

IN THE CIRCUIT COURT OF THE  
SECOND JUDICIAL CIRCUIT IN AND  
FOR LEON COUNTY, FLORIDA

MIAMI DADE COUNTY EXPRESSWAY  
AUTHORITY,

CASE NO.: 2018 CA 002300

Plaintiff,

v.

PAMELA JO BONDI, in her official capacity as  
Florida Attorney General,

Defendants

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**VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

This is an action for declaratory and injunctive relief seeking a declaration that statutes passed by the Florida Legislature in 2017 and 2018 modifying Part 1, Chapter 348, Florida Statutes, known as the Florida Expressway Authority Act, unconstitutionally impaired contracts to which MIAMI DADE COUNTY EXPRESSWAY AUTHORITY (“MDX” or “Plaintiff”) is a party, are unconstitutional special laws, violated other constitutional protections, and further violated §348.0010 Fla. Stat. MDX also seeks an injunction, temporary and permanent, as to the enforcement of the subject sections of the Florida Expressway Authority Act, as unconstitutional and without effect of law. In support of its claims for relief, MDX states as follows:

**INTRODUCTION**

In 2017 and 2018 the Florida Legislature passed statutes, that amended Part 1 of Chapter 348 of the Florida Statutes, known as the Florida Expressway Authority Act (hereinafter “the 2017 Amendments” and “the 2018 Amendment” respectively.) The

2017 Amendments and the 2018 Amendment only applied to Part I of the Act, thereby only impacting MDX and no other Florida expressway authority. The 2017 Amendments, among other things:

(1) required MDX to immediately reduce its toll rates to SunPass customers between 5 to 10 percent, § 348.0004(6), *Fla. Stat.*;

(2) placed restrictions on MDX's right, acquired by contract, to set its toll rates, including, among other things, requiring an independent traffic and revenue study for toll increases (except for increases tied to inflation), and a 2/3 majority vote of the authority board to approve a toll increase, § 348.0004(2)(e)(1)(a-b), *Fla. Stat.*;

(3) limited the amount of toll revenue that can be used for administrative expenses, § 348.0004(2)(e)(1)(c), *Fla. Stat.*;

(4) required a distance of at least five miles between main through-lane tolling points on transportation facilities constructed after July 1, 2017, § 348.0004(2)(e)(1)(d), *Fla. Stat.*;

(5) dedicated at least 20 percent, but not more than 50 percent, of annual surplus revenues to transportation and transit related expenses for projects approved by the Miami-Dade County Metropolitan Planning Organization ("MPO"), § 348.0004(11), *Fla. Stat.*; and

(6) required certain measures relating to accountability, including a financial audit requirement and required website posting of meeting agendas, financial audit, bond covenants, budget, contracts, expenditures and other information, § 348.00115, *Fla. Stat.*

The toll rate reduction mandate along with some of the other 2017 Amendments included "savings" clauses that made implementation of the amendments "subject to requirements contained in outstanding debt obligations as of July 1, 2017" or "subject to compliance with covenants made to bondholders."

The 2017 Amendments were of great concern to MDX because they impaired

rights MDX acquired from the State of Florida Department of Transportation under a contract titled the Transfer Agreement when it purchased five expressways located in Miami-Dade County (the “System.”) The Transfer Agreement granted to MDX full financial control of the System, i.e., “full jurisdiction and control over the operation, maintenance and finances of the System in perpetuity, including, without limitation, all right to regulate, establish, collect and receive tolls thereon.”

Full jurisdiction and control of the operation, maintenance and finances of the System granted under the Transfer Agreement is MDX’s most important asset. It is pledged to MDX bondholders under MDX’s Amended and Restated Trust Indenture, serving as the sole security for \$1.5 Billion Dollars in outstanding A rated municipal tax-exempt bonds and the sole means to secure future bonds to finance construction to improve and expand the System. MDX bonds are not backed by the full faith and credit of the State. Tolls are its sole revenue source making control of its finances a material issue to the financial markets to demonstrate the ability to repay debts free from outside influence. In reliance on the savings clauses contained in the 2017 Amendments, MDX did not lower its toll rate believing it fell under the statutory exemption that permitted it to comply with the covenants in its financing documents that conflict with the statute.

In 2018, the Florida Legislature again passed an amendment to only Part 1, of the Florida Expressway Authority Act (“the 2018 Amendment.”) The 2018 Amendment required MDX to submit to the Governor information regarding its compliance with the minimum five percent (5%) SunPass® toll reduction prescribed in the 2017

Amendments. If the required toll reduction has not taken place, effective October 31, 2018, the existing MDX Board will be dissolved and, except for the Florida Department of Transportation district secretary, a new board will be appointed by that date by the Governor and the Miami-Dade County Commission. See § 348.0003(2)(d)(2), Fla. Stat. The 2018 Amendment in effect removed the savings clauses contained in the 2017 Amendments forcing the MDX Board to yield its financial control of the System to the Legislature and reduce toll rates or be removed. The clear inference being that a new Board would be appointed that would comply and reduce the toll rate regardless of the harm it would cause MDX or its bondholders.

The 2017 and 2018 Amendments did significant harm to MDX, casting a cloud of uncertainty over who controls the right to set MDX's toll rate and manage its finances. As a result of that uncertainty, MDX's bond counsel can no longer provide an unqualified opinion certifying to the financial markets that MDX solely controls its finances, effectively ending MDX's ability to continue to issue A rated municipal bonds to finance construction to improve and expand the System. The market has already responded to this uncertainty as the Fitch Rating Agency downgraded the outlook for MDX bonds to negative due to "unprecedented intervention taken by the Florida State Legislature usurping local autonomy in order to lower toll rates and divert surplus revenues to other Miami-Dade County project obligations.

## **THE PARTIES**

1. The Plaintiff is the MIAMI DADE COUNTY EXPRESSWAY AUTHORITY, a Florida Expressway Authority formed by Miami Dade County ordinance Article XVIII,

Section 2-128, pursuant to the rights granted to Home Rule Counties under section 348.0003 of the Florida Expressway Authority Act..

2. The Defendant is THE HONORABLE PAMELA JO BONDI ("Bondi") who is the Attorney General of the State Florida and is sued in her official capacity. Bondi is a proper defendant in this action because the Attorney General is the chief law enforcement officer of the State having the duty to enforce Chapter 348, Florida Statutes and particularly the 2017 Amendments and the 2018 Amendment that are the subject of this litigation. Florida Dept. of Education v. Glasser, 622 So.2d 944, 948 (Fla. 1993.)

### **JURISDICTION AND VENUE**

3. This is an action for declaratory relief, pursuant to Chapter 86, Florida Statutes, to determine the constitutionality of the 2017 and 2018 Amendments to Chapter 348, Part 1, Florida Statutes, and whether said amendments can be enforced as valid law.

4. This action further seeks a declaration to determine whether the 2017 and 2018 Amendments violate Section 348.0010, Florida Statutes.

5. The Court has jurisdiction to grant declaratory relief. See §§86.011, 86.021, 86.101, Fla. Stat.; Abdool v. Bondi, 141 So.3d 529 (Fla. 2014); Martinez v. Scanlan, 582 So. 2d 1167, 1170 (Fla. 1991).

6. This action further seeks temporary and permanent injunctive relief to stop the application of the 2017 Amendments.

7. This Court has jurisdiction to grant injunctive relief. Art. V. § 20, Fla.

Const.; §26.012(3), Fla. Stat.; Sea Breeze Video, Inc. v. Federico, 648 So.2d 226, 228 (Fla. 2dDCA 1994.)

8. Venue is proper in Leon County because the Defendant is located in, or has her principal headquarters in, Leon County, Florida. See. § 47.011, Fla. Stat.; DCF v. Sun-Sentinel, 865 So.2d 1278 (Fla. 2004.)

9. All conditions precedent to the institution of this lawsuit have been, or will be, satisfied or waived.

### **FACTS COMMON TO ALL CLAIMS**

10. MDX is an expressway authority that was created by the Miami Dade County Board of County Commissioners Ordinance Article XVIII, Section 2-128 pursuant to Part I of the Florida Expressway Authority Act (the "Act") Chapter 348, Florida Statutes pursuant to rights granted to home rule counties under §348.0003, Fla. Stat..

11. The Act is divided into Parts.

12. Each Part enables the creation of expressway authorities based on certain criteria.

13. The criteria in Part I permits a home rule county as defined by § 125.011(1), Fla. Stat., to, by ordinance, create an expressway authority.

14. Section 125.011(1) Fla. Stat., defines a county as:

Any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. III of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein

conferred. Use of the word “county” within the above provisions shall include “board of county commissioners” of such county.

15. The local governments authorized to operate under a home rule charter by the State Constitutions of 1885 and 1968 are the City of Key West, Monroe County, Dade County, and Hillsborough County. See, Fla. Const. Art. VIII, s. 6, n. 2, 3, and 4.

16. Of these, only Miami Dade County operates under a home rule charter, which was adopted on May 21, 1957. Therefore, Miami-Dade County is the only government entity meeting the definition of county in § 125.011(1), Fla. Stat.

17. As a result of the home rule county criteria in Part I of the Act, MDX is the only expressway authority subject to Part I of the Act.

18. Pursuant to §348.0004, Fla. Stat., MDX, as an authority created and established pursuant to the Florida Expressway Authority Act, may acquire, hold, construct, improve, maintain, operate, and own an expressway system.

19. On or about December 10, 1996 MDX purchased the right to full jurisdiction and control of the operation, maintenance, and finances of five expressways in Miami Dade County from the State of Florida Department of Transportation (the “System”).

20. The terms of the purchase and the rights acquired by that purchase are contained in a document titled the Transfer Agreement that was entered into by and between MDX and the State of Florida Department of Transportation. The Transfer Agreement is attached hereto as Exhibit A.

21. MDX paid the State \$80 million to defease bonds the State secured with

the System and assumed an additional \$11 million of State liabilities as consideration for the purchase of the full jurisdiction and control of the System.

22. MDX issued bonds to pay the transfer price and secured payment of those bonds with the rights obtained under the Transfer Agreement and the State accepted those funds demonstrating acceptance of the terms of the Transfer Agreement including the scope of the rights transferred to MDX.

23. The Transfer Agreement is a valid contract where each party certified having the legal right to enter into the contract and each had the requisite authority and right to convey and acquire the rights contained therein. See Exhibits B.

24. The Transfer Agreement is recorded in the Public Records of Miami Dade County at O.R. Book 28566 Pg. 0277 through Pg. 0369. As of December 10, 1996, the effective date of the Transfer Agreement, MDX owned the rights to operate, maintain, and control the finances of the System.

25. The Transfer Agreement at Section 3(a) provides:

... the Authority shall have acquired full jurisdiction and control over the operation, maintenance and finances of the System in perpetuity, including, without limitation, all right to regulate, establish, collect and receive tolls thereon.

26. These rights are MDX's core asset and the Transfer Agreement is pledged as security for repayment of all MDX debt and financing. The Transfer Agreement, and specifically MDX's rights contained therein, is listed as an asset on MDX's balance sheet contained in its audited financial statements.

27. MDX's issues municipal debt, mostly bonds, to achieve the lowest cost of



capital for its toll payers, in order to finance its legislatively intended mission, i.e., the construction of expressways and related projects that increase mobility in Miami-Dade County.

28. MDX bonds, pursuant to § 348.005(2), Fla. Stat., are not backed by the full faith and credit of the State of Florida.

29. MDX bonds are secured solely by its toll revenue and the rights vested in MDX by the Transfer Agreement that guaranty decision making at the local level by a Board with direct knowledge of its needs and requirements and a fiduciary obligation to act in its best interest.

30. MDX issues all debt subject to its Amended and Restated Trust Indenture (“Trust Indenture.”) See Exhibit C.

31. The Trust Indenture sets out the contract terms by which MDX secures its obligation to its bondholders.

32. The Transfer Agreement is specifically pledged to MDX bondholders under the MDX Trust Indenture.

33. MDX’s rights of full jurisdiction and control of the operation, maintenance, and finances of the System in perpetuity, including the right to regulate, establish, collect and receive the tolls there on, are incorporated by reference into the MDX Trust Indenture and pledged to the bondholders as security for repayment of its bonds, evidencing local control and the source of MDX’s right and ability to repay its bonds.

34. MDX’s bondholders relied upon those rights, conveyed in the Transfer Agreement, as security for their investment in MDX’s bonds.

35. As further detailed herein, impairment of those rights by the Legislature reflected in the 2017 Amendments also conflict with the Trust Indenture and MDX's bondholders contractual right and expectation that MDX, and not the Legislature, is the only entity with the right to jurisdiction and control of MDX's finances and the right to "regulate, establish, and collect" tolls on the MDX System.

36. In 2017 the Florida Legislature passed amendments to Chapter 348, Part 1, Florida Statutes.

37. The Legislature amended § 348.0004(2)(e), Fla. Stat. to add the following:

1. Notwithstanding any other provision of law to the contrary, but subject to any contractual requirements contained in documents securing any indebtedness outstanding on July 1, 2017, in any county as defined in s. 125.011(1):

a. The authority may not increase a toll unless the increase is justified to the satisfaction of the authority by a traffic and revenue study conducted by an independent third party, except for an increase to the extent necessary to adjust for inflation pursuant to the procedure for toll rate adjustments provided in s. 338.165.

b. A toll increase must be approved by a two-thirds vote of the expressway authority board.

c. The amount of toll revenues used for administrative expenses by the authority may not be greater than 10 percent above the annual state average of administrative costs determined as provided in this sub-subparagraph. The Florida Transportation Commission shall determine the annual state average of administrative costs based on the annual administrative expenses of all the expressway authorities of this state. For purposes of this sub-subparagraph, administrative expenses include, but are not limited to, employee salaries and benefits,

small business outreach, insurance, professional service contracts not directly related to the operation and maintenance of the expressway system, and other overhead costs. The commission may adopt rules necessary for the implementation of this sub-subparagraph.

d. On transportation facilities constructed after July 1, 2017, there must be a distance of at least 5 miles between main through-lane tolling points. The distance requirement of this sub-subparagraph does not apply to entry and exit ramps.

38. The Legislature amended § 348.0004(6), Fla. Stat. to add the following:

(6) Subject to compliance with any covenants made with the holders of any bonds issued pursuant to the Florida Expressway Authority Act, an authority in any county as defined in s. 125.011(1) shall, at the time that any toll is incurred, reduce the toll charged on any of the authority's toll facilities by at least 5 percent, but not more than 10 percent, for each SunPass registrant having an account in good standing and having the license plate of the vehicle or vehicles incurring the toll registered to the SunPass account at the time the toll is incurred. The authority may not impose additional requirements for receipt of the reduced toll amount.

39. The Legislature amended § 348.0004(11), Fla. Stat. to add the following:

(11) Notwithstanding any other provision of the Florida Expressway Authority Act, an authority in any county as defined in s. 125.011(1) shall determine its surplus revenues as defined in s. 348.0002(12). The authority shall then dedicate at least 20 percent, but not more than 50 percent, of the annual surplus revenues to transportation- and transit-related expenses for projects in the area served by the authority. The metropolitan planning organization for any county as defined in s. 125.011(1) shall annually select a project or projects within the county to be funded by the authority's dedicated surplus revenues as provided in this subsection and provide to the authority a list reflecting the selected project or projects. The authority shall select from

the list for funding from the authority's dedicated surplus revenues transportation-and transit-related expenses that have a rational nexus to the transportation facilities of the authority and may include, but are not limited to, expenses associated with the planning, design, acquisition, construction, extension, rehabilitation, equipping, preservation, maintenance, or improvement of public transportation facilities, transit facilities, intermodal facilities, or multimodal corridors owned or operated by such municipality or county; and transit-related expenses that impact the capacity or use of the transportation facilities of the authority. For the purpose of this subsection, a rational nexus must demonstrate that the proposed transportation expenditure makes a substantial impact on the capacity or use of the transportation facilities of the authority, or that the proposed transit expenditure complements the operation of, or expands the access to, the transportation facilities of the authority.

40. The Legislature amended § 348.0004(12), Fla. Stat., to add the following:

(12) A county as defined in s. 125.011(1) must have a financial audit of the revenues and expenditures of the county's transportation plan conducted by an independent third party not less than biennially and must post the audits on the county's website to be eligible to receive the dedicated surplus revenues as provided in subsection (11).

41. This Section 12 is not directed towards an expressway authority but related to the change in the legislative scheme that was modified in section 11 mandating an expressway authority governed by Part 1 must pay over a part of its surplus to fund other local governments' projects.

42. The Legislature amended § 348.0004(13), Fla. Stat., to add the following:

(13) An authority established in any county as defined in 125.011(1) must have a financial audit conducted by an independent third party not less than biennially, and the audit report must be made publicly available on the authority's website.

43. This Section 13 applies to MDX, but as a matter of policy, MDX already did this annually but must now post the results on its website.

44. In 2017 the Legislature also created § 348.00115, Fla. Stat., and it states:

An expressway authority in a county as defined in s. 125.011(1) shall post the following information on its website:

- (1) Audited financial statements and any interim financial reports.
- (2) Board and committee meeting agendas, meeting packets, and minutes.
- (3) Bond covenants for any outstanding bond issues.
- (4) Authority budgets.
- (5) Authority contracts. For purposes of this subsection, the term "contract" means a written agreement or purchase order issued for the purchase of goods or services or a written agreement for the receipt of state or federal financial assistance.
- (6) Authority expenditure data, which must include the name of the payee, the date of the expenditure, and the amount of the expenditure. Such data must be searchable by name of the payee, name of the paying agency, and fiscal year and must be downloadable in a format that allows offline analysis.
- (7) Information relating to current, recently completed, and future projects on authority facilities.

45. Section 348.00115, Fla. Stat., does not contain a savings clause that exempts its application and applied to MDX on the effective date July 1, 2017. MDX is in full compliance and posts these matters on its website. However, prior to passage, MDX was already posting on its website a very large majority of the information mandated by the amendment in order to comply with the requirements of the Uniform Special District Accountability Act, Chapter 189, Florida Statutes.

46. Upon the passage of amendments to §§ 348.0004(2)(e), and §

348.0004(6), Fla. Stat., MDX determined that it was exempt from application of these portions of the 2017 Amendments because they conflicted with its rights under the Transfer Agreement, and its Trust Indenture, i.e., covenants and contractual requirements contained in documents securing any indebtedness outstanding on July 1, 2017, and MDX did not implement them.

47. Upon passage of amendments to § 348.0004(11), Fla. Stat., MDX determined its terms conflicted with its rights under the Transfer Agreement and its Trust indenture.

48. The applicability of § 348.0004(11), unlike the changes made to §§ 348.0004(2)(e) and § 348.0004(6), Fla. Stat., was not passed subject to conflicts with “covenants” and “documents securing its indebtedness.”

49. To determine if MDX was mandated to comply with § 348.0004(11), Fla. Stat., MDX considered it against the covenant made by the state in § 348.0010, Fla. Stat.

50. Section 348.0010, Fla. Stat., states:

The state does hereby pledge to, and agrees with, any person, firm, corporation, or federal or state agency subscribing to or acquiring the bonds to be issued by an authority for the purposes of the Florida Expressway Authority Act that the state will not limit or alter the rights hereby vested in an authority and the department until all bonds at any time issued, together with the interest thereon, are fully paid and discharged, insofar as the same affects the rights of the holders of bonds issued hereunder. The state does further pledge to, and agrees with, the United States that, in the event any federal agency constructs, or contributes any funds for the completion, extension, or improvement of, an expressway system or any part or

portion thereof, the state will not alter or limit the rights and powers of an authority and the department in any manner which would be inconsistent with the continued maintenance and operation of the expressway system or the completion, extension, or improvement thereof or which would be inconsistent with the due performance of any agreement between the authority and any such federal agency, and the authority and the department shall continue to have and may exercise all powers granted so long as the same shall be necessary or desirable for carrying out the purposes of the Florida Expressway Authority Act and the purposes of the United States in the completion, extension, or improvement of the expressway system or any part or portion thereof.

51. In reliance upon the covenant of the State in § 348.0010, Fla. Stat., MDX is exempt from application of § 348.0004(11), Fla. Stat., as amended.

52. MDX interpreted the covenant of the State in § 348.0010, Fla. Stat., to exempt it from application of §348.004(11), Fla. Stat., because its impact was to eliminate the MDX Board's right to determine the calculation and use of its surplus, provided under the Transfer Agreement, said right being pledged to its bondholders in security of repayment of its bonds under its Trust Indenture.

53. Given that §348.0004(11), Fla. Stat., "altered rights vested in the authority" and that were pledged to its bondholders, MDX, for itself and its bondholders, relied upon the covenant's plain meaning that the State would not alter its rights while bonds remained outstanding, and in reliance on the State's covenant did not implement this section.

54. MDX did not interpret §§ 348.0004(12) and (13) or § 348.00115, Fla. Stat., as being in conflict with either the Transfer Agreement or its Trust Indenture. As used herein the term "the 2017 Amendments" refers to those 2017 amendments that do

conflict with the MDX Transfer Agreement and Trust Indenture, to wit: §§ 348.0004(2)(e)(1)(a-d), § 348.0004(6), and 348.0004(11), Fla. Stat.

55. MDX sought the assistance of the Attorney General to interpret whether the 2017 Amendments conflicted with the Transfer Agreement or the Trust Indenture and was therefore an unconstitutional impairment. Although the Attorney General did not provide an opinion, it did provide guidance citing to Laborer's Int'l Union of N. Am., Local 478 v. Burroughs, 541 So.2d 1160 (Fla. 1989) as instructive and setting out the standard that a conflict exists where "one must violate one provision...to comply with another." See Exhibit D.

56. Under the standard provided above by the Attorney General the 2017 Amendments conflict with the Transfer Agreement and the Trust Indenture as MDX must choose to violate one to comply with the other supporting MDX's interpretation that it was exempt from application of the amendments.

57. MDX was commanded by the Legislature to appear in Tallahassee to attend a hearing of the Transportation and Infrastructure Subcommittee on October 25, 2017 to explain why it had failed, to among other things, reduce its toll rates. Exhibit E - [http://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=2443575804\\_2017101242](http://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=2443575804_2017101242).

58. By letters, tweets and articles published in local papers, state legislators questioned MDX's interpretation exempting it from application of the 2017 Amendments due to conflicts with its financing documents and pressed the case for the legislation specifically targeting MDX to reduce its toll rate and then to punish MDX for not reducing its toll rates. See Exhibit F.



59. In 2018 the Florida Legislature passed a new modification to Part 1 of Chapter 348, Florida Statutes, § 348.003(2)(d)(2), Fla. Stat. MDX, again, was the only Florida expressway authority that was affected by the modification (“the 2018 Amendment”).

60. Section.348.0003(2)(d)(2), Fla. Stat., states:

Notwithstanding subparagraph 1, in any county as defined in s. 125.011, the governing body of the authority shall by October 1, 2018, submit to the Governor information regarding its compliance with the minimum 5 percent toll reduction prescribed in s. 348.0004(6). If the required toll reduction has not taken place, effective October 31, 2018, the existing board shall be dissolved and, except for the district secretary of the department, a new board shall be appointed by that date. No member of the board on October 1, 2018, may be appointed to the new board. Except for the district secretary of the department, the members must be residents of the county. Five voting members shall be appointed by the governing body of the county. At the discretion of the governing body of the county, up to two of the members appointed by the governing body of the county may be elected officials residing in the county. Three voting members of the authority shall be appointed by the Governor. One member shall be the district secretary of the department serving in the district that contains such county. This member shall be an ex officio voting member of the authority.

61. The 2018 Amendment mandated that the MDX Board would be dissolved if it did not reduce toll rates by a minimum 5% as set out in the 2017 Amendments.

62. The 2018 Amendment did not condition dissolution of the Board on compliance with § 348.0004(6), Fla. Stat., but made clear the Board must reduce its toll rate or be dissolved.

63. The clear impact of the 2018 Amendment was to eliminate the savings

clauses that made application of the toll rate reduction subject to compliance with MDX's documents securing its indebtedness.

64. The Senate staff provided to legislators an analysis of the proposed 2018 Amendment and its impact to MDX before passage and opined:

If a court determines that this bill impairs the rights of any bondholder of an expressway authority created under part 1 of ch. 348, F.S., by requiring the reduction of tolls for certain users of the road, then such provision of the bill may be found unconstitutional. See Exhibit G.

65. Even after receiving the warning from Senate professional staff that the Amendments were potentially unconstitutional the Legislature passed it into law mandating that the MDX Board give up its contractual right to autonomy, subject itself to the control of the Legislature and reduce toll rates as demanded regardless of the impact to MDX, its bondholders, or its ability to continue to use its contract rights as the security to obtain financing to continue its mission to increase mobility in Miami-Dade County.

66. No other expressway authority in Florida was subject to this legislative scheme or the harmful consequences that resulted from the 2017 and 2018 Amendments.

67. As a consequence of the 2017 Amendments and the 2018 Amendment there is a cloud of uncertainty regarding who has the right to control MDX's operations, set MDX toll rate, and manage its finances.

68. As a consequence of this uncertainty, MDX is currently unable to issue public municipal debt on par with its previous bond issuances because its bond counsel

can no longer provide an unqualified opinion that MDX retains the full jurisdiction and control of its finances including the right to regulate tolls or that the Legislature in the future will not continue to usurp or interfere with MDX's full jurisdiction and control of the right to set its tolls or manage its finances.

69. As a result, in July 2018, after passage of the 2018 Amendment, the Fitch Rating Agency downgraded MDX's bonds outlook as negative citing unprecedented legislative usurpation of its rights, and MDX's Bond Insurer has raised concerns of current impairment of the Transfer Agreement and Trust Indenture by the amendments as well as concerns about future legislation requiring reduction in toll rates. See Exhibits H and I, respectively.

70. Under the legal standard provided as guidance by the Attorney General as well as the clear harm caused to MDX and its bondholders as expressed by the Fitch downgrade, concerns raised by MDX's bond insurer, and MDX current inability to issue parity bonds it is clear that the 2017 and 2018 Amendments unconstitutionally impair the Transfer Agreement and the Trust Indenture, are unconstitutional special laws, and violate § 348.0010 consistent with the warnings provided by Senate staff to the Legislature before passing these amendments.

### **EXPEDITED CONSIDERATION**

71. Section 86.111, Florida Statutes, provides for expedited consideration of actions for declaratory relief, and MDX requests such consideration.

**COUNT I**  
**DECLARATORY RELIEF**

*(The 2017 Amendments Violates Constitution prohibition against Impairment of Contract)*

72. MDX realleges and incorporates herein by reference the allegations of Paragraphs 1 - 71 as if fully set forth herein.

73. The Transfer Agreement is a contract between the State of Florida, Department of Transportation and MDX. It conveyed and vests the following rights to MDX:

*The Department and Authority acknowledge that upon recordation, conveyance and transfer, the Authority shall have acquired full jurisdiction and control over the operation, maintenance and finances of the System in perpetuity, including, without limitation, all right to regulate, establish, collect and receive tolls thereon. (See Paragraph 3(a) of Transfer Agreement.)*

74. The plain meaning of this contract language is that the right to control the operation and finances of MDX including the right to regulate, establish, collect and receive tolls on the System is the sole and exclusive right of MDX, i.e., the MDX Board.

75. To finance its legislative objective, MDX sells tax-exempt municipal bonds to the public to obtain the lowest cost of capital to benefit its toll payers and keep the toll rate as low as possible.

76. As a result of this strategy and its efficiency, until passage of the Amendments, MDX provided a very popular annual Cash Back Program to its toll payers where it rebated a percentage of tolls paid by its frequent customers.

77. MDX currently has \$1.5Billion in outstanding A rated municipal tax-exempt

bonds.

78. To fund its existing approved Capital Program, i.e., construction, extension, repair or maintenance of the System, MDX will be required to sell more bonds to finance its projects.

79. To induce the public to buy its bonds, MDX made contractual promises in its Trust Indenture that secure the repayment of its bonds. The Trust Indenture:

... assigns pledges and grants a lien upon and security interest in the following described property to the Trustee:

- (a) the Revenues (as hereinafter defined.)
- (b) the Transfer Agreement.

80. These assets were pledged:

for the equal and proportionate benefit and security of the Bonds, issued and to be issued under the Prior Indenture and hereunder and secured by this Indenture, including any Bonds hereafter issued, without preference, priority or distinction as to participation in the lien benefit and protection hereof of any one Bond over any or from the others by reason of priority in the issue or negotiation thereof or by reason of the date or dates of maturity thereof ... so that each and all of the Bonds shall have the same right, lien and privilege under this indenture and shall be equally secured hereby, with the same effect as if the same had all been made, issued and negotiated upon the delivery hereof. (See Trust Indenture Granting Clause Page 3-4)

81. The Trust Indenture further sets out at Section 7.18, Agreements with Department:

The Authority covenants to diligently enforce all obligations of the Department under the Transfer Agreement... The

Authority covenants to perform all its obligations under such agreements.

82. Based on the pledge of the Transfer Agreement in the Trust Indenture, MDX bondholders were induced to purchase MDX's bonds and have an expectation that based on the rights conveyed under the Transfer Agreement the MDX Board is the sole party with the right to manage its finances and specifically to regulate, establish, collect and receive tolls on the System.

83. The Trust Indenture also requires the MDX Board to diligently enforce its rights under the Transfer Agreement. Thus, MDX is contractually required to challenge impairment of its rights to regulate, establish, collect and receive tolls on the System.

84. The State of Florida made promises by contract in the Transfer Agreement that it cannot unilaterally modify under contract law.

85. The 2017 Amendments, attempt to do by force of law what the State of Florida cannot do under contract law, and unilaterally modify contract rights it sold to MDX.

86. Article I, section 10, of the Florida Constitution mandates:

"[n]o ... law impairing the obligation of contracts shall be passed." "As part of the Florida Constitution's Declaration of Rights, this right belongs to the people ... as against the \*1191 government." *Citrus County Hosp. Bd. v. Citrus Mem'l Health Found., Inc.*, 150 So.3d 1102, 1106 (Fla. 2014) (quoting *Traylor v. State*, 596 So.2d 957, 963 (Fla. 1992) (explaining that "each right" in the Declaration of Rights is "a distinct freedom guaranteed to each Floridian against government intrusion" and "operates in favor of the individual, against [the]

government"). Searcy v. State, 209 So.3d  
1181 (Fla. 2017).

87. Based on the above it is unconstitutional for the Florida Legislature to enact laws that impair the rights conveyed to MDX by contract.

88. The 2017 Amendments directly intrudes upon, usurps and impairs MDX's full jurisdiction and control over the operation, maintenance and finances of the System and the right to regulate, establish, collect and receive tolls on the System.

89. Section 348.004(2)(e)(1)(a), Fla. Stat., requires that an increase in toll rates must be justified by a traffic and revenue study conducted by an independent third party, except for toll increases to adjust for inflation pursuant to § 338.165, Fla. Stat..

90. This section conflicts with MDX right to full jurisdiction and control over the operation, maintenance and finances of the System including toll rate setting pledged to its bondholders by adding additional requirements to the toll rate setting process. It should be noted that prior to passage of the legislation, MDX policy already required a traffic study to modify its toll rate. Further, the MDX Board has never permitted automatic toll increases for inflation (CPI) as now mandated by the 2017 Amendments but instead required a two-thirds majority vote of the Board to protect its toll payers from such automatic increases.

91. Section 348.0004(2)(e)(1)(b), Fla. Stat., requires a super-majority board vote to increase tolls. MDX policy currently requires a majority vote to increase tolls as determined by the MDX bylaws.

92. This amendment replaces the Board's decision controlling the manner in

which tolls may be increased, i.e., regulated, thereby conflicting with MDX's rights under the Transfer Agreement that provide MDX full jurisdiction and control over the System including the right to "regulate, establish, collect and receive tolls," this right also being pledged to MDX bondholders.

93. Section 348.0004(2)(e)(1)(c), Fla. Stat., limits administrative expenses to not greater than 10% above the state average of administrative costs as determined by the Florida Transportation Commission.

94. Administrative expenses are part of the operation, maintenance and finances of the System and reserved to MDX by the Transfer Agreement, placing the amendment in conflict with MDX's rights and those pledged to its bondholders.

95. Section 348.0004(2)(e)(1)(d), Fla. Stat., requires 5 miles between tolling points on any portion of the System constructed after July 1, 2017.

96. This amendment conflicts with MDX's rights under the Transfer Agreement that gives full jurisdiction and control to regulate, establish, collect and receive tolls on the System and pledged to MDX bondholders.

97. Section 348.0004(6) requires that as of July 1, 2017 the authority is mandated to provide a 5-10% reduction in its toll rate to all SunPass users subject to compliance with covenants MDX made to its bondholders. Prior to passage, SunPass users already enjoyed a 50% reduction in toll rates as those System users that do not have a SunPass pay the stated toll rate which is double the SunPass rate.

98. This amendment impairs MDX's rights under the Transfer Agreement and impairs bondholder rights under the MDX Trust indenture as it usurps MDX full



jurisdiction and control of its toll rate setting authority, replacing local control of toll rate setting by a Board that is duty bound to act in the best interest of the authority with the decision-making of the Legislature which has no obligations to MDX or its bondholders. This impairment is amplified by the 2018 Amendment.

99. Section 348.0004(11) requires an expressway authority to determine its surplus revenues based on the definition of surplus contained in § 348.002(12) and requires setting aside between 20-50% of its surplus to fund projects of other local agencies selected by the local Metropolitan Planning Organization.

100. This amendment infringes on MDX's rights under § 348.0004(2), the Transfer Agreement, and bondholder rights under the Trust Indenture as it removed the Board's discretion to determine how revenues are used, and specifically whether to use its surplus to fund projects of other local agencies and by how much.

101. This amendment further creates a direct conflict between the statutory definition of surplus funds and the requirements of the MDX Trust Indenture that permits revenues to be used to pay expenses for System improvements, i.e., the construction, extension, repair or maintenance of the System.

102. The statutory definition of surplus revenue, § 348.002(11), Fla. Stat., does not permit the deduction of non-debt related expenses in determining surplus, i.e., the use of budgeted revenues for construction, extension, repair or maintenance of the System.

103. In contrast, the MDX Trust Indenture requires MDX to budget for System Improvements expenses.

104. By removing MDX's discretion to use its revenues to pay expenses for construction, repair or maintenance of the System before determining surplus, the amendment conflicts with MDX's rights under the Transfer Agreement and conflicts with MDX's obligations to bondholders under the Trust Indenture.

105. The 2017 Amendments are an unconstitutional impairment of MDX's rights under the Transfer Agreement. Searcy v. State, 209 So. 3d 1181 (Fla. 2017).

106. The 2017 Amendments are an unconstitutional impairment of the MDX Trust Indenture. Searcy v. State, 209 So. 3d 1181 (Fla. 2017).

107. Based on the foregoing, all elements necessary to support a cause of action for declaratory relief are present:

- a. There is a bona fide, actual, present need for a declaration that the 2017 Amendments are invalid and unconstitutional.
- b. The declaration sought deals with a present controversy as to an ascertainable set of facts.
- c. Constitutionally provided rights and privileges of MDX and MDX bondholders are dependent upon the law applicable to the facts.
- d. The Plaintiffs and the Defendants have an actual, present, adverse, and antagonistic interest in the subject matter of this Complaint.
- e. The antagonistic and adverse interests are all before this Court.
- f. The relief sought is not merely the giving of legal advice or providing the answer to a question propounded from curiosity, but stems from an actual controversy.

**WHEREFORE**, Plaintiff, MDX respectfully request that this Court enter a declaratory judgment that §§348.0004(2)(e), § 348.0004(6) and § 348.0004(11), Fla. Stat., as amended, are unconstitutional, prohibit the State of Florida from enforcing

same, and grant such other relief as this Court deems just and proper.

**COUNT II**  
**DECLARATORY RELIEF**  
*(The 2017 Amendments Violate § 348.0010)*

108. MDX realleges and incorporates herein by reference the allegations of Paragraphs 1 - 107 as if fully set forth herein.

109. Section 348.0010, Fla. Stat., promises to any person acquiring MDX's bonds that the State will not alter the rights vested in the authority until all bonds are fully paid and discharged. The statute states:

The state does hereby pledge to, and agrees with, any person, firm, corporation, or federal or state agency subscribing to or acquiring the bonds to be issued by an authority for the purposes of the Florida Expressway Authority Act that the state will not limit or alter the rights hereby vested in an authority and the department until all bonds at any time issued, together with the interest thereon, are fully paid and discharged, insofar as the same affects the rights of the holders of bonds issued hereunder.

110. MDX's "full jurisdiction and control over the operation, maintenance and finances of the System in perpetuity, including, without limitation all right to regulate, establish, collect and receive tolls on the System" is limited and altered by the passage of the 2017 Amendments in violation of § 348.0010, Fla. Stat.

111. The passage of the 2017 Amendments that among other things mandate that MDX provide a 5%-10% discount of its toll rate to Sunpass users and limits the use of revenues to pay expenses for construction, extension, maintenance and repair of the

System limits and alters MDX's exclusive right under the Transfer Agreement to regulate, establish, collect and receive tolls on the System. It also alters, limits and affects the rights MDX conveyed under its Trust Indenture to its bondholders currently holding \$1.5Billions of outstanding bonds.

112. Section 348.0010, Fla. Stat., prohibits the passage of such laws that limit or alter the rights vested in an authority until all bonds at any time issued, together with the interest thereon, are fully paid and discharged, insofar as the same affects the rights of holders of bonds issued hereunder.

113. MDX has \$1.5 Billion of outstanding bonds on the effective date of the 2017 Amendments, and the amendments alter and limits the rights of MDX and its bondholders in violation of § 348.0010, Fla. Stat.

**WHEREFORE**, Plaintiff, MDX respectfully request that this Court enter a declaratory judgment that §§348.0004(2)(e), § 348.0004(6) and §348.0004(11), Fla. Stat., as amended, violate § 348.0010, Fla. Stat., are invalid as a result thereof, and prohibit the State of Florida from enforcing same, and grant such other relief as this Court deems just and proper including:

**COUNT III**  
**DECLARATORY RELIEF**

*(The 2017 Amendments violate Constitution - Special law)*

114. MDX realleges and incorporates herein by reference the allegations of Paragraphs 1 - 107 as if fully set forth herein.

115. Section 86.021, Fla. Stat., permits any aggrieved party claiming to be

affected by a statute to obtain a declaration of the statute's validity and the party's rights or status thereunder.

116. By design of the Legislature, the 2017 Amendments apply only to Part 1 of Chapter 348, Florida Statutes.

117. Part 1, of Chapter 348, Florida Statutes, only applies to Miami-Dade County, and therefore, MDX is the only expressway authority subject to it.

118. Article III, §10 of the Florida Constitution prohibits the Legislature from passing a special law without either providing advance notice of intent to enact the law or conditioning the law's effectiveness upon a referendum of the electors of the areas affected. Specifically, Article III, §10, Fla. Const., provides in its entirety:

No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected.

119. A "special law" is one that relates to, or is designed to operate upon, particular persons or entities.

120. Upon the effective date of the 2017 Amendment no other expressway authority in Florida except MDX was subject to its application.

121. The 2017 Amendments subjects its application to financing documents in effect on July 1, 2017. Based on this date the amendment can only ever apply to MDX.

122. All Florida expressway authorities, and all tolling entities in Miami-Dade County, Florida, Department of Transportation, Florida Turnpike Enterprise and Miami-Dade County, use SunPass to collect tolls yet the legislation only selects MDX as

its target to provide toll rate relief to the very narrow category of Florida citizens that use the five MDX toll roads in Miami-Dade County.

123. The majority of tolling in Miami-Dade County is done by FDOT and Florida Turnpike Enterprise (“FTE”). FDOT and FTE were not similarly required to reduce toll rates in Miami-Dade County or any other county in Florida for its SunPass customers.

124. There is no possibility that any other or future expressway authority in Florida can meet the requirements of the 2017 Amendments because of the dates in the statute.

125. Because the 2017 Amendments apply only to MDX, it is a special law designed to operate upon a particular entity. License Acquisitions, LLC., v. Debarry Real Estate Holdings, 155 So.3d 1137 (Fla. 2014).

126. The 2017 Amendments were enacted under the guise of a general law without notice or conditioning the law’s effectiveness upon a referendum. Because the 2017 Amendments have not met the specific procedural requirements for passage as a special law, it is invalid.

**WHEREFORE**, pursuant to Chapter 86, Florida Statutes et. seq., MDX seeks a declaratory judgment that the 2017 Amendments are an impermissible special law that was not enacted pursuant to the requisite procedures, and is therefore unconstitutional under Article III, § 10 of the Florida Constitution and invalid.

**COUNT IV**  
**DECLARATORY RELIEF**

*(The 2018 Amendments Violates Constitution - Impairment of Contract)*

127. MDX realleges and incorporates herein by reference the allegations of Paragraphs 1 - 107 as if fully set forth herein.

128. In reliance on savings clauses contained in the 2017 Amendments, MDX did not lower its toll rate or implement the other limitations on its autonomy to manage its finances.

129. The savings clauses made the mandates in the 2017 Amendments “subject to compliance with any covenants made with the holders of any bonds issued pursuant to the Florida Expressway Authority Act.”

130. MDX’s Trust Indenture pledged the rights acquired under the Transfer Agreement to its bondholders that vested in MDX “the full jurisdiction and control over the operation, maintenance and finances of the System in perpetuity, including, without limitation, all right to regulate, establish, collect and receive tolls thereon.”

131. Given that the mandate to reduce the toll rate was in conflict with MDX’s full jurisdiction and control of its toll rate as provided under the Transfer Agreement, MDX complied with its Transfer Agreement and Trust Indenture, as authorized by the savings clauses in the 2017 Amendments, and did not reduce its toll rate.

132. The legislators that sponsored the 2017 Amendments disagreed with MDX’s interpretation of the 2017 Amendments and specifically MDX’s reliance on the savings clauses to not reduce its toll rate as directed by the Legislature.

133. MDX was commanded to appear before the Transportation and

Infrastructure Subcommittee on October 25, 2017 for a hearing to explain why it did not reduce tolls rates as required by the 2017 Amendments.

134. At the hearing, MDX explained to the legislator questioning its decision not to reduce the toll rate that the 2017 Amendments conflicted with its contract rights, and that the conflict was creating uncertainty in the financial market with the potential effect of destabilizing its bond rating and the ability to issue future bonds. MDX explained that it interpreted the Legislature's inclusion of savings clauses as recognizing the potential destabilizing effect of the legislation, and providing a means to preserve the status quo of its outstanding bonds, and to cure the potential constitutional issues and the violation of § 348.0010, Fla. Stat.

135. The legislator did not agree with that assessment.

136. In the next legislative session, the legislators that introduced the 2017 Amendments introduced the 2018 Amendment that passed into law.

137. The 2018 Amendments provided that the MDX Board would be dissolved if by October 31, 2018 the minimum 5% toll rate reduction was not implemented.

138. The 2018 Amendment did not tie dissolution of the Board to compliance with the 2017 Amendments, but specifically to the implementation of the 5% toll rate reduction.

139. The de facto effect of the 2018 Amendment was to eliminate the savings clauses contained in the 2017 Amendments and impose the Legislature's control over MDX's toll rate setting right and financial autonomy or dissolve the MDX Board as punishment and appoint a new Board that would comply and reduce the toll rate and



permit impairment of MDX's rights.

140. The impact to MDX has been negative and significant in that the Fitch Rating Agency downgraded the outlook for MDX bonds to negative directly based on the Legislature's usurpation of its rights.

141. MDX's Bond Insurer has similarly raised concerns over the Legislature's impairment of the Transfer Agreement and the potential for future legislative actions that further reduce tolls and impair the Transfer Agreement.

142. MDX also remains unable to currently issue A rated parity bonds under its Trust Indenture as a result of the uncertainty over its financial autonomy including control of its toll rates created by the 2017 and 2018 Amendments.

143. Article I, § 10, of the Florida Constitution mandates:

"[n]o ... law impairing the obligation of contracts shall be passed." "As part of the Florida Constitution's Declaration of Rights, this right belongs to the people ... as against the \*1191 government." *Citrus County Hosp. Bd. v. Citrus Mem'l Health Found., Inc.*, 150 So.3d 1102, 1106 (Fla. 2014) (quoting *Traylor v. State*, 596 So.2d 957, 963 (Fla. 1992) (explaining that "each right" in the Declaration of Rights is "a distinct freedom guaranteed to each Floridian against government intrusion" and "operates in favor of the individual, against [the] government")). *Searcy v. State*, 209 So.3d 1181 (Fla. 2017).

144. Based on the above it is unconstitutional for the Florida Legislature to enact laws that interfere with the rights conveyed to MDX by contract.

145. The 2018 Amendment directly intrudes upon and usurps MDX's full

jurisdiction and control of the System including without limitation, all right to regulate, establish, collect and receive tolls thereon; said rights also being contained in the MDX Trust Indenture.

146. The 2018 Amendments are an unconstitutional impairment of MDX's rights under the Transfer Agreement. Searcy v. State, 209 So. 3d 1181 (Fla. 2017).

147. The 2018 Amendments are an unconstitutional impairment of the MDX Trust Indenture. Searcy v. State, 209 So. 3d 1181 (Fla. 2017).

148. Based on the foregoing, all elements necessary to support a cause of action for declaratory relief are present:

- a. There is a bona fide, actual, present need for a declaration that the 2017 Amendments are invalid and unconstitutional.
- b. The declaration sought deals with a present controversy as to an ascertainable set of facts.
- c. Constitutionally provided rights and privileges of MDX and MDX bondholders are dependent upon the law applicable to the facts.
- d. The Plaintiffs and the Defendants have an actual, present, adverse, and antagonistic interest in the subject matter of this Complaint.
- e. The antagonistic and adverse interests are all before this Court.
- f. The relief sought is not merely the giving of legal advice or providing the answer to a question propounded from curiosity, but stems from an actual controversy.

**WHEREFORE**, Plaintiff, MDX respectfully request that this Court enter a declaratory judgment that § 348.0003(2)(d)(2), Fla. Stat., as amended, is unconstitutional, prohibit the State of Florida from enforcing same, and grant such other

relief as this Court deems just and proper.

**COUNT V**  
**DECLARATORY RELIEF**

*(The 2018 Amendments Violates § 348.0010, Fla. Stat.)*

149. MDX realleges and incorporates herein by reference the allegations of Paragraphs 1 - 107 as if fully set forth herein.

150. Section 348.0010, Fla. Stat., promises to any person acquiring MDX's bonds that the State will not alter the rights vested in the authority until all bonds are fully paid and discharged. The statute states:

The state does hereby pledge to, and agrees with, any person, firm, corporation, or federal or state agency subscribing to or acquiring the bonds to be issued by an authority for the purposes of the Florida Expressway Authority Act that the state will not limit or alter the rights hereby vested in an authority and the department until all bonds at any time issued, together with the interest thereon, are fully paid and discharged, insofar as the same affects the rights of the holders of bonds issued hereunder.

151. MDX's rights conveyed by the State under the Transfer Agreement, i.e., full jurisdiction and control to regulate, establish, collect and receive tolls on the System, and pledged to MDX bondholders in its Trust Indenture, is limited and altered by the passage of the 2018 Amendments in violation of § 348.0010, Fla. Stat.

152. The passage of the 2018 Amendment that mandates MDX provide a minimum 5% discount of its toll rate to Sunpass users or its Board would be dissolved alters rights vested in MDX under the Transfer Agreement to regulate, establish, collect

and receive tolls on the System. It also impairs the rights MDX conveyed to its bondholders under its Trust Indenture.

153. Section 348.0010, Fla. Stat., prohibits the passage of such laws that alter or limit the rights of an authority or bondholder while bonds remain outstanding.

154. MDX has \$1.5 Billion of outstanding bonds on the effective date of the 2018 Amendment, and the amendment alters and limits the rights of MDX and its bondholders in violation of § 348.0010, Fla. Stat.

**WHEREFORE**, Plaintiff, MDX respectfully request that this Court enter a declaratory judgment that § 348.003(2)(d)(2), Fla. Stat., as amended, violates § 348.0010, Fla. Stat., and is invalid, and prohibit the State of Florida from enforcing same, and grant such other relief as this Court deems just and proper.

**COUNT VI**  
**DECLARATORY RELIEF**

*(The 2018 Amendments Violates Constitution - Special Laws)*

155. MDX realleges and incorporates herein by reference the allegations of Paragraphs 1 - 107 as if fully set forth herein.

156. Section 86.021, Florida Statutes permits any aggrieved party claiming to be affected by a statute to obtain a declaration of the statute's validity and the party's rights or status thereunder.

157. By design of the Legislature, the 2018 Amendment applies only to Part 1 of Chapter 348.

158. Part 1, of Chapter 348, Florida Statutes, only applies to Miami-Dade

County, and therefore, MDX is the only expressway authority subject to it because that section only applies to home rule counties as defined by § 125.011(1), Fla. Stat.

159. Article III, § 10 of the Florida Constitution prohibits the Legislature from passing a special law without either providing advance notice of intent to enact the law or conditioning the law's effectiveness upon a referendum of the electors of the areas affected. Specifically, that section provides in its entirety:

No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected. Art. III, §10, Fla. Const.

160. A "special law" is one that relates to, or is designed to operate upon, particular persons or entities.

161. Upon the effective date of the 2018 Amendment no other expressway authority in Florida except MDX was subject to its application or could have been subject to its application.

162. All Florida expressway authorities and tolling entities in Miami-Dade County use SunPass to collect tolls yet the legislation only selects MDX as its target.

163. There is no possibility that any other expressway authority in Florida can meet the requirements of Part 1, Chapter 348, Florida Statutes because of the dates in the statute, and its reference to compliance with the 2017 Amendments.

164. Because the 2018 Amendment applies only to MDX, it is a special law designed to operate upon a particular entity. License Acquisitions, LLC., v. Debarry Real

Estate Holdings, 155 So.3d 1137 (Fla. 2014).

165. The 2018 Amendments were enacted under the guise of a general law without notice or conditioning the law's effectiveness upon a referendum. Because the 2018 Amendments have not met the specific procedural requirements for passage as a special law, it is invalid.

**WHEREFORE**, pursuant to Chapter 86, Florida Statutes et. Seq., MDX seeks a declaratory judgment that the 2018 Amendments are an impermissible special law that was not enacted pursuant to the requisite procedures, and is therefore unconstitutional under Article III, § 10 of the Florida Constitution, and is invalid.

**COUNT VII  
INJUNCTION**

*(Injunction against enforcement of 2017 Amendments)*

166. MDX realleges and incorporates herein by reference the allegations of Paragraphs 1 - 107 as if fully set forth herein.

167. MDX is entitled to seek temporary and permanent injunctive relief pursuant to Section 26.012(3), Florida Statutes, to prevent the application of an unconstitutional law.

168. The 2017 Amendments are unconstitutional laws that impair MDX contract rights under the Transfer Agreement and the MDX Trust Indenture in violation of Art. § 10, Fla. Const.

169. The 2017 Amendments are special laws that do not meet the procedural requirements for enactment of a special law and is therefore in violation of Article III,

Section 10 of the Florida Constitution.

170. Because it has no adequate remedy at law, MDX seeks an injunction to prevent the effectiveness and enforcement of the invalid 2017 Amendments.

171. If this Court does not enjoin the enforcement of the 2017 Amendments as special laws that impair MDX contractual rights, MDX will continue to suffer irreparable harm because its core asset is damaged and its ability to access first tier A tax-exempt bond financing at customary rates is damaged as a result.

172. MDX is substantially likely to succeed on the merits of the underlying case because the 2017 Amendments unconstitutionally impair its contracts, are unconstitutional special laws and cause other significant irreparable harm.

173. Granting the requested relief is in the public interest because MDX is unable to pursue its intended legislated goal to increase mobility in Miami-Dade County because its ability to issue parity debt is effectively terminated by the 2017 Amendments, thereby greatly increasing the cost of borrowing that will be borne ultimately by the toll payer.

**WHEREFORE**, MDX prays the Court enter temporary and permanent injunction against the enforcement of the 2017 Amendments, and further that the Court grant any such other relief as is just, equitable and proper.

DATED this 25th day of October, 2018.

Respectfully submitted,

By: 

KIRK DE LEON, ESQ.

Fla Bar No: 989959

**De LEON & De LEON, P.A.**

**Attorneys for Plaintiff**

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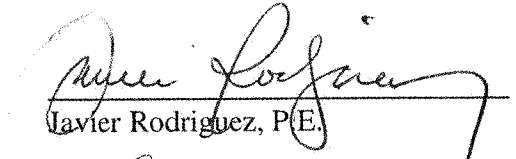



**VERIFICATION**

STATE OF FLORIDA        )  
  )  
COUNTY OF DADE        )

ss:

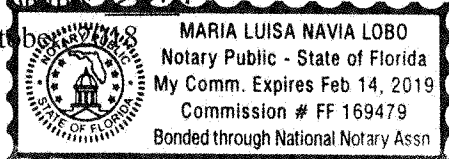
BEFORE ME, the undersigned authority, personally appeared Javier Rodriguez, P.E., who is the Executive Director of the MIAMI DADE COUNTY EXPRESSWAY AUTHORITY (“MDX”), the Plaintiff herein, and after being first duly sworn, deposes and says that he has read the Verified Complaint for Declaratory and Injunctive Relief attached hereto, and that the facts set forth therein are true and correct according to his own personal knowledge and information. The source of his knowledge is his personal knowledge and the records and reports of the Plaintiff, its employees and agents. Further, the exhibits attached are made in accord with MDX's record keeping procedures. These types of records are customarily made by MDX and include the records of other governmental entities, like the Florida Legislature. MDX requires that these records be made at or near the time of any transaction being so recorded. MDX requires that only employees/agents with knowledge of the transaction being recorded make such records. The attached exhibits are MDX business records or records obtained from public records and information.

  
Javier Rodriguez, P.E.

  
Notary Public  
My Commission Expires:

SWORN TO AND SUBSCRIBED

before me on this 21<sup>st</sup>  
day of Oct



\_\_\_\_\_  
(Type or print name)

**Exhibit List**

- Exhibit A – The Transfer Agreement.
- Exhibit B – Certifications of Parties to Transfer Agreement.
- Exhibit C – MDX Amended and Restated Trust Indenture.
- Exhibit D – Letter from Attorney General dated January 16, 2018.
- Exhibit E – Video of October 25, 2017 Transportation and Infrastructure Subcommittee hearing.
- Exhibit F – Letters and articles from legislators regarding MDX toll rate.
- Exhibit G – Senate Staff Analysis of 2018 Amendment.
- Exhibit H – Fitch Rating Agency press release.
- Exhibit I – Correspondence from MDX Bond Insurer.

## Exhibit A

### The Transfer Agreement

## TRANSFER AGREEMENT

THIS TRANSFER AGREEMENT (this "Agreement") is made and entered into on this 10th day of December, 1996, between DADE COUNTY EXPRESSWAY AUTHORITY (the "Authority"), a body politic and corporate, a public instrumentality, and an agency of the State, existing under the Florida Expressway Authority Act (Part I of Chapter 348, Florida Statutes, as amended) (the "Act"), and the STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION (the "Department"), an agency of the State of Florida (the "State").

### W I T N E S S E T H:

WHEREAS, the Authority was established by Ordinance No. 94-215, adopted on December 13, 1994, by the Board of County Commissioners of Dade County, pursuant to the Act; and

WHEREAS, the Act sets forth the Authority's purposes and powers, which include the powers to: (1) acquire, hold, construct, improve, maintain, operate, own, and lease the expressway system located in Dade County and identified more particularly in Exhibit A hereto (the "System"); (2) fix, alter, change, establish, and collect tolls, rates, fees, rentals, and other charges for the services and facilities of the System; and (3) utilize surplus revenues to finance or refinance the planning, design, acquisition, construction, maintenance or improvement of a public transportation facility or transportation facilities located in Dade County or any programs or projects that will improve the levels of service on the System; and

WHEREAS, the Department and the Authority have agreed to a transfer of operational and financial control of the System from the Department to the Authority on the date hereof upon the terms and conditions herein set forth; and

WHEREAS, the duties of all parties in implementing the transfer of operational and financial control of the System from the Department to the Authority are set forth in this Agreement; and

WHEREAS, the System is currently financed with bonds of the State of Florida denominated Full Faith and Credit Dade County Road Refunding Bonds, Series 1993 (the "State Bonds") in the aggregate outstanding principal amount of \$91,300,000 supported by revenues of the System; and

WHEREAS, the System cannot be transferred until provision is made for the defeasance of the State Bonds and the simultaneous termination of the 1989 Lease-Purchase Agreement Covering Dade County Road Project dated as of April 5, 1989 (the "Lease-Purchase Agreement") among the Department, the Division of Bond Finance of the State Board of Administration of Florida (formerly known as the Division of Bond Finance of the Department of General Services of the State of Florida) (the "Division") and Dade County, Florida (the "County"); and

WHEREAS, the Authority is issuing on the date hereof under the Trust Indenture dated as of November 15, 1996 (the "Indenture") between the Authority and The Bank of New York, as Trustee, \$80,000,000 in aggregate principal amount of its Toll System

Revenue Bonds, Series 1996 (Taxable) (the "Bonds") and is applying a portion of the proceeds of the Bonds, and certain other available moneys, on the date hereof to defease all of the outstanding State Bonds pursuant to the terms and provisions of the Escrow Deposit Agreement dated of even date herewith (the "Escrow Agreement") between the Authority and the State Board of Administration of Florida (the "SBA"); and

**WHEREAS**, simultaneously with the entry by the Department and the Authority into this Agreement, the Department and the Authority are entering into the following additional agreements with respect to the System, each dated the date hereof: (a) Toll Operations and Maintenance Agreement (the "Toll Operations and Maintenance Agreement"); (b) Roadway Operations and Maintenance Agreement (the "Roadway Operations and Maintenance Agreement"); and (c) SunPass Agreement (the "SunPass Agreement"); and

**WHEREAS**, the Authority and the Department have identified all physical assets (other than the roadways described in Exhibit A hereto), such as buildings, toll equipment, other additions and permanent attachments and all tangible personal property to be transferred from the Department to the Authority on the date hereof as part of the System, which assets are identified more particularly in Exhibit B hereto (the "Non-Roadway Assets"); and

**WHEREAS**, the Authority and the Department have identified in Exhibit C hereto certain fund balances presently held in respect of the State Bonds that shall also be transferred in the manner hereinafter set forth upon the transfer of the System; and

WHEREAS, the Authority and the Department have identified more particularly in Exhibit D hereto certain financial obligations that the Authority shall owe to the Department under this Agreement as of and after the date hereof (the "Net Liabilities");

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants and benefits set forth herein and other good and valuable consideration, receipt of which is hereby acknowledged, hereby agree as follows:

1. **Representations by the Department.** The Department makes the following representations as the basis for the undertakings on its part herein contained.

(a) The Department has been duly created and is validly existing as a public agency under the laws of the State. The Department has all necessary power to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper official action the Department has been duly authorized to execute and deliver this Agreement. The obligations of the Department under this Agreement are valid and enforceable in accordance with their terms, except to the extent that such enforceability may be subject to bankruptcy, insolvency, moratorium, and other laws affecting creditors' rights generally and to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(b) Other than the State Bonds, the Lease-Purchase Agreement, the obligation of the Authority to repay the Net Liabilities and other amounts that may become payable by the

Authority from time to time under this Agreement as hereinafter provided and the obligation of the Authority to pay amounts due to the Department from time to time pursuant to the Toll Operations and Maintenance Agreement, the Roadway Operations and Maintenance Agreement and the SunPass Agreement, no other obligations encumber the System in any manner as of the date hereof or the revenues derived therefrom.

(c) There is no litigation pending or, to the knowledge of the Department, threatened with respect to the Lease-Purchase Agreement, the State Bonds, or this Agreement or which will affect the performance by the Department of its obligations under this Agreement.

(d) No default exists with respect to the Lease-Purchase Agreement or the outstanding State Bonds; and the execution of this Agreement does not constitute a violation of applicable law or regulations or a breach of or default under any other agreement to which the Department is a party or an event that, with the passage of time, would become a breach of or default under any such agreement.

(e) All consents, waivers, approvals and other governmental actions required to be taken in order for the Department to fully comply with this Agreement have been received by the Department.

2. **Representations by the Authority.** The Authority makes the following representations as the basis for the undertakings on its part herein contained.



(a) The Authority has been duly created and is validly existing as a body politic and corporate, a public instrumentality and an agency of the State existing under the Act. The Authority has all necessary power to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper corporate action the Authority has been duly authorized to execute and deliver this Agreement. The obligations of the Authority under this Agreement are valid and enforceable in accordance with their terms, except to the extent that such enforceability may be subject to bankruptcy, insolvency, moratorium, and other laws affecting creditors' rights generally and to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(b) The Authority will use the System for the purpose of providing regional and local traffic flow and mobility within Dade County and for generating revenues for such purposes as may be permitted under the Act and other applicable law.

(c) No litigation is pending or, to the knowledge of the Authority, threatened with respect to the Bonds or this Agreement or which will affect the performance by the Authority of its obligations under this Agreement.

(d) No default exists with respect to this Agreement and the execution of this Agreement does not constitute a violation of applicable law or regulations or a breach of or default under any other agreement to which the Authority is a party or an event

that, with the passage of time, would become a breach of or default under any such agreement.

(e) The Authority represents and warrants that neither the execution of this Agreement, the performance of its obligations hereunder, the issuance of the Bonds nor the application of the proceeds thereof in accordance with their terms and the terms of the Escrow Agreement will violate any statutory, constitutional or other limitation with respect to the incurrence of debt or the levy of taxes or as to the valid appropriation of moneys for the purposes hereof.

(f) The Authority represents that the transfer of operational and financial control of the System is essential to the Authority's proper, efficient and economic operation.

### 3. Transfer of the System.

(a) The Department shall promptly record this Agreement showing transfer of operational and financial control of the System pursuant to this Agreement, upon the satisfaction of the conditions precedent set forth in Section 3(b) of this Agreement. The Department represents that right-of-way maps indicating the location of the System have been recorded in the public records of the County as set forth in composite Exhibit E hereto. The parties shall execute this Agreement in recordable form and record it in the public records of the County to evidence the transfer of operational and financial control of the System to the Authority. The Department hereby conveys the Non-Roadway Assets upon

satisfaction of the conditions precedent set forth in Section 3 (b) of this Agreement. The Department shall cause to be transferred to the Authority all applicable balances in the funds and accounts established under the resolution pursuant to which the State Bonds were issued and secured in such manner as the Authority shall have previously specified to the Department in writing. The Department and the Authority acknowledge that, upon such recordation, conveyance and transfer, the Authority shall have acquired full jurisdiction and control over the operation, maintenance and finances of the System in perpetuity, including, without limitation, all right to regulate, establish, collect and receive tolls thereon. Upon such recordation, conveyance and transfer, the Authority shall act on behalf of the Department in the conveyance of those properties not needed for operation or support of the System which have been declared surplus to the System by the Authority. The disposal of any such property shall comply with the requirements of Section 337.25, Florida Statutes, as amended. The Authority, however, shall not, convey or dispose of any property needed to operate or support the State Highway System. The Department and the Authority also acknowledge that such recordation, conveyance and transfer shall not affect the status of the System with regard to the National Highway System and the State Highway System.

(b) The conditions precedent to such recordation, conveyance and transfer shall be:

(1) entry by the Authority and the SBA into the Escrow Agreement;

(2) deposit by or on behalf of the Authority of all amounts required to be so deposited under the Escrow Agreement on the date hereof;

(3) receipt by the Division, the SBA and the Authority of (i) a verification report, in form and substance satisfactory to each, from an independent nationally recognized accounting firm confirming the sufficiency of the amounts so deposited, together with the earnings thereon, to pay the principal of and interest on the State Bonds through the earlier to occur of their redemption in whole or final maturity, and (ii) a report concerning rebate calculations on the State Bonds as of the date of their defeasance;

(4) receipt by the Division, the SBA and the Authority of an opinion of nationally recognized bond counsel, who may be bond counsel to the Authority, in form and substance satisfactory to each, substantially to the effect that the lien of the State Bonds upon all sources of revenue pledged to their repayment has ceased, determined and become void and the State Bonds have been defeased in accordance with the terms of the resolution under which they were issued and secured;

(5) the Department and the Authority shall have entered into this Agreement, the Toll Operations and Maintenance Agreement, the Roadway Operations and Maintenance Agreement and the SunPass Agreement;

(6) the Authority and The Bank of New York, as Trustee, shall have entered into the Indenture, which shall provide for payment by the Authority to the Department of the Annual Repayment Requirements (as hereinafter defined) in a manner consistent with the requirements of this Agreement, and shall have issued the Bonds thereunder;

(7) certificates of insurance or other evidence satisfactory to the Authority that the Department shall have caused the Authority to be named as of the date hereof as an additional insured and loss payee on all policies of insurance maintained by it with respect to the System, except to the extent that such insurance is maintained through the Department of Insurance and the Department of Insurance shall not permit the Authority to be named as an additional insured and loss payee on such insurance;

(8) each party to all of the agreements mentioned in this Section 3(b) shall have provided to each other party to such agreements and opinions in form and substance satisfactory to such other party substantially to the effect that each such agreement constitutes a valid and binding obligation of the party on whose behalf such opinion is being given, enforceable in accordance with its terms, except to the extent that such enforceability may be subject to bankruptcy, insolvency, moratorium, and other laws affecting creditors' rights generally and to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law);

(9) counsel to the Department and the Authority shall have provided such other opinions as the Department and the Authority may reasonably request; and

(10) the Division, the Department and the County shall have provided evidence in form and substance satisfactory to the Authority as to the termination of the Lease-Purchase Agreement on the date hereof.

**4. Reimbursement of Annual Repayment Requirements, Including Net Liabilities.**

(a) Except as otherwise set forth in this Section, the Authority agrees to pay to the Department the Net Liabilities in accordance with the payment schedule attached hereto as Exhibit F.

(b) The Department agrees that the obligation of the Authority to reimburse the Department for the Net Liabilities (and any other Annual Repayment Requirements, as hereinafter defined) shall be subject to Sections 5.05, 5.06 and 5.12 of the Indenture (or any successor provisions thereto), which sections (and the definition of "Annual Repayment Requirements" set forth in the Indenture) may not be amended without the prior written consent of the Department. Sections 5.05, 5.06 and 5.12 of the Indenture require generally that Revenues (as defined in the Indenture) credited to the Revenue Fund established under the Indenture be applied in the following order of priority: first, to the payment of Operation and Maintenance Expenses (as defined in the Indenture to include among other things Authority administrative overhead and System operations and maintenance expenses payable to the

Department under the Toll Operations and Maintenance Agreement, the Roadway Operations and Maintenance Agreement and the SunPass Agreement), second, to the maintenance in the Revenue Fund of an operations and maintenance reserve in an amount not to exceed 8.33% of the annual budget of the Authority, third, to the payment of debt service on Bonds (as defined in the Indenture) outstanding under the Indenture, fourth, to maintenance of the Debt Service Reserve Fund Requirements established under the Indenture, fifth, to the maintenance of the funding requirements established under the Indenture for the Renewal and Replacement Fund (as defined in the Indenture), sixth, if any portion of the then current Non-Contingent Portion of the Annual Repayment Requirements (as defined below) or any portion of the Non-contingent Portion of the Annual Repayment Requirements from prior Fiscal Years (as defined in the Indenture) remain unpaid, to repay to the Department to the extent Revenues are available \$2,000,000 per Fiscal Year (or the remaining balance, if less than \$2,000,000) toward the unpaid portion of the Non-contingent Portion of the Annual Repayment Requirements and the Non-Contingent Portion of the Annual Repayment Requirements from prior Fiscal Years that remains unpaid until the same has been paid in full, seventh, through the end of the Fiscal Year ending on June 30, 2001, to transfer to the Authority Account of the General Fund the next \$1,000,000 available in the General Account per Fiscal Year, eighth, if any portion of the Contingent Portion of the Annual Repayment Requirements (as defined below) remains unpaid, to repay to the Department the unpaid portion of the Contingent

Portion of the Annual Repayment Requirement, and ninth to transfer to the Authority Account of the General Fund the balance. The Authority may apply or cause to be applied moneys credited to the Authority Account for any lawful purpose of the Authority. As used in this Agreement and in the Indenture, "Annual Repayment Requirements" shall mean, for any given Fiscal Year, the total of the following: (i) the Net Liabilities payable by the Authority for such Fiscal Year as set forth in Exhibit F to this Agreement, if any; (ii) the SunPass Installation Costs (as defined in the SunPass Agreement) payable by the Authority for such Fiscal Year pursuant to the SunPass Agreement, if any; (iii) Environmental Liabilities (as hereinafter defined) payable by the Authority for such Fiscal Year pursuant to this Agreement, if any; and (iv) Overruns (as defined in the Toll Operations and Maintenance Agreement and the Roadway Operations and Maintenance Agreement), if any. As used herein, clauses (i) and (ii) of the definition of Annual Repayment Requirements shall constitute the Non-contingent Portion of the Annual Repayment Requirements and clauses (iii) and (iv) of the definition of Annual Repayment Requirements shall constitute the Contingent Portion of the Annual Repayment Requirements.

(c) The Authority shall have the right to prepay, without premium or penalty, at any time after the transfer of operational and financial control of the System to the Authority all or a portion of the Annual Repayment Requirements.



(d) Subject to compliance by the Authority with the requirements set forth in the Indenture and the next paragraph, the Authority may establish additional accounts under the Indenture in its discretion that are subordinate to the funding priorities established in Sections 5.05, 5.06 and 5.12 of the Indenture (or any successor provisions thereto) on the date hereof; provided, that the Department, in its discretion may agree to subordinate payments of Annual Repayment Requirements due to it under this Section to the funding of such additional accounts. In the event that the Authority is unable to pay the Annual Repayment Requirements when due under this Section in full on account of a lack of available revenues, such deficiency shall be cumulative and the deficient amount of any payment shall be added to the amount of Annual Repayment Requirements required to be paid in each installment due thereafter until such time as all such deficiencies have been made up.

(e) Unless specifically agreed to by the Department, during any period of time in which the Authority is not current in the payment of the Non-contingent Portion of the Annual Repayment Requirements due under this Section, the Authority shall not issue Additional Bonds (as defined in the Indenture) and shall not expend monies for purposes other than those described in subclauses first through eighth of clause (b) of this Section.

(f) At any time that there shall be an unpaid principal balance of the Non-contingent Portion of the Annual Repayment Requirements, unless specifically agreed to by the Department, the

Authority may issue Additional Bonds only if the Authority first provides the Department:

(i) A copy of a certificate signed by an authorized officer of the Authority stating the amount of Test Period Revenues (as defined below) projected to be received by the Authority during the current Fiscal Year and each full Fiscal Year to and including the fifth full Fiscal Year following the projected date when the project to be financed from the proceeds of such Additional Bonds will be placed in service (the "Test Period"). "Test Period Revenues" shall mean, for the purposes hereof, the Net Revenues (as defined in the Indenture) during the Test Period, as determined by such authorized officer, further adjusted by such authorized officer to reflect 100% of the additional Revenues (as defined in the Indenture) which, in the opinion of the Authority's consulting engineer, would be received from increases in tolls, rates, fees, rentals and other charges relating to the System scheduled to take effect during the Test Period (provided that such increases must be adopted as of the date the certification is made and such increases must be effective on, or scheduled to become effective no later than six months from, the date on which such certificate is made and must remain in effect for the entirety of the Test Period);

(ii) A written opinion of the Authority's consulting engineer stating that (A) the projections of Test Period

Revenues set forth in the certificate of such authorized officer delivered pursuant to subclause (i) immediately above are reasonable, and (B) the Test Period Revenues are sufficient to enable the Authority to pay when due over the entirety of the Test Period all of the Non-contingent Portion of the Annual Repayment Requirements that shall exist at the time of such opinion and that shall be scheduled to be paid over the Test Period, as well as all payments due from Revenues that are higher in priority under the Indenture to the payment when due of such Annual Repayment Requirements, taking into account the additional principal and interest requirements of the Additional Bonds proposed to be issued.

In addition to the foregoing requirements, if at the time of issuance of such Additional Bonds, there shall remain an unpaid balance of the Contingent Portion of the Annual Repayment Requirements, the prior written consent of the Department shall be a condition precedent to the issuance of such Additional Bonds.

(g) At any time that there shall be an unpaid principal balance of the Non-contingent Portion of the Annual Repayment Requirements, unless specifically agreed to by the Department, the Authority may issue Refunding Bonds (as defined in the Indenture) only if the Authority first provides the Department either (i) a certificate signed by an authorized officer of the Authority, confirming that the annual principal and interest requirements for each bond year in which the Bonds to be refunded would be outstanding but for such refunding for all outstanding Bonds

following issuance of the Refunding Bonds with respect to which the certificate is made (excluding any Bonds being defeased by proceeds of the Refunding Bonds) is not greater than the annual principal and interest requirements for each bond year for all outstanding Bonds prior to issuance of such Refunding Bonds, or (ii) in lieu thereof, the certificate required by subclause (i) of clause (f) of this Section, the opinion required by subclause (ii) of clause (f) of this Section and, if appropriate, the prior written consent of the Department as required by the last paragraph of clause (f) of this Section, each prepared as though the Refunding Bonds constitute a series of Additional Bonds and as though the Test Period shall commence on the date of issuance of such Refunding Bonds.

(h) At any time that there shall be an unpaid principal balance of the Non-contingent Portion of the Annual Repayment Requirements, unless specifically agreed to by the Department, the Authority may issue Completion Bonds (as defined in the Indenture) in an aggregate amount not to exceed 10% of the original estimated cost of any project financed from the proceeds of Bonds at the time of the issuance of such Bonds only if the Authority first provides the Department a certificate of the Authority's consulting engineer stating the original estimated cost of the project to be completed at the time of issuance of the Bonds originally issued to finance such project, that such estimated cost will be exceeded, the cost of completing such project, and that other funds available or reasonably expected to become available for such cost of

completion, together with the proceeds of the Completion Bonds, will be sufficient to pay such cost of completion.

(i) The Authority shall not incur any indebtedness other than Additional Bonds, Refunding Bonds or Completion Bonds payable out of the Revenues unless it shall have made provision to maintain the priority of payment to the Department from the Revenues of the Annual Repayment Requirements from the General Fund established under the Indenture.

5. **Insurance.**

(a) To the extent not reimbursed to the Department by the Authority pursuant to the terms of the Toll Operations and Maintenance Agreement or the Roadway Operations and Maintenance Agreement, the costs of all insurance policies maintained by the Department with respect to the System shall be reimbursed by the Authority to the Department as a System operations expense.

(b) At the request of the Authority in writing, the Department agrees to use its best efforts to transfer such policies to the Authority.

(c) So long as the Toll Operations and Maintenance Agreement remains in effect, the Department shall maintain in effect insurance coverage for all property that becomes part of the Toll Facilities after the date of this Agreement. So long as the Roadway Operations and Maintenance Agreement remains in effect, the Department shall maintain in effect insurance coverage for all property that becomes part of the Roadway Facilities after the date of this Agreement. All such coverage shall be similar to that

maintained with respect to other property comprising part of the Toll Facilities or the Roadway Facilities, as the case may be.

6. **Environmental and Other Tort Liability.**

(a) As used in this Agreement, the term "Hazardous Substances" means any hazardous or toxic substances, materials or wastes, which are or become regulated under any applicable local, state or federal law including, but not limited to those substances, materials and wastes listed in the United States Department of Transportation Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, and such substances, materials and wastes such as (i) petroleum and petroleum distillates, (ii) asbestos containing materials, (iii) polychlorinated biphenyls, (iv) "hazardous substances" as designated pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251 et seq. or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317), (v) substances defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., or (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq.

(b) With respect to events, actions, omissions or other occurrences that arose prior to the date of this Agreement, in the event that there shall be any claims (including, without limitation, third party claims for personal injury or real or

personal property damage), actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities (including sums paid in settlement of claims), interest, losses, attorneys' fees, consultant fees and all other costs and expenses of any kind or nature that arise directly or indirectly from or in connection with the presence, suspected presence, release or suspected release of any Hazardous Substance in or into the air, soil, surface water, groundwater or soil vapor at, on, about, under or within the System, or any portion thereof (collectively, the "Environmental Liabilities"), the Department shall pay or cause to be paid such Environmental Liabilities when due. Environmental Liabilities so paid by the Department and incurred shall be reimbursed to the Department by the Authority as operation and maintenance expenses of the system in the manner set forth in Section 4(b) of this Agreement and Section 5.05 of the Indenture (or any successor provision thereto), except that any Environmental Liabilities in excess of \$200,000 annually shall be reimbursed in the manner set forth in Section 4(b) of this Agreement and Section 5.12 of the Indenture (or any successor provision thereto).

(c) With respect to events, actions, omissions or other occurrences that arise on or after the date of this Agreement, in the event that Environmental Liabilities are incurred by the Department or its contractors, the Department shall pay or cause to be paid such Environmental Liabilities when due. Environmental Liabilities so paid by the Department and incurred without

negligence or misconduct by the Department shall be reimbursed to the Department by the Authority as operation and maintenance expenses of the system in the manner set forth in Section 4(b) of this Agreement and Section 5.05 of the Indenture (or any successor provision thereto), except that Environmental Liabilities in excess of \$200,000 annually shall be reimbursed in the manner set forth in Section 4(b) of this Agreement and Section 5.12 of the Indenture (or any successor provision thereto). Notwithstanding the foregoing, under no circumstances shall the Authority reimburse the Department for Environmental Liabilities so paid by the Department that arose or arise due to the migration of Hazardous Substances from properties owned or operated by the Department that are not part of the System.

(d) Environmental Liabilities caused by the Authority, its contractors or third parties after the date of the Agreement, shall be the responsibility of the Authority.

(e) Without limiting the generality of the foregoing, Environmental Liabilities shall include costs, including capital, operations and maintenance costs, incurred in connection with any investigation or monitoring of site conditions, any clean-up, containment, remedial, removal or restoration work required or performed by any federal, state or local governmental agency or political subdivision or performed by any nongovernmental entity or person because of the presence, suspected presence, release or suspected release of any Hazardous Substance in or into the air, soil, groundwater, surface water or soil vapor at, on, about, under



or within the System or any portion thereof, any claims of third parties for loss or damage due to such Hazardous Substance. In addition, Environmental Liabilities shall include, without limitation, all loss or damage sustained by the Department, the Authority or any third party due to any Hazardous Substance (i) that is present or suspected to be present in the air, soil, groundwater, surface water or soil vapor at, on, about, under or within the System or any portion thereof on or before the date of this Agreement, or (ii) that migrates, flows, percolates, diffuses or in any way moves onto, into or under the air, soil, groundwater, surface water or soil vapor at, on, about, under or within the System or any portion thereof after the date of this Agreement, irrespective of whether such Hazardous Substance shall be present or suspected to be present in the air, soil, groundwater, surface water or soil vapor at, on, about, under or within the System or any portion thereof as a result of any release, discharge, disposal, dumping, spilling or leaking (accidental or otherwise) onto the System or any portion thereof occurring before, on or after the date of this Agreement or caused by any person or entity.

(f) In the event that there shall be any claims (including, without limitation, third party claims for personal injury or real or personal property damage), actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities (including sums paid in settlement of claims), interest, losses, attorneys' fees, consultant fees and all other

costs and expenses of any kind or nature that are made, levied or assessed against the Department, that are not Environmental Liabilities and that arise directly or indirectly from or in connection with the design, operation, maintenance or ownership of the System ("Tort Liabilities"), the Department shall pay or cause to be paid such Tort Liabilities when due. Tort Liabilities so paid by the Department shall be reimbursed to the Department by the Authority as Operations and Maintenance Expenses of the System in the manner set forth in Section 4(b) of this Agreement and Section 5.05 of the Indenture (or any successor provision thereto). Without limiting the generality of the foregoing, Tort Liabilities shall include all costs incurred by the Department in the defense of the claim, attorneys' fees, expert witness costs, sums paid in settlement of tort claims and judgments, damages and all other costs and expenses of any kind or nature that relate to such claim against the Department.

(g) The Department or the Authority may secure insurance to cover Environmental Liabilities and such cost of Insurance shall be chargeable to the costs of operations.

7. **Cooperation on Obtaining Federal Funding.** The Department and the Authority agree to cooperate in obtaining federal funding for current and future System projects.

8. **Financial Reporting.** The Authority shall prepare annual financial statements reflecting the Authority's financial position as of the end of each Fiscal Year, with results of operations for each such Fiscal Year, in accordance with generally accepted

accounting principles. The Authority shall have these financial statements audited in accordance with Government Audit Standards. Audited financial statements will be provided to the Department's Comptroller and the State Comptroller within 120 days after the end of each such Fiscal Year.

9. **Appropriations.** The obligation of the Department to expend funds under this Agreement is contingent upon an annual appropriation by the Florida Legislature.

10. **Effective Date of this Agreement.** This Agreement shall become effective on the date hereof.

11. **Counterparts.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

12. **Provisions Separable.** The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part.

13. **Amendment of Agreement.** This agreement may be amended by mutual agreement of the Department and the Authority expressed in writing and executed and delivered by each.

14. **Format.** All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

15. **Notices.** All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made and received when delivered (personally, by courier service such as Federal Express, or by other messenger) against receipt or upon actual receipt of registered or certified mail, postage prepaid, return receipt requested, addressed as set forth below:

(d) If to the Authority: Dade County Expressway  
Authority  
111 N.W. 1st Street, Suite 2740  
Miami, Florida 33128  
ATTN: Mr. Servando M. Parapar,  
P.E., Executive Director

(e) If to the Department: Florida Department of  
Transportation  
1000 N.W. 111 Avenue  
Miami, Florida 33172  
ATTN: Mr. Jose Abreu, P.E.,  
District Secretary

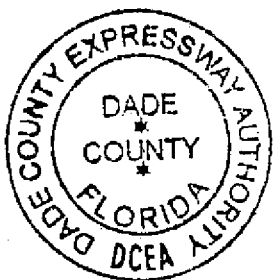
and

Florida Department of  
Transportation  
605 Suwannee Street  
Tallahassee, Florida 32399  
ATTN: Mr. Thomas F. Barry, Jr.,  
P.E., Assistant Secretary  
for Finance and  
Administration

(f) With a copy to: Greenberg Traurig  
1221 Brickell Avenue  
Miami, Florida 33131  
ATTN: Bruce Giles-Klein, Esq.

Any party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this paragraph for the giving of notice.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement, the DADE COUNTY EXPRESSWAY AUTHORITY, signing by and through its Chairman, and the STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, signing by and through its Secretary, each duly authorized to execute same.



[SEAL]

DADE COUNTY EXPRESSWAY AUTHORITY

BY: *Sonny Holtzman*  
Sonny Holtzman, Esq., Chairman

BY: *Servando M. Parapar*  
Servando M. Parapar, P.E.  
Executive Director

ATTEST:

*Helen M. Cespedes*  
Helen M. Cespedes  
Secretary

WITNESSES

*[Signature]*  
*[Signature]*

Approved as to form and legal sufficiency

*[Signature]*  
Bruce Giles-Klein  
Greenberg Traurig Hoffman Lipoff  
Rosen & Quentel, P.A.

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

BY: *Ben G. Watts*  
Ben G. Watts, P.E. Secretary

WITNESSES

*Chuck Hall*  
*Rash*

Approved as to form and legal  
sufficiency

*Jan M. Haulk*  
Comptroller's Approval

*Robert B. Boyd*

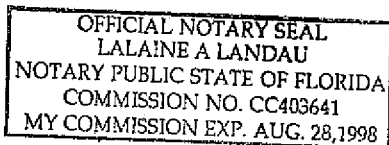
STATE OF FLORIDA )  
 ) SS:  
COUNTY OF DADE )

I, LALAINÉ A. LANDAU, a Notary Public in and for the said County in the State aforesaid, do hereby certify that SONNY HOLTZMAN, SERVANDO PARAPAR and HELEN M. CESPEDES personally known to me to be the same persons whose names are, as Chairman, Executive Director, and Secretary, respectively of the DADE COUNTY EXPRESSWAY AUTHORITY, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they, being thereunto duly authorized, signed, sealed with the seal of said Authority, and delivered the said instrument as the free and voluntary act of said Authority and as their own free and voluntary act, for the uses and purposes therein as set forth.

Given under my hand and notarial seal this 9th day of December, 1996.

*Lalaine A. Landau*  
NOTARY PUBLIC  
State of Florida

Notary Public  
Seal of Office



- Personally known to me, or
- Produced Identification:
- Did take an oath
- Did not take an oath

My Commission Expires: 8/28/98

STATE OF FLORIDA        )  
                                  ) SS:  
COUNTY OF LEON        )

I, Shirley M Evans, a Notary Public in and for the said County in the State aforesaid, do hereby certify that BEN G. WATTS personally known to me to be the same person whose name is, as Secretary of the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he, being thereunto duly authorized, signed, and delivered the said instrument as the free and voluntary act of said Department and as his own free and voluntary act, for the uses and purposes therein as set forth.

Given under my hand and notarial seal this 9 th day of December, 1996.



SHIRLEY M. EVANS  
MY COMMISSION # CC409083 EXPIRES  
September 22, 1998  
BONDED THRU TROY FAIR INSURANCE, INC.

Shirley M Evans

NOTARY PUBLIC  
State of Florida

Notary Public  
Seal of Office

- Personally known to me, or  
— Produced Identification:  
—  
— Did take an oath  
— Did not take an oath  
My Commission Expires:



EXHIBIT A

DADE COUNTY EXPRESSWAY SYSTEM

Name: Airport Expressway  
State Road#: 112  
County Section#: 87003  
RCI Milepost#: 0 - 4.132

Name: East-West (Dolphin) Expressway  
State Road#: 836  
County Section#: 87200  
RCI Milepost#: 0 - 11.756

Name: South Dade (Don Shula) Expressway  
State Road#: 874  
County Section#: 87005  
RCI Milepost#: 0 - 7.2

Name: Snapper Creek Expressway  
State Road#: 878  
County Section#: 87021  
RCI Milepost#: 0 - 2.725

Name: Gratigny Parkway  
State Road#: 924  
County Section#: 87300  
RCI Milepost#: 0 - 5.378

The Dade County Expressway System shall also include the Non-Roadway Assets identified on Exhibit B to the Transfer Agreement and the fund balances on Exhibit C to the Transfer Agreement.

EXHIBIT B

DADE COUNTY EXPRESSWAY SYSTEM  
NON-ROADWAY ASSETS

Upon execution of this agreement, the Department shall transfer ownership of all property, with the exception of the infrastructure, located at the Dade County Expressway System listed in Exhibit A to the Authority. The transfer of property includes the buildings, toll booths, toll equipment and other property (both over and under \$500) detailed on the following pages. In addition, all miscellaneous items such as supplies and small equipment, such as staplers, etc., shall become the property of the Authority.

DCEA TRANSFER OF ITEMS NOT IN FDOT PROPERTY SYSTEM

DADE EAST/WEST EXPRESSWAY

Buildings

Tech Trailer (1)

Miscellaneous Toll Equipment

Automatic Coin Machines/Receipt (5)

Toll Gates (5)

Toll Receipt Printers (5)

Island Traffic Signals (5)

Lane Controllers (5)

Vault Cart (1)

Vaults (150)

Miscellaneous Office Equipment

VCR's (4)

Computer Cabinets (5)

Telephones (2)

ALR Computer (1)

Uninterrupted Power Source (1)

Tables (7)

Generator (1)

Alarm System (1)

Chairs (18)

Refrigerator (1)

DCEA TRANSFER OF ITEMS NOT IN FDOT PROPERTY SYSTEM

DADE EAST/WEST EXPRESSWAY - Page 2

Microwave (1)  
Lockers (90)  
T.V. Monitor (2)  
Access Monitor (1)  
Monitor (1)  
Printers (2)  
Joy Stick (1)  
Keyboards (2)  
Count Out Desk (1)  
Harddrive (1)  
Storage Cabinets (9)  
Water Fountain (1)  
File Cabinet (8)  
Calculator (2)  
Dollies (3)  
Desk (3)  
Credenza (1)  
Edger (1)  
Work Table (1)  
Flammable Cabinet (1)  
Canopies (3)

DCEA TRANSFER OF ITEMS NOT IN FDOT PROPERTY SYSTEM

SOUTH DADE EXPRESSWAY

Buildings

Toll Booths (4)

Vault Shed (1)

Storage Shed (1)

Miscellaneous Toll Equipment

Gates (10)

Automatic Coin Machines (10)

Toll Receipt Printer (4)

Island Traffic Signals (4)

Lane Controllers (14)

Vault Cart (1)

Vaults (300)

Miscellaneous Office Equipment

Desk & Shelf (1)

Desk (3)

Chairs (11)

Hand Trucks (2)

Generator (1)

Podium (1)

Computer Cabinet (5)

Storage Cabinet (3)

File Cabinet (4)

Lawnmower (2)

DCEA TRANSFER OF ITEMS NOT IN FDOT PROPERTY SYSTEM

SOUTH DADE EXPRESSWAY - Page 2

Lawnmower (2)  
Pushmobile (1)  
Microwave (1)  
Refrigerator (1)  
Stove-Sink (1)  
T.V. Monitors (2)  
Access Monitor (1)  
Monitor (2)  
Joy Stick (1)  
Printer (2)  
Phone (3)  
Harddrive (1)  
Keyboard (3)  
VCR (6)  
Lockers (25)  
Adding Machine (1)  
Intercom (1)  
ALR Computer (1)  
Table (2)  
Uninterrupted Power Source (1)  
Calculator (1)  
Count Out Desk (1)  
Canopies (1)  
A/C Unit (1)  
Alarm System (1)

DCEA TRANSFER OF ITEMS NOT IN FDOT PROPERTY SYSTEM

MIAMI AIRPORT

Miscellaneous Toll Equipment

Toll Receipt Printers (3)  
Toll Gates (3)  
Automatic Coin Machines/Receipt (3)  
Island Traffic Signals (3)  
Vaults (60)  
Vault Cart (1)  
Lane Controllers (6)

Miscellaneous Office Equipment

A/C Unit (1)  
Generator (1)  
Canopies (1)  
Desk (3)  
Chair (8)  
Microwave (1)  
Refrigerator (1)  
Lockers (52)  
File Cabinets (3)  
Telephone (3)  
TV Monitor (2)  
Monitor (1)  
Computer Cabinet (4)

DCEA TRANSFER OF ITEMS NOT IN FDOT PROPERTY SYSTEM

MIAMI AIRPORT - Page 2

Access Monitor (1)

Joystick Viewer (1)

Uninterrupted Power Source (2)

Harddrive (1)

Keyboard (2)

Printer (2)

Calculator (3)

ALR Computer (1)

VCR'S (3)

Count Out Desk (2)

Floor Machine (1)

Edger (2)

Pressure Cleaner (1)

Storage Cabinets (6)

Pushmobile (1)

Water Fountain (1)

Table (3)

Wall Mount Cabinet (1)

Hand Truck (1)



DCEA TRANSFER OF ITEMS NOT IN FDOT PROPERTY SYSTEM

GRATIGNY PARKWAY

Buildings

Storage Sheds (1)

Toll Booths (6)

Toll Plaza Building (1)

Miscellaneous Toll Equipment

Toll Receipt Printers (8)

Toll Gates (12)

Automatic Coin Machines/Receipt (12)

Island Traffic Signals (10)

Lane Controllers (20)

Vault Cart (1)

Vaults (210)

Miscellaneous Office Equipment

VCR (7)

Computer Cabinet (4)

Uninterrupted Power Source (2)

Telephone (3)

Hard drive (1)

ALR Computer (1)

Generator (1)

A/C System (2) 1 for storage shed; 1 for tunnel

Canopies (1)

DCEA TRANSFER OF ITEMS NOT IN FDOT PROPERTY SYSTEM

GRATIGNY PARKWAY - Page 2

File Cabinets (25)  
Overhead Cabinets (3)  
Storage Cabinets (4)  
Lawn Mower (1)  
Worklight (1)  
L-Shape Counter (1)  
Lockers (46)  
Overhead File (1)  
Chairs (15)  
Desk (3)  
Table (5)  
Refrigerator (1)  
Microwave (1)  
Computer Cabinet (2)  
T.V. Monitor (2)  
Printer (2)  
Access Monitor (1)  
Security Monitor (1)  
Security Printer (1)  
Keyboards (4)  
Joy-Stick Viewer (1)  
Hand Truck (3)  
Modular Counter (1)

DCEA TRANSFER OF ITEMS NOT IN FDOT PROPERTY SYSTEM

GRATIGNY PARKWAY - Page 3

PC Monitor (2)

Safe (7)

Night Depository (1)

Count Out Desk (1)

Receiving Unit - Safe (1)

SUN. 12, DIS. ITEM

DEPARTMENT OF TRANSPORTATION  
DEPARTMENT OF TRAFFIC  
SAHAS FIXED ASSETS - POSIDINARY  
LIST OF PROPERTY IN ITEM NUMBER SEQUENCE BY DISTRICT

SOUTH DADE EXPRESSWAY

ITEM NUM	ORG LULS 1-5	DESCRIPTION	PRIMARY DOCUMENT	SECONDARY DOCUMENT	OTHER DOCUMENT	OWNER/SHIP	CID	SERIAL NUMBER	ACQ CHST	ACQ DATE	LOCATION	CLASS
									HRDP	UNIT/RALE		
BL 006135	55605000885	TOLL PLAZA ADMIN BLDG-SD DADE EXP				5084870015500000000	0100		68852.00	12/01/83	13006135	0700
BL 006246	55605000885	12X40 MODULAR BUILDING				5084870015500000000	0100		15248.00	02/11/91	13006246	0700
TL 345327	55605000885	MANAGER'S CASH LOCKER (SAFE)				5084870015500000000	0100		2127.00	10/16/89	13006135	3996
TL 345328	55605000885	SUPERVISOR'S CASH LOCKER (SAFE)				5084870015500000000	0100		1486.00	10/16/89	13006135	3996
TL 345356	55605000885	DEPOSITORY UNIT (DRDP CHUTE)				5084870015500000000	0100		2959.00	09/08/89	13006135	3996
TL 345357	55605000885	RECEIVING UNIT (SAFE)				5084870015500000000	0100		2320.00	09/08/89	13006135	3996
TL 378578	55605000885	BILL COUNTER				5084870015500000000	0100		1195.00	08/18/92	13016136	3992
TL 388529	55605000885	COIN COUNTER MODEL 5061				5084870015500000000	0100	3H05408	9175.00	07/05/95	13016135	3992
TL 415383	55605000885	TOLL TERMINAL				5084870015500000000	0100		6817.00	12/18/92	13006135	4559
TL 415387	55605000885	TOLL TERMINAL				5084870015500000000	0100		294577			
TL 415388	55605000885	TOLL TERMINAL				5084870015500000000	0100		6817.00	12/18/92	13006135	4559
TL 415389	55605000885	TOLL TERMINAL				5084870015500000000	0100		294577			
TL 508279	55605000885	PLATFORM WEIGH SCALE				5084870015500000000	0100		6817.00	12/18/92	13006135	4559
TL 828279	55605000885	UTILITY STRAGE BLDG				5084870015500000000	0100		825.18	08/27/86	13006135	5100

\*\* NUMBER OF ITEMS(S)  
\*\*\* TOTAL COST/DURATION DIVISION OF TOLLA

===== 14 =====  
===== 131676.14 =====  
=====

SUN. L2, DIS, ITEM

DEPARTMENT OF TRANSPORTATION  
DEPARTMENT OF TRAFFIC  
SARAS FIXED ASSE, SUBSIDIARY  
LIST OF PROPERTY IN ITEM NUMBER SEQUENCE BY DISTRICT

MIAMI AIRPORT

ITEM NUM	ORG LULS 1-5 DESCRIPTION	PRIMARY DOCUMENT	SECUNDARY DOCUMENT	OTHER DOCUMENT	CID	OWNERSHIP	SERIAL NUMBER	ACR	CUST	ACR DATE	LOCATION	CLASS
RE 006090	55605000876	TOLL BDDTHS				5084870015500000000	0100		10000.00	05/25/93	13016090	0400
	00900180004	PRS436 0007							CONTRACT 85436			
RE 006091	55605000876	TOLL BDDTHS				5084870015500000000	0100		10000.00	05/25/93	13016091	0400
	00900180004	PRS436 0007							CONTRACT 85436			
RL 006092	55605000876	TOLL BDDTHS				5084870015500000000	0100		10000.00	05/25/93	13016092	0400
	00900180004	PRS436 0007							CONTRACT 85436			
BL 006138	55605000876	TOLL PLAZA ADMIN BLDG-MIAMI AIRPORT				5084870015500000000	0100		734400.00	10/21/96	13004138	0700
	00016730001	LAWN HOMER							448.37	10/22/86	13006138	3700
TL 345053	55605000876	MANAGER'S CASH LOCKER (SAFE)				5084870015500000000	0100		2127.00	10/16/89	13006130	3996
	00086490001	DEPOSITORY UNIT (DROP CHUTE)							2959.00	11/02/89	13006130	3996
TL 345321	55605000876	RECEIVING UNIT (SAFE)				5084870015500000000	0100		1488.00	09/25/89	13006138	3996
	0008980003	SUPERVISOR'S CASH LOCKER (SAFE)							749.00	06/17/93	13016138	3992
TL 345374	55605000876	CURRENCY COMPUTER				5084870015500000000	0100		003199			
	00087500001								6812.00	12/18/92	13016090	4559
TL 381041	55605000876	TOLL TERMINAL				5084870015500000000	0100		294577			
	00903850006	TOLL TERMINAL							6812.00	12/18/92	13016090	4559
TL 415380	55605000876	TOLL TERMINAL				5084870015500000000	0100		294577			
	00902320006	TOLL TERMINAL							6812.00	12/18/92	13016090	4559
TL 415381	55605000876	PLATFORM METSH SCALE				5084870015500000000	0100		294577			
	00902320006	UTILITY STORAGE BLDG							825.18	08/27/86	13006138	5100
TL 508281	55605000876	KEY BUILDING ALARM SYSTEM, ADMIN. BLDG				5084870015500000000	0100		1037.00	02/24/86	13006138	8111
	0008710007	CIRCUITRY SUBSTR							3404.37	02/12/86	13006138	3900
TL 828280	55605000876	10'X16' STORAGE BLDG				5084870015500000000	0100		377.00	08/01/81	13006138	7100
TL 828361	55605000876	KEY BUILDING ALARM SYSTEM, ADMIN. BLDG				5084870015500000000	0100		1037.00	02/24/86	13006138	8111
RH 838644	55605000876	CIRCUITRY SUBSTR				5084870015500000000	0100		3404.37	02/12/86	13006138	3900
TL 910523	55605000876	UTILITY STORAGE BLDG				5084870015500000000	0100		825.18	08/27/86	13006138	5100
	00490320002											

\*\* NUMBER OF ITEMS(S) \*\*\*\*\* 18 \*\*\*\*\*

\*\*\* TOTAL COST/DONATION DIVISION OF TOLLA \*\*\*\*\* 900804.88 \*\*\*\*\*

DPFR0701  
R530ADD1

SURT: L2, DIS, ITEM

DEPARTMENT OF TRANSPORTATION  
DEPARTMENT OF TRANSPORTATION  
SOMAS FIXED ASSET SUBSIDIARY  
LIST OF PROPERTY IN ITEM NUMBER SEQUENCE BY DISTRICT

PAGE 1  
RUN DATE 11/27/96  
AS OF 11/27/96

ITEM NUM	BKG LVL 1-5	DESCRIPTION	OTHER DOCUMENT	UNERSHIP	SERIAL NUMBER	ACR COST	ACR DATE	LOCATION	CLASS
	PRIMARY DOCUMENT	SECONDARY DOCUMENT		CID		PROP URQUE			
TL 345627	55605000811	CHIN COUNTER, JETSMART MODEL	5061	5084870015500000000		7940.00	10/08/91	13016103	3992
	00901870001	E2927430001		0100		MIAMI EAST BEST			
TL 345635	55605000811	DOT MATRIX PRINTER	292743	5084870015500000000		530.00	01/07/92	13006103	3999
	00902260002	E2922960001	2922906	0100		GRATIGNY			
TL 378946	55605000811	6 LINE-12 STATION PHONE SYSTEM	293263	5084870015500000000		3741.67	02/24/92	13006103	3990
	00903790001	E2932630001		0100					
TL 415367	55605000811	TOLL TERMINAL	294577	5084870015500000000		6817.00	12/18/92	13016165	4559
	00902320006	E2945770001		0100		294577			
TL 415368	55605000811	TOLL TERMINAL	294577	5084870015500000000		6817.00	12/18/92	13016165	4559
	00902320006	E2945770001		0100		294577			
TL 415369	55605000811	TOLL TERMINAL	294577	5084870015500000000		6817.00	12/18/92	13016165	4559
	00902320006	E2945770001		0100		294577			
TL 415370	55605000811	TOLL TERMINAL	294577	5084870015500000000		6817.00	12/18/92	13016165	4559
	00902320006	E2945770001		0100		294577			
TL 415371	55605000811	TOLL TERMINAL	294577	5084870015500000000		6817.00	12/18/92	13016165	4559
	00902320006	E2945770001		0100		294577			
TL 415372	55605000811	TOLL TERMINAL	294577	5084870015500000000		6817.00	12/18/92	13016165	4559
	00902320006	E2945770001		0100		294577			
TL 415373	55605000811	TOLL TERMINAL	294577	5084870015500000000		6817.00	12/18/92	13016165	4559
	00902320006	E2945770001		0100		294577			
TL 508226	55605000811	DIGITAL HETER MODEL DRIPOR	292906	5084870015500000000		920.00	01/07/92	13006103	5111
	00903260002	E2929060001		0100		GRATIGNY			
TL 508227	55605000811	PLATFORM 18X24 (FDR SCALES)	292906	5084870015500000000		920.00	01/07/92	13006103	5111
	00903260002	E2929060001		0100		GRATIGNY			

\*\* NUMBER OF ITEMS(S)  
\*\*\* TOTAL COST/DONATION DIVISION OF TOLLA

61772.67

ITEM NUM	DRG LVL 1-5 DESCRIPTION	PRIMARY DOCUMENT	SECONDARY DOCUMENT	OTHER DOCUMENT	DIVERSITY	CID	SERIAL NUMBER	ACR	EAST PRDP	UNIQUE	ACR DATE	LOCATION	CLASS	
BL 006137	55605000884	TOLL PLAZA	ADHIN BLDG-EAST	WEST EXP	508487001550000000	0100	10000.00	05/25/93	13016355	0400	240859.00	06/01/83	13006137	0700
RL 006355	55605000884	TOLL GOODHS	PR5436	0009	508487001550000000	0100	10000.00	05/25/93	13016356	0400				
RL 006356	55605000884	TOLL GOODHS	PR5436	0009	508487001550000000	0100	10000.00	05/25/93	13016357	0400				
BL 006357	55605000884	TOLL GOODHS	PR5436	0009	508487001550000000	0100	10000.00	05/25/93	13016358	0400				
BL 006358	55605000884	TOLL GOODHS	PR5436	0009	508487001550000000	0100	10000.00	05/25/93	13016359	0400				
BL 006359	55605000884	TOLL GOODHS	PR5436	0009	508487001550000000	0100	10000.00	05/25/93	13016360	0400				
TL 345323	55605000884	HANAGER'S CASH LOCKER (SAFE)	E2828820001		508487001550000000	0100	2127.00	10/16/89	13006137	3996				
TL 345324	55605000884	SUPERVISOR'S CASH LOCKER (SAFE)	E2828820001		508487001550000000	0100	1486.00	10/16/89	13006137	3996				
TL 345325	55605000884	DEPOSITARY UNIT (DRPP CHUTE)	E2828820001		508487001550000000	0100	2959.00	11/02/89	13006137	3996				
TL 345326	55605000884	RECEIVING UNIT (SAFE)	E2829160001		508487001550000000	0100	2328.00	11/02/89	13006137	3996				
TL 381040	55605000884	CURRENCY COUNTER	E0031920002		508487001550000000	0100	749.00	06/17/93	13016137	3992				
TL 383993	55605000884	ACCOUNTING & SURVEILLANCE SYSTEM	E0032520001		508487001550000000	0100	22900.00	12/15/93	13016137	3997				
TL 383995	55605000884	ACCOUNTING & SURVEILLANCE SYSTEM	E0032520001		508487001550000000	0100	32246.00	12/15/93	13016137	3997				
TL 385010	55605000884	HIAMT E/M PHONE SYSTEM	S1224480001		508487001550000000	0100	5584.30	10/31/94	13016137	3990				
TL 389956	55605000884	CHAIN COUNTER SETTER JET SHIRT	S0157160003	015716	508487001550000000	0100	9175.00	07/05/95	13016135	3992				
TL 415374	55605000884	TOLL TERMINAL	E2945770001		508487001550000000	0100	6817.00	12/18/92	13016085	4559				
TL 415375	55605000884	TOLL TERMINAL	E2945770001		508487001550000000	0100	6817.00	12/18/92	13016085	4559				
TL 415376	55605000884	TOLL TERMINAL	E2945770001		508487001550000000	0100	6817.00	12/18/92	13016085	4559				
TL 415377	55605000884	TOLL TERMINAL	E2945770001		508487001550000000	0100	6817.00	12/18/92	13016085	4559				
TL 415378	55605000884	TOLL TERMINAL	E2945770001		508487001550000000	0100	6817.00	12/18/92	13016085	4559				
TL 415379	55605000884	TOLL TERMINAL	E2945770001		508487001550000000	0100	6817.00	12/18/92	13016085	4559				
TL 508280	55605000884	PLATFORM WEIGH SCALE	E9027890001		508487001550000000	0100	825.18	08/27/86	13006137	5100				
TL 910522	55605000884	CHAIN COUNTER SORTER	E2589320001		508487001550000000	0100	3404.37	02/12/86	13006137	3900				

LADE EAST/WEST EXPRESSWAY

UNIV/UT  
H5506801

SUN. L2, DIS, ITEM

LIST OF PROPERTY IN ITEM NUMBER SEQUENCE BY DISTRICT

PAGE 2  
RUN DATE 11/26/96  
AS OF 11/26/96

DEPARTMENT OF TRANSPORTATION  
DEPARTMENT OF TR. TORTIATION  
SMA'S FIXED ASSE. SUBSIDIARY

ITEM NUM	ORG LVLS 1-5 DESCRIPTION	OTHER DOCUMENT	OWNERSHIP	CID	SERIAL NUMBER	ACQ COST	ACQ DATE	LOCATION	CLASS
PRIMARY DOCUMENT	SECONDARY DOCUMENT	OTHER DOCUMENT	CID			PROP	UNIQUE		

\*\* NUMBER OF ITEMS(S)

\*\*\* TOTAL COST/DONATION DIVISION OF TULLA

===== 23 =====  
913536.85  
=====



EXHIBIT C  
DADE COUNTY EXPRESSWAY SYSTEM  
FUND BALANCES HELD IN RESPECT OF STATE BONDS

Source: SBA Account Valuation Report as of 11/26/96

	Cost	Accrued Interest
Renewal and Replacement	\$6,000,000	\$155,678.85
Sinking Fund	3,217,713.69	41,645.60
Debt Service Reserve	6,865,557.29	160,947.86

EXHIBIT D  
 DADE COUNTY EXPRESSWAY SYSTEM  
 STATEMENT OF OUTSTANDING LIABILITIES  
 DUE STATE TRANSPORTATION TRUST FUND AS OF DECEMBER 10, 1996

Long Term (6/30/96)	\$13,547,213
Current Year Toll Revenues Applied to Long Term (8/96)	(539,800)
General Reserve Transfer Applied to Long Term (11/96)	<u>(1,164,025)</u>
Balance as of 12/10/96	<u>\$11,843,388</u>
Current Year (6/30/96)	\$2,680,255
General Reserve Transfer Applied to Current (7/96)	(1,710,567)
Current Year Toll Revenues Applied to Current (8/96)	<u>(969,688)</u>
Balance as of 12/10/96	<u>0</u>
1996/97 O & M Budget Costs (through 12/31/96)	\$4,412,764
Current Year Toll Revenues Applied to O & M (through 12/5/96)	(4,044,258)
Current Year Toll Revenues Applied to O & M (Estimated 12/6/96-12/9/96)	<u>(368,506)</u>
Balance as of 12/10/96	<u>0</u>
Unreimbursed Capital Expenditures	594,376
1989 Project Construction Trust Fund as of 10/31/96	(511,938)
1989 Project Construction Trust Fund Interest (Estimated 10/31/96-12/10/96)	<u>(4,000)</u>
Balance as of 12/10/96	<u>78,438</u>
Net Outstanding Liabilities	<u>\$11,921,826</u>

## EXHIBIT E

DADE COUNTY EXPRESSWAY SYSTEM  
RECORDED RIGHT-OF-WAY MAPS (12/16/96)

12/16/96

PROJECT NO.	STATE ROAD #	LOCAL NAME	FROM	TO	SHEETS	RECORDING INFO.	
						PB.	PAGE
87005-2503	874	South Dade Expwy	SW 117 Avenue	SR 94 SW 88th St. (Kendall Drive)	8	88	39
87005-2504	874	South Dade Expwy	SR 94 SW 88th St. (Kendall Dr.)	SR 826 (Palmetto Expwy)	12	88	69
87005-2507		South Dade Expwy					
87005-2516	874	Parcel 100 South Dade Expwy	V/O SW 85th St. & 97th Ave		1	152	1
87003-2521	112	Airport Expwy Ramp Connector	NW 21 Street	NW South River Dr.	6	152	2
87090-2501	112	Airport Expwy	NW 42nd Avenue	NW 12th Avenue	10	68	86
						70	22
						70	84
						73	67
87200-2521	836	East-West Expwy	Homestead Extension of Florida Turnpike (SR 821)	Palmetto Expwy (SR 826)	13	124	97
87200-2538	836	107 Ave Interchange East West Expwy	NW 107 Ave. interchange		1	124	98
87200-2503	836	East-West Expwy	NW 82 Ave	NW 45 Ave	9	81	14
*87200-2504	836	East-West Expwy	NW 45 Ave	NW 37 Ave	6	81	13
*87200-2504	836	East-West Expwy	NW 37 Ave	NW 30 Ave	3	101	20
87200-2505	836	East-West Expwy	NW 30 Ave	NW 17 Ave	10	81	83
						80	63
87200-2505	836	East-West Expwy	NW 22 Pl.	NW 21 Ave	1	124	99
87200-2401	836	East-West Expwy	NW 3 Ave	Biscayne Bay	4	83	70
87200-2530	836	12 St. Dr. Ramp East-West Expwy	Ramp NW 12 St. Dr.		1	124	100
87021-2501	878	Snapper Creek Expwy	SW 87th Avenue	SR 5 (US 1 S. Dixie Hwy)	5	88	73
87008-2504	924	Gratigny Expwy	NW 57th Avenue	NW 25th Avenue	9	152	3
87008-2505	924	Gratigny Expwy	NW 72 Avenue	NW 57th Avenue	5	152	4

\*corrected 12/16/96

EXHIBIT F  
 DADE COUNTY EXPRESSWAY SYSTEM  
 SCHEDULE OF PAYMENT OF NON-CONTINGENT  
 PORTION OF ANNUAL REPAYMENT REQUIREMENTS

Net Liabilities at 12/10/96*	\$11,921,826
Annual Repayment Requirement FY97	<u>(2,000,000)</u>
Balance as of 6/30/97	<u>9,921,826</u>
SunPass Installation Costs*	4,604,663
Annual Repayment Requirement FY98	<u>(2,000,000)</u>
Balance as of 6/30/98	<u>12,526,489</u>
Annual Repayment Requirement FY99	<u>(2,000,000)</u>
Balance as of 6/30/99	<u>10,526,489</u>
Annual Repayment Requirement FY00	<u>(2,000,000)</u>
Balance as of 6/30/00	<u>8,526,489</u>
Annual Repayment Requirement FY01	<u>(2,000,000)</u>
Balance as of 6/30/01	<u>6,526,489</u>
Annual Repayment Requirement FY02	<u>(2,000,000)</u>
Balance as of 6/30/02	<u>4,526,489</u>
Annual Repayment Requirement FY03	<u>(2,000,000)</u>
Balance as of 6/30/03	<u>2,526,489</u>
Annual Repayment Requirement FY04	<u>(2,000,000)</u>
Balance as of 6/30/04	<u>526,489</u>
Annual Repayment Requirement FY05	<u>(526,489)</u>
Balance as of 6/30/05	<u>0</u>

\*Estimated. Payment schedule will be adjusted to reflect actual net liabilities and costs incurred.

# DCEA Teleconference

10/1/96

Transfer Agreement

Toll Operations & Maintenance Agreement

Sunpass Agreement

Name

Telephone

Ed McParson OMB

488-5811 x1075

Bob Plant

OTO

488-5687

Mika Akridge

R/W

488-4001

Ken Towcimak

R/W

488-2421

Ken Grimes

R/W

488-2421

J. Manilla

Legal

488-6221

Chris Spoon

OTO

488-5687

Andy Reese

OTO

488-5687

Sara Ciro

OOO

921-7141

LORIN KRUEGER

SYS PLANNING

922-0997

howell clary

OOO

921-7651

Annette Donn

OMB

488-5712

Post-It <sup>®</sup> Fax Note	7671	Date	# of pages ▶ 1
To	Servando Parapa		
From	Annette Donn		
Co./Dept.	Co.		
Phone #	Phone # 904-488-5712		
Fax #	Fax #		

DCFA

PAGE 01

FDOT CO FAX - (904) 413-0660  
" DC " - (305) 470-5610  
DCFA (305) 375-325

FDOT - DCFA TRANSFER NEGOTIATIONS

10/3/96

SERVANDO M. PARAPAR - DCFA - 315-3232

Percy L. Aguila, Jr. - RPR 577-4400

BRUCE H. GILES-KLEIN - DCFA 305-579-0573

GUS PEGO 305-470-5466

GARY DONN 305-470-5458

JIM RATCLIFF (305) 470-5186

**GREENBERG**  
ATTORNEYS AT LAW  
**TRAURIG**

**Memorandum**

**To** Persons Listed on the Attached Distribution List  
**From** Bruce Giles-Klein  
**Date** September 26, 1996  
**Re** Dade County Expressway Authority--Acquisition Financing

---

Enclosed please find the first draft of the Transfer Agreement for the Dade County Expressway Authority. Brady Sneath's copy has been sent to him via facsimile.

Please call if you have any questions or comments.

**DADE COUNTY EXPRESSWAY AUTHORITY  
ACQUISITION FINANCING**

Working Group List

<b>NAME</b>	<b>COMPANY</b>	<b>TELEPHONE</b>	<b>FAX</b>
SERVANDO PARAPAR	Dade County Expressway Authority 111 N.W. 1st Street, Suite 2740 Miami, FL 33128	(305) 375-3232	(305) 375-3253
PERCY R. AGUILA, JR.	Rauscher Pierce Refnes, Inc. 201 South Biscayne Blvd., Suite 830 Miami, FL 33131	(305) 577-4400	(305) 577-4838
BRUCE GILES-KLEIN	Greenberg Traurig 1221 Brickell Avenue Miami, FL 33131	(305) 579-0573	(305) 579-0717
TOM HERNDON	Tom Herndon & Associates 101 East College Avenue Tallahassee, FL 32301	904-224-9689	904-224-8621
JOSE R. PAGAN	PaineWebber Incorporated One International Place Miami, FL 33131	305-536-9279	305-536-9268
NORMAN PELLEGRINI	PaineWebber Incorporated 200 S. Orange Avenue, Suite 2200 Orlando, FL 32801	407-648-0150	407-648-4529
CAROL MULLER	PaineWebber Incorporated 1285 Avenue of the Americas, 10th Floor New York, NY 10019	212-713-3412	212-713-1303
LUIS REITER	Squire Sanders & Dempsey 201 South Biscayne Boulevard Miami, FL 33132	305-577-8700	305-358-1425
BRADY SNEATH	State of Florida Department of Transportation 605 Suwannee Street, MS 7 Tallahassee, FL 32399-0450	904-488-5811 Ext. 1021	904-413-0660



## Exhibit B

### Certifications of Parties to Transfer Agreement


**CERTIFICATE OF STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION**

The undersigned hereby certifies and represents that he is duly authorized by the State of Florida Department of Transportation (the "Department") to execute and deliver this Certificate and further certifies on behalf of the Department as follows:

1. The Department has the full legal right, power and authority to enter into: (i) the Transfer Agreement between the Dade County Expressway Authority (the "Authority") and the Department; (ii) the Toll Operations and Maintenance Agreement; (iii) the Roadway Operations and Maintenance Agreement; and (iv) the SunPass Agreement, each of the foregoing dated as of December 10, 1996 (collectively, the "Department Documents"), and to carry out and consummate the transactions contemplated by the Department Documents.
2. The Department is in compliance, in all respects, with the terms of the Department Documents and with the obligations on its part contained in the Department Documents or any agreements relating thereto.
3. This Certificate is made in connection with the transfer by the Department of operational and financial control of the System as described in the Department Documents and may be relied upon in connection therewith.

IN WITNESS WHEREOF, I have hereunto set my hand this 10<sup>th</sup> day of December, 1996.

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

By:   
Print Name: BEN G. WATTS, P.E.  
Print Title: SECRETARY OF TRANSPORTATION

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GREENBERG  
ATTORNEYS AT LAW  
TRAURIG

December 10, 1996

Dade County Expressway Authority  
111 N.W. First Street, Suite 2740  
Miami, FL 33128

Division of Bond Finance  
1801 Hermitage Boulevard,  
Suite 200  
Tallahassee, FL 32308

State Board of Administration  
of Florida  
Hermitage Centre  
1801 Hermitage Blvd.  
Tallahassee, FL 32308

Florida Department of  
Transportation  
605 Suwanne Street, MB-7  
Tallahassee, FL 32399-0450

Metro Dade County  
111 N.W. 1st Street, Suite 2810  
Miami, FL 33128

Re: \$91,300,000 in outstanding aggregate principal  
amount of State of Florida Full Faith and Credit  
Dade County Road Refunding Bonds, Series 1993

Ladies and Gentlemen:

We have acted as co-bond counsel to Dade County Expressway Authority (the "Authority"), in connection with the issuance by the Authority on this date of its \$80,000,000 Dade County Expressway Authority (Florida) Toll System Revenue Bonds, Series 1996 (Taxable) (the "Series 1996 Bonds"), a portion of the proceeds of which, together with certain other available moneys, are being applied on this date to defease all of the Bonds referenced above (the "State Bonds"). In connection therewith you have requested that we provide you with this opinion letter. In rendering the opinions set forth below, we have examined such proceedings of the State of Florida and the Authority and such other matters as we have deemed necessary for the purposes of rendering this opinion, and we have assumed the accuracy and truthfulness of all such proceedings, other public records and certain certifications that have been executed or certified by public officials acting within the scope of their official capacities and have not verified the accuracy or truthfulness thereof. Based upon the foregoing, we are of the opinion that:

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AGILES-KLEIN1469291 11/27/96

GREENBERG TRAURIG HOFFMAN LIPOFF ROSEN & QUENTEL, P.A.  
1221 BRICKELL AVENUE MIAMI, FLORIDA 33131 305-579-0500 FAX 305-579-0717  
MIAMI NEW YORK WASHINGTON, D.C.  
FORT LAUDERDALE WEST PALM BEACH TALLAHASSEE ORLANDO

Dade County Expressway Authority  
State Board of Administration of Florida  
Metro Dade County  
Division of Bond Finance  
Florida Department of Transportation  
December 10, 1996  
Page 2

1. The Escrow Deposit Agreement dated as of November 15, 1996 (the "Escrow Agreement") between the Authority and the State Board of Administration of Florida, as Escrow Agent (the "SBA"), and the Forward Delivery Agreement (the "Forward Agreement") dated as of even date herewith among the Authority, the SBA and The Chase Manhattan Bank have each been duly authorized, executed and delivered by the Authority. Assuming the due authorization, execution and delivery of the Escrow Agreement and the Forward Agreement by the other parties thereto, each constitutes a valid and binding obligation of the Authority, enforceable in accordance with its terms, subject to state and federal laws and equitable principles affecting the enforcement of creditors' rights.

2. On and as of this date, the State Bonds are deemed to be fully paid and discharged and are no longer deemed to be outstanding for the purposes of the resolution pursuant to which they were issued. Further, all liability of the Division of Bond Finance of the State Board of Administration of Florida, the State of Florida Department of Transportation, and Dade County, Florida with respect to the State Bonds has ceased, terminated and been completely discharged and extinguished. In rendering this opinion, we have relied upon the report dated of even date herewith of Grant Thornton LLP as to the mathematical accuracy of certain computations contained in schedules relating to the adequacy of moneys held under the Escrow Agreement to pay all of the principal of and interest on the State Bonds as the same become due and payable.

This letter is furnished by us solely for your benefit and may not be relied upon by any other person.

Respectfully submitted,

*Gregory J. Hoffman*  
*Lipoff, Moran & Quental, A.A.*

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GREENBERG  
ATTORNEYS AT LAW  
TRAURIG

December 10, 1996

Dade County Expressway Authority

PaineWebber Incorporated,  
as Representative of the Underwriters  
under the Bond Purchase Contract identified below  
New York, New York

PaineWebber Incorporated,  
as Remarketing Agent under the Indenture relating to  
the Series 1996 Bonds

\$80,000,000  
DADE COUNTY EXPRESSWAY AUTHORITY (FLORIDA)  
TOLL SYSTEM REVENUE BONDS  
SERIES 1996 (TAXABLE)

Ladies and Gentlemen:

We have acted as Co-Counsel to the Dade County Expressway Authority (the "Authority") in connection with the issuance by the Authority of its Dade County Expressway Authority (Florida) Toll System Revenue Bonds, Series 1996 (Taxable) dated December 10, 1996 (the "Series 1996 Bonds"). All terms used in capitalized form and not defined herein have the meanings ascribed to such terms in the Bond Purchase Contract dated December 6, 1996 (the "Bond Purchase Contract") between the Authority and the Underwriters identified therein; except, that the term "Authority Agreements" shall also include the Forward Delivery Agreement dated December 10, 1996 among the Authority, the State Board of Administration of Florida and The Chase Manhattan Bank.

We have examined, among other things: (i) the Official Statement dated December 6, 1996, relating to the Series 1996 Bonds (the "Official Statement"), and (ii) the Act, (iii) the Resolution of the Governing Board of the Division of Bond Finance of the State Board of Administration, adopted on November 9, 1993, which authorized issuance of the State Bonds; (iv) Dade County, Florida Ordinance No.(s) 94-215 and 96-119; adopted by the Board of County Commissioners of Dade County, Florida; (v) Resolution No.(s) 96-6, 96-7 and 96-8 and 96-9 each adopted by the Authority (collectively, the "Resolution"); (vi) organizational documents of the Authority

and; (vii) such other law, rules, regulations as deemed necessary or prudent in rendering our opinion.

Based on such examination, we are of the opinion that, under existing law:

1. The Authority is a body politic and corporate, and a public instrumentality and an agency of the State of Florida, duly created and validly existing under the Act and has full legal right, power and authority to adopt the Resolution, acquire operational and financial control of the System and to authorize, execute and deliver and to perform its obligations under the Authority Agreements.

2. The Authority has duly adopted the Resolution, has duly authorized, executed and delivered the Authority Agreements, and the Resolutions and, assuming the due authorizations, execution and delivery of the Authority Agreements by the other parties thereto, the Authority Agreements constitute legal, binding and valid obligations of the Authority, enforceable in accordance with their respective terms; provided, however, the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity.

3. The Authority has acquired operational and financial control of the System in accordance with the provisions of the Department Agreements.

4. The information in the Official Statement as to legal matters relating to the Authority, the Trust Estate, the Revenues, the Act, the Series 1996 Bonds, the System, the Authority Agreements and the Resolution is correct in all material respects and does not omit any statement, which in our opinion, should be included or referred to therein, and in addition, with respect to the information in the Official Statement and based upon review of the Official Statement as Co-Counsel to the Authority and without having undertaken to determine independently the accuracy or completeness of the contents of the Official Statement, we have no reason to believe that the Official Statement (except for the information under the headings "DESCRIPTION OF THE SERIES 1996 BONDS - Book-Entry Only System", "MUNICIPAL BOND INSURANCE" and "THE INITIAL LIQUIDITY FACILITY" and in APPENDIX E thereto and the financial and statistical data contained therein as to which no view is expressed) as of its date and as of the date hereof contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading.

5. The use of the Preliminary Official Statement by the Underwriters for the purpose of offering the Series 1996 Bonds for sale has been duly authorized by the Authority.

6. The Official Statement has been duly authorized, executed and delivered by the Authority, and the Authority has consented to the use thereof by the Underwriters.

7. To the best of our knowledge, the adoption of the Resolution, the acquisition of operational and financial control of the System, and the authorization, execution and delivery of the Authority Agreements and the Series 1996 Bonds, and compliance with the provisions thereof, does not and will not conflict with, or constitute a breach of or default under, any law, administrative regulation, consent decree, ordinance, resolution or any agreement or other instrument to which the Authority was or is subject, as the case may be, nor will such adoption, acquisition, execution, delivery, authorization or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the Authority, or under the terms of any law, administrative regulation, ordinance, resolution or instrument, except as expressly provided by the Authority Agreements.

8. To the best of our knowledge, all approvals, consents, authorizations and orders of any governmental authority or agency having jurisdiction in any matter which would constitute a condition precedent to the performance by the Authority of its obligations under the Authority Agreements, the Series 1996 Bonds and the Resolution have been obtained and are in full force and effect.

9. The Authority is lawfully empowered to pledge and grant a lien of the Trust Estate, including the Revenues, for payment of the principal of, purchase price, redemption premium, if any, and interest on the Series 1996 Bonds as the same becomes due and payable.

10. Except as disclosed in the Official Statement to the best of our knowledge, as of the date hereof there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or threatened against the Authority, affecting or seeking to prohibit, restrain or enjoin the acquisition or operational and financial control of the System by the Authority, the collection of Tolls thereon, or the sale, issuance or delivery of the Series 1996 Bonds, or the pledge of and lien on the Trust Estate, or contesting or affecting as to the Authority the validity or enforceability in any respect of the Series 1996 Bonds, the Resolution or the Authority Agreements, or contesting the completeness or accuracy of

Dade County Expressway Authority  
PaineWebber Incorporated  
December 10, 1996  
Page 4

the Preliminary Official Statements or the Official Statement or any supplement or amendment thereto, or contesting the powers of the Authority, the governing body of the Authority, or any authority for the issuance of the Series 1996 Bonds, the adoption of the Resolution, the acquisition of operational and financial control of the System by the Authority or the execution and delivery by the Authority of the Authority Agreements or their performance.

This letter is furnished by us solely for your benefit in connection with the original issuance and delivery of the Series 1996 Bonds and may not, without our express written consent, be relied upon by any other person.

Respectfully Submitted,

*Quentin J. Hoffmann*  
*Quentin J. Hoffmann, P.E.*





December 10, 1996

Dade County Expressway Authority  
111 N.W. First Street, Suite 2740  
Miami, Florida 33128

PaineWebber Incorporated,  
as Remarketing Agent and  
as Representative on behalf  
of itself and the other  
Underwriters  
200 South Orange Avenue, Suite 2200  
Orlando, Florida 32801

RE: \$80,000,000.00 Dade County Expressway Authority (Florida) Toll System  
Revenue Bonds, Series 1996 (Taxable)

Ladies and Gentlemen:

I have acted as counsel to the State of Florida, Department of Transportation (the "Department") in connection with the transfer of operational and financial control of certain expressways located in Dade County, Florida in connection with the issuance by Dade County Expressway Authority (the "Authority") on this date of its Dade County Expressway Authority (Florida) Toll System Revenue Bonds, Series 1996 (Taxable) in the aggregate principal amount of \$80,000,000.00. This opinion is being rendered pursuant to Section 7(d)(xxi) of that certain Bond Purchase Contract, dated December 6, 1996 (the "Bond Purchase Contract"), between the Authority and PaineWebber Incorporated, on behalf of itself and the other underwriters named therein. Capitalized terms used herein without definition have the meaning ascribed thereto in the Bond Purchase Contract.

In my capacity as such counsel, I have examined the following documents, each between the Department and the Authority and each dated as of the date hereof; (i) the Transfer Agreement; (ii) the Roadway Operations and Maintenance Agreement; (iii) the Toll Operations and Maintenance Agreement; and (iv) the Sun Pass Agreement and such other documents, records of the Department and other instruments as I deemed necessary to enable me to express the opinions set forth below, including original counterparts or certified copies of the documents listed in clauses (i) through (iv) above (such agreements are hereinafter referred to collectively as the "Department Agreements").


Based on the foregoing, it is my opinion that the Department has duly authorized, executed and delivered the Department Agreements, and assuming the due authorization, execution and delivery of the Department Agreements by the Authority, the Department

Dade County Expressway Authority  
PaineWebber Incorporated,  
as Remarketing Agent and  
as Representative on behalf  
of itself and the other  
Underwriters  
December 10, 1996  
Page 2 of 2

Agreements constitute legal, binding and valid obligations of the Department, enforceable in accordance with their respective terms; provided, however, that the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity.

This opinion is being delivered to the addressees named above in connection with the transactions described herein and may not be used or relied upon in any other capacity or by any other party without my prior written approval in each instance.

Respectfully submitted,

  
Joseph Mancilla,  
Chief of General Litigation  
Office of the General Counsel

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## Exhibit C

MDX Amended and Restated Trust Indenture

---

**AMENDED AND RESTATED TRUST INDENTURE<sup>♦</sup>**

**From**

**Miami-Dade County Expressway Authority**

**(f/k/a Dade County Expressway Authority)**

**To**

**The Bank of New York, as Trustee**

Originally Dated as of November 15, 1996

and

Amended and Restated as of June 15, 2002

---

<sup>♦</sup> Subsequent amendments to the Amended and Restated Trust Indenture are shown in footnotes.

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## **AMENDED AND RESTATED TRUST INDENTURE**

This Amended and Restated Trust Indenture is dated as of June 15, 2002 (as the same may be amended or supplemented from time to time, this "Indenture"), and is from Miami-Dade County Expressway Authority, f/k/a Dade County Expressway Authority (together with its successors and assigns as permitted under this Indenture, the "Authority"), a body politic and corporate, a public instrumentality and an agency of the State of Florida (the "State") existing under the Florida Expressway Authority Act (Part I of Chapter 348, Florida Statutes, as amended) (together with any successor provisions of law, the "Act"), to The Bank of New York, a New York banking corporation, as trustee (together with any successor permitted under this Indenture, the "Trustee"). This Indenture amends and restates the Trust Indenture dated as of November 15, 1996 (the "Original Indenture") from Dade County Expressway Authority to the Trustee, which previously had been amended and supplemented by the First Supplemental Trust Indenture (the "First Supplemental Indenture"), the Second Supplemental Trust Indenture (the "Second Supplemental Indenture") and the Third Supplemental Trust Indenture (the "Third Supplemental Indenture") dated as of October 15, 1999, January 1, 2000 and June 1, 2001, respectively, and from the Authority to the Trustee (as so amended and supplemented, the "Prior Indenture").

### **WITNESSETH:**

**WHEREAS**, the Authority was established by Ordinance No. 94-215, adopted on December 13, 1994, by the Board of County Commissioners of Dade County, Florida, pursuant to the Act; and

**WHEREAS**, the Act sets forth the Authority's purposes and powers, which include, among others, the powers to: (1) acquire, hold, construct, improve, maintain, operate, own, and lease the expressways located in Dade County and identified more particularly in Exhibit A hereto (together with certain non-roadway assets identified more particularly on Exhibit B hereto and together with any Improvements, as hereinafter defined, the "System"); (2) fix, alter, change, establish, and collect tolls, rates, fees, rentals, and other charges for the services and facilities of the System; (3) utilize surplus revenues to finance or refinance the planning, design, acquisition, construction, maintenance or improvement of a public transportation facility or transportation facilities located in Dade County, Florida or any programs or projects that will improve the levels of service on the System; and (4) borrow money, make and issue negotiable notes, bonds, refunding bonds and other evidence of indebtedness to finance the System; and

**WHEREAS**, the State of Florida, Department of Transportation (together with any successor to its powers and functions, the "Department") transferred operational and financial control of the System in perpetuity from the Department to the Authority on December 10, 1996 upon the terms and conditions set forth in the Transfer Agreement dated December 10, 1996 (as amended and as the same may be further amended or supplemented from time to time the "Transfer Agreement") between the Department and the Authority; and

**WHEREAS**, simultaneously with the entry by the Department and the Authority into the Transfer Agreement, the Department and the Authority entered into the following additional agreements with respect to the System, each dated December 10, 1996: (a) Toll Operations and

Maintenance Agreement (as the same may be amended or supplemented from time to time, the “Toll Operations and Maintenance Agreement”); (b) Roadway Operations and Maintenance Agreement (as the same may be amended or supplemented from time to time, the “Roadway Operations and Maintenance Agreement”); and (c) SunPass Agreement (as the same may be amended or supplemented from time to time, the “SunPass Agreement”); and

**WHEREAS**, prior to the entry by the Authority and the Trustee into the Original Indenture, the System was financed with bonds of the State of Florida denominated Full Faith and Credit Dade County Road Refunding Bonds, Series 1993 (the “State Bonds”) then outstanding in the aggregate principal amount of \$91,300,000 that were supported by revenues of the System and other security; and

**WHEREAS**, the Authority is issued on December 10, 1996 under the Original Indenture, \$80,000,000 in aggregate principal amount of its Dade County Expressway Authority (Florida) Toll System Revenue Bonds, Series 1996 (Taxable) (the “Series 1996 Bonds”) and applied a portion of the proceeds of the Bonds and took certain other actions on that date to acquire operational and financial control of the System in perpetuity by defeasing all of the outstanding State Bonds pursuant to the terms and provisions of the Escrow Deposit Agreement dated as of November 15, 1996 (as the same may be amended or supplemented from time to time, the “Escrow Agreement”) between the Authority and the State Board of Administration of Florida (together with any successor to its powers and functions, the “SBA”); and

**WHEREAS**, it was a precondition to the transfer of the System pursuant to the terms of the Transfer Agreement that the 1989 Lease-Purchase Agreement Covering Dade County Road Project dated as of April 5, 1989 (the “Lease-Purchase Agreement”) among the Department, the Division of Bond Finance of the SBA (formerly known as the Division of Bond Finance of the Department of General Services of the State of Florida) (the “Division”) and Dade County, Florida (the “County”) be terminated; and

**WHEREAS**, the Department, the Division and the County terminated the Lease-Purchase Agreement effective as of and on December 10, 1996; and

**WHEREAS**, pursuant to the Transfer Agreement, the Department transferred certain moneys to the Authority for application in the manner hereinafter provided; and

**WHEREAS**, the Authority has also previously issued under the Prior Indenture: (i) \$10,000,000 in principal amount of its Miami-Dade County Expressway Authority Toll System Revenue Bond (the “Series 1999 Bond”) as a series of Additional Bonds (as defined in the Prior Indenture), (ii) \$150,000,000 in aggregate principal amount of its Miami-Dade County Expressway Authority Toll System Revenue Bonds, Series 2000 (the “Series 2000 Bonds”), as a series of Additional Bonds, and (iii) \$89,345,000 in aggregate principal amount of its Miami-Dade County Expressway Authority (Florida) Toll System Refunding Revenue Bonds, Series 2001A (the “Series 2001A Bonds”); such Series 1999 Bond, Series 2000 Bonds and Series 2001A Bonds being secured by the Trust Estate (as hereinafter defined) on a parity with the lien thereon in favor of the Series 1996 Bonds and any other series of Additional Bonds that may be issued from time to time hereafter; and

**WHEREAS**, all things necessary to make the Series 1996 Bonds, the Series 1999 Bond, the Series 2000 Bonds and the Series 2001A Bonds previously authenticated by the Trustee and issued under the Prior Indenture and when authenticated by the Trustee and issued as in this Indenture provided, the valid, binding and legal obligations of the Authority according to the import thereof, and to constitute the Prior Indenture, as amended and restated by this Indenture, a valid pledge of and grant of a lien on the Trust Estate (as hereinafter defined), subject to the provisions of this Indenture, for the purpose of providing for the operation and maintenance of the System and to secure the payment of the principal of, premium, if any, and interest on the Bonds (as hereinafter defined) have been done and performed, in due form and time, as required by law; and

**WHEREAS**, the execution and delivery of this Indenture and the execution and issuance of the Series 1996 Bonds, the Series 1999 Bond, the Series 2000 Bonds and the Series 2001A Bonds, subject to the terms hereof, have in all respects been duly authorized by the Authority;

### **GRANTING CLAUSES**

Now, Therefore, This Indenture Witnesseth:

That in order to provide for the acquisition, construction, installation, equipping, operation and maintenance of the System and to secure the payment of the principal of, premium, if any, and interest on all Bonds issued and to be issued under this Indenture, according to the import thereof, and to reimburse any Credit Provider and Liquidity Provider and any Reserve Facility Provider (each as hereinafter defined) for amounts owed to them under any Credit Facility, Liquidity Facility or Reserve Facility (each as hereinafter defined), respectively, but subject to the limitations set forth herein, and the performance and observance of each and every covenant and condition contained herein and in the Bonds, and for and in consideration of the premises and of the acceptance by the Trustee of the trusts hereby created, and of the purchase and acceptance of the Bonds by the respective Owners (as hereinafter defined) thereof, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, and for the purpose of fixing and declaring the terms and conditions upon which the Bonds shall be issued, authenticated, delivered, secured and accepted by all Persons who shall from time to time be or become Owners thereof, the Authority does hereby assign, pledge and grant a lien upon and a security interest (and does hereby confirm its prior assignment, pledge and grant of a lien upon and a security interest under the Prior Indenture) in all of its right, title and interest in and to the following described property, rights and interests (collectively, the "Trust Estate") to the Trustee and its successors in trust and assigns, to the extent provided in this Indenture:

- (a) the Revenues (as hereinafter defined);
- (b) the Transfer Agreement; provided, that the assignment made by this clause shall not impair or diminish any obligation of the Authority under the provisions of the Transfer Agreement;
- (c) all Funds, Accounts and Subaccounts (each as hereinafter defined) established pursuant to this Indenture other than the Rebate Fund (as hereinafter defined) and all moneys and securities and earnings in such funds, accounts and subaccounts; and

(d) Any and all other contracts, instruments, moneys, revenues or sources of revenues (including, without limitation, pledged tax receipts of any type and from any source), securities and property furnished from time to time to the Trustee by the Authority or on behalf of the Authority or by any other Persons to be held by the Trustee as part of the Trust Estate under the terms of this Indenture;

But in trust nevertheless, for the equal and proportionate benefit and security of the Bonds issued and to be issued under the Prior Indenture and hereunder and secured by this Indenture, including any Bonds hereafter issued, without preference, priority or distinction as to participation in the lien, benefit and protection hereof of any one Bond over any other or from the others by reason of priority in the issue or negotiation thereof or by reason of the date or dates of maturity thereof, or for any other reason whatsoever (except as expressly provided in this Indenture), so that each and all of the Bonds shall have the same right, lien and privilege under this Indenture and shall be equally secured hereby, with the same effect as if the same had all been made, issued and negotiated upon the delivery hereof (all except as expressly provided in this Indenture);

Provided, however, that prior to the occurrence of an Event of Default (as hereinafter defined) the lien on and pledge of the Trust Estate conferred by this Indenture in favor of the Trustee shall be subject in all respects to the provisions of this Indenture that require the application of Revenues or other moneys to the funds created under this Indenture, including in each case any account or subaccount established therein, prior to the application of such Revenues or other moneys for the payment of the principal or redemption price of and the interest on the Bonds. No Owner of any Bond has the right to compel any exercise of the taxing power of any unit of government to pay the principal or Redemption Price of the Bonds or the interest thereon.

Notwithstanding the foregoing provisions of these Granting Clauses:

(i) moneys in and investments of the Rebate Fund (as hereinafter defined) shall not be pledged to the payment of the Bonds and shall be applied solely to the payment of rebate amounts due to the United States of America with respect to Bonds or payments in lieu thereof or as otherwise provided in this Indenture; and

(ii) upon the occurrence of an Event of Default (as hereinafter defined) the Trustee shall have a first lien on amounts held pursuant to Section 9.04.

Provided Further, however, that these presents are upon the condition that, if the Authority, or its successors, shall well and truly pay or cause to be paid, or provide for the payment of all principal, premium, if any, and interest on the Bonds due or to become due thereon, at the times and in the manner stipulated therein and herein, then this Indenture and the rights hereby granted shall cease, terminate and be void, but shall otherwise be and remain in full force;

And it is hereby covenanted and agreed by and among the Authority, the Trustee and the Owners from time to time of the Bonds, that the terms and conditions upon which the Bonds are to be issued, authenticated, delivered, secured and accepted by all Persons who shall from time to

time be or become the Owners thereof, and the trusts and conditions upon which the moneys and securities hereby pledged are to be held and disposed of, which trusts and conditions the Trustee hereby accepts, are as follows:

## **ARTICLE I**

### **DEFINITIONS**

**SECTION 1.01. DEFINITIONS.** Unless the context otherwise requires, the terms defined in this Section 1.01 shall for all purposes hereof and of any amendment hereof or supplement hereto and of the Bonds and of any certificate, opinion, request or other document mentioned herein or therein have the meanings defined herein, the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined herein:

“Account” shall mean any account created and maintained pursuant to this Indenture.

“Accountant” shall mean the independent certified public accountants or firm of independent certified public accountants retained by the Authority under the provisions of Section 7.05 to perform and carry out the duties imposed on the Accountant by this Indenture.

“Accreted Value” shall mean, as of any date of computation with respect to any Capital Appreciation Bond, an amount equal to the principal amount of such Capital Appreciation Bond at its initial offering plus the interest accrued on such Capital Appreciation Bond from the date of delivery to the original purchasers thereof to the Compounding Date next preceding the date of computation or the date of computation if a Compounding Date plus, with respect to matters related to the payment upon redemption or acceleration of the Capital Appreciation Bond, if such date of computation shall not be a Compounding Date, a portion of the difference between the Accreted Value as of the immediately preceding Compounding Date (or the date of original issuance if the date of computation is prior to the first Compounding Date succeeding the date of original issuance) and the Accreted Value as of the immediately succeeding Compounding Date, calculated based on the assumption that Accreted Value accrues during any period in equal daily amounts on the basis of a year of 360 days consisting of twelve months of thirty days each. Interest shall accrue on any Capital Appreciation Bond and be compounded periodically at such rate and at such times as provided for in any Supplemental Indenture relating to said Capital Appreciation Bond.

“Act” shall have the meaning ascribed to it in the introductory paragraph of this Indenture.

“Additional Bonds” shall mean the Bonds issued pursuant to the provisions of Section 2.08 on a parity with Outstanding Bonds.

“Administrative Expenses” shall mean the reasonable and necessary general and administrative expenses of the Authority including salaries of Authority administrative personnel, any taxes which may be lawfully imposed on the System or its income or operations and reserves therefor, the amount necessary to compensate any Fiduciary in accordance with the provisions of this Indenture, including, but not limited to, Section 8.04, and any other administrative expenses required to be paid under the provisions of this Indenture or by law, as

such expenses are determined to have been incurred in accordance with the method of accounting used in the preparation of the annual financial statements of the Authority including, to the extent so determined, expenses not annually recurring, but excluding: (i) any allowance for depreciation, or amortization; and (ii) any deposits or transfers to the credit of the Funds, Accounts or Subaccounts; provided, however, that to the extent such Administrative Expenses relate, all or in part, to a future period of time they shall be prospectively determined by reference to the Annual Budget, to the extent applicable to the future period, and to any projections authorized to be used herein, to the extent applicable to the future period.

“Alternate Credit Facility” shall mean a Credit Facility provided pursuant to the terms of Section 13.03.

“Alternate Credit Facility Date” shall have the meaning ascribed to it in Section 13.03.

“Alternate Liquidity Facility” shall mean a Liquidity Facility provided pursuant to the terms of Section 13.06.

“Alternate Liquidity Facility Date” shall have the meaning ascribed to it in Section 13.06.

“Amortization Requirements” shall mean the money required to be deposited in the Sinking Fund for the purpose of the mandatory redemption or payment at maturity of any Term Bonds issued pursuant to this Indenture, the specific amounts and times of such deposits to be as provided in Section 3.01 with respect to the Series 1996 Bonds and to be determined in the Supplemental Indenture authorizing the issuance of such Term Bonds.

“Annual Budget” shall mean the annual budget, as amended or supplemented, adopted or in effect for a particular Fiscal Year as provided in Section 5.04.

“Annual Repayment Requirements” shall mean, for any given Fiscal Year, the total of the following: (i) the Net Liabilities (as defined in the Transfer Agreement) payable by the Authority for such Fiscal Year as set forth in Exhibit F to the Transfer Agreement, if any; (ii) the SunPass Installation Costs (as defined in the SunPass Agreement) payable by the Authority for such Fiscal Year pursuant to the SunPass Agreement, if any; (iii) Environmental Liabilities (as defined in the Transfer Agreement) payable by the Authority for such Fiscal Year pursuant to the Transfer Agreement, if any; and (iv) Overruns (as defined in the Toll Operations and Maintenance Agreement and the Roadway Operations and Maintenance Agreement), if any. As used in this Indenture, clauses (i) and (ii) of the definition of Annual Repayment Requirements shall constitute the Non-contingent Portion of the Annual Repayment Requirements and clauses (iii) and (iv) shall constitute the Contingent Portion of Annual Repayment Requirements.

“Appreciated Value” shall mean, with respect to any Capital Appreciation and Income Bond: (a) as of any date of computation prior to the Interest Commencement Date, an amount equal to the principal amount thereof on the date of original issuance plus the interest accrued on such Bond from the date of original issuance of such Bond to the Compounding Date next preceding the date of computation or the date of computation if a Compounding Date, such interest to compound periodically at the times and at the rate provided in any Supplemental Indenture authorizing the issuance of said Bond, plus, if such date of computation shall not be a Compounding Date, a portion of the difference between the Appreciated Value as of the

immediately preceding Compounding Date (or the date of original issuance if the date of computation is prior to the first Compounding Date succeeding the date of original issuance) and the Appreciated Value as of the immediately succeeding Compounding Date calculated based upon an assumption that Appreciated Value accrues during any period in equal daily amounts on the basis of a year of 360 days consisting of twelve months of thirty days each; and (b) as of any date of computation on and after the Interest Commencement Date, the Appreciated Value on the Interest Commencement Date.

“Authority” shall have the meaning ascribed to it in the introductory paragraph to this Indenture.

“Authority Account” shall mean the Account by that name established in the General Fund.

“Authority Counsel” shall mean Greenberg Traurig, P.A., Edwards & Carstarphen and any other legal counsel appointed by the Authority to represent its legal interests.

“Authorized Denomination” means (a) in the case of the Series 1996 Bonds, (i) while the Series 1996 Bonds bear interest at a Daily, Weekly or Monthly Rates, \$100,000 and integral multiples of \$5,000 over \$100,000, and (ii) while the Series 1996 Bonds bear interest at a Quarterly, Semiannual, Extended or Fixed Rate, \$5,000, and integral multiples thereof, (b) in the case of the Series 1999 Bond, its unpaid principal balance from time to time, (c) in the case of the Series 2000 Bonds and the Series 2001A Bonds, \$5,000, and integral multiples thereof, and (d) in the case of other Series of Bonds, such denominations as shall be authorized in the Supplemental Indenture authorizing the issuance of such Bonds.

“Authorized Officer” shall mean, when used with respect to the Authority, the Chairman, the Vice-Chairman, the Executive Director, and any other officer or employee of the Authority designated from time to time by resolution of the Authority as an Authorized Officer under this Indenture.

“Average Annual Debt Service Requirement” shall mean, as of any date and with respect to a particular Series of Bonds, the arithmetic average of the Principal and Interest Requirements in the then current and each succeeding Fiscal Year.

“Average Rate” shall mean the rate determined by dividing the total amount of interest paid on all Variable Rate Bonds for a given period by the average principal amount of all Variable Rate Bonds Outstanding during that period.

“Bonds” shall mean, collectively, Outstanding Series 1996 Bonds, the Outstanding Series 1999 Bond, Outstanding Series 2000 Bonds, Outstanding Series 2001A Bonds, Completion Bonds, Additional Bonds and Refunding Bonds.

“Bond Counsel” shall mean any firm of nationally recognized municipal bond attorneys selected by the Authority, including co-counsel to such firm, each of which shall be and experienced in the issuance of municipal bonds and matters relating to the exclusion of the interest thereon from gross income for purposes of federal income taxation.



“Bond Registrar” shall mean a bank or trust company, either within or without the State of Florida, designated as such by resolution of the Authority, which shall perform such functions as Bond Registrar as are required by this Indenture with respect to one or more Series of Bonds. Notwithstanding the preceding sentence, the Trustee shall be the initial Bond Registrar.

“Bondholder” (or “Owner”) shall mean the registered owners of the Bonds as shown on the registration books of the Bond Registrar maintained pursuant to Section 2.04.

“Business Day” means any date other than (i) Saturday or Sunday, (ii) a day on which the Trustee, any Credit Provider or any Liquidity Provider is lawfully closed, (iii) a day on which the federal reserve bank for the federal reserve district in which the Trustee or Tender Agent is located is closed; or (iv) a day on which the New York Stock Exchange is closed.

“Capital Appreciation Bonds” shall mean any Bonds as to which interest is compounded periodically on each Compounding Date and which are payable in an amount equal to the then current Accreted Value only at maturity, earlier redemption or other payment date therefor, all as designated by any Supplemental Indenture authorizing the issuance of such Bonds and which may be either Serial Bonds or Term Bonds.

“Capital Appreciation and Income Bonds” shall mean any Bonds as to which accruing interest is not paid prior to the Interest Commencement Date specified in any Supplemental Indenture authorizing the issuance of such Bonds and with respect to which, until said Interest Commencement Date, the Appreciated Value is compounded periodically on each Compounding Date.

“Capitalized Interest” shall mean proceeds of Bonds set aside to pay the interest costs on Bonds that will accrue during the construction of a Project or other specified period, the amount of which shall be set forth in the Supplemental Indenture authorizing the issuance of the Bonds, the proceeds of which shall be applied for such purpose.

“Chairman” shall mean the Person appointed to serve as the Chairman of the Authority or his designee or the Person succeeding to his principal function.

“Code” shall mean the applicable provisions of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

“Completion Bonds” shall mean the Bonds issued pursuant to the provisions of Section 2.07 on a parity with Outstanding Bonds.

“Compounding Date” shall mean, with respect to any Capital Appreciation Bond and Capital Appreciation and Income Bond, the dates on which interest shall compound, as specified in any Supplemental Indenture authorizing the issuance of such Bonds.

“Construction Fund” shall mean the Fund of that name created and maintained pursuant to Section 4.01.

“Consulting Engineer” shall mean the engineer, engineering firm, traffic consultant or traffic consulting firm at the time retained by the Authority pursuant to Section 7.05 to carry out

and perform the duties imposed on the Consulting Engineer by this Indenture. The Authority may retain the services of more than one Consulting Engineer to perform duties and services required of the Consulting Engineer under this Indenture.

“Continuing Disclosure Agreement” shall mean, with respect to one or more Series of Bonds, the Continuing Disclosure Agreement entered into between the Authority, the dissemination agent specified therein and such other Persons who are determined to be Obligated Persons (within the meaning of Rule 15c2-12 of the Securities and Exchange Commission) with respect to such Bonds, as same may be amended from time to time, in order to comply with Rule 15c2-12 of the Securities and Exchange Commission.

“Conversion Date” means:

(a) When used with respect to a Fixed Rate, the date on which a Fixed Rate becomes effective pursuant to Section 2.06(m); and

(b) When used with respect to any particular Variable Rate Period, the date on which such Rate Period first becomes effective pursuant to Section 2.06.

“Convertible Bonds” shall mean Bonds issued under this Indenture which are convertible, at the option of the Authority, into a form of Bonds which are permitted by this Indenture other than the form of such Bonds at the time they were issued.

“Corporation Rate” shall mean the rate of interest per annum borne by Provider Bonds, which shall equal the Prime Rate plus 1% or, if applicable the Default Rate; provided however that the Corporation Rate shall not exceed the lesser of 12% per annum or the maximum rate permitted by applicable law.

“Cost” shall mean, as applied to a Project, the aggregate cost of construction of the Project, and all obligations and expenses relating thereto, including all items of cost which are set forth in Section 4.03.

“Counterparty” shall mean a financial institution whose long-term debt obligations, or whose payment obligations under a Hedge Agreement are guaranteed by an entity, whose senior long-term debt obligations are rated (on the date the Hedge Agreement is entered into) at least “A-” by S&P or “A3” by Moody’s.

“County” shall have the meaning ascribed to it in the recitals to this Indenture.

“Credit Facility” shall mean the Initial Credit Facility and each and every other irrevocable letter of credit, policy of municipal bond insurance, surety bond, guaranty, purchase agreement, credit agreement or similar facility in which the entity providing such facility irrevocably agrees to provide funds to make payment of the principal of and interest on Bonds when due. The term “Credit Facility” shall also include and “Alternate Credit Facility.”

“Credit Provider” shall mean the Initial Credit Provider and each and every other provider of a Credit Facility, if any, with respect to any Series of Bonds.

“Daily Rate” shall mean the interest rate determined for the Bonds for a Daily Rate Period pursuant to Section 2.06(c).

“Daily Rate Period” shall mean, while the Series 1996 Bonds bear interest at the Daily Rate, the period commencing on each Business Day to but excluding the following Business Day.

“Debt Service Reserve Fund” shall mean the Fund of that name created and maintained pursuant to Section 5.06.

“Debt Service Reserve Fund Deposit Requirement” shall mean an amount in each of the twelve successive months beginning with the month following any month in which any amount shall have been withdrawn from the Debt Service Reserve Fund (or drawn under a Reserve Facility) or a deficiency is determined to exist upon valuation of the Debt Service Reserve Fund pursuant to Section 6.02, equal to one twelfth of the deficiency created by such withdrawal (or draw under a Reserve Facility) or resulting from such valuation until such deficiency is made up. In the case of a draw under the Initial Reserve Facility, such deficiency shall include all Policy Costs then due and owing under the Series 1996 Debt Service Reserve Fund Policy Agreement.

“Debt Service Reserve Fund Requirement” shall mean, as of any date of calculation, an amount equal to the least of: (i) the maximum Principal and Interest Requirements on the Bonds in the current or any future Fiscal Year for the Bonds; (ii) 125% of the Average Annual Debt Service Requirement for the Bonds; or (iii) 10% of the proceeds of the Bonds. The Debt Service Reserve Fund Requirement may be satisfied, in whole or in part, by the deposit of a Reserve Facility.

“Default Rate” shall mean, with respect to Provider Bonds, a rate of interest per annum equal to the Prime Rate plus 3%.

“Department” shall have the meaning ascribed to it in the recitals to this Indenture.

“Department Operation and Maintenance Expenses” shall mean, for a given period, Operation and Maintenance Expenses incurred by the Department pursuant to the Toll Operations and Maintenance Agreement, the Roadway Operations and Maintenance Agreement and the SunPass Agreement, as such amounts have been determined by the Authority with reference to the Annual Budget and in accordance with such agreements.

“Depositary” shall mean any bank, savings association or trust company duly authorized by law to engage in its business and to receive Authority funds and designated by an Authorized Officer as a depositary of moneys under the provisions of this Indenture.

“Deposit Day” shall mean the day on or before the twenty-fifth (25th) day of each month (or such other day that may be designated in a Supplemental Indenture as a “Deposit Day” in respect of a Series of Bonds) on which day a withdrawal from the Revenue Fund and a deposit to one or more other Funds, Accounts or Subaccounts is required to accomplish the payments and transfers required by such Supplemental Indenture.

“Direct Participant” shall mean a participant in the DTC Book-Entry Only System on whose DTC accounts ownership interests in securities are credited.

“DTC” means The Depository Trust Company, New York New York, and its successors and assigns.

“Eligible Funds” means:

(a) Bonds proceeds deposited with the Trustee contemporaneously with the issuance and sale of Bonds (other than proceeds of sale of Bonds to the Authority) and which were continuously thereafter subject to the lien of this Indenture in a separate and segregated fund, account or subaccount established hereunder in which no moneys which were not Eligible Funds were at any time held while such Bond proceeds were held therein, together with the investment earnings thereon;

(b) Moneys (i) held in any Fund, Account or Subaccount in which no other moneys which are not Eligible Funds are held, and (ii) which have been on deposit with the Trustee for at least three hundred sixty-six (366) consecutive days during which period no Event of Bankruptcy shall have occurred, together with the investment earnings thereon;

(c) Proceeds of a drawing under the Credit Facility or the Liquidity Facility; and

(d) Proceeds from the issuance and sale of Refunding Bonds and any other moneys deposited with the Trustee if there is delivered to the Trustee at the time of the issuance and sale of such Refunding Bonds or the deposit of such other moneys with the Trustee a written opinion of nationally recognized bankruptcy counsel to the effect that payments with such proceeds or other moneys, as the case may be, of principal of, premium, if any, or interest on the Bonds would not be avoidable transfers under the United States Bankruptcy Code should an Event of Bankruptcy hereafter occur.

“Escrow Agent” shall mean a bank or trust company, either within or without the State of Florida, having fiduciary powers and designated as Escrow Agent in an Escrow Deposit Agreement and performing such functions as are required by such Escrow Deposit Agreement.

“Escrow Agreement” shall have the meaning ascribed to it in the recitals to this Indenture. The Escrow Agreement shall not be considered to be an Escrow Deposit Agreement within the meaning of this Indenture.

“Escrow Deposit Agreement” shall mean an Escrow Deposit Agreement, by and between the Authority and an Escrow Agent, pursuant to which cash and Escrow Securities will be held by the Escrow Agent to provide for payment, in whole or in part, of one or more specified Series of Bonds.

“Escrow Securities” shall mean cash, direct non-callable obligations of the United States of America and securities fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America, to which direct obligations or guarantee the full faith and credit of the United States of America has been pledged, Refcorp interest strips, CATS, TIGRS, STRPS, or defeased municipal bonds rated “AAA” by S&P or “Aaa” by

Moody's (or any combination thereof). Also, "Escrow Securities" shall include United States Agency for International Development securities fully and unconditionally guaranteed as to the payment of principal and interest by the United States of America, where such securities shall be scheduled to mature at least fifteen days prior to the date on which the maturing principal of and interest on such securities are required to pay when due the principal of and premium, if any, and interest due and to become due on Bonds deemed paid within the meaning of Section 12.01 of this Indenture on or prior to the redemption date or maturity date thereof, as the case may be.

"Event of Bankruptcy" means the filing of a petition in bankruptcy or the commencement of a proceeding under the United States Bankruptcy Code pursuant to Sections 301 or 303 thereof by or against the Authority.

"Event of Default" shall have the meaning ascribed to it in Section 9.02.

"Extended Rate" shall mean the interest rate determined for the Series 1996 Bonds for an Extended Rate Period pursuant to Section 2.06(h).

"Extended Rate Period" shall mean, while the Series 1996 Bonds bear interest at the Extended Rate, the period commencing on the Extended Rate Conversion Date and on the first Business Day of the calendar month following the last day of the prior Rate Period, extending for a period of one year or integral multiples of six months in excess of one year as established by the Remarketing Agent and ending on a day which is the last day preceding the first Business Day of a calendar month.

"Fiduciary" shall mean, collectively, the Trustee, Bond Registrar and Paying Agent, or, as the context may require, any one of them.

"First Supplemental Indenture" shall have the meaning ascribed to it in the introductory paragraph of this Indenture.

"Fiscal Year" shall mean the period established as the Authority's fiscal year, presently commencing July 1 of each year and concluding on June 30 of the following year, as the same may be changed from time to time by resolution of the Authority, a copy of which shall have been provided to the Trustee.

"Fitch" shall mean Fitch Investors Service, L.P. and its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Fitch" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Authority by written notice of an Authorized Officer to the Trustee.

"Fixed Rate" means an interest rate to be determined for the Series 1996 Bonds pursuant to Section 2.06(p).

"Fixed Rate Period" means the period of time during which the Series 1996 Bonds bear interest at a Fixed Rate.

"Fund" shall mean any fund created and maintained pursuant to this Indenture.

“General Account” shall mean the Account of that name established in the General Fund.

“General Fund” shall mean the Fund of that name created and maintained pursuant to Section 5.06.

“Government Obligations” shall mean direct obligations of, or obligations the full and timely payment of the principal of and interest on which are guaranteed by, the United States of America.

“Hedge Agreement” shall mean the Series 1996 Cap Agreement and shall also include an interest rate exchange agreement, an interest rate swap agreement, a forward purchase contract, a put option contract, a call option contract or any other financial product which is used by the Authority as a hedging device with respect to its obligation to pay debt service on any of the Bonds, entered into between the Authority and a Counterparty; provided that such arrangement shall be specifically designated in a certificate of the Executive Director as a “Hedge Agreement” for purposes of this Indenture; and provided further that, at the time of entering into such Hedge Agreement, the Authority shall have obtained written evidence that the Counterparty satisfies the requirements for a Counterparty set forth in the definition of such term in this Article I.

“Hedge Charges” shall mean charges payable by the Authority to a Counterparty upon the execution, renewal or termination of any Hedge Agreement and any periodic fee payable by the Authority to keep such Hedge Agreement in effect and other payments required thereby.

“Hedge Obligations” shall mean net payments required to be made by the Authority under a Hedge Agreement from time to time as a result of fluctuation in hedged interest rates, or fluctuation in the value of any index of payment.

“Hedge Receipts” shall mean net payments received by the Authority from a Counterparty under a Hedge Agreement.

“Improvements” shall mean any extension, enlargement, improvement, equipping, construction, renovation, repair, replacement, rehabilitation or acquisition of all or any portion of the System, but only to the extent that the same shall have been determined by resolution of the Authority to be or to become a part of the System.

“Indenture” shall have the meaning ascribed to it in the introductory paragraph hereof.

“Initial Credit Facility” shall mean the municipal bond new issue insurance policy issued by the Initial Credit Provider that guarantees payment of principal of and interest on the Series 1996 Bonds.

“Initial Credit Provider” shall mean Financial Guaranty Insurance Company, a New York stock insurance company, or any successor thereto.

“Initial Liquidity Facility” shall mean the Standby Bond Purchase Agreement dated as of December 1, 1996 between the Trustee and the Initial Liquidity Provider, as the same may be amended or supplemented from time to time in accordance with its terms.

“Initial Liquidity Provider” shall mean FGIC Securities Purchase, Inc., a Delaware corporation, or any successor thereto.

“Initial Reserve Facility” shall mean the municipal bond debt service reserve fund policy issued by the Initial Reserve Facility Provider that guarantees payment of an amount up to 50% of the Debt Service Reserve Fund Requirement as calculated with respect to the Series 1996 Bonds.

“Initial Reserve Facility Provider” shall mean Financial Guaranty Insurance Company, a New York stock insurance company, or any successor thereto.

“Interest Commencement Date” shall mean, with respect to any particular Capital Appreciation and Income Bonds, the date specified in any Supplemental Indenture authorizing the issuance of such Bonds (which date must be prior to the maturity date for such Bonds) after which interest accruing on such Bonds shall be payable on a periodic basis, with the first such payment date being the applicable Interest Payment Date immediately succeeding such Interest Commencement Date.

“Interest Payment Date” shall mean, with respect to the Series 1996 Bonds:

(a) When the Series 1996 Bonds bear interest at the Daily, Weekly or Monthly Rate, the first Business Day of each calendar month commencing with the first Business Day of the calendar month following the initial issuance and delivery of the Series 1996 Bonds;

(b) When the Series 1996 Bonds bear interest at the Quarterly Rate, the first Business Day of the third calendar month following the Quarterly Rate Conversion Date and subsequently the first Business day of each third calendar month thereafter;

(c) When the Series 1996 Bonds bear interest at the Semiannual or Extended Rate, the first Business Day of the sixth month following the Semiannual or Extended Rate Conversion Date and subsequently the first Business Day of each sixth calendar month thereafter; and

(d) When the Series 1996 Bonds bear interest at the Fixed Rate, each January 1 and July 1 after the Fixed Rate Conversion Date.

“Interest Payment Date” means, with respect to the Series 1999 Bond, the Series 2000 Bonds and the Series 2001A Bonds, each January 1 and July 1, commencing January 1, 2000 for the Series 1999 Bond, commencing on July 1, 2000 for the Series 2000 Bond, and commencing on January 1, 2002 for the Series 2001A Bond. “Interest Payment Date” means with respect to other Series of Bonds, the dates on which interest on such Bonds is payable as specified in the Supplemental Indenture authorizing the issuance of such Bonds.

“Investment Securities” shall mean any of the following to the extent the same are at the time legal for investment by the Authority pursuant to applicable law and any other investment securities approved by the Credit Provider:

(a) Direct obligations of the United States of America and securities fully and unconditionally guaranteed as to the timely payment of principal and interest by the United

States of America, provided, that the full faith and credit of the United States of America must be pledged to any such direct obligation or guarantee (“Direct Obligations”);

(b) Direct obligations and fully guaranteed certificates of beneficial interest of the Export-Import Bank of the United States; consolidated debt obligations and letter of credit-backed issues of the Federal Home Loan Banks; the Federal Home Loan Mortgage Corporation (“FHLMCs”); debentures of the Federal Housing Administration; mortgage-backed securities (except stripped mortgage securities which are valued greater than par on the portion of unpaid principal) and senior debt obligations of the Federal National Mortgage Association (“FNMA”); participation certificates of the General Services Administration; guaranteed mortgage-backed securities and guaranteed participation certificates of the Government National Mortgage Association (“GNMA”); guaranteed participation certificates and guaranteed pool certificates of the Small Business Administration; debt obligations and letter of credit-backed issues of the Student Loan Marketing Association; local authority bonds of the U.S. Department of Housing & Urban Development; guaranteed Title XI financings of the U.S. Maritime Administration; guaranteed transit bonds of the Washington Metropolitan Area Transit Authority; and Resolution Funding Corporation securities;

(c) Direct obligations of any state of the United States of America or any subdivision or agency thereof whose unsecured, uninsured and unguaranteed general obligation debt is rated, at the time of purchase, “A” or better by Moody’s and “A” or better by S&P, or any obligation fully and unconditionally guaranteed by any state, subdivision or agency whose unsecured, uninsured and unguaranteed general obligation debt is rated, at the time of purchase, “A” or better by Moody’s and “A” or better by S&P;

(d) Commercial paper (having original maturities of not more than 270 days) rated, at the time of purchase, “P-1” by Moody’s and “A-1” or better by S&P;

(e) Federal funds, unsecured certificates of deposit, time deposits or bankers acceptances (in each case having maturities of not more than 365 days) of any domestic bank including a branch office of a foreign bank which branch office is located in the United States, provided legal opinions are received to the effect that full and timely payment of such deposit or similar obligation is enforceable against the principal office or any branch of such bank, which, at the time of purchase, has a short-term “Bank Deposit” rating of “P-1” by Moody’s and “Short-Term CD” rating of “A-1” or better by S&P;

(f) Deposits of any bank or savings and loan association which has combined capital, surplus and undivided profits of not less than \$3 million, provided such deposits are continuously and fully insured by the Bank Insurance Fund or the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation;

(g) Investments in money market funds rated “AAAm” or “AAAm-G” by S&P;

(h) Repurchase agreements collateralized by Direct Obligations, GNMA, FNMA or FHLMC with any registered broker/dealer subject to Securities Investors’ Protection Corporation jurisdiction or any commercial bank insured by the Federal Deposit Insurance Corporation, if such broker/dealer or bank has an uninsured, unsecured and unguaranteed



obligation rated “P-1” or “A3” or better by Moody’s and “A-1” or “A-” or better by S&P, provided:

(i) a master repurchase agreement or specific written repurchase agreement governs the transaction;

(ii) the securities are held free and clear of any lien by the Trustee or an independent third party acting solely as agent (“Agent”) for the Trustee, and such third party is (A) a Federal Reserve Bank, (B) a bank which is a member of the Federal Deposit Insurance Corporation and which has combined capital, surplus and undivided profits of not less than \$50 million, or (C) a bank approved in writing for such purpose by the Credit Provider, and the Trustee shall have received written confirmation from such third party that it holds such securities, free and clear of any lien, as agent for the Trustee;

(iii) a perfected first security interest under the Uniform Commercial Code, or book entry procedures prescribed at 31 C.F.R 306.1 et seq. or 31 C.F.R. 350.0 et seq. in such securities is created for the benefit of the Trustee;

(iv) the repurchase agreement has a term of 180 days or less, and the Trustee or the Agent will value the collateral securities no less frequently than weekly and will liquidate the collateral securities if any deficiency in the required collateral percentage is not restored within two business days of such valuation; and

(v) the fair market value of the securities in relation to the amount of the repurchase obligation, including principal and interest, is equal to at least 103%;

(vi) Investment agreements, the issuer, form and substance of which are specifically approved by the Credit Provider; and

(vii) The Local Government Surplus Funds Trust Fund administered by the State Board of Administration of Florida.

“Lease-Purchase Agreement” shall have the meaning ascribed to it in the recitals to this Indenture.

“Liquidity Facility” shall mean a letter of credit, policy of insurance, surety bond, guaranty, purchase agreement, credit agreement or similar facility in which the entity providing such facility agrees to provide funds to pay the purchase price of, or agrees to purchase, Put Bonds upon their tender by the Owners thereof. The term “Liquidity Facility” shall also include an Alternate Liquidity Facility.

“Liquidity Provider” shall mean the Initial Liquidity Provider and each other provider of a Liquidity Facility, if any, with respect to any Series of Bonds.

“Maximum Rate” shall mean, with respect to the Series 1996 Bonds prior to the conversion of the Series 1996 Bonds to the Fixed Rate, 15% so long as the Series 1996 Bonds are Taxable Bonds or 12% so long as the Series 1996 Bonds are not Taxable Bonds, and, thereafter, the highest rate of interest allowed by law. “Maximum Rate” shall mean, with respect

to other Series of Bonds, the lower of the highest rate of interest allowed by law and such rate as shall be determined as the “Maximum Rate” for such Bonds in the Supplemental Indenture authorizing the issuance thereof.

“Monthly Rate” shall mean the interest rate determined for a Monthly Rate Period pursuant to Section 2.06(e).

“Monthly Rate Period” shall mean, while the Series 1996 Bonds bear interest at the Monthly Rate, the period commencing on the first Business Day of each month to but excluding the first Business Day of the following month.

“Moody’s” shall mean Moody’s Investors Service, Inc. and its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Authority by written notice of an Authorized Officer to the Trustee.

“Net Proceeds” shall mean proceeds from any insurance, condemnation, performance bond, federal or state flood disaster assistance or any other financial guaranty (except a Credit Facility, Liquidity Facility or a Reserve Facility) paid with respect to the System remaining after payment therefrom of all reasonable expenses, including attorneys’ fees, incurred in the collection thereof; and, with respect to insurance, to the extent the Authority elects to self-insure, any moneys payable from any appropriation made by the Authority with respect to such self-insurance.

“Net Revenues” shall mean, for any period, the amount of the excess of Revenues over the amounts paid from the Revenue Fund for Operation and Maintenance Expenses during such period.

“Non-contingent Portion of Annual Repayment Requirements” shall have the meaning ascribed to it in the definition of Annual Repayment Requirements.

“Obligated Person” shall have the meaning ascribed to it in Rule 15c2-12 of the Securities and Exchange Commission.

“Operation and Maintenance Expenses” shall mean the reasonable and necessary Administrative Expenses (but only to the extent the same otherwise constitute Operation and Maintenance Expenses within the meaning of this definition), Department Operation and Maintenance Expenses (but only to the extent the same otherwise constitute Operation and Maintenance Expenses within the meaning of this definition) and the reasonable and necessary expenses of maintenance, repair and operation of the System and its toll facilities, including, without limitation, all ordinary and usual expenses of maintenance and repair, insurance premiums, engineering expenses, legal expenses, the costs of collecting and accounting for Tolls, employee bond premiums, payments in satisfaction of the obligations of the Authority under Section 7.15, amounts due in respect of fees and expenses under the Payment Agreement or any similar agreement with respect to a Credit or Liquidity Facility, and any other similar expenses required to be paid with respect to the System under the provisions of this Indenture or by law, as such expenses are determined to have been incurred in accordance with the method of

accounting used in the annual financial statements of the Authority, including, to the extent so determined, expenses not annually recurring, but excluding: (i) any reserves for extraordinary maintenance or repair; (ii) any allowance for depreciation or amortization; (iii) any deposits or transfers to the credit of the Funds and Accounts.

“Opinion of Bond Counsel” means a written opinion of Bond Counsel, in form and substance satisfactory to the Trustee, and except as may be otherwise specifically set forth in this Indenture, to the effect that the action proposed to be taken is authorized or permitted by the laws of the State and this Indenture and will not adversely affect the validity of the Bonds under the laws of the State or, except to the extent that any of the Bonds shall be Taxable Bonds, the exclusion from gross income for federal income tax purposes of interest on any Bonds.

“Opinion of Counsel” means an opinion in writing signed by an attorney or firm of attorneys acceptable to the Trustee who may be Authority Counsel or other counsel.

“Outstanding” shall mean, when used with reference to the Bonds or any of them, all Bonds theretofore delivered except: (a) Bonds deemed to have been paid in accordance with Section 3.05 or Section 12.01; (b) Bonds in lieu of which other Bonds have been issued pursuant to the provisions hereof relating to Bonds destroyed, mutilated, stolen or lost; (c) Bonds paid, redeemed or delivered to or acquired by the Authority for cancellation; and (d) for purposes of any consent or other action to be taken hereunder by the Owners of a specified percentage of principal amount of Bonds, the Bonds held by or for the account of the Authority.

“Owner” (or “Bondholder”) shall mean the registered owners of the Bonds as shown on the registration books of the Bond Registrar maintained pursuant to Section 2.04.

“Participant” means one of the entities which is a member of the Securities Depository and deposits securities, directly or indirectly in the Book-Entry System maintained pursuant to Section 2.12.

“Participating Underwriter” shall mean, with respect to a Series of Bonds, any original underwriter of such Bonds identified as a “Participating Underwriter” in a Continuing Disclosure Agreement relating to such Bonds.

“Paying Agent” shall mean a bank or trust company, either within or without the State of Florida, designated as such by resolution of the Authority, which shall perform such functions as Paying Agent as are required by this Indenture with respect to one or more Series of Bonds. Notwithstanding the preceding sentence, the Trustee shall be the initial Paying Agent for the Series 1996 Bonds.

“Payment Agreement” shall mean the Payment Agreement dated as of December 1, 1996 among the Authority, the Trustee and the Initial Liquidity Provider, as the same may be amended or supplemented from time to time in accordance with its terms. The Authority hereby authorizes and directs the Trustee to enter into the Payment Agreement.

“Payment Obligations” mean amounts owed by the Authority to the Credit Provider pursuant to the reimbursement agreement in effect between them and the amounts owed by the

Authority to the Liquidity Provider pursuant to the reimbursement agreement in effect between them.

“Person” shall mean any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof, unless the context shall otherwise indicate.

“Policy Costs” shall have the meaning ascribed to it in the Series 1996 Debt Service Reserve Fund Policy Agreement.

“Prime Rate” shall mean, with respect to Provider Bonds, the rate of interest publicly announced by JPMorgan Chase Bank or its successor from time to time as its “Prime Rate”.

“Principal and Interest Requirements” shall mean the respective amounts which are required in each Fiscal Year to provide:

(a) for paying the interest on all Bonds then Outstanding which is payable on each Interest Payment Date in such Fiscal Year (the “Interest Requirement”);

(b) for paying the principal of all Serial Bonds then Outstanding which is payable upon the maturity of Serial Bonds in such Fiscal Year (together with clause (c) immediately below, the “Principal Requirement”); and

(c) for paying the Amortization Requirements, if any, for all Term Bonds then Outstanding for such Fiscal Year (together with clause (b) immediately above, the “Principal Requirement”).

For purpose of computing (a), (b) and (c) above, any principal, interest or Amortization Requirements due on the first day of a Fiscal Year shall be deemed due in the preceding Fiscal Year.

The following rules shall apply in determining the amount of the Principal and Interest Requirements for any Fiscal Year:

(i) the interest rate on Variable Rate Bonds shall be assumed to be: (A) for all purposes other than determining whether the test for issuing Additional Bonds set forth in Section 2.08 is met or determining compliance with the Debt Service Reserve Fund Requirement, the Average Rate of interest on all Variable Rate Bonds during the twelve months ending with the month preceding the date of calculation or such shorter period of time as such Variable Rate Bonds may have been Outstanding or, in the event there were no Variable Rate Bonds Outstanding during the twelve months preceding the date of calculation, then the initial rate of interest; or (B) for purposes of determining whether the test for issuing Additional Bonds set forth in Section 2.08 is met and for determining compliance with the Debt Service Reserve Fund Requirement, (1) with respect to Taxable Bonds, a rate equal to the bond equivalent yield on United States Treasury Obligations with maturities comparable to the average weighted maturities of the Taxable Bonds then outstanding, plus 50 basis points, which yield shall be calculated in accordance with standard practices in the banking industry, and (2) with respect to Bonds that are not Taxable Bonds, a rate equal to the most recently published Bond Buyer 25

Bond Revenue Index (or a comparable index, if such index is no longer published), plus 50 basis points;

(ii) in the case of Put Bonds, the date or dates on which the Owner of such Put Bonds may elect or be required to tender such Bonds for payment or purchase shall be ignored if the source for said payment or purchase is a Credit Facility or a Liquidity Facility and the stated dates for Amortization Requirements and principal payments thereof shall be used for purposes of this calculation; provided, however, that during any period of time after the Credit Provider has advanced funds under a Credit Facility or a Liquidity Provider has advanced funds under a Liquidity Facility and before such amount is repaid, Principal and Interest Requirements shall include the principal amount so advanced and interest thereon, in accordance with the principal repayment schedule and interest rate or rates specified in the reimbursement or other similar agreement relating to such Credit Facility or Liquidity Facility;

(iii) in the case of Capital Appreciation Bonds, the principal and interest portions of the Accreted Value becoming due at maturity or by virtue of an Amortization Requirement in that Fiscal Year's calculation shall be included;

(iv) in the case of Capital Appreciation and Income Bonds, the principal and interest portions of the Appreciated Value becoming due at maturity or by virtue of an Amortization Requirement in that Fiscal Year's calculation shall be included;

(v) in the case of Convertible Bonds, the calculations shall be based on the form of the Bonds as of the time of the calculation without regard to any unexercised conversion feature;

(vi) if interest on a Series of Bonds is payable from Capitalized Interest or from other amounts set aside irrevocably for such purpose at the time such Bonds are issued, or if principal, interest or Amortization Requirements are payable from investment earnings retained or deposited in the Sinking Fund in accordance with Section 6.02, interest, principal and Amortization Requirements on such Series of Bonds shall be included in Principal and Interest Requirements only to the extent of the amount of interest, Principal and Amortization Requirements payable in a Fiscal Year from amounts other than amounts so funded to pay same; and

(vii) To the extent that the Authority has entered into a Hedge Agreement with respect to any Bonds and notwithstanding the provisions of clauses (i) through (vi) above, while the Hedge Agreement is in effect and so long as the Counterparty has not defaulted thereunder and so long as the Counterparty or an entity guarantying its obligations under such Hedge Agreement maintains a rating on its senior long-term debt obligations of at least "BBB" from S&P or "Baa2" from Moody's, for the purpose of determining the Interest Requirements the interest rate with respect to the principal amount of such Bonds equal to the "notional" amount specified in the Hedge Agreement shall be assumed to be (A) if the Authority's Hedge Obligations under the Hedge Agreement are computed based upon a fixed rate of interest, the actual rate of interest upon which the Authority's Hedge Obligations are computed under such Hedge Agreement, and (B) if the Authority's Hedge Obligations under the Hedge Agreement are computed based upon a variable rate of interest, the average rate of interest for the Authority's

Hedge Obligations under the Hedge Agreement for the prior Fiscal Year or portion thereof while the Hedge Agreement was in effect or if the Hedge Agreement was not in effect during such prior Fiscal Year, then the lesser of (X) the initial rate of interest for the Authority's Hedge Obligations under the Hedge Agreement and (Y) the average rate of interest for the prior Fiscal Year under a published variable interest rate index agreed upon by the Authority and the Counterparty which is generally consistent with the formula which shall be used to determine the Authority's Hedge Obligations; "average rate" with respect to the Authority's Hedge Obligations for the prior Fiscal Year shall mean the rate determined by dividing the total annualized amount paid by the Authority under the Hedge Agreement in such Fiscal Year or portion thereof (without taking into account Hedge Receipts during such prior Fiscal Year or portion thereof) by the "notional" amount specified in the Hedge Agreement for such Fiscal Year.

"Project" shall mean Improvements to the System described in a Supplemental Indenture, as the same may be modified or amended as provided in Section 4.04.

"Provider Bonds" shall have the meaning ascribed to it in Section 3.10(d)(ii).

"Purchase Date" means the date upon which the Tender Agent is obligated to purchase a Series 1996 Bond or Series 1996 Bonds pursuant to Article III.

"Purchase Price" of any Series 1996 Bond required to be purchased by the Tender Agent pursuant to Article III means an amount equal to the principal amount of such Series 1996 Bond plus, if the Purchase Date is other than an Interest Payment Date, accrued interest thereon, at the rate applicable to the Series 1996 Bond from the most recent Interest Payment Date and up to but excluding the Purchase Date.

"Put Bonds" shall mean all Bonds which, in accordance with this Indenture (including any Supplemental Indenture authorizing the issuance of a Series of Bonds), may be tendered for payment or purchase by or on behalf of the Authority prior to the stated maturities thereof.

"Quarterly Rate" shall mean the interest rate determined for the Series 1996 Bonds for any Quarterly Rate Period pursuant to Section 2.06(f).

"Quarterly Rate Period" shall mean, while the Series 1996 Bonds bear interest at the Quarterly Rate, the period commencing on the Quarterly Rate Conversion Date for the Series 1996 Bonds, and on the first Business Day of each third calendar month thereafter, to but excluding the first Business Day of the third calendar month thereafter.

"Rate Period" or "Period" shall mean, when used with respect to any particular rate of interest applicable to the Series 1996 Bonds (whether a Daily, Weekly, Monthly, Quarterly, Semiannual, Extended or Fixed Rate), the period during which such rate of interest will remain in effect pursuant to Section 2.06.

"Rate Stabilization Account" shall mean the Account of that name established in the General Fund.

"Rating Agency" shall mean Fitch, Moody's or S&P, or whichever of them shall maintain a rating on any of the Bonds at a given time.

“Rebate Fund” shall mean the Fund of that name created and maintained pursuant to Section 7.15.

“Record Date” shall mean, in the case of the Series 1996 Bonds (i) the Business Day immediately prior to the Interest Payment Date in question in the case of the Daily and Weekly Rate Periods, (ii) the last Business Day at least five (5) days prior to the Interest Payment Date in question in the case of the Monthly Rate Periods, and (iii) the 15th day (whether or not a Business Day) of the calendar month immediately preceding such Interest Payment Date in the case of a Quarterly, Semiannual, Extended Rate or Fixed Rate Period. “Record Date” shall mean, in the case of any other Bonds, the date fifteen days next preceding an Interest Payment Date, whether or not a Business Day, or the date otherwise designated as such in any Supplemental Indenture authorizing the issuance of such Bonds.

“Refunding Bonds” shall mean the Bonds issued pursuant to the provisions of Section 2.09 on a parity with any Outstanding Bonds.

“Remarketing Agent” means the remarketing agent appointed pursuant to Section 13.07.

“Remarketing Agreement” means the Remarketing Agreement dated as of even date herewith between the Authority and the Remarketing Agent.

“Renewal and Replacement Fund” shall mean the Fund of that name created and maintained pursuant to Section 5.06.

“Reserve Facility” shall mean the Initial Reserve Facility and any other insurance policy, surety bond, irrevocable letter of credit or other credit agreement or similar facility maintained by the Authority in lieu of or in partial substitution for cash or securities on deposit in the Debt Service Reserve Fund.

“Reserve Facility Provider” shall mean the Initial Reserve Facility Provider and any other provider of a Reserve Facility.

“Revenue Fund” shall mean the Fund of that name created and maintained pursuant to Section 5.05.

“Revenues” shall mean all Tolls, revenues, rates, fees, charges and rentals received by or accrued to the Authority in connection with or as a result of its ownership or operation of the System, including any Hedge Receipts, any revenues (including revenues that may be derived from taxes) pledged as part of the Trust Estate at any time after the date of this Indenture, any investment income from moneys held on deposit in any of the Funds or Accounts (other than the Rebate Fund) created hereunder, and, except for purposes of Section 2.08(c) of this Indenture, any amounts transferred or to be transferred from the Rate Stabilization Account to the Revenue Fund, all as calculated in accordance with the method of accounting used in the annual financial statements of the Authority.

“Roadway Operations and Maintenance Agreement” shall have the meaning ascribed to it in the recitals to this Indenture.

“S&P” shall mean Standard & Poor’s Rating Group, a division of The McGraw-Hill Companies, Inc., and its successors and assigns, and, if such entity shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “S&P” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Authority by written notice of an Authorized Officer to the Trustee.

“Second Supplemental Indenture” shall have the meaning ascribed to it in the introductory paragraph of this Indenture.

“Securities Depository” shall mean DTC or its nominee, and its successors appointed by the Authority in accordance with the provisions of Section 2.12.

“Semiannual Rate” shall mean the interest rate determined for a Semiannual Rate Period pursuant to Section 2.06(g).

“Semiannual Rate Period” shall mean, while the Series 1996 Bonds bear interest at the Semiannual Rate, the period commencing on the Semiannual Rate Conversion Date and from and including the first Business Day of each sixth calendar month thereafter to but excluding the first Business Day of the sixth calendar month thereafter.

“Serial Bonds” shall mean the Bonds of a Series which are stated to mature in annual installments.

“Series” shall mean the Bonds delivered at any one time under the provisions of Article II.

“Series 1996 Bonds” shall mean the Dade County Expressway Authority (Florida) Toll System Revenue Bonds, Series 1996 (Taxable) authorized to be issued pursuant to Section 2.06.

“Series 1996 Cap Agreement” shall mean the Cap Agreement dated as of December 10, 1996 between Canadian Imperial Bank of Commerce and the Authority, as the same may be amended or supplemented from time to time in accordance with its terms.

“Series 1996 Debt Service Reserve Fund Policy Agreement” shall mean the Debt Service Reserve Fund Policy Agreement dated as of December 10, 1996 between the Authority and the Initial Reserve Facility Provider, as the same may be amended or supplemented from time to time in accordance with its terms.

“Series 1999 Bond” shall have the meaning ascribed to it in the recitals to this Indenture.

“Series 2000 Bonds” shall have the meaning ascribed to it in the recitals to this Indenture.

“Series 2001A Bonds” shall have the meaning ascribed to it in the recitals to this Indenture.

“Sinking Fund” shall mean the Fund of that name created and maintained pursuant to Section 5.06.



“Special Record Date” shall mean, with respect to any Bond the date established by the Authority in connection with the payment of overdue interest on the Bonds pursuant to Section 2.02.

“State” shall have the meaning ascribed to it in the introductory paragraph to this Indenture.

“State Bonds” shall have the meaning ascribed to it in the recitals hereto.

“Subaccount” shall mean any subaccount created and maintained pursuant to this Indenture.

“SunPass Agreement” shall have the meaning ascribed to it in the recitals to this Indenture.

“Supplemental Indenture” shall mean an indenture supplemental hereto or amendatory hereof entered into by the Authority and the Trustee pursuant to the terms hereof. Notwithstanding the foregoing, the First Supplemental Indenture, the Second Supplemental Indenture (except for Section 4.01 of the Second Supplemental Indenture, the provisions of which have been incorporated in this Indenture) and the Third Supplemental Indenture (except for Section 4.06 of the Third Supplemental Indenture, the provisions of which have been incorporated in this Indenture) shall be considered to be Supplemental Indentures for all purposes of this Indenture.

“System” shall have the meaning ascribed to it in the recitals to this Indenture.

“Taxable Bond” shall mean any Series 1996 Bond and any other Bond issued under this Indenture, if in connection with such issuance there was not delivered to the Authority an opinion of Bond Counsel to the effect that the interest on such Bond is not included in the gross income of the Owners thereof for purposes of federal income taxation.

“Tender Agent” shall mean The Bank of New York, or any successor or successors appointed in accordance with Section 13.09 of this Indenture.

“Tender Agent Agreement” shall mean the Tender Agent Agreement dated as of even date herewith between the Authority and the Tender Agent.

“Term Bonds” shall mean Bonds which shall be stated to mature on one date and for the amortization of which payment of Amortization Requirements are required to be made into the Sinking Fund.

“Test Period Revenues” shall have the meaning ascribed to it in Section 2.08(c)(v).

“Third Supplemental Indenture” shall have the meaning ascribed to it in the introductory paragraph of this Indenture.

“Time Deposits” shall mean time deposits, certificates of deposit or similar arrangements with any bank or trust company which is a member of the Federal Deposit Insurance Corporation

and any federal or State of Florida savings and loan association whose deposits are insured by the Savings Association Insurance Fund and which are secured in the manner provided in Section 6.01.

“Toll Operations and Maintenance Agreement” shall have the meaning ascribed to it in the recitals to this Indenture.

“Tolls” shall mean all tolls, fares, incomes, receipts, rents, franchises, charges and all returns or moneys of an income nature derived by or for the benefit of the Authority from users of the System.

“Transfer Agreement” shall have the meaning ascribed to it in the recitals to this Indenture.

“Trustee” shall mean The Bank of New York or any other bank or trust company, either within or without the State of Florida, having fiduciary powers and designated as Trustee in the manner provided in Section 8.08.

“Trust Estate” shall have the meaning ascribed to it in the recitals to this Indenture.

“Variable Rate” means, as the context requires, the Daily, Weekly, Monthly, Quarterly, Semiannual or Extended Rate applicable to the Series 1996 Bonds.

“Variable Rate Bonds” shall mean Bonds issued with a variable, adjustable, convertible or other similar interest rate which is not fixed in percentage for the entire term thereof at the date of issue, and which may be convertible to a fixed interest rate.

“Vice-Chairman” shall mean the Person appointed to serve as the Vice-Chairman of the Authority or his designee or the Person succeeding to his principal function.

“Weekly Rate” shall mean the interest rate determined for a Weekly Rate Period pursuant to Section 2.06(d) hereof.

“Weekly Rate Period” shall mean, while the Series 1996 Bonds bear interest at the Weekly Rate, the period commencing on Thursday of each week (or in the case of the first Weekly Rate Period, on the date of original issuance and delivery of the Series 1996 Bonds) to but excluding Thursday of the following week (or in the case of the first Weekly Rate Period, the Thursday immediately following the date of original issuance and delivery of the Series 1996 Bonds), except that (a) in the case of a conversion to a Weekly Rate Period from a different Variable Rate Period, the initial Weekly Rate Period shall be from and including and including the Weekly Rate Conversion Date to but excluding Thursday of the following week, and (b) in the case of a conversion of the Series 1996 Bonds from a Weekly Rate Period to a different Rate Period, the last Weekly Rate Period shall end on and exclude the Conversion Date.

**SECTION 1.02. INTERPRETATION.** (a) In this Indenture, unless the context otherwise requires:

(i) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Indenture, refer to this Indenture, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the date of this Indenture;

(ii) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa;

(iii) References to Articles and Sections refer to Articles and Sections of this Indenture unless the context specifically requires otherwise;

(iv) Any headings preceding the text of the several Articles and Sections of this Indenture, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Indenture, nor shall they affect its meaning, construction or effect; and

(v) References to Funds shall include any and all Accounts or Subaccounts therein, unless the context otherwise requires.

(b) Whenever in this Indenture the Authority or the Trustee is named or referred to, it shall include, and shall be deemed to include, its respective successors and assigns whether so expressed or not. All of the covenants, stipulations, obligations and agreements by or on behalf of, and other provisions for the benefit of, the Authority or the Trustee contained in this Indenture shall bind and inure to the benefit of such respective successors and assigns and shall bind and inure to the benefit of any officer, board, commission, authority, agency or instrumentality to whom or to which there shall be transferred by or in accordance with law any right, power or duty of the Authority or of its successors or assigns, the possession of which is necessary or appropriate in order to comply with any such covenants, stipulations, obligations, agreements or other provisions of this Indenture.

(c) Nothing in this Indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any Person other than the Authority, the Trustee, any Credit Provider, any Liquidity Provider, any Reserve Facility Provider, including their respective agents, and the Owners, any right, remedy or claim under or by reason of this Indenture or any covenant, condition or stipulation hereof. All the covenants, stipulations, promises and agreements in this Indenture contained by or on behalf of the Authority shall be for the sole benefit of the Authority, the Trustee, any Credit Provider, any Liquidity Provider, any Reserve Facility Provider, including their respective agents and the Owners.

## ARTICLE II

### AUTHORIZATION, DETAILS, EXECUTION, DELIVERY AND REGISTRATION OF BONDS

**SECTION 2.01. AUTHORIZATION OF BONDS.** The Authority shall not issue any Bonds while this Indenture is in effect except in accordance with the provisions of this Article II. Bonds may be issued in one or more Series only for purposes permitted under this Article II. The total principal amount of Bonds that may be issued and Outstanding under this Indenture is unlimited. Any two or more Series may be consolidated for purposes of sale in such manner as may be provided herein or in the Supplemental Indenture authorizing the issuance of the Bonds of such Series. The principal of, redemption premium, if any, and interest on all Bonds shall be payable solely from the Trust Estate.

Upon the issuance of a Series of Bonds under the terms, limitations and conditions herein provided, the Authority shall provide for the funding of the Debt Service Reserve Fund in an amount equal to the Debt Service Reserve Fund Requirement, all as set forth herein with respect to the Series 1996 Bonds and in the Supplemental Indenture authorizing the issuance of any other Series of Bonds. The Authority may establish a separate Account in the Debt Service Reserve Fund for each Series of Bonds, including those secured by a Reserve Facility, and the Owners of Bonds secured by such separate account shall not be secured by any other Account or Reserve Facilities in the Debt Service Reserve Fund.

**SECTION 2.02. DETAILS OF BONDS.** The Bonds of each Series issued under the provisions of this Indenture shall be designated “Dade County Expressway Authority (Florida) Toll System Revenue Bonds”, and may be further designated as “Refunding”, or “Taxable”, as the Authority may determine to be appropriate, in each case inserting the year of issuance and any identifying series letter after the word “Series”, subject to such variations or changes as may be determined necessary or appropriate by the Authority and specified as hereinafter provided with respect to the Series 1996 Bonds or in a Supplemental Indenture authorizing the issuance of the Bonds of any other Series. The Bonds shall be in such amounts, if any, of Serial Bonds and/or Term Bonds and in the form of Capital Appreciation Bonds, Capital Appreciation and Income Bonds, Convertible Bonds, Put Bonds, Variable Rate Bonds or such other form of Bonds which may be marketable from time to time, or any combination thereof, as the Authority may determine. Except as otherwise provided in a Supplemental Indenture authorizing the issuance of a Series of Bonds, the Bonds of such Series shall be in fully registered form as to principal and interest, without coupons. Except as otherwise provided in a Supplemental Indenture authorizing the issuance of a Series of Bonds, both the principal of and the interest on the Bonds of such Series shall be payable in any coin or currency of the United States of America, or by check or wire payment in such currency, as, at the respective times of payment, is legal tender for the payment of public and private debts.

Payment of interest on any Interest Payment Date with respect to the Bonds, other than Capital Appreciation Bonds and interest on Capital Appreciation and Income Bonds that accrues prior to the Interest Commencement Date, shall be made to the Person appearing on the registration books of the Authority maintained pursuant to Section 2.04, as of the close of business on the Record Date. Such interest shall be payable by check or draft drawn on a Paying

Agent and shall be mailed on the Interest Payment Date to each Owner as of the Record Date, at his address as it appears on said registration books, or in the case of an Owner of \$1,000,000 or more of Bonds, by wire transfer to a domestic bank account specified in writing by such Owner to the Trustee and Paying Agent at least fifteen (15) days prior to an Interest Payment Date.

If and to the extent that the Authority shall fail to make a required payment or provision for payment of interest on any Bond on any Interest Payment Date, that interest shall cease to be payable to the Person who was the Owner of that Bond as of the applicable Record Date. When moneys become available for payment of interest on such Bond, the Trustee shall establish a Special Record Date for the payment of that interest which shall not be more than twenty, nor fewer than ten, days prior to the date of the proposed payment. Not fewer than ten days prior to the Special Record Date, notice of the proposed payment and of the Special Record Date therefor shall be mailed to each Owner of record on the fifth day prior to such mailing at his address as it appears on the registration books of the Authority maintained pursuant to Section 2.04. Thereafter, such interest shall be payable to the Owners of such Bonds at the close of business on the Special Record Date.

The principal of, and redemption premium, if any, on the Bonds, the Accreted Value of Capital Appreciation Bonds and the Appreciated Value of Capital Appreciation and Income Bonds shall be payable to or upon the order of the Owner or his duly authorized attorney or legal representative, as the same falls due, upon the presentation and surrender of such Bonds at the designated corporate trust office of the Paying Agent.

Each Series of Bonds (other than the Series 1996 Bonds) shall be authorized by a Supplemental Indenture which shall establish or provide a means of establishing the following:

- (a) the purpose for which such Bonds are to be issued, which shall be a purpose permitted under this Article II;
- (b) the manner in which the proceeds of the sale of such Bonds are to be applied, including any required deposits to the Funds, Accounts and Subaccounts;
- (c) whether such Bonds shall be issued as Serial Bonds, Term Bonds, or a combination of the foregoing and whether such Bonds shall be in the form of Capital Appreciation Bonds, Capital Appreciation and Income Bonds, Convertible Bonds, Put Bonds, Variable Rate Bonds or any other form of Bond which may become marketable from time to time, or any combination of such forms as determined by the Authority;
- (d) the Authorized Denominations in which such Bonds are issuable;
- (e) the amount or amounts, date or dates, maturity date or dates (not exceeding the maximum number of years after the date of original issuance as is permitted by law), and interest rate or rates (not exceeding the maximum rate permitted by law) with respect to such Bonds;
- (f) the Interest Payment Dates for such Bonds;
- (g) the redemption and tender provisions, if any, for such Bonds;

(h) the appointment of the Paying Agent and Bond Registrar for such Bonds and any remarketing agent, Credit Provider, Liquidity Provider or Reserve Facility Provider to be appointed in connection with the issuance of such Bonds and the authority to execute agreements relating to the functions to be performed by any such Person, to the extent applicable to any of such Bonds;

(i) the creation of any additional Funds, Accounts and Subaccounts applicable to such Bonds and the designation of any such additional Funds, Accounts and Subaccounts as being established with respect to such Bonds;

(j) the manner in which the Authority shall ensure that the Debt Service Reserve Fund Requirement shall be satisfied at the time of issuance of such Bonds;

(k) the designated corporate trust office of the Bond Registrar and Paying Agent for such Bonds; and

(l) such other matters as required by this Indenture to be established in a Supplemental Indenture or otherwise deemed appropriate by the Authority to be included therein and not inconsistent with the provisions of this Indenture.

**SECTION 2.03. EXECUTION, AUTHENTICATION; BOND FORM.** Except as otherwise permitted or required by the Act or applicable law, the Bonds shall be signed by, or bear the facsimile signature of, the Chairman or Vice-Chairman of the Authority. The official seal of the Authority or a facsimile thereof shall be imprinted or impressed on the Bonds. Such official seal shall be attested by the signature or facsimile signature of the Secretary of the Authority or an Authorized Officer. In case any officer whose signature or a facsimile of whose signature shall appear on any Bonds shall cease to be such officer before such Bonds have been authenticated and transferred by the Bond Registrar or delivered by the Authority, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he or she had remained in office until such authentication and transfer or delivery occurred. In addition, any Bond may bear the facsimile signature of, or may be signed by, such Persons as at the actual time of the execution of the Bond shall be the proper officers to execute such Bond although at the date of the Bond such Persons may not have been such officers.

Only such Bonds as have endorsed thereon a certificate of authentication as set forth in the form of Bond authorized by this Indenture, in the case of the Series 1996 Bonds, or a Supplemental Indenture authorizing the issuance of any other Series of Bonds, duly executed by the Bond Registrar, shall be entitled to any benefit or security under this Indenture. No Bonds shall be valid or obligatory for any purpose unless and until such certificate of authentication on the Bond has been duly executed by the Bond Registrar, and such certificate of the Bond Registrar upon any such Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Indenture. The Bond Registrar's certificate of authentication on any Bond shall be deemed to have been duly executed if signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Bonds that may be issued hereunder at any one time. The Series 1996 Bonds shall be substantially in the form attached as Exhibit C hereto. Each

other Series of Bonds shall be substantially in the form set forth in the Supplemental Indenture authorizing the issuance of such Bonds.

**SECTION 2.04. BOND REGISTRAR; REGISTRATION, TRANSFER AND EXCHANGE.** The Authority shall cause books for the registration and transfer of Bonds to be kept by the Bond Registrar. Unless otherwise provided with respect to a Series of Bonds in the Supplemental Indenture authorizing the issuance of the Bonds of such Series, all Bonds shall be registered in such books upon issuance thereof, who shall make notation of such registration thereon and shall not be registered to bearer. Bonds shall thereafter be transferred only by the Owner of such Bonds, in person or by his duly authorized attorney or legal representative, upon the surrender thereof together with a written assignment duly executed by the Owner or his duly authorized attorney or legal representative in such form as shall be satisfactory to the Bond Registrar. The registration of such transfer shall be made on such registration books and endorsed on the Bond by the Bond Registrar. Upon the transfer of any Bond, the Bond Registrar shall cause to be issued in the name of the transferee a new Bond or Bonds.

Upon surrender at the designated corporate trust office of the Bond Registrar with a written instrument of transfer duly executed by the Owner or his duly authorized attorney or legal representative, in such form as shall be satisfactory to the Bond Registrar, Bonds may be exchanged for a like aggregate principal amount of Bonds of other Authorized Denominations of the same Series, interest rate and maturity. The Authority shall execute, and the Bond Registrar shall authenticate and deliver such Bonds as the Owner making the exchange is entitled to receive.

In all cases in which the privilege of exchanging or transferring Bonds is exercised, the Authority shall execute and the Bond Registrar shall authenticate and deliver Bonds in accordance with the provisions of this Indenture. All Bonds surrendered in any such exchanges or transfers shall forthwith be delivered to the Bond Registrar and canceled by the Bond Registrar in the manner provided in Section 2.05.

No charge shall be made to any Bondholder for the privilege of registration, transfer or exchange hereinabove granted, but any Bondholder requesting any such registration, transfer or exchange shall pay any tax or other governmental charge required to be paid with respect thereto. The Authority and Bond Registrar shall not be required to execute, transfer or exchange any Bond during the period beginning at the close of business on a Record Date (or Special Record Date) and ending at the close of business on the next Interest Payment Date (or date set for payment of interest for which the Special Record Date was set). The Authority and Bond Registrar shall not be required to transfer or exchange any Bond: (a) during the fifteen days immediately preceding the date of mailing of notice of the redemption of such Bond; or (b) after such Bond has been selected for redemption or has matured.

Each Bond delivered pursuant to any provision of this Indenture in exchange or substitution for, or upon the transfer of the whole or any part of, one or more other Bonds, shall carry all of the right to interest which is accrued and unpaid, and which is to accrue, on the whole or part of the Bonds previously carried, and notwithstanding anything contained in this Indenture, such newly delivered Bond shall be dated or bear such notation so that neither gain

nor loss in interest the payment of which is not in default shall result from any exchange, substitution or transfer.

The Authority, the Trustee, the Paying Agent and the Bond Registrar may deem and treat the Person in whose name any Bond is registered on the books maintained pursuant to this Section 2.04 as the absolute Owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment thereof and for all other purposes whatsoever, and none of the Authority, the Paying Agent or the Bond Registrar shall be affected by any notice to the contrary. All such payments shall be valid and effective to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid. Notwithstanding anything to the contrary in this Indenture, the Authority may authorize the use of a book entry only system of beneficial ownership with respect to any Series of Bonds.

**SECTION 2.05. CANCELLATION OF BONDS.** All Bonds paid or redeemed, either at or before maturity, shall be delivered to the Paying Agent when such payment or redemption is made, and such Bonds, together with all Bonds purchased by the Authority and delivered to the Paying Agent for cancellation, shall thereupon be promptly canceled. Bonds so canceled may at any time be destroyed by the Paying Agent, who shall execute a certificate of destruction in duplicate by the signature of one of its authorized officers, describing the Bonds so destroyed, and one executed certificate shall be filed with the Bond Registrar and the other executed certificate shall be kept by the Paying Agent.

**SECTION 2.06. AUTHORIZATION OF SERIES 1996 BONDS.**

(a) General Terms and Provisions.

(i) Terms of Series 1996 Bonds. The Series 1996 Bonds: (A) shall be issued in the initial aggregate principal amount of \$80,000,000; (B) shall be dated the date of the issuance thereof; (C) shall mature on July 1, 2019; (D) shall be substantially in the form attached as Exhibit C hereto; (E) shall be payable as to interest on each Interest Payment Date established therefor at the rate per annum determined as provided in the form thereof and in this Section 2.06; (F) shall be subject to redemption, to optional and mandatory tender for purchase, and to remarketing, all as provided in the form thereof and in Article III; and (G) shall be considered Bonds for all purposes of this Indenture. Interest on Series 1996 Bonds bearing interest at the Daily Rate, Weekly Rate, Monthly Rate and Quarterly Rate will be calculated based on the actual days elapsed and a year of 365 or 366 days, as applicable, and interest on the Series 1996 Bonds bearing interest at the Semiannual Rate, Extended Rate or Fixed Rate will be calculated based on a year of 360 days consisting of twelve 30-day months.

(ii) Purposes of Series 1996 Bonds. The Series 1996 Bonds shall be issued for the purposes of providing funds to pay all or a portion of the cost of (A) the acquisition by the Authority of operational and financial control of the System, as it exists on the date hereof, in perpetuity by, among other things, defeasing all of the outstanding State Bonds pursuant to the terms and provisions of the Escrow Agreement, (B) funding a portion of the Debt Service Reserve Fund Requirement in respect of the Series 1996 Bonds, and (C) paying certain costs associated with the issuance of the 1996 Bonds.



(iii) Application of Proceeds and Other Available Moneys.

(A) The proceeds of the Series 1996 Bonds shall be applied by an Authorized Officer as follows:

(1) \$76,000,000 shall be immediately transferred to the SBA for application pursuant to the Escrow Agreement; and

(2) \$4,000,000, an amount equal to the Debt Service Reserve Fund Requirement in respect of the Series 1996 Bonds shall be delivered to the Trustee for deposit to the credit of the Debt Service Reserve Fund.

(B) Simultaneous with the issuance of the Series 1996 Bonds, the Authority shall cause to be delivered to the Trustee the amounts described below for application as follows:

(1) All of the cash and securities credited to the Renewal and Replacement Reserve Fund established in respect of the State Bonds shall be delivered to the Trustee and credited to the Renewal and Replacement Fund;

(2) \$6,966,037.96, consisting of \$6,905,165.45 credited to the Reserve Account established for the State Bonds and \$60,872.51 credited to the Debt Retirement Account established for the State Bonds shall be immediately transferred to the SBA for application pursuant to the Escrow Agreement;

(3) \$2,000,000 credited to the Debt Retirement Account for the State Bonds shall be immediately transferred to Canadian Imperial Bank of Commerce as required under the Cap Agreement; and

(4) \$1,201,533.88 credited to the Debt Retirement Account for the State Bonds shall be delivered to the Trustee for deposit to the credit of a special account (which the Authority hereby directs the Trustee to establish and maintain) and applied at the written direction of an Authorized Officer to the payment of certain costs of issuance of the Series 1996 Bonds, including, but not limited to, financial advisory, accounting and legal fees, rating agency fees, printing costs, initial Bond Registrar fees, initial Paying Agent fees, initial Trustee fees, Credit Facility and Liquidity Facility fees and expenses, if any, and any other miscellaneous expenses relating to the issuance of the Series 1996 Bonds (At the written direction of an Authorized Officer the Trustee shall close such special account and shall transfer any amounts remaining therein at the time of closure to the Revenue Fund).

(iv) Conditions Precedent to Issuance of Series 1996 Bonds. The Series 1996 Bonds shall be authenticated by the Bond Registrar and delivered by the Trustee in such manner as shall be specified in writing by an Authorized Officer, but only after the Series 1996 Bonds shall have been executed as provided in this Indenture and there shall have been delivered to the Trustee, the following:

(A) fully executed copies of this Indenture, the Escrow Agreement, the Transfer Agreement, the Toll Operations and Maintenance Agreement, the Roadway Operations

and Maintenance Agreement, the SunPass Agreement, the Initial Credit Facility, the Initial Liquidity Facility, the Remarketing Agreement, the Tender Agent Agreement, the Continuing Disclosure Agreement and the Escrow Agreement;

(B) separate written opinions of each Bond Counsel stating that each is of the opinion that the issuance of the Series 1996 Bonds has been duly authorized, that all conditions precedent to the delivery of the Series 1996 Bonds have been satisfied, and that this Indenture creates a valid and enforceable pledge of the Trust Estate; and

(C) \$80,000,000, in immediately available funds, constituting the purchase price for the Series 1996 Bonds upon their initial issuance and delivery.

(b) Variable Rate; Determination by Remarketing Agent; Notice of Rates Determined. The Series 1996 Bonds shall initially bear interest at the Weekly Rate until converted to another Rate Period as provided herein. Subject to the further provisions of this Article II with respect to particular Variable Rates or conversions between Rate Periods, and subject to the provisions of the Series 1996 Bonds, the Variable Rate to be applicable to Series 1996 Bonds during any Variable Rate Period shall be determined by the Remarketing Agent as provided in this Section 2.06 and notice thereof shall be given as follows:

(i) Notice of each preliminary Variable Rate and Variable Rate shall be given as follows:

(A) By the Remarketing Agent to the Trustee, the Bond Registrar and the Tender Agent by telephone (followed by notice in writing by an authorized officer of the Remarketing Agent) not later than 5:00 p.m., Eastern time, (10:00 a.m., Eastern time, with respect to Daily Rates) on the date of determination; and

(B) On the last Business Day of each month or more frequently upon the Credit Provider's or Liquidity Provider's written request, the Tender Agent shall provide written notice thereof to the Credit Provider and the Liquidity Provider.

Notice of each preliminary Monthly, Quarterly, Semiannual and Extended Rate, and of each Monthly, Quarterly, Semiannual and Extended Rate, shall be given by the Bond Registrar by sending notice in writing to the Owners of the Series 1996 Bonds and the Trustee not later than 5:00 p.m., Eastern time, on the third Business Day following the date of determination. The Tender Agent shall inform the Owners of the Series 1996 Bonds and the Trustee of the Daily and Weekly Rates upon request.

(ii) The preliminary Variable Rate or the Variable Rate so to be determined shall be the lowest rate of interest which, in the judgment of the Remarketing Agent, would cause the Series 1996 Bonds to have a market value equal to the principal amount thereof, plus accrued interest, under prevailing market conditions as of the date of determination of such preliminary Variable Rate or Variable Rate. The preliminary Variable Rate is intended to serve only as an indication of the lowest interest rate that would cause the Series 1996 Bonds to have a market value equal to par under market conditions on the date on which such preliminary Variable Rate is determined. The Variable Rate determined after the preliminary Variable Rate is determined may be higher, lower or the same as such preliminary Variable Rate.

Notwithstanding the foregoing, in no event shall the preliminary Variable Rate or the Variable Rate for any Variable Rate Period exceed the Maximum Rate.

(iii) All determinations of Variable Rates pursuant to this Section shall be conclusive and binding upon the Authority, the Trustee, the Bond Registrar, the Tender Agent, the Credit Provider, the Liquidity Provider, and the Owners of the Series 1996 Bonds. The Authority, the Trustee, the Bond Registrar, the Tender Agent and the Remarketing Agent shall not be liable to the Owner of any Series 1996 Bond for failure to give any notice required above or for failure of the Owner of any Series 1996 Bond to receive any such notice.

(c) Daily Rates.

(i) Daily Rate Periods shall be from each Business Day to but excluding the following Business Day.

(ii) The Daily Rate for each Daily Rate Period shall be determined by the Remarketing Agent between 8:30 a.m., Eastern time, and 10:00 a.m., Eastern time, on the commencement date of the Daily Rate Period to which it relates.

(d) Weekly Rates.

(i) The first Weekly Rate Period shall commence on the date of original issuance and delivery of the Series 1996 Bonds and shall run to but excluding the next succeeding Thursday. Weekly Rate Periods thereafter shall be from Thursday of each week to but excluding Thursday of the following week; except that (A) in the case of a conversion to a Weekly Rate Period from a different Variable Rate Period, the initial Weekly Rate Period for the Series 1996 Bonds shall be from and including the Weekly Rate Conversion Date to but excluding Thursday of the following week; and (B) in the case of a conversion of the Series 1996 Bonds from a Weekly Rate Period to a different Rate Period, the last Weekly Rate Period shall end on and exclude the Conversion Date.

(ii) The Weekly Rate for each Weekly Rate Period shall be determined not later than 4:00 p.m., Eastern time, on Wednesday or, if such Wednesday is not a Business Day, the last Business Day which is immediately prior to the commencement date of the Weekly Rate Period to which it relates.

(e) Monthly Rates.

(i) Monthly Rate Periods shall be from and including the first Business Day of each calendar month to but excluding the first Business Day of the following month.

(ii) The Monthly Rate for each Monthly Rate Period shall be determined as follows:

(A) A preliminary Monthly Rate for each Monthly Rate Period shall be determined not later than 4:00 p.m., Eastern time, on the last Business Day which is at least eight (8) days immediately preceding the commencement date of such period; and

(B) The actual Monthly Rate for each Monthly Rate Period shall be determined not later than 4:00 p.m., Eastern time, on the Business Day immediately preceding the commencement date of such period.

(f) Quarterly Rates.

(i) Quarterly Rate Periods shall be (A) from and including the Quarterly Rate Conversion Date for the Series 1996 Bonds and from and including the first Business Day of each third (3rd) calendar month thereafter; (B) to but excluding the first Business Day of the third (3rd) calendar month thereafter.

(ii) The Quarterly Rate for each Quarterly Rate Period shall be determined as follows:

(A) A preliminary Quarterly Rate for each Quarterly Rate Period shall be determined not later than 4:00 p.m., Eastern time, on the last Business Day which is at least fifteen (15) days preceding the commencement date of such period; and

(B) The actual Quarterly Rate for each Quarterly Rate Period shall be determined not later than 4:00 p.m., Eastern time, on the Business Day immediately preceding the commencement date of such period.

(g) Semiannual Rates.

(i) Semiannual Rate Periods shall be (A) from and including the Semiannual Rate Conversion Date for the Series 1996 Bonds and from and including the first Business Day of each sixth calendar month thereafter; (B) to but excluding the first Business Day of the sixth month thereafter.

(ii) The Semiannual Rate for each Semiannual Rate Period shall be determined as follows:

(A) A preliminary Semiannual Rate for each Semiannual Rate Period shall be determined not later than 4:00 p.m., Eastern time, on the last Business Day which is at least thirty (30) days immediately preceding the commencement date of such period;

(B) The actual Semiannual Rate for each Semiannual Rate Period shall be determined not later than 4:00 p.m., Eastern time, on the Business Day immediately preceding the commencement date of such period.

(h) Extended Rates.

(i) Extended Rate Periods shall commence initially on the Extended Rate Conversion Date for the Series 1996 Bonds, and subsequently on the first Business Day of the calendar month following the last day of the prior Rate Period and extend for a period of one year or integral multiples of six months in excess of one year set by the Remarketing Agent, and end on a day which is the last day preceding the first Business Day of a calendar month.

(ii) The Extended Rate for each Extended Rate Period shall be determined as follows:

(A) A preliminary Extended Rate for each Extended Rate Period shall be determined not later than 4:00 p.m., Eastern time, on the last Business Day which is at least thirty (30) days immediately preceding the commencement date of such period;

(B) The actual Extended Rate for each Extended Rate Period shall be determined not later than 4:00 p.m., Eastern time, on the Business Day immediately preceding the commencement date of such period.

(i) Limitation on Rate Periods. None of the Variable Rate Periods may extend beyond the termination date of the Credit Facility or the Liquidity Facility.

(j) Conversion between Variable Rate Periods. (i) At the option of the Authority and upon delivery of an Opinion of Bond Counsel to the Trustee and the Authority, the Series 1996 Bonds may be converted from one Variable Rate Period to another as provided in this clause (j). In the case of conversion from one Variable Rate Period to a different Variable Rate Period, the Conversion Date shall be an Interest Payment Date for the Variable Rate Period from which the conversion is to be made; provided, however, that in the case of a conversion from an Extended Rate Period, the Conversion Date shall be limited to an Interest Payment Date on which a new Extended Rate Period for the Series 1996 Bonds would otherwise have commenced pursuant to Section 2.06(h). At the direction of the Authority, the Remarketing Agent shall give written notice of any conversion pursuant to this Section to the Trustee, the Bond Registrar, the Tender Agent, the Authority, the Credit Provider and the Liquidity Provider not less than five Business Days prior to the date on which the Tender Agent is required to notify the Owners of the conversion in the manner provided in this clause (j). Such notice shall specify the Conversion Date and the Rate Period to which the conversion will be made. Not less than thirty (30) days prior to any Conversion Date, the Tender Agent shall mail or cause the Bond Registrar to mail a written notice of the conversion to the Authority, the Trustee, the Credit Provider, the Liquidity Provider and all of the Owners of the Series 1996 Bonds. Such notice shall set forth (A) the information contained in the notice from the Remarketing Agent pursuant to this clause (j) above, (B) the Interest Payment Dates for the new Rate Period, (C) in the case of conversion to a Variable Rate Period, the dates on which the Remarketing Agent will determine and the Tender Agent will notify the Owners of the preliminary Variable Rate (if applicable) and the Variable Rate for the Variable Rate Period commencing on the Conversion Date, and (D) the matters required to be stated pursuant to Section 3.08(b) with respect to purchases of Series 1996 Bonds which are governed by such Section.

(k) Determination of Variable Rate Effective on Conversion Date. The preliminary Variable Rate (if applicable) and the Variable Rate for the Variable Rate Period commencing on the Conversion Date shall be determined by the Remarketing Agent in the manner and on the dates provided in this Section 2.06. In addition to determining the Variable Rate for the Rate Period to which conversion is to be made, the Remarketing Agent shall determine a Weekly Rate at the time specified in Section 2.06(d), and give notice thereof to the Tender Agent, the Bond Registrar and the Trustee, which Weekly Rate shall take effect, if needed, pursuant to clause (l) below.

(l) Conditions on which Conversion Ineffective. Notwithstanding the delivery of notice of conversion pursuant to clause (j) above, conversion to a new Variable Rate Period shall not take effect as to the Series 1996 Bonds if:

(i) The Remarketing Agent fails to determine a Variable Rate for the Rate Period to which the conversion is to be made;

(ii) Any notice required by Section 2.06(j) is not given when required;

(iii) There is not delivered to the Authority and the Trustee an Opinion of Bond Counsel, dated as of the Conversion Date;

(iv) Such notice of conversion is rescinded by the Authority by written notice of such rescission to the Trustee and the Remarketing Agent which written notice is delivered prior to the applicable Conversion Date. If the Trustee receives notice of such rescission prior to the time the Trustee has given notice to the Owners of the Series 1996 Bonds, then such notice of conversion shall be of no force and effect. If the Trustee receives notice of such rescission after the Trustee has given notice to the Owners of the Series 1996 Bonds, then the Series 1996 Bonds shall automatically adjust to a Weekly Rate Period. Any purchases of Series 1996 Bonds scheduled or required to take place on the proposed effective date of any Rate Period (being also the effective date of the automatic adjustment to a Weekly Rate Period as in this Section 2.06(l) provided) shall take place on such date. No Opinion of Bond Counsel shall be required in connection with any automatic adjustment to a Weekly Rate Period as in this Section 2.06(l) provided; or

(v) There is not delivered to the Trustee written evidence from the Rating Agency that any such conversion to a Quarterly Rate, Semiannual Rate or Extended Rate will not, of itself, cause a reduction or withdrawal of any rating then assigned to the Bonds.

Except as specifically provided in (iv) above, in any such event, the Series 1996 Bonds which were to be converted shall automatically be converted to a Weekly Rate Period on the date such conversion was to be made, provided that any mandatory or optional tender for purchase on the Conversion Date shall nevertheless be carried out. No cancellation of a conversion pursuant to this subsection shall constitute an Event of Default hereunder. Upon the occurrence of an event described in (i) above, the Weekly Rate for the Series 1996 Bonds shall be the per annum rate of interest determined on each Thursday (or if such day is not a Business Day, the immediately preceding Business Day) by the Trustee which is equal to the lesser of the Maximum Rate and (1) so long as the Series 1996 Bonds shall remain Taxable Bonds, a rate equal to the bond equivalent yield on ninety-one day United States Treasury Bills, plus 50 basis points, which yield shall be calculated in accordance with standard practices in the banking industry on the basis of the discount rates at which such bills were sold, or (2) should the Series 1996 Bonds cease to be Taxable Bonds, a rate equal to the most recently published Bond Buyer 25 Bond Revenue Index (or a comparable index, if such index is no longer published), plus 50 basis points.

(m) Conversion to Fixed Rate. The Series 1996 Bonds shall be converted to bear interest at a Fixed Rate upon request of the Authority as provided in this clause (m). The Fixed Rate Conversion Date shall be:

(i) In the case of a conversion from a Variable Rate Period other than an Extended Rate Period, an Interest Payment Date for the Series 1996 Bonds on which interest is payable for the Variable Rate Period from which the conversion is to be made; and

(ii) In the case of a conversion from an Extended Rate Period, an Interest Payment Date for the Series 1996 Bonds on which a new Extended Rate Period would otherwise have commenced pursuant to Section 2.06(h).

Not less than forty-five (45) days (or such shorter period approved by the parties to receive the same) prior to the Fixed Rate Conversion Date, the Authority shall give written notice to the Trustee, the Bond Registrar, the Tender Agent, the Remarketing Agent, the Credit Provider and the Liquidity Provider, setting forth (A) the election to convert the Series 1996 Bonds to a Fixed Rate, and (B) the proposed Fixed Rate Conversion Date. As a condition of any such conversion, the Trustee, the Credit Provider, the Liquidity Provider and the Remarketing Agent shall receive, concurrently with the notice, an Opinion of Bond Counsel.

(n) Preliminary Determination of Terms of Series 1996 Bonds while Bearing Interest at the Fixed Rate. The Remarketing Agent shall make a preliminary determination of the Fixed Rate or Fixed Rates for the Series 1996 Bonds and the maturities of the Series 1996 Bonds in the same manner as is provided for the final determination of rates pursuant to Section 2.06(p). Such preliminary determination shall be made on a Business Day which is at least thirty-five (35) days prior to the Fixed Rate Conversion Date. On the date of the preliminary determination, the Remarketing Agent shall notify the Tender Agent and the Tender Agent shall notify the Authority, the Trustee, the Bond Registrar, the Credit Provider and the Liquidity Provider, by telephone (promptly confirmed in writing), telegram, telecopy, telex or other similar means of communication of the preliminary Fixed Rate or Rate or Rates so determined.

(o) Notice of Conversion to Fixed Rate. The Tender Agent shall mail or cause the Bond Registrar to mail a notice of the proposed conversion to the Authority, the Bond Registrar, the Trustee, the Credit Provider, the Liquidity Provider and the Owners of all Series 1996 Bonds to be converted. Such notice shall be mailed not less than thirty (30) days prior to the proposed Fixed Rate Conversion Date. Such notice shall set forth the proposed Fixed Rate Conversion Date and state:

(i) that the Series 1996 Bonds are subject to mandatory tender for purchase (without the right to retain) on the Fixed Rate Conversion Date at a Purchase Price of par plus accrued interest; and

(ii) that the Series 1996 Bonds shall be deemed purchased on the Fixed Rate Conversion Date, and thereafter the Owner shall have no further rights hereunder except to receive such Purchase Price.

(p) Determination of Fixed Rate. The Remarketing Agent shall determine the Fixed Rate or Fixed Rates for the Series 1996 Bonds by not later than 3:30 p.m., Eastern time, on the last Business Day that is at least five (5) days prior to the Fixed Rate Conversion Date for the Series 1996 Bonds. The Fixed Rate or Fixed Rates shall be the lowest rate or rates of interest per annum (not in excess of the maximum rate of interest allowed by law) which, in the judgment of

the Remarketing Agent as of the date of determination and under prevailing market conditions, would cause the Fixed Rate Series 1996 Bonds to have a market value equal to the principal amount thereof, plus accrued interest. If necessary or desirable to achieve the lowest Fixed Rate or Fixed Rates on the Series 1996 Bonds, the Remarketing Agent may determine that some or all of the Series 1996 Bonds shall be converted to Serial Bonds maturing in years for which Amortization Requirements have been established for the Series 1996 Bonds and maturing in aggregate principal amounts that correspond to such Amortization Requirements. Not later than 4:00 p.m., Eastern time, on the date of determination of the Fixed Rate, the Remarketing Agent shall notify the Tender Agent of the Fixed Rate or Fixed Rates and of any serialization of the maturities of the Series 1996 Bonds by telephone (promptly confirmed in writing). Such determination shall be conclusive and binding upon the Authority, the Trustee, the Tender Agent, the Credit Provider, the Liquidity Provider and the Owners of the Series 1996 Bonds. The Tender Agent shall make such Fixed Rate and serialization of the maturities of the Series 1996 Bonds available upon request by telephone (promptly confirmed in writing), telegram, teletype, telex or other similar communication to the Authority, the Trustee, the Credit Provider and the Liquidity Provider. In addition to determining a Fixed Rate, the Remarketing Agent shall determine a Weekly Rate pursuant to Section 2.06(d) and give notice thereof to the Tender Agent, the Bond Registrar, the Trustee, the Credit Provider and the Liquidity Provider, which Weekly Rate shall take effect if needed pursuant to Section 2.06(q).

(q) Conditions on which Conversion to Fixed Rate Ineffective. Notwithstanding the delivery of notice of a Fixed Rate conversion pursuant to Section 2.06(o) above, conversion of Series 1996 Bonds to a Fixed Rate Period shall not take effect:

- (i) if the Authority withdraws such notice of conversion not later than the Business Day preceding the date on which the Fixed Rate is to be determined;
- (ii) if the Remarketing Agent fails to determine a Fixed Rate;
- (iii) if any notice required by Section 2.06(o) is not given when required; or
- (iv) if upon the conversion, any Fixed Rate Series 1996 Bonds would be Provider Bonds unless the Liquidity Provider consents.

In any of such events, the Series 1996 Bonds shall automatically be converted to a Weekly Rate for a Weekly Rate Period which shall commence on the date the Fixed Rate conversion was to be made, provided that the mandatory tender for purchase pursuant to Sections 3.08 and 3.09 shall nevertheless be carried out if notice of the Fixed Rate conversion had been given to the Owners of the Series 1996 Bonds. Withdrawal of a conversion notice shall be given by the Authority to the Trustee, the Tender Agent, the Bond Registrar, the Remarketing Agent, the Credit Provider and the Liquidity Provider, by telephone, promptly confirmed in writing. No cancellation of a Fixed Rate conversion pursuant to this subsection shall constitute an Event of Default hereunder. If the Series 1996 Bonds are converted to a Weekly Rate, and the Remarketing Agent fails to set a Weekly Rate, the Weekly Rate shall be the per annum rate of interest determined on each Thursday (or if such day is not a Business Day, the immediately preceding Business Day) by the Trustee which is equal to the lesser of the Maximum Rate and (1) so long as the Series 1996 Bonds shall remain Taxable Bonds, a rate equal to the bond equivalent yield on ninety-one day



United States Treasury Bills, plus 50 basis points, which yield shall be calculated in accordance with standard practices in the banking industry on the basis of the discount rates at which such bills were sold, or (2) should the Series 1996 Bonds cease to be Taxable Bonds, a rate equal to the most recently published Bond Buyer 25 Bond Revenue Index (or a comparable index, if such index is no longer published), plus 50 basis points.

(r) Effect of Conversion to Fixed Rate. Once the Authority has effectively exercised its option to convert the Series 1996 Bonds to a Fixed Rate pursuant to this Section 2.06, the Authority shall have no further options to convert the Series 1996 Bonds to any other Rate Period, and the Series 1996 Bonds shall no longer be payable from or secured by the Liquidity Facility or subject to tender for purchase.

## **SECTION 2.07. COMPLETION BONDS.**

(a) General. In addition to the Bonds authorized to be issued under the provisions of Section 2.06, Completion Bonds may be issued pursuant to this Section 2.07 and secured by this Indenture from time to time, on a parity with any other Outstanding Bonds, in an aggregate amount not to exceed 10% of the original estimated Cost of any Project financed from the proceeds of Bonds at the time of the issuance of such Bonds. Completion Bonds shall be issued for the purpose of providing funds to pay all or a part of the Cost of completing the Project financed from the proceeds of such Bonds, in the manner hereinafter provided and, as shall be specified in the Supplemental Indenture authorizing the issuance of such Completion Bonds, to make deposits to the Funds and Accounts and pay other costs of issuance and expenses relating thereto.

(b) Application of Proceeds. The proceeds (including Capitalized Interest and accrued interest, if any) of the Completion Bonds shall be applied by an Authorized Officer as follows (or shall otherwise be set forth in the Supplemental Indenture authorizing the issuance of such Completion Bonds):

(i) the amount, if any, received as Capitalized Interest on the Completion Bonds shall be delivered to the Trustee for deposit to the credit of the applicable Account or Subaccount of the Construction Fund, pursuant to Section 4.01 and the amount, if any received as accrued interest on the Completion Bonds shall be delivered to the Trustee for deposit to the credit of the Sinking Fund;

(ii) the amount estimated by an Authorized Officer to be sufficient for that purpose shall be delivered to the Trustee for deposit to the credit of a special account and applied to the payment of the expenses of issuing the Completion Bonds, including, but not limited to, financial advisory, accounting and legal fees, rating agency fees, printing costs, initial Bond Registrar fees, initial Paying Agent fees, initial Trustee fees, Credit Facility and Liquidity Facility fees and expenses, if any, and any other miscellaneous expenses relating to the issuance of the Completion Bonds;

(iii) the amount necessary to make the amount on deposit therein equal to the applicable Debt Service Reserve Fund Requirement, as may be limited by Section 2.01 or by any Supplemental Indenture authorizing the issuance of the Completion Bonds, shall be delivered to

the Trustee for deposit to the credit of the Account of the Debt Service Reserve Fund created for such Completion Bonds; and

(iv) the balance of the proceeds of the Completion Bonds remaining after the deposits made pursuant to clauses (i) through (iii) above have been made shall be delivered to the Trustee for deposit to the credit of the appropriate Account or Subaccount in the Construction Fund for application to the payment of the Cost of the Project to be completed from the proceeds of such Completion Bonds.

(c) Conditions Precedent to issuance of Completion Bonds. Completion Bonds shall be authenticated by the Bond Registrar and delivered by the Trustee in such manner as shall be specified in writing by an Authorized Officer, but only after the Completion Bonds shall have been executed as provided in this Indenture and there shall have been obtained and delivered to the Trustee, the following:

(i) a copy of this Indenture, including all Supplemental Indenture entered into prior to this issuance of such Completion Bonds and particularly the Supplemental Indenture authorizing the issuance of such Completion Bonds;

(ii) a certificate of the Consulting Engineer stating the original estimated Cost of the Project to be completed at the time of issuance of the Bonds originally issued to finance such Project, that such estimated Cost will be exceeded, the Cost of completing such Project, and that other funds available or reasonably expected to become available for such Cost of completion, together with the proceeds of the Completion Bonds, will be sufficient to pay such Cost of completion;

(iii) a written opinion or opinions of Bond Counsel stating that it is of the opinion that the issuance of the Completion Bonds has been duly authorized, that all conditions precedent to the delivery of such Completion Bonds have been provided for or fulfilled or otherwise satisfied, that this Indenture creates a valid and enforceable pledge of the Trust Estate, and that the issuance of the Completion Bonds will not adversely affect the exclusion of interest on any Bonds from gross income for federal income tax purposes;

(iv) a certificate of an Authorized Officer to the effect that no Event of Default has occurred and is continuing as of the date of issuance of such Completion Bonds (except any Event of Default that may be cured by application of the proceeds of such Completion Bonds); and

(v) an amount equal to that amount which the Authority shall have determined to be the purchase price for such Completion Bonds.

The Authority covenants that it will not issue Completion Bonds without the prior written consent of the Initial Reserve Facility Provider so long as there shall be due and owing at the time of such issuance any Policy Costs.

## SECTION 2.08. ADDITIONAL BONDS.

(a) General. In addition to the Bonds authorized under the provisions of Sections 2.06 and 2.07, Additional Bonds may be issued pursuant to this Section 2.08 and secured by this Indenture from time to time, on a parity with any other Outstanding Bonds, subject to the conditions hereinafter provided in this Section 2.08, for the purpose of providing funds, together with other legally available funds, to pay all or any part of the Cost of a Project, and, as shall be specified in the Supplemental Indenture authorizing the issuance of such Additional Bonds, to make deposits to the Funds and Accounts and pay other costs of issuance and expenses relating thereto. The Additional Bonds shall be issued in an aggregate principal amount set forth in a Supplemental Indenture authorizing their issuance.<sup>1</sup>

(b) Application of Proceeds. The proceeds (including Capitalized Interest and accrued interest) of the Additional Bonds shall be applied by an Authorized Officer as follows (or as shall otherwise be set forth in the Supplemental Indenture authorizing the issuance of such Additional Bonds):

(i) the amount, if any, received as Capitalized Interest on the Additional Bonds shall be delivered to the Trustee for deposit to the credit of the applicable Account or Subaccount in the Construction Fund pursuant to Section 4.01 and the amount, if any, received as accrued interest on the Additional Bonds shall be delivered to the Trustee for deposit to the credit of Sinking Fund;

(ii) the amount estimated by an Authorized Officer to be sufficient for that purpose shall be delivered to the Trustee for deposit to the credit of a special account and applied to the payment of the expenses of issuing the Additional Bonds, including, but not limited to, financial advisory, accounting and legal fees, rating agency fees, printing costs, initial Bond Registrar fees, initial Paying Agent fees, initial Trustee fees, Credit Facility and Liquidity Facility fees and expenses, if any, and any other miscellaneous expenses relating to the issuance of such Bonds;

(iii) the amount necessary to make the amount on deposit therein equal to the applicable Debt Service Reserve Fund Requirement, as may be limited by Section 2.01 or by the Supplemental Indenture authorizing the issuance of such Additional Bonds, shall be delivered to the Trustee for deposit to the credit of the appropriate Account of the Debt Service Reserve Fund; and

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<sup>1</sup> The Third Supplemental Trust Indenture to Amended and Restated Indenture amended this paragraph to read as follows:

“In addition to the Bonds authorized under Sections 2.06 and 2.07, Additional Bonds may be issued pursuant to this Section 2.08 and secured by this Indenture from time to time, on a parity with any other Outstanding Bonds, subject to the conditions hereinafter provided in this Section 2.08, (i) for the purpose of providing funds, together with other legally available funds, to pay all or any part of the Cost of a Project, and, as shall be specified in the Supplemental Indenture authorizing the issuance of such Additional Bonds, to make deposits to the Funds and Accounts and pay other costs of issuance and expenses relating thereto, or (ii) to finance Hedge Charges including, without limitation, termination payments relating to Hedge Agreements. The Additional Bonds shall be issued in an aggregate principal amount set forth in a Supplemental Indenture authorizing their issuance.”

(iv) the balance of the proceeds of the Additional Bonds remaining after the deposits made pursuant to clauses (i) through (iii) above have been made shall be delivered to the Trustee for deposit to the credit of the applicable Account or Subaccount of the Construction Fund for application to the payment of the Cost of the Project financed by such Bonds.<sup>2</sup>

(c) Conditions Precedent to Issuance of Additional Bonds. Additional Bonds shall be authenticated by the Bond Registrar and delivered by the Trustee in such manner as shall be specified in writing by an Authorized Officer, but only after such Bonds shall have been executed as provided in this Indenture and there shall have been obtained and delivered to the Trustee (and in the case of clauses (v) and (vi) below, to the Department), the following:

(i) a copy of this Indenture, including all Supplemental Indentures entered into prior to this issuance of such Additional Bonds and particularly the Supplemental Indenture authorizing the issuance of such Additional Bonds;

(ii) a written opinion or opinions of Bond Counsel stating that it is of the opinion that the issuance of such Additional Bonds has been duly authorized, that all conditions precedent to the delivery of such Bonds have been provided for or fulfilled or otherwise satisfied, that this Indenture creates a valid and enforceable pledge of the Trust Estate, and that the issuance of the Additional Bonds will not adversely affect the exclusion of interest on any Bonds from gross income for federal income tax purposes;

(iii) a certificate of an Authorized Officer to the effect that no Event of Default has occurred and is continuing as of the date of issuance of such Additional Bonds (except any Event of Default that may be cured by application of the proceeds of such Bonds);

(iv) an amount equal to that amount which the Authority shall have determined to be the purchase price for such Bonds;

(v) A copy of a certificate signed by an Authorized Officer stating the amount of Test Period Revenues projected to be received by the Authority during the current Fiscal Year and each full Fiscal Year to and including the fifth full Fiscal Year following the projected date when the Project to be financed from the proceeds of such Additional Bonds will be placed in service (the "Test Period"). "Test Period Revenues" shall mean, for the purposes hereof, the Net Revenues during the Test Period, as determined by the Authorized Officer, further adjusted by the Authorized Officer to reflect 100% of the additional Revenues which, in the opinion of the Consulting Engineer, would be received from increases in Tolls, rates, fees, rentals and other

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<sup>2</sup> The Third Supplemental Trust Indenture to Amended and Restated Trust Indenture amended this paragraph to read as follows:

"the balance of the proceeds of the Additional Bonds remaining after the deposits made pursuant to clauses (i) through (iii) above have been made shall be delivered to the Trustee for deposit (A) in connection with Additional Bonds authorized by clause (i) of subsection (a) of this Section 2.08, to the credit of the applicable Account or Subaccount of the Construction Fund for application to the payment of the Cost of the Project financed by such Additional Bonds, and (B) in connection with Additional Bonds authorized by clause (ii) of subsection (a) of this Section 2.08, in such manner as shall be specified in the Supplemental Indenture authorizing the issuance of such Additional Bonds for application to the payment of those Hedge Charges financed thereby as provided in the Supplemental Indenture authorizing the issuance thereof."

charges relating to the System scheduled to take effect during the Test Period (provided that such increases must be adopted as of the date the certification is made and such increases must be effective on, or scheduled to become effective no later than eighteen months from, the date on which such certificate is made and must remain in effect for the entirety of the Test Period);<sup>3</sup>

(vi) A written opinion of the Consulting Engineer stating that (A) the projections of Test Period Revenues set forth in the certificate of the Authorized Officer delivered pursuant to clause (v) immediately above are reasonable, and (B) the Test Period Revenues are sufficient to enable the Authority to comply with all of the requirements of Section 5.01(b) over the entirety of the Test Period, taking into account the additional Principal and Interest Requirements of the Additional Bonds proposed to be issued;<sup>4</sup>

(vii) Either (A) A certificate of the Department stating that, at the time the Additional Bonds are to be issued, (1) the Authority is current in the payment to the Department of any unpaid Non-contingent Portion of Annual Repayment Requirements, (2) there is not any unpaid Contingent Portion of Annual Repayment Requirements, and (3) the Department acknowledges that Revenues, based on the opinion of the Consulting Engineer, are projected to be sufficient to pay when due the Annual Repayment Requirements after taking into account the debt service requirements of the Additional Bonds, or (B) if, at the time the Additional Bonds are to be issued (1) the Authority is not current in the payment to the Department of any unpaid Non-contingent Portion of Annual Repayment Requirements, (2) there shall be any unpaid Contingent Portion of Annual Repayment Requirements, or (3) Revenues, based on the opinion of the Consulting Engineer, are projected to be insufficient to pay when due the Annual Repayment

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<sup>3</sup> The Sixth Supplemental Trust Indenture to Amended and Restated Indenture amended this paragraph to read as follows:

“(v) A copy of a certificate signed by an Authorized Officer stating the amount of Test Period Revenues projected to be received by the Authority during the current Fiscal Year and each full Fiscal Year to and including the fifth full Fiscal Year following the projected date when the Project to be financed from the proceeds of such Additional Bonds will be placed in service (the “Test Period”). “Test Period Revenues” shall mean, for the purposes hereof, the Net Revenues during the Test Period, as determined by the Authorized Officer, further adjusted by the Authorized Officer to reflect 100% of the additional Revenues which, in the opinion of the Consulting Engineer, would be received from increases in Tolls, rates, fees, rentals and other charges relating to the System scheduled to take effect during the Test Period (provided that such increases must be adopted as of the date the certification is made and such increases must be effective on, or scheduled to become effective no later than ~~eighteen~~ thirty-six months from, the date on which such certificate is made and must remain in effect for the entirety of the Test Period);”

<sup>4</sup> The Sixth Supplemental Trust Indenture to Amended and Restated Indenture amended this paragraph to read as follows:

“(vi) A written opinion of the Consulting Engineer stating that (A) the projections of Test Period Revenues set forth in the certificate of the Authorized Officer delivered pursuant to clause (v) immediately above, including, without limitation, that portion of Test Period Revenues anticipated by the Authorized Officer to be derived from increases in Tolls, rates, fees, rentals and other charges relating to the System scheduled to take effect during the Test Period, are reasonable, and (B) the Test Period Revenues are sufficient to enable the Authority to comply with all of the requirements of Section 5.01(b) over the entirety of the Test Period, taking into account the additional Principal and Interest Requirements of the Additional Bonds proposed to be issued;”

Requirements after taking into account the debt service requirements of the Additional Bonds, a written consent from the Department to the issuance of such Bonds; and

(viii) A certificate of the Department to the effect that the Authority has delivered to the Department a certificate prepared in accordance Section 2.08(c)(vi) of this Indenture and prepared as though the scheduled debt service payments required to be made by the Authority to the Department under such State Infrastructure Bank Loan Agreements then in effect between the Authority and the Department constitute a component of Annual Repayment Requirements.

The Authority covenants that it will not issue Additional Bonds without the prior written consent of the Initial Reserve Facility Provider so long as there shall be due and owing at the time of such issuance any Policy Costs.

## **SECTION 2.09. REFUNDING BONDS.**

(a) General. In addition to the Bonds authorized under the provisions of Sections 2.06, 2.07 and 2.08, Refunding Bonds may be issued pursuant to this Section 2.09 and secured by this Indenture from time to time on a parity with any other Outstanding Bonds, subject to the conditions hereinafter provided in this Section 2.09, for the purpose of providing funds, together with other legally available funds, for refunding all or any portion of the Outstanding Bonds of any one or more Series issued under the provisions of this Indenture, including the payment of all amounts necessary to defease the Outstanding Bonds to be refunded in accordance with the provisions thereof, and, as shall be specified in the Supplemental Indenture authorizing the issuance of a Series of Refunding Bonds, to make deposits to the Funds and Accounts and pay other costs of issuance and expenses relating thereto.

(b) Application of Proceeds. The proceeds (including Capitalized Interest and accrued interest) of the Refunding Bonds, as applicable, shall be applied by an Authorized Officer as follows (or in such other manner as shall be set forth in the Supplemental Indenture authorizing the issuance of such Series of Refunding Bonds):

(i) the amount, if any, received as Capitalized Interest on the Refunding Bonds shall be delivered to the Trustee for deposit to the credit of the applicable Account or Subaccount in the Construction Fund pursuant to Section 4.01 and the amount, if any, received as accrued interest on the Refunding Bonds shall be delivered to the Trustee for deposit to the credit of Sinking Fund;

(ii) the amount estimated by an Authorized Officer to be sufficient for that purpose shall be delivered to the Trustee for deposit to the credit of a special account and applied to the payment of the expenses of issuing the Refunding Bonds, including, but not limited to, financial advisory, accounting and legal fees, rating agency fees, printing costs, initial Bond Registrar fees, initial Paying Agent fees, initial Trustee fees, Credit Facility and Liquidity Facility fees and expenses, if any, and any other miscellaneous expenses relating to the issuance of such Bonds;

(iii) the amount necessary to make the amount on deposit therein equal to the applicable Debt Service Reserve Fund Requirement, as may be limited by Section 2.01 or by the

Supplemental Indenture authorizing the issuance of such Bonds, shall be delivered to the Trustee for deposit to the credit of the appropriate Account of the Debt Service Reserve Fund; and

(iv) the balance of the proceeds of the Refunding Bonds remaining after the deposits made pursuant to clauses (i) through (iii) above have been made shall be applied to pay or provide for the payment of the Bonds to be refunded thereby in such manner as shall satisfy the conditions of Article XII to the release of the lien of the Trust Estate and this Indenture in favor of such Bonds.

(c) Conditions Precedent to Issuance of Refunding Bonds. Refunding Bonds shall be authenticated by the Bond Registrar and delivered by the Trustee in such manner as shall be specified in writing by an Authorized Officer, but only after such Bonds shall have been executed as provided in this Indenture and there shall have been obtained and delivered to the Trustee, the following:

(i) a copy of this Indenture, including all Supplemental Indenture entered into prior to this issuance of such Refunding Bonds and particularly the Supplemental Indenture authorizing the issuance of such Refunding Bonds;

(ii) a written opinion or opinions of Bond Counsel stating that it is of the opinion that the issuance of such Refunding Bonds has been duly authorized, that all conditions precedent to the delivery of such Bonds have been provided for or fulfilled or otherwise satisfied, that this Indenture creates a valid and enforceable pledge of the Trust Estate, and that the issuance of the Refunding Bonds will not adversely affect the exclusion of interest on any Bonds from gross income for federal income tax purposes;

(iii) a certificate of an Authorized Officer to the effect that no Event of Default has occurred and is continuing as of the date of issuance of such Refunding Bonds (except any Event of Default that may be cured by application of the proceeds of such Bonds);

(iv) an amount equal to that amount which the Authority shall have determined to be the purchase price for such Bonds;

(v) either (A) a certificate signed by an Authorized Officer, confirming that the annual Principal and Interest Requirements for each Fiscal Year in which the Bonds to be refunded would be Outstanding but for such refunding for all Outstanding Bonds following issuance of the Refunding Bonds with respect to which the certificate is made (excluding any Bonds being defeased by proceeds of the Refunding Bonds) is not greater than the annual Principal and Interest Requirements for each Fiscal Year for all Outstanding Bonds prior to issuance of such Refunding Bonds, or (B) in lieu thereof, the certificate required by Section 2.08(c)(v) and the opinion required by Section 2.08(c)(vi), each prepared as though the Refunding Bonds constitute a Series of Additional Bonds and as though the Test Period shall commence on the date of issuance of such Refunding Bonds, and under the circumstances set forth in Section 2.08(c)(vii), the written consent of the Department described therein; and

(vi) Where the Authority shall have satisfied the requirements of Section 2.09(c)(v)(B) above with respect to such Refunding Bonds, a certificate of the Department to the effect that the Authority has delivered to the Department a certificate prepared in accordance

Section 2.08(c)(vi) of this Indenture and prepared as though the scheduled debt service payments required to be made by the Authority to the Department under such State Infrastructure Bank Loan Agreements then in effect between the Authority and the Department constitute a component of Annual Repayment Requirements.

The Authority covenants that it will not issue Refunding Bonds without the prior written consent of the Initial Reserve Facility Provider so long as there shall be due and owing at the time of such issuance any Policy Costs.

**SECTION 2.10. PREPARATION OF DEFINITIVE BONDS; TEMPORARY BONDS.** The definitive Bonds of each Series shall be lithographed or printed with or without steel engraved borders. Until the definitive Bonds of any Series are ready for delivery, there may be executed, and an Authorized Officer may deliver, or cause the Bond Registrar to deliver, in lieu of definitive Bonds and subject to the same limitations and conditions, except as to identifying numbers, temporary printed, engraved, lithographed or typewritten Bonds in Authorized Denominations substantially of the tenor hereinabove set forth, and with appropriate omissions, insertions and variations as may be required. The Authority shall cause the definitive Bonds to be prepared and to be executed, endorsed and delivered to the Bond Registrar, on behalf of the Authorized Officer, and the Bond Registrar, upon presentation to it of any temporary Bond, shall cancel the same and authenticate and deliver, in exchange therefor, at the place designated by the Owner, without expense to the Owner, a definitive Bond or Bonds of the same Series and in the same aggregate principal amount, maturing on the same date and bearing interest at the same rate as the temporary Bond surrendered. Until so exchanged, the temporary Bonds shall in all respects, including the privilege of registration if so provided, be entitled to the same benefit of this Indenture as the definitive Bonds to be issued and authenticated hereunder. The Bond Registrar shall promptly destroy all temporary Bonds that have been canceled and shall submit a certificate to the Chairman certifying that such temporary Bonds have been canceled and destroyed. Notwithstanding the foregoing, the definitive Series 1996 Bonds may be issued in typewritten form and a Supplemental Indenture authorizing the issuance of a Series of Bonds may provide for the definitive Bonds of a Series to be in typewritten form or in such other form as provided therein.

**SECTION 2.11. MUTILATED, DESTROYED, STOLEN OR LOST BONDS.** In case any Bonds secured hereby shall become mutilated or be destroyed, stolen or lost, the Authority may cause to be executed, and the Bond Registrar shall authenticate and deliver, a new Bond of like series, date, maturity, denomination and interest rate in exchange and substitution for and upon the cancellation of, such mutilated Bond or in lieu of and in substitution for such Bond destroyed, stolen, or lost, upon the Owner's paying the reasonable expenses and charges of the Authority in connection therewith and, in the case of a Bond destroyed, stolen or lost, his filing with the Authority and Bond Registrar evidence satisfactory to them that such Bond was destroyed, stolen or lost, and of his ownership thereof, and furnishing the Authority and Bond Registrar with indemnity satisfactory to them. In the event any such Bond shall be about to mature or has matured or been called for redemption, instead of issuing a duplicate Bond, the Authority may direct the Paying Agent to pay the same without surrender thereof. Any Bond surrendered for replacement shall be canceled in the same manner as provided in Section 2.05.



Any such duplicate Bonds issued pursuant to this Section 2.11 shall constitute additional contractual obligations on the part of the Authority and the Trustee, whether or not the lost, stolen or destroyed Bonds are at any time found, and such duplicate Bonds shall be entitled to equal and proportionate benefits and rights as to lien on and source and security for payment from the Revenues and moneys on deposit in the Funds and Accounts with all other Bonds issued hereunder.

**SECTION 2.12. BOOK-ENTRY SYSTEM FOR SERIES 1996 BONDS.** The Series 1996 Bonds shall be initially issued in the name of Cede & Co., as nominee for DTC as the initial Securities Depository and Owner of the Series 1996 Bonds, and may be held in the custody of or by the Trustee for the account of the Securities Depository. A single certificate will be issued and delivered to the Securities Depository for each maturity of the Series 1996 Bonds (except as otherwise required by DTC). The ultimate purchasers of ownership interests in the Series 1996 Bonds (the “Beneficial Owners”) will not receive physical delivery of Series 1996 Bond certificates except as provided herein. For so long as the Securities Depository shall continue to serve as securities depository for the Series 1996 Bonds as provided herein, all transfers of beneficial ownership interests will be made by book entry only, and no investor or other party purchasing, selling or otherwise transferring beneficial ownership of Series 1996 Bonds is to receive, hold or deliver any Bond certificate.

The Authority and the Trustee shall treat the Securities Depository (or its nominee) as the sole and exclusive Owner of the Series 1996 Bonds registered in its name for the purposes of payment of the principal of and interest on or Redemption Price, if any, of the Series 1996 Bonds or portion thereof to be redeemed, and of giving any notice permitted or required to be given to Series 1996 Bondholders under this Indenture and neither the Authority nor the Trustee shall be affected by any notice to the contrary. Neither the Authority nor the Trustee shall have any responsibility or obligations to the Securities Depository, any Participant, any Beneficial Owner or any other Person which is not shown on the bond registration books maintained by the Bond Registrar, with respect to the accuracy of any records maintained by the Securities Depository or any Participant; the payment by the Securities Depository or any Participant of any amount in respect of the principal of and interest on the Series 1996 Bonds; any notice which is permitted or required to be given to Series 1996 Bondholders under this Indenture; the selection by the Securities Depository or any Participant of any Person to receive payment in the event of a partial redemption of the Series 1996 Bonds; or any consent given or other action taken by the Securities Depository as a Series 1996 Bondholder. The Trustee shall pay all principal of and interest on or Redemption Price, if any, of the Series 1996 Bonds registered in the name of Cede & Co. only to or “upon the order of” the Securities Depository (as that term is used in the Uniform Commercial Code as adopted in Florida), and all such payments shall be valid and effective to fully satisfy and discharge the Authority’s obligations with respect to the principal of and interest on or Redemption Price, if any, of such Series 1996 Bonds to the extent of the sum or sums so paid.

The Authority and the Trustee covenant and agree, so long as DTC shall continue to serve as Securities Depository for the Series 1996 Bonds, to meet the requirements of DTC with respect to required notices and other provisions of the Letter of Representations executed with respect to the Series 1996 Bonds.

The Authority may rely conclusively upon (i) a certificate of the Securities Depository as to the identity of the Participants in the Book Entry System with respect to the Series 1996 Bonds and (ii) a certificate of any such Participant as to the identity of, and the respective principal amount of Series 1996 Bonds beneficially owned by, the Beneficial Owners.

Whenever, during the term of the Series 1996 Bonds, the beneficial ownership thereof is determined by a book entry at the Securities Depository, the requirements in this Indenture of holding, delivering or transferring Series 1996 Bonds shall be deemed modified to require the appropriate Person to meet the requirements of the Securities Depository as to registering or transferring the book entry to produce the same effect. Any provision hereof permitting or requiring delivery of Series 1996 Bonds shall, while the Series 1996 Bonds are in a Book Entry System, be satisfied by the notation on the books of the Securities Depository in accordance with the law of the State.

The Trustee and the Authority, at the direction and expense of the Authority, may from time to time appoint a successor Securities Depository and enter into an agreement with the Securities Depository, to establish procedures with respect to the Series 1996 Bonds not inconsistent with the provisions of this Indenture. Any successor Securities Depository shall be approved by the Trustee and shall be a “clearing agency” registered under Section 17A of the Securities Exchange Act of 1934, as amended.

The Trustee and the Authority, at the direction and expense of the Authority, will cause the delivery of bond certificates to each Beneficial Owner, registered in the name of such Beneficial Owner, under the following circumstances:

(a) The Securities Depository determines to discontinue providing its service with respect to the Series 1996 Bonds and no successor Securities Depository is appointed as described above. Such a determination may be made at any time by giving 30 days’ written notice to the Authority and the Trustee and discharging its responsibilities with respect thereto under applicable law; or

(b) The Authority determines not to continue the Book Entry System through a Securities Depository.

The Trustee is hereby authorized to make such changes to the form of Bonds attached hereto as Exhibit C which are not inconsistent with this Indenture and which are necessary or appropriate upon the appointment of a successor Securities Depository or while the Book Entry System is not in effect.

If at any time, the Securities Depository ceases to hold the Series 1996 Bonds, thereafter all references herein to the Securities Depository shall be of no further force or effect.

### ARTICLE III

#### REDEMPTION AND TENDER FOR PURCHASE OF BONDS

**SECTION 3.01. REDEMPTION DATES AND PRICES.** Bonds other than the Series 1996 Bonds shall be subject to redemption in the manner set forth, if any, in the Supplemental Indenture authorizing the issuance of such Bonds. The Series 1996 Bonds may not be called for redemption by the Authority except as provided below:

(a) (i) The Series 1996 Bonds bearing interest at Daily, Weekly, Monthly, Quarterly, Semiannual or Extended Rates (but only if the Extended Rate Period is one year in duration) are subject to optional redemption from Eligible Funds prior to their stated maturity upon request of the Authority in whole or in part at any time at a price equal to the principal amount thereof, without premium, plus accrued interest thereon to the redemption date.

(ii) The Series 1996 Bonds bearing interest at Extended Rates (but only if the Extended Rate Period is more than one year in duration) or the Fixed Rate are subject to optional redemption from Eligible Funds (or from moneys that are not Eligible Funds if there shall not be a Credit Facility in place at the time of such redemption or if the Credit Facility in place at the time of such redemption is a policy of municipal bond insurance) prior to their stated maturity upon request of the Authority in whole or in part at the times and at the prices set forth below, and in such amounts and of such maturities as the Authority shall direct, plus accrued interest thereon to the redemption date:

<b>Years Remaining from Conversion Date until end of Extended Rate Period or Final Maturity of Bonds in the Fixed Rate Period</b>	<b>First Day of Redemption Period</b>	<b>Redemption Price</b>
More than fifteen	Tenth anniversary of Conversion Date	102% declining by 1% on each succeeding anniversary of the tenth anniversary of the Conversion Date until reaching 100% and thereafter at 100%
More than seven but not more than fifteen	Seventh anniversary of Conversion Date	102% declining by 1% on each succeeding anniversary of the seventh anniversary of the Conversion Date until reaching 100% and thereafter at 100%
More than five but not more than seven	Fourth anniversary of Conversion Date	101% declining by 1% on the next anniversary after the fourth anniversary of the Conversion Date and thereafter at 100%
Five or fewer	Not callable	

Notwithstanding any provision in this Indenture or the Series 1996 Bonds to the contrary, this Indenture and the Bonds may be amended as of the Conversion Date upon the request of the Authority, without the consent of any of the Bondholders, to change the redemption provisions applicable during an Extended Rate Period or the Fixed Rate Period to such redemption provisions as are acceptable to the Authority provided the Authority provides an Opinion of Bond Counsel to the Trustee to the effect that such amendment will not adversely affect the exclusion from gross income of interest on the Bonds for purposes of federal income taxation.

(iii) Prior to notice being given to the Owners of affected Series 1996 Bonds of any optional redemption of Series 1996 Bonds under this Section 3.01(a), either (A) there shall be deposited with the Trustee an amount sufficient to pay the principal amount of the Series 1996 Bonds subject to redemption, plus accrued interest to the redemption date, plus any premium applicable to such redemption, or (B) such notice shall state that the redemption is conditioned on the receipt of moneys for such redemption by the Trustee on or prior to the redemption date. In the event that a conditional notice of redemption is given and such moneys are not timely received, the redemption for which such notice was given shall not be undertaken. Amounts deposited pursuant to this paragraph shall be kept by the Trustee in a trust account separate and segregated from all other moneys deposited under this Indenture and shall be held uninvested unless invested at the direction of an Authorized Officer only in Government Obligations that mature on or before the redemption date. If the redemption price is required to be paid with Eligible Funds as specified in Section 3.01(a)(i) or (ii), the Trustee shall cancel the redemption of the Series 1996 Bonds if it determines that sufficient Eligible Funds will not be available on the redemption date. It is understood that the Initial Credit Facility and the Initial Liquidity Facility are not available to provide Eligible Funds for the payment of any redemption under this Section.

(b) The Series 1996 Bonds shall be redeemed in whole or in part in such amounts and of such maturities as the Authority shall direct at any time at a redemption price equal to 100% of the principal amount thereof plus accrued interest, if any, to the redemption date upon receipt by the Trustee of a written notice from the Authority stating that either of the following events has occurred:

(1) all or substantially all of the System shall be damaged or destroyed and the Authority shall determine that it is not practicable or desirable to rebuild, repair and restore the same; or

(2) all or substantially all of the System shall be condemned or such use or control thereof shall be taken by eminent domain as to render the same unsatisfactory to the Authority for continued operation.

Any such redemption pursuant to this Section 3.01(b) prior to the Fixed Rate Conversion Date shall be made only from Eligible Funds.

(c) Provider Bonds are subject to redemption prior to maturity at the option of the Authority as a whole or in part in such amounts and of such maturities as the Authority may direct on any date at the principal amount thereof, without premium, plus interest accrued thereon to the redemption date.

(d) The Series 1996 Bonds are also subject to redemption prior to maturity at a redemption price equal to the principal amount thereof, plus accrued interest, by application by the Trustee of funds on deposit to the credit of the Sinking Fund on July 1 in the years and in the principal amounts as follows:

<u>YEAR</u>	<u>AMOUNT</u>
1999	\$ 1,000,000
2000	1,800,000
2001	2,000,000
2002	2,200,000
2003	2,300,000
2004	2,500,000
2005	2,600,000
2006	2,800,000
2007	3,000,000
2008	3,200,000
2009	3,400,000
2010	3,600,000
2011	3,900,000
2012	4,100,000
2013	4,400,000
2014	4,700,000
2015	4,900,000
2016	5,400,000
2017	5,600,000
2018	6,100,000
2019*	10,500,000

\*By operation of maturity.

(e) If less than all of the Bonds of a Series or of any one maturity of a Series shall be called for redemption, the particular Bonds to be redeemed shall be selected by the Trustee in such manner as the Trustee in his discretion deems fair and appropriate except to the extent otherwise provided in the Supplemental Indenture authorizing the Bonds of such Series.

**SECTION 3.02. NOTICE OF REDEMPTION.** Except as otherwise provided with respect to a Series of Bonds in the Supplemental Indenture authorizing the issuance of the Bonds of such Series, at least thirty (30) days, but not more than forty-five (45) days, before the redemption date of any Bonds, the Trustee shall cause a notice of such redemption to be: (a) filed with any Paying Agent; (b) sent by telefacsimile followed by first class mail to registered securities depositories and to national information services that disseminate redemption notices; and (c) mailed, postage prepaid, to all Owners of Bonds to be redeemed in whole or in part at their addresses as they appear on the registration books herein provided for. Failure to file any such notice with any Paying Agent or to mail any such notice to any Bondholder or to any securities depository or national information service or any defect therein shall not affect the

validity of the proceedings for redemption, except to the extent a Bondholder is prejudiced thereby, and then, only with respect to such Bondholder. Except as otherwise provided with respect to a Series of Bonds in the Supplemental Indenture authorizing the issuance of the Bonds of such Series, each such notice shall set forth: (t) the date fixed for redemption; (u) the redemption price to be paid; (v) the CUSIP numbers and the certificate numbers of the Bonds to be redeemed; (w) the name and address of the Paying Agent for the Bonds; (x) the dated date, interest rate and maturity date of the Bonds; and (y) if less than all of the Bonds of a Series then Outstanding shall be called for redemption, the amounts of each of the Bonds to be redeemed; and (z) the name, address and telephone number of a contact for such redemption.

### **SECTION 3.03. [RESERVED]**

**SECTION 3.04. REDEMPTION OF PORTIONS OF BONDS.** Except as provided in Section 2.12, any Bond which is to be redeemed only in part shall be surrendered at any place of payment specified in the notice of redemption (with due endorsement by, or written instrument of transfer in form satisfactory to the Bond Registrar duly executed by the Owner thereof or his duly authorized attorney or legal representative in writing) and the Authority shall execute and the Bond Registrar shall authenticate and deliver to the Owner of such Bond, without charge, other than any applicable tax or other governmental charge, a new Bond or Bonds, of any Authorized Denomination, as requested by such Owner in an aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Bonds so surrendered.

**SECTION 3.05. EFFECT OF CALL FOR REDEMPTION.** On the date fixed for redemption, notice having been given in the manner and under the conditions hereinabove provided, the Bonds or portions thereof called for redemption shall be due and payable at the Redemption Price provided therefor. If money or Escrow Securities, or a combination of both, sufficient to pay the Redemption Price of the Bonds to be redeemed are held by the Trustee in trust for the Owners of Bonds to be redeemed on the date fixed for redemption, then interest on the Bonds called for redemption shall cease to accrue; such Bonds shall cease to be entitled to any benefits or security under this Indenture or to be deemed Outstanding, and the Owners of such Bonds shall have no rights in respect thereof except to receive payment of the Redemption Price thereof. Bonds and portions of Bonds for which irrevocable instructions to pay on one or more specified dates or to call for redemption at the redemption date have been given to the Trustee in form satisfactory to it shall not thereafter be deemed to be Outstanding under this Indenture and shall cease to be entitled to the security of or any rights under this Indenture, other than rights to receive payment of the Redemption Price thereof, to be given notice of redemption in the manner provided in Section 3.02, and, to the extent hereinafter provided, to receive Bonds for any unredeemed portions of Bonds, if money or Escrow Securities, or a combination of both, sufficient to pay the Redemption Price of such Bonds or portions thereof, are held in separate accounts by the Trustee in trust for the Owners of such Bonds. All money held by the Trustee under this Section 3.05 for the redemption of Bonds after the Redemption Date shall be held uninvested or invested at the written direction of the Authority in Government Obligations that mature on or before the redemption date.

For purposes of this Article III, Escrow Securities shall be deemed to be sufficient to redeem Bonds on a specified date if the principal of and the interest on such Escrow Securities, when due, will be sufficient to pay on such date the Redemption Price of such Bonds to such date.

If a portion of an Outstanding Bond shall be selected for redemption, the Owner thereof or his attorney or legal representative shall present and surrender such Bond to the Bond Registrar for payment of the Redemption Price of the portion thereof called for redemption, and the Authority shall execute and the Bond Registrar shall authenticate and deliver to or upon the order of such Owner or his legal representative, without charge therefor, for the unredeemed portion of the principal amount of the Bond so surrendered, a Bond of the same stated maturity and bearing interest at the same rate.

**SECTION 3.06. EXPENSES OF REDEMPTION.** The expenses of any redemption of Bonds pursuant to this Article shall be paid from the Revenue Fund.

**SECTION 3.07. OPTIONAL TENDERS BY OWNERS DURING VARIABLE RATE PERIODS.** (a) Purchase Dates. During any Variable Rate Period a beneficial owner of the Series 1996 Bonds (other than Provider Bonds) may elect to have its Series 1996 Bonds (or portions thereof in Authorized Denominations) purchased at the Purchase Price, on the following Purchase Dates by causing the Direct Participant through whom such beneficial owner owns such Series 1996 Bond to give the following irrevocable telephonic or written notices meeting the further requirements of subsection (b) of this Section 3.07 and upon transfer on the registration books of DTC on the same day such notice is given of the beneficial ownership interest in such Series 1996 Bonds to the account of the Trustee, “free delivery” for settlement on the Purchase Date:

(i) Series 1996 Bonds bearing interest at Daily Rates may be tendered for purchase on any Business Day upon telephonic notice of tender given to the Trustee not later than 10:30 a.m., Eastern time, on the Purchase Date;

(ii) Series 1996 Bonds bearing interest at Weekly Rates may be tendered for purchase on any Business Day upon delivery of a written notice of tender to the Trustee not later than 5:00 p.m., Eastern time, on a Business Day not less than seven (7) days prior to the Purchase Date;

(iii) Series 1996 Bonds bearing interest at Monthly, Quarterly or Semiannual Rates may be tendered for purchase on any Interest Payment Date upon delivery of a written notice of tender to the Trustee not later than 5:00 p.m., Eastern time, on a Business Day which is not less than seven (7) days prior to the Interest Payment Date in the case of Series 1996 Bonds bearing interest at Monthly and Quarterly Rates, or fifteen (15) days prior to the Interest Payment Date in the case of Series 1996 Bonds bearing interest at Semiannual Rates; and

(iv) Series 1996 Bonds bearing interest at Extended Rates may be tendered for purchase on the commencement date of any Extended Rate Period (other than the Extended Rate Conversion Date) upon delivery of a written notice of tender to the Trustee not later than 5:00

p.m., Eastern time, on a Business Day which is not less than fifteen (15) days prior to the Purchase Date.

(b) Notice of Tender. Each notice of tender:

(i) shall, in the case of a written notice, be delivered to the Trustee at its principal office and be in form satisfactory to the Trustee;

(ii) shall state, whether delivered in writing or by telephone (A) the principal amount of the Series 1996 Bond or portion of the Series 1996 Bond to be purchased, (B) that the Owner irrevocably demands purchase of such Series 1996 Bond or portion thereof, (C) the date on which such Series 1996 Bond or portion is to be purchased, (D) payment instructions, and (E) the DTC number of such Direct Participant; and

(iii) shall automatically constitute, whether delivered in writing or by telephone (A) an irrevocable offer to sell the Series 1996 Bond or portion to which the notice relates on the Purchase Date to any purchaser selected by the Remarketing Agent, at the Purchase Price, (B) an irrevocable authorization and instruction to the Series 1996 Bond Registrar to effect transfer of such Series 1996 Bond or portion upon payment of such price to the Trustee on the Purchase Date, (C) an irrevocable authorization and instruction to the Tender Agent to effect the exchange of the Series 1996 Bond to be purchased in whole or in part for other Series 1996 Bonds of the same maturity in an equal aggregate principal amount so as to facilitate the sale of such Series 1996 Bond or portion, and (D) an acknowledgment that such Owner will have no further rights with respect to such Series 1996 Bond or portion thereof upon payment of the Purchase Price by the Trustee on the Purchase Date to the Direct Participant from whom the notice of tender is received, except for the right of such Owner to receive such Purchase Price upon surrender of such Series 1996 Bond to the Tender Agent.

The determination of the Trustee as to whether a notice of tender has been properly delivered pursuant to the foregoing shall be conclusive and binding upon the Owner. The Trustee, if other than the Tender Agent, shall promptly notify the Tender Agent of its receipt of each notice given pursuant to this Section. The Trustee shall hold beneficial ownership interests of Series 1996 Bonds delivered to it pursuant to this Section pending settlement in trust for the benefit of the direct participant from whom the beneficial interests in the Series 1996 Bonds are received and shall remit any interest payments received with respect to such Series 1996 Bonds for the period prior to the Purchase Date to such Direct Participant.

(c) Series 1996 Bonds to be Remarketed. Not later than 4:30 p.m., Eastern time, on the Business Day immediately following the date of receipt of any notice of tender (or immediately upon such receipt, in the case of Series 1996 Bonds bearing interest at Daily Rates), the Tender Agent shall notify the Remarketing Agent and the Trustee of the principal amount of Series 1996 Bonds or portions thereof to be tendered and remarketed and the date they are to be tendered and remarketed. Such notices shall be given by telephone, telegram, telecopy, telex or other similar communication and shall be promptly confirmed in writing.

(d) Remarketing of Tendered Series 1996 Bonds. The Remarketing Agent shall offer for sale and use its best efforts to find purchasers for all Series 1996 Bonds or portions thereof



properly tendered. All Series 1996 Bonds shall be at all times remarketed at the Purchase Price. Notwithstanding the foregoing, the Remarketing Agent shall not offer for sale any Series 1996 Bond if notice of (i) any optional or mandatory redemption, (ii) any conversion from one Variable Rate Period to another or to a Fixed Rate Period has been given to the Owners of the Series 1996 Bonds pursuant to the provisions of this Indenture, or (iii) any defeasance in accordance with the provisions of Article XII has occurred, unless the Remarketing Agent has advised the Person in writing to whom the offer is made of such occurrence and the effect of the same on the rights of such Owners including, but not limited to, the rights of such Owners to tender their Series 1996 Bonds, as described in the conversion notice from the Tender Agent to the Owners of the Series 1996 Bonds.

**SECTION 3.08. MANDATORY TENDERS UPON VARIABLE RATE CONVERSION.** (a) Purchase Dates. In the case of any conversion from one Variable Rate Period to another Variable Rate Period (except a conversion between a Daily Rate Period and a Weekly Rate Period), the Series 1996 Bonds to be converted are subject to mandatory tender for purchase on the Conversion Date at the Purchase Price.

(b) Notice to Owners. Any notice of a conversion given to Bondholders pursuant to Section 2.06(j) shall, in addition to the requirements of such Section, specify (i) that the Series 1996 Bonds to be converted will be subject to mandatory tender for purchase on the Conversion Date and the time at which Series 1996 Bonds are to be tendered for purchase, and (ii) if appropriate, any requirements imposed by Section 2.06(n).

(c) Remarketing. At or before 4:00 p.m., Eastern time, on the Business Day immediately following the last day on which notices of election to tender Series 1996 Bonds may be delivered to the Tender Agent pursuant to Section 3.07 (or immediately upon receipt of such notice in the case of optional tenders of Series 1996 Bonds bearing the Daily Rate), the Tender Agent shall notify the Trustee, the Credit Provider, the Liquidity Provider and the Remarketing Agent, by telephone, telegram, telecopy, telex or other similar communication, of the aggregate principal amount of Series 1996 Bonds to be tendered for purchase on the Conversion Date or the Purchase Date. At or before 4:00 p.m., Eastern time, on the fifth Business Day immediately preceding the conversion to a Daily, Weekly or Monthly Rate Period or on the seventh calendar day (or, if such day is not a Business Day, on the next succeeding Business Day) preceding the conversion to a Quarterly Rate Period or on the fifteenth calendar day (or, if such day is not a Business Day, on the next succeeding Business Day) preceding the conversion to a Semiannual or Extended Rate Period, the Tender Agent shall notify the Trustee, the Credit Provider, the Liquidity Provider and the Remarketing Agent, by telephone, telegram, telecopy, telex or other similar communication, of the aggregate principal amount of Series 1996 Bonds to be tendered for purchase on the Conversion Date or the Purchase Date. The Remarketing Agent shall offer for sale and use its best efforts to find purchasers for the Series 1996 Bonds to be tendered. All Series 1996 Bonds shall be at all times remarketed at the Purchase Price.

**SECTION 3.09. MANDATORY TENDERS UPON EXPIRATION, SUBSTITUTION OR TERMINATION OF CREDIT FACILITY OR LIQUIDITY FACILITY.** (a) Purchase Dates. Prior to the Fixed Rate Conversion Date of the Series 1996 Bonds, the Series 1996 Bonds shall be subject to mandatory tender for purchase at the Purchase Price:

(i) on a Business Day which is at least five days prior to the date on which the Credit Facility or Liquidity Facility is to be canceled in connection with replacement by an Alternate Credit Facility pursuant to Section 13.03 or an Alternate Liquidity Facility pursuant to Section 13.06, as the case may be; or

(ii) on a Business Day which is at least five days prior to a termination or expiration of the Credit Facility or the Liquidity Facility, including a Termination Event (as defined in the Initial Liquidity Facility) described in a Termination Notice delivered pursuant to Section 2.03 of the Initial Liquidity Facility.

(b) [RESERVED]

(c) Notice to Owners. Notice of mandatory tender of Series 1996 Bonds shall be given by mail by the Bond Registrar at the direction of the Trustee to the Owners of said Series 1996 Bonds by first class mail not less than thirty (30) days prior to the mandatory tender date. A copy of such notice shall be sent to the Authority and the Trustee. Notice having been so given, such mandatory tender shall occur on the date provided in such notice whether or not an Alternate Credit Facility or Liquidity Facility, as the case may be, is provided after such initial notice has been given.

(d) Remarketing. On the Business Day on which the first notice is mailed pursuant to 3.09(c), the Trustee shall notify the Tender Agent and the Remarketing Agent by telephone, telegram, telecopy, telex or other similar communication of the aggregate principal amount of Series 1996 Bonds to be tendered for purchase on the mandatory tender date.

The Remarketing Agent shall offer for sale at par and use its best efforts to find purchasers for the Series 1996 Bonds to be tendered pursuant to Section 3.09(a) and advise them whether the Credit Facility or the Liquidity Facility will be replaced. In the case of replacement of the Credit Facility or Liquidity Facility, the Remarketing Agent shall inform prospective purchasers of the identity of the new Credit Provider or Liquidity Provider and the ratings to be in effect on the Series 1996 Bonds following such replacement. All Series 1996 Bonds shall be at all times remarketed at the Purchase Price.

**SECTION 3.10. PURCHASE OF TENDERED SERIES 1996 BONDS.** (a) Notices. At or before 3:30 p.m., Eastern time, on the Business Day immediately preceding the Purchase Date (or 11:00 a.m., Eastern time, on the Purchase Date in the case of Series 1996 Bonds bearing interest at Daily Rates), the Remarketing Agent shall give notice by telephone, telegram, telecopy, telex or other similar communication to the Trustee of the principal amount of tendered Series 1996 Bonds which have been remarketed and of the names, addresses and taxpayer identification numbers of the purchasers and the denominations of remarketed Series 1996 Bonds to be delivered to each purchaser. On the Purchase Date, the Trustee shall draw on the Liquidity

Facility to the extent necessary to timely pay the Purchase Price with regard to the Series 1996 Bonds for which remarketing proceeds (other than proceeds of sale to the Authority) have not been paid to the Trustee. In the case of the Initial Liquidity Facility, such draw shall be made not later than 11:30 a.m., New York City time, on the Purchase Date. In the event that the Trustee does not receive from the Remarketing Agent the notice described in this Section, on the Purchase Date the Trustee shall draw on the Liquidity Facility to the extent necessary to timely pay the Purchase Price of all Series 1996 Bonds subject to tender for purchase on such Purchase Date. In the case of the Initial Liquidity Facility, such draw shall be made not later than 11:30a.m., New York City time, on the Purchase Date.

(b) Sources of Payment. The Remarketing Agent shall pay to the Trustee, on the Purchase Date, all amounts representing proceeds of the remarketing of tendered Series 1996 Bonds, such payments to be made in the manner and at the time specified in Sections 3.07(d), 3.08(c), 3.09(d), 3.10(d) and 3.12(c), as applicable. All such proceeds, the proceeds of a draw upon the Liquidity Facility and all other Eligible Funds shall be held by the Trustee in trust in a separate segregated account. The Liquidity Provider has agreed under the Liquidity Facility to pay, on or before 3:30 p.m., Eastern time, on the Purchase Date, the Purchase Price to the Trustee of such Series 1996 Bonds that have not been remarketed.

(c) Payments by the Trustee. Before 4:00 p.m., Eastern time, on the Purchase Date and upon receipt by the Trustee of 100% of the aggregate Purchase Price of the tendered Series 1996 Bonds, the Trustee shall pay the Purchase Price of such Series 1996 Bonds to the Owners thereof (or as otherwise provided in Section 3.07) at its principal office or by bank wire transfer. Such payments shall be made in immediately available funds. Payments of such Purchase Price are to be made from the following sources in the order of priority indicated:

(i) The proceeds of the sale of the Series 1996 Bonds which have been remarketed by the Remarketing Agent (other than proceeds of a sale of the Series 1996 Bonds to the Authority); and

(ii) The proceeds of the sale of the Series 1996 Bonds which have been purchased by the Liquidity Provider pursuant to the Liquidity Facility or other proceeds received under or pursuant to a Liquidity Facility;

(iii) Moneys paid by the Authority for such purpose that are Eligible Funds;  
and

(iv) Other moneys paid by the Authority for such purpose.

(d) Registration and Delivery of Tendered or Purchased Series 1996 Bonds. (i) Subject to the requirements of clauses (ii) and (iii) immediately below, on the Purchase Date, the Bond Registrar shall register and deliver (or hold) all Series 1996 Bonds purchased on any Purchase Date as follows:

(1) Series 1996 Bonds purchased or remarketed by the Remarketing Agent shall be registered in accordance with the instructions of the Remarketing Agent and made available for delivery to the Remarketing Agent; and

(2) Series 1996 Bonds purchased with funds made available under or pursuant to the Liquidity Facility shall be registered in the name of the Liquidity Provider or its nominee and shall be delivered to or to the order of the Liquidity Provider in accordance with the provisions of the Liquidity Facility. While so registered, such Series 1996 Bonds shall constitute Provider Bonds.

(ii) While the DTC Book-Entry Only System is in effect for the Series 1996 Bonds, the Trustee shall deliver Series 1996 Bonds purchased or remarketed by the Remarketing Agent by transfer of beneficial ownership of such Series 1996 Bonds on the registration books of DTC to or upon the order of the Remarketing Agent.

(iii) While the DTC Book-Entry Only System is in effect for the Series 1996 Bonds, the Trustee shall identify Series 1996 Bonds purchased with funds made available under or pursuant to the Liquidity Facility on its registration books as Provider Bonds. The Trustee shall withdraw Provider Bonds from the DTC Book-Entry Only System and shall prepare and authenticate physical Series 1996 Bonds representing such Provider Bonds. While the DTC Book-Entry Only System is in effect for the Series 1996 Bonds, in the event that Provider Bonds are subsequently remarketed pursuant to the terms of this Article III and the Liquidity Facility, the Trustee shall take such action as shall be necessary to reinstate the DTC Book-Entry Only System for such Series 1996 Bonds and shall transfer beneficial ownership thereof on the books of DTC to or upon the order of the Remarketing Agent.

(e) Delivery of Series 1996 Bonds; Effect of Failure to Surrender Series 1996 Bonds.

(i) All Series 1996 Bonds to be purchased on any date shall be required to be delivered to the designated corporate trust office of the Tender Agent at or before 11:30 a.m., Eastern time, on the Purchase Date, except that Series 1996 Bonds bearing interest at Semiannual or Extended Rates being tendered for purchase at the election of the Owner pursuant to Section 3.07 shall be delivered to the designated corporate trust office of the Tender Agent along with the notice of tender.

(ii) If the Owner of any Series 1996 Bond (or portion thereof) that is subject to purchase pursuant to this Article III fails to surrender such Series 1996 Bond to the Tender Agent for purchase on the Purchase Date, and if the Trustee is in receipt of the Purchase Price therefor, such Series 1996 Bond (or portion thereof) shall nevertheless be deemed purchased on the Purchase Date and ownership of such Series 1996 Bond (or portion thereof) shall be transferred to the purchaser thereof as provided in subsection (d) of this Section 3.10. Any Owner who fails to deliver a Series 1996 Bond for purchase as required above shall have no further rights thereunder except the right to receive the Purchase Price thereof upon presentation and surrender of said Series 1996 Bond to the Tender Agent. The Tender Agent shall promptly notify the Trustee of any such failure to deliver a Series 1996 Bond to the Tender Agent, and the Trustee shall be entitled to conclusively rely on such notification.

(f) Investment of Funds. All money held by the Trustee for the payment of the Purchase Price of Series 1996 Bonds from whatever source derived, including remarketing proceeds and draws upon the Liquidity Facility, shall be held in a separate segregated account

and shall be held uninvested or invested at the written direction of the Authority in Government Obligations with overnight maturities.

(g) Exception for Bonds Owned by Authority. Notwithstanding anything in this Agreement to the contrary, the Initial Liquidity Provider shall not be required to purchase Series 1996 Bonds subject to optional or mandatory tender for purchase under this Indenture that are beneficially held (or held in certificated form) by or on behalf of the Authority or any affiliate of the Authority.

**SECTION 3.11. SERIES 1996 BONDS PURCHASED UNDER LIQUIDITY FACILITY.** In the event that any Series 1996 Bonds are Provider Bonds, the Remarketing Agent shall continue to offer for sale and use its best efforts to sell such Series 1996 Bonds at the Purchase Price. The Tender Agent shall deliver such Series 1996 Bonds to the Liquidity Provider or its designee which shall hold the same pending such remarketing. While the Liquidity Facility is effective, Series 1996 Bonds purchased with funds made available under the Liquidity Facility shall not be delivered upon remarketing unless the Liquidity Facility is reinstated for the principal amount of the outstanding Series 1996 Bonds and interest thereon in accordance with its terms and the Remarketing Agent, the Bond Registrar, the Tender Agent, any designee of the Liquidity Provider then holding Provider Bonds and the Trustee have been advised in writing by the Liquidity Provider that it has elected to reinstate the Liquidity Facility in full.

**SECTION 3.12. MANDATORY TENDERS UPON CONVERSION TO FIXED RATE.** (a) Purchase Date. In the case of any conversion from a Variable Rate Period to the Fixed Rate Period, the Series 1996 Bonds to be converted are subject to mandatory tender for purchase on the Conversion Date at the Purchase Price.

(b) Notice to Owners. Any notice of a conversion given to Bondholders pursuant to Section 2.06(o) shall, in addition to the requirements of such Section, specify that the Series 1996 Bonds to be converted will be subject to mandatory tender for purchase on the Conversion Date and the time at which Series 1996 Bonds are to be tendered for purchase.

(c) Remarketing. At or before 4:00 p.m., Eastern time, on the fifteenth calendar day (or, if such day is not a Business Day, on the next succeeding Business Day) preceding the conversion to a Fixed Rate Period, the Tender Agent shall notify the Trustee, the Credit Provider, the Liquidity Provider and the Remarketing Agent, by telephone, telegram, telecopy, telex or other similar communication, of the aggregate principal amount of Series 1996 Bonds to be tendered for purchase on the Conversion Date or the Purchase Date. The Remarketing Agent shall offer for sale and use its best efforts to find purchasers for the Series 1996 Bonds to be tendered.

**SECTION 3.13. INSUFFICIENT FUNDS FOR PURCHASES.** If the moneys available for purchase of Series 1996 Bonds pursuant to this Article are inadequate for the purchase of all Series 1996 Bonds which are tendered on any Purchase Date, all Series 1996 Bonds subject to such purchase shall continue to bear interest at the same rate as in effect on the day prior to the Purchase Date to the date on which the earliest of the following occurs:

- (i) The Fixed Rate Conversion Date for the Series 1996 Bonds;
- (ii) The date on which any default by the Liquidity Provider under the terms of the Liquidity Facility has been cured; or
- (iii) The fifth day after the date on which an Alternate Liquidity Facility meeting the requirements of Section 13.06 becomes effective.

If the preceding paragraph becomes applicable, (i) the Tender Agent shall immediately (but no later than the end of the next succeeding Business Day) return all tendered Series 1996 Bonds to the Owners thereof and notify all Owners of Series 1996 Bonds in writing of the interest rate to be effective pursuant to the preceding paragraph and (ii) the Trustee shall return all moneys received for the purchase of such Series 1996 Bonds to the Persons who provided such moneys.

**SECTION 3.14. BOOK-ENTRY TENDERS.** Notwithstanding any other provision of this Article III to the contrary, all tenders for purchase during any period in which the Series 1996 Bonds are registered in the name of Cede & Co. (or the nominee of any successor securities depository) shall be subject to the terms and conditions set forth in the Representation Letter and any notes and regulations promulgated by DTC.

**SECTION 3.15. DUTIES OF TRUSTEE WITH RESPECT TO PURCHASE OF SERIES 1996 BONDS.** The Trustee agrees, with respect to any optional or mandatory tender of the Series 1996 Bonds:

- (a) to hold all moneys, other than moneys delivered to it by or on behalf of the Authority for the purchase of Series 1996 Bonds, delivered to it hereunder for the purchase of Series 1996 Bonds as agent and bailee of and in escrow for the benefit of, the Person or entity which shall have so delivered such moneys until the Series 1996 Bonds purchased with such moneys shall have been delivered to or for the account of such Person or entity; and
- (b) to hold all moneys delivered to it hereunder by or on behalf of the Authority for the purchase of Series 1996 Bonds as agent and bailee of, and in escrow for the benefit of, the Owners who shall deliver Series 1996 Bonds to it for purchase until the Series 1996 Bonds purchased with such moneys shall have been delivered to or for the account of the Authority.

**SECTION 3.16. SPECIAL PROVISIONS REGARDING PROVIDER BONDS.** (a) Notwithstanding anything in this Indenture to the contrary, at any time that there shall be Provider Bonds Outstanding, (1) all such Provider Bonds shall be remarketed before any other Series 1996 Bonds are remarketed; (2) the Series 1996 Bonds shall not be converted to the Fixed Rate unless the Provider Bonds are converted simultaneously to the Fixed Rate; and (3) all such Provider Bonds shall be redeemed before any other Series 1996 Bonds are redeemed.

(b) It is understood that the Initial Liquidity Provider shall not release any Provider Bonds to the Remarketing Agent unless it is concurrently paid the principal amount of such Provider Bonds plus all interest accrued thereon at the Corporation Rate, plus any unpaid fees and expenses.

(c) Notwithstanding anything in Section 2.06 or elsewhere in this Indenture to the contrary, Provider Bonds shall bear interest at the Corporation Rate, unless the Initial Liquidity Provider shall have provided the Authority and the Trustee with written notice that an Event of Default under the Initial Liquidity Facility shall have occurred and shall then be continuing, in which event, Provider Bonds shall bear interest at the Default Rate for so long as such Event of Default shall continue. The Trustee shall be entitled to rely fully upon a certificate from the Initial Liquidity Provider as to the continuance of such Event of Default. All interest on Provider Bonds shall be computed on the basis of a year of 365 or 366 day year, as appropriate, and shall be payable on the same Interest Payment Dates as shall apply to Series 1996 Bonds that bear interest at the Weekly Rate.

## ARTICLE IV

### CONSTRUCTION FUND

**SECTION 4.01. CONSTRUCTION FUND.** A special fund is hereby created and designated “Dade County Expressway Authority Construction Fund” (herein sometimes called the “Construction Fund”) which shall be held by the Trustee and to the credit of which there shall be deposited the amounts described in Sections 2.07 and 2.08. At the option of the Authority, there may also be deposited with the Trustee for the credit of the Construction Fund, for such purposes as described in a resolution of the Authority authorizing such deposit, any moneys received by the Authority from any source, unless such moneys are required by this Indenture to be otherwise applied.

The moneys in the Construction Fund derived from the proceeds of Bonds shall be held in trust in the custody of the Trustee and applied to the payment of the Cost of a Project in accordance with this Article IV, Sections 2.07 and 2.08 and any Supplemental Indenture or to payment of such other Improvements or for such other purpose as specified in the resolution authorizing the deposit. Pending such application, such moneys shall be subject to a lien and charge in favor of the Owners of the Outstanding Bonds in the manner provided herein until paid out as herein provided. To the extent that no other funds under this Indenture shall be available to pay the principal of or interest then due on any Bonds, the Trustee shall apply amounts credited to the Construction Fund for such purpose, but only after it shall have been provided with an Opinion of Bond Counsel.

If the Authority shall issue Additional Bonds pursuant to Section 2.08, the Authority shall create and designate a special Account within the Construction Fund to which shall be deposited an amount of proceeds of such Additional Bonds as is specified in the Supplemental Indenture authorizing the issuance of such Additional Bonds.<sup>5</sup> Additional special Accounts may be created by the Authority for deposit of funds, if any, from other sources, as provided in the resolution directing such deposit. Upon the issuance of any Series of Bonds, the proceeds of which will be

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<sup>5</sup> The Third Supplemental Indenture to Amended and Restated Trust Indenture amended this sentence to read as follows:

“If the Authority shall issue Additional Bonds pursuant to Section 2.08(a)(i), the Authority shall create and designate a special Account within the Construction Fund to which shall be deposited an amount of proceeds of such Additional Bonds as is specified in the Supplemental Indenture authorizing the issuance of such Additional Bonds.”

used to pay Capitalized Interest, the Authority shall create a Subaccount in the Account in the Construction Fund for such Series to which the Capitalized Interest for such Series shall be deposited. The Trustee, upon written direction from the Authority, shall transfer amounts on deposit in said Subaccount to the appropriate Subaccount of the Interest Subaccount at the times and in the amounts directed by the Authority.

**SECTION 4.02. PAYMENTS FROM CONSTRUCTION FUND.** Payment of the Cost of a Project shall be made from the Construction Fund as herein provided. All such payments shall be subject to the provisions and restrictions set forth in this Article and the Authority covenants that it will not cause or permit to be paid from the Construction Fund any sums except in accordance with such provisions and restrictions. Moneys in the Construction Fund shall be disbursed by the Trustee, upon the filing with the Trustee by the Authority of a requisition for such disbursement in the form of Exhibit D hereto, signed by an Authorized Officer and by the Consulting Engineer. Upon receipt of each requisition prepared in accordance herewith, the Trustee shall promptly issue its check or make other arrangements to fund the disbursements as directed in the requisition from amounts on deposit in the Construction Fund in an amount equal to the amount to be paid as set forth in such requisition and to promptly pay the same to the party specified in such requisition.

**SECTION 4.03. COST OF A PROJECT.** For the purposes of this Article IV, the Cost of a Project shall include, without limitation, the following:

(a) obligations incurred for labor, materials, machinery and equipment in connection with the construction of enlargements, improvements, modifications and extensions, and for the restoration or relocation of property damaged or destroyed in connection with same and for the demolition and disposal of structures and all other obligations incurred to contractors, suppliers, materialmen, and laborers that are necessary or desirable in connection with a Project;

(b) interest accruing upon the Bonds prior to the commencement of and during construction or for any additional period if so provided, subject to any limitation, in any Series relating to such Bonds;

(c) the cost of acquiring by purchase, if such purchase shall be deemed expedient, and the amount of any award or final judgment in, or any settlement or compromise of, any proceeding to acquire by condemnation, such property, lands, rights of way, franchises, easements and other interests in lands constituting a part of, or as may be deemed necessary or convenient for the acquisition or construction of, a Project; the cost of options and partial payments thereon, the cost of filling, draining, or improving any lands so acquired, and the amount of any damages incident to or consequent upon the acquisition or construction of a Project;

(d) expenses of administration properly chargeable to a Project including legal expenses of consultants, financing charges, Trustee fees, bond counsel fees and expenses, the cost of preparing and issuing Bonds, the cost and charges of Credit Facilities and Liquidity Facilities, taxes or other municipal or governmental charges lawfully levied or assessed during construction upon a Project or any property acquired therefor, and premiums on insurance (if any) in connection with a Project during construction;



(e) fees and expenses of architects, engineers, surveyors, construction supervisors and similar professionals for making studies (including analyses of transportation alternatives, planning and environmental impact), surveys and estimates of cost and of revenue and for preparing plans and supervising construction, as well as for the performance of all other duties set forth herein in relation to the construction of a Project or the issuance of Bonds therefor;

(f) all items of cost for which the Authority is permitted to expend proceeds of indebtedness under the Act, including other items of expense not elsewhere in this Section specified, incident to the acquisition or construction and equipment of a Project and the placing of any improvements in operation and to the acquisition of real estate, franchises and rights of way therefor, including abstracts of title and title insurance;

(g) any amounts advanced by any agency of the State or federal government for any of the foregoing purposes and any obligation or expenses heretofore or hereafter incurred by the Authority for any of the foregoing purposes, including the cost of materials, supplies or equipment furnished by the Authority in connection with the construction of a Project and paid for by the Authority out of funds other than moneys in the Construction Fund, and further including any bond anticipation notes issued by the Authority in the future to pay all or any part of the cost of a Project together with interest on any such bond anticipation notes; and

(h) the cost of any other Improvements to a Project as may be approved by a Supplemental Indenture.

For purposes of this Article IV, the Cost of a Project shall also include reimbursement to the Authority for any expenditures of the Authority that otherwise would constitute a Cost of a Project.

**SECTION 4.04. MODIFICATIONS AND AMENDMENTS TO PROJECT.** The Authority may, in its sole discretion, modify or amend any Project to include such Improvements as it deems appropriate.

**SECTION 4.05. DISPOSITION OF SUMS IN THE CONSTRUCTION FUND.** When the construction of any Project shall have been completed, which fact shall be evidenced by a certificate stating the date of such completion, signed and approved by the Consulting Engineer, the balance in the Construction Fund relating to that Project not reserved for the payment of any remaining part of the Cost of such Project, or not otherwise required to be applied in any specified manner by any Supplemental Indenture relating to Bonds issued to finance that Project, shall be transferred by the Trustee, upon the written direction of the Authority, in the following order of priority: first, to the credit of the Sinking Fund to the extent of any deficiency therein, second, to the redemption of Bonds, to the extent provided for in a Supplemental Indenture authorizing the issuance of such Bonds and third, to the General Account to be applied as provided in Section 5.12, provided that prior to such transfer the Authority first obtains an Opinion of Bond Counsel.

## ARTICLE V

### REVENUE AND FUNDS

#### **SECTION 5.01. COVENANTS AS TO TOLLS, ETC.** The Authority covenants:

(a) that it will continue in effect the present schedule of Tolls for traffic using the System until such schedule shall be increased, decreased, or otherwise changed, revised or reconfigured as hereinafter provided,

(b) that it will maintain (x) any recurring revenue stream pledged pursuant to clause (d) of the Granting Clauses of this Indenture and any Supplemental Indenture as part of the Trust Estate with respect to all Bonds or a particular Series of Bonds and (y) the Tolls for traffic using the System, in each case, at such lawful levels, as shall, in the opinion of the Consulting Engineer from time to time, result in producing Revenues sufficient in each Fiscal Year to provide an amount of Net Revenues in each Fiscal Year equal to not less than the greater of (i) one hundred twenty per centum (120%) of the Principal and Interest Requirements for such Fiscal Year on account of all Bonds then Outstanding and (ii) one hundred percent (100%) of the sum in such Fiscal Year of (A) any deficiency in the Debt Service Reserve Fund Requirement applicable to all Bonds then Outstanding and any amount scheduled to become due and payable to a Reserve Facility Provider in such Fiscal Year as a result of a draw or claim upon a Reserve Facility issued by such Reserve Facility Provider, (B) the Principal and Interest Requirements for such Fiscal Year on account of all Bonds Outstanding, (C) the deposits to the Renewal and Replacement Account for such Fiscal Year required by the provisions of Section 5.06(c), and (D) the amount required to pay any current or past due Annual Repayment Requirements due the Department under Section 5.12. Notwithstanding the foregoing, Net Revenues in each such Fiscal Year, without regard to any amounts transferred or to be transferred from the Rate Stabilization Account to the Revenue Fund, shall be equal to not less than one hundred per centum (100%) of the Principal and Interest Requirements for such Fiscal Year on account of all Bonds then Outstanding.

(c) that on or before January 1 and July 1 of each Fiscal Year, commencing with the Fiscal Year ending June 30, 1998, it will review its financial condition and estimate and determine whether Net Revenues for such year are reasonably expected to be sufficient to enable the Authority to comply with subsection (b) above and file with the Trustee a copy of its resolution making such determination ("Determination"). If the Determination evidences the Authority's determination that Net Revenues are or are anticipated to be inadequate to comply with subsection (b) above, the Authority will forthwith request the Consulting Engineer to make its recommendations to the Authority, in writing, with a copy to the Trustee, as to a revision of the schedule of Tolls, rates, fees, rentals and other charges and any changes in methods of operation to provide sufficient Net Revenues to enable the Authority to comply with subsection (b) above.

Anything in this Indenture to the contrary notwithstanding, if the Authority shall comply with all recommendations of the Consulting Engineer on or before the expiration of eight months from the date of filing the Determination with the Trustee, the failure to meet the requirements of said subsection (b) in any Fiscal Year shall not, in and of itself, constitute an Event of Default.

(d) Notwithstanding anything in this Indenture to the contrary, (i) the Authority may remove Tolls when necessary for public safety or otherwise in an emergency situation and (ii) the Authority may relocate Toll collection facilities and may replace two-way Tolls with one-way Tolls so long as it remains in compliance with the provisions of this Indenture, including particularly this Section 5.01.

Notwithstanding any of the foregoing provisions of this Section 5.01, agreements and contracts for the operation and maintenance of the System in effect on the date of this Indenture shall not be subject to revisions except in accordance with their terms, and the Authority may enter into new agreements or contracts for the operation and maintenance of the System on such terms and for such periods of time as it shall determine to be proper.

The covenant set forth in subsection (b) above shall not be applicable to any principal and interest requirement attributable to any notes issued in anticipation of Bonds to be issued under this Indenture unless such notes are issued as Bonds hereunder.

The Authority further covenants that upon its making any request to the Consulting Engineer for its recommendations as to a revision of the schedules of Tolls or upon the receipt of any such recommendations from the Consulting Engineer or upon the adoption by the Authority of any revised schedule of Tolls, certified copies of any such request, recommendations or revised schedule of Tolls so adopted will forthwith be filed with the Trustee and mailed by the Authority to all Bondholders who shall have filed their names and addresses with the Secretary of the Authority for such purpose.

**SECTION 5.02. UNIFORMITY OF TOLLS.** The Authority covenants that Tolls will be classified in a reasonable way to cover all traffic, so that the Tolls may be uniform in application to all traffic falling within any reasonable class regardless of the status or character of any Person, firm or corporation participating in the traffic, and that no reduced rate of Toll will be allowed within any such class except that provision may be made for the use of commutation or other tickets or privileges based upon frequency or volume. The Authority further covenants that no free vehicular passage will be permitted over the tolled sections of the System except to vehicles of members, employees and contractors of the Authority, the Department, any fire or police department or other governmental entity whose duties affect public safety, but in each case only on official acts of business, and except as may otherwise be required Section 338.155, Florida Statutes, as amended, any successor provision thereto and any by any other applicable law.

**SECTION 5.03. ANNUAL INSPECTION OF SYSTEM.** The Authority covenants that, commencing with the Fiscal Year ending June 30, 1998, it will cause the Consulting Engineer employed by it under the provisions of Section 7.05, among such other duties as may be imposed upon them by the Authority or by this Indenture, to make an inspection of the System at least once in each year and, on or before the 1st day of January in each Fiscal Year, to submit to the Authority a report setting forth with respect to the System (a) their findings whether the System has been maintained in good repair, working order and condition and (b) their recommendations as to the proper maintenance, repair and operation of the System during the ensuing Fiscal Year. In lieu of performing such inspection with respect to the entire System and in the preparation of such report, with the prior written approval of an Authorized Officer,

the Consulting Engineer may rely on inspections with respect to portions of the System conducted by or for the Department and on reports prepared by or for the Department.

Promptly after the receipt of such reports by the Authority, copies thereof shall be filed with the Trustee and mailed by the Authority to all Bondholders who shall have filed their names and addresses with the Secretary of the Authority for such purposes.

The Authority further covenants that, if any such report of the Consulting Engineer shall set forth that the System has not been maintained in good repair, working order and condition, it will, promptly restore the System to good repair, working order and condition with all expedition practicable in accordance with the recommendations of the Consulting Engineer.

**SECTION 5.04. ANNUAL BUDGET.** The Authority covenants, that commencing in the Fiscal Year ending on June 30, 1998, on or before the 20th day of April in each Fiscal Year it will prepare a preliminary budget for the ensuing Fiscal Year of (i) Operation and Maintenance Expenses and (ii) the amount to be deposited to the credit of the Renewal and Replacement Fund with respect to the System for the ensuing Fiscal Year. On or before the 20th day of April in such Fiscal Year copies of each such preliminary budget shall be filed with the Trustee and mailed by the Authority to the Consulting Engineer. The Authority further covenants that it will comply with any reasonable request of the Trustee or the Consulting Engineer as to the classifications in which such budget shall be prepared, particularly with respect to the divisions into which such budget shall be divided. The Authority further covenants that on or before the 15th day of June in such Fiscal Year it will finally adopt the budget for the ensuing Fiscal Year of (i) Operation and Maintenance Expenses and (ii) the amount to be deposited to the credit of the Renewal and Replacement Fund with respect to the System for the ensuing Fiscal Year and (iii) the general purposes for which moneys held for the credit of the Renewal and Replacement Fund shall be appropriated. On or before the 20th day of June in such Fiscal Year copies of the Annual Budget shall be filed with the Trustee and mailed by the Authority to the Consulting Engineer.

If for any reason the Authority shall not have adopted the Annual Budget before the first day of any Fiscal Year, the preliminary budget for such Fiscal Year, or if there is none so approved, the Annual Budget for the preceding Fiscal Year shall, until the adoption of the Annual Budget, be deemed to be in force and shall be treated as the Annual Budget under the provisions of this Article.

The Authority may at any time adopt an amended or supplemental Annual Budget for the remainder of the then current Fiscal Year, and when so approved the Annual Budget so amended or supplemented shall be treated as the Annual Budget under the provisions of this Article. At least thirty (30) days prior to the adoption of any amended or supplemental Annual Budget, the Authority shall cause a notice of the proposed adoption of such amended or supplemental Annual Budget to be filed with the Trustee and to be mailed to the Consulting Engineer and all Bondholders who shall have filed their names and addresses with the Secretary of the Authority for such purpose. Such notice shall briefly set forth the nature of the proposed amended or supplemental Annual Budget and shall state that copies thereof are on file at the office of the Authority for inspection by all Bondholders. Copies of any such amended or supplemental Annual Budget shall be filed with the Trustee and mailed by the Authority to the Consulting

Engineer and all Bondholders who shall have filed their names and addresses with the Secretary of the Authority for such purpose.

The Authority further covenants that the Operation and Maintenance Expenses incurred in any Fiscal Year will not exceed the reasonable and necessary amount thereof, and that it will not expend any amount or incur any obligations for maintenance, repair and operation of the System in excess of the amounts provided for Operation and Maintenance Expenses in the Annual Budget, except amounts which may be paid from the Renewal and Replacement Fund or the General Fund. Nothing contained in this Section shall limit the amount the Authority may expend for Operation and Maintenance Expenses in any Fiscal Year provided any amounts expended therefor in excess of the amounts provided for Operation and Maintenance Expenses in the Annual Budget shall be received by the Authority from some source other than the Revenues, and the Authority shall not make any reimbursement therefor from Revenues.

In the event that the Authority changes its Fiscal Year, the time periods and dates specified in this Section shall be deemed to be adjusted to accommodate such change in Fiscal Year.

**SECTION 5.05. REVENUE FUND.** A special fund is hereby created and designated “Dade County Expressway Authority Revenue Fund” (herein sometimes called the “Revenue Fund”). The Authority covenants that it shall, to the extent practicable, deposit the portion of the Revenues comprised of cash Toll receipts daily into one or more special trust funds to be designated the “Dade County Expressway System Toll Collection Account” (the “Collection Account”). The Collection Account shall be established pursuant to a deposit trust agreement and maintained in one or more banks or trust companies designated by the Authority and eligible under the laws of the State to receive deposits of public funds. Expenses of administration incurred by the banks or trust companies maintaining the Collection Account shall be offset in part from time to time from investment earnings on amounts credited to the Collection Account. The Authority shall transfer or cause to be transferred all amounts credited to the Collection Account weekly, to the extent practicable, but not less often than once every two weeks, to the Trustee for deposit to the credit of the Revenue Fund. The Authority covenants further that, except as herein provided with respect to investment earnings on the Sinking Fund and as otherwise herein provided, all Revenues collected by the Authority other than cash Toll receipts will be deposited daily, to the extent practicable, but not less often than once every two weeks, with the Trustee for deposit to the credit of the Revenue Fund. The lien of this Indenture upon moneys and revenues that constitute part of the Trust Estate shall attach as soon as such moneys and revenues are collected by or on behalf of the Authority.

The moneys in the Revenue Fund shall be held by the Trustee in trust and applied upon the direction or order of an Authorized Officer to the payment of Operation and Maintenance Expenses, except the withdrawals which the Trustee is authorized to make as provided in this Article V, and, pending such application, such moneys shall be subject to a lien and charge in favor of the Owners of the Bonds issued and Outstanding hereunder and for the further security of such Owners until paid out or withdrawn as herein provided.

**SECTION 5.06. SINKING FUND; ADDITIONAL FUNDS AND ACCOUNTS.** A special fund is hereby created and designated “Dade County Expressway Authority Sinking

Fund”, herein sometimes called the “Sinking Fund”). Three other special funds are hereby created and designated, respectively, “Dade County Expressway Authority Debt Service Reserve Fund” (herein sometimes called the “Debt Service Reserve Fund”), “Dade County Expressway Authority Renewal and Replacement Fund” (herein sometimes called the “Renewal and Replacement Fund”) and “Dade County Expressway Authority General Fund” (herein sometimes called the “General Fund”). The General Fund shall consist of the General Account, the Rate Stabilization Account and the Authority Account. The moneys in the Sinking Fund, the Debt Service Reserve Fund, the Renewal and Replacement Fund and the General Fund shall be held by the Trustee in trust in each case and applied as hereinafter provided with respect to each such Fund, Account and Subaccount therein and, pending such application, shall be subject to a lien and charge in favor of the Owners of the Bonds issued and Outstanding under this Indenture and for the further security of such Owners until paid out or transferred as herein provided.

It shall be the duty of the Trustee, on or before the 25th day of each month and/or on such other Deposit Day as may be required pursuant to a Supplemental Indenture, to withdraw from the Revenue Fund and transfer an amount equal to the amount of all moneys held for the credit of the Revenue Fund on the last day of the preceding month less an amount (to be held as a reserve for Operation and Maintenance Expenses) not in excess of eight and thirty-three hundredths per centum (8.33%) of the amount shown by the Annual Budget to be necessary for Operation and Maintenance Expenses for the current Fiscal Year (or any percentage less than eight and thirty-three hundredths per centum (8.33%) as may be determined by the Authority by resolution from time to time filed with the Trustee) to the credit of the following Funds or Accounts in the following order:

(a) first, deposit to the credit of the Sinking Fund, such amount (or the entire sum so withdrawn if less than the required amount) as shall equal the sum of

(i) an amount that, together with an equal amount assumed to be deposited on one Deposit Day of each succeeding calendar month prior to the next Interest Payment Date, shall equal (as shall be estimated to equal during a Daily Rate Period or Weekly rate Period) the Interest Requirements of the Bonds payable on the next Interest Payment Date, and

(ii) an amount that, together with an equal amount assumed to be deposited on one Deposit Day of each succeeding calendar month prior to the next principal payment date (including any date established for the payment of Amortization Requirements) for the Bonds occurring within one year of the date of such deposit, shall equal the Principal Requirements of the Bonds payable on such next principal payment date (or date established for the payment of Amortization Requirements);

provided that in making such transfer to the Trustee, the Trustee shall take into account any accrued interest deposited from the proceeds of a Series of Bonds and any amounts specified in a certificate of an Authorized Officer delivered to the Trustee prior to such Deposit Day as credited to the Sinking Fund or a special Account in the Construction Fund, dedicated to pay Capitalized Interest on Bonds and anticipated to be available to pay interest on Bonds on the next Interest Payment Date; provided further, that, in making such transfer, the Trustee shall take into account any investment income realized by the Authority from the investment of moneys to the credit of the Sinking Fund and the Debt Service Reserve Fund (or any other excess in the Debt

Service Reserve Fund transferred or then transferable to the Sinking Fund pursuant to Section 5.08(b)) since the Deposit Day next preceding the Interest Payment Date last occurring prior to such Deposit Day; and provided further that, in the event the Authority has entered into any Hedge Agreement pursuant to the provisions of this Indenture, amounts shall be deposited in the Sinking Fund at such other times and/or in such other amounts or transferred to such other parties as necessary to pay the Hedge Obligations due under the Hedge Agreement on a parity with interest due on the Bonds, all in the manner described in the Supplemental Indenture authorizing the issuance of any Series of Bonds where Hedge Obligations may become payable under a Hedge Agreement. Notwithstanding the foregoing, the Authority shall remain obligated to cure any deficiency in the amount so deposited for the payment of interest on Variable Rate Bonds on or prior to the applicable Interest Payment Date, and the Trustee shall transfer from the Revenue Fund, to the extent that moneys are available therein the amount necessary to cure any such deficiency on or prior to such Interest Payment Date.

(b) second, to the credit of the Debt Service Reserve Fund, such amount, if any, remaining after the deposits under clause (a) above (or the entire balance if less than the required amount) as shall equal the Debt Service Reserve Fund Deposit Requirement;

(c) third, deposit to the credit of the Renewal and Replacement Fund an amount equal to such amount, if any, as may be necessary to make the total amount to the credit of such Fund equal to the total amount budgeted for expenditure in the then current Fiscal Year by the Authority in its Annual Budget; and

(d) finally, deposit to the credit of the General Account, the balance, if any, remaining after making the deposits under clauses (a), (b) and (c) above.

The payments and deposits required pursuant to this Section shall be cumulative and the amount of any deficiency in any month shall be added to the amount otherwise required to be paid or deposited in each month thereafter until such time as such deficiency shall have been made up.

Notwithstanding the foregoing provisions of clause (a), if there shall be to the credit of the Sinking Fund on a Deposit Day the amount required to be on deposit to the credit of such Fund on the next Interest Payment Date and the next principal payment date, no further deposit into such Fund on account of the requirements of said clause shall then be required.

As provided in this Indenture with respect to the Series 1996 Bonds and as provided in a Supplemental Indenture authorizing any other Series of Bonds, if the interest on such Bonds is payable otherwise than semiannually on January 1 and July 1 of each year or if the principal or Amortization Requirements are payable otherwise than on January 1 or July 1, then the Authority shall provide in such Supplemental Indenture for such deposits to the Funds mentioned in clauses (a) and (b) above as shall be necessary to accrue evenly and to ensure the sufficiency of the required deposits to make timely payment of the debt service on such Bonds.

**SECTION 5.07. APPLICATION OF MONEYS IN SINKING FUND.** (a) The Trustee shall, on or before the Business Day immediately preceding each Interest Payment Date, withdraw from the Sinking Fund and transfer to the Paying Agent, and the Paying Agent shall

(1) remit by mail to each Owner of Bonds the amounts required for paying the interest on such Bonds as such interest becomes due and payable and (2) set aside or deposit in trust with the Paying Agent, the amounts required for paying the principal of such Bonds as such principal becomes due and payable.

(b) Except in the case of any Bonds that constitute Variable Rate Bonds or Put Bonds, the Authority may direct the Trustee to purchase Bonds identified by the Authority prior to maturity at the most advantageous price obtainable with reasonable diligence by the Authority, such price not to exceed the principal of such Bonds. The Trustee shall pay the purchase price and the interest accrued on such Bonds to the date of settlement therefor from the Sinking Fund; provided, however, that money in the Sinking Fund may be used by the Trustee to purchase Bonds for cancellation only to the extent said moneys are in excess of the amount required for payment of the Bonds theretofore matured and the total amount of interest and principal on the Bonds scheduled to become due on the next succeeding Interest Payment Date or Principal Payment Date, respectively.

(c) In the case of Bonds secured by a Credit Facility or Liquidity Facility, amounts on deposit in the Sinking Fund may be applied as provided in the applicable Supplemental Indenture to reimburse the Credit Provider or Liquidity Provider for amounts drawn under such Credit Facility or Liquidity Facility to pay the principal or Purchase Price of and premium, if any, and interest on such Bonds, as appropriate.

**SECTION 5.08. USE OF MONEYS IN DEBT SERVICE RESERVE FUND.** (a) Moneys held for the credit of the Debt Service Reserve Fund shall be transferred to the credit of the Sinking Fund and used for the purpose of paying the principal and interest of all Bonds whenever and to the extent that the moneys held for the credit of the Sinking Fund and available moneys held for the credit of the General Fund and the Renewal and Replacement Fund shall be insufficient for such purpose. If the amount transferred from the Debt Service Reserve Fund to the Sinking Fund pursuant to the preceding paragraph shall be less than the amount required to be transferred thereunder, any amount thereafter deposited to the credit of the Debt Service Reserve Fund shall be immediately transferred to the Sinking Fund as and to the extent required to make up such deficiency.

(b) If on the Deposit Day immediately preceding each Interest Payment Date and/or principal payment date in each Fiscal Year the moneys held for the credit of the Debt Service Reserve Fund shall exceed an amount equal to the Debt Service Reserve Fund Requirement, the Trustee shall transfer such excess to the credit of the Sinking Fund.

(c) Whenever the amount on deposit in the Debt Service Reserve Fund is less than the Debt Service Reserve Fund Requirement, the Trustee shall notify the Authority of the amount of the deficiency. Upon such notification, the Trustee shall transfer from moneys held to the credit of the Revenue Fund on the Deposit Day in each month thereafter, to the credit of the Debt Service Reserve Fund an amount not less than Debt Service Reserve Fund Deposit Requirement until such deficiency is remedied.



(d) The Authority may satisfy the Debt Service Reserve Fund Requirement by the deposit of a Reserve Facility as set forth below, provided that the following provisions have been fulfilled.

(i) A surety bond or insurance policy issued to the Trustee by a company licensed to issue an insurance policy guaranteeing the timely payment of debt service on the Bonds (a “municipal bond insurer”) may be deposited in the Debt Service Reserve Fund to meet the Debt Service Reserve Fund Requirement if the claims paying ability of the issuer thereof shall be rated “AAA” or “Aaa” by S&P or Moody’s, respectively.

(ii) A surety bond or insurance policy issued to the Trustee by an entity other than a municipal bond insurer may be deposited in the Debt Service Reserve Fund to meet the Debt Service Reserve Fund Requirement if the form and substance of such instrument and the issuer thereof shall be approved by the Credit Provider.

(iii) An unconditional irrevocable letter of credit issued to the Trustee by a bank may be deposited in the Debt Service Reserve Fund to meet the Debt Service Reserve Fund Requirement if the issuer thereof is rated at least “AA” by S&P. The letter of credit shall be payable in one or more draws upon presentation by the beneficiary of a sight draft accompanied by its certificate that it then holds insufficient funds to make a required payment of principal of or interest on the Bonds. The draws shall be payable within two days of presentation of the sight draft. The letter of credit shall be for a term of not less than three years. The issuer of the letter of credit shall be required to notify the Authority and the Trustee, not later than 30 months prior to the stated expiration date of the letter of credit, as to whether such expiration date shall be extended, and if so, shall indicate the new expiration date.

If such notice indicates that the expiration date shall not be extended, the Authority shall deposit in the Debt Service Reserve Fund an amount sufficient to cause the cash or Investment Securities on deposit in the Debt Service Reserve Fund together with any other qualifying credit instruments, to equal the Debt Service Reserve Fund Requirement on all Outstanding Bonds, such deposit to be paid in equal installments on at least a semi-annual basis over the remaining term of the letter of credit, unless the Reserve Facility is replaced by a Reserve Facility meeting the requirements in any of subparagraphs (i) or (ii) above or in this subparagraph (iii). The letter of credit shall permit a draw in full not less than two weeks prior to the expiration or termination of such letter of credit if the letter of credit has not been replaced or renewed. The Trustee is directed to draw upon the letter of credit prior to its expiration or termination unless an acceptable replacement is in place or the Debt Service Reserve Fund is fully funded in its required amount.

(iv) The use of a Reserve Facility pursuant to this Section shall be subject to receipt of an opinion of counsel acceptable to the Credit Provider and in form and substance satisfactory to each as to the due authorization, execution, delivery and enforceability of such Reserve Facility in accordance with its terms, subject to applicable laws affecting creditors’ rights, generally, and, in the event the issuer of such credit instrument is not a domestic entity, an opinion of foreign counsel in form and substance satisfactory to the Credit Provider. In addition, the use of an irrevocable letter of credit shall be subject to receipt of an opinion of counsel acceptable to the Credit Provider and in form and substance satisfactory to the Credit Provider to

the effect that payments under such letter of credit would not constitute avoidable preferences under Section 547 of the U.S. Bankruptcy Code or similar state laws with avoidable preference provisions in the event of the filing of a petition for relief under the U.S. Bankruptcy Code or similar state laws by or against the Authority (or any other account party under such letter of credit).

(v) The obligation to reimburse a Reserve Facility Provider for any fees, expenses, claims or draws upon such Reserve Facility shall be subordinate to the payment of the principal and interest on the Bonds. Subject to the second succeeding sentence, the right of a Reserve Facility Provider to payment for or reimbursement of claims or draws on a Reserve Facility and its fees and expenses (including all Policy Costs in the case of the Initial Reserve Facility) shall be prior to cash replenishment of the Debt Service Reserve Fund. The Reserve Facility shall provide for a revolving feature under which the amount available thereunder will be reinstated to the extent of any reimbursement of draws or claims paid. If the revolving feature is suspended or terminated for any reason, the right of the Reserve Facility Provider to reimbursement will be further subordinated to cash replenishment of the Debt Service Reserve Fund to an amount equal to the difference between the full original amount available under the Reserve Facility and the amount then available for further draws or claims. If (A) the Reserve Facility Provider becomes insolvent, (B) the issuer of the Reserve Facility defaults in its payment obligations thereunder, (C) the claims-paying ability of the Reserve Facility Provider of an insurance policy or surety bond falls below a S&P “AAA” or a Moody’s “Aaa”, or (D) the rating of the Reserve Facility Provider of a letter of credit falls below a S&P “AA”, the obligation to reimburse such Reserve Facility Provider shall be subordinate to the cash replenishment of the Debt Service Reserve Fund.

(vi) If (A) the revolving reinstatement feature described in the preceding subparagraph is suspended or terminated, (B) the rating of the claims paying ability of the Reserve Facility Provider of the surety bond or insurance policy falls below a S&P “AAA” or a Moody’s “Aaa”, or (C) the rating of the rating of the Reserve Facility Provider of the letter of credit falls below a S&P “AA”, the Authority shall either (D) deposit into the Debt Service Reserve Fund an amount sufficient to cause the cash or Investment Securities on deposit in the Debt Service Reserve Fund to equal the Debt Service Reserve Fund Requirement on all Outstanding Bonds, such amount to be paid over the ensuing five years in equal installments deposited at least semi-annually or (E) replace such instrument with a surety bond, insurance policy or letter of credit meeting the requirements in any of subparagraphs (i), (ii) or (iii) above within six months of such occurrence. In the event (F) the rating of the claims paying ability of the Reserve Facility Provider of the surety bond or insurance policy falls below a S&P or Moody’s “A”, (G) the rating of the Reserve Facility Provider of the letter of credit falls below a S&P or Moody’s “A”, (H) the Reserve Facility Provider defaults in its payment obligations or (I) the Reserve Facility Provider becomes insolvent, the Authority shall either deposit into the Debt Service Reserve Fund an amount sufficient to cause the cash or Investment Securities on deposit in the Debt Service Reserve Fund to equal the Debt Service Reserve Fund Requirement on all Outstanding Bonds, such amount to be paid over the ensuing year in equal installments on at least a monthly basis or replace such instrument with a surety bond, insurance policy or letter of credit meeting the requirements in any of subparagraphs (i), (ii) or (iii) above within six months of such occurrence.

(vii) Where applicable, the amount available for draws or claims under the Reserve Facility may be reduced by the amount of cash or Investment Securities deposited in the Debt Service Reserve Fund pursuant to the last sentence of the preceding subparagraph (vi).

(viii) The Trustee shall ascertain the necessity for a claim or draw upon the Reserve Facility and shall provide notice to the Reserve Facility Provider in accordance with its terms not later than three days (or such longer period as may be necessary depending on the permitted time period for honoring a draw under the Reserve Facility) prior to each Interest Payment Date. In the case of the Initial Reserve Facility, such notice shall be provided at least two Business Days prior to each Interest Payment Date.

(ix) Cash on deposit in the Debt Service Reserve Fund shall be used (or Investment Securities purchased with such cash shall be liquidated and the proceeds applied as required) prior to any drawing on any Reserve Facility. If and to the extent that more than one Reserve Facility is deposited in the Debt Service Reserve Fund, drawings thereunder and repayments of costs associated therewith shall be made on a pro rata basis, calculated by reference to the maximum amounts available thereunder.

(x) The Trustee shall have no responsibility to monitor the rating of any Reserve Facility Provider.

(xi) As security for the obligations of the Authority under the Series 1996 Debt Service Reserve Fund Policy Agreement, the Authority hereby grants to the Initial Reserve Facility Provider a lien on and security interest in the Net Revenues subordinate only to the funding requirements with respect to the Principal and Interest Requirements on Bonds established under this Indenture pursuant to Section 5.06(a). In the event that the Authority shall fail to repay any Policy Costs when due under the Series 1996 Debt Service Reserve Fund Policy Agreement, the Initial Reserve Facility Provider shall be entitled to exercise any and all remedies available at law, including but not limited to the right to bring an action against the Trustee or the Authority for specific performance, other than (i) acceleration of the maturity of the Bonds, or (ii) remedies which would adversely affect Bondholders.<sup>6</sup>

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<sup>6</sup> The Sixth Supplemental Indenture to Amended and Restated Indenture added the following new clause (xii) at the conclusion thereof as follows:

(xii) Notwithstanding anything in this Indenture to the contrary:

(A) the Authority may satisfy any incremental increase in the Debt Service Reserve Fund Requirement resulting from the issuance of Bonds after June 30, 2010 with a Reserve Facility if the Reserve Facility Provider of such Reserve Facility has a long-term credit rating of not less than "A1/A+" from Moody's and S&P respectively at the time of deposit of such Reserve Facility into the Debt Service Reserve Fund.

(B) if (1) such a Reserve Facility Provider becomes insolvent or defaults in its payment obligations on its Reserve Facility, or (2) the long-term credit rating of such Reserve Facility Provider falls below a Moody's "A2" or an S&P "A", the obligation to reimburse such Reserve Facility Provider shall be subordinate to the cash replenishment of the Debt Service Reserve Fund.

(C) if (1) the revolving reinstatement feature of such a Reserve Facility described in clause (d)(v) of this Section is suspended or terminated, (2) the long-term credit rating of the Reserve Facility Provider of such Reserve Facility falls below a Moody's "A-2" or an S&P "A"

**SECTION 5.09. USE OF MONEYS IN RENEWAL AND REPLACEMENT FUND.**

Except as hereinafter provided in this Section, moneys held for the credit of the Renewal and Replacement Fund shall be disbursed only for the purpose of paying the cost of

- (a) unusual or extraordinary maintenance or repairs, maintenance or repairs not recurring annually, and renewals and replacements, including major items of equipment,
- (b) repairs or replacements resulting from an emergency caused by some extraordinary occurrence, so characterized by a certificate signed by an Authorized Officer, approved by the Consulting Engineer and filed with the Trustee stating that the moneys in the Revenue Fund and insurance proceeds, if any, available therefor are insufficient to meet such emergency, and
- (c) paying all or any part of the cost of any System Improvements.

Notwithstanding the foregoing, so long as the Authority shall remain obligated to pay the Annual Repayment Requirements to the Department and whenever the Authority shall otherwise be legally or contractually obligated to pay any other moneys from the General Fund to the Department, the Authority may expend moneys credited to the Renewal and Replacement Fund pursuant to clause (c) of the preceding sentence only with the prior written approval of the Department.

Disbursements by the Trustee from the Renewal and Replacement Fund shall be made in accordance with the provisions of Section 4.02 for payments from the Construction Fund to the extent that such provisions may be applicable.

If at any time the moneys held for the credit of the General Fund and Sinking Fund shall be insufficient for the purpose of paying the principal of and interest on all the Bonds as such principal and interest become due and payable, then the Trustee shall transfer from any unencumbered moneys held for the credit of the Renewal and Replacement Fund to the credit of the Sinking Fund an amount sufficient to make up any such deficiency.

The Trustee shall from time to time transfer any moneys from the Renewal and Replacement Fund to the credit of the Revenue Fund upon the receipt of a written statement of

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or is withdrawn or suspended, or (3) such Reserve Facility Provider becomes insolvent or defaults in its payment obligations on its Reserve Facility, the Authority shall either deposit into the Debt Service Reserve Fund an amount sufficient to cause the cash or Investment Securities on deposit in the Debt Service Reserve Fund to equal the Debt Service Reserve Fund Requirement on all Outstanding Bonds, such amount to be paid over the ensuing three years in equal installments deposited at least semi-annually or replace such instrument with a surety bond, insurance policy or letter of credit meeting the requirements of this clause (xii) above within six months of such occurrence.

(D) To the extent not inconsistent with this clause (xii), the requirements of this Indenture, including particularly Section 5.08(d), applicable to the Reserve Facilities shall apply to Reserve Facilities acquired to satisfy any incremental increase in the Debt Service Reserve Fund Requirement resulting from the issuance of Bonds after June 30, 2010.

an Authorized Officer directing such transfer and certifying that the amount so to be transferred is no longer required for the purposes of the Renewal and Replacement Fund.

**SECTION 5.10. [RESERVED]**

**SECTION 5.11. [RESERVED]**

**SECTION 5.12. USE OF MONEYS IN GENERAL FUND.** At the written direction of the Authority, the Trustee shall apply, transfer or pay moneys held to the credit of the General Account as follows: (i) first, (a) to the payment of the scheduled debt service payments required to be made by the Authority to the Department under such State Infrastructure Bank Loan Agreements as may then be in effect between the Authority and the Department, and then, (b) if any portion of the then current Non-contingent Portion of Annual Repayment Requirements or any portion of the Non-contingent Portion of Annual Repayment Requirements from prior Fiscal Years remain unpaid, to pay to the Department to the extent moneys are available in the General Account \$2,000,000 per Fiscal Year (or the remaining balance if less than \$2,000,000) toward the unpaid portion of the Non-contingent Portion of Annual Repayment Requirements and the Non-contingent Portion of Annual Repayment Requirements from prior Fiscal Years that remains unpaid until the same has been paid in full; (ii) second, through the end of the Fiscal Year ending on June 30, 2001 to transfer to the Authority Account the next \$1,000,000 available in the General Account per Fiscal Year; (iii) third, if any portion of the Contingent Portion of Annual Repayment Requirements remains unpaid, to pay to the Department the unpaid portion of the Contingent Portion of Annual Repayment Requirements; (iv) fourth, to transfer to the Rate Stabilization Account such amount as may be set forth in a certificate delivered by an Authorized Officer to the Trustee from time to time, and (v) fifth, to transfer to the Authority Account the balance.

The Authority may apply or cause to be applied moneys held for the credit of the Rate Stabilization Account, upon the written direction of an Authorized Officer at such times and in such amounts as shall be set forth in such written direction, for transfer to the Revenue Fund. The Trustee shall also transfer moneys held for the credit of the Rate Stabilization Account to the Revenue Fund to the extent necessary to avoid a deficiency in the required deposits thereto and the required payments therefrom.

The Authority may apply or cause to be applied moneys credited to the Authority Account for any lawful purpose of the Authority, including, but not limited to, the payment of rebate, payments due to Credit Providers, Liquidity Providers and Reserve Facility Providers and Hedge Charges.

Notwithstanding the foregoing, if moneys held for the credit of the Sinking Fund shall be insufficient to pay the principal of and interest on all Bonds at the time such interest and principal income become due and payable, the Trustee shall transfer from any moneys held to the credit of the General Fund for deposit to the credit of the Sinking Fund an amount equal to such deficiency.

The Authority covenants that it shall direct the Trustee to make the transfers described above in such a manner so that the Authority shall remain at all times in full compliance with the terms of the Transfer Agreement.

**SECTION 5.13. MONEYS SET ASIDE TO BE HELD IN TRUST.** All moneys that the Trustee shall have withdrawn from the Sinking Fund or shall have received from any other source and set aside, or deposited with the Bond Registrar or Paying Agents, for the purpose of paying any of the Bonds hereby secured at the maturity thereof shall be held in trust for the respective Owners of such Bonds. But any moneys that shall be so set aside or deposited and that shall remain unclaimed by the Owners of such Bonds for the period of two (2) years after the date on which such Bonds shall have become due and payable shall upon request in writing be paid to the Authority or to such officer, board or body as may then be entitled by law to receive the same, and thereafter the Owners of such Bonds shall look only to the Authority or to such officer, board or body, as the case may be, for payment and then only to the extent of the amounts so received without any interest thereon, and the Trustee, the Bond Registrar, the Trustee and the Paying Agent shall have no responsibility with respect to such moneys.

**SECTION 5.14. CANCELLATION OF BONDS.** Except as otherwise provided herein or in a Supplemental Indenture, all Bonds paid or purchased, either at or before maturity, shall be canceled upon the payment or purchase of such Bonds and shall be delivered to the Bond Registrar when such payment or purchase is made. All Bonds canceled under any of the provisions of this Indenture shall be destroyed by the Bond Registrar, and the Bond Registrar shall execute a certificate of destruction in triplicate describing the Bonds so destroyed. One executed certificate of destruction shall be filed with the Secretary of the Authority and one with the Paying Agent and the other executed certificate shall be retained by the Bond Registrar.

**SECTION 5.15. SEPARATE ACCOUNTS.** The moneys required to be accounted for in each of the Funds, Accounts and Subaccounts established herein may be deposited in a single bank account, and funds allocated to the various Funds, Accounts and Subaccounts established herein may be invested in a common investment pool, provided that adequate accounting records are maintained to reflect and control the restricted allocation of the moneys on deposit therein and such investments for the various purposes of such Funds, Accounts and Subaccounts as herein provided.

The designation and establishment of the various Funds and Accounts in and by this Indenture shall not be construed to require the establishment of any completely independent, self-balancing funds as such term is commonly defined and used in governmental accounting, but rather is intended solely to constitute an earmarking of certain revenue for certain purposes and to establish certain priorities for application of such revenue as herein provided.

## ARTICLE VI

### DEPOSITARIES OF MONEYS, SECURITY FOR DEPOSITS AND INVESTMENTS OF FUNDS

**SECTION 6.01. SECURITY FOR DEPOSITS.** All moneys received by or on behalf of the Authority, subject to the provisions of this Indenture, including all such moneys delivered to the Trustee, shall be held in accordance herewith by the Trustee, or at the written direction of an Authorized Officer, shall be deposited with a Depository or Depositories. All such moneys shall be held in trust, shall be applied only in accordance with the provisions of this Indenture and shall not be subject to lien or attachment by any creditor of the Authority or Trustee except as otherwise provided in this Indenture.

All moneys held by the Trustee or a Depository hereunder in excess of the amount guaranteed by the Federal Deposit Insurance Corporation or other federal agency shall be continuously secured for the benefit of the Authority and the Owners of the Bonds in such manner as may then be provided by applicable State or federal laws or regulations regarding the security for, or granting a preference in the case of, the deposit of public funds; provided, however, that it shall not be necessary for the Paying Agent to give security for the deposits of any moneys with them for the payment of the principal of or the redemption premium or the interest on any Bonds issued hereunder or for the Authority to give security for any moneys which shall be represented by obligations purchased under the provisions of this Article as an investment of such money.

**SECTION 6.02. INVESTMENT OF MONEYS.** Moneys held for the credit of the Construction Fund, the Revenue Fund, the Sinking Fund, the Debt Service Reserve Fund, the Renewal and Replacement Fund, the General Fund and the Rebate Fund shall, as nearly as may be practicable, be continuously invested and reinvested by the Trustee, only upon written direction or telephonic direction promptly followed by written direction of an Authorized Officer to the Trustee, in Investment Securities which shall mature, or which shall be subject to redemption by the holder thereof at the option of such holder, not later than the respective dates when moneys held for the credit of said Funds and the Accounts and Subaccounts will be estimated by an Authorized Officer to be required for the purposes intended (which Investment Securities, in the case of the Debt Service Reserve Fund, shall not mature later than five years after the date of purchase). As to funds invested in Time Deposits, each such Time Deposit shall permit the moneys so placed to be available for use at the time provided above. Any and all such investments shall comply with any requirements set forth in any certificate or other instrument of the Authority with respect to preventing any Series of Bonds from being characterized as “arbitrage bonds” within the meaning of Section 148 of the Code or any successor provision thereto. The Trustee shall assume that any Investment Security in which the Authority has directed it to invest is a lawful investment for the Authority.

Investment Securities so purchased as an investment of moneys in any such Fund, Account or Subaccount shall be deemed at all times to be part of such Fund, Account or Subaccount. The interest accruing thereon and any gain realized from such investment shall be credited to, and any loss resulting from such investment shall be charged to, the respective Fund, Account or Subaccount. An Authorized Officer may direct the Trustee to sell or present for

payment or redemption any Investment Securities so acquired whenever it shall be necessary to do so in order to provide moneys to meet any payment from such Fund, Account or Subaccount. Neither the Authority, the Trustee nor any agent thereof shall be liable, or responsible, for any loss resulting from any such investment. The Trustee shall value Investment Securities credited to the Funds, Accounts and Subaccounts upon request of the Authority or the Credit Provider, but, in any event, not less often than annually, at the market value thereof, exclusive of accrued interest.

Any and all income received from the investment of moneys in the Revenue Fund and the General Fund shall be deposited upon receipt thereof in the Revenue Fund.

Any and all income received from the investment of moneys in the Accounts and Subaccounts in the Sinking Fund shall be retained in the Accounts and Subaccounts in which they are earned.

Any and all income earned on investments in the Debt Service Reserve Fund shall be transferred to the Sinking Fund; provided, however, such income in the Debt Service Reserve Fund shall be retained in Debt Service Reserve Fund in the event that amounts on deposit therein are less than the related Debt Service Reserve Fund Requirement.

Any and all income received from the investment of moneys in the Construction Fund shall remain therein until completion of the Project for which such moneys were deposited in the Construction Fund and, to the extent any excess income remains at the end of the Project, same shall be applied in the manner set forth in Section 4.05.

Any income received from the investment of moneys in the Rebate Fund shall remain therein.

## ARTICLE VII

### PARTICULAR COVENANTS

**SECTION 7.01. PAYMENT OF PRINCIPAL, INTEREST AND PREMIUM; LIMITED OBLIGATIONS.** The Authority covenants that it will promptly pay the principal of and the interest on the Bonds, and any premium required for the retirement of said Bonds by purchase or redemption, at the places, on the dates and in the manner specified herein and in said Bonds.

Except as otherwise provided in this Indenture, the principal, interest and premium on the Bonds are payable solely from the Revenues which are hereby pledged to the payment thereof and the moneys on deposit from time to time in the Funds, Accounts and Subaccounts, in the manner and to the extent hereinabove particularly specified, and nothing in the Bonds or in this Indenture shall be construed as obligating the Authority to pay the principal, the interest and premium, if any, thereon except from the Revenues and the moneys on deposit from time to time in the Funds, Accounts and Subaccounts. The Authority has no taxing power.

**SECTION 7.02. CONSTRUCTION OF A PROJECT.** The Authority covenants that it will construct or otherwise carry out each Project for which Bonds shall be issued in



accordance with this Indenture and in conformity with law and the requirements of governmental authorities having jurisdiction thereover, and that it will complete, or cause the completion of, such Projects with all expedience practicable.

The Authority further covenants that it will require each Person, firm or corporation with whom it may contract for labor or materials in connection with a Project to furnish a performance bond, in such amount, if any, as may be required under State law or as may otherwise be required by the Authorized Officer charged with responsibility for establishing the amount of such performance bond, to insure completion and performance of such contract or, in lieu thereof, to deposit with an Authorized Officer marketable securities having a market value equal to the amount of such payment and performance bond and eligible as security for the deposit of trust funds under regulations of the Board of Governors of the Federal Reserve System, and to carry such workers' compensation or employers' liability insurance and such builders' risk insurance, if any, as may be required by law. The Authority further covenants and agrees that in the event of any default under any such contract and the failure of the surety to complete the contract, it will proceed to collect under any such performance bond or securities and the proceeds of any such performance bond or securities shall forthwith, upon receipt of such proceeds, be applied toward the completion of the contract in connection with which such performance bond or securities shall have been furnished. The Authority further covenants and agrees that each such contract will also provide that payments thereunder shall not be made by the Authority in excess of such retainages as required by State law or as are established by the Authority upon the recommendation of the Consulting Engineer.

**SECTION 7.03. OPERATION OF THE SYSTEM.** The Authority covenants: (a) to establish from time to time and to enforce reasonable rules and regulations governing the use and operation of the System to the extent determined by the Authority to be necessary to provide for the safe and efficient operation of the System, (b) that all compensation, salaries, fees, wages and other amounts paid by it in connection with the maintenance, repair and operation of the System will be reasonable, (c) that no more Persons will be employed by it than are necessary, (d) that it will maintain and operate the System, or cause the System to be maintained and operated, in a safe, efficient and economical manner, (e) that it will at all times maintain the System, or cause the System to be maintained, in good repair and in sound operating condition and (f) that it will make all necessary repairs, renewals and replacements from moneys available for that purpose, or will cause the same to be made.

**SECTION 7.04. COVENANT AGAINST ENCUMBRANCES.** The Authority covenants that it will pay all taxes and assessments or other governmental charges lawfully levied or assessed upon or in respect of the System or upon any part thereof or upon any Revenues when the same shall become due and payable by the Authority. Except to the extent permitted in this Indenture, the Authority will not create or suffer to be created any lien or charge upon the System or any part thereof or upon the Revenues ranking equally with or prior to the Bonds except, to the extent provided herein with respect to the Series 1996 Bonds or in the Supplemental Indenture authorizing the issuance of any other Series of Bonds, the lien for the benefit of any Credit Provider or Liquidity Provider securing payment of the Bonds, and that, it will pay or cause to be discharged, or will make adequate provision to satisfy and discharge, within sixty days after the same shall accrue, all lawful claims and demands against the Authority for labor, materials, supplies or other objects which, if unpaid, might by law become a

lien upon the System or any part thereof or upon the Revenues; provided, however, that nothing contained in this Section 7.04 shall require the Authority to pay or cause to be discharged, or make provision for, any such lien or charge so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings.

**SECTION 7.05. RETENTION OF CONSULTING ENGINEER AND ACCOUNTANTS; APPOINTMENT OF OFFICERS.** The Authority covenants that it will, for the purpose of performing and carrying out the duties imposed on the Consulting Engineer by this Indenture, engage, as needed, an independent engineer or traffic consultants or firm or corporation of engineers or rate consultants, in each case with recognized ability and standing, and that it will, for the purpose of performing and carrying out the duties imposed on the Accountants by this Indenture, engage as needed, an independent certified public accountant or firm of certified public accountants of recognized ability and standing. The Authority covenants that it will appoint and maintain a Chairman, Vice-Chairman, Secretary and such other Authorized Officers as it deems appropriate, and delegate to such Persons the duties imposed or permitted to be imposed upon them by this Indenture.

**SECTION 7.06. INSURANCE.** To the extent available at reasonable rates, the Authority covenants that it will maintain insurance, or the Department on its behalf, will at all times maintain insurance with respect to the System, in the form of multiple peril, all risks insurance, provided by a responsible insurance company or companies licensed to and doing business in the State, in a reasonable and customary amount recommended by the Consulting Engineer. To the extent available at reasonable rates, the Authority, or the Department on its behalf, further covenants that it will at all times carry policies of insurance from a responsible insurance company or companies against loss, total or partial, of the use and occupancy of the System, or any part thereof, which will provide income to the Authority during the period of suspension of use.

Notwithstanding the foregoing provisions of this Section, the Authority may institute and maintain self insurance programs with regard to such risks as shall be consistent with the recommendations of the Consulting Engineer.

The Net Proceeds of any casualty, whether from insurance or self-insurance, shall be applied pursuant to Section 7.07. The Net Proceeds of all insurance covering loss of Revenues shall be deposited to the credit of the Revenue Fund.

**SECTION 7.07. DAMAGE, DESTRUCTION OR CONDEMNATION.** If the System or any portion thereof is destroyed or damaged by fire or other casualty, or title to, or the temporary use of the System or any portion thereof shall be taken under the exercise of the power of eminent domain, the Authority shall, within sixty days after such damage, destruction or condemnation elect, to the extent applicable, one of the two following options by written notice from an Authorized Officer of such election to the Trustee:

(a) Option A - Repair, Restoration or Replacement. Except as provided in Option B, the Authority will cause the Net Proceeds of any insurance or the Net Proceeds of any payment made in connection with a self-insurance election, or the Net Proceeds of any claim or condemnation award to be remitted to the Trustee to be applied to the prompt repair, restoration

or replacement of the System. Any such Net Proceeds received by the Trustee shall be deposited in the Construction Fund and applied by the Trustee toward the payment of the Cost of such repair, restoration or replacement, utilizing the same requisition process set forth in Article IV for the payment of the Cost of a Project. If the Net Proceeds are sufficient for such purpose, the balance remaining shall be transferred to the credit of the Revenue Fund. If the Net Proceeds are insufficient for such purpose, such deficiency may be supplied out of any available moneys in the General Fund, and if sums are unavailable therein, from the Revenue Fund.

(b) Option B - Redemption.

(i) In the event that the Authority has determined that its operations have not been materially adversely affected and that it is not in the best interest of the Authority to repair, restore or replace that portion of the System so damaged, destroyed or condemned, then the Authority shall not be required to comply with the provisions of subparagraph (a) set forth above and: (A) if the Net Proceeds are less than the Principal and Interest Requirements during the succeeding twelve months on all Outstanding Bonds after taking into account funds on deposit in the Sinking Fund intended to pay such Principal and Interest Requirements, such Net Proceeds shall be deposited in the Revenue Fund; or (B) if the Net Proceeds are equal to or greater than the net amount specified in clause (A), then the net amount specified shall be deposited in the Revenue Fund and the amount in excess thereof shall be applied to effect the special mandatory redemption, in part, of Outstanding Bonds in accordance with Section 3.01(b), in the case of the Series 1996 Bonds, or in accordance with such similar provisions as may apply to the redemption of other Outstanding Bonds.

(ii) In the event that the Authority has determined that the System's operations have been materially adversely affected and that it is not in the best interest of the Authority to repair, restore or replace the System, and that the Net Proceeds, together with all other sums in the Funds, Accounts and Subaccounts, are at least equal to the interest and principal remaining payable on all Outstanding Bonds as of the next Interest Payment Date that is at least 60 days after such determination, then the Authority shall not be required to comply with the provisions of subparagraph (a) set forth above and the Net Proceeds shall be applied to effect the special mandatory redemption, in whole, of Outstanding Bonds in accordance with Section 3.01(b), in the case of the Series 1996 Bonds, or in accordance with such similar provisions as may apply to the redemption of other Outstanding Bonds.

**SECTION 7.08. USE OF REVENUES.** The Authority covenants and agrees that none of the Revenues will be used for any purpose other than as provided in this Indenture. The Authority further covenants that it will adopt such resolutions and such rules and regulations as may be necessary or appropriate to carry out the obligations of the Authority under the provisions of this Indenture.

**SECTION 7.09. [RESERVED]**

**SECTION 7.10. ENFORCEMENT OF COLLECTIONS.** The Authority will diligently enforce and collect all Tolls, fees, rentals or other charges for the services and facilities of the System and take all steps, actions and proceedings for the enforcement and collection of

such Tolls, fees, rentals and other charges which shall become delinquent to the full extent permitted or authorized by the laws of the State.

**SECTION 7.11. RECORDS, ACCOUNTS AND AUDITS.** (a) The Authority covenants that it will keep accurate records and accounts of all expenditures relating to the Authority, of the Revenues, the application of Revenues and the number and class of vehicles using the System. All expenditures must be accounted for by proper invoices or approved charge documents prior to any such expenditure.

(b) The Authority further covenants that at least quarterly it will cause to be filed with the Trustee a report signed by the Chairman or Vice-Chairman and the Executive Director or his designee setting forth financial statements prepared in accordance with generally accepted accounting principles applicable to the operations of the Authority: (a) for all months of the current Fiscal Year including the month in which said report is given; and (b) for the same months of the preceding Fiscal Year.

(c) The Authority further covenants that it will, at the end of each Fiscal Year, prepare financial statements in accordance with generally accepted accounting principles applicable to operations of the Authority and that it will cause an audit of the financial statements to be made by the Accountant. Such audit will be conducted in accordance with generally accepted auditing standards applicable to operations of the Authority. The audit will be completed within one hundred eighty days after the end of the Fiscal Year. Within a reasonable time thereafter reports of such audit and copies of each report shall be filed with the Trustee and copies of such reports shall be mailed by the Authority to the Consulting Engineer. The scope of the Accountant's audit will be sufficient to enable it to report as to compliance by the Authority with the rate covenant of this Indenture and any material non-compliance by the Authority of the conditions and covenants under this Indenture.

(d) The Authority further covenants that it will cause any additional reports relating to the Authority to be made as required by law.

(e) All of the reports described in clauses (a) through (d) of this Section shall be made available by the Authority to any Bondholder that requests same.

(f) Commencing with the Fiscal Year ending on June 30, 1998, the Authority shall provide or cause to be provided to the Credit Provider the following information:

(i) Not later than 10 days prior to the commencement of each Fiscal Year, the Annual Budget for such Fiscal Year;

(ii) Within 180 days after the end of each Fiscal Year, the audited financial statements described in clause (c) of this Section, together with a statement of the amount credited to the Debt Service Reserve Fund as its last valuation, and, if not presented in such audited financial statements, a statement of the Revenues pledged to payment of Bonds in each such Fiscal Year, a statement of the number of vehicles using the Toll facilities of the System during such Fiscal Year broken down by class of user and a schedule of Toll rates in effect for all classes of vehicles, and a description of any planned Improvements or Improvements then underway;

(iii) Within 30 days after the incurrence by the Authority of any indebtedness other than the Series 1996 Bonds, including, without limitation, Additional Bonds, Refunding Bonds and Completion Bonds, a copy of the official statement or other disclosure document, if any, prepared in connection therewith;

(iv) Notice of any draw upon or deficiency due to market fluctuation in the amount, if any, credited to the Debt Service Reserve Fund;

(v) notice of the redemption, other than mandatory sinking fund redemption, of any of the Bonds, or of any advance refunding of any of the Bonds, including the principal amount, maturities and CUSIP numbers of such Bonds;

(vi) such additional information as the Credit Provider may reasonably request from time to time.

**SECTION 7.12. SALE OR DISPOSAL OF SYSTEM.** The Authority covenants that, except as permitted by this Section 7.12 and as in this Indenture otherwise permitted, it will not sell or otherwise dispose of or encumber the System or any part thereof. The Authority may, from time to time sell any machinery, fixtures, apparatus, tools, instruments or other property acquired by the Authority in connection with the System and materials used in connection therewith, if an Authorized Officer shall determine that such property is no longer needed or is no longer useful in connection with the construction or operation or maintenance of the System. The proceeds of any such sale shall be applied to the replacement of the property so sold or disposed of and any property so acquired as such replacement shall become a part of the System subject to this Indenture or such proceeds shall be deposited to the credit of the Revenue Fund. Notwithstanding the foregoing, the Authority may from time to time, upon compliance with the terms and conditions of the Transfer Agreement, permanently abandon the use of, sell or trade any property forming a part of the System, but only if there shall be filed with the Authority prior to such abandonment, sale or trade:

(a) a certificate of the Authority stating that the Authority is not then in default in the performance of any of the material covenants, conditions, agreements or provisions contained in this Indenture; and

(b) a certificate of the Consulting Engineer projecting that the Revenues for the next succeeding twelve months, after giving effect to such abandonment, sale or trade and any replacement, and after adjustment to reflect changes in the rate schedule in effect on the date of such certificate, are anticipated to be sufficient in all respects to comply with Section 5.01;

(c) a certificate of the Authority that such abandonment, sale or trade considering the use the Authority has stated it intends to make with any proceeds derived therefrom, and after consideration of all other benefits and detriments anticipated to result therefrom, will not have a material adverse impact on future Revenues, and is consistent with the Authority's business and purpose; and

(d) an Opinion of Bond Counsel.

The proceeds of any disposition authorized by the Consulting Engineer's certificate as aforescribed shall be applied as stated therein or, if not so stated, the proceeds of the sale of any property shall either be deposited by the Authority with the Trustee for deposit to the credit of the Revenue Fund, or shall be applied to the replacement of the property so sold, and any property acquired as such replacement shall become a part of the System subject to the provisions of this Indenture.

Nothing in this Section 7.12 shall limit the power of the Authority to enter into any sale, lease or lease-purchase of the System with the Department, or any other entity provided such sale, lease or lease-purchase is subject to the terms of this Indenture and in no way adversely impairs the amount, or pledge, of the Revenues and sums in the Funds and Accounts available to Bondholders as set forth herein. Nothing in this Section 7.12 shall limit the power of the Authority to enter into operating agreements with governmental or private entities, providing that such agreements are consistent with and subject to this Indenture and the Authority obtains an Opinion of Bond Counsel.

**SECTION 7.13. OTHER INDEBTEDNESS.** Nothing in this Indenture shall be construed as in any way prohibiting or limiting the power of the Authority to enter into agreements, including interest rate swaps, incur obligations, undertake indebtedness or otherwise enter into any financing transactions to the extent such agreements, obligations, indebtedness or financing transactions do not impose any lien upon the Revenues and are payable from sources other than Revenues. The foregoing shall include bond or revenue anticipation notes, including notes anticipated to be paid from proceeds of Bonds issued hereunder, and any other obligations of the Authority that are payable from funds other than Revenues.

**SECTION 7.14. INVESTMENTS AND USE OF PROCEEDS TO COMPLY WITH CODE; TAXABLE BONDS.**

(a) The Authority covenants with the Owners of each Series of Bonds (other than the Series 1996 Bonds and any other Series of Taxable Bonds), that it shall comply with the requirements of the Code necessary to maintain the exclusion of interest on the Bonds from gross income for purposes of federal income taxation, including the payment of any amount required to be rebated to the U.S. Treasury pursuant to the Code, and, in particular, that it shall not make or direct the making of any investment or other use of proceeds of such Series of Bonds (or amounts deemed to be proceeds under the Code) in any manner which would cause the interest on such Series of Bonds to be or become subject to federal income taxation, nor shall it fail to do any act which is necessary to prevent such interest from becoming subject to federal income taxation.

(b) The Authority covenants with the Owners of each Series of Bonds (other than the Series 1996 Bonds and any other Series of Taxable Bonds) that neither the Authority nor any other Person under its control or direction will make any investment or other use of the proceeds of Bonds (or amounts deemed to be proceeds under the Code) in any manner which would cause such Series of Bonds to be "private activity bonds" as that term is defined in Section 141 of the Code (or any successor provision thereto), except as to any Series so categorized at the time of issuance, and that it will comply with the requirements of the Code throughout the term of the Bonds.

(c) The Authority may, if it so elects, issue one or more Series of Taxable Bonds, the interest on which is (or may be) includable in the gross income of the Owners thereof for federal income taxation purposes, provided that the issuance thereof will not cause the interest on any other Bonds theretofore issued hereunder to be or become subject to federal income taxation.

(d) Notwithstanding anything to the contrary contained in subparagraphs (a) through (c) hereof, the Authority may, if it so elects, issue one or more Series of Bonds as “private activity bonds,” as that term is defined in Section 141 (or any successor provision thereto) of the Code and which are “qualified bonds,” as that term is defined in Section 141 (or any successor provision thereto) of the Code and, in the event it does so, the Authority covenants that it will not make or direct the making of any investment nor will it use the proceeds of any such Series in a manner which would make such Bonds not “qualified bonds.”

**SECTION 7.15. ARBITRAGE REBATE COVENANTS.** There is hereby created a Fund to be designated the “Dade County Expressway Authority Rebate Fund” which shall be held and maintained by the Trustee. Prior to the issuance of each Series of Bonds other than the Series 1996 Bonds or any other Series of Taxable Bonds, the Authority shall execute and deliver a certificate or agreement containing arbitrage rebate covenants (the “Rebate Covenants”) as to said Series of Bonds. The Authority shall make or cause to be made payments from the Rebate Fund of amounts required to be deposited therein to the United States of America in the amounts and at the times required by the Rebate Covenants. The Authority covenants for the benefit of the Bondholders that it will comply with the requirements of the Rebate Covenants. There shall be excluded from the pledge and lien of this Indenture the Rebate Fund, together with all moneys and securities from time to time held therein and all investment earnings derived therefrom. The Authority shall not be required to comply with the requirements of this Section 7.15, or with the Rebate Covenants, in the event that the Authority obtains an Opinion of Bond Counsel that: (a) such compliance is not required in order to maintain the federal income tax exemption of interest on the Bonds; and/or (b) compliance with some other requirement is necessary to maintain the federal income tax exemption of interest on the Bonds or is a permissible substitute for any deleted requirement. The Authority shall enter into a Supplemental Indenture, or amend the Rebate Covenants, as may be applicable, to reflect the deletion or substitution of any such requirement. In addition, the Authority shall not be required to comply with this Section 7.15 to the extent that any Bonds issued under this Indenture are Taxable Bonds.

**SECTION 7.16. NO COMPETING SYSTEMS.** The Authority will not acquire, construct, lease or operate, nor will it cause or authorize the acquisition, construction, lease or operation of a competing roadway, bridge or tunnel system that will traverse the same or nearly the same route as the System without first having obtained a report from the Consulting Engineer demonstrating the need for the additional roadway, bridge or tunnel and a Consulting Engineer’s certificate demonstrating that the acquisition, construction, lease or operation of the additional roadway, bridge or tunnel will not have a material adverse effect on Revenues or the Authority’s ability to pay debt service on Outstanding Bonds and that the additional roadway, bridge or tunnel is capable of being financed and operated in a fiscally sound and prudent manner.

**SECTION 7.17. [RESERVED]**

**SECTION 7.18. AGREEMENTS WITH DEPARTMENT.** The Authority covenants to diligently enforce all obligations of the Department under the Transfer Agreement, the Toll Operations and Maintenance Agreement, the Roadway Operations and Maintenance Agreement and the SunPass Agreement. The Authority covenants to perform all of its obligations under such agreements. Notwithstanding the foregoing, the Authority shall have no obligation to cause the Toll Operations and Maintenance Agreement, the Roadway Operations and Maintenance Agreement or the SunPass Agreement to remain in effect.

**SECTION 7.19. COVENANTS WITH CREDIT PROVIDERS AND LIQUIDITY PROVIDERS.** The Authority may make such covenants as it may, in its sole discretion, determine to be appropriate with any Credit Provider, Liquidity Provider or other financial institution that shall agree to provide for Bonds of any one or more Series a Credit Facility or Liquidity Facility that shall enhance the security or the value of such Bonds; provided, however, such covenants may not impair the rights of any existing Bondholders in any manner that, pursuant to Section 11.02, would require such Bondholder's consent, without first obtaining such consent.

**SECTION 7.20. CONTINUING DISCLOSURE.** The Authority agrees to enter into a Continuing Disclosure Agreement with respect to the Series 1996 Bonds and with respect to each other Series of Bonds to the extent required by law and to comply with and carry out all of the provisions of any such Continuing Disclosure Agreement. Notwithstanding any other provision hereof, failure of the Authority or the dissemination agent named therein to comply with any Continuing Disclosure Agreement shall not be considered an Event of Default; provided, however, the dissemination agent may (and, at the request of any Participating Underwriter or the Owners of at least twenty-five percent (25%) in aggregate principal amount of Outstanding Bonds, shall) or any Bondholder may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order to cause the Authority and the dissemination agent to comply with their respective obligations under this Section 7.20 and any applicable Continuing Disclosure Agreement.

To the extent there are Obligated Persons with respect to any Series of Bonds other than the Authority, the Authority shall, prior to the issuance of such Bonds, cause each Obligated Person to execute a written undertaking for the benefit of, and enforceable by, the Owners, from time to time, of such Bonds to provide with respect to each such Obligated Person an annual update of the financial information and operating data set forth in the Official Statement relating to the Bonds, annual financial statements, if any, and notices of occurrence of material events as required by Rule 15(c)2-12 of the Securities and Exchange Commission. Any Obligated Person with respect to a Series of Bonds, other than the Authority, shall be required, in the written undertaking described above, to specify, in reasonable detail, the type of financial information and operating data to be provided, the accounting principles pursuant to which financial statements will be prepared, and whether the financial statements will be audited, and the date on which the information for each preceding fiscal year will be provided, and to whom it will be provided.



## ARTICLE VIII

### CERTAIN MATTERS RELATING TO THE TRUSTEE, BOND REGISTRAR AND PAYING AGENT

**SECTION 8.01. CERTAIN MATTERS RELATING TO THE TRUSTEE, BOND REGISTRAR AND PAYING AGENT.** (a) The Trustee, Bond Registrar and Paying Agent (hereinafter sometimes referred to collectively as the “Fiduciaries”) will signify the acceptance of the duties and obligations imposed upon them by this Indenture and any other agreements with the Authority by executing and delivering to the Authority a written acceptance thereof, and by executing such acceptance, each Fiduciary shall be deemed to have accepted such duties and obligations with respect to the Bonds, upon and subject to the provisions set forth in this Article VIII.

(b) Except during the continuance of an Event of Default, (i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; (b) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. In case the Trustee has actual notice that an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in the exercise of such rights and powers, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs. The Trustee may consult with counsel, including counsel who rendered the approving opinion on the Bonds, and the written advice or opinion of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

**SECTION 8.02. RESPONSIBILITIES OF FIDUCIARIES.** The statements contained herein and in the Bonds shall be taken as the statements of the Authority and the Fiduciaries assume no responsibility for the correctness of same. The Fiduciaries make no representation as to the validity or sufficiency of this Indenture or as to the security afforded by this Indenture and each Fiduciary shall incur no liability with respect thereof. The Bond Registrar shall, however, be responsible for its representation contained in its certificate of authentication on the Bonds. The Fiduciaries shall not be under any responsibility or duty with respect to the application of any moneys paid by such Fiduciaries in accordance with the provisions of this Indenture to or upon the order of the Authority or to any other Fiduciary. The Fiduciaries shall not be under any obligation or duty to perform any act which would involve them in expense or liability or to institute or defend any suit with respect thereof, or to advance any of their own moneys, unless indemnified to their satisfaction. Subject to the provisions of the following paragraph, the Fiduciaries shall not be liable in connection with the performance of their duties hereunder except for their own negligence or willful default.

**SECTION 8.03. EVIDENCE ON WHICH FIDUCIARIES MAY ACT.** The Fiduciaries, upon receipt of any notice, resolution, request, consent, order, certificate, report, opinion, bond or other paper or document furnished to them pursuant to any provision of this

Indenture shall examine such instrument to determine whether it conforms to the requirements of this Indenture and shall be protected in acting upon any such instrument believed by them to be genuine and to have been signed or presented by the proper party or parties. Each Fiduciary may reasonably consult with counsel and certified public accounting firms, who may or may not be counsel to, or accountants for, the Authority, and the opinion of such counsel or accountants shall be full and complete authorization and protection in respect of any action taken or suffered by it under this Indenture in good faith and in accordance therewith.

Whenever a Fiduciary shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action under this Indenture, such matters (unless other evidence in respect thereof be therein specifically prescribed) may be deemed to be conclusively proved and established by a certificate of an Authorized Officer, and such certificate shall be full warrant for any action taken or suffered in good faith based thereon; but in its discretion, a Fiduciary may in lieu thereof accept other evidence of such fact or matter or may require such further or additional evidence as may seem reasonable to it.

Except as otherwise expressly provided this Indenture, any request, order, notice or other direction required or permitted to be furnished pursuant to any provision thereof by the Authority to a Fiduciary shall be sufficiently executed in the name of the Authority by an Authorized Officer.

The Trustee shall not be presumed to have knowledge of any Event of Default other than those Events of Default described in Section 9.02(a), (b) and (c), unless the Trustee receives written notice specifying such Event of Default from the Authority or the Owners of ten percent (10%) or more in aggregate principal amount of Outstanding Bonds.

**SECTION 8.04. COMPENSATION.** Prior to its appointment, each Fiduciary shall file with the Authority a negotiated schedule of anticipated fees and charges for services to be performed pursuant to this Indenture. The Authority shall pay to such Fiduciary from time to time pursuant to such schedule reasonable compensation for all services rendered, and all reasonable expenses, charges, counsel fees and expenses and other disbursements, including those of its attorneys, agents, and other Persons not regularly in its employ, incurred in and about the performance of its powers and duties under this Indenture. To the extent permitted by law, the Authority hereby agrees to indemnify each Fiduciary and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity brought by third parties, or any other expenses, fees or charges of any character or nature which it may incur or with which it may be threatened by reason of such third party threats or proceedings, except in the case of such Fiduciary's own negligence or willful default, and in connection therewith to indemnify such Fiduciary against any and all expenses, including attorneys' fees and expenses and the costs of defending any action, suit or proceeding or resisting any claim, including appellate proceedings. Notwithstanding anything in this Indenture to the contrary, no Fiduciary shall be entitled to payment from or have any claim or lien on moneys paid under a Credit Facility or a Liquidity Facility or on moneys representing the proceeds of remarketing of Bonds under Article III of this Indenture.

**SECTION 8.05. CERTAIN PERMITTED ACTS.** A Fiduciary may become the Owner of any Bonds, with the same rights it would have if it were not a Fiduciary. To the extent

permitted by law, a Fiduciary may act as Depositary for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Bondholders or to effect or aid in any reorganization growing out of the enforcement of the Bonds or this Indenture, whether or not any such committee shall represent the Owners of a majority in aggregate principal amount of the Bonds then Outstanding.

**SECTION 8.06. RESIGNATION OF TRUSTEE.** The Trustee may at any time resign and be discharged from the duties and obligations created by this Indenture by giving not less than ninety (90) days' written notice to the Authority and the Credit Provider, and sending notice thereof by first class, postage prepaid mail to the Bondholders. Such resignation shall take effect upon the date in such notice unless previously a successor Trustee shall have been appointed by the Authority or the Bondholders as provided in Sections 8.07 and 8.08, in which event such resignation shall take effect immediately on the appointment of such successor; provided that no resignation shall become effective until the appointment of a successor Trustee.

**SECTION 8.07. REMOVAL OF TRUSTEE.** The Trustee may be removed at any time with or without cause by any instrument or concurrent instruments in writing, filed with the Trustee and the Credit Provider, and signed by the Owners of a majority in principal amount of the Bonds then Outstanding or their duly authorized attorneys or legal representatives. So long as no Event of Default or an event which with notice or passage of time, or both, would become an Event of Default, shall have occurred and be continuing, the Trustee may be removed at any time with or without cause by resolution of the Authority filed with the Trustee and the Credit Provider. No removal shall become effective until the appointment of a successor Trustee. Notwithstanding anything to the contrary contained herein or in this Indenture, the Authority shall pay to the Trustee all fees, charges and expenses owing to the Trustee together with all fees and expenses (including reasonable attorneys' fees and expenses) reasonably incurred by the Trustee in connection with its removal by the Authority.

**SECTION 8.08. APPOINTMENT OF SUCCESSOR TRUSTEE.** In case at any time the Trustee shall resign or shall be removed or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or if a receiver, liquidator or conservator of the Trustee, or of its property, shall be appointed, or if any public officer shall take charge or control of the Trustee, or of its property or affairs, a successor shall be appointed by the Authority by a duly executed written instrument signed by an Authorized Officer. The Authority shall give notice of any such appointment made by it by mailing written notice of such appointment by first class mail, postage prepaid, to the Credit Provider and to the Owners of the Bonds as their names and addresses appear in the books kept by the Bond Registrar, such notice to be given within thirty (30) days after such appointment.

If in a proper case no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Section 8.08 within forty five (45) days after the Trustee shall have resigned or been removed or after a vacancy in the office of the Trustee shall have occurred, the Trustee or the Owner of any Bond may apply to any court of competent jurisdiction to appoint a successor Trustee. Said court may thereupon, after such notice, if any, as such court may deem proper, appoint a successor Trustee. The Authority shall pay the Trustee all fees and expenses, including reasonable attorneys' fees and expenses and the costs of bringing such proceedings

(including appellate proceedings) incurred by the Trustee in connection with obtaining such court appointment of a successor Trustee.

Any Trustee appointed under the provisions of this Section 8.08 shall be a subsidiary of, or under common control with, a bank with trust powers, a trust company or a national banking association with trust powers, having capital stock, surplus and undivided earnings aggregating at least \$50,000,000, if there be such a bank or trust company or national banking association willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Indenture. Any such bank or trust company shall be organized and existing under the laws of a state of the United States.

**SECTION 8.09. TRANSFER OF RIGHTS AND PROPERTY TO SUCCESSOR TRUSTEE.** Any successor Trustee appointed under this Indenture shall execute, acknowledge and deliver to its predecessor Trustee, and also to the Authority, an instrument accepting such appointment, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become fully vested with all moneys, estates, properties, rights, powers, duties and obligations of such predecessor Trustee, with like effect as if originally named as Trustee. The Trustee ceasing to act shall nevertheless, on the written request of the Authority, or of the successor Trustee, execute, acknowledge and deliver such instrument of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting and confirming in such successor Trustee all the right, title and interest of the predecessor Trustee in and to any property held by it under this Indenture, and shall pay over and assign to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Should any deed, conveyance or instrument in writing from the Authority be reasonably required by such successor Trustee for more fully and certainly vesting in and confirming to such successor Trustee any such estates, rights, power and duties, any and all such deeds, conveyances and instruments in writing shall, on request, and so far as may be authorized by law, be executed, acknowledged and delivered by the Authority.

**SECTION 8.10. MERGER OR CONSOLIDATION OF FIDUCIARY.** Any company into which any Fiduciary may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which any Fiduciary may sell or transfer all or substantially all of its corporate trust business, provided such company shall be a bank with trust powers, a trust company or a national banking association with trust powers and shall be authorized by law to perform all duties imposed upon it by this Indenture, shall be the successor to such Fiduciary without the execution or filing of any paper or the performance of any further act. Any such bank or trust company shall be organized and existing under the laws of a state of the United States.

**SECTION 8.11. ADOPTION OF AUTHENTICATION.** In case any of the Bonds contemplated to be issued under this Indenture shall have been authenticated but not delivered, any successor Bond Registrar may adopt the certificate of authentication of any predecessor Bond Registrar so authenticating such Bonds and deliver such Bonds so authenticated; and in case any of the Bonds shall not have been authenticated, any successor Bond Registrar may authenticate such Bonds in the name of, but as successor to, the predecessor Bond Registrar, or

in the name of the successor Bond Registrar; and, in all such cases, such certificate shall be given full force and effect.

**SECTION 8.12. RESIGNATION OR REMOVAL OF PAYING AGENT AND APPOINTMENT OF SUCCESSOR.** The Paying Agent may, at any time, resign and be discharged of the duties and obligations created by this Indenture by giving ninety (90) days' written notice to the Authority, the Credit Provider and the Trustee. So long as no Event of Default or an event which, with notice or passage of time, or both, would become an Event of Default, shall have occurred and be continuing, the Paying Agent may be removed at any time by an instrument filed with such Paying Agent, the Credit Provider and the Trustee and signed by an Authorized Officer. Any successor Paying Agent shall be appointed by the Authority and shall be a bank with trust powers, a trust company or a national banking association with trust powers willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Indenture. Any such bank or trust company shall be organized and existing under the laws of a state of the United States. The Authority shall give written notice of such appointment to the Credit Provider.

In the event of the resignation or removal of the Paying Agent, such Paying Agent shall pay over, assign and deliver any moneys held by it as Paying Agent to its successor, or if there be no successor, to the Trustee. In the event that for any reason there shall be a vacancy in the office of any Paying Agent, the Trustee shall act as such Paying Agent.

**SECTION 8.13. RESIGNATION AND REMOVAL OF BOND REGISTRAR AND APPOINTMENT OF SUCCESSOR.** The Bond Registrar may, at any time, resign and be discharged of the duties and obligations created by this Indenture by giving at least ninety (90) days' written notice to the Authority, the Credit Provider and the Trustee. So long as no Event of Default or an event which, with notice or passage of time, or both, would become an Event of Default, shall have occurred and be continuing, the Bond Registrar may be removed at any time by an instrument filed with such Bond Registrar, the Credit Provider and Trustee and signed by an Authorized Officer. Any successor Bond Registrar shall be appointed by the Authority and shall be a bank with trust powers, a trust company or a national banking association with trust powers willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed by this Indenture. Any such bank or trust company shall be organized and existing under the laws of a state of the United States. The Authority shall give written notice of such appointment to the Credit Provider. In the event of the resignation or removal of the Bond Registrar, such Bond Registrar shall assign and deliver the books for registration and transfer of Bonds maintained by it to its successor, or if there be no successor, to the Trustee. In the event that for any reason there shall be a vacancy in the office of any Bond Registrar, the Trustee shall act as such Bond Registrar.

## ARTICLE IX

### EVENTS OF DEFAULT; REMEDIES

**SECTION 9.01. EXTENSION OF INTEREST PAYMENT.** In case the time for the payment of interest on any Bond shall be extended by operation of law, whether or not such extension be by or with the consent of the Authority, such interest so extended shall not be entitled in case of default hereunder to the benefit or security of this Indenture except subject to the prior payment in full of the principal of all Bonds then Outstanding and of all interest the time for the payment of which shall not have been extended.

**SECTION 9.02. EVENTS OF DEFAULT.** Each of the following events is hereby declared an “Event of Default”:

(a) payment of the principal or Purchase Price of and the redemption premium, if any, on any of the Bonds shall not be made when the same shall become due and payable, either at maturity or by proceedings for redemption or otherwise; or

(b) payment of any installment of interest on any of the Bonds shall not be made when the same shall become due and payable; or

(c) redemption of Term Bonds in accordance with an Amortization Requirement shall not be made as required; or

(d) the Authority admits in writing its inability to pay its debts generally as they become due, or files a petition in bankruptcy or makes an assignment for the benefit of its creditors or consents to the appointment of a receiver or trustee for itself or for all or a substantial part of the System; or

(e) the Authority is adjudged insolvent by a court of competent jurisdiction, or is adjudged a bankrupt or a petition in bankruptcy is filed against the Authority, or an order, judgment or decree is entered by a court of competent jurisdiction appointing, without the consent of the Authority, a receiver or trustee of the Authority or of the whole or any part of its property and any of the aforesaid adjudications, orders, judgments or decrees shall not be vacated or set aside or stayed within ninety days from the date of entry thereof; or

(f) the Authority shall file a petition or answer seeking reorganization or any arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof; or

(g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Authority or of the whole or any substantial part of its property, and such custody or control shall not be terminated within ninety days from the date of assumption of such custody or control; or

(h) the Authority shall default in its obligation to duly and punctually perform any other of the material covenants, conditions, agreements and provisions contained in the Bonds or in this Indenture (other than the covenants set forth at Section 7.20) and such default shall

continue for thirty days after written notice specifying such default and requiring same to be remedied shall have been given to the Authority by the Trustee or the Owners of not less than ten percent in aggregate principal amount of the Bonds then Outstanding; or

(i) written notice shall have been received by the Authority from a Credit Provider or Liquidity Provider that an event of default has occurred under the agreement underlying a Credit Facility or Liquidity Facility.

In determining whether an Event of Default has occurred or is continuing under Section 9.02 (a), (b) or (c), no effect shall be given to payments made under a Credit Facility.

The Trustee shall provide to the Authority, the Credit Provider, the Liquidity Provider, the Reserve Facility Provider and the Remarketing Agent immediate notice of any default under Section 9.02 (a), (b) or (c) and notice of any other Event of Default known to the Trustee (as provided in Section 8.03) within 10 days after the Trustee has acquired knowledge thereof. The Trustee shall provide to the Owners of the Bonds prompt written notice of the occurrence and continuance of any Event of Default after the Trustee has acquired knowledge thereof (as provided in Section 8.03).

**SECTION 9.03. ENFORCEMENT OF REMEDIES BY TRUSTEE.** Upon the happening and continuance of any Event of Default, the Trustee, on behalf of the Owners of the Bonds, may, but shall not be obligated to, and shall, if directed by the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding and if the conditions precedent hereinafter described are satisfied, exercise all rights granted to Bondholders pursuant to this Article IX in the manner and to the extent specified in this Indenture. Neither the Bonds nor this Indenture confers any right to accelerate the maturity of any of the Bonds. The Owners of the Bonds shall have no right to enforce any remedies upon an Event of Default, except as herein provided. In the event that the Owners of a majority in aggregate principal amount of the Bonds then Outstanding shall have given to the Trustee written notice of an Event of Default on account of which a suit, action or proceeding is to be taken, have made written request of the Trustee to proceed with same, have afforded the Trustee a reasonable opportunity to institute such suit, action or proceeding in its or their name, and shall have offered to the Trustee reasonable security and indemnity against the costs, expenses and liabilities, including attorneys' fees and expenses, that may be incurred in connection therewith, the foregoing written notifications, requests and offers of indemnity being conditions precedent to the obligation of the Trustee to pursue any remedy hereunder, and notwithstanding compliance with such conditions precedent the Trustee shall have refused or neglected to comply with such request within a reasonable time, then any Owner of the Bonds may institute any suit, action, mandamus or other proceeding in equity or at law for the enforcement of any right under this Indenture. In addition, upon providing the Trustee with reasonable security and indemnity against costs, expenses and liabilities as aforescribed, the Owners of a majority in aggregate principal amount of the Bonds then Outstanding may, by written notice delivered to the Trustee, direct the method and place of conducting all remedial proceedings to be taken by the Trustee, provided such direction shall not be contrary to provisions of law and this Indenture and, provided further, the Trustee shall have the right to decline to follow any such direction which, in the opinion of the Trustee, would be unjustly prejudicial to Owners of the Bonds not parties to such direction. In the absence of such direction from Bondholders, the Trustee may proceed in the manner it deems

appropriate in accordance with the terms and conditions hereof. The Trustee may, in its discretion, notwithstanding the failure of the Owners of the Bonds to provide the indemnity required by the conditions precedent heretofore described, nevertheless bring such suits, actions or proceedings or take such other action as, in its judgment, is proper to be done by it as Trustee, without indemnity, in which event the Authority shall reimburse the Trustee, from Revenues, for all costs and expenses, outlays and counsel fees and other reasonable disbursements properly incurred in connection therewith. Upon an Event of Default the Trustee may exercise all rights and powers granted to the Authority pursuant to Section 9.03 subject, however, to the Trustee's right to reimburse itself for the costs, expenses and liabilities for which it is indemnified pursuant to this Indenture, prior to application of any money in the Sinking Fund for the benefit of the Owners of the Bonds. Upon the occurrence of an Event of Default and the continuance of such Event of Default, the Trustee shall give by first class, postage prepaid mail to all Bondholders, as their names and addresses appear in the books kept by the Bond Registrar, notice of such Event of Default known to the Trustee, unless such Event of Default shall have been cured; provided, however, that except in the case of an Event of Default described in Sections 9.02(a), (b) or (c), the Trustee shall be protected in withholding such notice so long as the Trustee in good faith determines that such Event of Default is not materially adverse to the interest of Bondholders.

**SECTION 9.04. PRO RATA APPLICATION OF FUNDS.** (a) Anything in this Indenture to the contrary notwithstanding, if at any time during the continuance of an Event of Default the moneys in the Sinking Fund, the Debt Service Reserve Fund, the Renewal and Replacement Fund and the General Fund, when applied in accordance with Article V, shall not be sufficient to pay the principal of, the premium, if any, or the interest on the Bonds as the same are then due and payable, such moneys, together with any moneys then available or thereafter becoming available for such purpose, whether through the exercise of the remedies provided for in this Article or otherwise, shall be applied by the Trustee as follows:

First: to the payment to the Fiduciaries of the amount necessary to compensate the Fiduciaries in accordance with the provisions of this Indenture;

Second: to the payment of the Persons entitled thereto of all installments of interest then due and payable on the Bonds, in the order in which such installments become due and payable on the Bonds, and, if the amount available shall not be sufficient to pay in full any particular installment on the Bonds, then the payment ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds;

Third: to the payment of the Persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due (other than Bonds called for redemption for the payment of which sufficient moneys are held pursuant to the provisions of this Indenture), in the order in which such principal became due, with interest thereon at the respective rates specified therein from the respective dates upon which they became due, and, if the amount available shall not be sufficient to pay in full the principal of Bonds due on any particular date, together with such interest, then to the payment first of such interest, ratably according to the amount of such interest due on such date, and then to the payment of such principal, ratably, according to the amount of such principal due on such



date, to the Persons entitled thereto without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds;

Fourth: to the payment of the interest on and principal of the Bonds, to the purchase and retirement of Bonds and to the redemption of Bonds, all in accordance with the provisions of Article V;

Fifth: to the Department for any amounts owed by the Authority to the Department under Section 5.12 or that are otherwise payable to the Department out of moneys credited to the General Fund; and

Sixth: to the Authority for any lawful purpose.

(b) The provisions of this Section are in all respects subject to the provisions of Section 9.01. Whenever moneys are to be applied by the Trustee pursuant to the provisions of this Section, such moneys shall be applied by the Trustee at such times, and from time to time, as the Trustee in its sole discretion shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future; the deposit of such moneys with the Paying Agent or otherwise setting aside such moneys in trust for the proper purpose, shall constitute proper application by the Trustee; and the Trustee shall incur no liability whatsoever to any Bondholder, Credit Provider, Liquidity Provider or to any other Person for any delay in applying any such funds, so long as the Trustee acts with reasonable diligence, having due regard to the circumstances, and ultimately applies the same in accordance with such provisions of this Indenture as may be applicable at the time of application. Whenever the Trustee shall exercise such discretion in applying such funds it shall fix the date upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such date shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the fixing of any such date, and shall not be required to make payment to the Owner of any Bond until such Bond shall be surrendered to it for appropriate endorsement.

**SECTION 9.05. EFFECT OF DISCONTINUANCE OF PROCEEDINGS.** In case any proceeding taken by the Trustee or any Bondholder on account of any Event of Default shall have been discontinued or abandoned for any reason, then and in every such case, the Authority, the Trustee and the Bondholder shall be restored to their former positions and rights hereunder, respectively, and all rights and remedies of the Authority, the Trustee and the Bondholders shall continue as though no such proceeding had been taken.

**SECTION 9.06. RESTRICTION ON INDIVIDUAL BONDHOLDER ACTIONS.** No Owner of any of the Bonds hereby secured shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Indenture, or to enforce any right hereunder except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the benefit of all Owners of such Bonds.

**SECTION 9.07. NO REMEDY EXCLUSIVE.** No remedy herein conferred upon the Bondholders is intended to be exclusive of any other remedy or remedies herein provided, and

each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder.

**SECTION 9.08. DELAY NOT A WAIVER.** No delay or omission of the Trustee or a Bondholder to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Indenture to the Trustee and the Bondholders may be exercised from time to time and as often as may be deemed expedient.

**SECTION 9.09. RIGHT TO ENFORCE PAYMENT OF BONDS.** Nothing in this Indenture shall affect or impair the right of any Bondholder to enforce the payment of the principal of, premium, if any, and interest on his Bond, or the obligation of the Authority to pay the principal of, premium, if any, and interest on each Bond to the Owners thereof at the time and place in said Bond expressed.

**SECTION 9.10. RIGHTS OF CREDIT PROVIDER.** In the event that, following an Event of Default, a Credit Provider honors its obligation under a Credit Facility to make payments on a Series of Bonds, said Credit Provider shall be entitled to exercise the rights of the Owners of the said Bonds for the purposes of this Article.

Anything in this Indenture to the contrary notwithstanding, while an Event of Default has occurred and is continuing hereunder, any Credit Provider, on behalf of the Owners of Bonds secured by such Credit Provider, or Owners of a majority in principal amount of the Bonds then Outstanding hereunder shall have the right, by an instrument in writing executed and delivered to the Authority and the Trustee, to direct the time and method of conducting all proceedings available under this Indenture or exercising any trust or power conferred by this Indenture in accordance with the provisions of this Indenture; provided, however, that the Credit Provider shall have no such rights if it has defaulted under its obligations under a Credit Facility. In the event of a conflict between the directions of any Credit Provider and those of the Owners of such Bonds, with respect to an Event of Default described in Section 9.02(i), the directions of such Credit Provider shall prevail, and with respect to any other Event of Default the directions of the Owners of the Bonds shall prevail.

The Trustee shall accept notice from the Credit Provider as to the occurrence or continuance of any Event of Default.

**SECTION 9.11. CLAIM UPON INITIAL CREDIT FACILITY.** (a) If on the third day (or the last Business Day at least three days) preceding any Interest Payment Date for the Series 1996 Bonds there is not on deposit with the Trustee sufficient moneys available to pay all principal of and interest on the Series 1996 Bonds due on such Interest Payment Date, the Trustee shall immediately notify the Initial Credit Provider and State Street Bank and Trust Company, N.A., New York, New York or its successor as its Fiscal Agent (the "Fiscal Agent") of the amount of such deficiency. If, by said Interest Payment Date, the Authority has not provided the amount of such deficiency, the Bond Registrar shall simultaneously make available to the Initial Credit Provider and to the Fiscal Agent the registration books for the Series 1996 Bonds maintained by the Bond Registrar. In addition:

(i) The Trustee shall provide the Initial Credit Provider with a list of the Bondholders entitled to receive principal or interest payments from the Initial Credit Provider under the terms of the Initial Credit Facility and shall make arrangements for the Initial Credit Provider and its Fiscal Agent (A) to mail checks or drafts to Bondholders entitled to receive full or partial interest payments from the Initial Credit Provider, and (B) to pay principal of the Series 1996 Bonds surrendered to the Fiscal Agent by the Bondholders entitled to receive full or partial principal payments from the Initial Credit Provider; and

(ii) The Trustee shall, at the time the Bond Registrar makes the registration books available to the Initial Credit Provider pursuant to clause (i) above, notify Bondholders entitled to receive the payment of principal of or interest on the Series 1996 Bonds from the Initial Credit Provider (A) as to the fact of such entitlement, (B) that the Initial Credit Provider will remit to them all or part of the interest payments coming due subject to the terms of the Initial Credit Facility, (C) that, except as provided in paragraph (b) below, in the event that any Bondholder is entitled to receive full payment of principal from the Initial Credit Provider, such Bondholder must tender his Series 1996 Bond with the instrument of transfer in the form provided on the Series 1996 Bond executed in the name of the Initial Credit Provider, and (D) that, except as provided in paragraph (b) below, in the event that such Bondholder is entitled to receive partial payment of principal from the Initial Credit Provider, such Bondholder must tender his series 1996 Bond for payment first to the Trustee, which shall note on such Series 1996 Bond the portion of principal paid by the Trustee, and then, with an acceptable form of assignment executed in the name of the Initial Credit Provider, to the Fiscal Agent, which will then pay the unpaid portion of principal to the Bondholder subject to the terms of the Initial Credit Facility.

(b) In the event that the Trustee has notice that any payment of principal of or interest on a Series 1996 Bond has been recovered from a Bondholder by a trustee in bankruptcy in accordance with the final, nonappealable order of a court having competent jurisdiction, the Trustee shall, at the time it provides notice to the Initial Credit Provider, notify all Bondholders that in the event that any Bondholder's payment is so recovered, such Bondholder will be entitled to payment from the Initial Credit Provider to the extent of such recovery, and the Trustee shall furnish to the Initial Credit Provider its records evidencing the payments of principal of and interest on the Series 1996 Bonds which have been made by the Trustee and subsequently recovered from Bondholders, and the dates on which such payments were made.

(c) The Initial Credit Provider shall, to the extent it makes payment of principal of or interest on the Series 1996 Bonds, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Initial Credit Facility and, to evidence such subrogation, (A) in the case of subrogation as to claims for past due interest, the Trustee shall note the Initial Credit Provider's rights as subrogee on the registration books maintained by the Bond Registrar upon receipt from the Initial Credit Provider of proof of the payment of interest thereon to the Bondholders of such Series 1996 Bonds, and (B) in the case of subrogation as to claims for past due principal, the Trustee shall note the Initial Credit Provider's rights as subrogee on the registration books for the Series 1996 Bonds maintained by the Trustee upon receipt of proof of the payment of principal thereof to the Bondholders of such Series 1996 Bonds. Notwithstanding anything in this Indenture to the contrary, the Trustee shall make payment of

such past due interest and past due principal directly to the Initial Credit Provider to the extent that the Initial Credit Provider is a subrogee with respect thereto.

## ARTICLE X

### EXECUTION OF INSTRUMENTS BY BONDHOLDERS AND PROOF OF OWNERSHIP OF BONDS

**SECTION 10.01. EXECUTION OF INSTRUMENTS BY BONDHOLDERS AND PROOF OF OWNERSHIP OF BONDS.** Any request, direction, consent or other instrument in writing required or permitted by this Indenture to be signed or executed by Bondholders may be in any number of concurrent instruments of similar tenor and may be signed or executed by such Bondholders or their duly authorized attorneys or legal representatives. Proof of the execution of any such instrument and of the ownership of Bonds shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Authority and the Trustee with regard to any action taken by it under such instrument if made in the following manner:

(a) The fact and date of the execution by any Person of any such instrument may be proved by the verification of any officer in any jurisdiction who, by the laws thereof, has power to take affidavits within such jurisdiction, to the effect that such instrument was subscribed and sworn to before him, or by an affidavit of a witness to such execution. Where such execution is on behalf of a Person other than an individual such verification or affidavit shall also constitute sufficient proof of the authority of the signer thereof.

(b) Ownership of Bonds should be proved by registration books of the Authority, or the Bond Registrar on behalf of the Authority, maintained as provided in this Indenture.

Nothing contained in this Indenture shall be construed as limiting the Authority or the Trustee to such proof, it being intended that the Authority and the Trustee may accept any other evidence of the matters herein stated which it may deem sufficient. Any request or consent of the Owner of any Bond shall bind every future Owner of the same Bond in respect of anything done by the Authority or the Trustee pursuant to such request or consent.

## ARTICLE XI

### SUPPLEMENTS AND AMENDMENTS

**SECTION 11.01. SUPPLEMENTAL INDENTURE WITHOUT BONDHOLDERS' CONSENT.** The Authority and the Trustee, from time to time and at any time, without obtaining consent from Bondholders, may enter into Supplemental Indentures that are not inconsistent with the terms and provisions hereof (which Supplemental Indentures shall thereafter form a part of the Indenture):

(a) to cure any ambiguity or defect or omission or to correct any inconsistent provisions in this Indenture; or

(b) to grant to or confer upon the Bondholders any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Bondholders; or

(c) to add to the conditions, limitations and restrictions on the issuance of Bonds under the provisions of this Indenture other conditions, limitations and restrictions thereafter to be observed; or

(d) to add to the covenants and agreements of the Authority in this Indenture other covenants and agreements thereafter to be observed by the Authority or to surrender any right or power herein reserved to or conferred upon the Authority; or

(e) to permit the issuance of Bonds, the interest on which is intended to be exempt from federal income taxation, in coupon form, if as a condition precedent to the enactment of such supplemental resolution, there shall be delivered to the Authority an Opinion of Bond Counsel; or

(f) to qualify the Bonds or any of the Bonds for registration under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended; or

(g) to qualify this Indenture as an “indenture” under the Trust Indenture Act of 1939, as amended; or

(h) to make such changes as may be necessary to adjust the terms hereof so as to facilitate the issuance of Variable Rate Bonds, Capital Appreciation Bonds, Capital Appreciation and Income Bonds, Convertible Bonds, Put Bonds and such other forms of Bonds as may be marketable from time to time; or

(i) to make such changes as may be necessary to maintain the exclusion of interest on any Series of Bonds from gross income for federal income tax purposes as said exclusion was intended to exist, if at all, at the time of issuance of such Series; or

(j) to make such changes as may evidence the right and interest herein of a Credit Provider, Liquidity Provider or Reserve Facility Provider; or

(k) to make such changes as may be necessary in order to obtain or maintain a rating or ratings on any Series of Bonds from one or more nationally recognized rating agencies; or

(l) to authorize and provide for the issuance of Completion Bonds, Additional Bonds and Refunding Bonds in accordance with the provisions of Sections 2.07, 2.08 and 2.09 and to specify and determine the matters and things referred to in Sections 2.07, 2.08 or 2.09, and any other matters and things relative to such Bonds which are not contrary to or inconsistent with this Indenture as theretofore in effect; or

(m) to amend, modify or rescind any provision in this Indenture at any time prior to the first delivery of such Bonds; or

(n) to make any other change, except those set forth in clauses (a) through (e) of Section 11.02, which is necessary to be made to permit the Authority to proceed with a transaction or activity that, in the written opinion of the Consulting Engineer as filed with the Authority, is in the best interests of the Authority to pursue, if there shall first be delivered and Opinion of Bond Counsel; provided that no Supplemental Indenture shall be entered into for this purpose unless the Credit Provider shall have provided its written consent thereto.

At least thirty days prior to the proposed entry by the Authority and the Trustee into a Supplemental Indenture for any of the purposes of this Section 11.01, the Authority shall cause a notice of such Supplemental Indenture to be mailed, postage prepaid, to the Credit Provider, the Trustee and all Owners of Bonds at their addresses as they appear on the registration books of the Authority maintained by the Bond Registrar and to the Rating Agency. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the offices of the Authority for inspection by all Bondholders. A failure on the part of the Authority to mail the notice required by this Section 11.01 shall not affect the validity of the Supplemental Indenture. The Authority shall provide the Credit Provider with an executed copy of such Supplemental Indenture, together with a transcript of all proceedings of the Authority relating thereto.

**SECTION 11.02. SUPPLEMENTAL INDENTURE WITH BONDHOLDERS' CONSENT.** Subject to the terms and provisions contained in this Section 11.02 and in Section 11.01, and not otherwise, the Credit Provider and the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to and approve any Supplemental Indenture as shall be deemed necessary or desirable by the Authority for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture; provided, however, that nothing herein contained shall permit, or be construed as permitting: (a) an extension of the maturity of the principal of or the interest on any Bond issued hereunder; or (b) a reduction in the principal amount of any Bond or the redemption premium or the rate of interest thereon; or (c) the creation of a lien upon or a pledge of Revenues other than the lien and pledge created by this Indenture or permitted to be created by this Indenture; or (d) a preference or priority of any Bond or Bonds over any other Bond or Bonds except as permitted by this Indenture; or (e) a reduction in the aggregate principal amount of the Bonds required for consent to a Supplemental Indenture. Nothing herein contained, however, shall be construed as making necessary the approval by Bondholders of the adoption of any Supplemental Indenture as authorized in Section 11.01.

If at any time the Authority shall determine that it is necessary or desirable to enter into any Supplemental Indenture for any of the purposes of this Section, an Authorized Officer shall cause notice of the proposed Supplemental Indenture to be mailed not less than 15 days prior to the date on which it is proposed that such Supplemental Indenture take effect, postage prepaid, to the Trustee, the Credit Provider and all Owners of Bonds at their addresses as they appear on the registration books and to all Rating Agencies. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the registered office of the Authority for inspection by all Bondholders. The Authority shall not, however, be subject to any liability to any Bondholder by reason of its failure to cause the notice required by this Section 11.02 to be mailed and any such failure shall not affect the validity of such

Supplemental Indenture when consented to and approved as provided in this Section 11.02. A subsequent resolution of the Authority may provide that the form and manner of providing notice to Bondholders be in some different form if so determined by the Authority.

Whenever the Authority shall deliver to the Chairman an instrument or instruments in writing purporting to be executed by the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding, which instrument or instruments shall refer to the proposed Supplemental Indenture and shall specifically consent to and approve the enactment thereof in substantially the form thereof referred to in such instrument, thereupon, but not otherwise, the Authority may enter into such Supplemental Indenture in substantially such form, without liability or responsibility to any Owner of any Bond, whether or not such Owner shall have consented thereto. Notwithstanding the foregoing, the Authority may enter into the proposed Supplemental Indenture prior to receiving the requisite consents provided the effective date of said Supplemental Indenture, by its terms, is delayed until, and conditioned upon, receipt of the required consents.

If the Owners of not less than a majority in aggregate principal amount of the Bonds Outstanding at the time of the entry into (or effective date of) such Supplemental Indenture shall have consented to and approved such Supplemental Indenture as herein provided, no Owner of any Bond shall have any right to object to the enactment of such Supplemental Indenture, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the Authority from adopting the same or from taking any action pursuant to the provisions thereof.

Any consent given by a Bondholder shall be binding with respect to all Bonds owned by said Bondholder on the date consent is given, and shall bind all future Owners of said Bonds, so that said future Owners shall have been deemed to consent to the proposed Supplemental Indenture with the same force and effect as if they had executed a consent as of the effective date thereof.

The consent of the Owners of any Series of Bonds to be issued hereunder shall be deemed given if the underwriters or initial marketing group consent in writing to such Supplemental Indenture and the substance of such Supplemental Indenture is disclosed in the official statement or other offering document pursuant to which such Series of Bonds are offered and sold to the public.

Notwithstanding anything in this Indenture to the contrary, whenever the consent, approval or direction of the Owners of any Bonds shall be required under this Indenture, each Credit Provider, if any, shall be deemed for all purposes under this Indenture to be the Owner of all Bonds with respect to which it shall have provided a Credit Facility, for so long as such Credit Facility remains in full force and effect and shall not have been dishonored or disavowed by such Credit Provider. The Authority shall provide the Credit Provider with an executed copy of such Supplemental Indenture, together with a transcript of all proceedings of the Authority relating thereto.

Upon the entry into any Supplemental Indenture pursuant to the provisions of this Section, this Indenture shall be and be deemed to be modified and amended in accordance

therewith, and the respective rights, duties and obligations under this Indenture of the Authority and all Owners of Bonds then Outstanding shall thereafter be determined, exercised and enforced in all respects under the provisions of this Indenture as so modified and amended.

**SECTION 11.03. SUPPLEMENTAL INDENTURES PART OF INDENTURE.**

Any Supplemental Indenture entered in accordance with the provisions of this Indenture shall thereafter form a part of this Indenture, and all of the terms and conditions contained in any such Supplemental Indenture as to any provisions authorized to be contained therein shall be and shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes. In case of the entry into any Supplemental Indenture, express reference may be made thereof in the text of any Bonds issued thereafter, if deemed necessary or desirable by the Authority.

**SECTION 11.04. OPINION OF BOND COUNSEL REQUIRED.** Notwithstanding anything in this Indenture to the contrary, the Trustee shall have no obligation to enter into any Supplemental Indenture unless it shall have been first provided an Opinion of Bond Counsel with respect thereto.

**ARTICLE XII**

**DEFEASANCE**

**SECTION 12.01. DEFEASANCE.** If (a) all the Outstanding Bonds shall have been paid as provided below, (b) the Authority shall pay or cause to be paid to the Trustee, Paying Agent and Bond Registrar and any other agents and other parties designated by a Supplemental Indenture, all sums of money due or to become due according to the provisions hereof and such other instruments as may be entered into with such agents and parties and (c) the Authority shall pay or cause to be paid to the Initial Reserve Facility Provider all Policy Costs due or to become due under the provisions of the Series 1996 Debt Service Reserve Fund Policy Agreement, then and in only that case the right, title and interest of the Bondholders hereunder shall cease, terminate and become void, and such Bonds shall cease to be entitled to any lien, benefit or security under this Indenture. In such event, this Indenture shall be discharged and released and amounts held in the Funds, Accounts and Subaccounts created hereunder shall be released to the Authority for its own purposes.

Any Bond shall be deemed to have been paid within the meaning and with the effect expressed in this Section 12.01 when the whole amount of the principal of and interest on such Bond shall have been paid or when: (a) there shall have been deposited with the Paying Agent or other appropriate Escrow Agent solely for the Owner of such Bond and other Bonds being defeased and specifically designated for the purpose of defeasance either moneys, Escrow Securities, or any combination thereof, in an amount which shall be verified by an Accountant as sufficient, with interest earnings thereon, to pay when due the principal of and premium, if any, and interest due and to become due on such Bonds on or prior to the redemption date or maturity date thereof, as the case may be; and (b) in the event such Bond does not mature and is not to be redeemed within the next succeeding sixty days, the Authority shall have notified, as soon as practicable, the Owner of such Bond, in the manner set forth in Article III, stating that the deposit of moneys and/or Escrow Securities required by clause (a) of this paragraph has been made with the Paying Agent or other Escrow Agent solely for the Owner of such Bond and other



Bonds being defeased, and that such Bond is deemed to have been paid in accordance with this Section and stating such maturity or redemption date upon which moneys are to be available for the payment of the principal of and premium, if any, and interest on such Bond.

Except as hereinafter provided, neither the moneys nor Escrow Securities deposited with the Paying Agent or other Escrow Agent pursuant to this Section 12.01 nor principal or interest payments on any such obligations shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of and premium, if any, and interest on said Bonds. Moneys and Escrow Securities held by an Escrow Agent may be substituted for other moneys and Escrow Securities to the extent permitted by an Escrow Deposit Agreement.

As to Variable Rate Bonds, the amount required for the interest thereon shall be calculated at the maximum rate permitted by the terms of the provisions which authorized the issuance of such Variable Rate Bonds; provided, however, that if on any date, as a result of such Variable Rate Bonds having borne interest at less than such maximum rate for any period, the total amount of moneys and Escrow Securities on deposit for the payment of interest on such Variable Rate Bonds is in excess of the total amount which would have been required to be deposited on such date in respect of such Variable Rate Bonds in order fully to discharge and satisfy such Bonds pursuant to the provisions of this Section, the Authority may use the amount of such excess, free and clear of any trust, lien, security interest, pledge or assignment securing said Variable Rate Bonds or otherwise existing under this Indenture; subject however, to the Authority's obtaining an Opinion of Bond Counsel. Notwithstanding anything in this Section 12.01 or elsewhere in this Indenture to the contrary, so long as S&P shall rate any Variable Rate Bonds, provision for the payment of such Variable Rate Bonds in accordance with this Section 12.01 shall not be deemed to release the lien of this Indenture in favor of such Variable Rate Bonds unless the Authority shall first have provided the Trustee with written evidence from S&P that such provision for payment will not, of itself, cause S&P to reduce or withdraw its then rating on such Variable Rate Bonds.

Notwithstanding any of the provisions of this Indenture to the contrary, Put Bonds may only be fully discharged and satisfied either by paying the principal of and interest on said Bonds as they become due and payable or by depositing moneys or Escrow Securities which shall be sufficient at the time of such deposit to pay when due the maximum amount of principal of and redemption premium, if any, and interest on such Put Bonds which could become payable to the Owners of such Bonds upon the exercise of any options provided to the Owners of such Bonds and the Authority; provided, however, that if, at the time a deposit is made pursuant to this paragraph, the options originally exercisable on the Put Bonds are no longer exercisable, such Bonds shall not be considered Put Bonds for these purposes.

If any portion of the moneys described for the payment of the principal of and redemption premium, if any, and interest on any portion of Bonds is not required for such purpose, the Authority may use the amount of such excess, free and clear of any trust, lien, security interest, pledge or assignment securing said Bonds or otherwise existing under this Indenture.

## ARTICLE XIII

### CREDIT FACILITIES, LIQUIDITY FACILITIES AND MISCELLANEOUS PROVISIONS RELATED TO VARIABLE RATE BONDS

**SECTION 13.01. CREDIT FACILITY.** The Trustee shall hold and maintain each Credit Facility for the benefit of the Bondholders benefitted thereby until such Credit Facility terminates or expires in accordance with its terms. If at any time during the term of a Credit Facility any successor Trustee shall be appointed and qualified under this Indenture, the resigning or removed Trustee shall request that the Credit Provider transfer the Credit Facility to the successor Trustee, to the extent such action is necessary, and shall comply with the applicable provisions of the Credit Facility. If the resigning or removed Trustee fails to make this request, the successor Trustee shall do so before accepting appointment. Upon the termination or expiration of a Credit Facility in accordance with its terms, the Trustee shall promptly surrender the Credit Facility then in effect to the Credit Provider.

**SECTION 13.02. ENFORCEMENT OF CREDIT FACILITY.** (a) The Authority and the Trustee, for the benefit of the Owners of the Bonds benefitted thereby, shall diligently enforce and take all reasonable steps, actions and proceedings necessary for the enforcement of all terms, covenants and provisions of each Credit Facility as contemplated herein and therein. The Trustee shall not consent to or permit any amendment or modification of a Credit Facility or any credit or reimbursement agreement pursuant to which a Credit Facility has been issued which would materially adversely affect the rights or interests of the Owners of any of the Bonds without the written consent of the Owners of 100% in aggregate principal amount of such Bonds.

(b) Any provisions in this Indenture requiring notice to or from a Credit Provider or the consent thereof prior to any action by the Trustee or the Authority shall have no force or effect with respect to such Credit Provider (i) following the later of (1) the termination or expiration of such Credit Facility, and (2) the repayment of all amounts owed to such Credit Provider pursuant to the credit or reimbursement agreement pursuant to which such Credit Facility was issued or (ii) following the failure or refusal of such Credit Provider to honor a properly presented and conforming draw under such Credit Facility, except with respect to all rights accruing to the Credit Provider with respect to unreimbursed draws on the Credit Facility.

**SECTION 13.03. ALTERNATE CREDIT FACILITIES.** (a) An Alternate Credit Facility, in substitution for any Credit Facility then in effect, may be provided if the Authority shall give written notice not more than 60 nor less than 30 calendar days prior to the date such Alternate Credit Facility is to take effect (and "Alternate Credit Facility Date") to the Trustee, the Tender Agent, the Remarketing Agent, the Rating Agency, the Liquidity Provider and the Credit Provider stating its election to provide an Alternate Credit Facility. Notwithstanding the foregoing, so long as the Initial Credit Provider shall not be in default of its obligations under the Initial Credit Facility, without the prior written consent of Financial Guaranty Insurance Company, the Authority may not provide an Alternate Credit Facility in place of the Initial Credit Facility unless such Alternate Credit Facility is issued by Financial Guaranty Insurance Company. Any such Alternate Credit Facility must satisfy the requirements of this Indenture for a Credit Facility. Each Alternate Credit Facility Date shall be determined by the Authority in the

notice to be provided pursuant to the first sentence of this clause (a). Each Alternate Credit Facility Date shall be a Business Day that is at least five days prior to the termination or expiration of the Credit Facility to be replaced.

(b) Upon the exercise of such option by the Authority, the Trustee shall send to the Bondholders a Notice of Alternate Credit Facility in substantially the form of Exhibit E not later than 20 calendar days prior to the Alternate Credit Facility Date. The Trustee shall not accept such Alternate Credit Facility unless the Trustee shall have received, prior to sending the Notice of Alternate Credit Facility (i) an Opinion of Bond Counsel stating that the delivery of such Alternate Credit Facility to the Trustee is authorized under this Indenture and the Act, complies with the terms hereof and will not adversely affect the exclusion of interest on any of the Bonds from gross income for federal income tax purposes, (ii) a certificate from an Authorized Officer and a written acknowledgment by the Credit Provider stating that all amounts owing to the Credit Provider under the credit or reimbursement agreement pursuant to which the Credit Facility to be replaced has been issued have been paid and that there are no Provider Bonds Outstanding, and (iii) written confirmation from the Rating Agency that the rating assigned to the Bonds will not be reduced or withdrawn as a result of such replacement.

**SECTION 13.04. LIQUIDITY FACILITY.** The Trustee shall hold and maintain each Liquidity Facility for the benefit of the Bondholders benefitted thereby until such Liquidity Facility terminates or expires in accordance with its terms. If at any time during the term of a Liquidity Facility any successor Trustee shall be appointed and qualified under this Indenture, the resigning or removed Trustee shall request that the Liquidity Provider transfer the Liquidity Facility to the successor Trustee, to the extent such action is necessary, and shall comply with the applicable provisions of the Liquidity Facility. If the resigning or removed Trustee fails to make this request, the successor Trustee shall do so before accepting appointment. Upon the termination or expiration of a Liquidity Facility in accordance with its terms, the Trustee shall promptly surrender the Liquidity Facility then in effect to the Liquidity Provider. If a Liquidity Facility shall be about to expire or terminate in accordance with its terms, without being extended or replaced by an Alternate Liquidity Facility, then the Authority and the Remarketing Agent shall use their best efforts to convert the Series 1996 Bonds to the Fixed Rate not later than 90 days prior to such expiration or termination, and, in the event of such expiration or termination, as soon as possible thereafter.

**SECTION 13.05. ENFORCEMENT OF LIQUIDITY FACILITY.** (a) The Authority and the Trustee, for the benefit of the Owners of the Bonds benefitted thereby, shall diligently enforce and take all reasonable steps, actions and proceedings necessary for the enforcement of all terms, covenants and provisions of each Liquidity Facility as contemplated herein and therein. The Trustee shall not consent to or permit any amendment or modification of a Liquidity Facility or any credit or reimbursement agreement pursuant to which a Liquidity Facility has been issued which would materially adversely affect the rights or interests of the Owners of any of the Bonds without the written consent of the Owners of 100% in aggregate principal amount of such Bonds.

(b) Any provisions in this Indenture requiring notice to or from a Liquidity Provider or the consent thereof prior to any action by the Trustee or the Authority shall have no force or effect with respect to such Liquidity Provider (i) following the later of (1) the termination or

expiration of such Liquidity Facility, and (2) the repayment of all amounts owed to such Liquidity Provider pursuant to the credit or reimbursement agreement pursuant to which such Liquidity Facility was issued or (ii) following the failure or refusal of such Liquidity Provider to honor a properly presented and conforming draw under such Liquidity Facility, except with respect to all rights accruing to the Liquidity Provider with respect to unreimbursed draws on the Liquidity Facility.

**SECTION 13.06. ALTERNATE LIQUIDITY FACILITIES.** (a) With the prior written consent of the Credit Provider, an Alternate Liquidity Facility, in substitution for any Liquidity Facility then in effect, may be provided if the Authority shall give written notice not more than 60 nor less than 30 calendar days prior to the date such Alternate Liquidity Facility is to take effect (and “Alternate Liquidity Facility Date”) to the Trustee, the Tender Agent, the Remarketing Agent, the Rating Agency, the Credit Provider and the Liquidity Provider stating its election to provide an Alternate Liquidity Facility. Any such Alternate Liquidity Facility must satisfy the requirements of this Indenture for a Liquidity Facility. Each Alternate Liquidity Facility Date shall be determined by the Authority in the notice to be provided pursuant to the first sentence of this clause (a). Each Alternate Liquidity Facility Date shall be a Business Day that is at least five days prior to the termination or expiration of the Liquidity Facility to be replaced.

(b) Upon the exercise of such option by the Authority, the Trustee shall send to the Bondholders a Notice of Alternate Liquidity Facility in substantially the form of Exhibit E not later than 20 calendar days prior to the Alternate Liquidity Facility Date. The Trustee shall not accept such Alternate Liquidity Facility unless the Trustee shall have received, prior to sending the Notice of Alternate Liquidity Facility (i) an Opinion of Bond Counsel stating that the delivery of such Alternate Liquidity Facility to the Trustee is authorized under this Indenture and the Act, complies with the terms hereof and will not adversely affect the exclusion of interest on any of the Bonds from gross income for federal income tax purposes, (ii) a certificate from an Authorized Officer and a written acknowledgment by the Liquidity Provider stating that all amounts owing to the Liquidity Provider under the credit or reimbursement agreement pursuant to which the Liquidity Facility to be replaced has been issued have been paid and that there are no Provider Bonds Outstanding, and (iii) written confirmation from the Rating Agency that the rating assigned to the Bonds will not be reduced or withdrawn as a result of such replacement.

**SECTION 13.07. REMARKETING AGENT.** The initial Remarketing Agent for the Series 1996 Bonds shall be PaineWebber Incorporated. The Authority may appoint a successor Remarketing Agent for the Series 1996 Bonds and may appoint Remarketing Agents for other Series of Bonds and their successors in compliance with the conditions set forth in Section 13.08. The Remarketing Agent shall designate to the Trustee its principal office and signify its acceptance of the duties and obligations imposed upon it hereunder by entering into a Remarketing Agreement with the Authority under which the Remarketing Agent shall agree to keep such books and records as shall be consistent with prudent industry practice and to make such books and records available for inspection by the Authority, the Trustee and the Tender Agent at all reasonable times.

**SECTION 13.08. QUALIFICATIONS OF REMARKETING AGENT.** Each Remarketing Agent shall be a member of the National Association of Securities Dealers, Inc., a

national banking association or a commercial banking corporation and shall meet such capitalization and/or credit requirements as the Authority may determine from time to time, shall be appointed by the Authority and shall be authorized by law to perform all the duties imposed upon it by this Indenture. The Remarketing Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least 60 days' written notice to the Authority, the Tender Agent, the Trustee, the Credit Provider and the Liquidity Provider. The Remarketing Agent may be removed at any time, with or without cause by the Authority, upon at least 30 days' written notice to the Remarketing Agent, by an instrument signed by Authorized Officer, filed with the Trustee, the Credit Provider, the Liquidity Provider, the Tender Agent and the Remarketing Agent. Notwithstanding the foregoing, no removal or resignation shall take effect until the Authority has appointed a successor Remarketing Agent, with the prior written approval of the Credit Provider and the Liquidity Provider, and such successor Remarketing Agent has accepted such appointment.

**SECTION 13.09. TENDER AGENT.** (a) The Trustee shall be the initial Tender Agent with respect to the Series 1996 Bonds. The Trustee hereby agrees to carry out its responsibilities as Tender Agent set forth in this Indenture. Any other Tender Agent that is not also the Trustee shall signify its acceptance of the duties and obligations imposed upon it hereunder by a written instrument of acceptance delivered to the Authority and the Trustee, under which the Tender Agent shall agree to particularly:

(i) hold all Bonds delivered to it for purchase hereunder as agent and bailee of, and in escrow for the benefit of, the respective Owners which have so delivered such Bonds until moneys representing the Purchase Price of such Bonds shall have been delivered to or for the account of or to the order of such Owners; and

(ii) keep such books and records as shall be consistent with prudent industry practice, and make such books and records available for inspection by the other parties.

The parties hereto shall each cooperate to cause the necessary arrangements to be made and to be thereafter continued whereby funds from the sources specified herein will be made available for the purchase of Bonds presented at the designated office of the Tender Agent, and to otherwise enable the Tender Agent to carry out its duties under this Indenture.

The Tender Agent, the Trustee and the Remarketing Agent shall cooperate to the extent necessary to permit the preparation, execution, issuance, authentication and delivery by the Tender Agent of replacement Bonds in connection with the tender and remarketing of Bonds under this Indenture.

The Authority and the Trustee acknowledge that, in carrying out its responsibilities hereunder, the Tender Agent shall be acting solely for the benefit of and as agent for the Owners from time to time of the Bonds. No delivery of the Bonds to the Tender Agent or any agent of the Tender Agent or purchase of Bonds by the Tender Agent shall constitute a redemption of the Bonds or any extinguishment of the debt evidenced thereby.

(b) The Tender Agent shall be a member of the National Association of Securities Dealers, Inc., a bank with trust powers, a trust company or a national banking association with

trust powers and shall meet such capitalization and/or credit requirements as the Authority may determine from time to time, shall be appointed by the Authority and shall be authorized by law to perform all the duties imposed upon it by this Indenture. Any such bank or trust company shall be organized and existing under the laws of a state of the United States. The Tender Agent may resign and be discharged of the duties and obligation created by this Indenture by giving at least sixty (60) days' notice by mail to the Trustee, the Authority, the Remarketing Agent, the Credit Provider and the Liquidity Provider, provided, however, that such resignation shall not take effect unless and until a successor Tender Agent shall be appointed by the Authority. The Authority shall use its best efforts to appoint a successor Tender Agent during such sixty (60) day period and in the event a successor Tender Agent has not taken office prior to the expiration of such sixty (60) day period, the Tender Agent may petition a court of applicable jurisdiction to appoint a successor Tender Agent. The Tender Agent may be removed at any time with or without cause by an instrument signed by an Authorized Officer and filed with the Credit Provider, the Liquidity Provider, the Tender Agent, the Remarketing Agent and the Trustee; provided, however, that such removal shall not take effect unless and until a successor Tender Agent shall be appointed by the Authority. In the event of the resignation or removal of the Tender Agent, the Tender Agent shall deliver any moneys and Bonds held by it to its successor, and if there be no successor, to the Trustee.

**SECTION 13.10. NOTICE TO RATING AGENCY.** The Trustee shall notify the Rating Agency, the Credit Provider and the Liquidity Provider as soon as practicable (a) after the Trustee becomes aware of (i) any expiration, termination or renewal of a Credit Facility or a Liquidity Facility, (ii) any change in a Credit Facility or Liquidity Facility or this Indenture, or (iii) the failure of a Credit Provider or Liquidity Provider to reinstate the interest portion of a Credit Facility or Liquidity Facility within the time allotted for such reinstatement to occur, or (b) if (i) the Trustee or the Tender Agent resigns or is removed or a new Trustee or Tender Agent is appointed, (ii) the Remarketing Agent resigns or is removed or a new Remarketing Agent is appointed, (iii) an Alternate Credit Facility or an Alternate Liquidity Facility is provided, (iv) there is a mandatory tender for purchase for a Series of Bonds in whole, (v) there is a call for the redemption of a Series of Bonds in whole, (vi) there is a change in the interest mode or otherwise in the method for determination of the interest payable on a Series of Bonds pursuant to Section 2.06 or otherwise, (vii) all of the Bonds of a Series are defeased pursuant to Article XII, or (viii) the Authority issues any Series of Bonds other than the Series 1996 Bonds.

## **ARTICLE XIV**

### **MISCELLANEOUS PROVISIONS**

**SECTION 14.01. EFFECT OF COVENANTS.** All covenants, stipulations, obligations and agreements of the Authority contained in this Indenture shall be deemed to be covenants, stipulations, obligations and agreements of the Authority to the full extent authorized or permitted by law, and all such covenants, stipulations, obligations and agreements shall bind or inure to the benefit of the successor or successors thereof from time to time and any officer, board, body or commission to whom or to which any power or duty affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law.

Except as otherwise provided in this Indenture, all rights, powers and privileges conferred and duties and liabilities imposed upon the Authority by the provisions of this Indenture shall be exercised or performed by the Board of the Authority or by such other officers, board, body or commission as may be required by law to exercise such powers or to perform such duties.

No covenants, stipulation, obligation or agreement herein contained shall be deemed to be a covenant, stipulation, obligation or agreement of any member, agent or employee of the Authority in his individual capacity, and neither the Board of the Authority nor any official executing the Bonds shall be liable Personally on the Bonds or be subject to any Personal liability or accountability by reason of the issuance thereof.

**SECTION 14.02. MANNER OF GIVING NOTICE.** Except as otherwise provided in this Indenture, any notice, demand, direction, request or other instrument authorized or required by this Indenture to be given to or filed with the Authority shall be deemed to have been sufficiently given or filed for all purposes of this Indenture if and when sent by registered mail, return receipt requested to the Authority at Dade County Expressway Authority 111 N.W. First Street, Suite 2740, Miami, Florida 33128, Attention: Executive Director. Except as otherwise provided in this Indenture, any notice, demand, direction, request or other instrument authorized or required by this Indenture to be given to or filed with the Trustee shall be deemed to have been sufficiently given or filed for all purposes of this Indenture if and when sent by registered mail, return receipt requested to the Trustee at The Bank of New York, c/o The Bank of New York Trust Company of Florida, N.A., 10161 Centurion Parkway, Jacksonville, Florida 32256, Attention: Corporate Trust Department. Except as otherwise provided in this Indenture, any notice, demand, direction, request or other instrument authorized or required by this Indenture to be given to or filed with the Tender Agent shall be deemed to have been sufficiently given or filed for all purposes of this Indenture if and when sent by registered mail, return receipt requested to the Tender Agent at The Bank of New York, 101 Barclay Street, New York, New York 10286. Except as otherwise provided in this Indenture, any notice, demand, direction, request or other instrument authorized or required by this Indenture to be given to or filed with the Remarketing Agent for the Series 1996 Bonds shall be deemed to have been sufficiently given or filed for all purposes of this Indenture if and when sent by registered mail, return receipt requested to the Remarketing Agent for the Series 1996 Bonds at PaineWebber Incorporated, 1285 Avenue of the Americas, New York, New York 10019, Attention: Short-Term Desk. Except as otherwise provided in this Indenture, any notice, demand, direction, request or other instrument authorized or required by this Indenture to be given to or filed with the Initial Credit Provider shall be deemed to have been sufficiently given or filed for all purposes of this Indenture if and when sent by registered mail, return receipt requested to the Initial Credit Provider at Financial Guaranty Insurance Company, 115 Broadway, New York, New York 10006, Attention: Senior Counsel - Public Finance. Except as otherwise provided in this Indenture, any notice, demand, direction, request or other instrument authorized or required by this Indenture to be given to or filed with the Fiscal Agent shall be deemed to have been sufficiently given or filed for all purposes of this Indenture if and when sent by registered mail, return receipt requested to the Fiscal Agent at State Street Bank and Trust Company, N.A., 61 Broadway, New York, New York 10006, Attention: Corporate Trust Department. Except as otherwise provided in this Indenture, any notice, demand, direction, request or other instrument authorized or required by this Indenture to be given to or filed with the Initial Liquidity Provider for the Series 1996 Bonds shall be deemed to have been sufficiently given or filed for all

purposes of this Indenture if and when sent by registered mail, return receipt requested to the Initial Liquidity Provider for the Series 1996 Bonds at FGIC Securities Purchase, Inc., 115 Broadway, New York, New York 10006, Attention: President. Except as otherwise provided in this Indenture, any notice, demand, direction, request or other instrument authorized or required by this Indenture to be given to or filed with Fitch for the Series 1996 Bonds shall be deemed to have been sufficiently given or filed for all purposes of this Indenture if and when sent by registered mail, return receipt requested to Fitch Investors Service, L.P., One State Street Plaza, New York, New York 10004, Attention: Public Finance. Except as otherwise provided in this Indenture, any notice, demand, direction, request or other instrument authorized or required by this Indenture to be given to or filed with Moody's for the Series 1996 Bonds shall be deemed to have been sufficiently given or filed for all purposes of this Indenture if and when sent by registered mail, return receipt requested to Moody's Investors Service, Inc., 99 Church Street, New York, New York 10007-2796, Attention: Public Finance Department. Except as otherwise provided in this Indenture, any notice, demand, direction, request or other instrument authorized or required by this Indenture to be given to or filed with S&P for the Series 1996 Bonds shall be deemed to have been sufficiently given or filed for all purposes of this Indenture if and when sent by registered mail, return receipt requested to Standard & Poor's Ratings Group, 25 Broadway, New York, New York 10004, Attention: Public Finance Ratings.

All documents received by the Authority or the Trustee under the provisions of this Indenture shall be retained in its possession, subject at all reasonable times to the inspection of any Bondholder, and the agents and representatives thereof.

**SECTION 14.03. SUCCESSORSHIP OF AUTHORITY.** In the event that the offices of any officer of the Authority mentioned in this Indenture shall be abolished or any two or more of such offices shall be merged or consolidated, or in the event of a vacancy in any such office by reason of death, resignation, removal from office or otherwise, or in the event any such officer shall become incapable of performing the duties of his office by reason of sickness, absence from the Authority or otherwise, all powers conferred and all obligations and duties imposed upon such officer shall be performed by the officer succeeding to the principal functions thereof or by the officer upon whom such powers, obligations and duties shall be imposed by law. The Authority may be dissolved or terminated in accordance with the Act and other applicable law only pursuant to a plan of transfer in connection with which an appropriate successor unit of government agrees to accept and assume all obligations of the Authority hereunder, including, specifically, the obligation to collect and enforce the Revenues and to pay the principal and interest on the Bonds from the Revenues and the moneys on deposit in the Funds, Accounts and Subaccounts.

**SECTION 14.04. FURTHER ACTS.** The officers and agents of the Authority are hereby authorized and directed to do all the acts and things required of them by the Bonds and this Indenture, for the full, punctual and complete performance of all of the terms, covenants, provisions and agreements contained in the Bonds and this Indenture.

**SECTION 14.05. HEADINGS NOT PART OF INDENTURE.** Any headings preceding the texts of the several Articles and Sections hereof and any table of contents, marginal notes or footnotes appended to copies hereof shall be solely for convenience of



reference, and shall not constitute a part of this Indenture, nor shall they affect its meaning, construction or effect.

**SECTION 14.06. AUTHORITY, FIDUCIARY AND BONDHOLDERS ALONE HAVE RIGHTS UNDER INDENTURE.** Except as herein otherwise expressly provided, nothing in this Indenture, expressed or implied, is intended or shall be construed to confer upon any Person, firm or corporation, other than the Authority, the Fiduciary and the Owners of the Bonds, any right, remedy or claim, legal or equitable, under or by reason of this Indenture or any provision hereof, this Indenture and all its provisions being intended to be and being for the sole and exclusive benefit of the Authority, the Fiduciaries and the Owners from time to time of the Bonds.

**SECTION 14.07. EFFECT OF PARTIAL INVALIDITY.** In case any one or more of the provisions of this Indenture or of any Bonds shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Indenture or of the Bonds, but this Indenture and the Bonds shall be construed and enforced as if such illegal or invalid provision had not been contained therein. The Bonds are issued and this Indenture is entered into with the intent that the laws of the State shall govern their construction.

**SECTION 14.08. SALE OF BONDS.** The Bonds shall be issued and sold at one time or from time to times and at such price or prices consistent with law and the requirements of this Indenture as the Authority shall hereafter determine by one or more Supplemental Indentures.

**SECTION 14.09. AUTHORITY TO PURCHASE OR DEAL IN BONDS.** Any bank or trust company acting as Trustee, Bond Registrar or Paying Agent under this Indenture, and its directors, officers, employees or agents may in good faith buy, sell, own, hold and deal in any of the Bonds and may join in any action which any Bondholder may be entitled to take with like effect as if such bank or trust company were not the Trustee, Bond Registrar or Paying Agent under this Indenture.

**SECTION 14.10. CAPITAL APPRECIATION BONDS AND CAPITAL APPRECIATION AND INCOME BONDS.** For the purposes of: (a) receiving payment of the redemption price if a Capital Appreciation Bond is redeemed prior to maturity; or (b) receiving payment of a Capital Appreciation Bond if the principal of all Bonds becomes due and payable under the provisions of this Indenture; or (c) computing the amount of Bonds held by the Owner of a Capital Appreciation Bond in giving to the Authority or the Trustee or receiver appointed to represent the Bondholders any notice, consent, request or demand pursuant to this Indenture for any purpose whatsoever, the principal amount of a Capital Appreciation Bond shall be deemed to be its Accreted Value. For all of the foregoing purposes as they relate to Capital Appreciation and Income Bonds, the principal amount of a Capital Appreciation and Income Bond, on or prior to its Interest Commencement Date, shall be its Appreciated Value.

**SECTION 14.11. PAYMENTS DUE ON DAYS THAT ARE NOT BUSINESS DAYS.** In any case where the date of maturity of interest on or principal of the Bonds or the date fixed for redemption of Bonds shall not be Business Day, then payment of such interest or principal and any redemption premium need not be mailed by the Paying Agent on such date but may be mailed on the next succeeding Business Day with the same force and effect as if mailed

on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after such date of maturity.

**SECTION 14.12. SUSPENSION OF PUBLICATION OR MAIL.** If, because of the temporary or permanent suspension of publication of any newspaper or financial journal, the suspension of delivery of registered mail or, for any other reason, the Authority shall be unable to publish in a newspaper or financial journal or mail by registered mail any notice required to be published or mailed by the provisions of this Indenture, the Authority shall give such notice in such other manner as in the judgment of the Authority shall most effectively approximate such publication or mailing thereof, and the giving of such notice in such manner shall for all purposes of this Indenture be deemed to be in compliance with the requirement for the publication or mailing thereof.

Except as otherwise provided herein, for all purposes of this Indenture, anything required to be mailed shall be deemed mailed upon the deposit of the item with the U.S. Postal Service, by registered mail, return receipt requested and addressed to the addressee as set forth in Section 13.02 or otherwise provided in this Indenture.

**SECTION 14.13. EFFECTIVE.** This Indenture shall take effect as of its date.

**IN WITNESS WHEREOF**, the Authority has caused this Indenture to be signed in its name and on its behalf by the Chairman or Vice-Chairman, and its seal to be hereunto affixed and attested by its Secretary, thereunto duly authorized, and to evidence its acceptance of the trusts hereby created, the Trustee has caused this Indenture to be signed in its name and on its behalf by one of its duly authorized officers, and its official seal to be hereunto affixed.

Signatures:

MIAMI-DADE COUNTY EXPRESSWAY  
AUTHORITY

By: /s/ Allen C. Harper  
Chairman

[Seal]

Attest:

/s/ MariaLuisa Navia Lobo  
Secretary

THE BANK OF NEW YORK, as Trustee

By: The Bank of New York Trust Company  
of Florida, N.A., as agent

By: /s/ Barbara B. Buck  
Authorized Officer

[Seal]

**EXHIBIT D**

**REQUISITION FORM--CONSTRUCTION FUND**

\$ \_\_\_\_\_ Dade County Expressway Authority (Florida) Toll System Revenue Bonds, Series

To: \_\_\_\_\_, as Trustee

This Requisition is made pursuant to Section 4.02 of the Trust Indenture dated as of November 15, 1996 from Dade County Expressway Authority to you as Trustee to pay Costs of the Series \_\_\_ Project.

The Trustee is hereby directed to pay sums out of the [Series \_\_\_ Account of the] Construction Fund as follows:

<u>Name &amp; Address of Payee</u>	<u>Amount</u>	<u>Purpose of Payment</u>
------------------------------------	---------------	---------------------------

The undersigned Authorized Officer of the Authority hereby certifies that each obligation, item of cost or expense mentioned in this Requisition: (a) has been properly incurred; (b) is a proper charge against the [Series \_\_\_ Account of the] Construction Fund; and (c) has not been the basis of any previous disbursement, payment or reimbursement to the Authority.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Authorized Officer

\_\_\_\_\_  
Consulting Engineer

**EXHIBIT E**

**NOTICE OF ALTERNATE CREDIT OR LIQUIDITY FACILITY**

**NOTICE TO BONDHOLDERS**

This notice is being sent pursuant to the provisions of the Trust Indenture dated as of November 15, 1996 (the "Indenture") from Dade County Expressway Authority (the "Authority") to The Bank of New York, as Trustee. Capitalized terms used in this notice shall have the same meanings as in the Indenture.

You are hereby notified as follows:

1. An Alternate [Credit/Liquidity] Facility issued by \_\_\_\_\_ and relating to the Authority's Dade County Expressway Authority (Florida) Toll System Revenue Bonds, Series 1996 (the "Bonds"), will become effective on \_\_\_\_\_ (the "Alternate [Credit/Liquidity] Facility Date"). Your Bond will be subject to mandatory tender for purchase on \_\_\_\_\_ at a price of 100% of the principal amount thereof, plus interest accrued thereon to such date.

2. Payment of the purchase price for your Bond will be made on the Alternate [Credit/Liquidity] Facility Date upon presentation and surrender at the address of the Tender Agent set forth below prior to 11:30 a.m., Eastern Time on the Alternate [Credit/Liquidity] Facility Date, of such Bond, duly endorsed in blank for transfer (with all signatures guaranteed by an eligible guarantor institution as defined by SEC Rule 17Ad 15 (17 CFR 240.17Ad 15):

The Bank of New York  
101 Barclay Street  
New York, New York 10286

3. In addition, you are further notified that interest will no longer accrue to you on your Bond on and after the Alternate [Credit/Liquidity] Facility Date and, other than the right to receive payment of the purchase price for your Bond, you shall then cease to have further rights under the Indenture.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit D

Letter from Attorney General  
dated January 16, 2018



**PAM BONDI**  
**ATTORNEY GENERAL**  
**STATE OF FLORIDA**

OFFICE OF THE ATTORNEY GENERAL  
Opinions Section

PL-01 The Capitol  
Tallahassee, FL 32399-1050  
Phone (850) 245-0158 Fax (850) 922-3969  
<http://www.myfloridalegal.com>

January 12, 2018

Mr. Carlos M. Zaldivar  
General Counsel  
Miami-Dade Expressway Authority  
3790 Northwest 21 Street  
Miami, Florida 33142

Dear Mr. Zaldivar:

On behalf of the Miami-Dade Expressway Authority ("MDX"), you have requested an opinion regarding the following:

Whether the recently amended provisions of Section 348.0004(2)(e)1., Florida Statutes (2017) (imposing requirements applicable to tolls and tolling points), apply "if the new requirements conflict with the authority's obligations to debt/ bondholders (MDX Bond Indenture) that exist on the effective date."

Attorney General Bondi has asked that I respond to your inquiry.

Effective July 1, 2017, section 348.0004 was amended to reflect new restrictions pertaining to tolls and tolling points on expressway systems owned by any expressway authority (such as MDX) created and established pursuant to the Florida Expressway Authority Act.<sup>1</sup> The new provisions contained in section 348.0004(2)(e)1. apply notwithstanding "any other provision of law to the contrary, but subject to any contractual requirements contained in documents securing any indebtedness outstanding on July 1, 2017, in any county as defined in § 125.011(1)[.]"

As a threshold matter, it is thus apparent that your inquiry cannot be addressed without first resolving two mixed questions of fact and law: (1) whether the MDX Bond Indenture constitutes a "document securing any indebtedness outstanding on July 1, 2017"<sup>2</sup> and (2) if so, to what extent the contractual requirements of such document may or may not be reconciled with MDX's obligations under section 348.0004(2)(e)1., as

<sup>1</sup> See ch. 348, Fla. Stat. (2017).

<sup>2</sup> Although your letter refers to the "MDX Bond Indenture," it does not describe the Indenture's provisions.

Mr. Carlos M. Zaldivar  
Page Two

amended.<sup>3</sup> Because this office cannot resolve questions of fact, or mixed questions of fact and law,<sup>4</sup> we are unable to supply the predicate answers to these questions.

We therefore regret that this office may not be of more direct assistance to you in this matter.

Sincerely,



Teresa L. Mussetto  
Senior Assistant Attorney General

TLM/tsh

---

<sup>3</sup> In determining whether a direct conflict between the requirements of § 316.0004(2)(e)1. and those of "any contractual requirements contained in documents securing any indebtedness outstanding on July 1, 2017" exists, the analysis applicable to determinations of conflict between local ordinances and state statutes may, by analogy, be instructive. Applying that standard, a conflict exists where "one must violate one provision...to comply with the other." *Laborers' Int'l Union of N. Am., Local 478 v. Burroughs*, 541 So. 2d 1160, 1161 (Fla. 1989). "Putting it another way, a conflict exists when two legislative enactments 'cannot co-exist.'" *Id.* (additional citations omitted).

<sup>4</sup> See Department of Legal Affairs Statement Concerning Attorney General Opinions (available at <http://myfloridalegal.com/pages.nsf/Main/dd177569f8fb0f1a85256cc6007b70ad#nature>, last visited December 20, 2017) ("Frequently Asked Questions About Attorney General Opinions").



## Exhibit E

### Video of October 25, 2017 Transportation and Infrastructure Subcommittee hearing

[http://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=2443575804\\_2017101242](http://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=2443575804_2017101242)

## Exhibit F

Letters and Articles from Legislators regarding  
MDX toll rate

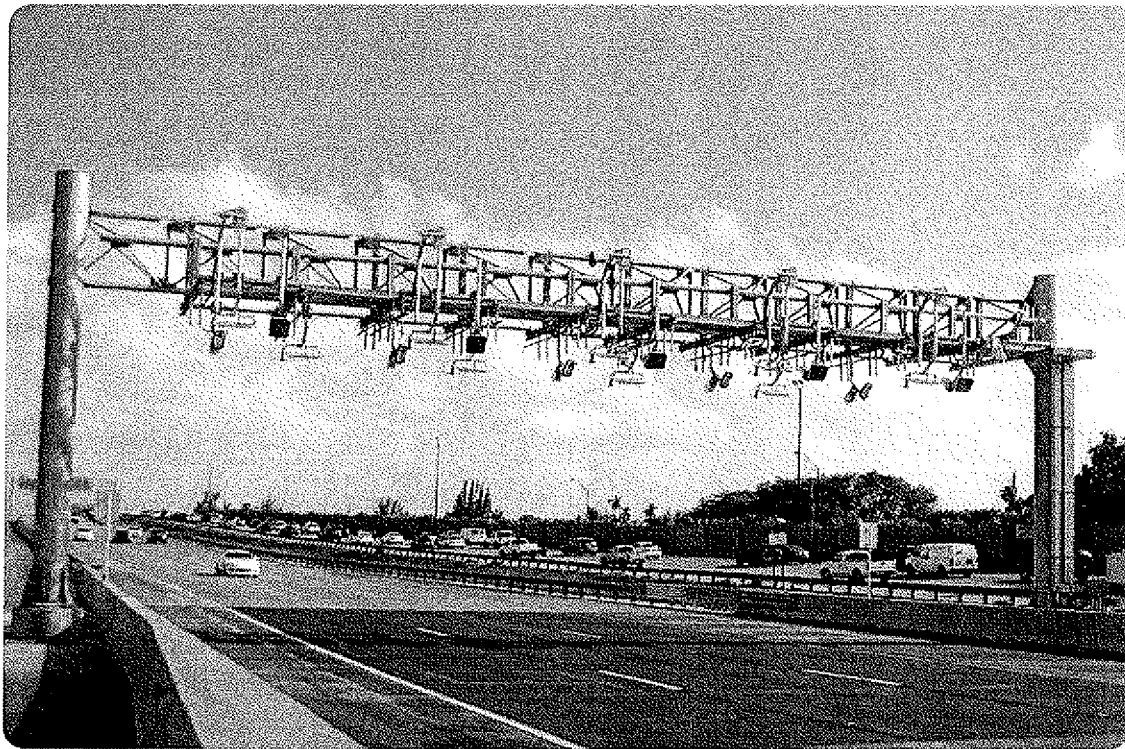


**Jeanette M. Nunez**

@RepJNunez

Follow

One step closer to much needed toll relief. HB 961 favorably passed its final committee stop. #MiamiDade #MDX



12:06 PM - 6 Apr 2017

3 Retweets 12 Likes



1

3

12



**Alejandro "Alex" Capote** @capotealejandro · 7 Apr 2017

Replying to @RepJNunez

Thank you! Gracias!

1

1

1





MIAMI-DADE COUNTY

## Florida might force Miami-Dade to cut tolls. Expect rebates to end, too.

BY DOUGLAS HANKS  
*dhanks@miamiherald.com*

May 11, 2017 08:28 PM

Updated May 11, 2017 09:05 PM

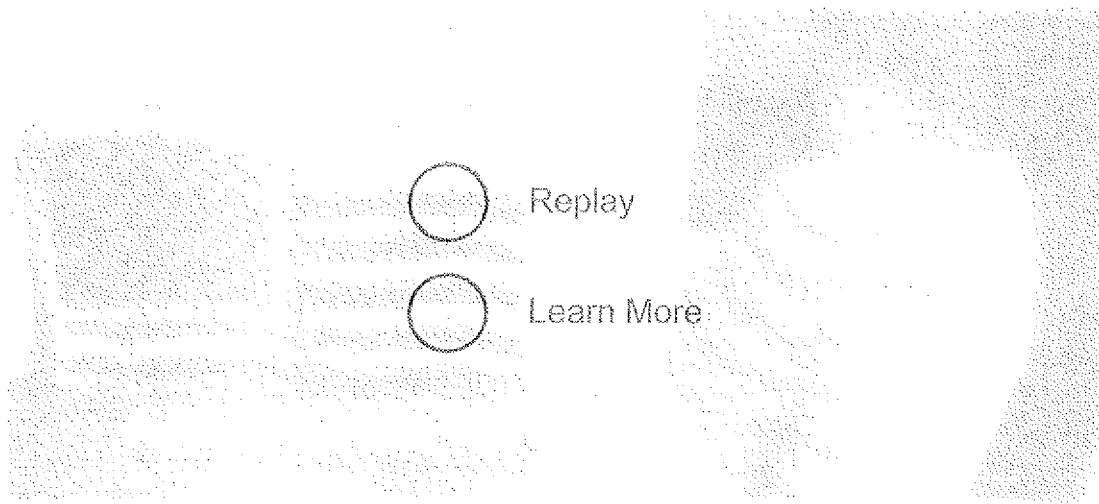
Tolls on Miami-Dade expressways could drop 5 percent under legislation awaiting Gov. Rick Scott's signature, and that might mean the end of yearly rebate checks for the county's biggest toll payers.

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The law backed by Miami-Dade legislators drew praise from anti-toll activists, since it mandates lower toll rates on five expressways and requires the county's toll authority to surrender parts of its vast cash coffers for use on rail and bus projects.

"When someone takes a child to school or goes to work, it shouldn't cost them \$10 a day," said Rep. Bryan Avila, R-Hialeah, who sponsored the bill passed May 5. Tolls "are certainly becoming a financial burden on the community as a whole."

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[How much did the 2014 expansion of tolling on the MDX system cost you? Check out our Toll Calculator.]

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With the Miami-Dade Expressway Authority (MDX) taking in about \$235 million in toll revenue last year, a 5 percent cut in tolls would mean nearly \$12 million in relief for the roughly 300,000 motorists who use the system each month. The MDX expressways are the Airport, Dolphin, Don Shula, Gratigny and Snapper Creek expressways.

**“**

**THIS IS SOMETHING TO MAKE SURE EVERYBODY GETS TOLL RELIEF.**

Florida Sen. Anitere Flores

Loopholes in the law might exempt the MDX from the toll cutbacks, if it can prove the reductions would void certain bond agreements with the lenders. But the provisions have MDX leaders bracing for big changes, including the end of the authority's annual peace offering to its biggest toll payers.

After backlash over a 2014 expansion of tolls on the Airport and Dolphin expressways that nearly doubled toll revenue within two years, MDX launched a rebate program for motorists paying more than \$100 in a single year. The program paid out \$5.5 million in December, with an average rebate check of about \$100.

The money comes from dollars MDX's board of county and state appointees declares surplus. That's the same pool of money targeted by Avila's bill for transit projects. Louis Martinez, the lawyer who serves as MDX's chairman, said the toll board would likely be forced to scratch the rebate program if the law gets enacted.

“Nobody wants to pay tolls,” he said. “But it just seems more logical to help the people who use the roads more.”

Scott hasn't said whether he plans to sign the bill. It would impose the toll cuts on expressways statewide, as well as require the state's highway system to refund users of tolled “express” lanes if their average speed drops below 40 miles per hour.

It's not clear what the law would actually mean for MDX, since the language waives the toll cuts if they would violate agreements authorities made with lenders in selling bonds. On March 10, an MDX official wrote a state legislative committee to say the proposed law violates the agency's bond agreements and would result in a credit downgrade for the toll system.

“The Bill impairs the Authority's ability to pay for projects, causing projects not to be cost

feasible,” wrote Marie Schares, MDX's chief financial officer. [Read](#)

**“  
IT JUST SEEMS MORE LOGICAL TO HELP THE PEOPLE WHO USE THE ROADS MORE.**

MDX Chairman Louis Martinez

Much of MDX's concern centers on a provision barring the agency from installing toll facilities within five miles of each other on roads built after July 1, 2017. That restriction would have cost the current system millions of dollars if it had been in effect in 2014 before the toll expansion. One five-mile stretch of the Dolphin, for example, now has two tolling spots. While those toll stations would not be affected, future road projects could be.

A recent Moody's report noted MDX has more than 1,500 days worth of cash on hand — essentially meaning it could stop collecting money and pay operating expenses for about four years. While MDX says it needs cash reserves for future projects, some want the money liquidated to support Miami-Dade's under-funded transit system, which relies on sales and property taxes.

“The question is whether someone comes in to tell [MDX] not to commit to any more projects,” said Xavier Suarez, a Miami-Dade commissioner.

Avila's House Bill 1049 is the latest attempt to rein in MDX, which was established as a buffer between elected officials and the politically unpopular process of establishing tolls. But with toll rates inspiring so much ire from residents, elected officials are increasingly eager to get involved with the board and its decisions.

Miami-Dade Mayor Carlos Gimenez recently secured one of the County Commission's seats on the MDX board and might make a bid for MDX chairman when elections are held in June. He's publicly advocated for the kind of toll rollback in the bill, saying motorists shouldn't have to go through hoops to pay less.

“Mayor Gimenez would rather have maximum toll relief throughout the system,” spokesman Michael Hernández said.

Sen. Anitere Flores, R-Miami, who backed Avila's bill, said the rebates didn't lessen anger about tolls for most drivers.

“A rebate is something that's nice. But there might be some individuals who use the toll roads a lot, but not quite enough to get a rebate,” she said. “This is something to make sure everybody gets toll relief.”

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**Jeanette M. Nunez**

@RepJNunez

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TY @FLGovScott for approving much needed toll relief in #MiamiDade. I am proud to have sponsored HB1049 w/ @BryanAvilaFL @SenReneGarcia



5:52 PM - 26 Jun 2017

4 Retweets 17 Likes



4

17





**Jeanette M. Nunez**

@RepJNunez

Follow



Yesterday, I addressed #MDX in the Transportation and Infrastructure Subcommittee on its failure to implement the provisions of HB1049.



7:51 AM - 26 Oct 2017

4 Retweets 11 Likes



1

4

11



**Jeanette M. Nunez** @RepJNunez · 26 Oct 2017



What I want to see is #toll reduction for my constituents and all toll payers of @MiamiDadeCounty!

3

2

3



**Jeanette M. Nunez** @RepJNunez · 26 Oct 2017



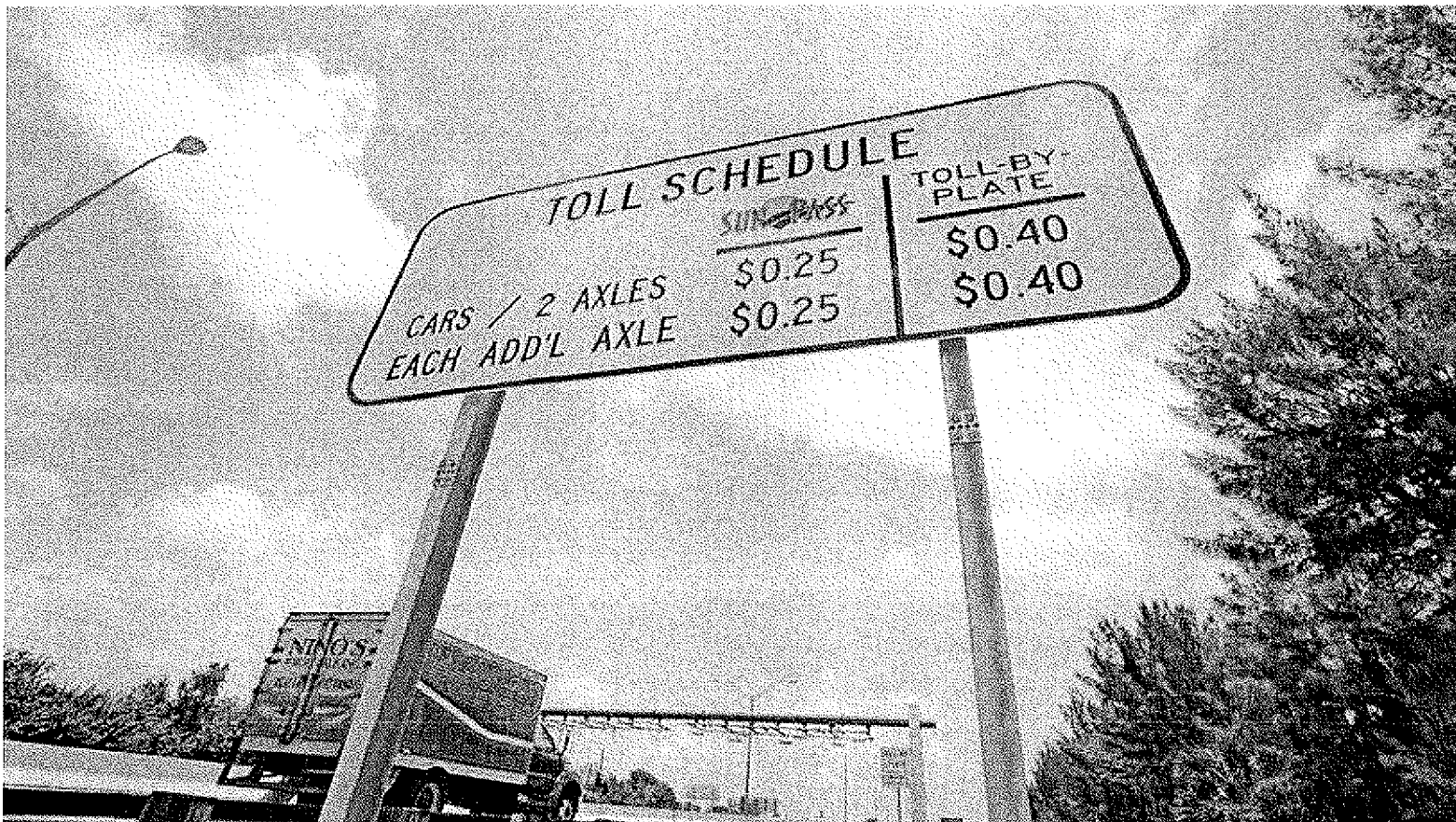
Myself, @BryanAvilaFL, @SenReneGarcia and #FLHouse has done its part to give toll relief to @MiamiDadeCounty. #MDX needs to act now!

3

2

3





### LATEST NEWS

## Bovo: Governor should sign bill reducing tolls and raise our quality of life in Miami-Dade

BY ESTEBAN BOVO JR.  
[www.miamidade.gov](http://www.miamidade.gov)

May 12, 2017 11:22 PM  
Updated May 12, 2017 11:26 PM

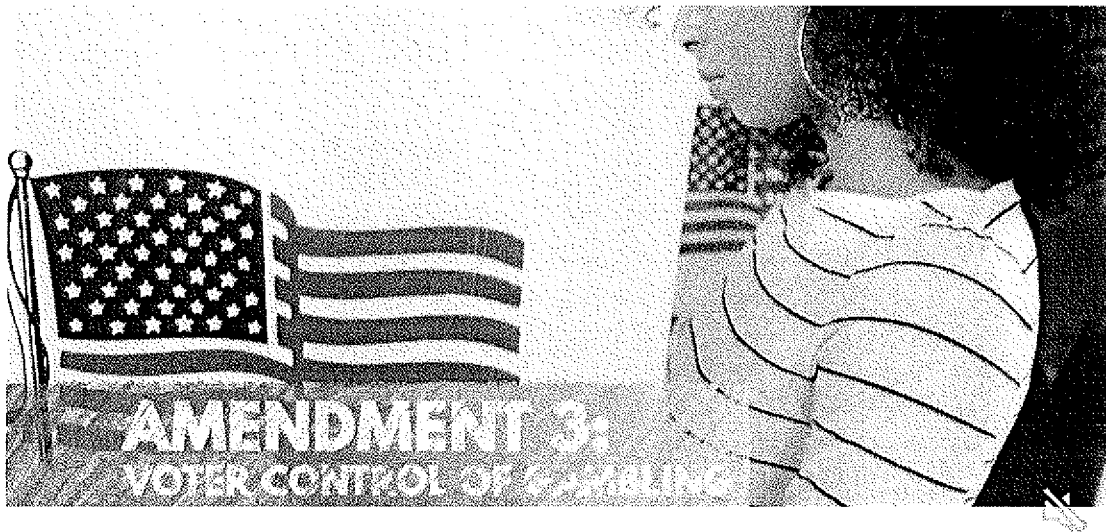
In 1994, the Florida Legislature and the Miami-Dade County Commission adopted legislation creating the Miami-Dade Expressway Authority, also known as MDX, in an effort to maintain toll dollars in Miami-Dade to improve the quality of life of county residents.

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Fast forward 23 years — Miami-Dade's population has grown to more than 2.6 million residents and out-of-town visitation has nearly doubled; thus, increasing the use of our roadways by both residents and visitors. This combination equals only one thing — ever growing traffic.

The Florida Department of Transportation, Florida's Turnpike, MDX, and Miami-Dade County have spent billions on expanding the Palmetto Expressway, Don Shula Expressway, Dolphin Expressway, Interstate 95, the Turnpike, and the surrounding roads that support the highway and interstate system.

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Many of the dollars that have been spent come from Miami-Dade's families' hard-earned paychecks, which are collected by either taxes or tolls.

But still we sit in traffic. Not to mention the billions that taxpayers have already paid out for the People's Transportation Plan, passed by voter referendum in 2002. Many residents believe it has fallen short on delivering sufficient transportation outcomes.

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Tolls are a leading funding source for roadway projects currently planned, under construction, or have already been built, yet these projects have not completely solved our traffic headaches.

Yes, expansion of roadways alleviate our commutes for a short period of time, but not before the roadway once again becomes overly congested.

The big question is, “How do we alleviate traffic and get more people moving efficiently throughout Miami-Dade?”

In comes the Strategic Miami Area Rapid Transit (SMART) plan, which is the county's comprehensive transportation plan that provides for new transit options for our residents and visitors.

The SMART plan consists of six transit corridors that extends service beyond the existing Metrorail to Aventura, Miami Gardens, Kendall, West Miami-Dade, Florida City, and Miami Beach.

These six transit corridors are estimated to cost anywhere between \$3 billion and \$6 billion in capital expenditures. An area in which MDX and FDOT could assist county residents significantly is by investing into the SMART plan.

MDX alone could invest some of the more than \$200 million toll dollars collected annually from Miami-Dade residents.

During the 2016-2017 legislative session, members of the Miami-Dade delegation filed various pieces of legislation to address the traffic and toll issues facing Miami-Dade residents.

House Bill 1049, relating to expressway authorities by state Rep. Bryan Avila and under the leadership of Rep. Jeanette Nunez and Sens. Anitere Flores and Rene Garcia, passed both the House and Senate unanimously.

This legislation provides that MDX contribute between 20 percent and 50 percent of surplus revenues into Miami-Dade projects that are selected by the county's Transportation Planning Organization.

The legislation also requires MDX to provide drivers with a rebate program, regulates and extends the distance between tolling points, places new restrictions on toll rate hikes, and cut tolls by between 5 percent and 10 percent.

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The surplus revenues from MDX could provide funding for the corridors of the SMART plan that represent millions of dollars that Miami-Dade needs for development and construction of such projects.

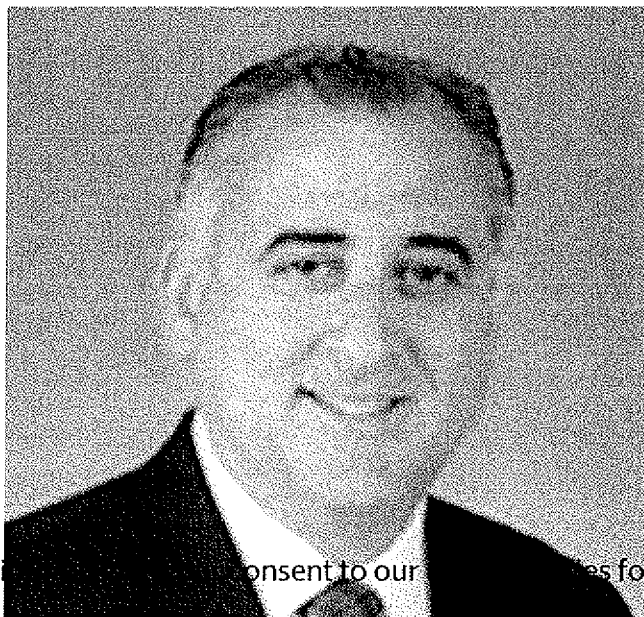
Assuming that the expressway authority follows its 2017 budget, the county can expect to tap into at least \$20 million in surplus revenues. This represents anywhere from \$4 million to \$10 million annually to be bonded for capital investments of the SMART plan.

The Miami-Dade Commission has unanimously adopted resolutions in support of this MDX reform legislation and has worked toward having the reforms adopted by the Florida Legislature to provide residents relief from the financial burdens caused by the tolls and create alternatives via mass transit.

I urge Gov. Rick Scott to sign this much-needed piece of legislation into law. This bill not only benefits all hard-working residents of Miami-Dade by reducing tolls and providing further accountability of tolls revenue, it also provides the next step in developing transportation options in our county.

They will provide a better quality of life for all who live, work and visit Miami-Dade.

*Esteban Bovo, Jr. represents District 13 and is the chairman of the Miami-Dade County Commission and past chair of the Transit and Mobility Services Committee. His newly created Chairman's Policy Council will tackle the most urgent problems the county faces within two and four years. Finding innovative transportation funding solutions tops the list.*



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## LETTERS TO THE EDITOR

# Lawmakers: MDX has failed Miami-Dade toll payers — again

May 18, 2018 12:18 AM

Updated May 18, 2018 12:18 AM

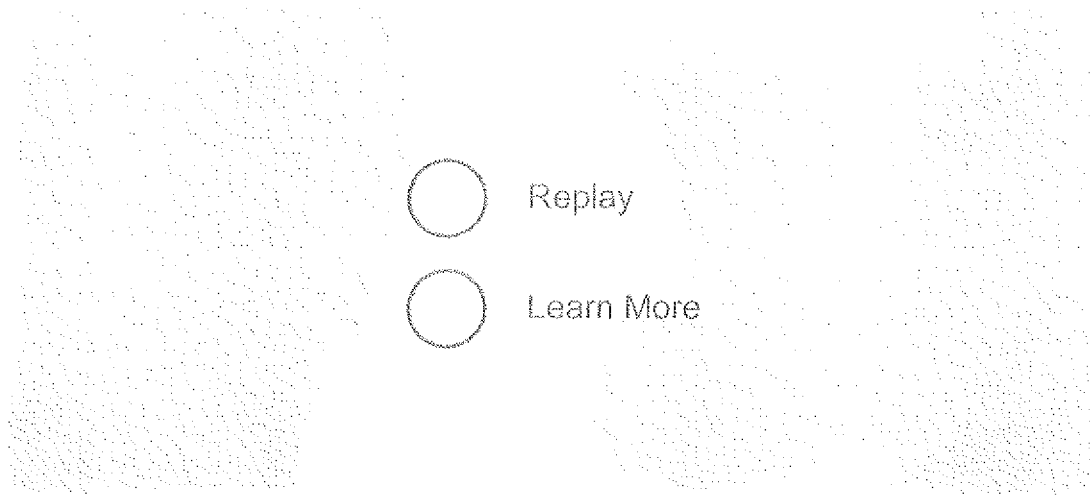
Another Legislative Session in the Florida Legislature has passed and we have had the honor of continuing to represent residents of Miami-Dade County on statewide issues.

In our time as legislators, we have worked with our constituents to address their most pressing concerns.

A common concern is traffic congestion and excessive toll rates.

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For far too long, Miami-Dade County residents have desperately sought transportation solutions and toll reductions.

In 2017, through our efforts and that of Senator Rene Garcia, we introduced legislation to bring much needed toll relief to our hardworking overburdened families.

The legislation required MDX to reduce tolls for SunPass users by 5-10% effective July 1, 2017.

To this day, MDX has refused to comply with Florida law and implement the mandatory toll reduction.

They have failed to provide Miami-Dade toll payers significant and much needed toll relief.

Not only do they fail to abide by Florida's law requiring toll reduction, but they create and adopt policies for their own benefit at the expense of hardworking families.

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For these reasons, we are proud to have championed legislation that would bring additional accountability from MDX.

During the 2018 legislative session, our colleagues passed legislation that requires MDX to comply with the toll reduction or their current board will be dissolved and replaced with a new board that will follow the law.

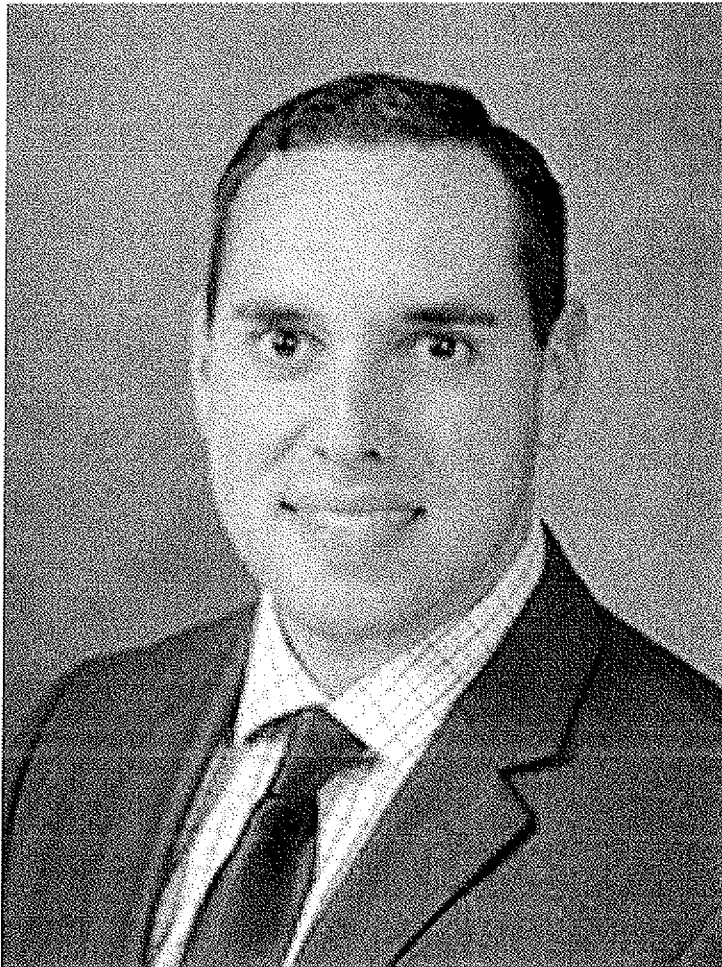
It is essential for MDX to do the right thing and reduce tolls for the citizens of Miami-Dade, as they are legally required to do.

Enough is enough.

*FLORIDA REPRESENTATIVES JEANETTE M. NUÑEZ*

*FLORIDA REPRESENTATIVE*

*BRYAN AVILA*



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# Florida House of Representatives

*Representative Bryan Avila*

District 111

District Office:  
301 Hialeah Drive Suite 117  
Hialeah, FL 33010  
(305) 805-5127  
(305) 805-5129 (fax)

Tallahassee Office:  
303 House Office Building  
402 South Monroe Street  
Tallahassee, FL 32399  
(850) 717-5111

Email: [Bryan.Avila@myfloridahouse.com](mailto:Bryan.Avila@myfloridahouse.com)

May 29, 2018

Dear Board member,

Adherence to the rule of law should never be optional. It is particularly more disturbing when a government entity, created by the Florida Legislature, takes it upon itself to ignore legislation that passed during the 2017 Regular Session and was effective July 1, 2017.

Without a doubt, the Miami-Dade Expressway Authority (MDX) has had ample time to implement HB 1049 "Limited Access and Toll Facilities." Among the many reforms in HB 1049, an immediate reduction of toll rates and the limiting of future increases were to provide relief to those families that depend on the use of your roadways to go to work or take their children to school.

As a member of the Board of Directors you are responsible for overseeing MDX's operations and ensuring it complies with Florida law. However, your choice to disregard the law is not only defiant, but also arrogant.

While a recent court proceeding questioned MDX's credibility, I strongly believe that your unlawful behavior irreparably harms any standing you may have in our community. As of today, it is clear that the members of this board have neglected their duties.

Since the agency is unwilling to abide by the law, then it can expect further reforms moving forward. As a state legislator and public servant, I will make sure to use every resource available to hold MDX accountable.

Sincerely,

A handwritten signature in cursive script that reads "Bryan Avila".

State Representative Bryan Avila  
District 111

#### Committees

- Commerce Committee • Energy & Utilities Subcommittee • Higher Education Appropriations Subcommittee
- Post-Secondary Education Subcommittee • Transportation & Infrastructure Subcommittee
- Joint Committee on Public Counsel Oversight

## Exhibit G

### Senate Staff Analysis of 2018 Amendment

The Florida Senate  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: PCS/SB 1012 (291154)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); and Senators Passidomo and Young

SUBJECT: Alligator Alley Toll Road

DATE: February 26, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Miller	TR	<b>Favorable</b>
2.	McAuliffe	Hrdlicka	ATD	<b>Recommend: Fav/CS</b>
3.	McAuliffe	Hansen	AP	<b>Pre-meeting</b>

**I. Summary:**

PCS/SB 1012 extends the statutory obligation of the Florida Department of Transportation (FDOT) to reimburse a county or another local governmental entity for the direct actual costs of operating the fire station at mile marker 63 on I-75/Alligator Alley (the Alley), currently set to expire on June 30, 2018. The bill requires the FDOT to make such reimbursement by interlocal agreement through June 30, 2021.

The bill also provides that all law enforcement officers on official law enforcement business are exempt from paying tolls on toll facilities. The bill defines "official law enforcement business."

The fiscal impact regarding the reimbursement by the FDOT for the costs of operating the fire station is indeterminate, but any FDOT expenditures will be based on an agreed-upon estimated schedule of such operational expenses incorporated into the required extended interlocal agreement.

The Revenue Estimating Conference reviewed the effect of a similar exemption from tolls for law enforcement vehicles (marked and unmarked vehicles) and estimated that the fiscal impact of the provision would be negative, but indeterminate, to the State Transportation Trust Fund, Turnpike trust funds, and local trust funds. State and local agencies with law enforcement traveling through toll facilities will have less expenditures.

The bill takes effect July 1, 2018.

## II. Present Situation:

### **Fire Station 63 on I-75/Alligator Alley**

Collier County provides fire, rescue, and emergency management services along the Alley through its dependent fire district, the Ochopee Fire Control and Rescue District, and the county's emergency medical services. These services are provided at a facility located at the FDOT's rest area on the Alley at mile marker 63 (MM63).<sup>1</sup>

### ***Use of Alley Tolls to Fund Fire Station 63***

Section 338.26, F.S., establishes the Alley as a toll road, because the construction of the road "contributed to the alteration of water flows in the Everglades and affected ecological patterns of the historical southern Everglades." The statute sets forth required uses of the fees generated from tolls for use of the Alley, which are deposited into the State Transportation Trust Fund. Fees must be used to reimburse outstanding contractual obligations and to operate and maintain the highway and toll facilities, including reconstruction and restoration.

Currently, related to the fire station on the Alley, the statute requires the fees to be used:

- To design and construct the fire station, which may be used by a county or other local governmental entity to provide the services to the public on the Alley; and
- To reimburse a county or other local governmental entity for the direct actual costs of operating the fire station, through an interlocal agreement effective July 1, 2014, to no later than June 30, 2018.<sup>2</sup>

Fees may also be transferred to the Everglades Trust Fund for certain environmental projects or may be pledged for revenue bonds or notes issued to pay for environmental projects in the area.

Upon termination of the interlocal agreement for the fire station, the FDOT would be authorized to use the fees for the other required or authorized uses described above.

### ***Toll Revenues and Expenses***

According to the FDOT's 2016 Annual Report for its Enterprise Toll Operations,<sup>3</sup> for Fiscal Year 2016-17 through 2020-21 the Alligator Alley will average \$34.5 million in gross toll revenue each year with annual operating and maintenance expenses averaging \$8.9 million and annual debt service payments averaging \$3.45 million. The maintenance expenses include funding for rest area improvements, fire station operations, and interchange lighting projects.

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<sup>1</sup> National Park Service, *Big Cypress: I-75, Mile Marker 63*, available at <https://www.nps.gov/bicy/planyourvisit/i-75-mm-63.htm> (last visited February 2, 2018). Greater Naples Fire Rescue District, *Station 63*, available at <https://www.greaternaplesfire.org/gnfrd-location/station-63/> (last visited February 2, 2018).

<sup>2</sup> Chapter 2014-223, Laws of Florida.

<sup>3</sup> The 2016 report is the latest posted to the FDOT's Turnpike Enterprise webpage and is available at [http://www.floridasturnpike.com/documents/reports/Toll%20Operations%20Annual%20Report/2016/2016%20OTO\\_Department%20Owned.pdf](http://www.floridasturnpike.com/documents/reports/Toll%20Operations%20Annual%20Report/2016/2016%20OTO_Department%20Owned.pdf) (last visited February 2, 2018.)

***The Interlocal Agreement for Fire Station 63***

On May 9, 2014, the FDOT and the Board of Commissioners of Collier County entered into an interlocal agreement to provide the terms and conditions under which the FDOT would “provide funding to the County for the County’s expenses in purchasing equipment, compensating County employees, and otherwise providing fire, rescue and emergency services utilizing the Fire Station.”<sup>4</sup>

The FDOT included the fire station in its construction project when it rebuilt the rest area at MM63 and the fire station opened in early 2015.<sup>5</sup> The fire station was built “for the exclusive use of the County for the duration of this Agreement.”<sup>6</sup> The FDOT owns the fire station and leases it to the County.<sup>7</sup> However, under the agreement, “all equipment, personal property, vehicles, apparatus and supplies acquired by County with funding provided by DEPARTMENT...shall remain the property of County, notwithstanding any termination of this Agreement.”<sup>8</sup>

***Funding in the Interlocal Agreement***

For the term of the agreement, the FDOT agreed to provide a maximum of \$1,761,235 for direct actual capital costs and a maximum of \$1,498,100 for the county’s direct actual costs of operating the fire station.<sup>9</sup> The county agreed to bear all expenses in excess of the FDOT’s specified participation.<sup>10</sup> The agreed-upon funding includes various annual operating items such as hired paramedics and fire fighters; expenses for administrative and building maintenance; expenses for bulk fuel and various types of search and rescue equipment. Capital costs include items such as vehicles, radios, vehicles, and breathing air compressors.<sup>11</sup>

Information regarding the FDOT’s Adopted Five-Year Work Program for 2014-2018 reflects the following funding for the MM63 fire station:<sup>12</sup>

Fiscal Year	Amount
2014	\$1,761,235
2015	\$1,498,100
2016	\$1,522,070
2017	\$1,522,070
2018	\$1,498,100

<sup>4</sup> Department-Collier County Interlocal Agreement, CSFA No. 55.036, May 9, 2014, at pp. 2-3.

<sup>5</sup> Department-Collier County Interlocal Agreement at p. 2 and 3. Marco Eagle, *New fire/EMS station opens on Alligator Alley*, April 5, 2015, available at <http://www.marconews.com/story/news/2015/04/03/new-fully-staffed-fireems-station-opens-alligator-alley/25238329/> (last visited February 2, 2018).

<sup>6</sup> Department-Collier County Interlocal Agreement at p. 3. The agreement provides that state or local law enforcement may station officers, agents, or response teams at the fire station, based on space and availability.

<sup>7</sup> Department-Collier County Interlocal Agreement at p. 12.

<sup>8</sup> Department-Collier County Interlocal Agreement at p. 13.

<sup>9</sup> The Agreement also authorizes the County to request a Consumer Price Index adjustment of the total operating amount 30 days prior to July 1 for each year after the first covered by the Agreement. Department-Collier County Interlocal Agreement at p. 10.

<sup>10</sup> Department-Collier County Interlocal Agreement at p. 11.

<sup>11</sup> Department-Collier County Interlocal Agreement at Exhibit B.

<sup>12</sup> FDOT, Web Application, Office of Work Program and Budget, *Five Year Work Program – Project Summary for Transportation System: Intrastate Interstate, Description: Alligator Alley Fire Station @ MM63*, updated January 10, 2018,

## Toll Exemptions

Section 338.155, F.S., requires the payment of tolls on toll facilities. However, the DOT may suspend tolls when necessary to assist in an emergency evacuation and the law provides the following exemptions:

- Employees of the agency operating the toll facility on official state business.
- State military personnel while on official military business.
- Certain disabled persons.
- Persons exempt from toll payment by the authorizing resolution for bonds issued to finance the toll facility.
- Persons exempt on a temporary basis when a toll facility is part of a detour route.
- Any law enforcement officer operating a marked official vehicle when on official law enforcement business.
- Any person operating a fire or rescue vehicle when on official business.
- Any person participating in the funeral procession of a law enforcement officer or firefighter killed in the line of duty.
- Any person driving a Department of Military Affairs automobile or other vehicle used for transporting military personnel, stores, and property that is properly identified.

For toll facilities managed by the DOT,<sup>13</sup> the revenues of which are not pledged to repayment of bonds, the DOT is authorized to allow certain vehicles exemptions from the payment of tolls:<sup>13</sup>

- Public transit vehicles.<sup>14</sup>
- Vehicles participating in a funeral procession for an active-duty military service member.<sup>15</sup>
- Registered hybrid vehicles using high-occupancy-vehicle or express lanes.<sup>16</sup>

### *Toll Exemptions for Law Enforcement Marked Vehicles*

According to the DOT, law enforcement agencies with marked vehicles submit a “SunPass Non-Revenue Account Application,” in which the agency lists each marked vehicle that will have a non-revenue SunPass transponder along with certain identifying information regarding each vehicle. The agency representative attests that the vehicles listed on the application qualify for the toll exemption for marked law enforcement vehicles.<sup>17</sup>

available at

<http://www2.dot.state.fl.us/fmsupportapps/workprogram/Support/WPItemRept.ASPX?RF=HIS&CD=03&SD=FIRE%20STATION&FY=FALSE|FALSE|FALSE|FALSE|FALSE|FALSE&ITM=435389~1&RP=ITEM> and <http://www2.dot.state.fl.us/fmsupportapps/workprogram/Support/WPItemRept.ASPX?RF=WP&CD=03&SD=FIRE%20STATION&FY=FALSE|FALSE|FALSE|FALSE|FALSE|FALSE&ITM=435389~1&RP=ITEM> (last visited February 2, 2018.)

<sup>13</sup> See Rules 14-100.006 and 14-100.004, F.A.C. Respectively the rules exempt public transit vehicles, certain carpools, motorcycles, and hybrid vehicles registered and operating on I-95 in Miami-Dade, Broward and Palm Beach Counties; and for public transit vehicles operating on express lanes.

<sup>14</sup> Section 338.155, F.S.

<sup>15</sup> Section 338.155, F.S.

<sup>16</sup> Section 316.0741, F.S.

<sup>17</sup> Department of Transportation, *2018 Agency Legislative Bill Analysis: SB 356*, Oct. 8, 2017.

### **Turnpike Bonds**

Section 338.227, F.S., authorizes the DOT to borrow money as provided in the State Bond Act<sup>18</sup> to pay all or any part of the cost of any one or more legislatively approved turnpike projects. The principal of, and the interest on, these bonds is paid solely from revenues pledged for their payment.

In s. 338.229, F.S., in connection with the issuance of Turnpike bonds, the state agrees not to limit or restrict the rights vested in the DOT to establish and collect tolls for the use of the Turnpike System and to fulfill the terms of any agreements made with bondholders. The agreement includes not impairing the rights or remedies of the bondholders until the bonds, together with interest on the bonds, are fully paid and discharged.<sup>19</sup>

The DOT provided information about the Turnpike's master bond resolution under which the current Turnpike bonds were issued. The resolution contains the DOT's commitments regarding the funding and operation of the Turnpike System. The resolution is a contract with the bondholders and "may not be amended in any way that affects 'the unconditional promises of the Department to fix, maintain and collect tolls for the use of the Turnpike System' without consent of all the holders of outstanding Turnpike bonds."<sup>20</sup>

Additionally, the DOT states that the resolution includes a section in which the DOT agreed that it "shall not allow or permit any free use of the Toll roads of the Florida Turnpike, except to officials or employees of the Department whose official duties in connection with the Florida Turnpike require them to travel over the Florida Turnpike, or except as may be provided by laws in effect on the date of the adoption of this Resolution."<sup>21</sup>

### ***Toll Exemptions under the Turnpike Bonds***

The Turnpike bond resolution was adopted and restated on May 17, 2005. At that time, state law authorized the DOT to suspend tolls in the event of emergencies and included the enumerated exemptions discussed above in s. 338.155, F.S.<sup>22</sup>

Such provisions were also in place when bonds were sold for Alligator Alley in 2007.<sup>23</sup>

In 2008 and 2012, when additional toll exemptions were created they were limited to DOT managed toll facilities, whose revenues were not pledged to repayment of bonds. As discussed above, the DOT is authorized to exempt public transit vehicles, vehicles participating in a funeral procession for an active-duty military service member, and hybrid vehicles from paying tolls.

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<sup>18</sup> Sections 215.57 – 215.83, F.S. Statutes creating the state's expressway and bridge authorities contain similar provisions. See ss. 348.0010, 348.64, 348.761, and 348.974, F.S.

<sup>19</sup> Statutes creating the state's expressway and bridge authorities contain similar provisions. See ss. 348.0010, 348.64, 348.761, and 348.974, F.S.

<sup>20</sup> Department of Transportation, *2018 Agency Legislative Bill Analysis: SB 356*, Oct. 8, 2017.

<sup>21</sup> Department of Transportation, *2018 Agency Legislative Bill Analysis: SB 356*, Oct. 8, 2017.

<sup>22</sup> Department of Transportation, *2018 Agency Legislative Bill Analysis: SB 356*, Oct. 8, 2017.

<sup>23</sup> Department of Transportation, *2018 Agency Legislative Bill Analysis: SB 356*, Oct. 8, 2017.

Because the revenues of the Turnpike System are pledged to repayment of bonds, these provisions do not apply to the Turnpike System or Alligator Alley.<sup>24</sup>

### III. Effect of Proposed Changes:

#### Fire Station 63 on I-75/Alligator Alley

The bill amends s. 338.26(3)(a), F.S., to extend the date through which the FDOT is statutorily obligated to reimburse Collier County for the direct actual costs of operating the MM63 fire station to no later than June 30, 2021.

#### Toll Exemptions

The bill amends s. 338.155(1), F.S., exempting law enforcement officers while on official law enforcement business from paying tolls. "Official law enforcement business" includes, but is not limited to, patrol operations, investigative activities, crime prevention activities, or traffic operations. The bill also changes references to "handicapped persons" to "disabled persons" and makes other technical changes.

The bill takes effect on July 1, 2018.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

#### D. Other Constitutional Issues:

Art. I, s. 10 of the State Constitution prohibits any law that would impair a contract. If a court determines that this bill impairs the master bond resolution of the Turnpike or Alligator Alley by exempting for law enforcement officers while on official law enforcement business from the payment of tolls, then such provisions of the bill may be found unconstitutional.

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<sup>24</sup> Department of Transportation, *2018 Agency Legislative Bill Analysis: SB 356*, Oct. 8, 2017.



**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:****Fire Station 63 on I-75/Alligator Alley**

The bill requires the FDOT to continue funding the County's direct actual costs of operating the MM63 fire station from the fees generated from tolls collected on the Alley through July 1, 2021. Under current law, the FDOT is authorized to use the fees for the other required or authorized uses described in the statute. The impact on toll bonds or other agreements is unknown at this time because the FDOT has not provided an analysis of the bill.

Collier County will receive funding for an additional three years for actual operating and capital costs related to the fire station, and thus will only have to expend county funds for expenses above the costs agreed to in the interlocal agreement. The exact amount of such funding is unknown but will likely be based on an agreed-upon estimated schedule of expenses incorporated into a new interlocal agreement or extension of the current interlocal agreement.

**Toll Exemptions**

On November 3, 2017, the Revenue Estimating Conference reviewed the effect of a similar exemption from tolls for law enforcement vehicles (marked and unmarked vehicles) and estimated that the fiscal impact of the provision would be negative, but indeterminate, to the State Transportation Trust Fund, Turnpike trust funds, and local trust funds.<sup>25</sup>

The Florida Department of Law Enforcement estimated that a similar bill could save the department about \$80,000 annually in toll expenditures.<sup>26</sup> The Department of Highway Safety and Motor Vehicles estimated that a similar bill would have a minimal impact to the department.<sup>27</sup> Local law enforcement and other law enforcement agencies will likely experience similar reduced annual expenditures for tolls.

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<sup>25</sup> Office of Economic and Demographic Research, Revenue Estimating Conference, *Law Enforcement Exemption, HB 141*, November 3, 2017, available at [http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/\\_pdf/page82.pdf](http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/_pdf/page82.pdf) (last visited Feb. 8, 2018). The conference methodology assumed that "[c]hanging the toll exemption from 'handicapped person' to 'person with a disability' will have no effect on eligibility."

<sup>26</sup> Florida Department of Law Enforcement, *2018 FDLE Legislative Bill Analysis: SB 356*, Sept. 28, 2017.

<sup>27</sup> Department of Highway Safety and Motor Vehicles, *2018 Agency Legislative Bill Analysis: HB 141*, Nov. 17, 2017.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The DOT has stated that any risk of violating bondholder rights associated with the statutory change to the toll exemptions could be avoided by limiting the exemption to toll facilities managed by the DOT, the revenues of which are not pledged to the repayment of bonds.<sup>28</sup>

**VIII. Statutes Affected:**

This bill amends sections 338.26 and 338.155 of the Florida Statutes.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**Recommended CS by Appropriations Subcommittee on Transportation, Tourism, and Economic Development on February 8, 2018:**

The committee substitute:

- Exempts law enforcement officers on official law enforcement business from paying tolls on toll facilities.
- Defines “official law enforcement business,” and changes references to “handicapped persons” in the toll exemption statute to “disabled persons,” along with other technical changes.
- Restores current law which limits the I-75/Alligator Alley fire station’s services to Alligator Alley.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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<sup>28</sup> Department of Transportation, *2018 Agency Legislative Bill Analysis: SB 356*, Oct. 8, 2017.

## Exhibit H

Fitch Rating Agency press release

## FITCH AFFIRMS MIAMI-DADE COUNTY EXPRESSWAY AUTHORITY, (FL)'S REVS AT 'A'; OUTLOOK NEGATIVE

Fitch Ratings-New York-27 July 2018: Fitch Ratings has affirmed the 'A' rating on Miami-Dade County Expressway Authority, (FL)'s (MDX) \$1.434 billion outstanding revenue and refunding bonds. The Rating Outlook on all senior rated bonds is revised to Negative from Stable.

### KEY RATING DRIVERS

Summary: The 'A' rating reflects the essentiality of the MDX system to commuters in the Miami area, coupled with a demonstrated logistical proficiency with regards to managing system assets. Further, MDX exhibits effectiveness in executing expansion and maintenance oriented capital planning while continuing an observed history of robust operating and financial performance. The system's recent implementation of the Open Road Tolling (ORT) system has expanded tolling and strengthened the system's financial profile, resulting in higher coverage and escalated deleveraging.

The revision of the outlook to Negative reflects the unprecedented intervention taken by the Florida State Legislature usurping local autonomy in order to lower toll rates and divert surplus revenues to other Miami-Dade County project obligations. The Negative Outlook also reflects uncertainty surrounding the long term impact the state's intervention may have on the authority's ability to allocate funds for capital expenditures in future years and issue additional debt. In addition, the Negative Outlook further encompasses uncertainty of future legislative actions that could impact MDX's independent rate making flexibility.

Stable Commuter Base With Strategic Importance - Revenue Risk (Volume): Stronger  
The MDX system has a mature traffic profile with steady annual increases in toll transactions. Revenues are derived from a robust system of assets that provide critical links within the Miami-Dade transportation network. The availability of limited alternative routes ensures the importance of the system to the region. While the system has recently experienced large year-over-year increases in transactions due to the implementation of ORT on all expressways, growth is projected to level off in forthcoming years.

Moderate Price Flexibility - Revenue Risk (Price): Midrange  
MDX's adopted toll policy indexes toll increases to the consumer price index (CPI) beginning in fiscal 2019. However, the 2017 state legislation and recently enacted 2018 legislation resulted in MDX Board passing a motion to implement a system wide 6% toll rate reduction. State involvement in MDX's rate setting process signifies a fundamental policy shift that causes uncertainty regarding future independent rate-setting ability. While management stated MDX is exempt from the legislation relating to the operational and financial control given it is superseded by bond document compliance and transfer agreement, it remains to be seen if the legislature will challenge MDX's rate-setting independence again in the future.

Good Physical Condition of Assets - Infrastructure & Renewal Risk: Stronger  
MDX has maintained the system and its facilities in satisfactory operational conditions and maintains a robust roadway inspection schedule, above that required by the Florida Department of Transportation. The system's ongoing maintenance could potentially be impacted by the legislation enforcing a rate decrease and requiring 20% of surplus revenues (after payment of debt service) be allocated to other Miami-Dade County projects before its replenishing its own renewal and replacement deposits. In the near term, the measure prompted MDX to suspend \$192 million worth of projects not currently under contract. However, the majority (\$561.6 million) of the authority's

five-year \$678.2 million work program is earmarked for expansion and capacity improvements leaving a manageable amount for system maintenance and repairs.

#### Some Exposure to Variable-Rate Debt - Debt Structure: Stronger

MDX's debt portfolio is mostly fixed rate with only 5% variable rate debt, the majority of which is hedged. The overall debt service profile is moderately escalating and the debt service reserve is cash funded at maximum annual debt service (MADS).

#### Financial Profile

Financial metrics for fiscal 2017 were consistent with recent historical results, as supported by strong year-to-date performance through April 2018. Leverage (net debt/CFADS) was 6.4x at fiscal year-end 2017, a decrease from the prior yearend due to an increase of revenues supported by higher transactions from the roll out of ORT. Leverage is estimated to average around 5x through fiscal year-end 2026. Debt service coverage was 2.0x in fiscal 2017 and averages 1.8x through fiscal 2028 based on Fitch's rating case, not including potential additional debt.

#### PEER GROUP

Central Florida Expressway Authority (CFA), rated 'A'/Outlook Stable is a comparable peer to MDX in terms of a large expressway system with a politically sensitive pricing environment, and both have strong volume profiles. Debt service coverage ratios and leverage are comparable over the medium term.

#### RATING SENSITIVITIES

##### Future Developments That May, Individually or Collectively, Lead to Negative Rating Action:

--An unclear long-term toll policy and/or the continued implementation of legislation requiring reduced toll rates.

--Transferring meaningful surplus cash for non-project county uses which limit economic rate setting ability and limits investment in system assets on a timely basis.

--Demonstrated lack of legal independent rate setting authority.

--Underperformance of traffic and revenue with an unwillingness or inability to adjust tolls accordingly, resulting in the erosion of the debt service coverage ratio below 1.6x for a sustained period.

--The addition of obligations that increase leverage above 8.0x.

##### Future Developments That May, Individually or Collectively, Lead to Positive Rating Action:

--Revenue growth outpacing the sponsor's projections in an environment reflecting stable operations and limited additional capital expansion, leading to debt service coverage above 1.8x on a sustained basis.

#### CREDIT UPDATE

##### Performance Update

System wide transactions stabilized in 2017, increasing only 5% to approximately 495 million in fiscal 2017, from 472 million in fiscal 2016 as the 100% electronic toll collections on the ORT system completed its second full year of operations. SunPass accounts were approximately 81% of transactions while toll by plates accounted for 17%. Historically, SunPass transactions have accounted for the largest amount of transactions, followed by toll-by-plate, which has exhibited increasing growth since fiscal 2014. Actual transactions for the first 10 months of fiscal 2018 are

approximately 6% lower than forecast due to hurricane Irma that hit Florida in September which resulted in a loss of 18 days of toll collections. Excluding hurricane days, transactions would be 1.1% below expectations. Approximately 71% of system wide transactions remains concentrated along the Dolphin Expressway (SR836) and Don Shula Expressway (SR874) at 47% and 24%, respectfully.

Total operating revenues were \$238 million in fiscal 2017, increasing 1% from \$235 million in fiscal 2016. The flattening out stems from the system maturing following the implementation of ORT in 2016. SunPass accounts generated approximately 81% (or \$191.0 million) of total toll revenues and 17.1% (\$40.5 million) from toll-by-plate billing. Actual performance through fiscal 2018 (April) shows total revenues outperforming budget expectations by 2.1% or \$4.1 million. However, we expect toll revenues will improve modestly over fiscal 2017 given 18 days of toll suspension occurred when Florida was hit by Hurricane Irma in September 2017. The slight increase also reflects revenue reporting timing adjustments. Revenue is based on process date which reflects a lag in billing of TBP customers.

Operating expenses decreased by 1.7% to \$53 million in fiscal 2017 as costs associated with the ORT ramp up have levelled off. Expenses from operations were lower by 1.4% primarily due to a decrease in image staffing expenses and the reduction of subsidy for the SunPass transponder. This was primarily offset by an increase in FDOT pass-through charges and ORT software/hardware maintenance. Maintenance and Administrative costs were flat compared to fiscal 2016. Actual performance of expenses through fiscal 2017 is under budget by 12% and 1.7% less than 2016, reflecting expenses returning to more historic levels since the tolling expansion project have been completed. Management expects future expenses to increase at an approximate inflationary rate in the medium term.

Effective July 1, 2017, the amended state legislation required MDX to reduce SunPass toll rates by 5%-10% and to allocate 20% of its annual surplus revenues (after debt service but before contributions to its renewal and replacement fund) to pay for county transit projects. Management believed they were exempt from the financial and operation sections of the bill on the basis that the legislation is contrary to their bond indenture, as well as MDX transfer agreement and submitted a request for clarification to the Office of Florida's Attorney General. The Attorney General declined to opine on the matter. Prior to the 2018 recess this spring, the state legislature passed another law calling for the identical rate reduction by Oct. 1, 2018 or the MDX board would be replaced with new members. Effective July 1, 2018, MDX lowered all tolls by 6% while it weighs its option to pursue the matter any further. Given the expressway's operating and capital needs in a congested and growing area, a strategic, reliable and independent toll policy is an important credit consideration. Fitch will continue to monitor ongoing developments as MDX weighs its options in regards to pursuing an exemption from the legislation and its overall toll-setting ability and policy.

MDX's fiscal 2019 to fiscal 2022 work plan is \$678.2 million of which the vast majority, \$561.6 million, is earmarked for expansion and capacity improvements. The budgeted amount is reflective of a larger \$1.2 billion project costs which includes 50 projects. Approximately 45% of the work plan is completed with the remaining projects expected to be finished through fiscal 2023. The FY 2018 and FY 2019 capital plan is expected to be funded with funds on hand and net revenues. FY 2020 capital program will be evaluated for a debt issuance amount to be determined as project schedules are currently under evaluation.

#### Fitch Cases

Fitch's base case assumes a 1.8% decline to traffic volume, based on an annualized calculation reflecting 10-months of actual performance for fiscal 2018. Volumes grow by 8% in 2019 reflecting a year without any weather interruptions and by an average of 2% thereafter. Average

toll rates decline by 7.7% in 2019 reflecting the mandated rate reduction. Rates are kept flat in 2020 and then grow by inflation thereafter. Operating expenses adopts budget expectations in fiscal 2018 of 9.5%, and then increases by 3.5% thereafter. Under Fitch's base case, the debt service coverage ratio (DSCR) in fiscal 2018 is 1.87x, then averages 1.9x through fiscal 2028. Leverage (net-debt/CFADS) averages 4.7x during the same period.

Under Fitch's rating case scenario, volumes are reduced by an additional 1% in 2019 and then grow by 1.4% thereafter. Average toll rates are cut by the initial 7.7% in 2019 and then by another 4% in 2020. Rates are held flat in 2021 and then grow by inflation thereafter. Operating expenses are grown by 4% annually. Under Fitch's rating case, the average debt service coverage ratio is 1.73x through fiscal 2028 and leverage averages 5.2x, not including potential additional debt. Inclusive of a potential \$80 million debt issuance in 2020, the average debt service coverage ratio will decrease marginally to 1.63x and leverage will peak after issuance at 6.92x.

#### Asset Description

MDX was formed in 1994 and is a public instrumentality and agency of the State of Florida. MDX is responsible for operating, maintaining and improving an expressway system that currently includes the Airport Expressway (SR-112), the East-West (Dolphin) Expressway (SR-836), the South Dade (Don Shula) Expressway (SR-874), the Gratigny Parkway (SR-924), and the Snapper Creek Expressway (SR-878).

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Applicable Criteria

Rating Criteria for Infrastructure and Project Finance - Effective from 24 August 2017 to 27 July 2018 (pub. 24 Aug 2017)

<https://www.fitchratings.com/site/re/902689>

Toll Roads, Bridges and Tunnels Rating Criteria (pub. 22 Feb 2018)

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## Exhibit I

Correspondence from MDX Bond Insurer

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