

**BY-LAWS  
OF  
NORTHERN INDIANA TOLL ROAD AUTHORITY, INC.**

**ARTICLE I**

**Definitions**

Section 1.     Definitions. The terms set forth below shall have the following meanings unless otherwise required by the context in which they may be used.

Acquisition. The term “Acquisition” shall mean the purchase by the Corporation of assets or equity interests in connection with its efforts to acquire control of the Toll Road Lease Interest, potentially including, without limitation, through the purchase from Seller of the Membership Interest.

Act. The term “Act” shall mean the Indiana Nonprofit Corporation Act of 1991, as amended.

Articles. The term “Articles of Incorporation” shall mean the Articles of Incorporation of the Corporation filed with the Secretary of State of Indiana and as are in effect from time to time, and any amendments thereto and all restatements thereof.

Associate Members. The term “Associate Member” or “Associate Members”, as the context shall require, shall mean and refer to any or all of the following Indiana counties whose geographical area includes an area in which the Toll Road physically passes: (i) Elkhart; (ii) LaGrange; (iii) Porter; (iv) St. Joseph; and, (v) Steuben; and which may subsequently be included as Associate Members as contemplated by Article XIII of these By-Laws, but subject to the requirements of Article IV, Section 10(f), in an expansion of the geographical area in which Grant Requests may be made and Grants issued of any Excess Revenue. The use of the term Associate Members is for convenience only and no potential Associate Members shall be considered a “Member” as that term is defined under the Act. The Articles specifically provide that the Corporation shall not have Members as that term is defined under the Act.

Board Committee. The term “Board Committee” (or “Committee”) shall mean a body whose members as a committee are authorized to exercise a designated portion of the authority or function of the Board when the Board is not in session.

Board of Directors. The term “Board of Directors” or “Board” shall mean the Board of Directors of the Corporation.

Bonds. The term “Bonds” shall mean the tax-exempt and taxable municipal bonds that shall be issued by the Corporation in order to finance the Acquisition, including, to the extent applicable, in accordance with IRS Rev. Rul. 63-20 and IRS Rev. Proc. 82-26.

Bond Documents. The term “Bonds Documents” shall mean documents executed in connection with the issuance of the Bonds.

By-Laws. The term “By-Laws” shall mean these By-Laws of the Corporation and any amendments hereto and all restatements hereof.

Chairman. The term “Chairman” shall mean the Chairman of the Board of Directors.

Code. The term “Code” shall mean the Internal Revenue Code of 1986, as amended, or the corresponding provisions of future United States internal revenue law.

Concession Agreement. The term “Concession Agreement” shall mean that certain Concession and Lease Agreement dated as of April 12, 2006 by and between the IFA and ITRCC.

Corporation. The term “Corporation” shall mean Northern Indiana Toll Road Authority, Inc., an Indiana nonprofit, public benefit corporation.

Counties. The term “Counties” shall collectively refer to the County of LaPorte, Indiana and the County of Lake, Indiana.

County. The term “County” shall mean, as the case may be, either or both of Lake County or LaPorte County.

Director. The term “Director” shall mean a member of the Board of Directors.

Excess Revenue. The term “Excess Revenue” shall mean any and all revenue received by the Corporation after payment of operation and maintenance costs of the Toll Road (including, without limitation, the funding of appropriate reserves), Founders Payment, debt service and other direct expenses of the Corporation.

Fiscal Year. The term “Fiscal Year” shall mean the fiscal year of the Corporation which shall begin each year on the first day of January and end on the last day of December of the same year.

Founders Payments. The term “Founders Payments” shall mean payments to each County in the amount of \$5,000,000 per year to be paid after payment of necessary operations and maintenance costs of the Toll Road, but before payment of required debt service on the Bonds.

Founding Members. The term “Founding Members” shall mean Lake County and LaPorte County. The use of the term Founding Members is for convenience only and none of the Founding Members shall be considered a “Member” as that term is defined under the Act. The Articles specifically provide that the Corporation shall not have Members as that term is defined under the Act.

Grant Requests. The term “Grant Requests” shall mean written requests from the Counties, other governmental entities within the Counties, or tax-exempt organizations

described under Section 501(c)(3) of the Code within the Counties for the funding by the Corporation of specific projects with charitable and governmental purposes designed to lessen the burdens of government as set forth in the Articles and as further described Article IV, Sections 2 and 3 of these By-Laws.

Grants. The term “Grants” shall mean the use by the Corporation of any Excess Revenue to further the Corporation’s charitable and governmental purposes of lessening the burdens of government through the funding of governmental projects pursuant to Grant Requests from the Counties, other governmental entities within the Counties, or tax-exempt organizations described under Code Section 501(c)(3) within the Counties.

Governmental Directors. The term “Governmental Directors” shall mean that particular type of and those directors of the Corporation as described in Article III, Section 1(c)(ii) of these By-Laws.

Governor-Appointed Director. The term “Governor-Appointed Director” shall mean that particular type of and that director of the Corporation as described in Article III, Section 1(c)(i)(B) of these By-Laws.

IFA. The term “IFA” shall mean the Indiana Finance Authority.

Independent Director. The term “Independent Director” shall mean a Director of the Corporation that is not at the time of initial appointment, and has not been at any time during the five (5) years preceding such time: (a) a director, officer, employee or attorney of the Corporation or any affiliate of the Corporation; (b) a customer of, supplier to, or other person that derives more than one percent (1%) of its revenues from its activities with the Corporation or any affiliate of the Corporation; (c) a person or other entity controlling or under common control with any such director, officer, employee, attorney, customer or supplier; or (d) a member of the immediate family of any such director, officer, employee, attorney, customer or supplier. As used herein, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a person or entity, whether through ownership of voting securities, by contract or otherwise.

Initial Board of Directors. The term “Initial Board of Directors” shall have the meaning ascribed to it in Article III, Section 1(b) of these By-Laws.

Initial Board Members. The term “Initial Board Members” shall have the meaning ascribed to it in Article III, Section 1(b) of these By-Laws.

IRS. The term “IRS” shall mean the United States Internal Revenue Service.

IRS Rev. Rul. 63-20. The term “IRS Rev. Rul. 63-20” shall mean IRS Revenue Ruling 63-20, 1963-1 C.B. 24.

IRS Rev. Proc. 79-5. The term “IRS Rev. Proc. 79-5” shall mean the IRS Revenue Procedure 79-5, 1979-1 C.B. 485.

IRS Rev. Proc. 81-22. The term “IRS Rev. Proc. 81-22 shall mean the IRS Revenue Procedure 81-22, 1981-1 C.B. 692.

IRS Rev. Proc. 82-26. The term “IRS Rev. Proc. 82-26” shall mean the IRS Revenue Procedure 82-26, 1982-1 C.B. 476.

IRS Rev. Proc. 97-13. The term “IRS Rev. Proc. 97-13” shall mean the IRS Revenue Procedure 97-13, 1997-1 C.B. 632.

ITRCC. The term “ITRCC” shall mean ITR Concession Company LLC, the current owner of the Toll Road Lease Interests.

Lake County. The term “Lake County” shall refer to the County of Lake, Indiana, a governmental entity and political subdivision of the State of Indiana.

LaPorte County. The term “LaPorte County” shall refer to the County of LaPorte, Indiana, a governmental entity and political subdivision of the State of Indiana.

Membership Interest. The term “Membership Interest” shall mean one hundred percent (100%) of the membership (equity) interests of ITRCC.

Mezzanine Debt. The term “Mezzanine Debt” shall mean any subordinated debt issued by the Corporation as part of the Acquisition contemplated hereunder, which subordinate debt may be issued as a subordinate tranche of the Bonds or as a separate facility.

Non-Governmental Directors. The term “Non-Governmental Directors” shall mean that particular type of and those directors of the Corporation as described in Article III, Section 1(c)(i) of these By-Laws.

Office Holder. The term “Office Holder” shall mean an individual holding one of the specified elective offices with the Counties set forth in Article III, Section 1(b)(ii) of these By-Laws.

Officer. The term “Officer” shall mean one or more of the positions as provided in Article V of these By-Laws.

Operator. The term “Operator” shall mean a third-party private management company with substantial experience as an operator of toll roads in other jurisdictions that will be engaged by the Corporation (in a manner compliant with IRS Rev. Proc. 97-13) to efficiently manage and operate the Toll Road and to ensure compliance with the terms of the Concession Agreement.

Operator-Appointed Director. The term “Operator-Appointed Director” shall mean that particular type of and that director of the Corporation as described in Article III, Section 1(c)(i)(C) of these By-Laws.

Regulations. The term “Regulations” shall mean the Treasury Regulations promulgated under the Code.

Reversion. The term “Reversion” shall mean the transfer of unencumbered fee title to the rights of the Toll Road Lease Interests under the Concession Agreement owned by the Corporation, with the written consent of the IFA, to LaPorte County upon the payment in full of the Bonds and Mezzanine Debt in the manner described in Section 3.05 of IRS Rev. Proc. 82-26.

Seller. The term “Seller” shall mean ITR Concession Company Holdings, LLC, a Delaware limited liability company, and the current owner of the Membership Interest.

Toll Road. The term “Toll Road” shall mean the Indiana East-West Toll Road.

Toll Road Lease Interests. The term “Toll Road Lease Interests” shall mean the lease rights for the remaining term of the Concession Agreement.

Section 2.     Interpretation. In these By-Laws, unless the context otherwise requires:

- (a) References to these By-Laws are references to these By-Laws, any exhibits and schedules which may be attached hereto and all amendments of these By-Laws hereafter adopted;
- (b) References to Articles and Sections are references to articles and sections of these By-Laws;
- (c) The terms “hereof”, “herein”, “hereby”, and derivative or similar words will refer to these entire By-Laws;
- (d) References to any document (including these By-Laws) are references to that document as amended, consolidated, supplemented, novated or replaced by the parties from time to time;
- (e) Unless the context requires otherwise, references to any law are references to that law and all rules and regulations promulgated thereunder;
- (f) The word “including” means including without limitation;
- (g) The gender of all words herein include the masculine, feminine, and neuter, and the number of all words herein include the singular and plural; and
- (h) The term “date hereof”, and similar terms means the effective date of adoption of these By-Laws.

**ARTICLE II**

**Name**

The name of the Corporation is Northern Indiana Toll Road Authority, Inc.

**ARTICLE III**

**Board of Directors**

**Section 1**      **Number, Appointment and Term of Office.**

- (a)      **Number.** The number of directors of the Corporation shall be ten (10) unless changed by amendment of this Article III, Section 1.
  
- (b)      **Composition of Initial Board of Directors.** Immediately following the incorporation of the Corporation, the president of the Board of Commissioners of LaPorte County shall appoint an initial and temporary Board of Directors (the “**Initial Board of Directors**”) of the Corporation consisting of eight (8) members (the “**Initial Board Members**”). The Initial Board of Directors will be supplemented by the Governor-Appointed Board Member and the Operator-Appointed Board Member when such Board members are appointed as provided for in Article III, Section 1(c) of these By-Laws (increasing the size of the Initial Board of Directors to ten (10) when such appointments are made).

The Initial Board of Directors will have no authority to amend the Articles or these By-Laws, but will otherwise have the powers and authority granted to the Board of Directors under the Act, the Articles and these By-Laws and will serve until LaPorte County, through a majority vote of the LaPorte County Board of Commissioners, appoints a total of eight (8) members of the Board of Directors (four (4) Non-Governmental Directors as provided in Article III, Section 1(c)(i)(A) and (ii) of these By-Laws, and four (4) Governmental Directors as provided in Article III, Section 1(c)(ii) of these By-Laws), at which time, the Initial Board Members shall be automatically deemed to have resigned (with no action required by either the former Initial Board Members or the Corporation) and the vacancies of the Initial Board Members immediately filled by the Board Members so-appointed by LaPorte County in accordance with Article III, Section 1(c)(i)(A) and (ii).

- (c)      **Composition of Board of Directors.** Other than with respect to the Initial Board Members, members of the Corporation’s Board of Directors will be appointed based on the following criteria:
  - (i)      **Non-Governmental Directors.** The Board of Directors shall have six (6) directors who are not elected representatives from the Counties (the “**Non-Governmental Directors**”). The Non-Governmental Directors will be appointed as follows:

- (A) LaPorte County, shall appoint four (4) individuals to serve on the Corporation's Board of Directors as follows:
- (1) One (1) individual nominated by majority vote of the Board of Commissioners of LaPorte County based on his/her knowledge or experience overseeing projects in fields such as hospitality, tourism, or transportation and who is an Independent Director;
  - (2) One (1) individual (a) nominated by majority vote of the Board of Commissioners of Lake County based on his/her knowledge or experience overseeing projects in fields such as hospitality, tourism, or transportation, and (b) acceptable to LaPorte County in its reasonable discretion.
  - (3) One (1) individual who is (a) nominated by majority vote of the LaPorte County Council based on his/her ability to bring regional perspective to the Corporation's Board of Directors as a result of prior experience in education, health care, or related professions, and (b) is a resident of either LaPorte County or Lake County; and
  - (4) One (1) individual who is (a) nominated by majority vote of the Lake County Council based on his/her ability to bring regional perspective to the Corporation's Board of Directors as a result of prior experience in education, health care, or related professions, (b) is a resident of either LaPorte County or Lake County, and (c) is acceptable to LaPorte County in its reasonable discretion;

In the above instances where LaPorte County is granted reasonable discretion over whether to approve a nominee, if LaPorte County chooses not to approve such nominee, the nominating body shall promptly nominate alternative individuals until a nominee that is reasonably acceptable to LaPorte County is nominated.

- (B) The Governor of the State of Indiana or his or her designee shall appoint one (1) individual to serve on the Board of Directors of the Corporation (the "**Governor-Appointed Director**"); and
- (C) The Operator shall appoint one (1) individual to serve on the Board of Directors of the Corporation (the "**Operator-Appointed Director**").

- (ii) **Governmental Directors.** The Board of Directors shall have four (4) directors who are elected representatives from the Counties (the

“**Governmental Directors**”). LaPorte County shall appoint all of the Governmental Directors as follows:

- (A) LaPorte County shall appoint one (1) individual who is (a) a member of the LaPorte County Council, and (b) nominated by a majority vote of the LaPorte County Council;
- (B) LaPorte County shall appoint one (1) individual who is (a) a member of the Board of Commissioners of LaPorte County, and (b) nominated by a majority vote of the Board of Commissioners of LaPorte County;
- (C) LaPorte County shall appoint one (1) individual who is (a) a member of the Lake County Council, (b) nominated by a majority vote of the Lake County Council, and (c) acceptable to LaPorte County in its reasonable discretion; and
- (D) LaPorte County shall appoint one (1) individual who is (a) a member of the Board of Commissioners of Lake County, (b) nominated by a majority vote of the Board of Commissioners of Lake County, and (c) acceptable to LaPorte County in its reasonable discretion.

In the above instances where LaPorte County is granted reasonable discretion over whether to approve a nominee, if LaPorte County chooses not to approve such nominee, the nominating body shall promptly nominate alternative individuals until a nominee that is reasonably acceptable to LaPorte County is nominated.

(d) **Term of Office.**

- (i) **Non-Governmental Directors.** The Non-Governmental Directors shall be appointed to three year terms.
- (ii) **Governmental Directors.** Governmental Directors shall serve as Directors of the Corporation for the lesser of (A) one year, or (B) until such time as they are no longer an Office Holder. Any Governmental Director shall automatically be terminated as a Director, without further action required by the Corporation or LaPorte County, if such Governmental Director ceases to be an Office Holder.

**Section 2** **Vacancies.**

- (a) **Non-Governmental Directors.** Any vacancy occurring on the Board of Directors with respect to a Non-Governmental Director, other than the Governor-Appointed Director and the Operator-Appointed Director, caused by an increase



in the number of directors, or by resignation, removal, death or otherwise, shall be filled in the same manner as provided in Article III, Section 1(c)(i)(A).

- (b) **Governmental Directors.** Any vacancy occurring on the Board of Directors with respect to a Governmental Director caused by an increase in the number of directors, or by resignation, removal, death or otherwise, shall be filled in the same manner as provided in Article III, Section 1(c)(ii).
- (c) **Governor-Appointed Director.** Any vacancy in the Governor-Appointed Director position shall be filled in the same manner as provided in Article III, Section 1(c)(i)(B).
- (d) **Operator-Appointed Director.** Any vacancy in the Operator-Appointed Director position shall be filled in the same manner as provided in Article III, Section 1(c)(i)(C).

**Section 3**     **Removal of Directors.** LaPorte County may remove any of the members of the Board of Directors appointed by LaPorte County “For Cause” (as defined herein), at any time, in which case the resultant vacancy (or vacancies) will be filled as specified in Section 2 above. The Board of Directors may also remove any of the members of the Board of Directors, with or without cause, by a vote of at least seventy five percent (75%) of the members of the Board of Directors, in which case the resultant vacancy (or vacancies) will be filled as specified in Article III, Section 2. Any Director that has been removed For Cause may not be subsequently re-appointed to the Board of Directors. “For Cause” means (a) conviction of a crime involving moral turpitude, (b) willful misconduct or gross neglect of duties which, in either case, has resulted, or in all probability is likely to result, in material economic damage to the Corporation, or (c) a repeated failure by a member of the Board of Directors to follow the written directives of the Board of Directors or guidelines expressly approved by the Board of Directors which has resulted, or in all probability is likely to result, in material economic damage to the Corporation; provided that within thirty (30) days after receiving notice of such misconduct, neglect or failure, on which LaPorte County is relying to terminate a member of the Board of Directors, such Director shall be provided the opportunity defend himself/herself before the Board of Commissioners of LaPorte County and/or the Board of Directors as applicable.

**Section 4**     **Resignations.** Members of the Board of Directors may resign at any time by giving written notice to the Board of Directors or the Chairman of the Corporation. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, no acceptance of such resignation shall be necessary to make it effective. Following any resignation, a replacement will be made as provided in Article III, Section 2.

**Section 5**     **Regularly Scheduled Meetings.**

- (a) **Annual Meeting.** The annual meeting of the Board of Directors for the appointment of Directors and election of Officers and for the transaction of such other business as may properly come before the meeting shall be held at such time and place as shall from time to time be determined by the Board of Directors.

Failure to hold the annual meeting in any given year(s) shall not work any forfeiture or dissolution of the Corporation and shall not affect otherwise valid corporate acts.

- (b) **Regular Meetings.** Regular meetings of the Board of Directors may be held at such time and place as shall from time to time be determined by the Board of Directors, and the Board of Directors shall have a minimum of six (6) meetings per year. The annual meeting of the Board of Directors shall be held in place of one (1) of such regular meetings.
- (c) **Schedule.** A schedule showing the annual meeting and the regular meetings of the Board of Directors for the fiscal year shall be distributed to each Director. A change in the date or time for any of the meetings on such schedule shall be communicated to each Director as provided for in the first sentence of Article III, Section 7.
- (d) **Location.** All meetings of the Board of Directors shall be held at the office of the Corporation or if otherwise determined by the Board of Directors, at such other location within the State of Indiana.

**Section 6**     **Special Meetings.** Special meetings of the Board of Directors may be called by the Chairman of the Corporation or by Directors constituting at least twenty-five percent (25%) of the total number of the members of the Board of Directors.

**Section 7**     **Notice.** Unless the Act requires a longer notice period, notice of the time and place of the annual meeting, regular meetings and any special meeting of the Board of Directors shall be served personally upon, e-mailed, faxed or telephoned to each Director at least two (2) days, or mailed to each Director at his or her usual place of business or residence at least five (5) days, prior to the day of the meeting. Directors, in lieu of such notice, may sign a written waiver of notice either before the time of the meeting, at the meeting or after the meeting. Attendance by a Director in person at any such meeting (a) waives objection to lack of notice or defective notice of the meeting, unless the Director at the beginning objects to holding the meeting or transacting business at the meeting, and (b) waives any valid objection to consideration of a particular matter at the meeting that is not within the purpose described in the meeting notice, unless such Director objects to considering the matter when the matter is presented. The Corporation or other party sending such notice shall be entitled to rely upon the most current addresses and telephone numbers on the Corporation's books and records.

**Section 8**     **Conference Telephone Meetings.** A member of the Board of Directors may participate in any meeting of the Board of Directors by means of a conference telephone or similar communications equipment by which all persons participating in the meeting can communicate with each other, and participation by these means constitutes presence in person at the meeting.

**Section 9**     **Quorum.** A majority of the actual number of Directors shall be necessary to constitute a quorum for the transaction of any business.

**Section 10 Voting.** Subject to the limitations set forth in this Article III, Section 10, the act of the majority of the Directors present at a meeting at which a quorum of such Directors is present shall constitute the act of the Board of Directors, unless the act of a greater number is required by the Act, the Articles, or by these By-Laws. Notwithstanding anything to the contrary herein, the following voting requirements shall apply to the following actions:

- (a) Any decision concerning or relating to the disposition of (i) the Excess Revenue, (ii) the approval of Grant Requests or (iii) the funding of Grants, shall require an affirmative vote of at least four (4) Directors; provided, however, that the Governor-Appointed Director and the Operator-Appointed Director shall not have a right to vote on any of these decisions.
- (b) Any decision regarding the selection of an Operator shall require an affirmative vote of at least seventy-five percent (75%) of the total number of Directors which shall include the vote of the Governor-Appointed Director (excepting that the Operator-Appointed Director shall not participate in such approval process). The selection of an Operator with substantial experience successfully and efficiently operating toll roads in other jurisdictions shall be a requirement at all times of the Corporation to maintain and operate the Toll Road.
- (c) Any change with respect to the Founders Payments or the use of Excess Revenue for the making of Grants shall require an affirmative vote of one hundred percent (100%) of the total number of Directors (excluding the Governor-Appointed Director and the Operator-Appointed Director who shall not participate in such vote).
- (d) The Corporation reserves the right to amend, alter, change or repeal any provisions contained in the Articles or any amendment thereto, by a vote of one hundred percent (100%) of the total number of the Board of Directors (excluding the Governor-Appointed Director and the Operator-Appointed Director who shall not participate in such vote); provided, however, that such power shall not authorize any amendment which would have the effect of (a) disqualifying the Corporation as a tax-exempt organization under Section 501(c)(3) of the Code or would have the effect of disqualifying contributions to the Corporation for deduction under Section 170(c)(2), Section 2055(a)(2) or Section 2522 of the Code, or (b) authorizing the Corporation to engage in activities other than those that may be carried on by an organization whose income is excluded from federal income tax under Section 115 of the Code.
- (e) The Corporation reserves the right to make, amend, alter, change or repeal any provisions contained in these By-Laws of the Corporation or in any amendment hereto, by a vote of one hundred percent (100%) of the total number of the Board of Directors (excluding the Governor-Appointed Director and the Operator-Appointed Director who shall not participate in such vote); provided, however, that such power shall not authorize any amendment, alteration, change or repeal to Article X of the By-Laws containing the Bankruptcy Remoteness Provisions and which would have the effect of (a) disqualifying the Corporation as a tax-exempt

organization under Section 501(c)(3) of the Code or would have the effect of disqualifying contributions to the Corporation for deduction under Section 170(c)(2), Section 2055(a)(2) or Section 2522 of the Code, or (b) authorizing the Corporation to engage in activities other than those that may be carried on by an organization whose income is excluded from federal income tax under Section 115 of the Code.

- (f) As contemplated by Article XIII, the Corporation reserves the right to expand the geographical area in which Grant Requests may be made and Grants of any Excess Revenue issued to include one (1) or more Associate Members and, therefore, amend the percentage allocation of any Grants of Excess Revenue provided for in Article IV, Section 2 of these By-Laws; provided, however, that such action of the Corporation shall require (i) a vote of One Hundred Percent (100%) of the total number of the Board of Directors (excluding the Governor-Appointed Director and the Operator-Appointed Director who shall not participate in such vote), and (ii) the required vote in accordance with Article III, Section 10(e) to make any and all necessary and related amendments to these By-Laws.

**Section 11** **Consent Action by Directors.** Subject to the limitations set forth in Article III, Section 10, any action required or permitted to be taken at any meeting of the Board of Directors or of any Board Committee thereof may be taken without a meeting, if a written consent to such action is signed by at least sixty-seven percent (67%) of the total number of Directors or all Directors of such Board Committee (unless a higher percentage is required for such action by these By-Laws, in which case the higher percentage will control), as the case may be, and such written consent is filed with the minutes of proceedings of the Board of Directors or such Board Committee. Action taken under this Article III, Section 11 is effective when the last Director signs the consent, unless the consent specifies a different, prior or subsequent effective date.

**Section 12** **Compensation and Expenses.** The Directors of the Corporation may be paid a reasonable per diem stipend for time expended in connection with their duties on behalf of the Corporation. Reasonable expenses incurred by Directors for the benefit of the Corporation may be reimbursed by the Corporation. No expense may be reimbursed unless a written request for reimbursement, accompanied by a receipt, is presented.

## **ARTICLE IV**

### **Specific Financial Matters**

**Section 1** **Founders Payment.** The Acquisition shall be structured so as to ensure that the Founders Payments will be paid to the Counties annually, including initial Founders Payments at closing to reimburse the Counties for the time and expenses associated with the formation of the Corporation and associated actions.

**Section 2** **Treatment of Excess Revenue.** Any Excess Revenue of the Corporation shall be used to fund Grant Requests, and Grants shall be allocated for charitable and

governmental purposes to projects intended to lessen the burdens of government in the Counties in as close to a ratable manner as reasonably practicable (*i.e.*, to the greatest extent reasonably practicable, fifty percent (50%) of the Grants will fund projects in Lake County and fifty percent (50%) of the Grants will fund projects in LaPorte County). The Corporation's Board of Directors shall establish procedures for the submission of Grant Requests, which will, at a minimum, require that Grant Requests from the Counties, other governmental entities within the Counties, or tax-exempt organizations described under Code Section 501(c)(3) within the Counties (a) be in writing, and (b) describe the proposed project, costs, and the charitable and governmental purposes and means by which the burdens of government will be lessened by the proposed project.

**Section 3**     **Grants.** All Grants shall fund projects within the Counties that have a charitable and governmental purposes and that lessen the burdens of government, such as, without limitation, special road, utility projects or infrastructure projects, projects to boost tourism, renovation or replacement of government buildings, initiatives to improve health, safety, and welfare of each County's residents, or any other initiatives by the Counties, other governmental entities within the Counties, or initiatives by tax-exempt organizations described under Code Section 501(c)(3) within the Counties to improve the well-being of County residents.

**Section 4**     **Funding of the Corporation.** At closing of the Acquisition, \$2,500,000 of the proceeds from the Bonds shall be allocated to the Corporation to fund organizational costs and expenses reasonably needed to capitalize the Corporation and allow the Corporation to begin to fulfill its mission as set forth in these By-Laws (including, without limitation, start-up costs, salaries, professional fees, general overhead costs, and other expenses). Thereafter, the Corporation's annual costs will be provided for in budgets submitted by the Operator in consultation with the Corporation's management and Board of Directors. All funds of the Corporation shall be subject to oversight by the Corporation's Board of Directors, Officers and management.

## **ARTICLE V**

### **Committees**

**Section 1**     **Committees Generally.** The Board of Directors may create one (1) or more Board Committees to assist it in carrying out any of the purposes of the Corporation, define the responsibilities of such Board Committee or Board Committees, delegate to such Board Committee or Board Committees powers as the Board of Directors determines to be appropriate and appoint Directors to serve on each Board Committee created in accordance with this Article V.

**Section 2**     **Executive Committee.** The members of the Board of Directors shall elect from their membership a Chairman (who will preside at meetings of the Board of Directors), Vice-Chair, and Secretary who will together form and serve as the Executive Committee for the Board of Directors. The Executive Committee shall meet at least once per month with the Executive Director.

**Section 3**     **Limit of Committee Authority.** To the extent specified by the Board of Directors, a Board Committee may exercise the authority of the Board of Directors and the management of the business and affairs of the Corporation; provided, however, that, except as otherwise provided in these By-Laws, a Board Committee may not do the following:

- (a) Approve the (i) dissolution, (ii) merger, (iii) sale, (iv) pledge, or (v) transfer of all, or substantially all, of the Corporation's assets;
- (b) Elect, appoint, or remove Directors or fill vacancies on the Board of Directors or on a Board Committee;
- (c) Elect, appoint, or remove Officers or fill vacant offices; or
- (d) Adopt, amend, or repeal the Corporation's Articles of Incorporation or the By-Laws.

## **ARTICLE VI**

### **Officers**

**Section 1**     **Principal Officers.** The principal Officers of the Corporation shall be a Chairman, a Vice-Chair, an Executive Director, a Chief Financial Officer, and a Secretary. The Corporation may also have such subordinate Officers as may be appointed in accordance with the provisions of these By-Laws. Any of the offices may be held by the same person.

**Section 2**     **Election and Term of Officers.** The principal Officers of the Corporation shall be chosen annually at the annual meeting of the Board of Directors by a vote of a majority of the Directors then in office. The Officer positions of Chairman, Vice-Chair and Secretary shall be chosen from among the members of the Board of Directors. Each Officer shall hold office for a period ending at the next annual meeting of the Board of Directors and until such Officer's successor shall have been duly chosen and qualified, or until such Officer's death, or until such Officer shall resign, or until such Officer shall have been removed in the manner hereinafter provided.

**Section 3**     **Subordinate Officers.** In addition to the principal Officers enumerated in Article VI, Section 1, the Corporation may have such other subordinate officers, agents and employees as the Board of Directors may deem necessary and as it shall select, each of whom (a) shall hold office for such period as the Board of Directors shall determine, (b) may be removed with or without cause, and (c) shall have such authority and perform such duties as the Board of Directors may from time to time determine. The Board of Directors may delegate to any principal Officer the power to appoint and to remove any such subordinate officers, agents or employees.

**Section 4**     **Removal.** Any principal Officer may be removed, either with or without cause, at any time, by resolution adopted at a meeting of the Board of Directors by a majority of the Directors then entitled to vote.

**Section 5**     **Resignations.** Any Officer may resign at any time by giving written notice to the Board of Directors, the Chairman or the Secretary. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, no acceptance of such resignation shall be necessary to make it effective.

**Section 6**     **Vacancies.** Any vacancy in any office may be filled by the Board of Directors at any regular or special meeting of the Board of Directors.

**Section 7**     **Chairman.** The Chairman shall have general supervision of the Board of Directors of the Corporation. The Chairman shall preside at all meetings of the Board of Directors. In general, the Chairman shall perform all duties and have all powers incident to the office of Chairman, as herein defined, and all such other duties and powers as the Board of Directors may, from time to time, assign.

**Section 8**     **Vice-Chair.** The Vice-Chair shall perform all duties incumbent upon the Chairman during the absence or disability of the Chairman, and perform such other duties as the Board of Directors may, from time to time, assign.

**Section 9**     **Executive Director.** The Executive Director shall have general responsibility and supervision for the overall day-to-day operations of the Corporation, subject to the control and direction of the Board of Directors. In general, the Executive Director shall perform all duties and have all the powers to supervise and manage the business of the Corporation, including implementation of the strategic goals and objectives of the Corporation, enabling the Board of Directors to fulfill its governance function, oversee the management and operation of the Toll Road by the Operator to ensure compliance by the Corporation in accordance with all of the provisions of the Concession Agreement, to analyze and recommend for approval Grant Requests and to otherwise provide direction and leadership toward achievement of the Corporation's philosophy, mission, strategy and annual goals and objectives. Subject to the control and direction of the Board of Directors, the Executive Director may enter into any contracts on behalf of the Corporation. The Executive Director shall also perform such other duties and have such other powers as the Board of Directors may, from time to time, assign.

**Section 10**    **Chief Financial Officer.** The Chief Financial Officer shall be responsible for all funds and securities of the Corporation. The Chief Financial Officer shall upon request exhibit at all reasonable times the books of account and records to any member of the Board of Directors of the Corporation during business hours at the office of the Corporation where such books and records shall be kept; shall render, upon request by the Board of Directors, a statement of the condition of the Corporation at any meeting of the Board of Directors; and, in general, shall perform all duties incident to the office of Chief Financial Officer and such other duties as from time to time may be assigned by the Board of Directors. The Chief Financial Officer shall give such bond, if any, for the faithful discharge of the Chief Financial Officer's duties as the Board of Directors may require.

**Section 11**    **Secretary.** The Secretary shall keep or cause to be kept in the books provided for that purpose the minutes of the meetings of the Board of Directors; shall duly give and serve all notices required to be given in accordance with the provisions of these By-Laws

and by the Act; shall be custodian of the records of the Corporation and attest to all documents, the execution of which on behalf of the Corporation under the Secretary's attestation is duly authorized in accordance with the provisions of these By-Laws; and, in general, shall perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned by the Board of Directors.

## **ARTICLE VII**

### **Conflict of Interest Policy**

**Section 1**     **Purpose.** The purpose of the conflict of interest policy is to protect the Corporation's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an Officer or Director of the Corporation or might result in a possible Excess Benefit Transaction (as that term is defined below). This policy is intended to supplement, but not replace, any applicable federal and state laws governing conflicts of interest applicable to tax-exempt, nonprofit and charitable organizations.

**Section 2**     **Definitions.** For purpose of this Article VII, the following terms shall have the following meanings:

- (a) "Compensation" shall mean direct or indirect remuneration as well as gifts or favors that are not insubstantial.
- (b) "Excess Benefit Transaction" shall mean any transaction or arrangement in which an economic benefit is provided by the Corporation, directly or indirectly, to or for the use of any Interested Person (including members of his or her family and any entity which is thirty-five percent (35%) owned or controlled by such Interested Person) if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing such benefit.
- (c) "Financial Interest" shall mean the interest of any person which arises, directly or indirectly, through business, investment, or family relationship, from any of the following:
  - (i) An ownership or investment interest in any entity with which the Corporation has a transaction or arrangement; or
  - (ii) A Compensation arrangement with the Corporation or with any entity or individual with which the Corporation has a transaction or arrangement; or
  - (iii) A potential ownership or investment interest in, or Compensation arrangement with, any entity or individual with which the Corporation is negotiating a transaction or arrangement.



A Financial Interest is not necessarily a conflict of interest. Under Article VII, Section 4, an Interested Person who has a Financial Interest may have a conflict of interest only if the appropriate Board of Directors or Board Committee decides that a conflict of interest exists.

- (d) “Interested Person” shall mean any Director, Officer, or member of a Board Committee (with powers delegated from the Board of Directors) who has a direct or indirect Financial Interest. If a person is an Interested Person with respect to any entity in the corporate organization of which the Corporation is a part, he or she is an Interested Person with respect to all entities in that system.

**Section 3**     **Duty to Disclose.** In connection with any actual or possible conflict of interest, an Interested Person must promptly disclose the amount of such consideration and the existence and nature of his or her Financial Interest to the Board of Directors and members of such Board Committee with powers delegated from the Board of Directors considering the proposed transaction or arrangement and all material facts with respect to such Financial Interest.

**Section 4**     **Determining Whether a Conflict of Interest Exists.** After the Interested Person discloses his or her Financial Interest and all material facts as contemplated by Section 3 of this Article VII, and after any discussion with the Interested Person, the Interested Person shall leave the Board of Directors or Board Committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining Board of Directors or Board Committee members shall decide if a conflict of interest exists.

**Section 5**     **Procedures for Addressing the Conflict of Interest.**

- (a) An Interested Person may make a presentation at the Board of Directors or Board Committee meeting, but after the presentation, the Interested Person shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
- (b) The Board of Directors or Board Committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- (c) After exercising due diligence, the Board of Directors or Board Committee shall determine whether the Corporation can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
- (d) If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Board of Directors or such Board Committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Corporation’s best interest, for its own benefit, and whether the transaction or arrangement is fair and reasonable to the Corporation. In conformity with the above determination the

Board of Directors or such Board Committee shall make its decision as to whether to enter into the transaction or arrangement.

**Section 6**      **Violations of the Conflict of Interest Policy.**

- (a) If the Board of Directors or Board Committee has reasonable cause to believe that a Director or Officer has failed to disclose actual or possible conflicts of interest, it shall inform the Director or Officer of the basis for such belief and afford the Director or Officer an opportunity to explain the alleged failure to disclose.
- (b) If, after hearing the response of the Director or Officer and after making such further investigation as may be warranted by the circumstances, the Board of Directors or Board Committee determines that the Director or Officer has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

**Section 7**      **Records of Proceedings.** The minutes of the Board of Directors or Board Committee with powers delegated from the Board of Directors shall contain:

- (a) The names of the persons who disclosed or otherwise were found to have a Financial Interest in connection with an actual or possible conflict of interest, the nature of the Financial Interest, any action taken to determine whether a conflict of interest was present, the Board of Directors' or Board Committee's decision as to whether a conflict of interest in fact existed, and the course of action determined to be taken with respect to the transaction or arrangement giving rise to such conflict of interest; and
- (b) The names of the persons who were present for discussions and votes relating to the transaction or arrangement, a summary of the content of the discussion, a summary of any alternatives to the proposed transaction or arrangement that were considered, and a record of any votes taken in connection with the proceedings.

**Section 8**      **Compensation.**

- (a) A voting member of the Board of Directors who receives Compensation, directly or indirectly, from the Corporation for services (other than the per diem compensation described herein) is precluded from voting on matters pertaining to that member's Compensation.
- (b) A voting member of any committee whose jurisdiction includes Compensation matters and who receives Compensation, directly or indirectly, from the Corporation for services (other than the per diem compensation described herein) is precluded from voting on matters pertaining to that member's Compensation.
- (c) No voting member of the Board of Directors or any Board Committee whose jurisdiction includes Compensation matters and who receives Compensation, directly or indirectly, from the Corporation (other than the per diem compensation

described herein), either individually or collectively, is prohibited from providing any information to any Board Committee regarding Compensation.

**Section 9** **Annual Statements.** Each Director, Officer and member of a Board Committee with powers delegated from the Board of Directors shall annually sign a statement which affirms that such person:

- (a) Has received a copy of the conflict of interest policy;
- (b) Has read and understands the policy;
- (c) Has agreed to comply with the policy; and
- (d) Understands that the Corporation is a charitable organization and that in order to maintain its Federal tax exemption it must engage primarily in activities that accomplish one (1) or more of its tax-exempt purposes.

**Section 10** **Periodic Reviews.** To ensure that the Corporation operates in a manner consistent with its charitable purposes and that it does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- (a) Whether Compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining; and
- (b) Whether partnerships, joint ventures, and arrangements with management organizations conform to written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further the Corporation's charitable purposes and do not result in inurement, impermissible private benefit or an Excess Benefit Transaction.

**Section 11** **Use of Outside Experts.** When conducting the periodic reviews provided for in this Article VII, the Corporation may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the Board of Directors of its responsibility for ensuring periodic reviews are conducted.

## **ARTICLE VIII**

### **Indemnification of Directors and Officers**

**Section 1** **Definitions.** For purposes of this Article VIII, the following terms shall have the following meanings:

- (a) "Liabilities" and "Expenses" shall mean monetary obligations incurred by or on behalf of a Director or Officer in connection with the investigation, defense or appeal of a Proceeding or in satisfying a claim thereunder and shall include, but shall not be limited to, attorneys' fees, paralegal fees, court costs, filing fees, fees

and costs incurred in arbitration, mediation or other forms of alternative dispute resolution, costs of investigations, experts (including, without limitation, accounting, criminal and forensic experts) and disbursements, amounts of judgments, fines or penalties, excise taxes assessed with respect to an employee benefit plan and amounts paid in settlement by or on behalf of a Director or Officer.

- (b) “Other Enterprise” shall mean any Corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, whether for profit or not, for which a Director or Officer is or was serving, at the request of the Corporation, as a director, officer, partner, trustee, employee or agent. The phrase “at the request of the Corporation” shall include a request made by resolution by the Board of Directors or by action of any Officer to any Director or other Officer of the Corporation.
- (c) “Proceeding” shall mean any claim, action, suit or proceeding (whether brought against, by or in the right of the Corporation or Other Enterprise or otherwise), civil, criminal, administrative or investigative, whether formal or informal, including arbitration, mediation or other forms of alternative dispute resolution, and whether actual or threatened or in connection with an appeal relating thereto, in which a director or officer may become involved, as a party or otherwise, (i) by reason of his or her being or having been a Director or Officer of the Corporation (and, if applicable, an employee or agent of the Corporation) or a director, officer, partner, trustee, employee or agent of an Other Enterprise or arising out of his or her status as such, or (ii) by reason of any past or future action taken or not taken by a Director or Officer in any such capacity, whether or not he or she continues to be such at the time he or she incurs Liabilities and Expenses under the Proceeding.
- (d) “Standard of Conduct” shall mean that a Director or Officer, based on facts then known to the Director or Officer, discharged the duties as a Director or Officer, including duties as a member of a Board Committee, in good faith in what he or she reasonably believed to be in or not opposed to the best interests of the Corporation or Other Enterprise, as the case may be, and, in addition, in any criminal Proceeding had reasonable cause to believe his conduct was lawful or had no reasonable cause to believe that his or her conduct was unlawful. The termination of any Proceeding, by judgment, order, settlement (whether with or without court approval) or conviction or upon a plea of guilty, shall not create a presumption that the Director or Officer did not meet the Standard of Conduct. The termination of any Proceeding by a consent decree or upon a plea of nolo contendere, or its equivalent, shall create the presumption that the Director or Officer met the Standard of Conduct.

**Section 2**      **Indemnification.** If a Director or Officer is made a party to or threatened to be made a party to, or is involved as a witness of otherwise in, any Proceeding, the Corporation shall indemnify the Director or Officer against Liabilities and Expenses incurred by him or her in connection with such Proceeding in the following circumstances:

- (a) If a Director or Officer has been wholly successful on the merits or otherwise with respect to any such Proceeding, he or she shall be entitled to indemnification for Liabilities and Expenses as a matter of right. If a Proceeding is terminated against the Director or Officer by consent decree or upon a plea of nolo contendere, or its equivalent, the Director or Officer shall not be deemed to have been “wholly successful” with respect to such Proceeding;
  
- (b) In all other situations, a Director or Officer shall be entitled to indemnification for Liabilities and Expenses as a matter of right unless (i) the Director or Officer has breached or failed to perform his or her duties, or conduct his or her relationship, with respect to the Corporation or Other Enterprise, as a Director or Officer in compliance with the Standard of Conduct and (ii) with respect to any action or failure to act by the Director or Officer which is at issue in such Proceeding, such action or failure to act constituted willful misconduct or recklessness. To be entitled to indemnification pursuant to this Section 2(b), the Director or Officer must notify the Corporation of the commencement of the Proceeding in accordance with Section 5 of this Article VIII and request indemnification. A review of the request for indemnification and the facts and circumstances underlying the Proceeding shall be made in accordance with one of the procedures described below; and the Director or Officer shall be entitled to indemnification as a matter of right unless, in accordance with such procedure, it is determined beyond a reasonable doubt that (i) the Director or Officer breached or failed to perform the duties of the office in compliance with the Standard of Conduct, and (ii) the breach or failure to perform constituted willful misconduct or recklessness. Any one of the following procedures may be used to make the review and determination of a Director’s or Officer’s request for indemnification under this Section 2(b):
  - (i) By the Board of Directors by a majority vote of a quorum consisting of directors who are not parties to, or who have been wholly successful with respect to, such Proceeding;
  - (ii) If a quorum cannot be obtained under (i) above, by a majority vote of a committee duly designated by the Board of Directors (in the designation of which, directors who are parties to such Proceeding may participate), consisting solely of two or more directors who are not parties to, or who have been wholly successful with respect to, such Proceeding;
  - (iii) By independent legal counsel selected by a majority vote of the full Board of Directors (in which selection, directors who are parties to such Proceeding may participate) and which may be outside counsel regularly employed by the Corporation; or
  - (iv) By a committee consisting of three (3) or more disinterested persons selected by a majority vote of the full Board of Directors (in which selection, directors who are parties to such Proceeding may participate).

Any determination made in accordance with the above procedures shall be binding on the Corporation and the Director or Officer;

- (c) If several claims, issues or matters of action are involved, a director or officer may be entitled to indemnification as to some matters even though he or she is not entitled to indemnification as to other matters; and
- (d) The indemnification herein provided shall be applicable to Proceedings made or commenced after the adoption of this Article VIII, whether arising from acts or omissions to act which occurred before or after the adoption of this Article VIII.

**Section 3**      **Prepaid Liabilities and Expenses.** The Liabilities and Expenses which are incurred or are payable by a Director or Officer in connection with any Proceeding shall be paid by the Corporation in advance promptly after submission of proper evidence thereof to the Corporation, with the understanding and agreement between such Director or Officer and the Corporation that, in the event it shall ultimately be determined as provided herein that the director or officer was not entitled to be indemnified, or was not entitled to be fully indemnified, the Director or Officer shall repay to the Corporation such amount, or the appropriate portion thereof, so paid or advanced.

**Section 4**      **Exceptions to Indemnification.** Notwithstanding any other provisions of this Article VIII to the contrary, the Corporation shall not indemnify a Director or Officer:

- (a) For any Liabilities or Expenses for which payment is actually made to or on behalf of a Director or Officer under a valid and collectible insurance policy, except in respect of any excess beyond the amount of payment under such insurance policy; or
- (b) For any Liabilities or Expenses incurred in a suit or claim against the Director or Officer arising out of or based upon actions attributable to the Director or Officer in which the Director or Officer gained any personal profit or advantage to which he or she was not legally entitled.

**Section 5**      **Notification and Defense of Proceeding.** Promptly after receipt by a Director or Officer of notice of the commencement of any Proceeding, the Director or Officer will, if a request for indemnification in respect thereof is to be made against the Corporation under this Article VIII, notify the Corporation of the commencement thereof, but the failure to so notify the Corporation will not relieve it from any obligation which it may have to the Director or Officer under this Article VIII or otherwise. With respect to any such Proceeding as to which the Director or Officer notifies the Corporation of the commencement thereof:

- (a) The Corporation will be entitled to participate therein at its own expense; and
- (b) Except as otherwise provided below, to the extent that it may so desire, the Corporation, jointly with any other indemnifying party similarly notified, will be entitled to assume the defense thereof, with counsel reasonably satisfactory to the Director or Officer. After notice from the Corporation to the Director or Officer of its election to assume the defense of the Director or Officer in the Proceeding,

the Corporation will not be liable to the Director or Officer under this Article VIII for any legal or other Expenses subsequently incurred by the Director or Officer in connection with the defense thereof other than reasonable costs of investigation or as otherwise provided below. The Director or Officer shall have the right to employ counsel in such Proceeding, but the Expenses of such counsel incurred after notice from the Corporation of its assumption of the defense thereof shall be at the expense of the Director or Officer unless:

- (i) The employment of counsel by the Director or Officer has been authorized by the Corporation; or
- (ii) The Director or Officer shall have reasonably concluded that there may be a conflict of interest between the Corporation and the Director or Officer in the conduct of the defense of such Proceeding; or
- (iii) The Corporation shall not in fact have employed counsel to assume the defense of such Proceeding;

In each of these cases the Expenses of counsel employed by the Director or Officer shall be paid by the Corporation. The Corporation shall not be entitled to assume the defense of any Proceeding brought by or in the right of the Corporation or as to which the Director or Officer shall have made the conclusion provided for in (ii) above; and

- (c) The Corporation shall not be liable to indemnify a Director or Officer under this Article VIII for any amounts paid in settlement of any Proceeding without the Corporation's prior written consent. The Corporation shall not settle any action or claim in any manner which would impose any penalty or limitation on a Director or Officer without the Director's or Officer's prior written consent. Neither the Corporation nor a Director or Officer will unreasonably withhold its or his or her consent to any proposed settlement.

**Section 6**      **Enforcement.** Any indemnification under this Article VIII shall be made promptly upon the Director or Officer being wholly successful on the merits or otherwise with respect to any Proceeding or upon the determination in accordance with Section 2(b) of this Article VIII that the Director or Officer is entitled to indemnification. Any advancement of Expenses under this Article VIII shall be made promptly after receipt by the Corporation of a written request from the person seeking advancement of Expenses, including such person's undertaking to repay all amounts so advanced (as required by Section 3 of this Article VIII). Any right of a Director or Officer to indemnification or advancement of Expenses as granted by this Article VIII may be enforceable by such Director or Officer in any court of competent jurisdiction if the Corporation denies such request, in whole or in part, or if no disposition thereof is made within thirty (30) days after receipt by the Corporation or request therefor.

**Section 7**      **Other Rights and Remedies.** The rights of indemnification provided under this Article VIII are not exhaustive and shall be in addition to any rights to which a Director or Officer may otherwise be entitled by contract or as a matter of law. Irrespective of

the provisions of this Article VIII, the Corporation may, at any time and from time to time, indemnify Directors, Officers, employees and other persons to the full extent permitted by the provisions of the Act, or any successor law, as then in effect, whether with regard to past or future matters.

**Section 8**      **Continuation of Indemnity.** All obligations of the Corporation under this Article VIII shall survive the termination of a Director's or Officer's service in any capacity covered by this Article VIII.

**Section 9**      **Insurance.** The Corporation may purchase and maintain insurance on behalf of any person who is or was or has agreed to become a Director or Officer or any person who is or was serving or has agreed to serve at the request of the Corporation as a Director, Officer, partner, trustee, employee or agent of an Other Enterprise against any liability asserted against such person and incurred by such person in any capacity or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of applicable law, this Article VIII or otherwise.

**Section 10**      **Contractual Rights and Applicability.** It is the intent of this Article VIII to empower the Corporation to provide indemnification and advancement of Expenses to the fullest extent allowed by law. Except as otherwise expressly provided herein, indemnification shall be provided without regard to the legal or equitable theory of the Proceeding, including but not limited to criminal claims, conspiracy claims, joint, several, comparative or sole negligence, breach of contract or warranty, strict liability, breach of fiduciary duty, mismanagement, corporate waste, or violation of federal or state securities law or any other laws, regulation or policy. The right to be indemnified or be reimbursed or advanced Expenses pursuant hereto (a) is a contract right based upon good and valuable consideration, pursuant to which the person entitled thereto may bring suit as if the provisions thereof were set forth in a separate written contract between the person and the Corporation, (b) is intended to be retroactive and shall be available with respect to events occurring prior to the adoption hereof, (c) shall continue to exist after the rescission or restrictive modification hereof, and (d) shall inure to the benefit of the heirs and personal representatives of any present or former Director or Officer.

If any portion of this Article VIII shall be invalidated on any ground by any court of competent jurisdiction, or in any arbitration proceeding, then the Corporation shall nevertheless indemnify each person entitled to indemnification or advancement of Expenses under this Article VIII as to all Liabilities and Expenses actually and reasonably incurred or suffered by such person and for which indemnification is available to such person pursuant to this Article VIII to the full extent permitted by any applicable portion of this Article VIII that shall not have been invalidated and to the fullest extent permitted by applicable law.

**Section 11**      **Indemnification of Employees and Agents of the Corporation.** The Corporation may, to the extent authorized by the Board of Directors from time to time, grant rights to indemnification and advancement of Expenses to employees and agents of the Corporation to the full extent of the provisions of this Article VIII with respect to the indemnification of, and advancement of Expenses to, Directors or Officers of the Corporation.



## ARTICLE IX

### Reversion and Re-Purchase of the Toll Road.

**Section 1**     **Reversion.** In the event that the Bonds and the Mezzanine Debt should be defeased and paid in full during the term of the Toll Road Lease or upon the maturity thereof, Reversion of the Toll Road Lease Interest to LaPorte County shall occur in compliance with the requirements for IRS Rev. Rul. 63-20 and IRS Rev. Proc. 82-26. This Reversion shall only occur if the Bond obligations and Mezzanine Debt have been paid in full.

**Section 2**     **Re-Purchase.** In the event the Corporation defaults on its obligations under the Bonds and the Mezzanine Debt, in compliance with IRS Rev. Rul. 63-20 and IRS Rev. Proc. 82-26, LaPorte County will be given ninety (90) days from the date of notice of such default to exercise the option to purchase the Toll Road Lease Interest and ninety (90) days from the date of such exercise (if exercised) to close on the purchase of the Toll Road Lease Interest.

## ARTICLE X

### Bankruptcy Remoteness Provisions

**Section 1**     **Special Purpose Entity.** The Corporation agrees to (a) limit the powers and areas of activities that the Corporation will engage in as set forth in the Articles, (b) conduct itself in a manner separate from any affiliates, and (c) obtain the consent of an Independent Director before taking any Bankruptcy Action (as described below). All future activities of the Corporation will be directed by the Board of Directors and no other entity or third-party will have any right to direct the activities of, or bind the Corporation.

**Section 2**     **Special Requirements.** The Corporation agrees to comply in all respects with the requirements set forth below (such provisions to be contained in its Articles, these By-laws and in any relevant Bond Documents) to qualify the Corporation as a bankruptcy remote entity:

- (a)     The Articles have limited the Corporation to charitable and governmental purposes solely to lessen the burdens of government of the Counties by: (i) acquiring the Toll Road Lease Interests (including, without limitation, through the Acquisition); (ii) issuing the Bonds, Mezzanine Debt and otherwise arranging financing to effectuate the Acquisition and/or to improve and maintain the Toll Road; (iii) overseeing the operation of the Toll Road, including, without limitation, by appointing and overseeing an Operator for the operation and management of the Toll Road; (iv) ensuring compliance with the provisions of the Concession Agreement; (v) providing for payment to the Counties of the Founders Payments; and (vi) ensuring and overseeing the efficient use of Excess Revenue to fund Grants pursuant to Grant Requests, and (vii) engaging in activities in furtherance of the foregoing.
  
- (b)     As long as the Bonds are outstanding, the Board of Directors agrees at all times that one (1) of the Directors must be designated the Independent Director.

- (c) The Corporation agrees that when acting on matters subject to the vote of the Board of Directors, notwithstanding that the Corporation may not then be insolvent, the Independent Director shall take into account the interests of the Corporation's creditors in connection with all corporate actions.
- (d) A unanimous vote of the Board of Directors (which will require the consent of the Independent Director) must be required for the Corporation to take any Bankruptcy Action (as described below).
- (e) The Corporation's obligation to indemnify its Directors and Officers must be fully subordinated to the Bonds and not constitute a claim against the Corporation while the Bonds remain outstanding.
- (f) The Corporation is prohibited from engaging in any dissolution, liquidation, consolidation, merger or sale of assets so long as the Bonds are outstanding (other than the contemplated dissolution of ITRCC following the Acquisition in connection with transferring ownership of the Toll Road Lease Interest under the Concession Agreement to the Corporation).
- (g) The Corporation's ability to incur indebtedness other than the Bonds and the Mezzanine Debt must be limited to what is permitted under the Bond Documents.
- (h) The Corporation is prohibited from amending, altering or repealing any provision of these By-Laws relating to separateness or bankruptcy remoteness.
- (i) If there is a dissolution or other termination event for the Corporation, the vote of a majority-in-interest of the remaining members of the Board of Directors must be sufficient to continue the life of the Corporation.
- (j) The Corporation agrees that it will comply in all respects with the "Separateness Provisions" described in Appendix A attached to these By-Laws.

**Section 3** **Independent Director.** The Independent Director shall be the person described in Article III, Section 1(c)(i) of these By-Laws.

**Section 4** **Bankruptcy Action.** A "Bankruptcy Action", with respect to the Corporation, shall mean any of the following:

- (a) Commencing any case, proceeding or other action on behalf of the Corporation under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization, relief from debts or the protection of debtors generally;
- (b) Instituting proceedings to have the Corporation adjudicated as bankrupt or insolvent;
- (c) Consenting to the institution of bankruptcy or insolvency proceedings against the Corporation;

- (d) Filing a petition or consenting to a petition seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation or other relief on behalf of the Corporation of its debts under any federal or state law relating to bankruptcy or insolvency;
- (e) Seeking or consenting to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or similar official for the Corporation or a substantial portion of its properties;
- (f) Making any assignment for the benefit of the creditors of the Corporation; or
- (g) Taking any action in furtherance of any of the foregoing.

## **ARTICLE XI**

### **Compliance with IRS Rev. Rul. 63-20 and IRS Rev. Proc. 82-26**

**Section 1 Federal Tax Requirements and Compliance Covenants of the Corporation.** It is the intent of the Corporation that it avail itself of the attributes of a “63-20” corporation as described in IRS Rev. Rul. 63-20 and the safe harbor guidelines set forth in IRS Rev. Proc. 82-26. To that end, the Corporation covenants and agrees:

- (a) **Obligations of the Corporation to be Considered issued on Behalf of a Governmental Unit.**
  - (i) The Corporation shall engage in activities that are essentially public in nature;
  - (ii) The Corporation shall not be organized for profit, except to the extent of retiring indebtedness;
  - (iii) The corporate income shall not inure to any private person;
  - (iv) LaPorte County shall have a beneficial interest in the Corporation while the indebtedness is outstanding, and LaPorte County shall obtain the property of the Corporation with respect to which the indebtedness (any Bonds or Mezzanine Debt issued by the Corporation the interest on which is excludable from gross income for federal income tax purposes) was incurred upon retirement of the indebtedness; and
  - (v) The Corporation and the specific “obligations” described in Article XI, Section 1(a)(iv) to be issued by the Corporation have been approved by LaPorte County on whose behalf the obligations are issued.

- (b) **Activities and Purposes of the Corporation.**
- (i) The activities and purposes of the Corporation are those permitted under the Act; and
  - (ii) The property to be acquired by the Corporation, including through the Bond financing, shall either (a) be located within the geographical boundaries of or (b) have a substantial connection with LaPorte County, the governmental unit on whose behalf the Bonds will be issued.
- (c) **LaPorte County Shall Appoint at Least Eighty Percent (80%) of the Corporation's Board of Directors.** LaPorte County, on whose behalf the Corporation is issuing the obligations, (A) appoints or approves the appointment of at least eighty percent (80%) of the members of the Board of Directors of the Corporation, and (B) has the power to remove, for cause, either directly or through judicial proceedings, any member of the Board of Directors and appoint a successor.
- (d) **Default by the Corporation of its Payments under the Obligations.** In the event the Corporation defaults in its payments under the obligations, LaPorte County has an exclusive option to purchase the property financed by the obligations and additions to that property for the amount of the outstanding indebtedness and accrued interest to the date of default. LaPorte County shall have (i) not less than ninety (90) days from the date it is notified by the Corporation of the default in which to exercise the option, and (ii) not less than ninety (90) days from the date it exercises the option to purchase the property.
- (e) **LaPorte County Must Obtain the Property of the Corporation with Respect to Which the Indebtedness was Incurred Upon Retirement of the Indebtedness.**
- (i) The obligations of the Corporation are issued on behalf of no more than one governmental unit and the property will vest solely in LaPorte County when the obligations are discharged. For purposes of this requirement, obligations are discharged when (A) cash is available at the place of payment on the date that the obligations are due (whether at maturity or upon prior call for redemption), and (B) interest ceases to accrue on the obligations; and
  - (ii) All of the original proceeds and investment proceeds of the obligations are used to provide tangible real or tangible personal property. Proceeds are considered to provide tangible property only if the proceeds are (A) used to finance costs that a taxpayer must charge to the property's capital account, may elect to charge to the property's capital account instead of deducting, or may elect to deduct instead of charging to the property's capital account, and (B) used to fund a reasonably required reserve fund

within the meaning of the Code. The previous sentence does not apply to a de minimis amount (less than \$5,000) that is included in the issuance of the Bonds solely for the purpose of rounding the dollar amount of the issuance. If excess proceeds remain on hand after the Acquisition or completion of reconstruction of the property, the requirements of this subsection will be considered met if (A) the face amount of the obligations (taking into account estimated investment proceeds) was based on reasonable estimates of the cost of the property at the time the obligations were issued, and (B) the excess proceeds are used and invested in the manner described in Sections 3.04, 3.05, and 3.06 of IRS Rev. Proc. 79-5, as amplified by IRS Rev. Proc. 81-22.

(f) **LaPorte County Obtains upon Discharge of the Obligations the Property and Exclusive Possession and Use of the Property Financed by the Obligations.**

- (i) LaPorte County obtains upon discharge of the obligations unencumbered fee title and exclusive possession and use of the property financed by the obligations, including any additions to the property, without demand or further action on its part. Thus, for example, all leases, management contracts, and other similar encumbrances must terminate upon discharge of the obligations. Encumbrances that do not significantly interfere with the enjoyment of the property, such as most easements granted to utility companies, are not considered encumbrances for purposes of this paragraph;
- (ii) Before the obligations are issued, LaPorte County adopts a resolution stating that it will accept title to the property financed by the obligations, including any additions to that property, when the obligations are discharged; and
- (iii) The Bond Documents or any other documents under which the obligations used to originally provide the property provide that any other obligations issued by the Corporation either to make improvements to the property or to refund a prior issue of the Corporation's obligations will be discharged no later than the latest maturity date of the original obligations, regardless of whether the original obligations are callable at an earlier date. In addition, the maturity date of the original obligations or any other obligations issued by the Corporation with respect to the property may not be extended beyond the latest maturity date of the original obligations, regardless of whether the original obligations are callable at an earlier date.

(g) **Fair Market Value of Property on Latest Maturity Date of Obligations.**

- (i) A reasonable estimate of the fair market value of the property on the latest maturity date of the obligations, regardless of whether the obligations are

callable at an earlier date, is equal to at least twenty percent (20%) of the original cost of the property financed by the obligations. The estimated fair market value of property shall be determined without including in the value any addition to the property or any increase or decrease for inflation or deflation during the term of the obligations; and

(ii) A reasonable estimate of the remaining useful life of the property on the latest maturity date of the obligations, regardless of whether the obligations are callable at an earlier date, is the longer of one (1) year or twenty percent (20%) of the originally estimated useful life of the property financed by the obligations.

(h) **LaPorte County to Approve Obligations.** LaPorte County must approve both the Corporation and the specific obligations to be issued by the Corporation. This requirement will be met if, within one (1) year prior to the issuance of the obligations, LaPorte County adopts a resolution approving the purposes and activities of the Corporation and the specific obligations to be issued by the Corporation.

## **ARTICLE XII**

### **Document Retention Policy**

**Section 1** **Purpose.** The purposes of this policy are to provide a written policy for the Corporation to:

- (a) Enhance compliance with governance requirements of the IRS; and
- (b) To promote the proper treatment of corporate records of the Corporation.

**Section 2** **General Guidelines.** Records should not be kept if they are no longer needed for the operation of the business or required by law. Unnecessary records should be eliminated from the Corporation's files. The cost of maintaining records is an expense which can grow unreasonably if good housekeeping is not performed. A mass of records also makes it more difficult to find pertinent records.

From time to time, the Corporation shall establish retention or destruction policies or schedules for specific categories of records in order to ensure legal compliance, and also to accomplish other objectives, such as preserving intellectual property and cost management. Several categories of documents that warrant special consideration are identified below. While minimum retention periods are established, the retention of the documents identified below and of documents not included in the identified categories should be determined primarily by the application of the general guidelines affecting document retention, as well as the exception for litigation relevant documents and any other pertinent factors.

**Section 3** **Exception for Litigation Relevant Documents.** The Corporation expects all Officers, Directors and employees to comply fully with any published records retention or

destruction policies and schedules, provided that all Officers, Directors, and employees should note the following general exception to any stated destruction schedule: If an Officer, Director or employee believes, or the Corporation states that the Corporation's records are relevant to litigation, or potential litigation (i.e., a dispute that could result in litigation), then those records must be preserved until it is determined that the records are no longer needed. That exception supersedes any previously or subsequently established destruction schedule for those records.

#### **Section 4      Minimum Retention Periods for Specific Categories.**

- (a) Corporate Documents. Corporate records include the Corporation's Articles of Incorporation, By-Laws and IRS Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Code ("Form 1023"). Corporate records should be retained permanently. Regulations also require that the Articles of Incorporation, By-Laws and Form 1023 be available for public inspection upon request.
- (b) Tax Records. Tax records include, but may not be limited to, documents concerning payroll, expenses, proof of contributions made by donors, accounting procedures, and other documents concerning the Corporation's revenues. Tax records should be retained for at least seven (7) years from the date of filing the applicable return.
- (c) Employment Records/Personnel Records. State and federal statutes require the Corporation to keep certain recruitment, employment and personnel information. The Corporation should also keep personnel files that reflect performance reviews and any complaints brought against the Corporation or individual employees under applicable state and federal statutes. The Corporation should also keep in the employee's personnel file all final memoranda and correspondence reflecting performance reviews and actions taken by or against personnel. Employment applications should be retained for three (3) years. Retirement and pension records should be kept permanently. Other employment and personnel records should be retained for seven (7) years.
- (d) Board and Board Committee Materials. Meeting minutes of the Corporation's Board of Directors and any Board Committee should be retained in perpetuity in the Corporation's minute book. A clean copy of all other Board of Directors and Board Committee materials should be kept for no less than three (3) years by the Corporation.
- (e) Press Releases/Public Filings. The Corporation should retain permanent copies of all press releases and publicly filed documents under the theory that the Corporation should have its own copy to test the accuracy of any document a member of the public can theoretically produce against the Corporation.
- (f) Legal Files. Legal counsel should be consulted to determine the retention period of particular documents, but legal documents should generally be maintained for a period of at least ten (10) years.

- (g) Marketing and Sales Documents. The Corporation should keep final copies of marketing and sales documents for the same period of time it keeps other corporate files, generally three (3) years. An exception to the three (3)-year policy may be sales invoices, contracts, leases, licenses, and other legal documentation. These documents should be kept for at least three (3) years beyond the life of the agreement.
- (h) Development/Intellectual Property and Trade Secrets. Development documents are often subject to intellectual property protection in their final form (e.g., patents and copyrights). The documents detailing the development process are often also of value to the Corporation and are protected as a trade secret where the Corporation:
- (i) Derives independent economic value from the secrecy of the information; and
  - (ii) Has taken affirmative steps to keep the information confidential.
- The Corporation should keep all documents designated as containing trade secret information for at least the life of the trade secret.
- (i) Contracts. Final, execution copies of all contracts entered into by the Corporation should be retained. The Corporation should retain copies of the final contracts for at least three (3) years beyond the life of the agreement, and longer in the case of publicly filed contracts.
- (j) Correspondence. Unless correspondence falls under another category listed elsewhere in this policy, correspondence should generally be saved for two (2) years.
- (k) Banking and Accounting. Accounts payable ledgers and schedules should be kept for seven (7) years. Bank reconciliations, bank statements, deposit slips and checks (unless for important payments and purchases) should be kept for three (3) years. Any inventories of products, materials, and supplies and any invoices should be kept for seven (7) years.
- (l) Insurance. Expired insurance policies, insurance records, accident reports, claims, etc. should be kept permanently.
- (m) Audit Records. External audit reports should be kept permanently. Internal audit reports should be kept for three (3) years.
- (n) Medical and Research Records. Medical and research records shall be maintained for the minimum periods required by applicable Federal or state law.



**Section 5**      **Electronic Mail.** Electronic mail (“E-mail”) that needs to be saved should be either:

- (a) Printed in hard copy and kept in the appropriate file; or
- (b) Downloaded to a computer file and kept electronically or on disk as a separate file.

The retention period for an E-mail depends upon the subject matter of the E-mail, as covered elsewhere in this Article VIII.

### **ARTICLE XIII**

#### **Associate Members**

Subject to the applicable requirements of these By-Laws, any or all of the following Indiana counties whose geographic area includes an area in which the Toll Road physically passes: (i) Elkhart; (ii) LaGrange; (iii) Porter; (iv) St. Joseph; and, (v) Steuben (the “**Associate Members**”); may be subsequently included in an expansion of the geographical area in which Grant Requests may be made and Grants issued of any Excess Revenue of the Corporation.

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**CERTIFICATE**

The undersigned hereby certifies that the foregoing By-Laws of the Corporation were duly approved and adopted by action of the Board of Directors of the Corporation to be effective as of the \_\_\_\_\_ day of March, 2015.

NORTHERN INDIANA TOLL ROAD AUTHORITY, INC.

By: \_\_\_\_\_  
\_\_\_\_\_ , \_\_\_\_\_

## APPENDIX A

The following constitute the “Separateness Provisions.” The Corporation must:

- maintain books, financial records and bank accounts that are separate and distinct from the books, financial records and bank accounts of any other person or entity;
- not commingle any of its assets, funds, liabilities or business functions with the assets, funds, liabilities or business functions of any other person or entity;
- observe all appropriate corporate procedures and formalities;
- pay its own liabilities, losses and expenses only out of its own funds;
- maintain separate annual financial statements prepared in accordance with generally accepted accounting principles, consistently applied, showing its assets and liabilities separate and distinct from those of any other person or entity;
- in the event the financial statements of the Corporation are consolidated with the financial statements of any other entity, cause to be included in such consolidated financial statements a narrative description of the separate assets, liabilities, business functions, operations and existence of the Corporation to ensure that such separate assets, liabilities, business functions, operations and existence are readily distinguishable by any person or entity receiving or relying upon a copy of such consolidated financial statements;
- pay or bear the cost of the preparation of its financial statements;
- not guarantee or become obligated for the debts or obligations of any other entity or person, other than as permitted under the bond documents;
- not hold out its credit as being available to satisfy the debts or obligations of any other person or entity, other than as permitted under the bond documents;
- hold itself out as an entity separate and distinct from any other person or entity (including its affiliates);
- correct any known misunderstanding regarding its separate identity;
- use separate stationery, business cards, purchase orders, invoices, checks and the like bearing its own name;
- to the extent that the Corporation and any of its affiliates occupy any premises in the same location, allocate fairly, appropriately and nonarbitrarily any rent and overhead expenses among and between such entities with the result that each entity bears its fair share of all such rent and expenses;

- to the extent that the Corporation and any of its affiliates share the same officers and other employees, allocate fairly, appropriately and nonarbitrarily any salaries and expenses related to providing benefits to such officers and other employees between or among such entities, with the result that each such entity will bear its fair share of the salary and benefit costs associated with all such common or shared officers or other employees;
- not make any loans to any person or entity or buy or hold any indebtedness issued by any other person or entity, other than cash and investment-grade securities and as otherwise expressly permitted or contemplated by the bond documents;
- conduct its own business in its own name;
- hold all of its assets in its own name;
- maintain an arm's-length relationship with its affiliates and enter into transactions with affiliates only on an arm's length and commercially reasonable basis;
- not pledge its assets for the benefit of any other person or entity;
- not identify itself as a division or department of any other entity;
- maintain adequate capital in light of its contemplated business operations;
- conduct transactions between the Corporation and third parties in the name of the Corporation and as an entity separate and independent from its affiliates;
- cause representatives, employees and agents of the Corporation to hold themselves out to third parties as being representatives, employees or agents, as the case may be, of the Corporation;
- not acquire or assume the obligations of its affiliates, other than as contemplated by the bond documents.