

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

<p>In re:</p> <p>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,</p> <p>as representative of</p> <p>THE COMMONWEALTH OF PUERTO RICO, <i>et al.</i></p> <p>Debtors.¹</p>	<p>PROMESA Title III</p> <p>No. 17 BK 3283-LTS (Jointly Administered)</p>
<p>In re:</p> <p>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,</p> <p>as representative of</p> <p>PUERTO RICO HIGHWAYS AND TRANSPORTATION AUTHORITY,</p> <p>Debtors.</p>	<p>PROMESA Title III</p> <p>No. 17 BK 3567-LTS</p>
<p>AMERINATIONAL COMMUNITY SERVICES, LLC, as Servicer for the GDB Debt Recovery Authority and CANTOR-KATZ COLLATERAL MONITOR LLC,</p> <p>Plaintiffs,</p> <p>v.</p> <p>AMBAC ASSURANCE CORPORATION, ASSURED GUARANTY CORP., ASSURED GUARANTY</p>	<p>Adv. Proc. No. 21- _____ -LTS</p> <p>PROMESA Title III</p>

¹ The Debtors in these Title III cases, along with each Debtor's respective Title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the "Commonwealth") (Bankruptcy Case No. 17-BK-3283 (LTS)) (Last Four Digits of Federal Tax ID: 3481), (ii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566(LTS)) (Last Four Digits of Federal Tax ID: 9686), (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567 (LTS)) (Last Four Digits of Federal Tax ID: 3808), (iv) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284 (LTS)) (Last Four Digits of Federal Tax ID: 8474); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17-4780 (LTS)) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5233-LTS) (Last Four Digits of Federal Tax ID: 3801).

MUNICIPAL CORP., NATIONAL PUBLIC FINANCE
GUARANTEE CORPORATION, FINANCIAL
GUARANTY INSURANCE COMPANY, PEAJE
INVESTMENTS LLC, and THE BANK OF NEW
YORK MELLON, as Fiscal Agent,²

Defendants.

ADVERSARY COMPLAINT

COME NOW AmeriNational Community Services, LLC (the “Servicer”), as servicer for the GDB Debt Recovery Authority (the “DRA”), and Cantor-Katz Collateral Monitor LLC, a Delaware limited liability company (the “Collateral Monitor,” and together with the Servicer, collectively, the “DRA Parties”), which serves as the collateral monitor for Wilmington Trust, N.A. in connection with the new bonds that the DRA issued pursuant to the *Government Development Bank for Puerto Rico Debt Restructuring Act*, Act No. 109-2017, as amended by Act No. 147-2018, and the approved Qualifying Modification for the Government Development Bank for Puerto Rico (the “GDB”)³ under Title VI of the *Puerto Rico Oversight, Management and Economic Stability Act* (“PROMESA”), by and through their undersigned legal counsel, and respectfully submit this Adversary Complaint for declaratory judgment seeking a decree as to the validity, extent, seniority and priority of the DRA and Defendants’ liens, secured interest, rights and claims against the Puerto Rico Highways and Transportation Authority (“HTA”).

INTRODUCTION

The DRA Parties seek to establish that (i) the DRA is the only creditor with a valid, perfected, first priority lien on and right to collect from the Act 30-31 Revenues (as defined

² Schulte Roth & Zabel LLP appears as counsel to the Collateral Monitor with respect to all parties except The Bank of New York Mellon, as Fiscal Agent.

³ See Dkt. No. 270 of Civil Case No. 18- 01561 (LTS) (Nov. 7, 2018).

below), (ii) the HTA Bonds (as defined below) are limited recourse obligations to be satisfied solely from the Bond Revenues (as defined below), which do not include the Act 30-31 Revenues, and are secured by only the Bond Revenues and other moneys deposited in the Bond Revenue Accounts (as defined below), (iii) neither the DRA's Loan Claims nor liens are subordinated to the HTA Bonds and (iv) the DRA's Loan Claims are payable and have a right to collect from the Bond Revenues that have not been deposited in the Bond Revenue Accounts.

I. Nature of the Action

1. The DRA respectfully requests that the Court issue a declaratory judgment that the DRA is the only party with a right to collect from and a security interest in the Act 30-31 Revenues, including the right to receive such revenues.

2. In addition, the DRA respectfully requests that the Court issue a declaratory judgment that the 1968 HTA Bonds and the 1998 HTA Bonds – as defined below – (i) are secured only by the Bond Revenues “actually received by HTA and actually deposited in the applicable [Bond Revenue Accounts],” *See In re Fin. Oversight & Mgmt Bd. For P.R.*, 618 B.R. 619, 638 (D.P.R. 2020), *aff'd*, 989 F.3d 170 (1st Cir. 2021), (ii) are limited recourse obligations to be satisfied solely from the Bond Revenues, and (iii) the DRA has the right to collect from the Bond Revenues to the extent they are not deposited in the Bond Revenue Accounts and to the extent that the DRA's Loan Claims are not paid-in-full from the proceeds of the DRA's lien on the Act 30-31 Revenues.

3. Finally, the DRA requests that the Court issue a declaratory judgment that the subordination language contained in the Loan Agreements (as defined below) and the Assignment and Security Agreement executed by and between HTA and GDB on August 28, 2013 (as amended, supplemented or otherwise modified, the “Security Agreement”) in

connection with the Loan Agreements does not cause any of the DRA's liens or claims to be subordinated to the HTA Bondholders' liens or claims.

II. The Parties

4. The DRA is a statutory public trust and public governmental instrumentality of the Commonwealth of Puerto Rico (the "Commonwealth"), independent and separate from any other Governmental Entity, created by virtue of the *Government Development Bank for Puerto Rico Debt Restructuring Act*, Act 109-2017 ("Act 109"). 7 P.R. Laws Ann. § 3171. The DRA is a legal entity that exists separately and operates independently from the Commonwealth as well as any other Governmental Entity. 7 P.R. Laws Ann. § 3172. The DRA has the capacity to sue and be sued. 7 P.R. Laws Ann. § 3175(a).

5. Pursuant to a Master Transfer Agreement executed between the DRA and the GDB on November 29, 2018, the GDB assigned to the DRA all of its legal rights, title and interest in, among other assets, 23 promissory notes that the HTA had issued in favor of the GDB (the "Loan Claims"), as well as \$200,000,000 in aggregate original principal amount of HTA Revenue Bonds (Series A) issued under the 1998 Resolution, as defined below (the "Bond Claims"). As of March 31, 2021, the Loan Claims had an aggregate outstanding principal balance in excess of \$1.7 billion and not less than \$866.4 million in accrued interest, plus fees and expenses that have accrued under the terms of the loans.

6. Defendant Ambac Assurance Corp. ("Ambac") is a Wisconsin-domiciled stock insurance corporation with its principal place of business at One State Street Plaza, New York, New York 10004. Ambac filed Claim Nos. 50420, 83010, and 122277 in the Commonwealth Title III Case on June 26, 27, and 28, 2018, respectively, for the 1968 and 1998 Bonds it allegedly holds and/or insures.

7. Defendant Assured Guaranty Corp. (“AGC”) is a Maryland insurance company with its principal place of business at 1633 Broadway, New York, New York 10019. AGC filed Claim Nos. 33081 and 57622 in the Commonwealth Title III Case on May 25, 2018, for the 1968 and 1998 Bonds it allegedly holds and/or insures.

8. Defendant Assured Guaranty Municipal Corp. (“AGMC”), Defendant AGMC is a New York insurance company with its principal place of business at 1633 Broadway, New York, New York 10019. AGMC filed Claim No. 27427 in the Commonwealth Title III Case on May 25, 2018, for the 1968 and 1998 Bonds it allegedly holds and/or insures.

9. Defendant National Public Finance Guarantee Corporation (“National”) is a New York insurance company with its principal place of business at 1 Manhattanville Road, Purchase, New York 10577. National filed Claim No. 30114 in the Commonwealth Title III Case on May 25, 2018, for the 1968 and 1998 Bonds it allegedly holds and/or insures.

10. Defendant Financial Guaranty Insurance Company (“FGIC”) is a New York stock insurance corporation with its principal place of business at 463 Seventh Avenue, 16th Floor, New York, New York 10018. FGIC filed Claim No. 101243 in the Commonwealth Title III Case on June 28, 2018, for the 1968 and 1998 Bonds it allegedly holds and/or insures.

11. Defendant Peaje Investments LLC (“Peaje”) is a Delaware limited liability company with its principal place of business in New York, New York. Peaje filed Claim No. 101312 in the Commonwealth Title III Case for the 1998 Bonds it allegedly holds and Claim No. 92706 for the 1968 Bonds it allegedly holds.

12. Defendant the Bank of New York Mellon (“BNYM” or the “Fiscal Agent”)⁴ is a

⁴ References herein to the Fiscal Agent shall refer to BNYM or any predecessor Fiscal Agent under the Bond Resolutions (as defined below), as the case may be.

bank organized under the laws of the State of New York having its principal place of business at 225 Liberty Street, New York, New York 10007. BNYM serves as Fiscal Agent for the HTA Bonds under the Bond Resolutions. In its capacity as Fiscal Agent, BNYM has asserted claims on behalf of the bondholders of HTA for billions in principal and unpaid interest and fees, and “a contingent and unliquidated claim” against the Commonwealth for various violations of law in connection with the HTA Bonds.⁵ Thus, as the Fiscal Agent, BNYM stands in the shoes of the bondholders of HTA in this proceeding.

13. Ambac, AGC, AGMC, National, FGIC, Peaje, and BNYM are collectively referred to as “Defendants.”

III. Jurisdiction and Venue

14. This Court has subject-matter jurisdiction over this adversary proceeding pursuant to PROMESA sections 306(a) and 306(b) because it arises under PROMESA Title III, in a Title III case, relates to the Commonwealth’s underlying Title III case, and involves disputes over property of the Commonwealth and/or HTA.

15. This Court has personal jurisdiction over Defendants pursuant to PROMESA section 306(c).

16. Venue is proper under PROMESA section 307 because this adversary proceeding is brought in a PROMESA Title III case pending in the District of Puerto Rico.

17. This adversary proceeding is brought pursuant to Rules 3007, 7001(1), (2), (8), and (9) of the Federal Rules of Bankruptcy Procedure and Bankruptcy Code sections 11 U.S.C.

⁵ BNYM filed several proofs of claim in the Title III Cases for HTA and the Commonwealth in its capacity as Fiscal Agent for the HTA Bondholders. For example, (i) Claim No. 32622 for the subordinated 1998 Bonds, (ii) Claim No. 37245 for the 1968 Bonds, (iii) Claim No. 38574 for the non-subordinated 1998 Bonds, (iv) Claim No. 21286 for the 1998 Bonds, and (v) Claim No. 26541 for the 1968 Bonds.

§§ 502 and 506, made applicable to this proceeding pursuant to PROMESA section 301(a); and 28 U.S.C. §§ 2201 and 2202.

IV. Factual Background

A. GDB Restructures its Debt Under Title VI of PROMESA, and Transfers all of its Rights, Title, and Interest in the Loan Claims and Other Assets to the DRA.

18. PROMESA was enacted into law on June 30, 2016. Section 101 of PROMESA established the Financial Oversight and Management Board for Puerto Rico (the “FOMB”). *See* 48 U.S.C. § 2121.

19. On July 12, 2017, the FOMB issued a resolution authorizing the GDB to use Title VI of PROMESA.

20. Pursuant to GDB’s Title VI restructuring, on November 5, 2018, the FOMB certified GDB’s qualifying modification under Title VI of PROMESA (the “Qualifying Modification”), and this Court approved the Qualifying Modification by Order dated November 7, 2018.

21. The DRA was created as a vehicle to give effect to the terms of the consensual restructuring that yielded the Qualifying Modification. Under the framework agreed to by GDB, the GDB bondholders, the FOMB, and the Puerto Rico Fiscal Agency and Financial Advisory Authority, the DRA issued new bonds to the GDB bondholders in exchange for their existing GDB bonds, which new DRA bonds have a face amount equal to 55% of the GDB bondholders’ claims.

22. On November 29, 2018, the DRA and the GDB entered into the Master Transfer Agreement pursuant to which GDB transferred substantially all its assets to the DRA. The Loan Claims, the Bond Claims, and GDB’s perfected security interest in the Act 30-31 Revenues were

among the legal and equitable rights, titles and interests received by the DRA from GDB. The DRA's assets are managed by the Servicer, with the supervision of the Collateral Monitor, to maximize their recovery.

23. The DRA Parties are pursuing this Adversary Complaint to protect the rights and recoveries of the DRA bondholders under the Loan Claims,⁶ which, as discussed below, have been disregarded by the Defendants and the FOMB.

B. The HTA Bonds, Their Source of Payment and Their Collateral.

24. HTA is a public corporation created by Act No. 74-1965 (the "HTA Enabling Act") to assume responsibility for the construction of highways and other transportation systems in Puerto Rico. *See* 9 P.R. Laws Ann. § 2002.

25. The HTA Enabling Act authorizes HTA to incur indebtedness and secure its debt obligations through a pledge of certain of its revenues, as more fully described below. *See* 9 P.R. Laws Ann. § 2004(I).

26. As allowed under the HTA Enabling Act, HTA issued bonds pursuant to Resolution No. 68-18 (as amended, supplemented or otherwise modified, the "1968 Resolution") and the bonds issued thereunder, the "1968 Bonds"), adopted June 13, 1968, and Resolution No. 98-06 (as amended, supplemented or otherwise modified, the "1998 Resolution" and the bonds issued thereunder, the "1998 Bonds" and the 1998 Resolution, together with the 1968 Resolution, the "Bond Resolutions" while the 1968 Bonds, together with the 1998 Bonds, the

⁶ While the DRA's Bond Claims would also benefit from the DRA's security interest in the Act 30-31 Revenues, as the Bond Claims qualify as "Obligations" under the Security Agreement, *see* Security Agreement at 1.2 of p. 2 and 5.1 of p. 7, the Complaint is focusing at this time on the DRA's recoveries in the Loan Claims. By proceeding in this fashion, the DRA parties are not waiving, releasing, and/or relinquishing their rights, arguments, or positions with respect to the Bond Claims' secured interest and collateral over the Act 30-31 Revenues under the Security Agreement, and specifically preserve and reserve these for consideration or adjudication in the appropriate proceeding, including, but not limited to, seeking an amendment to the instant Complaint at a later time to address these issues.

“HTA Bonds” or “Bonds”), adopted February 26, 1998. True and correct copies of the 1968 Resolution and the 1998 Resolution are annexed hereto as **Exhibit A** and **Exhibit B**, respectively.

27. The Bond Resolutions and certain statutory provisions adopted by the Commonwealth in connection with HTA Bonds contemplated that certain revenues (and only those revenues) would provide a source of funds for the repayment of the HTA Bonds.

28. Section 601 of the 1968 Resolution provides:

[T]he principal, interest and premiums [on the 1968 Bonds] are payable **solely from Revenues and from any funds received by the Authority for that purpose from the Commonwealth** which Revenues and funds are hereby pledged to the payment thereof in the manner and to the extent hereinabove particularly specified.

1968 Resolution at 50 (emphasis added).

29. Section 601 of the 1998 Resolution provides:

[S]uch principal, interest and premiums are payable **solely from Revenues and other moneys deposited to the credit of the Revenue Fund and from any funds received by the Authority for that purpose from the Commonwealth**, which Revenues, moneys and funds are hereby pledged (with such priorities with respect to the use and disposition of Revenues as are in this Resolution specified) to the payment thereof in the manner and to the extent hereinabove particularly specified.

1998 Resolution at 58 (emphasis added).

30. The 1968 Resolution defines “Revenues” (the “1968 Revenues”) as

(a) all moneys received by the Authority on account of gasoline tax allocated to the Authority by Act No. 75, approved June 23, 1965; (b) Toll Revenues; (c) the proceeds of any other taxes, fees or charges which the Legislature of Puerto Rico has allocated or may hereafter allocate to the Authority and expressly authorize the Authority to pledge to the payment of the principal of and interest on Bonds or other obligations of the Authority and which are pledged by the Authority to the payment of the principal and interest on Bonds or other obligations issued under the provisions of this Resolution; provided that written notice of such pledge has been delivered to Standard & Poor's Corporation, Moody's Investors

Service, Inc. and any other rating agency then rating the bonds; and (d) investment earnings on deposit to the credit of the funds and accounts established hereunder, except for the Construction Fund.

1968 Resolution at 11.⁷

31. The 1998 Resolution defines “Revenues” (the “1998 Revenues” and, together with the 1968 Revenues, the “Bond Revenues”) as:

[A]ll moneys received by the Authority on account of the crude oil tax allocated to the Authority by Act No. 34, approved July 16, 1997, as amended, all Existing Tax and Fee Revenues upon the repeal and cancellation of the 1968 Resolution, any tolls or other charges imposed by the Authority for the use of any of the Toll Facilities other than Existing Toll Facilities Revenues received by the Authority prior to the repeal and cancellation of the 1968 Resolution, the proceeds of any other taxes, fees or charges which the Legislature of Puerto Rico may hereafter allocate to the Authority and expressly authorize the Authority to pledge to the payment of the principal of and interest on bonds or other obligations of the Authority and which are pledged by the Authority to the payment of the principal of and interest on bonds or other obligations issued under the provisions of this Resolution, and investment earnings on deposits to the credit of funds and accounts established hereunder, except for the Construction Fund.

1998 Resolution at 13.⁸

32. HTA granted to the holders of the 1968 Bonds (the “1968 Bondholders”) and the holders of the 1998 Bonds (the “1998 Bondholders” and, together with the 1968 Bondholders, the “HTA Bondholders” or “Bondholders”) a lien on the moneys deposited in certain special funds with enumerated sub-accounts created pursuant to Section 401 of each of the Bond Resolutions (collectively, the “Bond Revenue Accounts”) to secure the HTA Bonds. 1968

⁷ The 1968 Revenues were also identified in the Official Statements of the 1968 Bonds. *See, e.g.*, <https://aafaf.pr.gov/wp-content/uploads/PRHTA-Series-Z-and-Y-OS.pdf> at PDF page 9 of 287.

⁸ The 1998 Revenues were also identified in the Official Statements of the 1998 Bonds. *See, e.g.*, <https://aafaf.pr.gov/wp-content/uploads/ISSUERS/PRHTA/Trans-Revenue-Bonds/2007/Transportation-Revenue-Refunding-Bonds-Series-N.pdf> at PDF page 1 of 182.

Resolution, Section 401; 1998 Resolution, Section 401. HTA agreed to make monthly deposits of the HTA Bond Revenues into the Bond Revenue Accounts, which would be held by the Fiscal Agent. *Id.*

33. Section 401 of each of the Bond Resolutions further provides that:

The moneys in said Funds and Accounts [i.e., the Bond Revenue Accounts] shall be held by the Fiscal Agent in trust and applied as hereinafter provided with regard to each such Fund and Account and, pending such application, shall be subject to a lien and charge in favor of the holders of the bonds issued and outstanding under this Resolution and for the further security of such holders until paid out or transferred as herein provided.

1968 Resolution at 41; 1998 Resolution at 47.

34. With respect to the collateral for the HTA Bonds, the Title III Court held in *In re Fin. Oversight & Mgmt. Bd. for P.R.*, 618 B.R. 619, 631-42 (D.P.R. 2020), *aff'd*, 989 F.3d 170 (1st Cir. 2021), that the HTA Bondholders have no “colorable claim” to an interest in the Bond Revenues beyond the moneys actually deposited in the Bond Revenue Accounts. The Title III Court concluded that the HTA Bondholder’s security interest extends only as far as the text of the Bond Resolutions allows. Specifically, only to those moneys “received by the Authority for that purpose from the Commonwealth” and “deposited to the credit of the [Bond Revenue Accounts].” *Id.* at 638-40. The First Circuit upheld this ruling. *In re FOMB*, 989 F.3d at 180-82.

35. The HTA Bondholders are bound by these decisions and must concede that whatever their security interest or lien may be, it is a claim to the Bond Revenue Accounts which, upon information and belief, presently hold \$0.

36. On January 25, 2002, HTA approved Resolution No. 2002-04 (the “2002 Resolution”), which authorized the issuance of Series D Bonds, Series E Bonds, and Series F Bonds under certain provisions of the 1998 Resolution.

37. HTA entered into a security agreement dated February 7, 2002 (the “2002

Security Agreement”), which purports to grant a security interest, for the benefit of the 1998 Bondholders, to the Fiscal Agent, as the secured party, as follows:

In order to provide security for the Debtor’s payment of principal of, premium (if any) and interest on its Transportation Revenue Bonds in accordance with their respective terms and the terms of the [1998] Resolution, Debtor hereby grants to the Secured Party a security interest in the Puerto Rico Highway and Transportation Authority Transportation Revenue Bonds Interest and Sinking Fund (and all accounts therein) and Puerto Rico Highway and Transportation Authority Transportation Revenue Fund (and all accounts therein), maintained under the [1998] Resolution, and all amounts required to be on deposit therein by the terms of the [1998] Resolution, including all proceeds and all after-acquired property, subject to application as permitted by the [1998] Resolution.

2002 Security Agreement at 1.

38. However, as noted by the Title III Court in *In re Fin. Oversight & Mgmt. Bd. for P.R.*, 618 B.R. at 640-41, *aff’d*, 989 F.3d 170, “[n]one of the provisions in [the 2002 Resolution] approves the security interest purportedly granted in the 2002 Security Agreement.”

Accordingly, the Court concluded that the 2002 Security Agreement did not expand the 1998 Bondholders’ collateral securing the HTA Bonds.

39. On February 7, 2002, the Fiscal Agent, on behalf of the 1998 Bondholders, filed a UCC-1 Financing Statement with the Puerto Rico State Department claiming a security interest over the 1998 Revenues as purportedly granted by the 2002 Security Agreement. Since no such security interest was authorized by the 2002 Resolution, that filing had no force or effect. Even if it had, that particular financing statement lapsed in 2012, and no continuation statement was filed.

C. The Act 30-31 Revenues.

40. On June 25, 2013, the Governor of Puerto Rico signed into law Act No. 30-2013 (“Act 30”) and Act No. 31-2013 (“Act 31”). Act 30 and Act 31 increased the amount of existing

excise tax revenues and fees encompassed in other laws, which funds are collected by the Commonwealth and were given in right to HTA.

41. According to the Statements of Motives of Act 30 and Act 31, these statutes identify other sources of income and raise additional funds for HTA to meet and repay its obligations with the GDB and, as a result, relieve GDB from the heavy burden that HTA represented for its loan portfolio. Statement of Motives of Act No. 30-2013, at 2, attached hereto as **Exhibit C**; Statement of Motives of Act No. 31-2013, at 2, attached hereto as **Exhibit D**.

42. Act 30 amended the Puerto Rico Vehicles and Traffic Act, Act No. 22-2000, to modify the amount of money collected from vehicle and trailer license fees to be transferred to HTA.

43. Prior to Act 30, HTA received \$15 for each motor vehicle or trailer license issued. Act 30 increased the amount transferred to HTA to the entire amount received from each such license for vehicles, which was over \$40 each year.

44. Act 31 amended the Internal Revenue Code for a New Puerto Rico, Act No. 1-2011, to increase the amounts transferred to HTA from excise taxes imposed, collected, and paid on crude oil, and partially finished and finished oil by-products and any other hydrocarbon mixture (the "Petroleum Products Excise Taxes").

45. Prior to Act 31, HTA received a maximum of \$120 million per year from the Petroleum Products Excise Taxes and none of the excise tax on cigarettes. Act 31 removed the cap on Petroleum Products Excise Taxes to be allocated to HTA and also allocated \$20 million per year from the excise tax on cigarettes to HTA.

46. In summary, the incremental revenues implemented through Acts 30 and 31 and allocated to HTA are (i) the revenues in excess of \$15 for each vehicle or trailer license issued;

(ii) the revenues in excess of \$120 million per fiscal year from the Petroleum Products Excise Taxes; and (iii) \$20 million per fiscal year from the excise tax on cigarettes (collectively, the “Act 30-31 Revenues”).

47. HTA could have pledged the Act 30-31 Revenues for the payment of, or as security for, the then-outstanding HTA Bonds but they did not. Doing so would have contradicted the express intent of Act 30 and Act 31. *See Exhibit C* at 2 and *Exhibit D* at 2. Accordingly, the Act 30-31 Revenues are not Bond Revenues.

D. The Loan Claims, Their Source of Payment and Their Collateral.

48. Between March 2008 and January 2014, GDB and HTA entered into 15 loan agreements (as amended, amended and restated, supplemented or otherwise modified, the “Loan Agreements”) pursuant to which GDB extended loans to HTA in the aggregate principal amount of approximately \$2 billion, which loans were memorialized by 23 promissory notes (which, as defined above, are the Loan Claims).

49. Pursuant to the terms of the Loan Agreements, the Loan Claims are payable from, *inter alia*, Act 30-31 Revenues, proceeds from future public-private partnerships, the proceeds of future HTA bond issuances, and, importantly, any available moneys and resources of HTA. *See, e.g.*, Loan Agreement dated August 28, 2013, Section 2.2, a true and correct copy of which is attached hereto as **Exhibit E**.

50. On August 28, 2013, GDB and HTA executed the Security Agreement, pursuant to Section 1.1 of which HTA “absolutely, irrevocably, and unconditionally assigns, conveys and transfers without recourse, to [GDB all of its] rights, title, obligations and interest in” all of the Act 30-31 Revenues, including HTA’s right to receive such revenues. *See Security Agreement* at 1.1 at pp. 1-2. A true and correct copy of the Security Agreement is attached hereto as **Exhibit F**.

51. Under Section 1.2 of the Security Agreement, HTA also assigned, pledged and granted to GDB as “security for the prompt and complete payment and performance when due of all of its Obligations ... a continuing security interest ... in all of the right, title and interest of [HTA] in the [Act 30-31 Revenues], whether presently held or hereafter acquired and wherever located.” *Id.* at p. 2.

52. The Security Agreement defines “Obligations” broadly to include “all indebtedness, obligations and liabilities (including, without limitation, guarantees and other contingent liabilities) of [HTA] to [GDB].” *Id.* at 5.1 at p. 7.

53. Thus, the pledge contained in the Security Agreement secures any indebtedness that HTA owes to GDB, including the Loan Claims.⁹

54. The security interest granted to GDB in the Security Agreement was duly perfected on August 29, 2013, through the filing of a UCC-1 Financing Statement with the Puerto Rico State Department, which was subsequently amended on March 31, 2015 (together, the “GDB Financing Statement”). A true and correct copy of the GDB Financing Statement is annexed hereto as **Exhibit G**.

55. As of March 31, 2021, the aggregate outstanding principal balance of the Loan Claims was in excess of \$1.7 billion, plus \$866.4 million in outstanding interest, fees, and expenses.

E. The HTA Bondholders’ Belated and Overreaching Financing Statements.

56. In 2014, the 1968 Bondholders filed four UCC-1 Financing Statements, the first two of which were filed on May 16, 2014, and the latter two of which were filed on August 4,

⁹ As previously explained, the DRA’s Bond Claims would also benefit from the DRA’s lien on the Act 30-31 Revenues, as the Bond Claims qualify as “Obligations” under the Security Agreement. *See* Security Agreement at 1.2 of p. 2 and 5.1 of p. 7.

2014 (the “1968 Financing Statements”).

57. In 2014, the 1998 Bondholders filed seven UCC-1 Financing Statements (collectively, the “1998 Financing Statements” and, together with the 1968 Financing Statements, the “HTA Bondholders Financing Statements”).

58. The descriptions of collateral in the HTA Bondholders Financing Statements purport to include as assets pledged to secure the HTA Bonds (i) the Bond Revenues prior to their deposit in the Bond Revenue Accounts and (ii) the Act 30-31 Revenues. However, the Bond Resolutions’ pledges of collateral to secure the HTA Bonds include only the Bond Revenues actually deposited in the Bond Revenue Accounts.

59. The Bondholders’ lien does not attach to the Bond Revenues prior to deposit in the Bond Revenue Accounts. And, the Act 30-31 Revenues were never pledged to secure the HTA Bonds and do not collateralize the HTA Bonds. The Act 30-31 Revenues did not exist at the time in which the HTA Bonds were issued and HTA did not grant the Bondholders a lien on such revenues after Act 30 and Act 31 were enacted.

60. A UCC-1 financing statement does not perfect a lien on the monies deposited in the Bond Revenue Accounts, which is the Bondholders’ only collateral. A lien on such monies is perfected by control, as that term is defined in the Puerto Rico Commercial Transactions Act, Act 208-1995, as amended, of the Bond Revenue Accounts. Therefore, the filing of the HTA Bondholders Financing Statements did not modify or improve the HTA Bondholders’ liens or the perfection of such liens.

61. Because the HTA Bondholders do not have a lien on the Bond Revenues that were not deposited in the Bond Revenue Accounts, and because the DRA’s Loan Claims are general recourse obligations payable from, *inter alia*, any available moneys and resources of

HTA, the DRA is entitled to collect on its Loan Claims from the undeposited Bond Revenues, to the extent that the proceeds of the Act 30-31 Revenues are not sufficient to satisfy the Loan Claims.

F. The Subordination Provisions.

62. Section 1.2 at p. 2 of the Security Agreement states:

As security for the prompt and complete payment and performance when due of all of its Obligations, the Assignor [HTA] does hereby assign, pledge and grant to the [GDB] a continuing security interest, which shall be junior, inferior and subordinate in all respects to the outstanding bonds of the Assignor issued pursuant to the Bond Resolutions, in all of the right, title and interest of the Assignor in the [Act 30-31 Revenues], whether presently held or hereafter acquired and wherever located.

63. Section 3.2 at p. 4 of the Security Agreement which is titled “Application of Revenues and Proceeds” provides that the revenues and proceeds of the “Collateral” (i.e., the Act 30-31 Revenues) be applied as follows:

- (i) to the payment of the outstanding bonds of [HTA] issued pursuant to the Bond Resolutions;
- (ii) any and all expenses and fees (including reasonable attorneys’ fees) incurred by the [GDB] in obtaining the Collateral;
- (iii) next, any surplus remaining to the payment of the Obligations in the following order of priority: ...

64. The term “Bond Resolutions,” as used in the Security Agreement, means the outstanding bonds of HTA issued pursuant to (i) the 1998 Resolution and (ii) Resolution No. 13-41 adopted by HTA on August 28, 2013 (the “2013 Resolution”).

65. There are no outstanding bonds issued under the 2013 Resolution and the 1968 Bonds are not mentioned in the Security Agreement.

66. Accordingly, the provision in Section 1.2 of the Security Agreement can only relate to the 1998 Bonds.

67. Twelve of the fifteen Loan Agreements include a subordination provision reading as follows (or similar): “the obligations of the Borrower hereunder with respect to the payment of principal and interest on the Loan ... is [sic] junior and subordinated in all respects to the payment of the outstanding bonds of the Borrower...” *See, e.g.*, Loan Agreement dated August 28, 2013, Section 2.6, a true and correct copy of which is attached as **Exhibit E**.

G. The Bondholders Cannot Enforce the Security Agreement or the Loan Agreements.

68. HTA and GDB are the only parties to the Security Agreement and the Loan Agreements. The HTA Bondholders are not parties to these agreements and there is no separate subordination agreement between the GDB or the DRA and the HTA Bondholders.

69. The HTA Bondholders are not express or intended third party beneficiaries of either the Security Agreement or the Loan Agreements. As a result the HTA Bondholders do not have the right to enforce the provisions of either the Security Agreement or the Loan Agreements.

70. Neither the Loan Agreements nor the Security Agreement states, expressly or otherwise, that the inclusion of the subordination provisions was meant for the express benefit of the HTA Bondholders. To the extent that the Bondholders may be incidental beneficiaries of the agreements, that does not entitle them to enforce the subordination provisions against the DRA.

71. Consequently, the HTA Bondholders have no right to enforce the subordination provisions in the Security Agreement or the Loan Agreements.

H. The Effect of the Security Agreement Subordination Provisions Is Limited.

72. To the extent that the 1998 Bondholders could be considered third party beneficiaries of the Security Agreement (which they are not), any subordination pursuant to the Security Agreement would create lien subordination. Section 1.2 of the Security Agreement provides that “the Assignor [HTA] does hereby assign, pledge and grant to the [GDB] a continuing security interest, which shall be junior, inferior and subordinate in all respects to the outstanding bonds of the Assignor issued pursuant to the Bond Resolutions.”

73. Here, the subordination provisions in Section 1.2 do not provide explicit debt subordination. Rather, the provisions focus on subordination of the lien. Thus, the subordination provisions must be lien subordination.

74. The lien subordination provisions have no practical effect in any event. The subordination provisions in Section 1.2 of the Security Agreement would only have come into effect if HTA had pledged the Act 30-31 Revenues to secure the “outstanding bonds of the Assignor issued pursuant to the Bond Resolutions.”

75. The Bond Resolutions contemplated that HTA could provide the Bondholders with additional collateral if additional revenues were made available to it by the Puerto Rico Legislature. Specifically, the definition of Bond Revenues includes “the proceeds of any other taxes, fees or charges which the Legislature of Puerto Rico may hereafter allocate to the [HTA] and expressly authorize the [HTA] to pledge to the payment of the principal of and interest on bonds or other obligations of the [HTA] and which are pledged by the [HTA] to the payment of the principal of and interest on bonds or other obligations issued under the provisions of this Resolution.” *See* 1998 Resolution at 13.

76. However, HTA never pledged the Act 30-31 Revenues to the 1998 Bonds. As a result, Section 1.2 of the Security Agreement, while constituting lien subordination, does not

provide any help to the 1998 Bondholders because they have no lien on the Act 30-31 Revenues that would subordinate the DRA's lien.

77. Even if the subordination language contained in Section 1.2 of the Security Agreement could be construed as a debt subordination provision, which it cannot, the 1998 Bondholders have no right to payment from the Act 30-31 Revenues due to the limited recourse nature of their rights, as set forth in Section 601 of the Bond Resolutions.

78. Similarly, even if the 1998 Bondholders could be considered third party beneficiaries to the Security Agreement, which they are not, the turnover language in Section 3.2 of the Security Agreement is of little effect. This provision sets forth the rules and priority for the distribution of the "Collateral," as defined in the Security Agreement, among creditors that share a right to such collateral. Therefore, the turnover language would only be relevant to the extent that the 1998 Bondholders had also received a security interest in the Act 30-31 Revenues, which they did not.

79. Revenues that are not shared collateral between the GDB and the 1998 Bondholders are not covered by Section 3.2 of the Security Agreement. Nor are proceeds that the GDB may obtain from sources other than the "Collateral," such as other revenues of HTA which the GDB – and now, the DRA – is entitled to receive for the payment of the Loan Claims which are general obligation loans payable from all HTA's revenues.

80. Thus, the language contained in Section 3.2 of the Security Agreement is limited to the distribution of shared collateral proceeds and is not intended as a general subordination of the GDB's – and now, the DRA's – right to receive the proceeds of its collateral.

I. The Loan Agreements' Subordination Language Is of No Effect.

81. Ten of the Loan Agreements contain a provision providing the following

language, or a variation thereof: “[t]he Loan shall be junior and subordinate to outstanding bonds of the Authority and shall be subject to certain other terms and conditions, to be included in the Loan Agreement.”

82. Assuming the HTA Bondholders could be considered third party beneficiaries to the Loan Agreements (which they are not), these provisions can only relate to the Bond Revenues over which both the HTA Bondholders and the DRA (as a general recourse creditor) have a right to collect from.

83. However, because the DRA is the only party with a right to collect from, and claim against, the Act 30-31 Revenues, the subordination language in these ten Loan Agreements cannot be read to include Act 30-31 Revenues.

J. Five Loan Agreements Have No Subordination Language at All.

84. Five of the Loan Agreements contain no subordination language at all. Each of these Loan Agreements was memorialized in Spanish.

85. GDB and HTA entered into a Loan Contract dated October 27, 2011, through which GDB extended to HTA a line of credit of up to \$71,119,589 (later increased to \$197,721,815). Neither this contract nor any of the four subsequent amendments subordinated this loan to any other obligation. Upon information and belief, the current outstanding principal balance under this loan is \$171,604,829.16.

86. GDB and HTA entered into a Loan Contract dated November 29, 2011, through which GDB extended to HTA a line of credit of up to \$49,325,000. Neither the original contract nor any of its six subsequent amendments subordinated this loan to any other obligation. Upon information and belief, the current outstanding principal balance under this loan is \$49,325,000.

87. GDB and HTA entered into a Loan Contract dated September 12, 2012, through

which GDB extended to HTA a line of credit of up to \$33,960,000 (later reduced to \$10,536,362.50). Neither the original contract nor any of its four subsequent amendments subordinated this loan to any other obligation. Upon information and belief, the current outstanding principal balance under this loan is \$9,869,606.01.

88. GDB and HTA entered into a Loan Contract dated February 28, 2013, through which GDB extended to HTA a line of credit of up to \$33,189,996. Neither this contract nor any of the two subsequent amendments subordinated this loan to any other obligation. Upon information and belief, the current outstanding principal balance under this loan is \$32,612,861.79.

89. GDB and HTA entered into a Loan Contract dated January 16, 2014, through which GDB extended to HTA a line of credit of up to \$15,000,000. The contract did not subordinate this loan to any other obligation. Upon information and belief, the current outstanding principal balance under this loan is \$14,077,671.14.

90. Therefore, these loan obligations of HTA, totaling \$277,489,968.10 in outstanding principal amount, together with all applicable interest and fees thereon, are not in any way subordinated to the HTA Bonds on the Bond Revenues.

K. The FOMB's Third Amended Plan and HTA PSA.

91. On May 11, 2021, the FOMB, as representative of the Commonwealth, HTA, and others, filed a *Third Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.* (the "Third Amended Plan") [Dkt. No. 16740],¹⁰ along with a *Disclosure Statement for the Third Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et*

¹⁰ Unless otherwise specified in this Complaint, "Dkt. No." references shall refer to the docket of *In re Commonwealth of Puerto Rico*, Case No. 17-3283 (LTS).

al. (the “Disclosure Statement”) [Dkt. No. 16741].

92. The Third Amended Plan adopts and incorporates an *HTA/CCDA Related Plan Support Agreement* (the “HTA PSA”), dated May 5, 2021, executed between (a) the FOMB, as representative of the Commonwealth and HTA, and (b) certain holders of claims related to bonds issued by HTA and the Puerto Rico Convention Center District Authority (“CCDA”); (c) AGC, AGMC, and National, in their capacities as insurers, and asserted holders, deemed holders, or subrogees with respect to HTA and CCDA Bonds. [Dkt No. 16741-3].

93. Pursuant to the HTA PSA, the Commonwealth agreed to provide a recovery to the HTA Bondholders on their clawback claims asserted against the Commonwealth in the Third Amended Plan. The recovery is a mix of cash payments and certain contingent value securities (“CVI”), “the payment for which the Commonwealth has pledged its full faith, credit and taxing power pursuant to Article VI of the Puerto Rico Constitution.” *Id.* at p. 7.

94. The DRA has also asserted clawback claims against the Commonwealth.

95. All of the clawback claims are based on the Commonwealth’s retention of the Act 30-31 Revenues beginning in 2015, thereby depriving HTA of the revenue streams that would have otherwise been used to repay the Loan Claims, in accordance with applicable claim and lien priorities.

96. The priority of recovery on the clawback claims should mirror the claim and lien priorities between the DRA and the HTA Bondholders. However, the Third Amended Plan incorrectly provides the HTA Bondholders senior priority on their clawback claims, such that they will receive a greater recovery on their clawback claims than the DRA, and does not take into account that the DRA is the only party with a right to collect from and security interest in the Act 30-31 Revenues.

97. The HTA PSA provides that certain payments on the CVI owed to the holders and insurers of HTA Bonds issued under the 1998 Resolution will be held in reserve (the “CVI Reserve”) “pending entry of a final order with respect to the GDB Loan Priority Determination.”

Id. The amount of the CVI Reserve would be:

equal to the difference of (a) the amount of cash that would be due to holders and insurers of HTA 98 Senior Bond Claims and HTA 98 Sub Bond Claims to the extent that payment with respect to the GDB HTA Loans is subordinated to payment with respect to the HTA 98 Bonds minus (b) the amount of cash that would be due to holders and insurers of HTA 98 Senior Bond Claims and HTA 98 Sub Bond Claims to the extent that payment with respect to the GDB HTA Loans is *pari passu* with respect to payment on account of the HTA 98 Bonds.

Id.

98. The CVI Reserve erroneously disregards the DRA’s exclusive lien on and right to collect from the Act 30-31 Revenues.

99. The HTA PSA defines the “GDB Loan Priority Determination” as,

the determination, in either the Commonwealth PROMESA Proceeding or the HTA PROMESA Proceeding, (a) with respect to the relative rights of recovery and priority of payment of the HTA 68 Bonds and the HTA 98 Bonds to the rights of the Government Development Bank with respect to the GDB HTA Loans, and/or (b) that the Government Development Bank Debt Recovery does not possess an allowable claim or entitlement to recover with respect to the HTA Clawback CVI based upon such GDB HTA Loans.

Id. at p. 10.

100. Thus, the HTA PSA anticipated that litigation would ensue between the Defendants and the DRA, as successor to the GDB, in relation to their priority for payment of the cash and CVI per the terms of the HTA PSA.

101. The instant Complaint is intended to provide a means to resolve the priority question with respect to the payments made by the Commonwealth on account of the clawback

claims, and any payments that may be made on account of the Loan Claims and the HTA Bonds under a future plan for HTA.

102. The DRA Parties are entitled to the declarations they seek.

V. Causes of Action

A. COUNT 1 – Declaration that the DRA is the Only Party with a Right to Collect from and a Valid, Perfected Security Interest in the Act 30-31 Revenues.

103. The DRA Parties repeat and re-allege each of the preceding allegations as if fully set forth herein.

104. According to the Statements of Motives of Act 30 and Act 31, the Act 30-31 Revenues were enacted by the Commonwealth of Puerto Rico with the express intent of identifying other sources of income and raising additional funds for HTA to meet and repay its obligations with the GDB and, as a result, relieving GDB from the heavy burden that HTA represented for its loan portfolio. *See* Exhibit C at 2 and Exhibit D at 2.

105. The Security Agreement granted the GDB a security interest in the Act 30-31 Revenues, wherever located, to secure the Loan Claims, and the right to receive such revenues.

106. The GDB perfected its security interest in the Act 30-31 Revenues by filing the GDB Financing Statement in 2013.

107. Neither the FOMB nor HTA have challenged the validity of the GDB's security interest in the Act 30-31 Revenues.

108. The DRA succeeded to the GDB's security interest in the Act 30-31 Revenues pursuant to Act 109 and the terms of the Transfer Agreement.

109. The Bondholders have a lien on the Bond Revenues solely to the extent that they are deposited in the Bond Revenue Accounts but, in any case, the Bond Revenues do not include

the Act 30-31 Revenues.

110. Upon information and belief, the current balance of the Bond Revenue Accounts for the 1968 Bonds and the 1998 Bonds is zero.

111. The HTA Bondholders do not have a lien on Act 30-31 Revenues.

112. Pursuant to Act 30, Act 31 and the Loan Agreements, the Act 30-31 Revenues are a source of repayment for the Loan Claims.

113. The HTA Bonds are limited recourse obligations, with no recourse to and no right to collect from the Act 30-31 Revenues.

114. Notwithstanding this, the Third Amended Plan incorrectly provides the HTA Bondholders senior priority, such that they will receive a greater recovery than the DRA, and does not take into account that the DRA is the only party with a right to collect from and security interest in the Act 30-31 Revenues.

115. Accordingly, the DRA Parties are entitled to a declaration from this Court decreeing that the DRA is the only party with (i) a valid, perfected, first-priority lien on the Act 30-31 Revenues and (ii) a right to collect from the Act 30-31 Revenues.

B. COUNT 2 – Declaration that the HTA Bondholders Have Limited Collateral to Secure the Bonds, that the HTA Bonds Are Limited Recourse Obligations, and Neither the Collateral Pledged to Secure the Bonds, nor the Bond Revenues to which the Bondholders Have Recourse, Includes the Act 30-31 Revenues.

116. The DRA Parties repeat and re-allege each of the preceding allegations as if fully set forth herein.

117. The HTA Bondholders have limited collateral and the HTA Bonds are limited recourse obligations.

118. The HTA Bondholder's collateral to secure the HTA Bonds is limited to the Bond

Revenues that are deposited in the Bond Revenue Accounts. The Title III Court confirmed in its holding that that the bondholders' have no "colorable claim" beyond the money actually deposited in the Bond Revenue Accounts. *In re Fin. Oversight & Mgmt. Bd. for P.R.*, 618 B.R. at 631-42, *aff'd*, 989 F.3d 170.

119. The Bond Revenues do not include the Act 30-31 Revenues. The Act 30-31 Revenues did not exist at the time HTA granted the HTA Bondholders a lien on the Bond Revenues deposited in the Bond Revenue Accounts and there has been no subsequent pledge to the HTA Bondholders to add the Act 30-31 Revenues to the HTA Bondholders' collateral. Act 30 and Act 31 expressly created a source of revenue for the payment of the Loan Claims. *See supra* at ¶¶ 40-47, 56-61.

120. The 1968 Bondholders Financing Statements and the 1998 Bondholders Financing Statements cannot and do not alter or expand the scope of the collateral securing the HTA Bonds.

121. The inclusion of the Act 30-31 Revenues and the Bond Revenues prior to their deposit in the Bond Revenue Accounts in the description of the collateral listed on the HTA Bondholder Financing Statements does not constitute a grant of a lien on such assets, much less constitute the perfection of a lien on such assets.

122. The HTA Bondholders cannot expand the scope of the collateral securing the HTA Bonds by unilaterally filing a financing statement with a broader description of collateral than what was actually granted in the Bond Resolutions.

123. Therefore, to the extent that the HTA Bondholder Financing Statements sought to perfect a lien on assets that were not pledged by HTA in the Bond Resolutions, this attempt by the HTA Bondholders has no legal effect as a matter of law.

124. None of the provisions in the 2002 Resolution approve the security interest purportedly granted in the 2002 Security Agreement. Therefore, the 2002 Security Agreement did not alter or expand the 1998 Bondholders' collateral to the 1998 Bonds.

125. The HTA Bonds are also limited recourse obligations of HTA. Section 601 of the 1968 Resolution provides that:

[T]he principal, interest and premiums [on the 1968 Bonds] are payable solely from [1968] Revenues and from any funds received by [HTA] for that purpose from the Commonwealth which Revenues and funds are hereby pledged to the payment thereof in the manner and to the extent hereinabove particularly specified.

126. HTA has not received any funds from the Commonwealth for the payment of the HTA Bonds, so the HTA Bondholders' only recourse for payment of the HTA Bonds is to the Bond Revenues on deposit in the Bond Revenue Accounts.

127. The 1998 Bonds are also limited recourse obligations of HTA. Section 601 of the 1998 Resolution provides that:

[T]he principal, interest and premiums [on the 1998 Bonds] are payable solely from [1998] Revenues and other moneys deposited to the credit of the Revenue Fund and from any funds received by [HTA] for that purpose from the Commonwealth, which Revenues, moneys and funds are hereby pledged (with such priorities with respect to the use and disposition of Revenues as are in this Resolution specified) to the payment thereof in the manner and to the extent hereinabove particularly specified.

128. HTA has not received any funds from the Commonwealth for the payment of the 1998 Bonds, so the 1998 Bondholders' only recourse for payment of the 1998 Bonds is to the 1998 Revenues deposited in the Bond Revenue Accounts.

129. Based on the foregoing, the DRA Parties are entitled to a declaration and/or a determination from this Court under 11 U.S.C. §§ 502 and/or 506, that the HTA Bonds (i) are secured only by the Bond Revenues "actually received by HTA and actually deposited in the

applicable [Bond Revenue Account]”, see *In re Fin. Oversight & Mgmt Bd. For P.R.*, 618 B.R. at 638, *aff’d*, 989 F.3d 170, and (ii) are limited recourse obligations to be satisfied “solely” from the Bond Revenues, which do not include the Act 30-31 Revenues. 1998 Resolution, §§ 401, 601; 1968 Resolution, §§ 401, 601.

C. COUNT 3 – Declaration that the DRA’s Loans Are Not Subordinate to the Bonds.

130. The DRA Parties repeat and re-allege each of the preceding allegations as if fully set forth herein.

131. The Loan Claims are not subordinate to the HTA Bonds. The DRA’s security interest in the Act 30-31 Revenues is the only security interest in the Act 30-31 Revenues, and therefore, it is not subject to subordination.

132. First, there is no subordination agreement between the HTA Bondholders and the GDB or DRA.

133. Second, the subordination provisions in the Security Agreement do not apply to the 1968 Bonds and the 1968 Bondholders are not third-party beneficiaries to the Loan Agreements or the Security Agreement.

134. Third, the 1998 Bondholders are not third-party beneficiaries of the Loan Agreements or the Security Agreements.

135. Fourth, even if the 1998 Bondholders were considered third-party beneficiaries to the Security Agreement, which they are not, the Security Agreement only creates lien subordination rather than debt subordination.

136. HTA could have granted the 1998 Bondholders a lien on the Act 30-31 Revenues, but did not do so. The Loan Claims are secured by the Act 30-31 Revenues, including the right to receive such revenues, while the 1998 Bonds’ liens (if any) extend only to the Bond Revenues

deposited in the Bond Revenue Accounts, which do not include any Act 30-31 Revenues.

137. Fifth, the turnover provision in Section 3.2 of the Security Agreement is similarly of no import because it also only applies to shared collateral, which there is none.

138. And sixth, the subordination language in certain Loan Agreements is limited to Bond Revenues, and does not cover Act 30-31 Revenues.

139. Notwithstanding this, the Third Amended Plan incorrectly provides the HTA Bondholders senior priority over the DRA and does not take into account that the DRA is the only party with a right to collect from and security interest in the Act 30-31 Revenues.

140. Accordingly, the DRA is entitled to a declaration that neither the DRA's Loan Claims nor liens are subordinated to the HTA Bonds claims or liens.

D. COUNT 4 – Declaration that the DRA's Loans Are Entitled to Collect on the Loan Claims from the Bond Revenues Not Deposited in the Bond Revenue Accounts.

141. The DRA Parties repeat and re-allege each of the preceding allegations as if fully set forth herein.

142. The HTA Bondholders' lien (if any) does not attach to Bond Revenues which are not deposited into the Bond Revenue Accounts.

143. The Loan Claims are general recourse obligations and are payable from, *inter alia*, any available moneys and resources of HTA.

144. The Bond Revenues not deposited into the Bond Revenue Accounts constitute available moneys and resources of HTA from which the DRA is entitled to collect on its Loan Claims.

145. Accordingly, the DRA is entitled to a declaration and/or determination from this Court under 11 U.S.C. §502 that the Loan Claims are payable, and have a right to collect, from

the Bond Revenues that have not been deposited into the Bond Revenue Accounts.

PRAYER FOR RELIEF

WHEREFORE, the DRA Parties respectfully request that the Court enter judgment in their favor and correspondingly issue the following relief:

- (a) A declaratory judgment that the DRA is the only party with a valid, perfected, first-priority lien on, security interest in, and a right to collect from the Act 30-31 Revenues;
- (b) A declaratory judgment and/or determination under 11 U.S.C. §§ 502 and/or 506 that the HTA Bonds (i) are secured only by the Bond Revenues actually received by HTA and actually deposited in the applicable Bond Revenue Account, and (ii) are limited recourse obligations to be satisfied solely from the Bond Revenues, which do not include the Act 30-31 Revenues;
- (c) A declaratory judgment that the DRA's Loan Claims and liens are not subordinated to the HTA Bondholders' claims or liens;
- (d) A declaratory judgment and/or determination from this Court under 11 U.S.C. § 502 that the Loan Claims are payable and have a right to collect from, the Bond Revenues that have not been deposited in the Bond Revenue Accounts; and
- (e) Such other relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 26th day of June, 2021.

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