

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

THE GOVERNMENT DEVELOPMENT BANK
FOR PUERTO RICO,

Applicant.

PROMESA

Title VI

Case No. 18-1561

APPLICATION OF THE GOVERNMENT DEVELOPMENT BANK FOR PUERTO RICO AND THE PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY, PURSUANT TO SECTION 601(M)(1)(D) OF THE PUERTO RICO OVERSIGHT, MANAGEMENT, AND ECONOMIC STABILITY ACT, FOR APPROVAL OF THE QUALIFYING MODIFICATION FOR GDB

The Government Development Bank for Puerto Rico (“**GDB**”) and the Puerto Rico Fiscal Agency and Financial Advisory Authority (“**AAFAF**”), pursuant to section 601(m)(1)(D) of the Puerto Rico Oversight, Management, and Economic Stability Act (“**PROMESA**”),¹ hereby file this Application (the “**Application**”) for approval of the Qualifying Modification (as defined below) for GDB. In support of the Application, GDB and AAFAF state as follows:

PRELIMINARY STATEMENT

1. The Application represents an important step in Puerto Rico’s overall financial restructuring: the government of Puerto Rico has reached consensus on the terms of a debt modification of a financially troubled public corporation under the creditor collective action procedures of PROMESA Title VI. Unlike PROMESA Title III, Title VI is premised on voluntary negotiations between a government debtor and its creditors with the Court having a limited supervisory role. In GDB’s case, the Qualifying Modification, which is the result of more than a year of complex negotiations among various constituents, is supported by creditors holding a majority of the \$4.5 billion in claims to be modified by Court order, as reflected by the

¹ Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in PROMESA.

parties to the GDB Restructuring Support Agreement (the “**RSA**”). The Financial Oversight and Management Board for Puerto Rico (the “**Oversight Board**”) unanimously certified the RSA as a Qualifying Modification under Title VI. And the legislative and executive branches of Puerto Rico determined, by passing and signing into law the *Government Development Bank for Puerto Rico Debt Restructuring Act*, Act No. 109-2017 (the “**GDB Restructuring Act**”), that it is in the best interests of Puerto Rico and its citizens to restructure GDB through the transactions contemplated by each of the Qualifying Modification and the Act.

2. The Qualifying Modification has thus been endorsed by all key stakeholders and is the epitome of a consensus driven transaction that Title VI represents. Moreover, by proceeding under Title VI with the support of a majority of its creditors (who have agreed, in light of GDB’s economic reality, to make significant economic concessions), GDB believes that it can maximize value for its stakeholders, while avoiding the delay, expense, and uncertainty associated with a Title III case and attendant litigation.

3. GDB’s restructuring and wind-down will proceed on parallel paths. *First*, under the Qualifying Modification, the claims of GDB’s bondholders, municipal and private depositors, and certain other contingent creditors will be resolved by exchanging such claims for new bonds issued by a governmental entity created by the GDB Restructuring Act—the GDB Debt Recovery Authority (the “**Recovery Authority**”). *Second*, the Commonwealth has determined that claims the Commonwealth and other public entities have against GDB will be resolved pursuant to the terms of the GDB Restructuring Act and the creation of a separate trust—the Public Entity Trust (the “**PET**”). The PET transaction is not a component of the Qualifying Modification and GDB and AAFAF are not seeking relief or Court approval with respect to that aspect of the transaction by this Application.

4. Under the Qualifying Modification, each \$1,000 of affected claims will be exchanged for new bonds having a face amount equal to \$550 (the “**New Bonds**”). In consideration for the Recovery Authority’s issuance of the New Bonds and the resulting cancellation of the Participating Bond Claims, GDB will transfer to the Recovery Authority its municipal loan portfolio, a portion of its public entity loan portfolio, its real estate owned assets, and its unencumbered cash, which assets will support and secure the New Bonds. The New Bonds are special limited obligations of the Recovery Authority and will not be payable or guaranteed by GDB or the Commonwealth. Upon closing of the Qualifying Modification, each municipality will also benefit from a full setoff of its deposits held at GDB against the outstanding balance of any loan owed by such municipality to GDB.

5. Under Title VI, the Court’s review and approval of the Qualifying Modification is limited to determining whether “the requirements of [PROMESA section 601] have been satisfied.” *See* PROMESA § 601(m)(1)(D); 48 U.S.C. § 2231(m)(1)(D). As discussed in this Application, GDB properly submitted the Qualifying Modification to the Oversight Board and obtained the requisite certifications under PROMESA sections 601(g)(2) and 104(i)(1); the Oversight Board established, in consultation with GDB, Pools of affected creditors in accordance with the requirements of PROMESA; and GDB complied with Title VI’s information and notice requirements, and properly launched the solicitation of votes from creditors eligible to vote. As such, the requirements of section 601 have clearly been met (or are anticipated to be satisfied following the voting deadline) and the Application should be approved.

6. This Application has four parts: Part I summarizes the relevant facts and history of GDB and the RSA; Part II explains the Qualifying Modification and the concurrent transactions; Part III describes the solicitation process; and Part IV summarizes how GDB

satisfies all requirements for approval of the Qualifying Modification under PROMESA section 601. Contemporaneously with the filing of this Application, GDB and AAFAF filed the *Motion for an Order Approving Procedures and Setting a Schedule for Approval of the Qualifying Modification for the Government Development Bank for Puerto Rico* (the “**Procedures Motion**”), seeking, among other things, that the Court schedule a hearing on approval of the Qualifying Modification on November 7, 2018 (the “**Approval Hearing**”).

JURISDICTION

7. The United States District Court for the District of Puerto Rico (the “**Court**”) has subject matter jurisdiction over this matter pursuant to PROMESA sections 106(a) and 601(m)(1)(D) and District of Puerto Rico Local Civil Rule 3.1. 48 U.S.C. §§ 2126(a), 2231(m)(1)(D). The statutory predicate for the relief sought in this Application is PROMESA section 601. 48 U.S.C. § 2231.

I. Background

A. GDB and AAFAF

8. GDB is a public corporation and an instrumentality of the Commonwealth of Puerto Rico (the “**Commonwealth**”) organized under Act No. 17-1948 (the “**GDB Enabling Act**”). Historically, GDB has served two functions: first, and foremost, GDB was a banking institution and a depository of funds for the Commonwealth and its instrumentalities, public corporations and municipalities. Second, it acted as fiscal agent, paying agent, and financial advisor to the Commonwealth and its instrumentalities, public corporations, and municipalities.

9. Over time, the Commonwealth sought to leverage GDB’s strong access to the capital markets by calling upon GDB to issue long-term and interim financing to the Commonwealth and its instrumentalities, public corporations and municipalities. This caused

GDB's liquidity and financial condition to be dependent on those entities' ability to repay their loans from GDB.

10. This practice of intra-government lending led to the fiscal crisis that has required GDB to seek to restructure its debts. In 2014, GDB lost its investment grade credit rating, which resulted in GDB losing access to capital markets, leaving GDB unable to borrow funds while simultaneously being burdened by significant non-performing assets—primarily loans to the Commonwealth and its public agencies and corporations—and with limited liquidity. By 2016, GDB could not satisfy its debt obligations and could no longer carry out its duties effectively.

11. Accordingly, on April 6, 2016, GDB's fiscal agent responsibilities were transferred to the newly created AAFAF under the *Puerto Rico Emergency Moratorium and Financial Rehabilitation Act*, Act No. 21-2016 (the "**Moratorium Act**"). See Moratorium Act § 602; Declaration of Suzanne S. Uhland, Esq. ("**Uhland Decl.**"), Ex. A. AAFAF was granted the authority to "oversee all matters related to the restructuring or adjustment" of certain covered obligations, as designated by Puerto Rico's Governor. Moratorium Act § 602(b). Two days later, former Governor Alejandro J. García Padilla signed Executive Order 2016-10, which declared GDB to be in a state of emergency and prohibited most withdrawals and loan disbursements. As a result, GDB essentially froze its bank functions and Government entities stopped depositing their funds at GDB and began depositing funds at other private banking institutions.

12. On January 18, 2017, the Puerto Rico legislature enacted the *Puerto Rico Fiscal Agency and Financial Advisory Authority Act*, Act 2-2017 (the "**AAFAF Enabling Act**"), which expanded AAFAF's authority and designated it as the only government entity authorized to renegotiate, restructure, and reach agreements with creditors in connection with public debt or

any other debt issued by any government entity. *See* AAFAF Enabling Act § 8(q); Uhland Decl., Ex. B. AAFAF was also granted authority to compel any governmental entity to take action to comply with a fiscal plan certified by the Oversight Board and to take action on behalf of any government entity to ensure compliance. *See* AAFAF Enabling Act §§ 8(m) and (o); Uhland Decl., Ex. B.

B. Overview of PROMESA Title VI

13. PROMESA provides two mechanisms for the Commonwealth and its instrumentalities to modify or restructure their debts: (i) Title III, as the Court knows, creates a court-supervised process similar to a proceeding under Chapter 9 of the Bankruptcy Code and (ii) Title VI provides an out-of-court process for negotiating a consensual debt modification with significant, but less than unanimous, support from affected creditors, with final court approval to bind non-consenting creditors. *See* PROMESA §§ 301–317, 601; 48 U.S.C. §§ 2161-2177, 2231.

14. Unlike Title III, which requires a substantial amount of court supervision (although less than in a chapter 11 case) over both substantive and procedural matters, Title VI permits a consensual restructuring (although not one requiring unanimity) overseen by the Oversight Board acting as Administrative Supervisor, and culminating in court approval to ensure that parties have complied with the prescribed procedure.

15. More specifically, Title VI’s collective creditor action provisions permit certain designated instrumentalities of the Commonwealth to effectuate a “Modification” of their funded debt and other financial indebtedness (collectively, “**Bonds**”) with the consent of a supermajority of those creditors voting in any affected class (each, a “**Pool**”), provided that such supermajority of those voting also constitutes a majority of the Bonds outstanding in such Pool.

PROMESA § 601(j); 48 U.S.C. § 2231(j). If the dual-pronged voting threshold is satisfied, the debt Modification’s terms bind all holders of claims within the same Pool.

16. PROMESA uses a broad definition of “Bonds” to determine eligibility for Modification under Title VI, encompassing not just financial instruments issued pursuant to a credit agreement or indenture, but many other types of financial obligations:

bond, loan, letter of credit, other borrowing title, obligation of insurance, or other financial indebtedness for borrowed money, including rights, entitlements, or obligations whether such rights, entitlements, or obligations arise from contract, statute, or any other source of law, in any case, related to such a bond, loan, letter of credit, other borrowing title, obligation of insurance, or other financial indebtedness in physical or dematerialized form of which the issuer, obligor, or guarantor is the territorial government.

PROMESA § 5(2); 48 U.S.C. § 2104(2). In turn, PROMESA section 5(3) defines “Bond Claims” to mean, as it relates to a Bond, the:

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

PROMESA § 5(3); 48 U.S.C. § 2104(3). Any claim that is a “Bond Claim” can be modified under Title VI.

17. A “Modification” that can be effectuated pursuant to Title VI includes “any modification, amendment, supplement, or waiver affecting any one or more series of Bonds, including those effected by way of exchange, conversion, or substitution.” *See* PROMESA § 601(a)(9); 48 U.S.C. § 2231(a)(9). Modifications can be proposed by the “Issuer” or by one or more holders of the right to vote the Issuer’s outstanding Bonds. The Issuer means either the Commonwealth or an “Authorized Territorial Instrumentality” that has “issued or guaranteed at

least one Bond that is Outstanding.” *See* PROMESA § 601(a)(8); 48 U.S.C. § 2231(8). An “Authorized Territorial Instrumentality” is an entity specifically authorized by the Oversight Board to avail itself of Title VI. *See* PROMESA § 601(e); 48 U.S.C. § 2231(e). GDB is both an Issuer and Authorized Territorial Instrumentality.

18. Here, GDB seeks to use Title VI to modify approximately \$4.5 billion in Bond Claims. The Bond Claims subject to the Qualifying Modification (*i.e.*, the Participating Bond Claims) include claims based on (i) GDB’s outstanding public bonds; (ii) certain deposits held at GDB by municipalities and non-public entities; and (iii) certain other private creditors. On July 12, 2017, the Oversight Board issued a resolution authorizing GDB to use the Title VI modification procedure.

C. The Restructuring Support Agreement

19. In the spring of 2017, GDB and AAFAF began negotiating with certain of their major creditor constituencies—including the ad hoc group of GDB bondholders (the “**Ad Hoc Group**”), a number of on-island credit unions or “cooperativas” (the “**Cooperativas**”), and Bonistas del Patio, Inc. (“**Bonistas**”), an organization that advocates for Puerto Rico residents who hold bonds of Commonwealth government issuers—regarding a Title VI modification.

20. Those extensive negotiations amongst creditors with varying interests resulted in the execution of the RSA on May 15, 2017. *See* Uhland Decl., Ex. C. The RSA embodies a compromise that is broadly supported by a GDB’s financial creditors, including more than 300 on-island bondholders, 50 Cooperativas, and the Ad Hoc Group of GDB Bondholders, which holds nearly \$1 billion in Bonds.

21. On July 12, 2017, the Oversight Board certified the Modification contemplated by the RSA, making it a “Qualifying Modification” under Title VI (the “**Qualifying Modification**”). *See* Uhland Decl., Ex. J.

22. The severe damage and devastation inflicted on Puerto Rico by Hurricanes Irma and María necessitated certain modifications to the RSA and pushed back the timeframe for consummating the Qualifying Modification. *See* Uhland Decl., Exs. D-H. Under the current RSA milestones, the deadline to complete solicitation of the Qualifying Modification is September 14, 2018 and the deadline to obtain court approval of the Qualifying Modification is November 21, 2018. *See* Uhland Decl., Ex. I.

23. The latest version of the RSA has been recertified by the Oversight Board as a Qualifying Modification, see Uhland Decl., Ex. L, and the legislature enacted an amendment to the GDB Restructuring Act to reflect the modifications to the RSA's terms, see Uhland Decl., Ex. M.

D. The GDB Fiscal Plan

24. On February 21, 2017, pursuant to PROMESA section 201, AAFAF and GDB prepared and submitted to the Oversight Board a fiscal plan for GDB. 48 U.S.C. § 2141. The original GDB Fiscal Plan acknowledged that there was no clear path to long-term viability for GDB based on its then-current financial condition, and provided for the orderly wind-down of GDB's operations. The Oversight Board certified the original GDB Fiscal Plan on April 28, 2017.

25. Then, on May 15, 2017, GDB and AAFAF entered into the RSA. The RSA was designed to effectuate the GDB Fiscal Plan by providing for transactions resulting in an orderly wind-down of GDB's operations. Under the RSA, the parties agreed to the mechanisms by which distributable cash flow would be allocated among GDB's various creditors and provided greater clarity as to how GDB's operations would be wound down. On June 30, 2017, AAFAF and GDB submitted a revised GDB Fiscal Plan to the Oversight Board that, among other things, reflected the RSA transaction. On March 21, 2018, AAFAF and GDB submitted a further

revised GDB Fiscal Plan to the Oversight Board that, among other things, amended the plan to be consistent with changes to the RSA. On April 20, 2018, the Oversight Board issued a unanimous written consent certifying the March 2018 GDB Fiscal Plan (as so certified, the “**GDB Fiscal Plan**”). *See* Uhland Decl., Ex. N.

II. Overview of the Qualifying Modification and Related Transactions

26. As described under the RSA, GDB and its creditors agreed to a modification, pursuant to the Qualifying Modification, of the private and municipal obligations of GDB. The Qualifying Modification, and the restructuring of such private and municipal obligations thereunder, is conditioned upon the global restructuring of GDB as contemplated under the GDB Fiscal Plan.

27. In addition, the Puerto Rico Legislature enacted, and the Governor of Puerto Rico signed into law on August 24, 2017, the GDB Restructuring Act to address the claims of the Commonwealth and its instrumentalities against GDB and to effectuate the approved Fiscal Plan for the GDB. *See* Uhland Decl., Ex. K. Under the GDB Restructuring Act, consistent with the GDB Fiscal Plan, GDB will divide its assets (other than certain excluded assets) between, and irrevocably transfer such assets to, two special purpose entities created by the Act: the Recovery Authority and the PET. Claims against GDB will be resolved pursuant to either the Qualifying Modification or the GDB Recovery Act.

A. The Qualifying Modification

28. Upon the consummation of the Qualifying Modification (the “**Closing Date**”), the holders of Participating Bond Claims will have such Participating Bond Claims mandatorily exchanged for New Bonds issued by the Recovery Authority. For each \$1,000 of Participating Bond Claims, holders of Participating Bond Claims will receive New Bonds having a face amount equal to \$550.

29. In consideration for the Recovery Authority's issuance of the New Bonds and the resulting cancellation of the Participating Bond Claims, GDB will transfer to the Recovery Authority its municipal loan portfolio, a portion of its public entity loan portfolio, its real estate owned assets, and its unencumbered cash (the "**Restructuring Property**").² Under the GDB Restructuring Act, the transfer of the Restructuring Property by GDB to the Recovery Authority will be an irrevocable, non-voidable, and absolute transfer of all of GDB's legal and equitable right, title, and interest in the Restructuring Property.³

30. The New Bonds will be secured by a statutory lien on the Restructuring Property pursuant to the GDB Restructuring Act and will be paid solely from funds generated by the Restructuring Property, after payment of the costs and expenses of the Recovery Authority and its service providers. The New Bonds are special limited obligations of the Recovery Authority and are not indebtedness or liabilities of GDB, AAFAF, the Commonwealth, or the Commonwealth's public instrumentalities or subdivisions other than the Recovery Authority; the New Bonds are not backed by the full faith and credit of GDB, AAFAF, the Commonwealth, or any of the Commonwealth's public instrumentalities or political subdivisions other than the Recovery Authority or any taxing power such entities possess.

31. The Restructuring Property will be managed by a servicer, which will handle all collections, administer defaults, delinquencies, and adjustments, and otherwise manage the Restructuring Property. The initial servicer is AmeriNational Community Services, LLC. A

² The Restructuring Property includes any assets, collections, fees, charges, proceeds, revenues, rents, insurance payments, income or other funds generated by, or received by the Issuer, the Servicer or GDB in respect of the property transferred to the Recovery Authority on or after the Closing Date.

³ All causes of action held by GDB unrelated to the Restructuring Property will be retained by GDB and GDB is authorized to retain and use any proceeds derived from pursuing those causes of action to satisfy or resolve any contingent and unliquidated claims against GDB arising on or before the Closing Date (other than those resolved pursuant to the Qualifying Modification or the GDB Restructuring Act). Upon GDB's sole determination that all such contingent and unliquidated claims have been satisfied or resolved, it shall transfer to the Issuer the remaining proceeds, if any, of the causes of action.

collateral monitor will also be engaged to, among other things, monitor collections on account of the Restructuring Property and provide a certification report semiannually. The initial collateral monitor is Cantor-Katz Collateral Monitor GP. Wilmington Trust, N.A. has also been appointed as the indenture trustee for the New Bonds.

32. On the Closing Date, GDB will also enter into a keepwell agreement (the “**Keepwell Agreement**”) with the Recovery Authority, which will provide, among other things, that if any Restructuring Property is returned or conveyed to GDB, or if the transfer to the Recovery Authority is deemed invalid or void, GDB will take such steps as may be necessary to irrevocably retransfer or re-convey such Restructuring Property to the trustee for the New Bonds. The Keepwell Agreement will further provide that GDB will indemnify and hold harmless holders of New Bonds from losses incurred as the result of certain legislative or court action resulting in the impairment of the Qualifying Modification, the New Bonds or the rights or liens of the Recovery Authority, the Indenture Trustee or the holders of the New Bonds.

33. Upon the Closing Date, holders of Participating Bond Claims will immediately and forever cease to have any rights, interests or claims against GDB or any of its assets (other than in accordance with the Keepwell Agreement), and such Participating Bond Claims will be extinguished and cancelled.

B. Concurrent Transactions Pursuant to the GDB Restructuring Act

34. To facilitate the wind-down of GDB, the Puerto Rico legislature has authorized certain intra-government transactions between GDB, on one hand, and the Commonwealth and its public corporations and instrumentalities, on the other. These transactions are being conducted pursuant to the GDB Restructuring Act—not the Qualifying Modification.⁴

⁴ Under the RSA, the effectuation of these concurrent transaction are conditions precedent to the Qualifying Modification.

i. The Public Entity Trust

35. The GDB Restructuring Act authorizes the consummation of the PET transaction. The primary purpose of the PET is to provide distributions to certain public corporation depositors, as well as to administer the restoration of federal funds deposited at GDB.⁵

36. Pursuant to the GDB Restructuring Act, on the Closing Date, the balance of liabilities owed between the Commonwealth and its agents, instrumentalities and affiliates (each a “**Non-Municipal Government Entity**”) and GDB will be determined by applying the outstanding balance of any deposits held at GDB in a Non-Municipal Government Entity’s name against the outstanding balance of any loan of such Non-Municipal Government Entity owed to GDB or of any bond or note of such Non-Municipal Government Entity held by GDB as of such date. Those Non-Municipal Government Entities having net claims against GDB, after giving effect to the foregoing adjustment, will receive their pro rata share of interests in the PET, which will be deemed to be full satisfaction of any and all claims such Non-Municipal Government Entity may have against GDB.

37. As a result of the PET transaction, the Commonwealth’s deposit claims against GDB will be offset against the Commonwealth’s unsecured debts to GDB, resulting in GDB holding a net claim against the Commonwealth in the amount of approximately \$890 million.

38. The assets of the PET (the “**PET Assets**”) will consist of this \$890 million claim against the Commonwealth, which is the subject of a proof of claim filed in the Commonwealth Title III case. A portion of the PET Assets will be transferred to the PET on the Closing Date and the remainder of the PET Assets, or any portion thereof, will be transferred to the PET in one

⁵ Federal funds held on deposit at GDB shall not be used to effect the restructuring of GDB and will not be subject to the setoffs contemplated by the GDB Restructuring Act.

or more transactions, as set forth in the Public Entity Deed of Trust (as defined in the GDB Restructuring Act). Under the GDB Restructuring Act, the transfer of the PET Assets by GDB to the PET will be an irrevocable, non-voidable, and absolute transfer of all of GDB's legal and equitable right, title, and interest in the PET Assets.⁶

39. **The PET transaction is not a component of the Qualifying Modification and no relief with respect to that transaction is being sought by this Application.** Holders of Participating Bond Claims will not have any interest in, or claim against, the PET Assets or the PET on account of their Participating Bond Claims.

ii. Municipal Setoff

40. The GDB Restructuring Act provides that, upon the closing of the Qualifying Modification, the full amount of each municipality's deposits held at GDB will be automatically applied to the outstanding balance of any loan owed to GDB by that municipality. To maximize relief for municipalities, the GDB Restructuring Act's setoff methodology applies the deposits to each municipality's smallest loans first, thus substantially reducing short-term debt payments and increasing cash flow (the "**Municipal Setoff**"). Any remaining municipal deposit claim will constitute a Participating Bond Claim that will be restructured pursuant to the Qualifying Modification. As a result of this setoff, the majority of municipalities will receive a full recovery on account of their deposit claims.

iii. Excess CAE Settlement

41. The GDB Restructuring Act also provides a mechanism to resolve undisbursed Excess CAE. "Excess CAE" refers to proceeds of a special additional tax held at GDB that,

⁶ The PET will have a residual equity interest in the Recovery Authority, pursuant to which it will receive a distribution of the remaining assets of the Recovery Authority, if any, after the New Bonds, certain costs in connection with the restructuring of GDB, and other indebtedness of the Recovery Authority have been paid in cash in full or otherwise discharged pursuant to the terms of the transaction documents.

prior to January 1, 2017, was certified by GDB as amounts above those required to be held by each municipality in the Municipal Public Debt Redemption Fund (as defined in the Municipal Financing Act). Pursuant to Article 502 of the GDB Restructuring Act, GDB will pay such municipalities, in cash, an amount equal to 55% of the municipality's Excess CAE claim. The GDB Restructuring Act further provides that if a municipality that has an Excess CAE claim executes a settlement agreement with GDB that includes a release of GDB and the Recovery Authority, and agrees not to challenge or otherwise take any action that is inconsistent with, or that would reasonably be expected to prevent, interfere with, delay or impede the consummation of, the Qualifying Modification, then, promptly upon the effective date of such settlement agreement, GDB will pay, in cash, to such municipality an amount equal to 55% of the municipality's Excess CAE deposit claim. In the case of any municipality that has an Excess CAE deposit claim but does not execute a settlement agreement with GDB prior to the Closing Date, such amounts will be paid to the municipality on the Closing Date.

42. In accordance with the GDB Restructuring Act, the remaining portion of such municipality's Excess CAE claim will be discharged, and the municipality will have no further rights or claims thereto, and GDB will have no further liability or obligation to the municipality in respect of the Excess CAE.

43. **The Excess CAE settlement is also not a component of the Qualifying Modification and no relief with respect to that transaction is being sought by this Application.**

III. Solicitation Process

44. On August 9, 2018, the GDB and AAFAF began soliciting votes on the Qualifying Modification from holders of Participating Bond Claims by transmitting copies of a

solicitation package to each holder of a Participating Bond Claim containing (i) the Solicitation Statement, including the Preliminary Offering Memorandum, *see* Uhland Decl., Ex. O; and (ii) one or more ballots, as applicable (the “**Ballot(s)**”) (together (i) and (ii), the “**Solicitation Package**”). The Solicitation Package was distributed to all holders of Participating Bond Claims as of July 31, 2018 (the “**Voting Record Date**”) (i) via first class mail (in the case of known parties), or (ii) by overnight delivery to representatives such as DTC participants or their mailing agents (collectively, the “**Nominees**”) on behalf of beneficial owners of certain Participating Bond Claims.

45. The Solicitation Package advises recipients, among other things, that the deadline for submitting a Ballot containing a vote to accept or reject the Qualifying Modification is September 12, 2018 at 5:00 p.m. (prevailing Eastern Time) (the “**Voting Deadline**”). The Solicitation Package further advises recipients that Ballots (or the relevant Master Ballot in the case of certain Participating Bond Claims held through a Nominee) must be returned to Epiq Corporate Restructuring (the “**Calculation Agent**”). The Ballot contains detailed instructions on how to complete it and how to make any applicable elections contained therein.

46. Moreover, the materials in the Solicitation Package establish and communicate how the Calculation Agent will tabulate the votes and elections contained in the Ballot. Those rules provide, among other things, that: (i) a timely properly completed Ballot submitted by a holder of a Participating Bond Claim supersedes and revokes any prior Ballot(s) submitted by that holder; (ii) Ballots that attempt to partially accept and partially reject the Qualifying Modification will not be counted; (iii) illegible Ballots or Ballots containing insufficient information to identify the claimant will not be counted; (iv) Ballots received after the Voting Deadline (provided that the Voting Deadline has not been extended) will not be counted, unless

the Calculation Agent otherwise determines; and (v) the Calculation Agent reserves the absolute right to reject any or all Ballots not proper in form, the acceptance of which would, in the opinion of the Calculation Agent, not be in accordance with the provisions of PROMESA.

47. GDB and AAFAF will also cause notice of voting on the Qualifying Modification to be published in (i) *El Nuevo Día* (in Spanish); (ii) *Caribbean Business* (in English); (iii) *El Diario* and *El Nuevo Herald* (in Spanish); (iv) *The Bond Buyer* (in English); and (v) *The Wall Street Journal* (in English) (the “**Publication Notice**”). The Publication Notice provides, among things, information on how to obtain a copy of the Solicitation Package. The Solicitation Statement and Preliminary Offering Memorandum will also be filed on the Electronic Municipal Market Access system (“**EMMA**”).

48. Holders of Participating Bond Claims will have adequate time to consider the materials in the Solicitation Package. As an initial matter, a substantial number of GDB’s creditors are party to the RSA and played an instrumental role in negotiating the terms of the Qualifying Modification with GDB and AAFAF over the past year. Through their participation in that process, the parties to the RSA had ample time to review extensively the terms of the Qualifying Modification, whether directly, or through their professional advisors. Given these circumstances and the fact that the Voting Deadline is more than 30 days after the commencement of solicitation, the holders of the Participating Bond Claims will have a sufficient amount of time to make an informed decision to accept or reject the Qualifying Modification.

IV. The Qualifying Modification Satisfies (or Will Satisfy) Each Requirement for Approval Under PROMESA Section 601

49. PROMESA section 601(m)(1)(D) provides that in order for a Qualifying Modification to be binding and effective, this Court must determine that “the requirements of

[PROMESA section 601] have been satisfied.” See PROMESA § 601(m)(1)(D); 48 U.S.C. § 2231(m)(1)(D). As demonstrated below, the Qualifying Modification clearly complies (or will comply) with each applicable requirement of section 601, including among other things, Title VI’s requirements for (i) vote pooling and claim classification, *id.* § 601(d); (ii) vote solicitation, *id.* § 601(h); and (iii) vote tabulation, *id.* § 601 (b), (j).

A. The Qualifying Modification Complies with PROMESA’s Pooling Requirements (PROMESA § 601(d))

50. The pooling of claims under the Qualifying Modification is proper under PROMESA. For purposes of voting on a Qualifying Modification, PROMESA section 601(d) directs the Oversight Board, as the Administrative Supervisor,⁷ to establish, in consultation with the Issuer⁸ (here, GDB), separate Pools of Bonds distinguished by specific provisions governing priority or security arrangements.

51. Specifically, section 601(d) sets forth the requirements for classifying Bonds in separate Pools, and provides as follows:

- Not less than one Pool shall be established for each Issuer. PROMESA § 601(d)(1); 48 U.S.C. § 2231(d)(1).
- “Secured Pools”⁹ shall be established for claims secured by a lien on property. PROMESA § 601(d)(2); 48 U.S.C. § 2231(d)(2).
- For each Issuer with multiple Bonds that are distinguished by specific provisions governing priority or security arrangement, separate Pools shall be established

⁷ The Administrative Supervisor means the “Oversight Board established under section 101.” PROMESA § 601(a)(1); 48 U.S.C. § 2231(a)(1).

⁸ The Issuer means the “Territory Government Issuer or an Authorized Territorial Instrumentality that has issues or guaranteed at least one Bond that is outstanding.” PROMESA § 601(a)(1); 48 U.S.C. § 2231(a)(1).

⁹ The term “**Secured Pool**” means a “Pool established in accordance with subsection (d) consisting only of Bonds that are secured by a lien on property, provided that the inclusion of a Bond Claim in such Pool shall not in any way limit or prejudice the right of the Issuer, the Administrative Supervisor, or any creditor to recharacterize or challenge such Bond Claim, or any purported lien securing such Bond Claim, in any other manner in any subsequent proceeding in the event a proposed Qualifying Modification is not consummated.” PROMESA § 601(a)(14); 48 U.S.C. § 2231(a)(14) .

corresponding to the relative priority or security arrangements of each holder. PROMESA § 601(d)(3)(A); 48 U.S.C. § 2231(d)(3)(A).

- For each Issuer that has issued senior and subordinated Bonds, separate Pools shall be established for the senior and subordinated Bonds corresponding to the relative priority or security arrangements. PROMESA § 601(d)(3)(B); 48 U.S.C. § 2231(d)(3)(B).
- For each Issuer that has issued multiple Bonds, for at least some of which a guarantee of repayment has been provided by the Commonwealth, separate Pools shall be established for such guaranteed and non-guaranteed Bonds. PROMESA § 601(d)(3)(C); 48 U.S.C. § 2231(d)(3)(C).
- For each Issuer that has issued multiple Bonds, for at least some of which a dedicated revenue stream has been pledged for repayment, separate Pools shall be established as follows: (i) for each dedicated revenue stream that has been pledged for repayment, not less than one Secured Pool for Bonds for which such revenue stream has been pledged, and separate Secured Pools shall be established for Bonds of different priority; and (ii) not less than one Pool for all other Bonds issued by the Issuer for which a dedicated revenue stream has not been pledged for repayment. PROMESA § 601(d)(3)(D); 48 U.S.C. § 2231(d)(3)(D).

52. PROMESA also prohibits placing into separate Pools Bonds that have identical rights in security or priority. *See* PROMESA § 601(d)(3)(E); 48 U.S.C. § 2231(d)(3)(E).

53. In accordance with the foregoing requirements, the Qualifying Modification includes two Pools: (i) a Pool for Bond Claims that benefit from a Commonwealth guarantee (the “**Guaranteed Bond Claim Pool**”) and (ii) a Pool for all other Bond Claims that do not benefit from a Commonwealth guarantee (the “**Non-Guaranteed Bond Claim Pool**”). The Guaranteed Bond Claim Pool includes only those claims in respect of the Senior Guaranteed Notes (2013) Series B-1 issued and outstanding pursuant to the certain trust indenture, dated as of February 17, 2006, between GDB and Wilmington Trust, National Association, as successor trustee, which Bonds have the benefit of a guarantee by the Commonwealth. The Non-Guaranteed Bond Claim Pool includes all other Participating Bond Claims. All of the Bond Claims in the Non-Guaranteed Bond Claim Pool are general unsecured obligations and possess

the same priority and other legal rights. There is no Secured Pool as no Participating Bond Claim is secured by a lien on property.

54. On May 8, 2018, the Oversight Board issued a resolution certifying the Non-Guaranteed Bond Claims Pool and the Guaranteed Bond Claims Pool as separate Pools and the only Pools pursuant to section 601(d). *See* Uhland Decl., Ex. L. Accordingly, GDB and AAFAF submit that the Pools, as certified by the Oversight Board, comply with PROMESA section 601(d).

B. GDB is An Authorized Territorial Instrumentality (PROMESA § 601(e))

55. Under PROMESA section 601(e), a territorial instrumentality, such as GDB, is eligible to restructure its indebtedness under Title VI if the Oversight Board has authorized such territorial instrumentality to avail itself of Title VI, thus making it an “**Authorized Territorial Instrumentality**” under PROMESA. On July 12, 2017, the Oversight Board issued a resolution designating GDB as an Authorized Territorial Instrumentality under section 601(e). *See* Uhland Decl., Ex. J.

C. The Information Delivery Requirement was Satisfied (PROMESA § 601(f))

56. Prior to solicitation of votes on a Qualifying Modification, PROMESA section 601(f) requires the Issuer to provide the Oversight Board, the Calculation Agent, and Epiq Corporate Restructuring in its capacity as information agent (the “**Information Agent**”) with the following information (collectively, the “**Information Delivery Requirement**”):

- a description of (i) the Issuer’s economic and financial circumstances, (ii) existing debts, and (iii) the impact of the proposed Qualifying Modification on the territory’s or its territorial instrumentalities’ public debt;
- a description of any other modifications being sought by the Issuer affecting any other Pools;
- if a fiscal plan with respect to such Issuer has been certified, the applicable fiscal plan; and

- such other information as may be required under applicable securities laws.

57. The Solicitation Package includes all of the foregoing information, thus satisfying the Information Delivery Requirement. On July 19, 2018, GDB and AAFAF provided a substantially complete version of the Solicitation Package to the Oversight Board, the Information Agent, and the Calculation Agent, and provided those entities with an opportunity to review and comment on such materials. On July 23, 2018, the Oversight Board acknowledged receipt of the Solicitation Package. *See* Uhland Decl., Ex. P.

D. The RSA was Certified by the Oversight Board as a Qualifying Modification (PROMESA § 601(g))

58. In order to proceed with a Title VI Modification, the Oversight Board must certify that the Modification is a Qualifying Modification under PROMESA section 601(g). A Modification constitutes a Qualifying Modification under section 601(g) if the Modification satisfies the requirements of either (i) the “voluntary agreement process,” as set forth in section 601(g)(2)(A)–(B) (the “**Voluntary Agreement Process**”), or (ii) the “consultation process,” as set forth in section 601(g)(1)(A)–(C). 48 U.S.C. §§ 2231(g)(2)(A)–(B), 2231(g)(1)(A)–(C).

59. The Oversight Board has certified the RSA as a Qualifying Modification pursuant to the Voluntary Agreement Process. *See* Uhland Decl., Exs. D, F. In certifying the RSA as a Qualifying Modification, the Oversight Board determined that (i) the RSA constituted a voluntary agreement (a “**Voluntary Agreement**”) that conforms to the GDB Fiscal Plan and provides for a sustainable level of debt, in accordance with PROMESA section 104(i)(1)(A), (ii) such Voluntary Agreement was effective because a majority in amount of the Bond Claims that are to be affected by the Qualifying Modification entered into the RSA, in accordance with PROMESA section 104(i)(2)(B), and (iii) the Qualifying Modification satisfied PROMESA’s

requirement that each holder in the same Pool receive the same consideration, as required by section 601(g)(1)(B).¹⁰

E. The Qualifying Modification was Properly Solicited (PROMESA § 601(h))

60. In order to solicit votes on the Qualifying Modification, the Information Agent must submit to the holders of any “Outstanding Bonds” of the Issuer, a package of solicitation materials, which must include the materials required to satisfy the Information Delivery Requirement. PROMESA § 601(h)(1); 48 U.S.C. § 2231(h)(1).

61. PROMESA section 601(b) defines what qualifies as an “Outstanding Bond” for purposes of soliciting votes on a Qualifying Modification. A Bond will be deemed *not* to be outstanding, and may *not* be counted in a vote on the Qualifying Modification, if as of the Voting Record Date:

- the Bond has previously been cancelled or delivered for cancellation or is held for reissuance but has not been reissued;
- the Bond has previously been called for redemption or previously become due and payable at maturity and the Issuer has previously satisfied its obligation to make, or provide for, all payments due in respect of the Bond;
- the Bond has been substituted with a security of another series; or
- the Bond is held by the Issuer or by an Authorized Territorial Instrumentality of the Territory Government Issuer or by a corporation, trust, or other legal entity that is controlled by the Issuer or an Authorized Territorial Instrumentality, as applicable.

PROMESA § 601(b)(1)–(4); 48 U.S.C. § 2231(b)(1)–(4). Section 601(b) further provides that a legal entity is “controlled” by the Issuer or by an Authorized Territorial Instrumentality if “the

¹⁰ PROMESA section 601(g)(1)(B) requires that “each exchanging, repurchasing, converting, or substituting holder of Bonds of any series in a Pool affected by that Modification is offered the same amount of consideration per amount of principal, the same amount of consideration per amount of interest accrued but unpaid and the same amount of consideration per amount of past due interest, respectively, as that offered to each other exchanging, repurchasing, converting, or substituting holder of Bonds of any series in a Pool affected by that Modification” Here, the Qualifying Modification includes two Pools, with all parties in both Pools receiving compensation in the same manner and, thus, this requirement is satisfied.

Issuer or an Authorized Territorial Instrumentality of the Territory Government Issuer, as applicable, has the power, directly or indirectly, through the ownership of voting securities or other ownership interests, by contract or otherwise, to direct the management of or elect or appoint a majority of the board of directors or other persons performing similar functions in lieu of, or in addition to, the board of directors of that legal entity.” PROMESA § 601(b); 48 U.S.C. § 2231(b).

62. PROMESA section 601(c) requires that prior to soliciting votes on a Qualifying Modification, the Issuer must deliver to the Calculation Agent a certificate, signed by an authorized representative of the Issuer, specifying any Bonds that are deemed *not* to be Outstanding Bonds for purposes of soliciting votes on the Qualifying Modification. *See* PROMESA § 601(c), 48 U.S.C. § 2231(c). Here, the only Bond that is not an Outstanding Bond under section 601(b) is the deposit claim held by the Puerto Rico Development Fund, which is a wholly owned subsidiary of GDB. On August 7, 2018, GDB delivered a certificate, signed by Jose Santiago, Chief Restructuring Officer and Executive Vice President of GDB, specifying that such Bond is not an Outstanding Bond and thus is not eligible to vote on the Qualifying Modification. *See* Uhland Decl., Ex. Q.

63. In addition, PROMESA sets forth certain guidelines regarding the manner of solicitation if the Information Agent is unable to identify an address for an Eligible Voter (as defined below). Specifically, if the address of an Eligible Voter is unavailable, section 601(h)(2) authorizes the Information Agent to solicit the vote or consent of such holders by:

- delivering the solicitation to the paying agent or The Depository Trust Corporation (if it serves as the clearing system for any of the Issuer’s Outstanding Bonds); or
- delivering or publishing the solicitation by whatever means the Information Agent, after consultation with the Issuer, “deems necessary and appropriate in order to make a reasonable effort to inform holders of any Outstanding Bonds of the Issuer.”

See PROMESA § 601(h)(2); 48 U.S.C. § 2231(h)(2). Section 601(h)(2)(B) confirms that “necessary and appropriate” notice may include notice by mail, publication in electronic media, publication on a website of the Issuer, or publication in newspapers of national circulation in the United States. See PROMESA § 601(h)(2)(B); 48 U.S.C. § 2231(h)(2)(B).

64. GDB and AAFAF implemented a process for their solicitation that they believe comports with PROMESA section 601(h). GDB and AAFAF established the Voting Record Date as of July 31, 2018 and used that date to identify the holders of Participating Bond Claims eligible to vote (each, an “**Eligible Voter**”). On August 9, 2018, GDB and AAFAF commenced the solicitation of votes by causing the Information Agent to distribute the Solicitation Packages to each Eligible Voter, including Nominees. The Solicitation Packages included the Solicitation Statement, Preliminary Offering Memorandum, and an applicable Ballot. The holders of Participating Bond Claims were directed in the Solicitation Statement and Ballots to follow the instructions contained in the Ballots in completing and submitting their respective Ballots. The holders of Participating Bond Claims were also informed in the Solicitation Statement and Ballots that they must submit a completed Ballot by regular mail, personal delivery, or overnight courier such that it is actually received by the Calculation Agent by 5:00 p.m. (prevailing Eastern Time) on the Voting Deadline in order to be counted. In the case of Participating Bond Claims held through a Nominee, the holder must complete, sign, and return the Ballot as directed by the Nominee.

65. GDB and AAFAF will also publish the Publication Notice in (i) *El Nuevo Día* (in Spanish); (ii) *Caribbean Business* (in English); (iii) *El Diario* and *El Nuevo Herald* (in Spanish); (iv) *The Bond Buyer* (in English); and (v) *The Wall Street Journal* (in English) and on EMMA.

66. The combination of mailing the Solicitation Package to Eligible Voters and the Publication Notice afforded parties in interest sufficient notice of voting on the Qualifying Modification. Accordingly, GDB and AAFAF have fully complied with the requirements of section 601(h).

F. GDB is Eligible to Propose the Qualifying Modification (PROMESA § 601(i))

67. Under PROMESA section 601(i), a Modification can be proposed by the Issuer or by one or more holders of the right to vote the Issuer's outstanding Bonds. The term Issuer means either the Territory Government Issuer (here, the Commonwealth) or an Authorized Territorial Instrumentality that has issued or guaranteed at least one Bond that is Outstanding. See PROMESA § 601(a)(1); 48 U.S.C. § 2231(a)(1). GDB has been designated an Authorized Territorial Instrumentality and thus is eligible to propose the Qualifying Modification in accordance with section 601(i).

G. The Voting Requirements Will be Satisfied Prior to the Approval Hearing (PROMESA § 601(j))

68. In order for a Qualifying Modification to be approved, PROMESA section 601(j) requires that the Qualifying Modification satisfy both a majority vote requirement and the supermajority vote requirement (collectively, the "**Requisite Approvals**"):

- *The Majority Vote Requirement.* Eligible Voters holding over 50% of the "Outstanding Principal" amount of Outstanding Bonds in each Pool must vote to approve the Qualifying Modification.
- *The Supermajority Vote Requirement.* Eligible Voters holding over 66 2/3% of the "Outstanding Principal" amount of Outstanding Bonds in each Pool that have voted in this solicitation to approve or reject the Qualifying Modification must vote to approve the Qualifying Modification.

69. Based on the amounts held by creditors that have signed on to the RSA, and are thus bound to vote in favor of the Qualifying Modification, GDB and AAFAF are confident that

the Requisite Approvals will be obtained. After the Voting Deadline and before the Approval Hearing, GDB and AAFAF will file a certification with the Court setting forth the voting results.

H. Epiq Corporate Restructuring has been Properly Designated the Calculation Agent and Information Agent (PROMESA §§ 601(k), (l))

70. For the purposes of (i) administering a vote of holders of Bond Claims; and (ii) calculating the principal amount of the Bond Claims of any series eligible to participate in such a vote and tabulating such votes, PROMESA sections 601(k) and 601(l) provide that a Calculation Agent and an Information Agent may be appointed, who must be reasonably acceptable to the Oversight Board. On May 8, 2018, the Oversight Board notified GDB that Epiq Corporate Restructuring is reasonably acceptable to serve as the Information Agent and the Calculation Agent for the solicitation. *See* Uhland Decl., Ex. L. Accordingly, the requirements of sections 601(k) and 601(l) have been satisfied.

I. Prior to the Approval Hearing, GDB and AAFAF Anticipate that they will Satisfy PROMESA Section 601(m)

71. In order for a Qualifying Modification to become conclusive and binding on all holders of Participating Bond Claims, the requirements set forth in PROMESA section 601(m) must be satisfied, which include that:

- The Requisite Approvals have been obtained. *See* PROMESA § 601(m)(1)(A); 48 U.S.C. § 2231(m)(1)(A).
- The Oversight Board, as Administrative Supervisor, certifies that (i) the Requisite Approvals have been obtained; (ii) the Qualifying Modification complies with the requirements set forth in PROMESA section 104(i)(1); and (iii) any conditions on the effectiveness of the Qualifying Modification have been satisfied or, in the Oversight Board's sole discretion, satisfaction of such conditions has been waived (except for such conditions that have been identified in the Qualifying Modification as non-waivable) (the "**601(m) Certification**"). *See* PROMESA § 601(m)(1)(B); 48 U.S.C. § 2231(m)(1)(B).
- With respect to a Bond Claim that is secured by a lien on property and with respect to which the holder of such Bond Claim has rejected or not consented to the Qualifying Modification, the holder of such Bond (i) retains the lien securing such Bond Claims

or (ii) receives on account of such Bond Claim through deferred cash payments, substitute collateral or otherwise at least the equivalent value of the lesser of the amount of the Bond Claim or of the collateral securing such Bond Claim. *See* PROMESA § 601(m)(1)(C); 48 U.S.C. § 2231(m)(1)(C).

- The District Court has entered an order approving the Qualifying Modification as satisfying the requirements of PROMESA section 601. *See* PROMESA § 601(m)(1)(D); 48 U.S.C. § 2231(m)(1)(D).

72. Following solicitation of the Qualifying Modification and obtaining the Requisite Approvals, GDB and AAFAF will submit the voting results to the Oversight Board, together with evidence that any conditions to the effectiveness of the Qualifying Modification have been satisfied or waived, and request that the Oversight Board provide the section 601(m) Certification. In addition, no Bond Claims are secured by a lien on property and, thus, that provision of section 601(m)(1)(C) will not be implicated by the Qualifying Modification.

73. Accordingly, prior to the Approval Hearing, GDB and AAFAF expect that all requirements of section 601(m), other than Court approval, will be satisfied.

RESERVATION OF RIGHTS

74. Nothing contained in this Application is an admission of the validity of any claim against GDB, or a waiver of GDB's, AAFAF's, or any other party's rights to dispute any claim.

NOTICE

75. GDB and AAFAF will provide notice of this Application by facsimile, e-mail, overnight delivery, or hand delivery to: (i) counsel to the Ad Hoc Group; (ii) counsel to the Oversight Board; (iii) counsel to Siemens Transportation Partnership Puerto Rico, S.E; (iv) counsel to the Unsecured Creditors' Committee; (v) counsel to the Municipality of San Juan; and (vi) counsel to the Ad Hoc Group of General Obligation Bondholders. This Application will also be published on EMMA.

CONCLUSION

For the reasons set forth above, along with the other evidence to be submitted to the Court following the Voting Deadline and prior to the Approval Hearing, GDB and AAFAF respectfully request that this Court approve the Qualifying Modification as fully satisfying all of the applicable requirements of PROMESA section 601 by entering an order approving the Qualifying Modification and granting such other and further relief as is just and proper.

Dated: August 10, 2018
San Juan, Puerto Rico

Respectfully submitted,

/s/ María D. Trelles Hernández

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