

In the opinion of Squire Patton Boggs (US) LLP and Hardwick Law Firm, LLC, Co-Bond Counsel, under existing law assuming continuing compliance with certain covenants and the accuracy of certain representations, interest on the Series 2024 Bonds is (i) excluded from gross income for federal income tax purposes, except interest on any Series 2024 Bonds for any period during which it is held by a "substantial user" of the facilities financed or a "related person" of such substantial user, as those terms are used in Section 147(a) of the Internal Revenue Code of 1986, as amended (the "Code"), (ii) an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals, and (iii) exempt from personal income taxes imposed by the State of New York and political subdivisions thereof, including The City of New York and the City of Yonkers, so long as that interest is excluded from gross income for federal income tax purposes. Interest on the Series 2024 Bonds may be subject to certain federal taxes imposed only on certain corporations. For a more complete discussion of the tax aspects, see "PART 18 – TAX MATTERS" herein.



\$1,845,640,000

**SPECIAL FACILITIES REVENUE BONDS,  
SENIOR SERIES 2024A (GREEN BONDS) (AMT)  
(CURRENT INTEREST BONDS)  
(JFK AIRPORT TERMINAL 6 REDEVELOPMENT PROJECT)**

\$1,945,637,768

**NEW YORK TRANSPORTATION  
DEVELOPMENT CORPORATION**



\$99,997,768

**SPECIAL FACILITIES REVENUE BONDS,  
SENIOR SERIES 2024B (AMT)  
(CONVERTIBLE CAPITAL APPRECIATION BONDS)  
(JFK AIRPORT TERMINAL 6 REDEVELOPMENT PROJECT)**

Date: Date of Issuance

Due: As shown on the inside cover

The New York Transportation Development Corporation (the "Issuer") is issuing (i) its Special Facilities Revenue Bonds, Senior Series 2024A (Green Bonds) (AMT) (Current Interest Bonds) (JFK Airport Terminal 6 Redevelopment Project) (the "Series 2024A Bonds"), and (ii) its Special Facilities Revenue Bonds, Senior Series 2024B (AMT) (Convertible Capital Appreciation Bonds) (JFK Airport Terminal 6 Redevelopment Project) (the "Series 2024B Bonds") and, together with the Series 2024A Bonds, the "Series 2024 Bonds" pursuant to the TDC Master Bond Indenture of Trust, dated as of November 1, 2022, between the Issuer and The Bank of New York Mellon, as trustee (the "Trustee"), as supplemented and amended, including by that certain TDC Second Supplemental Bond Indenture of Trust to be dated as of November 1, 2024, among the Issuer, the Trustee and Assured Guaranty Inc., a Maryland domiciled financial guaranty insurance company, as the bond insurer (the "Bond Insurer") (as so supplemented and amended, the "Indenture"). The proceeds of the Series 2024 Bonds will be loaned to JFK Millennium Partners, LLC, a Delaware limited liability company (the "Borrower"), pursuant to the TDC Building Loan Agreement, dated as of November 1, 2022 as amended by the First Amendment to the TDC Building Loan Agreement to be dated as of November 1, 2024 (as so amended, the "TDC Building Loan Agreement") and the TDC Project Loan Agreement, dated as of November 1, 2022, as amended by the First Amendment to the TDC Project Loan Agreement to be dated as of November 1, 2024 (as so amended, the "TDC Project Loan Agreement") and, together with the TDC Building Loan Agreement, the "TDC Loan Agreements", each by and between the Issuer and the Borrower, and used to (i) refinance costs relating to the design and construction of the Project (as described herein), which includes, among other things, the new Terminal 6 ("Terminal 6") being constructed by the Borrower on the sites of the former Terminal 6 and current Terminal 7 at John F. Kennedy International Airport in Queens, New York (the "Airport"), including costs originally financed by a portion of the proceeds of the Loan Facility (as defined herein) and (ii) pay costs of issuance relating to the Series 2024 Bonds and costs associated with the payoff of the applicable portion of the Loan Facility, including costs, if any, of terminating the associated Permitted Hedge Agreements (as defined herein).

Pursuant to that certain Lease Agreement, dated as of November 17, 2022 by and between the Port Authority of New York and New Jersey (the "Port Authority") and the Borrower, as amended by that certain Supplemental Agreement, dated as of June 15, 2023 (as further supplemented and amended from time to time, the "Lease Agreement"), the Borrower is obligated to consummate: (i) the operation, maintenance and subsequent demolition of Terminal 7 at the Airport, including associated facilities as further described herein, (ii) the design, construction, financing, operation, and maintenance of Terminal 6 and certain ancillary facilities, and (iii) the design and construction of certain off-premises facilities at the Airport (the "Off-Premises Facilities") on behalf of the Port Authority, which Off-Premises Facilities will not be operated or maintained by the Borrower and will not constitute part of the facilities leased to the Borrower under the Lease Agreement (collectively, and as further described herein, the "Project"). The Lease Agreement expires on December 30, 2060, subject to earlier termination as described therein.

The costs of the Project incurred to date have been funded, and additional costs of the Project will be funded, with, among other lawfully available funds, (i) a portion of the proceeds of the Loan Facility and debt issued to refinance the Loan Facility, including the Series 2024 Bonds, Additional Senior Bonds (as defined herein), other Additional Senior Obligations (as defined herein) and/or Subordinate Obligations (as defined herein), (ii) certain revenues received from the operation of Terminal 7 and Terminal 6, (iii) equity contributions from the Borrower, and (iv) investment earnings.

The Borrower's obligations under the TDC Loan Agreements and the TDC Notes (as defined herein) are payable primarily from certain revenues the Borrower receives from the operation of Terminal 7 and Terminal 6, including payments made by airlines, providers of concession goods and services, and other commercial users of Terminal 7 and Terminal 6. See "PART 4 – SECURITY FOR THE SERIES 2024 BONDS," "PART 14 – AIRLINE REVENUES," and "PART 15 – NON-AIRLINE REVENUES" herein. The Series 2024 Bonds will be secured, on a parity basis with all other Senior Obligations (as defined herein), including, but not limited to, the Loan Facility, the Permitted Hedge Agreements and any Additional Senior Obligations, by certain collateral held by the Senior Collateral Agent, including, (i) all right, title, and interest of the Issuer (except for the Issuer's Reserved Rights as described herein) in and to the TDC Loan Agreements and the TDC Notes that has been assigned to the Senior Collateral Agent pursuant to the Issuer Assignment Agreements (as defined herein), (ii) certain collateral (including certain pledged funds and accounts) held by The Bank of New York Mellon, as senior collateral agent (the "Collateral Agent" or "Senior Collateral Agent"), pursuant to the Collateral Agency and Accounts Agreement, dated as of November 1, 2022, by and among the Borrower, the Collateral Agent, the Intercreditor Agent (as defined herein), the Issuer, the Trustee, the Administrative Agent (as defined herein), and the Bank of New York Mellon, as deposit account bank, as amended by the First Amendment to the Collateral Agency and Accounts Agreement to be dated as of November 1, 2024, by and among the Borrower, the Collateral Agent, the Intercreditor Agent, the Securities Intermediary, the Trustee, the Administrative Agent and the Issuer (as so amended and supplemented, the "Collateral Agency and Accounts Agreement"), (iii) the leasehold mortgages encumbering the Borrower's interest in the Lease Agreement, (iv) certain additional collateral held under certain documents and instruments more fully described herein, including the (a) Senior Security Agreement, (b) Senior Equity Pledge Agreement, (c) Assignments of Leases and Rents, and (d) Direct Agreements, and (v) all real and personal property that is subject to a Security Interest granted under any Security Document ((i)-(v), collectively, the "Collateral"). As described herein, certain segregated funds and accounts constitute segregated collateral and are pledged only to certain Obligations or classes of Obligations. The Series 2024 Bonds are also secured, together with any Additional Senior Bonds issued thereunder, by the moneys and obligations held by the Trustee under the Indenture (except moneys held in the Rebate Account).

The scheduled payment of principal of and interest on a portion of the Series 2024 Bonds identified on the inside cover page hereof (the "Insured Bonds") when due will be guaranteed under an insurance policy to be issued concurrently with the delivery of the Insured Bonds by the Bond Insurer. See "PART 6 – BOND INSURANCE."



The Series 2024 Bonds will be issued in book-entry-only form and will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"). The payment of the principal of and interest on the Series 2024 Bonds will be made by the Trustee directly to Cede & Co., as described herein. The Issuer has designated the Series 2024A Bonds as "Green Bonds" due to the environmental benefits of the projects expected to be financed with proceeds of the Series 2024A Bonds. The Series 2024A Bonds will be issued as fully registered bonds in denominations of \$5,000 or in integral multiples thereof and will bear interest at the rates shown on the inside cover hereof, payable semi-annually on June 30 and December 31 of each year, commencing on December 31, 2024. The Series 2024B Bonds will be issued as fully registered bonds in denominations that will result in Accreted Values at the respective Interest Commencement Dates being equal to \$5,000 or any integral multiple thereof, and (i) from their date of issuance until (but not including) their respective Interest Commencement Dates set forth on the inside cover hereof, interest shall accrue, but shall not be payable, at the rates set forth on the inside cover hereof, compounded semi-annually on June 30 and December 31 of each year, and (ii) commencing with their respective Interest Commencement Dates, shall bear interest at the rates shown on the inside cover hereof, payable semi-annually on June 30 and December 31 of each year. The Series 2024 Bonds will be subject to optional, extraordinary, and mandatory redemption prior to maturity as described herein. See "PART 2 – DESCRIPTION OF THE SERIES 2024 BONDS – Redemption of the Series 2024 Bonds" herein.

The Series 2024 Bonds will be special and limited revenue obligations of the Issuer, payable solely out of the Trust Estate pledged under the Indenture referred to herein. None of the Series 2024 Bonds, the principal thereof, the interest thereon, or the redemption price thereof, shall ever constitute a debt of the State of New York (the "State"), the Port Authority, the New York Job Development Authority (the "JDA"), the New York State Urban Development Corporation (d/b/a Empire State Development) ("ESD"), or any other local development corporation, agency, or authority of the State (other than the Issuer), and none of the State, the Port Authority, JDA, ESD, or any other local development corporation, agency, or authority of the State (other than the Issuer) shall be liable on the Series 2024 Bonds. The Issuer has no power of taxation.

Investing in the Series 2024 Bonds is subject to numerous risks, including, but not limited to, those described in "PART 17 – RISK FACTORS" herein. This cover page contains certain information for quick reference only. It is not a summary of the Series 2024 Bonds. Investors must read this Official Statement and the appendices hereto in their entirety to obtain information essential to the making of an informed decision with respect to the Series 2024 Bonds.

The Series 2024 Bonds are being offered when, as, and if issued by the Issuer and accepted by the Underwriters (as defined herein), and subject to prior sale, withdrawal, or modification of the offer without notice and certain other conditions. Certain legal matters will be passed upon by Squire Patton Boggs (US) LLP, New York, New York, and Hardwick Law Firm, LLC, New York, New York, as Co-Bond Counsel to the Issuer, and BurgherGray LLP, New York, New York, as Issuer Counsel. Certain legal matters will be passed upon for the Issuer by its General Counsel, for the Borrower by its co-counsel, O'Melveny & Myers LLP, Los Angeles, California and Bryant Rabbino LLP, New York, New York, and for the Underwriters by their co-counsel, Katten Muchin Rosenman LLP, New York, New York and D. Seaton and Associates, P.A., P.C., New York, New York. It is expected that the Series 2024 Bonds will be available for delivery through the facilities of DTC in New York, New York, on or about November 5, 2024.

Goldman Sachs &amp; Co. LLC

Siebert Williams Shank

Academy Securities Inc.

Cabrera Capital Markets

J.P. Morgan

KeyBanc Capital Markets, Inc.

Mischler Financial Group, Inc.

Morgan Stanley

Ramirez &amp; Co., Inc.

RBC Capital Markets

Rice Financial Products Company

SMBC Nikko Securities America, Inc.

Wells Fargo Securities

**\$1,845,640,000**  
**NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION**  
**SPECIAL FACILITIES REVENUE BONDS,**  
**SENIOR SERIES 2024A (GREEN BONDS) (AMT) (CURRENT INTEREST BONDS)**  
**(JFK AIRPORT TERMINAL 6 REDEVELOPMENT PROJECT)**

<u>Maturity</u>	<u>Amount</u>	<u>Interest Rate</u>	<u>Price</u>	<u>Yield</u>	<u>CUSIP Number<sup>†</sup></u>
December 31, 2054 <sup>BI</sup>	\$660,000,000	5.25%	104.888	4.64% <sup>C</sup>	650116HT6
\$280,530,000	5.50%	Term Bond Due December 31, 2054	Priced 106.393	to Yield 4.70% <sup>C</sup>	CUSIP <sup>†</sup> 650116HV1
\$160,000,000	4.50%	Term Bond Due December 31, 2054 <sup>I</sup>	Priced 96.475	to Yield 4.72%	CUSIP <sup>†</sup> 650116HU3
\$745,110,000	5.50%	Term Bond Due December 31, 2060	Priced 105.320	to Yield 4.83% <sup>C</sup>	CUSIP <sup>†</sup> 650116HW9

**\$99,997,768**  
**NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION**  
**SPECIAL FACILITIES REVENUE BONDS,**  
**SENIOR SERIES 2024B (AMT)**  
**(CONVERTIBLE CAPITAL APPRECIATION BONDS)**  
**(JFK AIRPORT TERMINAL 6 REDEVELOPMENT PROJECT)**

<u>Maturity</u>	<u>Original Principal Amount (\$)</u>	<u>Interest Commencement Date</u>	<u>Interest Rate</u>	<u>Accreted Value at Interest Commencement Date</u>	<u>Original Principal Amount per \$5,000 in Maturity Amount</u>	<u>CUSIP Number<sup>†</sup></u>
December 31, 2054 <sup>I</sup>	\$99,997,768	12/31/2034	5.00%	\$165,100,000	\$3,028.40	650116HX7

<sup>†</sup> CUSIP® is a registered trademark of the American Bankers Association. CUSIP data herein is provided by CUSIP Global Services, managed by FactSet Research Systems Inc. on behalf of The American Bankers Association. This information is not intended to create a database and does not serve in any way as a substitute for the CUSIP Services Bureau. CUSIP numbers have been assigned by an independent company not affiliated with the Issuer, Borrower or the Underwriters and are included solely for the convenience of the registered owners of the applicable Series 2024 Bonds. None of the Issuer, Borrower nor the Underwriters (nor their agents or counsel) are responsible for the selection or uses of these CUSIP numbers, and no representation is made as to their correctness on the applicable Series 2024 Bonds or as included herein. The CUSIP number for a specific maturity is subject to being changed after the issuance of the Series 2024 Bonds as a result of various subsequent actions including, but not limited to, a refunding in whole or in part or as a result of the procurement of secondary market portfolio insurance or other similar enhancement by investors that is applicable to all or a portion of certain maturities of the Series 2024 Bonds.

<sup>B</sup> Series 2024A Balloon Indebtedness.

<sup>I</sup> Insured Bond.

<sup>C</sup> Yield calculated to December 31, 2034 first optional redemption date.

# NEW TERMINAL 6 AT JFK AIRPORT



Aerial View



Roadway Approach



Departures Hall



Grand Hall



Arrivals Hall

**(THIS PAGE INTENTIONALLY LEFT BLANK)**

## IMPORTANT INFORMATION ABOUT THIS OFFICIAL STATEMENT

The information set forth herein has been obtained from the Issuer, the Borrower, and other sources which are believed to be reliable. As to information and expressions of opinion from the Borrower, they are to be construed as representations by or opinions of the Borrower and not representations by or opinions of the Issuer. The information and expressions of opinion contained in this Official Statement are subject to change without notice, and neither the delivery of this Official Statement nor any sale hereunder shall under any circumstances create any implication that there has been no change in the information or opinions stated herein or in the affairs of the Issuer or the Borrower since the date hereof.

The Issuer has provided the information set forth under the headings “PART 9 – PROJECT PARTICIPANTS – The Issuer” and “– Directors and Officers of the Issuer” and “PART 23 – LITIGATION – The Issuer,” but has not reviewed or approved, and makes no representation, warranty, or certification as to the adequacy or accuracy of, the information set forth anywhere else in this Official Statement.

The Borrower has provided all information in this Official Statement not provided by the Issuer, or the Underwriters (excluding “PART 6 – BOND INSURANCE”, “PART 7 – BOND INSURANCE RISK FACTORS”, “PART 16 – THE CONSULTANTS’ REPORTS”, “PART 18 – TAX MATTERS”, “PART 26 – MUNICIPAL ADVISOR” and Appendices B-1, B-2, B-3, B-4, I, K, L and M hereto).

The Underwriters have provided the following sentence for inclusion in this Official Statement. The Underwriters have reviewed the information in this Official Statement in accordance with and as part of their responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriters do not guarantee the accuracy or completeness of such information.

The order and placement of materials in this Official Statement, including the Appendices, are not to be deemed a determination of relevance, materiality or importance, and this Official Statement, including the cover page, the inside cover pages, and the Appendices, must be considered in its entirety. The captions and headings in this Official Statement are for convenience only and in no way define, limit or describe the scope or intent, or affect the meaning or construction, of any provisions or sections of this Official Statement. The offering of the Series 2024 Bonds is made only by means of this entire Official Statement.

The contents of this Official Statement are not to be construed as legal, business, or tax advice. Prospective investors should consult their own attorneys and business and tax advisors as to legal, business, and tax advice. Prospective investors should consult their own attorneys and business and tax advisors as to legal, business, and tax advice. In making an investment decision, prospective investors must rely on their own examination of the terms of the offering of the Series 2024 Bonds, including the merits and risks involved. This Official Statement is not to be construed as a contract or agreement between the Issuer and the purchasers or holders of any Series 2024 Bonds.

**THE SERIES 2024 BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE INDENTURE HAS NOT BEEN QUALIFIED UNDER THE TRUST INDENTURE ACT OF 1939, AS AMENDED, IN RELIANCE UPON EXEMPTIONS CONTAINED IN SUCH ACTS. THE REGISTRATION OR QUALIFICATION OF THE SERIES 2024 BONDS IN ACCORDANCE WITH APPLICABLE PROVISIONS OF SECURITIES LAWS OF THE STATES IN WHICH THE SERIES 2024 BONDS HAVE BEEN REGISTERED OR QUALIFIED AND THE EXEMPTION FROM REGISTRATION OR QUALIFICATION IN OTHER STATES CANNOT BE REGARDED AS A RECOMMENDATION THEREOF.**

This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of, the Series 2024 Bonds in any jurisdiction in which such offer, solicitation, or sale is not qualified under applicable law or to any person to whom it is unlawful to make such offer, solicitation, or sale.

**THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION, NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS OFFICIAL STATEMENT. ANY REPRESENTATION TO THE CONTRARY MAY BE A CRIMINAL OFFENSE.**

Where statutes, reports, agreements, or other documents are referred to herein, reference should be made to such statutes, reports, agreements, or other documents for more complete information regarding the rights and obligations of the parties thereto, facts and opinions contained therein, and the subject matter thereof, and all summaries of such statutes, reports, agreements, or other documents are qualified in their entirety by reference to such statutes, reports, agreements, or other documents.

Certain statements included or incorporated by reference in this Official Statement constitute “forward-looking statements” within the meaning of the United States Private Securities Litigation Reform Act of 1995, Section 21E of the United States Securities Exchange Act of 1934, as amended, and Section 27A of the Securities Act. Such statements are generally identifiable by the terminology used, such as “plan,” “expect,” “estimate,” “budget,” “intend,” “projection,” or other similar words. Such forward-looking statements include, but are not limited to, certain statements contained in the information in APPENDIX B-1 – “REPORT OF THE AIRPORT CONSULTANT,” APPENDIX B-3 – “REPORT OF THE LENDERS’ TECHNICAL ADVISOR,” APPENDIX B-4 – “REPORT OF THE INSURANCE CONSULTANT,” and APPENDIX B-2 – “REPORT OF THE AIRLINE TRAFFIC FORECAST CONSULTANT.” Such forward-looking statements speak only as of the date of this Official Statement. A number of important factors affecting the Borrower, Terminal 7, Terminal 6 and the Project could cause actual results to differ materially from those stated in the forward-looking statements.

Forward-looking statements inherently are subject to a variety of risks and uncertainties that could cause actual results to differ materially from those projected. Such risks and uncertainties include, among others, general economic and business conditions, changes in political, social, and economic conditions, regulatory initiatives and compliance with governmental regulations, litigation and various other events, conditions, and circumstances, many of which are beyond the control of the Borrower. **THE BORROWER AND THE ISSUER DISCLAIM ANY OBLIGATION OR UNDERTAKING TO RELEASE PUBLICLY ANY UPDATES OR REVISIONS TO ANY FORWARD-LOOKING STATEMENT CONTAINED HEREIN TO REFLECT ANY CHANGE IN THE EXPECTATIONS WITH REGARD THERETO OR ANY CHANGE IN EVENTS, CONDITIONS, OR CIRCUMSTANCES ON WHICH ANY SUCH STATEMENT IS BASED.**

References to website addresses presented herein are for informational purposes only and may be in the form of a hyperlink solely for the reader’s convenience. Unless specified otherwise, such web sites and the information or links contained therein are not incorporated into, and are not part of, this Official Statement.

The Series 2024A Bonds have been designated as “Green Bonds.” Kestrel (“Kestrel”) has provided an independent external review and opinion that the Series 2024A Bonds conform with the four core components of the International Capital Market Association Green Bond Principles and therefore qualify for Green Bonds designation. The Series 2024B Bonds have not been designated as Green Bonds as certain

aspects of the Project are not currently eligible for financing or refinancing with Green Bonds. For more information, see “PART 2 – DESCRIPTION OF THE SERIES 2024 BONDS – Green Bonds Designation – Series 2024A” herein and APPENDIX M – “GREEN BONDS SECOND PARTY OPINION.”

Assured Guaranty Inc. (“AG” or “Bond Insurer”) makes no representation regarding the Series 2024 Bonds or the advisability of investing in the Series 2024 Bonds. In addition, AG has not independently verified, makes no representation regarding, and does not accept any responsibility for the accuracy or completeness of this Official Statement or any information or disclosure contained herein, or omitted herefrom, other than with respect to the accuracy of the information regarding AG supplied by AG and presented under the heading “PART 6 – BOND INSURANCE” and APPENDIX L – “SPECIMEN MUNICIPAL BOND INSURANCE POLICY.”

**THIS OFFICIAL STATEMENT INCLUDES THE COVER PAGE, THE INSIDE COVER PAGE, THE SUMMARY STATEMENT, THE APPENDICES, AND THE INFORMATION INCLUDED BY SPECIFIC CROSS-REFERENCE HEREIN AND SHOULD BE READ IN ITS ENTIRETY. INFORMATION CONTAINED ON THE WEBSITES OF THE BORROWER, THE ISSUER, OR THE CONSULTANTS DO NOT CONSTITUTE PART OF THIS OFFICIAL STATEMENT. THE FORM SECOND SUPPLEMENTAL TRUST INDENTURE, FORM FIRST AMENDMENT TO COLLATERAL AGENCY AND ACCOUNTS AGREEMENT, FORM FIRST AMENDMENTS TO TDC LOAN AGREEMENTS AND FORM FIRST AMENDMENT TO INTERCREDITOR AGREEMENT ATTACHED HERETO IN APPENDICES D-1, D-2, D-4 AND D-5, RESPECTIVELY, ARE FORM DOCUMENTS AND REMAIN SUBJECT TO FINALIZATION THROUGH THE DATE OF DELIVERY OF THE SERIES 2024 BONDS.**

## NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION

### Directors

<u>Name</u>	<u>Affiliation</u>
George J. Haggerty	Haggerty Munz, PLLC
Andrew Kennedy	Senior Vice President, Ostroff Associates, Inc.
Anthony Dalessio	Deputy CFO and Controller of New York State Urban Development Corporation (d/b/a Empire State Development)
Elizabeth Lusskin	Executive Vice President, Small Business & Technology Development of the New York State Urban Development Corporation (d/b/a Empire State Development)

### Officers

<u>Name</u>	<u>Title</u>
Raymond Orlando	Chief Financial Officer
Matthew Bray	Treasurer
Joshua D. Bloodworth	Executive Vice President – Legal and General Counsel
Goldie Weixel	Deputy General Counsel
Deborah Royce	Secretary
Courtney Heed	Assistant Secretary



**Co-Bond Counsel**

Squire Patton Boggs (US) LLP  
Hardwick Law Firm, LLC

**Co-Borrower's Counsel**

O'Melveny & Myers LLP  
Bryant Rabbino LLP

**Co-Underwriters' Counsel**

Katten Muchin Rosenman LLP  
D. Seaton and Associates, P.A., P.C.

**Issuer Counsel**

BurgherGray LLP

**Trustee**

The Bank of New York Mellon

**Collateral Agent**

The Bank of New York Mellon

**Securities Intermediary**

The Bank of New York Mellon

**Intercreditor Agent**

The Bank of New York Mellon

**Municipal Advisor to the Port Authority**

Frasca & Associates, LLC

**Municipal Advisor to the Borrower**

Backstrom McCarley Berry & Co. LLC

## TABLE OF CONTENTS

	<u>Page</u>
SUMMARY STATEMENT .....	i
PART 1 – INTRODUCTION .....	1
PART 2 – DESCRIPTION OF THE SERIES 2024 BONDS .....	5
Series 2024A Bonds .....	5
Series 2024B Bonds .....	5
Delivery .....	6
Payment of Principal .....	6
Payment of Interest .....	6
Redemption of the Series 2024 Bonds .....	7
Selection of Bonds to be Redeemed or Purchased in Lieu of Redemption .....	12
Notice of Redemption .....	12
Payment of Redeemed Series 2024 Bonds .....	13
Cancellation of Redeemed Bonds .....	13
Mandatory Optional Redemption of the Series 2024A Balloon Indebtedness .....	14
Green Bonds Designation – Series 2024A .....	14
PART 3 – PLAN OF FINANCE .....	15
Project Sources and Uses of Funds .....	15
Contingencies .....	18
Interest Income .....	18
Loan Facility .....	18
Aggregate Senior Obligation Debt Service .....	20
Hedging Agreements .....	21
Member Equity .....	22
Liquidity Reserve Account .....	23
Bank Consents .....	23
Lease Constraint on Indebtedness .....	24
PART 4 – SECURITY FOR THE SERIES 2024 BONDS .....	24
General .....	24
The TDC Loan Agreements .....	27
The Collateral Agency and Accounts Agreement .....	27
The Leasehold Mortgages .....	37
The Senior Equity Pledge Agreement .....	38
The Assignments of Leases and Rents .....	38
Direct Agreements .....	38
The Senior Security Agreement .....	39
Equity Letters of Credit and Collateral Account Control Agreement .....	40
The Intercreditor Agreement .....	41
The Indenture .....	41
Termination Payment to the Borrower Upon Termination of the Lease Agreement .....	43
PART 5 – FLOW OF FUNDS UNDER THE COLLATERAL AGENCY AND ACCOUNTS AGREEMENT .....	44
Flow of Project Revenues .....	44
Flow of Funds Pre-Substantial Completion .....	47
Flow of Funds Post-Substantial Completion .....	53
PART 6 – BOND INSURANCE .....	61
Bond Insurance Policy .....	61
Assured Guaranty Inc. ....	61

PART 7 – BOND INSURANCE RISK FACTORS .....	63
PART 8 – JFK AIRPORT .....	64
The Airport .....	64
The Basic Lease.....	64
Air Service Area; Passenger and Air Traffic.....	65
PART 9 – PROJECT PARTICIPANTS .....	65
The Issuer .....	65
The Borrower.....	66
The Equity Members .....	78
The D&C Contractor .....	79
The D&C Guarantor .....	80
The Manager.....	80
The Manager Guarantor .....	80
PART 10 – THE LEASE AGREEMENT.....	80
Principal Rights and Responsibilities of the Parties.....	81
Port Authority Retained Rights .....	84
Compensation Events .....	84
Delay Events.....	85
Termination Rights.....	87
Lenders’ Rights and Remedies; Refinancing .....	89
PART 11 – THE PROJECT.....	92
Overview .....	92
Phasing of the Project – <i>Phase 1 &amp; Phase 2</i> .....	93
Construction Milestones.....	94
Construction Progress .....	95
Environmental, Social and Governance (“ESG”).....	98
PART 12 – THE D&C CONTRACT .....	99
Back-to-Back Obligations .....	99
DB D&C Work.....	99
Change Orders and Directives.....	101
Warranty.....	102
Compensation Events and Delay Events.....	103
Equivalent Project Relief.....	104
Delay and Liquidated Damages.....	104
Unavoidable Delay Events .....	105
Limitation of Liability .....	105
Indemnity.....	106
Construction Security .....	106
Suspension Rights .....	107
Termination Rights.....	108
PART 13 – OPERATION AND MANAGEMENT OF THE PROJECT.....	110
PART 14 – AIRLINE REVENUES.....	112
Terminal 7 Airline Revenues.....	113
Terminal 6 Airline Revenues.....	113
PART 15 – NON-AIRLINE REVENUES.....	118
Concession Revenues .....	118
Advertising Revenues.....	119
Rebate Revenues .....	120
Other Non-Airline Operating Revenues .....	120

Interest Income .....	120
Total Non-Airline Revenues.....	120
<b>PART 16 – THE CONSULTANTS’ REPORTS .....</b>	<b>121</b>
Summary of Consultants’ Reports.....	121
Report of the Airport Consultant.....	121
Report of the Airline Traffic Forecast Consultant.....	122
Report of the Lenders’ Technical Advisor .....	122
Report of the Insurance Consultant .....	123
<b>PART 17 – RISK FACTORS .....</b>	<b>124</b>
General .....	124
Risks Associated with Limited Recourse Obligations.....	124
Matters Relating to Enforceability of Financing Documents .....	125
Additional Obligations .....	127
Loan Facility, Intercreditor and Hedging Risks .....	128
Bond Term Substantially Coterminous With Term of Lease Agreement .....	129
Risks Related to Collateral .....	129
Potential Inadequacy of Funding Sources .....	130
Actual Results May Differ From Forecasts and Assumptions .....	131
Risks Related to the Lease Agreement .....	132
Risks Related to the Basic Lease .....	134
Risks Related to Operations at the Airport During Construction .....	134
Risks Related to Construction of the Project.....	135
Risks Related to Coordination with Other Airport Operations and Interfaces .....	137
Risks Related to Sublease Agreements .....	137
Risks Factors Affecting Airline Demand for Terminal 7 and Terminal 6.....	138
Risks Related to Changes in Law and Applicable Standards Changes .....	139
Risks Related to Certain Environmental, Health and Safety Considerations .....	139
Risks Related to Damage or Destruction of Terminal 7 and Terminal 6 and Adequacy and Availability of Insurance.....	140
Risks Relating to Lack of Title Insurance; No Legal Description.....	140
Risks Related to New York Lien Law; Effect of Failure to Comply .....	141
Risks Related to Exemption From Mortgage Recording Tax .....	141
Certain Airport Regulatory Considerations.....	142
Landing Fees Levied by the Port Authority .....	143
Risk Factors Relating to the Airline Industry .....	143
Risk Factors of Future Pandemics .....	151
Cybersecurity Risks.....	151
Risks Related to Flood Risk and Possible Sea-Level Rise .....	152
Possible Loss of Tax-Exempt Status of Series 2024 Bonds .....	152
Risks of Bond Insurer Deemed Owner of Insured Bonds .....	153
Risks Related to the Borrower’s Business – Internal Controls.....	153
<b>PART 18 – TAX MATTERS .....</b>	<b>154</b>
General .....	154
Risk of Future Legislative Changes and/or Court Decisions.....	156
Original Issue Discount and Original Issue Premium .....	156
<b>PART 19 – LIMITED LIABILITY FOR THE SERIES 2024 BONDS .....</b>	<b>157</b>
<b>PART 20 – RATINGS .....</b>	<b>157</b>
<b>PART 21 – UNDERWRITING .....</b>	<b>157</b>
<b>PART 22 – LEGAL MATTERS.....</b>	<b>158</b>
<b>PART 23 – LITIGATION .....</b>	<b>159</b>

The Issuer .....	159
The Borrower.....	159
PART 24 – CERTAIN RELATIONSHIPS .....	159
The Borrower and the Manager.....	159
The Manager and the Manager Subcontractor.....	159
Goldman and Vantage Member Relationship .....	159
Goldman and Borrower Relationship .....	160
Siebert Williams Shank & Co., LLC and Borrower Relationship.....	160
Siebert Williams Shank & Co., LLC and ATI Member Relationship.....	160
Royal Bank of Canada and the Borrower Relationship.....	160
PART 25 – FINANCIAL STATEMENTS AND INDEPENDENT AUDITORS .....	161
PART 26 – MUNICIPAL ADVISORS .....	161
PART 27 – CONTINUING DISCLOSURE.....	161
Appendix A    Definitions .....	A-1
Appendix B-1  Report of the Airport Consultant .....	B-1-1
Letter of the Airport Consultant .....	B-1-2
Appendix B-2  Report of the Airline Traffic Forecast Consultant .....	B-2-1
Appendix B-3  Report of the Lenders’ Technical Advisor.....	B-3-1
Appendix B-4  Report of the Insurance Consultant.....	B-4-1
Appendix C-1  Consolidated Financial Statements and Independent Auditors Report.....	C-1-1
Appendix C-2  Condensed Consolidated Financial Information as of June 30, 2024 (Unaudited).....	C-2-1
Appendix D-1  Form Trust Indenture .....	D-1-1
Form Second Supplemental Trust Indenture .....	D-1-2
Appendix D-2  Form Collateral Agency and Accounts Agreement .....	D-2-1
Form First Amendment to Collateral Agency and Accounts Agreement.....	D-2-2
Appendix D-3  Form Leasehold Mortgages .....	D-3-1
Appendix D-4  Form TDC Loan Agreements .....	D-4-1
Form First Amendments to TDC Loan Agreements .....	D-4-2
Appendix D-5  Form Intercreditor Agreement .....	D-5-1
Form First Amendment to Intercreditor Agreement.....	D-5-2
Appendix E    Summary of Certain Provisions of the Lease Agreement.....	E-1
Appendix F-1  Form of Common Terms Agreement.....	F-1-1
Appendix F-2  Form of Credit Agreement.....	F-2-1
Appendix F-3  Form of Series 2022 Bondholder Agreement .....	F-3-1
Appendix G    Summary of Certain Provisions of the D&C Contract .....	G-1
Appendix H    Summary of Certain Provisions of the Management Services Agreement.....	H-1
Appendix I    Book-Entry Only System.....	I-1
Appendix J    Form of Continuing Disclosure Undertaking .....	J-1
Appendix K    Forms of Legal Opinions of Co-Bond Counsel .....	K-1
Appendix L    Specimen Municipal Bond Insurance Policy .....	L-1
Appendix M    Green Bonds Second Party Opinion .....	M-1
Appendix N    Table of Accreted Values of Series 2024B Convertible Capital Appreciation Bonds Through the Interest Commencement Date .....	N-1

**(THIS PAGE INTENTIONALLY LEFT BLANK)**

## SUMMARY STATEMENT

This Summary Statement is subject in all respects to more complete information contained in this Official Statement and should not be considered a complete statement of the facts material to making an investment decision. The offering of the Series 2024 Bonds to potential investors is made only by means of the entire Official Statement. Capitalized terms used in this Summary Statement and not defined in this Summary Statement will have the meanings given to such terms in APPENDIX A – “DEFINITIONS” or as otherwise defined elsewhere in this Official Statement.

### **The Offering**

The proceeds of the Series 2024 Bonds will be used to refinance costs associated with the Project. Construction on Phase 1 of the Project commenced in the fourth quarter of 2022 and is ongoing across the terminal, airside and landside scopes of work. See “SUMMARY STATEMENT – The Project,” “PART 11 – THE PROJECT – Construction Progress” and APPENDIX B-3 – “REPORT OF THE LENDERS’ TECHNICAL ADVISOR” for more information about the Project development status to date. For information about use of proceeds of the Green Bonds, see “PART 2 – DESCRIPTION OF THE SERIES 2024 BONDS – Green Bonds Designation – Series 2024A” and APPENDIX M – “GREEN BONDS SECOND PARTY OPINION.”

The Project is estimated to cost approximately \$5.0 billion, which has been funded to date, and which the Borrower anticipates will continue to be funded, with the proceeds of the hereinafter defined Loan Facility (as the same is being partially refinanced with the proceeds of the Series 2024 Bonds and is expected to be further refinanced in the future from the proceeds of Additional Senior Obligations or Subordinate Obligations), operating revenues, equity contributions from the Borrower and investment earnings. Pursuant to the Lease Agreement, the aggregate principal amount of the Borrower’s debt secured by the Leasehold Mortgages shall not exceed a maximum amount of \$4,225,000,000. See “PART 3 – Lease Constraint on Indebtedness,” “PART 10 – THE LEASE AGREEMENT,” and APPENDIX E – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE AGREEMENT – Project Financing.” These indebtedness restrictions set forth in the Lease Agreement are for the sole benefit of the Port Authority and can be waived or amended by the Port Authority without the consent of the holders of the Series 2024 Bonds or other Senior Obligations, although such restrictions as effectuated through the Leasehold Mortgages would require consent of the Senior Secured Parties (including holders of the Series 2024 Bonds) to amend in accordance with the Financing Documents.

The Borrower’s obligations under the TDC Loan Agreements and the corresponding TDC Notes are payable primarily from revenues to be earned by the Borrower from the operation of Terminal 7 and Terminal 6. See “PART 14 – AIRLINE REVENUES” and “PART 15 – NON-AIRLINE REVENUES” herein.

The Series 2024 Bonds, the Loan Facility, the Permitted Hedge Agreements and any Additional Senior Obligations will be secured on a parity basis by

certain Senior Collateral, including leasehold mortgages encumbering the Borrower's interest in the Lease Agreement and certain security held under certain documents and instruments, including the (i) Collateral Agency and Accounts Agreement, (ii) Senior Security Agreement, (iii) Senior Equity Pledge Agreement, (iv) Assignments of Leases and Rents, and (v) Direct Agreements.

### **The Project**

The Project includes the eventual decommissioning and demolition of Terminal 7 at the Airport, including associated facilities to be decommissioned and demolished in accordance with the Lease Agreement ("Terminal 7") and the design and construction of Terminal 6 (as defined below), consisting of approximately 1,200,000 square feet of space, including 10 aircraft gates (nine widebody gates and one narrowbody gate), as well as associated aircraft ramp and apron areas, a consolidated Federal Inspection Services ("FIS") facility, a seamless post-security connection between Terminal 6 and Terminal 5 ("Terminal 5"), at least three airline lounges (two of which will have direct boarding to aircraft), concourses, concession areas, inbound and outbound baggage handling systems, utility and mechanical rooms, stairwells, stairways, escalators and elevators, arrival and departure roadways, and all fixtures, furnishings and equipment necessary for the operation of a world-class passenger terminal building capable of handling international and domestic passenger traffic, as described in the Lease Agreement as the "New Terminal Facilities" (collectively, "Terminal 6"). The Project also includes development and construction of a new ground transportation center, including for-hire-vehicle parking and personal vehicles loading area. For a more detailed description of the full scope of the Project, as well as phasing thereof, see "PART 11 – THE PROJECT."

Construction of the Project commenced in the fourth quarter of 2022 and has been progressing largely on schedule. See "PART 11 – THE PROJECT."

### **Authorization and Purpose; Series 2024 Bonds are Limited Obligations**

The New York Transportation Development Corporation (the "Issuer") is issuing its (i) Special Facilities Revenue Bonds, Senior Series 2024A (Green Bonds) (AMT) (Current Interest Bonds) (JFK Airport Terminal 6 Redevelopment Project) (the "Series 2024A Bonds"), and (ii) Special Facilities Revenue Bonds, Senior Series 2024B (AMT) (Convertible Capital Appreciation Bonds) (JFK Airport Terminal 6 Redevelopment Project) (the "Series 2024B Bonds" and, together with the Series 2024A Bonds, the "Series 2024 Bonds"), pursuant to (i) resolutions of the Issuer adopted on August 28, 2024 and October 1, 2024 authorizing the issuance and sale of the Series 2024 Bonds and (ii) the Indenture. Proceeds of the Series 2024 Bonds will be loaned to JFK Millennium Partners, LLC, a Delaware limited liability company (the "Borrower"), pursuant to the TDC Loan Agreements and used, together with other lawfully available moneys, to (i) refinance costs relating to the design and construction of the Project and (ii) pay costs of issuance relating to the Series 2024 Bonds and costs associated with the payoff of the applicable portion of



the Loan Facility, including costs, if any, of terminating the associated Permitted Hedge Agreements.

The Series 2024 Bonds are special limited revenue obligations of the Issuer payable solely from the payments made by the Borrower under the TDC Loan Agreements and the TDC Notes, the Trust Estate as described in the Indenture, and the Senior Collateral as described in the Collateral Agency and Accounts Agreement.

**Security for the  
Series 2024 Bonds**

The Series 2024 Bonds will be secured on a parity basis with all other Senior Obligations, including, but not limited to, the Loan Facility, the Permitted Hedge Agreements and any Additional Senior Obligations by certain collateral held by the Senior Collateral Agent, including (i) the leasehold mortgages encumbering the Borrower's interest in the Lease Agreement, (ii) all right, title, and interest of the Issuer in and to the TDC Loan Agreements and the TDC Notes that has been assigned to the Senior Collateral Agent pursuant to the Issuer Assignment Agreements (as defined herein), (iii) certain collateral (including certain pledged funds and accounts) held by the Collateral Agent under the Collateral Agency and Accounts Agreement, and (iv) certain additional collateral held under certain documents and instruments more fully described herein, including the (a) Senior Security Agreement, (b) Senior Equity Pledge Agreement, (c) Assignments of Leases and Rents, and (d) Direct Agreements. In addition, the Series 2024 Bonds, together with other Senior Bonds issued or to be issued under the Indenture, will be secured by moneys and obligations held by the Trustee under the Indenture (except moneys held in the Rebate Account). Certain collateral constitutes Segregated Collateral, solely for the benefit of certain Obligations or classes of Obligations as designated in the Financing Documents, and as more fully described herein.

The Borrower derives revenues to pay its operating expenses and loan obligations, including obligations with respect to the Series 2024 Bonds, the Loan Facility and the Permitted Hedge Agreements, primarily from certain revenues it receives from the operation of Terminal 7 and Terminal 6. See "PART 14 – AIRLINE REVENUES," and "PART 15 – NON-AIRLINE REVENUES."

Project Revenues will be deposited in a Pre-Substantial Completion Revenue Account until (but not including) the Phase 2 End of Funding Date, after which Project Revenues will be deposited in a Post-Substantial Completion Revenue Account. Amounts will be transferred from such accounts monthly, in accordance with a series of priorities established in the Collateral Agency and Accounts Agreement, subject to certain restrictions as in effect from time to time therein and in the other Financing Documents. See "PART 5 – FLOW OF FUNDS UNDER THE COLLATERAL AGENCY AND ACCOUNTS AGREEMENT."

**Debt Service Reserve  
Accounts**

The Collateral Agency and Accounts Agreement establishes a Senior Debt Service Reserve Account, which will be funded on the Phase 2 End of Funding Date in an amount equal to the Senior Debt Service Reserve Requirement and will secure the Series 2024 Bonds, the Loan Facility, ordinary course payments on the Permitted Hedge Agreements and any Additional Senior Obligations issued in accordance with the Collateral Agency and Accounts Agreement and the other Financing Documents.

The Senior Debt Service Reserve Account is a pledged account that will be maintained by the Securities Intermediary and constitutes Segregated Collateral solely for the benefit of the Senior Secured Parties; the Security Interest thereon pursuant to the Senior Security Agreement shall be held by the Collateral Agent for the exclusive benefit of the Senior Secured Parties.

The Debt Service Reserve Requirement for the Senior Debt Service Reserve Account on the Phase 2 End of Funding Date and on each Transfer Date thereafter is the Aggregate Debt Service with respect to all Outstanding Senior Obligations during the next succeeding twelve (12) month period, net of up to the Aggregate Debt Service with respect to the Outstanding Senior Obligations during the next succeeding three (3) month period, to the extent such amounts are then on deposit in the Ramp-Up Reserve Account.

All or any portion of the cash in any Debt Service Reserve Account may be replaced with a standby letter of credit, at the option of the Borrower subject to certain conditions, the primary beneficiary of which shall be the Collateral Agent, and, subject to certain covenants regarding the use of the Series 2024 Bond proceeds, the cash, if any, being replaced shall be transferred to the Post-Substantial Completion Revenue Account.

**Liquidity Reserve  
Account**

The Liquidity Reserve Account is a pledged account that will be maintained by the Securities Intermediary and shall constitute Collateral for the benefit of the Secured Parties.

Concurrently with the execution of the Lease Agreement, the Borrower funded a Liquidity Reserve Account in an amount of \$100,000,000 which, as of August 31, 2024, had a balance of \$105,008,910 all of which remains on deposit therein. Amounts on deposit in the Liquidity Reserve Account are available to address unforeseen liquidity events or any other needs of the Project, as determined by the Borrower, and, in particular, amounts on deposit in the Liquidity Reserve Account shall be available (A) to pay Project Costs, but not to pay Permitted Tax Distributions or transfer funds to the Remaining Revenue Account, and (B) on and after the Phase 2 End of Funding Date, (x) if the amount in the Liquidity Reserve Account exceeds the amount equal to six (6) months of the aggregate of Ground Rent, First Additional Rent, Second Additional Rental, Third Additional Rent, and Concessions Revenue Rent (collectively, the “Required Liquidity Reserve Amount”), and (y) any amount in the Liquidity Reserve Account in excess of the Required Liquidity Reserve Amount may be transferred to the Distribution Account, if the Restricted

Payment Conditions have been met, or may be transferred, at the election of the Borrower, to any other account created under the Collateral Agency and Accounts Agreement, including any reserve account.

Beginning on the first Quarterly Distribution Date following the date on which aggregate distributions made by the Borrower to Equity Members from the Distribution Account equal the aggregate amount of equity invested by the Equity Members in the Project to such date, so long as no Default or Event of Default has occurred and is continuing, amounts remaining in the Liquidity Reserve Account shall be transferred to the Distribution Account (without (and not subject to) any conditions, restrictions or limitations) for distribution by the Borrower to the Equity Members in equal installments on each Quarterly Distribution Date over the remainder of the term of the Lease Agreement.

No additional deposits are required to be made to the Liquidity Reserve Account, even if the amount in such account falls below the Required Liquidity Reserve Amount.

**Ramp-Up Reserve Account**

The Ramp-Up Reserve Account is a pledged account that will be maintained by the Securities Intermediary and shall constitute Segregated Collateral solely for the benefit of the Senior Secured Parties. The Ramp-Up Reserve Account is intended to provide additional debt service reserves for the Senior Obligations during the Ramp-Up Period. The Borrower will fund the Ramp-Up Reserve Account on the Phase 2 End of Funding Date with proceeds from the subaccounts of the Construction Account allocated for such purpose (with the particular subaccount(s) of the Construction Account to be determined at the Borrower's election at the time of each such funding, subject to certain restrictions regarding the application of proceeds of Tax-Exempt Obligations) in an amount equal to the Aggregate Debt Service with respect to all Outstanding Senior Obligations during the next succeeding nine (9) month period (said amount being, as of any date determination, the "Ramp-Up Reserve Requirement"), and thereafter additional deposits shall be made in accordance with the requirements of "PART 5 – FLOW OF FUNDS UNDER THE COLLATERAL AGENCY AND ACCOUNTS AGREEMENT – Flow of Funds Post-Substantial Completion" herein. No additional funds will be deposited into the Ramp-Up Reserve Account after the discharge of the Senior Bank Obligations.

For each Calculation Date during the Ramp-Up Period, the Borrower shall calculate the Senior Debt Service Coverage Ratio and the Ramp-Up Debt Service Coverage Ratio for the immediately preceding DSCR Calculation Period. If, on any date on which any debt service payment (whether fees, interest, principal, and/or other debt service payments) is due on any Senior Obligations, the Senior Debt Service Coverage Ratio for the immediately preceding Calculation Date was less than 1.30:1.00, the Collateral Agent shall transfer from the Ramp-Up Reserve Account to the relevant Sub-Account(s) of the Senior Obligations Payment Account (as directed by the Borrower) funds to make payment of debt service due and payable on the applicable Transfer

Date in an aggregate amount necessary to cause the Ramp-Up Debt Service Coverage Ratio for such immediately preceding calendar quarter to be equal to 1.30:1.00. On the Ramp-Up End Date (which is the first date after the day on which the Ramp-Up Debt Service Coverage Ratio has been equal to or above 1.40:1.00 for eight consecutive Calculation Dates), all remaining amounts on deposit in the Ramp-Up Reserve Account shall be transferred, (i) first, to the Senior Debt Service Reserve Account, to the extent necessary to bring the balance of the Senior Debt Service Reserve Account up to an amount equal to the Senior Debt Service Reserve Requirement, and (ii) second, to the Post-Substantial Completion Revenue Account, provided that any proceeds of Tax-Exempt Obligations shall only be used for permitted uses in accordance with the Code.

**Rate Covenant/  
Financial Ratio  
Covenant**

The Borrower has covenanted in the Collateral Agency and Accounts Agreement, for the benefit of all Secured Parties, to take all lawful measures to establish, prescribe and collect Project Revenues sufficient, after paying all O&M Expenses, to achieve, in each DSCR Calculation Period, (i) during the Ramp-Up Period, (A) a Total Debt Service Coverage Ratio of 1.25x and (B) a Senior Debt Service Coverage Ratio of 1.30x, and (ii) after the Ramp-Up End Date, (A) a Total Debt Service Coverage Ratio of 1.15x and (B) a Senior Debt Service Coverage Ratio of 1.20x, both on a prospective basis (based on Borrower forecasts) and on a retrospective basis (based on the most recently delivered quarterly financial statements), subject to the terms of the Collateral Agency and Accounts Agreement.

If the Senior Debt Service Coverage Ratio or Total Debt Service Coverage Ratio requirement is not projected to be met for an upcoming fiscal year, then the Borrower shall be required to request a third party to recommend revisions to its Annual Operating Budget and, after taking into account such recommendations, to revise its Annual Operating Budget to produce (to the extent practicable using prudent business judgment) sufficient revenues to satisfy such Senior Debt Service Coverage Ratio or Total Debt Service Coverage Ratio requirement. Failure to satisfy the rate covenant shall not be deemed an event of default under the Collateral Agency and Accounts Agreement or other Financing Documents so long as the Borrower revises its Annual Operating Budget as recommended by the applicable third party, insofar as practicable using prudent business judgment, so as to cure such failure.

Subject to the Intercreditor Agreement, certain events of default under the Common Terms Agreement and other financing documents related specifically to the Loan Facility do not automatically permit the exercise of remedies by the Senior Collateral Agent, unless (x) the Standstill Period has expired, (y) the Senior Bank Obligations have been accelerated in accordance with the Senior Bank Financing Documents (which acceleration would then trigger cross-acceleration of the Series 2024 Bonds without action taken by the holders of the Series 2024 Bonds), and (z) the Administrative Agent has instructed the Intercreditor Agent to instruct the Senior Collateral Agent to exercise an

Enforcement Action of the types contemplated in clauses (a) and (b) of the definition thereof with respect to such event of default.

**Additional  
Obligations**

The Borrower has covenanted in the Collateral Agency and Accounts Agreement not to incur Additional Senior Obligations or Additional Subordinate Obligations unless certain requirements have been met, including (i) satisfaction of the applicable Lease Agreement requirements as in effect on November 1, 2022, (ii) historical and projected compliance with the rate covenant/financial ratio covenant (with certain modifications in the case of certain Additional Subordinate Obligations), and (iii) in the case of Additional Senior Obligations only, the Rating Agencies then rating the then-existing Senior Obligations affirm (1) that such then-existing senior debt will maintain a rating of BBB, Baa2 or its equivalent or higher, by not less than two Rating Agencies, after giving pro forma effect to the incurrence of such Additional Senior Obligations, or (2) that the ratings on the then-existing Senior Obligations, after giving pro forma effect to the incurrence of such Additional Senior Obligations, will not be lowered as a result of the incurrence of the Additional Senior Obligations.

The Borrower will not be required to meet the requirements of clause (ii) above in order to incur Additional Senior Obligations if: (A) the proposed Additional Senior Obligations or Additional Subordinate Obligations are deemed Completion Obligations and the aggregate principal amount of such Completion Obligations to be issued for completion purposes does not exceed 10% of the aggregate original principal amount of all Secured Obligations previously issued for the applicable improvements, or (B) the proposed Additional Senior Obligations or Additional Subordinate Obligations are to be issued to refund Outstanding Senior Obligations or Outstanding Subordinate Obligations, as applicable, and the proposed incurrence does not result in an increase in Annual Debt Service in any Fiscal Year on all Outstanding Senior Obligations or Outstanding Subordinate Obligations, as applicable, following the incurrence of such Additional Senior Obligations or Additional Subordinate Obligations.

The Common Terms Agreement has certain additional restrictions on the incurrence of Additional Obligations by the Borrower for so long as the Senior Bank Obligations are outstanding. These additional restrictions are for the sole benefit of the holders of the Senior Bank Obligations, are subject to waiver or amendment thereby in their sole discretion and will no longer apply following the discharge of the Senior Bank Obligations. See APPENDIX F-1 – “FORM OF COMMON TERMS AGREEMENT.”

**The Lease  
Agreement**

Pursuant to the Lease Agreement, the Port Authority has leased to the Borrower real property and improvements thereon comprising the Premises, subject in each case to certain conditions.

Under the Lease Agreement, the Borrower is entitled to charge, collect, and retain revenues derived from its operation and management of Terminal 7 and

Terminal 6, including by subleasing or otherwise making available such facilities for use by airline, concession, and certain other tenants. The Borrower's revenue streams from the operation of Terminal 7 and Terminal 6 are expected to comprise the Borrower's principal sources of funds for repayment of the Series 2024 Bonds and the Loan Facility and for other obligations of the Borrower, including Rentals owed by the Borrower to the Port Authority and other amounts owed under the Lease Agreement. SEE "PART 14 – AIRLINE REVENUES," "PART 15 – NON-AIRLINE REVENUES", and APPENDIX E – "SUMMARY OF CERTAIN PROVISIONS OF THE LEASE AGREEMENT – Rental."

The Lease Agreement expires on the earliest to occur of: (i) December 30, 2060, (ii) the date of termination of the Basic Lease, or (iii) any earlier termination of the Lease Agreement in accordance with its terms.

Upon the occurrence of certain limited termination events set forth in the Lease Agreement, the Lease Agreement may be terminated by either the Port Authority or the Borrower, and the Lease Agreement will automatically terminate upon the termination of the Basic Lease. The Port Authority will not be obligated to make a termination payment to the Borrower, except in certain limited circumstances, which payment will be subject and subordinate to the Port Authority's payment of debt service on its Consolidated Bonds and certain payments into the Port Authority's General Reserve Fund, the amount of which will vary depending on the circumstances. See APPENDIX E – "SUMMARY OF CERTAIN PROVISIONS OF THE LEASE AGREEMENT."

## **Plan of Finance**

The Project has been, and is expected to continue to be, funded from a number of sources, including (i) prior to giving effect to the paydown of a portion thereof with a portion of the proceeds of the Series 2024 Bonds, \$2,482,000,000 from amounts drawn through September 30, 2024 under the Loan Facility, (ii) up to approximately \$962,000,000 of additional proceeds of the Loan Facility, (iii) \$1,300,000,000 in equity contributions from the Equity Members to JFK Millennium Partners Holdings, LLC ("HoldCo") for further contribution to the Borrower, (iv) approximately \$84,316,214 from operating revenues and reinvestment thereof, (v) approximately \$61,929,330 in investment income during construction and (vi) approximately \$900,000 payable by the Port Authority to the Borrower in connection with the design and construction of a fuel line pursuant to the Lease Agreement. Funds received from issuance of the Series 2024 Bonds will also be used to pay costs of issuance. The operation of Terminal 7 and Terminal 6 is expected to generate operating revenues and require payment of operating expenses.

This transaction is the first of multiple anticipated refinancings. After giving effect to the issuance of the Series 2024 Bonds, approximately \$508,453,869 will remain Outstanding under the Loan Facility, with approximately \$962,000,000 of undrawn capacity available to be drawn and applied to the remaining costs of the Project. The Borrower intends to refinance the

outstanding balance of the Loan Facility prior to the scheduled maturity in November 2029, subject to market conditions as in effect from time to time.

**The D&C Contract**

The Project is being undertaken pursuant to that certain Design-Build Contract (as supplemented and amended from time to time, the “D&C Contract”) dated the Original Closing Date (as defined herein) between the Borrower and Hunt Construction Group, Inc. (the “D&C Contractor”), pursuant to which substantially all of the Design Work and Construction Work (the “D&C Work”) relating to the Project has been and will continue to be undertaken by the D&C Contractor consistent with a guaranteed maximum price and date certain basis.

The D&C Contract is, subject to the terms and conditions set forth therein (including, without limitation, such terms and conditions that explicitly impose an obligation on the Borrower and the limitation of the D&C Contractor’s liability), “back-to-back” with the D&C Work related obligations and liabilities imposed on the Borrower in the Lease Agreement, excluding certain limited matters specifically identified in the D&C Contract as obligations of the Borrower. See “PART 12 – THE D&C CONTRACT – DB D&C Work” and APPENDIX G – “SUMMARY OF CERTAIN PROVISIONS OF THE D&C CONTRACT.”

The D&C Contractor has provided a guaranty (the “DB Guaranty”) from its parent company, AECOM, a Delaware corporation. The rights and benefits of the Borrower with respect to such DB Guaranty has been assigned to the Collateral Agent and the Port Authority is a permitted assignee of such DB Guaranty. “PART 12 – THE D&C CONTRACT – Construction Security – Parent Company Guaranty.”

**Operation and Management of the Project**

The Borrower is responsible under the Lease Agreement for the operation, management, administration, and maintenance of the Premises, including any repair, modification, reconstruction, rehabilitation, restoration, renewal and replacement of the Premises, all as required under the Lease Agreement (collectively, the “Operations and Maintenance Work”). Pursuant to that certain Management Services Agreement, dated the Original Closing Date (as supplemented and amended from time to time, the “Management Services Agreement”) by and between the Borrower and Vantage Airport Group (JFK) Ltd. (the “Manager”), the Manager has agreed to provide the Borrower with certain operation and maintenance services and support through December 30, 2060, or until the earlier termination of the Management Services Agreement or the Lease Agreement in accordance with the applicable terms thereof. Vantage Airport Group (US) Ltd. has guaranteed the obligations of the Manager (such guaranty, the “Manager Guarantee”). The Collateral Agent and the Port Authority are permitted assignees of the Manager Guarantee. SEE “PART 10 – THE LEASE AGREEMENT” AND APPENDIX E – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE AGREEMENT – Conduct of Operations.”

Pursuant to the Management Services Agreement, the Manager, through additional personnel, including a Project Manager, Project Director and Design Manager, Executive and non-Executive staff, and other third-party resources, provides day-to-day management of the Borrower's business and operations, including concession management and the management of the D&C Work, as further set forth in "PART 13 – OPERATION AND MANAGEMENT OF THE PROJECT" hereof.

A portion of the services to be performed under the Management Services Agreement, including design and construction contract administration, public affairs support, and stakeholder outreach has been subcontracted to RXR JMP Development Services LLC (the "Manager Subcontractor") for fulfillment, who is entitled to a fee from the Manager for its services and to reimbursement of reasonable costs and expenses paid or incurred by the Manager Subcontractor in connection with rendering such services.

With certain limited exceptions set forth in the Lease Agreement, the management fees and expenses of the Manager will be paid from revenues of the Borrower prior to debt service on the outstanding Senior Obligations, including the Series 2024 Bonds, as part of the Borrower's Permitted O&M Expenses. The Manager reports and is accountable to HoldCo's Board of Directors. See "PART 13 – OPERATION AND MANAGEMENT OF THE PROJECT" and APPENDIX H – "SUMMARY OF CERTAIN PROVISIONS OF THE MANAGEMENT SERVICES AGREEMENT."

**Restricted  
Distributions**

The Collateral Agency and Accounts Agreement imposes certain restrictions on transfers from the Remaining Revenue Account and the Surplus Remaining Revenue Account to the Distribution Account, which Distribution Account is not a Project Account and is not pledged for the benefit of the Secured Parties. Funds may be transferred from the Remaining Revenue Account and the Surplus Remaining Revenue Account (*pro rata*) to the Distribution Account quarterly, subject to satisfaction of Restricted Payment Conditions, including, without limitation, a restriction on making distributions prior to the Substantial Completion of the Project, and subject to application of the Loan Facility and Balloon Indebtedness cash sweeps, if and when applicable. See "PART 4 – SECURITY FOR THE SERIES 2024 BONDS – The Collateral Agency and Accounts Agreement – Restricted Distributions."

Until the discharge in full of the Senior Bank Obligations and the Series 2022 Bonds, certain additional restricted payment conditions will apply pursuant to the Common Terms Agreement. See APPENDIX F-1 – "FORM OF COMMON TERMS AGREEMENT" hereto. These additional restrictions are for the sole benefit of the holders of the Senior Bank Obligations and are subject to waiver or amendment thereby in their sole discretion, and such additional restricted payment conditions will no longer apply following the discharge of the Loan Facility.



Commencing 10 years prior to the scheduled maturity thereof, the Borrower has agreed to apply certain amounts distributed from the Remaining Revenue Account and the Surplus Remaining Revenue Account to the redemption of a portion of the Series 2024A Balloon Indebtedness. See “PART 4 – SECURITY FOR THE SERIES 2024 BONDS – The Collateral Agency and Accounts Agreement – Restricted Distributions.”

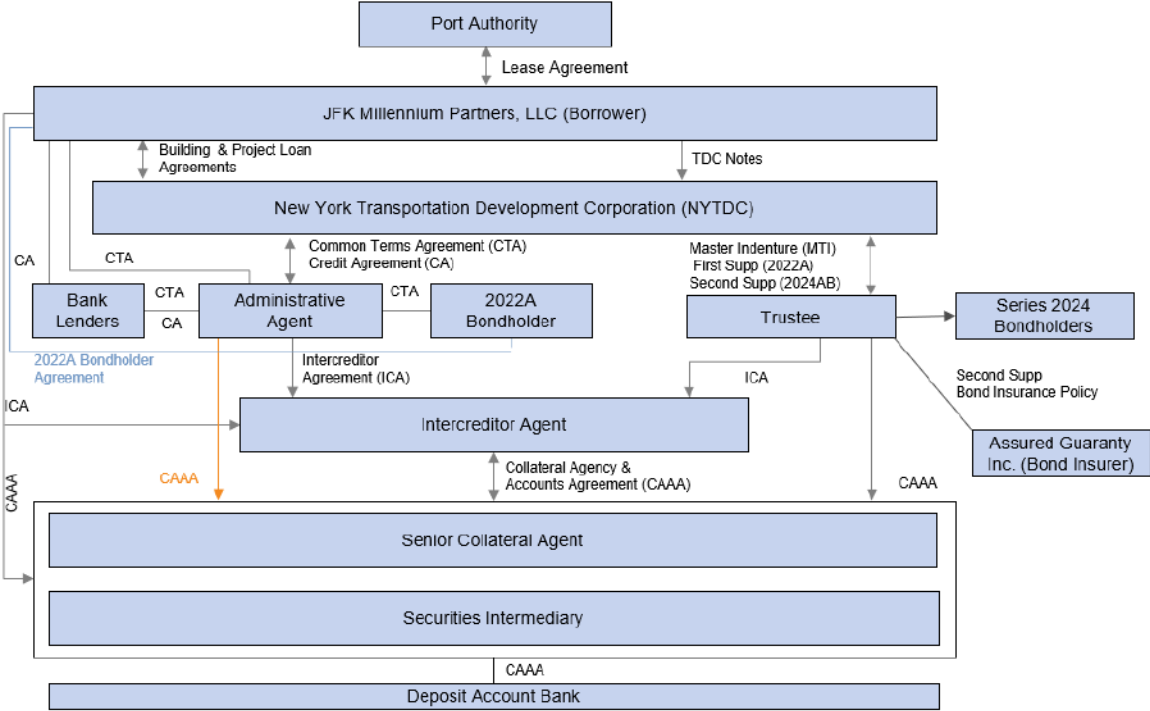
**Bond Insurance**

The scheduled payment of principal of and interest on all or such portion of the Series 2024 Bonds identified on the inside cover page hereof as insured bonds (the “Insured Bonds”) when due will be guaranteed under an insurance policy to be issued concurrently with the delivery of such Insured Bonds by the Bond Insurer. See “PART 6 - BOND INSURANCE.”

**Risk Factors**

Investing in the Series 2024 Bonds is subject to numerous risks. See “PART 17 – RISK FACTORS.”

# Financing Structure



# THE PORT AUTHORITY OF NY & NJ

LEASE AGREEMENT

## EQUITY SPONSORS

VANTAGE (45%)  
AMERICAN TRIPLE I (30%)  
RXR (20%)  
JETBLUE (5%)

JFK  
MILLENNIUM  
PARTNERS  
HOLDINGS,  
LLC

**JFK** Millennium  
Partners

NEW YORK  
TRANSPORTATION  
DEVELOPMENT  
CORPORATION

CAAA & OTHER  
SENIOR  
SECURITY  
DOCUMENTS

SENIOR  
LOANS

SERIES 2022A  
BONDS

SERIES 2024  
BONDS AND  
FUTURE  
LONG-TERM  
BONDS

DESIGN BUILD  
AGREEMENT

DESIGN BUILD -  
MAIN CONTRACTOR  
(AECOM HUNT)

MANAGEMENT  
SERVICES  
AGREEMENT

MANAGER

AIRLINE  
SUBLEASES

AIRLINES

OTHER  
SUBLEASES

IN-TERMINAL  
CONCESSIONS

CONTRACTED  
SERVICES

MISCELLANEOUS  
SERVICES

**(THIS PAGE INTENTIONALLY LEFT BLANK)**

## OFFICIAL STATEMENT RELATING TO

**\$1,945,637,768**

### NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION

**\$1,845,640,000**  
SPECIAL FACILITIES REVENUE BONDS,  
SENIOR SERIES 2024A (GREEN BONDS) (AMT)  
(CURRENT INTEREST BONDS)  
(JFK AIRPORT TERMINAL 6 REDEVELOPMENT  
PROJECT)

**\$99,997,768**  
SPECIAL FACILITIES REVENUE BONDS,  
SENIOR SERIES 2024B (AMT)  
(CONVERTIBLE CAPITAL APPRECIATION BONDS)  
(JFK AIRPORT TERMINAL 6 REDEVELOPMENT  
PROJECT)

### PART 1 – INTRODUCTION

This Official Statement (including the cover page, the inside cover page, the Summary Statement, and the Appendices) is being distributed in connection with the offering and sale of \$1,945,637,768 aggregate principal amount of (i) Special Facilities Revenue Bonds, Senior Series 2024A (Green Bonds) (AMT) (Current Interest Bonds) (JFK Airport Terminal 6 Redevelopment Project) (the “Series 2024A Bonds”), and (ii) Special Facilities Revenue Bonds, Senior Series 2024B (AMT) (Convertible Capital Appreciation Bonds) (JFK Airport Terminal 6 Redevelopment Project) (the “Series 2024B Bonds” and, together with the Series 2024A Bonds, the “Series 2024 Bonds”) of the New York Transportation Development Corporation (the “Issuer”). Capitalized terms used herein unless otherwise defined have the meanings given to them in APPENDIX A – “DEFINITIONS.” The Issuer is a local development corporation formed under Section 1411 of the New York Not-for-Profit Corporation Law, being Chapter 35 of the Consolidated Laws of New York.

In connection with the Port Authority of New York and New Jersey’s (the “Port Authority”) approved redevelopment plan for John F. Kennedy International Airport in Queens, New York (the “Airport”), as described in more detail in APPENDIX B-1 “REPORT OF THE AIRPORT CONSULTANT,” the Port Authority entered into a lease agreement with JFK Millennium Partners, LLC, a Delaware limited liability company (the “Borrower”) (as supplemented and amended from time to time, the “Lease Agreement”) on November 17, 2022 (the “Original Closing Date”), pursuant to which the Borrower has the right and obligation to design, build, and operate a new passenger terminal building on the sites of the former Terminal 6 that was demolished in 2011 (the “Prior Terminal 6”) and Terminal 7 at the Airport. In connection therewith, the Borrower took over operations of Terminal 7 on December 1, 2022 and commenced construction on Phase 1 on the site of the Prior Terminal 6. Operations at Terminal 7 are anticipated to continue until Phase 1 is complete at which point the Borrower will transition its operations to the completed portion of Terminal 6, decommission and demolish Terminal 7 and proceed with the construction of Phase 2 of the Project, including, without limitation, the remaining portion of Terminal 6. Upon completion, the Project will include an estimated 1,200,000 square feet new passenger terminal building, with 10 gates (nine widebody gates and one narrowbody gate), improved airside and landside operations, access to two AirTrain stations and transformation of the ground floor of the Terminal 5 Parking Garage, also known as the Yellow Garage, and the adjacent portion of the roadway network into a new ground transportation center, including for-hire-vehicle parking and personal vehicles loading area (the “Ground Transportation Center,” as further defined in the Lease Agreement), servicing Terminal 6 and Terminal 5. See “PART 11 – THE PROJECT.”

The Series 2024 Bonds are authorized to be issued under and pursuant to (i) resolutions of the Issuer adopted on August 28, 2024 and October 1, 2024 authorizing, among other things, the issuance and sale of the Series 2024 Bonds, and (ii) the TDC Master Bond Indenture of Trust, dated as of November 1, 2022, by and between the Issuer and The Bank of New York Mellon, as trustee (the “Trustee”), as amended and supplemented, including by the TDC Second Supplemental Bond Indenture to be dated as of November 1, 2024, by and among the Issuer, the Trustee and the Bond Insurer (the “Master Bond Indenture” as so

supplemented, and as the same may be further amended, supplemented or modified from time to time, the “Indenture”). The Trustee will also serve as Paying Agent and Bond Registrar for the Series 2024 Bonds.

On the Original Closing Date, (a) the Issuer issued its not to exceed \$435,000,000 Special Facilities Bonds, Senior Series 2022A (Tax-Exempt) (AMT) (JFK Airport Terminal 6-7 Redevelopment Project) (the “Series 2022 Bonds”), all of which has been funded through a direct placement with the Royal Bank of Canada (the “Series 2022 Bondholder”) and (b) the Borrower, the Issuer, the Lenders, the Security Deposit Facility LC Issuing Bank, ING Capital LLC, as administrative agent (the “Administrative Agent”) and the coordinating lead arrangers, senior joint lead arranger, joint lead arrangers, mandated lead arrangers, senior managing agent and bookrunners party thereto entered into a Credit Agreement (the “Credit Agreement”), pursuant to which: (i) the Lenders agreed to lend up to \$3,009,000,000 to the Issuer (the “Senior Term Loans”), (ii) the Security Deposit Facility LC Issuing Bank agreed to make Security Deposit LCs available to the Issuer (which Security Deposit LCs were to be used by the Borrower to provide a security deposit to the Port Authority with respect to and as required by the Lease Agreement), and (iii) the Security Deposit Facility Lender agreed to make Security Deposit Loans to the Issuer (the Security Deposit Loans together with the Senior Term Loans, the “Senior Loans”). The Borrower, Issuer, Collateral Agent, Lenders, Security Deposit Facility LC Issuing Bank, Intercreditor Agent, Administrative Agent, and Series 2022 Bondholder are parties to that certain Common Terms Agreement (the “Common Terms Agreement”), dated as of November 1, 2022 which provides for certain common terms of the Series 2022 Bonds and the Senior Loans (such Series 2022 Bonds, the Senior Loans, and the Security Deposit LC Obligations being referred to herein collectively as the “Loan Facility”). The provisions of the Common Terms Agreement are only for the benefit of the Series 2022 Bondholder and the Lenders, and are not for the benefit of, nor enforceable by, the holders of the Series 2024 Bonds, and will no longer apply following the discharge of the Senior Bank Obligations. Except as expressly set forth in the Intercreditor Agreement dated as of November 1, 2022, as amended by the First Amendment to the Intercreditor Agreement, to be dated as of November 1, 2024, each among the Borrower, Administrative Agent, the Trustee, The Bank of New York Mellon, as senior collateral agent (the “Collateral Agent” or “Senior Collateral Agent”), the Hedge Providers (as defined herein) and The Bank of New York Mellon, as intercreditor agent (the “Intercreditor Agent”) (collectively, as amended and supplemented from time to time, the “Intercreditor Agreement”), the holders of the Series 2024 Bonds are not entitled to consent to any amendment or waiver granted by the Lenders under the Common Terms Agreement. The form of the Intercreditor Agreement is attached hereto as APPENDIX D-5 and the form of the Common Terms Agreement is attached hereto as APPENDIX F-1. The proceeds of the Loan Facility, as drawn, were lent by the Issuer to the Borrower pursuant to the hereinafter defined TDC Loan Agreements. The Loan Facility is further secured by the Borrower’s Series 2022A Building Note, the TDC Bank Debt Building Note, Series 2022A Project Note, the TDC Bank Debt Project Note and the TDC Security Deposit Project Note (collectively, the “2022 TDC Notes”). The proceeds from the sale of the Series 2024 Bonds will be loaned to the Borrower and used to (i) refinance costs relating to the design and construction of the Project, including costs originally financed by a portion of the proceeds of the Loan Facility and (ii) pay costs of issuance relating to the Series 2024 Bonds and costs associated with the payoff of the applicable portion of the Loan Facility, including costs, if any, of terminating the associated Permitted Hedge Agreements. The Administrative Agent, the Senior Collateral Agent, the Trustee, the Intercreditor Agent and the Hedge Providers have consented to amendments and supplements to certain Financing Documents (including, among other documents, the First Amendments to TDC Loan Agreements, First Amendment to the Collateral Agency and Accounts Agreement, and Second Supplemental Indenture), and the Administrative Agent has provided waivers of certain terms of the Common Terms Agreement, in connection with, and to facilitate, the issuance of the Series 2024 Bonds.

Under the Common Terms Agreement, the Borrower has covenanted to enter into, and thereafter maintain, Permitted Hedge Agreements that hedge and mitigate the variable interest rate risk of the Issuer under the Loan Facility to which the Borrower is exposed, on a pass-through basis, under the terms of the TDC Loan Agreements. As further described herein, the obligations of the Borrower under the Loan Facility and the Permitted Hedge Agreements constitute Senior Obligations secured on a parity basis with the Series 2024 Bonds. See “PART 3 – PLAN OF FINANCE.”

As of September 30, 2024, approximately \$2,047,000,000 has been drawn under the Senior Term Loans and the full \$435,000,000 has been drawn under the Series 2022 Bonds, leaving approximately \$962,000,000 of remaining capacity under the Loan Facility available to be drawn upon to pay a portion of the remaining Project costs. Following the issuance of the Series 2024 Bonds, approximately \$508,453,869 of debt will remain Outstanding under the Loan Facility, all of which, together with subsequent advances thereunder, is scheduled to mature in full on November 17, 2029 (the “Bank Financing Maturity Date”). The Borrower’s current plan of finance, which is subject in all respects to market conditions from time to time and remains subject to change in their sole and absolute discretion, anticipates the issuance of additional tax-exempt and taxable bonds either as Additional Senior Obligations (secured on a parity basis with the Series 2024 Bonds and the Loan Facility) and/or Subordinate Obligations (secured on a subordinate basis to the Senior Obligations), to refinance the balance of the Loan Facility outstanding from time to time. The Borrower may also incur Additional Senior Obligations (secured on a parity basis with the Series 2024 Bonds and the Loan Facility) and/or Subordinate Obligations (secured on a subordinate basis to the Senior Obligations) for non-refunding purposes, in each case under and in accordance with the Collateral Agency and Accounts Agreement, and with respect to Additional Senior Bonds or Additional Subordinate Bonds, the Indenture. See “PART 4 – SECURITY FOR THE SERIES 2024 BONDS – The Collateral Agency and Accounts Agreement – Additional Obligations”; in APPENDIX D-2 – “FORM OF COLLATERAL AGENCY AND ACCOUNTS AGREEMENT – Additional Obligations” and in APPENDIX D-1 – “FORM OF TRUST INDENTURE – Conditions to Issue Additional Bonds.” The Common Terms Agreement has certain additional restrictions on the incurrence of Additional Obligations by the Borrower for so long as the Senior Bank Obligations are outstanding. These additional restrictions are for the sole benefit of the holders of the Senior Bank Obligations, are subject to waiver or amendment thereby in their sole discretion and will no longer apply following the discharge of the Senior Bank Obligations. See APPENDIX F-1 – “FORM OF COMMON TERMS AGREEMENT.”

The Borrower, the Collateral Agent, The Bank of New York Mellon, as securities intermediary (the “Securities Intermediary”) under the Intercreditor Agreement, the Issuer, the Trustee, the Administrative Agent and The Bank of New York Mellon, as deposit account bank (the “Deposit Account Bank”) entered into that certain Collateral Agency and Accounts Agreement, dated as of November 1, 2022, as amended by the First Amendment to the Collateral Agency and Accounts Agreement to be dated as of November 1, 2024, by and among the Borrower, the Collateral Agent, the Intercreditor Agent, the Securities Intermediary, the Trustee, the Administrative Agent and the Issuer (as so amended and supplemented, the “Collateral Agency and Accounts Agreement”), pursuant to which the Collateral Agent will hold collateral as security for the Series 2024 Bonds, the Loan Facility and any other Obligations of the Borrower, including any Additional Obligations issued in accordance with the Collateral Agency and Accounts Agreement.

The proceeds from the sale of the Series 2024 Bonds and the proceeds of the Loan Facility are being loaned to the Borrower pursuant to a TDC Building Loan Agreement, dated as of November 1, 2022, as amended by the First Amendment to the TDC Building Loan Agreement to be dated as of November 1, 2024 (as so amended, the “TDC Building Loan Agreement”) and the TDC Project Loan Agreement, dated as of November 1, 2022, as amended by the First Amendment to the TDC Project Loan Agreement to be dated as of November 1, 2024 (as so amended, the “TDC Project Loan Agreement” and, together with the TDC Building Loan Agreement, the “TDC Loan Agreements”). The Borrower will execute and deliver a Series 2024 Building Note and a Series 2024 Project Note relating to the Series 2024 Bonds (the “2024 TDC Notes” and, together with the 2022 TDC Notes, and any additional promissory notes of the Borrower evidencing the indebtedness of the Borrower under the TDC Building Loan or the TDC Project Loan Agreement, the “TDC Notes”) in favor of the Issuer. The Borrower will be obligated under the TDC Loan Agreements and the TDC Notes to make payments sufficient to pay the principal or Redemption Price of, and interest on, the Series 2024 Bonds, the Loan Facility and any Additional Senior Obligations, as and when the same become due.

The obligations of the Borrower to make payments pursuant to the TDC Building Loan Agreement and the related TDC Notes are unconditional obligations of the Borrower secured by the TDC Building Loan Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of November 1, 2022, among the Borrower, the Issuer, and the Collateral Agent (the “Building Leasehold Mortgage”) and the obligations of the Borrower to make payments pursuant to the TDC Project Loan Agreement and the related TDC Notes are unconditional obligations of the Borrower secured by the TDC Project Leasehold Loan Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of November 1, 2022, among the Borrower, the Issuer, and the Collateral Agent (the “Project Leasehold Mortgage” and, together with the Building Leasehold Mortgage, the “Leasehold Mortgages”), respectively, each of which encumber the Borrower’s interest in the Lease Agreement.

The collateral also includes other security held by the Collateral Agent on behalf of the Secured Parties, including (i) amounts held in certain Project Accounts established and held under the Collateral Agency and Accounts Agreement; (ii) the personal property of the Borrower under the Senior Security Agreement, dated as of November 1, 2022 between the Borrower and the Collateral Agent (as supplemented and amended from time to time, the “Senior Security Agreement”); (iii) equity interests of the Borrower under the Amended and Restated Senior Equity Pledge Agreement, to be dated as of November 1, 2024, by and among JFK Millennium Partners Holdings, LLC, a Delaware limited liability company, which owns 100% of the equity interests of the Borrower, and the Senior Collateral Agent (the “Senior Equity Pledge Agreement”), (iv) Assignment of Leases and Rents (Building Loan) and Assignment of Leases and Rents (Project Loan), each dated as of November 1, 2022 (together, the “Assignments of Leases and Rents”); (v) Consents to Assignment (a) among the Borrower, the D&C Contractor, and the Collateral Agent, dated as of the Original Closing Date (the “D&C Contractor Direct Agreement”), setting forth certain rights of the Lenders with respect to the D&C Contract, (b) among the Borrower, the Manager, and the Collateral Agent, dated as of the Original Closing Date (the “Manager Direct Agreement”), setting forth certain rights of the Lenders with respect to the Management Services Agreement, and (c) among the Borrower, JetBlue Airways Corporation (“JetBlue”), and the Collateral Agent, dated as of the Original Closing Date (the “JetBlue Direct Agreement”), setting forth certain rights of the Lenders with respect to the Anchor Tenant Agreement and Sublease, dated as of the Original Closing Date, between the Borrower and JetBlue (the “JetBlue Sublease”), each of (a)-(c) a “Direct Agreement” and, together with other Consents to Assignment that the Borrower may enter into with the Collateral Agent and counterparties in connection with certain material Concessions Subleases and Airline Subleases, the “Direct Agreements;” and (vi) in certain limited circumstances, amounts owed under the Equity Contribution Agreement, as further secured by the Equity Letters of Credit or Equity Collateral Accounts. The Issuer has assigned all of its right, title and interest, except for its Reserved Rights, in the Leasehold Mortgages, the Assignment of Leases and Rents, the TDC Loan Agreements and the TDC Notes to the Collateral Agent pursuant to the Issuer Assignment Agreements, which assignments will be amended in connection with the issuance of the Series 2024 Bonds to incorporate the First Amendments to TDC Loan Agreements (as defined here) and the TDC Notes relating to such Series 2024 Bonds. In addition, certain collateral is held by the Trustee for the benefit of the Bondholders pursuant to the Indenture. See “PART 4 – SECURITY FOR THE SERIES 2024 BONDS” and APPENDICES C-1 through C-4 – “FORM TRUST INDENTURE,” “FORM COLLATERAL AGENCY AND ACCOUNTS AGREEMENT,” “FORM LEASEHOLD MORTGAGES,” and “FORM TDC LOAN AGREEMENTS.”

The Borrower expects to pay its obligations under the TDC Loan Agreements and the TDC Notes (i) prior to Project completion, primarily from proceeds borrowed thereunder, and (ii) after Project completion, from net operating revenues received from the operation of Terminal 6, including payments made by airlines, providers of concession goods and services, and other commercial users of Terminal 6. See “PART 14 – AIRLINE REVENUES,” and “PART 15 – NON-AIRLINE REVENUES.”

**THE SERIES 2024 BONDS ARE SPECIAL AND LIMITED REVENUE OBLIGATIONS OF THE ISSUER, PAYABLE BY THE ISSUER AS TO THE PRINCIPAL, REDEMPTION PRICE, AND INTEREST THEREON, SOLELY OUT OF THE TRUST ESTATE PLEDGED UNDER THE**



**INDENTURE REFERRED TO HEREIN. NONE OF THE SERIES 2024 BONDS, THE PRINCIPAL THEREOF, THE INTEREST THEREON, THE REDEMPTION PRICE THEREOF, IF ANY, OR ANY INTEREST ACCRUED THEREON TO THE DATE OF REDEMPTION, SHALL EVER CONSTITUTE A DEBT OF THE STATE OF NEW YORK (THE “STATE”), THE PORT AUTHORITY, THE NEW YORK JOB DEVELOPMENT AUTHORITY (THE “JDA”), THE NEW YORK STATE URBAN DEVELOPMENT CORPORATION (D/B/A EMPIRE STATE DEVELOPMENT) (“ESD”), OR ANY OTHER LOCAL DEVELOPMENT CORPORATION, AGENCY, OR AUTHORITY OF THE STATE (OTHER THAN THE ISSUER), AND NONE OF THE STATE, THE PORT AUTHORITY, JDA, ESD, OR ANY OTHER LOCAL DEVELOPMENT CORPORATION, AGENCY, OR AUTHORITY OF THE STATE (OTHER THAN THE ISSUER) SHALL BE LIABLE ON THE SERIES 2024 BONDS. THE ISSUER HAS NO POWER OF TAXATION. SEE “PART 19 – LIMITED LIABILITY FOR THE SERIES 2024 BONDS” HEREIN.**

## **PART 2 – DESCRIPTION OF THE SERIES 2024 BONDS**

### **Series 2024A Bonds**

The Series 2024A Bonds are being issued as fully registered bonds in denominations of \$5,000 or in integral multiples thereof and will be dated their date of delivery. The Series 2024A Bonds will mature on the dates and in the amounts, and will bear interest from their date of issuance at the rates, set forth on the front inside cover of this Official Statement. Interest on the Series 2024A Bonds will be payable semi-annually on each June 30 and December 31, commencing on December 31, 2024. The Series 2024A Bonds will bear interest from the delivery date until the principal amount thereof is paid, such interest to be computed upon the basis of a 360-day year consisting of twelve 30-day months.

### **Series 2024B Bonds**

The Series 2024B Bonds are being issued as fully registered bonds in denominations that will result in the Accreted Value at the respective Interest Commencement Date being equal to \$5,000 or any integral multiple thereof and will be dated their date of delivery. The Series 2024B Bonds will mature on the dates and in the amounts set forth on the inside cover hereof. Interest on the Series 2024B Bonds shall be compounded semi-annually on each June 30 and December 31 (each a “Compounding Date”) (based on a 360-day year consisting of twelve 30-day months), commencing on December 31, 2024, at the approximate yields to their respective Interest Commencement Date set forth on the inside cover hereof until, but not including, their respective Interest Commencement Date of December 31, 2034. On and after the Interest Commencement Date, such Series 2024B Bonds shall be deemed Current Interest Bonds and shall bear interest at the rates shown on the inside cover hereof computed based on their respective Accreted Values on such Interest Commencement Date, payable semiannually on Interest Payment Dates of June 30 and December 31 of each year, commencing on June 30, 2035.

Under the Indenture, the Accreted Value of each of the Series 2024B Bonds: (i) on any Compounding Date is the amount established by the schedule of Accreted Values for the applicable Series 2024B Bond as set forth in APPENDIX N – “TABLE OF ACCRETED VALUES OF SERIES 2024B CONVERTIBLE CAPITAL APPRECIATION BONDS THROUGH THE INTEREST COMMENCEMENT DATE,” which amount represents the initial principal amount at issuance of the applicable Series 2024B Bond plus interest accrued and compounded on each Compounding Date to the date of determination, calculated on the basis of a three hundred sixty (360) day year of twelve (12) thirty (30) day months, and (ii) with respect to any date other than a Compounding Date, the Accreted Value shall be the sum of (1) the Accreted Value on the preceding Compounding Date plus (2) the product of (x) a fraction, the numerator of which is the number of days having elapsed from the preceding Compounding Date and the denominator of which is the number of days from such preceding Compounding Date to the next succeeding Compounding Date, multiplied by (y) the difference between the Accreted Values on such Compounding Dates, which amount represents the principal plus the amount of interest that has accrued to

such date of determination. No interest is payable on any Series 2024B Bonds prior to the first Interest Payment Date following the applicable Interest Commencement Date; thereafter, interest at the applicable rate on any Series 2024B Bond is payable on the first Interest Payment Date following the Interest Commencement Date for such Series 2024B Bond and thereafter on each June 30 and December 31 until maturity or earlier redemption thereof, such interest to be computed and paid based upon the Accreted Value of the Series 2024B Bonds on their respective Interest Commencement Dates at the respective rates of interest as set forth in APPENDIX N – “TABLE OF ACCRETED VALUES OF SERIES 2024B CONVERTIBLE CAPITAL APPRECIATION BONDS THROUGH THE INTEREST COMMENCEMENT DATE” hereto and the inside cover page hereof.

### **Delivery**

It is expected that the Series 2024 Bonds will be available for delivery through the facilities of the Depository Trust Company (“DTC”) in New York, New York, on or about the date on which the Series 2024 Bonds are issued. The Series 2024 Bonds will be issued in book-entry-only form and will be registered in the name of Cede & Co., as nominee of DTC. The payment of the principal of, interest on and Redemption Price on, if any, the Series 2024 Bonds will be made by the Trustee directly to Cede & Co., as nominee for DTC, as the registered owner of the Series 2024 Bonds, to be subsequently disbursed to Beneficial Owners of the Series 2024 Bonds, all as described herein. Purchasers of the Series 2024 Bonds will not receive physical delivery of certificates representing their ownership interests in the Series 2024 Bonds.

### **Payment of Principal**

The principal of the Series 2024 Bonds shall become due and payable on the Principal Payment Dates, as shown on the inside cover page of this Official Statement. The principal of the Series 2024 Bonds shall be payable to the Holders of the applicable Series of Bonds in lawful money of the United States of America at the Maturity Date upon presentation and surrender of the Series 2024 Bonds at the principal corporate trust office of the Trustee as Bond Registrar. Payment of the Redemption Price shall be made to or upon the order of the registered owners, without presentation of the Series 2024 Bonds, by wire transfer in federal funds. So long as a book-entry system is used for determining beneficial ownership of the Series 2024 Bonds, payments of principal and other payments will be made to DTC as described in APPENDIX I – “BOOK-ENTRY ONLY SYSTEM.”

### **Payment of Interest**

Interest on the Series 2024 Bonds shall be payable on each Interest Payment Date until maturity or until the date fixed for redemption, if any, and until payment of the principal shall have been made or provided for in accordance with the provisions of the Indenture.

Except as described below, interest payable on the Series 2024 Bonds on any Interest Payment Date shall be paid by the Trustee to the Holders of such Series 2024 Bonds appearing on the registration books maintained by the Trustee as Bond Registrar at the close of business on the fifteenth day (whether or not a Business Day) of the calendar month immediately preceding such Interest Payment Date (the “Record Date”), and shall be paid (1) by check mailed to such Holders at their address as it appears on such registration books maintained by the Trustee, or (2) at the written request addressed to the Trustee as Paying Agent by any Holder of Bonds in an aggregate principal amount in excess of \$1,000,000 as shown on the registration books kept by the Bond Registrar, by electronic wire transfer, in immediately available funds to the account filed with the Trustee prior to the Record Date next preceding any Interest Payment Date. So long as a book-entry system is used for determining beneficial ownership of the Series 2024 Bonds, payments of interest and other payments will be made to DTC as described below in APPENDIX I – “BOOK-ENTRY ONLY SYSTEM.”

## **Redemption of the Series 2024 Bonds**

### ***Optional Redemption of Series 2024A Bonds***

The Series 2024A Bonds are subject to redemption at the option of the Issuer (at the written direction of the Borrower) prior to maturity on and after December 31, 2034, in whole or in part, at any time, without premium, at a redemption price equal to 100% of the principal of Series 2024A Bonds to be redeemed, plus the interest accrued on such Series 2024A Bonds to (but not including) the Redemption Date.

### ***Optional Redemption of Series 2024B Bonds***

The Series 2024B Bonds are subject to optional redemption prior to maturity by the Issuer, in whole or in part, at the written direction of the Borrower (A) from the Series 2024 Closing Date through December 30, 2044, at the Make-Whole Redemption Price, or (B) on and after December 31, 2044, at any time, without premium, (x) if redeemed prior to the Interest Commencement Date, at the Accreted Value as of the Redemption Date, and (y) if redeemed on or after the Interest Commencement Date, at the Accreted Value at the Interest Commencement Date plus accrued interest to the Redemption Date.

“Make-Whole Redemption Price” means, the greater of (i) 100% of the principal amount of Current Interest Bonds to be redeemed or the Accreted Value of Compound Interest Bonds to be redeemed, as applicable and (ii) the sum of the present value of the remaining scheduled payments of principal, accreted interest and interest to the Maturity Dates of the Bonds to be redeemed (not including any portion of those payments of interest accrued and unpaid as of the date on which the Bonds are to be redeemed) discounted to the Redemption Date on a semi-annual basis, assuming a 360-day year consisting of twelve 30-day months, at the adjusted Municipal Market Data AAA benchmark yield (the “MMD Rate”), plus, in each case, accrued and unpaid interest on the Bonds to be redeemed on the Redemption Date.

### ***Purchase in Lieu of Redemption***

If any Series 2024 Bond is called for optional redemption, in whole or in part, the Issuer, upon written direction of the Borrower, may elect to have such Series 2024 Bonds purchased in lieu of redemption on the applicable Redemption Date (the “Purchase Date” with respect to such Series 2024 Bonds) at a purchase price equal to the applicable (i) Redemption Price with respect to the Series 2024A Bonds (including any interest accrued on such Bonds to the Redemption Date) or (ii) the Accreted Redemption Price with respect to the Series 2024B Bonds (including, on any date on or after the Interest Commencement Date, any interest accrued on such Bonds to the Redemption Date), in each case, (the “Purchase Price” with respect to such Series 2024 Bonds).

If the Issuer, upon written request of the Borrower, elects to purchase any Series 2024 Bonds, the Trustee shall give notice of the purchase of such Series 2024 Bonds in the name of the Issuer to the registered owners thereof by first-class mail, postage prepaid, not less than thirty (30) days prior to the Purchase Date with respect to such Series 2024 Bonds specified in such notice. The Series 2024 Bonds to be purchased are required to be tendered on the Purchase Date with respect to such Series 2024 Bonds to the Trustee. The Series 2024 Bonds to be purchased that are not so tendered will be deemed to have been properly tendered for purchase. Such purchase will not operate to extinguish the indebtedness of the Issuer evidenced thereby or modify the terms of such Series 2024 Bonds and such Series 2024 Bonds need not be cancelled, but will remain Outstanding under the Indenture and continue to bear interest.

The Issuer’s obligation to purchase any Series 2024 Bond is conditioned upon the availability of sufficient money to pay the Purchase Price with respect to such Series 2024 Bonds for all of the Series 2024 Bonds to be purchased on the Purchase Date with respect to such Series 2024 Bonds. If sufficient money is available on the Purchase Date with respect to such Series 2024 Bonds to pay the Purchase Price with

respect to such Series 2024 Bonds of the Series 2024 Bonds to be purchased, the former registered owners of such Series 2024 Bonds will have no claim thereunder or under the Indenture or otherwise for payment of any amount other than the Purchase Price with respect to such Series 2024 Bonds. If sufficient money is not available on the Purchase Date with respect to such Series 2024 Bonds for payment of the Purchase Price with respect to such Series 2024 Bonds, the Series 2024 Bonds tendered or deemed tendered for purchase will continue to be registered in the name of the registered owners on the Purchase Date with respect to such Series 2024 Bonds, who will be entitled to the payment of the (i) Redemption Price of such Series 2024A Bonds or (ii) Accreted Redemption Price of such Series 2024B Bonds, on the Redemption Date in accordance with their respective terms.

### ***Extraordinary Redemptions***

*Preservation of Tax-Exempt Status of Series 2024 Bonds.* The Series 2024 Bonds shall be subject to extraordinary optional redemption by the Issuer, at the direction of the Borrower, on any date at (i) Redemption Price with respect to the Series 2024A Bonds (including, any interest accrued on such Bonds to the Redemption Date) or (ii) the Accreted Redemption Price with respect to the Series 2024B Bonds (including, on any date on or after the Interest Commencement Date, any interest accrued on such Bonds to the Redemption Date), without premium if the Borrower shall have delivered to the Trustee and the Issuer an Opinion of Bond Counsel addressed to the Trustee and the Issuer substantially to the effect that (i) a failure so to redeem Series 2024 Bonds (or the relevant portion thereof) may adversely affect the exclusion of interest on the Series 2024 Bonds from the gross income of the Holders pursuant to Section 103 of the Code and (ii) redemption of Series 2024 Bonds in the amount set forth in such opinion (but in no smaller amount than that set forth in such opinion) would permit the continuance of any exclusion so afforded under Section 103 of the Code. The Series 2024 Bonds to be so redeemed shall be determined by the Borrower.

*Extraordinary Mandatory Redemption of the Series 2024 Bonds.* The Series 2024 Bonds are subject to extraordinary mandatory redemption, in whole or in part, as the case may be, at the (i) Redemption Price with respect to the Series 2024A Bonds or (ii) Accreted Redemption Price with respect to the Series 2024B Bonds, without premium to the extent of funds available therefore from, and as soon as practical following:

A. Receipt by the Trustee of Series 2024 Bonds proceeds remaining on deposit more than five years after the issuance thereof, if and to the extent required by the Collateral Agency and Accounts Agreement;

B. Receipt by the Trustee of the *pro rata* portion of the Borrower Insurance Proceeds or Borrower Condemnation Proceeds allocated to the Series 2024 Bonds, *pro rata* with the Loan Facility, Secured Hedge Agreements, and any Additional Senior Obligations in accordance with the Collateral Agency and Accounts Agreement, following the request of the Trustee to the Securities Intermediary to transfer such funds pursuant to the Collateral Agency and Accounts Agreement and the Second Supplemental Indenture;

C. Receipt by the Trustee of the *pro rata* portion of the Borrower Lease Termination Proceeds allocated to the Series 2024 Bonds, *pro rata* with the Loan Facility, Secured Hedge Agreements, and any Additional Senior Obligations in accordance with the Collateral Agency and Accounts Agreement, following the request of the Trustee to the Securities Intermediary to transfer such funds pursuant to the Collateral Agency and Accounts Agreement and the Second Supplemental Indenture;

D. Receipt by the Trustee of the *pro rata* portion of the Disposition Proceeds allocated to the Series 2024 Bonds, *pro rata* with the Loan Facility, Secured Hedge Agreements, and any Additional Senior Obligations in accordance with the Collateral Agency and Accounts Agreement, following the request of

the Trustee to the Securities Intermediary to transfer such funds pursuant to the Collateral Agency and Accounts Agreement and the Second Supplemental Indenture; or

E. Foreclosure by the Senior Collateral Agent on the leasehold estate pursuant to the Leasehold Mortgages and the Collateral Agency and Accounts Agreement.

*Extraordinary Mandatory Redemption of Series 2024A Balloon Indebtedness as Segregated Collateral Only Upon Enforcement Action.*

After the taking of an Enforcement Action under the Collateral Agency and Accounts Agreement, and in no case before 10-Year Cash Sweep Date, the serial Series 2024A Bond maturing on December 31, 2054, bearing interest at the rate of 5.25% (the “Series 2024A Balloon Indebtedness”), is subject to extraordinary mandatory redemption, in whole or in part, as the case may be, by the Issuer, at the Redemption Price without premium, to the extent of funds available therefor from, and as soon as practical following receipt by the Trustee of amounts transferred from, the Surplus Remaining Revenue Account pursuant to the Collateral Agency and Accounts Agreement.

*Mandatory Redemption Upon the Occurrence of a Determination of Taxability.* The Series 2024 Bonds are subject to mandatory redemption in whole or, under certain circumstances, in part, at the (i) Redemption Price with respect to the Series 2024A Bonds or Accreted Redemption Price with respect to the Series 2024B Bonds, without premium within ninety (90) days following receipt by the Trustee of written notice from a current or former Holder or Beneficial Owner of the Series 2024 Bonds or the Borrower of a Determination of Taxability. Payment of such (i) Redemption Price with respect to the Series 2024A Bonds or (ii) Accreted Redemption Price with respect to the Series 2024B Bonds, shall constitute the full and complete payment and satisfaction to the Holders of such Series 2024 Bonds for any claim, damages, costs or expenses arising out of such Determination of Taxability. All of the Series 2024 Bonds shall be redeemed upon a Determination of Taxability as described above, unless, in the Opinion of Bond Counsel, redemption of a portion of the Series 2024 Bonds would have the result that interest payable on the remaining Series 2024 Bonds outstanding after the redemption would not be includable for federal income tax purposes in the gross income of any Holder or Beneficial Owner of a Series 2024 Bond, other than a Holder or Beneficial Owner who is a “substantial user” of the portion of the Project financed or refinanced with the proceeds of the Series 2024 Bonds or a “related person” of such substantial user within the meaning of the Code, in which case only such portion shall be redeemed. The Series 2024 Bonds to be redeemed in part shall be determined by the Borrower.

Notwithstanding the foregoing, any Holder may direct the Trustee not to redeem all or a portion of its Series 2024 Bonds upon the occurrence of a Determination of Taxability, if such Series 2024 Bonds or portions thereof not to be redeemed will be in an Authorized Denomination, by delivering to the Trustee at its principal office for delivery of notices on or prior to the second Business Day prior to the date of redemption an instrument which (A) states that such person is a Holder of such Series 2024 Bonds and specifies the denomination of such Series 2024 Bonds and the CUSIP number thereof, (B) states that the Holder has knowledge that a Determination of Taxability has occurred with respect to such Series 2024 Bonds and that interest received with respect to such Series 2024 Bonds may be includible in the gross income of the Holder for federal income tax purposes and (C) directs the Trustee not to redeem such Series 2024 Bonds. Once the Trustee has received such notice in a timely fashion, such Series 2024 Bonds will never again be subject to mandatory redemption as described under this subheading.

“Determination of Taxability” has the meaning set forth in APPENDIX A – “DEFINITIONS” with respect to the Series 2022A Bonds and, with respect to the Series 2024 Bonds and any additional Series of Tax-Exempt Bonds (other than the Series 2022A Bonds), means (a) a published or private ruling, technical advice memorandum or field service advice is issued or provided by the Internal Revenue Service concluding that the interest payable on the Bonds of such Series is includable in the gross income of the holders thereof for federal income tax purposes in connection with a process in which the Borrower has

participated or has been given the opportunity to participate, and which ruling, memorandum or advice the Borrower, in its discretion, does not contest or from which no further right of judicial review or appeal exists, in each case in the manner provided below, (b) a final determination by a court of competent jurisdiction in the United States or by the Internal Revenue Service that the interest payable on the Bonds of such Series is includable in the gross income of the holders thereof for federal income tax purposes from which no further right of appeal exists in a proceeding in which the Borrower has participated or has been a party, or has been given the opportunity to participate or be a party, or (c) the delivery to the Issuer, the Borrower or the Bondholder of a written opinion of Squire Patton Boggs (US) LLP or Hardwick Law Firm, LLC, as Bond Counsel, or any other Bond Counsel, in any of the foregoing cases, to the effect that, as a result of a failure by the Borrower to observe any covenant or agreement of the Borrower in any Financing Document or any applicable Tax Certificate, or the inaccuracy of any Borrower representation or warranty therein, the interest payable on the Bonds of such Series is includable in the gross income of the holders thereof for federal income tax purposes or of written advice to the effect that the opinion of such Bond Counsel delivered on the Issuance Date of the Bonds of such Series to the effect that interest on such Bonds is not includable in the gross income of the holders thereof for federal income tax purposes may no longer be relied upon; provided, however, that no such Determination of Taxability described in (a) or (b) shall be considered to exist unless (i) the registered or Beneficial Owner or former registered or Beneficial Owner of such Series of Bonds involved in such proceeding or action (A) gives the Borrower and the Trustee prompt notice of the commencement thereof and (B) (if the Borrower agrees to pay all expenses in connection therewith) offers the Borrower the opportunity to control the defense thereof and (ii) either (A) the Borrower does not agree within 30 days of receipt of such offer to pay such expenses and liabilities and to control such defense or (B) the Borrower shall exhaust or choose not to exhaust all available proceedings for the contest, review, appeal or rehearing of such decree, judgment or action which the Borrower determines to be appropriate; provided further that no such Determination of Taxability described in (c) above shall be considered to exist if upon receipt of such opinion or written advice described in (c) above, the Borrower gives the Issuer and the Bondholder prompt written notice of its intent to obtain (at the Borrower's expense) a second opinion and, within 60 days of the receipt such opinion or written advice described in (c) above, delivers to the Issuer and the Bondholder an opinion of a nationally recognized attorney or firm of attorneys experienced in matters relating to municipal bond law and the tax exemption of interest on bonds of states and their political subdivisions, reasonably acceptable to the Issuer and the Bondholder, to the effect that interest on such Bonds is excludable from the gross income of the holders thereof for federal income tax purposes; provided, further, no Determination of Taxability described above will result (i) from the inclusion of interest on any Bond in the computation of minimum or indirect taxes or (ii) if the events that would otherwise give rise to a Determination of Taxability occur as a result of a change in the Code or regulations under the Code adopted after the date of issuance of the applicable Tax-Exempt Bonds.

#### ***Mandatory Sinking Fund Redemption***

The Series 2024 Bonds identified below shall be subject to mandatory redemption by the Issuer prior to maturity, in part, at a price equal to one hundred percent (100%) of the principal or Accreted Value amount thereof, together with accrued and unpaid interest to (but not including) the date of redemption, without premium, in satisfaction of the Sinking Fund Requirements on the dates and in the principal amounts set forth below, subject to the credits provided therefor in the Indenture:

Series 2024A Bonds maturing December 31, 2054 and bearing interest at 5.50%

Sinking Fund Requirement Payment Date	Sinking Fund Requirement
December 31, 2051	\$24,915,000
June 30, 2052	39,515,000
December 31, 2052	41,030,000
June 30, 2053	42,095,000
December 31, 2053	43,190,000
June 30, 2054	44,315,000
December 31, 2054*	45,470,000

\* Stated Maturity.

Series 2024A Bonds maturing December 31, 2054 and bearing interest at 4.50%

Sinking Fund Requirement Payment Date	Sinking Fund Requirement
December 31, 2051	\$14,645,000
June 30, 2052	22,470,000
December 31, 2052	23,325,000
June 30, 2053	23,935,000
December 31, 2053	24,565,000
June 30, 2054	25,200,000
December 31, 2054*	25,860,000

\* Stated Maturity.

Series 2024A Bonds maturing December 31, 2060

Sinking Fund Requirement Payment Date	Sinking Fund Requirement
June 30, 2055	\$53,330,000
December 31, 2055	54,795,000
June 30, 2056	56,280,000
December 31, 2056	57,810,000
June 30, 2057	59,385,000
December 31, 2057	61,000,000
June 30, 2058	62,665,000
December 31, 2058	64,365,000
June 30, 2059	66,120,000
December 31, 2059	67,920,000
June 30, 2060	69,770,000
December 31, 2060*	71,670,000

\* Stated Maturity.

## Series 2024B Bonds

Sinking Fund Requirement Payment Date	Sinking Fund Requirement
December 31, 2051	\$15,110,000
June 30, 2052	23,180,000
December 31, 2052	24,070,000
June 30, 2053	24,700,000
December 31, 2053	25,340,000
June 30, 2054	26,010,000
December 31, 2054*	26,690,000

\* Stated Maturity.

At its option, to be exercised on or before the 45<sup>th</sup> day next preceding any mandatory Redemption Date for Series 2024 Bonds due to a Sinking Fund Requirement, the Borrower may deliver to the Trustee for cancellation Series 2024 Bonds of the appropriate series, interest rate, and maturity in any aggregate principal amount which have been purchased by the Borrower in the open market. Each Series 2024 Bond so delivered shall be credited by the Trustee at 100% of the principal amount thereof against the Sinking Fund Requirement for the Series 2024 Bonds of such Series on such mandatory Redemption Date in such chronological order as shall be directed in writing by the Borrower. The Borrower will, on or before the 45<sup>th</sup> day preceding each mandatory scheduled sinking fund Redemption Date, furnish the Trustee with a certificate stating the extent to which the provisions of the first sentence of this paragraph are to be availed of with respect to such mandatory Redemption Date; and unless such certificate is so timely furnished to the Trustee, the Sinking Fund Requirements for such mandatory Redemption Date shall not be reduced under the provisions of this paragraph.

### **Selection of Bonds to be Redeemed or Purchased in Lieu of Redemption**

In the case of redemption or purchase in lieu of redemption of less than all of a Series of Bonds, unless otherwise provided in the Indenture, the Trustee at the direction of the Borrower will select the maturities of such Series of Bonds to be redeemed or purchased. If less than all of a maturity and Series of Series 2024 Bonds are to be redeemed or purchased, unless otherwise provided in the Indenture, the Series 2024 Bonds of such Series and maturity to be redeemed or purchased will be selected by the Trustee, by lot, using such method of selection as the Trustee shall determine; provided however that so long as the Series 2024 Bonds are registered in the name of Cede & Co., as nominee of DTC, the particular Series and maturities of Bonds to be redeemed will be determined in accordance with DTC's procedures as from time to time in effect. No Series 2024 Bonds may be resold subsequent to a purchase in lieu of redemption unless the Issuer obtains a Favorable Opinion of Bond Counsel, and the Issuer may rely conclusively on such Opinion in complying with the requirements of the Indenture.

### **Notice of Redemption**

Unless otherwise provided in the Indenture, when redemption of any Series 2024 Bonds or any portions thereof is requested or required pursuant to the Indenture, upon written notice from the Borrower to the Trustee delivered no less than 30 days prior to the Redemption Date, the Trustee shall give notice of such redemption in the name of the Issuer, specifying the CUSIP number, the date of original issue, the date of mailing of the notice of redemption, maturities, interest rates and principal amounts of the Series 2024 Bonds or portions thereof to be redeemed, the Redemption Date, the Redemption Price and the place or places where amounts due upon such redemption will be payable (including the name, address and telephone number of a contact person at the Trustee) and specifying the principal amounts of the Series 2024 Bonds or portions thereof to be payable and, if less than all of the Series 2024 Bonds of any maturity are to be redeemed, the numbers of such Series 2024 Bonds or portions thereof to be so redeemed. Such



notice shall further state that on the Redemption Date, there shall become due and payable upon each Series 2024 Bonds or portion thereof to be redeemed the Redemption Price thereof, and if sufficient moneys are held in trust for the payment of such Redemption Price, from and after the Redemption Date interest thereon shall cease to accrue and be payable. Such notice may set forth any additional information relating to such redemption. The Trustee, in the name and on behalf of the Issuer, (i) shall, if the Series 2024 Bonds are held in the Book-Entry System, send by Electronic Means and, in all other cases, mail a copy of such notice by first-class mail, postage prepaid, not more than 45 nor less than 20 days prior to the Redemption Date to the registered owners of any such Series 2024 Bonds that are to be redeemed, at their last addresses, if any, appearing upon the registration books, but any defect in such notice shall not affect the validity of the proceedings for the redemption of any other Series 2024 Bonds and (ii) with respect to any Bonds in connection with which Borrower has entered into a continuing disclosure undertaking, cause notice of such redemption to be submitted to the MSRB's EMMA system. Any notice mailed as provided in this section shall be conclusively presumed to have been duly given, whether or not the registered owner receives the notice. With respect to any optional redemption of the Series 2024 Bonds, such notice may state that such redemption shall be conditional upon the receipt by the Trustee on or prior to the Redemption Date of moneys sufficient to pay the Redemption Price of the Series 2024 Bonds to be redeemed, and that if such moneys shall not have been so received said notice shall be of no force and effect and the Issuer shall not be required to redeem such Series 2024 Bonds. In the event that such notice of redemption contains such a condition and such moneys are not so received, the redemption shall not be made and the Trustee shall within a reasonable time thereafter give notice to the registered owners of the Series 2024 Bonds, in the manner in which the notice of redemption was given, that such moneys were not so received. In the event of a postal strike, the Trustee shall give notice by overnight courier (if available), and in the absence of the availability of overnight courier, by Electronic Means.

#### **Payment of Redeemed Series 2024 Bonds**

Notice having been given in the manner provided in the Indenture, the Series 2024 Bonds or portions thereof so called for redemption shall become due and payable on the Redemption Date so designated at the Redemption Price. If, on the Redemption Date, moneys for the redemption of the Series 2024 Bonds or portions thereof to be redeemed, together with interest to the Redemption Date, shall be held by the Paying Agents so as to be available therefor on said date and if notice of redemption shall have been given as aforesaid, then, from and after the Redemption Date, interest on the Series 2024 Bonds or portions thereof so called for redemption shall cease to accrue and become payable. If said moneys shall not be so available on the Redemption Date, such Series 2024 Bonds or portions thereof shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption.

Payment of the Redemption Price shall be made to or upon the order of the registered owners, without presentation of the Series 2024 Bonds, by wire transfer in federal funds.

#### **Cancellation of Redeemed Bonds**

Each Series 2024 Bonds redeemed in full under the provisions of the Indenture shall forthwith be canceled and destroyed or removed from the appropriate digital ledger in accordance with the provisions of the Indenture and no Series 2024 Bonds shall be executed, authenticated or issued under the Indenture in exchange or substitution therefor.

If there shall be called for redemption less than all of any Series 2024 Bond, upon the written request of any Bondholder of such partially redeemed Series 2024 Bond to the Trustee, the Issuer shall execute, and the Trustee shall authenticate and deliver upon the surrender of such Bond, without charge to the owner thereof, for the unredeemed portion of the Series 2024 Bond so surrendered, a Series 2024 Bond or Series 2024 Bonds of the same Series and maturity in any of the Authorized Denominations and bearing interest at the same rate.

## **Mandatory Optional Redemption of the Series 2024A Balloon Indebtedness**

Commencing ten years prior to the maturity thereof, the Borrower shall direct the Trustee to redeem the Series 2024A Balloon Indebtedness pursuant to the optional redemption provisions for the Series 2024A Bonds summarized above, in the amounts and on the dates as follows, provided that the applicable transfers from the Remaining Revenue Account and Surplus Remaining Revenue Account are then permitted pursuant to the Collateral Agency and Accounts Agreement. See “PART 4 – SECURITY FOR THE SERIES 2024 BONDS – The Collateral Agency and Accounts Agreement – Restricted Distributions.”

(i) As soon as reasonably practicable after each Quarterly Distribution Date occurring on and after the 10 Year Cash Sweep Date, if the Loan Life Coverage Ratio as of the immediately preceding Calculation Date is less than 1.10:1.00 pursuant to the calculations of an independent consultant who is experienced in traffic and revenue studies for airports, in a report delivered to the Senior Collateral Agent by the request of the Borrower on any day from the date preceding such Calculation Date by fourteen (14) months until such Calculation Date, in an amount equal to the least of: (A) the amount that will make the Loan Life Coverage Ratio greater than 1.10:1.00, (B) one hundred percent (100%) of the amount deposited into the Remaining Revenue Account pursuant to the terms of the Financing Documents from and after the Calculation Date immediately preceding the 10 Year Cash Sweep Date, and (C) the Remaining Revenue Account Limit. The Borrower shall cause the independent consultant to provide the report contemplated above at any time within the fourteen (14) month period prior to the applicable Calculation Date.

(ii) As soon as reasonably practicable after each Quarterly Distribution Date occurring on and after the 5 Year Cash Sweep Date, in an amount equal to (A) the lesser of (x) the greater of (I) (a) eighty percent (80%) of the amount deposited into the Remaining Revenue Account pursuant to the terms of the Financing Documents from and after the Calculation Date immediately preceding the 5 Year Cash Sweep Date *minus* (b) all amounts previously applied to redeem the Series 2024A Balloon Indebtedness pursuant to this paragraph and (II) the amount calculated in paragraph (i) above, and (y) the Remaining Revenue Account Limit, *minus* (B) any amount required to be applied to redeem Series 2024A Balloon Indebtedness pursuant to paragraph (i) above on such date; provided that the amount determined pursuant to this paragraph shall in no event be less than \$0.

## **Green Bonds Designation – Series 2024A**

*None of the Issuer, its counsel (including Issuer Counsel, Co-Bond Counsel, and General Counsel), the Borrower, its co-counsel, the Municipal Advisor, or the Underwriters or their co-counsel have independently confirmed or verified the information under this subsection or assumed any obligation to ensure that the Series 2024A Bonds comply with any legal or other standards or principles that may be related to Green Bonds (as defined below). The Issuer and the Borrower have designated the Series 2024A Bonds as Green Bonds based solely on Kestrel’s independent external review and opinion that the Series 2024A Bonds conform with the four core components of the International Capital Market Association (the “ICMA”) Green Bond Principles and therefore qualify for Green Bonds designation.*

The designation of the Series 2024A Bonds as Green Bonds does not entitle the owner of any Series 2024A Bonds to any benefit under the Code. Owners of the Series 2024A Bonds do not have any security other than as described under this “PART 2 – DESCRIPTION OF THE SERIES 2024 BONDS.”

Per the ICMA, Green Bonds (“Green Bonds”) are any type of bond instrument where the proceeds will be exclusively applied to finance or re-finance, in part or in full, new and/or existing eligible Green Projects and which are aligned with the four core components of the Green Bond Principles. The four core components are: 1. Use of Proceeds; 2. Process for Project Evaluation and Selection; 3. Management of Proceeds; and 4. Reporting.

Kestrel has determined that the Series 2024A Bonds are in conformance with the four core components of the ICMA Green Bond Principles, as described in Kestrel’s “Second Party Opinion,” which is attached hereto as APPENDIX M – “GREEN BONDS SECOND PARTY OPINION.”

For over 20 years, Kestrel has been consulting in sustainable finance. Kestrel is an approved verifier accredited by the Climate Bonds Initiative. Kestrel reviews transactions in all asset classes worldwide for alignment with ICMA Green Bond Principles, Social Bond Principles, Sustainability Bond Guidelines and the Climate Bonds Initiative Standards and Criteria.

The Second Party Opinion issued by Kestrel does not and is not intended to make any representation or give any assurance with respect to any other matter relating to the Series 2024A Bonds. Second Party Opinions provided by Kestrel are not a recommendation to any person to purchase, hold, or sell the Series 2024A Bonds and designations do not address the market price or suitability of these bonds for a particular investor and do not and are not in any way intended to address the likelihood of timely payment of interest or principal when due.

In issuing the Second Party Opinion, Kestrel has assumed and relied upon the accuracy and completeness of the information made publicly available by the Issuer and the Borrower or that was otherwise made available to Kestrel. See also, “PART 9 – PROJECT PARTICIPANTS – Environmental, Social and Governance.”

### **PART 3 – PLAN OF FINANCE**

#### **Project Sources and Uses of Funds**

The Project is estimated to cost approximately \$5.0 billion, which will be derived from a number of sources, including primarily the Loan Facility and Obligations issued to refinance the Loan Facility (including the Series 2024 Bonds), equity contributions from the Equity Members, operating revenues, and investment income. Proceeds of the Series 2024 Bonds will be used to, among other things, pay down a portion of the amounts drawn to date under the Loan Facility and, if and to the extent applicable, terminate an associated portion of the Permitted Hedge Agreements.

The estimated sources and uses of funds with respect to the issuance of the Series 2024 Bonds are expected to be as follows:

### Sources and Uses of Series 2024 Bonds

#### Sources of Funds

Principal Amount	\$ 1,945,637,768.00
Net Original Issue Premium	<u>84,194,934.90</u>
 Total Sources	 <u><u>\$ 2,029,832,702.90</u></u>

#### Uses of Funds

Senior Term Loan Paydown	\$ 1,627,656,131.00
Refund Series 2022A Bonds	345,890,000.00
Net Permitted Hedge Agreement Termination Costs	17,706,918.63
Issuance and Other Paydown Costs <sup>1</sup>	<u>38,579,653.27</u>
 Total Uses	 <u><u>\$ 2,029,832,702.90</u></u>

<sup>1</sup> Includes Underwriters' Discount, legal fees, Issuer's fees, rating agency fees, pricing costs, a portion of the Policy premium, and other fees and expenses. Additional amounts may be paid from other Borrower funds.  
Source: JFK Millennium Partners, LLC.

After giving effect to the issuance of the Series 2024 Bonds and the pay down of a portion of the Loan Facility, the estimated sources and uses of funds for the Project are expected to be as follows:

### Aggregate Sources and Uses of Funds

<b>Sources of Funds</b>	Financing Activity through Closing	Remaining Financing Activity*	Total*
Series 2024 Bonds Proceeds	\$ 2,029,832,703	\$ 0	\$ 2,029,832,703
Loan Facility	173,002,068	1,297,451,801	1,470,453,869
Borrower Equity	0	1,300,000,000	1,300,000,000
Reinvested Operating Revenues	0	83,354,496	83,354,496
Investment Income During Construction	33,600,423	25,282,733	58,883,156
Future Bond Proceeds <sup>1</sup>	0	29,193,279	29,193,279
<b>Total Sources<sup>2</sup></b>	<b>\$ 2,236,435,193</b>	<b>\$ 2,735,282,310</b>	<b>\$ 4,971,717,503</b>
<b>Uses of Funds</b>			
Construction Costs <sup>3</sup>	\$ 1,439,083,578	\$ 1,768,620,442	\$ 3,207,704,020
Pre-Development Expenses	220,665,443	0	220,665,443
Issuance Costs <sup>4</sup>	133,011,219	13,918,355	146,929,574
Equity LOC Fees	112,058,219	102,357,067	214,415,286
Interest During Construction <sup>5</sup>	176,909,815	613,860,939	790,770,754
Swap Termination Payments	17,706,919	15,043,546	32,750,465
Senior Debt Service Reserve Account <sup>6</sup>	0	130,691,871	130,691,871
Ramp-Up Reserve Fund <sup>6</sup>	0	130,691,871	130,691,871
Liquidity Reserve Account	100,000,000	(89,745,044)	10,254,956
Other Reserve Amounts	0	49,843,263	49,843,263
<b>Total Uses<sup>2</sup></b>	<b>\$ 2,236,435,193</b>	<b>\$ 2,735,282,310</b>	<b>\$ 4,971,717,503</b>

\* Estimated, subject to change.

<sup>1</sup> Future bond proceeds used to fund costs of issuance related to the projected future 2028 refinancing of the Loan Facility.

<sup>2</sup> Totals may not add due to rounding.

<sup>3</sup> These costs include the guaranteed maximum price of the D&C Contract as well as the Port Authority Cost Reimbursement, Milestone Payments, Management Personnel, MSA Fees, Lounge and Tenant fit out related costs, Insurance, Contingencies and Fuel Line.

<sup>4</sup> Approximately \$38,579,653 of the issuance costs relate to the Series 2024 Bonds, including Underwriters' Discount, legal fees, Issuer's fees, rating agency fees, pricing costs, the Policy premium and other fees and expenses.

<sup>5</sup> Includes interest on the Loan Facility and the Series 2024 Bonds.

<sup>6</sup> To be funded on the Phase 2 End of Funding Date. See "PART 4 – SECURITY FOR THE SERIES 2024 BONDS" below.

Source: JFK Millennium Partners, LLC.

## **Contingencies**

As of September 30, 2024, the Borrower maintains in its Project Budget, available for any and all Project related activities, unallocated contingencies exceeding \$75.1 million. See APPENDIX B-3 – “REPORT OF THE LENDERS’ TECHNICAL ADVISOR – 8.3 Design-Builder’s Guaranteed Maximum Price,” “– 8.3.1 Lessee Allowances,” and “– 8.4 Lessee Costs” for additional information regarding contingency utilization to date.

## **Interest Income**

The Borrower invests cash balances related to excess borrowings, net earnings from operating Terminal 7 and its Liquidity Reserve Account in various Eligible Investments, including (i) money market funds with one of the two highest long-term ratings available from S&P and Moody’s, earning rates as of October 1, 2024 of 4.79% – 4.8% per annum, (ii) obligations the principal and interest of which are unconditionally guaranteed by the United States of America, earning rates as of October 1, 2024 at a weighted rate of 4.4% per annum, and (iii) two guaranteed investment contracts guaranteed by an entity whose obligations are rated not lower than A2 by Moody’s, one maturing June 30, 2026 and earning interest at the rate of 4.72% and the second maturing December 31, 2026 and earning interest at the annual rate of 4.70%.

## **Loan Facility**

On the Original Closing Date, (i) the Issuer issued its not to exceed \$435,000,000 Special Facilities Bonds, Senior Series 2022A (Tax-Exempt) (AMT) (JFK Airport Terminal 6-7 Redevelopment Project) (the “Series 2022 Bonds”), all of which has been funded through a direct placement with the Royal Bank of Canada (the “Series 2022 Bondholder”) and (ii) the Borrower, the Issuer, the Lenders, the Security Deposit Facility LC Issuing Bank, ING Capital LLC, as administrative agent (the “Administrative Agent”) and the coordinating lead arrangers, senior joint lead arranger, joint lead arrangers, mandated lead arrangers, senior managing agent and bookrunners party thereto entered into a Credit Agreement (the “Credit Agreement”), pursuant to which: (i) the Lenders agreed to lend up to \$3,009,000,000 to the Issuer (the “Senior Term Loans”), (ii) the Security Deposit Facility LC Issuing Bank agreed to make Security Deposit LCs available to the Issuer (which Security Deposit LCs were to be used by the Borrower to provide a security deposit to the Port Authority with respect to and as required by the Lease Agreement), and (c) the Security Deposit Facility Lender agreed to make Security Deposit Loans to the Issuer (the Security Deposit Loans together with the Senior Term Loans, the “Senior Loans”). See APPENDIX F-2 – “FORM OF CREDIT AGREEMENT” and APPENDIX F-3 – “SERIES 2022 BONDHOLDER AGREEMENT.”

The Borrower, Issuer, Collateral Agent, Lenders, Securities Deposit Facility LC Issuing Bank, Intercreditor Agent, Administrative Agent, and Series 2022 Bondholder are parties to that certain Common Terms Agreement (the “Common Terms Agreement”), dated as of November 1, 2022, which provides for certain common terms of the Series 2022 Bonds and the Senior Loans (such Series 2022 Bonds, the Senior Loans, and the Security Deposit LC Obligations being referred to herein collectively as the “Loan Facility”). The provisions of the Common Terms Agreement are only for the benefit of the Series 2022 Bondholder and the Lenders, and are not for the benefit of, nor enforceable by, the holders of the Series 2024 Bonds, and will no longer apply following the discharge of the Senior Bank Obligations. Certain events of default under the Common Terms Agreement and other financing documents related specifically to the Loan Facility do not automatically permit the exercise of remedies by the Senior Collateral Agent, unless (i) the Standstill Period has expired, (ii) the Senior Bank Obligations have been accelerated in accordance with the Senior Bank Financing Documents (which acceleration would then trigger cross-acceleration of the Series 2024 Bonds without action taken by the holders of the Series 2024 Bonds), and (iii) the Administrative Agent has instructed the Intercreditor Agent to instruct the Senior Collateral Agent to exercise an Enforcement Action of the types contemplated in clauses (a) and (b) of the definition thereof

(other than solely with respect to Segregated Collateral of the Bank Finance Parties) with respect to such event of default. See “PART 17 – RISK FACTORS – Loan Facility, Intercreditor and Hedging Risks.”

Except as expressly set forth in the Intercreditor Agreement (as defined herein), the holders of the Series 2024 Bonds will not be entitled to consent to any amendment or waiver effected under the Common Terms Agreement. The Intercreditor Agreement is attached hereto as APPENDIX D-5 and the Common Terms Agreement is attached hereto as APPENDIX F-1.

As of September 30, 2024, approximately \$2,047,000,000 has been drawn from the Senior Term Loans and all \$435,000,000 has been drawn against the Series 2022 Bonds. A portion of the proceeds of the Series 2024 Bonds will be applied to the redemption and/or prepayment of approximately \$1,973,546,131 of the Loan Facility, leaving an outstanding Loan Facility balance of approximately \$508,453,869, all of which, together with future advances thereunder is scheduled to mature in full on the Bank Financing Maturity Date. The approximately \$962,000,000 of undrawn Senior Term Loans will remain available to be funded through the Issuer to the Borrower through the TDC Loan Agreements and applied to pay costs of the Project following the issuance of the Series 2024 Bonds. The Borrower’s current plan of finance, which is subject in all respects to market conditions from time to time and remains subject to change in their sole and absolute discretion, anticipates refinancing future draws under the Loan Facility with the proceeds of additional tax-exempt and taxable bonds constituting either Additional Senior Obligations (secured on a parity basis with the Series 2024 Bonds and any remaining balance of the Loan Facility) and/or Subordinate Obligations (secured on a subordinate basis to the Senior Obligations).

Under the Common Terms Agreement, the Borrower has covenanted to enter into, and thereafter maintain, Permitted Hedge Agreements that hedge and mitigate the variable interest rate risk of the Issuer under the Loan Facility to which the Borrower is exposed, on a pass-through basis, under the terms of the TDC Loan Agreements. See APPENDIX F-1 – “FORM OF COMMON TERMS AGREEMENT.”

The obligations of the Borrower under the Loan Facility and the Permitted Hedge Agreements constitute Senior Obligations secured on a parity basis with the Series 2024 Bonds. The Loan Facility is further secured by the Series 2022A Building Note, the TDC Bank Debt Building Note, the Series 2022A Project Note, the TDC Bank Debt Project Note and the TDC Security Deposit Project Note (collectively, the “2022 TDC Notes”). The Borrower is obligated under the TDC Loan Agreements and the 2022 TDC Notes to make payments sufficient to pay the principal or Redemption Price of, and interest on, the Loan Facility, as and when the same becomes due.

The Loan Facility documentation includes certain covenants, events of default and draw requirements that are more stringent than those applicable to the Series 2024 Bonds under the Indenture. In particular, the rights and remedies of the Bank Lenders under the Loan Facility documentation are more robust than those of the Series 2024 Bondholders in certain respects, and specific conditions must be satisfied in order for the Bank Lenders to fund their obligations under the Loan Facility. The Series 2024 Bondholders are not parties to or beneficiaries of the documentation relating to the Loan Facility and are not entitled to consent to amendments or waivers thereunder, subject to the Intercreditor Agreement (see “PART 4 – SECURITY FOR THE SERIES 2024 BONDS – The Intercreditor Agreement – Amendments to Financing Documents” herein; see also APPENDIX F-1 – “FORM OF COMMON TERMS AGREEMENT”, APPENDIX F-2 – “FORM OF CREDIT AGREEMENT” and APPENDIX F-3 – “SERIES 2022 BONDHOLDER AGREEMENT” hereto for detailed provisions concerning the Loan Facility).

## Aggregate Senior Obligation Debt Service

After giving effect to the issuance of the Series 2024 Bonds and the repayment of a portion of the Loan Facility with the proceeds thereof, the aggregate debt service on the Senior Obligations will be as follows:

FYE December 31	Series 2024A Principal <sup>(1)</sup>	Series 2024A Interest <sup>(1)(2)</sup>	Series 2024B Principal	Series 2024B Interest <sup>(2)</sup>	Loan Facility & Refinancing Payments <sup>(2)(3)</sup>	Total Senior Obligation Debt Service <sup>(2)(3)</sup>
2024		\$ 15,284,920			\$ 11,024,277	\$ 26,309,197
2025		98,260,200			75,551,820	173,812,020
2026		98,260,200			89,272,696	187,532,896
2027		98,260,200			90,191,730	188,451,930
2028		98,260,200			80,073,736	178,333,936
2029		98,260,200			75,782,038	174,042,238
2030		98,260,200			75,782,038	174,042,238
2031		98,260,200			75,782,038	174,042,238
2032		98,260,200			75,782,038	174,042,238
2033		98,260,200			75,782,038	174,042,238
2034		98,260,200			104,302,163	202,562,363
2035		98,260,200		\$ 8,255,000	108,154,038	214,669,238
2036		98,260,200		8,255,000	111,139,038	217,654,238
2037		98,260,200		8,255,000	114,187,538	220,702,738
2038		98,260,200		8,255,000	117,304,038	223,819,238
2039		98,260,200		8,255,000	120,472,163	226,987,363
2040		98,260,200		8,255,000	123,715,413	230,230,613
2041		98,260,200		8,255,000	127,015,288	233,530,488
2042		98,260,200		8,255,000	130,378,538	236,893,738
2043		98,260,200		8,255,000	133,810,125	240,325,325
2044		98,260,200		8,255,000	137,319,431	243,834,631
2045		98,260,200		8,255,000	140,897,425	247,412,625
2046		98,260,200		8,255,000	144,542,988	251,058,188
2047		98,260,200		8,255,000	148,268,688	254,783,888
2048		98,260,200		8,255,000	152,064,994	258,580,194
2049		98,260,200		8,255,000	155,926,456	262,441,656
2050		98,260,200		8,255,000	159,880,656	266,395,856
2051	\$ 39,560,000	98,260,200	\$ 9,151,825	14,213,175	109,457,944	270,643,144
2052	126,340,000	94,638,613	28,618,380	25,551,620		275,148,613
2053	133,785,000	88,043,950	30,308,227	24,251,273		276,388,450
2054	140,845,000	81,081,263	31,919,336	22,765,414		276,611,013
2055	203,880,000	72,924,425				276,804,425
2056	215,135,000	61,800,906				276,935,906
2057	227,015,000	50,063,388				277,078,388
2058	239,555,000	37,677,681				277,232,681
2059	252,785,000	24,607,869				277,392,869
2060	266,740,000	10,816,263				277,556,263
Total <sup>4</sup>	<b>\$ 1,845,640,000</b>	<b>\$ 3,189,964,676</b>	<b>\$ 99,997,768</b>	<b>\$ 218,861,482</b>	<b>\$ 3,063,861,365</b>	<b>\$ 8,418,325,291</b>

<sup>(1)</sup> Assumes Series 2024A Balloon Indebtedness refinanced prior to final maturity with amortization semiannually from June 30, 2055 to December 31, 2060 with coupon of 5.25%.

<sup>(2)</sup> Gross interest shown and does not take into effect any funding of interest during construction.

<sup>(3)</sup> Assumes remaining Senior Term Loans pay interest at an effective rate of 5.887% and Series 2022A Bonds pay interest at an effective rate of 4.801% as each are drawn through the projected refinancing date in March 2028. Assumes future refinancing of remaining approximately \$1,470,453,869 of the Loan Facility in March 2028 at an effective total interest cost of 4.98% with coupons ranging from 5.00% to 5.25% and principal amortization semiannually from June 30, 2034 to December 31, 2051. Amounts are estimated and subject to change.

<sup>(4)</sup> Totals may not add due to rounding.



## Hedging Agreements

With respect to the Senior Term Loans, the Borrower has entered into and is required, under the Common Terms Agreement, to maintain certain hedge agreements (the “Senior Term Loans Permitted Hedge Agreements”) that collectively have (A) through but not including the Substantial Completion Date, an effective notional amount of not less than 100% of the projected aggregate outstanding principal amount of the Senior Term Loans as of each Scheduled Credit Extension Date; (B) for the period commencing on, and including the Substantial Completion Date and ending on, but excluding, the first anniversary thereof, an effective notional amount of not less than 90% of the projected aggregate outstanding principal amount of the Senior Term Loans as of each Interest Payment Date and (C) thereafter, until the Bank Financing Maturity Date, an effective notional amount of not less than 75% of the projected aggregate outstanding principal amount of the Senior Term Loans as of each Interest Payment Date, in each case calculated in accordance with the Base Case Financial Model as of the Original Closing Date; provided that, if the aggregate effective notional amount of the Senior Term Loans Permitted Hedge Agreements is greater than 100% of the projected aggregate principal amount of the Senior Term Loans, in each case, calculated in accordance with the Base Case Financial Model, the Borrower shall within five (5) Business Days thereafter partially terminate, on a pro rata basis, the Senior Term Loans Permitted Hedge Agreements in the amount necessary to ensure that the effective notional amount of the Senior Term Loans Permitted Hedge Agreements do not exceed 100% of the projected outstanding principal amount of the Senior Term Loans, in each case, calculated in accordance with the Base Case Financial Model.

With respect to the Series 2022A Bonds, the Borrower has entered into and is required to maintain certain hedge agreements (the “Series 2022A Bonds Permitted Hedge Agreements”) that collectively have (A) through but not including the Substantial Completion Date, an effective notional amount of not less than 100% of the projected par value of the outstanding Series 2022A Bonds as of each Scheduled Drawing Date, provided that if the Purchaser exercises its right to advance a drawing of the remaining available RBC Commitment, from the date that is five (5) Business Days after the applicable drawing, the effective notional amount shall be not less than 100% of the actual par value of the outstanding Series 2022A Bonds; (B) for the period commencing on, and including, the Substantial Completion Date and ending on, but excluding, the first anniversary thereof, an effective notional amount of not less than 90% of the projected par value of the outstanding Series 2022A Bonds as of each Interest Payment Date, and (C) thereafter, until the Bank Financing Maturity Date, an effective notional amount of not less than 75% of the projected par value of the outstanding Series 2022A Bonds as of each Interest Payment Date, in each case, calculated in accordance with the Base Case Financial Model as of the Original Closing Date; provided that, if the aggregate effective notional amount of the Series 2022A Bonds Permitted Hedge Agreements is greater than 100% of the projected aggregate par value of the outstanding Series 2022A Bonds on any Interest Payment Date, in each case, calculated in accordance with the Base Case Financial Model, the Borrower shall within five (5) Business Days thereafter partially terminate, on a pro rata basis, the Series 2022A Bonds Permitted Hedge Agreements, in the amount necessary to ensure that the effective notional amount of the Series 2022A Bonds Permitted Hedge Agreements do not exceed 100% of the projected par value of the outstanding Series 2022A Bonds, in each case, calculated in accordance with the Base Case Financial Model.

Pursuant to the Common Terms Agreement, the Borrower has entered into and is required to maintain certain hedge agreements to mitigate interest rate exposure of the Borrower (the “Interest Rate Exposure Hedge Agreements”) that, for the period commencing on, and including, the Bank Financing Maturity Date through, and including, December 31, 2060, effectively hedge or mitigate at all times during such period, on an aggregate basis, not less than 75% of the effective projected interest rate exposure of the Borrower (whether direct or indirect) during such period on the projected principal amount or par value, as the case may be, of the Indebtedness intended to repay the Senior Term Loans and redeem the Series 2022A Bonds in full upon occurrence of the Bank Financing Maturity Date as of each projected interest payment date of such Indebtedness, in each case, as shown in the Base Case Financial Model delivered on the Original Closing Date.

As of September 1, 2024, the Borrower has entered into Permitted Hedge Agreements with ING Capital Markets LLC, JPMorgan Chase Bank, National Association, KeyBank National Association, Royal Bank of Canada, The Bank of Nova Scotia, SMBC Capital Markets, Inc., Mizuho Capital Markets LLC and MUFG Bank, LTD, each of which (or an affiliate thereof) is also a Lender under the Loan Facility.

In connection with the issuance of the Series 2024 Bonds and payoff of a portion of the Loan Facility with the proceeds thereof, an associated portion of the Permitted Hedge Agreements will be terminated. See “PART 3 – PLAN OF FINANCE – Sources and Uses of Series 2024 Bonds” herein.

## **Member Equity**

### ***Aggregate Capital Commitment***

Under the Equity Contribution Agreement, the aggregate amount of equity investment that the equity members of the Borrower have committed to contribute (the “Total Equity Commitment”) is \$1.3 billion, which amount is split among the Borrower’s equity members as follows: (i) with respect to RXR JFK MP Holdings Member LLC (the “RXR Member”), \$260,000,000, (ii) with respect to Corsair-Vantage Airport Fund Aggregator, L.P. (the “Vantage Member”), \$585,000,000, (iii) with respect to ATI Javelin Holdings, LP (the “ATI Member” and, together with the RXR Member, Vantage Member and JetBlue, the “Equity Members”), \$390,000,000, and (iv) with respect to JetBlue, \$65,000,000.

The obligations of each Equity Member to make Equity Contributions under the Equity Contribution Agreement are irrevocable, absolute and unconditional. As described under “***Equity Letters of Credit or Collateral Account Control Agreement***” below, each Equity Member has also posted or entered into, as applicable, and must maintain, until the earlier of (i) the date on which the unfunded equity commitment of each Equity Member is zero and (ii) the date on which the later of (x) the Discharge of Senior Obligations and (y) the Discharge of Subordinate Obligations occurs (the earlier of such dates being the “Release Date”), one or more irrevocable standby letter(s) of credit or collateral accounts subject to a collateral account control agreement in the amount of their required Equity Contribution.

### ***Payment of Equity Contributions; Acceleration***

Pursuant to the Equity Contribution Agreement, the Equity Members will be required to make Equity Contributions into the Equity Contribution Sub-Account of the Construction Account as and when requested by the Borrower (or, in certain circumstances, the Collateral Agent or the Administrative Agent). The Borrower will determine when during the construction period to request such Equity Contributions, in order to optimize the use of the various funding sources available to the Borrower.

Upon receipt by the applicable Equity Member of a contribution notice from the Borrower (or, in certain circumstances, the Collateral Agent or the Administrative Agent) requesting payment of a portion of such Equity Contribution, each Equity Member will contribute the requested funds, up to the amount of its total equity commitment. All Equity Contributions will be deemed to be made upon deposit of the applicable funds into the Equity Contribution Sub-Account of the Construction Account.

If the full amount of the equity commitments have not been contributed by the Substantial Completion Date, the entirety of each Equity Member’s remaining equity commitment is required to be made on the Substantial Completion Date. In addition, the payment of Equity Contributions may be requested (i) at the election of the Borrower; (ii) upon the occurrence and continuance of an Event of Default under the Senior Bank Financing Documents; (iii) if a payment under the TDC Loan Agreements has been accelerated, or (iv) in the event that the Securities Intermediary has been instructed to transfer funds from the Equity Contribution Sub-Account of the Construction Account and there are not sufficient funds in such account to make such transfers as of two (2) Business Days prior to the applicable transfer date, in which case the aggregate amount equal to such shortfall shall be deposited.

If a Sponsor fails to make a payment or Equity Contribution or provide Equity Support in accordance with the Equity Contribution Agreement (a “Defaulting Sponsor”), each other Sponsor has the right, but not the obligation, to provide payment of the relevant Equity Contribution or provide Equity Support, as applicable, on behalf of the Defaulting Sponsor, provided that they exercise such option by providing notice to the Collateral Agent accompanied by (i) payment into the Equity Contribution Sub-Account of the Construction Account of the applicable defaulted payment or (ii) the delivery of Equity Support, as applicable, within four (4) Business Days of the relevant Sponsor becoming a Defaulting Sponsor. The Senior Collateral Agent acknowledges that any such payment(s) or delivery of Equity Support, as applicable, shall be deemed to satisfy the Defaulting Sponsor’s obligations under the Equity Contribution Agreement in respect of any failure by such Defaulting Sponsor and shall not give rise to an Event of Default or any other default or event of default under any Financing Document.

The Equity Members are not required to contribute equity funds in excess of each Equity Member’s pro rata share of the Total Equity Commitment, and such obligations are several, not joint and several.

### **Liquidity Reserve Account**

Concurrently with the execution of the Lease Agreement, the Borrower funded a Liquidity Reserve Account in an amount of \$100,000,000 which, as of August 31, 2024, had a balance of \$105,008,910, all of which remains on deposit therein. Amounts on deposit in the Liquidity Reserve Account are available to address unforeseen liquidity events or any other needs of the Project, as determined by the Borrower, and, in particular, amounts on deposit in the Liquidity Reserve Account shall be available as follows:

(i) Prior to the Phase 2 End of Funding Date, to pay Project Costs (including to fund any shortfall in the Pre-Substantial Completion Revenue Account), at the direction of the Borrower.

(ii) On or after the Phase 2 End of Funding Date, (A) to pay Project Costs (including to fund any shortfall in the Post-Substantial Completion Revenue Account, but not to pay Permitted Tax Distributions or transfer funds to the Remaining Revenue Account) and (B) if the amount in the Liquidity Reserve Account exceeds the Required Liquidity Reserve Amount, then any amount in the Liquidity Reserve Account in excess of the Required Liquidity Reserve Amount may be transferred to the Distribution Account (but only if the Restricted Payment Conditions are then satisfied), or may be transferred, at the election of the Borrower, to any other account created under the Collateral Agency and Accounts Agreement, including any reserve account.

Beginning on the first Quarterly Distribution Date following the date on which aggregate distributions made by the Borrower to the Sponsors from the Distribution Account equal the aggregate amount of equity invested by the Sponsors in the Project to such date, so long as no Default or Event of Default has occurred and is continuing, amounts remaining in the Liquidity Reserve Account shall be transferred to the Distribution Account (without (and not subject to) any conditions, restrictions or limitations) for distribution by the Borrower to the Sponsors in equal installments on each Quarterly Distribution Date over the remainder of the Lease Agreement.

The Liquidity Reserve Account is a pledged account that will be maintained by the Securities Intermediary and shall constitute Collateral for the benefit of the Secured Parties.

No additional deposits are required to be made to the Liquidity Reserve Account, even if the amount in such account falls below the Required Liquidity Reserve Amount.

### **Bank Consents**

Since the initial closing of the Loan Facility, there have been three Bank Consents delivered: (i) that certain Limited Consent and Waiver dated December 28, 2023, executed by the Borrower, the Senior

Collateral Agent, the Intercreditor Agent, the Trustee, and the Administrative Agent (relating to and permitting the Borrower to deliver a \$285,000 letter of credit to the Port Authority in connection with Borrower's lease of certain office space at the Airport from the Port Authority); (ii) that certain Limited Consent and Waiver Regarding Fit-Out Allowance, dated January 12, 2024, executed by the Borrower and the Administrative Agent (authorizing certain change orders under the D&C Contract with an estimated cost not to exceed \$135.4 million in the aggregate); and (iii) that certain Limited Consent and Waiver – Owner Controlled Insurance Program – Claims Reserve Funding, dated February 23, 2024, executed by the Borrower, the Senior Collateral Agent, the Intercreditor Agent, the Trustee, and the Administrative Agent and any additional consents granted to the Borrower by the Administrative Agent on behalf of the Bank Finance Parties, pursuant to the terms of the Senior Financing Documents (relating to the establishment of the Owner Controlled Insurance Program and the funding of certain deposits in connection therewith of not to exceed \$98.5 million over a period of five years) (collectively, the “Bank Consents”). The Bank Consents have each been effective since their respective dates and have been incorporated and reflected in the descriptions and discussions throughout this Official Statement, including, in particular, those relating to the Project, the D&C Contract, the Owner Controlled Insurance Program and in the Consultants' reports appended hereto as APPENDIX B.

In addition, the Administrative Agent, the Senior Collateral Agent, the Trustee, the Intercreditor Agent and the Hedge Providers have consented to amendments and supplements to certain Financing Documents (including, among other documents, the First Amendments to TDC Loan Agreements, First Amendment to the Collateral Agency and Accounts Agreement, and Second Supplemental Indenture), and the Administrative Agent has provided waivers of certain terms of the Common Terms Agreement, in connection with, and to facilitate, the issuance of the Series 2024 Bonds.

### **Lease Constraint on Indebtedness**

Pursuant to the Lease Agreement, the aggregate principal amount of the Borrower's debt secured by the Leasehold Mortgages shall not exceed a maximum amount of \$4,225,000,000. The Borrower is generally required to obtain the Port Authority's prior written consent to any proposed refinancing. However, the Port Authority's consent is not required if the proposed refinancing is incurred to refinance all or any portion of the initial Loan Facility originating under the Senior Financing Documents, subject to certain conditions in the Lease Agreement. The Borrower has structured the issuance of the Series 2024 Bonds to fit within a permitted Refinancing under the Lease Agreement that does not require the Port Authority's consent. These indebtedness restrictions set forth in the Lease Agreement are for the sole benefit of the Port Authority. The Lease Agreement provisions can be waived or amended by the Port Authority without the consent of the holders of the Series 2024 Bonds or other Senior Obligations. For more information related to the Lease Agreement's constraints on indebtedness, see APPENDIX E – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE AGREEMENT – Project Financing.”

## **PART 4 – SECURITY FOR THE SERIES 2024 BONDS**

### **General**

Generally, after substantial completion of the Project, the Series 2024 Bonds and all other Senior Obligations are expected to be paid from Project Revenues. Amounts due and payable on the Senior Obligations, including the Series 2024 Bonds, are secured, on a parity basis, by certain collateral, other than Segregated Collateral described below, that is held by the Senior Collateral Agent under the Collateral Agency and Accounts Agreement. This collateral includes the following:

- (a) Covenants of the Borrower to cause the timely payment of the Senior Obligations, including the Series 2024 Bonds, under the TDC Loan Agreements and TDC Notes. See “PART 4 – SECURITY FOR THE SERIES 2024 BONDS – The TDC Loan Agreements.” The Issuer has assigned all of its right, title and interest, except for its Reserved Rights, in the Leasehold

Mortgages, the Assignment of Leases and Rents, the TDC Loan Agreements and the TDC Notes to the Senior Collateral Agent pursuant to the Issuer Assignment Agreements.

(b) Covenants of the Borrower under the Collateral Agency and Accounts Agreement to take all lawful measures to establish, prescribe and collect Project Revenues sufficient to meet the rate covenant/financial ratio covenant described herein. See “PART 4 – SECURITY FOR THE SERIES 2024 BONDS – Rate Covenant/Financial Ratio Covenant.”

(c) The Project Accounts created under the Collateral Agency and Accounts Agreement, including, but not limited to:

(1) The Senior Debt Service Reserve Account, a Segregated Reserve Pledged Account solely for the benefit of the Senior Secured Parties; see “PART 4 – SECURITY FOR THE SERIES 2024 BONDS – Debt Service Reserve Account;” and

(2) The Ramp-Up Reserve Account, a Segregated Reserve Pledged Account solely for the benefit of the Senior Secured Parties; see “PART 4 – SECURITY FOR THE SERIES 2024 BONDS – Ramp-Up Reserve Account.”

(d) The Leasehold Mortgages, including a mortgage lien on and security interest in all of the Borrower’s interests under the Lease Agreement. The Leasehold Mortgages secure all of the Borrower’s indebtedness, liabilities and obligations under the TDC Loan Agreements and the TDC Notes, including any obligations due by the Borrower to the Senior Collateral Agent on behalf of the Senior Secured Parties pursuant to the TDC Loan Agreements and the TDC Notes. See “PART 4 – SECURITY FOR THE SERIES 2024 BONDS – Leasehold Mortgages.”

(e) The Senior Equity Pledge Agreement, including a pledge of HoldCo’s interests, options, warrants and rights to purchase, dividends, distributions, cash, securities, instruments and other property from time to time paid, payable or otherwise distributed in respect of or in exchange for all or any part of its limited liability company interests in the Borrower and any indebtedness owed to HoldCo by the Borrower from time to time. See “PART 4 – SECURITY FOR THE SERIES 2024 BONDS – The Senior Equity Pledge Agreement.”

(f) The Assignment of Leases and Rents, including a pledge of all of the Borrower’s right, title, and interest in all written or oral leases, subleases, licenses, franchises, concessions, and other occupancy agreements to which the Borrower is a landlord. See “PART 4 – SECURITY FOR THE SERIES 2024 BONDS – Assignment of Leases and Rents.”

(g) The Direct Agreements, including collateral assignments of the D&C Contract, the Management Services Agreement and the JetBlue Sublease by the Borrower to the Senior Collateral Agent, including certain cure and step-in rights, subject to certain conditions. See “PART 4 – SECURITY FOR THE SERIES 2024 BONDS – The Direct Agreements.”

(h) The Senior Security Agreement, including a Security Interest in and lien on all of the Borrower’s right, title and interest in, to and under all of its personal property, tangible and intangible. See “PART 4 – SECURITY FOR THE SERIES 2024 BONDS – The Senior Security Agreement.”

(i) In certain limited circumstances, amounts owed under the Equity Contribution Agreement, as further secured by the Equity Letters of Credit or Equity Collateral Accounts. See “PART 4 – SECURITY FOR THE SERIES 2024 BONDS – Equity Letters of Credit and Collateral Account Control Agreement.”

The rights of the Senior Secured Parties regarding actions on the Collateral are subject to the terms of the Intercreditor Agreement. The Holders of the Series 2024 Bonds are represented by the Trustee as their Secured Debt Representative under the Intercreditor Agreement. See “PART 4 – SECURITY FOR THE SERIES 2024 BONDS – The Intercreditor Agreement.”

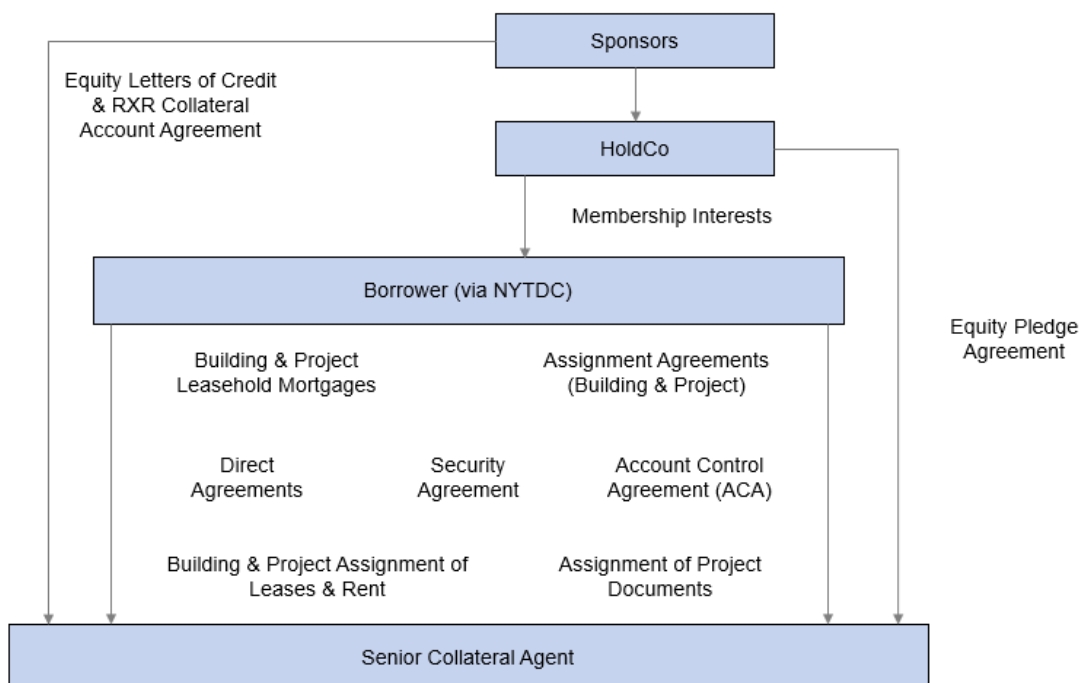
In addition to the collateral held by the Senior Collateral Agent, the Series 2024 Bonds are also secured by the Trust Estate under the Indenture. See “PART 4 – SECURITY FOR THE SERIES 2024 BONDS – The Indenture.”

The collateral held by the Senior Collateral Agent, the Trust Estate (with respect to Senior Bonds) and all additional collateral in which a Security Interest is granted or intended to be granted in favor of the Senior Secured Parties (or any sub-agent or other Person acting for or on behalf of the Senior Secured Parties), for the benefit of the Senior Secured Parties, by the Issuer, the Borrower or the HoldCo under the Senior Collateral Documents constitute the Senior Collateral securing the Series 2024 Bonds (collectively, the “Senior Collateral”).

Certain Senior Collateral that is designated in the Senior Financing Documents as Segregated Collateral is pledged only for the benefit of certain Obligations or classes of Obligations. In addition to the Segregated Reserve Pledged Accounts discussed above, Segregated Collateral includes the Segregated Proceeds Pledged Accounts, the Surplus Remaining Revenue Account, each under the Collateral Agency and Accounts Agreement, and Segregated Policy Payment Accounts under the Indenture.

Please see the following diagram for an overview of the documents securing the Series 2024 Bonds and other Senior Obligations:

## Senior Security Documents



## **The TDC Loan Agreements**

The Issuer has loaned certain proceeds of the Loan Facility and will loan the proceeds of the Series 2024 Bonds to the Borrower under and pursuant to the TDC Loan Agreements and the related TDC Notes for purposes of financing and refinancing a portion of the costs relating to the design and construction of the Project and to pay or reimburse the Borrower for certain other costs and expenses. Proceeds used to pay a “cost of improvement” under the New York Lien Law are loaned to the Borrower under the TDC Building Loan Agreement and other proceeds, used to pay costs that do not qualify as a “cost of improvement” under the New York Lien Law, are loaned to the Borrower under the TDC Project Loan Agreement.

The Borrower has agreed in the First Amendments to the TDC Loan Agreements to optionally redeem the Series 2024 Balloon Indebtedness pursuant to the terms outlined in the Second Supplemental Indenture. See “PART 2 – DESCRIPTION OF THE SERIES 2024 BONDS – Mandatory Optional Redemption of the Series 2024A Balloon Indebtedness.” The Borrower has agreed to cause the Senior Collateral Agent to make certain payments to the Bond Insurer, including the payment of deferred Bond Insurer Premium as a fee, administrative cost and expense due and payable under the Financing Documents.

The Issuer has assigned its interests in the TDC Loan Agreements to the Collateral Agent, except for the Issuer’s Reserved Rights, pursuant to the Issuer Assignment Agreements. For more information relating to the terms of the TDC Loan Agreements, see APPENDIX D-4 – “FORM TDC LOAN AGREEMENTS.”

## **The Collateral Agency and Accounts Agreement**

Pursuant to the terms of the Collateral Agency and Accounts Agreement, The Bank of New York Mellon has been appointed as Senior Collateral Agent by the Administrative Agent (on behalf of the Bank Lenders and the Holders of the Series 2022A Bonds), the Trustee (on behalf of the Holders of the Bonds (other than the Holders of the Series 2022A Bonds) and the Senior Bond Insurer Obligations) and the Intercreditor Agent (on behalf of each other Senior Secured Party) with respect to the security interests in and to the Senior Collateral and the rights and remedies set forth under the Senior Collateral Documents. The Collateral Agency and Accounts Agreement appoints the Collateral Agent and outlines its duties and responsibilities, establishes certain Project Accounts and Non-Pledged Accounts, dictates the flow of Project Revenues through the Pre-Substantial Completion Revenue Account and Post-Substantial Completion Revenue Account and includes certain covenants of the Borrower and the Issuer, among other provisions. See APPENDIX D-2 – “FORM OF COLLATERAL AGENCY AND ACCOUNTS AGREEMENT.”

### ***Rate Covenant/Financial Ratio Covenant***

The Collateral Agency and Accounts Agreement contains certain financial commitments of the Borrower, one of which is the rate covenant/financial ratio covenant. Under the Collateral Agency and Accounts Agreement, the Borrower has covenanted to take all lawful measures to establish, prescribe and collect Project Revenues sufficient, after paying all O&M Expenses (including all O&M Expenses not constituting Permitted O&M Expenses and all Ground Rent, First Additional Rent, Second Additional Rental, and Third Additional Rent) to achieve, in each DSCR Calculation Period, (i) during the Ramp-Up Period, (A) a Total Debt Service Coverage Ratio of 1.25x and (B) a Senior Debt Service Coverage Ratio of 1.30x, and (ii) after the Ramp-Up End Date, (A) a Total Debt Service Coverage Ratio of 1.15x and (B) a Senior Debt Service Coverage Ratio of 1.20x, both on a prospective basis (based on forecasts prepared by the Borrower based on reasonable assumptions and information known to the Borrower at such time) and on a retrospective basis (based on the Borrower’s annual audited and quarterly unaudited consolidated financial statements most recently required to be delivered), subject to the terms of the Collateral Agency and Accounts Agreement; provided, however that (i) if the Total Debt Service Coverage Ratio or the Senior Debt Service Coverage Ratio requirement is not projected to be met for an upcoming fiscal year, then the

Borrower shall request a third party to recommend revisions to its Annual Operating Budget and, after taking into account such recommendations, to revise its Annual Operating Budget to produce (to the extent practicable using prudent business judgment) sufficient revenues to satisfy such Total Debt Service Coverage Ratio or Senior Debt Service Coverage Ratio requirement, and that (ii) failure to satisfy this covenant shall not be deemed an event of default under the TDC Loan Agreements, the Credit Agreement or the other Financing Documents so long as the Borrower revises its Annual Operating Budget, as recommended by the applicable third party, insofar as practicable (using prudent business judgment) so as to cure such failure. For further description of the rate covenant/financial ratio covenant and the other financial commitments made by the Borrower, see APPENDIX D-2 – “FORM OF COLLATERAL AGENCY AND ACCOUNTS AGREEMENT.”

In addition to the rate covenant set forth in the Collateral Agency and Accounts Agreement, the Borrower has covenanted, in the Common Terms Agreement for the benefit of the Bank Finance Parties, to maintain for each DSCR Calculation Period a Total Debt Service Coverage Ratio of not less than 1.10 to 1.00 and a Senior Debt Service Coverage Ratio of not less than 1.15 to 1.10, on a retrospective and prospective basis. Failure to satisfy such covenant shall be a default under the Common Terms Agreement, subject to certain rights to cure such breach in certain circumstances if additional equity contributions are made to the Borrower within specified time frames. This covenant is only for the benefit of the Bank Finance Parties, may be amended or waived by the Bank Finance Parties in their sole discretion, and will no longer apply following the discharge of the Senior Bank Obligations, see APPENDIX F-1 – “FORM OF COMMON TERMS AGREEMENT.”

### ***Project Accounts***

Pursuant to the Collateral Agency and Accounts Agreement, certain Project Accounts have been, and will be, established in the name of the Borrower and certain Non-Pledged Accounts have established in the name of the Borrower or the Port Authority, as applicable. Pursuant to the Senior Security Agreement, the Borrower pledged and granted to the Collateral Agent, for the benefit of the Secured Parties, a security interest in and lien on the Project Accounts and the funds and investments on deposit therein, subject to the provisions of the Collateral Agency and Accounts Agreement; provided, however, that the Collateral Agent does not have a security interest in or lien on the Non-Pledged Accounts, nor the funds and investments on deposit therein.

The proceeds of the Series 2024 Bonds and the Loan Facility, as well as Project Revenues and certain other amounts received by the Borrower (including Equity Contributions), have been and will be deposited into certain Project Accounts, and the Borrower may direct the Securities Intermediary to credit funds to or deposit funds in, and to withdraw and transfer funds from, each Project Account, including the withdrawal of proceeds of the Series 2024 Bonds to pay for or reimburse Project Costs, subject to satisfaction by the Borrower of certain requirements for withdrawals and transfers set forth in the Collateral Agency and Accounts Agreement. See APPENDIX D-2 – “FORM OF COLLATERAL AGENCY AND ACCOUNTS AGREEMENT – Article V: Project Accounts and Non-Pledged Accounts.” for a further description of the Project Accounts. The flow of funds set forth in the Collateral Agency and Accounts Agreement is summarized in “PART 5 – FLOW OF FUNDS UNDER THE COLLATERAL AGENCY AND ACCOUNTS AGREEMENT.”

### ***Debt Service Reserve Account***

The Collateral Agency and Accounts Agreement establishes a Senior Debt Service Reserve Account, which will be funded on the Phase 2 End of Funding Date in an amount equal to the Senior Debt Service Reserve Requirement, as described below, and as set forth in clause *Seventh* under “PART 5 – FLOW OF FUNDS UNDER THE COLLATERAL AGENCY AND ACCOUNTS AGREEMENT – Flow of Funds Post-Substantial Completion.” The Senior Debt Service Reserve Account will secure the Series 2024 Bonds, the Loan Facility, ordinary course payments on the Permitted Hedge Agreements and any



Additional Senior Obligations issued in accordance with the Collateral Agency and Accounts Agreement and the other Financing Documents.

The Senior Debt Service Reserve Account is a pledged account maintained by the Securities Intermediary and constitutes Segregated Collateral solely for the benefit of the Senior Secured Parties; the Security Interest thereon pursuant to the Senior Security Agreement is held by the Senior Collateral Agent for the exclusive benefit of the Senior Secured Parties.

The Senior Debt Service Reserve Requirement on the Phase 2 End of Funding Date and on each Transfer Date thereafter is the Aggregate Debt Service with respect to all Outstanding Senior Obligations during the next succeeding twelve (12) month period, net of any amounts (up to the Aggregate Debt Service with respect to the Outstanding Senior Obligations during the next succeeding three (3) month period) then on deposit in the Ramp-Up Reserve Account.

Any amounts on deposit in the Senior Debt Service Reserve Account in excess of the Senior Debt Service Reserve Requirement shall be transferred by the Securities Intermediary to the Post-Substantial Completion Revenue Account; provided, however, that if any proceeds of the Series 2024 Bonds or any other Tax-Exempt Bonds are on deposit in the Senior Debt Service Reserve Account, such proceeds shall be transferred to the Tax-Exempt Bond Interest Payment Sub-Account established for such Tax-Exempt Bonds. See “PART 3 – PLAN OF FINANCE.”

### ***Ramp-Up Reserve Account***

The Collateral Agency and Accounts Agreement establishes the Ramp-Up Reserve Account, which is intended to provide additional debt service reserves for the Senior Obligations during the Ramp-Up Period. The Borrower will fund the Ramp-Up Reserve Account on the Phase 2 End of Funding Date with proceeds from the subaccounts of the Construction Account allocated for such purpose (with the particular subaccount(s) of the Construction Account to be determined at the Borrower’s election at the time of each such funding, subject to certain restrictions regarding the application of proceeds of Tax-Exempt Obligations) in an amount equal to the Aggregate Debt Service with respect to all Outstanding Senior Obligations during the next succeeding nine (9) month period (said amount being, as of the Phase 2 End of Funding Date and on each Transfer Date thereafter until the Ramp-Up End Date, the “Ramp-Up Reserve Requirement”), and thereafter additional deposits shall be made in accordance with the requirements of “PART 5 – FLOW OF FUNDS UNDER THE COLLATERAL AGENCY AND ACCOUNTS AGREEMENT – Flow of Funds Post-Substantial Completion” herein. No additional funds will be deposited into the Ramp-Up Reserve Account after the discharge of the Senior Bank Obligations.

The Ramp-Up Reserve Account is a pledged account that is maintained by the Securities Intermediary and constitutes Segregated Collateral solely for the benefit of the Senior Secured Parties; the Security Interest thereon pursuant to the Senior Security Agreement is held by the Senior Collateral Agent for the exclusive benefit of the Senior Secured Parties.

No later than five (5) Business Days after each Calculation Date during the Ramp-Up Period, the Borrower shall deliver to the Intercreditor Agent and the Senior Collateral Agent an officer’s certificate with its calculation of the Senior Debt Service Coverage Ratio and the Ramp-Up Debt Service Coverage Ratio for the DSCR Calculation Period ended on such Calculation Date. If, on any date on which any Debt Service is due on any Senior Obligations, the Senior Debt Service Coverage Ratio for the DSCR Calculation Period ending on the immediately preceding Calculation Date was less than 1.30:1.00, the Collateral Agent shall transfer from the Ramp-Up Reserve Account to the relevant Sub-Account(s) of the Senior Obligations Payment Account funds to make payment of Debt Service due and payable on the applicable Transfer Date in an aggregate amount necessary to cause the Ramp-Up Debt Service Coverage Ratio for such immediately preceding calendar quarter to be equal to 1.30:1.00. On the Ramp-Up End Date (which is the first date after the day on which the Ramp-Up Debt Service Coverage Ratio has been equal to or above 1.40:1.00 for eight

consecutive Calculation Dates), all remaining amounts on deposit in the Ramp-Up Reserve Account shall be transferred, (i) first, to the Senior Debt Service Reserve Account, to the extent necessary to bring the balance of the Senior Debt Service Reserve Account up to an amount equal to the Senior Debt Service Reserve Requirement, and (ii) second, to the Post-Substantial Completion Revenue Account, provided that any proceeds of Tax-Exempt Obligations shall only be used for permitted uses in accordance with the Code.

If the Senior Collateral Agent is required to make any transfer of funds from the Ramp-Up Reserve Account to any other Project Account, the Senior Collateral Agent shall, on the applicable Transfer Date, send notice to the Borrower, the Intercreditor Agent and the Disclosure Dissemination Agent.

Amounts on deposit in the Ramp-Up Reserve Account shall be available to fund certain shortfalls in the Post-Substantial Completion Revenue Account, as well as payments to any Interest Payment Sub-Account or Hedge Ordinary Course Payment Sub-Account (provided that the amount on deposit in the Ramp-Up Reserve Account immediately after giving effect to such transfer, when added to the amount then on deposit in the Senior Debt Service Reserve Account shall be at least equal to the Senior Debt Service Reserve Requirement at such time).

Any amounts on deposit in the Ramp-Up Reserve Account in excess of the Ramp-Up Reserve Requirement shall be transferred by the Securities Intermediary to the Post-Substantial Completion Revenue Account; provided, however, that if any proceeds of the Series 2024 Bonds or any other Tax-Exempt Bonds are on deposit in the Ramp-Up Reserve Account, such excess amount shall be transferred to the Tax-Exempt Bond Interest Payment Sub-Account established for such Tax-Exempt Bonds. See “PART 3 – PLAN OF FINANCE.”

#### ***Reserve Account Letters of Credit***

Subject to certain restrictions of the Common Terms Agreement that are applicable for so long as the Senior Bank Obligations remain Outstanding, the Borrower may, upon notice to the relevant Secured Debt Representative, so long as no Event of Default has occurred and is continuing, substitute all or any portion of the cash or Eligible Investments on deposit in the Senior Debt Service Reserve Account and/or the Ramp-Up Reserve Account (each a “Reserve Account”) with an Acceptable Letter of Credit in favor of the Collateral Agent; provided that, if such Reserve Account holds proceeds of any Tax-Exempt Obligations or any investment earning thereon, no such substitution shall be made until the Borrower has delivered to the Securities Intermediary and the applicable Secured Debt Representative a Favorable Opinion of Bond Counsel; further provided that, the Borrower shall obtain confirmation (A) that such then Outstanding Senior Obligations will maintain a rating of BBB, Baa2 or its equivalent or higher, from each Rating Agency which provided a rating of such then Outstanding Senior Obligations, but in any event not less than two Rating Agencies (without giving effect to any Bond Insurance Policy then in effect), after giving pro forma effect to the substitution of cash or Eligible Investments on deposit in a Reserve Account with an Acceptable Letter of Credit, or (B) that the ratings on the then Outstanding Senior Obligations (without giving effect to any Bond Insurance Policy then in effect), after giving pro forma effect to the substitution of cash or Eligible Investments on deposit in a Reserve Account with an Acceptable Letter of Credit, will not be lowered as a result of the incurrence of the substitution of cash or Eligible Investments on deposit in a Reserve Account with an Acceptable Letter of Credit. In the event that the Borrower substitutes cash or Eligible Investments on deposit in such Reserve Account with such Acceptable Letter of Credit and delivers any such Acceptable Letter of Credit to the Applicable Collateral Agent, the cash or Eligible Investments so substituted will be transferred to the Post-Substantial Completion Revenue Account. The undrawn face value of any such Acceptable Letter of Credit shall be included when calculating the balance on deposit in such Reserve Account.

The Borrower may, from time to time, direct the Applicable Collateral Agent to draw on any such Acceptable Letter of Credit, in the amount specified by the Borrower. If the cash funds on deposit in such Reserve Account are not sufficient to make in full the transfers required under the Collateral Agency and

Accounts Agreement, the Collateral Agent shall (without direction from the Borrower) draw on any Acceptable Letter of Credit for such Reserve Account in an amount equal to such shortfall. Further, the Collateral Agent shall (without direction from the Borrower) draw on such Acceptable Letter of Credit for the entire available amount if: (i) such letter of credit is not replaced thirty (30) days prior to expiry thereof with immediately available funds of equal amount deposited into the Reserve Account or with a replacement Acceptable Letter of Credit for the same available amount, (ii) within twenty (20) days of being notified by the Borrower or the Intercreditor Agent that the issuer thereof is no longer an Eligible LC Issuer, and the Borrower shall not have provided a replacement Acceptable Letter of Credit or deposited cash into the Reserve Account, in each case in an amount equal to the then available amount of such Acceptable Letter of Credit, or (iii) the Intercreditor Agent has notified the Senior Collateral Agent that an Event of Default has occurred and is continuing. See APPENDIX D-2 – “FORM OF COLLATERAL AGENCY AND ACCOUNTS AGREEMENT.”

### ***Restricted Distributions – Remaining Revenue Account***

The Collateral Agency and Accounts Agreement imposes certain restrictions on transfers from the Remaining Revenue Account to the Distribution Account, which Distribution Account is not a Project Account and is not pledged for the benefit of the Secured Parties. Funds may be transferred from the Remaining Revenue Account to the Distribution Account quarterly, subject to satisfaction of Restricted Payment Conditions, including, without limitation, a restriction on making distributions prior to the Substantial Completion of the Project, and subject to making certain payments from the Remaining Revenue Account that have priority over transfers to the Distribution Account. On each Quarterly Distribution Date, so long as (x) the Restricted Payment Conditions are satisfied as of such Quarterly Distribution Date, or (y) from and after the date that is ten (10) years preceding the maturity date of the Series 2024A Balloon Indebtedness (the “10 Year Cash Sweep Date”), only for payments pursuant to (a), if any, and (b)(B) below, without satisfaction of the Restricted Payment Condition if approved in writing by the Port Authority prior to such Quarterly Distribution Date (and the Borrower will use commercially reasonable efforts to obtain such approval from the Port Authority at the time such approval is needed; provided, that, notwithstanding any provision of the Senior Financing Documents to the contrary, with respect to any provision of the Senior Financing Documents requiring the approval or consent of the Port Authority, the Parties acknowledge and agree that the Port Authority may grant, withhold or condition its approval or consent in its sole and absolute discretion), the Securities Intermediary shall transfer amounts held in the Remaining Revenue Account (other than reasonable reserve amounts, as determined by the Borrower and approved by the Port Authority) as follows:

(a) *First*, to the Port Authority, in the amount certified in the Distribution Account Certificate as the amounts of Excess Value Rent and Equity Gain Share, if any, payable to the Port Authority, provided, that such payments shall be made *pro rata* from the Remaining Revenue Account and the Surplus Remaining Revenue Account, if applicable, on such Quarterly Distribution Date;

(b) *Second*, (A) so long as the Senior Bank Obligations remain outstanding, to the Extraordinary Receipts Account for *pro rata* application toward a mandatory prepayment of the Senior Loans, mandatory redemption of the Series 2022A Bonds, and payment of any amounts required to be paid under the Permitted Hedge Agreement, in each case in accordance the Collateral Agency and Accounts Agreement and the Common Terms Agreement, in an amount equal to 50% (if such Quarterly Distribution Date occurs prior to the first anniversary of the Substantial Completion Date) or 75% (if such Quarterly Distribution Date occurs on or after the first anniversary of Substantial Completion Date) of the funds remaining on deposit in the Remaining Revenue Account after giving effect to the transfer described in clause (a) above, and (B) from and after the 10 Year Cash Sweep Date, to the 2024A Tax-Exempt Bond Interest Payment Sub-Account and the 2024A Tax-Exempt Bond Principal Payment Sub-Account for the mandatory optional redemption as described in “PART 2 – DESCRIPTION OF THE SERIES 2024 BONDS – Mandatory Optional Redemption of the Series 2024A Balloon Indebtedness”; provided that such

payments shall be made *pro rata* from the Remaining Revenue Account and the Surplus Remaining Revenue Account, if applicable; and

(c) Third, to the Distribution Account, in an amount equal to 100% of the funds remaining on deposit in the Surplus Remaining Revenue Account after giving effect to the transfers described in clauses (a) and (b) above.

***Restricted Payment Conditions***

The Restricted Payment Conditions are as follows:

(a) on the Transfer Date immediately preceding the Quarterly Distribution Date on which the Borrower requests that funds be transferred from the Remaining Revenue Account or the Surplus Remaining Revenue Account (after giving effect to all transfers and deposits required to be made under the Collateral Agency and Accounts Agreement on such Transfer Date), the Operating Account, the Senior Obligations Payment Accounts, the Hedge Ordinary Course Payment Account, the Hedge Termination Payment Account, the Debt Service Reserve Accounts, O&M Reserve Account, Major Maintenance Reserve Account, the Ramp-Up Reserve Account and the Handback Reserve Account shall be fully funded to their respective required levels as of such Transfer Date;

(b) on the Transfer Date immediately preceding the Quarterly Distribution Date on which the Borrower requests that funds be transferred from the Remaining Revenue Account or the Surplus Remaining Revenue Account (after giving effect to all transfers and deposits required to be made hereunder on such Transfer Date), no Deferred Concessions Revenue Rent is accrued and unpaid;

(c) for the DSCR Calculation Period ending on the immediately preceding Calculation Date, the Senior Debt Service Coverage Ratio is not less than (i) during the Ramp-Up Period, 1.30:1.00, and (ii) on and after the Ramp-Up End Date, 1.20:1.00, and the Total Debt Service Coverage Ratio is not less than (x) during the Ramp-Up Period, 1.25:1.00, and (y) on and after the Ramp-Up End Date, 1.15:1.00; *provided, however*, that, subject to the Borrower making an election pursuant to the Collateral Agency and Accounts Agreement, the amount of DSCR Debt Service used to calculate the Senior Debt Service Coverage Ratio and Total Debt Service Coverage Ratio shall include amounts paid with Equity Contributions;

(d) for the DSCR Calculation Period commencing on the immediately preceding Calculation Date, the projected Senior Debt Service Coverage Ratio is not less than (i) during the Ramp-Up Period, 1.30:1.00, and (ii) on and after the Ramp-Up End Date, 1.20:1.00, and the projected Total Debt Service Coverage Ratio is not less than (x) during the Ramp-Up Period, 1.25:1.00, and (y) on and after the Ramp-Up End Date, 1.15:1.00; *provided, however*, that, subject to the Borrower making an election pursuant to the Collateral Agency and Accounts Agreement, the amount of DSCR Debt Service used to calculate the Senior Debt Service Coverage Ratio and Total Debt Service Coverage Ratio shall include amounts paid or expected to be paid with Equity Contributions;

(e) no Default or Event of Default under the Financing Documents has occurred and is continuing or would exist immediately after giving effect to the requested transfer of funds;

(f) the Port Authority (A) has not exercised its right to terminate the Lease Agreement in respect of an Event of Default under the Lease Agreement or (B) if it has so exercised such right to terminate the Lease Agreement, then it has subsequently rescinded its notice of termination;

(g) Substantial Completion of the Project has occurred;

(h) prior to Discharge of Senior Bank Obligations, the Additional Restricted Payment Conditions (as defined in the Common Terms Agreement) are satisfied;

(i) not later than the third (3rd) Business Day prior to the Quarterly Distribution Date on which the Borrower requests that funds be transferred from the Remaining Revenue Account or the Surplus Remaining Revenue Account pursuant to the Collateral Agency Agreement, the Borrower shall have delivered to the Securities Intermediary and the Collateral Agent a Distribution Account Certificate, signed by a Responsible Officer of the Borrower, representing that the Restricted Payment Conditions were satisfied on the Calculation Date immediately preceding such Quarterly Distribution Date (provided that, notwithstanding the definition of DSCR Debt Service, in determining the amount of DSCR Debt Service for purposes of calculating the Senior Debt Service Coverage Ratio and Total Debt Service Coverage Ratio for purposes of determining satisfaction of the Restricted Payment Conditions, the amounts paid from or expected to be paid from (as applicable) Equity Contributions shall not be subtracted from Aggregate Debt Service unless the Borrower has elected to make such subtraction in such Distribution Account Certificate, and the Borrower may not make such election (A) with respect to more than four (4) consecutive Calculation Dates immediately preceding such Quarterly Distribution Date or (B) more than ten (10) times in total), and certifying the amount of Excess Value Rent, if any, payable to the Port Authority on such date; and

(j) all Second Additional Rental, the payment of which has been deferred in accordance with the terms of the Lease Agreement (if any), has been paid in full.

### ***Surplus Remaining Revenue Account***

The Surplus Remaining Revenue Account will be, if applicable, a pledged account maintained by the Securities Intermediary and constituting Segregated Collateral solely for the benefit of the Holders of the Series 2024 Balloon Indebtedness and the Bond Insurer (solely as an Owner of Series 2024 Bonds and with respect to any subrogated claim with respect to Series 2024 Bonds). The Surplus Remaining Revenue Account shall be subject to a Security Interest pledged to the Trustee only for the benefit of the Holders of the Series 2024 Balloon Indebtedness and the Bond Insurer (solely as an Owner of Series 2024 Bonds and with respect to any subrogated claim with respect to Series 2024 Bonds).

The Borrower shall instruct the Senior Collateral Agent to establish the Surplus Remaining Revenue Account on the first Quarterly Distribution Date in which all the following conditions occur (collectively, the “Surplus RRA Transfer Conditions”):

(i) Amounts would have been transferred from the Remaining Revenue Account to the 2024A Tax-Exempt Bond Interest Payment Sub-Account and the 2024A Tax-Exempt Bond Principal Payment Sub-Account pursuant to the Collateral Agency and Accounts Agreement except only for the fact that the conditions to make a transfer from the Remaining Revenue Account to the 2024A Tax-Exempt Bond Interest Payment Sub-Account and the 2024A Tax-Exempt Bond Principal Payment Sub-Account pursuant to the Collateral Agency and Accounts Agreement were not met and without regard as to whether the Second Supplemental Indenture conditioned any such transfer on such conditions in the Collateral Agency and Accounts Agreement being met;

(ii) Following any transfers from the Remaining Revenue Account, the balance of the Remaining Revenue Account is greater than \$0.

After the Surplus Remaining Revenue Account has been established, on each Quarterly Distribution Date that the Surplus RRA Transfer Conditions are met, the Securities Intermediary shall transfer from the Remaining Revenue Account to the Surplus Remaining Revenue Account the amounts that would have been payable from the Remaining Revenue Account to the 2024A Tax-Exempt Bond Interest Payment Sub-Account and the 2024A Tax-Exempt Bond Principal Payment Sub-Account pursuant to the Collateral Agency and Accounts Agreement except only for the fact that the conditions to make a transfer from the Remaining Revenue Account to the 2024A Tax-Exempt Bond Interest Payment Sub-Account and the 2024A Tax-Exempt Bond Principal Payment Sub-Account pursuant to the Collateral

Agency and Accounts Agreement were not met and without regard as to whether the Second Supplemental Indenture conditioned any such transfer on such conditions in the Collateral Agency and Accounts Agreement being met. No transfers will be made to the Surplus Remaining Revenue Account prior to the 10-Year Cash Sweep Date.

Proceeds of the Surplus Remaining Revenue Account shall be applied as follows:

(i) Until applied pursuant (ii) below, *pro rata* with funds available in the Remaining Revenue Account, to make payments to:

(a) Fund a shortfall in the Post-Substantial Completion Revenue Account, in accordance with the Collateral Agency and Accounts Agreement;

(b) Any Interest Payment Sub-Account, in accordance with the Collateral Agency and Accounts Agreement; and

(c) The Hedge Ordinary Course Payments Sub Account, in accordance with the Collateral Agency and Accounts Agreement.

(ii) From and after the 10 Year Cash Sweep Date, on each Quarterly Distribution Date (x) so long as the Restricted Payment Conditions are satisfied as of such Quarterly Distribution Date, or (y) only for payments pursuant to (ii)(a) below, if any, and (ii)(b) below, without satisfaction of the Restricted Payments Conditions if approved in writing by the Port Authority prior to such Quarterly Distribution Date (and the Borrower will use commercially reasonable efforts to obtain such approval from the Port Authority at the time such approval is needed; provided, that, notwithstanding any provision of the Senior Financing Documents to the contrary, with respect to any provision of the Senior Financing Documents requiring the approval or consent of the Port Authority, the Parties acknowledge and agree that the Port Authority may grant, withhold or condition its approval or consent in its sole and absolute discretion), the Securities Intermediary shall transfer amounts held in the Surplus Remaining Revenue Account (other than reasonable reserve amounts, as determined by the Borrower and approved by the Port Authority) as follows:

(a) *First*, to the Port Authority, in the amount certified in such Distribution Account Certificate as the amounts of Excess Value Rent and Equity Gain Share, if any, payable to the Port Authority; provided, that such payments shall be made *pro rata* from the Remaining Revenue Account and the Surplus Remaining Revenue Account on such Quarterly Distribution Date;

(b) *Second*, to the 2024A Tax-Exempt Bond Interest Payment Sub-Account and the 2024A Tax-Exempt Bond Principal Payment Sub-Account for the mandatory optional redemption as described in “PART 2 -DESCRIPTION OF THE SERIES 2024 BONDS- Mandatory Optional Redemption of the Series 2024A Balloon Indebtedness”; provided that such payments shall be made *pro rata* from the Remaining Revenue Account and the Surplus Remaining Revenue Account; and

(c) *Third*, to the Distribution Account, in an amount equal to 100% of the funds remaining on deposit in the Surplus Remaining Revenue Account after giving effect to the transfers described in (a) and (b) above.

(iii) Following the taking of an Enforcement Action, moneys in the Surplus Remaining Revenue Account shall be applied by the Collateral Agent in accordance with the Collateral Agency and Accounts Agreement.

For further information regarding the funding of and distribution from the Remaining Revenue Account to the Distribution Account, see “PART 5 – FLOW OF FUNDS UNDER THE COLLATERAL

AGENCY AND ACCOUNTS AGREEMENT – Flow of Funds Post-Substantial Completion,” and Appendix D-2 – “FORM OF COLLATERAL AGENCY AND ACCOUNTS AGREEMENT.”

Prior to the Discharge of Senior Bank Obligations in their entirety, certain additional restricted payment conditions may apply pursuant to the Common Terms Agreement, unless waived or amended by the holders of the Senior Bank Obligations in their sole discretion.

***Segregated Collateral***

Segregated Collateral includes the Collateral held in certain accounts only for the benefit of the respective Secured Parties specified in the Collateral Agency and Accounts Agreement and the Collateral held in each Segregated Policy Payment Account only for the benefit of the Owners of Insured Bonds and the relevant Bond Insurer related to such Segregated Policy Payment Account, as specified in the Supplemental Indenture with respect to any such Insured Bonds.

Segregated Collateral under the Collateral Agency and Accounts Agreement includes the Senior Debt Service Reserve Account, the Ramp-Up Reserve Account, each solely for the benefit of the Senior Secured Parties, the Surplus Remaining Revenue Account, solely for the benefit of the Holders of the Series 2024 Balloon Indebtedness and the Bond Insurer (solely as an Owner of Series 2024 Bonds and with respect to any subrogated claim with respect to Series 2024 Bonds), each as described above, the Bank Proceeds Sub-Account and the Series 2022A Bond Proceeds Sub-Account, each solely for the benefit of the Bank Finance Parties, the Subordinate Debt Service Reserve Account, solely for the benefit of the Subordinate Secured Parties, any Senior Cash Collateral Account and any additional Segregated Pledged Account only for the benefit of the respective Secured Parties as specified in the Collateral Agency and Accounts Agreement.

***Additional Obligations***

*Additional Senior Obligations.* The Borrower shall not incur Additional Senior Obligations unless the following additional requirements are satisfied as of the date on which such Additional Senior Obligations are incurred:

(i) The Borrower has provided to the Senior Collateral Agent evidence indicating that, as of the date of incurrence of such Additional Senior Obligations, the Borrower has met the requirements under the Lease Agreement for the incurrence of such Additional Senior Obligations (as such requirements were in effect on the Original Closing Date without giving effect to any waiver by the Port Authority); and

(ii) The Borrower has provided to the Senior Collateral Agent (A) evidence that after giving effect to, the incurrence of such Additional Senior Obligations, the Borrower is in compliance with the rate covenant/financial ratio covenant pursuant to the Collateral Agency and Accounts Agreement, and (B) a certificate from an Airport Consultant stating that, based upon reasonable assumptions, projected Project Revenues will be sufficient to satisfy the requirements of the rate covenant/financial ratio covenant pursuant to the Collateral Agency and Accounts Agreement (including such Additional Senior Obligations proposed to be incurred but excluding any Senior Obligations proposed to be Refinanced with the proceeds of such Additional Senior Obligations) for each Fiscal Year following the incurrence of such Additional Senior Obligations to the final maturity of all Outstanding Senior Obligations; and

(iii) The Rating Agencies then rating the then Outstanding Senior Obligations affirm (A) that such then Outstanding Senior Obligations will maintain a rating of BBB, Baa2 or its equivalent or higher from each Rating Agency, but in any event not less than two Rating Agencies, which provided a rating of such then Outstanding Senior Obligations after giving pro forma effect to the incurrence of such Additional Senior Obligations, or (B) that the ratings on the then Outstanding Senior Obligations, after giving pro

forma effect to the incurrence of such Additional Senior Obligations, will not be lowered as a result of the incurrence of the Additional Senior Obligations; and

(iv) Prior to the Discharge of Senior Bank Obligations in their entirety, the conditions set forth in the Common Terms Agreement for the incurrence of Additional Obligations are satisfied as determined by the Required Bank Finance Parties.

The Borrower shall not be required to satisfy the conditions summarized in clause (ii) or (iii) above to (x) incur Additional Senior Obligations that are Completion Obligations, if the aggregate principal amount of such Completion Obligations (together with the principal amount of all previously incurred Completion Obligations) does not exceed 10% of the aggregate original principal amount of all Secured Obligations issued prior to the first incurrence of Completion Obligations, or (y) incur Additional Senior Obligations to Refinance Outstanding Senior Obligations, if the incurrence of such Additional Senior Obligations does not result in an increase in Annual Debt Service in any Fiscal Year on all Outstanding Senior Obligations following the incurrence of such Additional Senior Obligations.

*Additional Subordinate Obligations.* The Borrower shall not incur Additional Subordinate Obligations unless each of the following additional conditions are satisfied as of the date on which such Additional Subordinate Obligations are incurred:

(i) The Borrower has provided to the Collateral Agent evidence indicating that, as of the date of incurrence of such Additional Subordinate Obligations, the Borrower has met the requirements under the Lease Agreement for the incurrence of such Additional Subordinate Obligations (as such requirements were in effect on the Original Closing Date without giving effect to any waiver by the Port Authority); and

(ii) The Borrower has provided to the Collateral Agent (A) evidence that, after giving effect to the incurrence of such Additional Subordinate Obligations, the Borrower is in compliance with the rate covenant/financial ratio covenant pursuant to the Collateral Agency and Accounts Agreement, and (B) a certificate from an Airport Consultant stating that, based upon reasonable assumptions, projected Project Revenues will be sufficient to satisfy the requirements of the rate covenant/financial ratio covenant (including such Additional Subordinate Obligations proposed to be incurred but excluding any Subordinate Obligations proposed to be Refinanced with the proceeds of such Additional Subordinate Obligations) for each Fiscal Year following the incurrence of the Additional Subordinate Obligations to the final maturity of all Outstanding Subordinate Obligations, provided that with respect to the incurrence of such Additional Subordinate Obligations issued pursuant provisions of the Lease Agreement authorizing additional debt to finance additional liquidity reserves in certain circumstances or to pay increased D&C Work costs or other capital expenditures resulting from certain changes in law or certain other requirements applicable to the Project, (A) the Borrower will only be required to achieve, in each DSCR Calculation Period, a total Debt Service Coverage Ratio of 1.10x during the Ramp-up Period and a Total Debt Service Coverage Ratio of 1.0x thereafter and (B) the Borrower need not satisfy prospective rate covenant/financial ratio covenant requirements pursuant to the Collateral Agency and Accounts Agreement for any periods during which 100% of the Aggregate Debt Service on the Additional Subordinate Obligations is capitalized;

(iii) Prior to the Discharge of Senior Bank Obligations in their entirety, the conditions set forth in the Common Terms Agreement for the incurrence of Additional Obligations are satisfied as determined by the Required Bank Finance Parties; and

(iv) no TDC Building Loan Agreement supplement is entered into with respect to such Additional Subordinate Obligations.

The Borrower shall not be required to satisfy the condition summarized in clause (ii) above to (x) incur Additional Subordinate Obligations that are Completion Obligations, if the aggregate principal amount of such Completion Obligations (together with the principal amount of all previously incurred



Completion Obligations) does not exceed 10% of the aggregate original principal amount of all Secured Obligations issued prior to the first incurrence of Completion Obligations, or (y) incur Additional Subordinate Obligations to Refinance Outstanding Subordinate Obligations, if the incurrence of such Additional Subordinate Obligations does not result in an increase in Annual Debt Service in any Fiscal Year on all Outstanding Subordinate Obligations following the incurrence of such Additional Subordinate Obligations.

### ***Pro Rata Treatment of Building/Project Loans***

The Issuer shall loan to the Borrower the principal amount of any Senior Obligations to be loaned or committed to the Borrower under the TDC Building Loan Agreement and the TDC Project Loan Agreement, such that the principal amount of the Senior Bank Obligations loaned or committed to the Borrower from the Senior Secured Parties represented by the Administrative Agent under the Intercreditor Agreement (collectively, the “CTA Obligations”), the principal amount loaned or committed to the Borrower from Senior Secured Parties represented by the Trustee under the Intercreditor Agreement (collectively, the “Indenture Obligations”) and the principal amount loaned or committed to the Borrower from any Additional Senior Creditors that become subject to the Intercreditor Agreement pursuant to an Accession Agreement and are identified therein as a Class (for each Class, an “Additional Class Obligation”) shall be allocated *pro rata* (based on the Outstanding principal amounts of the CTA Obligations, the Indenture Obligations and each of the Additional Class Obligations on the date of any loan) as Building Loans under the TDC Building Loan Agreement and as Project Loans under the TDC Project Loan Agreement. Upon a Refinancing of any Building Loan or Project Loan, the principal amount of such Building Loans and Project Loans shall be reallocated such that the principal amount of all Outstanding Building Loans and Outstanding Project Loans shall be *pro rata* between CTA Obligations, Indenture Obligations and each Additional Class Obligation.

### **The Leasehold Mortgages**

As security for the obligations under the TDC Building Loan Agreement and the TDC Project Loan Agreement and the related TDC Notes, the Borrower has executed the Building Leasehold Mortgage and the Project Leasehold Mortgage, respectively, each in favor of the Issuer and the Collateral Agent. The Leasehold Mortgages each grant to the Issuer and the Collateral Agent, for the benefit of the respective Secured Parties, a mortgage lien on and security interest in all of the Borrower’s interests under the Lease Agreement and certain related property and interests. The Issuer has assigned its interests in the Leasehold Mortgages to the Collateral Agent, except for the Issuer’s Reserved Rights, pursuant to the Issuer Assignment Agreements.

The Leasehold Mortgages and all rights of the Collateral Agent as Mortgagee are subject to the terms and conditions of the Lease Agreement. The Port Authority has recognized the Collateral Agent as a “Recognized Mortgagee” under the Lease Agreement, which entitles the Collateral Agent to certain notice and cure rights and certain other protections with respect to the Lease Agreement.

The Leasehold Mortgages contain certain representations and covenants on the part of the Borrower relating to the Lease Agreement and the work to be performed by the Borrower thereunder and grant certain remedies to the Collateral Agent upon the occurrence and continuance of an Event of Default under the Leasehold Mortgages, including, for only certain specific Events of Default, the right to foreclose upon the Borrower’s interest in the Lease Agreement. Such remedies must, in all instances, be exercised in accordance with the terms of the Lease Agreement.

The Leasehold Mortgages shall be deemed satisfied, discharged and of no further force and effect upon the retirement, redemption, refunding, defeasance, satisfaction or other payment or discharge of the Senior Obligations and certain other obligations of the Borrower under the Financing Documents. See

APPENDIX D-3 – “FORM OF LEASEHOLD MORTGAGES” for a further description of the Leasehold Mortgages and the conveyed leasehold estate.

### **The Senior Equity Pledge Agreement**

HoldCo and the Senior Collateral Agent are parties to that certain Senior Equity Pledge Agreement, pursuant to which HoldCo pledged to the Senior Collateral Agent, for the benefit of the Senior Secured Parties, a security interest in (i) all of its limited liability company interests in the Borrower, all options, warrants and rights to purchase limited liability company interests in the Borrower and all dividends, distributions, cash, securities, instruments and other property from time to time paid, payable or otherwise distributed in respect of or in exchange for all or any part of its limited liability company interests in the Borrower and all proceeds thereof, (ii) indebtedness owed to HoldCo by the Borrower from time to time, including any instruments or payment intangibles evidencing or relating to such indebtedness, (iii) all proceeds of the foregoing and (iv) all books and records relating to any of the foregoing, in order to secure the timely payment in full when due of the Senior Obligations.

The Senior Equity Pledge Agreement also contains certain covenants of HoldCo imposing certain restrictions on its operations and ability to incur indebtedness until such time as it can deliver a non-consolidation opinion and ratings confirmation letters relating to then-Outstanding Senior Obligations to the Senior Collateral Agent.

### **The Assignments of Leases and Rents**

The Borrower executed the Building Loan Assignment of Leases and Rents and Project Loan Assignment of Leases and Rents, each dated as of November 1, 2022, in favor of the Issuer and the Collateral Agent. Pursuant to these agreements, the Borrower granted to the Collateral Agent, as securities for the full and timely payment of the Senior Obligations, all of the Borrower’s right, title, and interest in all written or oral leases, subleases, licenses, franchises, concessions, and other occupancy agreements to which the Borrower is a landlord, and certain related rights and interests. The Issuer has assigned its interests in the Assignment of Leases and Rents to the Collateral Agent, except for the Issuer’s Reserved Rights, pursuant to the Issuer Assignment Agreements.

### **Direct Agreements**

As additional security for the Senior Obligations, the Collateral Agent and the Borrower entered into the Direct Agreements.

Pursuant to the D&C Contractor Direct Agreement with the D&C Contractor, the D&C Contractor consented to the assignment of the D&C Contract by the Borrower to the Collateral Agent as security for the benefit of the Secured Parties and, subject to certain conditions, granted the Collateral Agent certain cure and step-in rights regarding the D&C Contract following a default thereunder by the Borrower.

Pursuant to the Manager’s Direct Agreement with the Manager, the Manager consented to the assignment of the Management Services Agreement by the Borrower to the Collateral Agent as security for the benefit of the Secured Parties and, subject to certain conditions, granted the Collateral Agent certain cure and step-in rights regarding the Management Services Agreement following a default thereunder by the Borrower.

Pursuant to the JetBlue Direct Agreement, JetBlue consented to the assignment of the JetBlue Sublease by the Borrower to the Collateral Agent as security for the benefit of the Secured Parties and, subject to certain conditions, granted the Collateral Agent certain cure and step-in rights regarding the JetBlue Sublease following a default thereunder by the Borrower.

Pursuant to the terms of the Common Terms Agreement, the Borrower is also required to deliver direct agreements to the Senior Collateral Agent from the applicable sublessee under any: (i) Material Airline Sublease, meaning any airline sublease entered into that is reasonably projected to represent 15% or more of the Borrower's total revenue in any period of 12 consecutive months generated from all then effective airline subleases, or (ii) Material Concession Sublease, meaning any concession sublease entered into that is reasonably projected to represent 15% or more of the Borrower's total revenue in any period of 12 consecutive months generated from all then effective concessions subleases. Certain subleases that require direct agreements will also require the prior consent of the Administrative Agent under the Common Terms Agreement. The provisions of the Common Terms Agreement are only for the benefit of the Series 2022 Bondholder and the Bank Lenders, and are not for the benefit of, nor enforceable by, the holders of the Series 2024 Bonds, and will no longer apply following the discharge of the Senior Bank Obligations, though direct agreements delivered pursuant to the requirements for the Common Terms Agreement will be for the benefit of the holders of all Senior Secured Obligations.

## **The Senior Security Agreement**

### ***Security Interest***

The Borrower and the Collateral Agent entered into the Senior Security Agreement, dated as of November 1, 2022, pursuant to which, in order to secure the full and prompt payment in full when due of the Senior Obligations (whether at stated maturity, by required prepayment, declaration, acceleration, demand, or otherwise), the Borrower granted to the Collateral Agent, for the benefit of the Senior Secured Parties, a Security Interest in and lien on all of its right, title and interest in, to and under all of its personal property, tangible and intangible, wherever located and whether now owned, leased or licensed or hereafter acquired, leased or licensed and whether now existing or hereafter arising, including (without limitation) the Borrower's interest in Project Revenues, Project Accounts, general intangibles, instruments, inventory, material project contracts, equipment and proceeds of insurance policies as further provided in the Senior Security Agreement.

Notwithstanding anything to the contrary in the Senior Security Agreement, the Borrower will remain liable for all obligations under and in respect of the Collateral and nothing contained in the Senior Security Agreement is intended to or will be a delegation of duties to the Collateral Agent or the Senior Secured Parties.

### ***Remedies***

If an Event of Default shall have occurred and be continuing (beyond any applicable cure or grace period), and subject to the Intercreditor Agreement and the other Senior Financing Documents, the Collateral Agent may exercise remedies authorized by law as further provided in the Senior Security Agreement, including but not limited to:

- (a) taking possession of any Collateral (as defined in the Senior Security Agreement) in accordance with the Lease Agreement and the other Senior Financing Documents;
- (b) requiring the Borrower to assemble all or any part of the Collateral (as defined in the Senior Security Agreement);
- (c) appointing a receiver of the Collateral (as defined in the Senior Security Agreement) or any part thereof;
- (d) withdrawing funds from deposit accounts or securities accounts; and
- (e) disposing of the Collateral (as defined in the Senior Security Agreement).

## **Equity Letters of Credit and Collateral Account Control Agreement**

Each Equity Member is also required to provide one or more irrevocable standby letter(s) of credit in an aggregate amount equal to the applicable Equity Member's total equity commitment (each an "Equity Letter of Credit") or to deposit cash or Eligible Investments into one or more Equity Collateral Accounts governed by a Collateral Account Control Agreement among the applicable Equity Member, the Senior Collateral Agent, and a securities intermediary, such that the aggregate face amount of the Equity Letter(s) of Credit delivered by each Equity Member plus the aggregate balance of such Equity Member's Equity Collateral Accounts are equal to such Equity Members' Unfunded Equity Commitment. Each Equity Letter of Credit must be issued by a financial institution that (i) has long-term unsecured debt ratings, from at least two rating agencies, of at least "A" from S&P, "A2," from Moody's, or "A" by Fitch Ratings Inc. ("Fitch"), and (ii) has either an office in New York, New York at which a letter of credit issued by it can be presented for payment or an office in the United States at which a letter of credit issued by it can be presented for payment and that grants the right for the beneficiary of any such letter of credit issued by it through email or other electronic method of presentation (an "Eligible LC Issuer"). Funds drawn on any Equity Letter of Credit will be deposited in the Equity Contribution Sub-Account of the Construction Account. The reimbursement obligations with respect to the Equity Letters of Credit will not be recourse to the Borrower. Currently, (i) JetBlue's equity commitment is supported by a letter of credit issued by Citibank N.A., (ii) the ATI Member's equity commitment is supported by letters of credit issued by National Australia Bank Limited, London Branch, ING Capital LLC, Sumitomo Mitsui Banking Corporation, New York Branch, and National Bank of Canada, (iii) the Vantage Member has provided a letter of credit issued by Goldman Sachs Bank USA, and (iv) the RXR Member's equity commitment is supported by letters of credit from Australia and New Zealand Banking Group Limited, Bank of Montreal, Chicago, and Sumitomo Mitsui Banking Corporation, New York Branch, as well as a Collateral Account Control Agreement with the Senior Collateral Agent, dated as of the Original Closing Date.

If an Equity Member fails to perform its contribution obligations under the Equity Contribution Agreement within the timelines set forth below, the Collateral Agent will be required to draw on the applicable Equity Letter of Credit or on the collateral accounts subject to the Collateral Account Control Agreement for purposes of satisfying such obligations.

If Equity Contributions are not made by the dates required pursuant to the Equity Contribution Agreement, the securities intermediary shall withdraw funds from such non-contributing Sponsor's Equity Collateral Account(s), and/or draw on such non-contributing Sponsor's Equity Collateral Account(s), and/or draw on such non-contributing Sponsor's Equity Letter(s) of Credit, for the purposes of satisfying such obligation of the applicable Sponsor. Such withdrawals will occur (i) with respect to Equity Contributions due at the request of the Borrower pursuant to delivery of a Contribution Notice (as defined in the Equity Contribution Agreement), on the Substantial Completion Date, or pursuant to a Shortfall Contribution Notice (as defined in the Equity Contribution Agreement) on the second Business Day after the due date for such performance, or (ii) with respect to Equity Contributions due because of an Event of Default under the Senior Bank Financing Documents or because payment under either TDC Loan Agreement has been accelerated on the due date for such performance.

In the event of Voluntary LC Termination in respect of any Equity Letter of Credit prior to the Release Date, the applicable Equity Member will be required to replace the expiring Equity Letter of Credit at least thirty (30) days prior to the expiration date of the existing Equity Letter of Credit. In addition, if the issuer of any Equity Letter of Credit ceases to satisfy the requirements for an Eligible LC Issuer, the applicable Equity Member will be required to replace such Equity Letter of Credit within twenty (20) Business Days of the date on which such issuer ceased to be an Eligible LC Issuer. If the applicable Equity Member fails to provide a replacement Equity Letter of Credit within the time frames described in each case above, the Collateral Agent shall draw the full undrawn amount of the expiring Equity Letter of Credit.

The Collateral Agent shall also draw on each Equity Letter of Credit, in the full amount thereof, and withdraw all funds from each Equity Collateral Account, upon receiving written notice from the Borrower, the Port Authority or the Intercreditor Agent that the Lease Agreement has been terminated by the Port Authority as the result of an Event of Default by the Borrower under the Lease Agreement.

To compensate the Equity Members for providing the Equity Letters of Credit, the Borrower will pay each Equity Member, monthly, an amount equal to, as of the date of calculation, (i) the average unfunded amount of the applicable Equity Member's Equity Letter of Credit for the relevant month multiplied by 3.00%, (ii) multiplied by the actual number of days in such month, and (iii) divided by 365 or 366, as applicable.

## **The Intercreditor Agreement**

The Intercreditor Agreement has been entered into by and among the Borrower, the Intercreditor Agent, the Trustee, the Administrative Agent, the Collateral Agent, the Permitted Hedge Providers party to the Intercreditor Agreement from time to time and each other entity that may become a party to the Intercreditor Agreement from time to time. The Intercreditor Agreement governs many rights and remedies of the various creditors, including, but not limited to, the Bank Lenders under the Loan Facility, acting through the Administrative Agent, the Series 2024 Bondholders, acting through the Trustee, and any future Senior Secured Party or Subordinate Secured Party that accedes pursuant to an Accession Agreement (as defined in the Intercreditor Agreement). Some of the primary provisions of the Intercreditor Agreement relate to (i) rights and restrictions regarding unilateral or joint action against the Collateral or any Segregated Collateral, (ii) intercreditor voting and consent matters, (iii) provisions relating to DIP financing, (iv) enforcement of remedies in case of a Borrower Event of Default, (v) rights and permitted actions by Subordinate Secured Parties, (vi) application of proceeds in case of insolvency or liquidation proceedings, and (vii) other rights of the Senior Secured Parties upon a Borrower Bankruptcy Event. See APPENDIX D-5 – “FORM OF INTERCREDITOR AGREEMENT.”

The Borrower currently anticipates that, after the discharge of the Loan Facility in full, it will seek an amendment to the Intercreditor Agreement to move to a one-dollar-one-vote system, as opposed to class-based voting. The determination to pursue the aforementioned amendment will be subject to market conditions at such time and remains subject to change in the Borrower's sole and absolute discretion. If pursued, such an amendment would require the consent of the Series 2024 Bondholders if and to the extent required by Section 10.3 of the Intercreditor Agreement. See APPENDIX D-5 “FORM OF INTERCREDITOR AGREEMENT”.

## **The Indenture**

### ***General***

*Trust Estate.* The Issuer, in order to secure the payment of the Bonds, including the Series 2024 Bonds, has pledged and assigned to the Trustee pursuant to the terms of the Indenture for the benefit of the Owners of the Series 2022A Bonds, the Series 2024 Bonds and any Additional Bonds issued thereunder, all of the following, which comprise the Trust Estate:

(a) subject to the Collateral Agency and Accounts Agreement and Intercreditor Agreement, all right, title and interest of the Issuer (except for Reserved Rights) in all moneys and obligations from time to time held by the Trustee under the Indenture, except for moneys or obligations held in any Rebate Account or held for the redemption or payment of Bonds that are deemed to have been paid pursuant to the Indenture;

(b) subject to the Collateral Agency and Accounts Agreement and Intercreditor Agreement, any Security Interest granted to the Collateral Agent for the benefit of: (i) the Issuer, securing the payment

obligations of the Borrower under the TDC Loan Agreements and the TDC Notes, and (ii) the Trustee on behalf of the Owners of the Bonds, under the Security Documents or otherwise;

(c) subject to the Collateral Agency and Accounts Agreement and Intercreditor Agreement, the interest of the Issuer, and any Security Interest created for the benefit of the Issuer, in all funds deposited from time to time and earnings thereon in the Project Accounts, any and all other accounts established as security for the Bonds under the Collateral Agency and Accounts Agreement, and any and all sub-accounts created thereunder as security for the Bonds; and

(d) subject to the Collateral Agency and Accounts Agreement and Intercreditor Agreement, any and all other property, revenues, rights or funds specifically granted, assigned or pledged as additional security for the Bonds or the TDC Loan Agreements in favor of the Trustee (as a Secured Party) or the Collateral Agent on behalf of the Trustee (as a Secured Party).

The Trust Estate shall be held by the Trustee for the equal and proportionate benefit of the Owners of the Series 2024 Bonds and the other Secured Parties, except for any preference and priority between the Senior Bonds and the Subordinate Bonds as established pursuant to the Indenture. For a complete description of the Trust Estate, see APPENDIX D-1 – “FORM OF TRUST INDENTURE.”

### ***Additional Bonds***

The Issuer has covenanted under the Indenture that, so long as any Bonds are Outstanding, the Issuer will not create or permit the creation of or issue any obligations or create any additional indebtedness which will be secured by a lien on all or any part of the Trust Estate established and created by or pursuant to the Indenture, except to the extent permitted by a Supplemental Indenture, the TDC Loan Agreements and the Collateral Agency and Accounts Agreement.

*Additional Senior Bonds.* At the request of the Borrower, additional Senior Bonds may be delivered under and be equally and ratably secured by the Indenture on a parity basis with the Series 2024 Bonds, the Loan Facility and any other additional Senior Obligations Outstanding, at any time and from time to time so long as the conditions set forth in the Indenture and the Collateral Agency and Accounts Agreement have been satisfied. See “PART 4 – SECURITY FOR THE SERIES 2024 BONDS – The Collateral Agency and Accounts Agreement – Additional Obligations – Additional Senior Obligations” below.

*Additional Subordinate Bonds.* At the request of the Borrower, additional Subordinate Bonds may be delivered under and be equally and ratably secured by the Indenture on a parity basis with any then-outstanding Subordinate Bonds and any other additional Subordinate Obligations Outstanding, at any time and from time to time so long as the conditions set forth in the Indenture and the Collateral Agency and Accounts Agreement have been satisfied. See “PART 4 – SECURITY FOR THE SERIES 2024 BONDS – The Collateral Agency and Accounts Agreement – Additional Obligations – Additional Subordinate Obligations” below.

The Common Terms Agreement has certain additional restrictions on the incurrence of Additional Obligations by the Borrower for so long as the Senior Bank Obligations are outstanding. These additional restrictions are for the sole benefit of the holders of the Senior Bank Obligations, are subject to waiver or amendment thereby in their sole discretion, and will no longer apply following the discharge of the Senior Bank Obligations. See APPENDIX F-1 – “FORM OF COMMON TERMS AGREEMENT.”

### ***Events of Default under the Indenture***

Each of the following is defined as and shall be deemed an “Event of Default” under the Indenture with respect to all of the outstanding Bonds:

(a) Default in the payment of the principal of or Redemption Price, if any, on any Bond when the same shall become due and payable, whether at the stated maturity thereof, or through failure to satisfy any Sinking Fund Requirement, or upon redemption or otherwise;

(b) Default in the payment of any interest on any Bond when the same shall become due and payable;

(c) Default shall be made in the observance or performance of any covenant, agreement or other provision contained in the Bonds or the Indenture (other than as referred to in sub-paragraphs (a) or (b) above) and such default shall continue for a period of thirty (30) days after written notice to the Issuer, the Borrower and the Trustee from the Owners of at least 25% in aggregate principal amount of the Bonds then Outstanding or from the Trustee specifying such default and requiring the same to be remedied, provided, with respect to any such failure covered by this sub-paragraph (c), no Event of Default shall be deemed to have occurred so long as a course of action adequate to remedy such failure shall have been commenced within such thirty (30) day period and shall thereafter be diligently prosecuted to completion and the failure shall be remedied thereby; and

(d) The occurrence of an “Event of Default” under and as defined in the Collateral Agency and Accounts Agreement or the Leasehold Mortgages that continues beyond any grace or cure period provided for under the Collateral Agency and Accounts Agreement or the Leasehold Mortgages.

The Trustee shall, within thirty (30) days of the occurrence of an Event of Default or of any event of which the Trustee is required to take notice and which would result in an Event of Default with the passage of time or the giving of notice, notify the Issuer, the Borrower, the Collateral Agent, the Intercreditor Agent, and all Bondholders of the occurrence of such Event of Default or such other event.

Upon the occurrence of an Event of Default, the Trustee is entitled to exercise certain remedies as set forth in the Indenture, subject to the terms of the Intercreditor Agreement.

For more information relating to the terms of the Indenture, see APPENDIX D-1 – “FORM OF TRUST INDENTURE.”

### **Termination Payment to the Borrower Upon Termination of the Lease Agreement**

The Lease Agreement grants the Borrower the right to terminate the Lease Agreement only in the following limited circumstances: (i) the Port Authority fails, within thirty (30) days following receipt of notice by the Borrower, to make payment of any undisputed amounts owed to the Borrower, (ii) the Port Authority expressly repudiates or willfully (with an intent to breach the Lease Agreement) fails to provide or defend Borrower’s right to quiet enjoyment of the Premises pursuant to the terms of the Lease Agreement (which shall not be deemed to occur during the pendency of a Force Majeure event or in the event of a Taking) such that Borrower is unable to (x) construct Terminal 6 or (y) operate Terminal 7 (prior to its decommissioning) and/or Terminal 6, in each case for a period of not less than one hundred eighty (180) consecutive days; provided, however, that the Borrower shall not have a termination right if the interference with quiet enjoyment is based on, arises out of, relates to or results from, in whole or in part, (A) Borrower’s exercise (or the exercise by any Person claiming by, through or under the Borrower) of a right granted to it under the Lease Agreement, (B) an act or omission of the Borrower (or any Person on behalf of the Borrower) or another Borrower-Related Entity (or on their behalf) whether or not in breach of the Lease Agreement or (C) a breach or default by the Borrower (or any Person on behalf of the Borrower) of any of the terms or conditions of the Lease Agreement, or any Project Document (as defined in the Lease Agreement), or (iii) the Port Authority willfully fails to tender the Premises or any portion thereof to the Borrower in accordance with the time periods required by the Lease Agreement.

If the Borrower elects to terminate the Lease Agreement as a result of the event described in clause (ii) of the preceding paragraph, the Port Authority shall pay compensation to the Borrower in an aggregate amount (the “Port Authority Default Termination Payment” calculated as of the effective date of the termination equal to the fair market value (had the Lease Agreement not been terminated) of the Borrower’s leasehold interest and its rights and obligations during the unexpired term of the Lease Agreement, determined pursuant to an appraisal regime set forth in the Lease Agreement. There can be no assurance that the Port Authority Default Termination Payment would be sufficient to pay off the Secured Obligations, including the Series 2024 Bonds. If the Borrower elects to terminate the Lease Agreement as a result of the event described in clause (i) or (iii) of the preceding paragraph, the Port Authority is not obligated to make any termination payment to the Borrower. To the extent that the Borrower elects not to exercise its right to terminate the Lease Agreement upon any of the events described in clauses (i), (ii), or (iii) of the preceding paragraph, then the Borrower shall retain each and every remedy for breach of the Lease Agreement which it has in law and in equity.

The Port Authority is permitted, but is under no obligation, under the Lease Agreement, at its discretion, following a Borrower Event of Default under the Leasehold Mortgages, the acceleration of the Borrower’s outstanding indebtedness (including its payment obligations under the TDC Loan Agreements with respect to the Series 2024 Bonds and the Loan Facility), or the termination of the Borrower’s rights under and in accordance with the Lease Agreement, to tender to the Collateral Agent an amount equal to the amount necessary to prepay or otherwise discharge the Borrower’s outstanding indebtedness (including its payment obligations under the TDC Loan Agreements with respect to the Series 2024 Bonds and the Loan Facility) to the date of the tender, and upon such tender the Leasehold Mortgages shall terminate.

For a more detailed summary of the Port Authority Default Termination Payment and the types of events that will entitle the Borrower to payment of such sums, see “PART 10 – THE LEASE AGREEMENT” and APPENDIX E – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE AGREEMENT.”

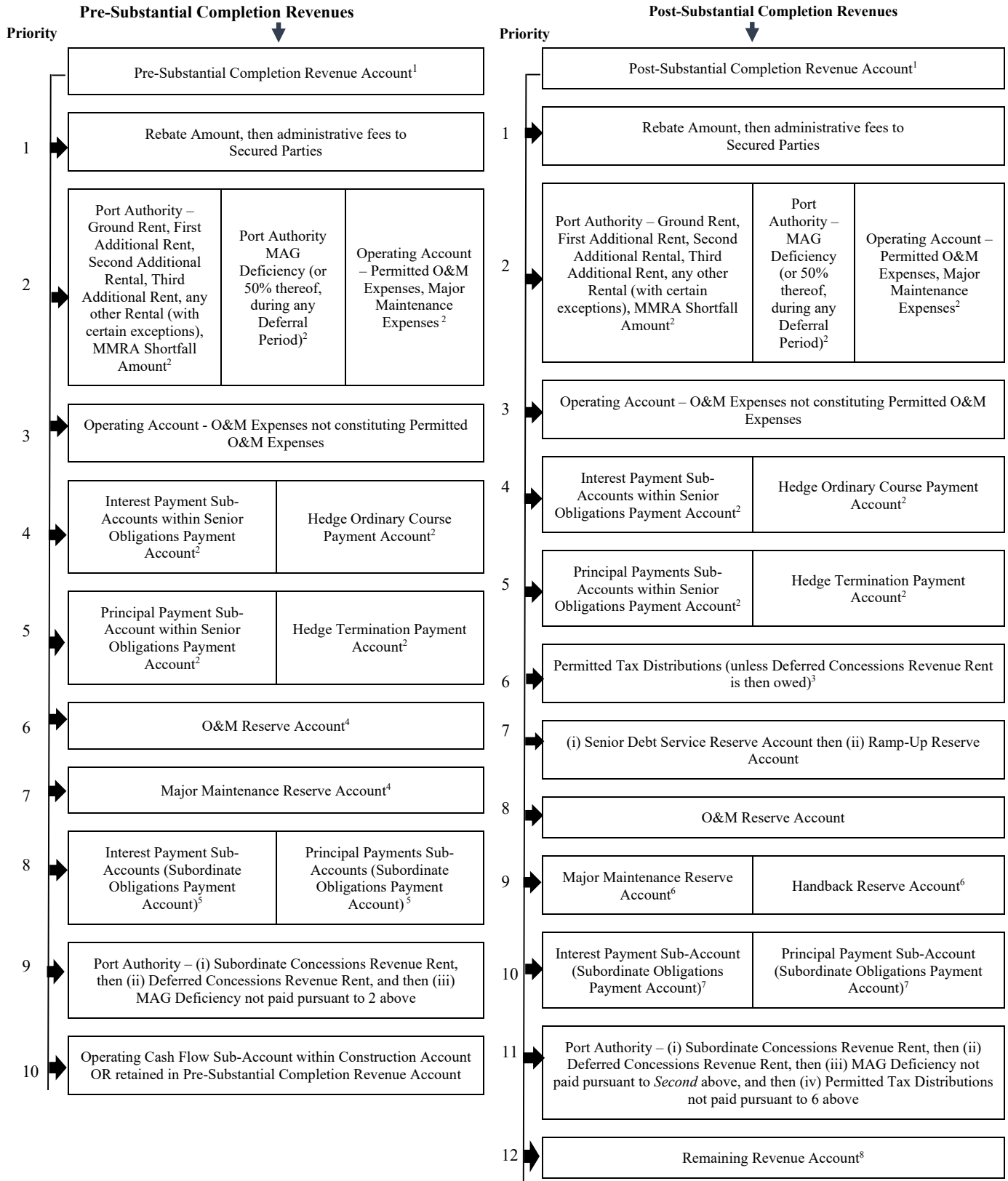
## **PART 5 – FLOW OF FUNDS UNDER THE COLLATERAL AGENCY AND ACCOUNTS AGREEMENT**

### **Flow of Project Revenues**

The Collateral Agency and Accounts Agreement establishes certain Project Accounts in the name of the Borrower, as well as certain Non-Pledged Accounts. See “PART 4 – SECURITY FOR THE SERIES 2024 BONDS – The Collateral Agency and Accounts Agreement.” The following tables illustrate how Project Revenues have been and will continue to be deposited in the various Project Accounts and Non-Pledged Accounts held by the Collateral Agent pursuant to the Collateral Agency and Accounts Agreement, both before the Phase 2 End of Funding Date and after the Phase 2 End of Funding Date.



**FLOW OF FUNDS**



Footnotes Appear on Following Page

---

<sup>1</sup> If amounts on deposit in the Pre-Substantial Completion Revenue Account or the Post-Substantial Completion Revenue Account are not sufficient on any Transfer Date to make required transfers, then the Securities Intermediary (or the Deposit Account Bank, with respect to the Operating Account) shall transfer funds to fund such shortfalls in these accounts as set forth in “PART 5 – Flow of Funds Pre-Substantial Completion” and “PART 5 – Flow of Funds Post-Substantial Completion” below.

<sup>2</sup> Funded pro rata.

<sup>3</sup> In the Building Loan Agreement, the Borrower covenants that notwithstanding anything to the contrary in any other Financing Documents, the Borrower shall not pay, distribute, declare the payment of or make any Permitted Tax Distributions, whether as a dividend, loan, investment, loan repayment or in any other form, (i) pursuant to Section 5.03(b)(6) of the Collateral Agency and Accounts Agreement, in an amount exceeding \$20 million per calendar year, and (ii) pursuant to Section 5.03(b)(11) of the Collateral Agency and Accounts Agreement, in any amount at any time.

<sup>4</sup> After the Phase 1 End of Funding Date.

<sup>5</sup> Funded in order of priority.

<sup>6</sup> The Handback Reserve Account is funded five years prior to the end of the term of the Lease Agreement, and is funded pro rata with the Major Maintenance Reserve Account.

<sup>7</sup> Funded in order of priority.

<sup>8</sup> Released only when Restricted Payment Conditions are satisfied. Under certain circumstances amounts released from the Remaining Revenue Account are required to be applied to certain redemptions of Outstanding Obligations, including: (A) prior to the discharge of the Senior Bank Obligations, certain redemptions of Senior Term Loans and Series 2022A Bonds, including required payments on associated Permitted Hedge Agreements, and (B) commencing ten years prior to the maturity thereof, a portion of the Series 2024A Balloon Indebtedness. See “PART 4 – SECURITY FOR THE SERIES 2024 BONDS – The Collateral Agency and Accounts Agreement - *Restricted Distributions*” herein.

## Flow of Funds Pre-Substantial Completion

Until (but not including) the Phase 2 End of Funding Date, the Borrower will promptly deposit into the Pre-Substantial Completion Revenue Account (i) all Project Revenues and all other amounts received by the Borrower from any source whatsoever, except for (x) the Non-Pledged Receipts and (y) amounts expressly required to be deposited in other Project Accounts pursuant to the Collateral Agency and Accounts Agreement, and (ii) amounts transferred from other Project Accounts as required by the terms of the Collateral Agency and Accounts Agreement. Pending such deposit, the Borrower will hold all such amounts received by it in trust for the benefit of the Secured Parties.

The Securities Intermediary shall, on each Transfer Date occurring prior to the Phase 2 End of Funding Date, make the following withdrawals, transfers and payments from the Pre-Substantial Completion Revenue Account (to the extent of funds then available in the Pre-Substantial Completion Revenue Account, and in each case to the extent the amounts required to pay such amounts have not been previously transferred from other Accounts at the direction of the Borrower in accordance with the Collateral Agency and Accounts Agreement) in the amounts, at the times and only for the purposes specified below at the request of the Borrower, and in the following order of priority, after giving effect to any other transfers into the Project Accounts required or permitted to be made on or prior to such Transfer Date in accordance with the terms of the Collateral Agency and Accounts Agreement (it being agreed that no amount shall be withdrawn or transferred on any date pursuant to any clause below until amounts sufficient as of that date (to the extent applicable) for all the purposes specified under the prior clauses shall have been withdrawn or transferred):

*First*, in the following order of priority (i) if any Rebate Amount is due under the Indenture, to fund the Rebate Account in an amount equal to such Rebate Amount, and thereafter, and (ii) *pro rata* to pay all fees (including commitment and letter of credit fees), administrative costs and expenses then due and payable under the Financing Documents to the Secured Parties;

*Second, pro rata* (i) to the Port Authority, an amount equal to the aggregate of Ground Rent, First Additional Rent, Second Additional Rental, Third Additional Rent, any other Rental (other than Concessions Revenue Rent, Excess Value Rent or Equity Gain Share) and any MMRA Shortfall Amount, in each case due and payable on the applicable Transfer Date, (ii) to the Port Authority, on the first Transfer Date following the identification of any MAG Deficiency for the preceding year, if applicable, an amount equal to such MAG Deficiency (provided that during any Deferral Period, only fifty percent (50%) of any MAG Deficiency shall be paid at this tier Second and the remaining fifty percent (50%) shall be paid at tier Ninth), and (iii) to the Operating Account, an amount equal, together with the amount then on deposit therein, to the Permitted O&M Expenses (other than amounts required to be transferred or paid to the Port Authority pursuant to this paragraph) then due and payable, or reasonably projected to be due and payable prior to the next succeeding Transfer Date, and Major Maintenance expenses (to the extent funds on deposit in the Major Maintenance Reserve Account are not sufficient to pay such Major Maintenance expenses and without duplication of any MMRA Shortfall Amount) then due and payable or reasonably projected to be due and payable prior to the next succeeding Transfer Date;

*Third*, to the Operating Account, an amount equal, when taken together with amounts then on deposit therein, to the O&M Expenses (other than amounts required to be transferred or paid to the Port Authority pursuant to paragraph Second) not constituting Permitted O&M Expenses then due and payable, or reasonably projected to be due and payable prior to the next succeeding Transfer Date;

*Fourth, pro rata*, (i) to the Hedge Ordinary Course Payment Account, an amount equal to the Ordinary Course Payments under any Secured Hedge Agreement then due and payable, or that are projected

by the Borrower to become due and payable prior to the next succeeding Transfer Date, and (ii) to each Interest Payment Sub-Account within the Senior Obligations Payment Account established in connection with Senior Obligations (other than Ordinary Course Payments under any Secured Hedge Agreement), an amount equal to the amount necessary to cause the balance on deposit in such Interest Payment Sub-Account to be equal to the product of (A) and (B), where:

(A) is a number equal to (I) divided by (II), where:

(I) is the number of Transfer Dates that have occurred since:

(a) subject to the succeeding clauses (b) and (c), the preceding Interest Payment Date for the applicable Senior Obligations (including the current Transfer Date but excluding any Transfer Date occurring on such preceding Interest Payment Date),

(b) subject to the succeeding clause (c), if no Interest Payment Date has yet occurred in respect of the applicable Senior Obligations, the date of issuance or borrowing for the applicable Senior Obligations (including the current Transfer Date), or

(c) with respect to Deferred Interest Obligations, the applicable Interest Payment Calculation Start Date (including the current Transfer Date); and

(II) is the total number of Transfer Dates in the Interest Payment Period for the applicable Senior Obligation; and

(B) is an amount equal to the aggregate amount of interest on such Senior Obligations scheduled to become due and payable on any Interest Payment Date with respect to such Senior Obligations occurring on such Transfer Date or thereafter prior to the next succeeding Transfer Date, as reasonably projected by the Borrower to become due and payable on such Interest Payment Date; provided, that if an Interest Payment Date for any such Senior Obligations will occur prior to the next succeeding Transfer Date, in no event shall the amount transferred to the applicable Interest Payment Sub-Account be less than the amount necessary to cause the balance then on deposit in such Interest Payment Sub-Account to be at least equal to the projected aggregate amount of interest on such Senior Obligations due and payable on such Interest Payment Date, as reasonably projected by the Borrower; provided, further, that if there are insufficient funds available on the Transfer Date to make the deposits required pursuant to this paragraph *Fourth* in full, transfers shall be made to the Hedge Ordinary Course Payment Account and the various Interest Payment Sub-Accounts maintained with respect to any Senior Obligations on a *pro rata* basis measured by the amounts required to be transferred to each such Project Account or sub-account pursuant to this paragraph *Fourth*;

*Fifth, pro rata*, (i) to the Hedge Termination Payment Account, an amount equal to the Hedge Termination Payments under any Secured Hedge Agreement then due and payable, or that is reasonably projected by the Borrower to become, due and payable prior to the next succeeding Transfer Date, and (ii) to each Principal Payment Sub-Account within the Senior Obligations Payment Account established in connection with Senior Obligations (other than Hedge Termination Payments under any Secured Hedge Agreement), an amount equal to the amount necessary to cause the balance on deposit in such Principal Payment Sub-Account to be equal to the product of (A) and (B), where:

(A) is a number equal to:

(I) for Senior Obligations not constituting Balloon Indebtedness, (a) divided by (b), where:

(a) is the number of Transfer Dates that have occurred since:

(x) subject to the succeeding clause (y), the preceding Principal Payment Date for the applicable Senior Obligations (including the current Transfer Date but excluding any Transfer Date occurring on such preceding Principal Payment Date), or

(y) if no Principal Payment Date has yet occurred in respect of the applicable Senior Obligations, the Principal Payment Calculation Start Date for the applicable Senior Obligations (including the current Transfer Date); and

(b) is the total number of Transfer Dates in the Principal Payment Period for the applicable Senior Obligation; or

(II) for Senior Obligations constituting Balloon Indebtedness:

(a) prior to the applicable Principal Payment Calculation Start Date, zero (0),

(b) on and after the applicable Principal Payment Calculation Start Date and before the first Principal Payment Date pursuant to the Balloon Indebtedness Certificate, (x) the number of Transfer Dates that have occurred since the Principal Payment Calculation Start Date for such Balloon Indebtedness (including the current Transfer Date but, if such Payment Calculation Start Date occurred on a prior Transfer Date, then excluding such Transfer Date), divided by (y) the total number of Transfer Dates in the Principal Payment Period outlined in the Balloon Indebtedness Certificate, or

(c) on and after the first Principal Payment Date pursuant to the Balloon Indebtedness Certificate, (x) the number of Transfer Dates that have occurred since the preceding Principal Payment Date outlined in the applicable Balloon Indebtedness Certificate (including the current Transfer Date but excluding any Transfer Date occurring on such preceding Principal Payment Date), divided by (y) the total number of Transfer Dates in the Principal Payment Period outlined in such Balloon Indebtedness Certificate; and

(B) is an amount equal to the principal or Accreted Value of such Senior Obligations scheduled or assumed (in accordance with the definition of Aggregate Debt Service) to become due and payable on the Principal Payment Date with respect to such Senior Obligations occurring on such Transfer Date or immediately thereafter; provided that if a Principal Payment Date for such Senior Obligations will occur prior to the next succeeding Transfer Date, in no event shall the amount transferred to the applicable Principal Payment Sub-Account be less than the amount necessary to cause the balance then on deposit in such Principal Payment Sub-Account to be at least equal to the aggregate amount of principal or Accreted Value of such Senior Obligations due and payable on such Principal Payment Date; provided further, that if there are insufficient funds available on the Transfer Date to make the deposits required pursuant to this paragraph *Fifth* in full,

transfers shall be made to the Hedge Termination Payment Account and the various Principal Payment Sub-Accounts maintained with respect to any Senior Obligations on a pro rata basis measured by the amounts required to be transferred to each such Project Account or sub-account pursuant to this paragraph *Fifth*;

*Sixth*, on each Transfer Date occurring after the Phase 1 End of Funding Date, to the O&M Reserve Account, the amount, if any, required to fund the O&M Reserve Account to the level required by the Collateral Agency and Accounts Agreement;

*Seventh*, on each Transfer Date occurring after the Phase 1 End of Funding Date, to the Major Maintenance Reserve Account, the amount, if any, required to fund the Major Maintenance Reserve Account to the level required by the Collateral Agency and Accounts Agreement;

*Eighth*, if applicable, in the following order of priority, (i) to each Interest Payment Sub-Account within the Subordinate Obligations Payment Account established in connection with the Subordinate Obligations, an amount equal to the amount necessary to cause the balance on deposit in such Interest Payment Sub-Account to be equal to the product of (A) and (B), where:

(A) is a number equal to (I) divided by (II), where:

(I) is the number of Transfer Dates that have occurred since:

(a) subject to the succeeding clause (b) and (c), the preceding Interest Payment Date for the applicable Subordinate Obligations (including the current Transfer Date but excluding any Transfer Date occurring on such preceding Interest Payment Date),

(b) subject to the succeeding clause (c), if no Interest Payment Date has yet occurred in respect of the applicable Subordinate Obligations, the date of issuance, Drawing or borrowing for the applicable Subordinate Obligations (including the current Transfer Date), or

(c) with respect to Deferred Interest Obligations, the applicable Interest Payment Calculation Start Date (including the current Transfer Date); and

(II) is the total number of Transfer Dates in the Interest Payment Period for the applicable Subordinate Obligation;

(B) is an amount equal to the aggregate amount of interest on such Subordinate Obligations scheduled to become due and payable on any Interest Payment Date with respect to such Subordinate Obligations occurring on such Transfer Date or thereafter prior to the next succeeding Transfer Date, as reasonably projected by the Borrower to become due and payable on such Interest Payment Date; provided, that if an Interest Payment Date for such Subordinate Obligations will occur prior to the next succeeding Transfer Date, in no event shall the amount transferred to the applicable Interest Payment Sub-Account be less than the amount necessary to cause the balance then on deposit in such Interest Payment Sub-Account to be at least equal to the projected aggregate amount of interest on such Subordinate Obligations due and payable on such Interest Payment Date, as reasonably projected by the Borrower; provided, further, that if there are insufficient funds available on the Transfer Date to make the deposits required pursuant to this paragraph *Eighth*(i), transfers shall be made to the various Interest Payment Sub-Accounts maintained with respect to

any Subordinate Obligations on a pro rata basis measured by the amounts required to be transferred to such Project Account or sub-account pursuant to this paragraph *Eighth*(i); and

(ii) to each Principal Payment Sub-Account within the Subordinate Obligations Payment Account established in connection with Subordinate Obligations, an amount equal to the amount necessary to cause the balance on deposit in such Principal Payment Sub-Account to be equal to the product of (A) and (B), where:

(A) is a number equal to:

(I) for Subordinate Obligations not constituting Balloon Indebtedness, (a) divided by (b), where:

(a) is the number of Transfer Dates that have occurred since:

(x) subject to the succeeding clause (y), the preceding Principal Payment Date for the applicable Subordinate Obligations (including the current Transfer Date but excluding any Transfer Date occurring on such preceding Principal Payment Date), or

(y) if no Principal Payment Date has yet occurred in respect of the applicable Subordinate Obligations, the Principal Payment Calculation Start Date for the applicable Subordinate Obligations (including the current Transfer Date); and

(b) the total number of Transfer Dates in the Principal Payment Period for the applicable Subordinate Obligations, or

(II) for Subordinate Obligations constituting Balloon Indebtedness:

(a) prior to the applicable Principal Payment Calculation Start Date, zero (0),

(b) on and after the applicable Principal Payment Calculation Start Date and before the first Principal Payment Date pursuant to the Balloon Indebtedness Certificate, (x) the number of Transfer Dates that have occurred since the Principal Payment Calculation Start Date for such Balloon Indebtedness (including the current Transfer Date but, if such Payment Calculation Start Date occurred on a prior Transfer Date, then excluding such Transfer Date), divided by (y) the total number of Transfer Dates in the Principal Payment Period outlined in the Balloon Indebtedness Certificate, or

(c) on and after the first Principal Payment Date pursuant to the Balloon Indebtedness Certificate, (x) the number of Transfer Dates that have occurred since the preceding Principal Payment Date outlined in the applicable Balloon Indebtedness Certificate (including the current Transfer Date but excluding any Transfer Date occurring on such preceding Principal Payment Date), divided by (y) the total number of Transfer Dates in the Principal Payment Period outlined in such Balloon Indebtedness Certificate; and

(B) is an amount equal to the principal or Accreted Value of such Subordinate Obligation scheduled or assumed (in accordance with the definition of Aggregate Debt Service) to become

due and payable on the Principal Payment Date with respect to such Subordinate Obligation occurring on such Transfer Date or immediately thereafter; provided that if a Principal Payment Date for such Subordinate Obligation will occur prior to the next succeeding Transfer Date, in no event shall the amount transferred to the applicable Principal Payment Sub-Account be less than the amount necessary to cause the balance then on deposit in such Principal Payment Sub-Account to be at least equal to the aggregate amount of principal or Accreted Value of such Subordinate Obligation due and payable on such Principal Payment Date; provided, further, that if there are insufficient funds available on the Transfer Date to make the deposits required pursuant to this paragraph *Eighth(ii)*, transfers shall be made to the various Principal Payment Sub-Accounts maintained with respect to any Subordinate Obligations on a pro rata basis measured by the amounts required to be transferred to each Project Account or sub-account pursuant to this paragraph *Eighth(ii)*;

*Ninth*, to the Port Authority an amount equal to (A) the Subordinate Concessions Revenue Rent, (B) any accumulated and unpaid Deferred Concessions Revenue Rent which are attributable to prior Transfer Dates, together with any interest due and payable thereon pursuant to the Lease Agreement, if applicable, and (C) on the first Transfer Date following the identification of any MAG Deficiency for the preceding year during the Deferral Period, any portion of the MAG Deficiency to the extent not paid pursuant to paragraph Second above, each as due and payable under the Lease Agreement;

*Tenth*, all remaining amounts shall be (i) transferred (in whole or in part) to the Operating Cashflow Sub-Account within the Construction Account, or (ii) retained (in whole or in part) in the Pre-Substantial Completion Revenue Account, in each case as directed by the Borrower.

Notwithstanding the foregoing, the Securities Intermediary shall automatically make the transfers described in clauses *First (i)*, *Second (i)*, *Fourth*, and *Fifth*, even if not instructed to do so by the Borrower.

If on any Transfer Date the amounts on deposit in the Pre-Substantial Completion Revenue Account are not sufficient to make the transfers required to be made from the Pre-Substantial Completion Revenue Account (i) pursuant to clauses *First* through *Eighth* described above, inclusive, in full, the Securities Intermediary shall (notwithstanding any other provision of the Collateral Agency and Accounts Agreement and without the need for a Funds Transfer Certificate), transfer funds from the Operating Cashflow Sub-Account (to the extent of the balance therein) in the amounts of the deficiencies to each Person and Project Account in accordance with the order of priority and pro rata portions set forth in the Collateral Agency and Accounts Agreement, and (ii) after having made such transfers in full, then the Securities Intermediary shall (notwithstanding any other provision of the Collateral Agency and Accounts Agreement and without the need for a Funds Transfer Certificate) transfer funds in an aggregate amount not exceeding the amount of such deficiency on such date to the Port Authority or to the Operating Account, as applicable, from the O&M Reserve Account.

On the Phase 2 End of Funding Date, all remaining funds, if any, then on deposit in the Pre-Substantial Completion Revenue Account shall be transferred (i) first, to the Operating Cashflow Sub-Account, in the amount necessary to cause the aggregate amount remaining on deposit in the Sub-Accounts of the Construction Account to equal to the amount of Project Costs incurred or anticipated to be incurred but not yet paid through and including the Final Completion Date, and (ii) thereafter, all remaining funds shall be transferred to the Post-Substantial Completion Revenue Account.



## Flow of Funds Post-Substantial Completion

On and after the Phase 2 End of Funding Date, the Borrower will promptly deposit into the Post-Substantial Completion Revenue Account (i) all Project Revenues and all other amounts received by the Borrower from any source whatsoever, except for the Non-Pledged Receipts and amounts required to be deposited in other Project Accounts pursuant to the Collateral Agency and Accounts Agreement, and (ii) any amounts transferred from other Project Accounts as required by the terms of the Collateral Agency and Accounts Agreement. Pending such deposit, the Borrower will hold all such amounts received by it in trust for the benefit of the Secured Parties.

The Securities Intermediary shall, on each Transfer Date occurring on or after the Phase 2 End of Funding Date, make the following withdrawals, transfers and payments from the Post-Substantial Completion Revenue Account (to the extent of funds then available in the Post-Substantial Completion Revenue Account, and in each case to the extent the amounts required to pay such amounts have not been previously transferred, in accordance with the terms of the Collateral Agency and Accounts Agreement, from other Accounts at the direction of the Borrower) in the amounts, at the times and only for the purposes specified in the Collateral Agency and Accounts Agreement at the request of the Borrower in a Funds Transfer Certificate and in the following order of priority, after giving effect to any other transfers into the Project Accounts required or permitted to be made prior to such Transfer Date in accordance with the terms of the Collateral Agency and Accounts Agreement (it being agreed that no amount shall be withdrawn or transferred on any date pursuant to any clause below until amounts sufficient as of that date (to the extent applicable) for all the purposes specified under the prior clauses shall have been withdrawn or transferred):

*First*, in the following order of priority (i) if any Rebate Amount is due under the Indenture, to fund the Rebate Account in an amount equal to such Rebate Amount, and thereafter and (ii) pro rata to pay all fees (including commitment fees), administrative costs and expenses then due and payable under the Financing Documents to the Secured Parties;

*Second, pro rata* (i) to the Port Authority, an amount equal to the aggregate Ground Rent, First Additional Rent, Second Additional Rental, Third Additional Rent, any other Rental (other than Concessions Revenue Rent, Excess Value Rent or Equity Gain Share) and any MMRA Shortfall Amount, in each case due and payable on the applicable Transfer Date, (ii) to the Port Authority, on the first Transfer Date following the identification of any MAG Deficiency for the preceding year, if applicable, an amount equal to such MAG Deficiency (provided that during any Deferral Period, only fifty percent (50%) of any MAG Deficiency shall be paid at this tier Second and the remaining fifty percent (50%) shall be paid at tier Eleventh), and (iii) to the Operating Account, an amount equal to, together with the amount then on deposit therein, the Permitted O&M Expenses (other than amounts required to be transferred or paid to the Port Authority pursuant to this paragraph) then due and payable, or reasonably projected to be due and payable prior to the next succeeding Transfer Date, and Major Maintenance expenses (to the extent funds on deposit in the Major Maintenance Reserve Account are not sufficient to pay such Major Maintenance expenses and without duplication of any MMRA Shortfall Amount) then due and payable or that will become due and payable prior to the next succeeding Transfer Date;

*Third*, to the Operating Account, an amount equal, when taken together with amounts then on deposit therein, to the O&M Expenses (other than amounts required to be transferred or paid to the Port Authority pursuant to paragraph 2) not constituting Permitted O&M Expenses then due and payable, or reasonably projected to be due and payable, prior to the next succeeding Transfer Date;

*Fourth, pro rata*, (i) to the Hedge Ordinary Course Payment Account, an amount equal to the Ordinary Course Payments under any Secured Hedge Agreement then due and payable, or that are projected

by the Borrower to become due and payable prior to the next succeeding Transfer Date, and (ii) to each Interest Payment Sub-Account within the Senior Obligations Payment Account established in connection with Senior Obligations (other than Ordinary Course Payments under any Secured Hedge Agreement), an amount equal to the amount necessary to cause the balance on deposit in such Interest Payment Sub-Account to be equal to the product of (A) and (B), where:

(A) is a number equal to (I) divided by (II), where:

(I) is the number of Transfer Dates that have occurred since:

(a) subject to the succeeding clauses (b) and (c), the preceding Interest Payment Date for the applicable Senior Obligations (including the current Transfer Date but excluding any Transfer Date occurring on such preceding Interest Payment Date),

(b) subject to the succeeding clause (c), if no Interest Payment Date has yet occurred in respect of the applicable Senior Obligations, the date of issuance, Drawing or borrowing for the applicable Senior Obligations (including the current Transfer Date), or

(c) with respect to Deferred Interest Obligations, the applicable Interest Payment Calculation Start Date (including the current Transfer Date); and

(II) is the total number of Transfer Dates in the Interest Payment Period for the applicable Senior Obligation; and

(B) is an amount equal to the aggregate amount of interest on such Senior Obligations scheduled to become due and payable on any Interest Payment Date with respect to such Senior Obligations occurring on such Transfer Date or thereafter prior to the next succeeding Transfer Date, as reasonably projected by the Borrower to become due and payable on such Interest Payment Date; provided that if an Interest Payment Date for such Senior Obligations will occur prior to the next succeeding Transfer Date, in no event shall the amount transferred to the applicable Interest Payment Sub-Account be less than the amount necessary to cause the balance then on deposit in such Interest Payment Sub-Account to be at least equal to the projected aggregate amount of interest on such Senior Obligations due and payable on such Interest Payment Date, as reasonably projected by the Borrower; provided, further, that if there are insufficient funds available on the Transfer Date to make the deposits required pursuant to this paragraph *Fourth* in full, transfers shall be made to the Hedge Ordinary Course Payment Account and the various Interest Payment Sub-Accounts maintained with respect to any Senior Obligations on a pro rata basis measured by the amounts required to be transferred to each such Project Account or sub-account pursuant to this paragraph *Fourth*;

*Fifth, pro rata*, (i) to the Hedge Termination Payment Account, an amount equal to the Hedge Termination Payments under any Secured Hedge Agreement then due and payable, or that is reasonably projected by the Borrower to become due and payable prior to the next succeeding Transfer Date, and (ii) to each Principal Payment Sub-Account within the Senior Obligations Payment Account established in connection with Senior Obligations (other than Hedge Termination Payments under any Secured Hedge Agreement), an amount equal to the amount necessary to cause the balance on deposit in such Principal Payment Sub-Account to be equal to the product of (A) and (B) where:

(A) is a number equal to:

(I) for Senior Obligations not constituting Balloon Indebtedness, (a) divided by (b), where:

(a) is the number of Transfer Dates that have occurred since:

(x) subject to the succeeding clause (y), the preceding Principal Payment Date for the applicable Senior Obligations (including the current Transfer Date but excluding any Transfer Date occurring on such preceding Principal Payment Date), or

(y) if no Principal Payment Date has yet occurred in respect of the applicable Senior Obligations, the Principal Payment Calculation Start Date for the applicable Senior Obligations (including the current Transfer Date); and

(b) is the total number of Transfer Dates in the Principal Payment Period for the applicable Senior Obligation; or

(II) for Senior Obligations constituting Balloon Indebtedness:

(a) prior to the applicable Principal Payment Calculation Start Date, zero (0),

(b) on and after the applicable Principal Payment Calculation Start Date and before the first Principal Payment Date pursuant to the Balloon Indebtedness Certificate,

(x) the number of Transfer Dates that have occurred since the Principal Payment Calculation Start Date for such Balloon Indebtedness (including the current Transfer Date but, if such Payment Calculation Start Date occurred on a prior Transfer Date, then excluding such Transfer Date), *divided by*

(y) the total number of Transfer Dates in the Principal Payment Period outlined in such Balloon Indebtedness Certificate, or

(c) on and after the first Principal Payment Date pursuant to the Balloon Indebtedness Certificate,

(x) the number of Transfer Dates that have occurred since the preceding Principal Payment Date outlined in the applicable Balloon Indebtedness Certificate (including the current Transfer Date but excluding any Transfer Date occurring on such preceding Principal Payment Date), *divided by*

(y) the total number of Transfer Dates in the Principal Payment Period outlined in the Balloon Indebtedness Certificate; and

(B) is an amount equal to the principal or Accreted Value of such Senior Obligations scheduled or assumed (in accordance with the definition of Aggregate Debt Service) to become due and payable on the Principal Payment Date with respect to such Senior Obligations occurring on such Transfer Date or immediately thereafter; provided that if a Principal Payment Date for such Senior Obligations will occur prior to the next succeeding Transfer Date, in no event shall the

amount transferred to the applicable Principal Payment Sub-Account be less than the amount necessary to cause the balance then on deposit in such Principal Payment Sub-Account to be at least equal to the aggregate amount of principal or Accreted Value of such Senior Obligations due and payable on such Principal Payment Date; provided further that if there are insufficient funds available on the Transfer Date to make the deposits required pursuant to this paragraph *Fifth* in full, transfers shall be made to the Hedge Termination Payment Account and the various Principal Payment Sub-Accounts maintained with respect to any Senior Obligations on a pro rata basis measured by the amounts required to be transferred to each such Project Account or sub-account pursuant to this paragraph *Fifth*;

*Sixth*, so long as no Default or Event of Default has occurred and is continuing or would result from such payment and to the extent not prohibited by any other Financing Document, to pay Permitted Tax Distributions in the amount and to the Persons requested in the Funds Transfer Certificate (provided that the Borrower has covenanted in the First Building Loan Agreement Amendment not to pay, distribute, declare the payment of or make any Permitted Tax Distributions, whether as a dividend, loan, investment, loan repayment or in any other form pursuant to this section in an amount exceeding \$20 million per calendar year), provided that if, on the applicable Transfer Date, any Deferred Concessions Revenue Rent is owed to the Port Authority under the Lease Agreement, such Permitted Tax Distributions shall instead be paid under tier *Eleventh* below;

*Seventh*, in the following order of priority, (i) to the Senior Debt Service Reserve Account, the amount (if any) necessary to fund such account so that the balance therein (taking into account amounts then on deposit therein, and any amount then available for drawing under any Acceptable Letter of Credit provided with respect to the Senior Debt Service Reserve Account) equals the Senior Debt Service Reserve Requirement at such time, and (ii) to the Ramp-Up Reserve Account, the amount (if any) necessary to fund such account so that the balance therein equals the Ramp-Up Reserve Requirement at such time;

*Eighth*, to the O&M Reserve Account, the amount (if any) necessary to fund such account so that the balance therein, taking into account amounts then on deposit therein and any amount then available for drawing under any Acceptable Letter of Credit provided with respect to the O&M Reserve Account, equals the O&M Reserve Requirement at such time;

*Ninth, pro rata* (i) to the Major Maintenance Reserve Account the amount (if any) necessary to fund such account so that the balance therein, taking into account the amount available for drawing under any Acceptable Letter of Credit provided with respect to the Major Maintenance Reserve Account, equals the Major Maintenance Reserve Requirement at such time, and (ii) to the Handback Reserve Account the amount (if any) necessary to fund such account so that the balance therein, taking into account the amount available for drawing under any Acceptable Letter of Credit provided with respect to the Handback Reserve Account, equals the Handback Reserve Amount at such time;

*Tenth*, if applicable, in the following order of priority, (i) to each Interest Payment Sub-Account within the Subordinate Obligations Payment Account established in connection with the Subordinate Obligations, an amount equal to the amount necessary to cause the balance on deposit in such Interest Payment Sub-Account to be equal to the product of (A) and (B), where:

(A) is a number equal to (I) divided by (II), where:

(I) is the number of Transfer Dates that have occurred since:

(a) subject to the succeeding clauses (b) and (c), the preceding Interest Payment Date for the applicable Subordinate Obligations (including the current Transfer Date but excluding any Transfer Date occurring on such preceding Interest Payment Date),

(b) subject to the succeeding clause (c), if no Interest Payment Date has yet occurred in respect of the applicable Subordinate Obligations, the date of issuance, Drawing or borrowing for the applicable Subordinate Obligations (including the current Transfer Date), or

(c) with respect to Deferred Interest Obligations, the applicable Interest Payment Calculation Start Date (including the current Transfer Date); and

(II) is the total number of Transfer Dates in the Interest Payment Period for the applicable Subordinate Obligations;

(B) is an amount equal to the aggregate amount of interest on such Subordinate Obligations scheduled to become due and payable on any Interest Payment Date with respect to such Subordinate Obligations occurring on such Transfer Date or thereafter prior to the next succeeding Transfer Date, as reasonably projected by the Borrower to become due and payable on such Interest Payment Date; provided that if an Interest Payment Date for such Subordinate Obligations will occur prior to the next succeeding Transfer Date, in no event shall the amount transferred to the applicable Interest Payment Sub-Account be less than the amount necessary to cause the balance then on deposit in such Interest Payment Sub-Account to be at least equal to the projected aggregate amount of interest on such Subordinate Obligations due and payable on such Interest Payment Date, as reasonably projected by the Borrower; provided, further, that if there are insufficient funds available on the Transfer Date to make the deposits required pursuant to this paragraph *Tenth(i)*, transfers shall be made to the various Interest Payment Sub-Accounts maintained with respect to any Subordinate Obligations on a pro rata basis measured by the amounts required to be transferred to such Project Account or sub-account pursuant to this paragraph *Tenth(i)*; and

(ii) to each Principal Payment Sub-Account within the Subordinate Obligations Payment Account established in connection with the Subordinate Obligations, an amount equal to the amount necessary to cause the balance on deposit in such Principal Payment Sub-Account to be equal to the product of (A) and (B), where:

(A) is a number equal to:

(I) for Subordinate Obligations not constituting Balloon Indebtedness, (a) divided by (b), where:

(a) is the number of Transfer Dates that have occurred since:

(x) subject to the succeeding clause (y), the preceding Principal Payment Date for the applicable Subordinate Obligations (including the current Transfer Date but excluding the Transfer Date on which such preceding Principal Payment Date occurred), or

(y) if no Principal Payment Date has yet occurred in respect of the applicable Subordinate Obligations, the Principal Payment Calculation Start Date for the applicable Subordinate Obligations (including the current Transfer Date); and

(b) the total number of Transfer Dates in the Principal Payment Period for the applicable Subordinate Obligations, or

(II) for Subordinate Obligations constituting Balloon Indebtedness:

(a) prior to the applicable Principal Payment Calculation Start Date, zero (0),

(b) on and after the applicable Principal Payment Calculation Start Date and before the first Principal Payment Date pursuant to the Balloon Indebtedness Certificate,

(x) the number of Transfer Dates that have occurred since the Principal Payment Calculation Start Date for such Balloon Indebtedness (including the current Transfer Date but, if such Payment Calculation Start Date occurred on a prior Transfer Date, then excluding such Transfer Date), divided by

(y) the total number of Transfer Dates in the Principal Payment Period outlined in the Balloon Indebtedness Certificate, or

(c) on and after the first Principal Payment Date pursuant to the Balloon Indebtedness Certificate,

(x) the number of Transfer Dates that have occurred since the preceding Principal Payment Date outlined in the applicable Balloon Indebtedness Certificate (including the current Transfer Date but excluding the Transfer Date on which such preceding Principal Payment Date occurred), divided by

(y) the total number of Transfer Dates in the Principal Payment Period outlined in such Balloon Indebtedness Certificate; and

(B) is an amount equal to the principal or Accreted Value of such Subordinate Obligation scheduled or assumed (in accordance with the definition of Aggregate Debt Service) to become due and payable on the Principal Payment Date for such Subordinate Obligations occurring on such Transfer Date or immediately thereafter; provided that if a Principal Payment Date for such Subordinate Obligation will occur prior to the next succeeding Transfer Date, in no event shall the amount transferred to the applicable Principal Payment Sub-Account be less than the amount necessary to cause the balance then on deposit in such Principal Payment Sub-Account to be at least equal to the aggregate amount of principal or Accreted Value of such Subordinate Obligation due and payable on such Principal Payment Date; provided, further, that if there are insufficient funds available on the Transfer Date to make the deposits required pursuant to this paragraph *Tenth(ii)*, transfers shall be made to the various Principal Payment Sub-Accounts maintained with respect to any Subordinate Obligations on a pro rata basis measured by the amounts

required to be transferred to each Project Account or sub-account pursuant to this paragraph *Tenth(ii)*;

*Eleventh*, in the following order of priority: (i) to the Port Authority an amount equal to (A) Subordinate Concessions Revenue Rent, (B) any accumulated and unpaid Deferred Concessions Revenue Rent which is attributable to prior Transfer Dates, together with any interest due and payable thereon pursuant to the Lease Agreement, and (C) on the first Transfer Date following the identification of any MAG Deficiency for the preceding year during the Deferral Period, any portion of the MAG Deficiency to the extent not paid pursuant to paragraph *Second* above, each as due and payable under the Lease Agreement, and (ii) to the extent not prohibited by any other Financing Document, Permitted Tax Distributions to the extent not paid pursuant to *Sixth* above (noting that such payment under this section is expressly prohibited by the First Building Loan Agreement Amendment), in the amount and to the Persons requested in the Funds Transfer Certificate;

*Twelfth*, all remaining amounts to the Remaining Revenue Account.

Notwithstanding the foregoing, the Securities Intermediary shall automatically make the transfers described in clauses *First (i)*, *Second (i)*, *Fourth*, *Fifth*, and *Sixth* even if not instructed to do so by the Borrower.

Each of the Borrower and (at the direction of the Secured Parties) each Collateral Agent acknowledges and agrees that payment of any Deferred Concessions Revenue Rent to which the Port Authority is entitled under and subject to the Lease Agreement will be made in the ordinary course to the extent of available funds therefore in accordance with the provisions of the Post-Substantial Completion Revenue Account section of the Collateral Agency and Accounts Agreement.

If on any Transfer Date the amounts on deposit in the Post-Substantial Completion Revenue Account are not sufficient to make the transfers required to be made from the Post-Substantial Completion Revenue Account pursuant to clauses *First* through *Tenth* described above, inclusive, in full, the Securities Intermediary (or the Deposit Account Bank, with respect to the Operating Account) shall (notwithstanding any other provision hereof and without the need for a Funds Transfer Certificate), transfer funds as follows:

(i) if amounts on deposit in the Post-Substantial Completion Revenue Account are not sufficient to make the transfers required in accordance with clause *First* with respect to amounts then due and payable under the Financing Documents, then funds in an aggregate amount not exceeding the amount of such deficiency shall be transferred on such date to the relevant Secured Parties *first, pro rata* from the Remaining Revenue Account and the Surplus Remaining Revenue Account, as applicable, *second*, from the Ramp-Up Reserve Account (provided that the amount on deposit in the Ramp-Up Reserve Account immediately after giving effect to such transfer, when added to the amount then on deposit in the Senior Debt Service Reserve Account (including any amount then available for drawing under any Acceptable Letter of Credit provided with respect to the Senior Debt Service Reserve Account), shall be at least equal to the Senior Debt Service Reserve Requirement at such time), and *third*, from the O&M Reserve Account;

(ii) if amounts on deposit in the Post-Substantial Completion Revenue Account are not sufficient to make the transfers required in accordance with clauses *Second* and *Third* (in such order of priority) in full on such Transfer Date, then, after application of subparagraph (i) above, funds in an aggregate amount not exceeding the amount of such deficiency shall be transferred on such date to the Port Authority or to the Operating Account, as applicable, *first, pro rata* from the Remaining Revenue Account and the Surplus Remaining Revenue Account, as applicable, *second*,

from the Ramp-Up Reserve Account (provided that the amount on deposit in the Ramp-Up Reserve Account immediately after giving effect to such transfer, when added to the amount then on deposit in the Senior Debt Service Reserve Account (including any amount then available for drawing under any Acceptable Letter of Credit provided with respect to the Senior Debt Service Reserve Account), shall be at least equal to the Senior Debt Service Reserve Requirement at such time), and *third*, from the O&M Reserve Account;

(iii) if amounts on deposit in the Post-Substantial Completion Revenue Account are not sufficient to transfer the full amount due to be transferred to the Hedge Ordinary Course Payment Account and to each Interest Payment Sub-Account within the Senior Obligations Payment Account on such Transfer Date in accordance with clause *Fourth*, then, after application of subparagraphs (i) and (ii) above, funds in an aggregate amount not exceeding the amount of such deficiency shall be transferred on such date to the Hedge Ordinary Course Payment Account and to each Interest Payment Sub-Account within the Senior Obligations Payment Account, *first, pro rata* from the Remaining Revenue Account and the Surplus Remaining Revenue Account, as applicable, *second*, from the Ramp-Up Reserve Account, *third*, from the Senior Debt Service Reserve Account, and *fourth*, from the O&M Reserve Account;

(iv) if amounts on deposit in the Post-Substantial Completion Revenue Account are not sufficient to transfer the full amount due to be transferred to the Hedge Termination Payment Account and to each Principal Payment Sub-Account within the Senior Obligations Payment Account on such Transfer Date in accordance with clause *Fifth*, then, after application of subparagraphs (i), (ii) and (iii) above, funds in an aggregate amount not exceeding the amount of such deficiency shall be transferred on such date to the Hedge Termination Payment Account and to each Principal Payment Sub-Account within the Senior Obligations Payment Account, *first, pro rata* from the Remaining Revenue Account and the Surplus Remaining Revenue Account, as applicable, *second*, from the Ramp-Up Reserve Account, *third*, from the Senior Debt Service Reserve Account, and *fourth*, from the O&M Reserve Account (provided that no transfer from the Senior Debt Service Reserve Account or the Ramp-Up Reserve Account to the Hedge Termination Payment Account shall be made pursuant to this paragraph (iv));

(v) if amounts on deposit in the Post-Substantial Completion Revenue Account are not sufficient to make the transfers required under clauses *Seventh*, *Eighth* or *Ninth* (in such order of priority) in full on such Transfer Date, then, after application of subparagraphs (i), (ii), (iii) and (iv) above, funds in an aggregate amount not exceeding the amount of such deficiency shall be transferred on such date to the Senior Debt Service Reserve Account, the O&M Reserve Account or the Major Maintenance Reserve Account, as applicable, *pro rata* from the Remaining Revenue Account, and the Surplus Remaining Revenue Account, as applicable;

(vi) if amounts on deposit in the Post-Substantial Completion Revenue Account are not sufficient to transfer the full amount due to be transferred to each Interest Payment Sub-Account and each Principal Payment Sub-Account maintained with respect to any Subordinate Obligations on such Transfer Date in accordance with clause *Tenth*, then, after application of subparagraphs (i), (ii), (iii), (iv) and (v) above, funds in an aggregate amount not exceeding the amount of such deficiency shall be transferred on such date to each Interest Payment Sub-Account and each Principal Payment Sub-Account maintained with respect to such Subordinate Obligations, *first, pro rata* from the Remaining Revenue Account and the Surplus Remaining Revenue Account, as applicable, *second*, from the Subordinate Debt Service Reserve Account, and *third*, from the O&M Reserve Account; and



(vii) if amounts on deposit in the Post-Substantial Completion Revenue Account are not sufficient to transfer the full amount due to be transferred to the Subordinate Debt Service Reserve Account on such Transfer Date in accordance with clause *Tenth*, then, after application of subparagraphs (i), (ii), (iii), (iv), (v) and (vi) above, funds in an aggregate amount not exceeding the amount of such deficiency shall be transferred on such date to the Subordinate Debt Service Reserve Account *pro rata* from the Remaining Revenue Account and the Surplus Remaining Revenue Account, as applicable.

## **PART 6 – BOND INSURANCE**

*Information contained under this heading relates to the Bond Insurer for certain Bonds, as further described below. Such information has been obtained from the Bond Insurer for use in this Official Statement. No representation is made by the Borrower, the Issuer or the Underwriters as to the accuracy or completeness of this information.*

### **Bond Insurance Policy**

Concurrently with the issuance of the Insured Bonds, the Bond Insurer will issue its Municipal Bond Insurance Policy for the Insured Bonds (the “Policy”). The Policy guarantees the scheduled payment of principal of and interest on the Insured Bonds when due in the form of the Policy attached hereto as Appendix L – “SPECIMEN MUNICIPAL BOND INSURANCE POLICY.”

The Policy is not covered by any insurance security or guaranty fund established under New York, Maryland, California, Connecticut or Florida insurance law.

### **Assured Guaranty Inc.**

The Bond Insurer is a Maryland domiciled financial guaranty insurance company and an indirect subsidiary of Assured Guaranty Ltd. (“AGL” and together with its subsidiaries, “Assured Guaranty”), a Bermuda-based holding company whose shares are publicly traded and are listed on the New York Stock Exchange under the symbol “AGO.” AGL, through its subsidiaries, provides credit enhancement products to the United States and non-U.S. public finance (including infrastructure) and structured finance markets and participates in the asset management business through ownership interests in Sound Point Capital Management, LP and certain of its investment management affiliates. Only the Bond Insurer is obligated to pay claims under the insurance policies the Bond Insurer has issued, and not AGL or any of its shareholders or other affiliates.

AG’s financial strength is rated “AA” (stable outlook) by S&P Global Ratings, a business unit of Standard & Poor’s Financial Services LLC (“S&P”), “AA+” (stable outlook) by Kroll Bond Rating Agency, Inc. (“KBRA”) and “A1” (stable outlook) by Moody’s Investors Service, Inc. (“Moody’s”). Each rating of AG should be evaluated independently. An explanation of the significance of the above ratings may be obtained from the applicable rating agency. The above ratings are not recommendations to buy, sell or hold any security, and such ratings are subject to revision or withdrawal at any time by the rating agencies, including withdrawal initiated at the request of AG in its sole discretion. In addition, the rating agencies may at any time change AG’s long-term rating outlooks or place such ratings on a watch list for possible downgrade in the near term. Any downward revision or withdrawal of any of the above ratings, the assignment of a negative outlook to such ratings or the placement of such ratings on a negative watch list may have an adverse effect on the market price of any security guaranteed by AG. AG only guarantees scheduled principal and scheduled interest payments payable by the issuer of bonds insured by AG on the date(s) when such amounts were initially scheduled to become due and payable (subject to and in

accordance with the terms of the relevant insurance policy), and does not guarantee the market price or liquidity of the securities it insures, nor does it guarantee that the ratings on such securities will not be revised or withdrawn.

***Merger of Assured Guaranty Municipal Corp. Into Assured Guaranty Inc.***

On August 1, 2024, Assured Guaranty Municipal Corp., a New York domiciled financial guaranty insurance company and an affiliate of AG (“AGM”), merged with and into AG, with AG as the surviving company (such transaction, the “Merger”). Upon the Merger, all liabilities of AGM, including insurance policies issued or assumed by AGM, became obligations of AG.

***Current Financial Strength Ratings***

On October 18, 2024, KBRA announced it had affirmed AG’s insurance financial strength rating of “AA+” (stable outlook).

On July 10, 2024, Moody’s, following Assured Guaranty’s announcement of the Merger, announced that it had affirmed AG’s insurance financial strength rating of “A1” (stable outlook).

On May 28, 2024, S&P announced it had affirmed AG’s financial strength rating of “AA” (stable outlook). On August 1, 2024, S&P stated that following the Merger, there is no change in AG’s financial strength rating of “AA” (stable outlook).

AG can give no assurance as to any further ratings action that S&P, Moody’s and/or KBRA may take. For more information regarding AG’s financial strength ratings and the risks relating thereto, see AGL’s Annual Report on Form 10-K for the fiscal year ended December 31, 2023.

***Capitalization of AG, AGM and Pro Forma Combined AG***

**As of June 30, 2024**  
(dollars in millions)

	<b><u>AG</u></b> <b><u>(Actual)</u></b>	<b><u>AGM</u></b> <b><u>(Actual)</u></b>	<b><u>AG</u></b> <b><u>(Pro Forma Combined)</u></b>
Policyholders’ surplus	\$1,649	\$2,599	\$3,960 <sup>(1)</sup>
Contingency reserve	\$421	\$910	\$1,331
Net unearned premium reserves and net deferred ceding commission income	\$355	\$2,078 <sup>(2)</sup>	\$2,433 <sup>(2)</sup>

<sup>(1)</sup>Net of intercompany eliminations.

<sup>(2)</sup>Such amount includes (i) 100% of the net unearned premium reserve and net deferred ceding commission income of AGM or pro forma combined AG, as applicable, and (ii) the net unearned premium reserves and net deferred ceding commissions of Assured Guaranty UK Limited (“AGUK”) and its 99.9999% owned subsidiary Assured Guaranty (Europe) SA (“AGE”).

The policyholders’ surplus, contingency reserves, and net unearned premium reserves and net deferred ceding commission income of AG, AGM, and the pro forma combined AG were determined in accordance with statutory accounting principles. The net unearned premium reserves and net deferred

ceding commissions of AGUK and AGE were determined in accordance with accounting principles generally accepted in the United States of America.

### ***Incorporation of Certain Documents by Reference***

Portions of the following documents filed by AGL with the Securities and Exchange Commission (the “SEC”) that relate to AG and AGM are incorporated by reference into this Official Statement and shall be deemed to be a part hereof:

- I. the Annual Report on Form 10-K for the fiscal year ended December 31, 2023 (filed by AGL with the SEC on February 28, 2024);
- II. the Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2024 (filed by AGL with the SEC on May 8, 2024); and
- III. the Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2024 (filed by AGL with the SEC on August 8, 2024).

All information relating to AG and AGM included in, or as exhibits to, documents filed by AGL with the SEC pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, excluding Current Reports or portions thereof “furnished” under Item 2.02 or Item 7.01 of Form 8-K, after the filing of the last document referred to above and before the termination of the offering of the Insured Bonds shall be deemed incorporated by reference into this Official Statement and to be a part hereof from the respective dates of filing such documents. Copies of materials incorporated by reference are available over the internet at the SEC’s website at <http://www.sec.gov>, at AGL’s website at <http://www.assuredguaranty.com>, or will be provided upon request to Assured Guaranty Inc.: 1633 Broadway, New York, New York 10019, Attention: Communications Department (telephone (212) 974-0100). Except for the information referred to above, no information available on or through AGL’s website shall be deemed to be part of or incorporated in this Official Statement.

Any information regarding AG and AGM included herein under the caption “PART 6 - BOND INSURANCE – Assured Guaranty Inc.” or included in a document incorporated by reference herein (collectively, the “AG Information”) shall be modified or superseded to the extent that any subsequently included AG Information (either directly or through incorporation by reference) modifies or supersedes such previously included AG Information. Any AG Information so modified or superseded shall not constitute a part of this Official Statement, except as so modified or superseded.

### ***Miscellaneous Matters***

AG makes no representation regarding the Insured Bonds or the advisability of investing in the Insured Bonds. In addition, AG has not independently verified, makes no representation regarding, and does not accept any responsibility for the accuracy or completeness of this Official Statement or any information or disclosure contained herein, or omitted herefrom, other than with respect to the accuracy of the information regarding AG supplied by AG and presented under the heading “PART 6 - BOND INSURANCE.”

## **PART 7 – BOND INSURANCE RISK FACTORS**

In the event the Borrower fails to make regularly scheduled payments of principal of and interest on any Insured Bonds when the same become due, the Trustee on behalf of owners of such Insured Bonds

shall have the right to make a claim under the Policy for such payments. There can be no assurance that the Bond Insurer will have sufficient claims paying resources to enable it to make timely payments on such Insured Bonds. The Policy does not insure payments on the Insured Bonds coming due by reason of acceleration, optional redemption, extraordinary redemption or mandatory redemption (other than mandatory sinking fund redemption), nor does it insure the payment of any redemption premium available upon the optional redemption of the Insured Bonds.

So long as the Insured Bonds are outstanding and the Bond Insurer is not in default under the Policy, the Bond Insurer shall be deemed the owner of the Insured Bonds for purposes of all actions relating to the Insured Bonds which require or permit the consent, direction or request of the owners of the Insured Bonds.

In the event that the Bond Insurer does not make scheduled payments of principal and interest on the Insured Bonds as such payments become due, such Insured Bonds will be payable solely from the moneys received by the Trustee pursuant to the Indenture. See “APPENDIX L—SPECIMEN MUNICIPAL BOND INSURANCE POLICY” for further information concerning the Bond Insurer and the Policy.

The ratings on the Insured Bonds are dependent in part on the ratings of the Bond Insurer. The Bond Insurer’s current ratings are predicated upon, among other things, a level of reserves in excess of the levels required by the various state agencies regulating insurance companies and an assessment by rating agencies of potential future claims and the adequacy of reserves to meet these claims, which levels of reserves and assessments could change over time and this could result in a downgrading or withdrawal of the ratings on the Insured Bonds. The Bond Insurer is not contractually bound to maintain its present level of reserves in the future or to increase them in order to maintain its present ratings.

## **PART 8 – JFK AIRPORT**

### **The Airport**

Opened on July 1, 1948, the Airport is located in the southeastern section of Queens, New York, on Jamaica Bay. The Airport consists of approximately 4,956 acres, including 880 acres in the Central Terminal Area, and is currently the largest airport in the New York metropolitan region, by passenger volume and cargo volume. The Central Terminal Area contains five individual airline passenger terminals. The terminals are independently operated (some directly by airlines and some by private terminal operators) under leases with the Port Authority.

In 2017 the Board of Commissioners of the Port Authority adopted plans for comprehensive improvements to the Airport, particularly in the Central Terminal Area, where certain existing passenger terminals are reaching the end of their useful lives. The Airport-wide master plan provides for certain new state-of-the-art passenger facilities with a focus on customer-oriented, sustainable, and technologically advanced operations. For a description of the Airport, including the redevelopment plan and status thereof, see Section 2 “AIRPORT FACILITIES AND TERMINAL REDEVELOPMENT PROGRAM” in the Report of the Airport Consultant appended hereto as APPENDIX B-1.

### **The Basic Lease**

The Port Authority operates the Airport under a lease agreement, entered into in 1947, which was amended and restated in 2004, and further amended in 2021 (as so amended, the “Basic Lease”), pursuant to which the land on which the Airport is located, among other property is leased by the City of New York (the “City”) to the Port Authority. The term of the Basic Lease is currently scheduled to expire on December 31, 2060. The Basic Lease provides the Port Authority with rights for the use, occupancy and control of

both the Airport and LaGuardia Airport (“LaGuardia”), in exchange for annual rents payable to the City based on the Port Authority’s annual gross revenue from both facilities, subject to a minimum guaranteed amount each year.

Subject to certain procedural requirements, including notice to the Port Authority, the City is entitled to seek a termination of the Basic Lease prior to its stated expiration date, resulting in the loss of the Port Authority’s rights with respect to the Airport, if the Port Authority fails to meet its payment or other various obligations under the Basic Lease. An early termination of the Basic Lease for any reason while the Lease Agreement remains in effect would also result in a termination of the Lease Agreement.

For additional information regarding the Basic Lease, see Section 1.2.2 “The Port Authority Airport Leases with the City of New York” in the Report of the Airport Consultant appended hereto as APPENDIX B-1.

Neither the Borrower, the City, or the Port Authority make any representations or warranties concerning the status of the Basic Lease. Further, no assurance can be provided that the Basic Lease will remain in effect during the full term of the Lease Agreement or the Series 2024 Bonds.

### **Air Service Area; Passenger and Air Traffic**

The Airport draws the majority of its origin and destination passenger traffic (i.e., passengers who either begin or end their trips at the Airport), from a geographical area comprised of the New York-Newark, NY-NJ-CT-PA Combined Statistical Area (as defined by the U.S. Department of Commerce – Economics and Statistics Administration U.S. Census Bureau) (the “Air Service Area”). Connecting traffic uses the Airport to reach another destination. In 2023, the Airport served over 62.5 million passengers, including origin and destination and connecting traffic. For additional information regarding the Air Service Area and passenger and air traffic, see Section 4 “PASSENGER DEMAND AND AIR SERVICE ANALYSIS” in the Report of the Airport Consultant appended hereto as APPENDIX B-1 as well as the Report of the Airline Traffic Forecast Consultant appended hereto as APPENDIX B-2.

## **PART 9 – PROJECT PARTICIPANTS**

### **The Issuer**

The Issuer was caused to be created in October 2015 under Section 1411 of the New York Not-For-Profit Corporation Law (the “NFPC Law”) by the New York Job Development Authority (“JDA”) pursuant to its authority under the New York Public Authorities Law and the NFPC Law. The Issuer had its organizational meeting on November 3, 2015. The Issuer is not a subsidiary or agent of the JDA for any purpose under the laws of New York.

The Issuer has all powers conferred upon a not-for-profit corporation by the NFPC Law. However, in fulfilling its purpose, the Issuer does not impose any liabilities or obligations upon JDA, the New York State Urban Development Corporation, doing business as Empire State Development or the Governor of the State of New York or the State of New York.

The Governor of the State of New York and JDA are the two members of the Issuer, each of which members appoints a designated number of Directors to the Board of the Issuer.

The Directors of the Issuer as of the date of this Official Statement are:

<u>Name</u>	<u>Affiliation</u>	<u>Appointed by</u>	<u>Term Expires</u>
George J. Haggerty	Haggerty Munz, PLLC	Governor	12/31/2016*
Andrew Kennedy	Senior Vice President, Ostroff Associates, Inc.	Governor	12/31/2017*
Anthony Dalessio	Deputy CFO and Controller of New York State Urban Development Corporation (d/b/a Empire State Development)	JDA	12/31/2024
Elizabeth Lusskin	Executive Vice President, Small Business & Technology Development of the New York State Urban Development Corporation (d/b/a Empire State Development)	JDA	12/31/2024

\*Holding over.

The Officers of the Issuer are:

<u>Name</u>	<u>Title</u>
Raymond Orlando	Chief Financial Officer
Matthew Bray	Treasurer
Joshua D. Bloodworth	Executive Vice President – Legal and General Counsel
Goldie Weixel	Deputy General Counsel
Deborah Royce	Secretary
Courtney Heed	Assistant Secretary

## **The Borrower**

### ***General Information Concerning the Borrower***

The Borrower is a Delaware limited liability company that was formed in February 2022 for the principal purpose of entering into the Lease Agreement and undertaking the Project and the Operations and Maintenance Work thereunder. The Borrower’s leasehold interest in the Premises under the Lease Agreement with the Port Authority constitutes its principal asset. The Borrower is a special purpose entity and does not anticipate engaging in any material operations other than the conduct of the Project, including the Operations and Maintenance Work.

### ***The Borrower’s Ownership Structure***

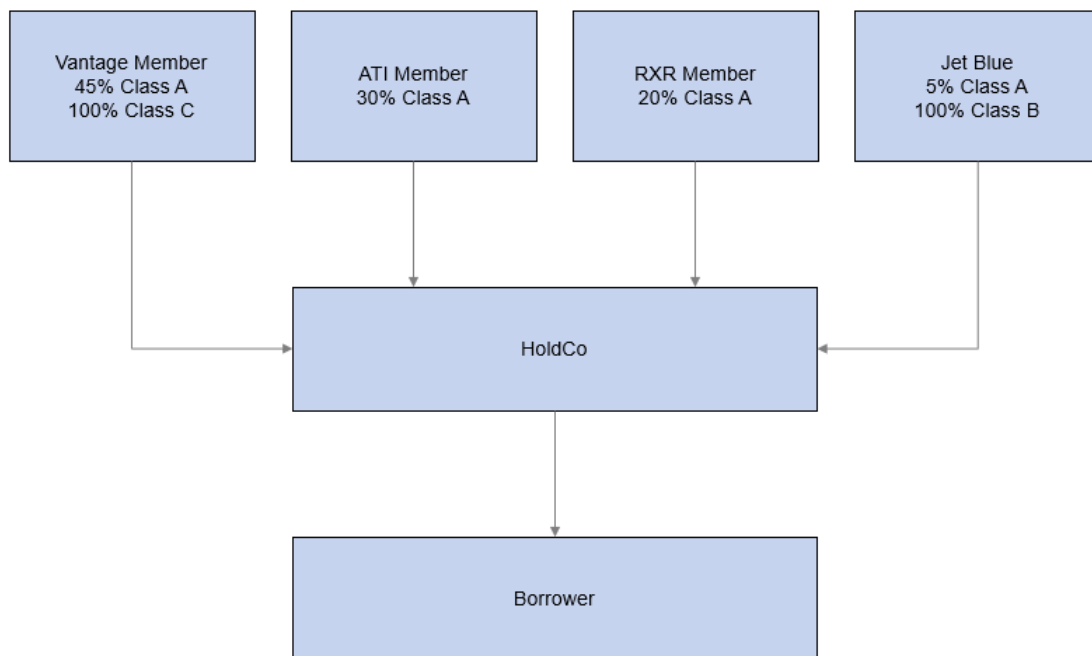
The Borrower’s sole member is HoldCo, a Delaware limited liability company that was formed in August 2022. HoldCo governs the affairs of, and the conduct of the business of, the Borrower, including the undertaking of all activities relating to the operation and management of the Premises.

The membership interests in HoldCo are comprised of “Class A Membership Interests,” the “Class B Membership Interest” and the “Class C Membership Interest.” The Class A Membership Interests are owned 45% by the Vantage Member, 30% by the ATI Member, 20% by the RXR Member, and 5% by JetBlue (each, in such capacity, a “Class A Member”), the Class B Membership Interest is owned by JetBlue

(in such capacity, the “Class B Member”) and the Class C Membership Interest is owned by the Vantage Member (in such capacity, the “Class C Member” and, together with the Class A Member and the Class B Member, the “Holdco Members”). The Vantage Member will only be entitled to retain its Class C Membership Interest if and for so long as it continues to hold at least 30% of the Class A Membership Interests. The Vantage Member may not transfer the Class C Membership Interest to any person that is not an affiliate of the Vantage Member.

Each Class A Member, in its capacity as such, is entitled to designate one director (each such Director, a “Class A Director”) to the board of directors of HoldCo (the “HoldCo Board”) for each 10% of Class A Membership Interests held by such Class A Member, it being understood, for the avoidance of doubt, that (i) a Class A Member who holds less than a 10% Class A Membership Interests shall not be entitled to designate any Class A Directors and (ii) a Class A Member who holds an incremental Class A Membership Interests of less than 10% shall not be entitled to appoint an additional Class A Director in respect of such incremental Class A Ownership Percentage. The Class B Member and Class C Member, each in their capacity as such, are each entitled to designate one director (as applicable, the “Class B Director” or “Class C Director” and, together with the Class A Directors, the “Directors”). The chair of the HoldCo Board (the “Chair”), at any time, shall be the Class A Director appointed as Chair by the Class A Member with the greatest Class A Membership Interests at such time. The Chair is currently George Casey.

The Borrower’s ownership structure described herein is represented in the corporate structure chart below:



See section 1.1 “JFK MILLENNIUM PARTNERS” in the Report of the Airport Consultant appended hereto as APPENDIX B-1.

***The Borrower’s Governance Structure***

Given the Borrower’s ownership structure described above, the Borrower’s governance and management is governed and determined by (i) the Limited Liability Company Operating Agreement of

HoldCo, dated as of the Original Closing Date (the “HoldCo LLC Agreement”) and (ii) the Limited Liability Company Agreement of Borrower, dated as of the Original Closing Date (the “Borrower LLC Agreement”).

Pursuant to the HoldCo LLC Agreement and the Borrower LLC Agreement, (i) the Borrower is managed by HoldCo as its sole member, and (ii) the HoldCo Members appoint the Directors of the HoldCo Board. The current number of Class A Directors of HoldCo is nine. Each Class A Member that owns at least 10% of the Class A Membership Interests has a right to appoint a certain number of Class A Directors in accordance with its percentage of ownership in HoldCo. Under the current ownership structure, (i) the Vantage Member has the right to appoint four Class A Directors, including the Chair, and the Class C Director, (ii) the ATI Member has the right to appoint three Class A Directors, (iii) the RXR Member has the right to appoint two Class A Directors, and (iv) JetBlue has the right to appoint the Class B Director.

The HoldCo Board has caused the Borrower to appoint the Chief Executive Officer, Chief Financial Officer, and other officers and staff of the Borrower as described in greater detail under the subcaption “*The Borrower’s Management Team*” below.

Under the HoldCo LLC Agreement, Directors that are nominated by an Equity Member are prohibited from voting on certain matters that present a conflict of interest.

Except for “Special Board Matters” and “Member Reserved Matters” (each as defined below), matters required to be approved by the HoldCo Board are initially required to be approved by (i) Class A Directors representing at least 40% of the Class A voting power and (ii) the Class C Director. If the Vantage Member ceases to hold at least 30% of the Class A Membership Interests, such matters will be subject to approval by Class A Directors representing at least 50% of the Class A voting power.

Certain governance and business matters (“Special Board Matters”) are subject to specific board approval requirements. For example:

- Certain material governance and business matters involving HoldCo and the Borrower require the unanimous approval of the Class A Directors. Such matters include without limitation (i) entering into, terminating or making amendments (other than de minimis amendments) to certain project contracts, (ii) entering into, terminating or making amendments (other than non-material, de minimis amendments) to the Borrower’s financing documents, (iii) incurring any indebtedness that is not otherwise permitted under the Borrower’s financing arrangements, (iv) making any material change to the Borrower’s insurance program and (v) subject to obtaining the approval of the Class B Director as described below, selling or acquiring any material assets except in the ordinary course of business or in accordance with an approved budget.
- Other governance and business matters relating to HoldCo and the Borrower are subject to the approval by Class A Directors representing 82.5% of the Class A voting power. Such matters include without limitation (i) making amendments (other than de minimis amendments) to certain commercial contracts, (ii) approving or amending the Borrower’s annual budget and (iii) subject to obtaining the approval of the Class B Director in certain circumstances, commencing, settling or making strategic decisions with respect to material legal proceedings.
- In addition to being subject to the approval of the Class A Directors, certain governance and business matters relating to HoldCo and the Borrower are subject to the approval of the Class B Director, including without limitation (i) selling or acquiring any material assets except in the ordinary course of business or in accordance with an approved budget, (ii) settling or surrendering



certain legal actions, including those which involve reputational risks, and (iii) entering, terminating or making any amendments (other than de minimis amendments) to any janitorial or security contracts.

Under the HoldCo LLC Agreement, certain actions (“Member-Reserved Matters”) can only be taken with the unanimous approval of each Class A Member, including without limitation (i) voluntarily winding up, liquidating or dissolving the business, (ii) declaring bankruptcy, (iii) acquiring any equity securities of the Borrower, (iv) entering into a new line of business or (v) amending HoldCo’s distribution policy.

### ***Restrictions on Transfers***

No HoldCo Member (in this instance, the “Transferor”) will be permitted to transfer all or any part of its direct Membership Interest to any other person (a “Transferee”) unless: (i) the proposed transfer is permitted pursuant to the terms of, and will not result in a breach of, certain project or financing documents; (ii) the proposed transfer will not have any adverse tax consequences on HoldCo or the other HoldCo Members, including that the proposed transfer will not cause HoldCo to be treated as a “publicly traded partnership” within the meaning of Section 7704 of the Code; (iii) if the Transferee is not already a HoldCo Member, the Transferee executes and delivers a joinder agreement; (iv) the proposed Transfer would not violate any U.S. federal or state securities laws or result in HoldCo or any HoldCo Member having to register under the Securities Act of 1933, as amended, the Securities and Exchange Act of 1934, as amended, the Investment Company Act of 1940, as amended, or any other U.S. federal or state securities laws; and (v) in the case of the Class B Membership Interest and the Class C Membership Interest, the Transferor has Transferred the entire Class B Membership Interest or Class C Membership Interest, as applicable, to the Transferee.

### ***The Borrower’s Management Team***

The Borrower’s governance structure leverages the Equity Members and their affiliates’ strength in airport management, development and investment. The Borrower is governed by the eleven-person HoldCo Board, with four Class A Directors and the Class C Director appointed by the Vantage Member, three Class A Directors appointed by the ATI member, two Class A Directors appointed by the RXR Member and the Class B Director appointed by JetBlue. Each member of the HoldCo Board is a senior executive with a wealth of experience that is expected to support the success of the Project and the operation of the Premises. The HoldCo Board focuses on creating value by leveraging their firms’ experience to ensure that the collective strength of all partners is focused on successful delivery by the management team below:

The Borrower’s current management team consists of six executives, all of whom are employees of the Manager but seconded to the Borrower. For more information, see “PART 13 – OPERATION AND MANAGEMENT OF THE PROJECT.”

The team is led by:

*Steve Thody – Chief Executive Officer*

Steve Thody has served as the Borrower’s Chief Executive Officer since April 2024. Mr. Thody is responsible for all facets of operations and management of Terminal 7 and Terminal 6, including terminal operations, airline relations, commercial management, and guest experience. He leads a dynamic project team of airport development and operations professionals to focus on project delivery and operational

performance, as well as manages shareholders and stakeholder relations, and engages in critical local community and Minority and Women Owned Business Enterprise (MWBE) outreach in support of the redevelopment.

From 2022 until his appointment, he served as the Borrower's Chief Operating Officer. From 2019 until 2022, Mr. Thody served as Project Director, Strategic Initiatives, for Vantage. In that role he oversaw initiatives, products, and partnerships to optimize terminal operational and revenue opportunities at Vantage's airports, with a particular focus on progressing the Project toward its initial financial close and negotiation and execution of the Lease Agreement with the Port Authority. In that position, Mr. Thody also assisted operations at LaGuardia Airport Terminal B, where he led the development of the team's Digital Assistant solution, and spearheaded Vantage's involvement in an industry-wide study of the impact of COVID-19 on the aviation industry, in partnership with the Harvard T.H. Chan School of Public Health and Airlines for America.

Mr. Thody has more than 20 years' worth of senior leadership experience in aviation, spanning global cargo operations, network airlines, airport management, investment, development, finance, and operations. Prior to joining Vantage, he held progressively senior roles at British Airways, leading to Vice President of Financial Planning and Analysis, was responsible for the North America, Caribbean, Asia, and the Pacific regions, and was the General Manager of British Airways' Terminal 7 operations at the Airport.

Mr. Thody holds a Bachelor's Degree in Accounting from the University of Hertfordshire and is a Chartered Accountant.

*Karen Ali – Chief Operating Officer*

Karen Ali has served as the Chief Operating Officer of the Borrower since July 2024. In her role, Ms. Ali oversees terminal operations, customer experience, budget and capital projects, risk management, and people leadership. She also serves as a critical liaison during the Terminal 6 construction phase, collaborating with capital development and construction teams to ensure a smooth transition from old to new facilities, including coordination, testing, commissioning, and implementation.

An accomplished senior professional, Ms. Ali has nearly 20 years of experience in operations management, project leadership, and business transformation across a range of sectors, including aviation. From 2022, until joining the Borrower, Ms. Ali served as the chief operating officer of Avi & Co., a luxury watch retailer, where she led ecommerce, logistics, sales, and marketing strategies. From 2020 until 2022, Ms. Ali served as Director of Operations for Lynx Air, where she implemented and oversaw all systems, processes, workflows and procedures during the airline's start up phase. Prior to that, Mr. Ali held progressively senior management positions over a decade-long period at WestJet, including as Regional Operations Manager for the airline's international operations including the New York airports.

Ms. Ali holds a Bachelor of Science in Psychology from the University of Alberta.

*Michael Sibilila – Chief Financial Officer*

Michael Sibilila has served as the Chief Financial Officer of the Borrower since 2022. As the Chief Financial Officer, Mr. Sibilila is responsible for managing all the Borrower's accounting and corporate finance activities and operations. Beginning in 2016 and prior to joining the Borrower in 2022, Mr. Sibilila served as the chief financial officer of LaGuardia Gateway Partners in their redevelopment of LaGuardia Airport's Terminal B.

Mr. Sibilía has more than 30 years of specialized aviation, construction, financing, and negotiations expertise. Prior to LaGuardia Gateway Partners, Mr. Sibilía served for 20 years as the chief financial officer at JFK International Airport Terminal LLC, the operator of Terminal 4 at the Airport, the first public-private partnership in U.S. aviation, leading the finance team through the initial terminal construction and two later expansions.

Earlier in his career, Mr. Sibilía worked as an executive in the apparel industry providing finance expertise throughout the United States and Asia and supporting 60 retail locations in 35 states as well as offices in Hong Kong, New Delhi, and Negros, Philippines. He also worked in real estate development and at global accounting firms.

Mr. Sibilía holds a Bachelor of Science in accounting from LaSalle University in Philadelphia, Pennsylvania and is a Certified Public Accountant.

*Folasade (Sade) Olanipekun-Lewis – Vice President, Operating & Community Partnerships*

Sade Olanipekun-Lewis has been Vice President, Operating & Community Partnerships of the Borrower since 2022. Ms. Olanipekun-Lewis leads the development and implementation of all community and organizational partnerships, with a focus on local community and MWBE engagement in the development of Terminal 6.

Since January 2018 and prior to joining the Borrower, Ms. Olanipekun-Lewis served as Regional Director of Government and Airport Affairs for American Airlines directing, and coordinating all political, governmental, and community strategies to support the airline's local and national business goals. Prior to joining American Airlines, Ms. Olanipekun-Lewis served as Chief Administrative Officer at Philadelphia International Airport and held other executive leadership roles with the City of Philadelphia.

Representing Vantage Group's interest, Ms. Olanipekun-Lewis also serves on the board of LaGuardia Gateway Partners (LGP), a private manager and developer of the new award-winning, state-of-the-art LaGuardia Terminal B. She also serves on the board of directors of the Airport Minority Advisory Council (AMAC) Foundation, which works to advance minorities and women pursuing careers in the aviation industry through scholarships and educational programs.

Ms. Olanipekun-Lewis brings deep and varied experience in airline and airport management, infrastructure, and finance to her role.

Ms. Olanipekun-Lewis holds a Bachelor of Arts in Economics from the Graduate Center, City University of New York, CUNY BA Program, a Juris Doctor from Temple University Beasley School of Law and a Master of Government Administration from the University of Pennsylvania, Fels School of Government.

*Derek Thielmann – Project Executive, Design & Construction*

Derek Thielmann has served as the Borrower's Project Executive, Design & Construction since 2022. Mr. Thielmann is responsible for the overall management and oversight of the construction of the

Project and acts as the principal liaison between the operational and construction partners involved in the redevelopment of Terminal 6.

Since 2016 and prior to joining the Borrower, Mr. Thielmann served as Vantage’s Vice President, Design and Construction and was responsible for managing all design and construction work in connection with the redevelopment of LaGuardia Terminal B.

With over 25 years of experience in the development and delivery of complex aviation and transportation projects, Mr. Thielmann previously held engineering and project management roles at Vancouver International Airport, as well as the Lynden Pindling International Airport in the Bahamas, where he designed and delivered a \$410 million, three-phased terminal development.

Mr. Thielmann holds a Bachelor of Science in Civil Engineering and Masters in Geo-Environmental Engineering from the University of Alberta.

*Kenneth Schuhmacher – Chief Legal Officer*

Kenneth Schuhmacher has been the Borrower’s Chief Legal Officer and Corporate Secretary since 2022. Mr. Schuhmacher is responsible for managing all legal, compliance and corporate governance matters for the Borrower. From January 2019 until joining the Borrower, Mr. Schuhmacher served as General Counsel for LaGuardia Gateway Partners in connection with the redevelopment of LaGuardia Terminal B.

Mr. Schuhmacher has extensive legal and commercial experience in global transactional work through previous experience as a partner at two leading international law firms as well as through his role as Commercial Director and General Counsel for Skanska Infrastructure Development North America.

Mr. Schuhmacher holds a Bachelor of Arts in History from Dartmouth College, a Juris Doctor from University of Michigan Law School and a Master of Law from Queens’ College of the University of Cambridge.

***HoldCo’s Board***

Pursuant to the HoldCo LLC Agreement, as of the date of this Official Statement, the Directors of the HoldCo Board are the following:

<u>Name</u>	<u>Position</u>	<u>Audit &amp; Finance Committee</u>	<u>Human Resources Committee</u>	<u>Appointed by</u>
George Casey	Class A Director (Chair)			Vantage Member
Sami Teittinen	Class A Director	(Chair)		Vantage Member
Hari Rajan	Class A Director			Vantage Member
Andrew Mazze	Class A Director			Vantage Member
David Cibrian	Class A Director		(Chair)	ATI Member
Alex Black	Class A Director	*		ATI Member
Sarah Wu	Class A Director	*		ATI Member
Scott Rechler	Class A Director		*	RXR Member
Jonathan Atkeson	Class A Director	*		RXR Member
Justin Ginsburgh	Class B Director			JetBlue
Stewart Steeves	Class C Director		*	Vantage Member

*George Casey – Class A Director (Chair)*

George Casey serves as a Class A Director appointed by the Vantage Member and Chair of the Board of Directors of Holdco. Mr. Casey is the Chief Executive Officer and chair of the board of directors of Vantage Group and is responsible for all aspects of Vantage’s corporate strategy, growth initiatives and global portfolio.

Over 40 years in the airport and aviation sector, Mr. Casey has been involved in capital planning and airport development, finance, operations, commercial management, mergers and acquisitions, and structuring and negotiating partnerships in almost every region of the world. He has participated in the analysis, assessment and review of more than 170 airports worldwide under different contractual and governance structures and overseen more than \$10 billion in airport financing in support of capital projects and acquisitions.

Working with key stakeholders, Mr. Casey has led nearly 22 successful airport transactions and chaired or served on 16 airport boards of directors worldwide. Mr. Casey is the former chair of the board of directors of LaGuardia Gateway Partners, which redeveloped and manages LaGuardia Airport’s Terminal B. Mr. Casey also serves on the board of directors for the Rick Hansen Foundation, to support inclusion for people with disabilities.

Before joining Vantage, Mr. Casey held executive positions with KPMG, PwC, and Airport Group International, where he collaborated with stakeholders to solve complex airport and transportation infrastructure challenges in jurisdictions around the world.

Mr. Casey holds a Bachelor of Science in Aeronautics with a minor in Business from San Jose State University.

*Sami Teittinen – Class A Director*

Sami Teittinen serves as a Class A Director appointed by the Vantage Member and as Chair of the Holdco Audit and Finance Committee. Mr. Teittinen is Vantage Group’s Chief Financial Officer, leading Vantage’s strategy, asset management, corporate development, mergers and acquisitions activity, and all aspects of corporate finance and risk management. Mr. Teittinen also serves as a Director and Audit and Finance Committee Chair for multiple airports and airport terminals across the United States and Caribbean.

Mr. Teittinen offers nearly 30 years of experience in the international aviation sector, including airlines, airline support services, fixed based operations, and airports. Prior to joining Vantage in 2017, Mr. Teittinen served as President and CEO of Silver Airways Corp., a FAA part 121 air carrier, where he was responsible for creating, leading, and implementing the company’s turnaround strategy. Mr. Teittinen also served as CFO for various business units at BBA Aviation PLC (now Signature Aviation), a publicly traded British multinational aviation services company.

Mr. Teittinen holds a Master of Business Administration from the University of Central Florida and is a graduate of the Finnish Defense Forces Reconnaissance School.

*Hari Rajan – Class A Director*

Hari Rajan serves as a Class A Director appointed by the Vantage Member. Mr. Rajan is the Managing Partner of Investcorp Corsair Infrastructure Partners and is the Lead Director on the board of directors of Vantage Group. Mr. Rajan also serves as a board member for other Investcorp Corsair

companies, including DP World Australia, Itinere Infraestructuras, and Kelda Holdings. He also serves on the board of Kyobo Life Insurance Company.

Prior to the establishment of Investcorp Corsair, Mr. Rajan served as the head of its predecessor, Corsair Infrastructure, and was closely involved in all aspects of the creation and growth of that business. From 1999 to 2001, concurrent with his responsibilities at Corsair, Mr. Rajan was a member of the Emerging Markets Financial Institutions Group at J.P. Morgan Chase & Co., where he participated in a number of transactions involving financial services companies across multiple geographies.

Mr. Rajan holds a Bachelor of Arts in Economics and Applied Mathematics from Yale University and a Master of Business Administration with honors from the Wharton School of the University of Pennsylvania.

*Andrew Mazze – Class A Director*

Andrew Mazze serves as a Class A Director appointed by the Vantage Member. Mr. Mazze is a Managing Director on the Infrastructure Investment Team at Manulife Investment Management, where he is responsible for originating, executing and managing equity investments in infrastructure assets. Over the course of his career, Mr. Mazze has led transactions across the transportation, renewable energy, power generation and utility sub-sectors. Mr. Mazze currently sits on the board of directors for multiple portfolio companies including a P3 tolled tunnel project and a utility privatization business.

Manulife Investment Management is the brand for the global wealth and asset management segment of Manulife Financial Corporation, which subsidiaries include John Hancock Life Insurance Company (U.S.A.). The Manulife Infrastructure Team manages more than \$17 billion of investments across asset class on behalf of third-party investors and the Manulife balance sheet.

Mr. Mazze holds a Bachelor of Science in Finance from Bentley University.

*David Cibrian – Class A Director*

David Cibrian serves as a Class A Director appointed by the ATI Member and as Chair of the Holdco Human Resources Committee. Mr. Cibrian is the Managing Partner and a Co-Founder of American Triple I Holdings and in that role he is responsible for developing and directing overall business strategies; building trusted relationships with asset and investor partners; leading high-quality investment decisions; and enforcing adherence to compliance, legal, and operating guidelines and policies.

Mr. Cibrian was formerly a Managing Director with Brevet Capital, a New York City-based investment firm founded in 1998. Among other responsibilities, he headed Brevet's firm-wide Government Financing Programs. He is experienced in various facets of fund management, including originations, underwriting/structuring, and asset management.

Mr. Cibrian has served in a variety of roles during his career – lawyer, accountant, corporate executive, and investment professional. Mr. Cibrian was formerly a CPA with Ernst & Young, Los Angeles and was a practicing international and corporate attorney for 25 years, including his experience in public finance at O'Melveny & Myers, Los Angeles. He was also a Senior Advisor to Civitas Capital Group, an alternative investment firm.

Mr. Cibrian is a former member of the Texas Finance Commission and the Texas Credit Union Commission.

Mr. Cibrian holds a Juris Doctor with honors from Georgetown Law School and a Bachelor of Science in Accounting with honors from Loyola Marymount University.

*Alex Black – Class A Director*

Alex Black serves as a Class A Director appointed by the ATI Member and as a member of the Holdco Audit and Finance Committee. Mr. Black is a Senior Advisor and Investment Committee member of American Triple I, LLC. He brings more than a decade of experience in infrastructure investment, development, and management.

Mr. Black previously served as Head of Portfolio Management at Alinda Capital Partners, where he supervised the firm's fund vehicles and was a member of the firm's Investment Committee. During his ten years at the firm, Alinda managed a peak of \$7.8 billion in equity commitments to a diverse set of infrastructure projects. Among other responsibilities, Mr. Black served as the lead partner overseeing selected portfolio companies across various asset classes. He was also responsible for oversight of the firm's investment in Heathrow Airport. Mr. Black also has operational experience developing responsible investment programs and has been a noted speaker on panels discussing issues facing infrastructure companies. Mr. Black aids American Triple I in a variety of matters including asset operational due diligence, and building credible, risk-adjusted strategic plans for our projects.

Mr. Black holds a Bachelor of Science with honors in Engineering from Exeter University and is also a Chartered Engineer (CEng) and a Chartered Accountant (ACA), both designated in the United Kingdom.

*Sarah Wu – Class A Director*

Sarah Wu serves as a Class A Director appointed by the ATI Member and as a member of the Holdco Audit and Finance Committee. Ms. Wu is a Managing Director, Head of Asset Management and an Investment Committee member at American Triple I, LLC. Ms. Wu brings over 20 years of infrastructure investment and asset management experience to the team. Most recently, she was Head of Investments for CCA Construction, a global conglomerate in infrastructure development where she spearheaded the development of a value-add, infrastructure investment program for the Americas.

Ms. Wu previously spent eight years in the Global Real Assets Division of JPMorgan Asset Management, including serving as Head of Asset Management for a core, infrastructure equity strategy that included a diverse group of portfolio companies in the US and UK. Ms. Wu also co-founded a core infrastructure debt strategy at JPMorgan following the Global Financial Crisis. Prior to JPMorgan, Ms. Wu spent 10 years at Credit Suisse on the Global Project Finance team responsible for non-recourse lending to infrastructure companies in the transport, power, energy, and shipping sectors in OECD and emerging markets.

Ms. Wu holds a Master's degree in Urban and Regional Planning from Columbia University, and a Bachelor's degree in Town and Country Planning from Manchester University.

*Scott Rechler – Class A Director*

Scott Rechler serves as a Class A Director appointed by the RXR Member and as a member of the Holdco Human Resources Committee. Mr. Rechler is the Chief Executive Officer and Chairman of RXR, an innovative investor, developer, and place-maker committed to applying a customer and community-centered approach to all aspects of its business.

Before starting RXR, Mr. Rechler served as the Chair and CEO of Reckson Associates, which he helped take public in 1995. RXR was founded in 2007, on the day after Mr. Rechler and his partners sold Reckson Associates for over \$6 billion, generating a 700% return to Reckson's investors. Since its founding, RXR has raised over \$10 billion of private equity through a series of funds and separate account vehicles and built an over 500-person, fully-integrated team of professionals with expertise in operations, construction and development, investment management, and more.

RXR manages over 30 million square feet of commercial properties with a gross asset value of \$21.2 billion. RXR also has a multi-family residential portfolio of 8,000 units under operation or development, an over \$4 billion new terminal under construction at JFK International Airport, and an expanding national portfolio and development pipeline in some of the fastest-growing markets in the country, including Phoenix, Denver, Raleigh, and Tampa.

Mr. Rechler also served on the Board of American Campus Communities (NASDAQ:ACC) after Reckson took a controlling interest in the company in 1998 and later took the company public in 2004. ACC would grow to become the largest student housing company in the United States and was recently acquired by Blackstone for \$13 billion in 2022.

Mr. Rechler has held numerous leadership positions at various levels of government. In December 2021, Mr. Rechler was elected to a 3-year term on the Board of Directors of the Federal Reserve Bank of New York. From 2011 to 2016, Mr. Rechler served on the Board of Commissioners as Vice Chairman for the Port Authority of New York and New Jersey. He later served on the Board of the New York Metropolitan Transportation Authority (MTA) from 2017 to 2019.

From 2017 to 2023, Mr. Rechler served as the Chair of the Regional Plan Association (RPA), a not-for-profit organization focused on the quality of life and the economic competitiveness of the NY Tri-State metropolitan area.

Mr. Rechler also serves as trustee and Vice Chair of the National September 11 Memorial and Museum at the World Trade Center, a member of the Real Estate Board of New York (REBNY) and the national organization, the Real Estate Roundtable (RER), Chair of The Feinstein Institute for Medical Research and a member of the Board of Trustees at Northwell Health, the Hospital for Special Surgery, NYU and a member of the NYU Real Estate Institute Advisory Committee.

Mr. Rechler is a graduate of Clark University and the New York University Schack Institute.

*Jonathan Atkeson – Class A Director*

Jonathan Atkeson serves as a Class A Director appointed by the RXR Member and as a member of the Holdco Audit and Finance Committee. Mr. Atkeson is a Managing Director in the Fortress Credit Funds since 2016 focusing on investments in the transportation and infrastructure sectors.

Mr. Atkeson joined Fortress in 2003 and prior to joining the credit team, Mr. Atkeson spent 13 years in the private equity business most recently as the Chief Operating Officer and Chief Financial Officer of Fortress Transportation and Infrastructure Investors LLC ("FTAI"). Prior to his role at FTAI, Mr. Atkeson focused on investments in the transportation and infrastructure sectors including investments in aircraft, shipping containers, intermodal chassis, and energy distribution.



Prior to joining Fortress in 2003, Mr. Atkeson worked as vice president in the private equity group at Whitney and Co., LLC and prior to that was a member of the mergers and acquisitions group at Credit Suisse First Boston.

Mr. Atkeson holds a Bachelor of Science in Public Health in Environmental Science and Engineering from the University of North Carolina at Chapel Hill and a Juris Doctor from Yale Law School.

*Justin Ginsburgh – Class B Director*

Justin Ginsburgh serves as the Class B Director appointed by JetBlue. Mr. Ginsburgh is the Managing Director Infrastructure, Properties & Development at JetBlue. He previously was Director of JFK Infrastructure Strategy & Development at JetBlue from 2017-2020, working on the selection of the Borrower as the developer of Terminal 6, the lease for Terminal 6 with the Port Authority, and initial design development.

Mr. Ginsburgh previously was at Amazon where he led the Last-Mile Transportation Sustainability team. Earlier in his career, Mr. Ginsburgh was the Co-Founded and General Manager of Citi Bike, the largest bike share system in the United States. He also brings a variety of other valuable experience from his time working for New York City's and State's economic development agencies and at Goldman Sachs Urban Investment Group.

Mr. Ginsburgh also serves as Treasurer and a board member of the Friends of Governors Island and as a board member for Bridging Voice, an organization that provides people with ALS access to assistive communication devices.

Mr. Ginsburgh holds a Bachelor of Arts with honors in History and Economics from Northwestern University and a Master of Business Administration from Harvard Business School, where he graduated as a Baker Scholar.

*Stewart Steves – Class C Director*

Stewart Steeves serves as the Class C Director appointed by the Vantage Member and as a member of the Holdco Human Resources Committee. Mr. Steeves is the Chief Operating Officer of Vantage Group and is responsible for planning, development, and management of Vantage Group's network of airports and related operations and support of business development initiatives.

Mr. Steeves has overseen almost \$10 billion in airport redevelopment projects across North America and the Caribbean. He sits on the board of directors of LaGuardia Gateway Partners, MJB Airports Limited, and Tradeport International Corporation.

Since joining Vantage in 2003, Mr. Steeves has held several executive positions across the network. As CEO of LaGuardia Gateway Partners, Mr. Steeves led the LaGuardia Terminal B redevelopment project through a multi-year competitive procurement, financing, complex construction phases, and operations and management. He also served as Vantage's CFO and CEO of Vantage's Nassau Airport Development Company, where he led a three-phase, \$410 million redevelopment of Lynden Pindling International Airport in The Bahamas, the largest infrastructure project in Bahamian history.

Prior to joining Vantage, Mr. Steeves held roles in corporate finance at Vancouver Airport Authority, HSBC in Vancouver, and construction project management for Turner Construction in Chicago.

Mr. Steeves holds a Bachelor of Applied Science in Civil Engineering from the University of Toronto and a Master of Business Administration from the Ivey School of Business at the University of Western Ontario. Mr. Steeves is also a Professional Engineer, Chartered Financial Analyst, and licensed pilot.

## **The Equity Members**

### ***Corsair-Vantage Airport Fund Aggregator, L.P.***

The Vantage Member is a Delaware limited partnership indirectly managed by Investcorp Corsair Infrastructure Partners, L.P. (“ICIP”). The general partner of the Vantage Member is Corsair-Vantage Airport Management, L.P., a Delaware limited partnership (“Corsair-Vantage Management”). In addition to indirectly being the investment manager and controlling the general partner of the Vantage Member, ICIP is also the investment manager and indirectly controls the general partner of Corsair-Vantage Investment Partners, L.P. (“Corsair-Vantage Investment Partners”). Corsair-Vantage Investment Partners owns 100% of the equity interests in Vantage.

Based in Vancouver, British Columbia, Canada, Vantage currently manages a portfolio of 13 airports and transportation centers around the world. Vantage’s locations served over 80 million passengers in 2023. As part of integrated design-build-operate teams, Vantage has completed over \$7.2 billion in capital projects with another \$4.2 billion underway, including serving as lead developer, equity investor and terminal manager (including construction management) of LaGuardia Terminal B, one of the largest transportation Public-Private Partnership projects in the United States.

In addition to its success with LaGuardia Terminal B, since its founding in 1994, Vantage has successfully exported its demonstrated expertise in airport and terminal operations and management from Vancouver to its operations in Chile, Cyprus, the United Kingdom and elsewhere around the globe. In Cyprus, Vantage led the consortium that successfully bid to develop, finance, build, and operate the two main airports, Larnaka and Pafos International Airports. Vantage’s experience in operational readiness, cultural awareness, government relations, and project financing allowed both capital projects, which were the largest construction contracts to ever be undertaken in Cyprus, to be completed on time and on budget.

Vantage has successfully managed significant and complex airport construction projects in widely different environments and operated several airports during construction, including construction coordination, operational readiness and transition, and transitions from existing terminals to new terminals in Nassau (Bahamas), Larnaka and Pafos (Cyprus) and Santiago (Chile). During the successful transition of 20 airports from public to private operation, Vantage has developed a proprietary transition roadmap document that is flexible for adaptation to the Premises.

### ***American Triple I Holdings, LLC***

The ATI Member is controlled by American Triple I Holdings, LLC (“ATI”). ATI is an investor, owner, developer, and manager of infrastructure assets and infrastructure-focused companies. The firm invests in the transportation, digital, and social infrastructure sectors. ATI is committed to serving its investor partners and communities by deploying capital into infrastructure projects and businesses throughout the United States and Canada. ATI’s professionals have years of infrastructure investment and asset management experience and generally target value-add, lower middle market opportunities that aim to spur economic development and larger opportunities where their experience may bring unique value. ATI is a minority and woman-owned, managed, and controlled firm. It seeks to operate in a manner that

reflects the same diversity of constituencies and deliver positive economic results for its investors and to the communities in which its investments are located.

### ***RXR Realty, LLC***

The RXR Member is controlled by RXR Realty, LLC (“RXR”). RXR is a leading national real estate operating and development company headquartered in New York, NY.

RXR comprises a 450+ person, vertically integrated operating and development company with deep expertise in public-private developments and a wide array of value creation activities. These include ground-up real estate development, infrastructure and industrial development, uncovering value in underperforming properties, incorporating cutting edge technologies, and value-added lending. The RXR platform manages investments with an aggregate gross asset value of approximately \$17.1 billion, comprising approximately 30.5 million square feet of commercial properties and 12,000 multi-family and for-sale units under operation or development in the United States.

With over \$1.1 billion of active construction underway in the New York metro area, the RXR team brings deep knowledge of local trends, hiring, and the construction market. RXR has extensive experience with public-private development throughout the New York metro area, including major redevelopment projects such as 175 Park Avenue, a two million+ square foot supertall commercial tower adjacent to Grand Central, and Pier 57, the redevelopment of a 400,000 square foot historic NYC pier anchored by Google.

RXR also serves as the designated partner to local municipalities on downtown redevelopment initiatives, such as Glen Cove in Long Island and New Rochelle in Westchester. Led by senior executives with substantial government experience, RXR has a proven track record of successfully collaborating with public sector counterparties on large-scale development projects, including with key employees at the Port Authority. Scott Rechler, CEO of RXR, formerly served as the Vice Chairman of the Board of Commissioners of the Port Authority.

### ***JetBlue Airways***

JetBlue is proud to be New York’s Hometown Airline® and the only major airline headquartered in New York. JetBlue’s differentiated product and culture combined with its competitive cost structure enables JetBlue to compete effectively in high-value geographies and serve customers to over 100 destinations. Its flagship Terminal 5 has been celebrated for its customer-friendly design and facilities. As of the third quarter of 2024, JetBlue operates 166 average daily departures from the Airport to 81 destinations with plans to increase to 184 daily departures.

### **The D&C Contractor**

The Borrower has contracted with the D&C Contractor, Hunt Construction Group, Inc. (“AECOM Hunt”) to design and construct the Project. The D&C Contractor’s payment and performance obligations are guaranteed by its parent company, AECOM (noted below as the “D&C Guarantor”). The D&C Contractor has developed and is implementing a complete design-build strategy for the Project.

The D&C Contractor has extensive experience in the successful delivery of challenging, fast-tracked aviation projects across the United States. The D&C Contractor, as part of AECOM’s Construction Management group, is ranked fourth largest construction manager at risk firm by revenue (ENR) in the United States, with revenues of \$5.7B in 2021, and has an enterprise bonding capacity of \$10 billion. The D&C Contractor has successfully completed significant aviation projects including Louis Armstrong New

Orleans International Airport, Phoenix Sky Harbor International Airport T3 Modernization, Indianapolis International Airport, Denver International Airport South Terminal Development, Hartsfield–Jackson Atlanta International Airport Maynard B. Jackson International Terminal, and Detroit Metropolitan Wayne County Airport Edward H. McNamara Midfield Terminal. The D&C Contractor brings to the Project extensive experience in the delivery of aviation facilities, coupled with world-class construction experience and a strong familiarity with the design and construction requirements associated with LEED® certified buildings.

The D&C Contractor has teamed up with a design team consisting of Corgan Associates Architects, PC as well as the D&C Contractor’s sister design company, AECOM-DCSA. Corgan is acting as the lead designer-architect of record for Terminal 6 and AECOM-DCSA is acting as the engineer of record for the site, civil and airside design. Both members of the design team have a significant presence in the United States and extensive experience in signature aviation projects.

### **The D&C Guarantor**

AECOM (the “D&C Guarantor”) has provided a separate guaranty in favor of the Borrower, which guarantees all of the Design- Builder’s obligations to the Borrower under the D&C Contract.

The D&C Guarantor is one of the world’s leading infrastructure firms, which provides both design and construction management services to its clients. AECOM is a publicly traded company and, as of the date of this Official Statement, additional information about AECOM is publicly available.

### **The Manager**

The Borrower has entered into the Management Services Agreement with the Manager, under which the Manager provides the Borrower with certain services and support in connection with the Borrower’s responsibilities to perform the Operations and Maintenance Work under the Lease Agreement.

The Manager, a wholly-owned indirect subsidiary of Vantage, serves as the Manager for the Project. The Manager leverages Vantage’s experience as a world-class operator with the goal of delivering best-in-class performance. The Manager has seconded to the Borrower executive and other personnel drawn from the Vantage network. The Project benefits from Vantage’s experience in running airports in vastly different environments, the transition of 20 airports to private operation, and the delivery of over \$7.2 billion in capital improvements over the past 25+ years. The Manager has subcontracted certain services to the Manager Subcontractor as set forth in “PART 13 – OPERATION AND MANAGEMENT OF THE PROJECT.”

### **The Manager Guarantor**

Vantage Airport Group (US) Ltd., a Delaware corporation, has provided a guarantee in favor of the Borrower, which guarantees all of the Manager’s obligations to the Borrower under the Management Services Agreement. Vantage Airport Group (US) Ltd. is a privately held company and, therefore, no summary financial data for Vantage Airport Group (US) Ltd. is provided.

## **PART 10 – THE LEASE AGREEMENT**

The following is a summary of selected provisions of the Lease Agreement and is not a full statement of the terms and conditions of such agreement. Accordingly, the following summary is qualified in its entirety by reference to the Lease Agreement and is subject to the full text of such agreement. Defined

terms used but not defined in this Part 10 shall have the meanings specified for such terms in APPENDIX E – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE AGREEMENT.”

As of the Original Closing Date, the Port Authority, as lessor, leased to the Borrower the Initial Premises, consisting of the Terminal 6 Parcel and the improvements thereon, and on December 1, 2022, the Port Authority leased to the Borrower the Terminal 7 Premises, consisting of the Terminal 7 Parcel and the improvements thereon, including Terminal 7, subject in each case to certain conditions. The Initial Premises and the Terminal 7 Premises, in each case to the extent subject to the Lease Agreement, are referred to herein as the “Premises.”

### **Principal Rights and Responsibilities of the Parties**

Pursuant to the Lease Agreement, the Port Authority leased the Premises to the Borrower, and the Borrower is obligated, among other things, to: (i) maintain and operate the Premises, and, (ii) undertake the D&C Work, including construction of Terminal 6, the Ground Transportation Center and the Off-Premises Facilities, all as further described herein, subject in each case to the terms and conditions of the Lease Agreement.

#### ***Use of Premises***

The Lease Agreement generally entitles the Borrower to use and operate the Premises as an airline passenger terminal and for related purposes. Specifically, the Lease Agreement entitles the Borrower to grant airlines and other airline users, retail concession operators and certain others the right to use space in the Premises, consistent with operation of the Premises as an airline passenger terminal and the terms of the Lease Agreement, in exchange for rentals, fees or other charges payable directly to the Borrower. The Borrower submitted and received the Port Authority’s approval for both a comprehensive terminal plan with respect to Terminal 6 and a comprehensive concessions plan with respect to Terminal 7 and Terminal 6. In addition to annual updates, the Borrower is required to submit for the Port Authority’s approval (x) an updated terminal plan at least 18 months prior to the projected Completion Date of Terminal 6, and (y) periodic updates to the concessions plan not less than quarterly and including the date that is at least 18 months prior to the projected Completion Date of Terminal 6. The comprehensive terminal plan is required to identify the principles and methodologies of the Borrower’s airline rates and charges structure and outline other matters relating to the airline users of Terminal 6. The comprehensive concessions plan is required to define the Borrower’s retail concessions program, including the types and designated locations of retail concessions throughout Terminal 6, rental structures, and similar matters. Each comprehensive terminal plan or comprehensive concessions plan remains in effect until its successor plan is approved.

Subject to the requirements of the comprehensive terminal plan and the comprehensive concessions plan, as then in effect, the Borrower is entitled to set the levels of all rates and charges for the use of Terminal 7 and Terminal 6, except for certain specific uses (which include, but are not limited to, advertising displays, cellphone and cellular technology, certain vending machines, concierge services, ground transportation services, on-Airport baggage carts, any development at the Ground Transportation Center, and any sponsorship and naming rights) that are reserved for control of the Port Authority (collectively, the “Reserved Uses”).

For purposes of this section, “Completion Date” means the date on which substantial completion of the entire D&C Work (i.e., completion of all D&C Work other than punch list items approved by the Port Authority and D&C Work specifically identified in the Baseline Schedule as extending beyond Substantial Completion of Phase 2) has been achieved.

### ***Design and Construction of the Project***

The Borrower is responsible for all D&C Work in accordance with the Lease Agreement. Under Section 2 of the Lease Agreement, the Borrower agrees to among other things, at its sole cost and expense (except as otherwise provided in the Lease Agreement), (x) design and construct Terminal 6 on the Premises and (y) design and/or construct all or a portion of the Off-Premises Facilities outside the Premises, all as set forth in the Lease Agreement and Project Documents and in accordance with Good Order Requirements, Applicable Law and Applicable Standards. The Borrower entered into the D&C Contract, under which the D&C Contractor is obligated to fulfill the Borrower's obligations under the Lease Agreement to design and construct the Project, except as expressly excluded in the D&C Contract. See "PART 11 – THE PROJECT," "PART 12 – THE D&C CONTRACT," APPENDIX E – "SUMMARY OF CERTAIN PROVISIONS OF THE LEASE AGREEMENT – Design and Construction by the Lessee" and APPENDIX G – "SUMMARY OF CERTAIN PROVISIONS OF THE D&C CONTRACT."

As further described in "PART 11 – THE PROJECT," the Project is expected to be completed in two phases. There are two steps to completion of each Phase: Substantial Completion and DBO. See APPENDIX E – "SUMMARY OF CERTAIN PROVISIONS OF THE LEASE AGREEMENT – Design and Construction by the Lessee – Completion of the Phase 1 D&C Work" and "– Completion of the Phase 2 D&C Work," and the related definitions in "EXHIBIT A – DEFINITIONS TO APPENDIX E SUMMARY OF CERTAIN PROVISIONS OF THE LEASE AGREEMENT" for further information about the requirements for reaching Substantial Completion of Phase 1, DBO of the Phase 1 D&C Work, Substantial Completion of Phase 2, and DBO of the Phase 2 D&C Work.

If the Borrower fails to achieve DBO of the Phase 1 D&C Work by the date that is 30 calendar days following the Scheduled Phase 1 DBO Date, or to achieve DBO of the Phase 2 D&C Work by the date that is thirty calendar days following the Scheduled Phase 2 DBO Date (each a "Completion Milestone"), in each case as the same may be extended pursuant to any Delay Event, the Borrower shall be required to pay liquidated damages equal to Forty Thousand Dollars (\$40,000) per day for every day a Completion Milestone remains unachieved. If the Borrower fails to achieve Substantial Completion of Phase 2 by the Outside Completion Date, as it may be adjusted as expressly provided under the Lease Agreement, such failure will constitute an Event of Default, which will entitle the Port Authority to terminate the Lease Agreement without any cure right of the Borrower, but subject to the rights of a Recognized Mortgagee. The Borrower's failure to satisfy a Completion Milestone does not constitute an Event of Default under the Lease Agreement, except to the extent that the Substantial Completion of Phase 2 has not occurred by the Outside Completion Date.

### ***Operation and Maintenance of the Premises***

Throughout the term of the Lease Agreement, the Borrower is obligated to operate, manage, administer and maintain the Premises in accordance with best management practice, Applicable Laws, the Applicable Standards, and Good Order Requirements, provided that from and after the date that the Terminal 7 Parcel became part of the Premises, the Borrower was and continues to be required to diligently operate Terminal 7 at a standard and level of quality consistent with Applicable Laws, all Applicable Standards and Good Order Requirements, but not specifically in accordance with best management practice. In accordance with the Lease Agreement, the Borrower made certain capital upgrades to Terminal 7, totaling approximately \$3 million. See APPENDIX E – "SUMMARY OF CERTAIN PROVISIONS OF THE LEASE AGREEMENT – Uses of the Premises – Conduct of Operations."

### ***Payments by the Borrower***

The Borrower is required to make certain payments to the Port Authority including, but not limited to the following: (i) Ground Rent (a rental equal to \$148,300 per acre annually, subject to escalation annually from the 2018 base year), (ii) First Additional Rent (\$500,000 for each year for each Leasehold Mortgage the Borrower has entered into (except that only one First Additional Rent will be due if more than one Leasehold Mortgage is entered into contemporaneously with respect to a single debt financing) beginning in the year in which Substantial Completion of Phase 1 occurs), (iii) Second Additional Rental (an amount established in the Lease that varies by year, ranging from approximately \$55.3 million in 2024 to \$137.3 million in 2060, with no Second Additional Rent due in 2028 or 2029), (iv) Third Additional Rent (\$33 million upon entering into the Lease Agreement, and \$1 million per year annually thereafter, beginning in 2027), (v) Excess Value Rent (generally, a portion of cash available for distribution, and only payable if certain conditions are satisfied), (vi) Concessions Revenue Rent (a share of gross rents received by the Borrower from Concession Sublessees, as further described in “APPENDIX E – SUMMARY OF CERTAIN PROVISIONS OF THE LEASE AGREEMENT – Rental”), (vii) reimbursement of certain costs incurred by the Port Authority directly related to the development of the Premises pursuant to the Lease Agreement, (viii) contributions of up to approximately \$13.8 million (in addition to a requirement to spend, as directed by the Port Authority, up to \$35 million) to support Airport-wide traffic mitigation efforts which will be made during the performance of the D&C Work and (ix) milestone payments in respect of work conducted by the Port Authority, consisting of \$23 million with respect to certain roadways work to be performed by the Port Authority and \$9 million with respect to certain backup power supplies to be provided by the Port Authority. The Borrower is prohibited from paying any rent or any other sums required to be paid under the Lease Agreement more than one month in advance of the due date thereof (excluding required deposits). See “APPENDIX E – SUMMARY OF CERTAIN PROVISIONS OF THE LEASE AGREEMENT – Rental” and Section 5.1.2 “PORT AUTHORITY RENTS UNDER THE LEASE” in the Report of the Airport Consultant appended hereto as APPENDIX B-1 for further information about rents due by the Borrower to the Port Authority.

### ***Subleases***

Under the Lease Agreement, the Borrower may not sublet, license or grant occupancy rights in or to the Premises or any portion thereof, or enter into any sublease or any amendment or modification to, or permit any extension of, an existing sublease (other than an extension of an existing sublease pursuant to the express terms thereof as long as such option to extend was approved by the Port Authority in connection with a consent to such sublease), in each case, without the prior written consent of the Port Authority in accordance with the Lease Agreement.

Subject to the terms and conditions of the Lease Agreement, including the consent of the Port Authority to the extent required thereby, the Borrower may enter into subleases with any of the following sublessees: (i) airlines, (ii) providers of concession goods and services in accordance or providers of other consumer services, (iii) governmental agencies, (iv) contractors performing Project Work on the Premises or otherwise providing services to the Borrower or any of its sublessees (provided that any such subleases shall be for temporary subleases for office and/or storage space only); and (v) such other Persons for such other purposes as are permitted under the Lease Agreement.

For additional information regarding the Port Authority’s consent rights and the subleasing process generally, as well as risks associated therewith, see “APPENDIX E – SUMMARY OF CERTAIN PROVISIONS OF THE LEASE AGREEMENT – Assignment and Sublease – Subleases,” “PART 17 – RISK FACTORS – Risks Related to Sublease Agreements,” and “PART 17 – RISK FACTORS – Certain Airport Regulatory Considerations – *Regulatory Considerations Regarding Airline Rates.*”

## **Port Authority Retained Rights**

The Port Authority has reserved various rights under the Lease Agreement, including, but not limited to, the following rights: (i) upon the failure of the Borrower to perform any obligation under the Lease Agreement within the specified time period or if no time period within 15 Business Days after notice from the Port Authority (or such additional time as may be agreed between the Borrower and the Port Authority with respect to obligations that by their nature are not susceptible to complete performance within such 15 Business Day period), the right (but not the duty nor the obligation) to perform any such obligation of the Borrower (subject to the rights of the Recognized Mortgagees) in addition to all other available remedies, and to be reimbursed by the Borrower for 115% of the Port Authority's costs of such performance, (ii) the right to implement, conduct, and receive fees with respect to the Reserved Uses, (iii) upon the effective date of a termination of the Lease Agreement, the right (subject to the Recognized Mortgagees' rights and remedies) to re-enter and regain possession of the Premises, (iv) the right to require changes in the design and construction of the D&C Work, to substitute materials and methods, and to order extra work, as it deems necessary or appropriate (subject to certain limitations as set forth in the Lease Agreement) ("Port Authority Changes"), and (v) various consent and approval rights with respect to, among other things, (A) airline and concession subleases, (B) certain refinancings or other incurrences of additional debt by the Borrower, (C) certain proposed alterations of the Baseline Schedule by the Borrower, including (without limitation) those that would adversely impact the critical path of certain other construction or redevelopment projects at the Airport or the personnel resources of the Port Authority available to provide necessary oversight, (D) any assignment of the Borrower's interest in the Lease Agreement, and (E) any change in control of the Borrower. See "PART 17 – RISK FACTORS – Risks Related to the Lease Agreement" and APPENDIX E – "SUMMARY OF CERTAIN PROVISIONS OF THE LEASE AGREEMENT – Reserved Uses."

## **Compensation Events**

Upon the occurrence of certain specified events ("Compensation Event"), the Lease Agreement provides that, subject to compliance with the requirements of the Lease Agreement and certain exceptions and exemptions, the Borrower is entitled to certain compensation from the Port Authority. If the Borrower fails to deliver notice of a Compensation Event within the required period set forth in the Lease Agreement, the Borrower will be deemed to have irrevocably and forever waived and released any claim or right to compensation or other adverse effects on costs, expenses and liabilities attributable to such Compensation Event. See APPENDIX E – "SUMMARY OF CERTAIN PROVISIONS OF THE LEASE AGREEMENT – Compensation Events."

The compensation owed to the Borrower ("Borrower Damages") with respect to any Compensation Event will be the sum of (i) any adverse Net Cost Impact and (ii) solely with respect to a Compensation Event constituting a Port Authority Change (including a Rejected Port Authority Change) any additional amount payable to the Borrower pursuant to the Lease Agreement (such amount being (x) if the Borrower and the Port Authority are unable to agree on a proposed Port Authority Change (other than a Rejected Port Authority Change) and the Port Authority directs the Borrower to implement the same, reimbursements of actual and reasonable incremental costs incurred by the Borrower during the D&C Work Period and the estimated incremental costs of the Borrower's performance of the Operations and Maintenance Work to the extent such Port Authority Change increases the square footage of Terminal 6 or requires the use of materials or components that have materially higher costs of operations or maintenance than prior to such Port Authority Change and (y) solely with respect to a Compensation Event constituting a Rejected Port Authority Change, any net adverse impact to the Borrower's forecasted costs and revenues resulting from such Rejected Port Authority Change), provided that there shall be no duplication or double compensation of Borrower Damages, and with respect to any Borrower Damages required to be paid by the Port Authority



as a result of a Port Authority Change (including a Rejected Port Authority Change), the Port Authority shall not be required to pay Borrower Damages until the Borrower Damages exceed \$33,000,000 in aggregate (taking into account any prior deductions from such amount to offset amounts payable by the Port Authority pursuant to the Lease Agreement). Borrower Damages will be net of all applicable insurance proceeds payable to the Borrower or, its contractors or suppliers associated with the Compensation Event (or that would have been payable but for the failure to comply with the insurance requirements set forth in the Lease Agreement or the failure of the Borrower to (or to cause its contractors or suppliers to) promptly submit a claim or cooperate with the relevant insurer) and will, subject to certain conditions, include all costs of asserting a claim for such insurance proceeds and any increased insurance premium resulting from such claim. In addition, Borrower Damages will be net of all amounts recovered, or made available to the Borrower from any sublessee or other third-party source, and the Borrower must use reasonable efforts to pursue any and all potential sources of funds or reimbursement from any sublessee or other third-party source to offset Borrower Damages. If the Borrower and the Port Authority are unable to agree that a Compensation Event claimed by the Borrower has occurred or with the Borrower's entitlement to or amount of Borrower Damages, then the dispute will be resolved in accordance with the dispute resolution procedures set forth in the Lease Agreement.

Following a determination of Borrower Damages, (1) if any portion of Borrower Damages is attributable for prior D&C Work Costs that have already been incurred by the Borrower or its contractors or suppliers, the Port Authority will pay such portion within 40 Business Days after the final determination of that portion of Borrower Damages, unless otherwise agreed by the Borrower; (2) if any portion of Borrower Damages is attributable to future D&C Work Costs, the Port Authority shall have the right to pay such portion as such costs are incurred or paid by the Borrower in periodic progress payments in arrears or otherwise in accordance with the Port Authority's standard practices and procedures for paying its contractors (provided that the Port Authority may instead elect to pay such amounts as a direct, lump-sum payment based on the net present value of such portion of Borrower Damages as determined using a discount rate mutually agreed by the Borrower and the Port Authority); and (3) the Port Authority may elect to pay any portion of Borrower Damages by adjustment to rentals payable by the Borrower to the Port Authority under the Lease Agreement.

Subject to the Borrower's rights with respect to non-monetary relief for Delay Events, and to the Borrower's rights with respect to terminating the Lease Agreement as described under the caption "Termination Rights – Grounds for Termination by the Borrower" below, Borrower Damages represent the Borrower's sole right to compensation and damages for the adverse effects of a Compensation Event against the Port Authority. Compensation Events can occur only during the D&C Work Period, and no event or condition that occurs following the end of the D&C Work Period can constitute a Compensation Event.

See APPENDIX B-3 – "REPORT OF THE LENDERS' TECHNICAL ADVISOR" for information relating to Compensation Event notices and Delay Event Notices submitted by the Borrower to the Port Authority to date, which notices and/or the details set forth therein may be disputed by the Port Authority.

### **Delay Events**

Upon the occurrence of a certain events delaying the Borrower's performance of the D&C Work or the Operations and Maintenance Work or otherwise adversely affecting the Borrower's ability to perform the D&C Work in compliance with the Project Documents, the Lease Agreement provides that, subject to compliance with the requirements of the Lease Agreement, the Borrower (1) will be excused from performance of its obligation to perform D&C Work or Operations and Maintenance Work, as applicable, during the pendency of such Delay Event but only to the extent that such work is directly affected by the Delay Event, (2) will be entitled to extend the Scheduled Phase 1 Completion Date and/or the Scheduled

Completion Date using a time impact analysis set forth in the Lease Agreement, but only to the extent the Delay Event actually delays the performance of the D&C Work beyond the Scheduled Phase 1 Completion Date and/or the Scheduled Completion Date, as applicable, (3) solely with respect to a Delay Event affecting performance of the D&C Work, will be permitted to make certain value engineering adjustments to the scope of the D&C Work to achieve cost savings that minimize the impact of the Delay Event, and (4) solely with respect to a Delay Event affecting performance of the Operations and Maintenance Work, will be entitled to adjustments to the Borrower's obligations to satisfy and achieve KPIs as necessary to reflect the impact of the Delay Event on the Borrower's ability to satisfy such obligations. If the Borrower fails to deliver notice of a Delay Event within the required period set forth in the Lease Agreement, the Borrower will be deemed to have irrevocably and forever waived and released any claim or right to extensions or any other relief attributable to such Delay Event. See APPENDIX E – "SUMMARY OF CERTAIN PROVISIONS OF THE LEASE AGREEMENT – Design and Construction by the Lessee – Delay Events."

Notwithstanding the occurrence of a Delay Event, the Borrower is required to continue its performance and observance of all of its obligations and covenants under the Lease Agreement to the extent that it is reasonably able to do so and to use its reasonable efforts, and to cause its contractors and suppliers to use reasonable efforts, to minimize the effect and duration of the Delay Event. The occurrence of a Delay Event does not excuse the Borrower from timely payment of monetary obligations pursuant to the Lease Agreement or compliance with Good Order Requirements, Applicable Law, Applicable Standards, the Requirements and Provisions for Work and the other Project Documents, except for temporary inability to comply as a direct result of the Delay Event.

If the Borrower and the Port Authority are unable to agree on the extent of any delay incurred or non-monetary relief from the Borrower's obligations under the Lease Agreement or the Port Authority disagrees that a Delay Event claimed by the Borrower has occurred (or as to its consequences) or that the Borrower is entitled to relief, then the dispute will be resolved in accordance with the dispute resolution procedures set forth in the Lease Agreement.

Subject to the Borrower's rights with respect to monetary relief for Compensation Events, the schedule relief and other relief specifically provided for Delay Events represent the Borrower's sole right to relief for the adverse effects of a Delay Event against the Port Authority, except for claims that the Borrower may have against the Port Authority during the D&C Work Period arising out of or relating to (a) the Port Authority's failure to comply with its payment obligations under the Lease Agreement, (b) the Port Authority's interference with the Borrower's right of quiet enjoyment as provided for in the Lease Agreement, (c) the Port Authority's willful failure to tender the Premises or any portion thereof to the Borrower in accordance with the time periods required by the terms of the Lease Agreement (which claims described in the foregoing clauses (a), (b), or (c) are subject to the Borrower's rights with respect to terminating the Lease Agreement as described under the caption "Termination Rights – Grounds for Termination by the Borrower" below and the dispute resolution procedures set forth in the Lease Agreement), or (d) a breach by the Port Authority of any obligation under the Lease Agreement affecting the Borrower's Operations and Maintenance Work in any partial portion of the Premises following the date of beneficial occupancy of the Borrower therein in accordance with the Lease Agreement. Delay Events can occur only during the D&C Period, and no event or condition that occurs following the end of the D&C Work Period can constitute a Delay Event. Because breach by the Port Authority of any material obligation under the Lease Agreement during the D&C Period constitutes a Delay Event, the "sole remedy" limitation described above in this paragraph may limit the Borrower's ability to bring other legal action against the Port Authority in the event of its breach of the Lease Agreement during the D&C Period. See APPENDIX E – "SUMMARY OF CERTAIN PROVISIONS OF THE LEASE AGREEMENT – Design and Construction by the Lessee – Delay Events."

See APPENDIX B-3 – “REPORT OF THE LENDERS’ TECHNICAL ADVISOR” for information relating to Compensation Event Notices and Delay Event Notices submitted by the Borrower to the Port Authority to date, which notices and/or the details set forth therein may be disputed by the Port Authority.

## **Termination Rights**

### ***Borrower Event of Default***

The Lease Agreement provides for a number of defaults by the Borrower (each, a “Lease Event of Default”), subject, in certain cases, to cure periods and limitations specified therein. Such Events of Default include, without limitation, (i) any representation or warranty made by the Borrower in the Lease Agreement or in any other certificate or agreement delivered by the Borrower to the Port Authority in connection with the Lease Agreement being incorrect, false or misleading in any material respect on the date made, unless the facts and circumstances that caused the representation or warranty to be incorrect, false or misleading can be remedied and the representation or warranty is no longer incorrect, false or misleading in any material respect within 90 days following the earlier of the date the Borrower learns of the incorrect, false, or misleading representation or warranty or the date of notice thereof from the Port Authority to the Borrower, (ii) the Borrower fails to (A) pay when due any Rentals under the Lease Agreement, if the failure remains unremedied for five days, (B) make any other payment of fees or charges required under the Lease Agreement to the Port Authority, if the failure remains unremedied for 30 days, or (C) deposit or cause the deposit of funds to any reserve accounts in the amounts and times required by the Lease Agreement and the Senior Security Agreement, if the failure remains unremedied for 10 days after receipt of notice of default from the Port Authority, (iii) the Borrower fails to achieve Substantial Completion of Phase 2 by the Outside Completion Date, as such date may be adjusted pursuant to the Lease Agreement, (iv) the Borrower fails to maintain (or cause to be obtained and maintained) insurance coverage required by the Lease Agreement, including failure to comply with the requirements relating to the amount, terms or coverage, and, with respect to any such failure that results from a change by the Port Authority to the insurance coverage requirements under the Lease Agreement or the failure by an insurance carrier to maintain the ratings required pursuant to the Lease Agreement, such failure continues without cure for a period of five Business Days after the initial date of such failure, (v) the occurrence of certain events related to the insolvency or bankruptcy of the Borrower; (vi) any sublease, assignment, or transfer of the Lease Agreement, the Borrower’s leasehold interest in the Premises, or any portion of any of the same, or the transfer of any equity interests in the Borrower, in each case in contravention of the terms of the Lease Agreement, (vii) the Borrower fails to keep, perform, and observe every direction issued by the Port Authority pursuant to the Lease Agreement (including any bulletin, directive, or other instruction issued by the General Manager of the Airport or the Chief Security Officer) or issued by the Port Authority in its capacity as a bi-state agency, an airport operator, or the tenant under the Basic Lease, if such failure remains unremedied for a period of 10 days (provided that the time period for cure may be extended in certain circumstances), or (viii) the Borrower fails to keep, perform or observe any promise, covenant or agreement in the Lease Agreement or any document incorporated by reference into the Lease Agreement and such failure remains unremedied for a period of 30 days after the date on which the Borrower receives written notice thereof from the Port Authority, or within such shorter period as may be required by any applicable governmental authority (provided that the time period for cure may be extended in certain circumstances). See APPENDIX E – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE AGREEMENT – Termination by the Port Authority.”

With respect to certain, but not all, Events of Default, the Borrower is entitled to cure such Event of Default by preparing and submitting for Port Authority approval within the applicable cure period a remedial plan that sets forth a schedule and specific actions to be taken by the Borrower to cure such Event of Default and, if applicable, reduce the likelihood of such defaults occurring in the future. Any failure of

the Borrower to comply diligently with an approved remedial plan shall be deemed an Event of Default and the Port Authority shall have the right to terminate the Lease Agreement without any further entitlement of the Borrower to any cure period or further notices of any kind for such Event of Default or to the proposal of another remedial plan (subject only to the notice and cure rights of the Recognized Mortgagees).

If the Port Authority terminates the Lease Agreement due to an Event of Default, all Rental obligations of the Borrower pursuant to the Lease Agreement, and all other obligations of the Borrower that have not been fully performed, will survive such termination and will remain in full force and effect for the full term of the Lease Agreement had the termination not occurred. Additionally, the Borrower will be required to pay damages set forth in the Lease Agreement to the Port Authority in connection with such termination. The Port Authority may maintain separate actions, periodically, to recover the damage or deficiency then due or, at its option, at any time, may sue to recover the full deficiency, less the proper discount, for the entire unexpired term, subject to any adjustments as permitted under the Lease Agreement in connection with a reletting by the Port Authority. See APPENDIX E – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE AGREEMENT – Termination by the Port Authority (Events of Default)” and “– Survival of the Obligations of the Lessee.”

#### ***Grounds for Termination by the Borrower***

The Borrower may terminate the Lease Agreement upon the occurrence of certain events or conditions, subject to the applicable cure periods and limitations specified therein. Grounds for termination of the Lease Agreement by the Borrower are: (i) the failure of the Port Authority, within 30 days following receipt of notice by the Borrower, to make payment of any undisputed amounts due to the Borrower; (ii) the Port Authority expressly repudiates or willfully (with an intent to deprive the Borrower of its rights to quiet enjoyment under the Lease Agreement) fails to provide or defend the Borrower’s right to quiet enjoyment of the Premises pursuant to the terms of the Lease Agreement (which shall not be deemed to occur during the pendency of a Force Majeure event or in the event of a condemnation), such that the Borrower is unable to construct Terminal 6 or operate Terminal 7 or Terminal 6, in each case for a period of not less than 180 consecutive days, subject to certain limitations and restrictions; or (iii) the Port Authority willfully fails to tender the Premises or any portion thereof to the Borrower in accordance with the time periods required by the terms of the Lease Agreement. See APPENDIX E – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE AGREEMENT – Termination by the Lessee” and “– Port Authority (Event of Default).”

Upon the occurrence of any such event, the Borrower may terminate the Lease Agreement upon 60 days’ notice to the Port Authority. If the Borrower terminates the Lease Agreement due to the occurrence described in clause (ii) of the preceding paragraph, then (a) the Port Authority shall pay the Borrower a termination payment (the “Port Authority Default Termination Payment”) calculated as of the effective date of the termination as equal to (without double counting) the fair market value (had the Lease Agreement not been terminated) of the Borrower’s leasehold interest and its rights and obligations during the unexpired term of the Lease Agreement, determined according to a process set forth in the Lease Agreement, and (b) the Port Authority will have the right, but not the obligation, to assume the Lessee Debt that is then outstanding under the Financing Documents and the Borrower’s rights and obligations under such Financing Documents, on terms mutually acceptable to the Port Authority and the applicable lenders, in which even the Port Authority Default Termination Payment will be reduced by the amount of the Lessee Debt so assumed; provided that if the Port Authority and the applicable financing parties are unable to agree on mutually acceptable terms for such assumption by the Port Authority of the Lessee Debt, then the Port Authority shall pay the full amount of the Port Authority Default Termination Payment. The Borrower is not entitled to any termination payment upon a termination of the Lease Agreement by the Borrower for any other reason, and termination of the Lease Agreement is the Borrower’s sole remedy for any of the

provisions described in clauses (i) through (iii) above, provided that if the Borrower elects not to terminate the Lease Agreement, then the Borrower will retain the other remedies for breach of the Lease Agreement that it has in law or in equity. Payment by the Port Authority of the Port Authority Default Termination Payment is subject and subordinate in all respects to payment of debt service on the Port Authority's Consolidated Bonds and payment into the General Reserve Fund of the amount necessary to maintain the General Reserve Fund in the amount specified in the General Reserve Fund Statutes.

### ***Early Termination of Basic Lease***

If the entire Premises are condemned, then the Lease Agreement will automatically terminate. If a material part of the Premises or the Airport's public landing area is condemned, then each of the Borrower and the Port Authority shall have the option, exercisable by notice within 10 Business Days after the date of the condemnation, to terminate the Lease Agreement. In such circumstances, the Port Authority shall pay the Borrower the fair value of the Borrower's leasehold interest in the Premises, subject to various limitations set forth in the Lease Agreement, including that the Borrower's recovery shall be limited to a proportionate share of the condemnation proceeds available to the Port Authority and other affected tenants at the Airport, and that the available condemnation proceeds will be limited to the amount of such proceeds received by the Port Authority from the condemning authority and remaining after the Port Authority has been compensated for certain of its own interests or investments affected by the taking. There can be no assurance that the amount of any such payment would be sufficient to pay and discharge the remaining balance of the Series 2024 Bonds. See APPENDIX E – "SUMMARY OF CERTAIN PROVISIONS OF THE LEASE AGREEMENT– Basic Lease."

### ***Early Termination Upon Condemnation***

If the entire Premises are condemned, then the Lease Agreement will automatically terminate. If a material part of the Premises or the Airport's public landing area is condemned, then each of the Borrower and the Port Authority shall have the option to terminate the Lease Agreement. In such circumstances, the Port Authority shall pay the Borrower the fair value of the Borrower's leasehold interest in the Premises, subject to various limitations set forth in the Lease Agreement, including that the Borrower's recovery shall be limited to a proportionate share of the condemnation proceeds available to the Port Authority and other affected tenants at the Airport, and that the available condemnation proceeds will be limited to the amount of such proceeds received by the Port Authority from the condemning authority and remaining after the Port Authority has been compensated for certain of its own interests or investments affected by the taking. There can be no assurance that the amount of any such payment would be sufficient to pay and discharge the remaining balance of the Series 2024 Bonds or the Loan Facility. See APPENDIX E – "SUMMARY OF CERTAIN PROVISIONS OF THE LEASE AGREEMENT– Condemnation."

## **Lenders' Rights and Remedies; Refinancing**

### ***Leasehold Mortgages***

Except as expressly authorized in the Lease Agreement, the Borrower may not mortgage its interest in the Lease Agreement. The Lease Agreement allows the Borrower to grant Leasehold Mortgages on its interest in the Lease Agreement to secure the initial Lessee Debt under the Financing Documents as well as certain subsequent Lessee Debt, subject in each instance to certain terms and conditions.

A Person that holds a Leasehold Mortgage that complies with the terms and conditions set forth in the Lease Agreement and is an Institutional Lender or an agent or trustee acting on behalf of one or more Institutional Lenders is entitled to the benefits and protections provided to a Recognized Mortgagee

pursuant to the Lease Agreement, and is a third party beneficiary of the provisions of the Lease Agreement related to financing of the Project, with the right to directly enforce such provisions. Pursuant to the Port Authority's Consent to Leasehold Mortgage and Other Financing Documents, dated as of the Original Closing Date, the Port Authority has recognized the Collateral Agent as a Recognized Mortgagee.

The Port Authority shall deliver to the Recognized Mortgagee a copy of each Event of Default Notice given under the Lease Agreement at the same time as and whenever any Event of Default Notice shall have been sent to the Borrower. If the Port Authority elects to terminate the Lease Agreement the Port Authority shall at the same time send to the Recognized Mortgagee a copy of the Port Authority termination notice. The effective time and date of such termination, so long as the Leasehold Mortgages are in effect, (A) shall not be sooner than (1) the 10th day after the date of the sending of the termination notice if the Lease Event of Default triggering such notice is capable of being cured solely by the payment of money, or (2) the 90th Business Day after the date of sending of the termination notice if the Lease Event of Default triggering such notice is not capable of being cured solely by the payment of money, and in each case, shall be subject to extension and or stay in certain circumstances for the benefit of a Recognized Mortgagee, and (B) if a Personal Default has occurred and is continuing and the Recognized Mortgagee has notified the Port Authority that it will exercise its foreclosure rights and/or an Equity Foreclosure, and has started to exercise such rights within 90 Business Days of its receipt of the Event of Default Notice, shall not be before the execution and delivery of an assignment and assumption agreement between the Borrower, the Recognized Mortgagee and the Port Authority.

#### ***Recognized Mortgagee's Right to Cure***

The Recognized Mortgagee shall have an additional period of (1) 10 days with respect to any Lease Event of Default that is capable of being cured solely by the payment of money, (2) 90 Business Days with respect to any other Lease Event of Default (other than certain Lease Events of Default related to Borrower bankruptcy or certain other specified Lease Events of Default not capable of cure by a party other than the Borrower, as to which no cure will be required), and (3) 180 days with respect to a failure to achieve Substantial Completion of Phase 2 by the Outside Completion Date, in each case beyond any cure period expressly provided to the Borrower in the Lease Agreement, to cure or cause to be cured any Lease Event of Default, but subject in all events to certain conditions, including payment of outstanding amounts due to the Port Authority and diligent efforts to cure, including, if necessary, foreclosure of the Leasehold Mortgages within a period of time reasonably acceptable to the Port Authority. If any Recognized Mortgagee is prohibited from curing any Lease Event of Default by any process, stay or injunction issued by any governmental entity or pursuant to any bankruptcy or insolvency proceeding involving the Borrower, then the time periods specified above for the Recognized Mortgagee to cure such Lease Event of Default shall be extended for the shorter of the period of such prohibition and 150 days.

If the Recognized Mortgagee is acting to cure a Lease Event of Default in accordance with the Lease Agreement, then the Port Authority shall not exercise its right to terminate the Lease Agreement by reason of such Lease Event of Default; provided, however, that the Port Authority may exercise any of its other rights and remedies provided for under the Lease Agreement, including the Port Authority's step-in rights under the Lease Agreement or under the Construction Security, or at law or in equity, and the exercise of such rights by the Port Authority shall not be deemed to constitute interference with the Recognized Mortgagee's rights under the Lease Agreement.

#### ***Foreclosure***

The Recognized Mortgagee may exercise its foreclosure rights and/or an Equity Foreclosure (or any contractual or statutory power of sale under the applicable Financing Documents or an assignment in

lieu) and enforce any applicable Financing Document in any lawful way, subject to certain conditions contained in the Lease Agreement, including, without limitation: (1) the Recognized Mortgagee is not a Prohibited Party, (2) the rights of the Borrower under the Lease Agreement may be assigned or transferred only to a Person that is approved by the Port Authority as a Qualified Terminal Operator, (3) the Recognized Mortgagee is not permitted in connection with its enforcement of its lien under Leasehold Mortgages to do anything that would materially and adversely affect the Premises, to the Operations and Maintenance Work or is otherwise inconsistent with, or not permitted by, the Lease Agreement, and (4) such Qualified Terminal Operator (or its designee or nominee) shall pay or cause to be paid to the Port Authority all amounts set forth in a Statement of Estimated Liabilities which are past due or due and payable in accordance with the provisions of the Lease Agreement.

### ***New Agreement***

If the Lease Agreement is rejected or disaffirmed pursuant to any bankruptcy law or proceeding or other similar law or proceedings affecting creditors' rights generally with respect to a bankruptcy proceeding relating to the Borrower or otherwise or is terminated as a result of any other Personal Default, then, subject to certain conditions contained in the Lease Agreement, the Port Authority agrees, if there are outstanding obligations to a Recognized Mortgagee (subject to the receipt of all necessary Governmental Approvals, which the Port Authority agrees to use commercially reasonable efforts to obtain), to enter into a new lease of the Premises (the "New Agreement") with the Recognized Mortgagee (or its designee or nominee that is not a Prohibited Party) and any ancillary documents or agreements as may be necessary or desirable to give full effect to the New Agreement for the remainder of the term of the Lease Agreement upon all of the remaining, unperformed covenants, agreements, terms, provisions and limitations of the Lease Agreement, effective as of the date of such termination subject to the conditions set forth in the Lease Agreement.

### ***Refinancing Requirements***

The Borrower is generally required to obtain the Port Authority's prior written consent to any Refinancing. However, certain Refinancings that meet the criteria set forth in the Lease Agreement do not require such prior consent, including certain refinancings of all or any portion of the initial Loan Facility originating under the Senior Financing Documents. The Borrower has structured the issuance of the Series 2024 Bonds to fit within a permitted Refinancing under the Lease Agreement that does not require the Port Authority's consent. Pursuant to the Lease Agreement, the aggregate principal amount of the Borrower's debt secured by the Leasehold Mortgages shall not exceed a maximum amount of \$4,225,000,000. Following the issuance of the Series 2024 Bonds, approximately \$508,453,869 of debt will remain Outstanding under the Loan Facility, all of which, together with the approximately \$962,000,000 of undrawn capacity anticipated to be drawn and applied to the remaining costs of the Project, is currently scheduled to mature in full on the Bank Financing Maturity Date. The Borrower's current plan of finance, which is subject in all respects to market conditions from time to time and remains subject to change in their sole and absolute discretion, anticipates the issuance of additional tax-exempt and taxable bonds either as Additional Senior Obligations (secured on a parity basis with the Series 2024 Bonds and the Loan Facility) and/or Subordinate Obligations (secured on a subordinate basis to the Senior Obligations), to refinance the balance of the Loan Facility outstanding from time to time, but prior to their maturity. Such refinancings may or may not require Port Authority consent at the time of such refinancing.

These indebtedness restrictions set forth in the Lease Agreement are for the sole benefit of the Port Authority. The Lease Agreement provisions can be waived or amended by the Port Authority without the consent of the holders of the Series 2024 Bonds or other Senior Obligations.

For detailed provisions of the Lease Agreement, see APPENDIX E – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE AGREEMENT – Project Financing.”

## **PART 11 – THE PROJECT**

### **Overview**

The Project includes (i) the operation, maintenance, and, subsequently, decommissioning and demolition of Terminal 7 and related infrastructure at the Airport; (ii) the design, construction, financing, operation, and maintenance of the Ground Transportation Center and Terminal 6, including the necessary aircraft ramp and apron areas; and (iii) the design and construction of certain Off-Premises Facilities at the Airport by the Borrower on behalf of the Port Authority, which Off-Premises Facilities will not be operated or maintained by the Borrower and will not constitute part of the facilities leased to the Borrower under the Lease Agreement. Certain aspects of the Project are eligible for financing or refinancing with Green Bonds. For information about the use of proceeds of the Green Bonds see “PART 2 – DESCRIPTION OF THE SERIES 2024 BONDS – Green Bonds Designation – Series 2024A” and APPENDIX M – “GREEN BONDS SECOND PARTY OPINION.”

As described more fully in the Report of the Airport Consultant attached hereto as APPENDIX B-1, the New York City air service market is one of the largest markets in the world in terms of total origin and destination passengers, and demand is anticipated to continue long-term. The Borrower’s operations at Terminal 7 currently benefit from the strong air service market in New York City, and the new Terminal 6 is intended to help address such passenger demand and improve the passenger flying experience by, among other things, (i) providing additional widebody gates compared to Terminal 7 to serve a greater volume of passengers and creating more growth options for airlines and (ii) provide best in class passenger amenities.

As evidence of the demand in the New York City air service market for the capacity and amenities of the new Terminal 6, the Borrower has already entered into a sublease with JetBlue for operations at Terminal 6, and the Borrower has entered into letters of intent with an additional seven airlines (“Expected Airlines”) who are expected to be tenants at Terminal 6 (Aer Lingus, Cathay Pacific, Lufthansa AG, Austrian Airlines, Brussels Airlines, Swiss International Air Lines and an additional long-haul foreign flag airline).

The Borrower and its advisors believe that Terminal 6 will be successful at attracting additional airline subtenants for the following reasons:

1. Terminal 6 is expected to provide improved customer experience and service by offering approximately 1,200,000 square feet of world-class facilities including modern passenger amenities, such as locally inspired retail, food and beverage offerings, duty free and other retail concessions, multiple premium airline lounge options, an arrivals lounge for use by all arriving passengers, and facilities for travelers with pets, families and mobility or sensory challenges;
2. Terminal 6’s compact design with short walking distances and state of the art systems such as, but not limited to, self-service bag drop, automated TSA security lanes and biometric-based access control systems will allow for a smooth and expedient passenger experience;
3. Terminal 6 will accommodate ADG V aircraft (equivalent to the Boeing 777 and Airbus 350 families) and include three Multiple Apron Ramp System gates that can accommodate one widebody or two narrowbody aircrafts;



3. Terminal 6 will provide an all new, large Federal Inspection Services (FIS) facility, which will facilitate efficient passenger flow;
4. The Borrower has partnered with the Manager, who has an extensive record of successfully completing complex airport construction projects and operating world-class facilities, including in the New York air service market;
5. Terminal 6 is expected to improve Minimum Connect Times with JetBlue in Terminal 5 by expanding taxilanes for more efficient airside operations and offering a post-security seamless walking connection between Terminal 5 and Terminal 6; and
6. Terminal 6 will include direct access to two AirTrain stations, and the centralized Ground Transportation Center, facilitating access to other terminals at the Airport and ground transportation, resulting in improved traffic and passenger flow.

For more information, please see APPENDIX B-1 – “REPORT OF THE AIRPORT CONSULTANT,” and APPENDIX B-2 – “REPORT OF THE AIRLINE TRAFFIC FORECAST CONSULTANT,” attached hereto.

### **Phasing of the Project – Phase 1 & Phase 2**

In total, Terminal 6 will include the construction of 10 gates (consisting of nine widebody gates and one narrowbody gate) and associated terminal space on the site of the Prior Terminal 6 and Terminal 7 at the Airport. While the Borrower has and will continue to operate Terminal 7 during the initial construction of Terminal 6, Terminal 7 will eventually be decommissioned and demolished following the opening of Phase 1 of Terminal 6 as described above.

Construction on Terminal 6 and related Project construction work began in the fourth quarter of 2022 and is divided into two (2) major phases:

- a) Phase 1 of the Project (collectively, as further described in the Lease Agreement and the D&C Contract, “Phase 1”), which is currently ongoing and is anticipated to open in the first quarter of 2026, includes (i) the construction of a portion of Terminal 6 on the vacant site previously occupied by the Prior Terminal 6 before its demolition in 2011, including five gates (four widebody gates and one narrowbody gate) arrival and departure roadways serving Terminal 6, check-in areas, a new FIS facility, inbound and outbound baggage systems, concession spaces, TSA security facilities, and certain airline lounges, two of which will have direct boarding to aircraft, (ii) construction of the Ground Transportation Center, (iii) construction of associated Off-Premises Facilities and (iv) the decommissioning of up to five gates of Terminal 7 to facilitate construction of the new Terminal 6. It is anticipated that one additional widebody gate will be added by the third quarter of 2026 after completion of Phase 1, but before completion of Phase 2.
- b) Phase 2 of the Project (collectively, as further described in the Lease Agreement and the D&C Contract, “Phase 2”), which will commence following the completion of Phase 1 and is anticipated to open in the second quarter of 2028, includes (i) the decommissioning and demolition of the rest of Terminal 7, (ii) construction of the remaining portion of the new Terminal 6 on the site previously occupied by Terminal 7 including four additional widebody gates, additional check-in areas, additional concession areas, and additional lounge spaces, and (iii) construction of additional associated Off-Premises Facilities, including necessary roadways and utilities.

## Construction Milestones

Under the Lease Agreement the Borrower is responsible for meeting the following completion milestones (the “Terminal 6 Construction Milestones”):

<b>Key Dates / Construction Milestones</b>	
Phase 1 Scheduled Substantial Completion Date	December 4, 2025
Phase 1 Date of Beneficial Occupancy	February 10, 2026*
Phase 2 Scheduled Substantial Completion Date	February 23, 2028
Phase 2 Date of Beneficial Occupancy	April 19, 2028*

\* If the Borrower fails to achieve the Phase 1 DBO or the Phase 2 DBO within 30 days following the milestone dates above, or as such dates may be extended pursuant to the terms of the Lease Agreement, the Borrower shall be required to pay liquidated damages of \$40,000 per day for each day thereafter that such milestone remains unmet.

The Lease Agreement also includes an Event of Default for a failure to achieve substantial completion of Phase 2 by the date which is 12 months following the Phase 2 Scheduled Substantial Completion Date listed above, or as such date may be extended pursuant to the terms of the Lease Agreement.

For more information on the provisions of the Lease Agreement regarding construction milestones see “PART 10– THE LEASE AGREEMENT – Principal Rights and Responsibilities of the Parties – Design and Construction of the Project.”

The Borrower believes that each milestone listed above is achievable based upon construction progress to date. For more information, see “PART 11 – THE PROJECT – Construction Progress” and APPENDIX B-3 – “REPORT OF THE LENDERS’ TECHNICAL ADVISOR.”

## Construction Progress

Terminal Approach



Departures Curb



Check-In Hall



Entrance to Security Checkpoint



East Concourse



Central Concourse



Construction of Terminal 6 began in the fourth quarter of 2022, and the Borrower and D&C Contractor have made significant progress towards achieving the construction milestones under the Lease Agreement.

Design of the Project is well advanced, with 85% of all design packages submitted and 74% of all design packages either approved or conditionally approved to date. Pending or future design packages include post-construction submittals, operational plans, and submissions that are anticipated to occur within the remaining months of 2024 or early 2025, such as the Terminal 7 demolition, TWA canopy replacement, Lufthansa fit-out, individual tenant fit-out, and photovoltaic designs. The Borrower and its advisors believe that the Project is therefore largely de-risked from a design perspective.

Construction work is ongoing and includes, among other activities the following:

- Pile installation;
- Slab-on-grade activities;
- Curtainwall installation;
- Insulation;
- Drywall;
- Sprayed fireproofing;
- Baggage handling equipment installation;
- Fire sprinkler installation;
- HVAC ductwork; and
- Electrical and plumbing installation.

As of August 31, 2024, approximately 85% of all budgeted work relating to actual construction and construction materials and supplies has been procured. In addition, as of August 31, 2024, based on a comparison of the actual value of construction work completed as a percentage of the amounts Borrower has budgeted (including increases due to approved change orders):

- Approximately 36% of overall D&C Work has been completed;
- Approximately 10% of all mechanical, electrical, plumbing, building automation and low voltage installation has been completed; and
- Approximately 26% of the Phase 1 baggage system has been completed.

Over the first nearly two years of construction, certain delays have affected Phase 1, but the Borrower and D&C Contractor have taken efforts to mitigate and address such delays. Although the September 2024 Detailed Schedule provided by the D&C Contractor currently forecasts a 22-day delay against the Phase 1 Substantial Completion Date and Phase 1 DBO milestones and a 19-day delay against the Phase 2 Substantial Completion Date and Phase 2 DBO milestones, the forecasted delays assume no revisions to the schedule or other resequencing of construction activities that can occur in parallel which would reduce the time needed for such activities that are otherwise contemplated to occur later in the schedule (e.g., potentially resequencing curtain-wall activities or installing baggage handling equipment in multiple areas at once). In addition, with the exception of overtime work to complete the installation of terminal structural steel, the remaining schedule provided by the D&C Contractor is based on standard working day and shift assumptions. The forecasted delays also do not take into account time built into the schedule for weather delays that, if such delay does not materialize, would provide additional float to the schedule or other actions that the Borrower or D&C Contractor may take to accelerate construction work. See APPENDIX B-3 – “REPORT OF THE LENDERS’ TECHNICAL ADVISOR.”

The Borrower is also pursuing its rights to Compensation and Delay Events under the Lease Agreement with respect to certain events contributing to the forecasted delays, and for certain other matters. See APPENDIX B-3 – “REPORT OF THE LENDERS’ TECHNICAL ADVISOR” for information relating to Compensation and Delay Event Notices submitted by the Borrower to the Port Authority, which Notices and/or the details set forth therein may be disputed by the Port Authority. The Borrower expects that additional delays may arise over the remainder of the construction period, and additional Compensation and Delay Event Notices may be submitted, which Notices and/or the details set forth therein may be disputed by the Port Authority.

The Borrower believes planned mitigation efforts and schedule revisions will allow for future acceleration of construction to complete Phase 1 or Phase 2 of the Project if needed to recover potential delays, including all of the current forecasted delay.

### ***Open Change Orders***

As is consistent with projects of similar scope and size, there have been a number of Changes (or claimed Changes) since the Borrower issued a notice to proceed with the DB D&C Work to the D&C Contractor. The Changes are being reviewed and/or negotiated by the parties pursuant to the terms of the D&C Contract. The parties are also proceeding through the Equivalent Project Relief process where Changes may be associated with Port Authority Changes or Qualifying D&C Changes for the Project. A subset of the Changes have moved to mediation (i.e., the third step of the dispute resolution process, which is mandated by the D&C Contract for claims (individually or in the aggregate) exceeding \$10,000,000 that

are not resolved through meetings of (a) project level representatives, and (b) senior executives). The current maximum cumulative value of the Changes (or claimed Changes) subject to mediation, without taking into consideration the likelihood of the Borrower's success in respect of such Changes (or claimed Changes) subject to mediation, is less than \$20,000,000. Any additional costs to the Borrower as a result of such Changes (or claimed Changes) subject to mediation may also be funded through certain unallocated contingencies which may be available for any and all Project related activities. See "PART 3 – PLAN OF FINANCE – Contingences" for more information.

### ***Interface Arrangements***

Concurrently with the Borrower's work on the Project, additional developments are being and may be undertaken at the Airport by the Port Authority and by other terminal operators or airport tenants. In order to facilitate coordination among the relevant parties undertaking redevelopment work at the Airport, the Borrower and the Port Authority have entered into a Construction Coordination Agreement with the Borrower, dated as of the Original Closing Date (the "Construction Coordination Agreement"), and the Port Authority has agreed to cause certain other entities undertaking significant development work at the Airport to enter into a similar agreement. The Construction Coordination Agreement governs construction-related conflicts among the Borrower and such other entities and sets forth the procedures for cooperation among the parties with respect to, and coordination of, the construction activities relating to the redevelopment of the Airport and other work activities, including coordination of shared uses at the Airport such as (without limitation) Airport roadways, certain laydown areas, ground vehicle parking, utilities, and certain other resources. In certain circumstances, if conflicts arise from competing uses of shared resources at the Airport, the Port Authority has the authority, in its sole and absolute discretion, to make determinations which are not arbitrary, capricious or unjustly discriminatory to resolve such conflicts in accordance with the procedures and order of prioritization set forth in the Construction Coordination Agreement. The Construction Coordination Agreement also requires the Borrower to use, at its cost, a vendor chosen by the Port Authority with respect to batching, barging and materials crushing. In the event of a conflict between the Lease Agreement and Construction Coordination Agreement, the provisions of the Construction Coordination Agreement will prevail.

The Borrower has also entered into a Reciprocal Rights Agreement between the Borrower and JetBlue, dated as of the Original Closing Date (the "Reciprocal Rights Agreement"), which agreement governs the interface between the Borrower and JetBlue with respect to the connection points between Terminal 5 and Terminal 6 and the design, construction, operation and maintenance of certain other facilities that will serve both terminals, including, without limitation, a taxi stand and consolidated bus frontage area with certain related improvements, certain arrival and departure roads, and the Ground Transportation Center, as well as the design, construction, operation and maintenance of certain temporary and permanent improvements to Gates 29 and 30 of Terminal 5. The Reciprocal Rights Agreement provides access to each of the Borrower and JetBlue to applicable areas of property leased by the other party, as needed to facilitate the construction and/or joint use of such facilities, and sets forth each party's rights and responsibilities with respect to such facilities, both during construction, if applicable, and thereafter.

The Design-Builder has included the known costs associated with complying with the Construction Coordination Agreement and the Reciprocal Rights Agreement in the GMP (as defined below), to the extent applicable, and must comply with the terms and requirements of such agreements and any future interface agreements to the extent applicable to the DB D&C Work.

## **Environmental, Social and Governance (“ESG”)**

The Borrower is committed to taking a proactive approach to achieve the Project’s sustainability goals through implementing innovative and effective initiatives geared toward minimizing the Project’s carbon footprint and energy usage. The Borrower has a clear set of key environmental goals and metrics, and it has adopted and will continue to adopt and maintain sustainability policies and procedures in order to integrate its ESG commitment into the core aspects of the Project’s design, construction, and operations.

The Borrower believes that, based on the sustainability features of Terminal 6, the facility will not only meet the Port Authority’s Sustainable Design Guidelines for both buildings and infrastructure and satisfy the requirement under the Lease Agreement that Terminal 6 achieve LEED Silver certification, but may achieve LEED Gold certification and an Envision Gold rating. The Borrower is also targeting SITES Gold certification for outdoor spaces. Terminal 6’s sustainability features include, among others, incorporation of high-efficiency building systems, installation of solar panels to generate renewable energy, fully electric ground support system, stormwater capture and reuse, and 90% waste diversion through recycling of asphalt, concrete, steel, and other materials. For further information about the sustainability features of the Project, see APPENDIX M – “GREEN BONDS SECOND PARTY OPINION.

On April 20, 2020, the Port Authority received a Finding of No Significant Impact (“FONSI”) / Record of Decision (“ROD”) under the National Environmental Policy Act (“NEPA”) process, which represents the FAA’s determination that the Project will have no significant environmental impacts based on the results of the Final Environmental Assessment for the JFK International Airport Redevelopment Program.

In addition, the Lenders’ Technical Advisor has reviewed the Project against the Equator Principles, which were established by the project finance sector to document a benchmark for the consideration of environmental and social risk factors during the due diligence progress of assessing requests for project finance. The Lender’s Technical Advisor confirmed that the appropriate categorization of the Project under the Equator Principles is Category C as the Project has “minimal or no social or environmental impacts.”

For more information see APPENDIX B-3 – “REPORT OF THE LENDERS’ TECHNICAL ADVISOR” and APPENDIX M – “GREEN BONDS SECOND PARTY OPINION.”

The Borrower’s operations are also focused on ensuring equal opportunity and participation of minority-owned business enterprises (“MBEs”) and women-owned business enterprises (“WBEs”), airport concession disadvantaged business enterprises (“ACDBEs”), local business enterprises (“LBEs”) from Queens, NY with emphasis on areas adjacent to the Airport, and service-disabled veteran owned businesses (“SDVOBs”) in all aspects of the Project. Pursuant to the Lease Agreement, the Borrower has agreed to commit itself to and use good faith efforts to among other matters (i) implement an extensive program of affirmative action, including specific affirmative action steps to ensure maximum opportunities for employment and contracting by minorities and women, and (i) achieve certain targets for MBE, WBE, ACDBE, LBE and SDVOB participation in the Project, including at least 20% MBE and 10% WBE participation in all eligible development, construction and operating work of the Project, 30% ACDBE participation as measured by the total estimated annual gross receipts for the overall concession program, 10% LBE participation in all phases and categories of work, and 3% SDVOB participation in design and construction work.

The Borrower’s commitment to such goals is reflected by significant MWBE equity participation in the Project as evidenced by the involvement of the ATI Member, a 100% minority-owned, controlled and managed firm, which is a 30% Equity Member. The ATI Member and its regulated affiliates are

focusing their efforts on investing and managing funds from traditional institutional investors, as well as helping promote the Project through substantial stakeholder engagement initiatives.

See also APPENDIX E – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE AGREEMENT– Minority Business Enterprises, Women-Owned Business Enterprises and Local Business Enterprises Commitment.”

## **PART 12 – THE D&C CONTRACT**

The Borrower and the D&C Contractor entered into a design-build contract (the “D&C Contract”), pursuant to which the DB D&C Work (as defined below) will be undertaken by the D&C Contractor consistent with a guaranteed maximum price and date certain basis. The D&C Contractor is Hunt Construction Group, Inc., D/B/A AECOM Hunt. The D&C Contractor has subcontracted the Design Work to a number of subconsultants, including, without limitation, Corgan Associates Architects P.C. (the architect of record). See “PART 9 – PROJECT PARTICIPANTS – The D&C Contractor.” See also APPENDIX G – “SUMMARY OF CERTAIN PROVISIONS OF THE D&C CONTRACT” for additional information regarding the provisions of the D&C Contract.

### **Back-to-Back Obligations**

The Borrower and the D&C Contractor agree in the D&C Contract that the obligations and liabilities imposed on the D&C Contractor under the D&C Contract, subject to the terms and conditions set forth therein (including, without limitation, such terms and conditions that explicitly impose an obligation on the Borrower and the limitation of the D&C Contractor’s liability (see “– Limitation of Liability” in this PART 12)), are “back-to-back” with the obligations and liabilities imposed on the Borrower in the Lease Agreement to the extent applicable to the DB D&C Work. The D&C Contractor acknowledges and agrees in the D&C Contract that it is familiar with and also will comply with all other obligations and liabilities imposed by the Port Authority under the Lease Agreement that are applicable to the D&C Contractor due to its status as the Lead Contractor, a D&C Contractor, a contractor and a party to a Key Contract.

The D&C Contract also provides that, insofar as it relates to the DB D&C Work, the D&C Contractor will not act or omit to act to cause the Borrower to be in breach of any of the Borrower’s obligations under the Project Documents, including without limitation the Lease Agreement.

### **DB D&C Work**

#### ***Scope of the Work***

The “DB D&C Work” is defined in the D&C Contract as follows:

all of the D&C Work to be performed by [the D&C Contractor] pursuant to [the D&C Contract] and the Lease [Agreement] and the GMP, but except as limited by this Agreement, PDD. . . , and Qualifications, Assumptions, and Exclusions. . . Notwithstanding the foregoing, the DB D&C Work shall be deemed to include without limitation all required design-build services, DB Design Work, DB Construction Work, labor, materials, equipment and all other work and other services required to be performed and furnished by [the D&C Contractor] under and subject to the DB Project Documents for the full and timely completion of the DB D&C Work. For the avoidance of doubt, the DB D&C Work shall be

deemed to include work or services required to secure Governmental Approvals, Construction Applications, Permits, approvals, or sign-offs for the DB D&C Work as set forth in this Agreement. For the avoidance of doubt, the DB D&C Work does not include any Operations and Maintenance Work.

The D&C Contractor is required to perform the DB D&C Work in accordance with the terms and conditions of the D&C Contract.

### ***Guaranteed Maximum Price***

In consideration of the D&C Contractor performing the DB D&C Work pursuant to the D&C Contract, the D&C Contractor will be paid an amount of \$2,320,898,569 (as the same may be adjusted pursuant to the D&C Contract, the “Guaranteed Maximum Price” or “GMP”). The GMP includes allowances for particular aspects of the DB D&C Work, which include (a) items identified by the Borrower and the Port Authority for potential value engineering and reduction in the GMP, (b) Terminal 7 demolition and abatement work, (c) Terminal 7 foundation demolition work, (d) Gate T5-30 enabling work related to potential pile obstructions, (e) Terminal 6 Phases 1 and 2 work related to potential pile obstructions, (f) environmental allowance for Jet Blue Terminal 6 spill clean-up, abatement of fuel limes and related work, (g) Phases 1 and 2 roof penetrations for photovoltaic system, (h) certain west concourse work, and (i) fit-out allowance scope of work. The D&C Contractor will not be entitled to any payment other than the GMP for its performance of the DB D&C Work, provided that adjustments to the GMP may occur in accordance with the D&C Contract in connection with Material Borrower Changes, Compensation Events, or Unavoidable Delay Events (each as described below).

Payments by the Borrower to the D&C Contractor are made monthly based on the D&C Contractor’s performance of the DB D&C Work in accordance with the respective schedule of values that are set forth in the D&C Contract. In addition, such monthly payments include any costs of the D&C Contractor that fall under the allowances or Direct DB D&C Work Costs (which are included in the GMP but are not subject to drawdown in accordance with the pre-established schedules and are instead to be paid as incurred). The pre-established schedules and the GMP also include certain mobilization fees and start-up costs, which will be paid to the D&C Contractor at the times and in the amounts specified in the schedules. The D&C Contract provides that the D&C Contractor and the Borrower may alter the relevant schedules by mutual agreement (subject to Port Authority Approval, if applicable). See APPENDIX G – “SUMMARY OF CERTAIN PROVISIONS OF THE D&C CONTRACT – Guaranteed Maximum Price (“GMP”), Subcontractor Buyout and Payments.”

### ***Cooperation***

The D&C Contract requires that the Borrower and the D&C Contractor cooperate and work in a diligent and expeditious manner to: (1) prevent, avoid and mitigate potential impacts to construction schedules, the scope of the D&C Work, and increased costs of construction for the Project, and (2) take into account how the D&C Work may impact Operations and Maintenance Work. These cooperation efforts include, for example, providing prompt updates to one another regarding possible changes to construction progress, seeking acceptable work-arounds to construction activities, identifying new or improved areas of coordination involving construction activities, and considering in good faith any proposed changes to the scope of work for the Project, as the case may be.

The D&C Contract also requires the D&C Contractor to cooperate with the Borrower and the Port Authority, including by attending meetings with the Port Authority. The D&C Contractor has also agreed



that the Borrower and the Port Authority (to the extent required by the Lease Agreement) shall have the right to communicate directly with the D&C Contractor's Design Professionals, provided that the D&C Contractor is included in each communication with the Design Professionals.

## **Change Orders and Directives**

### ***Changes***

The Borrower has the right from time to time during the DB D&C Work Period to effectuate changes to the DB D&C Work, to substitute materials, require different methods, to add or remove portions of the DB D&C Work, or alter the time, method, or cost of the D&C Contractor's execution of the DB D&C Work as the Borrower deems necessary or appropriate (each, a "Change"). A Change may be initiated (i) by the Borrower (a "Borrower Change") (ii) as a result of a Port Authority Change or any other Qualifying D&C Change, (iii) as a result of any other Change permitted by the Lease Agreement for which the D&C Contractor is entitled to Equivalent Project Relief, (iv) as a result of a Change expressly permitted by the D&C Contract, (v) through a Site Instructive, or (vi) through a Field Proceed Order. The review of a proposed Change or Changes by the D&C Contractor and any Subcontractor, regardless of the number of such reviews, is included in the D&C Contractor's General Conditions Costs, and will not be included as an additional cost to the Borrower on any Change Order. The cost and expenses of Changes will either increase or decrease the GMP, but such Change Order will not impact the amount of the Construction Contingency.

See APPENDIX G – "SUMMARY OF CERTAIN PROVISIONS OF THE D&C CONTRACT – Changes in the DB D&C Work."

### ***Contemplated Change Order Requests and Change Order Proposals***

Changes may be initiated by the Borrower (including changes requested by the Port Authority) by submitting to the D&C Contractor a Contemplated Change Order Request setting forth in detail the nature of the Change. In accordance with the applicable timing requirements under the D&C Contract, the D&C Contractor must subsequently prepare and submit to the Borrower a Change Order Proposal, which the Borrower must consider in good faith and submit to the Port Authority for its consideration pursuant to the Lease Agreement. Each Change Order Proposal is required to contain: (i) the estimated incremental DB D&C Work Costs (including applicable soft costs) during the DB D&C Work Period, including any applicable adjustments to the critical path or otherwise to the Baseline Schedule, (ii) the time impact analysis of the proposed change to the Baseline Schedule, including to any Milestone Event Date and/or the Scheduled Completion Date (unless there is no impact to the Baseline Schedule), (iii) any other deviation from the D&C Contractor's obligations under the Lease Agreement or from the Requirements and Provisions for Work that would result from the implementation of the proposed Change, and (iv) such other supporting documentation as may be reasonably requested by the Port Authority or the Borrower, as applicable.

If the Borrower (and, if required under the Lease Agreement, the Port Authority) approves a Change Order Proposal, the Borrower shall issue a Change Order setting that includes the agreed terms (including the payment terms) for that Change, which Change Order shall reflect the terms of the approved Change Order Proposal and, upon execution, shall become a part of the Construction Application and the D&C Contract. If applicable Milestone Event Dates shall be extended to a new date reflected in the approved Change Order.

### ***Borrower Change Directives***

If the Borrower and the D&C Contractor (and the Port Authority, in the event Port Authority Approval is required under the Lease Agreement) are unable to reach an agreement on a Change Order Proposal within seven (7) Days of submission, the Borrower may, in its sole and absolute discretion, issue a Borrower Change Directive directing the D&C Contractor to proceed with the DB D&C Work constituting such Change and, if applicable, providing for any adjustment in the Cost of the DB D&C Work, Baseline Schedule (subject to approval by the Port Authority, if required to adjust a date on the Baseline Schedule), Milestone Events, or Milestone Event Dates resulting from such Change. Upon the D&C Contractor's receipt of a Borrower Change Directive, the D&C Contractor is required to proceed with the DB D&C Work constituting the Change provided for therein, promptly after such receipt or as otherwise may be required in such Borrower Change Directive; provided that the D&C Contractor retains the right to dispute a Borrower Change Directive, and provided further that, if the value of the Borrower Change Directive(s), Field Proceed Order(s) and other amounts in dispute arising from the D&C Contract is equal to Ten Million Dollars (\$10,000,000) in the aggregate at any given time, then the Borrower and the D&C Contractor are required to proceed with interim dispute resolution procedures set forth in the D&C Contract, which includes meetings among the parties' principals and then mediation.

### ***Port Authority Changes and Qualifying D&C Changes***

The D&C Contractor's remedies against the Borrower under the D&C Contract due to a Port Authority Change or Qualifying D&C Change arising under the Lease Agreement, including additional compensation, extension of the Milestone Event Dates, or relief from Liquidated Damages (including any liquidated damages imposed on the Borrower by the Port Authority pursuant to the Lease Agreement), are limited against the Borrower in all instances to Equivalent Project Relief payable by the Borrower (it being understood that the D&C Contractor is not entitled to any relief or compensation directly from the Port Authority).

### ***Material Borrower Change***

A Borrower's Change shall only be compensable under the D&C Contract if it satisfies the criteria for a Material Borrower Change (as defined in APPENDIX G – "SUMMARY OF CERTAIN PROVISIONS OF THE D&C CONTRACT"). All relief arising from Changes to the D&C Contract is subject to the explicit terms and conditions of the D&C Contract.

### **Warranty**

The D&C Contractor warrants and guarantees (the "Warranty") to the Borrower the same warranty that the Borrower provides to the Port Authority under the Lease Agreement (subject to the terms of the D&C Contract). The Warranty includes the rectification of all nonconforming work, including, to the extent necessary, through removal and/or replacement thereof, whether discovered by the D&C Contractor, the Borrower, or the Port Authority. The Warranty with respect to each Phase is required to be for a term of two (2) years from the issuance by the Port Authority of the Phase 1 Completion Certificate or the Completion Certificate, as applicable, or for such term as required by the PDD, but, with respect to any portion of the DB D&C Work that is repaired and/or replaced during such two (2) year period, such term is required to be for two (2) years from the date of repair and/or replacement of such portion of the DB D&C Work, but in no event more than four (4) years from the date of commencement of the original Warranty provided that the Warranty with respect to any Installation Portion or Partial Occupancy Portion that has achieved partial completion prior to the Phase 1 Completion Date or the Completion Date, as applicable, will commence from the issuance by the Port Authority of a "Temporary Certificate of

Authorization to Occupy or Use” with respect to such Installation Portion or Partial Occupancy Portion, as applicable (the “Warranty Period”). In the event that any portion of the DB D&C Work is identified as being defective or nonconforming during the Warranty Period, the D&C Contractor, at its sole expense, is required to submit a corrective action plan meeting the requirements of the Lease Agreement and rectify such nonconforming and/or defective work, as applicable. The D&C Contractor must implement such corrective action plan within three (3) days of its receipt of the approval of such corrective action plan. In the event that the D&C Contractor fails to implement the corrective action plan, the Borrower may, in addition to exercising all other legal and equitable remedies it may have, (1) deduct from any payment due or thereafter to become due to the D&C Contractor under the D&C Contract, the amount of damage, cost or expense that has been or, as reasonably estimated by the Borrower, incurred by the Borrower due to such failure by the D&C Contractor, and (2) perform or cause to be performed any needed repairs and replacements, in which event the D&C Contractor shall compensate the Borrower for the cost thereof, on demand. The D&C Contractor has also expressly waived any claims noting that its guaranty or any of its Warranties have been impaired due to any corrective work performed by, or at the direction of, the Borrower. See APPENDIX G – “SUMMARY OF CERTAIN PROVISIONS OF THE D&C CONTRACT – Warranty; Nonconforming Work.”

## **Compensation Events and Delay Events**

### ***Compensation Events***

In the event of the occurrence of a Compensation Event, the Lease Agreement provides that, subject to the notice requirements and submission of the necessary documentation and other requirements set forth therein, the Borrower will be entitled to certain compensation from the Port Authority with respect to such Compensation Event. See “PART 10– THE LEASE AGREEMENT – Compensation Events.” The D&C Contract provides that, subject to similar notice requirements, submission of the necessary documentation and satisfaction of the other requirements established under the Lease Agreement, the D&C Contractor will have the right to seek additional compensation from the Borrower for a Compensation Event. The D&C Contract provides that Equivalent Project Relief (including the D&C Contractor’s rights against the Borrower to enforce the Borrower’s obligations thereunder with respect to claims for Equivalent Project Relief (see “– Equivalent Project Relief” below)) will be the sole and exclusive rights of the D&C Contractor to relief for the adverse effects of a Compensation Event. See APPENDIX B-3 – “REPORT OF THE LENDERS’ TECHNICAL ADVISOR” for information relating to Compensation Event Notices submitted by the Borrower to the Port Authority to date, which Notices and/or the details set forth therein may be disputed by the Port Authority.

### ***Delay Events***

In the event of the occurrence of a Delay Event, the Lease Agreement provides that, subject to the notice requirements and submission of the necessary documentation and other requirements set forth therein, the Borrower will be entitled to certain schedule extensions from the Port Authority with respect to such Delay Event. See “PART 10– THE LEASE AGREEMENT – Delay Events.” The D&C Contract provides that, subject to similar notice requirements, submission of the necessary documentation and satisfaction of the other requirements established under Lease Agreement, the D&C Contractor will have the right to seek a schedule extension from the Borrower for a Delay Event. The D&C Contract provides that Equivalent Project Relief (including the D&C Contractor’s rights against the Borrower to enforce the Borrower’s obligations thereunder with respect to claims for Equivalent Project Relief (see “Equivalent Project Relief” below)) will be the sole and exclusive rights of the D&C Contractor to relief for the adverse effects of a Delay Event, except in the case of Unavoidable Delay Events or a Borrower Suspension (see “Unavoidable Delay Events” below). See APPENDIX B-3 – “REPORT OF THE LENDERS’

TECHNICAL ADVISOR” for information relating to Delay Event Notices submitted by the Borrower to the Port Authority to date, which Notices and/or the details set forth therein may be disputed by the Port Authority.

### **Equivalent Project Relief**

The D&C Contract provides that, so long as the D&C Contractor complies with the requirements of the D&C Contract and subject to the limitations set forth thereunder, the D&C Contractor will benefit from and have the same rights, benefits and entitlements, including to financial compensation or any extension of time or relief from performance of DB D&C Work obligations under the D&C Contract, as those of the Borrower under the Lease Agreement; provided that such rights, benefits or entitlements under the D&C Contract (“Equivalent Project Relief”) will be conditional upon the existence and enforcement of a corresponding right, benefit or entitlement of the Borrower under the Lease Agreement (“Primary Project Relief”). Pursuant to the D&C Contract, the D&C Contractor must provide any claim for Equivalent Project Relief, including without limitation claims for changes to Applicable Standards, to the Borrower within sufficient time and in sufficient detail to enable the Borrower to submit such claim to the Port Authority for which Primary Project Relief may be available to the Borrower and, if the Borrower determines that such claim is a Reasonable D&C Contractor Claim, the Borrower will promptly forward and process such claim to the Port Authority as a claim for Primary Project Relief. At the Borrower’s request, the D&C Contractor is required to participate with the Borrower in the Borrower’s discussions with the Port Authority with respect to any claim for Primary Project Relief relating to the D&C Contractor’s obligations under the D&C Contract. Although the D&C Contract provides that the Borrower will take the lead in all such discussions with the Port Authority and that Borrower may settle any Reasonable D&C Contractor Claim without the consent of the D&C Contractor, if in such circumstances the amount requested in such Reasonable D&C Contractor Claim is greater than the amount for which the Borrower settles such Reasonable D&C Contractor Claim, then the D&C Contractor may either receive a pro-rata portion of the claim or bring a claim against the Borrower in respect of such difference.

The Borrower may decline to pursue any claim provided by the D&C Contractor that the Borrower determines (in its reasonable discretion) is not a Reasonable D&C Contractor Claim (and informs the D&C Contractor in writing), provided that the Borrower provides notice to the D&C Contractor within two (2) business days of receipt of such claim for Equivalent Project Relief. If the D&C Contractor disagrees, then D&C Contractor can direct the Borrower to pursue such claim at the D&C Contractor’s sole cost and expense.

See APPENDIX G – “SUMMARY OF CERTAIN PROVISIONS OF THE D&C CONTRACT – Changes in the DB D&C Work.”

### **Delay and Liquidated Damages**

Pursuant to the D&C Contract, the D&C Contractor has agreed to pay the Borrower liquidated damages (“Liquidated Damages”) in the amount of (a) Three Hundred Seventy-Five Thousand Dollars (\$375,000) per day for failing to achieve Substantial Completion of Phase 1 by the applicable Milestone Event Date, and (b) Three Hundred Thirty Thousand Dollars (\$330,000) per day for failure to achieve Substantial Completion of Phase 2 by the applicable Milestone Event Date; provided that any Liquidated Damages shall not exceed Two Hundred Thirty-Two Million Dollars (\$232,000,000) (the “Liquidated Damages Cap”). The D&C Contract also provides for a thirty (30) day grace period before assessing Liquidated Damages; however, if the D&C Contractor does not timely cure its breach within such period, Liquidated Damages will begin to accrue from the applicable Liquidated Damages Milestone Event date (i.e., the first date giving rise to Liquidated Damages as opposed to starting the clock from day thirty one).

Notwithstanding the cap on Liquidated Damages, the parties have agreed in the D&C Contract that such cap does not limit the Borrower's right to seek direct damages arising from a D&C Contractor caused delay to the Project, which is set forth in more detail in APPENDIX G – "SUMMARY OF CERTAIN PROVISIONS OF THE D&C CONTRACT – Baseline Schedule."

### **Unavoidable Delay Events**

The D&C Contract sets forth certain events that are Unavoidable Delay Events in which the D&C Contractor is entitled to time and/or compensation subject to the terms of the D&C Contract. See APPENDIX G – "SUMMARY OF CERTAIN PROVISIONS OF THE D&C CONTRACT – Changes in the DB D&C Work."

Under the D&C Contract, the occurrence of an Unavoidable Delay Event may give rise to a claim against the Borrower and can entitle the D&C Contractor to relief from performing its obligations under the D&C Contract and may include adjustments to the GMP and/or the deadlines the D&C Contractor is required to meet with respect to the Project in order to avoid an Event of Default and the payment of Liquidated Damages (see "Termination Rights – Termination for D&C Contractor Default" below and "Delay and Liquidated Damages" above). In particular, the D&C Contractor may be entitled to an extension of time in respect of the applicable Milestone Event, compensation for such additional time, and an extension of time in respect of the Liquidated Damages Milestone Dates, in each case (1) to the extent attributable to an Unavoidable Delay Event and (2) if the D&C Contractor provides notice to the Borrower in accordance with the terms of the D&C Contract. The D&C Contractor's relief for Unavoidable Delay Events is set forth in APPENDIX G – "SUMMARY OF CERTAIN PROVISIONS OF THE D&C CONTRACT – Baseline Schedule."

### **Limitation of Liability**

Pursuant to the D&C Contract, the maximum aggregate liability of the D&C Contractor to the Borrower (including amounts recovered under any D&C Guaranty, the D&C Letter of Credit, surety bond or retainage, as applicable): (i) for default under, breach or termination of the D&C Contract (or negligence or breach causing termination of any DB Project Document); and (ii) in tort (including negligence and strict liability), for breach of a statutory duty or for any other cause of action in connection with the D&C Contract or related to the Project, the DB Project Documents or the DB D&C Work, inclusive of liability to pay Liquidated Damages (see "– Delay and Liquidated Damages" herein), will be limited to an amount equal to 35% of the sum of the GMP, as such GMP may be amended in accordance with the D&C Contract. Such limitations do not apply to certain events excluded therefrom in the D&C Contract, which are set forth in Appendix G "SUMMARY OF CERTAIN PROVISIONS OF THE D&C CONTRACT – Consequential Damages; Limitations on Liability." However, the D&C Contractor's aggregate liability to the Borrower for any errors or omissions in the DB Design Work shall be limited to the Fifty Million Dollars (\$50,000,000) (the "Design Limitation of Liability"), except the Design Limitation of Liability shall not apply to claims arising out of, resulting from, or in any way related to the misconduct or independent negligence of the D&C Contractor in the performance of non-DB Design Work. See APPENDIX G – "SUMMARY OF CERTAIN PROVISIONS OF THE D&C CONTRACT – Consequential Damages; Limitations on Liability."

## **Indemnity**

### ***Indemnification Pursuant to the Lease***

Pursuant to the D&C Contract, the D&C Contractor is required to indemnify and hold harmless the Borrower and the other indemnitees set forth in the D&C Contract for any liability for losses that the Borrower or such other indemnitees incur to any Port Authority Indemnified Party pursuant to the Lease Agreement to the extent resulting from any acts or omissions of the D&C Contractor or any other DB Party. Further, the D&C Contract establishes the Port Authority Indemnified Parties as indemnitees, with direct right of enforcement, in each indemnity given by the D&C Contractor under the D&C Contract.

Likewise, the D&C Contract requires the Borrower to include a similar provision in all contracts with separate contractors retained by the Borrower whereby such third-parties will indemnify and hold harmless the D&C Contractor for any liability for losses that the D&C Contractor incurs to any Port Authority Indemnified Party pursuant to the Lease Agreement to the extent resulting from any acts or omissions of the separate contractors (excluding the D&C Contractor and any DB Subcontractor).

For a description of such indemnity obligations under the Lease Agreement, see APPENDIX E – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE AGREEMENT – Indemnification.” See also APPENDIX G – “SUMMARY OF CERTAIN PROVISIONS OF THE D&C CONTRACT – Indemnity.”

### ***Additional Indemnification by the D&C Contractor***

Pursuant to the D&C Contract, the D&C Contractor is also required to indemnify, defend and hold harmless the Borrower from and against any and all claims and losses suffered or costs incurred by the Borrower (including as a result of claims against the Borrower by third parties) to the extent caused by: (i) the negligent performance of the DB D&C Work; (ii) the infringement of any intellectual property right arising out of the performance of any of the DB D&C Work; (iii) the negligence or willful misconduct of the D&C Contractor or its Subcontractors; (iv) personal injury or property damage; and (v) the failure to comply with the applicable terms of the Lease Agreement or the Basic Lease or causing the Borrower to fail to comply with the terms of the Lease Agreement or the Basic Lease or to pay any amounts due thereunder, or causing the Borrower to fail to comply with the terms of the Lease Agreement or the Basic Lease or to pay any amounts due thereunder.

## **Construction Security**

### ***Parent Company Guaranty***

The D&C Contractor’s parent company, AECOM, a Delaware corporation, has provided a guaranty of the D&C Contractor’s obligations under the D&C Contract to the Borrower in the amount of Five Hundred Million Dollars (\$500,000,000) (the “Parent Company Guaranty”). The rights and benefits of the Borrower with respect to the Parent Company Guaranty were assigned to the Collateral Agent.

### ***D&C Letter of Credit***

The D&C Contractor provided three (3) irrevocable standby letters of credit issued by Credit Agricole Corporation & Investment Bank, JPMorgan Chase, and Wells Fargo in favor of the Borrower and the Collateral Agent in a form and substance consistent with the requirements under the Lease Agreement securing the payment and performance obligations of the D&C Contractor under the D&C Contract (collectively, the “D&C Letters of Credit”) in the amount of Two Hundred Thirty Two Million Eighty Nine

Thousand Eight Hundred Fifty Six Dollars (\$232,089,856). The D&C Letter of Credit shall remain in effect until the later of the calendar year stated therein to be the final expiration date thereof, or the Scheduled Completion Date of the DB D&C Work. The D&C Contractor shall amend the existing D&C Letters of Credit or deliver a replacement D&C Letter of Credit if the stated final expiration date thereof is prior to the then-anticipated Scheduled Completion Date. The D&C Contractor is obligated to renew, cause the renewal of, or replace the D&C Letter of Credit no later than sixty (60) days prior to the stated expiration date thereof. The D&C Contractor shall replace the D&C Letter of Credit if the issuer thereof ceases to be an Eligible Issuer within five (5) Business Days thereafter. If the Collateral Agent does not receive a replacement D&C Letter of Credit from an Eligible LC Issuer within the time specified, the Borrower or Collateral Agent, as applicable, may draw on the full available amount of the D&C Letter of Credit. See APPENDIX B-3 – “REPORT OF THE LENDERS’ TECHNICAL ADVISOR.”

### ***Other Security***

The D&C Contractor and its Subcontractors have also procured payment and performance bonds in accordance with the D&C Contract. See also APPENDIX G – “SUMMARY OF CERTAIN PROVISIONS OF THE D&C CONTRACT – Insurance and Construction Security.”

### **Suspension Rights**

#### ***Port Authority’s Right to Suspend***

Pursuant to the Lease Agreement, the Port Authority retains the right at any time to suspend, in whole or in part, the D&C Work by written order to the Borrower. See APPENDIX E – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE AGREEMENT – Design and Construction by the Lessee – Compliance Directives; Suspension of D&C Work.” The Borrower is required to provide the D&C Contractor with a copy of each such written suspension order relating to the DB D&C Work as soon as practicable, and the D&C Contractor’s relief in the event of a Port Authority suspension is subject to Equivalent Project Relief. Refer to summary of Lease Agreement for additional details regarding the Port Authority’s right to suspend the agreement and relief by the Borrower, whereby the D&C Contractor may seek Equivalent Project Relief pursuant to the D&C Contract. See APPENDIX E – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE AGREEMENT – Design and Construction by the Lessee – Compliance Directives; Suspension of D&C Work.”

#### ***Borrower’s Right to Suspend***

The Borrower has the right at any time and for any reason, in whole or in part, to direct the D&C Contractor to suspend the DB D&C Work or any part thereof by giving written notice to the D&C Contractor. If the DB D&C Work is suspended by the Borrower, the DB Contractor will be entitled to a Change Order in accordance with the D&C Contract, provided that the D&C Contractor will not be entitled to any Change Order, additional costs, or schedule relief for any Port Authority directed suspension of the DB D&C Work. The Borrower may also unilaterally order the D&C Contractor to resume performance of the DB D&C Work at any time during. If the DB D&C Work is suspended by the Port Authority, the D&C Contractor will be entitled to Equivalent Project Relief from the Borrower to the extent that such suspension constitutes a Compensation Event and/or Delay Event pursuant to the Lease Agreement.

#### ***D&C Contractor’s Right to Suspend***

Subject to the Lenders’ rights under the D&C Contractor Direct Agreement and the Port Authority’s rights under any DB Direct Agreement, including the right to notice of default and the right to

cure, and further subject to the provisions of the D&C Contract regarding certain limitations on the right of the D&C Contractor to suspend its performance under the D&C Contract (as described in the last paragraph of this section), the D&C Contractor may suspend the DB D&C Work in the case of a Borrower payment default; provided that: (i) any such suspension will only be effective for a period commencing fourteen (14) days after the Borrower's receipt from the D&C Contractor of written notice of such suspension and ending on the date that the Borrower Payment Default is cured; (ii) if the Borrower Payment Default is not cured within fourteen (14) days after such notice, the D&C Contractor will be entitled to demobilize; and (iii) from the date of commencement of any such suspension until the earlier of the termination of the D&C Contract or the date that the Borrower Payment Default is cured, the Borrower will be required to compensate the D&C Contractor for the actual and documented costs (limited to any direct costs, payments to DB Subcontractors and Suppliers, demobilization and, if applicable, remobilization costs) and overhead and profit on the same that resulted from such suspension, and will be required to grant the D&C Contractor additional time for performance of the D&C Contractor's contractual obligations reflecting the delay resulting from such suspension, subject to the terms of the D&C Contract. See APPENDIX G – "SUMMARY OF CERTAIN PROVISIONS OF THE D&C CONTRACT – Changes in the DB D&C Work."

## **Termination Rights**

### ***Termination by Borrower for D&C Contractor Default***

The Borrower has the right to terminate the D&C Contract, upon notice to the D&C Contractor and subject to the applicable cure periods, if any, upon the occurrence of an Event of Default as set forth in the D&C Contract. See APPENDIX G – "SUMMARY OF CERTAIN PROVISIONS OF THE D&C CONTRACT – Termination Rights" for a complete list of all of the D&C Contractor Events of Default under the D&C Contract.

Upon termination due to an Event of Default, the Borrower shall have the right to take possession of and use all or any part of the D&C Contractor's materials, equipment, supplies and other property of every kind used by the D&C Contractor in the performance of the DB D&C Work, and engage the services of other parties therefore. The occurrence of an Event of Default in one Phase shall constitute an Event of Default in all other Phases. Further, the D&C Contractor may carry out any or all of the obligations of the D&C Contractor, either directly or through others, and charge the cost thereof to the D&C Contractor.

### ***Termination of Lease for D&C Contractor Default***

If the Port Authority exercises its right to terminate the Lease Agreement due to the fault of the D&C Contractor, then the D&C Contractor shall pay the Borrower its proportionate share of the costs and expenses incurred by the Borrower and the Port Authority attributable to the D&C Contractor in connection with such termination, including without limitation, any re-entry, regaining or resumption of possession, collecting all amounts due to the Borrower and the Port Authority, the cleaning, repair, or restoration of any space which may be used and occupied under the Lease Agreement (on failure of the D&C Contractor to have it cleaned, repaired or restored), the care and maintenance of such space during any period of non-use of the space, the foregoing to include without limitation personnel costs and legal expenses (including but not limited to the cost to the Borrower or the Port Authority of in-house legal services), repairing the space and putting the space in order (such as but not limited to repairing, cleaning, and restoring the same pursuant to the Lease Agreement). Termination shall not relieve the D&C Contractor of any liabilities or obligations hereunder which shall have accrued on or prior to the effective date of the termination.



### ***Termination by the D&C Contractor***

The D&C Contractor has the right to terminate the D&C Contract for cause upon forty-five (45) days' prior written notice and opportunity to cure to the Borrower if any undisputed amounts due to the D&C Contractor remain unpaid for more than forty-five (45) days after the date the same becomes due to the D&C Contractor under the D&C Contract and remains unpaid at the end of such notice and cure period.

### ***Other Termination***

Subject to the Lenders' rights under the D&C Contractor Direct Agreement, to the Port Authority's right to assignment of the D&C Contract under certain circumstances upon termination of the Lease Agreement, and to satisfaction of the D&C Contractor's obligations under the D&C Contract upon termination of the Lease Agreement, the D&C Contract will terminate automatically if the Lease Agreement is terminated for whatever reason, including the Borrower's default thereunder, without liability of the Borrower or the Port Authority for the D&C Contractor's lost profits or business opportunity. In the event of a termination of the Lease Agreement entitling the Borrower to compensation from the Port Authority, the Borrower will (i) notify the D&C Contractor and work with the D&C Contractor in preparing any applicable claim for termination compensation and (ii) to the extent practicable, provide the D&C Contractor with an opportunity to participate in the discussion and resolution of any claim with the Port Authority.

### ***Compensation to the D&C Contractor Upon Termination***

Should the Borrower terminate the D&C Contract for cause and subject to the Borrower's right to withhold payments arising from the D&C Contract, the D&C Contractor will only be entitled to payment for that portion of the GMP incurred by the D&C Contractor in the performance of the DB D&C Work up to the date of termination and for all materials, supplies and equipment incorporated in the DB D&C Work and/or stored at the Project Site or at such off-site storage locations as shall have been approved by the Borrower in accordance with the provisions of the D&C Contract. The D&C Contractor shall not however be entitled to recover anticipated profits on account of the Base Fee, General Requirements Costs and/or the General Conditions Costs or the anticipated profits of Subcontractors for portions of the DB D&C Work unperformed or for materials or equipment unfurnished, nor for reimbursement for Losses arising out of matters covered by insurance.

Should the Borrower terminate the D&C Contract for convenience, it must pay the D&C Contractor for, among other things, the following items: (a) all retainages, if any, earned by the D&C Contractor except retainages as to any Subcontracts assumed by the Borrower; (b) a sum of money equal to the Cost of the DB D&C Work incurred by the D&C Contractor for which payments have not theretofore been made under the D&C Contract, including all reasonable costs of demobilization, close-out and site stabilization costs; and (c) the pro rata portion of the Base Fee applicable to the DB D&C Work performed by the D&C Contractor through the effective date of such termination, including any "true up" thereof. The D&C Contractor will not be entitled to receive anticipated profits on any DB D&C Work not yet performed or any damages though, consequential or otherwise.

Should the D&C Contractor terminate the D&C Contract, the Borrower must pay the D&C Contractor for, among other things, the following items: (i) the Cost of the DB D&C Work due to the D&C Contractor for DB D&C Work performed through the date of termination; (ii) the Base Fee for such DB D&C Work; and (iii) actual, reasonable and demonstrated demobilization costs, close-out costs and costs incurred to protect or preserve the DB D&C Work.

All payments shall be subject to the Borrower's rights to withhold pursuant to the terms of the D&C Contract. See APPENDIX G – "SUMMARY OF CERTAIN PROVISIONS OF THE D&C CONTRACT – Termination Rights" for the D&C Contractor's remedies in the event of a termination of the D&C Contract.

### **PART 13 – OPERATION AND MANAGEMENT OF THE PROJECT**

The Borrower is responsible under the Lease Agreement for all Operations and Maintenance Work for the Premises.

The Borrower has entered into the Management Services Agreement with the Manager wherein the Manager is required to provide the Borrower with services and support in connection with the Borrower's responsibility to perform the Operations and Maintenance Work. The term of the Management Services Agreement commenced on the Original Closing Date, and will extend until December 30, 2060 (i.e., the expiration date of the Lease Agreement), unless extended pursuant to an extension in the term of the Lease Agreement or terminated earlier as described therein. Capitalized terms used in this Part 13 and not defined in this Part 13 will have the meanings given to such terms in APPENDIX H – "SUMMARY OF CERTAIN PROVISIONS OF THE MANAGEMENT SERVICES AGREEMENT."

Under the Management Services Agreement, the Manager provides to the Borrower recommended nominees for appointment to the position of Chief Executive Officer of the Borrower together with other capable and experienced key management personnel that it recommends serve in senior management roles of the Borrower (collectively, the "Executives"). Upon approval of the HoldCo Board, such Executives are seconded to the Borrower by the Manager. The Manager also proposes additional personnel for secondment to the Borrower, including for the positions of Project Manager, Project Director and Design Manager as set out in the Lease Agreement. The appointment of all non-Executive personnel is solely within the control of the Executives. The Executives and such additional personnel shall be the only Borrower personnel, all of which are seconded to the Borrower by the Manager. The positions in the Borrower held by the Manager's employees are as set out in an organizational chart approved by the Borrower from time to time.

The broad services provided by the Manager to the Borrower under the Management Services Agreement include the secondment of Manager personnel to the Borrower, and through such personnel and other third-party resources, the provision of day-to-day management of the Borrower's business and operations, which includes, without limitation:

- General management services, including providing access to qualified corporate personnel, data and systems as may be required in connection with the performance of the Manager's obligations under the Management Services Agreement; designing, implementing and maintaining appropriate accounting functions; selecting and managing the installation of computer and information systems for financial, administrative and operational systems; providing enterprise risk management including administering insurance programs and managing and overseeing the outsourcing of services to be provided to the Borrower by third parties such as snow removal, safety, security and janitorial services;
- Design and construction program services, including managing and coordinating the Borrower's rights and obligations as described in the D&C Contract with the D&C Contractor; working with all parties with the objective of ensuring the project scope is delivered on time and on budget and administering and coordinating the work and activities of third-party consultants;

- Operational readiness and transition (“ORAT”) services, including coordinating ORAT plan activities with the Borrower, the Port Authority and stakeholders; assisting with the commissioning, activation and training associated with new systems and equipment with the D&C Contractor; developing and implementing training and orientation programs and developing and managing operations center procedures; and
- Operations and maintenance services, including providing access to qualified personnel for guidance and support in relation to terminal and ramp operations; preparing an annual operations and maintenance business plan and annual services budget for submission to HoldCo’s Board; establishing commercial lease policies and plans; providing assistance and coordination in the development of corporate plans and strategies and providing ongoing capital and life cycle planning assistance and coordination.

The Manager has access to Vantage’s airport network, including but not limited to its know-how, guides and manuals with respect to best industry practices for administration, financing, human resources, operations, information technology and commercial and brand issues as may be necessary for it to perform the management services. While the Manager is obligated to provide the requisite management services under the Management Services Agreement in accordance with best management practice, the obligations under the Lease Agreement with respect to the Operations and Maintenance Work will remain the primary obligations of the Borrower and will not be deemed to have passed through to the Manager except as provided for in the Management Services Agreement.

The Manager has entered into a subcontract with RXR JMP Development Services LLC (the “Manager Subcontractor”), an affiliate of the RXR Member on commercial terms and conditions in relation to the Manager Subcontractor’s provision of certain services to the Manager, including design and construction contract administration, public affairs support and stakeholder outreach. The services provided by the Manager Subcontractor are a subset of the services provided by the Manager under the Management Services Agreement, and any fees payable to the Manager Subcontractor are paid out of Management Services Agreement fees.

Under the Management Services Agreement, the Manager is entitled to the following fees (the “MSA Fees”) as compensation for its services:

- on the Original Closing Date, a one-time fixed mobilization fee in an amount equal to \$2,400,000 in respect of the mobilization services provided by the Manager to the Borrower on or prior to the Original Closing Date, together with all reasonable third-party and out-of-pocket costs and expenses incurred in connection therewith;
- for the period from and after the Original Closing Date and up to and until Substantial Completion of Phase 2 of the D&C Work, a fee for the provision of services in connection with the D&C Work in the aggregate amount of \$20,000,000, payable in monthly installments;
- during the term, a management fee, paid monthly in arrears, and prorated for any stub year calculated as follows:
  - for the period from and after the Original Closing Date and up to and including Substantial Completion of Phase 2 of the D&C Work, \$6,600,000 per annum (adjusted by the consumer price index specified in the Management Services Agreement on the Original Closing Date and indexed to March 1, 2018); and

- for the period subsequent to Substantial Completion of Phase 2 of the D&C Work, an amount equal to \$6,800,000 per annum (adjusted by the consumer price index specified in the Management Services Agreement and indexed to March 1, 2018); and
- for the period from and after the Original Closing Date and up to and including the DBO of Phase 2 of the D&C Work, an operational readiness and transition services fee, calculated as follows:
  - for the period from and after the Original Closing Date and up to and including December 31, 2022, an amount equal to \$2,250,000 payable on December 31, 2022;
  - for the period after December 31, 2022, and up to and including the DBO of Phase 1 of the D&C Work, an amount equal to \$3,750,000 payable on the DBO of Phase 1 of the D&C Work; and
  - for the period subsequent to the DBO of Phase 1 of the D&C Work, and up to and including the DBO of Phase 2 of the D&C Work, an amount equal to \$1,500,000 payable on the DBO of Phase 2 of the D&C Work.

The management fees and expenses of the Manager under the Management Services Agreement will generally be paid from revenues of the Borrower prior to debt service on the Series 2024 Bonds and the Loan Facility as part of the Borrower’s Permitted O&M Expenses.

Vantage Airport Group (US) Ltd. is providing a guarantee of the Manager’s performance and payment obligations under the Management Services Agreement.

The Manager reports and is accountable to HoldCo’s Board. The Manager is an indirect wholly owned subsidiary of Vantage.

For a further description of the Management Services Agreement, see APPENDIX H – “SUMMARY OF CERTAIN PROVISIONS OF THE MANAGEMENT SERVICES AGREEMENT.”

#### **PART 14 – AIRLINE REVENUES**

Airline revenues from Terminal 7 and Terminal 6 are expected to comprise one of the Borrower’s primary revenue sources. Airline revenues includes (i) all activity-based or per-enplaned-passenger fees, as well as fixed leased space revenue from (a) airlines and (b) other businesses that provide support directly related to the operation of aircraft, enplaning and deplaning of passengers and ground or passenger handling services as well as (ii) fixed leased space revenue from renting ancillary storage space within Terminal 7 and Terminal 6 to concessionaires.

In connection with the Project, the Borrower has projected Airline revenues for Terminal 7 and Terminal 6 for the period from the beginning of the fiscal year ending December 31, 2024 through the end of the fiscal year ending December 31, 2032 (the “Projection Period”), which projections have been reviewed by the Airport Consultant. For more information see Section 5.2 “Airline Revenues” of the Report of the Airport Consultant appended hereto as APPENDIX B-1 – “REPORT OF THE AIRPORT CONSULTANT.”

## **Terminal 7 Airline Revenues**

The Borrower currently operates Terminal 7 with the support of the Manager during construction of Phase 1. Once Phase 1 is complete, Terminal 7 will be decommissioned and demolished. See “PART 11 – THE PROJECT – Phasing of the Project – Phase 1 & Phase 2.”

Upon taking over management of Terminal 7 in late 2022, the Borrower negotiated new subleases with all airlines operating in Terminal 7 and with certain other additional airlines. As a result of the Borrower’s efforts, 13 airlines currently operate from Terminal 7:

- Aer Lingus
- Air Canada
- Alaska Airlines
- ANA
- Condor
- Ethiopian Airlines
- Frontier
- HiSky
- Icelandair
- Kuwait Airways
- LOT Polish Airlines
- Norse Atlantic
- Sun Country Airlines

Despite disruptions due to the immediate decommissioning of multiple gates and other changes on site to accommodate construction of Terminal 6, the Borrower has successfully managed operations at Terminal 7 and currently projects Terminal 7 airline revenues in 2024 and 2025 of approximately \$97.5 million and \$89.4 million, respectively.

In addition, through its management of Terminal 7, the Borrower has been advantaged in attracting airline tenants to Terminal 6 by being able to provide interim gating opportunities at the Airport and reducing the potential for disruptions from an airline’s transition to Terminal 6. The Borrower has also been able to develop commercial relationships with airlines operating at Terminal 7 as well as at the Airport more generally to successfully attract certain airlines currently operating at Terminal 7 or at other terminals at the Airport to become tenants in Terminal 6 upon Completion of Phase 1. Managing Terminal 7 has also allowed the Borrower to develop and refine operating procedures in real-time at the Airport and be better prepared to manage operations at Terminal 6 from the outset.

## **Terminal 6 Airline Revenues**

As described in the Report of the Airport Consultant appended hereto as APPENDIX B-1, in addition to the JetBlue Sublease, the Borrower expects multiple airlines to operate from Terminal 6 following the completion of Phase 1. The Borrower has negotiated non-binding letters of intent with term sheets outlining the agreed-upon terms and conditions of subleases with each of seven airlines (the “Expected Airlines”): Aer Lingus, Cathay Pacific, Lufthansa AG (along with their affiliates Austrian Airlines, Brussels Airlines, and Swiss International Air Lines), and one additional long-haul foreign flag airline. Lufthansa AG and its affiliates are currently expected to begin operations at Terminal 6 only upon completion of construction of the one additional widebody gate anticipated in the third quarter of 2026

shortly after the completion of Phase 1— see “PART 11 – THE PROJECT – Phasing of the Project – Phase 1 & Phase 2.”

Aer Lingus and the other foreign flag airline currently operate from Terminal 7. Cathay Pacific and Lufthansa AG and its affiliates currently operate from Terminal 8 and Terminal 1, respectively.

The Borrower is in various stages of negotiation of subleases with each such Expected Airline. The terms of the Terminal 6 subleases with the Expected Airlines are each anticipated to be greater than 15 years. Once negotiated, all such subleases will be subject to the consent of the Port Authority pursuant to the terms of the Lease Agreement, and, until the discharge of the Senior Bank Obligations, may be subject to the consent of the Administrative Agent pursuant to the terms of the Common Terms Agreement. For more information see “PART 4 – SECURITY FOR THE SERIES 2024 BONDS – Direct Agreements”, “PART 10 – LEASE AGREEMENT – Subleases” and “PART 17 – RISK FACTORS – Risks Related to Sublease Agreements.”

The percentage of projected airline revenues represented by the operations of the Expected Airlines are 57% in 2027 (the first full-year of operations following the anticipated completion of Phase 1) and 36% in 2029 (the first full year of operations following the anticipated completion of Phase 2).

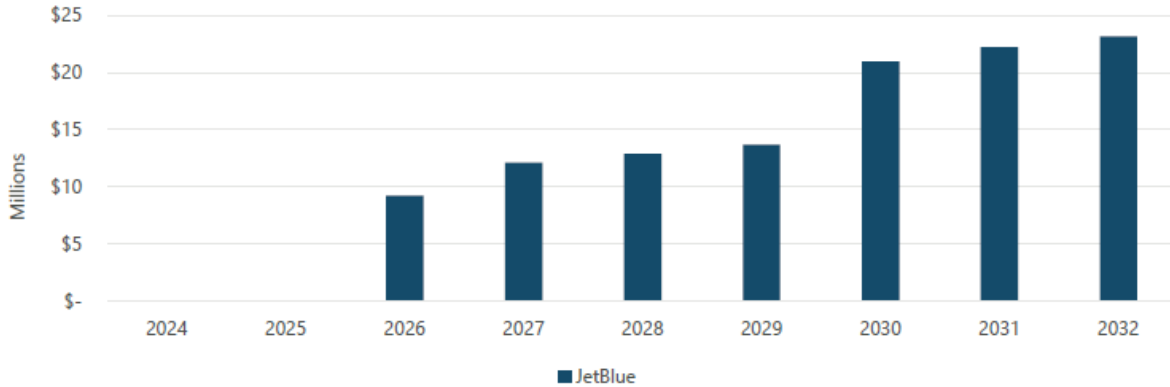
In addition to JetBlue and the other Expected Airlines, the Borrower is engaged in discussions with other selectively targeted and interested airlines (“Additional Targeted Airlines”, together with the Expected Airlines “Other Airlines”) to operate from Terminal 6 (including certain airlines operating at Terminal 7) based on a number of factors, including their expected schedule and use of gate or FIS facilities and their passenger profile, airline alliance (e.g. Star Alliance), and their strategic fit with Terminal 6.

See Section 5.2.2 “Terminal 6 Airline Revenues” in the Report of the Airport Consultant appended hereto as APPENDIX B-1 for additional information regarding Airline Revenues.

### ***JetBlue Revenues***

JetBlue and the Borrower entered into the JetBlue Sublease, which runs through December 31, 2050, pursuant to which JetBlue will be a tenant in Terminal 6 and has preferential use rights with respect to the holdroom and aircraft apron associated with the new narrowbody gate to be completed in Phase 1 (“Gate 31”), as well as access to sterile corridors leading from Gate 31 to the FIS area in Terminal 5 and from Gate 31 to the Terminal 6 FIS area. JetBlue will also have access to a maximum of eight ticket counters and the outbound baggage system in Terminal 6 under certain conditions outlined in the JetBlue Sublease. For the purpose of the financial analysis below and in the Report of the Airport Consultant, the JetBlue Sublease is assumed to commence on January 1, 2026, and expire on December 31, 2050. Airline revenues from the JetBlue Sublease during the Projection Period are projected to be approximately \$12.1 million in 2027, \$13.7 million in 2029 and \$23.2 million in 2032, and are summarized below:

### Projected Terminal 6 JetBlue Revenues (in Millions)



SOURCE: JFK Millennium Partners, LLC, October 2024.

See Section 5.2.2.1 “JetBlue Airways Corporation” in the Report of the Airport Consultant appended hereto as APPENDIX B-1 for additional information regarding the JetBlue Sublease, including certain revenue projections association therewith.

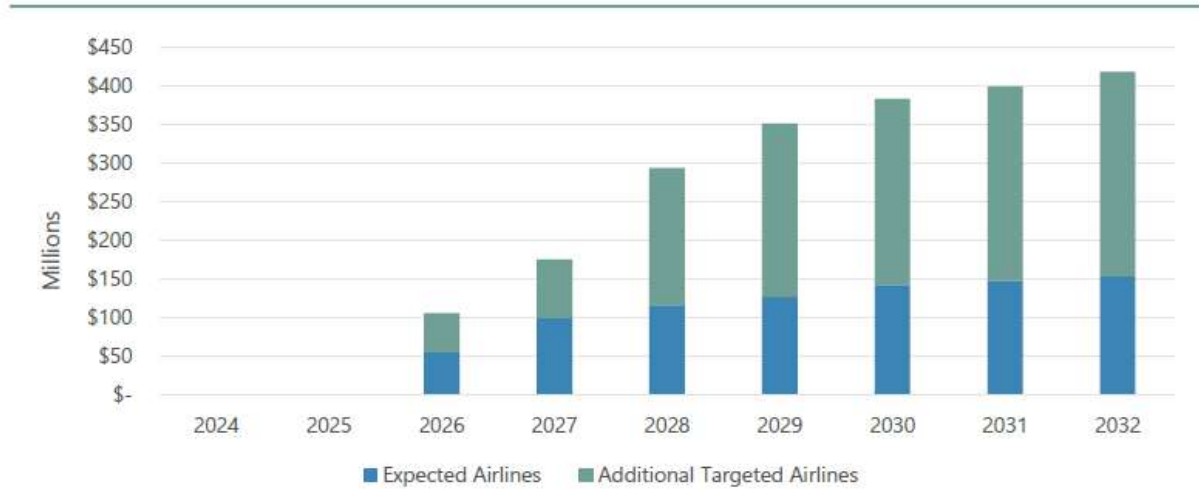
#### ***Other Airline Revenues***

Airline revenues from Other Airlines is made up of revenue from activity-based fees, as well as leased space revenues.

Total airline revenues from the seven Expected Airlines are projected to be approximately \$99.6 million in 2027, \$127.2 million in 2029 and \$153.5 million in 2032, comprised of activity-based fees of approximately \$87.2 million in 2027, \$108.4 million in 2029 and \$129.9 million in 2032 and leased space revenues of approximately \$12.4 million in 2027, \$18.8 million in 2029 and \$23.6 million in 2032.

Total airline revenues from the Additional Targeted Airlines are projected to be approximately \$75.9 million in 2027, \$223.8 million in 2029 and \$264.3 million in 2032, comprised of activity-based fees of approximately \$73.2 million in 2027, \$218.2 million in 2029 and \$257.2 million in 2032 and leased space revenues of approximately \$2.7 million in 2027, \$5.6 million in 2029 and \$7.1 million in 2032.

### Projected Terminal 6 Other Airline Total Revenues (in Millions)



**NOTES:**

Does not include JetBlue.

Revenues include activity-based and lease revenues.

Expected Airlines include Aer Lingus, Cathay, Lufthansa AG (and its affiliates Austrian Airlines, Brussels Airlines, and Swiss International Air Lines), and one additional long-haul foreign flag airline.

SOURCE: JFK Millennium Partners LLC. October 2024.

#### ***Ancillary Revenues***

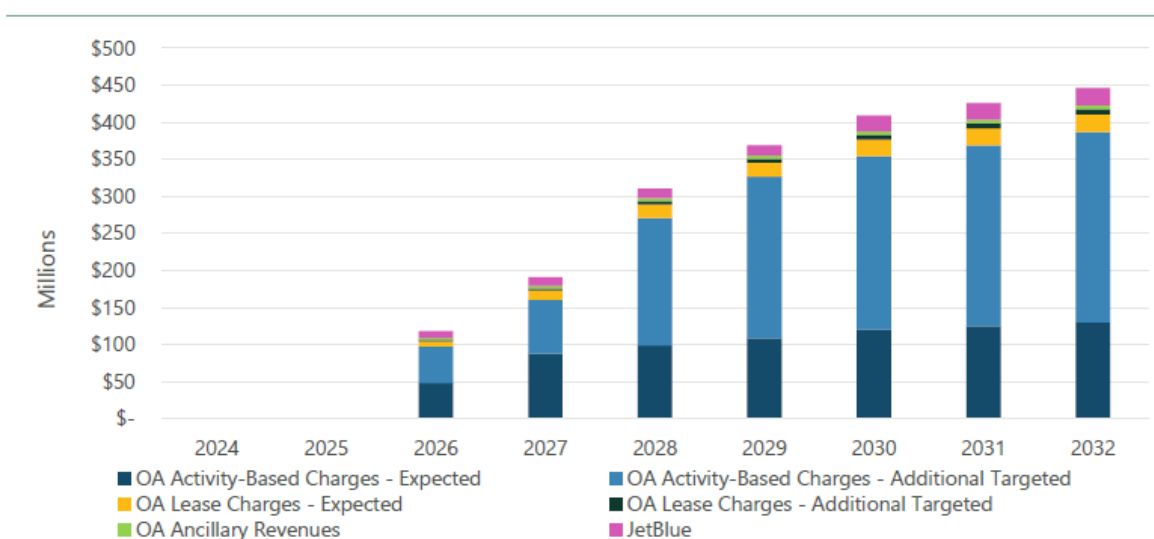
Revenues from other ancillary airline users, including other businesses that provide support directly related to the operation of aircraft, enplaning and deplaning of passengers and ground or passenger handling services, as well as fixed leased space revenue from renting ancillary storage space within Terminal 7 and Terminal 6 to concessionaires in each case during the Projection Period are projected to be approximately \$3.3 million in 2027, \$4.6 million in 2029 and \$5.0 million in 2032.

#### ***Total Airline Revenues***

Total airline revenues from JetBlue, Other Airlines and Ancillary Revenues during the Projection Period are projected to be approximately \$190.9 million in 2027, \$369.2 million in 2029 and \$446 million in 2032, and are summarized on the following table:



### Projected Terminal 6 Airline Revenues (in Millions)



NOTES:  
 OA – Other Airline  
 T6 – Terminal 6  
 Expected Airlines include Aer Lingus, Cathay, Lufthansa AG (and its affiliates Austrian Airlines, Brussels Airlines, and Swiss International Air Lines), and one additional long-haul foreign flag airline.  
 SOURCE: JFK Millennium Partners, October 2024.

### Projected Airline Revenues (in Millions)

	PROJECTED									
	2024	2025	2026	2027	2028	2029	2030	2031	2032	
<b>Terminal 7 Revenues<sup>1</sup></b>	\$97.5	\$89.4	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	
<b>Terminal 6 Revenues</b>										
JetBlue	\$0.0	\$0.0	\$9.2	\$12.1	\$12.9	\$13.7	\$21.0	\$22.3	\$23.2	
OA Activity-Based Charges - Expected	\$0.0	\$0.0	\$48.0	\$87.2	\$98.7	\$108.4	\$120.2	\$125.1	\$129.9	
OA Activity-Based Charges - Additional Targeted	\$0.0	\$0.0	\$49.0	\$73.2	\$172.3	\$218.2	\$234.1	\$244.0	\$257.2	
OA Leased Space - Expected	\$0.0	\$0.0	\$7.6	\$12.4	\$17.9	\$18.8	\$22.2	\$22.9	\$23.6	
OA Leased Space - Additional Targeted	\$0.0	\$0.0	\$1.8	\$2.7	\$4.7	\$5.6	\$6.7	\$6.9	\$7.1	
OA Ancillary Revenues	\$0.0	\$0.0	\$2.6	\$3.3	\$4.2	\$4.6	\$4.7	\$4.8	\$5.0	
<b>Total Airline Revenues</b>	<b>\$97.5</b>	<b>\$89.4</b>	<b>\$118.2</b>	<b>\$190.9</b>	<b>\$310.7</b>	<b>\$369.2</b>	<b>\$408.8</b>	<b>\$425.9</b>	<b>\$446.0</b>	
Enplanements (Millions)	0.00	0.00	1.81	2.59	3.71	4.16	4.23	4.30	4.38	
Revenue per Enplanement	n/a	n/a	\$65.31	\$73.60	\$83.78	\$88.84	\$96.64	\$98.94	\$101.90	

SOURCE: JFK Millennium Partners, LLC, October 2024.

The increase in total airline revenues during the Projection Period is primarily due to the expected increases in enplaned passengers for those years and annual inflation or other adjustments to airline rates and charges.

See Section 5.2.2 “Terminal 6 Airline Revenues” in the Report of the Airport Consultant appended hereto as APPENDIX B-1 for additional information regarding airline revenues.

## **PART 15 – NON-AIRLINE REVENUES**

The Borrower also receives non-airline revenues generated primarily by concession revenues, but which also includes advertising revenues, certain rebate revenues, other non-airline operating revenues and interest income. A portion of revenues received by the Borrower from certain of these revenue sources are required to be shared with the Port Authority, as further described below.

In connection with the Project, the Borrower has projected non-airline revenues for Terminal 6 during the Projection Period, which projections have been reviewed by the Airport Consultant. For more information see Section 5.3 “Non-Airline Revenues” and Table 5-9 “Projected Cash Flow and Debt Service Coverage (Dollars in Millions) – Baseline Scenario” of the Report of the Airport Consultant appended hereto as APPENDIX B-1 – “REPORT OF THE AIRPORT CONSULTANT.”

The Borrower anticipates that it will begin receiving non-airline revenues from Terminal 6 operations in 2026, after the expected completion of Phase 1 and the initial opening of Terminal 6.

### **Concession Revenues**

The Borrower, with the support of the Manager, currently manages the concession programs at Terminal 7 and is procuring and will manage the concession programs at Terminal 6.

In addition to supporting the Borrower in Terminal 7, Vantage’s experience in terminal concessions programs as either overall terminal operator or concessions manager includes New York’s LaGuardia Airport Terminal B, Chicago Midway and Kansas City International Airport.

Leveraging the extensive concessions experience of the Manager, the Borrower has implemented, and will continue implementing, commercial strategies for both Terminal 6 and Terminal 7 in terms of concessionaire management, space design and layout, and product category mix.

The Terminal 7 concessions program includes, and the Terminal 6 concessions program is expected to include, multiple duty-free/travel, specialty retail, news and gifts/convenience and food and beverage offerings. The Borrower has already selected the majority of concessions operators for Terminal 6 and is in the process of negotiating concession subleases with all expected tenants. The Borrower has also previously announced partnerships with Avolta companies Hudson and Dufry to operate more than 28,000 square feet of duty-free, travel convenience and specialty retail stores in Terminal 6 as well as with various local and diverse food and beverage operators to provide an authentic New York culinary experience in the new terminal. As with subleases with airline tenants, once negotiated, all concession subleases will be subject to the consent of the Port Authority pursuant to the terms of the Lease Agreement, and, until the discharge of Senior Bank Obligations, may be subject to the consent of the Administrative Agent pursuant to the terms of the Common Terms Agreement. For more information see “PART 4 – SECURITY FOR THE SERIES 2024 BONDS – Direct Agreements”, “PART 10– LEASE AGREEMENT – Subleases” and “PART 17 – RISK FACTORS – Risks Related to the Lease Agreement.”

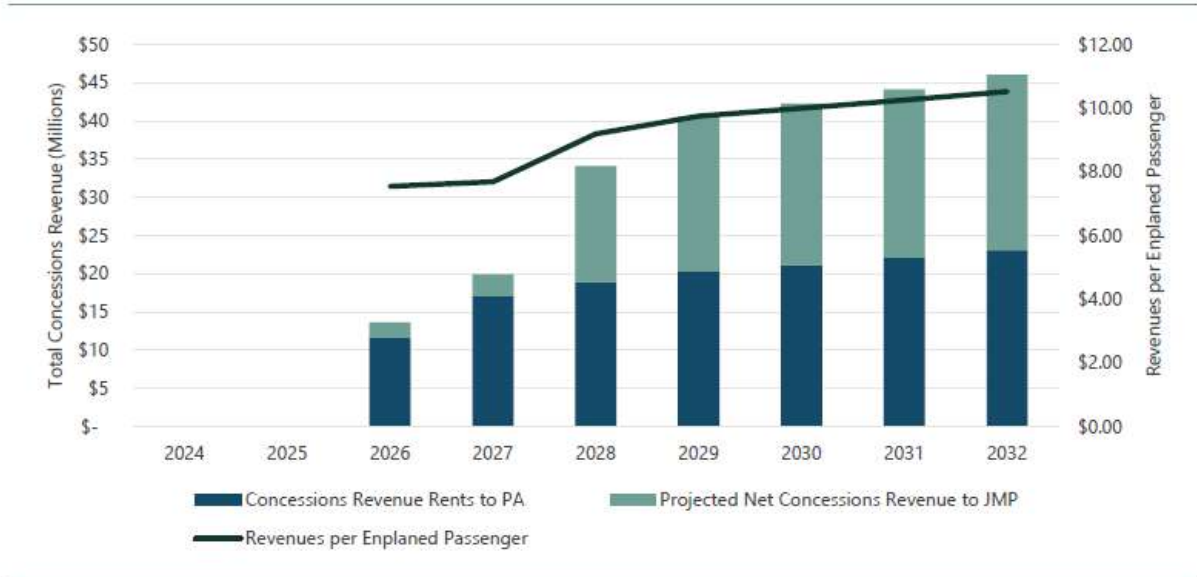
The Borrower requires and will require each concession sublessee operating in Terminal 7 or that will operate in Terminal 6 to pay rentals to the Borrower pursuant to their applicable concessions sublease. Pursuant to the Lease Agreement, the rentals collected by the Borrower from each concession sublessee will be split between the Borrower and the Port Authority, with the Port Authority being entitled to the

greater of 50% of such rental amounts or, in certain cases, a minimum guaranteed rent amount calculated by reference to the number of enplaned passengers using Terminal 6. Revenues payable to the Port Authority under the Lease Agreement are not pledged for the payment of the Obligations, including the Series 2024 Bonds, and will be paid by the Borrower directly to the Port Authority. See “PART 10– THE LEASE AGREEMENT – Principal Rights and Responsibilities of the Parties – Payments by the Borrower.”

Total concession revenues to be received by the Borrower are projected to be approximately \$20.0 million in 2027, \$40.5 million in 2029 and \$46.1 million in 2032.

The following chart presents the total concession revenue projected to be received by the Borrower and the Port Authority for Terminal 6, as well as projected concession revenue per enplaned passenger in Terminal 6, in each case during the Projection Period:

**Projected Concession Revenue (in Millions) and Concession Revenues per Terminal 6 Enplaned Passenger**



NOTE: PA - Port Authority of New York and New Jersey.  
 SOURCES: JFK Millennium Partners, LLC, October 2024.

**Advertising Revenues**

The Borrower anticipates receiving advertising revenues, which reflect the Borrower’s share pursuant to the Lease Agreement of the Terminal 6 portion of the Port Authority’s airports-wide advertising revenue program administered by Clear Channel Airports. Advertising revenue projections for Terminal 6 are calculated based on a metric of Terminal 7 advertising revenues per enplaned passenger, adjusted for inflation, applied to the number of enplaned passengers departing from Terminal 6.

Total advertising revenues to be received by the Borrower are projected to be approximately \$1.8 million in 2027, \$3.4 million in 2029 and \$3.8 million in 2032. However, throughout the Projection Period, advertising on a per passenger basis is anticipated to remain flat and increases in the projected revenues are a result of inflation.

## **Rebate Revenues**

The Borrower anticipates receiving rebate revenues in 2026, 2028 and 2029 in the form of repayments of capital expenditures incurred by the Borrower in preparing storefronts for concessionaire tenants that were initially provided by the Borrower, and solar PV installation vendor rebates.

Total rebate revenues to be received by the Borrower are projected to be approximately \$1.5 million in 2026, \$4.7 million in 2028 and \$1.0 million in 2029, with no rebates expected in any other years of the Projection Period.

## **Other Non-Airline Operating Revenues**

Separate from direct rental income from concession sublessee's, the Borrower anticipates collecting other non-airline operating revenues including common area maintenance fees and marketing fees for certain maintenance and marketing services provided for or on behalf of concession sublessees. Total other non-airline operating revenues to be received by the Borrower are projected to be approximately \$1.8 million in 2027, \$2.9 million in 2029 and \$3.3 million in 2032.

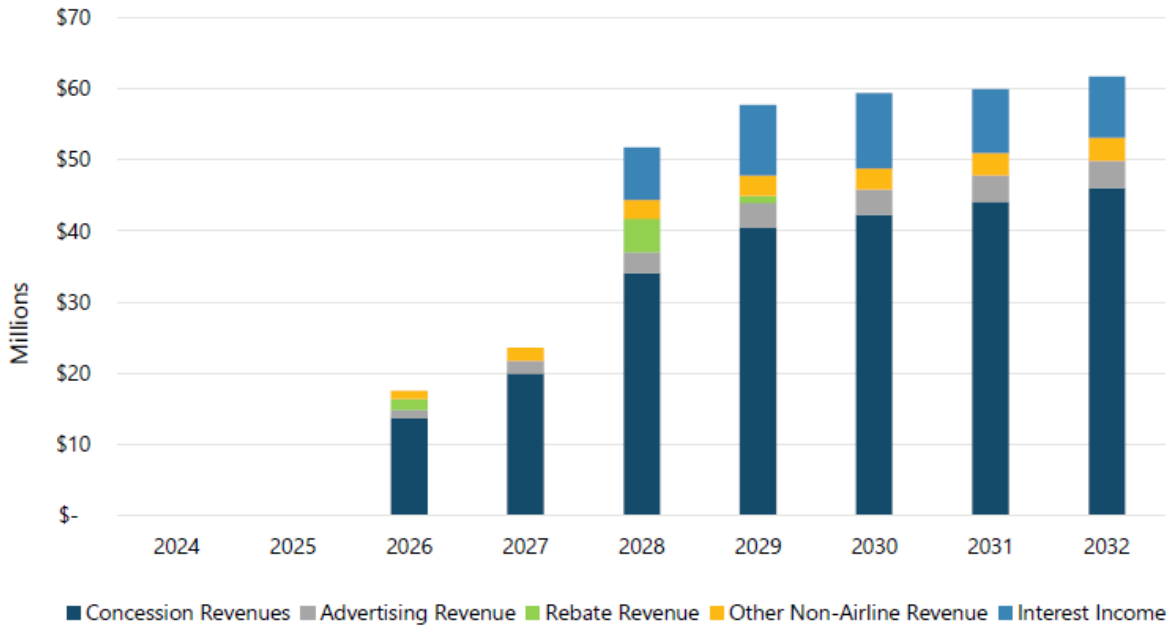
## **Interest Income**

The Borrower also expects to receive investment earnings from various accounts in which its funds are held. Interest income is not projected to be received until 2028 and then to be approximately \$9.9 million in 2029 and \$8.6 million in 2032. The interest rate on the deposits has been assumed to be 3% throughout the lease period.

## **Total Non-Airline Revenues**

Total non-airline revenues from all sources during the Projection Period are projected to be approximately \$23.6 million in 2027, \$57.8 million in 2029 and \$61.7 million in 2032, and are summarized on the following table:

## Projected Terminal 6 Total Non-Airline Revenues (in Millions)



SOURCES: JFK Millennium Partners, LLC, October 2024.

## PART 16 – THE CONSULTANTS’ REPORTS

### Summary of Consultants’ Reports

The Borrower has engaged the Airport Consultant, Airline Traffic Forecast Consultant, Lenders’ Technical Advisor and Insurance Consultant, each to prepare their respective reports attached hereto as APPENDIX B-1, B-2, B-3, and B-4, respectively. The Report of the Airport Consultant evaluates the ability of the Borrower to comply with the requirements of the Financing Documents, including regarding its payment obligations with respect to the Series 2024 Bonds, on a pro forma basis for Fiscal Years, ending December 31, 2024 through 2032, based on the assumptions described therein. The Report of the Airline Traffic Forecast Consultant evaluates and forecasts passenger demand to determine revenue generation for Terminal 6 from 2024 through 2060. This report takes into account population, economy, demographics, and air transportation marketplace to provide context for the forecast results and the outlook for future passenger traffic and capacity at the Airport. The Report of the Lenders’ Technical Advisor provides an independent review and evaluation of the Borrower’s approach to the Project, including technical solutions and contractual arrangements on behalf of the Lenders. Key areas reviewed include the Project structure and risk transfer, site conditions, permitting, design and construction approach, cost, schedule, operations, maintenance and lifecycle. Finally, the Report of the Insurance Consultant provides an independent review of the Borrower’s insurance coverage and risk management in connection with the Project.

### Report of the Airport Consultant

Ricondo & Associates, Inc. (the “Airport Consultant” or “Ricondo”) prepared the Report of the Airport Consultant, dated October 10, 2024 (the “Original Report of the Airport Consultant”), which

analyzed and reviewed projected Terminal 7 and Terminal 6 revenues and rates and charges. The Airport Consultant has prepared the Letter of the Airport Consultant, dated October 23, 2024 (the “Letter of the Airport Consultant” and together with the Original Report of the Airport Consultant, the “Report of the Airport Consultant”), to supplement the Original Report of the Airport Consultant based on the final pricing information related to the Series 2024 Bonds. The Report of the Airport Consultant is included in this Official Statement as APPENDIX B-1. See APPENDIX B-1 – “REPORT OF THE AIRPORT CONSULTANT.”

In developing its analyses, the Airport Consultant reviewed:

- I. certain projections and forecasts provided by the Borrower and its advisors;
- II. activity forecasts developed by the Airline Traffic Forecast Consultant, a technical advisor on air traffic activity to the Borrower, regarding the ability of the area served by the Airport to generate demand for air service at the Airport, specifically at Terminal 7 and Terminal 6; trends in air service and passenger activity in Terminal 7 and Terminal 6; and
- III. the financial performance of Terminal 7 and Terminal 6 for the Projection Period.

The Airport Consultant Report must be read in its entirety and any summary herein is qualified in its entirety to such report. The Airport Consultant has reviewed certain projections of revenues provided by the Borrower for the Projection Period. The Airport Consultant has also reviewed certain projections of expenses provided by the Borrower of the operation of the Terminal 7 and Terminal 6 through the Projection Period. The Airport Consultant has classified these expenses for each year, as: (i) operation and maintenance of the Premises, (ii) asset repair and replacement of Terminal 6, (iii) satisfying the Operation and Maintenance Reserve Requirement and the Major Maintenance Requirements, (iv) paying rents due to the Port Authority, and (v) paying debt service on the Series 2024 Bonds and the Loan Facility.

The Airport Consultant has concluded that (i) Terminal 6 revenues will be sufficient to comply with the Rate Covenant/Financial Ratio Covenant in each year of the Projection Period and (ii) Terminal 6 airline rates and charges should remain reasonable as compared with those at other large-hub U.S. airport terminals and their respective markets.

### **Report of the Airline Traffic Forecast Consultant**

ASM Global Route Development Consultants (the “Airline Traffic Forecast Consultant” or “ASM”) prepared the Report of the Airline Traffic Forecast Consultant, which reviews projected airline traffic for Airport and Terminal 6, included in this Official Statement as APPENDIX B-2. See APPENDIX B-2 – “REPORT OF THE AIRLINE TRAFFIC FORECAST CONSULTANT.”

### **Report of the Lenders’ Technical Advisor**

BTY Group (the “Lenders’ Technical Advisor” and together with the Airport Consultant and the Airline Traffic Forecast Consultant, the “Consultants”) prepared its report, which reviews the technical aspects of the Project and supporting information provided by the Borrower, included in this Official Statement as APPENDIX B-3. See APPENDIX B-3 – “REPORT OF THE LENDERS’ TECHNICAL ADVISOR.” The key areas reviewed by the BTY Group include, among other things, the Project’s structure and risk transfer, site conditions, permitting, design and construction approach, cost, schedule, operations, maintenance and lifecycle.

The Lenders' Technical Advisor Report must be read in its entirety and any summary herein is qualified in its entirety to such report. The Lenders' Technical Advisor has determined that most of the Borrower's risk/responsibility with respect to the Project (See PART 11 – "THE PROJECT") has been transferred to the D&C Contractor, including but not limited to the following:

- the Borrower's risk related to design pertaining to the D&C Work on the Premises and D&C Work for Off-Premises Facilities;
- the Borrower's responsibility for preparing design submittals relating to the Project, with the exception of certain carve-outs;
- the material portion of the Borrower's risk related to the Warranty Period (transferred to the D&C Contractor for a two-year period, subject to certain extensions);
- most of the Borrower's risk related to regulatory approvals for the DB D&C Work;
- the Borrower's risk related to site conditions (some of which will be managed through a series of budgets and contingencies between the Borrower and Port Authority and some of which will transfer to the D&C Contractor); and
- the Borrower's risk related to the Project Schedule (including Substantial Completion of Phase 1 and Substantial Completion of Phase 2).

Additionally, the Borrower has transferred to the Manager under the Management Services Agreement the responsibility (a) for the performance of Operations and Maintenance Work (but will retain the risk for O&M costs), (b) for ongoing capital and Lifecycle planning assistance and coordination (but will retain the Lifecycle cost risk) and (c) relating to the incentive and deduction regime pertaining to the key performance indicators ("KPI").

The following factors relating to the Project also minimize risk: (a) Project Schedule reporting requirements are more stringent than typical cases, which shows a high degree of attention being paid to the schedule, (b) the Project will not result in significant impacts to the environmental resources (with minimal, or no, social or environmental impacts), (c) the D&C Contractor's guaranteed maximum price ("GMP") is reasonable and appropriate for the Project and (d) in the event the D&C Contractor needs to be replaced, that the D&C Contractor's 35% liability cap is adequate to cover the total replacement premium while the proposed liquid security is adequate to cover the short-term replacement premiums.

The Lenders' Technical Advisor concluded that the Equity Members (including the affiliate of the Vantage Member, who acts as the Manager under the Management Services Agreement) have a track record of successful projects, including some of the most challenging airport, terminal and infrastructure projects around the world, and this expertise will be leveraged through all of the Project phases; additionally, the D&C Contractor has extensive experience working in and around airports and successfully planning and managing complex logistics, security challenges and multi-level coordination. As a result, the Lenders' Technical Advisor found that the Equity Members should have no issues collaboratively carrying out the responsibilities of the Borrower or in meeting the designated requirements of the Project.

### **Report of the Insurance Consultant**

INTECH Risk Management GmbH (the "Insurance Consultant") prepared the Report of the Insurance Consultant, which reviews the insurance provisions for the Borrower and the Work, included in

this Official Statement as APPENDIX B-4. See APPENDIX B-4 – “REPORT OF THE INSURANCE CONSULTANT.”

All of these reports should be read in their entirety by potential investors in the Series 2024 Bonds.

## **PART 17 – RISK FACTORS**

### **General**

Potential investors should carefully consider the following risk factors and other investment considerations prior to making a decision to purchase Series 2024 Bonds. The following description of certain risk factors is not intended to be, nor can it be, a complete description of all of the general or specific risk factors relating to an investment in Series 2024 Bonds. Additional risk factors relating to the purchase of Series 2024 Bonds are described throughout this Official Statement, whether or not specifically designated as risk factors. Additional risks and uncertainties not presently known, or currently believed to be immaterial, may also materially and adversely affect the payment of the Series 2024 Bonds. This section should be read in conjunction with the rest of the Official Statement, including the Appendices hereto. In addition, although the various risks discussed in this Official Statement are generally described separately, prospective investors of the Series 2024 Bonds should consider the potential effects of the interplay of multiple risk factors.

### **Risks Associated with Limited Recourse Obligations**

The Series 2024 Bonds are special and limited obligations of the Issuer, payable solely out of the Trust Estate pledged under the Indenture, primarily from payments made by the Borrower pursuant to the TDC Loan Agreements and the TDC Notes. The Borrower will pay its obligations under such TDC Loan Agreements and the TDC Notes primarily from certain revenues it receives from the operation of Terminal 7 and Terminal 6, certain of which are shared with the Port Authority under the Lease Agreement.

If the Borrower does not, for any reason, generate sufficient Project Revenue, in a timely manner, it may not be able to make payments of the amounts due under the TDC Loan Agreements and the TDC Notes. In such an event, payments of principal or interest on the Series 2024 Bonds may not be made, and the registered owners of the Series 2024 Bonds will not have any recourse to any party other than the Borrower, or, as applicable, to the Collateral, for payment of the amounts then due.

The Borrower is a single-purpose entity, formed for the purpose of undertaking the transactions contemplated under the Lease Agreement, including entering into the Lease Agreement and the associated Project Documents and Financing Documents. As such, the Borrower does not expect to own any material assets other than the leasehold interest in the facilities leased to it under the Lease Agreement, its rights under other assets and contracts generally related to such facilities, the Equity Contributions, and amounts on deposit in the relevant Project Accounts in accordance with the Collateral Agency and Accounts Agreement.

The Borrower’s obligations under the Lease Agreement and the Financing Documents are obligations solely of the Borrower and not of any affiliate of the Borrower. No Equity Member of the Borrower has any obligation to contribute additional equity to the Borrower beyond the Equity Contributions or to otherwise provide funds to the Borrower, and the Borrower has no sources of revenue other than from the operation of Terminal 7 and Terminal 6. In addition, none of the Equity Members of the Borrower has guaranteed the payment of the Series 2024 Bonds and the Equity Members have no obligation with respect to the payment of the Series 2024 Bonds. Therefore, the Borrower’s ability to make



payments in respect to debt service on the Series 2024 Bonds will depend on the successful construction of the Project and collection of revenues from the operation of Terminal 7 and Terminal 6, after the payment of O&M Expenses (including Ground Rent, First Additional Rent, Second Additional Rental, and Third Additional Rent payable to the Port Authority under the Lease Agreement) and other amounts payable prior to the payment of debt service pursuant to the Collateral Agency and Accounts Agreement. The amount of revenues that the Borrower will be able to collect from its operation of Terminal 7 and Terminal 6 may vary depending on a number of factors, including many that are outside the control of the Borrower, such as adverse conditions affecting the economy generally, the airline industry or other relevant business sectors in particular, or the occurrence of force majeure or other adverse events. See “PART 17 – RISK FACTORS – Risks Related to Construction of the Project” and “PART 17 – RISK FACTORS – Risk Factors Relating to the Airline Industry.”

Substantially all of the Borrower’s rights under the Lease Agreement and the other Project Documents are being pledged and assigned as security for the Borrower’s financial obligations in connection with the Project, but no assurance can be given that the funds available to the Collateral Agent will be sufficient to make all of the payments to be paid from the Collateral, including payment with respect to debt service on the Series 2024 Bonds.

### **Matters Relating to Enforceability of Financing Documents**

The rights and remedies available to the Trustee, the Collateral Agent, the Intercreditor Agent, the Issuer, and the registered owners of the Series 2024 Bonds upon an event of default under the Indenture, the Collateral Agency and Accounts Agreement, the Intercreditor Agreement, the TDC Loan Agreements, or other agreements described herein may be affected by applicable statutes and legal doctrines and are in many respects dependent upon regulatory and judicial enforcement actions which are often subject to discretion and delay. The various legal opinions to be delivered concurrently with the delivery of the Series 2024 Bonds will be subject to certain assumptions and qualified as to the enforceability of the various legal instruments by limitations imposed by bankruptcy, reorganization, insolvency, or other similar laws affecting the rights of creditors generally and by judicial principles of equity.

#### ***Bankruptcy and Insolvency Risks***

Numerous statutory provisions, including the federal Bankruptcy Code (the “Bankruptcy Code”) and state laws affording similar relief to debtors, may result in a stay or otherwise interfere with, delay or permanently impair the ability of the Collateral Agent to obtain payment pursuant to the TDC Loan Agreements and the TDC Notes or to realize upon collateral.

Payments of principal, accreted value, redemption price, and interest in respect of the Series 2024 Bonds would likely be adversely affected by a bankruptcy of the Borrower or similar state law proceeding. The delay and consequences of delay in the ability of the Collateral Agent to enforce rights and remedies against the Borrower, including any delay caused by the imposition of any stay under the Bankruptcy Code or state laws affording similar relief, can be significant and can permanently prevent the exercise of rights and remedies by the Collateral Agent against the Borrower. For example, if the Borrower becomes the subject of a bankruptcy proceeding, Section 362 of the Bankruptcy Code operates as an automatic stay of, among other things, any enforcement action by the Collateral Agent to obtain possession of property from a debtor’s estate, and may delay or permanently prevent the Collateral Agent from exercising their other rights and remedies, including foreclosure or sale. While relief from the automatic stay to enforce remedies may be requested, consideration of a request to provide relief is highly discretionary with the bankruptcy court and can be denied for a number of reasons, including where the collateral is “necessary to an effective reorganization” of the Borrower.

In addition to impairment of the Collateral Agent's ability to exercise remedies in the event of a Borrower bankruptcy, under the current Bankruptcy Code, the Borrower or its trustee in bankruptcy would be required, within 120 days of the bankruptcy filing, to elect to assume or reject the Lease Agreement. The Borrower may seek an order of the bankruptcy court extending the deadline for another 90 days. Any extensions following the 210-day period must be made with the consent of the Port Authority, as landlord, and approval by the bankruptcy court. The Borrower's failure to assume or reject the Lease Agreement within these timeframes would result in the automatic rejection of the Lease Agreement. As part of the bankruptcy case, the Borrower would have the choice of either (i) assuming the Lease Agreement and thereby retaining its occupancy rights to the Premises or (ii) rejecting the Lease Agreement and vacating the Premises. Assumption of the Lease Agreement by the Borrower would require that the Borrower (a) cure any defaults under the Lease Agreement, (b) maintain its payment obligations under the Lease Agreement during bankruptcy, and (c) provide assurance of future performance of its obligations under the Lease Agreement.

Under the Leasehold Mortgages the Borrower has agreed to notify the applicable Leasehold Mortgagee and to offer to attempt to assign the Lease Agreement to the applicable Leasehold Mortgagee (or its designee or nominee) prior to making an application to reject the Lease Agreement but there can be no assurance that such agreement would be enforced by a bankruptcy court. In addition, pursuant to the Leasehold Mortgages the Borrower has agreed that any rejection of the Lease Agreement without a prior offer of assignment to the applicable Leasehold Mortgagee (or its designee or nominee) shall be deemed, at the election of the Leasehold Mortgagee, to be an assignment of the Lease Agreement to the applicable Collateral Agent or its designee, but again there can be no assurance that such agreement would be enforced by a bankruptcy court.

Following any rejection of the Lease Agreement in a bankruptcy of the Borrower, the Port Authority has agreed to enter into a new Lease Agreement with the Recognized Mortgagee or its nominee, subject to receipt of all necessary governmental approvals and timely compliance with the applicable provisions of the Lease Agreement. However, if the Borrower does not desire to retain the Premises, in lieu of rejecting the Lease Agreement, it is also possible that a bankruptcy could allow the Borrower to sell its leasehold interest in the Premises under the supervision of the bankruptcy court, in which event the Collateral Agent's security interest would attach to the proceeds of the sale, and the Collateral Agent would be entitled to an unsecured claim against the Borrower for any shortfall between the amounts due under the TDC Loan Agreements and the TDC Notes.

With respect to the TDC Loan Agreements and the TDC Notes, in a bankruptcy the Borrower could retain possession of the Premises and seek to reorganize and emerge from bankruptcy, but because of the security provided by the Leasehold Mortgages, the Borrower would be required to pay to the Collateral Agent pursuant to a plan of reorganization, as a secured creditor, the value of the Borrower's leasehold interest in the Premises under the Lease Agreement. Any amounts owed by the Borrower under the TDC Loan Agreements or the TDC Notes in excess of the value of the Borrower's leasehold interest would be treated as an unsecured claim and entitled to payment on the same terms as all unsecured claims in any such reorganization, which could be substantially less than the face value of the unsecured claim.

No market valuation of the Borrower's leasehold interest in the Premises has been prepared in connection with the offering of the Series 2024 Bonds, and no representation is made as to what the value of the Premises might be in the future, so there can be no assurance regarding the likelihood that a fully secured claim would result in the situations described above. Moreover, the actual valuation of the Borrower's leasehold in the Premises and the appropriate valuation methodology could be issues that a bankruptcy court would review. Bankruptcy courts use different valuation methodologies and it is difficult to predict or estimate a precise valuation. Prior to the confirmation of a plan of reorganization, the Collateral

Agent could also seek to obtain adequate protection payments for the diminution in value caused by the Borrower's use of the Premises during bankruptcy, but there is no assurance that the bankruptcy court would order any immediate payments to the Collateral Agent during the pendency of the case.

A bankruptcy or similar state law proceeding with respect to any airline or concession tenant or user of Terminal 7 and Terminal 6 could adversely affect the Borrower's revenues and its ability to make timely payments in respect of the Series 2024 Bonds.

A bankruptcy or similar state law proceeding with respect to the D&C Contractor or the Manager could adversely affect the Borrower's ability to comply with its obligations under the Lease Agreement. The New York Local Finance Law (McKinney's Local Finance Law) currently authorizes the City to be a debtor under the applicable provisions of the United States Bankruptcy Code with respect to municipalities. If the City should file a proceeding under Chapter 9 of the United States Bankruptcy Code, it is possible that actions could be taken in that case, despite the existence of Section 929 of the United States Bankruptcy Code, that would impact or alter the Basic Lease, thereby affecting the Lease Agreement. Such actions could adversely affect the security for the Series 2024 Bonds and any Additional Bonds.

### ***Legal and Equitable Limitations***

If an Event of Default occurs under any of the Financing Documents, the practical realization of the Collateral Agent's rights will depend on the exercise of various remedies specified in the Financing Documents and will be subject to the limitations placed on those rights under applicable law and principles of equity. For example, the enforcement of any remedies granted to the Collateral Agent under the Financing Documents may be affected by, among other things, rights or defenses imposed or conferred by any state or federal court in the exercise of its equitable jurisdiction and the exercise of judicial discretion.

### **Additional Obligations**

As is noted elsewhere herein, payments with respect to the Series 2024 Bonds are contingent upon the Borrower making loan payments pursuant to the TDC Loan Agreements and the TDC Notes. The Collateral Agency and Accounts Agreement allows the Borrower to incur Additional Senior Obligations and Additional Subordinate Obligations, provided that all applicable requirements are satisfied. See "PART 4 – SECURITY FOR THE SERIES 2024 BONDS – The COLLATERAL AGENCY AND ACCOUNTS AGREEMENT – Additional Obligations" for a description of the applicable circumstances and conditions related to such incurrence of Additional Obligations. Any additional Senior Obligations issued would be payable from the revenues of the Borrower on a *pari-passu* basis with the Series 2024 Bonds and the Loan Facility and would also share in the Collateral. To the extent that the Borrower's revenues are insufficient to make payments on all of the Obligations Outstanding, such insufficiency may negatively impact the ability of the Borrower to satisfy its payment obligations under the TDC Loan Agreements which support the payment of principal, accreted value, redemption price or interest on the Series 2024 Bonds and the Loan Facility. Furthermore, during any foreclosure action or other efforts to realize upon the Collateral, or in the case of an early termination of the Lease Agreement, to the extent that the Borrower has incurred Additional Senior Obligations, registered owners of the Series 2024 Bonds will be required to share the proceeds of the Collateral or any termination payment, as applicable, with a larger group of holders of Senior Obligations, proportionally reducing any claim that the registered owners of such Series 2024 Bonds may otherwise have to such proceeds or termination payment amount.

## **Loan Facility, Intercreditor and Hedging Risks**

The Borrower intends to fund a substantial portion of remaining Project costs from the remaining undrawn balance of the Loan Facility. While this approach can result in certain efficiencies, it introduces a number of risks relating to the availability of such funds in the amounts and at the times required for timely completion of the Project, including, but not limited to, failure of the Borrower to satisfy the conditions precedent to each credit extension or to each withdrawal of advanced funds from the Construction Account under the Common Terms Agreement, or delays or failures on the part of the banks to fund otherwise eligible credit extension requests. See APPENDIX F-1 – “FORM OF COMMON TERMS AGREEMENT.” Any such failure on the part of the Borrower or the banks could result in delays to the Project completion timeline and may necessitate the Borrower arranging alternate financing, if possible, at higher rates or upon worse terms, all of which could materially adversely impact the Borrower’s operating results.

The Loan Facility is subject to certain mandatory and optional prepayment provisions and will mature in full on the Bank Financing Maturity Date; as such, the Loan Facility is a temporary source of funding, which will need to be refinanced or replaced in full prior to said maturity.

The agreements governing the Loan Facility, and in particular the Common Term Agreement, include various affirmative, negative, and financial covenants that are more stringent than those included in the Indenture or the Collateral Agency Agreement during the term of the Loan Facility, including obligations to obtain the consent of certain Bank Finance Parties to enter into certain operational agreements or take other actions that the Borrower may believe are beneficial for the Project. See APPENDIX F-1 – “FORM OF COMMON TERMS AGREEMENT.” Complying with certain of such covenants could limit the Borrower’s ability to operate its business and to take advantage of business opportunities that are in the Borrower’s best interest. The terms of any future indebtedness the Borrower may incur could include similar or other restrictive covenants.

While the covenants in the agreements governing the Loan Facility are subject to important exceptions and qualifications, if the Borrower fails to comply with them and is unable to obtain a waiver or amendment, an event of default under such documents would result. If an event of default under such documents were to occur, the lenders under the Loan Facility could exercise various remedies set forth therein, subject to the terms of the Intercreditor Agreement, including declaring outstanding amounts due and payable, which acceleration would then trigger cross-acceleration of the Series 2024 Bonds without action taken by the holders of the Series 2024 Bonds. The acceleration of significant indebtedness could require the Borrower to seek to negotiate or repay its obligations, and there is no assurance that such renegotiation or repayment would be successful.

In addition, certain events of default under the Common Terms Agreement and other financing documents related specifically to the Loan Facility do not automatically permit the exercise of remedies by the Senior Collateral Agent, unless (i) the Standstill Period has expired, (ii) the Senior Bank Obligations have been accelerated in accordance with the Senior Bank Financing Documents (which acceleration would then trigger cross-acceleration of the Series 2024 Bonds without action taken by the holders of the Series 2024 Bonds), and (iii) the Administrative Agent has instructed the Intercreditor Agent to instruct the Senior Collateral Agent to exercise an Enforcement Action of the types contemplated in clauses (a) and (b) of the definition thereof (other than solely with respect to Segregated Collateral of the Bank Finance Parties) with respect to such event of default). In such circumstance, the Senior Collateral Agent would not be permitted to exercise remedies for the benefit of the holders of the Senior Obligations, including the Series 2024 Bonds despite the Borrower’s non-compliance with the terms of the Common Terms Agreement or such other financing documents related specifically to the Loan Facility.

As described herein, the Borrower currently anticipates that after the discharge of the Loan Facility in full, it will seek an amendment to the Intercreditor Agreement to move to a dollar-for-dollar, as opposed to block, voting basis. The determination to pursue the aforementioned amendment will be subject to market conditions at such time and remains subject to change in the Borrower's sole and absolute discretion. Until such amendment takes effect, if ever, the Intercreditor Agreement provides for class-based voting and certain fundamental enforcement rights that may, in certain limited circumstances, disadvantage the Series 2024 Bondholders when compared to the Bank Finance Parties. See APPENDIX D-5 "FORM OF INTERCREDITOR AGREEMENT."

The Permitted Hedge Agreements may, at any time, have a negative value to the Borrower. If either the swap counterparty or Borrower terminates such an agreement when the agreement has a negative value to the Borrower, the Borrower would be obligated to make a termination payment to the counterparty in the amount of such negative value, and such payment could be substantial and potentially materially adverse to the financial condition of the Borrower. Further, the Borrower is obligated to terminate certain Permitted Hedge Agreements as it pays down and refinances the Loan Facility, including with respect to the mandatory prepayment provisions applicable thereto, which could increase the cost to the Borrower of complying with the Common Terms Agreement and otherwise impact the Borrower's decision-making regarding when and how to approach the refinancing of the portion of the Loan Facility that remains outstanding after issuance of the Series 2024 Bonds. The Borrower's payment obligations with respect to the Permitted Hedge Agreements, both in the ordinary course and upon termination, are senior secured obligations and rank *pari passu* with its obligations with respect to the Series 2024 Bonds and the Loan Facility.

#### **Bond Term Substantially Coterminous With Term of Lease Agreement**

The scheduled expiry date of the Lease Agreement and the final maturity date of the Series 2024 Bonds are substantially the same. Should there be an event requiring the exercise by the Collateral Agent of cure rights or other remedial action, there is no absolute right to extend the term of the Lease Agreement in a manner that would permit restructuring of debt to implement a remedy that would permit repayment over a period that is longer than the existing final maturity date of the Series 2024 Bonds.

#### **Risks Related to Collateral**

It may be difficult for the Collateral Agent to realize the value of the Collateral, and the proceeds received from a sale of the Collateral may be insufficient to repay the Series 2024 Bonds, the Loan Facility and any Additional Senior Obligations.

Foreclosure on the Collateral may be subject to perfection and priority issues, the need for third party approvals and consents and to practical problems associated with the realization of the Series 2024 Bondholders' security interest in the Collateral. Foreclosure of the Leasehold Mortgages is available for only certain specified Events of Default under the Leasehold Mortgages and will require the commencement of a legal action as non-judicial foreclosure is not available in New York State. Judicial foreclosure is a lengthy process that requires careful compliance with a number of procedural requirements. As a result, realization on the Collateral will likely be subject to significant costs and delays that may adversely affect the Series 2024 Bondholders. In addition, New York State law restricts the ability of the holder of a mortgage loan to simultaneously bring an action on the mortgage debt and to foreclose the mortgage. The enforcement of the Collateral Agent's security interest with respect to the Collateral may not provide sufficient funds to repay all amounts due with respect to the Series 2024 Bonds and Loan Facility.

In addition, since the Borrower's principal asset is its rights under the Lease Agreement, there are practical limitations on the exercise of remedies in respect thereof. Under the Lease Agreement, if the Collateral Agent (as the Recognized Mortgagee) acquires the Borrower's interest in the Lease Agreement through foreclosure of the Leasehold Mortgages, it must engage a Qualified Terminal Operator with respect to the operations of the Premises and may only further assign the Lease Agreement to a Qualified Terminal Operator who will be required to satisfy certain payment obligations and cure certain outstanding breaches of the Lease Agreement. To constitute a Qualified Terminal Operator, an entity must have sufficient experience, personnel, and financial capability to operate and maintain the Premises on a basis consistent with the requirements of the Lease Agreement. The number of potential purchasers willing or able to meet these requirements under the Lease Agreement may be limited. Thus, as a practical matter, the Series 2024 Bondholders will have certain limitations on their ability to replace the Borrower as the lessee under the Lease Agreement following a foreclosure.

### **Potential Inadequacy of Funding Sources**

The Borrower plans to fund the balance of the costs of construction of the Project using funds from a variety of sources other than the Series 2024 Bonds, namely the capital contributions from the Equity Members, proceeds of the heretofore undrawn Senior Term Loans, and revenues generated from the operation of Terminal 7 and Terminal 6. To the extent that all or a portion of the funds expected to be received from the sources identified above are not received by the Borrower, or to the extent that the Borrower receives all or a portion of such funds later than anticipated, the Borrower's ability to complete the construction of the Project may be limited or delayed, potentially adversely affecting the Borrower's ability to satisfy its payment obligations with respect to the Series 2024 Bonds.

#### ***Multiple Funding Sources***

The Project is a complex Project comprising a number of different work scopes, such as demolition of Terminal 7, construction of Terminal 6, construction of the Off-Premises Facilities and construction of the Ground Transportation Center, among others. The Project is further complicated by the need to continue operating Terminal 7 and during the Terminal 6 construction process. Completion of the Project is scheduled to proceed on a scheduled timeline, with completion deadlines for various components of the Project.

The plan of finance includes funding for the costs of the Project from a number of sources. These include proceeds of the Series 2024 Bonds, the Loan Facility, Borrower equity, operating revenues, and earnings on invested funds. Risk factors associated with Series 2024 Bonds funding are summarized under the heading "RISK FACTORS – Disbursement of Loan Facility Proceeds" and "– Risks Associated With the Series 2024 Bonds." The Loan Facility is a temporary source of funding, which will need to be replaced in full when refinanced. Operating revenues during the construction period are budgeted to, among other things, cover operating expenses, with any excess being available for design and construction costs. Should any of these sources fail, or should operating revenues fall short of projections, operating expenses exceed projections, or project costs exceed projections, including for unexpected events, the project schedule may be disrupted and additional funding may be required.

#### ***Disbursement of Loan Facility Proceeds***

Access to proceeds of the Loan Facility is dependent upon submission of detailed requisitions to the Collateral Agent that have been approved by the Technical Advisor. Such requisitions will be prepared, for the most part, by the D&C Contractor and reviewed by the Borrower prior to submission to the Technical Advisor. As a condition of approval of a requisition from the Construction Account the Technical Advisor

must certify, among other things, that sufficient funds are available or are projected to be available to pay all project costs (including financing costs such as capitalized interest and required transfers to the Senior Debt Service Reserve Account and certain other reserve accounts) necessary to achieve the Completion Date on or before the Outside Completion Date, and that Substantial Completion is reasonably expected to be achieved on or prior to the Outside Completion Date.

If there is a dispute among any of the D&C Contractor, the Borrower and the Technical Advisor as to the compliance of a proposed requisition with the terms of the various Project contracts and the Collateral Agency and Accounts Agreement, disbursement of all or a portion of such requisitioned funds may be delayed in whole or part. If the Technical Advisor is unable to certify as to sufficiency of funds available to pay Project costs necessary to achieve the Completion Date, additional funds may be required. For risk factors relating to the issuance of Additional Obligations, see “PART 17 – RISK FACTORS – Additional Obligations.” If the Technical Advisor is unable to certify as to its reasonable expectation that Substantial Completion is reasonably expected to be achieved on or prior to the Outside Completion Date, D&C Work on the Project may be stopped unless accommodation can be worked out between the Borrower and the Port Authority.

#### ***Operating Revenues and Operating Expenses Prior to Substantial Completion***

The plan of finance anticipates operating expenses prior to Substantial Completion. These include costs of operating (and providing major maintenance for) Terminal 7, or portions thereof as such facilities are phased out of operation. In connection with the migration of operations from Terminal 7 to Terminal 6, operating revenues are projected to increase. No assurances can be made that the projected amounts of operating revenues, operating expenses and amounts available for re-investment will be consistent with the Borrower’s current projections.

#### ***Debt Service Reserve Accounts Funded at Phase 2 End of Funding Date***

The Borrower will be required to transfer funds following the Phase 2 End of Funding Date, from the various Sub-Accounts of the Construction Accounts, or other available funds, to the Debt Service Reserve Accounts. If sufficient funds are not available at such time to fund the Debt Service Reserve Accounts because of unanticipated additional construction costs or other reasons, the Debt Service Reserve Accounts may be funded in lesser amounts than required or may be delayed.

#### ***Limited Equity Commitment***

The equity commitment required to be contributed by the Equity Members of the Borrower is limited to \$1.3 billion. If any event occurs during the construction period that require additional funding, there will be no recourse by the Borrower to the Equity Members for additional equity. No Equity Member will be required to provide additional equity during the O&M Period following Substantial Completion.

#### **Actual Results May Differ From Forecasts and Assumptions**

The forecasts and projections contained herein, including projections of traffic flows and revenues contained in the Report of the Airport Consultant and the Report of the Airline Traffic Forecast Consultant are based on assumptions that the preparers (and the Borrower) believe are reasonable. Actual results are likely to differ from those projections and such variances may be material. None of the Borrower, the Equity Members, or any other party assumes any responsibility for the accuracy of such projections.

## **Risks Related to the Lease Agreement**

### ***Termination Risk under the Lease Agreement***

The Borrower's principal asset is its leasehold interest under the Lease Agreement, including the right to develop, design, construct, operate and maintain Terminal 6 and to charge, collect and retain revenues from the operation of such facilities until the expiration of the Lease Agreement in December 2060, subject to the terms of the Lease Agreement. The Borrower's interest in the Premises pursuant to the provisions of the Lease Agreement, and the continuation of the Lease Agreement, are essential to the existence and effectiveness of the Collateral Agent's security interests in the Collateral and in the Trust Estate under the Indenture. Accordingly, in the event of a termination of the Lease Agreement, the Collateral Agent's security interests will be extinguished and there will be no meaningful source of payment for the Series 2024 Bonds.

Following the occurrence and during the continuation of certain defaults by the Borrower under the Lease Agreement, the Port Authority is entitled, subject to the provisions of the Lease Agreement, including certain cure and step-in rights granted to the Recognized Mortgagee thereunder, to, among other things, terminate the Lease Agreement and repossess and assume control of the Premises, and take certain other actions in accordance with the terms of the Lease Agreement. See APPENDIX E – "SUMMARY OF CERTAIN PROVISIONS OF THE LEASE AGREEMENT – Termination by the Port Authority (Events of Default)" for a description of Lease Events of Default that could give rise to a Port Authority right to terminate the Lease Agreement.

Upon a termination by the Port Authority due to a Lease Event of Default under the Lease Agreement, the Port Authority will not be required to make any termination payment to the Borrower. The amounts available to the Borrower or the Collateral Agent in such event may be limited to the funds, if any, being held under the Collateral Agency and Accounts Agreement and may not be sufficient to pay the obligations of the Borrower upon such a termination, including payment with respect to the principal and interest (and premiums or penalties, if any) on the Series 2024 Bonds.

The Lease Agreement also provides that, in certain limited circumstances other than a Lease Event of Default, the Borrower shall have the right to terminate the Lease Agreement and, in certain limited circumstances, to receive from the Port Authority the Port Authority Default Termination Payment. See "PART 4 – SECURITY FOR THE SERIES 2024 BONDS–Termination Payment to the Borrower Upon Termination of the Lease Agreement" and APPENDIX E – "SUMMARY OF CERTAIN PROVISIONS OF THE LEASE AGREEMENT – Termination by Lessee" for a description of the events entitling the Borrower to terminate the Lease Agreement and recover the Port Authority Default Termination Payment. The amount payable by the Port Authority may not be sufficient by itself to pay amounts due with respect to the Series 2024 Bonds and Loan Facility. No assurance can be given that amounts recovered by the Collateral Agent from these other amounts will be timely or sufficient to permit the payment in full of all amounts needed to discharge all Outstanding Bonds.

### ***Payment of Termination Compensation Subject and Subordinate to Certain Other Port Authority Payment Obligations***

Payment by the Port Authority of any termination payment under the Lease Agreement is subject and subordinate in all respects to payment by the Port Authority of debt service on its Consolidated Bonds, as required by the applicable provisions of the Consolidated Bond Resolution, and payment into the General Reserve Fund of the amount necessary to maintain the General Reserve Fund at the amount specified in the General Reserve Fund Statements. The payment of any termination payment by the Port Authority is not



secured by or payable from the General Reserve Fund. There can be no assurances that the Port Authority will have sufficient funds available as and when needed to make any termination payment that may be payable to the Borrower pursuant to the Lease Agreement.

### ***Risks Related to Recognized Mortgagee's Cure Rights***

The Recognized Mortgagee's exercise of cure and step-in rights following a Lease Event of Default are subject to compliance with certain conditions under the Lease Agreement, including the payment of certain amounts due and timely action to cure non-monetary defaults. In the case of a monetary Lease Event of Default, cure payments must be made within 10 days after the expiration of the Borrower's cure period under the Lease Agreement.

In the case of non-monetary Lease Events of Default, cures must be effected within (i) 90 Business Days (other than as described in the immediately subsequent clause (ii), certain Lease Events of Default related to Borrower bankruptcy, or certain other specified Lease Events of Default not capable of cure by a party other than the Borrower, as to which no cure will be required), or (ii) 180 days with respect to a failure to achieve Substantial Completion of Phase 2 by the Outside Completion Date, in each case, after the expiration of the Borrower's cure period, subject to extension under certain circumstances but, in all events, subject to compliance with the applicable provisions of the Lease Agreement.

There can be no assurance that the Collateral Agent or its designee or nominee will have access to sufficient funds to timely cure a monetary default or the ability to timely cure a non-monetary default. In the event the Collateral Agent is unable to timely effect a cure, the Port Authority has the right to terminate the Lease Agreement, in which event the Lease Agreement will no longer constitute collateral for the Series 2024 Bonds.

### ***Governmental Approvals***

Pursuant to the Lease Agreement, the Borrower is responsible for securing, obtaining, and maintaining in full force and effect, all governmental approvals (including environmental permits) required for the Project and the operation and maintenance of the Premises (including any required future capital improvements as those requirements change from time to time), other than those governmental approvals obtained or to be obtained by the Port Authority. With respect to the Project, some of the governmental approvals have been or will be obtained by the Borrower; otherwise, such responsibility has been assumed by the D&C Contractor. The Borrower does not currently anticipate any delays or difficulties in obtaining or maintaining any such governmental approvals as and when the same are required pursuant to the Lease Agreement; however, no assurance can be given that either the Borrower or the D&C Contractor will be able to obtain and maintain the applicable governmental approvals. Although a failure or delay in obtaining governmental approvals due to certain willful failures or delays by the Port Authority constitutes a Compensation Event and Delay Event under the Lease Agreement, most delays or failures – particularly those attributable to the Borrower or the D&C Contractor – are not covered. A failure by the Borrower or the D&C Contractor to obtain and maintain any necessary or required governmental approvals, to the extent that the schedule, cost or revenue impact on the Project or the operation and maintenance of Terminal 6 or Terminal 7 as a result of such failure is not accommodated for under the Lease Agreement, could prevent or delay components of the D&C Work with respect to the Project, the operation of the Premises or the construction of future capital improvements, could impose additional costs on the Borrower, could result in a decrease in the operational revenues received by the Borrower and/or could provide the Port Authority with the right to terminate the Lease Agreement, all of which could adversely impact the Borrower's ability to make payments of debt service on the Series 2024 Bonds and Loan Facility.

## **Risks Related to the Basic Lease**

The Lease Agreement is subject to the Basic Lease. The City has the right to terminate the Basic Lease if the Port Authority fails to meet its payment or certain other obligations under the Basic Lease, and none of the City, the Port Authority or the Borrower is making any representation or warranty concerning the Basic Lease. An early termination of the Basic Lease while the Series 2024 Bonds are outstanding would result in the loss of the Port Authority's rights with respect to the Airport, termination of the Lease Agreement (or any successor lease), termination of the Borrower's (or any successor lessee's) interests in the Premises, and termination of the Leasehold Mortgages. If (i) the Basic Lease is terminated due to the failure of the Port Authority to meet certain obligations under the Basic Lease from the gross negligence or willful misconduct of the Port Authority, as finally determined pursuant to a non-appealable judgment of a court of competent jurisdiction (and not a breach or default arising from or related to any act or failure to act by the Borrower or certain entities related to the Borrower) and (ii) the City does not afford the Borrower the option to attorn to, or enter into a direct lease with, the City on the terms that are substantially the same as the terms of the Lease Agreement, then the Borrower will be entitled to termination compensation, but only to the extent that such termination is determined pursuant to a final, non-appealable judgment of a court of competent jurisdiction to be a failure of quiet enjoyment as described under "PART 4 – SECURITY FOR THE SERIES 2024 BONDS – Termination Payment to the Borrower Upon Termination of the Lease Agreement."

In the event the Basic Lease is terminated for any other reason, it would be unlikely that funds would be available to repay any outstanding Series 2024 Bonds and Loan Facility since the City would be under no obligation to continue to grant the Borrower (or any successor lessee) any ongoing interest in the Premises or to recognize any interest that the Collateral Agent (as mortgagee under the Leasehold Mortgages) may otherwise have had with respect to the Premises. Accordingly, no assurances can be given that the Basic Lease will remain in effect for the full term of the Lease Agreement or the Series 2024 Bonds or Loan Facility or that the Series 2024 Bonds and Loan Facility could be repaid if the Basic Lease is terminated. See APPENDIX E – "SUMMARY OF CERTAIN PROVISIONS OF THE LEASE AGREEMENT – Basic Lease."

The New York Local Finance Law (McKinney's Local Finance Law) currently authorizes the City to be a debtor under the applicable provisions of the United States Bankruptcy Code with respect to municipalities. If the City should file a proceeding under Chapter 9 of the United States Bankruptcy Code, it is possible that actions could be taken in that case, despite the existence of Section 929 of the United States Bankruptcy Code, that would impact or alter the Basic Lease, thereby affecting the Lease Agreement. Such actions could adversely affect the security for the Series 2024 Bonds and any Additional Bonds.

## **Risks Related to Operations at the Airport During Construction**

The Airport in general and Terminal 7 in particular are heavily used and are congested as a result of spatial and scheduling constraints. Pursuant to the Lease Agreement, operations at Terminal 7 and Terminal 6 must be maintained during construction. The Borrower intends to construct Terminal 6 in two phases. Prior to completion of Phase 1, portions of Terminal 7 will or have been decommissioned to facilitate construction of Terminal 6. Following the completion of Phase 1, the Borrower expects to move all operations from Terminal 7 to Terminal 6, and subsequently decommission and demolish Terminal 7. The Borrower will then operate the portion of Terminal 6 completed in Phase 1, while construction of Phase 2 and the remainder of Terminal 6 is completed. For more information, see "PART 11 – THE PROJECT – Phasing of the Project – Phase 1 & Phase 2." In addition to construction of Terminal 6 occurring adjacent to the Borrower's operations at Terminal 7 or the portion of Terminal 6 that will be opened following completion of Phase 1, the Borrower's operation of Terminal 7 and Terminal 6 may be affected by

redevelopment projects across the Airport, including work performed on roadways adjacent to Terminal 7 or Terminal 6.

The Borrower's phased construction plan will require certain areas of Terminal 7 to be vacated by current users at specified times to enable construction in such areas to begin. If the applicable facilities are not vacated when anticipated, or if other complications arising from the interface between D&C Work and on-going operations at Terminal 7 or Terminal 6, or from work performed on other redevelopment projects at the Airport, including work performed on roadways, such events could result in delays to the Project for which the Borrower is not entitled to payment from the D&C Contractor or the Port Authority, or is not entitled to an extension of time to complete the Project (unless such occurrences constituted Compensation Events or Delay Events under the Lease Agreement). See "PART 17 – RISK FACTORS – Risks Related to Construction of the Project – Events That Impact Contract Price or Schedule." In addition, such D&C Work could interfere with the ongoing airline and other operations in the then-operational portions of Terminal 7 and Terminal 6, potentially negatively impacting the Borrower's revenues and its ability to operate such facilities in accordance with the requirements of the Lease Agreement. Although the Borrower has sought to reduce the possibility of any such disruption by generally planning to complete D&C Work in enclosed areas of the Airport (segregated from areas being used for ongoing Airport operations) and carefully planning the sequencing of Terminal 6 D&C Work, there can be no assurance that such a disruption will not occur or that the Borrower would be able to address and remediate any such disruption before it results in adverse consequences under the Lease Agreement or negatively impacts the Borrower's business, financial condition and results of operations.

## **Risks Related to Construction of the Project**

### ***Events That Impact the Construction and the Borrower's Revenues***

The Project is a complex construction project comprising a number of different work scopes. Completion of the Project is scheduled to proceed on a scheduled timeline, with completion deadlines for various components of the Project.

Pursuant to the terms and conditions of the Lease, the Borrower is obligated to achieve Substantial Completion of Phase 2 by the Outside Completion Date, and the Borrower will owe liquidated damages to the Port Authority if DBO of the Phase 1 D&C Work is not achieved by 30 days following the Scheduled Phase 1 DBO Date or if DBO of the Phase 2 D&C Work is not achieved by 30 days following the Scheduled Phase 2 DBO Date. Pursuant to the D&C Contract, the D&C Contractor has agreed to comply with such deadlines to the extent they relate to the DB D&C Work required to be undertaken by the D&C Contractor under the D&C Contract. See "PART 11 – THE PROJECT" and "PART 12 – THE D&C CONTRACT" for a further description of the applicable construction deadlines, as well as for a description of the obligations of the D&C Contractor.

The Project is a significant design and construction endeavor, with a schedule that contemplates completion in phases, as more particularly described in "PART 11 – THE PROJECT – Phasing of the Project – Phase 1 & Phase 2." As with any major construction effort, the Project involves many risks that could result in cost overruns, in delays or in a failure to complete the Project. Challenges to achieving Substantial Completion and DBO on schedule and within budget might include, among others, shortages of materials and labor, work stoppages, labor disputes, bad weather, floods, earthquakes and other casualties, unforeseen engineering, environmental or geological problems, permitting and approvals and third-party litigation (including protests or litigation about noise or vibrations that affect business owners or residents). Any of these events could increase the costs of or result in delays to the Project.

In addition, given the complexity of the Project (including the phasing thereof) and also the scope of the other activities that are expected to take place at the Airport during the same time period, including the Off-Premises Facilities and other planned and ongoing construction projects at the Airport (see “PART 11 – THE PROJECT”), lack of sufficient and effective coordination among the Borrower, the D&C Contractor, the Port Authority, any airline or concession sublessees performing design or construction work in respect of their subleased premises and other relevant third-parties or the failure of any such party to comply with its obligations with respect to such coordination or to complete its work (or necessary inspections or approvals) in a timely fashion could also result in such cost overruns or delays.

The Lease allocates a limited number of these risks, particularly as they relate to Compensation Events that impact the cost of the Project, to the Port Authority. The D&C Contract, which includes a maximum contract sum, also allocates a number of these risks to the D&C Contractor. Except where attributable to certain qualifying changes in the D&C Work pursuant to the Lease or otherwise excusable under the D&C Contract, the risks resulting from the possible negative revenue impact related to unexcused delays in achieving certain interim milestones or Substantial Completion (under which circumstances liquidated damages are payable by the D&C Contractor), completion of the D&C Work on schedule and on budget generally and free of Defects, and compliance of the D&C Work with Applicable Laws and applicable standards have been allocated to the D&C Contractor. Nevertheless, certain risks from a failure to coordinate construction of the Project may remain with the Borrower, including risks arising from the failure of airline or concession sublessees to complete design or construction work in respect of their subleased premises in a timely manner to allow such premises to be substantially complete or open concurrently with the schedule for the base building portions of Terminal 6, which failure may delay the Substantial Completion or DBO of Terminal 6.

Any delay in achieving certain interim milestones (including the opening of a fifth widebody gate by the third quarter of 2026 following the Completion of Phase 1, which is required to accommodate certain Expected Airlines operations at Terminal 6), delay in achieving Substantial Completion or DBO by the relevant deadline, or increased costs or defects with respect to the Project for which the Borrower does not have sufficient remedy against the D&C Contractor under the D&C Contract or for which the Borrower does not have a right to claim a Delay Event or Compensation Event under the Lease may adversely impact the business and operations of the Borrower and, possibly, the Borrower’s ability to make payment of debt service on the Senior Obligations, including the Series 2024 Bonds. In addition, the failure to comply with the terms of the Lease as a result of a delay in reaching Substantial Completion of Phase 2 by the Outside Completion Date could result in the Port Authority having the right to terminate the Lease under certain circumstances. See “– Risks Related to the Lease – Termination Risk under the Lease” above.

#### ***Delay in the Completion of the Project***

Pursuant to the terms and conditions of the Lease, the Borrower is obligated to complete construction of the Project in accordance with certain milestones and deadlines. Pursuant to the terms and conditions of the D&C Contract, the D&C Contractor has agreed to comply with such deadlines as they relate to the DB D&C Work required to be undertaken by the D&C Contractor under the D&C Contract. In the event that the D&C Contractor fails to implement any works and/or mitigation measures to avoid any delay in the construction schedule, as required under the D&C Contract, the D&C Contractor may be in breach of its obligations under the D&C Contract and such breach could result in a delay in the completion of Phase 1 or Phase 2 of the Project.

If the D&C Contractor does not meet the construction deadlines set forth in the D&C Contract, the Borrower may be in breach of its obligations under the Lease and will likely, in any such circumstance, be required to pay liquidated damages to the Port Authority with respect thereto. Although the Borrower is

entitled to receive compensation for the same damages from the D&C Contractor, the D&C Contractor could fail to compensate the Borrower for the applicable liquidated damages pursuant to the D&C Contract, which would result in a delay in the Borrower's ability to collect the same or otherwise prevent the recovery of any such amounts.

### ***Reliance on Performance by D&C Contractor***

The D&C Contract is generally structured to pass through to the D&C Contractor, on a back-to-back basis, a substantial portion of the Borrower's obligations and risks under the Lease Agreement with respect to the construction of the Project. See "PART 12 – THE D&C CONTRACT – Back-to-Back Obligations." In the event that the D&C Contractor does not satisfy its obligations under the D&C Contract, the Borrower might be at risk of default under the Lease Agreement and could be exposed to claims by the Port Authority. Moreover, while the Borrower may be entitled to receive compensation from the D&C Contractor for certain delays, defects or other defaults under the D&C Contract, the D&C Contractor could fail to compensate the Borrower for such delays, defects or other defaults and the D&C Guarantors could fail to honor their payment obligations under the D&C Guaranties. In some circumstances, termination of the Lease Agreement could result from such non-compliance by the D&C Contractor. See "– Risks Relating to the Lease Agreement – Termination Risk under the Lease Agreement" above.

Pursuant to the D&C Contract, the maximum aggregate liability of the D&C Contractor to the Borrower under such circumstances is generally limited to an amount equal to 35% of the sum of the GMP. See "PART 12 – THE D&C CONTRACT – Limitation of Liability." If losses by the Borrower as a result of the D&C Contractor's failure to satisfy its obligations are not recoverable from the D&C Contractor or are in excess of such limitation on liability, the Borrower might not have sufficient funds available to satisfy its corresponding obligations under the Lease Agreement and the Borrower's ability to make timely payment of debt service on the Series 2024 Bonds and Loan Facility could also be adversely affected.

### **Risks Related to Coordination with Other Airport Operations and Interfaces**

The Borrower is exposed to certain risks arising from potential issues related to required coordination with third parties conducting work at the Airport that could delay or increase the cost of the D&C Work or the Operations and Maintenance Work, including risks associated with any work conducted by the Port Authority at the Airport. To address these issues, the Borrower has entered into the Construction Coordination Agreement with the Port Authority (which generally applies during construction of the Project) and the Reciprocal Rights Agreement with JetBlue (which applies both during and after construction of the Project). These agreements have, to date, facilitated necessary coordination and are expected to continue to address coordination issues necessary to conduct certain work required to progress the D&C Work. However, there can be no guarantee that such agreements will fully address all coordination and interface risks, or that any such interface with the D&C Work or the Operations and Maintenance Work will not increase costs or cause delays for the Borrower for which the Borrower may not be compensated or will not lead to a default under the Lease Agreement.

### **Risks Related to Sublease Agreements**

The Borrower's primary revenue sources are various rents, fees and charges paid by airline or concession sublessees pursuant to the terms of the applicable sublease with such party. All such subleases are subject to the consent of the Port Authority pursuant to the terms of the Lease Agreement, and, until the discharge of the Senior Bank Obligations, may be subject to the consent of the Administrative Agent pursuant to the terms of the Common Terms Agreement. For more information see "PART 4 – SECURITY FOR THE SERIES 2024 BONDS – Direct Agreements", "PART 10 – LEASE AGREEMENT –

Subleases.” Except for the JetBlue Sublease, the Borrower has not yet entered into any subleases for Terminal 6 with any airline or concession sublessee which has been consented to by the Port Authority. The Borrower has executed non-binding letters of intent with term sheets outlining the agreed-upon terms and conditions of a sublease with all seven Expected Airlines anticipated to operate at Terminal 6 and is in various stages of negotiation of formal subleases with each such Expected Airline. While the Borrower has selected the majority of concessions operators for Terminal 6, the Borrower is also in the process of negotiating concession subleases with such operators. The Borrower will have to negotiate subleases with additional airline or concession operators to meet the forecasts and projections of passengers and revenue contained in the Report of the Airport Consultant and the Report of the Airline Traffic Forecast Consultant.

No assurances can be provided that the Borrower will reach agreement on any anticipated subleases with any airline or concession sublessees, that such subleases will be on commercial terms sufficient to meet the forecasts and projections of passengers or revenue contained in the Report of the Airport Consultant and the Report of the Airline Traffic Forecast Consultant or otherwise generate sufficient revenues to pay debt service on all of the Senior Obligations, including the Series 2024 Bonds, or that such subleases will receive the consent of the Port Authority or, if applicable, the Administrative Agent, and any failure to do or achieve any of the foregoing may reasonably be expected to adversely impact the Borrower’s results and operations. In addition, the timelines and procedures for review and consent to subleases by the Port Authority, and if applicable, the Administrative Agent, and any delays caused thereby, may delay the legal effectiveness of such subleases, which may negatively affect the results and operations of the Borrower.

#### **Risks Factors Affecting Airline Demand for Terminal 7 and Terminal 6**

Upon completion of Terminal 6, it is anticipated that a mix of airline tenants, including JetBlue under the JetBlue Sublease, will lease gates. Where a sizable market share of terminal facilities is not accounted for by a single airline, the risk associated with the potential for one airline to reduce or discontinue service is mitigated.

Based on the anticipated mix of airline tenants in Terminal 7 and Terminal 6 and ongoing changes in the airline industry, changes in the composition of airline tenants in Terminal 7 and Terminal 6 are expected to occur from time to time in the normal course of operations. Any such changes could be material, when viewed individually or cumulatively. Further, some airlines may decrease or discontinue their usage of Terminal 7 or Terminal 6 in the future, which would place additional importance on attracting new airline users in order to maintain a healthy revenue base.

Airlines serving the New York area have a choice of airports and, even within the Airport, have a choice of passenger terminal facilities. While the Airport attracts the largest share within the New York metropolitan area originating and departing (O&D) passengers and is also its principal international airport, airline service and passenger activity at other commercial airports in the area have also grown over time, reflecting, in part, the overall growing demand for air travel throughout the Air Trade Area. Newark Liberty International Airport, in particular, has experienced significant increases in international flight and passenger activity in recent years. Further, each area airport has its own unique passenger terminal facilities, which may or may not be capable of accommodating additional airline and passenger activity. In addition to other airports in the Air Trade Area, it is possible that Terminal 7 and Terminal 6 will be competing for airline tenants with other terminals at the Airport, many of which are also undergoing redevelopment and or modernizations.

No assurances can be given that the Borrower will be able to maintain lease arrangements with airline tenants at all gates in Terminal 7 and Terminal 6 or that, even if such agreements are maintained,

that revenues therefrom will be sufficient support for the Borrower's obligations with respect to the Series 2024 Bonds, the Loan Facility and any future Additional Obligations.

As airlines grow and reinforce their alliances and other similar business relationships with one another in an effort to seek competitive advantages in the global marketplace, the evolving impact of such relationships at the Airport could adversely affect future individual airline demand for Terminal 6. In particular, key alliance partners may drive demand to specific terminals at the Airport other than Terminal 6. Such changes could also serve to limit the number of airlines who may at any time be interested in leasing gates or using space in Terminal 6.

### **Risks Related to Changes in Law and Applicable Standards Changes**

The obligations of the Borrower under the Lease Agreement and in connection with the financing thereof are subject to various laws, policies and regulations of the Port Authority and other governmental authorities, including, among others, laws governing environmental protections, tax policies or minimum wage requirements. Changes in such laws, policies or regulations could negatively impact the cost and schedule related to the Project, the Borrower's ability to fulfill its Operations and Maintenance Work obligations under the Lease Agreement and the Borrower's business, financial condition and results of operations. Changes in law do not qualify as Compensation Events under the Lease, and the Borrower would not be entitled to any compensation with respect to any change in law. If any such new or amended laws, policies or regulations require the Borrower to expend additional funds or adversely affect the Borrower's revenues, such changes could adversely impact the Borrower's ability to pay debt service on the Series 2024 Bonds and Loan Facility.

### **Risks Related to Certain Environmental, Health and Safety Considerations**

As with any project of this size and nature, the Project and Operations and Maintenance Work are subject to numerous statutes, rules and regulations relating to environmental protection and the safety and health of employees and the public during its construction and operation, including: standards relating to the discharge or release of hazardous and other regulated substances to the air, water and land, and the identification, generation, storage, handling, transportation, disposal, record keeping, labeling, reporting, emergency response and investigation, remediation or cleanup in connection with hazardous and toxic materials or other substances associated with the facility; limits on noise emissions; and safety and health standards, practices and procedures. Compliance with such requirements may impose significant additional costs on the Project and the Operations and Maintenance Work. Failure to comply with any such statutes, regulations and directives or any permits required thereunder could have adverse effects on the Project and the Operations and Maintenance Work, including civil or criminal liability, imposition of environmental liens and fines and expenditures of funds to bring the Project and the Operations and Maintenance Work into compliance. In addition, changes in existing laws or regulations could have an adverse effect on the Project and Operations and Maintenance Work. The D&C Contract allocates a number of these risks with respect to the Project to the D&C Contractor (see "– Risks Related to the Project" above).

In addition, soil and groundwater at the Premises have been affected by releases of petroleum hydrocarbons and contaminants, primarily relating to the use of underground fuel storage tanks. Several areas within the Premises footprint have been the subject of remediation to address such releases; however, it is anticipated that contamination will be encountered during the course of excavation for the Project. The Project budget has addressed the potential costs of soil and groundwater contamination encountered during construction. However, the presence of contamination could have an adverse impact on the Project schedule or on the costs associated with the Operations and Maintenance Work at the Airport.

Climate change concerns may have an adverse financial impact on the airline industry that could be significant (see “– Future Environmental Regulatory Developments, such as Climate Change Regulations in the United States and Abroad Could Adversely Affect Operations and Increase Operating Costs in the Airline Industry” below).

### **Risks Related to Damage or Destruction of Terminal 7 and Terminal 6 and Adequacy and Availability of Insurance**

The Borrower is obligated under the Lease Agreement to obtain and keep in force comprehensive insurance, including all-risk property damage insurance covering the full replacement cost of Terminal 7, Terminal 6 and the Ground Transportation Center. See APPENDIX B-4 – “REPORT OF THE INSURANCE CONSULTANT.” In the event, however, that the insurance required under the Lease Agreement is not commercially available, the Borrower may request a reduction or waiver of insurance requirements pursuant to a procedure provided for in the Lease Agreement. The insurance required under the Financing Documents incorporates the requirements of the Lease Agreement. The Borrower is also required to cause airline or concession sublessees as well as certain contractors to maintain certain comprehensive insurance coverages naming the Borrower and certain other parties as additional insureds and loss payees thereunder.

The proceeds of casualty insurance may only be used to repair or replace Terminal 7 or Terminal 6 or, if applicable, the Ground Transportation Center, and no proceeds will be available under the Lease Agreement for repayment of the Series 2024 Bonds or Loan Facility or for any other purpose until the Premises have been restored as required by the Lease, to the Port Authority’s satisfaction. There can be no assurance that such comprehensive insurance coverage will be available in the future on commercially reasonable terms or that the amounts for which the Borrower is insured (including as additional insured or loss payee under any insurance policies of airline or concession sublessees or the Borrower’s contractors) or amounts that the Borrower receives under such insurance coverage will be sufficient to rebuild any damaged facility to the condition, capacity, or efficiency of the previously existing facility.

Under the Lease Agreement, if, following a casualty event (other than a casualty event resulting from the gross negligence or willful misconduct of the Borrower or a contractor of the Borrower), insufficient insurance proceeds are received by the Borrower to reconstruct the damaged facility in accordance with the original plans and specifications for such facility, the Borrower may promptly propose to the Port Authority a plan with respect to (i) reasonable modifications to the affected facilities that would allow such facilities to be restored, replaced and rebuilt, solely with the insurance proceeds made available for such purpose at least to the extent of the value and as nearly as possible to the condition, quality, and class of such affected facility existing immediately prior to such casualty, (ii) to modify the Lease Agreement as may be necessary or appropriate in light of the proposed modifications to the affected facility, and/or (iii) any refinancing the Borrower would propose to incur in connection with such restoration.

There can be no assurance that any modified facility rebuilt pursuant to agreement by the Borrower and the Port Authority as a result of insufficient insurance proceeds will be able to produce sufficient revenues to enable the Borrower to meet its payment obligations with respect to the Series 2024 Bonds and Loan Facility.

### **Risks Relating to Lack of Title Insurance; No Legal Description**

No mortgagee title insurance has been or will be obtained with respect to the Leasehold Mortgages. Accordingly, there is no direct source of payment to cover defects in title or intervening liens, including



any mechanics liens that may arise during construction, nor is there any third party obligated to defend the respective liens of the Leasehold Mortgages.

The Lease Agreement describes the Premises by reference to certain diagrams rather than a metes and bounds legal description. Accordingly, the Leasehold Mortgages have been recorded against the tax block and lot of the Airport and include those diagrams to indicate the portion of the Airport covered by the Lease Agreement and the Leasehold Mortgages. Without a more precise legal description of the Premises no assurance can be given that recording will provide adequate notice of the boundaries of Collateral Agent's interest in the Premises under the Leasehold Mortgages. As a result, other parties may not be precluded from asserting claims with regard to portions of the Premises.

### **Risks Related to New York Lien Law; Effect of Failure to Comply**

Under the New York Lien Law mechanics' liens filed by contractors, suppliers or others granted lien rights under the Lien Law may take priority over certain mortgages, even if the mortgages were recorded prior to the filing of such mechanics liens. The lien priority of mortgages securing certain construction-related costs may be protected against such subsequently filed liens if certain requirements are met. Among the requirements under Section 22 of the Lien Law are the filing of an affidavit setting forth the consideration for the loan and the net amount available for "costs of the improvement" as defined in the Lien Law, filing of a building loan contract in the county clerk's office prior to the recordation of the mortgage securing such amount, and filing any modification to the building loan contract within 10 days after the execution of any such modification. The failure by the Borrower and the Collateral Agent to comply with the applicable provisions of the New York Lien Law could result in the lien of the Senior Building Leasehold Mortgage becoming subordinated to mechanics, materialman's and other intervening lienors.

### **Risks Related to Exemption From Mortgage Recording Tax**

New York State imposes a tax on the recording of mortgages and of certain related documents. The tax is payable at the time of recording. In the event that a mortgage is recorded without payment of the proper mortgage recording tax then neither the mortgage nor the obligations it secures can be enforced until the tax and any accrued interest and penalties are paid.

Based on a mortgage recording tax exemption cited in advisory opinions rendered to local development corporations organized under the same New York State statute as the Issuer and common practice, the Leasehold Mortgages were submitted, and certain notices confirming that the Series 2024 Bonds are secured under the Leasehold Mortgages will be submitted, for recording without payment of mortgage recording tax.

There can be no assurance that governmental authorities will not challenge the mortgage recording tax exemption asserted in respect of the Leasehold Mortgages in a subsequently conducted audit or otherwise. If it is determined that such taxes are or were payable when the Leasehold Mortgages, or certain notices confirming that the Series 2024 Bonds are secured under the Leasehold Mortgages, were submitted for recording, the Borrower will be obligated to pay them but no Borrower funds are currently budgeted for this contingency.

## **Certain Airport Regulatory Considerations**

### ***General***

The Port Authority and the Airport are subject to various federal statutory, regulatory and contractual requirements concerning the lease, construction and operation of Terminal 7 and Terminal 6.

It is not possible to predict whether future legislation, regulations, policies, orders, restrictions or limitations on the Airport, the Project, or operation of Terminal 7, Terminal 6 and the Ground Transportation Center will be imposed. Each could be adversely affected if statutory or regulatory changes are implemented that (i) impose more comprehensive or stringent restrictions or requirements on the Airport and on the Airport's facilities, or (ii) otherwise impair the Borrower's ability to operate Terminal 7 and Terminal 6.

### ***Available Slots***

Based on the significant demand for airline service from within the New York metropolitan area, as well as the practical limitations affecting the region's air traffic space and the runway capacity at the Airport, the FAA has established limits on the number of flight operations that airlines may schedule during peak operating periods each day at the Airport. The FAA has also established similar types of limitations at each of LaGuardia Airport and Newark Liberty International Airport.

Under the FAA's current Order on Operating Limitations for the Airport (the "O/A Order"), which was initially published in January 2008 and was most recently extended to October 2026, scheduled flight take-offs and landings (each an "Operating Authorization") at the Airport are limited to 81 per hour during peak operating hours at the Airport. Operating Authorizations have been allocated to airlines operating at the Airport by the FAA, and in general, airlines with Operating Authorizations may also lease or trade Operating Authorizations with other airlines, following FAA approval, so long as the arrangement does not extend beyond the current expiration date of the O/A Order. Accordingly, for so long as the FAA's current O/A Order or similar flight limitations for the Airport remain in effect, an airline's ability to initiate or increase scheduled service to and from the Airport will necessarily depend upon that airline having or obtaining from the FAA unused or reallocated Operating Authorizations, or being able to obtain leased or traded Operating Authorizations from other airlines, at its desired operating times.

There can also be no assurance given that the FAA or other governmental agencies having jurisdiction will not enact even stricter limitations on flight activity at the Airport in light of the growing demand for air travel in the New York metropolitan area and its impact on the region's air traffic space and area airports.

### ***Regulatory Considerations Regarding Airline Rates***

Under applicable federal statutes, U.S. Department of Transportation ("DOT") and FAA policy, FAA grant assurances and judicial precedent, airport fees and rates and charges levied on air carriers for services and facilities at U.S. airports that receive federal grants must be fair and reasonable and not unjustly discriminatory.

Specifically, under DOT/FAA policy, airfield fees (e.g., for use of runways) are required to be based on historic costs, but non-airfield aeronautical facility (e.g., passenger terminal facilities) fees can be based on any reasonable methodology, including but not limited to direct negotiation with users, so-called "compensatory" rates based on historic cost valuation, or an objective and justified determination of

fair market value. Airport proprietors also cannot subject air carriers to “unjust discrimination” in fees and operating conditions. This obligation requires that air carriers making similar use of an airport be charged substantially comparable rates and charges and receive similar treatment, although airports are permitted to make reasonable classifications among airlines such as classifications based on signatory or non-signatory status, and to offer reasonable price reductions to volume purchasers or users of airport services. As proprietor of the Airport, the Port Authority must assure compliance with all these standards and could be held accountable for any non-compliance. The Port Authority has in turn required the Borrower to comply with these standards pursuant to the Lease.

The Borrower intends for its current and future fee structures for airline use of both Terminal 7 Facilities and Terminal 6 to comply with applicable federal statutes and DOT/FAA policy. The Borrower further believes that the fees that currently are or that are planned to be charged to airlines for their use of such facilities are and will be competitively constrained because of the presence of various alternative terminals at the Airport. The Borrower also plans to obtain the agreement of affected airlines to its proposed fees through direct negotiations with those airlines, thereby reducing the likelihood of an administrative or other legal challenge to those fees, although the Borrower retains the ability to establish airline fees unilaterally by tariff. Under applicable DOT/FAA policy and regulations, the DOT/FAA generally do not permit air carriers to challenge airport fees to which they have contractually agreed.

Nevertheless, there can be no assurance that (i) any of the Borrower’s airline fees will not be challenged by one or more air carriers as unfair or unreasonable or as unjustly discriminatory, or (ii) any of the Borrower’s airline fees will be upheld in the event of a challenge. An adverse DOT/FAA or other legally binding determination regarding any non-compliance of the Borrower’s airline fees could require the Borrower to develop alternative fees or alternative fee methodologies, and possibly to refund a portion of the challenged fees to the affected airlines, either of which events could adversely affect the Borrower’s ability to generate sufficient revenues to support its obligations, including its obligations with respect to the Series 2024 Bonds.

### **Landing Fees Levied by the Port Authority**

The Port Authority is entitled to levy certain charges directly on airline users for their use of public landing area and related areas and services at terminals at the Airport, including Terminal 7 and Terminal 6. The Port Authority levies charges for, among others, takeoff and landing of aircraft at terminals, including Terminal 7 and Terminal 6, which charges may be passed on by airlines and result in higher fares for passengers or adversely impact the operating costs of the airlines at Terminal 7 and Terminal 6. Any higher fares as a result of such changes to airline charges may negatively impact airline service and passenger demand at Terminal 7 and Terminal 6, which may negatively impact the results and operations of the Borrower.

### **Risk Factors Relating to the Airline Industry**

#### *General*

The revenues of the Borrower could be affected by the economic health of the air transportation industry or events affecting one or more of its airline users. More specifically, unfavorable events affecting the industry or specific airline users of Terminal 7 and Terminal 6 could lead one or more of such users to default with respect to its payment obligations to the Borrower and/or decrease or discontinue its operations at the Airport or Terminal 7 or Terminal 6. Decreased passenger service by a specific airline or a decreased demand for air travel more generally could also adversely affect the Borrower’s non-airline revenues, which are sensitive to passenger traffic levels. The Borrower makes no representation concerning the financial

health of any airline user and no assurance can be given regarding the impact, if any, that future unfavorable events affecting Terminal 6's airline users or the airline industry more broadly might have upon the Borrower or its operations at Terminal 7 and Terminal 6.

In general, the airline industry has been cyclical and characterized by high sensitivity to general economic conditions and other factors.

***Reduced Fares and Profitability may Result from Lower Demand and Overcapacity Because of the Airline Industry's Sensitivity to Unfavorable Economic Conditions and Changing Volatility***

Until recently, the airline industry had undergone structural changes and sustained significant financial losses. The economic condition of the industry is highly competitive and volatile. The industry is sensitive to a variety of factors, including (i) the cost and availability of fuel, labor, aircraft, and insurance, (ii) general economic conditions, (iii) international trade, (iv) currency values, (v) competitive considerations, including the effects of airline ticket pricing, (vi) traffic and airport capacity constraints, (vii) governmental regulation, including security regulations and taxes imposed on airlines and passengers, and maintenance and environmental requirements, (viii) passenger demand for air travel, (ix) disruption caused by airline accidents, criminal incidents and acts of war or terrorism, (x) the cost and availability of financing, (xi) the capacity of the national air traffic control system, (xii) national and international disasters and hostilities, (xiii) public health concerns and pandemics, such as the spread of COVID-19, influenza, severe acute respiratory syndrome or other communicable diseases, (xiv) the cost and availability of employees and labor relations within the airline industry, (xv) regulation by the federal government, (xvi) environmental risks, noise abatement concerns and regulation, (xvii) acts of war or terrorism, (xviii) aircraft manufacturing defects or supply chain disruptions, and (xix) other risks. Due to the discretionary nature of business and personal travel spending, airline passenger traffic and revenues are heavily influenced by the strength of the U.S. and other countries' economies, other regional and international economies, corporate profitability, safety and security concerns and other factors. Ongoing structural changes to the industry are the result of a number of factors including the impact of low cost airlines, declines in business travel due to technological change, internet travel web sites and airlines reorganizing under applicable bankruptcy (or similar) law. Some airlines operating at the Airport have emerged from bankruptcy reorganizations or have recently entered bankruptcy over the past several years. Airlines may file for bankruptcy protection in the future.

Further, alliances, mergers and other forms of industry consolidation, including antitrust immunity grants, may take place and may or may not involve airlines serviced at Terminal 7 or Terminal 6 as participants. Depending on which airlines combine, or seek to combine, and which assets, if any, are sold or otherwise transferred to other airlines in connection with such combinations, and whether combinations sought by various airlines are or are not ultimately consummated, the competitive position of airlines serviced at Terminal 7 or Terminal 6 relative to the other airlines that have, or have not, participated in consolidations, could be harmed and day-to-day operations at Terminal 7 or Terminal 6 could be affected.

The financial performance of the air transportation industry correlates with the state of the national economy and the global economy. Prolonged periods of stagnant or weak economic conditions (including high inflation) could have a material adverse effect on business, financial condition and operating results in the industry. Economic downturns generally lead to an overall decline in flight demand. Because airlines have relatively high fixed costs, much of which cannot be mitigated during periods of lower demand for air travel, they are particularly sensitive to changes in economic conditions. A reduction in the demand for air travel due to unfavorable economic conditions also limits their ability to raise fares to counteract increased fuel, labor and other costs. Deterioration in either the domestic and/or global economy may therefore have a material impact on revenue in the industry. Future increases in passenger traffic will depend largely on

the ability of the U.S. and other countries to sustain growth in economic output and income. Following significant and dramatic changes which occurred in the financial markets in September 2008, the global economy experienced a recession followed by weak growth. There can be no assurances that prolonged weak economic conditions or other national and international fiscal or health-pandemic related concerns will not have an adverse effect on the air transportation industry, particularly over the full term of the Lease Agreement. Finally, volatility in the financial and credit markets may have a material adverse effect on the financial condition of airline companies, because such economic conditions could make it difficult for certain airlines to obtain financing on acceptable terms to refinance certain maturing debt and to meet future capital commitments.

***High and/or Volatile Fuel Prices or Significant Disruptions in the Supply of Aircraft Fuel Could have a Material Adverse Impact on the Operating Results of Airline Companies***

The price and availability of fuel is a critical and uncertain factor affecting airline operating economics. The price of oil and the associated cost of jet fuel is the largest single cost affecting the airline industry. The volatility in jet fuel prices, which track just above crude oil prices, has significantly affected airlines' operating costs over the past several years.

Fuel costs are expected to remain volatile and may affect future passenger traffic levels, which depend on stable international conditions as well as national and global economic health. Future financial losses could force airlines to further retrench, merge, consolidate, seek bankruptcy protection, discontinue marginal operations, or liquidate. The restructuring, merging, or liquidation of one or more of the large network airlines could drastically affect air service at many connecting hub airports, offer business opportunities for the remaining airlines, and change air travel patterns throughout the U.S. and the world aviation system.

Although fuel cost is of major importance to the airline industry, future prices and availability are uncertain and fluctuate based on numerous factors. These can include supply-and-demand expectations, geopolitical events, fuel inventory levels, monetary policies, regulatory efforts to reduce aircraft emissions and economic growth estimates. Historically, certain airlines have also employed fuel hedging as a practice to provide some protection against future fuel price increases. While fuel hedging has generally not been used by airlines in recent years, it remains as a potential option to mitigate fuel cost risk.

***Aviation Safety and Security Concerns***

Concerns about the safety of airline travel and effectiveness of security precautions, particularly in the context of international hostilities, terrorist attacks, increased threat levels and world health concerns may influence passenger travel behavior and airline travel demand.

In early January 2024, the FAA ordered the temporary grounding of Boeing 737-9 MAX aircraft operated by U.S. airlines or in U.S. territory following an incident on Alaska Airlines during which a plug door malfunctioned. On January 24, 2024, the FAA approved an inspection and maintenance process that each Boeing 737-9 MAX aircraft must undergo before being eligible to return to service. In March 2024, the FAA halted production expansion of the Boeing 737 MAX and continued its increased onsite presence at Boeing's facility in Renton, Washington and Spirit AeroSystems' facility in Wichita, Kansas. Future safety issues (or the perception thereof) with respect to aircraft which serve the Airport, as well as any associated manufacturing and production impacts could result in reduced passenger traffic.

Aviation industry supply chain issues are also impacting the airline industry, including, but not limited to, engines, airframes and other parts. At this time, it is uncertain when such supply chain issues will resolve.

### ***Demand for Air Travel***

Airline fares have an important effect on passenger demand, particularly for price-sensitive “discretionary” travel, such as vacation travel. Airfares are influenced by airline operating costs and debt burden, passenger demand, capacity and yield management, market presence and competition. If airlines are unable to charge fares sufficiently high to cover operating costs and interest expense they will experience financial difficulty, which could adversely affect airline revenues and profits.

### ***Capacity of Air Traffic Control and Airport Systems***

Demand on air traffic control systems continue to cause aircraft delays and restrictions, both on the number of aircraft movements in certain air traffic routes and on the number of landings and takeoffs at certain airports (including the Airport). These restrictions affect airline schedules and passenger traffic nationwide, including the Airport. The FAA has made certain improvements to the computer, radar and communications equipment of the air traffic control system in recent years, but no assurances can be given that future increases in airline and passenger traffic will not again adversely affect airline operations.

### ***Economic Base for Airport’s Trade Area; Additional Economic Variables Impacting the Airport***

The demand for air transportation is largely dependent upon the demographic and economic characteristics of its surrounding geographical area. The relationship between the demographic and economic characteristics of an area and its demand for travel is particularly strong for origin and destination (O&D) passenger traffic, which, as previously noted, has historically accounted for the largest portion of airline traffic demand at the Airport – approximately 80 percent in 2023, according to the Airport Consultant’s Report. As a result, the major portion of demand for air travel at the Airport is influenced more by the local and national socioeconomic characteristics of the Airport’s Air Trade Area (consisting of the New York-Newark-Jersey City, NY-NJ-PA Metropolitan Statistical Area and the Bridgeport-Stamford-Norwalk, CT Metropolitan Statistical Area) than by individual airline decisions regarding air service patterns, including connecting activity.

The Airport serves the largest population base in the United States with high household and per capita personal income and benefits from a large and diverse economic base that supports business and leisure travel. From 2012 to 2022, the Air Trade Area gross regional product (GRP) averaged approximately 9.0 percent of the annual US GDP. In 2023, New York City was ranked the wealthiest city in the world, with the City’s cumulative wealth of more than \$3 trillion. The City receives the most visitors of any US city and consistently ranks in the top 10 most visited cities globally. Projected economic variables indicate that the Air Trade Area will remain a destination that attracts both business travelers and tourists, positively affecting the demand for future inbound airline travel. Projected Air Trade Area economic variables further support the continued increase in numbers of local outbound passengers. See “APPENDIX B-1 “REPORT OF THE AIRPORT CONSULTANT.”

Many additional factors have combined to alter consumer travel patterns. The threat of terrorism remains a key factor in passenger travel decisions. As a result, national governments have mandated various security measures that have resulted in new security taxes and fees, longer passenger processing and wait times at airports and higher operating costs. Both add to the costs of air travel and make air travel less attractive to consumers relative to ground transportation, especially to short-haul destinations.

### ***Terrorist Attacks, Political Uprisings, Armed Conflicts, their Consequences, or the Fear of Such Occurrence Could Negatively Affect the Borrower, Even if not Directed at the Airline Industry***

Terrorist attacks, political uprising and armed conflicts worldwide have had significant negative effects on the international airline industry in the past. The attacks of September 11, 2001 and the continuing threat posed by terrorist attacks, including bioterrorism and new forms of terrorism, materially impacted and continue to impact air travel.

Since September 11, 2001, the recurrence of terrorism incidents against either domestic or world aviation has remained a risk to achieving forecast levels of activity. Tighter security measures have restored the public's confidence in the integrity of the US and global aviation security systems. However, any terrorist incident targeting aviation could have an immediate and significant impact on the demand for air travel. Additionally, geopolitical issues may affect aviation activity. Potential governmental or regional instability in certain countries or locations may affect access to, or demand for, aviation service in these places. The Russian invasion of Ukraine, which began in February 2022, is still ongoing. The conflict has resulted in the closure of airspace over Russia and Ukraine to most airlines. Restrictions on Russian airlines have resulted in the suspension of nearly all service between Russia and other countries. These restrictions have limited airlines' ability to operate certain nonstop routes that would otherwise overfly Russia or Ukraine. Additionally, conflict in the Middle East region, involving Israel, Iran and armed terrorist organizations that operate in the region such as Hamas or Hezbollah, which escalated in October 2023, remains an evolving situation. Further developments in these conflicts could exacerbate geopolitical and economic uncertainty and potentially impact demand for travel to certain regions. As the largest international gateway airport in the US (as measured by arriving international passengers), the Airport provides service to nearly all major regions of the world, and the Borrower expects that international airlines servicing foreign destinations will be the primary airline tenants at Terminal 7 and Terminal 6. Future geopolitical instability may affect international aviation service demand. The possibility of intensified international hostilities and further terrorist attacks involving or affecting commercial aviation are a continuing concern that may affect future travel behavior and airline passenger demand.

Terminal 7 and Terminal 6 are high-profile potential targets at a high-profile Airport in a high-profile metropolitan area. There can be no assurance that Terminal 7 and Terminal 6 themselves will not be directly affected by a terrorist attack.

Further, future enhanced securities procedures may significantly increase inconvenience and delays at airports, including the Airport, again impacting passenger demand for air travel.

### ***Unmanned Aerial Vehicles***

With the proliferation of inexpensive, commercially available, unmanned aerial vehicles ("UAVs"), or drones, the threat that unauthorized and unsafe UAV operations near airports could adversely affect the safety or security of United States airports and arriving or departing aircraft has increased significantly in recent years. An unauthorized UAV incursion at the Airport could be the source for a potential terrorist attack or assault on the Airport infrastructure and therefore could result in the temporary delay or cancellation of flights to or from Terminal 7 and Terminal 6 as well as harm the Airport's brand, reputation and the Borrower's relationships with customers, airlines and concessionaires.

### ***Mergers and Acquisitions***

US and foreign airlines have merged or acquired competitors to achieve operational and commercial synergies and to improve their financial performance. Consolidation across the industry has

resulted in the realignment of several airline route networks as airlines have sought to improve network efficiency. Further consolidation of the US or foreign airline industry could affect the amount of capacity offered at the Airport and could alter the competitive landscape

***Extensive Government Regulation Could Increase an Airline's Operating Costs and Restrict its Ability to Conduct its Business***

Airlines are subject to extensive regulatory and legal requirements in the U.S. and internationally. As an example, in the United States, Congress has passed laws, and the FAA has issued a number of maintenance directives and other operating regulations, that impose substantial costs on airlines. In January 2014, the FAA's more stringent pilot flight and duty time requirements under Part 137 of the Federal Aviation Regulations took effect, which has increased costs for all airlines. In July 2014, minimum qualifications took effect for airline first officers and the U.S. Congress is currently considering legislation that, among other things, would increase passenger rights and require certain new security measures, further increasing airline operating costs. Internationally, additional laws, regulations, taxes and airport charges have been proposed from time to time that could significantly increase the cost of airline operations or reduce revenues. The ability of an airline to operate international routes is subject to change because the applicable arrangements between the governments may be amended from time to time, or because appropriate slots or facilities may not be available.

***Future Environmental Regulatory Developments, such as Climate Change Regulations in the United States and Abroad Could Adversely Affect Operations and Increase Operating Costs in the Airline Industry***

Numerous scientific studies on global climate change show that, among other effects on the global ecosystem, sea levels will rise, extreme temperatures will become more common and extreme weather events will become more frequent as a result of increasing global temperatures attributable to atmospheric pollution. Over the next 25 to 100 years, such extreme events and conditions are expected to increasingly disrupt and damage critical infrastructure and property as well as regional economies and industries that depend on natural resources and favorable climate conditions. Disruptions could include more frequent and longer-lasting power outages, fuel shortages and service disruptions. Coastal public infrastructure may be threatened by the continued increase in the frequency and extent of high-tide flooding due to sea level rise, and inland infrastructure, including access to roads, the viability of bridges and the safety of pipelines, may be affected by increases in the severity and frequency of heavy precipitation events. Near-coastal areas like the greater New York City metropolitan area (which contains areas of land that are at or near sea level) may be at risk of substantial flood damage over time, affecting private development and public infrastructure. As a result, many residents, businesses, and governmental operations within this area could be negatively impacted and possibly displaced, reducing demand for air and land travel to or from the greater New York City metropolitan area.

Climate change concerns have led, and may continue to lead, to new laws and regulations at the federal and state levels that could have a material adverse effect on the operations of Terminal 6 and also could affect ground operations at airports. The U.S. Environmental Protection Agency ("EPA") has taken steps towards the regulation of greenhouse gas ("GHG") emissions under existing federal law. Those steps may in turn lead to further regulation of aircraft GHG emissions. Regulation by the EPA can be initiated by private parties or by governmental entities other than the EPA. The EPA has stated its intent to propose GHG emission standards for covered aircraft that will be at least as stringent as emission standards under development by the International Civil Aviation Organization, which were adopted in 2017. The Borrower cannot predict what the EPA's emission standards will be or what effect those standards may have on the Borrower or air traffic at the Airport. The effects, however, could be material. On January 11, 2021, the



EPA issued a final rule entitled Control of Air Pollution from Airplanes and Airplane Engines: GHG Emission Standards and Test Procedures, 86 Fed. Reg. 2136 (Jan. 11, 2021). The rule adopts GHG standards equivalent to those adopted by the International Civil Aviation Organization (“ICAO”) in 2017 for certain civil subsonic jet airplanes and larger subsonic propeller-driven airplanes with turboprop engines. The standards generally apply to new type design airplanes with certification applications submitted on or after January 11, 2021 (January 1, 2023 for certain, smaller new designs) and in-production airplanes starting on January 1, 2028, but not to existing airplanes already in service. In its analysis of costs and benefits in the preamble to the rule, the EPA explained that many airplanes manufactured in the United States “already met the ICAO standards at the time of their adoption” or would be expected to do so by 2020. The impact to the Airport and Terminal 6 is not expected to be significant, and the rule does not require modifications to airports.

Extreme climate weather conditions caused by climate change may increase and disrupt airport operations, damage facilities and potentially decrease demand for travel for the upcoming decades. The frequency and severity of climate-related weather events may be expected to increase over the next decades, and airports may experience more disruptions to flights or may see fundamental damage to key physical assets like runways or terminals as a result. Climate change could result in rising sea levels, flooding and other natural disasters. Given the Airport’s location near large bodies of water, rising sea levels, flooding and other natural disasters could impact physical assets at the Airport, including at Terminal 6.

There are certain climate change laws and regulations that have already gone into effect, including the European Union Emissions Trading Scheme, environmental taxes for certain international flights, limited greenhouse gas reporting requirements and land-use planning laws which could apply to airports and could affect airlines in certain circumstances. In addition, there is the potential for additional regulatory actions in regard to the emission of greenhouse gases by the aviation industry. The precise nature of future requirements is difficult to predict, but the financial impact to the airline industry would likely be adverse and could be significant.

***Increases in Insurance Costs or Reductions in Insurance Coverage may Adversely Impact Airline Operations and Financial Results***

An airline’s ability to manage its business with an adequate level of insurance coverage against risk of losses from man-made and natural disasters is dependent on, among other things, insurance policies. There can be no guarantee that the amount of insurance coverage upon the occurrence of a man-made or natural disaster, including the loss of one or more of its aircraft for any reason, would be sufficient to cover the resulting losses. Substantial claims resulting from an accident in excess of an airline’s related insurance coverage could be harmful. Following September 11, 2001, aviation insurers significantly increased airline insurance premiums and reduced the maximum amount of coverage available to commercial airlines. Accordingly, airline insurance costs increased significantly and the ability of airlines to continue to obtain insurance even at current prices remains uncertain. Additionally, severe disruptions in the domestic and global financial markets could adversely impact the claims paying ability of some insurers. Future downgrades in the ratings of enough insurers could adversely impact both the availability of appropriate insurance coverage and its cost. Because of competitive pressures in the airline industry, the ability to pass additional insurance costs to passengers is limited. As a result, further increases in insurance costs or reductions in available insurance coverage could have an adverse impact on the financial results of airline operations.

***Union Disputes, Employee Strikes, Slowdowns, and other Labor-related Disruptions could Adversely Affect Airline Operations which Result in Increased Costs Impairing Financial Results***

The airline industry is labor intensive, utilizing large numbers of pilots, flight attendants, aircraft maintenance technicians, ground support personnel and other personnel. Strikes or labor disputes with unionized employees may adversely affect an airlines' ability to conduct business. While collective bargaining and other agreements between airline companies and their respective unions takes place regularly, a breakdown in the bargaining process could lead to industrial action, which could disrupt operations and have a material adverse effect on business performance. There can be no assurance that airlines being serviced at Terminal 6 and Terminal 7 will not experience strikes or other labor related employment disruptions.

***Airlines Rely Heavily on Technology and Automated Systems to Operate, and any Significant Failure of these Technologies or Systems Could Reduce Revenue or Harm a Company***

Airlines are highly dependent on technology and automated systems in their operations and to achieve low operating costs. These technologies and systems include computerized airline reservation systems, flight operations systems, financial planning, management and accounting systems, telecommunications systems, website, maintenance systems and check-in kiosks. The risk of a security breach or disruption, particularly through cyber-attack or cyber intrusion, including by computer hackers, foreign governments and cyber terrorists, has increased as the number, intensity and sophistication of attempted attacks and intrusions from around the world have increased. Furthermore, there has been heightened legislative and regulatory focus on data security in many countries, including requirements for varying levels of customer notification in the event of a data breach. Any disruption to computer and communications systems could significantly impair an airline's ability to operate its business efficiently and could have material adverse effects on cash flows, financial condition and results of operations.

***Aircraft Supply Chain Constraints***

Supply chain constraints causing shortages of aircraft engines, avionics, and other essential components are affecting the ability of aircraft manufacturers, including Airbus and Boeing, to produce larger, more fuel-efficient aircraft in the numbers being sought by airlines even while there is industry-wide domestic overcapacity. Such constraints are causing and may continue to cause a reduction in the number of active aircraft in fleets able to operate service, however, due to the variety and complexity of airline operation, these constraints may affect individual airlines and/or Terminal 7 and Terminal 6 with different magnitudes.

***Customs and Border Protection Staffing***

Staffing shortages and capacity limitations of the Customs and Border Protection (CBP) could be factors that might affect future activity at the Airport and at competing airports, particularly as it relates to increasing international service. For example, Terminal 7 and Terminal 6's likelihood of increasing international service will be reduced if CBP is unable to provide an adequate amount of CBP agents to process the additional incoming passengers.

***Air Traffic Control Systems and Staffing***

Capacity limitations of the national air traffic control system, the Airport and at competing airports could be factors that might affect future activity at the Airport. In the past, demands on the air traffic control

system have caused operational restrictions that have affected airline schedules and passenger traffic and caused significant delays. For example, on January 10, 2023, a failure in the FAA’s Notice to Air Missions (“NOTAM”) system, which flags potential hazards for pilots before departure, caused an approximately two-hour grounding of all passenger aircraft in the United States. The FAA concluded the outage was caused by a contractor who mistakenly deleted files in the NOTAM system database.

Over the last ten years, the FAA has made certain improvements to the computer, radar and communications equipment of the air traffic control system in recent years, but no assurances can be given that future increases in airline and passenger activity would not again adversely affect airline operations. The 2012 FAA Reauthorization Act contained numerous provisions aimed at accelerating the implementation of Next Generation Air Transport System (“NextGen”). NextGen is designed to modernize the National Airspace System from a ground-based system of air traffic control to a satellite-based system of air traffic management in order to enhance the use of airspace and runways. The 2024 FAA Reauthorization Act requires the FAA to implement certain NextGen programs by December 31, 2025 and also requires the implementation of advanced data communication capabilities by 2026 and the modernization of aeronautical information management systems by 2027.

### **Risk Factors of Future Pandemics**

The COVID-19 pandemic resulted in restrictions on passenger air travel, challenges to ordinary airline operations and severe disruptions to the global and United States economies. The COVID-19 pandemic had, and future pandemics may have, a material adverse effect on the demand for passenger air travel.

No assurances can be given that future pandemics or other currently unknown or unexpected health related governmental, political or other unforeseen crises will not have a material adverse impact on the operations of Terminal 7 and Terminal 6 or the ability of the Borrower to make payments under the TDC Loan Agreements in an amount sufficient to pay the debt service on the Series 2024 Bonds and the Loan Facility.

### **Cybersecurity Risks**

The Borrower, like many other large public and private entities, relies on a large and complex technology environment to conduct its operations, and faces multiple cybersecurity threats including, but not limited to, hacking, phishing, viruses, malware and other attacks on its computing and other digital networks and systems (collectively, “Systems Technology”). As a recipient and provider of personal, private, or sensitive information, the Borrower may be subject to data privacy and data protection regulations and may be the target of cybersecurity incidents that could result in adverse consequences to Borrower and its Systems Technology, including failure to be in compliance with such data privacy and data protection regulations, leading to requiring a response action to mitigate the consequences.

Cybersecurity incidents could result from unintentional events, or from deliberate attacks by unauthorized entities or individuals attempting to gain access to the Systems Technology for the purposes of misappropriating assets or information or causing operational disruption and damage. To mitigate the risk of business operations impact and/or damage from cybersecurity incidents or cyber-attacks, the Borrower invests in multiple forms of cybersecurity and operational safeguards.

The frequency of these threats has continued to increase alongside the intensity and sophistication thereof. In connection with the same, regulatory and legislative focus surrounding data privacy and

cybersecurity has increased. There can be no assurances at this time regarding the impacts of any such regulations.

Malicious third parties may attempt to gain access to the Borrower's systems or information, or through its business partners and third-party service providers, including through fraud or other means of deception, or introduction of malicious code, such as malware and ransomware. If successful, these actions could cause harm to the Borrower's computer systems or compromise data stored on its computer networks or those of its business partners and third-party service providers, potentially causing the Borrower to incur remedial, legal and other costs, which could be material. Hardware or software that the Borrower or its business partners or third-party service providers develop, acquire or use in connection with Borrower's systems may contain defects that could unexpectedly compromise information security.

While cybersecurity and operational safeguards are periodically tested, no assurances can be given that such measures will ensure against cybersecurity threats and attacks. A significant cybersecurity incident could result in material adverse consequences for the Borrower, including, but not limited to, loss of functionality of critical systems; loss, destruction or theft of systems or data; service or system disruptions; damage to equipment or injury to persons and property; business delays; reputational damage; litigation, regulatory enforcement or other legal action. There can be no assurances at this time what impact, if any, a cybersecurity incident would have on the operations or operating results of Terminal 7 and Terminal 6 or on the Borrower's ability to make payments under the TDC Loan Agreements, and in turn, the Series 2024 Bonds and the Loan Facility.

#### **Risks Related to Flood Risk and Possible Sea-Level Rise**

The New York State Department of Environmental Conservation ("DEC") is required under the 2014 New York State Community Risk and Resiliency Act to adopt sea-level rise projections and provide guidance to other State agencies in applying those projections. The DEC adopted revised sea-level projections in February 2017, which project a sea-level rise in New York City with a medium projection of 16 inches by the 2050s, and 29 inches by the 2080s. The Project must comply with applicable building codes and Port Authority guidelines, which take into account floodplain elevations and sea level rise in order to protect the Project from flooding to the extent practicable. It is possible, however, that despite these flood mitigation efforts, flooding events related to extreme weather or unexpectedly high sea-level rise could adversely affect the Project and the operations of the Borrower.

#### **Possible Loss of Tax-Exempt Status of Series 2024 Bonds**

On the date of delivery of and payment for the Series 2024 Bonds, Co-Bond Counsel will render its opinions with respect to the tax-exempt status of the interest on the Series 2024 Bonds, the forms of which opinions are set forth in APPENDIX K. See also "PART 18 – TAX MATTERS."

As described under "PART 2 – DESCRIPTION OF THE SERIES 2024 BONDS – Redemption of the Series 2024 Bonds – Extraordinary Redemptions," the Series 2024 Bonds may be subject to mandatory redemption in whole or in part upon a Determination of Taxability. However, the definition of Determination of Taxability does not apply to every situation in which the interest on the Series 2024 Bonds may be determined to be includable in gross income of holders or Beneficial Owners thereof for federal tax purposes. If the interest on the Series 2024 Bonds is determined to be includable in gross income of holders or Beneficial Owners thereof for federal tax purposes for a reason other than a Determination of Taxability, the Series 2024 Bonds are not subject to redemption solely as a consequence thereof, and the principal thereof is not required to be accelerated by the Trustee.

Further, a determination that the interest on the Series 2024 Bonds is includable in gross income of the holders or Beneficial Owners may not occur for a substantial period of time after interest first becomes includable in the gross income of the owners thereof for federal income tax purposes. The loss of the exclusion of the interest on any Series 2024 Bonds from gross income of the owners thereof for federal income tax purposes could be retroactive on which the Series 2024 Bonds are issued. The tax liability of the owners of any Series 2024 Bonds for failure to include interest on such Series 2024 Bonds in their gross income may extend to years for which interest was received or accrued on such Series 2024 Bonds, or some portion thereof, and for which the relevant statute of limitations has not yet run.

Other than if and to the extent applicable in connection with an extraordinary redemption as described under “PART 2 – DESCRIPTION OF THE SERIES 2024 BONDS – Redemption of the Series 2024 Bonds – Extraordinary Redemptions,” no additional interest or penalty is payable in the event of the taxability of interest on the Series 2024 Bonds.

### **Risks of Bond Insurer Deemed Owner of Insured Bonds**

So long as there is no default under the Policy, the Bond Insurer will be deemed the owner of the Insured Bonds for purpose of all actions relating to the Insured Bonds which require the consent, direction or request of the Series 2024 Bondholders of the Insured Bonds. Pursuant to the Indenture, each holder of the Insured Bonds will appoint the Bond Insurer as its agent and attorney-in-fact with respect to the Insured Bonds. See APPENDIX D-1 – “FORM OF TRUST INDENTURE.” The Bond Insurer may have interests that differ from the holders of the Insured Bonds and may not make the same decision with respect to the foregoing that a holder would make. So long as there is no default on the Policy, Series 2024 Bondholders will not be permitted to override the decisions of the Bond Insurer with respect to the Insured Bonds.

### **Risks Related to the Borrower’s Business – Internal Controls**

The Borrower’s independent auditors, KPMG LLP, identified certain material weaknesses in connection with its audit of the Borrower’s internal control over financial reporting and financial statements for the fiscal years ended December 31, 2022 and December 31, 2023. See APPENDIX C-1 – “CONSOLIDATED FINANCIAL STATEMENTS AND INDEPENDENT AUDITORS’ REPORT.” A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the entity’s financial statements will not be prevented, or detected and corrected, on a timely basis.

The Borrower was established in August 2022 and achieved financial close on the Loan Facility on the Original Closing Date, at which point the Management Services Agreement went into effect and the Borrower commenced primary operations. In connection with the Borrower’s fiscal year ended December 31, 2022, KPMG reported three material weaknesses: (i) lack of an adequate number of personnel in its accounting and related functions to ensure appropriate segregation of duties; (ii) absence of controls in place to ensure that all journal entries are reviewed by someone other than the initial preparer; and (iii) lack of adequate controls to ensure appropriate accounting treatment of non-routine technical accounting matters. In connection with the Borrower’s fiscal year ended December 31, 2023, KPMG reported one remaining material weakness: lack of adequate controls to ensure appropriate accounting treatment of non-routine technical accounting matters.

The Borrower has implemented, or is in the process of implementing, measures designed to improve its internal control over financial reporting to address the underlying causes of the identified material weaknesses, including (i) hiring qualified staff for key roles in finance and accounting operations to promote adequate segregation of duties; (ii) establishing additional levels of reviews and approvals of

journal entries and non-routine transactions; (iii) enhancing the design of its monthly and quarterly financial close checklists; (iv) formalizing the delegation of responsibility and timing for the preparation and review of its financial close checklist; and (v) performing a full U.S. GAAP financial statement close for the nine-month period ending September 30, 2024. Management of the Borrower believes that the identified material weaknesses have been remediated as of the date hereof.

While management of the Borrower believes that all the identified material weaknesses have been remediated as of the date hereof, if the Borrower fails to achieve and maintain effective internal control over financial reporting, it could result in material misstatements in its financial statements and could also impair its ability to provide financial statements on a timely basis. Ineffective internal control over financial reporting could expose the Borrower to increased risk of fraud or misuse of corporate assets, potential regulatory investigations and civil or criminal sanctions in addition to other adverse operating impacts (including, but not limited to, adversely impacting the Borrower's access to capital markets).

For purposes of this section, "U.S. GAAP" means generally accepted accounting principles in the United States set forth by the Financial Accounting Standards Board (FASB).

## **PART 18 – TAX MATTERS**

### **General**

In the opinion of Squire Patton Boggs (US) LLP and Hardwick Law Firm, LLC, Co-Bond Counsel, under existing law: (i) interest on the Series 2024 Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), except interest on any Series 2024 Bonds for any period during which it is held by a "substantial user" of the facilities financed or a "related person" of such substantial user, as those terms are used in Section 147(a) of the Code, and is an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals; and (ii) interest on the Series 2024 Bonds is exempt from personal income taxes imposed by the State of New York (the "State") and political subdivisions thereof, including the City and the City of Yonkers, so long as that interest is excluded from gross income for federal income tax purposes. Co-Bond Counsel expresses no opinion as to any other tax consequences regarding the Series 2024 Bonds.

The opinion on tax matters will be based on and will assume the accuracy of certain representations and certifications, and continuing compliance with certain covenants, of the Issuer, the Borrower, and other applicable entities contained in the transcript of proceedings and that are intended to evidence and assure the foregoing, including that the Series 2024 Bonds are and will remain obligations the interest on which is excluded from gross income for federal income tax purposes. Co-Bond Counsel will not independently verify the accuracy of those representations and certifications or the continuing compliance with those covenants.

The opinion of Co-Bond Counsel is based on current legal authority and covers certain matters not directly addressed by such authority. It represents Co-Bond Counsel's legal judgment as to exclusion of interest on the Series 2024 Bonds from gross income for federal income tax purposes but is not a guaranty of that conclusion. The opinion is not binding on the Internal Revenue Service (the "IRS") or any court. Co-Bond Counsel expresses no opinion about (i) the effect of future changes in the Code and the applicable regulations under the Code or (ii) the interpretation and the enforcement of the Code or those regulations by the IRS.

The Code prescribes a number of qualifications and conditions for the interest on state and local government obligations to be and to remain excluded from gross income for federal income tax purposes,

some of which require future or continued compliance after issuance of the obligations. Noncompliance with these requirements by the Issuer, the Borrower, or other applicable entities may cause loss of such status and result in the interest on the Series 2024 Bonds being included in gross income for federal income tax purposes retroactively to the date of issuance of the Series 2024 Bonds. The Borrower and, subject to certain limitations, the Issuer have each covenanted to take the actions required of it for the interest on the Series 2024 Bonds to be and to remain excluded from gross income for federal income tax purposes, and not to take any actions that would adversely affect that exclusion. After the date of issuance of the Series 2024 Bonds, Co-Bond Counsel will not undertake to determine (or to so inform any person) whether any actions taken or not taken, or any events occurring or not occurring, or any other matters coming to Co-Bond Counsel's attention, may adversely affect the exclusion from gross income for federal income tax purposes of interest on the Series 2024 Bonds or the market value of the Series 2024 Bonds.

Interest on the Series 2024 Bonds may be subject: (1) to a federal branch profits tax imposed on certain foreign corporations doing business in the United States; (2) to a federal tax imposed on excess net passive income of certain S corporations; and (3) to the alternative minimum tax imposed under Section 55(b) of the Code on "applicable corporations" (within the meaning Section 59(k) of the Code). Under the Code, the exclusion of interest from gross income for federal income tax purposes may have certain adverse federal income tax consequences on items of income, deduction or credit for certain taxpayers, including financial institutions, certain insurance companies, recipients of Social Security and Railroad Retirement benefits, those that are deemed to incur or continue indebtedness to acquire or carry tax-exempt obligations, and individuals otherwise eligible for the earned income tax credit. The applicability and extent of these and other tax consequences will depend upon the particular tax status or other tax items of the owner of the Series 2024 Bonds. Co-Bond Counsel will express no opinion regarding those consequences.

Payments of interest on tax-exempt obligations, including the Series 2024 Bonds, are generally subject to IRS Form 1099-INT information reporting requirements. If a Series 2024 Bond owner is subject to backup withholding under those requirements, then payments of interest will also be subject to backup withholding. Those requirements do not affect the exclusion of such interest from gross income for federal income tax purposes.

Co-Bond Counsel's engagement with respect to the Series 2024 Bonds ends with the issuance of the Series 2024 Bonds, and, unless separately engaged, Co-Bond Counsel is not obligated to defend the Issuer, the Borrower or the owners of the Series 2024 Bonds regarding the tax status of interest thereon in the event of an audit examination by the IRS. The IRS has a program to audit tax-exempt obligations to determine whether the interest thereon is includible in gross income for federal income tax purposes. If the IRS does audit the Series 2024 Bonds, under current IRS procedures, the IRS will treat the Issuer as the taxpayer and the beneficial owners of the Series 2024 Bonds will have only limited rights, if any, to obtain and participate in judicial review of such audit. Any action of the IRS, including but not limited to selection of the Series 2024 Bonds for audit, or the course or result of such audit, or an audit of other obligations presenting similar tax issues, may affect the market value of the Series 2024 Bonds.

Prospective purchasers of the Series 2024 Bonds upon their original issuance at prices other than the respective prices indicated on the inside cover of this Official Statement, and prospective purchasers of the Series 2024 Bonds at other than their original issuance, should consult their own tax advisors regarding other tax considerations such as the consequences of market discount, as to all of which Co-Bond Counsel expresses no opinion.

## **Risk of Future Legislative Changes and/or Court Decisions**

Legislation affecting tax-exempt obligations is regularly considered by the United States Congress and may also be considered by the State legislature. Court proceedings may also be filed, the outcome of which could modify the tax treatment of obligations such as the Series 2024 Bonds. There can be no assurance that legislation enacted or proposed, or actions by a court, after the date of issuance of the Series 2024 Bonds will not have an adverse effect on the tax status of interest on the Series 2024 Bonds or the market value or marketability of the Series 2024 Bonds. These adverse effects could result, for example, from changes to federal or state income tax rates, changes in the structure of federal or state income taxes (including replacement with another type of tax), or repeal (or reduction in the benefit) of the exclusion of interest on the Series 2024 Bonds from gross income for federal or state income tax purposes for all or certain taxpayers.

For example, federal tax legislation that was enacted on December 22, 2017, reduced corporate tax rates, modified individual tax rates, eliminated many deductions, repealed the corporate alternative minimum tax that was in effect at the time, and eliminated the tax-exempt advance refunding of tax-exempt bonds and tax-advantaged bonds, among other things. Additionally, investors in the Series 2024 Bonds should be aware that future legislative actions might increase, reduce or otherwise change (including retroactively) the financial benefits and the treatment of all or a portion of the interest on the Series 2024 Bonds for federal income tax purposes for all or certain taxpayers. In all such events, the market value of the Series 2024 Bonds may be affected and the ability of holders to sell their Series 2024 Bonds in the secondary market may be reduced.

Investors should consult their own financial and tax advisers to analyze the importance of these risks.

## **Original Issue Discount and Original Issue Premium**

Certain of the Series 2024 Bonds (“Discount Series 2024 Bonds”) may be offered and sold to the public at an original issue discount (“OID”). OID is the excess of the stated redemption price at maturity over the “issue price” of a Discount Series 2024 Bonds. The issue price of a Discount Series 2024 Bonds is the initial offering price to the public (other than to bond houses, brokers or similar persons acting in the capacity of underwriters or wholesalers) at which a substantial amount of the Discount Series 2024 Bonds of the same maturity is sold pursuant to that offering. For federal income tax purposes, OID accrues to the owner of a Discount Series 2024 Bonds over the period to maturity based on the constant yield method, compounded semiannually (or over a shorter permitted compounding interval selected by the owner). The portion of OID that accrues during the period of ownership of a Discount Series 2024 Bonds (i) is interest excluded from the owner’s gross income for federal income tax purposes to the same extent, and subject to the same considerations discussed above, as other interest on the Series 2024 Bonds, and (ii) is added to the owner’s tax basis for purposes of determining gain or loss on the maturity, redemption, sale or other disposition of that Discount Series 2024 Bonds. A purchaser of a Discount Series 2024 Bonds in the initial public offering at the issue price (described above) for that Discount Series 2024 Bonds who holds that Discount Series 2024 Bonds to maturity will realize no gain or loss upon the retirement of that Discount Series 2024 Bonds.

Certain of the Series 2024 Bonds (“Premium Series 2024 Bonds”) may be offered and sold to the public at a price in excess of their stated redemption price at maturity. That excess constitutes bond premium. For federal income tax purposes, bond premium is amortized over the period to maturity of a Premium Series 2024 Bonds, based on the yield to maturity of that Premium Series 2024 Bonds (or, in the case of a Premium Series 2024 Bonds callable prior to its stated maturity, the amortization period and yield



may be required to be determined on the basis of an earlier call date that results in the lowest yield on that Premium Series 2024 Bonds), compounded semiannually. No portion of that bond premium is deductible by the owner of a Premium Series 2024 Bonds. For purposes of determining the owner's gain or loss on the sale, redemption (including redemption at maturity) or other disposition of a Premium Series 2024 Bonds, the owner's tax basis in the Premium Series 2024 Bonds is reduced by the amount of bond premium that is amortized during the period of ownership. As a result, an owner may realize taxable gain for federal income tax purposes from the sale or other disposition of a Premium Series 2024 Bonds for an amount equal to or less than the amount paid by the owner for that Premium Series 2024 Bonds. A purchaser of a Premium Series 2024 Bonds in the initial public offering who holds that Premium Series 2024 Bonds to maturity (or, in the case of a callable Premium Series 2024 Bonds, to its earlier call date that results in the lowest yield on that Premium Series 2024 Bonds) will realize no gain or loss upon the retirement of that Premium Series 2024 Bonds.

*Owners of Discount and Premium Series 2024 Bonds should consult their own tax advisors as to the determination for federal income tax purposes of the existence of OID or bond premium, the determination for federal income tax purposes of the amount of OID or bond premium properly accruable or amortizable in any period with respect to the Discount or Premium Series 2024 Bonds, other federal tax consequences in respect of OID and bond premium, and the treatment of OID and bond premium for purposes of state and local taxes on, or based on, income.*

#### **PART 19 – LIMITED LIABILITY FOR THE SERIES 2024 BONDS**

The Series 2024 Bonds are special and limited revenue obligations of the Issuer, payable by the Issuer as to the principal, redemption price, and interest thereon, solely out of the Trust Estate pledged under the Indenture referred to herein. Neither the Series 2024 Bonds, the principal thereof, the interest thereon, nor the redemption price thereof, together with interest accrued thereon to the date of redemption, shall ever constitute a debt of the State, the Port Authority, JDA, ESD, or any other local development corporation, agency, or authority of the State (other than the Issuer), and none of the State, the Port Authority, JDA, ESD, or any other local development corporation, agency, or authority of the State (other than the Issuer) shall be liable on the Series 2024 Bonds. The Issuer has no power of taxation.

#### **PART 20 – RATINGS**

S&P, Moody's, and Kroll Bond Rating Agency, LLC ("KBRA") are expected to assign ratings of "AA", "A1" and "AA+", respectively, to the Insured Bonds, with the understanding that, upon delivery of the Insured Series 2024 Bonds, the Policy will be issued by the Bond Insurer. The Series 2024 Bonds have been assigned unenhanced underlying ratings by S&P and Moody's of "BBB-" and "Baa3", respectively. Generally, a rating agency bases its rating on information and materials furnished to it and on investigations, studies and assumptions by such rating agency. A rating is not a recommendation to buy, sell or hold the Series 2024 Bonds. There is no assurance that such ratings will continue for any given period of time or will not be revised downward, suspended or withdrawn entirely by the rating agency, if in its judgment, circumstances so warrant. Any such lowering, suspension or withdrawal of the rating might have an adverse effect upon the market price or marketability of the Series 2024 Bonds. The Underwriters, the Issuer and the Borrower undertake no responsibility after the issuance of the Series 2024 Bond to assure the maintenance of the rating or to oppose any revision or withdrawal thereof.

#### **PART 21 – UNDERWRITING**

The Series 2024 Bonds are being purchased by Goldman Sachs & Co. LLC ("Goldman") and Siebert Williams Shank & Co., LLC (together, the "Representatives"), on behalf of themselves and the

other underwriters listed on the cover of this Official Statement (the “Underwriters”). The Underwriters have agreed, subject to certain conditions, to purchase the Series 2024 Bonds from the Issuer at an aggregate purchase price of \$2,019,904,605.60 (which represents the par amount of the Series 2024 Bonds, less the Underwriters’ discount of \$9,928,097.30, plus net original issue premium of \$84,194,934.90) and to make a public offering of the Series 2024 Bonds at prices that are not in excess of the public offering prices or yields indicated on the inside cover page of this Official Statement.

The Series 2024 Bonds may be offered and sold to certain dealers (including the Underwriters) at prices lower than such public offering prices, and such public offering prices may be changed, from time to time, by the Underwriters. The Underwriters will be obligated to purchase all Series 2024 Bonds if any are purchased.

The Underwriters and their respective affiliates are full service financial institutions engaged in various activities, which include sales and trading, commercial and investment banking, advisory investment management, investment research, principal investment, hedging, market making, brokerage and other financial and non-financial activities and services. Certain of the Underwriters and their respective affiliates have provided, and may in the future provide, a variety of these services to the Borrower and to persons and entities with relationships with the Borrower, for which they received or will receive customary fees and expenses including, but not limited to, serving as lenders under the Loan Facility and counterparties with respect to certain Permitted Hedge Agreements.

In the ordinary course of their various business activities, the Underwriters and their respective affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (which may include bank loans and/or credit default swaps) for their own account and for the accounts of their customers and may at any time hold long and short positions in such securities and instruments. Such investment and securities activities may involve securities and instruments of the Issuer (directly, as collateral securing other obligations or otherwise) and/or persons and entities with relationships with the Issuer. The Underwriters and their respective affiliates may also communicate independent investment recommendations, market color or trading ideas and/or publish or express independent research views in respect of such assets, securities or instruments and may at any time hold, or recommend to clients that they should acquire, long and/or short positions in such assets, securities and instruments.

In addition, certain of the Underwriters may have entered into distribution agreements with other broker-dealers (that have both been designated by the Issuer as Underwriters) for the distribution of the Series 2024 Bonds at the original prices. Such agreements generally provide that the relevant Underwriter will share a portion of its underwriting compensation or selling concession with such broker-dealers.

For additional relationships between the Underwriters, the Representatives or their affiliates, please see “PART 24– CERTAIN RELATIONSHIPS.”

## **PART 22 – LEGAL MATTERS**

Certain legal matters relating to the authorization and validity of the Series 2024 Bonds and the exclusion of the interest on the Series 2024 Bonds from gross income for federal income tax purposes will be subject to the approving opinion of Squire Patton Boggs (US) LLP, New York, New York, and Hardwick Law Firm, LLC, Co-Bond Counsel. See APPENDIX K – “FORM OF LEGAL OPINION OF CO-BOND COUNSEL.” Certain legal matters will be passed upon for the Issuer by BurgherGray LLP, New York, New York, as Issuer Counsel. Certain legal matters will be passed upon for the Issuer by its General Counsel and for the Borrower by its co-counsel, O’Melveny & Myers LLP, Los Angeles, California and

Bryant Rabbino LLP, New York, New York. Certain legal matters will be passed upon for the Underwriters by Katten Muchin Rosenman LLP, New York, New York and D. Seaton and Associates, P.A., P.C, New York, New York. Certain legal matters will be passed upon for the Trustee, Collateral Agent and Intercreditor Agent by Paparone Law PLLC, New York, New York.

## **PART 23 – LITIGATION**

### **The Issuer**

There is not now pending any litigation restraining or enjoining the issuance or delivery of the Series 2024 Bonds or questioning or affecting the validity of the Series 2024 Bonds or the proceedings and authority under which they are to be issued, or the pledge or application of any moneys or security provided for the payment of the Series 2024 Bonds, or relating to the use of the Series 2024 Bonds proceeds or the existence or powers of the Issuer.

### **The Borrower**

There is not now pending any litigation with respect to the existence or powers of the Borrower or the Borrower's ability to consummate the transactions described herein.

## **PART 24 – CERTAIN RELATIONSHIPS**

The Borrower is a limited liability company initially with four Equity Members holding interests: the Vantage Member, the RXR Member, the ATI Member and JetBlue. For a discussion of the Borrower's governance structure see "PART 9 – PROJECT PARTICIPANTS – The Borrower." See generally "PART 21– UNDERWRITING."

### **The Borrower and the Manager**

The Borrower has entered into the Management Services Agreement with the Manager. The Manager is 100% indirectly owned by Vantage, which is an affiliate under common control with the Vantage Member. The Manager's performance obligations under the Management Services Agreement have been guaranteed by Vantage Airport Group (US) Ltd.

### **The Manager and the Manager Subcontractor**

The Manager has entered into a subcontract with the Manager Subcontractor, an affiliate of the RXR Member, in relation to the Manager Subcontractor's provision of certain services to the Manager, including design and construction contract administration, public affairs support and stakeholder outreach. The services provided by the Manager Subcontractor are a subset of the services provided by the Manager under the Management Services Agreement, and any fees payable to the Manager Subcontractor are paid out of Management Services Agreement fees.

### **Goldman and Vantage Member Relationship**

Goldman Sachs Bank USA, an affiliate of Goldman, has provided a letter of credit to the Vantage Member in connection with its contribution pursuant to the Equity Contribution Agreement. Goldman Sachs Bank USA has received and continues to receive customary fees and expenses for providing such financing services to the Vantage Member.

## **Goldman and Borrower Relationship**

The Borrower has entered into and, under the Common Terms Agreement, is required to maintain certain Permitted Hedge Agreements in connection with the Loan Facility. In connection with the paydown of a portion of the Loan Facility with the proceeds of the Series 2024 Bonds, the Borrower is terminating certain Permitted Hedge Agreements associated therewith, all as more fully described in “PART 3 – PLAN OF FINANCE.” The Hedge Providers have entered into derivatives transactions with Goldman Sachs Bank USA or affiliates, in its principal capacity, to effect the foregoing. Additionally, Goldman and its affiliates have provided, and continue to provide, certain other advisory services to the Borrower and certain of its affiliates, including, but not limited to, certain advisory services undertaken in connection with the origination of the Loan Facility in November 2022. Goldman and their affiliates may also provide other or additional services and support to the Borrower, and Goldman has engaged in or may in the future engage, in transactions with, and perform services for, the Borrower and any affiliates thereof for which it received or will receive customary fees and expenses. Under certain circumstances, Goldman and their affiliates, including, but not limited to Goldman Sachs Bank USA, may have certain creditor and/or other rights against the Borrower and any affiliates thereof in connection with such transactions and/or services.

## **Siebert Williams Shank & Co., LLC and Borrower Relationship**

The Borrower has engaged Siebert Williams Shank & Co. LLC (“Siebert”), one of the Representatives of the Underwriters, to assist the Borrower in connection with the Borrower’s obligations under the Lease Agreement to use good faith efforts to provide for meaningful participation in the Project by minority-owned and women-owned businesses. Pursuant to this engagement, Siebert has assisted the Borrower in connection with the engagement of minority-owned and woman-owned underwriting firms and other service providers in connection with the issuance of the Series 2024 Bonds.

## **Siebert Williams Shank & Co., LLC and ATI Member Relationship**

The ATI Member is controlled by ATI. ATI is an investor, owner, developer, and manager of infrastructure assets and infrastructure-focused companies. The firm invests in the transportation, digital, and social infrastructure sectors. ATI shares some common ownership with Siebert, but given the specific governance framework articulated in ATI’s governing documents, ATI is separately managed and controlled. The ATI Member may, however, benefit reputationally from its relationship with Siebert given that the indirect holders of approximately 67% of the equity interests in Siebert’s parent company directly or indirectly own approximately 75% of ATI’s equity interests.

## **Royal Bank of Canada and the Borrower Relationship**

Royal Bank of Canada, an affiliate of RBC Capital Markets, LLC (“RBCCM”), one of the Underwriters, is currently serving as a swap counterparty under a Permitted Hedge Agreement. As swap counterparty, the Royal Bank of Canada has certain rights against the Borrower.

A portion of the proceeds of the Series 2024 Bonds will be applied to the termination of that portion of the Permitted Hedge Agreements associated with the paid off portion of the Loan Facility, including certain swaps with Royal Bank of Canada. Depending on market conditions, the Borrower may receive a swap termination payment from Royal Bank of Canada or the Royal Bank of Canada may receive a swap termination payment from Borrower, from Series 2024 Bond proceeds.

Royal Bank of Canada, an affiliate of RBCCM, currently hold Series 2022A Bonds in its tender option bond program either in a common law trust established under the laws of the State of New York or

a statutory trust established under the laws of the State of Delaware (in either case, such trust (“Trust”)). The Royal Bank of Canada provides credit protection to investors of the Trust. In addition, RBCCM through its affiliate (i) earns the total interest income available to the bonds, less its funding expenses, by holding the bonds in the Trust and (ii) has a long-term creditor position with the Borrower and consolidates the ownership of the bonds on its balance sheet. Furthermore, RBCCM serves as remarketing agent to the Trust. Finally, as a result of the Series 2024 Bonds refinancing transactions, a portion of the Series 2022A Bonds are being refinanced and the ownership interest and credit position of the Royal Bank of Canada relating thereto is being eliminated.

## **PART 25 – FINANCIAL STATEMENTS AND INDEPENDENT AUDITORS**

The audited consolidated financial statements of JFK Millennium Partners Holdings, LLC and its wholly owned subsidiary JFK Millennium Partners, LLC, for the fiscal years ended December 31, 2023 and December 31, 2022 and the unaudited condensed consolidated financial information as of and for the six-months ended June 30, 2024 presented in this Official Statement have been prepared in accordance with generally accepted accounting principles in the United States. See APPENDIX C-1 – “CONSOLIDATED FINANCIAL STATEMENTS AND INDEPENDENT AUDITORS’ REPORT” and APPENDIX C-2 – “CONDENSED CONSOLIDATED FINANCIAL INFORMATION AS OF JUNE 30, 2024 (UNAUDITED)” hereto.

The consolidated financial statements of JFK Millennium Partners Holdings, LLC and its subsidiary, as of December 31, 2023 and 2022, and for the years then ended, included in this Official Statement as APPENDIX C-1 – “CONSOLIDATED FINANCIAL STATEMENTS AND INDEPENDENT AUDITORS’ REPORT,” have been audited by KPMG LLP, as independent auditors, as stated in their report included therein.

As more fully described in “Part 17 – RISK FACTORS – Risks Related to the Borrower’s Business – Internal Controls,” KPMG LLP identified certain material weaknesses in connection with its audit of the Borrower’s internal control over financial reporting and financial statements for the fiscal years ended December 31, 2022 and December 31, 2023.

## **PART 26 – MUNICIPAL ADVISORS**

Backstrom McCarley Berry & Co. LLC is serving as Municipal Advisor to the Borrower with respect to the issuance of the Series 2024 Bonds.

Frasca & Associates, LLC, as municipal advisor to the Port Authority, has considered certain matters on behalf of the Port Authority in connection with this offering of the Series 2024 Bonds.

## **PART 27 – CONTINUING DISCLOSURE**

In order to enable the Underwriters to comply with the requirements of Rule 15c2-12 (the “Rule”) promulgated by the Securities and Exchange Commission (the “SEC”), pursuant to the Securities Exchange Act of 1934, as amended, the Borrower will execute the Continuing Disclosure Undertaking to periodically provide certain financial information and operating data to the Municipal Securities Rulemaking Board (the “MSRB”), and to provide notice to the MSRB of certain events, pursuant to the requirements of the Rule. The Issuer will have no responsibility or liability to the holders of the Series 2024 Bonds or any other person with respect to such continuing disclosure. The form of the Continuing Disclosure Undertaking is set forth in APPENDIX J to this Official Statement.

The Borrower has not prior to the date of this Official Statement entered into any undertakings pursuant to the Rule.

(Remainder of Page Intentionally Left Blank)

The execution and delivery of this Official Statement by Authorized Officers have been duly authorized by the Issuer and the Borrower.

**NEW YORK TRANSPORTATION  
DEVELOPMENT CORPORATION**

By: /s/ Raymond Orlando  
Authorized Officer

**JFK MILLENNIUM PARTNERS, LLC**

By: /s/ Michael Sibilis  
Authorized Officer

**(THIS PAGE INTENTIONALLY LEFT BLANK)**



## APPENDIX A

### DEFINITIONS

#### Rules of Interpretation

1. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation.”
2. Definitions of terms shall apply equally to the singular and plural forms of the terms defined.
3. The word “will” shall be construed to have the same meaning and effect as the word “shall.”
4. A reference to a Person shall be construed to include its successors and permitted assigns.
5. A reference in a document to an Article, Section, Exhibit, Schedule, Annex or Appendix is to the Article, Section, Exhibit, Schedule, Annex or Appendix of such document, regardless of whether the word “herein” is used, unless otherwise indicated. Exhibits, Schedules, Annexes or Appendices to any document shall be deemed to be part of such document, unless expressly indicated otherwise.
6. Any definition of or reference to any agreement, instrument or other document shall be construed (a) including all exhibits, schedules and other attachments thereto, (b) as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented and/or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth in the Financing Documents) and (c) including all documents, instruments or agreements issued or executed in replacement or substitution thereof.
7. The words “hereof,” “herein” and “hereunder” and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document.
8. References to “days” means calendar days, unless the term “Business Days” shall be used. References to a time of day means such time in New York, New York, unless otherwise specified.
9. A reference to a day as it relates to a transfer of funds, if such day is not a Business Day, shall mean the next day that is a Business Day.
10. All accounting terms used which are not expressly defined herein have the meanings given to them in accordance with GAAP. Except as otherwise specifically provided herein, all computations made shall be made in accordance with GAAP.

Unless otherwise specified, capitalized terms used in the Financing Documents shall have the meanings set forth below:

“**10 Year Cash Sweep Date**” has the meaning ascribed to such term in Section 2.12(a) of the Second Supplemental Indenture.

“**2022 TDC Building Notes**” means the Series 2022A Building Note, the TDC Bank Debt Building Note and any additional promissory notes of the Borrower evidencing the indebtedness of the Borrower under the TDC Building Loan Agreement.

“**2022 TDC Project Notes**” means Series 2022A Project Note, the TDC Bank Debt Project Note, the TDC Security Deposit Project Note and any additional promissory notes of the Borrower evidencing the indebtedness of the Borrower under the TDC Project Loan Agreement.

“**2022A Tax-Exempt Bond Interest Payment Sub-Account**” means the “2022A Tax-Exempt Bond Interest Payment Sub-Account” within the Senior Obligations Payment Account established and created in the name of the Borrower pursuant to Section 5.01(a) of the Collateral Agency and Accounts Agreement.

“**2022A Tax-Exempt Bond Principal Payment Sub-Account**” means the “2022A Tax-Exempt Bond Principal Payment Sub-Account” within the Senior Obligations Payment Account established and created in the name of the Borrower pursuant to Section 5.01(a) of the Collateral Agency and Accounts Agreement.

“**2024A Tax-Exempt Bond Interest Payment Sub-Account**” means the “2024A Tax-Exempt Bond Interest Payment Sub-Account” within the Senior Obligations Payment Account established and created in the name of the Borrower pursuant to Section 2.01(a) of the First CAAA Amendment.

“**2024A Tax-Exempt Bond Principal Payment Sub-Account**” means the “2024A Tax-Exempt Bond Principal Payment Sub-Account” within the Senior Obligations Payment Account established and created in the name of the Borrower pursuant to Section 2.01(a) of the First CAAA Amendment.

“**2024B Tax-Exempt Bond Interest Payment Sub-Account**” means the “2024B Tax-Exempt Bond Interest Payment Sub-Account” within the Senior Obligations Payment Account established and created in the name of the Borrower pursuant to Section 2.01(a) of the First CAAA Amendment.

“**2024B Tax-Exempt Bond Principal Payment Sub-Account**” means the “2024B Tax-Exempt Bond Principal Payment Sub-Account” within the Senior Obligations Payment Account established and created in the name of the Borrower pursuant to Section 2.01(a) of the First CAAA Amendment.

“**5-year Redemption Date**” has the meaning given in Section 10.07(g) of the Collateral Agency and Accounts Agreement.

“**5 Year Cash Sweep Date**” has the meaning ascribed to such term in Section 2.12(a) of the Second Supplemental Indenture.

“**Acceleration Action**” has the meaning given in Section 3.3(a)(v) of the Intercreditor Agreement.

“**Acceleration Payment**” means all payments made to a Secured Debt Representative or Secured Party pursuant to an Acceleration Action.

“**Acceptable Letter of Credit**” means any standby letter of credit in favor of the Collateral Agents (a) substantially in the form attached to the Collateral Agency and Accounts Agreement as Exhibit I (Form of Letter of Credit), and issued by an Eligible LC Issuer, (b) the reimbursement obligations with respect to which shall not be (i) recourse to the Borrower or the Project or (ii) secured by a lien on, or a security interest in, the Collateral, (c) the term of which is at least one year from the date of issue (except that for letters of credit issued as a replacement letter of credit with less than one year remaining until the stated expiration date of the original letter of credit, the term shall be for such shorter period) and (d) which allows drawing (i) during the 30 day period prior to expiry (unless otherwise replaced), (ii) upon downgrade of the issuer such that it is no longer an Eligible LC Issuer if not replaced within twenty days of such downgrade

and, (iii) if such letter of credit is used to fund any reserve account established under the Collateral Agency and Accounts Agreement, when funds would otherwise be drawn from such reserve account.

“**Accession Agreement**” means an Accession Agreement substantially in the form of Exhibit A to the Intercreditor Agreement.

“**Account Bank Fee Letter**” means that certain Account Bank Fee Letter, dated on or about the date hereof, between the Borrower and the Deposit Account Bank, setting forth the fees payable to the Deposit Account Bank.

“**Account Collateral**” means, subject to the Collateral Agency and Accounts Agreement, (a) all Project Accounts and funds deposited therein and moneys, funds, instruments, securities and all other property from time to time credited to such Project Accounts, (b) all “securities accounts” (within the meaning of Section 8-501 of the UCC), all deposit accounts and any and all other bank accounts, and (c) all “proceeds” (as defined in the UCC) of any or all of the foregoing, in each case of (a) through (c) that is subject to a security interest granted by the Borrower, as applicable, pursuant to the Senior Security Agreement.

“**Account Control Agreement**” means that certain Account Control Agreement, dated as of November 1, 2022, among the Borrower, the Collateral Agents and the Deposit Account Bank in respect of the Operating Account and any replacement Account Control Agreement to which the Collateral Agents are a party.

“**Accounts,**” “**Sub-Accounts,**” “**Subaccounts,**” or “**Funds**” means, with respect to the Indenture, the funds established and created under Section 4.02 of the Master Indenture and any Accounts or Subaccounts therein, or under any Supplemental Indenture, and, with respect to the Collateral Agency and Accounts Agreement, the funds established and created under Sections 5.01, 5.05, 5.17(b), 5.18 and 5.19 of the Collateral Agency and Accounts Agreement, or under any amendment or supplement to the Collateral Agency and Accounts Agreement.

“**Accredited Investor**” has the meaning given in Rule 501 of Regulation D under the Securities Act of 1933, as amended.

“**Accreted Redemption Price**” means for Current Interest Bonds, the Redemption Price and for Compounding Interest Bonds, the Accreted Value.

“**Accreted Value**” means, with respect to any Compounding Interest Bond, (a) as of any Compounding Date, the amount established by the schedule of Accreted Values relating to such Bond, which amount represents the initial principal amount at issuance of such Bond plus interest accrued and compounded on each Compounding Date to the date of determination, calculated on the basis of a three hundred sixty (360) day year of twelve (12) thirty (30) day months, and (b) as of any date other than a Compounding Date, the sum of (i) the Accreted Value on the preceding Compounding Date plus (ii) the product of (x) a fraction, the numerator of which is the number of days having elapsed from the preceding Compounding Date and the denominator of which is the number of days from such preceding Compounding Date to the next succeeding Compounding Date, multiplied by (y) the difference between the Accreted Values on such Compounding Dates, which amount represents the principal plus the amount of interest that has accrued to such date of determination. The Issuer may provide in a Supplemental Indenture that, with respect to any Series of Bonds, the Accreted Value as of any date other than a Compounding Date shall be determined using a constant interest rate method rather than as provided in (b).

“**Act**” means the New York Not-for-Profit Corporation Law, being Chapter 35 of the Consolidated Laws of New York, the Issuer being created by action of the JDA established under Section 1802, Subtitle I, Title 8, Article 8, of the New York Public Authorities Law, as each may be amended from time to time.

“**Act of Secured Parties**” means, as to any matter at any time:

- (a) prior to the Discharge of Senior Obligations, one or more written directions provided to the Senior Collateral Agent by the Intercreditor Agent, with the written consent of holders of Senior Obligations representing the Required Senior Secured Parties; and
- (b) following the Discharge of Senior Obligations, one or more written directions provided to the Subordinate Collateral Agent by the Intercreditor Agent with the written consent of holders of Subordinate Obligations representing the Required Subordinate Secured Parties.

For purposes of this definition, votes will be determined in accordance with Article 8 of the Intercreditor Agreement.

“**Additional Bonds**” means any additional bonds issued as Additional Obligations pursuant to and in accordance with the Master Indenture and any related Supplemental Indenture. Each series of Additional Bonds shall be designated as Senior Bonds or Subordinate Bonds for purposes of the Indenture and the Collateral Agency and Accounts Agreement at the time of issuance.

“**Additional Class Obligations**” has the meaning ascribed to such term in Section 11.06 of the Collateral Agency and Accounts Agreement.

“**Additional Conditions Notice**” has the meaning set forth in Section 5.04(c) of the Collateral Agency and Accounts Agreement.

“**Additional Insured Bonds**” means any Additional Bonds specified in a Supplemental Indenture with respect to the issuance of such Series of Bonds as having the benefit of a Bond Insurance Policy.

“**Additional Note**” means a promissory note issued in connection with the making of a TDC Additional Loan, which promissory note shall be in substantially the form of Exhibit C attached to the TDC Loan Agreements, or such other form as may be agreed by the Borrower and the Issuer, and shall include any and all supplements or amendments thereto made in conformity with the applicable Additional Obligations Loan Agreement Supplement and the Master Indenture.

“**Additional Obligations**” means Additional Senior Obligations and Additional Subordinate Obligations.

“**Additional Obligations Loan Agreement Supplement**” means, for each series of Additional Senior Obligations and Additional Subordinate Obligations, the loan agreement, supplement or amendment to be executed by the Issuer and the Borrower in connection with the incurrence of Additional Obligations by the Borrower.

“**Additional Senior Creditor**” means, with respect to any Class of Additional Senior Obligations, the holders of such Additional Senior Obligations, any Secured Debt Representative with respect to such Additional Senior Obligations, and any other trustee or agent or any other similar agent or Person therefor under any related Additional Senior Financing Document.

**“Additional Senior Financing Documents”** means, with respect to any Senior Obligations incurred after the Closing Date, the notes, credit agreements, indentures, security documents and other operative agreements evidencing or governing such Indebtedness, and each other agreement entered into for the purpose of securing such Senior Obligations.

**“Additional Senior Obligations”** means (i) any Additional Bonds issued as Senior Bonds, (ii) any Senior Bond Insurer Obligations related to any Additional Insured Bonds, and (iii) any additional Senior Obligations (other than the Senior Bank Obligations and the Permitted Hedge Agreements) in each case, secured by the liens created pursuant to the Senior Collateral Documents, the holders of which (or an agent or trustee on their behalf) are or have become parties to the Intercreditor Agreement pursuant to an Accession Agreement as a Senior Secured Party in accordance with Section 5.5 of the Intercreditor Agreement. Additional Senior Obligations shall exclude Bond Insurer Unsecured Obligations.

**“Additional Senior Obligations Loan Agreement Supplement”** means an Additional Obligations Loan Agreement Supplement entered into in connection with the incurrence of Additional Senior Obligations.

**“Additional Subordinate Creditor”** means, with respect to any Class of Additional Subordinate Obligations, the holders of such Additional Subordinate Obligations, any Secured Debt Representative with respect to such Additional Subordinate Obligations, any other trustee or agent or any other similar agent or representative therefor under any related Additional Subordinate Financing Documents.

**“Additional Subordinate Financing Documents”** means, with respect to any Subordinate Obligations incurred after the Closing Date, the notes, credit agreements, indentures, security documents and other operative agreements evidencing or governing such Indebtedness, and each other agreement entered into for the purpose of securing such Subordinate Obligations.

**“Additional Subordinate Obligations”** means any Additional Bonds issued as Subordinate Bonds, and any additional Subordinate Obligations secured by the liens created pursuant to the Subordinate Collateral Documents, the holders of which (or an agent or trustee on their behalf) have become parties to the Intercreditor Agreement pursuant to an Accession Agreement as a Subordinate Secured Parties in accordance with Section 5.5 of the Intercreditor Agreement.

**“Adjusted SIFMA Rate”** means the SIFMA Index plus the Applicable Spread; provided, however, that from and after the Taxable Date, the “Adjusted SIFMA Rate” means the Taxable Rate; provided, further, however, that upon the occurrence and during the continuance of any Event of Default, the “Adjusted SIFMA Rate” shall equal the Post-Default Rate.

**“Adjustment Date”** means Thursday of each week (whether or not such day is a Business Day); provided, however, if the Alternative Index is the Daily Simple SOFR Rate, the “Adjustment Date” shall mean each SOFR Interest Day.

**“Administrative Agency Fee Letter”** means an Administrative Agent Fee Letter, between the Borrower and the Administrative Agent, setting forth the fees payable to the Administrative Agent.

**“Administrative Agent”** means ING Capital, LLC in its capacity as administrative agent.

**“Adverse Action”** has the meaning given in Section 3.5(b)(ii) of the Intercreditor Agreement.

**“Affiliate”** of any Person means any other Person that is Controlling, Controlled by or under common Control with such Person.

“**Agents**” means, individually or collectively, as the context may require, the Senior Secured Debt Representatives, the Collateral Agents, the Subordinate Secured Debt Representative and the Intercreditor Agent.

“**Aggregate Bank Debt Exposure**” equals Funded Bank Debt *plus* unfunded available Bank Commitments.

“**Aggregate Debt Service**” means, for any applicable period:

- (a) when calculating “Aggregate Debt Service” on a historical basis, such amount shall consist of:
  - (i) all interest accrued during such period (whether paid or unpaid) in respect of Secured Obligations (other than interest accruing with respect to Compounding Interest Bonds), (A) plus the net amounts payable by the Borrower as Ordinary Course Payments under Secured Hedge Agreements in respect of such period, or (B) minus the net amounts receivable by the Borrower as Ordinary Course Payments under Secured Hedge Agreements in respect of such period; *plus*
  - (ii) all principal due during such period in respect of Secured Obligations (including, without limitation, the Accreted Value of any Compounding Interest Bonds maturing or scheduled for redemption in such applicable period);
- (b) when calculating “Aggregate Debt Service” on a prospective basis with respect to any Secured Obligations, the aggregate amount of Debt Service on such Secured Obligations for such applicable period, provided that:
  - (i) in determining the amount of principal to be funded in such applicable period, payment shall (unless a different clause of this definition of Aggregate Debt Service applies for purposes of determining principal maturities or amortization) be assumed to be made on Outstanding Secured Obligations in accordance with any amortization schedule established by the applicable Financing Document setting forth the terms of such Secured Obligations, including, as a principal payment, the Accreted Value of any Compounding Interest Bonds maturing or scheduled for redemption in such applicable period; in determining the amount of interest to be funded in such applicable period, interest payable at a fixed rate shall (except to the extent clause (ii) or (iii) of this definition of Aggregate Debt Service applies) be assumed to be made at such fixed rate and on the required funding dates as provided in the applicable Financing Document; provided, however, that interest payable on any Secured Obligations shall be excluded to the extent such payments are to be capitalized and added to principal outstanding during such applicable period;
  - (ii) Balloon Indebtedness shall be treated in accordance with the terms set out in the applicable Balloon Indebtedness Certificate, including amortization over the term specified in such Balloon Indebtedness Certificate (provided that such term shall be not more than the remaining term of the Lease Agreement or 35 years, whichever is shorter); and with respect to any Secured Obligations only a portion of which constitutes Balloon Indebtedness, the remaining portion will be treated as described in clause (i) or such other provision of this definition of Aggregate Debt Service;

- (iii) Tender Indebtedness shall be treated as if the principal amount of such Secured Obligations were to be amortized over a term as specified in a Tender Indebtedness Certificate or of not more than the remaining term of the Lease Agreement and with principal amortization and sinking funds as specified in a certificate signed by the Authorized Borrower Representative attached to the Financing Document setting forth the terms of such Secured Obligations that constitutes Tender Indebtedness (the “Tender Indebtedness Certificate”); the interest rate used for such computation shall be a rate determined by a Consultant to be a reasonable market rate for fixed-rate Secured Obligations of a corresponding term on the date of such calculation, with no credit enhancement and taking into consideration whether such Secured Obligations bear interest which is or is not excluded from gross income for federal income tax purposes; and with respect to all funding requirements of principal and interest payments becoming due prior to the year in which such Tender Indebtedness is first subject to tender, such payments shall be treated as described in clause (b)(i) of this definition of Aggregate Debt Service unless the interest during that period is subject to fluctuation, in which case the interest becoming due prior to such first tender date shall be determined as provided in clause (v) of this definition of Aggregate Debt Service;
- (iv) for Variable Rate Indebtedness, unless otherwise provided in the particular Financing Document governing particular Secured Obligations (except to the extent otherwise provided in an applicable Balloon Indebtedness Certificate or Tender Indebtedness Certificate, or to the extent clause (b)(vi) of this definition of Aggregate Debt Service applies), the interest rate on such Secured Obligations shall be the sum of (A) the swap rate for the applicable index and corresponding term, plus (B) the Applicable Spread or “Applicable Margin” as defined in the Common Terms Agreement, as applicable;
- (v) Debt Service on Repayment Obligations; and
- (vi) for Secured Obligations with respect to which a corresponding Secured Hedge Agreement applies (except to the extent otherwise provided in an applicable Balloon Indebtedness Certificate), all interest to be accrued during such period (whether to be paid or unpaid in such period) in respect of Secured Obligations, (A) plus the net amounts payable by the Borrower as Ordinary Course Payments under the applicable Secured Hedge Agreements in respect of such period, or (B) minus the net amounts receivable by the Borrower as Ordinary Course Payments under the applicable Secured Hedge Agreements in respect of such period; plus all principal due during such period in respect of such Secured Obligations.

“**Aggregate Hedging Agreement Termination Values**” means, the aggregate value under each Secured Hedge Agreement for each Hedge Provider, after taking into account the effect of any legally enforceable netting agreement relating to such Secured Hedge Agreement, (a) for any date on or after the date any Secured Hedge Agreement has been closed-out, liquidated or terminated and termination value(s) determined in accordance with such agreement, (in each case, however so defined) such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for any Secured Hedge Agreement, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Secured Hedge Agreements (which may include a Hedge Provider or Bank Lender or any Affiliate of a Hedge Provider or a Bank Lender).

“**Airline Sublease**” has the meaning set forth in the Lease Agreement.

“**Airport**” means John F. Kennedy International Airport in Queens, New York.

“**Airport Consultant**” means Ricondo & Associates, Inc.

“**Alternative Index**” means the S&P Municipal Bond 7 Day High Grade Rate Index as published by S&P Dow Jones Indices, which appears on the Bloomberg Screen SPMUV7DY. If the S&P Municipal Bond 7 Day High Grade Rate Index or a successor equivalent index is no longer calculated and published by S&P Dow Jones Indices, or its successors and assigns, in its current form, then the S&P Municipal Bond 7 Day High Grade Rate Index shall be replaced by a fluctuating rate per annum, determined as of each applicable Daily Simple SOFR Computation Date for each Adjustment Date, equal to the Daily Simple SOFR Rate, as in effect on the applicable Daily Simple SOFR Computation Date.

“**Annual Operating Budget**” means, with respect to any Fiscal Year of the Borrower, the Borrower’s annual operating and capital expenditure budget approved by the Borrower and the HoldCo in accordance with the provisions of its respective Organizational Documents.

“**Applicable Collateral Agent**” means (a) prior to the Discharge of Senior Obligations, the Senior Collateral Agent and (b) from and after the Discharge of Senior Obligations, the Subordinate Collateral Agent, if applicable; provided, that in the case of this clause (b), if and for so long as the Discharge of Senior Obligations shall be deemed not to have occurred pursuant to Section 6.5 of the Intercreditor Agreement, “**Applicable Collateral Agent**” means the Senior Collateral Agent.

“**Applicable Law**” means with respect to any Person, property or matter, all applicable international, foreign, Federal, state and local statutes, treaties, rules, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, licenses, authorizations and permits of any Governmental Authority, whether in effect as of date hereof or thereafter and in each case as amended, including any of the foregoing pertaining to land use or zoning restrictions and the UCC.

“**Applicable Spread**” means 140 basis points (1.40%) for the period from and including the Initial Drawing Date to but not including the third anniversary of the Initial Drawing Date; 165 basis points (1.65%) for the period from and including the third anniversary of the Initial Drawing Date to but not including the fifth anniversary of the Initial Drawing Date; and 190 basis points (1.90%) for the period from and including the fifth anniversary of the Initial Drawing Date to maturity.

“**Approvals**” has the meaning ascribed to such term in Appendix E hereto.

“**Asset Preservation Schedule**” has the meaning ascribed to such term in the Lease Agreement.

“**Assignment of Leases and Rents**” means, collectively, (i) the Assignment of Leases and Rents (Building Loan) and (ii) the Assignment of Leases and Rents (Project Loan).

“**Assignment of Leases and Rents (Building Loan)**” means the Assignment of Leases and Rents (Building Loan), dated as of November 1, 2022, between the Borrower, the Issuer and the Senior Collateral Agent).



**“Assignment of Leases and Rents (Project Loan)”** means the Assignment of Leases and Rents (Project Loan), dated as of November 1, 2022, between the Borrower, the Issuer and the Senior Collateral Agent.

**“Assignment of Project Documents”** means the Assignment of Project Documents, Permits and Licenses, dated as of November 1, 2022, between the Borrower and the Senior Collateral Agent.

**“Authorized Borrower Representative”** means (a) the Chief Executive Officer of the Borrower; or (b) any other individual (or individuals) so designated by the Borrower to act as Authorized Borrower Representative by written certificate of the Borrower furnished to the Collateral Agents, containing the specimen signature of such Person.

**“Authorized Denominations”** means, unless otherwise specified in the Supplemental Indenture governing the respective Bonds, (a) with respect to Compounding Interest Bonds, if any, a denomination equal to the principal amount that, when interest is accrued and compounded thereon at the applicable compounding interest rate on each Interest Accretion Date to the date of maturity thereof (with respect to a Capital Appreciation Bond) or to the Interest Commencement Date (with respect to a Convertible Capital Appreciation Bond), will result in a Maturity Amount at maturity (with respect to a Capital Appreciation Bond) or an Accreted Value on the Interest Commencement Date (with respect to a Convertible Capital Appreciation Bond) equal to \$5,000 or any whole multiple thereof and (b) with respect to Current Interest Bonds, a denomination of \$5,000 or any whole multiple thereof.

**“Available Amount”** means, with respect to any Letter of Credit or any other letter of credit, at any time, the undrawn stated amount of such Letter of Credit or other letter of credit, as applicable, in effect at such time; provided, that with respect to any Letter of Credit or other letter of credit that, by its terms or the terms of any other agreement or instrument relating thereto, provides for one or more automatic increases in the stated amount thereof, the stated amount of such Letter of Credit or other letter of credit, as applicable, shall be deemed to be the maximum stated amount of such Letter of Credit or other letter of credit, as applicable, after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time (assuming compliance at such time with all conditions to drawing).

**“Available Funding”** means, as of any date of determination, an amount equal to the aggregate of (without double-counting): (a) amounts available to the Borrower under the Financing Documents on such date; (b) amounts standing to the credit of the Project Accounts on such date, to the extent such funds are available for application towards payment of Project Costs in accordance with the Collateral Agency and Accounts Agreement; (c) amounts due and payable to the Borrower (including milestone payments) from the Port Authority under the Lease Agreement prior to the Completion Date and which remain unpaid, to the extent such amounts are undisputed, are not outstanding following the due date and the expiration of any applicable cure period for payment therefor and are available for application towards payment of Project Costs in accordance with the Lease Agreement and the Collateral Agency and Accounts Agreement; (d) undisputed tax refunds due and payable to the Borrower prior to the Completion Date and which remain unpaid; (e) outstanding amounts due and payable to the Borrower under any Material Project Document (other than the Lease Agreement) prior to the Completion Date and which remain unpaid, to the extent that such amounts are (i) undisputed and are not outstanding following the due date and the expiration of any applicable cure period for payment therefor and (ii) prior to the Discharge of Senior Bank Obligations, if security is typically obtained for such type of Material Project Document, the counterparty to such Material Project Document (other than a Material Sublease) has provided the Borrower with an Acceptable Letter of Credit or other comparable security satisfactory to the Administrative Agent (acting on the instructions of the Required Bank Finance Parties) in support of such payment obligations; (f) proceeds of any insurance claim expected to be received by the Borrower prior to the Completion Date with respect to the Project or the Borrower and to be available to be applied to the payment of Project Costs pursuant to the terms of the

Financing Documents, which remain unpaid, to the extent that such amounts are undisputed and are not outstanding following the due date and the expiration of any applicable cure period for payment therefor; (g) the aggregate amount of the Unfunded Equity Commitments of all Sponsors available to the Borrower pursuant to the Equity Contribution Agreement on such date (and the amount of any other Equity Contributions committed by the Sponsors to the Borrower in excess of such Sponsors' Unfunded Equity Commitments, so long as Equity Contributions are secured by Equity Support) that can be used to pay Project Costs, and (h) amounts projected to be available for the payment of Project Costs (including from operating revenues, and including amounts not yet due and payable under Material Project Documents but expected to be due and payable thereunder in the ordinary course) pursuant to the Lessee's Base Case Financial Model and Construction Schedule and Budget, in each case, most recently delivered to the Administrative Agent, to the extent that such amounts (i) are undisputed and are not outstanding following the due date for payment therefor (plus any applicable grace period), (ii) are certified by the Lessee as consistent with such Base Case Financial Model and Construction Schedule and Budget, as applicable, and (iii) are capped at an increase of 20% against the projections contained in the Base Case Financial Model delivered on the Closing Date and (i) any other funding arrangements available to pay Project Costs satisfactory to the Administrative Agent (acting on the instructions of the Required Bank Finance Parties).

**"Balloon Indebtedness"** means, with respect to (a) any separate Series of Bonds, (b) Secured Obligations pursuant to the Bank Commitments, assuming the Bank Commitments are fully utilized, or (c) any set of Additional Obligations issued and/or committed on a single date pursuant to the terms of a single associated set of Financing Documents, in any such case, that portion of principal of (a), (b) or (c) maturing on a single date or within a Fiscal Year (i) that equals or exceeds 10% of the aggregate amount thereof and (ii) which the Borrower designates as Balloon Indebtedness in a Balloon Indebtedness Certificate. For purposes of this definition, the principal amount maturing on any date shall be reduced by the amount of such Secured Obligations scheduled to be amortized by prepayment or redemption prior to their stated maturity date. Commercial Paper shall not be considered to be Balloon Indebtedness.

**"Balloon Indebtedness Certificate"** means a certificate signed by an Authorized Borrower Representative and attached to a Financing Document issuing or loaning Secured Obligations that (a) designates certain portions of such Secured Obligations as Balloon Indebtedness, (b) indicates that the Borrower intends to refinance such Secured Obligations and states the probable terms of such refinancing, including the anticipated interest rate (which shall be the rate determined by a Consultant to be a reasonable market rate assuming the refinancing of the Outstanding Secured Obligations pursuant to terms outlined in such certificate), with no credit enhancement, and taking into consideration whether such Secured Obligations bear interest which is or is not excluded from gross income for federal income tax purposes, and the final maturity date and principal amortization and sinking fund deposits of such refinancing (provided that such refinanced Outstanding Secured Obligations shall be amortized over a term of not more than the remaining term of the Lease Agreement), (c) certifies that the debt capacity of the Borrower is sufficient to successfully complete such refinancing, if applicable, and (d) sets forth any additional terms of such Secured Obligations that are designated as Balloon Indebtedness.

**"Bank Commitments"** has the meaning assigned to the term "Commitments" in the Common Terms Agreement.

**"Bank Consents"** means, collectively: (i) that certain Limited Consent and Waiver dated December 28, 2023, executed by the Borrower, the Senior Collateral Agent, the Intercreditor Agent, the Trustee, and the Administrative Agent; (ii) that certain Limited Consent and Waiver Regarding Fit-Out Allowance, dated January 12, 2024, executed by the Borrower and the Administrative Agent; (iii) that certain Limited Consent and Waiver – Owner Controlled Insurance Program – Claims Reserve Funding, dated February 23, 2024, executed by the Borrower, the Senior Collateral Agent, the Intercreditor Agent, the Trustee, and the Administrative Agent; and (iv) any additional consents granted to the Borrower by the

Administrative Agent on behalf of the Bank Finance Parties pursuant to the terms of the Senior Financing Documents.

**“Bank Finance Parties”** means the Bank Lenders, the Initial Purchaser, the Purchaser, any Series 2022A Bondholder and any Credit Protection Provider (as defined in the Bondholder’s Agreement), and “Bank Finance Party” means any of them, as the context requires.

**“Bank Financing TDC Loan Agreements”** means the TDC Loan Agreements solely as they relate to the lending of any proceeds of the Loan Facility.

**“Bank Lenders”** means the Lenders and the Security Deposit Facility LC Issuing Banks.

**“Bank Proceeds Sub-Account”** means the “Bank Proceeds Sub-Account” established and created in the name of the Borrower pursuant to Section 5.01(a) of the Collateral Agency and Accounts Agreement.

**“Bankruptcy Code”** means Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor statute.

**“Bankruptcy Law”** means the Bankruptcy Code and any other federal, state, or foreign law for the relief of debtors, or any arrangement, reorganization, insolvency, moratorium, assignment for the benefit of creditors, any other marshaling of the assets or liabilities of the Borrower, or similar law affecting creditors’ rights generally.

**“Bankruptcy Related Event”** means the events of default described in Section 8.1(m) of the TDC Building Loan Agreement, Section 8.1(m) of the TDC Project Loan Agreement or Section 7.01(h), (i) or (j) of the Common Terms Agreement.

**“Base Case Financial Model”** means a mechanically sound financial model delivered on the Closing Date and thereafter when required by Section 5.14(d) of the Common Terms Agreement or otherwise delivered by the Borrower to the Administrative Agent pursuant to the Common Terms Agreement (except where otherwise provided in the Financing Documents), prepared by the Borrower, forecasting the revenues and expenditures of the D&C Work and the Operations and Maintenance Work for the time periods and based upon the assumptions and methodology provided by the Borrower.

**“Basic Lease”** means that certain Amended and Restated Agreement of Lease of the Municipal Air Terminals between The City of New York, as landlord, and the Port Authority, as tenant, dated as of November 24, 2004 and recorded in the office of the City Register of the City on December 3, 2004 under City Register File No. 2004000748687, as the same from time to time may have been or may be supplemented, amended and/or restated.

**“Beneficial Owner”** means, so long as the Bonds are negotiated in the Book-Entry System, any Person who acquires a beneficial ownership interest in a Bond held by the Securities Depository. If at any time the Bonds are not held in the Book-Entry System, Beneficial Owner shall mean “Owner” for purposes of the Indenture.

**“Best Management Practice”** has the meaning ascribed to such term in Appendix E hereto.

**“BHC Act Affiliate”** of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

**“Blue Sky Laws”** means the laws and accompanying regulations regulating the offers and sales of securities and of those selling them in each of the 50 states, the District of Columbia and territories of Puerto Rico and Guam.

**“Bond Counsel”** means, collectively, Squire Patton Boggs (US) LLP and Hardwick Law Firm, LLC, or such other law firm or firms selected by the Issuer, with the consent of the Borrower, which consent shall not be unreasonably withheld, who have nationally recognized expertise in the issuance of municipal securities, the interest on which is excluded from gross income for federal and State income tax purposes.

**“Bond Interest Payments”** means, with respect to a payment date for Bonds, the interest (including the interest component of the Redemption Price due in connection with any mandatory redemption payment on any Bond) due on such date on the Bonds.

**“Bond Insurance Policy”** means (i) with respect to the Insured Series 2024 Bonds, the bond insurance policy issued at the request of the Borrower by the Bond Insurer guaranteeing the scheduled payment of the principal of and interest on the Insured Series 2024 Bonds when due and (ii) with respect to any other Additional Bonds, a bond insurance policy issued at the request of the Borrower by a Bond Insurer guaranteeing the scheduled payment of the principal of and interest on all or a portion of such Additional Bonds as specified in such bond insurance policy and in the Supplemental Indenture pursuant to which such Additional Bonds were issued.

**“Bond Insurer”** means, (i) with respect to the Insured Series 2024 Bonds, the Series 2024 Bond Insurer, and (ii) with respect to any Additional Insured Bonds, the bond insurer specified in the Supplemental Indenture pursuant to which such Additional Insured Bonds were issued.

**“Bond Insurer Advances”** means the “Bond Insurer Advances” as defined with respect to any Insured Bonds in the Supplemental Indenture therefor.

**“Bond Insurer Default”** means, with respect to a Bond Insurer, the existence and continuance of any of the following:

(a) the failure of such Bond Insurer to pay when, as and in the amounts required, any amount due and payable under its Bond Insurance Policy;

(b) such Bond Insurer (i) filing any petition or commencing any case, proceeding or other action under any provision or chapter of the United States Bankruptcy Code or any other similar federal or state law relating to insolvency, bankruptcy, rehabilitation, dissolution, winding-up, arrangement, adjustment, composition, liquidation, reorganization or similar relief, (ii) making a general assignment for the benefit of its creditors, or (iii) having an order for relief entered against it under the United States Bankruptcy Code or any other similar federal or state law relating to insolvency, bankruptcy, rehabilitation, dissolution, winding-up, arrangement, adjustment, composition, liquidation, reorganization or similar relief which shall not have been dismissed, stayed or bonded (pending appeal) within sixty (60) days after the entry thereof;

(c) a court of competent jurisdiction, the Maryland Insurance Administration or other competent regulatory authority entering an order, judgment or decree (i) appointing a custodian, trustee, agent or receiver for such Bond Insurer or for all or any material portion of its property or (ii) authorizing the taking of possession by a custodian, trustee, agent or receiver of such Bond Insurer (or the taking of possession of all or any material portion of the property of such Bond Insurer), which in each case shall not have been dismissed, stayed or bonded (pending appeal) within sixty (60) days after the entry thereof; or

(d) its Bond Insurance Policy ceasing (or such Bond Insurer claiming in writing that it has ceased) to be in full force and effect.

**“Bond Insurer Fees”** means (i) with respect to the Insured Series 2024 Bonds, the “Bond Insurer Fees” as defined in the First Amendments to TDC Loan Agreements, and (ii) with respect to any Additional Insured Bonds, as defined in the Additional Obligations Loan Agreement Supplement related to the payment of Bond Insurer fees in connection with such Additional Insured Bonds.

**“Bond Insurer Fiscal Agent”** means the “Bond Insurer Fiscal Agent” as defined with respect to any Insured Bonds in the Supplemental Indenture therefor.

**“Bond Insurer Late Payment Interest”** means the “Bond Insurer Late Payment Interest” as defined with respect to any Insured Bonds in the Supplemental Indenture therefor.

**“Bond Insurer Late Payment Rate”** means the “Bond Insurer Late Payment Rate” as defined with respect to any Insured Bonds in the Supplemental Indenture therefor.

**“Bond Insurer Premium”** has the meaning set forth in the applicable Bond Insurer Premium Schedule.

**“Bond Insurer Premium Schedule”** means (i) with respect to the Insured Series 2024 Bonds, the Bond Insurer Premium Schedule attached as Schedule I to the Second Supplemental Indenture, as acknowledged by the Borrower, in respect of the premium and other amounts payable by the Borrower in consideration of the issuance of the applicable Bond Insurance Policy by the Bond Insurer, and (ii) with respect to any Additional Insured Bonds, (A) a schedule attached to the Supplemental Indenture for such Additional Insured Bonds or (B) an instrument among the relevant Bond Insurer and the Borrower, in each case, in respect of the premium and other amounts payable by the Borrower in consideration of the issuance of the relevant Bond Insurance Policy for such Additional Insured Bonds by such Bond Insurer.

**“Bond Insurer Reimbursement Amounts”** means the “Bond Insurer Reimbursement Amounts” as defined with respect to any Insured Bonds in the Supplemental Indenture therefor.

**“Bond Insurer Unsecured Obligations”** means all non-monetary claims of the Bond Insurer under the Senior Financing Documents; provided, that each monetary judgment arising from non-monetary claims under the Senior Financing Documents shall constitute Senior Bond Insurer Obligations and shall be secured by the Senior Collateral. The Bond Insurer Unsecured Obligations shall not be secured by the Senior Collateral and shall not constitute Secured Obligations.

**“Bond Payment Accounts”** means, collectively, the Senior Obligations Payment Account, the Subordinate Obligations Payment Account, if applicable, and the respective Sub-Accounts related to the payment of principal of and interest on the Series 2022A Bonds and any Additional Bonds.

**“Bond Proceeds Sub-Accounts”** means, together, the Building Loan Tax-Exempt Bond Proceeds Sub-Account, the Project Loan Tax-Exempt Bond Proceeds Sub-Account.

**“Bond Register”** means the books maintained and kept by the Bond Registrar for registration and transfer of Bonds pursuant to Section 2.05 of the Master Indenture.

**“Bond Registrar”** means The Bank of New York Mellon, as the initial authenticating agent, bond registrar, transfer agent, and paying agent for the Bonds, and until a successor shall have become such pursuant to the terms of the Indenture and, thereafter, “Bond Registrar” shall mean the successor.

“**Bondholder**” or “**Holder**” or “**Owner**” of a Bond means the registered owner of such Bond as shown in the registration records of the Trustee.

“**Bondholder’s Agreement**” or “**Series 2022A Bondholder Agreement**” means, with respect to the Series 2022A Bonds, that certain Bondholder’s Agreement, dated as of November 1, 2022, between the Borrower and the Purchaser.

“**Bond Purchase Agreement**” means, with respect to the Series 2022A Bonds, the Series 2022A Bond Purchase Agreement, and, with respect to any Additional Bonds, an agreement entered into from time to time regarding the purchase of such Additional Bonds, among the Issuer, the Borrower, and an Initial Purchaser, a Purchaser or Underwriter.

“**Bonds**” means the Series 2022A Bonds, together with the Additional Bonds issued from time to time pursuant to the Indenture, if any.

“**Book-Entry System**” means the system maintained by the Securities Depository described in Section 2.03 of the Master Indenture.

“**Borrower**” or “**Lessee**” means JFK Millennium Partners, LLC, a Delaware limited liability company.

“**Borrower Bankruptcy Event**” means any Bankruptcy Related Event, where Borrower is the debtor subject to the Bankruptcy Related Event.

“**Borrower Condemnation Proceeds**” has the meaning ascribed to such term in Section 5.15(a) of the Collateral Agency and Accounts Agreement.

“**Borrower Covenants**” means, collectively, the covenants of the Borrower in Article X of the Collateral Agency and Accounts Agreement.

“**Borrower Insurance Proceeds**” means all proceeds of insurance (other than proceeds of business interruption insurance and delay in start up insurance or other insurance coverages against anticipated losses of revenue) payable to or received by the Borrower (whether by way of claims, return of premiums, ex gratia settlements or otherwise).

“**Borrowing Request**” means a drawing request under the Credit Agreement in substantially the form attached thereto as Exhibit B.

“**Building Leasehold Mortgage**” means that certain TDC Building Loan Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of November 1, 2022, among the Borrower, the Issuer, and the Senior Collateral Agent.

“**Building Loan Bank Proceeds Sub-Account**” means the “Building Loan Bank Proceeds Sub-Account” within the Construction Account created in the name of the Borrower pursuant to Section 5.01(a) of the Collateral Agency and Accounts Agreement.

“**Building Loan Costs**” means all costs and expenses incurred in connection with the design, construction, commissioning and financing of the Project that constitute the “cost of improvements” pursuant to the provisions of Section 22 of the New York State Lien Law, which costs, if advanced pursuant to the provisions of the TDC Building Loan Agreement, will have priority over subsequently filed mechanic’s liens.

**“Building Loan Tax-Exempt Bond Proceeds Sub-Account”** means the “Building Loan Tax-Exempt Bond Proceeds Sub-Account” within the Construction Account created in the name of the Borrower pursuant to Section 5.01(a) of the Collateral Agency and Accounts Agreement.

**“Building Loans”** means the Series 2022A Bond Building Loan, the Series 2024 Bond Building Loan, the TDC Senior Term Loan Building Loan, and any Additional Obligations identified as “Building Loans” in the Financing Documents pursuant to which such Additional Obligations are issued.

**“Business Day”** means any day that is not (i) a Saturday, a Sunday or other day on which commercial banks in New York, New York are authorized or required by law, regulation or executive order to be closed, or (ii) a day on which the New York Stock Exchange is closed.

**“Calculation Agent”** means, initially, the Trustee, and thereafter any other Calculation Agent designated from time to time by the Issuer at the direction of the Borrower with the consent of the Purchaser in accordance with Section 2.08 of the First Supplemental Indenture.

**“Calculation Date”** means each March 31, June 30, September 30 and December 31 following the Phase 2 End of Funding Date.

**“Calculation Period”** has the meaning ascribed to such term in Section 2.12(a) of the Second Supplemental Indenture.

**“Capital Appreciation Bonds”** means Bonds which are Compounding Interest Bonds throughout their entire term.

**“Capital Expenditures”** means, for any period, all expenditures made, directly or indirectly, by the Borrower during such period for equipment, fixed assets, real property or improvements, or for replacements or substitutions therefor or additions thereto, that have been or should be, in accordance with GAAP, reflected as additions to property, plant or equipment on a balance sheet of the Borrower or have a useful life of more than one year.

**“Capital Lease”** means, at any time, a lease with respect to which the lessee is required concurrently to recognize the acquisition of an asset and the incurrence of a liability in accordance with GAAP.

**“Capital Lease Obligation”** means, with respect to any Person and a Capital Lease, the amount of the obligation of such Person as the lessee under such Capital Lease which would, in accordance with GAAP, appear as a liability on a balance sheet of such Person.

**“Capital Stock”** means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation), including, without limitation, partnership interests and membership interests, and any and all warrants, rights or options to purchase any of the foregoing.

**“Capitalized Interest”** means the net amounts payable by the Borrower of (i) interest on the Secured Obligations, and (ii) Ordinary Course Payments pursuant to a “qualified hedge” under section 148 of the Code with respect to the Secured Obligations, in each case accruing prior to the respective placed-in-service date, as defined for purposes of the Code, of the Project or portion thereof.

**“Cash”** means money, currency or a credit balance in any demand account or deposit account (as such term is defined in the UCC).

“**Cash Collateral**” has the meaning given in Section 6.1(a) of the Intercreditor Agreement.

“**Casualty Event**” means any partial or total loss of, destruction of or damage to any property of the Borrower.

“**Casualty Proceeds Sub-Account**” means the Casualty Proceeds Sub-Account established and created in the name of the Borrower pursuant to Section 5.01(a) of the Collateral Agency and Accounts Agreement.

“**City**” means The City of New York.

“**Claim**” has the meaning set forth in Section 4.05 of the Second Supplemental Indenture.

“**Class**” means

- (a) with respect to the Senior Secured Parties, each of:
  - (i) the Senior Bank Creditors (in their capacity as such);
  - (ii) collectively, the Senior Bondholders (other than the Bondholders of the Series 2022A Bonds, in their capacity as such) and Bond Insurer with respect to the Senior Bond Insurer Obligations;
  - (iii) each Hedge Provider individually; and
  - (iv) any Additional Senior Creditors that become subject to the Intercreditor Agreement pursuant to an Accession Agreement and are identified therein as a Class;
- (b) with respect to any Senior Obligations, each of:
  - (i) the Senior Bank Obligations;
  - (ii) without duplication, the Senior Bond Obligations (excluding obligations under the Series 2022A Bonds);
  - (iii) the Obligations of the Issuer or the Borrower under each of the Secured Hedge Agreement (including Ordinary Course Payments and Hedge Terminations Payments); and
  - (iv) any Additional Senior Obligations that are identified as a Class;
- (c) with respect to the Subordinate Secured Parties, each of:
  - (i) the Subordinate Bondholders (in their capacity as such); and
  - (ii) any Additional Subordinate Creditors that become subject to the Intercreditor Agreement pursuant to an Accession Agreement and are identified therein as a Class;
- (d) with respect to any Subordinate Obligations, each of:



- (i) the Subordinate Obligations; and
- (ii) the Additional Subordinate Obligations (excluding any additional Hedge Agreements) and that is identified therein as a Class.

“**Class Percentage**” means, the total percentage of a Class of Senior Secured Party’s Senior Obligations as calculated in accordance with the following for purposes of determining the threshold required for Required Senior Secured Parties and an Intercreditor Vote in Section 8.4(b)(ii):

(a) Pre-Enforcement Action:

- (i) Senior Bondholders and Bond Insurers, collectively: Senior Bond Par Amount (excluding the Series 2022A Bonds) over Total Pre-Enforcement Senior Secured Voting Value;
- (ii) Senior Bank Creditors: Aggregate Bank Debt Exposure (including the Series 2022A Bonds) over Total Pre-Enforcement Senior Secured Voting Value;
- (iii) Hedge Providers: Zero percent; and
- (iv) Holders of Additional Senior Obligations: the available or committed value and principal amount of such Additional Senior Obligations over Total Pre-Enforcement Senior Secured Voting Value;

(b) Post-Enforcement Action:

- (i) Senior Bondholders and Bond Insurers, collectively: Senior Bond Par Amount (excluding the Series 2022A Bonds) over Total Post-Enforcement Senior Secured Voting Value;
- (ii) Senior Bank Creditors: Funded Bank Debt over Total Post-Enforcement Senior Secured Voting Value;
- (iii) Hedge Providers: Aggregate Hedging Agreement Termination Values over Total Post-Enforcement Senior Secured Voting Value; and
- (iv) Holders of Additional Senior Obligations: the principal amount outstanding of such Additional Senior Obligations over Total Post-Enforcement Senior Secured Voting Value.

“**Clearing Agency**” has the meaning ascribed to such term in Section 5.21(k) of the Collateral Agency and Accounts Agreement.

“**Closing Date**” means November 17, 2022.

“**Code**” means the Internal Revenue Code of 1986, as from time to time amended, and any regulations promulgated thereunder that are applicable to the Tax-Exempt Bonds, including, without limitation, any Treasury Regulations or Temporary or Proposed Regulations, as the same shall from time to time be amended, including (until modified, amended or superseded) Treasury Regulations or Temporary or Proposed Regulations under the Internal Revenue Code of 1954, as amended.

**“Collateral”** means all real and personal property that is subject to a Security Interest granted under any Security Document and shall include the Senior Collateral and the Subordinate Collateral. For the avoidance of doubt, the Collateral does not include the Non-Pledged Accounts or Non-Pledged Receipts.

**“Collateral Account Control Agreement”** has the meaning ascribed to such term in the Equity Contribution Agreement.

**“Collateral Agency and Accounts Agreement”** means that certain Collateral Agency and Accounts Agreement, dated as of November 1, 2022, by and among the Borrower, the Intercreditor Agent, the Collateral Agents and the Securities Intermediary, the Administrative Agent, the Trustee, the Issuer, and the Deposit Account Bank.

**“Collateral Agent”** means The Bank of New York Mellon, as senior collateral agent.

**“Collateral Agent Fee Letter”** means a Collateral Agent Fee Letter, between the Borrower and the Senior Collateral Agent, setting forth the fees payable to the Senior Collateral Agent.

**“Commercial Paper”** shall mean debt obligations of the Issuer authorized by the Issuer to be incurred through the issuance, from time to time, of taxable or tax-exempt notes of the Issuer under and in accordance with the provisions of the Indenture, with maturities of not to exceed 270 days. The term “Commercial Paper” does not include any notes issued as Subordinate Obligations.

**“Commodity Exchange Act”** means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

**“Common Terms Agreement”** means that certain Common Terms Agreement, dated as November 1, 2022, by and among the Issuer, the Borrower, the Intercreditor Agent, the Senior Collateral Agent, the Administrative Agent, the Trustee, and the Senior Bank Creditors.

**“Community Development Reserve Fund Account”** means the “Community Development Reserve Fund Account” established and created in the name of the Borrower pursuant to Section 5.19 of the Collateral Agency and Accounts Agreement.

**“Compensation Event”** has the meaning ascribed to such term in Appendix E hereto.

**“Completion Date”** means the date on which substantial completion of the entire D&C Work (i.e., completion of all D&C Work other than punch list items approved by the Port Authority and D&C Work specifically identified in the Baseline Schedule as extending beyond Substantial Completion of Phase 2) has been achieved.

**“Completion Obligations”** means any Additional Obligations the net proceeds of which are used to finance Project Costs associated with the completion of the D&C Work, including Additional Obligations permitted pursuant to the Lease Agreement.

**“Compounding Date”** means with respect to the Series 2024B Bonds, each June 30 and December 31 and with respect to any additional Compounding Interest Bond, the date on which interest is compounded and added to principal for purposes of determining its Accreted Value.

**“Compounding Interest Bonds”** means Bonds, the interest on which is payable only at maturity (or, with respect to Convertible Capital Appreciation Bonds, after the related Interest Commencement Date rather than at maturity) or earlier redemption or acceleration of maturity in amounts determined by reference

to the Accreted Value, and include, but are not limited to, Capital Appreciation Bonds and Convertible Capital Appreciation Bonds. For purposes of (i) receiving payment of the redemption price, if any, of a Compounding Interest Bond that is redeemed prior to maturity and (ii) computing the principal amount of Compounding Interest Bonds held by the Owner thereof in giving any notice, consent, request or demand pursuant to the applicable Supplemental Indenture for any purpose whatsoever, the principal amount of a Compounding Interest Bond as of a specific date shall be deemed to be its Accreted Value as of such date.

**“Concession Management Services Agreement”** means any agreement for the provision of concession management services entered into by the Borrower pursuant to the Lease Agreement (other than the Management Services Agreement).

**“Concessions Revenue Rent”** has the meaning ascribed to such term in Appendix E hereto.

**“Concessions Revenue Rent Account”** means the “Concessions Revenue Rent Account” established and created in the name of the Borrower pursuant to Section 5.05 of the Collateral Agency and Accounts Agreement.

**“Condemnation Proceeds Sub-Account”** means the Condemnation Proceeds Sub-Account established and created in the name of the Borrower pursuant to Section 5.01(a) of the Collateral Agency and Accounts Agreement.

**“Conforming Plan of Reorganization”** means any Plan of Reorganization that provides for the payment in full, in cash, of all Senior Obligations (including all post-petition interest, fees, expenses, and other amounts as provided in Section 6.7 of the Intercreditor Agreement, and any premium or make-whole) on the effective date of such Plan of Reorganization.

**“Construction Account”** means the “Construction Account” established and created in the name of the Borrower pursuant to Section 5.01(a) of the Collateral Agency and Accounts Agreement.

**“Construction Account Withdrawal Certificate”** means a certificate delivered by the Borrower in accordance with the Collateral Agency and Accounts Agreement in the form of Exhibit E thereto.

**“Construction Project”** has the meaning ascribed to such term in Appendix E hereto.

**“Construction Schedule and Budget”** means the construction schedule and budget delivered by the Borrower to the Agents in respect of the Project, provided that such construction schedule and budget has been certified by the Technical Advisor as consistent with project completion and total construction cost reflected in the then-current Base Case Financial Model.

**“Construction Security”** has the meaning ascribed to such term in Appendix E hereto.

**“Consultant”** means any Independent consultant, consulting firm, engineer, architect, engineering firm, architectural firm, accountant or accounting firm, financial advisory or investment banking firm, experts in the area of air traffic and airport financial analysis, or other expert recognized to be well qualified for work of the character required and retained by the Collateral Agents to perform acts and carry out the duties provided for such consultant in the Collateral Agency and Accounts Agreement.

**“Contractor”** has the meaning ascribed to such term in the Lease Agreement.

**“Contribution Notice”** has the meaning ascribed to such term in the Equity Contribution Agreement.

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

“**Controlled Entity**” means (a) any of the Borrower’s respective Affiliates and (b) if the Borrower has a parent company, such parent company and its Controlled Affiliates.

“**Convertible Capital Appreciation Bonds**” means Bonds, the interest on which from their issuance date or dated date until the related Interest Commencement Date is compounded periodically, and from and after such Interest Commencement Date is payable not less often than annually, as set forth in the Supplemental Indenture authorizing the same, calculated on the basis of the Accreted Value on such Interest Commencement Date, and the Accreted Value of which as of said Interest Commencement Date is treated as the principal amount after such conversion date.

“**Counsel**” means an attorney or firm of attorneys, acceptable to the Trustee and the Issuer, of counsel who may (except as otherwise expressly provided in the TDC Loan Agreements or any other Security Document) be counsel for the Borrower or the Issuer.

“**Covered Entity**” means any of the following:

(a) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b)

(b) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(c) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“**Credit Acceleration**” has the meaning specified in the last paragraph of Section 7.01 of the Common Terms Agreement.

“**Credit Agreement**” means that certain Credit Agreement, dated as November 1, 2022, among the Borrower, the Issuer, the Administrative Agent, the Bank Lenders and the coordinating lead arrangers, senior joint lead arranger, joint lead arrangers, mandated lead arrangers, senior managing agent and bookrunners party thereto.

“**Credit Agreement Bank Note**” means each promissory note delivered to any Bank Lender by the Issuer pursuant to the Credit Agreement.

“**Credit Bid**” means an offer submitted by an Agent (on behalf of the Secured Parties) to acquire the property of the Obligors or any portion thereof in exchange for full and final satisfaction of all or a portion of the Senior Obligations or, after the Discharge of Senior Obligations, the Subordinate Obligations, as applicable, under this Agreement and the Financing Documents.

“**Credit Extension**” means (a) each Senior Term Loan under the Credit Agreement, (b) each Security Deposit LC Credit Extension (as defined in the Common Terms Agreement) under the Credit Agreement, (c) each Security Deposit Loan under the Credit Agreement, and (d) the purchase of Series 2022A Bonds and each Drawing with respect thereto under the Series 2022A Bond Purchase Agreement.

**“Credit Facility”** means a policy of municipal bond insurance, including, without limitation, each Bond Insurance Policy, a letter of credit, surety bond, line of credit, guarantee, standby purchase agreement, debt service reserve fund surety policy or other financial instrument which obligates a third party to make payment of or provide funds to the Collateral Agents for the payment of the principal of and/or interest on Secured Obligations whether such obligation is to pay in the first instance and seek reimbursement or to pay only if the obligated party fails to do so.

**“Credit Provider”** means the party obligated to make payment of principal of and/or interest on any Secured Obligations under a Credit Facility.

**“Cross-Default Standstill Period”** has the meaning given in Section 3.8 of the Intercreditor Agreement.

**“CTA Obligations”** has the meaning ascribed to such term in Section 11.06 of the Collateral Agency and Accounts Agreement.

**“Current Interest Bonds”** means (i) Bonds, the interest on which are payable not less often than annually from their date of issuance, and (ii) Convertible Capital Appreciation Bonds, following their applicable Interest Commencement Date.

**“D&C Contract”** means that certain Design Build Agreement, dated the Closing Date, between the Borrower and the D&C Contractor.

**“D&C Contractor”** means Hunt Construction Group, Inc., an Indiana corporation, and the successors, assigns and replacements thereof under the D&C Contract.

**“D&C Contractor Direct Agreement”** means that certain Consent to Assignment, dated as of the Closing Date, among the Collateral Agents, the D&C Contractor and the Borrower.

**“D&C Guarantor”** means AECOM, a Delaware corporation.

**“D&C Guaranty”** means that certain Parent Company Guaranty, dated as of the Closing Date, made by the D&C Guarantor in favor of the Borrower.

**“D&C Letter of Credit”** means an Acceptable Letter of Credit in favor of the Collateral Agents, delivered in accordance with the Lease Agreement.

**“D&C Work”** has the meaning ascribed to such term in Appendix E hereto.

**“Daily Simple SOFR”** means, for any day (a “SOFR Interest Day”), a rate per annum (rounded upward to the next one-sixteenth (1/16th) of one percentage (0.0625%), if necessary) equal to SOFR for the related Daily Simple SOFR Computation Date. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Issuer or the Borrower.

**“Daily Simple SOFR Computation Date”** means, with respect to Daily Simple SOFR, the day that is two (2) U.S. Government Securities Business Days prior to (a) if such SOFR Interest Day is a U.S. Government Securities Business Day, such SOFR Interest Day or (b) if such SOFR Interest Day is not a U.S. Government Securities Business Day, the Business Day immediately preceding such SOFR Interest Day. For example, with respect to the foregoing clause (b), and without modifying the foregoing definition, if such SOFR Interest Day is a Saturday that is not a U.S. Government Securities Business Day, and the

immediately preceding Friday, Thursday and Wednesday are all U.S. Government Securities Business Days, the Daily Simple SOFR Computation Date for such SOFR Interest Day would be the immediately preceding Wednesday.

**“Daily Simple SOFR Rate”** means a fluctuating rate per annum, determined as of each applicable Daily Simple SOFR Computation Date for each Adjustment Date, equal to the product of (a) Daily Simple SOFR, as in effect on such Daily Simple SOFR Computation Date and (b) 80%.

**“DB Event of Default”** has the meaning assigned to the term “Event of Default” in the D&C Contract.

**“DB Outside Completion Date”** means the ninetieth (90<sup>th</sup>) day prior to the Outside Completion Date.

**“Debt Service”** means, with respect to any Secured Obligations and during the applicable period, the aggregate amount of the interest, principal, Accreted Value, Redemption Price or Acceleration Payment on the relevant Senior Obligations, or, in the case of Secured Hedge Agreements, the net amount payable by the Borrower thereunder, in each case, that is payable during such period.

**“Debt Service Reserve Accounts”** means, collectively, the Senior Debt Service Reserve Account and the Subordinate Debt Service Reserve Account.

**“Debt Service Reserve Requirements”** means, collectively the Senior Debt Service Reserve Requirement and the Subordinate Debt Service Reserve Requirement.

**“Debtor Relief Laws”** means any Bankruptcy Law, or any other applicable state, provincial territorial, or federal bankruptcy laws and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief statute, law, ordinance, rule or regulation of the United States of America, any state thereof, or the District of Columbia, or other applicable jurisdictions from time to time in effect, including any corporate law of any jurisdiction permitting a debtor to obtain a stay or a compromise of the claims of its creditors against it and including any rules and regulations pursuant thereto.

**“Decision Period”** means the period of time determined by the Intercreditor Agent and designated in any notice delivered by the Intercreditor Agent to the Agents to make any decision in accordance with Section 8.4(b) of the Intercreditor Agreement; provided, that (a) subject to clause (b) below, each Decision Period shall end not earlier than 30 days after the date of such notice; provided, further, that the Intercreditor Agent may designate such lesser period (being at least 15 Business Days) as it may consider necessary or advisable in circumstances where the interests of the Secured Parties or any of them would otherwise be likely to be prejudiced, and (b) any such period of time may be extended at the request of the Administrative Agent, the Trustee or any other Agent for a period not to exceed an additional 15 Business Days (or such longer period as all Parties may otherwise agree in writing) on a one-time basis only for any notice.

**“Deemed Drawing”** shall have the meaning ascribed to such term in the Series 2022A Bond Purchase Agreement.

**“Default”** means any event, omission or circumstance that with the lapse of time, the giving of notice or both, could become an Event of Default.

**“Default Notice Date”** has the meaning given in Section 5.22(e) of the Collateral Agency and Accounts Agreement.

“**Default Right**” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“**Defaulted Interest**” means the term set forth in Section 2.18(e) of the Master Indenture.

“**Defaulting Sponsor**” means a Sponsor that fails to make a payment or Equity Contribution or provide Equity Support in accordance with the Equity Contribution Agreement.

“**Defeasance Obligations**” means Government Obligations that are not subject to redemption (other than at the option of the holder thereof) prior to the date or dates on which the proceeds thereof are required pursuant to the terms of the Indenture.

“**Defect**” has the meaning ascribed to such term in Appendix E hereto.

“**Deferral Period**” has the meaning ascribed to such term in Section 5.05 of the Collateral Agency and Accounts Agreement.

“**Deferred Concessions Revenue Rent**” has the meaning ascribed to such term in Appendix E hereto.

“**Deferred Interest Obligations**” means Convertible Capital Appreciation Bonds and any other Secured Obligation with interest payment deferred beyond (12) twelve months after the initial issuance of, or the binding written commitment with respect to, the applicable Secured Obligation.

“**Delay Event**” has the meaning ascribed to such term in Appendix E hereto.

“**Deposit Account Bank**” means The Bank of New York Mellon, a banking corporation organized under the laws of the State of New York, in its capacity as Deposit Account Bank under the Collateral Agency and Accounts Agreement, and its successors and assigns pursuant to the Collateral Agency and Accounts Agreement.

“**Deposit Account Bank Termination Notice**” has the meaning ascribed to such term in Section 5.25(b) of the Collateral Agency and Accounts Agreement.

“**Design Manager**” has the meaning ascribed to such term in the Lease Agreement.

“**Designated Rating Agency**” means Fitch, Moody’s or S&P and, in each case, any successors thereto, or, if none of the foregoing (or any successor thereof) exists, any other Nationally Recognized Rating Agency.

“**Determination of Taxability**” means:

(I) with respect to the Series 2022A Bonds, (a) a published or private ruling, technical advice memorandum or field service advice is issued or provided by the Internal Revenue Service concluding that the interest payable on the Bonds of such Series is includable in the gross income of the holders thereof for federal income tax purposes in connection with a process in which the Borrower has participated or has been given the opportunity to participate, and which ruling, memorandum or advice the Borrower, in its discretion, does not contest or from which no further right of judicial review or appeal exists, in each case in the manner provided below, (b) a final determination by a court of competent jurisdiction in the United States or by the Internal Revenue Service that the interest payable on the Bonds of such Series is includable in the gross income of the holders thereof for federal income tax purposes from which no further right of

appeal exists in a proceeding in which the Borrower has participated or has been a party, or has been given the opportunity to participate or be a party, or (c) the delivery to the Issuer, the Borrower or the Purchaser of a written opinion of Squire Patton Boggs (US) LLP or Hardwick Law Firm, LLC, as Bond Counsel, or any other Bond Counsel to the effect that the interest payable on the Bonds of such Series is includable in the gross income of the holders thereof for federal income tax purposes or of written advice to the effect that the opinion of such Bond Counsel delivered on the Issuance Date of the Bonds of such Series to the effect that interest on such Bonds is not includable in the gross income of the holders thereof for federal income tax purposes may no longer be relied upon; provided, however, that no such Determination of Taxability described in (a) or (b) shall be considered to exist unless (i) the registered or Beneficial Owner or former registered or Beneficial Owner of such Series of Bonds involved in such proceeding or action (A) gives the Borrower and the Trustee prompt notice of the commencement thereof and (B) (if the Borrower agrees to pay all expenses in connection therewith) offers the Borrower the opportunity to control the defense thereof and (ii) either (A) the Borrower does not agree within 30 days of receipt of such offer to pay such expenses and liabilities and to control such defense or (B) the Borrower shall exhaust or choose not to exhaust all available proceedings for the contest, review, appeal or rehearing of such decree, judgment or action which the Borrower determines to be appropriate; provided further that no such Determination of Taxability described in (c) above shall be considered to exist if upon receipt of such opinion or written advice described in (c) above, the Borrower gives the Issuer and the Purchaser prompt written notice of its intent to obtain (at the Borrower's expense) a second opinion and, within 60 days of the receipt such opinion or written advice described in (c) above, delivers to the Issuer and the Purchaser an opinion of a nationally recognized attorney or firm of attorneys experienced in matters relating to municipal bond law and the tax exemption of interest on bonds of states and their political subdivisions, reasonably acceptable to the Issuer and the Purchaser, to the effect that interest on such Bonds is (and in the case of the Series 2022A Bonds, addition future Drawings, if such Drawings are made prior to the Series 2022A Commitment End Date, will be) excludable from the gross income of the holders thereof for federal income tax purposes; provided, further, no Determination of Taxability described above will result from the inclusion of interest on any Bond in the computation of minimum or indirect taxes; and

(II) with respect to any Series of Tax-Exempt Bonds other than the Series 2022A Bonds, (a) a published or private ruling, technical advice memorandum or field service advice is issued or provided by the Internal Revenue Service concluding that the interest payable on the Bonds of such Series is includable in the gross income of the holders thereof for federal income tax purposes in connection with a process in which the Borrower has participated or has been given the opportunity to participate, and which ruling, memorandum or advice the Borrower, in its discretion, does not contest or from which no further right of judicial review or appeal exists, in each case in the manner provided below, (b) a final determination by a court of competent jurisdiction in the United States or by the Internal Revenue Service that the interest payable on the Bonds of such Series is includable in the gross income of the holders thereof for federal income tax purposes from which no further right of appeal exists in a proceeding in which the Borrower has participated or has been a party, or has been given the opportunity to participate or be a party, or (c) the delivery to the Issuer, the Borrower or the Bondholder of a written opinion of Squire Patton Boggs (US) LLP or Hardwick Law Firm, LLC, as Bond Counsel, or any other Bond Counsel, in any of the foregoing cases, to the effect that, as a result of a failure by the Borrower to observe any covenant or agreement of the Borrower in any Financing Document or any applicable Tax Certificate, or the inaccuracy of any Borrower representation or warranty therein, the interest payable on the Bonds of such Series is includable in the gross income of the holders thereof for federal income tax purposes or of written advice to the effect that the opinion of such Bond Counsel delivered on the Issuance Date of the Bonds of such Series to the effect that interest on such Bonds is not includable in the gross income of the holders thereof for federal income tax purposes may no longer be relied upon; provided, however, that no such Determination of Taxability described in (a) or (b) shall be considered to exist unless (i) the registered or Beneficial Owner or former registered or Beneficial Owner of such Series of Bonds involved in such proceeding or action (A) gives the Borrower and the Trustee prompt notice of the commencement thereof and (B) (if the



Borrower agrees to pay all expenses in connection therewith) offers the Borrower the opportunity to control the defense thereof and (ii) either (A) the Borrower does not agree within 30 days of receipt of such offer to pay such expenses and liabilities and to control such defense or (B) the Borrower shall exhaust or choose not to exhaust all available proceedings for the contest, review, appeal or rehearing of such decree, judgment or action which the Borrower determines to be appropriate; provided further that no such Determination of Taxability described in (c) above shall be considered to exist if upon receipt of such opinion or written advice described in (c) above, the Borrower gives the Issuer and the Bondholder prompt written notice of its intent to obtain (at the Borrower's expense) a second opinion and, within 60 days of the receipt such opinion or written advice described in (c) above, delivers to the Issuer and the Bondholder an opinion of a nationally recognized attorney or firm of attorneys experienced in matters relating to municipal bond law and the tax exemption of interest on bonds of states and their political subdivisions, reasonably acceptable to the Issuer and the Bondholder, to the effect that interest on such Bonds is excludable from the gross income of the holders thereof for federal income tax purposes; provided, further, no Determination of Taxability described above will result (i) from the inclusion of interest on any Bond in the computation of minimum or indirect taxes or (ii) if the events that would otherwise give rise to a Determination of Taxability occur as a result of a change in the Code or regulations under the Code adopted after the date of issuance of the applicable Tax-Exempt Bonds.

**“DIP Financing”** has the meaning given in Section 6.1(a) of the Intercreditor Agreement.

**“Direct Agreements”** means, collectively, (a) the Manager Direct Agreement, (b) the D&C Contractor Direct Agreement, (c) if and when entered into pursuant to Section 6.08(c) of the Common Terms Agreement, any direct agreement in respect of the Concession Management Services Agreement, and (d) if and when entered into pursuant to Section 6.08(d) of the Common Terms Agreement, each direct agreement in respect of a Material Sublease (other than those described in the preceding clause (c)).

**“Direction Notice”** has the meaning ascribed to such term in Section 6.03 of the Collateral Agency and Accounts Agreement.

**“Discharge of Senior Bank Obligations”** means, subject to Section 6.5 of the Intercreditor Agreement:

- (a) irrevocable and indefeasible, payment in full in cash or discharge in full (including by defeasance, if applicable) of (i) the outstanding principal amount of all Senior Loans, Series 2022A Bonds and notes under the Senior Financing Documents, (ii) unreimbursed amounts with respect to any Letter of Credit issued under the Senior Bank Financing Documents and (iii) interest, fees, expenses and other amounts outstanding at such time under the Senior Bank Financing Documents (including interest, fees, expenses and other amounts accruing on or after the commencement of an Insolvency or Liquidation Proceeding, in each case at the applicable rate provided for in the respective Senior Bank Financing Documents, whether or not such interest, fees, expenses or other amounts would be allowed in such Insolvency or Liquidation Proceeding, and any premium or make-whole, if any);
- (b) the termination or expiration of all commitments, if any, to extend credit (including the issuance of any Letter of Credit) that would constitute Senior Bank Obligations;
- (c) cancellation, termination or cash collateralization at 102.5% of aggregate Available Amount of all Letters of Credit issued and outstanding under the Senior Bank Financing Documents (unless the outstanding amount of exposure under the relevant Letter of Credit has been back-stopped by a letter of credit reasonably satisfactory to the applicable issuing bank);

- (d) the termination or expiration of all Secured Hedge Agreements that hedge or mitigate commercial risk with respect to the Senior Bank Obligations (or as of the date of execution, were intended or designed to hedge or mitigate commercial risk with respect to the Senior bank Obligations), or the entering into of any arrangement(s) (that are satisfactory to the applicable Hedge Provider in its sole and absolute discretion) which provide for the effective termination, cancellation, netting or set-off of such Secured Hedge Agreements;
- (e) payment in full in cash or discharge in full of all Senior Bank Obligations (excluding contingent indemnification and reimbursement obligations, that, by their express terms, survive the termination, expiration, or cancellation of the Secured Hedge Agreements) outstanding under the Secured Hedge Agreements that hedge or mitigate commercial risk with respect to the Senior Bank Obligations (or as of the date of execution, were intended or designed to hedge or mitigate commercial risk with respect to the Senior bank Obligations);
- (f) payment in full in cash or discharge in full of all other Senior Bank Obligations that are then due and payable or otherwise accrued and owing at or prior to the time such amounts are paid; and
- (g) adequate provision being made to the satisfaction of the applicable Senior Bank Creditors for any contingent or unliquidated Senior Bank Obligations related to claims, causes of action or liabilities that have been asserted against the related Senior Bank Creditors and for which indemnification is required under the Senior Bank Financing Documents.

**“Discharge of Senior Obligations”** means, subject to Section 6.5 of the Intercreditor Agreement:

- (a) payment in full in cash or discharge in full (including by defeasance, if applicable) of (i) the outstanding principal amount of all Senior Obligations under the Senior Financing Documents, (ii) unreimbursed amounts with respect to any Letter of Credit issued under the Senior Financing Documents and (iii) interest, fees, expenses and other amounts outstanding at such time under the Senior Financing Documents (including interest, fees, expenses and other amounts accruing on or after the commencement of an Insolvency or Liquidation Proceeding, in each case at the applicable rate provided for in the respective Senior Financing Documents, whether or not such interest, fees, expenses or other amounts would be allowed in such Insolvency or Liquidation Proceeding, and any premium or make-whole, if any);
- (b) the termination or expiration of all commitments, if any, to extend credit (including the issuance of any Letter of Credit) that would constitute Senior Obligations;
- (c) cancellation, termination or cash collateralization at 102.5% of aggregate Available Amount of all Letters of Credit issued and outstanding under the Senior Financing Documents (unless the outstanding amount of exposure under the relevant Letter of Credit has been back-stopped by a letter of credit reasonably satisfactory to the applicable issuing bank);
- (d) the termination or expiration of all Secured Hedge Agreements, or the entering into of any arrangement(s) (that are satisfactory to the applicable Hedge Provider in its reasonable discretion) which provide for the effective termination, cancellation, netting or set-off of such Secured Hedge Agreements;

- (e) payment in full in cash or discharge in full of all Senior Obligations (excluding contingent indemnification and reimbursement obligations, that, by their express terms, survive the termination, expiration, or cancellation of the Secured Hedge Agreements) outstanding under the Secured Hedge Agreements;
- (f) payment in full in cash or discharge in full of all other Senior Obligations that are then due and payable or otherwise accrued and owing at or prior to the time such amounts are paid; and
- (g) adequate provision being made to the satisfaction of the applicable Senior Bank Creditors for any contingent or unliquidated Senior Obligations related to claims, causes of action or liabilities that have been asserted against the related Senior Secured Parties and for which indemnification is required under the Senior Financing Documents;

provided, that the Discharge of Senior Obligations shall not be deemed to have occurred if the applicable payments are made with the proceeds of other Senior Obligations that constitute an exchange or replacement for or a Refinancing of such Senior Obligations.

**“Discharge of Subordinate Obligations”** means, subject to Section 6.5 of the Intercreditor Agreement:

- (a) the irrevocable and indefeasible payment in full in cash or discharge in full (including by defeasance, if applicable) of (i) the outstanding principal amount of all Subordinate Obligations, (ii) unreimbursed amounts with respect to any Letter of Credit issued under the Subordinate Financing Documents and (iii) interest, fees, expenses and other amounts outstanding at such time under the Subordinate Financing Documents (including interest, fees, expenses and other amounts accruing on or after the commencement of an Insolvency or Liquidation Proceeding, in each case at the applicable rate provided for in the respective Subordinate Financing Documents, whether or not such interest, fees, expenses or other amounts would be allowed in such Insolvency or Liquidation Proceeding, and any premium or make-whole, if any);
- (b) the termination or expiration of all commitments, if any, to extend credit (including the issuance of any Letter of Credit) that would constitute Subordinate Obligations;
- (c) cancellation, termination or cash collateralization at 102.5% of aggregate Available Amount of all Letters of Credit issued and outstanding under the Subordinate Financing Documents (unless the outstanding amount of exposure under the relevant Letter of Credit has been back-stopped by a letter of credit reasonably satisfactory to the applicable issuing bank);
- (d) payment in full in cash or discharge in full of all other Subordinate Obligations that are then due and payable or otherwise accrued and owing at or prior to the time such amounts are paid; and
- (e) adequate provision being made for any contingent or unliquidated Subordinate Obligations related to claims, causes of action or liabilities that have been asserted against the related Subordinate Secured Parties and for which indemnification is required under the Subordinate Financing Documents;

provided, that the Discharge of Subordinate Obligations shall not be deemed to have occurred if the applicable payments are made with the proceeds of other Subordinate Obligations that constitute an exchange or replacement for or a Refinancing of such Subordinate Obligations.

“**Disposition**” or “**Dispose**” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“**Disposition Proceeds**” has the meaning ascribed to such term in Section 5.15(d) of the Collateral Agency and Accounts Agreement.

“**Disputed Payment Amount**” has the meaning ascribed to such term in Section 5.30 of the Collateral Agency and Accounts Agreement.

“**Distribution Account**” means the “Distribution Account” established and created in the name of the Borrower pursuant to Section 5.19(b) of the Collateral Agency and Accounts Agreement.

“**Dollars**” and the sign “**\$**” mean the lawful currency of the United States of America.

“**Drawing**” means a drawing extended by the Initial Purchaser to the Issuer under the terms and conditions of the Series 2022A Bond Purchase Agreement with respect to the Series 2022A Bonds. “Drawings” refers to all such drawings extended by the Initial Purchaser to the Issuer under the Series 2022A Bond Purchase Agreement, including, without limitation, the Initial Drawing.

“**Drawing Request**” means a drawing request under the Series 2022A Bond Purchase Agreement in substantially the form attached thereto as Exhibit C.

“**DSCR Calculation Period**” means, as applicable, (i) each DSCR Initial Stub Period, (ii) any 12-month period beginning after the Phase 2 End of Funding Date and ending on a Calculation Date, or (iii) on a forward-looking basis, any 12-month period ending on a Calculation Date.

“**DSCR Debt Service**” means Aggregate Debt Service less, on a prospective basis, without duplication, the amounts expected to be paid from, and on a historical basis, the amounts actually paid from, amounts not constituting Project Revenues (including, without limitation, (i) the proceeds of any redemption of the Bonds, prepayment of the Senior Loans or refinancing of all or part of the Obligations, (ii) the capitalized interest payable on Secured Obligations from proceeds on deposit in the Construction Account and (iii) Equity Contributions).

“**DSCR Initial Stub Period**” means each period from the Phase 2 End of Funding Date to any Calculation Date occurring prior to the first anniversary of the Phase 2 End of Funding Date.

“**DTC**” means The Depository Trust Company, New York, New York.

“**Electronic Means**” means telecopy, facsimile transmission, e-mail transmission containing a PDF copy of the signature of the party delivering the communication, or other similar electronic means of communication providing evidence of transmission, including a telephonic communication confirmed by any other Electronic Means.

**“Electronic Signature”** means an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a Person with the intent to sign the record.

**“Eligible Accounts”** means the Funds, including the Accounts and Sub-Accounts thereunder, established pursuant to the Indenture.

**“Eligible Investments”** means:

- (a) Direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;
- (b) Investments in Dollar-denominated commercial paper or tax-exempt obligations having, at such date of acquisition, the highest credit rating obtainable from S&P or from Moody’s and maturing within one year of the date of acquisition;
- (c) Investments in Dollar-denominated certificates of deposit, banker’s acceptances and time deposits issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof which has a combined capital and surplus and undivided profits of not less than \$500,000,000, maturing within one year of the date of acquisition;
- (d) Investments in Dollar-denominated federal funds, certificates of deposit, time deposits and banker’s acceptances having maturities of not more than 365 days, of any bank, the short-term debt obligations of which are rated not lower than A-1 by S&P and P-1 by Moody’s;
- (e) Investment agreements, including guaranteed investment contracts, repurchase agreements and forward delivery agreements, that are obligations of an entity whose senior long term debt obligations, deposit rating or claims-paying ability are rated, or guaranteed by an entity whose obligations are rated (at the time the investment is entered into), not lower than A2 by Moody’s or its equivalent from another Designated Rating Agency; and
- (f) money market funds or qualified investment funds given one of the two highest long term ratings available from S&P and Moody’s.

**“Eligible LC Issuer”** has the meaning ascribed to such term in the Lease Agreement (in effect on the Closing Date, without regards to any subsequent amendment or modification).

**“EMMA”** means the Electronic Municipal Markets Access system (or any successor thereof) administered by the Municipal Securities Rulemaking Board (or any successor administrator of such system).

**“Enforcement Action”** means any action, whether by judicial or bankruptcy proceedings or otherwise, to enforce or exercise any of the rights and remedies granted to the Senior Collateral Agent, the Subordinate Collateral Agent, the Senior Secured Parties, the Subordinate Bondholders or any other Agent pursuant to the Security Documents or any other Financing Documents against the Collateral or any Obligor, in each case, upon the occurrence and during the continuance of an Event of Default, including:

- (a) foreclosure proceedings with respect to the Collateral;
- (b) exercising any rights or remedies under any of the Direct Agreements, the Lease Agreement or Performance Security;
- (c) seeking to have a trustee, receiver, liquidator or similar official appointed for or over, attempting any action to take possession of, exercising any right, remedy or power with respect to, or otherwise taking any action to enforce a security interest in or realize upon, or taking any other action available in respect of, any Collateral, whether under any Security Document, applicable law or otherwise,

but, excluding any Permitted Actions.

**“Enforcement Exception”** means those rights granted to an Agent or Secured Party pursuant to Section 3.2(c), Sections 3.5 and Section 3.7 of the Intercreditor Agreement.

**“Entitlement Order”** shall have the meaning given to such term in Section 8-102 of the UCC.

**“Environmental Cooperation Agreements”** means, collectively, (a) the Cooperation Agreement, dated as of October 28, 2021, between British Airways Plc and Vantage Airport Group (US) Ltd., as amended by the Extension to Cooperation Agreement between British Airways Plc and the Borrower, dated as of November 4, 2022, and (b) the Environmental Agreement, dated November 17, 2022, between JetBlue Airways Corporation and the Borrower.

**“Environmental Laws”** means any Applicable Law related to pollution, preservation, protection or restoration of the environment or the generation, use, transport, management, Release or threatened Release of, or exposure to, any Hazardous Materials.

**“Environmental Liability”** means any liability or obligation, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), directly or indirectly, resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment, disposal or permitting or arranging for the disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

**“Equity Collateral Account”** has the meaning assigned to that term in the Equity Contribution Agreement.

**“Equity Contribution”** has the meaning ascribed to such term in the Equity Contribution Agreement.

**“Equity Contribution Agreement”** means that certain Equity Contribution Agreement, dated as of November 1, 2022, by and among the Sponsors, the HoldCo, the Borrower, and the Collateral Agents.

**“Equity Contribution Letters of Credit”** means the Equity Letters of Credit in favor of the Collateral Agents, issued in accordance with the Equity Contribution Agreement.

**“Equity Contribution Sub-Account”** means the “Equity Contribution Sub-Account” established and created within the Construction Account in the name of the Borrower pursuant to Section 5.01(a) of the Collateral Agency and Accounts Agreement.

**“Equity Deposit”** has the meaning assigned to that term in the Equity Contribution Agreement.

**“Equity Gain Share”** has the meaning assigned to that term in the Lease Agreement.

**“Equity Interests”** means shares, shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person.

**“Equity Letter of Credit”** has the meaning assigned to that term in the Equity Contribution Agreement.

**“Equity Member”** has the meaning ascribed to such term in Appendix E hereto.

**“Equity Support”** has the meaning assigned to that term in the Equity Contribution Agreement.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

**“ERISA Affiliate”** means any trade or business (whether or not incorporated) that is treated as a single employer together with the Borrower under section 414 of the Code.

**“ERISA Event”** means the Borrower or any ERISA Affiliate maintaining, sponsoring or contributing to any employee benefit plan subject to ERISA or the Code.

**“Event of Default”** has the meaning ascribed to such term in each of the Indenture, the Credit Agreement, the Bondholder’s Agreement, the TDC Building Loan Agreement, the TDC Project Loan Agreement, the Common Terms Agreement, the Collateral Agency and Accounts Agreement or other similar agreements governing the Secured Obligations.

**“Excess Interest”** has the meaning ascribed to such term in the Section 2.07(f) of the First Supplemental Indenture.

**“Excess Value Rent”** has the meaning ascribed to such term in Appendix E hereto.

**“Excluded Perfection Collateral”** means (i) vehicles and other assets subject to certificates of title in which perfection of a security interest requires notation of a certificate of title (other than vehicles or other assets constituting inventory (as defined in the UCC)), to the extent such vehicles or assets have an aggregate book value of less than \$1,000,000, (ii) letter of credit rights (as defined in the UCC) in an amount less than \$500,000 individually and \$2,500,000 in aggregate; (iii) commercial tort claims (as defined in the UCC) in an amount less than \$500,000 individually and \$2,500,000 in the aggregate, (iv) chattel paper (as defined in the UCC) deposited or to be deposited for collection or other chattel paper, including electronic chattel paper (as defined in the UCC), in an amount less than \$500,000 individually and \$2,500,000 in the aggregate, and (v) instruments (as defined in the UCC) deposited or to be deposited for collection or other instruments in an amount less than \$500,000 individually and \$2,500,000 in the aggregate.

**“Excluded Swap Obligation”** means, with respect to any guarantor, any Swap Obligation if, and to the extent that, all or a portion of the guarantee of such guarantor of, or the grant by such guarantor of a security interest to secure, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the

regulations thereunder at the time the guarantee of such guarantor or the grant of such security interest becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guarantee or security interest is or becomes illegal.

“**Existing Terminal Facilities**” has the meaning ascribed to such term in Appendix E hereto.

“**Expiration Date**” has the meaning ascribed to such term in Appendix E hereto.

“**Expropriation Event**” means a “Taking” (as defined in the Lease Agreement) covering all or any part of the Premises.

“**Extraordinary Receipts Accounts**” means the “Extraordinary Receipts Accounts” established and created in the name of the Borrower pursuant to Section 5.01(a) of the Collateral Agency and Accounts Agreement.

“**Favorable Opinion of Bond Counsel**” means, with respect to any action the occurrence of which requires such an opinion, an Opinion of Bond Counsel to the effect that such action is permitted under the Act and the Indenture and with respect to any action relating to a Series of Tax-Exempt Bonds, will not impair the exclusion of interest on the Series of Tax-Exempt Bonds from gross income for purposes of federal income taxation (subject to the inclusion of any exceptions contained in the Opinion of Bond Counsel delivered upon original issuance of such Series of Tax-Exempt Bonds).

“**Federal Book-Entry Regulations**” means (a) the United States Department of the Treasury’s regulations governing “Securities” (as defined in 31 C.F.R. § 357.2) issued by the United States Treasury and maintained in the form of entries in the federal reserve banks’ book-entry system known as the Treasury/Reserve Automated Debt Entry System (TRADES), as such regulations are set forth in 31 C.F.R. Part 357 and (b) regulations analogous and substantially similar to the regulations described in clause (a) above governing any other automated book-entry system operated by the United States federal reserve banks in which securities issued by government sponsored enterprises are issued, recorded, transferred and maintained in book-entry form.

“**Fee Letters**” means the Administrative Agency Fee Letter, the Collateral Agent Fee Letter, the Account Bank Fee Letter and the Mandate Letter.

“**Final Completion Date**” means the date of issuance by the Port Authority of a “Final Certificate of Authorization to Occupy or Use” in respect to the Phase 2 D&C Work (as defined in the Lease Agreement) pursuant to the Lease Agreement.

“**Financing Documents**” means the Senior Financing Documents and the Subordinate Financing Documents.

“**First Additional Rent**” has the meaning ascribed to such term in Appendix E hereto.

“**First Amendment to Building Loan Assignment**” means the First Amendment to Issuer Assignment Agreement (Building Loan), dated as of November 1, 2024.

“**First Amendment to Project Loan Assignment**” means the First Amendment to Issuer Assignment Agreement (Project Loan), dated as of November 1, 2024.



**“First Amendment to the Intercreditor Agreement”** means the First Amendment to the Intercreditor Agreement, dated as of November 1, 2024.

**“First Amendments to Issuer Assignment Agreements”** means the First Amendment to Building Loan Assignment and the First Amendment to Project Loan Assignment.

**“First Amendments to TDC Loan Agreements”** means, collectively the First Building Loan Agreement Amendment and the First Project Loan Agreement Amendment.

**“First Building Loan Agreement Amendment”** means that certain First Building Loan Agreement Amendment, dated as of November 1, 2024, between the Borrower and the Issuer.

**“First CAAA Amendment”** means that certain First Amendment to the Collateral Agency and Accounts Agreement, dated as of November 1, 2024, by and among the Borrower, the Intercreditor Agent, the Senior Collateral Agent, the Securities Intermediary and the Issuer.

**“First Project Loan Agreement Amendment”** means that certain First Project Loan Agreement Amendment, dated as of November 1, 2024, between the Borrower and the Issuer.

**“First Supplemental Indenture”** means that certain TDC First Supplemental Bond Indenture of Trust between the Issuer and the Trustee, dated as of November 1, 2022.

**“Fiscal Year”** means the twelve months commencing on January 1 of any calendar year and ending on December 31 of such calendar year.

**“Fitch”** means Fitch Ratings, Inc.

**“Free Cash Flow”** means, for any DSCR Calculation Period, the amount of (A) minus (B), where:

- (a) is the sum of:
  - (i) actual Project Revenues deposited in the Pre-Substantial Completion Revenue Account or the Post-Substantial Completion Revenue Account during such DSCR Calculation Period (provided that proceeds from business interruption insurance, advance loss of profit or delay in startup will be deemed received during the period in which the business interruption or delay for which such proceeds were received occurred); *plus*
  - (ii) interest earned on Sub-Accounts of the Construction Account during such DSCR Calculation Period (without duplication of any amounts pursuant to the preceding clause (i)); *plus*
  - (iii) all amounts transferred from the O&M Reserve Account or the Major Maintenance Reserve Account during such DSCR Calculation Period to the Pre-Substantial Completion Revenue Account pursuant to Section 5.02(c) of the Collateral Agency and Accounts Agreement or to the Post-Substantial Completion Revenue Account pursuant to Section 5.03(c) of the Collateral Agency and Accounts Agreement, as applicable, but in each case only to the extent such amounts transferred from the O&M Reserve Account or the Major Maintenance Reserve Account, respectively, were initially funded from Project Revenues; and

- (b) is the sum of:
- (i) all amounts that are required to be paid or transferred during such DSCR Calculation Period pursuant to Section 5.02 (b)(1) or Section 5.03(b)(1) of the Collateral Agency and Accounts Agreement, as applicable
  - (ii) O&M Expenses payable by the Borrower during such DSCR Calculation Period (excluding such expenditures withdrawn from the O&M Reserve Account to directly pay O&M Expenses, and for the avoidance of doubt excluding all transfers of amounts outlined in section (A)(iii) of this definition of Free Cash Flow); *plus*
  - (iii) Major Maintenance expenditures payable by the Borrower during such DSCR Calculation Period (excluding (a) such expenditures withdrawn from the Major Maintenance Reserve Account to directly pay Major Maintenance expenditures, including all transfers of amounts outlined in section (A)(iii) of this definition of Free Cash Flow, (b) such expenditures withdrawn from the Handback Reserve Account, (c) any draws under any letter of credit or other performance security available for purposes of the Major Maintenance Reserve Account or the Handback Reserve Account, as the case may be, in accordance with the terms of the Collateral Agency and Accounts Agreement and the Lease Agreement, (d) operating and capital expenditures made with Borrower Insurance Proceeds that are not included in the calculation of Project Revenues or (e) the principal amount of borrowed funds (including Additional Obligations) applied to pay Major Maintenance); *plus*
    - (i) deposits into the Major Maintenance Reserve Account, O&M Reserve Account, and the Handback Reserve Account during such DSCR Calculation Period; *plus*
    - (ii) all MAG Deficiency transferred to the Port Authority pursuant to Section 5.02 (b)(2) or Section 5.03(b)(2) of the Collateral Agency and Accounts Agreement, as applicable.

“**Fundamental Enforcement Rights**” has the meaning given in Section 3.5(b)(i) of the Intercreditor Agreement.

“**Fundamental Events of Default**” has the meaning given in Annex II of the Intercreditor Agreement.

“**Funded Bank Debt**” means the aggregate principal amount of Senior Bank Obligations outstanding under the Credit Agreement or the Series 2022A Bonds.

“**Funding Shortfall**” means any circumstance where, on any date prior to the Completion Date, the Available Funding is less than the aggregate of (a) the aggregate amount of all Project Costs incurred by the Borrower for the Project prior to the Completion Date which, in each case, are due and payable on such date but have not yet been paid; (b) the aggregate amount of all remaining Project Costs that have been or are reasonably likely to be incurred by the Borrower to achieve the Completion Date on or prior to the Outside Completion Date; (c) the aggregate amount required to fully fund the Senior Debt Service Reserve Account, the Ramp-Up Reserve Account, the O&M Reserve Account, and the Major Maintenance Reserve Account on or before the Phase 2 End of Funding Date in accordance with the Collateral Agency and Accounts Agreement and (d) the aggregate amount of all O&M Expenses forecast by the Borrower to

be incurred prior to the Completion Date as set forth in the Annual Operating Budget then in effect and consistent with the Base Case Financial Model.

“**Funds Transfer Certificate**” means a certificate delivered by the Borrower in accordance with the Collateral Agency and Accounts Agreement in the form of Exhibit D thereto.

“**GAAP**” means such accepted accounting practice as conforms at the time to applicable generally accepted accounting principles in the United States of America, consistently applied.

“**Government Obligations**” means the obligations described in clause (a) of the definition of “Eligible Investments” and obligations the timely payment of the principal of and interest on which are fully and unconditionally guaranteed by the United States of America.

“**Governmental Approval**” has the meaning ascribed to such term in Appendix E hereto.

“**Governmental Authority**” has the meaning ascribed to such term in Appendix E hereto.

“**Gross Rents**” has the meaning ascribed to such term in the Lease Agreement.

“**Ground Rent**” has the meaning ascribed to such term in Appendix E hereto.

“**Handback Amount**” has the meaning ascribed to such term in the Lease Agreement.

“**Handback Performance Security**” has the meaning ascribed to such term in the Lease Agreement.

“**Handback Reserve Account**” means the “Handback Reserve Account” established and created in the name of the Borrower pursuant to Section 5.18 of the Collateral Agency and Accounts Agreement.

“**Handback Reserve Amount**” means an amount equal to one hundred fifteen percent (115%) of the Handback Amount.

“**Hazardous Materials**” means all pollutants, contaminants, wastes, chemicals, materials and substances subject to regulation or which can give rise to liability under any Environmental Law, including explosive or radioactive substances, lead, per- and polyfluoroalkyl substances, petroleum, petroleum breakdown products, petroleum by products, petroleum distillates, asbestos, asbestos-containing materials, polychlorinated biphenyls, radon gas, toxic mold, pesticides, fungicides, fertilizers, or other agricultural chemicals and includes any “Hazardous Substance” (as defined in the Lease Agreement).

“**Hedge Agreement**” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, (b) any agreement with respect to any swap, call, cap, collar, floor, forward, future, put, spot, option, or derivative transaction or arrangement or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value, and (c) any and all transactions of any kind,

and the related confirmations, that are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “**Master Agreement**”), including any such obligations or liabilities under any Master Agreement; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, or employees shall be a “**Hedge Agreement**.”

“**Hedge Ordinary Course Payment Account**” has the meaning ascribed to such term in Section 5.01(a) of the Collateral Agency and Accounts Agreement.

“**Hedge Provider**” means any entity that is a party to a Secured Hedge Agreement (other than the Issuer and the Lessee), provided that any such entity is either already a party to the Intercreditor Agreement or shall have executed and delivered to the Intercreditor Agent an Accession Agreement pursuant to which such entity becomes a party to the Intercreditor Agreement and agrees to be bound by the obligations of a Secured Party and Hedge Provider under the terms thereof.

“**Hedge Termination Payment**” means any amount payable in connection with a termination (whether as a result of the occurrence of an event of default or other termination event) of a Secured Hedge Agreement calculated in accordance with the terms thereof after giving effect to any legally enforceable netting arrangement; provided that, for the avoidance of doubt, “Hedge Termination Payments” shall not include any Ordinary Course Payments due under any such Secured Hedge Agreement (except any amounts that are then due and payable, but unpaid, shall be included in the amount due as part of such termination payment).

“**Hedge Termination Payment Account**” has the meaning ascribed to such term in Section 5.01(a) of the Collateral Agency and Accounts Agreement.

“**HoldCo**” means JFK Millennium Partners Holdings, LLC.

“**Indebtedness**” means with respect to any Person: (a) indebtedness of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, other than current trade payables (and related accrued expenses) incurred in the ordinary course of business, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person, (e) any lease which in accordance with GAAP is required to be capitalized on the balance sheet of such Person (and the amount of these obligations shall be the amount so capitalized), (f) all unconditional obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value any capital stock or other equity interests of such Person or any warrants, rights or options to acquire such capital stock or other equity interests, (g) all net obligations of such Person pursuant to Hedge Agreements, (h) all guarantee obligations of such Person in respect of obligations of the kind referred to in clauses (a) through (g) above, and (i) all Indebtedness of the type referred to in clauses (a) through (g) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any lien on property (including accounts and contracts rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness.

“**Indenture**” means the Master Indenture, as supplemented by the First Supplemental Indenture and the Second Supplemental Indenture, as the same may be further supplemented and amended from time to time.

“**Indenture Obligations**” has the meaning ascribed to such term in Section 11.06 of the Collateral Agency and Accounts Agreement.

“**Indenture Secured Parties**” means (i) the Bondholders and (ii) the Bond Insurer only with respect to the Senior Bond Insurer Obligations.

“**Independent**” means, when used with respect to any specified firm or individual, such a firm or individual who (a) does not have any direct financial interest or any material indirect financial interest in the operations of any Secured Party, other than the payment to be received under a contract for services to be performed, and (b) is not connected with any Secured Party as an official, officer or employee.

“**Initial Drawing**” has the meaning ascribed to such term in the Series 2022A Bond Purchase Agreement.

“**Initial Drawing Date**” has the meaning ascribed to such term in the Series 2022A Bond Purchase Agreement.

“**Initial Purchaser**” means, (i) with respect to the Series 2022A Bonds, RBC Capital Markets, LLC, together with its successors and assigns (but excluding any person or entity to which RBC Capital Markets, LLC may transfer or assign the Series 2022A Bonds) and (ii) with regards to any Additional Bonds, a Person that initially purchases such Additional Bonds directly from the Issuer in a private placement transaction, if any.

“**Insolvency or Liquidation Proceeding**” means:

- (a) any voluntary or involuntary case or proceeding under any Bankruptcy Law with respect to any Obligor;
- (b) any other voluntary or involuntary insolvency, reorganization or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding with respect to any Obligor or with respect to a material portion of their respective assets;
- (c) any liquidation, dissolution, reorganization or winding up of any Obligor whether voluntary or involuntary and whether or not involving insolvency or bankruptcy; or
- (d) any assignment for the benefit of creditors or any other marshalling of assets and liabilities of any Obligor.

“**Insurance Consultant**” means Intech Risk Management GmbH.

“**Insured Bonds**” means the Insured Series 2024 Bonds and any Additional Insured Bonds.

“**Insured Series 2024 Bonds**” means, collectively the Insured Series 2024A Bonds and the Insured Series 2024B Bonds.

“**Insured Series 2024A Bonds**” means the Series 2024A Bonds identified in Section 2.03(b) of the Second Supplemental Indenture as having the benefit of the Bond Insurance Policy.

“**Insured Series 2024B Bonds**” means the Series 2024B Bonds identified in Section 2.04(b) of the Second Supplemental Indenture as having the benefit of the Bond Insurance Policy.

**“Intercreditor Agent”** means The Bank of New York Mellon, as intercreditor agent.

**“Intercreditor Agreement”** means that certain Intercreditor Agreement, dated as of November 1, 2022, among the Borrower, the Administrative Agent, the Trustee, the Collateral Agents, the Hedge Providers and the other parties thereto from time to time, and the Intercreditor Agent.

**“Intercreditor Vote”** has the meaning ascribed to such term in Section 8.2 of the Intercreditor Agreement.

**“Interest”** or **“interest”** means the interest on the specified obligations; in the case of Compounding Interest Bonds, the interest component included in the Maturity Amount (or Accreted Value payable upon redemption) shall be deemed to constitute principal; provided, however, that for purposes of any limitation contained in a resolution or any Supplemental Indenture on the issuance of an aggregate principal amount of Bonds of any Series, the principal amount of Compounding Interest Bonds shall be the initial principal amount of such Compounding Interest Bonds on the issuance date.

**“Interest Accretion Date”** means, as to any Compounding Interest Bonds, the date of calculation, determined by reference to accretion tables contained in each such Compounding Interest Bond or contained or referred to in any Supplemental Indenture with respect to such Series of Compounding Interest Bonds.

**“Interest Accrual Period”** means the period during which a Bond of a Series accrues interest payable on the next Interest Payment Date applicable thereto. Each Interest Accrual Period shall commence on (and include) the last Interest Payment Date to which interest has been paid or duly provided for (or, if no interest has been paid, from the date of original authentication and delivery of such Series of Bonds) to, but not including, the Interest Payment Date on which interest is to be paid.

**“Interest Commencement Date”** means (a) for Convertible Capital Appreciation Bonds, the date established prior to the issuance of each Series of Convertible Capital Appreciation Bonds, on which the compounding of interest ceases and on and after which interest is payable currently on the Accreted Value on the next ensuing Interest Payment Date and (b) for any other Deferred Interest Obligations, the first date that interest is payable currently on such Deferred Interest Obligations.

**“Interest Payment Calculation Start Date”** means the date occurring one (1) Interest Payment Period prior to the Interest Commencement Date of the applicable Deferred Interest Obligations.

**“Interest Payment Date”** means (a) as to Current Interest Bonds, (i) for the Series 2022A Bonds, the first Business Day of each calendar month, commencing on January 3, 2023, and on their maturity dates, and (ii) for any Additional Bonds, as defined in the applicable Supplemental Indenture, (b) as to any Convertible Capital Appreciation Bonds, each January 1 and July 1 following (and, for the avoidance of doubt, not including) their respective Interest Commencement Dates, or as defined in the applicable Supplemental Indenture, (c) as to any Capital Appreciation Bonds, their respective maturity dates, (d) for the Senior Loans, TDC Bank Debt Loans and the TDC Security Deposit Project Loan, each “Interest Payment Date” as defined in the Common Terms Agreement and (e) for any other Secured Obligations, the date or dates on which interest of such Secured Obligations is due and payable as set forth in the documents pursuant to which such Secured Obligations were incurred.

**“Interest Payment Period”** means, with respect to any Secured Obligation the number of months in between each Interest Payment Date for such Secured Obligation as designated in the Financing Document for the applicable Secured Obligation; provided that, in no event shall the Interest Payment Period of any Tax-Exempt Obligations exceed thirteen (13) months.

**“Interest Payment Sub-Accounts”** means, collectively, the 2022A Tax-Exempt Bond Interest Payment Sub-Account, the Senior Loan Interest Payment Sub-Account, and any other sub-account of the Senior Obligations Payment Account or Subordinate Obligations Payment Account established by the Securities Intermediary in respect of any Series of Bonds, as specified in the Supplemental Indenture pursuant to which such Series of Bonds were issued, or other Secured Obligation, pursuant to the applicable Financing Document, established for the payment of interest on the applicable Secured Obligation.

**“Interest Payments”** means, with respect to a payment date for Secured Obligations, the interest (including the interest component of the Redemption Price or mandatory prepayment due in connection with any mandatory redemption payment on any Bond or mandatory prepayment of any Senior Bank Obligations) due on such date on the Secured Obligations.

**“Issue Date”** or **“Issuance Date”** means, with respect to a Series of Bonds, the date of delivery of such Series of Bonds by the Issuer, against payment therefor.

**“Issuer”** means the New York Transportation Development Corporation, a local development corporation formed under the New York Not-for-Profit Corporation Law pursuant to the Act, in its capacity as “conduit issuer” in the issuance of certain Bonds approved by the Issuer on behalf of the State of New York, and such Bonds, are special, limited obligations of the Issuer.

**“Issuer Assignment Agreement (Building Loan)”** means that certain Assignment Agreement (Building Loan) dated as of November 1, 2022, assigning the TDC Building Loan Agreement and the 2022 TDC Building Notes, between the Issuer and the Senior Collateral Agent.

**“Issuer Assignment Agreement (Project Loan)”** means that certain Assignment Agreement (Project Loan) dated as of November 1, 2022, assigning the TDC Project Loan Agreement and related 2022 TDC Project Notes, between the Issuer and the Senior Collateral Agent.

**“Issuer Assignment Agreements”** means, collectively, (i) the Issuer Assignment Agreement (Building Loan) and (ii) the Issuer Assignment Agreement (Project Loan).

**“Issuer Documents”** means, collectively, (a) the Collateral Agency and Accounts Agreement, (b) the Indenture, (c) the Tax Certificates, (d) the Common Terms Agreement, (e) the Credit Agreement, (f) the TDC Loan Agreements, (g) the Bonds, (h) the Issuer Assignment Agreements, (i) the Assignments of Leases and Rents, (j) the Leasehold Mortgages, (k) the Series 2022A Bond Purchase Agreement, (l) Letter of Representation and (m) a DTC Letter of Representation.

**“Issuer Representative”** means the Chair, President, Chief Financial Officer, General Counsel, and Treasurer, or any other officer designated to act by resolution of the Issuer by written certificate furnished to the Trustee containing the specimen signature of such Person and signed on behalf of the Issuer by the Chair. Such certificate may designate an alternate or alternates.

**“JetBlue ATA and Sublease”** means the Anchor Tenant Agreement and Sublease to be entered between JetBlue Airways Corporation and the Lessee.

**“Key Contract”** has the meaning ascribed to such term under Appendix E hereto.

**“Law”** means any federal, state, local and municipal laws, rules and regulations, orders, codes, directives, permits, approvals, decisions, decrees, ordinances or by-laws having the force of law and any common or civil law, whether adopted or enacted prior to or after the date of the Lease Agreement including binding court and judicial decisions having the force of law, and includes any amendment, extension or re-

enactment of any of the same in force from time to time and all other instruments, orders and regulations made pursuant to statute, including those made by any Governmental Authority.

“**LC Cash Collateral Accounts**” has the meaning ascribed to such term in Section 10.05 of the Collateral Agency and Accounts Agreement.

“**LBE**” means a business enterprise located within the County of Queens in the State of New York.

“**Lead Contractor**” has the meaning ascribed to such term in Appendix E hereto.

“**Lease Agreement**” means that certain Agreement of Lease, dated as of November 17, 2022, by and between the Port Authority and the Borrower, and all exhibits and schedules thereto.

“**Lease Effective Date**” has the meaning ascribed to such term in Appendix E hereto.

“**Lease Event of Default**” has the meaning ascribed to such term in Appendix E hereto.

“**Leasehold Mortgages**” means the Building Leasehold Mortgage and the Project Leasehold Mortgage.

“**Lenders**” has the meaning ascribed to such term in the Common Terms Agreement.

“**Lessee Change**” has the meaning ascribed to such term in Appendix E hereto.

“**Lessee Value Engineering Change**” has the meaning ascribed to such term in the Series 2022A Bond Purchase Agreement.

“**Letter of Credit**” means (a) any letter of credit issued pursuant to any Additional Senior Financing Document or (b) any letter of credit issued pursuant to any other Financing Document, as the context may require.

“**Letter of Representation**” means that certain Letter of Representation dated November 17, 2022, delivered by the Borrower to the Issuer and the Initial Purchaser pursuant to the Series 2022A Bond Purchase Agreement in substantially the form attached as Exhibit A thereto.

“**Lien**” means any Security Interest, any easements, covenants, conditions, rights-of-way or other exceptions or defects or irregularities to title or any preferential arrangement of any kind or nature whatsoever with respect to any property.

“**Liquidity Facility**” means a letter of credit, line of credit, standby purchase agreement or other financial instrument, including a Credit Facility, which is available to provide funds with which to purchase Bonds.

“**Liquidity Provider**” means the entity which is obligated to provide funds to purchase Bonds under the terms of a Liquidity Facility.

“**Liquidity Reserve Account**” means the “Liquidity Reserve Account” established and created in the name of the Borrower pursuant to Section 5.11 of the Collateral Agency and Accounts Agreement.

“**Loan Facility**” means the Senior Loans, the Series 2022A Bonds and the Security Deposit LC Obligations.



**“Loan Facility Loans”** means the TDC Bank Debt Loans, the TDC Series 2022A Bond Loans and the TDC Security Deposit Project Loan.

**“Loan Life Coverage Ratio”** has the meaning ascribed to such term in Section 2.12(a) of the Second Supplemental Indenture.

**“MAG Deficiency”** means, with respect to any calendar year or portion thereof occurring during the Concession Period (as defined in the Lease Agreement), the amount by which the amount due and payable to the Port Authority as Concessions Revenue Rent for such period exceeds the sum of amounts transferred to the Port Authority from the Concessions Revenue Rent Account pursuant to Section 5.05(c) of the Collateral Agency and Accounts Agreement during such period.

**“Major Maintenance”** has the meaning ascribed to such term in the Lease Agreement.

**“Major Maintenance Reserve Account”** means the “Major Maintenance Reserve Account” established and created in the name of the Borrower pursuant to Section 5.01(a) of the Collateral Agency and Accounts Agreement.

**“Major Maintenance Reserve Requirement”** means (i) prior to the Phase 1 End of Funding Date, zero and (ii) following the Phase 1 End of Funding Date, the amount calculated by the Borrower as set forth below with respect to each Calculation Date which amount the Borrower will calculate to be equal, as of each Calculation Date, to the sum of the maintenance capital expenditures anticipated to be due over the succeeding three-year period, based on the then-existing Asset Preservation Schedule, calculated using the following percentage amounts: (x) 100% of the anticipated maintenance capital expenditures for year “N,” *plus* (y) 67% of the anticipated maintenance capital expenditures for year “N+1,” *plus* (z) 33% of the anticipated maintenance capital expenditures for year “N+2.”

**“Make-Whole Redemption Price”** means, unless otherwise specified in the Supplemental Indenture governing the respective Bonds, the greater of (i) 100% of the principal amount of Current Interest Bonds to be redeemed or the Accreted Value of Compound Interest Bonds to be redeemed, as applicable and (ii) the sum of the present value of the remaining scheduled payments of principal, accreted interest and interest to the Maturity Dates of the Bonds to be redeemed (not including any portion of those payments of interest accrued and unpaid as of the date on which the Bonds are to be redeemed) discounted to the Redemption Date on a semi-annual basis, assuming a 360-day year consisting of twelve 30-day months, at the adjusted Municipal Market Data AAA benchmark yield (the **“MMD Rate”**), plus, in each case, accrued and unpaid interest on the Bonds to be redeemed on the Redemption Date.

**“Management Fee”** means (i) for the period from and after the Lease Effective Date and up to and including Substantial Completion of Phase 2, \$6,600,000 per annum (adjusted by the consumer price index on the Lease Effective Date, indexed to March 1, 2018); and (ii) for the period subsequent to Substantial Completion of Phase 2, an amount equal to \$6,800,000 per annum (adjusted annually by the consumer price index, indexed to March 1, 2018), in each case paid monthly in arrears, and prorated for any stub year.

**“Management Services Agreement”** or **“MSA”** means that certain Management Services Agreement, dated as of the Closing Date, between the Borrower and the Manager.

**“Manager”** means Vantage Airport Group (JFK) Ltd., and its successors and assigns as the Manager under the Management Services Agreement.

**“Manager Direct Agreement”** means that certain Consent to Assignment, dated as of the Closing Date, among the Borrower, the Manager and the Collateral Agents.

“**Manager Guarantee**” means that certain Manager Guaranty, dated as of the Closing Date, made by the MSA Guarantor, in favor of the Borrower and assigned to the Collateral Agents.

“**Mandate Letter**” means the certain Mandate Letter dated as of September 14, 2022, among the Borrower, the Administrative Agent, the Lead Arrangers (as defined in the Mandate Letter) and the Initial Purchaser, setting forth the fees payable to the Lead Arrangers, as supplemented by that certain Joinder Agreement to Mandate Letter dated as of October 6, 2022 among MUFG Bank, LTD. and the parties to the original Mandate Letter.

“**Master Indenture**” means that certain TDC Master Bond Indenture of Trust, dated as of November 1, 2022, between the Issuer and the Trustee.

“**Material Adverse Effect**” means a material adverse effect on:

- (a) the business, properties, performance, results of operation or condition (financial or otherwise) of the Borrower or the Pledgor;
- (b) the legality, validity or enforceability of a Financing Document or Material Project Document;
- (c) the Borrower’s or the Pledgor’s ability to observe and perform its material obligations under any Financing Document;
- (d) the Borrower’s ability to observe and perform its material obligations under any Material Project Document;
- (e) any Material Project Party’s ability to observe and perform its material obligations under any Financing Document or Material Project Document to which it is a party;
- (f) the legality, validity, enforceability, perfection or priority of the Security Interest created pursuant to the Senior Collateral Documents; and
- (g) the rights of the Secured Parties under the Financing Documents, including in respect of the Collateral created pursuant to the Senior Collateral Documents or the ability of the Secured Parties to enforce their rights and remedies under the Financing Documents, including such Senior Collateral Documents,

provided that no effect arising out of or in connection with or resulting from any of the following shall be deemed, either alone or in combination, to constitute or contribute to a Material Adverse Effect: (i) general economic conditions or changes therein, (ii) financial, banking, currency or capital markets fluctuations or conditions, including changes in interest rates, (iii) conditions affecting the air transportation industry generally, (iv) any action, omission, change, effect, circumstance or condition contemplated by the Financing Documents or attributable to the execution, performance or announcement of the Financing Documents or the transactions contemplated thereby, or (v) events that are Compensation Events or Delay Events (including Force Majeure events), each as defined in and pursuant to the Lease Agreement.

“**Material Airline Sublease**” means (a) the JetBlue ATA and Sublease and (b) each Airline Sublease entered into after the Closing Date which is reasonably projected to represent 15% or more of the Borrower’s total revenue in any period of 12 consecutive months generated from all then effective Airline Subleases.

**“Material Concession Sublease”** means each Concession Sublease entered into after the Closing Date which is reasonably projected to represent 15% or more of the Borrower’s total revenue in any period of 12 consecutive months generated from all then effective Concession Subleases.

**“Material Project Documents”** means, collectively, (a) the Lease Agreement, (b) the D&C Contract, (c) the Construction Security, (d) the Management Services Agreement, (e) Manager Guarantee, (f) each Material Sublease, (g) each Consent to Sublease (as defined in the Lease Agreement) with respect to each Material Sublease, (h) any Concession Management Services Agreement (if and when entered into), (i) all Performance Security issued or posted in respect of any of the foregoing, (j) each Environmental Cooperation Agreement, and (k) each Reciprocal Rights Agreement and (l) any agreement or Performance Security (as applicable) replacing any of the foregoing.

**“Material Project Party”** means each party (other than the Borrower) to a Material Project Document.

**“Material Sublease”** means (a) each Material Airline Sublease, and (b) each Material Concession Sublease.

**“Maturity Amount”** means, with respect to any Compounding Interest Bond, the value of such Compounding Interest Bond which is due at its stated maturity.

**“Maturity Dates”** means the dates on which the Bonds mature, as determined pursuant to the applicable Supplemental Indenture.

**“Maximum Federal Corporate Tax Rate”** means, for any day, the maximum rate of income taxation imposed on corporations pursuant to Section 11(b) of the Code, as in effect as of such day (or, if as a result of a change in the Code, the rate of income taxation imposed on corporations generally shall not be applicable to the Purchaser, the maximum statutory rate of federal income taxation which could apply to the Purchaser as of such day).

**“Maximum Interest Rate”** means the lesser of (a) twelve percent (12%) per annum and (b) the maximum non-usurious lawful rate of interest permitted by applicable law.

**“Milestone Payment Sub-Account”** means the “Milestone Payment Sub-Account” established and created within the Construction Account in the name of the Borrower pursuant to Section 5.01(a) of the Collateral Agency and Accounts Agreement.

**“MMRA Shortfall Amount”** means, on each Transfer Date, the amount (if any) by which amounts due and payable to the Port Authority pursuant to the Lease Agreement exceed the amount on deposit in the Major Maintenance Reserve Account.

**“Model Auditor”** means Operis Business Engineering Limited.

**“Modification”** has the meaning given in Section 5.3(a) of the Intercreditor Agreement.

**“Moody’s”** means Moody’s Investors Service, Inc.

**“MSA Guarantor”** means Vantage Airport Group (US) Ltd.

**“MSA Subcontract”** means that certain Subcontractor Services Agreement, dated on or about the date hereof, between the Manager and MSA Subcontractor pursuant to which the Manager has

subcontracted a portion of its obligations under the Management Services Agreement to the MSA Subcontractor.

**“MSA Subcontractor”** means RXR JMP Development Services LLC.

**“MSRB”** means the Municipal Securities Rulemaking Board established pursuant to Section 15(b)(1) of the Securities Exchange Act of 1934.

**“Nationally Recognized Rating Agency”** means any nationally-recognized securities rating agency that provides a rating on the Bonds at the request of the Borrower.

**“Net Cash Proceeds”** means, with respect to any cash amount received by any Person, such cash amount net of customary underwriting fees or discounts, credit enhancement premiums, and similar financing related costs and other reasonable and documented out-of-pocket costs and expenses, including legal counsel fees, and Taxes incurred by such Person in connection with the collection thereof.

**“New Improvements”** has the meaning ascribed to such term in the Lease Agreement.

**“Non-Conforming Plan of Reorganization”** means any Plan of Reorganization whose provisions are inconsistent with or in contravention of the provisions of the Intercreditor Agreement, including any Plan of Reorganization that purports to re-order (whether by subordination, invalidation, or otherwise) or otherwise disregard, in whole or part, the provisions of Section 2 (including the Security Interest priorities of Section 2.1) of the Intercreditor Agreement, the provisions of Section 4 or the provisions of Section 6 of the Intercreditor Agreement.

**“Non-Pledged Accounts”** means, collectively, the Concessions Revenue Rent Account, the Tenant Security Deposit Account, the Distribution Account, the Handback Reserve Account (including any Handback Performance Security) and the Community Development Reserve Fund Account, each under the Collateral Agency and Accounts Agreement, and the Rebate Account under the Indenture.

**“Non-Pledged Receipts”** means, collectively, (a) all amounts required to be deposited into any Non-Pledged Account pursuant to the Collateral Agency and Accounts Agreement, and (b) the Disputed Payment Amounts.

**“Non-Recourse Parties”** has the meaning given in Section 10.16 of the Intercreditor Agreement.

**“Non-U.S. Plan”** means any plan, fund (including, without limitation, any superannuation fund) or other similar program established or maintained outside the United States of America by the Borrower primarily for the benefit of employees of the Borrower residing outside the United States of America, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

**“Non-Voting Senior Creditor”** has the meaning given in Section 8.3 of the Intercreditor Agreement.

**“Notice Address”** means, as to each Notice Party, the address for such Notice Party set forth in Section 12.04 of the Collateral Agency and Accounts Agreement and Section 11.08 of the Master Indenture, respectively.

**“Notice Parties”** means the Parties provided notice in Section 12.04 of the Collateral Agency and Accounts Agreement and Section 11.08 of the Master Indenture and pursuant to any Supplemental Indenture.

**“O&M Expenses”** means, for any period, any actual cash expenditure incurred by the Borrower in performing Operations and Maintenance Work (other than Major Maintenance) including (a) wages, salaries, fringe benefits and other payroll costs or remuneration (including reimbursement of employee expenses) paid to or for employees employed for the benefit of the Operations and Maintenance Work, (b) the cost of routine maintenance, repairs, improvements, alterations and changes related to the areas in the Premises, including payments to Contractors and Suppliers for cleaning, rubbish removal, snow removal, facility maintenance, equipment maintenance, extermination and other cleaning and maintenance services furnished by such Contractors and Suppliers, (c) payments for electricity, water, sewer rents and other fuel and Utility services, (d) the cost of provision, maintenance, repair and replacement of fixtures, furniture, furnishings, operating supplies, equipment and tools, (e) (i) the cost of any insurance carried by the Borrower with respect to the Premises or the Operations and Maintenance Work or with respect to any accident or casualty occurring with respect thereto and (ii) the cost of any such accident or casualty paid for by the Borrower to the extent such accident or casualty is not reimbursed by insurance proceeds and such accident or casualty was not caused by the gross negligence or willful neglect of the Borrower, (f) the costs of (i) telephone, telegraph, postage, messenger service and other communications services and (ii) trucking and other shipping services, (g) payments for rental of leased equipment and supplies, (h) payments to third parties for legal, accounting, architectural, engineering, space planning and other professional services and other professional fees paid to third parties, (i) advertising and promotional expenses paid to third parties, (j) Taxes actually paid by the Borrower including excise taxes, New York City sales and use tax and taxes on utilities or on the provision of utility services but excluding New York State Corporation Franchise tax, New York City General Corporation tax and New York City Unincorporated Business tax, (k) costs and fees incurred in connection with the obtaining and maintaining in effect of any Governmental Approval from any Governmental Authority and filing any reports or requests for review with any Governmental Authority, (l) any fees, charges, penalties, judgments or other amounts assessed against the Borrower by any Governmental Authority, (m) costs and fees incurred in the development, implementation and operation of computer systems, (n) costs incurred by the Borrower, including reasonable attorney’s fees, for adjudication, arbitration, mediation or other dispute resolution mechanisms used to resolve disputes between the Borrower and the Port Authority or third parties, (o) amounts payable to third parties for services provided as part of the Operations and Maintenance Work, including financial services and any other services, (p) amounts refunded to Sublessees and other third parties with respect to amounts overpaid by such Persons, (q) amounts payable in respect of the Borrower’s indemnification obligations to the Port Authority or third parties unless such obligation results from the willful misconduct, negligence, or other culpable act, error or omission of the Borrower, (r) Ground Rent, First Additional Rent, Second Additional Rental and Third Additional Rent (but not Concessions Revenue Rent, Excess Value Rent or Equity Gain Share) and (s) fees and other amounts that are paid to the Manager under the Management Services Agreement; it being understood that O&M Expenses shall not include Permitted Tax Distributions or any reimbursement or payment of amounts that are contemplated in the definition of Permitted Tax Distributions.

**“O&M Reserve Account”** means the “O&M Reserve Account” established and created in the name of the Borrower pursuant to Section 5.01(a) of the Collateral Agency and Accounts Agreement.

**“O&M Reserve Requirement”** means, as of any date (a) prior to the Phase 1 End of Funding Date, zero, (b) on and after the Phase 1 End of Funding Date, fifty percent (50%) of the budgeted O&M Expenses for the next succeeding twelve (12) months, as shown in the then-applicable Annual Operating Budget, it being understood that, to the extent any portion of such twelve (12) month period is not included in the latest available Annual Operating Budget, the amount of O&M Expenses for such portion shall be deemed

to be equal to 110% of the amount of O&M Expenses for the same portion of the twelve (12) month period that is included in such Annual Operating Budget.

**“Obligations”** means all advances to, and debts, liabilities, obligations, covenants and duties of, the Borrower arising under any Financing Document or otherwise with respect to any Credit Extension (including erroneous payment subrogation rights pursuant to Section 9.10(b)(iii) of the Common Terms Agreement), whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against the Borrower or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding. Without limiting the foregoing, the Obligations include (a) the obligation to pay principal, interest, charges, expenses, fees, indemnities, Ordinary Course Payments, Hedge Termination Payments and other amounts payable by the Borrower under any Financing Document and (b) the obligation of the Borrower to reimburse any amount in respect of any of the foregoing that the Administrative Agent or any Bank Finance Party, in each case in its sole discretion, may elect to pay or advance on behalf of the Borrower.

**“Obligations Payment Account”** means the Senior Obligations Payment Accounts or the Subordinate Obligations Payment Accounts.

**“Obligors”** means, collectively, the Borrower and Pledgor.

**“OFAC”** means the Office of Foreign Assets Control of the U.S. Department of the Treasury.

**“Off-Premises Facilities”** has the meaning ascribed to such term in Appendix E hereto.

**“Officer’s Certificate”** means a certificate of a Senior Financial Officer or other Responsible Officer of the Borrower whose responsibilities extend to the subject matter of such certificate.

**“Operating Account”** has the meaning ascribed to such term in Section 5.01(c) of the Collateral Agency and Accounts Agreement.

**“Operating Cashflow Sub-Account”** means the “Operating Cashflow Sub-Account” established and created in the name of the Borrower pursuant to Section 5.01(a) of the Collateral Agency and Accounts Agreement.

**“Operations and Maintenance Term Requirements”** has the meaning ascribed to such term in the Lease Agreement.

**“Operations and Maintenance Work”** means the operation, management, administration, and maintenance of Terminal 7, Terminal 6 and the Ground Transportation Center, including any repair, modification, reconstruction, rehabilitation, restoration, renewal and replacement of Terminal 7, Terminal 6 and the Ground Transportation Center, all as required under the Lease Agreement.

**“Opinion of Bond Counsel”** means a written opinion of Bond Counsel.

**“Opinion of Counsel”** means a written opinion of Counsel.

**“Ordinary Course Payments”** means all regularly scheduled payments due from either party under any Secured Hedge Agreement from time to time, calculated in accordance with the terms of such Secured Hedge Agreement, (including after any offset expressly contemplated thereby) but excluding, for

the avoidance of doubt, any Hedge Termination Payments due and payable under such Secured Hedge Agreement.

**“Organizational Documents”** means, (a) with respect to any Person that is a Governmental Authority, (i) the constitutional and statutory provisions that are the basis for the existence and authority of such Governmental Authority, including any enabling statutes, ordinances or public charters and any other organic laws establishing such Governmental Authority and (ii) the bylaws, code of regulations, operating procedures or other organizational documents of or adopted by such Governmental Authority by which such Governmental Authority, its powers, operations or procedures or its securities, bonds, notes or other obligations are governed or from which such powers are derived; and (b) with respect to any other Person, the charter, articles or certificate of organization, formation or incorporation, limited liability company agreement, operating agreement, by-laws or partnership agreement, as applicable, or other similar or equivalent organizational documents of such Person.

**“Other Remedial Action”** has the meaning given in Section 3.7(a) of the Intercreditor Agreement.

**“Outside Completion Date”** has the meaning ascribed to such term in Appendix E hereto.

**“Outstanding”** means,

- (a) when used in respect of Senior Loans, the TDC Bank Debt Loans, or the Security Deposit Loans as of any date of determination, all such loans that have been drawn by the Issuer or the Borrower, as applicable, and that are then unpaid,
- (b) all Ordinary Course Payments and Hedge Termination Payments that have become due and payable under the Secured Hedge Agreements and remain unpaid,
- (c) when used with respect to Bonds as of any date of determination, all Bonds that have been executed, authenticated and delivered under the Indenture, including, without limitation, in the case of Series 2022A Bonds, all Series 2022A Bonds purchased by the Initial Purchaser pursuant to the terms of the Series 2022A Bond Purchase Agreement, except:
  - (i) any Bond, or portion thereof, on which all principal and interest due or to become due on or before maturity has been paid; provided that, to the extent a Bond was paid by the Bond Insurer, that portion of the Bond so paid shall be treated as Outstanding until such time as a new Series 2024 Bond has been issued in the name of the Bond Insurer pursuant to Section 4.02(b) of the Second Supplemental Indenture;
  - (ii) any Bond, or portion thereof, on which the Redemption Price due or to become due has been paid in accordance with the redemption provisions applicable to such Bond;
  - (iii) Bonds in lieu of which other Bonds have been executed, authenticated and delivered pursuant to the provisions of the Indenture relating to the transfer and exchange of Bonds or the replacement of mutilated, lost, stolen or destroyed Bonds;
  - (iv) Bonds that have been canceled by the Trustee or that have been surrendered to the Trustee for cancellation;

- (v) Bonds which, under the terms of the Supplemental Indenture pursuant to which they were issued, are deemed to no longer be Outstanding; and
- (vi) Bonds that have been defeased pursuant to and in accordance with the Indenture; and
- (d) with respect to any other Secured Obligation, the amount thereof that has been issued and is then unpaid.

“**Participant**” means a member of or a participant in the Securities Depository.

“**Party**” means, with respect to any written agreement, a party to such agreement.

“**Pay-Over Amount**” has the meaning given in Section 6.3(b)(iv) of the Intercreditor Agreement.

“**Paying Agent**” means the Trustee or any other bank or trust company designated by the Issuer as Paying Agent pursuant to Section 9.01(b) of the Master Indenture.

“**Payment Date**” means the “Payment Date” as defined with respect to any Insured Bonds in the Supplemental Indenture therefor.

“**Performance Security**” means any performance bonds, guarantees, other credit enhancement or liquidity instruments issued or posted in respect of any Material Project Document by any party thereto (other than the Borrower).

“**Permitted Action Notice**” has the meaning given in Section 3.3(b) of the Intercreditor Agreement.

“**Permitted Actions**” has the meaning given in Section 3.3(a) of the Intercreditor Agreement.

“**Permitted Hedge Agreements**” means any Hedge Agreement entered into by the Borrower with a Permitted Hedge Provider in connection with the Borrower’s obligations under Section 5.13 of the Common Terms Agreement.

“**Permitted Hedge Provider**” means any Person that, as of the date of the applicable Permitted Hedge Agreement is a Bank Finance Party (or an Affiliate thereof).

“**Permitted Indebtedness**” means any of the following Indebtedness of the Borrower:

- (a) Indebtedness incurred under the Financing Documents entered into on the Closing Date;
- (b) Additional Obligations permitted to be incurred pursuant to Section 10.27 of the Collateral Agency and Accounts Agreement;
- (c) Subordinated Affiliate Obligations;
- (d) after the Discharge of Senior Bank Obligations in their entirety, reimbursement obligations incurred in connection with the issuance of letters of credit or bond insurance policies (other than the Bond Insurer Reimbursement Amounts) in connection with the Project which letters of credit or bond insurance policies are permitted pursuant to the Lease Agreement and the Financing Documents, including letters of credit with respect to any Debt Service Reserve Account, the O&M Reserve Account, the Major Maintenance



Reserve Account, the Liquidity Reserve Account, and the Ramp-Up Reserve Account and any letters of credit required by the Lease Agreement;

- (e) Purchase money obligations in an amount not to exceed in the aggregate \$5 million and incurred to finance discrete items of equipment not comprising an integral part of the Terminal Facilities that extend to, and are secured by, only the equipment being financed and proceeds thereof, as long as such purchase money obligations do not exceed the purchase price paid for such equipment and, prior to the Discharge of Senior Bank Obligations, so long as the incurrence of such purchase money obligations does not result in a downgrade of the credit ratings applicable to any Senior Obligations from the rating applicable to any such Senior Obligations immediately prior to such incurrence, without giving effect to the Bond Insurance Policy, if any;
- (f) Current accounts payable arising, and accrued expenses incurred, in the ordinary course of business that are payable in accordance with customary practices that are not overdue by more than ninety (90) days (unless subject to a good faith contest);
- (g) Indebtedness under Permitted Hedge Agreements;
- (h) Indebtedness incurred as permitted by any of the Bank Consents described in clauses (i)-(iii) of the definition thereof but, in each case, only to the extent contemplated thereby, and only for so long as the consents or waivers set forth therein remain in effect; and
- (i) (x) the Senior Bond Insurer Obligations related to the Insured Series 2024 Bonds, and (y) Senior Bond Insurer Obligations related to Insured Bonds other than the Insured Series 2024 Bonds, so long as, with respect to this clause (y), the applicable Bond Insurer has entered into an agreement in form and substance reasonably acceptable to the Administrative Agent (so long as the Discharge of Senior Bank Obligations has not occurred) and each other Secured Debt Representative (other than the Hedge Providers) of each Senior Obligation then Outstanding, agreeing to be subject to the terms of the Intercreditor Agreement and such agreement (or any replacement thereof complying with the terms of this clause (i) of the definition of “Permitted Indebtedness”) remains in full force and effect.

**“Permitted Liens”** means:

- (a) Any Security Interest arising by operation of Law or any Security Interest arising in the ordinary course of business in connection with or to secure the performance of bids, tenders, contracts, leases, statutory obligations, surety bonds or appeal bonds;
- (b) Any mechanic’s, materialmen’s, workmen’s, repairmen’s, employees’, warehousemen’s, carriers’ or any like lien or right of set-off arising in the ordinary course of business or under applicable Law, securing obligations incurred in connection with the Project which are not overdue by more than thirty (30) days or are being contested in good faith;
- (c) Any purchase-money security interest or right of title retention in connection with the acquisition of assets in the ordinary course of business, provided that, in each case, (i) such interest or right secures Permitted Indebtedness, (ii) such interest or right extends only to the asset purchased and proceeds thereof, (iii) such interest or right is created, and the Indebtedness secured thereby is incurred, within ninety (90) days after such acquisition,

and (iv) the Indebtedness secured thereby does not exceed the fair market value of such asset at the time of acquisition;

- (d) Any Security Interest for taxes, assessments or governmental charges not yet due or being diligently contested in good faith, pursuant to adequate proceedings and for which adequate reserve have been created;
- (e) Any Security Interest arising out of judgments or awards fully covered by insurance or with respect to which an appeal or proceeding for review is being prosecuted, enforcement has been stayed, or which has been bonded;
- (f) Any Security Interest created pursuant to or contemplated by the Financing Documents or to secure Secured Obligations, or any Security Interest pursuant to or contemplated by the Security Agreement dated as of the Closing Date between the Borrower and the Port Authority (as such Security Agreement is in effect on the Closing Date);
- (g) Any right of set-off arising under a Financing Document;
- (h) Any other lien granted over assets with a value not exceeding \$5,000,000 (or its equivalent) in the aggregate;
- (i) Any Security Interest securing Permitted Indebtedness, including, any Security Interest on cash deposits on reimbursement obligations, as described in clause (d) of the definition of “Permitted Indebtedness”;
- (j) Any Security Interest incurred or deposit made in the ordinary course of business in connection with workers’ compensation, unemployment insurance or other forms of governmental insurance or benefits;
- (k) Any Security Interest arising solely by virtue of any statutory or common law provision relating to banker’s liens, rights to set-off or similar rights;
- (l) Any easements, covenants, conditions, rights-of-way or other exceptions or defects or irregularities to title with respect to the Mortgaged Property (as defined in each of the Building Leasehold Mortgage and the Project Leasehold Mortgage) existing on the date of authentication and delivery of the Series 2022A Bonds, provided that no such easements, covenants, conditions, rights-of-way or other exceptions or defects or irregularities may be expanded, renewed or modified to apply to any portion of the Mortgaged Property (as defined in each of the Building Leasehold Mortgage and the Project Leasehold Mortgage) not subject to such easements, covenants, conditions, rights-of-way or other exceptions or defects or irregularities on such date, unless such Security Interest as so expanded, renewed or modified otherwise qualifies as a Permitted Lien under this definition;
- (m) Licenses or sub-licenses of intellectual property granted in the ordinary course of business;  
or
- (n) The following mechanic’s liens as listed on Schedule B to that certain title report from Stewart Title Commercial Services dated September 17, 2022 (Amended 11/15/22), Title No. NY10634, delivered to the Bank Financing Parties in advance of the Closing Date (the “Title Report”):

- (i) Owner: Flight Center Hotel LLC  
Lienor: Hailey Insulation Corp.  
Filed: March 20, 2020  
Index No.: [ ]  
Amount: \$127,045.27
- (ii) Owner: Flight Center Hotel LLC  
Lienor: Hailey Insulation Corp.  
Filed: March 20, 2020  
Index No.: [ ]  
Amount: \$17,100.00
- (iii) Owner: Flight Center Hotel LLC  
Lienor: Hayley Insulation Corp.  
Filed: March 20, 2020  
Index No.: [ ]  
Amount: \$322,330.83
- (iv) Owner: Port Authority of New York & New Jersey  
Lienor: TK Elevator Corporation  
Filed: June 28, 2021  
Control Number: [ ]  
Amount: \$1,379,528.71; or
- (o) Any liens related to the amounts shown as past due on the DataTrace Tax Search Continuation, order number 12307923, included in the Title Report, in an aggregate amount not to exceed the sum of all those amount showing as past due in such Tax Search Continuation as of the date of the Title Report; or
- (p) Any liens or other Security Interests permitted by any of the Bank Consents described in clauses (i)-(iii) of the definition thereof but, in each case, only to the extent contemplated thereby, and only for so long as the consents or waivers set forth therein remain in effect; or
- (q) Any Liens related to water supply amounts owed to the Department of Environmental Protection with respect to any account other than an account of or for the account of the Borrower; or
- (r) Any other Security Interest approved in writing by the Secured Parties in accordance with the Intercreditor Agreement.

“**Permitted O&M Expenses**” has the meaning ascribed to such term in Appendix E hereto.

“**Permitted Tax Distributions**” means, for a taxable period (or portion thereof) following the Discharge of Senior Bank Obligations, in their entirety, for which the Borrower is a flow through entity for tax purposes, distributions in an amount equal to (a) the total net taxable income generated by the Borrower for U.S. federal income tax purposes for such period (taking into account deductibility of state and local taxes to the extent applicable) less net losses generated in a prior tax period to the extent not previously taken into account hereunder, multiplied by (b) the highest effective marginal combined United States federal, state or local income tax rate for such taxable year prescribed for an individual or a corporation (whichever is higher) residing in New York City taking into account the character (e.g., long term or short

term capital gain or ordinary or exempt) of the applicable income, provided that to the extent that a limitation on the use of current or prior losses to offset future income exists for federal, state or local income Tax purposes with respect to an individual or a corporation, the amount of losses taken into account for purposes of clause (a) above will be reduced to the extent such limitation prevents the current utilization of such losses by an individual or corporation, as applicable (it being understood such losses may be taken into account in a future tax period to the extent the applicable limitation no longer prevents the utilization of such losses in such future period).

**“Person”** means an individual, association, unincorporated organization, corporation, partnership, limited liability company, joint venture, business trust or a government or agency or a political subdivision thereof or other entity or organization.

**“Phase 1 End of Funding Date”** means the first day of the month following the month in which Substantial Completion of Phase 1 occurs (or if such day is not a Business Day, then the next succeeding Business Day).

**“Phase 2 End of Funding Date”** means the first day of the month following the month in which Substantial Completion of Phase 2 occurs (or if such day is not a Business Day, then the next succeeding Business Day).

**“Plan of Reorganization”** means any plan of reorganization, plan of liquidation, agreement for composition, or other type of plan of arrangement proposed in or in connection with any Insolvency or Liquidation Proceeding.

**“Pledged Funds”** has the meaning ascribed to such term in Section 4.04 of the Master Indenture.

**“Pledgor”** means the HoldCo.

**“Port Authority”** means the Port Authority of New York and New Jersey, in its capacity as party to the Lease Agreement.

**“Port Authority Default Termination Payment”** has the meaning ascribed to such term in Appendix E hereto.

**“Port Authority Milestone Payment”** has the meaning ascribed to such term in Appendix E hereto.

**“Post-Default Rate”** means an interest rate (before as well as after judgment) equal to (a) in the case of overdue principal or during the existence of an Event of Default, the rate that would otherwise be applicable on the Senior Loans or the Series 2022A Bonds, as applicable, plus 2% per annum (provided that, with respect to a SOFR Loan, the determination of the applicable interest rate is subject to Section 2.20 of the Credit Agreement to the extent that SOFR Loans may not be converted to, or continued as, SOFR Loans (as defined in the Common Terms Agreement), pursuant thereto) or (b) in the case of overdue fees or other amounts due hereunder or under any other Senior Bank Financing Document, to the extent permitted by Applicable Law, the rate applicable to ABR Loans (as defined in the Common Terms Agreement) plus 2% per annum, in each case, from and including the date of such non-payment or occurrence of an Event of Default to but excluding the date on which such amount is paid in full or such Event of Default has ceased to exist or has been waived in accordance with the terms of the Senior Bank Financing Documents.

**“Post-Substantial Completion Revenue Account”** means the “Post-Substantial Completion Revenue Account” established and created in the name of the Borrower pursuant to Section 5.01(a) of the Collateral Agency and Accounts Agreement.

**“Pre-Substantial Completion Revenue Account”** means the “Pre-Substantial Completion Revenue Account” established and created in the name of the Borrower pursuant to Section 5.01(a) of the Collateral Agency and Accounts Agreement.

**“Premises”** has the meaning ascribed to such term in “PART 10 – THE LEASE AGREEMENT.”

**“Prepayment Date”** means any date on which the Senior Loans must be mandatorily prepaid in accordance with the Common Terms Agreement or the Credit Agreement.

**“Principal”** or **“principal”** means the principal of the specified obligations; in the case of Compounding Interest Bonds, the interest component of the value of such Compounding Interest Bonds at maturity (or Accreted Value payable upon redemption) shall be deemed to constitute principal; provided, however, that for purposes of any limitation contained in a resolution or any Supplemental Indenture on the issuance of an aggregate principal amount of Bonds of any Series, the principal amount of Compounding Interest Bonds shall be the initial principal amount of such Compounding Interest Bonds on the issuance date.

**“Principal Office”** means, with respect to the Trustee, the address of such Person identified as its Notice Address in the Indenture or otherwise notified in writing by such Person.

**“Principal Payment Calculation Start Date”** means, with respect to any Secured Obligations, the date occurring twelve (12) months prior to the first Principal Payment Date for such Secured Obligations.

**“Principal Payment Date”** means (a) for the Series 2022A Bonds, the maturity date or the date of any mandatory redemption as set forth in the First Supplemental Indenture, and (b) for the Senior Loans, TDC Bank Debt Loans or the TDC Security Deposit Project Loan, the “Bank Financing Maturity Date” as defined in the Common Terms Agreement, (c) for any other Secured Obligations, the date or dates on which principal of such Secured Obligations, including pursuant to any mandatory sinking fund requirements, is due and payable as set forth in the documents pursuant to which such Secured Obligations were incurred or (d) for Secured Obligations constituting Balloon Indebtedness, the date or dates on which principal of such Balloon Indebtedness, including pursuant to any mandatory sinking fund requirements, is due and payable as set forth in the Balloon Indebtedness Certificate.

**“Principal Payment Period”** mean, with respect to any Secured Obligations, twelve months (12), unless otherwise specified in the Financing Document for the applicable Secured Obligations or, in the case of Balloon Indebtedness, the applicable Balloon Indebtedness Certificate; provided that, in no event shall the Principal Payment Period of any Tax-Exempt Obligations exceed thirteen (13) months.

**“Principal Payment Sub-Accounts”** means, collectively, the 2022A Tax-Exempt Bond Principal Payment Sub-Account, the Senior Loan Principal Payment Sub-Account, and any other sub-account of the Senior Obligations Payment Account or Subordinate Obligations Payment Account established by the Securities Intermediary in respect of any Series of Bonds, as specified in the Supplemental Indenture pursuant to which such Series of Bonds were issued, or other Secured Obligation, pursuant to the applicable Financing Document, established for the payment of principal on the applicable Secured Obligation.

**“Principal Payments”** means, with respect to a payment date, the principal (including mandatory sinking fund payments and the principal component of the Redemption Price or mandatory prepayment due

in connection with any mandatory redemption payment on any Bond or prepayment of any Senior Bank Obligations) due or to become due prior to the next succeeding Principal Payment Date.

“**Project**” has the meaning ascribed to such term in the first Whereas clause to the Collateral Agency and Accounts Agreement and the Master Indenture, respectively.

“**Project Accounts**” means the Accounts and Sub-Accounts established pursuant to Section 5.01(a) and 5.01(c) of the Collateral Agency and Accounts Agreement or under any amendment or supplement to the Collateral Agency and Accounts Agreement, and the Operating Account. The Non-Pledged Accounts do not constitute Project Accounts.

“**Project Costs**” means all costs and expenses incurred in connection with the design, construction, commissioning and financing of the Project that are the obligation of the Borrower, including, without limitation, (a) Building Loan Costs, (b) the contract price of the D&C Contract, (c) amounts payable under all construction, engineering, technical and other contracts entered into by the Borrower in connection with performing the Borrower’s obligations under the Lease Agreement and in accordance with the Financing Documents, (d) all operating, maintenance and capital expenditures, including any expenditures in connection with Major Maintenance and other Operations and Maintenance Work incurred prior to the Phase 2 End of Funding Date, (e) financing costs, including costs of issuance, interest during construction, initial working capital costs, and funding of the Debt Service Reserve Accounts, O&M Reserve Account, the Ramp-Up Reserve Account and the Major Maintenance Reserve Account, (f) development costs and fees paid on the Closing Date in accordance with a flow of funds memorandum, (g) fees incurred by the Sponsors in connection with the procurement or issuance and maintenance of Equity Support, such maintenance fees to be at a rate not to exceed 3% per annum of the amount available to be drawn thereunder or withdrawn therefrom, as applicable, (h) any taxes, assessments or governmental charges payable by the Borrower in connection with the Project, and (i) any other payments required to be made by the Borrower in accordance with the Lease Agreement.

“**Project Director**” has the meaning ascribed to such term in the Lease Agreement.

“**Project Documents**” has the meaning ascribed to such term in Appendix E hereto.

“**Project Leasehold Mortgage**” means that certain TDC Project Loan Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of November 1, 2022, among the Borrower, the Issuer and the Senior Collateral Agent.

“**Project Loan Bank Proceeds Sub-Account**” means the “Project Loan Bank Proceeds Sub-Account” within the Construction Account created in the name of the Borrower pursuant to Section 5.01(a) of the Collateral Agency and Accounts Agreement.

“**Project Loan Tax-Exempt Bond Proceeds Sub-Account**” means the “Project Loan Tax-Exempt Bond Proceeds Sub-Account” within the Construction Account created in the name of the Borrower pursuant to Section 5.01(a) of the Collateral Agency and Accounts Agreement.

“**Project Loans**” means the Series 2022A Bond Project Loan, the Series 2024 Bond Project Loan, the TDC Senior Term Loan Project Loan, the TDC Security Deposit Project Loan and any Additional Obligations identified as “Project Loans” in the Financing Documents pursuant to which such Additional Obligations are issued.

“**Project Manager**” has the meaning ascribed to such term in Appendix E hereto.

**“Project Revenues”** means, for any period (without duplication), all revenue received by or on behalf of the Borrower during such period, including but not limited to revenues received by the Borrower from the operation of the Project, interest earned on and paid to the Borrower in respect of any Project Accounts (except for interest earned on Sub-Accounts of the Construction Account holding proceeds of Secured Obligations), proceeds from any business interruption insurance and delay in start up insurance, revenue derived from any third-party concession, lease or contract, liquidated damages paid under the D&C Contract, and any other receipts otherwise arising or derived from or paid or payable in respect of the Project, but excluding (i) proceeds of borrowings by the Borrower, (ii) equity contributions to the Borrower, (iii) proceeds of condemnation proceedings and asset sales, (iv) insurance payments other than proceeds from business interruption insurance and delay in start up insurance, (v) proceeds in respect of Secured Hedge Agreements (including Ordinary Course Payments and Hedge Termination Payments) and (vi) the Non-Pledged Receipts.

**“Property”** or **“properties”** means, unless otherwise specifically limited, real or personal property of any kind, tangible or intangible, choate or inchoate.

**“Purchase Date”** means the “Purchase Date” as defined with respect to any Series of Bonds in the Supplemental Indenture therefor.

**“Purchase Price”** means the “Purchase Price” as defined with respect to any Series of Bonds in the Supplemental Indenture therefor.

**“Purchaser”** means Royal Bank of Canada and its successors and assigns.

**“QFC”** has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

**“QFC Credit Support”** means any support, through a guarantee or otherwise, for Permitted Hedge Agreements or any other agreement or instrument that is a QFC.

**“Qualified Terminal Operator”** has the meaning ascribed to such term in Appendix E hereto.

**“Quarterly Distribution Date”** means a date specified by the Securities Intermediary within a thirty (30) day period following each Calculation Date.

**“Ramp-Up Debt Service Coverage Ratio”** means, for any DSCR Calculation Period, the ratio of A divided by B where:

A = the Free Cash Flow for such period plus all amounts transferred from the Ramp-Up Reserve Account to the Senior Obligations Payment Account during the immediately succeeding calendar quarter; and

B = the DSCR Debt Service (provided that, notwithstanding clause (iii) in the definition of DSCR Debt Service, any amounts paid or expected to be paid (as applicable) from Equity Contributions shall not be subtracted from Aggregate Debt Service in determining the DSCR Debt Service for purposes of calculating the Ramp-Up Debt Service Coverage Ratio) for such period with respect to the Senior Obligations.

**“Ramp-Up End Date”** means the first date after the day on which the Ramp-Up Debt Service Coverage Ratio has been equal to or above 1.40:1.00 for eight consecutive Calculation Dates.

**“Ramp-Up Period”** means the period commencing on the Phase 2 End of Funding Date and ending upon the Ramp-Up End Date.

**“Ramp-Up Reserve Account”** means the “Ramp-Up Reserve Account” established and created in the name of the Borrower pursuant to Section 5.01(a) of the Collateral Agency and Accounts Agreement.

**“Ramp-Up Reserve Requirement”** means, on the Phase 2 End of Funding Date and on each Transfer Date thereafter until the Ramp-Up End Date, an amount equal to the Aggregate Debt Service with respect to all Outstanding Senior Obligations during the next succeeding nine (9) month period.

**“Rating Agencies”** means Moody’s, S&P and Fitch if then providing a rating on a Series of Bonds, or any other Nationally Recognized Rating Agency then providing a rating on a Series of Bonds.

**“Rating Category”** means a generic securities rating category, without regard, in the case of a long-term rating category, to any refinement or gradation of such long-term rating category by a numerical modifier or otherwise.

**“Rating Confirmation”** means written evidence from each Rating Agency then rating a Series of Bonds that no rating assigned to such Series of Bonds or any portion thereof by such Rating Agency, if any, will be withdrawn or reduced below the rating on such Series of Bonds as a result of the action under review, without giving effect to the Bond Insurance Policy, if applicable.

**“Rebate Account”** means the Rebate Account established pursuant to Section 4.02(a) of the Master Indenture, the Series 2022A Rebate Account, the Series 2024A Rebate Account, the Series 2024B Rebate Account, and any other Rebate Account established pursuant to any other Supplemental Indenture.

**“Rebate Amount”** means the amount required to be rebated to the United States pursuant to Section 148(f)(2) of the Code or successor provisions applicable to the Bonds.

**“Rebate Fund”** means the Rebate Fund established pursuant to Section 4.02(a) of the Master Indenture.

**“Reciprocal Rights Agreement”** means each of (a) the Reciprocal Rights Agreement, dated as of the Closing Date, between the Borrower and JetBlue Airways Corporation and (b) any other agreement that provides the Lessee with easements or other right to access and use any portion of Terminal 5 (as defined in the Lease Agreement) for the purposes of the Lessee’s carrying out the D&C Work (as defined in the Lease Agreement) and use and access of those portions of Terminal 5 as may be necessary for use and operation of the New Terminal Facilities, which is entered into by the Lessee with a Person that becomes a tenant of Terminal 5 after the Closing Date.

**“Recognized Mortgagee”** has the meaning given to the term in Appendix E hereto.

**“Record Date”** means the fifteenth (15th) day (whether or not a Business Day) of the month immediately preceding each Interest Payment Date in respect of the Bonds.

**“Recovery”** has the meaning given in Section 6.5 of the Intercreditor Agreement.

**“Redemption Date”** means the date fixed for redemption of Bonds subject to redemption in any notice of redemption given in accordance with the terms of the Indenture.



**“Redemption Price”** means, unless otherwise set forth with respect to a particular Series of Bonds in the applicable Supplemental Indenture, (a) the principal, interest and any premium, if any, due on a Bond on the date on which it is redeemed prior to maturity pursuant to the redemption provisions of the applicable Supplemental Indenture and (b) the Accreted Redemption Price for any Bonds pursuant to the applicable Supplemental Indenture. For the avoidance of doubt, the Redemption Price of Series 2022A Bonds subject to mandatory redemption pursuant to Section 2.04(f) of the First Supplemental Indenture shall include any interest that has accrued at the Taxable Rate.

**“Refinance”** or **“Refinancings”** means, in respect of any Secured Obligations, to refinance, extend, renew, defease, amend, increase, modify, supplement, restructure, refund, replace or repay, or to issue other indebtedness or enter alternative financing arrangements, in exchange or replacement for such Secured Obligations (in whole or in part), including by adding or replacing lenders, creditors, agents, or borrowers, and including in each case, but not limited to, after the original instrument giving rise to such indebtedness has been terminated and including, in each case, through any credit agreement, indenture or other agreement.

**“Related Parties”** means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

**“Release”** means, any release, spill, emission, emanation, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration into or through the indoor or outdoor environment, including movement through ambient air, soil, surface water, ground water, wetlands, land or subsurface strata.

**“Remaining Revenue Account”** means the “Remaining Revenue Account” established and created in the name of the Borrower pursuant to Section 5.01(a) of the Collateral Agency and Accounts Agreement.

**“Remaining Revenue Account Limit”** has the meaning ascribed to such term in Section 2.12(a) of the Second Supplemental Indenture.

**“Rental”** has the meaning ascribed to such term in the Lease Agreement.

**“Repayment Obligations”** means an obligation arising under a written agreement of the Borrower and a Credit Provider pursuant to which the Borrower agrees to reimburse the Credit Provider for amounts paid through a Credit Facility used to pay Debt Service on any Bonds, or an obligation arising under a written agreement of the Borrower and a Liquidity Provider pursuant to which the Borrower agrees to reimburse the Liquidity Provider for amounts paid through a Liquidity Facility used to purchase Bonds.

**“Required Bank Finance Parties”** has the meaning set forth in the Common Terms Agreement.

**“Required Bondholders”** means the minimum percentage of Senior Bondholders (without regard to the registered owners of Series 2022A Bonds) required under the Indenture to direct the Trustee to exercise remedies with respect to the Collateral or, in the case of any Segregated Pledged Account held for the benefit of the Subordinate Bondholders, the minimum percentage of Subordinate Bondholders required under the Indenture to direct the Trustee to exercise remedies with respect to such Collateral.

**“Required Liquidity Reserve Amount”** means an amount equal to, from and after the Phase 2 End of Funding Date, six (6) months of the aggregate of Ground Rent, First Additional Rent, Second Additional Rental, Third Additional Rent, and Concession Revenue Rent.

**“Required Percentage”** means, with respect to any matter, the minimum percentage of Secured Parties required under such Secured Party’s applicable Financing Documents to direct their respective Agent to exercise remedies with respect to the Collateral.

**“Required Senior Secured Parties”** means, at any time, the holders of more than 50% of (1) prior to any Enforcement Action, the Total Pre-Enforcement Senior Secured Voting Value and (2) following any Enforcement Action, the Total Post-Enforcement Senior Secured Voting Value.

**“Required Subordinate Secured Parties”** means, as of any date, the holders of more than 50% of the sum of the Subordinate Obligations under the Subordinate Financing Documents.

**“Reserve Accounts”** means, collectively, the Senior Debt Service Reserve Account, the Subordinate Debt Service Reserve Account, and the Ramp-Up Reserve Account.

**“Reserved Rights”** means the rights of the Issuer to (a) execute and deliver supplements and amendments to the Indenture and the TDC Loan Agreements, pursuant to Article X of the Master Indenture, (b) be held harmless and indemnified pursuant to Section 7.2(a) of the TDC Loan Agreements, (c) receive any funds for its own use, whether as administration fees pursuant to Section 7.2(a) of the TDC Loan Agreements or indemnification pursuant to Section 7.2(a) of the TDC Loan Agreements, (d) receive notices and other documents as required under the TDC Loan Agreements to be delivered to the Issuer, (e) provide any consent, acceptance or approval with respect to matters as provided in the TDC Loan Agreements, and (f) receive payments under, and enforce pursuant to Article VIII of the TDC Loan Agreements.

**“Responsible Officer”** means, with respect to any Person, the chief executive officer, president, any senior vice president or chief financial officer of such Person, or, in the case of the Borrower only, other individual identified under the Management Services Agreement (or any replacement thereof) as being responsible for administering the Intercreditor Agreement and the other Financing Documents.

**“Restricted Payment”** means (a) any dividend payment or other distribution of assets, properties, cash rights, obligations or securities on account of any Equity Interests in the Borrower, (b) any purchase, redemption or any other acquisition for value of any Equity Interests in the Borrower or of any warrants, rights or options to acquire any such Equity Interests, in each case, now or hereafter outstanding, (c) any other payment to the Pledgor, any Equity Member, any Sponsor or any of their respective Affiliates, other than any amount properly payable in accordance with (i) the Material Project Documents, (ii) the other agreements, instruments and documents listed in Schedule 3.04(b) to the Common Terms Agreement (as in effect on the Closing Date) or (iii) any additional agreements, instruments or documents entered into between the Borrower and any such party (or any modification of the agreements, instruments and documents listed in clauses (i), (ii) or (iii)) entered into in compliance with the Financing Documents and, prior to the Discharge of Senior Obligations in their entirety, with the consent of the Required Bank Finance Parties (such consent not to be unreasonably withheld or delayed) and, if applicable, consistent with the Annual Operating Budget, or (d) any payment of principal or interest on any Indebtedness of the Borrower to or for the benefit of the Pledgor, any Equity Member, any Sponsor or any of their respective Affiliates.

**“Restricted Payment Conditions”** has the meaning ascribed to such term in Section 5.17(d) of the Collateral Agency and Accounts Agreement.

**“S&P”** means S&P Global Ratings Inc.

**“Sanctioned Country”** means a country or territory that is the target of comprehensive country- or territory-wide sanctions, including, as of the date hereof, Cuba, Iran, North Korea, Syria, and the Crimea, Donetsk People’s Republic and Luhansk People’s Republic regions of Ukraine.

**“Sanctioned Person”** means, at any time, any Person (a) that is the subject of sanctions administered or enforced by OFAC (including by being listed on the Specially Designated Nationals and Blocked Persons List, the Consolidated Sanctions, or any similar list maintained by OFAC), the U.S. Department of State, or the United Nations Security Council, the European Union, His Majesty’s Treasury, or other relevant sanctions authority (b) that is fifty-percent or more owned, directly or indirectly, in the aggregate by one or more Persons described in clause (a) above; (c) that is operating, organized or resident in a Sanctioned Country; or (d) with whom a United States Person is otherwise prohibited or restricted by Sanctions Laws from engaging in trade, business or other activities.

**“Sanctions Laws”** means the laws, rules, regulations and executive orders promulgated or administered to implement economic sanctions or anti-terrorism programs by (a) any U.S. Governmental Authority (including, without limitation, OFAC), including Executive Order 13224, the USA PATRIOT Act, the Trading with the Enemy Act, the International Emergency Economic Powers Act and the laws, regulations, rules and/or executive orders relating to restrictive measures against Iran Sanctioned Persons and Sanctioned Countries; and (b) the United Nations Security Council or any other legislative body of the United Nations.

**“Scheduled Borrowing Date”** means, (a) Scheduled Credit Extension Date and/or (b) Scheduled Drawing Date.

**“Scheduled Credit Extension Date”** means each date set forth in Schedule 2.04 to the Credit Agreement, or if such date is not an U.S. Government Securities Business Day, the immediately preceding U.S. Government Securities Business Day.

**“Scheduled Drawing”** shall have the meaning ascribed to such term in the Series 2022A Bond Purchase Agreement.

**“Scheduled Drawing Date”** means each date set forth in Schedule 1 to the Series 2022A Bond Purchase Agreement, or if such date is not a Business Day, the immediately preceding Business Day.

**“Second Additional Rental”** has the meaning ascribed to such term in Appendix E hereto.

**“Second Supplemental Indenture”** means that certain TDC Second Supplemental Bond Indenture of Trust between the Issuer and the Trustee, dated as of November 1, 2024, as consented to by the Intercreditor Agent, the Senior Collateral Agent and the Administrative Agent, and as acknowledged and agreed to by the Borrower.

**“Secured Accounts”** has the meaning ascribed to such term in the Senior Security Agreement.

**“Secured Debt Representative”** means:

- (a) in the case of the Senior Bank Creditors, the Administrative Agent; provided that, solely in the case of the obligation of each Secured Debt Representative to provide notice of the delineated information described in the last paragraph of Section 5.02(b) of the Collateral Agency and Accounts Agreement and the third-to-last paragraph of Section 5.03(b) of the Collateral Agency and Accounts Agreement with respect to the Series 2022A Bonds, the Secured Debt Representative shall be the Trustee;
- (b) in the case of the Senior Bondholders (except as provided in clause (a) above, excluding Senior Bondholders of the Series 2022A Bonds) and the Bond Insurer with respect to the

Senior Bond Insurer Obligations, the Trustee in its capacity as trustee for such Senior Bondholders and Bond Insurer with respect to the Senior Bond Insurer Obligations;

- (c) in the case of any Additional Senior Creditor, any agent or trustee (or equivalent) specified therein as the representative of such Additional Senior Creditors; provided, that such Person shall have acceded to the Intercreditor Agreement in such capacity, in accordance with the terms thereof on behalf of itself and all such Additional Senior Creditors;
- (d) the Hedge Provider party to such Secured Hedge Agreement (unless such Hedge Provider specifies another Person as its Secured Debt Representative by notice to the Applicable Collateral Agent);
- (e) in the case of the Subordinate Bondholders, the Trustee in its capacity as trustee for such Subordinate Bondholders; and
- (f) in the case of any Additional Subordinate Creditor, any agent or trustee (or equivalent) specified therein as the representative of such Additional Subordinate Creditors; provided, that such Person shall have acceded to the Intercreditor Agreement in such capacity, in accordance with the terms thereof on behalf of itself and all such Additional Subordinate Creditors.

**“Secured Hedge Agreement”** means any interest rate swap, floor, cap, collar, option, swaption, hedge, or any other similar agreement or arrangement or any combination of the foregoing (including any agreement or arrangement entered into under and pursuant to a master agreement or other similar arrangement) entered into by the Borrower.

**“Secured Obligations”** means, all obligations of Issuer or the Borrower now existing or hereafter arising under the Financing Documents, relating to and including the Senior Obligations and Subordinate Obligations. Secured Obligations shall exclude Bond Insurer Unsecured Obligations.

**“Secured Parties”** or **“Secured Party”** means, collectively or individually as the context requires, (a) the Collateral Agents, with respect to amounts owed to them by the Borrower under the Collateral Agency and Accounts Agreement, (b) the Trustee, for the benefit of the Indenture Secured Parties, from time to time and with respect to amounts payable to it as fees and expenses pursuant to the Indenture, (c) the Issuer, with respect to amounts payable to it pursuant to the Reserved Rights, (d) each Hedge Provider, (e) the Bondholders (f) each Bank Lender, (g) the Administrative Agent, (h) the Deposit Account Bank, (i) the Securities Intermediary, (j) the Intercreditor Agent, (k) the Bond Insurer with respect to the Senior Bond Insurer Obligations, (l) any Additional Senior Creditors, and (m) any Additional Subordinate Creditors.

**“Securities Act”** means the federal Securities Act of 1933, as amended.

**“Securities Depository”** means, while the Series 2022A Bonds are maintained in the Book-Entry System, DTC.

**“Securities Intermediary”** means The Bank of New York Mellon, as securities intermediary.

**“Security Deposit Facility LC Issuing Bank”** has the meaning ascribed to such term in Common Terms Agreement.

**“Security Deposit Facility Lender”** has the meaning ascribed to such term in Credit Agreement.

“**Security Deposit LC**” has the meaning ascribed to such term in Credit Agreement.

“**Security Deposit Loans**” has the meaning ascribed to such term in Credit Agreement.

“**Security Documents**” means, collectively, any agreement, document or instrument entered into or delivered by the Borrower that creates a Security Interest in favor of the Collateral Agents for the benefit of the Secured Parties (including, without limitation, the Senior Collateral Documents and the Subordinate Collateral Documents, the Account Control Agreement, the Issuer Assignment Agreements, and the Assignment of Project Documents).

“**Security Interest**” means: (a) a mortgage, deed of trust, pledge, lien charge, assignment, hypothecation, security interest, title retention arrangement, preferential right, trust arrangement or other arrangement having the same or equivalent commercial effect as a grant of security; or (b) any agreement to create or give any arrangement referred to in clause (a) of this definition.

“**Segregated Collateral**” means the Collateral held in each Segregated Pledged Account and any Senior Cash Collateral Account only for the benefit of the respective Secured Parties specified in the Collateral Agency and Accounts Agreement and the Collateral held in each Segregated Policy Payment Account only for the benefit of the Owners of Insured Bonds and the relevant Bond Insurer related to such Segregated Policy Payment Account, as specified in the Supplemental Indenture with respect to any such Insured Bonds.

“**Segregated Pledged Accounts**” means the Segregated Proceeds Pledged Accounts, the Segregated Reserve Pledged Accounts and the Surplus Remaining Revenue Account.

“**Segregated Policy Payments Account**” means the “Segregated Policy Payments Account” as defined with respect to any Insured Bonds in the Supplemental Indenture therefor.

“**Segregated Proceeds Pledged Accounts**” means the Bank Proceeds Sub-Account and the Series 2022A Bond Proceeds Sub-Account.

“**Segregated Reserve Pledged Accounts**” means the Ramp-Up Reserve Account, the Senior Debt Service Reserve Account and the Subordinate Debt Service Reserve Account.

“**Senior Bank Creditors**” means, collectively, the Administrative Agent, the Senior Collateral Agent (but solely as an agent of the Bank Finance Parties) and the Bank Finance Parties.

“**Senior Bank Financing Documents**” means the Common Terms Agreement, the Credit Agreement, the Series 2022A Bonds, the Bank Financing TDC Loan Agreements, the TDC Bank Debt Building Note, the Series 2022A Building Note, the Indenture (but only to the extent related to the Series 2022A Bonds), the Series 2022A Bond Purchase Agreement, the Bondholder’s Agreement, the Tax Certificate and the Senior Collateral Documents (but only to the extent related to Loan Facility, the Loan Facility Loans or any TDC Additional Loan from proceeds from the Loan Facility).

“**Senior Bank Obligations**” means (a) Senior Obligations owed to the Senior Bank Creditors and (b) the Obligations of the Borrower under the Bank Financing TDC Loan Agreements.

“**Senior Bond Fund**” has the meaning ascribed to such term in Section 4.02(a)(i) of the Master Indenture.

**“Senior Bond Insurer Obligations”** means, any amounts payable by the Issuer or the Borrower (whether directly or through the Trustee or the Senior Collateral Agent) to any Bond Insurer pursuant to the Senior Financing Documents, including, but not limited to, the Bond Insurer Premium, the Bond Insurer Reimbursement Amounts, the Bond Insurer Fees, any monetary claim under the Senior Financing Documents (including any subrogation rights with respect to any Senior Obligations), any monetary judgment in relation thereto, any monetary judgments arising from non-monetary claims under the Senior Financing Documents, and all other rights, remedies or claim against the Borrower, other than the Bond Insurer Unsecured Obligations. For the avoidance of doubt, Senior Bond Insurer Obligations shall exclude Bond Insurer Unsecured Obligations. The Senior Bond Insurer Obligations are Additional Senior Obligations, Senior Obligations, Senior Bond Obligations and Senior Secured Debt.

**“Senior Bond Obligations”** means, (a) Senior Obligations owed to the Senior Bondholders, (b) with respect to TDC Loan Agreements, or any Additional Obligations Loan Agreement Supplement entered into in connection with any Senior Bonds, all principal of, and interest, fees and expenses payable with respect to, such TDC Loan Agreement or any Additional Obligations Loan Agreement Supplement, but only to the extent such agreements evidence or provide for Indebtedness in respect of Senior Bonds and (c) the Senior Bond Insurer Obligations; it being understood that when calculating the aggregate amount of Senior Bond Obligations, such calculation shall be made without duplication of Bond Insurer Reimbursement Amounts and Senior Obligations to which Bond Insurer may have been subrogated or Senior Bonds that may have been issued to the Bond Insurer in connection with any payment made on the Bond Insurance Policy. Senior Bond Obligations shall exclude Bond Insurer Unsecured Obligations.

**“Senior Bond Par Amount”** means the principal amount of outstanding Current Interest Bonds constituting Senior Bonds (excluding the Series 2022A Bonds) plus the Accreted Value, as applicable, of outstanding Compounding Interest Bonds constituting Senior Bonds (excluding the Series 2022A Bonds).

**“Senior Bondholder”** means, at any time, the registered owner of any Senior Bond.

**“Senior Bonds”** means the Series 2022A Bonds and any Additional Bonds issued in compliance with the Indenture on parity with the Series 2022A Bonds, and that by the terms thereof are specifically superior with respect to payment of principal and interest thereon to Subordinate Bonds issued in the future.

**“Senior Cash Collateral Account”** has the meaning given in Section 5.4(c) of the Intercreditor Agreement.

**“Senior Collateral”** means all collateral in which a Security Interest is granted or intended to be granted in favor of the Senior Secured Parties (or any sub-agent or other Person acting for or on behalf of the Senior Secured Parties), for the benefit of the Senior Secured Parties, by the Issuer, the Borrower or the HoldCo under the Senior Collateral Documents.

**“Senior Collateral Agent”** means The Bank of New York Mellon, a banking corporation organized under the laws of the State of New York, in its capacity as collateral agent on behalf of the Senior Secured Parties, and its successors and assigns pursuant to the Collateral Agency and Accounts Agreement.

**“Senior Collateral Documents”** means the Collateral Agency and Accounts Agreement (but only to the extent it provides for Indebtedness or other obligations related to the Loan Facility or other Senior Obligations), Senior Security Agreement, the Senior Equity Pledge Agreement, the Leasehold Mortgages, the Assignments of Leases and Rents, the Account Control Agreement (to the extent it provides control of the applicable deposit or securities account to the Senior Collateral Agent), the Issuer Assignment Agreements, the Assignment of Project Documents, the Intercreditor Agreement, the Collateral Account Control Agreement and each other agreement, indenture, assignment, mortgage or other instrument that

creates or purports to create a Security Interest in favor of the Senior Collateral Agent for the benefit of the Senior Secured Parties.

**“Senior Debt Service Coverage Ratio”** or **“Senior DSCR”** means, for any DSCR Calculation Period, the ratio of A divided by B where:

A = the Free Cash Flow for such period; and

B = the DSCR Debt Service for such period with respect to the Senior Obligations, if any.

**“Senior Debt Service Reserve Account”** means the “Senior Debt Service Reserve Account” established and created in the name of the Borrower pursuant to Section 5.01(a) of the Collateral Agency and Accounts Agreement.

**“Senior Debt Service Reserve Requirement”** means, on the Phase 2 End of Funding Date and on each Transfer Date thereafter, an amount equal to the Aggregate Debt Service with respect to all Outstanding Senior Obligations calculated for the twelve (12) month period after such date, net of any amounts (up to the Aggregate Debt Service with respect to the Outstanding Senior Obligations for the three (3) months after such date) then on deposit in the Ramp-Up Reserve Account.

**“Senior Equity Pledge Agreement”** means that certain Amended and Restated Senior Equity Pledge Agreement, dated as of the Closing Date, by and among the HoldCo, the Borrower, and the Senior Collateral Agent.

**“Senior Financing Documents”** means, the Indenture (but only to the extent the Indenture provides for Indebtedness in respect of the Series 2022A Bonds, or any other Senior Bonds issued under the Indenture), the Senior Bonds, the TDC Loan Agreements (to the extent issued in connection with loans made with proceeds from Senior Obligations), the 2022 TDC Building Notes, the 2022 TDC Project Notes, any Additional Note (to the extent issued in connection with loans made with proceeds from Senior Obligations), any other Additional Obligations Loan Agreement Supplement (but only to the extent entered into in connection with Senior Bonds or Senior Bond Insurer Obligations), the Credit Agreement, the Credit Agreement Bank Notes, the Common Terms Agreement, the Bond Purchase Agreement, the Series 2022A Bondholder Agreement, each Direct Agreement, each Additional Senior Financing Document, each Secured Hedge Agreement, the Senior Collateral Documents, the Letter of Representation, the Fee Letters, the Tax Certificate, any other agreement, document or instrument providing for or evidencing any Obligations owed to the Senior Secured Parties (in such capacity) and any other document or instrument executed or delivered at any time in connection with any of the Obligations owed to the Senior Secured Parties (in such capacity), including any other fee letters and any other intercreditor or accession agreement among holders of the Senior Obligations, to the extent such are effective at the relevant time, in each case as amended, restated, amended and restated, supplemented or otherwise modified or waived from time to time.

**“Senior Loan Interest Payment Sub-Account”** means the “Senior Loan Interest Payment Sub-Account” established and created in the name of the Borrower pursuant to Section 5.01(a) of the Collateral Agency and Accounts Agreement.

**“Senior Loan Principal Payment Sub-Account”** means the “Senior Loan Principal Payment Sub-Account” established and created in the name of the Borrower pursuant to Section 5.01(a) of the Collateral Agency and Accounts Agreement.

**“Senior Loans”** means the Senior Term Loans and the Security Deposit Loans.

**“Senior Obligations”** means all obligations of the Issuer or the Borrower of every nature outstanding under the Senior Financing Documents that constitute or relate to Senior Secured Debt (including erroneous payment subrogation rights under Section 9.10(b)(iii) of the Common Terms Agreement, principal, Ordinary Course Payments, Hedge Termination Payments, interest, fees, make-whole, breakage and other similar amounts (including any interest, fees, expenses, or make-whole accrued or accruing (or which would, absent the commencement of any Insolvency or Liquidation Proceeding of the Borrower, accrue) on or after commencement of any Insolvency or Liquidation Proceeding of the Borrower in accordance with the rate specified in the relevant Senior Financing Documents, whether or not the claim for such interest, fees, expenses, any make-whole or breakage is allowed or allowable as a claim in such Insolvency or Liquidation Proceeding) and any Senior Bond Obligations; provided, that for the avoidance of doubt, Senior Obligations shall not include any Subordinate Obligations (including any such Subordinate Obligations evidenced by or outstanding under any Senior Financing Document); provided, further, that “Senior Obligations” shall exclude Excluded Swap Obligations and Bond Insurer Unsecured Obligations.

**“Senior Obligations Payment Account”** means, the “Senior Obligations Payment Account” established and created in the name of the Borrower pursuant to Section 5.01(a) of the Collateral Agency and Accounts Agreement.

**“Senior Secured Debt”** means all Indebtedness of the Issuer or the Borrower under the Senior Financing Documents that is intended to be secured by first priority liens on the Collateral. Senior Secured Debt shall exclude Bond Insurer Unsecured Obligations.

**“Senior Secured Debt Representative”** means with respect to any Class of Senior Secured Parties, the Secured Debt Representative of such Class of Senior Secured Parties.

**“Senior Secured Parties”** means (a) the Senior Collateral Agent, (b) the Trustee, in its capacity as Secured Debt Representative for the Indenture Secured Parties holding Senior Obligations, (c) the Senior Bondholders, (d) the Issuer, with respect to amounts payable to it pursuant to the Reserved Rights, (e) each Hedge Provider, (f) the Bank Lenders, (g) the Administrative Agent, (h) the Bond Insurer with respect to the Senior Bond Insurer Obligations, and (i) other holders of Senior Obligations from time to time (including their Secured Debt Representatives); provided, that, no Equity Member or any Affiliate of an Equity Member shall be a “Senior Secured Party” except to the extent permitted (or, if not addressed therein, not prohibited) under any other Senior Financing Document or any Subordinate Financing Document.

**“Senior Secured Party Unanimous Decision”** has the meaning given in Section 10.3(b)(i) of the Intercreditor Agreement.

**“Senior Security Agreement”** means the Senior Security Agreement, dated as of November 1, 2022, between the Borrower and the Senior Collateral Agent.

**“Senior Term Loan Commitments”** means, with respect to each Bank Lender, the commitment, if any, of such Bank Lender to make or otherwise fund Senior Term Loans to the Issuer, as such commitment may be (a) reduced from time to time pursuant to Section 2.07 of the Credit Agreement or Section 2.10 of the Credit Agreement and (b) reduced or increased from time to time pursuant to assignments by or to such Bank Lender pursuant to Section 8.04 of the Credit Agreement. The initial amount of each Term Loan Commitment of each Bank Lender is set forth on Schedule 2.01 of the Credit Agreement, or in the Assignment and Assumption (as defined in the Common Terms Agreement) pursuant to which such Bank Lender shall have assumed its Senior Term Loan Commitment, as applicable. The initial aggregate amount of the Senior Term Loan Commitments was \$3,009,000,000.



“**Senior Term Loans**” has the meaning ascribed to such term in Section 2.01(a) of the Credit Agreement.

“**Series**” or “**Series of Bonds**” means the original issuance thereof of each of the Series 2022A Bonds and any Additional Bonds thereafter authenticated and delivered therefor pursuant to the Indenture.

“**Series 2022 Bond Payment Account**” means the Series 2022 Senior Bond Payment Account created pursuant to Section 4.02(a) of the Master Indenture, including the Series 2022A Senior Bond Interest Payment Sub-Account, the Series 2022A Senior Bond Principal Payment Sub-Account, and the Series 2022A Senior Bond Redemption Payment Sub-Account.

“**Series 2022A Bond Building Loan**” has the meaning given in Section 3.1(a) of the TDC Building Loan Agreement.

“**Series 2022A Bond Building Proceeds Sub-Account**” means the “Series 2022A Bond Proceeds Sub-Account” established and created in the name of the Borrower pursuant to Section 5.01(a) of the Collateral Agency and Accounts Agreement.

“**Series 2022A Bond Documents**” means the Master Indenture, the First Supplemental Indenture, the Series 2022A Bond Purchase Agreement, the Series 2022A Bondholder Agreement and the Series 2022A Bonds.

“**Series 2022A Bond Proceeds Sub-Account**” means the “Series 2022A Bond Proceeds Sub-Account” established and created in the name of the Borrower pursuant to Section 5.01(a) of the Collateral Agency and Accounts Agreement.

“**Series 2022A Bond Project Loan**” has the meaning given in Section 3.1(a) of the TDC Project Loan Agreement.

“**Series 2022A Bond Project Proceeds Sub-Account**” means the “Series 2022A Bond Proceeds Sub-Account” established and created in the name of the Borrower pursuant to Section 5.01(a) of the Collateral Agency and Accounts Agreement.

“**Series 2022A Bond Purchase Agreement**” means, with respect to the Series 2022A Bonds, that certain Bond Purchase Agreement dated October 21, 2022, among the Issuer, the Borrower, the Initial Purchaser and the Purchaser.

“**Series 2022A Bondholder**” means “Owner”, as defined in the Bondholder’s Agreement.

“**Series 2022A Bonds**” means the New York Transportation Development Corporation Special Facilities Bonds, Senior Series 2022A (Tax-Exempt) (AMT) (JFK Airport Terminal 6-7 Redevelopment Project), issued from time to time in the aggregate principal amount of up to \$435,000,000 and, subject to any redemption thereof, Outstanding in the aggregate principal amount of all Drawings under the Series 2022A Bonds, and issued, executed, authenticated and delivered under the Indenture.

“**Series 2022A Building Note**” means the promissory note of the Borrower in the form attached to the TDC Building Loan Agreement as Exhibit C-1, evidencing a portion the indebtedness of the Borrower under the TDC Building Loan Agreement with respect to the Series 2022A Bonds.

“**Series 2022A Commitment End Date**” has the meaning ascribed to the term “Commitment End Date” in the Series 2022A Bond Purchase Agreement.

**“Series 2022A Project Note”** means the promissory note of the Borrower in the form attached to the TDC Project Loan Agreement as Exhibit A-1, evidencing a portion the indebtedness of the Borrower under the TDC Project Loan Agreement with respect to the Series 2022A Bonds.

**“Series 2022A Rebate Account”** means the “Series 2022A Rebate Account” established pursuant to Section 3.01 of the First Supplemental Indenture.

**“Series 2022A Senior Bond Interest Payment Sub-Account”** means the “Series 2022A Senior Bond Interest Account” established pursuant to Section 3.01 of the First Supplemental Indenture.

**“Series 2022A Senior Bond Par Amount”** means the principal amount of outstanding Current Interest Bonds constituting the Series 2022A Bonds.

**“Series 2022A Senior Bond Principal Payment Sub-Account”** means the “Series 2022A Senior Bond Principal Account” established pursuant to Section 3.01 of the First Supplemental Indenture.

**“Series 2022A Senior Bond Redemption Payment Sub-Account”** means the “Series 2022A Senior Bond Redemption Account” established pursuant to Section 3.01 of the First Supplemental Indenture.

**“Series 2024 Bond Building Loan”** has the meaning given in Section 3.1(a) of the First Building Loan Agreement Amendment.

**“Series 2024 Bond Building Proceeds Sub-Account”** means the “Series 2024 Bond Building Proceeds Sub-Account” within the Construction Account established and created in the name of the Borrower pursuant to Section 2.01(c) of the First CAAA Amendment.

**“Series 2024 Bond Loans”** means, collectively, the Series 2024 Bond Building Loan and the Series 2024 Bond Project Loan.

**“Series 2024 Bond Proceeds Sub-Account”** means the “Series 2024 Bond Proceeds Sub-Account” within the Construction Account established and created in the name of the Borrower pursuant to Section 2.01(b) of the First CAAA Amendment.

**“Series 2024 Bond Project Loan”** has the meaning given in Section 3.1 of the First Project Loan Agreement Amendment.

**“Series 2024 Bond Project Proceeds Sub-Account”** means the “Series 2024 Bond Project Proceeds Sub-Account” within the Construction Account established and created in the name of the Borrower pursuant to Section 2.01(d) of the First CAAA Amendment.

**“Series 2024 Bonds”** means collectively, the Series 2024A Bonds and the Series 2024B Bonds.

**“Series 2024 Bond Insurer”** means Assured Guaranty Inc., a Maryland domiciled financial guaranty insurance company, or any successor thereto or assignee thereof.

**“Series 2024 Building Note”** means the promissory note of the Borrower in the form attached to the First Building Loan Agreement Amendment as Exhibit B-1, evidencing a portion the indebtedness of the Borrower under the TDC Building Loan Agreement with respect to the Series 2024 Bonds.

**“Series 2024 Closing Date”** means November 5, 2024.

**“Series 2024 Financing Documents”** means, collectively, (a) the First CAAA Amendment, (b) First Amendments to TDC Loan Agreements, (c) the Series 2024 Notes, (d) the Second Supplemental Indenture, (e) the Series 2024 Bonds, (f) the First Amendments to Issuer Assignment Agreements and (g) the Tax Certificate delivered in respect of the Series 2024 Bonds.

**“Series 2024 Issuer Documents”** means, collectively, (a) the Collateral Agency and Accounts Agreement, (b) the Indenture, (c) the Tax Certificates, (d) the Loan Agreement, (e) the Series 2024 Bonds, (f) the First Amendments to Issuer Assignment Agreements, (g) the Leasehold Mortgages, (h) the Bond Purchase Agreement, and (i) the DTC Letter of Representation, but in each case, only as related to the Series 2024 Bonds.

**“Series 2024 Notes”** means, together, the Series 2024 Building Note and the Series 2024 Project Note.

**“Series 2024 Project Note”** means the promissory note of the Borrower in the form attached to the First Project Loan Agreement Amendment as Exhibit A-1, evidencing a portion the indebtedness of the Borrower under the TDC Project Loan Agreement with respect to the Series 2024 Bonds.

**“Series 2024 Rebate Accounts”** has the meaning ascribed to such term in Section 3.02(c) of the Second Supplemental Indenture.

**“Series 2024 TDC Resolution”** means that resolution adopted by the Issuer on October 1, 2024 authorizing the issuance of the Series 2024 Bonds and related matters.

**“Series 2024 Underwriters”** means Goldman Sachs & Co. LLC, as Bookrunning Senior Manager, and Siebert Williams Shank & Co. LLC, as Co-Senior Manager.

**“Series 2024A Balloon Indebtedness”** means the Series 2024A Bonds designated as Balloon Indebtedness in the Series 2024A Balloon Indebtedness Certificate delivered to the Senior Collateral Agent pursuant to the First Building Loan Agreement Amendment.

**“Series 2024A Bonds”** means the New York Transportation Development Corporation, Special Facilities Revenue Bonds, Senior Series 2024A, (Green Bonds) (AMT) (Current Interest Bonds) (JFK Airport Terminal 6 Redevelopment Project), issued in the aggregate principal amount of \$1,845,640,000. The Series 2024A Bonds are Additional Bonds, Senior Bonds, Additional Senior Obligations and Senior Secured Debt.

**“Series 2024A Rebate Account”** means the “Series 2024A Rebate Account” established pursuant to Section 3.01 of the Second Supplemental Indenture.

**“Series 2024A Senior Bond Interest Payment Sub-Account”** means the “Series 2024A Senior Bond Interest Account” established pursuant to Section 3.01 of the Second Supplemental Indenture.

**“Series 2024A Senior Bond Principal Payment Sub-Account”** means the “Series 2024A Senior Bond Principal Account” established pursuant to Section 3.01 of the Second Supplemental Indenture.

**“Series 2024A Senior Bond Redemption Payment Sub-Account”** means the “Series 2024A Senior Bond Redemption Account” established pursuant to Section 3.01 of the Second Supplemental Indenture.

“**Series 2024B Bonds**” means the New York Transportation Development Corporation, Special Facilities Revenue Bonds, Senior Series 2024B (AMT) (Convertible Capital Appreciation Bonds) (JFK Airport Terminal 6 Redevelopment Project), issued in the aggregate principal amount of \$99,997,768. The Series 2024B Bonds are Additional Bonds, Senior Bonds, Additional Senior Obligations and Senior Secured Debt.

“**Series 2024B Rebate Account**” means the “Series 2024B Rebate Account” established pursuant to Section 3.01 of the Second Supplemental Indenture.

“**Series 2024B Senior Bond Interest Payment Sub-Account**” means the “Series 2024B Senior Bond Interest Account” established pursuant to Section 3.01 of the Second Supplemental Indenture.

“**Series 2024B Senior Bond Principal Payment Sub-Account**” means the “Series 2024B Senior Bond Principal Account” established pursuant to Section 3.01 of the Second Supplemental Indenture.

“**Series 2024B Senior Bond Redemption Payment Sub-Account**” means the “Series 2024B Senior Bond Redemption Account” established pursuant to Section 3.01 of the Second Supplemental Indenture.

“**Shared Collateral**” means, at any time, Collateral in which the holders of two or more Classes of Secured Obligations (or their respective Agents) hold a valid and perfected security interest at such time. If more than two Classes of Secured Obligations are outstanding at any time and the holders of less than all Classes of Secured Obligations hold a valid and perfected security interest in any Collateral at such time, then such Collateral shall constitute Shared Collateral for those Classes of Secured Obligations that hold a valid and perfected security interest in such Collateral at such time and shall not constitute Collateral for any Class which does not have a valid and perfected security interest in such Collateral at such time.

“**Shortfall**” has the meaning given in Section 6.3(b)(iv) of the Intercreditor Agreement.

“**Shortfall Contribution Notice**” means a request for equity contribution to be delivered by the Securities Intermediary to the Sponsors, substantially in the form of Exhibit K-1 to the Collateral Agency and Accounts Agreement.

“**SIFMA Determination Date**” means Wednesday of each week or, if Wednesday is not a Business Day, the next succeeding Business Day.

“**SIFMA Index**” means for any day the SIFMA Municipal Swap Index (a weekly, high-grade market index comprised of seven (7) day tax exempt, variable rate demand notes produced by Municipal Market Data) rounded upward to the second decimal place in effect on each SIFMA Determination Date and effective on each Adjustment Date. If the SIFMA Index or a successor equivalent index is no longer calculated and published by Municipal Market Data in its current form, then the SIFMA Index shall be replaced by the Alternative Index. If at any time neither such index is available, the “SIFMA Index” means instead the most recently effective index that the Purchaser determines most closely approximates the SIFMA Index, and which is procedurally acceptable to the Calculation Agent. If the SIFMA Index shall be less than zero, such rate shall be deemed to be zero.

“**Sinking Fund Requirement**” means the principal amount of Bonds subject to mandatory redemption in accordance any Supplemental Indenture.

“**SOFR**” means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator’s

Website on the immediately succeeding Business Day. No information available on or through such website shall be deemed to be part of or incorporated in this Official Statement.

“**SOFR Administrator**” means the Federal Reserve Bank of New York.

“**SOFR Administrator’s Website**” means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time. No information available on or through such website shall be deemed to be part of or incorporated in the Official Statement.

“**SOFR Interest Day**” has the meaning set forth in the defined term “Daily Simple SOFR” herein.

“**Special Record Date**” means a special date fixed by the Trustee to determine the names and addresses of Holders of the Bonds for purposes of paying interest on a special interest payment date for the payment of Defaulted Interest.

“**Sponsors**” means Corsair-Vantage Airport Fund Aggregator, L.P., ATI Javelin Holdings LP, RXR JFK MP Holdings Member LLC, and JetBlue Airways Corporation.

“**Standstill Period**” has the meaning given in Section 3.5(b)(iii) of the Intercreditor Agreement.

“**State**” means the State of New York.

“**Sublease**” has the meaning ascribed to such term in Appendix E hereto.

“**Sublessees**” has the meaning ascribed to such term in Appendix E hereto.

“**Subordinate Adequate Protection Payments**” has the meaning given in Section 6.3(b)(iv) of the Intercreditor Agreement.

“**Subordinate Bond Fund**” has the meaning ascribed to such term in Section 4.02(a)(ii) of the Master Indenture.

“**Subordinate Bond Par Amount**” means the principal amount of outstanding Current Interest Bonds constituting Subordinate Bonds plus the Accreted Value, as applicable, of outstanding Compounding Interest Bonds constituting Subordinate Bonds.

“**Subordinate Bondholder**” means, at any time, the registered owner of any Subordinate Bond.

“**Subordinate Bonds**” means any Additional Bonds issued in compliance with the Indenture that by the terms thereof are specifically subordinate and junior to the Senior Bonds, including the Series 2022A Bonds, with respect to payment of principal and interest thereon.

“**Subordinate Collateral**” means all collateral in which a Security Interest is granted or intended to be granted in favor of the Subordinate Collateral Agent, for the benefit of the Subordinate Secured Parties, by the Issuer, the Borrower, or HoldCo pursuant to the Subordinate Collateral Documents.

“**Subordinate Collateral Agent**” has the meaning ascribed to such term in Section 2.11(c) of the Collateral Agency and Accounts Agreement.

“**Subordinate Collateral Documents**” means the Collateral Agency and Accounts Agreement (but only to the extent it provides for Indebtedness or other obligations related to the Subordinate Obligations),

the Intercreditor Agreement, and each other agreement that creates or purports to create a Security Interest in favor of the Subordinate Collateral Agent for the benefit of the Subordinate Secured Parties.

**“Subordinate Concessions Revenue Rent”** has the meaning ascribed to such term in Appendix E hereto.

**“Subordinate Debt Service Reserve Account”** means the “Subordinate Debt Service Reserve Account” established and created in the name of the Borrower pursuant to Section 5.01(a) of the Collateral Agency and Accounts Agreement.

**“Subordinate Debt Service Reserve Requirement”** means, on the Phase 2 End of Funding Date and on each Transfer Date thereafter, an amount specified in the Subordinate Financing Documents.

**“Subordinate Financing Documents”** means, the Subordinate Collateral Documents, the Indenture (but only to the extent the Indenture provides for Indebtedness in respect of Additional Bonds issued as Subordinate Bonds issued under the Indenture), any Subordinate Bonds, any Additional Obligations Loan Agreement Supplement entered into in connection with Subordinate Bonds, any Additional Note (to the extent issued in connection with loans made with proceeds from Subordinate Bonds), each Direct Agreement, each Additional Subordinate Financing Document, any other agreement, document or instrument providing for or evidencing any Obligations owed to the Subordinate Secured Parties (in such capacity) and any other document or instrument executed or delivered at any time in connection with any of Obligations owed to the Subordinate Secured Parties (in such capacity), including any other intercreditor or accession agreement among holders of the Subordinate Obligations, to the extent such are effective at the relevant time.

**“Subordinate Obligations”** means all obligations of the Issuer or the Borrower of every nature outstanding under the Subordinate Financing Documents that constitute or relate to Subordinate Secured Debt (including principal, interest, fees, make-whole, breakage and other similar amounts (including any interest, fees, expenses, or make-whole accrued or accruing (or which would, absent the commencement of any Insolvency or Liquidation Proceeding of the Borrower, accrue) on or after commencement of any Insolvency or Liquidation Proceeding of the Borrower in accordance with the rate specified in the relevant Subordinate Financing Documents, whether or not the claim for such interest, fees, expenses, any make-whole or breakage is allowed or allowable as a claim in such Insolvency or Liquidation Proceeding)); provided, that for the avoidance of doubt, Subordinate Obligations shall not include any Senior Obligations (including any such Senior Obligations evidenced by or outstanding under any Subordinate Financing Document).

**“Subordinate Obligations Payment Account”** means the “Subordinate Obligations Payment Account” established and created in the name of the Borrower pursuant to Section 5.01(a) of the Collateral Agency and Accounts Agreement.

**“Subordinate Secured Debt”** means all Indebtedness of the Issuer or the Borrower under the Subordinate Financing Documents that is intended to be secured by liens on the Subordinate Collateral with a priority that is junior to the liens created for the benefit of the Senior Secured Parties, but senior to all other liens (other than Permitted Liens).

**“Subordinate Secured Debt Representative”** means the Trustee in its capacity as trustee for the Subordinate Bondholders.

**“Subordinate Secured Party”** means, at any time, the holder of any Subordinate Obligations (including its Secured Debt Representative) solely in its capacity as a holder of Subordinate Obligations;

provided, that no Affiliate of an Equity Member shall be a “Subordinate Secured Party” except to the extent permitted (or, if not addressed therein, not prohibited) under any other Senior Financing Document or any Subordinate Financing Document.

“**Subordinate Secured Party Unanimous Decision**” has the meaning given in Section 10.3(b)(ii) of the Intercreditor Agreement.

“**Subordinated Affiliate Obligations**” means any unsecured indebtedness or other unsecured obligations owed by the Borrower to the Pledgor, any Equity Member, any Sponsor, their respective Affiliates or any other direct or indirect holders of equity in the Borrower that are expressly subordinated in right of payment to the Secured Obligations (prior to Discharge of Senior Bank Obligations, in their entirety, in form and substance satisfactory to the Required Bank Finance Parties) and the source of repayment of which is solely limited to funds on deposit in the Remaining Revenue Account (as defined in Section 5.01(a)(xiv) of the Collateral Agency and Accounts Agreement).

“**Subsidiary**” means, with respect to any Person (the “parent”) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, Controlled or held, or (b) the management of which is, as of such date, otherwise Controlled, directly or indirectly, through one or more intermediaries, by such Person.

“**Substantial Completion Date**” means the date of Substantial Completion of the Project under, and as defined in, the Lease Agreement.

“**Substantial Completion of Phase 1**” has the meaning ascribed to such term in Appendix E hereto.

“**Substantial Completion of Phase 2**” has the meaning ascribed to such term in Appendix E hereto.

“**Substantial Completion of the Project**” has the meaning ascribed to such term in the Lease Agreement.

“**Supplemental Indenture**” means any indenture supplemental to or amendatory of the Indenture, executed and delivered by the Issuer and the Trustee in accordance with Article X of the Indenture.

“**Supplier**” has the meaning ascribed to such term in the Lease Agreement.

“**Supported QFC**” means any Permitted Hedge Agreement or other agreement or instrument that is a QFC for which the Financing Documents provide QFC Credit Support.

“**Surplus Remaining Revenue Account**” has the meaning ascribed to such term in Section 5.17(e) of the Collateral Agency and Accounts Agreement.

“**Surplus RRA Transfer Conditions**” has the meaning ascribed to such term in Section 5.17(e) of the Collateral Agency and Accounts Agreement.

**“Swap Obligation”** means, with respect to any guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act.

**“Tax Certificate”** means with respect to any issuance of Bonds under the Indenture or incurrence of Senior Term Loans, (a) one or more certificates or agreements that sets forth the Issuer’s or the Borrower’s expectations regarding the investment and use of proceeds of any Series of Bonds and Senior Term Loans and other matters relating to Bond Counsel’s opinion regarding the federal and State income tax treatment of interest on such Bonds, including any instructions delivered by Bond Counsel in connection with any such certificate or agreement and any appendices, schedules and exhibits thereto; and (b) any amendment or modification of any such certificate or agreement that is accompanied by an opinion of Bond Counsel stating that the amendment or modification will not adversely affect the exclusion of interest on such Bonds from gross income for federal and State income tax purposes or the ability to refinance such Senior Term Loans with proceeds from Bonds or other Indebtedness which interests are excluded from gross income for federal and State income tax purposes.

**“Tax Covenant”** means the covenants of the Borrower pursuant to Sections 10.7 and 10.24 of the Collateral Agency and Accounts Agreement.

**“Tax-Exempt Bond Interest Payment Sub-Account”** means any “Tax-Exempt Bond Interest Payment Sub-Account” within the Senior Obligations Payment Account or the Subordinate Obligations Payment Account that is or may be established and created in the name of the Borrower pursuant to the Collateral Agency and Accounts Agreement for a Series of Bonds.

**“Tax-Exempt Bond Proceeds Sub-Account”** means the “Tax-Exempt Bond Proceeds Sub-Account” established and created in the name of the Borrower pursuant to Section 5.01(a) of the Collateral Agency and Accounts Agreement.

**“Tax-Exempt Bonds”** means Bonds issued pursuant to the Indenture, interest on which is exempt for federal income tax purposes.

**“Tax-Exempt Obligations”** means, collectively the Tax-Exempt Bonds and any additional Secured Obligations, interest on which is exempt for federal income tax purposes.

**“Taxable Bonds”** means Bonds issued pursuant to the Indenture, interest on which is not exempt for federal income tax purposes.

**“Taxable Date”** means the date on which interest on any Series 2022A Bonds is first includable in gross income of any Holder thereof (including, without limitation, the Purchaser) as a result of a Determination of Taxability.

**“Taxable Obligations”** means, collectively, the Taxable Bonds and the Senior Loans, interest on which is not exempt for federal income tax purposes.

**“Taxable Period”** means the period during which interest on any of the Series 2022A Bonds is includable in the gross income of any holder of such Bonds as a result of a Determination of Taxability beginning on the Taxable Date.

**“Taxable Rate”** means, for each day during a Taxable Period, the sum of (a) Daily Simple SOFR in effect on such day and (b) the product of (i) the Applicable Spread and (ii) the Taxable Rate Factor.



“**Taxable Rate Factor**” means, for each day that the Taxable Rate is determined, the quotient of (i) one divided by (ii) one minus the Maximum Federal Corporate Tax rate in effect for such day, rounded upward to the second decimal place.

“**Taxes**” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties thereto.

“**TDC Additional Loan**” means a loan made in connection with the issuance of Additional Obligations.

“**TDC Bank Debt Building Note**” means the promissory note of the Borrower in the form attached to the TDC Building Loan Agreement as Exhibit C-2, evidencing a portion the indebtedness of the Borrower under the TDC Building Loan Agreement with respect to the TDC Senior Term Loan Building Loan.

“**TDC Bank Debt Loans**” means the TDC Senior Term Loan Building Loan and the TDC Senior Term Loan Project Loan.

“**TDC Bank Debt Project Note**” means the promissory note of the Borrower in the form attached to the TDC Project Loan Agreement as Exhibit A-2, evidencing a portion the indebtedness of the Borrower under the TDC Project Loan Agreement with respect to the TDC Senior Term Loan Project Loan.

“**TDC Building Loan Agreement**” means that certain TDC Building Loan Agreement, dated as of November 1, 2022, between the Borrower and the Issuer.

“**TDC Loan Agreements**” means, collectively, the TDC Building Loan Agreement, the TDC Project Loan Agreement and each Additional Obligations Loan Agreement Supplement.

“**TDC Notes**” means the 2022 TDC Building Notes, the 2022 TDC Project Notes and any additional promissory notes of the Borrower evidencing the indebtedness of the Borrower under the TDC Building Loan Agreement or the TDC Project Loan Agreement.

“**TDC Project Loan Agreement**” means that certain TDC Project Loan Agreement, dated as of November 1, 2022, between the Borrower and the Issuer.

“**TDC Resolution**” means that resolution adopted by the Issuer on October 20, 2022.

“**TDC Security Deposit Project Loan**” has the meaning given in Section 3.1(c) of the TDC Project Loan Agreement.

“**TDC Security Deposit Project Note**” means the promissory note of the Borrower in the form attached to the TDC Project Loan Agreement as Exhibit A-3, evidencing a portion the indebtedness of the Borrower under the TDC Project Loan Agreement with respect to the TDC Security Deposit Project Loan.

“**TDC Senior Term Loan Building Loan**” has the meaning given in Section 3.1(b) of the TDC Building Loan Agreement.

“**TDC Senior Term Loan Project Loan**” has the meaning given in Section 3.1(b) of the TDC Project Loan Agreement.

“**TDC Series 2022A Bond Loans**” means the Series 2022A Bond Building Loan loaned pursuant to the TDC Building Loan Agreement and the Series 2022A Bond Project Loan loaned pursuant to the TDC Project Loan Agreement.

“**Technical Advisor**” means BTY Group, and its successors and assigns, or such other nationally-recognized independent engineering firm performing similar services (a) selected by the Borrower in compliance with the Financing Documents and (b) that has acknowledged that it is acting on behalf of the Collateral Agents.

“**Tenant Security Deposit Account**” has the meaning ascribed to such term in Section 5.09(a) of the Collateral Agency and Accounts Agreement.

“**Tender Indebtedness**” means any Bonds or portions of Bonds a feature of which is an obligation on the part of the Bondholders, under the terms of such Bonds, to tender all or a portion of such Bonds to the Borrower, the Trustee, the Paying Agent or other fiduciary or agent or Credit Provider or Liquidity Provider for payment or purchase and requiring that such Bonds or portions of Bonds be purchased if properly presented.

“**Term**” means the term of the Lease Agreement.

“**Terminal 6**” means the new Terminal 6 being constructed by the Borrower on the sites of the former Terminal 6 and current Terminal 7 at the Airport.

“**Terminal 7**” means Terminal 7 at the Airport.

“**Terminal Facilities**” means, collectively, the Existing Terminal Facilities and the New Terminal Facilities, and each individually, a “**Terminal Facility**.”

“**Termination Date**” means (a) with respect to the Financing Documents, the date when all obligations to be paid or performed by the Borrower, as applicable, thereunder have been indefeasibly paid and performed in full; or (b) with respect to the Lease Agreement, the date of expiration of the Term or if applicable, any early termination thereof.

“**Third Additional Rent**” has the meaning ascribed to such term in Appendix E hereto.

“**Total Debt Service Coverage Ratio**” or “**Total DSCR**” means, for any DSCR Calculation Period, the ratio of A divided by B where:

A = the Free Cash Flow for such period; and

B = the DSCR Debt Service for such period with respect to all Secured Obligations, if any.

“**Total Loss**” means a Casualty Event or Expropriation Event resulting in damage to, destruction or loss of all or substantially all of the Project.

“**Total Post-Enforcement Senior Secured Voting Value**” equals, on or following the Intercreditor Agent having instructed the Applicable Collateral Agent to take any Enforcement Action, Funded Bank Debt plus Aggregate Hedging Agreement Termination Values plus the principal amount outstanding of Additional Senior Obligations pursuant to the applicable Additional Senior Financing Documents.

**“Total Post-Enforcement Subordinate Secured Voting Value”** equals, on or following the Intercreditor Agent having instructed the Applicable Collateral Agent to take any Enforcement Action, the principal amount outstanding of the Additional Subordinate Obligations pursuant to the applicable Additional Subordinate Financing Document.

**“Total Pre-Enforcement Senior Secured Voting Value”** equals, prior to the Intercreditor Agent having instructed the Applicable Collateral Agent to take any Enforcement Action, the Aggregate Bank Debt Exposure plus the principal amount outstanding and available or committed value of the Additional Senior Obligations pursuant to the applicable Additional Senior Financing Document.

**“Total Pre-Enforcement Subordinate Secured Voting Value”** equals, prior to the Intercreditor Agent having instructed the Applicable Collateral Agent to take any Enforcement Action, the principal amount outstanding and available or committed value of the Additional Subordinate Obligations pursuant to the applicable Additional Subordinate Financing Document.

**“Traffic Advisor”** means Informa Princeton LLC.

**“Transaction Documents”** means the Financing Documents and the Material Project Documents.

**“Transfer Date”** means the first Business Day of each calendar month.

**“Treasury Rate”** means, as of any Redemption Date, the yield to maturity as of such Redemption Date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release as H.15 (519) that has become publicly available at least two Business Days prior to the Redemption Date (excluding inflation indexed securities) (or, if such statistical release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from the Redemption Date to the Maturity Date of a Series of Bonds to be redeemed; provided, however, that if the period from the Redemption Date to such Maturity Date is less than one year, the weekly average yield on actually traded United States Treasury securities to a constant maturity of one year will be used.

**“Treasury Regulations”** means the temporary, proposed or final federal income tax regulations promulgated by the U.S. Department of the Treasury, together with the other published written guidance thereof as applicable to the Bonds under the Code.

**“True-Up Drawing”** shall have the meaning ascribed to such term in the Series 2022A Bond Purchase Agreement.

**“Trust”** means (a) a common law trust established by the Purchaser or an Affiliate of the Purchaser under the laws of the State of New York, (b) a statutory trust established by the Purchaser or an Affiliate of the Purchaser under the Delaware statutory trust statute or (c) any other type of trust, including, without limitation, a custodial arrangement established by the Purchaser or any Affiliate, which, in any case, has an interest in any Series 2022A Bonds.

**“Trust Estate”** has the meaning set forth in the Master Indenture.

**“Trustee”** means The Bank of New York Mellon, a banking corporation organized and existing under the laws of the State of New York, as Trustee under the Indenture, and any successor pursuant to the terms of the Indenture.

“**Trustee Representative**” means any officer of the Trustee assigned to the corporate trust department or any other officer of the Trustee customarily performing functions similar to those performed by any such officer, with respect to matters related to the administration of the Indenture.

“**UCC**” means the Uniform Commercial Code as in effect in the applicable state or jurisdiction.

“**Underwriter**” means (i) any Person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in an initial public sale of the Bonds, and (ii) any Person that agrees pursuant to a written contract directly or indirectly with a Person described in clause (i) hereof to participate in the initial public sale of the Bonds (including a member of a selling group or a party to a retail distribution agreement participating in the initial public sale of a Series of Bonds).

“**Unfunded Equity Commitment**” has the meaning ascribed to such term in the Equity Contribution Agreement.

“**Unilaterally Enforcing Senior Creditor**” has the meaning given in Section 7.2(a)(vi)(C) of the Intercreditor Agreement.

“**Unpaid Project Costs**” has the meaning ascribed to such term in Section 5.04(j) of the Collateral Agency and Accounts Agreement.

“**U.S. Government Securities Business Day**” means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“**Utility**” has the meaning ascribed to such term in Appendix E hereto.

“**Variable Rate Indebtedness**” means any Secured Obligations the interest rate on which is not, at the time in question, fixed to maturity, excluding any Commercial Paper.

“**Voting Certification**” has the meaning given in Section 8.4(b)(ii) of the Intercreditor Agreement.

“**Work**” has the meaning ascribed to such term in the Lease Agreement.

“**WSJ Prime**” means a per annum rate of interest equal to the Prime Rate, as published in the Wall Street Journal and as in effect from time to time. WSJ Prime is available as of the Series 2024 Closing Date at <https://www.wsj.com/market-data/bonds/moneyrates>. No information available on or through such website shall be deemed to be part of or incorporated in this Official Statement.

“**Yield**” means, with respect to an issue of Tax-Exempt Bonds, the discount rate that, when used in computing the present worth of all payments of principal and interest to be paid on the issue, computed on the basis of a 360-day year and semi-annual compounding, produces an amount equal to the “issue price” of the issue of Tax-Exempt Bonds, less the fees for any “qualified guarantees” as defined in Treasury Regulations § 1.148-4(f). Yield is computed on an issue by treating any fixed yield bond as redeemed at its stated redemption price on the optional redemption date that would produce the lowest Yield on the issue if that fixed yield bond either (a) is subject to optional redemption within five years of its issue date, or (b) bears interest at increasing interest rates (i.e., is a stepped coupon bond), or (c) has an issue price that exceeds its stated redemption price at maturity by more than one-fourth of one percent (.25%) multiplied by the product of the stated redemption price at maturity and the number of complete years to the first

optional redemption date for that bond. Yield is further computed on an issue by treating any bonds of the issue that are subject to mandatory early redemption as redeemed on their mandatory early redemption dates at their present value, rather than at their stated principal amount, if their stated principal amount exceeds their initial offering price by more than one-fourth of 1% multiplied by the product of their stated redemption price at maturity and the number of years to their weighted average maturity date.

**(THIS PAGE INTENTIONALLY LEFT BLANK)**

**APPENDIX B-1**

**REPORT OF THE AIRPORT CONSULTANT**

**(THIS PAGE INTENTIONALLY LEFT BLANK)**



# Report of the Airport Consultant

JFK Millennium Partners, LLC

New York Transportation Development Corporation  
Special Facilities Revenue Bonds,  
Senior Series 2024A and 2024B  
(JFK Airport Terminal 6 Redevelopment Project)

Prepared for:

**JFK Millennium Partners, LLC**

Prepared by:

**Ricondo & Associates, Inc.**

In Association with:

**Infrastructure Advisors, LLC**

Ricondo & Associates, Inc. (Ricondo) prepared this document for the stated purposes as expressly set forth herein and for the sole use of JFK Millennium Partners, LLC and its intended recipients. The techniques and methodologies used in preparing this document are consistent with industry practices at the time of preparation and this Report should be read in its entirety for an understanding of the analysis, assumptions, and opinions presented. Ricondo & Associates, Inc. is not registered as a municipal advisor under Section 15B of the Securities Exchange Act of 1934 and does not provide financial advisory services within the meaning of such act.

THIS PAGE INTENTIONALLY LEFT BLANK

October 10, 2024

Mr. Steve Thody, CEO  
JFK Millennium Partners, LLC  
295 Madison Avenue, Suite 1125  
New York, NY 10017

RE: New York Transportation Development Corporation Special Facilities Revenue Bonds, Senior Series 2024A and 2024B (JFK Airport Terminal 6 Redevelopment Project)

Dear Mr. Thody:

Ricondo & Associates, Inc. (Ricondo) is pleased to present this Report of the Airport Consultant (Report) for inclusion as Appendix B-1 to the Official Statement for the New York Transportation Development Corporation Special Facilities Revenue Bonds, Senior Series 2024A and 2024B (the Series 2024 Bonds), as defined herein and described in the Report. The Series 2024 Bonds will be issued pursuant to the Transportation Development Corporation (TDC) Master Bond Indenture of Trust (as amended and supplemented, the Indenture) between the New York Transportation Development Corporation (Issuer), a local development corporation formed under Section 1411 of the New York Not-for-Profit Corporation Law, and The Bank of New York Mellon, as trustee (Trustee).

The proceeds of the Series 2024 Bonds will be loaned to JFK Millennium Partners, LLC (JMP) pursuant to the TDC Building Loan Agreement (the Loan Agreement) and the TDC Project Loan Agreement (collectively, and each as amended and supplemented, the Loan Agreements), each between JMP and the Issuer. Proceeds from the Series 2024 Bonds are anticipated to be used to:

- (i) repay principal and associated accrued interest of a portion of the Loan Facility outstanding balance,
- (ii) pay charges, fees and mark to market payments related to settlement of certain interest rate hedge instruments associated with the portion of Loan Facility that is being repaid, and
- (iii) to pay certain costs of issuance related to the Series 2024 Bonds.

The Series 2024 Bonds will be secured as set forth in the Indenture and in the Collateral Agency and Accounts Agreement (as amended and supplemented, the CAAA) and will be payable from and secured by, in part, revenues generated by JMP via the operation of the Project (defined herein). Project revenues will consist primarily of terminal rentals and fees collected from the existing Terminal 7 airlines prior to its demolition and the airlines expected to operate in the new Terminal 6 and concession revenues that will be generated from the operation of Terminal 7 prior to its demolition and Terminal 6. Both Project Revenue sources are described in the Report.

JMP is a special purpose limited liability company wholly owned by JFK Millennium Partners Holdings, LLC, a special purpose limited liability company owned (directly or indirectly) by affiliates of Vantage Group, American Triple I Partners, LLC, RXR Realty, and JetBlue Airways Corporation. Through a Lease Agreement executed in 2022 between JMP and the Port Authority of New York and New Jersey (the Port Authority or

PANYNJ), JMP is responsible for:

- (i) The operation, maintenance, and demolition of the existing Terminal 7 and related infrastructure at John F. Kennedy International Airport (JFK or the Airport);
- (ii) the design, construction, financing, operation, and maintenance of Terminal 6, a new facility which is being built on the existing and currently vacant Terminal 6 site and the existing Terminal 7 site, and the operating and maintaining of Terminal 7 prior to its closure and demolition, as part of the Terminal 6 construction;
- (iii) the design and construction of a ground transportation center and certain off-premises facilities at the Airport on behalf of the Port Authority, which will not be operated or maintained by JMP and will not constitute part of the facilities leased to the JMP under the Lease Agreement.

Unless otherwise defined herein, all capitalized terms in the Report are used as defined in the Official Statement, including Appendix A “Definitions” thereto, the Indenture, or the Lease Agreement between JMP and the Port Authority.

The Report was prepared in accordance with the scope of Ricondo’s engagement with JMP and is subject to the terms of that engagement. Ricondo, its officers, staff, or agents do not make any representation or warranty as to the factual accuracy of the information provided to us by or on behalf of JMP, the Issuer, or their subcontractors or agents, upon which the Report is based. Any advice, opinions, or recommendations within this document should be read and relied upon only in the context of the Report as a whole. The contents of the Report do not provide legal, financial, insurance, or tax advice or opinions.

The Report presents the analyses undertaken by Ricondo to evaluate the ability of JMP to comply with the requirements of the Loan Agreement, the CAAA, and the Indenture on a *pro forma* basis for Fiscal Years (FY) ending December 31, 2024 through 2032 (the Projection Period) based on the assumptions regarding the planned issuance of the Series 2024 Bonds and the timely completion of the Project. In developing our analyses, Ricondo reviewed and verified certain projections and forecasts provided by JMP and its advisors, including activity forecasts developed by Airline Strategy & Marketing (ASM), a technical advisor on air traffic activity to JMP. Ricondo reviewed and verified ASM’s assessment of the ability of the area served by the Airport (the Air Trade Area) to generate demand for air service at the Airport, specifically at the existing Terminal 7 and the new Terminal 6; trends in air service and passenger activity in existing Terminal 7 and the new Terminal 6; and the financial performance of the existing Terminal 7 and the new Terminal 6 for the Projection Period. Information and assumptions used by Ricondo in the development of the analyses are described in the Report including references to the source of the material. The Report is organized as follows:

- Summary and Findings
- Chapter 1: JFK Millennium Partners, LLC, the Port Authority, and the Series 2024 Bonds
- Chapter 2: Airport Facilities, JFK Redevelopment Program, and Terminal 6 Redevelopment Project
- Chapter 3: Demographic and Economic Analysis

- Chapter 4: Passenger Demand and Air Service Analysis
- Chapter 5: Financial Analysis

On the basis of the analysis set forth in the Report, Ricondo is of the opinion that the Project Revenues generated each year of the Projection Period are expected to be sufficient to comply with the rate covenant established in the CAAA and the rate covenant in the Common Terms Agreement (CTA) while the existing Loan Facility is outstanding. Although summary information is provided, a complete understanding of the justification for our conclusion cannot be attained without reading the Report in its entirety.

Founded in 1989, Ricondo is a full-service aviation consulting firm providing physical and financial planning services to airport owners and operators, airlines, and federal and state agencies. Ricondo has prepared Reports of the Independent Airport Consultant in support of more than \$46 billion of airport-related revenue bonds from 1996. Ricondo is not registered as a municipal advisor under Section 15B of the Securities Exchange Act of 1934. Ricondo is not acting as a municipal advisor and has not been engaged by JMP to provide advice with respect to the structure, timing, terms, or other similar matters concerning the issuance of municipal securities. The assumptions regarding such matters included in the Report were provided by JMP or JMP's technical advisors, or were derived from general, publicly available data approved by JMP. Ricondo owes no fiduciary duty to JMP. Ricondo recommends that JMP discuss the information and analyses contained in the Report with internal and external advisors and experts that JMP deems appropriate before taking any action. Any opinions, assumptions, views, or information contained herein are not intended to be, and do not constitute, "advice" within the meaning of Section 15B of the Securities Exchange Act of 1934.

The techniques and methodologies used by Ricondo in preparing this Report are consistent with industry practices for similar studies in connection with airport revenue bond sales. While Ricondo believes that the approach and assumptions are reasonable, some assumptions regarding future trends and events discussed in the Report, including the implementation schedule, forecasts of passenger activity, and the projections of financial performance, may not materialize. Therefore, actual performance will likely differ from the forecasts and projections set forth in the Report and the variations may be material. In developing our analyses, Ricondo used information from various sources, including JMP, JMP's technical advisors, federal and local governmental agencies, and independent private providers of economic and aviation industry data, as identified in the notes accompanying the related tables and exhibits in the Report. Ricondo believes these sources to be reliable but has not audited the data and does not warrant their accuracy. The analyses presented are based on conditions known as of the date of this letter. Ricondo has no obligation to update this Report on an ongoing basis.

Sincerely,



RICONDO & ASSOCIATES, INC.

THIS PAGE INTENTIONALLY LEFT BLANK

## TABLE OF CONTENTS

<b>Summary and Findings</b> .....	<b>B1-14</b>
Key Findings.....	B1-15
JFK Millennium Partners, LLC, the Port Authority, and the Series 2024 Bonds.....	B1-17
JFK Airport.....	B1-19
Terminal Redevelopment.....	B1-19
Historical and Forecast Air Traffic.....	B1-25
Air Service Demand Drivers.....	B1-25
Approach to JFK and Terminal 6 Forecast.....	B1-27
Financial Analysis.....	B1-28
<b>1. JFK Millennium Partners, LLC, the Port Authority, and the Series 2024 Bonds</b> .....	<b>B1-30</b>
1.1 JFK Millennium Partners, LLC (JMP).....	B1-30
1.1.1 Vantage Group (Vantage).....	B1-31
1.1.2 American Triple I Partners, LLC (ATI) .....	B1-31
1.1.3 RXR Realty, LLC (RXR).....	B1-31
1.1.4 JetBlue Airways Corporation.....	B1-32
1.2 The Port Authority of New York and New Jersey (Port Authority).....	B1-32
1.2.1 Governing Structure.....	B1-32
1.2.2 The Port Authority Airport Leases with the City of New York.....	B1-33
1.3 The JMP Lease with the Port Authority.....	B1-33
1.4 The Series 2024 Bonds.....	B1-34
<b>2. Airport Facilities, JFK Redevelopment Program, and Terminal 6 Redevelopment Project</b> .....	<b>B1-38</b>
2.1 Passenger Terminals.....	B1-39
2.1.1 JFK Redevelopment Program.....	B1-40
2.1.2 Terminal 6 Redevelopment Project.....	B1-45
2.2 Other Airport Facilities.....	B1-49
2.2.1 Airfield.....	B1-49
2.2.2 Airport Support and Air Cargo Areas.....	B1-49
2.2.3 Landside Access.....	B1-49
2.2.4 Parking.....	B1-49
2.2.5 On-Airport Hotel.....	B1-50

**3. Demographic and Economic Analysis ..... B1-51**

3.1 Air Trade Area .....B1-51

    3.1.1 Airports Serving the Air Trade Area.....B1-51

3.2 Demographic Analysis ..... B1-53

    3.2.1 Population..... B1-53

    3.2.2 Age Distribution and Education ..... B1-55

    3.2.3 Per Capita Income and Income Distribution..... B1-57

3.3 Economic Analysis .....B1-59

    3.3.1 Gross Domestic/Regional Product ..... B1-59

    3.3.2 Employment Trends ..... B1-60

    3.3.3 Business Climate..... B1-64

    3.3.4 Employment by Major Industrial Sector ..... B1-67

3.4 Economic Outlook..... B1-76

    3.4.1 Short-Term Economic Outlook..... B1-76

    3.4.2 Long-Term Economic Assumptions Considered in Validating the Enplaned Passenger Forecasts..... B1-77

    3.4.3 Conclusions ..... B1-78

**4. Passenger Demand and Air Service Analysis..... B1-79**

4.1 Global and National Perspective of the Airport .....B1-79

4.2 Regional Perspective of the Airport ..... B1-83

    4.2.1 Airports Serving the New York City Air Trade Area..... B1-83

    4.2.2 Airport Share of New York City Traffic..... B1-84

    4.2.3 JFK as an International Gateway ..... B1-87

4.3 Airlines Serving the Airport..... B1-88

4.4 Historical Airport Activity..... B1-96

    4.4.1 Passengers ..... B1-96

    4.4.2 Air Service ..... B1-99

    4.4.3 Passenger Airline Operations ..... B1-99

4.5 Factors Affecting Aviation Demand at the Airport..... B1-105

    4.5.1 Impact of the COVID-19 Pandemic..... B1-105

    4.5.2 National Economy..... B1-109

    4.5.3 Mergers, Acquisitions, and New Entrant Airlines ..... B1-109

    4.5.4 Threat of Terrorism and Geopolitical Issues..... B1-110

    4.5.5 Cost of Aviation Fuel..... B1-110



JOHN F. KENNEDY INTERNATIONAL AIRPORT

4.5.6 Capacity of the National Airspace System ..... B1-111

4.5.7 Hub Airlines ..... B1-111

4.5.8 Foreign Flag Airlines ..... B1-119

4.5.9 Regulatory Constraints ..... B1-122

4.6 ASM Forecasts of Aviation Activity and Ricondo Review ..... B1-122

4.6.1 ASM JFK Forecast ..... B1-123

4.6.2 ASM Terminal 6 Forecast ..... B1-124

4.6.3 Ricondo Evaluation of the ASM Activity Forecast ..... B1-126

**5. Financial Analysis ..... B1-130**

5.1 Financial Framework ..... B1-130

5.1.1 The JMP Lease Agreement ..... B1-130

5.1.2 Port Authority Rents Under the Lease ..... B1-131

5.1.3 Operational Framework ..... B1-133

5.2 Airline Revenues ..... B1-133

5.2.1 Terminal 7 Airline Revenues ..... B1-134

5.2.2 Terminal 6 Airline Revenues ..... B1-135

5.2.3 Total Airline and Ancillary Revenues ..... B1-139

5.3 Non-Airline Revenues ..... B1-140

5.3.1 Concession Revenues ..... B1-141

5.3.2 Advertising Revenues ..... B1-144

5.3.3 Rebate Revenues ..... B1-144

5.3.4 Other Non-Airline Revenues ..... B1-144

5.3.5 Interest Income ..... B1-144

5.3.6 Total Non-Airline Revenues ..... B1-145

5.4 Operating and Maintenance Expenses ..... B1-145

5.4.1 Operating and Maintenance Expense Projections ..... B1-147

5.4.2 Operating and Maintenance Expense Categories ..... B1-148

5.5 Asset Repair and Replacement ..... B1-151

5.6 Financing Related Costs ..... B1-152

5.7 Annual Debt Service ..... B1-152

5.7.1 Debt Service on the Existing Series 2022A Bonds ..... B1-153

5.7.2 Debt Service on the Senior Term Loans ..... B1-154

5.7.3 Debt Service on Series 2024 Bonds ..... B1-154

5.7.4 Debt Service on Future Series 2028 Bonds ..... B1-155

JOHN F. KENNEDY INTERNATIONAL AIRPORT

5.7.5 Total Anticipated Debt Service ..... B1-155

5.8 Evaluation of Terminal 6 Airline Charges ..... B1-156

5.9 Cash Flow and Debt Service Coverage..... B1-159

5.10 Low ASM Terminal 6 Passenger Forecast Scenario..... B1-162

5.11 Supplemental Long-Term Financial Projections..... B1-162

5.12 Assumptions for Financial Projections ..... B1-162

**LIST OF APPENDICES**

Appendix A Financial Projection Tables

**LIST OF TABLES**

Table S-1 Terminal 6 Redevelopment Estimated Sources and Uses of Funds ..... B1-22

Table S-2 JFK Redevelopment Program Terminal Use..... B1-23

Table S-3 JFK Redevelopment Program Gates..... B1-24

Table S-4 Projected Economic Variables (2022-2032) ..... B1-26

Table S-5 Top Five Global Metropolitan Areas by Origin and Destination Passengers ..... B1-26

Table S-6 Top Five United States Metropolitan Areas by Origin and Destination Passengers ..... B1-27

Table S-7 Ricondo and ASM JFK and Terminal 6 Total Passenger Forecast ..... B1-27

Table S-8 Projected Cash Flow and Senior Debt Service Coverage Ratio (Dollars in Millions) – Baseline Scenario..... B1-29

Table 2-1 JFK Redevelopment Program Terminal Use..... B1-41

Table 2-2 JFK Redevelopment Program Gate Count..... B1-44

Table 2-3 Terminal 6 Redevelopment Estimated Sources and Uses of Funds ..... B1-48

Table 3-1 Historical and Projected Population (2002-2032)..... B1-54

Table 3-2 Age Distribution and Educational Attainment..... B1-56

Table 3-3 Per Capita Personal Income (2020-2032)..... B1-58

Table 3-4 Gross Regional/Domestic Product..... B1-60

Table 3-5 Civilian Labor Force and Unemployment Rate (2013-2023) ..... B1-61

Table 3-6 Nonagricultural Employment Trends by Major Industry Sector (2023) ..... B1-63

Table 3-7 Major Employers in the New York Area..... B1-66

Table 3-8 Top 25 Fortune 500 Companies Headquartered in the Air Trade Area..... B1-67

Table 3-9 Top 10 Destination Cities Worldwide ..... B1-71

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

Table 3-10	Residential Building Permits and Valuation .....	B1-75
Table 3-11	Projected Economic Variables Used in the Passenger Demand Forecasts.....	B1-77
Table 4-1	Top Five Global Metropolitan Areas by Origin and Destination Passengers .....	B1-80
Table 4-2	Top Five United States Metropolitan Areas by Origin and Destination Passengers .....	B1-80
Table 4-3	Top 25 United States Airports by Domestic Enplaned Passengers .....	B1-81
Table 4-4	Top 25 United States Airports by International Enplaned Passengers.....	B1-82
Table 4-5	Historical Shares of Domestic Passengers for Airports Serving the New York City Market .....	B1-84
Table 4-6	Historical Shares of International Passengers for Airports Serving the New York City Market.....	B1-85
Table 4-7	International Passengers, Destinations and Foreign Flag Airlines .....	B1-87
Table 4-8	Scheduled Passenger Airlines Serving the Airport (2024).....	B1-90
Table 4-9	JFK Scheduled US Airline Base .....	B1-91
Table 4-10	JFK Scheduled Foreign Flag Airline Base.....	B1-92
Table 4-11	JFK Historical Domestic, International, and Total Passengers.....	B1-96
Table 4-12	JFK Historical Origin and Destination and Connecting Passengers .....	B1-98
Table 4-13	Airline Share of JFK Passengers .....	B1-99
Table 4-14	Top 20 JFK Domestic Origin and Destination Markets by Passenger Bookings (2023) .....	B1-100
Table 4-15	Top 20 JFK International Origin and Destination Markets by Passenger Bookings (2023).....	B1-101
Table 4-16	JFK Passenger Airline Operations.....	B1-104
Table 4-17	JFK Average Seats per Departure, Load Factor, and Passengers per Departure .....	B1-105
Table 4-18	Delta Air Lines Departures by Airport .....	B1-112
Table 4-19	Delta Air Lines Domestic Destinations by Airport .....	B1-112
Table 4-20	Delta Air Lines International Destinations by Airport.....	B1-113
Table 4-21	JetBlue Airways Departures by Airport .....	B1-114
Table 4-22	JetBlue Airways Destinations by Airport.....	B1-114
Table 4-23	American Airlines Departures by Airport .....	B1-115
Table 4-24	American Airlines Domestic Destinations by Airport .....	B1-116
Table 4-25	American Airlines International Destinations by Airport .....	B1-116
Table 4-26	New York City Airline Hub 2024 Scheduled Departures and Destinations Served .....	B1-117
Table 4-27	Number of Foreign Flag Airlines Serving Top US International Gateway Airports .....	B1-119
Table 4-28)	Foreign Flag Airlines by JFK Terminal.....	B1-120
Table 4-29	ASM Terminal 6 Enplaned Passenger Forecast.....	B1-125

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

Table 4-30	Ricondo and ASM Terminal 6 Enplaned Passenger Forecast.....	B1-127
Table 5-1	Terminal 7 Airlines.....	B1-134
Table 5-2	Projected Airline Revenues (In Millions).....	B1-140
Table 5-3	Estimated JFK Terminal 6 Series 2024 Bonds.....	B1-152
Table 5-4	Outstanding Debt Over the Projection Period (In Millions).....	B1-153
Table 5-5	Projected Debt Service – Series 2022A Bonds (In Millions).....	B1-153
Table 5-6	Projected Debt Service – Senior Term Loans (In Millions).....	B1-154
Table 5-7	Projected Debt Service – Series 2024 (In Millions).....	B1-155
Table 5-8	Projected Debt Service – Series 2028 Bonds (In Millions).....	B1-155
Table 5-9	Projected Cash Flow and Debt Service Coverage (Dollars in Millions) – Baseline Scenario.....	B1-160
Table 5-10	Projected Cash Flow and Debt Service Coverage (Dollars in Millions) – Low Scenario.....	B1-161

## LIST OF EXHIBITS

Exhibit S-1	Organizational Structure of the Project.....	B1-18
Exhibit S-2	JFK Terminal Complex Redevelopment.....	B1-20
Exhibit S-3	Terminal 6 Site Layout.....	B1-22
Exhibit 1-1	Organizational Structure of the Project.....	B1-35
Exhibit 1-2	Flow of Funds Cashflow Waterfall, Pre-Substantial Completion.....	B1-36
Exhibit 1-3	Flow of Funds Cashflow Waterfall, Post-Substantial Completion.....	B1-37
Exhibit 2-1	JFK International Airport.....	B1-38
Exhibit 2-2	JFK Terminal Complex Redevelopment.....	B1-43
Exhibit 2-3	Terminal 6 Site Layout.....	B1-46
Exhibit 2-4	Terminal 6 Redevelopment Construction Schedule.....	B1-47
Exhibit 3-1	JFK Airport Air Trade Area.....	B1-52
Exhibit 3-2	Household Income Distribution (2022) (in 2017 dollars).....	B1-59
Exhibit 4-1	Airport Share of Total Enplaned Passengers.....	B1-86
Exhibit 4-2	Airport Share of Total O&D Passengers.....	B1-87
Exhibit 4-3	Air Trade Area Transatlantic O&D Passenger Itineraries.....	B1-88
Exhibit 4-4	JFK and EWR Transatlantic Capacity (2024).....	B1-89
Exhibit 4-5	Nonstop Domestic Destinations (2024).....	B1-102
Exhibit 4-6	Nonstop International Destinations (2024).....	B1-103

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

Exhibit 4-7	Seat Capacity Recovery Indexed to 2019 – JFK, Total New York City Airports, and United States .....	B1-106
Exhibit 4-8	Seat Capacity Recovery Indexed to 2019 – JFK, EWR, and LGA .....	B1-106
Exhibit 4-9	Seat Capacity Recovery Indexed to 2019 by Region – JFK .....	B1-107
Exhibit 4-10	Enplaned Revenue Passenger Recovery Indexed to 2019 - JFK.....	B1-108
Exhibit 4-11	Net Profit of Commercial Airlines Worldwide .....	B1-109
Exhibit 4-12	Historical Monthly Averages of Jet Fuel and Crude Oil Prices .....	B1-111
Exhibit 4-13	Delta Air Lines Hub Share of Transatlantic Seat Capacity .....	B1-113
Exhibit 4-14	American Airlines Hub Share of Transatlantic Seat Capacity .....	B1-117
Exhibit 4-15	2023 O&D and Connecting Passenger Share at Air Trade Area Airline Hubs.....	B1-118
Exhibit 4-16	ASM and TAF Total Passenger Forecast for JFK .....	B1-124
Exhibit 4-17	ASM Baseline Terminal 6 Enplaned Passenger Forecast.....	B1-125
Exhibit 4-18	ASM and Ricondo Total Passenger Forecast for JFK .....	B1-126
Exhibit 4-19	ASM and Ricondo Terminal 6 Total Enplaned passenger Forecast .....	B1-127
Exhibit 5-1	Annual Port Authority Rents .....	B1-133
Exhibit 5-2	Projected Terminal 6 JetBlue Revenues (In Millions).....	B1-135
Exhibit 5-3	Projected Terminal 6 Other Airline Revenues (In Millions) .....	B1-137
Exhibit 5-4	Projected Terminal 6 Other Airline Lease Space Revenues (In Millions) .....	B1-138
Exhibit 5-5	Projected Terminal 6 Other Airline Total Revenues (in Millions).....	B1-138
Exhibit 5-6	Projected Terminal 6 Airline Revenues (In Millions) .....	B1-139
Exhibit 5-7	2029 Estimated Non-Airline Revenues in Terminal 6.....	B1-141
Exhibit 5-8	Projected Concession Revenues (In Millions) and Concession Revenues per Terminal 6 Enplaned Passenger .....	B1-143
Exhibit 5-9	Projected Terminal 6 Total Non-Airline Revenues (In Millions) .....	B1-145
Exhibit 5-10	Estimated 2029 Terminal 6 Operating and Maintenance Expenses (In Millions).....	B1-147
Exhibit 5-11	Projected Terminal 6 Operating and Maintenance Expenses (In Millions).....	B1-148
Exhibit 5-12	Terminal 6 Projected Asset Repair and Replacement Expenses (In Millions) .....	B1-152
Exhibit 5-13	Estimated Total Debt Service (In Millions).....	B1-156

## SUMMARY AND FINDINGS

JFK Millennium Partners, LLC (JMP) commissioned Ricondo & Associates, Inc. (Ricondo) to prepare this Report of the Airport Consultant (Report) in conjunction with the issuance of the New York Transportation Development Corporation Special Facilities Revenue Bonds, Senior Series 2024A and 2024B (JFK Airport Terminal 6 Redevelopment Project) (collectively the Series 2024 Bonds)<sup>1</sup> to evaluate JMP's ability to generate Project Revenues sufficient to meet the obligations under the Collateral Agency and Accounts Agreement (as amended and supplemented, the CAAA) and the Common Terms Agreement (the CTA), including JMP's obligations with respect to the Series 2024 Bonds and the Loan Facility (described herein), including but not limited to the rate covenants included therein, on a pro forma basis.

The proceeds from the Series 2024 Bonds are part of the plan of finance for the development of Terminal 6 at John F. Kennedy International Airport (JFK or the Airport). In developing this analysis, Ricondo reviewed the purpose, cost, schedule, and expected financial projections of the JFK Terminal 6 Redevelopment Project (the Project)<sup>2</sup>, the terms of the CAAA and Indenture that govern the issuance of the Series 2024 Bonds, the terms of the Series 2024 Bonds and the terms of the Loan Facility, all as provided by JMP, and the ability of Terminal 6 to meet its leasing objectives and to accommodate demand.

To develop the *pro forma* analysis of JMP's financial performance, Ricondo reviewed the Lease Agreement between the Port Authority of New York and New Jersey (the Port Authority) and JMP (the Lease Agreement) that establishes the business arrangements between the Port Authority and JMP along with proposed airline rate setting methodologies and pro forma revenue projections provided by JMP. JMP is expected to generate Project Revenues primarily from the airlines serving Terminal 6 through various rentals for gates,<sup>3</sup> terminal space, and other spaces, Federal Inspection Services (FIS) facility fees; from fees and rents charged to concessionaires providing various goods and services to passengers within Terminal 6; from other users of Terminal 6; and from the operation of existing Terminal 7 until its demolition. These Project Revenues are, in large measure, driven by passenger demand for air service at the Airport, which is a function of global, national, and local economic conditions, the ability and willingness of the airlines to provide service at a level commensurate with this demand, and JMP's ability to fully use the gates at Terminal 6, and lease airline exclusive-use, concession and other rentable space.

The analysis presented in this Report is derived from a series of findings provided by JMP and its technical advisors. Ricondo has received, reviewed, and evaluated these assumptions in compiling this Report.

Ricondo reviewed the historical relationships between economic activity and demand for air service, the airlines' provision of air service at the Airport, the activity projections provided by Airline Strategy & Marketing (ASM), a technical advisor on air traffic activity to JMP, and the financial projections provided by JMP and its technical advisors.

---

<sup>1</sup> "Series 2024 bonds" will refer to the Senior Series 2024A and 2024B Bonds, collectively, throughout this Report unless otherwise noted.

<sup>2</sup> For purposes of this Report, the Project includes design, construction, and operation of Terminal 6 including contiguous aircraft ramp and apron areas, new contiguous frontage roads and supporting buildings, site utilities, and the operation and demolition of the Existing Terminal 7 facilities.

<sup>3</sup> Gate, also referred to as "contact gate," is an aircraft parking position with access to the terminal via a passenger loading bridge.

## KEY FINDINGS

The key findings of this Report, to be elaborated in subsequent sections, include the following:

### ***Economic and demographic base supports long-term air traffic demand***

- Projected economic variables indicate that the Air Trade Area (defined herein) will remain a destination that attracts both business travelers and tourists and that it will continue to benefit from increases in local outbound passenger volume. The Airport benefits from serving the largest population base in the country with high household and per capita personal income, and being located in a city that receives the most visitors of any US city,<sup>4</sup> and consistently ranks in the top 10 most visited cities globally.<sup>5</sup>

### ***The New York City Market and JFK drive demand for air service***

- The New York City air service market is one of the highest-ranking markets in the world, typically ranking first or second in the world and first in the United States in terms of total origin and destination (O&D) passengers. Airlines recognize the New York City market as an essential destination, and demand is expected to continue in the long-term. JFK is the largest international gateway airport in the United States (as measured by arriving international passengers) and the largest airport in the New York City market, with 42 percent of the market's total passengers in 2023. This strong demand for air service supports long-term activity and the potential to create a favorable position for airlines from a pricing perspective when assessing the reasonableness of airport costs.

### ***JFK Redevelopment Program provides necessary gates to accommodate demand, and choices for airlines***

- The overall JFK Redevelopment Program addresses the ability to serve long-term demand and improve efficiency and passenger experience Airport-wide. Ricondo estimated that 2019 flight schedules utilized 96 percent to 97 percent of gate capacity in 2019 and future schedules within the Projection Period (2024 through 2032) may have demand that exceeds the availability of existing gate capacity.
- The analysis indicated that demand for terminal facilities will remain strong even with the Airport-wide terminal redevelopment. The JFK Redevelopment Program will not create a substantially different number of gates; therefore, demand for gates, especially at peak periods, is anticipated to remain similar, even after the several terminal projects described herein are completed. Additionally, existing operations reach long-imposed FAA slot constraints in peak periods, limiting additional activity at these times.
- As terminal operators secure airline tenants for future terminal use, including JMP with Terminal 6, competitive offerings will play a part in airline selection and various factors will inform airline decision-making. Although some airline tenants at Terminal 6 are known and expected at this time, the precise mix of airline tenants that will use Terminal 6 is unknown. However, the diverse mix of airlines provides for a variety of combinations that may result in similar passenger volumes assumed in the financial analysis included in this Report.

### ***The Terminal 6 Redevelopment Project includes benefits to airlines and demonstrated market support***

- Airline charges at existing and new JFK terminals, including Terminal 6, are projected to be some of the highest airport charges in the country on a per enplaned passenger basis, but the higher charges are supported by the airlines serving JFK given its strategic importance in airline route networks.

---

<sup>4</sup> Office of the New York State Comptroller, *Tracking the Return: The Tourism Industry in New York City*, May 2024.

<sup>5</sup> Euromonitor International, *Top City Destinations Ranking* (2023 edition).

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

- In competing for specific airline tenants, the terminal operators at JFK must include offerings that are attractive to secure existing and new airlines. To compete effectively with other JFK terminal operators, JMP has strategically positioned Terminal 6 as a boutique terminal with differentiated services, amenities, benefits, and commercial and operational terms in subleases. JMP reports these terms have been positively received by (1) the airlines with whom JMP has negotiated non-binding letters of intent with term sheets outlining the terms and conditions of a sublease, including, Lufthansa AG and its affiliates (Austrian Airlines, Brussels Airlines, and Swiss International Air Lines) Cathay Pacific, Aer Lingus, and one additional long-haul foreign flag airline (the Expected Airlines), and (2) airlines JMP is actively engaged in discussions with about relocating to Terminal 6 (the Additional Targeted Airlines). In this Report, Expected Airlines and Additional Targeted Airlines are collectively referred to as the "Other Airlines."
- The strategic positioning of Terminal 6 includes the following major elements:
  - flexible airline sublease terms, with certain terms extending for 20-years
  - a single move for those airlines relocating from Terminal 7 to Terminal 6
  - an independent non-airline terminal operator with Vantage Group (Vantage), which has proven experience at New York airports (5-star Skytrax Terminal B at LGA and Terminal 7 at JFK)
  - a dedicated arrivals and departure Terminal 6 roadway, meaning that the roadway will not include traffic from the adjacent Terminal 5
  - shortest walk-times at JFK of 3 to 6 minutes from the TSA passenger security checkpoint to Terminal 6 gates
  - a seamless post-security connection between Terminal 6 and Terminal 5, creating efficient connections with JetBlue, with lower minimum connecting times than would be achieved from other JFK terminals, which will likely lead to additional revenues for airlines with connections to JetBlue
  - airline departure lounges with some providing direct access to board flights from the lounge
  - a dedicated FIS facility for arriving international passengers with the latest processing technology
  - an arrivals hall after exiting Terminal 6 FIS facility with direct access to two AirTrain stations and a centralized Ground Transportation Center (GTC)
  - arrivals lounge with amenities for passengers on long-haul flights (e.g., showers, food, and beverage)
  - shortest taxi-in and taxi-out times for most-used runway configurations at JFK
  - on-site aircraft parking positions and de-icing pads
- Increases in cost to airlines attributable to terminal charges may be partially offset by cost savings due to operational efficiencies or certainty of gate availability, depending on the specific airline sublease.
- Vantage has successfully managed significant and complex airport construction projects and operated several airports during their construction. Vantage was the lead developer, equity investor, and terminal manager (including construction management) of the LaGuardia Airport (LaGuardia or LGA) Terminal B Redevelopment, a project of similar scale and complexity which was recognized by several industry awards.
- The average projected revenues from the Expected Airlines are at or above the total airline averages assumed in the financial analysis on a per enplaned passenger basis.
- Given Terminal 6 will be independent (i.e., not airline managed), it will provide JMP the flexibility to adapt airline subleases to the needs of an airline tenant, such as, but not limited to, cost certainty, preferential access to gates, and lounge space, catering to airline priorities and structuring charges accordingly.



## JFK MILLENNIUM PARTNERS, LLC, THE PORT AUTHORITY, AND THE SERIES 2024 BONDS

JMP—indirectly owned by, or by affiliates of, Vantage, American Triple I Partners, LLC (ATI), RXR Realty, LLC (RXR), and JetBlue Airways Corporation (JetBlue) (together, the Sponsors)—was created as a special purpose company (JFK Millennium Partners, LLC) to design, build, finance, operate, and maintain the Project at the Airport under a lease arrangement with the Port Authority dated November 17, 2022.<sup>6</sup> Terminal 6 is being constructed as a new facility which is being built on the existing and currently vacant Terminal 6 site and the existing Terminal 7 site. JMP is also responsible for operating and maintaining Terminal 7 prior to its closure.

The organizational structure of the Project is shown in **Exhibit S-1**.

In 2022, JMP raised \$3.444 billion of senior secured credit facilities that included \$3.009 billion from a consortium of banks as part of a construction financing (the Senior Term Loans), and \$435 million through the Series 2022A floating rate bonds privately placed with the Royal Bank of Canada (the Series 2022A Bonds together with the Senior Term Loans and certain security deposit letter of credit obligations with respect to an \$8 million security deposit facility, the Loan Facility). The Series 2024 Bonds, which repay a portion of the Loan Facility outstanding balance, will be issued pursuant to the New York Transportation Development Corporation (TDC) Master Bond Indenture of Trust (Indenture) (as amended and supplemented) between the New York TDC (the Issuer), which will act as the conduit issuer for this transaction between the Trustee and JMP. JMP will borrow the proceeds from the Series 2024 Bonds and the remaining Loan Facility from the Issuer pursuant to the Loan Agreements. Project funds will be held and administered pursuant to the CAAA among JMP, the Trustee, the Senior Collateral Agent, the Subordinate Collateral Agent (if any) (together, the Collateral Agents), the Intercreditor Agent, the Issuer, the Administrative Agent with respect to the Loan Facility (the Administrative Agent), the Securities Intermediary, and the Deposit Account Bank.

JMP anticipates that, upon the issuance of the Series 2024 Bonds, approximately \$985 million of the existing Loan Facility will remain outstanding.

JMP's obligations with respect to the Loan Facility and the Series 2024 Bonds will be secured on a parity basis as Senior Obligations.

Proceeds from the Series 2024 Bonds are anticipated to be borrowed from TDC by JMP and used to:

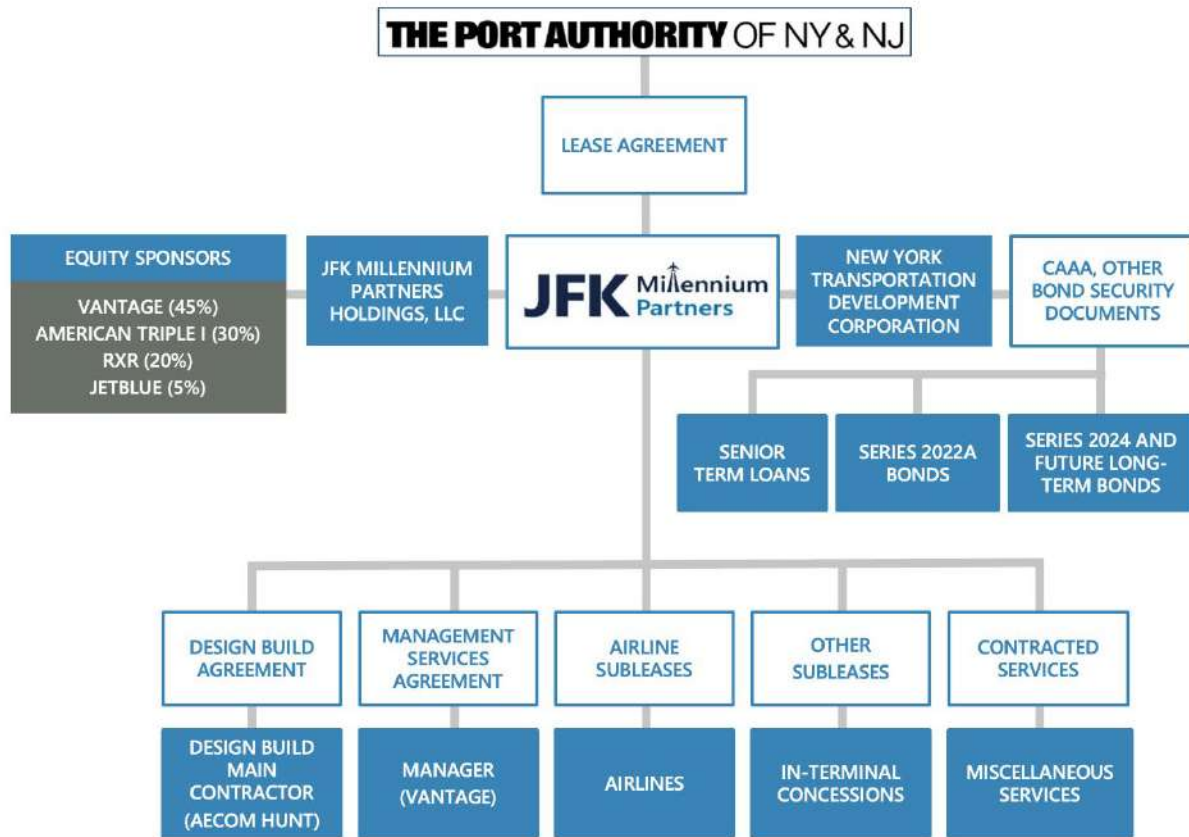
- (i) repay principal and associated accrued interest of a portion of the Loan Facility outstanding balance,
- (ii) pay charges, fees, and mark-to-market payments related to settlement of certain interest rate hedge instruments associated with the portion of Loan Facility that is being redeemed, and
- (iii) to pay certain costs of issuance related to the Series 2024 Bonds.

A portion of the proceeds from the Series 2024 Bonds available for Project costs will be eligible for "green" projects as designated by Kestrel, an Approved Verifier accredited by the Climate Bonds Initiative (CBI).

---

<sup>6</sup> JFK Millennium Partners Holdings LLC (JMP HoldCo) was formed in August 2022 for the sole purpose of owning the membership interests in JMP to facilitate the financing of the Project.

EXHIBIT S-1 ORGANIZATIONAL STRUCTURE OF THE PROJECT



SOURCE: JFK Millennium Partners, LLC, October 2024.

## JFK AIRPORT

The Airport is a large-hub<sup>7</sup> commercial service airport serving New York City (the City) and the surrounding region. Its primary facilities consist of the airfield, terminal area, maintenance/airport support areas, and parking areas. The airfield consists of four runways; the terminal area includes five operating passenger Terminals 1, 4, 5, 7, and 8 connected via JFK's AirTrain system and collectively provide a total of 120 aircraft gates.<sup>8</sup>

## TERMINAL REDEVELOPMENT

The Airport is currently undergoing the JFK Redevelopment Program, an extensive redevelopment program in an effort to provide capacity for expected ongoing growth in demand, and to improve customer experience, customer service, and operational efficiency. This redevelopment program includes the Project in addition to other terminal redevelopment and ground transportation projects, which together will allow for connected terminals, an increase in terminal and gate capacity and efficiency, better roadway access, modern amenities, more efficient taxiways, and updated security features.<sup>9</sup>

The JFK Redevelopment Program includes all terminals at JFK which will result in expanded or new terminal facilities and will involve the movement and expansion of airline service operations. **Exhibit S-2** presents the progression of the JFK terminal complex redevelopment since 2019 through the completion of ongoing projects. Completed and ongoing JFK Redevelopment Program terminal projects include the following:

- **Terminal 1:** The original terminal was built and is currently being operated by Terminal One Group Association (TOGA), L.P., a consortium of international airlines. The Terminal 1 redevelopment, branded the "New Terminal One (NTO)" project is being built and will be operated by JFK NTO, LLC.<sup>10</sup> The NTO footprint will encompass the former Terminal 2 and Terminal 3 sites, a portion of the Terminal 4 site, the Green garage site, and the existing Terminal 1 site. NTO will be delivered in phases—the first, NTO Phase A is scheduled to open in June 2026 with subsequent phases subject to certain activity triggers described later in this Report. The NTO, including all 23 gates, could be completed by the end of 2029 if Phase B1 commences following Phase A, and Phase B2 commences following the completion of Phase B1. Additional information about the NTO project and associated triggers are included in **Section 2.2**.
- **Terminal 4:** The terminal opened in 2001 and is operated by JFK International Air Terminal (JFKIAT), a consortium comprised of Delta Air Lines and Schiphol USA Inc., a US affiliate of Amsterdam-based Royal Schiphol Group. Terminal 4 completed its \$1.5 billion expansion in 2023 adding five net new gates, coinciding with Delta relocating all its Terminal 2 (10 gates) operations to Terminal 4.
- **Terminal 5:** The existing terminal was funded by the Port Authority and built by JetBlue which operates the terminal under a lease. There will be a direct, post-security seamless connection between Terminal 5 and new Terminal 6.

---

<sup>7</sup> As defined by the FAA, a large-hub airport enplanes one percent or more of enplaned passengers nationwide during a calendar year. In 2023, one percent equaled approximately 9.4 million enplaned passengers.

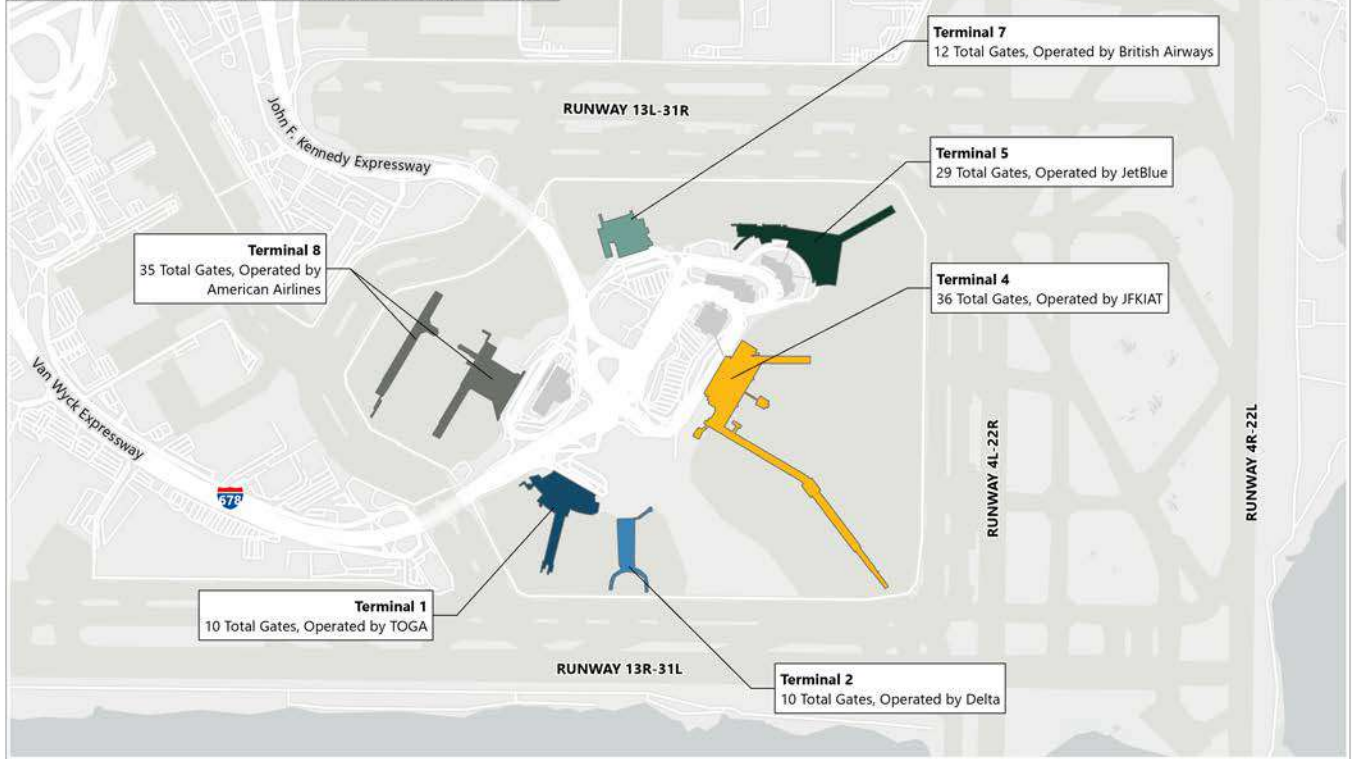
<sup>8</sup> See **Table S-3** for details about gates. Airport gates control terminal access to passenger aircraft. A narrowbody gate can accommodate an aircraft that has passenger seats arranged around a single aisle such as a Boeing 737 or Airbus A320 models, while a widebody gate can accommodate aircraft with passenger seating arranged around multiple aisles such as Boeing 787 or Boeing 777 models. Gate counts for the same terminal facility may vary due to parking positions and configurations. In certain conditions, a single widebody gate may accommodate multiple smaller aircraft.

<sup>9</sup> Direct interterminal connectivity without exiting security is a feature exclusive to Terminals 6 and 5.

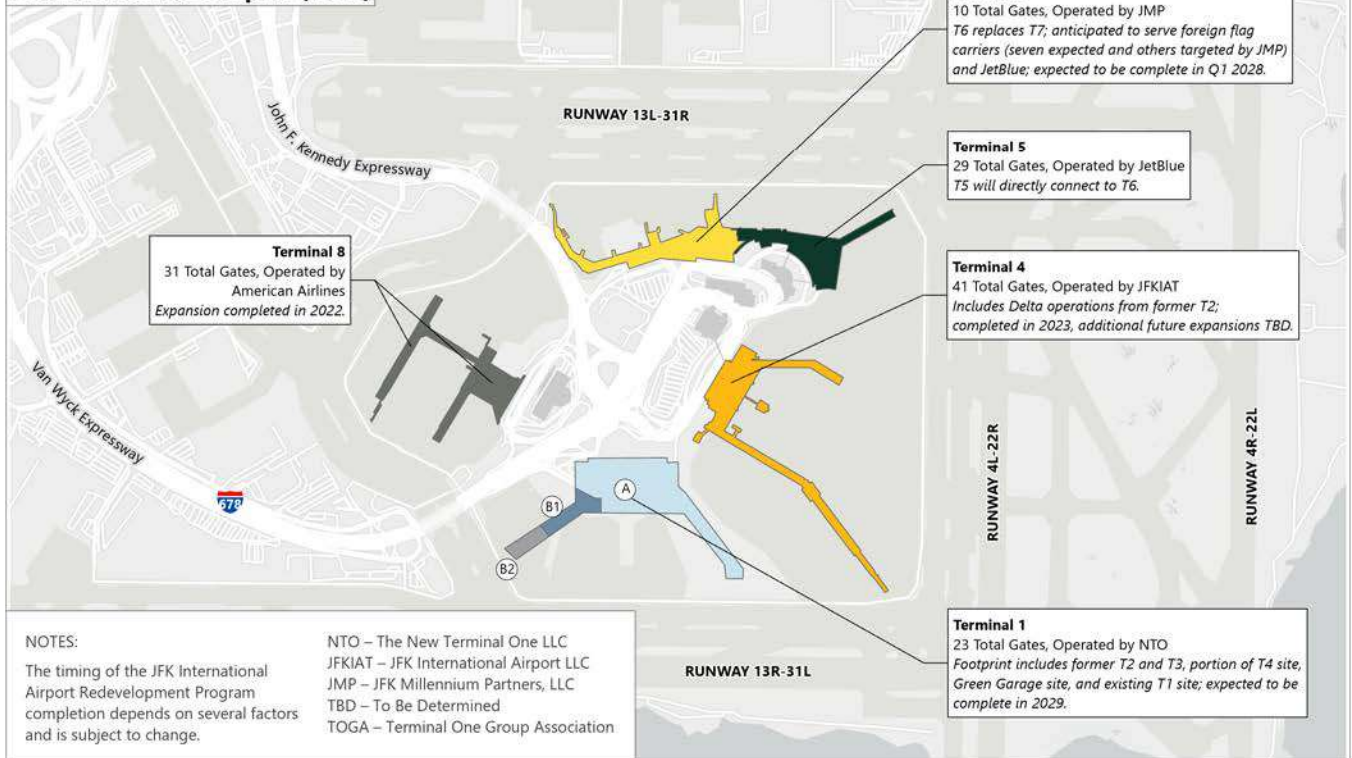
<sup>10</sup> Unlike Terminal One Group Association, JFK NTO, LLC is a non-airline entity.

JOHN F. KENNEDY INTERNATIONAL AIRPORT

**Terminal Complex before Redevelopment (2019)**



**Future Terminal Complex (2029)**



SOURCES: NYC OpenData, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc., MET/NASA, USGS, EPA, NOAA, US Census Bureau, USDA, USFWS, August 2024 (baseline); New York City Open Data, 2022, Terminal; Port Authority of NY & NJ John F. Kennedy International Airport, "JFK Redevelopment Program Overview," January 2020; John F. Kennedy International Airport, "Terminals," <https://new-york-jfk-airport.com/guide/terminals> (accessed July 22, 2024); New York Transportation Development Corporation Special Facilities Revenue Bonds, Series 2024 Offering Statement, published June 2024; JFK Millennium Partners, LLC, "Airline Traffic and Economic Analysis Report, JFK International Airport Terminal 6," June 2024; Department of Transportation, Federal Aviation Administration Eastern Region, "Preliminary Draft of Environmental Assessment Prepared for the John F. Kennedy (JFK) International Airport Redevelopment Program at JFK International Airport," May 24, 2016; "Written Re-Evaluation and Record of Decision for the Final Environmental Assessment Prepared for the John F. Kennedy (JFK) International Airport Redevelopment Program at JFK International Airport," May 31, 2022; Terminal layout interpretations by Ricardo & Associates, Inc.

**EXHIBIT S-2**



**JFK TERMINAL COMPLEX REDEVELOPMENT**

- **Terminal 6:** Terminal 6 is being built and will be operated by JMP and will replace Terminal 7. Terminal 5 and Terminal 6 will have a post-security seamless connection, and the Terminal 6 Redevelopment Project will include 10 gates (9 widebody and 1 narrowbody), replacing the 12 Terminal 7 gates<sup>11</sup>. The terminal can accommodate up to 13 aircraft because three of the nine widebody gates are Multiple Apron Ramp System (MARS) capable gates, each of which can accommodate two narrowbody aircraft in lieu of one widebody aircraft. JetBlue has agreed through its sublease to preferentially lease a narrowbody gate in Terminal 6 and use the FIS facility in Terminal 6. As of the date of this Report, JMP has negotiated non-binding letters of intent with term sheets outlining the terms and conditions for a sublease with each of the seven Expected Airlines to operate in Terminal 6 in addition to JetBlue. These Expected Airlines, along with the Additional Targeted Airlines, will operate from the nine widebody gates.

Construction began in the fourth quarter of 2022. Phase 1 of the Terminal 6 redevelopment is anticipated to be completed by the first quarter of 2026 and will provide five gates. Phase 2 includes demolition of Terminal 7 and completion of five additional Terminal 6 gates and is currently expected to start in 2026 and be completed by the first quarter of 2028. Airlines will cease operations in Terminal 7 upon completion of Phase 1 of Terminal 6 and will relocate to Terminal 6 or other JFK terminals. **Exhibit S-3** shows the site layout of Terminal 6 (highlighted in blue).

**Table S-1** sets forth the current, as of October 2024, sources and uses of funds for the Terminal 6 Redevelopment Project, including the proceeds of the Series 2024 Bonds.

Additional information on JMP, the Port Authority, the Loan Facility, and the Series 2024 Bonds is provided in **Chapter 1** and **Chapter 2** of this Report.

- **Terminal 8:** The terminal was built and is operated by American Airlines and was expanded in 2022, adding 130,000 square feet of space, five new widebody gates, some of which were converted from existing narrowbody gates, four new widebody parking positions, and an improved baggage handling system. Following the redevelopment and the completion of the Terminal 8 expansion plan, British Airways and American Airlines co-located their operations in the renovated terminal.

**Table S-2** presents the terminal operators and hub airlines at those terminals, where applicable. At JFK, American, Delta, and JetBlue operate hubs, with each airline scheduling 90 or more scheduled average daily departures to at least 50 different destinations. The number and size of available gates at the JFK terminals will change as part of the redevelopment. **Table S-3** presents the estimated gates by terminal in 2019, 2024, and in the future following the completion of ongoing terminal projects. The net change between 2019 and the end of the JFK Redevelopment at the Airport is expected to result in just two additional gates; and, consequently, gates should remain in demand.

Ricondo conducted an analysis of flight schedules with consideration of future gates in the planned JFK Redevelopment Program. The analysis evaluated the availability of gates and linear feet of terminal frontage<sup>12</sup> relative to existing airline flight schedules (prior to the impact of the COVID-19 pandemic) and estimated future flight schedules. The analysis confirmed that the terminal redevelopment projects are necessary to accommodate 2019 and estimated future flight schedules. Ricondo estimated 2019 flight schedules utilized 96 percent to 97 percent of existing gate capacity and future schedules within the Projection Period (2024 through 2032) may have demand that exceeds the availability of existing gate capacity. The analysis indicated that demand for terminal facilities will remain strong even with the Airport-wide terminal development.

---

<sup>11</sup> Prior to the commencement of Terminal 6 construction, Terminal 7 included 12 gates (6 widebody and 6 narrowbody). At the time of this Report, there are a total of 9 gates at Terminal 7 (5 widebody and 4 narrowbody).

<sup>12</sup> Terminal frontage takes into account the potential for adapting gates based on the aircraft fleet demand.

EXHIBIT S-3 TERMINAL 6 SITE LAYOUT



NOTE:  
Terminal 6, the Project, is highlighted in blue. Terminal 5, adjacent to the Project, is highlighted in red.  
SOURCE: JFK Millennium Partners, LLC, February 2022.

TABLE S-1 TERMINAL 6 REDEVELOPMENT ESTIMATED SOURCES AND USES OF FUNDS

SOURCES OF FUNDS	MILLIONS \$	USES OF FUNDS	MILLIONS \$
Series 2024 Bond Proceeds	\$1,578.1	Construction Costs	\$2,790.7
Construction Loan Facility Proceeds	\$1,965.3	Prepayment of 3rd Additional Rent	\$33.0
Construction Cash Account Withdrawal	\$84.3	Port Authority Oversight Costs	\$40.0
Interest Income from Reserves	\$19.0	Development Costs	\$220.7
Interest Income Other	\$42.9	Interest During Construction	\$811.5
Equity	\$1,300.0	Funding of Reserves and Cash Account Deposit	\$668.8
		Cost of Issuance	\$208.9
		LOC Costs	\$216.1
<b>Total Sources of Funds</b>	<b>\$4,989.7</b>	<b>Total Project Costs</b>	<b>\$4,989.7</b>

NOTE:  
Figures may not sum precisely due to rounding.  
SOURCE: JFK Millennium Partners, LLC, October 2024.

TABLE S-2 JFK REDEVELOPMENT PROGRAM TERMINAL USE

TERMINAL	EXISTING		FUTURE	
	OPERATOR	HUB AIRLINE	OPERATOR	HUB AIRLINE
Terminal 1		NONE		NONE
Terminal 4	 JFK INTERNATIONAL AIR TERMINAL		 JFK INTERNATIONAL AIR TERMINAL	
Terminal 5				
Terminal 6				NONE
Terminal 7		NONE		
Terminal 8				

NOTES:

Hub Airline indicates an airline that has a concentration of activity at the terminal and represents a material portion or majority of passenger activity at the terminal. Terminal 1 is operated by Terminal One Group Association (TOGA), L.P., a consortium of international airlines that consists of Air France, Korean Air, and Lufthansa as current partner airlines. As of October 2024, 27 airlines operate from Terminal 1. New Terminal One has previously disclosed they have secured commitments from Air France, Etihad Airways, KLM Royal Dutch Airlines, Korean Air, LOT Polish Airlines, EVA Air, Air Serbia, Scandinavian Airlines, and Neos.

As of the date of this Report, JMP has negotiated letters of intent with term sheets outlining the terms and conditions for a sublease with seven Expected Airlines including Aer Lingus, Cathay Pacific, Lufthansa AG (including its affiliates Austrian Airlines, Brussels Airlines and Swiss International Air Lines), and one additional long-haul foreign flag airline."

SOURCES: New York Transportation Development Corporation Special Facilities Revenue Bonds, Series 2024 Offering Statement published June 2024 (applies to New Terminal One); The New Terminal One, "The New Terminal One and Italian Airline Neos announce partnership for operations at JFK Airport," September 2024; Ricondo and Associates, October 2024.

TABLE S-3 JFK REDEVELOPMENT PROGRAM GATES

PREVIOUS (2019)					EXISTING (2024)					FUTURE <sup>1</sup>					
	REGIONAL JET	NARROWB ODY	WIDEBOY	TOTAL GATES		REGIONAL JET	NARROWB ODY	WIDEBOY	TOTAL GATES		REGIONAL JET	NARROWB ODY	WIDEBOY	TOTAL GATE	
T1		0	10	10	T1			10	10	T1 <sup>2</sup>		1 Total 0 in Phase A		22 Total 14 in Phase A	23 Total 14 in Phase A
T2		1	9	10	T2	-	-	-	-	T2		-	-	-	
T4	11	0	25	36	T4	11	7	23	41	T4 <sup>3</sup>	11	7	23	41	
T5		29		29	T5		29	0	29	T5		29	0	29	
T6		-	-	-	T6		-	-	-	T6		1	9	10	
T7		6	6	12	T7		4	5	9	T7					
T8	6	21	8	35	T8		17	14	31	T8		17	14	31	
<b>TOTAL</b>	<b>17</b>	<b>57</b>	<b>58</b>	<b>132</b>	<b>TOTAL</b>	<b>11</b>	<b>57</b>	<b>52</b>	<b>120</b>	<b>TOTAL</b>	<b>11</b>	<b>55</b>	<b>68</b>	<b>134</b>	

NOTES:

Gate counts may vary due to parking positions. In certain conditions, a single widebody gate may accommodate multiple smaller aircraft.

1 Future gates represent the estimated gates for ongoing capital programs, as described in this Report.

2 New Terminal One will be delivered in phases; Phase A, Phase B1, and Phase B2, Total includes all three phases allowed in the NTO lease and assumes triggers are met.

3 Does not include a potential second phase of Concourse A expansion (first phase completed in 2023).

SOURCES: John F. Kennedy International Airport, "Terminals" <https://new-york-jfk-airport.com/guide/terminals> (accessed July 22, 2024); ASM, "Airline Traffic and Economic Analysis Report, JFK International Airport Terminal 6," June 2024; New York Transportation Development Corporation Special Facilities Revenue Bonds, Series 2024 Offering Statement published June 2024; Department of Transportation, Federal Aviation Administration Eastern Region, "Preliminary Draft of Environmental Assessment Prepared for the John F Kennedy (JFK) International Airport Redevelopment Program at JFK International Airport; Department of Transportation, Federal Aviation Administration Eastern Region, "Written Re-Evaluation and record of Decision for the Final Environmental Assessment Prepared for the John F Kennedy (JFK) International Airport Redevelopment Program at JFK International Airport," May 31, 2022; JFK Millennium Partners, LLC, September 2024; Terminal layout interpretations by Ricondo & Associates. October 2024.



## HISTORICAL AND FORECAST AIR TRAFFIC

### AIR SERVICE DEMAND DRIVERS

The demand for air transportation at an airport is, to a large degree, dependent upon the demographic and economic characteristics of its surrounding geographical area. This relationship is particularly strong for origin and destination (O&D) passenger traffic, which has historically accounted for the largest portion of airline traffic demand at the Airport—approximately 80 percent in 2023.<sup>13</sup> Therefore, the major portion of demand for air travel at the Airport is influenced more by the local socioeconomic characteristics of the Airport’s Air Trade Area<sup>14</sup> than by individual airline decisions regarding service patterns in support of connecting activity.

The Airport benefits from a large and diverse local economic base that supports business and leisure travel. The Airport serves the largest population base in the country with high household and per capita personal income. From 2012 to 2022, the Air Trade Area gross regional product (GRP) averaged approximately 9.0 percent of the annual US GDP.<sup>15</sup> In 2023, New York City was ranked the wealthiest city in the world, with the City’s cumulative wealth of more than \$3 trillion.<sup>16</sup> The City receives the most visitors of any US city<sup>17</sup> and consistently ranks in the top 10 cities with the highest visitation globally.<sup>18</sup> Projected economic variables indicate that the Air Trade Area will remain a destination that attracts both business travelers and tourists, positively affecting the demand for future inbound airline travel. Projected Air Trade Area economic variables further support the continued increase in numbers of local outbound passengers.

**Table S-4** presents selected 2022 and 2032 economic data for the Air Trade Area and the United States, as projected by Woods & Poole Economics, Inc. Ricondo considered these factors when evaluating the activity forecast for the Airport.

The New York City market was ranked second in the world and first in the United States in 2023 in terms of total O&D passengers, as presented in **Table S-5** and **Table S-6**. JFK is the largest airport serving the Air Trade Area, with 42 percent of total passengers in 2023, followed by Newark Liberty International Airport (EWR) with 33 percent and LaGuardia Airport (LGA) with 22 percent. Three smaller airports, Westchester County Airport (HPN), Long Island MacArthur Airport (ISP), and New York Stewart International Airport accounted for approximately 3 percent of the Air Trade Area passengers in 2023. JFK is the largest international gateway airport in the US, serving more international passengers than any other airport and represented 68.1 percent of the international passengers at Air Trade Area airports in 2023. In 2024, 8 US airlines and 65 foreign flag airlines are scheduled to provide nonstop service to 74 domestic destinations and 123 international destinations, as seen in **Section 4.4**.

---

<sup>13</sup> US Department of Transportation T-100 database and O&D Survey, 2023.

<sup>14</sup> As defined in **Chapter 3**, an air trade area is the geographical area served by an airport. John F. Kennedy’s International Airport’s Air Trade Area consists of the New York-Newark-Jersey City, NY-NJ-PA Metropolitan Statistical Area and the Bridgeport-Stamford-Norwalk, CT Metropolitan Statistical Area; for further information, please refer to **Section 3.1** of this Report.

<sup>15</sup> Woods & Poole Economics, Inc., 2024 Complete Economic and Demographic Data Source, July 2024.

<sup>16</sup> “World’s Wealthiest Cities Report 2024,” *Henley & Partners*, <https://www.henleyglobal.com/publications/wealthiest-cities-2024> (accessed July 26, 2024).

<sup>17</sup> Office of the New York State Comptroller, *Tracking the Return: The Tourism Industry in New York City*, May 2024.

<sup>18</sup> Euromonitor International, *Top City Destinations Ranking* (2023 edition).

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

TABLE S-4 PROJECTED ECONOMIC VARIABLES (2022-2032)

VARIABLE <sup>1,2</sup>	CY 2022 <sup>5</sup>	CY 2032	CAGR CY 2022 - CY 2032
Air Trade Area Gross Regional Product (GRP) <sup>3</sup>	\$1,933,990	\$2,443,237	2.4%
US Gross Domestic Product (GDP) <sup>3</sup>	\$21,788,014	\$26,995,687	2.2%
Air Trade Area Net Earnings <sup>3</sup>	\$986,890	\$1,240,109	2.3%
US Net Earnings <sup>3</sup>	\$11,644,967	\$14,510,547	2.2%
Air Trade Area Total Earnings <sup>3</sup>	\$1,133,784	\$1,472,841	2.7%
US Total Earnings <sup>3</sup>	\$13,105,445	\$16,891,768	2.6%
Air Trade Area Total Employment	14,072,581	16,583,954	1.7%
US Total Employment	212,442,016	246,375,203	1.5%
Air Trade Area Total Personal Income <sup>3</sup>	\$1,522,394	\$1,905,040	2.3%
US Total Personal Income <sup>3</sup>	\$18,803,588	\$23,670,984	2.3%
Air Trade Area Per Capita Personal Income <sup>4</sup>	\$74,166	\$90,822	2.0%
US Per Capita Personal Income <sup>4</sup>	\$56,421	\$66,646	1.7%
Air Trade Area Population	20,526,852	20,975,445	0.2%
US Population	333,271,411	355,174,678	0.6%

## NOTES:

CY – Calendar Year

CAGR – Compound Annual Growth Rate

1 Employment data include wage and salary workers, proprietors, private household employees, and miscellaneous workers. Establishment data from the US Department of Commerce, Bureau of Economic Analysis is used in this table, which differs from employment data in **Table 3-5** due to differing sources, definitions, and methodologies.

2 Some variables presented in this table are exclusive to the aviation forecast and are not included in the demographic and economic analysis discussed in this chapter.

3 Figures displayed in millions of 2017 dollars.

4 Figures in 2017 dollars.

5 CY 2022 is the last year of historical data in the Woods & Poole database and is the basis for Woods & Poole's future projections. Therefore, it is the last year of historical data displayed in this table. More recent data may be available from other sources.

SOURCE: Woods & Poole Economics, Inc., 2024 Complete Economic and Demographic Data Source, July 2024.

TABLE S-5 TOP FIVE GLOBAL METROPOLITAN AREAS BY ORIGIN AND DESTINATION PASSENGERS

METROPOLITAN AREA	2019		2020		2021		2022		2023	
	RANK	O&D PASSENGERS	RANK	O&D PASSENGERS	RANK	O&D PASSENGERS	RANK	O&D PASSENGERS	RANK	O&D PASSENGERS
London <sup>1</sup>	1	152,275,409	4	40,554,162	15	31,763,842	1	107,554,308	1	133,963,128
<b>New York City<sup>2</sup></b>	<b>2</b>	<b>121,820,154</b>	<b>7</b>	<b>36,516,301</b>	<b>1</b>	<b>68,795,678</b>	<b>2</b>	<b>104,389,469</b>	<b>2</b>	<b>118,563,257</b>
Tokyo <sup>3</sup>	3	119,500,549	2	47,908,727	6	42,107,948	4	66,621,890	3	113,204,268
Beijing <sup>4</sup>	6	90,753,695	3	45,624,461	3	58,361,774	7	51,561,059	4	103,732,354
Shanghai <sup>5</sup>	4	97,957,058	1	56,921,203	2	62,915,366	9	49,503,515	5	98,071,667

## NOTES:

1 London includes London City Airport, Gatwick Airport, Heathrow Airport, Luton Airport, London Southend Airport, and London Stansted Airport.

2 New York City includes Newark Liberty International Airport, Westchester County Airport, Long Island MacArthur Airport, John F. Kennedy International Airport, LaGuardia Airport, and New York Stewart International Airport.

3 Tokyo includes Haneda Airport and Narita International Airport.

4 Beijing includes Beijing Nanyuan Airport (closed on September 25, 2019), Beijing Capital International Airport, and Beijing Daxing International Airport (opened on September 25, 2019).

5 Shanghai includes Shanghai Pudong International Airport and Shanghai Hongqiao International Airport.

SOURCE: Sabre Market Intelligence, August 2024 (passenger bookings data).

JOHN F. KENNEDY INTERNATIONAL AIRPORT

TABLE S-6 TOP FIVE UNITED STATES METROPOLITAN AREAS BY ORIGIN AND DESTINATION PASSENGERS

METROPOLITAN AREA	2019		2020		2021		2022		2023	
	RANK	O&D PASSENGERS	RANK	O&D PASSENGERS	RANK	O&D PASSENGERS	RANK	O&D PASSENGERS	RANK	O&D PASSENGERS
New York City <sup>1</sup>	1	121,820,154	1	36,516,301	1	68,795,678	1	104,389,469	1	118,563,257
Los Angeles <sup>2</sup>	2	93,801,362	2	32,517,602	2	58,108,422	2	79,645,837	2	88,271,902
Chicago <sup>3</sup>	3	60,277,858	4	21,405,390	3	40,543,287	3	52,240,632	3	56,751,808
Orlando <sup>4</sup>	4	49,706,862	3	21,423,981	4	39,196,496	4	48,718,800	4	52,135,405
Las Vegas <sup>5</sup>	5	43,636,798	7	18,299,555	7	33,317,924	5	42,855,389	5	45,171,229

NOTES:

- 1 New York City includes Newark Liberty International Airport, Westchester County Airport, Long Island MacArthur Airport, John F. Kennedy International Airport, LaGuardia Airport, and New York Stewart International Airport.
- 2 Los Angeles includes Hollywood Burbank Airport, Los Angeles International Airport, Long Beach Airport (Daugherty Field), Ontario International Airport, and John Wayne Airport.
- 3 Chicago includes Chicago Midway International Airport, Chicago O'Hare International Airport, and Chicago Rockford International Airport.
- 4 Orlando includes Orlando International Airport and Orlando Sanford International Airport.
- 5 Las Vegas includes Harry Reid International Airport.

SOURCE: Sabre Market Intelligence, August 2024 (passenger bookings data).

APPROACH TO JFK AND TERMINAL 6 FORECAST

A forecast of passengers and aircraft operations for JFK and specifically for Terminal 6 were prepared by ASM and reviewed by Ricondo. Ricondo has reviewed and validated the activity forecasts prepared by ASM through the Projection Period for purposes of the financial analysis included in this Report. In this process, Ricondo developed an independent forecast for JFK including a similar approach to ASM with detailed buildup of activity in the near-term and socioeconomic driven results thereafter. ASM and Ricondo’s forecasts of total JFK and Terminal 6 enplaned passengers are similar in trajectory and volume. **Table S-7** presents the Ricondo and ASM baseline JFK forecast total passengers and Terminal 6 forecast enplaned passengers in 2025 through 2032.

TABLE S-7 RICONDO AND ASM JFK AND TERMINAL 6 TOTAL PASSENGER FORECAST

YEAR	JFK TOTAL PASSENGER			TERMINAL 6 ENPLANED PASSENGERS		
	RICONDO FORECAST	ASM BASELINE FORECAST	ASM H/(L) THAN RICONDO	RICONDO FORECAST	ASM BASELINE FORECAST	ASM H/(L) THAN RICONDO
2025	64,420,000	65,610,000	1.8%	3,902,000	3,970,000	1.7%
2026	64,966,000	67,640,000	4.1%	3,936,000	4,019,000	2.1%
2027	66,452,000	69,542,000	4.6%	4,022,000	4,043,000	0.5%
2028	67,855,000	71,223,000	5.0%	4,104,000	4,073,000	-0.8%
2029	69,288,000	72,719,000	5.0%	4,188,000	4,156,000	-0.8%
2030	70,705,000	74,075,000	4.8%	4,270,000	4,231,000	-0.9%
2031	72,029,000	75,441,000	4.7%	4,337,000	4,304,000	-0.8%
2032	73,127,000	76,816,000	5.0%	4,362,000	4,377,000	0.3%
<b>Compound Annual Growth Rate</b>						
2025 - 2032	1.8%	2.3%		1.6%	1.4%	

SOURCES: Airport Strategy & Marketing, June 2024; Ricondo & Associates, Inc., October 2024.

## FINANCIAL ANALYSIS

JMP provided Ricondo with projected financial results through the term of the Lease Agreement. These projections, as shown in **Table S-8**, include Terminal 6 Project Revenues, including concession and other non-airline revenues, airline revenues; expenses such as operating and maintenance (O&M) expenses, payments to the Port pursuant to the Lease Agreement, asset repair and replacement costs; debt service for existing and future Senior Obligations, and the resulting debt service coverage.

The Debt Service Coverage Ratios (DSCRs) for the anticipated Senior Obligations, including the Series 2024 Bonds and the anticipated Series 2028 Bonds, are projected to meet the minimum requirements of the Total DSCR of 1.25x and Senior DSCR of 1.30x through the Ramp-up Period (projected to be FY 2028 to FY 2031) and a Total DSCR of 1.15x and Senior DSCR of 1.20x through the remainder of the Projection Period. The minimum DSCR within the Projection Period is projected to be 1.53x in 2028 and 1.51x during the remaining lease period. Ricondo reviewed, with the support of its subconsultant Infrastructure Advisors, LLC, JMP's projected cashflows and debt service coverage results through the Projection Period and assessed the reasonableness of the revenues.

Ricondo also assessed the reasonableness of airline revenues and finds the projected charges to airlines (on a per enplanement basis) reasonable through the Projection Period when taking into account the air service market and capacity constraints at other Air Trade Area airports and JFK terminals. Additional information on the financial projections and analysis is included in **Chapter 5** and **Appendix A** of this Report.

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

TABLE S-8 PROJECTED CASH FLOW AND SENIOR DEBT SERVICE COVERAGE RATIO (DOLLARS IN MILLIONS) – BASELINE SCENARIO

	2024	2025	2026	2027	2028	2029	2030	2031	2032
<b>Project Revenues</b>									
Terminal 7									
Airline Revenue	\$97,508	\$89,407	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Non-Airline Revenue	\$14,901	\$15,213	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Terminal 6 Revenue									
Airline Revenue	\$0	\$0	\$118,165	\$190,900	\$310,697	\$369,204	\$408,847	\$425,896	\$446,002
Concession Revenue	\$0	\$0	\$13,658	\$19,963	\$34,105	\$40,554	\$42,309	\$44,164	\$46,073
Advertising Revenue	\$0	\$0	\$1,213	\$1,782	\$2,956	\$3,392	\$3,535	\$3,682	\$3,832
Rebate Revenue	\$0	\$0	\$1,500	\$0	\$4,714	\$1,000	\$0	\$0	\$0
Other Commercial Revenue	\$0	\$0	\$1,149	\$1,809	\$2,649	\$2,899	\$3,020	\$3,148	\$3,282
Interest Income	\$0	\$0	\$0	\$0	\$7,323	\$9,908	\$10,555	\$8,964	\$8,558
<b>Total Project Revenues</b>	<b>\$112,409</b>	<b>\$104,620</b>	<b>\$135,685</b>	<b>\$214,453</b>	<b>\$362,444</b>	<b>\$426,958</b>	<b>\$468,267</b>	<b>\$485,854</b>	<b>\$507,748</b>
<b>Less:</b>									
Operating Expenses <sup>1</sup>	(\$85,517)	(\$86,511)	(\$93,941)	(\$75,805)	(\$83,822)	(\$86,215)	(\$91,693)	(\$94,043)	(\$96,131)
Management Fee	(\$7,637)	(\$7,637)	(\$7,637)	(\$7,637)	(\$8,780)	(\$9,353)	(\$9,550)	(\$9,750)	(\$9,955)
Port Authority Rents	(\$66,297)	(\$68,096)	(\$82,646)	(\$82,797)	(\$25,143)	(\$26,496)	(\$63,619)	(\$84,299)	(\$93,094)
Other Costs - Financing Related	(\$1,194)	(\$1,225)	(\$1,255)	(\$1,286)	(\$1,317)	(\$1,349)	(\$1,381)	(\$1,413)	(\$1,447)
Major Maintenance	\$0	\$0	(\$42)	(\$255)	(\$262)	(\$573)	(\$2,150)	(\$2,201)	(\$2,969)
<b>Net Revenues</b>	<b>(\$48,237)</b>	<b>(\$58,849)</b>	<b>(\$49,836)</b>	<b>\$46,672</b>	<b>\$243,120</b>	<b>\$302,972</b>	<b>\$299,875</b>	<b>\$294,148</b>	<b>\$304,153</b>
Changes in O&M Reserve Account	\$0	\$0	(\$41,721)	(\$4,580)	(\$1,483)	(\$2,837)	(\$1,275)	(\$1,146)	(\$517)
Changes in Major Maintenance Reserve Account	\$0	\$0	(\$620)	(\$735)	(\$1,385)	(\$1,864)	(\$1,799)	(\$3,325)	(\$4,204)
Changes in Handback Reserve	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Concessions Rent Subordinated to Debt Service	\$0	\$0	\$0	(\$8,540)	(\$9,474)	(\$10,139)	(\$10,577)	(\$11,041)	(\$11,518)
<b>Cash Flows available for Debt Service</b>	<b>(\$48,237)</b>	<b>(\$58,849)</b>	<b>(\$92,177)</b>	<b>\$32,816</b>	<b>\$230,778</b>	<b>\$288,131</b>	<b>\$286,223</b>	<b>\$278,636</b>	<b>\$287,913</b>
Series 2022A Bonds Debt Service	\$20,883	\$9,501	\$9,868	\$9,990	\$2,589	\$0	\$0	\$0	\$0
Senior Term Loans Debt Service	\$121,082	\$93,233	\$107,481	\$108,575	\$27,965	\$0	\$0	\$0	\$0
PA LOC Debt Service	\$144	\$156	\$168	\$180	\$202	\$216	\$221	\$227	\$233
Series 2024 Bonds Debt Service	\$0	\$74,850	\$74,850	\$74,850	\$74,850	\$74,850	\$74,850	\$74,850	\$74,850
Series 2028 Bonds Debt Service	\$0	\$0	\$0	\$0	\$76,052	\$101,403	\$101,403	\$101,403	\$101,403
Less: Interest During Construction	(\$142,109)	(\$177,740)	(\$192,366)	(\$193,595)	(\$30,554)	\$0	\$0	\$0	\$0
<b>Total Senior Obligations</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$151,105</b>	<b>\$176,469</b>	<b>\$176,475</b>	<b>\$176,480</b>	<b>\$176,486</b>
Senior Debt Service Coverage Ratio	n/a	n/a	n/a	n/a	1.53x	1.63x	1.62x	1.58x	1.63x

## NOTE:

1 Includes operating expenses for Terminal 7 (\$48.8 million in FY 2024 and \$44.1 million in FY 2025)

SOURCE: JFK Millennium Partners, LLC, October 2024.

# 1. JFK MILLENNIUM PARTNERS, LLC, THE PORT AUTHORITY, AND THE SERIES 2024 BONDS

In 2017, A *Vision Plan for John F. Kennedy International Airport (Vision Plan)* was prepared by an Airport Advisory Panel as a report for the Governor of New York.<sup>19</sup> The Vision Plan provided recommendations for infrastructure development at the airports operated by the Port Authority of New York and New Jersey (Port Authority), including the need to maximize private sector investments in modernizing the terminals at JFK. As part of this plan, JetBlue Airways Corporation (JetBlue), which held the development rights for Terminal 6, ran a competitive tender process in July 2017 to select a development partner to redevelop the Terminal 6 site. A consortium of Vantage Group (Vantage) and RXR Realty, LLC (RXR) was selected as JetBlue's development partner in March 2018. American Triple I Partners, LLC (ATI) was later added as a Minority-Owned Business Enterprise (MBE) Equity Investor in September 2019.

## 1.1 JFK MILLENNIUM PARTNERS, LLC (JMP)

JFK Millennium Partners, LLC, (JMP) is indirectly owned by, or by affiliates of, Vantage, RXR, ATI, and JetBlue. Collectively, and through their sponsors, JMP has extensive experience in the development, financing, and long-term asset management of airports and public-private partnership (P3) infrastructure in the United States, Canada, and outside of North America.

JMP was created as a special purpose company to design, build, finance, operate, and maintain Terminal 6 (the Terminal 6 Development Project, or the Project)<sup>20</sup> at John F. Kennedy International Airport (the Airport or JFK) under a lease arrangement with the Port Authority. Terminal 6 is being constructed as a new facility which is being built on the existing and currently vacant Terminal 6 site and the existing Terminal 7 site. JMP is also responsible for operating and maintaining Terminal 7 prior to its closure which is a part of the Terminal 6 construction.

In August 2021, the Port Authority approved the key terms of a lease agreement with JMP (JMP Lease or Lease Agreement) for the Project. On November 17, 2022, JMP entered into the Lease Agreement which runs through December 30, 2060, to construct and operate Terminal 6, among other responsibilities described herein. JMP is wholly owned by JFK Millennium Partners Holdings, LLC (JMP HoldCo). JMP HoldCo is owned directly or by affiliates of:

- Vantage (45 percent)
- ATI (30 percent)
- RXR (20 percent)
- JetBlue (5 percent)

---

<sup>19</sup> "A Vision Plan for John F. Kennedy International Airport" (New York City, NY: Airport Advisory Panel, 2017).

<sup>20</sup> For purposes of this Report, the Project includes design, construction, and operation of Terminal 6 including contiguous aircraft ramp and apron areas, new contiguous frontage roads and supporting buildings, site utilities, and the operation and demolition of the Existing Terminal 7 facilities.

### 1.1.1 VANTAGE GROUP (VANTAGE)

Vantage is a leading investor, developer, and manager of airports and terminals. Throughout their 30+ year history, Vantage has provided project delivery, terminal operations, and investor services to more than 30 airports globally. Vantage is a wholly owned strategic platform of Investcorp Corsair Infrastructure Partners for capital deployment in the airport and transportation sectors.

In 2023, Vantage's airports served over 80 million passengers, traveling on 160 different airlines to 265 global destinations. As part of integrated design-build-operate teams, Vantage has completed approximately \$7.2 billion in capital projects with another approximately \$4.2 billion underway.<sup>21</sup>

Vantage has successfully managed significant and complex airport construction projects in different environments and operated several airports during their construction, including construction coordination, operational readiness and transition, and transitions from existing terminals to new terminals. In addition to leading transitions for terminals in Nassau, Larnaka, Pafos and Santiago; Vantage was the lead developer, equity investor, and terminal manager (including construction management) of the LaGuardia Airport (LaGuardia or LGA) Terminal B Redevelopment project. This Terminal B project, also under a long-term lease agreement with the Port Authority, was substantially completed in 2022, has similarities in scale and complexities to the Project at JFK, and is also located in the NYC market, and has received awards, such as the 5-star Skytrax rating and the Best New Terminal in the World 2023 by Skytrax based on its design and excellence in facility management.

### 1.1.2 AMERICAN TRIPLE I PARTNERS, LLC (ATI)

ATI is a New York-based investor, owner, developer, and manager of infrastructure assets. ATI has experience in infrastructure, government, and finance, which positions the firm to effectively source, invest, and manage public and private opportunities.

ATI targets the transportation, digital, and social verticals that demonstrate attractive secular growth trends or which need significant capital for upgrade or modernization. ATI's mission to create value for investors and communities through innovative infrastructure investments closely aligns with the firm's origin as a Minority and Women Owned Business Enterprise (MWBE). ATI seeks to operate in a manner that reflects the same diversity of constituencies and to deliver a positive impact to communities.

### 1.1.3 RXR REALTY, LLC (RXR)

RXR is a private real estate company with expertise in investment management, property management, development, design, construction, leasing, and financing. RXR currently has over \$1.3 billion in active construction underway in the New York metro area and has 93 properties with an estimated aggregate gross asset value under management of over \$18 billion.<sup>22</sup>

RXR's experience in public-private developments in the New York metro area include major redevelopment projects such as 175 Park Avenue, a 2 million+ square-foot supertall office tower adjacent to Grand Central Station; Pier 57, an adaptive reuse of a historic NYC pier into a 400,000 square-foot mixed-use building anchored by Google; the Willoughby, a 476-unit multifamily rental building on Long Island University (LIU) Brooklyn's campus; Garvies Point Master Development, a mixed-use community located at Glen Cove that resulted from transforming a brownfield waterfront site into a community with 28 acres of park and an esplanade; Nasau Hub, a Nassau County-based

---

<sup>21</sup> Vantage Group, <https://www.vantagegroup.com/>

<sup>22</sup> RXR by the Numbers, December 30, 2023.

redevelopment of the Nassau Veterans Coliseum area with an aim to create a mixed-use, Innovation District in a 70-acre area that will bring new economic activity, jobs, and entertainment to the area, and provide a walkable neighborhood; and the New Rochelle Master Plan Development.<sup>23</sup>

#### 1.1.4 JETBLUE AIRWAYS CORPORATION

Based in Long Island City and *New York's hometown airline*®, JetBlue is the only major airline headquartered in New York. JetBlue's differentiated product and culture combined with its competitive cost structure enables JetBlue to compete effectively in high-value markets with service to over 100 destinations. As of Q3 2024, JetBlue operates 166 average daily departures from JFK to 81 destinations with plans to increase to 200 daily departures. Its flagship Terminal 5 at JFK has been celebrated for its customer-friendly design, facilities, and amenities.

## 1.2 THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (PORT AUTHORITY)

### 1.2.1 GOVERNING STRUCTURE

The Port Authority, established in April 1921, is responsible for the construction, operation, and maintenance of transportation infrastructure supporting the Greater New York – New Jersey region's trade and transportation network. Its jurisdictional area, the "Port District," includes a radius of approximately 25 miles from the Statue of Liberty in New York Harbor.

In addition to four of the region's commercial service airports (JFK, LGA, Newark Liberty International, and Stewart International Airports), the Port Authority operates Teterboro Airport (a general aviation facility), six tunnels and bridges, bus terminals, marine terminals, and ports throughout the New York Harbor region as well as the Port Authority Trans-Hudson (PATH) transit rail system. The Port Authority's transportation, terminal, and other facilities of commerce within the Port District are divided into five lines of business:

- Aviation,
- Port Authority Trans-Hudson Corporation (PATH) (rail),
- Port Commerce,
- Tunnels-Bridges-Terminals, and
- The World Trade Center.

A 12-member Board of Commissioners governs the Port Authority, with the Governors of New York and New Jersey each appointing 6 members with the approval of their respective state's Senate. The Port Authority operates its airports through an Aviation Department.

The Port Authority is a financially self-supporting entity. It does not receive tax revenue from either state or from any local jurisdiction and has no power to tax, nor does it have the power to pledge the credit of either state or any municipality. The Port Authority relies primarily on revenues generated from facility operations.

---

<sup>23</sup> RXR, September 2024.



### 1.2.2 THE PORT AUTHORITY AIRPORT LEASES WITH THE CITY OF NEW YORK

The Port Authority has operated both LGA and JFK pursuant to the *Amended and Restated Lease of Municipal Air Terminals* (the Basic Lease) between the City of New York and the Port Authority since 1947. In addition, the Port Authority operates Newark Liberty International Airport (Newark or EWR) under a lease agreement with the City of Newark and arrangements with the City of Elizabeth. The Port Authority has also operated Teterboro Airport since its purchase in 1949 and New York Stewart International Airport through a lease with the State of New York in 2007.

The Basic Lease was most recently amended and restated in early 2021, with a term extending through December 31, 2060. In addition to the establishment of rental payments due from the Port Authority to the City of New York, the Basic Lease provides the Port Authority the right to enter into subleases regarding the development of facilities at LGA and JFK.

### 1.3 THE JMP LEASE WITH THE PORT AUTHORITY

The Lease Agreement between the Port Authority (lessor) and JMP (lessee) for the Terminal 6 Parcel (23.1 acres) and the Terminal 7 Parcel (35.4 acres) was executed on November 17, 2022. Under the terms of the Lease Agreement, JMP is responsible for the financing, design, development, construction, operation, and maintenance of the Project, which will be situated on the Terminal 6 Parcel and the Terminal 7 Parcel for the duration of the lease (December 30, 2060).

Terminal 6 is being constructed as a new facility. This new unified interconnected passenger terminal building is being built on the existing and currently vacant Terminal 6 site and the existing Terminal 7 site. Consisting of approximately 1.2 million square feet, the new terminal will include the capacity for 10 gates including 9 widebody gates. With a direct connection with JetBlue's Terminal 5, it will replace the existing terminal facilities on the Terminal 7 Parcel and the apron and taxi lanes on the vacant Terminal 6 Parcel.

The design, development, and construction of Terminal 6 has started and is scheduled to be completed in two phases. Phase 1 includes design, development, and construction on the Terminal 6 Parcel and continued operation and maintenance of Terminal 7. Phase 2 includes demolition of the existing Terminal 7 and new construction on the Terminal 7 Parcel. Pursuant to the Lease Agreement, JMP will also be responsible for the construction of certain Off-Premises Facilities which are included in the Project costs. Off-Premises Facilities will not be operated or maintained by JMP and will not constitute part of the facilities leased to JMP under the Lease Agreement.<sup>24</sup> The total Project is scheduled to be completed by the second quarter of 2028. Additional information regarding lease rentals and JMP's responsibilities and obligations for the operation of Terminal 7 are included in **Section 5.1**.

The Lease Agreement includes several categories of rental payments to the Port Authority over the term of the lease which generally include Ground Rent, first additional rent, second additional rent, Third Additional Rent, Excess Value Rent, and concession revenue rent. Additional information about the Project is included in **Section 2.1.3** of this Report.

---

<sup>24</sup> These off-Premises facilities generally include projects that tie into work on-Premises such as adjustments to the Terminal 5 frontage and access roads, connectivity of supporting infrastructure, adjustments to the Yellow Garage ground floor entrance area, construction of the bridge connector connecting the Terminal 5 Parking Garage and the Orange Garage, the construction of a new Taxi Plaza, adjustments to the Terminal 5 HOV curbside, aesthetic improvements to the existing bridge between the Terminal 7 AirTrain station and the Existing Terminal Facilities, the relocation of existing Terminal 5 Gate 30 and certain other modifications to Terminal 5 necessary to accommodate the connection of Terminal 6, adjustment to the off-Premises taxiway throats on the north side of the Terminal 6 Parcel, and necessary temporary facilities off the Premises.

## 1.4 THE SERIES 2024 BONDS

The plan of finance for the Project includes proceeds from the Series 2024 Bonds, proceeds from the Loan Facility, equity contributions, and project revenues. In 2022, JMP obtained a Loan Facility to fund a portion of the Project costs, the proceeds of which are held under a Collateral Agency and Accounts Agreement (as amended and supplemented, the CAAA) between JMP and the New York Transportation Development Corporation (TDC). The Loan Facility includes (i) Special Facilities Bonds, Senior Series 2022A (Tax-Exempt) (AMT) (JFK Airport Terminal 6-7 Redevelopment Project) (the Series 2022 Bonds) issued in November 2022 under a Credit Agreement through a direct placement with the Royal Bank of Canada, and (ii) the Senior Term Loans, a Credit Agreement by and among the issuer, JMP, the Administrative Agent and the financial institutions listed therein, pursuant to which bank lenders agreed to lend approximately \$3.0 billion to the New York TDC (the Issuer) and to provide an \$8 million security deposit facility, all for the benefit of JMP. The Loan Facility is administered in accordance with a Common Terms Agreement (CTA).

The Series 2024 Bonds will be issued pursuant to the TDC Master Bond Indenture of Trust (as amended and supplemented, the Indenture) between the Issuer and the Trustee and are anticipated to refinance a portion of the Loan Facility.

It is anticipated that JMP will borrow the proceeds of the Series 2024 Bonds from the Issuer pursuant to the TDC Loan Agreements. The Project funds will be held and administered pursuant to the CAAA among JMP, the Trustee, the Collateral Agents, the Intercreditor Agent, the Issuer, the Administrative Agent, the Securities Intermediary, and the Deposit Account Bank.

**Exhibit 1-1** presents the organizational structure of the transaction.

JMP's obligations with respect to the Series 2024 Bonds and Loan Facility will be payable, in part, from and secured under the Indenture (with respect to the Series 2024 Bonds and the Series 2022 Bonds), the CTA (with respect to the Loan Facility), and the CAAA by revenues generated from the Project. Project Revenues consist primarily of terminal rentals and charges collected from the airlines operating in Terminal 7 and the future Terminal 6 and concession revenues generated from the operation of Terminal 7 and the future Terminal 6, both described in **Chapter 5** of this Report. The Series 2024 Bonds and Loan Facility are non-recourse to the Issuer and the Port Authority.

Proceeds from the Series 2024 Bonds are anticipated to be used to:

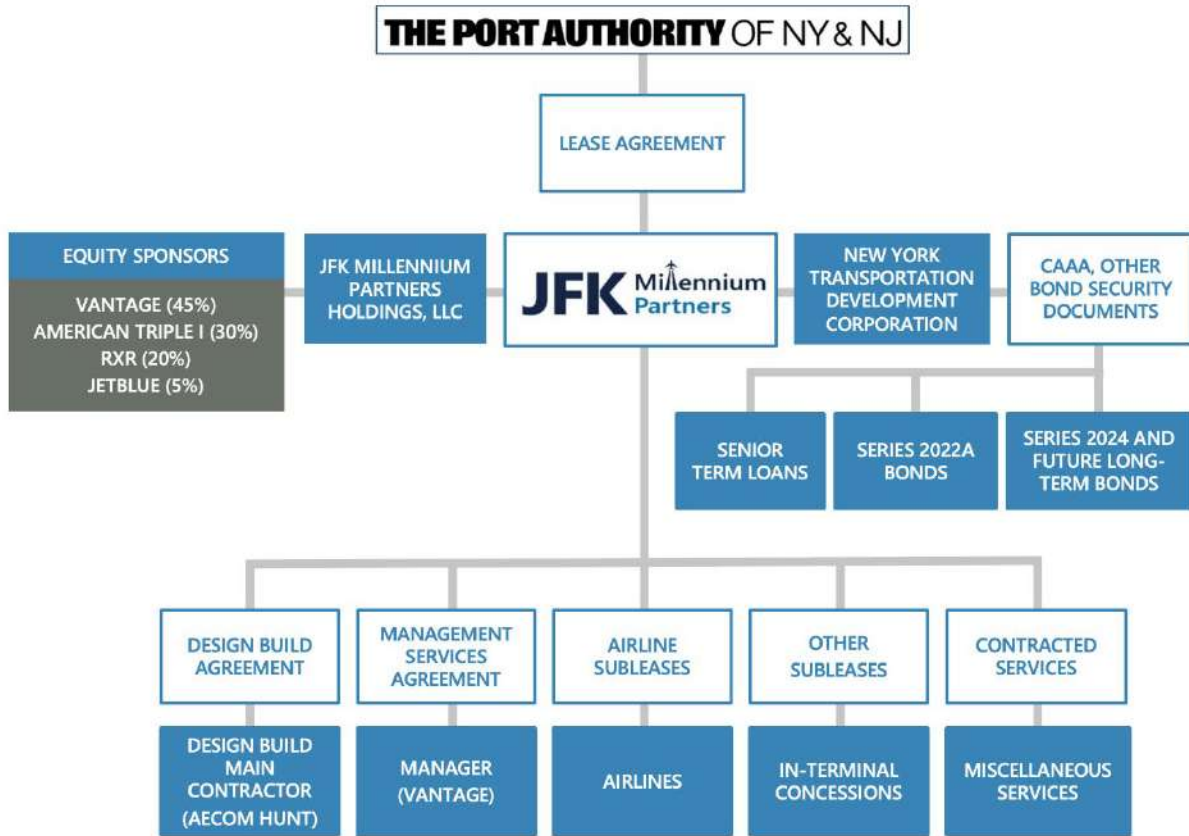
- (i) repay principal and associated accrued interest of a portion of the Loan Facility outstanding balance,
- (ii) pay charges, fees and mark-to-market payments related to settlement of certain interest rate hedge instruments associated with the portion of Loan Facility that is being refinanced, and
- (iii) to pay certain costs of issuance related to the Series 2024 Bonds.

A portion of the proceeds from the Series 2024 Bonds available for Project costs will be eligible for "green" projects as designated by Kestrel, an Approved Verifier accredited by the Climate Bonds Initiative (CBI).

Unless otherwise defined herein, all capitalized terms in this Report are used as defined in the Official Statement, including Appendix A "Definitions" thereto, the Indenture, or the Lease Agreement between JMP and the Port Authority.

**Exhibits 1-2** and **1-3** presents the Flow of Funds, Pre-substantial Completion and Post-substantial Completion, respectively, for the Project.

EXHIBIT 1-1 ORGANIZATIONAL STRUCTURE OF THE PROJECT



SOURCE: JFK Millennium Partners, LLC; Ricondo & Associates, Inc., October 2024.

EXHIBIT 1-2 FLOW OF FUNDS CASHFLOW WATERFALL, PRE-SUBSTANTIAL COMPLETION

<b>PRE-SUBSTANTIAL COMPLETION REVENUE ACCOUNT</b>				
<b>1</b>	Rebate Amount, then administrative fees to Secured Parties			
<b>2</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">Ground Rent, 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Additional Rent, any other Rental (excludes Concessions Revenue Rent, Excess Value Rent, and Equity Gain Share), MMRA Shortfall Amount</td> <td style="width: 20%; padding: 5px;">MAG Deficiency (50% during Deferral Period)</td> <td style="width: 30%; padding: 5px;">Permitted O&amp;M Expenses, Major Maintenance Expenses</td> </tr> </table>	Ground Rent, 1 <sup>st</sup> , 2 <sup>nd</sup> , and 3 <sup>rd</sup> Additional Rent, any other Rental (excludes Concessions Revenue Rent, Excess Value Rent, and Equity Gain Share), MMRA Shortfall Amount	MAG Deficiency (50% during Deferral Period)	Permitted O&M Expenses, Major Maintenance Expenses
Ground Rent, 1 <sup>st</sup> , 2 <sup>nd</sup> , and 3 <sup>rd</sup> Additional Rent, any other Rental (excludes Concessions Revenue Rent, Excess Value Rent, and Equity Gain Share), MMRA Shortfall Amount	MAG Deficiency (50% during Deferral Period)	Permitted O&M Expenses, Major Maintenance Expenses		
<b>3</b>	O&M Expenses not constituting Permitted O&M Expenses			
<b>4</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">Interest Payment Sub Accounts within Senior Obligations Payment Account</td> <td style="width: 50%; padding: 5px;">Hedge Ordinary Course Payment Account</td> </tr> </table>	Interest Payment Sub Accounts within Senior Obligations Payment Account	Hedge Ordinary Course Payment Account	
Interest Payment Sub Accounts within Senior Obligations Payment Account	Hedge Ordinary Course Payment Account			
<b>5</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">Principal Payment Sub Account within Senior Obligations Payment Account</td> <td style="width: 50%; padding: 5px;">Hedge Termination Payment Account</td> </tr> </table>	Principal Payment Sub Account within Senior Obligations Payment Account	Hedge Termination Payment Account	
Principal Payment Sub Account within Senior Obligations Payment Account	Hedge Termination Payment Account			
<b>6</b>	O&M Reserve Account			
<b>7</b>	Major Maintenance Reserve Account			
<b>8</b>	Interest Payment Sub Accounts (Subordinate Obligations Payment Account), then Principal Payments Sub Accounts (Subordinate Obligations Payment Account)			
<b>9</b>	(i) Subordinate Concessions Revenue Rent, then (ii) Deferred Concessions Revenue Rent, and then (iii) Remaining MAG Deficiency (during Deferral Period)			
<b>10</b>	Operating Cash Flow Sub Account within Construction Account OR Pre Substantial Completion Revenue Account			

SOURCE: JFK Millennium Partners, LLC, October 2024.

EXHIBIT 1-3 FLOW OF FUNDS CASHFLOW WATERFALL, POST-SUBSTANTIAL COMPLETION

<b>POST-SUBSTANTIAL COMPLETION REVENUE ACCOUNT</b>				
<b>1</b>	Rebate Amount, then administrative fees to Secured Parties			
<b>2</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">Ground Rent, 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Additional Rent, any other Rental (excludes Concessions Revenue Rent, Excess Value Rent, and Equity Gain Share), MMRA Shortfall Amount</td> <td style="width: 20%; padding: 5px;">MAG Deficiency (50% during Deferral Period)</td> <td style="width: 30%; padding: 5px;">Permitted O&amp;M Expenses, Major Maintenance Expenses</td> </tr> </table>	Ground Rent, 1 <sup>st</sup> , 2 <sup>nd</sup> , and 3 <sup>rd</sup> Additional Rent, any other Rental (excludes Concessions Revenue Rent, Excess Value Rent, and Equity Gain Share), MMRA Shortfall Amount	MAG Deficiency (50% during Deferral Period)	Permitted O&M Expenses, Major Maintenance Expenses
Ground Rent, 1 <sup>st</sup> , 2 <sup>nd</sup> , and 3 <sup>rd</sup> Additional Rent, any other Rental (excludes Concessions Revenue Rent, Excess Value Rent, and Equity Gain Share), MMRA Shortfall Amount	MAG Deficiency (50% during Deferral Period)	Permitted O&M Expenses, Major Maintenance Expenses		
<b>3</b>	O&M Expenses not constituting Permitted O&M Expenses			
<b>4</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">Interest Payment Sub Accounts within Senior Obligations Payment Account</td> <td style="width: 50%; padding: 5px;">Hedge Ordinary Course Payment Account</td> </tr> </table>	Interest Payment Sub Accounts within Senior Obligations Payment Account	Hedge Ordinary Course Payment Account	
Interest Payment Sub Accounts within Senior Obligations Payment Account	Hedge Ordinary Course Payment Account			
<b>5</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">Principal Payment Sub Account within Senior Obligations Payment Account</td> <td style="width: 50%; padding: 5px;">Hedge Termination Payment Account</td> </tr> </table>	Principal Payment Sub Account within Senior Obligations Payment Account	Hedge Termination Payment Account	
Principal Payment Sub Account within Senior Obligations Payment Account	Hedge Termination Payment Account			
<b>6</b>	Permitted Tax Distributions (unless Deferred Concessions Revenue Rent then owed)			
<b>7</b>	(i) Senior Debt Service Reserve Account, then (ii) Ramp Up Reserve Account			
<b>8</b>	O&M Reserve Account			
<b>9</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">Major Maintenance Reserve Account</td> <td style="width: 50%; padding: 5px;">Handback Reserve Account</td> </tr> </table>	Major Maintenance Reserve Account	Handback Reserve Account	
Major Maintenance Reserve Account	Handback Reserve Account			
<b>10</b>	Interest Payment Sub Accounts (Subordinate Obligations Payment Account), then Principal Payments Sub Accounts (Subordinate Obligations Payment Account)			
<b>11</b>	(i) Subordinate Concessions Revenue Rent, then (ii) Deferred Concessions Revenue Rent, and then (iii) Remaining MAG Deficiency (during Deferral Period)			
<b>12</b>	Remaining Revenue Account			

SOURCE: JFK Millennium Partners, LLC, October 2024.

## 2. AIRPORT FACILITIES, JFK REDEVELOPMENT PROGRAM, AND TERMINAL 6 REDEVELOPMENT PROJECT

Located in the New York City Borough of Queens, the Airport is 15 miles from midtown Manhattan. Accommodated within the existing Airport site are five operating passenger terminals and an elevated people mover system (the AirTrain) providing access to each of the terminals and other parts of the Airport, including the rental car center. In addition, the Airport has four runways, an airport traffic control tower (ATCT), associated hangars, multiple cargo facilities, associated parking facilities, and the on-airport TWA Hotel. The remainder of Airport property is used for airport or airline support functions, such as navigational aids and lighting, aircraft fuel storage, and equipment storage and maintenance. **Exhibit 2-1** is an aerial view of the Airport.

EXHIBIT 2-1 JFK INTERNATIONAL AIRPORT



SOURCE: Nearmap, August 2024 (aerial photography – for visual reference only, may not be to scale); JFK International Airport “Maps” <https://www.jfkairport.com/at-airport/airport-maps>, (accessed July 22, 2024)

## 2.1 PASSENGER TERMINALS

The airlines serving the Airport currently operate from Terminals 1, 4, 5, 7, and 8 which provide a total of 120 aircraft gates<sup>25</sup> and are connected via JFK's AirTrain system. Terminal 2 was demolished in 2023 to accommodate an expansion of Terminal 1. Terminals 3 and 6 were demolished in 2014 and 2011, respectively, to accommodate other terminal area developments. In contrast to most airports in the United States, where terminals are generally constructed and operated by the airport sponsor, the terminals at JFK were privately developed and are operated by private entities under long-term unit terminal ground leases with the Port Authority.

This section describes existing terminal facilities. Terminal development projects that are anticipated to impact and expand existing facilities are described in **Section 2.2**.

### *Terminal 1*

Terminal 1, which opened in May 1998, was built and is operated by the Terminal One Group Association (TOGA), L.P., a consortium of international airlines that consists of Air France, Korean Air, and Lufthansa as current partner airlines. The 700,000-square foot building provides access to 10 contact gates (defined as an aircraft parking position with access to the terminal via a passenger loading bridge), and 2 remote aircraft parking positions (defined as an aircraft parking position without direct access to a terminal). Terminal 1 has the ability to serve up to two Airplane Design Group (ADG) VI aircraft (equivalent to the Airbus A380 and Boeing 747-8), however, this restricts the use of adjacent gates. The terminal houses its own FIS facility to process inbound international passengers through customs and immigration. As of October 2024, 27 airlines operate from Terminal 1.<sup>26</sup>

As described in **Section 2.1.2**, Terminal 1 is currently undergoing redevelopment. It will replace the existing terminal and expand to encompass the area of the recently demolished Terminal 2 and the previously demolished Terminal 3. The redeveloped terminal, branded "New Terminal One (NTO)," is further described in **Section 2.2**. The lease for Terminal 1 held by TOGA expires at the time NTO Phase A opens, which is anticipated to be on June 1, 2026, or in 2028 if Phase A is not completed by then.

### *Terminal 4*

The two million square foot Terminal 4, developed and operated by JFK International Air Terminal (JFKIAT)<sup>27</sup>, opened in May 2001. Terminal 4 has undergone three major expansions/renovations, one in 2013 (Phase 1), one in 2015 (Phase 2), and another that concluded in 2023 (Phase 2.5).<sup>28</sup> Terminal 4 completed its \$1.5 billion expansion as part of the JFK Redevelopment Program in 2023 adding five net new gates. This coincided with Delta relocating all its Terminal 2 operations (10 gates) to Terminal 4 and the demolition of Terminal 2. The terminal houses two

---

<sup>25</sup> See **Table 2-2** for details on gates. Gate counts may vary due to parking positions. In certain conditions, a single widebody gate may accommodate multiple smaller aircraft.

<sup>26</sup> John F. Kennedy International Airport, "Airlines," <https://www.jfkairport.com/flight/airlines> and "Terminals" <https://new-york-jfk-airport.com/guide/terminals> (accessed July 22, 2024).

<sup>27</sup> JFKIAT's airline parties include Delta, Aeromexico, Air Europa, Air India, Avianca, Caribbean Airlines, China Airlines, Copa Airlines, El Al, Emirates, Etihad Airways, Hawaiian Airlines, Kenya Airways, KLM Royal Dutch Airlines, LATAM, Singapore Airlines, Uzbekistan Airlines, Virgin Atlantic, WestJet Airlines, and Xiamen Airlines.

<sup>28</sup> Delta's portion of the expansion is complete while \$150 million of upgrades for the rest of the terminal are expected to be completed by 2025. Furthermore, Delta has an option, which it has not exercised, to commence a second phase of the Terminal 4 redevelopment which would add 12 more narrowbody aircraft gates, an expanded headhouse, and upgraded terminal frontage according to the New York Transportation Development Corporation Special Facilities Revenue Bonds, Series 2024 Offering Statement published June 2024.

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

concourses and a 24-hour, 7 days a week, FIS facility and serves several international airlines in addition to its largest tenant, Delta. As of October 2024, 20 airlines operate from Terminal 4 which has 38 gates in operation.<sup>29</sup>

### **Terminal 5**

Terminal 5 was constructed behind the former TWA Flight Center, which closed in 2001 and is currently the site for the Airport's only on-airport hotel, as discussed in **Section 2.2.5**. Terminal 5 opened in October 2008 and underwent expansion in 2014. The facility was funded by the Port Authority and built by JetBlue, which operates the terminal under a lease that extends through October 2041. The 676,000-square-foot facility provides access to 29 narrowbody aircraft contact gates and 13 remote aircraft parking positions, including six international gates with FIS facilities that opened in November 2014. As of October 2024, two airlines operate from Terminal 5, JetBlue and Cape Air.<sup>30</sup>

### **Terminal 7**

Terminal 7 opened in 1972 and was previously operated by British Airways but is now operated by JFK Millennium Partners, LLC pursuant to the Lease Agreement. Under the Lease Agreement, JMP will operate Terminal 7 until Phase 1 of Terminal 6 is complete (in the first quarter of 2026), at which point Terminal 7 will be demolished and Phase 2 of Terminal 6 will be constructed in its place. Serving both international and domestic flights, the 534,456-square-foot terminal building provides access to nine contact gates and houses an FIS facility. As of October 2024, 13 airlines operate from Terminal 7.

### **Terminal 8**

The new Terminal 8 opened in 2007 and services both international and domestic flights. The terminal was built and is operated by American Airlines under a lease that expires in December 2036. The 1.8 million-square-foot terminal building was expanded in 2022 at a cost of \$400 million which consisted of the addition of 130,000 square feet of space, five new widebody gates, four new widebody parking positions, and an improved baggage handling system, as well as a reduction of narrowbody and regional jet gates.

Following the redevelopment and the completion of the Terminal 8 expansion plan, British Airways and American Airlines co-located their operations in the new terminal. As of October 2024, 11 airlines<sup>31</sup> operate from Terminal 8 which has 31 gates<sup>32</sup> in operation and houses an FIS facility.

## **2.1.2 JFK REDEVELOPMENT PROGRAM**

The Airport is currently undergoing an extensive redevelopment program (including the Project) in an effort to improve customer experience, customer service, operational efficiency, and to address needs for additional capacity. The Port Authority intends for the Airport-wide program to provide redeveloped terminals, better roadway access, modern amenities, more efficient taxiways, and updated security. Note the redevelopment of Terminals 4 and 8 is functionally complete and is described in **Section 2.1**.

---

<sup>29</sup> John F. Kennedy International Airport, "Airlines," <https://www.jfkairport.com/flight/airlines> and "Terminals" <https://new-york-jfk-airport.com/guide/terminals> (accessed July 22, 2024).

<sup>30</sup> *Ibid.*

<sup>31</sup> John F. Kennedy International Airport, "Airlines," <https://www.jfkairport.com/flight/airlines> and "Terminals" <https://new-york-jfk-airport.com/guide/terminals> (accessed July 22, 2024).

<sup>32</sup> New York Transportation Development Corporation Special Facilities Revenue Bonds, Series 2024 Offering Statement published June 2024.



JOHN F. KENNEDY INTERNATIONAL AIRPORT

**Table 2-1** presents the terminal operators and hub airlines at those terminals, where applicable. At JFK, American, Delta, and JetBlue operate hubs, with each airline scheduling 90 or more scheduled average daily departures to at least 50 different destinations.

TABLE 2-1 JFK REDEVELOPMENT PROGRAM TERMINAL USE

TERMINAL	EXISTING		FUTURE	
	OPERATOR	HUB AIRLINE	OPERATOR	HUB AIRLINE
Terminal 1		NONE		NONE
Terminal 4				
Terminal 5				
Terminal 6				NONE
Terminal 7		NONE		
Terminal 8				

NOTES:

Hub Airline indicates an airline that has a concentration of activity at the terminal and represents a material portion or majority of passenger activity at the terminal. Terminal 1 is operated by Terminal One Group Association (TOGA), L.P., a consortium of international airlines that consists of Air France, Korean Air, and Lufthansa as current partner airlines. As of October 2024, 27 airlines operate from Terminal 1. New Terminal One has previously disclosed they have secured commitments from Air France, Etihad Airways, KLM Royal Dutch Airlines, Korean Air, LOT Polish Airlines, EVA Air, Air Serbia, Scandinavian Airlines, and Neos.

As of the date of this Report, JMP has negotiated letters of intent with term sheets outlining the terms and conditions for a sublease with seven Expected Airlines including Aer Lingus, Cathay Pacific, Lufthansa AG (including its affiliates Austrian Airlines, Brussels Airlines and Swiss International Air Lines), and one additional long-haul foreign flag airline.

SOURCES: New York Transportation Development Corporation Special Facilities Revenue Bonds, Series 2024 Offering Statement published June 2024 (applies to New Terminal One); The New Terminal One, "The New Terminal One and Italian Airline Neos announce partnership for operations at JFK Airport," September 2024; Ricondo and Associates, October 2024.

### ***New Terminal 1***

The NTO project includes the construction of a new terminal in replacement of current operating Terminal 1 and the recently demolished Terminal 2. The NTO footprint will encompass the demolished Terminal 2 site, the former Terminal 3 site, a portion of the Terminal 4 site, the Green Garage site, and the existing Terminal 1 site. It is anticipated to be built in three phases, subject to certain passenger activity triggers. The project is privately financed by a consortium of labor, operating and financial partners, including Ferrovial, JLC Infrastructure, Ullico and Carlyle.

Phase A, which has an estimated cost of \$8.424 billion (including demolition, construction, financing, and other costs),<sup>33</sup> will include the construction of the headhouse, east concourse, and associated aprons and roadways adding up to approximately 1.8 million square feet of terminal space<sup>34</sup>. Expected to be complete by mid-2026, Phase A will provide 13 widebody gates, one temporary widebody gate, five hardstands, a departures level and arrivals level, and an FIS facility. Phases B1 and B2, which require reaching specific triggers to commence, include a second concourse with an additional 9 gates for a total of 23 gates (Phase B1 will include 4 widebody gates and 1 narrowbody gate and Phase B2 will include 4 widebody gates). The new terminal is anticipated to have the capability to serve ADG VI aircraft and, while capable, is not intended to serve domestic operations.

All three phases of the NTO could be completed by the end of 2029 if Phase B1 commences following Phase A, and Phase B2 follows the completion of Phase B1. Triggers related to the phases include traffic levels and credit rating conditions. The traffic triggers, different for Phase B1 and B2, address Airport-wide international enplaned passenger activity or NTO enplaned passenger activity. If traffic levels are reached, the NTO lease requires the operator to proceed with the next project phase, subject to certain provisions. A traffic trigger for Phase B1 is reached when six months of Airport international enplaned passengers are equal to or exceed the activity in the same six-month period in 2019. Based on Port Authority data, international enplaned passengers at JFK during the six-month period from March to August 2024 were approximately 102.6 percent of the count for the same period in 2019.

### ***Terminal 6***

Terminal 6, the focus of this Report, is an ongoing, approximately \$5.0 billion development of a new terminal to replace Terminal 7. Terminal 6 will include 10 gates, of which 9 are international widebody gates. Construction began in 2022 and will be delivered in two phases. Terminal 6 will open at the completion of the first phase which is scheduled to be in the first quarter of 2026 with the second phase scheduled to be complete in the first quarter of 2028. Further details regarding Terminal 6 are provided in **Section 2.1.3**.

**Exhibit 2-2** presents a comparison of the Airport terminal complex during the JFK Redevelopment Program in 2019, 2024, and in the future following the completion of ongoing projects. **Table 2-2** presents the corresponding gates by size and terminal.

---

<sup>33</sup> Estimated project cost for NTO Phase A only per the New York Transportation Development Corporation Special Facilities Revenue Bonds, Series 2024 Offering Statement published June 2024.

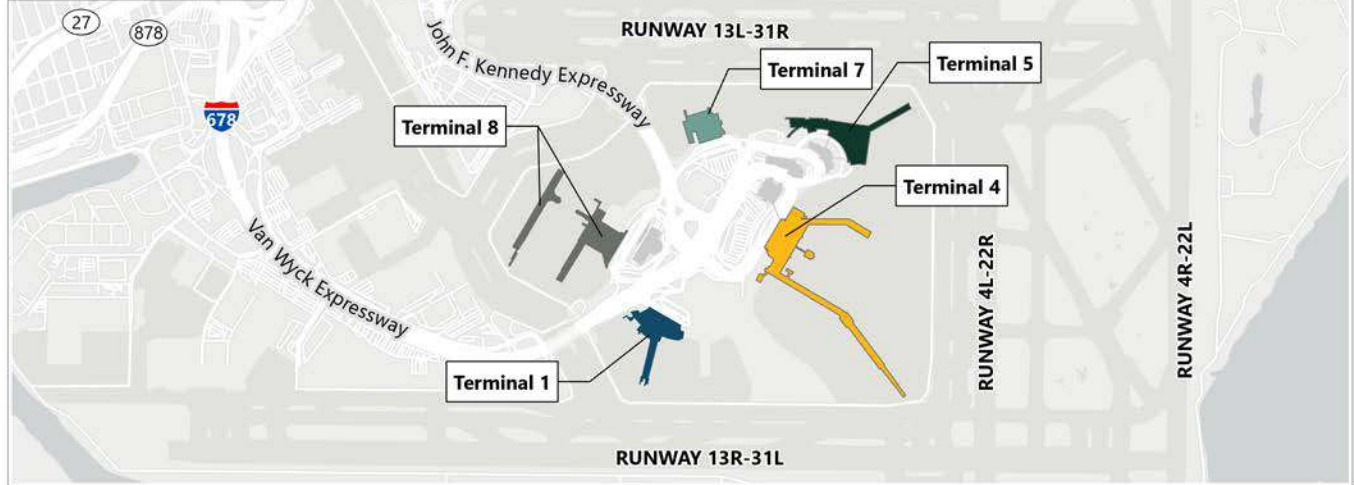
<sup>34</sup> Estimated terminal footprints per the New York Transportation Development Corporation Special Facilities Revenue Bonds, Series 2024 Offering Statement published June 2024.

JOHN F. KENNEDY INTERNATIONAL AIRPORT

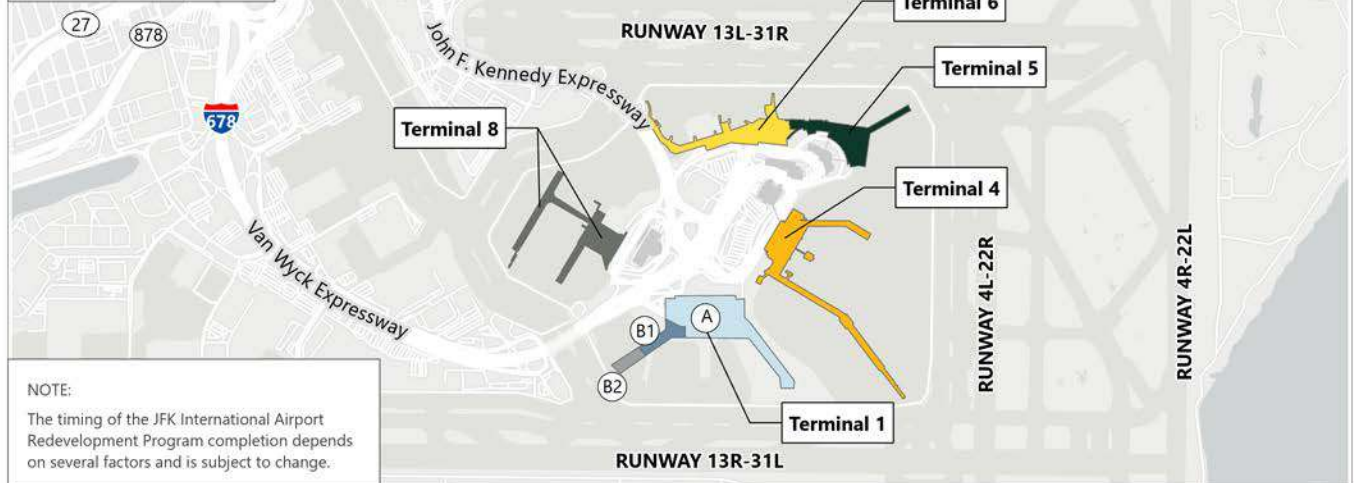
Terminal Complex before Redevelopment (2019)



Current Terminal Complex (2024)



Future Terminal Complex (2029)



NOTE:  
The timing of the JFK International Airport Redevelopment Program completion depends on several factors and is subject to change.

SOURCES: NYC OpenData; Esri, TomTom, Garmin, SafeGrphic, GeoTechnologies, Inc., METI/NASA, USGS, EPA, NPAS, US Census Bureau, USDA, USFWS, August 2024 (basemap); New York City Open Data, 2022 (terminals); Port Authority of NY & NJ John F. Kennedy International Airport, "JFK Redevelopment Program Overview," January 2020; John F. Kennedy International Airport, "Terminals" <https://new-york-jfk-airport.com/guide/terminals> (accessed July 22, 2024); New York Transportation Development Corporation Special Facilities Revenue Bonds, Series 2024 Offering Statement published June 2024; JFK Millennium Partners, LLC.

EXHIBIT 2-2



JFK TERMINAL COMPLEX REDEVELOPMENT

JOHN F. KENNEDY INTERNATIONAL AIRPORT

TABLE 2-2 JFK REDEVELOPMENT PROGRAM GATE COUNT

PREVIOUS (2019)					EXISTING (2024)					FUTURE <sup>1</sup>				
	REGIONAL JET	NARROWB ODY	WIDEBOY	TOTAL GATES		REGIONAL JET	NARROWB ODY	WIDEBOY	TOTAL GATES		REGIONAL JET	NARROWB ODY	WIDEBOY	TOTAL GATES
T1		0	10	10	T1			10	10	T1 <sup>2</sup>		1 Total 0 in Phase A	22 Total 14 in Phase A	23 Total 14 in Phase A
T2		1	9	10	T2	-	-	-	-	T2		-	-	-
T4	11	0	25	36	T4	11	7	23	41	T4 <sup>3</sup>	11	7	23	41
T5		29		29	T5		29	0	29	T5		29	0	29
T6		-	-	-	T6		-	-	-	T6		1	9	10
T7		6	6	12	T7		4	5	9	T7				
T8	6	21	8	35	T8		17	14	31	T8		17	14	31
<b>TOTAL</b>	<b>17</b>	<b>57</b>	<b>58</b>	<b>132</b>	<b>TOTAL</b>	<b>11</b>	<b>57</b>	<b>52</b>	<b>120</b>	<b>TOTAL</b>	<b>11</b>	<b>55</b>	<b>68</b>	<b>134</b>

NOTES:

Gate counts may vary due to parking positions. In certain conditions, a single widebody gate may accommodate multiple smaller aircraft.

1 Future represents the estimated gates for ongoing capital programs, as noted.

2 New Terminal One (NTO) will be delivered in phases; Phase A, Phase B1, and Phase B2. Total includes all three phases allowed in the NTO lease and assumes triggers are met.

3 Does not include a potential second phase of Concourse A expansion (first phase completed in 2023).

SOURCES: John F. Kennedy International Airport, "Terminals" <https://new-york-jfk-airport.com/guide/terminals> (accessed July 22, 2024); ASM, "Airline Traffic and Economic Analysis Report, JFK International Airport Terminal 6," June 2024; New York Transportation Development Corporation Special Facilities Revenue Bonds, Series 2024 Offering Statement published June 2024; Department of Transportation, Federal Aviation Administration Eastern Region, "Preliminary Draft of Environmental Assessment Prepared for the John F Kennedy (JFK) International Airport Redevelopment Program at JFK International Airport; Department of Transportation, Federal Aviation Administration Eastern Region, "Written Re-Evaluation and record of Decision for the Final Environmental Assessment Prepared for the John F Kennedy (JFK) International Airport Redevelopment Program at JFK International Airport," May 31, 2022; JFK Millennium Partners, LLC, September 2024; Terminal layout interpretations by Ricondo & Associates, October 2024.

### ***The Roadways, Utilities and Ground Transportation Center Project***

In conjunction with the terminal projects, the JFK Redevelopment Program includes a \$1.24 billion Roadways, Utilities and Ground Transportation Center Project (RUGTC) with an expected completion date of December 2027.<sup>35</sup> It will be delivered by Skanska Halmar JFK Joint Venture (SHJV), a Port-sanctioned joint venture consisting of Skanska USA Civil NE and Halmar International LLC. The project includes streamlining and modernizing the Airport's roadway network, improving traffic and wayfinding technologies, and relocating and upgrading utilities. The main part of the RUGTC project is constructing an eco-conscious, multi-level Ground Transportation Center (GTC) with a modern design.<sup>36</sup> The project's GTC will feature 1,950 parking spaces, electric vehicle charging stations, an elevated pedestrian bridge with a bicycle lane, and renewable energy features such as solar paneling and a rainwater harvesting facility.

#### **2.1.3 TERMINAL 6 REDEVELOPMENT PROJECT**

The original Terminal 6 was demolished in 2011, and Terminal 7 is anticipated to cease operations and be demolished in 2026, providing a 65-acre site for the Terminal 6 development to be completed by 2028. In August 2021, the Port Authority approved a lease agreement as one of the first post-COVID lease agreements in JFK's Redevelopment Program. This lease agreement, executed in 2022 and extending through 2060, is in partnership with JMP to finance, redesign, build, and operate Terminal 6 and also to operate and ultimately demolish Terminal 7 (at the time of completion of Terminal 6 Phase 1).

The construction of Terminal 6 includes an estimated 1.2 million square foot terminal with 10 gates (nine are widebody gates and one is a narrowbody gate), six premier airline lounges post-TSA security, seamless connectivity between Terminals 5 and 6, and improved airside operations with expanded taxilanes which will facilitate more efficient turn times and Minimum Connect Times (MCTs) between airlines. The Project also includes direct access to two AirTrain stations, and a Ground Transportation Center (separate from the centralized GTC which is part of the RUGTC project). Terminal 6 will connect with Terminal 5 (on Level 2 of Terminal 6) to allow airline interconnectivity and a dedicated Terminal 6 FIS facility creating efficient passenger flow. Terminal 6 is anticipated to accommodate ADG V aircraft (equivalent to up to the Boeing 777x and Airbus 350 families) and include three Multiple Apron Ramp System (MARS) gates that can each accommodate one widebody or two narrowbody aircraft. Other highlights of the Terminal 6 project include a modern self-service bag drop, automated Transportation Security Administration (TSA) security lanes, a biometric-based access control systems, on-site aircraft parking positions, inbound and outbound baggage systems, and on-site de-icing pads.

Pursuant to the Lease Agreement, JMP will also be responsible for the construction of certain Off-Premises Facilities which are included in the Project costs, but JMP will not be responsible for operating these new off-Airport facilities.<sup>37</sup>

**Exhibit 2-3** shows the site layout of the Terminal 6 project.

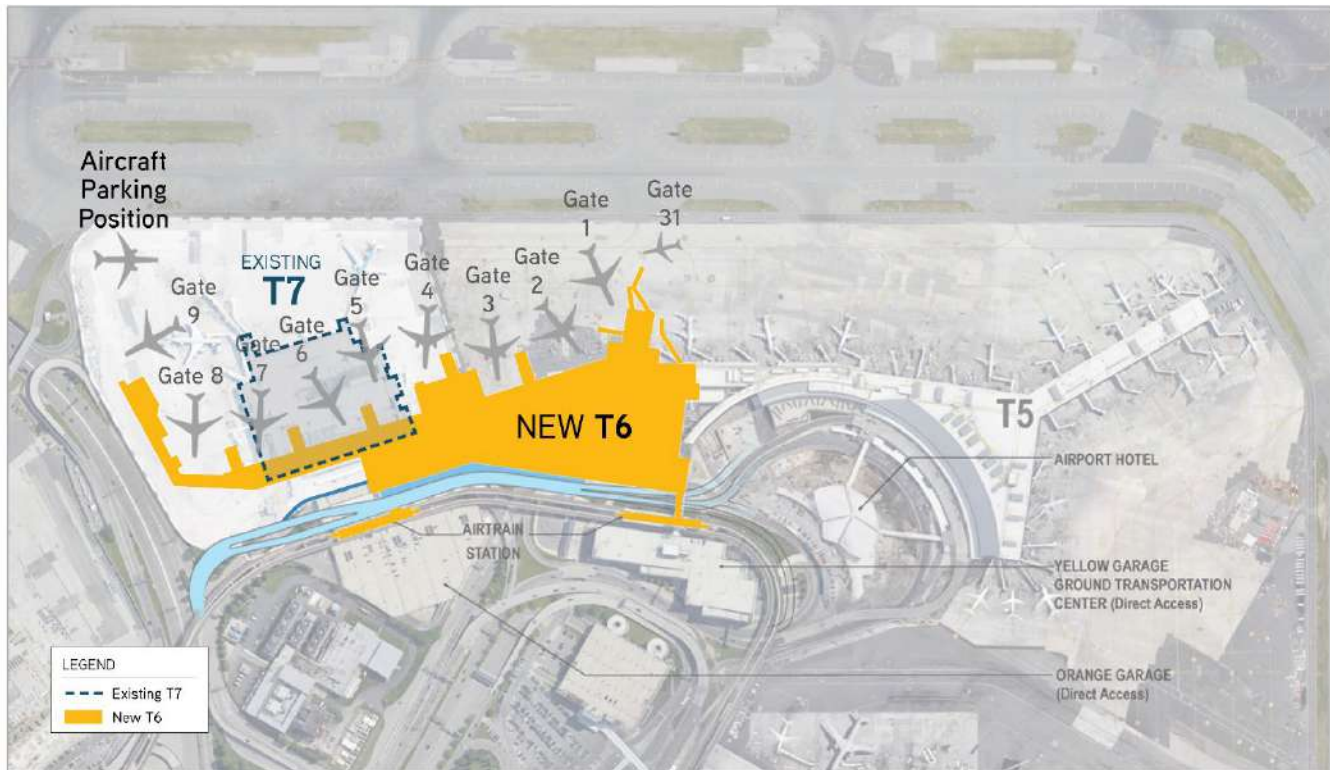
---

<sup>35</sup> John F. Kennedy International Airport, <https://www.anewjfk.com/projects/shjv-roadways-and-gtc/> (accessed July 22, 2024).

<sup>36</sup> The centralized GTC that is a part of the JFK Redevelopment Program RUGTC project is separate and distinct from the Terminal 6 Redevelopment Project's ground transportation center adjacent to Terminals 5 and 6.

<sup>37</sup> These off-Premises facilities generally include projects that tie into work on-Premises such as adjustments to the Terminal 5 frontage and access roads, connectivity of supporting infrastructure, adjustments to the Yellow Garage ground floor entrance area, construction of the bridge connector connecting the Terminal 5 Parking Garage and the Orange Garage, the construction of a new Taxi Plaza, adjustments to the Terminal 5 HOV curbside, aesthetic improvements to the existing bridge between the Terminal 7 AirTrain station and the Existing Terminal Facilities, the relocation of existing Terminal 5 Gate 30 and certain other modifications to Terminal 5 necessary to accommodate the connection of Terminal 6, adjustment to the off-Premises taxiway throats on the north side of the Terminal 6 Parcel, and necessary temporary facilities off the Premises.

## EXHIBIT 2-3 TERMINAL 6 SITE LAYOUT



## NOTE:

Gate T6-6 and T6-9 are Multiple Apron Ramp System (MARS) gates that can also accommodate 1 WB or two NB aircraft.

SOURCE: JFK Millennium Partners, LLC, June 2022.

In addition to a sublease with JetBlue for rental of one narrowbody gate in Terminal 6. JMP has negotiated non-binding letters of intent with term sheets outlining the terms and conditions of a sublease with each of the seven Expected Airlines including Aer Lingus, Cathay Pacific, Lufthansa AG (including its affiliates Austrian Airlines, Brussels Airlines and Swiss International Air Lines), and one additional long-haul foreign flag airline through at least 2040.

For purposes of this Report, the elements of the Project that are the subject to the Lease Agreement with the Port Authority and generate the Project Revenues pledged to the Series 2024 Bonds and parity lenders are listed below and are collectively defined as the Project.

- **Terminal 6** –Terminal 6 will include four levels with the following organization:
  - Level 3 will include the east and west check-in halls with a central TSA security checkpoint and post-security airline lounges;
  - Level 2 will be the concourse level with terminal concessions, airline lounges, and holdrooms; will connect to Terminal 5, post-TSA security
  - Level 1.5 will include a sterile corridor connecting gates to the FIS facility; and
  - Level 1 will include arrival experiences such as a premium arrival lounge for both international and domestic passengers, ground transportation, and a domestic baggage claim.
- **Terminal 6 Apron Improvements** – Construction of the apron for the 10 new gates, nine of which will be widebody capable; three of the nine widebody gates will be MARS capable gates.

JOHN F. KENNEDY INTERNATIONAL AIRPORT

- **Roadways** – Construction of temporary and permanent terminal frontage and access roads.

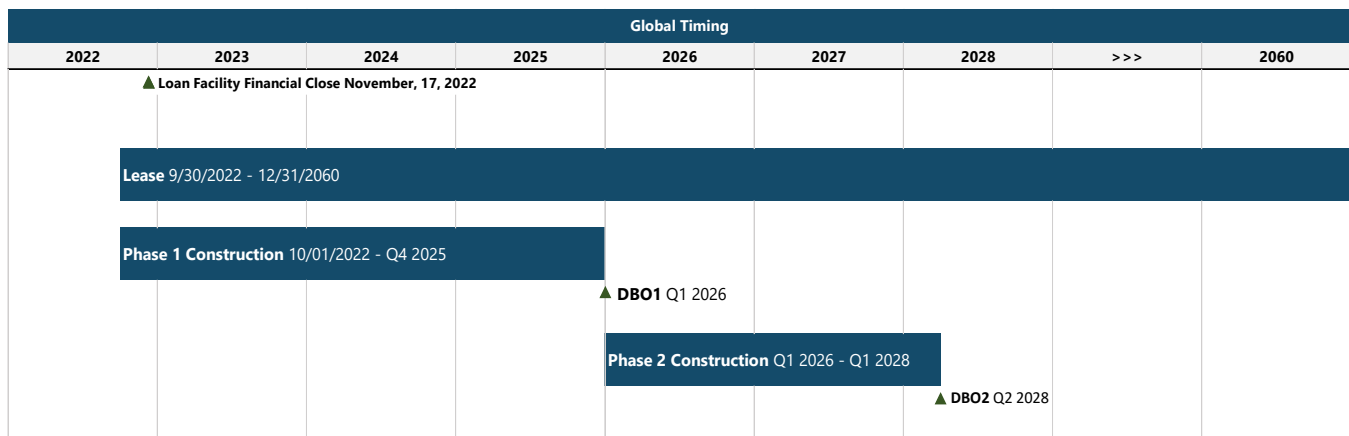
As part of the Project, JMP is also responsible for delivering the GTC (part of the off-premises work described above), but there are no revenues associated with it. Development will include a transformation of the ground floor of the Terminal 5 Yellow Parking Garage and the adjacent portion of the roadway network into a new GTC. The GTC will include a for-hire-vehicle (FHV) and personal vehicles loading area and will create a consolidated area for Terminal 6’s passengers to access ground transportation options to and from the Airport that are within walking distance from Terminal 6’s arrivals area. In addition, the roadways portion of the project will separate Terminal 6 landside traffic from Terminal 5’s landside traffic. This work is separate from the RUGTC’s centralized GTC described in **Section 2.1.2**.

**2.1.3.1 TERMINAL 6 CONSTRUCTION SCHEDULE AND PHASING**

**Exhibit 2-4** shows the anticipated construction schedule for Terminal 6. Construction began in the third quarter of 2022 and will continue through the first quarter of 2028. During the construction period, Terminal 7 will operate and be replaced in phases. Demolition of certain existing structures, fixtures, and other improvements on the existing Terminal 7 site and development of Terminal 6 and GTC will occur simultaneously, with different parts of existing Terminal 7 taken offline as Terminal 6 becomes operational in order to support the transition of operations. The development is divided into two major phases, during which existing facilities will be demolished and replaced with new facilities.

During Phase 1, JMP is operating the existing Terminal 7. Phase 1 includes the construction of the Terminal 6 headhouse and departure and arrivals area, which will include five new gates anticipated to be open in 2026: four widebody and one narrowbody, to be built on the vacant site previously occupied by Terminal 6 before its demolition in 2011. After Phase 1’s anticipated completion in 2026, Phase 2 will commence with the demolition of Terminal 7. It is anticipated that one additional widebody gate will be added by the third quarter of 2026 after completion of Phase 1 but before the completion of Phase 2. The construction of Phase 2 is anticipated to be completed before the second quarter of 2028. In total, the Project will include the construction of 10 gates, including nine widebody gates, and associated terminal space which will replace the decommissioned gates at Terminal 7.

**EXHIBIT 2-4 TERMINAL 6 REDEVELOPMENT CONSTRUCTION SCHEDULE**



NOTES:  
 DBO – Date of Beneficial Occupancy  
 The schedule reflects estimates provided by JMP in September 2024.  
 SOURCE: JFK Millennium Partners, LLC, October 2024.

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

**2.1.3.2 TERMINAL 6 GATE CAPACITY**

Pre-construction gate capacity in existing Terminal 7 is 6 narrowbody gates and 6 widebody gates. Upon Terminal 6 Phase 1 Date of Beneficial Occupancy (DBO1), 5 new gates will open and Terminal 7 gates will close in anticipation of its demolition. The aircraft parking plan for the full Terminal 6 Redevelopment Project includes 10 gates capable of international service of which nine are widebody gates and one is a narrowbody gate. The improvements replace several narrowbody gates with widebody gates, which should accommodate greater passenger activity through Terminal 6.

In the initial construction phases, it is expected that all airlines will continue operating from the same existing gates as they operate today, although three gates have closed in existing Terminal 7 to accommodate construction of Terminal 6. The number of available gates at Terminal 7 will fluctuate during construction.

Airline facilities within the Terminal 6 check-in area and concourses will use common-use equipment, anticipated to allow operational flexibility during irregular and normal operations. JMP expects that Terminal 6 will have sufficient gate capacity to accommodate projected aeronautical activity discussed in Section 4.6 of this Report.

**2.1.3.3 PROJECT FUNDING SOURCES AND USES**

A combination of sources will be used to fund Terminal 6 development, including the Loan Facility,<sup>38</sup> sponsor equity, Project Revenues, interest income, and potentially proceeds from the termination of hedges related to the refinancing of the Loan Facility. **Table 2-3** shows the sources and uses of funds. The total cost is approximately \$5.0 billion. Approximately \$3.54 billion is funded with loan proceeds; approximately \$84.3 million is funded with net operating cash; approximately \$1.3 billion is funded from sponsor equity; and approximately \$61.9 million of the Project costs is funded by interest income. The uses of funds include construction of the new facilities, the payment of ongoing financing related costs and capitalized interest, and reserves and contingencies.

Total Project costs for construction, design, and financing are estimated to be approximately \$5.0 billion]. The estimated Project costs are provided in Table 2-3.

**TABLE 2-3 TERMINAL 6 REDEVELOPMENT ESTIMATED SOURCES AND USES OF FUNDS**

SOURCES OF FUNDS	MILLIONS \$	USES OF FUNDS	MILLIONS \$
Series 2024 Bond Proceeds	\$1,578.1	Construction Costs	\$2,790.7
Construction Loan Facility Proceeds	\$1,965.3	Prepayment of 3rd Additional Rent	\$33.0
Construction Cash Account Withdrawal	\$84.3	Port Authority Oversight Costs	\$40.0
Interest Income from Reserves	\$19.0	Development Costs	\$220.7
Interest Income Other	\$42.9	Interest During Construction	\$811.5
Equity	\$1,300.0	Funding of Reserves and Cash Account Deposit	\$668.8
		Cost of Issuance	\$208.9
		LOC Costs	\$216.1
<b>Total Sources of Funds</b>	<b>\$4,989.7</b>	<b>Total Project Costs</b>	<b>\$4,989.7</b>

## NOTES:

Figures may not sum precisely due to rounding.

SOURCE: JFK Millennium Partners, LLC, October 2024.

<sup>38</sup> The proceeds of the Series 2024 Bonds will be used to pay down a portion of the Loan Facility.



## 2.2 OTHER AIRPORT FACILITIES

### 2.2.1 AIRFIELD

The Airport has four runways, made up of two pairs of parallel runways:

- Runway 13R-31L, 14,500 feet long and 200 feet wide;
- Runway 13L-31R, 10,000 feet long and 200 feet wide;
- Runway 4L-22R, 12,000 feet long and 200 feet wide; and
- Runway 4R-22L, 8,400 feet long and 200 feet wide.

All runways have high-intensity runway edge lighting, centerline and taxiway exit lighting, and a sign system that is illuminated at night for taxiing aircraft. All runways are grooved to enhance safety.

### 2.2.2 AIRPORT SUPPORT AND AIR CARGO AREAS

The Airport's cargo facilities consist of nearly 4 million square feet of air cargo and office space. Facilities include cargo handling and service facilities (including an animal handling facility), a US Post Office Airport Mail Facility, and an Airport Travel Plaza facility. The Airport Travel Plaza also includes truck fueling, truck parking, and other services. The ARK at JFK is the Airport's animal handling facility, offering veterinary capabilities; kenneling; and handling of equine, bovine, swine, birds, and exotic and zoo animals.

In late 2023, Worldwide Flight Services (WFS) announced it was building a new, 346,000-square-foot cargo facility at the Airport.<sup>39</sup> The facility is anticipated to open in early 2025 and will include a handling facility for temperature-controlled goods such as pharmaceuticals and perishables.<sup>40</sup>

### 2.2.3 LANDSIDE ACCESS

The Airport is accessible directly from Interstate-678 and provides access to the interstate highway system in and around the Air Trade Area. The Airport includes designated lots to pick up and drop off passengers, as well as staging lots for ride share and taxi services. Public transportation to the Airport includes the AirTrain, which provides landside access between Airport terminals and directly connects to both the Metropolitan Transportation Authority (MTA) subway lines and the Long Island Rail Road (LIRR) at Jamaica Station. The AirTrain also connects to the MTA subway at Howard Beach Station, allowing easy access to New York City, Penn Station, Atlantic Terminal, and all Long Island destinations. Additionally, the AirTrain connects to Federal Circle Station, providing access to car rentals at the Airport. MTA buses provide service between the Airport, Brooklyn, Queens, and beyond with subway connections. Currently, no rail or subway, besides the AirTrain, serves the Airport directly.

### 2.2.4 PARKING

The Airport currently provides over 14,000 public parking spaces, including terminal parking and long-term parking. Each operating terminal connects to a designated parking lot. The Blue Lot is located across Terminal 4, the Yellow Lot is located across Terminal 5, the Orange Lot is located across Terminal 7, and the Red Lot is located across Terminal 8 and currently serves Terminal 1 as well. Each parking lot has access to the AirTrain, providing transportation between the terminals, parking lots, parking garages, and two train stations. Parking Lot 9, designated as long-term parking, is located off the Nassau Expressway, and can be accessed by the AirTrain or MTA buses.

---

<sup>39</sup> Aviation Business News, "WFS to grow cargo capacity at JFK with new 346,000sq ft facility," October 26, 2023.

<sup>40</sup> *Ibid.*

### 2.2.5 ON-AIRPORT HOTEL

The Airport currently has one on-airport hotel with direct access to the terminals. The TWA Hotel was originally built in 1962 as an airport terminal for Trans World Airlines (TWA), but the airline ceased all passenger activity in 2001 after it was acquired by American Airlines.<sup>41</sup> The terminal's original headhouse, listed in the National Register of Historic Places, was preserved and is now the site of a 512-guestroom hotel.

The hotel is located with direct walking access to Terminal 5 which is adjacent to Terminal 6 and the AirTrain which can be used to access the other Airport terminals. Facilities in the hotel include 50,000 square feet of meeting and event space, a fitness center, food halls and shop, a rooftop swimming pool, an observation deck overlooking the Airport's runways, and a cocktail lounge inside a restored Lockheed Constellation L-1649A aircraft.

---

<sup>41</sup> "TWA History," TWA history, December 11, 2013, <http://twamuseum.com/htdocs/twahistory2.htm>.

## 3. DEMOGRAPHIC AND ECONOMIC ANALYSIS

The demand for air transportation at an airport is, to a large degree, dependent upon the demographic and economic characteristics of the geographical area surrounding the airport. This chapter presents data indicating that the Airport's Air Trade Area (defined in **Section 3.1**) has an economic base capable of supporting increased airline traffic demand discussed in Chapter 4.

### 3.1 AIR TRADE AREA

An Air Trade Area is the geographical area served by an airport, and the boundaries of an airport's Air Trade Area are influenced by such factors as the location of other metropolitan areas and their associated airport facilities. For purposes of this Report, the Airport's Air Trade Area consists of the New York-Newark-Jersey City, NY-NJ Metropolitan Statistical Area and the Bridgeport-Stamford-Norwalk, CT Metropolitan Statistical Area).<sup>42</sup> As presented in **Exhibit 3-1**, the Airport's Air Trade Area encompasses 23 counties in three states: Fairfield County in Connecticut; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, and Union Counties in New Jersey; and Bronx, Kings, Nassau, New York, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester Counties in New York.<sup>43</sup> The Air Trade Area is served by five commercial airports, which are discussed in further detail in this Chapter. Demographic, economic, and competitive factors all affect the market for air travel in the Air Trade Area. Ricondo considered these factors when evaluating the activity forecast for the Airport and, specifically, for Terminal 6.

#### 3.1.1 AIRPORTS SERVING THE AIR TRADE AREA

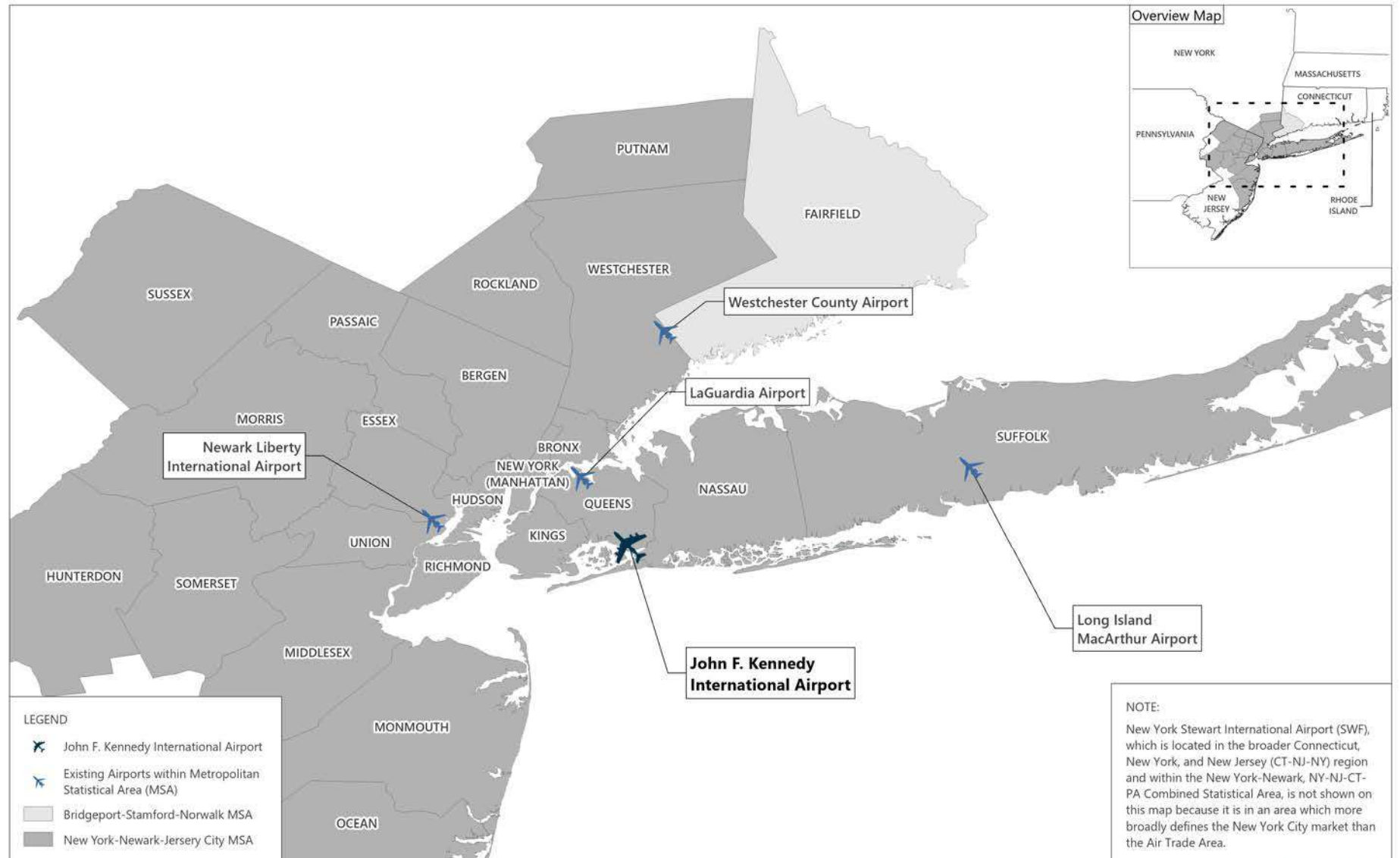
The Air Trade Area is served by five commercial airports. The Port Authority operates the three largest airports: JFK, EWR, and LGA. The airports in the Air Trade Area that are not operated by the Port Authority are Westchester County Airport (HPN) in White Plains, New York and Long Island MacArthur Airport (ISP) in the Town of Islip, New York. Factors such as the number of airlines serving the airport, the destinations served from the airport, fares, level of service, access to/from the point of origination/destination within the New York Area, and air traffic congestion/potential for travel delays all factor into a passenger's selection of an airline and airport for flights on a particular trip. JFK is located slightly farther than LGA from the densely populated core area surrounding Manhattan. However, constraints at LGA such as lack of FIS facilities and restriction on flight distances, which are described in **Section 4.5.9**, direct much of the international and long-haul market shares to JFK and EWR. The key physical aspects of each of the five airports serving the New York-New Jersey region is described in **Section 4.2.1**.

---

<sup>42</sup> A Metropolitan Statistical Area is a geographic entity delineated by the Office of Management and Budget for use by federal statistical agencies in collecting, tabulating, and publishing federal statistics. As defined by the Office of Management and Budget, Metropolitan Statistical Areas have at least one urbanized area with a population of 50,000 or more, plus adjacent territory that has a high degree of social and economic integration with the urbanized area, as measured by commuting ties.

<sup>43</sup> In defining the Air Trade Area, the driving time to/from the Airport was taken into consideration. Without traffic congestion, the Bridgeport-Stamford-Norwalk, CT Metropolitan Statistical Area (consisting of Fairfield County) is within 60 minutes driving time of the Airport and, while certain portions of the 23-county New York-Newark-Jersey City, NY-NJ Metropolitan Statistical Area are beyond 60 minutes driving time of the Airport, the New York-Newark-Jersey City, NY-NJ Metropolitan Statistical Area in its entirety is considered within the Air Trade Area for purposes of this Report.

JOHN F. KENNEDY INTERNATIONAL AIRPORT



SOURCES: National Atmospheric and Atmospheric Administration, 2024 (state and county boundaries); Federal Aviation Administration, 2024 (airports).

EXHIBIT 3-1



JFK AIR TRADE AREA

## 3.2 DEMOGRAPHIC ANALYSIS

The relationship between the demographic and economic characteristics of an area and the related demand for air travel is particularly true for origin and destination (O&D) passenger traffic, which has historically accounted for the largest portion of airline traffic at the Airport—approximately 80 percent of total traffic at the Airport in 2023.<sup>44</sup> Therefore, the majority of demand for air travel at the Airport is influenced more by the local socioeconomic characteristics of the surrounding area than by individual airline decisions regarding service patterns in support of connecting activity. The following three subsections present data that indicate that the demographic and economic base of the Airport's Air Trade Area is capable of supporting increased demand for air travel. For purposes of comparison, demographic and socioeconomic data for the combined states of Connecticut, New Jersey, and New York (the CT-NJ-NY region) and the United States is provided in addition to demographic and socioeconomic data for the Air Trade Area.

### 3.2.1 POPULATION

There is typically a positive correlation between population growth in a local area and air travel demand. Historical population for the Air Trade Area, the CT-NJ-NY region, and the United States is presented in **Table 3-1**. As shown, Table 3-1 illustrates the population trends and compound growth rates for the Air Trade Area, the CT-NJ-NY region, and the United States. The Air Trade Area's population grew from approximately 19.4 million in 2002 to 20.5 million in 2022. Approximately 8.3 million of the Air Trade Area's 20.5 million residents lived in New York City<sup>45</sup> in 2022, making up roughly 41.2 percent of the Air Trade Area's population. The 23-county Air Trade Area is the most populous metropolitan region in the United States and is a major air transportation market.

Compared to the Air Trade Area, the CT-NJ-NY region experienced similar growth with the region's population increasing from 31.1 million in 2002 to 32.5 million in 2022. In contrast, population for the United States grew more rapidly between 2002 and 2022 than the Air Trade Area and the Tri-State Area, (0.7 percent CAGR compared to 0.3 percent and 0.2 percent, respectively).

Table 3-1 also presents population projections prepared by Woods & Poole Economics, Inc., for the Air Trade Area, the CT-NJ-NY region, and the United States in 2032.<sup>46</sup> Population in the Air Trade Area is projected to increase at a CAGR of 0.2 percent between 2022 and 2032, reaching approximately 21.0 million in 2032. The tri-state region's population is projected to reach approximately 33.1 million by 2032. This reflects a consistent but slow growth pattern, with a CAGR of 0.2 percent from 2022 to 2032, the same as the Air Trade Area's projected growth CAGR during the same period. Population in the US is projected to grow at a CAGR of 0.6 percent between 2022 and 2032 which is greater than the projected CAGR for the Air Trade Area and the CT-NJ-NY region (0.2 percent for each).

---

<sup>44</sup> US Department of Transportation T-100 database and O&D Survey, 2023.

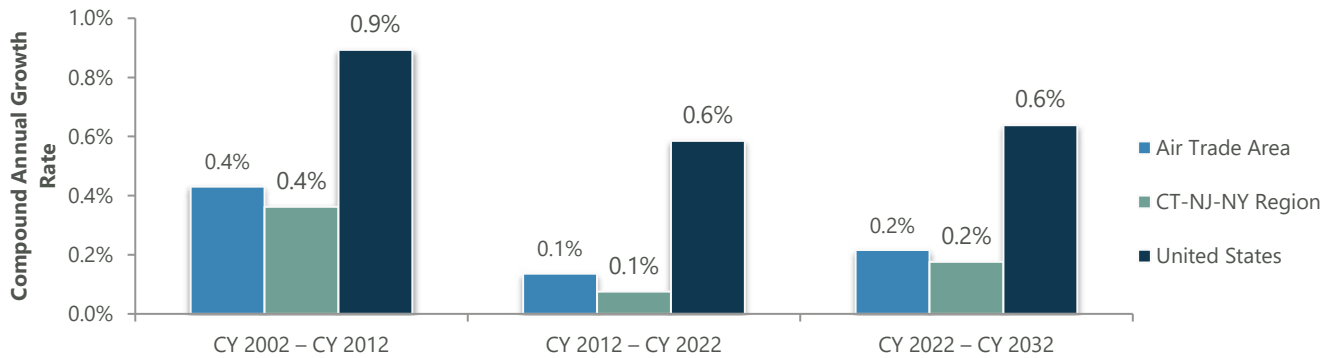
<sup>45</sup> New York City consists of Bronx County, Kings County, New York County, Queens County, and Richmond County.

<sup>46</sup> Woods & Poole Economics, Inc. uses a national economic model to project county-level socioeconomic data through 2050. The model is updated every year, and the historical data and projections used in this Report are from Woods & Poole's 2022 *Complete Economic and Demographic Data Source*.

JOHN F. KENNEDY INTERNATIONAL AIRPORT

TABLE 3-1 HISTORICAL AND PROJECTED POPULATION (2002-2032)

AREA	HISTORICAL <sup>1</sup>			PROJECTED CY 2032	COMPOUND ANNUAL GROWTH RATE			
	CY 2002	CY 2012	CY 2022		HISTORICAL			PROJECTED
					CY 2002 – CY 2012	CY 2012 – CY 2022	CY 2002 – CY 2022	CY 2022 – CY 2032
Fairfield County, CT	892,900	938,495	963,054	995,746	0.5%	0.3%	0.4%	0.3%
Bergen County, NJ	890,647	921,699	953,540	971,597	0.3%	0.3%	0.3%	0.2%
Essex County, NJ	795,625	798,318	849,724	863,344	0.0%	0.6%	0.3%	0.2%
Hudson County, NJ	615,554	663,437	702,381	726,156	0.8%	0.6%	0.7%	0.3%
Hunterdon County, NJ	125,892	127,534	129,805	131,366	0.1%	0.2%	0.2%	0.1%
Middlesex County, NJ	769,280	828,130	861,094	899,218	0.7%	0.4%	0.6%	0.4%
Monmouth County, NJ	624,532	633,309	644,228	652,588	0.1%	0.2%	0.2%	0.1%
Morris County, NJ	477,234	499,680	511,219	518,831	0.5%	0.2%	0.3%	0.1%
Ocean County, NJ	536,069	585,142	655,663	703,474	0.9%	1.1%	1.0%	0.7%
Passaic County, NJ	494,571	508,918	513,634	523,552	0.3%	0.1%	0.2%	0.2%
Somerset County, NJ	305,255	330,915	347,047	359,755	0.8%	0.5%	0.6%	0.4%
Sussex County, NJ	147,712	147,982	145,575	146,525	0.0%	-0.2%	-0.1%	0.1%
Union County, NJ	527,625	547,163	570,417	582,753	0.4%	0.4%	0.4%	0.2%
Bronx County, NY	1,358,739	1,425,890	1,381,808	1,398,661	0.5%	-0.3%	0.1%	0.1%
Kings County, NY	2,480,559	2,610,699	2,589,531	2,632,904	0.5%	-0.1%	0.2%	0.2%
Nassau County, NY	1,339,572	1,359,363	1,385,294	1,401,749	0.1%	0.2%	0.2%	0.1%
New York County, NY	1,555,382	1,641,654	1,594,543	1,639,239	0.5%	-0.3%	0.1%	0.3%
Putnam County, NY	98,263	99,444	98,312	98,732	0.1%	-0.1%	0.0%	0.0%
Queens County, NY	2,224,507	2,310,104	2,278,558	2,313,924	0.4%	-0.1%	0.1%	0.2%
Richmond County, NY	452,813	474,999	491,358	504,639	0.5%	0.3%	0.4%	0.3%
Rockland County, NY	293,728	319,774	340,357	353,106	0.9%	0.6%	0.7%	0.4%
Suffolk County, NY	1,456,745	1,508,508	1,527,974	1,547,869	0.3%	0.1%	0.2%	0.1%
Westchester County, NY	935,219	968,086	991,736	1,009,717	0.3%	0.2%	0.3%	0.2%
<b>Air Trade Area</b>	<b>19,398,423</b>	<b>20,249,243</b>	<b>20,526,852</b>	<b>20,975,445</b>	<b>0.4%</b>	<b>0.1%</b>	<b>0.3%</b>	<b>0.2%</b>
<b>CT-NJ-NY Region</b>	<b>31,149,192</b>	<b>32,297,634</b>	<b>32,542,723</b>	<b>33,119,716</b>	<b>0.4%</b>	<b>0.1%</b>	<b>0.2%</b>	<b>0.2%</b>
<b>United States</b>	<b>287,625,148</b>	<b>314,371,456</b>	<b>333,271,411</b>	<b>355,174,678</b>	<b>0.9%</b>	<b>0.6%</b>	<b>0.7%</b>	<b>0.6%</b>



NOTES:

CY – Calendar Year

1 CY 2022 is the last year of historical data in the Woods & Poole database and is the basis for Woods & Poole’s future projections. Therefore, it is the last year of historical data displayed in this table. More recent data may be available from other sources.

SOURCE: Woods & Poole Economics, Inc., 2024 Complete Economic and Demographic Data Source, July 2024.

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

According to the United States Census Bureau, the three largest metropolitan areas in the United States have each experienced population decreases from 2020 to 2023. New York-Newark-Jersey City, NY-NJ Metropolitan Statistical Area, despite being the most populated, saw its population decline from approximately 20.1 million in 2020 to 19.5 million in 2023. Similarly, Los Angeles-Long Beach-Anaheim, CA Metropolitan Statistical Area's population decreased from 13.2 million to 12.8 million, and the Chicago-Naperville-Elgin, IL-IN Metropolitan Statistical Area shrank from 9.45 million to 9.26 million over the same period.<sup>47</sup> The COVID-19 pandemic led to a significant exodus of residents from these urban centers, as people sought to avoid close personal interactions and shifted to remote work. However, recent data suggests that these population losses are subsiding due to increased immigration from abroad and a reduction in domestic out-migration.<sup>48</sup>

Furthermore, the Air Trade Area's lagging projected population growth is not unusual for its geographic region. As the region's population ages and domestic out-migration continues, future population growth in the Air Trade Area will largely be due to continued immigration.<sup>49</sup> Despite these relatively modest population growth trends, the projected increase of nearly 450,000 new residents in the Air Trade Area between 2022 and 2032 is expected to generate additional demand for airline service at the Airport.

### 3.2.2 AGE DISTRIBUTION AND EDUCATION

The demand for airline travel varies across different age groups, which significantly influences O&D passenger activity at the Airport. According to Consumer Expenditure Survey data from the US Department of Labor, Bureau of Labor Statistics, in the United States, persons between the ages of 35 and 54 account for 44.5 percent of expenditures on airfares and other types of transportation that charge fares.<sup>50</sup> Furthermore, according to Airlines for America, adults aged 25 to 39 had the highest propensity to fly in 2023.

**Table 3-2** indicates that, in 2022, the percentage of the population in the 35-54 age range was 26.0 percent in the Air Trade Area, slightly higher than the CT-NJ-NY region's 25.4 percent and the national average of 25.2 percent. The median age in the Air Trade Area was 39.6 years, which is slightly lower than the CT-NJ-NY region's median age of 40.1 years but greater than the national median age of 39.2 years. Table 3-2 also indicates that the Air Trade Area had 27.4 percent of its population within the age group with the highest propensity to fly in 2022, which is greater than both the CT-NJ-NY area (26.5 percent) and the national average (26.8 percent). This demographic's high propensity to travel aligns with its cohorts' professional and personal needs, involving frequent travel for work, vacations, and visiting, thereby driving a substantial portion of air travel activity.

This demographic's high propensity to travel aligns with its cohorts' professional and personal needs, involving frequent travel for work, vacations, and visiting, thereby driving a substantial portion of air travel activity.

---

<sup>47</sup> Metropolitan and Micropolitan Statistical Areas Population Totals: 2020-2023, United States Census Bureau, June 25, 2024.

<sup>48</sup> Frey, William, "New Census Data Hints at an Urban Population Revival, Assisted by Immigration," *Brookings*, April 15, 2024, <https://www.brookings.edu/articles/new-census-data-hints-at-an-urban-population-revival-assisted-by-immigration/>.

<sup>49</sup> Frey, William, "Immigration is Driving the Nation's Modest Population Growth, New Census Data Shows," *Brookings*, January 4, 2024, <https://www.brookings.edu/articles/immigration-is-driving-the-nations-modest-post-pandemic-population-growth-new-census-data-shows/>

<sup>50</sup> US Department of Labor, Bureau of Labor Statistics, "Consumer Expenditure Survey 2022," <https://www.bls.gov/cex/tables.htm> (accessed June 26, 2024).

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

TABLE 3-2 AGE DISTRIBUTION AND EDUCATIONAL ATTAINMENT

	AIR TRADE AREA	CT-NJ-NY REGION	UNITED STATES
<b>AGE DISTRIBUTION</b>			
<b>Total Population</b>	<b>20,526,852</b>	<b>32,542,723</b>	<b>333,271,411</b>
<i>By Age Group</i>			
Under 18	21.0%	20.6%	21.7%
18 to 24 Years	8.5%	9.1%	9.4%
25 to 34 Years	14.1%	13.5%	13.7%
35 to 44 Years	13.3%	12.9%	13.1%
45 to 54 Years	12.7%	12.4%	12.1%
55 to 64 Years	13.2%	13.5%	12.6%
65 and Above	17.2%	17.9%	17.3%
<b>Total</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>
<b>Median Age <sup>1</sup></b>	<b>39.6</b>	<b>40.1</b>	<b>39.2</b>
<b>EDUCATIONAL ATTAINMENT <sup>2</sup></b>			
Population 25 Years and Older	14,511,289	22,919,652	226,274,000
<i>By Highest Level Achieved</i>			
Less than 9th Grade	6.6%	5.4%	3.5%
9th - 12th Grade, No Diploma	5.7%	5.5%	5.3%
High School Graduate (includes equivalency)	22.9%	24.9%	28.5%
Some College, No Degree	13.9%	14.9%	14.6%
Post-Secondary Degree			
<i>Associate's Degree</i>	6.7%	8.1%	10.5%
<i>Bachelor's Degree</i>	25.2%	23.4%	23.4%
<i>Master's Degree or Doctorate</i>	19.0%	17.8%	14.2%
<b>Total</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

## NOTES:

1 Median age data for the Air Trade Area and the combined Connecticut-New Jersey-New York region are not available. The median age for the Air Trade Area shown above is the weighted average median age of Bridgeport-Stamford-Norwalk, CT Metropolitan Statistical Area and the New York-Newark-Jersey City NY-NJ Metropolitan Statistical Area and the three-state region median age shown above is the weighted average median age of each of the respective states.

2 Percentages for educational attainment were taken from the 2022 American Community Survey.

SOURCES: Woods & Poole Economics, Inc., 2024 Complete Economic and Demographic Data Source, July 2024 (Age); US Census Bureau, 2022 American Community Survey 1-Year Estimates.



The education attainment of a region's population also impacts air travel demand. Higher education levels are typically associated with higher travel frequencies. According to Consumer Expenditure Survey data,<sup>51</sup> people with a college or associate's degree generate a high percentage of expenditures on airline travel. Data indicate that 83.4 percent of airfares are purchased by college graduates, while 8.3 percent are purchased by consumers who have had some college, and 8.3 percent are purchased by consumers who never attended college. As shown in Table 3-2, 50.9 percent of the Air Trade Area's population over the age of 25 have a post-secondary degree (associate's, bachelor's, master's, or doctorate), which is higher than both the CT-NJ-NY region (49.3 percent) and the nation (48.1 percent).

### 3.2.3 PER CAPITA INCOME AND INCOME DISTRIBUTION

Another indicator of a region's demand for airline travel is per capita personal income.<sup>52</sup> Per capita personal income indicates the relative affluence of a region's residents, as well as their ability to afford airline travel. It can also be an indicator of an area's attractiveness to business and leisure travelers. Regions with higher per capita personal income often have stronger business connections to the rest of the nation, as well as a more developed market for tourism, both of which the NYC region is known for. It should be noted, however, that per capita personal income is not adjusted for the cost of living in a particular area.

**Table 3-3** presents historical per capita personal income in the Air Trade Area, the CT-NJ-NY region, and the nation (in 2017 dollars) from 2012 through 2022 and projected for 2032. As shown, per capita personal income in the Air Trade Area exceeded that of both the CT-NY-NJ region and the nation. Between 2012 and 2022, the Air Trade Area experienced a CAGR of 1.5 percent in per capita personal income, slightly surpassing the 1.4 percent CAGR of the CT-NJ-NY region. However, both regions lagged behind the national CAGR of 1.9 percent during the same period, suggesting that while the Air Trade Area maintains a higher income level, its growth pace has been more modest in comparison to the national trend.

Woods & Poole Economics, Inc., projects per capita personal income in the Air Trade Area to increase from \$74,166 in 2022 to \$90,822 in 2032. This increase corresponds to a CAGR of 2.0 percent that is the same as the projected CAGR for the CT-NY-NJ region and exceeds the national projected CAGR of 1.7 percent.

The percentage of higher-income households (defined as those earning \$100,000 or more annually) within the Air Trade Area is another key indicator of potential demand for airline travel. According to Consumer Expenditure Survey data from the US Department of Labor, Bureau of Labor Statistics, 65.4 percent of airfare expenditures are made by households with annual incomes of \$100,000 or more.<sup>53</sup> **Exhibit 3-2** presents the percentages of households in various per capita personal income categories (as expressed in 2020 dollars) for the Air Trade Area, the CT-NJ-NY region, and the United States in 2022. In the Air Trade Area, 33.8 percent of households earned \$100,000 or more, greater than 30.2 percent in the CT-NY-NJ region, and 23.1 percent in the United.

---

<sup>51</sup> US Department of Labor, Bureau of Labor Statistics, "Consumer Expenditure Survey 2022," <https://www.bls.gov/cex/tables.htm> (accessed June 26, 2024).

<sup>52</sup> Per capita personal income is the sum of wages and salaries, other labor income, proprietors' income, rental income, dividend income, personal interest income, and transfer payments, less personal contributions for government social insurance, divided by the region's population.

<sup>53</sup> US Department of Labor, Bureau of Labor Statistics, "Consumer Expenditure Survey 2022," <https://www.bls.gov/cex/tables.htm> (accessed June 26, 2024).

JOHN F. KENNEDY INTERNATIONAL AIRPORT

TABLE 3-3 PER CAPITA PERSONAL INCOME (2020-2032)

YEAR	PER CAPITA PERSONAL INCOME		
	AIR TRADE AREA	CT-NY-NJ REGION	UNITED STATES
<b>Historical</b>			
CY 2012	\$64,002	\$57,432	\$46,791
CY 2013	\$63,008	\$56,694	\$46,352
CY 2014	\$64,339	\$57,783	\$47,656
CY 2015	\$66,492	\$59,778	\$49,391
CY 2016	\$67,880	\$60,827	\$49,825
CY 2017	\$70,431	\$62,824	\$51,005
CY 2018	\$71,671	\$63,779	\$52,243
CY 2019	\$73,105	\$65,269	\$53,664
CY 2020	\$75,244	\$67,899	\$56,530
CY 2021	\$78,632	\$70,238	\$59,107
CY 2022 <sup>1</sup>	\$74,166	\$66,189	\$56,421
<b>Projected</b>			
CY 2032	\$90,822	\$80,346	\$66,646
<b>Compound Annual Growth Rate</b>			
CY 2012 - CY 2022	1.5%	1.4%	1.9%
CY 2022 - CY 2032	2.0%	2.0%	1.7%
INCOME CATEGORY (IN 2017 DOLLARS)	PERCENTAGE OF HOUSEHOLDS IN INCOME CATEGORIES (CY 2022)		
	AIR TRADE AREA	CT-NY-NJ REGION	UNITED STATES
Less than \$29,999	23.8%	24.3%	26.3%
\$30,000 to \$59,999	20.5%	22.0%	25.5%
\$60,000 to \$74,999	9.2%	10.0%	11.2%
\$75,000 to \$99,999	12.8%	13.5%	13.8%
\$100,000 or More	33.8%	30.2%	23.1%

NOTES:

CY – Calendar Year

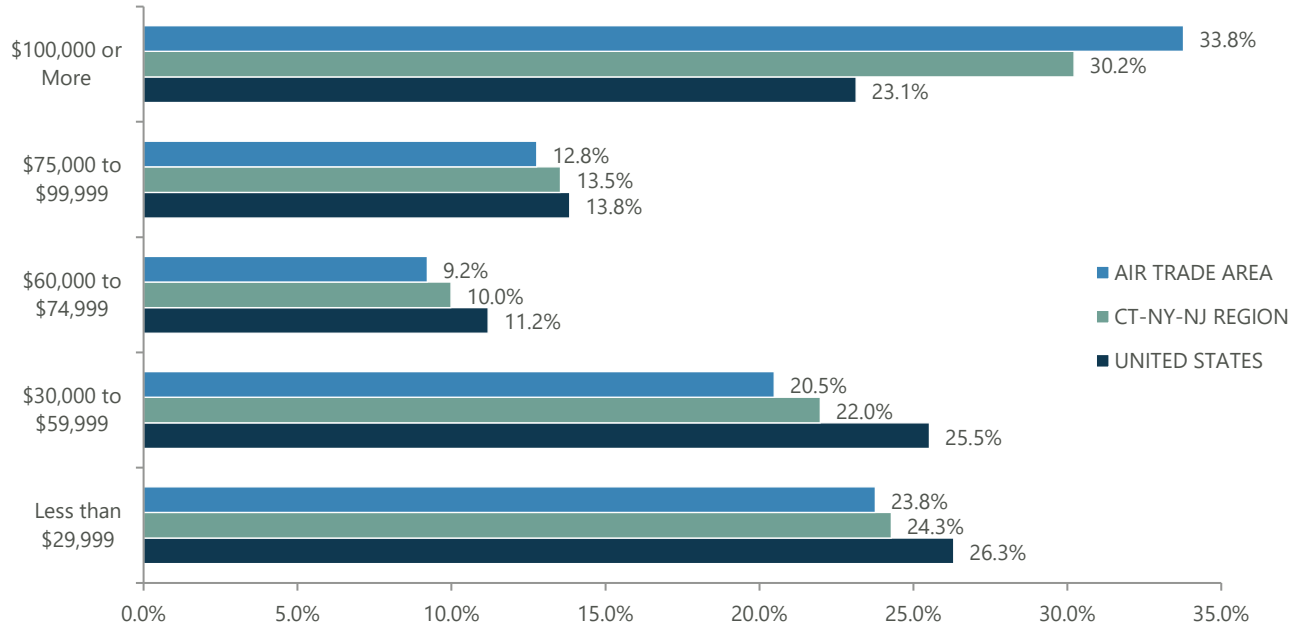
Per capita personal income and income brackets are in 2017 dollars.

Percentages may not sum precisely due to rounding.

<sup>1</sup> CY 2022 is the last year of historical data in the Woods & Poole database and is the basis for Woods & Poole's future projections. Therefore, it is the last year of historical data displayed in this table. More recent data may be available from other sources.

SOURCE: Woods & Poole Economics, Inc., 2024 Complete Economic and Demographic Data Source, July 2024.

EXHIBIT 3-2 HOUSEHOLD INCOME DISTRIBUTION (2022) (IN 2017 DOLLARS)



NOTE:

1 CY 2022 is the last year of historical data in the Woods & Poole database and is the basis for Woods & Poole’s future projections. Therefore, it is the last year of historical data displayed in this table. More recent data may be available from other sources.

SOURCE: Woods & Poole Economics, Inc., 2024 Complete Economic and Demographic Data Source, July 2024.

### 3.3 ECONOMIC ANALYSIS

#### 3.3.1 GROSS DOMESTIC/REGIONAL PRODUCT

Gross Domestic Product (GDP) for the United States as a whole, and its state and county equivalent, Gross Regional Product (GRP), are measures of the market value of all final goods and services produced within a particular area for a specific period. GDP and GRP are among the broadest measures of the economic health of a particular area and, consequently, the area’s potential air travel demand.

**Table 3-4** presents historical GRP and GDP for the Air Trade Area, the CT-NY-NJ region, and the United States from 2012 through 2022, as expressed in 2017 dollars, and projected GRP and GDP for 2032. As shown, the GRP for the Air Trade Area increased at a CAGR of 2.1 percent, from approximately \$1.6 trillion in 2012 to approximately \$1.9 trillion in 2022. In comparison, the GRP for the CT-NY-NJ region grew 1.9 percent on average and the nation’s equivalent measure increased at CAGR of 2.5 percent.

Woods & Poole Economics, Inc. projects GRP for the Air Trade Area to increase from \$1.9 trillion in 2022 to \$2.4 trillion in 2032. This increase represents a CAGR of 2.4 percent, which is greater than the CAGRs projected for the CT-NY-NJ region and the nation over the same period, both of which are 2.2 percent.

TABLE 3-4 GROSS REGIONAL/DOMESTIC PRODUCT

YEAR	GROSS DOMESTIC / REGIONAL PRODUCT (IN MILLIONS OF 2017 DOLLARS)		
	AIR TRADE AREA	CT-NJ-NY REGION	UNITED STATES
<b>Historical</b>			
CY 2012	\$1,567,811	\$2,206,975	\$17,074,008
CY 2013	\$1,593,385	\$2,235,542	\$17,466,806
CY 2014	\$1,637,637	\$2,286,182	\$17,953,808
CY 2015	\$1,701,968	\$2,374,484	\$18,596,359
CY 2016	\$1,754,652	\$2,432,263	\$18,910,750
CY 2017	\$1,780,265	\$2,463,514	\$19,368,509
CY 2018	\$1,848,366	\$2,539,703	\$19,999,274
CY 2019	\$1,905,850	\$2,621,731	\$20,529,773
CY 2020	\$1,826,658	\$2,520,298	\$19,998,314
CY 2021	\$1,917,362	\$2,644,597	\$21,264,626
CY 2022 <sup>1</sup>	\$1,933,990	\$2,675,651	\$21,788,014
<b>Projected</b>			
CY 2032	\$2,443,237	\$3,314,874	\$26,995,687
ANNUAL PER CAPITA GDP/GRP GROWTH	AIR TRADE AREA	CT-NJ-NY REGION	UNITED STATES
CY 2012 – CY 2022	2.1%	1.9%	2.5%
CY 2022 – CY 2032	2.4%	2.2%	2.2%

NOTES:

CY – Calendar Year

In millions of 2017 dollars.

<sup>1</sup> CY 2022 is the last year of historical data in the Woods & Poole database and is the basis for Woods & Poole’s future projections. Therefore, it is the last year of historical data displayed in this table. More recent data may be available from other sources.

SOURCE: Woods & Poole Economics, Inc., 2024 Complete Economic and Demographic Data Source, July 2024.

### 3.3.2 EMPLOYMENT TRENDS

Employment growth is an additional factor that typically drives air travel demand. Recent employment trends for the Air Trade Area, the CT-NJ-NY region, and the United States are presented on **Table 3-5**. As shown, the Air Trade Area’s civilian labor force, defined as the civilian population over the age of 16 that is available for work, increased from approximately 10.4 million workers in 2013 to approximately 10.8 million workers in 2023. This represents a compound annual growth rate (CAGR) increase of 0.4 percent over the period, compared to an approximately 0.3 percent increase in the CT-NY-NJ region, and an approximately 0.7 percent increase for the labor force in the United States.

As also shown in Table 3-5, annual unemployment rates for the Air Trade Area and the CT-NY-NJ region were generally at or below the national unemployment rates each year from 2013 until the onset of the COVID-19 pandemic in 2020. The pandemic had a significant impact on employment, with the Air Trade Area’s unemployment rate peaking at 10.1 percent in 2020, compared to 9.5 percent for the CT-NY-NJ region and 8.1 percent nationally. By 2021, the unemployment rate in the Air Trade Area had decreased to 7.5 percent, though it remained higher than the 6.9 percent in the CT-NY-NJ region and the national rate of 5.3 percent.

JOHN F. KENNEDY INTERNATIONAL AIRPORT

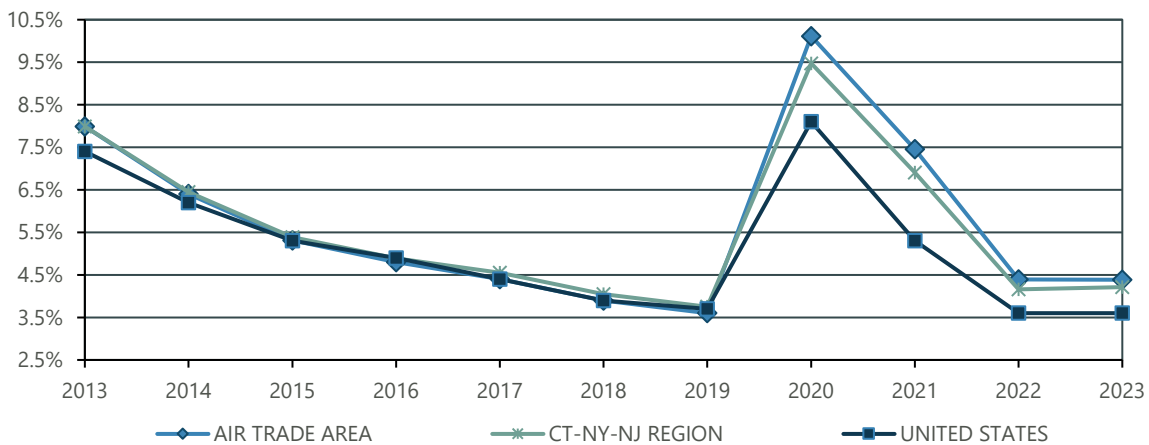
TABLE 3-5 CIVILIAN LABOR FORCE AND UNEMPLOYMENT RATE (2013-2023)

YEAR	CIVILIAN LABOR FORCE		
	AIR TRADE AREA	CT-NY-NJ REGION	UNITED STATES
CY 2013	10,379,493	16,028,346	155,389,000
CY 2014	10,352,075	15,906,563	155,922,000
CY 2015	10,389,322	15,923,212	157,130,000
CY 2016	10,395,665	15,913,042	159,187,000
CY 2017	10,765,423	16,376,834	160,320,000
CY 2018	10,738,438	16,354,785	162,075,000
CY 2019	10,820,892	16,470,116	163,539,000
CY 2020	10,519,673	16,077,047	160,742,000
CY 2021	10,530,066	16,023,941	161,204,000
CY 2022	10,675,728	16,243,991	164,287,000
CY 2023	10,832,880	16,440,662	167,116,000

Compound Annual Growth Rate

CY 2013 – CY 2023	0.4%	0.3%	0.7%
-------------------	------	------	------

YEAR	UNEMPLOYMENT RATES		
	AIR TRADE AREA	CT-NY-NJ REGION	UNITED STATES
CY 2013	8.0%	8.0%	7.4%
CY 2014	6.4%	6.4%	6.2%
CY 2015	5.3%	5.4%	5.3%
CY 2016	4.8%	4.9%	4.9%
CY 2017	4.4%	4.5%	4.4%
CY 2018	3.9%	4.0%	3.9%
CY 2019	3.6%	3.8%	3.7%
CY 2020	10.1%	9.5%	8.1%
CY 2021	7.5%	6.9%	5.3%
CY 2022	4.4%	4.2%	3.6%
CY 2023	4.4%	4.2%	3.6%
July 2024	4.5%	4.3%	4.3%



NOTES:

CY – Calendar Year

The civilian labor force is in thousands.

Annual data is not seasonally adjusted.

Monthly data is seasonally adjusted.

SOURCE: US Department of Labor, Bureau of Labor Statistics, August 2024.

Employment in the Air Trade Area was particularly hard hit by the COVID-19 pandemic, and recovery has been slower than the rest of the United States, due in part to the significant role of tourism, hospitality, and retail in the Air Trade Area.<sup>54</sup> In 2022 and 2023, the unemployment rates remained consistent across the regions, with the Air Trade Area at 4.4 percent, the CT-NJ-NY region at 4.2 percent, and the United States at 3.6 percent. As of July 2024, the unemployment rate in the Air Trade Area increased slightly to 4.5 percent, while the CT-NJ-NY region and the nation each increased to 4.3 percent.

**Table 3-6** presents an analysis of nonagricultural employment trends by major industry sector; the Air Trade Area's employment trends are compared to those for the United States in CY 2013 and CY 2023. As shown, nonagricultural employment in the Air Trade Area increased from 9.4 million workers in CY 2013 to approximately 10.5 million workers in CY 2023. The increase represents a CAGR of 1.1 percent during this period (CY 2013 to CY 2023), compared to a 1.4 percent CAGR nationwide.

Most of the major industry groups in the Air Trade Area experienced positive employment growth between CY 2013 and CY 2023, with the greatest average annual growth occurring in the transportation/utilities sector. Along with the transportation/utilities sector, the education and health services, construction, and professional and business services sectors led employment growth in the Air Trade Area.

Compared to the US on the basis of CAGR, the Air Trade Area's growth in employment in each sector between CY 2013 and CY 2023 was less rapid except for employment in education and health services which grew more rapidly in the Air Trade Area than the nation— 2.6 percent compared to 1.9 percent, respectively. As shown in the bar chart in Table 3-6, employment in the Air Trade Area in CY 2023 is more concentrated in the education and health services, professional and business services, financial, other services, and information sectors than it is in the nation. Contrarily, employment in the government, trade, leisure and hospitality, transportation/utilities, construction, and manufacturing sectors are less concentrated in the Air Trade Area than it is in the United States.

Changes in the Air Trade Area's nonagricultural employment sector makeup differ from the national trends that occurred between CY 2013 and CY 2023. In the Air Trade Area during that period, it was primarily trade and government employment that lost part of their share of employment to the education and health services sector, as employment in the latter increased at greater CAGRs than the former. Manufacturing, other services, and financial employment as a percent of total employment decreased minimally (by less than 1 percent) for in the Air Trade Area, and employment in the information, construction, transportation/utilities, leisure and hospitality, and professional and business services sectors increased minimally (by less than 1.0 percent) for each industry. In the United States, the changes in employment by sector were not as significant as in the Air Trade Area, with only the government and trade sectors decreasing by more than a percentage point of total employment for each industry between CY 2013 and CY 2023 and no sectors increasing by more than 1 percent within the same period.

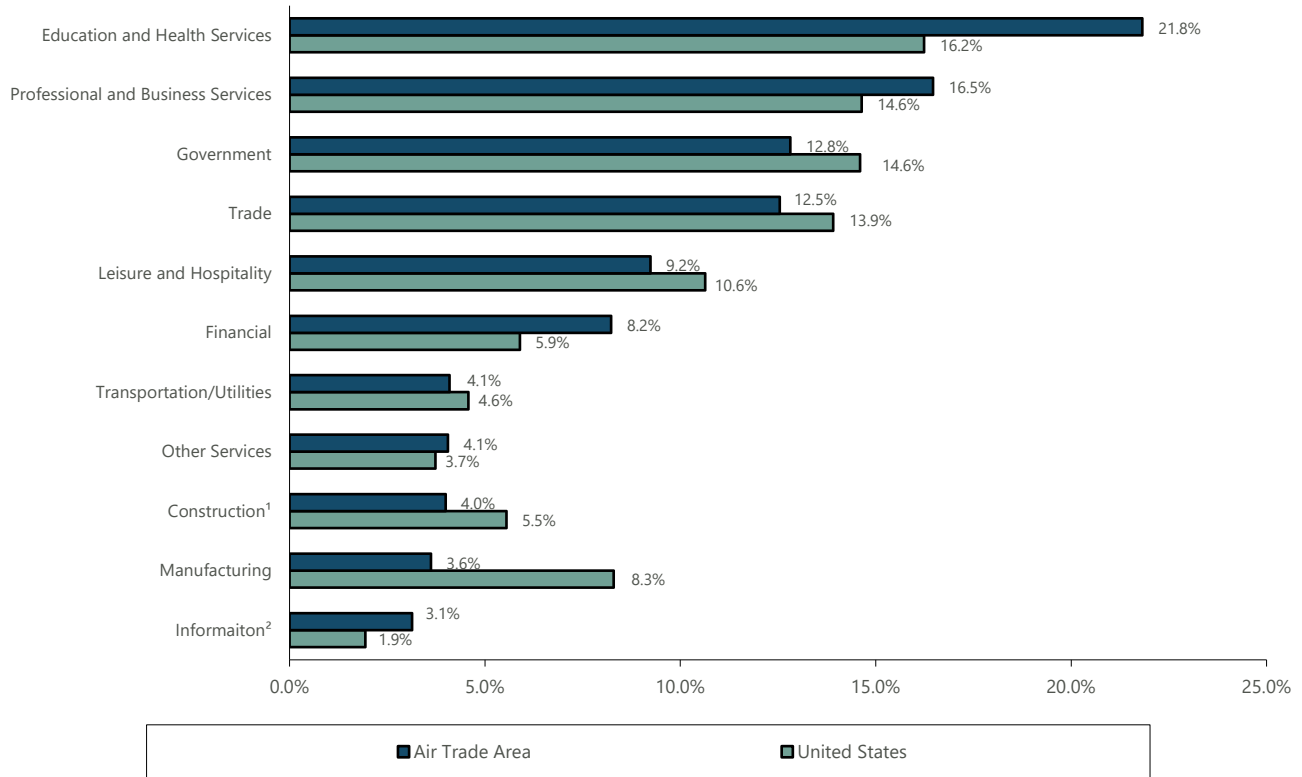
---

<sup>54</sup> Haag, Matthew and Patrick McGeehan, "The 'Double Whammy' That Is Slowing New York City's Job Growth," *The New York Times*, <https://www.nytimes.com/2021/12/14/nyregion/nyc-economy-jobless.html> (accessed July 25, 2024).

JOHN F. KENNEDY INTERNATIONAL AIRPORT

TABLE 3-6 NONAGRICULTURAL EMPLOYMENT TRENDS BY MAJOR INDUSTRY SECTOR (2023)

SECTOR	AIR TRADE AREA NONAGRICULTURAL EMPLOYMENT <sup>1</sup>			UNITED STATES NONAGRICULTURAL EMPLOYMENT		
	CY 2013	CY 2023	COMPOUND ANNUAL GROWTH RATE	CY 2013	CY 2023	COMPOUND ANNUAL GROWTH RATE
			CY 2013 – CY 2023			CY 2013 – CY 2023
Education and Health Services	1,760.1	2,284.6	2.6%	21,086.0	25,342.0	1.9%
Professional and Business Services	1,470.6	1,723.3	1.6%	18,623.0	22,840.0	2.1%
Government	1,362.3	1,341.3	(0.2%)	21,853.0	22,782.0	0.4%
Trade	1,401.9	1,312.7	(0.7%)	20,697.3	21,706.2	0.5%
Leisure and Hospitality	847.2	966.7	1.3%	14,254.0	16,593.0	1.5%
Financial	787.1	861.7	0.9%	7,886.0	9,197.0	1.5%
Transportation/Utilities	328.6	428.8	2.7%	5,037.9	7,140.7	3.5%
Other Services	410.3	424.4	0.3%	5,483.0	5,826.0	0.6%
Construction <sup>1</sup>	343.8	417.8	2.0%	6,719.0	8,658.0	2.6%
Manufacturing	404.4	378.5	(0.7%)	12,020.0	12,940.0	0.7%
Information <sup>2</sup>	295.0	328.6	1.1%	2,706.0	3,027.0	1.1%
<b>Total</b>	<b>9,411.3</b>	<b>10,468.4</b>	<b>1.1%</b>	<b>136,365.2</b>	<b>156,051.9</b>	<b>1.4%</b>



NOTES:

CY – Calendar Year

1 Includes mining and logging employment.

2 The information sector includes communications, publishing, motion picture and sound recording, and online services.

SOURCE: US Department of Labor, Bureau of Labor Statistics, July 2024.

### 3.3.3 BUSINESS CLIMATE

The New York metropolitan area has historically been an economic leader of the nation and the world. From 2013 to 2023, the New York metropolitan area represented approximately 8.8 percent of the annual US GDP.<sup>55</sup> In 2023, New York City was ranked the wealthiest city in the world, home to 359,500 millionaires and 60 billionaires, with the city's cumulative wealth of more than \$3 trillion.<sup>56</sup> As a global financial center, New York City is characterized by its concentration of major financial institutions, including the two largest stock exchanges, financial markets, and numerous major banks, asset managers, insurance companies, and other financial institutions. New York City ranked first in the 2023 Global Financial Centres Index (GFCI 35) based on future competitiveness, with strengths in business environment, financial sector development, infrastructure, human capital, and reputation<sup>57</sup>

New York continues to be an attractive location for national and global businesses. Employers are drawn to the Air Trade Area and its educated labor force. In 2022, the *INSEAD Global Talent Competitiveness Index*<sup>58</sup> ranked New York #23 out of 173 cities for its ability to grow, attract, and retain talent.<sup>59</sup> New York was ranked #2 in the Global Power City Index, which assesses a city's comprehensive power, including research and development, cultural interaction, livability, environment, and accessibility, all of which contribute to its overall business attractiveness.<sup>60</sup>

The Air Trade Area fosters a favorable climate for businesses headquartered abroad, boosting international air travel demand. In 2023, over 500,000 workers in New York are employed due to international investment, and more than 1,830 international employers have operations in New York.<sup>61</sup> New York also received first place for its foreign direct investment (FDI) strategy according to FDI's Global Cities of the Future ranking.<sup>62</sup> Foreign-owned establishments and FDI contribute significantly to the economy of the Air Trade Area, facilitating the spread of global knowledge, technology, and ideas to innovation and competitiveness in the economy.

The startup activity in the region continues to attract new businesses, further solidifying the city's status as a global innovation hub. New York City ranked second in the Startup Genome Global Startup Ecosystem among 300 ecosystems globally, tied with London in 2023.<sup>63</sup> The ranking evaluates cities on several critical factors including the availability of venture capital, the presence of large and innovative companies, the quality of the workforce, market reach, and the strength of networking among startups.

---

<sup>55</sup> Woods & Poole Economics, Inc., 2024 Complete Economic and Demographic Data Source, July 2024.

<sup>56</sup> "World's Wealthiest Cities Report 2024," *Henley & Partners*, <https://www.henleyglobal.com/publications/wealthiest-cities-2024> (accessed July 26, 2024).

<sup>57</sup> The Global Financial Centres Index 33, *Long Finance*, March 2023, [https://www.longfinance.net/media/documents/GFCI\\_33\\_Report\\_2023.03.23\\_v1.1.pdf](https://www.longfinance.net/media/documents/GFCI_33_Report_2023.03.23_v1.1.pdf).

<sup>58</sup> Note the more recent 2023 index does not rank cities; therefore, the 2022 index is described here.

<sup>59</sup> "The Global Talent Competitiveness Index," *INSEAD*, <https://www.insead.edu/sites/default/files/assets/dept/fr/gtci/GTCI-2022-report.pdf> (accessed July 26, 2024).

<sup>60</sup> "Global Power City Index 2023," Institute for Urban Strategies The Mori Memorial Foundation, November 2023, <https://mori-m-foundation.or.jp/english/ius2/gpci2/>.

<sup>61</sup> "Foreign Direct Investment Strengths New York's Economy," *Global Business Alliance*, <https://z71927.p3cdn1.secureserver.net/wp-content/uploads/2023/10/New-York.pdf> (accessed July 26, 2024).

<sup>62</sup> "FDI's Global Cities of the Future 2021/2022 — FDI Strategy Winners," *fDi Intelligence*, February 2021, <https://www.fdiintelligence.com/content/rankings-and-awards/fdis-global-cities-of-the-future-20212022-fdi-strategy-winners-79335>.

<sup>63</sup> "The Global Startup Ecosystem Report 2023," Startup Genome, <https://startupgenome.com/article/global-startup-ecosystem-ranking-2023-top-30-plus-runners-up> (accessed July 26, 2024).



## JOHN F. KENNEDY INTERNATIONAL AIRPORT

Despite New York City's strengths in retaining talent and entrepreneurs, the city underperforms in quality of life and environment categories compared to other top cities.<sup>64</sup> Issues such as income inequality and housing affordability remain significant challenges. In 2023, while the number of millionaires surged, lower and middle-income New Yorkers are increasingly leaving the city due to the high cost of living.<sup>65</sup> As detailed in a report by the Fiscal Policy Institute, these financial pressures make it difficult for lower and middle-income residents to maintain their standard of living, leading them to seek more affordable options elsewhere. This trend threatens essential services and white-collar industries critical to the city's stability and growth.<sup>66</sup>

### 3.3.3.1 MAJOR EMPLOYERS

A list of the 23 largest employers in the New York Area is presented in **Table 3-7**.<sup>67</sup> Major private sector employers, alongside higher education institutions, rely heavily on passenger service for business travel, education, and partnerships. Accessibility and connectivity are crucial for sustaining the dynamic and expansion of these sectors, fostering economic growth and maintaining the New York Area's position as a global hub for finance, education, and healthcare.

Each year, *Fortune* magazine ranks the top 500 US public companies by annual revenue. Per 2024 rankings, 70 Fortune 500 company headquarters are located in the Air Trade Area. New York City leads with 43 of these top companies, ranking first among other cities and serves as the home to major banks including JPMorgan Chase (ranked 12), Citigroup (ranked 21), Goldman Sachs Group (ranked 35), and Morgan Stanley (ranked 41). The diversified financial and commercial banking industries are the predominant sectors among the Fortune 500 companies in the Air Trade Area. Additionally, 15 Fortune 500 companies are located in Connecticut, with 10 of them based in Fairfield County which is in the Air Trade Area. A list of the 2024 Fortune 500 companies headquartered in the Air Trade Area is provided in **Table 3-8**. Some of the major employers listed in Table 3-8 are Fortune 500 companies headquartered in the Air Trade Area and are therefore listed in Table 3-7 as well.

The significance of the Air Trade Area extends beyond its high concentration of Fortune 500 company headquarters, encompassing the national and international headquarters of foundations, charities, and governmental institutions. Major entities like the Rockefeller Foundation, the global headquarters of the United Nations, and the New York Stock Exchange are situated in New York City. These institutions are pivotal to the economic infrastructure, enabling national and international collaborations, which underscores and drives the demand for air travel to the Air Trade Area.

---

<sup>64</sup> "Oxford Economics Global Cities Index 2024," Oxford Economics, May 2024, <https://static.poder360.com.br/2024/05/oxford-economics-cidades-mai2024.pdf>.

<sup>65</sup> New York Times, "New York's Millionaire Class Is Growing. Other People Are Leaving," December 12, 2023.

<sup>66</sup> "Who is Leaving New York State?," The Fiscal Policy Institute, December 2023, <https://fiscalpolicy.org/wp-content/uploads/2023/12/FPI-Who-is-Leaving-Full-Report-Dec-2023.pdf>

<sup>67</sup> The list in Table 3-5 includes employers in New York City (Bronx, Kings, New York, Queens, and Richmond Counties) as well as in Nassau, Suffolk, and Westchester Counties in New York State and Bergen, Essex, Hudson, and Union Counties in New Jersey.

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

TABLE 3-7 MAJOR EMPLOYERS IN THE NEW YORK AREA

RANKING <sup>1</sup>	EMPLOYER	NEW YORK AREA EMPLOYEES <sup>2</sup>	INDUSTRY
1	New York City Department of Education	144,594	Government
2	City of New York <sup>4</sup>	100,868	Government
3	Northwell Health	85,088	Health Care
4	United States Government	84,699	Government
5	Metropolitan Transportation Authority (MTA) <sup>5</sup>	74,111	Government
6	State of New York	68,000	Government
7	New York City Police Department (NYPD)	53,885	Government
8	JPMorgan Chase & Co.	46,000	Commercial Banking
9	New York-Presbyterian Hospital	43,203	Health Care
10	Mount Sinai Health System	41,486	Health Care
11	NYC Health + Hospitals	37,272	Health Care
12	Montefiore Health System	29,992	Health Care
13	New York University Langone Health	28,405	Health Care
14	New York University <sup>6</sup>	26,657	Higher Education
15	Bank of America, National Association	24,000	Commercial Banking
16	Memorial Sloan Kettering Cancer Center	21,077	Health Care
17	Morgan Stanley	21,000	Commercial Banking
18	Columbia University in the City of New York	19,110	Higher Education
19	Citigroup Inc.	18,500	Commercial Banking
20	New York City Fire Department (FDNY)	17,613	Government
21	Stony Brook University	16,309	Higher Education
22	Consolidated Edison Co. of New York	14,592	Energy
23	Ernst & Young	13,888	Professional Service

## NOTES:

- 1 Ranking based on 2023 number of employees.
- 2 New York Area includes New York City (Bronx, Kings, New York, Queens, and Richmond Counties) and Nassau, Suffolk, and Westchester Counties in New York State and Bergen, Essex, Hudson, and Union Counties in New Jersey.
- 3 The list is ranked up to the 23<sup>rd</sup> major employer.
- 4 Employment figures include all city agencies, except the Department of Education, NYC Health + Hospitals, the New York City Police Department, the New York City Fire Department, and the City University of New York.
- 5 Figures include affiliates and are for the entirety of the MTA, which includes Dutchess, Orange, Putnam, and Rockland counties.
- 6 Fiscal year ends Aug. 31. Employee totals include staff at the NYU School of Medicine.

SOURCE: Crain's *Largest Employers (2024)*, July 1, 2024.

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

TABLE 3-8 TOP 25 FORTUNE 500 COMPANIES HEADQUARTERED IN THE AIR TRADE AREA

	COMPANY	FORTUNE 500 RANK	REVENUE (2023) (\$MILLIONS)	LOCATION	INDUSTRY
1	JPMorgan Chase	12	\$239,425	New York, NY	Commercial Banks
2	Citigroup	21	\$156,820	New York, NY	Commercial Banks
3	Verizon Communications	31	\$133,974	New York, NY	Telecommunications
4	Goldman Sachs Group	35	\$108,418	New York, NY	Commercial Banks
5	Morgan Stanley	41	\$96,194	New York, NY	Commercial Banks
6	Johnson & Johnson	42	\$95,195	New Brunswick, NJ	Pharmaceuticals
7	PepsiCo	44	\$91,471	Purchase, NY	Food Consumer Products
8	American Express	58	\$67,364	New York, NY	Diversified Financials
9	MetLife	60	\$66,905	New York, NY	Insurance: Life, Health (Stock)
10	IBM	63	\$61,860	Armonk, NY	Information Technology Services
11	StoneX Group	66	\$60,856	New York, NY	Diversified Financials
12	Merck	67	\$60,115	Kenilworth, NJ	Pharmaceuticals
13	Pfizer	69	\$58,496	New York, NY	Pharmaceuticals
14	Charter Communications	76	\$54,607	Stamford, CT	Telecommunications
15	New York Life Insurance	78	\$54,317	New York, NY	Insurance: Life, Health (Mutual)
16	Prudential Financial	81	\$53,979	Newark, NJ	Insurance: Life, Health (Stock)
17	AIG	94	\$46,802	New York, NY	Insurance: Prop. & Casualty (Stock)
18	TIAA	96	\$45,735	New York, NY	Insurance: Life, Health (Mutual)
19	Travelers	105	\$41,364	New York, NY	Insurance: Prop. & Casualty (Stock)
20	Warner Bros. Discovery	106	\$41,321	New York, NY	Entertainment
21	PBF Energy	112	\$38,325	Parsippany, NJ	Petroleum Refining
22	Philip Morris International	121	\$35,174	Stamford, CT	Tobacco
23	Bank of New York Mellon	130	\$33,805	New York, NY	Commercial Banks
24	Apollo Global Management	136	\$32,644	New York, NY	Securities
25	Paramount Global	142	\$30,610	New York, NY	Entertainment

## NOTE:

Based on FY 2023 revenues.

SOURCE: "2024 Fortune 500," Fortune, June 2024

### 3.3.4 EMPLOYMENT BY MAJOR INDUSTRIAL SECTOR

The Air Trade Area benefits from an economically diverse labor force. Sources of economic diversity in the region are discussed in this section by focusing on the following nonagricultural employment sectors, listed in order of their contribution to the Air Trade Area's employment base (see Table 3-6): education and health services, professional and business services, government, trade, leisure and hospitality, financial, transportation and utilities, other services, construction, manufacturing, and information.

### 3.3.4.1 EDUCATION AND HEALTH SERVICES

In CY 2023, the education and health services sector accounted for approximately 2.3 million employees in the Air Trade Area, representing 16.2 percent of its total nonagricultural employment. Employment in this sector within the Air Trade Area increased at a CAGR of 2.6 percent between CY 2013 and CY 2023, compared to a 1.9 percent CAGR increase for the United States over the same period. Northwell Health is the largest employer in the education and health services sector in the New York Area, with over 85,000 employees, making it the third-largest employer overall in the region. It comprises over 21 hospitals across 13 campuses and more than 850 outpatient facilities, serving as New York State's largest healthcare provider and private employer.<sup>68</sup> Other significant healthcare employers in the New York Area include New York-Presbyterian Hospital with 43,203 employees, Mount Sinai Health System with 41,486 employees, NYC Health + Hospitals with 37,272 employees, Montefiore Health System with 29,992 employees, and New York University Langone Health with 28,405 employees.

There are three relatively large higher education employers in the New York Area: New York University, Columbia University in the City of New York, and Stony Brook University. New York University (NYU), a private research university with its main campus in New York City, is the fourteenth largest employer in the New York Area, with 26,657 employees and approximately 57,000 students enrolled across its 11 schools and colleges in Manhattan and Brooklyn.<sup>69</sup> Columbia University has 19,110 employees and 35,872 enrolled students, making it the eighteenth largest employer in the area.<sup>70</sup> Stony Brook University employs 16,309 individuals and has approximately 25,865 enrolled students.<sup>71</sup>

New York City is a premier destination for international students in the United States, home to prestigious universities like Columbia University, New York University (NYU), Fordham University, and the City University of New York (CUNY).<sup>72</sup> During the 2022 to 2023 academic year, NYU hosted the greatest number of international students in the country, with over 25,000 international students and scholars from more than 120 countries.<sup>73</sup> These educational institutions generate significant airline traffic due to the high volume of international students traveling to and from their home countries, attending academic conferences, participating in study abroad programs, and engaging in research collaborations.

### 3.3.4.2 PROFESSIONAL AND BUSINESS SERVICES

Professional and business services employment in the Air Trade Area increased at a CAGR of 1.6 percent between CY 2013 and CY 2023, compared to a 2.1 percent increase for the United States over the same period. In CY 2023, this sector accounted for approximately 1.7 million employees in the Air Trade Area, representing 16.5 percent of

---

<sup>68</sup> Northwell Health, "Northwell Health Community Health Needs Assessment 2022-2024", <https://www.northwell.edu/sites/northwell.edu/files/2023-04/System-Report-2022-2024.pdf> (accessed July 29, 2024).

<sup>69</sup> New York University, <https://www.nyu.edu/employees/resources-and-services/administrative-services/institutional-research/factbook.html> (accessed July 29, 2024).

<sup>70</sup> Columbia University, "Columbia University Fall Headcount Enrollment by school, 2014-2023," [https://opir.columbia.edu/sites/default/files/content/Statistical%20Abstract/opir\\_enrollment\\_history.pdf](https://opir.columbia.edu/sites/default/files/content/Statistical%20Abstract/opir_enrollment_history.pdf) (accessed July 29, 2024).

<sup>71</sup> Stony Brook University, "Fact Book (2023-2024)," [https://www.stonybrook.edu/commcms/irpe/fact\\_book/data\\_and\\_reports/\\_files/enrollment/Fall1957-Present.pdf](https://www.stonybrook.edu/commcms/irpe/fact_book/data_and_reports/_files/enrollment/Fall1957-Present.pdf) (accessed July 29, 2024).

<sup>72</sup> Preston, Matthew, "Top US Cities for International Students to Thrive: Affordability, Community & Fun," *CommercialSearch*, January 4, 2024, <https://www.commercialsearch.com/blog/top-cities-for-international-students-usa/>.

<sup>73</sup> New York University, "Annual Report 2022 – 2023 Academic Year," <https://www.nyu.edu/content/dam/nyu/globalServices/documents/annualreport/OGS%20Annual%20Report%202022-2023.pdf> (accessed July 24, 2024).

total nonagricultural employment and holding the second largest share of nonagricultural employment among all industries.

Professional services providers, while large in number, primarily employ smaller numbers of employees per firm. However, a notable example of a larger professional services provider in the Air Trade Area is Ernst & Young (EY). Providing services across assurance, consulting, law, strategy, tax, and transactions, EY employs 13,888 individuals in the Air Trade Area.<sup>74</sup>

### 3.3.4.3 GOVERNMENT

In CY 2023, the government sector accounted for approximately 1.3 million employees in the Air Trade Area, representing 12.8 percent of total nonagricultural employment in the Air Trade Area. Government employment in the Air Trade Area decreased at a CAGR of -0.2 percent between CY 2013 and CY 2023, which was lower than the growth rate for the United States (0.4 percent) during the same period.

Among the top 10 major employers in the Air Trade Area, as listed in Table 3-7, six are from the government sector. The largest overall employer in the New York Area is the Department of Education, with 144,594 employees. The New York City school system is the largest school district in the United States, overseeing 1,870 schools, including 274 charter schools, with a total of 1,047,895 students in 2023.<sup>75</sup> The second largest employer in the New York Area is the City of New York, with 100,868 employees. Other significant government employers in the New York Area include the MTA with 74,111 employees, the State of New York with 68,000 employees, the Police Department with 53,885 employees, and the Fire Department with 17,613 employees.

### 3.3.4.4 TRADE

In CY 2023, the trade sector accounted for approximately 1.3 million employees in the Air Trade Area, representing 12.5 percent of total nonagricultural employment. Trade employment in the Air Trade Area decreased at a CAGR of -0.7 percent between CY 2013 and CY 2023, compared to a 0.5 percent increase in the United States during the same period. Retail trade in the Air Trade Area accounted for approximately 31.1 percent of all trade employees in CY 2023, whereas wholesale trade accounted for approximately 68.9 percent of trade employees.

One of the primary reasons for the downturn in retail trade employment is the impact of the COVID-19 pandemic, which severely disrupted retail operations and caused a slower recovery compared to other industries. The shift toward e-commerce has significantly reduced the demand for physical retail spaces, and the high operational costs in New York City have forced many retail businesses to close.<sup>76</sup> The rise of remote and hybrid work has also reduced commuter traffic, making it difficult for retailers to sustain their business. As a result, the MTA has seen its retail revenue fall from \$72 million in 2019 to \$52 million in 2023.<sup>77</sup>

Despite the downturn, New York City is still home to some of the largest retailers, including a mix of high-end department stores, flagship locations of global brands, and popular local stores.<sup>78</sup> Saks Fifth Avenue, for example, is

---

<sup>74</sup> EY, [https://www.ey.com/en\\_us/services](https://www.ey.com/en_us/services) (accessed July 29, 2024).

<sup>75</sup> The New York City Department of Education, <https://www.schools.nyc.gov/about-us/reports/doe-data-at-a-glance> (accessed August 27, 2024).

<sup>76</sup> Center for an Urban Future, "NYC's Stalled Retail Recovery," June 2023, <https://nycfuture.org/research/nycs-stalled-retail-recovery>.

<sup>77</sup> Graham, Aidan, "Brooklyn Lost 50 Chain Stores in 2023 Amid Citywide Decline, Study Shows," *Brownstoner*, January 3, 2024, <https://www.brownstoner.com/brooklyn-life/national-chain-closures-nyc-brooklyn-retail-center-for-urban-future-report-2023/>.

<sup>78</sup> The Marmara Park Avenue, "The Best Luxury Department Stores in New York City," <https://park.marmaranyc.com/blog/the-best-luxury-department-stores-in-new-york-city> (accessed July 31, 2024).

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

a renowned luxury department store offering a wide range of designer brands and premium products headquartered in New York City. Macy's, the largest department store in the world, provides an extensive selection of clothing, accessories, and home goods. Bergdorf Goodman, an iconic store on Fifth Avenue, is known for its luxury fashion. One of the largest outlet malls in the Air Trade Area is The Mills at Jersey Gardens, located in Elizabeth, NJ, which contains over 190 stores, including high-end and popular brands like Ralph Lauren and Nike Factory Store.<sup>79</sup>

### 3.3.4.5 LEISURE AND HOSPITALITY

In CY 2023, the leisure and hospitality sector accounted for approximately 966,700 employees in the Air Trade Area, representing 9.2 percent of total nonagricultural employment. This is lower than the national average, where the sector accounted for 10.6 percent of total nonagricultural employment. Leisure and hospitality employment in the Air Trade Area increased at a CAGR of 1.3 percent between CY 2013 and CY 2023, compared to a 1.5 percent increase for the United States over the same period.

According to NYC & Company, the official destination marketing organization, convention, and visitors bureau for New York City, 62.2 million people visited the New York City area in 2023, with 11.6 million of them being international visitors, bringing the total visitor number to 93.4 percent of pre-pandemic levels in 2019.<sup>80</sup> International visitation saw a 23.4 percent increase compared to 2022.<sup>81</sup> Although the total number of visitors has not fully recovered to pre-pandemic levels, visitor spending showed an approximate 2.1 percent year-over-year increase from CY 2022 to CY 2023 (from \$47 million to \$48 million, respectively) and a CAGR of 0.2 percent from 2019 to 2023.<sup>82,83</sup>

International leisure travel has rebounded more quickly than business travel, reaching 84 percent of pre-pandemic levels and contributing more significantly to the total visitor recovery figure.<sup>84</sup> Meanwhile, international business travel in 2023 remained 33.3 percent below pre-pandemic levels.<sup>85</sup> The shift to remote work across the country has reduced the need for travel for meetings, leading companies to cut travel budgets and causing a notable effect on the overall international business visitor numbers.<sup>86</sup>

New York City continues to lead the nation in attracting the most visitors.<sup>87</sup> In 2023 and based on several criteria, New York ranked eighth among the top 10 destinations worldwide, moving up two spots from 2022, as shown in **Table 3-9**. Hotel performance remained strong, with an estimated 36.1 million room nights sold, approximately 10 percent below 2019 record levels and 7 percent increase from 2022.<sup>88</sup> This performance placed New York City among

<sup>79</sup> Simon Malls, <https://www.simon.com/mall/the-mills-at-jersey-gardens/stores> (accessed July 31, 2024).

<sup>80</sup> "NYC & Company Annual Report 2023-2024," NYC & Company, <https://corporate.nyctourism.com/annual-report/2024> (accessed July 22, 2024).

<sup>81</sup> *Ibid.*

<sup>82</sup> Tourism Economics, *Economic Impact of Visitors In New York 2022 New York City Focus*, September 2023.

<sup>83</sup> Office of the New York State Comptroller, *Tracking the Return: The Tourism Industry in New York City*, May 2024.

<sup>84</sup> *Ibid.*

<sup>85</sup> *Ibid.*

<sup>86</sup> Dervishi, Kay, "New York State Tourism Has Surged in Unexpected Places," *City & State New York*, July 15, 2024, <https://www.cityandstateny.com/policy/2024/07/new-york-state-tourism-has-surged-unexpected-places/397971/>

<sup>87</sup> Office of the New York State Comptroller, *Tracking the Return: The Tourism Industry in New York City*, May 2024.

<sup>88</sup> "NYC & Company Annual Report 2023-2024," NYC & Company, <https://corporate.nyctourism.com/annual-report/2024> (accessed July 22, 2024).

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

the top three US markets and made it the highest-performing hotel city in the fourth quarter of 2023.<sup>89</sup> Despite 140 hotels in the New York Area being used for housing the homeless, migrants, and asylum seekers, demand for hotels remained robust.<sup>90</sup> Over the next three years, more than 70 new hotels, creating over 10,000 hotel rooms, will be added to the city's inventory, offering additional accommodation to the Air Trade Area.<sup>92</sup> As of 2023, the average occupancy rate for hotel rooms in the New York City reached 81.6 percent where the average daily rate (ADR) exceeded pre-pandemic levels in 2023, reaching nearly \$300 per room.<sup>93</sup>

TABLE 3-9 TOP 10 DESTINATION CITIES WORLDWIDE

RANKING	CITY	COUNTRY	MOVEMENT FROM 2022
1	Paris	France	Stayed
2	Dubai	United Arab Emirates	Stayed
3	Madrid	Spain	Up 1
4	Tokyo	Japan	New Entry
5	Amsterdam	The Netherlands	Down 2
6	Berlin	Germany	Up 2
7	Rome	Italy	Down 2
<b>8</b>	<b>New York</b>	<b>United States of America</b>	<b>Up 2</b>
9	Barcelona	Spain	Stayed
10	London	United Kingdom	Down 4

SOURCE: Euromonitor International, Top City Destinations Ranking (2023 edition).

The Air Trade Area serves as a bustling hub of sports, entertainment, and major events, drawing millions of domestic and international visitors annually. This area is home to iconic arenas and stadiums that host a variety of sports teams, events, and concerts. Notably, Madison Square Garden in New York City is home to the New York Knicks (basketball) and New York Rangers (ice hockey), as well as hundreds of events that attract millions of visitors each year. The Prudential Center in Newark hosts the New Jersey Devils (ice hockey), while MetLife Stadium in East Rutherford is the home field for both the New York Giants and New York Jets (football). Additionally, New York is renowned for hosting major sports events such as the US Open Tennis Championships in Flushing Meadows and the New York City Marathon, attracting international audience, athletes, and spectators to the Air Trade Area. The Air Trade Area is also a vibrant center for arts and culture that offers over 100 museums, galleries, and historic sites. Specific attractions include the Metropolitan Museum of Art, the National September 11 Memorial, Grand Central Terminal, the Statue of Liberty, and the Empire State Building. The Metropolitan Museum of Art regained its place as the most visited museum in the United States in 2023, with over 5.4 million visitors and receiving 10 percent more

<sup>89</sup> "Fact Sheet: New York City Tourism Generates \$74 Billion in Economic Impact for State and City Economy in 2023," *NYC & Company*, <https://www.business.nyc tourism.com/press-media/press-releases/year-end-tourism-numbers-announcement> (accessed July 24, 2024).

<sup>90</sup> New York Area includes the entire Metropolitan Statistical Area for New York (all five boroughs) and Long Island, Westchester, the Lower Hudson Valley, and Northern New Jersey.

<sup>91</sup> "There's no city like New York. Is that enough for hotel investors?" *HOTELS*, January 15, 2024, <https://hotelsmag.com/news/theres-no-city-like-new-york-is-that-enough-for-hotel-investors/>.

<sup>92</sup> "Fact Sheet: New York City Tourism Generates \$74 Billion in Economic Impact for State and City Economy in 2023," *NYC & Company*, <https://www.business.nyc tourism.com/press-media/press-releases/year-end-tourism-numbers-announcement> (accessed July 24, 2024).

<sup>93</sup> Office of the New York State Comptroller, *Tracking the Return: The Tourism Industry in New York City*, May 2024

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

visitors than in 2019.<sup>94</sup> Live theater, such as Broadway Shows, saw 12.3 million admissions in the 2022 to 2023 season, with attendance up 6 percent from 2022.<sup>95</sup>

Upcoming notable events in the Air Trade Area include the 2026 FIFA World Cup and the United States Semi-quincentennial (America 250) celebration. The 2026 FIFA World Cup final will be hosted at MetLife Stadium in East Rutherford, New Jersey, expecting to attract global audiences to the Air Trade Area for the final match on July 19, 2026.<sup>96</sup> Moreover, 2026 will see New York City commemorate America 250, celebrating 250 years since the founding of the United States. These celebrations will feature a variety of events and activities, likely drawing significant domestic and international attention and visitation to the Air Trade Area.

### 3.3.4.6 FINANCIAL

Financial, insurance, and real estate services comprise the financial sector. In CY 2023, the financial sector accounted for approximately 861,700 employees in the Air Trade Area. Unsurprisingly, employment in the financial sector plays a more significant role in the Air Trade Area than in the nation. The financial sector accounted for 8.2 percent of total nonagricultural employment in CY 2023 in the Air Trade Area compared to 5.9 percent in the nation. Employment in the financial sector in the Air Trade Area increased at a CAGR of 0.9 percent between CY 2013 and CY 2023, compared to a 1.5 percent increase for the United States over the same period.

New York City is home to some of the largest commercial and investment banks in the world, including JPMorgan Chase & Co., Goldman Sachs, Morgan Stanley, Bank of America, and Citigroup. These financial giants significantly contribute to employment in the Air Trade Area. JP Morgan Chase & Co. is ranked as the eight largest employers in the New York Area with 46,000 employees. Similarly, Bank of America, Morgan Stanley, and Citigroup employ 24,000, 21,000, and 18,500 people, respectively. The financial sector in New York City also offers some of the highest salaries across industries, including banking, fund and trust management, and corporate management, with the securities industry paying the highest average salary of any major sector in the city.<sup>97</sup> Globally, the financial sector is expected to see the most substantial growth in business travel, with a projected 72 percent increase in spending through 2028.<sup>98</sup> As shown in Table 3-8, the Air Trade Area is also home to several Fortune 500 insurance companies that contribute significantly to the Air Trade Area's employment landscape. Notable companies include MetLife, New York Life Insurance, and AIG, which employ thousands of individuals and play a critical role in the area's financial sector.

### 3.3.4.7 TRANSPORTATION AND UTILITIES

In CY 2023, the transportation and utilities sector accounted for approximately 428,800 employees in the Air Trade Area, which accounted for 4.1 percent of total nonagricultural employment. The transportation and utilities sector plays a relatively smaller role in the Air Trade Area's employment base than in the nation overall (a 4.1 percent share of total nonagricultural employment versus a 4.6 percent share, respectively). Transportation and utilities

---

<sup>94</sup> Cheshire, Lee and José da Silva, "The 100 most popular art museums in the world—blockbusters, bots and bounce-backs," *The Art Newspaper*, March 26, 2024, <https://www.theartnewspaper.com/2024/03/26/the-100-most-popular-art-museums-in-the-world-2023>.

<sup>95</sup> "Fact Sheet: New York City Tourism Generates \$74 Billion in Economic Impact for State and City Economy in 2023," *NYC & Company*, <https://www.business.nyc tourism.com/press-media/press-releases/year-end-tourism-numbers-announcement> (accessed July 24, 2024).

<sup>96</sup> FIFA, "New York New Jersey to host FIFA World Cup 26 Final," <https://www.fifa.com/en/tournaments/mens/worldcup/canadamexicousa2026/articles/new-york-new-jersey-stadium-host-world-cup-2026-final> (accessed July 24, 2026).

<sup>97</sup> Office of the New York State Comptroller, *The Securities Industry in New York City*, October 2023.

<sup>98</sup> Global Business Travel Association, "Global Business Travel Industry Spending Expected to Hit Record \$1.48 Trillion in 2024," July 22, 2024, <https://www.gbta.org/global-business-travel-industry-spending-expected-to-hit-record-1-48-trillion-in-2024/>.



## JOHN F. KENNEDY INTERNATIONAL AIRPORT

employment in the Air Trade Area increased at a CAGR of 2.7 percent between CY 2013 and CY 2023, compared to an increase of 3.5 percent for the nation over the same period.

The common modes of transportation offered by transit service providers in the area include subways, buses, light-rail systems, commuter trains, and various ground transportation options such as taxis, ride-shares, and car rentals. Helicopter transfers between JFK, Newark, and Manhattan are also available.

The MTA is the largest public transit authority in the United States. The New York City Subway, with 472 stations, provides round-the-clock service throughout the five boroughs. Key lines include the 1, 2, 3, 4, 5, 6, A, C, E, F, N, Q, R, and W, which connect major hubs like Times Square, Grand Central Station, and Penn Station. The MTA also operates the Long Island Rail Road (LIRR) and Metro-North Railroad, which connect the city to Long Island, Westchester County, and Hudson Valley. In addition to the subway station, the MTA also operates a comprehensive bus network in New York City. Key routes include the M15 Select Bus Service (SBS) running along the First and Second Avenues in Manhattan, the Bx12 SBS in the Bronx, and the Q44 SBS in Queens. These buses feature dedicated lanes and limited stops to improve travel times.

The Port Authority provides critical transportation facilities in the New York City metropolitan area, including the PATH train system. The PATH provides 24-hour service between Manhattan and New Jersey, with major stations at World Trade Center, 33<sup>rd</sup> Street, Hoboken, and Newark. The Port Authority also manages major bus terminals, including the Port Authority Bus Terminal in Manhattan, the George Washington Bridge Bus Station in Upper Manhattan, and Journal Square Transportation Center in Jersey City. The Port Authority bus terminals serve as major transit hubs for commuter routes and long-distance intercity bus service.

The Staten Island Ferry is an important transportation link between Staten Island and Manhattan, operated by the New York City Department of Transportation (NYCDOT). The ferry provides 24-hour service for commuters and tourists, connecting the St. George Terminal in Staten Island with the Whitehall Terminal in Lower Manhattan. The Roosevelt Island Tramway provides a unique transit option between Roosevelt Island and Manhattan; it runs from the Tramway Plaza on 59<sup>th</sup> Street and Second Avenue in Manhattan to Tramway Plaza on Roosevelt Island.

Ride-sharing services, along with taxis, provide flexible transportation for New Yorkers and visitors. According to the NYC Taxi & Limousine Commission, there were a total of 177,673 active driver licenses in CY 2023, covering taxis, For-Hire Vehicles (FHV), paratransit, and commuter vans, an increase from 173,980 in CY 2022.<sup>99</sup>

Notable transportation and utility employers in the Air Trade Area, (see Table 3-7), include the MTA which is the fifth largest employer in the Air Trade Area with 74,111 employees and Consolidated Edison Co. of New York (ConEdison) with 14,592 employees.

### 3.3.4.8 OTHER SERVICES

In CY 2023, the other services sector accounted for approximately 424,400 employees in the Air Trade Area, which accounted for 4.1 percent of total nonagricultural employment. Other services employment in the Air Trade Area increased at a CAGR of 0.3 percent between CY 2013 and CY 2023, compared to an increase of 0.6 percent for the United States over the same period.

Other services employment includes personal services (e.g., assisting the elderly with activities of daily living); dry cleaning and laundry services; repair and maintenance services; religion, grant making, civic, professional, and similar organizations; and private household employment. Because the demand for these services is on an individual or

---

<sup>99</sup> New York City Taxi and Limousine Commission, "2023 Annual Report," January 2024, [https://www.nyc.gov/assets/tlc/downloads/pdf/annual\\_report\\_2023.pdf](https://www.nyc.gov/assets/tlc/downloads/pdf/annual_report_2023.pdf).

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

household level, trends in other services employment do not independently drive economic growth, but rather tend to reflect growth in other industry sectors, which results in an increased demand for other services by individuals and households.

### 3.3.4.9 CONSTRUCTION

In CY 2023, the construction sector accounted for approximately 417,800 employees in the Air Trade Area, which accounted for 4.0 percent of total nonagricultural employment. Construction employment in the Air Trade Area increased at a CAGR of 2.0 percent between CY 2013 and CY 2023, compared to an increase of 2.6 percent for the nation over the same period.

As major companies look to expand their presence in New York City, notable planned or ongoing construction projects in New York City include 270 Park Avenue, 70 Hudson Yards, and 2 World Trade Center.<sup>100</sup> Set to be the new global headquarters for JPMorgan Chase in 2025, 270 Park Avenue is a 60-story skyscraper featuring 2.5 million square feet of office space with a capacity of 15,000 employees; it will be the tallest structure in New York completely powered by hydroelectric energy.<sup>101</sup> The 70 Hudson Yards is a mixed-used, 45-story tower that is expected to open in 2026 with over 1.3 million square feet.<sup>102</sup> 2 World Trade Center is a planned office tower as part of the World Trade Center complex redevelopment. This project aims to add more than 80 stories and 2.8 million rentable square feet of space to the World Trade Center site, including a public plaza with access to over 350,000 square feet of shopping and restaurants in the adjacent transportation hub and concourses.<sup>103</sup>

Both building permits and housing sales and prices are indirect indicators of employment in the construction sector. As shown in **Table 3-10**, Air Trade Area residential building permits and valuation<sup>104</sup> experienced a greater increase than what was experienced by the CT-NY-NJ region and an equivalent increase in units and more modest increase in valuation compared to the United States over the CY 2013 to CY 2023 period. The Air Trade Area's residential building permit units grew by 4.3 percent on average from CY 2013 through CY 2023 (compared to 3.5 percent for the CT-NY-NJ region and 4.3 percent for the United States). Residential building valuation for the new units increased at a CAGR of 6.9 percent; comparing favorably to a lesser increase of 6.3 percent for the CT-NY-NJ region while not as high as the nation's CAGR of 7.5 percent.

The New York City residential real estate market experienced notable changes in fiscal year ended June 30, 2023.<sup>105</sup> The inventory of units for rent increased by 20.6 percent, reaching 37,420 units compared to 31,036 units in FY 2022. Concurrently, the median asking rent rose by 7.1 percent, from \$3,500 in FY 2022 to \$3,750 in FY 2023 while the inventory for sale also increased by 1.9 percent to 17,731 units. However, the median sale price for residential properties decreased by -1.9 percent, from \$800,005 in FY 2022 to \$785,000 in FY 2023. This highlights a mixed pattern in the NYC residential real estate market, with increasing rental inventory and prices, but a slight decrease

---

<sup>100</sup> Weiss, Lois, "Developers are betting on the future of NYC with huge new office towers," New York Post, October 27, 2023, 8:52 a.m. EST, <https://nypost.com/2023/10/27/real-estate/a-dozen-new-office-towers-are-set-to-rise-in-manhattan/>.

<sup>101</sup> Young, Michael and Matt Pruznick, "JPMorgan Headquarters Reaches 1,388-Foot Pinnacle At 270 Park Avenue in Midtown East, Manhattan," New York YIMBY, February 23, 2024, 8:00 a.m., <https://newyorkyimby.com/2024/02/jpmorgan-headquarters-reaches-1388-foot-pinnacle-at-270-park-avenue-in-midtown-east-manhattan.html>.

<sup>102</sup> Lifestyle Office by Related, "70 Hudson Yards," <https://www.lifestyleoffice.com/70-hudson-yards> (accessed July 31, 2024).

<sup>103</sup> World Trade Center, <https://www.wtc.com/about/buildings/2-world-trade-center> (accessed July 31, 2024).

<sup>104</sup> Residential building permit and valuation data identified as Air Trade Area is for the Miami–Fort Lauderdale–West Palm Beach Metropolitan Statistical Area, of which Palm Beach County is a part. Data not available at the county-level to calculate true Air Trade Area permits and valuations.

<sup>105</sup> The City of New York, "New York Annual Comprehensive Financial Report of the Comptroller for the Fiscal Years Ended June 30, 2023 and 2022," <https://comptroller.nyc.gov/wp-content/uploads/documents/ACFR-2023.pdf> (accessed July 31, 2024).

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

in the median sale price for properties.

TABLE 3-10 RESIDENTIAL BUILDING PERMITS AND VALUATION

YEAR	AIR TRADE AREA		CT-NY-NJ REGION		UNITED STATES	
	UNITS	VALUATION	UNITS	VALUATION	UNITS	VALUATION
CY 2013	42,325	\$6,029,921	62,214	\$9,134,452	990,822	\$177,655,915
CY 2014	49,873	\$7,612,254	69,770	\$10,800,018	1,052,124	\$194,349,701
CY 2015	89,022	\$12,722,517	111,248	\$16,160,641	1,182,582	\$223,611,322
CY 2016	45,134	\$7,849,283	66,008	\$11,270,885	1,206,642	\$237,101,605
CY 2017	52,297	\$8,895,515	72,398	\$12,282,708	1,281,977	\$258,505,419
CY 2018	50,789	\$8,581,376	70,535	\$12,025,025	1,328,827	\$271,119,544
CY 2019	63,494	\$9,580,496	87,578	\$13,554,380	1,386,048	\$280,534,195
CY 2020	56,697	\$8,237,144	78,947	\$12,264,604	1,471,141	\$307,209,904
CY 2021	57,953	\$9,230,654	81,880	\$14,111,106	1,736,982	\$380,036,187
CY 2022	71,584	\$13,524,781	96,192	\$18,857,528	1,680,368	\$384,447,171
CY 2023	64,557	\$11,754,613	87,919	\$16,820,549	1,511,102	\$365,373,043
<b>Compound Annual Growth Rate</b>						
CY 2013 – CY 2023	4.3%	6.9%	3.5%	6.3%	4.3%	7.5%

## NOTES:

CY – Calendar Year

Dollar amounts in thousands.

SOURCE: US Department of Commerce, Bureau of the Census, July 2024.

The vacancy rate in the Manhattan office market ended FY 2023 at 22.4 percent, exceeding the previous peak of 21.5 percent in FY 2022.<sup>106</sup> Although higher vacancy rates have not led to lower asking rents, market conditions remain challenging as demand for office space adjusts to hybrid schedules. In July 2024, office availability rates have held steady around 17 percent citywide since the end of 2021 with office attendance in the NYC metropolitan area from Tuesday to Thursday reached 57.3 percent of pre-pandemic levels in the fourth quarter of FY 2023.<sup>107, 108</sup>

### 3.3.4.10 MANUFACTURING

In CY 2023, the manufacturing sector accounted for approximately 378,500 employees in the Air Trade Area, representing 3.6 percent of total nonagricultural employment. Manufacturing employment in the Air Trade Area is significantly less concentrated than that in the nation, compared to a share of 8.3 percent in the nation. Manufacturing employment in the Air Trade Area decreased at a CAGR of -0.7 percent between CY 2013 and CY 2023 compared to an increase of 0.7 percent for the nation over the same period. The decline in New York City's manufacturing employment is primarily due to high real estate and labor costs, restrictive zoning regulations, and competition for space from other industries.<sup>109</sup>

<sup>106</sup> *Ibid.*

<sup>107</sup> The City of New York, "New York by the Numbers Monthly Economic and Fiscal Outlook," July 9, 2024, <https://comptroller.nyc.gov/newsroom/newsletter/new-york-by-the-numbers-monthly-economic-and-fiscal-outlook-no-91-july-9-2024/#new-york-city-economy>.

<sup>108</sup> *Ibid.*

<sup>109</sup> McDonough, Annie, "New York City's Uphill Battle to Save Manufacturing," *City & State New York*, July 5, 2023, <https://www.cityandstateny.com/policy/2023/07/new-york-citys-uphill-battle-save-manufacturing/388172/#:~:text=Once%20home%20to%20all%20kinds,New%20Yorkers%20worked%20in%20factories.>

Notable manufacturers in the Air Trade Area include pharmaceutical companies such as Pfizer Inc., Johnson & Johnson, and Merck. Consumer goods manufacturers in the region encompass General Electric, which produces appliances, lighting, and industrial products; Unilever, known for its personal care, hygiene, and food products; PepsiCo, a leader in beverages and snack foods; and Estee Lauder Companies, specializing in cosmetics and skincare products.

#### 3.3.4.11 INFORMATION, TECHNOLOGY, AND MEDIA

The information, technology, and media sector combines telecommunications service providers, traditional publishing, motion picture and sound recording, broadcasting, software, online services, and data processing. In CY 2023, the information sector accounted for approximately 328,600 employees in the Air Trade Area, representing 3.1 percent of total nonagricultural employment. The sector plays a significant role in the Air Trade Area's employment base compared to a share of 1.9 percent in the nation. Information, technology, and media employment in the Air Trade Area grew at a CAGR of 1.1 percent between CY 2013 and CY 2023, which was the same for the nation.

The Air Trade Area is home to some of the largest and most influential companies in the information, technology, and media sector. NBCUniversal Media, a global leader in media and entertainment known for its extensive portfolio of television broadcast networks and film studios; Verizon, one of the largest telecommunications service providers in the United States; and notable software companies such as Spotify and Bloomberg are all headquartered in New York City. Additionally, Altice USA, a provider of broadband and telephony services, is headquartered in Long Island City, NY, while IBM, a global technology and innovation company, is based in Armonk, NY. These notable companies collectively enhance the diverse information sector within the Air Trade Area, driving innovation and economic growth.

### 3.4 ECONOMIC OUTLOOK

#### 3.4.1 SHORT-TERM ECONOMIC OUTLOOK

The Congressional Budget Office (CBO) economic outlook released in June 2024 projects a 2.6 percent year-over-year increase in real GDP for 2024, which is similar to the real GDP growth in 2023 (2.5 percent). The real GDP growth rate is projected by the CBO to decrease to 2.1 percent in 2025, and then fall to 1.8 percent by 2026, around where it stays until the end of the CBO outlook period (2034).<sup>110</sup> Real GDP growth projected by CBO is similar to that projected by the International Monetary Fund (IMF). The IMF economic outlook released in April 2024 projects a 2.7 percent year-over-year increase in real US GDP for 2024. 2025 is then projected to see slower year-over-year US GDP growth of 1.9 percent.<sup>111</sup> The CBO projects the national unemployment rate to rise to 4.4 percent by the end of CY 2027.<sup>112</sup>

The City of New York, per its Executive Budget for fiscal year 2025, expects its economy (i.e., real gross city product) will grow from CY 2024 through CY 2028 by a Compound Average Annual Growth Rate (CAGR) of 1.7 percent and the unemployment rate to increase from a projected 3.9 percent in CY 2024 to 4.4 percent in CY 2028.<sup>113</sup>

---

<sup>110</sup> Congressional Budget Office, *The Budget and Economic Outlook: 2024 to 2034*, June 2024.

<sup>111</sup> International Monetary Fund, *World Economic Outlook Update: Steady but Slow: Resilience amid Divergence*, April 2024.

<sup>112</sup> Congressional Budget Office, *The Budget and Economic Outlook: 2024 to 2034*, June 2024.

<sup>113</sup> The City of New York Mayor's Office of Management and Budget, "Executive Budget Fiscal Year 2025," April 2024.

### 3.4.2 LONG-TERM ECONOMIC ASSUMPTIONS CONSIDERED IN VALIDATING THE ENPLANED PASSENGER FORECASTS

As described in more detail in Chapter 4, the methodologies used in developing forecasts of enplaned passengers at the Airport and of Terminal 6 included (among other methodologies) statistical linear regression modeling, with local and national socioeconomics and demographics as independent variables and O&D passengers as the dependent variable. Independent variables considered for this analysis included population, employment, earnings (total and net), personal income (per capita and total), and GRP/GDP (per capita and total) for the combined area of two Metropolitan Statistical Areas which comprise the Air Trade Area, and the United States.

For each socioeconomic and demographic variable, Ricondo utilized regression modeling which produced a coefficient that was applied to the corresponding variable projection developed by Woods & Poole to provide a forecast of enplaned passengers at JFK. **Table 3-11** presents the CY 2022 and CY 2032 figures used in the modeling that Ricondo developed to evaluate forecasts of activity prepared by Airport Strategy & Marketing (ASM) for the Airport and Terminal 6, as well as the CAGR for each independent variable in CY 2022 and CY 2032. As previously stated, the demand for air transportation at an airport is, to a large degree, dependent upon the demographic and economic characteristics of an airport's Air Trade Area. The projected growth during the Projection Period in the economic indicators in Table 3-11 supports the underlying assumptions that drive the Ricondo forecast which was used to evaluate ASM's airline activity forecast discussed in **Section 4.6.3**.

TABLE 3-11 PROJECTED ECONOMIC VARIABLES USED IN THE PASSENGER DEMAND FORECASTS

VARIABLE <sup>1,2</sup>	CY 2022 <sup>5</sup>	CY 2032	CAGR CY 2022 - CY 2032
Air Trade Area Gross Regional Product (GRP) <sup>3</sup>	\$1,933,990	\$2,443,237	2.4%
US Gross Domestic Product (GDP) <sup>3</sup>	\$21,788,014	\$26,995,687	2.2%
Air Trade Area Net Earnings <sup>3</sup>	\$986,890	\$1,240,109	2.3%
US Net Earnings <sup>3</sup>	\$11,644,967	\$14,510,547	2.2%
Air Trade Area Total Earnings <sup>3</sup>	\$1,133,784	\$1,472,841	2.7%
US Total Earnings <sup>3</sup>	\$13,105,445	\$16,891,768	2.6%
Air Trade Area Total Employment	14,072,581	16,583,954	1.7%
US Total Employment	212,442,016	246,375,203	1.5%
Air Trade Area Total Personal Income <sup>3</sup>	\$1,522,394	\$1,905,040	2.3%
US Total Personal Income <sup>3</sup>	\$18,803,588	\$23,670,984	2.3%
Air Trade Area Per Capita Personal Income <sup>4</sup>	\$74,166	\$90,822	2.0%
US Per Capita Personal Income <sup>4</sup>	\$56,421	\$66,646	1.7%
Air Trade Area Population	20,526,852	20,975,445	0.2%
US Population	333,271,411	355,174,678	0.6%

NOTES:

CY – Calendar Year

CAGR – Compound Annual Growth Rate

1 Employment data include wage and salary workers, proprietors, private household employees, and miscellaneous workers. Establishment data from the US Department of Commerce, Bureau of Economic Analysis is used in this table, which differs from employment data in Table 3-5 due to differing sources, definitions, and methodologies.

2 Some variables presented in this table are exclusive to the aviation forecast and are not included in the demographic and economic analysis discussed in this chapter.

3 Figures displayed in millions of 2017 dollars.

4 Figures in 2017 dollars.

5 CY 2022 is the last year of historical data in the Woods & Poole database and is the basis for Woods & Poole's future projections. Therefore, it is the last year of historical data displayed in this table. More recent data may be available from other sources.

SOURCE: Woods & Poole Economics, Inc., 2024 Complete Economic and Demographic Data Source, July 2024.

### 3.4.3 CONCLUSIONS

The Air Trade Area population was 20.5 million in CY 2022, and it is projected by Woods & Poole to increase to approximately 21.0 million by CY 2032. This represents a 0.2 percent CAGR for the Air Trade Area, which is the same as that of CT-NJ-NY region and below that of the United States during the same period (0.6 percent).

Per capita personal income was greater in the Air Trade Area than in the CT-NJ-NY region and the United States between CY 2012 and CY 2022. The Air Trade Area's per capita personal income in CY 2022 (\$74,166) was 31 percent greater than per capita personal income in the United States (\$56,421) and 12 percent greater than personal income in the CT-NJ-NY region (\$80,346). Per capita personal income in the Air Trade Area is projected by Woods & Poole to increase at a CAGR of 2.0 percent between CY 2022 and CY 2032, which is the same as the projected CAGR of the CT-NJ-NY region and greater than that of the United States (1.7 percent).<sup>114</sup>

Between CY 2012 and CY 2022, the Air Trade Area's GRP grew at a CAGR of approximately 2.1 percent, which is greater than that of the CT-NJ-NY region and less than that of the United States during the same period, 1.9 percent and 2.5 percent, respectively. GRP in the Air Trade Area is projected by Woods & Poole to increase at a CAGR of 2.1 percent between CY 2022 and CY 2032; CT-NJ-NY region GRP and US GDP are projected to increase less rapidly by comparison, each with CAGRs of 2.2 percent.

Between CY 2013 and CY 2023, the Air Trade Area's labor force grew at a CAGR of approximately 0.4 percent, which is greater than that of the CT-NJ-NY region and less than that of the United States during the same period (0.3 percent and 0.7 percent, respectively).

In terms of percentages of industry sector shares, CY 2023 employment in the following industry sectors in the Air Trade Area exceeded employment in the United States: Education and Health Services, Professional Services, Financial, Other Services, and Information.

The data cited in this chapter supports the conclusion that the Air Trade Area has a large and diverse economy with projected growth that is anticipated to increase the demand for airline travel at the Airport through the Projection Period (ending FY 2032).

---

<sup>114</sup> Amounts are in 2017 dollars.

## 4. PASSENGER DEMAND AND AIR SERVICE ANALYSIS

This chapter describes historical and forecast aviation activity at the Airport and discusses key factors affecting these trends.

### 4.1 GLOBAL AND NATIONAL PERSPECTIVE OF THE AIRPORT

The New York City market includes the five commercial service airports located within the Air Trade Area (JFK, Newark Liberty International (EWR), Westchester County (HPN), Long Island MacArthur (ISP), and LaGuardia (LGA) airports) as well as New York Stewart International Airport (SWF), which is located in the broader Connecticut, New York, and New Jersey (CT-NJ-NY) region and within the New York-Newark, NY-NJ-CT-PA Combined Statistical Area, which more broadly defines the New York City market than the Air Trade Area. Based on historical airline bookings data, the New York City market was ranked second in the world and first in the United States (US) in terms of total origin and destination (O&D) passengers. O&D passengers represent passengers that begin or end their journey at an Air Trade Area airport. **Table 4-1** presents the top five metropolitan areas globally in terms of total O&D passengers in 2023 as well as total O&D passengers and the market ranking from 2019 through 2022; **Table 4-2** presents this data for the top five metropolitan areas in the US in terms of total O&D passengers in 2023. New York City has remained a significant global market for O&D passengers throughout the past five years, including the COVID-19 pandemic period, and has also been the largest market in the US throughout the period.

**Table 4-3** presents the top 25 airports in the US by domestic enplaned revenue passengers carried by scheduled passenger airlines as recorded in the US Department of Transportation (USDOT) T-100 database; **Table 4-4** presents the top 25 airports by international enplaned revenue passengers. JFK ranked 17<sup>th</sup> among US airports by domestic enplaned revenue passengers in 2023. The Airport currently ranks one position higher than prior to the pandemic, and the Airport recovered to pre-pandemic domestic enplaned revenue passenger levels in 2023. Throughout the period from 2019 to 2023, JFK has been the largest US airport by volume of international enplaned revenue passengers, and the volume recorded in 2023 represents 96.6 percent of pre-pandemic international enplaned revenue passenger volumes recorded in 2019. In 2023, JFK handled 51 percent more international enplaned passengers than the second largest US airport by volume of international enplaned passengers, LAX.

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

TABLE 4-1 TOP FIVE GLOBAL METROPOLITAN AREAS BY ORIGIN AND DESTINATION PASSENGERS

METROPOLITAN AREA	2019		2020		2021		2022		2023	
	RANK	O&D PASSENGERS	RANK	O&D PASSENGERS	RANK	O&D PASSENGERS	RANK	O&D PASSENGERS	RANK	O&D PASSENGERS
London <sup>1</sup>	1	152,275,409	4	40,554,162	15	31,763,842	1	107,554,308	1	133,963,128
<b>New York City<sup>2</sup></b>	<b>2</b>	<b>121,820,154</b>	<b>7</b>	<b>36,516,301</b>	<b>1</b>	<b>68,795,678</b>	<b>2</b>	<b>104,389,469</b>	<b>2</b>	<b>118,563,257</b>
Tokyo <sup>3</sup>	3	119,500,549	2	47,908,727	6	42,107,948	4	66,621,890	3	113,204,268
Beijing <sup>4</sup>	6	90,753,695	3	45,624,461	3	58,361,774	7	51,561,059	4	103,732,354
Shanghai <sup>5</sup>	4	97,957,058	1	56,921,203	2	62,915,366	9	49,503,515	5	98,071,667

## NOTES:

- 1 London includes London City Airport, Gatwick Airport, Heathrow Airport, Luton Airport, London Southend Airport, and London Stansted Airport.
- 2 New York City includes Newark Liberty International Airport, Westchester County Airport, Long Island MacArthur Airport, John F. Kennedy International Airport, LaGuardia Airport, and New York Stewart International Airport.
- 3 Tokyo includes Haneda Airport and Narita International Airport.
- 4 Beijing includes Beijing Nanyuan Airport (closed on September 25, 2019), Beijing Capital International Airport, and Beijing Daxing International Airport (opened on September 25, 2019).
- 5 Shanghai includes Shanghai Pudong International Airport and Shanghai Hongqiao International Airport.

SOURCE: Sabre Market Intelligence, August 2024 (passenger bookings data).

TABLE 4-2 TOP FIVE UNITED STATES METROPOLITAN AREAS BY ORIGIN AND DESTINATION PASSENGERS

METROPOLITAN AREA	2019		2020		2021		2022		2023	
	RANK	O&D PASSENGERS	RANK	O&D PASSENGERS	RANK	O&D PASSENGERS	RANK	O&D PASSENGERS	RANK	O&D PASSENGERS
<b>New York City<sup>1</sup></b>	<b>1</b>	<b>121,820,154</b>	<b>1</b>	<b>36,516,301</b>	<b>1</b>	<b>68,795,678</b>	<b>1</b>	<b>104,389,469</b>	<b>1</b>	<b>118,563,257</b>
Los Angeles <sup>2</sup>	2	93,801,362	2	32,517,602	2	58,108,422	2	79,645,837	2	88,271,902
Chicago <sup>3</sup>	3	60,277,858	4	21,405,390	3	40,543,287	3	52,240,632	3	56,751,808
Orlando <sup>4</sup>	4	49,706,862	3	21,423,981	4	39,196,496	4	48,718,800	4	52,135,405
Las Vegas <sup>5</sup>	5	43,636,798	7	18,299,555	7	33,317,924	5	42,855,389	5	45,171,229

## NOTES:

- 1 New York City includes Newark Liberty International Airport, Westchester County Airport, Long Island MacArthur Airport, John F. Kennedy International Airport, LaGuardia Airport, and New York Stewart International Airport.
- 2 Los Angeles includes Hollywood Burbank Airport, Los Angeles International Airport, Long Beach Airport (Daugherty Field), Ontario International Airport, and John Wayne Airport.
- 3 Chicago includes Chicago Midway International Airport, Chicago O'Hare International Airport, and Chicago Rockford International Airport.
- 4 Orlando includes Orlando International Airport and Orlando Sanford International Airport.
- 5 Las Vegas includes Harry Reid International Airport.

SOURCE: Sabre Market Intelligence, August 2024 (passenger bookings data).



## JOHN F. KENNEDY INTERNATIONAL AIRPORT

TABLE 4-3 TOP 25 UNITED STATES AIRPORTS BY DOMESTIC ENPLANED PASSENGERS

AIRPORT	2019		2020		2021		2022		2023	
	RANK	ENPLANED PASSENGERS	RANK	ENPLANED PASSENGERS	RANK	ENPLANED PASSENGERS	RANK	ENPLANED PASSENGERS	RANK	ENPLANED PASSENGERS
Hartsfield-Jackson Atlanta International Airport (ATL)	1	47,613,740	1	19,030,850	1	34,059,568	1	40,720,949	1	44,918,095
Denver International Airport (DEN)	3	32,315,696	3	15,912,064	2	27,956,464	2	32,416,304	2	36,068,266
Dallas Fort Worth International Airport (DFW)	4	31,234,166	2	16,971,134	3	27,120,226	3	30,652,932	3	33,873,059
O'Hare International Airport (ORD)	2	34,135,947	4	12,870,460	4	23,782,325	4	27,653,825	4	29,364,939
Harry Reid International Airport (Las Vegas) (LAS)	6	22,978,422	7	10,261,864	8	18,754,277	6	24,250,522	5	26,269,382
Los Angeles International Airport (LAX)	5	30,617,813	6	10,971,165	6	19,869,515	5	24,560,178	6	26,193,955
Orlando International Airport (MCO)	10	21,243,018	9	9,745,519	7	18,782,132	7	21,901,268	7	24,831,228
Charlotte Douglas International Airport (CLT)	7	22,442,811	5	12,543,942	5	19,912,439	8	21,391,664	8	23,837,907
Phoenix Sky Harbor International Airport (PHX)	9	21,573,752	8	10,207,324	9	18,505,487	9	20,928,086	9	22,774,134
Seattle-Tacoma International Airport (SEA)	8	22,236,184	10	8,805,973	10	16,633,607	10	20,054,944	10	21,818,495
San Francisco International Airport (SFO)	11	20,413,040	15	6,197,634	18	10,142,142	11	15,618,524	11	17,460,312
Newark Liberty International Airport (EWR)	16	16,091,355	16	6,106,210	15	11,282,471	12	15,587,166	12	17,280,593
George Bush Intercontinental Airport (IAH)	14	16,532,047	11	6,956,227	11	13,120,087	13	15,297,649	13	16,669,909
Boston Logan International Airport (BOS)	13	16,792,347	20	5,256,781	19	9,877,995	14	14,501,579	14	16,116,819
Minneapolis–St. Paul International Airport (MSP)	12	17,586,933	12	6,647,496	12	11,833,116	15	14,167,710	15	15,549,591
LaGuardia Airport (LGA)	17	14,286,110	27	3,947,056	26	7,677,574	18	13,731,104	16	15,242,683
<b>John F. Kennedy International Airport (JFK)</b>	<b>18</b>	<b>14,242,913</b>	<b>25</b>	<b>4,159,197</b>	<b>22</b>	<b>8,945,098</b>	<b>17</b>	<b>14,000,584</b>	<b>17</b>	<b>14,325,564</b>
Miami International Airport (MIA)	25	10,794,203	21	5,249,861	14	11,583,504	16	14,139,243	18	14,098,854
Detroit Metropolitan Wayne County Airport (DTW)	15	16,311,884	14	6,395,002	16	11,036,512	19	12,676,059	19	13,865,196
Fort Lauderdale–Hollywood International Airport (FLL)	20	13,787,590	13	6,629,187	13	11,677,973	20	12,305,867	20	13,383,694
Baltimore/Washington International Thurgood Marshall Airport (BWI)	21	12,919,203	19	5,333,163	21	9,011,731	25	10,758,726	21	12,407,477
Salt Lake City International Airport (SLC)	22	12,362,039	17	5,836,487	17	10,568,373	21	11,879,047	22	12,316,430
Ronald Reagan Washington National Airport (DCA)	24	11,434,091	29	3,618,375	28	6,725,911	22	11,442,224	23	12,172,107
Philadelphia International Airport (PHL)	19	14,051,843	18	5,504,565	20	9,289,418	23	10,901,261	24	11,894,558
San Diego International Airport (SAN)	23	12,228,760	23	4,535,847	24	7,761,273	24	10,887,269	25	11,841,926

SOURCE: Cirium Diio, August 2024 (US Department of Transportation T-100 data, enplaned passenger data).

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

TABLE 4-4 TOP 25 UNITED STATES AIRPORTS BY INTERNATIONAL ENPLANED PASSENGERS

AIRPORT	2019		2020		2021		2022		2023	
	RANK	ENPLANED PASSENGERS	RANK	ENPLANED PASSENGERS	RANK	ENPLANED PASSENGERS	RANK	ENPLANED PASSENGERS	RANK	ENPLANED PASSENGERS
<b>John F. Kennedy International Airport (JFK)</b>	<b>1</b>	<b>16,947,952</b>	<b>1</b>	<b>4,135,213</b>	<b>1</b>	<b>6,364,162</b>	<b>1</b>	<b>13,116,775</b>	<b>1</b>	<b>16,369,636</b>
Los Angeles International Airport (LAX)	2	12,737,571	3	3,148,907	3	3,862,987	3	8,145,258	2	10,854,451
Miami International Airport (MIA)	3	10,549,847	2	3,346,255	2	5,793,459	2	9,593,715	3	10,648,273
Newark Liberty International Airport (EWR)	5	7,118,796	4	1,879,505	4	3,229,683	4	6,101,133	4	7,242,389
San Francisco International Airport (SFO)	4	7,456,465	9	1,567,298	11	1,599,764	6	4,901,285	5	6,857,119
O'Hare International Airport (ORD)	6	6,868,808	5	1,744,207	8	2,637,021	5	5,578,024	6	6,564,460
Hartsfield-Jackson Atlanta International Airport (ATL)	7	6,230,088	7	1,677,168	7	2,784,270	7	4,848,021	7	6,233,548
George Bush Intercontinental Airport (IAH)	8	5,479,442	6	1,733,858	5	3,207,936	9	4,637,414	8	5,645,927
Dallas Fort Worth International Airport (DFW)	9	4,631,413	8	1,635,314	6	2,906,902	8	4,710,615	9	5,399,929
Washington Dulles International Airport (IAD)	11	4,131,868	11	957,360	10	1,620,062	10	3,570,289	10	4,568,647
Boston Logan International Airport (BOS)	12	3,929,715	12	777,516	12	1,050,235	12	2,959,520	11	3,863,241
Fort Lauderdale–Hollywood International Airport (FLL)	10	4,228,608	10	1,407,362	9	1,954,314	11	3,104,939	12	3,698,242
Orlando International Airport (MCO)	13	3,460,812	13	772,109	14	922,371	13	2,625,008	13	3,369,738
Seattle-Tacoma International Airport (SEA)	14	2,751,400	14	617,372	16	764,481	14	2,111,799	14	2,762,815
Charlotte Douglas International Airport (CLT)	18	1,763,467	16	529,264	13	996,409	15	1,722,690	15	2,080,725
Denver International Airport (DEN)	21	1,557,479	17	456,112	15	916,885	16	1,627,000	16	1,968,457
Philadelphia International Airport (PHL)	16	1,980,306	22	334,651	18	517,340	17	1,527,815	17	1,762,861
Harry Reid International Airport (Las Vegas) (LAS)	19	1,759,291	21	362,935	21	368,529	18	1,260,500	18	1,592,449
Daniel K. Inouye International Airport (HNL)	15	2,601,998	15	536,998	38	76,113	22	775,465	19	1,572,734
Detroit Metropolitan Wayne County Airport (DTW)	17	1,868,768	18	426,596	19	483,266	19	1,080,288	20	1,508,454
Minneapolis–St. Paul International Airport (MSP)	20	1,611,787	19	409,058	20	373,578	20	1,065,444	21	1,460,324
Phoenix Sky Harbor International Airport (PHX)	24	1,035,190	20	370,591	17	587,836	21	1,058,554	22	1,253,832
LaGuardia Airport (LGA)	23	1,116,603	24	201,111	29	172,365	23	666,992	23	929,472
Salt Lake City International Airport (SLC)	28	516,503	27	152,480	25	289,767	24	546,070	24	624,648
Baltimore/Washington International Thurgood Marshall Airport (BWI)	25	559,525	25	167,991	24	329,620	25	502,477	25	615,337

SOURCE: Cirium Diio, August 2024 (US Department of Transportation T-100 data, enplaned passenger data).

## 4.2 REGIONAL PERSPECTIVE OF THE AIRPORT

### 4.2.1 AIRPORTS SERVING THE NEW YORK CITY AIR TRADE AREA

The New York City Air Trade Area is served by three major airports. These airports are all defined by the Federal Aviation Administration (FAA) as large-hub airports based on the percentage of nationwide passenger activity handled at each facility.<sup>115</sup> A brief overview of each airport is presented below:

- JFK is the largest airport serving the Air Trade Area; serving 62.4 million total passengers in 2023, representing 99.8 percent of passenger volumes recorded in 2019.<sup>116</sup> It is the region's primary international gateway and is served by 65 foreign flag airlines in addition to 8 US airlines.<sup>117</sup> JFK also serves as a hub for three airlines: Delta Air Lines (Delta), JetBlue Airways (JetBlue), American Airlines (American). The role that JFK plays in each of these airlines' route networks is presented in more detail in **Section 4.5.7**.
- EWR is the second largest airport serving the Air Trade Area, serving 49.1 million total passengers in 2023, a 5.8 percent increase relative to 2019.<sup>118</sup> It is the region's secondary international gateway and a hub for United Airlines (United), which is the largest single airline hub among the Air Trade Area's airports.
- LGA is the region's third-largest airport, serving 32.4 million total passengers in 2023, a 4.2 percent increase relative to 2019.<sup>119</sup> LGA serves as a hub for Delta and American and primarily accommodates passengers traveling on domestic itineraries.

The large-hub airports serving the Air Trade Area have constraints in the form of slot and destination limitations, which are discussed in **Section 4.5.9**.

Two smaller airports also serve the Air Trade Area:

- HPN, located approximately 33 miles north of Manhattan, served 2.4 million revenue passengers in 2023, representing a 30.6 percent increase from 2019.<sup>120</sup> JetBlue has represented the largest share of passengers and departing seats at HPN throughout the period, and HPN is also served by American, BermudAir, Breeze Airways (Breeze), Cape Air, Delta, and Tradewind Aviation. BermudAir commenced service to Bermuda L. F. Wade International Airport (BDA) in 2023, while the remaining destinations served from HPN are located in the US.
- ISP, located approximately 55 miles east of Manhattan, served 1.3 million total passengers in 2023, a 17.5 percent decrease relative to 2019.<sup>121</sup> Southwest Airlines (Southwest) currently represents the largest share of revenue passengers and departing seats at ISP, followed closely by Frontier Airlines (Frontier), which was the largest airline by both metrics in 2022. Breeze also serves ISP, and JetBlue is scheduled to begin service during 2024. All destinations served from ISP are within the US.
- The catchment areas of HPN and ISP have some overlap with the catchment areas of JFK, EWR, and LGA, but they capture a small component of the overall New York City market due to their distance from Manhattan and

---

<sup>115</sup> As defined by the FAA, a large-hub airport enplanes 1.0 percent or more of nationwide revenue enplaned passengers. This was equal to approximately 9.4 million revenue enplaned passengers in FY 2023.

<sup>116</sup> Port Authority of New York and New Jersey, July 2024.

<sup>117</sup> Per published airline schedules for the year ending December 2024.

<sup>118</sup> Port Authority of New York and New Jersey, July 2024.

<sup>119</sup> Port Authority of New York and New Jersey, July 2024.

<sup>120</sup> US Department of Transportation T-100 Database, July 2024.

<sup>121</sup> US Department of Transportation T-100 Database, July 2024.

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

the core of the New York City metropolitan area as well as their relatively limited air service compared to the large-hub airports serving the Air Trade Area. Similar to the large-hub airports, SWF is also operated by the Port Authority and is located within the New York-Newark, NY-NJ-CT-PA Combined Statistical Area. However, it is located outside the Air Trade Area, approximately 64 miles from Manhattan and the core of the metropolitan area.

#### 4.2.2 AIRPORT SHARE OF NEW YORK CITY TRAFFIC

**Table 4-5** presents the total domestic passengers and passenger shares among JFK, EWR, LGA, and the consolidated passengers and passenger share of HPN, ISP, and SWF (i.e., "Other"). Between 2014 and 2023, JFK represented between 28 percent and 33 percent of total domestic passengers, with EWR and LGA representing similar shares during most of this period. JFK domestic passengers increased by a 2.4 percent CAGR between 2014 and 2019 compared to a 3.8 percent CAGR for all airports serving the New York City market during the same period. JFK, EWR, LGA, and the consolidated other airports with commercial service each recovered to pre-pandemic domestic passenger volumes in 2023. Growth in domestic passenger volumes at JFK from 2014 to 2023 represented a 1.7 percent CAGR, whereas domestic passenger volumes at commercial service airports serving New York City as a whole increased at a 2.8 percent CAGR.

TABLE 4-5 HISTORICAL SHARES OF DOMESTIC PASSENGERS FOR AIRPORTS SERVING THE NEW YORK CITY MARKET

YEAR	DOMESTIC PASSENGERS <sup>1</sup>								
	JFK	JFK SHARE	EWR	EWR SHARE	LGA	LGA SHARE	OTHER <sup>2</sup>	OTHER SHARE	TOTAL
2014	25,021,432	32.5%	23,762,627	30.8%	25,157,202	32.7%	3,098,990	4.0%	77,040,251
2015	26,806,854	32.6%	25,691,410	31.3%	26,684,923	32.5%	2,989,794	3.6%	82,172,981
2016	27,324,138	31.6%	28,218,424	32.6%	27,996,855	32.4%	2,983,667	3.4%	86,523,084
2017	26,961,081	30.7%	30,330,568	34.5%	27,474,292	31.3%	3,112,269	3.5%	87,878,210
2018	28,117,337	30.8%	31,730,735	34.8%	27,857,697	30.5%	3,557,344	3.9%	91,263,113
2019	28,233,791	30.4%	32,004,140	34.5%	28,875,041	31.1%	3,647,594	3.9%	92,760,566
2020	8,267,666	28.2%	12,121,093	41.3%	7,853,368	26.8%	1,088,404	3.7%	29,330,531
2021	18,037,803	31.1%	22,446,527	38.7%	15,273,203	26.3%	2,315,408	4.0%	58,072,941
2022	28,449,455	31.1%	31,943,547	34.9%	27,807,585	30.4%	3,263,763	3.6%	91,464,350
2023	29,094,515	29.5%	35,347,911	35.8%	30,576,140	31.0%	3,686,288	3.7%	98,704,854
<b>Compound Annual Growth Rate</b>									
2014 – 2019	2.4%		6.1%		2.8%		3.3%		3.8%
2014 – 2023	1.7%		4.5%		2.2%		1.9%		2.8%

## NOTES:

EWR – Newark Liberty International Airport

LGA – LaGuardia Airport

JFK – John F. Kennedy International Airport

1 Includes passengers as reported by the Port Authority of New York and New Jersey for EWR, LGA, JFK, and SWF and revenue passengers reported by the US Department of Transportation T-100 database for other airports.

2 Other includes Westchester County Airport (HPN), Long Island MacArthur Airport (ISP), and New York Stewart International Airport (SWF).

SOURCES: Port Authority of New York and New Jersey, August 2024 (EWR, LGA, JFK, and SWF passenger data); Cirium Diio, August 2024 (US Department of Transportation, T-100 data, HPN and ISP passenger data).

JOHN F. KENNEDY INTERNATIONAL AIRPORT

**Table 4-6** presents the total international passengers and passenger shares among JFK, EWR, LGA, and the consolidated passengers and passenger share of HPN, ISP, and SWF. Between 2014 and 2023, JFK represented between approximately 65 percent and 69 percent of total international passengers, with EWR representing the next largest share, ranging between approximately 27 percent and 34 percent. LGA represented most of the remainder, between approximately 2 and 4 percent during the period. JFK international passengers increased by a 4.0 percent CAGR between 2014 and 2019 compared to a 4.1 percent CAGR for all airports serving the New York City market during the same period. International passenger volumes at JFK, EWR, LGA, and the consolidated other airports with commercial service remained below pre-pandemic volumes in 2023, though recovery continued relative to the prior year. Growth in international passenger volumes at JFK from 2014 to 2023 represented a 1.9 percent CAGR, slightly higher than the 1.8 percent CAGR recorded for international passenger volumes at all commercial service airports serving New York City.

**TABLE 4-6 HISTORICAL SHARES OF INTERNATIONAL PASSENGERS FOR AIRPORTS SERVING THE NEW YORK CITY MARKET**

YEAR	INTERNATIONAL PASSENGERS <sup>1</sup>								
	JFK	JFK SHARE	EWR	EWR SHARE	LGA	LGA SHARE	OTHER <sup>2</sup>	OTHER SHARE	TOTAL
2014	28,198,994	67.5%	11,781,130	28.2%	1,814,893	4.3%	0	0.0%	41,795,017
2015	30,077,876	68.9%	11,805,317	27.1%	1,752,745	4.0%	0	0.0%	43,635,938
2016	31,779,334	69.2%	12,344,869	26.9%	1,790,006	3.9%	0	0.0%	45,914,209
2017	32,527,901	68.3%	12,888,553	27.1%	2,087,936	4.4%	141,077	0.3%	47,645,467
2018	33,518,898	66.8%	14,128,785	28.1%	2,224,430	4.4%	324,307	0.6%	50,196,420
2019	34,337,672	67.2%	14,384,897	28.2%	2,209,853	4.3%	159,635	0.3%	51,092,057
2020	8,362,976	66.8%	3,771,799	30.1%	391,824	3.1%	0	0.0%	12,526,599
2021	12,750,519	64.8%	6,603,025	33.5%	327,830	1.7%	0	0.0%	19,681,374
2022	26,838,256	67.4%	11,621,707	29.2%	1,286,207	3.2%	53,287	0.1%	39,799,457
2023	33,369,816	68.1%	13,736,863	28.0%	1,808,820	3.7%	103,113	0.2%	49,018,612
<b>Compound Annual Growth Rate</b>									
2014 – 2019	4.0%		4.1%		4.0%		NA		4.1%
2014 – 2023	1.9%		1.7%		0.0%		NA		1.8%

NOTES:

EWR – Newark Liberty International Airport

JFK – John F. Kennedy International Airport

LGA – LaGuardia Airport

NA – Not Applicable

1 Includes passengers as reported by the Port Authority of New York and New Jersey for EWR, LGA, JFK, and SWF and revenue passengers reported by the US Department of Transportation T-100 database for other airports.

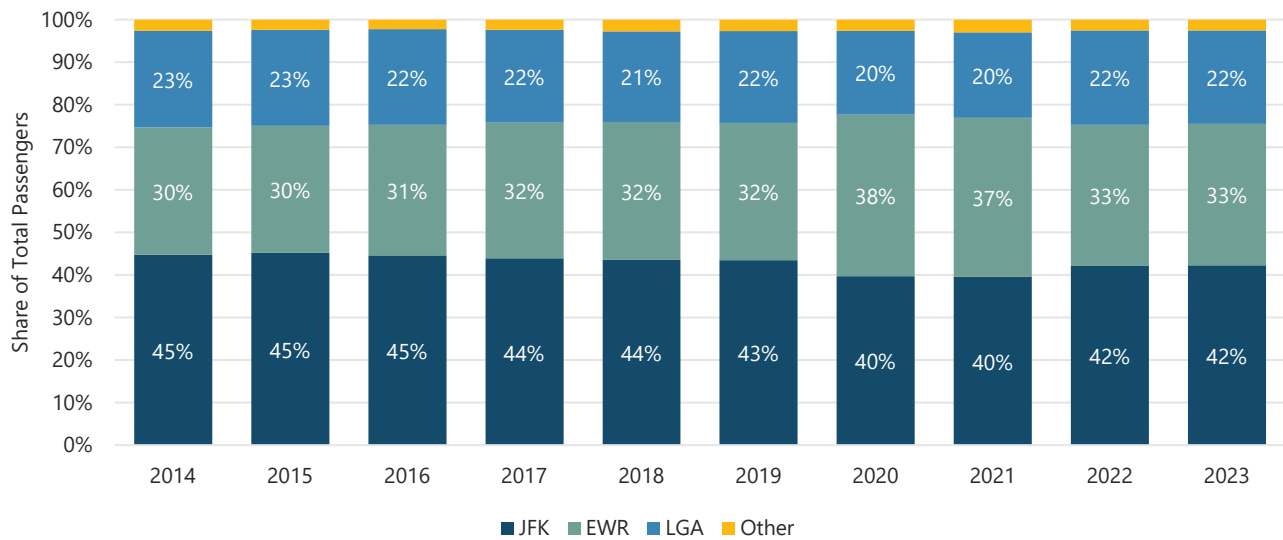
2 Other includes Westchester County Airport (HPN), Long Island MacArthur Airport (ISP), and New York Stewart International Airport (SWF).

SOURCES: Port Authority of New York and New Jersey, August 2024 (EWR, LGA, JFK, and SWF passenger data); Cirium Diio, August 2024 (US Department of Transportation, T-100 data, HPN and ISP passenger data).

JOHN F. KENNEDY INTERNATIONAL AIRPORT

**Exhibit 4-1** presents the airport share of the Air Trade Area’s total passengers between 2014 and 2023. Throughout the period, JFK has represented the largest share of total passengers. The Airport represented between 43 percent and 45 percent of total passengers prior to the pandemic, decreasing to 40 percent during 2020 and 2021 due to the effects of the pandemic on international passenger demand, which are detailed further in **Section 4.5.1**. The Airport handled 42 percent of total passengers in 2022 and 2023, nearer to pre-pandemic levels. EWR represented the next largest share of total passengers, ranging between 30 percent and 32 percent prior to the pandemic, peaking at 38 percent in 2020, and decreasing to 33 percent in 2022 and 2023. LGA has represented between 12 percent and 23 percent of total enplaned passengers between 2014 and 2023. **Exhibit 4-2** presents the share of New York City market O&D passengers by airport. JFK’s share of O&D passengers has been nearly the same as its share of total enplaned passengers throughout the historical period, ranging between approximately 39 percent and 45 percent of total O&D passengers.

EXHIBIT 4-1 AIRPORT SHARE OF TOTAL ENPLANED PASSENGERS



NOTES:

EWR – Newark Liberty International Airport

JFK – John F. Kennedy International Airport

LGA – LaGuardia Airport

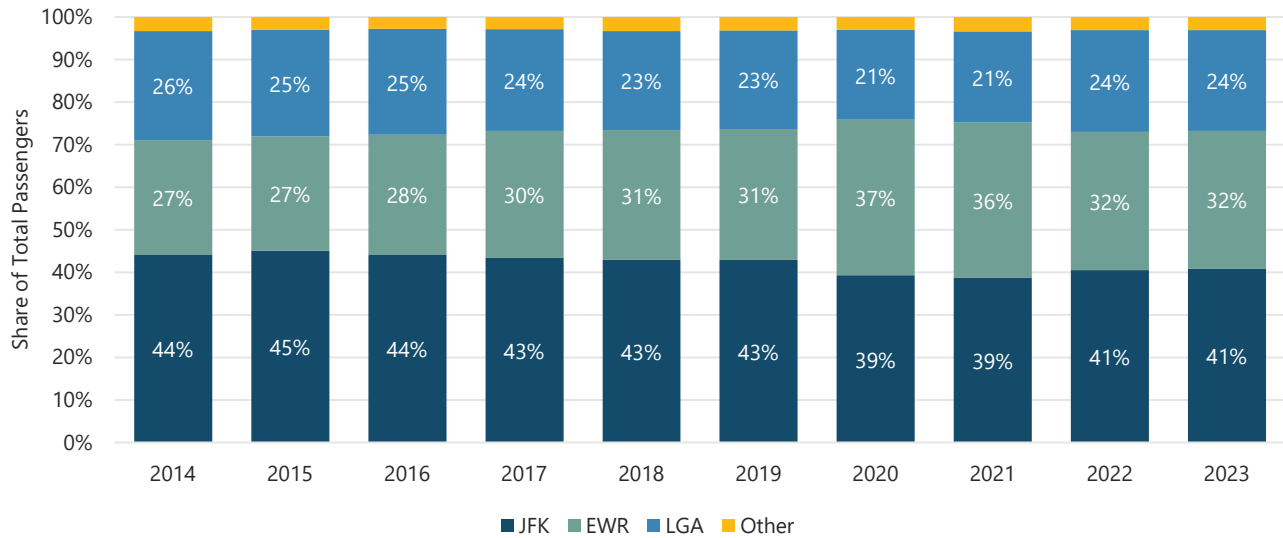
NA – Not Applicable

1 Includes passengers as reported by the Port Authority of New York and New Jersey for EWR, LGA, JFK, and SWF and revenue passengers reported by the US Department of Transportation T-100 database for other airports.

2 Other includes Westchester County Airport (HPN), Long Island MacArthur Airport (ISP), and New York Stewart International Airport (SWF).

SOURCES: Port Authority of New York and New Jersey, August 2024 (EWR, LGA, JFK, and SWF passenger data); Cirium Diio, August 2024 (US Department of Transportation, T-100 data, HPN and ISP passenger data).

EXHIBIT 4-2 AIRPORT SHARE OF TOTAL O&D PASSENGERS



NOTES:

EWR – Newark Liberty International Airport

JFK – John F. Kennedy International Airport

LGA – LaGuardia Airport

NA – Not Applicable

1 Includes passengers as reported by the Port Authority of New York and New Jersey for EWR, LGA, JFK, and SWF and revenue passengers reported by the US Department of Transportation T-100 database for other airports.

2 Other includes Westchester County Airport (HPN), Long Island MacArthur Airport (ISP), and New York Stewart International Airport (SWF).

SOURCES: Port Authority of New York and New Jersey, August 2024 (EWR, LGA, JFK, and SWF passenger data); Cirium Diio, August 2024 (US Department of Transportation, T-100 data, HPN and ISP passenger data).

4.2.3 JFK AS AN INTERNATIONAL GATEWAY

The Airport is the primary international gateway for the Air Trade Area, representing approximately two-thirds of international enplaned passengers during the period from 2014 to 2023. EWR is the second largest international gateway serving the New York City market, serving between one-quarter and one-third of international demand. **Table 4-7** presents the share of international passengers at the large-hub airports serving the Air Trade Area, as well as the aggregate total from the other three airports with commercial service in the broader New York City market. The table also includes the international destinations served, foreign countries served, and the number of foreign flag airlines serving the airports. JFK leads all airports serving the New York City market in each metric.

TABLE 4-7 INTERNATIONAL PASSENGERS, DESTINATIONS AND FOREIGN FLAG AIRLINES

METRIC	JFK	EWR	LGA	OTHER
2023 Share of International Passengers	68.1%	28.0%	3.7%	0.2%
International Destinations Served Nonstop	123	91	5	3
Foreign Countries/Regions Served Nonstop	79	55	3	3
Foreign Flag Airlines	65	25	1	3

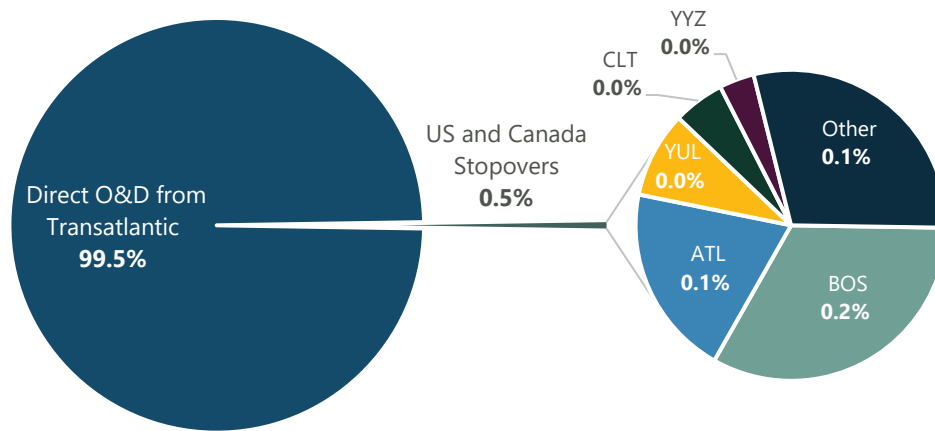
NOTE: International destinations and foreign countries served and the number of foreign flag airlines based on published airline schedules for 2024. Some scheduled activities may not actually operate.

SOURCES: Port Authority of New York and New Jersey, August 2024 (EWR, LGA, JFK, and SWF passenger data); Cirium Diio, August 2024 (US Department of Transportation, T-100 data, HPN and ISP passenger data); Cirium Diio, August 2024 (published airline schedules).

JOHN F. KENNEDY INTERNATIONAL AIRPORT

Transatlantic markets, inclusive of Europe, Africa, the Middle East, and Central and South Asia, represent approximately 52 percent of the total international traffic at JFK. The Airport and the broader New York City market are well-positioned to serve as a transatlantic gateway given their geographical position in the northeast US; travel across the Atlantic connecting through most other US airline hubs would require a circuitous routing. The Air Trade Area is very well served by foreign flag airlines on transatlantic routes. In 2024, all but one foreign flag airline providing regular transatlantic service to the US served one or more Air Trade Area airports.<sup>122</sup> As presented in **Exhibit 4-3**, nearly all, 99.5 percent, of transatlantic O&D passengers in the New York City area depart or arrive on the transatlantic leg of their journey from an airport in the Air Trade Area, with the remainder connecting at another North American gateway.

EXHIBIT 4-3 AIR TRADE AREA TRANSATLANTIC O&D PASSENGER ITINERARIES



NOTES:

ATL – Hartsfield-Jackson Atlanta International Airport; BOS – Boston Logan International Airport; CLT – Charlotte Douglas International Airport; O&D – Origin & Destination passengers; US – United States; YUL – Montréal-Pierre Elliott Trudeau International Airport; YYZ – Toronto Pearson International Airport

SOURCE: Sabre Market Intelligence, August 2024 (passenger bookings data).

JFK and EWR are the only major airports serving the Air Trade Area that have nonstop transatlantic service. **Exhibit 4-4** presents a comparison of scheduled departing seats from JFK and EWR to transatlantic destinations for the 12-month period ending December 2024. JFK seat capacity on transatlantic routes is more than double that of EWR. JFK also has more service to unique transatlantic destinations than EWR, with 91 percent of EWR’s seat capacity on transatlantic routes to destinations that are also served from JFK, compared to 83 percent for JFK. The residual 17 percent of JFK’s transatlantic seat capacity represents transatlantic destinations that are only served from JFK.

### 4.3 AIRLINES SERVING THE AIRPORT

More airlines serve JFK than any other airport in the US. As of August 2024, 73 airlines served provide scheduled passenger service at JFK during the 12 months ending in December 2024, 67 served LAX, the next most served

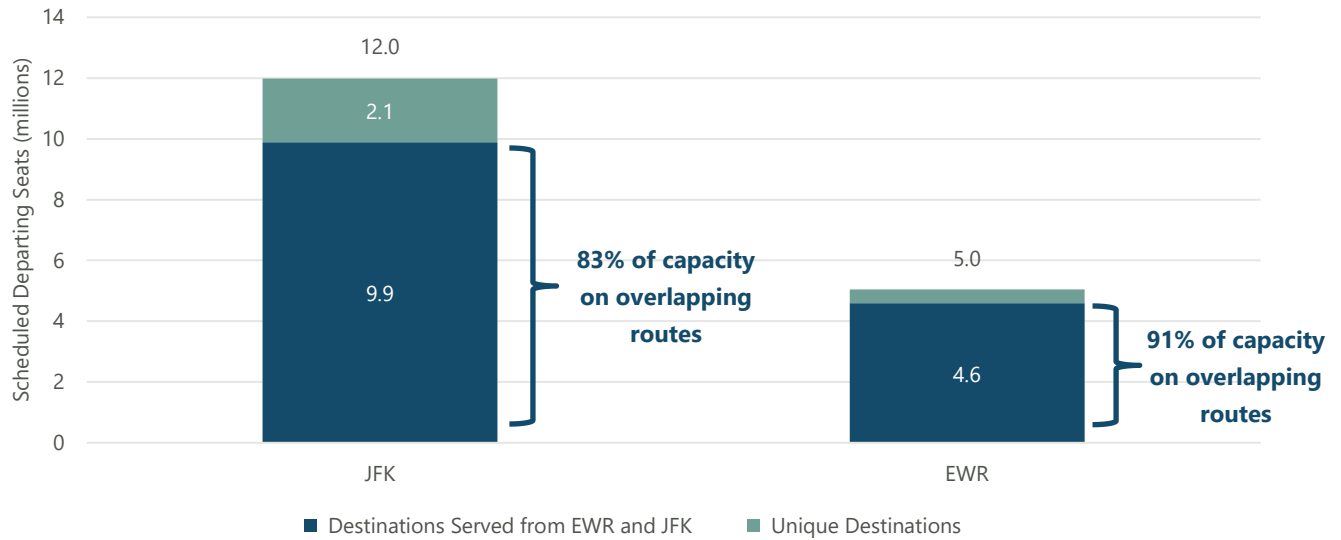
<sup>122</sup> Based on published airline schedules for the year 2024; excludes charter operations and subsidiary airlines. The scheduled passenger airline serving exclusively non-New York City area airports is Air Tahiti Nui, which operates service from Paris Charles de Gaulle Airport (CDG) to Tahiti Faa’a International Airport (PPT) in Papeete, Tahiti by way of Los Angeles International Airport (LAX) and Seattle-Tacoma International Airport (SEA).



JOHN F. KENNEDY INTERNATIONAL AIRPORT

airport, and MIA, SFO, and ORD the third, fourth, and fifth most served airports had service from 55, 53, and 50 airlines, respectively.<sup>123</sup>

EXHIBIT 4-4 JFK AND EWR TRANSATLANTIC CAPACITY (2024)



NOTE:  
 EWR – Newark Liberty International Airport; JFK – John F. Kennedy International Airport  
 SOURCE: Cirium Diio, August 2024 (published airline schedules).

**Table 4-8** lists the passenger airlines providing scheduled service at the Airport during the 12 months ending in December 2024 as of August 2024. The Airport is currently served by 8 scheduled US airlines and 65 foreign flag airlines.

**Table 4-9** presents US airlines providing scheduled service during the period from 2014 to 2024. The Airport benefits from a stable core of five US airlines that have provided scheduled service to the Airport throughout the historical period. Sun Country Airlines (Sun Country) and Frontier have begun service to the Airport since the onset of the COVID-19 pandemic, commencing service in 2023 and 2024, respectively. United, which operates a hub at EWR, briefly resumed service at the Airport in 2021, but the airline suspended service at the Airport in 2023.

**Table 4-10** presents foreign flag airlines providing scheduled service during the period from 2014 to 2024. The number of foreign flag airlines peaked in 2018 and 2019, when 71 airlines served the Airport. Thirty-five airlines have consistently served the Airport throughout the historical period. During the period, the number of foreign flag airlines serving the Airport has increased from 62 airlines in 2014 to 64 airlines in 2024. Among airlines currently serving the Airport, eight airlines that did not operate at the Airport prior to the COVID-19 pandemic have commenced service from the Airport since 2020, including Azores Airlines, Neos, and Air Senegal in 2021; Norse Atlantic Airways, Air New Zealand, and Flair Airlines in 2022; as well as Scandinavian Airlines in 2023. These airlines provide service to a wide range of destinations, including Africa, Canada, and Europe along with the Airport’s first nonstop links to Oceania. Several airlines that provided service to the Airport in 2019 and early 2020 have not resumed service since the onset of the pandemic due to shifting business models, cessation of operations, or other

<sup>123</sup> Cirium Diio (published airline schedules), August 2024.

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

strategic and financial changes. Similarly, no service to Ukraine nor Russia has operated since the onset of war between the two countries in early 2022. Potential resumption of service or lack thereof by either grouping of airlines is not anticipated to have a material impact on the activity forecast for Terminal 6.

TABLE 4-8 SCHEDULED PASSENGER AIRLINES SERVING THE AIRPORT (2024)

SCHEDULED US AIRLINES (8)	FOREIGN FLAG AIRLINES (65)	
Alaska Airlines	Aer Lingus <sup>1</sup>	HiSky Europe
American Airlines	Aerolineas Argentinas	Iberia
Cape Air	Aeromexico	Icelandair
Delta Air Lines	Air Canada	ITA Airways
Frontier Airlines	Air China	Japan Airlines
Hawaiian Airlines	Air Europa	Kenya Airways
JetBlue Airways	Air France	KLM Royal Dutch Airlines
Sun Country Airlines	Air India	Korean Air
	Air New Zealand	Kuwait Airways
	Air Senegal	LATAM Group <sup>3</sup>
	Air Serbia	LOT Polish Airlines
	All Nippon Airways	Lufthansa
	Asiana Airlines	Neos
	Austrian Airlines	Norse Atlantic Airways <sup>4</sup>
	Avianca Group <sup>2</sup>	Philippine Airlines
	British Airways	Qantas
	Brussels Airlines	Qatar Airways
	Caribbean Airlines	Royal Air Maroc
	Cathay Pacific	Royal Jordanian
	Cayman Airways	Azores Airlines
	China Airlines	Saudia
	China Eastern Airlines	Scandinavian Airlines
	China Southern Airlines	Singapore Airlines
	Condor	Swiss International Air Lines
	Copa Airlines	TAP Air Portugal
	Egyptair	Turkish Airlines
	El Al	Uzbekistan Airways
	Emirates	Virgin Atlantic
	Ethiopian Airlines	Viva Aerobus
	Etihad Airways	Volaris Group <sup>5</sup>
	EVA Air	WestJet Airlines
	Finnair	Xiamen Airlines
	Flair Airlines	

## NOTES:

Scheduled passenger airlines are included based on published airline schedules for 2024, with the exception of HiSky Europe which does not appear in published schedules but has reported activity.

Includes regional affiliates, where applicable.

1 Includes subsidiary Aer Lingus UK.

2 Includes Avianca, Avianca Costa Rica, Avianca Ecuador, Avianca El Salvador.

3 Includes LATAM Airlines Chile, LATAM Airlines Brazil, and LATAM Airlines Peru.

4 Includes subsidiary Norse Atlantic UK.

5 Includes Volaris, Volaris Costa Rica, and Volaris El Salvador.

SOURCES: Cirium Diio, August 2024 (published airline schedules); Port Authority of New York and New Jersey, August 2024

JOHN F. KENNEDY INTERNATIONAL AIRPORT

TABLE 4-9 JFK SCHEDULED US AIRLINE BASE

AIRLINE <sup>1</sup>	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024 <sup>2</sup>
Delta Air Lines	•	•	•	•	•	•	•	•	•	•	•
JetBlue Airways	•	•	•	•	•	•	•	•	•	•	•
American Airlines	•	•	•	•	•	•	•	•	•	•	•
Alaska Airlines	•	•	•	•	•	•	•	•	•	•	•
Hawaiian Airlines	•	•	•	•	•	•	•	•	•	•	•
Sun Country Airlines	•	•	•	•	•	•				•	•
Cape Air					•	•	•	•	•	•	•
Frontier Airlines											•
United Airlines	•	•						•	•		
Eastern Airlines <sup>3</sup>			•				•	•	•		
<b>Total Airlines Serving the Airport</b>	<b>7</b>	<b>7</b>	<b>7</b>	<b>6</b>	<b>7</b>	<b>7</b>	<b>7</b>	<b>8</b>	<b>8</b>	<b>7</b>	<b>8</b>

NOTES:

- 1 Where applicable, includes affiliated, regional, and merged airlines.
- 2 Scheduled service in 2024 in the 12-month period ending December 2024 as of July 2024.
- 3 Rebranded from Dynamic Airways in April 2018.

SOURCE: Cirium Diio, August 2024 (published airline schedules).

TABLE 4-10 (1 OF 4) JFK SCHEDULED FOREIGN FLAG AIRLINE BASE

AIRLINE <sup>1</sup>	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024 <sup>2</sup>
British Airways	•	•	•	•	•	•	•	•	•	•	•
Virgin Atlantic	•	•	•	•	•	•	•	•	•	•	•
Avianca <sup>3</sup>	•	•	•	•	•	•	•	•	•	•	•
Air France	•	•	•	•	•	•	•	•	•	•	•
Emirates	•	•	•	•	•	•	•	•	•	•	•
Aer Lingus <sup>4</sup>	•	•	•	•	•	•	•	•	•	•	•
Turkish Airlines	•	•	•	•	•	•	•	•	•	•	•
Lufthansa	•	•	•	•	•	•	•	•	•	•	•
Qatar Airways	•	•	•	•	•	•	•	•	•	•	•
LATAM <sup>5</sup>	•	•	•	•	•	•	•	•	•	•	•
Cathay Pacific	•	•	•	•	•	•	•	•	•	•	•
Iberia	•	•	•	•	•	•	•	•	•	•	•
Korean Air	•	•	•	•	•	•	•	•	•	•	•
ITA Airways <sup>6</sup>	•	•	•	•	•	•	•	•	•	•	•
KLM Royal Dutch Airlines	•	•	•	•	•	•	•	•	•	•	•
Swiss International Air Lines	•	•	•	•	•	•	•	•	•	•	•
Aeromexico	•	•	•	•	•	•	•	•	•	•	•
El Al	•	•	•	•	•	•	•	•	•	•	•
Etihad Airways	•	•	•	•	•	•	•	•	•	•	•
Air India	•	•	•	•	•	•	•	•	•	•	•
Copa Airlines	•	•	•	•	•	•	•	•	•	•	•
Caribbean Airlines	•	•	•	•	•	•	•	•	•	•	•
Japan Airlines	•	•	•	•	•	•	•	•	•	•	•
Asiana Airlines	•	•	•	•	•	•	•	•	•	•	•
Singapore Airlines	•	•	•	•	•	•	•	•	•	•	•

TABLE 4-10 (2 OF 4) JFK SCHEDULED FOREIGN FLAG AIRLINE BASE

AIRLINE <sup>1</sup>	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024 <sup>2</sup>
All Nippon Airways	•	•	•	•	•	•	•	•	•	•	•
LOT Polish Airlines	•	•	•	•	•	•	•	•	•	•	•
Royal Air Maroc	•	•	•	•	•	•	•	•	•	•	•
Egyptair	•	•	•	•	•	•	•	•	•	•	•
EVA Air	•	•	•	•	•	•	•	•	•	•	•
Icelandair	•	•	•	•	•	•	•	•	•	•	•
Saudia	•	•	•	•	•	•	•	•	•	•	•
Finnair	•	•	•	•	•	•	•	•	•	•	•
Brussels Airlines	•	•	•	•	•	•	•	•	•	•	•
Kuwait Airways	•	•	•	•	•	•	•	•	•	•	•
Air China	•	•	•	•	•	•	•			•	•
Air Canada	•	•	•							•	•
Austrian Airlines	•	•	•	•	•	•	•	•	•	•	•
China Airlines	•	•	•	•	•	•	•	•	•	•	•
Royal Jordanian	•	•	•	•	•	•	•	•	•	•	•
Air Europa	•	•	•	•	•	•	•	•	•	•	•
Qantas	•	•	•	•	•	•	•			•	•
Uzbekistan Airways	•	•	•	•	•	•	•	•	•	•	•
WestJet Airlines	•	•	•	•	•	•	•	•	•	•	•
China Eastern Airlines	•	•	•	•	•	•	•	•	•	•	•
Cayman Airways	•	•	•	•	•	•	•	•	•	•	•
Aerolineas Argentinas	•	•	•	•	•	•	•	•	•	•	•
China Southern Airlines	•	•	•	•	•	•	•		•	•	•
Volaris <sup>7</sup>		•	•	•	•	•	•	•	•	•	•
Philippine Airlines		•	•	•	•	•	•	•	•	•	•

TABLE 4-10 (3 OF 4) JFK SCHEDULED FOREIGN FLAG AIRLINE BASE

AIRLINE <sup>1</sup>	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024 <sup>2</sup>
TAP Air Portugal			•	•	•	•	•	•	•	•	•
Condor			•	•	•	•		•	•	•	•
Air Serbia			•	•	•	•	•	•	•	•	•
Xiamen Airlines				•	•	•	•				•
Kenya Airways					•	•	•	•	•	•	•
Viva Aerobus					•	•	•	•	•	•	•
Ethiopian Airlines						•	•	•	•	•	•
Azores Airlines <sup>8</sup>								•	•	•	•
Neos								•	•	•	•
Air Senegal								•	•	•	•
Norse Atlantic Airways <sup>9</sup>									•	•	•
Air New Zealand									•	•	•
Flair Airlines									•	•	•
Scandinavian Airlines										•	•
HiSky Europe											•
Aeroflot	•	•	•	•	•	•	•	•	•		
Swoop									•		
Air Italy	•	•	•	•	•	•	•				
Azerbaijan Airlines	•	•	•	•	•	•	•				
InterJet	•	•	•	•	•	•	•				
Norwegian Air <sup>10</sup>	•	•	•	•	•	•	•				
South African Airways	•	•	•	•	•	•	•				
Ukraine International Airlines	•	•	•	•	•	•	•				
Hainan Airlines				•	•	•	•				
Corsair							•				
Fly Jamaica Airways	•	•	•	•	•	•					

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

TABLE 4-10 (4 OF 4) JFK SCHEDULED FOREIGN FLAG AIRLINE BASE

AIRLINE <sup>1</sup>	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024 <sup>2</sup>
TAME	•	•	•	•	•	•					
XL Airways France	•	•	•	•	•	•					
Thomas Cook Airlines		•	•	•	•	•					
Eurowings					•	•					
Estelar						•					
Wow Air					•						
Air Berlin	•	•	•	•							
Arik Air	•	•	•	•							
Pakistan International Airlines	•	•	•	•							
Transaero	•	•									
<b>Total Airlines Serving the Airport</b>	<b>62</b>	<b>65</b>	<b>67</b>	<b>68</b>	<b>69</b>	<b>70</b>	<b>64</b>	<b>56</b>	<b>61</b>	<b>63</b>	<b>65</b>

## NOTES:

- 1 Where applicable, includes affiliated, regional, and merged airlines.
  - 2 Scheduled service in 2024 in the 12-month period ending December 2024 as of July 2024.
  - 3 Includes Avianca, Avianca Costa Rica, Avianca Ecuador, Avianca El Salvador.
  - 4 Includes subsidiary Aer Lingus UK.
  - 5 Includes LATAM Airlines Chile, LATAM Airlines Brazil, and LATAM Airlines Peru. In May 2018, LAN Airlines was rebranded as LATAM Airlines Chile; TAM Linhas Aéreas was rebranded as LATAM Airlines Brazil; LAN Peru was rebranded as LATAM Airlines Peru.
  - 6 ITA Airways is the successor of Alitalia, which ceased operations on October 15, 2021.
  - 7 Includes Volaris, Volaris Costa Rica, and Volaris El Salvador.
  - 8 Rebranded from SATA Internacional in October 2015.
  - 9 Includes subsidiary Norse Atlantic UK.
  - 10 Includes subsidiary Norwegian Air UK.
- SOURCE: Cirium Diio, August 2024 (published airline schedules).

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

## 4.4 HISTORICAL AIRPORT ACTIVITY

The following sections present a review of JFK's historical passenger activity, air service, and passenger airline operations.

### 4.4.1 PASSENGERS

**Table 4-11** presents historical domestic, international, and total passengers (enplaned and deplaned) at the Airport. Passenger volumes increased in the period prior to the pandemic, with growth in domestic, international, and total passengers from 2014 to 2019 representing 2.4 percent, 4.0 percent, and 3.3 percent CAGRs, respectively. Passenger volumes fell in 2020 because of the COVID-19 pandemic; the effects of the pandemic are discussed further in **Section 4.5.1**. Domestic passenger volumes recovered to pre-pandemic levels in 2022 and grew at a 1.7 percent CAGR from 2014 to 2023. International passengers, which represent a large share of total passengers at the Airport, were slower to recover from the effects of the pandemic and represented 97.2 percent of pre-pandemic volumes in 2023. Total passenger volumes in 2023 represented 99.8 percent of pre-pandemic volumes.

TABLE 4-11 JFK HISTORICAL DOMESTIC, INTERNATIONAL, AND TOTAL PASSENGERS

YEAR	DOMESTIC PASSENGERS	ANNUAL GROWTH	INTERNATIONAL PASSENGERS	ANNUAL GROWTH	TOTAL PASSENGERS	ANNUAL GROWTH
2014	25,021,432	4.7%	28,198,994	6.2%	53,220,426	5.5%
2015	26,806,854	7.1%	30,077,876	6.7%	56,884,730	6.9%
2016	27,324,138	1.9%	31,779,334	5.7%	59,103,472	3.9%
2017	26,961,081	-1.3%	32,527,901	2.4%	59,488,982	0.7%
2018	28,117,337	4.3%	33,518,898	3.0%	61,636,235	3.6%
2019	28,233,791	0.4%	34,337,672	2.4%	62,571,463	1.5%
2020	8,267,666	-70.7%	8,362,976	-75.6%	16,630,642	-73.4%
2021	18,037,803	118.2%	12,750,519	52.5%	30,788,322	85.1%
2022	28,449,455	57.7%	26,838,256	110.5%	55,287,711	79.6%
2023	29,094,515	2.3%	33,369,816	24.3%	62,464,331	13.0%
Jan to Jun 2023	14,465,934		15,502,603		29,968,537	
Jan to Jun 2024	13,601,782	-6.0%	16,704,436	7.8%	30,306,218	1.1%
<b>Compound Annual Growth Rate</b>						
2014 – 2019	2.4%		4.0%		3.3%	
2014 – 2023	1.7%		1.9%		1.8%	

## NOTE:

Passengers represent revenue passengers only.

SOURCE: Port Authority of New York and New Jersey, August 2024

Notable details regarding passenger activity at the Airport between 2014 and 2024 are included below. Additional context regarding the evolution of the route networks and seat capacity offered by the Airport's hub airlines, American, Delta, and JetBlue, is provided in **Section 4.5.7**.

- **2014 to 2019:** Both domestic and international passenger volumes grew prior to the pandemic. During the period, several new airlines began providing service to the Airport along with new nonstop destinations served



## JOHN F. KENNEDY INTERNATIONAL AIRPORT

from JFK. New domestic airlines providing service included Alaska Airlines (Alaska) and Cape Air. New international airlines included Air Serbia, China Southern Airlines, Condor, Ethiopian Airlines, Kenya Airways, Philippine Airlines, TAP Air Portugal, Viva Aerobus, Volaris, WestJet Airlines, and Xiamen Airlines. These airlines provided service to several new nonstop destinations on four continents, including Félix-Houphouët-Boigny International (ABJ; Abidjan, Ivory Coast), Belgrade Nikola Tesla (BEG), Guangzhou Baiyun International (CAN), Fuzhou Changle International (FOC), Miguel Hidalgo y Costilla Guadalajara International (GDL), Lisbon (LIS), Ninoy Aquino International (MNL; Manila, Philippines), Jomo Kenyatta International (NBO; Nairobi, Kenya), and Calgary International (YYC) airports. Incumbent airlines also provided new service to a variety of domestic and international destinations. New domestic destinations served by these airlines included Ted Stevens Anchorage International (ANC), Bangor International (BGR), Cape Cod Gateway (HYA), Ontario International (ONT), Worcester Regional (ORH), Reno-Tahoe International (RNO), Savannah/Hilton Head International (SAV), and John Wayne (SNA; Orange County, California) airports, and new international destinations included Chhatrapati Shivaji Maharaj International Airport, Mumbai (BOM), Curaçao International Airport (CUR), Blaise Diagne International Airport (DSS; Dakar, Senegal), Edinburgh Airport (EDI), Ponta Delgada–João Paulo II Airport (PDL), Pointe-à-Pitre International Airport (PTP), Los Cabos International Airport (SJD; San José del Cabo, Mexico), Argyle International Airport (SVD), Islam Karimov Tashkent International Airport (TAS), and Mariscal Sucre International Airport (UIO; Quito, Ecuador).

- **2020 to 2022:** Passenger activity decreased sharply following the onset of the pandemic in March 2020. Several airlines suspended service to JFK during the period, reflecting government-imposed restrictions on international travel as well as decreased domestic and international passenger travel demand more broadly. As travel demand began to recover, several airlines commenced service at the Airport, including Air New Zealand, Air Senegal, Azores Airlines, Flair Airlines, Neos, and Norse Atlantic Airways which provided service to several destinations, including nonstop service to previously unserved destinations such as Auckland Airport (AKL), Berlin Brandenburg Airport “Willy Brandt” (BER), Madeira Airport (FNC; Funchal, Portugal), and Lajes Airport (TER). Incumbent airlines added service to a few new destinations, including Bozeman Yellowstone (BZN) and Alfonso Bonilla Aragón (CLO; Santiago de Cali, Colombia) international airports, reflective of the relatively early return of passenger demand for outdoor leisure markets and short-haul international destinations in Latin America from the pandemic-era downturn in demand. Of note, Singapore Airlines, which has historically served JFK with flights that stop in Europe en route to Singapore, commenced nonstop flights to Singapore Changi Airport (SIN) in 2020, using specially configured Airbus A350-900 Ultra-Long-Range (ULR) aircraft, becoming the longest nonstop flight in the world. In 2020, American and JetBlue launched a strategic partnership called the “Northeast Alliance” whereby the two airlines coordinated scheduling and marketing in the region to grow their combined presence and market share. By 2022, both airlines exceeded their pre-pandemic levels of capacity and passengers at the Airport. In 2023, the US Department of Justice ruled the alliance was anti-competitive and the two airlines unwound the partnership.
- **2023 to 2024:** As passenger demand recovered from the effects of the pandemic, additional airlines resumed service at the Airport. Among airlines serving the Airport in 2019 that did not provide any scheduled service in 2020, two had resumed service by 2024, while five airlines that served the Airport during at least a portion of 2020 resumed service at some point in 2022, 2023, or 2024. New airlines serving the Airport in 2023 and 2024 include Scandinavian Airlines, providing service to Copenhagen Airport, Kastrup (CPH), HiSky Europe, providing service to Bucharest Henri Coandă International Airport (OTP), and Frontier, adding competition on domestic routes to Hartsfield-Jackson Atlanta International Airport (ATL), Harry Reid International Airport (LAS; Las Vegas), and Luis Muñoz Marín International Airport (SJU; San Juan, Puerto Rico). Incumbent airlines added several new destinations as well, including domestic service to Ithaca Tompkins International (ITH) and international flights to Flamingo International (BON; Kralendijk, Bonaire) Philip S. W. Goldson International (BZE; Belize City, Belize),

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

Porto (OPO), and Tulum International (TQO) airports. In 2023, total passengers represented just under 100 percent of total 2019 passengers. Total passengers from January 2024 through June 2024 are 1.1 percent higher than the same period in 2023 and 0.4 percent lower than January through June 2019.

**Table 4-12** presents the historical O&D, connecting, and total passengers at JFK. During the period between 2014 and 2023, all categories have grown, with increases of 2.0 percent, 1.1 percent, and 1.8 percent CAGRs, respectively. In the first half of 2024, O&D passengers increased 6.1 percent compared to the first half of 2023 while connecting passengers decreased 16.0 percent during the same period. Connecting passenger volumes decreased in the period preceding the pandemic; connecting passenger volume has returned to the pre-pandemic activity level observed in 2019. O&D passengers have represented between approximately 78 percent and 87 percent of total passengers over the historical period.

TABLE 4-12 JFK HISTORICAL ORIGIN AND DESTINATION AND CONNECTING PASSENGERS

YEAR	O&D PASSENGERS	O&D YOY % CHANGE	CONNECTING PASSENGERS	CONNECTING YOY % CHANGE	TOTAL PASSENGERS	TOTAL YOY % CHANGE	O&D SHARE OF TOTAL
2014	41,765,329	5.6%	11,455,097	5.1%	53,220,426	5.5%	78.5%
2015	45,410,606	8.7%	11,474,124	0.2%	56,884,730	6.9%	79.8%
2016	47,862,192	5.4%	11,241,280	-2.0%	59,103,472	3.9%	81.0%
2017	48,857,031	2.1%	10,631,951	-5.4%	59,488,982	0.7%	82.1%
2018	50,868,280	4.1%	10,767,955	1.3%	61,636,235	3.6%	82.5%
2019	52,471,237	3.2%	10,100,226	-6.2%	62,571,463	1.5%	83.9%
2020	14,245,879	-72.9%	2,384,763	-76.4%	16,630,642	-73.4%	85.7%
2021	26,694,224	87.4%	4,094,098	71.7%	30,788,322	85.1%	86.7%
2022	43,563,333	63.2%	11,724,378	186.4%	55,287,711	79.6%	78.8%
2023	49,859,509	14.5%	12,604,822	7.5%	62,464,331	13.0%	79.8%
Jan to Jun 2023	23,229,030		6,739,507		29,968,537		77.5%
Jan to Jun 2024	24,648,194	6.1%	5,658,024	-16.0%	30,306,218	1.1%	81.3%
<b>Compound Annual Growth Rate</b>							
2014 – 2019	4.7%		-2.5%		3.3%		
2014 – 2023	2.0%		1.1%		1.8%		

## NOTES:

O&D – Origin and Destination; YOY – year-over-year

SOURCES: Port Authority of New York and New Jersey, August 2024 (historical data); Cirium Diio, August 2024 (US Department of Transportation DB1B data).

**Table 4-13** presents the airline share of total passengers between 2014 and 2023. Traffic at JFK is distributed across many airlines, with no single airline representing more than one-third of total passengers during this period. Delta and JetBlue have been the largest and second largest airlines by share of total passengers during the period, except for 2021 and 2022, when the order was reversed. American has consistently represented the third-largest share. British Airways represented the fourth-largest share from 2014 to 2018, while Alaska (inclusive of Virgin America, which it acquired in 2018) has grown from the fifth largest to the fourth-largest airline by share due to an expansion of its route network as well as the effects of the COVID-19 pandemic on international demand and foreign flag airline activity.

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

TABLE 4-13 AIRLINE SHARE OF JFK PASSENGERS

AIRLINE <sup>1</sup>	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Delta Air Lines	24.7%	25.2%	26.6%	27.1%	27.2%	28.8%	30.0%	32.4%	28.6%	30.0%
JetBlue Airways	22.9%	23.3%	23.3%	23.0%	23.0%	23.0%	28.6%	33.2%	28.8%	25.6%
American Airlines	14.6%	13.5%	13.0%	11.8%	11.2%	10.2%	10.1%	13.2%	14.4%	12.9%
Alaska Airlines	1.9%	1.9%	2.1%	2.1%	2.2%	2.4%	2.0%	1.6%	2.3%	2.1%
British Airways	2.8%	2.6%	2.5%	2.4%	2.3%	2.2%	1.8%	0.7%	1.7%	2.1%
Air France	1.7%	1.7%	1.6%	1.8%	1.7%	1.8%	1.4%	1.0%	2.0%	1.7%
Virgin Atlantic	1.3%	1.4%	1.3%	1.4%	1.7%	1.9%	1.4%	0.6%	1.5%	1.6%
Emirates	1.5%	1.8%	1.9%	1.7%	1.6%	1.5%	1.4%	1.2%	1.5%	1.4%
Avianca	0.9%	0.9%	1.0%	1.0%	1.3%	1.2%	1.1%	1.1%	1.0%	1.4%
Aer Lingus	0.9%	0.9%	0.8%	0.8%	0.7%	0.8%	0.7%	0.4%	1.0%	1.0%
Turkish Airlines	1.0%	0.9%	0.9%	0.9%	0.9%	0.8%	1.1%	1.3%	1.0%	0.9%
Iberia	0.7%	0.6%	0.6%	0.6%	0.7%	0.7%	0.6%	0.4%	0.8%	0.9%
Other Airlines	25.4%	25.4%	24.4%	25.4%	25.4%	24.7%	19.7%	12.9%	15.4%	18.3%

NOTE:

1 Where applicable, includes affiliated, regional, and merged airlines.

SOURCE: Cirium Diio, August 2024 (US Department of Transportation T-100 data).

#### 4.4.2 AIR SERVICE

An important characteristic of airport activity is the distribution of an airport's O&D markets, which are reflective of both air travel demand in a market, available air service and airport facilities, and the availability of services at competing airports. **Table 4-14** presents the top 20 domestic JFK O&D markets for the year ending December 2023; **Table 4-15** presents the top 20 JFK international O&D markets for the same period. Markets are ranked based on O&D passenger booking counts, and the tables also include the airlines providing service to these markets as well as the average weekly nonstop departures during the period. South Florida represents the largest domestic market by passenger bookings, and London represents the largest international market. The top 20 domestic markets represent 77.1 percent of domestic O&D passenger bookings, while international demand is more dispersed, with the top 20 markets representing 43 percent of international O&D passenger bookings.

**Exhibit 4-5** provides an illustration of the domestic markets served nonstop from the Airport; **Exhibit 4-6** illustrates the international markets served nonstop from the Airport. In 2024, an average of 342 domestic daily departures are scheduled to serve 74 nonstop destinations and an average of 255 international daily departures are scheduled to serve 123 nonstop destinations.

#### 4.4.3 PASSENGER AIRLINE OPERATIONS

**Table 4-16** presents the JFK annual passenger airline operations for 2014 through 2023. From 2014 to 2023, total passenger airline operations increased at a 1.3 percent CAGR. During this period, regional aircraft, narrowbody aircraft, and widebody aircraft operations grew at 0.3 percent, 0.9 percent, and 2.7 percent CAGRs, respectively. Regional aircraft operations and total aircraft operations had recovered to pre-pandemic levels by 2023, with narrowbody and widebody aircraft operations representing 97.8 percent and 97.4 percent of 2019 operations. Between 2014 and 2019, the average seats per departure increased for regional aircraft and narrowbody aircraft operations, while seats per widebody aircraft departure decreased slightly, with the decrease representing a 0.1 percent CAGR. JFK is operationally constrained by FAA-imposed slot restrictions related to the number of hourly arrivals. Additional information on the slot constraints is included in **Section 4.5.9**.

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

TABLE 4-14 TOP 20 JFK DOMESTIC ORIGIN AND DESTINATION MARKETS BY PASSENGER BOOKINGS (2023)

RANK	MARKET	O&D PASSENGERS	WEEKLY NONSTOP DEPARTURES <sup>1</sup>	NUMBER OF AIRLINES	AIRLINES <sup>2</sup>
1	South Florida <sup>3</sup>	2,706,322	232	3	AA, B6, DL
2	Los Angeles <sup>4</sup>	2,576,566	214	3	AA, B6, DL
3	San Francisco <sup>5</sup>	1,707,916	146	4	AA, AS, B6, DL
4	Orlando	1,148,790	95	2	B6, DL
5	Las Vegas	797,995	57	4	AA, AS, B6, DL
6	San Juan	778,027	62	2	B6, DL
7	Seattle <sup>6</sup>	702,328	60	3	AS, B6, DL
8	San Diego	650,293	48	3	AS, B6, DL
9	Atlanta	616,186	72	2	B6, DL
10	Phoenix	585,521	49	3	AA, B6, DL
11	Austin	553,272	51	3	AA, B6, DL
12	Tampa	495,326	45	2	B6, DL
13	Salt Lake City	457,709	40	2	B6, DL
14	Raleigh/Durham	340,808	91	3	AA, B6, DL
15	Chicago <sup>7</sup>	304,624	52	3	AA, B6, DL
16	Denver	303,149	29	2	B6, DL
17	Fort Myers	278,487	24	2	B6, DL
18	Portland	265,531	20	3	AS, B6, DL
19	Buffalo	265,104	59	2	B6, DL
20	Jacksonville	261,382	37	2	B6, DL
	<b>Others</b>	<b>4,693,696</b>			
	<b>Total</b>	<b>20,489,033</b>			

## NOTES:

AA – American Airlines; AS – Alaska Airlines; B6 – JetBlue Airways; DL – Delta Air Lines; O&D – Origin and Destination

Figures may not sum up due to rounding.

1 Average weekly nonstop departures during 2023.

2 Operated nonstop service during 2023.

3 Includes Miami (MIA), Fort Lauderdale–Hollywood (FLL), and Palm Beach (PBI) International airports.

4 Includes Los Angeles International (LAX), Ontario International (ONT), Hollywood Burbank (BUR), John Wayne (SNA), and Long Beach (LGB) airports.

5 Includes San Francisco (SFO), Norman Y. Mineta San José (SJC), and San Francisco Bay Oakland (OAK) International airports.

6 Includes Seattle-Tacoma (SEA), Seattle Paine Field (PAE) International airports.

7 Includes Chicago O'Hare (ORD) and Midway (MDW) International airports.

SOURCE: Sabre Market Intelligence, August 2024.

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

TABLE 4-15 TOP 20 JFK INTERNATIONAL ORIGIN AND DESTINATION MARKETS BY PASSENGER BOOKINGS (2023)

RANK	MARKET	O&D PASSENGERS	WEEKLY NONSTOP DEPARTURES <sup>2</sup>	NUMBER OF AIRLINES	AIRLINES <sup>2</sup>
1	London, United Kingdom <sup>3</sup>	2,086,280	168	7	AA, B6, BA, DL, N0, VS
2	Santiago, Dominican Republic	945,179	64	2	B6, DL
3	Santo Domingo, Dominican Republic	840,565	60	2	B6, DL
4	Paris, France <sup>4</sup>	839,933	69	5	AA, AF, B6, DL, N0
5	Milan, Italy <sup>5</sup>	695,910	34	5	AA, AZ, DL, EK, NO
6	Tel Aviv-Yafo, Israel	679,512	25	3	AA, DL, LY
7	Cancun, Mexico	661,251	42	3	AA, B6, DL
8	Mexico City, Mexico <sup>6</sup>	590,644	42	4	AA, AM, DL, VB
9	Rome, Italy	545,568	40	4	AA, AZ, DL, N0
10	Punta Cana, Dominican Republic	509,748	37	3	AA, B6, DL
11	Montego Bay, Jamaica	485,572	36	4	AA, B6, BW, DL
12	Oranjestad, Aruba	387,811	25	2	B6, DL
13	Madrid, Spain	384,743	31	4	AA, DL, IB, UX
14	Dublin, Ireland	367,350	21	2	DL, EI
15	Barcelona, Spain	361,124	19	3	AA, DL, IB
16	Kingston, Jamaica	360,522	27	2	B6, BW
17	Frankfurt, Germany	350,605	30	4	DE, DL, LH, SQ
18	Seoul, South Korea <sup>7</sup>	315,135	22	2	KE, OZ
19	Guayaquil, Ecuador	297,749	16	2	AV, B6
20	Georgetown, Guyana <sup>8</sup>	285,895	21	3	AA, B6, BW
	<b>Others</b>	<b>15,870,484</b>			
	<b>Total</b>	<b>27,861,578</b>			

## NOTES:

AA – American Airlines; AF– Air France; AM – Aeromexico; AV – Avianca; AZ – ITA Airways; B6 – JetBlue Airways; BA– British Airways; BW – Caribbean Airlines; DE – Condor; DL – Delta Air Lines; EI – Aer Lingus; EK – Emirates; IB – Iberia; KE – Korean Air; LH – Lufthansa; LY – El Al; N0 – Norse Atlantic Airways; NO – Neos; O&D – Origin and Destination; OZ – Asiana Airlines; SQ – Singapore Airlines; UX – Air Europa; VB – Viva Aerobus; VS – Virgin Atlantic

Figures may not sum up due to rounding.

1 Average weekly nonstop departures during 2023.

2 Operated nonstop service during 2023.

3 Includes Heathrow (LHR), Gatwick (LGW), London City (LCY), Luton (LTN), and London Stansted (STN) airports.

4 Includes Charles de Gaulle (CDG), Orly (ORY), and Paris–Le Bourget (LBG) airports.

5 Includes Malpensa (MXP), Linate (LIN), and Orio al Serio International (BGY) airports.

6 Includes Benito Juárez (MEX) and Felipe Ángeles (NLU) International airports.

7 Includes Incheon (ICN) and Gimpo International (GMP) airports.

8 Includes Cheddi Jagan (GEO) and Eugene F. Correia (OGL) International airports.

SOURCE: Sabre Market Intelligence, August 2024.

JOHN F. KENNEDY INTERNATIONAL AIRPORT



SOURCES: Esri, USGS, April, 2024 (basemap); Esri, 2023 (continent boundary, airports, lakes); US Census Bureau, 2023 (state boundary); Cirium Diio, August 2024 (published airline schedules); Ricondo & Associates, Inc., July 2024 (routes).

EXHIBIT 4-5



JFK NONSTOP DOMESTIC DESTINATIONS (2024)

JOHN F. KENNEDY INTERNATIONAL AIRPORT



SOURCES: Esri, USGS, April, 2024 (basemap); Esri, 2023 (continent boundary, airports, lakes); US Census Bureau, 2023 (state boundary); Cirium Diio, August 2024 (published airline schedules); Ricondo & Associates, Inc., July 2024 (routes).

EXHIBIT 4-6



JFK NONSTOP INTERNATIONAL DESTINATIONS (2024)

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

TABLE 4-16 JFK PASSENGER AIRLINE OPERATIONS

YEAR	REGIONAL AIRCRAFT		NARROWBODY AIRCRAFT		WIDEBODY AIRCRAFT		TOTAL OPERATIONS	
	OPERATIONS	AVERAGE SEATS PER DEPARTURE	OPERATIONS	AVERAGE SEATS PER DEPARTURE	OPERATIONS	AVERAGE SEATS PER DEPARTURE	OPERATIONS	AVERAGE SEATS PER DEPARTURE
2014	68,364	60	237,806	145	94,107	281	400,277	163
2015	62,926	65	254,884	146	97,075	287	414,885	166
2016	66,773	66	253,602	147	106,574	288	426,949	169
2017	68,620	66	245,196	151	107,713	290	421,529	172
2018	73,033	66	249,346	153	106,839	294	429,218	174
2019	69,393	65	249,203	156	107,614	295	426,210	176
2020	21,994	67	110,809	159	39,521	279	172,324	175
2021	40,026	73	160,046	161	59,695	269	259,767	172
2022	81,867	75	236,068	159	91,237	279	409,172	169
2023	88,665	75	243,811	160	104,786	277	437,262	171
<b>Compound Annual Growth Rate</b>								
2014 – 2019	0.3%	1.3%	0.9%	1.4%	2.7%	1.0%	1.3%	1.6%
2014 – 2023	2.9%	2.4%	0.3%	1.1%	1.2%	-0.1%	1.0%	0.5%

SOURCE: Cirium Diio, August 2024 (US Department of Transportation T-100 data).

**Table 4-17** presents JFK's average seats per departure, load factor, and passengers per departure between 2014 and 2023. During the historical period, seats per departure increased at a 0.5 percent CAGR and load factor increased at a 0.2 percent CAGR, enabling growth in passengers per departure, which represented a 0.8 percent CAGR during the period. The average seats per departure remains slightly below pre-pandemic levels, while load factors have recovered to 83 percent, equivalent to 2019 levels. The average load factor at JFK is similar to those at other international gateways and large-hub airports.<sup>124</sup> Additional discussion on load factors and the activity forecast is included in **Section 4.6**.

<sup>124</sup> Cirium Diio, (T-100 database), September 2024.



## JOHN F. KENNEDY INTERNATIONAL AIRPORT

TABLE 4-17 JFK AVERAGE SEATS PER DEPARTURE, LOAD FACTOR, AND PASSENGERS PER DEPARTURE

YEAR	SEATS PER DEPARTURE	LOAD FACTOR	PASSENGERS PER DEPARTURE
2014	163	81%	133
2015	166	82%	137
2016	169	82%	138
2017	172	82%	141
2018	174	83%	144
2019	176	83%	147
2020	175	55%	97
2021	172	69%	119
2022	169	79%	135
2023	171	83%	143
<b>Compound Annual Growth Rate</b>			
2014 – 2019	1.6%	0.5%	2.0%
2014 – 2023	0.5%	0.2%	0.8%

SOURCES: Port Authority of New York and New Jersey, August 2024 (historical data); Cirium Diio, August 2024 (US Department of Transportation T-100 data).

## 4.5 FACTORS AFFECTING AVIATION DEMAND AT THE AIRPORT

This section discusses the qualitative factors that may influence future aviation activity at the Airport. These factors were considered, either directly or indirectly, in developing the aviation activity forecasts for the Airport and for Terminal 6.

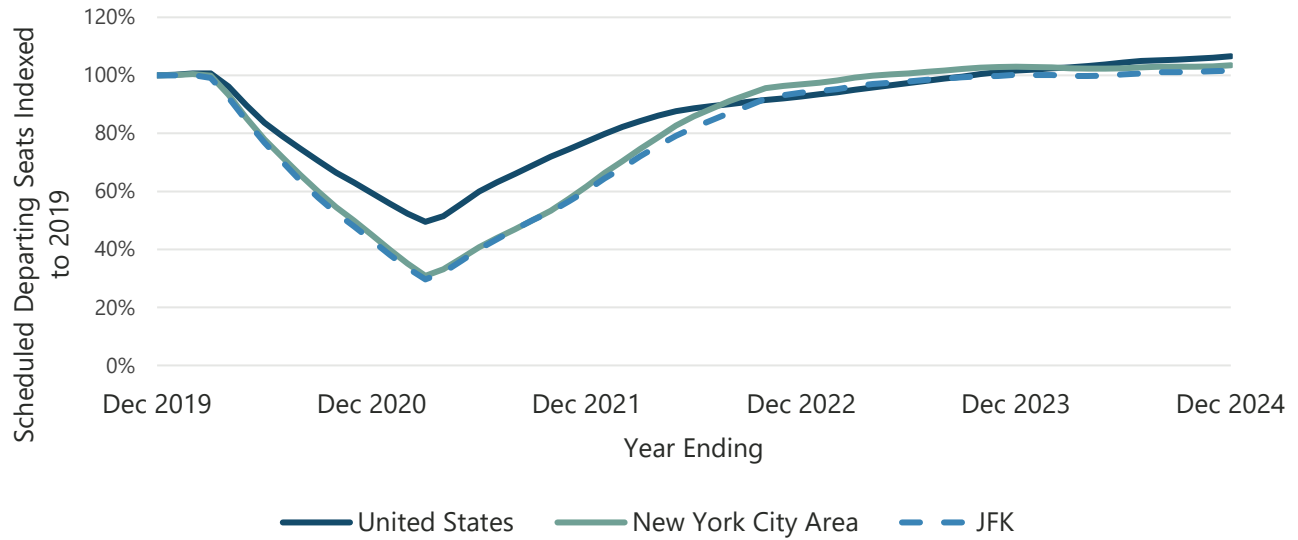
### 4.5.1 IMPACT OF THE COVID-19 PANDEMIC

The outbreak and spread of the COVID-19 pandemic severely curbed global aviation demand. The impact to air travel began in East Asia in December 2019 and accelerated to other regions of the world in the first quarter of 2020. Airlines responded by reducing capacity across their networks due to decreased demand, travel restrictions, and border closures. May 2020 represented the low point in terms of passenger airline seat capacity. In June 2020, seat capacity began to recover, with the initial recovery focused primarily on domestic markets with outdoor leisure activities where people could visit while also remaining socially distanced.

**Exhibits 4-7** and **Exhibit 4-8** illustrate the recovery of seat capacity at the Airport, competing airports, the New York City area as a whole, and in the US market. The New York market experienced a larger decrease in departing seat capacity relative to the US as whole, due to the relatively slow recovery of international travel and business travel demand. As the primary airport for international passengers in the area, JFK was particularly impacted by the downturn in demand for international travel and associated government travel restrictions. However, the Airport experienced a recovery in line with that of competing airports in the region, and the minimum rolling annual seat capacity relative to 2019 was observed in February 2021, the same month as the rest of the US. As the rest of the US returned to pre-pandemic seat capacity, capacity recovery slowed, and JFK eclipsed the national recovery beginning in August 2022. Departing seat capacity relative to 2019 at the Airport has generally remained in line with the US, with a slightly higher relative capacity observed from August 2022 to February 2024 and a slightly lower relative capacity since February 2024.

JOHN F. KENNEDY INTERNATIONAL AIRPORT

EXHIBIT 4-7 SEAT CAPACITY RECOVERY INDEXED TO 2019 – JFK, TOTAL NEW YORK CITY AIRPORTS, AND UNITED STATES



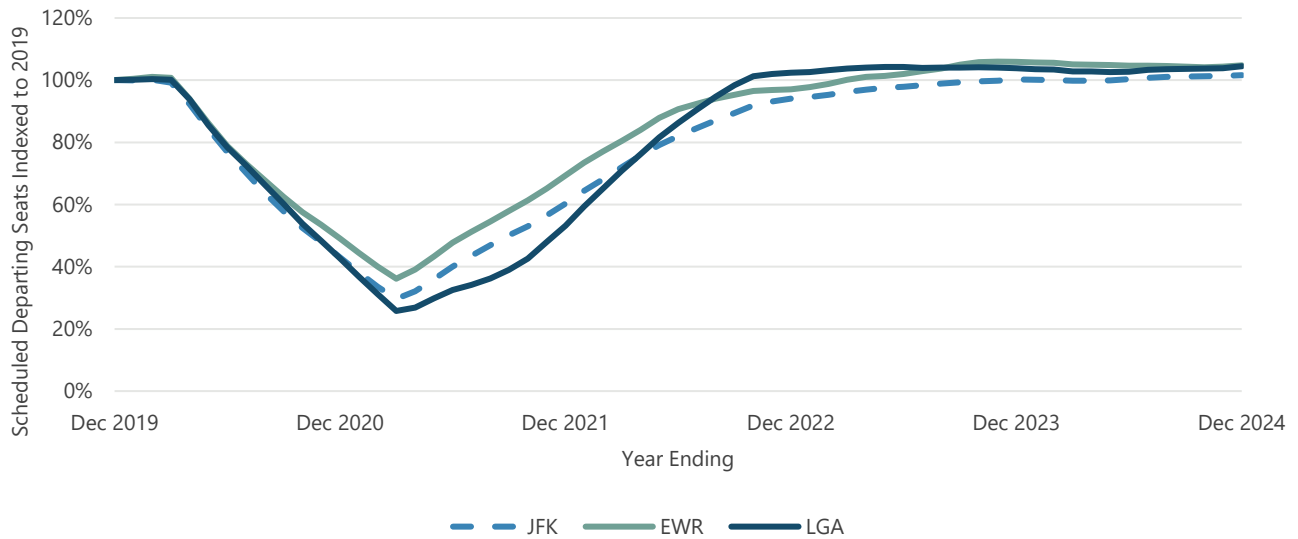
NOTES:

JFK – John F. Kennedy International Airport

Rolling 12-month departing seat capacity indexed to 2019 total.

SOURCE: Cirium Diio, August 2024 (published airline schedules).

EXHIBIT 4-8 SEAT CAPACITY RECOVERY INDEXED TO 2019 – JFK, EWR, AND LGA



NOTES:

JFK – John F. Kennedy International Airport; EWR – Newark Liberty International Airport; LGA – LaGuardia Airport

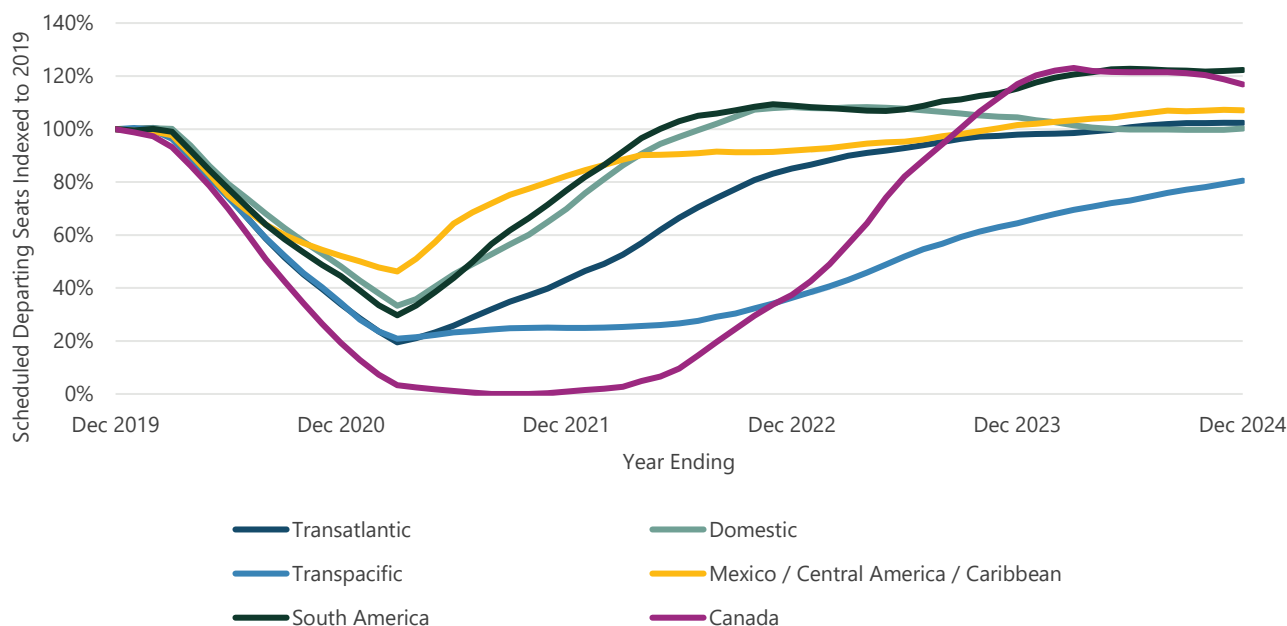
Rolling 12-month departing seat capacity indexed to 2019 total.

SOURCE: Cirium Diio, August 2024 (published airline schedules).

JOHN F. KENNEDY INTERNATIONAL AIRPORT

The recovery in demand was uneven across different international regions due in part to travel restrictions that have varied by country in terms of timing and severity. **Exhibit 4-9** depicts the scheduled seat capacity recovery for JFK by region. Mexico, Central America, Caribbean, and South American markets, where travel was supported by leisure demand as well as visiting friends and family, have recovered faster than other international markets, with scheduled seat capacity on South American flights recovering to 2019 levels in May 2022. Similarly, domestic leisure travel recovered relatively quickly, reaching 2019 levels in July 2022. Scheduled seat capacity in transatlantic markets remained just above 50 percent of 2019 levels into spring 2022; however, the recovery accelerated following the relaxation of travel restrictions, with departing seat capacity in the 12 months ending in March 2023 representing 90 percent of 2019 levels, recovering to 100 percent in May 2024. In the 12 months ending December 2024, transpacific market capacity is expected to represent 80 percent of 2019 levels based on published schedules as of August 2024. Travel between the US and Canada was severely restricted through most of 2021, though recovery was rapid following the relaxation of travel restrictions, increasing from 10 percent of 2019 levels in June 2022 to 82 percent of 2019 levels in June 2023; the market recovered to 2019 levels in September 2023.

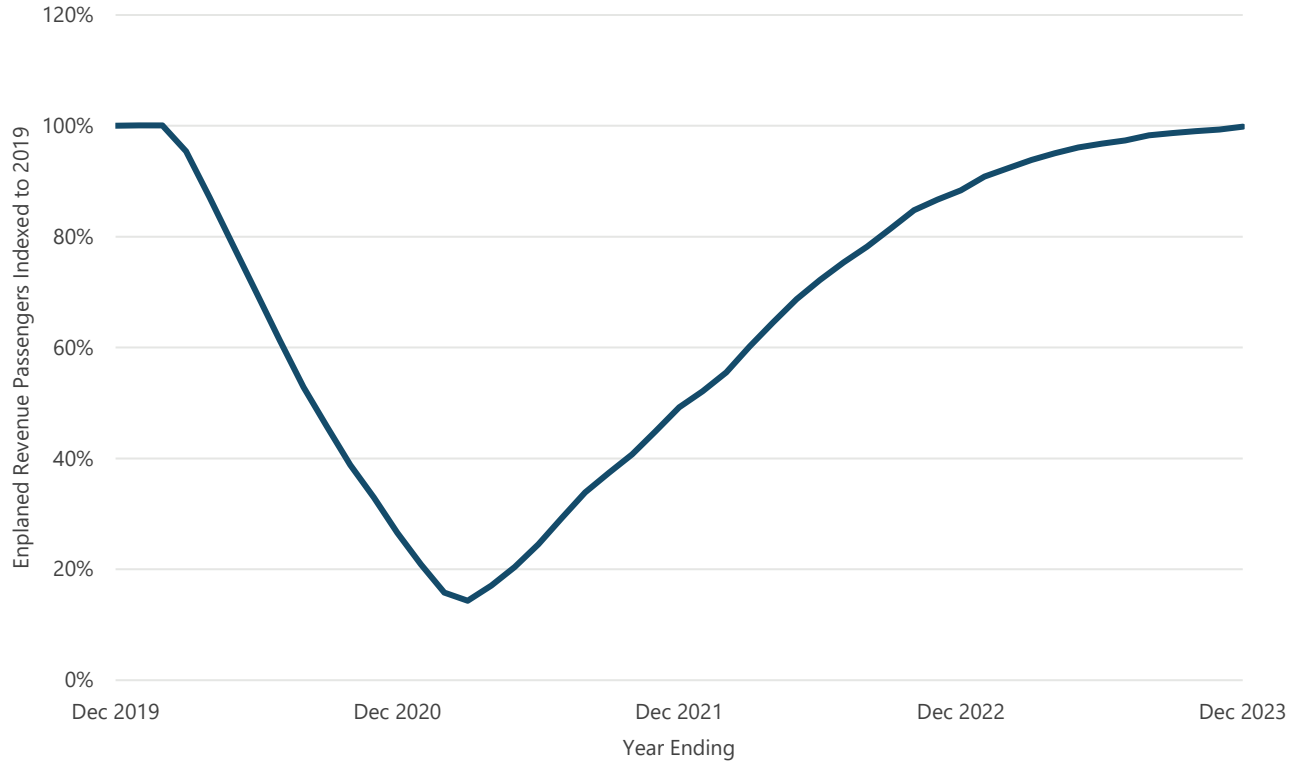
EXHIBIT 4-9 SEAT CAPACITY RECOVERY INDEXED TO 2019 BY REGION – JFK



NOTE:  
 Rolling 12-month departing seat capacity indexed to 2019 total.  
 SOURCE: Cirium Diio, August 2024 (published airline schedules).

**Exhibit 4-10** presents the enplaned revenue passenger recovery at the Airport. Enplaned passenger volumes saw a smaller decline relative to 2019 compared to seat capacity, as airlines reduced their scheduled flights. However, load factors remained relatively low due to limited demand for travel in the height of pandemic-era lockdowns. In March 2021, 14 percent of 2019 passenger levels were observed, the pandemic period minimum. Following March 2021, enplaned passenger volumes increased steadily, with approximately 100 percent of 2019 passenger levels observed in the year ending December 2023.

EXHIBIT 4-10 ENPLANED REVENUE PASSENGER RECOVERY INDEXED TO 2019 - JFK

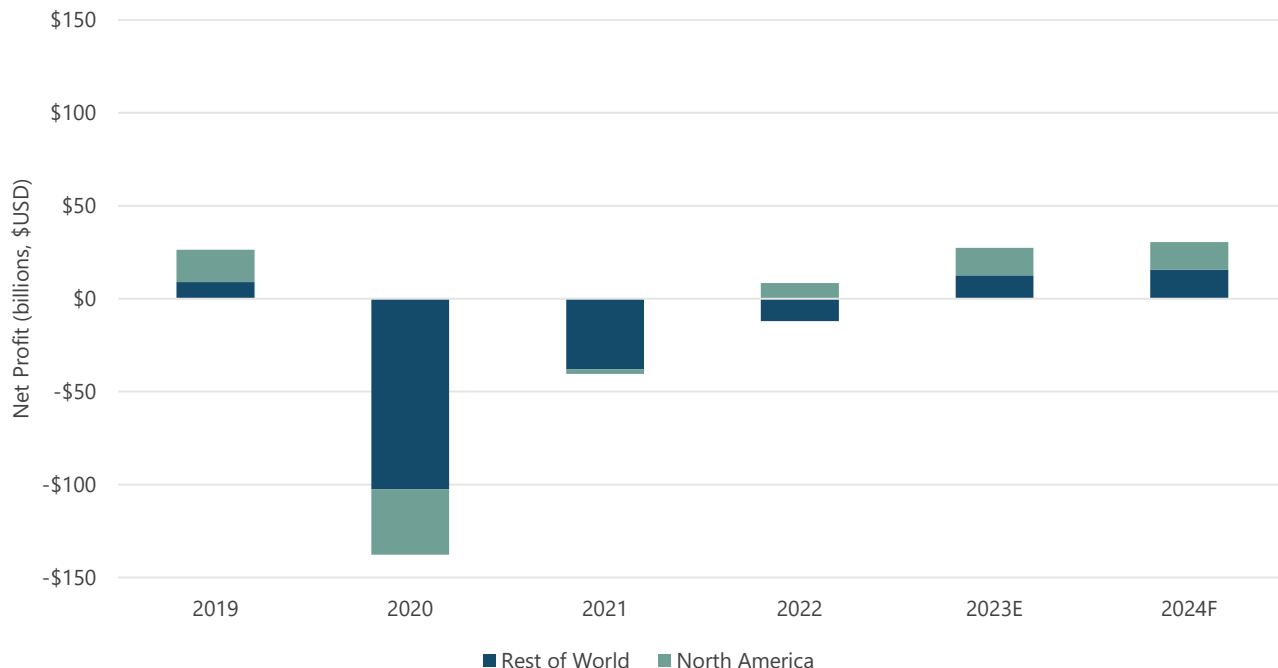


SOURCE: Port Authority of New York and New Jersey, August 2024.

Globally, airlines experienced an operating loss of \$137.7 billion in 2020, which lessened to a \$40.4 billion operating loss in 2021. In 2022, North American airlines returned to profitability, while airlines throughout the rest of the world were estimated to have returned to profitability in 2023. In 2024, operating profits are forecast to remain unchanged for North American airlines, while profit for airlines in other regions is forecast to increase approximately 24.6 percent.<sup>125</sup> **Exhibit 4-11** shows the airline profitability for North America and for the rest of the world from 2019 to 2024 (as currently forecast).

<sup>125</sup> International Air Transport Association, *Global Outlook for Air Transport – Deep Change – June 2024 – Data Tables*, <https://www.iata.org/en/iata-repository/publications/economic-reports/global-outlook-for-air-transport-june-2024-report/#:~:text=Global%20air%20cargo%20traffic%20is,grow%20by%205%25%20in%202024.&text=traffic%2C%20the%20industry's%20rev%20should,also%20from%20higher%20passenger%20yields>. (accessed June 28, 2024).

EXHIBIT 4-11 NET PROFIT OF COMMERCIAL AIRLINES WORLDWIDE



NOTES:

2023E – Estimated

2024F – Forecast

SOURCE: International Air Transport Association, *Global Outlook for Air Transport – Deep Change – June 2024 – Data Tables*, July 2024.

Continued spread of existing and new variants of the COVID-19 virus may result in the extension of existing travel restrictions and implementation of new restrictions that may affect the recovery to pre-pandemic levels of demand for air travel.

**4.5.2 NATIONAL ECONOMY**

Historically, trends in airline travel have been closely correlated with national economic trends, most notably changes in gross domestic product (GDP). Chapter 3 of this Report presents an analysis of the general economic trends, both national and local, that may influence demand for air service over time. National GDP is expected to increase approximately 2.0 percent annually through the Projection Period, which should support generally increasing demand for air service over the Projection Period. Actual economic activity may differ from this forecast, especially on a year-to-year basis. Demand for air service may be impacted by changes in economic performance.

**4.5.3 MERGERS, ACQUISITIONS, AND NEW ENTRANT AIRLINES**

US airlines have merged or acquired competitors to achieve operational and commercial synergies and to improve their financial performance. A wave of consolidation began in 2005 when America West Airlines merged with US Airways, retaining the US Airways brand for the consolidated airline. In 2009, Delta acquired Northwest Airlines. In 2010, United acquired Continental Airlines. In 2011, Southwest acquired AirTran Airways. In 2013, US Airways and American merged, with the consolidated airline retaining the American brand. In 2016, Alaska acquired Virgin America and the two airlines completed their integration in 2018. The most recent consolidation occurred in

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

September 2024 when Alaska closed its acquisition of Hawaiian Airlines, while Hawaiian Airlines will remain a separate brand. Consolidation across the industry has resulted in the realignment of several airline route networks as airlines have sought to improve network efficiency. Further consolidation of the US airline industry could affect the amount of capacity offered at the Airport and could alter the competitive landscape.

Two new airlines, Avelo and Breeze, have commenced operations in the US domestic passenger airline industry during the pandemic recovery period, but neither airline has commenced service at the Airport. As of August 2024, Avelo operates its primary East Coast base at Tweed New Haven Airport (HVN), located approximately 63 miles northeast of the Airport in New Haven, Connecticut, while Breeze currently provides service to HPN and ISP.

#### 4.5.4 THREAT OF TERRORISM AND GEOPOLITICAL ISSUES

Since September 11, 2001, the recurrence of terrorism incidents against either domestic or world aviation has remained a risk to achieving forecast levels of activity. Tighter security measures have restored the public's confidence in the integrity of the US and global aviation security systems. However, any terrorist incident targeting aviation could have an immediate and significant impact on the demand for air travel.

Additionally, geopolitical issues may affect aviation activity during the Projection Period. Potential governmental or regional instability in certain countries or locations may affect access to, or demand for, aviation service in these places. At the time of this report, the Russian invasion of Ukraine, which began in February 2022, is still ongoing. The conflict has resulted in the closure of airspace over Russia and Ukraine to most airlines. Restrictions on Russian airlines have resulted in the suspension of nearly all service between Russia and other countries. These restrictions have limited airlines' ability to operate certain nonstop routes that would otherwise overfly Russia or Ukraine. Additionally, an escalation of conflict between Israel and Hamas, which began in October 2023, remains an evolving situation. Further developments in these conflicts could exacerbate geopolitical and economic uncertainty and potentially impact demand for travel to certain regions. As the largest international gateway in the US, JFK provides service to nearly all major regions of the world. Future geopolitical instability may affect international aviation service demand.

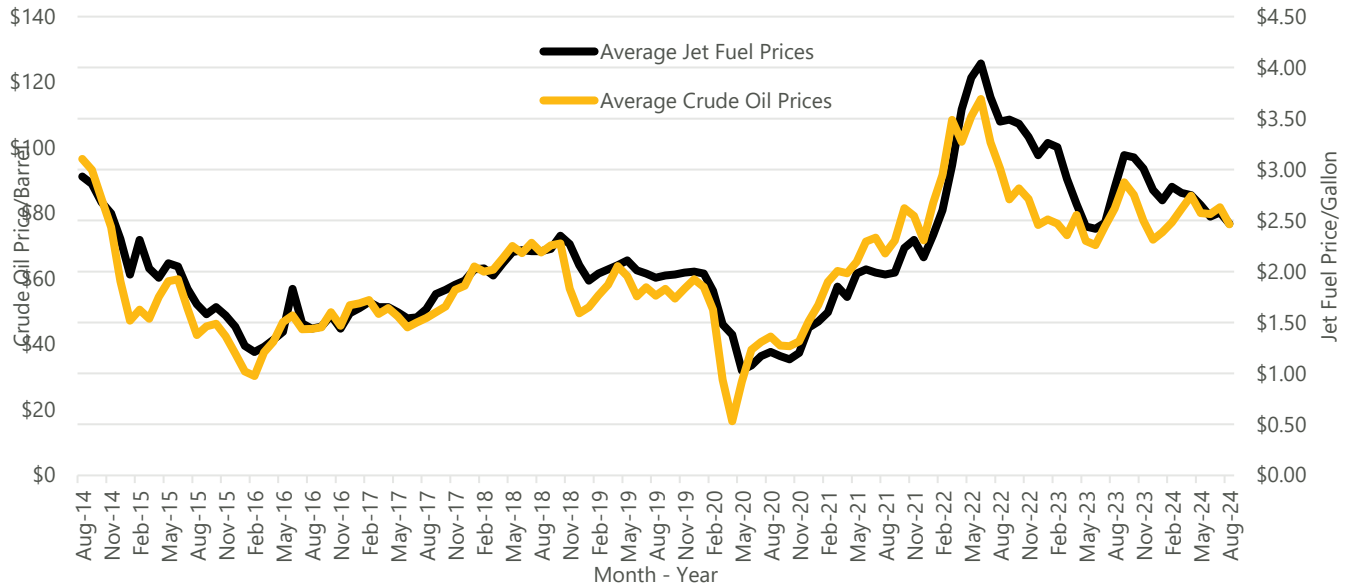
#### 4.5.5 COST OF AVIATION FUEL

As of the second quarter of Calendar Year (CY) 2024, jet fuel accounted for 21.5 percent of total airline operating costs, second only to labor, according to Airlines for America.<sup>126</sup> The average price of jet fuel peaked in June 2022 at \$4.04 per gallon, having grown steadily since April 2020, which represented the lowest price observed during the historical period. Jet fuel prices have generally decreased since June 2022, with an average \$2.75 jet fuel price per gallon recorded in April 2024. Fluctuating fuel costs affect airline profitability, which could lead to air service changes as airlines adjust capacity and pricing to address changes in the cost of fuel. **Exhibit 4-12** shows the monthly averages for jet fuel and crude oil prices from August 2014 through August 2024.

---

<sup>126</sup> Airlines for America, *Passenger Airline Cost Index (PACI)*, <http://airlines.org/dataset/a4a-quarterly-passenger-airline-cost-index-u-s-passenger-airlines/> (accessed June 28, 2024).

EXHIBIT 4-12 HISTORICAL MONTHLY AVERAGES OF JET FUEL AND CRUDE OIL PRICES



SOURCES: US Bureau of Transportation Statistics, October 2024; US Energy Information Administration, October 2024.

4.5.6 CAPACITY OF THE NATIONAL AIRSPACE SYSTEM

Increased delays at busy airports may affect the efficiency of the National Airspace System (NAS). In its report, *Airport Capacity Needs in the National Airspace System* (January 2015), the FAA emphasized the need to continue to invest in system improvements with airfield enhancements and NextGen capabilities to address delays at key airports. Several NextGen projects specifically affected JFK, one of several airports in the highly congested and complex local airspace. While these projects have been implemented, the hourly arrival slot limitations remain in place and JFK continues to be identified by the FAA in its biannual National Plan of Integrated Airport Systems Report as a severely capacity constrained airport. Other procedural or technological opportunities may exist to provide improved arrival capacity at the Airport. However, should the FAA pursue updates or changes, evaluation, approval, and implementation of new procedures or technology may take several years.

4.5.7 HUB AIRLINES

American, Delta, and JetBlue operate hubs at JFK, with each airline scheduling 90 or more scheduled average daily departures to at least 50 different destinations. American and Delta also operate hubs at LGA, while United operates a hub at EWR. The following section describes each of the New York City airline hubs and the roles they play in the airlines’ route networks.

**Delta Air Lines**

Delta represented 30.0 percent of the Airport’s total enplaned passengers in 2023, the highest share of any airline at the Airport. Delta operates its sixth largest hub at JFK, out of nine total hubs, in terms of average daily departures. **Table 4-18** presents average daily departures and hub rankings at each of Delta’s hubs in 2019, 2022, 2023, and 2024. JFK’s ranking in average daily departures is the same in 2024 as in 2019. Delta also operates a hub at LGA. On

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

a consolidated basis JFK and LGA would rank second behind Delta's hub at ATL. Delta also serves EWR as a spoke airport with service to its other hubs.

TABLE 4-18 DELTA AIR LINES DEPARTURES BY AIRPORT

AIRPORT	2019		2022		2023		2024	
	DAILY DEPARTURES	RANK	DAILY DEPARTURES	RANK	DAILY DEPARTURES	RANK	DAILY DEPARTURES	RANK
ATL	939	1	733	1	760	1	801	1
MSP	400	2	283	2	290	2	300	2
DTW	374	3	281	3	277	3	290	3
SLC	251	4	228	4	229	4	228	4
LGA	231	5	225	5	224	5	228	5
<b>JFK</b>	<b>209</b>	<b>6</b>	<b>190</b>	<b>6</b>	<b>212</b>	<b>6</b>	<b>209</b>	<b>6</b>
SEA	147	7	135	7	145	7	148	7
LAX	146	8	133	8	140	8	142	8
BOS	110	9	123	9	133	9	136	9

SOURCE: Cirium Diio, August 2024 (published airline schedules).

Delta operates from Terminal 4 at JFK. It is expected that Delta will continue to operate from Terminal 4 upon completion of the JFK Redevelopment Program.

**Tables 4-19 and 4-20** present the number of domestic and international destinations Delta serves from each of its hubs. JFK has consistently ranked sixth in terms of domestic destinations served and second in terms of international destinations served, behind ATL.

TABLE 4-19 DELTA AIR LINES DOMESTIC DESTINATIONS BY AIRPORT

AIRPORT	2019		2022		2023		2024	
	DESTINATIONS	RANK	DESTINATIONS	RANK	DESTINATIONS	RANK	DESTINATIONS	RANK
ATL	165	1	151	1	150	1	155	1
MSP	125	2	113	2	115	2	119	2
DTW	113	3	103	3	100	3	99	3
SLC	91	4	86	4	85	4	87	4
LGA	66	5	72	5	78	5	79	5
<b>JFK</b>	<b>53</b>	<b>6</b>	<b>54</b>	<b>6</b>	<b>54</b>	<b>6</b>	<b>58</b>	<b>6</b>
SEA	48	7	45	9	46	9	54	7
LAX	45	8	47	8	49	8	54	7
BOS	43	9	50	7	53	7	53	9

SOURCE: Cirium Diio, August 2024 (published airline schedules).



JOHN F. KENNEDY INTERNATIONAL AIRPORT

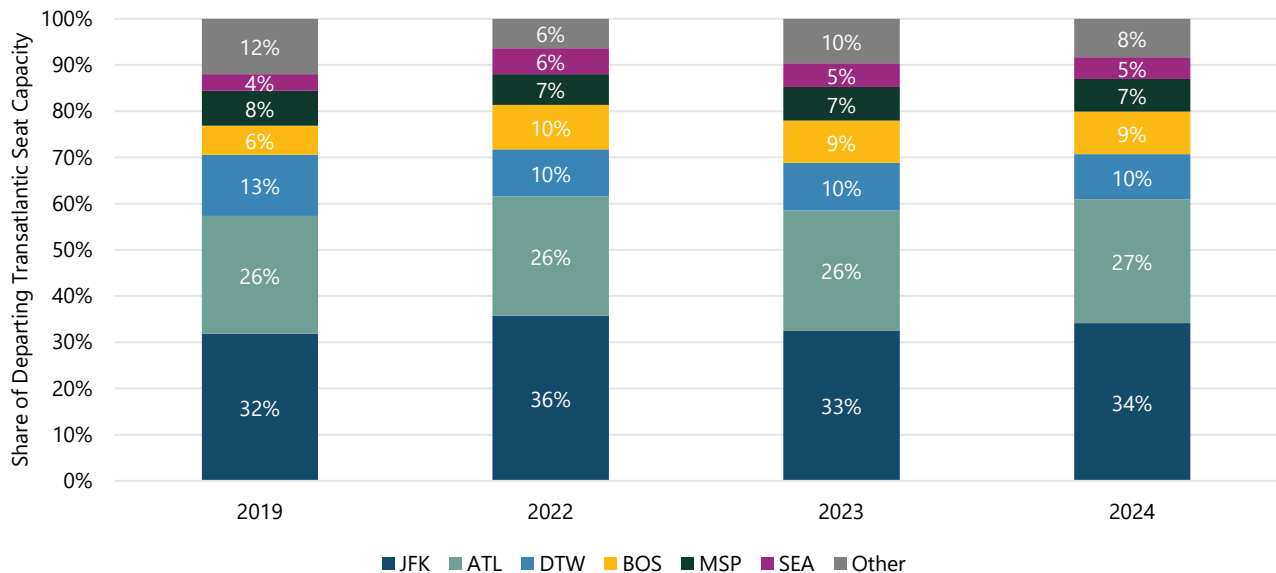
TABLE 4-20 DELTA AIR LINES INTERNATIONAL DESTINATIONS BY AIRPORT

AIRPORT	2019		2022		2023		2024	
	DESTINATIONS	RANK	DESTINATIONS	RANK	DESTINATIONS	RANK	DESTINATIONS	RANK
ATL	70	1	57	1	65	1	67	1
<b>JFK</b>	<b>52</b>	<b>2</b>	<b>41</b>	<b>2</b>	<b>46</b>	<b>2</b>	<b>52</b>	<b>2</b>
MSP	26	4	18	3	20	3	27	3
DTW	26	4	17	4	19	4	20	4
LAX	14	6	14	5	14	6	16	5
BOS	14	6	12	6	14	6	15	6
SEA	13	7	10	7	10	8	11	7
SLC	10	8	9	8	10	8	10	8
LGA	5	9	2	10	3	10	4	9

SOURCE: Cirium Diio, August 2024 (published airline schedules).

The Airport is Delta’s largest transatlantic gateway. **Exhibit 4-13** presents the share of scheduled departing seats to transatlantic destinations that corresponds to each of Delta’s hubs between 2019, 2022, 2023, and 2024. The Airport has consistently represented the largest share of Delta’s scheduled transatlantic seat capacity this period, which has increased from 32 percent in 2019 to 34 percent in 2024.

EXHIBIT 4-13 DELTA AIR LINES HUB SHARE OF TRANSATLANTIC SEAT CAPACITY



SOURCE: Cirium Diio, August 2024 (published airline schedules).

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

**JetBlue Airways**

In 2023 JetBlue represented 25.6 percent of total enplaned passengers at the Airport, the second highest share after Delta. As presented in **Tables 4-21** and **4-22**, the Airport has consistently ranked higher than any other airport in JetBlue's network in terms of departures and destinations served. JetBlue's next largest base of operations is Boston Logan International Airport (BOS). Whereas the network strategies of American and Delta are based on the hub and spoke network model, JetBlue's network is based primarily on point-to-point service, with large operations of over 100 average daily departures at JFK and BOS, and smaller focus city operations at other airports.

TABLE 4-21 JETBLUE AIRWAYS DEPARTURES BY AIRPORT

AIRPORT	2019		2022		2023		2024	
	DAILY DEPARTURES	RANK	DAILY DEPARTURES	RANK	DAILY DEPARTURES	RANK	DAILY DEPARTURES	RANK
<b>JFK</b>	<b>158</b>	<b>1</b>	<b>177</b>	<b>1</b>	<b>172</b>	<b>1</b>	<b>158</b>	<b>1</b>
BOS	155	2	129	2	134	2	128	2
FLL	101	3	71	3	71	3	70	3
MCO	63	4	50	4	56	4	56	4
SJU	34	5	40	5	45	5	32	5
LGA	29	6	31	6	36	6	27	6
LAX	27	7	31	7	30	7	27	7
DCA	22	8	29	8	26	8	25	8

SOURCE: Cirium Diio, August 2024 (published airline schedules).

TABLE 4-22 JETBLUE AIRWAYS DESTINATIONS BY AIRPORT

AIRPORT	2019		2022		2023		2024	
	DESTINATIONS	RANK	DESTINATIONS	RANK	DESTINATIONS	RANK	DESTINATIONS	RANK
<b>JFK</b>	<b>77</b>	<b>1</b>	<b>89</b>	<b>1</b>	<b>91</b>	<b>1</b>	<b>92</b>	<b>1</b>
BOS	72	2	74	2	75	2	75	2
FLL	63	3	55	3	44	3	43	3
MCO	31	4	23	5	26	4	28	4
SJU	13	6	13	9	12	8	18	5
LAX	5	15	23	5	21	5	18	5
LGA	5	15	16	7	20	6	16	7
EWR	10	8	36	4	16	7	14	8

SOURCE: Cirium Diio, August 2024 (published airline schedules).

JOHN F. KENNEDY INTERNATIONAL AIRPORT

JetBlue operates from Terminal 5 at JFK and is expected to utilize at least one gate at Terminal 6 upon the completion of the Terminal 6 Redevelopment. More specifically, an Anchor Tenant Agreement and Sublease has been executed between JMP and JetBlue (JetBlue Sublease) with a commencement date of the Terminal 6 Phase 1 Date of Beneficial Occupancy (DBO1). Additional information on the JetBlue Anchor Agreement and Sublease is included in **Section 5.2.2**.

JetBlue’s average daily departures and number of destinations served increased between 2019 and 2022 at JFK as well as EWR and LGA due in part to the launch of the Northeast Alliance (NEA) with American in 2021. In 2023 the US Department of Justice ruled the alliance was anti-competitive and the two airlines unwound the partnership. Average daily departures decreased from a peak of 177 in 2022 to 158 in 2024.

**American Airlines**

American represented 12.9 percent of the Airport’s total enplaned passengers in 2023, the third highest share after JetBlue. American operates its tenth largest hub at JFK, out of 10 total hubs, in terms of average daily departures. **Table 4-23** presents average daily departures and hub rankings at each of American’s hubs in 2019, 2022, 2023, and 2024. While JFK’s ranking among American’s hubs has not changed during this period, the number of scheduled average daily departures has increased from 77 in 2019 to 90 in 2024. American’s scheduled average daily departures from the Airport peaked in 2022 at 100, due in part to the Northeast Alliance, which ended in 2023. American also operates a hub at LGA and serves EWR as a spoke airport with service to its other hubs.

American currently operates out of Terminal 8 at JFK. It is expected that American will continue to operate from Terminal 8 upon completion of the JFK Redevelopment Program.

TABLE 4-23 AMERICAN AIRLINES DEPARTURES BY AIRPORT

AIRPORT	2019		2022		2023		2024	
	DAILY DEPARTURES	RANK	DAILY DEPARTURES	RANK	DAILY DEPARTURES	RANK	DAILY DEPARTURES	RANK
DFW	812	1	740	1	761	1	829	1
CLT	664	2	561	2	580	2	659	2
ORD	469	3	324	3	310	3	352	3
MIA	360	4	318	4	307	4	336	4
PHL	328	5	242	5	239	5	266	5
PHX	253	6	223	6	228	6	252	6
DCA	231	7	211	7	222	7	243	7
LAX	194	8	133	8	118	8	122	8
LGA	151	9	118	9	118	9	119	9
<b>JFK</b>	<b>77</b>	<b>10</b>	<b>100</b>	<b>10</b>	<b>94</b>	<b>10</b>	<b>90</b>	<b>10</b>

SOURCE: Cirium Diio, August 2024 (published airline schedules).

**Table 4-24** and **Table 4-25** present the number of domestic and international destinations American serves from each of its hubs in 2019, 2022, 2023, and 2023. JFK has consistently ranked tenth in terms of domestic destinations served during this period. The Airport has consistently ranked fifth in terms of international destinations served during this period.

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

TABLE 4-24 AMERICAN AIRLINES DOMESTIC DESTINATIONS BY AIRPORT

AIRPORT	2019		2022		2023		2024	
	DESTINATIONS	RANK	DESTINATIONS	RANK	DESTINATIONS	RANK	DESTINATIONS	RANK
DFW	182	1	188	1	186	1	184	1
CLT	147	2	141	2	138	2	137	2
ORD	135	3	134	3	134	3	136	3
PHX	101	4	90	5	93	4	91	4
DCA	90	5	90	5	87	6	89	5
PHL	77	6	82	6	87	6	86	6
MIA	65	7	78	7	86	7	83	7
LGA	61	8	48	8	53	8	57	8
LAX	49	9	45	9	49	9	49	9
<b>JFK</b>	<b>11</b>	<b>10</b>	<b>28</b>	<b>10</b>	<b>24</b>	<b>10</b>	<b>24</b>	<b>10</b>

SOURCE: Cirium Diio, August 2024 (published airline schedules).

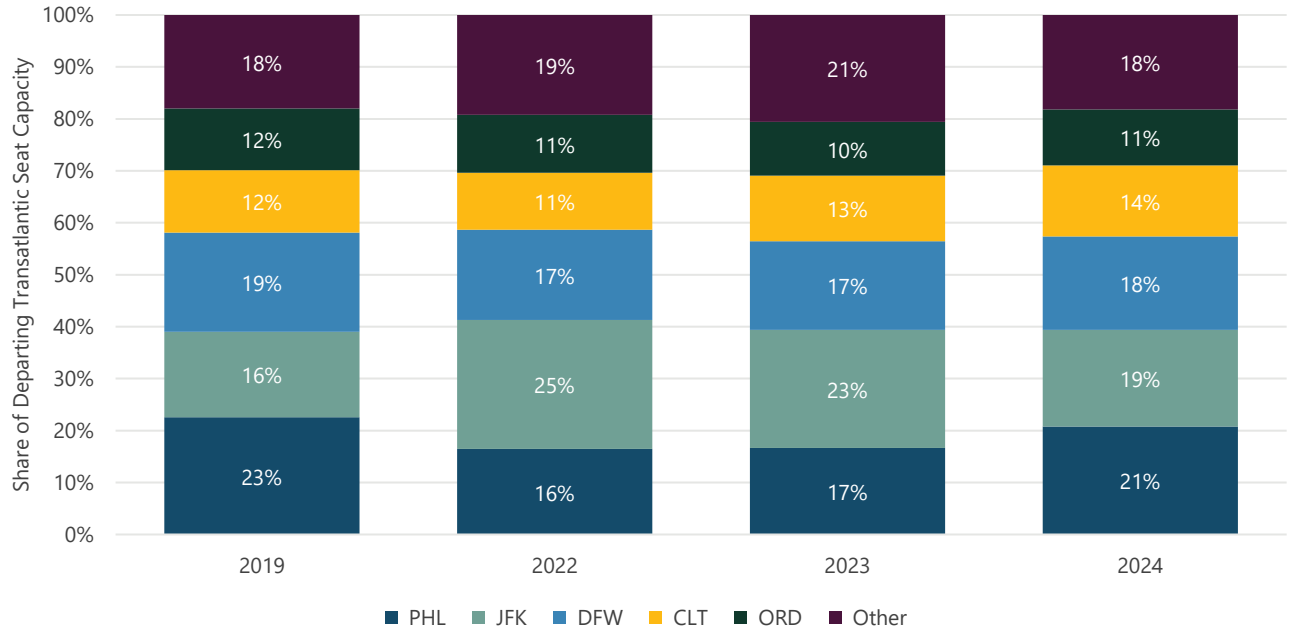
TABLE 4-25 AMERICAN AIRLINES INTERNATIONAL DESTINATIONS BY AIRPORT

AIRPORT	2019		2022		2023		2024	
	DESTINATIONS	RANK	DESTINATIONS	RANK	DESTINATIONS	RANK	DESTINATIONS	RANK
MIA	78	1	77	1	77	1	77	1
DFW	63	2	62	2	59	2	62	2
CLT	38	3	37	3	36	3	41	3
PHL	37	4	32	4	29	4	32	4
<b>JFK</b>	<b>25</b>	<b>5</b>	<b>29</b>	<b>5</b>	<b>26</b>	<b>5</b>	<b>28</b>	<b>5</b>
ORD	21	6	25	6	23	6	24	6
PHX	17	7	13	7	14	7	13	7
LAX	14	8	11	8	11	8	10	8
LGA	6	9	4	9	4	9	4	9
DCA	3	10	4	9	4	9	4	9

SOURCE: Cirium Diio, August 2024 (published airline schedules).

**Exhibit 4-14** presents the share of scheduled departing seats to transatlantic destinations that corresponds to each of American's hubs in 2019, 2022, 2023, and 2024. The Airport's share has increased from 16 percent in 2019 to 19 percent in 2024. In 2024, the Airport ranks second behind Philadelphia International Airport (PHL) in terms of American's scheduled transatlantic departing seats.

EXHIBIT 4-14 AMERICAN AIRLINES HUB SHARE OF TRANSATLANTIC SEAT CAPACITY



SOURCE: Cirium Diio, August 2024 (published airline schedules).

**Other Air Trade Area Hubs**

United’s hub at EWR is the largest single airline hub at any of the Air Trade Area airports. **Table 4-26** presents the average scheduled daily departures and destinations served from each of the airline hubs at JFK, EWR, and LGA in 2024. United’s EWR hub ranks first in terms of average daily departures, domestic destinations served, and international destinations served. United also serves LGA as a spoke airport with service to other connecting hubs. United suspended service to JFK in October 2022.

TABLE 4-26 NEW YORK CITY AIRLINE HUB 2024 SCHEDULED DEPARTURES AND DESTINATIONS SERVED

AIRLINE AND HUB	AVERAGE DAILY DEPARTURES	RANK	DOMESTIC DESTINATIONS SERVED	RANK	INTERNATIONAL DESTINATIONS SERVED	RANK	TOTAL DESTINATIONS SERVED	RANK
United - EWR	375	1	88	1	76	1	164	1
Delta - LGA	228	2	79	2	4	5	83	4
Delta - JFK	209	3	57	3	52	2	109	2
JetBlue - JFK	158	4	51	5	41	3	92	3
American - LGA	119	5	57	3	4	5	61	5
American - JFK	90	6	24	6	28	4	52	6

SOURCE: Cirium Diio, August 2024 (published airline schedules).

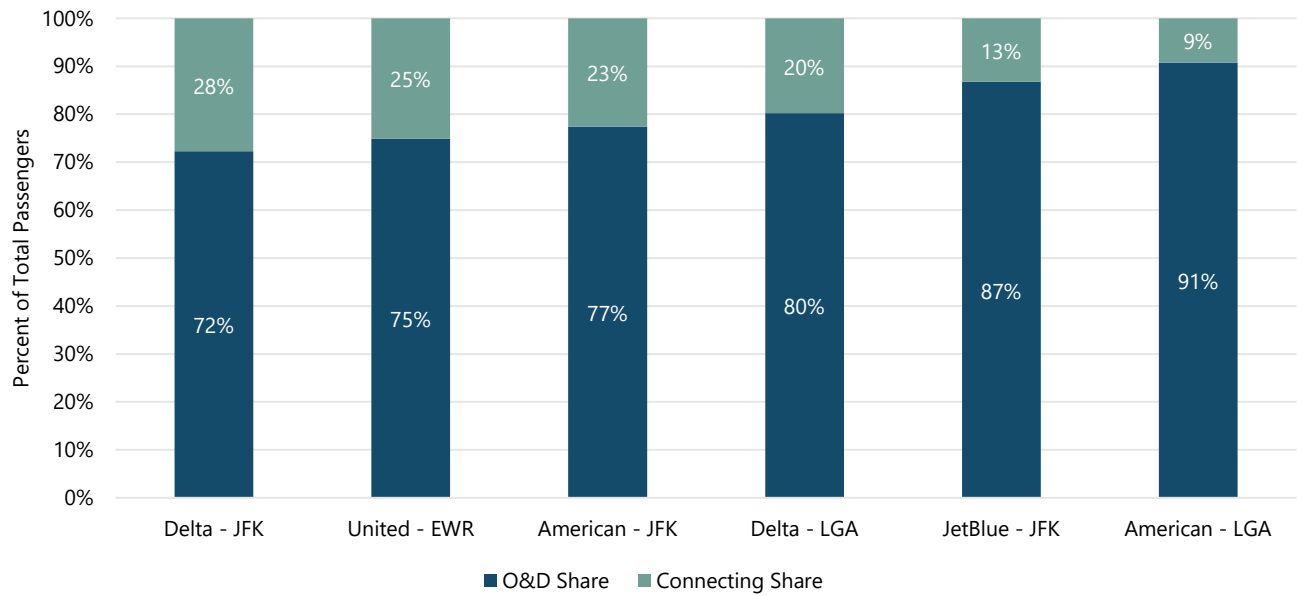
JOHN F. KENNEDY INTERNATIONAL AIRPORT

**Exhibit 4-15** presents the segmentation of passengers between O&D and connecting at each of the hubs at JFK, EWR, and LGA for the 12-month period ending December 2023. Delta’s hub at JFK has the largest share of connecting passengers, at 28 percent. United’s hub at EWR ranks second in terms of percentage of connecting passengers, at 25 percent, followed by American’s JFK hub at 23 percent and Delta’s hub at LGA at 20 percent. Connecting passengers at the other hubs represent less than 15 percent of total passengers. The relatively low share of connecting passengers at these hubs is indicative of several factors:

- The Air Trade Area represents a large O&D market which enables airlines to fill most of the available seat capacity with local passengers.
- The Air Trade Area airports are not geographically well-positioned to link domestic destinations across airlines’ route networks.
- American and Delta have split their operations between JFK and LGA, with most international service from JFK, which limits the opportunity to build connecting passenger itineraries to and from international destinations.
- The network airlines have other hubs that are well-positioned as transatlantic connecting gateways due to their geography as well as more capacity to accommodate connecting passengers (due to less O&D demand and fewer capacity constraints than at Air Trade Area airports). These include PHL for American, ATL for Delta, and IAD for United.

While the Air Trade Area airline hubs do not accommodate a large volume of connecting passengers, they establish a meaningful presence for the hub airlines in the largest O&D market in the United States. This presence is critically valuable to establishing market share nationally and competing effectively for business travelers.

**EXHIBIT 4-15 2023 O&D AND CONNECTING PASSENGER SHARE AT AIR TRADE AREA AIRLINE HUBS**



SOURCE: Cirium Diio, August 2024 (US DOT T-100 Database and O&D Survey).

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

#### 4.5.8 FOREIGN FLAG AIRLINES

The Airport is the largest international gateway in the United States, with scheduled service in 2024 from 65 foreign flag airlines. **Table 4-27** presents the number of foreign flag airlines serving the top US international gateway airports from 2019 through 2024. JFK has consistently ranked the highest, followed by LAX with scheduled service from 54 foreign flag airlines in 2024.

TABLE 4-27 NUMBER OF FOREIGN FLAG AIRLINES SERVING TOP US INTERNATIONAL GATEWAY AIRPORTS

AIRPORT	2019	2020	2021	2022	2023	2024
JFK	70	64	56	61	63	65
LAX	56	50	41	51	54	54
MIA	48	42	34	43	43	43
SFO	44	38	32	35	43	43
ORD	41	36	30	35	34	35
IAD	34	35	29	31	32	34
BOS	33	30	25	27	30	33
MCO	28	24	18	23	25	29
SEA	22	21	17	22	23	26
EWR	29	27	21	20	22	25

SOURCE: Cirium Diio, August 2024 (published airline schedules).

**Table 4-28** presents the home country, JFK terminal, global alliance affiliation, and JFK codeshare partners for each of the foreign flag airlines with scheduled service to JFK as of August 2024. Terminal 1 was served by 28 foreign flag airlines, more than any other terminal at JFK. Terminal 4 ranked second with 18 foreign flag airlines. The residual foreign flag airlines were spread across Terminals 7 and 8. Members of the three global airline alliances, Oneworld, SkyTeam, and Star Alliance, are distributed across different terminals with no single terminal necessarily representing a single alliance. As of August 2024, of the foreign flag airlines, 29 had codeshare cooperation with US airlines on JFK routes, whereby codeshare partners market the same flight under their own airline designator and flight number. The foreign flag airlines are not necessarily located in the same terminal as their US codeshare partner, which limits interconnectivity between some partner airlines.

In 2024, for five foreign flag airlines, JFK is their only destination served in the United States, and for an additional 25 foreign flag airlines, JFK is their largest destination served in the United States in terms of scheduled seat capacity.

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

TABLE 4-28 (1 OF 2) FOREIGN FLAG AIRLINES BY JFK TERMINAL

FOREIGN FLAG AIRLINE	COUNTRY/REGION <sup>1</sup>	TERMINAL <sup>2</sup>	GLOBAL ALLIANCE	JFK CODESHARE PARTNERS <sup>3</sup>	JFK IN US ROUTE NETWORK
Air China	China	1	Star Alliance		
Air France	France	1	SkyTeam	Delta	Largest US Destination
Air New Zealand	New Zealand	1	Star Alliance		
Air Senegal <sup>4</sup>	Senegal	1			Only US Destination
Air Serbia	Serbia	1			Largest US Destination
Asiana Airlines	South Korea	1	Star Alliance		
Austrian Airlines	Austria	1	Star Alliance		
Brussels Airlines	Belgium	1	Star Alliance		Largest US Destination
Cayman Airways	Cayman Islands (UK)	1			
China Eastern Airlines	China	1	SkyTeam	Delta	
Egyptair	Egypt	1	Star Alliance		Largest US Destination
EVA Air	Taiwan	1	Star Alliance		
Flair Airlines	Canada	1			
ITA Airways	Italy	1	SkyTeam	Delta	Largest US Destination
Japan Airlines	Japan	1	Oneworld		
Korean Air	South Korea	1	SkyTeam	Delta	
Lufthansa	Germany	1	Star Alliance		Largest US Destination
Neos	Italy	1			Largest US Destination
Philippine Airlines	The Philippines	1			
Royal Air Maroc	Morocco	1	Oneworld	American, JetBlue	Largest US Destination
Azores Airlines	Portugal	1			
Saudia	Saudi Arabia	1	SkyTeam		
Scandinavian Airlines <sup>5</sup>	Denmark	1	SkyTeam		
Swiss International Air Lines	Switzerland	1	Star Alliance		Largest US Destination
TAP Air Portugal	Portugal	1	Star Alliance	JetBlue	
Turkish Airlines	Turkey	1	Star Alliance	JetBlue	Largest US Destination
Viva Aerobus	Mexico	1			
Volaris	Mexico	1			
Aeromexico	Mexico	4	SkyTeam	Delta	
Air Europa	Spain	4	SkyTeam	Delta	
Air India	India	4	Star Alliance		
Avianca	Colombia	4	Star Alliance		
Caribbean Airlines	Trinidad and Tobago	4			Largest US Destination
China Airlines	Taiwan	4	SkyTeam	Delta	



## JOHN F. KENNEDY INTERNATIONAL AIRPORT

TABLE 4-28 (2 OF 2) FOREIGN FLAG AIRLINES BY TERMINAL

FOREIGN FLAG AIRLINE	COUNTRY/REGION <sup>1</sup>	TERMINAL <sup>2</sup>	GLOBAL ALLIANCE	JFK CODESHARE PARTNERS <sup>3</sup>	JFK IN US ROUTE NETWORK
Copa Airlines	Panama	4	Star Alliance		
EI AI	Israel	4		Delta, JetBlue	Largest US Destination
Emirates	United Arab Emirates	4			Largest US Destination
Etihad Airways	United Arab Emirates	4		JetBlue	Largest US Destination
Kenya Airways	Kenya	4	SkyTeam	Delta	Only US Destination
KLM Royal Dutch Airlines	The Netherlands	4	SkyTeam	Delta	Largest US Destination
LATAM	Chile	4			
Singapore Airlines	Singapore	4	Star Alliance	JetBlue	
Uzbekistan Airways	Uzbekistan	4			Only US Destination
Virgin Atlantic	United Kingdom	4	SkyTeam	Delta	Largest US Destination
WestJet Airlines	Canada	4		Delta	
Xiamen Airlines	China	4	SkyTeam		
Aer Lingus	Ireland	7		JetBlue	Largest US Destination
Aerolineas Argentinas <sup>6</sup>	Argentina	7	SkyTeam	Delta	
Air Canada	Canada	7	Star Alliance		
All Nippon Airways	Japan	7	Star Alliance		
Condor	Germany	7			Largest US Destination
Ethiopian Airlines	Ethiopia	7	Star Alliance		
HiSky Europe	Romania	7			Only US Destination
Icelandair	Iceland	7		JetBlue	
Kuwait Airways	Kuwait	7			Only US Destination
LOT Polish Airlines	Poland	7	Star Alliance	JetBlue	Largest US Destination
Norse Atlantic Airways	Norway	7			Largest US Destination
British Airways	United Kingdom	8	Oneworld	American, JetBlue	Largest US Destination
Cathay Pacific	Hong Kong, China	8	Oneworld	American	Largest US Destination
China Southern Airlines	China	8		American, Delta	
Finnair	Finland	8	Oneworld	American	Largest US Destination
Iberia	Spain	8	Oneworld	American	Largest US Destination
Qantas	Australia	8	Oneworld	American	
Qatar Airways	Qatar	8	Oneworld	American, JetBlue	Largest US Destination
Royal Jordanian	Jordan	8	Oneworld	American	

## NOTES:

- 1 Represents country/region where airline headquarters is based. Subsidiary airlines may be based in other countries.
- 2 Represents the departure terminal. Some airlines may use a different terminal for arrivals.
- 3 Includes US airline codeshare partners for flights to and from JFK only.
- 4 Air Senegal discontinued service to JFK on September 19, 2024.
- 5 Scandinavian Airlines discontinued its Star Alliance membership on August 31, 2024, and joined SkyTeam on September 1, 2024.
- 6 Aerolineas Argentinas discontinued service to JFK on August 8, 2024.

SOURCES: Port Authority of New York and New Jersey (terminal assignments), August 2024; Cirium Diio, August 2024 (published airline schedules).

#### 4.5.9 REGULATORY CONSTRAINTS

Access to the Air Trade Area is constrained due to restrictions at the three large airports. The airspace surrounding the New York City metropolitan area is some of the most complex airspace in the world. This complexity results from the location of JFK, EWR, and LGA, within 10 miles of each other, as well as HPN and ISP in the same area, and a fourth large airport, PHL, within 90 miles. The same airspace also accommodates aircraft transitioning to arrive at the Washington, DC area airports, and is in the middle of the heavily congested Northeast Corridor between Washington, DC, and Boston, Massachusetts. JFK, EWR, and LGA are subject to slot constraints due to limited airspace and airfield capacity. International Air Transport Association (IATA) Level 2 slot constraints are in place at EWR due to activity at peak periods, which approaches capacity limits. Voluntary schedule facilitation is used to limit systemic delays at Level 2 airports. IATA Level 3 slot constraints are in place at JFK and LGA due to demand that significantly exceeds operational capacity, and scheduled operations are restricted during peak hours.<sup>127</sup> Activity per hour is capped and flight schedules are coordinated:

- 81 scheduled operations per hour during peak hours at JFK
- 71 scheduled operations per hour during peak hours at LGA

LGA is further restricted by additional factors:

- The perimeter rule restricts nonstop flights to points beyond 1,500 statute miles, with the exception of flights to Denver and flights operating on Saturdays.
- Due to lack of FIS facilities, international service at LGA is limited to destinations with Customs and Border Patrol (CBP) pre-clearance.
- At 7,002 feet, the length of both of LGA's runways limits widebody aircraft operations.

To the extent slot restrictions remain at JFK, additional passenger activity growth may be limited to operational growth at periods when scheduled flight activity is less than the cap (typically off-peak hours), increasing load factors or upgauging of aircraft size. Slot constraints will continue to influence the demand for gate capacity. As demand grows without additional slot or gate capacity growth, the market value of existing capacity may increase.

#### 4.6 ASM FORECASTS OF AVIATION ACTIVITY AND RICONDO REVIEW

Forecasts of aviation demand at the Airport in total and, specifically at Terminal 6 (i.e., total passengers and aircraft operations) were developed by ASM in June 2024 for the period 2024 through 2060.<sup>128</sup> The assumptions, methodology, and forecasts are described in ASM's *Airline Traffic and Economic Analysis Report, JFK International Airport Terminal 6* (June 28, 2024). The following subsections provide an overview of the methodologies and assumptions used by ASM and the forecast results. The financial analysis discussed in Chapter 5 uses the ASM forecasts of activity as underlying assumptions for the Projection Period (2024 through 2032). Ricondo has reviewed and validated the forecasts of activity used for the financial analysis through the Projection Period.

The ASM Terminal 6 activity forecast was based on the following analyses:

- A bottom-up forecast was developed at the airline and route level for JFK through 2028. The 2029 through 2060 forecast of passenger activity was based on socioeconomic regression analysis using United States GDP.

---

<sup>127</sup> JFK is identified as a Level 3 for purposes of runway capacity and Level 2 for gate/terminal capacity.

<sup>128</sup> ASM, *Airline Traffic and Economic Analysis Report, JFK International Airport Terminal 6*, June 28, 2024

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

- The subsequent baseline forecast of Terminal 6 activity was based on the identification of 21 airlines that would potentially operate from Terminal 6. High and low scenarios forecasts were also developed that consider different groupings of airlines operating from Terminal 6.
- Ricondo reviewed and developed an independent forecast through the Projection Period which produced similar results validating the use of the ASM forecast for the financial analysis included in Chapter 5.

#### 4.6.1 ASM JFK FORECAST

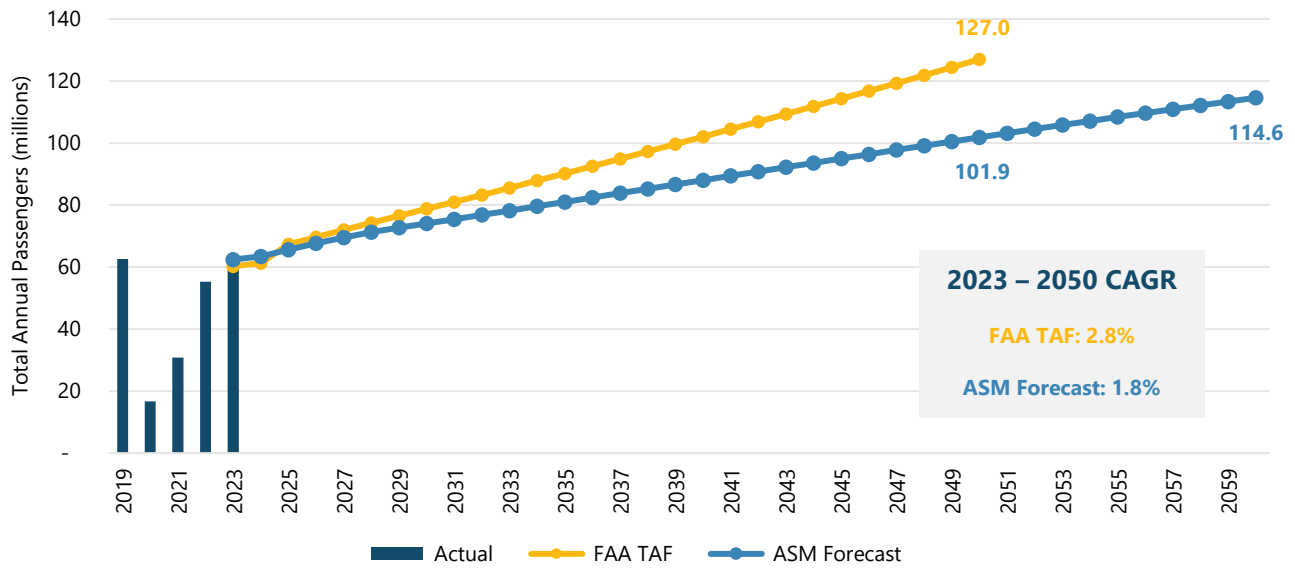
The ASM bottom-up forecast for JFK was developed at the airline and route level through 2028. The forecast considered published airline schedules through December 2024 as of April 2024. For 2025 through 2028, the forecast of departures, average seats per departure, and average load factors considered the recent performance of airlines and specific routes. The fleet mix assumptions were based on airlines' current and expected future fleet. Consideration was also given to JFK's slot limitations and how airlines may use larger aircraft and/or higher load factors to accommodate passenger growth instead of incremental frequencies.

The long-term forecast for JFK was based on an econometric model that uses historical and projected United States GDP from Oxford Economics. The historical analysis was based on passenger activity that occurred at JFK between 2001 and 2019 as well as 2022 and 2023. Historical activity that occurred in 2020 and 2021 was not incorporated into the socioeconomic regression analysis as it was heavily influenced by factors specific to the COVID-19 pandemic that are not assumed to influence demand for air travel in the long-term. The regression analysis of the historical passenger activity at JFK and United States GDP produced an R-squared value of 89 percent, which indicates that United States GDP is a strong predictor of future passenger activity. The long-term forecast assumes that airlines will increase average seats per aircraft through deployment of larger aircraft and/or increased seat densification, resulting in an increase in average seats per departure from 175 in 2024 to 229 in 2060. The forecast assumes airlines will develop tools and processes to manage seat inventory more efficiently, resulting in an increase in average load factor from 81 percent in 2024 to 91 percent in 2060.

The long-term forecast does not assume that any specific future events that would result in a meaningful decrease in air travel, such as terrorism, pandemics, or airline failures, will occur during the Projection Period. While the forecast does not specifically consider a future economic downturn, economic downturns occurred during the historical period that was analyzed. Data from this period were incorporated into the development of the regression equations that were used in the long-term passenger forecast.

**Exhibit 4-16** presents the JFK unconstrained total passenger forecasts prepared by ASM as well as the FAA's 2023 Terminal Area Forecast (TAF). Unconstrained forecasts are developed independent of constraining factors, which include airspace capacity, slots, the ability of airlines to supply sufficient capacity to accommodate demand, and similar limits on passenger airline operations. The TAF, which goes through 2050, forecasts a 2023 to 2050 CAGR of 2.8 percent compared to 1.8 percent in the ASM forecast for the same period. The TAF forecast of total passengers in 2050 is 127.0 million compared to 101.9 million in the ASM forecast. The TAF is forecast on a federal fiscal year basis (October through September) while the ASM forecast is on a calendar year basis. Both the TAF and the ASM forecast are unconstrained.

EXHIBIT 4-16 ASM AND TAF TOTAL PASSENGER FORECAST FOR JFK



NOTE:

Years reflect 12 months ending December 31 for Airport Strategy & Marketing activity and 12 months ending September 30 for the FAA TAF.  
 SOURCES: Port Authority of New York and New Jersey, August 2024 (actual passengers); Airport Strategy & Marketing (forecast passengers); Federal Aviation Administration, 2023 Terminal Area Forecast, March 2023.

### 4.6.2 ASM TERMINAL 6 FORECAST

The ASM Terminal 6 forecast was based on the identification of airlines that could potentially use Terminal 6. The bottom-up forecast was used to project each airline’s passengers through 2028. From 2029 through 2060, the econometric growth rate for all JFK passengers was applied to each airline individually. The baseline forecast identifies 21 different airlines that could potentially operate from Terminal 6. High and low scenario forecasts were based on different combinations of airlines operating from Terminal 6. The baseline and low and high scenario forecasts assume that JetBlue will use a single gate at Terminal 6, operating an average of 5 daily departures and an average 172 seats per departure, increasing by one seat every three years beginning in 2031. JetBlue’s average load factor is forecast to increase from 82 percent in 2026 to 87 percent in 2030 and remain at that level through 2060.

Additionally, the baseline, low, and high scenario forecasts all assume that the Expected Airlines including Aer Lingus, Cathay Pacific, Lufthansa AG (including its affiliates Austrian Airlines, Brussels Airlines and Swiss International Air Lines), and one additional long-haul foreign flag airline will operate from Terminal 6. Each of these airlines have fully negotiated non-binding letters of intent with term sheets outlining proposed terms of the sublease. With the exception of the long-haul foreign flag airline, all the Expected Airlines have publicly announced their intent to operate at Terminal 6. The identification of Additional Targeted Airlines that may operate at Terminal 6 in each scenario considered several factors that influence the propensity for airlines to choose to locate in a terminal at the Airport, including gate access, support facility availability, and connectivity or colocation with partner airlines or airlines within the same ownership group. The airline combinations modeled in the scenarios represent a selection of the potential combinations of these airlines.

JOHN F. KENNEDY INTERNATIONAL AIRPORT

**Table 4-29** presents the ASM baseline and low and high scenario Terminal 6 enplaned passenger forecasts in interval years from 2025 to 2060. Total Passengers are forecast to increase from 3.7 million in 2025 to 6.0 million in 2060 in the low scenario forecast, from 3.9 million in 2025 to 6.4 million in 2060 in the baseline forecast, and from 3.8 million in 2025 to 6.6 million in 2060 in the high scenario forecast.

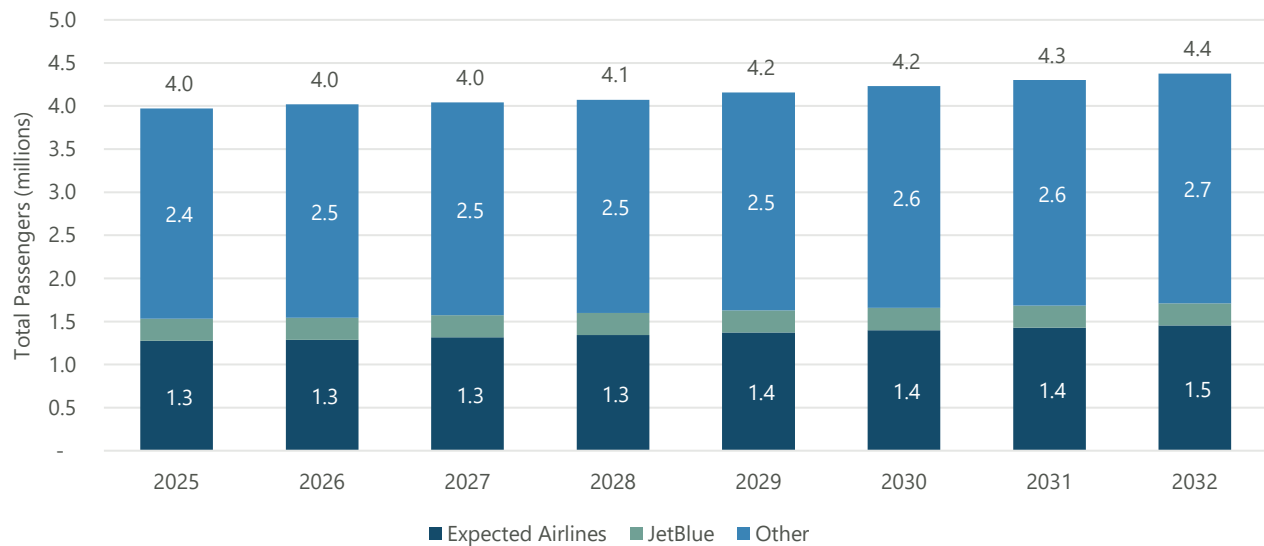
TABLE 4-29 ASM TERMINAL 6 ENPLANED PASSENGER FORECAST

YEAR	LOW SCENARIO	BASELINE	HIGH SCENARIO
2025	3,651,000	3,970,000	3,820,000
2030	3,998,000	4,231,000	4,334,000
2035	4,347,000	4,601,000	4,714,000
2040	4,700,000	4,976,000	5,098,000
2045	5,051,000	5,349,000	5,481,000
2050	5,395,000	5,715,000	5,856,000
2055	5,725,000	6,065,000	6,215,000
2060	6,036,000	6,395,000	6,554,000
<b>Compound Annual Growth Rate</b>			
2014 – 2023	1.4%	1.4%	1.6%

SOURCE: Airport Strategy & Marketing, August 2024.

**Exhibit 4-17** presents the breakdown of the ASM baseline Terminal 6 enplaned passenger forecast by Expected Airlines, JetBlue, and other potential airlines. Airlines that are currently under contract, inclusive of JetBlue, represent approximately 39 percent of the total Terminal 6 forecast passengers.

EXHIBIT 4-17 ASM BASELINE TERMINAL 6 ENPLANED PASSENGER FORECAST



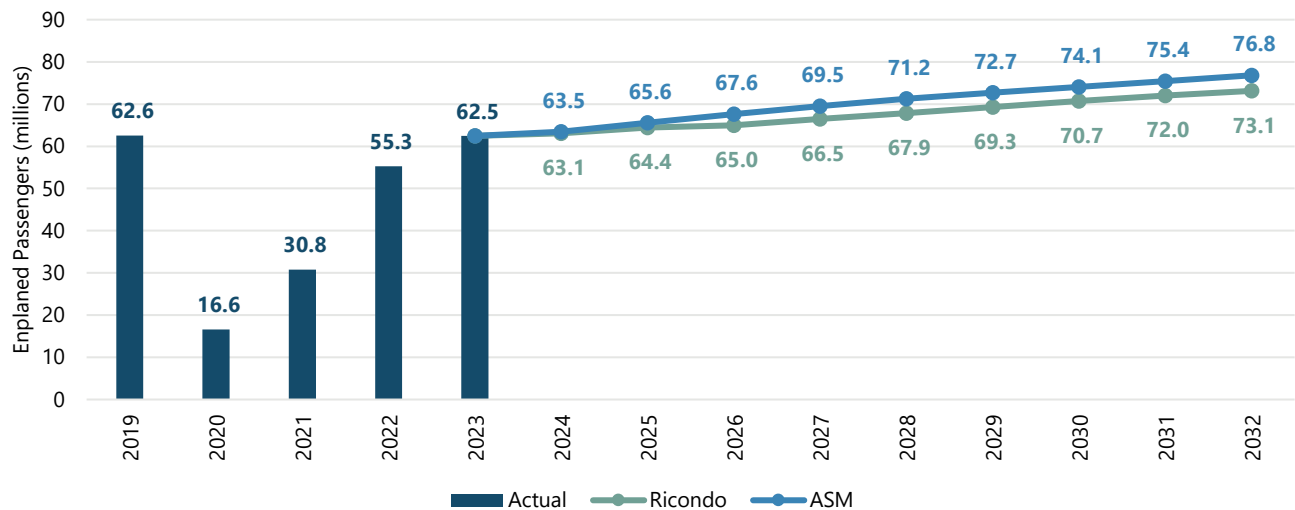
SOURCE: Airport Strategy & Marketing, August 2024.

### 4.6.3 RICONDO EVALUATION OF THE ASM ACTIVITY FORECAST

Ricondo has reviewed and validated the activity forecasts prepared by ASM through the Projection Period for purposes of the financial analysis included in this Report. In this process, Ricondo developed an independent forecast for JFK including a similar approach to ASM with detailed buildup of activity in the near-term and socioeconomic driven results thereafter. Growth assumptions of airline capacity, the regions served, and markets were developed to forecast activity by airline through 2025. Airlines capacity assumptions were based on published airline schedules through December 2024. The long-term forecast was based on independent socioeconomic regression analyses of domestic and international O&D passengers. The socioeconomic variables incorporated into the regression analysis were sourced from Woods & Poole Economics, Inc. and are discussed in **Section 3.4.2**. The variables included GRP, personal income, employment, and total earnings for the total United States as well as the New York City CSA. The regression analysis produced R-squared values between 71 percent and 82 percent for domestic O&D passengers and between 92 percent and 98 percent for international O&D passengers. Connecting passengers were modeled as a percentage of O&D passengers. Long-term demand was apportioned to airlines based on the forecast 2025 share of passengers as established in the short-term forecast.

The ASM and Ricondo forecasts of total JFK enplaned passengers are similar in trajectory and volume, with the Ricondo Airport-wide forecast marginally lower than the ASM forecast through most of the Projection Period and the Terminal 6 forecast marginally higher. **Exhibit 4-18** presents the ASM and Ricondo forecasts of total JFK passenger through the Projection Period. ASM forecasts total JFK passengers will increase from 62.5 million in 2023 to 76.8 million in 2032, which represents a CAGR of 2.3 percent. Ricondo forecasts total JFK passengers will increase from 62.5 million in 2023 to 73.1 million in 2032, which represents a CAGR of 1.8 percent.

EXHIBIT 4-18 ASM AND RICONDO TOTAL PASSENGER FORECAST FOR JFK



SOURCES: Airport Strategy & Marketing, June 2024, Ricondo & Associates, Inc., October 2024.

JOHN F. KENNEDY INTERNATIONAL AIRPORT

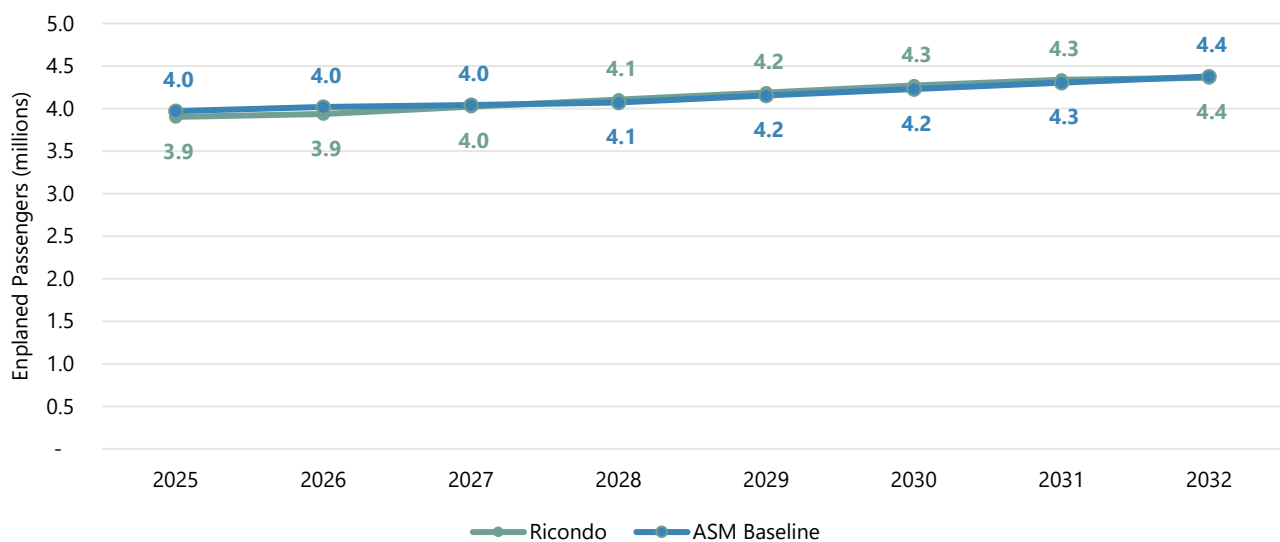
Ricondo validated the ASM forecast for Terminal 6 through the Projection Period by developing activity forecasts for the 21 airlines expected to operate at Terminal 6 as identified in the ASM baseline forecast. Activity forecasts by airline were developed in the short-term utilizing bottom-up forecasts of airline activity based off of published schedules and historical trends and in the long-term by applying the annual growth rate forecast in the regression analysis model explained passenger volumes by airline. The forecasts were constrained on an airline-by-airline basis using estimates of maximum annual operations by airline, projected seats per departure, and load factor estimates. **Table 4-30** and **Exhibit 4-19** presents the Ricondo and ASM baseline Terminal 6 forecast explained passengers for the years 2025 through 2032.

TABLE 4-30 RICONDO AND ASM TERMINAL 6 ENPLANED PASSENGER FORECAST

YEAR	RICONDO FORECAST	ASM BASELINE FORECAST	ASM H/(L) THAN RICONDO
2025	3,902,000	3,970,000	1.7%
2026	3,936,000	4,019,000	2.1%
2027	4,022,000	4,043,000	0.5%
2028	4,104,000	4,073,000	-0.8%
2029	4,188,000	4,156,000	-0.8%
2030	4,270,000	4,231,000	-0.9%
2031	4,337,000	4,304,000	-0.8%
2032	4,362,000	4,377,000	0.3%
Compound Annual Growth Rate			
2025 - 2032	1.6%	1.4%	

SOURCE: Airport Strategy & Marketing, August 2024; Ricondo & Associates, Inc, October 2024.

EXHIBIT 4-19 ASM AND RICONDO TERMINAL 6 TOTAL ENPLANED PASSENGER FORECAST



SOURCES: Airport Strategy & Marketing, June 2024, Ricondo & Associates, Inc., October 2024.

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

Ricondo evaluated key factors that support the growth in activity levels identified in the ASM forecast for JFK and Terminal 6, specifically:

- Slots – The forecast activity can be accommodated within the existing FAA slot program. As demand approaches and exceeds pre-COVID-19 pandemic levels, it is expected that airlines may increase operations during certain peak periods, but the slot constraints will remain in place. Airlines may be able to increase utilization of existing slots and add flights outside of slot-controlled hours (06:00 to 23:00), but JFK is assumed to remain a Level 3 slot-controlled airport.<sup>129</sup> Future FAA airspace system improvements, as described in **Section 4.5.6**, may enable an increase in the number of peak-hour slots and increase JFK's overall operational capacity, but these improvements are not assumed during the Projection Period.
- Average Seats Per Departure – Growth in average seats per departure is expected for many airlines on a system-wide basis as they continue to retire smaller regional aircraft and take delivery of larger mainline aircraft on order. Between 2014 and 2023 the average seats per departure for passenger airlines at all JFK terminals increased from 163 to 171 as average seat size increased for regional, narrowbody, and widebody aircraft types. JFK, given the market and constraints, will logically be a location where airlines schedule larger aircraft. However, the growth of seat size of the largest aircraft is not anticipated. Historically, several foreign flag airlines have operated the largest passenger aircraft types, the Airbus A380 and Boeing 747, on JFK routes. Production of these aircraft types has ceased and there are no equivalent-sized aircraft in development. These aircraft will likely be replaced with aircraft such as the Airbus A350 and Boeing 777-9, as the A380 and Boeing 747 are retired. While the availability of larger aircraft may limit the growth in average seats per departure, the growth assumed through the Projection Period is consistent with the anticipated availability of large aircraft.
- Load Factor – The forecast assumes that the passenger load factor will increase as demand for air travel grows. The growth in load factor in the Projection Period, increasing to 91 percent in 2060, is high for industry standards, but reasonable given constraints to access the market. Airlines may struggle to manage inventory and pricing levels to consistently achieve high load factors. Consistently full flights may also impose additional requirements on airline operations, potentially requiring longer turn times and leaving minimal available seat inventory to accommodate stranded or delayed passengers during irregular operations.
- Airline Mix – The Terminal 6 forecast is based on an assumed combination of airlines that could operate from the terminal, but the specific airline mix beyond JetBlue and the Expected Airlines is currently unknown and could continue to change throughout the Projection Period. Airline considerations with regard to terminal preference may include colocation with airlines, availability of appropriately sized gates, facilities to accommodate their operations, cost, terminal amenities, and preferential access to gates. Terminal 6 will be integrated with the existing Terminal 5, supporting interconnectivity with JetBlue which has 158 scheduled average daily departures to 92 destinations from the JFK in 2024.<sup>130</sup> JetBlue is an attractive partner for foreign airlines serving JFK because it is not a member of a global airline alliance and has few restrictions on alliance partners, unlike American, Delta, and United, members of Oneworld, SkyTeam, and Star Alliance, respectively, which typically cannot develop alliances with members of competing global alliances.
- Operational Efficiencies – The integration of Terminal 5 and Terminal 6 will potentially support an improvement in the MCT between airlines operating at Terminal 6 and JetBlue in Terminal 5. The standard MCT with JetBlue

---

<sup>129</sup> Airlines must maintain 80 percent usage of their slots to retain user rights. In 2019, airlines flew approximately 86 percent of their available operational slots at JFK per analysis of reported operations sourced from the US Department of Transportation T-100 Database.

<sup>130</sup> Per published airline schedules, as of August 2024.



## JOHN F. KENNEDY INTERNATIONAL AIRPORT

and other airlines at JFK is 2 hours. Simplified baggage transfer between terminals and shorter distance to JetBlue gates is estimated to reduce the MCT by approximately 45 minutes, creating an advantage for Terminal 6 airlines compared to airlines operating from other terminals that require additional steps in the connection process and longer MCTs. Terminal 6 will also have access to two AirTrain stations facilitating access to other terminals and ground transportation. Other features of Terminal 6 include a dedicated FIS facility, space for multiple airline lounges, and efficient passenger flow with low average walking time between the security checkpoint to gates as well as between gates and domestic baggage claim.

- Terminal Capacity – While JFK has a limited number of total gates and most terminals approach their maximum operational capacity at peak hours, there are other terminals that could represent an alternative to Terminal 6. The various terminal operators will compete for airline tenants as the redevelopment projects occur. Airline preference for other terminals could result in a lower level of activity at Terminal 6, or lower lease rates, or both. However, the analysis of daily schedules at JFK and those schedules at higher activity levels developed within the Projection Period indicates that terminal facilities at peak periods are at or near capacity for aircraft operations, including the planned terminal redevelopment projects. During peak periods, hard stand positions must be available to accommodate aircraft that are towed off the gate to allow use of the gate for other arrivals or departures. The forecast assumes hardstand positions are available for this tow-on, tow-off operation. The availability of these hardstand positions and the ability to operate a significant tow operation during peak periods will influence the ability to accommodate the demand. It is reasonable to assume demand and airline capacity will continue to build in off-peak periods, but the addition of operations at peak periods is limited, and access to facilities at peak desirable periods will be highly desirable.

## 5. FINANCIAL ANALYSIS

This chapter describes JMP's financial framework, the projections of Terminal 6 Project Revenues, concession and other non-airline revenues, operating and maintenance (O&M) expenses, asset repair and replacement costs, debt service and debt service coverage. Ricondo reviewed, with the support of its subconsultant Infrastructure Advisors, LLC, JMP's projected cashflows and debt service coverage results and assessed the reasonableness of the projected revenues and associated airline charges. Ricondo finds the projected Terminal 6 airline costs per enplaned passenger reasonable through the Projection Period when taking into account the air service market and capacity constraints at other New York Area airports and JFK terminals. This chapter presents financial information reflecting the baseline activity forecast described in Chapter 4. In addition, summary financial information reflecting the low activity scenario described in Chapter 4 is included as a sensitivity in Section 5.10. The full JMP baseline financial projections are included as **Appendix A** to this Report.

### 5.1 FINANCIAL FRAMEWORK

The City owns the Airport, and the Port Authority has operated the Airport under a lease with the City (Basic Lease) since 1947. The Basic Lease was amended and restated in early 2021, with a term extending through December 31, 2060. In addition to establishing the Port Authority's rental payments, the Basic Lease provides the Port Authority the right to enter into subleases to develop facilities at the Airport. JMP's fiscal year (FY) ends December 31.

#### 5.1.1 THE JMP LEASE AGREEMENT

The Lease Agreement between the Port Authority and JMP sets forth the rights and obligations of JMP and the Port Authority with respect to the design, construction, financing, operation, and maintenance of the Terminal 6 Development. The Lease Agreement is the principal contractual vehicle that encapsulates the transaction between JMP and the Port Authority.

The term of the Lease Agreement between JMP and the Port Authority is defined in Section 3 of the Lease Agreement as commencing on November 17, 2022 and expiring on the earlier of (a) 11:59 p.m. on the 30th day of December 2060, or upon the termination of the Basic Lease, whichever is earlier (the Expiration Date); and (b) any earlier termination of the Lease Agreement in accordance with its terms.

JMP has passed down the majority of construction obligations incurred under the Lease Agreement through the Design-Build Contract with Hunt Construction Group, Inc. The Design-Build Contract sets forth the terms and conditions for the design and construction of the development of Terminal 6. JMP has transferred the majority of construction risk during the construction period to the Designer-Builder under a guaranteed maximum price (GMP) contract. JMP will retain a certain scope under a budget managed by the Lessee.

JMP will be responsible for managing the operation of Terminal 7 during the construction of Terminal 6. Once construction is complete, JMP will be responsible for Terminal 6 operations for the duration of the Lease Agreement. JMP entered into a Management Services Agreement with an affiliate of Vantage (the Manager), under which the Manager provides JMP with certain management and support services related to the O&M work for Terminal 7 and Terminal 6. In addition to O&M, the Manager manages and assists with Design Build Agreement (D&C Services), concession-related services, Operational Readiness and Transition (ORAT) services, and personnel deployment for operations, design-build, and company management. The Manager, through additional personnel, including a Project Manager, Project Director, Design Manager, Executive and non-Executive staff, and other third-party

resources, provides day-to-day management of the Borrower's business and operations, including concession management and the management of the D&C Work. Additionally, Vantage Airport Group (US) Ltd. has guaranteed the obligations of the Manager (such guaranty, the "Manager Parent Guaranty").

### 5.1.2 PORT AUTHORITY RENTS UNDER THE LEASE

Under the Lease Agreement, JMP agrees to pay, fund, or apply rentals and other payments as follows:

- i. Ground Rent: For each year or portion thereof during the Term, pay the Port Authority a rental equal to \$148,300 per acre, as adjusted annually from the 2018 base year by the greater of (1) 50 percent of the Consumer Price Index (CPI) Percentage Increase or (2) 4 percent. The total land is 58.5 acres, including 23.1 acres for the Terminal 6 Parcel (Phase 1) and 35.4 acres for the Terminal 7 Parcel (Phase 2). For the purpose of financial analysis, Ground Rent is assumed to escalate by 4 percent annually and in 2024 is \$187,647 per acre.
- ii. First Additional Rent: Pay the Port Authority \$500,000 for each Senior Leasehold mortgage on December 1 of each Calendar Year commencing in the Calendar Year in which Substantial Completion of Phase 1 shall occur until all amounts secured by such Senior Leasehold Mortgage have been repaid in full, provided that if more than one Senior Leasehold Mortgage is entered into contemporaneously with respect to a single debt financing, only one First Additional Rent will be due annually. For the purpose of the analysis, it is assumed that the First Additional Rent will be paid each year from 2026 to 2060.
- iii. Second Additional Rental: For each year or a portion thereof during the Term, pay the Port Authority a rental equaling the Second Additional Rental Rate as provided in Exhibit 12 of the Lease, payable in monthly installments. In addition, the First Supplement sets forth criteria under which Second Additional Rental may be deferred through 2035 if the debt service coverage ratio is less than 1.2x. As set forth in Exhibit 12 of the Lease, the Second Additional Rental Rate in 2024 is \$55.3 million and will be paid each year until 2027, and then from 2030 to 2060, in amounts ranging from \$36.1 million in 2030 to \$137,349 million in 2060.
- iv. Third Additional Rental: Pay the Port Authority \$33 million on the Effective Date and an additional \$1M annually for each year of the Term, beginning in 2027, payable in monthly installments.
  - i. Excess Value Rent: For any calendar quarter in which JMP is permitted to distribute cash from the Remaining Revenue Account, a portion of Cash Available for Distribution, other than reasonable reserves, may be distributed to the Port Authority following the provisions of the Lease Agreement. Excess Value Rent has not been estimated for the purpose of financial analysis.
  - ii. Concessions Revenue Rents to JMP and the Port Authority: From the Lease Commencement Date and throughout the Term, collect rentals from each Concession Sublessee and pay Concessions Revenue Rent to the Port Authority as calculated in the following:
    - a. Prior to DBO2, an amount equal to the greater of (1) 50 percent of the Gross Rents for the Current Calendar Year and (2) the sum of (i) \$5.00 per International Enplanement during the Current Calendar Year, compounded annually from 2016 according to CPI, and (ii) \$2.00 per Domestic Enplanement during the Current Calendar Year, compounded annually from 2016 according to CPI.
    - b. Following DBO2, an amount equal to the greater of (1) 50 percent of the Gross Rents for the Current Calendar Year and (2) the greater of (i) the product of (a) 80 percent of the Concessions Revenue Rent for the preceding Calendar Year divided by the Aggregate Enplanements during that preceding Calendar Year and (b) the Aggregate Enplanements during the Current Calendar Year; and (ii) the sum of (a) \$2.75 per International Enplanement during the Current Calendar Year,

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

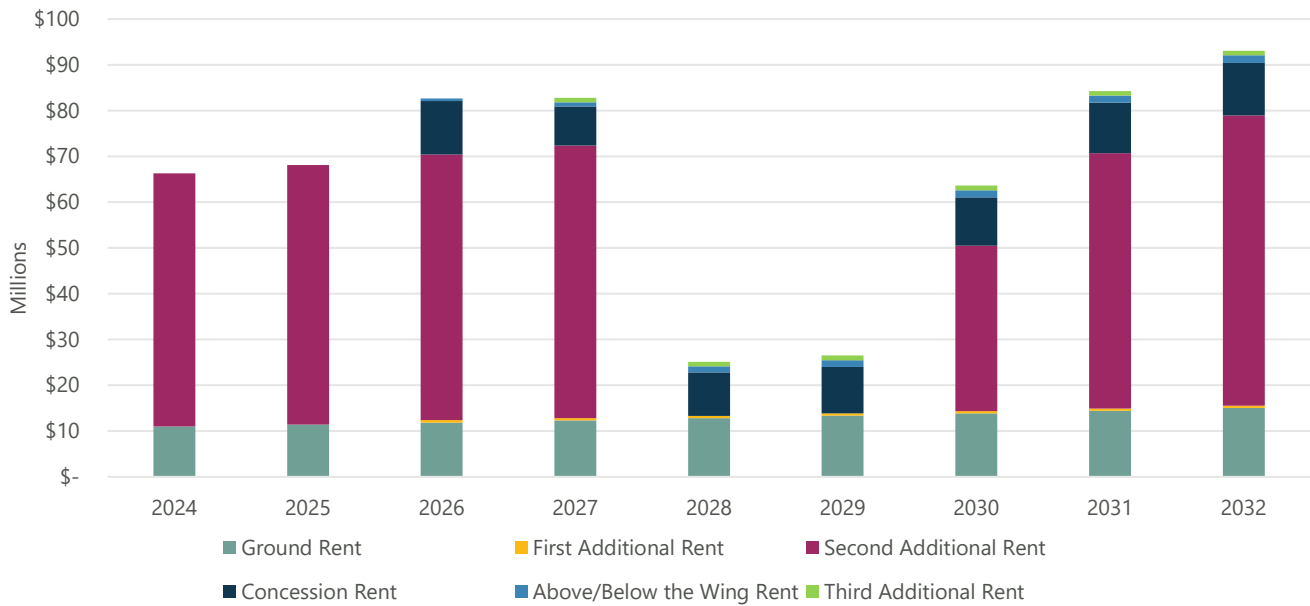
- adjusted from 2021 based on CPI, and \$0.91 per Domestic Enplanement during the Current Calendar Year, adjusted from 2021 based on CPI. For the years 2029 to 2060, the Concession Revenue Rents are based on 50 percent of the Gross Concession Revenues and exceed the other values and hence have been used for projections.
- iii. Port Authority Cost Reimbursement: Reimburse the Port Authority for reasonable third-party out-of-pocket expenses incurred by the Port Authority directly related to the development of the Premises pursuant to the Lease Agreement in an aggregate amount not to exceed \$40 million. The reimbursements will comprise \$25 million during the construction of Phase 1 of the Project and \$15 million during the construction of Phase 2 of the Project, provided the Port Authority provides invoices to substantiate the actual third-party out-of-pocket expenses. Total amounts incurred were \$7.1 million and \$1.2 million in 2023 and 2022, respectively.
  - iv. Advertising Rents: The Port Authority reserves the right to enter a contract for the management or ownership of advertising with respect to any airports-wide advertising program within the New Terminal Facilities with the understanding that 50 percent of the revenues paid to the Port Authority which are allocable to the New Terminal Facilities are to be paid to the Lessee. With respect to any airports-wide advertising program entered by the PA after the effective date, the PA has the right to reserve 20 percent of all available advertising inventory at the Premises for the PA's own use. The locations, quantities, and types of advertising will be approved by the PA.
  - v. Milestone Payments: On the date which is 12 months following the Port Authority's notification to JMP that it has commenced its work that enables roadway work to commence ("the Milestone Payment Date") the following Lessee payments will be made:
    - JMP shall pay the Port Authority \$23.0 million with respect to roadways.
    - JMP shall pay the Port Authority \$9.0 million with respect to the backup power source.
  - vi. Airport-Wide Facilities and Services Payment: JMP shall make contributions of up to approximately \$13.8 million (in addition to a requirement to spend, as directed by the Port Authority, up to \$35.0 million) to support Airport-wide traffic mitigation efforts which will be made during the performance of the D&C Work.

Ground Rent, First Additional Rent, Second Additional Rental, Third Additional Rent, Concessions Revenue Rent, Milestone Payments, and Port Authority Cost Reimbursement must be paid by JMP prior to the payment of any debt. During the period 2027 through 2036, 50 percent of the of Concessions Revenue Rent amount is subordinate to payment of Lessee Debt constituting senior debt or subordinate debt (of any tier) extended to the Lessee by any party other than a direct or indirect constituent owner of the Lessee, but senior and prior to the payment of Lessee Debt constituting loans made by the direct or indirect constituent owners of the Lessee to the Lessee (whether structured as loans or preferred equity). The payment of rentals required to be paid under the Lease Agreement (other than Excess Value Rent) must be senior and prior to the payment of any other O&M Expenses. See Exhibits 1-2 and 1-3 for Flow of Funds before and after substantial completion of the Project.

Port Authority rents are anticipated by JMP to total approximately 104.6 million in FY 2032, including 93.1 million in Port Authority rents payable prior to debt service on Senior Obligations, and \$11.5 million in Concessions Revenue Rent. **Exhibit 5-1** presents the annual Port Authority rents anticipated by JMP over the projection period.

JOHN F. KENNEDY INTERNATIONAL AIRPORT

EXHIBIT 5-1 ANNUAL PORT AUTHORITY RENTS



NOTE:

Exhibit 12 of the Lease Agreement does not include Second Additional Rental rates for 2028 and 2029. Rent resumes in 2030. Second Additional Rental may be deferred between 2030 through 2035 under certain criteria, which are not assumed in this financial analysis.

Concession Rent does not assume Excess Value Rent through the Projection Period and does not include the Concession Rent subordinated to Senior Debt Obligations.

SOURCE: JFK Millennium Partners, LLC, October 2024.

5.1.3 OPERATIONAL FRAMEWORK

JMP assumed the O&M responsibilities of Terminal 7 from the Port Authority on the Terminal 7 Parcel Lease Commencement Date (December 1, 2022), and JMP will be responsible for operating and maintaining Terminal 6 once constructed. The Manager will provide certain management services to JMP under the Management Services Agreement, and the Manager will implement an operational readiness and transition plan to ensure the smooth transition of operations and maintenance from the Port Authority to JMP.

5.2 AIRLINE REVENUES

Airline revenues include (i) all activity-based or per enplaned passenger fees as well as fixed leased space revenue from (a) airlines and (b) other businesses that provide support directly related to the operation of aircraft, enplaning and deplaning of passengers and ground or passenger handling services and (ii) certain fixed lease space revenue from concessionaires for storage or office space in Terminal 7 and Terminal 6 through the term of the Lease Agreement. Upon taking over management in late 2022, JMP negotiated new subleases with all airlines operating in Terminal 7. For Terminal 6, JMP has entered into a sublease with JetBlue for the rental of one narrowbody Terminal 6 gate, and has negotiated non-binding letters of intent with term sheets outlining the terms and conditions for a sublease with each of the seven additional Expected Airlines (including Aer Lingus, Cathay Pacific, Lufthansa AG [along with their affiliates Austrian Airlines, Brussels Airlines and Swiss International Airlines] and one additional long-haul foreign flag airline). At the time of producing this Report, Expected Airlines represent an estimated 57 percent of Phase 1 airline revenues as estimated for 2027 and 36 percent of Phase 2 airline revenues as estimated for 2029.

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

## 5.2.1 TERMINAL 7 AIRLINE REVENUES

Effective December 1, 2022, JMP began negotiating new subleases with all of the airlines operating in Terminal 7. JMP also negotiated subleases with 10 additional airline tenants that were not previously operating at Terminal 7 who have since begun operations. The terms of these subleases related to the use and occupancy of Terminal 7 and airline rates and charges were substantially similar to subleases in place for Terminal 7 prior to the Lease Agreement. **Table 5-1** shows the airlines operating at Terminal 7 in 2024.

TABLE 5-1 TERMINAL 7 AIRLINES

AIRLINE	EXISTING <sup>1</sup>	ADDED
Aerolineas Argentinas <sup>2</sup>	X	
Aer Lingus <sup>3</sup>		X
Air Canada		X
Alaska Airlines	X	
All Nippon Airways	X	
Condor		X
Ethiopian Airlines		X
Frontier Airlines		X
HiSky Europe		X
Icelandair	X	
Kuwait Airways		X
LOT Polish Airways	X	
Norse Atlantic Airways <sup>4</sup>		X
Scandinavian Airlines <sup>5</sup>		X
Sun Country Airlines		X

NOTES:

- 1 Existing airline tenant of Terminal 7 at the time of the Lease Agreement (November 2022).
  - 2 Discontinued service to JFK as of August 2024.
  - 3 Includes Aer Lingus UK.
  - 4 Includes Norse Atlantic Airways UK.
  - 5 Scandinavian Airlines was added in February 2023 but discontinued service as of March 2024.
- SOURCE: JFK Millennium Partners, LLC, October 2024.

Pursuant to the Lease Agreement between JMP and the Port Authority, JMP is operating Terminal 7 during the construction of Phase 1 of Terminal 6 (2022 through 2025). During this period, JMP receives revenues from the airlines operating from Terminal 7 pursuant to the terms of subleases negotiated with each such airline.

As Terminal 6 facilities become available, airlines operating from Terminal 7 will transition to Terminal 6 or to other terminals at the Airport. The majority of the airlines in Terminal 7 are expected to or already have negotiated letters of intent and term sheets, though not fully executed and approved subleases, to relocate to Terminal 6 once Terminal 6 Phase 1 construction is complete.

Terminal 7 airline revenue is estimated to total approximately \$97.5 million in FY 2024 and decrease to \$89.4 million in FY 2025 due to the possibility of an airline leaving Terminal 7 prior to the Phase 1 opening of Terminal 6.

## 5.2.2 TERMINAL 6 AIRLINE REVENUES

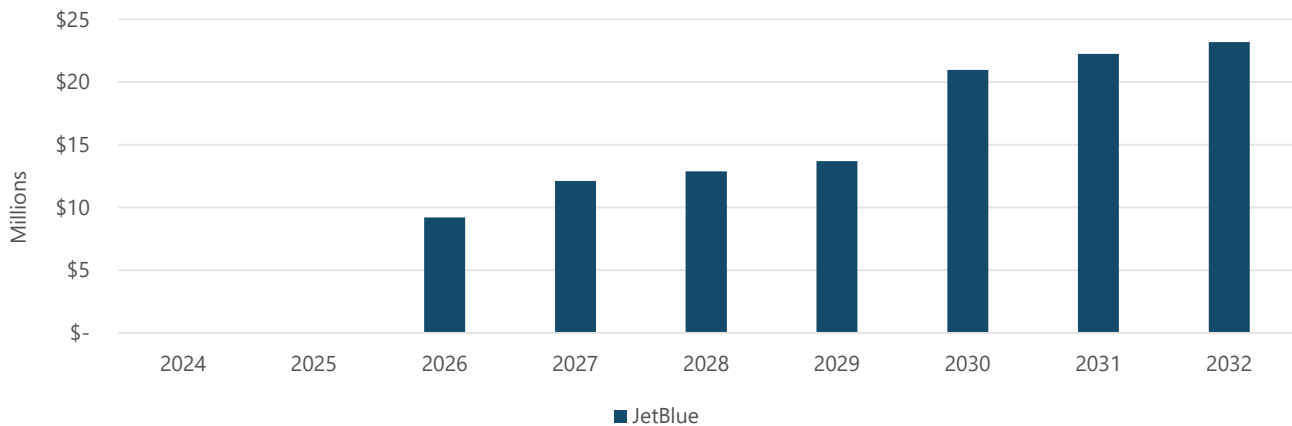
### 5.2.2.1 JETBLUE AIRWAYS CORPORATION

An Anchor Tenant Agreement and Sublease has been executed between JMP and JetBlue (JetBlue Sublease) with a commencement date of the Terminal 6 Phase 1 Date of Beneficial Occupancy (DBO1). For the purpose of the financial analysis included in this Report, the JetBlue Sublease commences on January 1, 2026, and expires on December 31, 2050.

The JetBlue Sublease provides JetBlue with preferential use of the Gate 31 holdroom and aircraft apron, and access to the Terminal 6 FIS facility. The JetBlue Sublease also includes provisions related to FIS facility access rights in Terminal 6. Beginning on DBO1, JetBlue will have the ability, but not the obligation, to process through the Terminal 6 FIS facility with a limited number of international arriving passengers from Terminal 5 gates, including Gate 31.

Revenues from JetBlue are projected to total approximately \$9.2 million in FY 2026, the first full year of Phase 1 operations and projected to increase to \$23.2 million in FY 2032. Projected JetBlue revenues for Terminal 6 begin in 2030 and include (1) Gate 31 revenues and (2) charges paid by JetBlue for international passengers arriving at Terminal 5 that use the Terminal 6 FIS facility. **Exhibit 5-2** presents total revenues projected to be received by JMP from JetBlue during the Projection Period for Terminal 6.

EXHIBIT 5-2 PROJECTED TERMINAL 6 JETBLUE REVENUES (IN MILLIONS)



SOURCE: JFK Millennium Partners, LLC, October 2024.

### 5.2.2.2 OTHER AIRLINES REVENUES

Other Airlines (which includes the seven Expected Airlines as well as certain Additional Targeted Airlines) will operate at Terminal 6, and these Other Airlines are anticipated to use the remaining gates through various tenant subleases.

JMP is in various stages of securing airlines to operate at Terminal 6. Securing an airline as a tenant in Terminal 6 typically involves negotiating a non-binding letter of intent, accompanied by a term sheet outlining the agreed upon terms and conditions for a new sublease (including, but not limited to, proposed rates and charges). The sublease is then drafted and negotiated between JMP and the airline and is subject to the consent of the Port Authority. All Expected Airlines have negotiated a non-binding letter of intent with JMP and, other than the additional long-haul foreign flag airline, have publicly announced their intent to operate at Terminal 6; however, none of the airlines have a sublease that has been consented to by the Port Authority and executed by the airline and JMP. Depending upon

their terms, such subleases may also be subject to approval of the Administrative Agent if they are projected to constitute 15 percent or more of JMP's total revenue in a consecutive 12-month period from all then effective airline subleases.

Airline subleases will include the payment of rates, fees, and charges by airlines for the use of check-in counters, TSA screening, inbound and outbound baggage system, FIS facility, gate areas, and the rental of exclusive use space (e.g., lounges and office space). According to JMP, it currently expects to use a "market-based approach" (rather than cost recovery at most other US airports) to establish the rates and charges paid by airlines operating in Terminal 6. It is anticipated that most airline subleases will include activity-based charges imposed for enplaned passengers and/or aircraft use of gates and will set these fees to escalate with time.

### ***Expected Airlines***

As of the date of this Report, JMP has negotiated non-binding letters of intent with term sheets outlining terms and conditions for a sublease with each of the seven Expected Airlines including Aer Lingus, Cathay Pacific, Lufthansa AG (including its affiliates Austrian Airlines, Brussels Airlines and Swiss International Air Lines), and one additional long-haul foreign flag airline. Aer Lingus and the other foreign flag airline currently operate from Terminal 7. Cathay Pacific and Lufthansa AG (and its affiliates) currently operate from Terminal 8 and Terminal 1, respectively. Based on the current airline alliance relationships of the Expected Airlines, JMP, through its leasing efforts, has built a foundation for a Star Alliance hub in Terminal 6.

The respective subleases for each of the Expected Airlines are anticipated to have terms greater than 15 years.

### ***Additional Targeted Airlines***

JMP is also engaged in discussions with other selectively targeted and interested airlines to operate from Terminal 6 (including certain airlines operating at Terminal 7) based on a number of factors, including expected schedule and use of gate and or FIS facilities, passenger profile, airline alliance (e.g., Star Alliance), and the strategic fit with Terminal 6. In connection with its airline leasing plan, JMP has identified various combinations of these Additional Targeted Airlines, providing JMP with the potential to maximize revenues from these airlines as well as to balance projected use of gate and FIS facilities. The financial analysis in this Report assumes that JMP will be successful in securing certain Additional Targeted Airlines at rates and charges equal to those included in the projection of airline revenues. Ricondo estimates there are other possible airline combinations and sublease terms that could produce similar revenues. However, revenues would be subject to future subleases with airlines and actual terms to be negotiated between JMP and each Additional Targeted Airline.

The total revenue (excluding leased space and ancillary revenues) of Other Airlines is projected to increase from \$96.9 million in FY 2026 to \$326.6 million in FY 2029. The revenue is projected to total \$387.1 million in FY 2032, representing a CAGR of 5.8 percent from FY 2029 to FY 2032.

The non-binding letters of intent and terms negotiated with the Expected Airlines demonstrate the potential to achieve the revenue assumed for the Additional Targeted Airlines given that the average rental revenue of the Expected Airlines is higher than the average assumed for the remaining Additional Targeted Airlines to achieve the total airline revenue in the financial projections. In addition, JMP has demonstrated flexibility in airline sublease terms. This adaptable approach will likely help in securing certain Additional Targeted Airlines.

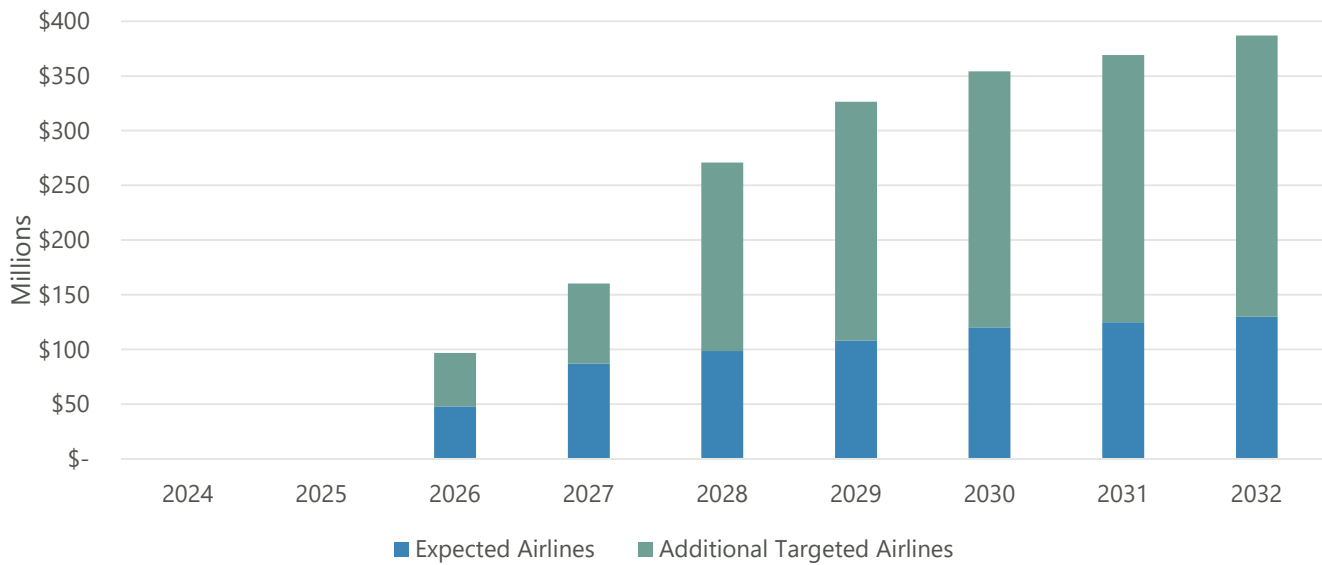
**Exhibit 5-3** presents the projected airline revenues from the Expected Airlines and the Additional Targeted Airlines. The combined share of the seven Expected Airlines is projected to be approximately 52 percent of the total airline revenue in FY 2026, decreasing to 36 percent in FY 2032. It is JMP's expectation that the projection of airline revenues



JOHN F. KENNEDY INTERNATIONAL AIRPORT

included in this Report will be met through a combination of revenues from Expected Airlines and revenues from certain of the Additional Targeted Airlines.

EXHIBIT 5-3 PROJECTED TERMINAL 6 OTHER AIRLINE REVENUES (IN MILLIONS)



NOTES:

Does not include JetBlue.

Expected Airlines include Aer Lingus, Cathay, Lufthansa AG (and its affiliates Austrian Airlines, Brussels Airlines, and Swiss International Air Lines), and one additional long-haul foreign flag airline.

SOURCE: JFK Millennium Partners, LLC, October 2024.

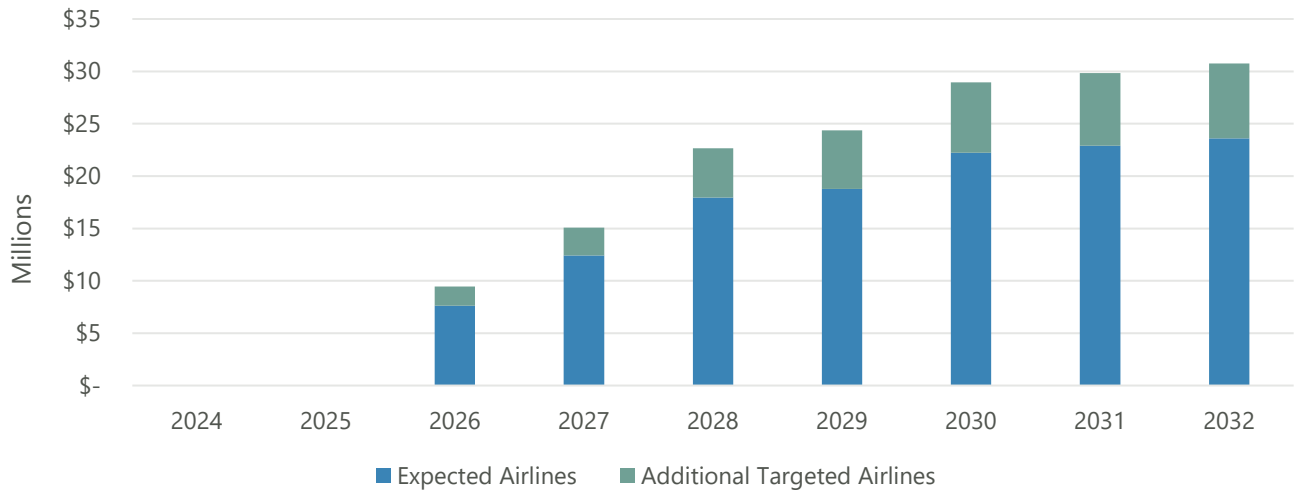
**Airline Leased Space Revenues**

Leased space revenues reflect airline payments for the exclusive use of lounge space, check-in desk office and other office space, and operations space. The anticipated leasable airline space, including a vacancy factor, was estimated by JMP based on Terminal 7 operations, commitments from the Expected Airlines, and assumptions about the amount of space to be leased by certain of the Additional Targeted Airlines based on JMP’s industry knowledge. Rental rates in the first year of each airline sublease are established for pre-and post-security airline leasing office and operations space, and lounge space, and are assumed to be adjusted each year by JMP pursuant to Expected Airline letters of intent and term sheets and assumptions regarding terms and conditions with certain of the Additional Targeted Airlines. Projected leased space revenues are approximately \$9.0 million for FY 2026, the first year in which these Terminal 6 revenues are collected. Leased space revenues are projected to increase to \$15.1 million in FY 2027, \$22.6 million in FY 2028, and \$24.4 million in FY 2029 (the first full year after DBO2). Leased space revenues are projected to increase to approximately \$30.7 million in FY 2032, reflecting a CAGR of 8.1 percent between FY 2029 and FY 2032.

**Exhibit 5-4** presents the projected airline leased space revenues. The Expected Airlines projected lease space revenue represents approximately 80.5 percent of the total estimated leased space revenues shown in Exhibit 5-4 in FY 2026 and 76.8 percent in FY 2032. **Exhibit 5-5** presents the projected Other Airline revenues, including activity-based revenues and leased space revenues, broken down by Expected Airlines and Additional Targeted Airlines.

JOHN F. KENNEDY INTERNATIONAL AIRPORT

EXHIBIT 5-4 PROJECTED TERMINAL 6 OTHER AIRLINE LEASE SPACE REVENUES (IN MILLIONS)



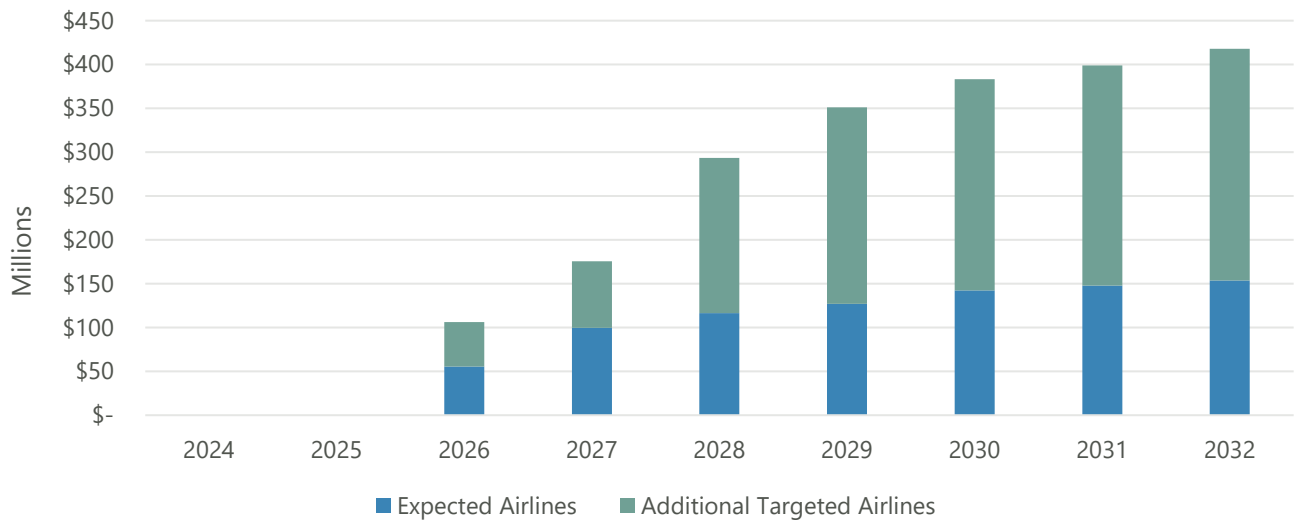
NOTES:

Does not include JetBlue.

Expected Airlines include Aer Lingus, Cathay, Lufthansa AG (and its affiliates Austrian Airlines, Brussels Airlines, and Swiss International Air Lines), and one additional long-haul foreign flag airline.

SOURCE: JFK Millennium Partners, LLC, October 2024.

EXHIBIT 5-5 PROJECTED TERMINAL 6 OTHER AIRLINE TOTAL REVENUES (IN MILLIONS)



NOTES:

Does not include JetBlue.

Revenues include activity-based and lease revenues.

Expected Airlines include Aer Lingus, Cathay, Lufthansa AG (and its affiliates Austrian Airlines, Brussels Airlines, and Swiss International Air Lines), and one additional long-haul foreign flag airline.

SOURCE: JFK Millennium Partners LLC, October 2024.

**Ancillary Revenues**

Ancillary revenues include above- and below-wing service providers<sup>131</sup>, and concessions storage rent. Total projected ancillary revenues are approximately \$4.6 million in 2029 (the first full year after DBO2) and will increase to approximately \$5.0 million in 2032, reflecting a CAGR of 2.8 percent. JMP does not anticipate increases to the real charges for services generating ancillary revenues throughout the projection period; increases in projected charges reflect inflation assumptions.

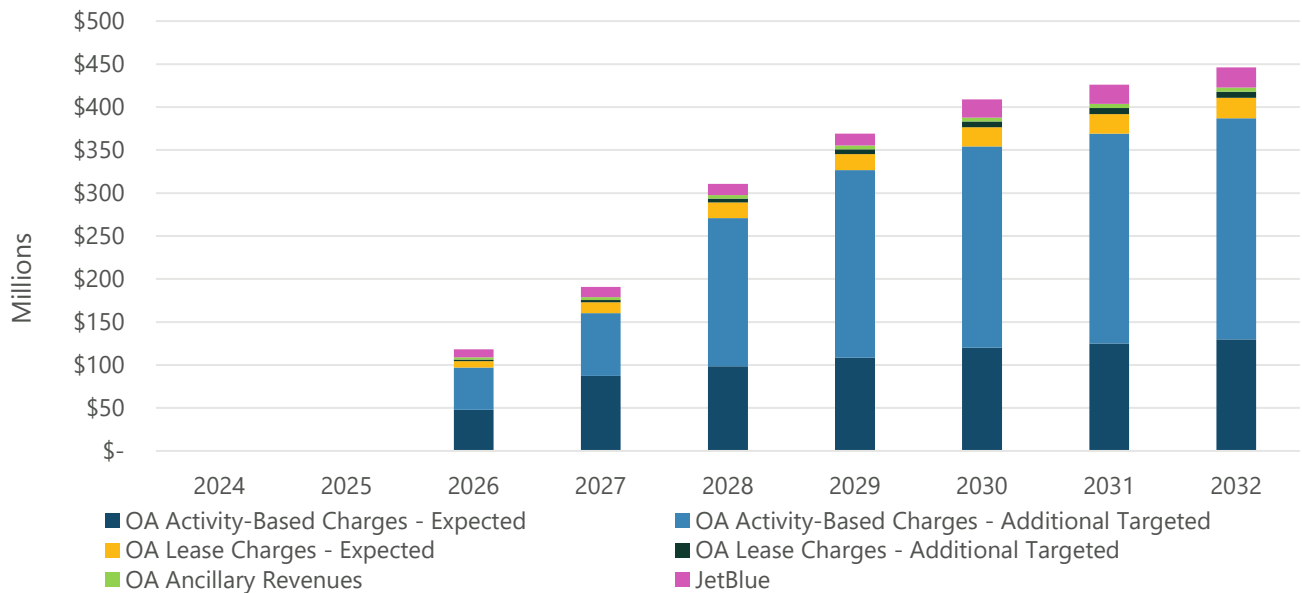
**5.2.3 TOTAL AIRLINE AND ANCILLARY REVENUES**

**Table A-1 in Appendix A** presents airline revenues projected to be received by JMP, resulting from the previously described rentals and fees. **Exhibit 5-6** presents the projected airline revenues.

As shown, JMP anticipates receiving Terminal 7 airline revenues from FY 2024 through FY 2025, and Terminal 6 airline revenues are anticipated to begin in FY 2026 upon DBO1.

Airline revenues are projected to total approximately \$369.2 million in FY 2029, the first full year of operation after Phase 2 completion. Airline revenues are projected to increase at a CAGR of 6.5 percent from FY 2029 through FY 2032, totaling approximately \$446.0 million in FY 2032. The increase in airline revenues is primarily due to additional enplaned passenger activity for these years and airline rate adjustments to compensate for inflation. A summary of airline revenues received by JMP is provided in **Table 5-2**.

**EXHIBIT 5-6 PROJECTED TERMINAL 6 AIRLINE REVENUES (IN MILLIONS)**



NOTES:

OA – Other Airline

T6 – Terminal 6

Expected Airlines include Aer Lingus, Cathay, Lufthansa AG (and its affiliates Austrian Airlines, Brussels Airlines, and Swiss International Air Lines), and one additional long-haul foreign flag airline.

SOURCE: JFK Millenium Partners, October 2024.

<sup>131</sup> Above- and below-the-wing services include the customer service functions associated with the gating, unloading, and loading of aircraft, such as aircraft marshaling, baggage handling, airport customer service representatives, and aircraft cleaning crews.

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

TABLE 5-2 PROJECTED AIRLINE REVENUES (IN MILLIONS)

	PROJECTED									
	2024	2025	2026	2027	2028	2029	2030	2031	2032	
<b>Terminal 7 Revenues<sup>1</sup></b>	\$97.5	\$89.4	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	
<b>Terminal 6 Revenues</b>										
JetBlue	\$0.0	\$0.0	\$9.2	\$12.1	\$12.9	\$13.7	\$21.0	\$22.3	\$23.2	
OA Activity-Based Charges - Expected	\$0.0	\$0.0	\$48.0	\$87.2	\$98.7	\$108.4	\$120.2	\$125.1	\$129.9	
OA Activity-Based Charges - Additional Targeted	\$0.0	\$0.0	\$49.0	\$73.2	\$172.3	\$218.2	\$234.1	\$244.0	\$257.2	
OA Leased Space - Expected	\$0.0	\$0.0	\$7.6	\$12.4	\$17.9	\$18.8	\$22.2	\$22.9	\$23.6	
OA Leased Space - Additional Targeted	\$0.0	\$0.0	\$1.8	\$2.7	\$4.7	\$5.6	\$6.7	\$6.9	\$7.1	
OA Ancillary Revenues	\$0.0	\$0.0	\$2.6	\$3.3	\$4.2	\$4.6	\$4.7	\$4.8	\$5.0	
<b>Total Airline Revenues</b>	<b>\$97.5</b>	<b>\$89.4</b>	<b>\$118.2</b>	<b>\$190.9</b>	<b>\$310.7</b>	<b>\$369.2</b>	<b>\$408.8</b>	<b>\$425.9</b>	<b>\$446.0</b>	
Enplanements (Millions)	0.00	0.00	1.81	2.59	3.71	4.16	4.23	4.30	4.38	
<b>Revenue per Enplanement</b>	<b>n/a</b>	<b>n/a</b>	<b>\$65.31</b>	<b>\$73.60</b>	<b>\$83.78</b>	<b>\$88.84</b>	<b>\$96.64</b>	<b>\$98.94</b>	<b>\$101.90</b>	

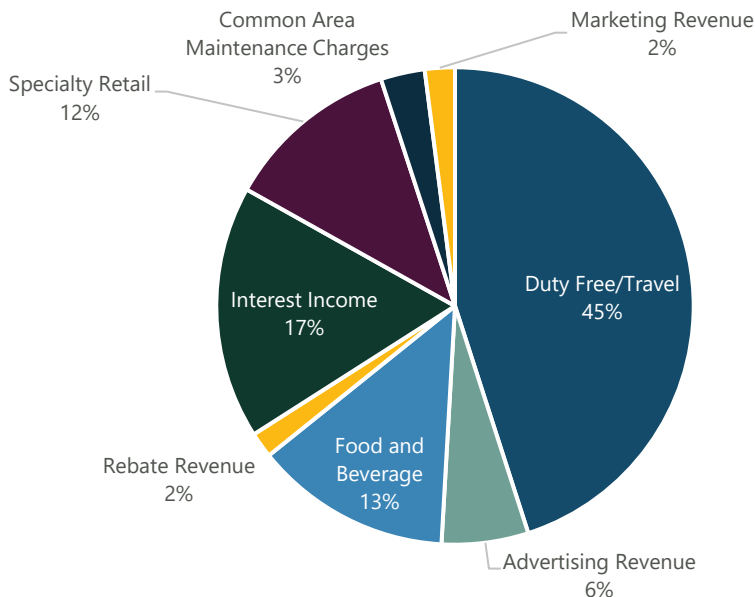
SOURCE: JFK Millennium Partners, LLC, October 2024.

### 5.3 NON-AIRLINE REVENUES

JMP anticipates receiving non-airline revenues in the form of concession revenues, advertising revenues, rebate revenues, other non-airline revenues, and interest income. The non-airline revenues included in the financial analysis reflect the forecast of activity discussed in Chapter 4 and the commercial strategy plan developed by JMP.

**Exhibit 5-7** presents the breakdown of projected non-airline revenue by category in Terminal 6 for 2029.

EXHIBIT 5-7 2029 ESTIMATED NON-AIRLINE REVENUES IN TERMINAL 6



NOTE:  
 Revenues related to news and convenience are included in Specialty Retail.  
 SOURCES: JFK Millennium Partners, LLC, October 2024.

### 5.3.1 CONCESSION REVENUES

JMP (through the MSA with Vantage) has been managing the concession program at Terminal 7 from the start of the Lease Agreement term and has implemented commercial strategies for Terminal 6 in terms of concessionaire management, space design and layout, and product category mix. Vantage’s experience in terminal concessions programs includes LaGuardia Airport Terminal B, Albuquerque International Sunport, Chicago Midway serving as concessions manager, alongside SSP and Hudson, and the new terminal at Kansas City International Airport. The non-airline revenues included in the financial analysis reflect the ASM forecast of activity discussed in **Chapter 4** and the commercial strategy plan developed by JMP.

Terminal 6 concession revenues will generally include the following core categories:

- Duty-Free and News & Retail
- Food & beverage

The construction of Terminal 6 includes a total terminal commercial area of approximately 59,600 square feet delivered through a combination of Phase 1 and Phase 2. Further, 90 percent of this commercial space will be in the airside concourse, while the remaining offerings will be located landside on the arrivals level (9 percent) and landside on the departures level (1 percent).

Terminal 6 passengers will pass through security and flow into the main retail space, where passengers may eat, shop, or dwell before continuing to the nearby holdrooms. Terminal 6 concessions are anticipated to provide a mix of premium, local, regional, national, and internationally recognized brands. Passengers flowing from both

Terminal 6 check-in areas will pass the first commercial area adjacent to the Terminal 5 connector; however, only passengers departing from the seven most westerly gates will transition past the second commercial area.

Key assumptions regarding contractual arrangements concerning the Terminal 6 concession program include the following:

- Effective December 1, 2022, JMP was required to negotiate new lease subleases with the non-airline tenants currently operating from Terminal 7. JMP receives revenues in the form of concessions revenue, including O&M/Marketing Fee; advertising revenue (via the airports-wide advertising program administered by Clear Channel); and revenue from other service providers in Terminal 7.
- JMP has commenced a competitive process to select concessionaires in the form of travel retail partners. Bidders have been selected for all Phase 1 concession spaces, as well as approximately 75 percent of Terminal 6 food & beverage space and all of the duty-free and news & retail space across both Phase 1 and Phase 2.
- Concession revenues will be collected monthly and will be structured as the greater of 1/12<sup>th</sup> of a minimum annual guarantee (MAG) or percentage rent. For a standard sublease, the MAG is calculated based on a MAG per enplanement negotiated for Phase 1 and Phase 2 as part of the tenant selection process. For all other years, the MAG per enplanement will be increased by CPI. At the beginning of each calendar year, the MAG will be calculated based on the current year escalated MAG per enplanement (or negotiated Phase 1 or Phase 2 MAG per enplanement for those years) multiplied by the projected enplanements for the year. The MAG will be adjusted at the end of each year based on actual enplanements and the total rent owed by each subtenant will be reconciled accordingly.
- For the concessions, a Common Area Maintenance fee will be calculated to cover common operating costs. The Common Area Maintenance fee will be calculated on a per-square-foot basis with no markup of the operating costs to the tenant and will be provided as part of the terms of the tenant contract.
- Marketing Revenues will be collected as a percentage of gross sales, using a common industry benchmark. Marketing Revenues will be used to promote the concessions program across different mediums and to create a clear retail brand. A marketing calendar and budget for all activities will be developed by JMP and agreed upon with the concessionaires at the start of each year.
- In Terminal 6, 30 percent of gross sales are required to be generated by the Airport Concession Disadvantaged Business Enterprises and Disadvantaged Business Enterprises. This requirement has been incorporated into the ongoing terminal retail planning and contract negotiations for the procurement packages described above.

Concession revenues include anticipated rents from duty-free, specialty retail, news, and gifts,<sup>132</sup> and food and beverage concessionaires. The projected concession revenue assumes the spend rates per enplaned passenger ("SPE") and effective rental rates determined by JMP with SPE increased throughout the Projection Period based on inflation. Enplaned passengers are increased according to the ASM activity forecast described in **Chapter 4**. Assumptions regarding the specific categories include the following:

- **Duty-Free and News & Retail:** JMP has successfully selected all Terminal 6 duty-free and news & retail concession space vendors. Estimates of duty-free and news & retail revenues in the financial analysis are based on the SPEs assumed in the successful bids and effective rental rates negotiated (i.e., portion of sales shared with JMP as a percentage, which may be tiered depending on the product type) included in the successful bids.

---

<sup>132</sup> Category "News and Gifts" also can refer to "News and Convenience."

JOHN F. KENNEDY INTERNATIONAL AIRPORT

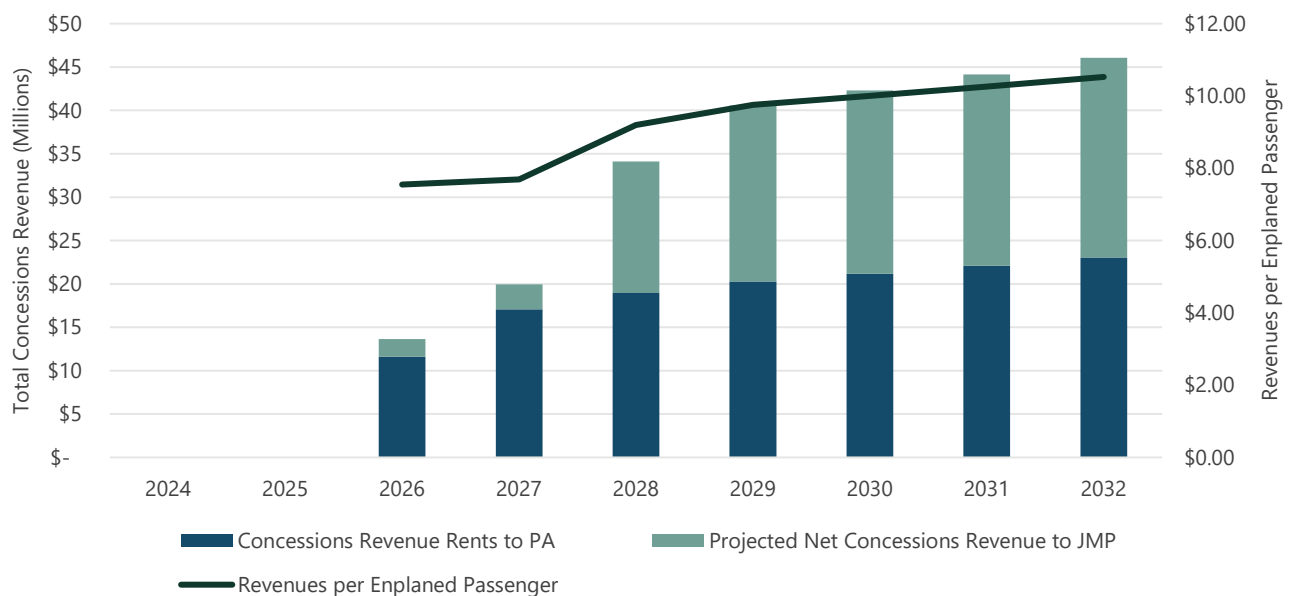
The effective rental rates bid by the successful proposers are anticipated to be incorporated into contracts between JMP and the proposers.

- Food & Beverage:** JMP has successfully bid and awarded all concession spaces for Phase 1, as well as approximately 75 percent of Terminal 6 food & beverage concession space across both Phase 1 and Phase 2, and the remaining 25 percent is currently in the bidding process. Accordingly, approximately 75 percent of estimated food & beverage revenues in the financial analysis are based on the estimated SPEs and effective rental rates included in the successful bids. The effective rental rates are anticipated to be incorporated into contracts between JMP and the successful proposers. The remaining 25 percent of estimated food & beverage revenues are estimated based on spend rates from a third-party concession consultant and assume effective rental rates that are less than those included in the successful bids for purposes of conservative financial projections.

Ricondo finds the concessions revenues in the Projection Period reasonable based on the terms already negotiated, potential increases in revenue based on passenger demographics with Expected Airlines, and industry benchmarking for similarly situated terminals and markets.

**Exhibit 5-8** presents the total concession revenues projected to be received by JMP during the Projection Period for Terminal 6, the portion of this revenue to be paid to the Port Authority in concessions revenue rents, and projected concession revenues per Terminal 6 enplaned passenger. As described in **Section 5.1.2** of this Report, JMP will pay Concessions Revenue Rents to the Port Authority which are reflected in the Port Authority Rents section of **Appendix A-3**. The portion of concessions revenues projected to be paid to the Port Authority in Concessions Revenue Rents (including the Concession Rent subordinate to Senior Debt Obligations) represents an 85 percent share of total concessions revenues in FY 2026, an 86 percent share in FY 2027, a 56 percent share in FY 2028, and a 50 percent share for FY 2029 through the end of the Projection Period.

**EXHIBIT 5-8 PROJECTED CONCESSION REVENUES (IN MILLIONS) AND CONCESSION REVENUES PER TERMINAL 6 ENPLANED PASSENGER**



NOTE: PA - Port Authority of New York and New Jersey.

SOURCES: JFK Millennium Partners, LLC, October 2024.

### 5.3.2 ADVERTISING REVENUES

JMP anticipates receiving advertising revenues which reflect the Terminal 6 portion of the Port Authority's airports-wide advertising revenue program administered by Clear Channel. Advertising revenue projections for Terminal 6 are calculated based on a metric of Terminal 7 advertising revenues per enplaned passenger which, in turn, are based on spend per enplaned passenger rates that were benchmarked against other JFK terminals, adjusted for inflation, and applied to the number of enplaned passengers departing from Terminal 6 gates.

It is anticipated that JMP will begin receiving advertising revenues in 2026, after the completion of Phase 1 construction. Advertising revenue is projected to be \$1.2 million in FY 2026 and increase to \$1.8 million in FY 2027, Advertising revenues are projected to increase again in FY 2028 to \$3.0 million and increase at a CAGR of 4.0 percent for the remainder of the projection period, from \$3.4 million in FY 2029 to \$3.8 million in FY 2032. However, throughout the Projection Period, advertising on a per passenger basis is anticipated to remain flat and increases in the projected revenues are a result of inflation. Clear Channel will provide JMP with its share of advertising revenue attributable to Terminal 6. Of the Terminal 6 advertising revenue received from Clear Channel, 50 percent is to be paid to the Port Authority in the form of advertising rent.

### 5.3.3 REBATE REVENUES

JMP anticipates receiving rebate revenues in the form of concessions storefronts tenant cost recovery and solar PV installation vendor rebates. Tenant cost recovery reflects revenues from concessionaires associated with the repayment of capital expenditures incurred in preparing storefronts that were initially provided by JMP. It is anticipated JMP will receive rebate revenues from FY 2026 to FY 2029, with rebate revenues totaling approximately \$1.5 million in FY 2026, approximately \$4.7 million in FY 2028 and approximately \$1.0 million in FY 2029.

### 5.3.4 OTHER NON-AIRLINE REVENUES

In addition to rental income received from concessionaires, JMP will also receive two other payments from the concessionaires:

- A Common Area Maintenance fee, which reflects the contribution of concessionaires to general terminal operating costs and is calculated on a per-square-foot basis (only affected by space increases and inflation).
- Contribution to a centralized Marketing Fund, which is calculated as a percentage of concession sales, and all of which is applied by JMP to pay for promotional and marketing activity for the terminal and its tenants.

It is anticipated JMP will receive the above-mentioned revenues totaling approximately \$1.1 million in FY 2026, approximately \$2.6 million in FY 2028 and the revenues are projected to increase at a CAGR of 4.2 percent for the remainder of the projection period, from \$2.9 million in FY 2029 to \$3.3 million in FY 2032.

### 5.3.5 INTEREST INCOME

JMP will receive interest income from deposits in various reserve accounts, including the Debt Service Reserve Account, the Ramp-Up Reserve Account, the Liquidity Reserve Account the O&M Reserve Account, and the Major Maintenance Reserve Account. The interest income is projected to be approximately \$7.2 million in FY 2028 and \$8.6 million in FY 2032. The interest rate on the deposits is assumed to be 3.0 percent throughout the lease period.



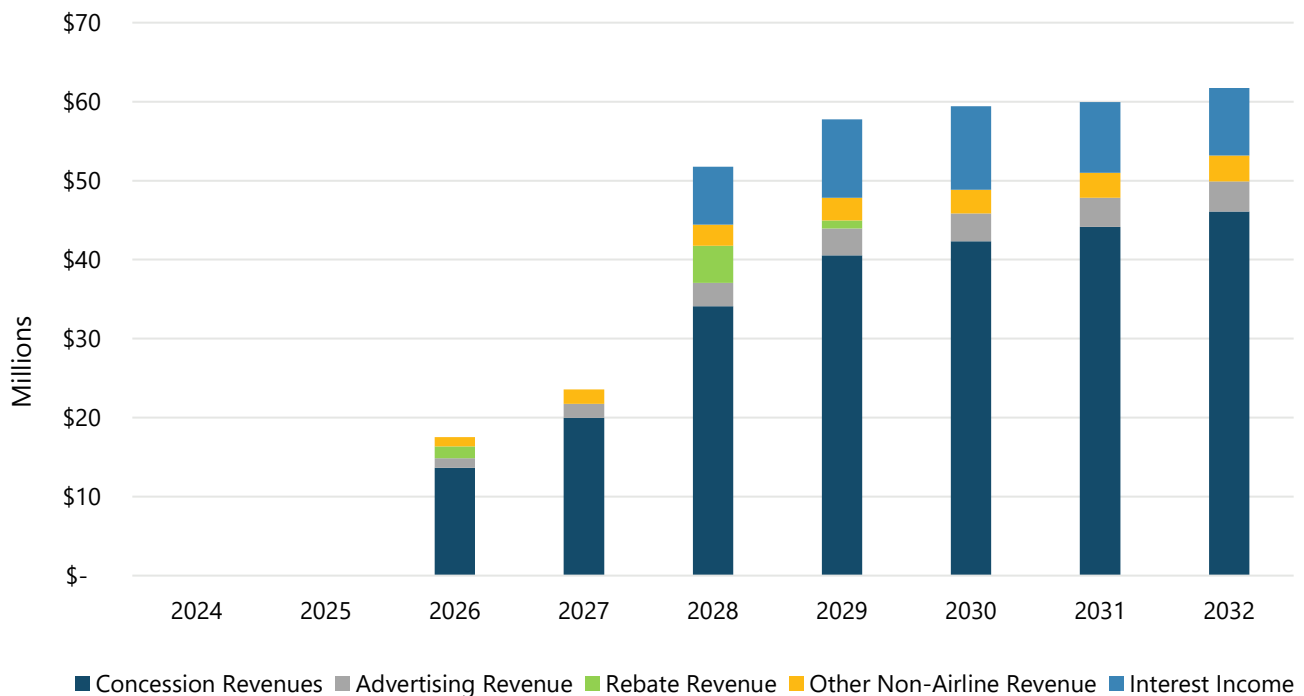
### 5.3.6 TOTAL NON-AIRLINE REVENUES

It is anticipated that JMP will begin receiving non-airline revenues from Terminal 6 operations in 2026, after the completion of Phase 1 construction. Non-airline revenues are projected to total approximately \$17.5 million for FY 2026, increasing to \$51.7 million in FY 2028, the year in which Phase 2 of construction is completed and Terminal 6 becomes fully operational. Non-airline revenues are projected to increase to \$57.8 million in FY 2029, the first full year of the new terminal’s operation. From FY 2029 to FY 2032, non-airline revenues are projected to increase at a CAGR of 2.3 percent, with \$61.7 million in non-airline revenues projected for FY 2032.

Total projected non-airline revenues to be received by JMP from the operation of Terminal 6 are presented in **Table A-2** in **Appendix A** of this Report.

**Exhibit 5-9** presents total non-airline revenues projected to be received by JMP during the Projection Period for Terminal 6.

EXHIBIT 5-9 PROJECTED TERMINAL 6 TOTAL NON-AIRLINE REVENUES (IN MILLIONS)



SOURCES: JFK Millennium Partners, LLC, October 2024.

### 5.4 OPERATING AND MAINTENANCE EXPENSES

O&M Expenses include those expenses incurred by JMP related to operating and maintaining Terminal 6 during the term of the Lease Agreement and described within **Section 5.4.2**. O&M Expenses do not include costs directly incurred by the airlines or costs directly incurred by the concessionaires. O&M Expenses are classified into the following categories. Certain expenses are limited to the construction period. Durations for each category are described in **Section 5.4.2**:

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

- Construction management fee
- Contracted services
- Utilities
- Personnel or Staffing Costs
- Insurance during operations
- Operating management fee
- Repairs and maintenance
- General & Administrative
- Ground Transportation Center (GTC) Operating Expenses
- Personnel

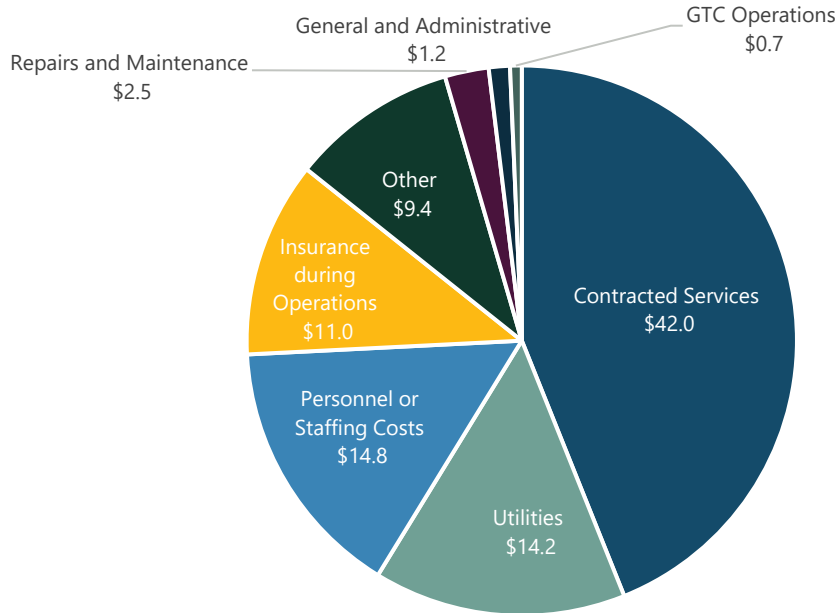
O&M Expenses and GTC Operating Expenses are anticipated to occur throughout the Projection Period. Insurance During Construction and construction management fees are anticipated during the construction period of the Project, while the operating management fees are anticipated to begin in 2028 after the completion of Terminal 6.

For all categories except Insurance During Construction and repairs and maintenance, O&M Expenses were estimated by Vantage, which has strong experience operating airports and managing operations during project construction. Vantage used benchmark data from the LGA Terminal B Redevelopment, with project-specific factors applied. In 2016, Vantage led the LaGuardia Gateway Partners consortium on the LaGuardia Airport Terminal B Redevelopment project to financial close and lease commencement. Estimated Insurance During Construction O&M Expenses were developed by JMP's technical advisors as described in **Section 5.4.2**. Projections of the repairs and maintenance O&M Expense were developed by JMP's technical advisors using asset modeling and inputs from Vantage that were based on the Designer-Builder's construction price and in-house historical data. This section of the Report presents key information provided by Vantage and JMP's technical advisors.

**Exhibit 5-10** presents the breakdown of estimated Terminal 6 O&M Expenses by category for 2029, the anticipated first full year of Terminal 6 operations. Projected O&M Expenses for Terminal 6 are presented in **Table A-3** in **Appendix A**. Estimated O&M Expenses for 2029 serve as the base year expenses from which future Terminal 6 O&M Expenses were projected. O&M Expenses were projected based on the type of expense, expectation of future inflation rates, and anticipated phasing related to the development of Terminal 6.

Additional information for each category of O&M Expense is included in **Section 5.4.2**.

EXHIBIT 5-10 ESTIMATED 2029 TERMINAL 6 OPERATING AND MAINTENANCE EXPENSES (IN MILLIONS)



NOTES:

GTC – Ground Transportation Center

SOURCE: JFK Millennium Partners LLC, October 2024.

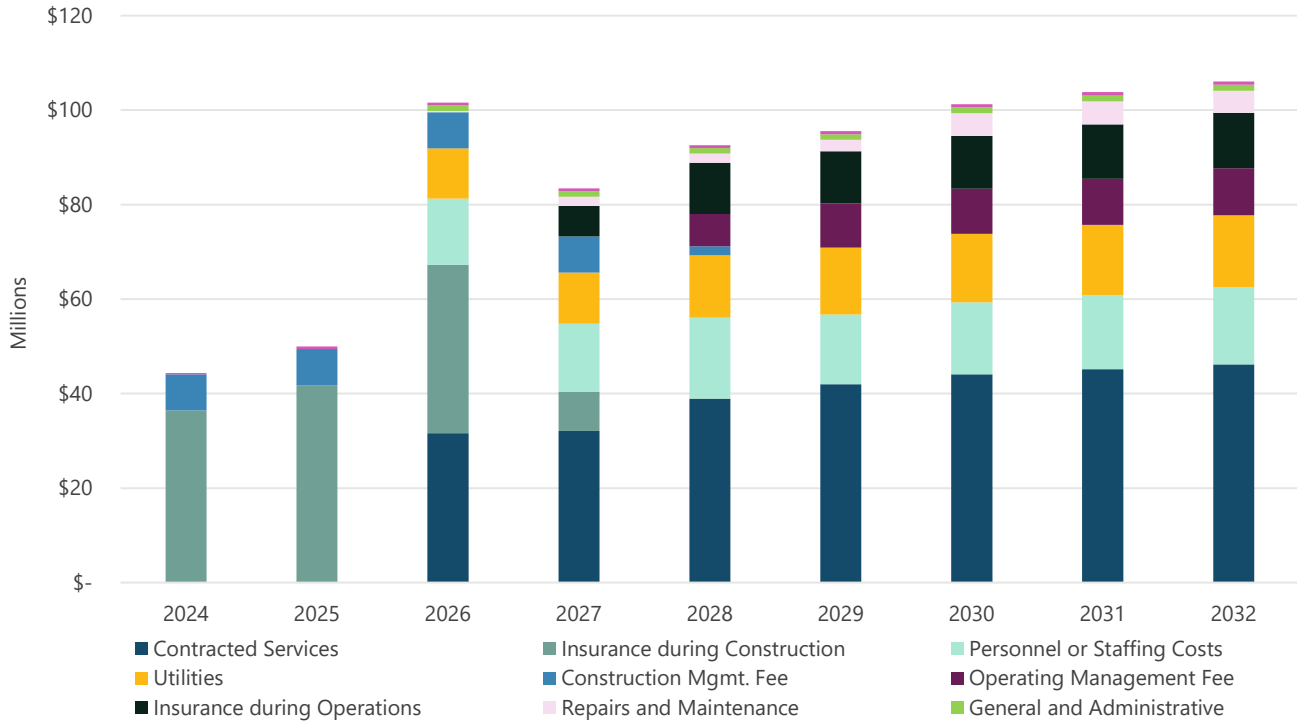
**5.4.1 OPERATING AND MAINTENANCE EXPENSE PROJECTIONS**

During the remaining years of construction of the Project (2024 through 2028), O&M Expenses are projected to fluctuate between approximately \$101.6 million and \$44.4 million annually, primarily as a result of many construction period insurance costs requiring upfront payment. Upon Phase 1 DBO, additional O&M Expenses are required (e.g., G&A, contracted services, utilities), increasing the total O&M Expenses to approximately \$101.6 million for 2026.

O&M Expenses and management fees are projected to increase to \$95.6 million in FY 2029, the first full year of operations for Terminal 6. Between FY 2029 and FY 2032, O&M Expenses are projected to increase by a CAGR of 3.5 percent, increasing to \$106.1 million by FY 2032.

**Exhibit 5-11** presents the projected O&M Expenses for Terminal 6.

EXHIBIT 5-11 PROJECTED TERMINAL 6 OPERATING AND MAINTENANCE EXPENSES (IN MILLIONS)



NOTES:

GTC – Ground Transportation Center

SOURCE: JFK Millennium Partners LLC, October 2024.

5.4.2 OPERATING AND MAINTENANCE EXPENSE CATEGORIES

The following subsections describe the various categories of O&M Expenses.

**Insurance During Construction and Operations**

Insurance payments during the construction of the Project will be made from the commencement of Phase 1 construction in 2022 through FY 2027. Insurance costs were estimated for both construction-related insurance costs during the 2022 through 2027 construction period and operations-related insurance costs from 2027 through the term of the lease. Estimates are based on a buildup of individual policies, including general liability, workers compensation, umbrella, builder’s risk, and professional liability, among others. Where final pricing of a given policy was not yet available, market research and industry standards were used to estimate approximate insurance costs.

O&M Expenses associated with Insurance During Construction are projected by JMP to total approximately \$36.4 million in FY 2024 and are anticipated to range between approximately \$8.4 million and approximately \$41.8 million between FY 2025 and FY 2027.

O&M Expenses related to insurance during operations are incurred starting in FY 2027 and are projected to be \$6.5 million.<sup>133</sup> The insurance expenses for FY 2029, the first full year of operations at Terminal 6, are projected to be

<sup>133</sup> Terminal 7 related insurances through 2025 are included in "Insurance During Construction."

\$11.0 million. Insurance expenses during operations are projected to increase by a CAGR of 2.3 percent from FY 2029 through FY 2032 to \$11.8 million. JMP does not anticipate any increase to the real cost of insurance throughout the projection period; this CAGR of 2.3 percent is in line with expected inflation over the same period.<sup>134</sup>

### **Construction Management Fee**

The construction management fee is incurred from the commencement of Phase 1 construction in 2022 through the completion of Phase 2 construction in 2028. Each calendar quarter will require approximately \$1.9 million in construction management costs, which total approximately \$7.6 million annually during each full year of construction. The total annual construction management fee reflects the terms of the Management Services Agreement (MSA), which includes a \$6.6 million fee in 2018 that is increased by CPI at the start of construction, with no inflation applied thereafter, equaling \$7.6 million. These fees relate to services provided under the MSA for the design and construction of the Project, concessions related to Terminals 6 and 7, and the operations of Terminal 7 and Phase 1 of Terminal 6.

### **Contracted Services**

Contracted services are comprised of outsourced operating services. Total O&M Expenses for contracted services were estimated by type of contracted service and are based on the Port Authority lease requirements as well as comparable figures from LGA Terminal B. For each category, the relevant key driver was used to project expenses. Examples of relevant key drivers include square footage of the terminal, apron acreage, expected passenger volume, number of Full-Time Equivalent (FTE) employees, or the number of passenger loading bridges.

Outsourced services include the following:

- Cleaning and sanitation-related services based on space, including janitorial services, which include common area space, septic services, waste disposal, and pest control.
- Security, police, and fire services, which are allocated based on space (measured in square feet).
- Snow removal services based on space (measured in acres).
- Facilities and technology, including common-use systems; heating, ventilation, and air conditioning (HVAC) and electrical and mechanical systems; elevators and escalators; and certain other maintenance based on space (measured in square feet).
- Environmental services based on space (measured in square feet).
- Baggage system based on number of passengers.
- Passenger loading bridges and doors based on number of bridges.
- Security Identification Display Area (SIDA), Secure Worker Access Consortium (SWAC), drug testing, and employee wellness based on FTE employees.
- Communications and marketing services based on space (measured in square feet).

As shown on **Table A-3**, contracted services for Terminal 6 are anticipated to begin in FY 2026 and total approximately \$31.6 million in FY 2026, the first full year of Phase 1 operation. The completion of Phase 2 in FY 2028 marks an increase in projected contracted services, to a total of approximately \$38.9 million. Contracted services are

---

<sup>134</sup> The Federal Reserve Projection Long-Term (10-Year) Average Annual Inflation as of 2024 Q3 report is 2.3 percent.

<https://www.philadelphiafed.org/surveys-and-data/real-time-data-research/inflation-forecasts> (accessed August 22, 2024)

projected to increase at the rate of 4.4 percent CAGR from \$38.9 million in FY 2028 to \$46.2 million in FY 2032. JMP does not anticipate increases in the real cost of contracted services throughout the Projection Period; increases in the projected costs reflect inflation assumptions.

### **Utilities**

The utility costs include electricity, chilled water, hot water, gas, water and sewer, and telephones. Utility costs were estimated using benchmarking data from JFK Terminal 7 and an assumed energy consumption for the planned Terminal 6 facility. The projection for utility costs accounts for the expected cost and consumption requirement for each utility category.

As shown on **Table A-3**, Terminal 6 utility costs are estimated to begin in FY 2026 and total approximately \$10.7 million. An increase to approximately \$13.2 million is projected for FY 2028 as Phase 2 is completed. Utility costs are projected to increase to \$15.2 million by 2032, reflecting a CAGR of 3.5 percent from FY 2028 to FY 2032.

### **Personnel or Staffing Costs**

O&M Expenses related to personnel assume full pay and benefits for staff, including management staff and the terminal and ramp operations team. All other services in the building are assumed to be outsourced and are contained in contracted services. Personnel or staffing costs were estimated by Vantage using a staffing model that was rebuilt in the fourth quarter of 2021, which considers a 20-hours-per-day, 7-days-per-week operation, and uses assumptions based on LGA Terminal B benchmarking, as well as New York market rate information.

The O&M Personnel costs for the Terminal 6 operating period are shown as a dedicated line item in the O&M financial model.

As shown on **Table A-3**, personnel O&M Expenses for Terminal 6 are assumed to begin in January 2026 with a team of staff supporting operations in Terminal 7. This team will transition to Terminal 6 at the commencement of Phase 1 operations, along with additional personnel to meet Requirement for Performance of Work (RPW) requirements.

Personnel expenses are projected to be \$14.0 million for FY 2026 and are projected to increase to \$14.8 million for FY 2029. Between FY 2029 and FY 2032, personnel expenses are projected to increase to \$16.3 million by a CAGR of 3.4 percent, attributable primarily to wage and benefits increases.

### **Operating Management Fee**

JMP's Management Services Agreement (MSA) requires payment of an operating management fee to the Manager, which will commence in FY 2028 when Terminal 6 becomes fully operational following the completion of Phase 2 construction. The operating management fee is projected to total approximately \$9.4 million in FY 2029, the first full year of Terminal 6 operations. The operating management fee is projected to increase by a CAGR of 2.1 percent from FY 2029 through FY 2032 to \$10.0 million, which is in line with expected inflation over the same period.

### **Repairs and Maintenance**

JMP will maintain common systems and assets while the airlines will maintain airline-specific systems and assets. In projecting O&M Expenses, the maintenance of any airline assets was not assumed.

Repair and maintenance O&M Expenses are anticipated by JMP to increase from approximately \$315,469 in FY 2026 to approximately \$2.0 million in FY 2028, followed by an increase to approximately \$4.8 million in FY 2030. Repairs and maintenance O&M Expenses are projected to remain relatively constant through the remainder of the projection period, totaling approximately \$4.7 million in FY 2032.

### **General and Administrative Expenses**

General and Administrative (G&A) expenses were estimated by JMP based on benchmarking data from LGA Terminal B. Major administrative expenses include professional services (including legal services, public relations and marketing services, and environmental consulting); telephone; training; information technology (IT) system license, fees, upgrade, and maintenance; and transition budget.

As shown on **Table A-3**, G&A expenses are projected to be \$1.1 million in FY 2026, the first full year of G&A expenses under Phase 1. Terminal 6 G&A expenses are projected to remain relatively constant through FY 2027, before increasing at a CAGR of 2.2 percent from \$1.2 million in FY 2028 to \$1.3 million in FY 2032. JMP does not anticipate increases in the real cost of G&A expenses throughout the Projection Period; increases in projected costs reflect inflation assumptions.

### **Ground Transportation Center Operations**

GTC O&M Expenses are estimated based on the Ground Rent agreed among JMP, the Port Authority, and JetBlue, plus annual O&M Expenses to maintain the operational hours. The total cost is distributed among the Port Authority, JMP, and JetBlue as follows: 50 percent is allocated to the Port Authority, and the remaining 50 percent is allocated between JMP and JetBlue based on assumed traffic. The GTC O&M Expenses included in this analysis reflect the JMP share of GTC costs.

GTC O&M Expenses are projected to total approximately \$287,467 in FY 2024 and increase to \$594,999 in FY 2025. In FY 2026, the first full year of operations after DBO1, GTC O&M Expenses are projected to total approximately \$614,336 and increase by a CAGR of 2.2 percent throughout the Projection Period to approximately \$699,537 in FY 2032. This 2.2 percent CAGR reflects assumed inflation over the same period and does not assume increases in real costs for GTC operations.

## **5.5 ASSET REPAIR AND REPLACEMENT**

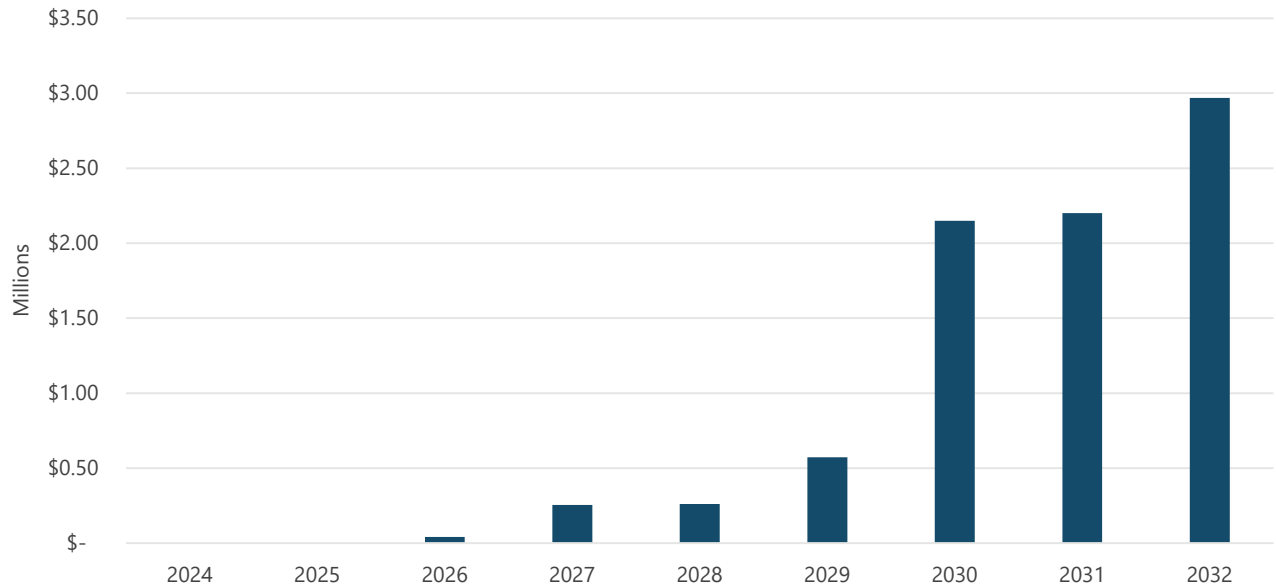
After construction is complete, Terminal 6 will require routine capital investment in all common-use systems and assets. The following asset categories have been identified: fire protection, HVAC, plumbing, baggage handling, conveying, interiors, shell, fuel, civil (landside and airside), passenger loading bridges, Furniture Fixtures & Equipment (FF&E), electrical communications and security, and electrical power.

As described in the Lease Agreement, JMP will be required to perform Major Maintenance of Terminal 6 and will establish and fund a Major Maintenance Reserve Fund annually from revenues to pay for the Major Maintenance of assets. Upon the expiration of the Lease Agreement, JMP must ensure that the condition of Terminal 6 satisfies the terms of the Handback Requirements found in the Lease Agreement.

Nearly all asset components require annual inspections; however, repair and replacement needs will vary with the useful lives of the assets. The need for asset repair and replacement is first anticipated in FY 2026. Initial asset replacement will be required for items with shorter useful lives, such as IT and security system components. Additional asset replacements in Terminal 6 are scheduled to occur throughout the Projection Period, depending on the estimated useful life of the component. Projected annual asset repair and replacement costs are presented in Table A-3 in Appendix A. The expenses, as developed by a third-party consultant, are projected to total approximately \$41,560 in FY 2026 and increase to \$3.0 million for the year 2032.

**Exhibit 5-12** presents the projected asset repair and replacement costs for Terminal 6 during the Projection Period.

EXHIBIT 5-12 TERMINAL 6 PROJECTED ASSET REPAIR AND REPLACEMENT EXPENSES (IN MILLIONS)



NOTE:  
 Asset repair and replacement projections include major maintenance expenses.  
 SOURCE: JFK Millennium Partners, LLC, October 2024.

### 5.6 FINANCING RELATED COSTS

In addition to O&M Expenses, asset repair and replacement, and Port Authority rents, additional operating costs will be required in the form of ongoing financing related costs for O&M Expense cashflow purposes and to maintain credit ratings on the Project. Projected financing related costs include the cost of maintaining ratings with rating agencies as well as admin agent, depository, and collateral agent fees. JMP projections for financing related costs include an estimated \$1.2 million in FY 2024, increasing annually based on the rate of inflation to \$1.4 million in 2032.

### 5.7 ANNUAL DEBT SERVICE

JMP intends to issue Series 2024 Bonds to refund a portion of the Series 2022A Bonds and the Senior Term Loans. A summary of the par amount (including premium) of each of the anticipated issuances is provided in **Table 5-3** and the outstanding debt is shown in **Table 5-4** before and after the issuance of the Series 2024 Bonds and annually thereafter through 2028.

TABLE 5-3 ESTIMATED JFK TERMINAL 6 SERIES 2024 BONDS

FY 2024 DEBT ISSUANCES	BOND ISSUE AMOUNT
2024A Current Interest Bonds	\$1,468.1 million
2024B Convertible Capital Appreciation Bonds (CABs)	\$110.0 million

SOURCE: JFK Millennium Partners, LLC, October 2024.



## JOHN F. KENNEDY INTERNATIONAL AIRPORT

TABLE 5-4 OUTSTANDING DEBT OVER THE PROJECTION PERIOD (IN MILLIONS)

CURRENT AND FUTURE DEBT ISSUANCES	PRE- ISSUANCE (Q3 2024)	POST ISSUANCE (Q4 2024)	2025	2026	2027	2028
Outstanding Senior Term Loans	\$2,047	\$1,025	\$1,751	\$1,751	\$1,751	-
Series 2022 Bonds	\$435	\$195	\$195	\$195	\$195	-
Series 2024 Bonds <sup>1</sup>		\$1,500	\$1,506	\$1,512	\$1,519	\$1,525
Series 2028 Bonds <sup>2</sup>	-	-	-	-	-	\$1,954
<b>Total</b>	<b>\$2,482</b>	<b>\$2,721</b>	<b>\$3,453</b>	<b>\$3,459</b>	<b>\$3,465</b>	<b>\$3,479</b>

## NOTES:

Total Debt does not include the PA Deposit LOC

1 Refers to 2024A Current Interest Bonds and 2024B Convertible Capital Appreciation Bonds (CABs)

2 Refers to anticipated future JMP Bonds that will refund the Series 2022A Bonds Facility and Loan Facility in Q1 2028. More details are provided in Section 5.7.4.

SOURCE: JFK Millennium Partners, LLC, October 2024.

**Table A-4 in Appendix A** presents the details of JMP's annual debt service on the Series 2022A Bonds, Series 2024 Bonds, Loan Facilities, and anticipated Additional Bonds. As a special purpose company created to develop the Project, JMP has no other outstanding debt.

### 5.7.1 DEBT SERVICE ON THE EXISTING SERIES 2022A BONDS

In 2022, JMP raised approximately \$435 million from Series 2022A Bonds as part of the construction financing. The Series 2022A Bonds are structured as a Flexible Drawdown Bond (FDB) direct purchase). The amount was drawn completely in FY 2022. Of the \$435 million, approximately \$240 million is anticipated to be retired in FY 2024 from a portion of the proceeds of the Series 2024 Bonds and the remaining \$195 million is anticipated to be retired in Q1 FY 2028 from a portion of the proceeds of a bond issuance (Series 2028 Bonds). The interest on this variable tax-exempt facility is calculated at the Securities Industry and Financial Markets Association (SIFMA) Municipal Swap Index, plus applicable margin. JMP has entered into a variable-to-fixed swap agreement to change this variable interest obligation into a fixed interest obligation of 3.401 percent + applicable margin. The margin varies from 1.4 percent to 1.9 percent over the period. The effective interest rate to JMP translates to 4.8 percent to 5.3 percent from FY 2024 to FY 2028.

The projected Debt Service on the 2022A Bonds is shown in **Table 5-5**.

TABLE 5-5 PROJECTED DEBT SERVICE – SERIES 2022A BONDS (IN MILLIONS)

	2024	2025	2026	2027	2028
Principal Repayment	\$239.6	\$0.0	\$0.0	\$0.0	\$195.4
Interest Payment	\$20.9	\$9.5	\$9.9	\$10.0	\$2.6
<b>Total Debt Service</b>	<b>\$260.5</b>	<b>\$9.5</b>	<b>\$9.9</b>	<b>\$10.0</b>	<b>\$198.0</b>

SOURCE: JFK Millennium Partners, LLC, October 2024.

## 5.7.2 DEBT SERVICE ON THE SENIOR TERM LOANS

Also in 2022, JMP raised approximately \$3,009 million from a consortium of banks as part of the construction financing. By the end of Q3 of FY 2024, JMP expects to have drawn \$2,047 million out of the total amount. The remaining \$962 million is anticipated to be drawn by Q4 of FY 2025. Out of the drawn amount of \$2,047 million, \$1,258 million is anticipated to be retired in Q4 FY 2024 from the proceeds of the Series 2024 Bonds. The entire remaining balance of \$1,751 million (post disbursement of \$962 million) is anticipated to be retired in Q1 FY 2028 through Series 2028 Bonds.

The interest on this variable taxable Senior Term Loans is calculated at Secured Overnight Financing Rate (SOFR) Index plus applicable margin. JMP has entered into a variable-to-fixed swap agreement to change this variable interest obligation into a fixed interest obligation of 3.637 percent plus applicable margin. The margin varies from 2.25 percent to 2.75 percent over the period. The effective interest rate for JMP translates to 5.9 percent to 6.4 percent from FY 2024 to FY 2028.

Payments on the Senior Term Loans include commitment fees throughout the term of the Senior Term Loans prior to its refunding, as well as hedge payments and interest on the amount of funding drawn from the Senior Term Loans. The projected Debt Service on the Senior Term Loans is shown in **Table 5-6**:

TABLE 5-6 PROJECTED DEBT SERVICE – SENIOR TERM LOANS (IN MILLIONS)

	2024	2025	2026	2027	2028
Principal Repayment	\$1,257.6	\$0.0	\$0.0	\$0.0	\$1,751.3
Interest Payment	\$121.1	\$93.2	\$107.5	\$108.6	\$28.0
<b>Total Debt Service</b>	<b>\$1,378.7</b>	<b>\$93.2</b>	<b>\$107.5</b>	<b>\$108.6</b>	<b>\$1,779.3</b>

SOURCE: JFK Millennium Partners, LLC, October 2024.

## 5.7.3 DEBT SERVICE ON SERIES 2024 BONDS

JMP intends to issue multiple series of bonds in 2024 to refund a portion of the Series 2022A Bonds and the Senior Term Loans, and to finance the remaining construction.

### **Senior Series 2024A Current Interest Bonds**

JMP intends to issue Senior Series 2024A Current Interest Bonds to the amount of approximately \$1.39 billion to refinance a portion of the existing Senior Term Loans and Series 2022A Bonds. The Current Interest Bonds are assumed to carry an interest rate between 5.25 and 5.50 percent and will mature over a period from FY 2055 to FY 2060. The annual full-year interest expense from FY 2025 to FY 2054 is \$74.9 million and begins decreasing from FY 2055 onward due to commencement of principal repayments.

### **Series 2024B Convertible Capital Appreciation Bonds**

JMP intends to issue Senior Series 2024B Convertible Capital Appreciation Bonds (CABs) to the amount of approximately \$110 million to refinance a portion of the existing Senior Term Loans and Series 2022A Bonds. The CABs are expected to mature in FY 2054. The outstanding principal amount of the CABs will increase each year and is projected to increase from \$110 million in FY 2024 to \$180 million by Q2 FY 2034 as interest accrued during the year will be added to the outstanding principal amount at the end of the year. From Q3 FY 2034 onwards, interest payments will commence on the outstanding principal amount of \$180 million. The annual full-year interest expense from FY 2035 onwards is \$10.0 million. During the Projection Period, there is no projected debt service on the CABs.

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

The projected Debt Service on the Series 2024 Bonds is shown in **Table 5-7**.

TABLE 5-7 PROJECTED DEBT SERVICE – SERIES 2024 (IN MILLIONS)

	2024	2025	2026	2027	2028	2029	2030	2031	2032
Principal Repayment	-	-	-	-	-	-	-	-	-
Interest Payment	-	\$74.9	\$74.9	\$74.9	\$74.9	\$74.9	\$74.9	\$74.9	\$74.9
Total Debt Service	-	<b>\$74.9</b>	<b>\$74.9</b>	<b>\$74.9</b>	<b>\$74.9</b>	<b>\$74.9</b>	<b>\$74.9</b>	<b>\$74.9</b>	<b>\$74.9</b>

SOURCE: JFK Millennium Partners, LLC, October 2024.

#### 5.7.4 DEBT SERVICE ON FUTURE SERIES 2028 BONDS

For financial projection purposes, JMP currently assumes refunding the remaining Series 2022A Bonds (outstanding amount of \$195.4 million) and Senior Term Loans (outstanding amount of \$1,751.3 million) with additional Senior Bonds in 2028 (the Series 2028 Bonds), with an anticipated par amount of \$1,953.5 million. For the purpose of this analysis, the Series 2028 Bonds will carry interest rates of 5.00 to 5.25 percent. The Series 2028 Bonds will start maturing in FY 2034 and have a term of 28 years from FY 2028 to FY 2055.

The projected Debt Service on the 2028 Bonds is shown in **Table 5-8**.

TABLE 5-8 PROJECTED DEBT SERVICE – SERIES 2028 BONDS (IN MILLIONS)

	2024	2025	2026	2027	2028	2029	2030	2031	2032
Principal Repayment	-	-	-	-	-	-	-	-	-
Interest Payment	-	-	-	-	\$76.1	\$101.4	\$101.4	\$101.4	\$101.4
Total Debt Service	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$76.1</b>	<b>\$101.4</b>	<b>\$101.4</b>	<b>\$101.4</b>	<b>\$101.4</b>

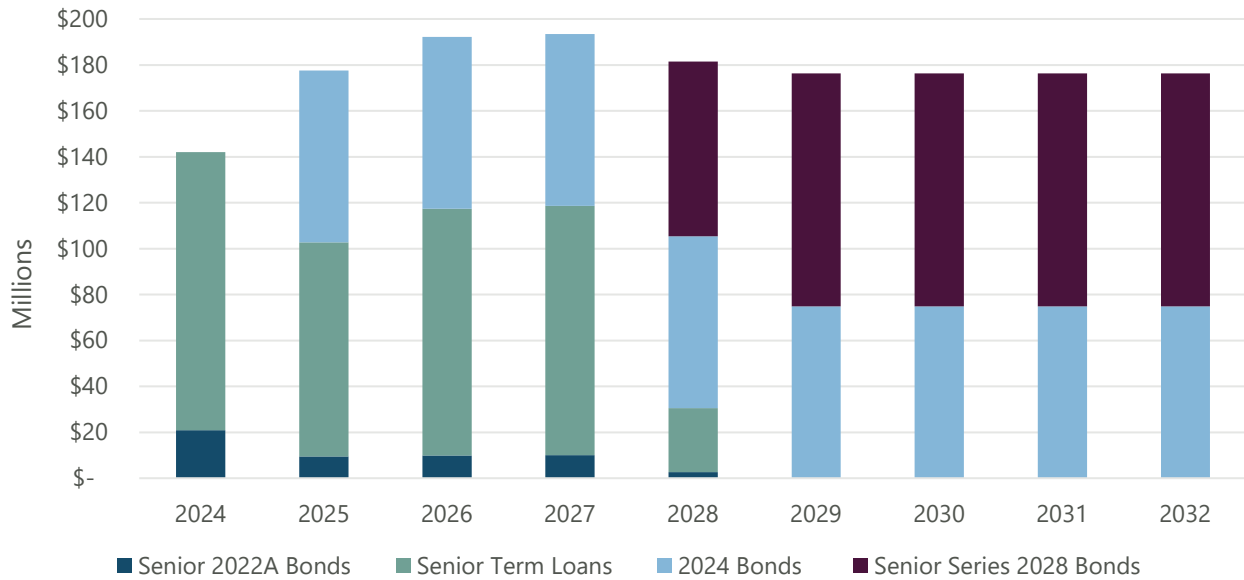
SOURCE: JFK Millennium Partners, LLC, October 2024.

#### 5.7.5 TOTAL ANTICIPATED DEBT SERVICE

**Exhibit 5-13** presents annual total debt service on the Series 2022A Bonds, Senior Term Loans, Series 2024 Bonds and future Series 2028 Bonds throughout the Projection Period.

While the Projection Period is through FY 2032, JMP anticipates that the total debt service payments will continue to increase throughout the term of the Lease Agreement. Principal payments on the Senior Series 2024A Current Interest Bonds, Senior Series 2024B CABs, and Series 2028 Bonds are anticipated to begin in 2055, 2054 and 2034, respectively.

EXHIBIT 5-13 ESTIMATED TOTAL DEBT SERVICE (IN MILLIONS)



NOTES:

- 1 Debt service shown includes gross accrued interest that includes the interest capitalized during the construction period.
  - 2 Debt service for Senior 2022A Bonds and Loan Facilities does not include the principal retired by refinancing in FY 2024 and FY 2028
- SOURCE: JFK Millennium Partners, LLC, October 2024.

## 5.8 EVALUATION OF TERMINAL 6 AIRLINE CHARGES

The strong demand in the New York City air service market means there is less airline sensitivity to airport charges, which are higher in New York than in other US markets. At JFK specifically, charges are anticipated to increase as dated facilities are replaced with new terminals and gates. Terminal 6 is projected to be competitive with similar or lower than average fees for other newer JFK terminals which represent the greatest competition for alternatives to Terminal 6. While all terminals present potential competition for tenants, some provide greater competition than others due to the availability of gate capacity and alignment with existing carriers. The New Terminal One (NTO) presents the strongest competition for the future Terminal 6's potential airline tenants other than JetBlue because the NTO is not anticipated to have a primary tenant or hub airline that would utilize a significant amount of the terminal capacity and potentially attract affiliated carriers. Therefore, the 23 gates, assuming NTO Phase B1 and B2 are constructed, will generally be available for consideration by those tenants that may also consider Terminal 6. Based on public disclosures, NTO has projected annual airline revenue that reflects an average cost per forecast enplaned passenger increasing from \$104 in 2026 to \$126 in 2035.<sup>135 136</sup> These charges may vary greatly by carrier depending on services and fees, but reflect that NTO, on average, is not positioned to be a low-cost alternative to Terminal 6.

<sup>135</sup> New York Transportation Development Corporation, *Special Facilities Revenue Bonds, Series 2024, (John F Kennedy International Airport New Terminal One Project) Official Statement*, Appendix B-1, June 18, 2024 (data); Ricondo & Associates, Inc., September 2024 (calculations).

<sup>136</sup> Does not include landing fees or other charges imposed by the Port Authority.

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

Terminal 4, while predominately occupied by Delta, has an ongoing development program that includes eight additional gates that may provide additional options for other airlines. Terminal 8 is occupied by American and its alliance partner, British Airways, relocated to Terminal 8 at the end of 2022. Therefore, while there are other foreign flag carriers that operate out of Terminal 8, there is limited gate availability, and the terminal is not undergoing a significant increase in gate capacity.

JMP has demonstrated a market for Terminal 6 and its charges by negotiating non-binding letters of intent with term sheets outlining the terms and conditions of subleases with each of the seven international airlines for Terminal 6 through at least 2040. These airlines will have specific business, commercial, and operational terms that demonstrate JMP's ability to adapt terms based on the tenant and secure long-term subleases. Importantly, the average revenue of the seven Expected Airlines is above the average targeted revenue projected in this Report.

In addition, airline decision-making is often influenced by other factors, such as the market revenue potential or the role of a critical market in the system. Of US passenger airline costs in the first quarter of 2024, approximately 2.0 percent was for airport landing fees, and approximately 5.2 percent was for non-aircraft rent and ownership, which includes terminal rents.<sup>137</sup> This indicates the potential revenue from a market will still play a more significant role in decision-making than airport charges, especially in a market as significant and as important as New York.

The following are factors airlines may consider when contemplating the cost reasonableness of Terminal 6 relative to other alternatives:

**Service to Other US Markets**

- While other US airports could serve as an alternative and airlines could assess the incremental cost JFK Terminal 6 represents relative to other airports, foregoing the New York market to reduce airline charges is not likely. One fact that demonstrates this is all regularly scheduled transatlantic foreign flag carriers currently serving the US serve New York City.
- In 2019, JFK served approximately 13.4 million of the 34.9 million O&D transatlantic passengers at the US gateway airports used in the comparison analysis. The next highest was LAX, with 5.6 million passengers. While certain airports offer an alternative with a lower cost, the size of the market and scale of the operation are materially different.
- JFK's location on the East Coast means transatlantic flights to alternative US gateway airports would incur additional distances to travel and the resulting associated costs from those additional distances, most notably fuel.

**Service to Other New York Airports**

- The three primary New York large commercial service airports (JFK, EWR, and LGA) have had historically high estimated CPEs when compared to other reported US airport CPEs. Therefore, the EWR, LGA, and JFK terminals can be considered more directly comparable than estimated sample flight charges across all international gateway airports in the United States.
- LGA does not present a viable alternative and comparison to JFK Terminal 6 due to a perimeter rule that prevents nonstop flights beyond 1,500 miles (except DEN or Saturday flights), slot and FAA flight limitations, and lack of

---

<sup>137</sup> Airlines for America, *Passenger Airline Cost Index (PACI)*, <http://airlines.org/dataset/a4a-quarterly-passenger-airline-cost-index-u-s-passenger-airlines/> (accessed August 22, 2024).

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

FIS facilities. However, the high airline cost at LGA demonstrates that airlines are willing to pay a premium to access the New York market.

- EWR and its facilities are more directly comparable to JFK Terminal 6 than LGA and could provide alternative access to a similar market. However, the markets for the two airports are not identical due to their locations, and more than half of the international destinations served by the New York City market are served by both EWR and JFK. In addition, existing gates at EWR have high utilization and cannot likely accommodate a significant amount of activity without development. Should redevelopment of EWR facilities occur in a manner that could provide a material amount of gate capacity, the cost would be significant enough that fees may come in line with Terminal 6. In addition, the project would take a significant amount of time to plan, design, obtain necessary approvals—including environmental review—and construct. Finally, while potentially a lower cost option, EWR does not offer a low-cost alternative based on historically reported data.

***Service to Other John F. Kennedy International Airport Terminals***

- JFK has a unique environment where there is a diverse selection of terminal options, each operated by a different party with independent charging approaches and agreements. This creates choices for airlines and potential competition among terminal operators. The non-JetBlue airlines that may find Terminal 6 operated by JMP attractive may be similarly attracted to the JFK terminals operated by other entities.
- At this time, there is no certainty regarding which airlines will use and lease facilities at Terminal 6 beyond those that have already committed to doing so. However, even with the ongoing terminal development programs at JFK, it is not anticipated that there will be an excess of gate capacity relative to demand.
- More than 70 airlines served JFK in 2024, each with different operating needs and business objectives. Carriers who are not currently obligated to have a long-term lease at a particular terminal have begun to target facilities and many factors will inform the decision-making, including, but not limited to costs. These may include:
  - Alignment of facility capabilities with operating requirements (aircraft size, international processing capabilities, etc.),
  - Colocation with alliance partners or connecting airlines,
  - Congestion of existing facilities,
  - Terminal operator’s experience,
  - Availability of leasable space such as lounge and operating space,
  - Prioritization and rights to facility use, and
  - Indirect operating costs.
- Between the number of carriers and the variety of factors influencing the selection of terminals by airlines, there are ways to achieve activity or revenues projected in the Projection Period without dependency on a particular set of circumstances. This allows for flexibility, although competition for airlines amongst the terminal operators is also anticipated to remain high throughout the Projection Period.
- Negotiating non-binding letters of intent with term sheets outlining terms and conditions of subleases with seven Expected Airlines for Terminal 6 through at least 2040 demonstrates the market supports the terminal charges and charging structure.

**Based on the reasons described in this section, Ricondo finds that the projected Terminal 6 user fees are not anticipated to have a material impact on the projected air traffic demand for Terminal 6.**

## 5.9 CASH FLOW AND DEBT SERVICE COVERAGE

**Table 5-9** and **Table A-5** in **Appendix A** present the Project cash flows, including airline revenues, non-airline revenues, O&M Expenses, Port Authority rents, financing related costs, asset repair and replacement, reserve requirements and adjustments, and debt service. The tables also present the DSCRs projected for the Senior and Subordinate Obligations associated with the Project.

As contained in Section 10.25 of the CAAA with respect to the Rate Covenant for Secured Obligations:

(a) The Borrower covenants and agrees to take all lawful measures to establish, prescribe and collect Project Revenues sufficient, after paying all O&M Expenses (including all O&M Expenses not constituting Permitted O&M Expenses and all Ground Rent, First Additional Rent, Second Additional Rental, and Third Additional Rent), to achieve, in each DSCR Calculation Period, (i) during the Ramp-up Period, (A) a Total Debt Service Coverage Ratio of 1.25x and (B) a Senior Debt Service Coverage Ratio of 1.30x, and (ii) after the Ramp-Up End Date, (A) a Total Debt Service Coverage Ratio of 1.15x and (B) a Senior Debt Service Coverage Ratio of 1.20x, both on a prospective basis (based on its forecasts prepared by the Borrower, which forecasts shall be based on reasonable assumptions (on the basis of information known to the Borrower on the date of preparation thereof) as to all factual matters material to the estimates therein) and on a retrospective basis (based on its annual audited and quarterly unaudited financial statements most recently required to be delivered), subject to the terms of Section 5.12.

(b) If the Total Debt Service Coverage Ratio or the Senior Debt Service Coverage Ratio does not meet the conditions outlined in Section 10.25(a) for an upcoming fiscal year, then the Borrower shall request a third-party to recommend revisions to its Annual Operating Budget and, after taking into account such recommendations, shall revise its Annual Operating Budget to produce (to the extent practicable using prudent business judgment) sufficient revenues to satisfy such Total Debt Service Coverage Ratio or Senior Debt Service Coverage Ratio requirement.

(c) If the Borrower revises its Annual Operating Budget pursuant to Section 10.25(b), then failure to satisfy the conditions set forth in Section 10.25(a) shall not be deemed an Event of Default under the TDC Loan Agreements, the Credit Agreements, or the other Financing Documents.

The Ramp-up Period is defined as the timeframe beginning at substantial completion of Phase 2 and continuing until the Ramp-Up Debt Service Coverage Ratio has been equal to or above 1.40:1.00 for eight consecutive quarterly calculation dates. .

The projected Debt Service on the outstanding and future debt is shown in the **Table 5-10**:

**The Senior Debt Service Coverage Ratios (DSCRs) for the anticipated Senior Obligations, including the Series 2024 Bonds and the Series 2028 Bonds, are projected to meet the minimum requirements of 1.30x through the Ramp-up Period (projected to be FY 2028 to FY 2031) and 1.20x through the remainder of the Projection Period. In addition, the Total DSCR requirements are projected to be satisfied. The minimum DSCR is projected to be approximately 1.53x within the Projection Period and approximately 1.51x during the remaining lease period, assuming the ASM baseline activity forecast.**

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

TABLE 5-9 PROJECTED CASH FLOW AND DEBT SERVICE COVERAGE (DOLLARS IN MILLIONS) – BASELINE SCENARIO

	2024	2025	2026	2027	2028	2029	2030	2031	2032
<b>Project Revenues</b>									
Terminal 7									
Airline Revenue	\$97,508	\$89,407	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Non-Airline Revenue	\$14,901	\$15,213	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Terminal 6 Revenue									
Airline Revenue	\$0	\$0	\$118,165	\$190,900	\$310,697	\$369,204	\$408,847	\$425,896	\$446,002
Concession Revenue	\$0	\$0	\$13,658	\$19,963	\$34,105	\$40,554	\$42,309	\$44,164	\$46,073
Advertising Revenue	\$0	\$0	\$1,213	\$1,782	\$2,956	\$3,392	\$3,535	\$3,682	\$3,832
Rebate Revenue	\$0	\$0	\$1,500	\$0	\$4,714	\$1,000	\$0	\$0	\$0
Other Commercial Revenue	\$0	\$0	\$1,149	\$1,809	\$2,649	\$2,899	\$3,020	\$3,148	\$3,282
Interest Income	\$0	\$0	\$0	\$0	\$7,323	\$9,908	\$10,555	\$8,964	\$8,558
<b>Total Project Revenues</b>	<b>\$112,409</b>	<b>\$104,620</b>	<b>\$135,685</b>	<b>\$214,453</b>	<b>\$362,444</b>	<b>\$426,958</b>	<b>\$468,267</b>	<b>\$485,854</b>	<b>\$507,748</b>
<b>Less:</b>									
Operating Expenses <sup>1</sup>	(\$85,517)	(\$86,511)	(\$93,941)	(\$75,805)	(\$83,822)	(\$86,215)	(\$91,693)	(\$94,043)	(\$96,131)
Management Fee	(\$7,637)	(\$7,637)	(\$7,637)	(\$7,637)	(\$8,780)	(\$9,353)	(\$9,550)	(\$9,750)	(\$9,955)
Port Authority Rents	(\$66,297)	(\$68,096)	(\$82,646)	(\$82,797)	(\$25,143)	(\$26,496)	(\$63,619)	(\$84,299)	(\$93,094)
Other Costs - Financing Related	(\$1,194)	(\$1,225)	(\$1,255)	(\$1,286)	(\$1,317)	(\$1,349)	(\$1,381)	(\$1,413)	(\$1,447)
Major Maintenance	\$0	\$0	(\$42)	(\$255)	(\$262)	(\$573)	(\$2,150)	(\$2,201)	(\$2,969)
<b>Net Revenues</b>	<b>(\$48,237)</b>	<b>(\$58,849)</b>	<b>(\$49,836)</b>	<b>\$46,672</b>	<b>\$243,120</b>	<b>\$302,972</b>	<b>\$299,875</b>	<b>\$294,148</b>	<b>\$304,153</b>
Changes in O&M Reserve Account	\$0	\$0	(\$41,721)	(\$4,580)	(\$1,483)	(\$2,837)	(\$1,275)	(\$1,146)	(\$517)
Changes in Major Maintenance Reserve Account	\$0	\$0	(\$620)	(\$735)	(\$1,385)	(\$1,864)	(\$1,799)	(\$3,325)	(\$4,204)
Changes in Handback Reserve	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Concessions Rent Subordinated to Debt Service	\$0	\$0	\$0	(\$8,540)	(\$9,474)	(\$10,139)	(\$10,577)	(\$11,041)	(\$11,518)
<b>Cash Flows available for Debt Service</b>	<b>(\$48,237)</b>	<b>(\$58,849)</b>	<b>(\$92,177)</b>	<b>\$32,816</b>	<b>\$230,778</b>	<b>\$288,131</b>	<b>\$286,223</b>	<b>\$278,636</b>	<b>\$287,913</b>
Series 2022A Bonds Debt Service	\$20,883	\$9,501	\$9,868	\$9,990	\$2,589	\$0	\$0	\$0	\$0
Senior Term Loans Debt Service	\$121,082	\$93,233	\$107,481	\$108,575	\$27,965	\$0	\$0	\$0	\$0
PA LOC Debt Service	\$144	\$156	\$168	\$180	\$202	\$216	\$221	\$227	\$233
Series 2024 Bonds Debt Service	\$0	\$74,850	\$74,850	\$74,850	\$74,850	\$74,850	\$74,850	\$74,850	\$74,850
Series 2028 Bonds Debt Service	\$0	\$0	\$0	\$0	\$76,052	\$101,403	\$101,403	\$101,403	\$101,403
Less: Interest During Construction	(\$142,109)	(\$177,740)	(\$192,366)	(\$193,595)	(\$30,554)	\$0	\$0	\$0	\$0
<b>Total Senior Obligations</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$151,105</b>	<b>\$176,469</b>	<b>\$176,475</b>	<b>\$176,480</b>	<b>\$176,486</b>
Senior Debt Service Coverage Ratio	n/a	n/a	n/a	n/a	1.53x	1.63x	1.62x	1.58x	1.63x

## NOTE:

1 Includes operating expense for Terminal 7 (\$48.8 million in FY 2024 and \$44.1 million in FY 2025)

SOURCE: JFK Millennium Partners, LLC, October 2024.



## JOHN F. KENNEDY INTERNATIONAL AIRPORT

TABLE 5-10 PROJECTED CASH FLOW AND DEBT SERVICE COVERAGE (DOLLARS IN MILLIONS) – LOW SCENARIO

	2024	2025	2026	2027	2028	2029	2030	2031	2032
<b>Project Revenues</b>									
Terminal 7									
Airline Revenue	\$97,508	\$89,407	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Non-Airline Revenue	\$14,901	\$15,213	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Terminal 6 Revenue									
Airline Revenue	\$0	\$0	\$101,611	\$160,956	\$276,283	\$331,393	\$370,120	\$386,635	\$404,835
Concession Revenue	\$0	\$0	\$11,562	\$16,524	\$29,160	\$34,865	\$36,362	\$37,954	\$39,686
Advertising Revenue	\$0	\$0	\$1,078	\$1,540	\$2,753	\$3,205	\$3,340	\$3,479	\$3,621
Rebate Revenue	\$0	\$0	\$1,500	\$0	\$4,714	\$1,000	\$0	\$0	\$0
Other Commercial Revenue	\$0	\$0	\$1,093	\$1,716	\$2,529	\$2,767	\$2,883	\$3,005	\$3,133
Interest Income	\$0	\$0	\$0	\$0	\$7,310	\$9,891	\$10,537	\$10,930	\$11,185
<b>Total Project Revenues</b>	<b>\$112,409</b>	<b>\$104,620</b>	<b>\$116,844</b>	<b>\$180,736</b>	<b>\$322,748</b>	<b>\$383,122</b>	<b>\$423,242</b>	<b>\$442,003</b>	<b>\$462,460</b>
Less:									
Operating Expenses <sup>1</sup>	(\$85,517)	(\$86,511)	(\$93,941)	(\$75,805)	(\$83,822)	(\$86,215)	(\$91,693)	(\$94,043)	(\$96,131)
Management Fee	(\$7,637)	(\$7,637)	(\$7,637)	(\$7,637)	(\$8,780)	(\$9,353)	(\$9,550)	(\$9,750)	(\$9,955)
Port Authority Rents	(\$66,297)	(\$68,096)	(\$80,939)	(\$81,389)	(\$23,713)	(\$24,952)	(\$62,008)	(\$82,619)	(\$91,353)
Other Costs - Financing Related	(\$1,194)	(\$1,225)	(\$1,255)	(\$1,286)	(\$1,317)	(\$1,349)	(\$1,381)	(\$1,413)	(\$1,447)
Major Maintenance	\$0	\$0	(\$42)	(\$255)	(\$262)	(\$573)	(\$2,150)	(\$2,201)	(\$2,969)
<b>Net Revenues</b>	<b>(\$48,237)</b>	<b>(\$58,849)</b>	<b>(\$66,970)</b>	<b>\$14,363</b>	<b>\$204,855</b>	<b>\$260,679</b>	<b>\$256,461</b>	<b>\$251,977</b>	<b>\$260,606</b>
Changes in O&M Reserve Account	\$0	\$0	(\$41,721)	(\$4,580)	(\$1,483)	(\$2,837)	(\$1,275)	(\$1,146)	(\$517)
Changes in Major Maintenance Reserve Account	\$0	\$0	(\$620)	(\$735)	(\$1,385)	(\$1,864)	(\$1,799)	(\$3,325)	(\$4,204)
Changes in Handback Reserve	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Concessions Rent Subordinated to Debt Service	\$0	\$0	\$0	(\$7,098)	(\$8,122)	(\$8,716)	(\$9,090)	(\$9,488)	(\$9,921)
<b>Cash Flows available for Debt Service</b>	<b>(\$48,237)</b>	<b>(\$58,849)</b>	<b>(\$109,311)</b>	<b>\$1,950</b>	<b>\$193,865</b>	<b>\$247,262</b>	<b>\$244,297</b>	<b>\$238,018</b>	<b>\$245,963</b>
Series 2022A Bonds Debt Service	\$20,883	\$9,501	\$9,868	\$9,990	\$2,589	\$0	\$0	\$0	\$0
Senior Term Loans Debt Service	\$121,082	\$93,233	\$107,481	\$108,575	\$27,965	\$0	\$0	\$0	\$0
PA LOC Debt Service	\$144	\$156	\$168	\$180	\$202	\$216	\$221	\$227	\$233
Series 2024 Bonds Debt Service	\$0	\$74,850	\$74,850	\$74,850	\$74,850	\$74,850	\$74,850	\$74,850	\$74,850
Series 2028 Bonds Debt Service	\$0	\$0	\$0	\$0	\$76,052	\$101,403	\$101,403	\$101,403	\$101,403
Less: Interest During Construction	(\$142,109)	(\$177,740)	(\$192,366)	(\$193,595)	(\$30,554)	\$0	\$0	\$0	\$0
<b>Total Senior Obligations</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$151,105</b>	<b>\$176,469</b>	<b>\$176,475</b>	<b>\$176,480</b>	<b>\$176,486</b>
Senior Debt Service Coverage Ratio	n/a	n/a	n/a	n/a	1.28x	1.40x	1.38x	1.35x	1.39x

## NOTE:

1 Includes operating expense for Terminal 7 (\$48.8 million in FY 2024 and \$44.1 million in FY 2025)

SOURCE: JFK Millennium Partners, LLC, October 2024.

## 5.10 LOW ASM TERMINAL 6 PASSENGER FORECAST SCENARIO

Additional analysis was performed to assess the results of the low activity scenario from the AMS forecast, as presented in Chapter 4. Underlying assumptions of the financial analysis remained consistent with the baseline financial analysis, with the exception of activity-driven revenue or expense calculations, which were adjusted to reflect the lower activity.

For the low activity scenario, as shown in Table 5-10, the Senior DSCRs for the anticipated Senior Obligations, including the Series 2024 Bonds and the Series 2028 Bonds, are projected to meet the minimum requirements of 1.30x through the Ramp-up Period (projected to be FY 2028 to FY 2031) and 1.20x through the remainder of the Projection Period. The minimum DSCR is projected to be approximately 1.28x within the Projection Period and through the remaining lease period.

## 5.11 SUPPLEMENTAL LONG-TERM FINANCIAL PROJECTIONS

For the purposes of this Report, the Projection Period is FY 2024 through FY 2032. However, JMP has contemplated financial projections through the term of the Lease Agreement between JMP and the Port Authority, which extends through FY 2060. Ricondo conducted minimal analysis to determine the validity of the financial projections beyond FY 2032. Tables in **Appendix A** of this Report present total projected Project Revenues and projected expenditures in 2040, 2050, and 2060. In each year, JMP projects Project Revenues to be sufficient to cover projected expenditures and debt service requirements. The projection methodologies used in the long-term calculations are consistent with the methodologies described for the Projection Period and are subject to risks identified in **Chapters 4** and **5**.

## 5.12 ASSUMPTIONS FOR FINANCIAL PROJECTIONS

The techniques and methodologies used in preparing this financial analysis are consistent with industry practices for similar studies in connection with airport revenue bond sales. While Ricondo believes the approach and assumptions used are reasonable, some assumptions regarding future trends and events presented in this Report, including the implementation schedule and forecasts of enplaned passengers, may not materialize. Achievement of the projections and forecasts presented in this Report, therefore, is dependent upon the occurrence of future events, which cannot be assured, and the variations may be material.



## APPENDIX A

# Financial Projection Tables

---

THIS PAGE INTENTIONALLY LEFT BLANK

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

TABLE A-1 PROJECTED AIRLINE REVENUES

(Dollars in Thousands for Fiscal Years Ending December 31)

	2024	2025	2026	2027	2028	2029	2030	2031	2032	2040	2050	2060
<b>Terminal 7 Airline Revenues</b>	\$ 97,508.27	\$ 89,407.01	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Terminal 6 Airline Revenues</b>												
JetBlue	\$ -	\$ -	\$ 9,215.72	\$ 12,133.58	\$ 12,879.61	\$ 13,693.28	\$ 20,984.16	\$ 22,262.34	\$ 23,201.15	\$ 30,436.22	\$ 52,091.49	\$ 71,716.73
OA Activity-Based Charges	\$ -	\$ -	\$ 96,919.12	\$ 160,426.07	\$ 270,994.55	\$ 326,595.34	\$ 354,254.96	\$ 369,024.20	\$ 387,101.55	\$ 556,383.68	\$ 892,467.33	\$ 1,482,132.36
OA Leased Space	\$ -	\$ -	\$ 9,450.07	\$ 15,080.66	\$ 22,645.35	\$ 24,353.01	\$ 28,938.21	\$ 29,827.05	\$ 30,742.35	\$ 39,163.51	\$ 53,131.02	\$ 72,245.44
OA Ancillary Revenues	\$ -	\$ -	\$ 2,579.89	\$ 3,259.26	\$ 4,177.35	\$ 4,562.69	\$ 4,670.10	\$ 4,781.92	\$ 4,957.33	\$ 6,427.75	\$ 8,971.93	\$ 11,473.18
<b>Total Airline Revenues</b>	<b>\$ 97,508.27</b>	<b>\$ 89,407.01</b>	<b>\$ 118,164.80</b>	<b>\$ 190,899.57</b>	<b>\$ 310,696.86</b>	<b>\$ 369,204.31</b>	<b>\$ 408,847.43</b>	<b>\$ 425,895.51</b>	<b>\$ 446,002.38</b>	<b>\$ 632,411.16</b>	<b>\$ 1,006,661.77</b>	<b>\$ 1,637,567.70</b>
Enplanements (Millions)			1.81	2.59	3.71	4.16	4.23	4.30	4.38	4.98	5.71	6.39
<b>Revenue per Enplanement</b>	<b>n/a</b>	<b>n/a</b>	<b>\$ 65.31</b>	<b>\$ 73.60</b>	<b>\$ 83.78</b>	<b>\$ 88.84</b>	<b>\$ 96.64</b>	<b>\$ 98.94</b>	<b>\$ 101.90</b>	<b>\$ 127.09</b>	<b>\$ 176.15</b>	<b>\$ 256.08</b>

SOURCE: JFK Millenium Partners, October 2024.

## JOHN F. KENNEDY INTERNATIONAL AIRPORT

TABLE A-2 CONCESSION REVENUES AND OTHER NON-AIRLINE REVENUES

(Dollars in Thousands for Fiscal Years Ending December 31)

	2024	2025	2026	2027	2028	2029	2030	2031	2032	2040	2050	2060
<b>Terminal 7 Non-Airline Revenues</b>	\$ 14,900.51	\$ 15,213.42	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Terminal 6 Non-Airline Revenues</b>												
<b>Concession Revenues</b>												
Duty Free/Travel value	\$ -	\$ -	\$ 8,784.96	\$ 12,862.70	\$ 21,907.41	\$ 26,008.11	\$ 27,105.48	\$ 28,263.93	\$ 29,452.85	\$ 40,693.85	\$ 59,741.19	\$ 85,613.17
Specialty Retail	\$ -	\$ -	\$ 2,320.66	\$ 3,427.04	\$ 5,748.05	\$ 6,850.38	\$ 7,186.83	\$ 7,496.18	\$ 7,813.66	\$ 10,815.44	\$ 15,901.80	\$ 22,810.61
News & Convenience	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Food & Beverage	\$ -	\$ -	\$ 2,552.86	\$ 3,672.92	\$ 6,449.98	\$ 7,695.85	\$ 8,016.68	\$ 8,404.27	\$ 8,806.81	\$ 12,625.35	\$ 19,095.68	\$ 27,884.32
Advertising Revenues	\$ -	\$ -	\$ 1,212.92	\$ 1,781.65	\$ 2,956.11	\$ 3,391.98	\$ 3,535.06	\$ 3,681.81	\$ 3,832.43	\$ 5,256.43	\$ 7,669.35	\$ 10,946.81
Rebate Revenues	\$ -	\$ -	\$ 1,500.00	\$ -	\$ 4,713.56	\$ 1,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Other Commercial Revenues</b>												
Common Area Maintenance Charges	\$ -	\$ -	\$ 755.43	\$ 1,234.89	\$ 1,655.17	\$ 1,724.60	\$ 1,798.01	\$ 1,875.62	\$ 1,956.91	\$ 2,738.74	\$ 4,140.77	\$ 6,212.20
Marketing Revenues	\$ -	\$ -	\$ 393.50	\$ 574.38	\$ 993.88	\$ 1,174.33	\$ 1,222.02	\$ 1,272.75	\$ 1,324.81	\$ 1,817.07	\$ 2,651.18	\$ 3,784.14
Interest Income	\$ -	\$ -	\$ -	\$ -	\$ 7,323.10	\$ 9,908.45	\$ 10,555.33	\$ 8,964.26	\$ 8,558.11	\$ 11,128.20	\$ 16,619.09	\$ 9,084.17
<b>Total Non-Airline Revenues</b>	<b>\$ 14,900.51</b>	<b>\$ 15,213.42</b>	<b>\$ 17,520.33</b>	<b>\$ 23,553.58</b>	<b>\$ 51,747.27</b>	<b>\$ 57,753.72</b>	<b>\$ 59,419.40</b>	<b>\$ 59,958.81</b>	<b>\$ 61,745.58</b>	<b>\$ 85,075.07</b>	<b>\$ 125,819.06</b>	<b>\$ 166,335.41</b>

SOURCE: JFK Millenium Partners, October 2024.

JOHN F. KENNEDY INTERNATIONAL AIRPORT

TABLE A-3 OPERATING AND MAINTENANCE EXPENSES AND PORT AUTHORITY RENTS

(Dollars in Thousands for Fiscal Years Ending December 31)

	2024	2025	2026	2027	2028	2029	2030	2031	2032	2040	2050	2060
<b>Terminal 7 O&amp;M Expenses</b>	\$ 48,801.92	\$ 44,145.36	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Terminal 6 O&amp;M Expenses</b>												
Insurance during Construction	\$ 36,427.78	\$ 41,771.03	\$ 35,625.78	\$ 8,364.55	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Construction Management fee	\$ 7,637.00	\$ 7,637.00	\$ 7,637.00	\$ 7,637.00	\$ 1,909.25	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Contracted Services	\$ -	\$ -	\$ 31,617.27	\$ 32,081.12	\$ 38,919.38	\$ 41,980.64	\$ 44,107.25	\$ 45,151.16	\$ 46,218.01	\$ 55,760.93	\$ 70,839.84	\$ 90,359.92
Utilities	\$ -	\$ -	\$ 10,655.00	\$ 10,878.76	\$ 13,198.36	\$ 14,175.58	\$ 14,473.26	\$ 14,815.81	\$ 15,165.88	\$ 14,922.85	\$ 18,958.30	\$ 24,182.30
Personnel Expenses	\$ -	\$ -	\$ 13,997.27	\$ 14,309.88	\$ 17,154.80	\$ 14,757.47	\$ 15,209.64	\$ 15,761.98	\$ 16,334.37	\$ 21,728.85	\$ 31,042.35	\$ 44,347.84
Insurance during Operations	\$ -	\$ -	\$ -	\$ 6,471.74	\$ 10,771.89	\$ 10,998.10	\$ 11,229.06	\$ 11,494.83	\$ 11,766.43	\$ 14,195.92	\$ 18,034.79	\$ 23,004.32
Operating Management Fee	\$ -	\$ -	\$ -	\$ -	\$ 6,870.77	\$ 9,353.41	\$ 9,549.83	\$ 9,750.37	\$ 9,955.13	\$ 11,755.82	\$ 14,471.39	\$ 17,814.26
Repairs and Maintenance	\$ -	\$ -	\$ 315.47	\$ 1,932.57	\$ 1,973.15	\$ 2,461.31	\$ 4,793.51	\$ 4,894.17	\$ 4,675.51	\$ 6,771.43	\$ 8,552.56	\$ 17,298.50
General Administrative	\$ -	\$ -	\$ 1,116.13	\$ 1,139.57	\$ 1,163.50	\$ 1,187.93	\$ 1,212.88	\$ 1,241.58	\$ 1,270.92	\$ 1,533.33	\$ 1,947.98	\$ 2,484.75
Ground Transportation Center (GTC) Operations	\$ 287.47	\$ 595.00	\$ 614.34	\$ 627.24	\$ 640.90	\$ 653.86	\$ 667.59	\$ 683.39	\$ 699.54	\$ 843.97	\$ 1,072.20	\$ 1,367.65
<b>Total Terminal 6&amp;7 O&amp;M Expenses</b>	<b>\$ 93,154.16</b>	<b>\$ 94,148.38</b>	<b>\$ 101,578.26</b>	<b>\$ 83,442.42</b>	<b>\$ 92,601.99</b>	<b>\$ 95,568.29</b>	<b>\$ 101,243.02</b>	<b>\$ 103,793.30</b>	<b>\$ 106,085.80</b>	<b>\$ 127,513.11</b>	<b>\$ 164,919.40</b>	<b>\$ 220,859.53</b>
<b>Port Authority of New York and New Jersey Rents</b>												
Ground Rent	\$ 10,977.34	\$ 11,416.43	\$ 11,873.09	\$ 12,348.01	\$ 12,841.93	\$ 13,355.61	\$ 13,889.84	\$ 14,445.43	\$ 15,023.25	\$ 20,560.35	\$ 30,434.34	\$ 45,050.26
First Additional Rent	\$ -	\$ -	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00
Second Additional Rent Senior to Debt Service	\$ 55,320.00	\$ 56,679.60	\$ 58,079.99	\$ 59,522.39	\$ -	\$ -	\$ 36,114.45	\$ 55,737.88	\$ 63,409.30	\$ 78,724.57	\$ 103,735.99	\$ 137,349.25
New 3rd Additional Rent	\$ -	\$ -	\$ -	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00
Concession Rent	\$ -	\$ -	\$ 11,628.38	\$ 8,540.43	\$ 9,473.95	\$ 10,138.59	\$ 10,577.25	\$ 11,041.09	\$ 11,518.33	\$ 32,067.32	\$ 47,369.34	\$ 68,154.05
Above/Below the Wing Rent	\$ -	\$ -	\$ 564.55	\$ 886.45	\$ 1,327.55	\$ 1,502.03	\$ 1,537.23	\$ 1,574.25	\$ 1,642.66	\$ 2,205.25	\$ 3,204.59	\$ 4,102.13
<b>Total Port Authority of New York and New Jersey Rents</b>	<b>\$ 66,297.34</b>	<b>\$ 68,096.03</b>	<b>\$ 82,646.01</b>	<b>\$ 82,797.28</b>	<b>\$ 25,143.44</b>	<b>\$ 26,496.23</b>	<b>\$ 63,618.76</b>	<b>\$ 84,298.66</b>	<b>\$ 93,093.53</b>	<b>\$ 135,057.49</b>	<b>\$ 186,244.27</b>	<b>\$ 256,155.69</b>
<b>Additional O&amp;M Operating Expenses</b>												
Asset Repair and Replacement	\$ -	\$ -	\$ 41.56	\$ 255.47	\$ 261.64	\$ 573.22	\$ 2,149.74	\$ 2,200.62	\$ 2,969.08	\$ 8,775.40	\$ 36,621.00	\$ 17,070.19
Financing Related Costs	\$ 1,194.12	\$ 1,224.66	\$ 1,255.34	\$ 1,286.12	\$ 1,317.17	\$ 1,348.65	\$ 1,380.68	\$ 1,413.36	\$ 1,446.75	\$ 1,745.47	\$ 2,217.49	\$ 2,828.52
<b>Total Additional Operating Expenses</b>	<b>\$ 1,194.12</b>	<b>\$ 1,224.66</b>	<b>\$ 1,296.90</b>	<b>\$ 1,541.59</b>	<b>\$ 1,578.81</b>	<b>\$ 1,921.87</b>	<b>\$ 3,530.42</b>	<b>\$ 3,613.98</b>	<b>\$ 4,415.83</b>	<b>\$ 10,520.87</b>	<b>\$ 38,838.49</b>	<b>\$ 19,898.71</b>
<b>Total Operating Expenses</b>	<b>\$ 160,645.62</b>	<b>\$ 163,469.07</b>	<b>\$ 185,521.17</b>	<b>\$ 167,781.29</b>	<b>\$ 119,324.24</b>	<b>\$ 123,986.39</b>	<b>\$ 168,392.20</b>	<b>\$ 191,705.93</b>	<b>\$ 203,595.16</b>	<b>\$ 273,091.47</b>	<b>\$ 390,002.16</b>	<b>\$ 496,913.93</b>

SOURCE: JFK Millenium Partners, October 2024.

JOHN F. KENNEDY INTERNATIONAL AIRPORT

TABLE A-4 ANNUAL DEBT SERVICE

(Dollars in Thousands for Fiscal Years Ending December 31)

	2024	2025	2026	2027	2028	2029	2030	2031	2032	2040	2050	2060
<b>T6 Construction Financing and Refinancing</b>												
2022A Bonds Debt Service	\$ 20,882.61	\$ 9,501.20	\$ 9,867.52	\$ 9,989.63	\$ 2,589.15	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Senior Term Loans Debt Service	\$ 121,082.24	\$ 93,232.93	\$ 107,480.53	\$ 108,575.13	\$ 27,964.74	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
PA LOC Debt Service	\$ 144.48	\$ 156.01	\$ 167.92	\$ 180.50	\$ 202.37	\$ 216.17	\$ 221.46	\$ 226.96	\$ 232.67	\$ 240.00	\$ 240.00	\$ 8,180.00
2024 Bonds Debt Service	\$ -	\$ 74,850.00	\$ 74,850.00	\$ 74,850.00	\$ 74,850.00	\$ 74,850.00	\$ 74,850.00	\$ 74,850.00	\$ 74,850.00	\$ 84,838.22	\$ 84,838.22	\$ 283,019.46
Senior Series 2028 Bonds Debt Service	\$ -	\$ -	\$ -	\$ -	\$ 76,052.38	\$ 101,403.18	\$ 101,403.18	\$ 101,403.18	\$ 101,403.18	\$ 150,264.30	\$ 186,434.56	\$ -
Less: Interest During Construction	\$ (142,109.33)	\$ (177,740.14)	\$ (192,365.96)	\$ (193,595.26)	\$ (30,553.89)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total Senior Lien Debt Service</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 151,104.75</b>	<b>\$ 176,469.35</b>	<b>\$ 176,474.63</b>	<b>\$ 176,480.13</b>	<b>\$ 176,485.85</b>	<b>\$ 235,342.52</b>	<b>\$ 271,512.78</b>	<b>\$ 291,199.46</b>
<b>Total Debt Service</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 151,104.75</b>	<b>\$ 176,469.35</b>	<b>\$ 176,474.63</b>	<b>\$ 176,480.13</b>	<b>\$ 176,485.85</b>	<b>\$ 235,342.52</b>	<b>\$ 271,512.78</b>	<b>\$ 291,199.46</b>

SOURCE: JFK Millenium Partners, October 2024.



JOHN F. KENNEDY INTERNATIONAL AIRPORT

TABLE A-5 PROJECTED CASH FLOW AND DEBT SERVICE COVERAGE – BASELINE SCENARIO

(Dollars in Thousands for Fiscal Years Ending December 31)

	2024	2025	2026	2027	2028	2029	2030	2031	2032	2040	2050	2060
<b>Project Revenues</b>												
<b>Terminal 7</b>												
Airline Revenue	\$ 97,508.27	\$ 89,407.01	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Non-Airline Revenue	\$ 14,900.51	\$ 15,213.42	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Terminal 6</b>												
Airline Revenue	\$ -	\$ -	\$ 118,164.80	\$ 190,899.57	\$ 310,696.86	\$ 369,204.31	\$ 408,847.43	\$ 425,895.51	\$ 446,002.38	\$ 632,411.16	\$ 1,006,661.77	\$ 1,637,567.70
Concession Revenue	\$ -	\$ -	\$ 13,658.47	\$ 19,962.67	\$ 34,105.45	\$ 40,554.35	\$ 42,308.99	\$ 44,164.37	\$ 46,073.32	\$ 64,134.63	\$ 94,738.68	\$ 136,308.09
Advertising Revenue	\$ -	\$ -	\$ 1,212.92	\$ 1,781.65	\$ 2,956.11	\$ 3,391.98	\$ 3,535.06	\$ 3,681.81	\$ 3,832.43	\$ 5,256.43	\$ 7,669.35	\$ 10,946.81
Rebate Revenue	\$ -	\$ -	\$ 1,500.00	\$ -	\$ 4,713.56	\$ 1,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other Commercial Revenue	\$ -	\$ -	\$ 1,148.94	\$ 1,809.27	\$ 2,649.05	\$ 2,898.94	\$ 3,020.02	\$ 3,148.36	\$ 3,281.72	\$ 4,555.81	\$ 6,791.94	\$ 9,996.34
Interest Income	\$ -	\$ -	\$ -	\$ -	\$ 7,323.10	\$ 9,908.45	\$ 10,555.33	\$ 8,964.26	\$ 8,558.11	\$ 11,128.20	\$ 16,619.09	\$ 9,084.17
<b>Total Project Revenues</b>	<b>\$112,408.78</b>	<b>\$104,620.43</b>	<b>\$135,685.13</b>	<b>\$214,453.15</b>	<b>\$362,444.13</b>	<b>\$426,958.03</b>	<b>\$468,266.84</b>	<b>\$485,854.32</b>	<b>\$507,747.96</b>	<b>\$717,486.23</b>	<b>\$1,132,480.83</b>	<b>\$1,803,903.12</b>
<b>Less:</b>												
Operating Expenses <sup>1</sup>	\$ (85,517.16)	\$ (86,511.38)	\$ (93,941.26)	\$ (75,805.42)	\$ (83,821.98)	\$ (86,214.88)	\$ (91,693.20)	\$ (94,042.92)	\$ (96,130.66)	\$ (115,757.29)	\$ (150,448.01)	\$ (203,045.27)
Management Fee	\$ (7,637.00)	\$ (7,637.00)	\$ (7,637.00)	\$ (7,637.00)	\$ (8,780.02)	\$ (9,353.41)	\$ (9,549.83)	\$ (9,750.37)	\$ (9,955.13)	\$ (11,755.82)	\$ (14,471.39)	\$ (17,814.26)
Port Authority Rents	\$ (66,297.34)	\$ (68,096.03)	\$ (82,646.01)	\$ (82,797.28)	\$ (25,143.44)	\$ (26,496.23)	\$ (63,618.76)	\$ (84,298.66)	\$ (93,093.53)	\$ (135,057.49)	\$ (186,244.27)	\$ (256,155.69)
Other Costs - Financing Related	\$ (1,194.12)	\$ (1,224.66)	\$ (1,255.34)	\$ (1,286.12)	\$ (1,317.17)	\$ (1,348.65)	\$ (1,380.68)	\$ (1,413.36)	\$ (1,446.75)	\$ (1,745.47)	\$ (2,217.49)	\$ (2,828.52)
Major Maintenance	\$ -	\$ -	\$ (41.56)	\$ (255.47)	\$ (261.64)	\$ (573.22)	\$ (2,149.74)	\$ (2,200.62)	\$ (2,969.08)	\$ (8,775.40)	\$ (36,621.00)	\$ (17,070.19)
<b>Net Revenues</b>	<b>\$ (48,236.84)</b>	<b>\$ (58,848.64)</b>	<b>\$ (49,836.04)</b>	<b>\$ 46,671.86</b>	<b>\$243,119.89</b>	<b>\$302,971.64</b>	<b>\$299,874.64</b>	<b>\$294,148.39</b>	<b>\$304,152.80</b>	<b>\$444,394.76</b>	<b>\$ 742,478.67</b>	<b>\$1,306,989.19</b>
Changes in O&M Reserve Account	\$ -	\$ -	\$ (41,721.21)	\$ (4,579.79)	\$ (1,483.15)	\$ (2,837.37)	\$ (1,275.14)	\$ (1,146.25)	\$ (516.91)	\$ (1,576.08)	\$ (6,283.19)	\$ 110,429.76
Changes in Major Maintenance Reserve Account	\$ -	\$ -	\$ (619.94)	\$ (735.18)	\$ (1,384.64)	\$ (1,864.20)	\$ (1,798.98)	\$ (3,324.59)	\$ (4,204.32)	\$ (2,983.34)	\$ (39,558.49)	\$ 17,070.19
Changes in Handback Reserve	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (85,318.29)	\$ -
Concessions Rent Subordinated to Debt Service	\$ -	\$ -	\$ -	\$ (8,540.43)	\$ (9,473.95)	\$ (10,138.59)	\$ (10,577.25)	\$ (11,041.09)	\$ (11,518.33)	\$ -	\$ -	\$ -
<b>Cash Flows available for Debt Service</b>	<b>\$ (48,236.84)</b>	<b>\$ (58,848.64)</b>	<b>\$ (92,177.18)</b>	<b>\$ 32,816.46</b>	<b>\$230,778.15</b>	<b>\$288,131.49</b>	<b>\$286,223.28</b>	<b>\$278,636.45</b>	<b>\$287,913.24</b>	<b>\$439,835.33</b>	<b>\$ 611,318.69</b>	<b>\$1,434,489.15</b>
2022A Bonds Debt Service	\$ 20,882.61	\$ 9,501.20	\$ 9,867.52	\$ 9,989.63	\$ 2,589.15	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Senior Term Loans Debt Service	\$ 121,082.24	\$ 93,232.93	\$ 107,480.53	\$ 108,575.13	\$ 27,964.74	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
PA LOC Debt Service	\$ 144.48	\$ 156.01	\$ 167.92	\$ 180.50	\$ 202.37	\$ 216.17	\$ 221.46	\$ 226.96	\$ 232.67	\$ 240.00	\$ 240.00	\$ 8,180.00
2024 Bonds Debt Service	\$ -	\$ 74,850.00	\$ 74,850.00	\$ 74,850.00	\$ 74,850.00	\$ 74,850.00	\$ 74,850.00	\$ 74,850.00	\$ 74,850.00	\$ 84,838.22	\$ 84,838.22	\$ 283,019.46
Senior Series 2028 Bonds Debt Service	\$ -	\$ -	\$ -	\$ -	\$ 76,052.38	\$ 101,403.18	\$ 101,403.18	\$ 101,403.18	\$ 101,403.18	\$ 150,264.30	\$ 186,434.56	\$ -
Less: Interest During Construction	\$ (142,109.33)	\$ (177,740.14)	\$ (192,365.96)	\$ (193,595.26)	\$ (30,553.89)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total Senior Lien Obligations</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$151,104.75</b>	<b>\$176,469.35</b>	<b>\$176,474.63</b>	<b>\$176,480.13</b>	<b>\$176,485.85</b>	<b>\$235,342.52</b>	<b>\$ 271,512.78</b>	<b>\$ 291,199.46</b>
Senior Debt Service Coverage Ratio	n/a	n/a	n/a	n/a	1.53x	1.63x	1.62x	1.58x	1.63x	1.87x	2.25x	4.93x

NOTE:

1 Includes operating expenses for Terminal 7 (\$48.8 million in FY 2024 and \$44.1 million in FY 2025)

SOURCE: JFK Millenium Partners, October 2024.

JOHN F. KENNEDY INTERNATIONAL AIRPORT

TABLE A-6 PROJECTED CASH FLOW AND DEBT SERVICE COVERAGE – LOW SCENARIO

(Dollars in Thousands for Fiscal Years Ending December 31)

	2024	2025	2026	2027	2028	2029	2030	2031	2032	2040	2050	2060
<b>Project Revenues</b>												
<b>Terminal 7</b>												
Airline Revenue	\$ 97,508.27	\$ 89,407.01	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Non-Airline Revenue	\$ 14,900.51	\$ 15,213.42	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Terminal 6</b>												
Airline Revenue	\$ -	\$ -	\$ 101,611.33	\$ 160,955.76	\$ 276,282.81	\$ 331,393.29	\$ 370,120.11	\$ 386,634.56	\$ 404,834.98	\$ 574,205.04	\$ 915,498.50	\$ 1,493,792.73
Concession Revenue	\$ -	\$ -	\$ 11,562.19	\$ 16,523.72	\$ 29,159.84	\$ 34,864.81	\$ 36,361.51	\$ 37,953.99	\$ 39,685.99	\$ 55,310.06	\$ 81,782.60	\$ 117,734.74
Advertising Revenue	\$ -	\$ -	\$ 1,077.50	\$ 1,540.22	\$ 2,753.04	\$ 3,205.31	\$ 3,340.43	\$ 3,478.94	\$ 3,621.02	\$ 4,964.53	\$ 7,240.78	\$ 10,332.43
Rebate Revenue	\$ -	\$ -	\$ 1,500.00	\$ -	\$ 4,713.56	\$ 1,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other Commercial Revenue	\$ -	\$ -	\$ 1,092.86	\$ 1,716.02	\$ 2,528.51	\$ 2,767.20	\$ 2,882.86	\$ 3,005.39	\$ 3,132.73	\$ 4,350.09	\$ 6,489.91	\$ 9,563.36
Interest Income	\$ -	\$ -	\$ -	\$ -	\$ 7,310.37	\$ 9,891.30	\$ 10,537.40	\$ 10,930.47	\$ 11,185.24	\$ 11,086.00	\$ 16,587.14	\$ 9,081.61
<b>Total Project Revenues</b>	<b>\$ 112,408.78</b>	<b>\$ 104,620.43</b>	<b>\$ 116,843.88</b>	<b>\$ 180,735.72</b>	<b>\$ 322,748.14</b>	<b>\$ 383,121.91</b>	<b>\$ 423,242.32</b>	<b>\$ 442,003.35</b>	<b>\$ 462,459.95</b>	<b>\$ 649,915.72</b>	<b>\$ 1,027,598.93</b>	<b>\$ 1,640,504.87</b>
<b>Less:</b>												
Operating Expenses <sup>1</sup>	\$ (85,517.16)	\$ (86,511.38)	\$ (93,941.26)	\$ (75,805.42)	\$ (83,821.98)	\$ (86,214.88)	\$ (91,693.20)	\$ (94,042.92)	\$ (96,130.66)	\$ (115,757.29)	\$ (150,448.01)	\$ (203,045.27)
Management Fee	\$ (7,637.00)	\$ (7,637.00)	\$ (7,637.00)	\$ (7,637.00)	\$ (8,780.02)	\$ (9,353.41)	\$ (9,549.83)	\$ (9,750.37)	\$ (9,955.13)	\$ (11,755.82)	\$ (14,471.39)	\$ (17,814.26)
Port Authority Rents	\$ (66,297.34)	\$ (68,096.03)	\$ (80,938.83)	\$ (81,389.20)	\$ (23,712.59)	\$ (24,952.45)	\$ (62,007.61)	\$ (82,618.84)	\$ (91,352.63)	\$ (130,429.28)	\$ (179,463.97)	\$ (246,483.46)
Other Costs - Financing Related	\$ (1,194.12)	\$ (1,224.66)	\$ (1,255.34)	\$ (1,286.12)	\$ (1,317.17)	\$ (1,348.65)	\$ (1,380.68)	\$ (1,413.36)	\$ (1,446.75)	\$ (1,745.47)	\$ (2,217.49)	\$ (2,828.52)
Major Maintenance	\$ -	\$ -	\$ (41.56)	\$ (255.47)	\$ (261.64)	\$ (573.22)	\$ (2,149.74)	\$ (2,200.62)	\$ (2,969.08)	\$ (8,775.40)	\$ (36,621.00)	\$ (17,070.19)
<b>Net Revenues</b>	<b>\$ (48,236.84)</b>	<b>\$ (58,848.64)</b>	<b>\$ (66,970.10)</b>	<b>\$ 14,362.51</b>	<b>\$ 204,854.74</b>	<b>\$ 260,679.31</b>	<b>\$ 256,461.27</b>	<b>\$ 251,977.23</b>	<b>\$ 260,605.70</b>	<b>\$ 381,452.46</b>	<b>\$ 644,377.07</b>	<b>\$ 1,153,263.17</b>
Changes in O&M Reserve Account	\$ -	\$ -	\$ (41,721.21)	\$ (4,579.79)	\$ (1,483.15)	\$ (2,837.37)	\$ (1,275.14)	\$ (1,146.25)	\$ (516.91)	\$ (1,576.08)	\$ (6,283.19)	\$ 110,429.76
Changes in Major Maintenance Reserve Account	\$ -	\$ -	\$ (619.94)	\$ (735.18)	\$ (1,384.64)	\$ (1,864.20)	\$ (1,798.98)	\$ (3,324.59)	\$ (4,204.32)	\$ (2,983.34)	\$ (39,558.49)	\$ 17,070.19
Changes in Handback Reserve	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (85,318.29)	\$ -
Concessions Rent Subordinated to Debt Service	\$ -	\$ -	\$ -	\$ (7,097.57)	\$ (8,121.50)	\$ (8,716.20)	\$ (9,090.38)	\$ (9,488.50)	\$ (9,921.50)	\$ -	\$ -	\$ -
<b>Cash Flows available for Debt Service</b>	<b>\$ (48,236.84)</b>	<b>\$ (58,848.64)</b>	<b>\$ (109,311.25)</b>	<b>\$ 1,949.98</b>	<b>\$ 193,865.45</b>	<b>\$ 247,261.54</b>	<b>\$ 244,296.77</b>	<b>\$ 238,017.89</b>	<b>\$ 245,962.97</b>	<b>\$ 376,893.03</b>	<b>\$ 513,217.09</b>	<b>\$ 1,280,763.12</b>
2022A Bonds Debt Service	\$ 20,882.61	\$ 9,501.20	\$ 9,867.52	\$ 9,989.63	\$ 2,589.15	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Senior Term Loans Debt Service	\$ 121,082.24	\$ 93,232.93	\$ 107,480.53	\$ 108,575.13	\$ 27,964.74	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
PA LOC Debt Service	\$ 144.48	\$ 156.01	\$ 167.92	\$ 180.50	\$ 202.37	\$ 216.17	\$ 221.46	\$ 226.96	\$ 232.67	\$ 240.00	\$ 240.00	\$ 8,180.00
2024 Bonds Debt Service	\$ -	\$ 74,850.00	\$ 74,850.00	\$ 74,850.00	\$ 74,850.00	\$ 74,850.00	\$ 74,850.00	\$ 74,850.00	\$ 74,850.00	\$ 84,838.22	\$ 84,838.22	\$ 283,019.46
Senior Series 2028 Bonds Debt Service	\$ -	\$ -	\$ -	\$ -	\$ 76,052.38	\$ 101,403.18	\$ 101,403.18	\$ 101,403.18	\$ 101,403.18	\$ 150,264.30	\$ 186,434.56	\$ -
Less: Interest During Construction	\$ (142,109.33)	\$ (177,740.14)	\$ (192,365.96)	\$ (193,595.26)	\$ (30,553.89)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total Senior Lien Obligations</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 151,104.75</b>	<b>\$ 176,469.35</b>	<b>\$ 176,474.63</b>	<b>\$ 176,480.13</b>	<b>\$ 176,485.85</b>	<b>\$ 235,342.52</b>	<b>\$ 271,512.78</b>	<b>\$ 291,199.46</b>
Senior Debt Service Coverage Ratio	n/a	n/a	n/a	n/a	1.28x	1.40x	1.38x	1.35x	1.39x	1.60x	1.89x	4.40x

NOTE:

1 Includes operating expenses for Terminal 7 (\$48.8 million in FY 2024 and \$44.1 million in FY 2025)

SOURCE: JFK Millennium Partners, October 2024.

**LETTER OF THE AIRPORT CONSULTANT**

**(THIS PAGE INTENTIONALLY LEFT BLANK)**



October 23, 2024

Mr. Steve Thody, CEO  
JFK Millennium Partners, LLC  
295 Madison Avenue, Suite 1125  
New York, NY 10017

RE: New York Transportation Development Corporation  
Special Facilities Revenue Bonds,  
Senior Series 2024A and 2024B (JFK Airport Terminal 6 Redevelopment Project)

Dear Mr. Thody:

Ricondo & Associates, Inc. (Ricondo) prepared the October 10, 2024, Report of the Airport Consultant (Report) in conjunction with the offering of the New York Transportation Development Corporation Special Facilities Revenue Bonds, Senior Series 2024A and 2024B (JFK Airport Terminal 6 Redevelopment Project) (collectively the Series 2024 Bonds), pursuant to a contractual engagement with JFK Millennium Partners, LLC (JMP).

This letter serves to reaffirm the findings of the Report with consideration of the pricing information that has been agreed with respect to the actual issuance of the Series 2024 Bonds. This letter and Report are for inclusion in the Official Statement for the Series 2024 Bonds.

The Report was included in Appendix B-1 of the Preliminary Official Statement for the Series 2024 Bonds dated October 11, 2024. Certain assumptions were made for the purposes of the financial analysis within the Report related to the Series 2024 Bonds and other financing and funding sources for the Terminal 6 Redevelopment Project (defined within the Report). The results of the financial analysis and underlying assumptions are described within the Report.

Subsequent to the issuance of the Report, the pricing information with respect to the Series 2024 Bonds has been agreed, including the aggregate principal amount, principal amount per maturity, and interest rates of the Series 2024 Bonds. The agreed pricing information reflects an increase in Series 2024 Bond proceeds and a reduction of the construction Loan Facility proceeds as funding sources for the Terminal 6 Redevelopment as compared to those reflected in the Report. The project construction costs remain unchanged. **Table 1** shows the updated sources and uses of funds for the Terminal 6 Redevelopment based on final pricing information as compared to those assumed in the Report.

**TABLE 1**      **UPDATED TERMINAL 6 REDEVELOPMENT ESTIMATED SOURCES AND USES OF FUNDS**

SOURCES OF FUNDS	MILLIONS \$		USES OF FUNDS	MILLIONS \$	
	REPORT	UPDATED		REPORT	UPDATED
Series 2024 Bond Proceeds	\$1,578.1	\$2,029.8	Construction Costs	\$2,790.7	\$2,790.7
Construction Loan Facility Proceeds	\$1,965.3	\$1,499.6	Prepayment of 3rd Additional Rent	\$33.0	\$33.0
Construction Cash Account Withdrawal	\$84.3	\$83.4	Port Authority Oversight Costs	\$40.0	\$40.0
Interest Income from Reserves	\$19.0	\$19.0	Development Costs	\$220.7	\$220.7
Interest Income Other	\$42.9	\$39.9	Interest During Construction	\$811.5	\$790.8
Equity	\$1,300.0	\$1,300.0	Funding of Reserves and Cash Account Deposit	\$668.8	\$702.5
			Cost of Issuance	\$208.9	\$179.7
			LOC Costs	\$216.1	\$214.4
<b>Total Sources of Funds</b>	<b>\$4,989.7</b>	<b>\$4,971.7</b>	<b>Total Project Costs</b>	<b>\$4,989.7</b>	<b>\$4,971.7</b>

NOTE:  
 Figures may not sum precisely due to rounding.  
 SOURCE: JFK Millennium Partners, LLC, October 2024 (Report and Updated information).

## Updated Financial Analysis

JMP provided Ricondo with updated financial projections that incorporate the final pricing information for the Series 2024 Bonds as presented by the sources and uses of funds shown in Table 1. **Table 2** shows an updated version of projected cash flows and Senior Debt Service Coverage Ratios through the Projection Period for the baseline activity scenario described in the Report. This table is directly comparable to Tables S-8 and 5-9 of the Report. A comparison of the Project Revenues and Senior Debt Service Coverage between the Report and the updated analysis reflecting final pricing information is shown in **Table 3**.

The Report describes underlying assumptions and methodologies that remain unchanged for the purposes of the updated analysis. For example, the following material assumptions were made for the purposes of the financial analysis included in this letter relative to the financial analysis in the Report:

- no changes to air traffic activity forecast and revenues,
- no changes to non-airline revenues,
- no changes to projected operating expenses,
- no changes to the capital program construction costs,
- updated the annual debt service for the Series 2024 Bonds to reflect the actual debt service, and
- updated other funding sources and associated revenues and expenses such as interest earnings and fund deposits to reflect the final pricing information.

**TABLE 2** UPDATED PROJECTED CASH FLOW AND SENIOR DEBT SERVICE COVERAGE RATIO (DOLLARS IN MILLIONS) – BASELINE SCENARIO

	2024	2025	2026	2027	2028	2029	2030	2031	2032
<b>Project Revenues</b>									
<b>Terminal 7</b>									
Airline Revenue	\$97,508	\$89,407	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Non-Airline Revenue	\$14,901	\$15,213	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>Terminal 6 Revenue</b>									
Airline Revenue	\$0	\$0	\$118,165	\$190,900	\$310,697	\$369,204	\$408,847	\$425,896	\$446,002
Concession Revenue	\$0	\$0	\$13,658	\$19,963	\$34,105	\$40,554	\$42,309	\$44,164	\$46,073
Advertising Revenue	\$0	\$0	\$1,213	\$1,782	\$2,956	\$3,392	\$3,535	\$3,682	\$3,832
Rebate Revenue	\$0	\$0	\$1,500	\$0	\$4,714	\$1,000	\$0	\$0	\$0
Other Commercial Revenue	\$0	\$0	\$1,149	\$1,809	\$2,649	\$2,899	\$3,020	\$3,148	\$3,282
Interest Income	\$0	\$0	\$0	\$0	\$7,248	\$9,809	\$10,456	\$8,890	\$8,492
<b>Total Project Revenues</b>	<b>\$112,409</b>	<b>\$104,620</b>	<b>\$135,685</b>	<b>\$214,453</b>	<b>\$362,370</b>	<b>\$426,859</b>	<b>\$468,167</b>	<b>\$485,780</b>	<b>\$507,682</b>
<b>Less:</b>									
Operating Expenses <sup>1</sup>	(\$85,517)	(\$86,511)	(\$93,941)	(\$75,805)	(\$83,822)	(\$86,215)	(\$91,693)	(\$94,043)	(\$96,131)
Management Fee	(\$7,637)	(\$7,637)	(\$7,637)	(\$7,637)	(\$8,780)	(\$9,353)	(\$9,550)	(\$9,750)	(\$9,955)
Port Authority Rents	(\$66,297)	(\$68,096)	(\$82,646)	(\$82,797)	(\$25,143)	(\$26,496)	(\$63,619)	(\$84,299)	(\$93,094)
Other Costs - Financing Related	(\$1,194)	(\$1,225)	(\$1,255)	(\$1,286)	(\$1,317)	(\$1,349)	(\$1,381)	(\$1,413)	(\$1,447)
Major Maintenance	\$0	\$0	(\$42)	(\$255)	(\$262)	(\$573)	(\$2,150)	(\$2,201)	(\$2,969)
<b>Net Revenues</b>	<b>(\$48,237)</b>	<b>(\$58,849)</b>	<b>(\$49,836)</b>	<b>\$46,672</b>	<b>\$243,045</b>	<b>\$302,872</b>	<b>\$299,775</b>	<b>\$294,074</b>	<b>\$304,086</b>
Changes in O&M Reserve Account	\$0	\$0	(\$41,721)	(\$4,580)	(\$1,483)	(\$2,837)	(\$1,275)	(\$1,146)	(\$517)
Changes in Major Maintenance Reserve Account	\$0	\$0	(\$620)	(\$735)	(\$1,385)	(\$1,864)	(\$1,799)	(\$3,325)	(\$4,204)
Changes in Handback Reserve	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Concessions Rent Subordinated to Debt Service	\$0	\$0	\$0	\$0	(\$7,269)	(\$10,139)	(\$10,577)	(\$11,041)	(\$11,518)
<b>Cash Flows available for Debt Service</b>	<b>(\$48,237)</b>	<b>(\$58,849)</b>	<b>(\$92,177)</b>	<b>\$41,357</b>	<b>\$232,908</b>	<b>\$288,032</b>	<b>\$286,124</b>	<b>\$278,562</b>	<b>\$287,847</b>
Series 2022A Bonds Debt Service	\$20,883	\$4,334	\$4,501	\$4,556	\$1,181	\$0	\$0	\$0	\$0
Senior Term Loans Debt Service	\$121,082	\$71,218	\$84,772	\$85,635	\$22,056	\$0	\$0	\$0	\$0
PA LOC Debt Service	\$144	\$156	\$168	\$180	\$202	\$216	\$221	\$227	\$233
Series 2024 Bonds Debt Service	\$0	\$98,260	\$98,260	\$98,260	\$98,260	\$98,260	\$98,260	\$98,260	\$98,260
Series 2028 Bonds Debt Service	\$0	\$0	\$0	\$0	\$56,837	\$75,782	\$75,782	\$75,782	\$75,782
Less: Interest During Construction	(\$142,109)	(\$173,968)	(\$187,701)	(\$188,632)	(\$23,237)	\$0	\$0	\$0	\$0
<b>Total Senior Obligations</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$155,299</b>	<b>\$174,258</b>	<b>\$174,264</b>	<b>\$174,269</b>	<b>\$174,275</b>
Senior Debt Service Coverage Ratio	n/a	n/a	n/a	n/a	1.50x	1.65x	1.64x	1.60x	1.65x

NOTES:

Comparable to Table S-8 and Table 5-9 of the Report.

Figures may not sum precisely due to rounding.

<sup>1</sup> Includes operating expenses for Terminal 7 (\$48.8 million in FY 2024 and \$44.1 million in FY 2025)

SOURCE: JFK Millennium Partners, LLC, October 2024.

**TABLE 3      COMPARISON OF UPDATED PROJECTED PROJECT REVENUES AND SENIOR DEBT SERVICE COVERAGE RATIO (DOLLARS IN MILLIONS) – BASELINE SCENARIO**

	2024	2025	2026	2027	2028	2029	2030	2031	2032
<b>Total Project Revenues</b>									
Report	\$112,409	\$104,620	\$135,685	\$214,453	\$362,444	\$426,958	\$468,267	\$485,854	\$507,748
Update	\$112,409	\$104,620	\$135,685	\$214,453	\$362,370	\$426,859	\$468,167	\$485,780	\$507,682
<b>Senior Debt Service Coverage Ratio</b>									
Report	n/a	n/a	n/a	n/a	1.53x	1.63x	1.62x	1.58x	1.63x
Update	n/a	n/a	n/a	n/a	1.50x	1.65x	1.64x	1.60x	1.65x

SOURCE: JFK Millennium Partners, LLC, October 2024 (Report and Updated information).



Mr. Steve Thody, CEO  
JFK Millennium Partners, LLC  
October 23, 2024  
Page 5

Based on these assumptions, there is no material change to the projection of the Senior Debt Service Coverage Ratio and Ricondo reaffirms the findings described in the Report.

## Confirmation of the Report Findings

**On the basis of the analysis set forth in the Report and updated in this letter, Ricondo is of the opinion that the Project Revenues generated in each year of the Projection Period are expected to be sufficient to comply with the rate covenant established in the Collateral Agency and Accounts Agreement (as amended and supplemented, the CAAA) and the rate covenant in the Common Terms Agreement (CTA) while the existing Loan Facility is outstanding. Although summary information is provided within this letter, a complete understanding of the analysis, assumptions, opinions, and justification for our conclusion cannot be attained without reading the Report in its entirety.**

Ricondo is not registered as a municipal advisor under Section 15B of the Securities Exchange Act of 1934. Ricondo is not acting as a municipal advisor and has not been engaged by JMP to provide advice with respect to the structure, timing, terms, or other similar matters concerning the issuance of municipal securities. The assumptions regarding such matters included in the Report and this letter were provided by JMP or JMP's technical advisors, or were derived from general, publicly available data approved by JMP. Ricondo owes no fiduciary duty to JMP. Any opinions, assumptions, views, or information contained herein are not intended to be, and do not constitute, "advice" within the meaning of Section 15B of the Securities Exchange Act of 1934.

The techniques and methodologies used by Ricondo in preparing the Report and this letter are consistent with industry practices for similar studies in connection with airport revenue bond sales. While Ricondo believes that the approach and assumptions are reasonable, some assumptions regarding future trends and events discussed in the Report, including the implementation schedule, forecasts of passenger activity, and the projections of financial performance, may not materialize. Therefore, actual performance will likely differ from the forecasts and projections set forth in the Report and the variations may be material. In developing our analyses, Ricondo used information from various sources, including JMP, JMP's technical advisors, federal and local governmental agencies, and independent private providers of economic and aviation industry data, as identified in the notes accompanying the related tables and exhibits in the Report. Ricondo believes these sources to be reliable but has not audited the data and does not warrant their accuracy. The analyses presented are based on conditions known as of the date of this letter. Ricondo has no obligation to update this Report on an ongoing basis.

Sincerely,



RICONDO & ASSOCIATES, INC.

**(THIS PAGE INTENTIONALLY LEFT BLANK)**

**APPENDIX B-2**

**REPORT OF THE AIRLINE TRAFFIC FORECAST CONSULTANT**

**(THIS PAGE INTENTIONALLY LEFT BLANK)**



# Airline Traffic and Economic Analysis Report

JFK International Airport Terminal 6

Prepared For

JFK Millennium Partners, LLC

June 28, 2024

*Update*

*October 10, 2024 v2*



## Contents

Introduction.....	3
Executive Summary.....	4
JFK Terminal 6 Project.....	11
New York and Role of JFK.....	12
New York Region.....	12
New York CSA Airports.....	17
JFK’s Primary Catchment Area.....	20
Busiest Airport and Primary International Gateway in the New York CSA.....	22
Role of Other New York CSA Airports.....	25
JFK Passenger Traffic Share in New York CSA.....	26
Airport Slot Constraints.....	27
JFK Passenger Traffic.....	29
Passenger Volumes at JFK.....	29
Enplaned Passenger Trends.....	37
Passenger Traffic Trends.....	42
International Passenger Traffic.....	46
Domestic Passenger Traffic.....	50
Global Traffic.....	53
Airline Service Trends.....	57
Airlines Serving JFK.....	57
Airline Traffic.....	60
Airline Alliances.....	64
Airfare Revenue.....	76
Fare Revenue at Large Airports.....	76
JFK Airfares.....	81
Economic Basis for Airline Traffic.....	85
Population.....	85
Employment.....	89
Income.....	96
Visitor Activity and Leisure Travel.....	99
Business Travel.....	102
Ethnic Community Travel.....	103

Economy.....	104
Airline Traffic Forecasts .....	112
Bottom-Up (near-term) and Econometric (long-term) Forecast.....	112
Forecast Results.....	117
Terminal 6 Forecast .....	128
Appendix A .....	131
International Air Transport Association (IATA) Airport Codes .....	131
Appendix B .....	134
Indicative Long-Term Forecast Results Extrapolation.....	134
Appendix C .....	135
Terminal 6 Airline Combination Enplaned Passengers (000s) .....	135

## Introduction

This report provides the results of an ASM passenger forecast for John F. Kennedy International Airport (JFK) and JFK's Terminal 6 from 2024 through 2060 as a key input to JFK Millennium Partners, LLC (JMP) for determining the revenue generation of Terminal 6. ASM's approach was to segment the overall forecast period as follows:

- **2024 – 2028:** A highly detailed bottom-up forecast of every route and airline at JFK was prepared. It included consideration of routes that are projected to be added or cancelled based on route performance and other factors. Actual airline schedules through April 2024 were used alongside published schedules for the remainder of 2024.
- **2029 – 2060:** GDP-based econometric forecast for JFK. Terminal 6: Combinations of potential airline occupants provided by JMP using the bottom-up forecast for the years 2024 – 2028 and the GDP-driven growth rate for all of JFK applied to each airline for the years 2029 – 2060.

The New York area's population, economy, demographics, and air transportation marketplace are analyzed to provide context for the forecast results and the outlook for future passenger traffic and capacity at JFK. The Combined Statistical Area (CSA) for New York-Newark, NY-NJ-CT-PA (New York CSA), as defined by the U.S. Census Bureau, is used as the primary measure of population, economic activity, and other statistics for the New York region. The region is served by six commercial airports. The major airports are JFK, LaGuardia (LGA), and Newark Liberty (EWR). The region is also served by three smaller secondary airports: Long Island MacArthur (ISP), Westchester County (HPN), and New York Stewart (SWF).

This report relies primarily on U.S. Department of Transportation T100 data for the analysis of passenger traffic as reflected in passenger enplanements. Data measuring the number of passengers travelling between their true origin and destination (regardless of itinerary and known as "O&D traffic") is sourced from Sabre Market Intelligence. The most recent and forward-looking airline schedules and capacity (through March 2025) are used throughout the report as available. Airline schedules and capacity change frequently, so the data in this report is only accurate as of the day it is accessed.

Airports are identified in this report by their three-letter International Air Transport Association (IATA) airport codes, as listed in Appendix A.



## Executive Summary

JFK Millenium Partners, LLC (JMP), a consortium established by Vantage Group, American Triple I, RXR Realty, and JetBlue Airways, was selected by the Port Authority of New York and New Jersey to finance, build, and operate JFK’s Terminal 6 from 2024 through 2060. An approximately 1.2 million square-foot terminal is being developed at the cost of approximately \$5 billion, with the first phase set to open in 2026 and project completion expected in 2028.

This report provides the results of a passenger traffic forecast for JFK airport and Terminal 6 through 2060, along with the context for the growth projected during the forecast period.

### JFK Airport

JFK is the largest airport in the New York metropolitan area (defined by its Combined Statistical Area, or CSA<sup>1</sup>), and it generated 30.7 million passengers in 2023. JFK plays a key role in both the U.S. and world air transportation markets. In 2023, it was ranked the sixth-busiest U.S. airport and the 13<sup>th</sup>-busiest airport in the world.<sup>2</sup> JFK is also the leading international airport in the U.S., attracting 16.3 million international passengers in 2023, or 13.9% of all international passenger enplanements in the U.S. In 2023, JFK generated approximately 51% more international enplaned passengers than the second largest U.S. international gateway at MIA.<sup>3</sup> JFK is one of six airports situated in the New York CSA, which also includes EWR, LGA, HPN, ISP, and SWF. In 2023, JFK had a 41.8% share of New York CSA passenger traffic.

### New York CSA

New York is the largest of all the U.S. CSAs, with 21.9 million residents in 2023. Three decades of population growth ended with a decline in the New York CSA during the COVID-19 pandemic. From the start of the COVID-19 pandemic through 2023, 573,000 residents left the area as a result of the rise in remote working and the relocation of companies incentivized by states in the South and Southwest. However, the out-migration trend has slowed, and the New York CSA is predicted to reach 23 million people by 2030. The region has maintained its position as the largest U.S. CSA, and that is likely to continue as the New York CSA resumes growth trajectory similar to before the COVID-19 pandemic.

The New York CSA also has the largest economy of all U.S. CSAs, with a GDP of more than \$2.2 trillion in 2023. Its economy is diverse: It is a leading finance hub, a major manufacturing center, a thriving technological sector, and a key location for global arts and culture activities. Unemployment has now fallen to 4.4% after peaking near the start of the COVID-19 pandemic in early 2020 peak of 10.2% — still above the 30-year record low of 3.6% in 2019 but making continued progress as economic conditions improve. Growth in the labor market will be supported

---

<sup>1</sup> As defined by the U.S. Census Bureau

<sup>2</sup> Source: U.S. DoT T100 for enplaned passenger, and U.S. DoT O&D Survey for origin-destination passengers (Jan-Dec)

<sup>3</sup> Source: U.S. DoT T-100 via Airline Data Inc.

by the continued recovery of New York’s tourism industry, which reached 93% of 2019 levels in 2023 and is anticipated to continue to improve and surpass pre-pandemic levels in 2025, when 68 million visitors are forecasted.

- A resilient economy with employment levels returning to pre-pandemic levels, rising wages and high per capita incomes.
- The most important CSA economically, with a GDP of more than \$2 trillion in 2023.
- The largest population of all the U.S. CSAs, with 21.3 million residents in 2023.
- The biggest U.S. CSA aviation market — 73.3 million passenger enplanements in 2023.
- An important business center with diverse sector opportunities and major employers.
- A leading global tourism market — a record 68 million visitors are predicted to arrive in 2025.

## JFK Recovery

In 2023, JFK served 30.7 million passengers, reaching 98% of 2019 traffic levels and 13.3% above 2022. JFK’s 2024 scheduled capacity is 3% above 2019. JFK has not yet fully recovered to pre-pandemic levels as a higher proportion of its passengers are international, and that traffic has recovered more slowly than domestic traffic because of border restrictions, testing requirements, and geopolitical issues. The return of strong demand for international travel has bolstered traffic, and JFK’s total international capacity is projected to be 2.8% higher in 2024 than in 2019.

U.S.-based airlines have led JFK’s post-pandemic recovery thanks to the early relaxation of domestic travel restrictions. JFK’s domestic capacity fully recovered to pre-pandemic levels in 2023, with total domestic seat capacity 2.0% higher than in 2019. Fewer domestic seats will be available in 2024, however, primarily because of a capacity reduction by JetBlue, but also an ongoing waiver of FAA slot utilization regulations.

The number of airlines serving JFK has now exceeded pre-pandemic levels — there are 73 airlines operating in June 2024 compared to 71 in June 2019. JFK continues to benefit from having a diverse airline mix without a dominant carrier or airline alliance group. The range of international and domestic airlines, both alliance members and unaligned, offers extensive connectivity, which protects JFK’s traffic base from major disruptions caused by a single carrier’s exit or termination. JFK serves as a primary hub for Delta Air Lines and is a large focus city for American Airlines and JetBlue. Delta and JetBlue had a combined share of 55.8% of enplanements in 2023, with all U.S. carriers having a 70.8% enplanement share, which is comparatively smaller than at other U.S. hubs.

New entrant airlines have been quick to replace those that leave JFK because of commercial or other reasons. For example, during the COVID-19 pandemic, Air Italy and Interjet withdrew from the Italian and Mexican markets because of bankruptcy; however, ITA Airways and Viva Aerobus replaced them. When Norwegian Air Shuttle stopped flying its low-cost long-haul operation, Norse Atlantic launched JFK service in its place.

JFK continues to be attractive to airlines because it gives them the ability to charge the profitable airfares that play a significant role in route revenue generation. Its average base fare of \$373 in 2023 was 45% higher than the average base fare across the 10 busiest U.S. airports.<sup>4</sup> JFK’s airfares are consistently high, and in 2023, fare revenues were up by 23% against 2022 and 12% against 2019, even though passengers were down by 2%.

JFK has a solid base for future traffic growth due to the positive outlook for economic and population growth in the New York CSA, popularity of the region for business and tourism, and importance of JFK as a gateway to the region.

## Passenger Forecasts

A passenger forecast for JFK was conducted for the period 2024 through to 2060 with the results summarized in Figure 1.

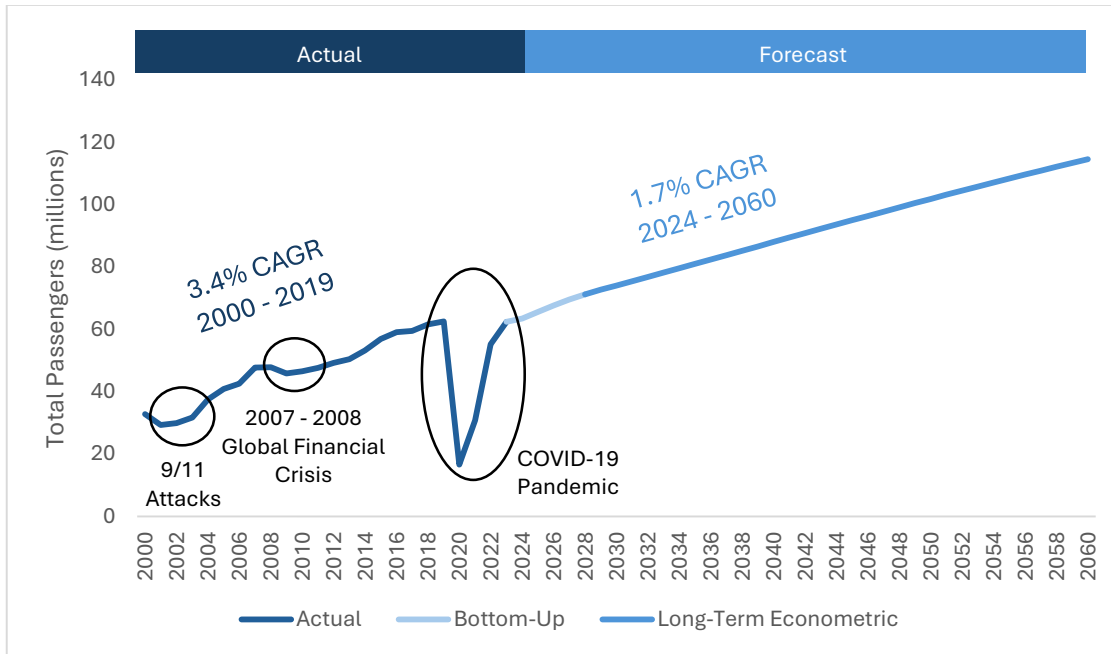
- A bottom-up or near-term forecast was completed for the period from 2024 to 2028. JFK’s total passengers grow from 62.4 million before the forecast period in 2023 to 71.2 million passengers in 2028.
- An econometric or long-term forecast covering the years from 2029 to 2060 results in JFK’s total passengers reaching 114.6 million passengers in 2060.

The ASM forecasts are unconstrained, meaning no limitations on passenger traffic or aircraft movements have been included. Route performance was considered, with strong routes receiving additional capacity while capacity was reduced or withdrawn from poor-performing routes. JFK’s slot limitations have been indirectly considered through the use of larger aircraft (upgauging) and/or higher load factors to enable passenger traffic growth. Fleet changes in terms of aircraft retirements and order deliveries have also been accounted for.

---

<sup>4</sup> Source: Enplanement ranking – U.S. DoT T-100 via Airline Data Inc, Average leg base fare – Sabre Market Intelligence. Data is one-way outbound from JFK.

Figure 1: JFK Airport Forecast Results Summary<sup>5</sup>

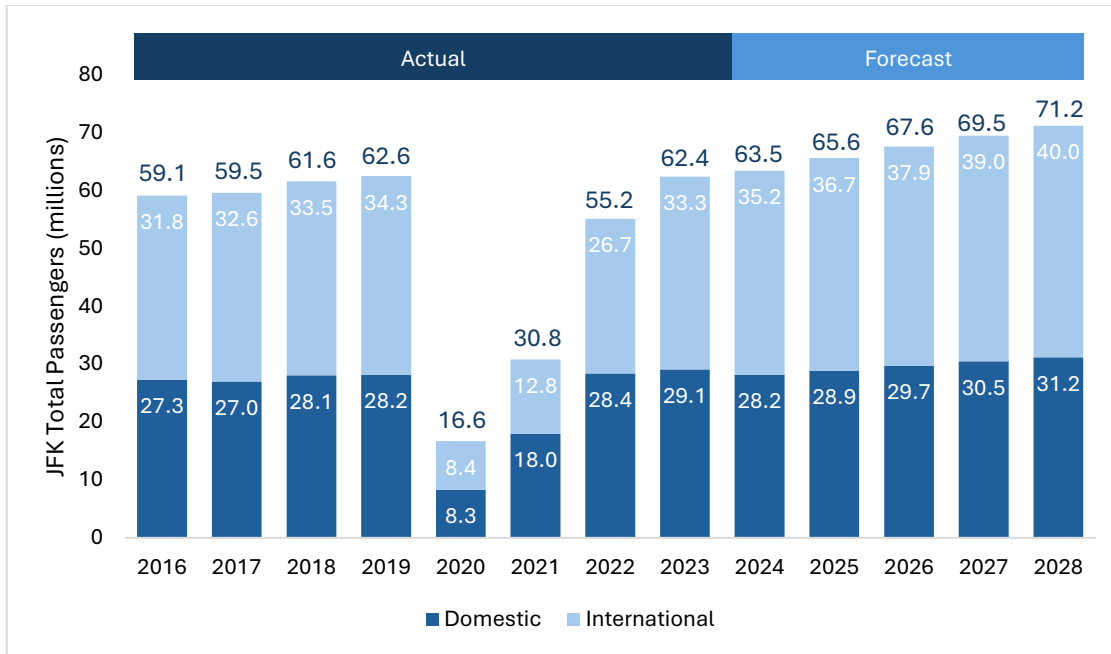


	Actual			Forecast						
	2019	2023	2025	2030	2035	2040	2045	2050	2055	2060
JFK Total Passengers (millions)	62.6	62.4	65.6	74.1	81.0	88.0	95.0	101.9	108.4	114.6

The bottom-up forecast details JFK passenger traffic on a route-by-route, carrier-by-carrier basis, resulting in 71.2 million passengers in 2028 for a CAGR of 2.7% from 2023 to 2028. The bottom-up forecast uses 2024 as a base year and applies an anticipated average annual load factor to JFK’s published capacity and flying program for 2024, resulting in a base year projection of 63.5 million JFK passengers, which is 1.7% higher than the 2023 enplanements. Figure 2 summarizes the bottom-up forecast results.

<sup>5</sup> Source: ASM Forecast

Figure 2: Bottom-Up Forecast Results



The long-term forecast results in 114.6 million passengers in 2060 for a CAGR of 1.7% for the period between 2023 and 2060. Table 1 summarizes the long-term passenger forecast results.

Despite the unconstrained nature of the long-term forecast, the CAGR of JFK’s passenger traffic between 2019 and 2060 is 1.5%, which is well below the historical rate of 3.5% for the period 1991 to 2019 and includes the impact of past events such as the 9/11 attacks and the 2007 – 2008 Global Financial Crisis. The lower future growth rate is primarily driven by a period of strong growth in the 2000s when both JetBlue and Delta increased their JFK presence and lower-than-historical GDP growth rate projections.

Table 1: Long-Term Forecast Results Summary (000s)

	2023	2024	2030	2040	2050	2060
Domestic	29,095	28,246	32,154	36,530	40,409	43,455
International	33,337	35,224	41,922	51,499	61,449	71,121
<b>Total</b>	<b>62,432</b>	<b>63,471</b>	<b>74,075</b>	<b>88,029</b>	<b>101,858</b>	<b>114,576</b>

The long-term forecast has been produced using regression analysis aligning passenger growth trends to the historical correlation of GDP growth in the U.S. against passenger traffic from 2000 through 2019, 2022, and 2023, as well as the expected outturn from the bottom-up forecast covering the period 2024 to 2028.

While the unconstrained forecast does not take into account specific measures airlines will use to fulfill the growth in demand, airlines have several ways to achieve passenger growth within the existing slot control regime:

- Use of larger aircraft
- Higher load factors
- Increasing utilization of existing slots
- More departures outside of slot-controlled hours

A forecast of passenger traffic in **Terminal 6** was completed based on a list of airlines provided by JMP. The baseline airline combination forecast projects passenger enplanements to reach 6.4 million by 2060. The bottom-up forecast for the airlines was used to determine their traffic through to 2028. For the period 2029 through 2060, the econometric growth rate for JFK airport was applied to each airline. The exception was JetBlue, which was forecasted using one gate’s worth of utilization and a projection of average aircraft size and load factor growth through the forecast period.

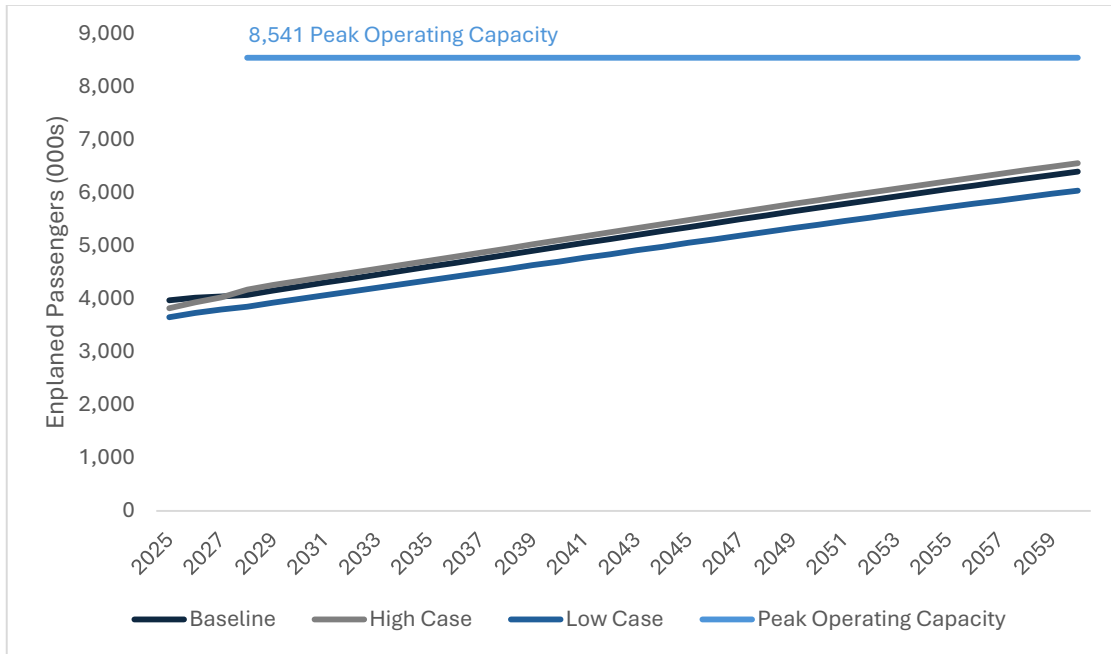
Additional combinations of airlines provided by JMP were forecasted to analyze the sensitivity of potential airline combinations resulting in more (high case) or fewer (low case) passenger enplanements in Terminal 6. The results of all three airline combination forecasts are summarized in Table 2 and Figure 3.

**Table 2: Terminal 6 Enplaned Passenger Forecast (000s)**

	2025	2030	2035	2040	2045	2050	2055	2060	2025-2060 CAGR
Low Case	3,651	3,998	4,347	4,700	5,051	5,395	5,725	6,036	1.4%
Baseline	3,970	4,231	4,601	4,976	5,349	5,715	6,065	6,395	1.4%
High Case	3,820	4,334	4,714	5,098	5,481	5,856	6,215	6,554	1.6%

In 2060, Terminal 6 would operate below its peak operating capacity of 8.5 million passengers, as shown in Figure 3.

Figure 3: Terminal 6 Enplaned Passenger Forecast



## JFK Terminal 6 Project

JMP, a consortium established by JetBlue Airways and affiliates of Vantage Group, RXR Realty, and American Triple I, is financing, designing, constructing, operating, and managing the new Terminal 6 at JFK.

JFK is owned by the City of New York and operated by the Port Authority of New York and New Jersey (Port Authority) under a lease with the City of New York that expires in 2060.

The facility will include a central headhouse on the former Terminal 6 site and existing Terminal 7 site. The new Terminal 6 will include an approximately 1.2 million square-foot terminal with 10 gates, passenger processing, TSA security screening facilities, and a U.S. Customs and Border Protection Federal Inspection Service (FIS) facility for international arrivals.

The terminal will have 10 new gates, including 9 capable of handling international widebody aircraft. In addition to a seamless Terminal 5 connection, the new Terminal 6 will also have access to two JFK AirTrain stops to facilitate connectivity with other JFK terminals, other JFK airport services, and the New York public transit system.

Key milestone dates for the Terminal 6 project include:

- **August 2021:** Port Authority Board of Directors approves the key terms to a lease through 2060 with JMP.
- **November 2022:** JMP achieves financial close and announces Lufthansa Group will relocate to Terminal 6 from Terminal 1.
- **February 2023:** Formal ground-breaking ceremony with New York Governor Kathy Hochul
- **1<sup>st</sup> Quarter 2026:** Phase one is anticipated to be completed with the opening of five gates.
- **1<sup>st</sup> Quarter 2028:** Phase two is anticipated to be completed with the opening of five additional gates.

Figure 4: New Terminal 6 at JFK





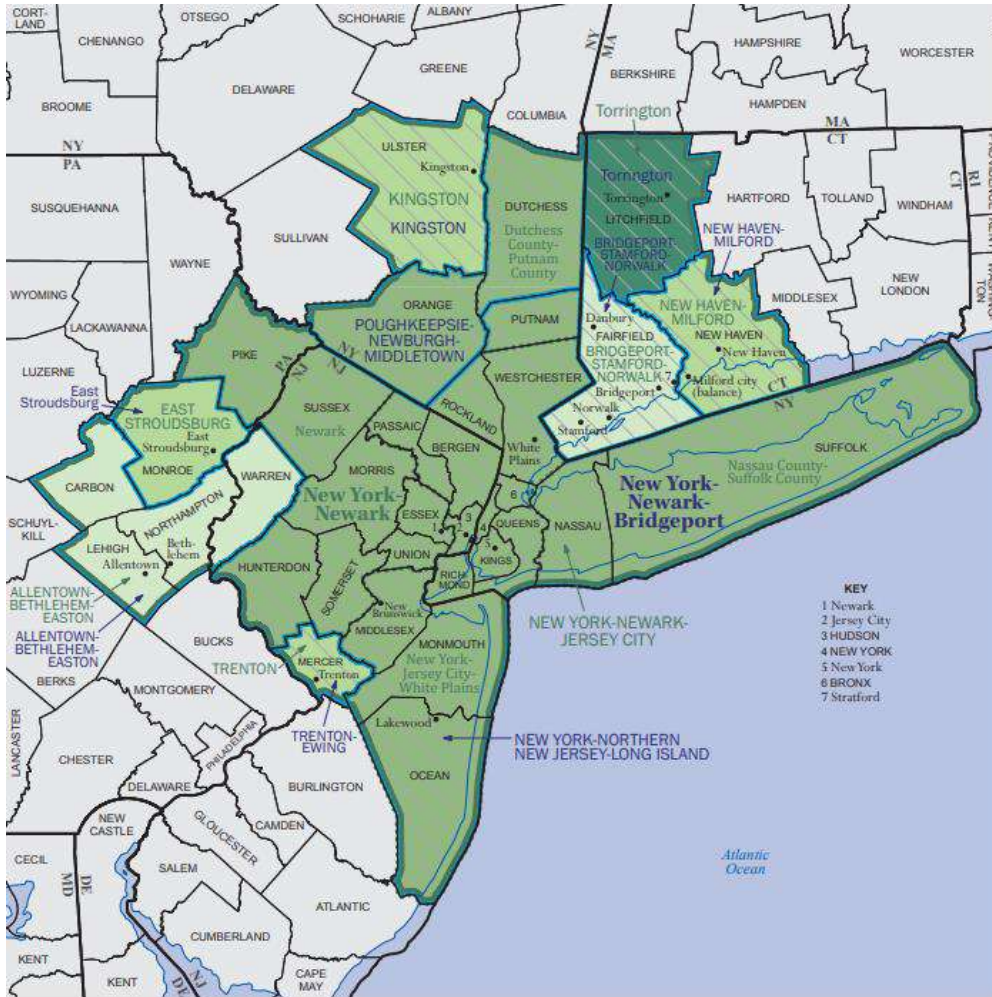
## New York and Role of JFK

Key Takeaways	
1	The New York CSA has the largest population of any region in the U.S. with 21.9 million people
2	The New York CSA has the most air travel volume of any CSA in the U.S., generating 73.3 million passenger enplanements in 2023, a 2.2% increase over 2019.
3	JFK has the most enplanements among the New York CSA airports with 30.7 million passenger enplanements in 2023. It is 25% and 90% more than EWR and LGA respectively, the next busiest New York CSA airports.
4	JFK's location means 51% of the New York CSA population is within its primary catchment area. The scale and scope of flights offered at JFK also make it attractive to the rest of the New York CSA population.
5	New York is a global tourism and business destination, which along with its large population base and natural geographical gateway to North and South America from Europe, fuels air service growth in the New York region. JFK remained the country's largest international gateway in 2023.

### New York Region

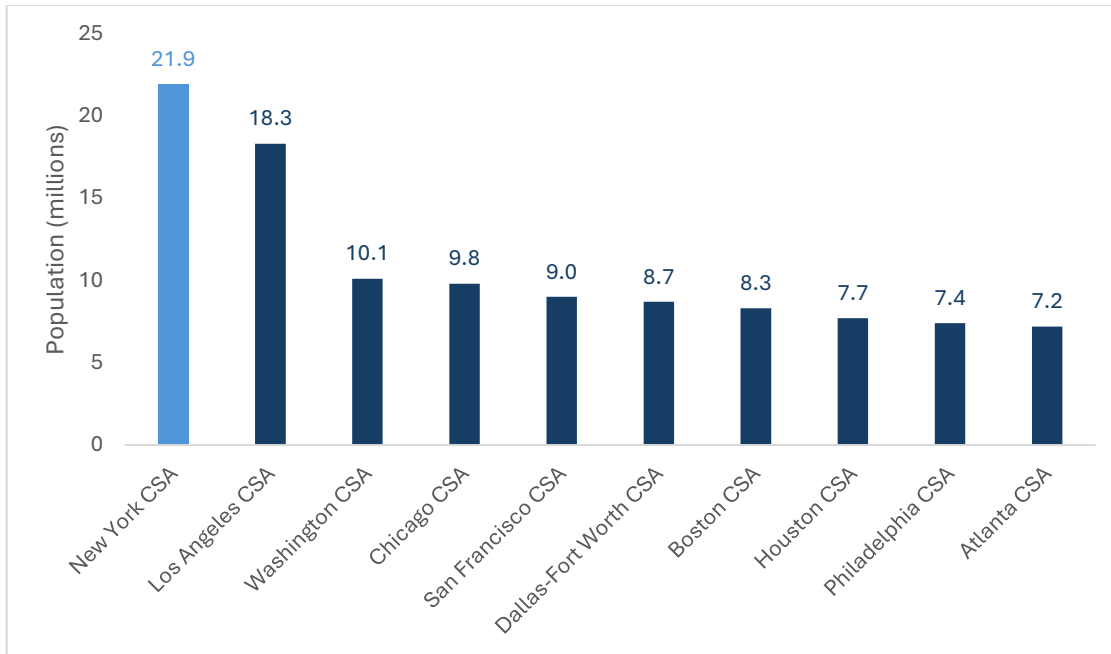
The New York region is the largest urban area in the U.S. in terms of population and one of the most economically important metropolitan areas in North America and globally. Figure 5 shows a map of the New York CSA.

Figure 5: New York CSA



The New York CSA has by far the largest population in the U.S. with 21.9 million people, based on 2023 U.S. Census Bureau estimates. It has 19% more people than the second-largest CSA in Los Angeles and 117% more than the third largest in the Washington, D.C. – Baltimore area. Figure 6 shows the 2023 estimated population for the 10 most populated U.S. CSAs.

Figure 6: 2023 10 Largest CSAs by Population<sup>6</sup>



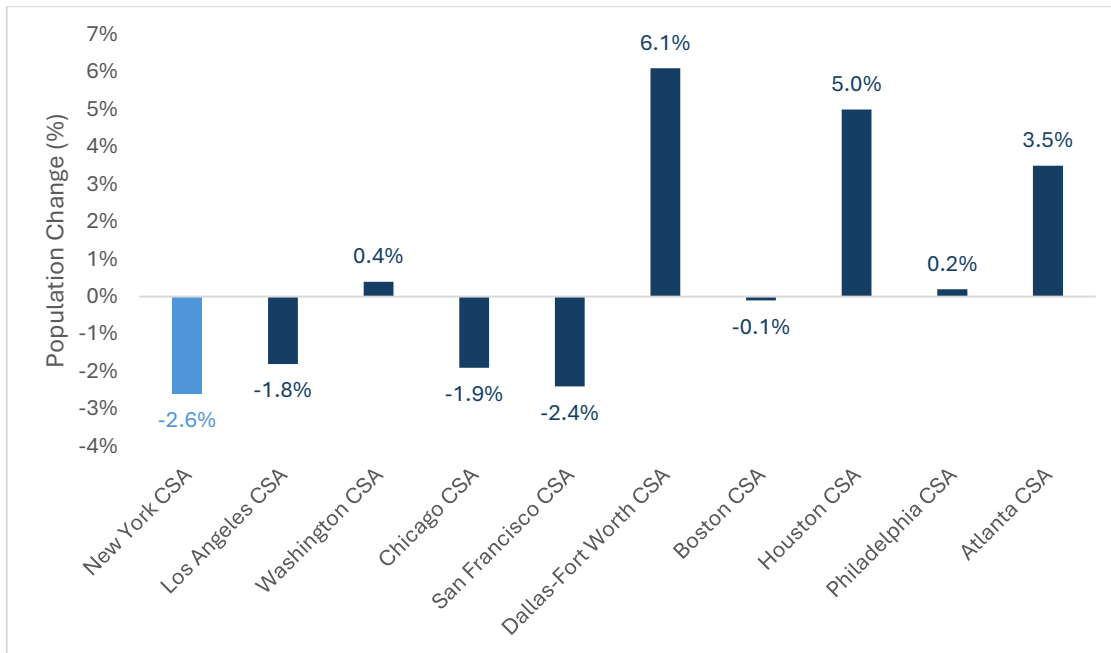
Region	CSA Definition – Geographic Area
New York CSA	New York-Newark, NY-NJ-CT-PA CSA
Los Angeles CSA	Los Angeles-Long Beach, CA CSA
Washington CSA	Washington-Baltimore-Arlington, DC-MD-VA-WV-PA CSA
Chicago CSA	Chicago-Naperville, IL-IN-WI CSA
San Francisco CSA	San Jose-San Francisco-Oakland, CA CSA
Dallas-Fort Worth CSA	Dallas-Fort Worth, TX-OK CSA
Boston CSA	Boston-Worcester-Providence, MA-RI-NH CSA
Houston CSA	Houston-Pasadena, TX CSA
Philadelphia CSA	Philadelphia-Reading-Camden, PA-NJ-DE-MD CSA
Atlanta CSA	Atlanta-Athens-Clarke County-Sandy Springs, GA-AL CSA

During the COVID-19 pandemic, the U.S. population grew by 1% to 334.9 million (April 2020 to July 2023). Larger urban CSAs saw declines in population over this period, while less densely populated CSAs witnessed population growth. The New York CSA’s population declined 2.6%, for example, while Los Angeles and San Francisco declined 1.8% and 2.4% respectively. The population change in the 10 largest U.S. CSAs is shown in Figure 7.

<sup>6</sup> Source: U.S. Census Bureau

Conversely, urban centers located in less-expensive regions with more available land and real estate saw population growth that was higher than the national average. As an example, the Dallas-Fort Worth and Houston CSAs have grown 6.1% and 5.0% respectively since April 2020. Despite the pandemic-related population decline, the New York CSA continues to be significantly larger than other U.S. CSAs, and its population growth is projected to continue through the rest of the decade.

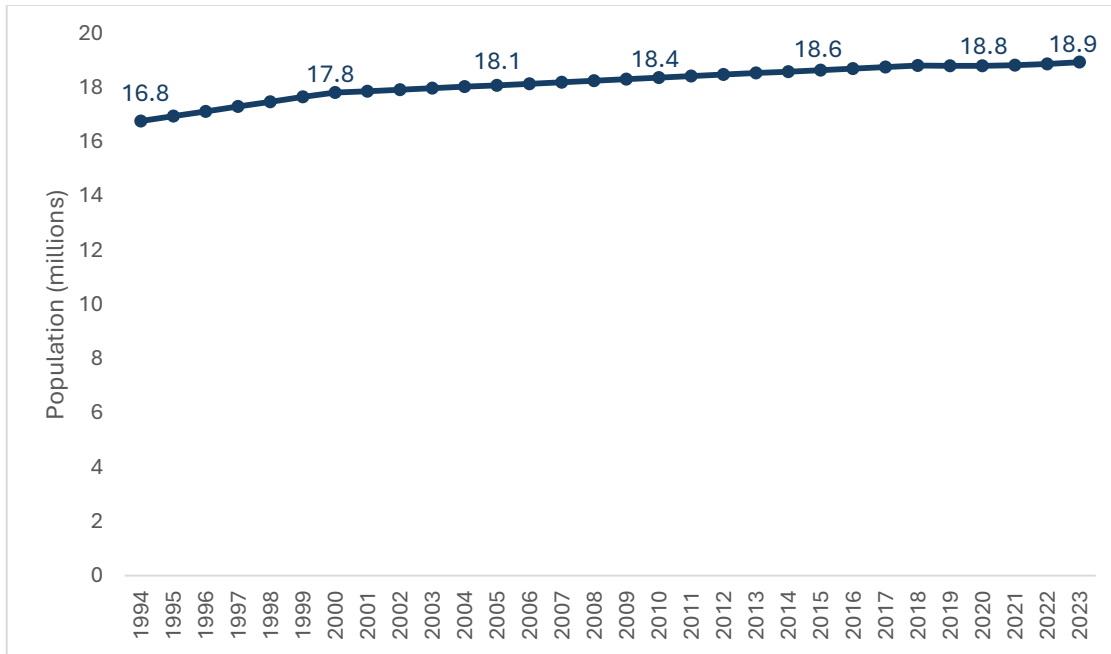
Figure 7: Change in U.S. CSA Population, April 2020 to July 2023<sup>7</sup>



While New York City’s population dipped during the COVID-19 pandemic, longer-term population growth in New York City has been consistent: over the past three decades, the city’s population grew 12.9% for a compound annual growth rate (CAGR) of 0.4%. New York’s continued growth occurred despite its density, high cost of living, and significant external shocks such as the 9/11 attacks and the 2007-2008 Global Financial Crisis. Additionally, United Nations populations predictions forecast that New York City’s population will continue to grow at historical levels or greater to 20.8 million by 2035 from its current 18.9 million. Figure 8 shows the population of New York City over the past 30 years.

<sup>7</sup> Source: U.S. Census Bureau

Figure 8: New York City Population, 1994-2023<sup>8</sup>



The population outflow has turned to growth over the past 12 months, and the largest number of new New York CSA residents are from the following regions:<sup>9</sup>

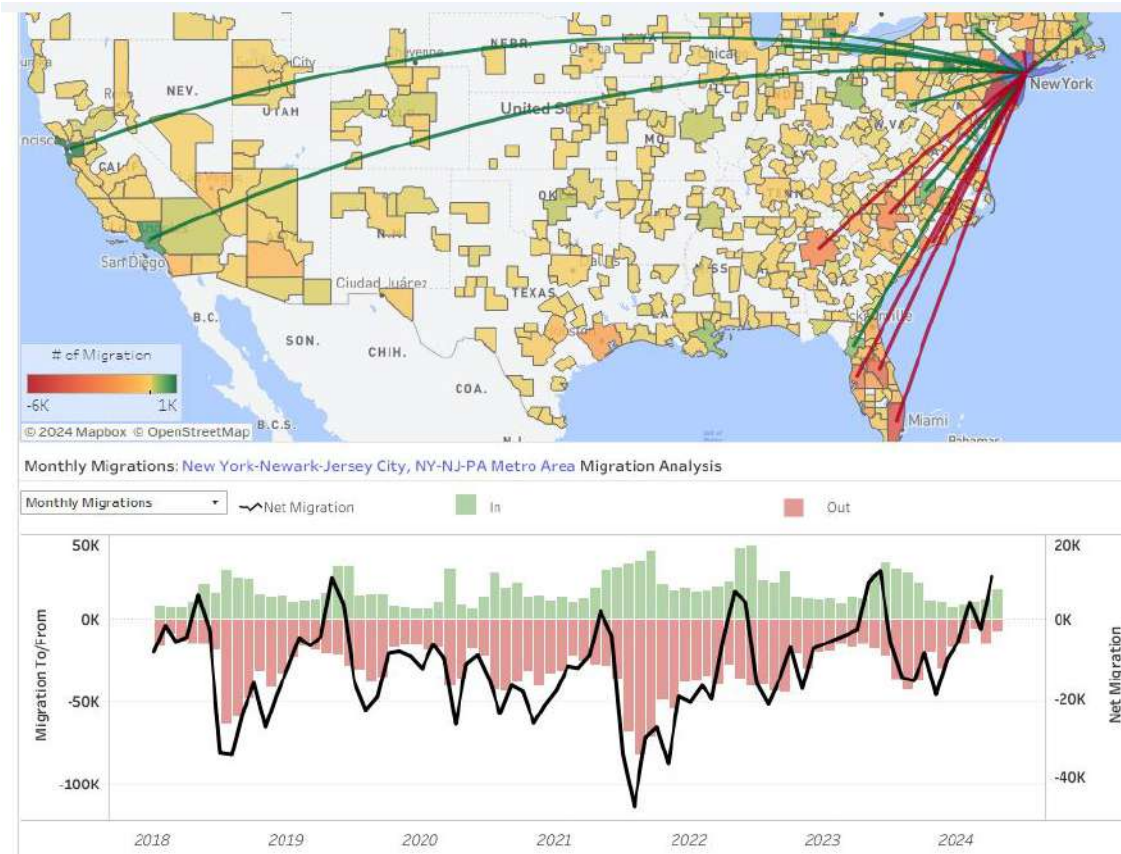
1. State College, PA
2. San Francisco-Oakland-Berkeley, CA
3. Ann Arbor, MI
4. Los Angeles-Long Beach-Anaheim, CA
5. Durham-Chapel Hill, NC
6. Boston-Cambridge-Newton, MA-NH
7. Ithaca, NY
8. Gainesville, FL
9. South Bend-Mishawaka, IN-MI
10. Morgantown, WV

Figure 9 shows the flow of outmigration and immigration in the New York CSA between 2018 and 2024.

<sup>8</sup> Source: United Nations Population Prospects Microtrends

<sup>9</sup> Source: Placer.ai combination of location-based mobile and U.S. Census Bureau data

Figure 9: New York CSA Net Migrations<sup>10</sup>



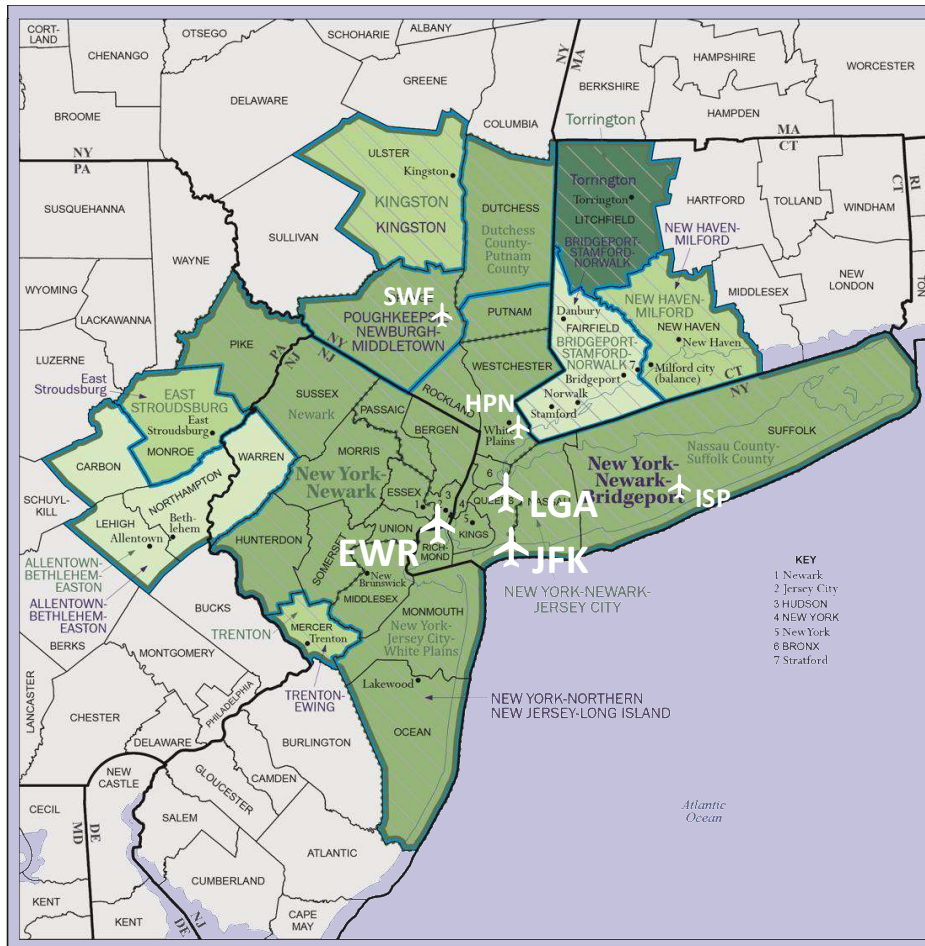
## New York CSA Airports

The New York CSA represents the primary and secondary catchment areas for the region’s three major airports (JFK, LGA, and EWR) and three smaller secondary airports (ISP, HPN, and SWF). The six commercial airports located in the New York CSA are shown in Figure 10.

The location and size of the major airports are driven by the population density of the areas surrounding the airports and their proximity to major Manhattan businesses and tourism attractions, along with suburban areas surrounding New York City.

<sup>10</sup> Source: Placer.ai 2023 Migration Report as of 14th June 2023

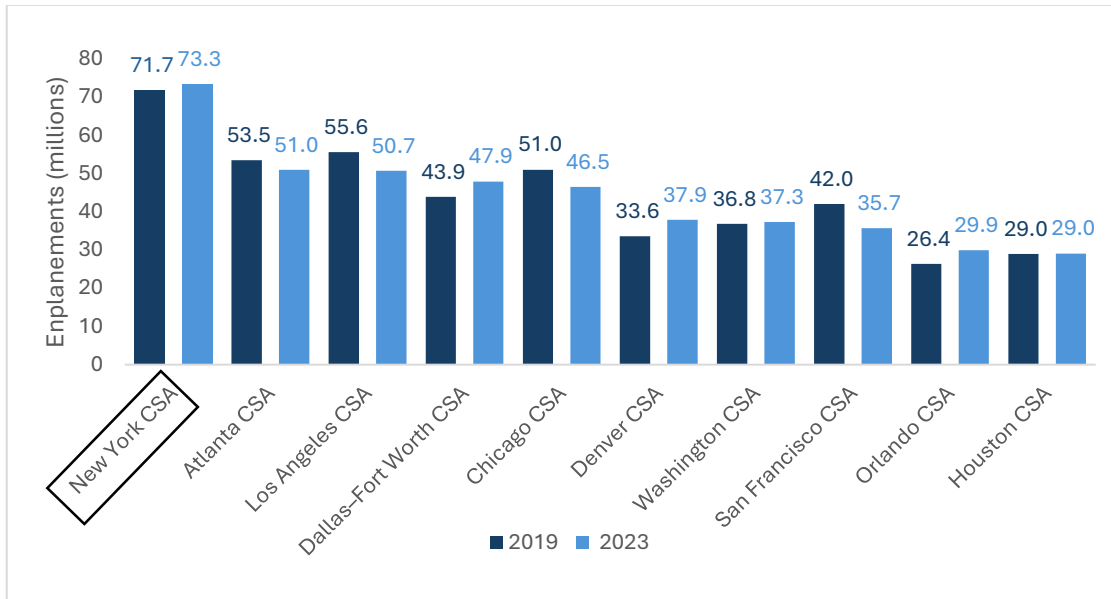
Figure 10: New York CSA with Largest Commercial Airports<sup>11</sup>



Besides having the largest population base in the U.S., the New York CSA is also the largest air transportation market by passenger volume, as shown in Figure 11. In 2023, passenger enplanements in the New York CSA airports exceeded those for 2019, making it one of five of the 10 largest CSAs to exceed 2019 traffic levels.

<sup>11</sup> Source: CSA Map – U.S. Census Bureau, Airport Location – gcmmap.com

Figure 11: 10 Largest CSA Passenger Enplanements<sup>12</sup>



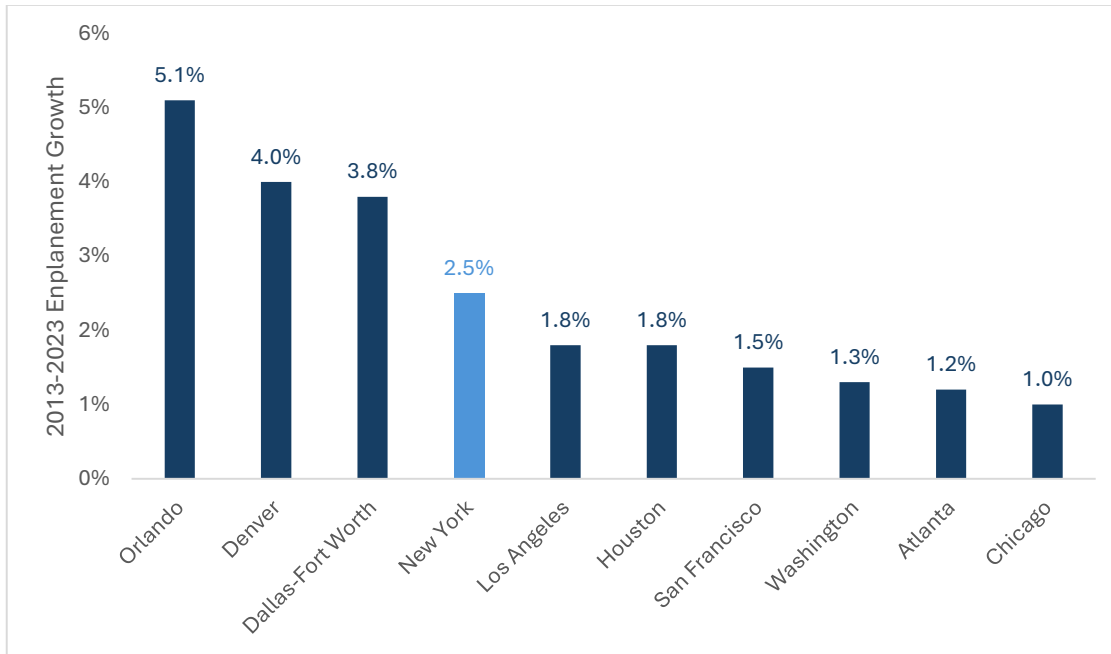
From 2013 to 2023, New York CSA airport passenger enplanements have grown by a CAGR of 2.5%, despite the impact of the COVID-19 pandemic. In the last decade, the New York CSA air transportation market registered the fourth-highest traffic growth rate among the 10 largest U.S. CSAs, as shown in Figure 12.

The strong growth of the New York CSA airports demonstrates robust travel demand, despite aircraft movements being limited by slot controls at the key New York airports (JFK and LGA). By contrast, no other airport in the 10 largest CSAs, except for DCA, has similar slot restrictions in place.

<sup>12</sup> Source: U.S. Department of Transportation (DoT) T-100 via Airline Data Inc. CSA Airports: New York (JFK, EWR, LGA, ISP, HPN, SWF), Los Angeles (LAX, BUR, ONT, SNA, LGB), Chicago (ORD, MDW), Dallas-Fort Worth (DFW, DAL), San Francisco (SFO, OAK, SJC), Washington (IAD, DCA, BWI), Houston (IAH, HOU), Orlando (MCO, MLB, SFB)



Figure 12: Largest Enplanement Growth Among U.S. CSAs, 2013-2023<sup>13</sup>



## JFK’s Primary Catchment Area

A number of factors drive passengers’ choice of airport, including airport location, accessibility, cost, and usability. The services that airlines offer – such as the breadth of the route network, schedules, and airfares – play a significant role as well. Different customer groups will place different values on the same attributes when choosing an airport. Business travelers will have different needs and priorities than leisure travelers, for example. Airline loyalty programs and other frequent-flyer perks also influence traveler choice.

However, when applicable, airport location is also a meaningful consideration for most passengers. The three primary New York CSA airports (JFK, EWR, and LGA) draw passengers from across the region based on their location. Passengers are more likely to choose an airport closer to their home and with less traffic congestion, particularly if the same level of air service is available at the closer airport. Passengers on either side of Manhattan, for example, are likely to avoid crossing Manhattan, especially during rush hour, and will opt for the most convenient airport.

LGA, while a more convenient airport for many domestic passengers, is limited in its service because of the Port Authority restriction on flights of more than 1,800 miles from Sunday to Friday.

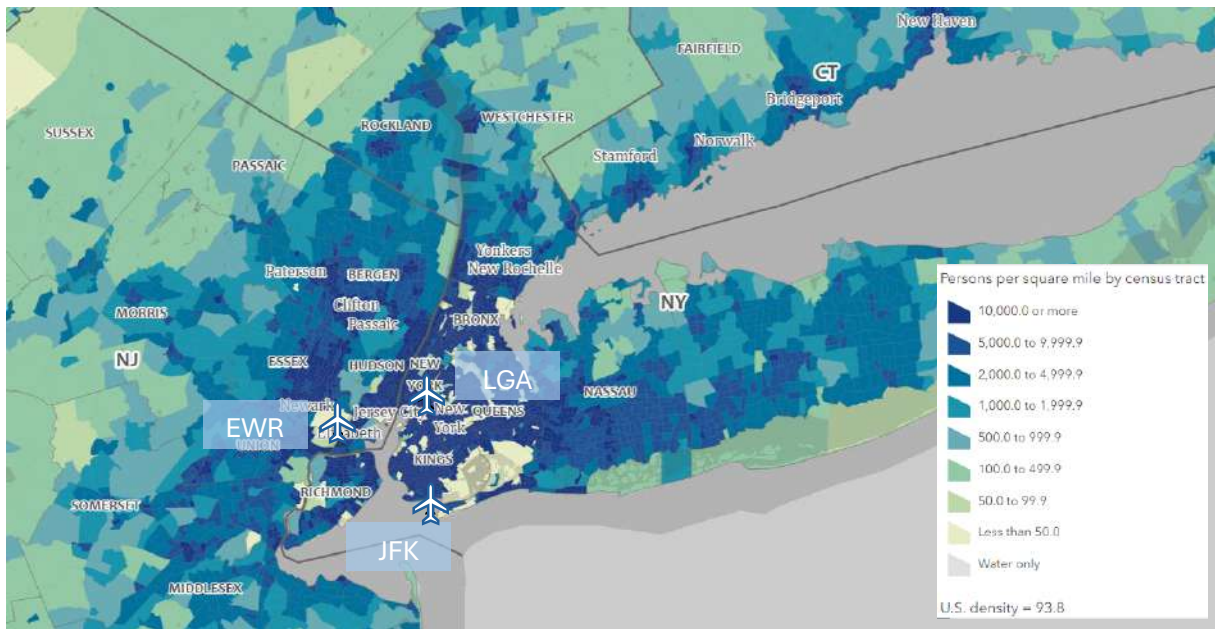
<sup>13</sup> Source: U.S. DoTT-100 via Airline Data Inc. CSA Airports: New York (JFK, EWR, LGA, ISP, HPN, SWF), Los Angeles (LAX, BUR, ONT, SNA, LGB), Chicago (ORD, MDW), Dallas-Fort Worth (DFW, DAL), San Francisco (SFO, OAK, SJC), Washington (IAD, DAC, BWI), Houston (IAH, HOU), Orlando (MCO, MLB, SFB)

Table 3 shows the population distribution across the New York CSA with JFK’s primary and secondary catchment areas, which are defined by proximity to the airport. Figure 13 shows the New York CSA population density relative to the location of the three busiest New York airports.

Table 3: 2023 JFK Catchment Population<sup>14</sup>

JFK Primary Catchment	Population (000s)	% of Catchment	% of New York Area
Kings County (Brooklyn)	2,561	22.9%	11.7%
Queens County	2,252	20.2%	10.3%
New York County (Manhattan)	1,597	14.3%	7.3%
Suffolk County	1,523	13.6%	7.0%
Nassau County	1,382	12.4%	6.3%
Bronx County	1,356	12.2%	6.2%
Richmond County (Staten Island)	491	4.4%	2.2%
<b>Subtotal: JFK Primary Catchment</b>	<b>11,163</b>	<b>100%</b>	<b>51.1%</b>
Surrounding Counties	10,697		48.9%
<b>Total JFK Catchment</b>	<b>21,860</b>		<b>100.0%</b>

Figure 13: New York CSA Population Density<sup>15</sup>

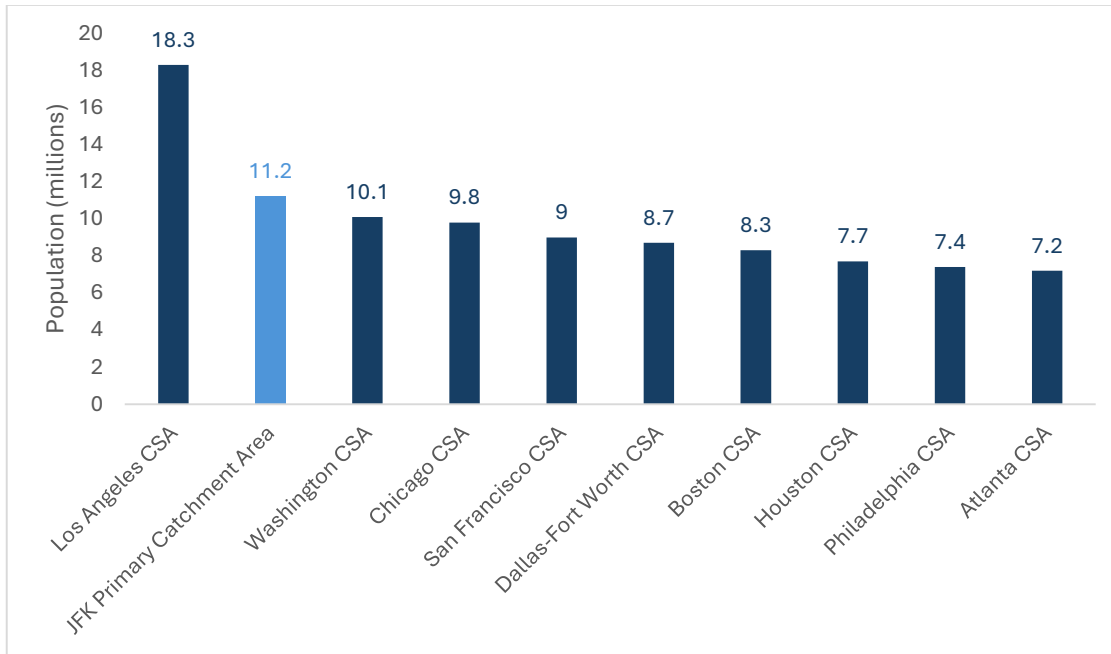


JFK’s primary catchment area has a population of 11.2 million people and on its own would be the second largest CSA in the U.S. behind the Los Angeles CSA, as shown in Figure 14.

<sup>14</sup> Source: U.S. Census Bureau

<sup>15</sup> Source: U.S. Census Bureau 2020 Census Demographic Map

Figure 14: JFK Primary Catchment Area Population<sup>16</sup> vs 10 Largest U.S. CSAs<sup>17</sup>



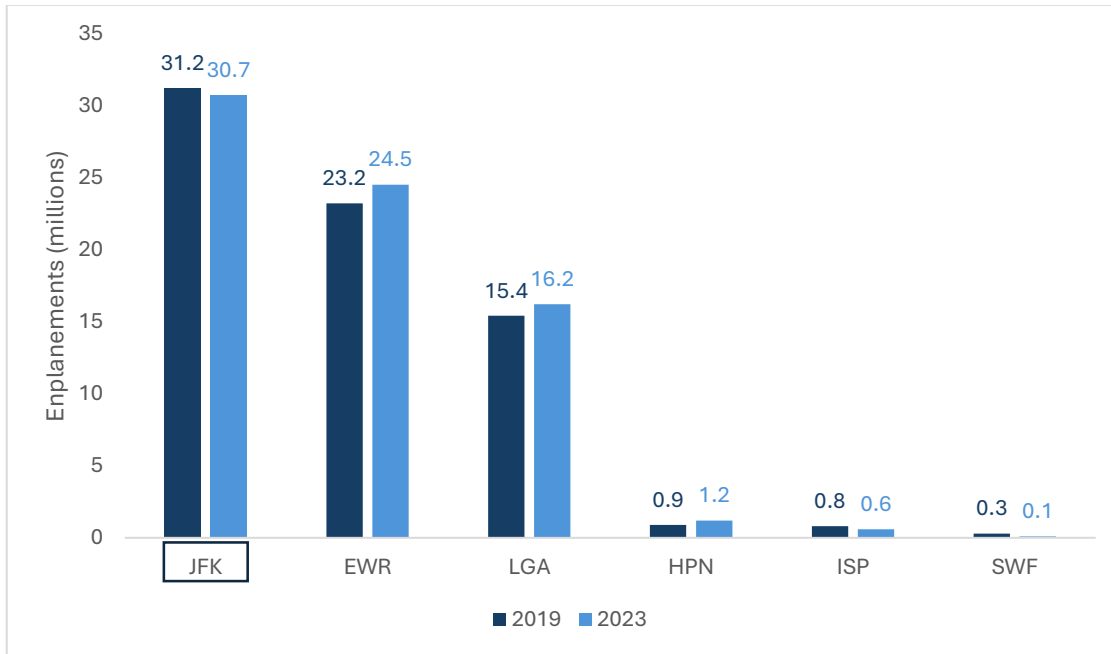
### Busiest Airport and Primary International Gateway in the New York CSA

JFK was the busiest airport in the New York region in terms of passengers both before the COVID-19 pandemic and in 2023, as shown in Figure 15.

<sup>16</sup> Source: ASM analysis

<sup>17</sup> Source: U.S. Census Bureau

Figure 15: New York CSA Airport Enplanements<sup>18</sup>



The New York airports in aggregate have surpassed pre-pandemic enplanement levels, as shown in Table 4. JFK has not fully recovered to pre-pandemic levels because of international traffic still suppressed by ongoing demand recovery and travel restrictions in some regions.

<sup>18</sup> Source: U.S. DoT T-100 via Airline Data Inc

Table 4: New York CSA Airport Domestic and International Enplanements<sup>19</sup>

Airport	2019 Enplanements (millions)			New York CSA Share		
	Domestic	International	Total	Domestic	International	Total
JFK	14.2	17.0	31.2	30.5%	67.1%	43.5%
EWR	16.1	7.1	23.2	34.7%	28.1%	32.4%
LGA	14.3	1.1	15.4	30.8%	4.4%	21.5%
<b>Subtotal</b>	<b>44.5</b>	<b>25.3</b>	<b>69.8</b>	<b>96.1%</b>	<b>99.7%</b>	<b>97.3%</b>
HPN	0.9	-	0.9	1.9%	-	1.2%
ISP	0.8	-	0.8	1.7%	-	1.1%
SWF	0.2	0.1	0.3	0.4%	0.3%	2.7%
<b>Total</b>	<b>46.4</b>	<b>25.4</b>	<b>71.8</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

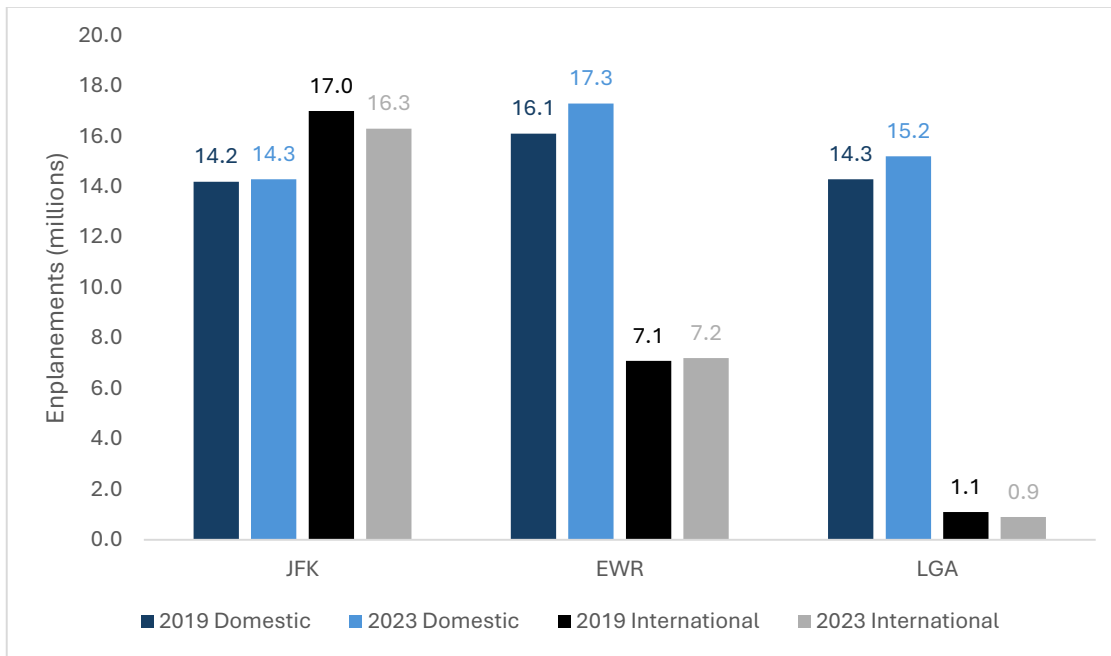
Airport	2023 Enplanements (millions)			New York CSA Share		
	Domestic	International	Total	Domestic	International	Total
JFK	14.3	16.3	30.7	29.4%	66.5%	41.8%
EWR	17.3	7.2	24.5	33.5%	29.5%	33.5%
LGA	15.2	0.9	16.2	31.3%	3.8%	22.1%
<b>Subtotal</b>	<b>46.9</b>	<b>24.5</b>	<b>71.4</b>	<b>96.2%</b>	<b>99.8%</b>	<b>97.4%</b>
HPN	1.2	-	1.2	2.4%	-	1.6%
ISP	0.6	-	0.6	1.3%	-	0.9%
SWF	0.1	0.1	0.1	0.2%	0.2%	0.2%
<b>Total</b>	<b>48.7</b>	<b>24.6</b>	<b>73.3</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

Before the COVID-19 pandemic, international traffic represented 54% of JFK’s total passengers compared to 31% in EWR and 7% in LGA<sup>20</sup>. JFK received 67% of the New York region’s international passenger traffic prior to the COVID-19 pandemic. JFK’s share of international traffic did not change significantly in the interim and was 66.5% in 2023. In 2023, international traffic in the New York region was 97% of 2019 and domestic traffic was 104%. Figure 16 shows pre- and post-pandemic domestic and international enplanements from the New York CSA airports.

<sup>19</sup> Source: U.S. DoT T-100 via Airline Data Inc

<sup>20</sup> LGA does not have customs and immigration facilities for international flights. However, flights pre-cleared at their origin can operate at LGA. Most pre-cleared passengers at LGA are coming from Canadian airports.

Figure 16: New York CSA Airport Domestic and International Enplanements<sup>21</sup>



In addition to serving as a gateway to the New York metropolitan area, JFK also serves as a connect point between the domestic U.S., Canada, Latin America, Caribbean, Europe, and other regions. Some of these connections are offered via the major global airline alliances (represented by Delta for SkyTeam and American for Oneworld, for example), with the unaligned JetBlue, or bilateral arrangements between other airlines.

Star Alliance connectivity in the New York area is focused on EWR where United has its hub. However, JFK is also served by several Star Alliance carriers including Lufthansa and Air Canada that also use the airport for connections.

### Role of Other New York CSA Airports

The United hub at EWR offers substantial connectivity from a wide range of North American markets to United’s transatlantic and southbound international network, as well as Star Alliance partner flights.

LGA, the region’s third major airport, is largely a domestic airport with a perimeter distance set by the Port Authority of 1,500 miles between Sunday and Friday. The perimeter rule was designed to keep JFK and EWR as the primary facilities for longer New York-area domestic and international flights.

<sup>21</sup> Source: U.S. DoT T-100 via Airline Data Inc

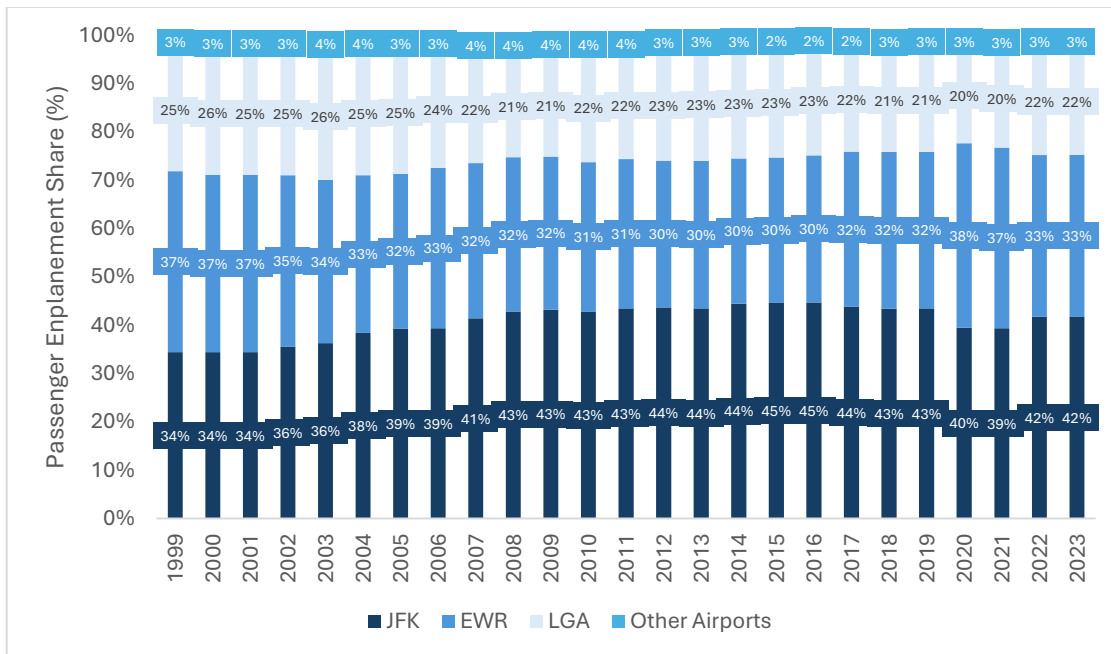
LGA also does not have a Federal Inspection Station (FIS) for international arrivals, so flights arriving from outside the U.S. must depart from airports with pre-clearance facilities<sup>22</sup>. Currently, the only such facilities within the perimeter are Canadian, although longer-distance flights from pre-cleared airports are possible on Saturdays when the perimeter rule is not in effect.

In addition to the three primary airports, the New York CSA is also served by secondary airports in Islip (ISP), White Plains (HPN), and Newburgh (SWF). Islip primarily serves suburban Long Island communities with service to leisure destinations. White Plains serves Westchester and surrounding counties, although it has flight capacity limitations. New York Stewart airport is approximately 55 miles north of New York City and has seen some service by ultra-low-cost airlines, including some international flights (currently headlined by the Icelandic ultra-low-cost carrier Play).

### JFK Passenger Traffic Share in New York CSA

JFK’s share of the New York CSA’s enplanements has remained in the 40% - 45% range over the past 15 years, following an increase from approximately 35% during the decade before that, as shown in Figure 17.

Figure 17: New York CSA Airports Passenger Enplanement Share<sup>23</sup>



<sup>22</sup> In 2023, pre-cleared flights operated to LGA from Aruba, Bermuda, the Bahamas, and Canada (Montreal and Toronto).

<sup>23</sup> Source: U.S. DoT T-100 via Airline Data Inc. Other airports are ISP, HPN, and SWF.

JFK's increasing share of New York area enplanements in the 2000s was attributable to JetBlue's launch and growth as well as the development of Delta's JFK presence and hub. Not only did both of those airlines grow at JFK in their own right, but their increasing level of capacity also attracted other airlines to the airports for connecting purposes.

All three of New York's major airports have federally regulated limits on the number of aircraft movements, as detailed in the next section. JFK and LGA have specific time-based slots that are granted and controlled under a centrally coordinated slot system. EWR was under similar regulations as JFK and EWR until 2016. The relaxation of restrictions resulted in a small increase in its regional enplanement share that came from both JFK and LGA. Even though the level of regulation at EWR is not as stringent as JFK and LGA, its operating constraints do limit the potential for a large share shift from JFK over the long term.

## Airport Slot Constraints

A slot is the permitted movement of an aircraft to either takeoff or land at an airport. Each flight, therefore, requires a pair of slots to operate. They are used at airports where an operational constraint such as airspace, runway, or terminals creates a limitation on the number of flights.

The Federal Aviation Administration (FAA) regulates slot controls in the United States, with the Port Authority managing the program<sup>24</sup> at the New York area airports. To prevent gridlock, slot controls are used to limit the number of movements at all three major New York airports.

The New York region has some of the busiest airspace and most congested airports in North America. At JFK and LGA, where operational demand exceeds airport capacity, airlines obtain slots for specific 30-minute increments of arrival and departure times for the slot-controlled hours of the day.<sup>25</sup> EWR is less stringently controlled, and airlines have more flexibility to schedule flights with their slots. Airlines can trade or lease slots with each other, but they are not owned assets that can be bought or sold.

Slots are assigned in pairs (for an arrival and departure) by day of week and by the winter and summer seasons.<sup>26</sup> To ensure that the airports are utilized efficiently, airlines are required to use their slots 80% of the time or risk forfeiture. However, during the COVID-19 pandemic, the FAA issued waivers for some usage rules because of widespread low passenger demand and international operating restrictions. More recently, the waivers were extended to relieve additional congestion and delays caused by a shortage of air traffic controllers. The waivers now in effect through October 25, 2025, allow airlines to reduce their slot usage by 10% without the risk of losing the slot. Given the FAA's staffing challenges, and the time required to train and qualify new air traffic

<sup>24</sup> Slots controls are more common at airports outside the United States. Globally, slot policies and procedures follow guidelines set by the International Air Transport Association (IATA). Slots in the U.S. largely follow these guidelines.

<sup>25</sup> JFK's slot-controlled hours are 6:00 am – 10:59 pm every day. At LGA, slot controls are in effect from 6:00 am – 9:59 pm Monday – Friday and 12:00 pm – 9:59 pm on Sunday. LGA slot controls are not in effect on Saturdays. Source: Federal Aviation Administration

<sup>26</sup> Timing of the seasonal airline schedules are determined by the date for daylight savings time change in Europe, which is the last Sunday in March (start of summer season) and the last Sunday in October (start of winter season).



controllers (particularly in the busy and complex airspace in and around New York), the waiver is likely to be extended beyond October 2025.

The importance of the New York market means slots in the area are highly sought after. Airlines consider the strategic and long-term value of operating in a slot-controlled airport, not only for the current economic value of the flights but also for the value to the airline's long-term strategy as there is no guarantee that slots will be available in the future.

The number of slots at JFK and LGA is highly unlikely to grow for the foreseeable future. Increasing the number of slots would require growth in runway and airspace capacity through additional infrastructure or technological improvements that are not currently planned and would require substantial time and investment to implement.

It is also unlikely that the number of New York area slots would decrease in the near-term or short-term, absent a substantial externality such as a major change in safety regulations. Capacity is not expected to decrease at the airport, and taking away slots from incumbent airlines would be a highly politically controversial move. Continued growth at EWR could lead to the return of stricter slot controls like those at JFK and EWR (which were in place at the airport until 2016).

Over the long-term, changes in the number of slots at JFK or the slot regulation are possible as technology, airport infrastructure, aircraft design and operations, demand patterns, and other circumstances evolve. However, the scale and nature of those changes are difficult to forecast from the perspective of the current regulatory, operational, and commercial environment.

## JFK Passenger Traffic

Key Takeaways	
1	JFK generated 30.7 million passenger enplanements in 2023, 81.7% of which O&D passengers while 18.3% were connecting.
2	In 2023, local enplanements were down 6.7% on 2019 but up 14.6% on 2022. Connecting enplanements were up 29.9% on 2019 and increased 7.8% from 2022.
3	JFK remains the busiest international gateway in the U.S. For 2023, the airport had 16.3 million international passenger enplanements, accounting for 53.3% of JFK's total enplanements for the year.
4	International traffic has been slower to recover than domestic. In 2023, international enplanements were 3.9% below 2019 while domestic enplanements were 1.1% above 2019. International traffic improved throughout 2023 and is expected to return to 2019 levels in 2024. International scheduled capacity in 2024 is 7.7% higher than 2023 and 2.8% higher than 2019.
5	Passenger traffic in 2023 recovered to 98% of 2019 levels. In 2023, total JFK enplanements increased by 13.3% over 2022. The current 2024 airline schedules <sup>27</sup> indicate planned seat capacity will be 2.4% higher than 2023 and 0.8% higher than 2019. The growth is backloaded in the year as total Jan – May 2024 capacity is 0.7% below the same period in 2022 and 3.7% below the same period in 2019.

## Passenger Volumes at JFK

As an air transport hub, JFK continues to play a key role globally. For 2023, by total passengers, JFK was ranked the 13<sup>th</sup>-busiest airport in the world (down two places from its 2022 global ranking of 11<sup>th</sup>, but seven places higher than its ranking 20<sup>th</sup> in 2019). For 2023, ahead of JFK were five airports in the U.S. (ATL, DFW, DEN, LAX, ORD), three in Asia (HND, CAN, DEL), three in Europe (LHR, IST, CDG) and one in the Middle East (DXB).<sup>28</sup>

In 2023, while demand continued to recover within the Asia-Pacific region and specifically the reopening of China, only one Chinese airport move ahead of JFK in the global rankings<sup>29</sup>. CAN was ranked 12<sup>th</sup> and is the primary hub for China Southern. The other two primary hubs, PEK and PVG for Air China and China Eastern respectively, also saw growth in 2023 but did not reach the top rankings of global airports. Chinese airport growth is the result of the return of domestic demand

<sup>27</sup> As of 15 May 2024

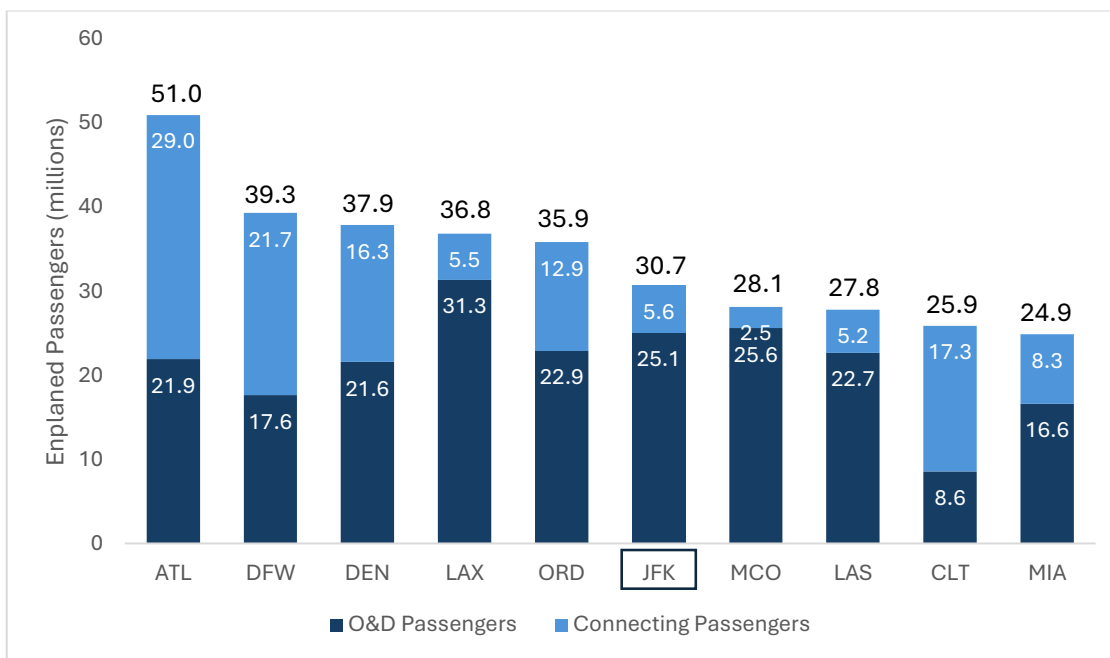
<sup>28</sup> Source: ACI World

<sup>29</sup> Source: Sabre Market Intelligence

rather than international. In 2024, China’s domestic capacity is up 7% on 2019 while its international capacity is down 29% overall and down 72% to the U.S.<sup>30</sup>

For the last few years, JFK has held a constant position among the busiest airports in the U.S. JFK was ranked the sixth-busiest airport for enplaned passengers in 2019, 2022, and 2023. As shown in Figure 18 for 2023, no other Northeast airport was within the 10 busiest U.S. airports. Looking at the other primary New York airports in 2023, EWR was ranked 12<sup>th</sup> busiest with 24.5 million passengers (+1 from 2022 and the same ranking as 2019). LGA was ranked 19<sup>th</sup> busiest with 16.1 million passengers (same ranking as 2022 and +2 from 2019).

Figure 18: 10 Busiest U.S. Airports by 2023 Enplaned Passengers<sup>31</sup>



As previously reported, the New York CSA has the largest population among U.S. CSAs. JFK draws demand from this surrounding population and, as such, a large portion of its enplaned passengers have journeys that originate or terminate in New York (Origin & Destination, or “O&D” passengers) as opposed to passengers making connections at JFK. In 2023, 82% of JFK’s enplaned passengers were O&D while 18% were connecting. The number and proportion of O&D passengers reflects the large amount demand from the New York CSA, and therefore the region’s strength as a market. The number of connecting passengers reflects the scale and breadth of capacity, although it is also reflective of the airlines’ choice to connect passengers at the airport.

<sup>30</sup> Source: Sabre Market Intelligence (as of 31 May 2024)

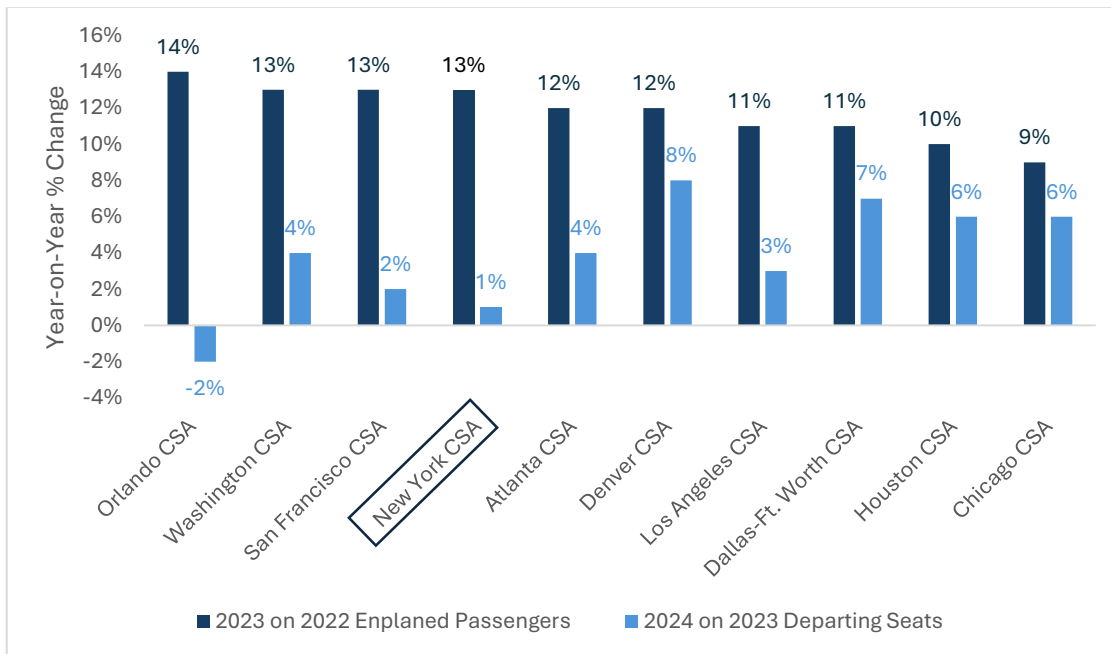
<sup>31</sup> Source: Enplaned Passengers - U.S. DoTT-100 via Airline Data Inc, Origin & Destination Passengers - U.S. DoT O&D Survey via Airline Data Inc

By comparison, the average composition across the 10 busiest U.S. airports was 63% O&D and 37% connecting. In 2019, 86% of JFK’s enplaned passengers were O&D (+4pts on 2023), while the average across the busiest airports was 67% O&D (+3pts on 2023). While JFK has a large local traffic base, New York is also a very popular leisure and business destination, so it has a strong inbound flow of traffic as well as outbound. For 2023, JFK ranked third highest among the busiest U.S. airports for O&D passenger market size (behind LAX and MCO).

### Year-on-Year Growth and COVID-19 Pandemic Passenger Traffic Recovery

Looking at year-on-year passenger traffic growth across the 10 busiest CSAs, enplaned passenger volumes increased an average of 12% over 2022, while scheduled capacity for 2024 is up an average of 4% on 2023. Compared to the 10 busiest CSAs, annual growth in enplanements within the New York CSA for 2023 was above average at 3% year-on-year (2022-2023). Using the same benchmark, current schedules data indicates that the annual capacity increase within the New York CSA for 2024 will be slightly below average at 1% from 2023 to 2024, as shown in Figure 19.

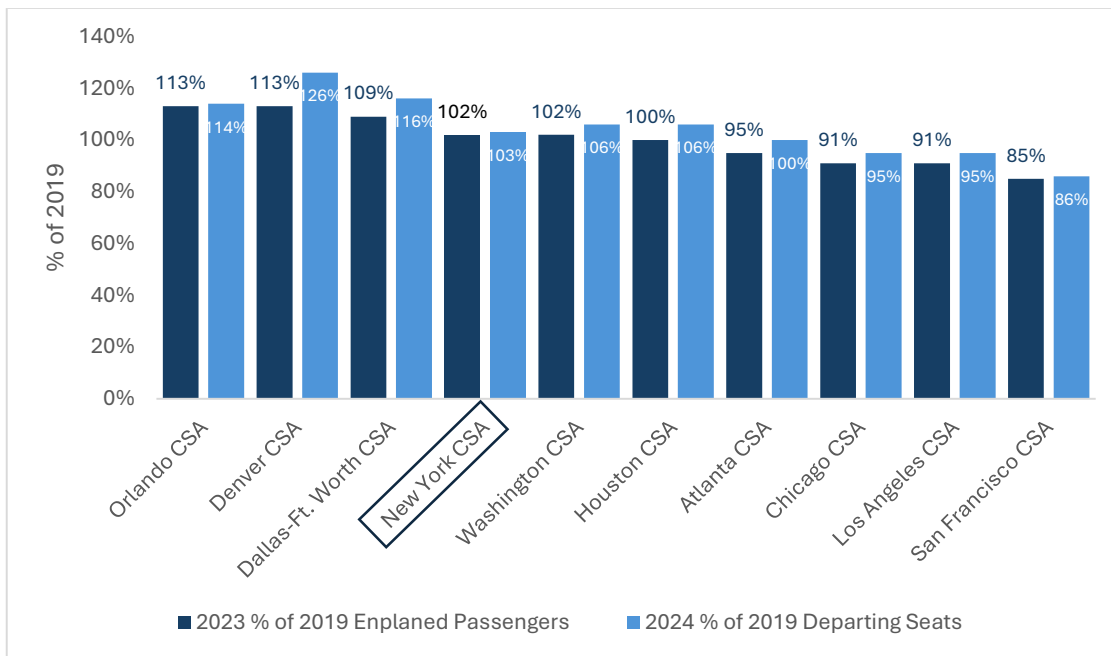
Figure 19: Passenger Traffic and Seat Capacity Year-on-Year Growth in 10 Largest U.S. CSAs<sup>32</sup>



<sup>32</sup> Source: Passenger Traffic - U.S. DoT T-100 via Airline Data Inc, Schedules - Airline Data Inc

For 2023, across the 10 busiest CSAs, enplaned passenger volumes recovered to 99% of 2019 levels. Looking at 2024, scheduled capacity for the calendar year is up 3% on 2019. Within the six New York CSA airports, 2023 enplaned passengers and 2024 seat capacity both exceed 2019 volumes. Among the 10 largest CSAs, New York CSA airports enplaned passenger recovery is slightly above average at 2% (2023 vs 2019), while seat recovery is in line with the average at 3% (2024 vs 2019), as shown in Figure 20.

Figure 20: Passenger Traffic and Seat Capacity Recovery in 10 Largest U.S. CSAs<sup>33</sup>



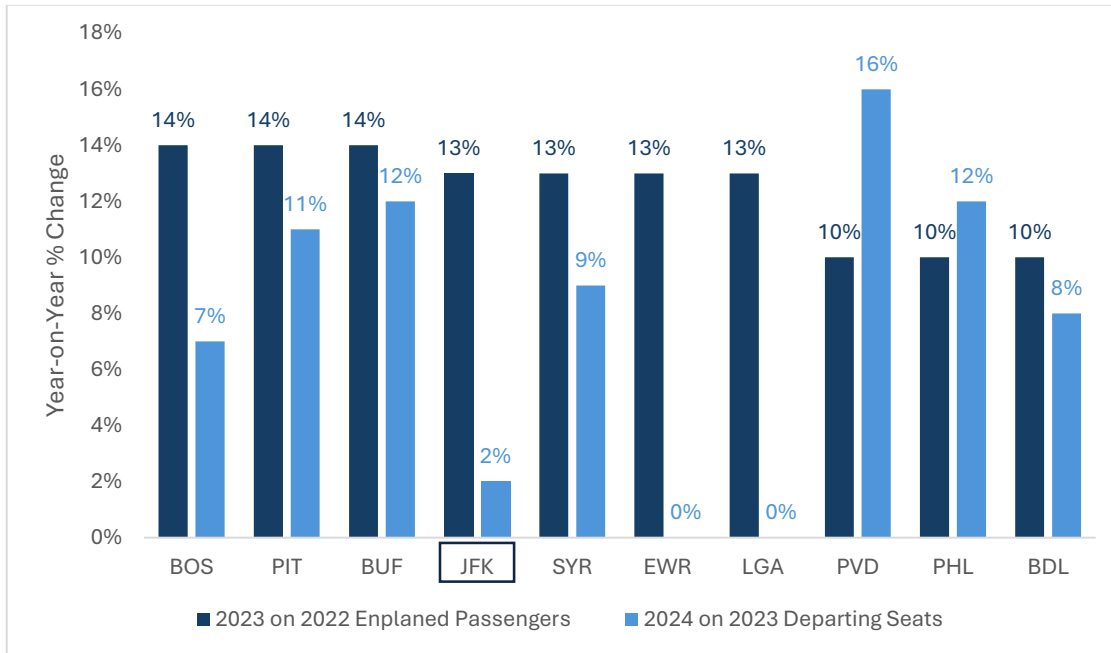
Compared to other airports based within the Northeast<sup>34</sup>, JFK enplaned passengers in 2023 increased 13.3% over 2022, which was slightly above the Northeast regional average of 12.8%. EWR and LGA increased at rates of 13.1% and 12.6% respectively. According to current 2024 schedules, JFK annual seat capacity growth from 2023 to 2024 is projected to be below the Northeast regional average of 4.3%. This is primarily due to JFK, and the other New York CSA airports, having experienced a greater return of capacity to 2019 volumes in 2023 than other airports in the Northeast. For the New York CSA airports, 2023 annual capacity was up 2% on 2019, while the average for the Northeast was -8%.<sup>35</sup> Figure 21 shows the year-on-year enplanement and seat capacity growth at the 10 busiest Northeastern U.S. airports.

<sup>33</sup> Source: Passenger Traffic - U.S. DoT T-100 via Airline Data Inc, Schedules - Airline Data Inc

<sup>34</sup> Northeast U.S. sub region is as defined by Airline Data Inc. Busiest airports include: JFK, EWR, LGA, HPN, ISP, BOS, PHL, PIT, BDL, BUF, PVD, SYR, ALB, ROC, PWM, MDT, BTM, MHT, HVN, ACY, ABE (listed are those with more than 1,000 outbound passengers per day in 2023).

<sup>35</sup> Source: Sabre Market Intelligence

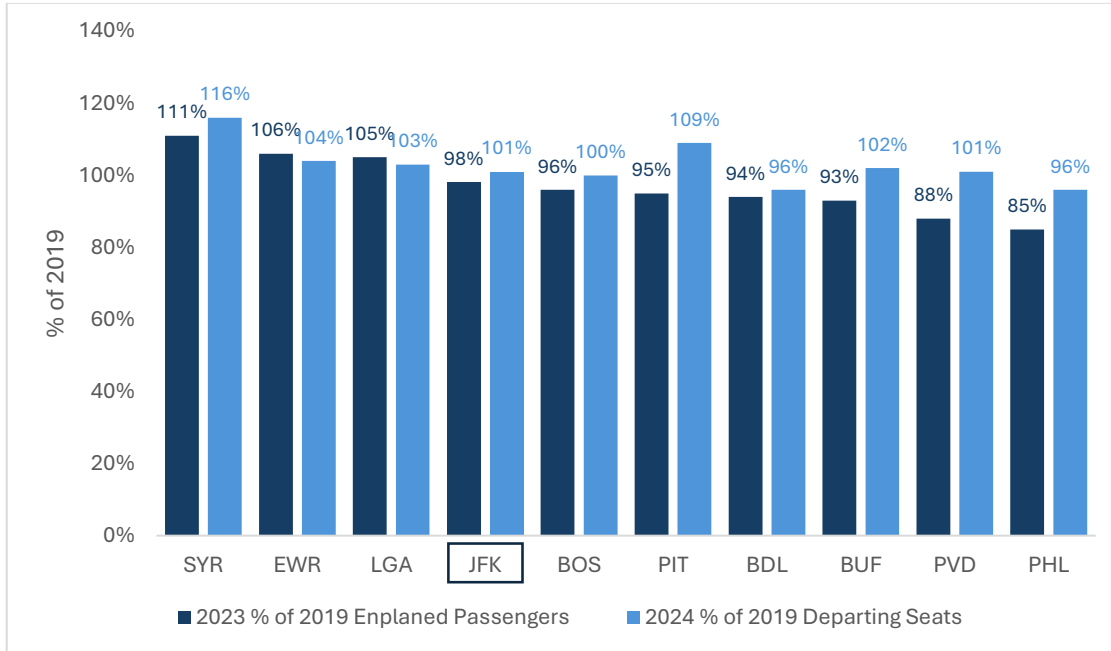
Figure 21: Passenger Traffic and Seat Capacity Year-on-Year Growth at 10 Busiest Northeast U.S. Airports<sup>36</sup>



The New York CSA major airports have recovered at an above average rate compared to other Northeast U.S. airports, as shown in Figure 22. Among the 10 Northeast airports with the most passenger enplanements in 2023, JFK ranked fourth highest in enplaned passenger recovery (2023 vs 2019). Enplaned passenger recovery at JFK was slightly less than seen at EWR and LGA, primarily because of the size of its international market. The proportion of international enplanements at JFK is much higher than any other airport in the Northeast region. In 2023, 53% of JFK enplanements were international, while the average for the Northeast was 24%.

<sup>36</sup> Source: Passenger Traffic - U.S. DoT T-100 via Airline Data Inc, Schedules - Airline Data Inc

Figure 22: Passenger Traffic and Seat Capacity Recovery at 10 Busiest Northeast U.S. Airports<sup>37</sup>

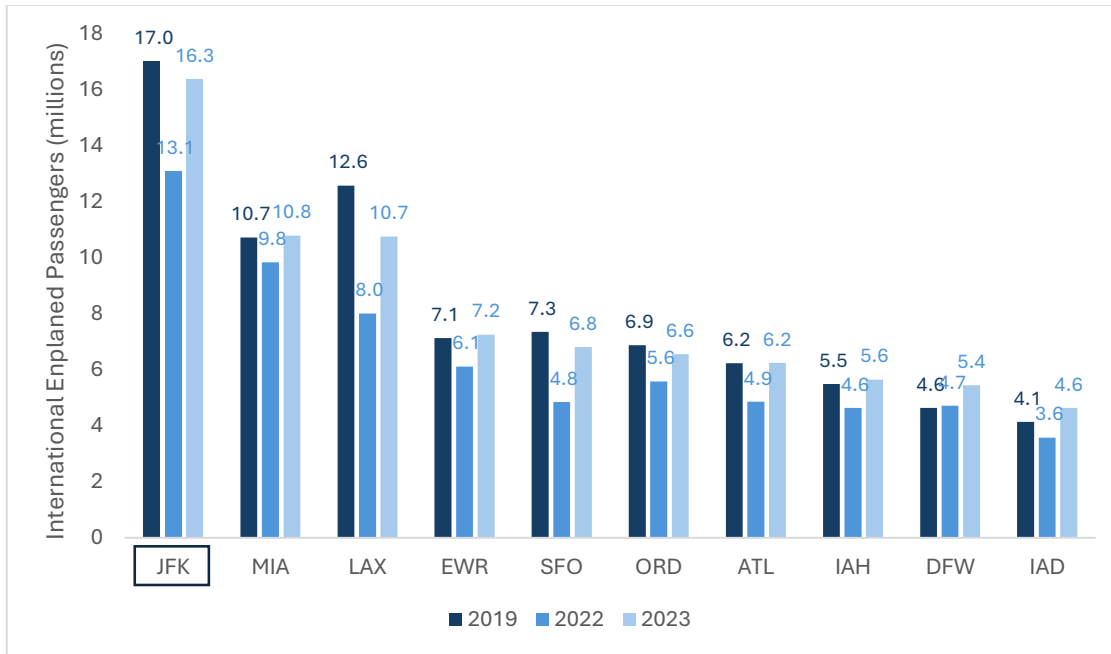


### International U.S. Gateways

For 2023, JFK retained its long-held position as the busiest international gateway of the U.S., as shown in Figure 23. The airport enplaned over 16.3 million international passengers in 2023, which is a 13.9% share of the U.S. total. JFK has been the busiest U.S. international gateway since at least 2000. During that period, its share has ranged from a high of 14.7% in 2016 to a low of 11.9% in 2002.

<sup>37</sup> Source: U.S. DoT T-100 via Airline Data Inc (data period Jan-Dec). Regions as defined by Airline Data Inc.

Figure 23: 10 Busiest U.S. International Gateway Airports<sup>38</sup>



EWB is the sixth busiest international U.S. gateway with 7.2 million enplaned passengers in 2023. Compared to JFK, EWB carried fewer passengers to every major international market except Canada.

As shown in Table 5, JFKs international traffic consists primarily of European bound enplaned passengers (42.8%) and Caribbean (18.4%). Of the 10 busiest international U.S. gateways, JFK served the largest number of enplaned passengers to Africa, Europe, and the Middle East.

<sup>38</sup> Source: U.S. DoT T-100 via Airline Data Inc.



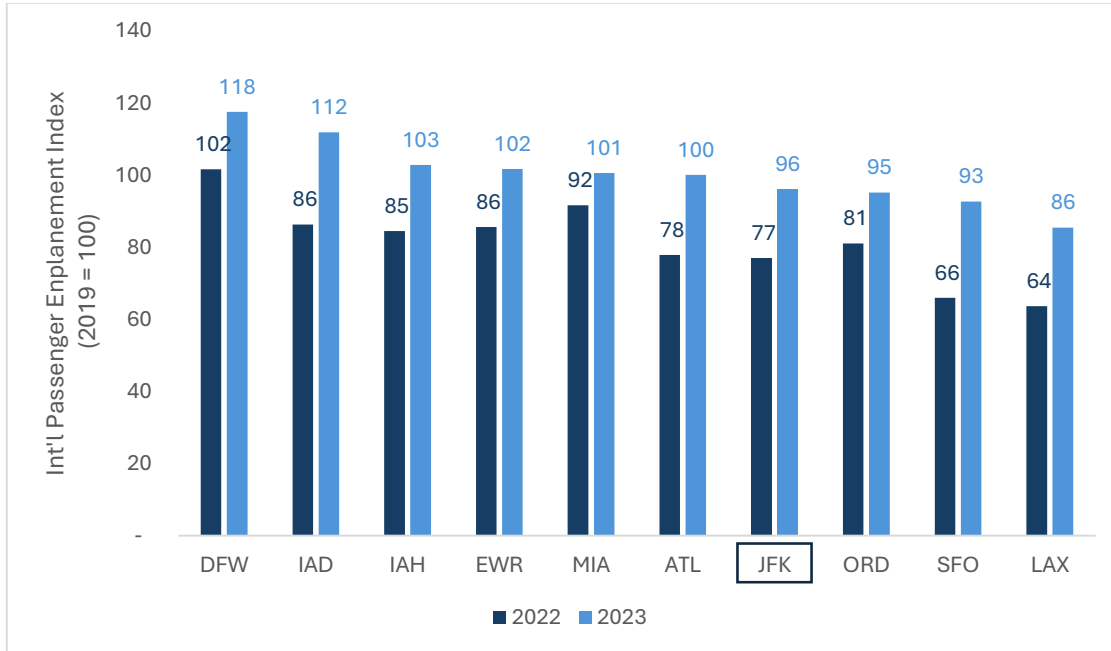
Table 5: Regional Composition of JFK International Enplaned Passenger Traffic Compared to the Average of the 10 Busiest U.S. International Gateways<sup>39</sup>

Region	JFK Average	10 Busiest U.S. Int'l Gateway Average	JFK Variation (pts)
Europe	42.8%	30.9%	11.9
Caribbean	18.4%	11.3%	7.1
Middle East	9.7%	7.1%	2.6
Asia	8.5%	10.4%	-1.9
South America	7.4%	7.5%	-0.1
Mexico	5.3%	14.3%	-8.9
Central America	3.1%	7.2%	-4.0
Africa	2.4%	1.5%	0.9
Canada	2.1%	7.8%	-5.7
Oceania	0.2%	2.0%	-1.8

In 2023, following the return of European demand, JFK’s total international passenger enplanements were up 24.8% vs 2022 and down by 3.9% vs 2019. Among the 10 busiest U.S. international gateways, 41% of ORD’s international enplanements were to Europe – the closest to JFK’s European share of 42.8%. ORD saw a similar rate of recovery to JFK, with international enplanements recovering to 95% of 2019 levels by 2023, which is 0.8 pts lower than JFK. At LAX and SFO, the relatively slow reopening of Asia-Pacific international borders has limited recovery of international enplanements. Out of the 10 busiest U.S. international gateways, LAX has seen the slowest international traffic recovery to pre-pandemic levels, with 2023 international enplanements 14.5% lower than 2019.

<sup>39</sup> Source: U.S. DoT-T-100 via Airline Data Inc. Destinations and regions as defined by Airline Data Inc.

Figure 24: Indexed International Passenger Enplanements at 10 Busiest U.S. International Gateway Airports<sup>40</sup>



## Enplaned Passenger Trends

As shown in Table 6, JFK’s enplanements grew by 37.3% from 2009 to 2019 (+8.5 million enplaned passengers), which is a compound annual growth rate (CAGR) of 3.5% and despite the current limit of 81 aircraft movements per hour having been imposed by the FAA in January 2008. The growth, which occurred with slot controls in place, was primarily due to increases in international traffic rather than domestic. From 2009 to 2019, international enplanements at JFK grew by 58.6%, which as a CAGR of 4.7%. Across the decade between 2009 and 2019, international enplanements accounted for 74% of JFK’s total enplaned passenger growth. The share of JFK’s international enplaned traffic grew 7.3 points during those 10 years to 54.6%. In 2023, international enplanements comprised 53.3% of JFK’s total enplanements, which is a 4.9-point increase from 2022 but down 1.3 points from 2019.

While international enplanements did not fully recover to 2019 levels in 2023, the ongoing recovery was clearly apparent. During the year there were several months where JFK’s international and domestic enplanements exceeded the same month in 2019. In the fourth quarter of 2023, JFK’s total enplanements were 1% above the fourth quarter 2019.

<sup>40</sup> Source: U.S. DoT-T-100 via Airline Data Inc. Destinations as defined by Airline Data Inc.

Table 6: JFK Historical Enplaned Domestic and International Passengers<sup>41</sup>

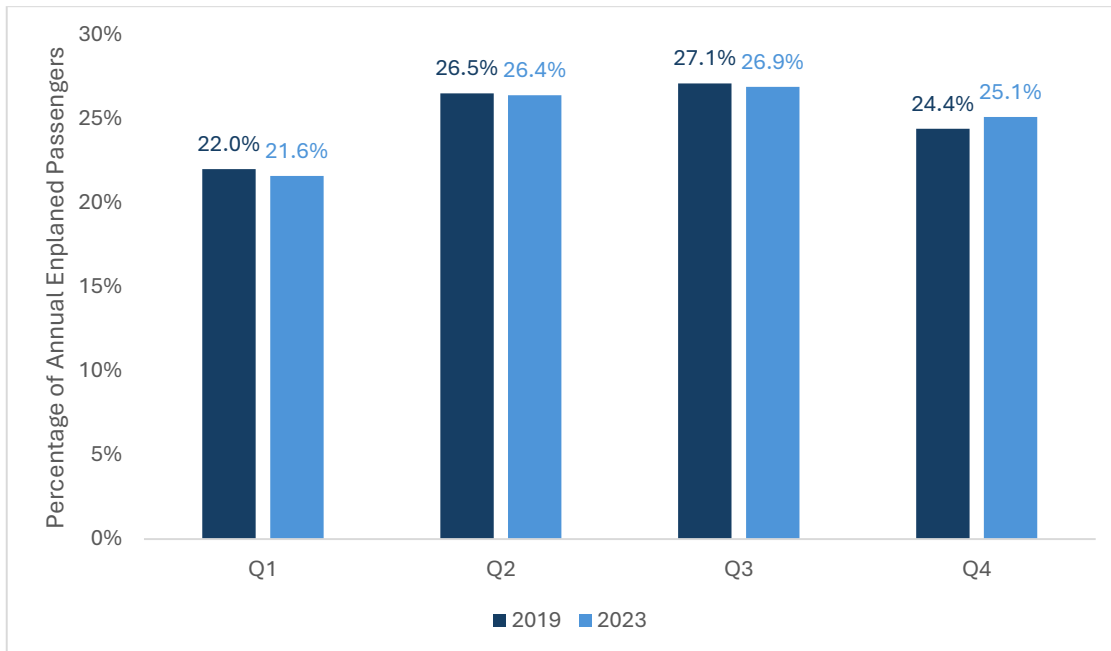
Year	Enplaned Passengers (000)			Annual Percentage Change		
	Domestic	International	Total	Domestic	International	Total
2000	6,996	9,018	16,014	-	-	-
2001	6,610	7,844	14,454	-5.5%	-13.0%	-9.7%
2002	7,234	7,284	14,518	9.4%	-7.1%	0.4%
2003	8,188	7,497	15,686	13.2%	2.9%	8.0%
2004	9,992	8,579	18,570	22.0%	14.4%	18.4%
2005	10,937	9,267	20,204	9.5%	8.0%	8.8%
2006	11,399	9,735	21,134	4.2%	5.0%	4.6%
2007	12,696	10,716	23,412	11.4%	10.1%	10.8%
2008	12,591	11,057	23,648	-0.8%	3.2%	1.0%
2009	11,982	10,727	22,709	-4.8%	-3.0%	-4.0%
2010	11,549	11,390	22,940	-3.6%	6.2%	1.0%
2011	11,881	11,782	23,663	2.9%	3.4%	3.2%
2012	12,090	12,454	24,544	1.8%	5.7%	3.7%
2013	11,971	13,066	25,036	-1.0%	4.9%	2.0%
2014	12,470	13,775	26,245	4.2%	5.4%	4.8%
2015	13,142	14,811	27,953	5.4%	7.5%	6.5%
2016	13,509	15,762	29,270	2.8%	6.4%	4.7%
2017	13,436	16,118	29,554	-0.5%	2.3%	1.0%
2018	14,032	16,644	30,676	4.4%	3.3%	3.8%
2019	14,160	17,015	31,175	0.9%	2.2%	1.6%
2020	4,146	4,150	8,296	-70.7%	-75.6%	-73.4%
2021	8,941	6,365	15,306	115.7%	53.4%	84.5%
2022	13,972	13,092	27,064	56.3%	105.7%	76.8%
2023	14,315	16,344	30,659	2.5%	24.8%	13.3%

Compound Annual Growth Rate			
2000–2005	9.3%	0.5%	4.8%
2006–2010	0.3%	4.0%	2.1%
2009–2013	0.0%	5.1%	2.5%
2009–2019	1.7%	4.7%	3.2%
2014–2019	2.6%	4.3%	3.5%
Percentage Change			
2019–2023	1.1%	-3.9%	-1.7%

<sup>41</sup> Source: U.S. DoT T-100 via Airline Data Inc

While enplanement volumes oscillated during the COVID-19 pandemic, JFK’s seasonality has remained consistent, as shown in Figure 25. In 2023, annual traffic was distributed such that slightly fewer enplaned passengers flew during the first three quarters and slightly more traveled during the fourth quarter. Even so, the seasonal share of fourth quarter traffic only increased by 0.7 pts between 2019 and 2023.

Figure 25: Distribution of Enplaned JFK Passengers By Quarter<sup>42</sup>



### Capacity Growth and Passenger Enplanements

Historically, passenger enplanements increased at a greater rate than seat capacity, with the average annual growth in total enplanements exceeding capacity growth rate by 1.1 points between 2009 and 2019.

The use of larger aircraft to increase seat capacity, or upgauging, is a common approach that airlines use at operationally constrained airports like JFK. Larger aircraft also have a lower operating cost per seat, which can lead to more efficient route economics. Aircraft manufacturers have been responding to airline calls for larger aircraft with the latest generation of widebody aircraft (e.g. B777 and A350) and narrowbody aircraft (e.g. B737 and A321) being larger than the previous ones.

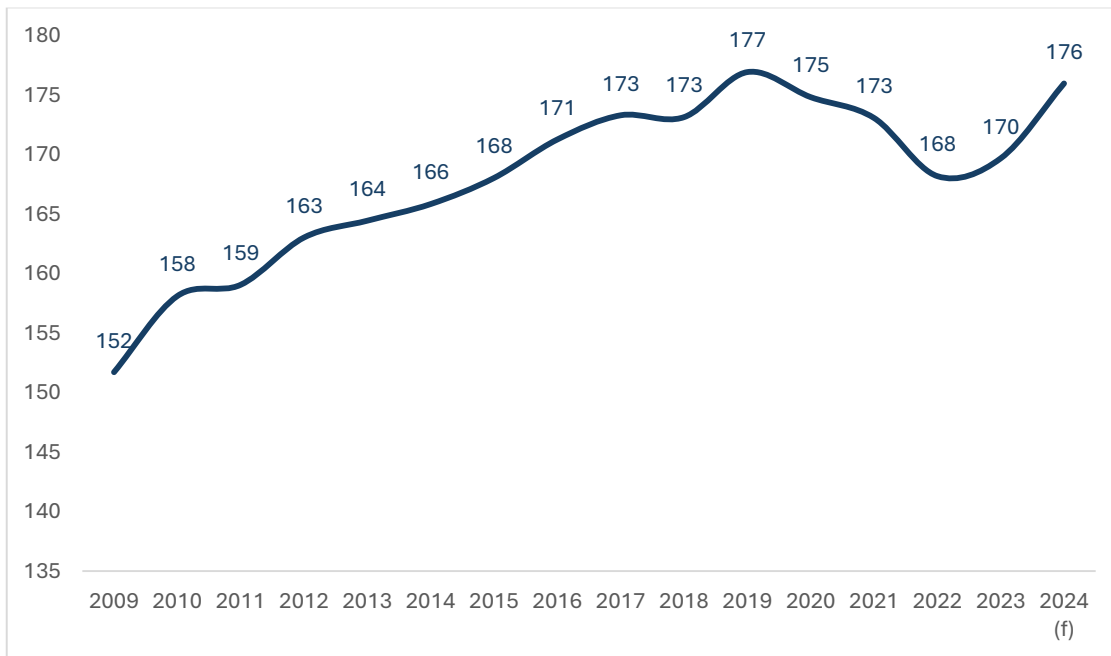
As mentioned previously, JFK total enplanements from 2009 to 2019 grew at a CAGR of 3.2% (domestic at 1.7% CAGR and international at 3.9% CAGR). Throughout the decade, growth in capacity was primarily driven by airlines’ use of larger aircraft. From 2009 to 2019, total departures grew by only 0.7% at JFK, which was 1.6 pts less than the average annual growth in seat capacity.

<sup>42</sup> Source: U.S. DoT T-100 via Airline Data Inc

From 2009 to 2019, the average seats per movement at JFK increased by 25 seats, or 16.6%, from 152 seats to 177 seats.

During the COVID-19 pandemic (2019 – 2022), JFK seats per movement declined by 4.9%. Starting in 2023, however, departures grew at a slower rate than seat capacity signalling the return of larger aircraft to the airport. From 2023 to 2024, the average seats per movement is projected to increase from 170 seats to 176 seats, an increase of 3.5% and almost back to the 2019 level as shown in Figure 26. The upward trend in average seats per movement is expected to continue over the long term given the capacity constraints returning in some JFK markets (including airports at the other end of the route), airlines looking for additional aircraft efficiencies, and the larger aircraft coming into the market.

Figure 26: JFK Average Scheduled Seats Per Movement<sup>43</sup>

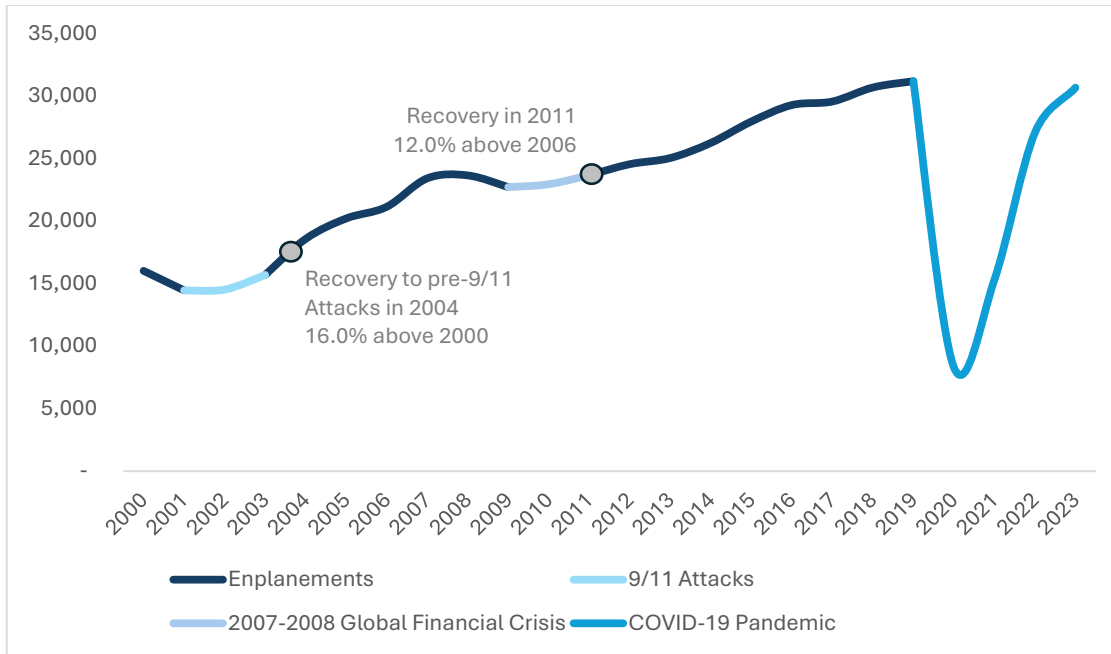


### JFK Passenger Traffic Resilience Following Downturns

Over the past two decades, passenger traffic at the New York CSA airports, and JFK in particular, have demonstrated passenger demand resilience during periods of recovery from major economic downturns and other adverse events. Figure 27 shows the recovery pattern since 2000.

<sup>43</sup> Source: Passenger Traffic - U.S. DoT T-100 via Airline Data Inc, Schedules - Airline Data Inc. 2024 is projected based on schedules published through the end of the year.

Figure 27: JFK Historical Enplaned Passengers<sup>44</sup>



JFK’s enplaned traffic recovered in approximately three years following both the 9/11 attacks and the 2007–2008 Global Financial Crisis. In each case, traffic then resumed a growth trajectory. In 2004, the year that traffic recovered following the 9/11 attacks, passenger enplanements grew beyond pre-crisis levels by 16.0%. After the 2007–2008 Global Financial Crisis in 2011, traffic grew 12% beyond 2006 levels. Both cases show that the New York CSA strongly rebounds during recoveries from economic and other types of downturns. The easing of COVID-19 pandemic measures in 2023<sup>45</sup> helped JFK passenger enplanements reach 98% of 2019 levels. Currently, 2024 passenger enplanements are on pace to exceed those of 2019, following the recovery patterns experienced during the previous crises of the past quarter century.

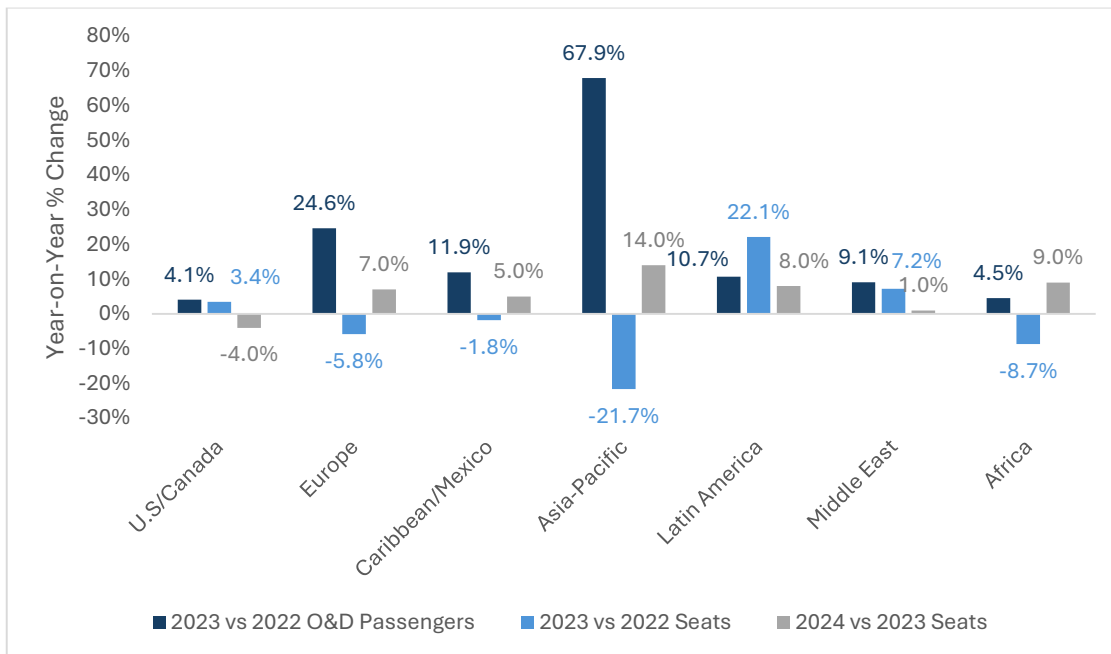
<sup>44</sup> Source: US DoT T-100 via Airline Data Inc

<sup>45</sup> While U.S. restrictions had mostly been lifted by 2023, some of JFK’s key source markets were still in the process of fully reopening borders. For example, Canada did not lift all restrictions until October 2022 and Japan in April 2023.

## Passenger Traffic Trends

Between 2022 and 2023, The Asia-Pacific region showed the fastest rate of JFK passenger traffic growth at 68%. Seat capacity declined 22% from 2022 to 2023 due to expectations of continued demand weakness and continuation of COVID-19 travel restrictions in the region. However, restrictions eased, resulting in the strong passenger traffic growth seen in 2023. Carriers responded in 2024 with a capacity increase of 14%. All other regions (other than U.S./Canada) are projected to see more seat capacity in 2024 than 2023, as shown in Figure 28. The decrease in the U.S./Canada region is largely due to a reduction in domestic seat capacity by 4%. JetBlue accounts for most of the decline, with more than 760,000 fewer domestic scheduled seats in 2024 than 2023.<sup>46</sup>

Figure 28: JFK O&D Passenger Traffic and Seat Capacity Year-on-Year Growth<sup>47</sup>

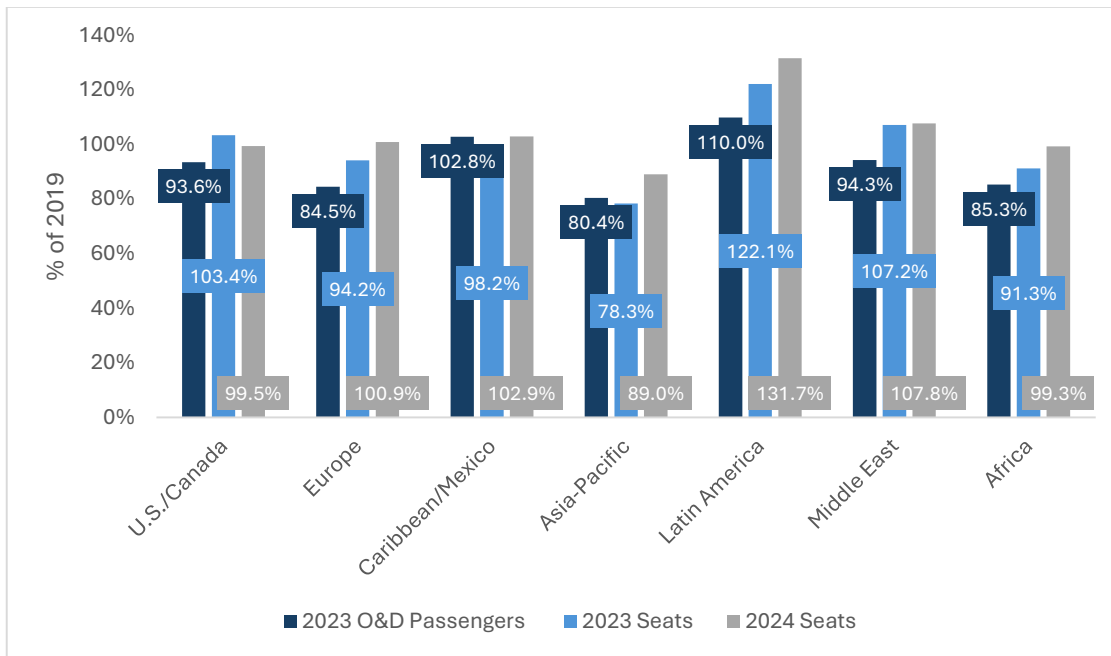


For 2023, JFK enplanements to both Latin America and the Caribbean have recovered to 10% and 3% above 2019 levels, as shown in Figure 29 below. The Caribbean is JFK’s second largest international market behind Europe. If capacity is used as an indicator of demand and airline confidence in the market, enplanements could continue to grow into 2024, with capacity continuing to increase.

<sup>46</sup> Schedules as of 15 May via Airline Data Inc.

<sup>47</sup> Source: Sabre Market Intelligence

Figure 29: JFK O&D Passenger Traffic and Seat Recovery by Global Region<sup>48</sup>



### Passenger Connections

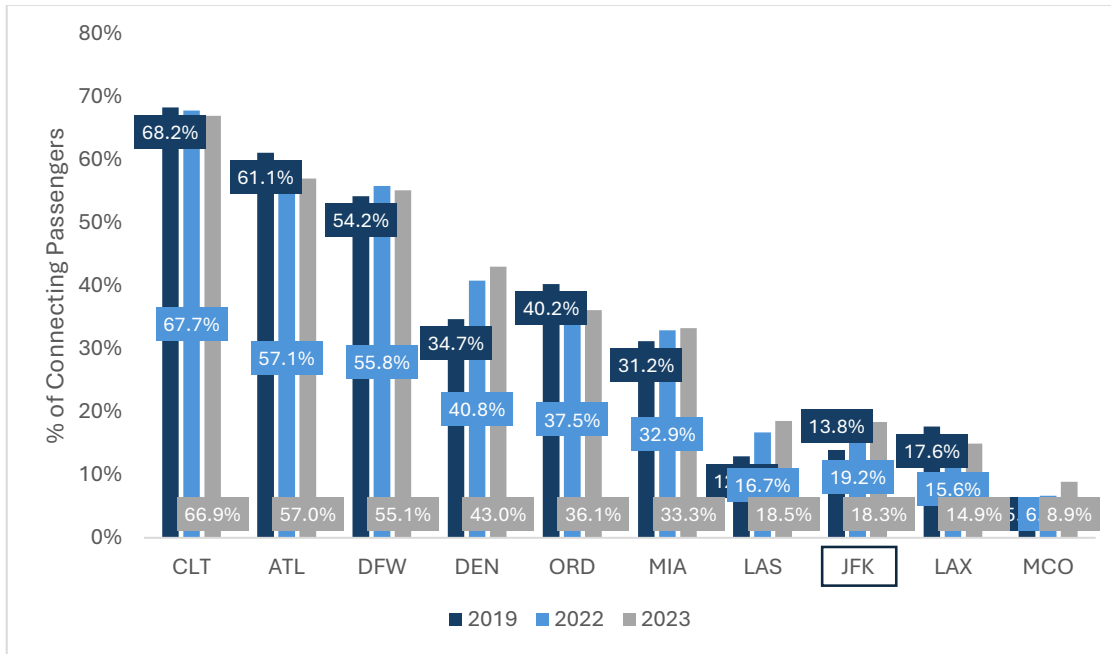
The New York CSA provides a strong and stable source of O&D passenger traffic to JFK. A large O&D market is important to airlines, as it can often feed services more reliably than connecting flows. This is because there can be a lot of competition for connecting passengers, with multiple airports providing connections to the same destination.

In 2023, 18.3% of JFK’s passenger enplanements were connecting, which was the third lowest share among the 10 busiest U.S. airports and as shown in Figure 30. Since 2019, JFK has seen a 4-point increase in its connecting market’s share of total enplaned passengers, although other airports saw similar shifts and JFK’s ranking position did not change.

<sup>48</sup> Source: Sabre Market Intelligence



Figure 30: Share of Connecting Passengers at 10 Busiest U.S. Airports<sup>49</sup>



As shown in Table 7, JFK O&D passenger grew at a greater rate than connecting between 2009 and 2019. More recently, however, the trend has reversed. From 2019 to 2023, JFK O&D passengers declined by 6.7%, while connecting passengers increased by 29.9%. Between 2022 and 2023, however, historic patterns of growth began to resume with O&D passengers once again increasing at a greater rate than connecting passengers with O&D traffic up 14.6% and connecting traffic increasing by 7.8%. The growth in JFK’s connecting passengers, despite the reduction in O&D traffic, is likely due to the importance of maintaining as much service to the New York market as was possible through the COVID-19 pandemic. With the local market weakened, airlines flowed connecting passengers through JFK to keep flights as viable as possible. The focus on preserving service to JFK and the New York market through the crisis demonstrates the airport’s and region’s importance to airline networks.

<sup>49</sup> Source: Enplanements - U.S. DoT-T-100 via Airline Data Inc, O&D Passengers - U.S. DoT O&D Survey via Airline Data Inc

Table 7: JFK Historical O&D and Connecting Passengers<sup>50</sup>

Year	Enplaned Passengers (000)			Percentage Share	
	O&D	Connecting	Total	O&D	Connecting
2000	10,226	5,788	16,014	63.9%	36.1%
2001	11,626	2,828	14,454	80.4%	19.6%
2002	11,486	3,032	14,518	79.1%	20.9%
2003	12,936	2,750	15,686	82.5%	17.5%
2004	15,324	3,246	18,570	82.5%	17.5%
2005	17,225	2,979	20,204	85.3%	14.7%
2006	17,170	3,964	21,134	81.2%	18.8%
2007	18,576	4,835	23,412	79.3%	20.7%
2008	18,578	5,070	23,648	78.6%	21.4%
2009	17,962	4,747	22,709	79.1%	20.9%
2010	18,143	4,797	22,940	79.1%	20.9%
2011	18,845	4,818	23,663	79.6%	20.4%
2012	19,584	4,960	24,544	79.8%	20.2%
2013	19,955	5,082	25,036	79.7%	20.3%
2014	20,188	6,057	26,245	76.9%	23.1%
2015	22,494	5,458	27,953	80.5%	19.5%
2016	23,969	5,301	29,270	81.9%	18.1%
2017	24,683	4,872	29,554	83.5%	16.5%
2018	26,089	4,587	30,676	85.0%	15.0%
2019	26,866	4,309	31,175	86.2%	13.8%
2020	7,149	1,147	8,296	86.2%	13.8%
2021	13,535	1,771	15,306	88.4%	11.6%
2022	21,872	5,192	27,064	80.8%	19.2%
2023	25,063	5,595	30,659	81.7%	18.3%
<b>Compound Annual Growth Rate</b>					
2000–2005	11.0%	-12.4%	4.8%		
2006–2010	1.4%	4.9%	2.1%		
2009–2013	3.0%	6.3%	2.5%		
2009–2019	4.1%	-1.0%	3.2%		
2014–2019	5.9%	-6.6%	3.5%		
<b>Percent Change</b>					
2019–2023	-6.7%	29.9%	-1.7%		

<sup>50</sup> Source: Enplanements - U.S. DoT T-100 via Airline Data Inc, O&D Passengers - U.S. DoT O&D Survey via Airline Data Inc

## International Passenger Traffic

As previously mentioned, JFK is the busiest U.S. gateway for international passenger traffic with 16.3 million international enplanements in 2023. As shown in Table 8, Europe was the largest regional destination for JFK international enplanements in 2023, with a 48.2% share. The Caribbean was second with 18.4%. Both Europe and the Caribbean have strong economic ties with JFK – the Caribbean with outbound tourism and a sizeable diaspora in New York, and Europe with inbound and outbound tourism and business traffic. In addition, JFK’s geographic location enables efficient connections to both regions from each other and North American cities.

Table 8: 2023 World Destinations for JFK International Enplanements<sup>51</sup>

Region	2023		Change in Share (pts)	
	Enplanements (000)	% Share	2019-2023	2022-2023
Europe	6,990	42.8%	-2.5	-0.1
Caribbean	3,007	18.4%	1.0	-1.5
Middle East	1,588	9.7%	1.2	-1.1
Asia	1,388	8.5%	-2.4	3.1
South America	1,209	7.4%	1.1	-0.6
Mexico	874	5.3%	0.1	-0.5
Central America	511	3.1%	1.2	-0.3
Africa	391	2.4%	-0.1	-0.2
Canada	348	2.1%	0.6	1.1
Oceania <sup>52</sup>	38	0.2%	-0.2	0.2

From 2019 to 2023, the regions that have seen the most change in their share of JFK’s total international enplanements have been Europe and Asia, with respective decreases of 2.5pts and 2.4pts. The reintroduction of airline capacity from JFK has been slower to these two regions than elsewhere. In Europe, the reduction in market share is connected to geopolitical issues such as the war in Ukraine and the slower return of business travel relative to leisure. Since March 2022, Russian flights have been banned from U.S. airspace. In 2019, Russia accounted for 4% of JFK to Europe enplanements, representing 280,000 passengers. In 2023 there was no discernable Russian traffic. Also, airlines are prohibited from using Russian airspace (at least for North American flights), which negatively impacts some routings to Europe and other regions, while making other flights unworkable from either an operational or commercial perspective. The second greatest decrease in European enplanements came from the UK, although it still accounts for 28% of JFK’s European traffic (same share as 2019), saw a reduction of 153,000 enplanements between 2019 and 2023. One significant cause for the decline is the relatively slow return of business travel.

<sup>51</sup> Source: U.S. DoT T-100 via Airline Data Inc. Regions as defined by Airline Data Inc

<sup>52</sup> Oceania includes Australia, New Zealand, and their Pacific Islands

In Asia, the overall reduction in market share is due to the relatively slow return of enplaned passengers to China. In 2023, excluding China, enplaned passengers between Asia and JFK were up 1.5% vs 2019.

The slow growth to China is likely connected to the delayed reopening of the Chinese border following the COVID-19 pandemic and capacity restrictions imposed by the U.S. and Chinese governments. For 2019 to 2023, JFK to China enplaned passengers were down by 90%. In 2024, capacity remains 80% below 2019 levels. On March 26, 2020, the U.S. Department of Transportation (DoT) banned all scheduled services operated by Chinese airlines in response to a ban on U.S. airlines imposed by the Chinese Aviation Authority (CAAC). While borders are now open, capacity remains limited with a cap on the number of U.S.-China flights. At the end of March 2024, the DoT agreed to raise its cap on U.S.-China flights from 35 weekly roundtrip flights to 50. By comparison, in 2019 there were an average of 45 weekly roundtrip flights to China from JFK alone. As of 2024, there are currently an average of eight weekly flights scheduled (up from four in 2023).<sup>53</sup>

### JFK's Busiest International Markets

In 2023, the 20 busiest international passenger markets from JFK, ranked by O&D passengers, accounted for 52% of the airport's international total, which is down 3pts from 2022 but a similar share to 2019. The 20 international routes with the most O&D traffic at JFK are shown in Table 9.

---

<sup>53</sup> Source: Enplanements - U.S. DoT T-100 via Airline Data Inc, Schedules - Airline Data Inc. Regions as defined by Airline Data Inc.

Table 9: Busiest JFK International O&D Markets, 2023<sup>54</sup>

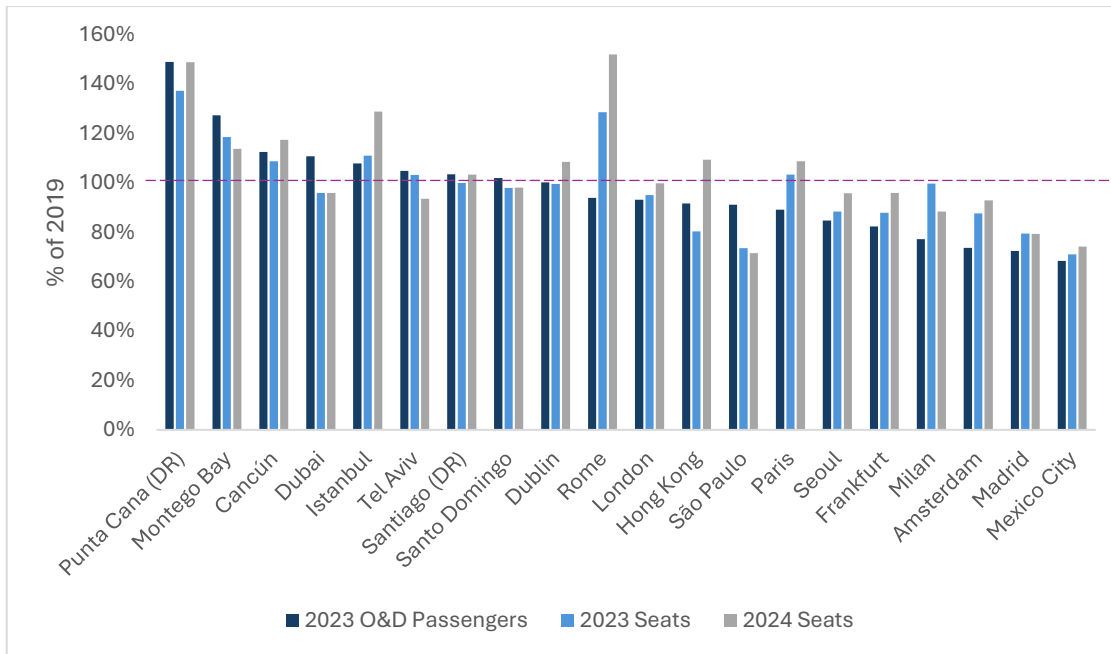
Rank	Market	O&D Passengers (000)	% of JFK Int'l O&Ds	% Change		Air Miles from JFK	Avg. Daily Scheduled Nonstop Departures	Number of Airlines Providing Nonstop Service
				(2023 vs 2019)	(2023 vs 2022)			
1	London	1,434	10.0%	-6.9%	34.7%	3,459	24	6
2	Paris	699	4.9%	-10.9%	11.9%	3,633	10	5
3	Santiago (DR)	485	3.4%	3.4%	12.7%	1,470	9	2
4	Santo Domingo	439	3.1%	2.0%	5.9%	1,549	9	2
5	Cancún	340	2.4%	12.5%	5.9%	1,555	6	3
6	Mexico City	328	2.3%	-31.7%	15.1%	2,090	6	4
7	Madrid	317	2.2%	-27.6%	8.6%	3,590	4	4
8	Dubai	313	2.2%	10.7%	16.1%	6,849	2	1
9	Seoul	301	2.1%	-15.3%	58.2%	6,906	3	2
10	Milan	288	2.0%	-22.8%	26.1%	3,993	5	5
11	Frankfurt	288	2.0%	-17.7%	13.7%	3,855	4	4
12	Tel Aviv	271	1.9%	4.8%	-2.8%	5,677	4	3
13	Rome	270	1.9%	-6.1%	34.2%	4,274	6	4
14	Amsterdam	264	1.8%	-26.3%	16.4%	3,644	5	3
15	Punta Cana	264	1.8%	48.8%	13.0%	1,554	5	3
16	Montego Bay	258	1.8%	27.3%	14.6%	1,545	5	4
17	Istanbul	257	1.8%	7.9%	1.2%	4,999	3	1
18	Dublin	234	1.6%	0.1%	8.4%	3,180	3	2
19	Hong Kong	214	1.5%	-8.4%	349.2%	8,070	2	1
20	São Paulo	203	1.4%	-8.9%	44.1%	4,745	3	3
<b>Top 20 Markets</b>		<b>7,465</b>	<b>52.0%</b>				<b>118</b>	
Other Markets		6,892	48.0%				123	
<b>Total</b>		<b>14,357</b>	<b>100%</b>				<b>241</b>	

In general, business travel has seen a slower return to 2019 levels than leisure, a trend that is reflected in the markets on the list of JFK's busiest international destinations. From 2019 to 2023, leisure destinations have seen the greatest rates of growth, with the largest percentage increase in enplanements in Punta Cana (+49%), Montego Bay (+27%), and Cancún (+12%), as shown in Figure 31.

<sup>54</sup> Source: Departing Passengers - U.S. DoT O&D Survey via Airline Data, Schedules - Airline Data Inc

Looking at 2024, capacity has increased significantly to Rome, Hong Kong, and Istanbul. Both Hong Kong and Istanbul are major hubs, although tourism in Hong Kong (globally and not just from JFK) has declined considerably over the past few years while Istanbul’s tourism has grown. Among the busiest 20 international markets, capacity to hub airports is projected to increase 7% over 2023 while capacity to non-hub airports is expected to grow by 3%.

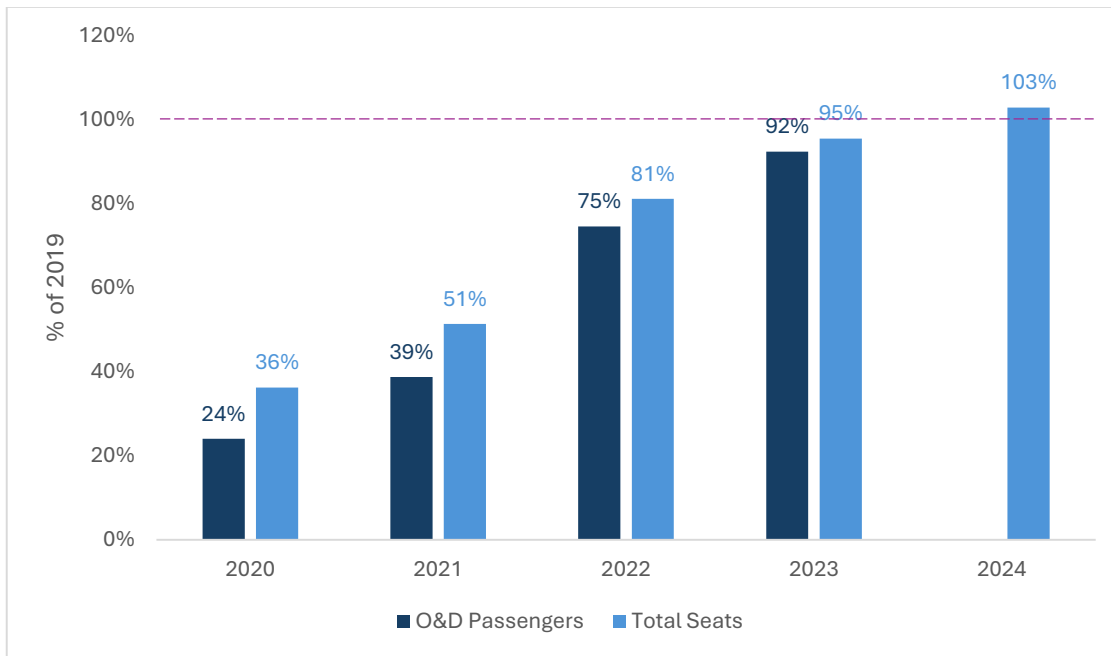
Figure 31: Growth in Seats and O&D Passengers to JFK's Busiest International Destinations<sup>55</sup>



In 2023, international O&D passengers increased 23.8% over 2022 and had recovered to 92% of 2019 levels. International capacity is projected to recover to 2019 levels in 2024 with annual seats expected to be 2.8% higher than 2019 and 7.7% above 2023, as shown in Figure 32.

<sup>55</sup> Source: Departing Passengers - U.S. DoT O&D Survey via Airline Data, Schedules - Airline Data Inc

Figure 32: JFK International Seats and O&D Passengers



### Domestic Passenger Traffic

In 2023, there were 14.3 million domestic enplanements at JFK, which was 46.7% of JFK’s total enplanements. Domestic enplanements in 2023 increased 2.5% over 2022 and were 1.1% above 2019, as shown in Table 10 and Figure 33. In 2023, the 20 busiest domestic O&D passenger markets accounted for 75.2% of the airport’s total annual domestic O&D passengers, which is 1.1pts lower than 2022 and 0.3pts lower than 2019.

Table 10: Busiest JFK Domestic O&D Markets, 2023<sup>56</sup>

Rank	Market	O&D Passengers (000)	% of JFK Domestic O&Ds	% Change		Air Miles from JFK	Avg. Daily Scheduled Nonstop Departures	Number of Airlines Providing Nonstop Service
				(2023 vs 2019)	(2023 vs 2022)			
1	Los Angeles <sup>57</sup>	1,358	12.7%	-24.9%	1.2%	2,464	31	7
2	Miami <sup>58</sup>	1,087	10.2%	21.8%	-8.0%	1,081	27	5
3	San Francisco <sup>59</sup>	890	8.3%	-17.4%	5.2%	2,583	21	5
4	Orlando	592	5.5%	-1.5%	0.6%	944	13	2
5	San Juan	412	3.9%	4.0%	10.6%	1,598	9	2
6	Las Vegas	408	3.8%	-13.2%	3.2%	2,248	8	4
7	Seattle	365	3.4%	-6.5%	11.2%	2,422	9	3
8	San Diego	321	3.0%	13.3%	4.7%	2,446	7	3
9	Atlanta	312	2.9%	7.4%	1.8%	760	10	2
10	Phoenix	306	2.9%	-4.1%	15.3%	2,153	7	3
11	Austin	288	2.7%	10.8%	9.0%	1,521	7	3
12	Tampa	261	2.4%	-0.8%	-3.6%	1,005	6	2
13	West Palm Beach	259	2.4%	9.8%	-1.3%	1,028	6	2
14	Salt Lake City	234	2.2%	-3.2%	2.7%	1,990	6	2
15	Raleigh/Durham	200	1.9%	44.2%	18.9%	427	13	3
16	Chicago <sup>60</sup>	168	1.6%	-15.5%	15.2%	740	7	3
17	Denver	161	1.5%	-11.5%	15.2%	1,626	4	2
18	Fort Myers	145	1.4%	15.7%	-1.0%	1,074	3	2
19	Buffalo	141	1.3%	-24.3%	30.2%	301	8	2
20	Jacksonville	138	1.3%	-20.2%	15.2%	828	5	2
<b>Top 20 Markets</b>		<b>8,046</b>	<b>75.2%</b>				<b>209</b>	
Other Markets		2,660	24.8%				157	
<b>Total</b>		<b>10,706</b>	<b>100.0%</b>				<b>366</b>	

<sup>56</sup> Source: Departing Passengers - U.S. DoT O&D Survey via Airline Data, Schedules - Airline Data Inc

<sup>57</sup> Los Angeles includes BUR, LAX, LGB, ONT, SNA

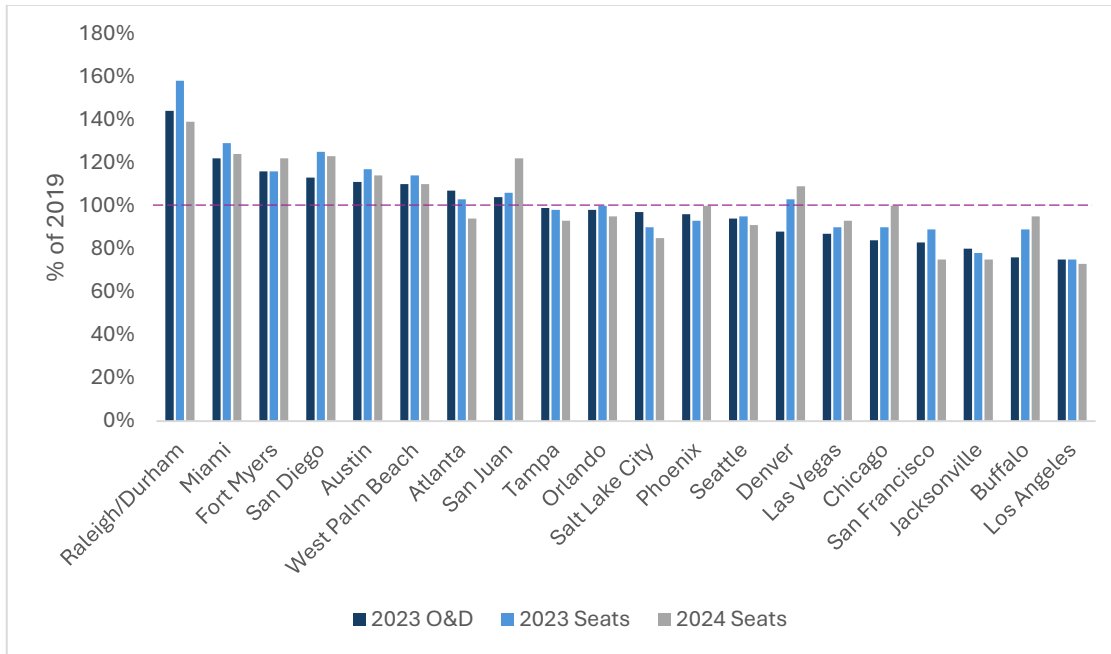
<sup>58</sup> Miami includes FLL, MIA

<sup>59</sup> San Francisco includes OAK, SFO, SJC

<sup>60</sup> Chicago includes MDW, ORD



Figure 33: JFK Domestic Seats and O&D Passengers<sup>61</sup>



JFK’s domestic O&D passenger demand has grown the most to Midwest and Southern markets where passenger volumes increased 24.1% and 2.6% respectively from 2019, as shown in Table 11. During the same period, the Northeast and West have seen declines of 14.6% and 14.8% respectively from 2019.

Capacity in 2024 is projected to decline from 2023 in all domestic regions other than the Northeast. Current schedules indicate that the West is the only domestic region with seat capacity remaining below 2019 levels. The reduction is a result of airline network consolidation. American’s and JetBlue’s 2024 seats to the West are projected to both decrease 25% from 2019, and Alaska’s seats are expected to decrease 20%. Delta is the only carrier at JFK increasing seats to the region, including 2% growth from 2023 to 2024. As a result of all of these changes, one million fewer seats are projected to fly from JFK to the West in 2024 than 2019. Most of the reduction is due to decreases in capacity between JFK and domestic hub airports. JFK domestic capacity to hub airports in 2024 is projected to be down 4% from 2019 while capacity to non-hub airports is expected to increase by 6%.

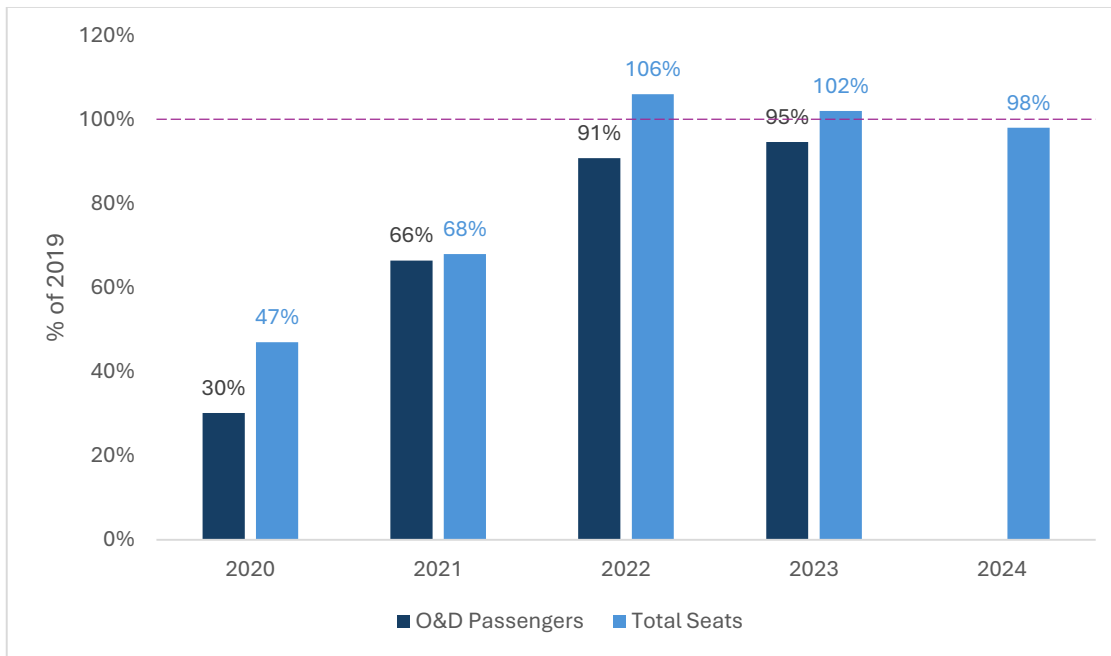
<sup>61</sup> Source: Departing Passengers - U.S. DoT O&D Survey via Airline Data, Schedules - Airline Data Inc

Table 11:Regional Growth in Domestic Seats and O&D Passengers<sup>62</sup>

Region	% of 2019		
	2023 O&D Passengers	2023 Seats	2024 Projected Seats
Midwest	124%	142%	136%
South	103%	108%	104%
Northwest	85%	111%	121%
West	85%	88%	85%

In 2023, domestic O&D traffic was 5% lower than 2019 while seat capacity increased 2%. For 2024, domestic seats are projected to be 2% lower than 2019, as shown in Figure 34.

Figure 34: JFK Domestic Seats and O&D Passengers<sup>63</sup>



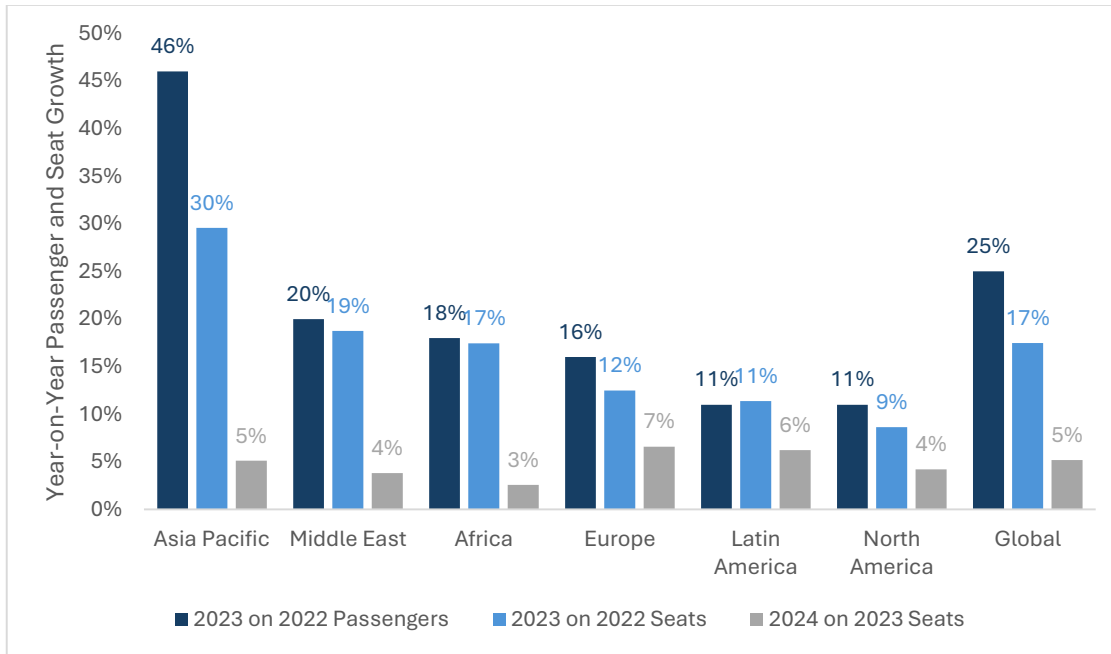
## Global Traffic

In 2023, global O&D passenger traffic recovered to 97% of 2019 levels. With 5.7 billion seats projected in 2024, global capacity is expected to only be 2.0 million seats below 2019, as shown in Figure 35. Global O&D passengers grew by 25% from 2022 to 2023 as borders continued to re-open. Global scheduled seats increased 17% from 2022 to 2023 and are projected to increase by 5% from 2023 to 2024.

<sup>62</sup> Source: Sabre Market Intelligence

<sup>63</sup> Source: Departing Passengers - U.S. DoT O&D Survey via Airline Data, Schedules - Airline Data Inc

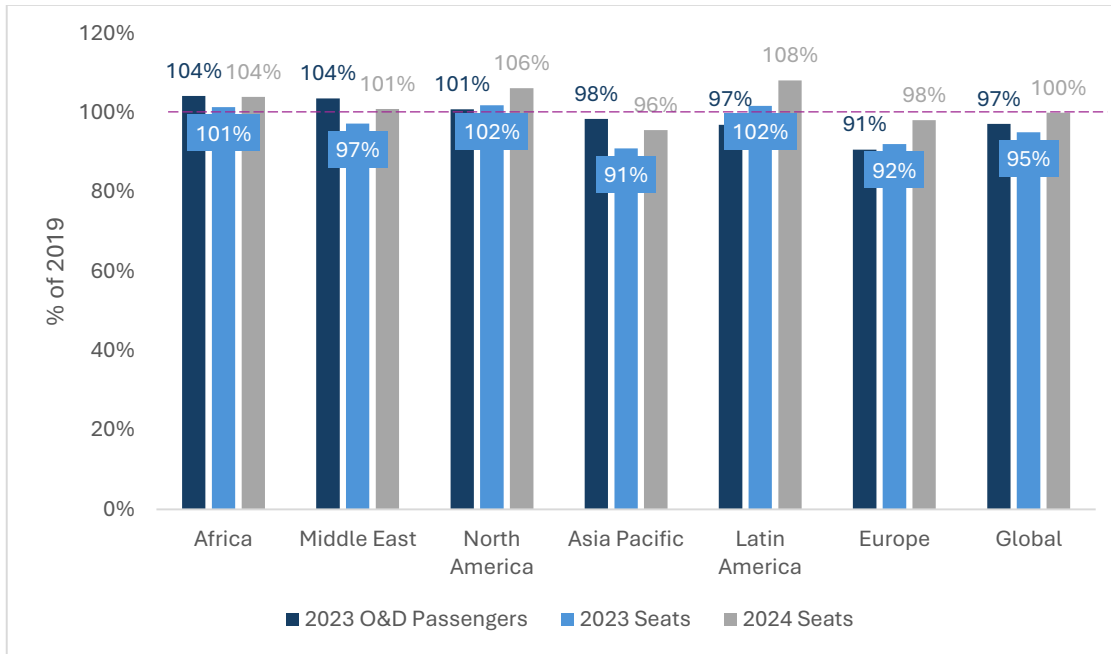
Figure 35: Global Year-on-Year Growth in Passengers and Seats<sup>64</sup>



North America accounted for 44% of JFK’s O&D passengers in 2023. In terms of O&D passenger recovery to 2019 levels, North America ranked third among all global regions in 2023 as shown in Figure 36. Projecting ahead to 2024, North American seat capacity is expected to be 6% higher than 2019, which is a 4.2% increase from 2023.

<sup>64</sup> Source: Sabre Market Intelligence

Figure 36: Global Passenger Traffic and Seat Capacity Recovery by Region<sup>65</sup>

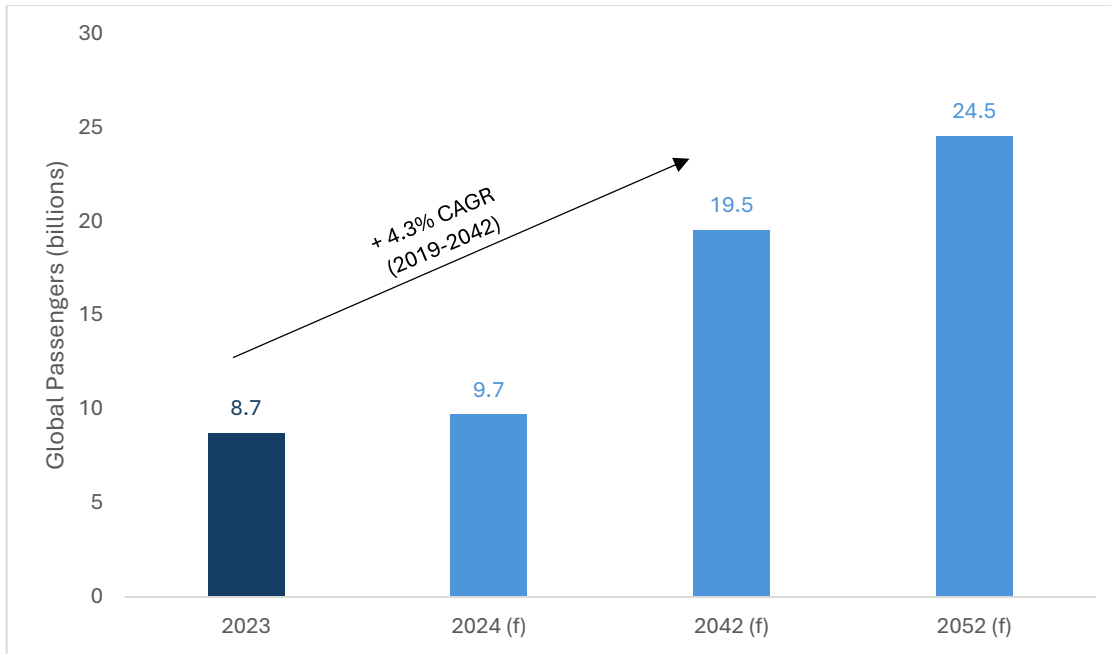


### Global Forecasts

Most major worldwide passenger traffic forecasts show global passenger traffic returning to 2019 levels in 2024. The Airports Council International (ACI) forecast shows global passenger traffic growing at a CAGR of 4.3% from 2023 to 2042 with annual global passengers doubling over the next 20 years, as shown in Figure 37.

<sup>65</sup> Source: Sabre Market Intelligence

Figure 37: Long-Term Global Passenger Traffic Forecast<sup>66</sup>



By 2042, ACI predicts China will replace the U.S. as the world’s busiest market by total passengers (domestic and international). It also anticipates that emerging markets (namely Indonesia, Türkiye, and Thailand) will grow enough to move into the rankings of the busiest global aviation markets. The forecasted progression of the busiest global aviation markets is shown in Table 12.

Table 12: Forecasted 10 Busiest Markets by Total Passenger Traffic<sup>67</sup>

Rank	2023	2042 (f)	2052 (f)
1	United States	China	China
2	China	United States	United States
3	India	India	India
4	Spain	Indonesia	Indonesia
5	United Kingdom	Spain	Spain
6	Japan	Japan	Türkiye
7	Türkiye	Türkiye	Japan
8	Brazil	United Kingdom	United Kingdom
9	Italy	Russia	Thailand
10	Germany	Thailand	Vietnam

<sup>66</sup> Source: ACI World Airport Traffic Forecasts 2023-2052 (published 2024) (f=forecast)

<sup>67</sup> Source: ACI World Airport Traffic Forecasts 2023-2052 (published 2024) (f=forecast)

## Airline Service Trends

Key Takeaways	
1	JFK is served by a wide range of airlines in terms of business model and geography, without being dominated by a single airline or global alliance.
2	The 73 airlines flying from JFK in June 2024 exceeds the 71 airlines operating in June 2019. Airlines that stopped operating at JFK because of the COVID-19 pandemic have been replaced.
3	JFK’s large and diverse airline population enables connections within the major airline alliances and partnerships with otherwise unaffiliated airlines, which in turn supports positive route economics.
4	JFK is, and will remain, significantly important to JetBlue despite the overturning of the Northeast Alliance partnership with American airlines and merger with Spirit Airlines.

### Airlines Serving JFK

The number of scheduled airlines serving JFK now exceeds pre-pandemic levels, with 73 in June 2024 compared to 71 in June 2019, as shown in Table 13. The number and diversity of the airlines indicates the importance of JFK to airlines globally.

Table 13: Regional Distribution of Scheduled Passenger Airlines Serving JFK<sup>68</sup>

Region of Airline Base	Number of Scheduled Airlines Serving JFK	
	June 2019	June 2024
Europe	27	25
Asia-Pacific	16	16
Middle East	7	7
U.S. Other	3	6
Africa	5	5
Latin America	5	5
Canada	1	3
U.S. Network	2	2
Mexico	3	2
Caribbean	2	2
<b>Total</b>	<b>71</b>	<b>73</b>

<sup>68</sup> Source: Marketing airline schedules via Airline Data Inc. as of 29 May 2024

Fourteen airlines have initiated service to JFK since the COVID-19 pandemic, as shown in Table 14. New domestic entrants include Cape Air, Frontier Airlines, and Sun Country Airlines. New international carriers are represented by both recently launched airlines like ITA Airways and Norse Atlantic, as well as more established new entrants such as Air New Zealand, Azores Airlines, Air Senegal, Condor, HiSky, Air Canada, Flair, and VivaAerobus.

The airlines that have not returned to JFK have either ceased operations entirely (such as Thomas Cook, Air Itlay, XL Airways, and Interjet) or have changed their business model. Norwegian Air Shuttle, for example, stopped operating its longhaul flights even though the airline remains in business. Aeroflot has not returned because of sanctions related to the ongoing conflict in Ukraine.

Asia Pacific carriers have largely returned, although restrictions that remain in place limit some destinations and frequencies. Hainan Airlines is a notable exception as it has yet to restart JFK service. And although Aerlineas Argentinas is currently operating at JFK, the airline plans to suspend service in August 2024 citing profitability issues.<sup>69</sup>

---

<sup>69</sup> Aerlineas Argentina's exit is reflected in the ASM forecast.

Table 14: JFK Scheduled Passenger Airlines<sup>70</sup>

U.S. Flag Airlines		
Network	Other	
American Airlines	Alaska Airlines	Hawaiian Airlines
Delta Air Lines	Cape Air	JetBlue Airways
	Frontier Airlines	Sun Country Airlines
Foreign Flag Airlines		
Europe	Asia Pacific	Mexico
Aer Lingus	Air China	Aeromexico
Aeroflot	Air India	Interjet *
Air Europa	Air New Zealand	VivaAerobus
Air France	All Nippon Airways	Volaris
Air Italy *	Asiana Airlines	Latin America
Air Serbia	Cathay Pacific Airways	Aerolineas Argentinas
Austrian Airlines	China Airlines	Avianca
Azerbaijan Airlines	China Eastern Airlines	Copa
Azores Airlines	China Southern Airlines	LATAM
British Airways	Eva Airways	Canada
Brussels Airlines	Hainan Airlines	Air Canada
Condor	Japan Airlines	Flair Airlines
Eurowings	Korean Air	Westjet
Finnair	Philippine Airlines	Caribbean
HiSky	Qantas Airways	Caribbean Airlines
Iberia	Singapore Airlines	Cayman Airways
Icelandair	Xiamen Airlines	
ITA Airways	Middle East	
KLM	El Al Israel Airlines	
LOT Polish Airlines	Emirates	
Lufthansa	Etihad Airways	
Neos Air	Kuwait Airways	
Norse Atlantic Airways	Qatar Airways	
Norwegian Air Shuttle	Royal Jordanian	
SAS	Saudi Arabian Airlines	
Swiss	Africa	
TAP Portugal	Air Senegal	Legend
Thomas Cook Airlines *	Egyptair	June 2019 only
Turkish Airlines	Ethiopian Airlines	June 2024 only
Uzbekistan Airways	Kenya Airways	June 2019 & June 2024
Virgin Atlantic Airways	Royal Air Maroc	* Airline ceased operations
XL Airways *	South African Airways	

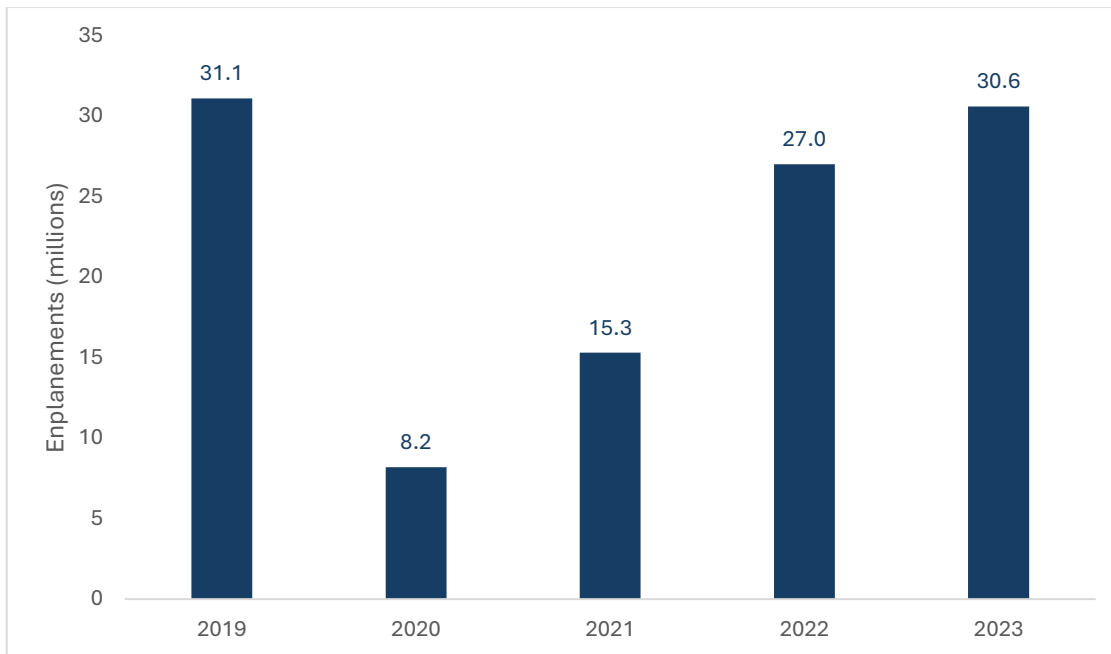
<sup>70</sup> Source: Marketing airline schedules via Airline Data Inc. as of 29 May 2024



## Airline Traffic

As described earlier, JFK passenger enplanements were close to 2019 levels, as shown in Figure 28.

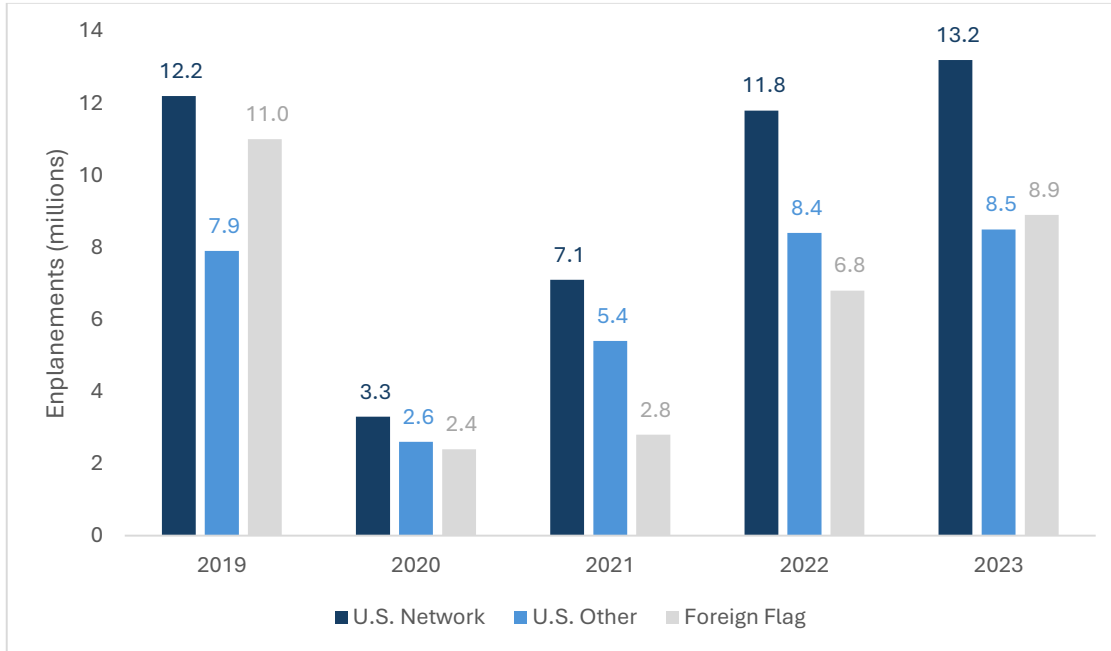
Figure 38: JFK Annual Passenger Enplanements<sup>71</sup>



U.S. airlines have led in the recovery because of the early relaxation of domestic travel restrictions, as shown in Figure 39 and Table 15. International airlines’ passenger activities in JFK are still recovering given the slower pace of travel restriction relaxation globally, but the trend toward a full recovery is evident. Market growth will drive additional passenger demand at JFK. Key airline trends such as growing connectivity within their own networks and through an increasing number of airline partnership structures, new and more efficient aircraft types, and growing competition will continue to maintain a strong interest in JFK among international airlines.

<sup>71</sup> Source: U.S. DoT T-100 via Airline Data Inc

Figure 39: JFK Annual Passenger Enplanements - U.S. and Foreign Flag Airlines<sup>72</sup>



<sup>72</sup> Source: U.S. DoT T-100 via Airline Data Inc.

Table 15: JFK Enplaned Passengers by Airline<sup>73</sup>

	Enplaned Passengers (000s)		% of JFK Total	
	2019	2023	2019	2023
<b>U.S. Flag Airlines</b>				
<b>U.S. Network</b>				
American	3,174	3,945	10.2%	12.9%
Delta	8,982	9,247	28.9%	30.2%
<b>U.S. Other</b>				
Alaska	732	627	2.4%	2.0%
JetBlue	7,189	7,859	23.1%	25.6%
Sun Country	2	23		
Others	2	12		
<b>Total U.S. Flag</b>	<b>20,081</b>	<b>21,713</b>	<b>64.6%</b>	<b>70.8%</b>
<b>Foreign Flag Airlines</b>				
Aer Lingus	242	317	0.8%	1.0%
Air France	573	520	1.8%	1.7%
Avianca	293	273	0.9%	0.9%
British Airways	689	642	2.2%	2.1%
Cathay Pacific	286	228	0.9%	0.7%
Emirates	452	414	1.5%	1.4%
Iberia	233	279	0.7%	0.9%
ITA	306	255	1.0%	0.8%
KLM	238	236	0.8%	0.8%
Korean Air	246	231	0.8%	0.8%
Lufthansa	317	239	1.0%	0.8%
Norwegian	784	-	2.5%	0.0%
Qatar	190	225	0.6%	0.7%
Swiss	205	204	0.7%	0.7%
Turkish Airlines	259	275	0.8%	0.9%
Virgin Atlantic	593	512	1.9%	1.7%
Other Foreign Flag	5,118	4,086	16.5%	13.3%
<b>Total Foreign Flag</b>	<b>11,024</b>	<b>8,936</b>	<b>35.4%</b>	<b>29.2%</b>
<b>JFK Total</b>	<b>31,105</b>	<b>30,649</b>	<b>100.0%</b>	<b>100.0%</b>

<sup>73</sup> Source: U.S. DoT T-100 via Airline Data Inc. Data is provided for Marketing Airlines, which includes operating affiliates flying under their brand.

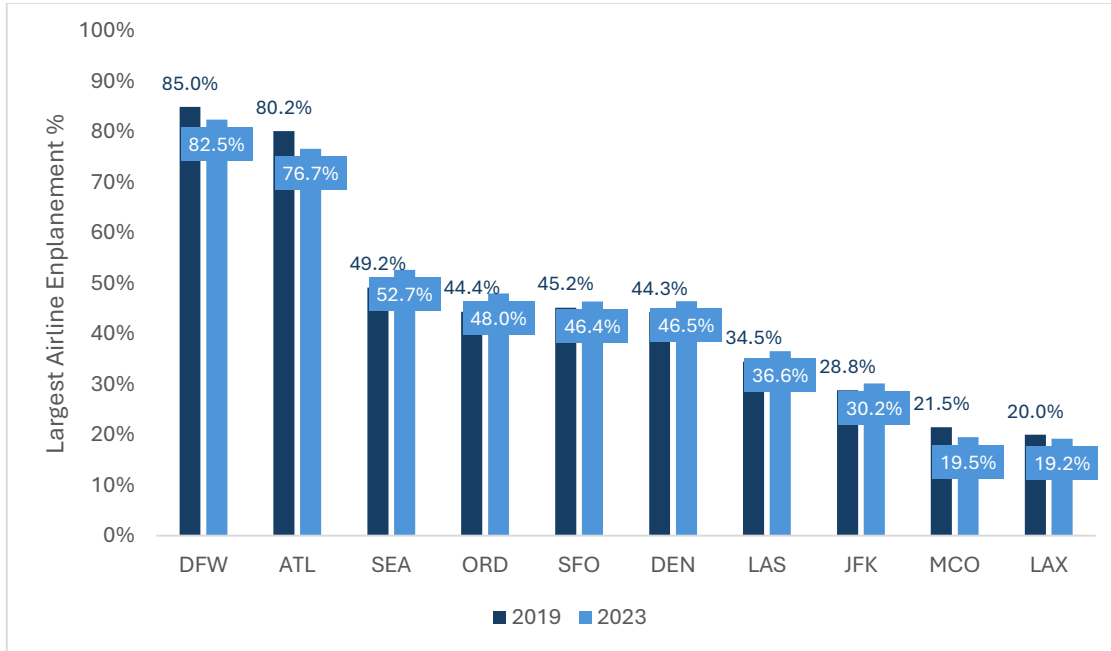
## JFK Not Dependent on Single Carrier

JFK is served by a diverse set of airlines with no one dominant carrier. Delta and JetBlue are JFK's largest operators, with a combined 55.8% share of enplanements in 2023. Delta's and JetBlue's combined enplanement share has increased by almost 6pts since 2019. The U.S. flag carrier share of JFK's total enplanements was 70.8% in 2023, which is 6% higher than 2019. The share of foreign flag enplanements at JFK decreased from 35.4% in 2019 to 29.2% in 2023, with international demand recovery still lagging.

Although Delta held the largest share of JFK enplanements in 2023 with 30.2%, its JFK share is significantly below the airline's 76.7% share at its other major hub at ATL, as shown in Figure 40 below. American's nearly 13% share of JFK enplanements is also quite low compared to its other large hub at DFW with 82.5%. Similarly, United has a much higher share of traffic where it is the dominant carrier including 48% at ORD, 46.4% at SFO, and 46.5% at DEN. JFK's size and importance drives a level of interest from a wide range of carriers that makes dominance by any one of them very difficult – especially when additional slots are needed to acquire additional share. The diverse carrier base provides a hedge against major service disruptions caused by a single carrier's exit or cessation of operations.

In the same vein, there is no overreliance on any foreign flag carrier at JFK. Most are major hub carriers in their respective regions that provide a multitude of connections globally. If one were to exit JFK, its traffic would likely be redistributed over other international connecting hubs if not available to another airline to fly nonstop.

Figure 40: Share of Enplaned Passengers Carried by Primary Airline at 10 Busiest U.S. Hubs<sup>74</sup>



Airport's Primary Airline										
	DFW	ATL	SEA	ORD	SFO	DEN	LAS	JFK	MCO	LAX
<b>2019</b>	AA	DL	AS	UA	UA	UA	WN	DL	WN	AA
<b>2023</b>	AA	DL	AS	UA	UA	UA	WN	DL	WN	DL

## Airline Alliances

JFK is served by all three major alliance groupings without being dominated by any one of them. In fact, the three major alliances group do not even encompass most of the operations at JFK. The airport is a significant hub for Delta and its SkyTeam partners, as they have carried the most passengers out of JFK over the past five years, through the pandemic and into the recovery. American Airlines and its Oneworld alliance partners also have a significant presence at JFK. Table 16 shows the global alliance membership of JFK's airlines.

<sup>74</sup> Source: U.S. DoT T-100 via Airline Data Inc.

Table 16: JFK Airlines by Global Alliance<sup>75</sup>

SkyTeam	Oneworld	Star Alliance	Unaffiliated
Aerolineas Argentinas	Aer Lingus	Air Canada	Air Senegal
Aeromexico	Alaska Airlines	Air China	Air Serbia
Air Europa	American Airlines	Air India	Azores Airlines
Air France	British Airways	Air New Zealand	Cape Air
China Airlines	Cathay Pacific Airways	All Nippon Airways	Caribbean Airlines
China Eastern Airlines	Finnair	Asiana Airlines	Cayman Airways
China Southern Airlines	Iberia	Austrian Airlines	Condor
Delta Air Lines	Japan Airlines	Avianca	EL AL
ITA Airways	Qantas Airways	Brussels Airlines	Emirates
Kenya Airways	Qatar Airways	Copa	Etihad Airways
KLM	Royal Air Maroc	Egyptair	Flair Airlines
Korean Air	Royal Jordanian Airlines	Ethiopian Airlines	Hawaiian Airlines
Saudi Arabian Airlines		Eva Airways	Icelandair
Virgin Atlantic Airways		LOT	JetBlue Airways
		Lufthansa	Kuwait Airways
		Philippine Airlines	LATAM
		SAS	Norse Atlantic Airways
		Singapore Airlines	Sun Country Airlines
		Swiss	Uzbekistan Airways
		TAP	Viva Aerobus
		Turkish Airlines	Volaris
			WestJet

Even with the presence of all three large alliance groups at JFK, airlines that are not part of these three groups still represent a significant volume of passenger traffic and are led in terms of passenger volume by JetBlue, as shown in Figure 41 and Table 17.

<sup>75</sup> Source: Airline Data Inc.

Figure 41: JFK Passenger Enplanements by Airline Alliance<sup>76</sup>

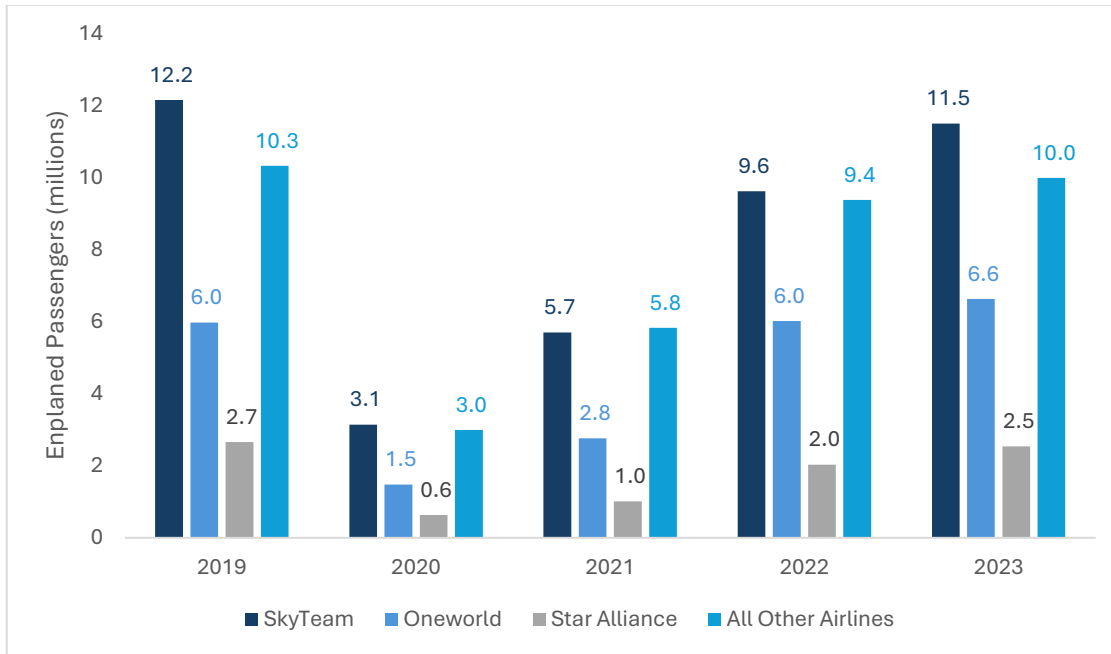


Table 17: JFK Airline Enplanement Share by Global Alliance<sup>77</sup>

Carrier	Alliance	Enplanement Share	
		2019	2023
Delta Air Lines	SkyTeam	28.8%	30.1%
JetBlue Airways		23.0%	25.6%
American Airlines	Oneworld	10.2%	12.9%
<b>Subtotal for Top 3</b>		<b>62.0%</b>	<b>68.6%</b>
Other		38.0%	31.4%
<b>Total</b>		<b>100.0%</b>	<b>100.0%</b>
SkyTeam		37.8%	37.1%
Oneworld		19.2%	21.6%
Star Alliance		8.1%	7.8%
Unaffiliated		34.8%	33.4%
<b>Total</b>		<b>100.0%</b>	<b>100.0%</b>

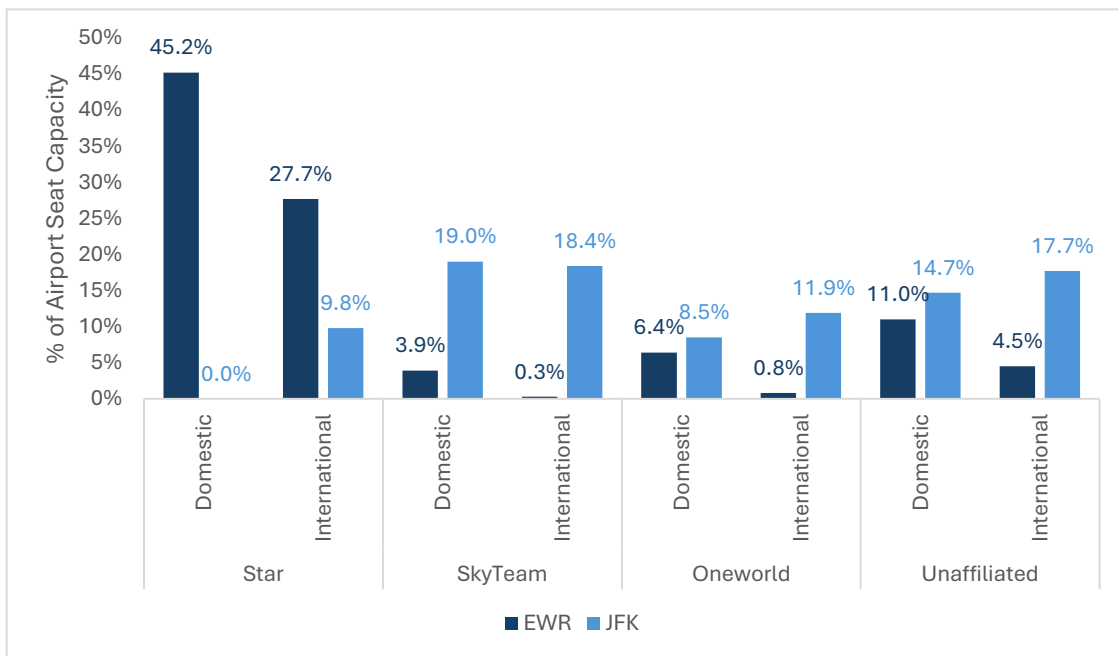
<sup>76</sup> Source: U.S. DoT T-100 via Airline Data Inc

<sup>77</sup> Source: U.S. DoT T-100 via Airline Data Inc

JetBlue mostly operates in Terminal 5 at JFK. The proximity and relative ease of connections between Terminal 6 and Terminal 5 makes Terminal 6 an attractive option of existing carriers and new entrants to JFK who are not part of the three major airline alliance groups. These unaffiliated carriers represent a 33.4% share of JFK enplanements.

EWR is a major hub for United Airlines and its Star Alliance partners. Despite JFK not being the primary airport for Star Alliance carriers, JFK’s importance is demonstrated by several key Star Alliance airlines, such as Lufthansa and Air Canada, providing JFK service to their home hubs. Star Alliance carriers account for 73% of EWR’s seat capacity and approximately 10% of seats at JFK in June 2024. Figure 42 shows how much more diverse JFK’s air carrier base is compared to EWR’s. In June 2024, unaffiliated carriers at EWR make up only 16% of the overall capacity, whereas their share at JFK is double that of EWR, at 32%.

Figure 42: JFK and EWR Seat Capacity by Airline Alliance<sup>78</sup>



### Joint Ventures

An airline joint venture (JV) is an advanced form of codesharing where the airline partners share the revenues and costs. It typically requires extensive government approval and allows the partners to coordinate pricing and schedules along with the financial arrangement. From a customer’s standpoint, the concept is meant to provide a seamless travel experience and multiple flight

<sup>78</sup> Source: Scheduled seat capacity at JFK and EWR in June 2024 as of 5 June 2024 via Airline Data Inc



options. However, some consider JV’s as anti-competitive as they essentially reduces or eliminates competition in the market, which can adversely affect fares.

There are major transatlantic and transpacific JVs involving U.S. flag carriers that are aligned with each of the three major global airline alliances. The most relevant ones in the case of JFK are the transatlantic JVs listed in Table 18. The presence of the transatlantic JV service at JFK minimizes the risk to any one carrier in the case of drastic capacity changes by another carrier, since capacity is one of the joint decisions regulated by the JV partners.

Table 18: Transatlantic JVs with Airlines Operating at JFK<sup>79</sup>

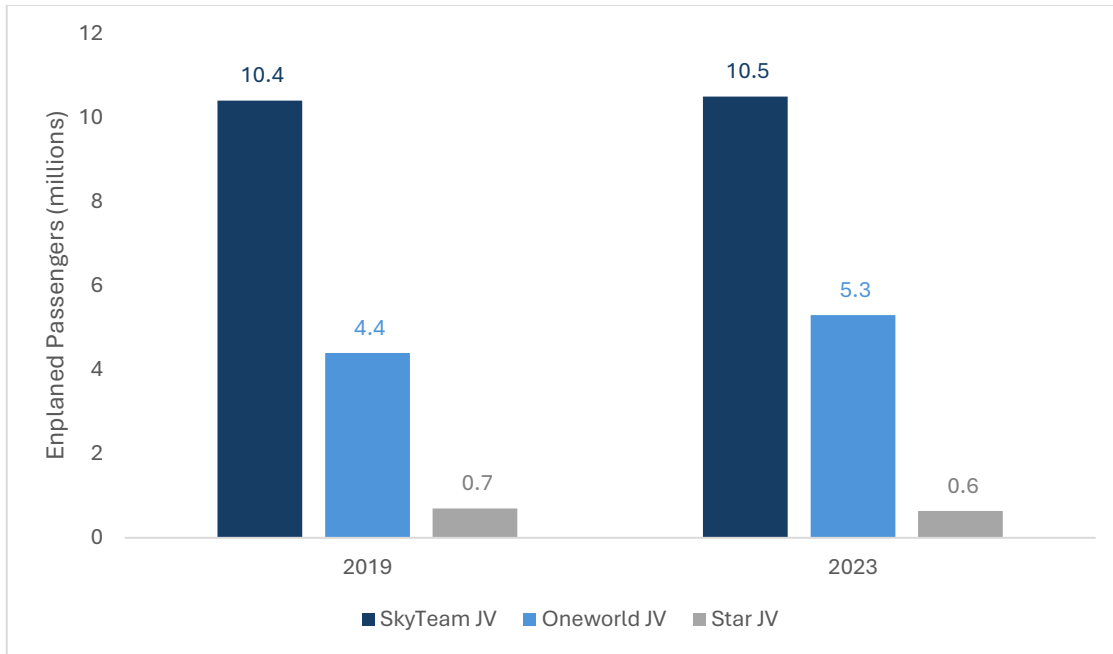
SkyTeam	Oneworld	Star Alliance
Air France	Aer Lingus	Air Canada
Delta Air Lines	American Airlines	Austrian Airlines
KLM	British Airways	Brussels Airlines
Virgin Atlantic Airways	Finnair	Lufthansa
	Iberia	Swiss

In 2023, the Delta/Air France/KLM JV carried approximately 34% of JFK’s enplanements. Air France/KLM purchasing an equity stake in SAS and that carrier’s plans to join SkyTeam later in 2024 has fueled speculation that SAS will join the SkyTeam JV and will also likely mean a shift in its New York capacity from EWR to JFK.

The JFK passenger enplanements for each alliance’s JV is shown in Figure 43.

<sup>79</sup> Source: U.S. DoT List of Active Antitrust Immunized Alliances

Figure 43: JFK Enplanements by Transatlantic JV<sup>80</sup>

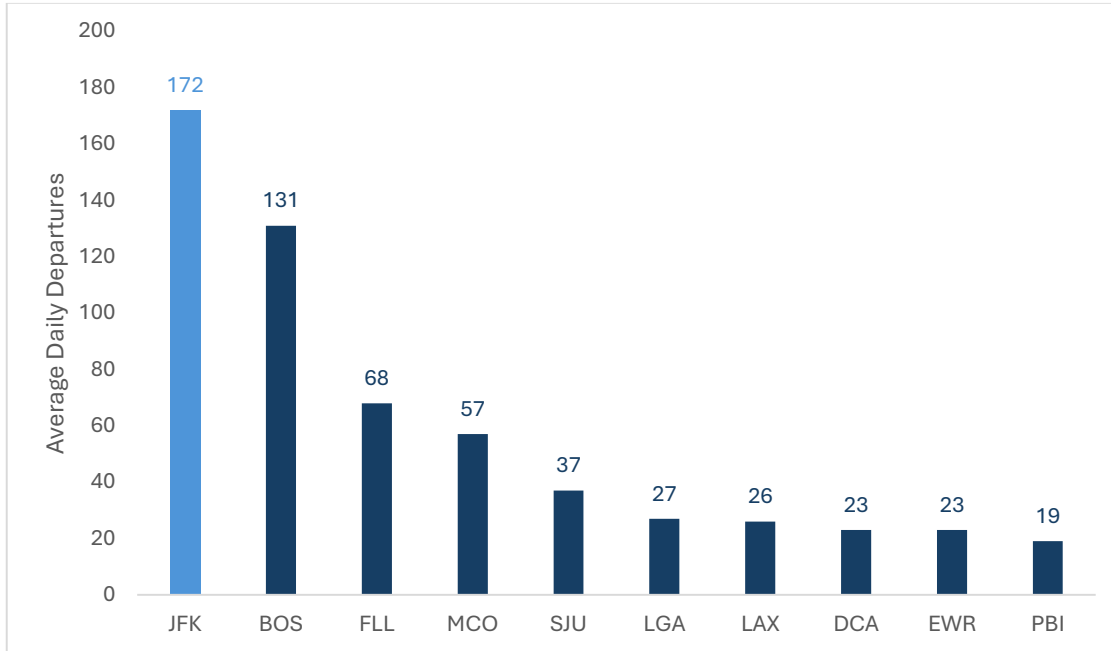


### JetBlue Partnerships

JFK is the key hub for JetBlue. It is the largest airport operation in the airline’s network (as shown in Figure 44), and JetBlue is the second largest airline at JFK for passenger enplanements. JetBlue’s 2023 passenger enplanements exceeded 2019 passenger enplanements by 9.3%, although upcoming capacity reductions will decrease near-term traffic levels.

<sup>80</sup> Source: U.S. DoT T-100 via Airline Data Inc

Figure 44: JetBlue's Largest Focus Cities by Average Daily Departures, June-August 2024<sup>81</sup>



Although it is not part of an airline alliance group, JetBlue has a global range of airline partners – some are global alliance members while others are unaffiliated. All of JetBlue’s partner airlines continue to provide service into JFK post-pandemic except for South African Airways, which did not return due to severe financial challenges. JetBlue’s airline partners are listed in Table 19.

Table 19: JetBlue Airline Partners<sup>82</sup>

Loyalty Program Partners	Codeshare Partners
Etihad Airways	Aer Lingus
Hawaiian Airlines	Air Serbia
Icelandair	Cape Air
JSX	El Al
Qatar Airways	Porter
Silver Airways	Turkish Airlines
Singapore Airlines	
South African Airways	

<sup>81</sup> Source: Schedules valid as of 6 June 2024 via Airline Data Inc.

<sup>82</sup> Source: JetBlue

In May 2024, JetBlue announced that it is seeking a codeshare with British Airways that would allow the two airlines to significantly expand their networks in the U.S. and Europe. Interestingly, British Airways is tightly aligned with another major U.S. flag carrier, American, in a transatlantic JV.

JetBlue and American used to be closely aligned in a partnership named the Northeast Alliance (NEA) through which they were able to codeshare, coordinate schedules, share revenue, and provide reciprocal loyalty program benefits across their operations in Boston and New York - including JFK. In May 2023, the partnership was terminated, as the U.S. Department of Justice prevailed in a lawsuit, making the case that the NEA was anti-competitive.

JetBlue's recovery from the COVID-19 pandemic and growth at JFK as a result of the NEA initiated in 2021 can be seen in Figure 45, where JetBlue's JFK seat capacity in 2022 exceeded 2019 levels. Subsequently, growth stalled and capacity reduced because of a series of internal and external factors. Among the primary capacity growth disruptors at JetBlue were the dissolution of the NEA with American, the failed merger with Spirit Airlines (also because of a U.S. government lawsuit), and ongoing issues with Pratt and Whitney engine issues<sup>83</sup>. These issues, along with rising costs, debt, and increasing competition in non-core parts of its network (such as the West Coast) led to a loss of \$310 million in 2023<sup>84</sup>. Among the carrier's plans to return to profitability are the reduction in flights and capacity in 2024 as well as revenue-improving and cost-reduction initiatives being initiated by the airline's new leadership team. JetBlue's published schedules show a system-wide reduction of 7.2% of departures, 5.4% of departing seats, and 3.2% of ASMs from calendar year 2023 to calendar year 2024.<sup>85</sup>

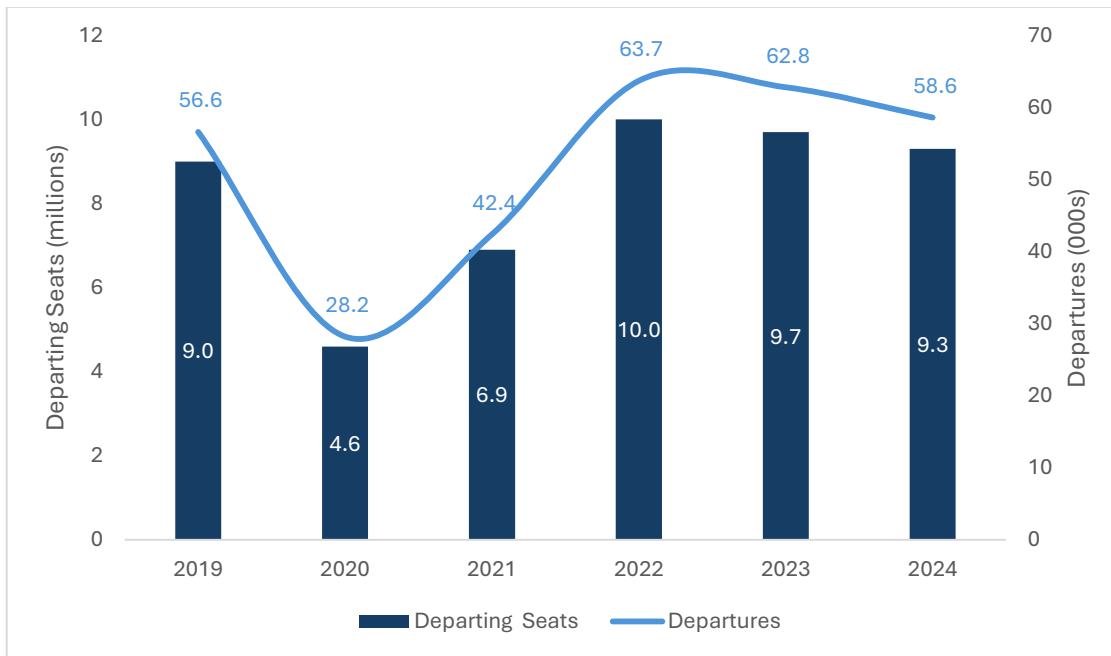
---

<sup>83</sup> Some of JetBlue's aircraft have the Pratt and Whitney geared turbofan (GTF) engine that is currently subject to long and earlier-than-expected engine maintenance checks, grounding dozens of JetBlue's aircraft. The problem affects the same aircraft at other airlines, which has strained Pratt and Whitney's ability to produce replacement parts and maintenance facility ability to service the aircraft affected around the world.

<sup>84</sup> Source: JetBlue 2023 annual results.

<sup>85</sup> Source: Sabre Market Intelligence as of 30 July 2024.

Figure 45: JetBlue JFK Departures and Seats<sup>86</sup>



Despite these changes, New York remains a strategic focus for JetBlue. The carrier can take advantage of the slot waivers in effect through the summer 2025 scheduling season to reduce capacity while preserving its key slots for future use.

### Regional Distribution of JFK Capacity

JFK continues to be a significant global gateway with a wide range of domestic and international destinations: 69 domestic and 117 international unique markets as of June 2024. While service in some international markets has been cancelled since the COVID-19 pandemic, they have been replaced by new ones. Although 13 destinations that operated in 2019 are no longer scheduled for 2024, they have been replaced with 14 new destinations, constituting a net gain of one new route. Table 20 shows the JFK seat capacity deployed to global regions and Table 21 lists JFK’s international nonstop destinations.

Travel restrictions in Asia – and in particular, China – were stricter and more prolonged than the rest of the world. Chengdu and Chongqing are two Chinese destinations that have not returned post-pandemic. Chinese provincial governments provided hefty airline incentives to boost direct connectivity of the Chinese third-tier cities to key global markets pre-pandemic. If this funding becomes available again, and capacity restrictions are further relaxed, JFK may see service to additional points in China reinstated.

<sup>86</sup> Source: Scheduled departures and departing seats as of 7 June 2024 via Airline Data Inc.

Table 20: Regional Distribution of JFK Seat Capacity (000s), June 2024<sup>87</sup>

Destination			% Change vs		Change % vs	
	2019	2023	2019	2024	2019	
United States	1,476	1,455	-1.4%	1,425	-3.4%	
Europe	859	816	-4.9%	928	8.0%	
Caribbean	338	304	-10.0%	329	-2.6%	
Far East	202	149	-26.0%	172	-14.6%	
Middle East	155	159	2.9%	163	5.0%	
Central America	123	118	-4.4%	141	14.2%	
South America	101	117	15.9%	126	24.6%	
Africa	49	47	-3.2%	49	0.6%	
Canada	34	40	16.1%	40	15.6%	
Australasia & Oceania	-	5	0.0%	8	0.0%	
<b>Total</b>	<b>3,336</b>	<b>3,211</b>	<b>-3.7%</b>	<b>3,379</b>	<b>1.3%</b>	

<sup>87</sup> Source: Scheduled departing seats as of 7 June 2024 via Airline Data Inc

Table 21: JFK International Scheduled Nonstop Destinations<sup>88</sup>

<b>Africa</b>	Nassau, Bahamas	Kiev, Ukraine	Cartagena, Colombia
Abidjan, Côte d'Ivoire	Philipsburg, Sint Maarten	Lisbon, Portugal	Georgetown, Guyana
Accra, Ghana	Port au Prince, Haiti	London, UK	Guayaquil, Ecuador
Cairo, Egypt	Port of Spain, Trinidad and Tobago	Madrid, Spain	Lima, Peru
Casablanca, Morocco	Providenciales, Turks and Caicos	Málaga, Spain	Medellín, Colombia
Dakar, Senegal	Puerto Plata, Dominican Republic	Manchester, UK	Pereira, Colombia
Johannesburg, South Africa	Punta Cana, Dominican Republic	Milan, Italy	Santiago, Chile
Lagos, Nigeria	Santiago, Dominican Republic	Moscow, Russia	São Paulo, Brazil
Nairobi, Kenya	Santo Domingo, Dominican Rep.	Munich, Germany	
<b>Asia</b>	Saint Kitts, Saint Kitts and Nevis	Naples, Italy	
Beijing, China	Saint Lucia, Saint Lucia	Nice, France	June 2019 Only
Bombay, India	Saint Vincent	Oslo, Norway	June 2024 Only
Chengdu, China	St. George's, Grenada	Palermo, Italy	June 2019 & June 2024
Chongqing, China	Tobago, Trinidad and Tobago	Paris, France	
Delhi, India	<b>Central America</b>	Ponta Delgada, Portugal	
Fuzhou, China	Belize City, Belize	Porto, Portugal	
Guangzhou, China	Guatemala City, Guatemala	Prague, Czech Republic	
Hong Kong, Hong Kong	Liberia, Costa Rica	Reykjavik, Iceland	
Manila, Philippines	Panama City, Panama Republic	<b>Mexico</b>	
Seoul, Republic of Korea	San Jose, Costa Rica	Cancún, Mexico	
Shanghai, China	San Pedro Sula, Honduras	Guadalajara, Mexico	
Taipei, Taiwan	San Salvador, El Salvador	Mexico City, Mexico	
Tashkent, Uzbekistan	<b>Europe</b>	Monterrey, Mexico	
Tokyo, Japan	Amsterdam, Netherlands	San Jose Del Cabo, Mexico	
<b>Canada</b>	Athens, Greece	Tulum, Mexico	
Calgary, AB	Barcelona, Spain	<b>Middle East</b>	
Montreal, QC	Belgrade, Serbia	Abu Dhabi, UAE	
Toronto, ON	Berlin, Germany	Amman, Jordan	
Vancouver, BC	Brussels, Belgium	Baku, Azerbaijan	
<b>Caribbean</b>	Bucharest, Romania	Doha, Qatar	
Antigua, Antigua and Barbuda	Budapest, Hungary	Dubai, UAE	
Aruba, Aruba	Copenhagen, Denmark	Istanbul, Turkey	
Barbados/Bridgetown, Barbados	Dublin, Ireland	Jeddah, Saudi Arabia	
Curacao, Netherlands Antilles	Düsseldorf, Germany	Kuwait, Kuwait	
Grand Cayman, Cayman Islands	Edinburgh, UK	Riyadh, Saudi Arabia	
Hamilton, Bermuda	Frankfurt, Germany	Tel Aviv, Israel	
Havana, Cuba	Funchal, Portugal	<b>South America</b>	
Kingston, Jamaica	Geneva, Switzerland	Bogotá, Colombia	
La Romana, Dominican Republic	Glasgow, Scotland, UK	Buenos Aires, Argentina	
Montego Bay, Jamaica	Helsinki, Finland	Cali, Colombia	

<sup>88</sup> Source: JFK scheduled service as of 7 June 2024 via Airline Data Inc.



JFK continues to see strong from global airlines. JFK, as one of the primary international gateways into the U.S., holds significant international prestige and gives many international travelers their first impression of the U.S. It continues to play an important role in tourism, business, and international relations.



## Airfare Revenue

Key Takeaways	
1	Airfares are high at JFK. In 2023, the airport generated the second largest amount of leg base fare revenue among U.S. airports, despite being ranked sixth busiest in passenger enplanements. JFK has consistently generated higher airfares than most of its competitors. It also held these rankings in 2019 and 2022.
2	JFK leg base fare revenue increased 23% from 2022 to 2023 and were 12% higher than 2019. In both years, the percentage increase was above the average for other U.S. airports
3	JFK's routes produce high yields, which improves the airport's attractiveness to airlines. In 2023, JFK had the second highest yield among U.S. airports. <sup>89</sup>
4	JFK has consistently been among the 10 highest revenue generating airports in the route networks of its three largest airlines: Delta, JetBlue, and American.
5	JFK had the highest premium base fare revenue as a percentage of total revenue among the busiest U.S. airports in 2023. The ability to attract premium fare passengers is a key driver of route profitability.

The strong demand for travel to and from New York, coupled with the capacity scarcity created by slot controls, New York CSA demographics, and airline mix enables airlines to generate relatively high fares at JFK. High yields help enable the profitability needed for airlines to continue growing their capacity.

### Fare Revenue at Large Airports

Positioned as a major international hub airport and gateway to the New York CSA, JFK is not only an important component of airline route networks, but also plays a significant role in their revenue generation. In 2023, JFK's airlines generated \$11.5 billion in leg base fare revenues<sup>90</sup> from outbound passengers, which is 23% higher than 2022 and 12% higher than 2019. While JFK is the sixth busiest U.S. airport in terms of annual passenger enplanements, it ranked second in passenger leg base fare revenues in 2023, as shown in Table 22.

<sup>89</sup> On a stage-length adjusted basis

<sup>90</sup> Leg base fare revenue is the revenue generated by the airline on the specific segment flown and exclusive of taxes, fees, and ancillary charges. The approach includes an allocation of fare revenue to each segment of a connecting itinerary to most appropriately apply fare revenues to a departing airport or individual flight segment.

Table 22: Leg Base Fare Revenue at Busiest U.S. Airports, 2023<sup>91</sup>

Revenue Rank	Enplaned Passenger Rank	Airport	Leg Base Fare Revenue (billions)	Leg Base Fare Revenue/Enplaned Passengers
1	4	Los Angeles (LAX)	\$ 12	\$ 322
<b>2</b>	<b>6</b>	<b>New York (JFK)</b>	<b>\$ 11</b>	<b>\$ 373</b>
3	1	Atlanta (ATL)	\$ 10	\$ 196
4	13	San Francisco (SFO)	\$ 9	\$ 373
5	2	Dallas (DFW)	\$ 9	\$ 221
6	5	Chicago (ORD)	\$ 9	\$ 241
7	12	Newark (EWR)	\$ 7	\$ 296
8	3	Denver (DEN)	\$ 6	\$ 172
9	10	Miami (MIA)	\$ 6	\$ 246
10	11	Seattle (SEA)	\$ 6	\$ 225
		<b>Average</b>	<b>-</b>	<b>\$ 258</b>

An analysis of the leg base fare revenues from the 10 busiest U.S. airports in 2023 shows that JFK passengers contribute an above average amount to airline revenues. Across the 10 busiest airports, the average base fare revenue per enplaned passenger was \$258, while the average at JFK was 45% higher at \$373. JFK’s average base fare of \$373 was tied with that of San Francisco. JFK’s revenue rank is higher than that of enplaned passengers due to the airlines’ ability to charge higher airfares at JFK, which is an important factor behind the potential for strong route profitability. For example, LAX generated 4% more base fare revenue than JFK but required an additional 21% more passengers to do so. This demonstrates the value of JFK’s passengers to airline revenues.

Although there was no overall change in JFK’s position among the 10 busiest airports by base fare revenue in 2023, JFK’s base fare increased at an above average rate. From 2022 to 2023, JFK leg base fare revenue increased by 23%, while the average across the 10 busiest U.S. airports was 18%, as shown in Table 23. In the same period, JFK’s leg base fare revenue per enplaned passenger increased by 9%, while the average across the 10 busiest U.S. airports was 7%. JFK’s increase in leg base fare revenue was driven by higher airfares rather than just additional passengers.

<sup>91</sup> Source: Enplanement ranking – U.S. DoTT-100 via Airline Data Inc, Leg base fare revenue and average leg base fare – Sabre Market Intelligence. Data is one-way outbound and includes both domestic and international revenue.

Table 23: Year-on-Year Change in Leg Base Fare Revenue at Busiest U.S. Airports by Revenue, 2022 to 2023<sup>92</sup>

Change in Revenue Rank	Change in Enplaned Passenger Rank	Airport	Change in Leg Base Fare Revenue	Change in Leg Base Fare Revenue/Enplaned Passengers
-	1	Los Angeles (LAX)	20%	6%
-	-	<b>New York (JFK)</b>	<b>23%</b>	<b>9%</b>
-	-	Atlanta (ATL)	14%	2%
2	1	San Francisco (SFO)	29%	9%
-	-	Dallas (DFW)	17%	6%
-2	-1	Chicago (ORD)	15%	7%
-	1	Newark (EWR)	22%	9%
-	-	Denver (DEN)	11%	1%
-	-1	Miami (MIA)	16%	11%
-	-	Seattle (SEA)	14%	3%
		<b>Average</b>	<b>18%</b>	<b>7%</b>

Comparing 2023 to 2019, JFK maintained its position as the second largest U.S. airport by leg base fare revenue with above average increases and leg base fare revenue per enplaned passenger, as shown in Table 24. For 2023, JFK passengers decreased 2% on 2019 and leg base fare revenues increased by 12%, which resulted in a 14% increase in average leg base fare revenue per enplaned passenger.

<sup>92</sup> Source: Enplanement ranking – U.S. DoTT-100 via Airline Data Inc, Leg base fare revenue and average leg base fare – Sabre Market Intelligence. Data is one-way outbound from JFK

Table 24: Change in Leg Base Fare Revenue at 10 Busiest U.S. Airports by Revenue, 2019 to 2023<sup>93</sup>

Change in Revenue Rank	Change in Enplaned Passenger Rank	Airport	Change in Leg Base Fare Revenue	Change in Leg Base Fare Revenue/Enplaned Passengers
-	-2	Los Angeles (LAX)	4%	22%
-	-	<b>New York (JFK)</b>	<b>12%</b>	<b>14%</b>
-	-	Atlanta (ATL)	7%	13%
-	-6	San Francisco (SFO)	7%	23%
2	2	Dallas (DFW)	37%	26%
-1	-2	Chicago (ORD)	7%	22%
-1	-	Newark (EWR)	12%	7%
-	2	Denver (DEN)	29%	17%
2	5	Miami (MIA)	36%	18%
-	-3	Seattle (SEA)	18%	20%
		<b>Average</b>	<b>4%</b>	<b>17%</b>

### Average Yield at Large Airports

The unit measurement of base fares is yield, which is the base fare revenue charged per mile (expressed in cents/mile). Unlike average fares, yield provides a measurement of an airline’s revenue-generating ability that takes distance into consideration. Table 25 details the average yields at JFK and the nine other busiest U.S. airports in terms of revenue generation. In 2023, with an average yield of 14.14 cents/mile, JFK was the second highest yielding airport, maintaining its position from 2022 but down from 2019. In 2019, JFK was the highest yielding airport among the 10 busiest U.S. airports. Since yield is a function of flight length, the yield figures have been adjusted to the average flight length at JFK to enable a consistent comparison between airports.

In 2023, airlines at JFK improved their yields both year-on-year and compared to 2019. When comparing 2023 to 2022, JFK’s average yield increased 2% while its average flight distance increased by 13%, indicating strong revenue-generating potential at the airport. Compared to 2019, in 2023 JFK’s average yield was up 20% while the average flight distance had reduced by 6%.

<sup>93</sup> Source: Enplanement ranking – U.S. DoTT-100 via Airline Data Inc, Leg base fare revenue and average leg base fare – Sabre Market Intelligence. Data is one-way outbound from JFK.

Table 25: Stage Length Adjusted Yield at 10 Busiest U.S. Airports by Revenue<sup>94</sup>

Airport	2023		2022		2019	
	Adjusted Leg Yield (cent/mile)	Avg. Flight Distance (mile)	Adjusted Leg Yield (cent/mile)	Avg. Flight Distance (mile)	Adjusted Leg Yield (cent/mile)	Avg. Flight Distance (mile)
San Francisco (SFO)	14.53	2,072	14.62	1,815	11.60	1,992
<b>New York (JFK)</b>	<b>14.14</b>	<b>2,204</b>	<b>13.90</b>	<b>1,945</b>	<b>11.74</b>	<b>2,341</b>
Newark (EWR)	13.53	1,553	13.21	1,486	11.86	1,620
Los Angeles (LAX)	12.96	1,988	13.34	1,758	10.20	2,060
Chicago (ORD)	12.52	1,199	12.46	1,141	9.98	1,140
Dallas (DFW)	12.39	1,006	12.59	966	9.46	1,014
Miami (MIA)	12.11	1,364	11.54	1,266	9.58	1,476
Atlanta (ATL)	11.95	894	12.78	831	10.56	867
Seattle (SEA)	10.86	1,350	11.51	1,260	9.14	1,303
Denver (DEN)	10.37	849	11.19	866	8.71	897

JFK generates significant amounts of revenue for each of its largest market share airlines: JetBlue, Delta, and American. In 2019, 2022, and 2023, the airport has been an important and consistent source of revenue for the three carriers, as shown in Table 26. In 2023, JFK maintained its position among JetBlue’s and American’s highest revenue generating airports. At Delta, in 2023 JFK became the airline’s second largest revenue generating airport by overtaking MSP, one of Delta’s major hubs with a dominating presence in the market, thus signifying JFK’s increasing importance within the airline’s network and contributor to its profitability.

Table 26: JFK Major Airline Leg Base Fare Revenue Ranking<sup>95</sup>

Airport	JetBlue Revenue Rank			Airport	Delta Revenue Rank			Airport	American Revenue Rank		
	2023	2022	2019		2023	2022	2019		2023	2022	2019
<b>JFK</b>	<b>1</b>	<b>1</b>	<b>1</b>	ATL	1	1	1	DFW	1	1	1
BOS	2	2	2	<b>JFK</b>	<b>2</b>	<b>3</b>	<b>4</b>	CLT	2	2	2
FLL	3	3	3	MSP	3	2	3	MIA	3	3	3
MCO	4	5	4	DTW	4	4	2	ORD	4	4	4
LAX	5	4	5	LAX	5	6	5	PHX	5	5	7
LGA	6	7	14	SLC	6	5	6	PHL	6	6	6
EWR	7	6	7	SEA	7	7	7	LAX	7	7	5
PBI	8	9	8	BOS	8	9	9	<b>JFK</b>	<b>8</b>	<b>8</b>	<b>8</b>
SFO	9	8	6	LGA	9	8	8	DCA	9	9	9
TPA	10	11	13	MCO	10	10	11	LGA	10	11	10

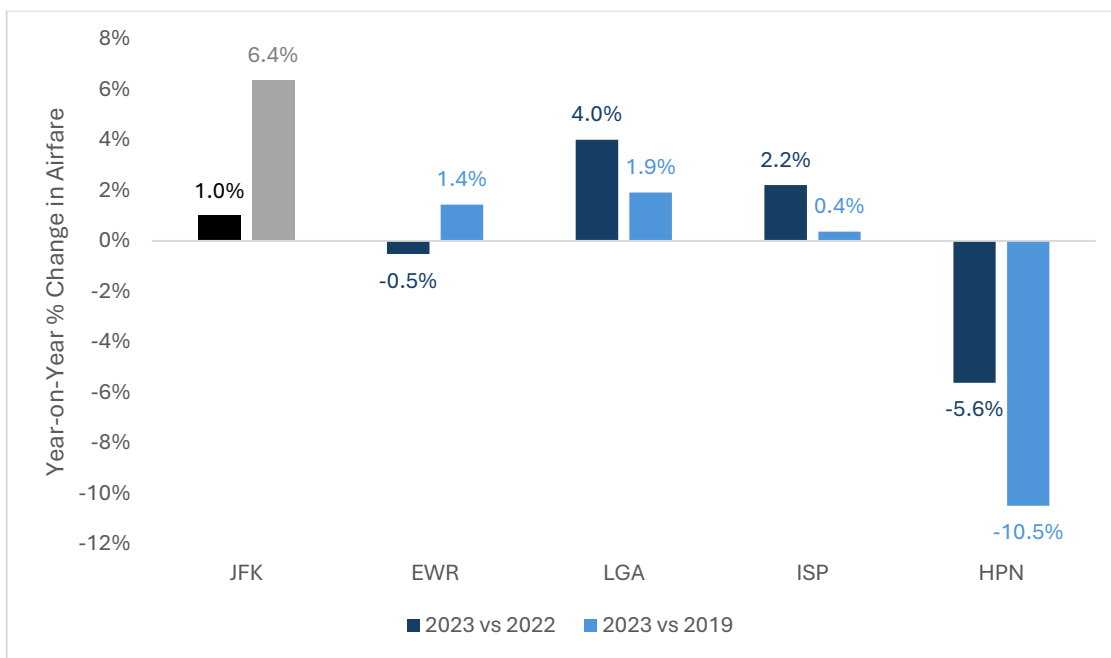
<sup>94</sup> Source: Sabre Market Intelligence. Yield adjusted to JFK average flight distance in each year.

<sup>95</sup> Source: Sabre Market Intelligence

## JFK Airfares

Between 2022 and 2023, the average domestic fare increase across the New York CSA was 0.8%, while JFK’s average domestic fare increased by 1%, as shown in Figure 46. From 2019 to 2023, the average growth in domestic airfares across the New York CSA was 2.7%. The growth was driven by JFK, which saw the largest percentage increase in domestic fares across the four year period at 6.4%

Figure 46: Year-on-Year Growth in Average Domestic, One-Way Fares at New York CSA Airports<sup>96</sup>



The average domestic one-way base fares among the 20 busiest domestic O&D markets from JFK in 2023 are compared in Table 27. At \$227, JFK had the highest average domestic base fare from the New York CSA airport, a position it also held in 2022 and 2019.

<sup>96</sup> Source: Sabre Market Intelligence

Table 27: Comparison of Airfares in JFK's 20 Busiest Domestic O&D Markets, 2023<sup>97</sup>

Rank	O&D Market	JFK Departing O&D Passengers (000s)	Average O&D Distance from JFK (miles)	JFK Share of New York CSA O&D Passengers	Average One-Way Domestic O&D Base Airfare				
					JFK	EWR	LGA	ISP	HPN
1	Los Angeles <sup>98</sup>	1,358	2,458	51.8%	\$ 364	\$ 288	\$ 225	\$ 220	\$ 184
2	Miami <sup>99</sup>	1,087	1,079	28.3%	\$ 161	\$ 153	\$ 153	\$ 91	\$ 164
3	San Francisco <sup>100</sup>	890	2,577	51.6%	\$ 298	\$ 343	\$ 214	\$ 198	\$ 239
4	Orlando	592	944	21.8%	\$ 143	\$ 139	\$ 120	\$ 92	\$ 149
5	San Juan	412	1,598	56.1%	\$ 211	\$ 182	\$ 161	\$ 172	\$ 195
6	Las Vegas	408	2,248	46.3%	\$ 294	\$ 261	\$ 199	\$ 189	\$ 287
7	Seattle	365	2,422	56.1%	\$ 262	\$ 246	\$ 258	\$ 220	\$ 299
8	San Diego	321	2,446	54.9%	\$ 253	\$ 266	\$ 214	\$ 223	\$ 279
9	Atlanta	312	760	17.3%	\$ 163	\$ 153	\$ 155	\$ 138	\$ 236
10	Phoenix	306	2,153	43.8%	\$ 260	\$ 253	\$ 205	\$ 205	\$ 262
11	Austin	288	1,521	47.8%	\$ 215	\$ 191	\$ 169	\$ 194	\$ 208
12	Tampa	261	1,005	22.6%	\$ 142	\$ 155	\$ 142	\$ 79	\$ 148
13	West Palm Beach	259	1,028	19.5%	\$ 160	\$ 185	\$ 181	\$ 144	\$ 188
14	Salt Lake City	234	1,990	59.1%	\$ 295	\$ 272	\$ 223	\$ 237	\$ 288
15	Raleigh/Durham	200	427	29.1%	\$ 129	\$ 134	\$ 141	\$ 92	\$ 149
16	Chicago <sup>101</sup>	167	736	8.9%	\$ 161	\$ 184	\$ 160	\$ 164	\$ 212
17	Denver	161	1,626	17.0%	\$ 189	\$ 231	\$ 186	\$ 190	\$ 212
18	Fort Myers	145	1,074	23.8%	\$ 146	\$ 171	\$ 157	\$ 135	\$ 175
19	Buffalo	143	301	49.8%	\$ 120	\$ 134	\$ 134	\$ 141	\$ 151
20	Jacksonville	138	828	31.0%	\$ 144	\$ 158	\$ 142	\$ 150	\$ 106
<b>JFK Top 20</b>		<b>8,046</b>	<b>1,644</b>	<b>32.7%</b>	<b>\$ 234</b>	<b>\$ 209</b>	<b>\$ 156</b>	<b>108</b>	<b>\$ 179</b>
Other Cities		2,660	1,459	17.5%	\$ 204	\$ 196	\$ 181	\$ 125	\$ 176
<b>Total Domestic</b>		<b>10,706</b>	<b>1,475</b>	<b>26.9%</b>	<b>\$ 227</b>	<b>\$ 204</b>	<b>\$ 169</b>	<b>112</b>	<b>\$ 178</b>

As was the case in 2019, JFK's domestic O&D demand is influenced by the 1,500-mile perimeter rule at LGA. In 2023, 10 of JFK's top 20 domestic markets (by O&D passengers) were over 1,500 miles from the airport (the same number of markets as 2019). In 2023, JFK captured a greater proportion of New York CSA traffic on longer-haul markets than shorter-haul markets. Among JFK's

<sup>97</sup> Source: U.S. DoT O&D Survey via Airline Data Inc, SWF excluded due to low traffic volumes.

<sup>98</sup> Los Angeles includes BUR, LAX, LGB, ONT, SNA

<sup>99</sup> Miami includes FLL, MIA

<sup>100</sup> San Francisco includes OAK, SFO, SJC

<sup>101</sup> Chicago includes MDW, ORD

20 busiest domestic O&D markets that were 1,500 miles or more from JFK, the airport accounted for 48% of the New York CSA traffic; for those that were less than 1,500 miles from JFK, the airport accounted for 22% of New York CSA traffic. For all of the 20 busiest JFK domestic O&D markets, JFK accounted for an average of 27% of New York CSA traffic.

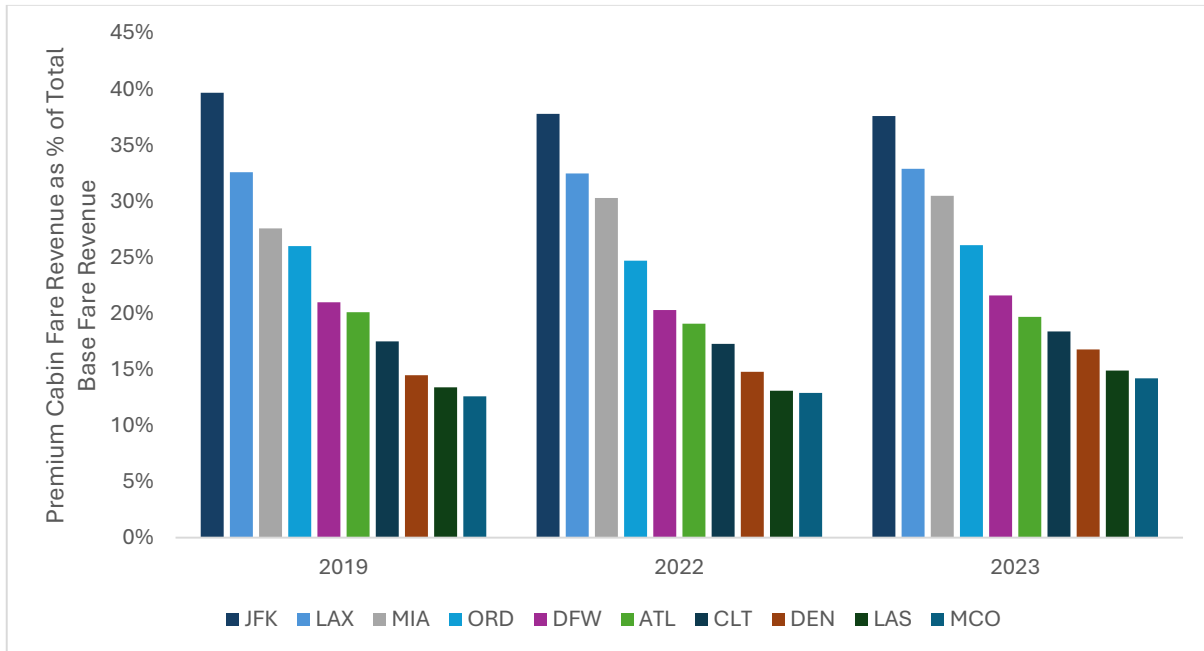
## Premium Passenger Revenue

An important source of airline revenue, and aid to profitability, is the sale of premium cabin seats in business and first class. Routes that can generate strong revenue streams from premium cabin sales are attractive to airlines.

Among the 10 busiest U.S. airports for passenger enplanements in 2023, JFK had the highest percentage of premium cabin base fare revenue, as shown in Figure 47. In 2023, 37.6% of JFK's total base fare revenue was generated from premium cabin passenger fares, which was 0.2pts lower than 2022 and 2.1pts lower than 2019. For 2019 and 2022, JFK also had the highest percentage of premium cabin base fare revenue. The consistency demonstrates JFK's resilience as a market and its importance as a reliable source of revenue to airline route networks.



Figure 47: Premium Cabin Fare Revenue as a Percentage of Total Base Fare Revenue at 10 Busiest U.S. Airports<sup>102</sup>



	JFK	LAX	MIA	ORD	DFW	ATL	CLT	DEN	LAS	MCO
2019	39.7%	32.6%	27.6%	26.0%	21.0%	20.1%	17.5%	14.5%	13.4%	12.6%
2022	37.8%	32.5%	30.3%	24.7%	20.3%	19.1%	17.3%	14.8%	13.1%	12.9%
2023	37.6%	32.9%	30.5%	26.1%	21.6%	19.7%	18.4%	16.8%	14.9%	14.2%

<sup>102</sup> Source: Enplanement ranking – U.S. DoT T-100 via Airline Data Inc, Base Fare Revenue – Sabre Market Intelligence. Premium cabin includes first class and business class tickets (unavailable on a leg basis)

## Economic Basis for Airline Traffic

Key Takeaways	
1	Despite a decline in population during the COVID-19 pandemic, the New York CSA remains the largest of all the U.S. CSAs and is forecasted to continue to be so for the remainder of the current decade.
2	Employment has returned to pre-pandemic levels. New York offers diverse sector opportunities and is home to major employers, including 47 of the Fortune 500 firms.
3	Wages have risen. Per capita incomes remain higher than the U.S. average, with 46% of New York CSA households having an income above \$100,000 indicating a high propensity to travel.
4	Tourism is on its way to returning to its previous peak, with a record 68 million visitors predicted to arrive in New York City in 2025.
5	The economy is robust. The New York CSA remains the most important U.S. CSA in economic terms with a GRP of more than \$2 trillion in 2023. Economic growth is projected to outpace the national average.
6	The COVID-19 pandemic economic recovery is following a similar timeline to previous economic crises as the New York CSA demonstrates its economic resilience.

JFK’s long-term growth is rooted in the continued development and growth of the New York metropolitan area. The New York CSA continues to have the largest population, the biggest economy, and is a leading visitor destination. It is historically resilient to shocks and downturns of different kinds and has demonstrated that it continues to be robust in the post COVID-19 pandemic world.

### Population

Despite experiencing a population decline of 3% since the beginning of the COVID-19 pandemic, the New York CSA remains the largest of the 166 CSAs in the U.S. with an estimated 21.9 million residents in 2023, as shown in Table 28.<sup>103</sup>

<sup>103</sup> Source: U.S. Census Bureau

Table 28: 10 Largest U.S. Combined Statistical Areas, 2023<sup>104</sup>

Rank	Combined Statistical Area	Estimated Population
1	New York–Newark, NY-NJ-CT-PA CSA	21,859,598
2	Los Angeles–Long Beach, CA CSA	18,316,743
3	Washington–Baltimore–Arlington, DC-MD-VA-WV-PA CSA	10,069,592
4	Chicago–Naperville, IL-IN-WI CSA	9,794,558
5	San Jose–San Francisco–Oakland, CA CSA	9,001,024
6	Dallas–Fort Worth, TX-OK CSA	8,654,750
7	Boston–Worcester–Providence, MA-RI-NH CSA	8,345,067
8	Houston–Pasadena, TX CSA	7,706,626
9	Philadelphia–Reading–Camden, PA-NJ-DE-MD CSA	7,390,919
10	Atlanta–Athens–Clarke County–Sandy Springs, GA-AL CSA	7,221,137

The reduction in population in 2020 arrived after steady growth from 1990 onwards.<sup>105</sup> The New York CSA experienced the largest decline in population of all U.S. CSAs during the COVID-19 pandemic, and in 2023 is estimated to have a total population 573,000 below its levels in April 2020.<sup>106</sup> Figure 48 shows the percentage change in population among the 10 largest U.S. CSAs between Q1 2020 and Q1 2023, while Table 29 and Figure 49 shows the New York CSA population decline relative to the whole U.S.

The shift in population from the larger CSAs in the Northeast and California to those in the South and Southwest was due to the rise in remote, flexible working arrangements and an already ongoing trend of companies relocating to states that have incentivized businesses with lower taxes, less stringent regulations, and lower operating costs.<sup>107</sup>

<sup>104</sup> Source: U.S. Census Bureau

<sup>105</sup> Source: U.S. Census Bureau

<sup>106</sup> Source: U.S. Census Bureau

<sup>107</sup> Source: Bloomberg/THE CITY – NYC News

Figure 48: Top 10 Largest Changes in U.S. CSA Population Q1 2020 vs 2023<sup>108</sup>

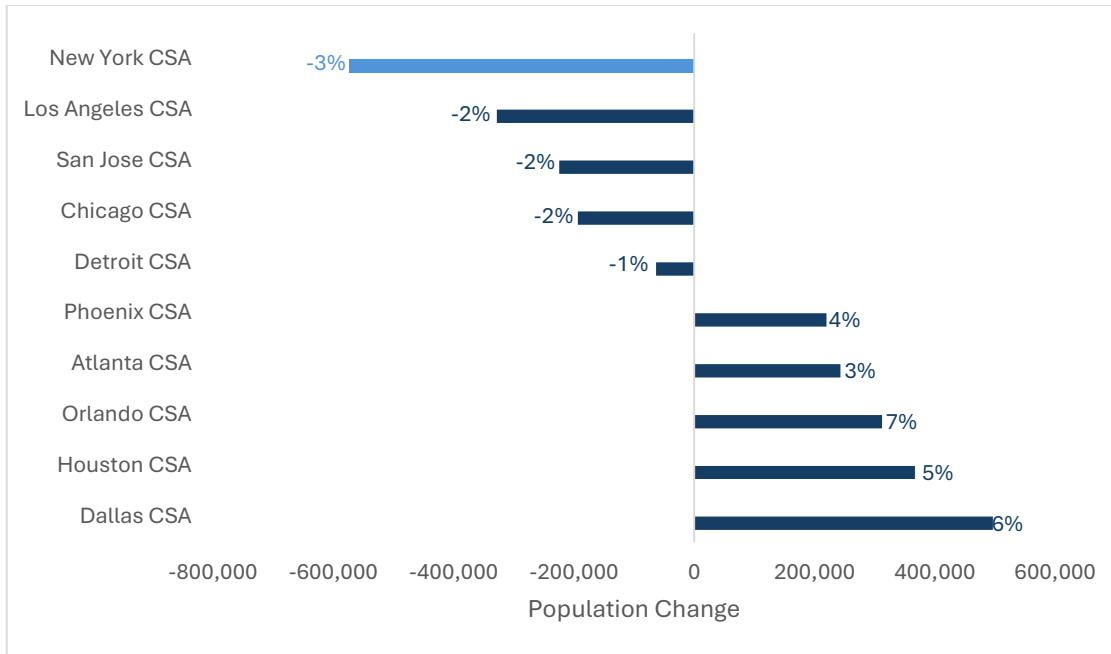


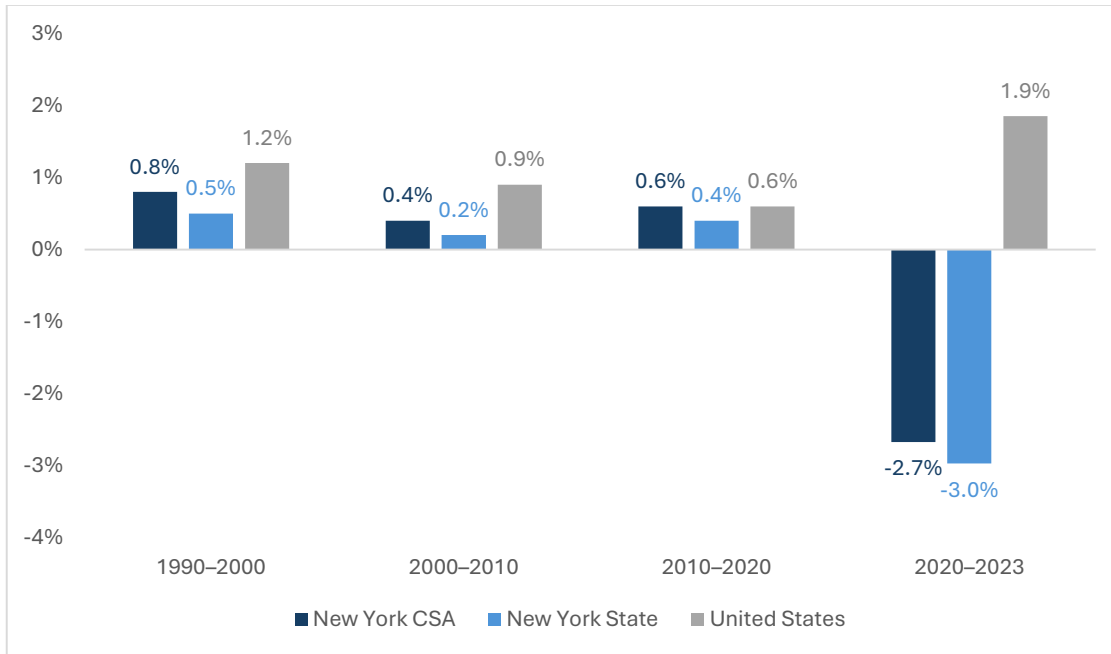
Table 29: New York CSA and State vs U.S. Population Change (millions)<sup>109</sup>

Year	New York CSA	New York State	United States
1990	18.9	18.0	249.5
2000	20.5	19.0	282.1
2010	21.3	19.4	309.8
2020	22.5	20.2	329.8
2023	21.9	19.6	335.9

<sup>108</sup> Source: U.S. Census Bureau

<sup>109</sup> Source: U.S. Census Bureau

Figure 49: Population Growth of the New York CSA, New York State, and U.S.<sup>110</sup>



The population growth rate in the New York CSA has historically been slightly lower than the population growth rate of the U.S. However, both the CSA and the state experienced population declines at the start of the current decade, while the population of the U.S. grew. As shown in Figure 50, the pace of population decline in the New York CSA did slow in 2023. The population of the New York CSA in 2030 is currently predicted to be 23.1 million people.<sup>111</sup>

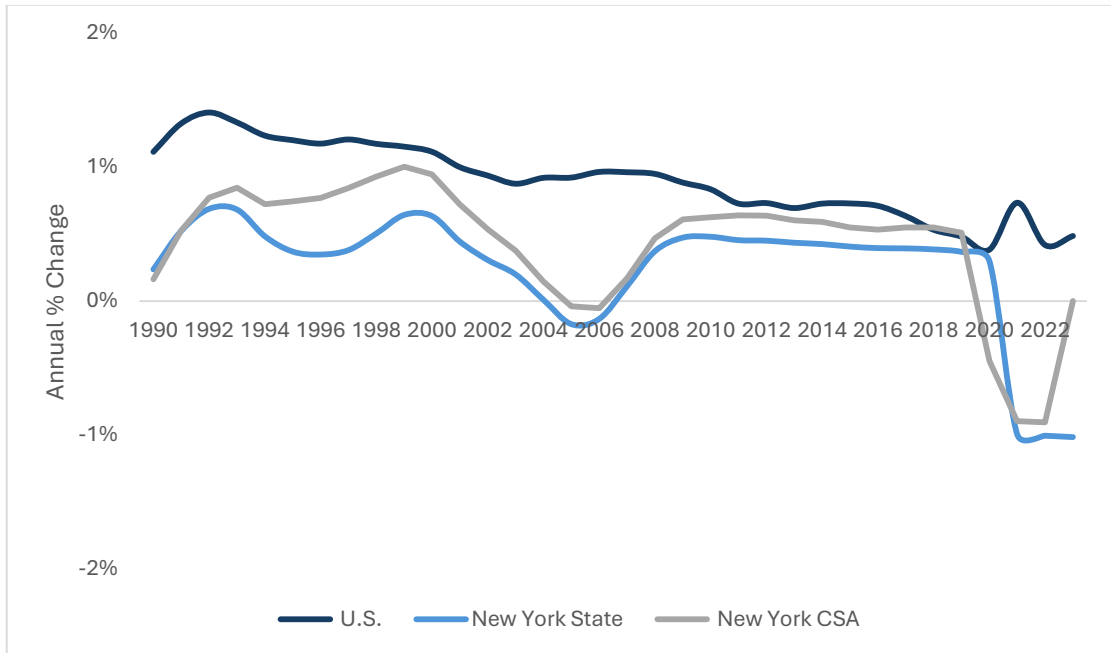
Forecasts prior to the COVID-19 pandemic indicated that the population of the New York CSA would be in the range of 23 million to 24 million by 2030.<sup>112</sup> The expectation that the long-term population growth will resume demonstrates the CSA’s resilience and attractiveness as a place to live and work.

<sup>110</sup> Source: U.S. Census Bureau

<sup>111</sup> Source: New York City Comptroller, Report: The Pandemic’s Impact on NYC Migration Patterns, 25 November 2021

<sup>112</sup> Source: U.S. Census Bureau/New York Metropolitan Transportation Council, Regional Planning Association, New York State and City Planning

Figure 50: Population Growth Rate in the U.S., New York State, and New York CSA<sup>113</sup>

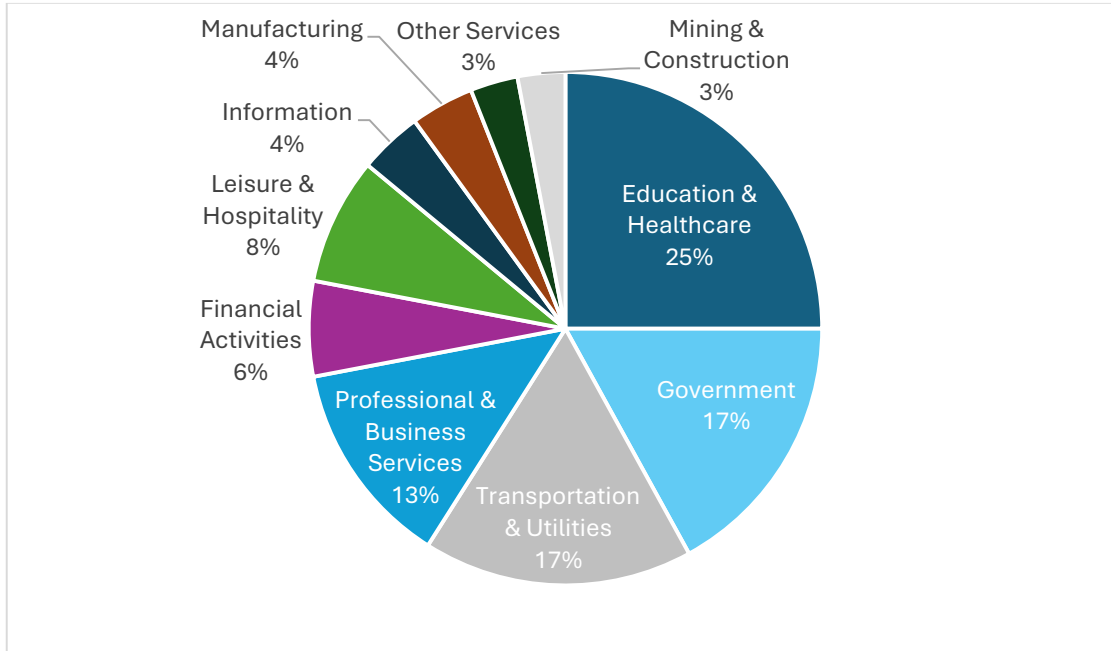


## Employment

Historical employment trends in the New York CSA and New York State have tracked alongside national levels. In general, non-agricultural employment has increased in the New York CSA during the past three decades, with the region seeing periods of robust growth, particularly in the service-providing sectors such as education, health services, leisure and hospitality, and financial activities. There has been a noticeable shift from manufacturing and good producing sectors to more service-oriented industries. Figure 51 shows the 2023 distribution of non-agricultural employment in the New York CSA.

<sup>113</sup> Source: U.S. Census Bureau

Figure 51: Distribution of Non-Agricultural Employment by Industry Sector in the New York CSA, 2023<sup>114</sup>



The unemployment rate has historically tracked higher than the national level in both the New York CSA and New York State, as shown in Figure 52. The overall unemployment rate in the U.S. was 3.9% in April 2024, 0.4pts above 2019. Both the New York CSA and New York state unemployment rates were 0.4pts and 0.3pts higher than the U.S. unemployment rate, at 4.3% and 4.2% respectively.<sup>115</sup> These are typical differences: Since 1990, the average unemployment rate for both the New York CSA and New York state has been 0.4pts higher than the unemployment rate for the U.S.<sup>116</sup> However, 2019 was a record low year for unemployment in both the U.S. and New York, with the New York CSA and New York State having lower unemployment rates than in 2018<sup>117</sup>, and unemployment is expected to decline in 2024 and 2025 as economic conditions improve.

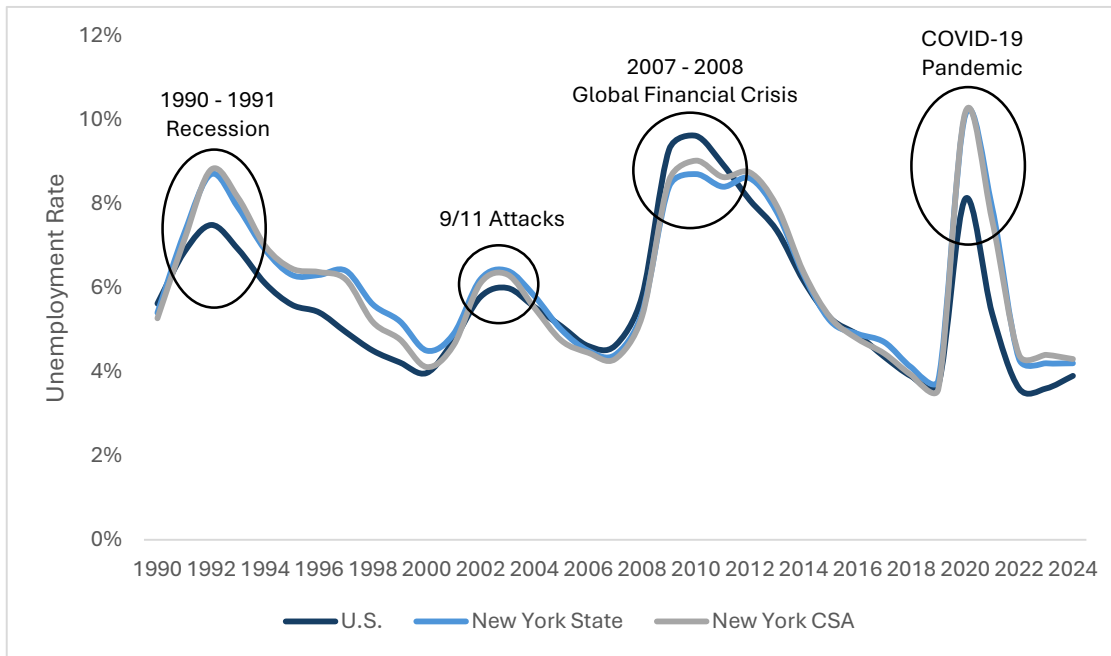
<sup>114</sup> Source: U.S. Bureau of Labor Statistics, New York Area Employment – April 2024

<sup>115</sup> Source: U.S. Department of Labor

<sup>116</sup> Source: U.S. Bureau of Labor Statistics

<sup>117</sup> U.S. Bureau of Labor Statistics, April 2020 Monthly Labor Review

Figure 52: Unemployment Rate Evolution<sup>118</sup>



### 1991 Recession

After the 1991 recession, the unemployment rate in the New York CSA peaked at 8.8% in 1992 but then fell consistently throughout the rest of the decade, reaching a low of 4.1% in 2000 which was only 0.1pts higher than the U.S. average.<sup>119</sup>

### 9/11 Attacks

The next recession in 2001, after the 9/11 attacks, had fewer impacts than the 1991 recession largely due to a financial support package put in place by the government in response to the attacks.<sup>120</sup> Unemployment peaked at 6.3% in the New York CSA and 6.4% in New York State in 2003.

### 2007 – 2008 Global Financial Crisis

The 2007 – 2008 Global Financial Crisis significantly impacted unemployment rates in the U.S. In 2009, the unemployment rate rose to 9.3% in the U.S. and 8.6% in the New York CSA. As shown in Figure 52, both the New York CSA and New York State had noticeably lower peak unemployment during this period than the rest of the U.S. During the following decade, the annual rate of change in non-agricultural employment remained steady, with the New York CSA seeing an annual increase of between 1.5% and 2%, in line with the rest of the U.S. Except for 2012, unemployment rates fell

<sup>118</sup> Source: U.S. Bureau of Labor Statistics

<sup>119</sup> Source: U.S. Bureau of Labor Statistics

<sup>120</sup> Source: U.S. Bureau of Labor Statistics



consistently in the New York CSA, from 9% in 2010 to 3.6% in 2019. The decline in the New York CSA unemployment rate during the 2010s was lower than the U.S. decline, though that was because the New York CSA unemployment rate was lower than the national rate at the start of the decade. Therefore, the New York CSA suffered less economic loss and had a stronger recovery than the U.S. from the 2007 – 2008 Global Financial Crisis, so the New York CSA had a lower unemployment rate than the U.S. in 2010.<sup>121</sup>

## COVID-19 Pandemic

The COVID-19 pandemic affected employment across the U.S., but the New York CSA was particularly hard hit in the early days because of high case rates and government restrictions on businesses. As a result, unemployment rates were highest among workers in the hospitality, tourism, transportation, and leisure industries. New York CSA unemployment jumped to a peak of 10.2% in 2020 from a 30-year historical low of 3.6% in 2019.<sup>122</sup>

However, the resilience of the New York economy demonstrated in prior recession once again helped the region to rebound. New York lost 20.3% of its payroll jobs between February and April 2020 but had returned to pre-pandemic employment levels by October 2023.<sup>123</sup>

The New York CSA’s employment rate in March 2024 was 0.3pts above February 2020,<sup>124</sup> demonstrating that a higher proportion of the population is working. The growth rate in New York is not as pronounced as in cities in Southern states (as shown in Figure 53), which have benefitted from the previously mentioned shift in corporate relocation and working practices. However, in March 2024 the New York metropolitan area added 118,700 jobs – its largest year-over-year increase in jobs and the highest of all 51 U.S. metropolitan areas.<sup>125</sup> The recent growth is also strong by historical standards: From 2010 to 2019, 890,000 private sector jobs were added (or approximately 100,000 annually), indicating that the job market is now recovering, and the New York CSA has made progress in recovering its labor force numbers.

---

<sup>121</sup> Source: U.S. Department of Commerce, Bureau of Economic Analysis, Real GDP Regional Data

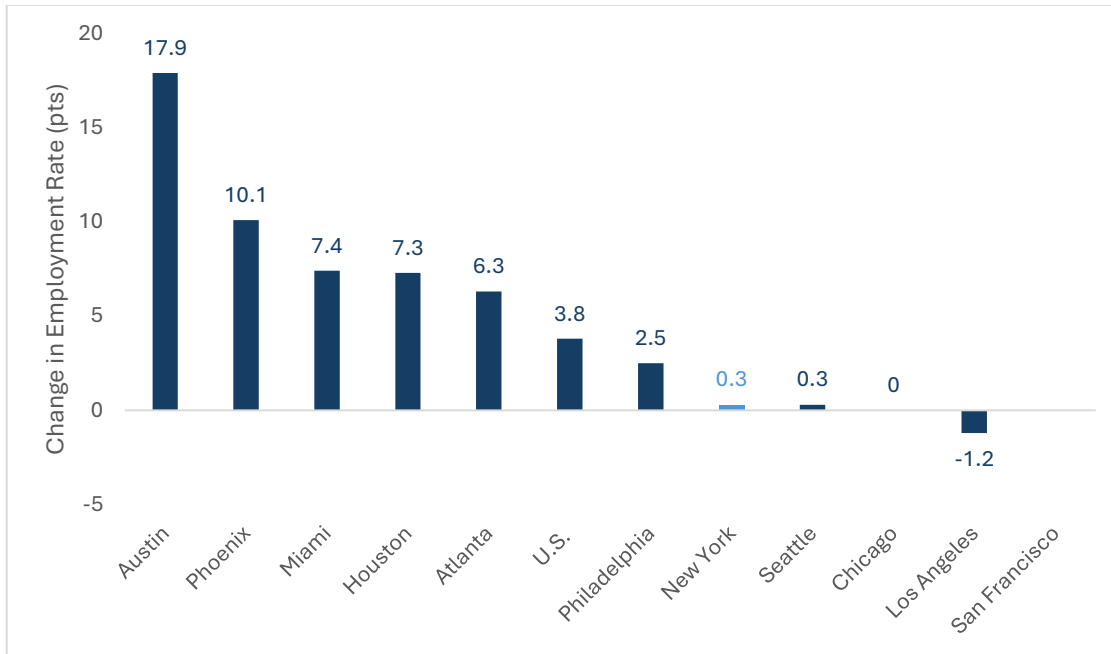
<sup>122</sup> Source: U.S. Bureau of Labor Statistics

<sup>123</sup> Source: The New York Times, “Adams Says NYC Regained Its Lost Jobs. Why Doesn’t It Feel That Way?”, 24 October 2023

<sup>124</sup> Source: The New School Center for New York City Affairs, “NYC Job Growth Again In Line with National Pace; Record NYC Labor Force Participation; But a Mixed Picture for Sectors Where Undocumented Migrants Tend to Work”, 25 April 2024

<sup>125</sup> Source: U.S. Bureau of Labor Statistics

Figure 53: Change in Employment Rate February 2020 vs March 2024<sup>126</sup>



### Major Employers

New York is home to many major employers across diverse industry sectors. It is a leading hub for banking, finance, and communications in the U.S., as well as a major manufacturing center with a thriving technical sector.

New York has more than 330,000 people<sup>127</sup> working in the financial sector with companies such as JP Morgan Chase, Citigroup, and Morgan Stanley as shown in Table 30. However, the New York CSA also has a highly diversified industrial economy that includes technology, pharmaceuticals, fashion, and manufacturing, with companies such as IBM, Verizon Communications, Pfizer, and Colgate-Palmolive.

Healthcare and social assistance are rapidly growing industries substituting employment in construction, retail, and leisure and hospitality, which are still below 2019 levels.

New York benefits from industry sectors that require a large amount of air travel: finance, professional and business services, technology, healthcare (incorporating the pharmaceutical sector), and information and technology. All require frequent travel for client meetings, on-site services, events and conferences, product launches, and sales and marketing.<sup>128</sup>

<sup>126</sup> Source: Federal Bank of New York Analysis

<sup>127</sup> Source: Investopedia, The World's Leading Financial Cities, 1 February 2024

<sup>128</sup> Source: McKinsey & Company, New York: A Concrete Jungle Where Dreams Are Still Made, 21 December 2021 & Deloitte, Navigating Toward A New Normal: 2023 Deloitte Corporate Travel Study, 10 April 2023

New York is also one of the top states in the U.S. for major corporate head offices. New York State is the headquarters for 47 Fortune 500 firms, 40<sup>129</sup> of which are based in New York City and shown in Table 30. New York is home to more Fortune 500 headquarters than any other city in the U.S. Nearly all these companies operate globally, with hundreds of thousands of employees in offices, manufacturing plants, and other facilities across the world. Consequently, they are significant participants in air travel.

---

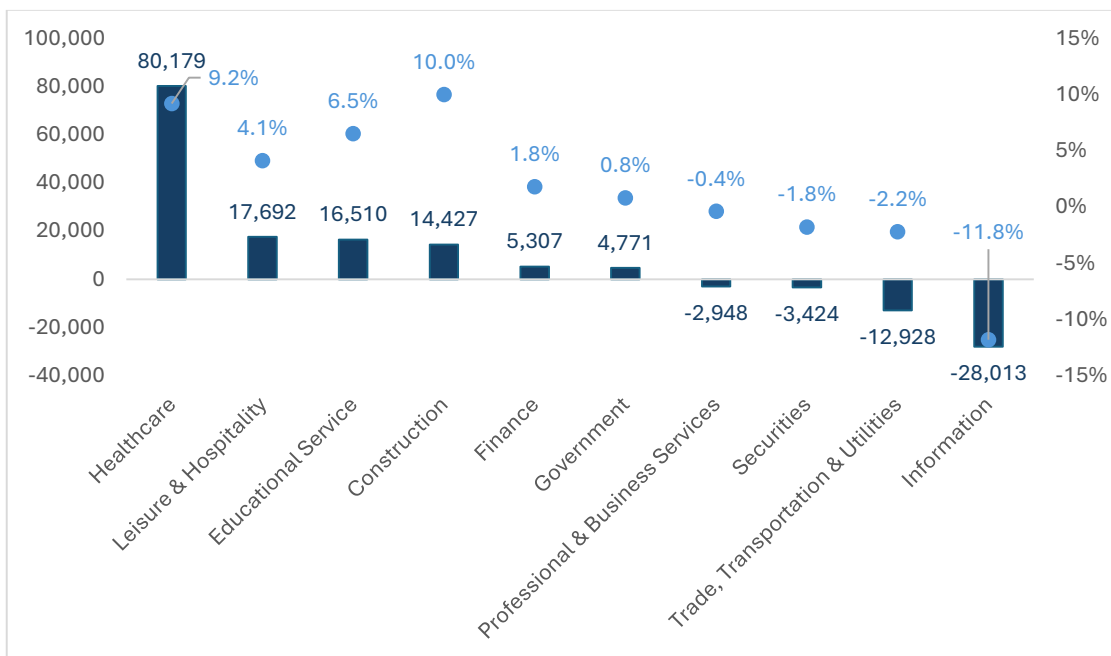
<sup>129</sup> Source: Fortune, "Fortune Announces 2023 Fortune 500 List", 5 June 2023

Table 30: Fortune 500 Companies Headquartered in New York City

Rank by Revenue	Company	Global Employees
1	JPMorgan Chase	293,723
2	Verizon Communications	117,100
3	Citigroup	223,400
4	MetLife	49,000
5	Goldman Sachs	43,900
6	American Express	64,000
7	Pfizer	79,000
8	Morgan Stanley	82,427
9	BlackRock	19,800
10	New York Life Insurance	11,388
11	AIG (American International Group)	26,200
12	Marsh & McLennan	83,000
13	Bank of New York Mellon	49,100
14	NBCUniversal Media	35,000
15	Tapestry	20,800
16	Icahn Enterprises	19,300
17	Estée Lauder	60,000
18	Warner Music Group	5,500
19	Omnicom Group	77,500
20	S&P Global	35,300
21	Viatis	37,000
22	CBS	23,640
23	Interpublic Group	58,900
24	Colgate-Palmolive	34,200
25	Schrödinger	600
26	Apollo Global Management	2,153
27	Bristol-Myers Squibb	32,200
28	WeWork	4,400
29	Simon Property Group	3,000
30	Cantor Fitzgerald	12,000
31	W. R. Berkley	7,470
32	PJT Partners	780
33	The New York Times	4,700
34	Madison Square Garden Sports	1,900
35	Tiffany & Co.	14,200
36	L3Harris	47,000
37	Foot Locker	50,000
38	Omnicom Group	77,500
39	Madison Square Garden Entertainment	12,000
40	Nasdaq	6,900

Moving forward, education and health services are projected to continue their employment gains driven by their ongoing demand and advancements.<sup>130</sup> Following on from its COVID-19 pandemic recovery, the leisure and hospitality sector is seeing a resurgence boosted by increased tourism and local spending. Tech companies and professional services are also expected to remain strong employers in New York City, although remote work has impacted them more than other sectors because the nature of the work is less reliant on a physical location. Certain aspects of the financial sector face a similar change, although continued job growth located in the region is anticipated. Figure 54 summarizes the changes in employment by industry sector between October 2022 and October 2023.

Figure 54: Changes in New York Employment by Industry, October 2022 - October 2023<sup>131</sup>



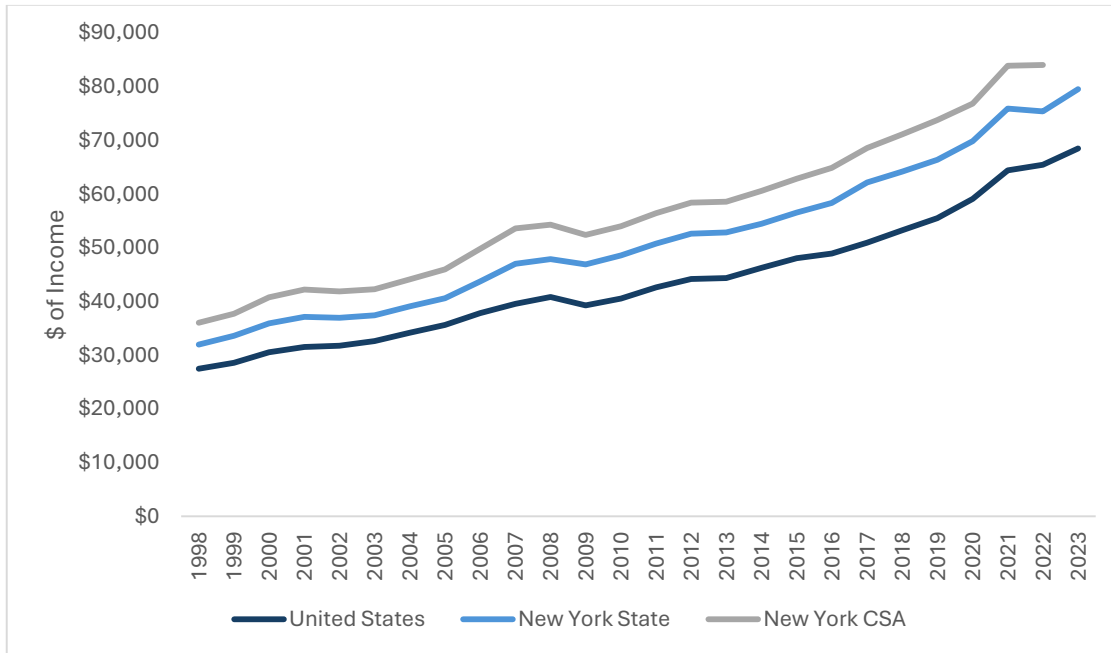
## Income

The per capita income in both New York State and the New York CSA has historically been higher than in the U.S. as a whole, while following the national trends of growth and decline, as shown in Figure 55. In 2022, the per capita personal income in New York State was 15% higher than the national average at \$75,423 and it was 28% higher than the national average in the New York CSA at \$84,084.

<sup>130</sup> Source: Manhattan Institute, “New York City Jobs Data Shines Light On NYC’s Economic Strengths and Weaknesses”, 25 April 2024

<sup>131</sup> Source: Bloomberg/THE CITY – NYC News

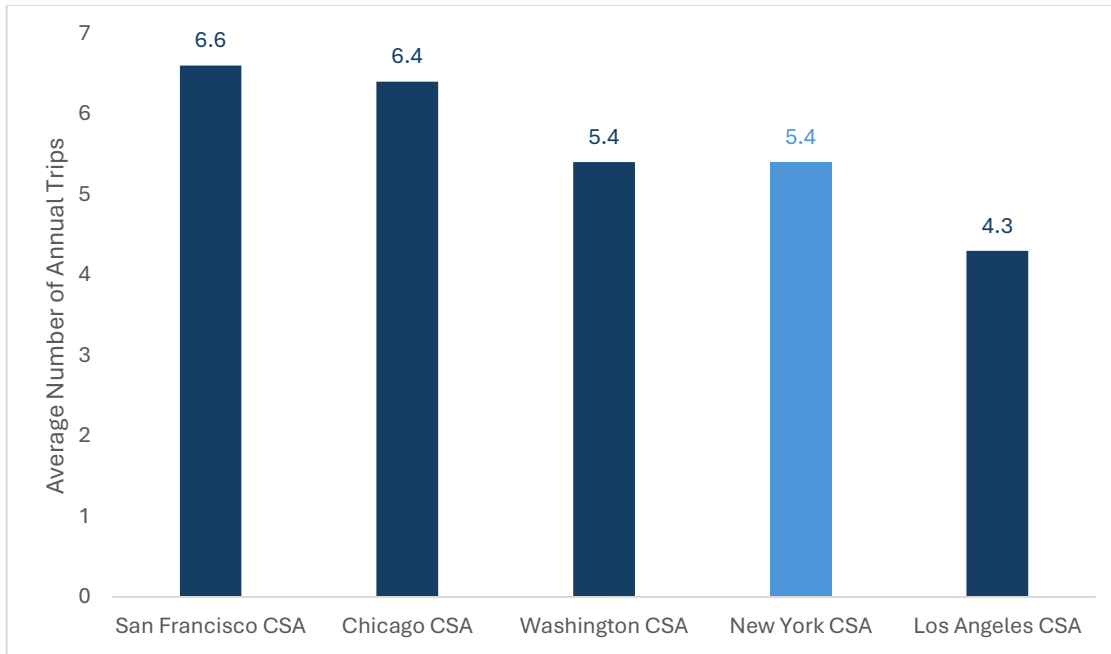
Figure 55: Per Capita Personal Income Trend in U.S., New York State, and New York CSA<sup>132</sup>



The New York CSA has one of the highest propensities to travel in all the U.S. CSAs, as shown in Figure 56. It can be attributed to the large population, financial and corporate sector, high-income households, and access to major airports.

<sup>132</sup> Source: U.S. Bureau of Economic Analysis - Federal Economic Data

Figure 56: Largest 5 CSA's With the Highest Propensity to Travel, 2023<sup>133</sup>



Total wage earnings in New York are projected to increase by 3.9% in 2024 and grow by similar rates through to 2027 amid lower inflation and modest job growth.<sup>134</sup> The factors that have brought higher-income workers to New York in the past remain in place and are likely to continue to be a draw over the longer term. The New York CSA is likely to be attractive to people driven by career opportunities as the economy continues to strengthen, expanding hybrid working models growing cultural and recreational opportunities, and providing ongoing access to a high concentration of top-tier educational institutions at primary, secondary, and university levels.<sup>135</sup> The strengthening economy will also additional investments in transportation and infrastructure improvements for rail, road, and air that can drive additional economic activity in the region.<sup>136</sup>

### Household Income Above \$100,000

Historically, the New York CSA has had the highest number of households with an income of more than \$100,000 of all U.S. CSAs. The number of households with incomes of over \$100,000 is an indicator of propensity to travel because 55% of airline fare expenditures are made by households with an income of \$100,000 or more.<sup>137</sup> The combination of continued economic growth and a

<sup>133</sup> Source: Passenger Traffic - Sabre Market Intelligence, Population – U.S. Census Data

<sup>134</sup> Source: New York Comptroller, Annual State of the City’s Economy and Finances, 15 December 2023

<sup>135</sup> Source: Office of the New York State Comptroller, Higher Education in New York, March 2024

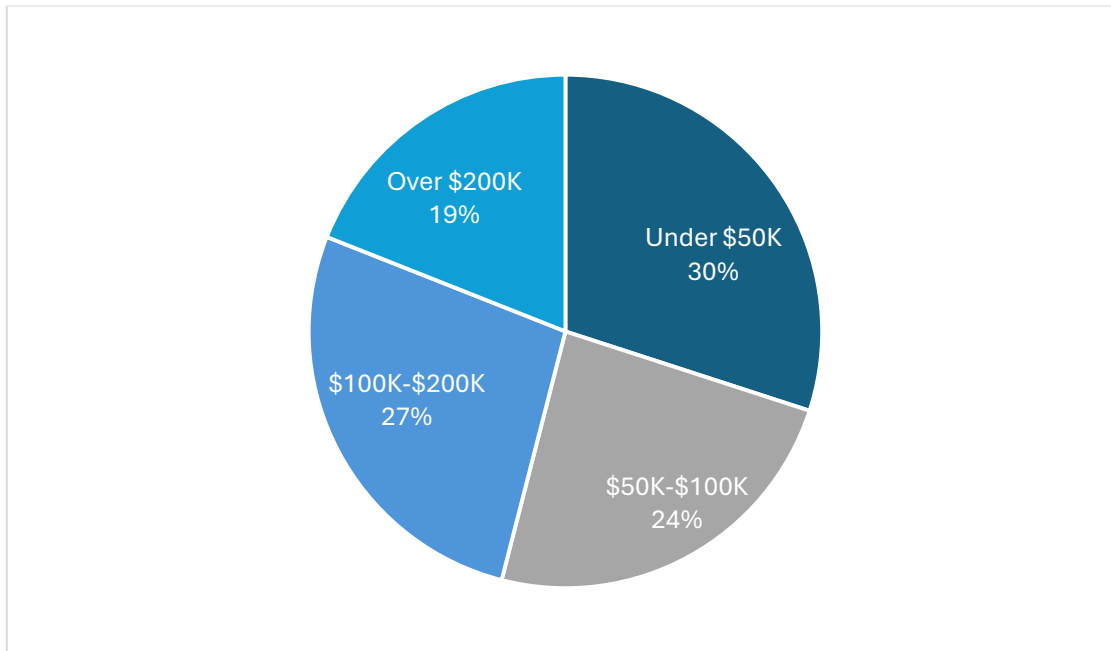
<sup>136</sup> Source: New York State, “Governor Honchul Announces Significant Investments in Transit Expansion and Roadway Safety as Part of FY2025 Budget Agreement”, 22 April 2024

<sup>137</sup> Source: U.S. Bureau of Labor Statistics - Consumer Expenditure Survey Data

strong job market should see an increase in the number of households earning an income above \$100,000 in 2024.

Salaries in New York are often higher than the national average to compensate for New York’s cost of living, which is approximately 78% higher<sup>138</sup> than the national average. However, while New York State has the fourth highest cost of living across the U.S., its residents have the most disposable income with an average of \$25,427 in leftover pay annually.<sup>139</sup> As shown in Figure 57, 46% of households in the New York CSA have an income higher than \$100,000, which is 10% higher than the national rate for those who fall into the \$100,000 to \$200,000 bracket and more than 1.5 times higher for those who earn over \$200,000.<sup>140</sup>

Figure 57: New York CSA Share of Income Per Household<sup>141</sup>



## Visitor Activity and Leisure Travel

New York is one of the most well-known tourist destinations in the world and frequently among the places international visitors go on their first trips to the United States. It offers a vast array of attractions, including more than 170 museums<sup>142</sup>, 41 Broadway and more than 100 Off Broadway theatres<sup>143</sup>, world-renowned sites like the Statue of Liberty and the Empire State Building, teams in

<sup>138</sup> Source: Unbiased.com, “What Is The Cost of Living In New York City?”, 28 February 2024

<sup>139</sup> Source: Forbes, “Examining the Cost of Living By State in 2024”, 17 June 2024

<sup>140</sup> Source: U.S. Census Bureau

<sup>141</sup> Source: U.S. Census Bureau

<sup>142</sup> Source: WNYC, December 2023

<sup>143</sup> Source: New York Theatre Guide



all major sports leagues, historical sites, and a wide range of convention and event space. In addition, New York is a city of many local neighborhoods with restaurants, shopping, festivals, and entertainment.

Tourism to New York rebounded strongly in 2023. A 10-year growth period had ended in 2020 for visitors to New York after tourism peaked in 2019 with 66.6 million visitors.<sup>144</sup> With the onset of the COVID-19 pandemic in early 2020, 47 million fewer visitors arrived. As a result, revenues fell from \$80.3 billion to \$20.2 billion, 89,000 jobs were lost, including 46% of staff in the hotel sector.<sup>145</sup>

Visitor numbers recovered to 62.2 million in 2023, which was 93% of the city’s 2019 visitation levels. The tourism recover led to the industry generating \$75 billion in economic impact, including \$48 billion from direct spending in 2023.<sup>146</sup> Hotel performance was strong in 2023, with an estimated 36.5 million room nights sold, or 92% of 2019 levels. Hotel occupancy was 81.6%, a 10pt increase over 2022 but still 5pts below 2019. However, the average daily rate of \$302 in 2023 was 8.5% above 2022 and 21% higher than 2019 levels.<sup>147</sup> New York City was the highest performing hotel city in the U.S. in the fourth quarter of 2023 in terms of room nights sold.<sup>148</sup>

Almost 10,000 new or renovated hotel rooms opened in New York City in 2022 and 2023. New York City Tourism + Conventions<sup>149</sup> reports that an additional 6,400 rooms will be added in 2024 and 2025.

New York City Tourism + Conventions is forecasting 64.5 million visitors in 2024 and 68.0 million visitors for the first time in 2025 (as shown in Figure 58) with continued strong recovery and growth through to 2030. Together with hotel developments, tourism growth will be assisted by the upgrades to JFK, LGA and EWR, an increase in cultural and recreational attractions including new museums in 2024 and 2025<sup>150</sup>, and the hosting of significant events, including the FIFA World Cup in 2026.

---

<sup>144</sup> Source: Office of the New York State Comptroller, “The Tourism Industry in New York City: Igniting the Return”, April 2021

<sup>145</sup> Source: Office of the New York State Comptroller, “The Tourism Industry in New York City: Igniting the Return”, April 2021

<sup>146</sup> Source: Office of the New York State Comptroller, “Tracking the Return: The Tourism Industry in New York City”, May 2024

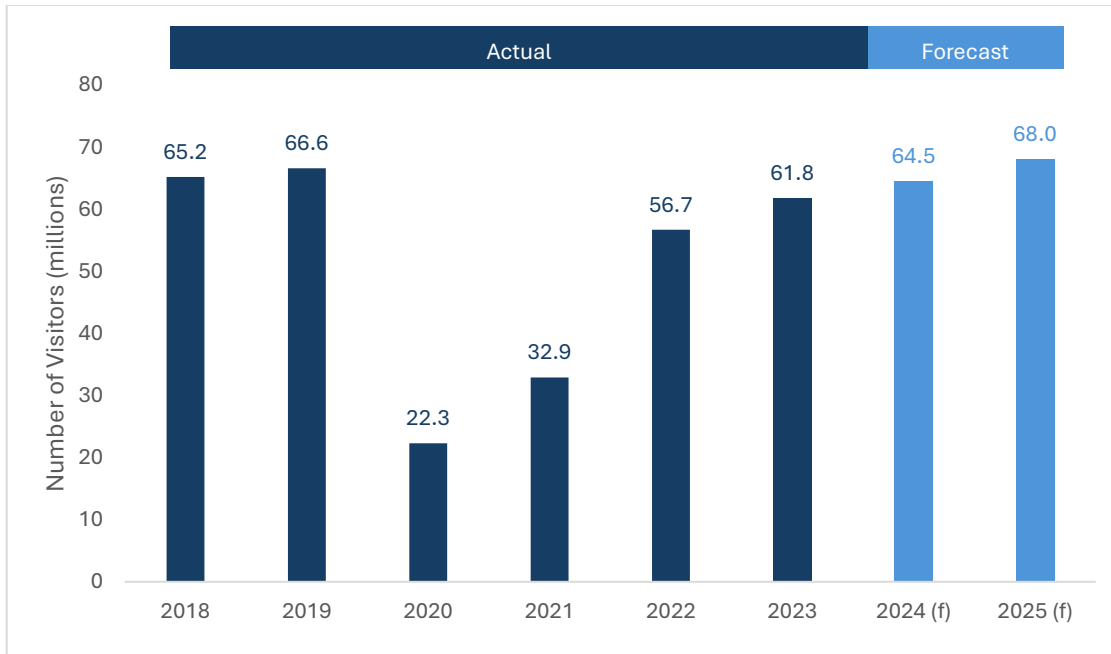
<sup>147</sup> Source: The New York Times, “Why NYC Hotels Are So Expensive Right Now”, 25 May 2024

<sup>148</sup> Source: New York City Tourism + Conventions, “Fact Sheet: New York City Tourism Generates \$74 Billion in Economic Impact for State and City Economy in 2023”, 18 December 2023

<sup>149</sup> New York Tourism + Conventions is the official destination marketing organization for New York City

<sup>150</sup> Source: New York City Tourism + Conventions, “What’s New & Upcoming in New York City”, 6 May 2024

Figure 58: New York City Historical and Projected Visitor Numbers<sup>151</sup>



### International Visitors

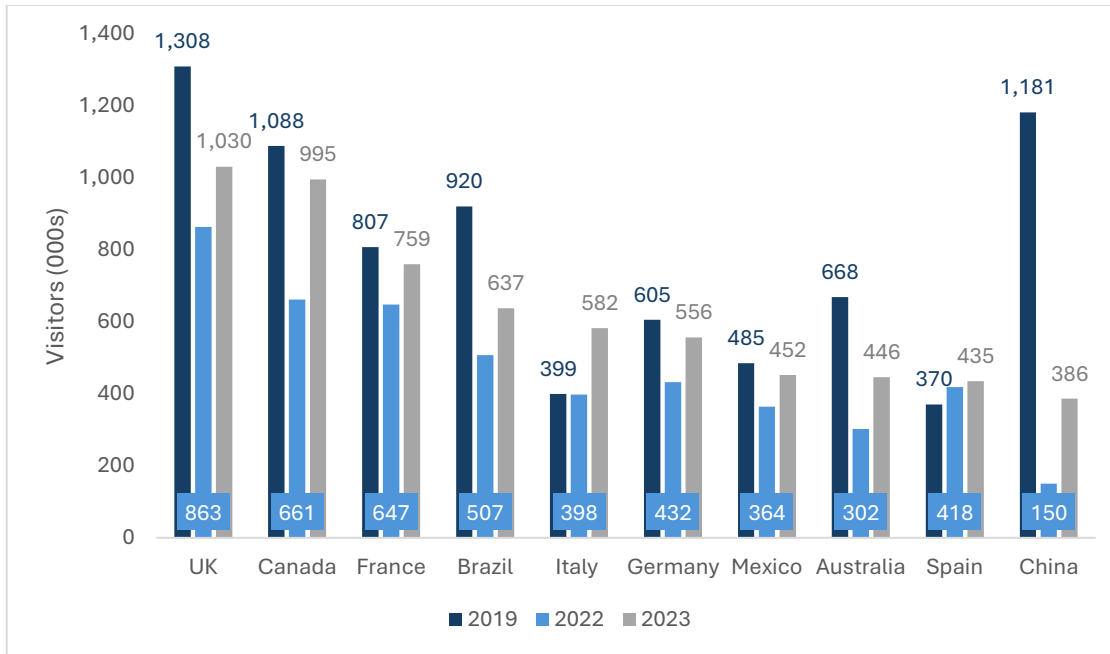
New York is the largest international tourism destination in the U.S. There were 11.6 million international visitors in 2023 who accounted for nearly half of all visitor spending.<sup>152</sup> International travel has seen mixed results across origin markets, with the Asia Pacific market returning at a slower pace than Europe or other regions, as shown in Figure 59. China, which was the second largest international market in 2019, has seen a particularly slow recovery because flights remain limited by both countries’ governments. The U.S. DoT and China agreed in 2023 to gradually increase capacity and air services between the two countries.<sup>153</sup> International tourism is expected to fully recover in 2024 with growth expected from the key markets and a still-slow recovery of Chinese visitors.

<sup>151</sup> Source: New York City Tourism + Conventions

<sup>152</sup> Source: Office of the New York State Comptroller, “Tracking the Return: The Tourism Industry in New York City”, May 2024

<sup>153</sup> Source: Aviation Week Network, “China, U.S. Set to Double Weekly Passenger Capacity by October”, 14 August 2023

Figure 59: International Visitation to New York City<sup>154</sup>



## Business Travel

Business travel was the hardest-hit travel sector during the COVID-19 pandemic<sup>155</sup> and continued to recover at a slower rate in 2023 than the leisure sector<sup>156</sup>, as shown in Figure 60. It accounted for approximately 20% of all visitors to New York in 2023, growing year-on-year by 3 million to 11.6 million.<sup>157</sup> However, the outlook is changing: Global business travel spending is expected to exceed pre-pandemic levels for the first time in 2024<sup>158</sup>, and U.S carriers reported a strong performance for business travel in the first quarter of 2024<sup>159</sup>:

- **Alaska Airlines** reported that revenues from corporate travel matched pre-pandemic levels.
- **United Airlines** announced it had recorded some of the largest numbers of corporate bookings in its history.
- **Delta Air Lines** saw a double-digit year-on-year increase in corporate sales in the first quarter, and it said 90% of its corporate travelers are planning to maintain or increase volumes during the second quarter of 2024.

<sup>154</sup> Source: New York City Tourism + Conventions, Annual Report 2023

<sup>155</sup> Source: Cignpost Diagnostics: “The State of Business Travel Industry in 2022/2023”, 28 September 2022

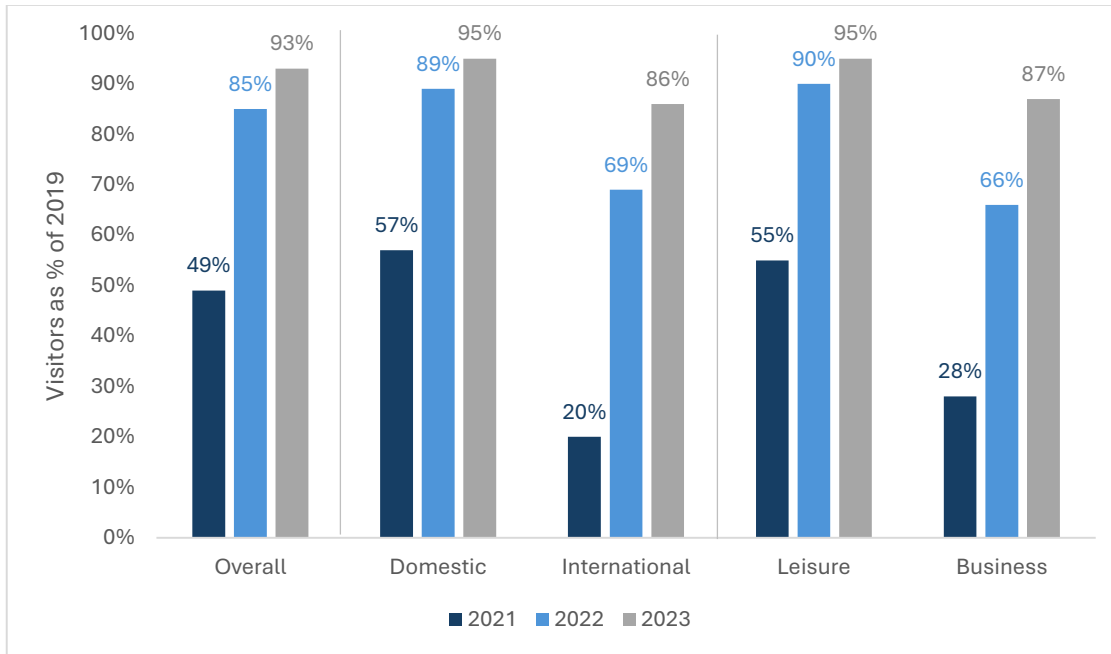
<sup>156</sup> Source: Deloitte, “Navigating Toward A New Normal: 2024 Deloitte Corporate Travel Study”, 10 April 2023

<sup>157</sup> Source: New York City Tourism + Conventions

<sup>158</sup> Source: Business Travel News Europe, “2024 Pricing Forecasts – Global Spending on Business Travel is Expected to Reach \$1.5 Trillion in 2024”, 19 December 2023

<sup>159</sup> Source: Reuters, “Business Travel Picks Up, Bolstering Outlook for U.S. Airlines”, 18 April 2024

Figure 60: New York Total Visitors by Sector<sup>160</sup>



### Ethnic Community Travel

Ethnic community travel is an important source for visiting friends and relatives as well as business connections and investment. The New York CSA is a major hub for immigration, as the region’s diverse economy attracts a steady flow of new residents from around the world. In 2022, 29.8% of the New York CSA population was foreign born, which equates to 5.8 million people and 12.7% of the total foreign-born population in the U.S.<sup>161</sup> Among the foreign-born population, 30% come from Asia and 14% from Europe. Many of the other top source country markets are in the Caribbean and Latin America, as shown in Table 31.

<sup>160</sup> Source: Office of the New York State Comptroller

<sup>161</sup> Source: U.S. Census Bureau

Table 31: To 10 Birth Countries of Foreign-Born Residents in the New York CSA, 2022<sup>162</sup>

Rank	Country of Birth	Number of New York CSA Residents	Percentage of Total Foreign-Born Population
1	Dominican Republic	612,968	10%
2	China	431,588	7%
3	Mexico	287,829	5%
4	Jamaica	277,042	5%
5	India	234,315	4%
6	Ecuador	189,043	3%
7	Guyana	168,255	3%
8	Haiti	163,731	3%
9	Bangladesh	138,394	2%
10	Trinidad and Tobago	102,603	2%
	Others	3,244,101	55%
	<b>Total</b>	<b>5,849,869</b>	<b>100%</b>

## Economy

New York has a large and diverse economy. While it has been subject to shocks and downturns in the past, it has shown itself to be historically resilient. The attributes that have made New York successful in the past remain in place, providing a strong long-term outlook for growth.

## Global Economic Outlook

The outlook for the global economy in 2024 is cautiously optimistic. World GDP is projected to grow by 2.7% in 2024.<sup>163</sup> Global inflation is predicted to decline from 6.8% in 2023 to 5.9% in 2024.<sup>164</sup> However, threats of oil prices rising and increased geopolitical tensions could put additional pressure on inflation, push back further interest rate cuts, erode disposable incomes, and reduce consumer spending. Elections are scheduled in numerous countries and territories in 2024, which will collectively affect 75% of the world’s population, adding a level of future uncertainty with economic policies, taxation, international trade relations, and market stability.

Advanced economies are expected to see moderate growth, while emerging markets and developing economies are projected to grow at a slower pace, as shown in Table 32. EU growth is predicted to be 1.2% and China 4.7% in 2024 – subdued rates by historical standards. However, the easing of inflation in the Eurozone and the fiscal support in China mean that both economies are in the midst of economic growth momentum.

<sup>162</sup> Source: U.S. Census Bureau 2022

<sup>163</sup> Source: Oxford Economics forecast

<sup>164</sup> Source: The International Monetary Fund

Table 32: Global GDP Forecast<sup>165</sup>

Region / Country	Historical (2010-2019)	Historical (2021-2023)	Forecast (2024-2030)
Emerging Asia <sup>166</sup>	6.3%	6.2%	5.3%
China	7.3%	5.4%	3.9%
Africa	3.9%	2.2%	3.3%
Canada	2.2%	3.4%	2.0%
World	3.0%	5.8%	2.6%
Middle East	2.6%	3.7%	2.7%
Latin America	1.3%	3.9%	2.1%
United States	3.7%	3.1%	1.9%
Europe	1.8%	3.2%	1.4%

## United States Economic Outlook

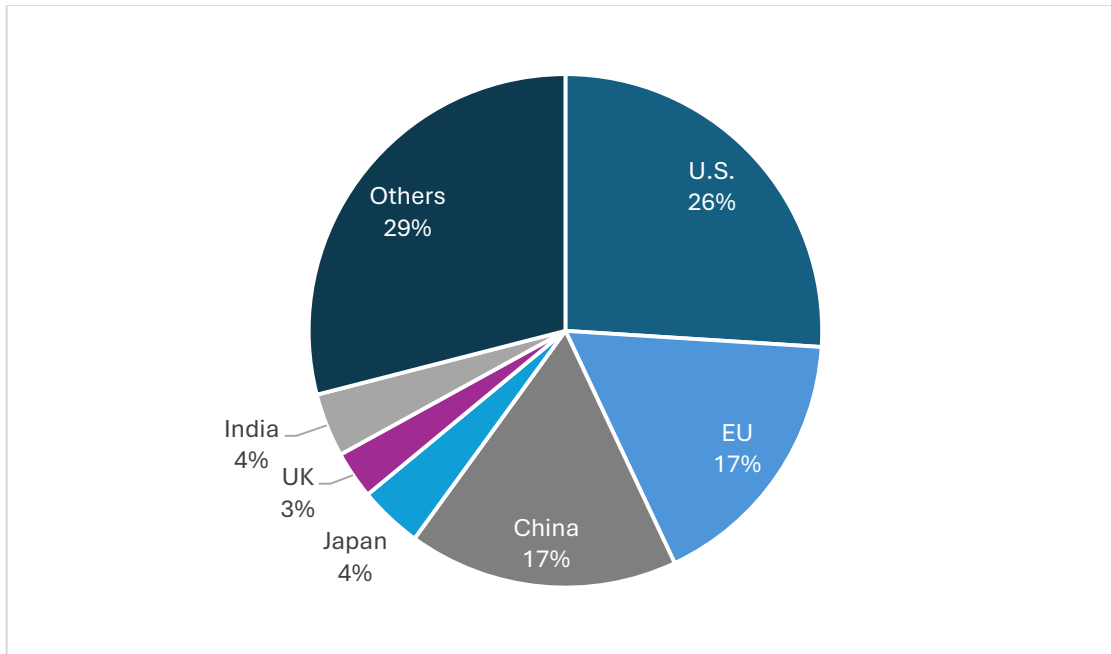
As shown in Figure 61, the U.S. continues to be the key player in the global economy. The IMF estimates the country is taking the largest share of global GDP in 2024, at 26.3%, which is 0.2pts above 2023.<sup>167</sup>

<sup>165</sup> Source: Oxford Economics as of May 2024

<sup>166</sup> China, India, Indonesia, Malaysia, Thailand, Vietnam, Philippines, Bangladesh, Pakistan, Sri Lanka, Myanmar, Cambodia, Laos, Nepal, Bhutan, Mongolia

<sup>167</sup> Source: The International Monetary Fund, April 2024 Outlook

Figure 61: Estimated Share of Global GDP, 2024<sup>168</sup>

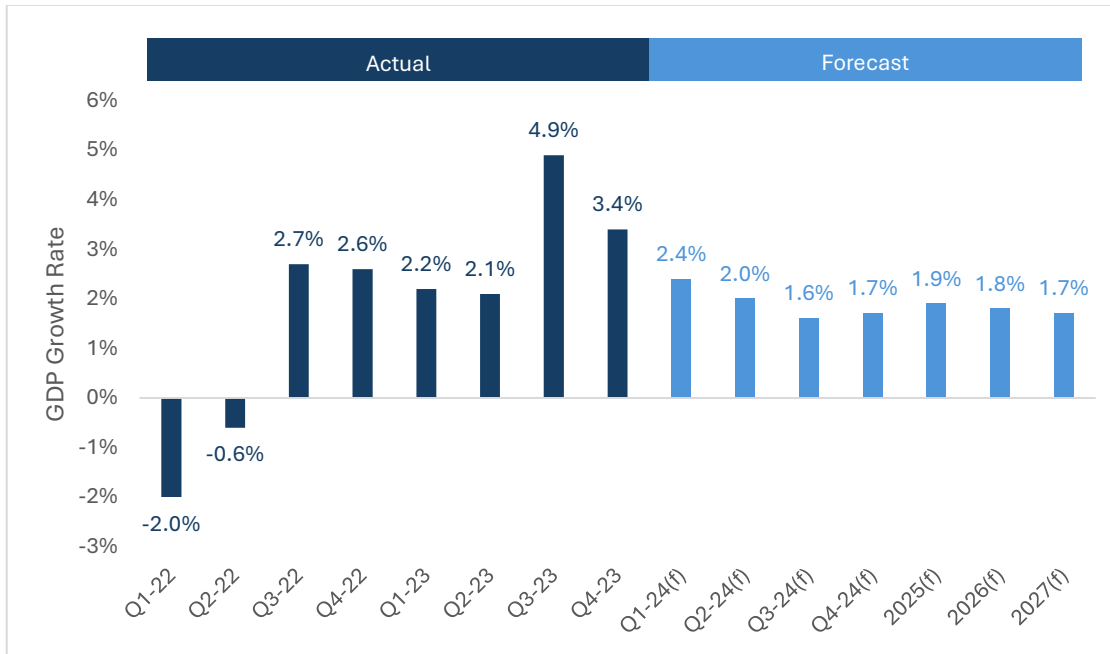


The U.S. economy remained resilient in 2023 and outperformed almost all econometric forecasts. After a strong end to 2023, U.S. GDP is forecasted to continue growing by 2.6% in 2024 before moderating to a steady pattern of slower growth in 2025 and growing an average of 1.8% between 2025 and 2028<sup>169</sup>, as shown in Figure 62. All regions of the U.S. are forecast to see medium-term growth.

<sup>168</sup> Source: Oxford Economics as of May 2024

<sup>169</sup> Source: Oxford Economics as of May 2024

Figure 62: U.S. GDP Growth Rate<sup>170</sup>



Growth is underpinned by a strong labor market; on a national basis the employment rate has remained close to 60% for the past two years, which is similar to that experienced in the 10 years prior to the COVID-19 pandemic.<sup>171</sup> U.S. job growth is projected to slow to 0.7% in 2024 followed by slow expansion thereafter.<sup>172</sup>

A stable labor market is also aiding steady growth in salaries and disposable incomes. Economic concerns such as supply chain bottlenecks, labor supply shortages, and oil and agricultural pressures because of Russia’s invasion into Ukraine have all lessened. The supply of labor has improved thanks to immigration. The U.S. Congressional Budget Office estimates that more than three million legal immigrants entered the country in 2023. New immigrants have raised the economy’s supply of workers and allowed the U.S. to generate jobs without accelerating inflation.<sup>173</sup> Inflation has gradually been falling: In March 2024, U.S. inflation stood at 3.4% which was much lower than its 9.1% peak, but not yet at the national target of 2%.<sup>174</sup> Analysts therefore believe that interest rate cuts will take place later in the year – Oxford economics is forecasting September and December 2024 interest rate decreases.<sup>175</sup> Inflation is projected to decrease to 2.3% by 2027.<sup>176</sup>

<sup>170</sup> Source: Oxford Economics as of May 2024

<sup>171</sup> Source: U.S. Bureau of Labor Statistics, “Employment-Population Ratio was 60.2% in January 2024”, 12 February 2024

<sup>172</sup> Source: New York City Comptroller, Annual State of the City’s Economy and Finances, 15 December 2023

<sup>173</sup> Source: Associated Press, “How Immigrant Workers in US Have Helped Boost Job Growth and Stave Off a Recession”, 12 April 2024

<sup>174</sup> Source: U.S. Bank Wealth Management, “How Do Changing Interest Rates Affect the Stock Market?”, 18 June 2024

<sup>175</sup> Source: Oxford Economics

<sup>176</sup> Source: New York City Comptroller, Annual State of the City’s Economy and Finances, 15 December 2023



## GDP and Passenger Growth

The growth in GDP historically correlates with increased air passenger enplanements (as shown in Figure 63), since economic prosperity leads to higher demand for business and leisure travel. Economic downturns lead to decreases in passenger numbers, as witnessed in the 1990 – 1991 recession, the 9/11 attacks, the 2007 – 2008 Global Financial Crisis, and the COVID-19 pandemic. From 1990 to 2010, enplaned passengers in the U.S. increased by 2.3% while real GDP increased by 2.5%. From 2011 to 2019, enplaned passengers increased 3.8% while real GDP grew at 3.1%.<sup>177</sup> The COVID-19 pandemic had a greater initial impact on air passenger numbers than GDP growth rates, with public health concerns, government restrictions, and changes in consumer and business behavior all creating a drop in demand for air travel while the wider economy was supported by government interventions and workplace practice adaptations. Real GDP for the U.S. in 2023 was 6% higher than in 2019, whereas total enplaned passengers were only 1% above their 2019 levels.<sup>178</sup>

During the nine years following the 2007 – 2008 Global Financial Crisis (2010 – 2019), JFK’s passenger enplanements grew by 37.8%, outpacing U.S. enplanement growth of 31.5%. During the COVID-19 pandemic, enplaned passengers at JFK decreased by 54% compared to 2019 levels, which was larger than the decrease in the U.S. of 44.4%. The sharper decline at JFK was caused by its relatively high proportion of international traffic.

While it is always subject to economic cycles, the size and robustness of the U.S. economy have helped buttress the country against major economic downturns. The U.S. annual GDP did not decline in 2000 to 2001, though quarterly decreases of 0.3% and 0.4% (Q4 2000 – Q1 2001 and Q2 2001 – Q3 2001, respectively) happened.<sup>179</sup> JFK’s resulting loss of enplaned passenger traffic was less than that of the U.S., at 1.7% versus 2.7%. Passenger traffic at JFK returned to pre-crisis levels in 2004, compared to 2005 for the U.S.

Since 1945, the average U.S. recession has lasted approximately 11 months.<sup>180</sup> The scale and scope of a recession determines its effect on passenger demand across the country or specific regions. For example, from 2008 to 2009, during the 2007 – 2008 Global Financial Crisis recession, U.S. GDP fell by 2.6%. While the drop led to a 7% decrease in passenger traffic across the U.S. between 2008 and 2009, JFK’s passenger traffic only declined by 3.8%. The smaller drop can be attributed to JFK’s large international route network, meaning passenger traffic is less reliant on U.S. GDP alone. Key country markets from JFK, such as those in Asia and Latin America, experienced a smaller and shorter decrease in GDP compared to the U.S., allowing demand for air travel in those countries to recover quickly. As a region, Asia did not experience a recession – GDP continued to grow throughout 2007 to 2009, driven by strong performance by large economies such as China. Latin American experienced a small decline in GDP in 2009, but it recovered quickly compared to other

<sup>177</sup> Source: GDP - U.S. Bureau of Economic Analysis, Enplanements – U.S. Department of Transportation T-100 data via Airline Data Inc.

<sup>178</sup> Source: GDP - U.S. Bureau of Economic Analysis, Enplanements – U.S. Department of Transportation T-100 data via Airline Data Inc.

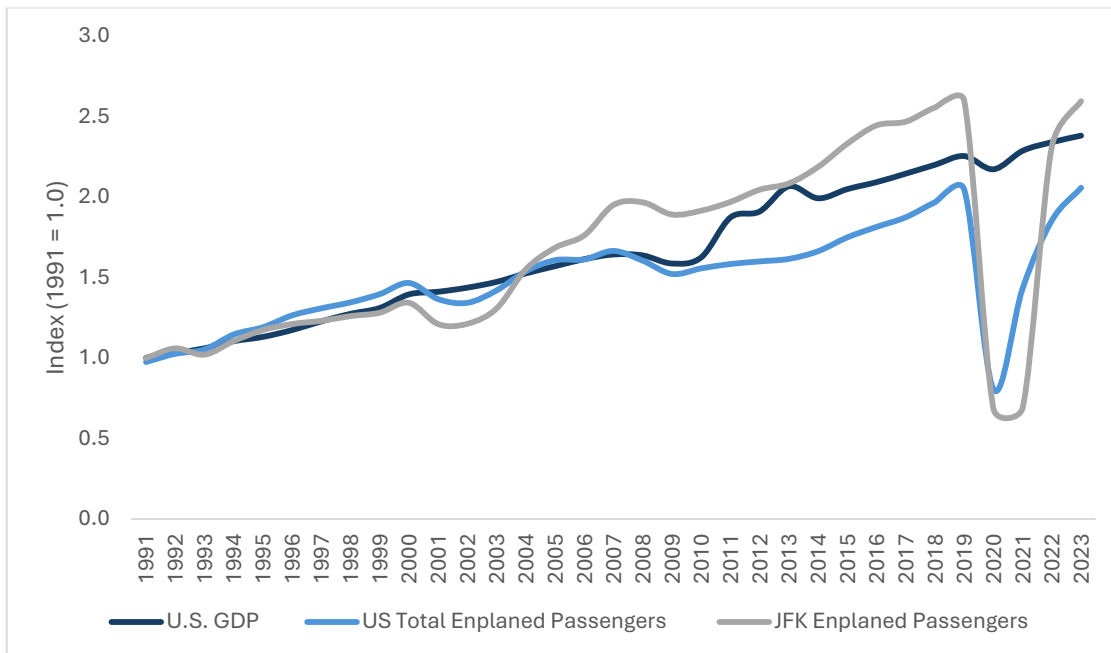
<sup>179</sup> Source: US Department of Commerce, Bureau of Economic Analysis

<sup>180</sup> Source: National Bureau of Economic Research, U.S Business Cycle Expansions and Contractions

regions and returned to pre-crisis levels in 2010. As global GDP started to increase again through 2009, JFK passenger numbers returned to pre-crisis levels in 2012, while total U.S. passenger traffic did not recover to pre-recession levels until 2015.

In 2023, JFK’s total enplaned passengers reached 62.5 million, on par with the 62.6 million achieved in 2019. In fact, December 2023 was the first month in which international passenger traffic surpassed totals from the same month in 2019.<sup>181</sup> Continued domestic and international economic growth is likely to support further increases in air passenger enplanements, and while the COVID-19 pandemic posed significant challenges in GDP recovery, the outlook for future travel remains positive.

Figure 63: Trends in U.S. Gross Domestic Product and Enplaned Passengers<sup>182</sup>



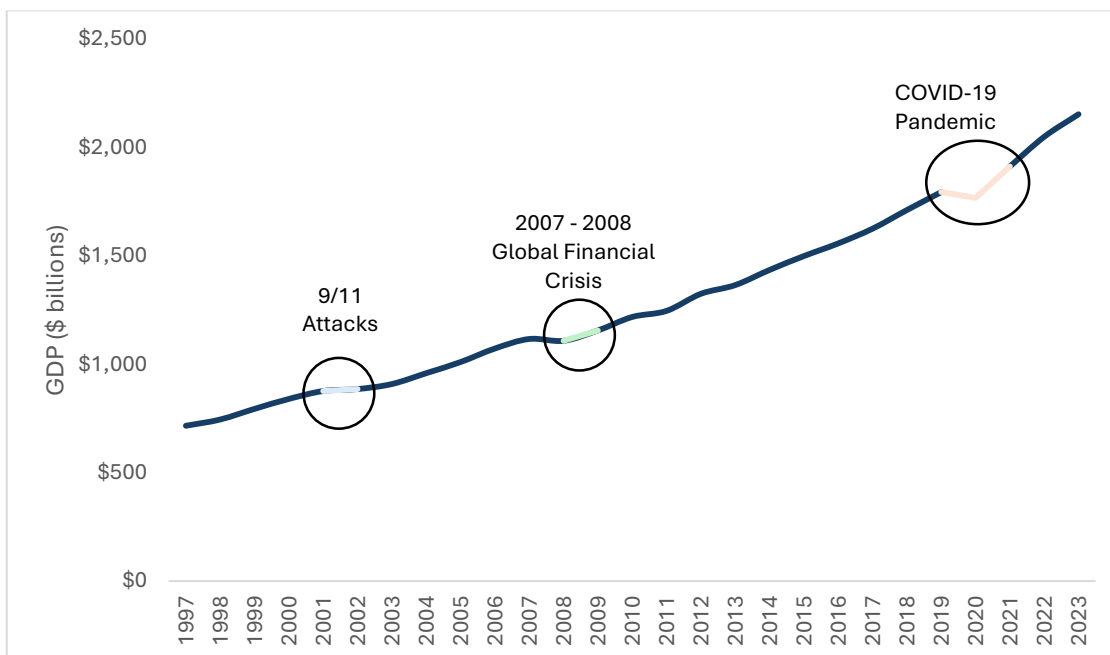
<sup>181</sup> Source: Port Authority of New York and New Jersey, “Port Authority Records Busiest Year Ever At Its Three Major Airports, Welcomes 144 Million Passengers in 2023”, 31 January 2024

<sup>182</sup> Source: GDP - U.S. Bureau of Economic Analysis, Enplanements – U.S. Department of Transportation T-100 data via Airline Data Inc.

## New York State Economy

New York State’s economy is the third largest in the U.S. behind California and Texas.<sup>183</sup> New York State has a resilient economy with GDP and employment recovering quickly after each downturn as shown in Figure 64. After the 2007 – 2008 Global Financial Crisis, GDP returned to pre-crisis levels seen in Q1 2007 by Q3 2009 (just over two years). The recent COVID-19 pandemic related downturn created a short, sharp recession, but New York GDP had already exceeded Q4 2019 levels by Q3 2021, or 1.5 years after the crisis began. Following on from recoveries in 2021 and 2022, the state’s economy expanded by 0.8% in 2023 and is forecasted to expand by 1.9% in 2024 and by 1.7% in 2025.<sup>184</sup>

Figure 64: New York State GDP Evolution<sup>185</sup>



## New York CSA Economy

The New York CSA economic trends are broadly similar to those at the state level. However, the New York State economy includes rural and urban contributions whereas the New York CSA is predominantly urban and suburban, with a focus on industries prevalent in metropolitan areas,

<sup>183</sup> Source: U.S. Bureau of Economic Analysis

<sup>184</sup> Source: New York State Division of The Budget, “Comments on U.S. and New York State Economy and Financial Markets – Hugh Johnson”, 28 February 2024

<sup>185</sup> Source: Federal Reserve Bank of St Louis

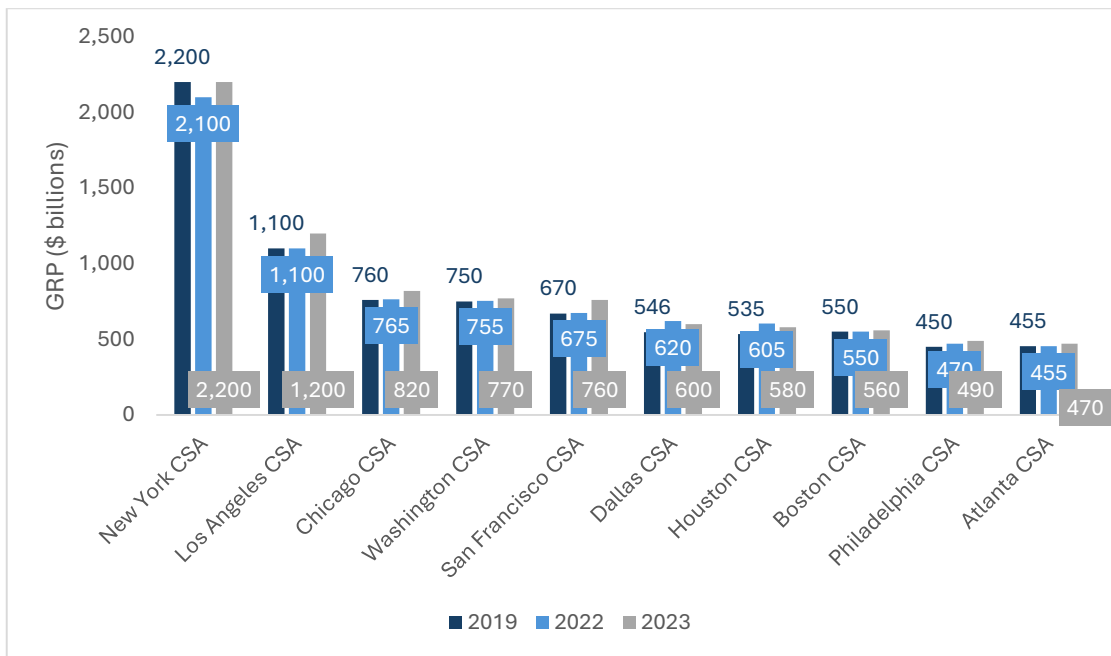
such as finance, business, and professional services. The New York CSA benefits from having a larger and denser population and several state economies<sup>186</sup> feeding into its overall GDP.

The New York CSA is a dynamic and influential region and has a GDP of over \$2 trillion. It is the largest metro area economy in the U.S. (as shown in Figure 65) and one of the largest regional economies in the world.<sup>187</sup>

The New York CSA’s inherent strengths and resilience have already enabled a rebound from the COVID-19 pandemic. The New York CSA has a stable economic outlook and will benefit from GDP growth from the tech and professional and business services sector as well as continuing to be a place where millions want to live, work, and visit. Its long-standing strengths will ensure it continues to be the most important CSA economically and the leading U.S. economic center for the rest of the decade.

The pandemic officially ended on May 11, 2023, and the New York region has once again demonstrated its economic resilience, rebounding at a similar rate to that after previous economic crises and continuing to be a key driver of the U.S. economy.

Figure 65: Gross Regional Product for 10 Largest U.S. CSAs<sup>188</sup>



<sup>186</sup> Primarily the densely populated suburbs in New Jersey, Connecticut, and Pennsylvania

<sup>187</sup> Source: U.S. Bureau of Economic Analysis

<sup>188</sup> Source: Federal Reserve Bank of St Louis

## Airline Traffic Forecasts

Key Takeaways	
1	The near-term forecast projects JFK’s passenger volume at 71.2 million in 2028, a CAGR of 2.7% from 2023 to 2028.
2	Growth in 2024 is expected to be limited, largely due to the reduction of more than one million seats by JetBlue from the domestic market, although growth is expected from 2025 and beyond.
3	Long-term unconstrained econometric forecast, performed against projections for U.S. GDP, projects total JFK passengers to reach 114.6 million passengers in 2060, representing a CAGR of 1.7% from 2023 to 2060.
4	Terminal 6 enplaned passenger volume is forecasted to reach 6.4 million passengers in 2060 using a baseline airline combination provided by JMP.

### Bottom-Up (near-term) and Econometric (long-term) Forecast

ASM completed a forecast of annual passenger traffic at JFK for the years 2024 through 2028. Passenger traffic during the initial five years is forecast using a bottom-up approach that provides a detailed projection of JFK passenger traffic on a route-by-route, carrier-by-carrier basis. The process involves analyzing every scheduled route operating at JFK by airline using historic changes to annualized movements, seats per movement, and load factors in addition to the extent of the recover from the COVID-19 pandemic to forecast future annual traffic and capacity. Each airline’s changes in fleet mix, route network recovery and strategy, and source market conditions are applied to each route.

The long-term passenger throughput forecast from 2029 to 2060 is performed on an econometric basis, applying regression analysis to a forecast of GDP growth of the U.S. obtained from Oxford Economics.

The entire forecast period was analyzed on an unconstrained basis and therefore did not take into account any operational, infrastructure, regulatory, or other limitations on passenger traffic or aircraft movements at the airport.

The near-term bottom-up forecast illustrates overall unconstrained passenger growth for JFK from 62.4 million passengers in 2023 to 71.2 million passengers in 2028 for a CAGR of 2.7%. The long-term econometric projection performed on an unconstrained basis shows traffic progression to 114.6 million passengers by 2060, a CAGR of 1.7% between 2023 and 2060.

## Bottom-Up Methodology

As the base year of the bottom-up forecast, the projections for 2024 are based upon the published and anticipated flying program as of April 2024. With the summer season already underway at the time of forecasting, and with good visibility of the anticipated program for the early part of the winter 2024/2025 schedules, the 2024 scheduled movements and capacity are largely fully visible except for any minor schedule and/or operational changes that may occur throughout the season. An anticipated annualized load factor is applied to this planned capacity to provide a projection of passenger traffic.

The historic data, in addition to the base year of the forecast (2024), is used to conservatively forecast movements, average seats per movement, and load factor annually for 2025 through 2028. While some routes may grow in-line with historic trends and changing market conditions, others could remain flat and some decline during the forecast period.

As is normal in the dynamic airline environment, strong routes receive additional capacity through a combination of more frequency, larger aircraft, and/or the lengthening of the seasonal program. Weaker routes lose capacity or are cancelled outright.

JFK's slot limitations are indirectly considered as part of this process, without applying any hard cap or limit, where routes with increasing passenger traffic are geared toward growth by using larger aircraft (upgauging) and or/higher load factors rather than frequency increases.

To determine the forecasted seats per movement, available future schedules were reviewed alongside known and anticipated fleet mix changes for each airline. Airline order books and publicly stated fleet plans were analyzed along with the typical age of the aircraft types being utilized at JFK to determine the balance between aircraft retirements, replacements, and growth during the bottom-up period.<sup>189</sup>

## Fleet Changes

The U.S. carriers are continuing to implement substantial changes to the makeup of their fleets through the retirement of older aircraft types and the delivery of newer variants, including some with new extended-range capabilities. The impact of these changes, such as those outlined in Table 33, is considered throughout the forecast.

Although these older variants are expected to be retired in part during the near-term forecast period, challenges with aircraft delivery schedules, maintenance issues, and shifting demand patterns are changing aircraft retirement plans, and particularly U.S. major airlines Delta and American. JetBlue has a younger fleet, so the impact of retirements is negligible, although future deliveries of the A220 and A321neo have been considered.

---

<sup>189</sup>Source: Aviation Week Fleet Discover and the Centre for Aviation (CAPA) fleet database

Foreign flag airlines were assessed on an individual basis, since a smaller portion of their fleets are applicable to JFK service. For example, the forecast assumes that Emirates will deploy more high-density A380s, Lufthansa will replace its A380s with other aircraft types, and Cathay Pacific will deploy more A350s, in line with their respective aircraft retirement and delivery schedules.

Table 33: Sample Aircraft Variant Replacement<sup>190</sup>

Airline	Pending Retirements		Potential Replacement Candidate		Market(s) Impacted
	Aircraft	Seats	Aircraft	Seats	
Delta Air Lines	A319-100	132	A220-300	130	DTW, AUS
	A320-200	157	B737-10	172	Not scheduled at JFK
	B717	110	A220-100/A220-300	109/130	Not scheduled at JFK
	B737-800	160	B737-10	172	AUS, PBI, RSW, MIA, ATL, TPA, NAS, BOS, JAX
	B757-200	175-184	B737-10/A321neo	172/194	ATL, STT, BOG, MBJ
	B767-300	211-216	A321neo	194	BRU, BCN, LIS, VCE, KEF, BOG, ARN, DSS, SFO, SNN, ATL, FCO, MXP
	B767-400	238	A330-200/A330-300	223/298	LHR, CDG, LAX, MXP, ZRH, FCO, EZE
American Airlines	A320-200	150	A321neo/XLR	196/152	Not scheduled at JFK
	A321-200	102 / 190	A321 neo XLR/B737-8	196/152/172	LAX, SFO, SNA, CLT, MIA
	B737-800	172	B737-8/-10	172/161	MIA, DFW, PUJ, AUS, MBI, BGI, SKB, PHX, CUN
	B777-200	273	B787-9	285	EZE, CDG, BCN, MIA, GIG, PHX

### New and Cancelled Routes

The forecast assumes that routes would lose capacity or be cancelled outright if they perform poorly, while unserved routes with sufficient demand could see the introduction of service. Airlines would most likely replace a cancelled route rather than remove the capacity from JFK entirely because the slots remain valuable assets. Therefore, the risk of traffic degradation from the cancellation of weak routes is low. Airlines frequently increase and decrease capacity on their routes as the route’s performance evolves, as reducing capacity on poor-performing routes, increasing capacity on stronger routes, and adding new routes are all normal activities as airline route networks evolve. The JFK routes cancelled and added for the bottom-up forecast are shown in Table 24.

<sup>190</sup> Source: Sabre Market Intelligence, ASM Forecast

Table 34: List of Routes Assumed to Commence or End

Status	2025	2026	2027	2028
Cancelled	Bucharest [OTP] (HiSky)	Anchorage [ANC] (Alaska Airlines)	Auckland [AKL] (Qantas)	
	Milwaukee [MKE] (JetBlue)	Liberia [LIR] (American Airlines)	Belize City [BZE] (JetBlue)	
	Munich [MUC] (Delta Air Lines)		Prague [PRG] (Delta Air Lines)	
	Porto [OPO] (SATA)		San Juan [SJU] (Frontier)	
	Portland [PDX] (JetBlue)		Saint Kitts [SKB] (JetBlue)	
	San Jose [SJC] (JetBlue)			
	Sacramento [SMF] (JetBlue)			
New	La Romana [LRM] (JetBlue)	Barcelona [BCN] (JetBlue)	Edinburgh [EDI] (American Airlines)	Beijing [PKX] (China Southern)
	Medellín [MDE] (JetBlue)	Boise [BOI] (JetBlue)	Lisbon [LIS] (JetBlue)	
	Oslo [OSL] (SAS)	Dublin [DUB] (American Airlines)	Riyadh [RUH] (Riyadh Air)	
	Stockholm [ARN] (SAS)	Istanbul [IST] (Delta Air Lines)	San Jose [SJC] (Alaska Airlines)	
		Lisbon [LIS] (American Airlines)		
		Manchester [MAN] (American Airlines)		
		Sydney [SYD] (Qantas)		

### Long-Term Methodology

The highly detailed and granular bottom-up forecast applies during the time when specific network and fleet changes can be reasonably anticipated, and airline network strategies are discernible. Forecasting passenger traffic for more than a few years out requires an approach beyond relying on plans that airlines within a highly dynamic and volatile industry cannot yet see themselves.

Therefore, an econometric regression was used to forecast the longer-term period from 2029 to 2060. The historic relationship between demand and GDP is correlated and tested, and this relationship is used to forecast unconstrained passenger demand based on a GDP predictor. GDP and passenger traffic have historically been closely correlated, so the ASM long-term methodology is a standard approach that is used for long-term airport forecasts across the aviation industry.



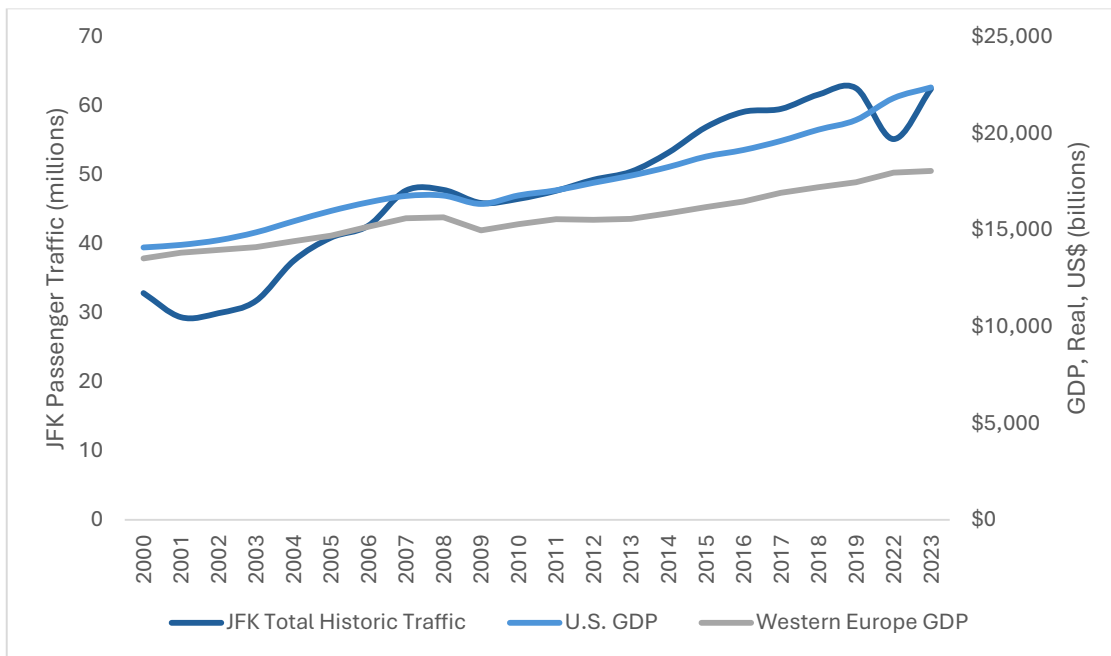
While passenger traffic is known to have some correlation to other casual factors, including population size, average airfare, and disposable income, GDP is a reliable univariate predictor of demand for which long-term forecasts are readily available.

Regression analysis of the GDP of the U.S. against historic traffic between 2000 and 2019 inclusive plus 2022 and 2023 in addition to the expected outturn from the bottom-up forecast covering 2024 to 2028 inclusive results in an  $r^2$  value of 0.89. In other words, 89% of the year-on-year changes to passenger throughput at JFK airport can be explained by changes to the GDP of the U.S., with the remaining 11% attributable to other casual factors.

When considering the GDP of other potentially relevant countries or regions, such as Western Europe, for example, there is an increasing disconnect between non-U.S. GDP values and traffic throughput at JFK, as demonstrated in Figure 66 and excluding the pandemic years of 2020 and 2021.

GDP data, both historic and forecasted, was obtained from Oxford Economics.

Figure 66: Relationship Between Historic Traffic and GDP Values<sup>191</sup>



The long-term forecast (2029 – 2060) is unconstrained, meaning no limitations to future growth have been included for slot restrictions, terminal or other maximum capacity, or for any other commercial, technical, or operational reason. Unconstrained forecasts are used to anticipate full passenger demand at an airport. If constraints were applied, the amount of long-term traffic forecasted would likely be lower. Also, no future economic downturns or other shocks are reflected

<sup>191</sup> Source: Traffic – Sabre Market Intelligence, GDP – Oxford Economics

in the GDP forecast. However, over the long-term forecast period from 2029 to 2060, passenger enplanements are forecasted to grow at a CAGR of 1.5%, which is conservatively below JFK's actual 2009 – 2019 CAGR of 3.6%

## Forecast Results

### Near-Term Results

The bottom-up forecast shows limited growth at JFK in 2024 year-on-year, with domestic enplanements expected to decline 2.9% to 28.2 million passengers, while international enplanements are expected to grow 5.7% year-on-year to 35.2 million passengers, resulting in 63.5 million JFK passengers, 1.7% higher than 2023 passengers. The major cause of the decline in domestic traffic in 2024 is the removal of more than one million seats by JetBlue, whose domestic capacity is projected to be down 12% from 2023 according to current schedules. Several major markets have been suspended or cancelled by JetBlue, including Dallas/Ft. Worth, Minneapolis, and Portland (Oregon) as the carrier consolidates its activity at JFK onto the most profitable routes only, reducing activity on marginal or unprofitable routes and/or those with particularly strong competitive pressures.

However, from 2025 and beyond, JFK passenger traffic is expected to return to a steadier growth trajectory, albeit with greater emphasis on international traffic for growth, as shown in Figure 67 and Table 35. By 2028, the end of the bottom-up period, domestic traffic is projected to grow to 31.2 million passengers, equivalent to a CAGR of 1.4% in the 2023 to 2028 period. International traffic is projected to grow to 40.0 million passengers by 2029, representing a CAGR of 3.7% from 2023 to 2028. Total traffic is therefore projected to reach 71.2 million passengers by 2028, representing a CAGR of 2.7% between 2023 and 2028.

Figure 67: JFK Passenger Traffic, Historic and Projected<sup>192</sup>

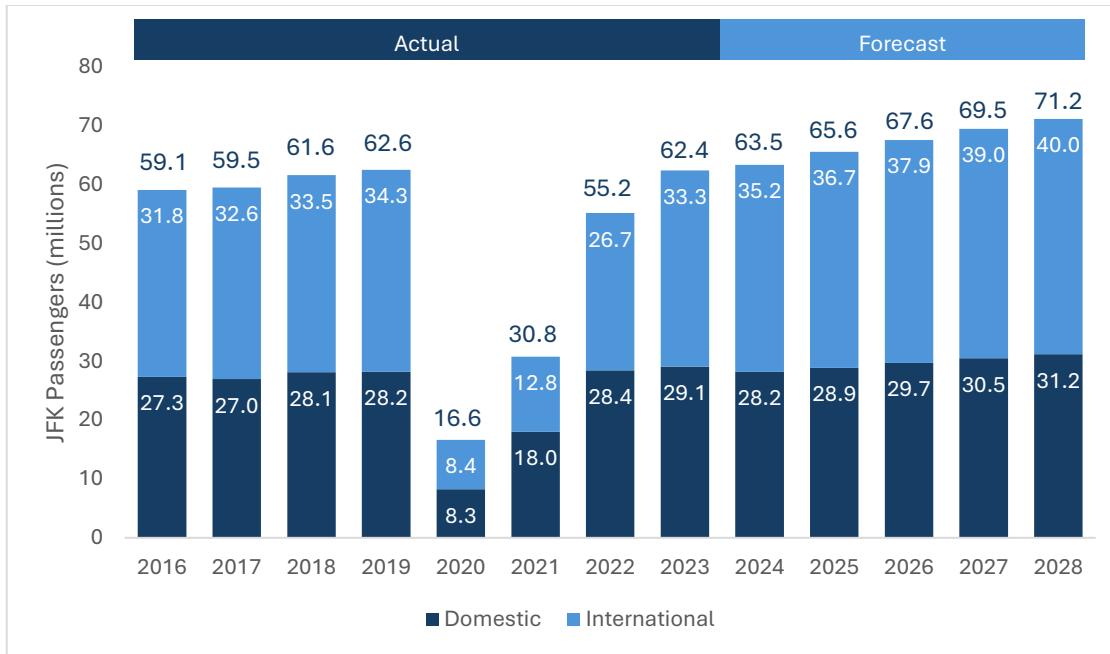


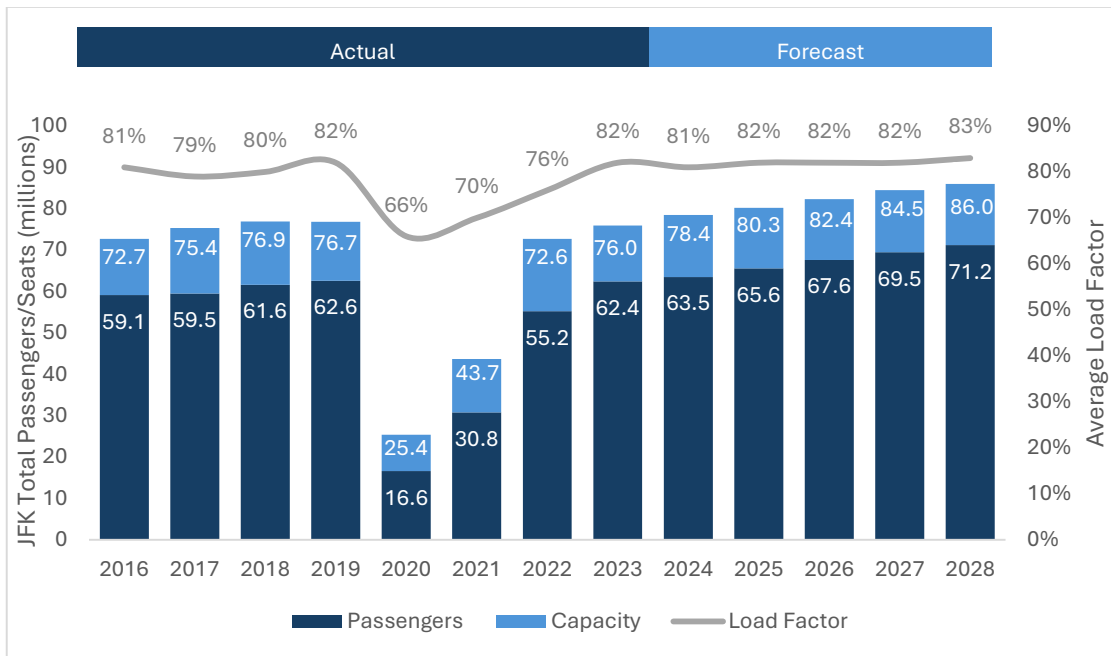
Table 35: JFK Bottom-Up Passenger Traffic Forecast Results (000s)

	2023	2024	2025	2026	2027	2028
Domestic	29,095	28,246	28,869	29,691	30,495	31,195
International	33,337	35,224	36,741	37,949	39,047	40,028
Total	62,432	63,471	65,610	67,640	69,542	71,223

Figure 68 shows the capacity and load factor projections associated with the near-term forecast.

<sup>192</sup> Source: Historic – Sabre Market Intelligence, Projected – ASM Forecast

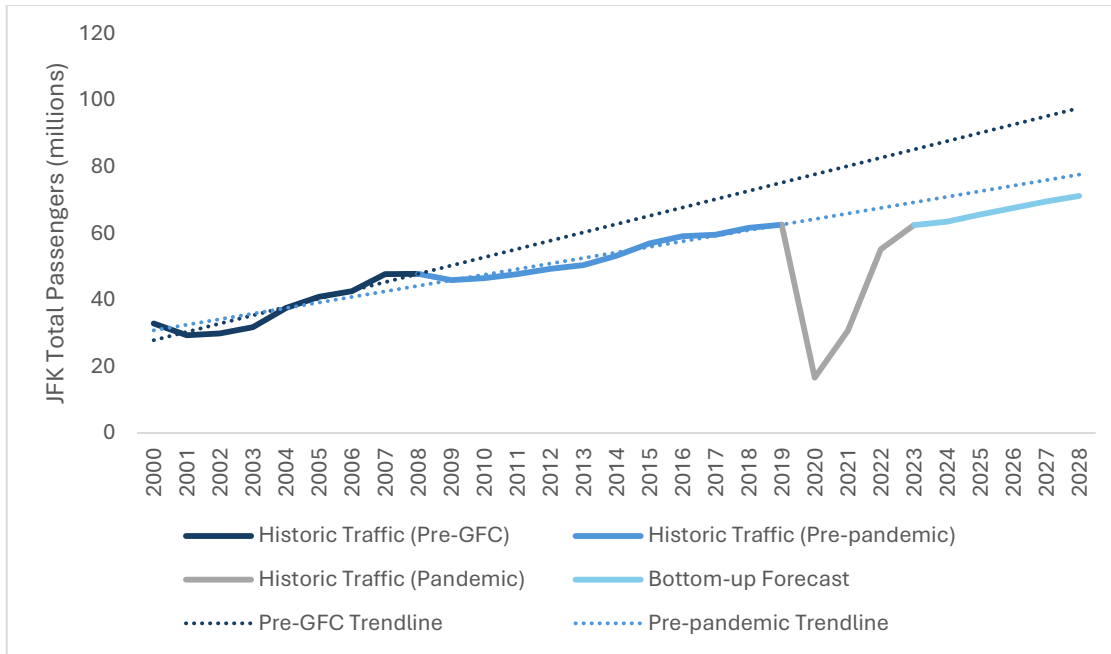
Figure 68: JFK Passenger, Capacity, and Load Factor Progression<sup>193</sup>



Although total traffic returned to pre-pandemic levels in 2023, because of the loss of growth during this time, total traffic is not expected to return to the pre-pandemic trendline. This is representative of normal post-shock trends, as it is well documented that following previous shocks to the aviation industry (such as the 9/11 attacks and the 2007 – 2008 Global Financial Crisis), there was a resulting loss of growth of traffic that did not return to the pre-shock trend. Figure 69 illustrates how following the 2007 – 2008 Global Financial Crisis, passenger traffic at JFK did not return to the pre-shock trendline, and similarly how the near-term forecasted passenger figures for JFK are also not expected to return to the pre-pandemic trendline.

<sup>193</sup> Source: Actual – Sabre Market Intelligence, Forecast – ASM Forecast

Figure 69: Pre- and Post-Shock Traffic Changes<sup>194</sup>



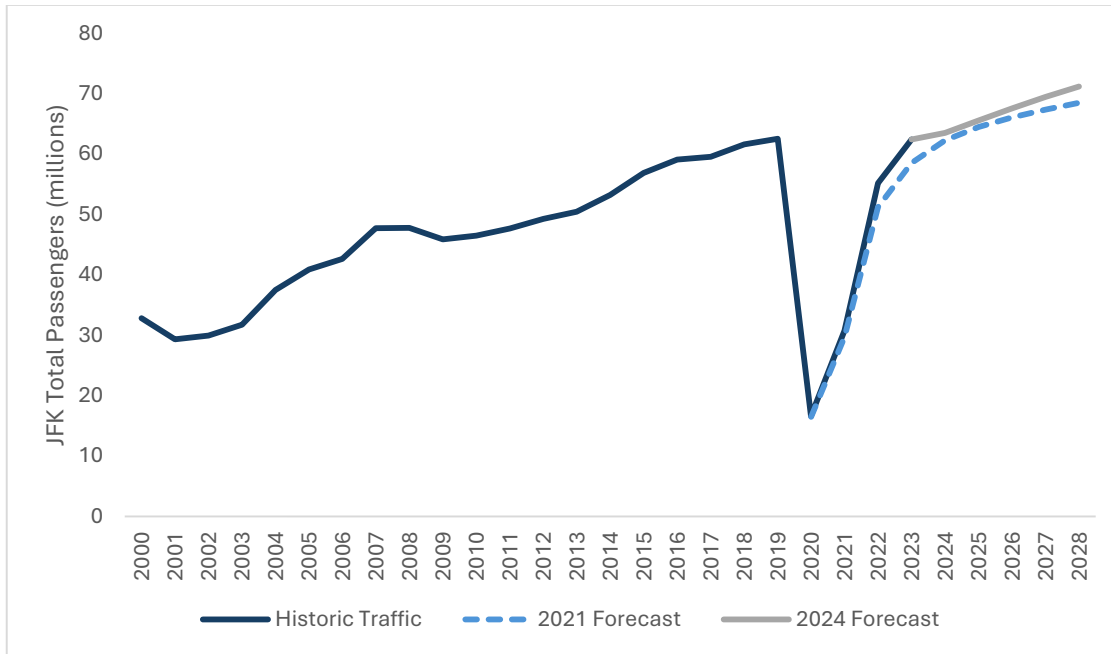
Compared to the previous forecast performed in 2021, the recovery of traffic following the COVID-19 pandemic has been quicker than anticipated, as shown in Table 36 and Figure 70. The 2021 forecast was produced while significant uncertainty remained about vaccine availability, border reopening, travel restrictions and testing requirements, and international economic recovery. Although the initial recovery happened at an accelerated rate, this rate of annual growth is expected to decelerate into 2024, largely as a result of JetBlue’s capacity reduction as well as other factors.

Table 36: Comparison of 2021 and 2024 Passenger Traffic Forecasts

Year	Passengers (000s)			% Change
	2021 Forecast	2024 Forecast	Difference	
2022	51,254	55,175	3,921	7.7%
2023	58,529	62,432	3,903	6.7%
2024	62,268	63,471	1,203	1.9%
2025	64,493	65,610	1,117	1.7%
2026	66,082	67,640	1,558	2.4%
2027	67,389	69,542	2,153	3.2%
2028	68,505	71,223	2,718	4.0%

<sup>194</sup> Source: Historic Traffic – Sabre Market Intelligence, Forecast – ASM Forecast

Figure 70: Near-Term Passenger Forecast Passenger Traffic Comparison<sup>195</sup>



The near-term forecast for JFK movements is shown in Table 37 and Figure 71. Compared to the prior forecast produced in 2021, the overall number of movements projected in the 2024 forecast is expected to be relatively static, with passenger growth coming from larger aircraft and more efficient use of seat capacity through higher load factors. However, there is still expected to be some marginal growth in the overall number of aircraft movements in line with historic growth rates on an unconstrained basis and representing an overall growth rate from 2023 to 2060 of 18.8% with a corresponding CAGR of 0.5% in this period.

Table 37: 2024 Near-Term Forecast Results, Aircraft Movements

	2023	2024	2025	2026	2027	2028
Domestic	275,331	255,208	252,394	256,534	262,333	265,474
International	186,566	194,211	198,845	202,785	206,698	209,430
Total	461,897	449,419	451,239	459,319	469,031	474,904

<sup>195</sup> Source: Historic Traffic – Sabre Market Intelligence, Forecasts – ASM Forecasts

Figure 71: JFK Movements Forecast, Historic and Projected<sup>196</sup>

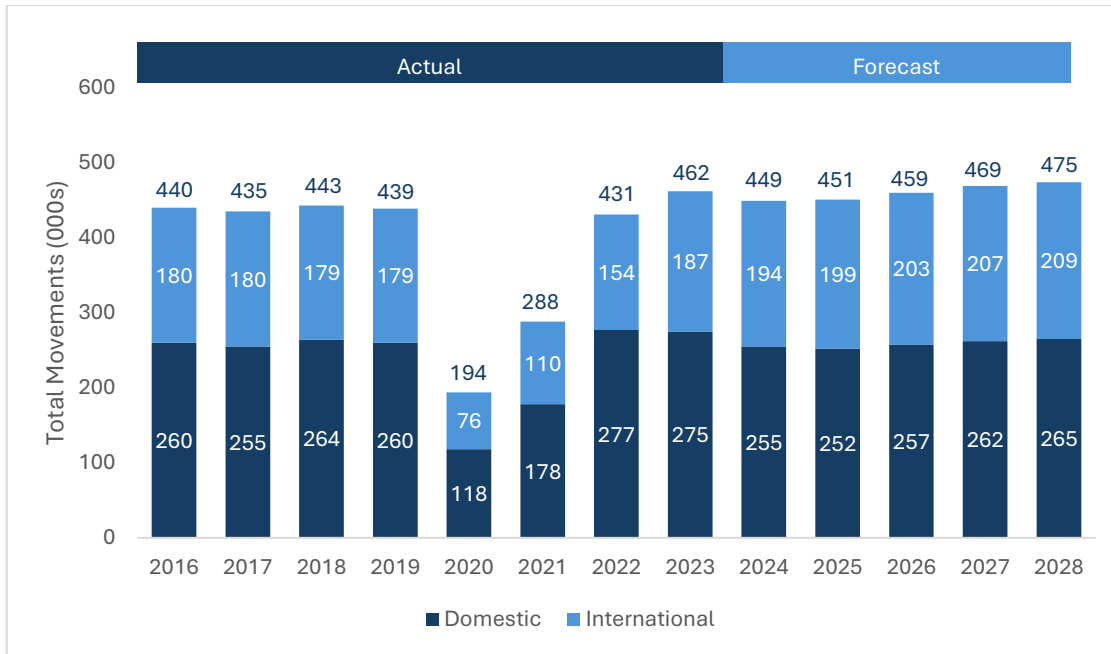
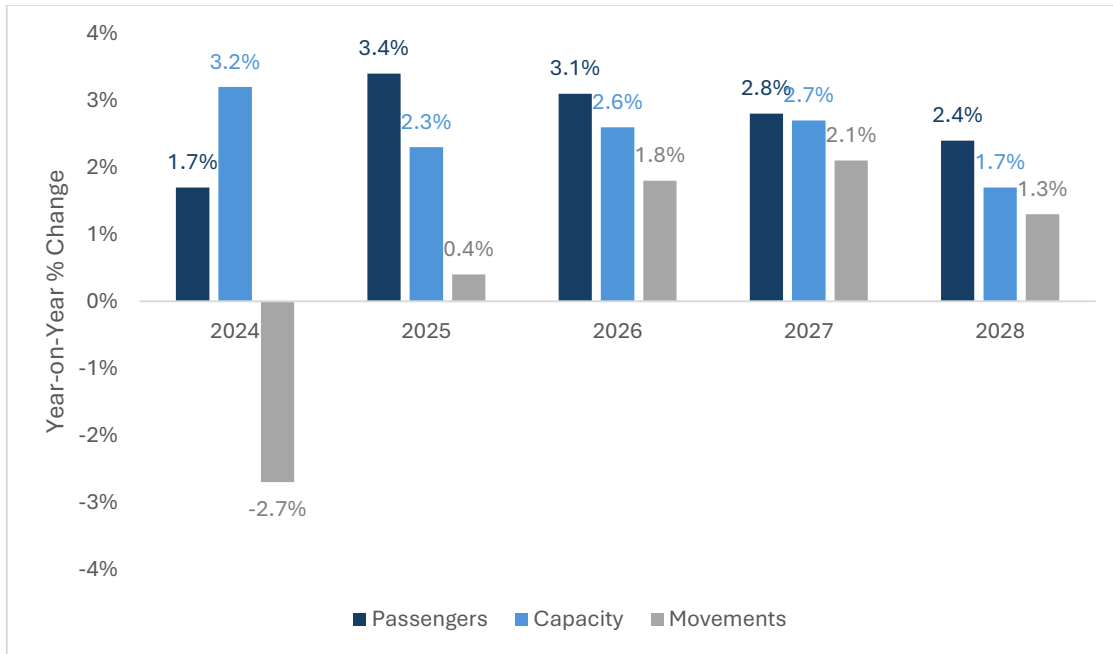


Figure 72 illustrates the nature of the growth between passengers, capacity, and movements, Except for the base year of 2024, passengers are expected to grow at a stronger rate year-on-year compared to capacity and movements. In 2024, passenger growth is not expected to keep pace with capacity growth, as some corresponding passenger growth is expected to materialize in 2025 instead.

<sup>196</sup> Source: Historic – Sabre Market Intelligence, Projected – ASM Forecast

Figure 72: Near-Term Forecast Year-on-Year Growth



### Long-Term Results

The long-term forecast projects JFK reaching 74.1 million passengers in 2030, growing to 114.6 million passengers in 2060, as shown in Figure 73 and Table 38.



Figure 73: JFK Long-Term Passenger Forecast Results<sup>197</sup>

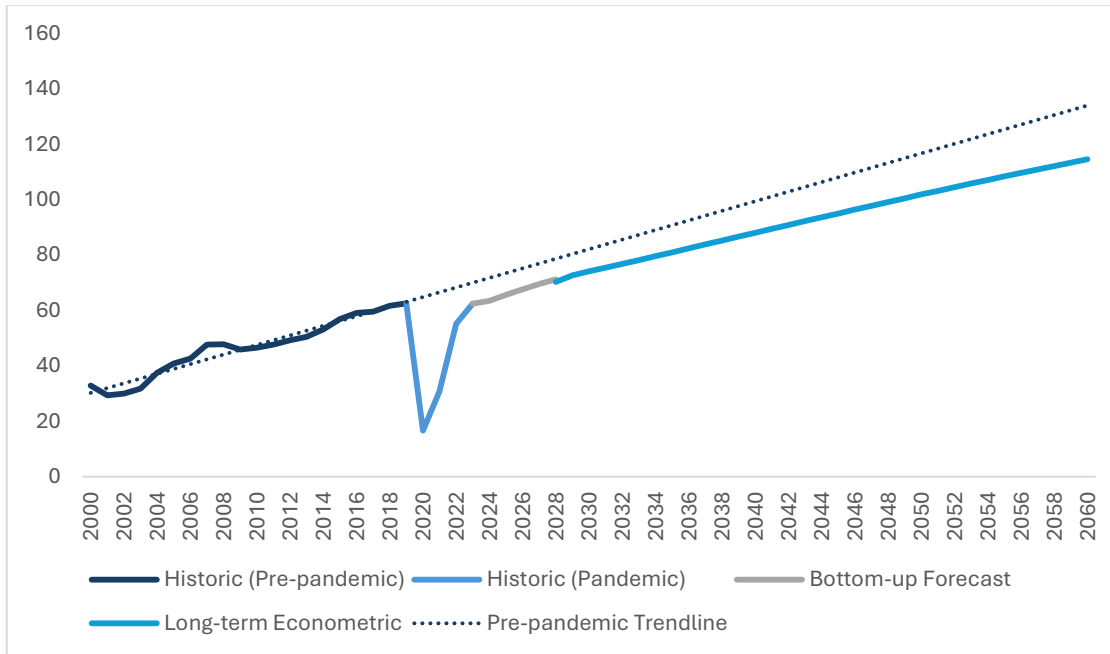


Table 38: JFK Long-Term Unconstrained Passenger Forecast Results (000s)

	2023	2024	2030	2040	2050	2060
Domestic	29,095	28,246	32,154	36,530	40,409	43,455
International	33,337	35,224	41,922	51,499	61,449	71,121
Total	62,432	63,471	74,075	88,029	101,858	114,576

As previously described, the econometric nature of the long-term forecast means that no specific operational constraints are considered and that the future growth in demand for travel to/from JFK will continue to have the same relationship with GDP as it has historically. Despite the unconstrained nature of the forecast, the CAGR of JFK’s passenger traffic between 2019 and 2060 is 1.5%, well below the historical rate (1991 – 2019) of 3.5%, which includes the impact of past events such as the 9/11 attacks and 2007 – 2008 Global Financial Crisis. The additional passenger demand will be partially satisfied with more use of existing aircraft movement capacity through:

- Larger aircraft:** New aircraft entering airline fleets are larger than the previous generation of aircraft performing the same missions. The increasing size reflects growing global passenger demand, global airport capacity constraints, and better economic efficiencies. The major aircraft manufacturers have indicated that increasing industry costs, further market growth, and technological improvements will all continue to drive the upgauging trend for the foreseeable future. Between 2009 and 2019, the average seats per movement at JFK increased by 22 from 153 to 175 for a CAGR of 1.4%. Although the COVID-19

<sup>197</sup> Source: Historic – Sabre Market Intelligence, Forecast – ASM Forecast

pandemic has resulted in a reduction in average aircraft size, by 2025 the average seats per movement is expected to resume growing to 178. The average aircraft capacity is projected to continue increasing in line with international movement growth, particularly among widebody aircraft. The trend is expected to persist over the long term as airlines optimize fleet size against limited slot availability at JFK and other major global airports.

- **Higher load factors:** The average annual load factor at JFK increased from 73% to 82% between 2009 and 2019. Although the COVID-19 pandemic brought on lower load factors, in 2023 the average load factor returned to 82%. Consequently, in 2023, 13.5 million seats still arrived at or departed from JFK unfilled. As airlines face increasing operating and cost efficiencies, the improving technology used to sell seats, optimize revenue, and manage inventory will result in an overall decrease in the number of unoccupied seats with a corresponding improvement in load factor. It is projected that the average load factors achieved for movements into and out of JFK will gradually increase over the forecast period.

It was previously discussed how following a shock to the industry, traffic levels do not typically return to the pre-shock trend. This phenomenon can be observed throughout the long-term duration of this forecast, where traffic is expected to return to a broadly similar rate of annual growth, albeit from a lower starting point, and will not return to the pre-pandemic trendline.

The projected deviation from the pre-pandemic trend widens as time progresses. This is initially caused by the compounding impact of the loss of growth (i.e. the loss of “growth of the growth” over time) and secondly as a result of the projected slowdown in the GDP growth rate as forecasted by Oxford Economics, which is the casual factor driving the long-term projection, causing this deceleration of JFK passenger traffic growth.

Compared to the forecast produced in 2021, the earlier 15 to 20 years of the updated long-term forecast suggest an increased outturn in passenger traffic, largely driven by the increased baseline based on which the econometric projection is performed. However, the rate of growth in the later years of the forecast is expected to slow down compared to the 2021 forecast, resulting in a “crossing over” of the two trajectories in 2046 when compared, as shown in Figure 74. The driver of this change is the downgrading of the economic outlook as per the Oxford Economics forecast used to perform the econometric regression, which typical loss between 0.4pts and 0.7pts of growth per year. Figure 75 and Figure 76 illustrate the changes to this GDP projection and trajectory, which is the cause of the change to the trajectory of the traffic forecast.

Figure 74: Forecast JFK Passengers Compared to 2021 Forecast

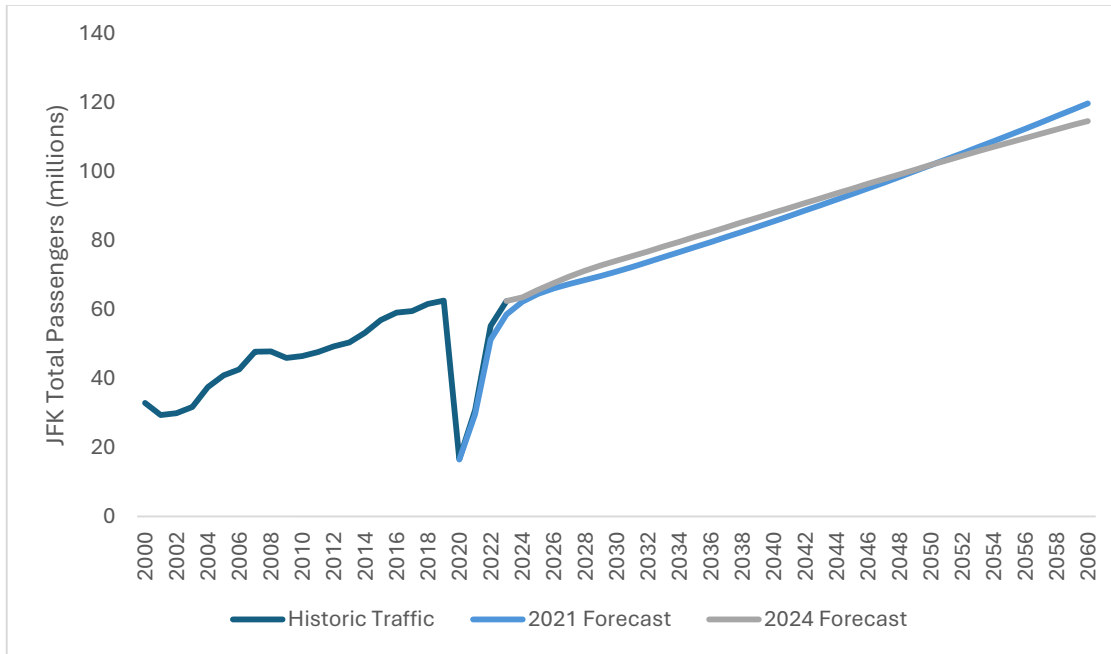


Figure 75: Changes to Oxford Economics GDP Forecast

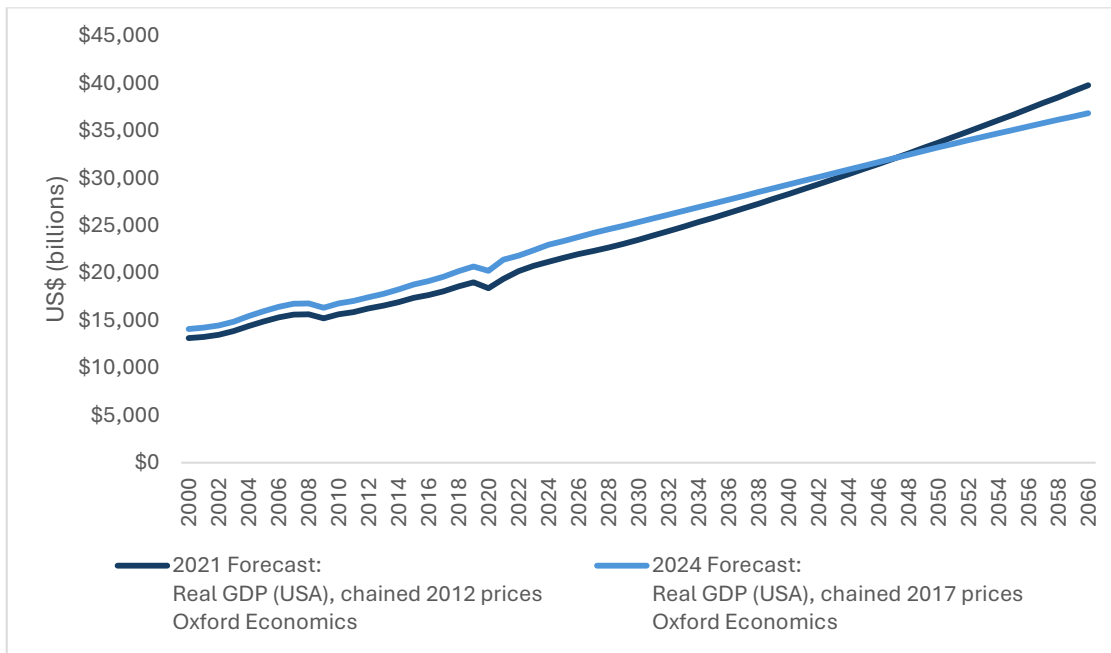


Figure 76: Oxford Economics Year-on-Year GDP Forecast Growth Rate

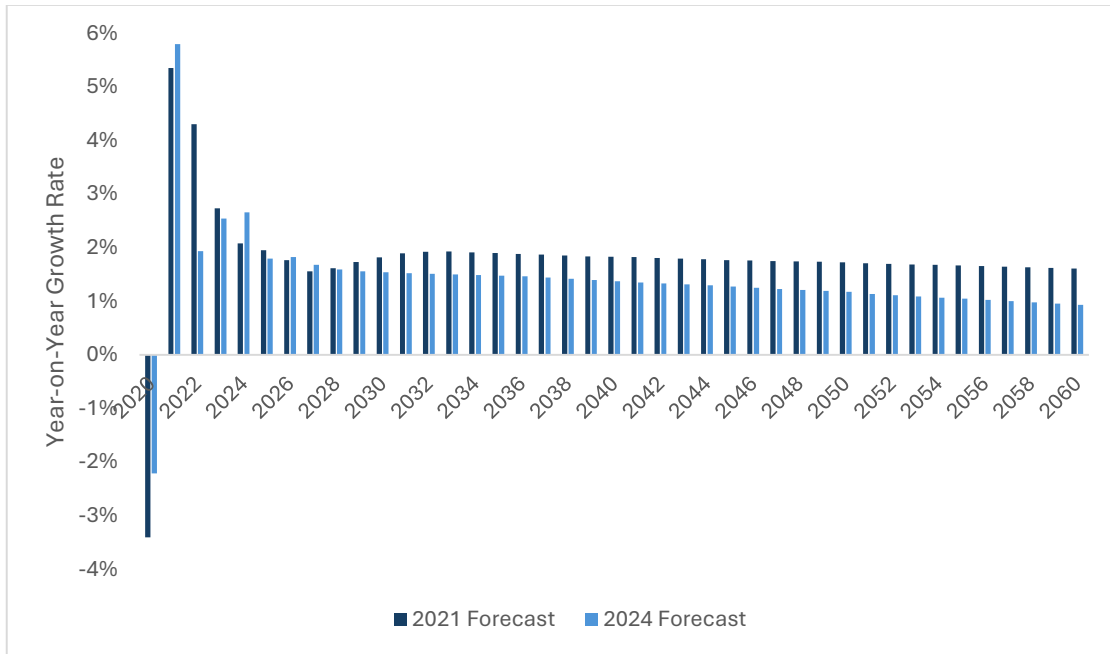


Figure 77 illustrates the indicative capacity and load factor required to achieve the projected long-term passenger enplanement throughput. It demonstrates steady improvement to load factor and capacity through the increases to movements and average seats to movement. Appendix B shows the detailed indicative extrapolation. While not itself a forecast, the movements, load factor, and seats per movement projections are indicative of the levels that would be required to achieve the forecasted passenger throughput.

Although JFK has constraints relating to slot availability and the number of possible aircraft movements in any period of time, the number of aircraft movements can still continue to grow via:

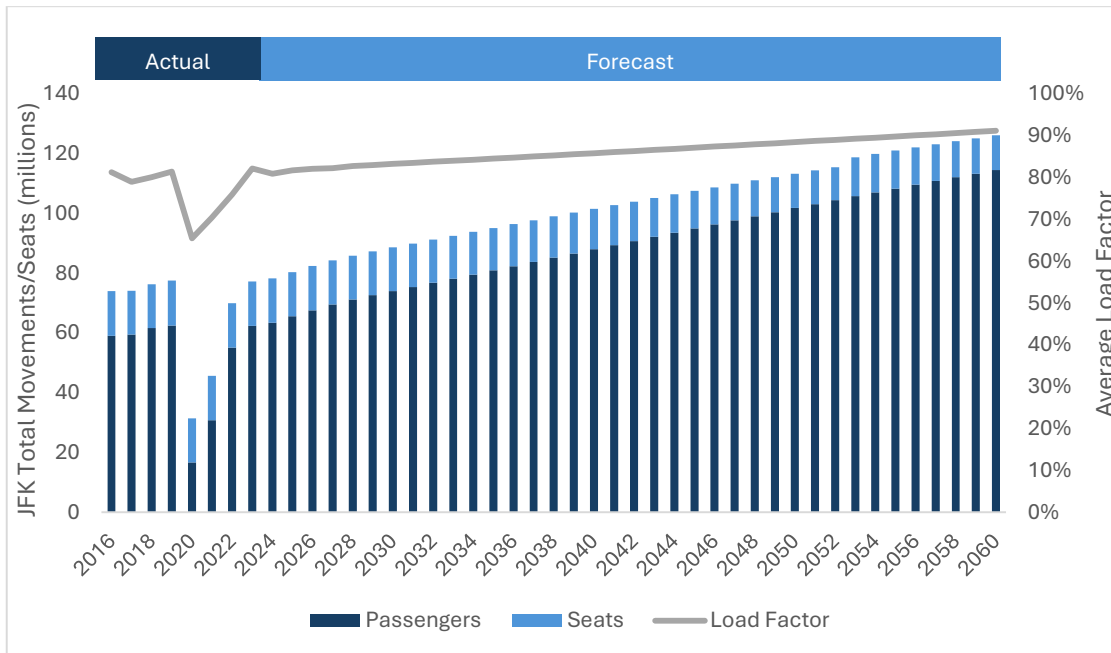
- Increased use of existing slots:** Airlines must maintain 80% usage of their slots to keep them. In 2019, airlines flew approximately 85.5% of the available aircraft movement slots. In 2024, airlines are utilizing approximately 81.0% of their slots.<sup>198</sup> Slot usage is lower because of the waiver currently in place. As passenger demand grows, airlines add frequency, extend the operating season on routes, and add new markets. Without additional slots to acquire, the growth in flights would be accomplished by operating a higher percentage of the slots they already have.
- Additional flights outside of slot-controlled hours:** JFK’s slot control rules are in effect for 17 hours each day. In 2019, 9.7% of JFK’s aircraft movements were scheduled outside of the slot-controlled hours, primarily to Asia, Central America, South America, and Florida. In 2024, 8.1% of aircraft movements are scheduled outside of slot-controlled hours.<sup>199</sup> The

<sup>198</sup> Source: Airline schedules via Airline Data Inc

<sup>199</sup> Source: Airline schedules via Airline Data Inc.

decline from 2019 is attributable to airlines using non-slot controlled hours not yet returning to JFK (primarily from Asia) and the slot waiver putting less pressure on operations in slot-controlled hours. As passenger demand grows, airlines will add movements outside slot-controlled hours either because slots are not available or the available gaps in their JFK schedules are during these hours (for example, to meet a connecting bank at their hubs).

Figure 77: Indicative Progression of Capacity and Load Factor<sup>200</sup>



## Terminal 6 Forecast

The passenger traffic forecasted to utilize Terminal 6 was produced from a list of airlines provided by JMP. The bottom-up forecast was used to determine each airline’s traffic through 2028. From 2029 through 2060, the econometric growth rate for all of JFK was applied to each airline individually. The JFK-wide growth rate was used because forecasting individual airline growth rates over the long-term is not possible while remaining consistent with the passenger enplanement totals for the airport as a whole.

JetBlue will only be occupying a single gate in Terminal 6, which creates a limit on the number of flights and seats that can operate. Its forecast reflected JetBlue’s typical five daily flights per gate, 172 average seats per departure, and 82% annual load factor. Between 2026 and 2030, JetBlue’s load factor is assumed to gradually increase to 87% and then remain steady through the end of the

<sup>200</sup> Source: Actual – Sabre Market Intelligence, Forecast – ASM Forecast

forecast period. Starting in 2031, JetBlue’s average seats per departure is increased by one seat every three years.<sup>201</sup>

Terminal 6 is forecasted to have 6.4 million passenger enplanements in 2060, as shown in Figure 78 and Table 39. Between 2025 and 2060, enplaned passenger traffic is projected to grow 61.1% for a CAGR of 1.4%. However, even in 2060 passenger volumes would remain below the peak operating capacity of 8.5 million. Terminal 6 passenger enplanements for each year of the forecast are shown in Appendix C.

Figure 78: Terminal 6 Enplaned Passenger Forecast

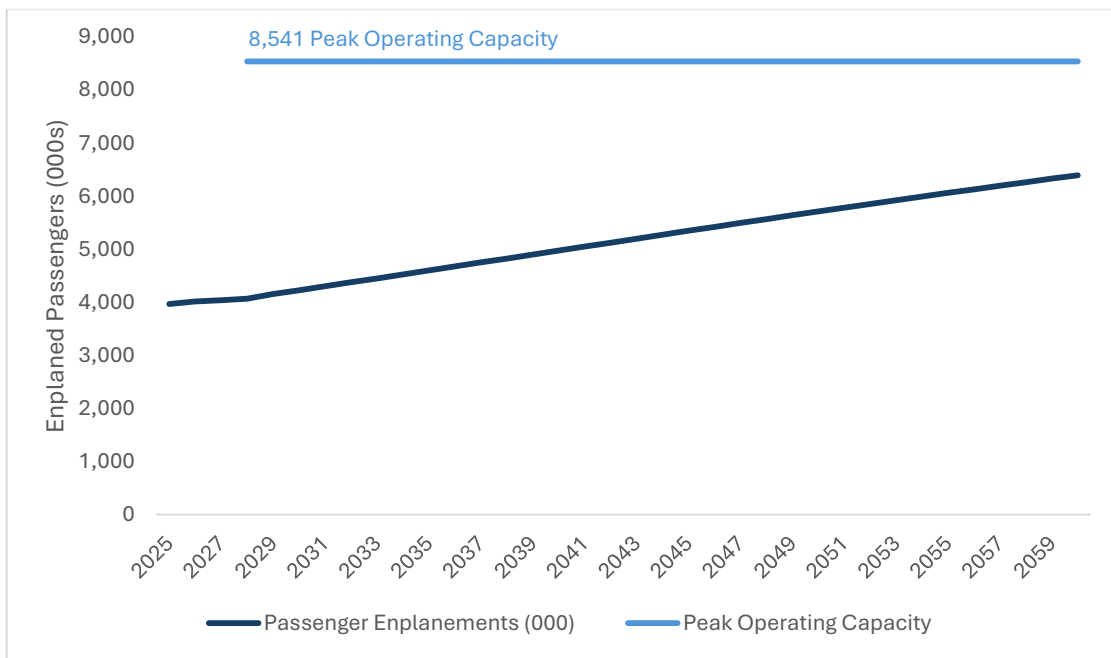


Table 39: Terminal 6 Enplaned Passenger Forecast (000s)

	2025	2030	2035	2040	2045	2050	2055	2060
T6 Airline Combination	3,970	4,231	4,601	4,976	5,349	5,715	6,065	6,395

Additional combinations of airlines were forecasted to analyze the sensitivity of potential airline combinations resulting in more (high case) or fewer (low case) passenger enplanements in Terminal 6. The high and low case airline combinations were provided by JMP and forecasted using the same methodology as the baseline case.

<sup>201</sup> 2031 was selected because in July 2024 the airline announced a deferral of its larger Airbus A321 aircraft until 2030.

Based on the JMP-provided airline combinations, Terminal 6 is expected to generate between 6.0 million and 6.6 million annual passengers in 2060, as shown in Figure 79 and Table 40. The Baseline Case is expected to generate 185.7 million enplaned passengers between 2025 and 2060 while the High Case and Low Case would generate 189.7 million and 175.2 million enplaned passengers respectively.

Figure 79: Terminal 6 Airline Combination Forecast

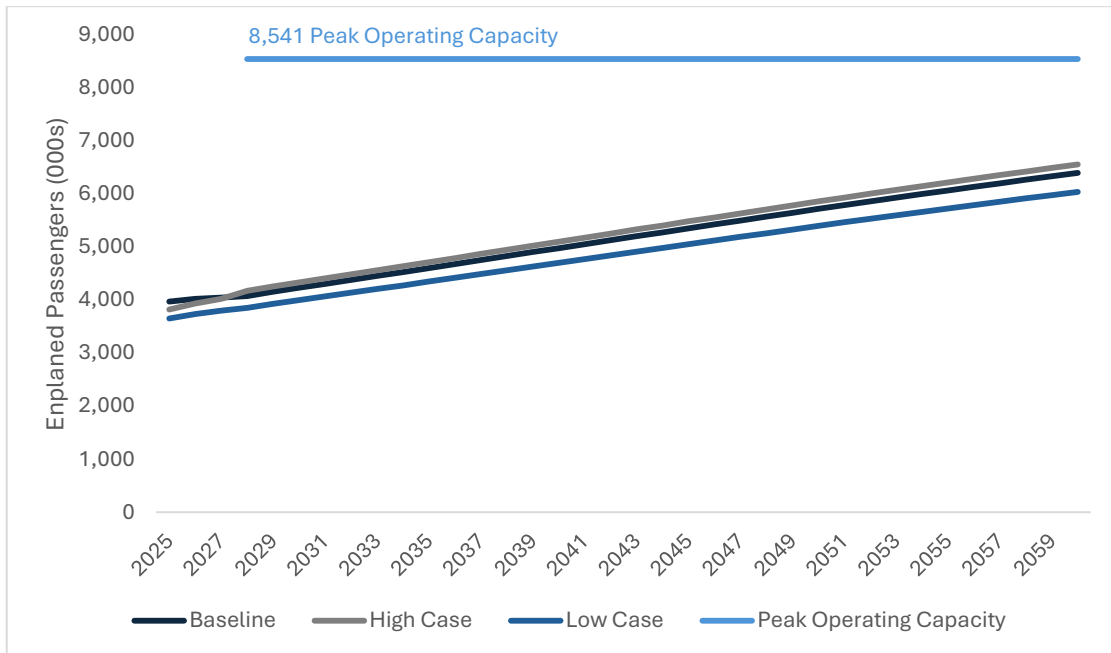


Table 40: Airline Combination Enplaned Passenger Forecast (000s)

	2025	2030	2035	2040	2045	2050	2055	2060	2025-2060 CAGR
Low Case	3,651	3,998	4,347	4,700	5,051	5,395	5,725	6,036	1.4%
Baseline	3,970	4,231	4,601	4,976	5,349	5,715	6,065	6,395	1.4%
High Case	3,820	4,334	4,714	5,098	5,481	5,856	6,215	6,554	1.6%

## Appendix A

### International Air Transport Association (IATA) Airport Codes

Code	Airport Name	Location
ABE	Lehigh Valley International Airport	Allentown, PA
ACY	Atlantic City International Airport	Atlantic City, NJ
AKL	Auckland Airport	Auckland, New Zealand
ALB	Albany International Airport	Albany, NY
ANC	Ted Stevens Anchorage International Airport	Anchorage, AK
ARN	Stockholm Arlanda Airport	Stockholm, Sweden
ATL	Hartsfield-Jackson Atlanta International Airport	Atlanta, GA
AUS	Austin-Bergstrom International Airport	Austin, TX
BCN	Josep Tarradellas Barcelona-El Prat Airport	Barcelona, Spain
BDL	Bradley International Airport	Hartford, CT
BGI	Grantley Adams International Airport	Bridgetown, Barbados
BOG	El Dorado International Airport	Bogota, Colombia
BOI	Boise Airport	Boise, ID
BOS	Boston Logan International Airport	Boston, MA
BRU	Brussels Airport	Brussels, Belgium
BTV	Patrick Leahy Burlington International Airport	Burlington, VT
BUF	Buffalo Niagara International Airport	Buffalo, NY
BUR	Hollywood Burbank Airport	Burbank, CA
BWI	BWI Marshall Airport	Baltimore, MD
BZE	Philip S. W. Goldson International Airport	Belize City, Belize
CAN	Guangzhou Baiyun International Airport	Guangzhou, China
CDG	Paris Charles de Gaulle Airport	Paris, France
CLT	Charlotte Douglas International Airport	Charlotte, NC
CUN	Cancun International Airport	Cancun, Mexico
DAL	Dallas Love Field	Dallas, TX
DCA	Ronald Reagan Washington National Airport	Washington, D.C.
DEL	Indira Ghandi International Airport	Delhi, India
DEN	Denver International Airport	Denver, CO
DFW	Dallas-Fort Worth International Airport	Dallas, TX
DSS	Blaise Diagne International Airport	Dakar, Senegal
DTW	Detroit Metropolitan Airport	Detroit, MI
DUB	Dublin Airport	Dublin, Ireland
DXB	Dubai International Airport	Dubai, United Arab Emirates
EDI	Edinburgh Airport	Edinburgh, Scotland
EWR	Newark Liberty International Airport	Newark, NJ
EZE	Ministro Pistarini International Airport	Buenos Aires, Argentina
FLL	Fort Lauderdale-Hollywood International Airport	Fort Lauderdale, FL
FCO	Leonardo da Vinci-Fiumicino Airport	Rome, Italy



Code	Airport Name	Location
GIG	Rio de Janeiro Galeão International Airport	Rio de Janeiro, Brazil
HND	Tokyo Haneda Airport	Tokyo, Japan
HOU	William P. Hobby Airport	Houston, TX
HPN	Westchester County Airport	White Plains, NY
HVN	Tweed New Haven Airport	New Haven, CT
IAD	Washington Dulles International Airport	Sterling, VA
IAH	George Bush Intercontinental Houston Airport	Houston, TX
ISP	Long Island MacArthur Airport	Islip, NY
IST	Istanbul International Airport	Istanbul, Türkiye
JAX	Jacksonville International Airport	Jacksonville, FL
JFK	JFK International Airport	New York, NY
KEF	Keflavik International Airport	Keflavik, Iceland
LAS	Harry Reid International Airport	Las Vegas, NV
LAX	Los Angeles International Airport	Los Angeles, CA
LGA	LaGuardia Airport	New York, NY
LGB	Long Beach Airport	Long Beach, CA
LHR	Heathrow Airport	London, UK
LIR	Daniel Oduber Quirós International Airport	Liberia, Costa Rica
LIS	Humberto Delgado Airport	Lisbon, Portugal
LRM	La Romana International Airport	La Romana, Dominican Republic
MAN	Manchester Airport	Manchester, UK
MBJ	Sangster International Airport	Montego Bay, Jamaica
MCO	Orlando International Airport	Orlando, FL
MDE	Jose Maria Cordova International Airport	Medellín, Colombia
MDT	Harrisburg International Airport	Harrisburg, PA
MDW	Midway International Airport	Chicago, IL
MHT	Manchester-Boston Regional	Manchester, NH
MIA	Miami International Airport	Miami, FL
MKE	Milwaukee Mitchell International Airport	Milwaukee, WI
MLB	Melbourne Orlando International Airport	Melbourne, FL
MUC	Munich International Airport	Munich, Germany
MPX	Milan Malpensa Airport	Milan, Italy
NAS	Lynden Pindling International Airport	Nassau, Bahamas
OAK	San Francisco Bay Oakland International Airport	Oakland, CA
ONT	Ontario International Airport	Ontario, CA
OPO	Francisco Sá Carneiro Airport	Porto, Portugal
ORD	O'Hare International Airport	Chicago, IL
OSL	Oslo Airport	Oslo, Norway
OTP	Bucharest Henri Coandă International Airport	Bucharest, Romania
PBI	Palm Beach International Airport	West Palm Beach, FL
PDX	Portland International Airport	Portland, OR
PEK	Beijing Capital International Airport	Beijing, China
PHL	Philadelphia International Airport	Philadelphia, PA

Code	Airport Name	Location
PHX	Phoenix Sky Harbor International Airport	Phoenix, AZ
PIT	Pittsburgh International Airport	Pittsburgh, PA
PKX	Beijing Daxing International Airport	Beijing, China
PRG	Václav Havel Airport Prague	Prague, Czechia
PUJ	Punta Cana International Airport	Punta Cana, Dominican Republic
PVD	Rhode Island T.F. Green International Airport	Providence, RI
PVG	Shanghai Pudong International Airport	Shanghai, China
PWM	Portland International Jetport	Portland, ME
ROC	Frederick Douglass Greater Rochester International Airport	Rochester, NY
RSW	Southwest Florida International Airport	Fort Myers, FL
RUH	King Khalid International Airport	Riyadh, Saudi Arabia
SEA	Seattle-Tacoma International Airport	Seattle, WA
SFB	Orlando Sanford International Airport	Sanford, FL
SFO	San Francisco International Airport	San Francisco, CA
SJC	San Jose Mineta International Airport	San Jose, CA
SJU	Luis Muñoz Marin International Airport	San Juan, PR
SKB	Robert L. Bradshaw International Airport	Basseterre, Saint Kitts
SMF	Sacramento International Airport	Sacramento, CA
SNA	John Wayne Airport	Santa Ana, CA
SNN	Shannon Airport	Shannon, Ireland
STT	Cyril E. King International Airport	St. Thomas, USVI
SWF	New York Stewart International Airport	Newburgh, NY
SYD	Sydney Kingsford Smith Airport	Sydney, Australia
SYR	Syracuse Hancock International Airport	Syracuse, NY
TPA	Tampa International Airport	Tampa, FL
VCE	Venice Marco Polo Airport	Venice, Italy
ZRH	Zurich Airport	Zurich, Switzerland

## Appendix B

### Indicative Long-Term Forecast Results Extrapolation

Year	Passengers (000s)	Seat Capacity (000s)	Load Factor	Movements (000s)	Seats per Movement
2024	63,471	78,429	81%	449	175
2025	65,610	80,258	82%	451	178
2026	67,640	82,352	82%	459	179
2027	69,542	84,541	82%	469	180
2028	71,223	86,013	83%	475	181
2029	72,719	87,554	83%	480	183
2030	74,075	88,916	83%	483	184
2031	75,441	90,281	84%	487	185
2032	76,816	91,648	84%	490	187
2033	78,200	93,016	84%	494	188
2034	79,593	94,386	84%	497	190
2035	80,995	95,758	85%	500	191
2036	82,405	97,130	85%	504	193
2037	83,816	98,494	85%	507	194
2038	85,225	99,846	85%	510	196
2039	86,629	101,184	86%	513	197
2040	88,029	102,507	86%	516	199
2041	89,424	103,816	86%	518	200
2042	90,820	105,117	86%	521	202
2043	92,215	106,409	87%	524	203
2044	93,610	107,691	87%	526	205
2045	94,998	108,957	87%	528	206
2046	96,380	110,206	87%	531	208
2047	97,756	111,441	88%	533	209
2048	99,128	112,663	88%	535	211
2049	100,497	113,872	88%	537	212
2050	101,858	115,065	89%	538	214
2051	103,188	116,215	89%	540	215
2052	104,507	117,343	89%	541	217
2053	105,814	118,451	89%	543	218
2054	107,109	119,537	90%	544	220
2055	108,391	120,601	90%	545	221
2056	109,658	121,642	90%	546	223
2057	110,911	122,659	90%	547	224
2058	112,149	123,652	91%	548	226
2059	113,371	124,621	91%	548	227
2060	114,576	125,564	91%	549	229

## Appendix C

### Terminal 6 Airline Combination Enplaned Passengers (000s)

Year	Low Case	Baseline Case	High Case
2025	3,651	3,970	3,820
2026	3,733	4,019	3,933
2027	3,796	4,043	4,024
2028	3,849	4,073	4,172
2029	3,927	4,156	4,257
2030	3,998	4,231	4,334
2031	4,067	4,304	4,409
2032	4,136	4,377	4,484
2033	4,206	4,452	4,561
2034	4,275	4,525	4,636
2035	4,347	4,601	4,714
2036	4,417	4,676	4,790
2037	4,489	4,752	4,868
2038	4,559	4,826	4,945
2039	4,630	4,902	5,022
2040	4,700	4,976	5,098
2041	4,771	5,051	5,176
2042	4,840	5,125	5,251
2043	4,911	5,200	5,328
2044	4,980	5,274	5,404
2045	5,051	5,349	5,481
2046	5,120	5,422	5,556
2047	5,190	5,496	5,632
2048	5,258	5,569	5,706
2049	5,328	5,643	5,782
2050	5,395	5,715	5,856
2051	5,463	5,787	5,930
2052	5,529	5,856	6,001
2053	5,595	5,927	6,074
2054	5,660	5,995	6,144
2055	5,725	6,065	6,215
2056	5,788	6,132	6,284
2057	5,852	6,200	6,353
2058	5,914	6,265	6,420
2059	5,976	6,331	6,488
2060	6,036	6,395	6,554

©2024 Informa Princeton LLC. All rights reserved.

This material was prepared by Informa Princeton LLC (dba Airport Strategy & Marketing – ASM). While based on information believed to be reliable, no guarantee is given that it is accurate or complete.

The opinions, forecasts, and assumptions contained in this material are as of the date indicated and subject to change without prior notice. The opinions referred to may not be suitable for any specific investment objectives, financial situations, or individual needs of recipients and should not be relied upon in substitution for the exercise of independent judgement. Informa Princeton LLC, nor other persons, shall be liable for any direct, indirect, special, incidental, consequential, punitive, or exemplary damages, including lost profits arising in any way from the information contained in the material.

Informa Princeton LLC do not accept responsibility for the achievement of passenger forecasts herein, since performance will depend on many factors. The forecasts in this presentation are nevertheless indicative of the traffic levels that might reasonably be expected to be achieved.

The statements herein do not constitute an offer.

**(THIS PAGE INTENTIONALLY LEFT BLANK)**

**APPENDIX B-3**

**REPORT OF THE LENDERS' TECHNICAL ADVISOR**

**(THIS PAGE INTENTIONALLY LEFT BLANK)**





LTA REPORT

# JFK Terminal 6 & 7 Redevelopment Project

REPORT NUMBER V1.3

OCTOBER 10, 2024

Prepared for:

**JFK Millennium Partners on behalf of the Project Lenders**

#300 - 30 E 6th Avenue, Vancouver, BC Canada V5T 1J4  
T 604 734 3126



# Contents

1.0	Executive Summary	3
2.0	Risk Summary	8
3.0	Project Description	16
4.0	Consortium	34
5.0	Regulatory Approvals	41
6.0	Site Conditions	44
7.0	Project Schedule	59
8.0	Construction Price	72
9.0	Operations and Maintenance	84
10.0	Lifecycle	92
11.0	Payment Mechanism	100
12.0	Equator Principles	109
13.0	Documentation	111
14.0	Reliance on Report	113

	Prepared By	Reviewed By	Date
V1.1	Chris Roy Ethan McLaren Lucia Stafford Lareina Chen Brendan Kwan	Brendan Kwan	August 21, 2024
V1.2	Ethan McLaren Emmalee Ast	Brendan Kwan	September 27, 2024
V1.3	Emmalee Ast	Brendan Kwan	October 10, 2024



## 1.0 Executive Summary

### 1.1 INTRODUCTION

The Port Authority of New York and New Jersey (the “Port Authority”) and JFK Millennium Partners (the “Developer” or “Lessee”) have entered into a lease (the “Lease”) for the design, construction, financing, operations and maintenance of the redevelopment of Terminals 6 and 7 at John F. Kennedy International Airport (“JFK Airport”), in New York City (the “Project”). The Project achieved Financial Close on November 17, 2022.

Vantage Group (“Vantage”), American Triple I Partners (“ATI”), RXR (“RXR”), and JetBlue Airways Corporation (“JetBlue”) are the equity sponsors of JFK Millennium Partners Holdings, LLC, which owns 100% of JFK Millennium Partners, LLC (“JMP” or the “Lessee”). The Lessee is a special purpose vehicle entity through which the Project will be designed, built, financed, operated and maintained between Financial Close and December 30, 2060 (the “Term”).

The Project is currently in construction. The Lessee has engaged Hunt Construction Group, Inc. (the “Design-Builder”) for the design and construction of the Project under the Design-Build Agreement (“DBA”). Please refer to Section 1.5 of this report for an overview of key risk transfer elements under the DBA.

BTY US, LLC (“BTY”) is the Lenders’ Technical Advisor (“LTA”) on the Project. The purpose of this report is to provide an independent review and evaluation of JMP’s approach to the Project, including technical solutions and contractual arrangements on behalf of the Lenders. Key areas reviewed include the Project structure and risk transfer, site conditions, permitting, design and construction approach, cost, schedule, operations, maintenance and lifecycle. Section 2 includes an overview of key findings, with further detail provided throughout the report.

### 1.2 KEY INPUTS

Below are the key project inputs:

Phase 1 Terminal Area	877,969 sf
Phase 2 Terminal Area	322,031 sf
Total Project Area	1,200,000 sf
Financial Close	November 17, 2022
Scheduled Phase 1 Completion Date	December 4, 2025
Phase 1 Date of Beneficial Occupancy (“DBO”)	February 10, 2026
Scheduled Completion Date	February 23, 2028
Phase 2 DBO	April 19, 2028
Construction Schedule ( <i>Financial Close to Phase 2 DBO</i> )	66 months



Overall Project Cost	\$2.79B	
Design-Builder Guaranteed Maximum Price	\$2.46B	\$2,052/sf
Lessee Costs	\$331M	
Term <i>(Financial Close to End of Term)</i>	38 years	
End of Term	December 30, 2060	
Annual Operations Cost Model T6 – Phase 1 (844,636sf)	\$58,250,688	\$70/sf/year
Annual Operations Cost Model T6 – Phase 2, Complete (1,200,000sf)	\$75,188,066	\$65/sf/year
Operator Mobilization Amount	\$2,400,000	
Total Lifecycle Cost Model <i>(over term)</i>	\$1,075,945,174	\$26/sf/year

### 1.3 SECURITY PACKAGE SUMMARY

The security packages provided by the Design-Builder and Manager are as follows:

	Design Builder	Manager
Parent Company Guarantee (“PCG”)	Provided by AECOM, a Delaware corporation, in amount equal to \$500M	Provided by Vantage Airport Group (U.S.) Ltd.
Limit of Liability	35% of the GMP, subject to typical exclusions	Prior to Substantial Completion: 75% of the Management Fee payable in a Calendar Year  Following Substantial Completion: 100% of the Management Fee payable in a Calendar Year
Performance and Payment Bond	\$500M	
Liquid Security / Letter of Credit	Liquid security equal to 10% of the GMP	
Cash Retention	10% retention from each monthly payment to the Design-Builder until the DB D&C Work is 50% complete, which will be released after Substantial Completion	



	Design Builder	Manager
Bonds, Subcontractor Default Insurance and Assignment of Subcontracts	The Design-Builder requires all subcontractors to post payment and performance bonds as permitted by the Port Authority, Lessee and the Lenders. As an alternative to payment and performance bonds, the Lessee may also implement the Design-Builder’s subcontractor default insurance (“SDI”) program to cover certain subcontractors as approved by the Port Authority or Lenders. The Lessee also has the right to take assignment of subcontracts upon termination of the Design-Build Agreement	
Liquidated Damages (Design-Builder to Lessee and includes Liquidated Damages payable from the Lessee to the Port Authority)	<ul style="list-style-type: none"> <li>• \$375,000/day for a delay to Substantial Completion of Phase 1</li> <li>• \$330,000/day for a delay to Substantial Completion of Phase 2</li> <li>• Liquidated Damages are capped at \$232M</li> </ul>	
Lifecycle Tests	<ul style="list-style-type: none"> <li>• N/A</li> </ul>	Major Maintenance Reserve look-forward funding mechanism equal to 100% / 66% / 33% of the lifecycle costs over a rolling 3-year period

**1.4 KEY PARTIES**

Entity	Party	Responsibilities
The Port Authority	The Port Authority of New York and New Jersey	Governmental authority as Lessor
Lessee	JFK Millennium Partners, LLC	Design, build, finance, operate and maintain
HoldCo	JFK Millennium Partners Holdings, LLC	Owens 100% of the Lessee
HoldCo Equity	45% Vantage Airport Group 30% American Triple I Partners 20% RXR 5% JetBlue Airways Corporation	Provide equity to HoldCo
Design-Builder	Hunt Construction Group, Inc.	Design and construction



Entity	Party	Responsibilities
Design-Builder Guarantor	AECOM, a Delaware corporation	Guarantee the obligations of the Design-Builder
Manager	Vantage Airport Group (JFK) Ltd.	Facilities management and lifecycle over the Operational Term
Manager Guarantor	Vantage Airport Group (US) Ltd.	

## 1.5 SUMMARY OF KEY CONTRACTS

Contract	Intent
Lease	Contract between the Port Authority of New York and New Jersey and the Lessee detailing the acceptance of the design, build, finance, operation and maintenance responsibilities with respect to Terminals 6 and 7 by the Lessee, and responsibilities retained by the Port Authority of New York and New Jersey.
Design-Build Agreement	The DBA is a guaranteed maximum price (“GMP”), date certain contract between the Lessee and the Design-Builder which constitutes a drop down of certain Lessee responsibilities for the D&C Work, which make up the “DB D&C Work.” The Project Definition Document (“PDD”) describes certain carveouts from the Design-Builder’s scope which are retained by the Lessee, including, without limitation, that the Lessee is responsible for the cost and design risk of the Fit-Out Allowance scope between Financial Close and the time the Fit-Out Allowance scope is fully procured. Refer to Section 8.2 and 8.3 for details. The DB D&C Work excludes the tenant and concession fit-outs, artwork and advertising installations which will be performed by third party Separate Contractors at the cost of the tenants.
Management Services Agreement (“MSA”)	Agreement between the Lessee and Manager under which the Manager will provide the Services for the duration of the Term. The Services include the management of the D&C Work, operational readiness and transition services and management of contracted third-party services, terminal leasing and terminal operations. The Lessee will retain the responsibility for O&M and lifecycle cost and will pay the Manager based on Annual Services Budgets prepared by the Manager each year. Once an Annual Service Budget is agreed, the Manager will not be permitted to make expenditures in excess of the budgeted amount.
Construction Coordination Agreement (“CCA”)	Agreement between the Lessee and Port Authority outlining the Lessee’s responsibility for coordinating the work with the Other Redevelopment Entities performing work in the central terminal area, which consist of JFK NTO LLC (the developer for the Terminal 1 redevelopment), JFK International Air Terminal LLC (the operator of Terminal 4) and the Design-Builders retained by the Port Authority to construct Central Substation 2 and the roadway network. The Lessee has transferred its responsibilities under the CCA for all costs known at the time the GMP was tendered to the Design-Builder via the DBA.



Contract	Intent
Lending Agreements	Agreements between the Lessee, the Lenders and certain other parties detailing financing terms, including (without limitation) a Collateral Agency and Accounts Agreement, a Common Terms Agreement and a Credit Agreement
Anchor Tenant Agreement and Sublease	Agreement between the Lessee and JetBlue detailing the terms of JetBlue's sublease at Terminal 6

## 1.6 DEFINITIONS

In this report, capitalized terms have the same meaning as ascribed to them in the Lease, DBA, or Management Services Agreement, as determined by the context of the section being read.

## 1.7 FURTHER INFORMATION

All queries concerning the contents of this report should be addressed to:

Brendan Kwan  
BTY Group  
30 E 6<sup>th</sup> Avenue  
Vancouver, BC, V5T 1J4  
Tel: +1 (604) 734-3126  
Email: [brendankwan@bty.com](mailto:brendankwan@bty.com)

Emmalee Ast  
BTY Group  
127 John Street  
Toronto, ON, M5V 2E2  
Tel: +1 (416) 596-9339  
Email: [emmaleeast@bty.com](mailto:emmaleeast@bty.com)



## 2.0 Risk Summary

The general technical aspects presently known have been assessed against experience of P3 Projects of similar type, as well as generally considered market positions.

The status rating for the following table should be interpreted as follows:

Draft Report	Final Report	
Project aspect that requires further assessment, information or mitigation prior to the Final Report. A red item indicates points to be considered with substantial Project impact.	Project aspect with a red rating should be considered by the creditor as a significantly higher than expected risk profile that could have significant impact on the Project from a technical perspective.	R
Project aspect that requires further assessment, information or mitigation prior to the Final Report, but is not anticipated to have significant Project impact.	Project aspect with an amber rating should be noted by the Creditor as a higher than expected risk profile but should not have significant impact on the Project from a technical perspective.	A
Project aspect that has an appropriate risk profile and therefore appropriate from a technical perspective.	Project aspect with a green rating is considered typical or an appropriate Project risk or suitable full technical mitigation has been received to ensure minimal technical Project effects.	G

We note that some items have not been assigned a risk rating of green, amber or red. The risk assessment of such items will be completed following the receipt and review of all necessary and relevant information.





Report Ref	Item	Summary	
3.4	Sustainability Requirements	<ul style="list-style-type: none"> <li>The Lease and RPWs have requirements to achieve Leadership in Energy &amp; Environmental Design (“LEED”)-NC Silver (50 points), Envision Gold v3 (40%) and SITES certification (70 credits)</li> <li>It is the intention to pursue Gold certification across all three sustainability frameworks</li> <li>Most of the Lessee’s risk related to the achievement of LEED Silver, Envision Gold and SITES Certification is transferred to Design-Builder</li> <li>We note that the Design-Builder’s draft targeted LEED Scorecard indicates that 55 points are achievable and 40 points are probable/maybe, which puts the Design-Builder above the 50 points required for LEED Silver</li> <li>We note the Design-Builder’s draft targeted Envision scorecard indicates a score of 43%, which puts the Design-Builder above the 40% threshold required for Envision Gold</li> <li>We note the Design Builder’s draft targeted SITES scorecard indicates that 83 credits are achievable and 32 credits are probable/maybe, which puts the Design-Builder above the 70 credits required for “SITES Certified” certification level</li> <li>BTY has reviewed the Sustainability Plan and notes that the pursuit of LEED Silver, Envision (Gold) and SITES certifications exceed the Port Authority Sustainable Building and Infrastructure Guidelines</li> </ul>	G
3.6	Design Solution Overview	<ul style="list-style-type: none"> <li>Most of the Lessee’s risk related to design is transferred to Design-Builder</li> <li>The design solution is reasonable</li> <li>There are no new or unproven technologies/techniques to be used</li> </ul>	G
3.7	Design Review Procedure	<ul style="list-style-type: none"> <li>The design is well advanced, and the Project is largely de-risked from a design perspective</li> <li>We understand that the Port Authority has generally complied with its required review times</li> <li>The Lessee and Design-Builder have effectively managed the Executive Design Review Committee (“EDRC”) and Design Review Working Committee (“DRWC”) process. There are only four packages remaining that are subject to the EDRC and DRWC reviews (advertising, wayfinding, branding and digital media displays)</li> <li>We understand that there are currently no concerns with design progress affecting the Design-Builder’s ability to progress the work on site. The Design-Builder is able to progress work for packages that are disapproved by receiving conditional approval from the Port Authority for specific scopes of work. The Lessee and Design-Builder is proactively managing this process</li> </ul>	G



Report Ref	Item	Summary	
4	Consortium	<ul style="list-style-type: none"> <li>• The major parties’ substantial experience in air transportation is testament of their abilities to successfully complete large and complex aviation projects</li> <li>• The experienced equity partners should have no issues collaboratively carrying out the responsibilities of the Lessee</li> <li>• The Design-Builder is well established in the aviation industry with over \$4.5B of aviation work and \$9B of design-build projects completed nationwide. Hunt’s extensive experience planning and managing complex logistics, security challenges and multi-level coordination on large infrastructure projects across the United States will be leveraged on the Project</li> <li>• In Vantage, the consortium brings award winning airport management expertise to the table. Their experience not only in airport operations, but managing operations during complex construction phasing and transitioning to a private facility, only enhances the overall consortium’s strength</li> <li>• Vantage will leverage its experience working on airports within the New York area. In 2016, Vantage led the LaGuardia Gateway Partners consortium on the LaGuardia Airport Terminal B redevelopment project to financial close and lease commencement. The project achieved Final Acceptance in 2023 and all of the new facilities are now open and operational</li> <li>• RXR brings significant local New York experience in its role as co-developer and equity investor in the Lessee, including experience with the Port Authority where senior RXR executives have previously held leadership positions. The company manages 71 commercial real estate properties and investments with an aggregate gross asset value of approximately \$20.5 billion</li> <li>• ATI has experience working with various state and local entities for financing their infrastructure projects and the firm is minority-owned and minority-managed with a 100% ethnic minority ownership, enabling responses to public and/or private sector mandates or incentives</li> </ul>	G



Report Ref	Item	Summary	
5	Regulatory Approvals	<ul style="list-style-type: none"> <li>The Lessee’s risk related to regulatory approvals for the DB D&amp;C Work, including its obligations related to obtaining the Governmental Approvals for the construction work, is transferred to the Design-Builder</li> <li>There is no re-zoning required for the Project</li> <li>The PA has received the Finding of No Significant Impact (“FONSI”) / Record of Decision (“ROD”) under the National Environmental Policy Act (“NEPA”) process, which is the key environmental permit required for the Project</li> <li>The Detailed Baseline Schedule includes a detailed breakdown and sequencing of the Tenant Alteration Applications (“TAA’s”) required by the Port Authority. These are the equivalent of the building permits that we would see on other projects</li> <li>The Design-Builder is getting TAA packages conditionally approved by the Port Authority in order to avoid delays in the construction schedule</li> </ul>	G
6	Site Conditions	<ul style="list-style-type: none"> <li>The Project has been partially derisked with respect to geotechnical and environmental site conditions. The remaining exposure is limited to the Phase 2 work at the existing Terminal 7 site. The Design-Builder did not encounter significant challenges related to geotechnical or environmental site conditions during the Phase 1 foundation work</li> <li>The Lessee’s risk related to site conditions is being managed through a series of budgets and contingencies, as well as certain risk transfer to the Design-Builder with respect to conditions that are known or should have been known based upon the standard of care</li> <li>The Lease includes a Delay Event for the discovery of any Unknown Condition that adversely affects the D&amp;C Work</li> <li>The Lessee is responsible for the Remediation of all Hazardous Substances encountered within the Excavation Boundary, and of all Releases of Hazardous Substances on the Premises occurring after the Commencement Date. With regard to Hazardous Substances encountered outside of the Excavation Boundary, the Lessee is only required to remediate if required by a Governmental Authority</li> <li>The Lessee is responsible for all necessary operations, maintenance and modifications related to the existing Tanks and Utilities</li> <li>Overall, the Final Environmental Assessment (“EA”) has determined that the Project will not result in significant impacts to the environmental resources, and that mitigation measures in addition to those already included in the Project plan are not required</li> <li>British Airways provided the Lessee with a \$14M settlement for the Remediation and Closure Costs for the Terminal 7 Jet Fuel Hydrant System</li> <li>The Lessee contemplates using three above ground storage tanks currently in place at Terminal 7 and will remediate any releases from those tanks upon shutdown of Terminal 7 operations. Any required remediation will be funded out of the British Airways settlement</li> </ul>	G



Report Ref	Item	Summary	
7	Project Schedule	<ul style="list-style-type: none"> <li>The Lessee’s risk related to the Project Schedule is transferred to the Design-Builder under the DBA with the exception of delays due to Material Developer Changes and certain Unavoidable Delays</li> <li>The schedule reporting requirements are more stringent than we typically see on similar P3 projects, which shows a high degree of attention being paid to schedule. We are not aware of any issues with the Design-Builder complying with the schedule reporting requirements</li> <li>There have been no adjustments to the contractual milestone dates since Financial Close</li> <li>BTY is of the opinion that the overall duration of the schedule is reasonable, but the roadway activities no longer contain as much float to recover future delays as the baseline schedule due to the resequencing and mitigation of delay that has already taken place</li> <li>The Lessee submitted a Compensation and Delay Event notice to the Port Authority for the delays to the roadway work caused by coordination challenges with the Roadways DB. The Roadways DB is the contractor engaged by the Port Authority for the design and construction of the Roadway Network in the Central Terminal Area (“CTA”)</li> <li>We note that with the exception of overtime work to complete the terminal structural steel, the remaining terminal schedule is based on standard working day and shift assumptions, which will allow for future acceleration if needed to recover potential delays, including the current forecasted delay to the contractual milestones</li> </ul>	G
8	Project Costs	<ul style="list-style-type: none"> <li>We consider the Design-Builder’s methodology in developing the Guaranteed Maximum Price for the Project to be reasonable and consistent with industry standards</li> <li>We have reviewed the construction price and supporting details, including the unit rates used in its preparation, and consider it to be reasonable and appropriate for this Project</li> <li>Procurement has advanced significantly since Financial Close, which has derisked the Project from a cost perspective. As of August 31, 2024, the Lessee and Design-Builder have awarded 98% of Category 2 Work (design and engineering) and 85% of Category 3 Work (direct construction costs)</li> <li>We have received a detailed breakdown of the Lessee’s cost build up for each line item and we are satisfied that the budget reflects the scope of work to be performed by the Lessee</li> <li>We consider the overall contingencies to be appropriate for the Project</li> </ul>	G



Report Ref	Item	Summary	
8.7	Design-Builder Replacement Scenarios	<ul style="list-style-type: none"> <li>We note the total premiums identified in the replacement scenarios include delay liquidated damages for approximately 16 to 24 weeks of delay in total, which equates to <math>\pm 2.3</math> to 4.1% of the Construction Price</li> <li>The likelihood of both the Design-Builder and Parent Company becoming insolvent is in our opinion, extremely low, and represents a worst-case scenario given their strength</li> <li>The Design-Builder's 35% liability cap is adequate to cover the total replacement premium and the liquid security is adequate to cover the short-term replacement premiums calculated in each of our five Design-Builder replacement scenarios outlined in this section</li> </ul>	G
9	Operations and Maintenance	<ul style="list-style-type: none"> <li>The Lessee transferred the responsibility for performance of the Operations and Maintenance Work to the Manager under the MSA but has retained the risk for the O&amp;M costs. The Lessee will pay the Manager based on Annual Services Budgets prepared by the Manager each year. Once an Annual Service Budget is agreed, the Manager will not be permitted to make expenditures in excess of the budgeted amount unless approved by the Lessee</li> <li>The Manager has a structured organization and performance plan that is consistent with anticipated operations procedures and is overall in a position to mitigate risks and unknown factors</li> <li>Vantage has a long track record of successfully managing airports, including its experience at LaGuardia Terminal B in the New York market</li> <li>Facilities Management requirements are typical of the current social infrastructure P3 market. The requirements are reasonable and achievable for an experienced Facility Manager, such as the Manager</li> <li>The Manager has developed the FM Cost Model using a combination of quotes from subcontractors, in-house historical data and existing contracts for Terminal 7 and the LaGuardia Terminal B project. The Manager's methodology in developing the FM Cost Model is consistent with their approach on other US P3 projects and considered appropriate</li> <li>The FM Cost Model has been developed using the Manager's ongoing experience at Terminal 7. The Manager has hired key staff with extensive facilities management experience at Terminal 7 and JFK Airport more broadly</li> <li>Based on our review of the FM Cost Model, including the methodology used in its development, we consider the FM Cost Model to be reasonable for a project of this size and complexity, with this combination of services and to be low risk</li> </ul>	G



Report Ref	Item	Summary	
10	Lifecycle	<ul style="list-style-type: none"> <li>• The Lessee has transferred the responsibility for ongoing capital and Lifecycle planning assistance and coordination to the Manager under the MSA but retains the Lifecycle cost risk. The Lessee will pay the Manager based on Annual Services Budgets prepared by the Manager each year. Once an Annual Service Budget is agreed, the Manager will not be permitted to make expenditures in excess of the budgeted amount</li> <li>• Lifecycle requirements are reasonable and achievable for an experienced Manager, such as Vantage</li> <li>• Handback requirements are typical of social infrastructure P3 projects</li> <li>• There remain some peaks within the lifecycle profile due to the Manager deliberately aligning certain asset replacements to achieve economies of scale and minimize disruptions. The Manager will likely smooth these activities out over 2-3 years in reality, which we consider reasonable</li> <li>• Manager’s extensive experience, client list and company resource on a local and global basis provides the LTA with the evidentiary detail to be reassured that the Manager will have no issue in meeting the designated requirements</li> <li>• We have reviewed the Lifecycle Cost Model and discussed the delivery strategy with the Manager to understand their approach to carrying out the FM and Lifecycle services. The Manager has developed the Lifecycle Cost Model using the Design-Builder’s Construction Price, in-house historical data and experience</li> <li>• Based on our review of the Lifecycle Cost Model, including the methodology used in its development and the factors noted above, we consider the Lifecycle Cost Model to be reasonable for a project of this size and complexity, and to be low risk</li> <li>• We consider that the Handback Plan is satisfactory and responds well to the Handback Requirements as stipulated within the Lease</li> </ul>	G



Report Ref	Item	Summary	
11	Payment Mechanism	<ul style="list-style-type: none"> <li>The Lessee will be responsible for making Milestone Payments to the Port Authority at defined points during construction for specific scopes of work to be provided by the Port Authority. These costs are included in the Project Management category of Lessee Costs, which are described in Section 8.4 of this report</li> <li>The Lessee will be responsible for making rental payments to the Port Authority during the Term. These costs are held separately in the Financial Model outside of the Lessee Costs described in Section 8.4 of this report</li> <li>The Lease includes Incentive KPIs to incentivize the Manager’s performance of the O&amp;M Work. The Lessee’s risk related to the incentive and deduction regime is transferred to the Manager under the MSA</li> <li>The Manager does not anticipate incurring either deductions or incentives related to the ACI-ASQ Overall Satisfaction Score based on Vantage’s experience on its other airport projects</li> <li>The deduction thresholds related to the Systems Availability KPIs are considered challenging and above industry standard and there is a likelihood that deductions will be incurred for conveyance systems, baggage systems and passenger loading bridges. We note that the risk exposure for these deductions is capped at \$490,000/year and the Manager has included a \$500,000/year contingency in its annual budget (indexed to inflation) to address this risk. Therefore, we consider the risk to be adequately mitigated</li> </ul>	G
12	Equator Principles	<ul style="list-style-type: none"> <li>The appropriate categorization for the Project is Category C where the project has “minimal or no social or environmental impacts” as defined by the IFC guidelines which categorizes the Project as having minimal, or no, social or environmental impacts</li> </ul>	G



## 3.0 Project Description

### 3.1 INTRODUCTION

The JFK Terminal 6 and 7 Replacement Project entails the design, build, finance, operation and maintenance of terminal facilities over the Lease Term for Terminal 6 and Terminal 7 sites at the John F. Kennedy International Airport, located in Queens, New York. The new terminal facilities will need to provide space for the following:

- Ground Transportation Center, which will link terminals, garages, AirTrain stations and passenger amenities;
- Pre- and post-security connections to Terminal 5;
- The passenger and commercial curb front roadways;
- Terminal access and exit roadways;
- New Terminal Building;
- Automated Check-in Capabilities;
- Gate area configured for 9 widebody aircraft and 1 narrow body aircraft (which can accommodate wide-body aircraft with a gate adjacency restriction), as well as 1 widebody aircraft parking position and two on-premise de-icing pads;
- Security areas for passenger and baggage screening;
- Connection of the Terminal 5 and Terminal 7 AirTrain stations to the New Terminal Facilities; and
- Terminal Amenities, including retail concessions and lounges.

The Phase 1 construction period, which is currently ongoing, consists of the design and construction of five new gates (four widebody plus one narrow body) on the Terminal 6 Parcel. Following completion of Phase 1, the Phase 2 construction period will consist of the demolition of Terminal 7 and the design and construction of five new widebody gates on the Terminal 7 Parcel.



The image below shows a rendering of the Project.



### 3.2 PROJECT SITE

The Project site consists of the Terminal 6 Parcel and Terminal 7 Parcel, which are shown in an Exhibit to the Lease. Any land, structures, improvements, additions, buildings, installations or other facilities on the Terminal 6 Parcel are deemed the Initial Premises. Similarly, any land, structures, improvements, additions, buildings, installations or other facilities on the Terminal 7 Parcel are deemed the Terminal 7 Premises. The Initial Premises and the Terminal 7 Premises collectively make up the Premises.

Prior to Financial Close, the Design-Builder prepared and submitted a Project site logistics plan for the Lessee, which designates the following:

- Field offices;
- Storage Areas;
- Protection (netting, cables, etc.);
- Hoists;
- Cranes;
- Fences;
- Sidewalk bridges;
- Temporary loading docks;
- Temporary lighting;
- Temporary protection;
- Temporary circulation and routes;
- Procedure for material delivery;

- Location of equipment; and
- Any other information required for the efficient performance of D&C Work.

The implementation of the Site logistics plan ensures that the D&C Work will be carried out in an organized manner, ultimately verifying that the occupied portions of the Project site or adjacent buildings and businesses will not interfere with the operations of the Lessee, JetBlue, Port Authority or other tenants.

### 3.3 SCOPE OF WORK

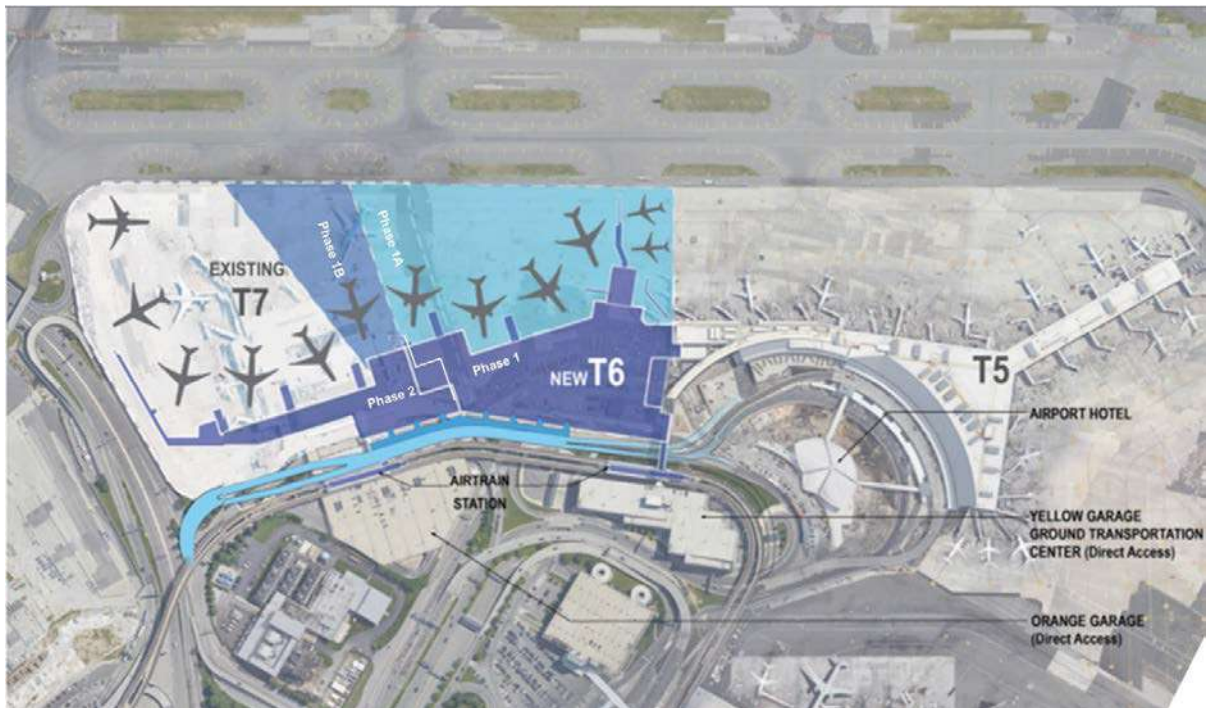
The Project is split into two phases: Phase 1 D&C Work and Phase 2 D&C Work. The first phase of D&C Work (“Phase 1 D&C Work”), which is currently ongoing, includes the following elements (Section 2 of the Lease):

- Construction of the portion of the New Terminal Facilities on the Terminal 6 Parcel expanded to the east building edge of the Existing Terminal Facilities on the Terminal 7 Parcel;
- Decommissioning of two Gates on the east side of the existing Terminal 7;
- Construction of the Ground Transportation Center; and
- Construction of the associated Off-Premises Facilities, including necessary roadways and utilities.

The second phase of D&C Work (“Phase 2 D&C Work”) includes the following elements:

- Demolition of the Existing Terminal Facilities on the Terminal 7 Parcel;
- Construction of the remaining portion of the New Terminal Facilities on the Terminal 7 Parcel; and
- Construction of the associated Off-Premises Facilities, including necessary roadways and utilities.

The image below provides a general overview of the Phase 1 and 2 D&C Work.





The scope of work on the Premises includes the following (Section 2(b)(2) of the Lease):

- The decommissioning and demolition of certain existing structures, fixtures and other improvements comprising the Existing Terminal Facilities;
- A unified inter-connected passenger terminal building (the “New Terminal Building”) consisting of approximately 1.150 million square feet of floor space, including a Federal Inspection Services (“FIS”) facility accessible to both the New Terminal Building and Terminal 5 for international flights, together with all associated and related areas and facilities, including concourses, supporting buildings, utility and mechanical rooms, concession areas, stairwells, stairways, escalators and elevators, and all fixtures, furnishings and equipment necessary, to replace the Existing Terminal Facilities on the Terminal 7 Parcel and the apron and taxi lanes on the Terminal 6 Parcel. While the FIS is sized to accommodate the future JetBlue international arrival flights, the operation will not be consolidated until after 2030 and so the Terminal 5i FIS will stay in use for the first few years of operation;
- All necessary and appropriate contiguous aircraft ramp and apron areas to serve the New Terminal Building;
- Adjustment to the taxiway lane on the north side of the Terminal 6 Parcel to allow for effective operations following Substantial Completion of Phase 1;
- All necessary and appropriate D&C Work necessary for the construction of temporary and permanent terminal frontage and access roads together with all appropriate ground lighting, lines, pipes, drains, wires, cables, manholes and conduits;
- All necessary and appropriate temporary facilities on the Premises to support passenger terminal services during the D&C Work Period;
- All necessary relocations or modifications to existing facilities, structures, service and utilities to facilitate D&C Work performed by the Lessee;
- All necessary and appropriate D&C Work on the Premises for the connecting of the New Terminal Building with Terminal 5;
- All appropriate lines, mains, cables, manholes, wires, conduits and other facilities required in connection with or relating to the mechanical, utility, electrical, storm sewer, sanitary sewer, telephone, fire alarm, fire protection, gas and other systems on the Premises needed for the New Terminal Building, including all necessary relocations and upgrades with sufficient capacity for the New Terminal Building, two de-icing pads and related de-icing fluid capture systems, communication systems, and all work necessary or required to tie to existing or new utility demarcation points, including all necessary valves and other equipment and accessories necessary to the use and operation of the heating, cooling, electrical, water and other utility systems which are to serve the Premises;
- All grading and paving of ground areas and appropriate landscaping for the New Terminal Facilities;
- All necessary or required blast fences, concertina wire on fences, and other fencing on the Premises;
- All necessary and required D&C Work required to implement security measures as required by the Port Authority;
- Transformation of the ground floor of the Terminal 5 Parking Garage (the Yellow Garage) and the adjacent part of the roadway network into a new ground transportation center servicing the New Terminal Facilities including for-hire-vehicle parking and personal vehicle loading area; and
- The KIAC fuel line, as shown in Annex U1.6 of Exhibit 3 of the Lease.

The scope of D&C Work for the Off-Premises Facilities includes the following (Section 2(b)(2) of the Lease):

- Construction of temporary and permanent adjustments to the terminal frontage and access roads on premises of Terminal 5, including the extension of the Terminal 5 departures and arrivals frontage on the west side of Terminal 5, and other limited roadway work to tie into existing structures, together



- with all appropriate ground lighting, lines, pipes, drains, wires, cables, manholes and conduits and other related facilities and infrastructure work (the “Off-Premises Roadway D&C Work”);
- All work necessary or required to tie the Lessee’s on-Premises utility work to the utility access stubs provided by the Port Authority off the Premises;
  - Adjustments to the Yellow Garage ground floor entrance area associated with the design and construction of the Ground Transportation Center, together with all work for the construction of the bridge connector connecting the Terminal 5 Parking Garage and the Orange Garage and, on Terminal 5’s premises, the construction of a new Taxi Plaza and adjustments to the Terminal 5 HOV curbside;
  - Limited aesthetic improvements to the existing bridge between the Terminal 7 AirTrain station and the Existing Terminal Facilities;
  - Relocation of existing Terminal 5 Gate 30 and certain other modifications to Terminal 5 necessary to accommodate the connection of the New Terminal Building with Terminal 5;
  - Adjustment to the off-Premises taxiway throats on the north side of the Terminal 6 Parcel; and
  - All necessary relocations or modifications to existing facilities, structures, services and utilities to facilitate the D&C Work.

In addition to the D&C Work to be performed by the Lessee, the Lessee and the Port Authority acknowledge that the Port Authority shall perform all appropriate and necessary work for the construction of the following Port Authority Enabling Work:

- Roadways connecting the CTA roadways to Terminal 5 and the New Terminal Facilities; and
- Construction of a new Central Substation 2 along with a back-up power source connected to the 15kV supply to the Premises as required for the operation of the New Terminal Facilities and all other appropriate lines, mains, cables, manholes, wires and conduits required to tie the mechanical, utility, electrical, storm sewer, sanitary sewer, phone, fire alarm, fire protection, gas and other systems off the Premises to the New Terminal Facilities.

### 3.4 SUSTAINABILITY REQUIREMENTS

BTY has reviewed the Sustainability Plan prepared by Corgan Associates Architects (“Corgan”), dated March 24, 2022 and note the following salient points:

- The Lease and RPWs mandate the achievement of LEED Silver certification under United States Green Building Council (“USGBC”) which means achieving the prerequisites and credits required to achieve the LEED-NC Silver Rating and achieve the LEED credits;
- The RPWs mandate the achievement of Envision Gold v3 certification under the Institute for Sustainable Infrastructure, which means achieving the prerequisites and credits required to achieve the Envision Gold v3 framework;
- The RPWs mandate the achievement of SITES Certification under the Sustainable SITES Initiative, which means achieving the prerequisites and credits required to achieve the “SITES Certified” certification level;
- The T6 Sustainable Design and Construction Plan will consist of LEED, SITES and Envision certifications;
- The pursuit of LEED, Envision and SITES certifications exceed the Port Authority Sustainable Building and Infrastructure Guidelines; and
- It is the intention to pursue Gold level certification across the LEED, SITES and Envision frameworks.



### 3.4.1 LEED Silver Certification

The Lessee’s risk related to the achievement of LEED Silver is transferred to Design-Builder. The Design-Builder will perform the D&C Work to achieve the Project’s sustainability requirements and goals as required by the Port Authority (Section 2.13 of the DBA).

BTY has reviewed the updated draft LEED Scorecard for the Project included in the Sustainability Plan. We note the Design-Builder’s draft targeted LEED Scorecard indicates that 55 points are believed to be achievable, and 40 points are probable/maybe, which puts the Design-Builder above the 50 points required for LEED Silver. Therefore, the Project will achieve a minimum certification of LEED Silver, but the Lessee has established LEED Gold as it’s target, which requires 60 points. In either case, the sustainability requirements of the Port Authority Sustainable Building Guideline will be met.

### 3.4.2 Envision Gold Certification

The Lessee’s risk related to the achievement of Envision Gold V3 is transferred to the Design Builder. BTY has reviewed the draft targeted Envision scorecard indicating a score of 43%, which puts the Design-Builder above the 40% threshold required to achieve Envision Gold.

### 3.4.3 SITES Certification

The Lessee’s risk related to the achievement of SITES Certification is transferred to the Design-Builder. The Sustainability Plan highlights that the Project’s minimum goal is to achieve SITES Certification, with the objective of achieving SITES Gold Certification. BTY has reviewed the draft SITES scorecard, which indicates that 83 credits are believed to be achievable and 32 credits are probable/maybe, which puts the Design-Builder above the 70 credits required for “SITES Certified” certification level. To achieve SITES Gold certification, the Design-Builder must earn 100 credits.

## 3.5 SCHEDULE OF AREAS

The gross floor area (“GFA”) for the Project is summarized as follows:

Project Area	Phase 1 Area (sf)	Phase 2 Area (sf)	Total Area (sf)
Level 1 – Arrivals/Ramp Level	326,024	87,722	413,746
Level 1.5 – Sterile Corridor	60,268	57,729	117,997
Level 2 – Concourse	302,528	131,537	434,065
Level 3 – Departures	180,767	31,481	212,248
Level 3.5 – Departures Intermediate Level	8,382	13,562	21,944
<b>Total Project Area</b>	<b>877,969</b>	<b>322,031</b>	<b>1,200,000</b>



### 3.6 DESIGN SOLUTION OVERVIEW

The Project’s design is summarized by major element as follows:

Element	Description
Substructure	<ul style="list-style-type: none"> <li>• Driven steel taper pile foundations, with anticipated capacity of 160 tons</li> <li>• Reinforced concrete pile caps and grade &amp; tie beams</li> <li>• Perimeter wall footings, misc. pits, core &amp; stair footings</li> <li>• Other standard foundation system where required</li> </ul>
Structure	<ul style="list-style-type: none"> <li>• Reinforced concrete framing and slabs to the Arrivals level</li> <li>• Steel framing of non-composite beams, columns and bracing to the Concourse, Departures and Roof levels</li> <li>• Lateral resistance provided by steel concentrically braced frames</li> <li>• Exposed structural steel bracing with intumescent paint and AESS-level finish</li> <li>• Concrete topping with welded wire mesh on metal deck floor system for Sterile corridor, Concourse, Departures and Roof levels</li> <li>• Steel Roof structure to long-span roof at Main Atrium</li> <li>• Main roof cantilevered to act as a canopy, supported by tapered structural steel members and stainless steel cables</li> <li>• Concrete stairs and landings for stair cores, steel for exterior stairs</li> </ul>
Exterior Enclosure	<ul style="list-style-type: none"> <li>• Dry floodproofing consisting of reinforced concrete curbs and flood gates to the Arrivals level to resist up to four feet of water pressure</li> <li>• Metal panel rain screen</li> <li>• Clear glass within unitized curtain wall system, also Spandrel glass within unitized curtain wall system, Louver W/ 50% free area within curtain wall system</li> <li>• Solar shading, as required</li> <li>• Glazed exterior doors</li> <li>• Overhead doors with automatic door operators</li> <li>• Membrane waterproof roofing with rigid insulation</li> <li>• Aluminum frames ETFE membrane cushion skylight system</li> </ul>
Partitions & Doors	<ul style="list-style-type: none"> <li>• Metal stud drywall system</li> <li>• CMU (Masonry)</li> <li>• Hollow metal interior doors</li> <li>• Aluminum doors, Aluminum sliding doors with auto door operator</li> <li>• Glazed interior doors</li> <li>• Wood interior doors</li> <li>• Stainless steel interior doors</li> <li>• Sliding glass exterior doors</li> </ul>



Element	Description
Finishes	<ul style="list-style-type: none"> <li>• Terrazzo flooring to restrooms</li> <li>• Porcelain wall tiling to restrooms and nursing rooms</li> <li>• Exposed concrete, LVT and VCT to Back of house</li> <li>• Mix of tile and carpet to level 2 concourse &amp; level 3 ticket counter queue</li> <li>• Porcelain tile flooring to Arrivals, Circulation Paths at Departure Gates, Ticketing Hall/Check-In, public stairs and baggage claim</li> <li>• Broadloom Carpet flooring to Sterile corridors, Holdrooms</li> <li>• Carpet flooring and premium ceiling finish to Security Screening Checkpoint</li> <li>• Airline Club and Retail Fit-Out by tenant</li> <li>• Acoustic ceiling to Concourse and gate counter areas, lounges, ticket hall, baggage claim, etc.</li> <li>• Suspended drywall ceiling to public washrooms and other area</li> <li>• Exposed structure to service areas, concession areas, support areas, egress stairs, etc.</li> <li>• Painting to interior partitions</li> <li>• Metal paneling and Mosaic Tile to Ticketing/Check-In feature walls</li> <li>• Artwork at various locations, excluded from the Design-Builder’s scope. The art program is managed by the Lessee</li> <li>• Special featured wall finishes to where required</li> </ul>
Fittings & Equipment	<ul style="list-style-type: none"> <li>• Guardrails / handrails and crash rails</li> <li>• Millwork including check-in desks, washroom vanities checking and boarding gate counters, etc.</li> <li>• Hold room bench and casual seating and tabletops</li> <li>• Washroom/janitor accessories, toilet partitions, urinal screens</li> <li>• Horizontal/vertical blinds</li> <li>• Way-finding system</li> <li>• Lockers, interior planters and other miscellaneous specialties</li> </ul>
Conveying Systems	<ul style="list-style-type: none"> <li>• Elevators</li> <li>• Escalators</li> <li>• Moving walkways</li> </ul>
Special Equipment	<ul style="list-style-type: none"> <li>• Baggage Screening and Handling System</li> <li>• Passenger Boarding Bridges</li> <li>• Pre-conditioned Air Units</li> <li>• Ground Power</li> <li>• Electrical GSE Charging Equipment</li> <li>• Aircraft de-icing fluid isolation and capture system</li> </ul>



Element	Description
Mechanical	<ul style="list-style-type: none"> <li>• HVAC System including air handling units, fan coil units, cooling tower, chillers and chilled water system, hot water system, unit heaters, direct expansion air conditioning system, snow melting, make up air units, loading bridge pressurization fans, smoke removal and purging fans, general exhaust system, pumps, variable frequency/speed drives, gas fired infrared radiant heaters, terminal devices, ductwork &amp; insulation, heating and chilled water piping and connection work of chilled water piping to existing, etc.</li> <li>• Controls including SCADA, DDC/BMS system, energy monitoring/metering system, etc.</li> <li>• Emergency generator fuel system including underground fuel oil tank, cathodic protection, leak detection system, piping and pumps, exhaust &amp; ventilation system etc.</li> <li>• Plumbing &amp; drainage system including new fixtures, electric water heaters, booster pumps, domestic hot / cold water supply and return piping system, aircraft potable water piping system, sanitary drainage piping system, storm water piping system, natural gas piping system and aircraft de-icing system, etc.</li> <li>• Fire protection including sprinkler fire protection system, smoke detection, fire alarm system, smoke control, miscellaneous extract systems, clean agent fire protection system, standpipe system, fire extinguishers, Fire Department connections, fuel oil storage protection, fire pumps &amp; jockey pumps and air compressor for dry type sprinkler fire protection system, etc.</li> </ul>
Mechanical Site Services	<ul style="list-style-type: none"> <li>• Mechanical site services include demolition works, storm water management system inclusive of storm water piping, catch basins, oil/grit interceptor, storm &amp; sanitary manholes, adjustment of existing manhole elevation, connection to existing pump/lift station. It also consists of sanitary system including sewage ejectors, force main, manholes and connection to existing pump/lift station; fire and water main inclusive of rerouting of existing mains, construction of new water and fire main, relocation of high-pressure piping, fire hydrants and connection work; relocation of gas piping mains and connection to utility.</li> </ul>
Electrical	<ul style="list-style-type: none"> <li>• Service and distribution system including normal power, emergency diesel generator power systems, UPS, grounding &amp; lighting protection and miscellaneous items where required</li> <li>• Internal &amp; external Lighting, devices and heating system including emergency lighting, branch devices, heating, etc.</li> <li>• Ancillaries including fire alarm system, security system, communication system, PA and intercom system, clock system, dynamic signage, CCTV system</li> </ul>
Electrical Site Services	<ul style="list-style-type: none"> <li>• Electrical site services including removal and relocation works of existing duct bank, new communications, ground and mounted lighting and security systems</li> <li>• New substation</li> </ul>





Element	Description
Site Works	<ul style="list-style-type: none"> <li>• Existing portion of airside and airside utility removal for new Terminal 6</li> <li>• Airside alignment</li> <li>• New airside utility/site service</li> <li>• New apron and taxi lanes, Wayfinding Signage</li> <li>• Hydrant Fuel System (aircraft fueling)</li> <li>• Other miscellaneous site works</li> </ul>
Landscaping	<ul style="list-style-type: none"> <li>• Between Terminals 5 and 6</li> <li>• At the Departures roadway ramp</li> <li>• At the Terminal 6 Arrivals Plaza</li> </ul>
Information Technology Systems	<ul style="list-style-type: none"> <li>• Telecommunications Networks</li> <li>• Paging and Mass Notification System</li> <li>• Security</li> <li>• Information Display Systems</li> <li>• Passenger Processing</li> </ul>
Landside Information Technology Systems	<ul style="list-style-type: none"> <li>• Closed Circuit Television</li> <li>• Road Weather Information Systems</li> <li>• Dynamic Messaging Signs</li> <li>• Vehicle Detection Count System</li> <li>• License Plate Reader System</li> <li>• TI-MED Readers</li> <li>• Parking Guidance System</li> <li>• Other miscellaneous systems</li> </ul>
Airside Information Technology Systems	<ul style="list-style-type: none"> <li>• Visual Docking Guidance Systems</li> <li>• Airport Operations Systems</li> <li>• Baggage Reconciliation System</li> </ul>
Roadways	<ul style="list-style-type: none"> <li>• New arrivals and departures roads serving the new terminal and dedicated Terminal 5 exit roadway</li> <li>• New elevated vehicular connector between Orange and Yellow Parking Garages</li> <li>• Drainage, lighting and traffic signals</li> <li>• Arrivals level Plaza</li> <li>• Ground Transportation Center</li> </ul>
Works Outside Terminal 6 Lease Limits	<ul style="list-style-type: none"> <li>• Roadway works near T5i Taxi Plaza</li> <li>• Roadway work in front of the TWA Hotel</li> <li>• Roadway Ramp to the Yellow Parking Garage</li> <li>• Approach Roadways to Terminal 5 and 6</li> <li>• Utility Connections to the existing Port Authority source</li> <li>• Utility Connections in the Vicinity of the Orange Garage</li> <li>• Roadway Demolition work</li> <li>• Traffic shifts and related Maintenance of Traffic</li> </ul>



### 3.7 DESIGN PROCESS

The Lessee is responsible for the preparation and presentation of the design submittals to the Port Authority to verify that the requirements in the Lease, Requirements and Provisions for Design and Construction Work (“RPW”), Port Authority Tenant Construction and Alteration Process (“TCAP”) Manual and Port Authority Tenant Construction Review Manual (“TCRM”) are satisfied with respect to the D&C Work. The Lessee’s responsibility for preparing design submittals and plans has been transferred to the Design-Builder through the Design-Build Agreement except for certain carve-outs for preparation and submission of plans, including the annual carbon emissions reports, aircraft de-icing management plan and waste reduction plans, which are defined in Exhibit 2.03 of the PDD.

#### 3.7.1 Design Review Working Committee

The DRWC consists of selected members of JFK Redevelopment and the Master Planning team, Port Authority Engineering Department, and the Lessee’s team, including the Lessee, the Lead Designer and the Operations and Maintenance Work liaison. This committee focuses on reviewing the Lessee’s Design Submittals in order to ensure the appropriate interior finishes and all other OneJFK elements are incorporated into the Lessee’s design per the requirements of the RPW. The DRWC determines which Design Submittals will be referred to the EDRC for further review (Section 1.3 of Section A of the RPW).

Similar to the EDRC, the DRWC meetings are an interactive workshop format. The Lessee schedules DRWC meetings with the Port Authority no less than 10 Business Days in advance of each meeting. The DRWC is responsible for providing written comments to the Lessee setting forth design changes suggested by the DRWC no later than 5 days after a meeting. The Lessee is responsible for incorporating into its Design Submittal:

- Design changes that, in the DRWC’s reasonable discretion, are necessary in order for the design to comply with the Project Documents’ requirements; and
- Any other suggested design changes that do not, individually or in the aggregate, negatively impact the Baseline Schedule or the direct cost to perform the Work.

A dedicated JFK Redevelopment Design Manager has been appointed by the Port Authority to act as a liaison, and ensure that the Lessee’s design progresses in accordance with requirements of the One JFK Vision, as well as Sections A and B of the RPWs (General Requirements and Technical Requirements, respectively). The JFK Redevelopment Design Manager shall act as the intermediary between the DRWC and the EDRC (Section 1.4 of Section A of the RPW).

If the DRWC requests any changes that are inconsistent with the Lessee’s approved Basis of Design, the changes will be addressed as either a Port Authority Change or a Qualifying D&C Change (Section 1.2.2 of Section A of the RPW).

#### 3.7.2 Executive Design Review Committee

The EDRC consists of selected members representing the Lessee, the Governor’s Office, Port Authority’s Executive Management, and the Aviation Director’s Office. The EDRC is a high-level executive management committee that reviews the Lessee’s Design Submittals referred to the EDRC by the DRWC during development to ensure that the design and architectural appearance of the Construction Project accommodates connected, architecturally-consistent character for the Airport to result in a One JFK environment in accordance with the Lease and the RPW (Section 1.2 of Section A of the RPW).

The EDRC meetings are conducted in an interactive workshop format. The EDRC meets monthly and any written comments will be provided to the Lessee within 5 Business Days after each meeting. The Lessee is responsible



for prioritizing agenda items for each EDRC meeting in order to obtain necessary Port Authority decisions and incorporate into upcoming Design Submittals.

If the EDRC requests any changes that are inconsistent with the Lessee’s approved Basis of Design, the changes will be addressed as either a Port Authority Change or a Qualifying D&C Change (Section 1.2.2 of Section A of the RPW).

**3.7.3 Submittals Review Process**

The Lessee may request to hold in-progress design workshops prior to any design submittal for the Port Authority to discuss and verify the progress of design submittals. The Lessee must provide a minimum of five Business Days’ notice to the Port Authority (Section 1.8 of Section A of the RPW).

Prior to submittal of any document or drawing to the Port Authority for its review and comment or approval, the Lessee’s Architect of Record and/or the Lessee’s Engineer of Record (“A/EOR”), must review each document and drawing for proper content, format, conformance to the project objectives, and compliance with the Project Documents and ensure the submittal is complete.

Lessee is required to deliver any submittal included in the Schedule of Submittals and Packaging Plan no later than one week from the date set forth in the Schedule of Submittals and Packaging Plan (the “Submittal Period”).

Upon receipt of any design submittal, the Port Authority will review the package and determine if the package meets the requirements of the Project Documents (including the TCAP manual) and Governmental Approvals required with respect to the scope of the D&C Work covered by the submittal, as well as to confirm whether Port Authority comments from previous submittals have been addressed and considered. The Port Authority reserves the right to deem the submittal incomplete and return to the Lessee within 3 Business Days of receipt of the submittal.

If a submittal is deemed incomplete, the Port Authority will return the submittal within the three Business Days period, together with information regarding the areas in which the Port Authority deems the submittal to be incomplete, and the review period will restart upon the Lessee’s resubmission.

If the Lessee fails to deliver a submittal within the applicable Submittal Period, the Port Authority will have an additional five Business Days to review once received by the Port Authority.

The periods available to the Port Authority to review a design submittal after the date they receive an accurate and complete submittal in conformance with the Project Documents are listed below. If a submittal does not fall into any of the categories in the table below and no review period is specified in the Lease, then the submittal will be subject to Port Authority review in accordance with the timeframes applicable to a Project Plan below.

Submittal	Comprehensive Basis of Design	Comprehensive Conceptual Design Submittal	Comprehensive Intermediate Design Submittal	Comprehensive Final Design Submittal	Advanced Final Design Submittal for a given element	Project Plan	Minor/Early Works Submittals
Review Times	15 Business Days	15 Business Days	20 Business Days	20 Business Days	10 Business Days	10 Business Days	5 Business Days



Submittal	Comprehensive Basis of Design	Comprehensive Conceptual Design Submittal	Comprehensive Intermediate Design Submittal	Comprehensive Final Design Submittal	Advanced Final Design Submittal for a given element	Project Plan	Minor/Early Works Submittals
Re-Submittal Review Times	10 Business Days	10 Business Days	10 Business Days	10 Business Days	10 Business Days	10 Business Days	2 Business Days

### 3.7.4 Design Status

The design of the Project is well advanced. The table below identifies the total number of design packages submitted and approved to-date.

Status	Number	%
Approved	64	50%
Conditionally Approved	30	24%
In Review	5	4%
Disapproved	9	7%
Total Submitted	108	85%
Pending or Future	19	15%
<b>Total</b>	<b>127</b>	<b>100%</b>

BTY understands that pending design submittals are not impacting the progress of work on site. Pending or future design packages include post-construction submittals, operational plans, and submissions that are anticipated to occur within the remaining months of 2024, such as the Terminal 7 demolition, TWA canopy replacement, Lufthansa fit out, and photovoltaic designs.

### 3.7.5 Conclusion

We note the following conclusions related to the design process:

- The design is well advanced, and the Project is largely de-risked from a design perspective;
- We understand that the Port Authority has generally complied with its required review times;
- The Lessee and Design-Builder have effectively managed the EDRC and DRWC process. There are only four packages remaining that are subject to the EDRC and DRWC reviews (advertising, wayfinding, branding and digital media displays); and
- We understand that there are currently no concerns with design progress affecting the Design-Builder’s ability to progress the work on site. The Design-Builder is able to progress work for packages that are disapproved by receiving conditional approval from the Port Authority for specific scopes of work. The Lessee and Design-Builder is proactively managing this process.



### 3.8 CONSTRUCTION STATUS

Phase 1 is currently under construction with progress ongoing across the terminal, airside and landside scopes of work. BTY visited the Project site with the Lessee and Design-Builder on August 27, 2024. The below list is a summary of the work completed to date.

Please refer to Appendix 1 of this report for progress photos taken during our site visit. Please refer to Section 7.4 for an overview of construction progress against the Project schedule.

#### Terminal:

The following work is ongoing:

- Pile installation;
- Pile testing;
- Foundation and anchor bolt installation;
- Slab-on-grade activities;
- Concrete testing;
- Pile deliveries;
- Pile fabrication (offsite);
- Steel deliveries;
- Steel fabrication (offsite);
- Curtainwall fabrication (offsite);
- Curtainwall installation;
- Structural Technologies fabrication (offsite);
- Structural steel erection;
- Steel decking;
- MEP sleeves/inserts/hangers;
- Front overhang and stair installation;
- Elevated deck concrete;
- CMU walls;
- Light gauge metal framing;
- Insulation;
- Drywall;
- Skylight/Oculus activities;
- TPO roofing;
- Sprayed fireproofing;
- Baggage handling equipment deliveries;



- Baggage handling equipment fabrication (offsite);
- Baggage handling equipment installation;
- Fire sprinkler installation;
- HVAC ductwork;
- Mechanical equipment installation;
- Overhead plumbing and electrical; and
- Underground plumbing and electrical are in progress.

Civil (Airside):

The following work is ongoing:

- Airside fence relocation;
- Concrete demolition; and
- Concrete recycling.

Civil (Landside):

The following work is ongoing:

- Utility Enabling Works;
- 5kV work;
- Underground electrical work;
- Fence and barrier work;
- Pile installation;
- Detour/MOT setup and relocation;
- Flushing utility lines;
- Abutment and pier activities;
- Steel erection; and
- Retaining wall construction.

**3.9 COMPENSATION AND DELAY EVENTS**

The Lessee is actively pursuing its rights to Compensation and Delay Events under the Lease, which are described in further detail in Sections 11.6 and 11.7 of this report. The table below summarizes the Compensation and Delay Event Notices submitted to the Port Authority.

Name	Description	Status
Application of 2022 New York City Building Code, dated January 31, 2023	The CDEN concerns the Port Authority’s requirement that the Lessee and Design-Builder abide by the 2022 New York City Building Code (“NYCBC”) instead of the 2012 NYCBC.	Resolved



Name	Description	Status
GTC Enabling and Fire Protection, dated February 3, 2023	The CDEN concerns the Port Authority’s requirement that the Design-Builder install a fire protection system in the existing Yellow Garage as part of its conversion to a Ground Transportation Center	Resolved
Painting Air Operations Area Concrete Barriers, dated February 10, 2023	The CDEN concerns the Air Operations Area fence installed for the capture of the terminal construction site, which the Port Authority required that the Design-Builder paint orange and white.	Resolved
Building 68 and 189 Regulated Building Materials, dated February 10, 2023	The CDEN concerns the additional abatement of Regulated Building Materials present in Buildings 68 and 189 which need to be performed prior to demolition	Resolved
Drainage and Stormwater Pollution Prevention Plan, dated February 19, 2023	The CDEN concerns the Design-Builder’s disapproval of the Design-Builder’s Stormwater Pollution Prevention Plan	Open
Taxiway A Potential Expansion of Work Scope, dated February 22, 2023	The CDEN concerns the duct bank system located underneath the proposed Taxiway A4 which the Port Authority is potentially requiring the Design-Builder to expand upon the work scope originally agreed in the Lease.	Resolved
Construction Worker Bussing, dated March 7, 2023	The CDEN concerns the Port Authority’s failure to comply with the terms of the Lease and timely provide the Lessee with a Port Authority preferred vendor for the Lessee to enter into a direct agreement with in connection with bussing construction workers to the construction site on a daily basis	Open
Delays in Approving Tenant Alteration Application YR-6006-11, dated March 8, 2023	The CDEN concerns the Port Authority’s disapproval of the Design-Builder’s initial roadways and utilities design package, which was submitted to the Port Authority on December 23, 2022.	Open
Yellow Garage Parking Capture, dated May 16, 2023	The CDEN concerns the capture of the Yellow Garage parking area and the costs associated with respect to additional signage and security guards requested to assist with vacating customers from the Yellow Garage.	Open
Life Safety Package Comments, dated March 24, 2023	The CDEN concerns the Port Authority’s review comments that may necessitate a redesign of certain terminal elements	Open
7460 Permanent Structure Line of Sight, dated May 22, 2023	The CDEN concerns the FAA’s non-approval of the 7460 submission for the permanent structure and the Port Authority’s direction to the Design-Builder to revise the design to obtain the FAA’s approval.	Open



Name	Description	Status
Additional Signage Roadway Utility #1 YR-6006-11 TA Submission, dated August 11, 2023	The CDEN concerns the Port Authority’s request for the Design-Builder to provide temporary signage during the different phases of construction and the Port Authority’s modification of standards.	Resolved
Roadway Work Order 113, dated August 31, 2023	The CDEN concerns material impacts to the D&C Work caused by the Port Authority prioritizing the work related to Work Order 113, which is being performed by the Port Authority’s contractor Grace Civil LLC, over the D&C Work being performed by the Design-Builder in the same area.	Open
Building 111 Tie-in to Existing HVAC Systems, dated July 3, 2023	The CDEN concerns work which was not completed by the Port Authority’s contractor at Building 111, which delayed the Design-Builder’s fitout work for the third floor leased premises.	Resolved
FAA 7460 Determination – Crane Operational Plan, dated July 25, 2023	The CDEN concerns the FAA’s 7460 determination with respect to the Crane Operational Plan and the Port Authority’s failure to provide timely notification and issue a Notice to Airmen in connection with the FAA’s determination.	Resolved
Terminal Signage, dated February 23, 2024	The CDEN Concerns the Port Authority’s direction to proceed with numbered Terminal Signage as opposed to lettered Terminal Signage as set forth in the Port Authority Master Signage Graphic Standards.	Resolved
Lot 55 Additional Soil Erosion Control, dated April 1, 2024	The CDEN concerns the Port Authority’s requirement for substantial environmental enhancements for the concrete stockpile area in Lot 55.	Resolved
Cellular DAS and Wi-Fi, dated June 17, 2024	The CDEN concerns the Port Authority’s delay in awarding a contract to a Vendor and potentially a recent change in direction with respect to responsibility of the scope of work, cost and schedule for the Wi-Fi and Cellular Distributed Antenna System at the Project.	Open
LSS Facility and Final Pricing, dated June 27, 2024	The CDEN concerns the Port Authority’s selection of the Logistics Vendor of the Modern Efficient Transport and Supply facility, the increased costs being charged and the decreased participation from Minority and Women Owned Business Enterprises.	Open
Changed AirTrain Work Rules, dated July 3, 2024	The CDEN concerns the changes in work rules and regulations of the D&C Work to be performed in the proximity of the AirTrain made by Alstom Transportation Inc.	Open





Name	Description	Status
LCP Tracker Non-Conformance for B Book Laborer Rates, dated July 22, 2024	The CDEN concerns the Port Authority’s requirement for the Design-Builder to use higher rates in LCP Tracker, which are not in accordance with the B Rates from the Project Labor Agreement.	Open
PANYNJ Suspension of Work, dated July 31, 2024	The CDEN concerns communication from the Port Authority regarding a damaged 5kv ductbank (damage is unrelated to the DB’s work) and instruction to cease any work in the vicinity of 5kv ductbanks.	Resolved
Manhole TE-11, dated August 16, 2024	The CDEN concerns direction from the Port Authority stating that changes be made to the previously approved design for Taxiway A and Manole TE-11, which will result in design and construction costs, and schedule impacts. This issue was previously considered resolved.	Open
Additional Flagger Costs, dated August 23, 2024	The CDEN concerns the Port Authority requiring flaggers upon the implementation of the traffic shift, part of Roadways Phase 1A, at the intersection of the T5 exit roads and the TWA Hotel exit road, that were not a part of the Maintenance and Protection of Traffic plan, and the costs to provide those flaggers.	Open

**3.10 WARRANTY PERIOD**

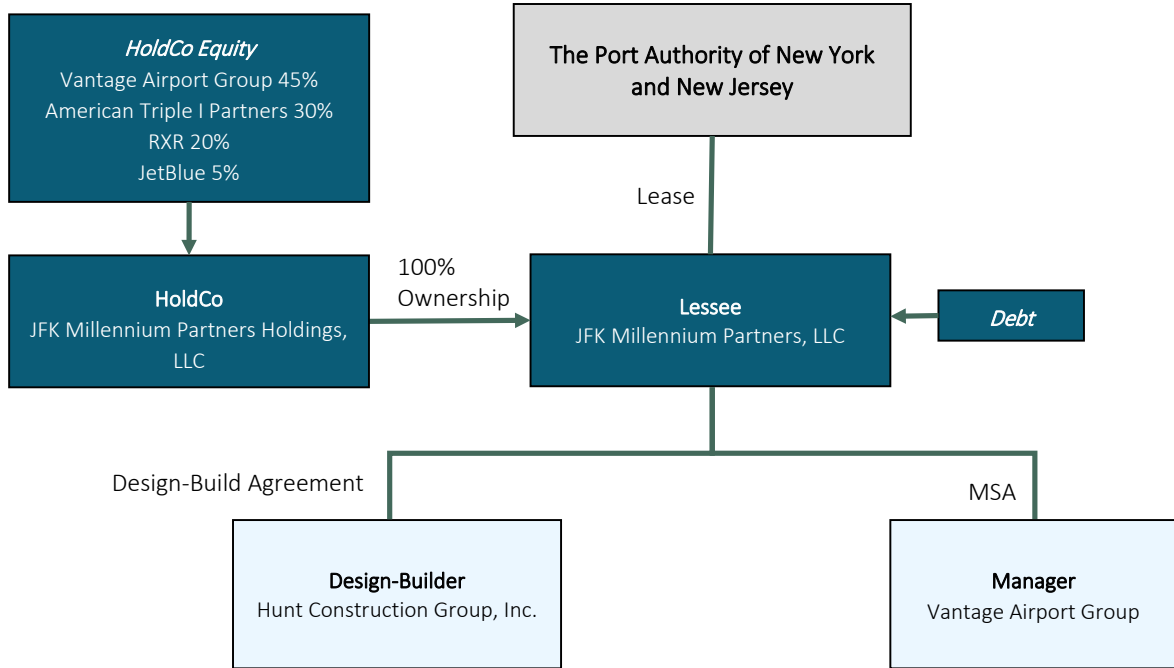
The Lessee will be responsible for correcting all Defects during the 2-year Warranty Period from the issuance of the Phase 1 Completion Certificate or the Completion Certificate, as applicable. If any repairs are required on an element of the D&C Work during the 2-year warranty period, the Warranty Period for that element will be extended for an additional 2 years. The Lessee will not have any warranty obligations for the Off-Premises Facilities once they have been turned over to the Port Authority and the related construction warranties have been assigned to the Port Authority (Section 2(i) of the Lease).

The material portion of the Lessee’s risk related to the Warranty Period has been transferred to the Design-Builder under the DBA for a period of two years, subject to extension for repair and replacement and certain other limited terms and conditions. Special extended warranties (e.g. roofing) are also specified in the scope documents and included within the GMP. The warranty provisions and 2-year Warranty Period are consistent with US P3 market precedent and provide appropriate protection to the Lessee.



## 4.0 Consortium

The general structure of the Project and the consortium is illustrated below:



The key members of the Project consortium are set out below:

Role	Company
Lessee	JFK Millennium Partners, LLC
HoldCo	JFK Millennium Partners Holdings, LLC comprised of JetBlue Airways and funds affiliated with Vantage Airport Group, RXR and American Triple I Partners
HoldCo Equity	45% Vantage Airport Group 30% American Triple I Partners 20% RXR 5% JetBlue Airways Corporation
Design-Builder	Hunt Construction Group, Inc. ("Hunt")



Role	Company
Manager	Vantage Airport Group (JFK) Ltd.
Debt	The Project was originally financed with bank loans and privately purchased municipal securities. JMP is currently planning to issue long term tax exempt bonds for the purpose of repaying a portion of the original financing.

The Lessee, JFK Millennium Partners, is comprised of funds affiliated with Vantage, RXR and ATI, and JetBlue, with JetBlue as the Anchor Tenant for the Project. Corgan is the lead design architect, who has engaged the following design subcontractors:

- Lilker Associates (Lead Mechanical Engineer & Lead Electrical Engineer);
- Arora Engineers (Lead Plumbing Engineer & Lead Fire Protection Engineer);
- Burns & McDonnell (Lead Special Systems and Low Voltage Designer);
- Severud Associates (Lead Structural Engineer);
- Brock Solutions (Baggage Handling Systems Controls);
- Stantec Architecture & Engineering Inc. (interior design);
- Foit-Albert Associates (associate architect);
- Studio 5 Architects, Inc. (associate architect);
- Architecture X Design (associate architect); and
- David Smotrich & Partners LLP (associate architect).

In addition, the Design-Builder has engaged AECOM USA Inc. for civil design, Langan Engineering for geotechnical engineering and NYCO Environmental and Dewatering Corp. for environmental engineering.

JFK Millennium Partners’ equity investors have a track record of successful projects including some of the most challenging airport, terminal and infrastructure projects around the world. The Consortium’s expertise generated through their collective P3 airport experience will be leveraged throughout all the Project phases.

**4.1 VANTAGE GROUP (CO-DEVELOPER, TERMINAL OPERATIONS AND LEAD EQUITY INVESTOR)**

Vantage is a leading investor, developer and manager of airports and terminals. Throughout their 30 year history, Vantage has provided Project Delivery, Terminal Operations and Investor services on more than 30 airports.

The group oversees airport projects globally, with their most notable experience being the redevelopment of the LaGuardia Airport Terminal B planned by the Port Authority, which has a capital value of \$5.1B (USD) and reached Final Acceptance in 2023. Vantage currently oversees all terminal operations and maintenance.

Vantage currently has:

- 30 years managing, developing and investing in airports;
- \$11B+ in Capital Development Projects completed and underway;
- \$8B in Assets Under Management;
- \$1B Network airports revenue;
- Over 1,000 employees across the network;
- 80 million passengers served by Vantage network locations (2023);
- Over 160 airline partners; and
- 265 global destinations served.



The following table provides a snapshot of some of Vantage’s relevant P3 work:

Project	Location	Status	Role	Capital Cost
LaGuardia Airport Terminal B	New York, USA	Operations	Terminal Operations, Equity Investor	\$5.1B
Sangster International Airport	Montego Bay, Jamaica	Operations	Terminal Operations, Equity Investor	\$132M
Arturo Merino Benitez International Airport	Santiago, Chile	Operations	Project Management, Airport Operations, Equity Investor	\$220M
Lynden Pindling International Airport	Nassau, Bahamas	Operations	Terminal Operations, Project Delivery, Equity Investor	\$410M
Larnaka and Paphos Airports	Larnaka, Cyprus	Operations	Terminal Operations, Project Delivery, Equity Investor	\$882M

Vantage is providing 45% of the equity requirement and provide 100% of the Operations and Maintenance responsibilities on the Project through their role as the Manager. As the Manager, Vantage will be the operator and manager of the Existing Terminal Facilities and New Terminal Facilities, performing and managing all Operations and Maintenance Work in accordance with the O&M Contract (Section 11 of the Lease).

#### 4.2 RXR (CO-DEVELOPER AND EQUITY INVESTOR)

RXR is a New York based vertically integrated private real estate company with expertise in investment management, property management, master development, design, construction, leasing and financing. It brings over 10 years of success working in complex public-private development projects throughout the New York region, and successfully delivering projects involving difficult regulatory and approval processes. RXR understands the nuances of the New York region and has a strong track record of overseeing construction activities. RXR will act as co-developer and equity investor for the Project.

RXR’s senior leadership team has extensive experience in delivering some of the largest and most complex public-use facilities in the New York/New Jersey region.

RXR’s Chairman and CEO Scott Rechler, working with David Garten (another member of RXR’s senior leadership team) held key leadership roles at the Port Authority, helping to shepherd high-profile projects, including:

- The construction and completion of the \$14.8 billion World Trade Center site;
- The vision plans for LaGuardia Airport and JFK International Airport;
- The \$1.5 billion replacement of the Goethals Bridge;
- The \$5.1 billion construction of the new Central Terminal B at LaGuardia Airport;
- Recovery and repairs post-Hurricane Sandy; and
- The development of the Port Authority’s 10-year, \$30 billion capital plan.



During his time with the Port Authority, Mr. Rechler served on the bi-state agency's Board of Commissioners as Vice Chairman, and as Chairman of the Port Authority's Capital Planning Committee with responsibility for its multi-billion capital budget.

RXR manages 93 commercial real estate properties and investments with an aggregate gross asset value of approximately \$22.3 billion, comprised of approximately 30.3 million square feet and a multi-family residential portfolio of approximately 7,600 units under operation or development, and control of development rights for an additional approximately 3,800 multi-family and for sale units.

RXR is providing 20% of the equity requirement on the Project.

#### **4.3 AMERICAN TRIPLE I PARTNERS (EQUITY INVESTOR)**

ATI is a New York based manager and developer of infrastructure assets. The firm is affiliated with their leading investment bank, Siebert Williams Shank & Co., thus creating a national asset sourcing platform. Siebert Williams Shank & Co. was founded in 1996 and currently has approximately 130 employees in 23 offices. They have managed more than \$2.0 trillion through over 6,000 municipal bond offerings. Siebert Williams Shank & Co. has also gained experience working with various state and local entities for financing their infrastructure projects.

ATI's equity investments contribute towards 80% of their portfolio. The firm's investment strategies are strengthened through Siebert William Shank & Co.'s national asset sourcing platform and relationships with government leaders and municipal experts. Additionally, the firm is minority-owned and minority-managed with a 100% ethnic minority ownership, enabling responses to public and/or private sector mandates or incentives.

The firm provides equity for a range of projects, including the following examples within the transportation, knowledge & information and environmental sectors:

- Airport facilities and services;
- Cargo and logistics facilities;
- Parking structures and systems;
- Data centers;
- Street lighting systems;
- Power grid modernization; and
- Traffic sensor systems.

ATI is providing 30% of the equity requirement on the Project.

#### **4.4 JETBLUE (EQUITY INVESTOR, ANCHOR TENANT)**

Recently recommitted to its headquarters in Long Island City, Queens, NY, JetBlue began service in 2000 and has grown to become the 6<sup>th</sup> largest passenger carrier in the United States based on revenue passenger miles. JetBlue carries more than 42 million customers a year to over 100 cities in the United States, Caribbean and Latin America with an average of 1,000 daily flights. JetBlue operates out of key airports in New York, Boston, Fort Lauderdale, Orlando, Los Angeles, and San Juan, Puerto Rico. As of 2021, JetBlue also operates out of London Heathrow Airport and London Gatwick Airport in the UK.

JetBlue is providing 5% of the equity requirement on the Project.



#### 4.5 HUNT CONSTRUCTION GROUP, INC. (DESIGN-BUILDER)

Hunt Construction Group, Inc. (“Hunt”) was founded in 1944 and is a leader in the construction of design-build projects, with over 100 projects, exceeding 37 million ft<sup>2</sup> and \$9 billion in contract value. The company has experience working across various market sectors and is a national leader in aviation. Hunt’s aviation project experience includes a wide range of project types, including new terminals, baggage handling systems and other interior modernizations. In total, Hunt has completed over 34 million ft<sup>2</sup> of aviation projects and \$8.5 billion worth of aviation projects nationwide.

In 2014, Hunt merged with AECOM, a fully integrated infrastructure and support services firm. Collectively, AECOM and Hunt leverages Hunt’s extensive experience working in and around airports and successfully planning and managing complex logistics, security challenges and multi-level coordination. Hunt comprises approximately 45% of AECOM’s Construction Management division, which generated \$6.6B of revenue in 2020 and has grown each year since Hunt was acquired in 2014. In addition to Hunt’s experience, Tishman, acquired by AECOM in 2010, has managed the construction of over 600M ft<sup>2</sup> of the world’s most iconic buildings and has extensive experience working in the New York area. In 2004, Tishman was selected to provide preconstruction and construction management services for the Port Authority for the 1 World Trade Center project.

The following table outlines Hunts’ relevant project experience:

Project	Location	Status	Capital Cost
JFK Terminal 1 CBIS Project	Jamaica, NY	Complete	\$44M
Louis Armstrong New Orleans International Airport – North Terminal	New Orleans, LA	Complete	\$878M
Maynard H. Jackson Jr. International Terminal	Atlanta, GA	Complete	\$1.2B
Luis Muñoz Marin International Airport Capacity Enhancement Program	Carolina, Puerto Rico	Complete	\$100M
Phoenix Sky Harbor International Airport Terminal 3 Modernization	Phoenix, AZ	Complete	\$480M
Fort Lauderdale Airport Terminal 1 Modernization Program	Fort Lauderdale, FL	Complete	\$269M
The Col. H. Weir Cook Terminal at Indianapolis International Airport	Indianapolis, IN	Complete	\$507M
Barclays Center	Brooklyn, NY	Complete	\$525M
SoFi Stadium	Inglewood, CA	Complete	\$3.36B
Houston Methodist Hospital Walter Tower	Houston, TX	Complete	\$505M
Mercedes-Benz Stadium	Atlanta, GA	Complete	\$1.49B
UBS Arena	Elmont, NY	Complete	\$697M
Pittsburgh International Airport Terminal Modernization	Pittsburgh, PA	In Progress	\$700M

#### 4.6 CORGAN (LEAD DESIGNER)

Corgan as the Lead Designer coordinates the design team, including the various associate architects and interior design firms. Corgan is an international leader in airport terminal design with completed work in over 200 airports worldwide. Over the past five years they have designed 10 million square feet of terminal projects.



Recent accolades include Top 10 appearances in BD+C’s ‘Top 10 Aviation Architects’ since 2013, with a #3 ranking for 2021.

Corgan has served the aviation market’s needs for over 70 years, including 30 years at JFK. This has provided Corgan a deep understanding of the logistical and operational challenges inherent in aviation projects. Corgan has over 135 professional airport-related staff which bring extensive global expertise to the Project.

Corgan has worked on the JetBlue Terminal 6 Development Project since 2017.

The table below demonstrates Corgan’s relevant project experience.

Project	Location	Status	Capital Cost
Dallas Fort Worth International Airport – Terminal D	Dallas, TX	Complete	\$753M
Dallas Fort Worth International Airport – Terminal Renewal and Improvement Program	Dallas, TX	Complete	\$2.7B
O’Hare International Airport – Concourse L Extension Project	Chicago, IL	Complete	\$76M
San Francisco International Airport – Terminal 1 Interim Boarding Area-B Remodel	San Francisco, CA	Complete	\$110M
William P. Hobby Airport – Southwest Airlines Terminal Expansion	Houston, TX	Complete	\$146M
Los Angeles International Airport – Midfield Satellite Concourse	Los Angeles, CA	Complete	\$1.4B
Hartsfield-Jackson Atlanta International Airport – AMOD Project	Atlanta, GA	Complete	\$153M
BNA Terminal and Landside Area Planning	Nashville, TN	Complete	\$1.36B
LaGuardia International Airport – Delta Airlines Terminal C	New York, NY	Complete	\$4.7B
O’Hare International Airport – Global Terminal and Concourse Design	Chicago, IL	In Design	\$4.5B

#### 4.7 CONCLUSION

Key conclusions are as follows:

- The major parties’ substantial experience in air transportation is testament of their abilities to successfully complete large and complex aviation projects;
- The experienced equity partners should have no issues collaboratively carrying out the responsibilities of the Lessee;
- The Design-Builder is well established in the aviation industry with over \$4.5B of aviation work completed nationwide. Hunt’s extensive experience planning and managing complex logistics, security challenges and multi-level coordination on large infrastructure projects across the United States will be leveraged on the Project;
- In Vantage, the consortium brings award winning airport management expertise to the table. Their experience not only in airport operations, but managing operations during complex construction phasing and transitioning to a private facility, only enhances the overall consortium’s strength;



- Vantage will leverage its experience working on airports within the New York area. In 2016, Vantage led the LaGuardia Gateway Partners consortium on the LaGuardia Airport Terminal B redevelopment project to financial close and lease commencement. The project achieved Final Acceptance in 2023 and all of the new facilities are now open and operational;
- RXR brings significant local New York experience in its role as co-developer and equity investor in the Lessee, including experience with the Port Authority where senior RXR executives have previously held leadership positions. The company manages 93 commercial real estate properties and investments with an aggregate gross asset value of approximately \$22.3 billion; and
- ATI has experience working with various state and local entities for financing their infrastructure projects and the firm is minority-owned and minority-managed with a 100% ethnic minority ownership, enabling responses to public and/or private sector mandates or incentives.





## 5.0 Regulatory Approvals

### 5.1 INTRODUCTION

This section provides a summary of the Lessee’s obligations related to the Premises and all permits and approvals, in addition to their approach to meeting these obligations.

The Port Authority commenced the letting of the Terminal 6 Parcel to the Lessee on the Effective Date (the “Terminal 6 Parcel Lease Commencement Date”), and the Terminal 7 Parcel on December 1, 2022 (the “Terminal 7 Parcel Lease Commencement Date”).

The Lessee’s risk related to regulatory approvals for the DB D&C Work, including its obligations related to obtaining the Governmental Approvals, is transferred to the Design-Builder subject to the terms of the Design-Build Agreement.

### 5.2 ZONING

No rezoning is required

### 5.3 LANDS (THE PREMISES)

The Terminal 6 Parcel and Terminal 7 are, collectively, the Premises. The Port Authority let to the Lessee the Premises in two stages, as summarized in the table below (Section 1 of the Lease):

Lease Commencement Date	Parcel Name	Parcel Summary
Effective Date (Terminal 6 Parcel Lease Commencement Date)	Terminal 6 Parcel	The land as indicated in the Lease Exhibits, and all structures, improvements, additions, buildings, installations, fixtures, facilities and other property located, constructed or installed in, on or under the Terminal 6 Parcel (collectively referred to as the “Initial Premises”).
December 1, 2022 (Terminal 7 Parcel Lease Commencement Date)	Terminal 7 Parcel	The land as indicated in the Lease Exhibits, and all structures, improvements, additions, buildings, installations, fixtures, facilities and other property located, constructed or installed in, on or under the Terminal 7 Parcel (collectively referred to as the “Terminal 7 Premises”).

The Premises are to be used and operated as an airline passenger terminal, including the use and occupancy by the Lessee, Scheduled Aircraft Operators (Airline Sublessees), Concession Sublessees and other Sublessees, Governmental Authorities and the Port Authority.

The Lessee is required to maintain and operate the Premises and charge, collect and retain revenues at the Premises derived from the operation of the Premises, in accordance with the Lease.

The Lessee accepts and assumes all responsibility for the Premises, the Rights of Access and the O&M Access Areas in an “as is” condition at the applicable Lease Commencement Date. The Lessee is subject to all



easements, restrictions, reservations and agreements to which the Premises are subject. Any additional work other than that defined in the Lease that the Lessee undertakes on the Premises is not reimbursable by the Port Authority (Section 1(f) of the Lease).

There are areas identified in the Lease for Temporary Rights of Access, which are off-Premises temporary areas that can be used by the Lessee. It is a Compensation Event if the Port Authority willfully fails to provide the Lessee with Temporary Rights of Access by the applicable specified date (except when such failure is due to an Emergency or Force Majeure or the negligence or misconduct of a Lessee Related Entity). It is a Delay Event to the extent that the Lessee was affected by a Force Majeure.

The areas outside of the Premises where access is required for works (temporary or otherwise) are shown in the Lease Exhibits (Temporary Rights of Access). The approach for enabling access to areas surrounding the TWA Hotel and KIAC are under discussion with applicable parties, including the respective operators and the Port Authority.

There are no encumbrances defined in the Lease.

#### **5.4 GOVERNMENTAL APPROVALS AND PORT AUTHORITY GOVERNMENTAL APPROVALS**

Governmental Approvals include all approvals, permits, permissions, consents, licenses, certificates (including sales tax exemption certificates), registrations, notices, exemptions, exceptions, waivers, filings and authorizations (whether statutory or otherwise) that are required to perform the D&C Work, the Operations & Maintenance Work or the lease and management of the Premises.

The Lessee is responsible for obtaining and maintaining (including any amendments or modifications required to be obtained by the Lessee) all Government Approvals (except Port Authority Governmental Approvals) necessary for the D&C Work and Operations & Maintenance Work. This responsibility includes ensuring that any Governmental Approvals held or required to be held by the previous owner or operator of transferred assets such as Tanks and Pipelines, within 30 days of the applicable Lease Commencement Date (Section 6(b) of the Lease).

The Port Authority Governmental Approvals, defined in the Lease Exhibits, are the responsibility of the Port Authority and include the State Pollutant Discharge Elimination System ("SPDES") Permit and the NEPA Approval Documents. The PA has received the FONSI / ROD, which is the key environmental permit required for the Project.

The Lessee submitted a Construction Application to the Port Authority for approval prior to the start of the Phase 1 D&C Work, as required under the Lease. This document details all the contracts that are proposed to be entered into for the performance of the D&C Work, as well as estimated cost and a phased occupancy and egress plan (Section 2(g) of the Lease).

The Lessee will be provided with Compensation Event protection for (Section 2(ee)(vii) of the Lease):

- Any willful failure or delay by the Port Authority to provide information required for Governmental Approvals in the possession of the Port Authority and not otherwise available to the Lessee within a time period specified by the Lessee (not less than 30 days);
- If the Port Authority willfully fails to provide a signature, in connection with the applications for Governmental Approvals that cannot otherwise be obtained by the Lessee within a reasonable period (not less than 10 days) after a signature is requested in writing by the Lessee.

No such willful failure or delay will be deemed to be a Compensation Event if it results from a Force Majeure Event with respect to the Port Authority.



## 5.5 DESIGN-BUILDER'S REGULATORY APPROVAL APPROACH

The Design-Builder has included durations for the following permits within its Detailed Baseline Schedule:

- Federal Aviation Administration ("FAA") 7460 Approval – Test Pile Program – Received;
- FAA 7406 Approval – Project Wide – Received;
- Long Island Well Permit (Dewatering) – Received;
- Air Train Work Permits – Terminal Piles – Received;
- Air Train Work Permits – Roadway Piles – Outstanding; and
- FAA 7460 Approval – Solar Panels – Outstanding.

The Detailed Baseline Schedule includes a detailed breakdown and sequencing of the TAAs required by the Port Authority under its TCAP Manual. The Port Authority's TAA process is their equivalent of the building permits that we would see on other projects.

Based on discussions with the Lessee, we understand that there are four outstanding TAA packages that have the potential to affect the schedule and create delays:

- Terminal Fitout Package – originally scheduled to be received in December 2023 in the Detailed Baseline Schedule;
- Life Safety Package – originally scheduled to be received in August 2022 in the Detailed Baseline Schedule;
- Airside Apron Package – originally scheduled to be received in August 2023 in the Detailed Baseline Schedule; and
- Roadway Package #2 – originally scheduled to be received in March 2023 in the Detailed Baseline Schedule.

We understand that the Life Safety Package has been in review for 1.5 years and the Airside Apron Package is waiting on environmental approval from the Port Authority. TAAs first get conditional approval from the Port Authority before they receive full approval, and hence disapproved packages have not affected construction. Therefore, in order to avoid delays and impacts to the construction schedule from the TAA process, the Design-Builder is working proactively with the Port Authority to get conditional approval on critical packages.

## 5.6 CONCLUSION

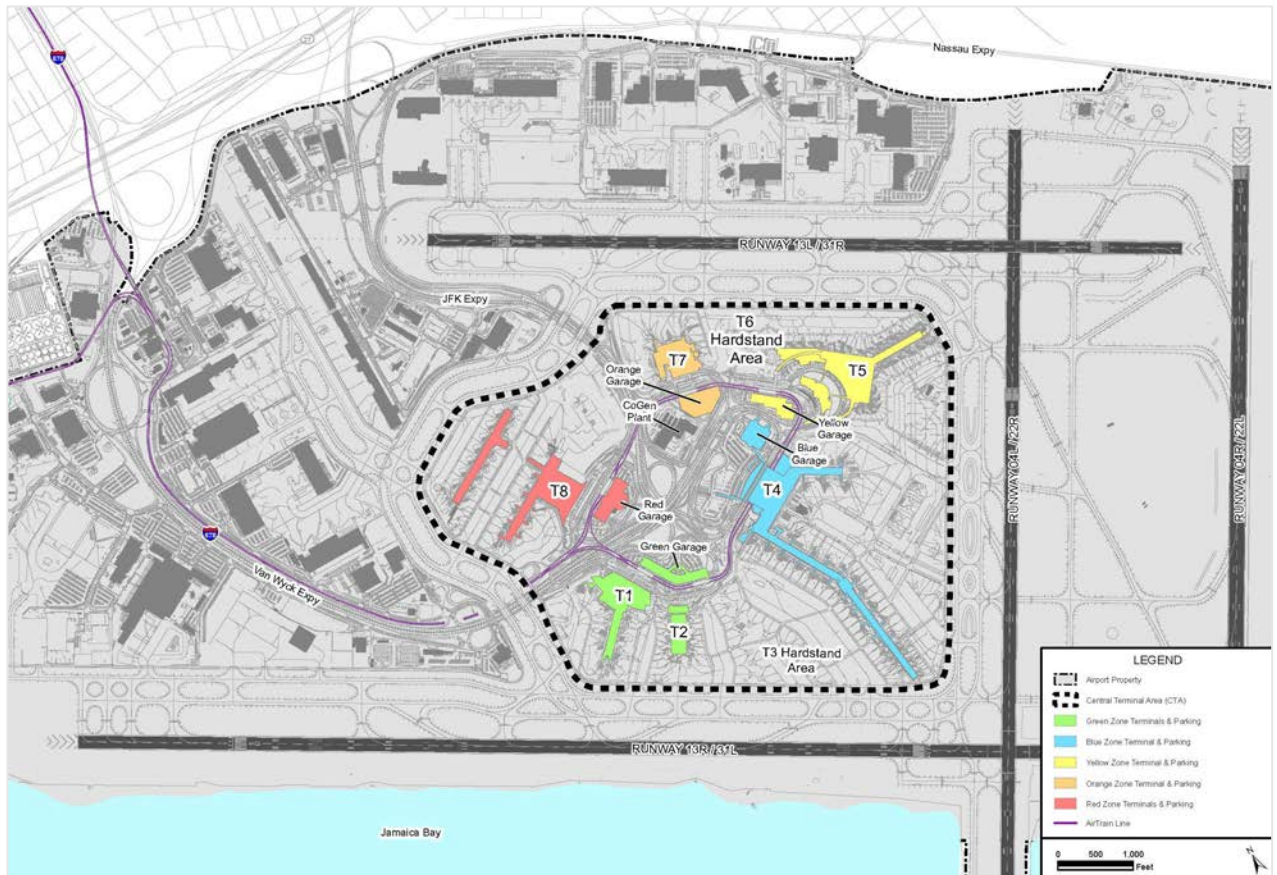
We note the following:

- The Lessee's risk related to regulatory approvals for the DB D&C Work, including its obligations related to obtaining the Governmental Approvals for the construction work, is transferred to the Design-Builder;
- There is no re-zoning required for the Project;
- The PA has received the FONSI / ROD under the NEPA process, which is the key environmental permit required for the Project;
- The Detailed Baseline Schedule includes a detailed breakdown and sequencing of the TAA's required by the Port Authority. These are the equivalent of the building permits that we would see on other projects; and
- The Design-Builder is getting TAA packages conditionally approved by the Port Authority in order to avoid delays in the construction schedule.

## 6.0 Site Conditions

### 6.1 INTRODUCTION

The existing JFK Airport CTA encompasses approximately 880 acres and serves passengers from six passenger terminals. The CTA also includes an interior roadway system, five parking garages, surface lots and an AirTrain light rail system servicing each passenger terminal. The image below demonstrates the location of the existing Terminal 6 Parcel and Terminal 7 building within the overall CTA area.

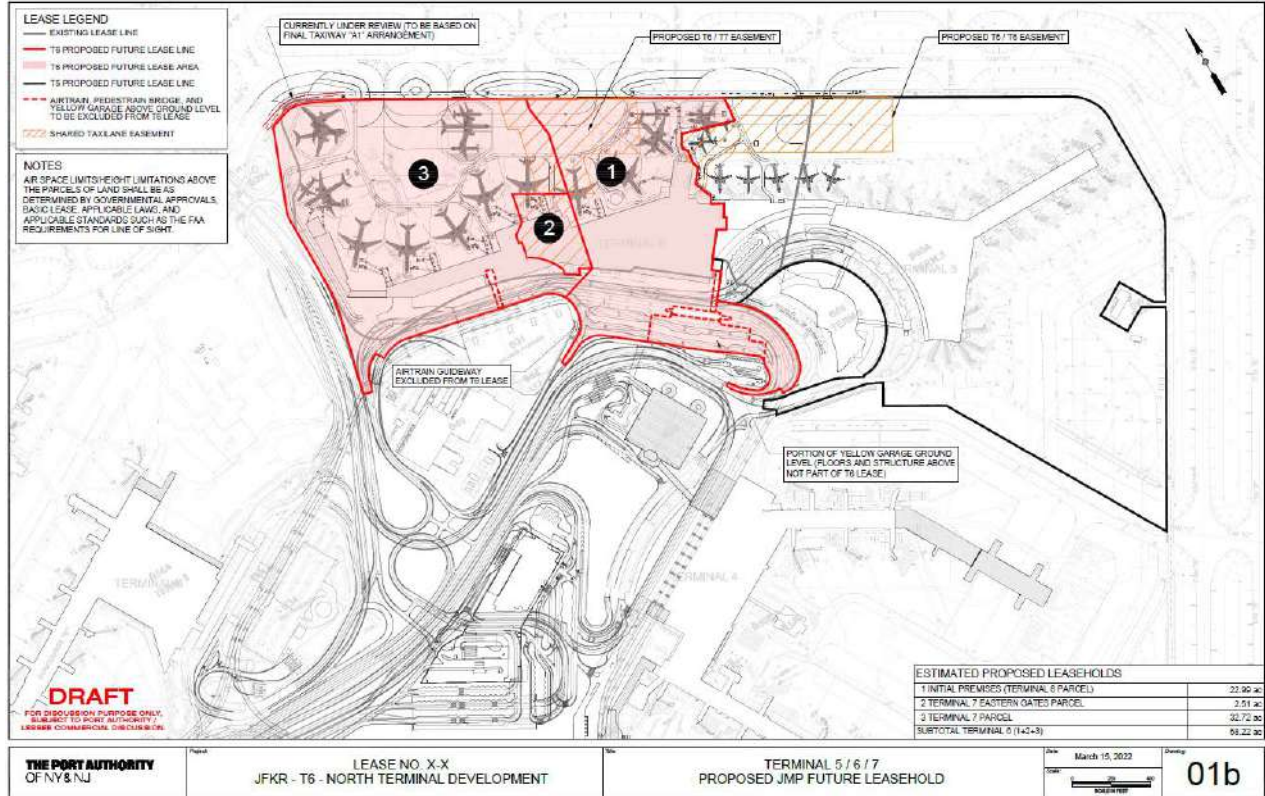


The Lessee hires and takes from the Port Authority the lands with all structures, buildings, installations, facilities and all other property located in, on or under (Section 1 of the Lease):

- The Terminal 6 Parcel; and
- The Terminal 7 Parcel of the Airport.



The following images outline the lease line for the Project:



The passenger terminal frontage roads are also part of the Premises.

The Lessee accepted the Initial Premises and the Terminal 7 Premises, the Rights of Access and the O&M Access areas 'as is' in the condition as of the applicable Commencement Date.

The Lessee will not take:

- The AirTrain, including the stations and bridges connecting to the existing Terminal 5 and existing Terminal 7;
- The Cogeneration Facility, also referred to as the Kennedy International Airport Cogeneration ("KIAC") Facility;
- The traffic systems; and
- The fuel storage system for aircraft hydrant fueling.

Although the Lessee will not take the fuel storage for aircraft hydrant fueling, we note that the Lessee retains the responsibility for designing, building and maintaining on-site fuel storage for the generators.

The Lease provides the Lessee with schedule relief via a Delay Event for the discovery of any Unknown Condition that adversely affects the D&C Work, including Unknown Archaeological Remains, Unknown Endangered Species, Unknown Facilities and Unknown Hazardous Substances, excluding any which the Lessee should have known about or is deemed to have known about prior to the Effective Date.



We note that the Project has been partially derisked with respect to geotechnical and environmental site conditions. The Design-Builder has completed the piling and contamination remediation for Phase 1. The remaining exposure to site conditions is limited to the Phase 2 work at the existing Terminal 7 site. The Lessee’s risk related to site conditions is being managed through a series of budgets and contingencies, as well as risk transfer to the Design-Builder.

**6.2 GEOTECHNICAL SITE CONDITIONS**

**6.2.1 Preliminary Geotechnical Data Report**

We have received and reviewed the Preliminary Geotechnical Data Report (Revision 2) for the Project prepared by Langan Engineering, Environmental, Surveying, Landscape Architecture, and Geology, D.P.C (“Langan”), dated April 2, 2020. The report was prepared to aid the Project’s design development, pricing and scheduling. The recommendations presented by Langan were developed in accordance with the relevant codes, standards and design references and are based on subsurface information provided by the Port Authority and Langan’s previous work in the site area for Terminal 6. The Langan team has extensive experience working alongside the Port Authority on past projects at JFK, specifically on Terminal 7. We note that Langan also has a strong working knowledge of Terminal 6 site area.

The site is located at Terminals 6 and 7 at JFK Airport in Jamaica, Queens, New York and is bound by the airside Runway Vehicle Service Road (to the north), Terminal 5 and TWA Hotel (to the east), Terminal 5 exit roadway and elevated AirTrain structures (Terminal 5 and Terminal 7) (to the south) and JFK Expressway (to the west). Currently, the Project site is occupied by the Terminal 7 building, airside roadways and other paved areas. The former Terminal 6 building was demolished in 2011.

The subsurface profile of the Project site consists of the following soil layers, listed in order of increasing depth:

- Fill (medium-fine sands with variable amounts of silt, clay and construction debris) – 7 to 18 feet below existing grades;
- Peat – ranging in thickness from 1-6 feet; and
- Granular soils (grey and brown medium-fine sands with varying amounts of silt and gravel).

There is groundwater located at 3 feet below ground, but this may vary seasonally. The subsurface profile extends to approximately 25 feet below ground and is not suitable to support the new roadway and structures on shallow foundations. Langan has recommended that all new structures are supported by deep foundations. Utilities will likely be supported by both shallow and deep foundations, dependent on their locations relative to the subsurface stratigraphy.

Langan’s preliminary recommendations for deep foundations are outlined in the following table.

Project Component	Geotechnical Engineer’s Recommendations
<i>Landside Foundations</i>	
Elevated Roadway Bridge Piers	Driven foundations consisting of tapertube piles (piles have a constant-diameter section in the shaft’s upper portion, and a tapered diameter in the lower portion).



Project Component	Geotechnical Engineer’s Recommendations
Concrete Bridge Abutment	Drilled foundations consisting of micropiles (small-diameter piles). The small pile diameters make the foundation adaptable to the presence of existing subsurface infrastructure.
<i>Terminal Buildings</i>	
Terminal Buildings	Driven foundations consisting of tapertube piles.
<i>Utilities</i>	
Various Utilities	<p>The Project Site’s different utilities will require different foundation support, dependent on the loads and utility type. For example, tanks and vaults are anticipated to bear on deep foundations. Dewatering will be necessary for the construction of utilities below the groundwater table.</p> <p>Utility construction must be coordinated with all other construction activities occurring on the Project Site to ensure the proposed construction has minimal impact on sensitive utilities and any utility installations has minimal impact on foundations.</p>

**6.2.2 Final Geotechnical Data Report**

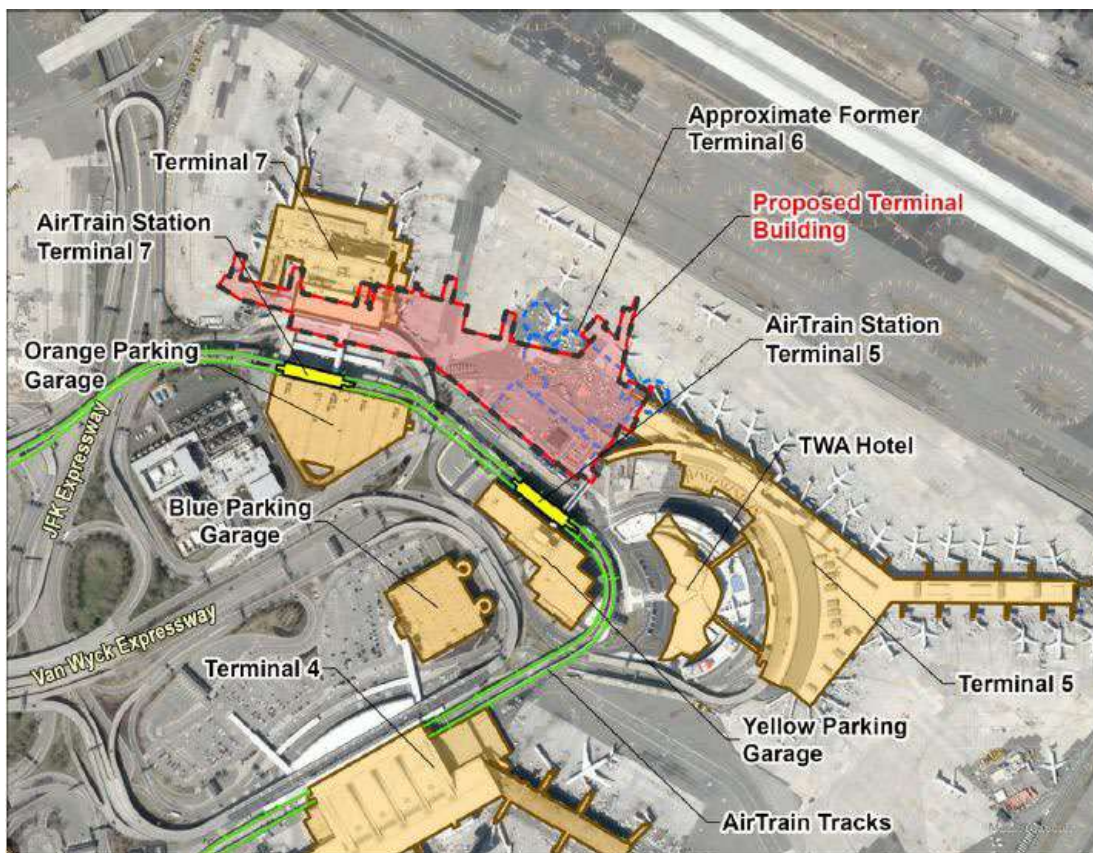
In addition to the preconstruction test pile program, the Design-Builder and Langan completed an additional geotechnical drilling program including geotechnical boring, CPTs and laboratory testing for the Terminal 6 building in April 2022. The results of the additional geotechnical drilling program, including the recommendations for the foundation design of the terminal are outlined in Langan’s Final Geotechnical Engineering Report dated May 27, 2022. We have received and reviewed this report and note the following salient points.

For the Terminal 6 building, we note Langan developed and oversaw the preconstruction test pile installation and testing program (between January – March 2022) for driven tapertube piles and drilled micropiles. Additionally, Langan has completed a geotechnical subsurface exploration program. As part of its final geotechnical evaluation for the T6 building, Langan reviewed the following documentation (with a focus on structural foundations):

- Comprehensive Conceptual Design Documents prepared by Corgan “JFKIA Terminal 6 Development”, dated February 17, 2022;
- Interim Geotechnical Support associated with the Development of Gate 30, Terminal 5, prepared by Langan, dated February 9, 2022;
- Deep Foundation Recommendations, JFK Passenger Arrivals Canopy Structure prepared by Langan, dated February 9, 2022;
- Summary of Test Pile Vibration Monitoring Program prepared by Langan, dated March 3, 2022;

- Test Pile Program – Micropile Installation & Load Test Summary Report, prepared by Langan, dated March 3, 2022;
- Test Pile Program – Tapertube Pile Installation & Load Test Summary Report (Revision 1), prepared by Langan, dated March 4, 2022;
- Geotechnical subsurface exploration program, performed by Langan;
- Site-Specific Seismic Study for JFK Airport Terminal 6 Development – Queens, New York, prepared by Langan, dated May 17, 2022; and
- Historic boring and CPT logs provided by the Port Authority – “JFK Redevelopment CTA Roadways, Utilities and GCT Boring Program”, dated March 26, 2021.

The future Terminal 6 building is shown in red in the following image of the general site layout:



As noted in the preliminary geotechnical exploration, the former Terminal 6 building was opened in 1969 and demolished in 2011, with the foundation walls, cellar slab and other foundation elements being largely abandoned in place. Piling through the remnant foundations was a potential risk item during Phase 1 foundation work; however, the piling for Phase 1 is now complete and Design-Builder did not encounter any significant challenges. Overall, there were very few obstructions encountered during the Phase 1 piling.





We note the following regarding the foundation recommendations for the terminal building, which are typical and do not present an unusual or onerous risk to the experienced Design-Builder:

- Most of the new Terminal 6 building will be supported on driven steel tapertube piles, except where driven piles cannot be installed due to driving-induced vibrations, or areas of reduced access (for example, in low-headroom conditions near the elevated AirTrain);
- In areas where there are vibration or clearance issues/concerns, drilled micropiles may be used;
- For drilled micropiles, once the design depth is reached, the steel reinforcement is placed and the pile is grouted. The casing is then extracted incrementally, and the grout is pressurized and topped off as required;
- Both driven and drilled piles are suitable for the support of the terminal buildings and large utilities/below-grade vaults;
- The pile foundation types are based on various factors including pile load testing conducted as part of the preconstruction test pile program, consideration of performance criteria, prior JFK experience and site constraints;
- The obstructions encountered during the subsurface investigation were most frequently within the footprint of the former Terminal 6 building, where remnant reinforced concrete foundation elements were encountered;
- The remnant Terminal 6 foundations generally consisted of a reinforced concrete slab, supported by reinforced concrete pile caps atop timer piles;
- Langan has noted similar foundation types are anticipated to be present at the existing Terminal 7 site; and
- All tapertube and micropile casing will be provided with corrosion protection.

Langan’s geotechnical recommendations for the following Project components based on the findings of the Final Geotechnical Engineering Report are outlined in the following table.

Project Component	Geotechnical Engineer’s Recommendations
<i>Foundation Recommendations for Lightly Loaded Structures</i>	
Shallow Foundations	Shallow foundations (spread footings) bearing in the upper fill layer may be suitable for lightly loaded site features (i.e., light poles, bollards) that can tolerate some long-term settlement
Utility Support	Through input from the MEP engineer, Langan has noted there are settlement-sensitive and gravity-fed storm and sanitary lines running below the T6 building slab, these sensitive and gravity-fed utilities cannot tolerate any appreciable settlement, and will therefore require supplemental support
<i>Recommendations for Applied Earth Pressures</i>	
Design Groundwater Level	The design of below grade structures include a temporary rise in groundwater levels up to the design flood event



Project Component	Geotechnical Engineer's Recommendations
Slab Design	Interior slab areas below the design flood elevation include a pile-supported structural slab designed to withstand the compressive slab loads in the typical service conditions and hydrostatic uplift pressures in the design flood event
Below-Grade Walls and Retaining Walls	Below-grade walls for mechanical pits and other structures are designed to resist earth/water pressures, and surcharge loadings consistent with the NYCBC
Waterproofing	Slabs and mechanical pits below the design flood elevation include a membrane waterproofing system  Langan has recommended a waterproofing membrane be installed below the typical ground floor slab and the depressed slab area
<b><i>Site Preparation and Construction Recommendations</i></b>	
General	Site preparation activities may include, but are not limited to: <ul style="list-style-type: none"> <li>• Stripping and removal of surface features (i.e., overlying concrete and asphalt)</li> <li>• Demolition of T7 during Phase 2</li> <li>• Compaction of on-site soils/placement of fills material</li> </ul>
Temporary Excavation Support	While the new terminal does not have a below-grade level, temporary support of excavation will be required so that pits and below-grade tanks can be built  Langan has noted the removal of remnant foundations may also require the use of support of excavation
Construction Dewatering	Install a temporary dewatering system to accommodate elevated groundwater levels, independent of flood events  All dewatering activities must be completed in accordance with the Environmental Management Plan ("EMP"), and the approved Long Island Well Permit



Project Component	Geotechnical Engineer’s Recommendations
Subgrade Protection during Construction and Stormwater Pollution Prevention	<p>Any foundation soils that become wet/soft before compaction shall be excavated and replaced with approved, compacted backfill before placing any fill, foundation units or other features</p> <p>All work on site must comply with the Stormwater Pollution Prevention Plan (“SWPPP”) approved by the Port Authority and New York State Department of Environmental Conservation</p>

The recommendations are typical and do not present an unusual or onerous risk to the experienced Design-Builder. The recommendations have been included in the design, delivery approach, schedule and pricing. The actual geotechnical conditions encountered to date during the Phase 1 D&C Work have aligned with the findings of the Final Geotechnical Engineering Report. The Phase 1 piling is complete, and the Design-Builder did not encounter any significant challenges.

**6.2.3 Seismic Studies**

BTY has received and reviewed the following seismic studies conducted by Langan:

- Site-Specific Seismic Study for JFK Terminal Six Development, dated May 6, 2022; and
- Site-Specific Seismic Study for JFK Terminal Six Development (Elevated Roadways) dated May 17, 2022.

The investigations forming the basis of the seismic analyses included the following:

- 79 test borings (between 10 – 100 feet below ground surface); and
- 38 cone penetration tests and 12 seismic cone penetration tests (advanced to 100 feet below ground surface).

Langan’s design recommendations satisfies the NYCBC and ASCE 7-10 requirements. The proposed development at Terminal 6 is classified as seismic Site Class of “D” (stiff soil), as per the 2016 SDGBDR.

In Langan’s opinion, there is sufficient margin of safety against soil liquefaction for the Terminal 6 site.

**6.3 ENVIRONMENTAL SITE CONDITIONS**

We have received and reviewed the Environmental Document Review Reports for Terminal 6 and 7 of the JFK International Airport, both of which were prepared by Langan and are dated May 8, 2020.

BTY notes that the activities completed as part of Langan’s document reviews do not constitute an Environmental Site Assessment and that no intrusive investigations/sampling were completed.

BTY met with Langan’s team to discuss their approach to environmental concerns including the 2 open LNAPL spills and the unknown locations of several USTs. To the extent any contaminated groundwater is encountered during construction, it will be treated and discharged in accordance with the applicable environmental requirements. The Design-Builder has obtained the Long Island Well Permit, which is a required Governmental





Langan has reviewed the following available environmental documentation/data to determine the existing environmental conditions at the site:

- Historical environmental reports provided by the Port Authority;
- The online New York State Department of Environmental Conservation (“NYSDEC”) spill database;
- The Petroleum Bulk Storage (“PBS”) and Chemical Bulk Storage (“CBS”) underground storage tank (“UST”) registration; and
- The Database Report (obtained from Environmental Risk Information Services).

#### ***Results and Recommendations***

The former fuel hydrant system (“FHS”) surrounding the old Terminal 6 (initially built in the late 1940s) was the primary source of historic soil and groundwater impacts on the Terminal 6 site. In 2012, the Terminal 6 FHS was closed in place and some associated structures were removed. Contamination included spills of jet fuel, diesel, light non-aqueous phase liquids (“LNAPL”) and other petroleum products. The Design-Builder has completed the soil and groundwater remediation work for Phase 1 and did not encounter any significant issues with unknown or unidentified contamination.

### **6.3.2 Terminal 7 Environmental Document Review**

The Project Site reviewed in the Terminal 7 Environmental Document Review includes:

- The existing Terminal 7 building; and
- Surrounding airside features (gates, taxis/runways, and the supporting airport operations area).

Langan has reviewed the following available environmental documentation/data to determine the existing environmental conditions at the site:

- Historical environmental reports provided by the Port Authority and British Airways;
- The online New York State Department of Environmental Conservation (“NYSDEC”) spill database;
- The PBS and CBS UST registration; and
- The Database Report (obtained from Environmental Risk Information Services).

#### ***Results and Recommendations***

Between 1988-2020, there were 53 documented spills of jet fuel, diesel, gasoline, and other petroleum products at Terminal 7, and 52 have been closed by NYSDEC. As of May 2020, there is one spill of LNAPL open at Terminal 7 and remediation is ongoing. Langan has noted there are higher levels of LNAPL detected when the water table is at lower elevations and that dewatering activities conducted during construction may release additional LNAPL. To the extent any contaminated groundwater is encountered during construction, it will be treated and discharged in accordance with the applicable environmental requirements.

### **6.3.3 Coordination with British Airways**

The Lessee and British Airways executed an Amendment to the Cooperation Agreement, which outlines the responsibility of both parties related to environmental remediation at the Terminal 7 site.

The Lessee has elected to use and operate three aboveground diesel generator storage tanks currently in place at Terminal 7 (the “Continued Terminal 7 Storage Tanks”). British Airways will be responsible for removing and disposing of all other above and underground storage tanks.



The Lessee engaged Langan to develop a Site Assessment Report in order to evaluate the nature and extent of any soil, groundwater or other contamination at the Terminal 7 site as a result of releases occurring prior to the BA Terminal 7 Lease Expiration Date. Langan provided a Remediation and Closure Cost Estimate to remediate contamination, close the Jet Fuel Hydrant System and remove the Continued Terminal 7 Storage Tanks. British Airways provided the Lessee with a \$14M settlement for the cost of this work.

The Lessee will be responsible for closing the Jet Fuel Hydrant System and Continuing Terminal 7 Storage Tanks and these costs will be funded from the British Airways settlement amount.

#### **6.4 FINAL ENVIRONMENTAL ASSESSMENT (FONSI/ROD)**

We have received and reviewed the Final EA for the JFK International Airport Redevelopment Program, dated April 20, 2020. The EA was sponsored by the Port Authority and prepared for the US Department of Transportation FAA as required under NEPA. The EA covers the full JFK International Airport Redevelopment Program, of which the Project is one component. The EA investigated the potential environmental effects of the Project Work, including how the Project would impact air quality, biological resources, coastal resources, hazardous materials and historical resources.

The JFK International Airport Redevelopment Program has received a Finding of No Significant Impact (“FONSI”) / Record of Decision (“ROD”), which is the key environmental permit required for the Project. The FONSI/ROD represents the FAA’s determination that the Project will have no significant environmental impacts. The FONSI/ROD was issued based on the results of the Final EA. The Final EA not only examined the impacts of activities associated with the redevelopment of JFK’s Terminal 6 and 7, but the entire JFK Redevelopment program. Since FONSI/ROD was based on the Final EA for the JFK Redevelopment program, BTY notes that it is a conservative disclosure of the Project’s anticipated environmental effects.

This section provides a summary of the salient points of the Lease related to the environmental site conditions and a summary of the EA findings.

##### **6.4.1 Compliance with Environmental Requirements**

The Lessee shall be obligated at its cost and expense to comply with all Environmental Requirements applicable to the Premises, operations, occupancy and use, O&M Access or any Environmental Damages, including all documentation preparation and submission to the Governmental Authorities related to Remediation works to comply with Environmental Requirements, including NEPA.

##### **6.4.2 Air Quality**

The Project’s emissions are not expected to exceed minimum thresholds of the US Environmental Protection Agency (“US EPA”) since there will not be an increase in the total number of motor vehicles travelling to and from JFK in addition to the forecasted growth. In the case that there are increased emissions from the Project, they will most likely derive from construction activities.

The emissions associated with the Project’s construction activities will occur primarily in engine exhaust from the operation of construction equipment and other vehicles on site. The EA recommends the following mitigation measures for the Project’s construction period (Section 5.2 of the Final EA):

- 70% of non-road diesel construction equipment less than 100 horsepower must meet the US EPA’s Tier 4 Emission Standards; and



- 100% of non-road diesel construction equipment equal to or more than 100 horsepower must meet the US EPA's Tier 4 emission standards.

Additional sustainability requirements relevant to air quality include:

- The implementation of all-electric ground support equipment (replace all existing baggage and cargo tugs, belt loaders and pushback tractors with electric models by 2025) (Section 19.3 of Section A of the RPW); and
- Ensuring at least 10% of the Lessee's fleet of on-road vehicles and the fleets of its Contractors and subcontractors accessing the airport are zero-emitting vehicles (Section 8.1.19 of Section A of the RPW).

Throughout the operations period, most emissions will be associated with motor vehicles and ground aircraft operations. It is highly unlikely that the Project will cause exceedances to the minimum thresholds of the US EPA due to the short-term nature of the construction activities, the Port Authority's existing emission reduction measures, the Port Authority's Sustainable Design Guidelines, and the construction period mitigation measures.

#### 6.4.3 Biological Resources

The Project Site consists of disturbed, fully developed land that is currently used for airport operations. There are no naturally vegetated areas within the Project Site to be impacted by Project Work, therefore there are no adverse impacts on the ecological communities or vegetation. The wildlife in the Project Site only includes species that are highly tolerant to human disturbance and the Project Work will not modify their habitat. The Project Site is already fully developed and does not provide habitat for any Federally-listed or state-listed species. There were 30 migratory birds protected under the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act that may be present close to the Project Site. However, the Project Site is not a suitable habitat for the birds and the Project remains unlikely to adversely impact migratory birds. Given the Project Site's existing use and development, no mitigation is required to control the biological resources (Section 5.3 of the Final EA).

#### 6.4.4 Coastal Resources

The Project Work will occur within the developed upland areas of the designated coastal zone boundary established by the New York State Department of State ("NYS DOS") and the New York City Department of City Planning ("NYC DCP") and will not impact coastal resources such as coastal barriers, wetlands, floodplains or fish and wildlife habitat. The Project will not cause adverse impacts on coastal resources and no mitigation is required (Section 5.5 of the Final EA).

#### 6.4.5 Hazardous Substances

If required by an applicable Governmental Authority, the Lessee will perform at its own cost an investigation or environmental site assessment as per Environmental Requirements to determine the extent of any contamination, pollutants or Hazardous Substances within the Premises for events related to the occupancy of the Lessee (Section 57 (i) of the Lease).

The Lessee will perform all Remediation required by Environmental Requirements in connection with Releases of Hazardous Substances at, on, under or from Airport that are caused by the Lessee or Lessee-Related Entity. With regard to Hazardous Substances encountered outside of the Excavation Boundary (defined as the applicable Perimeter Dig Area: the perimeter of an area that will actually be excavated as part of the D&C Work, plus ten



feet from the edge of such area, with some exceptions) the Lessee shall only perform Remediation if required to do so by a Governmental Authority.

No liability will be taken by the Lessee for (Section 57 of the Lease):

- Violations of Environmental Laws or Releases of Hazardous Substances caused by the gross negligence or willful misconduct of the Port Authority or the migration of Hazardous Substances through soil or groundwater from other locations;
- Fines or penalties or third-party claims arising from violations of Environmental Requirements associated with the operation of the Terminal 7 Parcel by other persons that occurred prior to the Terminal 7 Parcel Lease Commencement Date;
- Pre-Existing Hazardous Substances disposed at locations approved by the Port Authority or migrations prior to the Terminal 7 Parcel prior to the Terminal 7 Parcel Lease Commencement Date; and
- Fines or penalties or third-party claims arising from violations of Environmental Requirements associated with operations on the Rights of Access occurring prior to taking occupancy.

The Lessee is responsible for the identification, abatement and removal off Site of all asbestos only interfering with the necessary D&C Work carried out by the Design-Builder to complete the Scope (Section 57(K) of the Lease).

Any costs, losses or other expenditures to be reimbursed by the Lessee in accordance with Section 57 of the Lease (Environmental Obligations) shall be additional rent, recoverable by the Port Authority in the same process as if it were originally a part of the Rental (Section 57 (A)(6) of the Lease).

The EA determined that historical soil and groundwater contamination is present within the Project Site, and this may continue to be a source of contaminants. After reviewing the US EPA's National Priorities List ("NPL"), it has been confirmed that there are no NPL sites within a one-mile radius of the Project Work. There have been historical accidental releases of hazardous substances through the handling, use and storage of various hazardous materials at the Project site and the Project Work may require the removal and/or relocation of existing fuel tanks and underground fuel lines.

Solid waste will be controlled through various requirements, including Port Authority's Sustainable Infrastructure Guidelines and a construction waste management program that will divert 75% of all construction debris from the landfills through recycling. Additionally, the Project is being designed to meet LEED Silver certification.

The demolition activities will generate solid waste and potentially hazardous materials requiring proper disposal. In the event that soil exhibiting evidence of contamination is encountered, the Lessee is required to test the soil and notify the Port Authority of the results to determine the sample's appropriateness for either offsite disposal or on-site soil reuse (Section 22.3.4.3 of Section A of the RPW). The demolition activities may also trigger the need for asbestos abatement in Terminal 7 (Section 22.3.5 of Section A of the RPW). Activities involving disturbing or excavating soils are required be completed in accordance with applicable Federal, state, tribal or local laws or regulations. The solid waste stream will be minimized through source reduction and recycling strategies, including the Port Authority's Sustainable Building Guidelines, reducing negative environmental impacts of the Project. Overall, there are no significant construction related impacts related to the release of hazardous materials, solid waste or pollution with the mitigation measures in place (Section 5.7 of the Final EA).

#### 6.4.6 Historical Resources

The Project Work does not include a change in runway use patterns or flight paths and will not cause an increase in aircraft operations other than forecasted growth. There is no expected impact to historic properties from construction activities, noise or increased traffic. On December 2, 2019, in their response to FAA, the New York





State Historic Preservation Office (“NY SHPO”) concluded that there are no identified Areas of Potential Effect and there was No Adverse Effect to archaeological resources. The Project will not impact archaeological and historical resources and no mitigation measures are required. (Section 5.8 of the Final EA).

#### **6.4.7 Water Resources**

There are no direct impacts on wetlands, floodplains, surface water or groundwater (collectively, the “water resources”) from the Project, and no mitigation is required. The Project may have indirect impacts on water resources due to the increased impervious surface areas. However, given the existing and planned stormwater management plans, adverse impacts to water resources are not anticipated (Section 5.14 of the Final EA).

### **6.5 UTILITIES**

The Parties acknowledge there are communications and utility lines and conduits located on or under the site on which D&C Work is to be performed, which do not, and may not in the future, serve the Premises. The Lessee, as part of the D&C Work, is responsible for the relocation and reinstallation of such communications and utility lines and conduits and for the restoration of all affected areas (“Relocation Work”) and shall be at the Lessee’s sole cost and expense (Section 2(s) of the Lease).

The Port Authority as reasonably requested by the Lessee, will provide its assistance in connection with the negotiation of any agreements for utility relocation, including Relocation Work, with third parties owning utilities and the resolution of any disputes with such third parties. All reasonable out-of-pocket costs, expenses and other charges paid or incurred by the Port Authority in cooperating with the Lessee will be payable to the Port Authority by the Lessee immediately upon demand.

If the Parties cannot agree on whether Relocation Work needs to be performed, or the scope of such Relocation Work, or a dispute arises in connection with the Port Authority’s cooperation, such dispute will be referred to the Chief Engineer.

The Lessee at its sole cost and expense is required to bring appropriate access stubs and service lines for the supply of cold water, electric power, telephone communications, thermal heating and cooling, and sanitary and storm sewers (“Utility Service Lines”) to locations at the perimeter of the Premises or to the nearest manhole or other location at the Airport as required by the Lease or determined by the Port Authority and the Lessee, and is responsible for (Section 2(t) of the Lease):

- Tying its utility lines and roadways into Utility Service Lines and roadway access stubs; and
- Coordinating and executing all agreements regarding the supply of Utilities and installation of Utility Services Lines with National Grid (with respect to Natural Gas), the FAA (with respect to NAVAIDS), telecommunication services providers and any other third-party utility companies owning Utilities that may be impacted by the Construction Work.

Regarding the Lessee’s coordination and execution of all utility agreements, the Lessee must keep the Port Authority informed at all times of the status of coordination and negotiation of such agreements.

The Lease includes an exhibit showing the location of the interface/tie-in points for Utility Service Lines, including water, sanitary, gas, fuel, electric, drainage and communications.



## 6.6 STORAGE TANKS

The Lessee takes full ownership of and responsibility for all ASTs, USTs and fuel lines or hydrants (except for Closed Tank Systems) located on the Terminal 6 and Terminal 7 Parcels as per their respective Lease Commencement Dates, including all associated pipes, lines, fixtures and equipment (Section 62 of the Lease).

The Lessee will perform at its own cost all necessary operations, maintenance and modifications to the Tanks to comply with all applicable Environmental Requirements and remove unused Tanks. The Port Authority will be held harmless from any risks arising from connections with the Tanks and Discharges from the Tanks whether or not known or unknown before or after the Terminal 6 Parcel and Terminal 7 Parcel Commencement Dates.

The Lessee will also assume ownership of and responsibility for any underground systems associated to petroleum products (except for Closed Pipelines), including jet fuel, aviation gasoline, and related hydrants, complying with all obligations of prior owner and operator of such Pipeline, ensuring compliance with any applicable Governmental Approvals.

## 6.7 CONCLUSION

We note the following conclusions related to site conditions:

- The Project has been partially derisked with respect to geotechnical and environmental site conditions. The remaining exposure is limited to the Phase 2 work at the existing Terminal 7 site. The Design-Builder did not encounter significant challenges related to geotechnical or environmental site conditions during the Phase 1 foundation work;
- The Lessee's risk related to site conditions is being managed through a series of budgets and contingencies, as well as certain risk transfer to the Design-Builder with respect to conditions that are known or should have been known based upon the standard of care;
- The Lease includes a Delay Event for the discovery of any Unknown Condition that adversely affects the D&C Work;
- The Lessee is responsible for the Remediation of all Hazardous Substances encountered within the Excavation Boundary, and of all Releases of Hazardous Substances on the Premises occurring after the Commencement Date. With regard to Hazardous Substances encountered outside of the Excavation Boundary, the Lessee is only required to remediate if required by a Governmental Authority;
- The Lessee is responsible for all necessary operations, maintenance and modifications related to the existing Tanks and Utilities;
- Overall, the Final EA has determined that the Project will not result in significant impacts to the environmental resources, and that mitigation measures in addition to those already included in the Project plan are not required;
- British Airways provided the Lessee with a \$14M settlement for the Remediation and Closure Costs for the Terminal 7 Jet Fuel Hydrant System; and
- The Lessee contemplates using three above ground storage tanks currently in place at Terminal 7 and will remediate any releases from those tanks upon shutdown of Terminal 7 operations. Any required remediation will be funded out of the British Airways settlement.



## 7.0 Project Schedule

### 7.1 INTRODUCTION

The Lessee is responsible for meeting the following Completion Milestones:

- Substantial Completion of Phase 1 by the Scheduled Phase 1 Completion Date, defined as December 4, 2025; and
- Substantial Completion of Phase 2 by the Scheduled Completion Date, defined as February 23, 2028.

The Lease includes an Event of Default for a failure to achieve Substantial Completion of Phase 2 by the Outside Completion Date, which is defined as 12 months following the Scheduled Completion Date.

The Lessee's risk related to the Project Schedule has been transferred to the Design-Builder under the DBA with the exception of delays due to Material Developer Changes and Unavoidable Delays, which are defined as (Section 10.8 of the DBA):

- Terrorism or war;
- Strikes not specific to the DB D&C Work that are beyond Design-Builder's or its Subcontractors' reasonable control;
- Fire or other casualty resulting in property damage to the DB D&C Work not caused by Design-Builder or any Subcontractor's negligence or willful misconduct;
- Other Force Majeure events, subject to terms and conditions of the DBA and the Lease;
- Compensation Events, subject to terms and conditions of the DBA and the Lease; and
- Acts or omissions or willful misconduct of Lessee-Related Entities.

We note that with the exception of the last event (e.g. acts or omissions or willful misconduct of Lessee-Related Entities), the Lessee is also provided with certain protection for these Unavoidable Delay events under the Delay Event and Compensation Event protections under the Lease. The Design-Builder's relief for Compensation Events is subject to equivalent project relief under the Lease.

### 7.2 PHASED D&C WORK APPROACH

The Lessee has planned the construction of the D&C Work to be performed in phases: Phase 1 D&C Work and Phase 2 D&C Work. The Phase 1 D&C Work includes the following responsibilities (Section 2(b)(2)(iii) of the Lease):

- Construction of the portion of the New Terminal Facilities on the Terminal 6 Parcel that has been expanded to the eastern building edge of the Existing Terminal Facilities on the Terminal 7 Parcel;
- Decommissioning of two Gates located on the eastern side of the existing Terminal 7;
- Construction of the Ground Transportation Center; and
- Construction of associated Off-Premises Facilities.

The Phase 2 D&C Work includes the following responsibilities:

- Demolition of the Existing Terminal Facilities on the Terminal 7 Parcel;
- Construction of the remaining New Terminal Facilities on the Terminal 7 Parcel; and
- Construction of associated Off-Premises Facilities.



### 7.3 DESIGN-BUILDER'S SCHEDULE APPROACH & METHODOLOGY

Key Dates from the Design-Builder's Detailed Baseline Schedule are summarised and compared to the Design-Builder's monthly schedule update dated September 6, 2024 in the table below. A negative number indicates a delay compared against the baseline schedule.

Activity	Detailed Baseline Schedule	Design-Builder's Current Schedule	Variance (calendar days)
Phase 1 Terminal			
Financial Close	17-Nov-22	17-Nov-22	0
Mobilization Complete	08-Aug-23	17-Dec-24	-497
Site Demolition Complete	04-May-23	07-Jun-24	-400
Foundations Complete	17-Oct-24	13-Aug-25	-300
Landside Utilities Complete	29-Jul-24	23-Jul-25	-359
Superstructure Complete	14-Apr-25	30-Oct-25	-199
Airside Civil & Utilities Complete	22-Feb-25	15-Oct-25	-235
Building Systems Complete	19-May-25	10-Jul-25	-52
Passenger Boarding Bridges Complete	15-Jul-25	17-Oct-25	-94
Passenger Conveying Complete	18-Jul-25	28-Oct-25	-102
Interior Construction Complete	22-Jul-25	31-Oct-25	-101
Enclosure Complete	01-Aug-25	15-Oct-25	-75
Baggage Handling System Complete	04-Aug-25	14-Aug-25	-10
Phase 1 Roadways			
Phase 1C Roadways Complete	18-Jun-24	29-Apr-25	-315
Phase 1A Roadways Complete	17-Sep-24	25-Nov-25	-434
Phase 1B Roadways Complete	02-Dec-24	22-Sep-25	-294
Phase 1E Roadways Complete	19-Feb-25	21-Oct-25	-244
Phase 1D Roadways Complete	15-Sep-25	01-Dec-25	-77
Phase 1F Roadways Complete	09-Dec-25	29-Sep-25	71
Phase 1 Substantial Completion	04-Dec-25	26-Dec-25	-22
Phase 1 DBO	10-Feb-26	04-Mar-26	-22
Phase 2 Terminal			
Terminal 7 Demolition Complete	14-Jul-26	30-Jul-26	-16
Foundations Complete	08-Feb-27	08-Apr-27	-59

#300 - 30 E 6th Avenue, Vancouver, BC Canada V5T 1J4 | 604 734 3126

*This Report has been prepared at the request of JFK Millennium Partners on behalf of the Project Lenders and is the exclusive property of BTY Group, which is the owner of the intellectual property rights relating to this Report. The Report must be treated as confidential and proprietary information of BTY Group and it may not be disclosed, reproduced or permitted to be disclosed to any party without the prior consent of BTY Group.*



Activity	Detailed Baseline Schedule	Design-Builder's Current Schedule	Variance (calendar days)
Superstructure Complete	19-Mar-27	26-May-27	68
Landside Utilities Complete	08-Apr-27	30-Jun-27	-83
Enclosure Complete	25-Jun-27	14-Oct-27	-111
Roadways Complete	21-Jun-27	10-Sep-27	-81
Airside Civil & Utilities Complete	12-Aug-27	30-Aug-27	-18
Passenger Boarding Bridges Complete	19-Jul-27	09-Sep-27	-52
Baggage Handling System Complete	23-Aug-27	26-Oct-27	-64
Building Systems Complete	19-Oct-27	20-Oct-27	-1
West Concourse Complete	10-Dec-27	29-Dec-27	-19
Passenger Conveying Complete	15-Nov-27	29-Jun-27	139
Interior Construction Complete	19-Oct-27	08-Dec-27	-50
Phase 2 Substantial Completion	23-Feb-28	13-Mar-28	-19
Phase 2 DBO	19-Apr-28	08-May-28	-19

The Design-Builder's Detailed Baseline Schedule was developed based on its experience with similar projects and input from local trade subcontractors. We note the following:

- The schedule includes a detailed sequence of preconstruction activities, including design, site investigations, procurement and permitting;
- The design activities and durations are based directly off the design team's schedule. The Design-Builder has incorporated the PA design review periods defined in the RPWs and has allowed for a resubmission to address PA comments for the majority of design submissions;
- The schedule has been informed by Vantage's experience at LaGuardia Airport;
- The schedule is based on a 5-day, 40-hour workweek with statutory holidays included;
- Opportunities to accelerate the schedule, if required, include longer shifts, weekends and additional labour;
- Labour is provided through a Project Labour Agreement with local unions;
- The Design-Builder has received schedule input from all critical subtrades. The prospective subcontractors for packages that are yet to be awarded will need to agree to the schedule logic and duration. The current schedule durations for remaining packages are based on the Design-Builder's historic experience;
- Weather days have been included in the schedule based on the National Oceanic and Atmospheric Administration's historic data for New York; and
- The Design-Builder has placed orders for long lead items early and, if needed, will use offsite storage to mitigate the risk of procurement delays.



#### 7.4 ASSESSMENT OF THE PROJECT SCHEDULE

Our review of the schedule is based on the Design-Builder's Detailed Baseline Schedule and the current monthly schedule update, dated September 6, 2024, reported by the Design-Builder.

The September 2024 Detailed Schedule forecasts a 22 day delay to the Phase 1 Substantial Completion and DBO milestones and a 19 day delay to the Phase 2 Substantial Completion and DBO milestones, which is reflective of delays experienced in several Phase 1 construction activities.

The delays to Phase 1 terminal construction activities were caused by delayed completion of the Gate T5-30 fixed link, which impacted the capture and demolition of the Gate T5-30G area and subsequent terminal foundation/structural work and the airside apron. Construction of the Gate T5-30 fixed link was completed in May 2024 and the Design-Builder implemented an acceleration program to recover delays to the remaining Phase 1 terminal piles, pile caps and foundation work in this area. The Design-Builder has mitigated these delays so far using the following methods:

- Resequencing of construction activities such that the Design-Builder can maintain the critical path duration;
- Revised logic throughout the schedule, considering more input from subtrades;
- Conservative use of float in the original baseline schedule; and
- Use of schedule acceleration methods as necessary.

The Design-Builder intends to further mitigate impacts to terminal construction by pouring larger areas of terminal slab on metal deck, utilizing overtime shifts for steel erection and decking, potentially resequencing curtainwall activities and installing baggage handling equipment in multiple areas at once. We have discussed the current Detailed Schedule with the Lessee. The Lessee considers the Design-Builder's schedule for Phase 1 to be realistic, and despite delays to the Phase 1 activities, considers the construction that has taken place on the terminal building to be advanced and progressing well.

The Phase 1 roadwork has been significantly delayed compared with the baseline schedule. The delays are due to coordination challenges with the Port Authority and the design-builder (the "Roadways DB") hired by the Port Authority to design and construct the Roadway Network in the CTA (the "Roadway DB Work"). The interface between the Design-Builder and the Roadway DB is governed by the Construction Coordination Agreement ("CCA") described in Section 7.7 below. The Design-Builder's phasing plan for the T6 roadway work was based on a defined handover plan and delineation of work zones with the Roadways DB, which has been subsequently revised, impacting the Design-Builder's phasing plan. The Lessee submitted a Compensation and Delay Event notice and is proactively managing the issue with the Port Authority. Despite the delays, the Design-Builder has worked collaboratively with the Port Authority and the Roadways DB to re-sequence the work and mitigate the impacts to the Substantial Completion and DBO milestone dates.

The Design-Builder is reporting additional delays due to egress modifications at Terminal 5, which are a part of the Gate T5-30 scope of work. The work did not progress as anticipated due to water penetration issues and remediation work is currently in progress. This impacts the Design-Builder's ability to capture a small area near Terminal 5, where piles are to be installed for the Terminal 5 connector. The Design-Builder plans to mitigate this by resequencing steel activities and implementing an overtime program for foundations and steel. This is currently on the critical path; however, it is anticipated that time can be recovered during the interior construction phase of the Terminal 5 connector.

BTY is of the opinion that the overall duration of the schedule is reasonable, but the roadway activities no longer contain as much float to recover future delays as the baseline schedule due to the resequencing and mitigation of delay that has already taken place. We note that with the exception of overtime work to complete the terminal structural steel, the remaining terminal schedule is based on standard working day and shift.

assumptions, which will allow for future acceleration if needed to recover potential delays, including the current forecasted delay to the contractual milestones.

## 7.5 PROJECT SCHEDULE REQUIREMENTS

The Project Schedule must be developed using a critical path methodology in sufficient detail to accurately depict the D&C Work. Specifically, the Project Schedule must include the following requirements (Section 3 of Section B of the RPW):

- No activities with a duration greater than 30 days, except for non-construction activities (procurement, fabrication, delivery of equipment, system software);
- Interdependencies between the D&C Work and all other activities required for the successful completion of the Project, including interface with Port Authority Enabling Projects that can affect the completion of the Project;
- Cost and resource loading;
- Appropriate activity ID's, description and codes;
- Clearly defined calendars that account for expected seasonal weather conditions, environmental permit requirements and statutory holidays;
- All activities must have clearly assigned predecessor and successor relationships to each activity and appropriate logic ties between activities;
- No use of negative float; and
- Identification of long lead items.

The Project Schedule requirements are in-line with previous similar P3 projects.

## 7.6 SCHEDULING REPORTING REQUIREMENTS

The following is a list of the Lessee's scheduling reporting requirements (Section 3.2 of RPW Section A):

- Submit a monthly Progress Schedule Update to the Port Authority showing all changes in the Progress Schedule versus the Detailed Baseline Schedule;
- The Lessee must provide a detailed two and six-week look ahead schedule regularly at Bi-Weekly D&C Work Progress Meetings;

The Detailed Baseline Schedule and the Progress Schedule Update reports must be submitted in Primavera and must include:

- A schedule narrative that provides a general description of the Lessee's approach to meeting the goals of the RPW, the Lease and the Critical Path;
- A narrative comparing the current dates to the respective intermediate key progress events and Completion Milestone dates, describing the physical progress during the current report period, explaining plans for continuing the D&C Work during the next report period and describing and explaining changes in crewing and construction equipment;
- The Lessee is required to also track critical interface/interdependency dates requested by the Port Authority;
- Analysis Report indicating Activities, intermediate key progress events or Completion Milestones that are behind schedule by at least thirty days;
- Critical Path and Near-Critical Path analysis;



- A Report that compares the current Progress Schedule Update with the then-effective Detailed Baseline Schedule and prior month's Progress Schedule Update and include explanations for all changes made;
- List of all added or deleted activities, activity/project constraints included in the Progress Schedule Update, and the rationale; and
- The major work elements, as defined in the work breakdown structure ("WBS"), to be accomplished during the next month and list any activities with potential challenges.

Following the D&C Work Commencement Date, the Lessee is required to issue to the Port Authority a Daily Progress Report. Daily Reports are submitted on a weekly basis for the previous week and include the following:

- The D&C Work performed;
- Any incidents or interference with traffic or passengers;
- Any incidents concerning public safety or personal injury; and
- A statement of any unusual happening that occurred.

No later than the last Business Day of the following month for each month following the Effective Date, the Lessee must deliver to the Port Authority a report that reflects the status of, and information related to the development and conduct of the D&C Work (the "Monthly Progress Report"). The Monthly Progress Report must include at least the following:

- A detailed description of the Design Work that was completed in the prior month, including an update on the status of the Design Work;
- A detailed description of the Construction Work that was completed in the prior month, including photographs showing the progress of the Construction Work;
- All changes in the Progress Schedule versus the Detailed Baseline Schedule;
- An updated Progress Schedule;
- The status of material and equipment deliveries;
- A Designated Debris Material Assessment Summary;
- A Health and Safety Report; and
- All other information reasonably requested by the Port Authority relating to the D&C Work, Applicable Laws and Applicable Standards.

The Baseline Schedule will identify (Section 2(c)(4) of the Lease):

- Each key interface activity between the D&C Work and any Other Redevelopment, so that altering such date on the Baseline Schedule will have, or would be expected to have an adverse impact on the critical path of any Other Redevelopment ("Other Redevelopment Interface Activities");
- Each activity requiring that physical components of the New Terminal Facilities or Off-Premises Facilities being performed by the Lessee be connected to physical components under control of the Port Authority ("Port Authority Interface Activities"); and
- Each activity requiring Port Authority personnel to perform Oversight activities ("Port Authority Oversight Resources").

The Lessee can alter the Baseline Schedule, subject to the review and comment of the Port Authority. Any alteration of the Baseline Schedule that affects any Other Redevelopment Interface Activity or Port Authority Interface Activity or adversely impacts the Port Authority Oversight Resources will be subject to the prior written approval of the Port Authority.





The Port Authority has agreed to coordinate with the Lessee in good faith to schedule the availability of Port Authority Oversight Resources to the next soonest possible date of availability, taking into account the resources already committed to the Other Redevelopments.

If the critical path of the D&C Work is more than 30 days behind the then-current Baseline Schedule, the Lessee will submit an Alternative Solutions Report, including a proposed schedule recovery strategy to mitigate any potential delay and will reasonably consider revisions to the Baseline Schedule proposed by the Port Authority to achieve completion within the required timeframes (Section 2(c)(5) of the Lease).

The schedule reporting requirements are more stringent than we typically see on similar P3 projects, which shows a high degree of attention being paid to schedule. While the delivery of monthly progress updates is standard, the requirement for Daily Progress Reports requires additional resources from the Design-Builder in order to meet the Port Authority's reporting requirements. We are not aware of any issues with the Design-Builder complying with the schedule reporting requirements.

## 7.7 CONSTRUCTION COORDINATION AGREEMENT

The Lessee and Port Authority entered into the CCA, which outlines the Lessee's responsibilities for coordinating the work with the Other Redevelopment Entities performing work in the CTA during the Construction Period, which consist of (Appendix A of the CCA):

- JFK NTO LLC – the developer for the Terminal 1 redevelopment;
- JFK International Air Terminal LLC – the operator of Terminal 4;
- The design-builder retained by the Port Authority to construct Central Substation 2; and
- The design-builder retained by the Port Authority to construct the roadway network.

The Lessee and the Other Redevelopment Entities use Shared Resources, defined as the roadways, laydown areas, parking, utilities, AirTrain Operator Services and the Vendor Operations at a purpose-built facility on or near airport property (the "LSS Facility") and other general logistical support. Each of the Other Redevelopment Entities also executed a construction coordination agreement substantially in the same form as the CCA.

The Lessee has transferred its responsibilities under the CCA to the Design-Builder via the DBA, provided that the Design-Builder may seek a change order under the DBA to the extent that the Design-Builder could not have known the costs of such compliance with the CCA at the time of the Lessee's acceptance of the GMP.

As part of the Draft Detailed Baseline Schedule submitted to the Port Authority, the Design-Builder provided an initial design and construction logistics schedule with a weekly projection of expected use of Shared Resources for the first three months of the Construction Period, including the use of (Section 1 of the CCA):

- CTA roadways;
- Interfaces between Roadway Network and non-CTA roadways;
- Parking lots;
- Off-Premises laydown areas;
- The number of delivery vehicles for equipment and materials;
- Buses to transport workers to the site;
- Vendor Operations at the LSS Facility;
- Utilities, including installations, removals or relocations; and
- On-site project support and coordination services to be provided by the AirTrain Operator.



The Design-Builder is responsible for providing the Port Authority with a rolling two-week and six-week look ahead forecast of the above information. The Port Authority will compile the Design-Builder's schedule with the schedules provided by the Other Redevelopment Entities and provide all parties with a Master Schedule.

The CCA requires the Design-Builder to participate in a Redevelopment Work Coordination Committee consisting of the Port Authority's JFK Program Director and representatives from the Other Redevelopment Entities. The committee holds meetings monthly and the determinations made at the meetings are binding on each party, subject to the dispute process defined in the CCA (Section 2 of the CCA).

The CCA includes a framework for resolving conflicts in the use of Shared Resources. The JFK Program Director has authority to make determinations which are not arbitrary, capricious or unjustly discriminatory to resolve conflicts in the use of Shared Resources between any of the Airport Redeveloping Entities (Section 3 of the CCA).

All Conflicts Determinations are intended to resolve the limited, technical issue of a Conflict arising from directly competing uses of a Shared Resource and are not intended to resolve any legal or commercial disputes. The JFK Program Director will make a Conflict Determination after considering the impacts of delay to the Lessee and Other Redevelopment Entities, the operational needs of the Airport, the stage or progression of the work and the legal requirements of the various Airport Redevelopment stakeholders.

If the Lessee raises a Conflict within seven days and could not have reasonably anticipated the Conflict, then the JFK Program Director will make a Conflict Determination within one Business Day after receiving written notice. If the Lessee or Other Redevelopment Parties view the Conflict Determination as arbitrary, capricious or unjustly discriminatory, they may refer the issue to the Port Authority's Chief Engineer, whose decision will be conclusive, final and binding.

The Port Authority has contracted with a Roadways DB to for the Roadway DB Work, which consists of the improvements and modifications to the Roadway Network in the CTA. The Design-Builder was provided with the opportunity to review and comment on the Roadways DB's Initial Design and Proposed Final Design and will work collaboratively with the Port Authority and the Roadways DB until all comments and modifications are reasonably addressed in the final design (Section 7 of the CCA).

In order to reduce trucking traffic and impacts on the surrounding community, the Port Authority has engaged Modern Efficient Transport and Supply LLC ("METS" or the "Logistics Vendor") to perform the following Vendor Operations at a purpose-built facility on Airport property (Section 8 of the CCA):

- Materials crushing and recycling operations;
- Operation of two high-capacity concrete batching facilities;
- On-Airport deliveries of bulk materials by barge to a barging facility at the Airport; and
- Bulk transportation of waste materials off-site using the barging facility.

The Port Authority is requiring the Design-Builder and Other Redevelopment Entities to use the Logistics Vendor for the Vendor Operations. The Design-Builder was responsible for providing the Port Authority with a Materials Barging Logistics Plan, a Concrete Crushing/Recycling Plan and a Concrete Batch Plant Utilization Plan, including the required quantities and specifications for concrete and the anticipated utilization of the barging and crushing facilities.

The Design-Builder is required to purchase the products and services offered through the Vendor Operations at the Final Pricing set by the Logistics Vendor pursuant to its procurement process, provided that the Final Pricing was not to exceed the Logistics Vendor's then-current listed base price for such products or services at its existing local base operations and will be a market price.

The Design-Builder will be allowed to bypass using the Logistics Vendor and source its own materials and services if any of the following occur:

#300 - 30 E 6th Avenue, Vancouver, BC Canada V5T 1J4 | 604 734 3126

*This Report has been prepared at the request of JFK Millennium Partners on behalf of the Project Lenders and is the exclusive property of BTY Group, which is the owner of the intellectual property rights relating to this Report. The Report must be treated as confidential and proprietary information of BTY Group and it may not be disclosed, reproduced or permitted to be disclosed to any party without the prior consent of BTY Group.*



- The Design-Builder will not be required to use the Vendor Operations until they are operational. The Design-Builder can enter into its own arrangements for goods and services for up to 90 days following the date that the Vendor Operations become operational;
- If there is a Conflict and the Port Authority provides priority to an Other Redevelopment Entity with respect to the use of the Vendor Operations;
- If the Logistics Vendor is unable to supply the required amount, quality or type of material at the times needed, unable to meet the need for customized services which differ from the offered Vendor Operations, delayed in supplying material or in material breach of a Purchase Order; or
- If the Port Authority acknowledges that the Design-Builder has a Critical Path Element that cannot be met by the Logistics Vendor or the need for customized services which differ from the offered Vendor Operations.

The Design-Builder will be responsible for independently testing, certifying, validating and accepting any products or services provided by the Logistics Vendor to the same extent that it would do for any other supplier or subcontractor.

Based on our review of the CCA, we consider the provisions related to coordination and scheduling to be reasonable requirements for the Port Authority to coordinate and manage the volume of work happening concurrently in the CTA. We have seen similar requirements on other airport development projects. However, in practice, there have been coordination and phasing conflicts between the Design-Builder and the Roadways DB that have led to delays to the Design-Builder's roadway scope. We understand that the Port Authority has been slow to resolve the issue and the Lessee submitted a Compensation and Delay Event notice to the Port Authority.

The requirements for the Logistics Vendor are a unique element of this Project. The Design-Builder communicated the Logistics Vendor requirements to all subtrades, so they were aware of the requirements prior to bidding. We understand that the Logistics Vendor is charging 10% more than market rate for concrete and the Lessee submitted a Compensation and Delay Event notice to the Port Authority.

Importantly, the CCA does provide the Design-Builder with the ability to bypass the Logistics Vendor if it is unable to supply the required quantity or quality of material. This ability was not provided in previous versions of the CCA, and we consider its inclusion to be an important risk mitigating factor.

## **7.8 SUBSTANTIAL COMPLETION PROCESS**

### **7.8.1 Substantial Completion of Phase 1**

Substantial Completion of the Phase 1 D&C Work ("Substantial Completion of Phase 1") will only occur if the Lessee has satisfied all of the applicable conditions set forth in the TCAP Manual with respect to the Phase 1 D&C Work and the Airport Security Guidelines Manual, and the following conditions (Section 2(v)(1) of the Lease):

- All certifications for mechanical, electrical, electronics and other systems that are essential to the operation, functionality and safety of the Phase 1 Improvements have been received and all inspection reports for such systems have been made;
- The Lessee has received, and paid all associated fees due and owing for, all applicable Governmental Approvals (other than Port Authority Governmental Approvals) required for performing O&M Work with respect to the Phase 1 Improvements, and has provided accurate and complete copies to the Port Authority;
- All plans and manuals for mechanical, electrical, electronics and other systems that are essential to the operation, functionality and safety of the Phase 1 Improvements, as identified by and agreed to by the



- Lessee and the Port Authority have been submitted and, if required, received the Port Authority's approval;
- All other submittals required by the Project Documents, Good Order Requirements, Applicable Law or Applicable Standards to have been provided by the Lessee prior to or on the Phase 1 Completion Date have been submitted and, if required, received Port Authority approval;
  - The Lessee has prepared, in consultation with the Port Authority, the punch list in respect of the Phase 1 D&C Work, and such punch list has received Port Authority approval; and
  - With respect to the individual tenant spaces in the New Terminal Facilities intended to be subleased to the Concession Subleases or Airline Subleases, the Lessee has installed the basic infrastructure and equipment for the supply of necessary Utilities to such tenant spaces as well as fire alarm, fire protection and space separation between the occupied and construction sites.

When all the Phase 1 D&C Work is substantially completed and ready for use, the Lessee is required to advise the Port Authority to such effect and deliver a certificate certifying that the requirements of Substantial Completion for Phase 1 have been met and that the Phase 1 D&C Work has been constructed in accordance with the Lease and the other Project Documents and in compliance with all Good Order Requirements, Applicable Laws and Applicable Standards.

Following (and subject to) delivery of the certificate to the Port Authority, the Phase 1 D&C Work will be inspected by the Port Authority to certify that the conditions for Substantial Completion of Phase 1 have (or have not) been met. If the same has been completed as certified by the Lessee, and the Lessee has complied in all respects, with the requirements of the Lease, the other Project Documents, Good Order Requirements, Applicable Standards and Applicable Law, a certificate to such effect will be issued to the Lessee by the Port Authority (the "Phase 1 Completion Certificate"). The Lessee will promptly transfer custody and control of the Off-Premises Facilities forming part of the Phase 1 Improvements to the Port Authority following receipt of the Phase 1 Completion Certificate and have no further obligations with respect to Off-Premises Facilities and the associated Temporary Rights of Access.

### **7.8.2 Substantial Completion of Phase 2**

Substantial Completion of the Phase 2 D&C Work ("Substantial Completion of Phase 2") will only occur if the Lessee has obtained a Phase 1 Completion Certificate, satisfied all of the applicable conditions set forth in the TCAP Manual and the Airport Security Guidelines Manual with respect to the Phase 2 D&C Work, and satisfied the following conditions (Section 2(v)(2) of the Lease):

- All certifications for mechanical, electrical, electronics and other systems that are essential to the operation, functionality and safety of the New Terminal Facilities have been received, and all inspection reports for such systems have been made;
- The Lessee has received, and paid all associated fees due and owing for, all applicable Governmental Approvals (other than Port Authority Governmental Approvals) required for performing O&M Work with respect to the New Terminal Facilities, and has provided accurate and complete copies to the Port Authority;
- All plans and manuals for mechanical, electrical, electronics and other systems that are essential to the operation, functionality and safety of the New Terminal Facilities, as identified by and agreed to by the Lessee and the Port Authority in the Project Documents, have been submitted and, if required, received Port Authority approval;
- All other submittals required by the Project Documents, Good Order Requirements, Applicable Law or Applicable Standards to have been provided by the Lessee prior to or on the Completion Date have been submitted and, if required, approved by the Port Authority;



- The Lessee has prepared, in consultation with the Port Authority, the punch list in respect of the Phase 2 D&C Work, and such punch list has received Port Authority approval; and
- With respect to the individual tenant spaces in the New Terminal Facilities intended to be subleased to the Concession Subleases or Airline Subleases, the Lessee has installed the basic infrastructure and equipment for the supply of necessary Utilities to such tenant spaces as well as fire alarm, fire protection and space separation between the occupied and construction sites.

When all of the D&C Work is substantially completed and ready for use, the Lessee is required to advise the Port Authority to such effect and deliver to the Port Authority a certificate certifying that the requirements for Substantial Completion of Phase 2 have been met and that the Phase 2 D&C Work has been constructed in accordance with the Project Documents, approved Construction Applications and the provisions of the Lease and in compliance with all Good Order Requirements, Applicable Laws and Applicable Standards.

Following (and subject to) delivery of the certificate to the Port Authority, the Phase 2 D&C Work will be inspected by the Port Authority to certify that the conditions for Substantial Completion of Phase 2 have (or have not) been met). If the same has been completed as certified by the Lessee, and the Lessee has complied, in all respects, with the requirements of the Lease, the other Project Documents, Good Order Requirements, Applicable Standards and Applicable Law, a certificate will be issued to the Lessee by the Port Authority (the "Completion Certificate"). The Lessee will promptly transfer, following receipt of the Completion Certificate, custody and control to the Port Authority of the Off-Premises Facilities not previously transferred, and the Lessee will have no further obligations with respect to such Off-Premises Facilities and the associated Temporary Rights of Access.

## **7.9 DATE OF BENEFICIAL OCCUPANCY PROCESS**

Following Substantial Completion of the Phase 1 D&C Work, the Lessee will be responsible for achieving DBO of the Phase 1 Improvements. The risk and responsibility for the work associated with achieving DBO is being retained at the Lessee level and partially transferred to the Design-Builder as it relates to coordination, cooperation and completion of enabling works in the terminal area. The work involves the installation of artwork, advertising and substantially completing the fit-out of concession spaces which are required to be opened upon DBO of the Phase 1 Improvements as set out in the Approved Pro Forma Concessions Plan or the then-effective Comprehensive Concessions Plan, as applicable (Section 2(v) and (2) of the Lease).

Similarly, the Lessee is responsible for achieving DBO following Substantial Completion of the Phase 2 D&C Work.

## **7.10 OUTSIDE COMPLETION DATE**

The Lessee must achieve Substantial Completion of the Phase 2 D&C Work no more than 12 months following the Scheduled Completion Date ("the Outside Completion Date") (Section 2(v)(2)(i) of the Lease).

Failure by the Lessee to complete the D&C Work (other than punch-list items approved by the PA) by the Outside Completion Date will constitute an Event of Default. The 12-month Outside Completion Date is in-line with similar North American P3 projects (Section 21(a)(18) of the Lease).

The DBA includes a Design-Builder Event of Default if the Design-Builder fails to achieve Substantial Completion of Phase 2 by 90 days prior to the Outside Completion Date. This provides the Lessee and Lenders with a 3-month buffer to replace the Design-Builder ahead of a subsequent Lessee Event of Default under the Lease, which is in-line with what we typically see on US P3 projects.

Under Schedule 10.7 of the DBA, if the Design-Builder fails to achieve either Milestone Event (i.e., Substantial Completion of Phase 1 and Substantial Completion of Phase 2) within 30 days of the scheduled date, then the



Design-Builder will be responsible for preparing a Remedial Plan to set out an accelerated work program to achieve the completion date defined in the Remedial Plan, which is subject to Lessee and Port Authority approval. The Design-Builder will not be in breach of the DBA so long as the Design-Builder is using all reasonable and diligent efforts to comply with the Remedial Plan (Section 10.7 of the DBA).

The Common Terms Agreement includes an Event of Default if the Lessee fails to achieve Substantial Completion of Phase 2 by 6 months prior to the Outside Completion Date. This provides the Lenders, under the Loan Facility, with a 6-month buffer to replace the Lessee ahead of a subsequent Lessee Event of Default under the Lease, which is in-line with what we typically see on US P3 projects. It will not be an Event of Default under the Common Terms Agreement if the LTA certifies that Substantial Completion of Phase 2 is reasonably expected to occur on or before the Outside Completion Date (Section 7.01(t) of the CTA). The Common Terms Agreement will no longer be in place following the repayment in full of the Loan Facility. The Loan Agreements include an Event of Default if the Lessee fails to achieve Substantial Completion of Phase 2 by the Outside Completion Date.

### **7.11 OPERATIONAL READINESS**

The Lessee will develop an Operational Readiness and Airport Transfer (“ORAT”) Plan to support the transition to active operations following Substantial Completion. The ORAT Plan will be submitted 4 months prior to activation of the New Terminal Facilities (Section 30.3 of Section B of the RPW).

The ORAT Plan will include an overall schedule, which will (Section 3.4 of Section B of the RPW):

- Be timed to align with completion of the D&C Work, testing and commissioning and handover schedules;
- Identify the ORAT critical path activities;
- Integrate stakeholders’ tenant fit-out programs;
- Include an interface matrix identifying external interfaces with Port Authority assets; and
- Include milestones for the availability and readiness of staff, relevant contracts that need to be in place for the start of operations, development and approval of the final Operations and Maintenance Plan, inspections by regulatory authorities.

The Lessee is responsible for successful opening by verifying that the integration of all airport systems is correctly working, that staff are familiar and experienced in standard operating procedures and that contingency procedures are tested by simulating real operations (Section 3.5 of Schedule B of the RPW).

The responsibility for development and implementation of the ORAT Plan is retained by the Lessee. Under the DBA, the Design-Builder will work with the Lessee and the Lessee’s ORAT Team to minimize inconveniences and interferences, and ensure the operational integrity of the operations at the Existing Terminal Facilities and New Terminal Facilities.

### **7.12 COMMISSIONING AND TESTING**

The Lessee is required to complete the Commissioning and Testing process in accordance with the ORAT schedule. The Commissioning and Testing stage of the Project includes the following tasks (Section 30.7.3(b) of the Technical Requirements):

- All facilities, equipment and systems have been tested and commissioned in line with approved procedures before the Lessee receives them from the Contractor. This stage is crucial for ensuring the adequate handover of assets;
- All Standard Operational Procedures (“SOPs”) and other relevant information applicable to the operation of the new facility has been developed and tested; and



- All staff are prepared to initiate operation. Preparation for staff includes recruiting, familiarization and training in line with Lessee Staff Plans.

The Design-Builder must coordinate with the ORAT Team, which includes the Lessee's third-party commissioning agent, and create required plans or schedules to carry out the commissioning and testing of D&C Work. The Lessee retains control of the commissioning program with its third-party commissioning agent. The Design-Builder will work with the ORAT Team to effectively schedule systems commissioning and to provide opportunities to advance other ORAT activities during the DB D&C Work, where those are possible (DBA Section 8.4.1).

### 7.13 CONCLUSION

We note the following conclusions related to the Project Schedule:

- The Lessee's risk related to the Project Schedule is transferred to the Design-Builder under the DBA with the exception of delays due to Material Developer Changes and certain Unavoidable Delays;
- The schedule reporting requirements are more stringent than we typically see on similar P3 projects, which shows a high degree of attention being paid to schedule. We are not aware of any issues with the Design-Builder complying with the schedule reporting requirements;
- There have been no adjustments to the contractual milestone dates since Financial Close;
- BTY is of the opinion that the overall duration of the schedule is reasonable, but the roadway activities no longer contain as much float to recover future delays as the baseline schedule due to the resequencing and mitigation of delay that has already taken place;
- The Lessee submitted a Compensation and Delay Event notice to the Port Authority for the delays to the roadway work caused by coordination challenges with the Roadways DB; and
- We note that with the exception of overtime work to complete the terminal structural steel, the remaining terminal schedule is based on standard working day and shift assumptions, which will allow for future acceleration if needed to recover potential delays, including the current forecasted delay to the contractual milestones.



## 8.0 Construction Price

### 8.1 INTRODUCTION

The overall Project costs consist of the Design-Builder’s Guaranteed Maximum Price (“GMP”), the Lessee’s budget for its retained scope, which are summarized in the table below and described further in this section. We note that these costs do not include financing costs, insurance or rent payments to the Port Authority which are carried in a separate budget.

Category	Budget as of August 31, 2024
Design-Builder Guaranteed Maximum Price (incl. Change Orders)	\$2,462,749,810
Lessee Costs	\$330,890,192
<b>Total</b>	<b>\$2,793,640,002</b>

Procurement has advanced significantly since Financial Close, which has derisked the Project from a cost perspective. As of August 31, 2024, the Lessee and Design-Builder have awarded 98% of Category 2 Work (design and engineering) and 85% of Category 3 Work (direct construction costs).

### 8.2 GMP TIMING AND COMPONENTS

The Design-Builder will conduct the D&C Work for Phase 1 and 2 in accordance with the DBA and at a single guaranteed maximum price (“GMP”).

The GMP consists of two distinct parts:

- The Core & Shell Scope GMP, which also includes work outside of the terminal building such as work on site, utilities, road work, demolition and landscaping. The Core & Shell Scope GMP accounts for approximately 75% of the direct costs.
- The Fit-Out Allowance, which accounts for approximately 22% of the direct costs. The original intent of the Fit-Out Allowance was to address potential design variations arising due to the fact that the final fit-out design required flexibility and input from stakeholders and tenants during the core and shell construction. The main elements of the fit-out design scope include concession and lounge areas, secondary distribution for MEP/FP systems, interior partitioning and finishes and low voltage systems. The Lessee is responsible for the risk of design development changes between Financial Close and the time the Fit-Out Allowance is fully procured and may elect to exceed the initial Fit-Out Allowance. When the fit-out design is complete, the Design-Builder will be responsible for procuring the Fit-Out Allowance Scope subject to the Lessee’s specific authorization for bid package awards. Once fully procured, the Fit-Out Allowance will be reconciled with the value carried in the GMP by adjusting that value to equal the actual value of the work to complete the Fit-Out Allowance Scope. Once the Fit-Out Allowance Scope is procured and reconciled, the Design-Builder takes responsibility for schedule and cost certainty. We note that the Fit-Out Allowance is therefore a temporary price risk exposure to the Lessee. Please refer to Section 8.3.1 for details on the current buyout status of the Fitout Allowance work and the remaining exposure.

The Design-Builder guarantees that the cost to design and construct the Project will not exceed the aggregate GMP, except where compensation is payable due to a Material Developer Change or where the Lessee is entitled to additional compensation under the Lease and the Equivalent Project Relief provisions apply. The Design-





Builder is not required to guarantee individual line items within the GMP, but must advise the Lessee of each transfer between line items within a GMP (Section 3.3.6 of the Interim Agreement).

The Lessee’s risk related to the GMP has been transferred to the Design-Builder with the exception of design changes and price escalation to the Fit-Out Allowance Scope during the period between Financial Close and the time when the Fit-Out Allowance Scope is fully procured. The Lessee is responsible for cost changes driven by design development during this period and is carrying a contingency to mitigate the risk as described in the contingency section below.

**8.3 DESIGN-BUILDER’S GUARANTEED MAXIMUM PRICE**

The Design-Builder’s GMP is summarized as follows.

Contract Price	Area (ft2)	Amount (August 31, 2024)	Cost/ft2
Direct Costs	1,200,000	\$1,853,307,198	\$1,544
Indirect Costs	1,200,000	\$609,442,612	\$508
<b>Total GMP Price</b>	<b>1,200,000</b>	<b>\$2,462,749,810</b>	<b>\$2,052</b>

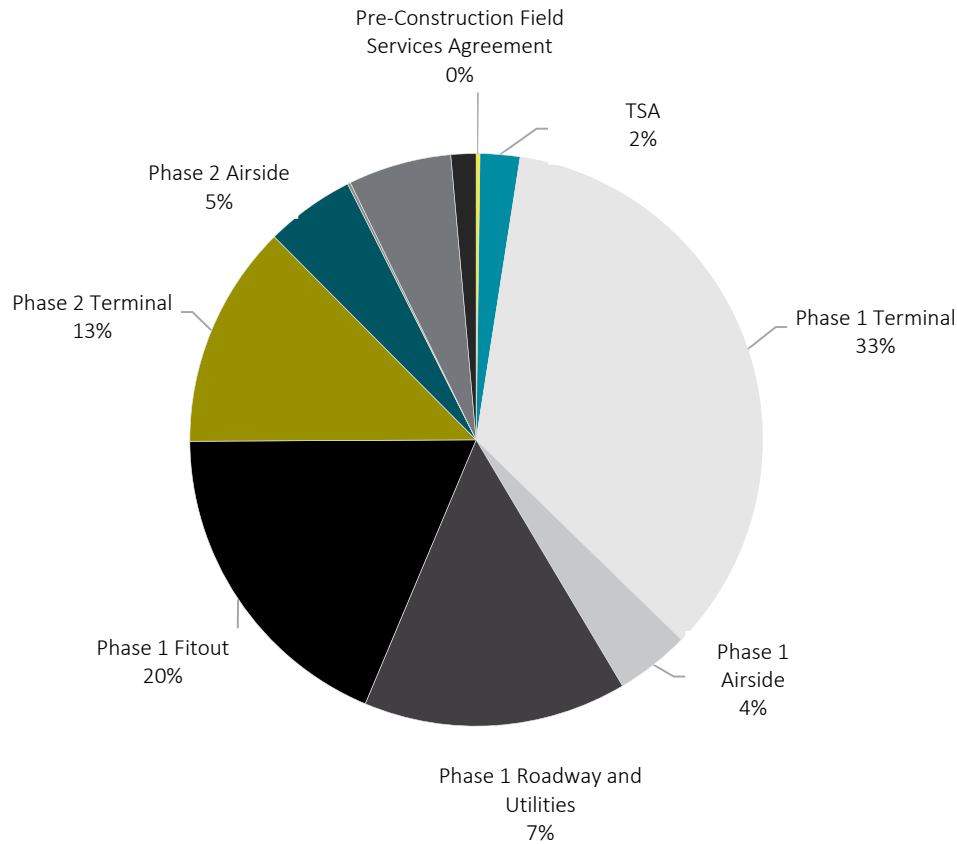
The Design-Builder’s Construction Price is broken down as follows:



Category	Original DBA Schedule of Values	Adjustments	Change Orders	Adjusted DBA Schedule of Values	Cost to Date (August 31, 2024)		Cost to Complete (August 31, 2024)	
					\$	%	\$	%
Preconstruction	\$3,888,756	-\$25,839	\$0	\$3,862,917	\$3,852,422	100%	\$10,494	0%
TSA	\$40,083,550	-\$11,696,932	\$11,174,452	\$39,561,070	\$14,778,243	37%	\$24,782,827	63%
Phase 1 Terminal	\$826,700,397	-	\$1,476,420	\$617,889,575	\$351,181,196	57%	\$266,708,379	43%
Phase 1 Airside	\$73,449,700	\$3,754,605	\$1,074,659	\$78,278,964	\$13,457,352	17%	\$64,821,612	83%
Phase 1 Roadway and Utilities	\$252,891,639	\$12,272,551	\$1,526,776	\$266,690,966	\$86,456,239	32%	\$180,234,727	68%
Phase 1 Fitout	\$0	\$273,426,547	\$86,688,366	\$360,114,913	\$34,351,613	10%	\$325,763,300	90%
Phase 2 Terminal	\$364,302,473	-	-\$1,346,556	\$234,037,950	\$19,394,811	8%	\$214,643,139	92%
Phase 2 Airside	\$89,178,944	\$6,812,707	\$0	\$95,991,651	\$1,838,892	2%	\$94,152,759	98%
Phase 2 Roadway and Utilities	\$8,857,290	-\$5,928,100	\$0	\$2,929,190	\$64,260	2%	\$2,864,930	98%
Phase 2 Fitout	\$0	\$102,010,373	\$26,522,157	\$128,532,530	\$3,214,876	3%	\$125,317,654	97%
Enabling Work	\$22,760,936	\$3,362,446	-\$705,910	\$25,417,472	\$24,633,888	97%	\$783,584	3%
<b>Direct Costs</b>	<b>\$1,682,113,685</b>	<b>\$44,783,149</b>	<b>\$126,410,364</b>	<b>\$1,853,307,198</b>	<b>\$553,223,792</b>	<b>30%</b>	<b>\$1,300,083,405</b>	<b>70%</b>
GC's, GR's, Fee	\$346,764,707	\$54,867	\$371,104	\$347,190,678	\$164,970,132	48%	\$182,220,546	52%
Construction Contingency	\$87,567,376	-\$45,460,395	-\$15,523,573	\$26,583,408	\$35,733,635	134%	-\$9,150,227	34%
Design	\$89,281,060	\$622,379	\$6,384,388	\$96,287,827	\$60,175,875	62%	\$36,111,952	38%
Interim Agreement	\$115,171,741	\$0	\$24,208,958	\$139,380,700	\$115,171,741	100%	\$24,208,958	17%
<b>Indirect Costs</b>	<b>\$638,784,884</b>	<b>-\$44,783,149</b>	<b>\$15,440,877</b>	<b>\$609,442,612</b>	<b>\$376,051,383</b>	<b>64%</b>	<b>\$233,391,229</b>	<b>36%</b>
<b>Total GMP</b>	<b>\$2,320,898,569</b>	<b>\$0</b>	<b>\$141,851,241</b>	<b>\$2,462,749,810</b>	<b>\$929,275,176</b>	<b>38%</b>	<b>\$1,533,474,635</b>	<b>62%</b>



The direct construction costs (hard construction costs) breakdown by category is graphically depicted as follows:



### 8.3.1 Lessee Allowances

There are three Lessee allowances carried within the Design-Builder’s GMP, for which the Lessee retains the price risk. We note that the Lessee’s exposure for these allowances is only on the direct costs; that the Design-Builder is responsible for the risk on the indirect costs.

#### Fit-out Allowance Scope

The Fit-Out Allowance was originally equal to \$375M in direct costs as a part of the GMP, which included escalation and design development contingency. The Fit-Out Allowance consists of general terminal fit-outs including masonry walls, ornamental metals and railings, architectural woodworking, flooring, doors, drywall, ceilings, painting, specialties, equipment, furnishings, plumbing, HVAC, lighting fixtures and secondary electrical distribution, telecommunications, audio-visual and other low voltage systems and security systems. The Fit-Out Allowance does not include the fit-outs of retail, advertising and airline lounges, which will be performed by third party Separate Contractors at the cost of the tenants.



The Design-Builder originally priced the Fit-Out Allowance based on the design assumptions for the Fit-Out Allowance Scope, which were at 50-60% completion at the time of Financial Close. As described in Section 8.2 above, the Lessee retained the risk of price and scope changes in the Fit-Out Allowance Scope during the period between Financial Close and when procurement is complete and is carrying contingency to mitigate this risk, which is further described in Section 8.5 below.

In December 2023, the Lessee was forecasting a \$110M cost overrun to the initial Fit-Out Allowance budget. The Lessee has mitigated this overrun by savings in the construction and operations budgets outside of the GMP, as well as value engineering. A revised Fit-Out Allowance budget of \$135M, which includes a buffer of \$25M, was approved by the Lenders in January 2024. The savings realized by the Lessee are summarized in the table below.

Category	Amount
Project Budget Positive Variances	\$47.4M
Qualifying D&C Changes Savings	\$15M
Operating Outperformance Through 2023	\$50.5M
Forecast Operating Outperformance	\$25.7M
<b>Total Savings</b>	<b>\$138.6M</b>

As of August 31, 2024, the anticipated cost overrun has been reduced to \$93M. The procurement of the Fit-Out Allowance Scope is now significantly advanced with market pricing received for 93% of the Phase 1 and 2 work. The Design-Build Contractor has awarded \$485M of fitout packages with \$35.9M pending award. We consider the risk of further overruns to the Fit-Out Allowance budget to be significantly reduced by the advanced stage of procurement and the buffer in the revised Fit-Out Allowance budget. In addition, the Lessee has access to the remaining contingency in the Lessee budget as well as the \$100M Supplemental Liquidity Reserve Account.

West Concourse

The GMP includes a \$31M Lessee allowance for the West Concourse. The Lessee has elected to proceed with a smaller building to accommodate the 9<sup>th</sup> gate at the West Concourse and previously put the design of this area on hold to allow time to advance budgeting and commercial discussions with the airlines to determine the best option. Since the Design-Builder was not provided with as much time to progress design development and subtrade bidding as the rest of the terminal, the parties agreed to carry the direct costs for the West Concourse as a Lessee allowance. The allowance value was based on the Design-Builder’s budget, which has been developed using the same subcontractor unit rates as the rest of the terminal.

As of August 31, 2024, \$3.4M has been approved toward the West Concourse allowance for passenger boarding bridges and interior video board signage.

Terminal 7 Demolition

The GMP includes a \$12M Lessee allowance for the demolition of the existing Terminal 7 building. Delays in getting Rights of Entry permits for Terminal 7 meant that physical access to the terminal to perform surveys/investigations to allow the design team to prepare demolition TAAs and subtrade bids and did not occur during the Interim Period. As a result, the parties agreed to carry the direct costs for the demolition work as a Lessee allowance. Similar to above, we note that the Lessee is carrying the Design-Builder’s budget, which has been developed with input from VRH, a New York based aviation contractor with experience at T7.

As of August 31, 2024, \$177,000 has been approved toward the T7 demolition allowance for asbestos surveys.



### 8.3.2 Assessment of the GMP

BTY reviewed the Design-Builder’s GMP prior to Financial Close, including the Design-Builder’s approach to developing the Construction Price. We noted the following:

- The Design-Builder’s initially developed its estimate in-house. Quantities were prepared by the Design-Builder’s team and verified with trade partners. The Design-Builder validated its historic unit rates with unit rate input received from trade partners;
- The Design-Builder then received market pricing from multiple subcontractors for each trade package, which were incorporated in the final GMP.
- The majority of subcontracts are lump sum contracts with a mixture of lump sum, design-build lump sum and design assist lump sum;
- The Design-Builder is subcontracting all of the direct construction work; and
- The Design-Builder’s fee, contingencies and escalation assumptions included in the GMP are considered reasonable.

We consider the Design-Builder’s methodology in developing the GMP to be reasonable. We have reviewed the construction price and supporting details, including the unit rates used in its preparation, and consider the GMP, including the Lessee allowances described above, to be reasonable and appropriate for this Project. Procurement has advanced significantly since Financial Close, which has derisked the Project from a cost perspective, as described in Section 8.1.

### 8.4 LESSEE COSTS

We have received a breakdown of the Lessee’s budget for scope items retained at the Lessee level, which are summarized in the table below. We note that these costs do not include financing costs, insurance or rent payments to the Port Authority which are carried in a separate budget.

Category	Original Budget	Approved Budget Changes	Revised Budget	Cost to Date ([June 30, 2024])		Cost to Complete ([June 30, 2024])	
				\$	%	\$	%
Project Management	\$148,089,363	(\$17,231,482)	\$130,857,881	\$43,560,076	33%	\$87,297,805	67%
Construction	\$142,867,402	(\$54,640,801)	\$88,226,601	\$15,807,724	18%	\$72,418,876	82%
Fees, Contingencies, Incentives	\$146,805,710	(\$35,658,097)	\$111,805,710	\$23,996,447	21%	\$87,809,263	79%
<b>Total Lessee Budget</b>	<b>\$437,762,475</b>	<b>-\$107,530,380</b>	<b>\$330,890,192</b>	<b>\$83,364,248</b>	<b>25%</b>	<b>\$247,525,944</b>	<b>75%</b>

The Lessee developed its budget based on the Lease and RPW requirements and the Lessee members’ previous experience and local knowledge, which includes historic and ongoing costs from LaGuardia Airport Terminal B.

The Lessee budget includes a number of contingencies, including a general Lessee Contingency, an Environmental Remediation Allowance, a Port Authority Contingency and a contingency for Qualifying D&C Changes. In addition, the Lessee has a \$100M Supplemental Liquidity Reserve Account (“SLRA”) through



construction, which is reduced to 6 months of rent following DBO2. This reserve is intended to be used by the Lessee to account for stranded risk between the Lease and DBA, thus offering another source of funds to account for potential project costs. Overall, we consider the level of contingency held by the Lessee to be appropriate for the Project.

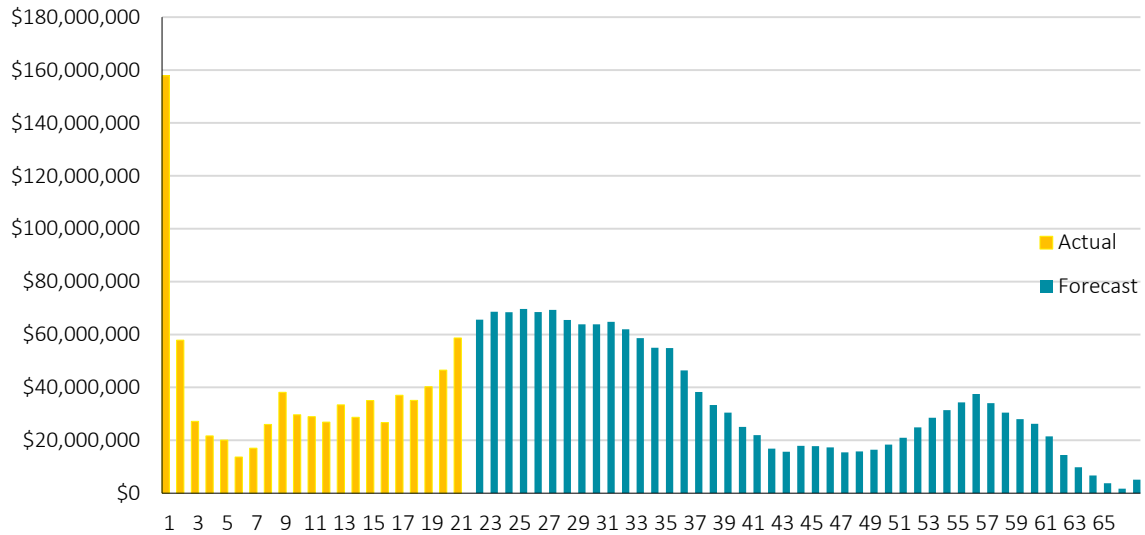
We have received a detailed breakdown of the Lessee's cost build up for each line item and we are satisfied that the budget reflects the scope of work to be performed by the Lessee and, based on Vantage's current experience, the Lessee costs are similar to those at LaGuardia Airport Terminal B (a project of similar scope and size).

## **8.5 PROJECT CASH FLOW / DRAWDOWN SCHEDULE**

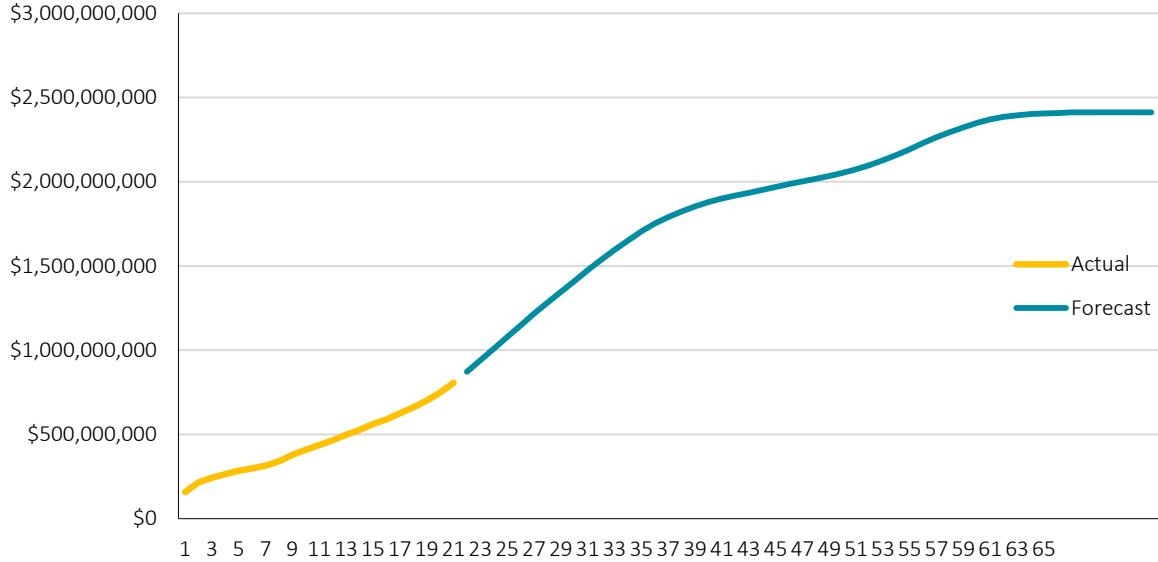
The Design-Builder's monthly and cumulative cash flows, based on the projected works schedule and associated expenditure for each work element, are graphically depicted as follows:



Monthly draw amounts based on the GMP value



Cumulative Cash Flow based on the GMP value



**8.6 PAYMENTS FROM THE LESSEE TO DESIGN-BUILDER**

The Lessee will make progress payments to the Design-Builder for Direct DB D&C Work Costs based on the percentage of work complete each month against the agreed Schedule of Values (Section 15.13 of the DBA).



The Lessee will pay the Base Fee, general requirements and general conditions each month according to the Monthly Cost Projections in Exhibit 20 of the DBA (Section 14.1 of the DBA).

Construction Contingency will be paid at the greater of (1) 5% of the Cost of the DB D&C Work, or (2) the actual amount of the Construction Contingency used in the month.

The payment process can be summarized as follows (Section 15.14 of the DBA):

- The Design-Builder will submit a preliminary Application for Payment and supporting documentation by the 20<sup>th</sup> day of each month during the Construction Phase;
- The Design-Builder and Lessee will meet within five Business Days to review the application;
- The Design-Builder will submit a final Application for Payment by the 5<sup>th</sup> day of the following month, which will incorporate any changes from Lessee’s review; and
- The Lessee will issue a Certificate for Payment within 15 days of receiving the Design-Builder’s final Application for Payment.

**8.7 PROPOSED DESIGN-BUILDER’S SECURITY PACKAGE**

The Design-Builder’s security package is summarized as follows:

Security	Details
Parent Company Guarantee (“PCG”)	Provided by AECOM, a Delaware corporation, and equal to \$500M
Limitation of Liability	35% of the GMP
Performance and Payment Bond	\$500M
Letters of Credit	10% of the GMP
Cash Retention	10% retention from each monthly payment to the Design-Builder until the DB D&C Work is 50% complete, which will be released after Substantial Completion
Bonds, Subcontractor Default Insurance and Assignment of Subcontracts	The Design-Builder will require all subcontractors to post payment and performance bonds as permitted by the Port Authority, Lessee and the Lenders. As an alternative to payment and performance bonds, the Lessee may also implement the Design-Builder’s SDI program to cover certain subcontractors as approved by the Port Authority or Lenders. The Lessee also has the right to take assignment of subcontracts upon termination of the Design-Builder
Liquidated Damages (Design-Builder to Lessee and includes Liquidated Damages payable from the Lessee to the Port Authority)	<ul style="list-style-type: none"> <li>• \$375,000/day for a delay to Substantial Completion of Phase 1</li> <li>• \$330,000/day for a delay to Substantial Completion of Phase 2</li> </ul>

**8.7.1 Design-Builder Parent Company Guarantee**

The Design-Builder provided a Parent Company Guarantee in an amount equal to \$500M.





### **8.7.2 Performance and Payment Bond**

The Design-Builder provided a Performance Bond in an amount equal to \$500M.

### **8.7.3 Letters of Credit**

The Design-Builder provided letters of credit in forms and amounts deemed acceptable by the Lessee, Port Authority and Lenders in the aggregate amount equal to 10% of the GMP.

### **8.7.4 Cash Retention**

The Lessee will retain 10% of each monthly payment to the Design-Builder until the DB D&C Work is 50% complete. The cash retention will be released to the Design-Builder after Substantial Completion.

### **8.7.5 Bonds, Subcontractor Default Insurance and Assignment of Subcontracts**

The Design-Builder will require all subcontractors to post payment and performance bonds as permitted by the Port Authority, Lessee and the Lenders. As an alternative to payment and performance bonds, the Lessee may also implement the Design-Builder's SDI program to cover certain subcontractors as approved by the Port Authority or Lenders. The Lessee also has the right to take assignment of subcontracts upon termination of the DBA.

### **8.7.6 Liquidated Damages Payable by the Design-Builder To Lessee**

The Design-Builder will be responsible for paying the following Liquidated Damages to the Lessee for delays to the following Milestone Events (Section 10.10 of the DBA):

- \$375,000/day for a delay to Substantial Completion of Phase 1; and
- \$330,000/day for a delay to Substantial Completion of Phase 2.

The amounts above include the following D&C Work Delay Payments payable to the Port Authority for delays to the following Completion Milestones (Section 2(c)(6) of the Lease):

- \$40,000/day for a failure to achieve the Substantial Completion of Phase 1 within 30 days after the Scheduled Phase 1 Completion Date; and
- \$40,000/day for a failure to achieve the Substantial Completion of Phase 2 within 30 days after the Scheduled Completion Date.

The Liquidated Damages will be capped at \$232M, which equals to 10% of the original GMP value.

## **8.8 DESIGN-BUILDER REPLACEMENT ANALYSIS**

We have calculated the premium cost to replace the Design-Builder at various key points in the Project Schedule. We selected scenarios that would not be covered by Delay Events or Compensation Events, and thus not allowing relief under either the Lease or the DBA. We have analyzed the adequacy of the security from two perspectives: total and liquid. The total security adequacy evaluates the ability of the full security package to cover the premium cost to replace the Design-Builder. The liquid security analysis looks at the adequacy of the Design-Builder's liquid security to cover the immediate costs (i.e. those required to be paid in the first three months following insolvency).

For our analysis we have considered the following cost categories that would increase the eventual construction cost on the Project realized upon the delayed achievement of the Scheduled Phase 1 Completion Date and the



Scheduled Completion Date. We consider that these premium costs, over the original Contract Price of the DBA, are additional costs to the Project against which the available security package should be tested:

- The legal and technical advisory due diligence costs incurred during the run up period to Design-Builder default and eventual replacement;
- The design team will be required to review completed work-in-place on the Project and develop a new tender package for potential replacement contractors to bid on;
- The replacement Design-Builder will have to mobilize and establish a presence on the Project as well as establish appropriate bonding and insurances;
- We have considered the general economic conditions of the construction industry in New York and potential inflation of construction costs from the bid submission until re-engaging with a replacement Design-Builder;
- Over and above the cost of escalation, we have considered that there will be an expectation of increased fee (profit) by the replacement Design-Builder. Given the value of the Contract Price, we have considered that a range of 5% to 15% (depending on the scenario being considered) of the cost to complete would be an appropriate fee premium. We consider that as the cost to complete decreases over time, the premium charged by a replacement contractor as a percentage of revised contract price increases. We highlight that a profit margin is already included in the value of the Contract Price and so this fee premium would add to that already existing profit margin;
- We have considered that despite the event of default, all work prior to the event has been inspected and approved. However, we have allowed 10% of the previous month's progress payment to remedy any deficient work (less indirect costs); and
- We consider that the delays as a result of the replacement process are not recoverable by the replacement Design-Builder and result in the same delay to achieving the Scheduled Phase 1 Completion Date and the Scheduled Completion Date. We have therefore applied liquidated damages assessed by the Lessee and Port Authority over the full delay period.

The table below provide a description of the 4 different scenarios and the total premium replacement cost calculated compared against the total security package provided by the limit of liability on the parent company guarantee:

Replacement DB Contractor Premium Summary		Total Replacement Premium		Total Security Available (PCG Liability Cap)		Anticipated Delay (weeks)	Month of Construction
		Amount	% of Construction Price	Amount	% of Construction Price		
1	One Month After Peak Cashflow	\$347,046,248	14.4%	\$812,314,499	35.0%	20	25
2	Phase 1 Interior Fitouts Complete	\$275,876,584	11.5%	\$812,314,499	35.0%	24	35
3	Existing Terminal 7 Demolition Ongoing	\$196,615,223	8.2%	\$812,314,499	35.0%	24	42
4	Phase 2 Building Enclosure Complete	\$116,313,881	4.8%	\$812,314,499	35.0%	16	56

The table below provides a description of the 4 different scenarios and the short term replacement cost, which considers the costs required to replace the contractor during the first three months following default. These costs have been compared against the available liquid security, consisting of the letter of credit and cash retention at the time of default:



Replacement DB Contractor Premium Summary		Short Term Replacement Premium		Liquid Security Available (Letter of Credit + Cash Retention)		Anticipated Delay (weeks)	Month of Construction
		Amount	% of Construction Price	Amount	% of Construction Price		
1	One Month After Peak Cashflow	\$30,982,248	1.3%	\$318,194,138	13.7%	20	25
2	Phase 1 Interior Fitouts Complete	\$22,844,584	1.0%	\$324,807,157	14.0%	24	35
3	Existing Terminal 7 Demolition Ongoing	\$13,539,223	0.6%	\$324,807,157	14.0%	24	42
4	Phase 2 Building Enclosure Complete	\$13,504,881	0.6%	\$324,807,157	14.0%	16	56

We have analyzed the adequacy of the security from two perspectives: Total and Liquid. The Total security adequacy evaluates the ability of the full security package to cover the premium cost to replace the Design-Builder. The Liquid security analysis looks at the adequacy of the Design-Builder’s liquid security to cover the immediate costs (i.e. those required to be paid in the first three months following insolvency).

We note the total premiums identified in the scenarios above include delay liquidated damages to fund the Lessee’s obligations for approximately 16 to 24 weeks of delay, which equates to ±2.3% to 4.1% of the Contract Price.

The likelihood of both the Design-Builder and Parent Company becoming insolvent is in our opinion extremely low, and represents a worst-case scenario given their strength.

The Design-Builder’s 35% liability cap is adequate to cover the total replacement premium and the liquid security is adequate to cover the short-term replacement premiums calculated in each of our Design-Builder replacement scenarios noted above.



## 9.0 Operations and Maintenance

### 9.1 INTRODUCTION

The Lessee will be responsible the performance of all Operations and Maintenance Work during the Term as follows (Section 11 of the Lease):

- The Lessee’s obligation for the Operations and Maintenance Work for the Existing Terminal Facilities began on the Terminal 7 Parcel Lease Commencement Date until the Existing Terminal Facilities are decommissioned and demolished; and
- The Lessee’s obligation for the Operations and Maintenance Work for each Partial Occupancy Portion of the New Terminal Facilities will begin when a Temporary Certificate of Authorization to Occupy or Use is issued.

The Lessee will be responsible for operation and maintenance of all airside and landside areas within the Premises, except as expressly described otherwise in the Lease or Project Documents. The Lessee shall perform the operations and maintenance work in compliance with its obligations in the Performance Standards and Measurement Provisions.

The Lessee entered into a Management Services Agreement (“MSA”) with the Manager. The Manager will provide the day-to-day management of the Lessee’s business and operations, including project management, operational readiness and transfer services, terminal management and concession management (Section 11(g)(2) of the Lease).

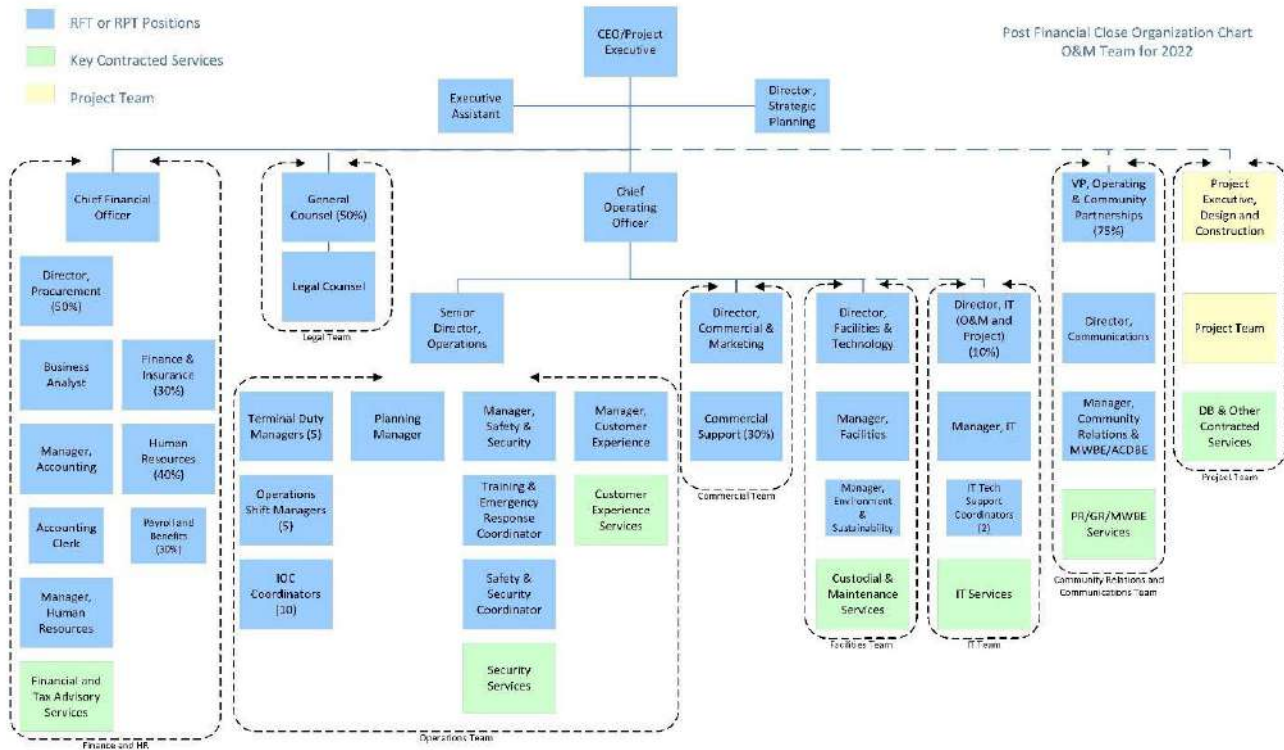
The Lessee transferred the responsibility for performance of the Operations and Maintenance Work to the Manager under the MSA but has retained the risk for the O&M costs. The Lessee will pay the Manager based on Annual Services Budgets prepared by the Manager each year. Once an Annual Service Budget is agreed, the Manager will not be permitted to make expenditures in excess of the budgeted amount, unless approved by the Lessee.

### 9.2 APPROACH TO O&M

The Manager will utilize their corporate offices in New York and Vancouver to facilitate and support their on-site services and programs, this includes the following:

- Training and development;
- Modelling;
- Quality assurance;
- Market analysis;
- Simulations;
- Innovation process improvements;
- Energy management and sustainability; and
- Capital and lifecycle planning.

The following O&M Organization Chart provides a detailed understanding of the roles and channels of communications within the Manager.



The Manager will integrate an O&M approach resulting from experience on its other airport operations, including LaGuardia Terminal B and the ongoing operation of the existing JFK Terminal 7. Key elements include:

- Safety and security;
- Communication;
- Strong stakeholder relationships; and
- Effective organizational structure.

The day-to-day operations include a continuous monitoring program utilizing a proprietary Safety Management System and Security Management System, which provide early warning indicators for safety-critical tasks. This will be utilized in conjunction with updated technology wherever applicable including CCTV, people tracking and curb management. All these elements are useful tools in managing terminal congestion and vehicle flows. Periodic congestion within the Project will be mitigated with the use of additional personnel as needed, while regularly testing their emergency readiness and response through internal tabletop exercises and live exercises.

A senior operations representative will be appointed and serve as the main point of contact for the Lessee and will have direct access and provide information and coordination. This will allow for accurate and timely communication and reduce the risk of delays in communication protocols.



The Manager will manage and execute some tasks through the use of third-party service providers who will be carefully selected based on their expertise in their respective fields. The Manager has depth of experience in New York in selecting qualified third-party service providers (e.g. based on its successful LaGuardia experience). They will be regularly monitored and audited to make sure proper protocols and processes are being carried out. Some of the third-party services include:

- Snow removal;
- Security (incl. goods screening, employee screening, curbside management);
- Janitorial/cleaning;
- Waste/recycling;
- Pest control;
- Septic systems; and
- Baggage system operation and maintenance.

The Manager will utilize KPI's in order to maintain an elevated performance level during the O&M term, this includes the use of internal audits for all functional areas in order to monitor trends and create value-add innovations. They will also integrate their "Whole Life Maintenance" strategy which helps balance costs with respect to operations and capital expenditures and maximize the net present value for the Project. The Whole Life Maintenance philosophy includes the following elements:

Design:

- Needs assessment
- Best practices
- Procurement stage selection process
- Use of a common platform

Construction:

- Work planning and scheduling
- Commissioning
- Testing, training and trials

Operation and Maintenance:

- Centralized maintenance
- Specialized third party experts
- Predictive budgeting through scheduled maintenance
- Optimized personnel

Renovation/Replacement:

- Condition performance
- Decommissioning
- Maximized asset service life

The Manager will use software to track the service life of all components in order to prevent system failures and extend asset lifecycles. They will do this by obtaining day-to-day maximum performance information from every airport within their portfolio, informing them on the reliability of various assets and systems. This will enable higher asset reliability and more performance predictability.

The Manager has a structured organization and performance plan that is consistent with anticipated operations procedures and is overall in a position to mitigate risks and unknown factors.



### 9.3 ANNUAL SERVICES BUDGET

The MSA includes an Initial Annual Services Budget which includes all costs, expenses and disbursements expected to be incurred by the Lessee with respect to the Services during the first Calendar Year of the Term. (Section 15 of the MSA).

The Manger will submit an Annual Services Budget by November 1 of each Calendar Year during the Term, which will be incorporated into the Lessee’s Annual Budget. The Lessee Board will review and comment on the Lessee Annual Budget and the Manager will be responsible for incorporating the reasonable comments of the Lessee Board and submitting a revised budget for approval. If a Lessee Annual Budget for a Calendar Year is not approved by December 1, then the Annual Services Budget for the prior Calendar Year will continue to apply until the revised budget is approved or settled under the dispute resolution procedure.

In no event will the Manager be permitted to make expenditures in excess of the amounts set forth in the Lessee Annual Budget.

### 9.4 O&M PRICING

The Manager’s Operations & Maintenance Cost Model, titled “OM Forecast – V17 – Final” can be summarized as follows:

Services	2026 Costs (Phase 1) (Nominal)	Phase 1 Cost/sf	2029 Costs (Phase 1 & 2) (Nominal)	Phase 1 & 2 Cost/sf
Area (sf)		877,969		1,200,000
Ground Transportation Centre*	\$614,336	<\$1	\$653,858	<\$1
Personnel or Staffing Costs	\$13,997,282	\$16	\$14,757,473	\$12
General & Admin	\$1,116,126	\$1	\$1,187,929	\$1
Contracted Services	\$31,552,474	\$36	\$41,951,922	\$35
Utilities	\$10,655,000	\$12	\$14,175,575	\$12
Repairs & Maintenance	\$315,469	<\$1	\$2,461,308	\$2
<b>Total</b>	<b>\$58,250,688</b>	<b>\$66</b>	<b>\$75,188,066</b>	<b>\$63</b>

\*The Ground Transportation Centre is not within the building footprint. As a result, the Cost/sf for Phase 1 and Phase 2 is not correlated to the total square footage of the terminal.

The O&M Costs presented in the table above are extracts of the annual O&M Costs of the corresponding year 2026 and 2029, which respectively represent the first full year in each of Phase 1 and Phase 2 (full operation) of Operation. The costs exclude insurance costs of \$35.6M in 2026 and \$11M in 2029. We have excluded insurance costs from our analysis to provide a more accurate benchmark with comparable projects in our database.

### 9.5 ASSESSMENT OF O&M PRICING

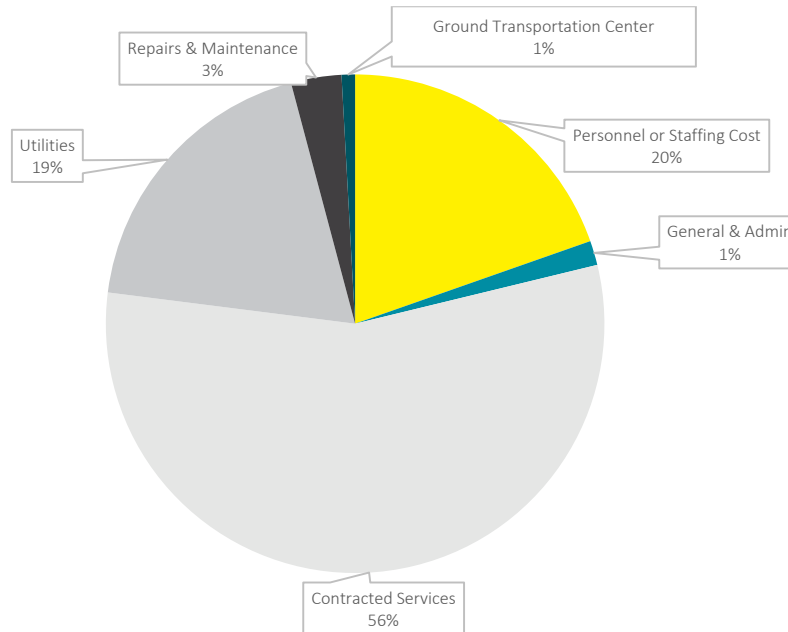
The Manager has developed the FM Cost Model using a combination of quotes from subcontractors, in-house historical data for similar projects, and its experience on Terminal 7 and LaGuardia Terminal B. The Manager’s



methodology in developing the FM Cost Model is consistent with the industry approach on US P3 projects and considered appropriate. We note the following:

- The Terminal Operations Center (“TOC”) will be located and operating on-site on a 24hr/day basis. It is ideal to have this response center located and consistently available on-site for these types of projects;
- Contingency for deductions is included;
- Subcontracted services equates to ±56% of the FM Model for Phases 1 and 2 combined, of which the Manager has sourced multiple quotes as well as leveraged existing contracts from Terminal 7 and the LaGuardia Terminal B project;
- Salaries and burdens included for Manager’s FTEs on-site, and equates to ±20% of the FM Model for Phases 1 and 2 combined (excludes subcontractor staff, and truck-based staff that the Manager may rely on for ad-hoc work, meaning all staff not working directly for the Project and whose costs are not included in the O&M Pricing);
- Utilities costs include electricity, natural gas, water & sewage, chilled water and heating hot water, phones, KIAC capital assessment and tenant reimbursement; and
- The Manager’s O&M model is reflective of experience gained during the operations and maintenance at the existing Terminal 7 as well as its ongoing experience at LaGuardia Airport.

The blended breakdown of costs for Phases 1 and 2 is summarized in the following chart.



Pricing ranges can be misleading as this is a unique project and comparable data points may include projects with different complexity factors, other historical precedents and are subject to inflationary impacts. Factors such as facility sizes, facility shapes, site areas, site locations and construction complexities are additional considerations.





that BTY accounts for when developing pricing benchmarks. Some considerations for this Project when comparing to a range of historical projects include:

- The Project size can greatly fluctuate the cost/sf as larger facilities can benefit from economies of scale for the FM team. As an example, regardless of the size of the Project, the FM team will require similar resources and skillsets on-site, which will be divided over a greater denominator resulting in a lower cost/sf;
- The quantity and characteristics related to subcontracted services, as bidders will bid more competitively for larger projects, resulting in a lower cost/sf for maintenance and services. The Project currently anticipates subcontracting approximately 56% of its FM Services;
- Labour costs in the New York area are on the higher range than those of other locations within the U.S.;
- Contingencies and profit vary across projects. More experienced Facility Managers can potentially reduce their contingency and profit to take into account the 'pool' of contingency across similar projects.

The annual FM Cost Model of \$70/sf for Phase 1 and \$65/sf (nominal dollars) for Phase 2 falls within the anticipated range that BTY has developed using recent North American Airport projects and adjusting for Project specific factors, competitiveness and current market conditions (some of which are noted above).

When reviewing and assessing the cost projections for the Project, the above factors were taken into consideration. We also conducted multiple discussions with the Manager to understand their approach to carrying out the Facilities Management services, and how they manage the overall development of the various responsibilities and costs. We also analyzed this FM Cost Model in conjunction with the Lifecycle cost model to ensure that the various tasks and costs were being managed and distributed as part of a holistic plan to carry out the FM services. Lastly, we accounted for the multi-Phase requirement to confirm appropriate management. Based on our review of the FM Cost Model, including the methodology used in its development and the factors noted above, it is our opinion that the FM Cost Model falls comfortably well within the anticipated competitive range for a project of this size and complexity, with this combination of services and consider it to be low risk.



**9.6 SUBCONTRACTED SERVICES**

A list of the services that the Manager intends to subcontract are identified in the table below.

Subcontracted Services
Snow Removal
Security
Janitorial/cleaning
Waste/recycling
Pest control
Grease waste removal
Baggage systems operation and maintenance
Passenger Boarding Bridges
Facility Maintenance

**9.7 PLANS AND REPORTS**

The Lessee is required to provide a number of plans for the provision of the Operations and Maintenance Work, including the following (Section 1.5 of Section C of the RPW):

- Concept of Operations Plan;
- Operations & Maintenance Plan (“O&M Plan”);
- Maintenance Manual;
- Airside Operations Manual;
- Comprehensive Security Plan;
- Terminal Emergency Response Plan;
- Terminal Management Manual;
- Safety Management System Manual; and
- Environmental Management Manual.

BTY considers these requirements of the Operations and Maintenance Term Requirements as appropriate and in-line with similar agreements in North America.

**9.8 SERVICES PROVIDED TO THE LESSEE**

The Port Authority will sell, furnish and supply the following services to the Lessee for use on the Premises (Section 39(b) of the Lease):

- Electricity;
- Sewerage;
- Domestic Cold Water; and
- Chilled Water and medium temperature hot water.



The Port Authority has entered into the Cogeneration Agreement with KIAC Partners (“KIAC”), dated April 28, 1993, for the construction, installation and operation of a Cogeneration Facility to produce electricity, Hot Water and Chilled Water and a thermal distribution system (“TDS”) at the Airport. Under the Cogeneration Agreement, the Port Authority will purchase all of the Lessee’s requirements for Hot Water and Chilled Water from KIAC and sell it to the Lessee (Section 40(a)(1) of the Lease).

The Port Authority will establish estimated unit rates each Calendar Year for the consumption of Hot Water and Chilled Water and will provide the Lessee with an estimated bill each month, which the Lessee will pay on a monthly basis. At the end of each Calendar Year, the Port Authority will determine the amounts payable by the Lessee and provide the Lessee with a final billing, which will be reconciled with the estimated monthly bills with a payment adjustment to reflect any over or under payments (Section 40(b)(1)(iv) of the Lease).

## 9.9 CONCLUSION

We note the following:

- The Lessee transferred the responsibility for performance of the Operations and Maintenance Work to the Manager under the MSA but has retained the risk for the O&M costs. The Lessee will pay the Manager based on Annual Services Budgets prepared by the Manager each year. Once an Annual Service Budget is agreed, the Manager will not be permitted to make expenditures in excess of the budgeted amount unless approved by the Lessee;
- The Manager has a structured organization and performance plan that is consistent with anticipated operations procedures and is overall in a position to mitigate risks and unknown factors;
- Vantage has a long track record of successfully managing airports, including its experience at LaGuardia Terminal B in the New York market;
- Facilities Management requirements are typical of the current social infrastructure P3 market. The requirements are reasonable and achievable for an experienced Facility Manager, such as the Manager;
- The Manager has developed the FM Cost Model using a combination of quotes from subcontractors, in-house historical data and existing contracts for Terminal 7 and the LaGuardia Terminal B project. The Manager’s methodology in developing the FM Cost Model is consistent with their approach on other US P3 projects and considered appropriate;
- The FM Cost Model has been developed using the Manager’s ongoing experience at Terminal 7. The Manager has hired key staff with extensive facilities management experience at Terminal 7 and JFK Airport more broadly; and
- Based on our review of the FM Cost Model, including the methodology used in its development, we consider the FM Cost Model to be reasonable for a project of this size and complexity, with this combination of services and to be low risk.



## 10.0 Lifecycle

### 10.1 INTRODUCTION

The Lessee will perform Major Maintenance to meet the Handback Requirements and to maintain compliance with the performance measures and standards in Section 11 of the Lease (Section 86(a) of the Lease).

The Lessee will prepare an Asset Preservation Schedule, which will be updated throughout the Term to reflect then-existing conditions of the Premises, changes in the estimated cost of Asset Preservation Work, changes in technology, changes in the means and methods of performing Asset Preservation Work and planned withdrawals from the Major Maintenance Reserve Fund for the next five Calendar Years (Section 86(b) of the Lease).

The Lessee will transfer the responsibility for ongoing capital and Lifecycle planning assistance and coordination to the Manager under the MSA but will retain the Lifecycle cost risk. The Lessee will pay the Manager based on Annual Services Budgets prepared by the Manager each year. Once an Annual Service Budget is agreed, the Manager will not be permitted to make expenditures in excess of the budgeted amount.

### 10.2 LIFECYCLE COST MODEL

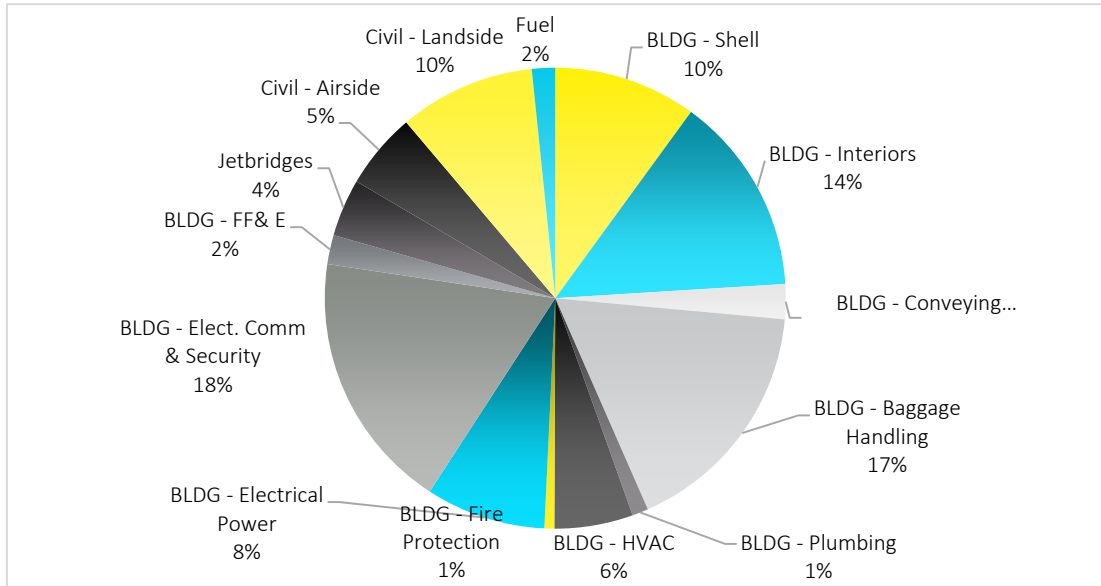
The Lifecycle Cost Model for Phase 1 and Phase 2 can be summarized as follows:

Description	Amount
Life Cycle Amount	\$1,075,945,174
Area (sf)	1,200,000
Term – O&M Period (Years)	35
Life Cycle / sf / Year	\$25.62
Annual Lifecycle Amount as Percentage of Direct Construction Price	1.25%

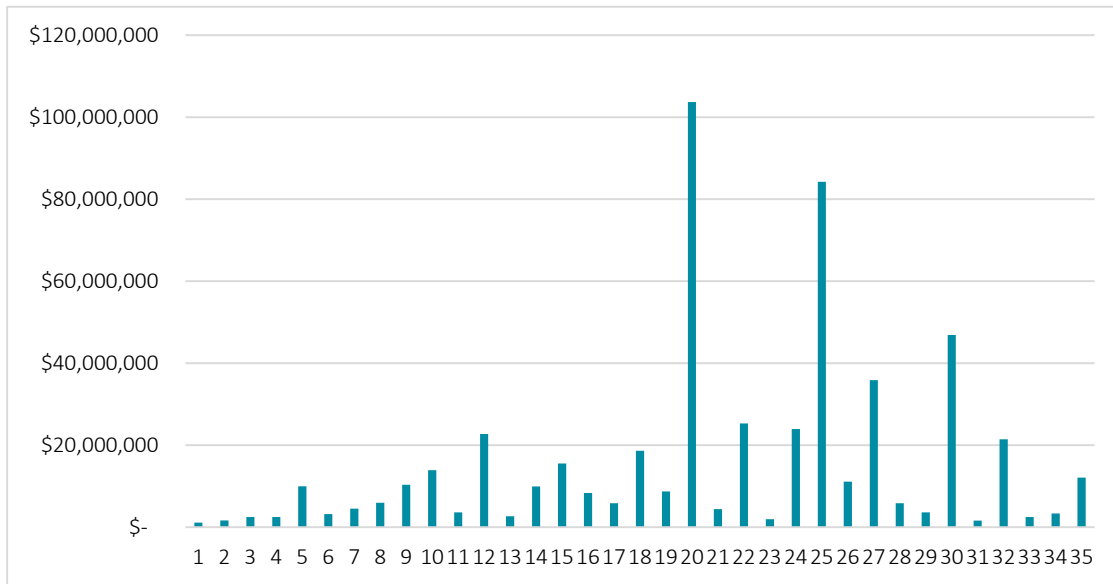
The total lifecycle costs presented in the table above consist of \$796M of replacement costs and \$280M of repairs and maintenance costs over the Term. Please refer to Section 9.4 for additional detail on the repairs and maintenance costs. We have reviewed the lifecycle cost model in conjunction with the routine O&M cost model presented in Section 9.4.



The elemental split of the Lifecycle Cost Model is graphically depicted as follows:

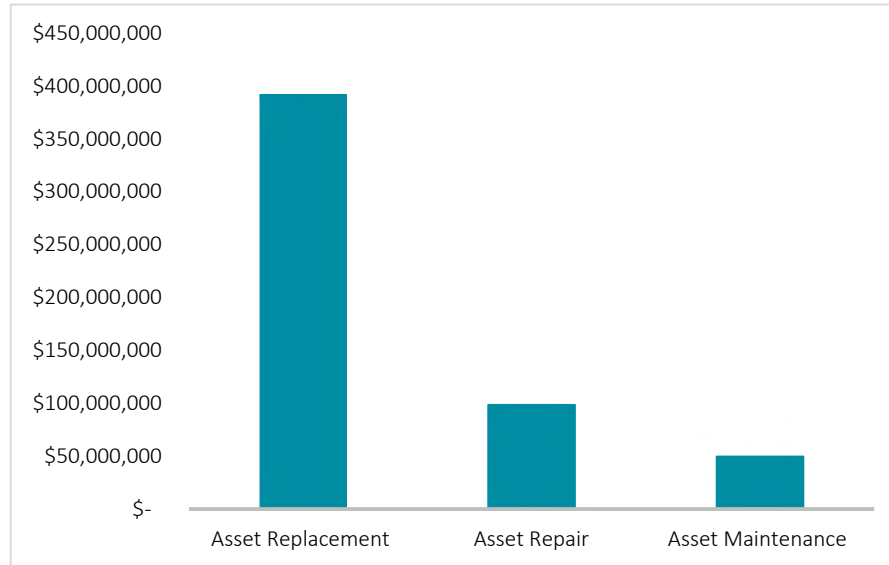


The profile of the Lifecycle Cost Model is graphically depicted as follows:





The profile of the Lifecycle Asset Replacement Category is graphically depicted as follows:



### 10.3 ASSESSMENT OF LIFECYCLE COSTS

We received an appropriate level of detail to support the Lifecycle Cost Model, which we have reviewed and discussed with the Manager. The Manager has developed the Lifecycle Cost Model using the Design-Builder’s Construction Price, in-house historical data and experience within this market sector. The estimate was developed using a bottom-up approach accounting for individual assets in order to formulate the overall projected costs for each construction division. Lifecycle cost estimate divisions were then divided into three main categories comprising of the following:

- Asset Replacement – Represents full replacement of asset/system assuming an end of useful asset life scenario;
- Asset Repair – Represents those assets/systems where there remains some useful life, however, some partial replacements are required in order to ensure proper functionality; and
- Asset Maintenance – Represents general maintenance activities for assets/systems that are not part of the standard operational tasks which are typically performed on a regular basis.

These three above-mentioned categories are taken as combined costs when considering the full Lifecycle budget and planning. The Lifecycle plan also features multiple unique budget costs outside of the typical building assets and characteristics. These include the following:

- Baggage Handling;
- Jetbridges;
- Civil – Airside & Landside; and
- Fuel systems and infrastructure (including the aircraft hydrant fueling system and on-site diesel fuel storage tanks for emergency generators).

The Lifecycle Cost Model of \$25.62/sf/year is within the range that BTY has developed using recent airport terminal redevelopment projects and adjusting for Project specific factors and competitiveness.



The Lifecycle Cost Model has some peaks within the cost profile due to the Manager deliberately aligning certain asset replacements in order to complete larger refresh projects and systems overhauls across larger segments of the terminal in consolidated projects and achieve economies of scale and minimize operational disruptions. In reality, the Manager notes that these spikes will likely be smoothed out over 2 to 3 years to complete the projects, which we consider reasonable.

When reviewing and assessing the Project, all extraneous factors were considered including the specialty assets as listed above. We also reviewed the cost/sf of each major element and Division and had discussions with the Manager to understand their approach to carrying out the FM and Lifecycle services. Also included was an in-depth discussion into how each Divisional cost was formulated in order to gain perspective into how certain potential risks were mitigated or eliminated. Based on our review of the Lifecycle Cost Model, including the methodology used in its development and the factors noted above, we consider the Lifecycle Cost Model to fall within the anticipated competitive range for a project of this size and complexity, and if executed according to the specified plan to be low risk.

#### 10.4 HANDBACK REQUIREMENTS

On the Expiration Date, the Lessee will hand the Premises back to the Port Authority in a condition that meets the Handback Requirements (Section 87(a) of the Lease).

The Handback Requirements require the Lessee to hand back the assets fit for purpose, fully functional and in the following condition, as rated by the Port Authority Enterprise Condition Rating Protocol (Section 2.12 of Section C of the RPW):

- “Good” condition (rating condition grade 2) or better for Critical Assets; and
- “Fair” condition (rating condition grade 3.4) or better for all other assets.

The parties will perform a joint Pre-Handback Inspection of the Premises prior to the Expiration Date to determine the condition of the premises and the residual life of the assets and to revise the Capital Asset Management Plan. The Lessee will be responsible for correcting any Defects identified in the Pre-Handback Inspection by the Expiration Date.

Five years before the end of the Term, the parties will jointly appoint an independent consultant to provide an estimate of the costs to meet the Handback Requirements (the “Handback Amount”). The Lessee will establish a Handback Reserve Fund for the sole and exclusive benefit of the Port Authority, which will be funded to 115% of the Handback Amount. The independent consultant will provide an annual assessment of the Handback Amount. If there is an excess of funds in the Handback Reserve Fund, the excess funds will be released to the Lessee (Section 87(d) of the Lease).

The Port Authority will be entitled to withdraw funds from the Handback Reserve Fund during a two-year period beginning on the Expiration Date if any portion of the Premises does not satisfy the Handback Requirements. After the expiration of the two-year period, any remaining funds in the Handback Reserve Fund will be released to the Lessee.

#### 10.5 HANDBACK ASSESSMENT

We received a detailed Handback Cost Estimate to support the Lessee’s plan for achieving the Handback Requirements, which we have reviewed and discussed with the Manager. The Handback Cost Estimate for Phase 1 and Phase 2 can be summarized as follows:

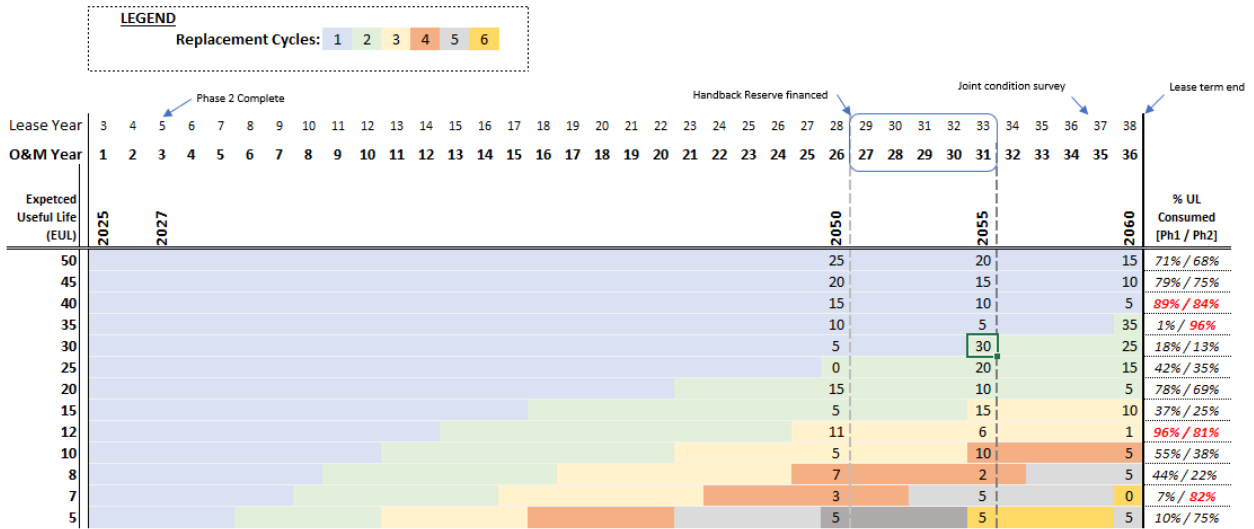


Category	Phase 1		Phase 2				Total
	Expected Useful Life 40 Years	Expected Useful Life 12 Years	Expected Useful Life 40 Years	Expected Useful Life 35 Years	Expected Useful Life 12 Years	Expected Useful Life 7 Years	
Shell	\$29,656,575	\$41,996	\$13,093,009	\$0	\$44,715	\$0	\$42,836,295
Interiors	\$561,600	\$138,930	\$273,000	\$0	\$105,655	\$0	\$1,079,185
Conveying	\$0	\$0	\$0	\$0	\$0	\$47,300	\$47,300
Baggage Handling	\$0	\$19,342,500	\$0	\$0	\$189,700	\$0	\$19,532,200
Plumbing	\$0	\$124,306	\$0	\$0	\$23,964	\$0	\$148,270
HVAC	\$428,337	\$0	\$146,328	\$71,356	\$0	\$	\$646,021
Fire Protection	\$786,112	\$0	\$786,112	\$0	\$0	\$0	\$1,572,224
Electrical Power	\$20,478,853	\$5,695,888	\$7,953,696	\$74,268	\$636,240	\$0	\$34,838,945
Electrical, Communications & Security	\$927,701	\$7,513,870	\$0	\$0	\$679,633	\$0	\$9,121,204
FF&E	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Jetbridges	\$0	\$768,900	\$0	\$0	\$179,520	\$0	\$948,420
Civil – Airside	\$10,695,122	\$36,266	\$16,340,600	\$0	\$0	\$0	\$27,071,988
Civil – Landside	\$9,196,027	\$0	\$0	\$0	\$0	\$0	\$9,196,027
Fuel	\$6,646,777	\$0	\$1,236,121	\$0	\$0	\$0	\$7,882,898
<b>Total</b>	<b>\$79,377,103</b>	<b>\$33,662,656</b>	<b>\$39,828,866</b>	<b>\$145,624</b>	<b>\$1,859,427</b>	<b>\$47,300</b>	<b>\$154,920,976</b>





The Replacement Cycles and Percentages of Useful Life is graphically depicted as follows:



The Manager has developed the Handback Cost Estimate using the Design-Builder’s Construction Price, in-house historical data and experience within this market sector. The approach in developing the estimate included the following parameters:

- Ensuring all critical assets would receive a “Good Condition Rating” rating or better while non-critical assets would receive a “Fair Condition Rating” or better as required by the Lease (based on IPWEA ratings approach);
- Assuring the Useful Life Remaining for the assets at the end of the term is at 10% or more;
- Placing assets into “categories” based on similarities rather than on an individual basis (while maintaining a bottom-up approach); and
- Consideration that for all assets requiring handback work at the end of Term, not all would require a full replacement.

Using the above criteria as a basis of the approach, the methodology (as shown in the table above) included separation of the equipment and systems into asset categories and then by percentage of “End of Useful Life” groupings. This was completed for both Phases 1 and 2 since they have differing completion dates. Once this was completed, the handback value was allocated based on the Manager’s assessment of the magnitude of work needed in order to bring the assets into the appropriate condition rating, at a minimum. This system of rating and estimation was applied utilizing a percentage of total replacement cost and the extent to which each was outside of the acceptable condition rating.

After a careful review of the Handback Cost Estimate and the methodologies utilized in its development, the following points are noted:

- Phases 1 and 2 have been separated in the calculation of the handback estimate to account for the staggered completion date and the respective impact on the End of Useful Life for the assets;
- The asset categories were divided into multiple End of Useful Life “buckets” to ensure they were assessed and estimated separately;



- An overall bottom-up approach was utilized for the various asset categories to ensure each one was considered separately and properly developed;
- The total handback cost reflects a reasonable percentage of the total Lifecycle Plan cost;
- The anticipated useful life remaining for each asset category are reflective of industry standards; and
- Despite there being a threshold requirement of 10% of Remaining Useful Life for all critical assets, the cost strategy includes a plan for inclusion of a minimum of 20%.

In addition to the above points, it is also noted that the use of a robust preventative maintenance plan and capital replacement plan are also key factors in ensuring the Handback Plan can be effectively implemented and reliable. As stated in Sections 9.0 and 10.0 of this Report, the Operations and Lifecycle Plans have been well developed and should help ensure the facility is in the anticipated condition at the expiration of the Term.

Given all these above mentioned points, it is our opinion that the Handback Plan is satisfactory and responds well to the Handback Requirements as stipulated within the Lease.

## 10.6 MAJOR MAINTENANCE RESERVE REQUIREMENTS

The Lessee will establish and fund the Major Maintenance Reserve Fund on Substantial Completion of Phase 1, which will be used to pay the cost of Major Maintenance at the New Terminal Facilities (Section 86(c) of the Lease).

If the Lessee fails to perform any Major Maintenance by the times identified in the Asset Preservation Schedule, the Port Authority will notify the Lessee, which will be considered a notice of default under the Lease. If the Lessee fails to complete the Major Maintenance within 30 days, then the Port Authority may either declare an Event of Default or perform the Major Maintenance at the sole cost of the Lessee, which will be paid for by drawing on the Major Maintenance Reserve Fund (Section 86(c)(6) of the Lease).

The Lessee is entitled to object to any notice delivered by the Port Authority if it has completed the Major Maintenance or if the Major Maintenance is not yet required. The parties will then have 30 days to meet and agree on the dispute, after which the matter will be referred to the Dispute Resolution Procedure (Section 86(c)(7) of the Lease).

The Major Maintenance Reserve funding requirements are outlined in the financing documents. The intent is to fund the reserve account on a rolling 3-year look forward calculation so that the balance equals:

- 100% of the lifecycle costs in year n+1;
- 67% of the lifecycle costs in year n+2; and
- 33% of the lifecycle costs in year n+3.

We consider the Major Maintenance Reserve funding requirements to be in-line with previous P3 projects.

## 10.7 JOINT PERIODIC CONDITION SURVEY

The Port Authority will perform a Condition Survey, not more often than every 5 years after Substantial Completion of Phase 1. The Port Authority will notify the Lessee of the proposed Condition Survey including the name of the proposed Condition Survey Contractor, scope and fee structure. The Lessee will have 30 days to object to the proposed Condition Survey Contract, in which case the parties will consult in good faith to resolve the dispute. If the dispute is not resolved in 30 days, then the Port Authority may make a decision, which will be final (Section 55(b) of the Lease).

The Lessee and Port Authority will equally share the Condition Survey Costs, except for the Exit Baseline Report, which will be fully paid for by the Lessee (Section 55(d) of the Lease).

#300 - 30 E 6th Avenue, Vancouver, BC Canada V5T 1J4 | 604 734 3126

*This Report has been prepared at the request of JFK Millennium Partners on behalf of the Project Lenders and is the exclusive property of BTY Group, which is the owner of the intellectual property rights relating to this Report. The Report must be treated as confidential and proprietary information of BTY Group and it may not be disclosed, reproduced or permitted to be disclosed to any party without the prior consent of BTY Group.*



Following the issuance of a Condition Survey Report, the Lessee and Port Authority will have 90 days to agree on all actions required to meet the Lessee's maintenance and repair obligations. If cannot agree on any action within 90 days, the Port Authority may make a determination, which will be final (Section 55(e) of the Lease).

The Condition Survey requirement is typical for P3 projects.

## 10.8 CONCLUSION

We note the following:

- The Lessee has transferred the responsibility for ongoing capital and Lifecycle planning assistance and coordination to the Manager under the MSA but retains the Lifecycle cost risk. The Lessee will pay the Manager based on Annual Services Budgets prepared by the Manager each year. Once an Annual Service Budget is agreed, the Manager will not be permitted to make expenditures in excess of the budgeted amount;
- Lifecycle requirements are reasonable and achievable for an experienced Manager, such as Vantage;
- Handback requirements are typical of social infrastructure P3 projects;
- There remain some peaks within the lifecycle profile due to the Manager deliberately aligning certain asset replacements to achieve economies of scale and minimize disruptions. The Manager will likely smooth these activities out over 2-3 years in reality, which we consider reasonable;
- Manager's extensive experience, client list and company resource on a local and global basis provides the LTA with the evidentiary detail to be reassured that the Manager will have no issue in meeting the designated requirements;
- We have reviewed the Lifecycle Cost Model and discussed the delivery strategy with the Manager to understand their approach to carrying out the FM and Lifecycle services. The Manager has developed the Lifecycle Cost Model using the Design-Builder's Construction Price, in-house historical data and experience;
- Based on our review of the Lifecycle Cost Model, including the methodology used in its development and the factors noted above, we consider the Lifecycle Cost Model to be reasonable for a project of this size and complexity, and to be low risk; and
- We consider that the Handback Plan is satisfactory and responds well to the Handback Requirements as stipulated within the Lease.



## 11.0 Payment Mechanism

### 11.1 INTRODUCTION

The Project is a revenue risk deal with the Lessee collecting rent from concession and airline tenants. The Lease includes an Excess Value Rent revenue sharing mechanism whereby the Lessee will share rental revenue with the Port Authority after it achieves certain predefined return thresholds.

The Lessee will be responsible for making a series of rental payments to the Port Authority during the Term.

### 11.2 MILESTONE PAYMENTS

The parties have agreed to the following Milestone Payments (Section 79 and 81 of the Lease):

Milestone Payment	Value	Payable By	Milestone Payment Date
Port Authority Payment for replacement of the KIAC back-up fuel supply line	\$900,000	Port Authority	12 months following the PA Roadways Commencement Date
Lessee Milestone Payment for Roadways	\$23M	Lessee	12 months following the PA Roadways Commencement Date
Lessee Milestone Payment for Backup Power Supply	\$9M	Lessee	12 months following the PA Roadways Commencement Date
Central Maintenance of Traffic	\$13.8M	Lessee	
<b>Total</b>	<b>\$44.9M</b>		

Completion of the Milestone Payments has not yet been required. The earliest of the Milestone Payments will be due in March 2025.

### 11.3 MARKET TESTING

The Lease does not require benchmarking and market testing.

### 11.4 RENT PAYMENTS

Throughout the Term, the Lessee is required to pay the following rent payments to the Port Authority (Section 4 of the Lease):

- Ground Rent, equal to \$148,300 (2018\$) per acre per year for the Premises (Section 97 of the Lease). The Ground Rent will be paid monthly through payments of 1/12<sup>th</sup> the full amount beginning on the



Effective Date. The Ground Rent will be escalated each year by the greater of (1) 4%, or (2) 50% of the percentage change in CPI for the New Year;

- The Lessee has entered into a Leasehold Mortgage and will pay the First Additional Rent equal to \$500,000 per year. Payments began at Substantial Completion of Phase 1 and will last until all amounts secured by the Leasehold Mortgage have been repaid in full;
- Beginning on the Terminal 7 Parcel Lease Commencement Date, the Lessee will pay Second Additional Rent in the amount set forth on a schedule attached to the Lease, which includes payments of between \$50M and \$60M each year from 2023 through 2027, no Second Additional Rent in 2028 and 2029, and escalating amounts in 2030 and thereafter. The Second Additional Rent will be paid monthly through payments of 1/12<sup>th</sup> of the full amount;
- Third Additional Rental as additional compensation to the Port Authority for letting the Premises, in the amount of \$33M to be paid on the Effective Date and an additional \$1M per year during each year of the Term in equal monthly installments; and
- Beginning on the Terminal 7 Parcel Lease Commencement Date, the Lessee will pay the Concession Revenue Rent to the Port Authority, based either on a share of concession revenues payable to the Lessee or a formula based on enplanements through the terminal facilities, a portion of which payment may be paid on a subordinate basis during certain periods during the Term.

## 11.5 PAYMENT ADJUSTMENTS

In order to incentivize performance in accordance with the performance standards, the Manager's performance of the O&M Work in the New Terminal Facilities will be measured against defined KPIs and may be subject to deductions up to the Maximum Deduction or receive incentive payments up to the Maximum Incentive in accordance with the provisions described in the Performance Standards and Measurement Provisions (Section 11 of the Lease).

The Manager's performance will be measured and guided based on Key Performance Indicators ("KPIs").

The Lessee's risk related to the incentive and deduction regime will be transferred to the Manager under the MSA, to the extent the failure to achieve such performance standards was caused by the failure of the Manager to perform the Services in accordance with Best Management Practice. Deductions and incentives will be applied to the Manager's annual Management Fee (Section 12 of the MSA).

### 11.5.1 Key Performance Indicators

There are three categories of KPIs included in the Performance Standards and Measurement Provisions, which is included as Exhibit 8 of the Lease:

- Incentive KPIs;
- Monitoring KPIs; and
- Reporting KPIs.

All KPIs will commence Monthly Performance Reporting at Lease commencement; however, payments and deductions associated with the Incentive KPIs will only take effect beginning on the Phase 1 Completion Date. All KPIs are to be reported in real time using the digital/networked systems integrated with the Port Authority or reported within 10 business days of the end of the month where no digital/networked system is available.



*Incentive KPIs*

Incentive KPIs refer to KPIs with financial incentives or deductions, including the Airport Council International-Airport Service Quality Overall Satisfaction Score KPI (“ACI-ASQ KPI”) and KPIs related to the availability of certain terminal systems (“Systems Availability KPIs”).

The maximum potential incentive payment or deduction payment for Incentive KPIs will be equal to 30% of the annual Management Fee (the “Incentive Pool Annual Cap”).

The Port Authority has selected the ACI-ASQ program as the industry benchmark to measure the Lessee’s performance. The program uses a quarterly survey process. 75% of the Incentive Pool will be awarded based on the New Terminal Facilities’ ACI-ASQ Overall Satisfaction Score. For the ACI-ASQ Overall Satisfaction Score, the maximum incentive and maximum deduction will equal 75% of the Incentive Pool Annual Cap (the “ASQ Annual Cap”).

Incentives and deductions will be applied as follows:

ACI-ASQ Overall Satisfaction Score	ACI-ASQ Incentive Threshold	Incentive Payment or Deduction
4.80 out of 5	Maximum Incentive Target	Incentive payment equal to the ASQ Annual Cap
4.65	50% Incentive Target	Incentive payment equal to 50% of the ASQ Annual Cap
4.50	Aspirational Target	No incentive payment or deduction
4.25	Deduction Baseline	No incentive payment or deduction
4.15	50% Deduction	Deduction equal to 50% of the ASQ Annual Cap
4.10	Maximum Deduction	Deduction equal to the ASQ Annual Cap

For scores between the threshold levels described above, the incentive payment or deduction will be calculated using linear interpolation between the score and the threshold level.

The Incentive Threshold will be revisited jointly by the Lessee and Port Authority every 5 years following the opening of the New Terminal Facility.

Systems Availability KPIs will represent the remaining 25% of the Incentive Pool Annual Cap. The maximum incentive payment or deduction for each System Availability KPI will be equal to 25% of the Incentive Pool Annual Cap divided by 4 representing the total number of Systems Availability KPIs (the “System Availability KPI Annual Cap”).

Systems Availability Threshold	Incentive Payment or Deduction
Maximum Incentive Target	Incentive payment equal to the Systems Availability KPI Annual Cap
50% Incentive Target	Incentive payment equal to 50% of the Systems Availability KPI Annual Cap
Baseline	No incentive payment or deduction
50% Deduction Level	Deduction equal to 50% of the Systems Availability KPI Annual Cap



Systems Availability Threshold	Incentive Payment or Deduction
Maximum Deduction Level	Deduction equal to the Systems Availability KPI Annual Cap

The systems and their target thresholds are described in the table below.

System	Scope	Maximum Incentive Target	50% Incentive Target	Baseline	50% Deduction Level	Maximum Deduction Level
Conveyance Systems	Elevators, escalators, moving sidewalks	99.9%	99.75%	99.5%	99.325%	99.25%
Baggage Systems	Inbound & outbound	99.9%	99.75%	99.5%	99.325%	99.1%
Passenger Loading Bridges & Associated Equipment	Passenger Loading Bridges pre-conditioned air, visual docking guidance system	99.9%	99.75%	99.7%	99.6%	99.5%
Asset Management	Critical Preventative Maintenance	100%	98%	97%	96%	95%
	Planned Preventative Maintenance	100%	95%	90%	85%	80%

For scores between the threshold levels described above, the incentive payment or deduction will be calculated using linear interpolation between the score and the threshold level.

The Incentive KPI thresholds have been determined by the Port Authority. Based on conversations with the Lessee and Manager, we understand that the deduction thresholds related to the ACI-ASQ Overall Satisfaction Score (which make up 75% of the potential maximum deduction or incentive) is considered reasonable and that the Manager does not anticipate incurring deductions or incentives based on the ACI-ASQ Overall Satisfaction Scores achieved on Vantage’s portfolio of airport projects.

The deduction thresholds related to the Systems Availability KPIs (which make up 25% of the potential maximum deduction or incentive) are considered challenging and above industry standard based on Vantage’s experience across its portfolio of airport projects and there is a likelihood that deductions will be incurred for conveyance systems, baggage systems and passenger loading bridges. We note that the risk exposure for these deductions is capped at \$490,000/year and the Manager has included a \$500,000/year contingency in its annual budget, which is indexed to inflation, to address this risk.

#### Monitoring KPIs

Monitoring KPIs are performance indicators with targeted performance benchmarks that are managed through Performance Management Plans. No direct incentive payments or deductions are applied to Monitoring KPIs.

The Lessee will be responsible for providing the Port Authority with a Performance Management Plan, which will focus on four elements: infrastructure design; technology implementation; compatible leasing plan structure; and operations plans. The Monitoring KPIs will be evaluated on a quarterly basis in a joint meeting with the Lessee and the Port Authority.



If the Lessee fails to implement the Performance Management Plan, the Port Authority may take actions to achieve the targets and recover its costs from the Lessee.

The Monitoring KPI categories include the following:

- Terminal Frontage Flow;
- Check-in Times;
- Security Wait Times;
- Bathroom Cleanliness;
- Bathroom Availability;
- Baggage Delivery;
- Gate Utilization; and
- Sustainability.

#### *Reporting KPIs*

The Lessee will provide the Port Authority additional KPIs to indicate the performance of the New Terminal Facility and expectations on future performance. These Reporting KPIs will be selected by the Lessee from the following major categories:

- Terminal Traffic;
- Landside Performance;
- Airside Performance;
- Safety;
- Security;
- Risk Management;
- Financial and Commercial;
- Talent Management/Productivity;
- Capacity Utilization / Capacity Management;
- Customer Experience;
- Asset Management; and
- Environmental / Sustainability.

## **11.6 DELAY EVENTS**

The Lease defines Delay Events as any of the following events or conditions that occurs during the D&C Work Period, each of which may be subject to certain conditions or limitations (Section 2(ff) of the Lease):

- The occurrence of any Force Majeure Event;
- The Lessee discovers an Unknown Condition that adversely impacts the D&C Work. Unknown Conditions include Unknown Archaeological Remains, Unknown Endangered Species, Unknown Facilities and Unknown Hazardous Substances, excluding any which the Lessee should have known or is deemed to have known about prior to the Effective Date;
- The existence of any agreement, easement, right of entry, covenant, condition, restriction or other instrument to which the New Terminal Facilities or Off-Premises Facilities are subject and which materially interferes with the performance of the D&C Work and was not known to the Lessee, or is not apparent upon inspection of public records, or cannot be reasonably inferred from, the Available Documents or publicly available information, and could not reasonably have been identified through review and analysis of Available Documents or publicly available information;





- The issuance of any injunction, restraining order or other similar legal order by a court of competent jurisdiction under Applicable Law based on a claim that challenges the Port Authority's authority to enter into the Lease which prohibits or enjoins prosecution of the D&C Work;
- Any Rules and Regulations Change or the RPW Change that materially and adversely impacts the Lessee's performance of the D&C Work;
- Certain D&C Work suspensions by the Port Authority longer than 24 hours;
- The occurrence of any Compensation Event or event that would have constituted a Compensation Event but for a Force Majeure event with respect to the Port Authority or an Emergency;
- Any breach of the material obligations outlined in the Lease or the Construction Coordination Agreement by the Port Authority; and
- Any failure by British Airways to comply with its surrender obligations in the British Airways Lease with respect to the Terminal 7 Parcel on or prior to the end of the Existing Terminal Facilities Stub Operating Period as a result of delayed completion of the Terminal 8 site.

The Lessee is required to give notice to the Port Authority within 20 Business Days following the date on which the Lessee first became aware that an event has occurred that the Lessee claims is or is likely to become a Delay Event.

A Delay Event that is agreed between the Parties affecting the performance of the D&C Work will:

- Excuse the Lessee from performance of its obligations to perform the D&C Work pursuant to the Lease but only to the extent that such D&C Work is directly affected;
- Extend the Scheduled Phase 1 Completion Date and/or the Scheduled Completion Date day-for-day for any delays in the performance of the D&C Work directly caused by such Delay Event using a Time Impact Analysis; and
- Permit the Lessee to implement a Value Engineering Lessee Change in order to achieve costs savings to minimize the impact of such Delay Event.

A Delay Event that is agreed between the Parties affecting performance of the O&M Work will excuse the Lessee from performance of its obligations to perform O&M Work pursuant to the Lease and with respect to the Lessee's obligations to satisfy and achieve certain KPIs will entitle the Lessee to adjustments (either temporary or permanently) as necessary to reflect the impact of such Delay Event upon the Lessee's ability to satisfy such obligations.

Please refer to Section 3.9 for an overview of Delay Event Notices submitted by the Lessee.

## 11.7 COMPENSATION EVENTS

Compensation Events are defined as any of the following events or conditions that occurs during the D&C Work Period, each of which may be subject to certain conditions or limitations (Section 2(ee)(1) of the Lease):

- Any Port Authority Change;
- The willful failure of the Port Authority to provide the Lessee with Temporary Rights of Access within specified timeframes;
- The willful failure of the Port Authority (i) to provide the Lessee with access to the applicable sites necessary for the Lessee to be able to construct the Off-Premises Facilities within specified timeframes, or (ii) to provide the Lessee with power required for the testing and commissioning of the New Terminal Facilities by certain specified dates, or (iii) to provide the Lessee with power required for operation of the New Terminal Facilities by certain specified dates;



- Certain suspensions of the D&C Work by the Port Authority for longer than 24 hours;
- The Port Authority's direction to remove, uncover and restore D&C Work, in certain circumstances;
- Any failure of the Port Authority to respond to any request from the Lessee for review and/or approval of specified schedules, plans, design documents or other submittals within the Submittal Review Period;
- With respect to Governmental Approvals the Lessee is required to obtain during the D&C Work Period, any willful failure or delay by the Port Authority to provide information required by Applicable Law for the Lessee to obtain or comply with such Governmental Approvals that is specifically requested in writing, is in the possession of the Port Authority and is not otherwise available to the Lessee within 30 days after a written request from the Lessee; and
- Willful failure by the Port Authority to provide their signature within a reasonable time period (not less than 10 business days) following the Lessee's request in order to obtain various Governmental Approvals.

If the events described above are not classified as Compensation Events due to the occurrence of a Force Majeure event, it is required that the Parties coordinate with each other to resume the performance regarding the event after the termination of such Force Majeure Event.

It is the Lessee's responsibility to prove the occurrence of a claimed Compensation Event and Lessee Damages. The Lessee is required to provide the Port Authority with written notice within 20 Business Days following the date on which the Lessee first becomes aware that an event has occurred that the Lessee is claiming to be a Compensation Event ("Compensation Event Notice"). The Compensation Event Notice must describe the following (Section 2(ee)(2) of the Lease):

- The claimed Compensation Event and its date of occurrence, described in reasonable detail;
- Any underlying disagreement or ambiguity of a technical nature contributing to or affecting the claimed Compensation Event;
- The amount claimed as Lessee Damages;
- Evidence demonstrating that the Lessee could not avoid the Compensation Event without incurring material cost or delays;
- Evidence demonstrating the Lessee's efforts to off-set Lessee Damages; and
- A written analysis and calculation for the Lessee Damages. If the required details for the written analysis and calculation are not available within this 20 business-day period, the Lessee may submit an estimate of the Lessee Damages and a written analysis no more than 30 days following the initial Compensation Event submission.

If the Port Authority rejects the Lessee's Compensation Event Notice, the Lessee will have the opportunity to correct the issues within three Business Days following the Port Authority's notification of rejection.

Following the submission of the Compensation Event Notice, the Port Authority may choose to hire a technical consultant, at their own cost and expense, to prepare a report regarding the Lessee Damages estimate and claimed Compensation Event. If the Port Authority concludes that the Lessee Damages are incorrect, the Lessee is responsible to reimburse the Port Authority for the costs of the technical consultant (Section 2(ee)(2)(iv) of the Lease).

The Lessee Damages with respect to any Compensation Event will be the sum of (Section 2(ee)(3) of the Lease):

- Any adverse Net Cost Impact; and
- Solely with respect to a Port Authority Change, any additional amount payable to the Lessee under the Lease with respect to a Port Authority Change.



If the Lessee Damages required to be paid by Port Authority are due to a Port Authority Change, the Port Authority will not be required to pay any Lessee Damages until such Lessee Damages exceed the sum of:

- The Port Authority Contingency Amount; and
- The Port Authority Additional Contingency Amount.

The Lessee Damages will be net of all applicable insurance proceeds payable to the Lessee and the Contractors associated with the Compensation Event and include the costs of asserting the claim for insurance proceeds and any increased insurance premiums (Section 2(ee)(3) of the Lease).

If a Compensation Event occurs, the Lessee will be entitled to Lessee Damages, which will be payable as follows (Section 2(ee)(4) of the Lease):

- If the Lessee Damages is for prior D&C Work Costs which have already been incurred by the Lessee or its Contractor, the Port Authority will pay a lump sum amount within 40 Business Days of the final determination of Lessee Damages, unless otherwise agreed to by the Lessee; and
- If the Lessee Damages is to pay for future D&C Work Costs, then the Port Authority will either pay the Lessee as the costs are incurred, or as a lump-sum payment equal to the net present value of the Lessee Damages.

Please refer to Section 3.9 for an overview of Compensation Event Notices submitted by the Lessee.

## 11.8 FORCE MAJEURE EVENTS

If the performance by the Port Authority or the Lessee (the “Affected Party”) is delayed or prevented by any of the following (subject to certain limitations) (Section 45 of the Lease):

- Unforeseeable law, rule, regulation, order, injunction or other action adopted or taken after the Effective Date by any Governmental Authority with jurisdiction over the airport or actions taken by Lessee-Related Entities in accordance with the Lease;
- Acts of God, floods, storms, war, civil disorder, terrorist act, public enemy, strike, labor dispute, shortages of materials, fuel, power; or
- Any other cause not within the control of the Affected Party to remedy, including a pandemic or epidemic health event officially declared by a federal or New York State Governmental Authority.

## 11.9 CONCLUSION

We note the following conclusions:

- The Lessee will be responsible for making Milestone Payments to the Port Authority at defined points during construction for specific scopes of work to be provided by the Port Authority. These costs are included in the Project Management category of Lessee costs, which are described in Section 8.4 of this report;
- The Lessee will be responsible for making rental payments to the Port Authority during the Term. These costs are held separately in the Financial Model outside of the Lessee costs described in Section 8.4 of this report;
- The Lease includes Incentive KPIs to incentivize the Manager’s performance of the O&M Work. The Lessee’s risk related to the incentive and deduction regime is transferred to the Manager under the MSA;
- The Manager does not anticipate incurring either deductions or incentives related to the ACI-ASQ Overall Satisfaction Score based on Vantage’s experience on its other airport projects; and



- The deduction thresholds related to the Systems Availability KPIs are considered challenging and above industry standard and there is a likelihood that deductions will be incurred for conveyance systems, baggage systems and passenger loading bridges. We note that the risk exposure for these deductions is capped at \$490,000/year and the Manager has included a \$500,000/year contingency in its annual budget (indexed to inflation) to address this risk. Therefore, we consider the risk to be adequately mitigated.



## 12.0 Equator Principles

### 12.1 INTRODUCTION

The Equator Principles were established by the project finance sector to document a benchmark for the consideration of environmental and social risk factors during the due diligence process of assessing requests for project finance.

The risk management considers business, credit, environmental and reputation risk. The Equator Principles allow financial institutions to assess, document, mitigate and report upon the project and its potential risks. Although the initial rationale for the Equator Principles was directed at finance for emerging markets and Lesser Developed Countries it has become best practice to consider the Principles for all projects.

There are ten basic Equator Principles that were documented in 2013; these are presented following.

- Review and Categorization
- Social and environmental Assessment
- Applicable Social and Environmental Standards
- Environmental and Social Management System and Equator Principles Action plan
- Stakeholder Engagement
- Grievance Mechanism
- Independent Review
- Covenants
- Independent Monitoring and Reporting
- Reporting and Transparency

The Equator Principles were developed with the active participation of the World Bank Group’s International Finance Corporation (“IFC”) and require projects to be categorized per three levels of impact on the social and environmental landscape:

Category	Description
A	Potential significant adverse social or environmental impacts that are diverse, irreversible or unprecedented
B	Projects that are defined by the IFC as having potential limited adverse social or environmental impacts that are few in number, generally site-specific, largely reversible and readily addressed through well proven mitigation measures
C	These are projects that are defined by the IFC as having minimal, or no, social or environmental impacts

We note that the IFC have typically categorized transportation infrastructure projects as Category C or, when delivered in non-OECD countries, potentially Category B. Since we believe the likely significant concern of the IFC for the Project will be environmental risk we believe for the Project, the mitigation of these concerns has been confirmed by the due diligence of the Environmental, Hazardous Materials and Geotechnical investigations that have already been completed.

Please refer to Section 6 of this Report where we have reviewed the site investigation reports carried out on behalf of the Port Authority.

The Port Authority received a FONSI/ROD for the wider JFK International Airport Redevelopment Program. The FONSI/ROD represents the FAA’s determination that the Project will have no significant environmental impacts based on the results of the Final EA, dated April 20, 2020.

#300 - 30 E 6th Avenue, Vancouver, BC Canada V5T 1J4 | 604 734 3126

*This Report has been prepared at the request of JFK Millennium Partners on behalf of the Project Lenders and is the exclusive property of BTY Group, which is the owner of the intellectual property rights relating to this Report. The Report must be treated as confidential and proprietary information of BTY Group and it may not be disclosed, reproduced or permitted to be disclosed to any party without the prior consent of BTY Group.*



## 12.2 APPLICATION OF EQUATOR PRINCIPLES

The environmental and project approval processes for new transportation infrastructure projects in the United States meet the requirements of the Equator Principles.

The Project has benefited from the public process that was mandated by the FAA via the NEPA process, which also satisfied the requirements of the City of New York and the Borough of Queens. We consider that the proposed development will have a very low negative social/environmental impact. Since the Project will improve the public's access to aviation services, it is considered that the overarching social impact is positive. We also report that because the Project will be delivered as a LEED Silver certified project, the environmental impacts are demonstrated as also positive.

We are of the opinion that the Project should be designated Category C rather than Category B for the following reasons:

- The planning has occurred in an OECD country with well-established regulations;
- No significant negative social impacts are perceived that warrant specific analysis;
- Construction activities will be appropriately controlled by means of conscientious and well-developed regulations;
- The project will be delivered by a team that is well experienced in meeting required regulatory process;
- The Project is being delivered under the auspices of a government regulated authority and meeting federal/state/city requirements will be high on their agenda;
- Following completion of the Project there will be minimal new emissions and the potential for sanitary and storm-water pollution will be remote.

## 12.3 CONCLUSION

The appropriate categorization for the Project is Category C where the project has "minimal or no social or environmental impacts" as defined by the IFC guidelines which categorizes the Project as having minimal, or no, social or environmental impacts.



## 13.0 Documentation

We have completed this review based on an examination of the following documents, amongst others:

- a) Lease, Execution Version, dated November 17, 2022 and Supplemental Agreement, dated June 15, 2023;
- b) Section A – Requirements & Provisions for Design and Construction Work – General Provisions;
- c) Section B – Requirements & Provisions for Design and Construction Work – Technical Requirements;
- d) Section C – Operations & Maintenance Term Requirements;
- e) Design-Build Agreement, Execution Version, dated November 17, 2022;
- f) Management Services Agreement, Execution Version, dated November 17, 2022;
- g) 2021-10-28\_Vantage BA Cooperation Agreement Executed, dated October 28, 2021;
- h) 2022-07-21\_JFK T7\_Amendment to BA Cooperation Agreement\_DRAFT, dated July 21, 2022;
- i) Preliminary Geotechnical Data Report (Revision 2), dated October 11, 2019;
- j) Environmental Document Review Report for Terminal 7, dated May 2020;
- k) Environmental Document Review Report for Terminal 6, dated May 2020;
- l) Finding of No Significant Impact Record of Decision, dated April 21, 2020;
- m) Terminal 6 Development Comprehensive Basis of Design (Revision 02), dated August 13, 2021;
- n) DESIGN\_2021-08-02\_JFK T6-T7\_15% Piles and Foundations, dated August 2, 2021;
- o) DESIGN\_2021-08-02\_JFK T6-T7\_15% Electrical, dated August 31, 2021;
- p) DESIGN\_2021-08-02\_JFK T6-T7\_15% Mechanical, dated August 31, 2021;
- q) DESIGN\_2021-08-02\_JFK T6-T7\_30% Structural, dated September 9, 2021;
- r) 2022-08-30\_JFK T6 Detailed Baseline Appendix B-Detailed Schedule\_DRAFT;
- s) 2022-08-30\_JFK T6 Detailed Baseline Appendix C-Critical Path\_DRAFT;
- t) 2022-09-09\_Project Cost Summary\_Financial Close;
- u) 2022-03-31\_JFK T6\_GMP\_Cashflow\_Worksheet;
- v) 2022-03-29\_JFK T6 – GMP – Clarifications – Working File;
- w) 01\_GMP Summary and Estimate Detail, dated March 25, 2022;
- x) 02\_Estimate Comparisons, dated March 25, 2022;
- y) Exhibit A – Estimate Summary (Core & Shell vs Fit-Out vs West Concourse), dated March 25, 2022;
- z) Exhibit B – Estimate Summary (Grouped by Estimate Type), dated March 25, 2022;
- aa) Design-Build Agreement Interim Agreement, dated August 24, 2021;
- bb) OM Forecast – V17 – Final;



- cc) 2022-03-02\_Lifecycle\_Model Template\_Vantage\_opportunities\_A12;
- dd) 2022-03-10\_LCC Model Output Comparison Summary\_Adjusted rev1;
- ee) 2022-03-23\_JFK T6\_Handback Calculation\_V4;
- ff) Construction Coordination Agreement, Execution Version;
- gg) 2022-05-27\_SDR\_Terminal Piles & Foundations\_Final Report\_SSSS\_JFK-T6\_Building;
- hh) 2022-5-27\_SDR\_Terminal & Piles Foundations\_100970701\_JFK T6 – Geotechnical Report FINALS+S;
- ii) 2022-08-11\_JFK T7 Conditions Assessment Report\_FINAL;
- jj) 2022-09-01\_Proposed\_Terminal 7 Path to Closure\_Enviro;
- kk) 2024-09-17 Monthly Construction Progress Report – August (2024); and
- ll) JFK\_T6 – Monthly Report #22 – SEPTEMBER 2024 (FINAL).





## 14.0 Reliance on Report

This report has been prepared by BTY US LLC at the request of JFK Millennium Partners, LLC (the “Sponsor”) for the reliance of the Lenders. “Lenders” means the financiers, which may comprise banks and/or bond investors, underwriters and/or monolines and/or related parties, such as rating agencies, providing financing for the Project, either directly or indirectly (through one or more intermediaries) to the Lessee. The Lenders are to provide debt finance to the Lessee in connection with the Project.

This report has been prepared in accordance with the scope of BTY’s engagement with the Sponsor and is subject to the terms of that appointment. This report is for the sole and confidential use and reliance of the Sponsor and the Lenders. BTY, its directors, staff or agents do not make any representation or warranty as to the factual accuracy of the information provided to us on behalf of the Lessee, its sub-contractors or agents, or the Port Authority, upon which this report is based.

This report shall not be reproduced or distributed to any party other than the recipients outlined above, without the express permission of BTY, provided that the report may be disclosed, on a non-reliance basis, to any third party to the extent such disclosure relates to the Project or the financing of the Project, or otherwise to the extent required pursuant to law, regulation, judicial or governmental order, or in a judicial or governmental proceeding.

Any advice, opinions, or recommendations within this document should be read and relied upon only in the context of this report as a whole. The contents of this report do not provide legal, insurance or tax advice or opinion.

This report is intended to provide a review of the fundamental technical features of the Project and provide an overview of the risks and mitigants of the Developer’s approach with regards to the construction and operation of the Project.



**APPENDIX 1**

# Progress Photos



**BTY.COM**

NORTH AMERICA | EUROPE

---

**BUILDING** INTELLIGENCE

**(THIS PAGE INTENTIONALLY LEFT BLANK)**

**APPENDIX B-4**

**REPORT OF THE INSURANCE CONSULTANT**

**(THIS PAGE INTENTIONALLY LEFT BLANK)**



# LENDERS' INSURANCE ADVISOR REPORT

VERSION 1.2



**PREPARED FOR**  
**JFK Millennium Partners, LLC**

**On behalf of the Finance Parties**

**PROJECT**  
**JFK Terminal 6 Redevelopment Project**

**PREPARED BY**  
INTECH Risk Management GmbH  
St. Veiter Ring 1A  
9020 Klagenfurt  
Austria

TEL: +43 463 203 055 10  
[www.intechrisk.com](http://www.intechrisk.com)

**SUBMITTED BY**  
**Sarah Roberts**  
**President**

TEL: +43 463 203 055 10  
EMAIL: [sroberts@intechrisk.com](mailto:sroberts@intechrisk.com)

October 9, 2024

PROTECT. OPTIMIZE. EVOLVE.

---

## TABLE OF CONTENTS

<b>LEGAL NOTICE</b> .....	<b>5</b>
<b>EXECUTIVE SUMMARY</b> .....	<b>6</b>
<b>1.0 REPORT VERSION</b> .....	<b>7</b>
<b>2.0 RELIANCE</b> .....	<b>7</b>
<b>3.0 PROJECT DESCRIPTION</b> .....	<b>8</b>
<b>4.0 DOCUMENTS REVIEWED</b> .....	<b>8</b>
4.1 AGREEMENTS & OTHER RELEVANT DOCUMENTS .....	8
4.2 INSURANCE .....	9
<b>5.0 REQUIRED INSURANCE – LEASE AGREEMENT</b> .....	<b>11</b>
5.1 D&C WORK INSURANCE .....	11
5.2 REQUIRED INSURANCE DURING THE ENTIRE TERM .....	16
5.3 CONTRACTOR INSURANCE REQUIREMENTS .....	22
5.4 DEDICATED INSURANCE .....	23
5.5 OTHER REQUIREMENTS AS TO INSURANCE POLICIES .....	23
<b>6.0 REQUIRED INSURANCE – DESIGN BUILD AGREEMENT</b> .....	<b>24</b>
6.1 DEVELOPER PROVIDED COVERAGE .....	25
6.1.1 <i>Owner Controlled Insurance Program (OCIP)</i> .....	25
6.1.2 <i>Developer Election Not to Proceed with OCIP</i> .....	26
6.1.3 <i>Builder’s Risk Insurance</i> .....	27
6.1.4 <i>Pollution Legal Liability Insurance</i> .....	28
6.1.5 <i>Design-Builder Insurance Requirements</i> .....	29
6.1.5.1 General Requirements.....	29
6.1.6 <i>Required Limits and Coverages</i> .....	31
6.1.7 <i>Additional Insureds</i> .....	38
6.1.8 <i>Restrictions on Insurance</i> .....	38
6.1.9 <i>Certain Endorsements</i> .....	38
6.1.10 <i>Review by the Developer</i> .....	39
6.1.11 <i>Notices</i> .....	39
6.1.12 <i>Compliance with Insurance Policies</i> .....	40
6.1.13 <i>Developer’s Right to Insure</i> .....	40
<b>7.0 REQUIRED INSURANCE – MANAGEMENT SERVICES AGREEMENT</b> .....	<b>41</b>
7.1 INSURANCE PROCURED BY THE MANAGER.....	41
7.2 LESSEE INSURANCE .....	41
<b>8.0 REQUIRED INSURANCE – COLLATERAL AGENCY AND ACCOUNTS AGREEMENT</b> .....	<b>42</b>
<b>9.0 REVIEW OF THE LTA REPORT</b> .....	<b>42</b>



<b>10.0</b>	<b>REQUIRED INSURANCE – BUILDING BOND LOAN AGREEMENT .....</b>	<b>43</b>
<b>11.0</b>	<b>REQUIRED INSURANCE – PROJECT BOND LOAN AGREEMENT .....</b>	<b>43</b>
<b>12.0</b>	<b>REQUIRED INSURANCE – COMMON TERMS AGREEMENT .....</b>	<b>43</b>
<b>13.0</b>	<b>REQUIRED INSURANCE – CREDIT AGREEMENT .....</b>	<b>45</b>
<b>14.0</b>	<b>REQUIRED INSURANCE – INTERCREDITOR AGREEMENT .....</b>	<b>45</b>
<b>15.0</b>	<b>REQUIRED INSURANCE – INSURANCE WAIVER LETTER.....</b>	<b>45</b>
<b>16.0</b>	<b>INSURANCE PROGRAM .....</b>	<b>46</b>
16.1	D&C WORK POLICIES.....	46
16.1.1	<i>Builder’s Risk.....</i>	46
16.1.2	<i>Commercial General Liability (OCIP).....</i>	51
16.1.3	<i>Worker’s Compensation and Employer’s Liability.....</i>	53
16.1.4	<i>Umbrella and Excess Liability.....</i>	54
16.1.5	<i>Terrorism Only (Construction Exposure).....</i>	56
16.1.6	<i>Director’s and Officers Insurance.....</i>	59
16.1.7	<i>Nuclear, Chemical, Biological &amp; Radiological (NCBR) – Construction Exposure.....</i>	60
16.1.8	<i>Professional Liability.....</i>	61
16.1.8.1	<i>Designer - AECOM.....</i>	61
16.1.8.2	<i>Design-Builder – CPPI Policy.....</i>	62
16.1.8.3	<i>Lessee’s Insurance – Owners’ Protective Professional Indemnity.....</i>	63
16.1.9	<i>Lead Architect’s Insurance.....</i>	64
16.1.9.1	<i>Commercial General Liability.....</i>	64
16.1.9.2	<i>Automobile Liability.....</i>	66
16.1.9.3	<i>Umbrella Liability.....</i>	67
16.1.9.4	<i>Workers Compensation and Employer’s Liability .....</i>	69
16.1.9.5	<i>Crime.....</i>	70
16.1.9.6	<i>Cyber Insurance .....</i>	71
16.1.10	<i>Design-Builder’s Insurance.....</i>	71
16.1.10.1	<i>Commercial General Liability.....</i>	71
16.1.10.2	<i>Automobile Liability .....</i>	72
16.1.10.3	<i>Umbrella and Excess Liability .....</i>	73
16.1.10.4	<i>Workers Compensation and Employer’s Liability.....</i>	75
16.1.10.5	<i>Contractor’s Equipment.....</i>	75
16.1.10.6	<i>Contractor’s Pollution.....</i>	76
16.1.11	<i>AECOM Insurance.....</i>	76
16.1.11.1	<i>Commercial General Liability.....</i>	76
16.1.11.2	<i>Automobile Liability .....</i>	77
16.1.11.3	<i>Workers Compensation and Employer’s Liability.....</i>	78
16.2	INSURANCE IN PLACE FOR THE TERM – TERMINAL 7 OPERATIONAL POLICIES.....	79
16.2.1	<i>All Risks Property.....</i>	79
16.2.2	<i>Terrorism Only (Terminal 7 Operational).....</i>	81
16.2.3	<i>Nuclear, Chemical, Biological &amp; Radiological (NCBR).....</i>	82
16.2.4	<i>Aviation Liability.....</i>	84
16.3	INSURANCE IN PLACE FOR THE TERM.....	85

16.3.1	<i>Commercial Crime Insurance</i> .....	85
16.3.2	<i>Cyber and Privacy Insurance (Primary)</i> .....	87
16.3.3	<i>Cyber and Privacy Insurance (Excess)</i> .....	88
16.3.4	<i>Contractor's Pollution Liability</i> .....	89
16.3.5	<i>Excess Contractor's Pollution Liability</i> .....	91
16.3.6	<i>Automobile Liability</i> .....	92
<b>17.0</b>	<b>DEDUCTIBLES AND SELF-INSURED RETENTIONS</b> .....	<b>93</b>
<b>18.0</b>	<b>RATINGS FOR INSURERS</b> .....	<b>93</b>
<b>19.0</b>	<b>UNAVAILABILITY OF INSURANCE</b> .....	<b>93</b>
<b>20.0</b>	<b>INSURANCE PREMIUM BENCHMARKING</b> .....	<b>94</b>
<b>21.0</b>	<b>FINANCE PARTIES PROTECTION</b> .....	<b>94</b>
21.1	FINANCE PARTIES' PROTECTION UNDER THE REQUIRED INSURANCE – D&C WORK.....	94
21.2	FINANCE PARTIES' PROTECTION UNDER THE REQUIRED INSURANCE – OPERATIONAL INSURANCES.....	95
21.3	FINANCE PARTIES' PROTECTION UNDER THE REQUIRED INSURANCE – OTHER TERM INSURANCES .....	95
<b>22.0</b>	<b>SUPERVENING EVENTS UNDER THE LEASE AGREEMENT</b> .....	<b>96</b>
22.1	COMPENSATION EVENTS .....	96
22.2	DELAY EVENTS.....	100
22.3	FORCE MAJEURE .....	101
<b>23.0</b>	<b>CONCLUSION</b> .....	<b>103</b>
	<b>APPENDICES – EVIDENCE OF INSURANCE</b> .....	<b>105</b>

## LEGAL NOTICE

This report does not constitute legal advice or legal opinion, nor shall any statement made herein be deemed to be or relied upon as legal advice.

This report is supplied solely for the use of any of the Relevant Parties (defined in Reliance section below) in accordance with the terms of the Reliance section below for the purposes of providing financing for the Project and is not to be otherwise circulated, quoted, relied upon or referred to without the express written consent of INTECH Risk Management GmbH.

This report is subject to and shall be construed in accordance with the laws of the State of New York.

## EXECUTIVE SUMMARY

DATE:	October 9, 2024
FILE NUMBER:	VANT001
PROJECT:	JFK Terminal 6 & 7 Redevelopment Project (“the Project”)
LOCATION:	John F. Kennedy International Airport (“JFK”) Queens, New York City
AUTHORITY:	Port Authority of New York and New Jersey (“Port Authority” or “Authority”)
BORROWER OR PROJECT CO:	JFK Millennium Partners, LLC
DESIGN BUILDER:	Hunt Construction Group, Inc., (“Design-Builder”)
DEVELOPER:	JFK Millennium Partners, LLC (“Developer”)
SENIOR COLLATERAL AGENT:	The Bank of New York Mellon
INTERCREDITOR AGENT:	The Bank of New York Mellon
ADMINISTRATIVE AGENT:	ING Capital, LLC (“Administrative Agent”)
LESSEE:	JFK Millennium Partners, LLC (“Lessee”)
MANAGER:	Vantage Airport Group (JFK) Ltd (“Manager”)
INTECH COMMENTS:	INTECH are of the opinion that the proposed insurance coverage and limits outlined in this report, in respect of the construction and operation phases, are appropriate for a project of this nature and size and nature.

## 1.0 REPORT VERSION

VERSION	DRAFTED BY	REVIEWED BY	DATE
1.0	Kate Prendergast Nadia Alizadeh	Sarah Roberts	September 18, 2024
1.1	Kate Prendergast Nadia Alizadeh	Sarah Roberts	September 26, 2024
1.2	Nadia Alizadeh	Sarah Roberts	October 09, 2024

## 2.0 RELIANCE

INTECH Risk Management GmbH (“INTECH”) has prepared this Lenders’ Insurance Advisor Report (“Report”) at the request of the Project Co, in connection with the Project.

The following listed parties (collectively, the “Relevant Parties”):

- (a) Project Lenders, defined as:
  - (i) prospective and actual providers of financing to the Project, including, without limitation, underwriters, bondholders, bank lenders, and other financing providers for the Project, and any security trustee or agent;
  - (ii) insurers or other providers of credit enhancement in connection with the financing of the Project; and
  - (iii) rating agencies
- (b) the Project Co;
- (c) each member of the Project Co;
- (d) any person that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with Vantage or RXR;
- (e) JetBlue Airways Corporation and its affiliates;
- (f) American Triple I Partners, LLC and its affiliates and any funds controlled by such entity;
- (g) possible, prospective, or actual other equity investors in the Project;
- (h) and each of their respective advisors,

are irrevocably entitled to use, refer to, and rely on the Report in accordance with INTECH’s engagement with the Project Co.

INTECH irrevocably authorizes and gives consent to any Relevant Party to provide or otherwise disclose the Report to third parties, solely to the extent it relates to the Project or the financing of the Project, provided that this authorization and consent to disclose the Report to a third party shall not confer upon such third party (other than any Relevant Party) any right to rely on the Report and any reliance thereon shall be at the sole risk of such third party and without liability to INTECH and further provided that the Relevant Parties may provide or otherwise

disclose the Report to the extent required pursuant to law, regulation, judicial or governmental order, or in a judicial or governmental proceeding.

## 3.0 PROJECT DESCRIPTION

John F. Kennedy International Airport (“JFK”) is the largest international gateway airport in the United States and the largest airport serving the New York City region with approximately 62.5 million passengers served in 2019.

A new Terminal 6 was officially approved by the PA Board of Directors and the Port Authority has entered into a lease agreement with JFK Millennium Partners, LLC, the private consortium that is responsible for financing, developing, and operating the new terminal.

The full approximately \$5.0 billion expense of building the terminal will be privately financed by JFK Millennium Partners. It will be built on the sites of the former Terminal 6, which was demolished in 2011, and the aging Terminal 7, which will be demolished once the new Terminal 6 Phase 1 construction is complete.

For this project, Vantage has partnered with American Triple I (ATI), a 100% minority and woman owned investor and developer, RXR Realty, a leading New York commercial real estate development firm, and JetBlue Airlines, with AECOM Hunt as the design-build team.

Together with the Port Authority, JFK Millennium Partners has the exciting opportunity to bring yet another world-class airport terminal to life in the New York metro area, through intuitive, sustainable terminal design, best-in-class operations, and more than 100,000 square feet of exceptional, New York inspired customer amenities.

## 4.0 DOCUMENTS REVIEWED

As part of our review, we have reviewed the following documentation:

### 4.1 Agreements & Other Relevant Documents

- Lease Agreement dated November 17, 2022, between The Port Authority of New York (“Port Authority”) and New Jersey and JFK Millennium Partners, LLC (“Lessee”) Execution Version including the Supplemental Agreement dated June 15, 2023 (“Lease Agreement”);
- Design Build Agreement dated November 17, 2022 between JFK Millennium Partners, LLC, (“Developer”), and Hunt Construction Group, Inc., (“Design-Builder”);
- Management Services Agreement between JFK Millennium Partners, LLC (“Lessee”) and Vantage Airport Group (JFK) Ltd (“Manager”), dated November 17, 2022 (“Management Services Agreement”);
- Collateral Agency and Accounts Agreement among JFK Millennium Partners LLC (“Borrower”), The Bank of New York Mellon (“Senior Collateral Agent”), The Bank of New York Mellon (“Securities Intermediary”), The Bank of New York Mellon (“Intercreditor Agent”), The Bank of New York Mellon (“Trustee”), ING Capital LLC, (“Administrative Agent”), The Bank of New York Mellon (“Deposit Account Bank”) and New York Transportation Development Corporation (“Issuer”) dated November 1, 2022 (“Collateral Agency and Accounts Agreement”), and draft First Amendment to Collateral Agency and Accounts Agreement;

- Lender Technical Advisor Report V1.2, JFK Terminal 6 & 7 Redevelopment Project, prepared for JFK Millennium Partners on behalf of the Project Lenders, dated September 27, 2024 (“LTA Report”);
- TDC Building Loan Agreement between New York Transportation Development Corporation (“Issuer”) and JFK Millennium Partners, LLC (“Borrower”), dated November 1, 2022 (“Building Bond Loan Agreement”), and draft First Amendment to Building Loan Agreement;
- TDC Project Loan Agreement between New York Transport Development Corporation (“Issuer”) and JFK Millennium Partners, LLC (“Borrower”), dated November 1, 2022 (“Project Bond Loan Agreement”), and draft First Amendment to Project Loan Agreement;
- Common Terms Agreement by and among New York Transportation Development Corporation (“Issuer”), JFK Millennium Partners, LLC (“Lessee”), The Bank of New York Mellon (as “Senior Collateral Agent” and as “Intercreditor Agent”), ING Capital. LLC (“Administrative Agent”), Royal Bank of Canada (“Series 2022D Bondholder”) and The Financial Institutions named therein, dated November 1, 2022 (“Common Terms Agreement”);
- Credit Agreement dated November 1, 2022 by and among New York Transportation Development Corporation (“Issuer”), JFK Millennium Partners, LLC (“Lessee”), ING Capital. LLC (“Administrative Agent”), ING Capital, LLC, Keybank National Association, MUFG Bank Ltd., Standard Chartered Bank, Sumitomo Mitsui Banking Corporation and The Bank of Nova Scotia, (“Coordinating Lead Arrangers” and “Joint Bookrunners”), Bank of China, New York Branch (“Senior Joint Lead Arranger”), JPMorgan Chase Bank N.A., and Mizuho Bank, Ltd. (“Joint Lead Arrangers”), Industrial and Commercial Bank of China Limited, New York Branch and Landesbank Baden-Württemberg, New York Branch (“Mandated Lead Arrangers”) and Siemens Financial Services, Inc. (“Senior Managing Agent”) and The Financial Institutions named therein (“Lenders” and “Security Deposit Facility LC Issuing Bank”) (“Credit Agreement”);
- Intercreditor Agreement by and among JFK Millennium Partners LLC (“Lessee”), The Bank of New York Mellon (“Trustee”), ING Capital LLC (“Administrative Agent”), The Bank of New York Mellon (“Intercreditor Agent”), The Bank of New York Mellon (“Senior Collateral Agent”), ING Capital Markets LLCM JPMorgan Chase Bank, N.A., Keybank National Association, Mizuho Capital Markets LLC, MUFG Bank, Ltd., Royal Bank of Canada, SMBC Capital Markets Inc., and the Bank of Nova Scotia (“Hedge Providers”) and Each Other Person Party Hereto from Time to Time, Execution Version dated November 1, 2022 (“Intercreditor Agreement”), and draft First Amendment to Intercreditor Agreement;
- Letter from The Port Authority of New York and New Jersey to JFK Millennium Partners, LLC dated November 17, 2022 (“Insurance Waiver Letter”);

## 4.2 Insurance

- Certificate of Insurance issued by Marsh USA, Inc., evidencing Builder’s Risk Insurance, certificate number TBC, dated October 18, 2022;
- Certificate of Insurance issued by Marsh USA, LLC., evidencing Commercial General Liability, certificate number NYC-011857797-03, dated October 18, 2022;
- Certificate of Insurance issued by Marsh USA LLC, evidencing Commercial General Liability, worker’s Compensation, certificate number NYC-011857797-03, dated October 18, 2022;
- Certificate of Insurance issued by Marsh USA LLC, evidencing Umbrella Liability, certificate number NYC-011857797-03, dated October 18, 2022;
- Certificate of Insurance issued by Marsh USA LLC, evidencing Excess Liability, certificate number NYC-011857797-03, dated October 18, 2022;
- Certificate of Insurance issued by Marsh USA LLC, evidencing Cyber Insurance and Excess Liabilities, certificate number NYC-011857797-03, dated October 18, 2022;

- Certificate of Insurance, issued by Marsh USA LLC , evidencing Contractor's Pollution Liability, certificate number NYC-011857797-03, dated October 18, 2022;
- Certificate of Insurance, issued by Marsh USA LLC , evidencing Protective Professional Indemnity, certificate number NYC-011857797-03, dated October 18, 2022;
- Certificate of Insurance issued by Marsh USA LLC, evidencing Director's & Officers, certificate number NYC-011857797-03, dated October 18, 2023;
- Certificate of Insurance issued by Marsh USA LLC, evidencing Construction Terrorism and Excess Liabilities, certificate number NYC-011857797-03, dated October 18, 2023;
- Certificate of Insurance issued by Marsh USA LLC, evidencing Construction NBCR and Excess Liabilities, certificate number NYC-011857797-03, dated October 18, 2023;
- Certificate of Insurance issued by Marsh USA LLC, evidencing Commercial General Liability, dated December 01, 2022;
- Certificate of Insurance issued by Marsh USA LLC, evidencing Automobile Liability, dated March 03, 2024;
- Certificate of Insurance issued by Marsh USA LLC, evidencing Umbrella Liability, dated December 01, 2022;
- Certificate of Insurance issued by Marsh USA LLC, evidencing Operational terrorism, dated December 01, 2023;
- Certificate of Insurance issued by Marsh USA LLC, evidencing Operational NBCR, dated December 01, 2023;
- Endorsement of Construction Liability Insurance, form Number 25, issued by Marsh USA, Inc, dated October 18, 2022;
- Endorsement of Construction Liability Insurance, policy Number 100025990221, issued by Marsh USA, Inc.;
- Endorsement of NCBR Insurance, policy Number B0509BOWTN2250815, issued by Marsh USA, Inc,
- Endorsement of Terrorism Insurance, Policy Number B0509BOWTN2250814, issued by Marsh USA, Inc.;
- Endorsement of Builder's Risk, issued by Marsh USA, Inc, dated October 18, 2022;
- Endorsement of Pollution Liability Insurance, Policy Number MKLV1ENV103666, issued by Marsh USA, Inc.;
- Endorsement of Operational TBC Insurance, Policy Number B0509BOWTN2350863, issued by Marsh USA, Inc;
- Certificate of Insurance issued by Arthur J. Gallagher Risk Management Services, LLC, evidencing Commercial General Liability, certificate number 1903366065, dated September 01, 2024;
- Certificate of Insurance issued by Arthur J. Gallagher Risk Management Services, LLC, evidencing Automobile Liability, certificate number 1903366065, dated September 01, 2024;
- Certificate of Insurance issued by Arthur J. Gallagher Risk Management Services, LLC, evidencing Umbrella Liability, certificate number 1903366065, dated September 01, 2024;
- Certificate of Insurance issued by Arthur J. Gallagher Risk Management Services, LLC, evidencing Worker's compensation and Employer's Liability, certificate number 1903366065, dated September 01, 2024;
- Certificate of Insurance issued by Arthur J. Gallagher Risk Management Services, LLC, evidencing Contractor's Pollution, certificate number 1903366065, dated September 01, 2024;
- Certificate of Insurance issued by Arthur J. Gallagher Risk Management Services, LLC, evidencing Contractor, equipment, certificate number 1903366065, dated September 01, 2024;
- Certificate of Insurance issued by Insurance Partners Inc., evidencing Contractor's Protective and Professional Liability, certificate number CL22111004983, dated November 17, 2024;



- Certificate of Insurance issued by Marsh Risk & Insurance Services, evidencing Commercial general Liability, certificate number LOS-002653631-08, dated April 01, 2024;
- Certificate of Insurance issued by Marsh Risk & Insurance Services, evidencing Auto Liability, certificate number LOS-002653631-08, dated April 01, 2024;
- Certificate of Insurance issued by Marsh Risk & Insurance Services, evidencing Umbrella Liability, certificate number LOS-002653631-08, dated April 01, 2024;
- Certificate of Insurance issued by Marsh Risk & Insurance Services, evidencing Architects & Engineers, certificate number LOS-002653631-08, dated April 01, 2024;
- Certificate of Insurance issued by Marsh Risk & Insurance Services, evidencing Professional Liability, certificate number LOS-002653631-08, dated April 01, 2024;
- Certificate of Insurance issued by CORE Insurance Group, evidencing Commercial General Liability, certificate number 466989007, dated January 01, 2024;
- Certificate of Insurance issued by CORE Insurance Group, evidencing Automobile Liability, certificate number 466989007, dated January 01, 2024;
- Certificate of Insurance issued by CORE Insurance Group, evidencing Umbrella Liability, certificate number 466989007, dated January 01, 2024;
- Certificate of Insurance issued by CORE Insurance Group, evidencing Worker's Compensation and Employer's Liability, certificate number 466989007, dated January 01, 2024;
- Certificate of Insurance issued by CORE Insurance Group, evidencing Crime Liability, certificate number 466989007, dated January 01, 2024;
- Certificate of Insurance issued by CORE Insurance Group, evidencing Cyber Insurance, certificate number 466989007, dated January 01, 2024;
- Endorsement of Aviation Liability Insurance, policy Number AAP N10702859 001, issued by Marsh USA, Inc.;
- Endorsement of NCBR Insurance, policy Number B0509BOWTN2250815, issued by Marsh USA, Inc.;
- Endorsement of All Risk Property Insurance, policy Number 14055510, issued by Marsh USA, Inc.;
- Endorsement of Construction Terrorism, Policy Number B0509BOWTN2250812, issued by Marsh USA, Inc.;
- Endorsement of Operational Terrorism, Policy Number B0509BOWTN2250853, issued by Marsh USA, Inc.;

## 5.0 REQUIRED INSURANCE – LEASE AGREEMENT

The Lessee shall procure and maintain, or cause to be procured and maintained, the insurance policies set forth in Section 12 (Insurance) strictly in accordance with the minimum coverage requirements and terms of coverage as set forth in Section 12 (Insurance). Each insurance policy required to be procured and maintained in accordance with Section 12 (Insurance) shall be effective on the Effective Date (or such other date to the extent specified in this Agreement) and, except with respect to the insurance policies described in Section 12(a)(2) and Section 12(a)(3) (which shall be maintained throughout the D&C Work Period or as otherwise specified therein) and to the extent otherwise explicitly specified in this Agreement, maintained throughout the Term.

### 5.1 D&C Work Insurance

The Lessee shall procure, maintain and pay for, or cause its Contractors to procure, maintain and pay for, the following insurance policies until completion of the D&C Work and for such longer period of time as specified herein:

Type of Insurance	Details of Coverage	Sum Insured/Deductible
Commercial General Liability Insurance	<p>Written on an occurrence form, which shall include products/completed operations for a period of not less than six (6) years after the Completion Date, premises - operations, acts of Terrorism, NBCR, explosion, collapse and underground property damage, independent contractors coverage, blanket contractual liability, covering the obligations assumed by the Lessee, bodily injury, including death, and property damage liability, broadened to include (or equivalent separate policies covering) sprinkler leakage legal liability and water damage legal liability (including damage caused by water and any other substance discharged from any part of the fire protective equipment for the Premises covering operations at both Existing Terminal Facilities or any portion thereof prior to demolition thereof, and all or any portion of the New Terminal Facilities as they are completed, or the collapse or fall of tanks forming part thereof, or the component parts or supports of such tanks) none of the foregoing to contain exclusions pertaining to:</p> <p>(1) "action-over" claims,                      (2) damage to aircraft (including aircraft in the care, custody or control of the Lessee),                      (3) "insured vs. insured" suits, or                      (4) demolition.</p>	<p>\$300,000,000 – Combined single limit per occurrence and in the aggregate for death, personal injury, bodily injury and property damage liability</p> <p>\$300,000,000 – Products-Completed Operations aggregate</p> <p>Maximum limit then available in the market (subject to section 12(d)(13)) - NBCR</p>
Commercial Automobile Liability Insurance	<p>Covering owned, non-owned and hired vehicles and including automatic coverage for newly acquired vehicles.</p>	<p>\$25,000,000 – Combined single limit per occurrence and in the annual aggregate for death, bodily injury and property damage liability for vehicles on the airside</p>
Pollution Legal Liability Insurance	<p>Claims made policy with a six (6) year policy term (renewable annually thereafter) and OCIP Contractors Pollution Liability (occurrence) policy with a six (6) year policy term, which shall include completed operations for six (6) years after Substantial Completion of the Project providing</p>	<p>\$100,000,000 – Combined single limit per incident and in the aggregate with linked limits for each policy</p>

Type of Insurance	Details of Coverage	Sum Insured/Deductible
	<p>coverage for bodily injury liability, property damage, environmental damage caused by pollution conditions on land, in air and on water, covering the Lessee, the D&amp;C Contractor and all tier sub-Contractors' pollution legal liability, including cleanup and Contractors Pollution Liability insurance covering the D&amp;C Work Period, which shall, as appropriate, include completed operations for a period of not less than six (6) years after the Completion Date, and exacerbation of known environmental conditions. Such coverage shall not contain a sunset provision, or any other provision, which would prohibit the reporting of a claim and the subsequent defense and indemnity that would normally be provided by the policy, shall "pay on behalf of" rather than "indemnify" the insured and shall include transportation coverage by or on the behalf of the Lessee for the loading and unloading and hauling of waste materials (including, without limitation, ACM and LCP) from the Premises to the final disposition location. Such coverage extensions shall be acceptable on a claims made basis.</p> <p>The pollution legal liability policy(ies) shall be expressly endorsed for this Agreement and transportation coverage for each transfer location and material disposition location.</p> <p>The pollution legal liability policy(ies) shall:</p> <p>(x) state that claim, disputes and coverage shall be litigated in United States courts having jurisdiction, and not be limited to arbitration and</p> <p>(y) subject to known conditions exclusions, acknowledge the Lessee's and its Contractors' disclosure to the insurance carrier of the presence on the Premises or activities or areas otherwise subject to the</p>	

Type of Insurance	Details of Coverage	Sum Insured/Deductible
	insurance policies of hazardous or toxic wastes or substances under Applicable Law including, but not limited to, the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. Section 6901 et. seq., the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. Section 9601 et. seq. and/or the Toxic Substances Control Act (“TSCA”), 15 U.S.C. Section 2601 et. seq.	
Professional Liability Insurance	On a claims-made basis with a ten (10)-year reporting/discovery period following the completion of each phase of the Construction Project, subject to a minimum policy term of ten (10) years, inclusive of D&C Work, which shall include a retroactive date that precedes the commencement of any Design Work and covering against liability, including acts, errors and omissions arising from professional services or work performed by or on behalf of the Lessee, the D&C Contractor, and any of its sub-Contractor, Lead Designer or any other Person employed by or on behalf of the Lessee, the D&C Contractor, sub-Contractor, or Lead Designer. All endorsements and exclusions shall be evidenced on the certificate of insurance, policy declaration page and schedule of endorsements (provided that premium amounts may be redacted therefrom)	\$75,000,000 – Combined single limit per claim and in the annual aggregate total limit in combination of policies carried by the Lessee, the D&C Contractor and/or the Lead Designer (provided that the policy carried by each of the Lessee, the D&C Contractor and the Lead Designer shall have a minimum limit of at least \$20,000,000)
Workers’ Compensation Insurance and Employer’s Liability Insurance	Each in accordance with the requirements of New York law. A waiver of subrogation, where legally permitted, shall be provided in favor of the Port Authority and the City Insureds	
Builder’s Risk Insurance	The Lessee shall procure, maintain, and pay premiums for, Builder’s Risk (all risk, including coverage for loss or damage by fire, collapse, lightning, windstorm, flood, earthquake, hail, acts of Terrorism, NBCR, explosion, underground property damage, riot, vandalism, malicious mischief, civil commotion, aircraft, vehicle impact, smoke, off premise service interruption, delay in	

Type of Insurance	Details of Coverage	Sum Insured/Deductible
	<p>startup, delay in completion, debris removal, valuable papers, pollutant cleanup and removal, professional fees, extra/expediting expenses, mold (to the extent ensuing from a separately covered cause of loss) and such other risks) on a Completed Value basis (except, with respect to NBCR, subject to Section 12(d)(13) (NBCR)) (non-reporting basis) with LEG III covering the D&amp;C Work during the performance thereof, including off site material, property in transit and delivered to the Premises but not attached to the realty, or existing property, until the D&amp;C Work is completed. Notwithstanding the foregoing, it is agreed by the Parties that in order to accommodate the construction phasing and sequencing of the D&amp;C Work, the Lessee shall be permitted to procure and maintain Builder’s Risk coverage at any given time only with respect to those phases of the D&amp;C Work which is being performed by the Lessee, and upon the issuance of a “Temporary Certificate of Authorization to Occupy or Use” in accordance with the TCAP Process with respect to any Partial Occupancy Portion, the Lessee shall no longer be required to maintain such policy with respect thereto; provided, that such Partial Occupancy Portion is, as of the date of issuance of the applicable “Temporary Certificate of Authorization to Occupy or Use”, subject to insurance coverage satisfying the applicable requirements set forth in subclauses (i) and (iii) of Section 12(a) (4) (Required Insurance During the Entire Term), such that no element, phase or completed portion shall be uninsured or underinsured with a Builder’s Risk policy or an all-risk property policy, as applicable, at any time.</p>	

## 5.2 Required Insurance During the Entire Term

During the Term (including any and all extensions thereof), the Lessee shall procure, maintain, and pay premiums on, the following insurance policies:

Type of Insurance	Details of Coverage	Sum Insured/Deductible
All-Risk Property Damage Insurance	<p>All-risk property damage insurance against all risk of loss, including, without limitation, coverage for acts of Terrorism, NBCR, flood, windstorm, storm surge, collapse, lightning, hail, ice, explosion, riot, vandalism, malicious mischief, civil commotion, Aircraft, smoke, fire and earthquake, and any other improvement constructed by the Lessee pursuant to this Agreement and all buildings, structures, improvements, installations, facilities, fixtures and equipment, furnishings and physical property owned, leased or within the care, custody or control of the Lessee and now or in the future located on or constituting a part of the Premises, with no coinsurance penalty provision.</p> <p>A waiver of subrogation, where legally permitted, shall be provided in favor of the Port Authority and the City Insureds.</p>	Full replacement cost (including all or any portion of the Existing Terminal Facilities prior to demolition thereof) (except, with respect to NBCR, subject to Section 12(d)(13) (NBCR)),
Boiler and Machinery Insurance	Covering all boilers, pressure-vessels and air conditioning and any other related equipment operated by the Lessee in or on the Premises (including all or any portion of the Existing Terminal Facilities prior to demolition thereof), including expedited expense, the policy or policies to be effective throughout the Term and to be in such form as may now or in the future be prescribed as of the effective date of said insurance by the rating organization having jurisdiction and/or fully compliant with any standards applied by the Commissioner of Financial Services of the State of New York in approving boiler and machinery policies for use by admitted insurers in the State of New York	In such amounts as to sufficiently cover the full inspection and replacement cost of such boilers, pressure-vessels and air conditioning and other related equipment
Business Interruption Insurance	On an Actual Loss Sustained basis written on an "all risks of physical loss" basis.	In an amount equal to the greater of (i) the gross rents payable by Sublessees of the

Type of Insurance	Details of Coverage	Sum Insured/Deductible
		<p>Premises for a period of three (3) years and (ii) the aggregate amount of Ground Rent, Second Additional Rent, Third Additional Rent and Concessions Revenue Rent payable by the Lessee hereunder for a three (3) year period with a waiting period of not greater than five (5) days for an interruption to ongoing operations of the Premises (including all or any portion of the Existing Terminal Facilities prior to demolition thereof) or continuing operations of surrounding Airport facilities</p>
<p>Commercial General Liability Insurance</p>	<p>Written on an occurrence form, which shall include products/completed operations, acts of Terrorism, NBCR, explosion, collapse and underground property damage, independent contractors coverage, blanket contractual liability, covering the obligations assumed by the Lessee, bodily injury, including death, and property damage liability, broadened to include (or equivalent separate policies covering) sprinkler leakage legal liability and water damage legal liability (including damage caused by water and any other substance discharged from any part of the fire protective equipment for the Premises covering operations at both Existing Terminal Facilities or any portion thereof prior to demolition thereof, and all or any portion of the New Terminal Facilities as they are completed or the collapse or fall of tanks forming part thereof, or the component parts or supports of such tanks), none of the foregoing to contain exclusions pertaining to (1) care, custody or control, (2) "action-over" claims, (3) damage to aircraft (including aircraft in the care, custody or control of the Lessee), or (4) "insured vs. insured" suits. Such insurance shall be broadened to include, or</p>	<p>\$300,000,000 – Combined single limit per occurrence and in the aggregate for death, personal injury, bodily injury and property damage liability</p> <p>Maximum limit then available in the market (subject to 12(d)(13)) – NBCR</p> <p><u>Cargo and Baggage Liability</u></p> <p>\$10,000,000 – Combined single limit per occurrence and in the aggregate each annual period for property loss of others</p>

Type of Insurance	Details of Coverage	Sum Insured/Deductible
Commercial Insurance      Automobile	<p>equivalent separate policies shall provide, cargo and baggage liability insurance</p> <p>Covering owned, non-owned and hired vehicles and including automatic coverage for newly acquired vehicles.</p>	<p>\$25,000,000 – Combined single limit per occurrence and in the annual aggregate for death, bodily injury and property damage liability for vehicles on the airside</p>
Pollution Insurance      Legal      Liability	<p>On an occurrence form (or alternatively, on a claims made basis with a ten (10) year reporting/discovery period) providing coverage for bodily injury liability, property damage and environmental damage caused by pollution conditions on land, in air and on water, covering the Lessee, the D&amp;C Contractor and all tier sub-Contractors' pollution legal liability, including cleanup and Pollution Legal Liability insurance covering the Term, which shall, as appropriate, include an extended reporting for a period of not less than ten (10) years after the Completion Date. Such coverage shall not contain a sunset provision, or any other provision, which would prohibit the reporting of a claim and the subsequent defense and indemnity that would normally be provided by the policy, shall "pay on behalf of" rather than "indemnify" the insured and shall include transportation coverage by or on the behalf of the Lessee for the loading and unloading and hauling of waste materials (including, without limitation, ACM and LCP) from the Premises to the final disposition location.</p> <p>The pollution legal liability policy(ies) shall be expressly endorsed for this Agreement and transportation coverage for each transfer location and material disposition location.</p> <p>The pollution legal liability policy(ies) shall (x) state that claims, disputes and coverage shall be litigated in United States courts having jurisdiction, and not be limited to arbitration and (y) acknowledge the</p>	<p>\$100,000,000 – Combined single limit per incident and in the aggregate</p> <p>the Lessee shall cause each of its Contractors (and any such Contractor's subcontractors) that operate, maintain or service any fuel tanks or fuel distribution systems on the Premises to provide Contractors Pollution Liability insurance protecting itself, the Port Authority and the City Insureds in an amount no lower than \$100,000,000</p>



Type of Insurance	Details of Coverage	Sum Insured/Deductible
	<p>Lessee's disclosure to the insurance carrier of the presence on the Premises or activities or areas otherwise subject to the insurance policies of materials that may be considered hazardous or toxic wastes or substances under Applicable Law, including, but not limited to, RCRA, CERCLA and/or TSCA.</p>	
<p>Liquor Liability Insurance</p>	<p>To the extent the same applies to the operations of the Lessee.</p>	<p>\$10,000,000 – Combined single limit per occurrence and in the aggregate each annual period for death, bodily injury and property damage liability</p>
<p>Cyber Liability, Network Security and Data Breach Insurance, including Technology Errors and Omissions (if applicable)</p>	<p>Lessee shall require each of Lessee's Contractors (other than sub-Contractors) that connects to any of the Port Authority's infrastructure systems or implements any computer system, network or similar computer-related property within the New Terminal Facilities, including, without limitation, any such system, network or similar computer-related property of the Lessee, and the data, software and programs stored thereon (whether in operational or in testing mode) (any such Contractor, an "<b>Applicable Contractor</b>"), to pay premiums for and maintain Cyber Liability, Network Security and Data Breach Insurance including Technology Errors and Omissions with the minimum limit of \$5,000,000 per occurrence with respect to such Applicable Contractor; <u>provided, however,</u> that (x) Lessee shall require each <b>Airline Sublessee</b> to pay premiums for and maintain Cyber Liability, Network Security and Data Breach Insurance including Technology Errors and Omissions with the minimum limits of \$10,000,000 per occurrence and \$25,000,000 in the aggregate with respect to each <b>Airline Sublessee</b>. In addition, Lessee shall pay premiums for and maintain Cyber Liability, Network Security and Data Breach Insurance including Technology Errors and Omissions with the minimum limit of \$25,000,000 per occurrence and</p>	

Type of Insurance	Details of Coverage	Sum Insured/Deductible
	<p>\$75,000,000 in the aggregate with respect to the Lessee and each Applicable Contractor, with each Applicable Contractor named as an additional named insured under such policy of insurance.</p> <p>Such insurance shall include the following coverages: (1) liability arising from theft, dissemination and/or use of confidential information stored or transmitted in electronic form; (2) liability arising from the introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, computer system, network or similar computer-related property and the data, software and programs stored thereon; and (3) the interruption of services directly or ancillary to the operation of critical infrastructure systems of the Port Authority. Services insured by such policy shall include, at a minimum (to the extent applicable as determined by the Port Authority): (1) systems analysis, (2) systems programming, (3) data processing, (4) systems integration, (5) outsourcing including outsourcing development and design, (6) systems design, consulting, development and modification, (7) training services relating to computer software or hardware, (8) management, repair and maintenance of computer products, networks and systems, (9) marketing, selling, servicing, distributing, installing and maintaining computer hardware or software, and (10) data entry, modification, verification, maintenance, storage, retrieval or preparation of data output, and any other services provided by the Lessee and its Contractors.</p> <p>Such insurance shall also include: (1) coverage for loss, disclosure and theft of data in any form; media and content rights infringement and liability, including but not limited to, software copyright infringement;</p>	

Type of Insurance	Details of Coverage	Sum Insured/Deductible
	<p>and network security failure or breach, including but not limited to, denial of service attacks and transmission of malicious code; (2) coverage for data breach regulatory fines and penalties, the cost of notifying individuals of a security or data breach, the cost of credit monitoring services and any other causally related crisis management expense for the duration of the claim; shall be primary and non-contributory, include contractual liability, severability for the insured organization for any intentional act exclusions in respect of data security liability, intentional or reckless or deliberate acts by any employee acting independently of any director, chief compliance officer, data protection officer or general counsel of the insured. Lessee's Cyber Liability, Network Security and Data Breach Insurance Policy shall cover consequential or vicarious liabilities (e.g., claims brought against the Port Authority or its directors, commissioners, officers, employees, agents, their affiliates, successors and/or assigns due to the wrongful acts and failures committed by Lessee and its Contractors) and direct losses (e.g., claims made by the Port Authority and its directors, commissioners, officers, employees, agents, their affiliates, successors and/or assigns against Lessee and its Contractors for financial loss due to wrongful acts or failures of the Lessee, and its Contractors).</p> <p>Such insurance, with the coverages specified by this clause (ix) (<i>Cyber Liability, Network Security and Data Breach Insurance</i>), shall be maintained by the Lessee and its Applicable Contractors for the duration of the Term and for a period of six (6) years thereafter; provided that during the D&amp;C Work Period, such insurance policy shall only be required to be maintained by the earlier of (1) Lessee's or Lessee's Applicable Contractors connection to any of the Port Authority's</p>	

Type of Insurance	Details of Coverage	Sum Insured/Deductible
	infrastructure systems or (2) implementation by the Lessee or any of its Applicable Contractors of any computer system, network or similar computer-related property within the New Terminal Facilities and the data, software and programs stored thereon.	
Commercial Crime Insurance	The Lessee shall procure, maintain, and pay premiums for, commercial crime insurance covering both innkeeper's/bailee legal liability, including broad form money and securities, money orders, counterfeit paper, depositor's forgery, computer fraud, cybercrime and transfer fraud, credit card forgery, audit expenses and employee dishonesty.	\$10,000,000 – Combined single limit per Occurrence
Workers' Compensation Insurance and Employer's Liability Insurance	<p>Throughout the Term, the Lessee shall procure, maintain, and pay premiums for, and cause its Contractors, sub-Contractors, any Lead Designer, any Manager and/or any concession manager to procure, maintain, and pay premium for, workers' compensation insurance and employer's liability insurance in accordance with the requirements of New York law.</p> <p>A waiver of subrogation, where legally permitted, shall be provided in favor of the Port Authority and the City Insureds.</p>	

### 5.3 Contractor Insurance Requirements

The Lessee may provide the insurance required under Section 12 (Insurance) by requiring each Contractor engaged by it for the Project Work to procure and maintain such insurance in accordance with the requirements set forth herein, including all applicable insurance that may be required from time to time pursuant to the TCAP Manual. Should the Lessee choose to procure insurance through its Contractors, the Lessee shall demonstrate to the Port Authority's satisfaction the Lessee's ability in and competence with managing such insurance requirements.

The Lessee shall be responsible to maintain, enforce, and ensure that the type of coverages and all limits maintained by it and any Contractors and sub-Contractors are accurate, adequate, and in compliance with the Port Authority insurance requirements set forth herein.

The Lessee shall cause each such Contractor to include the additional insureds and loss payees, as applicable, specified in the applicable insurance policies as required under Section 12 (Insurance).

If requested by the Port Authority, the Lessee shall promptly provide certificates of insurance evidencing coverage for each Contractor. If the Lessee does procure insurance through its Contractors as aforesaid, certificates of insurance and any other documentation required of the Lessee by this Section 12 (Insurance) shall similarly be required to be provided to the Port Authority by the Contractor or by the Lessee on behalf of the Contractor.

#### 5.4 Dedicated Insurance

All insurance coverage required to be provided by the Lessee, any Contractor, the Manager and any concession manager, other than any business automobile liability or workers' compensation insurance, shall be purchased specifically and exclusively for the Project Work and the Premises, and extend throughout the Term (or as otherwise provided herein) to all aspects of the Project Work and the Lessee's operations at the Airport, with coverage limits devoted solely to the Project Work and the Premises (and the areas subject to the Temporary Rights of Access and O&M Access Areas).

All insurance coverage required to be provided by the Lead Designer and any D&C Contractor, other than any business automobile liability or workers' compensation insurance, shall be purchased specifically and exclusively for the D&C Work and the Premises, and extend throughout the D&C Work Period to all aspects of the D&C Work, with coverage limits devoted to the D&C Work and the Premises (and the areas subject to the Temporary Rights of Access and O&M Access Areas).

The Lessee shall ensure that the insurance under this Agreement shall be seamless throughout the Term, including, without limitation, among and between each phase of the D&C Work, and shall not contain lapses or gaps in coverage. Any insurance necessary to be obtained and maintained in order to avoid any lapses or gaps in coverage shall be paid for and be the sole responsibility of the Lessee. Insurance coverage with dedicated limits specific to the Project Work and the Premises and identified premiums is acceptable; provided that it otherwise meets all requirements described in this Section 12 (*Insurance*).

#### 5.5 Other Requirements as to Insurance Policies

There are a number of additional requirements required by the insurance policies as outlined in Section 12. We have highlighted the key requirements, as follows:

- Insureds under Property and Liability Policies
  - (i) All property damage insurance policies (including Builder's Risk Insurance) required under this Agreement shall name the Lessee, the D&C Contractor, the Port Authority Indemnified Parties and the City Insureds (with insurance clauses consistent with the provisions of this Agreement) as additional insureds and loss payees, as their respective interests may appear.
  - (ii) All liability policies (except for professional liability insurance (errors and omissions), employer's liability insurance and workers' compensation insurance, if any) required under this Agreement shall name the Lessee, the D&C Contractor, the Port Authority Indemnified Parties and the City Insureds as additional insureds, with respect to liability arising out of the D&C Work, the

Operations and Maintenance Work or any other work or operations performed by Lessee, the D&C Contractor and any sub-Contractor, including materials, parts or equipment furnished in connection with such work or operations, using policy form at least as broad as ISO Form CG 20 10 11 85 (or CG 2010 or its substantial equivalent for ongoing operations and ISO Form CG 20 37 10 01 or its substantial equivalent for completed operations work). The Lessee shall disclose to the Port Authority Indemnified Parties any endorsements that limit or exclude coverage customarily provided by ISO's CG 00 01.

- The policies will contain contractual liability coverage other than professional liability.
- The Lessee's and its Contractors' insurance will be primary and non-contributory.
- Self-insurance including self-insurance retention funds, fronting captives, etc. are not permitted.
- Policies will provide for 90 days' notice of cancellation to the Port Authority and Recognized Mortgagee
- All policies will contain a waiver of subrogation shall be given in favor of all additional named insureds and additional insureds.
- All policies will contain separation of insured and severability of interests clauses

## 6.0 REQUIRED INSURANCE – DESIGN BUILD AGREEMENT

Traditional Insurance Coverage Design-Builder shall be required at all times beginning on the date hereof, and until receipt of written notice from Developer pursuant to Section 12.1.2 (if any), to comply with the insurance requirements annexed hereto as **Exhibit 27** and the insurance requirements set forth in Section 12 of the Lease to the extent applicable to the Design-Builder. Design-Builder shall be entitled to reimbursement for costs of maintaining such insurance at the costs set forth in the GMP. Design-Builder shall compensate Developer for any costs assessed by the Port Authority in accordance with Section 12(m)(4) and/or Section 12(n) of the Lease as a result of Design-Builder's failure to comply with the insurance requirements to the extent applicable to Design-Builder.

OCIP. Developer shall obtain an OCIP for the Project to provide for builder's risk, contractor's pollution liability, excess liability, general liability, and workers' compensation insurance that includes those terms set forth in **Exhibit 27** annexed hereto. Copies of any such policies and manual have been provided to Design-Builder for its review prior to binding of the coverage. Developer shall notify Design-Builder in writing when the OCIP policy has been bound for this Project, and Design-Builder shall within seven (7) Days of such notice cancel any insurance coverages to the extent specially obtained for the Project pursuant to Section 12.1, and Design-Builder shall be reimbursed for any costs incurred through the date of the cancellation of the policies.

Professional Liability. In addition to the Architect's and Design Professionals' practice policies, Design-Builder

and Lead Designer shall, at a minimum, procure and maintain project specific professional liability policies in the aggregate amount of Fifty Million Dollars (\$50,000,000).

Builder's Risk Insurance and Pollution Legal Liability Insurance

(1) Builder's Risk.

- a) Unless otherwise provided, Developer shall purchase and maintain builder's risk insurance in accordance with the insurance requirements set forth in Exhibit 27.
- b) Developer shall pay costs not covered because of such deductibles, provided, however, Developer shall be entitled to backcharge Design-Builder up to One Hundred Thousand Dollars (\$100,000) in builder's risk deductibles for each claim made against Developer's builder's risk policy in any event that any actions of Design-Builder or any Subcontractor(s) results in a builder's risk claim. If Design-Builder fails to pay any such deductible or backcharge any responsible Subcontractor for the same, Developer shall be entitled to withhold the same against a progress payment.
- c) The builder's risk insurance shall cover portions of the DB D&C Work stored off the Project Site, and also portions of the DB D&C Work in transit, so long as storage and transit are within the contiguous United States.

(2) Pollution Legal Liability Insurance.

- a) Unless otherwise provided, Developer shall purchase and maintain the pollution legal liability insurance in accordance with the insurance requirements set forth in Exhibit 27.
- b) Developer shall pay costs not covered because of such deductibles, provided, however, Developer shall be entitled to backcharge Design-Builder up to One Hundred Thousand Dollars (\$100,000) in pollution legal liability deductibles for each claim made against Developer's pollution policy in any event that any actions of Design-Builder or any Subcontractor(s) results in a pollution policy claim. If Design-Builder fails to pay any such deductible or backcharge any responsible Subcontractor for the same, Developer shall be entitled to withhold the same against a progress payment.

**6.1 Developer Provided Coverage**

**6.1.1 Owner Controlled Insurance Program (OCIP)**

Type of Insurance	Details of Coverage	Sum Insured/Deductible
Commercial General Liability Insurance	The commercial general liability insurance policy written on an occurrence form, which shall include products/completed operations for a period of not less than six (6) years after the Completion Date, premises -	\$300,000,000 – Combined single limit per occurrence and in the aggregate for death, personal injury, bodily injury and property damage liability

Type of Insurance	Details of Coverage	Sum Insured/Deductible
	operations, acts of Terrorism, NBCR, explosion, collapse and underground property damage, independent contractors coverage, blanket contractual liability, covering the obligations assumed by the Developer, bodily injury, including death, and property damage liability, broadened to include (or equivalent separate policies covering) sprinkler leakage legal liability and water damage legal liability (including damage caused by water and any other substance discharged from any part of the fire protective equipment for the Premises covering operations at both Existing Terminal Facilities or any portion thereof prior to demolition thereof, and all or any portion of the New Terminal Facilities as they are completed, or the collapse or fall of tanks forming part thereof, or the component parts or supports of such tanks) none of the foregoing to contain exclusions pertaining to (1) "action-over" claims, (2) damage to aircraft (including aircraft in the care, custody or control of Developer), (3) "insured vs. insured" suits, or (4) demolition	\$300,000,000 – Products Completed Operations aggregate
Workers' Compensation Insurance and Employer's Liability Insurance	Each in accordance with the requirements of New York law. A waiver of subrogation, where legally permitted, shall be provided in favor of the Indemnitees	

### 6.1.2 Developer Election Not to Proceed with OCIP

In the event that Developer elects not to secure and maintain insurance coverage under Section A(1) via an Owner Controlled Insurance Program (OCIP), Design-Builder shall provide the insurance set forth in Section A(1) and shall be compensated for all direct and indirect costs associated with providing the insurance set forth in Section A(1).. In the event that Design-Builder will provide the insurance described herein, Design-Builder shall provide a certificate of insurance as well as copies of all policies will be provided to Developer no less than ten (10) days prior to start of work. Design-Builder shall maintain the required coverage for a minimum of six (6) years beyond the completion of all DB D&C Work for the Project, or such longer period as specified in this Exhibit 27, the Agreement, or the Lease.



### 6.1.3 Builder's Risk Insurance

Type of Insurance	Details of Coverage	Sum Insured/Deductible
Builder's Risk Insurance	<p>During the D&amp;C Work Period (and any and all extensions thereof), Developer shall procure, maintain, and pay premiums for, Builder's Risk (all risk, including coverage for loss or damage by fire, collapse, lightning, windstorm, flood, earthquake, hail, acts of Terrorism, NBCR, explosion, underground property damage, riot, vandalism, malicious mischief, civil commotion, aircraft, vehicle impact, smoke, off premise service interruption, delay in startup, delay in completion, debris removal, valuable papers, pollutant cleanup and removal, professional fees, extra/expediting expenses, mold (to the extent ensuing from a separately covered cause of loss) and such other risks) with LEG III covering the D&amp;C Work during the performance thereof, including off site material, property in transit and delivered to the Premises but not attached to the realty, or existing property, until the D&amp;C Work is completed</p> <p>Notwithstanding the foregoing, it is agreed by the Parties that in order to accommodate the construction phasing and sequencing of the D&amp;C Work, Developer shall be permitted to procure and maintain Builder's Risk coverage at any given time only with respect to those phases of the D&amp;C Work which is being performed by Developer, and upon the issuance of a "Temporary Certificate of Authorization to Occupy or Use" in accordance with the TCAP Process with respect to any Partial Occupancy Portion, Developer shall no longer be required to maintain such policy with respect thereto; provided,</p>	<p>On a Completed Value basis (except, with respect to NBCR, subject to Section 12(d)(13) (NBCR) of the Lease) (non-reporting basis)</p> <p>Developer shall be entitled to backcharge Design-Builder up to One Hundred Thousand Dollars (\$100,000) in builder's risk deductibles for each claim made against Developer's builder's risk policy in any event that any actions of Design-Builder or any Subcontractor(s) results in a builder's risk claim. Developer will assess a deductible or self-insured retention contribution against Design-Builder, and that deductible or self-insured retention contribution shall be due and payable to Developer within thirty (30) days after Developer's written demand thereof. Subject to Section 13.2.4 of this Agreement, Developer may back charge the party, may withhold from monies otherwise owing to the party, or may collect by any other lawful means, the amount(s) owed by the party as its allocated portion of the deductible or self-insured retention. The contribution shall remain uninsured by the party against whom it is assessed and will not be covered by any insurance policy, nor shall it be included in the contract price</p>

Type of Insurance	Details of Coverage	Sum Insured/Deductible
	<p>that such Partial Occupancy Portion is, as of the date of issuance of the applicable "Temporary Certificate of Authorization to Occupy or Use", subject to insurance coverage satisfying the applicable requirements set forth in subclauses (i) and (iii) of Section 12(a)(4) of the Lease (Required Insurance During the Entire Term), such that no element, phase or completed portion shall be uninsured or underinsured with a Builder's Risk policy or an all-risk property policy, as applicable, at any time.</p>	

#### 6.1.4 Pollution Legal Liability Insurance

Type of Insurance	Details of Coverage	Sum Insured/Deductible
<p>Pollution    Legal    Liability Insurance</p>	<p>Written on a claims made basis, policy with a six (6) year policy term and OCIP Contractors Pollution Liability (written on an occurrence basis) policy with a six (6) year policy term, which shall include completed operations for six (6) years after the completion of all DB D&amp;C Work for the Project, or such longer period as specified in this Exhibit 27, the Agreement, or the Lease, providing coverage for bodily injury liability, property damage and environmental damage caused by pollution conditions on land, in air and on water, covering the Developer, Design-Builder, and all Subcontractors of all tiers' pollution legal liability, including cleanup</p>	<p>\$100,000,000 – Combined single limit per incident and in the aggregate for each policy</p> <p>Developer shall be entitled to back charge Design-Builder up to One Hundred Thousand Dollars (\$100,000) in pollution legal liability deductibles for each claim made against Developer's pollution policy in any event that any actions of Design-Builder or any Subcontractor(s) results in a pollution policy claim. Developer will assess a deductible or self-insured retention contribution against Design-Builder, and that deductible or self-insured retention contribution shall be due and payable to Developer within thirty (30) days after Developer's written demand thereof. Subject to Article 12 of this Agreement, Developer</p>

Type of Insurance	Details of Coverage	Sum Insured/Deductible
		<p>may back charge the party, may withhold from monies otherwise owing to the party, or may collect by any other lawful means, the amount(s) owed by the party as its allocated portion of the deductible or self-insured retention. The contribution shall remain uninsured by the party against whom it is assessed and will not be covered by any insurance policy, nor shall it be included in the contract price.</p>

### 6.1.5 Design-Builder Insurance Requirements

The Design-Builder will provide and maintain the following insurance described below from a company or companies authorized to transact insurance business in the state of New York, to cover the following losses: (i) any DB D&C Work not covered by the OCIP, (ii) work performed not at the Project Site, or (iii) work performed by non-OCIP enrolled Subcontractors. All insurers will be rated at least A - X in the current A.M. Best ratings guide or must be otherwise acceptable to the Developer.

#### 6.1.5.1 General Requirements

Design-Builder shall secure, and keep in full force and effect, and shall cause its Subcontractors to secure, and keep in full force and effect as required by this Agreement, the following coverage at Design-Builder's sole cost and expense. A certificate of insurance as well as copies of all policies will be provided to Developer no less than ten (10) days prior to start of work. The required coverage shall be maintained by Design-Builder's for a minimum of six (6) years beyond the completion of all DB D&C Work for the Project, or such longer period as specified in this Exhibit 27, the Agreement, or the Lease.

1. All policies shall:
  - a) Except for Workers' Compensation, Employers' Liability, and Professional Liability, stipulate that such insurance is primary and is not excess of, or contributing with, any other insurance, including any deductible, maintained by, provided to, carried by or for the benefit of the "Additional Insureds" (which are also referred to in this Agreement as the "Indemnitees"), which shall mean the entities and individuals listed in Exhibit 29 of this Agreement;
  - b) Except for Workers' Compensation, Employers' Liability, and Professional Liability, provide coverage to the Additional Insureds for bodily injury or death of an employee of the Design-Builder or all Subcontractors of every tier, regardless of whether such bodily injury or death is caused or alleged to be caused, in whole or in part, by the negligence or fault of any Additional Insureds;
  - c) Except for Workers' Compensation, Employers' Liability, and Professional Liability, and except as to the circumstances provided in Section 1.3.2. provide coverage to the Additional Insureds for liability caused by negligence, fault, breach of contract, breach or violation of statute,

- ordinance, governmental regulation, standard or rule by the Design-Builder and its agents, all Subcontractors of every tier and their agents, or any third party under its control;
- d) Agree that the amount of insurance available to the Additional Insureds shall be for the full amount of the loss up to the policy limits of liability and shall not be limited to the minimum requirements;
  - e) Waive any and all right of subrogation against all additional named insureds and the Additional Insureds;
  - f) Contain a severability endorsement if the policy does not contain a separation of insureds clause; and
  - g) Contain a provision giving the Additional Insureds a ninety (90) day prior written notice of any termination or cancellation of the policy or material change in coverage, except thirty (30) days' notice shall apply to cancellation due to non-payment of premium.
  - h) In addition to the requirements set forth herein, comply with all insurance requirements, terms and provisions as set forth in the Lease for the applicable type of coverage.
  - i) Each policy of liability insurance (except for professional liability insurance) shall be required to provide contractual liability coverage which shall cover the obligations assumed by such party under any indemnification provisions set forth in its agreement related to the Project. Design-Builder acknowledges and agrees that the policies required hereunder shall not be limited by any limitations expressed in the indemnification provisions set forth in this Agreement, other than that of a typical policy insuring work of this nature.
  - j) Design-Builder shall use best efforts to ensure that the insurance it procures and maintains shall provide that the interest of the Port Authority Indemnified Parties (as defined in the Lease) and the City Insureds (as defined in the Lease) will not be prejudiced by Developer or Design-Builder's error, omission or misdescription of the risk insured under the policies, incorrect declaration of values, failure to advise insurers of any change of risk interest or property insured or failure to comply with a statutory requirement, nor by any other misrepresentation, act or omission by Developer or Design-Builder that would otherwise result in forfeiture or reduction of coverage.
  - k) Unless otherwise agreed to in writing by the Port Authority in its discretion, no defense costs shall be included within or erode the limits of coverage of any of the primary insurance policies, except that litigation and mediation defense costs may be included within the limits of coverage of professional liability, cyber liability, contractors pollution legal liability and pollution legal liability policies, to the extent such insurance coverage is required hereunder.
2. **Waiver Of Subrogation/Rights of Recovery:** The enrolled parties and their respective insurers will waive all rights of recovery against the Developer, Design-Builder, the Developer's agents, officials, and employees and against each other.
  3. **Primary and Non-Contributing:** Except for Workers' Compensation and Employers' Liability insurance, provide insurance coverage for work away from the Project Site required of the enrolled parties is primary and non-contributing.
  4. **Products and Completed Operations Coverage:** Shall be maintained for a minimum of six (6) years beyond the completion of all DB D&C Work for the Project, or such longer period as specified in this Exhibit 27, the Agreement, or the Lease.
  5. **Certificates of Insurance:** The enrolled parties and excluded parties will provide Certificates of Insurance to the Developer and/or the CIP administrator evidencing that policies specified in this Section

B, providing the required coverage, conditions and limits are in full force and effect. Certificates and endorsements are to be delivered prior to commencing any DB D&C Work or Services hereunder, and annually thereafter, and at least ten (10) days prior to any expiration of each insurance policy. In the event of cancellation, threatened cancellation, or material adverse change in coverage, the Developer and/or the CIP administrator shall be given at least thirty (30) days advance written notice thereof by registered mail, return receipt requested.

### 6.1.6 Required Limits and Coverages

Type of Insurance	Details of Coverage	Sum Insured/Deductible
Workers' Compensation and Employers' Liability	The Design-Builder will maintain Statutory Workers' Compensation insurance to cover obligations imposed by Federal and State statutes having jurisdiction over enrolled parties' employees while engaged in the performance of the work at locations other than the Project Site and approved sites incidental and/or adjacent to the work.	<p><b>Workers' Compensation coverage</b> will comply with the statutory limits of the State of New York</p> <p><b>Employers' Liability</b> insurance with limits as follows:</p> <ul style="list-style-type: none"> <li>(i) \$1,000,000 – Bodily Injury by accident for each person</li> <li>(ii) \$1,000,000 – Bodily Injury by disease for each person</li> <li>(iii) \$1,000,000 – Bodily Injury by Disease – Policy Limit</li> </ul>
Commercial General Liability	Insurance for premises and operations away from the Project Site and approved sites incidental and/or adjacent to the DB D&C Work of the enrolled parties (including products and completed operations covering products manufactured, assembled or otherwise worked upon away from the Project Site) providing coverage as broad as Commercial General Liability insurance ISO form CG 00 01. Such insurance shall provide coverage for all operations including the products-	<p>\$1,000,000 – Each Occurrence</p> <p>\$2,000,000 – Aggregate for products and completed operations</p> <p>\$2,000,000 – General aggregate limit, which shall apply separately and be reinstated annually</p>

Type of Insurance	Details of Coverage	Sum Insured/Deductible
	<p>completed operations hazard, and shall be maintained for six (6) years beyond the completion of all DB D&amp;C Work for the Project, or such longer period as specified in this Exhibit 27, the Agreement, or the Lease.</p> <p>The policy shall not contain any exclusions directed toward any types of projects, materials or processes involved in the DB D&amp;C Work. Coverage shall conform to the following additional requirements:</p> <ul style="list-style-type: none"><li>• Contractual Liability for an “insured contract” as defined by the policy;</li><li>• Coverage for explosion, collapse and underground hazards, if such exposure exists;</li><li>• No pollution exclusion broader than form CG 21 55;</li><li>• No professional liability exclusion broader than form CG 22 79;</li><li>• No exclusion for claims related to NY Labor Law;</li><li>• The general aggregate limit shall be dedicated to the Project;</li><li>• Must not exclude losses arising out of DB D&amp;C Work occurring offsite ; and</li><li>• No exclusions related to “Action Over” claims</li></ul> <p>General Aggregate limits shall apply on a “per project” basis.</p> <p>Coverage shall include, but is not limited to, bodily injury, broad form property damage, personal injury, advertising injury, premises/operations, products/completed operations (minimum of 6 years), contractual liability</p>	

Type of Insurance	Details of Coverage	Sum Insured/Deductible
	<p>for “insured contract” as defined by the policy, blanket explosion, collapse and underground property damage, incidental malpractice, host liquor liability and independent contractors.</p> <p>In any Pollution exclusion, building heating equipment and hostile fire shall not be excluded.</p> <p>Earth Movement, Mold and Cross Suits shall not be excluded. If Coverage includes a Mold exclusion, subcontractors can provide Contractors Pollution Liability coverage with no Mold exclusion.</p> <p>With respect to Coverage for Damage to Your Work, “property damage” to that particular part of “your work,” that is defective or malfunctions, arising out of “your work” or any part of it shall be covered.</p> <p>Coverage shall include Contractual Liability for liability assumed under this Agreement and all other contracts, including, but not limited to, Subcontracts with Subcontractors of every tier, relative to this Project, to the extent such contracts are “insured contract” as defined by the policy or if the insured would have such liability in the absence of the contracts.</p> <p>Subcontractors may be able to provide such limits using a combination of GL and Excess policies.</p>	
<p>Commercial Liability          Automobile</p>	<p>Covering all owned, hired and non-owned vehicles including coverage during loading and unloading activities. Such insurance will provide coverage not less than that of the standard ISO Commercial Automobile Liability for CA 00 01.</p>	<p>With limits of no less than \$25,000,000 combined single limit per occurrence for bodily injury and property damage if the airport airside access is required, and \$5,000,000 combined single limit per occurrence for bodily injury and</p>

Type of Insurance	Details of Coverage	Sum Insured/Deductible
	<p>The above-mentioned limit of Auto liability can be a combination of primary and excess/umbrella coverage.</p> <p>Contain an endorsement providing, and the applicable certificates of insurance shall note, that the insurance carrier shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the Person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority; provided, however, that the foregoing shall not apply to the Workers' Compensation &amp; Employers' Liability and Professional Policy.</p> <p>The MCS-90 endorsement must be attached to the Commercial Automobile Liability policy if hazardous materials or waste are to be transported.</p>	<p>property damage if no airport airside access required</p>
Umbrella/Excess Liability	<p>Umbrella/Excess Liability insurance on a following form basis in excess of over Employers' Liability, Commercial General Liability and Commercial Automobile Liability.</p> <p>Coverage shall follow form of the Commercial General Liability, Employers' Liability &amp; Automobile Liability.</p> <p>Shall be maintained for six (6) years beyond the completion of all DB D&amp;C Work for the Project, or such longer period as specified in this Exhibit 27, the Agreement, or the Lease.</p>	<p>Total limits for any single claim (including primary and umbrella/excess) shall be no less than \$5,000,000 on a per occurrence/annual aggregate/products &amp; completed operations aggregate.</p>
Contractor's Insurance	Equipment	
	<p>Provided on an "all risk" form, covering all risk of physical damage to equipment provided for use at the Project Site by</p>	



Type of Insurance	Details of Coverage	Sum Insured/Deductible
	<p>Design-Builder, whether owned, leased, rented, borrowed or used at the Project Site. Design-Builder waives its rights of recovery against Developer and each of its officers, employees, consultants and agents including, but not limited to, the Port Authority Indemnified Parties and each Developer Representative, as to any damage or loss which may occur to its equipment to the extent covered by insurance. Design-Builder will ensure that the insurance company providing such coverage specifically agrees to this waiver. If uninsured, Design-Builder will hold harmless the aforementioned parties, including Developer, the Port Authority Indemnified Parties, and the Additional Insureds, for loss or damage to its tools and equipment.</p>	
<p>Professional Liability Insurance</p>	<p>For Design-Builder, a project-specific contractor's protective professional indemnity insurance policy in the amount of \$50,000,000, as approved by Developer. The Design-Builder shall maintain this coverage for six (6) years beyond the completion of all DB D&amp;C Work for the Project, or such longer period as specified in this Exhibit 27, the Agreement, or the Lease. If the policy is not renewed or allowed to lapse, the Design-Builder shall purchase a six (6) year Extended Reporting Period.</p> <p>From the date that Design Work or design services were provided for the Project, the Architect and Engineer of Record for the Project shall provide Professional Liability insurance (not required to be furnished on a project-specific basis) written on a claims-made basis and maintained for a ten (10)-year reporting/discovery period following the completion of each portion of the Project, and subject to the policy requirements of the Lease.</p>	<p><u>Design Builder</u> \$50,000,000</p> <p><u>Architect and Engineer of Record</u> \$20,000,000 – Per claim and aggregate each annual period</p> <p>If Architect or Engineer of Record for the Project procures a project specific professional liability policy, the aggregate limits of such policy will not be required to be reinstated annually</p>

Type of Insurance	Details of Coverage	Sum Insured/Deductible
	<p>It is anticipated that in certain situations, a subcontractor (of any tier) may perform work of a professional nature which would be excluded under the OCIP Policies as “professional services.” It is therefore required that any subcontractor or professional services vendor that is performing such professional services obtains professional liability insurance.</p>	<p>Subcontractor engineers and architects: \$5,000,000 per claim and aggregate.</p> <p>Subcontractor surveyors and other provisions services vendors: \$2,000,000 per claim and aggregate</p>
<p>Cyber Liability Insurance</p>	<p>Design-Builder shall take out, pay premiums for and maintain Cyber Liability, Network Security and Data Breach Insurance including Technology Errors and Omissions.</p> <p>Such insurance shall include the following coverages: (1) liability arising from theft, dissemination and/or use of confidential information stored or transmitted in electronic form; (2) liability arising from the introduction of a computer virus into, or otherwise causing damage to, a customer’s or third person’s computer, computer system, network or similar computer-related property and the data, software and programs stored thereon; and (3) the business interruption of services directly or ancillary to the operation of critical infrastructure systems of the Port Authority.</p> <p>Services insured by such policy shall include, at a minimum (to the extent applicable as determined by the Port Authority): (1) systems analysis, (2) systems programming, (3) data processing, (4) systems integration, (5) outsourcing including outsourcing development and design, (6) systems design, consulting, development and modification, (7) training services relating to computer software or</p>	<p>\$25,000,000 – Per Occurrence</p>

	<p>hardware, (8) management, repair and maintenance of computer products, networks and systems, (9) marketing, selling, servicing, distributing, installing and maintaining computer hardware or software, and (10) data entry, modification, verification, maintenance, storage, retrieval or preparation of data output, and including services provided by the Design-Builder and each of its Subcontractors and subconsultants.</p> <p>Such insurance shall also include: (1) coverage for loss, disclosure and theft of data in any form; media and content rights infringement and liability, including but not limited to, software copyright infringement; and network security failure or breach, including but not limited to, denial of service attacks and transmission of malicious code; (2) coverage for data breach regulatory fines and penalties, the cost of notifying individuals of a security or data breach, the cost of credit monitoring services and any other causally related crisis management expense for the duration of the claim; shall be primary and non-contributory, include contractual liability, severability for the insured organization for any intentional act exclusions in respect of data security liability, intentional or reckless or deliberate acts by any employee acting independently of any director, chief compliance officer, data protection officer or general counsel of the insured.</p> <p>Design-Builder's Cyber Liability, Network Security and Data Breach Insurance Policy shall cover consequential or vicarious liabilities (e.g., claims brought against the Port Authority or its directors, commissioners, officers, employees, agents, their affiliates, successors and/or assigns due to the wrongful acts and failures committed by Design-</p>	
--	--	--

Type of Insurance	Details of Coverage	Sum Insured/Deductible
	<p>Builder and each of its Subcontractors and subconsultants) and direct losses (e.g., claims made by the Port Authority and its directors, commissioners, officers, employees, agents, their affiliates, successors and/or assigns against Design-Builder and each of its Subcontractors and subconsultants for financial loss due to wrongful acts or failures of the Design-Builder and each of its Subcontractors and subconsultants).</p> <p>Such insurance policy shall be maintained by the Design-Builder for the duration of the Term and for a period of six (6) years thereafter.</p>	

### 6.1.7 Additional Insureds

Each policy required (except Workers' Compensation, Employers' Liability, and Professional Liability) will name as additional insureds the parties and entities as set forth in Exhibit 29 of this Agreement, as may be adjusted or amended by Developer from time to time.

For commercial general liability, CG 20 10 11/85 (or substantial equivalent), and CG 20 37 10 01 (or substantial equivalent) should be utilized. Products and completed operations coverage shall be maintained for a minimum of six (6) years beyond the completion of all DB D&C Work for the Project, or such longer period as specified in this Exhibit 27, the Agreement, or the Lease. For a complete list of additional insureds, please see Exhibit 29.

Endorsements adding additional insureds to required policies shall contain no limitations, conditions, restrictions or exceptions to coverage beyond those that apply under the policy generally, and shall state that the interests and protections of each additional insured shall not be affected by any misrepresentation, act or omission of a named insured or any breach by a named insured of any provision in the policy which would otherwise result in forfeiture or reduction of coverage.

### 6.1.8 Restrictions on Insurance

Except as otherwise approved by Developer, self-funded, self-insurance, self-insured retention, policy fronting, or other non-risk transfer insurance mechanisms by the Design-Builder or its Subcontractors (or sub-Subcontractors, as applicable) other than self-funded collateral as required by the OCIP, are not permitted (except for such commercial standard deductibles that are self-funded, including retention under professional liability insurance and pollution liability insurance).

### 6.1.9 Certain Endorsements

**Governmental Immunity.** All policies required under this Agreement shall contain an endorsement containing the following language: "The insurance carrier shall not, without obtaining express written advance permission

from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting “suits” against the Port Authority.”

**No Limitations.** Endorsements adding additional insureds to required policies shall contain no limitations, conditions, restrictions or exceptions to coverage beyond those that apply under the policy generally, and shall state that the interests and protections of each additional insured shall not be affected by any misrepresentation, act or omission of a named insured or any breach by a named insured of any provision in the policy which would otherwise result in forfeiture or reduction of coverage.

#### 6.1.10 Review by the Developer

All insurance coverages and policies required under this Exhibit may be reviewed by the Developer for adequacy of terms, conditions, coverages and limits of coverage at any time during the term of this Agreement.

The Developer may, at any time during the term of this Agreement for any reason, upon written notice to the Design-Builder, require an increase in minimum limits, changes in deductibles, or other additions, deletions, amendments or modifications to the required coverage with respect to any insurance or any related term thereof (either in form or substance), or other or additional or replacement insurance, in any amounts or against any insurable risks, perils or hazards, or the replacement of carriers issuing such policies should any such carriers fall below the “Minimum Insurance Carrier Rating”.

#### 6.1.11 Notices

The Design-Builder shall provide the Developer with the following written notices:

As soon as practicable, but in no event later than five (5) days after the occurrence of any claim made by the Developer or any other party under any insurance obtained in connection with the Project or otherwise in connection with this Agreement, the Project, or the Premises, which claim involves any of the following:

- i. any incident involving the general public, a Subcontractor, Design-Builder, the Port Authority, any employees, or any separate developments at the Airport;
- ii. any fatality;
- iii. any incident that involves an amputation or potential loss of use of a limb or body part;
- iv. incidents that might result in the loss of bodily functions, senses, or abilities;
- v. head injuries resulting in unconsciousness;
- vi. falls from any height;
- vii. major property damage, including collapse, explosion, or fire;
- viii. any disruption, causing interruption to the operations of the Premises;
- ix. any impairment to any security/fire protection systems at the Premises;
- x. any incident resulting in injury to two (2) or more persons;
- xi. any incident where an ambulance is called;
- xii. incidents involving damage to Aircraft; and
- xiii. the expiration of any insurance policy (whether by its terms or due to non-payment of premium or otherwise) at least thirty (30) days prior to such expiration (ten (10) days for nonpayment), including

notification of the date of such expiration.

Without limiting the generality of this Section, the Design-Builder shall promptly notify the Developer of any incident(s) that could give rise to a claim against the Developer and/or the Port Authority.

#### **6.1.12 Compliance with Insurance Policies.**

The Design-Builder shall:

- i. comply with the terms, conditions and requirements of all insurance policies required pursuant to this Exhibit 27, this Agreement and the Lease;
- ii. not do or omit to do anything, or permit (insofar as it is within its power) any other person to do or omit to do anything, on or with respect to the Premises or the Project or with respect to the DB D&C Work that results in or could reasonably be expected to result in the cancellation of any insurance policies or that would entitle any insurer to refuse to pay any claim under any insurance policy (in whole or in part) or that would otherwise prejudice the interests of the Developer, the Port Authority, any Port Authority Indemnified Party or any of the City Insureds in an insurance policy or claim under any insurance policy;
- iii. promptly upon request furnish to the Developer such information and data as may be necessary to enable the Developer to adjust any loss, in the event the Premises or any part thereof or the Airport or any part thereof shall be damaged by any casualty against which insurance is carried pursuant to this Exhibit 27 and the Developer and the Port Authority is entitled to participate in the adjustment of such loss pursuant to the terms of this Agreement; and
- iv. to the extent the Developer pays (including if the Developer reimburses the Port Authority or City for) any premiums, costs, charges or fees with respect to any of the insurance policies required pursuant to this Exhibit 27, promptly (but in any event no later than thirty (30) days following notice by the Port Authority of such payment) reimburse Developer for any such premiums, costs, charges or fees.

#### **6.1.13 Developer's Right to Insure**

If the Design-Builder fails to obtain and maintain or cause to be obtained and maintained the insurance required by this Exhibit 27, the Developer shall have the right (without any obligation to do so), upon ten (10) Business Days' notice to the Design-Builder and any Recognized Mortgagee in a non-Emergency or forthwith in an Emergency and without assuming any obligation in connection therewith, to effect such insurance and one hundred fifteen percent (115%) of all costs and expenses of the Developer in connection therewith shall be payable by the Design-Builder to the Developer, on demand without any days of grace and without prejudice to any other rights and remedies of the Developer hereunder or under law or in equity. Such insurance taken out by the Developer shall not relieve the Design-Builder of its obligations to insure hereunder and the Developer shall not be liable for any loss or damage suffered by the Design-Builder in connection therewith.

## 7.0 REQUIRED INSURANCE – MANAGEMENT SERVICES AGREEMENT

### 7.1 Insurance Procured by the Manager

During the Term, the Manager will maintain, or cause to be maintained, at its own cost and expense (and without reimbursement by the Lessee), all insurance that it is obligated to maintain under Applicable Law and pursuant to the Section 12 (Insurance) of the Lease, including Sections 12(a)(4)(ix) (Cyber Liability, Network Security and Data Breach Insurance, including Technology Errors and Omissions) and 12(a)(4)(xi) (Workers' Compensation Insurance and Employer's Liability Insurance) of the Lease, and commercial crime insurance protecting against employee dishonesty, embezzlement, theft, and the like in amounts and otherwise in a form acceptable to the Port Authority, and naming the Port Authority and the Lessee as additional loss payees thereunder.

The Manager will cause the Lessee, the Lead Contractor, the Port Authority Indemnified Parties and the City Insureds to be named as additional insureds and loss payees on all liability policies the Manager is required to maintain pursuant to the Lease (except for any professional liability insurance (errors and omissions), employer's liability insurance and workers' compensation insurance, if any), and the Manager will provide certificates of insurance to the Lessee promptly upon request.

All insurance coverage required to be provided by the Manager under the Lease, other than any business automobile liability or workers' compensation insurance, shall be purchased specifically and exclusively for the Project Work and the Premises and extend throughout the Term, in accordance with Section 12(c)(1) (Dedicated Insurance) of the Lease and shall otherwise conform with all requirements set out in Section 12(d) (Other Requirements as to Insurance Policies) of the Lease.

The Lessee will cooperate with the Manager in the submission of any insurance claim arising out of the Manager's provision of the Services, provided that such claim is not contrary to the interests of the Lessee.

### 7.2 Lessee Insurance

The Manager will assist the Lessee in securing and maintaining (at the sole cost of the Lessee) all insurance policies and insurance coverage required to be secured and maintained by the Lessee under the Project Documents, the Key Contracts, the Financing Documents and Applicable Law (collectively, "Lessee's Required Insurance").

As part of the Services, the Manager will work directly with insurance brokers and/or insurance companies on the Lessee's behalf to obtain the Lessee's Required Insurance at commercially reasonable rates and in the time periods required under the applicable documents.

The Manager will make recommendations to the Lessee Board regarding the purchase and/or renewal and replacement of the Lessee's Required Insurance and will generally keep the Lessee Board informed of the status of the Lessee's Required Insurance.

The Lessee will cause the Manager be named as an additional insured and subrogation to be waived in favour of the Manager on all insurance policies that are Lessee's Required Insurance, and the Lessee will provide proof

of such insurance along with copies of each such applicable policy (or any renewals or replacements thereof) to the Manager promptly upon delivery by the insurers.

## 8.0 REQUIRED INSURANCE – COLLATERAL AGENCY AND ACCOUNTS AGREEMENT

INTECH has reviewed the Collateral Agency and Accounts Agreement, among JFK Millennium Partners, LLC, the Bank of New York Mellon, the Bank of New York Mellon, the Bank of New York Mellon, ING Capital LLC, the Bank of New York Mellon, and New York Transportation Development Corporation, dated November 1, 2022, including First Amendment, dated [•], 2024.

Section 10.3 of the agreement states:

At all times throughout the term of this Agreement, including without limitation during any period of reconstruction of the New Terminal Facilities, the Borrower shall maintain all insurance coverages required under the Lease Agreement, as such requirements may be waived or modified in accordance with the Lease Agreement. Without limiting the foregoing (i) the Borrower shall provide to the Collateral Agents the same notice and evidence of renewal as it provides to the Port Authority and (ii) such insurance policies shall, as applicable, afford to the Collateral Agents the same contractual liability coverage, notice of cancellation rights, waivers of subrogation and non-impairment of coverage rights as they afford to the Port Authority.

Within thirty (30) days following the end of each Fiscal Year, the Borrower shall submit to the Collateral Agents a certificate (i) listing all insurance being carried by, or on behalf of, the Borrower and the expiration date of each insurance policy, (ii) certifying that all insurance required to be maintained pursuant to the Project Documents and the Financing Documents is in full force and effect and that all premiums theretofore due have been fully paid or provided for and (iii) summarizing each event of loss with respect to the Project in such Fiscal Year for which loss proceeds exceed \$5,000,000 (per individual loss) in such Fiscal Year.

The Borrower shall provide to the Collateral Agents certificates stating that its insurance coverage and such insurance policies name the Secured Debt Representatives and the Issuer as additional insureds and loss payees as their interests appear.

In no event will the Collateral Agents have any obligation to determine the sufficiency of any such insurance information or to, in any manner, independently evaluate the Borrower's compliance with any insurance covenants in connection therewith.

## 9.0 REVIEW OF THE LTA REPORT

INTECH has reviewed the Draft Report issued by BTY Group dated September 27, 2024. We confirm there is nothing contained in the report which will not be sufficiently covered by the insurance program or will negatively impact the Lessee's ability to place and maintain insurance.



## 10.0 REQUIRED INSURANCE – BUILDING BOND LOAN AGREEMENT

INTECH has reviewed Building Bond Loan Agreement, between New York Transportation Development Corporation and JFK Millennium Partners, LLC, dated [•], 2022, including First Amendment, dated [•], 2024. There are no insurance provisions contained within the Building Bond Loan Agreement.

## 11.0 REQUIRED INSURANCE – PROJECT BOND LOAN AGREEMENT

INTECH has reviewed Project Bond Loan Agreement, between New York Transportation Development Corporation and JFK Millennium Partners, LLC, dated [•], 2022, including First Amendment, dated [•], 2024. There are no insurance provisions contained within the Project Bond Loan Agreement.

## 12.0 REQUIRED INSURANCE – COMMON TERMS AGREEMENT

The effectiveness of this Agreement and the obligation of each Bank Finance Party to make any Credit Extension under any Senior Bank Financing Document are subject to the receipt by the Administrative Agent of each of the following documents and the satisfaction of each other condition precedent in this Section 4.01, in each case in form and substance satisfactory to each Bank Finance Party, or the waiver of such receipt or satisfaction, as applicable, by each Bank Finance Party.

- (i) The Administrative Agent shall have received customary certificates of insurance evidencing the existence of all insurance required under Section 5.02 as of such date, including evidence that the Senior Collateral Agent is included as additional insured as its interests may appear under each such insurance and the Senior Collateral Agent is a loss payee under each such insurance related to property damage, and including such additional endorsement and terms identified in Section 27 of the Project Report prepared by the Insurance Consultant, other than the endorsements listed in Schedule 4.01(l)(i).
- (ii) The Lessee shall have delivered to the Administrative Agent a certificate of the Insurance Consultant, dated as of the Closing Date, certifying the existence of all insurance coverage and other terms required pursuant to Section 5.02 as of such date, that such insurance is in full force and effect and that all premiums then due and payable have been paid.
- (iii) The Lessee shall have delivered to the Administrative Agent a letter of confirmation and undertaking from the Lessee's insurance broker identifying the underwriters, types of insurance, applicable insurance limits and policy terms consistent with the Project Report prepared by the Insurance Consultant and delivered pursuant to Section 4.01(g)(iv) above, and the requirements of Section 5.02 as of such date.

- (iv) The Lessee shall have delivered to the Administrative Agent a “life of loan” Federal Emergency Management Agency Standard Flood Hazard Determination with respect to the real property subject to the Leasehold Mortgage.

Under Schedule 5.02, except to the extent expressly waived by the Required Bank Finance Parties in accordance with the terms hereof, the Lessee will maintain, with an Approved Insurer, insurance with respect to its properties and businesses against such casualties and contingencies, of such types, on such terms and in such amounts (including deductibles, co-insurance and self-insurance, if adequate reserves are maintained with respect thereto) required to be maintained under the Lease Agreement (as such requirements are in effect on the Closing Date without giving effect to any waiver or consent by the Port Authority, or if requiring higher or additional coverage, lower deductibles, less exceptions or terms that are otherwise more stringent, as modified by the Port Authority in accordance with the Lease Agreement), and except as set forth in Schedule 4.01(1)(i), naming the Senior Collateral Agent as an additional insured as its interests may appear under each such insurance and the Senior Collateral Agent as loss payee under each such insurance related to property damage, including such additional endorsement and terms identified in Section 27 of the Project Report prepared by the Insurance Consultant, and otherwise satisfying the requirements set forth in Section 10.03 of the Collateral Agency and Accounts Agreement. Without limiting the foregoing, (i) the Lessee shall provide the same notice and evidence of renewal to the Senior Collateral Agent as it is required to provide to the Port Authority and (ii) such insurance policies shall, as applicable, afford to the Senior Collateral Agent the same contractual liability coverage, notice of cancellation rights, waivers of subrogation and non-impairment of coverage rights to the Senior Collateral Agent as they are required to afford to the Port Authority.

For so long as each of the corresponding waivers or modifications granted pursuant to the Letter Agreement dated November 17, 2022, between the Port Authority and the Lessee, relating to the amendment of certain requirement set forth in the Lease Agreement with respect to D&C Work Period insurance remain in effect (capitalized terms used below have the meaning assigned thereto in the Lease Agreement):

1. Crime policy need not cover cybercrime, but only to the extent that cybercrime is covered under the cyber policy and the crime policy provides coverage for computer and transfer fund fraud and fraudulent impersonation (a/k/a social engineering).
2. The liability limit and replacement cost limit for NBCR coverage shall be \$100,000,000.
3. The requirement that the general aggregate limit be reinstated annually on the professional liability policies need not be satisfied, provided that the aggregate limit in place for the term of the D&C Work Period is at least \$75,000,000.
4. Professional liability policies need not utilize deductibles, provided that instead the Lessee may self-insure retention of not more than \$500,000.

## 13.0 REQUIRED INSURANCE – CREDIT AGREEMENT

There are no insurance provisions contained within the Credit Agreement.

## 14.0 REQUIRED INSURANCE – INTERCREDITOR AGREEMENT

INTECH has reviewed Intercreditor Agreement, by and among JFK Millennium Partners, LLC, the Bank of New York Mellon, ING Capital LLC, the Bank of New York Mellon, ING Capital LLC, The Bank of New York Mellon and ING Capital Markets LLC, JP Morgens Chase Bank, N.A, KeyBank National Association, Mizuho Capital markets LLC, MUFG Bank, LTD., Royal Bank of Canada, SMBC Capital Markets Inc., and the Bank of Nova Scotia, dated [●] 2024, including First Amendment, dated October [●], 2024.

Under Section 5.2, until the Discharge of Senior Obligations has occurred, subject to the terms of, and the rights of the Obligors under, the Senior Financing Documents and the rights of the Port Authority under the Lease Agreement, the Senior Collateral Agent on behalf of the Senior Secured Parties, subject to the last sentence of this Section 5.2, will have the right to

- (a) be named as an additional insured (other than for worker's compensation and employer's liability) and (in the case of policies covering real or personal property or business interruption) lender's loss payee under any insurance policies maintained from time to time by the Lessee,
- (b) to the extent provided in the Senior Financing Documents, (A) adjust or settle any insurance policy or claim covering the Collateral in the event of any loss thereunder and (B) approve any award granted in any condemnation or similar proceedings (including any deed in lieu thereof) affecting the Collateral and received by the Lessee in accordance with the Lease Agreement.

Following the Discharge of Senior Obligations and until the Discharge of Subordinate Obligations has occurred, the Subordinate Collateral Agent on behalf of the Subordinate Secured Parties will be named as an additional insured (other than for worker's compensation and employer's liability) and shall otherwise have the rights granted to the Senior Collateral Agent as described in the preceding sentence. Until the Discharge of Senior Obligations has occurred, if any Subordinate Secured Party shall, at any time, receive any proceeds of any such insurance policy or any such award or payment in contravention of this Agreement, it shall segregate and hold in trust and forthwith pay such proceeds over to the Senior Collateral Agent in accordance with Section 4.3.

Notwithstanding the foregoing, the Port Authority Indemnified Parties (as defined in the Lease Agreement) and the City Insureds (as defined in the Lease Agreement) will have the sole exclusive right to be named as (a) additional insureds and loss payee as their respective interests may appear in the Lease Agreement in all property damage insurance policies required under the Lease Agreement and (b) additional insured in all liability insurance policies required under the Lease Agreement (other than professional liability, employer's liability and workers' compensation).

## 15.0 REQUIRED INSURANCE – INSURANCE WAIVER LETTER

As per the insurance waiver letter dated November 17, 2022:

In connection with the Lease, the Port Authority and the Lessee hereby agree as follows:

1. Certain requirements set forth in the Lease with respect to D&C Work Period insurance shall be amended as follows:
  - a. Waive the requirement for the crime policy to cover Cybercrime. Cybercrime will be covered under the Cyber policy. This coverage is not available in the market under Crime policies, however the Cyber policy will provide coverage for Cybercrime and the Crime policy will provide coverage for Computer and Transfer Fund Fraud and Fraudulent Impersonation (a/k/a Social Engineering).
  - b. Amend the \$300,000,000 liability limit and replacement cost limit for NBCR coverage to be \$100,000,000. The largest limit currently available in the market for liability and property damage at this site is currently \$100,000,000, which will be in place.
  - c. Waive the requirement for the general aggregate limit to reinstate annually on the Professional Liability policies. The \$75,000,000 aggregate limit will be in place for the term of the D&C Work Period. Dedicated Professional Liability insurance that provides annually reinstating aggregate limits is not currently available for project coverage.
  - d. Waive the requirement for the Professional Liability policies to utilize deductibles and instead allow for self-insured retentions of \$500,000 as that is all that is available in the insurance market for this line of coverage.

## 16.0 INSURANCE PROGRAM

### 16.1 D&C Work Policies

#### 16.1.1 Builder's Risk

Rating(s):	<i>Insurer</i>	<i>Percentage</i>	<i>A.M. Best</i>	<i>S&amp;P</i>
	Chubb U.S. Group of Insurance Companies	17%	A++ XV	A+
	Liberty Mutual Insurance Company	17%	A+ XV	AA
	Allianz Global Risks	10.5%	A+ XV	AA
	Lloyds of London (SCOR)	5%	A+ XV	A+
	AXA XL Insurance Company	9%	A+ XV	AA-
	AIG	2.5%	A XV	A+
	Zurich Insurance Company Ltd.	5%	A XV	AA
	Starr Indemnity & Liability Company	4.5%	A XV	A+
	Lloyds of London (MSIG Mitsui Sumitomo)	4%	A+ XV	A+
	Lloyds of London (Markel)	2%	A+ XV	A+
	Lloyds of London (SOMPO)	4.5%	A+ XV	A+

PROTECT. OPTIMIZE. EVOLVE.

	HDI Global SE	2%	A XV	A+
	Lloyds of London (QBE UK Limited)	5%	A+ XV	A+
	Lloyds of London (AWAC)	2.5%	A+ XV	A+
	London Helvetia	2%	A+ XV	A+
	Lloyds of London (Aviva Insurance Limited)	2.5%	A+ XV	A+
	Lloyds of London (Munich Re)	2.5%	A+ XV	A
	CNA Insurance	2.5%	A+ XV	A+
<b>Policy Term:</b>	October 18, 2022 – February 23, 2028			
<b>Policy Number:</b>	Chubb U.S. Group of Insurance Companies	I11202767 001		
	Liberty Mutual Insurance Company	MK2-L9L-475235-012		
	Allianz Global Risks	USE00149822		
	Lloyds of London (SCOR)	FA0099329-2022-1		
	AXA XL Insurance Company	US00122104CA22A		
	AIG	011436018		
	Zurich Insurance Company Ltd.	IM 0460204-00		
	Starr Indemnity & Liability Company	SICON1000652305		
	Lloyds of London (MSIG Mitsui Sumitomo)	CIM4112907		
	Lloyds of London (Markel)	MKLV18PP000138		
	Lloyds of London (SOMPO)	ECR10015366300		
	HDI Global SE	BRD5893000S		
	Lloyds of London (QBE UK Limited)	CREII2250050		
	Lloyds of London (AWAC)	CREII2250050		
	London Helvetia	CREII2250050		
	Lloyds of London (Aviva Insurance Limited)	CREII2250050		
	Lloyds of London (Munich Re)	CREII2250050		
	CNA Insurance	703987469		
<b>Named Insured:</b>	<ul style="list-style-type: none"> <li>• JFK Millennium Partners AJV</li> <li>• Sponsors</li> <li>• The Contractor</li> <li>• All other contractors, subcontractors and agents of any tier.</li> </ul>			

	<ul style="list-style-type: none"> <li>• Consultants, suppliers and vendors, all of any tier, while carrying out physical work associated with the Project or on and about the Project Site or caused by their physical presence on or movement about the Project Site</li> <li>• Financiers and/or Funders</li> <li>• The employees, directors or officers of any of the above.</li> </ul>
Additional Named Insured:	<ul style="list-style-type: none"> <li>• The Bank of New York Mellon (senior Collateral Agent) as its interest may appear</li> <li>• The Port Authority of New York and New Jersey and each of its commissioners, officers, directors, agents, employees, and authorized representatives;</li> <li>• The City of New York and each of its officers, directors, agents, employees, and authorized representatives;</li> <li>• New York City Economic development Corporation and each of its officers, directors, agents, employees and authorized representatives;</li> <li>• Vantage Airport Group (US) LTD</li> <li>• Vantage Airport Group LTD</li> <li>• RXR VAF III JFK Millennium Partners Vehicle LLC</li> <li>• American Triple I Partners</li> <li>• JetBlue Airways Corporation, and each of their respective affiliates, shareholders, members, managers, partners (including partners of partners), subsidiaries and related parties, and any successors and/or assigns of of such entities</li> <li>• JFK Millennium Partners, LLC</li> </ul>
Loss Payee:	<ul style="list-style-type: none"> <li>• The Bank of New York Mellon (Senior Collateral Agent) as Sole Loss Payee</li> <li>• JFK Millennium Partners, LLC</li> <li>• The Port Authority of New York and New Jersey and each of its commissions, officers, directors, agents, employees and authorized representatives</li> <li>• The City of New York and New Jersey and each of its commissioners, officers, directors, agents, employees and authorized representatives</li> <li>• New York Economic Development Corporation and each of its commissioners, officers, directors, agents, employees and authorized representatives;</li> </ul>
Lender Protection:	<ul style="list-style-type: none"> <li>• Loss Payee</li> <li>• Non-vitiation</li> <li>• Waiver of subrogation</li> <li>• Notice of cancellation</li> </ul>
Perils Insured:	Direct physical Loss subject to the terms, conditions and exclusions in the policy forms and as specified below
Extensions/Endorsements:	<ul style="list-style-type: none"> <li>• Delay in Opening (per from number ACE0729)</li> <li>• Insurance Premiums for Builders Risk, Workers' Compensation and General Liability Insurance</li> </ul>
Location:	John F. Kennedy International Airport Terminal 6/7, Queens, New York, 11430
Sum Insured:	<b>Phase 1:</b>

	<p>\$2,140,811,249 – total limit          \$1,819,011,249 – physical loss or damage          \$439,300,000 – loss of business income (Phase 1: \$321,800,000 / Phase 2 Overlay: \$117,500,000)</p> <p><b>Phase 2:</b>          \$1,042,005,878 – total limit          \$673,905,878 – physical loss or damage          \$368,100,000 – loss of business income</p>
Sublimits:	<p><u>Sublimits of Insurance:</u></p> <p>\$10,000,000 – Property in Transit per Conveyance          \$10,000,000 – Temporary Off-site Storage and Off-site Staging areas, any one location          \$20% of the insured physical Loss, or \$20,000,000 whichever is less          \$25% of the insured physical Loss, or \$25,000,000 whichever is less          \$1,000,000 – Trees, Shrubs and Plants          \$1,000,000 – Protection Services Charges          \$1,000,000 – Fire Protective Equipment Recharge          \$2,500,000 – Valuable Papers and Records          \$250,000 – Claim Preparation Expenses          \$250,000 – Protection of Insured Property Pre-Loss          \$250,000 – Office and Construction Trailers/Semi-Trailers and their Contacts          Ordinance or Law          \$250,000 – Business Personal Property          \$250,000 – Tower Crane Re-erection Expense          \$500,000,000 – Named Windstorm</p> <p><u>Annual Aggregate Sublimits of Insurance:</u></p> <p><u>Flood:</u>          \$250,000,000 – Per Occurrence          \$250,000,000 – Annual Aggregate</p> <p><u>Earth Movement:</u>          \$500,000,000 – Per Occurrence          \$500,000,000 – Annual Aggregate</p> <p><u>Pollution or Contamination Clean-up:</u>          \$1,000,000 – Per Occurrence          \$1,000,000 – Annual Aggregate</p> <p><u>Limited Coverage for Fungus, wet Rot, Dry Rot or Bacteria:</u>          \$1,000,000 – Per Occurrence          \$1,000,000 – Annual Aggregate</p>
Deductibles:	<p>\$250,000 – Direct Physical Loss in any one Occurrence Except:</p>

	<p>\$500,000 or NA% – Loss in any one Occurrence caused by or resulting from Flood subject to a maximum deductible of NA;          \$500,000 or NA% – Loss in any one Occurrence caused or resulting from Earth Movement subject to a maximum deductible of NA;          \$500,000, or NA% – Loss in any one Occurrence caused or resulting from Water Damage subject to a maximum deductible of NA;          \$500,000, or NA% – Loss in any one Occurrence caused or resulting from Named Windstorm subject to a maximum deductible of NA;          \$250,000, or NA% – Loss in any one Occurrence caused or resulting from Testing</p> <p>Where a percentage deductible is shown above, the deductible shall be the greater of the dollar amount shown, or the stated percentage of the total insured values at the INSURED PROJECT site or sites at the time and date of the LOSS, unless a maximum deductible is listed:</p> <p>Delay in Opening-Waiting Period – 45 Calander Days, each Delay except:</p> <p>45 Calendar Days – each Delay caused by or resulting from Flood;          45 Calendar Days – each Delay caused by or resulting from Earth Movement;          45 Calendar Days – each Delay caused by or resulting from Windstorm.</p>
<p>Waiver of Subrogation:</p>	<p>In favor of:</p> <ul style="list-style-type: none"> <li>• The Bank of New York Mellon (senior Collateral Agent) as its interest may appear</li> <li>• The Port Authority of New York and New Jersey and each of its commissioners, officers, directors, agents, employees, and authorized representatives;</li> <li>• The City of New York and each of its officers, directors, agents, employees, and authorized representatives;</li> <li>• New York City Economic development Corporation and each of its officers, directors, agents, employees and authorized representatives;</li> <li>• Vantage Airport Group (US) LTD</li> <li>• Vantage Airport Group LTD</li> <li>• RXR VAF III JFK Millennium Partners Vehicle LLC</li> <li>• American Triple I Partners</li> <li>• JetBlue Airways Corporation, and each of their respective affiliates, shareholders, members, managers, partners (including partners of partners), subsidiaries and related parties, and any successors and/or assigns of of such entities</li> <li>• JFK Millennium Partners, LLC</li> </ul>
<p>Cancellation:</p>	<p>90 days' notice written notice of cancellation, 30 days' notice for non-payment of premium to:</p> <ul style="list-style-type: none"> <li>• Bank of New York Mellon</li> <li>• The Port Authority of New York and New Jersey /PATH</li> <li>• The Port Authority of New York and New Jersey, Manager, Risk Financing</li> </ul>



PROTECT. OPTIMIZE. EVOLVE.

INTECH hereby confirms that the insurance is in full force and effect and the Finance Parties have been appropriately protected as described above.

### 16.1.2 Commercial General Liability (OCIP)

Insurance Carrier(s):	Starr Indemnity and Liability Company	
Rating(s):	S&P	A.M. Best's
	A+	A XV
Policy Term:	October 18, 2022 – February 23, 2028	
Policy Number:	1000025990221	
Named Insured:	<ul style="list-style-type: none"> <li>JFK Millennium Partners, LLC, C/O Vantage Airport Group</li> <li>Coverage afforded by this policy is automatically extended to contractors who are issued a Workers Compensation policy under this Controlled Insurance Program. All other contractors not issued a Workers Compensation policy under this Program must be endorsed onto the General Liability policy to be afforded coverage under this Program;</li> <li>Unless otherwise endorsed on this policy and subject to the above, no coverage will be provided to: Vendors; suppliers; truck carriers or haulers; material dealers; delivery persons; structural demolition operations; blasting operations; any security patrol or guard services; hazardous waste removal; abatement contractors; surveyors; any and all professional trades; manufacturers; fabricators,; any other organization performing activities outside of the “designated project(s)” that do not have on-site dedicated payroll associated with installation activities.</li> <li>All contractors, of any tier, for whom the First Named Insured has agreed, prior to the loss, in a written contract, to provide general liability coverage for the “designated project(s)” to which this insurance applies and the contractor performs construction activities at the “designated project(s),” pursuant to the written contract.</li> </ul>	
Additional Insured	<ul style="list-style-type: none"> <li>Vendors</li> <li>Mortgagee, Assignee or Receiver</li> <li>Lessor of Leased Equipment – Automatic Status When Required in Lease Agreement</li> <li>RXR JMP Development Services LLC.</li> <li>The Bank of New York Mellon (Senior Collateral Agent) a sit's interest may appear</li> <li>The Port Authority of New York and New Jersey and each of its commissioners, officers, directors, agents, employees, and authorized representatives</li> </ul>	

	<ul style="list-style-type: none"> <li>• The City of New York and each of its officers, directors, agents, employees, and authorized representatives</li> <li>• New York City Economic Development Corporation and each of its officers, directors, agents, employees, and authorized representatives; and</li> <li>• Vantage Airport Group (US) LTD</li> <li>• Vantage Airport Group LTD</li> <li>• RXR VAF III JFK Millennium Partners Vehicle LLC</li> <li>• American Triple I Partners</li> <li>• JetBlue Airways Corporation, and each of their respective affiliates, shareholders, members, managers, partners (including partners of partners), subsidiaries and related parties, and any successors and/or assigns of of such entities</li> <li>• JFK Millennium Partners, LLC</li> </ul>
Perils Insured:	Commercial General Liability including bodily injury and third party property damage
Location:	JFK Millennium Partners LLC's JFK Redevelopment Project at JFK International Airport, Queens, NY 11430
Lender Protection:	<ul style="list-style-type: none"> <li>• Additional Insured</li> <li>• Waiver of Subrogation</li> <li>• Notice of Cancellation]</li> </ul>
Sum Insured:	<p>\$15,000,000 – Each Occurrence            \$15,000,000 – General Aggregate            \$15,000,000 – Personal and Advertising Injury Limit - Any one person or organization            \$15,000,000 – Products – Completed Operations Aggregate Limit            \$300,000 – Damage to Premises Rented to You Limit            Annually – General Aggregate Limit Reinstatement</p>
Deductible:	\$10,000,000
Waiver of Subrogation:	<p>In favor of:</p> <ul style="list-style-type: none"> <li>• Bank of New York Mellon as Senior Collateral Agent</li> <li>• The Port Authority of New York and New Jersey</li> </ul>
Cancellation:	<p>90 days' notice written notice of cancellation, 30 days' notice for non-payment of premium to:</p> <ul style="list-style-type: none"> <li>• Bank of New York Mellon</li> <li>• The Port Authority of New York and New Jersey /PATH</li> <li>• The Port Authority of New York and New Jersey, Manager, Risk Financing</li> </ul>

INTECH hereby confirms that the insurance is in full force and effect and the Finance Parties have been appropriately protected as described above.

### 16.1.3 Worker’s Compensation and Employer’s Liability

Insurance Carrier(s):	Starr Indemnity and Liability Company	
Rating(s):	<i>S&amp;P</i>	<i>A.M. Best</i>
	A+	A XV
Policy Term:	October 18, 2022 – February 23, 2028	
Policy Number:	900 0186000	
Named Insured:	<ul style="list-style-type: none"> <li>JFK Millennium Partners, LLC, C/O Vantage Airport Group</li> <li>Coverage afforded by this policy is automatically extended to contractors who are issued a Workers Compensation policy under this Controlled Insurance Program. All other contractors not issued a Workers Compensation policy under this Program must be endorsed onto the General Liability policy to be afforded coverage under this Program;</li> <li>Unless otherwise endorsed on this policy and subject to the above, no coverage will be provided to: Vendors; suppliers; truck carriers or haulers; material dealers; delivery persons; structural demolition operations; blasting operations; any security patrol or guard services; hazardous waste removal; abatement contractors; surveyors; any and all professional trades; manufacturers; fabricators,; any other organization performing activities outside of the “designated project(s)” that do not have on-site dedicated payroll associated with installation activities.</li> <li>All contractors, of any tier, for whom the First Named Insured has agreed, prior to the loss, in a written contract, to provide general liability coverage for the “designated project(s)” to which this insurance applies and the contractor performs construction activities at the “designated project(s),” pursuant to the written contract.</li> </ul>	
Additional Insured	N/A for Worker’s Compensation	
Perils Insured:	Worker’s Compensation and Employer’s Liability	
Sum Insured:	<p><u>Workers’ Compensation:</u> States Covered</p> <p><u>Employer’s Liability:</u>            \$1,000,000 – Bodily Injury by Accident – Each Accident            \$1,000,000 – Bodily Injury by Disease – Policy Limit            \$1,000,000 – Bodily Injury by Disease – Each Employee</p> <p><u>Other States Insurance:</u>            All states except North Dakota, Ohio, Washington, Wyoming, Puerto Rico and states designated in item 3.a of the policy.</p>	
Deductible:	\$2,000,000	

PROTECT. OPTIMIZE. EVOLVE.

Waiver of Subrogation:	In favor of: <ul style="list-style-type: none"> <li>• Bank of New York Mellon as Senior Collateral Agent</li> <li>• The Port Authority of New York and New Jersey</li> </ul>
Cancellation:	The insurers have refused to provide notice of cancellation to the Lenders. In our opinion this can be dealt with by confirming that the insurance premiums have been paid or are current which at the time of closing they are.  Furthermore, should there be a notice of cancellation provided the Borrower has the obligation under the Finance Documents to notify the Finance Parties.  Finally we note that this is not a main project policy, and therefore, feel that the risk is negligible to the Finance Parties.

INTECH hereby confirms that the insurance is in full force and effect and the Finance Parties have been appropriately protected as described above.

#### 16.1.4 Umbrella and Excess Liability

Insurance Carrier(s), Ratings and Layers	<i>Insurer</i>	<i>S&amp;P</i>	<i>A.M. Best</i>
<u><a href="#">Umbrella</a></u>	Starr Indemnity and Liability Company	A+	A XV
<u><a href="#">1<sup>st</sup> Excess</a></u>	Liberty Mutual Insurance Company	A+	A XV
	Zurich-American Insurance Company	AA	A+ XV
	Markel American Insurance Company	A	A XV
<u><a href="#">2<sup>nd</sup> Excess</a></u>	Lloyds of London	A+	A+ XV
	Sompo	A+	A+ XV
	Great American Insurance Company	A+	A+ XV
<u><a href="#">3<sup>rd</sup> Excess</a></u>	Liberty Mutual Insurance Company	A+	A XV
	Ascot Insurance Company	BBB	A XIV
	Berkshire Hathaway	AA+	A++ XV
	Markel American Insurance Company	A	A XV
	Allied World Assurance Company, Ltd	A+	A XV
	Lloyds of London (Sompo Bda)	A+	A+ XV
	Munich Reinsurance America	A	A+ XV
	Lloyds Slip Lloyds of London (Lex)	A+	A+ XV
	<u><a href="#">4<sup>th</sup> Excess</a></u>	Chubb Bermuda	AA

	Lloyds of London (Argo)	A+	A+ XV
	Lloyds of London (Helix)	A+	A+ XV
	Lloyds of London (Ark)	A+	A+ XV
	Ascot Insurance Company	BBB	A XIV
	Munich Reinsurance Company America	A	A+ XV
	Lloyds of London (Starr)	A+	A+ XV
Policy Term:	October 18, 2022 – February 23, 2028		
Umbrella Policy Number:	10000588021221		
Excess Policy Number:	<p><b>1<sup>st</sup> Excess</b>                      ECO(28)64675737 – \$10,000,000 part of \$30,000,000                      SFX 1134649-00 - \$15,000,000 part of \$30,000,000                      MKLM1EUE100715 - \$5,000,000 part of \$30,000,000</p> <p><b>2<sup>nd</sup> Excess</b>                      BOWCN2250784 - \$25,000,000 part of \$50,000,000                      XSC30026463600 - \$12,500,000 part of \$50,000,000                      EXC 4455196 - \$12,500,000 part of \$50,000,000</p> <p><b>3<sup>rd</sup> Excess</b>                      ECO(28)64348797 - \$10,000,000 part of \$100,000,000                      EXNA2210000354-01 - \$12,500,000 part of \$100,000,000                      47-XSF-32-4955-01 - \$12,500,000 part of \$100,000,000                      MKLM6XL30000396 - \$10,000,000 part of \$100,000,000                      0313-5779 - \$12,500,000 part of \$100,000,000                      EXC30017000300 - \$12,500,000 part of \$100,000,000                      B0509BOWZC2250069 - \$12,500,000 part of \$100,000,000                      BOWCN2250825 - \$12,500,000 part of \$100,000,000                      62785843 - \$5,000,000 part of \$100,000,000</p> <p><b>4<sup>th</sup> Excess</b>                      JFKMP-0274/MXS - \$25,000,000 part of \$100,000,000                      BMBDAOCC2022005 - \$10,000,000 part of \$100,000,000                      BMBDAOCC2022005 - \$10,000,000 part of \$100,000,000                      BMBDAOCC2022005 - \$12,500,000 part of \$100,000,000                      BMBDAOCC2022005 - \$10,000,000 part of \$100,000,000                      B0509BOWZC2250070 - \$10,000,000 part of \$100,000,000                      BOWCN225826 - \$22,500,000 part of \$100,000,000</p>		
Named Insured:	<ul style="list-style-type: none"> <li>• JFK Millennium Partners, LLC</li> <li>• JMP Millennium Partners, LLC</li> </ul>		
Additional Insured	Following form with underlying layers		
Lender Protection:	Follow form with underlying layers		
Perils Insured:	Excess Liability – follow form with underlying layers		

PROTECT. OPTIMIZE. EVOLVE.

Sum Insured:	<p><b><i>Umbrella:</i></b> \$5,000,000 – Each Occurrence \$5,000,000 - Aggregate</p> <p><b><i>1<sup>st</sup> Excess:</i></b> \$30,000,000 – Per Occurrence \$30,000,000 - Aggregate</p> <p><b><i>2<sup>nd</sup> Excess:</i></b> \$50,000,000 – Per Occurrence \$50,000,000 - Aggregate</p> <p><b><i>3<sup>rd</sup> Excess</i></b> \$100,000,000 – Per Occurrence \$100,000,000 - Aggregate</p> <p><b><i>4<sup>th</sup> Excess</i></b> \$100,000,000 – Per Occurrence \$100,000,000 - Aggregate</p> <p><b>Total Limits: \$285,000,000 per occurrence / \$285,000,000 aggregate in excess of primary \$15,000,000</b></p> <p><b>Total Limits Overall: \$300,000,000 per occurrence / aggregate</b></p>
Deductible:	N/A for excess policies
Waiver of Subrogation:	Following form with underlying layers
Cancellation:	Following form with underlying layers

INTECH hereby confirms that the insurance is in full force and effect and the Finance Parties have been appropriately protected as described above.

### 16.1.5 Terrorism Only (Construction Exposure)

Insurers and Rating(s):	<i>Insurer</i>	<i>Percentage</i>	<i>A.M. Best</i>	<i>S&amp;P</i>
	<b>Primary Policy</b>			
	Lloyds of London (Talbot)	20%	A+ XV	A+
	Lloyds of London (Convex)	15%	A+ XV	A+
	Lloyds of London (Sompo)	15%	A+ XV	A+
	Lloyds of London (Hiscox)	10%	A+ XV	A+
	Lloyds of London (Liberty)	20%	A+ XV	A+
	Lloyds of London (Hamilton)	10%	A+ XV	A+

	Lloyds of London (Roanoke)	10%	A+ XV	A+
	<b>1<sup>st</sup> Excess</b>			
	Lloyds of London (Arch)	10%	A+ XV	A+
	Lloyds of London (Argo)	7%	A+ XV	A+
	Lloyds of London (Mosaic)	10%	A+ XV	A+
	Lloyds of London (Amlin)	8%	A+ XV	A+
	Lloyds of London (Fidelis)	15%	A+ XV	A+
	Lloyds of London (IQUW)	5%	A+ XV	A+
	Lloyds of London (CNA Hardy)	10%	A+ XV	A+
	Lloyds of London (IGI)	5%	A+ XV	A+
	Lloyds of London (Talbot)	10%	A+ XV	A+
	Lloyds of London (Hiscox)	15%	A+ XV	A+
	Lloyds of London (Liberty)	5%	A+ XV	A+
	<b>2<sup>nd</sup> Excess</b>			
	Lloyds of London (Chubb)	6.818182%	A+ XV	A+
	Lloyds of London (QBE)	5.681818%	A+ XV	A+
	Lloyds of London (Aegis)	5.454545%	A+ XV	A+
	Lloyds of London (Allianz)	6.818182%	A+ XV	A+
	Lloyds of London (Hartford)	4.545455%	A+ XV	A+
	Lloyds of London (Inigo)	3.636364%	A+ XV	A+
	Lloyds of London (Lancashire)	12.643636%	A+ XV	A+
	Lloyds of London (Aspen)	6.818182%	A+ XV	A+
	Lloyds of London (Cincinnati)	2.272727%	A+ XV	A+
	Lloyds of London (Canopus)	4%	A+ XV	A+
	Lloyds of London (Travelers)	3.181818%	A+ XV	A+
	Lloyds of London (Fidelis)	15.909091%	A+ XV	A+
	Lloyds of London (Markel)	4.545455%	A+ XV	A+
	Lloyds of London (Brit)	3.720%	A+ XV	A+
	Lloyds of London (Beazley)	6.818182%	A+ XV	A+
	Lloyds of London (Antares)	3.636364%	A+ XV	A+
	Lloyds of London (Apollo)	3.5%	A+ XV	A+
Policy Term:	October 18, 2022 – October 18, 2028			
Policy Number:	<b>Primary:</b> TN2250812 (LEAD) <b>1st Excess:</b> TN2250813 (LEAD)			

	<b>2<sup>nd</sup> Excess:</b> TN2250814
<b>Named Insured:</b>	JFK Millennium Partners, LLC
<b>Additional Insured:</b>	<ul style="list-style-type: none"> <li>• The Bank of New York Mellon (Senior Collateral Agent) as additional insured as its interest may appear under each insurance</li> <li>• The Port Authority of new York and New Jersey and each of its commissioners, officers, directors, agents, employees, and authorized representatives;</li> <li>• The City of New York and each of its officers, directors, agents, employees, and authorized representatives;</li> <li>• New York City Economic Development Corporation and each of its officers, directors, agents, employees, and authorized representatives;</li> <li>• Vantage Airport Group (US) LTD;</li> <li>• Vantage Airport Group LTD;</li> <li>• RXR VAF III JFK Millennium Partners Vehicle LLC;</li> <li>• American Triple I Partners;</li> <li>• JetBlue Airways Corporation, and each of their respective affiliates, shareholders, members, managers, partners (including partners of partners); subsidiaries and related parties, and any successors and/or assigns of such entities</li> </ul>
<b>Loss Payee:</b>	<ul style="list-style-type: none"> <li>• The Bank of New York Mellon (Senior Collateral Agent) is a sole loss payee under each insurance related to property damage</li> <li>• JFK Millennium Partners, LLC</li> <li>• The Port Authority of new York and New Jersey and each of its commissioners, officers, directors, agents, employees, and authorized representatives;</li> <li>• The City of New York and each of its officers, directors, agents, employees, and authorized representatives;</li> <li>• New York City Economic Development Corporation and each of its officers, directors, agents, employees, and authorized representatives</li> </ul>
<b>Perils Insured:</b>	Physical loss or damage due to a terrorist act
<b>Sum Insured:</b>	<p><b>Declared Limits:</b></p> <p>\$2,587,148,526 – hard costs for Phase 1 and 2 \$801,400,000 – delay in start-up</p> <p><b>Policy Limit: \$2,100,000,000 blanket limit split as follows:</b></p> <p>Primary: \$500,000,000 per occurrence / aggregate 1<sup>st</sup> Excess: \$500,000,000 per occurrence / aggregate 2<sup>nd</sup> Excess: \$1,000,000,000 per occurrence / aggregate</p>
<b>Waiver of Subrogation:</b>	In favor of:



	<ul style="list-style-type: none"> <li>• The Bank of New York Mellon (Senior Collateral Agent) as additional insured as its interest may appear under each insurance</li> <li>• The Port Authority of New York and New Jersey and each of its commissioners, officers, directors, agents, employees, and authorized representatives;</li> <li>• The City of New York and each of its officers, directors, agents, employees, and authorized representatives;</li> <li>• New York City Economic Development Corporation and each of its officers, directors, agents, employees, and authorized representatives;</li> <li>• Vantage Airport Group (US) LTD;</li> <li>• Vantage Airport Group LTD;</li> <li>• RXR VAF III JFK Millennium Partners Vehicle LLC;</li> <li>• American Triple I Partners;</li> <li>• JetBlue Airways Corporation, and each of their respective affiliates, shareholders, members, managers, partners (including partners of partners); subsidiaries and related parties, and any successors and/or assigns of such entities</li> </ul>
<p>Cancellation:</p>	<p>Non-cancelable except for non-payment of premium for which 15 days will be provided.</p> <ul style="list-style-type: none"> <li>• Bank of New York Mellon</li> <li>• The Port Authority of New York and New Jersey /PATH</li> <li>• The Port Authority of New York and New Jersey, Manager, Risk Financing</li> </ul>

INTECH hereby confirms that the insurance is in full force and effect and the Finance Parties have been appropriately protected as described above.

### 16.1.6 Director's and Officers Insurance

Insurance Carrier(s):	Berkshire Hathaway Specialty Insurance Company	
Rating(s):	<i>S&amp;P</i>	<i>A.M. Best</i>
	A++ XV	AA+
Policy Term:	October 18, 2023 – October 18, 2024	
Policy Number:	47-EMC-324958-01	
Named Insured:	JFK Millenium Partners, LLC	
Perils Insured:	Director's & Officer's Liability	
Sum Insured:	\$5,000,000 – Aggregate limit \$1,000,000 – Side A Additional Limit for directors and Officers \$6,000,000 – All liability Coverage	
Sublimit:	\$150,000 – Derivative Demand Investigation Costs	
Deductible:	\$150,000	

Cancellation:	<p>90 days' notice written notice of cancellation, 30 days' notice for non-payment of premium to:</p> <ul style="list-style-type: none"> <li>• Bank of New York Mellon</li> <li>• The Port Authority of New York and New Jersey /PATH</li> <li>• The Port Authority of New York and New Jersey, Manager, Risk Financing</li> </ul>
---------------	--

INTECH hereby confirms that the insurance is in full force and effect and the Finance Parties have been appropriately protected as described above.

### 16.1.7 Nuclear, Chemical, Biological & Radiological (NCBR) – Construction Exposure

Insurers and Rating(s):	<i>Insurer</i>	<i>Percentage</i>	<i>A.M. Best</i>	<i>S&amp;P</i>
	Lloyds of London (Talbot)	15%	A+ XV	A+
	Lloyds of London (Convex)	5%	A+ XV	A+
	Lloyds of London (Allianz)	15%	A+ XV	A+
	Lloyds of London (Arch)	5%	A+ XV	A+
	Lloyds of London (Chaucer)	10%	A+ XV	A+
	Lloyds of London (Brit)	10.25%	A+ XV	A+
	Lloyds of London (IQUW)	5%	A+ XV	A+
	Lloyds of London (Apollo)	4.75%	A+ XV	A+
	Lloyds of London (Hiscox)	15%	A+ XV	A+
	Lloyds of London (Liberty)	10%	A+ XV	A+
	Lloyds of London (Hamilton)	5%	A+ XV	A+
	Policy Term:	October 18, 2022 – October 18, 2028		
Policy Numbers:	TN2250815 / UTS2572352.22 / 5N330683001 / WTS400286312			
Named Insured:	JFK Millennium Partners, LLC			
Additional Insured:	<ul style="list-style-type: none"> <li>• The Bank of New York Mellon (Senior Collateral Agent) as additional insured as its interest may appear under each insurance</li> <li>• The Port Authority of new York and New Jersey and each of its commissioners, officers, directors, agents, employees, and authorized representatives;</li> <li>• The City of New York and each of its officers, directors, agents, employees, and authorized representatives;</li> <li>• New York City Economic Development Corporation and each of its officers, directors, agents, employees, and authorized representatives;</li> <li>• Vantage Airport Group (US) LTD;</li> <li>• Vantage Airport Group LTD;</li> <li>• RXR VAF III JFK Millennium Partners Vehicle LLC;</li> <li>• American Triple I Partners;</li> </ul>			

	<ul style="list-style-type: none"> <li>• JetBlue Airways Corporation, and each of their respective affiliates, shareholders, members, managers, partners (including partners of partners); subsidiaries and related parties, and any successors and/or assigns of such entities</li> </ul>
Loss Payee:	<ul style="list-style-type: none"> <li>• The Bank of New York Mellon (Senior Collateral Agent) is a sole loss payee under each insurance related to property damage</li> <li>• JFK Millennium Partners, LLC</li> <li>• The Port Authority of New York and New Jersey and each of its commissioners, officers, directors, agents, employees, and authorized representatives;</li> <li>• The City of New York and each of its officers, directors, agents, employees, and authorized representatives;</li> <li>• New York City Economic Development Corporation and each of its officers, directors, agents, employees, and authorized representatives</li> </ul>
Perils Insured:	Physical loss or damage due to malicious acts of nuclear, chemical, biological or radiological origin including third party liability arising therefrom
Sum Insured:	\$100,000,000 each occurrence / aggregate
Waiver of Subrogation:	<p>In favor of:</p> <ul style="list-style-type: none"> <li>• Bank of New York Mellon as Senior Collateral Agent</li> <li>• The Port Authority of New York and New Jersey</li> </ul> <p>*We note that the insurer has not yet agreed to provide the waiver of subrogation under this policy and the insurance broker is working to obtain. In the event that a waiver of subrogation is not provided in favor of the Senior Collateral Agent the risk is, in our opinion, negligible as there is no likelihood for the Finance Parties to cause a loss under the nuclear, chemical, biological and radiological policy.</p>
Cancellation:	<p>90 days' notice written notice of cancellation, 30 days' for non-payment of premium to Scheduled Person or Organization including :</p> <ul style="list-style-type: none"> <li>• The Port Authority of New York and New Jersey /PATH</li> <li>• The Port Authority of New York and New Jersey, Manager, Risk Financing</li> <li>• Bank of New York Mellon</li> </ul>

INTECH hereby confirms that the insurance is in full force and effect and the Finance Parties have been appropriately protected as described above.

### 16.1.8 Professional Liability

Under the Lease there will be a total of \$75,000,000 of professional liability provided between the Lead Architect, the Design-Builder and the Lessee. Insurance is as follows:

#### 16.1.8.1 Designer - AECOM

PROTECT. OPTIMIZE. EVOLVE.

Insurance Carrier(s):	Illinois Insurance Co.		
Rating(s):	S&P		A.M. Best
	Not Rated		A- XI
Policy Term:	April 01, 2024 – April 01, 2025		
Policy Number:	EON G21654693 005		
Named Insured:	AECOM AECOM USA, Inc.		
Additional Insured	N/A		
Perils Insured:	Architects & Engineers Professional Liability Defense Included		
Sum Insured:	\$10,000,000 – Per Claim and Aggregate		
Deductible:	None Specified		
Waiver of Subrogation:	In favor of: <ul style="list-style-type: none"> <li>the Developer, Design-Builder, the Developer’s agents, officials, and employees and against each other.</li> </ul>		

INTECH hereby confirms that the insurance is in full force and effect and will not provide any protections to the Finance Parties, nor are they required contractually. Coverage is required as evidence only and therefore is deemed acceptable.

#### 16.1.8.2 Design-Builder – CPPI Policy

Insurance Carrier(s), Ratings and Layers	Insurer	S&P	A.M. Best
<u>Umbrella</u>	Berkshire Hathaway Specialty Insurance	AA+	A++ XV
<u>1<sup>st</sup> Excess</u>	Starr Surplus Lines Insurance Co.	Not Rated	A XV
<u>2<sup>nd</sup> Excess</u>	North American Capacity Insurance Co.	AA-	A+ XV
<u>3<sup>rd</sup> Excess</u>	Vantage Risk Specialty Insurance Co.	Not Rated	A- XI
<u>4<sup>th</sup> Excess</u>	Endurance American Specialty Insurance Co.	A+	A+ XV
Policy Term:	<b>Primary:</b> November 17, 2022 – February 23, 2028 <b>1<sup>st</sup> Excess:</b> November 17, 2022 – February 23, 2028 <b>2<sup>nd</sup> Excess:</b> November 17, 2022 – February 23, 2028 <b>3<sup>rd</sup> Excess:</b> November 17, 2022 – February 23, 2028 <b>4<sup>th</sup> Excess:</b> November 17, 2022 – February 23, 2028 Extended Reporting Period: 6 years (February 25, 2028 – February 25, 2034) Retro Date: June 05, 2019		

PROTECT. OPTIMIZE. EVOLVE.

Policy Number:	42-CNP325468-01
Excess Policy Number:	TBD
Named Insured:	Hunt Construction Group, Inc.
Additional Insured	Follow form with underlying layers
Lender Protection:	Follow form with underlying layers
Perils Insured:	Excess Liability – follow form with underlying layers
Sum Insured:	<p><b>Primary:</b> \$15,000,000 – Per Claim \$15,000,000 – Aggregate</p> <p><b>1<sup>st</sup> Layer:</b> \$10,000,000 <b>2<sup>nd</sup> Layer:</b> \$10,000,000 <b>3<sup>rd</sup> Layer:</b> \$10,000,000 <b>4<sup>th</sup> Layer:</b> \$5,000,000</p> <p><b>Total Limit:</b> \$50,000,000</p>
Deductible:	N/A for excess policies
Waiver of Subrogation:	Following form with underlying layers
Cancellation:	Following form with underlying layers

INTECH hereby confirms that the insurance is in full force and effect and will not provide any protections to the Finance Parties, nor are they required contractually. Coverage is required as evidence only and therefore is deemed acceptable.

#### 16.1.8.3 Lessee's Insurance – Owners' Protective Professional Indemnity

Insurance Carrier(s):	Berkely Insurance Company	
Rating(s):	<i>S&amp;P</i>	<i>A.M. Best</i>
	A+	A+ XV
Policy Term:	October 18, 2022 – February 23, 2028	
Policy Number:	OOPB-5018972-1022	
Named Insured:	JFK Millennium Partners, LLC	
Additional Insured	N/A with OPPI	
Lender Protection:	Notice of cancellation only	
Perils Insured:	Owners' protective professional indemnity to cover excess errors & omissions for the owner (Lessee)	
Sum Insured:	\$25,000,000 per claim	
	\$25,000,000 aggregate	

PROTECT. OPTIMIZE. EVOLVE.

Deductible:	\$500,000
Waiver of Subrogation:	N/A for OPPI
Cancellation:	<p>90 days' notice written notice of cancellation, 30 days' for non-payment of premium to Scheduled Person or Organization including</p> <ul style="list-style-type: none"> <li>• Bank of New York Mellon</li> <li>• The Port Authority of New York and New Jersey /PATH</li> <li>• The Port Authority of New York and New Jersey, Manager, Risk Financing</li> </ul>

### 16.1.9 Lead Architect's Insurance

#### 16.1.9.1 Commercial General Liability

Insurance Carrier(s):	Transportation Insurance Company	
Rating(s):	S&P	A.M. Best's
	A+	A XV
Policy Term:	January 01, 2024 – Jaarynu 01, 2025	
Policy Number:	6076463587	
Named Insured:	Corgan & Associates Inc.	
Additional Insured	<ul style="list-style-type: none"> <li>• JFK Millennium Partners, LLC,</li> <li>• Vantage Airport Group (US) LTD.,</li> <li>• Vantage Airport Group LTD</li> <li>• RXR VAF III JFK Millennium Partners Vehicle LLC</li> <li>• Paslay Management Group LP, American Triple I Partners</li> <li>• JetBlue Airways Corporation</li> <li>• British Airways PLC, and each of their respective affiliates, shareholders, members, managers, partners (including partners of partners), subsidiaries and related parties, and any successors and/or assigns of such entities;</li> <li>• Any present or future mortgagee which encumbers an interest in the land or improvements located at the Project Site, together with their respective directors, officers, employees, and any successors and assigns of such entities</li> <li>• The Port Authority of New York and New Jersey and each of its commissioners, officers, directors, agents, employees, and authorized representatives;</li> <li>• The City of New York and each of its officers, directors, agents, employees, and authorized representatives;</li> <li>• New York City Economic Development Corporation and each of its officers, directors, agents, employees, and authorized representatives;</li> <li>• The Bank of New York Mellon</li> </ul>	

	<ul style="list-style-type: none"> <li>• Hunt Construction Group, Inc.</li> <li>• such other and further entities and/or individuals as may be reasonably identified by Developer to Consultant in writing.</li> </ul>
Perils Insured:	Commercial General Liability including bodily injury and third-party property damage
Location:	JFK Terminal 5 and Terminal 6 Redevelopment: JFK Airport, Queens, NY 11430.
Lender Protection:	<ul style="list-style-type: none"> <li>• Additional Insured</li> <li>• Waiver of Subrogation</li> </ul>
Sum Insured:	\$2,000,000 – Each Occurrence \$1,000,000 – Damage for Rented Premises \$5,000 – Medical Expenses \$2,000,000 – Personal and Advertisement Injury \$4,000,000 – General Aggregate \$4,000,000 – Products- Completed/Operating Aggregate \$50,000 – Leased Equipment
Deductible:	None Specified
Waiver of Subrogation:	In favor of: <ul style="list-style-type: none"> <li>• JFK Millennium Partners, LLC,</li> <li>• Vantage Airport Group (US) LTD.,</li> <li>• Vantage Airport Group LTD</li> <li>• RXR VAF III JFK Millennium Partners Vehicle LLC</li> <li>• Paslay Management Group LP, American Triple I Partners</li> <li>• JetBlue Airways Corporation</li> <li>• British Airways PLC, and each of their respective affiliates, shareholders, members, managers, partners (including partners of partners), subsidiaries and related parties, and any successors and/or assigns of such entities;</li> <li>• Any present or future mortgage which encumbers an interest in the land or improvements located at the Project Site, together with their respective directors, officers, employees, and any successors and assigns of such entities</li> <li>• The Port Authority of New York and New Jersey and each of its commissioners, officers, directors, agents, employees, and authorized representatives;</li> <li>• The City of New York and each of its officers, directors, agents, employees, and authorized representatives;</li> <li>• New York City Economic Development Corporation and each of its officers, directors, agents, employees, and authorized representatives;</li> <li>• Hunt Construction Group, Inc.</li> </ul> such other and further entities and/or individuals as may be reasonably identified by Developer to Consultant in writing.
Cancellation:	30days' notice written notice of cancellation other than non-payment of premium.

INTECH hereby confirms that the insurance is in full force and effect and the Architect is not required to provide any protections to the Finance Parties contractually other than a general naming of any present or future mortgagee. This approach is, in our opinion, acceptable as the Borrower maintains appropriate insurance in which the Finance Parties are named.

**16.1.9.2 Automobile Liability**

Insurance Carrier(s):	Valley Forge Insurance Company	
Rating(s):	S&P	A.M. Best
	A+	A XV
Policy Term:	January 01, 2024 – January 01, 2025	
Policy Number:	6076417533	
Named Insured:	Corgan & Associates Inc	
Additional Insured:	<ul style="list-style-type: none"> <li>• JFK Millennium Partners, LLC,</li> <li>• Vantage Airport Group (US) LTD.,</li> <li>• Vantage Airport Group LTD</li> <li>• RXR VAF III JFK Millennium Partners Vehicle LLC</li> <li>• Paslay Management Group LP, American Triple I Partners</li> <li>• JetBlue Airways Corporation</li> <li>• British Airways PLC, and each of their respective affiliates, shareholders, members, managers, partners (including partners of partners), subsidiaries and related parties, and any successors and/or assigns of such entities;</li> <li>• Any present or future mortgagee which encumbers an interest in the land or improvements located at the Project Site, together with their respective directors, officers, employees, and any successors and assigns of such entities</li> <li>• The Port Authority of New York and New Jersey and each of its commissioners, officers, directors, agents, employees, and authorized representatives;</li> <li>• The City of New York and each of its officers, directors, agents, employees, and authorized representatives;</li> <li>• New York City Economic Development Corporation and each of its officers, directors, agents, employees, and authorized representatives;</li> <li>• The Bank of New York Mellon</li> <li>• Hunt Construction Group, Inc.</li> <li>• such other and further entities and/or individuals as may be reasonably identified by Developer to Consultant in writing.</li> </ul>	
Perils Insured:	Bodily injury and third party property damage arising out of owned, hired, leased and non-owned automobiles	
Lender Protection:	<ul style="list-style-type: none"> <li>• Additional Insured</li> <li>• Waiver of Subrogation</li> </ul>	



Sum Insured:	\$1,000,000 combined single limit- Each Accident
Waiver of Subrogation:	<p>In favor of:</p> <ul style="list-style-type: none"> <li>• JFK Millennium Partners, LLC,</li> <li>• Vantage Airport Group (US) LTD.,</li> <li>• Vantage Airport Group LTD</li> <li>• RXR VAF III JFK Millennium Partners Vehicle LLC</li> <li>• Paslay Management Group LP, American Triple I Partners</li> <li>• JetBlue Airways Corporation</li> <li>• British Airways PLC, and each of their respective affiliates, shareholders, members, managers, partners (including partners of partners), subsidiaries and related parties, and any successors and/or assigns of such entities;</li> <li>• Any present or future mortgagee which encumbers an interest in the land or improvements located at the Project Site, together with their respective directors, officers, employees, and any successors and assigns of such entities</li> <li>• The Port Authority of New York and New Jersey and each of its commissioners, officers, directors, agents, employees, and authorized representatives;</li> <li>• The City of New York and each of its officers, directors, agents, employees, and authorized representatives;</li> <li>• New York City Economic Development Corporation and each of its officers, directors, agents, employees, and authorized representatives;</li> <li>• Hunt Construction Group, Inc.</li> </ul> <p>such other and further entities and/or individuals as may be reasonably identified by Developer to Consultant in writing.</p>
Cancellation:	30days' notice written notice of cancellation other than non-payment of premium.

INTECH hereby confirms that the insurance is in full force and effect and the Architect is not required to provide any protections to the Finance Parties contractually other than a general naming of any present or future mortgagee. This approach is, in our opinion, acceptable as the Borrower maintains appropriate insurance in which the Finance Parties are named.

**16.1.9.3 Umbrella Liability**

Insurance Carrier(s):	Continental Insurance Company	
Rating(s):	S&P	A.M. Best
	A+	A XV
Policy Term:	January 01, 2024 – January 01, 2025	
Policy Number:	6076417550	
Named Insured:	Corgan & Associates Inc	
Additional Insured:	<ul style="list-style-type: none"> <li>• JFK Millennium Partners, LLC,</li> <li>• Vantage Airport Group (US) LTD.,</li> </ul>	

	<ul style="list-style-type: none"> <li>• Vantage Airport Group LTD</li> <li>• RXR VAF III JFK Millennium Partners Vehicle LLC</li> <li>• Paslay Management Group LP, American Triple I Partners</li> <li>• JetBlue Airways Corporation</li> <li>• British Airways PLC, and each of their respective affiliates, shareholders, members, managers, partners (including partners of partners), subsidiaries and related parties, and any successors and/or assigns of such entities;</li> <li>• Any present or future mortgagee which encumbers an interest in the land or improvements located at the Project Site, together with their respective directors, officers, employees, and any successors and assigns of such entities</li> <li>• The Port Authority of New York and New Jersey and each of its commissioners, officers, directors, agents, employees, and authorized representatives;</li> <li>• The City of New York and each of its officers, directors, agents, employees, and authorized representatives;</li> <li>• New York City Economic Development Corporation and each of its officers, directors, agents, employees, and authorized representatives;</li> <li>• Hunt Construction Group, Inc.</li> <li>• such other and further entities and/or individuals as may be reasonably identified by Developer to Consultant in writing.</li> </ul>
Perils Insured:	Umbrella Liability
Lender Protection:	<ul style="list-style-type: none"> <li>• Additional Insured</li> <li>• Waiver of Subrogation</li> </ul>
Sum Insured:	<p>\$15,000,000 – Each Occurrence          \$15,000,000 - Aggregate</p>
Waiver of Subrogation:	<p>In favor of:</p> <ul style="list-style-type: none"> <li>• JFK Millennium Partners, LLC,</li> <li>• Vantage Airport Group (US) LTD.,</li> <li>• Vantage Airport Group LTD</li> <li>• RXR VAF III JFK Millennium Partners Vehicle LLC</li> <li>• Paslay Management Group LP, American Triple I Partners</li> <li>• JetBlue Airways Corporation</li> <li>• British Airways PLC, and each of their respective affiliates, shareholders, members, managers, partners (including partners of partners), subsidiaries and related parties, and any successors and/or assigns of such entities;</li> <li>• Any present or future mortgagee which encumbers an interest in the land or improvements located at the Project Site, together with their respective directors, officers, employees, and any successors and assigns of such entities</li> <li>• The Port Authority of New York and New Jersey and each of its commissioners, officers, directors, agents, employees, and authorized representatives;</li> </ul>

	<ul style="list-style-type: none"> <li>• The City of New York and each of its officers, directors, agents, employees, and authorized representatives;</li> <li>• New York City Economic Development Corporation and each of its officers, directors, agents, employees, and authorized representatives;</li> <li>• Hunt Construction Group, Inc.</li> </ul> <p>such other and further entities and/or individuals as may be reasonably identified by Developer to Consultant in writing.</p>
Cancellation:	30days' notice written notice of cancellation other than non-payment of premium.

INTECH hereby confirms that the insurance is in full force and effect and the Architect is not required to provide any protections to the Finance Parties contractually other than a general naming of any present or future mortgagee. This approach is, in our opinion, acceptable as the Borrower maintains appropriate insurance in which the Finance Parties are named.

#### 16.1.9.4 Workers Compensation and Employer's Liability

Insurance Carrier(s):	National Fire Insurance Company of Hartford	
Rating(s):	S&P	A.M. Best
	A+	A XV
Policy Term:	January 01, 2024 – January 01, 2025	
Policy Number:	6076417564	
Named Insured:	Corgan & Associates Inc	
Additional Insured	N/A for Worker's Compensation	
Perils Insured:	Worker's Compensation and Employer's Liability	
Lender Protection:	<ul style="list-style-type: none"> <li>• Additional Insured</li> <li>• Waiver of Subrogation</li> </ul>	
Sum Insured:	<u>Workers' Compensation:</u> States Covered  <u>Employer's Liability:</u> \$1,000,000 – Each Accident \$1,000,000 – Disease – Each Employee \$1,000,000 – Disease – Policy Limit	
Deductible:	None Specified	
Waiver of Subrogation:	In favor of: <ul style="list-style-type: none"> <li>• JFK Millennium Partners, LLC,</li> <li>• Vantage Airport Group (US) LTD.,</li> <li>• Vantage Airport Group LTD</li> <li>• RXR VAF III JFK Millennium Partners Vehicle LLC</li> <li>• Paslay Management Group LP, American Triple I Partners</li> <li>• JetBlue Airways Corporation</li> </ul>	

	<ul style="list-style-type: none"> <li>• British Airways PLC, and each of their respective affiliates, shareholders, members, managers, partners (including partners of partners), subsidiaries and related parties, and any successors and/or assigns of such entities;</li> <li>• Any present or future mortgagee which encumbers an interest in the land or improvements located at the Project Site, together with their respective directors, officers, employees, and any successors and assigns of such entities</li> <li>• The Port Authority of New York and New Jersey and each of its commissioners, officers, directors, agents, employees, and authorized representatives;</li> <li>• The City of New York and each of its officers, directors, agents, employees, and authorized representatives;</li> <li>• New York City Economic Development Corporation and each of its officers, directors, agents, employees, and authorized representatives;</li> <li>• Hunt Construction Group, Inc.</li> <li>• such other and further entities and/or individuals as may be reasonably identified by Developer to Consultant in writing.</li> </ul>
Cancellation:	30days' notice written notice of cancellation other than non-payment of premium.

INTECH hereby confirms that the insurance is in full force and effect and the Architect is not required to provide any protections to the Finance Parties contractually other than a general naming of any present or future mortgagee. This approach is, in our opinion, acceptable as the Borrower maintains appropriate insurance in which the Finance Parties are named.

#### 16.1.9.5 Crime

Insurance Carrier(s):	Continental Casualty Company	
Rating(s):	S&P	A.M. Best
	A+	A XV
Policy Term:	January 01, 2024 – January 01, 2025	
Policy Number:	596644872	
Named Insured:	Corgan & Associates Inc	
Additional Insured	N/A for Cime Policy	
Perils Insured:	Commercial Crime Policy	
Sum Insured:	\$1,000,000 – Per Loss	
Deductible:	\$5,000	
Waiver of Subrogation:	None Specified	
Cancellation:	30days' notice written notice of cancellation other than non-payment of premium.	

PROTECT. OPTIMIZE. EVOLVE.

The insurance is provided as evidence only to the Finance Parties, which is acceptable.

**16.1.9.6 Cyber Insurance**

Insurance Carrier(s):	Trisura Specialty Insurance Company	
Rating(s):	S&P	A.M. Best
	Not Rated	A- IX
Policy Term:	January 01, 2024 – January 01, 2025	
Policy Number:	ATB-6767509-01	
Named Insured:	Corgan & Associates Inc	
Additional Insured	None Specified	
Perils Insured:	Cyber Insurance	
Sum Insured:	\$3,000,000 – Cyber Aggregate	
Waiver of Subrogation:	None Specified	
Cancellation:	30days' notice written notice of cancellation other than non-payment of premium.	

The insurance is provided as evidence only to the Finance Parties, which is acceptable.

**16.1.10 Design-Builder's Insurance**

**16.1.10.1 Commercial General Liability**

Insurance Carrier(s):	Hartford Fire Insurance Company	
Rating(s):	S&P	A.M. Best's
	A+	A+ XV
Policy Term:	September 01, 2024 – September 01, 2025	
Policy Number:	57CSEQU3251	
Named Insured:	Hunt Construction Group, Inc.	
Additional Insured	<ul style="list-style-type: none"> <li>• Vantage Airport Group LTD.;</li> <li>• RXR VAF III JFK Millennium Partners Vehicle LLC;</li> <li>• JetBlue Airways Corporation;</li> <li>• Paslay Management Group LP;</li> <li>• British Airways PLC, and each of their respective affiliates, shareholders, members, managers, partners (including partners of partners), subsidiaries and related parties, and any successors and/or assigns of such entities;</li> <li>• any present or future mortgagee which encumbers an interest in the land or improvements located at the Project Site, together with their</li> </ul>	

	<p>respective directors, officers, employees, and any successors and assigns of such entities;</p> <ul style="list-style-type: none"> <li>• The Port Authority of New York and New Jersey and each of its commissioners, officers, directors, agents, employees, and authorized representatives;</li> <li>• The City of New York and each of its officials, officers, directors, agents, employees, and authorized representatives;</li> <li>• New York City Economic Development Corporation and each of its officers, directors, agents, employees, and authorized representatives,</li> <li>• And such other and further entities and/or individuals as may be reasonably identified by Sponsors to Design-Builder in writing.</li> </ul>
Perils Insured:	Commercial General Liability including bodily injury and third party property damage
Location:	JFK Terminal 5 and Terminal 6 Redevelopment
Lender Protection:	Additional Insured
Sum Insured:	<p>\$2,000,000 – Each Occurrence          \$1,000,000 – Damage for Rented Premises          \$10,000 – Medical Expenses          \$2,000,000 – Personal and Advertisement Injury          \$4,000,000 – General Aggregate          \$4,000,000 – Products- Completed/Operating Aggregate</p>
Deductible:	None Specified

INTECH hereby confirms that the insurance is in full force and effect and the Contractor is not required to provide any protections to the Finance Parties contractually other than a general naming of any present or future mortgagee. This approach is, in our opinion, acceptable as the Borrower maintains appropriate insurance in which the Finance Parties are named.

#### 16.1.10.2 Automobile Liability

Insurance Carrier(s):	Hartford Fire Insurance Company	
Rating(s):	S&P	A.M. Best
	A+	A+ XV
Policy Term:	September 01, 2024 – September 01, 2025	
Policy Number:	57UENQU3252	
Named Insured:	Hunt Construction Group, Inc.	
Additional Insured:	<ul style="list-style-type: none"> <li>• Vantage Airport Group LTD.;</li> <li>• RXR VAF III JFK Millennium Partners Vehicle LLC;</li> </ul>	

	<ul style="list-style-type: none"> <li>• JetBlue Airways Corporation;</li> <li>• Paslay Management Group LP;</li> <li>• British Airways PLC, and each of their respective affiliates, shareholders, members, managers, partners (including partners of partners), subsidiaries and related parties, and any successors and/or assigns of such entities;</li> <li>• any present or future mortgagee which encumbers an interest in the land or improvements located at the Project Site, together with their respective directors, officers, employees, and any successors and assigns of such entities;</li> <li>• The Port Authority of New York and New Jersey and each of its commissioners, officers, directors, agents, employees, and authorized representatives;</li> <li>• The City of New York and each of its officials, officers, directors, agents, employees, and authorized representatives;</li> <li>• New York City Economic Development Corporation and each of its officers, directors, agents, employees, and authorized representatives,</li> <li>• And such other and further entities and/or individuals as may be reasonably identified by Sponsors to Design-Builder in writing.</li> </ul>
Perils Insured:	Bodily injury and third-party property damage arising out of owned, hired, leased and non-owned automobiles
Sum Insured:	\$1,000,000 combined single limit- Each Accident

INTECH hereby confirms that the insurance is in full force and effect and the Contractor is not required to provide any protections to the Finance Parties contractually other than a general naming of any present or future mortgagee. This approach is, in our opinion, acceptable as the Borrower maintains appropriate insurance in which the Finance Parties are named.

#### 16.1.10.3 Umbrella and Excess Liability

Insurance Carrier(s), Ratings and Layers	Insurer	S&P	A.M. Best
<u>Umbrella</u>	Starr Indemnity and Liability Company	A+	A XV
<u>2<sup>nd</sup> Excess</u>	Allied World National Assurance Company	A+	A XV
<u>3<sup>rd</sup> Excess</u>	XL Insurance America Inc.	AA-	A+ XV
<u>4<sup>th</sup> Excess</u>	American Guarantee and Liability Insurance Co.	AA	A+ XV

PROTECT. OPTIMIZE. EVOLVE.

<u>5<sup>th</sup> Excess</u>	Ohio Casualty Insurance Company	A	A XV
Policy Term:	September 01, 2024 – September 01, 2025		
Umbrella Policy Number:	1000585995241		
Excess Policy Number:	<b>2<sup>nd</sup> Excess:</b> 03077891 <b>3<sup>rd</sup> Excess:</b> US00076432LI24A <b>4<sup>th</sup> Excess:</b> AEC185448905 <b>5<sup>th</sup> Excess:</b> ECO2560185745		
Named Insured:	Hunt Construction Group, Inc.		
Additional Insured	<ul style="list-style-type: none"> <li>• Vantage Airport Group LTD.;</li> <li>• RXR VAF III JFK Millennium Partners Vehicle LLC;</li> <li>• JetBlue Airways Corporation;</li> <li>• Paslay Management Group LP;</li> <li>• British Airways PLC, and each of their respective affiliates, shareholders, members, managers, partners (including partners of partners), subsidiaries and related parties, and any successors and/or assigns of such entities;</li> <li>• any present or future mortgagee which encumbers an interest in the land or improvements located at the Project Site, together with their respective directors, officers, employees, and any successors and assigns of such entities;</li> <li>• The Port Authority of New York and New Jersey and each of its commissioners, officers, directors, agents, employees, and authorized representatives;</li> <li>• The City of New York and each of its officials, officers, directors, agents, employees, and authorized representatives;</li> <li>• New York City Economic Development Corporation and each of its officers, directors, agents, employees, and authorized representatives,</li> <li>• And such other and further entities and/or individuals as may be reasonably identified by Sponsors to Design-Builder in writing.</li> </ul>		
Lender Protection:	Additional Insured		
Perils Insured:	Umbrella Liability		
Sum Insured:	<b>Umbrella:</b> \$10,000,000 – Each Occurrence \$10,000,000 – Aggregate  <b>2<sup>nd</sup> Layer:</b> \$15,000,000 – Each Occurrence and Aggregate  <b>3<sup>rd</sup> Excess:</b> \$25,000,000 – Each Occurrence and Aggregate  <b>4<sup>th</sup> Excess:</b>		



PROTECT. OPTIMIZE. EVOLVE.

	\$25,000,000 – Each Occurrence and Aggregate  <b>5<sup>th</sup> Excess:</b> \$25,000,000 – Each Occurrence and Aggregate
Deductible:	N/A for excess policies

INTECH hereby confirms that the insurance is in full force and effect and the Contractor is not required to provide any protections to the Finance Parties contractually other than a general naming of any present or future mortgagee. This approach is, in our opinion, acceptable as the Borrower maintains appropriate insurance in which the Finance Parties are named.

**16.1.10.4 Workers Compensation and Employer’s Liability**

Insurance Carrier(s):	Twin City Fire Insurance Company	
Rating(s):	S&P	A.M. Best
	A+	A+ XV
Policy Term:	September 01, 2024 – September 01, 2025	
Policy Number:	57WEQU3250	
Named Insured:	Hunt Construction Group, Inc.	
Additional Insured	N/A for Worker’s Compensation	
Perils Insured:	Worker’s Compensation and Employer’s Liability	
Sum Insured:	<u>Workers’ Compensation:</u> States Covered  <u>Employer’s Liability:</u> \$1,000,000 – Each Accident \$1,000,000 – Disease – each Employee \$1,000,000 – Disease – Policy Limit	

INTECH hereby confirms that the insurance is in full force and effect and the Contractor is not required to provide any protections to the Finance Parties contractually other than a general naming of any present or future mortgagee. This approach is, in our opinion, acceptable as the Borrower maintains appropriate insurance in which the Finance Parties are named.

**16.1.10.5 Contractor’s Equipment**

Insurance Carrier(s):	Lexington Insurance Company	
Rating(s):	S&P	A.M. Best
	A+	A XV
Policy Term:	September 01, 2024 – September 01, 2025	
Policy Number:	21480592	
Named Insured:	Hunt Construction Group, Inc.	

PROTECT. OPTIMIZE. EVOLVE.

Perils Insured:	Contractor's Equipment
Sum Insured:	\$2,000,000 – Leased and Rented \$100,000 – Unscheduled Equipment

The insurance is provided as evidence only to the Finance Parties, which is acceptable.

#### 16.1.10.6 Contractor's Pollution

Insurance Carrier(s):	Ironshore Specialty Insurance Co.	
Rating(s):	S&P	A.M. Best
	A	A XV
Policy Term:	September 01, 2024 – September 01, 2025 Extended Reporting to six-year term applies	
Policy Number:	CELLUW00160189	
Named Insured:	Hunt Construction Group, Inc.	
Perils Insured:	Contractor's Pollution	
Sum Insured:	\$25,000,000 – Each Claim and Aggregate	

The insurance is provided as evidence only to the Finance Parties, which is acceptable.

### 16.1.11 AECOM Insurance

#### 16.1.11.1 Commercial General Liability

Insurance Carrier(s):	ACE American Insurance Company	
Rating(s):	S&P	A.M. Best's
	AA	A++ XV
Policy Term:	April 01, 2024 – April 01, 2025	
Policy Number:	HDO G47343045	
Named Insured:	AECOM AECOM USA, Inc.	
Additional Insured	<ul style="list-style-type: none"> <li>• Vantage Airport Group LTD.;</li> <li>• RXR VAF III JFK Millennium Partners Vehicle LLC;</li> <li>• JetBlue Airways Corporation;</li> <li>• Paslay Management Group LP;</li> <li>• British Airways PLC, and each of their respective affiliates, shareholders, members, managers, partners (including partners of partners), subsidiaries and related parties, and any successors and/or assigns of such entities;</li> <li>• any present or future mortgagee which encumbers an interest in the land or improvements located at the Project Site, together with their</li> </ul>	

	respective directors, officers, employees, and any successors and assigns of such entities; <ul style="list-style-type: none"> <li>• The Port Authority of New York and New Jersey and each of its commissioners, officers, directors, agents, employees, and authorized representatives;</li> <li>• The City of New York and each of its officials, officers, directors, agents, employees, and authorized representatives;</li> <li>• New York City Economic Development Corporation and each of its officers, directors, agents, employees, and authorized representatives,</li> <li>• And such other and further entities and/or individuals as may be reasonably identified by Sponsors to Design-Builder in writing.</li> </ul>
Perils Insured:	Commercial General Liability including bodily injury and third party property damage
Location:	JFK Terminal 5 and Terminal 6 Redevelopment: JFK Airport, Queens, NY 11430
Lender Protection:	Additional Insured
Sum Insured:	\$10,000,000 – Each Occurrence \$10,000,000 – Damage for Rented Premises \$5,000 – Medical Expenses \$10,000,000 – Personal and Advertisement Injury \$10,000,000 – General Aggregate \$10,000,000 – Products- Completed/Operating Aggregate
Deductible:	None Specified
Waiver of Subrogation:	In favor of:  The Developer, Design-Builder, the Developer's agents, officials, and employees and against each other.

INTECH hereby confirms that the insurance is in full force and effect and the Designer is not required to provide any protections to the Finance Parties contractually other than a general naming of any present or future mortgagee. This approach is, in our opinion, acceptable as the Borrower maintains appropriate insurance in which the Finance Parties are named.

#### 16.1.11.2 Automobile Liability

Insurance Carrier(s):	ACE American Insurance Company	
Rating(s):	S&P	A.M. Best
	AA	A++ XV
Policy Term:	April 01, 2024 – April 01, 2025	
Policy Number:	ISA H1073888A	
Named Insured:	AECOM AECOM USA, Inc	

Additional Insured:	<ul style="list-style-type: none"> <li>• Vantage Airport Group LTD.;</li> <li>• RXR VAF III JFK Millennium Partners Vehicle LLC;</li> <li>• JetBlue Airways Corporation;</li> <li>• Paslay Management Group LP;</li> <li>• British Airways PLC, and each of their respective affiliates, shareholders, members, managers, partners (including partners of partners), subsidiaries and related parties, and any successors and/or assigns of such entities;</li> <li>• any present or future mortgagee which encumbers an interest in the land or improvements located at the Project Site, together with their respective directors, officers, employees, and any successors and assigns of such entities;</li> <li>• The Port Authority of New York and New Jersey and each of its commissioners, officers, directors, agents, employees, and authorized representatives;</li> <li>• The City of New York and each of its officials, officers, directors, agents, employees, and authorized representatives;</li> <li>• New York City Economic Development Corporation and each of its officers, directors, agents, employees, and authorized representatives,</li> <li>• And such other and further entities and/or individuals as may be reasonably identified by Sponsors to Design-BUILDER in writing.</li> </ul>
Perils Insured:	Bodily injury and third party property damage arising out of owned, hired, leased and non-owned automobiles
Sum Insured:	\$5,000,000 combined single limit- Each Accident
Waiver of Subrogation:	In favor of: The Developer, Design-BUILDER, the Developer’s agents, officials, and employees and against each other.

INTECH hereby confirms that the insurance is in full force and effect and the Contractor is not required to provide any protections to the Finance Parties contractually other than a general naming of any present or future mortgagee. This approach is, in our opinion, acceptable as the Borrower maintains appropriate insurance in which the Finance Parties are named.

**16.1.11.3 Workers Compensation and Employer’s Liability**

Insurance Carrier(s):	ACE American Insurance Company	
Rating(s):	S&P	A.M. Best
	AA	A++ XV
Policy Term:	April 01, 2024 – April 01, 2025	
Policy Number:	WLR C50718748 (AOS) SCF C50718852 (WI Retro)	
Named Insured:	AECOM AECOM USA, Inc.	

Additional Insured	N/A for Worker's Compensation
Perils Insured:	Worker's Compensation and Employer's Liability
Sum Insured:	<u>Workers' Compensation:</u> States Covered  <u>Employer's Liability:</u> \$5,000,000 – Each Accident \$5,000,000 – Disease – Each Employee \$5,000,000 – Disease – Policy Limit
Deductible:	None Specified
Waiver of Subrogation:	In favor of:  The Developer, Design-Builder, the Developer's agents, officials, and employees and against each other.

INTECH hereby confirms that the insurance is in full force and effect and the Contractor is not required to provide any protections to the Finance Parties contractually. This approach is, in our opinion, acceptable as the Borrower maintains appropriate insurance in which the Finance Parties are named.

## 16.2 Insurance in Place for the Term – Terminal 7 Operational Policies

JFK Millenium Partners, LLC has taken over operations for Terminal 7 and therefore the following policies specific to the operations of Terminal 7 are in full force and effect as follows:

### 16.2.1 All Risks Property

Insurers and Rating(s):	Insurer	Percentage	A.M. Best	S&P
<b>Primary - \$250,000,000</b>				
	American Home Assurance Company	75%	A XV	A+
	Zurich American Insurance Company	20%	A XV	A+
	Lloyds of London (Marsh Syndicate Fast Track)	5%	A+ XV	A+
<b>Excess - \$456,400,401</b>				
	Chubb Bermuda Insurance Company	100%	A++ XV	AA
Policy Term:	December 1, 2023 – December 1, 2024			
Policy Number:	<b>Primary:</b> 14055510 (AIG) / ERP0740694600 (Zurich) / B0509MPSB2301581 (Lloyds) <b>Excess:</b> JFKMP02379P			
Named Insured:	JFK Millennium Partners, LLC			
Additional Insured:	<ul style="list-style-type: none"> <li>RXR JMP Development Services LLC</li> </ul>			

	<ul style="list-style-type: none"> <li>• The Bank of New York Mellon</li> <li>• The Port Authority of New York and New Jersey and each of its commissioners, officers, directors, agents, employees and authorized representatives</li> <li>• The City of New York</li> <li>• One Liberty Plaza</li> <li>• Vantage Airport Group (US) Ltd.</li> <li>• JFK Millennium Partner, LLC</li> <li>• Vantage Airport Group (US) Ltd.</li> <li>• RXR VAF III JFK Millennium Partners Vehicle LLC</li> <li>• American Triple Partners</li> <li>• JetBlue Airways Corporation</li> </ul>
Loss Payee:	<ul style="list-style-type: none"> <li>• Bank of New York Mellon as Senior Collateral Agent</li> <li>• The Port Authority of New York and New Jersey</li> <li>• The City of New York</li> <li>• New York City of Economic Development Corporation</li> <li>• Vantage Airport Group (US) LTD</li> <li>• Vantage Airport Group LTD</li> <li>• RXR VAF III JFK Millennium Partners Vehicle LLC</li> <li>• American Triple I Partners</li> <li>• JetBlue Airways Corporation</li> <li>• ING Capital LLC</li> </ul>
Perils Insured:	All risks physical loss or damage including business interruption, flood, earth movement and named storm
Sum Insured:	<p><b>Primary:</b> \$250,000,000</p> <p><b>Excess:</b> \$456,400,401</p> <p><b>Total Limits: \$706,400,401 per occurrence</b></p>
Waiver of Subrogation:	<p>In favor of:</p> <ul style="list-style-type: none"> <li>• Bank of New York Mellon as Senior Collateral Agent</li> <li>• The Port Authority of New York and New Jersey</li> </ul>
Cancellation:	<p>30 days' notice written notice of cancellation, 10 days' for non-payment of premium to Scheduled Person or Organization including</p> <ul style="list-style-type: none"> <li>• Bank of New York Mellon as Senior Collateral Agent</li> <li>• The Port Authority of New York and New Jersey</li> <li>• The City of New York</li> <li>• New York City of Economic Development Corporation</li> <li>• Vantage Airport Group (US) LTD</li> </ul>

PROTECT. OPTIMIZE. EVOLVE.

	<ul style="list-style-type: none"> <li>• Vantage Airport Group LTD</li> <li>• RXR VAF III JFK Millennium Partners Vehicle LLC</li> <li>• American Triple I Partners</li> <li>• JetBlue Airways Corporation</li> </ul> <p>ING Capital LLC</p>
--	--

INTECH hereby confirms that the insurance is in full force and effect and the Finance Parties have been appropriately protected as described above.

### 16.2.2 Terrorism Only (Terminal 7 Operational)

Insurers and Rating(s):	<i>Insurer</i>	<i>Policy Number</i>	<i>A.M. Best</i>	<i>S&amp;P</i>
	Lloyds of London (Talbot)	TN2250853	A+ XV	A+
	Lloyds of London (IQUW)	TN2250853	A+ XV	A+
	Lloyds of London (Sompo)	TN2250853	A+ XV	A+
	Lloyds of London (QBE)	TN2250853	A+ XV	A+
	Lloyds of London (Inigo)	TN2250853	A+ XV	A+
	Lloyds of London (Amlin)	TN2250853	A+ XV	A+
	Lloyds of London (Hiscox))	UTS2574829.22	A+ XV	A+
	Lloyds of London (Liberty)	5N334790001	A+ XV	A+
	Lloyds of London (AXA XL)	US00123554SP22A	A+ XV	A+
	Lloyds of London (Roanoake)	01MRTR0000421-00	A+ XV	A+
	Lloyds of London (Allianz)	TN2250854	A+ XV	A+
	Lloyds of London (Aspen)	TN2250854	A+ XV	A+
	Lloyds of London (Hartford)	TN2250854	A+ XV	A+
	Lloyds of London (Talbot)	TN2250854	A+ XV	A+
	Lloyds of London (Sompo)	TN2250854	A+ XV	A+
	Lloyds of London (Cincinnati)	TN2250854	A+ XV	A+
Policy Term:	December 1, 2023 – December 1, 2024			
Policy Number:	As outlined above			
Named Insured:	JFK Millennium Partners, LLC			
Additional Insured:	<ul style="list-style-type: none"> <li>• RXR JMP Development Services LLC</li> <li>• The Bank of New York Mellon</li> </ul>			

	<ul style="list-style-type: none"> <li>The Port Authority of New York and New Jersey and each of its commissioners, officers, directors, agents, employees and authorized representatives</li> <li>The City of New York</li> <li>One Liberty Plaza</li> <li>Vantage Airport Group (US) Ltd.</li> <li>JFK Millennium Partner, LLC</li> <li>Vantage Airport Group (US) Ltd.</li> <li>RXR VAF III JFK Millennium Partners Vehicle LLC</li> <li>American Triple Partners</li> <li>JetBlue Airways Corporation</li> </ul>
Loss Payee:	<ul style="list-style-type: none"> <li>Bank of New York Mellon as Senior Collateral Agent</li> <li>The Port Authority of New York and New Jersey</li> </ul>
Perils Insured:	Physical loss or damage due to a terrorist act including terrorism liability
Sum Insured:	Primary: \$500,000,000 per occurrence / aggregate including terrorism liability Excess: \$141,122,900 per occurrence / aggregate 2 <sup>nd</sup> Excess: \$1,000,000,000 per occurrence / aggregate
Waiver of Subrogation:	In favor of: <ul style="list-style-type: none"> <li>Bank of New York Mellon as Senior Collateral Agent</li> <li>The Port Authority of New York and New Jersey</li> </ul>
Cancellation:	90 days' notice written notice of cancellation, 30 days' for non-payment of premium to Scheduled Person or Organization including <ul style="list-style-type: none"> <li>Bank of New York Mellon as Senior Collateral Agent</li> <li>The Port Authority of New York and New Jersey</li> </ul>

INTECH hereby confirms that the insurance is in full force and effect and the Finance Parties have been appropriately protected as described above.

### 16.2.3 Nuclear, Chemical, Biological & Radiological (NCBR)

Insurers and Rating(s):	<i>Insurer</i>	<i>Percentage</i>	<i>A.M. Best</i>	<i>S&amp;P</i>
	Lloyds of London (Talbot)	12.5%	A+ XV	A+
	Lloyds of London (Brit)	10%	A+ XV	A+
	Lloyds of London (Allianz)	7.5%	A+ XV	A+
	Lloyds of London (IQUW)	10%	A+ XV	A+
	Lloyds of London (Apollo)	5%	A+ XV	A+
	Lloyds of London (Arch)	7.5%	A+ XV	A+



	Lloyds of London (Inigo)	2.5%	A+ XV	A+
	Lloyds of London (Argo)	5%	A+ XV	A+
	Lloyds of London (Ascot)	10%	A+ XV	A+
	AXA XL	25%	A+ XV	A+
<b>Policy Term:</b>	December 01, 2023 – December 01, 2024			
<b>Policy Number:</b>	TN2250856 / TN2205857 / US00123603SP22A			
<b>Named Insured:</b>	JFK Millennium Partners, LLC			
<b>Additional Insured:</b>	<ul style="list-style-type: none"> <li>• RXR JMP Development Services LLC</li> <li>• The Bank of New York Mellon</li> <li>• The Port Authority of New York and New Jersey and each of its commissioners, officers, directors, agents, employees and authorized representatives</li> <li>• The City of New York</li> <li>• One Liberty Plaza</li> <li>• Vantage Airport Group (US) Ltd.</li> <li>• JFK Millennium Partner, LLC</li> <li>• Vantage Airport Group (US) Ltd.</li> <li>• RXR VAF III JFK Millennium Partners Vehicle LLC</li> <li>• American Triple Partners</li> <li>• JetBlue Airways Corporation</li> </ul>			
<b>Loss Payee:</b>	<ul style="list-style-type: none"> <li>• Bank of New York Mellon as Senior Collateral Agent</li> <li>• The Port Authority of New York and New Jersey</li> </ul>			
<b>Perils Insured:</b>	Physical loss or damage due to malicious acts of nuclear, chemical, biological or radiological origin including third party liability arising therefrom			
<b>Sum Insured:</b>	\$100,000,0000 each occurrence / aggregate			
<b>Waiver of Subrogation:</b>	In favor of: <ul style="list-style-type: none"> <li>• Bank of New York Mellon as Senior Collateral Agent</li> <li>• The Port Authority of New York and New Jersey</li> </ul>			
<b>Cancellation:</b>	90 days' notice written notice of cancellation, 30 days' for non-payment of premium to Scheduled Person or Organization including <ul style="list-style-type: none"> <li>• Bank of New York Mellon as Senior Collateral Agent</li> <li>• The Port Authority of New York and New Jersey</li> </ul>			

INTECH hereby confirms that the insurance is in full force and effect and the Finance Parties have been appropriately protected as described above.

16.2.4 Aviation Liability

Insurers and Rating(s):	Insurer	Policy Number	A.M. Best's	S&P
	ACE Property & Casualty	AAP N107028959 001	A+ XV	A+
	Arch Insurance Company	N9907010	A+ XV	A+
	Lloyds of London (2003 XLC Syndicate)	N9907010	A+ XV	A+
	AXIS Specialty Europe	N9907010	A+ XV	A+
	Lloyds of London (0435 FDY Syndicate)	N9907010	A+ XV	A+
	Lloyds of London (Convex)	N9907010	A+ XV	A+
	Lloyds of London (1969 APL Lloyds Syndicate)	N9907010	A+ XV	A+
	Lloyds of London (HDI)	N9907010	A+ XV	A+
	Lloyds of London (Helvetia)	N9907010	A+ XV	A+
	Liberty Mutual Insurance Europe	N9907010	A+ XV	A+
	Swiss Re International	N9907010	A+ XV	A+
	Lloyds of London (0510 KLN)	N9907010	A+ XV	A+
Policy Term:	December 1, 2023 – December 1, 2024			
Policy Number:	<b>Primary:</b> AAP N10702859 001 <b>Excess:</b> N9907010			
Named Insured:	JFK Millennium Partners, LLC			
Additional Insured	<ul style="list-style-type: none"> <li>• RXR JMP Development Services LLC.</li> <li>• The Bank of New York Mellon (Senior Collateral Agent) a sit's interest may appear</li> <li>• The Port Authority of New York and New Jersey and each of its commissioners, officers, directors, agents, employees, and authorized representatives</li> <li>• The City of New York and each of its officers, directors, agents, employees, and authorized representatives</li> <li>• New York City Economic Development Corporation and each of its officers, directors, agents, employees, and authorized representatives; and</li> <li>• Vantage Airport Group (US) LTD</li> <li>• Vantage Airport Group LTD</li> <li>• RXR VAF III JFK Millennium Partners Vehicle LLC</li> <li>• American Triple I Partners</li> <li>• JetBlue Airways Corporation, and each of their respective affiliates, shareholders, members, managers, partners (including partners of</li> </ul>			

	<p>partners), subsidiaries and related parties, and any successors and/or assigns of of such entities</p> <ul style="list-style-type: none"> <li>• JFK Millennium Partners, LLC</li> </ul>
Perils Insured:	Aviation Liability including bodily injury and third party property damage including airside operations and commercial general liability
Location:	JFK Millennium Partners LLC's JFK Redevelopment Project at JFK International Airport, Queens, NY 11430
Lender Protection:	<ul style="list-style-type: none"> <li>• Additional Insured</li> <li>• Waiver of Subrogation</li> <li>• Notice of Cancellation</li> </ul>
Sum Insured:	<p><b>Primary</b>            \$100,000,000 per occurrence            \$100,000,000 aggregate</p> <p><b>Excess:</b>            \$200,000,000 per occurrence            \$200,000,000 aggregate</p> <p><b>Total Limits:</b>  <b>\$300,000,000 per occurrence</b>  <b>\$300,000,000 aggregate</b></p>
Waiver of Subrogation:	<p>In favor of:</p> <ul style="list-style-type: none"> <li>• Bank of New York Mellon as Senior Collateral Agent</li> <li>• The Port Authority of New York and New Jersey</li> </ul>
Cancellation:	<p>90 days' notice written notice of cancellation, 30 days' notice for non-payment of premium to:</p> <ul style="list-style-type: none"> <li>• Bank of New York Mellon as Senior Collateral Agent</li> <li>• The Port Authority of New York and New Jersey /PATH</li> <li>• The Port Authority of New York and New Jersey, Manager, Risk Financing</li> </ul>

INTECH hereby confirms that the insurance is in full force and effect and the Finance Parties have been appropriately protected as described above.

### 16.3 Insurance in Place for the Term

In addition to the insurance for the D&C Work and the operational insurance for Terminal 7, the Lease requires certain insurances to be carried out throughout the Term which apply to both construction and operations, as follows:

#### 16.3.1 Commercial Crime Insurance

Insurance Carrier(s):	Iron specialty Insurance Company
-----------------------	----------------------------------

PROTECT. OPTIMIZE. EVOLVE.

Rating(s):	S&P	A.M. Best
	A	A XIV
Policy Term:	October 18, 2023 – October 18, 2024	
Policy Number:	FI4NACNCOZ002	
Named Insured:	JFK Millenium Partners, LLC	
Perils Insured:	Commercial Crime Policy	
Sum Insured:	\$10,000,000 – Employee Theft \$10,000,000 – Forgery or Alteration \$10,000,000 – Inside the Premises Theft of Money and Securities \$10,000,000 – Inside the Premises Robbery or Safe Burglary of Other Property \$10,000,000 – Outside the Premises \$10,000,000 – Computer And Funds Transfer Fraud \$10,000,000 – Money Orders and Counterfeit Money \$10,000,000 – Client's Property \$10,000,000 – Credit, Debit or Charge Card Forgery	
Sublimit:	\$50,000 – Fraudulent Impersonation	
Deductible:	\$100,000 – Employee Theft \$100,000 – Forgery or Alteration \$100,000 – Inside the Premises Theft of Money and Securities \$100,000 – Inside the Premises Robbery or Safe Burglary of Other Property \$100,000 – Outside the Premises \$100,000 – Computer and Funds Transfer Fraud \$100,000 – Money Orders and Counterfeit Money \$100,000 – Client's Property \$100,000 – Credit, Debit or Charge Card Forgery \$25,000 – Fraudulent Impersonation	
Waiver of Subrogation:	N/A for Crime Insurance	
Cancellation:	30 days' notice written notice of cancellation, 00 days' notice for non-payment of premium to: <ul style="list-style-type: none"> <li>• Bank of New York Mellon</li> <li>• The Port Authority of New York and New Jersey /PATH</li> <li>• The Port Authority of New York and New Jersey, Manager, Risk Financing</li> </ul> We note that the Port Authority has accepted 30 days' notice of cancellation. INTECH deems no risk to the Finance Parties to be provided with only 30 days of cancellation.	

INTECH hereby confirms that the insurance is in full force and effect and the Finance Parties have been appropriately protected as described above.

**16.3.2 Cyber and Privacy Insurance (Primary)**

Insurance Carrier(s):	ACE American Insurance Company	
Rating(s):	S&P	A.M. Best
	AA	A++ XV
Policy Term:	October 18, 2023 – October 18, 2024	
Policy Number:	D98310514	
Named Insured:	JFK Millenium Partners, LLC	
Additional Insured:	Blanket Pursuant to a Contract – Cyber ERM	
Perils Insured:	Cyber Enterprise Risk Management	
Extensions:	Cyber Incident Response Fund Contingent Business Interruption Loss and Extra Expenses	
Sum Insured:	\$5,000,000 – Maximum Single Limit \$5,000,000 – Maximum Policy Aggregate limit	
Sublimits:	<b>First Party Insuring Agreement:</b> <u>Each Claim and in the Aggregate:</u>  \$5,000,000 – Cyber Incident Response Team \$2,500,000 – Non-Panel Response Provider \$5,000,000 – Business interruption Loss and Extra expenses \$2,500,000 – Unscheduled Providers \$5,000,000 – Digital Data Recovery \$5,000,000 – Network Extortion	
	<b>Third Party Liability Insuring Agreements:</b> <u>Each Claim and in the Aggregate:</u>  \$5,000,000 – Cyber, Privacy and Network Security Liability \$5,000,000 – Payment Card Loss \$5,000,000 – Regulatory Proceedings \$5,000,000 – Electronic, Social and Printed Media Liability	
Deductible:	<b>First Party Insuring Agreement:</b>  \$150,000 – Cyber Incident Response Team \$150,000 – Non-Panel Response Provider \$150,000/24 Hours – Business interruption Loss and Extra expenses \$150,000/24 Hours – Unscheduled Providers \$150,000 – Digital Data Recovery \$150,000 – Network Extortion	
	<b>Third Party Liability Insuring Agreements:</b>  \$150,000 – Cyber, Privacy and Network Security Liability \$150,000 – Payment Card Loss	

	\$150,000 – Regulatory Proceedings \$150,000 – Electronic, Social and Printed Media Liability  <b>Cyber Other Terms and Conditions:</b> \$150,000 – Ransomware Encounter \$150,000 – Widespread Severe Known Vulnerability Exploit \$150,000 – Widespread Software Supply Chain Exploit \$150,000 – Widespread Severe Zero Day Exploit \$150,000 – All Other Widespread Events
Waiver of Subrogation:	N/A for Cyber
Cancellation:	30 days' notice written notice of cancellation, 00 days' notice for non-payment of premium to: <ul style="list-style-type: none"> <li>• Bank of New York Mellon</li> <li>• The Port Authority of New York and New Jersey /PATH</li> <li>• The Port Authority of New York and New Jersey, Manager, Risk Financing</li> </ul> We note that the Port Authority has accepted 30 days' notice of cancellation. INTECH deems no risk to the Finance Parties to be provided with only 30 days of cancellation.

INTECH hereby confirms that the insurance is in full force and effect and the Finance Parties have been appropriately protected as described above.

### 16.3.3 Cyber and Privacy Insurance (Excess)

Insurance Carrier(s) & Ratings:	Insurer	S&P	A.M. Best
1 <sup>st</sup> Excess	Starr Indemnity & Liability Company	A+	A XV
2 <sup>nd</sup> Excess	Arch Insurance Company	A+	A+ XV
3 <sup>rd</sup> Excess	AXA XL Insurance Company	AA-	A+ XV
4 <sup>th</sup> Excess	Allianz Global Risk	A+	A+ XV
5 <sup>th</sup> Excess	Liberty Mutual (Ironshore)	A+	A XV
6 <sup>th</sup> Excess	Zurich Insurance Company	A+	A+ XV
Policy Term:	October 18, 2023 – October 18, 2024		
Policy Number:	1st Excess: 1000635379221 2 <sup>nd</sup> Excess: NPL0068408-00 3 <sup>rd</sup> Excess: MTE9046877 00 4 <sup>th</sup> Excess: USF04898723 5 <sup>th</sup> Excess: EO5NACWD0Y001 6 <sup>th</sup> Excess: EOC 1863936 – 00		
Named Insured:	JFK Millenium Partners, LLC C/O Vantage Airport Group		

Additional Insured:	Following form with underlying layers
Perils Insured:	Network Security & Privacy Liability
Extensions:	Cyber Incident Response Fund Contingent Business Interruption Loss and Extra Expenses
Sum Insured:	1 <sup>st</sup> Excess: \$15,000,000 xs \$10,000,000 2 <sup>nd</sup> Excess: \$15,000,000 xs \$25,000,000 3 <sup>rd</sup> Excess: \$10,000,000 xs \$40,000,000 4 <sup>th</sup> Excess: \$10,000,000 xs \$50,000,000 5 <sup>th</sup> Excess: \$10,000,000 xs \$60,000,000 6 <sup>th</sup> Excess: \$5,000,000 xs \$70,000,000  <b>Total limit: \$75,000,000</b>
Deductible:	<b>2<sup>nd</sup> Excess:</b> \$150,000 – per claim
Waiver of Subrogation:	N/A for Cyber
Cancellation:	Follow form with underlying layer.

INTECH hereby confirms that the insurance is in full force and effect and the Finance Parties have been appropriately protected as described above.

#### 16.3.4 Contractor’s Pollution Liability

Insurance Carrier(s):	Evanston Insurance Company	
Rating(s):	<i>S&amp;P</i> A	<i>A.M. Best</i> A XV
Policy Term:	October 18, 2022 – October 18, 2028	
Policy Number:	MKLV1ENV103666	
Named Insured:	JFK Millenium Partners, LLC	
Additional Insured:	<ul style="list-style-type: none"> <li>• RXR JMP Development Services LLC.</li> <li>• The Bank of New York Mellon (Senior Collateral Agent) a sit’s interest may appear</li> <li>• The Port Authority of New York and New Jersey and each of its commissioners, officers, directors, agents, employees, and authorized representatives</li> <li>• The City of New York and each of its officers, directors, agents, employees, and authorized representatives</li> <li>• New York City Economic Development Corporation and each of its officers, directors, agents, employees, and authorized representatives; and</li> <li>• Vantage Airport Group (US) LTD</li> <li>• Vantage Airport Group LTD</li> <li>• RXR VAF III JFK Millennium Partners Vehicle LLC</li> <li>• American Triple I Partners</li> <li>• JetBlue Airways Corporation, and each of their respective affiliates, shareholders, members, managers, partners (including partners of</li> </ul>	

	<p>partners), subsidiaries and related parties, and any successors and/or assigns of of such entities</p> <ul style="list-style-type: none"> <li>• JFK Millennium Partners, LLC</li> </ul>
Perils Insured:	Contractor's pollution liability and pollution legal liability for bodily injury and third party property damage arising from a pollution event including gradual pollution.
Sum Insured:	\$25,000,000 per occurrence
Sublimits:	<p>\$25,000,000 – Aggregate Limit                  \$25,000,000 – Each Contractor's Pollution condition                  \$25,000,000 – Each transportation pollution condition                  \$25,000,000 – Each non-owned disposal site pollution condition                  \$1,000,000 – Each crisis management and emergency response                  \$25,000,000 - Bodily Injury: Each claim                  \$25,000,000 – Property Damage resulting from pollution conditions:                  Aggregate                  \$25,000,000 – Transportation pollution liability : Each claim and Aggregate                  \$25,000,000 – Non Owned disposal sites: Each claim and Aggregate                  \$1,000,000 – Crisis Management and Emergency Response Costs: each claim and Aggregate                  \$25,000,000 – Business Interruption Expenses: Each Claim and Aggregate                  \$25,000,000 – Offsites cleanup costs resulting from new pollution conditions: each claim and Aggregate                  \$25,000,000 – Offsites cleanup costs resulting from pre existing pollution conditions: each claim and Aggregate                  \$25,000,000 – Onsite cleanup costs resulting from new pollution conditions: each claim and Aggregate                  \$25,000,000 – Onsite cleanup costs resulting from pre existing pollution conditions: each claim and Aggregate                  \$25,000 – Disciplinary proceedings – Defense Costs: Each Disciplinary Proceeding                  \$10,000 - Disciplinary proceedings: each claim or each disciplinary proceeding                  \$25,000,000 – Shared General Aggregate</p>
Deductible:	<p>\$500,000 Per Occurrence – Aggregate Limit                  \$500,000 Per Occurrence – Each Contractor's Pollution condition                  \$500,000 Per Occurrence – Each transportation pollution condition                  \$500,000 Per Occurrence – Each non-owned disposal site pollution condition                  \$500,000 Per Occurrence – Each crisis management and emergency response                  \$500,000 Per Occurrence – Transportation pollution liability : Each claim and Aggregate                  \$500,000 Per Occurrence – Non Owned disposal sites: Each claim and Aggregate</p>
Waiver of Subrogation:	In favor of:



PROTECT. OPTIMIZE. EVOLVE.

	<ul style="list-style-type: none"> <li>• Bank of New York Mellon as Senior Collateral Agent</li> <li>• The Port Authority of New York and New Jersey</li> </ul>
Cancellation:	<p>30 days' notice written notice of cancellation, 00 days' notice for non-payment of premium to:</p> <ul style="list-style-type: none"> <li>• Bank of New York Mellon</li> <li>• The Port Authority of New York and New Jersey /PATH</li> <li>• The Port Authority of New York and New Jersey, Manager, Risk Financing</li> </ul> <p>We note that the Port Authority has accepted 30 days' notice of cancellation. INTECH deems no risk to the Finance Parties to be provided with only 30 days of cancellation.</p>

INTECH hereby confirms that the insurance is in full force and effect and the Finance Parties have been appropriately protected as described above. [

### 16.3.5 Excess Contractor's Pollution Liability

Insurers and Rating(s):	<i>Insurer</i>	<i>A.M. Best</i>	<i>S&amp;P</i>
	Berkshire Hathaway Specialty Insurance	A ++ XV	AA+
	Allied World National Assurance Company	A XV	A+
	Ironshore Specialty Insurance Company	A XIV	A
Policy Term:	October 18, 2022 – October 18, 2028		
Policy Number:	<p><b>1<sup>st</sup> Excess:</b> MKLV1ENV103666  <b>2<sup>nd</sup> Excess:</b> 0313-5787  <b>3<sup>rd</sup> Excess:</b> IEELPLLCNCHI001</p>		
Named Insured:	JFK Millennium Partners, LLC		
Additional Insured:	Following form with underlying layers		
Perils Insured:	Contractor's pollution liability combined with pollution legal liability		
Sum Insured:	<p><b>1<sup>st</sup> Excess:</b>            \$25,000,000 – Per Occurrence            \$25,000,000 – Aggregate</p> <p><b>2<sup>nd</sup> Excess:</b>            \$25,000,000 – Each Occurrence            \$25,000,000 - Aggregate</p> <p><b>3<sup>rd</sup> Excess:</b>            \$25,000,000 – Each Occurrence            \$25,000,000 – Aggregate</p> <p><b>Total Limits: \$100,000,000 per claim / aggregate</b></p>		

PROTECT. OPTIMIZE. EVOLVE.

Waiver of Subrogation:	Following form with underlying layers
Cancellation:	Following form with underlying layers

INTECH hereby confirms that the insurance is in full force and effect and the Finance Parties have been appropriately protected as described above.

### 16.3.6 Automobile Liability

Insurance Carrier(s):	Turnbull Insurance Company	
Rating(s):	<i>S&amp;P</i>	<i>A.M. Best</i>
	A	A+ XV
Policy Term:	March 7, 2024 – March 7, 2025	
Policy Number:	10UENDQ5383	
Named Insured:	JFK Millenium Partners, LLC	
Additional Insured:	<ul style="list-style-type: none"> <li>• RXR JMP Development Services LLC.</li> <li>• The Bank of New York Mellon (Senior Collateral Agent) a sit's interest may appear</li> <li>• The Port Authority of New York and New Jersey and each of its commissioners, officers, directors, agents, employees, and authorized representatives</li> <li>• The City of New York and each of its officers, directors, agents, employees, and authorized representatives</li> <li>• New York City Economic Development Corporation and each of its officers, directors, agents, employees, and authorized representatives; and</li> <li>• Vantage Airport Group (US) LTD</li> <li>• Vantage Airport Group LTD</li> <li>• RXR VAF III JFK Millennium Partners Vehicle LLC</li> <li>• American Triple I Partners</li> <li>• JetBlue Airways Corporation, and each of their respective affiliates, shareholders, members, managers, partners (including partners of partners), subsidiaries and related parties, and any successors and/or assigns of of such entities</li> <li>• JFK Millennium Partners, LLC</li> </ul>	
Perils Insured:	Bodily injury and third party property damage arising out of owned, hired, leased and non-owned automobiles	
Sum Insured:	\$1,000,000 combined single accident	
Waiver of Subrogation:	In favor of: <ul style="list-style-type: none"> <li>• Bank of New York Mellon as Senior Collateral Agent</li> <li>• The Port Authority of New York and New Jersey</li> </ul>	

<b>Cancellation:</b>	<p>The insurers have refused to provide notice of cancellation to the Lenders. In our opinion this can be dealt with by confirming that the insurance premiums have been paid or are current which at the time of closing they are.</p> <p>Furthermore, should there be a notice of cancellation provided the Borrower has the obligation under the Finance Documents to notify the Finance Parties.</p> <p>Finally we note that this is not a main project policy, and therefore, feel that the risk is negligible to the Finance Parties.</p>
----------------------	---

INTECH hereby confirms that the insurance is in full force and effect and the Finance Parties have been appropriately protected as described above.

## 17.0 DEDUCTIBLES AND SELF-INSURED RETENTIONS

As between the Port Authority and the Lessee, the Lessee shall be solely responsible to ensure that all deductibles under each insurance policy or coverage required to be procured and maintained hereunder in accordance with Section 12 (Insurance) of the Lease Agreement are paid. The Port Authority Indemnified Parties shall not be responsible for payment of such deductibles, or for any payment of premium or other financial obligation with respect to insurance, under any circumstances. Any deductible (including retention under professional liability insurance and pollution liability insurance) shall not impair or otherwise reduce the limits required for each insurance policy required to be procured and maintained in accordance with Section 12 (Insurance).

In our opinion the deductibles are appropriate for the current marketplace as outlined in Section 18 above and are, in our opinion, acceptable.

## 18.0 RATINGS FOR INSURERS

As per the Lease Agreement, all insurance provided for (other than any captive insurer providing terrorism risk insurance in accordance with Section 12(d)(6) and Section 12(o)) shall be issued by insurance carriers having and maintaining an A.M. Best rating of at least A minus (X) or an equivalent rating by a comparable insurance rating agency, including, without limitation, Fitch, Inc.

INTECH can confirm that all Insurers on cover have acceptable ratings for this Project as outlined above in Section 16.

## 19.0 UNAVAILABILITY OF INSURANCE

Section 12 (f) (2) of the Lease Agreement outlines the procedure in the event that the Port Authority requires an increase in minimum limits, changes in deductibles, or other additions, deletions, amendments or modifications to the required coverage as follows:

Under this section, the Lessee may request in writing that the Port Authority reconsider such change on grounds that such change is:

- Commercially unavailable;

- Only available at premiums that are disproportionate to the coverage provided
- Not customarily required for comparable large urban commercial air passenger terminals within the USA.
- The Lessee must provide sufficient information to the Port Authority’s risk manager and the Port Authority will then provide an answer within thirty (30) days.

In our opinion the unavailability provisions are reasonable and acceptable.

## 20.0 INSURANCE PREMIUM BENCHMARKING

Premium benchmarking generally refers to the project company or developer’s ability to apply for an increase or decrease in service or availability payments from the relevant project authority to account for insurance pricing fluctuations which are not the fault of the developer over the course of the project term.

We note that the Lease does not contain a provision for premium benchmarking therefore the Lessee bears the risk of higher insurance costs; however, this is to be expected on a concession or lease which does not utilize an availability-based payment model. We understand that the insurance premiums for OCIP will be fixed at Financial Close, which will substantially mitigate the risk of pricing fluctuations.

## 21.0 FINANCE PARTIES PROTECTION

If under the terms of any Project Document the Lessee is obligated to, and does, carry insurance coverage with higher limits or lower deductibles, or broader coverage than required under the Lease Agreement, the Lessee’s provision of such insurance shall satisfy the applicable requirements of this Agreement; provided that such policy meets all the other applicable requirements of Section 12 (insurance) of the Lease.

### 21.1 Finance Parties’ Protection under the Required Insurance – D&C Work

During the D&C Works the Finance Parties are named as follows::

Policy	Required by LIA
“All Risks” Builder’s Risk Insurance	<ul style="list-style-type: none"> <li>• Collateral Agent as loss payee</li> <li>• Waiver of subrogation in favour of the Collateral Agent</li> <li>• Non-vitiation</li> <li>• Notice of cancellation to the Collateral Agent</li> </ul>
Commercial General Liability Insurance (OCIP)	<ul style="list-style-type: none"> <li>• Collateral Agent as additional insured</li> <li>• Waiver of subrogation in favour of the Collateral Agent</li> <li>• Notice of cancellation to the Collateral Agent</li> </ul>
Workers’ Compensation and Employer’s Liability Insurance	<ul style="list-style-type: none"> <li>• Collateral Agent not named under the policy</li> <li>• Notice of cancellation to the Collateral Agent</li> </ul>
Excess Liability	<ul style="list-style-type: none"> <li>• Collateral Agent as additional insured</li> <li>• Waiver of subrogation in favour of the Collateral Agent</li> <li>• Notice of cancellation to the Collateral Agent</li> </ul>
Terrorism Only (Construction Exposure)	<ul style="list-style-type: none"> <li>• Collateral Agent as loss payee</li> <li>• Waiver of subrogation in favour of the Collateral Agent</li> </ul>

Policy	Required by LIA
	<ul style="list-style-type: none"> <li>• Non-vitiation</li> <li>• Notice of cancellation to the Collateral Agent</li> </ul>
<b>Nuclear, Chemical, Biological &amp; Radiological</b>	<ul style="list-style-type: none"> <li>• Collateral Agent as loss payee</li> <li>• Waiver of subrogation in favour of the Collateral Agent</li> <li>• Non-vitiation</li> <li>• Notice of cancellation to the Collateral Agent</li> </ul>
<b>Professional Liability</b>	<ul style="list-style-type: none"> <li>• Collateral Agent not named</li> <li>• Notice of cancellation to the Collateral Agent</li> </ul>

We can confirm that the Collateral Agent has been appropriately named under the policies as per the notes in Section 15.

## 21.2 Finance Parties' Protection under the Required Insurance – Operational Insurances

As the operations for Terminal 7 have commenced the operational insurances required are in full force and effect and the Collateral Agent is protected as follows:

<b>“All Risks” Property including Boiler &amp; Machinery</b>	<ul style="list-style-type: none"> <li>• Collateral Agent as loss payee</li> <li>• Waiver of subrogation in favour of the Collateral Agent</li> <li>• Non-vitiation</li> <li>• Notice of cancellation to the Collateral Agent</li> </ul>
<b>Terrorism Only (Construction Exposure)</b>	<ul style="list-style-type: none"> <li>• Collateral Agent as loss payee</li> <li>• Waiver of subrogation in favour of the Collateral Agent</li> <li>• Non-vitiation</li> <li>• Notice of cancellation to the Collateral Agent</li> </ul>
<b>Nuclear, Chemical, Biological &amp; Radiological</b>	<ul style="list-style-type: none"> <li>• Collateral Agent as loss payee</li> <li>• Waiver of subrogation in favour of the Collateral Agent</li> <li>• Non-vitiation</li> <li>• Notice of cancellation to the Collateral Agent</li> </ul>
<b>Aviation Liability (air-side operations and commercial general liability)</b>	<ul style="list-style-type: none"> <li>• Collateral Agent as additional insured</li> <li>• Waiver of subrogation in favour of the Collateral Agent</li> <li>• Notice of cancellation to the Collateral Agent</li> </ul>

We can confirm that the Collateral Agent has been appropriately named under the policies as per the notes in Section 16.

## 21.3 Finance Parties' Protection under the Required Insurance – Other Term Insurances

In addition to the insurance for the D&C Work and the operational insurance for Terminal 7, the Lease requires certain insurances to be carried out throughout the Term which apply to both construction and operations. The Collateral Agent is protected as follows:

<b>Commercial Crime Insurance</b>	<ul style="list-style-type: none"> <li>• Collateral Agent not named</li> <li>• Notice of cancellation to the Collateral Agent</li> </ul>
-----------------------------------	--

<b>Cyber Liability</b>	<ul style="list-style-type: none"> <li>• Collateral Agent not named</li> <li>• Notice of cancellation to the Collateral Agent</li> </ul>
<b>Contractor's Pollution / Pollution Legal Liability</b>	<ul style="list-style-type: none"> <li>• Collateral Agent as additional insured</li> <li>• Waiver of subrogation in favour of the Collateral Agent</li> <li>• Notice of cancellation to the Collateral Agent</li> </ul>
<b>Automobile Liability</b>	<ul style="list-style-type: none"> <li>• Collateral Agent as additional insured</li> <li>• Waiver of subrogation in favour of the Collateral Agent</li> <li>• Notice of cancellation to the Collateral Agent</li> </ul>

We can confirm that the Collateral Agent has been appropriately named under the policies as per the notes in Section 15 and 16.

## 22.0 SUPERVENING EVENTS UNDER THE LEASE AGREEMENT

The Lease Agreement contains typical relief provisions which outline certain events which may occur during construction or operations (as applicable) and the extent any contractual relief is offered to the Lessee or the Port Authority. The following sections outline the various relief events along with their insurability.

### 22.1 Compensation Events

For the purposes of this Agreement, the term "Compensation Event" means any of the following events or conditions which occur during the Design & Construction Work Period subject to the limitations and other provisions set forth in Lease:

Event Number	Compensation Event	Insurable?
i.	any Port Authority Change;	No
ii.	any willful failure of the Port Authority to provide the Lessee with Temporary Rights of Access by the applicable specified date in accordance with Section 2(b)(3); provided, that no such failure shall be deemed to be a Compensation Event to the extent that it is (x) due to the performance of work by the Port Authority or its contractors on the Airport necessitated by an Emergency, or (y) in response to a Force Majeure event with respect to the Port Authority, for so long as the Parties are coordinating the resumption of performance pursuant to the last paragraph of this Section 2(ee)(1);	No
iii.	any willful failure of the Port Authority to (A) provide the Lessee with access to the applicable sites necessary for the Lessee to be able to construct the Off-Premises Facilities, within the time periods specified in the Baseline Schedule or the Master Schedule, as applicable, and/or	No

Event Number	Compensation Event	Insurable?
	(B) provide the Lessee with power required for testing and commissioning of the New Terminal Facilities by the later of February 19, 2025 (which shall be extended day-for-day for any extension to the date for Substantial Completion of Phase 1 that is initially set forth in the Baseline Schedule) and when the substations and the associated connected loads at the New Terminal Facilities are ready and able to receive the power, and/or (C) provide the Lessee with power required for operations of the New Terminal Facilities by the Scheduled Phase 1 DBO Date (which shall be extended day-for-day for any extension to such date); provided, that no such failure shall be deemed to be a Compensation Event to the extent that it is (x) due to the performance of work by the Port Authority or its contractors on the Airport necessitated by an Emergency or (y) in response to a Force Majeure event with respect to the Port Authority, for so long as the Parties are coordinating the resumption of performance pursuant to the last paragraph of this Section 2(ee)(1)	
iv.	any suspension of the D&C Work by the Port Authority in excess of twenty-four (24) hours for reasons other than an event described in Section 2(dd) (2);	No, except limited coverage may be available under the prevention of access extension to the business interruption coverage
v.	the Port Authority's direction to uncover, remove, and restore D&C Work, (A) if the Port Authority had the opportunity to inspect the D&C Work before it was covered and was given reasonable prior notice that the D&C Work was being covered, (B) if the Port Authority orders the D&C Work uncovered after the fact, and (C) the D&C Work exposed proves in compliance with Good Order Requirements, Applicable Laws, Applicable Standards, this Agreement, the Requirements and Provisions for Work and the other Project Documents; provided, that no such event shall be deemed to be a Compensation Event to the extent that it is (x) conducted at the direction of any Governmental Authority, or (y) in response to a Force Majeure event, in each case for so long as the Parties are coordinating the resumption of performance pursuant to the last paragraph of this Section 2(ee)(1);	No
vi.	any failure of the Port Authority to respond to any request from the Lessee for review and/or approval of such schedules, plans, design documents, or other submittals listed on Exhibit 10 ( <i>Material Submittals and Review Period</i> ) within the time period set forth in such	No

Event Number	Compensation Event	Insurable?
	<p>Exhibit 10 (<i>Material Submittals and Review Period</i>) (the “<b>Submittal Review Period</b>”); provided that failure to respond within the Submittal Review Period will not be a Compensation Event unless the Lessee shall have provided notice of the failure within three (3) Business Day of the expiration of the Submittal Review Period to the Port Authority with the following caption in bold and capitalized type: “<b>THIS IS A NOTICE REQUESTING YOUR [REVIEW/APPROVAL] TO THE PROPOSED [DESCRIBED SCHEDULE, PLAN, DESIGN DOCUMENT, OR OTHER SUBMITTAL] AFFECTING THE D&amp;C WORK. FAILURE TO RESPOND TO THIS NOTICE WITHIN FIVE (5) BUSINESS DAYS OF RECEIPT OR DEEMED RECEIPT SHALL CONSTITUTE A COMPENSATION EVENT</b>” and the Port Authority shall have failed to respond to such notice within the five (5) Business Day period; and provided further, that it shall not be deemed a failure to timely respond if such failure results, in whole or in part, from (A) failure of the Lessee or any Lessee-Related Entity to provide a complete and accurate submission or a submission that does not comply with the requirements of this Agreement or the other Project Documents (including compliance with Applicable Standards), or (B) required review by Governmental Authorities in connection with any such schedules, plans, design documents, or other submittals for the Port Authority’s approval where such review is required and cannot be completed or independently obtained by the Lessee, or (C) failure by the Lessee to obtain a Governmental Approval that is required in connection with any such schedules, plans, design documents, or other submittals in order for the Port Authority to provide its response or complete its review; and provided further, that no such failure shall be deemed to be a Compensation Event to the extent it is in response to a Force Majeure event with respect to the Port Authority and for so long as the Parties are coordinating the resumption of performance pursuant to the last paragraph of this Section 2(ee)(1);</p>	
vii.	<p>with respect to Governmental Approvals the Lessee is required to obtain pursuant to the Project Documents during the D&amp;C Work Period (A) any willful failure or delay by the Port Authority to provide information required by Applicable Law or Applicable Standards for the Lessee to obtain or comply with such Governmental Approvals that is specifically identified in a written request from the Lessee to the Port Authority, is in the possession of the Port Authority and is not otherwise available to the Lessee within a time period reasonably specified by the Lessee in such request (but not less than thirty (30) days after receipt of such written request), or, if no time period is specified, then within a reasonable time period after the request from the Lessee to</p>	No



Event Number	Compensation Event	Insurable?
	<p>provide such information (but not less than thirty (30) days), or (B) the willful failure of the Port Authority to provide a signature of a Port Authority official within a reasonable period (but not less than ten (10) Business Days) after such signature is requested in writing by the Lessee with respect to documentation reviewed and approved by the Port Authority prior to the submission of such request by the Lessee in connection with the applications for such Governmental Approvals that cannot otherwise be obtained by the Lessee, and the Lessee has expressly stated in such written request the requested return date for such signature (which shall be not less than ten (10) Business Days after such request); provided, that no such willful failure or delay shall be deemed to be a Compensation Event to the extent it results from the denial or disapproval of documentation submitted to the Port Authority for signature or results from a Force Majeure event with respect to the Port Authority and for so long as the Parties are coordinating the resumption of performance pursuant to the last paragraph of this Section 2(ee)(1).</p>	

Except, in each case noted above, to the extent arising by reason of or attributable to:

(A) the negligence or willful misconduct of the Lessee or a Lessee-Related Entity,

(B) any act or omission by the Lessee or a Lessee-Related Entity in breach of the provisions of this Agreement or any other Project Document,

(C) the Port Authority's need to comply with Applicable Laws or Applicable Standards (provided such Applicable Standards apply to other Airport facilities and are applied to the Lessee in a Non-Discriminatory Manner),

D) a contractual requirement which is legally binding on the Port Authority, which contract has been entered into in the ordinary course of the Port Authority's operations at the Airport (which requirements, if incurred following the execution of this Lease, will not include obligations under a new or substantially modified lease agreement with a passenger terminal operator providing for substantial new construction, other than those obligations which are not, according to their terms, unduly discriminatory and which relate to construction coordination), or

(E) the failure of the Port Authority to address disagreements between a Lessee-Related Entity and any other party conducting construction work at the Airport under various cooperation agreements or arrangements (including the Construction Coordination Agreement) between them.

If any of the events described in clauses (ii), (iii) and (v) through (vii) of this Section 2(ee)(1) are deemed not to be a Compensation Event due to the occurrence of a Force Majeure event with respect to the Port Authority, the Parties shall coordinate with each other in good faith to resume the performance relevant to

the event as soon as reasonably practicable following the cessation of such Force Majeure event, with the Parties' understanding that the nature of certain Force Majeure events may preclude or hamper the Port Authority's ability to resume performance immediately, notwithstanding that the Force Majeure event has ceased.

## 22.2 Delay Events

For the purposes of the Lease Agreement, the term "Delay Event" shall mean any of the following events or conditions (subject to the limitations and other provisions set forth in this Section 2(ff)) which occur during the D&C Work Period that causes a delay in the Lessee's performance of the Project Work or otherwise adversely affect the Lessee's ability to perform the D&C Work in compliance with the Project Documents):

Event Number	Compensation Event	Insurable?
i.	the occurrence of any Force Majeure event with respect to the Lessee or any Lessee-Related Entity;	See Below
ii.	the discovery of any Unknown Condition by the Lessee during the performance of the D&C Work that adversely impacts the Lessee's performance of the D&C Work;	No, except discovery of unknown contaminants may be covered under an environmental pollution policy.
iii.	the existence of any agreement, easement, right of entry, covenant, condition, restriction or other instrument to which the New Terminal Facilities or Off-Premises Facilities are subject and which materially interferes with the performance of the D&C Work and such agreement, easement, right of entry, covenant, condition, restriction or other instrument (A) is not known to the Lessee or any Lessee-Related Entity (it being understood that the Lessee will be charged with the knowledge of JetBlue as a result of JetBlue's operations as lessee on the Initial Premises prior to the Terminal 6 Parcel Lease Commencement Date), (B) was not notified to the Lessee by the Port Authority in, or cannot be reasonably inferred from the Disclosed Documents, (C) is not identified in, or is not apparent upon inspection of public records, or cannot be reasonably inferred from, the Available Documents or publicly available information, and (D) could not reasonably have been identified through review and analysis of Available Documents or publicly available information;	No
iv.	the issuance of any injunction, restraining order or other similar legal order by a court of competent jurisdiction under Applicable Law based on a claim that challenges the Port Authority's authority to enter into this Agreement or the transactions contemplated hereby, which injunction or order prohibits or enjoins prosecution of the D&C Work;	No
v.	any Rules and Regulations Change or the RPW Change (to the extent not covered otherwise by any of the other events specified in this Section 2(ff)) or in an approved change order implementing a Port Authority Change) that materially and adversely impacts the Lessee's performance of the D&C Work;	No

Event Number	Compensation Event	Insurable?
vi.	Any suspension of the D&C Work by the Port Authority in excess of twenty-four (24) hours made in response to an event requiring the suspension of D&C Work specifically set forth in Section 2(dd)(2)(ii) through (vi);	No
vii.	the occurrence of any Compensation Event or event that would have constituted a Compensation Event but for a Force Majeure event with respect to the Port Authority or an Emergency;	No
viii.	any breach by the Port Authority of any material obligation under this Agreement or the Construction Coordination Agreement (to the extent not covered otherwise by any of the other events specified in this Section 2(ff);	No
ix.	any failure by British Airways to comply with the surrender obligations set forth in the British Airways Lease with respect to the Terminal 7 Parcel on or prior to the end of the Existing Terminal Facilities Stub Operating Period as a result of a delay to the completion of the Terminal 8 site at the Airport required for British Airways' relocation to the Terminal 8 site at the Airport.	No

Except, in each case, to the extent arising by reason of or attributable to –

(A) the negligence or willful misconduct of a Lessee-Related Entity or

(B) any act or omission by a Lessee-Related Entity in breach of the provisions of this Agreement or any other Project Document.

### 22.3 Force Majeure

Force Majeure Events are defined in Section 45 of the Lease Agreement and is defined as any of the following events.

If the performance by the Port Authority or the Lessee (for purposes of this Section 45, the “**Affected Party**”) of any of its obligations hereunder is delayed or prevented in whole or in part by:

Event Number	Compensation Event	Insurable?
i.	any unforeseeable law, rule, regulation, order, injunction, or other action adopted or taken after the Effective Date by any Governmental Authority with jurisdiction over (i) the Airport or (ii) actions taken by Lessee-Related Entities pursuant to this Agreement;	No. Limited coverage under property/builder's risk policies in the event of building ordinance or law change during repairs or reconstruction after an insured loss.
ii.	any acts of God;	Yes, provided such event causes physical damage to the Facility it would be covered under the all risks builder's risk and all risks property, including ensuing loss of income.

Event Number	Compensation Event	Insurable?
iii.	Floods;	Yes – covered all risks builder’s risk and all risks property, including ensuing loss of income.
iv.	Storms;	Yes – covered all risks builder’s risk and all risks property, including ensuing loss of income.
v.	War;	No
vi.	civil disorder;	Event itself is not insurable but any malicious damage to the property would be covered by the all risks builder’s risk and all risks property, including ensuing loss of income.
vii.	terrorist act (including cyber terrorism, cyber sabotage or cyber vandalism);	Yes, subject to continuance of the Terrorism Risk Insurance Act in its current form. May not be available if such legislation is lapsed.
viii.	public enemy;	No
ix.	Strike;	Event itself is not insurable but any malicious damage to the property would be covered by the all risks builder’s risk and all risks property, including ensuing loss of income.
x.	labor dispute;	No
xi.	shortages of materials, fuel or power.	No

Or any other cause not within the control of the Affected Party to remedy, including a pandemic or epidemic health event officially declared by a federal or New York State Governmental Authority (any of the foregoing, a “**Force Majeure**”), the Affected Party shall not be deemed to be in violation of this Agreement, and the Affected Party shall be excused from performance of its obligations in accordance with this Agreement but only to the extent that such performance is prevented by such Force Majeure, unless, in any case, the delay or prevention of performance shall result from failure on the part of the Affected Party to use reasonable care to prevent the events claimed as Force Majeure or avoid the delay resulting from such events, or use reasonable efforts to cure such delay or mitigate the impacts upon of performance; provided, however, that except to the extent expressly provided for in any other provision of this Agreement nothing in this Section 45 (Force Majeure) shall relieve the Lessee of any obligation to pay any Rentals specified hereunder or any other fees, charges or money payments due by the Lessee hereunder. Notwithstanding the foregoing, in no event shall the inadequacy of financial resources required in any circumstance constitute Force Majeure or causes or conditions beyond the control of either Party hereunder.

Notwithstanding the foregoing and for the avoidance of doubt -

- a) Without limiting rights and remedies of the Lessee or Port Authority in other provisions of this Agreement (including, without limitation under Section 2 (ff)), the Lessee shall not be released from its obligation to comply with Governmental Approvals or Applicable Law by operation of Section 45 (a) arising with respect to (i) the issuance or adoption by any Governmental Authority of any new

Governmental Approval or Applicable Law or amendment of any Governmental Approval or Applicable Law, or (ii) any action taken by a Governmental Authority to enforce, or failure to enforce, any Applicable Law or Governmental Approval, or (iii) any change in interpretation or implementation of any Applicable Law or Governmental Approval.

- b) Force Majeure shall not include any strike, labor dispute or labor protest directed solely at any Lessee-Related Entity or caused by or attributable to any act (including any pricing or other practice or method of operation) or omission of any Lessee-Related Entity.
- c) No abatement, diminution or reduction of the Rentals, fees or other charges payable by the Lessee shall be claimed by or allowed to the Lessee for any inconvenience, interruption, cessation or loss of business or other loss caused, directly or indirectly, by any present or future laws, rules, requirements, orders, directions, ordinances or regulations of the United States of America, or of the state, county or city governments, or of any other municipal, governmental or lawful authority whatsoever, or by priorities, rationing or curtailment of labor or materials, or by war or by any matter or thing resulting therefrom, or, except as otherwise provided herein, by any other cause or condition beyond the control of the Port Authority, nor shall this Agreement be affected by any such causes or conditions.

## 23.0 CONCLUSION

The insurance required to be in place under the Lease is in full force and effect for the D&C Works, the operations of Terminal 7 and the entire Lease insurance requirements which apply to both construction and operations of Terminals 6 and 7.

As outlined in the report herein it is our opinion that the Collateral Agent has been appropriately named to the policies and is protected under the insurance program.

The insurance program is in compliance with the Lease and all other material project documents.

Should any interested party have questions, please do not hesitate to contact the undersigned.

Yours truly,

**INTECH RISK MANAGEMENT GMBH**



PROTECT. OPTIMIZE. EVOLVE.



Sarah Roberts, BA (Hons), MBA, CRM, Akad. Vers. Maklerin  
President

**DIRECT DIAL:** +43 463 203 055 10

**EMAIL:** [sroberts@intechrisk.at](mailto:sroberts@intechrisk.at)

PROTECT. OPTIMIZE. EVOLVE.

[APPENDICES INTENTIONALLY OMITTED]

**(THIS PAGE INTENTIONALLY LEFT BLANK)**



**APPENDIX C-1**

**CONSOLIDATED FINANCIAL STATEMENTS AND INDEPENDENT AUDITORS' REPORT**

**(THIS PAGE INTENTIONALLY LEFT BLANK)**



**JFK MILLENNIUM PARTNERS HOLDINGS, LLC**  
AND ITS WHOLLY OWNED SUBSIDIARY  
JFK MILLENNIUM PARTNERS, LLC

Consolidated Financial Statements

December 31, 2023 and 2022

(With Independent Auditors' Report Thereon)

## JFK MILLENNIUM PARTNERS HOLDINGS, LLC

### Table of Contents

	<b>Page</b>
Independent Auditors' Report	1
Consolidated Financial Statements:	
Consolidated Balance Sheets	3
Consolidated Statements of Operations	4
Consolidated Statements of Members' Equity (Deficit)	5
Consolidated Statements of Cash Flows	6
Notes to Consolidated Financial Statements	7



KPMG LLP  
Suite 200  
1305 Walt Whitman Road  
Melville, NY 11747-4302

## Independent Auditors' Report

The Members

JFK Millennium Partners Holdings, LLC:

### *Opinion*

We have audited the consolidated financial statements of JFK Millennium Partners Holdings, LLC and its subsidiary (the Company), which comprise the consolidated balance sheets as of December 31, 2023 and December 31, 2022, and the related consolidated statements of operations, changes in members' equity (deficit), and cash flows for the year ended December 31, 2023 and the period from inception (February 24, 2022) through December 31, 2022, and the related notes to the consolidated financial statements.

In our opinion, the accompanying consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2023 and December 31, 2022, and the results of its operations and its cash flows for the year ended December 31, 2023 and the period from inception (February 24, 2022) through December 31, 2022 in accordance with U.S. generally accepted accounting principles.

### *Basis for Opinion*

We conducted our audits in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the Auditors' Responsibilities for the Audit of the Consolidated Financial Statements section of our report. We are required to be independent of the Company and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### *Responsibilities of Management for the Consolidated Financial Statements*

Management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with U.S. generally accepted accounting principles, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the consolidated financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern for one year after the date that the consolidated financial statements are issued.

### *Auditors' Responsibilities for the Audit of the Consolidated Financial Statements*

Our objectives are to obtain reasonable assurance about whether the consolidated financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditors' report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the consolidated financial statements.



In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the consolidated financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the consolidated financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control related matters that we identified during the audit.

KPMG LLP

Melville, New York  
April 25, 2024

**JFK MILLENNIUM PARTNERS HOLDINGS, LLC**

Consolidated Balance Sheets

December 31, 2023 and 2022

(Dollars in thousands)

<b>Assets</b>	<b>2023</b>	<b>2022</b>
Current assets:		
Cash	\$ 2,909	18,504
Restricted cash and cash equivalents	17,200	115,635
Restricted short-term investments	594,231	255,440
Accounts receivable	20,627	4,437
Prepaid expenses and other current assets	49,439	89,806
Total current assets	684,406	483,822
Contract asset	972,477	18,253
Capitalized contract costs	219,755	252,933
Other assets – Project	43,423	50,014
Operating lease right-of-use assets	3,965	—
Other long-term assets	47,044	15,221
Total assets	\$ 1,971,070	820,243
<b>Liabilities and Members' Equity (Deficit)</b>		
Current liabilities:		
Accounts payable and accrued liabilities	\$ 70,795	45,261
Accounts payable, related parties	9,370	6,882
Accrued interest	26,864	8,630
Operating lease liabilities, current	294	—
Total current liabilities	107,323	60,773
Long-term debt	1,620,652	926,596
Operating lease liabilities, non-current	3,718	—
Other long-term liabilities	21,734	2,740
Total liabilities	1,753,427	990,109
Members' equity (deficit)	217,643	(169,866)
Total liabilities and members' equity (deficit)	\$ 1,971,070	820,243

See accompanying notes to consolidated financial statements.

**JFK MILLENNIUM PARTNERS HOLDINGS, LLC**

Consolidated Statements of Operations

Year ended December 31, 2023 and  
the period from inception (February 24, 2022) through December 31, 2022

(Dollars in thousands)

	<b>2023</b>	<b>2022</b>
Revenues:		
Construction services	\$ 785,021	—
O&M services	179,988	22,684
Total revenues	965,009	22,684
Expenses:		
Construction expenses	418,753	—
Management fees	6,110	2,997
Utilities	5,522	484
Salaries and benefits	9,593	2,706
Contracted services	25,641	1,898
Professional services	2,703	169,815
Equity letter of credit fees	46,429	4,808
General and administrative	5,674	1,209
Insurance	3,388	741
Total expenses	523,813	184,658
Operating income (loss)	441,196	(161,974)
Other (income) expense, net:		
Interest expense	72,127	8,734
Interest income, (gains) and losses, net	(18,440)	(842)
Total other (income) expense, net	53,687	7,892
Net income (loss)	\$ 387,509	(169,866)

See accompanying notes to consolidated financial statements.



**JFK MILLENNIUM PARTNERS HOLDINGS, LLC**

Consolidated Statements of Members' Equity (Deficit)

Year ended December 31, 2023 and  
the period from inception (February 24, 2022) through December 31, 2022

(Dollars in thousands)

Balance at inception (February 24, 2022)	\$	—
Net loss		<u>(169,866)</u>
Members' deficit at December 31, 2022		(169,866)
Net income		<u>387,509</u>
Members' equity at December 31, 2023	\$	<u><u>217,643</u></u>

See accompanying notes to consolidated financial statements.

**JFK MILLENNIUM PARTNERS HOLDINGS, LLC**

Consolidated Statements of Cash Flows

Year ended December 31, 2023 and  
the period from inception (February 24, 2022) through December 31, 2022

(Dollars in thousands)

	<u>2023</u>	<u>2022</u>
Operating activities:		
Net income (loss)	\$ 387,509	(169,866)
Adjustments to reconcile net income (loss) to net cash used in operating activities:		
Amortization of issuance costs and debt discount	17,237	8,630
Amortization of capitalized contract asset	33,178	—
Amortization of other asset – project	6,591	—
Mark-to-market gain on derivative contracts, net	105	—
Changes to operating assets and liabilities:		
Accounts receivable	(16,190)	(4,437)
Prepaid expenses and other current assets	40,262	(89,806)
Contract asset	(954,224)	(18,253)
Capitalized contract cost	—	(252,933)
Other assets – project	—	(50,014)
Other long-term assets	(31,823)	(15,221)
Accounts payable and accrued liabilities	25,534	45,261
Accounts payable, related parties	2,488	6,882
Other long-term liabilities	18,994	2,740
Operating lease right-of-use assets	(133)	—
Operating lease liabilities	180	—
Net cash flows used in operating activities	<u>(470,292)</u>	<u>(537,017)</u>
Investing activities:		
Purchases of restricted investments	(463,024)	(255,440)
Sales of restricted investments	124,233	—
Net cash used in investing activities	<u>(338,791)</u>	<u>(255,440)</u>
Financing activities:		
Long-term debt proceeds	711,000	1,021,000
Debt issuance costs	(15,947)	(94,404)
Net cash provided by financing activities	<u>695,053</u>	<u>926,596</u>
Net change in cash, restricted cash, and restricted cash equivalents	(114,030)	134,139
Cash, restricted cash, and restricted cash equivalents at beginning of period	<u>134,139</u>	<u>—</u>
Cash, restricted cash, and restricted cash equivalents at end of period	\$ <u><u>20,109</u></u>	\$ <u><u>134,139</u></u>
Supplemental disclosure of cash flow activities:		
Cash interest paid	\$ 53,893	—
Right-of-use assets obtained in exchange for operating lease liabilities	4,098	—

See accompanying notes to consolidated financial statements.

## JFK MILLENNIUM PARTNERS HOLDINGS, LLC

Notes to Consolidated Financial Statements

December 31, 2023 and 2022

### (1) Summary of Significant Account Policies

#### (a) Description of the Business

JFK Millennium Partners Holdings, LLC (“the Parent”) was formed on August 26, 2022 by Corsair-Vantage Airport Fund Aggregator, L.P., ATI Javelin Holdings, LP, RXR JFK MP Holdings Member LLC, and JetBlue Airways Corporation (“JetBlue”) (each individually a “Member”, and collectively, “the Members”). JFK Millennium Partners, LLC (“the Subsidiary” or “the Company”) is a Delaware limited liability company formed on February 24, 2022. The Company is a wholly owned subsidiary of the Parent. These consolidated financial statements include the activities of both the Parent and the Subsidiary. The Parent had no operational activities in 2023 and 2022, and all activities are conducted by the Subsidiary.

The table below summarizes the Members and their respective interest in the Parent as of both December 31, 2023 and 2022.

	<u>Members’ interest</u>
Corsair-Vantage Airport Fund Aggregator, L.P.	45 %
ATI Javelin Holdings, LP	30
RXR JFK MP Holdings Member LLC	20
JetBlue Airways Corporation	5

Per an Equity Contribution Agreement between the Parent and the Members, the Members are required to fund their equity commitment totaling \$1,300 million, which is allocated to the Members based upon their respective interests in the Parent. Per the Company’s LLC agreement, Members are required to make equity contributions to the Company, which will be recorded as contributions by the Parent to the Company.

The table below summarizes the Members and their respective remaining equity commitment in the Parent as of both December 31, 2023 and 2022. Neither the Equity Contribution Agreement nor the LLC Agreement require contributions in excess of each Member’s total equity commitment. Each Member’s total equity commitment, with the exception of RXR JFK MP Holdings Member LLC, which is partially cash collateralized, is supported by letters of credit posted by each Member, in favor of the Company.

	<u>(In thousands)</u>
Corsair-Vantage Airport Fund Aggregator, L.P. \$	585,000
ATI Javelin Holdings, LP	390,000
RXR JFK MP Holdings Member LLC	260,000
JetBlue Airways Corporation	65,000
	<u>1,300,000</u>
\$	<u>1,300,000</u>

## JFK MILLENNIUM PARTNERS HOLDINGS, LLC

### Notes to Consolidated Financial Statements

December 31, 2023 and 2022

For the years ended December 31, 2023 and 2022, no equity contributions were made by the Members.

Per the LLC Agreement, the fees related to carrying the letters of credit and cash collateral are reimbursable to each Member by the Company.

The Company entered into an agreement, effective from November 17, 2022 through December 30, 2060 (referred to herein as “the Port Authority Agreement”, “the Agreement”, or “the Port Agreement”), with the Port Authority of New York and New Jersey (“the Port Authority”). Under that agreement, the Company has taken occupancy of two parcels at JFK Airport, the Terminal 6 and Terminal 7 Parcels, is responsible for the design and construction of the New JFK Terminal 6 (“the Construction Project”), as well as the operations and maintenance of the Existing JFK Terminal 7 (from December 1, 2022) and, when completed, New JFK Terminal 6 (“the Operations and Maintenance Project”) at New York’s John F. Kennedy International Airport (“the Airport”).

The Project includes:

1. The operation, maintenance, decommissioning and demolition of the Existing Terminal 7 (referred to as “the Existing Terminal 7”);
2. The design and construction of the New Terminal 6, that will connect behind security to Terminal 5, owned and operated by JetBlue, and will be built in two phases:
  - i) Phase I will deliver five gates, a Federal Inspection Station (“FIS”) for international passenger processing, ticketing counters, passenger security screening, concessions, and airport lounge space.
  - ii) Upon demolition of the Existing Terminal 7, Phase 2 construction will commence and will consist of an additional five gates, concession space, and additional airline lounges in the New Terminal 6.
3. The operation and maintenance of the New Terminal 6.

Collectively, the Construction Project and Operations and Maintenance Project are referred to as the Project, which is further described in Note 1(k), *Revenue Recognition*. Concurrent with the execution of the Port Authority Agreement, the Company entered into a Design-Build Agreement (“the DBA”) with Hunt Construction Group, Inc. (“the DB Contractor”). The DBA requires that the DB Contractor perform all activities related to the Construction Project. The Construction Project commenced in January 2023. The estimated amount of the cost of the Construction Project, which includes the DBA and all other Project costs, as of December 31, 2023 and 2022 is \$5,051 million and \$5,027 million, respectively. As additional security to reduce the risks to the Company and lenders, the DB Contractor has posted a letter of credit totaling \$232.1 million.

## JFK MILLENNIUM PARTNERS HOLDINGS, LLC

### Notes to Consolidated Financial Statements

December 31, 2023 and 2022

The New York Transportation Development Corporation issued Special Facilities Bonds, Series 2022A (Tax-Exempt) (AMT) in the aggregate principal amount of \$435.0 million (“the Series 2022A Bonds”) on November 17, 2022, with Royal Bank of Canada as the Purchaser and the Company as the Borrower pursuant to an Indenture of Trust (“the Trust Indenture”) between the New York Transportation Development Corporation and the Bank of New York Mellon, as trustee, (“the Trustee”). The proceeds of the Series 2022A Bonds were loaned to the Company pursuant to a Building Loan and Project Loan Agreement (“the 2022A Loan Agreements”) to (1) finance a portion of the costs relating to the design and construction of the Project, (2) partially fund capitalized interest during construction, (3) fund a working capital reserve account, and (4) pay certain costs of issuance related to the Series 2022A Bonds. Accordingly, a portion of the Company’s cash and investments are restricted for these purposes.

In addition to the Series 2022A Bonds, The New York Transportation Development Corporation as conduit lender, entered into an agreement on November 17, 2022, to issue in the aggregate, \$3,009 million, Senior Taxable Loans (“the Taxable Debt”) through a Credit Agreement with a series of lenders, pursuant to the Credit Agreement Indenture. The proceeds will be released on scheduled credit extension dates in amounts determined in the Credit Agreement. Total amounts funded through December 31, 2023 and 2022, are \$1,297 million and \$586 million, respectively. The proceeds of the Taxable Debt were loaned to the Company pursuant to a Building Loan and Project Loan Agreement (“the Taxable Loan Agreements”) to (1) finance a portion of the costs relating to the design and construction of the Project, (2) partially fund capitalized interest during construction, (3) fund a working capital reserve account, and (4) pay certain costs of issuance related to the Taxable Debt. Construction Project costs not funded by the Series 2022A Bonds and Taxable Debt, will be funded with (1) certain revenues received from the operation of the Existing Terminal 7 and New Terminal 6, (2) equity contributions from the Company’s Members, and (3) interest income. The proceeds from the Series 2022A Bonds and Taxable Debt are expected to cover the majority of the costs to complete the Construction Project. The remaining costs will be funded through equity contributions from the Members, interest income on investments and cash flow generated from operations.

The 2022A Loan Agreement, Taxable Loan Agreements, Trust Indenture and Credit Agreement Indenture may be referenced here within as the Financing Documents.

#### **(b) Basis of Presentation of the Consolidated Financial Statements**

The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP). The accompanying consolidated financial statements include the accounts of Parent and Subsidiary. The Parent had no activity in 2023 or 2022 and therefore all amounts reflected are that of the Subsidiary. No intercompany balances or transactions have been eliminated in consolidation.

The Company has reclassified certain amounts relating to its prior period results to conform to its current period presentation. These reclassifications have not changed the results of operations of the prior period.

For purposes of note disclosures, the amounts reported for the period from inception (February 24, 2022) through December 31, 2022, are defined as the year ended December 31, 2022.

## JFK MILLENNIUM PARTNERS HOLDINGS, LLC

### Notes to Consolidated Financial Statements

December 31, 2023 and 2022

#### **(c) Use of Estimates**

The preparation of consolidated financial statements in accordance with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenue and expenses during the reporting period. Significant items subject to such estimates and assumptions include the stand-alone selling prices, estimated total costs, estimated margins for each performance obligation, and estimated total transaction price, as further discussed in Note 1(k), *Revenue Recognition*. The estimates and assumptions used in the preparation of the consolidated financial statements are based upon management's evaluation of the relevant facts and circumstances through the date of issuance. Actual results could differ from those estimates.

#### **(d) Cash**

The balance of unrestricted cash as of December 31, 2023 and 2022 is \$2.9 million and \$4.0 million, respectively.

#### **(e) Restricted Cash and Cash Equivalents**

As of December 31, 2023 and 2022, \$17.2 million and \$16.4 million, respectively, was restricted for the payment of, among other things, the construction cost of the New Terminal 6, rent, operating costs and working capital reserve requirements.

#### **(f) Restricted Short-Term Investments**

As of December 31, 2023 and 2022, restricted short-term investments are classified as held-to-maturity for use as working capital reserves and construction cost, if required, and are carried at cost and consisted of approximately \$594.2 million and \$594.0 million, respectively. In 2023, these balances consist of fixed income debt securities invested in guaranteed investment contracts ("GICs") with a financial institution with maturities in 2026 and, for both 2023 and 2022, the balance is invested in money market accounts, including US Treasury Obligation accounts with immediate availability of funds. The costs of the investments approximate fair value due to their short-term nature.

Restricted short-term investments are dedicated to the payment of, among other things, the construction cost of the New Terminal 6. The Company's policy is to include all interest-bearing investments in short-term investments.

#### **(g) Accounts Receivable**

The Company manages the airline and concession activities and is also responsible for the Construction Project. In general, accounts receivable are due within 30 days.

#### **(h) Prepaid Expenses and Other Current Assets**

Prepaid expenses and other current assets primarily include amounts paid by the Company for general business and Project insurance coverage and stored materials.

## JFK MILLENNIUM PARTNERS HOLDINGS, LLC

Notes to Consolidated Financial Statements

December 31, 2023 and 2022

### (i) **Long-Lived Assets**

Long-lived assets are reviewed for impairment at an asset group level (which for the Company consists primarily of its contract asset) whenever events or changes in circumstances indicate that the carrying value of the assets may not be recoverable. If the estimated undiscounted future cash flows expected from the use and eventual disposition of the assets are less than their carrying amount, an impairment loss is recognized equal to the difference between the assets' fair values and their carrying amounts. The Company has not recognized any impairment losses for the years ended December 31, 2023 and 2022.

Capitalized contract costs represent costs incurred related to the Project and are reflected in the consolidated balance sheets. These amounts include development costs related to design and construction incurred prior to financial close. In addition, costs were incurred to allow for the DB Contractor to hire staff, enable work, set up offices, trailers, preconstruction design, and reimbursables. These amounts will be recovered over the contract period. The balance of Capitalized Contract Costs at December 31, 2023 and 2022 were \$219.8 million and \$252.9 million, respectively.

The Company also incurred Project costs related to the Port Authority Agreement, including rent, oversight fees and milestone payments that are to be recognized over the term of the Construction Project. These amounts appear on the consolidated balance sheet as Other Assets, project and will be treated in a manner similar to the capitalized contract costs. The balance reflected at December 31, 2023 and 2022, were \$43.4 million and \$50.0 million, respectively.

### (j) **Service Concession Arrangement**

The Company has long-term obligations under the Port Authority Agreement. Under the terms of the Project (specifically, the New Terminal 6), the Company is responsible for the build-out of the premises and, as the assets are the property of the Port Authority, the Company is not the owner of the related premises. Although the Company is not considered to be the owner, the Company has responsibility for the development, construction, and operation of the New Terminal 6, on a long-term basis. Based on the terms of the Port Authority Agreement, the Company accounts for its operations as a service concession arrangement, as defined by ASC Topic 853, *Service Concession Arrangements*. The agreement with the Port Authority entails design, construction, and operation and maintenance of public infrastructure. The Port Authority is the Company's only customer, and not third parties such as airlines or concessionaires (refer to Note 1(k), *Revenue Recognition*, for further discussion). The Port Authority is considered the Grantor of its rights to the Company for the infrastructure addressed under the Service Concession Arrangement. ASC 853 stipulates that the infrastructure subject to the standard may not be accounted for as a lease, nor should the infrastructure used in the service concession arrangement be recognized as property and equipment by the operating entity. Instead, the arrangement should be accounted for under the applicable revenue standard. Therefore, the Company recognizes revenue in accordance with ASC 606, *Revenue from Contracts with Customers*, to this arrangement.

## JFK MILLENNIUM PARTNERS HOLDINGS, LLC

Notes to Consolidated Financial Statements

December 31, 2023 and 2022

### **(k) Revenue Recognition**

The Company applies the following five steps in order to recognize revenue from contracts with customers: (i) identify the contract(s) with a customer; (ii) identify the performance obligation(s) in the contract; (iii) determine the transaction price; (iv) allocate the transaction price to the performance obligation(s) in the contract; and (v) recognize revenue when (or as) the entity satisfies a performance obligation.

In accordance with ASC 606, the Company applies the five-step model to a contract when it is probable that the entity will collect substantially all of the consideration it is entitled to in exchange for the goods or services it transfers to the customer (the Port Authority). The consideration is variable and is estimated using the expected value method taking into consideration that under the contract consideration is generated primarily from its right to charge airlines and non-airline concessionaires that are using the infrastructure. The Company is negotiating airline lease agreements and retail concession agreements with multiple airlines and concessionaires. The term for each of these agreements will vary, with many of the airline agreements commencing with the operations at the Existing Terminal 7 and a few including both Terminal 6 and Existing Terminal 7 operations. Based upon the demand for travel in New York City, and more specifically John F. Kennedy Airport, the Company believes that it is probable it will collect the consideration to which it is entitled to in exchange for the services that transferred under the contract barring any unforeseen events that would affect airport transportation in New York. In addition, taking into consideration the slot-constrained nature of John F. Kennedy Airport, it is believed that demand for Terminal 6 of John F. Kennedy Airport will be consistent with that forecasted during the Company's initial financing. At contract inception, the Company assessed whether the goods or services promised within the Port Authority Agreement represent a performance obligation. Under the Port Authority Agreement, the Company is responsible for the Construction Project and the Operations and Maintenance Project. The Company determined that the Construction Project and Operations and Maintenance Project are both capable of being distinct and distinct in the context of the contract. Accordingly, each is determined to be a separate performance obligation under the Port Authority Agreement. No other performance obligations were identified. The total estimated transaction price of \$24,468.6 million was allocated to each performance obligation. The Company allocates the contract's transaction price to each performance obligation using the best estimate of the stand-alone selling price of each performance obligation, which is estimated using the expected-cost-plus-margin approach. The transaction price is reduced by payments made to the Port Authority as the Grantor. These payments are discussed in Note 2, *Port Authority Agreement*.



## JFK MILLENNIUM PARTNERS HOLDINGS, LLC

### Notes to Consolidated Financial Statements

December 31, 2023 and 2022

The Company recognizes the transaction price allocated to each performance obligation over time by measuring the progress toward complete satisfaction using the input method of costs incurred. Due to the long-term nature of the contract, developing the estimated total cost at completion requires judgment. In estimating the cost of the work to be completed, the following factors are considered: the nature and complexity of the work to be performed, subcontractor performance, and the risk and impact of delayed performance. There was no material change in the transaction price year-over-year and therefore there was no material cumulative catch-up adjustment recorded.

(i) *Construction Revenue*

Revenue related to the Construction Project performance obligation is recognized over time as the Company's performance creates or enhances an asset that the customer controls as it is created or enhanced. The Company measures progress towards the satisfaction of a performance obligation over time using the cost-to-cost input method. Incurred costs represent work performed, which corresponds with, and thereby best depicts, the transfer of control to the customer.

At each reporting period, the Company determines the costs incurred project-to-date for the Construction Project performance obligation and recognizes revenue based on the ratio of costs incurred to-date to the total estimated costs at completion of the performance obligation. Total estimates are reviewed and revised periodically throughout the Construction Project period. Changes in estimates of total cost or total transaction price are recorded in the period of revision as an adjustment of cumulative revenue recognized to-date.

The Construction Project performance obligation includes the revenues generated for:

1. The demolition of the Existing Terminal 7;
2. The design and construction of the New Terminal 6, that will connect behind security to Terminal 5 owned and operated by JetBlue, which will be built in two phases:
  - i) Phase I delivery of five gates, a FIS for international passenger processing, ticketing counters, passenger security screening, concessions, and airport lounge space.
  - ii) Phase 2 delivery of an additional five gates, concession space, and additional airline lounges.

The Company incurred certain construction-related costs before beginning of the Construction Project to satisfy the related performance obligation. As these costs are expected to be recovered through future fees for the services to be provided, they are capitalized and will be amortized over the term of the Construction Project on a systematic basis that is consistent with the transfer of the services to the customer. Costs incurred to obtain the contract were expensed as incurred because they would have been incurred regardless of whether the contract was obtained.

## JFK MILLENNIUM PARTNERS HOLDINGS, LLC

### Notes to Consolidated Financial Statements

December 31, 2023 and 2022

Total revenue expected to be recognized from the Construction Project performance obligation is currently estimated at approximately \$5,483.3 million (transaction price allocated to the Construction Project). The Construction Project stand-alone selling price was determined using the expected cost plus a margin approach. Management established the margin to be 9.0%, based on margins of comparable large-scale construction contractors. Approximately \$4.7 billion of the transaction price allocated to the Construction Project performance obligation remains unsatisfied as of December 31, 2023. The Company recognized Construction Project revenue for the years ended December 31, 2023 and 2022, of \$785.0 million and \$0.0, respectively. There was no cumulative catch-up adjustment as the Construction Project commenced in January 2023. The related construction costs incurred for years ended December 31, 2023 and 2022, is \$418.8 million and \$0.0 million, respectively.

Revenues related to the Construction Project performance obligation will be recognized over the period through the Scheduled Completion Date of the Project or Date of Beneficial Occupancy of Phase 2 (defined in the Port Authority Agreement as February 23, 2028).

(ii) *Operations and Maintenance Service Revenue*

Revenue related to the Operations and Maintenance performance obligation is recognized over time as the customer (the Port Authority) simultaneously receives and consumes the benefits as services are provided. These services are viewed as a single performance obligation comprised of a series of distinct services. The Company uses a cost-to-cost input method to measure progress towards complete satisfaction of the performance obligation. The selection of the method to measure progress requires judgment and is based on the nature of the services provided. As the Company's efforts with respect to Operations and Maintenance work are largely based on usage of the infrastructure, it is believed that the cost-to-cost input method best depicts the transfer of control to the customer.

At each reporting period, the Company determines the costs incurred period-to-date for the Operations and Maintenance Project performance obligation and recognize revenue based on the ratio of costs incurred to date to the total estimated costs to satisfy the performance obligation. Total estimates are reviewed and revised periodically throughout the Operations and Maintenance Project period. Changes in estimates of total cost or total transaction price will be recorded in the period of revision as an adjustment of cumulative revenue recognized to-date.

The costs associated with these revenues are expensed in the period in which they are incurred. The total revenue to be recognized through the Company's Operations and Maintenance Project performance obligation over the term of the Port Authority Agreement is currently estimated at \$18,985.3 million (transaction price allocated to the Operations and Maintenance Project). Approximately \$18.8 billion of the transaction price allocated to the performance obligation remains unsatisfied as of December 31, 2023. The Company recognized Operations and Maintenance Service revenue for the years ended December 31, 2023 and 2022, of \$180.0 million and \$22.7 million, respectively.

**JFK MILLENNIUM PARTNERS HOLDINGS, LLC**

Notes to Consolidated Financial Statements

December 31, 2023 and 2022

The stand-alone selling price of the Operations and Maintenance Project performance obligation represents estimated operating expenses to be incurred by the Company plus a margin of 20.0%, which is based on margins of comparable companies that provide similar operations and maintenance services.

*(iii) Contract Assets and Contract Liabilities*

Billing practices are governed by the contract terms with airlines and concessionaires and do not necessarily correlate with revenue recognized over time using the cost-to-cost method. Unbilled receivables (contract assets) include unbilled amounts resulting from revenue recognized under the cost-to-cost measure of progress, when recognized revenues exceed the amount billed to the customer and end users of infrastructure. Deferred revenue (contract liabilities) may arise when amounts received from the airlines and concessionaires exceed revenues recognized under the cost-to-cost measure of progress. The Company's contract assets and contract liabilities are reported in a net position at the end of each reporting period.

As of December 31, 2023 and 2022, the net contract asset balance in the accompanying consolidated balance sheets included a contract asset of \$972.5 million and \$18.3 million, respectively. A rollforward of the contract asset for the year ending December 31, 2023 includes the following amounts:

	<u>(In thousands)</u>
Construction contract asset:	
Beginning balance, December 31, 2022	\$ —
Construction revenue	785,021
Payments to the Port Authority	<u>73,893</u>
Ending balance, December 31, 2023	<u>858,914</u>
O&M contract asset:	
Beginning balance, December 31, 2022	18,253
O&M revenue	179,988
O&M billings	(96,420)
Payments to the Port Authority	<u>11,742</u>
Ending balance, December 31, 2023	<u>113,563</u>
Contract asset	\$ <u><u>972,477</u></u>

*(i) Management Fees*

The Company entered into a management agreement ("the Management Agreement") with Vantage Airport Group (JFK) Ltd. ("the Management Company" or "Vantage Management"), a related party, through one of the Company's members (Note 5, *Transactions with Members*). Under the Management Agreement, Vantage Management provides personnel and services to support the operations at the Existing Terminal 7 and New Terminal 6, as well as the Construction Project.

## JFK MILLENNIUM PARTNERS HOLDINGS, LLC

### Notes to Consolidated Financial Statements

December 31, 2023 and 2022

Fees under the Management Agreement (“the Management Fees”) include:

- a) Management Fee – a base annual fee (“the O&M Fee”), until substantial completion of Phase 2 of the New Terminal 6 (“Phase 2 Substantial Completion”), of \$7.6 million of which \$1.5 million is in construction expense and the remainder is in Management fees in the consolidated Statement of Operations. For the period subsequent to Phase 2 Substantial Completion the O&M Fee will be equivalent to \$6.8 million adjusted annually by CPI, indexed to March 1, 2018. The O&M Fee relates to services provided for management of and concession operations at the Existing Terminal 7 and New Terminal 6.
- b) D&C Program Fee – a fee paid for provision of services in connection with the design and construction of the New Terminal 6 from November 17, 2022 through Phase 2 Substantial Completion will total \$20.0 million. The total fee incurred for the year amounting to \$3.6 million (2022 – \$0.4 million) is included in the construction expense in the consolidated Statement of Operations (2022 – included in the contract cost asset in the Statement of financial position).
- c) Mobilization Fee – a one-time fee of \$2.4 million in respect of mobilization services provided by the Management Company and paid on November 17, 2022 was included in the Professional services in the consolidated Statement of Operations.
- d) Operational Readiness and Transition Fee – three payments totaling \$7.5 million (“the ORAT fee”) for services provided by the Management Company related to operational readiness and transition services. The payments to be made are (i) \$2.3 million payable December 2022, (ii) \$3.75 million payable on the Date of Beneficial Occupancy of Phase 1, and (iii) \$1.5 million payable at the Date of Beneficial Occupancy of Phase 2. The ORAT fee amounting to \$0.9 million (2022 – \$2.3 million) is included in construction expense (2022 – management fee) in the consolidated Statement of Operations.

Management Fees incurred for the years ended December 31, 2023 and 2022, were \$12.1 million and \$6.0 million, which include O&M Fees of \$7.6 million and \$0.9 million, D&C Program Fees of \$3.6 million and \$0.4 million, Mobilization fee of \$0.0 million and \$2.4 million, and ORAT fee of \$0.9 million and \$2.3 million, respectively. Management Fees are recognized in operating expenses, as management fees, and Project costs that are expensed once the construction starts as a component of construction costs based upon an allocation of time and services provided. Construction-related costs incurred before beginning to satisfy the related performance obligation are capitalized and will be amortized over the term of the Construction Project on a systematic basis that is consistent with the transfer of the services to the customer.

#### **(m) Income Taxes**

The Company is a limited liability company and is a pass-through entity for federal and state income tax purposes. The Company is not liable for U.S. federal income taxes, as its Members recognize their share of income and loss on their respective tax returns. Accordingly, no provision for U.S. federal income taxes is recognized.

## **JFK MILLENNIUM PARTNERS HOLDINGS, LLC**

Notes to Consolidated Financial Statements

December 31, 2023 and 2022

### **(n) Concentration of Credit Risk**

The Company's financial instruments that are exposed to concentrations of credit risk consist primarily of restricted cash, restricted cash equivalents, restricted short-term investments, restricted investments, and certain receivables. The Company maintains its cash in a high-credit-quality commercial bank where the cash balance, at times, is more than the federally insured deposit limits. Investments are made with large, reputable financial institutions. The Company regularly monitors the financial stability of the commercial bank and financial institutions, including respective credit agency ratings, and believes they are not exposed to significant credit risk. Of the \$20.6 million and \$4.4 million of accounts receivable outstanding as of December 31, 2023 and 2022, respectively, all amounts relate to receivables from airlines, airline-related entities, and concessionaires.

### **(o) Fair Value of Financial Instruments**

The Company measures fair value as the price that would be received to sell an asset or paid to transfer a liability in the principal or most advantageous market in an orderly transaction between market participants. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or liability. As a basis for considering assumptions, accounting principles generally accepted in the United States of America establishes a three-level hierarchy for fair value measurements based upon the transparency of inputs to the valuation of asset or liability as of the measurement date:

Level 1 Unadjusted quoted prices in active markets that are accessible at the measurement dates for identical, unrestricted assets or liabilities.

Level 2 Quoted prices for markets that are not active, or inputs that are observable either directly or indirectly, for substantially the full term of the asset or liability.

Level 3 Prices or valuation techniques that require inputs that are both significant to the fair value measurement and unobservable (i.e., supported with little or no market activity).

The fair value of short term investments are deemed to be Level 1 and the interest rate swap derivative is deemed to be Level 2 in the fair value hierarchy.

### **(p) Risks and Uncertainties**

The Company's future operating results may be affected by various factors, including the continuance of the leases with retail and other operators, arrangements with airlines and the Port Authority Agreement and Project. Terrorist attacks, economic recession, bankruptcy of major airlines, public health epidemics and pandemics, the impact of war, and political turmoil have previously had a negative impact on the airline industry and could impact the Company's operating results.

While the Company has no reason to believe that its relationship with the airlines, concessionaires or the Port Authority will deteriorate, any interruption of these relationships or other adverse events affecting the airline industry or concession operations would adversely affect the Company. The Company may reassess estimates in the consolidated financial statements in response to the above referenced risks and uncertainties.

## **JFK MILLENNIUM PARTNERS HOLDINGS, LLC**

### Notes to Consolidated Financial Statements

December 31, 2023 and 2022

#### **(q) Insurance**

The Company is required to carry certain insurance coverages pursuant to the Port Authority Agreement, the DBA, as well as the Loan Agreements. During the construction period, all major Project insurance policies are provided by the Company. Company insurance policies during the construction period include an owner-controlled insurance policy, as well as insurance covering workers' compensation, employment practices, vehicles, cyber liability and company, directors and officer's liability. Prepaid insurance costs represent insurance premiums paid that are related to future periods and these amounts are included in prepaid and other current assets and other long-term assets in the accompanying consolidated balance sheet. As of December 31, 2023 and 2022, prepaid insurance costs totaled \$27.0 million and \$21.7 million, respectively, of which \$9.9 million and \$7.0 million is in prepaid expenses and other current assets and \$17.1 million and \$14.7 million, respectively, is in other long-term assets on the accompanying consolidated balance sheet. Prepaid insurance policy premiums are amortized ratably over the respective policy coverage period. During the construction of the Project, insurance costs relating to the project are recorded as construction expense in the accompanying consolidated statements of operations. The portion of insurance related to the Existing Terminal 7 operation is expensed over the term of the policy and included in Insurance in the accompanying consolidated statements of operations.

#### **(r) Distributions**

The Company expects, from time to time, to make distributions of cash flows and capital to its Members, as and to the extent available subject to any limitations specified in the Port Authority Agreement or Loan Agreements.

For the years ended December 31, 2023 and 2022, no distributions were declared or made to the Members.

#### **(s) Leases**

The Company has leases in office premises under operating leases where it is the lessee. Such lease arrangements generally do not contain residual value guarantees or purchase options or if purchase options exist, they are not probable of being exercised.

The Company accounts for leases in accordance with Topic 842, *Leases*. The Company determines if an arrangement is or contains a lease at contract inception. The Company recognizes a right-of-use (ROU) asset and a lease liability at the lease commencement date. For operating and finance leases, the lease liability is initially measured at the present value of the unpaid lease payment at the commencement date. The lease liability is subsequently measured at amortized cost using the effective-interest method.

## JFK MILLENNIUM PARTNERS HOLDINGS, LLC

### Notes to Consolidated Financial Statements

December 31, 2023 and 2022

Key estimates and judgments include how the Company determines (i) the discount rate it uses to discount the unpaid lease payments to present value, (ii) lease term, and (iii) lease payments.

- (i) Topic 842 requires a lessee to discount its unpaid lease payments using the interest rate implicit in the lease or, if that rate cannot be readily determined, its incremental borrowing rate. Generally, the Company cannot determine the interest rate implicit in the lease because it does not have access to the lessor's estimated residual value or the amount of the lessor's deferred initial direct costs. An election is available to nonpublic entities to use a risk-free rate as the discount rate when the rate implicit in the lease is not determinable. The Company has elected to apply the risk-free rate as its discount rate for all asset classes of leases when such criteria is met.
- (ii) The lease term for all of the Company's leases includes the noncancellable period of the lease plus any additional periods that the Company will exercise the renewal option or not exercise the termination option or in which the exercise of those options is controlled by the lessor.
- (iii) Lease payments included in the measurement of the lease liability comprise the following:
  - a) Fixed payments, including in-substance fixed payments, owed over the lease term and
  - b) Variable lease payments that depend on an index or rate, initially measured using the index or rate at the lease commencement date.
  - c) Under Company's lessee arrangements, where both lease and nonlease (ASC 606, like repairs and maintenance) components exists, the Company has elected the practical expedient to account for the lease and nonlease components as a single lease component.

The ROU asset is initially measured at cost, which comprises the initial amount of the lease liability adjusted for lease payments made at or before the lease commencement date, plus any initial direct costs incurred, less any lease incentives received.

For operating leases, the ROU asset is subsequently measured throughout the lease term at the carrying amount of the lease liability, plus initial direct costs, plus any prepaid lease payments, less the unamortized balance of lease incentives received. Lease expense for lease payments is recognized on a straight-line basis over the lease term.

The Company monitors for events or changes in circumstances that require a reassessment of one of its leases. When a reassessment results in the remeasurement of a lease liability, a corresponding adjustment is made to the carrying amount of the corresponding ROU asset, unless doing so would reduce the carrying amount of the ROU asset to an amount less than zero. In that case, the ROU asset is reduced to zero and the remainder of the adjustment is recorded in profit or loss.

Operating lease ROU assets are presented as operating lease ROU assets on the consolidated balance sheet. The Operating lease liabilities is presented separately in current liabilities and the long-term portion on the consolidated balance sheet.

The Company has elected not to recognize ROU assets and lease liabilities for short-term leases that have a lease term of 12 months or less. The Company recognizes the lease payments associated with its short-term leases as an expense on a straight-line basis over the lease term.

## JFK MILLENNIUM PARTNERS HOLDINGS, LLC

### Notes to Consolidated Financial Statements

December 31, 2023 and 2022

Variable lease payments associated with the Company's leases are recognized when the event, activity, or circumstance in the lease agreement on which those payments are assessed occurs. Variable lease payments are presented as operating expense in the Company's consolidated Statement of Operations in the same line item as expense arising from fixed lease payments.

ROU assets for operating leases are reduced by impairment losses, if any. The Company uses the long-lived assets impairment guidance in Subtopic 360-10, *Property, Plant, and Equipment – Overall*, to determine whether an ROU asset is impaired, and if so, the amount of the impairment loss to recognize.

The Company monitors for events or changes in circumstances that require a reassessment of one of its leases. When a reassessment results in the remeasurement of a lease liability, a corresponding adjustment is made to the carrying amount of the corresponding ROU asset unless doing so would reduce the carrying amount of the ROU asset to an amount less than zero. In that case, the ROU asset is reduced to zero and the remainder of the adjustment is recorded in profit or loss.

#### **(t) Derivative Instruments**

The Company recognizes all derivative instruments as either assets or liabilities in the consolidated balance sheet at their respective fair values except for those derivatives that are designated as qualified cash flow hedges that follow the simplified approach. Gains and losses on the derivative are recognized in current earnings (i.e., using a mark-to-market approach).

#### **(u) Recently Adopted Accounting Pronouncement**

In June 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2016-13, *Financial Instruments – Credit Losses: Measurement of Credit Losses on Financial Instruments*, which applies a current expected credit loss ("CECL") model, a new impairment model based on expected losses rather than incurred losses. The CECL model is expected to result in more timely recognition of credit losses. Additionally, from 2016 through 2023, the FASB issued additional related ASUs that provide further guidance and clarification and became effective for the Company upon the adoption of ASU 2016-14.

The Company adopted ASU 2016-13 and its related ASUs (collectively referred to as "Topic 326") using the modified retrospective method for all financial assets measured at amortized cost on January 1, 2023. As a result, the Company was not required to adjust its comparative period financial information for effects of the standard or make the new required credit loss allowance disclosures for periods before the date of adoption. Prior period amounts continue to be presented in accordance with previously applicable generally accepted accounting principles.

The expected credit losses and subsequent adjustments to such losses will be recorded through an allowance account deducted from the amortized cost basis of the financial asset, with the net carrying value of the financial asset presented on the consolidated balance sheets at the amount expected to be collected. The credit loss expense and subsequent adjustments to such losses are recorded as a provision for (or reversal of) credit loss expense in the consolidated statements of operations. The CECL model is expected to result in more timely recognition of credit losses. With respect to private companies, the amendments in this update are effective for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years.



## JFK MILLENNIUM PARTNERS HOLDINGS, LLC

### Notes to Consolidated Financial Statements

December 31, 2023 and 2022

The Company determined that accounts receivable and contract assets are within the scope of the Topic 326 analysis. Accounts receivable are expected to be collected in less than one year and are therefore classified as current assets. Contract assets include unbilled amounts through 2060 upon expiration of the Port Authority Agreement, and therefore, are classified as long-term assets. The Company determines the allowance for credit losses for accounts receivable and contract assets using estimates of probability of customer default and loss given default percentages applied to estimated exposure at default. When measuring expected credit losses, the Company considers customers' historical payment patterns, customers' credit ratings as published by credit rating agencies, and current and reasonable and supportable forecasts of economic conditions in estimating customers' probability of default, exposure at default, and estimated loss given default. The Company collectively evaluates contract assets with similar industry risk and credit risk characteristics. In addition, the Company evaluates the collectability of contract assets on an individual basis, when they no longer have similar risk characteristics to determine if any are deemed uncollectible. Contract assets are written off against the allowance for credit losses when deemed uncollectible.

The Company will continually review and update, when necessary, all such relevant judgments and assessments in determining the reserves for credit losses. When specific customers are identified as no longer sharing the same risk profile as their current pool, they are removed from the pool and evaluated separately.

The Company adopted the updates on January 1, 2023, with no material impact on the consolidated financial statements.

#### **(2) Port Authority Agreement**

On November 17, 2022, the Company entered into an agreement with the Port Authority with a term through December 30, 2060 (the Port Authority Agreement, as previously defined).

Under the terms of the Port Authority Agreement, the Company assumed sole responsibility for the development, construction, and operations (as an airline passenger terminal) of the New Terminal 6, and effective December 1, 2022, operation and management of the Existing Terminal 7 as an airline passenger terminal. All amounts discussed in items (a) through (h) below are considered consideration payable to Grantor and are reflected as a reduction in the transaction price discussed in Note 1(k), *Revenue Recognition*, above.

##### **(a) Ground Rent**

From Port Authority Agreement Commencement with regards to the Terminal 6 Parcel (23.1 acres), and from December 1, 2022 forward with regards to the Terminal 7 Parcel (35.4 acres) to its expiration, the Port Authority shall receive an annual rent, payable in equal monthly installments, of \$148,300 per acre (2018 base) increased each January 1 by the greater of 4% and 50% of the CPI Percentage Increase for the new year. Rent expense related to the Ground Rent is recognized as incurred over the term of the Port Authority Agreement. Total Ground Rent incurred by the Company in 2023 and 2022 is \$10.6 million and \$1.0 million, respectively, related to both parcels. These amounts are included within contract asset and other assets as of December 31, 2023 and 2022, respectively.

## JFK MILLENNIUM PARTNERS HOLDINGS, LLC

### Notes to Consolidated Financial Statements

December 31, 2023 and 2022

**(b) First Additional Rent**

The Company must pay the Port Authority \$0.5 million on December 1 of each calendar year commencing in the year in which Substantial Completion of Phase I of the New Terminal 6 occurs. The first payment is expected to occur December 2026.

**(c) Second Additional Rental**

The Company must pay the Port Authority a Second Additional Rental payment in advance of December 1, 2022 through Agreement expiration an annual amount, payable in equal monthly installments, in amounts outlined in the Port Authority Agreement, which does include a provision for deferral of payments (“the Deferred Second Additional Rent”) for the years 2030 through 2035 based on the occurrence of certain defined factors. The scheduled annual amounts for the succeeding years are (a) 2024 – \$55.3 million, (b) 2025 – \$56.7 million, (c) 2026 – \$58.0 million, (d) 2027 – \$59.5 million, (e) 2028 – \$0.0 million, and (f) 2029 and thereafter – \$2,861.8 million. Total rent expense related to the Second Additional Rental recorded by the Company in 2023 and 2022 is \$54.0 million and \$8.2 million, respectively. These amounts are reflected in contract asset and other assets as of December 31, 2023 and 2022, respectively.

**(d) Third Additional Rental**

The Company must pay the Port Authority a rental payment as additional compensation (“the Third Additional Rental”) in the amount of \$33.0 million to be paid on November 17, 2022, and an additional \$1.0 million annually, payable in equal monthly installments, beginning January 1, 2027. Total rent expense related to the Third Additional Rental recorded by the Company in 2023 and 2022 is \$0.0 million and \$33.0 million, respectively. These amounts are reflected in other assets as of December 31, 2023 and 2022.

**(e) Excess Value Rent**

For any Distribution Date (as defined in the Financing Documents) that there is Cash Available for Distribution (as defined in the Financing Documents), the calculation of amounts to be distributed shall be calculated as follows:

- i) to the Company until the total distributions achieve a 10.5% return on invested equity.
- ii) 5% to the Port Authority and 95% to the Company until total distributions achieve a 11.5% return on invested equity.
- iii) 10% to the Port Authority and 90% to the Company until total distributions achieve a 12.0% return on invested equity.
- iv) 25% to the Port Authority and 75% to the Company until total distributions achieve a 12.75% return on invested equity.
- v) 50% to the Port Authority and 50% to the Company until total distributions achieve a 13.5% return on invested equity.
- vi) 75% to the Port Authority and 25% to the Company until the Port Authority has received Excess Value Rent equal to the PA Catch-Up Amount as defined in the Agreement.

**JFK MILLENNIUM PARTNERS HOLDINGS, LLC**

Notes to Consolidated Financial Statements

December 31, 2023 and 2022

vii) 50% each to the Port Authority and the Company.

**(f) Concession Revenue Rents**

From December 1, 2022, during the term that the Existing Terminal 7 is operated, the Company must pay to the Port Authority 50% of all Concessions Gross Rents, as defined in the Port Agreement. The Company recognized \$5.4 million and \$0.3 million as concession rent expense for 2023 and 2022, respectively, and it is reflected as an increase in the contract asset in the Consolidated Balance Sheets for 2023 and as general and administrative expenses in 2022 in the accompanying Consolidated Statements of Operations.

From Substantial Completion of Phase I of the New Terminal 6, until the Phase 2 Opening Date, the Company must pay to the Port Authority annually the greater of (i) 50% of all Concession Gross Rents as defined in the Port Agreement, and (ii) the sum of (z) the product of the Pre-Opening International Enplanement Rate and the International Enplanements during the Calendar Year and (y) the product of the Pre-Opening Domestic Enplanement Rate and the Domestic Enplanements during the Current Calendar Year.

From the Phase 2 Opening date of the New Terminal 6 until Agreement expiration, an amount equal to the greater of: (x) 50% of the Gross Rents for the Current Calendar Year, and (w) the greater of (1) the product of (I) the quotient obtained by dividing (a) 80% of the Concessions Revenue Rent paid or payable with respect to the Calendar Year immediately preceding the Current Calendar Year by (b) the Aggregate Enplanements during that preceding Calendar Year, and (II) the Aggregate Enplanements during the Current Calendar Year; and (2) the sum of (I) the product of the Post-Opening International Enplanement Rate and the International Enplanements during the Current Calendar Year and (II) the product of the Post-Opening Domestic Enplanement Rate and the Domestic Enplanements during the Current Calendar Year.

Notwithstanding the above Concession Revenue Rents obligations, during the years from and including 2027 to and including the earlier of (x) 2036 and (y) the date of any Recapitalization event ("the Deferral Period"), payment of a portion of the Concessions Revenue Rent equal to 50% of the Concessions Revenue Rent for the then Current Calendar Year shall be paid to the Port Authority senior and prior to the payment of any Lessee Debt or any debt service thereof, and payment of the remaining portion of the Concessions Revenue Rent ("the Subordinate Concessions Revenue Rent"), including any amounts attributable to any minimum guaranteed rent, shall be subordinate to payment of Lessee Debt constituting senior debt or subordinate debt (of any tier) extended to the Lessee by any party other than a direct or indirect constituent owner of the Lessee, but senior and prior to the payment of Lessee Debt constituting loans made by the direct or indirect constituent owners of the Lessee to the Lessee (whether structured as loans or preferred equity). To the extent Lessee does not have sufficient funds available to pay any amount of Subordinate Concessions Revenue Rent when due, then Lessee may defer payment of such Subordinate Concessions Revenue Rent ("Deferred Concessions Revenue Rent"); provided, that (y) any Deferred Concessions Revenue Rent shall accrue interest at the rate of 7.5%, and (z) no Distributions shall be permitted if at any time there is Deferred Concessions Revenue Rent then accrued and unpaid.

**JFK MILLENNIUM PARTNERS HOLDINGS, LLC**

Notes to Consolidated Financial Statements

December 31, 2023 and 2022

**(g) Port Authority Cost Reimbursement**

The Company shall reimburse the Port Authority for reasonable third-party out-of-pocket expenses incurred by the Port Authority directly related to the development of the Project in an aggregate amount not to exceed \$40 million, with \$25 million paid during Phase 1 of the New Terminal 6 construction and the balance paid during the Phase 2 construction. Total amounts incurred were \$7.1 million and \$1.2 million in 2023 and 2022, respectively. The amounts incurred in 2023 were reflected as an increase in the contract asset and the amounts in 2022 reflected as Other assets to be recognized as an increase in the contract asset in future years.

**(h) Milestone Payments**

On the date which is twelve months following the Port Authority's notification to the Company that it has commenced its work that enables roadway work to commence ("the Milestone Payment Date") the following payments will be made:

- (z) The Port Authority shall pay the Company \$0.9 million with respect to the KIAC Fuel Line.
- (y) The Company shall pay the Port Authority \$23.0 million with respect to roadways.
- (x) The Company shall pay the Port Authority \$9.0 million with respect to the backup power source.

**(3) Accounts Receivable**

At December 31, 2023 and 2022, accounts receivable included the following (in thousands):

	<u>2023</u>	<u>2022</u>
Airlines	\$ 16,021	3,341
Concessionaires	2,610	792
Others	<u>1,996</u>	<u>304</u>
	<u>\$ 20,627</u>	<u>4,437</u>

Airlines are billed monthly on the following bases:

- a.) Exclusive space occupied at contracted rate per square foot, billed monthly,
- b.) Rate per aircraft turn at contracted rate with rates varying based upon domestic/international and aircraft type.
- c.) In addition, international carriers are billed an additional rate per arriving international passenger.
- d.) Airlines not billed per aircraft turn are billed a rate per enplaned passenger.
- e.) Airlines using the common lounge are billed at agreed upon rates for each passenger making use of the lounge.

**JFK MILLENNIUM PARTNERS HOLDINGS, LLC**

Notes to Consolidated Financial Statements

December 31, 2023 and 2022

Concessionaires pay percent rent for each dollar sale of activity as reported monthly. In addition, concessionaires pay a common area maintenance charge per square foot of occupied space and a marketing fee as a percent of sales.

**(4) Accounts Payable and Accrued Liabilities**

At December 31, 2023 and 2022, accounts payable and accrued liabilities included the following (in thousands):

	<b>2023</b>	<b>2022</b>
Project payables	\$ 63,633	41,569
Operating payables	4,972	3,632
Other accrued expenses	2,190	60
	\$ 70,795	45,261

**(5) Transactions with Members**

Included in accounts payable, related parties, at December 31, 2023 and 2022, in the aggregate, is \$9.4 million and \$6.9 million, respectively, owed to certain related parties.

	<b>2023</b>	<b>2022</b>
	(In thousands)	
American Triple I	\$ 1,027	1,035
JetBlue Airways Corporation	166	166
RXR JFK MP Holdings	662	662
Corsair-Vantage Airport Fund Aggregator, L.P	1,491	1,491
Vantage Airport Group (JFK) Ltd	5,646	3,528
Vantage Airport Group (US) Ltd	378	—
	\$ 9,370	6,882

As part of the Management Agreement, the Company is provided with secondees from Vantage Airport Group or their affiliates, and these secondees provide management services throughout the year. The secondment arrangements are ongoing for the duration of the Management Agreement. In addition, under the Management Agreement, certain services related to assistance with various concessions are provided. These services were also provided by the individual Members. The services provided have included, but are not limited to, the payment of the initial start-up costs (including all costs related to the initial bid and acceptance of the Company under the Port Authority Agreement), acting as directors on the Company's Board, maintenance of the back-office systems, and working or consulting on behalf of the Company. The Company reimburses the Members for the cost of providing these services. The total amount of costs incurred by the Company in relation to services provided by the Members and the secondment arrangements for the years ended 2023 and 2022 totaled \$9.4 million and \$3.8 million, respectively. In addition, the Company incurred costs for IT, equipment, and travel related to the secondees of \$0.3 million,

## JFK MILLENNIUM PARTNERS HOLDINGS, LLC

### Notes to Consolidated Financial Statements

December 31, 2023 and 2022

\$0.2 million is recorded as Construction Cost Asset in the consolidated balance sheets and \$0.1 million is reflected as General and Administrative expenses in the consolidated Statement of Operations. Of these amounts, \$0.5 million and \$2.4 million remained outstanding as of December 31, 2023 and 2022, respectively, and is included in accounts payable related parties on the accompanying consolidated balance sheets.

As discussed in the Management Fees section of Note 1(l), *Management Fees*, Vantage Management provides services under the Management Agreement. Under the terms of the agreement, Vantage Management provides certain Project related and operation and maintenance and related services for the Company. The total amount of costs charged to the Company per the Management Contract for the years ended December 31, 2023 and 2022 were (a) O&M Fee, \$7.6 million and \$0.9 million, (b) D&C Fee \$3.6 million and \$0.4 million, (c) Mobilization Fee \$0.0 million and \$2.4 million, and (d) ORAT Fee \$0.9 million and \$2.3 million, with all amounts included as Capitalized Contract Costs, except for \$6.1 million and \$0.7 million, respectively, of the O&M Fee and the ORAT fee which are recorded as an operating expense. Of these amounts \$0.8 million is included in accounts payable, related parties, in the accompanying consolidated balance sheets.

As discussed in Note 1(a), *Description of the Business*, the Members secured their obligations to make capital contributions to the Company via equity letters of credit totaling \$1,260 million and \$40 million in cash collateral. Each Member is entitled to be reimbursed for the costs of these equity letters of credit/cost of cash collateral. The total amount of costs incurred by the Company in relation to this reimbursement for the years ended December 31, 2023 and 2022, was \$39 million and \$4.8 million and is included as an operating expense in the accompanying consolidated statements of operations. Of this amount \$3.3 million (2022 – \$3.3 million) is included in Accounts payable, related parties on the accompanying consolidated balance sheets. In addition, a prepayment of \$39 million was paid at financial close and is being amortized to operating expense until Substantial Completion of the Project. The portion expensed in 2023 is \$7.4 million and (2022 – \$0). The unamortized balance is reflected as a Prepaid Expense on the balance sheet in the amount of \$7.4 million (2022 – \$39 million), and \$24.2 million (2022 – \$0) in Other long-term assets.

As part of an agreement entered into between the Company and America Triple I Holdings, LLC (“ATI Agreement”), ATI provides services related to Minority Businesses and Women Enterprises. Costs incurred by the Company related to the ATI Agreement for the years ended December 31, 2023 and 2022 were less than \$0.4 million and \$0.1 million, respectively, with the entire amount being expensed as professional fees and included in Accounts payable, related parties on the accompanying consolidated balance sheets.

In 2022, the Company reimbursed the Members for costs incurred prior to closing of \$264.0 million which was recorded in the Consolidated Statement of Operations as professional services expense. In 2023, no additional costs prior to closing were reimbursed to Members.

## JFK MILLENNIUM PARTNERS HOLDINGS, LLC

### Notes to Consolidated Financial Statements

December 31, 2023 and 2022

#### (6) Long-Term Debt

As described in Note 1(a), *Description of the Business*, the New York Transportation Development Corporation issued Special Facilities Bonds, Series 2022A Bonds in the amount of \$435.0 million. In addition to these Series 2022A Bonds, the New York Transportation Development Corporation, as conduit lender, agreed to issue, in the aggregate amount of \$3,009 million, Senior Taxable Loans through a Credit Agreement with a series of lenders, pursuant to the Credit Agreement Indenture. The total amounts funded at December 31, 2023 and 2022 are \$1,297.0 million and \$586.0 million, respectively. The proceeds were then loaned to the Company by the New York Transportation Development Corporation under the Loan Agreements. Unamortized net premium and debt issuance costs related to the Loan Agreements aggregated \$111.3 million and \$94.4 million as of December 31, 2023 and 2022, respectively. The fair value of the debt under the Loan Agreements is estimated to be \$1,620.7 million and \$926.6 million as of December 31, 2023 and 2022, respectively, which equals the book value of the Long-term Debt reflected on the consolidated balance sheet. The lenders and collateral agent have placed certain restrictions on the Company's ability to, among other things, incur additional debt, pay or make member distributions, sell assets, enter into transactions with affiliates and merge or consolidate with other entities. The Company is required to pledge, assign, and grant to the collateral agent, a Lien on the Collateral as defined in accordance with the provision of the Loan Agreements. The debt is secured by a Leasehold Mortgage.

Debt issuance costs are presented on the accompanying consolidated balance sheets as a direct reduction to the related debt liability and amortized.

The Company will pay its obligations under the Loan Agreements during construction, from proceeds from the debt under the Loan Agreements and revenues derived from the Existing Terminal 7, and upon completion of each phase of the New Terminal 6, from revenues received from the operation of the New Terminal 6, including payments from airlines and concession providers. The debt under the Loan Agreements is secured by (1) the Loan Agreements, (2) moneys and obligations held by the Trustee, and (3) the Leasehold Mortgage held by the collateral agent ("the Collateral Agent") pursuant to an agreement amongst the Company, Collateral Agent and Trustee, the Collateral Agency Agreement. The Collateral Agency Agreement also allows for monitoring all restricted fund activity including reserve deposits and accounts required under the Port Authority Agreement and Loan Agreements.

The Company is required, in connection with the debt under the Loan Agreements, to comply with certain covenants and disclosures ("the Continuing Disclosure(s)"). The annual requirements, due 120 days after year-end, include, (1) issuance of the audited consolidated financial statements, (2) until the Phase 2 Substantial Completion Date, a certificate from a Responsible Officer that the assumptions and projections contained in the Base Case Financial Model remain reasonable, or an Updated Base Case Financial Model (this requirement also applies at November 1 of each year). In addition to the issuance of the audited consolidated financial statements, the following requirements must be adhered to once Phase 2 Substantial Completion is achieved: (a) the annual delivery of an updated Base Case Financial Model, certified by a Responsible Officer, (b) within 30 days of the end of each quarter, a certificate executed by a Responsible Officer, setting forth (i) Total and Senior Debt Service Coverage Ratios and (ii) the Major Maintenance and O&M Reserve Requirements as well as their outstanding balances. Financial Covenants within the Loan Agreements, effective with the first quarter ending after Phase 2 Substantial Completion, is a Total Debt Service Coverage Ratio of not less than 1.10 and a Senior Debt Service Coverage Ratio of not less than 1.15. In addition, the Loan Agreements require the funding of four reserves, (1) Debt Service Reserve Requirements, such requirements occurred at financial closing, and in addition, at Phase 2 Substantial

## JFK MILLENNIUM PARTNERS HOLDINGS, LLC

### Notes to Consolidated Financial Statements

December 31, 2023 and 2022

Completion and monthly thereafter, the reserve balance must total an amount equal to the Aggregate Senior Debt Service due for the twelve month period after such date that the calculation is performed, net of the amount in the Ramp-Up Reserve, (b) Ramp-Up Reserve, initially to be funded from debt proceeds, will be funded until the senior Debt Coverage Ratios, for a period of eight consecutive months, are equal to or above 1.40. Until this is achieved, deposits will be made to the Ramp-Up Reserve account to allow for the balance, when combined with the Debt Service Reserve to have set aside funds to achieve a debt coverage of 1.30, (c) effective the Phase 1 Substantial Completion Date the Company is required to establish a Major Maintenance Reserve based upon a three year estimate of capital expenditures, with Year one set at 100% of the estimate, Year 2 at 67% of the estimate and Year three at 33%, and (d) effective the Phase 1 Substantial Completion Date the Company is required to establish an O&M Reserve set at 50% of the O&M Expenses for the succeeding twelve months as shown in the then applicable Annual Operating Budget.

The debt under the Loan Agreements has a seven-year maturity and requires interest payments in accordance with the interest payment schedule of the Loan Agreement. These debt bear interest at rates ranging from 4.80% to 6.03%. Interest is payable quarterly in arrears. The effective interest rate after taking into account the amortization of the debt issuance premium and debt issuance costs is 5.19% to 6.93%. The Senior Taxable Loan matures on November 17<sup>th</sup>, 2029, with an anticipated re-financing, pursuant to the terms of the Anticipated Debt Service Schedule in the Senior Term Loan Balloon Indebtedness Certificate. The Series 2022A Bonds matures on November 17<sup>th</sup>, 2029.

The Company uses variable rate debt to finance its operations. To manage fluctuations in cash flows resulting from changes in the contractually specified rate, the Company enters into 'pay-fixed, receive-variable' interest rate swap agreements. Taken together with the related debt, these swaps create the economic equivalent of fixed-rate debt, up to the notional amount of its hedged debt. The Company's Revolving Credit agreement and the related interest rate swap agreements were all based on Secured Overnight Financing Rate ("SOFR"). As of December 31, 2023 and 2022, the total notional amount of the Company's outstanding interest-rate swap agreements that were entered into to hedge outstanding or forecasted debt obligations were \$1.732 million and \$0.0 million, respectively. As of December 31, 2023, \$0.7 million of gains on derivative instruments is included in interest income, (gains) and losses, net in the consolidated statements of operations.

The future commitments related to interest payments on the debt under the Loan Agreements are as follows (in thousands):

Fiscal year ended December 31:	
2024	\$ 131,868
2025	181,596
2026	202,266
2027	202,266
2028	202,820
Thereafter	<u>177,883</u>
Total	<u>\$ 1,098,699</u>



**JFK MILLENNIUM PARTNERS HOLDINGS, LLC**

Notes to Consolidated Financial Statements

December 31, 2023 and 2022

**(7) Leases**

In 2023, the Company entered into noncancellable operating leases, primarily for office space that expire over the next five years. These leases generally contain renewal options however the renewal period is not stated. Because the Company is not reasonably certain to exercise these renewal options, the options are not considered in determining the lease term and associated potential option payments are excluded from lease payments. The Company also elected to discount its leases using a risk-free rate.

Amounts reported on the consolidated balance sheet as of December 31, 2023, were as follows (in thousands):

Right-of-use assets	\$	<u>3,965</u>
	\$	<u><u>3,965</u></u>
Operating lease liabilities, current	\$	294
Operating lease liabilities, non-current		<u>3,718</u>
	\$	<u><u>4,012</u></u>

Maturities of lease liabilities under noncancellable leases as of December 31, 2023, are as follows (in thousands):

	<b><u>Total</u></b>
2024	\$ 294
2025	318
2026	343
2027	371
2028	400
Thereafter	<u>2,286</u>
	\$ <u><u>4,012</u></u>

Other lease information is as follows:

	<b><u>2023</u></b>
Cash paid for amounts included in the measurement of lease liabilities:	
Operating lease expense	41
Remaining lease term	10 years
Discount rate	3.96 %

## **JFK MILLENNIUM PARTNERS HOLDINGS, LLC**

Notes to Consolidated Financial Statements

December 31, 2023 and 2022

### **(8) Commitments and Contingencies**

The Company is involved in various other claims and legal actions arising in the ordinary course of business. In the opinion of management, the ultimate disposition of these matters will not have a material adverse effect on the Company's consolidated financial position, results of operations, or liquidity. There are no other commitments in addition to the base rent and additional rent discussed in Note 2, *Port Authority Agreement*.

### **(9) Subsequent Events**

The Company has evaluated subsequent events through April 25, 2024 the date these consolidated financial statements were available to be issued. There were no subsequent events that required recognition in the consolidated financial statements.

**APPENDIX C-2**

**CONDENSED CONSOLIDATED FINANCIAL INFORMATION AS OF JUNE 30, 2024  
(UNAUDITED)**

**(THIS PAGE INTENTIONALLY LEFT BLANK)**

**JFK Millennium Partners Holdings, LLC**

And its wholly owned subsidiary

JFK Millennium Partners, LLC

Unaudited Condensed Consolidated Financial Statements

For the Six-Month Period ended June 30, 2024

**JFK Millennium Partners Holdings, LLC**  
Unaudited Condensed Consolidated Balance Sheet  
As of June 30, 2024  
(Dollars in thousands)

**June 30, 2024**

**ASSETS**

**Current assets**

Cash and cash equivalents	\$	1,458
Restricted cash and cash equivalents		15,129
Restricted short-term investments		766,793
Accounts receivable and other receivable		21,969
Prepaid expense and other current assets		48,472
Total current assets		<b>853,821</b>

Contract Asset		1,656,913
Contract Cost Asset		194,800
Other assets - Project		38,492
Operating lease right-of-use assets		3,805
Other long-term assets		37,399

<b>TOTAL ASSETS</b>	<b>\$</b>	<b>2,785,229</b>
---------------------	-----------	------------------

**LIABILITIES AND MEMBERS' EQUITY**

**Current liabilities:**

Accounts payable and accrued liabilities	\$	109,523
Accounts payable, related parties		2,661
Accrued interest		1,740
Operating lease liabilities, current		294
Total current liabilities		<b>114,218</b>

Long-term debt		2,111,018
Operating lease liabilities, non-current		3,568
Other long-term liabilities		21,910

Total liabilities	<b>\$</b>	<b>2,250,715</b>
-------------------	-----------	------------------

Members' Equity		534,514
<b>TOTAL LIABILITIES AND MEMBERS' EQUITY</b>	<b>\$</b>	<b>2,785,229</b>

**JFK Millennium Partners Holdings, LLC**  
 Unaudited Condensed Consolidated Income Statement  
 Six-Month Period ended June 30, 2024  
 (Dollars in thousands)

**June 30, 2024**

Revenues:		
Construction services	\$	629,717
O&M services		104,003
Total revenues		733,720
Expenses:		
Construction expenses		320,848
Management fees		3,055
Utilities		3,273
Salaries and benefits		7,193
Contracted services		11,726
Professional services		1,518
Equity letter of credit fees		23,108
General and administrative		2,898
Insurance		1,804
Total expenses		375,423
Operating Income		358,297
Other (income) expense:		
Interest expense		47,193
Interest income		(5,767)
Other (income) expense, net		41,426
Net income	\$	316,871

**JFK Millennium Partners Holdings, LLC**

Unaudited Condensed Consolidated Statement of Members' Equity

Six-Month Period ended June 30, 2024

(Dollars in thousands)

Members' Equity at December 31, 2023	217,643
Net income	316,871
<b>Members' Equity at June 30, 2024</b>	<b><u><u>\$534,514</u></u></b>



**JFK Millennium Partners Holdings, LLC**  
Unaudited Condensed Consolidated Statements of Cash flow  
Six-Month Period ended June 30, 2024  
(Dollars in thousands)

**June 30, 2024**

**Operating activities:**

Net income	\$316,871
Adjustments to reconcile net income to net cash used in operating activities:	
Amortization of issuance cost and debt discount	(3,634)
Amortization of capitalized Contract cost	24,955
Amortization of Other assets - Project	4,931
Changes to Operating assets and liabilities:	
Accounts receivable and other receivables	(1,341)
Prepaid and other assets	10,612
Contract asset	(684,436)
Accounts payable and accrued liabilities	38,728
Other long term liabilities	177
Due to related parties	(6,710)
Accrued interest on bonds	(25,124)
Operating lease right-of-use assets	160
Operating lease liabilities	(150)
<b>Net cash used in operating activities</b>	<b>(324,960)</b>

**Investing activities**

(Purchases) of restricted investments	(172,562)
<b>Net cash used in investing activities</b>	<b>(172,562)</b>

**Financing activities**

Long-term debt proceeds	494,000
<b>Net cash from financing activities</b>	<b>494,000</b>

Net decrease in cash and cash equivalents	(3,522)
Cash, restricted cash and restricted cash equivalents, beginning of year	20,109
Cash, restricted cash and restricted cash equivalents, end of the period	<b>\$16,587</b>

Supplemental disclosure of cash flow activities:

Cash interest paid	\$89,707
--------------------	----------

**(THIS PAGE INTENTIONALLY LEFT BLANK)**

**APPENDIX D-1**

**FORM TRUST INDENTURE**

**(THIS PAGE INTENTIONALLY LEFT BLANK)**

**TDC MASTER BOND INDENTURE OF TRUST**

Between

**NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION**

as Issuer

and

**THE BANK OF NEW YORK MELLON**

as Trustee

Dated as of November 1, 2022

securing

New York Transportation Development Corporation  
Special Facilities Bonds  
(JFK Airport Terminal 6-7 Redevelopment Project)

## TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS AND RULES OF INTERPRETATION; INDENTURE TO CONSTITUTE CONTRACT.....	5
Section 1.01 Definitions.....	5
Section 1.02 Indenture to Constitute Contract.....	5
ARTICLE II AUTHORIZATION, TERMS, EXECUTION AND ISSUANCE OF THE BONDS.....	6
Section 2.01 Authorization of Bonds.....	6
Section 2.02 All Bonds Equally and Ratably Secured by Trust Estate Except as Expressly Provided Herein .....	6
Section 2.03 Terms of the Bonds; Securities Depository .....	7
Section 2.04 Execution of Bonds.....	8
Section 2.05 Registration of Transfer and Exchange of Bonds; Persons Treated as Owners.....	9
Section 2.06 Lost, Stolen, Destroyed and Mutilated Bonds .....	9
Section 2.07 Conditions for Delivery of Bonds.....	10
Section 2.08 Form of Bonds .....	11
Section 2.09 Trustee’s Authentication Certificate .....	11
Section 2.10 Other Obligations.....	11
Section 2.11 Cancellation and Destruction of Bonds by the Trustee .....	11
Section 2.12 Temporary Bonds.....	12
Section 2.13 Authorization of Additional Senior Bonds .....	12
Section 2.14 Authorization of Subordinate Bonds .....	12
Section 2.15 Conditions to Issue Additional Bonds .....	13
Section 2.16 Limitation on Issuer’s Liability .....	15
Section 2.17 CUSIP Numbers.....	15
Section 2.18 Denominations, Medium, Method and Place of Payment and Dating of Bonds .....	15
ARTICLE III REDEMPTION OF BONDS BEFORE MATURITY.....	18
Section 3.01 Redemption of Bonds .....	18
Section 3.02 Selection of Bonds to Be Redeemed or Purchased in Lieu of Redemption.....	18
Section 3.03 Notice of Redemption.....	18
Section 3.04 Payment of Redeemed Bonds .....	19

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
Section 3.05 Cancellation of Redeemed Bonds.....	20
Section 3.06 Redemption of Bonds .....	20
ARTICLE IV REVENUES AND FUNDS.....	21
Section 4.01 Pledge of Trust Estate .....	21
Section 4.02 Creation of Funds and Accounts.....	21
Section 4.03 Application of Senior and Subordinate Bond Funds .....	22
Section 4.04 Pledged Funds Pledged for Payments.....	23
Section 4.05 Eligible Accounts.....	24
Section 4.06 Trust Funds, Unclaimed Moneys.....	24
Section 4.07 Balance in Funds.....	24
Section 4.08 Creation of Additional Accounts and Sub-Accounts.....	24
Section 4.09 Rebate Fund .....	25
ARTICLE V PARTICULAR COVENANTS .....	26
Section 5.01 Issuer’s Obligations Not to Create a Pecuniary Liability .....	26
Section 5.02 Payment of Principal and Interest.....	26
Section 5.03 Performance of Covenants; Issuer .....	26
Section 5.04 Books and Records; Certificate as to Defaults .....	27
Section 5.05 TDC Loan Agreements .....	27
Section 5.06 Creation of Liens; Indebtedness.....	27
Section 5.07 Ownership; Instruments of Further Assurance .....	27
Section 5.08 Security Agreement; Filing.....	28
Section 5.09 Reporting between the Trustee and the Collateral Agents.....	30
Section 5.10 Reserved.....	30
Section 5.11 List of Owners.....	30
Section 5.12 Reserved.....	30
Section 5.13 Notices, Etc. ....	30
ARTICLE VI INVESTMENTS.....	32
Section 6.01 Investments .....	32
Section 6.02 Use of Trustee Affiliates to Make Investments .....	32
Section 6.03 No Trade Confirmation.....	32
ARTICLE VII DISCHARGE OF INDENTURE .....	34

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
Section 7.01 Discharge of this Indenture.....	34
ARTICLE VIII DEFAULTS AND REMEDIES.....	36
Section 8.01 Events of Default .....	36
Section 8.02 Remedies on Events of Default.....	36
Section 8.03 Majority Bondholders May Control Proceedings.....	38
Section 8.04 Rights and Remedies of Bondholders.....	38
Section 8.05 Application of Moneys .....	39
Section 8.06 Trustee May Enforce Rights Without Bonds.....	39
Section 8.07 Delay or Omission No Waiver.....	40
Section 8.08 No Waiver of One Default to Affect Another .....	40
Section 8.09 Discontinuance of Proceedings on Default; Position of Parties Restored .....	40
Section 8.10 Waivers of Events of Default.....	40
Section 8.11 Trustee to Notify Parties of Default and Disclose Information Relating to Default.....	41
Section 8.12 Extended Interest .....	41
ARTICLE IX THE TRUSTEE AND PAYING AGENT.....	42
Section 9.01 Appointment and Acceptance of Duties .....	42
Section 9.02 Indemnity .....	42
Section 9.03 Responsibilities of Trustee.....	42
Section 9.04 Compensation .....	45
Section 9.05 Evidence on Which Trustee May Act.....	45
Section 9.06 Trustee and Paying Agents May Deal in Bonds .....	45
Section 9.07 Resignation or Removal of Trustee .....	45
Section 9.08 Successor Trustee.....	46
Section 9.09 Resignation or Removal of Paying Agent; Successor .....	48
Section 9.10 Appointment of Co-Trustee .....	48
Section 9.11 Books and Records; Reports.....	49
Section 9.12 Notice to Rating Agencies .....	49
ARTICLE X SUPPLEMENTAL INDENTURES.....	50
Section 10.01 Supplemental Indentures Not Requiring Consent of Bondholders.....	50



## TABLE OF CONTENTS

(continued)

	<b>Page</b>
Section 10.02 Supplemental Indentures Requiring Consent of Bondholders.....	51
Section 10.03 Execution of Supplemental Indentures .....	53
Section 10.04 Reserved.....	53
Section 10.05 Reserved.....	53
Section 10.06 Amendments to Collateral Agency and Accounts Agreement and Other Financing Documents Not Requiring Consent of Bondholders .....	53
Section 10.07 Amendments to Collateral Agency and Accounts Agreement and Other Financing Documents Requiring Consent of Bondholders .....	54
ARTICLE XI MISCELLANEOUS .....	55
Section 11.01 Evidence of Signature of Bondholders and Ownership of Bonds .....	55
Section 11.02 Parties Interested Herein.....	55
Section 11.03 Titles, Headings, Etc .....	55
Section 11.04 No Pecuniary Liability of Issuer or Members.....	55
Section 11.05 Severability .....	56
Section 11.06 Governing Law; Waiver of Jury Trial .....	56
Section 11.07 Execution in Counterparts.....	56
Section 11.08 Notices .....	57
Section 11.09 Payments Due or Actions to be Taken on Non-Business Days.....	58
Section 11.10 Reliance on Directions of the Borrower .....	58
Section 11.11 Moneys Held for Particular Bonds .....	58
Section 11.12 Force Majeure .....	59
Section 11.13 USA PATRIOT Act.....	59
Section 11.14 Prior Agreements Superseded.....	59
Section 11.15 Exculpation of Issuer .....	59
Section 11.16 Indemnified Parties Entitled to Indemnity.....	60
Section 11.17 Issuer Not Responsible for Insurance, Taxes, Execution of Indenture, or Application of Moneys Applied in Accordance with this Indenture .....	60
Section 11.18 Issuer May Rely on Certificates.....	60
Section 11.19 Effective Date .....	61
EXHIBIT A MASTER LIST OF DEFINITIONS ....	<b>ERROR! BOOKMARK NOT DEFINED.</b>

**THIS TDC MASTER BOND INDENTURE OF TRUST** dated as of November 1, 2022 (as supplemented and amended from time to time, this “Indenture”) is by and between **NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION**, a local development corporation formed under Section 1411 of the New York Not-for-Profit Corporation Law, being Chapter 35 of the Consolidated Laws of New York, created by action of the New York Job Development Authority (“JDA”) established under Section 1802, Subtitle I, Title 8, Article 8, of the New York Public Authorities Law, and having an address c/o Empire State Development, 633 Third Avenue, New York, New York 10017 (the “Issuer”), party of the first part, and **THE BANK OF NEW YORK MELLON**, a banking corporation organized and existing under the laws of the State of New York, as Trustee under this Indenture (the “Trustee”), having a designated corporate trust office at New York, New York, party of the second part.

## **RECITALS**

**WHEREAS**, The Port Authority of New York and New Jersey, a municipal corporate instrumentality and political subdivision of the States of New York and New Jersey, created and existing by virtue of the Compact of April 30, 1921, made by and between the States of New York and New Jersey, and thereafter consented to by the Congress of the United States (the “Port Authority”) has entered into a Lease Agreement, dated as of November 17, 2022 (the “Lease Agreement”), with JFK Millennium Partners, LLC, a Delaware limited liability company (the “Borrower”), pursuant to which, among other things, the Borrower is obliged to consummate the following (collectively, the “Project”): (i) the operation, maintenance, and demolition of the Existing Terminal Facilities at John F. Kennedy International Airport in Queens, New York (“Airport”) which Existing Terminal Facilities include the existing Terminal 7 facilities, (ii) the design, construction, financing, operation and maintenance of the New Terminal Facilities at the Airport (which New Terminal Facilities include new Terminal 6 facilities and replacement Terminal 7 facilities) and certain ancillary facilities, and (iii) the design and construction of the Off-Premises Facilities at the Airport on behalf of the Port Authority, which Off-Premises Facilities will not be operated or maintained by the Borrower and will not constitute part of the facilities leased to the Borrower under the Lease Agreement;

**WHEREAS**, the Borrower may request from time to time that the Issuer issue its special facilities bonds (the “Bonds”) in several series (each a “Series of Bonds”) pursuant to Supplemental Indentures to this Indenture to finance the Project Costs;

**WHEREAS**, the proceeds from the sale of each Series of Bonds will be loaned to the Borrower pursuant to the terms of the TDC Loan Agreements, and the Borrower will execute and deliver the TDC Notes in favor of the Issuer to further evidence the obligations of the Borrower under the TDC Loan Agreements (and the Issuer will assign the TDC Notes to the Senior Collateral Agent pursuant to the Issuer Assignment Agreements), and such proceeds will be applied to pay the Project Costs;

**WHEREAS**, pursuant to the Collateral Agency and Accounts Agreement, the Intercreditor Agent, for and on behalf of the Secured Parties, appointed The Bank of New York Mellon, a banking corporation organized and existing under the laws of the State of New York, as Senior Collateral Agent, and Securities Intermediary under the Collateral Agency and Accounts Agreement, and the Senior Collateral Agent shall take actions for the benefit of the Trustee, on

behalf of the holders of the Bonds, and other Secured Parties under the Security Documents and the Intercreditor Agreement;

**WHEREAS**, the Issuer will assign all of its right, title and interest in and to the TDC Loan Agreements and the TDC Notes, except for the Reserved Rights, to the Senior Collateral Agent at the direction of the Trustee as security for the Secured Obligations;

**WHEREAS**, as security for the Secured Obligations, the Borrower has, pursuant to the Leasehold Mortgages, granted mortgage liens on and security interests in the interests of the Borrower under the Lease Agreement in favor of the Senior Collateral Agent and the Issuer, and the Issuer will assign its interest in each of the Leasehold Mortgages to the Senior Collateral Agent pursuant to the Issuer Assignment Agreements;

**WHEREAS**, as security for the Secured Obligations, the Borrower has, pursuant to the Senior Security Agreement, granted to the Senior Collateral Agent, for the benefit of the Senior Secured Parties, a senior-priority security interest (subject to Permitted Liens) in, to and under the Collateral; and

**WHEREAS**, all things necessary to make the Bonds, when authenticated by the Trustee and issued as set forth in this Indenture, the valid, binding and legal special obligations of the Issuer according to the import thereof, and to constitute this Indenture a valid pledge and assignment of the loan payments, revenues and receipts herein made to the payment of the principal of, Redemption Price, if any, and interest on the Bonds, have been done and performed, and the creation, execution and delivery of this Indenture, and the creation, execution and issuance of the Bonds from time to time, subject to the terms hereof, have in all respects been duly authorized.

**NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS, THIS INDENTURE WITNESSETH:** The Issuer, in consideration for the purchase of the Bonds by the Owners from time to time and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in order to secure the payment of the Bonds and to secure the performance and observance of all the covenants and conditions set forth in the Bonds and this Indenture, has executed and delivered this Indenture and has pledged and assigned or has required to be pledged and assigned, and by these presents does pledge and assign unto the Trustee and to its successors and assigns forever and, subject to the Security Documents and the Intercreditor Agreement, for the benefit of the Owners, all of the following described property, franchises, rights and income, including any title or interest therein acquired after the date hereof (collectively, the "Trust Estate").

## **GRANTING CLAUSE**

### **I**

Subject to the Collateral Agency and Accounts Agreement and the Intercreditor Agreement, all right, title and interest of the Issuer (except for Reserved Rights) in all moneys and obligations from time to time held by the Trustee under this Indenture and all other moneys or obligations which at such time are deposited or are required to be deposited with, or are held or required to be held by or on behalf of, the Trustee in trust under any of the provisions of this Indenture and any other right, title or interest which at such time is subject to the lien of this

Indenture, except for moneys or obligations (i) held in any Rebate Accounts established in connection with a Series of Bonds, or (ii) deposited with or paid to the Trustee for the redemption or payment of Bonds which are deemed to have been paid in accordance with Article VII hereof.

## II

Subject to the Collateral Agency and Accounts Agreement and the Intercreditor Agreement, any Security Interest granted to the Collateral Agents for the benefit of: (i) the Issuer, securing payment obligations of the Borrower under the TDC Loan Agreements and the TDC Notes and (ii) the Trustee (as a Secured Party) on behalf of the Owners of the Bonds, under the Security Documents or otherwise, including without limitation the Collateral pledged thereunder, and the present and continuing right of the Collateral Agents on behalf of the Trustee (as a Secured Party) to make claim for, collect, receive and receipt for any of the sums, amounts, income, revenues, issues and profits and any other sums of money payable or receivable under the Security Documents, to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which the Collateral Agents on behalf of the Trustee (as a Secured Party) is entitled to do under such Security Documents.

## III

Subject to the Collateral Agency and Accounts Agreement and the Intercreditor Agreement, the interest of the Issuer, and any Security Interest created for the benefit of the Issuer, in all funds deposited from time to time and earnings thereon in the Project Accounts, any and all other accounts established from time to time pursuant to the Collateral Agency and Accounts Agreement as security for the Bonds, and any and all sub-accounts created thereunder as security for the Bonds, each held by the Collateral Agents under the Collateral Agency and Accounts Agreement.

## IV

Subject to the Collateral Agency and Accounts Agreement and the Intercreditor Agreement, any and all other property, revenues, rights or funds from time to time hereafter by delivery or by writing of any kind specifically granted, assigned or pledged as and for additional security for any of the Bonds or the TDC Loan Agreements in favor of the Trustee (as a Secured Party) or the Collateral Agents on behalf of the Trustee (as a Secured Party), including any of the foregoing granted, assigned or pledged by the Borrower or any other Person on behalf of the Borrower, and the Trustee (as a Secured Party) and/or the Collateral Agents on behalf of the Trustee (as a Secured Party) is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof, the terms of the Collateral Agency and Accounts Agreement and the terms of the Intercreditor Agreement.

The creation, perfection, enforcement, and priority of the pledge of the Trust Estate by the Issuer to secure or pay the Bonds as provided herein shall be governed by this Indenture, subject to the terms of the Collateral Agency and Accounts Agreement and the Intercreditor Agreement. The Trust Estate pledged for the payment of the Bonds, as received by or otherwise credited to the Issuer, shall be subject to the lien of such pledge. The lien of such pledge shall be valid, binding, and enforceable as against all Persons having claims of any kind in tort, contract, or otherwise

against the Issuer irrespective of whether such Persons have notice of such liens. All funds provided pursuant to the Collateral Agency and Accounts Agreement for deposit into any Account of this Indenture will be available together with other moneys then on deposit in such Accounts to be used for the applicable purposes as set forth in this Indenture. If all Bonds Outstanding under this Indenture are discharged in accordance with Section 7.01 hereof, the right, title and interest of the Trustee and each Owner in and to the Trust Estate shall terminate and be discharged; otherwise this Indenture is to be and remain in full force and effect.

**THIS INDENTURE FURTHER WITNESSETH** and it is expressly declared, that the Trust Estate shall be held by the Trustee (or by the Collateral Agents on behalf of and for the benefit of the Trustee and, to the extent applicable, the other Secured Parties) for the equal and proportionate benefit of the Owners and the other Secured Parties and any of them, without preference, priority or distinction as to lien or otherwise, except such preference and priority as is established herein between Senior Bonds and Subordinate Bonds (or as otherwise provided herein) or in the Intercreditor Agreement. When Bonds are issued, executed and delivered in accordance with the provisions of this Indenture, such Bonds will have been duly authorized, executed and delivered and will constitute the valid special, limited obligations of the Issuer, payable solely from and secured exclusively by the Trust Estate (including the Collateral pledged in favor of the Collateral Agents for the benefit of the Trustee), including the payments to be made by the Borrower under the TDC Loan Agreements, and nothing in the Bonds or this Indenture shall be construed as assigning or pledging therefor any other funds or assets of the Issuer.

All covenants, stipulations, promises, agreements and obligations of the Issuer set forth herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Issuer and not of any member, officer or employee of the Issuer in his or her individual capacity, and no recourse shall be had for the prepayment of principal or interest on, or Redemption Price, if any, on the Bonds or for any claim based thereon or hereunder against any member, officer or employee of the Issuer or any person executing the Bonds in his or her individual capacity.

All Bonds issued and secured hereunder are to be issued, authenticated and delivered and all said loan payments, revenues and receipts hereby pledged are to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the Issuer has agreed and covenanted, and does hereby agree and covenant with the Trustee and with the respective Owners, from time to time of the Bonds or any part thereof, as follows:

**ARTICLE I**  
**DEFINITIONS AND RULES OF INTERPRETATION; INDENTURE TO CONSTITUTE**  
**CONTRACT**

Section 1.01 Definitions.

All capitalized terms used herein but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Master List of Definitions in Exhibit A attached to this Indenture. The rules of interpretation set forth in Exhibit A shall also apply to this Indenture.

Section 1.02 Indenture to Constitute Contract.

In consideration of the purchase and acceptance of any or all of the Bonds by those who shall own the same from time to time, the provisions of this Indenture shall be part of the contract of the Issuer with the Owners of the Bonds, and shall be deemed to be and shall constitute contracts among the Issuer, the Trustee and the Owners from time to time of the Bonds. The pledge made in this Indenture and the provisions, covenants and agreements herein set forth to be performed by or on behalf of the Issuer shall be for the equal benefit, protection and security of the Owners of any and all of the Bonds, except as specifically provided herein. All of the Senior Bonds, regardless of the time or times of their issuance or maturity, shall be of equal rank without preference, priority or distinction of any of the Senior Bonds over any other thereof, except as expressly provided in or pursuant to this Indenture. All of the Subordinate Bonds, regardless of the time or times of their issuance or maturity, shall be of equal rank without preference, priority or distinction of any of the Subordinate Bonds over any other thereof, except as expressly provided in or pursuant to this Indenture.

[END OF ARTICLE I]

**ARTICLE II**  
**AUTHORIZATION, TERMS, EXECUTION AND ISSUANCE OF THE BONDS**

Section 2.01 Authorization of Bonds. Upon the request of the Borrower, the Issuer may issue Series of Bonds from time to time as hereinafter provided for the purpose of providing funds to aid in financing and refinancing the Project. Unless otherwise provided in the Supplemental Indenture providing for the issuance of a Series of Bonds, the Bonds shall be designated “New York Transportation Development Corporation Special Facilities Bonds (JFK Airport Terminal 6-7 Redevelopment Project)” and shall bear an appropriate series designation.

Section 2.02 All Bonds Equally and Ratably Secured by Trust Estate Except as Expressly Provided Herein.

Except as otherwise expressly provided herein (including, without limitation, the Granting Clauses of this Indenture) and the differences set forth herein and in the Intercreditor Agreement with respect to Senior Bonds and Subordinate Bonds, each Series of Bonds issued under this Indenture and at any time Outstanding shall in all respects be equally and ratably secured hereby, without preference, priority or distinction on account of the date or dates or the actual time or times of the issue or maturity of such Series of Bonds, so that each Series of Bonds at any time issued and Outstanding hereunder shall have the same right, lien and preference under and by virtue of this Indenture, and shall all be equally and ratably secured hereby.

Except as may otherwise be expressly provided in this Indenture, each Series of Bonds shall be entitled to the benefit of the continuing pledge and lien created by this Indenture to secure the full and final payment of the principal of, Redemption Price, if any, and interest on such Series of Bonds. Each Series of Bonds issued under this Indenture and the obligations of the Borrower under the TDC Loan Agreements will be secured by the Leasehold Mortgages. Each Series of Bonds issued hereunder shall be special obligations of the Issuer, secured and payable (except to the extent payable out of proceeds from the sale of such Series of Bonds or the income from the temporary investments thereof) by the Issuer solely out of the payments or other receipts, funds or moneys pledged therefor pursuant to this Indenture and from any amounts otherwise available under this Indenture for the payment of such Bonds, and from amounts payable to the Collateral Agents as Leasehold Mortgagee under the Leasehold Mortgages. The Bonds shall be additionally secured by a pledge and assignment of the Issuer’s right, title and interest in and to the TDC Loan Agreements (excluding the Reserved Rights) and except for the Leasehold Mortgages, shall not be secured by any other Security Interest or other possessory interest in all or any part of the Project or by any leasehold interest of the Port Authority or the Borrower or any fee or leasehold interest of the City in any portion of the Airport or in the facilities operated or constructed as part of the Project. In the event the Borrower shall fail to make any payment under the TDC Loan Agreements or shall otherwise default under the TDC Loan Agreements, and, as a result thereof, the principal of the Bonds is declared or becomes due and payable, none of the Issuer, the Trustee, or any Holder of any of the Bonds shall have any rights or remedies with respect to the Project or the leasehold interest of the Port Authority or the Borrower or any fee or the leasehold interest of the City but shall only have the rights hereunder and under the TDC Loan Agreements and the Leasehold Mortgages, the Collateral Agency and Accounts Agreement, and the Intercreditor Agreement, including, to the extent set forth in such documents, the right to enforce against the Borrower the obligation of the Borrower to make loan payments sufficient to enable the Issuer to pay the

principal of, Redemption Price, if any, and interest on the Bonds and the right herein to realize upon any of the Funds. The Port Authority shall not have any obligation with respect to the Bonds; provided that the Port Authority has agreed to certain rights of the Recognized Mortgagee (as defined in the Lease Agreement) pursuant to Section 83 of the Lease Agreement.

Section 2.03 Terms of the Bonds; Securities Depository. Each Series of Bonds shall have the terms provided herein and in the Supplemental Indenture providing for the issuance thereof.

(a) Except as otherwise provided in this Section or in the Supplemental Indenture for a Series of Bonds, each Series and maturity of the Bonds shall be issued in the form of one typewritten Bond. Each Bond shall be registered in the name of the Securities Depository or its nominee, and beneficial ownership interests thereof shall be maintained in the Book-Entry System of the Securities Depository for the account of the Participants. Initially, each Bond shall be registered in the name of Cede & Co., as the nominee of The Depository Trust Company. Except as provided in subsection (c) of this Section, the Bonds may be transferred in whole, but not in part, only to the Securities Depository or a nominee of the Securities Depository or to a successor Securities Depository (or to a nominee of such successor Securities Depository) selected by the Borrower with prior written notice to the Issuer and the Trustee. Each Bond shall bear legends substantially to the following effect:

“Except as otherwise provided in the Indenture, this Bond may be transferred, in whole but not in part, only to another nominee of the Securities Depository (as defined in the Indenture) or to a successor Securities Depository or to a nominee of a successor Securities Depository.”

“Each Holder of this Bond (by purchase or transfer and acceptance hereof) acknowledges the Issuer shall have no interest in the facilities operated or constructed as part of the Project. Each Holder of this Bond (by purchase or transfer and acceptance hereof) agrees that none of the Issuer, any Bondholder, or the Trustee shall have any interest in the Project or the Lease Agreement (including but not limited to, any rights to perform the rights or obligations of the Borrower under the Lease Agreement or otherwise, any rights of possession, entry, re-entry, redemption, eviction or regaining or resumption of possession, any right to the appointment of a receiver or to sell, convey, transfer, mortgage, acquire, pledge, assign, let or resublet the facilities operated or constructed as part of the Project or the Lease Agreement or any part thereof or any rights created thereby or the letting thereunder) under (i) the Security Documents, (ii) the Act, (iii) the actions under the real property law and Proceedings Law of the State or (iv) the real property law of the State; or otherwise, in each case except for those rights pursuant to the Leasehold Mortgages. Further, the Bondholder acknowledges that it shall not have any claim, interest, remedy, right or action against the Port Authority or the facilities operated or constructed as part of the Project or under the Lease Agreement at law or in equity arising out of or in connection with the Act, the Security Documents or the Project (other than the interests, rights and remedies granted to the Leasehold Mortgagee under or pursuant to the Leasehold Mortgages). In addition to and without limiting the foregoing, the Bondholder hereby acknowledges and agrees that in the event there shall be a conflict between the provisions of the Leasehold Mortgages and the Lease Agreement, the Lease Agreement shall govern. Copies of the Indenture, the Basic Lease, the Lease Agreement, the TDC Loan Agreements and the Leasehold Mortgages are on file at the principal corporate trust office of the Trustee and reference is made to such documents for the provisions relating, among other things, to the terms and security of the Bonds, the custody and application of the proceeds of



the Bonds, the rights and remedies of the Holders of the Bonds, and the rights, duties and obligations of the Issuer, the Borrower, the City of New York, the Port Authority, and the Trustee. The Port Authority shall not have any obligation with respect to the Bonds; provided that the Port Authority has agreed to certain rights of the Recognized Mortgagee (as defined in the Lease Agreement) pursuant to Section 83 of the Lease Agreement.”

(b) The Issuer and the Trustee shall have no responsibility or obligation with respect to the accuracy of the records of the Securities Depository or any Participant with respect to any beneficial ownership interest in the Bonds, the delivery to any Participant, Beneficial Owner of the Bonds or other Person, other than the Securities Depository, of any notice with respect to the Bonds or the payment to any Participant, Beneficial Owner of the Bonds or other Person, other than the Securities Depository, of any amount with respect to the principal of, Redemption Price, if any, and interest on the Bonds. So long as definitive Bonds are not issued pursuant to subsection (c) of this Section, the Issuer and the Trustee may treat the Securities Depository as, and deem the Securities Depository to be, the absolute owner of such Bonds for all purposes whatsoever, including, without limitation, (i) the payment of the principal of, Redemption Price, if any, and interest on such Bonds, (ii) giving notices of redemption, purchase and other matters with respect to such Bonds and (iii) registering transfers with respect to such Bonds.

(c) If at any time the Securities Depository notifies the Issuer or the Trustee that it is unwilling or unable to continue as Securities Depository with respect to any or all of the Bonds or if at any time the Securities Depository shall no longer be registered or in good standing under the Securities Exchange Act or other applicable statute or regulation, then the Issuer or the Trustee shall notify the Borrower of the same, and the Borrower may as promptly as possible select a successor Securities Depository and provide written notice thereof to the Issuer and the Trustee. If a successor Securities Depository is not appointed by the Borrower within 45 days after the Issuer receives notice or becomes aware of such condition, as the case may be, the provisions of subsections (a) and (b) above shall no longer be applicable and the Issuer shall execute and the Trustee shall authenticate and deliver definitive Bonds as provided below, in each case at the sole cost and expense of the Borrower. Bonds issued in exchange for one or more Bonds pursuant to this subsection (c) shall be registered in such names and Authorized Denominations as the preceding Securities Depository, pursuant to instructions from the Participants or otherwise, shall instruct the Issuer and the Trustee. The Trustee shall promptly deliver such definitive Bonds to or for the account of the Persons in whose names such Bonds are so registered at their respective addresses set forth in such instructions.

#### Section 2.04 Execution of Bonds.

The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of an Issuer Representative attested by the manual or facsimile signature of the Secretary or Assistant Secretary of the Issuer. Any facsimile signatures shall have the same force and effect as if the appropriate officers had personally signed each of said Bonds. In case any of the officers who shall have signed or whose reproduced facsimile signature appears thereon shall cease to be such officer before such Bonds shall have been actually issued and delivered, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery, and also any Bond may bear the facsimile signature of or may be signed by such persons as at the actual time of the execution of such Bond shall be the

proper officers to sign such Bond although at the date of such Bond such persons may not have been such officers. Neither the members, directors, officers or agents of the Issuer nor any person executing the Bonds shall be liable personally or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 2.05 Registration of Transfer and Exchange of Bonds; Persons Treated as Owners.

The Issuer shall cause books for the registration and for the registration of transfer of the Bonds as provided in this Indenture to be kept by the Trustee, which is hereby appointed the Bond Registrar for the Bonds. The transfer of any Bond shall be registered upon surrender of such Bond at the designated corporate trust office of the Bond Registrar, duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or his attorney duly authorized in writing, thereupon the Issuer shall execute and the Trustee shall authenticate and deliver, in the name of the transferee or transferees, a new fully registered Bond of the same Series and maturity, in any Authorized Denomination or Authorized Denominations and bearing interest at the same rate.

Bonds may be exchanged at the designated corporate trust office of the Bond Registrar for a like aggregate principal amount of fully registered Bonds of the same Series, maturity and interest rate in Authorized Denominations. The Issuer shall execute and the Trustee shall authenticate and deliver Bonds which the Bondholder making the exchange is entitled to receive, bearing numbers not contemporaneously outstanding.

The Bond Registrar shall not be required to register the transfer of or exchange of any Bond (i) after notice calling such Bond or portion thereof for redemption or purchase has been mailed or (ii) after any Bond (or portion thereof) has been selected for redemption or purchase.

No Bonds shall be transferred by the Bond Registrar subsequent to a purchase in lieu of redemption unless the Issuer obtains a Favorable Opinion of Bond Counsel, and the Bond Registrar may rely conclusively on such Opinion of Bond Counsel in complying with the requirements of this Section 2.05 hereof.

The Person in whose name a Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of the principal of, Redemption Price, if any, and interest on any Bond shall be made only to or upon the written order of the Owner or his legal representative, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums paid.

Any Bondholder requesting exchange or registration of transfer shall pay any tax or other governmental charge required to be paid with respect to such exchange or registration of transfer.

Section 2.06 Lost, Stolen, Destroyed and Mutilated Bonds.

Upon receipt by the Issuer and the Bond Registrar of evidence satisfactory to them of the loss, theft, destruction or mutilation of any Bond and, in the case of a lost, stolen or destroyed Bond, of indemnity satisfactory to them, and upon surrender and cancellation of the Bond, if

mutilated, the Issuer shall execute, and the Trustee shall authenticate and deliver, a new Bond of the same Series, maturity, interest rate and Authorized Denomination in lieu of such lost, stolen, destroyed or mutilated Bond or, if such lost, stolen, destroyed or mutilated Bond shall have matured or have been called for redemption or purchase, or is about to mature, in lieu of executing and delivering a new Bond as aforesaid, the Issuer may pay such Bond. Any such new Bond shall bear a number not contemporaneously outstanding. The Owner of any such new Bond may be required to pay all expenses and charges of the Issuer, the Trustee and of the Bond Registrar in connection with the issuance of such Bond. All Bonds shall be held and owned upon the express condition that, to the extent permitted by law, the foregoing conditions are exclusive with respect to the replacement and payment of mutilated, destroyed, lost or stolen Bonds.

Section 2.07 Conditions for Delivery of Bonds. Upon the execution and delivery of a Supplemental Indenture providing for the issuance of a Series of Bonds, the Issuer shall execute and deliver such Series of Bonds to the Trustee, and the Trustee shall authenticate such Series of Bonds, *provided, however*, that prior to delivery by the Trustee of such Series of Bonds there shall be filed and delivered to the Trustee the following:

(a) A resolution duly adopted by the Issuer, certified by an Issuer Representative, authorizing the execution and delivery of the applicable Financing Documents and other documents relating to the issuance of the Series of Bonds to which the Issuer is a party (the “Issuer Documents”).

(b) Executed counterparts of (i) each of the Financing Documents executed and delivered in connection with the issuance of such Series of Bonds (including, without limitation, the applicable Supplemental Indenture, TDC Loan Agreements or any amendment(s) thereto, Notes, Tax Certificate, as applicable, and Leasehold Mortgages (or any amendment(s) thereto)), and (ii) the Lease Agreement (or any amendment(s) thereto), in each case as may be applicable.

(c) Certified copies of the previously executed Financing Documents then in effect that are amended or supplemented by any document delivered pursuant to Section 2.07(b) above.

(d) The written request of the Issuer to the Trustee, signed by an Issuer Representative, authorizing and directing the Trustee to authenticate the Series of Bonds and to deliver the Series of Bonds to the underwriters, if applicable, upon payment to the Trustee of the purchase price thereof.

(e) Receipt and acknowledgment by the Issuer of the financing fee to be paid by the Borrower in connection with the issuance of the Series of Bonds.

(f) The executed Series of Bonds.

(g) A certificate of an Authorized Borrower Representative stating that (i) each of the Financing Documents to which the Borrower is a party is in full force and effect, (ii) no Event of Default has occurred and is continuing thereunder nor to the knowledge of the person executing such certificate has there occurred any event which, upon notice or lapse of time or both, would become an Event of Default, and (iii) the consent of the Port Authority to the issuance of

the Series of Bonds has either been obtained or is not required pursuant to the terms of the Lease Agreement.

- (h) The Opinion of Bond Counsel.
- (i) The Opinion of Counsel to the Issuer.
- (j) The Opinion of Counsel to the Borrower.
- (k) The Opinion of Disclosure Counsel, if applicable.

(l) Any other items required by the Supplemental Indenture pursuant to which such Series of Bonds is being issued.

(m) Such additional documents, instruments, certificates or opinions as may be reasonably requested by the Issuer or Bond Counsel.

Section 2.08 Form of Bonds. The definitive Bonds of each Series shall be in substantially the form set forth as an exhibit to the Supplemental Indenture providing for the issuance of such Series of Bonds.

Section 2.09 Trustee's Authentication Certificate.

No Bond shall be secured hereby or entitled to the benefit hereof, or shall be valid or become obligatory for any purpose, unless the certificate of authentication has been duly executed by the Trustee; and such certificate of the Trustee upon any Bond shall be conclusive evidence and the only competent evidence that such Bond has been authenticated and delivered hereunder. The Trustee's certificate of authentication shall be deemed to have been duly executed by it if manually signed by an authorized representative of the Trustee, but it shall not be necessary that the same person sign the certificate of authentication on all of the Bonds issued hereunder.

Section 2.10 Other Obligations.

So long as any Bonds are Outstanding, the Issuer hereby covenants that it will not create or permit the creation of or issue any obligations or create any additional indebtedness which will be secured by a lien on all or any part of the Trust Estate established and created by or pursuant to this Indenture, except to the extent permitted by a Supplemental Indenture, the TDC Loan Agreements, and the Collateral Agency and Accounts Agreement.

Section 2.11 Cancellation and Destruction of Bonds by the Trustee.

Whenever any Outstanding Bonds shall be delivered to the Trustee for the cancellation thereof pursuant to this Indenture, upon payment of the principal amount and interest represented thereby, or for replacement pursuant to Section 2.05 or 2.06 hereof, such Bonds shall be promptly cancelled by the Trustee and disposed of in accordance with the Trustee's custom and practice. Evidence of such disposition shall be furnished to the Issuer and the Borrower at the Issuer's or Borrower's request.

#### Section 2.12 Temporary Bonds.

Pending the preparation of definitive Bonds of a Series, the Issuer may execute and the Trustee shall authenticate and deliver temporary Bonds of such Series. Temporary Bonds of such Series shall be issuable as fully registered Bonds without coupons, of any Authorized Denomination, and substantially in the form of the definitive Bonds of such Series but with such omissions, insertions and variations as may be appropriate for temporary Bonds of such Series, all as may be determined by the Issuer. Every temporary Bond of a Series shall be executed by the Issuer and be authenticated by the Trustee upon the same conditions and in substantially the same manner, and with like effect, as the definitive Bonds of such Series. As promptly as practicable, the Issuer shall execute and shall furnish definitive Bonds of such Series and thereupon temporary Bonds of such Series may be surrendered in exchange therefor without charge at the principal corporate trust office of the Trustee, and the Trustee shall authenticate and deliver in exchange for such temporary Bonds of such Series a like aggregate principal amount of definitive Bonds of such Series and, until so exchanged, the temporary Bonds of such Series shall be entitled to the same benefits under this Indenture as definitive Bonds of such Series.

#### Section 2.13 Authorization of Additional Senior Bonds.

Following the initial issuance of Bonds pursuant to this Indenture, additional Senior Bonds may be issued from time to time subject to the provisions of this Section and Sections 10.21 and 10.27 of the Collateral Agency and Accounts Agreement. Each Series of additional Senior Bonds shall be designated as Senior Bonds pursuant to the applicable Supplemental Indenture.

(a) Subject to Section 10.27 of the Collateral Agency and Accounts Agreement, and at the request of the Borrower, additional Senior Bonds may be delivered under and be equally and ratably secured by this Indenture on a parity with any other Senior Bonds Outstanding, at any time and from time to time while no Event of Default has occurred and is continuing under this Indenture, the Lease Agreement, the TDC Loan Agreements and the Collateral Agency and Accounts Agreement and no Enforcement Action is ongoing under the Collateral Agency and Accounts Agreement or the Intercreditor Agreement.

#### Section 2.14 Authorization of Subordinate Bonds.

Following the initial issuance of Bonds pursuant to this Indenture, Subordinate Bonds may be issued from time to time subject to the provisions of this Section and Section 10.27 of the Collateral Agency and Accounts Agreement. Each Series of Subordinate Bonds shall be designated as Subordinate Bonds pursuant to the applicable Supplemental Indenture.

(a) Subject to Section 10.27 of the Collateral Agency and Accounts Agreement, at the request of the Borrower, Subordinate Bonds may be delivered under and be equally and ratably secured by this Indenture on a parity with any other Subordinate Bonds Outstanding, at any time and from time to time while no Event of Default has occurred and is continuing under this Indenture, the Lease Agreement, the TDC Loan Agreements and the Collateral Agency and Accounts Agreement and no Enforcement Action is ongoing under the Collateral Agency and Accounts Agreement or the Intercreditor Agreement; provided, however that the Subordinate Bonds shall be subordinate in right of payment to any Senior Obligations Outstanding.

Section 2.15 Conditions to Issue Additional Bonds.

Before any Additional Bonds shall be delivered under the provisions of Sections 2.13 and 2.14, the following conditions shall occur:

(a) The Issuer shall authorize the issuance of such Additional Bonds, fixing the amount and terms thereof and describing the purpose or purposes for which such Additional Bonds are being delivered or describing the Outstanding Bonds to be refunded.

(b) The Issuer shall authorize a Supplemental Indenture for the purpose of delivering such Additional Bonds and such Supplemental Indenture shall specify, among other matters, whether the Additional Bonds are Senior Bonds or Subordinate Bonds, the related debt service reserve requirement, if any, and redemption terms, and whether any additional accounts shall be established hereunder or under the Collateral Agency and Accounts Agreement.

(c) Each Series of Additional Bonds that are issued as Senior Bonds shall be equally and ratably secured under this Indenture with any other Series of Senior Bonds, without preference, priority or distinction of any Senior Bonds over any other Senior Bonds. Each Series of Additional Bonds that are issued as Subordinate Bonds shall be equally and ratably secured under this Indenture with any other Series of Subordinate Bonds, without preference, priority or distinction of any Subordinate Bonds over any other Subordinate Bonds. All such Additional Bonds shall be in such denomination or denominations, bear such date or dates, bear interest at such rate or rates, have such maturity date or dates, Redemption Dates and Redemption Prices, contain an appropriate series designation, including the designation of Senior Bonds or Subordinate Bonds, and be delivered at such prices as shall be designated in a Supplemental Indenture and approved by the Issuer.

(d) Prior to or simultaneously with the execution and issuance of such Additional Bonds by the Issuer, there shall be filed with the Trustee the following:

(1) A certified copy of the resolution of the Issuer authorizing the issuance of such Additional Bonds.

(2) A certificate of the Borrower stating that as of the date of such issuance (A) no event or condition has happened or existed and is continuing, or is happening or existing, which constitutes, or which, with notice or lapse of time or both, would constitute an Event of Default under this Indenture, the Lease Agreement, and the TDC Loan Agreements or an Enforcement Action under the Collateral Agency and Accounts Agreement or the Intercreditor Agreement and (B) such Additional Bonds constitute Permitted Indebtedness.

(3) The written consent of the Borrower to the issuance of Additional Bonds and a certificate of the Issuer that no event or condition has happened or existed and is continuing, or is happening or existing, which constitutes, or which, with notice or lapse of time or both, would constitute, an Event of Default under the Indenture or the TDC Loan Agreements.

(4) Notice to and written consent of the Port Authority, if required by the Lease Agreement.

(5) An original executed counterpart of the Supplemental Indenture.

(6) An executed counterpart to the supplement to the TDC Loan Agreements and the respective Note related to such Additional Bonds.

(7) A request and authorization to the Trustee by the Issuer to authenticate the Additional Bonds and deliver said Additional Bonds to or upon the order of the purchaser(s) therein identified upon payment to the Trustee, of the purchase price thereof. The Trustee shall be entitled to rely conclusively upon such request and authorization as to the name(s) of the purchaser(s) and the amount of such purchase price.

(8) In the case of Additional Bonds being delivered to refund Outstanding Senior Bonds or Subordinate Bonds, such additional documents as shall be reasonably required by the Trustee to evidence that provision has been duly made in accordance with the provisions of Article VII herein for the payment of the Senior Bonds or Subordinate Bonds to be refunded.

(9) In the case of Additional Bonds being delivered to repay outstanding Senior Bank Obligations, such additional documents as shall be reasonably required by the Trustee to evidence that provision has been duly made for the repayment of the applicable Senior Bank Obligations.

(10) An Opinion of Bond Counsel to the effect that the issuance of such Additional Bonds has been duly authorized, that all legal conditions precedent to the delivery of such Additional Bonds have been fulfilled, and that the Additional Bonds are valid and binding obligations of the Issuer in accordance with their terms.

(11) Such other certificates, statements, receipts, opinions and documents as the Trustee shall reasonably require for the issuance of such Additional Bonds.

When the documents specified in this subsection have been filed with the Trustee, the Trustee shall authenticate and deliver such Additional Bonds to or upon the order of the purchasers thereof, but only upon payment of the purchase price of such Additional Bonds. The proceeds of the sale of such Additional Bonds, except Additional Bonds delivered to refund Outstanding Bonds, including accrued interest and premium thereon, if any, or outstanding Senior Bank Obligations, paid over to the Trustee shall be deposited and applied by the Trustee as provided herein and in the Supplemental Indenture authorizing the issuance of such Additional Bonds. The proceeds of all Additional Bonds delivered to refund Outstanding Senior Obligations or Subordinate Bonds shall be deposited by the Trustee, after payment or making provision for payment of all expenses incident to such financing, to the credit of a special trust fund, appropriately designated, to be held in trust for the exclusive purpose of paying the principal of, interest and premium, if any, on the Senior Obligations or Subordinate Bonds to be refunded, as provided in Article VII herein and in the Supplemental Indenture authorizing the issuance of such

refunding Additional Bonds. The proceeds of all Additional Bonds delivered to repay outstanding Senior Bank Obligations shall be deposited by the Trustee, after payment or making provision for payment of all expenses incident to such financing, to the credit of a special trust fund, appropriately designated, to be held in trust for the exclusive purpose of paying amounts necessary to repay the applicable Senior Bank Obligation or portion thereof.

Section 2.16 Limitation on Issuer's Liability.

Anything in this Indenture, the Bonds, the TDC Loan Agreements or any other Financing Document to the contrary notwithstanding, any obligations of the Issuer under this Indenture, the Bonds, the TDC Loan Agreements or any other Financing Document or related document for the payment of money shall not subject the Issuer to any pecuniary or other liability nor create a debt of the State (or any political subdivision or public benefit corporation), and the State (or any political subdivision or public benefit corporation) shall not be liable on any obligation so incurred, but any such obligation shall be a special limited obligation of the Issuer secured and payable solely as provided in this Indenture.

Section 2.17 CUSIP Numbers.

The Issuer in issuing the Bonds may use CUSIP numbers (if then generally in use), and, if so, the Trustee shall use CUSIP numbers in notices of redemption or purchase as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Bonds or as contained in any notice of redemption or purchase and that reliance may be placed only on the other identification numbers printed on the Bonds, and any such redemption or purchase shall not be affected by any defect in or omission of such numbers. The Issuer or the Borrower will promptly notify the Trustee in writing of any change in the CUSIP numbers.

Section 2.18 Denominations, Medium, Method and Place of Payment and Dating of Bonds.

(a) The Bonds shall be issued in the form of fully registered Bonds in Authorized Denominations. The respective principal amounts of the Bonds to be issued as Current Interest Bonds and Compounding Interest Bonds shall be specified in the applicable Supplemental Indenture. The principal of and interest on, and Redemption Price, if any, of the Bonds shall be payable in lawful money of the United States of America.

(b) Except as may be specifically set forth herein, the Trustee, the Borrower and the Issuer may treat the Owner of a Bond as the absolute owner thereof for all purposes, whether or not such Bond shall be overdue, and the Trustee, the Borrower and the Issuer shall not be affected by any knowledge or notice to the contrary; and payment of the principal of and Redemption Price, if any, and interest on such Bond shall be made only to such Owner, which payments shall be valid and effectual to satisfy and discharge the liability of such Bond to the extent of the sum or sums so paid. All Bonds at maturity or on earlier redemption paid pursuant to the provisions of this Section shall be cancelled by the Trustee.

(c) The Bonds shall be dated their respective dates of authentication and delivery thereof. Any Current Interest Bonds shall bear the rate or rates of interest per year as shall



be specified in the applicable Supplemental Indenture. Interest on Current Interest Bonds shall be payable on each Interest Payment Date until the principal amount has been paid or provided for. Any Current Interest Bonds shall bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from their dated date.

Any Compounding Interest Bonds shall bear interest from their dated date at the compounding rate or rates of interest per year, accrued and compounded on each Interest Accretion Date and payable at maturity, that will result in the aggregate Maturity Amounts payable at maturity, as shall be specified in the applicable Supplemental Indenture. The total interest accrued on any Compounding Interest Bond as of any particular date shall be an amount equal to the amount by which the Accreted Value of that Compounding Interest Bond as of that date exceeds the principal amount of that Compounding Interest Bond.

(d) The principal of the Bonds of a Series shall become due and payable on its Principal Payment Dates. The principal or Redemption Price of the Bonds shall be payable by check or wire transfer to the Holders of such Series of Bonds at the Maturity Date or Redemption Date upon presentation and surrender of the Bonds of such Series at the designated corporate trust office of the Trustee. The interest payable on the Bonds of a Series on any Interest Payment Date shall be paid by the Trustee to the Holders of such Series of Bonds appearing on the registration books maintained by the Trustee as Bond Registrar at the close of business on the Record Date for such interest, and shall be paid (1) by check mailed to such Holders at their address as it appears on such registration books or at such other address furnished in writing by such Holders to the Trustee, or (2) at the written request addressed to the Trustee by any Holder of Bonds, or unless otherwise provided in any writing with or from the Securities Depository, by electronic wire transfer in immediately available funds for credit to the bank routing number and account number filed with the Trustee no later than a Record Date for any interest payment.

(e) Interest on any Bond that is due and payable but not paid on the date due (“Defaulted Interest”) shall cease to be payable to the Owner of such Bond on the relevant Record Date and shall be payable to the Owner in whose name such Bond is registered at the close of business on a special record date (the “Special Record Date”) for the payment of such Defaulted Interest, which Special Record Date shall be fixed in the following manner. The Collateral Agents shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Bond and the date of the proposed payment (which date shall be such as will enable the Trustee to comply with the next sentence hereof), and shall deposit with the Trustee at the time of such notice an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment; money deposited with the Trustee shall be held in trust for the benefit of the Owners of the Bonds entitled to such Defaulted Interest as provided in this Section. Following receipt of such funds the Trustee shall fix the Special Record Date for the payment of such Defaulted Interest which shall be not more than fifteen (15) nor less than ten (10) days prior to the date of the proposed payment and not less than ten (10) days after the receipt of such funds by the Trustee. The Trustee shall promptly notify the Borrower of such Special Record Date and, in the name and at the expense of the Borrower, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be delivered via Electronic Means if the Bonds are held in the Book-Entry System, or mailed first class postage prepaid, to each

Owner of a Bond entitled to such notice at the address of such Owner as it appears on the bond registration books not less than ten (10) days prior to such Special Record Date.

Subject to the foregoing provisions of this Section, each Bond delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Bond of the same Series shall carry all the rights to interest accrued and unpaid, and to accrue, which were carried by such other Bond, and each such Bond shall bear interest from such date, so that neither gain nor loss in interest shall result from such registration of transfer or exchange.

[END OF ARTICLE II]

**ARTICLE III**  
**REDEMPTION OF BONDS BEFORE MATURITY**

Section 3.01 Redemption of Bonds. The Bonds shall be subject to redemption prior to maturity at such times, to the extent and in the manner provided herein and in the applicable Supplemental Indenture.

Section 3.02 Selection of Bonds to Be Redeemed or Purchased in Lieu of Redemption. In the case of redemption or purchase in lieu of redemption of less than all of a Series of Bonds, unless otherwise provided in the Supplemental Indenture providing for the issuance of a Series of Bonds, the Trustee at the direction of the Borrower will select the maturities of such Series of Bonds to be redeemed or purchased. If less than all of a maturity and Series of Bonds are to be redeemed or purchased, unless otherwise provided in the Supplemental Indenture providing for the issuance of such Series of Bonds, the Bonds of such Series and maturity to be redeemed or purchased will be selected by the Trustee, by lot, using such method of selection as the Trustee shall determine; provided however that so long as the Bonds are registered in the name of Cede & Co., as nominee of DTC, the particular Series and maturities of Bonds to be redeemed will be determined in accordance with DTC's procedures as from time to time in effect. No Bonds may be resold subsequent to a purchase in lieu of redemption unless the Issuer obtains a Favorable Opinion of Bond Counsel, and the Issuer may rely conclusively on such Opinion in complying with the requirements of this Section 3.02. The portion of any Bond to be redeemed in part shall be in an Authorized Denomination and, in selecting a Bond for redemption in part, the Trustee shall treat that Bond as representing that number of Bonds that is obtained by dividing the principal amount of such registered Bond by the Authorized Denomination (referred to below as a "unit") then issuable rounded down to the integral multiple of such minimum denomination. If it is determined that one or more, but not all, of the units of principal amount represented by any such Bond is to be called for redemption, then, upon notice of intention to redeem such unit or units, the Holder of such Bond shall forthwith surrender such Bond to the Trustee for (a) payment to such Holder of the Redemption Price of the unit or units of principal amount called for redemption and (b) delivery to such Holder of a new Bond or Bonds of the same maturity in the aggregate unpaid principal amount of the unredeemed balance of the principal amount of such Bond in accordance with Section 3.05. If the Holder of any such Bond of a denomination greater than a unit shall fail to present such Bond to the Trustee for payment and exchange as aforesaid, such Bond shall, nevertheless, become due and payable on the date fixed for redemption to the extent of the unit or units of principal amount called for redemption (and to that extent only).

Section 3.03 Notice of Redemption.

Unless as otherwise provided in a Supplemental Indenture, when redemption of any Bonds or any portions thereof is requested or required pursuant to this Indenture, upon written notice from the Borrower to the Trustee delivered no less than 30 days prior to the Redemption Date, the Trustee shall give notice of such redemption in the name of the Issuer, specifying the CUSIP number, the date of original issue, the date of mailing of the notice of redemption, maturities, interest rates and principal amounts of the Bonds or portions thereof to be redeemed, the Redemption Date, the Redemption Price and the place or places where amounts due upon such redemption will be payable (including the name, address and telephone number of a contact person at the Trustee) and specifying the principal amounts of the Bonds or portions thereof to be payable

and, if less than all of the Bonds of any maturity are to be redeemed, the numbers of such Bonds or portions thereof to be so redeemed. Such notice shall further state that on the Redemption Date there shall become due and payable upon each Bond or portion thereof to be redeemed the Redemption Price thereof, and if sufficient moneys are held in trust for the payment of such Redemption Price, from and after the Redemption Date interest thereon shall cease to accrue and be payable. Such notice may set forth any additional information relating to such redemption. The Trustee, in the name and on behalf of the Issuer, (i) shall, if the Bonds are held in the Book-Entry System, send by Electronic Means and, in all other cases, mail a copy of such notice by first-class mail, postage prepaid, not more than 45 nor less than 20 days prior to the Redemption Date to the registered owners of any such Bonds that are to be redeemed, at their last addresses, if any, appearing upon the registration books, but any defect in such notice shall not affect the validity of the proceedings for the redemption of any other Bonds and (ii) with respect to any Bonds in connection with which Borrower has entered into a continuing disclosure undertaking, cause notice of the redemption of such Bonds to be submitted to the MSRB's EMMA system. Any notice mailed as provided in this Section shall be conclusively presumed to have been duly given, whether or not the registered owner receives the notice. With respect to any optional redemption of the Bonds, such notice may state that such redemption shall be conditional upon the receipt by the Trustee on or prior to the Redemption Date of moneys sufficient to pay the Redemption Price of the Bonds to be redeemed, and that if such moneys shall not have been so received said notice shall be of no force and effect and the Issuer shall not be required to redeem such Bonds. In the event that such notice of redemption contains such a condition and such moneys are not so received, the redemption shall not be made and the Trustee shall within a reasonable time thereafter give notice to the registered owners of the Bonds, in the manner in which the notice of redemption was given, that such moneys were not so received. In the event of a postal strike, the Trustee shall give notice by overnight courier (if available), and in the absence of the availability of overnight courier, by Electronic Means.

Section 3.04 Payment of Redeemed Bonds. Notice having been given in the manner provided in Section 3.03 hereof, the Bonds or portions thereof so called for redemption shall become due and payable on the Redemption Date so designated at the Redemption Price. If, on the Redemption Date, moneys for the redemption of all Bonds or portions thereof to be redeemed, together with interest to the Redemption Date, shall be held by the Paying Agents so as to be available therefor on said date and if notice of redemption shall have been given as aforesaid, then, from and after the Redemption Date, interest on the Bonds or portions thereof so called for redemption shall cease to accrue and become payable. If said moneys shall not be so available on the Redemption Date, such Bonds or portions thereof shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption.

(b) Payment of the Redemption Price shall be made to or upon the order of the registered owners only upon presentation of such Bonds for cancellation and exchange as provided in Section 3.05 hereof; provided, however, that any Bondholder of at least \$1,000,000 in aggregate principal amount of Bonds to be redeemed may, by written request to the Trustee, received by the Trustee at least five (5) Business Days prior to the Redemption Date, direct that payments of Redemption Price be made by wire transfer in federal funds at such wire transfer address as the owner shall specify to the Trustee in such written request.

Section 3.05 Cancellation of Redeemed Bonds. Each Bond redeemed in full under the provisions of this Article shall forthwith be canceled and destroyed in accordance with the provisions hereof and no Bonds shall be executed, authenticated or issued hereunder in exchange or substitution therefor.

(b) If there shall be called for redemption less than all of any Bond, as described in Section 3.02 hereof, the Issuer shall execute and the Trustee shall authenticate and deliver, upon the surrender of such Bond, without charge to the owner thereof, for the unredeemed portion of the Bond so surrendered, a Bond or Bonds of the same Series and maturity in any of the Authorized Denominations and bearing interest at the same rate.

Section 3.06 Redemption of Bonds.

All Bonds may be made subject to redemption upon such terms and conditions as set forth in the applicable Supplemental Indenture.

[END OF ARTICLE III]

## ARTICLE IV REVENUES AND FUNDS

Section 4.01 Pledge of Trust Estate. The pledge made by this Indenture shall be valid and binding from and after the time of the delivery by the Trustee of the first Bonds authenticated and delivered under this Indenture. The security so pledged and then or thereafter received by the Issuer shall immediately be subject to the lien of such pledge. The obligation to perform the contractual provisions hereby made, shall, with respect to the Trust Estate, have priority over any or all other obligations and liabilities of the Issuer and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Issuer, irrespective of whether such parties have notice thereof.

Section 4.02 Creation of Funds and Accounts. (a) The following Funds and Accounts (inclusive of any Sub-Accounts) are hereby established and created (unless the contrary is expressly noted below):

(i) a Fund entitled “Senior Bond Fund” (the “Senior Bond Fund”), and within the Senior Bond Fund the following Accounts shall be established pursuant to the applicable Supplemental Indenture:

(1) an Account entitled “Senior Interest Account” with respect to each Series of Bonds issued as Senior Bonds (the “Senior Interest Account”);

(2) an Account entitled “Senior Principal Account” with respect to each Series of Bonds issued as Senior Bonds (the “Senior Principal Account”); and

(3) an Account entitled “Senior Redemption Account” with respect to each Series of Bonds issued as Senior Bonds (the “Senior Redemption Account”).

(ii) a Fund entitled “Subordinate Bond Fund” (the “Subordinate Bond Fund”), and within the Subordinate Bond Fund the following Accounts shall be established pursuant to the applicable Supplemental Indenture:

(1) an Account entitled “Subordinate Interest Account” with respect to each Series of Bonds issued as Subordinate Bonds (the “Subordinate Interest Account”);

(2) an Account entitled “Subordinate Principal Account” with respect to each Series of Bonds issued as Subordinate Bonds (the “Subordinate Principal Account”); and

(3) an Account entitled “Subordinate Redemption Account” with respect to each Series of Bonds issued as Subordinate Bonds (the “Subordinate Redemption Account”).

(iii) a Fund entitled “Rebate Fund” (the “Rebate Fund”), and within the Rebate Fund an Account entitled “Rebate Account” shall be established pursuant to the applicable Supplemental Indenture with respect to each Series of Bonds (the “Rebate Account”).

The moneys in each of said Funds and the Accounts therein shall be held in trust and applied as hereinafter provided with regard to each such Fund or Account therein and, pending such application, shall be subject to a lien and charge in favor of the Holders of the Bonds of the applicable lien priority issued and Outstanding under this Indenture and for the further security of such Holders until paid out or transferred as herein provided, subject, however, in each case, to the Granting Clauses of this Indenture. Each Fund and Account shall be held by the Trustee.

(b) There shall be deposited into the appropriate account of the Senior Bond Fund and the Subordinate Bond Fund (i) amounts remitted or transferred to such accounts pursuant to Sections 5.06(c), 5.06(f) or 5.06(i) of the Collateral Agency and Accounts Agreement, as applicable, and (ii) any other moneys received by the Trustee that are accompanied by directions from the Senior Collateral Agent that such moneys are to be deposited in such account.

Section 4.03 Application of Senior and Subordinate Bond Funds. The Senior Bond Fund and Subordinate Bond Fund shall be applied as follows:

(a) Application of Senior Bond Fund.

(i) The Trustee shall on each Interest Payment Date pay or cause to be paid to the respective Paying Agents therefor out of each applicable Senior Interest Account of the Senior Bond Fund, in immediately available funds, any amounts required for the payment of accrued interest due on the applicable Series of Senior Bonds on such Interest Payment Date.

(ii) The Trustee shall on each Principal Payment Date pay or cause to be paid to the respective Paying Agents therefor out of each applicable Senior Principal Account of the Senior Bond Fund, in immediately available funds, any amounts required for the payment of (i) the principal amount due on the applicable Series of Senior Bonds, if any, upon the presentation and surrender of the requisite Senior Bonds (such presentation and surrender not being required if Cede & Co. is the Holder of the Senior Bonds), and (ii) the Sinking Fund Requirements due and payable on the applicable Series of Senior Bonds, if any (accrued interest being payable from the applicable Senior Interest Account of the Senior Bond Fund). With respect to any Sinking Fund Requirements, the Trustee shall call for redemption, in the manner provided in Article III hereof or the corresponding provision of any applicable Supplemental Indenture, Senior Bonds for which Sinking Fund Requirements are applicable in a principal amount equal to the Sinking Fund Requirement then due with respect to such Bonds. Such call for redemption shall be made even though at the time of mailing of the notice of such redemption sufficient moneys therefor shall not have been deposited in the applicable Senior Principal Account of the Senior Bond Fund.

(iii) Amounts in each applicable Senior Redemption Account of the Senior Bond Fund to be applied to the redemption of the applicable Series of Senior Bonds shall be paid to the respective Paying Agent therefor on or before each Redemption Date and applied by it on such Redemption Date to the payment of the Redemption Price of the applicable Series of Senior Bonds being redeemed (accrued interest being payable from the applicable Senior Interest Account of the Senior Bond Fund).

(b) Application of Subordinate Bond Fund.

(i) The Trustee shall on each Interest Payment Date pay or cause to be paid to the respective Paying Agents therefor out of each applicable Subordinate Interest Account of the Subordinate Bond Fund, in immediately available funds, any amounts required for the payment of accrued interest due on the applicable Series of Subordinate Bonds on such Interest Payment Date.

(ii) The Trustee shall on each Principal Payment Date pay or cause to be paid to the respective Paying Agents therefor out of each applicable Subordinate Principal Account of the Subordinate Bond Fund, in immediately available funds, any amounts required for the payment of (i) the principal amount due on the applicable Series of Subordinate Bonds, if any, upon the presentation and surrender of the requisite Subordinate Bonds (such presentation and surrender not being required if Cede & Co. is the Holder of the Subordinate Bonds), and (ii) the Sinking Fund Requirements due and payable on the applicable Series of Subordinate Bonds, if any (accrued interest being payable from the applicable Subordinate Interest Account of the Subordinate Bond Fund). With respect to any Sinking Fund Requirements, the Trustee shall call for redemption, in the manner provided in Article III hereof or the corresponding provision of any applicable Supplemental Indenture, Subordinate Bonds for which Sinking Fund Requirements are applicable in a principal amount equal to the Sinking Fund Requirement then due with respect to such Bonds. Such call for redemption shall be made even though at the time of mailing of the notice of such redemption sufficient moneys therefor shall not have been deposited in the applicable Subordinate Principal Account of the Subordinate Bond Fund.

(iii) Amounts in each applicable Subordinate Redemption Account of the Subordinate Bond Fund to be applied to the redemption of the applicable Series of Subordinate Bonds shall be paid to the respective Paying Agent therefor on or before each Redemption Date and applied by it on such Redemption Date to the payment of the Redemption Price of the applicable Series of Subordinate Bonds being redeemed (accrued interest being payable from the applicable Subordinate Interest Account of the Subordinate Bond Fund).

Section 4.04 Pledged Funds Pledged for Payments. Subject to the terms and conditions set forth herein, moneys held for the credit of each Account in the Senior Bond Fund and the Subordinate Bond Fund (collectively, the “Pledged Funds”) shall be held in trust and disbursed by the Trustee for (a) the payment of interest upon the applicable Series of Bonds as such interest falls



due or (b) the payment of the principal of the applicable Series of Bonds at their respective maturities whether at the stated payment date or by redemption. Subject to the terms and conditions set forth herein, moneys held to the credit of the Pledged Funds are hereby pledged to and charged with the payments mentioned in this Section.

Section 4.05 Eligible Accounts. The Funds established under this Indenture and any Accounts and Sub-Accounts thereunder shall be Eligible Accounts. In the event that the accounts held by the Trustee are no longer deemed Eligible Accounts, the Trustee shall resign and a successor Trustee shall be appointed pursuant to Section 9.08 hereof.

Section 4.06 Trust Funds, Unclaimed Moneys. All moneys which the Trustee shall have withdrawn from the Senior Bond Fund and the Subordinate Bond Fund or shall have received from any other source and set aside or deposited with the respective Paying Agents for the purpose of paying any of the Bonds hereby secured, either at the maturity thereof or by call for redemption, shall be held uninvested (without liability for interest or other compensation) in trust for the respective Holders of such Bonds. Any moneys which shall be so set aside or deposited by the Trustee and which shall remain unclaimed by the Holders of such Bonds for a period of two (2) years after the date on which such Bonds shall have become payable shall, together with accumulated interest and earnings thereon, be paid to the Borrower as the absolute property thereof and free from trust, and the Trustee shall thereupon be released and discharged with respect thereto; *provided, however*, that before being required to make any such payments, the Trustee shall, at the expense of the Borrower, mail to the Holders of such Bonds a notice that such moneys remain unclaimed and that, after a date named in such notice, which date shall not be less than forty (40) nor more than ninety (90) days after the date of mailing of such notice, the balance of such moneys then unclaimed shall be paid to the Borrower in accordance herewith.

Section 4.07 Balance in Funds. Except as provided in Section 4.06 hereof, after provision shall be made for the payment of all Bonds then Outstanding and the interest thereon and for the payment of all other obligations, expenses and charges herein required to be paid, the Trustee shall pay any balance in the Pledged Funds then held by it under this Indenture to the Borrower.

Section 4.08 Creation of Additional Accounts and Sub-Accounts.

(a) The Trustee shall, at the written request of the Borrower, establish additional Accounts within any of the Funds established under this Indenture, and Sub-Accounts within any of the Accounts established pursuant to this Indenture, as shall be specified in such written request, for the purpose of identifying more precisely the sources of payments into and disbursements from such Funds, Accounts and Sub-Accounts (including in connection with the issuance of Additional Bonds); but the establishment of any such additional Accounts or Sub-Accounts shall not alter or modify any of the requirements of this Indenture with respect to the deposit or use of the moneys in any Fund established hereunder.

(b) The Trustee shall be reimbursed by the Borrower for all costs incurred by it in connection with the establishment of such additional Accounts or additional Sub-Accounts.

Section 4.09 Rebate Fund.

(a) The Trustee shall deposit amounts into the Rebate Accounts as provided herein. The Rebate Fund shall be held by the Trustee separate and apart from all other Funds and Accounts held under this Indenture and from all other moneys of the Trustee. Any provision hereof to the contrary notwithstanding, amounts credited to the Rebate Fund shall be free and clear of any lien hereunder.

(b) Pursuant to the TDC Loan Agreements, the Borrower has agreed to pay or provide the Trustee with funds sufficient to pay the Rebate Amount (if any) payable pursuant to Section 148(f) of the Code with respect to the Tax-Exempt Bonds. Amounts received from the Borrower to satisfy the Rebate Amount shall be deposited in the applicable Rebate Account of the Rebate Fund and paid by the Trustee, upon the written instruction of the Borrower, to the United States government not later than 60 days after the computation date to which such payment relates. Any excess moneys (including investment income) in the applicable Rebate Account of the Rebate Fund after any such payment is made shall be paid over to the Borrower at its written request.

[END OF ARTICLE IV]

## ARTICLE V PARTICULAR COVENANTS

Section 5.01 Issuer's Obligations Not to Create a Pecuniary Liability. Each and every covenant herein made, including all covenants made in the various sections of this Article V, is predicated upon the condition that any obligation for the payment of money incurred by the Issuer shall not create a debt of the State (or any political subdivision or public benefit corporation thereof), and the State shall not be liable on any obligation so incurred, and the Bonds shall not be payable out of any funds of the Issuer other than those pledged therefor but shall be payable by the Issuer solely from the Trust Estate including the payments made by the Borrower under the TDC Loan Agreements and the TDC Notes, and the revenues and receipts pledged to the payment thereof in the manner and to the extent in this Indenture specified, and nothing in the Bonds, in the TDC Loan Agreements, in the TDC Notes, in this Indenture or in any other Financing Document shall be considered as pledging any other funds or assets of the Issuer.

Section 5.02 Payment of Principal and Interest. The Issuer covenants that it will, from the sources contemplated herein or in the applicable Supplemental Indenture, promptly pay or cause to be paid the principal of, Redemption Price, if any, and interest on the Bonds, at the place, on the dates and in the manner provided in this Indenture and in the Bonds according to the true intent and meaning thereof. All covenants, stipulations, promises, agreements and obligations of the Issuer contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the Issuer and not of any member, officer, director, employee or agent thereof in his individual capacity, and no resort shall be had for the payment of the principal of, Redemption Price, if any, or interest on the Bonds or for any claim based thereon or hereunder against any such member, officer, director, employee or agent or against any natural person executing the Bonds. None of the Bonds, the principal thereof or the interest or Redemption Price, if any, thereon shall ever constitute a debt of the State, the Port Authority, JDA, the New York State Urban Development Corporation (d/b/a Empire State Development) or any local development corporation, agency, authority or political subdivision of the State (other than the Issuer) and neither the State nor any such other entity shall be liable on any obligation so incurred, and the Bonds shall not be payable out of any funds of the Issuer other than those pledged therefor. The Issuer shall not be required under this Indenture or the TDC Loan Agreements or any other Financing Document to expend any of its funds other than (i) the proceeds of the Bonds, (ii) the loan payments, revenues and receipts pledged to the payment of the Bonds, and (iii) any income or gains therefrom.

Section 5.03 Performance of Covenants; Issuer. The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all proceedings pertaining thereto. The Issuer represents and warrants that it is duly authorized under the Act and the laws of the State to issue the Bonds authorized hereby and to execute this Indenture, to make the loans pursuant to the TDC Loan Agreements and the TDC Notes, to assign the TDC Loan Agreements, the TDC Notes, and the Leasehold Mortgages, and to pledge the Trust Estate including the loan payments made by the Borrower under the TDC Loan Agreements and the TDC Notes, hereby pledged in the manner and to the extent herein set forth; that all action on its part for the issuance of the Bonds and the execution and delivery of this Indenture has been duly and effectively taken; and that the Bonds in the hands of the Holders

thereof are and will be the valid and enforceable special limited obligations of the Issuer according to the import thereof.

Section 5.04 Books and Records; Certificate as to Defaults. The Issuer and the Trustee each covenant and agree that, so long as any of the Bonds shall remain Outstanding, proper books of record and account will be kept showing complete and correct entries of all transactions relating to the Project and that the Borrower and the Holders of any of the Bonds shall have the right at all reasonable times to inspect all records, accounts and data relating thereto. In this regard, so long as the TDC Loan Agreements are in full force and effect, records furnished by the Issuer and the Borrower to, or kept by, the Trustee in connection with its duties as such shall be deemed to be in compliance with the Issuer's obligations under this Section 5.04.

Section 5.05 TDC Loan Agreements. It is understood and agreed that the Issuer will, pursuant to the TDC Loan Agreements and the TDC Notes, loan to the Borrower an amount equal to the principal amount of the Outstanding Bonds. Executed copies of the TDC Loan Agreements and each Note will be on file in the office of the Issuer and in the designated corporate trust office of the Trustee. Reference is hereby made to the TDC Loan Agreements for a detailed statement of the terms and conditions thereof and for a statement of the rights and obligations of the parties thereunder. All covenants and obligations of the Borrower under the TDC Loan Agreements shall be enforceable either by the Issuer or by the Trustee, to whom (in the case of the Trustee, in its own name as Trustee or in the name of the Issuer) is hereby granted the right (to the extent provided therefor in this Section 5.05 and subject to the provisions of Section 9.02 hereof and the terms of the Collateral Agency and Accounts Agreement and the Intercreditor Agreement) to enforce all rights of the Issuer and all obligations of the Borrower under the TDC Loan Agreements, whether or not the Issuer is enforcing such rights and obligations. The Trustee shall take such action in respect of any matter as is provided to be taken by it in the TDC Loan Agreements, upon compliance or noncompliance by the Borrower and the Issuer with the provisions of the TDC Loan Agreements relating to the same, subject to the terms hereof.Creation of Liens; Indebtedness. The Issuer shall not create or suffer to be created, or incur or issue any evidences of indebtedness secured by, any lien or charge upon or pledge of the Trust Estate, including the revenues and payments required to be made under the TDC Loan Agreements and the TDC Notes and assigned to the Trustee under this Indenture, except the lien, charge and pledge created by this Indenture (including the issuance of Additional Bonds hereunder) and the Leasehold Mortgages. The Issuer shall have no pecuniary liability for its covenants set forth in this Indenture, including under this Section 5.06, and the Leasehold Mortgages.

Section 5.07 Ownership; Instruments of Further Assurance. Subject to Article IX hereof and to the terms of the Intercreditor Agreement, the Trustee on behalf of the Issuer and at the expense of the Borrower shall defend the rights of the Issuer under the Financing Documents for the benefit of the Holders of the Bonds, to the extent permitted by law, against the claims and demands of all Persons whomsoever in the Trust Estate. The Issuer covenants that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such Supplemental Indentures and such further acts, instruments and transfers as the Trustee may reasonably require for the better assuring, transferring, conveying, pledging, assigning and confirming unto the Trustee all and singular the property described herein, subject to the liens, pledge and security interests of this Indenture, and the payments received under the TDC Loan Agreements and the TDC Notes, revenues and receipts pledged hereby to the payment of the

principal or Redemption Price, if any, of, Sinking Fund Requirements for, if any, and interest on the Bonds. Any and all property hereafter acquired that is of the kind or nature herein provided to be and become subject to the lien, pledge and security interest hereof shall ipso facto, and without any further conveyance, assignment or act on the part of the Issuer or the Trustee, become and be subject to the liens, pledge and security interests of this Indenture as fully and completely as though specifically described herein and therein, but nothing in this sentence contained shall be deemed to modify or change the obligations of the Issuer heretofore made by this Section 5.07.

Section 5.08 Security Agreement; Filing.

(a) This Indenture constitutes a “security agreement” within the meaning of the New York State Uniform Commercial Code-Secured Transactions. The security interest created by this Indenture, in the rights and other intangible interests described herein, shall be perfected by the filing of financing statements by the Borrower at the direction of the Issuer (at the sole cost and expense of the Borrower) in the office of the Secretary of State of the State in the City of Albany, New York, which financing statements shall be in accordance with the New York State Uniform Commercial Code-Secured Transactions. Subsequent to the foregoing filings, financing and continuation statements shall be filed and re-filed by the Collateral Agents whenever such action is necessary to preserve the lien and security interest hereof. Any such filings or re-filings shall be prepared by the Borrower and delivered to the Collateral Agents (if electronic filing is not elected by the Issuer) on a timely basis accompanied by any fees or requisite charges. The Collateral Agents will thereupon effect any such filings and re-filings of financing and continuation statements in said office of the Secretary of State, and promptly notify the Borrower of any such filings.

(b) The Issuer and the Trustee acknowledge that, as of the Closing Date:

1. Section 9-515(b) of the New York State Uniform Commercial Code-Secured Transactions provides that an initial financing statement filed in connection with a “public-finance transaction” is effective for a period of 30 years after the date of filing if such initial financing statement indicates that it is filed in connection with a public finance transaction;

2. Section 9-102(67) of the New York State Uniform Commercial Code-Secured Transactions defines a public-finance transaction as a secured transaction in connection with which, in substance, (x) bonds are issued, (y) all or a portion of the bonds have an initial stated maturity of at least 20 years, and (z) the debtor, obligor, secured party or assignee with respect to the collateral or secured obligation is a governmental unit of a state (as such term is defined therein);

3. The Issuer represents that it is a “governmental unit of a state” as such term is defined in Section 9-102(45) of the New York State Uniform Code - Secured Transactions; and

4. Subject to any future change in law, the initial financing statement as shall be filed with respect to the security interest described above shall therefore

have an effective period of thirty (30) years after the date of filing, for the purpose of determining the date by which continuation statements shall be filed.

(c) Subsequent to the initial filings, if it is necessary to re-file financing statements and/or file continuation statements and/or take any other actions to preserve the lien and security interest of this Indenture (individually or collectively, the “Continuation Action(s)”), then the Borrower in a timely manner shall: (A) as applicable, upon the request of a Collateral Agent (i) prepare and deliver to the Collateral Agent all necessary instruments and filing papers, together with remittances equal to the costs of required filing fees and other charges, so that the Collateral Agent may perform the Continuation Actions, or (ii) electronically perform the Continuation Actions and deliver to the Collateral Agent written certification (upon which the Collateral Agent may conclusively rely) that such performance has occurred, specifying the Continuation Actions performed, or (iii) perform some of the Continuation Actions in the manner described in clause “(i)” and the others in the manner described in clause “(ii)”; and (B) if requested by a Collateral Agent or the Issuer, deliver or cause to be delivered to the Issuer and the Collateral Agents the Opinion of Counsel to the Borrower as described below. The Collateral Agent may conclusively rely upon (y) when applicable, the certification referred to in clause “(A)(ii),” and (z) in all instances, the Opinion of Counsel to the Borrower. In the event the Borrower chooses to have the Collateral Agents perform all or some of the Continuation Actions, as provided in clause “(A)(i),” the Collateral Agents shall reasonably promptly perform such Continuation Actions at the Borrower’s sole expense. The Borrower shall perform the obligations described hereinabove in clauses “(A)” (in every case) and “(B)” (if so requested) no later than ten (10) days prior to (i) thirtieth (30<sup>th</sup>) anniversary of the Closing Date, and/or (ii) the date (not covered by clause “(i)”) on which a Continuation Action is to be taken to preserve the lien and security interest of this Indenture.

If an Opinion of Counsel to the Borrower is requested pursuant to clause “(B),” then the Opinion of Counsel to the Borrower shall be addressed to the Borrower, the Issuer and the Collateral Agents. If so requested, the Borrower shall deliver successive Opinions of Counsel in respect of (i) the thirtieth (30<sup>th</sup>) anniversary of the Closing Date, and/or (ii) the date of any required Continuation Action not covered by clause “(i),” in each case not later than fifteen (15) days prior to the date on which a Continuation Action is required to be taken. In the Opinion of Counsel to the Borrower, counsel shall opine as to: (i) what Continuation Actions are necessary; (ii) the deadline dates for the required Continuation Actions; and (iii) the jurisdictions in which the Continuation Actions must be effected. Counsel in such opinion shall additionally opine that, upon performance of the Continuation Actions by, as the case may be, (i) the Collateral Agents with instruments and papers prepared by the Borrower, (ii) the Borrower through electronic filing, or (iii) the Collateral Agents as to some Continuation Actions, and the Borrower as to the others through electronic filings, all appropriate steps shall have been taken on the part of the Borrower, the Issuer and the Collateral Agents then requisite to the maintenance of the perfection of the security interest of the Collateral Agents in and to all property and interests which by the terms of this Indenture are to be subjected to the lien and security interest of this Indenture.

(d) Any filings with respect to UCC financing statements may be made electronically, and the Issuer shall have the right to designate a company (which shall be reasonably acceptable to the Collateral Agents) to facilitate the filing of UCC financing statements.

(e) The Trustee acknowledges and agrees (on behalf of itself and the Bondholders) that neither the Issuer, nor any of its directors, members, officers, employees, servants, agents, persons under its control or supervision, or attorneys (including Bond Counsel to the Issuer), nor any of the Borrower's directors, members, officers, employees, servants, agents, persons under their control or supervision, or attorneys, shall have any responsibility or liability whatsoever related in any way to the filing or re-filing of any UCC financing statements or continuation statements, or the perfection or continuation of perfection of any security interests, or the recording or rerecording of any document, or the failure to effect any act referred to in this Section, or the failure to effect any such act in all appropriate filing or recording offices, or the failure of sufficiency of any such act so effected.

(f) All costs (including reasonable attorneys' fees and expenses) incurred in connection with the effecting of the requirements specified in this Section shall be paid by the Borrower.

Section 5.09 Reporting between the Trustee and the Collateral Agents.

Any reports or notices required to be given hereunder or pursuant to any Supplemental Indenture from the Trustee to the Collateral Agents, may be deemed by the Collateral Agents to be delivered to the Collateral Agents without any further action on the part of the Trustee, as long as the Trustee and the Collateral Agents are the same entity.

Section 5.10 Reserved.

Section 5.11 List of Owners.

The Trustee will keep on file for the Bonds a list of names and addresses of the Owners of all Bonds, as from time to time registered on the registration books maintained by the Trustee, together with the principal amount and numbers of such Bonds owned by each such Owner. At reasonable times and under reasonable regulations established by the Trustee, such list may be inspected and copied for any purpose by the Borrower, and its counsel and other authorized agents, or by the Owners (or a designated representative thereof) of 15% or more in aggregate principal amount of Outstanding Bonds, such possession or ownership and the authority of such designated representative to be evidenced to the satisfaction of the Trustee.

Section 5.12 Reserved.

Section 5.13 Notices, Etc.

The Trustee shall promptly deliver to the Issuer, the Borrower, the Intercreditor Agent, and the Collateral Agents:

(a) any notice provided to it by the Borrower under the terms of the TDC Loan Agreements;

(b) written notice of the occurrence of any Event of Default under this Indenture (with a description of any action being taken or proposed to be taken with respect thereto),

including any payment defaults under Section 8.01(a) or (b) hereof and any Event of Default pursuant to the TDC Loan Agreements; and

(c) written notice of any Security Interest placed on, or any claim against, the Trust Estate (other than the Security Interests created under this Indenture or the other Financing Documents or any other Permitted Security Interest) to the extent it has knowledge thereof.

(d) In addition to the above means of giving notice, the Trustee shall have the right to accept and act upon instructions, including funds transfer instructions (“Instructions”) given pursuant to (and in accordance with) this Indenture and delivered using Electronic Means; provided, however, that the Borrower shall provide to the Trustee an incumbency certificate listing persons with the authority to provide such Instructions (“Authorized Persons”) and containing specimen signatures of such Authorized Persons, which incumbency certificate shall be amended by the Borrower whenever a person is to be added or deleted from the listing. If the Borrower elects to give the Trustee any Instructions using Electronic Means, and the Trustee, in its discretion, elects to act upon such Instructions, the Trustee’s understanding of such Instructions shall be deemed controlling. The Borrower understands and agrees that if the Trustee cannot determine the identity of the actual sender of such Instructions, the Trustee may conclusively presume that directions that purport to have been sent by an Authorized Person listed on the incumbency certificate provided to the Trustee have been sent by such Authorized Persons. The Borrower shall be responsible for ensuring that only Authorized Persons transmit such Instructions to the Trustee and that the Borrower and all Authorized Persons are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the Borrower. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee’s reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction, provided that the Trustee will not be relieved from liability for its own bad faith, negligence or willful misconduct. Except as provided above in this paragraph, the Borrower agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Trustee and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Borrower; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures.

[END OF ARTICLE V]



## ARTICLE VI INVESTMENTS

Section 6.01 Investments. (a) *Article IV Accounts*. To the extent practicable and subject to the terms and conditions of this Indenture and the Collateral Agency and Accounts Agreement, immediately available funds held for the credit of the Accounts established under Article IV hereof (referred to collectively in this subsection as the “Article IV Accounts”) shall be invested and reinvested by the Trustee only in Eligible Investments. Any such investments shall mature not later than the respective dates when the funds held for the credit of the particular Article IV Account will be required for the purposes intended for such Account, and no Eligible Investments may mature beyond the latest maturity date of any Bonds Outstanding at the time such Eligible Investments are deposited.

The Borrower shall give to the Trustee specific written directions respecting the investment of any money in the Article IV Accounts, subject, however, to the provisions of this Article, and the Trustee shall invest such money under this subsection as so directed by the Borrower. The Trustee shall be entitled to rely on the written directions of the Borrower without further investigation. Ratings of Eligible Investments referred to herein shall be determined at the time of purchase of such Eligible Investments and without regard to ratings subcategories. The Trustee shall have no responsibility to monitor the ratings of Eligible Investments after the initial purchase of such Eligible Investments, including at the time of the reinvestment of proceeds thereof.

Eligible Investments credited to any Article IV Accounts shall be held by or under the control of the Trustee and, while so held, shall be deemed at all times to be part of such Account or Subaccount in which such money was originally held. Net income or gain received and collected from such investments shall be credited and losses charged to the Article IV Account, Account or Subaccount therein from which such investment shall have been made. Except as provided in any Supplemental Indenture, the Trustee shall sell or present for redemption any obligations so purchased whenever directed in writing by the Borrower in order to provide money to make any payment or transfer of money from any such Account or Subaccount therein.

(b) *No Liability for Investment Losses*. The Trustee shall not be liable or responsible for any loss, fee, tax or other charge resulting from any investment, reinvestment or liquidation of an investment of moneys held in the Article IV Accounts.

(c) *Valuation*. The value of the Eligible Investments shall be included on the monthly statements of account delivered by the Trustee to the Borrower.

### Section 6.02 Use of Trustee Affiliates to Make Investments.

The Trustee may make any investments of amounts held in Article IV Accounts permitted under this Indenture through its own bond department or the bond department of any bank or trust company which is an Affiliate of the Trustee.

### Section 6.03 No Trade Confirmation.

Although the Issuer and Borrower recognize that they may obtain a broker confirmation or written statement containing comparable information at no additional cost, the Issuer and Borrower

each individually agree that confirmations of Eligible Investments are not required to be issued by the Trustee for each month in which a monthly statement is rendered (and that no statement need be rendered for any Fund or Account if no activity occurred in such Fund or Account during such month).

[END OF ARTICLE VI]

**ARTICLE VII**  
**DISCHARGE OF INDENTURE**

Section 7.01 Discharge of this Indenture.

(a) If the Bonds secured hereby shall be paid in accordance with their terms (or payment of the Bonds has been provided for in the manner set forth in the following paragraph), and the fees and expenses of the Trustee and the Issuer due in connection with the payment of the Bonds and all other sums payable hereunder shall have been paid or provided for in accordance with the provisions of this Section 7.01, then this Indenture and the Trust Estate and all rights granted hereunder shall thereupon cease, terminate and become void and be discharged and satisfied. In such event, upon the written request of the Issuer, the Trustee shall execute such documents as may be reasonably required to evidence the discharge of this Indenture and shall turn over any surplus in any Account as the Authorized Borrower Representative shall direct in writing, except as otherwise provided herein.

(b) Payment of any Outstanding Bond (or portion thereof) shall, prior to the maturity or redemption date thereof, be deemed to have been provided for within the meaning and with the effect expressed in this Section if (i) in the case said Bond (or portion) is to be redeemed on any date prior to its maturity, the Issuer shall have given to the Trustee in form satisfactory to it irrevocable instructions to give notice of redemption of said Bonds in accordance with the provisions of Article III hereof, (ii) there shall have been irrevocably deposited with the Trustee in trust either cash in an amount which shall be sufficient, or Defeasance Obligations, the principal of and the interest on which when due, and without any reinvestment thereof, will provide moneys which, together with the cash, if any, deposited with or held by the Trustee, at the same time, shall be sufficient to pay when due the principal of and Redemption Price, if any, and interest due and to become due on said Bond (or portion) on and prior to the Redemption Date or Maturity Date thereof, as the case may be, (iii) there shall have been filed with the Trustee and the Issuer, (x) a report of a firm of nationally recognized independent certified public accountants, acceptable to the Trustee and the Issuer, confirming the arithmetical accuracy of the computations showing the cash or Defeasance Obligations, the principal of and interest on which when due, without reinvestment, together with cash, if any, deposited at the same time will be sufficient to pay when due, the principal and Redemption Price, if any, and interest due or to become due on such Bond (or portion), on and prior to the Redemption Date or Maturity Date thereof, as the case may be and (y) a Favorable Opinion of Bond Counsel, acceptable to the Trustee and the Issuer, to the further effect that upon provision for the payment of the principal of and Redemption Price, if any, and interest due or to become due on such Bonds, the pledge of moneys and securities hereunder and the grant of all rights to the Owners of such Bonds hereunder shall be discharged and satisfied, and (iv) the Issuer shall have given the Trustee in form satisfactory to it irrevocable instructions to give a notice to the Owners of such Bonds that the deposit required by (ii) above has been made with the Trustee, and that, with respect to such Bonds, the pledge of this Indenture has been released and discharged, except as otherwise herein provided, and that payment of said Bond (or portion) has been provided for in accordance with this Section and stating such Maturity Date or Redemption Date upon which moneys are to be available for the payment of the principal of and Redemption Price, if any, and interest on said Bond (or portion). At such time as payment of any Bond (or portion) has been provided for as aforesaid, such Bond (or portion) shall no longer be

secured by or entitled to the benefits of this Indenture, except for the purpose of any payment from such moneys or securities deposited with the Trustee.

(c) The release of the obligations of the Issuer under this Section shall be without prejudice to the right of the Trustee to be paid by the Borrower compensation that the Borrower has agreed to pay to the Trustee for all services rendered by it hereunder and all its expenses, charges and other disbursements incurred on or about the administration of the trust hereby created and the performance of its powers and duties hereunder.

[END OF ARTICLE VII]

**ARTICLE VIII  
DEFAULTS AND REMEDIES**

Section 8.01 Events of Default. Each of the following is hereby defined as and shall be deemed an “Event of Default”:

(a) Default in the payment of the principal of or Redemption Price, if any, on any Bond when the same shall become due and payable, whether at the stated maturity thereof, or through failure to satisfy any Sinking Fund Requirement, or upon redemption or otherwise;

(b) Default in the payment of any interest on any Bond when the same shall become due and payable;

(c) Default shall be made in the observance or performance of any covenant, agreement or other provision contained in the Bonds or this Indenture (other than as referred to in (a) or (b) of this Section) and such default shall continue for a period of thirty (30) days after written notice to the Issuer, the Borrower and the Trustee from the Owners of at least 25% in aggregate principal amount of the Bonds then Outstanding or from the Trustee specifying such default and requiring the same to be remedied, provided, with respect to any such failure covered by this subsection (c), no Event of Default shall be deemed to have occurred so long as a course of action adequate to remedy such failure shall have been commenced within such thirty (30) day period and shall thereafter be diligently prosecuted to completion and the failure shall be remedied thereby;

(d) The occurrence of an “Event of Default” under and as defined in the Collateral Agency and Accounts Agreement or the Leasehold Mortgages that continues beyond any grace or cure period provided for under the Collateral Agency and Accounts Agreement or the Leasehold Mortgages;

The Trustee shall, within thirty (30) days of the occurrence of an Event of Default or of any event of which the Trustee is required to take notice and which would result in an Event of Default with the passage of time or the giving of notice, notify the Issuer, the Borrower, the Collateral Agents, the Intercreditor Agent, and all Bondholders of the occurrence of such Event of Default or such other event.

Section 8.02 Remedies on Events of Default.

(a) *Transfer of Funds under the Collateral Agency and Accounts Agreement*. If such an Event of Default as described in Section 8.01(a) or (b) has occurred and is continuing, then, subject in all events to the provisions of the Intercreditor Agreement, without further demand or notice, the Trustee may request the Collateral Agents to transfer immediately available funds in the Project Accounts to the Sub-Accounts in the Senior Bond Payment Account and the Sub-Accounts in the Senior Bond Redemption Account for each Series of Bonds, as applicable, as provided in the Collateral Agency and Accounts Agreement and subject to the Intercreditor Agreement, and the Trustee shall deposit any moneys received as a result of such action in the Sub-Accounts in the Senior Bond Payment Account and the Senior Bond Redemption Account for each Series of Bonds, as applicable.

(b) *Legal Proceedings and Acceleration.* (1) The Trustee may, at the written direction of the Holders of a majority in aggregate principal amount of Senior Bonds Outstanding but excluding the aggregate principal amount of any Outstanding Series 2022A Bonds, (a) bring such suits, actions or proceedings at law or in equity to enforce the rights of the Holders of such Senior Bonds, and require the Issuer or the Borrower or either or both of them to carry out the agreements with or for the benefit of such Bondholders, and to perform its or their duties, under this Indenture and the other Financing Documents, or (b) by written notice to the Issuer, the Borrower and the Collateral Agents, declare the principal of such Bonds to be immediately due and payable, whereupon the principal of such Bonds and the interest thereon accrued to the date of payment shall, without further action, become and be immediately due and payable, anything in this Indenture or in the Bonds to the contrary notwithstanding. The Trustee may also, by action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the Bondholders.

(2) In addition to the remedies described in the preceding paragraph, if a Credit Acceleration (as defined in the Common Terms Agreement) is declared, the Trustee hereby automatically (and without direction of the Holders) declares that the principal of all Bonds subject to the Intercreditor Agreement are immediately due and payable (unless provided otherwise in the Supplemental Indenture governing the terms of a Series of Bonds), whereupon the principal of such Bonds and the interest thereon accrued to the date of payment shall, without further action, become and be immediately due and payable, anything in this Indenture or in such Bonds to the contrary notwithstanding.

(c) *Suit for Judgment on the Bonds.* The Trustee shall be entitled to sue for and recover judgment, either before or after or during the pendency of any proceedings for the enforcement of the lien of this Indenture, for the enforcement of any of its rights, or the rights of the Bondholders hereunder, but any such judgment against the Issuer shall be enforceable only against the Trust Estate. No recovery of any judgment by the Trustee shall in any manner or to any extent affect the lien of this Indenture or any rights, powers or remedies of the Trustee hereunder, or any lien, rights, powers or remedies of the Owners of the Bonds, but such lien, rights, powers and remedies of the Trustee and of the Bondholders shall continue unimpaired as before.

No right or remedy is intended to be exclusive of any other right or remedy, but each and every such right or remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute.

If any Event of Default shall have occurred and is continuing, and if requested by the Owners of a majority in aggregate principal amount of Bonds then Outstanding and the Trustee is indemnified as provided in Section 9.02 hereof, the Trustee shall be obligated to exercise such one or more of the rights and powers conferred by this Section as the Trustee, being advised by counsel (with such counsel being obtained at the expense of the Borrower), shall deem most expedient in the interests of the Bondholders.

(d) *Cure Rights of Borrower.* Pursuant to the TDC Loan Agreements, the Issuer has granted to the Borrower full authority for the account of the Issuer to perform any covenant or obligation of the Issuer, the non-performance of which is alleged in any notice received by the Borrower to constitute a default hereunder, in the name and stead of the Issuer with full power to

do any and all things and acts to the same extent that the Issuer could do and perform any such things and acts with power of substitution. The Trustee agrees to accept such performance by the Borrower as performance by the Issuer.

(e) *The Collateral Agency and Accounts Agreement.* The Trustee shall be entitled to deliver all notices, instructions, directions, and otherwise exercise all of the Trustee's rights under the Collateral Agency and Accounts Agreement (including, without limitation, the right to deliver a Direction Notice under Section 6.03 of the Collateral Agency and Accounts Agreement directing the Collateral Agents to deliver an activation notice under the Account Control Agreement). The Trustee may direct the Collateral Agents with respect to the exercise of rights and remedies and such matters as are described in subsections (a), (b) and (c) of this Section as it relates to the Collateral held pursuant to the Collateral Agency and Accounts Agreement, and may further direct the Collateral Agents as to application of Funds, Accounts and application of such Collateral.

(f) *Exercise of All Legal Remedies.* Subject to the Collateral Agency and Accounts Agreement, the Trustee may take whatever action at law or in equity may appear necessary or desirable to enforce the rights of the Owners (including in respect of the Trust Estate).

#### Section 8.03 Majority Bondholders May Control Proceedings.

The Owners of a majority in aggregate principal amount of the Senior Bonds then Outstanding shall have the right, at any time, to the extent permitted by law, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver, or any other proceedings hereunder; provided that such direction shall not be otherwise than in accordance with the provisions hereof. The Trustee shall not be required to act on any direction given to it pursuant to this Section unless indemnified as provided in Section 9.02 hereof.

#### Section 8.04 Rights and Remedies of Bondholders.

No Owner of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereof or for the appointment of a receiver or any other remedy hereunder, unless a default has occurred of which the Trustee has notice, and such default shall have become an Event of Default and the Owners of a majority in aggregate principal amount of Senior Bonds then Outstanding shall have made written request to the Trustee and shall have offered reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, and unless they have also offered to the Trustee indemnity as provided in Section 9.02 hereof and unless the Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name; and such notification, request, offer of indemnity and consent are hereby declared in every case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more Owners of the Bonds shall have the right in any manner whatsoever to affect, disturb or prejudice

the lien of this Indenture and the Trustee does not have an affirmative duty to ascertain whether or not such actions are so unduly prejudicial by his, her or their action or to enforce any right hereunder except in the manner herein provided and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and, except as otherwise provided herein, for the equal benefit of the Owners of all Bonds then Outstanding. Nothing in this Indenture contained shall, however, affect or impair the right of any Owner of Bonds to enforce the payment, by the institution of any suit, action or proceeding in equity or at law, of the principal of and Redemption Price, if any, and interest on any Bond at and after the maturity thereof, or the obligation of the Issuer to pay the principal of, Redemption Price, if any, Sinking Fund Requirement and interest on each of the Bonds to the respective Owners of the Bonds at the time and place, from the source and in the manner herein and in the Bonds expressed.

Section 8.05 Application of Moneys. All moneys received or held by the Trustee from the Collateral Agents pursuant to and in accordance with the Collateral Agency and Accounts Agreement, this Indenture, and the other Financing Documents shall (subject to the terms of the Granting Clauses of this Indenture) after payment of the reasonable costs and expenses of the proceedings resulting in the collection of such moneys and the expenses, liabilities and advances incurred or made by the Trustee (the “Trustee Collection Costs”) and all fees and expenses due to the Trustee hereunder (“Trustee Fees”), be deposited into the respective Account of the Senior Bond Fund and the Subordinate Bond Fund and be applied to the payment of the Bonds in accordance with Section 4.03 hereof (provided, however, that any moneys held for non-presented Bonds under Section 4.06 or Section 11.11 hereof shall only be applied to the payment of such Bonds without reduction for Trustee Collection Costs or Trustee Fees).

Whenever the Trustee shall apply such funds to the payment of the Bonds, it shall fix the date (which shall be an Interest Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue. The Trustee shall give notice of the deposit of any such moneys and of the fixing of any such date, and shall not be required to make payment to the Owner of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid. The Trustee shall set a Special Record Date for such payment in accordance with Section 2.19(e) hereof.

Whenever all of the Bonds and interest thereon have been paid under the provisions of this Section and all expenses and fees of the Trustee and any other amounts to be paid to the Issuer hereunder have been paid, any balance remaining in the Funds and Accounts shall be paid as provided in the Collateral Agency and Accounts Agreement.

Section 8.06 Trustee May Enforce Rights Without Bonds.

All rights of action and claims under this Indenture or any of the Bonds Outstanding hereunder may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or proceedings relative thereto; and any suit or proceeding instituted by the Trustee shall be brought in its name as Trustee, without the necessity of joining as plaintiffs or defendants any Owners of the Bonds, and any recovery of judgment shall be for the ratable benefit of the Owners of the Bonds and subject to the provisions of this Indenture (including the Granting Clauses of this Indenture and the proviso in the first paragraph of Section 8.05 hereof).



Section 8.07 Delay or Omission No Waiver.

No delay or omission of the Trustee or of any Bondholder to exercise any right or power accruing upon any default shall exhaust or impair any such right or power or shall be construed to be a waiver of any such default, or acquiescence therein; and every power and remedy given by this Indenture may be exercised from time to time and as often as may be deemed expedient.

Section 8.08 No Waiver of One Default to Affect Another.

No waiver of any default hereunder, whether by the Trustee or the Bondholders, shall extend to or affect any subsequent or any other then existing default or shall impair any rights or remedies consequent thereon.

Section 8.09 Discontinuance of Proceedings on Default; Position of Parties Restored.

In case the Trustee shall have proceeded to enforce any rights under this Indenture and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every such case the Issuer, the Borrower, the Trustee and the Owners shall be restored to their former position and rights hereunder with respect to the Trust Estate and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 8.10 Waivers of Events of Default.

(a) Subject to the terms of the Intercreditor Agreement and the Common Terms Agreement, the Trustee may waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest on the Bonds (other than the Series 2022A Bonds, with respect to which such actions may be taken by the Administrative Agent), and shall do so upon the written request of the Owners of a majority in aggregate principal amount of all the Bonds then Outstanding excluding the aggregate principal amount of any Outstanding Series 2022A Bonds in respect of which default exists; provided, however, that there shall not be waived any Event of Default in the payment of the principal of or Redemption Price, if any, on any Outstanding Bonds at the date of maturity or redemption thereof, or any default in the payment when due of the interest on any such Bonds, unless prior to such waiver or rescission, all arrears of interest or all arrears of payments of principal and Redemption Price, if any (with interest upon such principal, Sinking Fund Requirements and Redemption Price, if any, at the rates borne by the Bonds) and all expenses of the Trustee, in connection with such default shall have been paid or provided for. In case of any such waiver or rescission, or in case any proceedings taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely to the Trustee, then and in every such case the Issuer, the Borrower, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder respectively, but no such waiver or rescission shall extend to or affect any subsequent or other default, or impair any rights or remedies consequent thereon.

(b) Notwithstanding anything in this Article VIII to the contrary, if, after the principal of all of the Bonds then Outstanding and the interest accrued thereon to the date of repayment is declared to be due and payable immediately, and before any judgment or decree for the payment thereof has been obtained or entered, the Issuer or the Borrower shall cause to be

deposited with the Trustee, an amount sufficient to pay all arrears of payments of the principal, Redemption Price and Sinking Fund Requirements, if any, of, and interest on the Bonds, and all expenses of the Trustee, in connection with such default shall have been paid or provided for, and all other Events of Default hereunder shall have been remedied, then such declaration of acceleration and its consequences shall be rescinded and annulled. In such event, the Trustee shall promptly give written notice of such waiver, rescission or annulment to the Issuer, the Collateral Agents, the Intercreditor Agent, the Borrower and the Port Authority, and shall give written notice by first class mail to the Owners of the Bonds at their addresses appearing on the registration books maintained by the Trustee.

Section 8.11 Trustee to Notify Parties of Default and Disclose Information Relating to Default.

The Trustee shall promptly notify in writing the Issuer, the Borrower, the Port Authority, the Intercreditor Agent, and the Collateral Agents of any default hereunder or the occurrence of any Event of Default. The Trustee may, in its discretion, notify in writing all Bondholders of the occurrence of any Event of Default and shall make available any and all information reasonably requested in writing of the Trustee concerning the Event of Default, the Bonds, the Issuer, the Collateral Agents, the Intercreditor Agent, the Borrower and any other information relevant to the Event of Default.

Section 8.12 Extended Interest.

In case the time for the payment of any interest on any Bond shall be extended, whether or not such extension be by or with the consent of the Issuer, such interest so extended shall not be entitled in case of default hereunder to the benefit or security of this Indenture except subject to the prior payment in full of the principal of all Bonds then outstanding and of all interest the time for the payment of which shall not have been extended.

[END OF ARTICLE VIII]

**ARTICLE IX**  
**THE TRUSTEE AND PAYING AGENT**

Section 9.01 Appointment and Acceptance of Duties.

(a) The Bank of New York Mellon, is hereby appointed as Trustee. The Bank of New York Mellon shall signify its acceptance of the duties and obligations of the Trustee hereunder and under each Financing Document by executing this Indenture and agrees to perform said trusts as a corporate trustee ordinarily would under a corporate mortgage subject to the express terms and conditions herein. All provisions of this Article IX shall be construed as extending to and including all the rights, duties and obligations imposed upon the Trustee under the TDC Loan Agreements and under any other Financing Document to which it shall be a party as fully for all intents and purposes as if this Article IX were contained in the TDC Loan Agreements and each such other Financing Document.

(b) The Bank of New York Mellon, is hereby appointed as Paying Agent for the Bonds. The Issuer may also from time to time appoint one or more other Paying Agents in the manner and subject to the conditions set forth in Section 9.09 for the appointment of a successor Paying Agent. Each Paying Agent shall signify its acceptance of the duties and obligations imposed upon it by this Indenture by executing and delivering to the Issuer, and in the case of all Paying Agents other than the Trustee, to the Trustee, a written acceptance thereof. The designated office of the Paying Agents is designated as the office of the Issuer for the payment of the principal or Redemption Price, if any, of, Sinking Fund Requirements, and interest on the Bonds.

Section 9.02 Indemnity.

The Trustee shall be under no obligation to institute any suit, or to take any remedial action under this Indenture, the Collateral Agency and Accounts Agreement, the Intercreditor Agreement, or under any other Financing Document or to enter any appearance or in any way defend in any suit in which it may be made defendant, or to take any steps in the execution of the trusts hereby created or in the enforcement of any rights and powers under this Indenture, the Collateral Agency and Accounts Agreement, the Intercreditor Agreement, or under any other Financing Document, until it shall be indemnified to its satisfaction against any and all reasonable compensation for services, costs and expenses, outlays, and counsel fees and other disbursements, and against all liability not due to its willful misconduct or gross negligence, provided, however, that the Trustee shall nevertheless be obligated to cause the principal amount of the Bonds to be accelerated or redeemed when required under this Indenture and to make payments (from the sources herein specified) on the Bonds when due, all at the times and in the manner specified in this Indenture. Nothing in this Section 9.02 shall be construed to require any indemnity from the Issuer to the Trustee.

Section 9.03 Responsibilities of Trustee.

(a) The Trustee shall have no responsibility in respect of the validity or sufficiency of this Indenture or of any other Financing Document or the security provided hereunder or thereunder or the due execution of this Indenture by the Issuer, or the due execution of any other Financing Document by any party (other than the Trustee) thereto, or in respect of the

validity of the Bonds authenticated and delivered by the Trustee in accordance with this Indenture or to see to the recording or filing of this Indenture or any other document or instrument whatsoever except as otherwise provided in Section 5.08 hereof. The recitals, statements and representations contained in this Indenture and in the Bonds shall be taken and be construed as made by and on the part of the Issuer and not by the Trustee, and the Trustee does not assume any responsibility for the correctness of the same; provided, however, that the Trustee shall be responsible for its representation contained in its certificate on the Bonds and for its responsibility as to filing, refiling, recording and re-recording as contained in Section 5.08 referred to above.

(b) The Trustee shall not be liable or responsible because of the failure of the Issuer to perform any act required of it by this Indenture or because of the loss of any moneys arising through the insolvency or the act or default or omission of any depository other than itself in which such moneys shall have been deposited under this Indenture or the Tax Certificate. The Trustee shall not be responsible for the application of any of the proceeds of the Bonds or any other moneys deposited with it and paid out, invested, withdrawn or transferred in accordance with this Indenture or the Tax Certificate or for any loss, fee, tax or other charge resulting from any such investment. The Trustee shall not be liable in connection with the performance of its duties under the TDC Loan Agreements, under this Indenture or under any other Financing Document except for its own willful misconduct or gross negligence. The immunities and exemptions from liability of the Trustee shall extend to its directors, officers, employees, agents and servants and persons under the Trustee's control or supervision.

(c) The Trustee, prior to the occurrence of an Event of Default and after curing of all Events of Default which may have occurred, if any, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred (which has not been cured) the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise as a prudent person would exercise under the circumstances in the conduct of such person's own affairs. The Trustee shall not be charged with knowledge of the occurrence of an Event of Default unless, (i) the Trustee has not received any certificate or other document regularly required to be delivered to the Trustee under the TDC Loan Agreements or any other Financing Document, (ii) the Trustee has not received from the Collateral Agents payment of any amount required to be remitted to the Trustee under the TDC Loan Agreements or any other Financing Document, (iii) an officer in the corporate trust department of the Trustee has actual knowledge thereof, or (iv) the Trustee has received written notice thereof from the Borrower, the Issuer or any Bondholder.

(d) The Trustee shall not be liable or responsible for the failure of the Borrower to effect or maintain insurance as provided in the TDC Loan Agreements nor shall it be responsible for any loss by reason of want or insufficiency in insurance or by reason of the failure of any insurer in which the insurance is carried to pay the full amount of any loss against which it may have insured the Issuer, the Borrower, the Trustee or any other Person.

(e) The Trustee shall execute (without the necessity of obtaining the signatures of the Borrower) and cause to be filed those continuation statements, any additional financing statements and all other instruments required by it by Section 5.08 hereof.

(f) The Trustee shall make annual reports to the Issuer, the Collateral Agents, and the Borrower of all moneys received and expended during the preceding year by it under this Indenture and of any Event of Default known to it under the TDC Loan Agreements or this Indenture or under any other Financing Document.

(g) With respect to the Tax Certificate, the Trustee shall not be required to make any payment of a Rebate Amount or any transfer of funds or take any other action required to be taken thereunder except upon the receipt of a written certificate of direction of an Authorized Borrower Representative delivered to the Trustee in accordance with the terms of the Tax Certificate. Notwithstanding any provision of the Tax Certificate or any other Financing Document, nothing in the Tax Certificate, either expressed or implied, shall be deemed to impose upon the Trustee any responsibility for the legal sufficiency of the Tax Certificate to effect compliance with the Code nor any duty to independently review or verify any information or calculation furnished to the Trustee by the Borrower.

(h) Subject to subsection (b) above, if consent of the Trustee is required under this Indenture, the Loan Agreement, the Collateral Agency and Accounts Agreement, or any other Financing Document to any action or event, the Trustee may, but shall not be obligated to, solicit consents therefor from Holders of the Bonds and shall not be in any way obligated to consent to any such action or event without the prior consent of the Holders of a majority in aggregate principal amount of the Bonds Outstanding unless a specific provision herein provides otherwise.

(i) The Trustee may consult with counsel of its selection and the advice of such counsel or any opinion of counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(j) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder.

(k) In no event shall the Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(l) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

(m) The Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder.

(n) Under no circumstances shall the Trustee be required to expend any of its own funds for any purpose for which funds are to be disbursed under this Indenture or any other Financing Document.

(o) The permissive right of the Trustee to do things enumerated in this Indenture, the Collateral Agency and Accounts Agreement or any other Financing Document shall not be construed as a duty, and in doing or not doing so the Trustee shall not be answerable for other than its gross negligence or willful misconduct.

#### Section 9.04 Compensation.

The Trustee and Paying Agents shall receive and collect from the Borrower as provided in the TDC Loan Agreements (and in accordance with the flow of funds set forth in the Collateral Agency and Accounts Agreement) payment or reimbursement for agreed upon fees for services rendered hereunder and under each other Financing Document and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by the Trustee or Paying Agents in connection therewith.

#### Section 9.05 Evidence on Which Trustee May Act.

(a) In case at any time it shall be necessary or desirable for the Trustee to make any investigation respecting any fact preparatory to taking or not taking any action, or doing or not doing anything, as such Trustee, and in any case in which this Indenture provides for permitting or taking any action, it may conclusively rely upon any certificate required or permitted to be filed with it under the provisions of this Indenture, and any such certificate shall be evidence of such fact to protect it in any action that it may or may not take, or in respect of anything it may or may not do, in good faith, by reason of the supposed existence of such fact.

(b) The Trustee shall be protected and shall incur no liability in acting or proceeding, or in not acting or not proceeding, in good faith, reasonably and in accordance with the terms of this Indenture, upon any resolution, order, notice, request, consent, waiver, certificate, statement, affidavit, requisition, bond or other paper or document which it shall in good faith reasonably believe to be genuine and to have been adopted or signed by the proper board or person, or to have been prepared and furnished pursuant to any of the provisions of this Indenture, or, at the sole cost and expense of the Borrower, and when determined necessary in the reasonable discretion of the Trustee, upon the written opinion of any attorney (who may be an attorney for the Issuer or an employee of the Borrower), engineer, appraiser, architect or accountant believed by the Trustee to be qualified in relation to the subject matter.

#### Section 9.06 Trustee and Paying Agents May Deal in Bonds.

Any national banking association, bank or trust company acting as a Trustee or Paying Agent, and its directors, officers, employees or agents, may in good faith buy, sell, own, hold and deal in any of the Bonds, and may join in any action which any Bondholder may be entitled to take with like effect as if such association, bank or trust company were not such Trustee or Paying Agent.

#### Section 9.07 Resignation or Removal of Trustee.

The Trustee may resign and thereby become discharged from the trusts created under this Indenture for any reason by giving written notice by registered or certified mail, postage prepaid, to the Issuer, to the Borrower and to the Holders of all Bonds not less than sixty (60) days before

such resignation is to take effect, but such resignation shall not take effect until (i) the appointment and acceptance thereof of a successor Trustee pursuant to Section 9.08 hereof and (ii) the transfer of the Trust Corpus (hereinafter defined) to such successor Trustee. Following such sixty (60) days, if no successor Trustee has been appointed, the Trustee shall have the right to petition a court of competent jurisdiction to have a successor Trustee appointed.

The Trustee may be removed at any time upon not less than thirty (30) days' notice by an instrument or concurrent instruments in writing filed with the Trustee and signed by the Issuer or the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding or their attorneys-in-fact duly authorized. Such removal shall become effective upon the appointment and acceptance of such appointment by a successor Trustee and the transfer of the Trust Corpus to such successor Trustee in accordance with the terms hereof. The Trustee shall promptly give notice of such filing to the other Notice Parties. No removal shall take effect until the appointment and acceptance thereof of a successor Trustee pursuant to Section 9.08 hereof. If the Trustee shall resign or shall be removed, such Trustee must transfer and assign to the successor Trustee, not later than thirty (30) days from the date specified in the removal notice, if any, or the date of the acceptance by the successor Trustee of its appointment as such, whichever shall last occur, (i) all amounts (including all investments thereof) held in any Fund, Account or Subaccount under this Indenture, together with a full accounting thereof, (ii) all records, files, correspondence, registration books Bond inventory, all information relating to Bond payment status (i.e., Outstanding principal payment and interest payment schedules, pending notices of redemption, payments made and to whom, delinquent payments, default or delinquency notices, deficiencies in any Fund, Account or Subaccount balance, etc.) and all such other information (in whatever form) in the possession of the Trustee being removed or resigning and (iii) all Financing Documents and other documents or agreements (including, without limitation, all UCC financing statements), including, without limitation, all insurance policies or certificates, credit facilities, letters of credit or other instruments provided to the Trustee being removed or resigning (clauses (i), (ii) and (iii) together with the Trust Estate, being collectively referred to as the "Trust Corpus").

#### Section 9.08 Successor Trustee.

(a) If at any time the Trustee shall be dissolved or otherwise become incapable of acting or shall be adjudged a bankrupt or insolvent, or if a receiver, liquidator or conservator thereof, or of its property, shall be appointed, or if any public officer shall take charge or control of the Trustee or of its property or affairs, the position of Trustee shall thereupon become vacant. If the position of Trustee shall become vacant for any of the foregoing reasons or for any other reason or if the Trustee shall resign, the Issuer shall appoint a successor Trustee and shall use its best efforts to obtain acceptance of such trust by the successor Trustee within sixty (60) days from such vacancy or notice of resignation. Within twenty (20) days after such appointment and acceptance, the Issuer shall notify in writing the Borrower and the Holders of all Bonds.

(b) In the event of any such vacancy or resignation and if a successor Trustee shall not have been appointed within sixty (60) days of such vacancy or notice of resignation, the Holders of a majority in aggregate principal amount of the Bonds then Outstanding, by an instrument or concurrent instruments in writing, signed by such Bondholders or their attorneys-in-fact thereunto duly authorized and filed with the Issuer, may appoint a successor Trustee which shall, immediately upon its acceptance of such trusts, and without further act, supersede the

predecessor Trustee. If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of subsection (a) or (b), within sixty (60) days of such vacancy or notice of resignation, the Holder of any Bond then Outstanding, the Issuer or any retiring Trustee or the Borrower may apply, at the expense of the Borrower, to any court of competent jurisdiction to appoint a successor Trustee. Such court may thereupon, after such notice, if any, as such court may deem proper, appoint a successor Trustee.

(c) Any Trustee appointed under this Section shall be a national banking association or a bank or trust company duly organized under the laws of any state of the United States authorized to exercise corporate trust powers under the laws of the State and authorized by law and its charter to perform all the duties imposed upon it by this Indenture and each other Financing Document. At the time of its appointment, any successor Trustee shall have a capital stock and surplus aggregating not less than \$100,000,000.

(d) The predecessor Trustee shall transfer to any successor Trustee appointed under this Section as a result of a vacancy in the position, the Trust Corpus by a date not later than thirty (30) days from the date of the acceptance by the successor Trustee of its appointment as such. Where no vacancy in the position of the Trustee has occurred, the transfer of the Trust Corpus shall take effect in accordance with the provisions of Section 9.07 hereof.

(e) Every successor Trustee shall execute, acknowledge and deliver to its predecessor, and also to the Issuer, an instrument in writing accepting such appointment, and thereupon such successor Trustee, without any further act, deed, or conveyance, shall become fully vested with all moneys, estates, properties, rights, immunities, powers and trusts, and subject to all the duties and obligations, of its predecessor, with like effect as if originally named as such Trustee; but such predecessor shall, nevertheless, on the written request of its successor or of the Issuer, and upon payment by the Borrower of the compensation, expenses, charges and other disbursements of such predecessor which are due and payable pursuant to Section 9.04 hereof, execute and deliver an instrument transferring to such successor Trustee all the estate, properties, rights, immunities, powers and trusts of such predecessor; and every predecessor Trustee shall deliver all property and moneys, together with a full accounting thereof, held by it under this Indenture to its successor. Should any instrument in writing from the Issuer be required by any successor Trustee for more fully and certainly vesting in such Trustee the estate, properties, rights, immunities, powers and trusts vested or intended to be vested in the predecessor Trustee, any such instrument in writing shall, on request, be executed, acknowledged and delivered by the Issuer. Any successor Trustee shall promptly notify the other Notice Parties of its appointment as Trustee.

(f) Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such company shall be a national banking association or a bank or trust company duly organized under the laws of any state of the United States and shall be authorized by law and its charter to perform all the duties imposed upon it by this Indenture and each other Financing Document shall be the successor to such Trustee without the execution or filing of any paper or the performance of any further act.



Section 9.09 Resignation or Removal of Paying Agent; Successor.

(a) Any Paying Agent may at any time resign and the discharge of the duties and obligations created by this Indenture by giving at least sixty (60) days' prior written notice to the other Notice Parties. Any Paying Agent may be removed at any time upon not less than thirty (30) days' written notice by an instrument filed with such Paying Agent and the Trustee and signed by the Issuer. Any successor Paying Agent shall be appointed by the Issuer, with the prior written approval of the Trustee (such approval not to be unreasonably withheld), and shall be a commercial bank or trust company with trust powers and duly organized under the laws of any state of the United States of America or a national banking association, having a capital stock and surplus aggregating at least \$100,000,000, and willing and able to accept the office on reasonable and customary terms and authorized by law and its charter to perform all the duties imposed upon it by this Indenture.

(b) In the event of the resignation or removal of any Paying Agent, such Paying Agent shall pay over, assign and deliver any moneys held by it as Paying Agent to its successors, or if there be no successor, to the Trustee. In the event that for any reason there shall be a vacancy in the office of any Paying Agent, the Trustee shall act as such Paying Agent.

Section 9.10 Appointment of Co-Trustee.

(a) It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction denying or restricting the right of banking corporations or associations to transact business as trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture or under any other Financing Document, and in particular in case of the enforcement of any on default, or in case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee or hold title to the properties, in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee (with the prior written consent of the Issuer) appoint an additional institution as a separate trustee or co-trustee. The following provisions of this Section are adapted to these ends.

(b) In the event that the Trustee appoints an additional institution as a separate trustee or co-trustee, each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by or vested in or conveyed to the Trustee with respect thereto shall be exercisable by and vest in such separate trustee or co-trustee but only to the extent necessary to enable such separate trustee or co-trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate trustee or co-trustee shall run to and be enforceable by either of them. Such co-trustee may be removed by the Trustee at any time, with or without cause.

(c) Should any instrument in writing from the Issuer be required by the separate trustee or co-trustee so appointed or removed by the Trustee for more fully and certainly vesting in and confirming to it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. In case any separate trustee or co-trustee, or a successor to either, shall become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and

obligations of such separate trustee or co-trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a new trustee or successor to such separate trustee or co-trustee.

(d) No trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder.

Section 9.11 Books and Records; Reports.

(a) The Trustee shall at all times keep, or cause to be kept, proper books of record and accounts in which complete and accurate entries shall be made of all transactions of the Trustee relating to the Bonds and all Funds, Accounts and subaccounts established pursuant to this Indenture. Such books of record and accounts shall be available for inspection by any Owner or its agents or representatives duly authorized in writing, at reasonable hours and under reasonable circumstances and upon reasonable prior written request.

(b) The Trustee shall maintain records of all receipts, disbursements, and investments of funds with respect to the Funds, Accounts and subaccounts until the fifth anniversary of the date on which all of the Bonds shall have been paid in full.

(c) The Trustee hereby agrees to provide a monthly report or statement to the Collateral Agents and to the Borrower four (4) Business Days prior to each Transfer Date setting forth, among other things, the balance for each Fund, Account and subaccount established and created pursuant to this Indenture.

Section 9.12 Notice to Rating Agencies.

The Trustee shall provide any Rating Agency then rating a particular Series of Bonds, with written notice, if possible, in advance or, if impossible, promptly following the effective date of (i) the appointment of any successor Trustee, (ii) any amendments to the Issuer Documents and Financing Documents, (iii) the payment in full of all of the applicable Bonds, (iv) the giving of a notice of redemption of the applicable Series of Bonds, (v) the acceleration of the payment of principal of and interest on the applicable Bonds or (vi) the redemption in whole or other payment in full of the applicable Bonds. The Trustee shall also furnish to any Rating Agency then rating a particular Series of Bonds, information reasonably requested in writing by such Rating Agency. The Trustee makes this covenant as a matter of courtesy and accommodation only and shall not be liable to any Person for any failure to comply therewith.

[END OF ARTICLE IX]

**ARTICLE X**  
**SUPPLEMENTAL INDENTURES**

Section 10.01 Supplemental Indentures Not Requiring Consent of Bondholders.

(a) The Issuer and the Trustee (with the consent of the Borrower) may enter into Supplemental Indentures for any one or more or all of the following purposes, and without the consent of or prior notice to the Holders of the Bonds (but in each case with the prior written consent of the Borrowers):

1. To cure any formal defect, omission or ambiguity in this Indenture or in any description of property subject to the lien hereof, if such action is not materially adverse to the interests of the Bondholders.

2. To grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers, authority or security which may lawfully be granted or conferred and which are not contrary to or inconsistent with this Indenture as theretofore in effect.

3. To add to the covenants and agreements of the Issuer in this Indenture other covenants and agreements to be observed by the Issuer which are not contrary to or inconsistent with this Indenture as theretofore in effect.

4. To add to the limitations and restrictions in this Indenture other limitations and restrictions to be observed by the Issuer which are not contrary to or inconsistent with this Indenture as theretofore in effect.

5. To confirm, as further assurance, any pledge under, and the subjecting to any lien or pledge created or to be created by, this Indenture, or of any other moneys, securities or funds, or to subject to the lien or pledge of this Indenture additional revenues, properties or collateral.

6. To modify or amend such provisions of this Indenture as shall, in the Opinion of Bond Counsel, be necessary to assure that the interest on the Tax-Exempt Bonds not be includable in gross income for federal income tax purposes.

7. To effect any other change herein which, in the judgment of the Trustee, is not to the material prejudice of the Trustee or the Bondholders (which, in exercising such judgment, may conclusively rely, and shall be protected in relying, in good faith, upon an Opinion of Counsel or an opinion or report of engineers, accountants or other experts).

8. To modify, amend or supplement this Indenture or any Supplemental Indenture in such manner as to permit or preserve the qualification hereof and thereof under the Trust Indenture Act of 1939 or any similar federal statute hereafter in effect or to permit or preserve the qualification of the Bonds for sale or exemption from registration or other limitations under the securities laws of the United States of America or of any of the states of the United States of America,

and to add to this Indenture or any Supplemental Indenture such other terms, conditions and provisions as may be permitted by said Trust Indenture Act of 1939 or similar federal statute.

9. To authorize the issuance of Additional Bonds and prescribe the terms, forms and details thereof not inconsistent with this Indenture.

10. To make any change not materially adversely affecting any Bondholder's rights requested by a Rating Agency in order to secure or maintain a rating on the Bonds.

11. To evidence the succession of a successor Trustee or to evidence the appointment of a separate or a Co-Trustee or the succession of a successor separate or Co-Trustee.

(b) Before the Issuer and the Trustee shall enter into any Supplemental Indenture pursuant to this Section, there shall have been filed with the Trustee an Opinion of Bond Counsel stating that such Supplemental Indenture is authorized or permitted by this Indenture and complies with its terms, and that upon execution it will be valid and binding upon the Issuer in accordance with its terms, and that such Supplemental Indenture will not adversely affect the exclusion from federal income taxation of interest on any Series of Tax-Exempt Bonds Outstanding or the validity of any of the Bonds.

(c) In determining whether any amendment, consent or other action to be taken, or any failure to act, under this Indenture would adversely affect the rights of the Holders of any Series of Bonds, the Trustee shall consider the effect of such amendment, consent, action or inaction on the security of such Bonds and may rely on a written opinion of counsel in connection therewith.

#### Section 10.02 Supplemental Indentures Requiring Consent of Bondholders.

(a) Subject to the terms and provisions contained in this Section and not otherwise, the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding shall have the right, from time to time, to consent to and approve the entering into by the Issuer and the Trustee of any Supplemental Indenture as shall be deemed necessary or desirable by the Issuer for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained herein. Any such Supplemental Indenture shall also be subject to the prior written consent of the Borrower.

Nothing herein contained shall permit, or be construed as permitting, however, (i) a change in the times, amounts or currency of payment of the principal of or Redemption Price, if any, or interest on any Outstanding Bonds, a change in the terms of redemption or maturity of the principal of or the interest on any Outstanding Bonds, or a reduction (except as provided in this Indenture) in the principal amount of any Outstanding Bond or the Redemption Price, if any, or the rate of interest thereon or any extension of the time of payment thereof, (ii) the creation of a lien upon or pledge of the Trust Estate other than the lien or pledge created by this Indenture, or (iii) a reduction in the aggregate principal amount of Bonds required for consent to such Supplemental Indenture,

in each case unless the prior written consent of the Owners of each Bond affected thereby has been obtained.

(b) If at any time the Issuer shall determine to enter into any Supplemental Indenture for any of the purposes of this Section, it shall cause notice of the proposed Supplemental Indenture to be mailed, postage prepaid, to all Bondholders at least ten (10) days prior to the effective date thereof. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture, and shall state that a copy thereof is on file at the offices of the Trustee for inspection by all Bondholders.

(c) Whenever, within one year after the date of such notice, there shall have first been filed with the Trustee (i) the written consents of Holders of each of (x) not less than a majority in aggregate principal amount of the Senior Bonds then Outstanding and (y) not less than a majority in aggregate principal amount of the Subordinate Bonds then Outstanding (or, if such Supplemental Indenture shall affect only a single Series of Bonds, or only Senior Bonds or only Subordinate Bonds, the written consents of not less than a majority in aggregate principal amount of such affected Series of Bonds Outstanding, Senior Bonds only, if only Senior Bonds are affected, or Subordinate Bonds only, if only Subordinate Bonds are affected), (ii) an Opinion of Bond Counsel stating that such Supplemental Indenture is authorized or permitted by this Indenture and complies with its terms, that upon execution it will be valid and binding upon the Issuer in accordance with its terms, and to the effect that such Supplemental Indenture will not cause the interest on the Tax-Exempt Bonds to become includable in gross income for federal income tax purposes, nor adversely affect the validity of the Bonds, and (iii) a Rating Confirmation (if a rating is then in effect) with respect to each affected Series or subseries of Bonds then Outstanding, the Issuer and the Trustee may enter into such Supplemental Indenture in substantially the form described in such notice. Each valid consent shall be effective only if accompanied by proof of the holding, at the date of such consent, of the Bonds with respect to which such consent is given. Any such consent shall be binding upon the Holder of the Bonds giving such consent and upon any subsequent Holder of such Bonds and of any Bonds issued in exchange therefor (whether or not such subsequent Holder thereof has notice thereof), unless such consent is revoked in writing by the Holder of such Bonds giving such consent or a subsequent Holder thereof by filing such revocation with the Trustee prior to the execution of such Supplemental Indenture.

(d) If the Holders of not less than the percentage of Bonds required by this Section shall have consented to and approved the execution thereof as herein provided, no Holder of any Bond shall have any right to object to the execution of such Supplemental Indenture, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Issuer from executing the same or from taking any action pursuant to the provisions thereof.

(e) Upon the execution of any Supplemental Indenture pursuant to the provisions of this Section, this Indenture shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Issuer, the Trustee and all Holders of Bonds then Outstanding shall thereafter be determined, exercised and enforced under this Indenture, subject in all respects to such modifications and amendments.

Section 10.03 Execution of Supplemental Indentures.

The Trustee is authorized to join with the Issuer in the execution of any such Supplemental Indenture and to make further agreements and stipulations which may be contained therein, but the Trustee shall not be obligated to enter into any such Supplemental Indenture which affects its rights, duties or immunities under this Indenture. Any Supplemental Indenture executed in accordance with the provisions of this Article shall thereafter form a part of this Indenture and all the terms and conditions contained in any such Supplemental Indenture as to any provision authorized to be contained therein shall be deemed to be part of this Indenture for any and all purposes. In case of the execution and delivery of any Supplemental Indenture, express reference may be made thereto in the text of the Bonds delivered thereafter, if any, if deemed necessary or desirable by the Trustee. In executing any Supplemental Indenture, the Trustee may conclusively rely on an Opinion of Bond Counsel stating that the execution of such Supplemental Indenture is authorized or permitted hereunder, complies with the terms hereof and will not adversely affect the exclusion from gross income of the interest payable on the Tax-Exempt Bonds.

Section 10.04 Reserved.

Section 10.05 Reserved.

Section 10.06 Amendments to Collateral Agency and Accounts Agreement and Other Financing Documents Not Requiring Consent of Bondholders.

The Trustee may, without the consent of or notice to the Bondholders (but, in each case, with the prior written consent of the Borrower if the Borrower is not a party to such Financing Documents), amend, change or modify the Collateral Agency and Accounts Agreement or any other Financing Documents (other than this Indenture), for any of the following purposes: (i) to cure any ambiguity, inconsistency, formal defect or omission therein; (ii) to grant to or confer upon the Trustee or the Collateral Agents for the benefit of the Bondholders any additional rights, remedies, powers, authority or security which may be lawfully granted or conferred; (iii) to subject thereto additional revenues, properties or collateral; (iv) (a) to evidence the succession of a successor Trustee or to evidence the appointment of a separate or a co-Trustee or the succession of a successor separate or co-Trustee or (b) to evidence the succession of a successor Collateral Agent or to evidence the appointment of a separate Collateral Agent, a Co-Collateral Agent or a Subordinate Collateral Agent or the succession of a successor separate Collateral Agent, Co-Collateral Agent or Subordinate Collateral Agent; (v) to make any change required in connection with an amendment permitted to another Financing Document, and (vi) to make any other change that, in the judgment of the Trustee (which, in exercising such judgment, may conclusively rely, and shall be protected in relying, in good faith, upon an Opinion of Counsel or an opinion or report of engineers, accountants or other experts) does not materially adversely affect the interests of the Bondholders. Before the Trustee shall enter into or consent to (or direct the Senior Collateral Agent to enter into or consent to) any amendment, change or modification to any of the Financing Documents, there shall be filed with the Trustee an Opinion of Bond Counsel to the effect that such amendment, change or modification will not adversely affect the exclusion from federal income taxation of interest on any Series of Tax-Exempt Bonds Outstanding or the validity of any of the Bonds. The Trustee shall have no liability to any Bondholder or any other Person for any action taken by it in good faith pursuant to this Section.

Section 10.07 Amendments to Collateral Agency and Accounts Agreement and Other Financing Documents Requiring Consent of Bondholders. Except as provided in Section 10.06 hereof, the Trustee shall not consent to any amendment, change or modification of the Collateral Agency and Accounts Agreement or any of the Financing Documents other than this Indenture (or direct or permit the Collateral Agents to consent to any amendment, change or modification of the Collateral Agency and Accounts Agreement or any of the Financing Documents), without the written approval or consent of the Holders of each of (i) not less than a majority in aggregate principal amount of the Senior Bonds hereby secured and then Outstanding and (ii) not less than a majority in aggregate principal amount of the Subordinate Bonds hereby secured and then Outstanding given and procured as set forth in Section 10.02 hereof (or the written consent of not less than a majority in aggregate principal amount of such affected Series of Bonds Outstanding, Senior Bonds only, if only Senior Bonds are affected, or Subordinate Bonds only, if only Subordinate Bonds are affected by such amendment, change or modification); provided, however, there shall be no amendment, change or modification to the obligation of the Borrower to make loan payments under the TDC Loan Agreements and the TDC Notes with respect to the Bonds (except as provided therein or in connection with the issuance of a Series of Outstanding Bonds) without the prior written approval of the Holders of 100% in aggregate principal amount of the Senior Bonds at the time Outstanding and the Holders of 100% in aggregate principal amount of the Subordinate Bonds at the time Outstanding given and procured as provided in Section 10.02 hereof (or the written consent of 100% in aggregate principal amount of such affected Series of Bonds Outstanding only, if only one Series of Bonds is affected, 100% in aggregate principal amount of Senior Bonds only, if only Senior Bonds are affected, or 100% in aggregate principal amount of Subordinate Bonds only, if only Subordinate Bonds are affected by such amendment, change or modification), without the delivery of an Opinion of Bond Counsel to the effect that such amendment, change, modification, reductions or postponement will not cause the interest on any Series of Tax-Exempt Bonds to cease to be excluded from gross income for federal income tax purposes. If at any time the Borrower or the Collateral Agents shall request the consent of the Trustee to any proposed amendment, change or modification described in this Section, the Trustee shall cause notice of such proposed amendment, change or modification to be mailed in the same manner as is provided in this Article X with respect to Supplemental Indentures. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the Principal Office of the Trustee for inspection by all Bondholders. The Trustee may, but shall not be obligated to, enter into (or permit the Collateral Agents to enter into) any such amendment, change or modification which affects the Trustee's or Collateral Agents' own rights, duties or immunities or otherwise. Before the Trustee shall enter into or consent to any such amendment, change or modification, there shall be filed with the Trustee an Opinion of Bond Counsel to the effect that such amendment, change or modification will not adversely affect the exclusion of interest on any Series of Tax-Exempt Bonds for federal income tax purposes under the Code or the validity of any of the Bonds.

[END OF ARTICLE X]

## ARTICLE XI MISCELLANEOUS

Section 11.01 Evidence of Signature of Bondholders and Ownership of Bonds. Any request, consent or other instrument which this Indenture may require or permit to be signed and executed by the Bondholders may be in one or more instruments of similar tenor, and shall be signed or executed by such Bondholders in person or by their attorneys appointed in writing. Proof of the execution of any such instrument or of an instrument appointing any such attorney, or the ownership of Bonds shall be sufficient (except as otherwise herein expressly provided) if made in the following manner, but the Trustee may, nevertheless, in its discretion require further or other proof in cases where it deems the same desirable:

(a) The fact and date of the execution by any Bondholder or his or her attorney of such instrument may be proved by the certificate of any officer authorized to take acknowledgments in the jurisdiction in which he or she purports to act that the person signing such request or other instrument acknowledged to him or her the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before a notary public.

(b) The ownership of any Bonds and the amount and numbers of such Bonds and the date of holding the same shall be proved by the registration books of the Issuer kept by the Trustee as Bond Register.

Any request or consent of the Owner of any Bond shall bind all future Owners of such Bond in respect of anything done or suffered to be done by the Issuer or the Trustee in accordance therewith.

### Section 11.02 Parties Interested Herein.

Nothing in this Indenture expressed or implied is intended or shall be construed to confer upon, or to give or grant to, any person or entity, other than the Borrower, the Trustee, the Collateral Agents, the Paying Agents, if any, and the registered Owners of the Bonds, any right, remedy or claim under or by reason of this Indenture or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Indenture contained by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Borrower, the Trustee, the Paying Agents, if any, and the registered Owners of the Bonds.

### Section 11.03 Titles, Headings, Etc.

The titles and headings of the articles, sections, and subsections of this Indenture have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms or provisions hereof.

### Section 11.04 No Pecuniary Liability of Issuer or Members.

No provision, covenant or agreement contained in this Indenture or in the Bonds or any obligations herein or therein imposed upon the Issuer or the breach thereof, shall constitute or give rise to or impose upon the Issuer a pecuniary liability or a charge upon its general credit. In making



the agreements, provisions and covenants set forth in this Indenture, the Issuer has not obligated itself except with respect to the Trust Estate.

All covenants, stipulations, promises, agreements and obligations of the Issuer contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the Issuer and not of any member, director, officer, employee or agent of the Issuer in his individual capacity, and no recourse shall be had for the payment of the principal or Redemption Price, if any, of, Sinking Fund Requirements for, if any, or interest on the Bonds or for any claim based thereon or hereunder against any member, director, officer, employee or agent of the Issuer or any natural person executing the Bonds.

#### Section 11.05 Severability.

Whenever possible, each provision of this Indenture shall be interpreted in such a manner as to be effective and valid under applicable Law, but if any provision of this Indenture shall be prohibited by or invalid under applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Indenture.

#### Section 11.06 Governing Law; Waiver of Jury Trial.

THE EFFECT AND MEANING OF THIS INDENTURE AND THE RIGHTS OF ALL PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED ACCORDING TO, THE LAWS OF THE STATE, WITHOUT GIVING EFFECT TO THE PRINCIPLES OF CONFLICTS OF LAWS THEREOF. EACH OF THE ISSUER AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE BONDS OR THE TRANSACTIONS CONTEMPLATED HEREBY.

#### Section 11.07 Execution in Counterparts.

This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

Section 11.08 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by overnight delivery service or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Issuer at

With a copy to:

If to the Borrower at

If to the Trustee at

If to Moody's at

If to S&P at

If to Fitch at

A duplicate copy of each notice, certificate or other communication given hereunder by or to the Issuer, the Borrower or the Trustee shall also be given to the Issuer, the Borrower and the Trustee. Alternatively, all notices, certificates or other communications hereunder may be given by Electronic Means. The Issuer, the Borrower, and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

In case, by reason of the suspension of regular mail service as a result of a strike, work stoppage or similar activity, it shall be impractical to mail notice of any event when such notice is required to be given pursuant to any provision of this Indenture, any manner of giving notice as shall be satisfactory to the Trustee and the Issuer shall be deemed to be a sufficient giving of such notice.

Upon receipt of the report(s) referred to in Section 7.01(b)(iii)(x) hereof, the Trustee shall promptly provide or cause to be provided a copy of such report(s) to the Rating Agencies.

Section 11.09 Payments Due or Actions to be Taken on Non-Business Days.

If the date for making any payment or the last day for performance of any act or the exercise of any right, as provided in this Indenture, shall not be a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided herein, and no interest on such payment shall continue to accrue for the period after such date.

Section 11.10 Reliance on Directions of the Borrower.

Whenever in this Indenture or the Tax Certificate an action or direction is required of or permitted by the Issuer or the Borrower, then, except as otherwise specifically provided, the Issuer and the Trustee agree that either of them shall be authorized to conclusively rely upon a written instrument from an Issuer Representative or Authorized Borrower Representative, as the case may be, with respect thereto.

Section 11.11 Moneys Held for Particular Bonds.

The amounts held by the Trustee or Paying Agents for the payment of the principal of and Redemption Price, if any, and interest due on any date with respect to particular Bonds shall, on

and after such date and pending such payment, and subject to any rebate requirements as set forth in the Tax Certificate or this Indenture, be set aside on its books and held in trust for the Holders of the Bonds entitled thereto. Such amounts so held shall be uninvested or, if invested, invested only in Government Obligations maturing within thirty (30) days.

Section 11.12 Force Majeure.

In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 11.13 USA PATRIOT Act.

The parties hereto acknowledge that in accordance with Section 326 of the USA PATRIOT Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The Issuer agrees that it will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the USA PATRIOT Act.

Section 11.14 Prior Agreements Superseded.

This Indenture shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Issuer and the Trustee relating to the subject matter hereof (other than any Financing Document or other document being executed contemporaneously herewith) with respect to the subject matter hereof.

Section 11.15 Exculpation of Issuer.

In the exercise of the powers of the Issuer and its members, officers, employees or agents under this Indenture and the TDC Loan Agreements, and including without limitation the application of moneys, the investment of funds, or the assignment or other disposition of the Trust Estate in the Event of Default by the Borrower, neither the Issuer nor its members, officers, employees or agents shall be accountable, except in the case of acts or omissions of gross negligence or willful misconduct of such parties, to the Owners of the Bonds, the Trustee, or the Borrower for any action taken or omitted by it or them in good faith and believed by it or them to be authorized or within the discretion or rights or powers conferred thereto. The Issuer and its members, officers, employees and agents shall be protected in acting upon any paper or document believed by it or them to be genuine, they may conclusively rely upon the advice of counsel and they may (but need not) require further evidence of any fact or matter before taking any action.

Section 11.16 Indemnified Parties Entitled to Indemnity.

(a) Pursuant to and as provided in Section 7.2 of the TDC Loan Agreements, the Borrower shall indemnify the Issuer, any Person who “controls” the Issuer within the meaning of Section 15 of the Securities Act of 1933, as amended, or Section 20 of the Securities Exchange Act of 1934, as amended, the Trustee and any member, principal, director, officer, official, agent, attorney and employee of the Issuer, the Trustee or the State (herein the “Indemnified Parties”).

(b) When an Indemnified Party incurs expenses or renders services after an Event of Default, the expenses and compensation for the services are intended to constitute expenses of administration under any applicable bankruptcy law.

Section 11.17 Issuer Not Responsible for Insurance, Taxes, Execution of Indenture, or Application of Moneys Applied in Accordance with this Indenture.

(a) The Issuer is not under any obligation to effect or maintain insurance or to renew any policies of insurance or to inquire as to the sufficiency of any policies of insurance carried by the Borrower, or to report, or make or file claims or proof of loss for, any loss or damage insured against or which may occur, or to keep itself informed or advised as to the payment of any taxes or assessments, or to require any such payment to be made. The Issuer shall have no responsibility in respect of the sufficiency of the security provided by this Indenture. The Issuer shall not be under any obligation to see that any duties herein imposed upon any party other than itself, or any covenants herein contained on the part of any party other than itself to be performed, shall be done or performed, and the Issuer shall not be under any liability for failure to see that any such duties or covenants are so done or performed.

(b) The immunities and exemptions from liability of the Issuer hereunder shall extend to its directors, members, attorneys, officers, employees and agents.

Section 11.18 Issuer May Rely on Certificates.

The Issuer shall be protected and shall incur no liability in acting or proceeding, or in not acting or not proceeding, in good faith, in a reasonable manner and in accordance with the terms of this Indenture, upon any resolution, order, notice, request, consent, waiver, certificate, statement, affidavit, requisition, bond or other paper or document which it shall in good faith reasonably believe to be genuine and to have been adopted or signed by the proper board or Person or to have been prepared and furnished pursuant to any of the provisions of the Collateral Agency and Accounts Agreement, the TDC Loan Agreements or this Indenture, or upon the written opinion of any attorney, engineer, accountant or other expert reasonably believed by it to be qualified in relation to the subject matter and otherwise permitted hereunder, and the Issuer shall not be under any duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument.

Section 11.19 Effective Date.

The date of this Indenture is for reference purposes only and shall not be construed to imply that this Indenture was executed as of the date first written above. This Indenture has been executed by the parties hereto and is effective on the Closing Date.

[SIGNATURE PAGE FOLLOWS]

**[SIGNATURE PAGES AND EXHIBITS HAVE BEEN REMOVED]**

**(THIS PAGE INTENTIONALLY LEFT BLANK)**



**FORM SECOND SUPPLEMENTAL TRUST INDENTURE**

**(THIS PAGE INTENTIONALLY LEFT BLANK)**

---

---

**TDC SECOND SUPPLEMENTAL BOND INDENTURE OF TRUST**

Between

**NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION**

as Issuer

**THE BANK OF NEW YORK MELLON**

as Trustee

and

**ASSURED GUARANTY INC.**

as Bond Insurer

Dated as of \_\_\_\_\_ 1, 2024

Governing the Issuance of and Securing

\$[•]  
New York Transportation Development Corporation  
Special Facilities Revenue Bonds, Senior Series 2024A  
(Green Bonds) (AMT)  
(Current Interest Bonds)  
(JFK Airport Terminal 6 Redevelopment Project)

\$[•]  
New York Transportation Development Corporation  
Special Facilities Revenue Bonds, Senior Series 2024B  
(AMT)  
(Convertible Capital Appreciation Bonds)  
(JFK Airport Terminal 6 Redevelopment Project)

---

---

## TABLE OF CONTENTS

(This Table of Contents is not a part of this Second Supplemental Indenture and is only for convenience of reference)

	<u>Page</u>
ARTICLE I SECOND SUPPLEMENTAL INDENTURE; DEFINITIONS AND RULES OF INTERPRETATION .....	4
Section 1.02    Definitions and Rules of Interpretation.....	4
ARTICLE II TERMS OF THE BONDS .....	5
Section 2.01    Authorization of Series 2024A Bonds, Principal Amount, and Designation. ....	5
Section 2.02    Authorization of Series 2024B Bonds, Principal Amount, and Designation. ....	5
Section 2.03    Terms of the Series 2024A Bonds. ....	6
Section 2.04    Terms of the Series 2024B Bonds .....	7
Section 2.05    Terms of the Series 2024 Bonds .....	8
Section 2.06    Book-Entry System.....	9
Section 2.07    Redemption Provisions for the Series 2024A Bonds.....	11
Section 2.08    Redemption Provisions for the Series 2024B Bonds.....	14
Section 2.09    Notice of Redemption. ....	18
Section 2.10    Payment of Redeemed Bonds .....	18
Section 2.11    Cancellation of Redeemed Bonds.....	19
Section 2.12    Mandatory Optional Redemption of the Series 2024A Balloon Indebtedness. ....	19
ARTICLE III ACCOUNTS FOR SERIES 2024 BONDS; APPLICATION OF PROCEEDS OF SERIES 2024 BONDS AND FLOW OF FUNDS.....	21
Section 3.01    Accounts for Series 2024 Bonds.....	21
Section 3.02    Application of Senior Bond Fund. ....	22
ARTICLE IV BOND INSURANCE .....	24
Section 4.01    Nonpayment of Principal or Interest on the Insured Series 2024 Bonds .....	24
Section 4.02    Bond Insurance Policy Payment Procedures .....	24
Section 4.03    Acceleration .....	26
Section 4.04    Subrogation.....	26
Section 4.05    Bond Insurer as Bond Owner.....	26
Section 4.06    Contractual Rights of the Bond Insurer .....	27
Section 4.07    Amendments .....	27
Section 4.08    Bond Insurer as Third-Party Beneficiary .....	27
Section 4.09    Notices, etc .....	28

## TABLE OF CONTENTS

(Continued)

	<u>Page</u>
Section 4.10	Bond Insurer Premium and Bond Insurer Fees..... 28
Section 4.11	Access and Information ..... 28
Section 4.12	Bond Insurer Default ..... 28
Section 4.13	Applicability of Article 4 ..... 29
Section 4.14	Appointment of Secured Debt Representative of Bond Insurer. .... 29
Section 4.15	Majority Bondholders May Control Proceedings ..... 29
Section 4.16	Rights and Remedies of the Bond Insurer ..... 29
Section 4.17	Bond Insurer Designations..... 30
Section 4.18	Bond Insurer Unsecured Obligations. .... 30
Section 4.19	Special Limited Obligations of the Issuer..... 30
ARTICLE V AMENDMENT TO THE MASTER INDENTURE ..... 31	
Section 5.01	Amendment to Section 1.01 Definition of Master Indenture..... 31
Section 5.02	Amendment to Section 10.06 of Master Indenture ..... 31
ARTICLE VI MISCELLANEOUS ..... 33	
Section 6.01	Titles, Headings, Etc ..... 33
Section 6.02	No Pecuniary Liability of Issuer or Members..... 33
Section 6.03	Severability ..... 33
Section 6.04	Governing Law; Waiver of Jury Trial ..... 33
Section 6.05	Execution in Counterparts ..... 33
Section 6.06	Notices ..... 33
Section 6.07	Payments Due or Actions to be Taken on Non-Business Days ..... 36
Section 6.08	Effective Date ..... 36
Exhibit A-1	Form of Series 2024A Bonds ..... A-1-1
Exhibit A-2	Form of Series 2024B Bonds ..... A-2-1
Schedule I	Bond Insurer Premium Schedule ..... S-1

**THIS TDC SECOND SUPPLEMENTAL BOND INDENTURE OF TRUST** dated as of [•] 1, 2024 (this “Second Supplemental Indenture”) is by and among **NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION**, a local development corporation formed under Section 1411 of the New York Not-for-Profit Corporation Law, being Chapter 35 of the Consolidated Laws of New York, created by action of the New York Job Development Authority (“JDA”) established under Section 1802, Subtitle I, Title 8, Article 8, of the New York Public Authorities Law, and having an address c/o Empire State Development, \_\_\_\_\_ (the “Issuer”), party of the first part, **THE BANK OF NEW YORK MELLON**, a banking corporation duly organized, existing and authorized to accept and execute trusts of the character herein set out under the laws of the State of New York, as Trustee under the Master Indenture (the “Trustee”), having a designated corporate trust office at New York, New York, party of the second part, and **ASSURED GUARANTY INC**, a Maryland domiciled financial guaranty insurance company.

## RECITALS

**WHEREAS**, The Port Authority of New York and New Jersey, a municipal corporate instrumentality and political subdivision of the States of New York and New Jersey, created and existing by virtue of the Compact of April 30, 1921, made by and between the States of New York and New Jersey, and thereafter consented to by the Congress of the United States (the “Port Authority”) has entered into a Lease, dated as of November 17, 2022 (as supplemented and amended from time to time, the “Lease Agreement”), with the Borrower pursuant to which, among other things, the Borrower is obliged to undertake the following (collectively, the “Project”): (i) the operation, maintenance, and demolition of the Existing Terminal Facilities at John F. Kennedy International Airport in Queens, New York (“Airport”), which Existing Terminal Facilities include the existing Terminal 7 facilities, (ii) the design, construction, financing, operation and maintenance of the New Terminal Facilities at the Airport (which New Terminal Facilities include new Terminal 6 facilities and replacement Terminal 7 facilities) and certain ancillary facilities, and (iii) the design and construction of the Off-Premises Facilities at the Airport on behalf of the Port Authority, which Off-Premises Facilities will not be operated or maintained by the Borrower and will not constitute part of the facilities leased to the Borrower under the Lease Agreement;

**WHEREAS**, pursuant to that certain Credit Agreement, dated as of November 1, 2022 (as amended, supplemented and/or otherwise modified from time to time, the “Credit Agreement”), among the Issuer, the Borrower, the Lenders, including the Security Deposit Facility Lenders and the Security Deposit Facility LC Issuing Bank, as Bank Lenders, each from time to time party thereto, the Administrative Agent and certain joint lead arrangers and bookrunners, (a) the Lenders have agreed to make certain Senior Term Loans available to the Issuer, (b) the Security Deposit Facility LC Issuing Bank has agreed to make Security Deposit LCs available to the Issuer and (c) the Security Deposit Facility Lender has agreed to make Security Deposit Loans to the Issuer, each on the terms and subject to the conditions set forth therein, and a portion of the proceeds of the Senior Loans has been loaned by the Issuer to the Borrower pursuant to the TDC Loan Agreements, and the Borrower has used such proceeds of such Senior Loans to finance a portion of the Project Costs;

**WHEREAS**, pursuant to a resolution adopted on October 20, 2022 by the Issuer (the “TDC Resolution”) the Issuer and the Trustee have entered into a TDC Master Bond Indenture of Trust dated as of November 1, 2022 (as the same may be amended or supplemented from time to time, the “Master Indenture”);

**WHEREAS**, pursuant to the TDC First Supplemental Bond Indenture of Trust dated as of November 1, 2022 (the “First Supplemental Indenture”), by and between the Issuer and the Trustee, the Issuer has issued its New York Transportation Development Corporation Special Facilities Bonds, Senior Series 2022A (Tax-Exempt) (AMT) (JFK Airport Terminal 6-7 Redevelopment Project) in the aggregate

principal amount of \$435,000,000 (the “Series 2022A Bonds”), and loaned the Borrower such funds pursuant to the TDC Loan Agreements for Project Costs;

**WHEREAS**, the Borrower may request from time to time that the Issuer issue Additional Bonds pursuant to supplemental indentures to the Master Indenture to finance Project Costs;

**WHEREAS**, the Borrower has requested that the Issuer issue its New York Transportation Development Corporation, Special Facilities Revenue Bonds, Senior Series 2024A (Green Bonds) (AMT) (Current Interest Bonds) (JFK Airport Terminal 6 Redevelopment Project), in the aggregate principal amount of \$[•] (the “Series 2024A Bonds”) and its New York Transportation Development Corporation, Special Facilities Revenue Bonds, Senior Series 2024B (AMT) (Convertible Capital Appreciation Bonds) (JFK Airport Terminal 6 Redevelopment Project), in the aggregate principal amount of \$[•] (the “Series 2024B Bonds”) and, together with the Series 2024A Bonds, the “Series 2024 Bonds”), to provide funds to loan to the Borrower pursuant to the provisions of the Senior Financing Documents to refinance a portion of the Senior Term Loans, redeem a portion of the Series 2022A Bonds, pay certain interest rate swap termination fees and pay certain costs of issuance related to the Series 2024 Bonds;

**WHEREAS**, pursuant to a resolution adopted on [October 1], 2024 by the Issuer (the “Series 2024 TDC Resolution”), the Issuer has duly determined to issue the Series 2024 Bonds under and in accordance with the Master Indenture and pursuant to this Second Supplemental Indenture as Additional Senior Obligations;

**WHEREAS**, contemporaneously with the execution, issuance and delivery of the Series 2024 Bonds, the Issuer will loan a portion of the proceeds of the Series 2024 Bonds to the Borrower pursuant to the terms of the First Amendment to the TDC Building Loan Agreement, dated as of [•] 1, 2024 (the “First Building Loan Agreement Amendment”) and the First Amendment to the TDC Project Loan Agreement, dated as of [•] 1, 2024 (the “First Project Loan Agreement Amendment”) and collectively with the First Building Loan Agreement Amendment, the “First Amendments to TDC Loan Agreements”) in the amount of \$[•] to enable the Borrower to prepay a portion of the Senior Term Loans, redeem a portion of the Series 2022A Bonds, pay certain interest rate swap termination fees and pay certain costs of issuance related to the Series 2024 Bonds;

**WHEREAS**, in connection with the execution and delivery of the First Amendments to TDC Loan Agreements, the Borrower will execute and deliver to the Issuer the Series 2024 Building Note (the “Series 2024 Building Note”) and the Series 2024 Project Note (the “Series 2024 Project Note”) and, together with the Series 2024 Building Note, the “Series 2024 Notes”), evidencing the aggregate principal amount of loans made or to be made by the Issuer to the Borrower of the proceeds of the Series 2024 Bonds pursuant to the First Amendments to TDC Loan Agreements;

**WHEREAS**, the Issuer will assign all of its right, title and interest in the First Amendments to TDC Loan Agreements, and the Series 2024 Notes, except for the Reserved Rights, to the Senior Collateral Agent, as security for the Senior Obligations;

**WHEREAS**, in order to secure the Senior Obligations, the Borrower has, pursuant to the Leasehold Mortgages, granted mortgage liens on and security interests in all of the interests of the Borrower under the Lease Agreement and security interests in certain additional accounts and property of the Borrower (including a pledge of the Borrower’s Project Revenues) to the Issuer and the Senior Collateral Agent, pursuant to the Leasehold Mortgages and other Senior Collateral Documents;

**WHEREAS**, the Master Indenture provides that, in connection with the issuance of a Series of Bonds, the Issuer shall execute and deliver to the Trustee a Supplemental Indenture governing the issuance of the Series of Bonds and setting forth the provisions thereof; and

**WHEREAS**, the Issuer has taken all necessary action to make the Series 2024 Bonds, when authenticated by the Trustee, valid and binding obligations of the Issuer in accordance with the Master Indenture and to constitute this Second Supplemental Indenture a valid and binding instrument for the authorization of and security for the payment of the principal, Accreted Value, Redemption Price and Sinking Fund Requirements, if any, of and interest on the Series 2024 Bonds.

**NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS, THIS SECOND SUPPLEMENTAL WITNESSETH:**

That the Issuer does, for good and valuable consideration, the receipt of which is hereby acknowledged, hereby covenant and agree with the Trustee and the respective Holders, from time to time, of the Series 2024 Bonds as follows:



## ARTICLE I

### SECOND SUPPLEMENTAL INDENTURE; DEFINITIONS AND RULES OF INTERPRETATION

Section 1.01 Second Supplemental Indenture. This Second Supplemental Indenture is authorized and executed by the Issuer and delivered to the Trustee pursuant to and in accordance with the Master Indenture. All covenants and agreements of the Master Indenture shall apply with full force and effect to the Series 2024 Bonds and to the Holders thereof, except as otherwise provided herein.

Section 1.02 Definitions and Rules of Interpretation. All capitalized terms used herein but not otherwise defined herein shall have the respective meanings ascribed to such terms in Exhibit A to the Collateral Agency and Accounts Agreement (as defined in the Master Indenture). Except as otherwise expressly provided or unless the context otherwise requires, the rules of interpretation included in Exhibit A to the Collateral Agency and Accounts Agreement (as defined in the Master Indenture) shall apply to this Second Supplemental Indenture.

Section 1.03 Additional Senior Financing Document Designation. This Second Supplemental Indenture shall constitute an Additional Senior Financing Document and the Series 2024 Bonds shall constitute Additional Senior Obligations, in each case pursuant to the Senior Financing Documents and as defined in the Collateral Agency and Accounts Agreement.

[END OF ARTICLE I]

## ARTICLE II

### TERMS OF THE BONDS

#### Section 2.01 Authorization of Series 2024A Bonds, Principal Amount, and Designation.

(a) The Series 2024A Bonds shall be issued as Senior Bonds pursuant to the Master Indenture in the aggregate principal amount of \$[•], and shall be used to prepay a portion of the Senior Term Loans, redeem a portion of the Series 2022A Bonds, pay certain interest rate swap termination fees and pay certain costs of issuance related to the Series 2024A Bonds. The Series 2024A Bonds shall be designated “New York Transportation Development Corporation, Special Facilities Revenue Bonds, Senior Series 2024A (Green Bonds) (AMT) (Current Interest Bonds) (JFK Airport Terminal 6 Redevelopment Project),” and shall have the terms set forth herein and in the Master Indenture. The Series 2024A Bonds shall be dated the Series 2024A Closing Date and shall be issued in Authorized Denominations. The Series 2024A Bonds shall consist of Current Interest Bonds.

(b) The Series 2024A Bonds shall be numbered consecutively from RA-1 upwards in order of issuance according to the records of the Bond Registrar and the Series 2024A Bonds issued upon any registration of transfer or exchange pursuant to this Second Supplemental Indenture shall be numbered in such manner as the Trustee in its discretion shall determine.

(c) The Series 2024A Bonds shall be payable, executed, authenticated, registrable, exchangeable and secured all as set forth in the Master Indenture and this Second Supplemental Indenture.

(d) The Series 2024A Bonds shall be in substantially the form set forth in Exhibit A-1 hereto, with such alterations and variations in the arrangement of paragraphs and the text to be contained on the face of each Series 2024A Bond, and with such completions, omissions, insertions, and changes as may be required by the circumstances to conform to industry practices or as may otherwise be consistent with the Master Indenture and this Second Supplemental Indenture. During any period that the Securities Depository or its nominee is the registered Holder of the Series 2024A Bonds, such forms shall be changed as may be necessary or desirable to reflect such registered ownership.

#### Section 2.02 Authorization of Series 2024B Bonds, Principal Amount, and Designation.

(a) The Series 2024B Bonds shall be issued as Senior Bonds pursuant to the Master Indenture in the aggregate principal amount of \$[•], and shall be used to prepay a portion of the Senior Term Loans, redeem a portion of the Series 2022A Bonds, pay certain interest rate swap termination fees and pay certain costs of issuance related to the Series 2024B Bonds. The Series 2024B Bonds shall be designated “New York Transportation Development Corporation, Special Facilities Revenue Bonds, Senior Series 2024B (AMT) (Convertible Capital Appreciation Bonds) (JFK Airport Terminal 6 Redevelopment Project)” and shall have the terms set forth herein and in the Master Indenture. The Series 2024B Bonds shall be dated the Series 2024 Closing Date and shall be issued in Authorized Denominations. The Series 2024B Bonds shall consist of Convertible Capital Appreciation Bonds.

(b) The Series 2024B Bonds shall be numbered consecutively from RB-1 upwards in order of issuance according to the records of the Bond Registrar and the Series 2024B Bonds issued upon any registration of transfer or exchange pursuant to this Second Supplemental Indenture shall be numbered in such manner as the Trustee in its discretion shall determine.

(c) The Series 2024B Bonds shall be payable, executed, authenticated, registrable, exchangeable and secured all as set forth in the Master Indenture and this Second Supplemental Indenture.

(d) The Series 2024B Bonds shall be in substantially the form set forth in Exhibit A-2 hereto, with such alterations and variations in the arrangement of paragraphs and the text to be contained on the face of each Series 2024B Bonds, and with such completions, omissions, insertions, and changes as may be required by the circumstances to conform to industry practices or as may otherwise be consistent with the Master Indenture and this Second Supplemental Indenture. During any period that the Securities Depository or its nominee is the registered Holder of the Series 2024B Bonds, such forms shall be changed as may be necessary or desirable to reflect such registered ownership.

Section 2.03 Terms of the Series 2024A Bonds.

(a) The Series 2024A Bonds shall be issued as Current Interest Bonds.

(b) Subject to prior redemption upon the terms and conditions hereinafter set forth, the Series 2024A Bonds shall mature on the dates and in the principal amounts as follows. Certain of the Series 2024A Bonds indicated below (the “Insured Series 2024A Bonds”), shall be entitled to the benefits of a financial guaranty insurance policy to be issued by the Bond Insurer:

Amount	Maturity Date ( _____ 1)
\$ _____	20 _____
_____	20 _____
_____	20 _____
_____	20 _____
_____	20 _____
_____	20 _____
_____	20 _____
_____	20 _____
_____	20 _____
_____	20 _____
_____	20 _____
_____	20 _____

\*Insured Series 2024A Bonds

(c) *Principal Payment Period.* The Principal Payment Period for the Series 2024A Bonds is six (6) months.

(d) *Balloon Indebtedness.* The Series 2024A Bonds maturing on \_\_\_\_\_, 20[ ] shall constitute Balloon Indebtedness as designated in the Series 2024A Balloon Indebtedness Certificate, attached to the First Building Loan Agreement Amendment as Exhibit G-1. The Holders of the Series 2024A Balloon Indebtedness and the Bond Insurer (solely as an Owner of Series 2024 Bonds and with respect to any subrogated claim with respect to Series 2024 Bonds) shall (if and when such account is established pursuant to the Collateral Agency and Accounts Agreement) benefit from a Security Interest in the Surplus Remaining Revenue Account pursuant to Section 5.17(e) of the Collateral Agency and Accounts Agreement. The Surplus Remaining Revenue Account is, upon the establishment of such account, hereby pledged as additional security in favor of the Trustee on behalf of the Holders of the Series 2024A Balloon Indebtedness and the Bond Insurer (solely as an Owner of Series 2024 Bonds and with respect to any subrogated claim with respect to Series 2024 Bonds).

(e) The Series 2024A Bonds will be dated as of \_\_\_\_\_, 2024, and will bear interest payable on \_\_\_\_\_ 1 and \_\_\_\_\_ 1 of each year, commencing \_\_\_\_\_ 1, 2024 (the “Interest Payment Date”). The Interest Payment Period for the Series 2024A Bonds shall be [six] months, commencing on

\_\_\_\_\_, 2024. The Series 2024A Bonds shall bear interest at the rates per year, and will mature in the principal amounts and on the Principal Payment Dates, as follows:

Principal Amount	Principal Payment Date (_____ 1)	Interest Rate
\$ _____	20__	- . ____ %
_____	20__	- . ____
_____	20__	- . ____
_____	20__	- . ____
_____	20__	- . ____
_____	20__	- . ____
_____	20__	- . ____
_____	20__	- . ____
_____	20__	- . ____
_____	20__	- . ____
_____	20__	- . ____
_____	20__	- . ____

Section 2.04 Terms of the Series 2024B Bonds.

(a) The Series 2024B Bonds shall be issued as Convertible Capital Appreciation Bonds.

(b) Subject to prior redemption upon the terms and conditions hereinafter set forth, the Series 2024B Bonds shall mature on the dates and in the principal amounts as follows. Certain of the Series 2024B Bonds indicated below (the “Insured Series 2024B Bonds” and collectively, with the Insured Series 2024A Bonds, the “Insured Series 2024 Bonds”), shall be entitled to the benefits of a financial guaranty insurance policy to be issued by the Bond Insurer:

Amount	Maturity Date (_____ 1)
\$ _____	20__
_____	20__
_____	20__
_____	20__
_____	20__
_____	20__
_____	20__
_____	20__
_____	20__
_____	20__
_____	20__
_____	20__

\*Insured Series 2024B Bonds

(c) The Series 2024B Bonds will be dated as of \_\_\_\_\_, 2024. Interest on such Series 2024B Bonds shall be compounded semiannually on Compounding Dates of \_\_\_\_\_ 1 and \_\_\_\_\_ 1 of each year, commencing \_\_\_\_\_ 1, 2024, until, but not including, the Interest Commencement Date of \_\_\_\_\_ 1, 20\_\_\_. On and after the Interest Commencement Date, such Series 2024B Bonds shall be deemed Current Interest Bonds and shall bear interest, computed based on their

respective Accreted Values on such Interest Commencement Date, payable semiannually on Interest Payment Dates of \_\_\_\_\_ 1 and \_\_\_\_\_ 1 of each year, commencing on \_\_\_\_\_ 1, 20\_\_\_\_. Such Series 2024B Bonds shall be issued in the original principal amounts, shall mature and be payable as to both principal and interest in the Maturity Amounts on the Principal Payment Dates, and shall accrue and/or bear interest at the interest rates per year, as follows:

Series 2024B Bonds

\$ \_\_\_\_\_ Series 2024B Term Bond Due \_\_\_\_\_ 1, 20\_\_\_\_  
 \$ \_\_\_\_\_ due as of \_\_\_\_\_ 1, 20\_\_\_\_ - Interest Rate\* \_\_\_\_\_%

\$ \_\_\_\_\_ Series 2024B Term Bond Due \_\_\_\_\_ 1, 20\_\_\_\_  
 \$ \_\_\_\_\_ due as of \_\_\_\_\_ 1, 20\_\_\_\_ - Interest Rate\* \_\_\_\_\_%

\* Interest Commencement Date is \_\_\_\_\_ 1, 20\_\_\_\_

The Accreted Value per \$5,000 Maturity Amount of the Series 2024B Bonds as of each Interest Accretion Date is as follows:

Bond Accreted Value Table

Interest Accretion Date	For Bonds Maturing in 20____	For Bonds Maturing in 20____
____/____/20____	\$ _____	\$ _____
____/____/20____	_____	_____
____/____/20____	_____	_____
____/____/20____	_____	_____
____/____/20____	_____	_____
____/____/20____	_____	_____
____/____/20____*	_____	_____

\*Final Interest Accretion Date is the day prior to the Interest Commencement Date.

Section 2.05 Terms of the Series 2024 Bonds.

(a) Interest on the Series 2024 Bonds shall be computed on the basis of a 360-day year consisting of twelve 30-day months. Interest on the Series 2024 Bonds shall be payable on each Interest Payment Date by the Paying Agent by check mailed on the date on which such interest is due to the Holders of the Series 2024 Bonds as of the close of business on the Record Date in respect of such Interest Payment Date at the registered addresses of Holders as shall appear on the registration books maintained pursuant to this Second Supplemental Indenture and the Master Indenture. In the case of any Holder of Series 2024 Bonds in an aggregate principal amount in excess of \$1,000,000 as shown on the registration books kept by the Bond Registrar who, prior to the Record Date next preceding any Interest Payment Date, shall have provided, or caused to be provided, wire transfer instructions to the Paying Agent, interest payable on such Series 2024 Bonds shall be paid in accordance with the wire transfer instructions provided by the Holder of such Series 2024 Bond. Payment of the principal of the Series 2024 Bonds shall be in lawful money of the United States of America made payable to the Holder thereof upon presentation and surrender of the Series 2024 Bonds at the principal corporate trust office of the Bond Registrar. Notwithstanding any other

provision of the Series 2024 Bonds to the contrary, so long as the Series 2024 Bonds shall be restricted to being registered on the registration books of the Issuer maintained by the Bond Registrar in the name of the Securities Depository for the Series 2024 Bonds, the provisions of the Master Indenture and this Second Supplemental Indenture governing Book-Entry Bonds shall govern the manner of payment of the principal, Accreted Value and Redemption Price of, and Sinking Fund Requirements, if any, of and interest on the Series 2024 Bonds.

(b) Interest on any Series 2024 Bond that is due and payable but not paid on the date due (“Defaulted Interest”) shall cease to be payable to the Owner of such Bond on the relevant Record Date and shall be payable to the Owner in whose name such Bond is registered at the close of business on a special record date (the “Special Record Date”) for the payment of such Defaulted Interest, which Special Record Date shall be fixed in the following manner. The Borrower shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Series 2024 Bond and the date of the proposed payment (which date shall be such as will enable the Trustee to comply with the next sentence hereof), and shall deposit with the Trustee at the time of such notice an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment; money deposited with the Trustee shall be held in trust for the benefit of the Owners of the Series 2024 Bonds entitled to such Defaulted Interest as provided in this Section. Following receipt of such funds the Trustee shall fix the Special Record Date for the payment of such Defaulted Interest, which shall be not more than fifteen (15) nor less than ten (10) days prior to the date of the proposed payment and not less than ten (10) days after the receipt of such funds by the Trustee. The Trustee shall promptly notify the Borrower and the Issuer of such Special Record Date and, in the name and at the expense of the Borrower, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be delivered by Electronic Means for so long as the Series 2024 Bonds are Book-Entry Bonds and, in all other cases, to be mailed, first-class postage prepaid, to each Owner of a Series 2024 Bond entitled to such notice at the address of such Owner as it appears on the bond registration books not less than ten (10) days prior to such Special Record Date.

Subject to the foregoing provisions of this Section, each Series 2024 Bond delivered under this Second Supplemental Indenture upon registration of transfer of or in exchange for or in lieu of any other Series 2024 Bond of the same Series shall carry all the rights to interest accrued and unpaid, and to accrue, which were carried by such other Series 2024 Bond, and each such Series 2024 Bond shall bear interest from such date, so that neither gain nor loss in interest shall result from such registration of transfer or exchange.

The person in whose name any Series 2024 Bond is registered at the close of business on any Record Date with respect to any Interest Payment Date shall be entitled to receive the interest payable on such Interest Payment Date notwithstanding the cancellation of such Series 2024 Bond upon any registration of transfer or exchange thereof subsequent to the Record Date and prior to such Interest Payment Date.

(c) The Series 2024 Bonds shall be dated the Series 2024 Closing Date. The Series 2024 Bonds, the certificate of authentication to be endorsed thereon and the form of assignment to be included therein, shall be substantially in the forms set forth in Exhibit A-1 and Exhibit A-2 hereto with such appropriate variations, omissions, substitutions and insertions as are permitted or required by this Second Supplemental Indenture.

Section 2.06 Book-Entry System. The Series 2024 Bonds shall be initially issued to a Securities Depository for holding in a Book-Entry System, without further action by the Issuer. There shall be a single bond certificate representing the entire aggregate principal amount of each separate maturity and interest

rate of the Series 2024 Bonds, and each bond certificate shall be registered in the name of the Securities Depository or its nominee, as Holder, and immobilized initially in the custody of the Securities Depository.

The Trustee, pursuant to a written request by the Issuer for the removal or replacement of the Securities Depository, and upon 30 days' notice to the Securities Depository, may remove or replace the Securities Depository. The Trustee agrees to remove or replace the Securities Depository at any time at the request of the Issuer. The Securities Depository may determine not to continue to act as Securities Depository for the Series 2024 Bonds upon 30 days' written notice to the Trustee. The Holders have no right to either a Book-Entry System or a Securities Depository for the Series 2024 Bonds.

Notwithstanding any other provision of this Second Supplemental Indenture or the Series 2024 Bonds, so long as the Series 2024 Bonds are in a Book-Entry System and the Securities Depository or its nominee is the Holder of the Series 2024 Bonds:

(i) Presentation of Series 2024 Bonds to the Paying Agent at redemption or at maturity shall be deemed made to the Paying Agent when the right to exercise ownership rights in the Series 2024 Bonds through the Securities Depository or the Securities Depository's participants is transferred by the Securities Depository on its books.

(ii) The Securities Depository may present notices, approvals, waivers, votes or other communications required or permitted to be made by Holders under this Second Supplemental Indenture on a fractionalized basis on behalf of some or all of those persons entitled to exercise ownership rights in the Series 2024 Bonds through the Securities Depository or its participants.

(iii) The Series 2024 Bonds or any portion thereof shall not be transferable or exchangeable except:

(A) to any successor of the Securities Depository;

(B) to any new Securities Depository not objected to by the Trustee, upon (i) the resignation of the then current Securities Depository or its successor from its functions as Securities Depository or (ii) termination of the use of the Securities Depository by direction of the Issuer; or

(C) to any Persons who are the assigns of the Securities Depository or its nominee, upon (i) the resignation of the Securities Depository from its functions as Securities Depository hereunder or (ii) termination of the use of the Securities Depository by direction of the Issuer.

If the use of the book-entry system is discontinued, then after the Trustee has made provision for notification of the beneficial Owners of their book-entry interests in the Series 2024 Bonds by appropriate notice to the then Securities Depository, the Trustee shall permit withdrawal of the Series 2024 Bonds from the Securities Depository, and authenticate and deliver Bond certificates in fully registered form and in Authorized Denominations to the assignees of the Securities Depository or its nominee. Such withdrawal, authentication and delivery shall (if the event is not the result of Issuer action or inaction) be at the cost and expense (including costs of printing or otherwise preparing, and delivering, such replacement Bond certificates) of those persons requesting that withdrawal, authentication and delivery.

Subject to any arrangements made by the Trustee with a Securities Depository with respect to the Series 2024 Bonds held in a Book-Entry System, principal and Redemption Price of and interest on any Series 2024 Bond shall be payable as provided in this Second Supplemental Indenture.

Section 2.07 Redemption Provisions for the Series 2024A Bonds. The Series 2024A Bonds are subject to redemption prior to maturity as follows:

(a) *Optional Redemption*. The Series 2024A Bonds maturing on and after \_\_\_\_\_ 1, 20\_\_ are subject to optional redemption prior to maturity by the Issuer, at the written direction of the Borrower, on and after \_\_\_\_\_ 1, 20\_\_, in whole or in part, at any time, without premium, at 100% of the principal amount of the Series 2024A Bonds to be redeemed plus interest accrued to the Redemption Date.

(b) *Extraordinary Optional Redemption Without Premium to Preserve Tax Exempt Status of the Series 2024A Bonds*. The Series 2024A Bonds shall be subject to extraordinary optional redemption by the Issuer, at the direction of the Borrower, on any date at the Redemption Price (including any interest accrued on such Bonds to the Redemption Date), without premium if the Borrower shall have delivered to the Trustee and the Issuer an Opinion of Bond Counsel addressed to the Trustee and the Issuer substantially to the effect that (i) a failure so to redeem Series 2024A Bonds (or the relevant portion thereof) may adversely affect the exclusion of interest on the Series 2024A Bonds from the gross income of the Holders pursuant to Section 103 of the Code and (ii) redemption of Series 2024A Bonds in the amount set forth in such opinion (but in no smaller amount than that set forth in such opinion) would permit the continuance of any exclusion so afforded under Section 103 of the Code. The Series 2024A Bonds to be redeemed in part as provided in this Section 2.07(b) shall be determined by the Borrower.

(c) *Extraordinary Mandatory Redemption of the Series 2024A Bonds*.

(i) Upon receipt by the Securities Intermediary of any (A) Borrower Insurance Proceeds or Borrower Condemnation Proceeds transferred from the Extraordinary Receipts Account to the 2024A Tax-Exempt Bond Interest Payment Sub-Account or the 2024A Tax-Exempt Bond Principal Payment Sub-Account pursuant to Section 5.15(a)(iii)(A)(II) of the Collateral Agency and Accounts Agreement, (B) Borrower Lease Termination Proceeds transferred from the Extraordinary Receipts Account to the 2024A Tax-Exempt Bond Interest Payment Sub-Account or the 2024A Tax-Exempt Bond Principal Payment Sub-Account pursuant to Section 5.15(b)(ii)(A)(II) of the Collateral Agency and Accounts Agreement or (C) Disposition Proceeds transferred from the Extraordinary Receipts Account to the 2024A Tax-Exempt Bond Interest Payment Sub-Account or the 2024A Tax-Exempt Bond Principal Payment Sub-Account pursuant to Section 5.15(d)(II) of the Collateral Agency and Accounts Agreement, the Trustee shall request the Securities Intermediary to transfer such funds to the Series 2024A Senior Bond Redemption Account.

(ii) The Series 2024A Bonds are subject to extraordinary mandatory redemption, in whole or in part, as the case may be, by the Issuer, at the Redemption Price without premium to the extent of funds available therefor from, and as soon as practical following:

(A) Receipt by the Trustee of proceeds of the Series 2024A Bonds pursuant to Section 10.07(g) of the Collateral Agency and Accounts Agreement;

(B) Receipt by the Trustee of Borrower Insurance Proceeds or Borrower Condemnation Proceeds transferred from the Extraordinary Receipts Account to the 2024A Tax-Exempt Bond Interest Payment Sub-Account or the 2024A Tax-Exempt Bond Principal Payment Sub-Account pursuant to Section 5.15(a)(iii)(A)(II) of the Collateral Agency and Accounts Agreement and Section 2.07(c) of this Second Supplemental Indenture;



(C) Receipt by the Trustee of Borrower Lease Termination Proceeds transferred from the Extraordinary Receipts Account to the 2024A Tax-Exempt Bond Interest Payment Sub-Account or the 2024A Tax-Exempt Bond Principal Payment Sub-Account by the Senior Collateral Agent or the Securities Intermediary pursuant to Section 5.15(b)(ii)(A)(II) of the Collateral Agency and Accounts Agreement and Section 2.07(c) of this Second Supplemental Indenture; or

(D) Receipt by the Trustee of Disposition Proceeds transferred from the Extraordinary Receipts Account to the 2024A Tax-Exempt Bond Interest Payment Sub-Account or the 2024A Tax-Exempt Bond Principal Payment Sub-Account by the Senior Collateral Agent or the Securities Intermediary pursuant to Section 5.15(d)(II) of the Collateral Agency and Accounts Agreement and Section 2.07(c) of this Second Supplemental Indenture; or

(E) Foreclosure by the Senior Collateral Agent on the leasehold estate pursuant to the Leasehold Mortgages and the Collateral Agency and Accounts Agreement.

(iii) The Series 2024A Balloon Indebtedness is subject to extraordinary mandatory redemption, in whole or in part, as the case may be, by the Issuer, at the Redemption Price without premium to the extent of funds available therefor from, and as soon as practical following receipt by the Trustee of amounts transferred from the Surplus Remaining Revenue Account pursuant to Section 6.06(a) of the Collateral Agency and Accounts Agreement.

(d) (i) *Purchase of Series 2024A Bonds in Lieu of Redemption.* If any Series 2024A Bond is called for optional redemption, in whole or in part, the Issuer, upon written direction of the Borrower, may elect to have such Series 2024A Bond purchased in lieu of redemption on the applicable Redemption Date (herein referred to as the “Purchase Date” with respect to the Series 2024A Bonds) at a purchase price equal to the applicable Redemption Price (including, any interest accrued on such Bonds to the Redemption Date) (herein referred to as the “Purchase Price” with respect to the Series 2024A Bonds).

(ii) If the Issuer, upon written request of the Borrower, elects to purchase any Series 2024A Bonds, the Trustee shall give notice of the purchase of such Series 2024A Bonds in the name of the Issuer to the registered Owners of the Series 2024A Bonds to be purchased by first-class mail, postage prepaid, not less than thirty (30) days prior to the Purchase Date with respect to the Series 2024A Bonds specified in such notice. The Series 2024A Bonds to be purchased are required to be tendered on the Purchase Date with respect to the Series 2024A Bonds to the Trustee. The Series 2024A Bonds to be purchased that are not so tendered will be deemed to have been properly tendered for purchase. Such purchase will not operate to extinguish the indebtedness of the Issuer evidenced thereby or modify the terms of the Series 2024A Bonds and such Series 2024A Bonds need not be cancelled, but will remain Outstanding under this Second Supplemental Indenture and continue to bear interest.

The Issuer’s obligation to purchase any Series 2024A Bond is conditioned upon the availability of sufficient money to pay the Purchase Price with respect to the Series 2024A Bonds for all of the Series 2024A Bonds to be purchased on the Purchase Date with respect to the Series 2024A Bonds. If sufficient money is available on the Purchase Date with respect to the Series 2024A Bonds to pay the Purchase Price with respect to the Series 2024A Bonds to be purchased, the former registered Owners of such Series 2024A Bonds will have no claim thereunder or under this Second Supplemental Indenture or otherwise for payment of any amount other than the Purchase Price with respect to the Series 2024A Bonds. If sufficient money is not available on the Purchase Date with respect to the Series 2024A Bonds for payment of the Purchase Price with

respect to the Series 2024A Bonds, the Series 2024A Bonds tendered or deemed tendered for purchase will continue to be registered in the name of the registered Owners on the Purchase Date with respect to the Series 2024A Bonds, who will be entitled to the payment of the Redemption Price of such Series 2024A Bonds on the Redemption Date in accordance with their respective terms.

(e) *Mandatory Sinking Fund Redemption.* The Series 2024A Bonds maturing on \_\_\_\_\_ 1, 20\_\_ and \_\_\_\_\_ 1, 20\_\_ shall be subject to mandatory redemption by the Issuer prior to maturity, in part, at a price equal to 100% of the principal amount thereof, together with accrued and unpaid interest to (but not including) the date of redemption without premium in satisfaction of the Sinking Fund Requirements on the dates and in the principal amounts set forth below, subject to the credits provided therefor in this Section 2.07(e):

Series 2024A Bonds maturing \_\_\_\_\_ 1, 20\_\_ with Interest Rate of . \_\_\_\_ %

Sinking Fund Requirement Payment Date	Sinking Fund Requirement
_____ 1, 20__	\$ _____
_____ 1, 20__	_____
_____ 1, 20__	_____
_____ 1, 20__ *	_____

\* Stated Maturity.

Series 2024A Bonds maturing \_\_\_\_\_ 1, 20\_\_ with Interest Rate of . \_\_\_\_ %

Sinking Fund Requirement Payment Date	Sinking Fund Requirement
_____ 1, 20__	\$ _____
_____ 1, 20__	_____
_____ 1, 20__	_____
_____ 1, 20__ *	_____

\* Stated Maturity.

At its option, to be exercised on or before the 45<sup>th</sup> day next preceding any mandatory Redemption Date for Series 2024A Bonds due to a Sinking Fund Requirement, the Borrower may deliver to the Trustee for cancellation Series 2024A Bonds of the appropriate maturity in any aggregate principal amount which have been purchased by the Borrower in the open market. Each Series 2024A Bond so delivered shall be credited by the Trustee at 100% of the principal amount thereof against the Sinking Fund Requirement for the Series 2024A Bonds on such mandatory Redemption Date in such chronological order as shall be directed in writing by the Borrower. The Borrower will, on or before the 45<sup>th</sup> day preceding each mandatory scheduled sinking fund Redemption Date, furnish the Trustee with a certificate stating the extent to which the provisions of the first sentence of this paragraph are to be availed of with respect to such mandatory Redemption Date; and unless such certificate is so timely furnished to the Trustee, the Sinking Fund Requirements for such mandatory Redemption Date shall not be reduced under the provisions of this paragraph.

(f) *Mandatory Redemption Upon the Occurrence of a Determination of Taxability.* The Series 2024A Bonds are subject to mandatory redemption in whole or, under certain circumstances, in part, at the Redemption Price without premium within ninety (90) days following receipt by the Trustee of written notice from a current or former Holder or Beneficial Owner of the Series 2024A Bonds or the Borrower of a Determination of Taxability. Payment of such Redemption Price with respect to the applicable Series 2024A Bonds shall constitute the full and complete payment and satisfaction to the Holders of such Series 2024A Bonds for any claim, damages, costs or expenses arising out of such Determination of Taxability. All of the Series 2024A Bonds shall be redeemed upon a Determination of Taxability as described above, unless, in the Opinion of Bond Counsel, redemption of a portion of the Series 2024A Bonds would have the result that interest payable on the remaining Series 2024A Bonds outstanding after the redemption would not be includable for federal income tax purposes in the gross income of any Holder or Beneficial Owner of a Series 2024A Bond, other than a Holder or Beneficial Owner who is a “substantial user” of the portion of the Project financed or refinanced with the proceeds of the Series 2024A Bonds or a “related person” of such substantial user within the meaning of the Code, in which case only such portion shall be redeemed. The Series 2024A Bonds to be redeemed in part as provided in this paragraph (g) shall be determined by the Borrower.

Notwithstanding the foregoing, any Holder may direct the Trustee not to redeem all or a portion of its Series 2024A Bonds upon the occurrence of a Determination of Taxability, if such Series 2024A Bonds or portions thereof not to be redeemed will be in an Authorized Denomination, by delivering to the Trustee at its principal office for delivery of notices on or prior to the second Business Day prior to the date of redemption an instrument which (A) states that such person is a Holder of such Series 2024A Bonds and specifies the denomination of such Series 2024A Bonds and the CUSIP number thereof, (B) states that the Holder has knowledge that a Determination of Taxability has occurred with respect to such Series 2024A Bonds and that interest received with respect to such Series 2024A Bonds may be includable in the gross income of the Holder for federal income tax purposes and (C) directs the Trustee not to redeem such Series 2024A Bonds. Once the Trustee has received such notice in a timely fashion, such Series 2024A Bonds will never again be subject to mandatory redemption as described under this caption.

Section 2.08 Redemption Provisions for the Series 2024B Bonds. The Series 2024B Bonds are subject to redemption prior to maturity as follows:

(a) *Optional Redemption.* The Series 2024B Bonds are subject to optional redemption prior to maturity by the Issuer, in whole or in part, at the written direction of the Borrower (A) from the Series 2024 Closing Date until \_\_\_\_\_ 1, 20\_\_\_\_, at the Make-Whole Redemption Price, or (B) on and after \_\_\_\_\_ 1, 20\_\_\_\_, at any time, without premium, at (x) if redeemed prior to the Interest Commencement Date, the Accreted Value as of the Redemption Date, and (y) if redeemed on or after the Interest Commencement Date, the Accreted Value at the Interest Commencement Date plus accrued interest to the Redemption Date.

(b) *Extraordinary Optional Redemption Without Premium to Preserve Tax Exempt Status of the Series 2024B Bonds.* The Series 2024B Bonds shall be subject to extraordinary optional redemption by the Issuer, at the direction of the Borrower, on any date at the Accreted Redemption Price (including, on any date after the Interest Commencement Date, any interest accrued on such Bonds to the Redemption Date), without premium if the Borrower shall have delivered to the Trustee and the Issuer an Opinion of Bond Counsel addressed to the Trustee and the Issuer substantially to the effect that (i) a failure so to redeem Series 2024B Bonds (or the relevant portion thereof) may adversely affect the exclusion of interest on the Series 2024B Bonds from the gross income of the Holders pursuant to Section 103 of the Code and (ii) redemption of Series 2024B Bonds in the amount set forth in such opinion (but in no smaller amount than that set forth in such opinion) would permit the continuance of any exclusion so afforded under

Section 103 of the Code. The Series 2024B Bonds to be redeemed in part as provided in this Section 2.08(b) shall be determined by the Borrower.

(c) *Extraordinary Mandatory Redemption of the Series 2024B Bonds.*

(i) Upon receipt by the Securities Intermediary of any (A) Borrower Insurance Proceeds or Borrower Condemnation Proceeds transferred from the Extraordinary Receipts Account to the 2024B Tax-Exempt Bond Interest Payment Sub-Account or the 2024B Tax-Exempt Bond Principal Payment Sub-Account pursuant to Section 5.15(a)(iii)(A)(II) of the Collateral Agency and Accounts Agreement, (B) Borrower Lease Termination Proceeds transferred from the Extraordinary Receipts Account to the 2024B Tax-Exempt Bond Interest Payment Sub-Account or the 2024B Tax-Exempt Bond Principal Payment Sub-Account pursuant to Section 5.15(b)(ii)(A)(II) of the Collateral Agency and Accounts Agreement or (C) Disposition Proceeds transferred from the Extraordinary Receipts Account to the 2024B Tax-Exempt Bond Interest Payment Sub-Account or the 2024B Tax-Exempt Bond Principal Payment Sub-Account pursuant to Section 5.15(d)(II) of the Collateral Agency and Accounts Agreement, the Trustee shall request the Securities Intermediary to transfer such funds to the Series 2024B Senior Bond Redemption Account.

(ii) The Series 2024B Bonds are subject to extraordinary mandatory redemption, in whole or in part, as the case may be, by the Issuer, at the Accreted Redemption Price without premium to the extent of funds available therefor from, and as soon as practical following:

(A) Receipt by the Trustee of proceeds of the Series 2024B Bonds pursuant to Section 10.07(g) of the Collateral Agency and Accounts Agreement;

(B) Receipt by the Trustee of Borrower Insurance Proceeds or Borrower Condemnation Proceeds transferred from the Extraordinary Receipts Account to the 2024B Tax-Exempt Bond Interest Payment Sub-Account or the 2024B Tax-Exempt Bond Principal Payment Sub-Account pursuant to Section 5.15(a)(iii)(A)(II) of the Collateral Agency and Accounts Agreement and Section 2.08(c) of this Second Supplemental Indenture;

(C) Receipt by the Trustee of Borrower Lease Termination Proceeds transferred from the Extraordinary Receipts Account to the 2024B Tax-Exempt Bond Interest Payment Sub-Account or the 2024B Tax-Exempt Bond Principal Payment Sub-Account by the Senior Collateral Agent or the Securities Intermediary pursuant to Section 5.15(b)(ii)(A)(II) of the Collateral Agency and Accounts Agreement and Section 2.08(c) of this Second Supplemental Indenture; or

(D) Receipt by the Trustee of Disposition Proceeds transferred from the Extraordinary Receipts Account to the 2024B Tax-Exempt Bond Interest Payment Sub-Account or the 2024B Tax-Exempt Bond Principal Payment Sub-Account by the Senior Collateral Agent or the Securities Intermediary pursuant to Section 5.15(d)(II) of the Collateral Agency and Accounts Agreement and Section 2.08(c) of this Second Supplemental Indenture; or

(E) Foreclosure by the Senior Collateral Agent on the leasehold estate pursuant to the Leasehold Mortgages and the Collateral Agency and Accounts Agreement.

(d) (i) *Purchase of Series 2024B Bonds in Lieu of Redemption.* If any Series 2024B Bond is called for optional redemption, in whole or in part, the Issuer, upon written direction of the Borrower, may elect to have such Series 2024B Bond purchased in lieu of redemption on the applicable Redemption Date (herein referred to as the “Purchase Date” with respect to the Series 2024B Bonds) at a purchase price equal to the applicable Accreted Redemption Price (including, on any date on or after the Interest Commencement Date, any interest accrued on such Bonds to the Redemption Date) (herein referred to as the “Purchase Price” with respect to the Series 2024B Bonds).

(ii) If the Issuer, upon written request of the Borrower, elects to purchase any Series 2024B Bonds, the Trustee shall give notice of the purchase of such Series 2024B Bonds in the name of the Issuer to the registered Owners of the Series 2024B Bonds to be purchased by first-class mail, postage prepaid, not less than thirty (30) days prior to the Purchase Date with respect to the Series 2024B Bonds specified in such notice. The Series 2024B Bonds to be purchased are required to be tendered on the Purchase Date with respect to the Series 2024B Bonds to the Trustee. The Series 2024B Bonds to be purchased that are not so tendered will be deemed to have been properly tendered for purchase. Such purchase will not operate to extinguish the indebtedness of the Issuer evidenced thereby or modify the terms of the Series 2024B Bonds and such Series 2024B Bonds need not be cancelled, but will remain Outstanding under this Second Supplemental Indenture and continue to bear interest.

The Issuer’s obligation to purchase any Series 2024B Bond is conditioned upon the availability of sufficient money to pay the Purchase Price with respect to the Series 2024B Bonds for all of the Series 2024B Bonds to be purchased on the Purchase Date with respect to the Series 2024B Bonds. If sufficient money is available on the Purchase Date with respect to the Series 2024B Bonds to pay the Purchase Price with respect to the Series 2024B Bonds to be purchased, the former registered Owners of such Series 2024B Bonds will have no claim thereunder or under this Second Supplemental Indenture or otherwise for payment of any amount other than the Purchase Price with respect to the Series 2024B Bonds. If sufficient money is not available on the Purchase Date with respect to the Series 2024B Bonds for payment of the Purchase Price with respect to the Series 2024B Bonds, the Series 2024B Bonds tendered or deemed tendered for purchase will continue to be registered in the name of the registered Owners on the Purchase Date with respect to the Series 2024B Bonds, who will be entitled to the payment of the Accreted Redemption Price of such Series 2024B Bonds on the Redemption Date in accordance with their respective terms.

(e) *Mandatory Sinking Fund Redemption.* The Series 2024B Bonds maturing on \_\_\_\_\_ 1, 20\_\_ and \_\_\_\_\_ 1, 20\_\_ shall be subject to mandatory redemption by the Issuer prior to maturity, in part, at a price equal to 100% of the principal amount thereof, together with accrued and unpaid interest to (but not including) the date of redemption without premium in satisfaction of the Sinking Fund Requirements on the dates and in the principal amounts set forth below, subject to the credits provided therefor in this Section 2.08(e):

Series 2024B Bonds maturing _____ 1, 20__ with Interest Rate of . ____ %	
Sinking Fund Requirement	
Payment Date	Sinking Fund Requirement
_____ 1, 20__	\$ _____
_____ 1, 20__	_____
_____ 1, 20__	_____
_____ 1, 20__ *	_____

\* Stated Maturity.

Series 2024B Bonds maturing \_\_\_\_\_ 1, 20 \_\_\_\_\_ with Interest Rate of . \_\_\_\_\_ %

Sinking Fund Requirement Payment Date	Sinking Fund Requirement
_____ 1, 20 _____	\$ _____
_____ 1, 20 _____	_____
_____ 1, 20 _____	_____
_____ 1, 20 _____ *	_____

\* Stated Maturity.

At its option, to be exercised on or before the 45<sup>th</sup> day next preceding any mandatory Redemption Date for Series 2024B Bonds due to a Sinking Fund Requirement, the Borrower may deliver to the Trustee for cancellation Series 2024B Bonds of the appropriate maturity in any aggregate principal amount which have been purchased by the Borrower in the open market. Each Series 2024B Bond so delivered shall be credited by the Trustee at 100% of the principal amount thereof against the Sinking Fund Requirement for the Series 2024B Bonds on such mandatory Redemption Date in such chronological order as shall be directed in writing by the Borrower. The Borrower will, on or before the 45<sup>th</sup> day preceding each mandatory scheduled sinking fund Redemption Date, furnish the Trustee with a certificate stating the extent to which the provisions of the first sentence of this paragraph are to be availed of with respect to such mandatory Redemption Date; and unless such certificate is so timely furnished to the Trustee, the Sinking Fund Requirements for such mandatory Redemption Date shall not be reduced under the provisions of this paragraph.

(f) *Mandatory Redemption Upon the Occurrence of a Determination of Taxability.* The Series 2024B Bonds are subject to mandatory redemption in whole or, under certain circumstances, in part, at the Accreted Redemption Price without premium within ninety (90) days following receipt by the Trustee of written notice from a current or former Holder or Beneficial Owner of the Series 2024B Bonds or the Borrower of a Determination of Taxability. Payment of such Accreted Redemption Price with respect to the applicable Series 2024B Bonds shall constitute the full and complete payment and satisfaction to the Holders of such Series 2024B Bonds for any claim, damages, costs or expenses arising out of such Determination of Taxability. All of the Series 2024B Bonds shall be redeemed upon a Determination of Taxability as described above, unless, in the Opinion of Bond Counsel, redemption of a portion of the Series 2024B Bonds would have the result that interest payable on the remaining Series 2024B Bonds outstanding after the redemption would not be includable for federal income tax purposes in the gross income of any Holder or Beneficial Owner of a Series 2024B Bond, other than a Holder or Beneficial Owner who is a “substantial user” of the portion of the Project financed or refinanced with the proceeds of the Series 2024B Bonds or a “related person” of such substantial user within the meaning of the Code, in which case only such portion shall be redeemed. The Series 2024B Bonds to be redeemed in part as provided in this paragraph (g) shall be determined by the Borrower.

Notwithstanding the foregoing, any Holder may direct the Trustee not to redeem all or a portion of its Series 2024B Bonds upon the occurrence of a Determination of Taxability, if such Series 2024B Bonds or portions thereof not to be redeemed will be in an Authorized Denomination, by delivering to the Trustee at its principal office for delivery of notices on or prior to the second Business Day prior to the date of redemption an instrument which (A) states that such person is a Holder of such Series 2024B Bonds and specifies the denomination of such Series 2024B Bonds and the CUSIP number thereof, (B) states that the Holder has knowledge that a Determination of Taxability has occurred with respect to such Series 2024B Bonds and that interest received with respect to such Series 2024B Bonds may be includible in the gross

income of the Holder for federal income tax purposes and (C) directs the Trustee not to redeem such Series 2024B Bonds. Once the Trustee has received such notice in a timely fashion, such Series 2024B Bonds will never again be subject to mandatory redemption as described under this caption.

Section 2.09 Notice of Redemption.

(a) Notice of redemption of Series 2024 Bonds permitted or required by this Second Supplemental Indenture shall be given in the manner set forth in Section 3.03 of the Master Indenture, without the necessity of any instructions or further act of the Issuer or the Borrower. The Trustee shall not be responsible for mailing notices of redemption to anyone other than the Securities Depository or its nominee.

(b) Under no circumstances shall the Trustee be required to use any of its own funds to effect any redemption of Series 2024 Bonds.

(c) If all of the Series 2024 Bonds are redeemed as provided in Sections 2.07(b) and 2.08(b) hereof, then (i) the failure by the Borrower to observe or perform a covenant or agreement in any Financing Document or (ii) the inaccuracy of any representation or warranty made by the Borrower in any Financing Document or the Tax Certificate, any of which results in a Determination of Taxability, shall not constitute an Event of Default under any Financing Document and payment of the Redemption Price specified above and amounts payable pursuant to Sections 2.07(b) and 2.08(b) hereof, shall constitute full and complete payment and satisfaction to the Owners of the Series 2024 Bonds for any claims, damages, costs or expenses arising out of or based upon such failure by the Borrower.

(d) If the lien of this Second Supplemental Indenture has been defeased with respect to any Series 2024 Bonds prior to the occurrence of an event permitting or requiring redemption of such Series 2024 Bonds, such Series 2024 Bonds will not be subject to redemption in the manner described above, except for any Sinking Fund Requirement and any redemption provided for in connection with such defeasance.

(e) All Series 2024 Bonds redeemed and the Redemption Price therefor paid in full under the provisions of Sections 2.07 and 2.08 hereof shall forthwith be canceled and returned to the Issuer and no Series 2024 Bonds shall be executed, authenticated or issued hereunder in exchange or substitution therefor, or for or in respect of any paid portion of such Series 2024 Bonds.

Section 2.10 Payment of Redeemed Bonds. (a) Notice having been given in the manner provided in Section 2.09 hereof, the Series 2024 Bonds or portions thereof so called for redemption shall become due and payable on the Redemption Date so designated at the Redemption Price. If, on the Redemption Date, moneys for the redemption of the Series 2024 Bonds or portions thereof to be redeemed, together with interest to the Redemption Date, shall be held by the Paying Agents so as to be available therefor on said date and if notice of redemption shall have been given as aforesaid, then, from and after the Redemption Date, interest on the Series 2024 Bonds or portions thereof so called for redemption shall cease to accrue and become payable. If said moneys shall not be so available on the Redemption Date, such Series 2024 Bonds or portions thereof shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption.

(b) Payment of the Redemption Price shall be made to or upon the order of the registered owners, without presentation of the Series 2024 Bonds, by wire transfer in federal funds.

Section 2.11 Cancellation of Redeemed Bonds.

(a) Each Series 2024 Bond redeemed in full under the provisions of this Second Supplemental Indenture shall forthwith be canceled and destroyed or removed from the appropriate digital ledger in accordance with the provisions hereof and no Series 2024 Bonds shall be executed, authenticated or issued hereunder in exchange or substitution therefor.

(b) If there shall be called for redemption less than all of any Series 2024 Bond, upon the written request of any Bondholder of such partially redeemed Series 2024 Bond to the Trustee, the Issuer shall execute, and the Trustee shall authenticate and deliver, upon the surrender of such Bond, without charge to the owner thereof, for the unredeemed portion of the Series 2024 Bond so surrendered, a Series 2024 Bond or Series 2024 Bonds of the same Series and maturity in any of the Authorized Denominations and bearing interest at the same rate.

Section 2.12 Mandatory Optional Redemption of the Series 2024A Balloon Indebtedness.

(a) *Mandatory Optional Redemption Definitions:* The following terms used in this Section have the meanings ascribed to them below:

(i) “10 Year Cash Sweep Date” means the date ten (10) years preceding the maturity date of the Series 2024A Balloon Indebtedness.

(ii) “5 Year Cash Sweep Date” means the date five (5) years preceding the maturity date of the Series 2024A Balloon Indebtedness.

(iii) “Calculation Period” means a period beginning on a Calculation Date and ending on the day preceding the following Calculation Date (i.e. the quarter following a Calculation Date, starting on the Calculation Date).

(iv) “Loan Life Coverage Ratio” means, as of any Calculation Date, (A) the present value of the projected amount of Free Cash Flow from such Calculation Date through the maturity date of the Series 2024A Balloon Indebtedness, discounted at the weighted average coupon of all of the Senior Obligations with scheduled principal payments (including both maturities and mandatory sinking fund redemption) between such Calculation Date and the maturity date of the Series 2024A Balloon Indebtedness, *divided by* (B) all principal due and payable (including both maturities and mandatory sinking fund redemption; and, for the avoidance of doubt, the calculation of such principal due and payable shall not take into account the projected debt service upon refinancing of any Series 2024A Bond maturing on \_\_\_\_ 1, 2054 as outlined in the Anticipated Debt Service Schedule of the Series 2024A Balloon Indebtedness Certificate, but instead shall be all the principal due and payable on such Series 2024A Bond maturing on \_\_\_\_ 1, 2054 pursuant to the terms of this Second Supplemental Indenture) of all Senior Obligations between the Calculation Date through the maturity date of the Series 2024A Balloon Indebtedness.

(v) “Remaining Revenue Account Limit” means, as of any Quarterly Distribution Date, (A) the amount on deposit in the Remaining Revenue Account *minus* any transfers to the Port Authority pursuant to Section 5.17(c)(i) of the Collateral Agency and Accounts Agreement on such Quarterly Distribution Date *plus* (B) the amount on deposit in the Surplus Remaining Revenue Account *minus* any transfers to the Port Authority pursuant to Section 5.17(f)(ii)(A) of the Collateral Agency and Accounts Agreement on such Quarterly Distribution Date.



(b) The Borrower shall direct the Trustee to redeem the Series 2024A Balloon Indebtedness, pursuant to the optional redemption provisions of Section 2.07(a) hereof, in the amounts and on the dates as follows, so long as, and only to the extent that, the applicable transfers from the Remaining Revenue Account and the Surplus Remaining Revenue Account are then permitted pursuant to Sections 5.17(c)(x) or (y) and 5.17(f)(ii)(x) or (y) of the Collateral Agency and Accounts Agreement, as applicable:

(i) As soon as reasonably practicable after each Quarterly Distribution Date occurring on and after the 10 Year Cash Sweep Date, if the Loan Life Coverage Ratio as of the immediately preceding Calculation Date is less than 1.10:1.00 pursuant to the calculations of an independent consultant who is experienced in traffic and revenue studies for airports, in a report delivered to the Senior Collateral Agent by the request of the Borrower on any day from the date preceding such Calculation Date by fourteen (14) months until such Calculation Date, in an amount equal to the least of: (A) the amount that will make the Loan Life Coverage Ratio greater than 1.10:1.00, (B) one hundred percent (100%) of the amount deposited into the Remaining Revenue Account pursuant to the terms of the Financing Documents from and after the Calculation Date immediately preceding the 10 Year Cash Sweep Date, and (C) the Remaining Revenue Account Limit. The Borrower shall cause the independent consultant to provide the report contemplated above at any time within the fourteen (14) month period prior to the applicable Calculation Date.

(ii) As soon as reasonably practicable after each Quarterly Distribution Date occurring on and after the 5 Year Cash Sweep Date, in an amount equal to (A) the lesser of (x) the greater of (I) (a) eighty percent (80%) of the amount deposited into the Remaining Revenue Account pursuant to the terms of the Financing Documents from and after the Calculation Date immediately preceding the 5 Year Cash Sweep Date *minus* (b) all amounts previously applied to redeem the Series 2024A Balloon Indebtedness pursuant to this Section 2.12(b)(ii) and (II) the amount calculated in (b)(i) above, and (y) the Remaining Revenue Account Limit, *minus* (B) any amount required to be applied to redeem Series 2024A Balloon Indebtedness pursuant to Section 2.12(b)(i) on such date; provided that the amount determined pursuant to this Section 2.12(b)(ii) shall in no event be less than \$0.

[END OF ARTICLE II]

### ARTICLE III

#### ACCOUNTS FOR SERIES 2024 BONDS; APPLICATION OF PROCEEDS OF SERIES 2024 BONDS AND FLOW OF FUNDS

Section 3.01 Accounts for Series 2024 Bonds. The following Accounts are hereby established and created:

(a) Within the Senior Bond Fund:

(i) the Series 2024A Senior Bond Interest Account (the “Series 2024A Senior Bond Interest Account”);

(ii) the Series 2024B Senior Bond Interest Account (the “Series 2024B Senior Bond Interest Account”);

(iii) the Series 2024A Senior Bond Principal Account (the “Series 2024A Senior Bond Principal Account”);

(iv) the Series 2024B Senior Bond Principal Account (the “Series 2024B Senior Bond Principal Account”);

(v) the Series 2024A Senior Bond Redemption Account (the “Series 2024A Senior Bond Redemption Account”);

(vi) the Series 2024B Senior Bond Redemption Account (the “Series 2024B Senior Bond Redemption Account”); and

(vii) Within the Rebate Fund:

(A) the Series 2024A Rebate Account (the “Series 2024A Rebate Account”);  
and

(B) the Series 2024B Rebate Account (the “Series 2024B Rebate Account”).

(b) Proceeds of Series 2024A Bonds. The purchase price of the Series 2024A Bonds (\$[•] ) shall be paid by the Underwriters to the Securities Intermediary and shall be deposited in the Series 2024A Bond Proceeds Sub-Account by the Securities Intermediary in accordance with Section 5.04(c) of the Collateral Agency and Accounts Agreement to refinance a portion of the Senior Term Loans, redeem a portion of the Series 2022A Bonds, pay certain interest rate swap termination fees and pay certain costs of issuance related to the Series 2024A Bonds.

(c) Proceeds of Series 2024B Bonds. The purchase price of the Series 2024B Bonds (\$[•] ) shall be paid by the Underwriters to the Securities Intermediary and shall be deposited in the Series 2024B Bond Proceeds Sub-Account by the Securities Intermediary in accordance with Section 5.04(c) of the Collateral Agency and Accounts Agreement to refinance a portion of the Senior Term Loans, redeem a portion of the Series 2022A Bonds, pay certain interest rate swap termination fees and pay certain costs of issuance related to the Series 2024B Bonds.

Section 3.02 Application of Senior Bond Fund.

(a) *Series 2024A Bonds.* (i) Subject to the provisions of Section 4.03 of the Master Indenture, the Trustee shall on each Interest Payment Date pay or cause to be paid to the Paying Agent out of the Series 2024A Senior Bond Interest Account, in immediately available funds, any amounts required for the payment of accrued and unpaid interest due on the Series 2024A Bonds on such Interest Payment Date.

(ii) Subject to the provisions of Section 4.03 of the Master Indenture, the Trustee shall on each Principal Payment Date pay or cause to be paid to the Paying Agent out of the Series 2024A Senior Bond Principal Account, in immediately available funds, the amounts required for the payment of (A) the principal amount due on the Series 2024A Bonds, if any, upon the presentation and surrender of the requisite Series 2024A Bonds (such presentation and surrender not being required if Cede & Co. is the Holder of the Series 2024A Bonds), and (B) the Sinking Fund Requirements due and payable on the Series 2024A Bonds, if any (accrued and unpaid interest being payable from the Series 2024A Senior Bond Interest Account). With respect to any Sinking Fund Requirements, the Trustee shall call for redemption, in the manner provided in Section 2.07, Series 2024A Bonds for which Sinking Fund Requirements are applicable in a principal amount equal to the Sinking Fund Requirement then due with respect to such Series 2024A Bonds.

(iii) Subject to the provisions of Section 4.03 the Master Indenture, amounts in the Series 2024A Senior Bond Redemption Account shall be applied to the redemption (including any purchase in lieu of redemption) of the Series 2024A Bonds, and shall be paid to the Paying Agent therefor on or before each Redemption Date and applied by it on such Redemption Date to the payment of the portion of the Redemption Price of the Series 2024A Bonds being redeemed (including any purchase in lieu of redemption) consisting of principal and the portion of the Redemption Price consisting of accrued and unpaid interest shall be payable from the Series 2024A Senior Interest Account.

(b) *Series 2024B Bonds.* (i) Subject to the provisions of Section 4.03 of the Master Indenture, the Trustee shall on each Interest Payment Date pay or cause to be paid to the Paying Agent out of the Series 2024B Senior Bond Interest Account, in immediately available funds, any amounts required for the payment of accrued and unpaid interest due on the Series 2024B Bonds on such Interest Payment Date.

(ii) Subject to the provisions of Section 4.03 of the Master Indenture, the Trustee shall on each Principal Payment Date pay or cause to be paid to the Paying Agent out of the Series 2024B Senior Bond Principal Account, in immediately available funds, the amounts required for the payment of (A) the principal amount due on the Series 2024B Bonds, if any, upon the presentation and surrender of the requisite Series 2024B Bonds (such presentation and surrender not being required if Cede & Co. is the Holder of the Series 2024B Bonds), and (B) the Sinking Fund Requirements due and payable on the Series 2024B Bonds, if any (accrued and unpaid interest being payable from the Series 2024B Senior Bond Interest Account). With respect to any Sinking Fund Requirements, the Trustee shall call for redemption, in the manner provided in Section 2.08 hereof, Series 2024B Bonds for which Sinking Fund Requirements are applicable in a principal amount equal to the Sinking Fund Requirement then due with respect to such Series 2024B Bonds.

(iii) Subject to the provisions of Section 4.03 the Master Indenture, amounts in the Series 2024B Senior Bond Redemption Account shall be applied to the redemption (including any purchase in lieu of redemption) of the Series 2024B Bonds, and shall be paid to the Paying Agent therefor on or before each Redemption Date and applied by it on such Redemption Date to the

payment of the portion of the Redemption Price of the Series 2024B Bonds being redeemed (including any purchase in lieu of redemption) consisting of principal and the portion of the Redemption Price consisting of accrued and unpaid interest shall be payable from the Series 2024B Senior Interest Account.

(c) *Rebate Fund.* The Series 2024A Rebate Account and the Series 2024B Rebate Account (collectively, the “Series 2024 Rebate Accounts”) shall be held by the Trustee separate and apart from all other Funds and Accounts held under the Master Indenture and this Second Supplemental Indenture and from all other moneys of the Trustee. Any provision hereof to the contrary notwithstanding, amounts credited to the Series 2024 Rebate Accounts shall be free and clear of any lien hereunder. Pursuant to the TDC Loan Agreements, the Borrower has agreed to pay or provide the Trustee with funds sufficient to pay the amounts (if any) payable pursuant to Section 148(f) of the Code with respect to the Series 2024 Bonds. Amounts received from the Borrower pursuant to Section 4.1(h) of the TDC Loan Agreements shall be deposited in the applicable Series 2024 Rebate Account and paid by the Trustee, upon the written instruction of the Borrower, to the United States government not later than 60 days after the computation date to which such payment relates. Any excess moneys (including investment income) in the Series 2024 Rebate Accounts after any such payment is made shall be paid over to the Borrower at its written request.

[END OF ARTICLE III]

## ARTICLE IV

### BOND INSURANCE

Section 4.01 Nonpayment of Principal or Interest on the Insured Series 2024 Bonds. The Bond Insurer shall be entitled to pay principal or interest on the Insured Series 2024 Bonds that becomes Due for Payment (as such term is defined in the Bond Insurance Policy) but is unpaid by reason of Nonpayment by the Issuer (as such term is defined in the Bond Insurance Policy) and any amounts due on the Insured Series 2024 Bonds as a result of acceleration of the maturity thereof in accordance with the Indenture, whether or not the Bond Insurer has received a Notice of Nonpayment (as such term is defined in the Bond Insurance Policy) or a claim upon the Bond Insurance Policy.

Section 4.02 Bond Insurance Policy Payment Procedures. As long as the Bond Insurance Policy shall be in full force and effect, the Issuer, the Borrower and the Trustee agree to comply with the following provisions:

(a) If, on the third Business Day prior to the Transfer Date immediately preceding an Interest Payment Date or Principal Payment Date on which the principal of or interest on the Insured Series 2024 Bonds is payable (a "Payment Date"), the Borrower has determined that, upon making all transfers and deposits required under the Collateral Agency and Accounts Agreement in respect of amounts due and payable under the Senior Financing Documents on the next Transfer Date, there will not be sufficient money to pay the principal of and interest on the Insured Series 2024 Bonds due on such Payment Date, the Borrower shall give notice thereof to the Trustee, the Senior Collateral Agent and the Bond Insurer and to its designated agent, if any (the "Bond Insurer Fiscal Agent"), by telephone or teletype of the amount of such deficiency by 12:00 noon, New York City time, on such Business Day. Unless the Borrower has delivered notice to the Trustee (which may be by telephone or teletype, and otherwise in accordance with the notice requirements set forth in the Collateral Agency and Accounts Agreement) confirming that the previously determined deficiency is no longer expected, on the second Business Day prior to the related Transfer Date, the Trustee shall make a claim under the Bond Insurance Policy and give notice to the Bond Insurer and the Bond Insurer's Fiscal Agent, if any, by telephone of the amount of such deficiency, and the allocation of such deficiency between the amount required to pay interest on the Insured Series 2024 Bonds and the amount required to pay the principal of Insured Series 2024 Bonds, confirmed in writing to the Bond Insurer and the Bond Insurer's Fiscal Agent by 12:00 noon, New York City time, on such second Business Day by filing the form of Notice of Claim and Certificate delivered with the Bond Insurance Policy; provided, however, that the Bond Insurer will not be required to make any payment to the extent that on the Payment Date no such deficiency of funds remains.

(b) The Trustee shall designate any portion of payment of principal on Insured Series 2024 Bonds paid by the Bond Insurer, whether by virtue of mandatory sinking fund installments, maturity or other advancement of maturity, on its books as a reduction in the principal amount of Insured Series 2024 Bonds registered to the then current Owner, whether DTC, its nominee or otherwise, and such Series 2024 Bonds shall remain Outstanding until a new Series 2024 Bond in a principal amount equal to the amount of principal so paid (without regard to authorized denominations) shall be executed on behalf of and delivered by the Issuer and the Trustee in accordance with Sections 2.01, 2.02, 2.06 and 4.01 hereof to the Bond Insurer, registered in the name of Assured Guaranty Inc.; provided, however, that failure by the Trustee to so designate any payment or failure of the Issuer and the Trustee to execute and deliver any replacement Series 2024 Bonds, subject to Book-Entry provisions, shall have no effect on the amount of principal or interest payable on any Insured Series 2024 Bond or the subrogation rights of the Bond Insurer.

(c) Upon payment of a claim under the Bond Insurance Policy, the Trustee shall establish a separate special purpose trust account solely for the benefit of Owners of the Insured Series 2024 Bonds

and the Bond Insurer, which account shall be referred to herein as the “Segregated Policy Payments Account,” over which the Trustee shall have exclusive control and sole right of withdrawal. The Trustee shall receive any amount paid under the Bond Insurance Policy in trust on behalf of the Owners of Insured Series 2024 Bonds and shall deposit any such amount in the Segregated Policy Payments Account and distribute such amount only for purposes of making the payments for which a claim was made. Such amounts shall be disbursed by the Trustee to the Owners of Insured Series 2024 Bonds in the same manner as principal and interest payments are to be made with respect to the Insured Series 2024 Bonds under the sections hereof regarding payment of Insured Series 2024 Bonds. It shall not be necessary for such payments to be made by check or wire transfers separate from the check or wire transfer used to pay the principal and interest with other funds available to make such payments. Notwithstanding anything herein to the contrary, subject to compliance with the terms of the Intercreditor Agreement, the Issuer (or the Borrower on its behalf) shall cause the Senior Collateral Agent to pay, solely from funds received from (or on behalf of) the Borrower, other than any fees or other amounts paid to the Issuer by the Borrower under the TDC Loan Agreements, pursuant to, and in accordance with, each of Section 4.1(d)(i) of the First Amendments to the TDC Loan Agreements and Section 5.02(b)(4), Section 5.02(b)(5), Section 5.03(b)(4), Section 5.03(b)(5), Section 6.06(b)(i)(B), Section 6.06(b)(i)(C) or Section 6.06(b)(i)(E) of the Collateral Agency and Accounts Agreement, as applicable, to the Bond Insurer a sum equal to:

- (i) the total of all amounts paid by the Bond Insurer under the Bond Insurance Policy, (the “Bond Insurer Advances”); *and*
- (ii) interest on such Bond Insurer Advances from the date paid by the Bond Insurer until payment thereof in full, payable to the Bond Insurer at the Bond Insurer Late Payment Rate per annum (“Bond Insurer Late Payment Interest” and together with Bond Insurer Advances, the “Bond Insurer Reimbursement Amounts”).

As used herein, the “Bond Insurer Late Payment Rate” means the lesser of:

- (a) the greater of (I) WSJ Prime, plus 5%, and (II) 15%; *and*
- (b) the maximum rate permissible under applicable usury or similar laws limiting interest rates.

The Bond Insurer Late Payment Rate shall be computed on the basis of the actual number of days elapsed over a year of 360 days. The Issuer hereby covenants and agrees that the Bond Insurer Reimbursement Amounts are secured by a lien on and pledge of the Senior Collateral and payable from such Senior Collateral on a parity basis with Debt Service due on the Series 2024 Bonds and shall be payable by the Senior Collateral Agent or the Trustee from funds received from (or on behalf of) the Borrower, including funds provided pursuant to Section 5.02(b), Section 5.03(b), Section 6.06(a), or Section 6.06(b) of the Collateral Agency and Accounts Agreement, as applicable, on a parity basis with Debt Service due on the Series 2024 Bonds. All Bond Insurer Reimbursement Amounts shall be amounts owing to the Bond Insurer and not to the Owners of such Insured Series 2024 Bonds and any such amounts actually received by the Bond Insurer shall reduce, dollar-for-dollar, first, the Bond Insurer Late Payment Interest and second, without duplication, the Bond Insurer Advances and the claims that the Bond Insurer may have under the Insured Series 2024 Bonds as a result of the Bond Insurer having paid, including pursuant to Section 4.04 below, such Bond Insurer Advances.

(d) The Trustee shall keep a complete and accurate record of all funds deposited by the Bond Insurer into the Segregated Policy Payments Account (as defined above) and the allocation of such funds to payment of interest on and principal of any Insured Series 2024 Bonds. The Bond Insurer shall have the right to inspect such records at reasonable times upon reasonable notice to the Trustee.

(e) Funds held in the Segregated Policy Payments Account shall constitute Segregated Collateral solely for the benefit of the Owners of the Insured Series 2024 Bonds and the Bond Insurer, shall not be invested by the Trustee and may not be applied to satisfy any costs, expenses or liabilities of the Trustee. The Trustee shall notify the Bond Insurer of any funds remaining in the Segregated Policy Payments Account after the Trustee has made the payments for which a claim was made to the Owners of the Insured Series 2024 Bonds and shall, at the written direction of the Bond Insurer, promptly remit such funds remaining to the Bond Insurer.

Section 4.03 Acceleration. If any maturity of the Insured Series 2024 Bonds is accelerated pursuant to Section 8.02(b) of the Master Indenture, the Bond Insurer may elect, in its sole discretion, but shall have no obligation, to pay accelerated principal and interest accrued on such principal to the date of acceleration (to the extent unpaid) and the Trustee shall be required to accept such amounts. Upon payment of such accelerated principal and interest accrued to the acceleration date as provided above, the Bond Insurer's obligations under the Bond Insurance Policy with respect to such Insured Series 2024 Bonds shall be fully discharged. If the Bond Insurer does not so elect to pay the Insured Series 2024 Bonds on an accelerated basis, the Bond Insurer shall pay under the Bond Insurance Policy the principal of and interest on the Insured Series 2024 Bonds at the time principal and interest would have been due had the maturity of the Insured Series 2024 Bonds not been accelerated.

Section 4.04 Subrogation. Amounts paid by the Bond Insurer under the Bond Insurance Policy shall not be deemed paid for purposes of the Indenture and the Insured Series 2024 Bonds relating to such payments shall remain Outstanding and continue to be due and owing until paid by the Issuer (on behalf of the Borrower) or the Borrower in accordance with the Senior Financing Documents. For the avoidance of doubt, amounts paid by the Bond Insurer under the Bond Insurance Policy to be paid by the Issuer (on behalf of the Borrower) or the Borrower in the preceding sentence are the same as (and not in addition to) the Bond Insurer Advances required to be paid under Section 4.02(c)(i) hereof. The Indenture shall not be discharged unless all amounts due or to become due to the Bond Insurer have been paid in full or duly provided for. In the event that the principal of and/or interest on the Insured Series 2024 Bonds shall be paid by the Bond Insurer pursuant to the Bond Insurance Policy, the Bond Insurer shall be subrogated to the rights of the recipients of such payments in accordance with the terms of the Bond Insurance Policy. Each obligation of the Issuer or the Borrower to the Bond Insurer under the Senior Financing Documents shall survive discharge or termination of such Senior Financing Documents.

Section 4.05 Bond Insurer as Bond Owner. So long as no Bond Insurer Default shall have occurred and be continuing, the Bond Insurer is deemed to be the sole Owner of the Insured Series 2024 Bonds for the purpose of exercising any voting right or privilege or giving any consent or direction or taking any other action that the registered Owners of the Insured Series 2024 Bonds are entitled to take pursuant to the Financing Documents subject to the same terms to which the Owners of the Insured Series 2024 Bonds are subject under the Financing Documents, including the Intercreditor Agreement. In furtherance thereof and as a term of the Indenture and each Insured Series 2024 Bond, each Owner of the Insured Series 2024 Bonds appoints the Bond Insurer as its agent and attorney-in-fact with respect to the Insured Series 2024 Bonds and agrees that the Bond Insurer may at any time during the continuation of an Insolvency or Liquidation Proceeding direct all matters relating to such Insolvency or Liquidation Proceeding that the registered Owners of the Insured Series 2024 Bonds are entitled to take pursuant to, in accordance with, and subject to the Financing Documents, including without limitation, (a) all matters relating to any claim or enforcement proceeding in connection with an Insolvency or Liquidation Proceeding (a "Claim"), (b) the direction of any appeal of any order relating to any Claim, (c) the posting of any surety, supersedeas or performance bond pending any such appeal, and (d) provided that, in each case, the exercise of the rights of the Bond Insurer under this subpart (d) are subject to the terms of the Collateral Agency and Accounts Agreement, the Indenture and the Intercreditor Agreement, the right to vote to accept or reject any plan of adjustment. In addition, each Owner of the Insured Series 2024 Bonds delegates and assigns to the Bond

Insurer, to the fullest extent permitted by law, the rights of each Owner of the Insured Series 2024 Bonds in the conduct of any Insolvency or Liquidation Proceeding, including, without limitation, all rights of any Owner of the Insured Series 2024 Bonds to an adversary proceeding or action with respect to any court order issued in connection with any such Insolvency or Liquidation Proceeding. The Trustee acknowledges such appointment, delegation and assignment by each Owner of the Insured Series 2024 Bonds for the Bond Insurer's benefit and agrees to cooperate with the Bond Insurer in taking any action reasonably necessary or appropriate in connection with such appointment, delegation and assignment.

Section 4.06 Contractual Rights of the Bond Insurer. The Issuer and the Trustee acknowledge and agree that:

(a) the rights granted to the Bond Insurer under this Second Supplemental Indenture to request, consent to or direct any action are rights granted to the Bond Insurer in consideration of its issuance of the Bond Insurance Policy;

(b) in determining whether any amendment, consent, waiver or other action to be taken, or any failure to take action hereunder would adversely affect the security for the Insured Series 2024 Bonds or the rights of the related Owners, the Trustee shall consider the effect of any such amendment, consent, waiver, action or inaction as if there were no Bond Insurance Policy;

(c) any exercise by the Bond Insurer of such rights is merely an exercise of the Bond Insurer's contractual rights and shall not be construed or deemed to be taken for the benefit, or on behalf, of the registered holders of the Insured Series 2024 Bonds; and

(d) such action does not evidence any position of the Bond Insurer, affirmative or negative, as to whether the consent of any of the registered holders of the Insured Series 2024 Bonds or any other person is required in addition to the consent of the Bond Insurer.

Section 4.07 Amendments. Any amendment, supplement, modification to, or waiver of, or consent under the Indenture that would reasonably be expected to materially adversely affect the rights and interests of the Bond Insurer or the security for the Insured Series 2024 Bonds shall be subject to the prior written consent of the Bond Insurer; provided, that any amendment, supplement, modification, waiver or consent related (x) solely to one or more Supplemental Indentures other than the Second Supplemental Indenture or the Master Indenture but solely with respect to the rights, obligations and other agreements of the Senior Bonds issued under any Supplemental Indenture other than the Second Supplemental Indenture or (y) to the incurrence of Additional Obligations by the Borrower pursuant to Section 10.27 of the Collateral Agency and Accounts Agreement shall not be deemed to materially adversely affect the rights and interests of the Bond Insurer and shall not be subject to the prior written consent of the Bond Insurer pursuant to the provisions of this Section 4.07 so long as any such Additional Obligations have no greater priority to payment than the existing Senior Obligations. Without limiting the foregoing, in determining whether any amendment, supplement, modification, waiver, consent, or other action to be taken, or any failure to take action, under the Indenture would reasonably be expected to materially adversely affect the rights and interests of the Bond Insurer or the security for the Insured Series 2024 Bonds, the Trustee shall act upon the direction of the Bond Insurer. In the event that in connection with the issuance of Additional Insured Bonds, the Bond Insurer of such Additional Insured Bonds obtains terms under the Indenture (other than the Bond Insurer Premium amount) that are more favorable than those under the Indenture applicable to the Bond Insurer of the Insured 2024 Bonds, such terms under the Indenture applicable to the Bond Insurer of the Insured 2024 Bonds shall be revised at the time of the issuance of such Additional Insured Bonds so that they are as, but no more, favorable.

Section 4.08 Bond Insurer as Third-Party Beneficiary. To the extent that any Senior Financing Document to which the Bond Insurer is not a party confers upon, gives or grants to the Bond Insurer, itself



and not as a Senior Secured Party represented by the Trustee pursuant hereto, any right, remedy or claim hereunder or thereunder, the Bond Insurer, in its capacity as such, is intended to be and is hereby explicitly recognized as being a third-party beneficiary of such right, remedy or claim and may exercise all legal rights and remedies in connection therewith; provided, that any exercise of any right, remedy or claim by the Bond Insurer with respect to the Senior Bond Insurer Obligations (including seeking foreclosure or proceeding against the Senior Collateral) shall be done through the Trustee as the Bond Insurer's Secured Debt Representative in accordance with the provisions of the Intercreditor Agreement, this Second Supplemental Indenture and the other Financing Documents.

Section 4.09 Notices, etc. While the Bond Insurance Policy is in effect, the Trustee will provide the Bond Insurer with (a) copies of any notices, financial statements, reports or information provided by or to the Trustee pursuant to the Financing Documents and (b) copies of any notices related to Events of Default, or the exercise of any remedies provided by or to the Trustee (in its capacity as Trustee) pursuant to any Financing Document. The Trustee shall notify the Bond Insurer of any failure of the Issuer or the Borrower to provide notices, certificates or other information required to be provided by such Person to the Trustee pursuant to the Indenture, the TDC Loan Agreements or the Collateral Agency and Accounts Agreement.

Section 4.10 Bond Insurer Premium and Bond Insurer Fees. The Bond Insurance Premium shall constitute a fee, administrative cost and expense due and payable under the Financing Documents for the purposes of the Senior Financing Documents and the Issuer (or the Borrower on its behalf) shall cause the Senior Collateral Agent, subject to the terms of the Intercreditor Agreement and the Collateral Agency and Accounts Agreement, to pay, solely from funds received from (or on behalf of) the Borrower, other than any fees or other amounts paid to the Issuer by the Borrower under the TDC Loan Agreements, the Bond Insurance Premium in accordance with the Schedule I hereto (the "Bond Insurer Premium Schedule"), Section 4.1(d)(ii) of the First Amendments to the TDC Loan Agreements and Sections 5.02(b)(1), 5.03(b)(1) or 6.06(b)(i)(A) of the Collateral Agency and Accounts Agreement, as applicable. The Issuer (or the Borrower on its behalf) shall cause the Senior Collateral Agent to pay, solely from funds received from (or on behalf of) the Borrower, other than any fees or other amounts paid to the Issuer by the Borrower under the TDC Loan Agreements, the Bond Insurer Fees in accordance with Section 4.1(d)(iii) of the First Amendments to the TDC Loan Agreements and Section 5.02(b)(1), 5.03(b)(1) or Section 6.06(b)(i)(A) of the Collateral Agency and Accounts Agreement, as applicable.

Section 4.11 Access and Information. The Issuer and the Trustee each covenant and agree to provide the Bond Insurer, at reasonable hours and under reasonable circumstances and upon reasonable prior written request, access to their books and records relating to the Insured Series 2024 Bonds.

Section 4.12 Bond Insurer Default. Whenever by the terms hereof the consent or approval of the Bond Insurer is required or the Bond Insurer, alone or together with the Owners, is authorized to request or direct the Trustee to take any action, such consent or approval shall not be required, and the Trustee shall not be obligated to comply with such request or direction of the Bond Insurer if a Bond Insurer Default with respect to that Bond Insurer exists and is continuing. If a Bond Insurer Default with respect to a Bond Insurer exists and is continuing nothing contained herein shall limit or impair the rights of the Owners to give any consent or approval or to request or direct the Trustee to take any action, such consent or approval of the Owner shall be effective without the consent or approval of that Bond Insurer otherwise required hereby and the Trustee shall comply with such request or direction notwithstanding that such request or direction is required to be made or given together with or by the Bond Insurer. Nothing in this Section 4.12, however, shall in any way limit or affect the rights of a Bond Insurer as an Owner of Insured Bonds, as subrogee of an Owner of Insured Bonds or as assignee of an Owner of Insured Bonds or to otherwise be reimbursed and indemnified for its reasonable costs and expenses and other payment on or in connection with the Insured Bonds or the Bond Insurance Policy of such Bond Insurer either by operation of law or at equity or by contract.

Section 4.13 Applicability of Article 4. The provisions of this Article 4 shall govern notwithstanding anything to the contrary in the Indenture. The provisions of this Article 4 are solely for the benefit of the Bond Insurer and can be waived in whole or in part by the Bond Insurer or modified in whole or in part as may be agreed to in writing among the Bond Insurer, the Issuer, the Borrower and the Bond Insurer without the consent of the Trustee and the Owners of the Bonds.

Section 4.14 Appointment of Secured Debt Representative of Bond Insurer.

(a) The Trustee is hereby appointed as Secured Debt Representative and Paying Agent for the Bond Insurer with respect to all the Senior Bond Insurer Obligations held by the Bond Insurer, whether under the Indenture, any other Financing Document, the Bond Insurer Premium Schedule, the Bond Insurance Policy or otherwise. The Trustee shall signify its acceptance of the duties and obligations imposed upon it as Secured Debt Representative and Paying Agent for the Bond Insurer by executing this Supplemental Indenture. The Bond Insurer has reviewed the Indenture and the Intercreditor Agreement and acknowledges all of the Trustee's rights, authority, powers and prerogatives, and that the Trustee may exercise such rights, authority, powers and prerogatives with respect to the Senior Bond Insurer Obligations in the same manner and with the same effects as it may do so with respect to the rights and remedies with respect to the other Senior Bond Obligations.

(b) The Trustee may, at the written direction of the Bond Insurer with respect to all the Senior Bond Insurer Obligations the Bond Insurer holds (other than as an Owner of Series 2024 Bonds or any subrogated claim with respect to Series 2024 Bonds), subject to the Intercreditor Agreement, bring such suits, actions or proceedings at law or in equity to enforce the rights of the Bond Insurer, and require the Issuer or the Borrower or both of them to carry out the agreements with or for the benefit of the Bond Insurer, and to perform its or their duties, under this Supplemental Indenture and the other Financing Documents.

Section 4.15 Majority Bondholders May Control Proceedings. The Bond Insurer acknowledges that, subject to the Bond Insurer's voting rights under Section 4.05 and the Bond Insurer's rights under Section 4.08 and with respect to amounts in the Segregated Policy Payments Account, the Owners of a majority in aggregate principal amount of the Senior Bonds then Outstanding (subject to the terms of the Master Indenture) shall have the right, at any time, to the extent permitted by law, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Supplemental Indenture, or for the appointment of a receiver, or any other proceedings hereunder; provided that such direction must be in accordance with the provisions hereof. The Trustee shall not be required to act on any direction given to it pursuant to this Section unless indemnified as provided in Section 9.02 of the Master Indenture.

Section 4.16 Rights and Remedies of the Bond Insurer. The Bond Insurer shall have no right to institute any suit, action or proceeding in equity or at law for the enforcement of any Senior Bond Insurer Obligations under this Second Supplemental Indenture or any other Financing Document or for the execution of any trust hereof to pay any Senior Bond Insurer Obligations or for the appointment of a receiver, or to take any action with respect to the Collateral, except through the Trustee acting as its Secured Debt Representative and in accordance with this Second Supplemental Indenture, the Master Indenture, the Collateral Agency and Accounts Agreement and the Intercreditor Agreement. Nothing in this Second Supplemental Indenture shall, however, affect or impair the right of any Owner of Series 2024 Bonds or (solely as an Owner of Series 2024 Bonds and with respect to any subrogated claim with respect to Series 2024 Bonds) the Bond Insurer to enforce the payment, by the institution of any suit, action or proceeding in equity or at law, of the principal of and Redemption Price, if any, and interest on any Series 2024 Bond at and after the maturity thereof, or the obligation of the Issuer to pay the principal of, Redemption Price,

if any, Sinking Fund Requirement and interest on each of the Series 2024 Bonds to the respective Owners of the Series 2024 Bonds at the time and place, from the source and in the manner herein and in the Series 2024 Bonds expressed, subject to and in accordance with the Intercreditor Agreement. Each Senior Secured Party is intended to be and is hereby explicitly recognized as being a third-party beneficiary of this Section and is entitled to exercise and enforce all legal rights and remedies in connection therewith in accordance with the Intercreditor Agreement and the other Financing Documents. Any amendment, supplement, modification to, or waiver of, or consent under this Section will require, and shall become effective only with, the prior written consent of each Senior Secured Party or its Secured Debt Representative.

Section 4.17 Bond Insurer Designations. For the purposes of this Second Supplemental Indenture, unless expressly indicated otherwise, the Bond Insurer is the Series 2024 Bond Insurer, and each reference to the “Bond Insurance Policy”, the “Bond Insurer Advances”, the “Bond Insurer Fees”, the “Bond Insurer Late Payment Interest”, “the Bond Insurer Premium”, the “Bond Insurer Premium Schedule”, and the “Bond Insurer Reimbursement Amounts”, is in reference to such term only with respect to the Insured Series 2024 Bonds.

Section 4.18 Bond Insurer Unsecured Obligations. The Bond Insurer acknowledges and agrees that, notwithstanding anything to the contrary in any of the Financing Documents, the Bond Insurer Unsecured Obligations shall not be secured by the Senior Collateral; provided, that, each monetary judgment arising from non-monetary claims under the Senior Financing Documents shall constitute Senior Bond Insurer Obligations and shall be secured by the Senior Collateral.

Section 4.19 Special Limited Obligations of the Issuer. Notwithstanding anything to the contrary in this Article IV, the monetary obligations of the Issuer under this Article IV are special limited obligations of the Issuer secured and payable solely from funds received by the Senior Collateral Agent from (or on behalf of) the Borrower, other than any fees or other amounts paid to the Issuer by the Borrower under the TDC Loan Agreements, as provided in the Senior Financing Documents. None of the State, the Port Authority, the JDA, ESD, or any other local development corporation, agency, or authority of the State (other than the Issuer) shall be liable thereon, nor shall any such amounts be payable out of any funds of the Issuer (other than in the case of any liability of the Issuer arising from the gross negligence or willful misconduct of the Issuer or any of its members, officers, employees or agents) other than those pledged therefor.

[END OF ARTICLE IV]

**ARTICLE V**  
**AMENDMENT TO THE MASTER INDENTURE**

Section 5.01 Amendment to Section 1.01 Definition of Master Indenture. Section 1.01 of the Master Indenture is hereby amended and replaced in its entirety as follows:

“Section 1.01 Definitions and Rules of Interpretation. All capitalized terms used herein but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Collateral Agency and Accounts Agreement dated as of November 1, 2022, by and among the Borrower, The Bank of New York Mellon, as the Intercreditor Agent, The Bank of New York Mellon, as the Senior Collateral Agent, The Bank of New York Mellon, as the Securities Intermediary, The Bank of New York Mellon, as the Trustee, ING Capital LLC, as the Administrative Agent, The Bank of New York Mellon, as the Deposit Account Bank and the Issuer, as it may be amended, restated, supplemented or modified from time to time (the “Collateral Agency and Accounts Agreement”). Except as otherwise expressly provided or unless the context otherwise requires, the rules of interpretation included in Exhibit A to the Collateral Agency and Accounts Agreement shall apply to this Indenture.”

Section 5.02 Amendment to Section 10.06 of Master Indenture. Section 10.06 of the Master Indenture is hereby amended by inserting the double-underlined text and deleting the stricken language as follows:

“The Trustee may, without the consent of or notice to the Bondholders (but, in each case, with the prior written consent of the Borrower if the Borrower is not a party to such Financing Documents), amend, change or modify the Collateral Agency and Accounts Agreement, any Security Document or any other Financing Documents (other than this Indenture), for any of the following purposes: (i) to cure any ambiguity, inconsistency, formal defect or omission therein; (ii) to grant to or confer upon the Trustee or the Collateral Agents for the benefit of the Bondholders any additional rights, remedies, powers, authority or security which may be lawfully granted or conferred; (iii) to subject thereto additional revenues, properties or collateral; (iv) (a) to evidence the succession of a successor Trustee or to evidence the appointment of a separate or a co-Trustee or the succession of a successor separate or co-Trustee or (b) to evidence the succession of a successor Collateral Agent or to evidence the appointment of a separate Collateral Agent, a Co-Collateral Agent or a Subordinate Collateral Agent or the succession of a successor separate Collateral Agent, Co-Collateral Agent or Subordinate Collateral Agent; (v) to make any amendment, change or modification required in connection with a Supplemental Indenture entered into pursuant to Section 10.1 hereof or an amendment permitted to another Financing Document permitted under this Section 10.6, and (vi) to make any other change that, in the judgment of the Trustee (which, in exercising such judgment, may conclusively rely, and shall be protected in relying, in good faith, upon an Opinion of Counsel or an opinion or report of engineers, accountants or other experts) does not materially adversely affect the interests of the Bondholders. Notwithstanding anything to the contrary herein, for the purposes of Section 10.3(b) of the Intercreditor Agreement, the Bondholders shall be deemed to have consented to any amendment, change or modification to a Security Document that is otherwise in compliance with the foregoing clauses (i)-(vi). Before the Trustee shall enter into or consent to (or direct the Senior Collateral Agent to enter into or consent to) any amendment, change or modification to any of the Financing Documents, there shall be filed with the Trustee an Opinion of Bond Counsel to the effect that such amendment, change or modification will not adversely affect the exclusion from

federal income taxation of interest on any Series of Tax-Exempt Bonds Outstanding or the validity of any of the Bonds. The Trustee shall have no liability to any Bondholder or any other Person for any action taken by it in good faith pursuant to this Section.”

[END OF ARTICLE V]

## ARTICLE VI

### MISCELLANEOUS

Section 6.01 Titles, Headings, Etc. The titles and headings of the articles, sections, and subsections of this Second Supplemental Indenture have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms or provisions hereof.

Section 6.02 No Pecuniary Liability of Issuer or Members. No provision, covenant or agreement contained in this Second Supplemental Indenture or in the Series 2024 Bonds or any obligations herein or therein imposed upon the Issuer or the breach thereof, shall constitute or give rise to or impose upon the Issuer a pecuniary liability or a charge upon its general credit. In making the agreements, provisions and covenants set forth in this Second Supplemental Indenture, the Issuer has not obligated itself except with respect to the Trust Estate.

All covenants, stipulations, promises, agreements and obligations of the Issuer contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the Issuer and not of any member, director, officer, employee or agent of the Issuer in his individual capacity, and no recourse shall be had for the payment of the principal, Redemption Price or Sinking Fund Requirements, if any, of, and interest on the Series 2024 Bonds or for any claim based thereon or hereunder against any member, director, officer, employee or agent of the Issuer or any natural person executing the Bonds.

Section 6.03 Severability. Whenever possible, each provision of this Second Supplemental Indenture or of the Series 2024 Bonds shall be interpreted in such a manner as to be effective and valid under applicable Law, but if any provision of this Second Supplemental Indenture or of the Series 2024 Bonds shall be prohibited by or invalid under applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Second Supplemental Indenture or of the Series 2024 Bonds.

Section 6.04 Governing Law; Waiver of Jury Trial. THE EFFECT AND MEANING OF THIS SECOND SUPPLEMENTAL INDENTURE AND THE RIGHTS OF ALL PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED ACCORDING TO, THE LAWS OF THE STATE, WITHOUT GIVING EFFECT TO THE PRINCIPLES OF CONFLICTS OF LAWS THEREOF. EACH OF THE ISSUER AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS SECOND SUPPLEMENTAL INDENTURE, THE SERIES 2024 BONDS OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 6.05 Execution in Counterparts. This Second Supplemental Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The exchange of copies of this Second Supplemental Indenture and of signature pages by facsimile, electronic, manual or portable document format (“PDF”) transmission shall constitute effective execution and delivery of this Second Supplemental Indenture as to the parties hereto and may be used in lieu of the original Second Supplemental Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile, electronic, manual or PDF shall be deemed to be their original signatures for all purposes.

Section 6.06 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by overnight delivery service or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Issuer at

New York Transportation Development Corporation

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

With a copy to:

Squire Patton Boggs (US) LLP

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

And

Hardwick Law Firm, LLC

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

If to the Borrower at

JFK Millennium Partners, LLC

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

With a copy to

O'Melveny & Myers

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

and

Bryant Rabbino LLP

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

If to the Trustee at

The Bank of New York Mellon

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

If to the Bond Insurer:

Assured Guaranty Inc.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

In each case in which the notice or other communication refers to a claim on the Bond Insurance Policy or an Event of Default, such notice or other communication shall be marked “URGENT MATERIAL ENCLOSED” and a copy shall also be sent to the attention of the General Counsel at the above address and at [generalcounsel@agltd.com](mailto:generalcounsel@agltd.com).

[If to Moody’s at

Moody’s Investors Service, Inc.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

If to S&P at

Standard & Poor’s Ratings Services

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

If to Fitch at

Fitch Ratings

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_]

A duplicate copy of each notice, certificate or other communication given hereunder by or to the Issuer, the Borrower, the Trustee or the Paying Agent shall also be given to the Issuer, the Borrower, the



Trustee and the Paying Agent. Alternatively, all notices, certificates or other communications hereunder may be given by Electronic Means. The Issuer, the Borrower, the Trustee and the Paying Agent may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

In case, by reason of the suspension of regular mail service as a result of a strike, work stoppage or similar activity, it shall be impractical to mail notice of any event when such notice is required to be given pursuant to any provision of this Second Supplemental Indenture, any manner of giving notice as shall be satisfactory to the Trustee and the Issuer shall be deemed to be a sufficient giving of such notice.

Section 6.07 Payments Due or Actions to be Taken on Non-Business Days. If the date for making any payment or the last day for performance of any act or the exercise of any right, as provided in this Second Supplemental Indenture, shall not be a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided herein, and no interest on such payment shall continue to accrue for the period after such date.

Section 6.08 Effective Date. The date of this Second Supplemental Indenture shall be for reference purposes only and shall not be construed to imply that this Second Supplemental Indenture was executed on the date first written above. This Second Supplemental Indenture has been executed by the parties hereto and is effective on the Series 2024 Closing Date hereof.

[END OF ARTICLE VI]

[SIGNATURE PAGE FOLLOWS]

**[SIGNATURE PAGES AND EXHIBITS HAVE BEEN REMOVED]**

**APPENDIX D-2**

**FORM COLLATERAL AGENCY AND ACCOUNTS AGREEMENT**

**(THIS PAGE INTENTIONALLY LEFT BLANK)**

---

---

**COLLATERAL AGENCY AND ACCOUNTS AGREEMENT**

Dated as of November 1, 2022

among

**JFK MILLENNIUM PARTNERS, LLC,**  
as the Borrower,

**THE BANK OF NEW YORK MELLON,**  
as Senior Collateral Agent,

**THE BANK OF NEW YORK MELLON,**  
as Securities Intermediary,

**THE BANK OF NEW YORK MELLON,**  
as Intercreditor Agent under that Intercreditor Agreement referred to herein,

**THE BANK OF NEW YORK MELLON,**  
as Trustee under that Master Indenture referred to herein,

**ING CAPITAL LLC,**  
as Administrative Agent under that Credit Agreement referred to herein,

**THE BANK OF NEW YORK MELLON,**  
as the Deposit Account Bank,

and

**NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION**  
as Issuer

---

---

## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DELIVERY OF THE CREDIT AGREEMENT, TDC LOAN AGREEMENTS, THE COMMON TERMS AGREEMENT, INDENTURE AND OTHER FINANCING DOCUMENTS .....	4
ARTICLE II THE COLLATERAL AGENTS .....	4
Section 2.01 Appointment .....	4
Section 2.02 Duties and Responsibilities.....	4
Section 2.03 Authorization .....	6
Section 2.04 Administrative Actions .....	7
Section 2.05 Determination of Amounts of Secured Obligations.....	7
Section 2.06 Employment of Agents .....	8
Section 2.07 Reliance of Collateral Agents .....	8
Section 2.08 Non-Reliance on Collateral Agents .....	9
Section 2.09 Collateral Agent in Individual Capacity .....	10
Section 2.10 Collateral Agents Under No Obligation .....	10
Section 2.11 Resignation and Removal; Subordinate Collateral Agent; Successor Collateral Agent; Individual Collateral Agent.....	10
Section 2.12 Books and Records; Reports.....	13
Section 2.13 No Consequential Damages.....	14
Section 2.14 Force Majeure .....	14
Section 2.15 Additional Protections .....	14
Section 2.16 No Liability for Clean-up of Hazardous Materials .....	15
Section 2.17 Merger of the Collateral Agent, Securities Intermediary or Deposit Account Bank.....	15
Section 2.18 Transfer to an Affiliate.....	16
Section 2.19 Institutional Lender .....	16
Section 2.20 Notice of Adverse Claims.....	16
ARTICLE III BORROWER REMAINS LIABLE.....	16
ARTICLE IV REASONABLE CARE .....	17
ARTICLE V PROJECT ACCOUNTS AND NON-PLEDGED ACCOUNTS.....	17
Section 5.01 Establishment of Project Accounts. ....	17
Section 5.02 Pre-Substantial Completion Revenue Account.....	21
Section 5.03 Post-Substantial Completion Revenue Account. ....	28
Section 5.04 Construction Account. ....	38

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
Section 5.05 Concessions Revenue Rent Account .....	49
Section 5.06 Senior and Subordinate Obligations Payment Accounts. ....	49
Section 5.07 Senior and Subordinate Debt Service Reserve Accounts. ....	53
Section 5.08 Reserve Account Letters of Credit.....	54
Section 5.09 Tenant Security Deposit Account. ....	55
Section 5.10 Hedge Ordinary Course Payment Account and Hedge Termination Payment Account. ....	55
Section 5.11 Liquidity Reserve Account. ....	57
Section 5.12 Ramp-Up Reserve Account. ....	57
Section 5.13 O&M Reserve Account.....	58
Section 5.14 Major Maintenance Reserve Account.....	59
Section 5.15 Extraordinary Receipts Account. ....	61
Section 5.16 Operating Account.....	64
Section 5.17 Remaining Revenue Account and Distribution Account.....	64
Section 5.18 Handback Reserve Account.....	67
Section 5.19 Community Development Reserve Fund Account .....	68
Section 5.20 Funds as Collateral.....	68
Section 5.21 Investment.....	68
Section 5.22 Withdrawal and Application of Funds; Priority of Transfers from Project Accounts; Event of Default. ....	70
Section 5.23 Termination of Project Accounts .....	72
Section 5.24 Securities Intermediary .....	73
Section 5.25 Appointment and Change of Deposit Account Bank.....	76
Section 5.26 Inadequately Identified Amounts.....	77
Section 5.27 Tax Reporting .....	78
Section 5.28 Reserved.....	78
Section 5.29 Investment of Funds in Non-Pledged Accounts .....	78
Section 5.30 Escrow of Disputed Amounts .....	78
Section 5.31 Secured Obligations Payment Shortfall Notice .....	78
ARTICLE VI COLLATERAL AND REMEDIES.....	79
Section 6.01 Administration of Collateral .....	79

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
Section 6.02 Notice of Event of Default.....	79
Section 6.03 Enforcement of Remedies.....	79
Section 6.04 Remedies of the Secured Parties.....	80
Section 6.05 Secured Party Information.....	80
Section 6.06 Application of Proceeds.....	81
Section 6.07 Reliance on Information .....	83
Section 6.08 Priority over Construction Liens.....	83
ARTICLE VII COMPENSATION, INDEMNITY AND EXPENSES.....	84
Section 7.01 Compensation; Fees and Expenses .....	84
Section 7.02 Borrower Indemnification.....	84
Section 7.03 Deposit Account Bank .....	85
ARTICLE VIII TERMINATION.....	85
ARTICLE IX ACCESSION.....	85
Section 9.01 Accession Generally .....	85
Section 9.02 Instructions to Collateral Agents .....	85
ARTICLE X COVENANTS OF THE BORROWER.....	85
Section 10.01 Maintenance of Existence.....	85
Section 10.02 Compliance with Lease Agreement and Financing Documents.....	85
Section 10.03 Required Insurance.....	86
Section 10.04 Accounts and Reporting.....	86
Section 10.05 Project Accounts .....	88
Section 10.06 Compliance with Laws .....	88
Section 10.07 Use of Tax-Exempt Obligations Proceeds; Tax Covenant.....	89
Section 10.08 Borrower Representations.....	90
Section 10.09 Taxes.....	90
Section 10.10 Business Activities.....	90
Section 10.11 Limitations on Fundamental Changes; Sale of Assets, Etc.....	90
Section 10.12 Arm’s-Length Transactions .....	91
Section 10.13 Eligible Investments.....	91
Section 10.14 Changes in Name, Place of Business or Fiscal Year .....	91
Section 10.15 [Reserved].....	91



**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
Section 10.16 Negative Pledge .....	91
Section 10.17 Nationally Recognized Rating Agencies. ....	91
Section 10.18 Transfer and Deposit of Funds.....	91
Section 10.19 Project Revenues.....	92
Section 10.20 Status of Entity.....	92
Section 10.21 Limitations on Indebtedness .....	92
Section 10.22 Public Purpose Covenants.....	92
Section 10.23 Post-Issuance Tax Compliance. ....	92
Section 10.24 Costs and Expenses of the Issuance of the Bonds .....	93
Section 10.25 Rate Covenant/Financial Ratio Covenant for Secured Obligations.....	93
Section 10.26 [Reserved].....	93
Section 10.27 Additional Obligations.....	93
ARTICLE XI COVENANTS OF THE ISSUER.....	95
Section 11.01 Binding Obligations of the Issuer .....	95
Section 11.02 Issuer Tax Covenant .....	95
Section 11.03 Issuer Arbitrage Covenants.....	96
Section 11.04 Further Assurances and Corrective Instruments .....	96
Section 11.05 Amendments Not Requiring Consent of Issuer .....	96
ARTICLE XII MISCELLANEOUS PROVISIONS .....	97
Section 12.01 Further Assurances.....	97
Section 12.02 Amendments; Waivers.....	97
Section 12.03 Successors and Assigns.....	98
Section 12.04 Notices .....	98
Section 12.05 Counterparts.....	100
Section 12.06 Applicable Law; Waiver of Jury Trial.....	100
Section 12.07 Captions .....	100
Section 12.08 Severability .....	100
Section 12.09 Collateral Agents' Rights.....	100
Section 12.10 Transfers to and from Accounts.....	102
Section 12.11 PATRIOT Act Notification.....	102
Section 12.12 Events Occurring on Days That Are Not Business Days .....	102

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
Section 12.13 Role of the Intercreditor Agent .....	102
Section 12.14 Issuer Acknowledgement.....	102
Section 12.15 Effectiveness Date .....	102

**EXHIBITS**

EXHIBIT A	Definitions and Rules of Interpretation
EXHIBIT B	Account Details
EXHIBIT C	Form of Account Control Agreement
EXHIBIT D-1	Form of Funds Transfer Certificate (through Phase 2 End of Funding Date)
EXHIBIT D-2	Form of Funds Transfer Certificate (after Phase 2 End of Funding Date)
EXHIBIT E	Construction Account Withdrawal Certificate
EXHIBIT F	Restricted Payment Conditions Satisfaction Transfer Certificate
EXHIBIT G	Community Development Reserve Fund Account Withdrawal Certificate
EXHIBIT H	Responsible Officer Incumbency Certificate
EXHIBIT I	Form of Letters of Credit
EXHIBIT J	Form of Technical Advisor Certificate
EXHIBIT K-1	Form of Shortfall Contribution Notice
EXHIBIT K-2	Form of Contribution Notice
EXHIBIT L	Form of Subordinate Accession Agreement

## COLLATERAL AGENCY AND ACCOUNTS AGREEMENT

This COLLATERAL AGENCY AND ACCOUNTS AGREEMENT, dated as of November 1, 2022 (as supplemented and amended from time to time, this “Agreement”), is made and entered into by and between **JFK MILLENNIUM PARTNERS, LLC**, a Delaware limited liability company (the “Borrower”); **THE BANK OF NEW YORK MELLON**, a New York banking corporation duly organized and validly existing and authorized to accept and execute trusts of the character set out herein under the laws of the State of New York on behalf of itself and the other Senior Secured Parties (in such capacity, the “Senior Collateral Agent”); **THE BANK OF NEW YORK MELLON**, a New York banking corporation duly organized and validly existing and authorized under the laws of the State of New York in its capacity as securities intermediary on behalf of itself and the other Secured Parties (in such capacity, the “Securities Intermediary”); **THE BANK OF NEW YORK MELLON**, in its capacity as intercreditor agent under the Intercreditor Agreement (the “Intercreditor Agent”); **THE BANK OF NEW YORK MELLON**, in its capacity as trustee under the Indenture (the “Trustee”); **ING CAPITAL LLC**, in its capacity as administrative agent under the Credit Agreement and the Common Terms Agreement (the “Administrative Agent”); **THE BANK OF NEW YORK MELLON**, a New York banking corporation, in its capacity as Deposit Account Bank (in such capacity, the “Deposit Account Bank”); and, solely with respect to its obligations under Article XI, **NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION**, a local development corporation formed under Section 1411 of the New York Not-for-Profit Corporation Law, being Chapter 35 of the Consolidated Laws of New York, created by action of the New York Job Development Authority (“JDA”) established under Section 1802, Subtitle I, Title 8, Article 8, of the New York Public Authorities Law (the “Issuer”). Capitalized terms used herein but not otherwise defined herein shall have the respective meanings ascribed to such terms in Exhibit A hereto. The rules of interpretation set forth in Exhibit A shall also apply to this Agreement.

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

**WHEREAS**, The Port Authority of New York and New Jersey, a municipal corporate instrumentality and political subdivision of the States of New York and New Jersey, created and existing by virtue of the Compact of April 30, 1921, made by and between the States of New York and New Jersey, and thereafter consented to by the Congress of the United States (the “Port Authority”) has entered into an Agreement of Lease, dated as of November 17, 2022 (as supplemented and amended from time to time, the “Lease Agreement”), with the Borrower pursuant to which, among other things, the Borrower is obliged to undertake the following (collectively, the “Project”): (i) the operation, maintenance, and demolition of the Existing Terminal Facilities at John F. Kennedy International Airport in Queens, New York (“Airport”), which Existing Terminal Facilities include the existing Terminal 7 facilities, (ii) the design, construction, financing, operation and maintenance of the New Terminal Facilities at the Airport (which New Terminal Facilities include new Terminal 6 facilities and replacement Terminal 7 facilities) and certain ancillary facilities, and (iii) the design and construction of the Off-Premises Facilities at the Airport on behalf of the Port Authority, which Off-Premises Facilities will not be operated or maintained by the Borrower and will not constitute part of the facilities leased to the Borrower under the Lease Agreement;

**WHEREAS**, pursuant to that certain Credit Agreement, dated as of November 1, 2022, among the Issuer, the Borrower, the Lenders, including the Security Deposit Facility Lenders and the Security Deposit Facility LC Issuing Bank, as Bank Lenders, each from time to time party thereto, the Administrative Agent and certain joint lead arrangers and bookrunners, (a) the Lenders have agreed to make certain Senior Term Loans available to the Issuer and (b) the Security Deposit Facility LC Issuing Bank has agreed to make Security Deposit LCs available to the Issuer and (c) the Security Deposit Facility Lender has agreed to make Security Deposit Loans to the Issuer, each on the terms and subject to the conditions set forth therein, the proceeds of the Senior Loans shall be loaned by the Issuer to the Borrower, and the Borrower will use the proceeds of such Senior Loans to finance a portion of the Project Costs;

**WHEREAS**, pursuant to a resolution adopted on October 20, 2022 by the Issuer (the “TDC Resolution”) and that certain TDC Master Bond Indenture of Trust, dated as of November 1, 2022 between the Issuer and the Trustee (as amended, supplemented and/or otherwise modified from time to time, the “Indenture”), the Issuer has authorized the issuance of its New York Transportation Development Corporation Special Facilities Bonds, Senior Series 2022A (Tax-Exempt) (AMT) (JFK Airport Terminal 6-7 Redevelopment Project) in the aggregate principal amount of up to \$435,000,000 (the “Series 2022A Bonds”);

**WHEREAS**, pursuant to that certain Common Terms Agreement, dated as of November 1, 2022 (as amended, supplemented and/or otherwise modified from time to time, the “Common Terms Agreement”), among the Borrower, the Issuer, the Bank Lenders, the Series 2022A Bondholder, the Intercreditor Agent, the Administrative Agent and the Senior Collateral Agent, the parties have agreed to common terms, conditions and administration of the Series 2022A Bonds, the Senior Loans and the Security Deposit LCs;

**WHEREAS**, the proceeds from the Loan Facility and any Additional Obligations will be loaned to the Borrower pursuant to the terms of the TDC Loan Agreements, and the Borrower will execute and deliver the TDC Notes in favor of the Issuer to further evidence the obligations of the Borrower under the TDC Loan Agreements, and such proceeds will be applied to partially pay the Project Costs;

**WHEREAS**, in connection with the Bank Financing TDC Loan Agreements, pursuant to which the Issuer will loan the proceeds of the Loan Facility to the Borrower, the Borrower will enter into Secured Hedge Agreements with the Hedge Providers that hedge and mitigate the interest rate risk of the Issuer under the Loan Facility, in each case to which the Borrower is exposed, on a pass-through basis, under the terms of the Bank Financing TDC Loan Agreements, in each case, in accordance with the terms of Section 5.13 of the Common Terms Agreement;

**WHEREAS**, the Issuer will assign all of its right, title and interest in and to the TDC Loan Agreements, and the TDC Notes, except for the Reserved Rights, to the Senior Collateral Agent, as security for the Senior Secured Debt, and will further endorse the TDC Notes and any Additional Note in respect of Senior Secured Debt in favor of the Senior Collateral Agent, as security for the Senior Secured Debt;

**WHEREAS**, in order to secure the Borrower’s obligations under the Financing Documents, the Borrower has granted mortgage liens on and security interests in all of the interests

of the Borrower under the Lease Agreement and security interests in certain additional accounts and property of the Borrower (including a pledge of the Borrower's Project Revenues) to the Issuer and the Senior Collateral Agent, pursuant to the Leasehold Mortgages and other Senior Collateral Documents;

**WHEREAS**, in order to secure its obligations under the Senior Financing Documents, Borrower has granted to the Senior Collateral Agent, for the benefit of the Senior Secured Parties, a first-priority security interest (subject to Permitted Liens) in, to and under the Collateral;

**WHEREAS**, the Senior Collateral Agent is the beneficiary under each D&C Letter of Credit and the Equity Contribution Letters of Credit, and the assignee with respect to each of the D&C Guaranty and the Manager Guarantee;

**WHEREAS**, pursuant to the Intercreditor Agreement, the Trustee, for and on behalf of the Bondholders (other than the Bondholders of the Series 2022A Bonds), and the Administrative Agent, for and on behalf of the Bank Lenders and the Bondholders of the Series 2022A Bonds, and each of the Hedge Providers, have appointed The Bank of New York Mellon, a banking corporation organized under the State of New York, as Intercreditor Agent under this Agreement, and as Intercreditor Agent under the Security Documents;

**WHEREAS**, the Administrative Agent (on behalf of the Bank Lenders and the Bondholders of the Series 2022A Bonds), the Trustee (on behalf of the Holders of the Additional Bonds) and the Intercreditor Agent (on behalf of each other Senior Secured Party) wish to appoint The Bank of New York Mellon, a banking corporation organized under the State of New York, as Senior Collateral Agent under this Agreement and the Security Documents, and the Senior Collateral Agent wishes to set forth the terms on which it shall accept such appointment and shall undertake to perform certain duties on behalf of the Senior Secured Parties with respect thereto;

**WHEREAS**, the Senior Collateral Agent wishes to appoint The Bank of New York Mellon, a banking corporation organized under the State of New York, as Securities Intermediary under this Agreement; and

**WHEREAS**, the Senior Collateral Agent wishes to appoint The Bank of New York Mellon, a banking corporation organized under the State of New York, as Deposit Account Bank under this Agreement; and

**NOW, THEREFORE**, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

**ARTICLE I**  
**DELIVERY OF THE CREDIT AGREEMENT, TDC LOAN AGREEMENTS, THE**  
**COMMON TERMS AGREEMENT, INDENTURE AND OTHER FINANCING**  
**DOCUMENTS**

A true and correct copy of the Credit Agreement, the TDC Loan Agreements, the Common Terms Agreement, the Indenture and each other Financing Document to which the Collateral Agents are not a party have been furnished to the Senior Collateral Agent and will be furnished to any Subordinate Collateral Agent, upon the Subordinate Collateral Agent's appointment pursuant to Section 2.11(c) (each, a "Collateral Agent" and collectively, the "Collateral Agents") by the Borrower, and the Borrower agrees to furnish to the Collateral Agents prompt notice of any amendments or modifications thereto. The Collateral Agents shall not be bound by any such modification or amendment unless they have received such notice. The Borrower hereby agrees to furnish true and correct copies of any additional Financing Documents entered into in the future and any amendments or modifications to any current or future Financing Documents (in each case to the extent that the Collateral Agents are not a party thereto) to the Collateral Agents promptly following the execution and delivery thereof.

**ARTICLE II**  
**THE COLLATERAL AGENTS**

**Section 2.01 Appointment.** The Administrative Agent (on behalf of the Bank Lenders and the Bondholders of the Series 2022A Bonds), the Trustee (on behalf of Bondholders of any Additional Bonds) and the Intercreditor Agent (on behalf of each other Senior Secured Party) hereby appoint The Bank of New York Mellon as collateral agent for the benefit of the Senior Secured Parties with respect to the Security Interests in the Senior Collateral and the rights and remedies granted pursuant to the Senior Collateral Documents. The Senior Collateral Agent accepts such appointment and agrees to act as Senior Collateral Agent in the manner contemplated herein, in the Intercreditor Agreement, and in the Security Documents. The Senior Collateral Agent is hereby authorized and directed to act in strict accordance with the terms of this Agreement. The Senior Collateral Agent hereby accepts and agrees to, and the Borrower hereby acknowledges and consents to, the foregoing authorization and direction of the Senior Collateral Agent, on behalf of the Senior Secured Parties. Any party that shall become a Senior Secured Party after the date hereof pursuant to the terms hereof and of the Intercreditor Agreement shall be deemed to have so acknowledged and consented to such appointment, authorization and direction of the Senior Collateral Agent by the Senior Secured Parties set forth in this Section 2.01. Any party that shall become a Subordinate Secured Party after the date hereof pursuant to the terms hereof and of the Intercreditor Agreement shall be deemed to have so acknowledged and consented to such appointment, authorization and direction of a Subordinate Collateral Agent appointed pursuant to Section 2.11(c).

**Section 2.02 Duties and Responsibilities.**

(a) Subject to the terms hereof, each Collateral Agent agrees, for the benefit of the applicable Secured Parties in accordance with the Intercreditor Agreement, to administer and enforce this Agreement and the other Security Documents to which it is a party or assignee as a Collateral Agent, and, among other remedies, to foreclose upon, collect and dispose of the

respective Collateral and to apply the proceeds therefrom as provided herein and in the Intercreditor Agreement, and otherwise to perform its duties and obligations as a Collateral Agent hereunder and thereunder in accordance with the terms hereof and thereof; provided, however, that each Collateral Agent shall have no duties or responsibilities except those expressly set forth herein, in the Intercreditor Agreement or in the other Security Documents to which it is a party or an assignee, and no implied covenants or obligations, fiduciary or otherwise, shall be read into this Agreement, the Intercreditor Agreement, or any such other Security Documents against either Collateral Agent.

(b) Notwithstanding anything contained herein to the contrary, no Collateral Agent shall be required to exercise any discretion or take any discretionary action but shall only be required to act or refrain from acting (and shall be fully protected in so acting or refraining from acting) in accordance with this Agreement and the Intercreditor Agreement or upon written instructions received by such Collateral Agent from the Borrower, the Intercreditor Agent or the Port Authority, in each case as expressly authorized by the terms hereof, and in accordance with the terms specified herein and in the Intercreditor Agreement, and such instructions shall be binding upon the applicable Collateral Agent and each of the applicable Secured Parties; provided, further, that neither Collateral Agent shall be required to take any action which is contrary to any provision hereof or of the Intercreditor Agreement or the other Security Documents or applicable Law.

(c) Notwithstanding any other provision of the Security Documents, in no event shall a Collateral Agent be required to foreclose on, or take possession of, any Collateral, if, in the reasonable judgment of such Collateral Agent, such action would be in violation of the Intercreditor Agreement or any applicable Law, rule or regulation pertaining thereto, or if such Collateral Agent reasonably believes that such action would result in the incurrence of liability by such Collateral Agent for which it is not provided with security or indemnity reasonably satisfactory to it against the costs, expenses and liabilities which might thereby be incurred pursuant to Section 2.10 of this Agreement.

(d) Neither Collateral Agent shall be responsible to the other Secured Parties for (i) any recitals, statements, representations or warranties by the Borrower, or any of the Secured Parties (other than its own) contained in this Agreement or the other Financing Documents, or any certificate or other document delivered by the Borrower, or any of the other Secured Parties thereunder, (ii) the value, validity, effectiveness, genuineness, enforceability (other than as to each Collateral Agent with respect to such documents to which such Collateral Agent is a party) or sufficiency of this Agreement or any other document referred to or provided for herein or therein or of the Collateral, (iii) the performance or observance by the Borrower or any of the Secured Parties (other than as to itself) of any of their respective agreements contained herein or in the other Financing Documents, nor shall the Collateral Agents be liable because of the invalidity or unenforceability of any provisions of this Agreement (other than as to itself) or (iv) the validity, perfection, priority or enforceability of the Security Interests on any of the Collateral, whether impaired by operation of Law or by reason of any action or omission to act on its part hereunder (except to the extent such action or omission constitutes gross negligence, bad faith or willful misconduct on the part of an applicable Collateral Agent), the validity of the title of the Borrower to the Collateral owned by it, insuring the Collateral or the payment of Taxes, charges, assessments on the Collateral or otherwise as to the maintenance of the Collateral.

(e) Except when a mandatory action is required by a Collateral Agent under the Security Documents or the Intercreditor Agreement, each Collateral Agent may at any time request instructions from the Intercreditor Agent as to a course of action to be taken by the Collateral Agent hereunder and under any of the Security Documents or in connection herewith and therewith or any other matters relating hereto and thereto. The Intercreditor Agent shall promptly reply to such request with direction to act in accordance with the Intercreditor Agreement and the requisite Security Document, and each Collateral Agent shall be fully justified in failing or refusing to take any such action if it shall not have received such written instruction in accordance with the Intercreditor Agreement. This provision is intended solely for the benefit of the Collateral Agents and their successors and permitted assigns and is not intended to and will not entitle the other parties hereto to any defense, claim or counterclaim or confer any rights on any other party hereto.

(f) None of the Collateral Agents, the Securities Intermediary or any of their respective directors, officers, employees or agents shall be liable or responsible for any action taken or omitted to be taken by it or them hereunder or in connection herewith, except for its or their own gross negligence, bad faith or willful misconduct.

(g) Pursuant to Section 83(a)(18) (Leasehold Mortgages) of the Lease, the Securities Intermediary shall act in accordance with instructions that it receives pursuant to this Agreement and the other Financing Documents in respect of disbursements from the Project Accounts (including disbursements for the benefit of the Port Authority).

**Section 2.03 Authorization.** The Administrative Agent (on behalf of the Bank Lenders and the Bondholders of the Series 2022A Bonds), the Trustee (on behalf of the Bondholders of any Additional Bonds) and the Intercreditor Agent (on behalf of each other Secured Party) hereby authorize the Collateral Agents (and any party that shall become a Secured Party after the date hereof pursuant to the terms hereof and of the Intercreditor Agreement shall be deemed to have so acknowledged and consented to such authorization) to (a) execute, deliver, and perform in such capacity under this Agreement and each other Financing Document to which each Collateral Agent is or is intended to be a party or is an assignee, (b) exercise and enforce any and all rights, powers and remedies provided to the Collateral Agents under this Agreement, any other Financing Document, any applicable Law, or any other document, instrument, or agreement, in each case in accordance with the terms thereof, in each case, to the extent applicable, in accordance with the terms of the Lease Agreement, (c) take any other action under and in accordance with this Agreement and any other Financing Document to which the applicable Collateral Agent is a party or an assignee and which the applicable Collateral Agent shall be entitled to have taken hereunder or under any other Financing Document and (d) take any other action under this Agreement and any other Financing Document that the Collateral Agents are directed to take by the Intercreditor Agent on behalf of the Secured Parties in accordance with the terms hereof and of the Intercreditor Agreement. Notwithstanding the foregoing, neither Collateral Agent shall commence an Enforcement Action except in accordance with instructions given by the Intercreditor Agent (acting in accordance with the Intercreditor Agreement). All decisions with respect to the type of Enforcement Action which is to be commenced shall be made by, and all actions with respect to prosecution and settlement of such Enforcement Action shall require the written consent of, the Intercreditor Agent (acting in accordance with the Intercreditor Agreement), and no Collateral Agent shall be required to take any Enforcement Action in the absence of any such written consent. Each Collateral Agent will use its reasonable efforts to pursue diligently the prosecution of any



Enforcement Action, which the Collateral Agent is so instructed to initiate pursuant to this Agreement and the Intercreditor Agreement. The Bank of New York Mellon represents that it is a banking corporation duly organized and validly existing and authorized to accept and execute trusts of the character set out herein under the laws of the State of New York on behalf of itself and the Secured Parties and to perform the duties of Senior Collateral Agent, Securities Intermediary and Deposit Account Bank hereunder. The Collateral Agents acknowledge that the Trustee's interest in the Collateral is part of the Trust Estate pursuant to the Indenture.

**Section 2.04 Administrative Actions.** Each Collateral Agent shall take such action as it reasonably deems necessary to continue the perfection of the Security Interests on the applicable Collateral held for the benefit of the applicable Secured Parties and to cause to be filed all continuation statements under the UCC in such manner and in such places as may be required by law in order to protect and maintain in force the lien of the Collateral Agent in the applicable Collateral created by the Security Documents. The Borrower shall be responsible for the reasonable costs incurred by the Collateral Agents performing their duties under this Section and in filing all continuation statements hereunder. The Collateral Agents shall not release any of the Collateral held for the benefit of the Secured Parties, except: (a) upon the written direction of the Intercreditor Agent (acting in accordance with the terms of the Intercreditor Agreement); (b) upon the Discharge of Senior Obligations or Discharge of Subordinate Obligations, as applicable, as certified to the Collateral Agents by the Intercreditor Agent; (c) for Collateral consisting of a debt instrument if the related Indebtedness evidenced thereby has been paid in full in cash, as certified to the Collateral Agent by the Intercreditor Agent; or (d) in connection with the permitted disposition of any assets of the Borrower made in accordance with the terms of the Financing Documents or where such release is expressly permitted under the terms of the Security Documents. Upon the written request by a Collateral Agent or the Borrower at any time, the Intercreditor Agent (acting in accordance with the terms of the Intercreditor Agreement) will confirm in writing (to the extent applicable) the Collateral Agent's authority to release particular types or items of Collateral pursuant to this Section and the Intercreditor Agent hereby agrees to provide such confirmations (or objections thereto) promptly in accordance with the Intercreditor Agreement.

**Section 2.05 Determination of Amounts of Secured Obligations.** Upon the written request of a Collateral Agent or the Borrower, the applicable Secured Debt Representative (acting in accordance with the applicable Financing Documents) shall promptly deliver to the applicable Collateral Agent and the Borrower a certificate, dated the date of delivery thereof (and the applicable Collateral Agent shall forward a copy of such certificate to the Secured Parties represented by it and to the Intercreditor Agent promptly, but in any event within two (2) Business Days after receipt thereof), as to (a) the identity and address of each applicable Secured Party (and, if applicable, any representative thereof), (b) the principal, accrued but unpaid interest, or any other amounts of the Secured Obligations then Outstanding held by, owed or payable to each such Secured Party, (c) in the case of any such certificate being delivered in contemplation of the application of amounts received by the Collateral Agent in respect of the Collateral pursuant to Article VI hereof, the amount of interest on the Secured Obligations owing and any other amounts in respect of the Secured Obligations owing to each Secured Party, as the case may be (in the case of any such other amounts, accompanied by appropriate evidence thereof), and/or (d) in the event that any of the Secured Obligations shall have become or been declared to be due and payable (whether at stated maturity, by required prepayment, redemption, declaration, acceleration,

demand, termination or early termination, close-out, liquidation, or otherwise), the amount of such Secured Obligations then due and payable to each Secured Party, as the case may be (to the extent that such information is different from that provided in clause (b) above); provided that each of the Borrower and each Secured Party shall have not less than five (5) Business Days from receipt of a copy of any such certificate to review such certificate and provide any objections to information contained therein related to any Secured Party within the above-mentioned period, to the applicable Collateral Agent. Absent receipt of notice of objection from the Borrower or a Secured Party within the above-mentioned period, each Collateral Agent shall be entitled to rely on certifications received by them from the applicable Secured Debt Representatives in accordance with the above for the purposes of determining the amount of the Secured Obligations then Outstanding held by each Secured Party; provided, that in the absence of a Collateral Agent's receipt of any certification requested by it pursuant to this sentence, such Collateral Agent shall be entitled (but not obligated) to take such action if such Collateral Agent shall have sufficient knowledge (acting reasonably) to make any determination required to be made in connection with such action.

**Section 2.06 Employment of Agents.** Each Collateral Agent may, at the Borrower's reasonable cost and expense, employ or retain such qualified counsel, accountants, appraisers or other experts or advisers as they may reasonably require for the purpose of determining and discharging their rights and duties hereunder and, in the absence of a Collateral Agent's gross negligence, bad faith or willful misconduct in employing or retaining any such counsel, accountants, appraisers, experts or advisers, may act and rely and shall be protected in acting and relying on the opinion or advice of or information obtained from any counsel, accountant, appraiser or other expert or advisor, whether retained or employed by the Borrower or such Collateral Agent, in relation to any matter arising in the administration hereof or in the determination or discharging of its rights and duties hereunder, and shall not be responsible for any act or omission on the part of any of them or for acting or relying on the opinion or advice or information obtained from such expert or advisor; provided, however, that in the absence of an Event of Default under the Financing Documents having occurred and being continuing, neither Collateral Agent shall be entitled to incur any costs or expenses of the scope contemplated in this Section in excess of \$15,000 in any six-month period without the prior approval of the Borrower, which approval shall not be unreasonably withheld, delayed or conditioned. In addition, neither Collateral Agent shall be liable for any acts or omissions of its nominees, correspondents, designees, agents, subagents or sub-custodians except to the extent of its gross negligence, bad faith or willful misconduct in nominating or appointing such Persons and so long as such Persons are permitted to act hereunder.

**Section 2.07 Reliance of Collateral Agents.** In connection with the performance of their duties hereunder, the Collateral Agents shall be entitled to rely conclusively upon, and shall be fully protected in acting or refraining from acting in accordance with, any written certification, notice, instrument, opinion, request, consent, order, approval, direction or other written communication (including any thereof by electronic communication) of or from the Intercreditor Agent (to the extent not in violation of the terms hereof or of the other Financing Documents), which the Collateral Agents reasonably believe to be genuine and to have been signed or sent by or on behalf of the proper Person or Persons, and the Collateral Agents shall be entitled to rely conclusively upon the due execution, validity and effectiveness, and the truth, correctness and acceptability of, any provisions contained therein. The Collateral Agents shall not have any responsibility to make any investigation into the facts or matters stated in any notice, certificate,

instrument, demand, request, direction, instruction, or other communication furnished to them that they reasonably believe to be genuine. Whenever this Agreement specifies that any instruction or consent by any Secured Debt Representative, the Intercreditor Agent, the Borrower or the Port Authority is to be given, the Collateral Agents shall be entitled to rely upon any such instruction or consent by such Secured Debt Representative, the Intercreditor Agent, the Borrower or the Port Authority, as applicable. Whenever this Agreement (or any other Financing Document) specifies that any instruction, direction or consent by the Intercreditor Agent is to be given in accordance with the terms of the Intercreditor Agreement, the Collateral Agents shall be entitled to rely upon any such instruction, direction or consent by the Intercreditor Agent (which instruction, direction or consent need not state that it is given in accordance with the terms of the Intercreditor Agreement), and the Collateral Agents may presume without investigation that any such instruction, direction or consent by the Intercreditor Agent has been given in accordance with the terms of the Intercreditor Agreement. The Intercreditor Agent hereby agrees to give any instruction, direction or consent required to be given by it to the Collateral Agents, as applicable, subject to and in accordance with the terms of the Intercreditor Agreement. Notwithstanding any provision of the Lease Agreement to the contrary, the Intercreditor Agent, Collateral Agents, the Deposit Account Bank and Securities Intermediary will not take any action or refrain from taking any action for which they have received an Opinion of Bond Counsel stating that the action or non-action will negatively impact the tax-exempt status of the Tax-Exempt Obligations; and the Intercreditor Agent, Collateral Agents, the Deposit Account Bank and Securities Intermediary shall be accorded all of their rights, privileges and immunities hereunder and under the Indenture or the Credit Agreement, as applicable, when taking action under the Lease Agreement.

**Section 2.08 Non-Reliance on Collateral Agents.** The Administrative Agent (on behalf of the Bank Lenders and the Bondholders of the Series 2022A Bonds), the Trustee (on behalf of the Bondholders of any Additional Bonds) and the Intercreditor Agent (on behalf of each other Secured Parties) hereby expressly acknowledge that neither the Collateral Agents nor any of their officers, directors, employees, agents, attorneys-in-fact or Affiliates has made any representations or warranties to such Secured Party and that no act by the Collateral Agents (other than any explicit written representation or warranty made by a Collateral Agent) hereafter taken shall be deemed to constitute any representation or warranty by the Collateral Agents to any other Secured Party. Except for any notices, reports and other documents expressly required to be furnished to the other Secured Parties by the Collateral Agents hereunder, the Collateral Agents shall not have any duty or responsibility to provide any other Secured Party with any credit or other information concerning the business, operations, property, condition (financial or other), prospects or creditworthiness of the Borrower or the Sponsors. The Bank of New York Mellon, in its roles as Senior Collateral Agent, Intercreditor Agent, Securities Intermediary, Deposit Account Bank and Trustee under this Agreement, the Intercreditor Agreement, the Indenture and the other Security Documents, is acting under this Agreement, the Intercreditor Agreement, the Indenture and the other Security Documents solely in its capacity as Senior Collateral Agent, Intercreditor Agent, Securities Intermediary, Deposit Account Bank and Trustee, respectively, and not in its individual capacity. ING Capital LLC, in its role as Administrative Agent under the applicable Financing Documents, is acting solely in its capacity as Administrative Agent and not in its individual capacity. In no case shall the Trustee (or any Person acting as successor Trustee under the Indenture), the Administrative Agent (or any Person acting as successor Administrative Agent under the Credit Agreement), or the Intercreditor Agent (or any Person acting as successor Intercreditor Agent under the Intercreditor Agreement) be personally liable for or on account of

any of the statements, representations, warranties, covenants or obligations of the Borrower hereunder or thereunder, all such liability, if any, being expressly waived by the parties hereto and any Person claiming by, through or under such party. This Section shall survive the payment of all Secured Obligations.

**Section 2.09 Collateral Agent in Individual Capacity.** Each Collateral Agent and its respective Affiliates may make loans to, issue letters of credit in favor of, accept deposits from and generally engage in any kind of business with the Borrower (to the extent the Borrower is permitted by the Financing Documents to enter into those transactions), the Sponsors and their respective Affiliates as though the Collateral Agent were not the Collateral Agent hereunder and under the Security Documents. With respect to Secured Obligations owed to a Collateral Agent and any Bonds issued to it, such Collateral Agent shall have the same rights and powers under this Agreement and the Financing Documents as any other Secured Party and may exercise the same as though it were not a Collateral Agent, and the term “Secured Party” shall include such Collateral Agent in its individual capacity, as applicable.

**Section 2.10 Collateral Agents Under No Obligation.** None of the provisions of the Security Documents shall be construed to require the Collateral Agents to expend or risk their own funds or otherwise to incur any personal liability, financial or otherwise, in the performance of any of their respective duties hereunder or thereunder. The Collateral Agents shall be under no obligation to exercise any of the rights or powers vested in them by the Security Documents unless the applicable Collateral Agent shall have been offered and accepted security or indemnity from the Borrower or any other Person reasonably satisfactory to them (provided that in no event shall any Secured Party be required to provide such security or indemnity) against the costs, expenses and liabilities which might be incurred by them in exercising such rights or powers (including interest thereon from the time incurred until reimbursed).

**Section 2.11 Resignation and Removal; Subordinate Collateral Agent; Successor Collateral Agent; Individual Collateral Agent.**

(a) **Resignation and Removal.** Subject to the appointment and acceptance of a successor Collateral Agent as provided below, a Collateral Agent may resign at any time by giving at least sixty (60) days’ prior written notice thereof to the other Secured Parties and the Borrower, and a Collateral Agent may be removed at any time with or without cause by the Intercreditor Agent upon thirty (30) days’ prior written notice thereof to such Collateral Agent and the Borrower and otherwise in accordance with the terms of the Intercreditor Agreement. No resignation or removal of a Collateral Agent shall be effective until a successor Collateral Agent has been appointed (it being understood that a successor Collateral Agent shall be an Institutional Lender as set forth in subclause (ii)(A) of the definition of “Institutional Lender” in the Lease Agreement). Upon any such resignation or removal, the Intercreditor Agent shall have the right to appoint a successor Collateral Agent which, so long as no Event of Default has occurred and is continuing, shall be acceptable to the Borrower, such acceptance not to be unreasonably withheld, delayed or conditioned.

(b) **Requirements for Successor Collateral Agent.** If no successor Collateral Agent shall have been so appointed by the Intercreditor Agent within sixty (60) days after the retiring Collateral Agent’s giving of notice of resignation or within thirty (30) days after the Intercreditor

Agent's giving of notice of the removal of the Collateral Agent, then the outgoing Collateral Agent may, on behalf of the Secured Parties, apply to a court of competent jurisdiction (with notice to the Intercreditor Agent and the Borrower) for the appointment of a successor Collateral Agent. In all such cases, the successor Collateral Agent shall be a bank organized under the laws of the United States of America or any state thereof that has an office in the State of New York and which agrees to administer the Collateral in accordance with the terms hereof and of the Intercreditor Agreement and the other Security Documents and the unsecured long-term debt of which shall be rated "A" or better by S&P or "A2" or better by Moody's and shall have a total capital stock and unimpaired surplus of not less than \$500,000,000 and assets of not less than \$1,000,000,000, shall not be a Prohibited Party (as defined in the Lease Agreement) and, so long as no Event of Default has occurred and is continuing, shall be reasonably acceptable to the Borrower (such acceptance not to be unreasonably withheld, delayed or conditioned). The Bank of New York Mellon, as Senior Collateral Agent hereby represents and confirms that it meets the qualifications provided in the preceding sentence as of the date hereof. Upon the acceptance of any appointment as Collateral Agent hereunder by a successor Collateral Agent, such successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges, obligations and duties of the outgoing Collateral Agent, and the outgoing Collateral Agent shall be discharged from its duties and responsibilities hereunder. After any outgoing Collateral Agent's resignation or removal hereunder as Collateral Agent, the provisions of this Agreement (including Sections 2.13, 7.01 and 7.02) shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as a Collateral Agent. For the avoidance of doubt, no resignation or removal pursuant to this Section 2.11 shall be effective until (A) a successor for the Collateral Agent has been appointed in accordance with (and subject to) the provisions of this Section 2.11, (B) the resigning or removed Collateral Agent has transferred to its successor all of its rights and obligations in its capacity as the Collateral Agent under this Agreement and the other Financing Documents, (C) the resigning or removed Collateral Agent has assigned, transferred or delivered, as applicable, all Collateral held by it to the successor Collateral Agent, together with all records, instruments and other documents necessary or appropriate to execute such assignment, transfer or delivery to the successor Collateral Agent, (D) the resigning or removed Collateral Agent has executed and delivered to the successor Collateral Agent the amendments to the applicable financing statements, and has taken other actions as may be necessary or appropriate, in connection with the assignment, transfer or delivery to the successor Collateral Agent of the security interests created under the Security Documents, and (E) the successor Collateral Agent has executed and delivered an agreement to be bound by the terms of this Agreement and the other Financing Documents to which prior Collateral Agent is a party and to perform all duties required of the prior Collateral Agent hereunder and thereunder.

(c) **Subordinate Collateral Agent.** Upon the issuance or incurrence by the Borrower of any Additional Subordinate Obligations, the Issuer, the Senior Collateral Agent, the Intercreditor Agent and any Secured Debt Representative on behalf of the Subordinate Secured Parties (with written notice to the other Secured Parties, the Borrower and the Port Authority) shall execute and deliver the Accession Agreement attached hereto as Exhibit L and all additional instruments necessary to appoint any Person as a Subordinate Collateral Agent ("Subordinate Collateral Agent"), with respect to all or any portion of the Collateral held by it that will secure the Additional Subordinate Obligations, in any case with such powers, rights, duties, obligations and immunities conferred upon the Subordinate Collateral Agent hereunder as may be specified therein (but not in excess of or different from those set forth herein for a Collateral Agent). If the

Borrower shall nevertheless refuse to join in the execution of any such instrument within five (5) Business Days of any written request therefor by the Senior Collateral Agent or if any Event of Default shall have occurred and is continuing, the Senior Collateral Agent may act under the foregoing provisions without the concurrence of the Borrower; and the Borrower hereby irrevocably makes, constitutes and appoints the Senior Collateral Agent as the agent and attorney-in-fact for the same to act for it under the provisions of (and in accordance with) this sub-Section. Until such time as a Subordinate Collateral Agent is appointed hereunder, all references herein to the “Collateral Agents” shall refer exclusively to the Senior Collateral Agent.

(d) **Co-Collateral Agent.** If at any time a Collateral Agent shall determine that it shall be necessary under applicable Law or in order to permit any action to be taken hereunder in accordance with the terms hereof, such Collateral Agent and the Intercreditor Agent (with written notice to the other Secured Parties, the Borrower and the Port Authority) shall execute and deliver all instruments necessary to appoint any Person as a co-collateral agent (“Co-Collateral Agent”) or substitute Collateral Agent, with respect to all or any portion of the Collateral held by it, in any case with such powers, rights, duties, obligations and immunities conferred upon the applicable Collateral Agent hereunder as may be specified therein (but not in excess of or different from those set forth herein for a Collateral Agent). If the Borrower shall nevertheless refuse to join in the execution of any such instrument within five (5) Business Days of any written request therefor by a Collateral Agent or if any Event of Default shall have occurred and is continuing, the Collateral Agent may act under the foregoing provisions without the concurrence of the Borrower; and the Borrower hereby irrevocably makes, constitutes and appoints each Collateral Agent as the agent and attorney-in-fact for the same to act for it under the provisions of (and in accordance with) this sub-Section.

(e) **Requirements for Subordinate Collateral Agent and Co-Collateral Agent.** Every Subordinate Collateral Agent and Co-Collateral Agent shall, to the extent permitted by Law, be appointed and act subject to the following provisions and conditions:

(i) all rights and powers conferred or imposed upon the Senior Collateral Agent may be conferred or imposed upon and may be exercised or performed by such Subordinate Collateral Agent or Co-Collateral Agent as specified in this Agreement and the instrument appointing such Subordinate Collateral Agent or Co-Collateral Agent;

(ii) the Senior Collateral Agent shall not be personally liable by reason of any act or omission of any Subordinate Collateral Agent or Co-Collateral Agent hereunder; and

(iii) each Subordinate Collateral Agent and Co-Collateral Agent shall be subject to the same restrictions or limitations on liability (to the extent applicable) that apply to the Senior Collateral Agent hereunder.

(f) **Co-Collateral Agents Holding Insubstantial Collateral.** A Co-Collateral Agent shall not be required to meet the conditions of eligibility under Section 2.11(b) if such Co-Collateral Agent holds only an insubstantial amount of the Collateral, as determined by the Intercreditor Agent (acting pursuant to the terms of the Intercreditor Agreement), and shall otherwise be subject to the same terms and conditions regarding resignation and replacement.

## **Section 2.12 Books and Records; Reports.**

(a) The Securities Intermediary shall at all times keep, or cause to be kept, proper books of record and accounts in which complete and accurate entries shall be made of all transactions relating to the applicable Secured Obligations, Project Revenues and the Project Accounts, including the status and expiration date of all financing statements and continuation statements filed with respect to the Collateral. The Securities Intermediary shall provide to each Collateral Agent access to the proper books of record, all information on accounts and transactions relating to the applicable Secured Obligations, Project Revenues and the Project Accounts related to Collateral for which such Collateral Agent is Secured Party. The Securities Intermediary shall deliver to the Collateral Agent, no later than (x) three (3) Business Days after the end of each calendar month, a report that shall set forth the account balances, receipts, disbursements, transfers, investment transactions and accruals for each of the Project Accounts relating to the Collateral for which such Collateral Agent is a Secured Party and (y) three (3) Business Days after receipt thereof, copies of all information related to the Project Accounts or the transactions relating to the Collateral for which such Collateral Agent is a Secured Party. If the Securities Intermediary and a Collateral Agent are the same entity, then the reporting requirement in the preceding sentence is satisfied with respect to that Collateral Agent and no additional action shall be deemed required by the Securities Intermediary. The Deposit Account Bank shall at all times keep, or cause to be kept, proper books of record and accounts in which complete and accurate entries shall be made of all transactions relating to the Non-Pledged Accounts. Such books of record and accounts shall be available for inspection by the Intercreditor Agent, each Collateral Agent and the other Secured Parties and/or their respective agents or representatives duly authorized in writing, at reasonable hours and under reasonable circumstances and upon reasonable prior written request.

(b) Within fifteen (15) days after the end of each calendar month, the Collateral Agents shall furnish to the Intercreditor Agent and the Borrower a report that shall set forth in reasonable detail (i) the account balances, receipts, disbursements, transfers, investment transactions, and accruals for each of the Project Accounts relating to the Collateral they hold during the preceding calendar month and (ii) all transfers into, and the then current account balance in, the Operating Account (provided that the Deposit Account Bank, as holder of the Operating Account, has provided the Collateral Agents with such information). Within fifteen (15) days after the end of each calendar month, the Deposit Account Bank shall furnish to the Intercreditor Agent, the Borrower and (solely with respect to the Concessions Revenue Rent Account, the Handback Reserve Account and the Community Development Reserve Fund Account) the Port Authority a report that shall set forth in reasonable detail the account balances, receipts, disbursements, and transfers for each of the Non-Pledged Accounts during the preceding calendar month.

(c) Within ninety (90) days after the end of each calendar year, the Collateral Agents shall furnish to the Intercreditor Agent and the Borrower a report setting forth in reasonable detail (i) the account balances, receipts, disbursements, transfers, investment transactions, and accruals for each of the Project Accounts relating to the Collateral they hold during the preceding calendar year and (ii) all transfers into, and the then current account balance in, the Operating Account (provided that the Deposit Account Bank, as holder of the Operating Account, has provided the Collateral Agents with such information). Within ninety (90) days after the end of each calendar year, the Deposit Account Bank shall furnish to the Intercreditor Agent, the Borrower and (solely with respect to the Concessions Revenue Rent Account, the Handback Reserve Account and the

Community Development Reserve Fund Account) the Port Authority a report setting forth in reasonable detail the account balances, receipts, disbursements and transfers for each of the Non-Pledged Accounts during the preceding calendar year.

(d) The Securities Intermediary and Collateral Agents shall maintain records of all receipts, disbursements, transfers, and investments of funds with respect to the Project Accounts (and all records and information received by the Securities Intermediary and Collateral Agents from the Deposit Account Bank in connection with the Operating Account) until the fifth anniversary of the date on which all of the Secured Obligations shall have been paid in full. The Deposit Account Bank shall maintain records of all receipts, disbursements, transfers, and investments of funds with respect to the Non-Pledged Accounts until the fifth anniversary of the date on which all of the Secured Obligations shall have been paid in full.

(e) On or prior to the date that is six (6) months prior to the expiration date of any UCC financing statement that has been filed with respect to the Collateral for which a Collateral Agent is the Secured Party and is known to the Collateral Agent, the Collateral Agent shall provide the Intercreditor Agent and the Borrower notice of the impending expiration date. This clause (e) is not intended to modify the responsibility of, the liability of, or provide a defense to, the Borrower under any Financing Document with respect to the filing of continuation statements or the maintenance of the Collateral Agents' perfected security interest in the Collateral with the priority contemplated by the Financing Documents.

**Section 2.13 No Consequential Damages.** In no event shall the Collateral Agents, the Intercreditor Agent, the Deposit Account Bank or the Securities Intermediary be liable under or in connection with the Financing Documents for indirect, special, incidental, punitive or consequential losses or damages of any kind whatsoever, including but not limited to lost profits, whether or not foreseeable, even if the Collateral Agents, the Intercreditor Agent, the Deposit Account Bank and/or Securities Intermediary has been advised of the possibility thereof and regardless of the form of action in which such damages are sought, excluding in each case any such damages resulting from such Person's gross negligence, bad faith or willful misconduct.

**Section 2.14 Force Majeure.** In no event shall the Collateral Agents, Securities Intermediary or the Deposit Account Bank be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services not within its control, the unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility; it being understood that the Collateral Agents, Securities Intermediary and the Deposit Account Bank shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances; and provided further that nothing in this Section 2.14 shall limit or exclude liability arising from gross negligence, bad faith or willful misconduct of the Collateral Agents, Securities Intermediary or the Deposit Account Bank (as applicable).

**Section 2.15 Additional Protections.** The rights, privileges, protections and benefits given to the Collateral Agents, the Intercreditor Agent, the Deposit Account Bank or the Securities



Intermediary, as the case may be, including, without limitation, its rights to be indemnified, are extended to, and shall be enforceable by, each agent, custodian and other Person employed to act hereunder by the Collateral Agents, the Intercreditor Agent, the Deposit Account Bank or the Securities Intermediary, as the case may be, including any Co-Collateral Agent, to the extent permitted to be so employed in accordance with the terms hereof; provided, however, that all such rights, privileges, protections and benefits are subject to the same limits and conditions imposed upon the Collateral Agents, the Intercreditor Agent, Deposit Account Bank or the Securities Intermediary, as the case may be.

**Section 2.16 No Liability for Clean-up of Hazardous Materials.** In the event that a Collateral Agent, in connection with the exercise of its rights and duties hereunder, is required to acquire title to an asset for any reason, or take any managerial action of any kind in regard thereto, in order to carry out any fiduciary or trust obligation for the benefit of another, which in the Collateral Agent's sole discretion may cause the Collateral Agent to be considered an "owner or operator" under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601, *et seq.*, or otherwise cause the Collateral Agent to incur liability under CERCLA or any other federal, state or local Law, the Collateral Agent reserves the right, instead of taking such action (unless such action is reasonably necessary to preserve the Collateral or protect the Security Interests in the Collateral and the Collateral Agent is (a) reasonably likely to be able to avail itself of a defense to liability under CERCLA or analogous state or local laws, and has had reasonable opportunity to conduct "all appropriate inquiry" as defined in 40 C.F.R. Part 312 or (b) reasonably expected to be indemnified by or on behalf of the Borrower for any losses, claims, damages and liabilities relating to such action pursuant to the terms herein; provided, however, that for purposes of this Section 2.17, the indemnification provided to the Collateral Agent by the Borrower pursuant to Section 7.02 is hereby acknowledged as acceptable), to either resign as a Collateral Agent or arrange for the transfer of the title or control of the asset to a court-appointed receiver to the extent such transfer is permitted by the terms of the Financing Documents. Except for such claims or actions arising directly from the gross negligence, bad faith or willful misconduct of a Collateral Agent, the Collateral Agent shall not be liable to any Person for any environmental claims or contribution actions under any federal, state or local Law by reason of the Collateral Agent's actions and conduct as authorized, empowered and directed hereunder or relating to the discharge, release or threatened release of hazardous materials into the environment.

**Section 2.17 Merger of the Collateral Agent, Securities Intermediary or Deposit Account Bank.**

(a) Any corporation or company into which a Collateral Agent shall be merged, or with which it shall be consolidated, or any corporation or company resulting from any merger or consolidation to which a Collateral Agent shall be a party, shall be the Collateral Agent under this Agreement, without the execution or filing of any paper or any further act on the part of the parties hereto, provided, that such resulting Person shall meet the requirements of Section 2.11(b). Upon the occurrence of any such event the Collateral Agent shall promptly provide written notice thereof to the Intercreditor Agent and the Borrower.

(b) Any corporation or company into which the Securities Intermediary shall be merged, or with which it shall be consolidated, or any corporation or company resulting from any

merger or consolidation to which the Securities Intermediary shall be a party, shall be the Securities Intermediary under this Agreement, without the execution or filing of any paper or any further act on the part of the parties hereto, provided, that such resulting Person shall meet the requirements specified in Section 2.11(b) with respect to the Collateral Agents (which requirements shall also apply to any Securities Intermediary). Upon the occurrence of any such event the Securities Intermediary shall promptly provide written notice thereof to the Intercreditor Agent and the Borrower.

(c) Any corporation or company into which the Deposit Account Bank shall be merged, or with which it shall be consolidated, or any corporation or company resulting from any merger or consolidation to which the Deposit Account Bank shall be a party, shall be the Deposit Account Bank under this Agreement, without the execution or filing of any paper or any further act on the part of the parties hereto, provided, that such resulting Person shall meet the requirements of Section 2.11(b) with respect to the Collateral Agents (which requirements shall also apply to any Deposit Account Bank). Upon the occurrence of any such event the Deposit Account Bank shall promptly provide written notice thereof to the Secured Debt Representatives and the Borrower.

**Section 2.18 Transfer to an Affiliate.** In addition to any rights it may have under Section 2.17 or under any other provision of this Agreement or any other Security Document, each Collateral Agent, the Securities Intermediary and the Deposit Account Bank may assign or transfer its rights under this Agreement and the other Security Documents to any Affiliate that meets the requirements of Section 2.11(b) and Section 2.19 subject to the prior written consent of the Borrower (so long as no Event of Default has occurred and is continuing) and the Intercreditor Agent.

**Section 2.19 Institutional Lender.** The Collateral Agents hereby represent and agree that each Collateral Agent is an Institutional Lender as set forth in subclause (ii)(A) of the definition of “Institutional Lender” in the Lease Agreement; it being understood and agreed, however, that each Collateral Agent, acting in its capacity as a Collateral Agent, shall not be considered to be a “lender.”

**Section 2.20 Notice of Adverse Claims.** Each Collateral Agent hereby represents (as to itself only) that, except for the claims and interests of the Secured Parties and the Borrower in each of the Project Accounts, such Collateral Agent (a) as of the date hereof, has no actual knowledge of, and has received no written notice of, and (b) as of each date on which any Project Account is established pursuant to this Agreement, has received no notice of, any claim to, or interest in, any Project Account. If any Person asserts any Lien against any Project Account, the Collateral Agents, upon obtaining written notice thereof, will notify the Intercreditor Agent, the Secured Parties and the Borrower within two Business Days of such notice thereof.

### **ARTICLE III BORROWER REMAINS LIABLE**

Anything herein to the contrary notwithstanding, (a) the Borrower shall remain liable under its contracts and agreements (including the Financing Documents and the Project Documents) to the extent set forth therein to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by the Collateral Agents of any of the

rights hereunder shall not release the Borrower from any of its duties or obligations under its contracts and agreements, and (c) neither the Collateral Agents nor any of the other Secured Parties shall have any obligation or liability under the contracts and agreements of the Borrower solely by reason of this Agreement, nor shall the Collateral Agents nor any other Secured Party be obligated to perform any of the obligations or duties of the Borrower thereunder or to take any action to collect or enforce any claim for payment assigned thereunder. Notwithstanding the foregoing, if the Borrower fails to perform any agreement of the Borrower contained herein relating to the perfection of any Security Interests in or preservation of the Collateral, the Collateral Agents may (but shall not be obligated to) themselves perform, or cause performance of, such obligation, and the reasonable expenses of the Collateral Agents incurred in connection therewith shall be payable by the Borrower under Article VII hereof.

#### **ARTICLE IV REASONABLE CARE**

The powers conferred on the Collateral Agents hereunder are being conferred solely to protect their interest in the Collateral for the benefit of the Secured Parties and shall not impose any duty upon them to exercise any such powers unless otherwise expressly provided. Except for the safe custody and preservation of the Collateral in their possession and the accounting for monies actually received, transferred or disbursed by it hereunder, the Collateral Agents shall have no other duty as to the Collateral, whether or not the Collateral Agents or any of the other Secured Parties have or are deemed to have knowledge of any matters, or as to the taking of any necessary steps to preserve rights against any parties or any other rights pertaining to the Collateral. The Collateral Agents hereby agree to exercise reasonable care in respect of the custody and preservation of the Collateral. The Collateral Agents shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in their possession if such Collateral is accorded treatment substantially equal to that which the Collateral Agents accord their own property.

#### **ARTICLE V PROJECT ACCOUNTS AND NON-PLEDGED ACCOUNTS**

##### **Section 5.01 Establishment of Project Accounts.**

(a) The following accounts (inclusive of any sub-accounts) are hereby established and created and shall be maintained by the Securities Intermediary in the name of the Borrower (unless the contrary is expressly noted below) (collectively the “Project Accounts”):

(i) an account in the name of the Borrower entitled “Pre-Substantial Completion Revenue Account” (the “Pre-Substantial Completion Revenue Account”);

(ii) an account in the name of the Borrower entitled “Post-Substantial Completion Revenue Account” (the “Post-Substantial Completion Revenue Account”);

(iii) an account in the name of the Borrower entitled “Construction Account” (the “Construction Account”), and within the Construction Account the following sub-accounts shall be established as of the date hereof:

A. a sub-account entitled “Tax-Exempt Bond Proceeds Sub-Account” (the “Tax-Exempt Bond Proceeds Sub-Account”), and within the Tax-Exempt Bond Proceeds Sub-Account, separate sub-accounts with respect to each Series of Tax-Exempt Bonds, including the sub-account entitled “Series 2022A Bond Proceeds Sub-Account” (the “Series 2022A Bond Proceeds Sub-Account”); and

B. a sub-account entitled “Bank Proceeds Sub-Account” (the “Bank Proceeds Sub-Account”);

C. a sub-account entitled “Building Loan Tax-Exempt Bond Proceeds Sub-Account” (the “Building Loan Tax-Exempt Bond Proceeds Sub-Account”), and within the Building Loan Tax-Exempt Bond Proceeds Sub-Account, separate sub-accounts with respect to each Series of Tax-Exempt Bonds, including the sub-account entitled “Series 2022A Bond Building Proceeds Sub-Account” (the “Series 2022A Bond Building Proceeds Sub-Account”); and

D. a sub-account entitled “Project Loan Tax-Exempt Bond Proceeds Sub-Account” (the “Project Loan Tax-Exempt Bond Proceeds Sub-Account”), and within the Project Loan Tax-Exempt Bond Proceeds Sub-Account, separate sub-accounts with respect to each Series of Tax-Exempt Bonds, including a sub-account entitled “Series 2022A Bond Project Proceeds Sub-Account” (the “Series 2022A Bond Project Proceeds Sub-Account”);

E. a sub-account entitled “Building Loan Bank Proceeds Sub-Account” (the “Building Loan Bank Proceeds Sub-Account”);

F. a sub-account entitled “Project Loan Bank Proceeds Sub-Account” (the “Project Loan Bank Proceeds Sub-Account”);

G. a sub-account entitled “Equity Contribution Sub-Account” (the “Equity Contribution Sub-Account”);

H. a sub-account entitled “Milestone Payment Sub-Account” (the “Milestone Payment Sub-Account”); and

I. a sub-account entitled “Operating Cashflow Sub-Account” (the “Operating Cashflow Sub-Account”);

(iv) an account in the name of the Borrower entitled “Senior Obligations Payment Account” (the “Senior Obligations Payment Account”), and within the Senior Obligations Payment Account:

A. a sub-account entitled “2022A Tax-Exempt Bond Interest Payment Sub-Account” (the “2022A Tax-Exempt Bond Interest Payment Sub-Account”);

- B. a sub-account entitled “2022A Tax-Exempt Bond Principal Payment Sub-Account” (the “2022A Tax-Exempt Bond Principal Payment Sub-Account”);
- C. a sub-account entitled “Senior Loan Interest Payment Sub-Account” (the “Senior Loan Interest Payment Sub-Account”);
- D. a sub-account entitled “Senior Loan Principal Payment Sub-Account” (the “Senior Loan Principal Payment Sub-Account”);
- (v) an account in the name of the Borrower entitled “Subordinate Obligations Payment Account” (the “Subordinate Obligations Payment Account”)
- (vi) an account in the name of the Borrower entitled “Senior Debt Service Reserve Account” (the “Senior Debt Service Reserve Account”);
- (vii) an account in the name of the Borrower entitled “Subordinate Debt Service Reserve Account” (the “Subordinate Debt Service Reserve Account”);
- (viii) an account in the name of the Borrower entitled “Hedge Ordinary Course Payment Account” (the “Hedge Ordinary Course Payment Account”);
- (ix) an account in the name of the Borrower entitled “Hedge Termination Payment Account” (the “Hedge Termination Payment Account”);
- (x) an account in the name of the Borrower entitled “Liquidity Reserve Account” (the “Liquidity Reserve Account”);
- (xi) an account in the name of the Borrower entitled “Ramp-Up Reserve Account” (the “Ramp-Up Reserve Account”);
- (xii) an account in the name of the Borrower entitled “Major Maintenance Reserve Account” (the “Major Maintenance Reserve Account”);
- (xiii) an account in the name of the Borrower entitled “O&M Reserve Account” (the “O&M Reserve Account”);
- (xiv) an account in the name of the Borrower entitled “Remaining Revenue Account” (the “Remaining Revenue Account”); and
- (xv) an account in the name of the Borrower entitled “Extraordinary Receipts Account” (the “Extraordinary Receipts Account”), and within the Extraordinary Receipts Accounts:
- A. a sub-account entitled “Casualty Proceeds Sub-Account” (the “Casualty Proceeds Sub-Account”); and

B. a sub-account entitled “Condemnation Proceeds Sub-Account” (the “Condemnation Proceeds Sub-Account”)

(b) Each such Project Account shall be identified in the manner set forth in Exhibit B attached hereto. Notwithstanding anything herein to the contrary, upon the written instruction of the Borrower or the Intercreditor Agent, the Securities Intermediary may, from time to time hereafter, establish and maintain additional sub-accounts within the Project Accounts (including, without limitation, sub-accounts with respect to any future Additional Bonds issued in accordance with the terms of the Indenture, including any Supplemental Indentures, and any other Secured Obligations in accordance with the terms of the applicable Financing Documents) for the purposes and the term specified in any such request.

(c) The Borrower hereby confirms that an operating account (the “Operating Account”) has been established as of the Closing Date with the Deposit Account Bank, and such account shall be maintained in the name of the Borrower. The Operating Account shall also constitute a Project Account and shall be subject to the Account Control Agreement (in the form attached hereto as Exhibit C).

(d) All of the Project Accounts shall, subject to the terms of this Agreement, be under the exclusive domain and control of the applicable Collateral Agent, as applicable (including the Operating Account, pursuant to the Account Control Agreement) and, except as expressly provided herein (and in the case of the Operating Account, in the Account Control Agreement), the Borrower shall not have any right to withdraw funds from any Project Account. The Borrower hereby irrevocably authorizes the Securities Intermediary, to credit funds to or deposit funds in, and to withdraw and transfer funds from, each Project Account in accordance with the terms of this Agreement (or the Account Control Agreement in the case of the Operating Account). The Project Accounts shall be maintained at all times in the State of New York or, in the case of the Operating Account, at a commercial bank with a branch office in the State of New York.

(e) The Senior Debt Service Reserve Account, the Subordinate Debt Service Reserve Account, and the Ramp-Up Reserve Account (collectively, the “Reserve Accounts”) shall constitute the Segregated Reserve Pledged Accounts. The Bank Proceeds Sub-Account and the Series 2022A Bond Proceeds Sub-Account shall constitute the Segregated Proceeds Pledged Accounts. The Segregated Reserve Pledged Accounts and the Segregated Proceeds Pledged Accounts shall constitute the Segregated Pledged Accounts.

(i) The Senior Debt Service Reserve Account and Ramp-Up Reserve Account shall constitute Segregated Collateral only for the benefit of the Senior Secured Parties. The Senior Debt Service Reserve Account shall be subject to a Security Interest pursuant to the Senior Security Agreement for the benefit of the Senior Secured Parties.

(ii) The Subordinate Debt Service Reserve Account shall constitute Segregated Collateral only for the benefit of Subordinate Secured Parties. Upon the issuance or incurrence of Additional Subordinate Obligations by the Borrower, the Borrower shall enter into a security agreement evidencing a Security Interest in the Subordinate Debt Service Reserve Account in favor of the Subordinate Collateral Agent for the benefit of the Subordinate Secured Parties.

(iii) The Segregated Proceeds Pledged Accounts shall constitute Segregated Collateral only for the benefit of the Bank Finance Parties. The Segregated Pledged Accounts shall be subject to a Security Interest for the benefit of the Bank Finance Parties.

(f) In addition to the Project Accounts addressed above, the Non-Pledged Accounts are addressed in Sections 5.05, 5.17(b), 5.18 and 5.19 and, with respect to the Rebate Account, in the Indenture. Each such Non-Pledged Account is identified in the manner set forth in Exhibit B attached hereto.

### **Section 5.02 Pre-Substantial Completion Revenue Account.**

(a) From the Closing Date until (but not including) the Phase 2 End of Funding Date, the Borrower shall promptly deposit or cause to be deposited into the Pre-Substantial Completion Revenue Account (i) all Project Revenues and all other amounts received by the Borrower from any source whatsoever, except for (x) the Non-Pledged Receipts and (y) amounts expressly required to be deposited in other Project Accounts pursuant to this Article V, and (ii) amounts transferred from other Project Accounts as required by the terms of this Agreement. Pending such deposit, the Borrower will hold all such amounts received by it in trust for the benefit of the Secured Parties in accordance with the terms hereof.

(b) The Securities Intermediary shall, on each Transfer Date occurring prior to the Phase 2 End of Funding Date, make the following withdrawals, transfers and payments from the Pre-Substantial Completion Revenue Account (to the extent of funds then available in the Pre-Substantial Completion Revenue Account, and in each case to the extent the amounts required to pay such amounts have not been previously transferred, in accordance with the terms hereof, from other Accounts at the direction of the Borrower) in the amounts, at the times and only for the purposes specified below at the request of the Borrower in a Funds Transfer Certificate (in substantially the form attached hereto as Exhibit D-1), and in the following order of priority, after giving effect to any other transfers into the Project Accounts required or permitted to be made on or prior to such Transfer Date in accordance with the terms hereof (it being agreed that no amount shall be withdrawn or transferred on any date pursuant to any clause below until amounts sufficient as of that date (to the extent applicable) for all the purposes specified under the prior clauses shall have been withdrawn or transferred):

1. *First*, in the following order of priority: (i) if any Rebate Amount is due under the Indenture, to fund the Rebate Account in an amount equal to such Rebate Amount, and thereafter, and (ii) *pro rata* to pay all fees (including commitment and letter of credit fees), administrative costs and expenses then due and payable under the Financing Documents to the Secured Parties;

2. *Second, pro rata* (i) to the Port Authority, an amount equal to the aggregate of Ground Rent, First Additional Rent, Second Additional Rental, Third Additional Rent, any other Rental (other than Concessions Revenue Rent, Excess Value Rent or Equity Gain Share) and any MMRA Shortfall Amount, in each case due and payable on the applicable Transfer Date, (ii) to the Port Authority, on the first Transfer Date following the identification of any MAG Deficiency for the preceding year, if applicable, an amount equal to such MAG Deficiency (provided that during any Deferral Period, only fifty

percent (50%) of any MAG Deficiency shall be paid at this tier Second and the remaining fifty percent (50%) shall be paid at tier Ninth), and (iii) to the Operating Account, an amount equal, together with the amount then on deposit therein, to the Permitted O&M Expenses (other than amounts required to be transferred or paid to the Port Authority pursuant this paragraph *Second*) then due and payable, or reasonably projected to be due and payable prior to the next succeeding Transfer Date, and Major Maintenance expenses (to the extent funds on deposit in the Major Maintenance Reserve Account are not sufficient to pay such Major Maintenance expenses and without duplication of any MMRA Shortfall Amount) then due and payable or reasonably projected to be due and payable prior to the next succeeding Transfer Date;

3. *Third*, to the Operating Account, an amount equal, when taken together with amounts then on deposit therein, to the O&M Expenses (other than amounts required to be transferred or paid to the Port Authority pursuant to paragraph *Second*) not constituting Permitted O&M Expenses then due and payable, or reasonably projected to be due and payable prior to the next succeeding Transfer Date;

4. *Fourth, pro rata*, (i) to the Hedge Ordinary Course Payment Account, an amount equal to the Ordinary Course Payments under any Secured Hedge Agreement then due and payable, or that are projected by the Borrower to become due and payable prior to the next succeeding Transfer Date, and (ii) to each Interest Payment Sub-Account within the Senior Obligations Payment Account established in connection with Senior Obligations (other than Ordinary Course Payments under any Secured Hedge Agreement), an amount equal to the amount necessary to cause the balance on deposit in such Interest Payment Sub-Account to be equal to *the product of* (A) and (B), where:

(A) is a number equal to (I) *divided by* (II), where:

(I) is the number of Transfer Dates that have occurred since:

(a) subject to the succeeding clauses (b) and (c), the preceding Interest Payment Date for the applicable Senior Obligations (including the current Transfer Date but excluding any Transfer Date occurring on such preceding Interest Payment Date),

(b) subject to the succeeding clause (c), if no Interest Payment Date has yet occurred in respect of the applicable Senior Obligations, the date of issuance or borrowing for the applicable Senior Obligations (including the current Transfer Date), or

(c) with respect to Deferred Interest Obligations, the applicable Interest Payment Calculation Start Date (including the current Transfer Date); and

(II) is the total number of Transfer Dates in the Interest Payment Period for the applicable Senior Obligation; and



(B) is an amount equal to the aggregate amount of interest on such Senior Obligations scheduled to become due and payable on any Interest Payment Date with respect to such Senior Obligations occurring on such Transfer Date or thereafter prior to the next succeeding Transfer Date, as reasonably projected by the Borrower to become due and payable on such Interest Payment Date; provided that if an Interest Payment Date for any such Senior Obligations will occur prior to the next succeeding Transfer Date, in no event shall the amount transferred to the applicable Interest Payment Sub-Account be less than the amount necessary to cause the balance then on deposit in such Interest Payment Sub-Account to be at least equal to the projected aggregate amount of interest on such Senior Obligations due and payable on such Interest Payment Date, as reasonably projected by the Borrower; provided, further, that if there are insufficient funds available on the Transfer Date to make the deposits required pursuant to this paragraph *Fourth* in full, transfers shall be made to the Hedge Ordinary Course Payment Account and the various Interest Payment Sub-Accounts maintained with respect to any Senior Obligations on a *pro rata* basis measured by the amounts required to be transferred to each such Project Account or sub-account pursuant to this paragraph *Fourth*;

5. *Fifth, pro rata*, (i) to the Hedge Termination Payment Account, an amount equal to the Hedge Termination Payments under any Secured Hedge Agreement then due and payable, or that is reasonably projected by the Borrower to become due and payable prior to the next succeeding Transfer Date, and (ii) to each Principal Payment Sub-Account within the Senior Obligations Payment Account established in connection with Senior Obligations (other than Hedge Termination Payments under any Secured Hedge Agreement), an amount equal to the amount necessary to cause the balance on deposit in such Principal Payment Sub-Account to be equal to *the product of* (A) and (B), where:

(A) is a number equal to:

(I) for Senior Obligations not constituting Balloon Indebtedness, (a) *divided by* (b), where:

(a) is the number of Transfer Dates that have occurred since:

(x) subject to the succeeding clause (y), the preceding Principal Payment Date for the applicable Senior Obligations (including the current Transfer Date but excluding any Transfer Date occurring on such preceding Principal Payment Date), or

(y) if no Principal Payment Date has yet occurred in respect of the applicable Senior Obligations, the Principal Payment Calculation Start Date for the applicable Senior Obligations (including the current Transfer Date); and

(b) is the total number of Transfer Dates in the Principal Payment Period for the applicable Senior Obligation; or

(II) for Senior Obligations constituting Balloon Indebtedness:

(a) prior to the applicable Principal Payment Calculation Start Date, zero (0),

(b) on and after the applicable Principal Payment Calculation Start Date and before the first Principal Payment Date pursuant to the Balloon Indebtedness Certificate, (x) the number of Transfer Dates that have occurred since the Principal Payment Calculation Start Date for such Balloon Indebtedness (including the current Transfer Date but, if such Payment Calculation Start Date occurred on a prior Transfer Date, then excluding such Transfer Date), *divided by* (y) the total number of Transfer Dates in the Principal Payment Period outlined in the Balloon Indebtedness Certificate, or

(c) on and after the first Principal Payment Date pursuant to the Balloon Indebtedness Certificate, (x) the number of Transfer Dates that have occurred since the preceding Principal Payment Date outlined in the applicable Balloon Indebtedness Certificate (including the current Transfer Date but excluding any Transfer Date occurring on such preceding Principal Payment Date), *divided by* (y) the total number of Transfer Dates in the Principal Payment Period outlined in such Balloon Indebtedness Certificate; and

(B) is an amount equal to the principal or Accreted Value of such Senior Obligations scheduled or assumed (in accordance with the definition of Aggregate Debt Service) to become due and payable on the Principal Payment Date with respect to such Senior Obligations occurring on such Transfer Date or immediately thereafter; provided that if a Principal Payment Date for such Senior Obligations will occur prior to the next succeeding Transfer Date, in no event shall the amount transferred to the applicable Principal Payment Sub-Account be less than the amount necessary to cause the balance then on deposit in such Principal Payment Sub-Account to be at least equal to the aggregate amount of principal or Accreted Value of such Senior Obligations due and payable on such Principal Payment Date; provided further that if there are insufficient funds available on the Transfer Date to make the deposits required pursuant to this paragraph *Fifth* in full, transfers shall be made to the Hedge Termination Payment Account and the various Principal Payment Sub-Accounts maintained with respect to any Senior Obligations on a *pro rata* basis measured by the amounts required to be transferred to each such Project Account or sub-account pursuant to this paragraph *Fifth*;

6. *Sixth*, on each Transfer Date occurring after the Phase 1 End of Funding Date, to the O&M Reserve Account, the amount, if any, required to fund the O&M Reserve Account to the required level pursuant to Section 5.13 of this Agreement;

7. *Seventh*, on each Transfer Date occurring after the Phase 1 End of Funding Date, to the Major Maintenance Reserve Account, the amount, if any, required to fund the Major Maintenance Reserve Account to the required level pursuant to Section 5.14 of this Agreement;

8. *Eighth*, if applicable, in the following order of priority:

(i) to each Interest Payment Sub-Account within the Subordinate Obligations Payment Account established in connection with the Subordinate Obligations, an amount equal to the amount necessary to cause the balance on deposit in such Interest Payment Sub-Account to be equal to *the product of* (A) and (B), where:

(A) is a number equal to (I) *divided by* (II), where:

(I) is the number of Transfer Dates that have occurred since:

(a) subject to the succeeding clause (b) and (c), the preceding Interest Payment Date for the applicable Subordinate Obligations (including the current Transfer Date but excluding any Transfer Date occurring on such preceding Interest Payment Date),

(b) subject to the succeeding clause (c), if no Interest Payment Date has yet occurred in respect of the applicable Subordinate Obligations, the date of issuance, Drawing or borrowing for the applicable Subordinate Obligations (including the current Transfer Date), or

(c) with respect to Deferred Interest Obligations, the applicable Interest Payment Calculation Start Date (including the current Transfer Date); and

(II) is the total number of Transfer Dates in the Interest Payment Period for the applicable Subordinate Obligation;

(B) is an amount equal to the aggregate amount of interest on such Subordinate Obligations scheduled to become due and payable on any Interest Payment Date with respect to such Subordinate Obligations occurring on such Transfer Date or thereafter prior to the next succeeding Transfer Date, as reasonably projected by the Borrower to become due and payable on such Interest Payment Date; provided, that if an Interest Payment Date for such Subordinate Obligations will occur prior to the next succeeding Transfer Date, in no event shall the amount transferred to the applicable Interest Payment Sub-Account be less than the amount necessary to cause the balance then on deposit in such Interest Payment Sub-Account to be at least equal to the projected aggregate amount of interest on such Subordinate Obligations due and payable on such Interest Payment Date, as reasonably projected by the Borrower; provided, further, that if there are insufficient funds available on the Transfer Date to make the deposits required pursuant to this paragraph *Eighth*(i), transfers shall be made to the various Interest Payment Sub-Accounts maintained with respect to any Subordinate Obligations on a *pro rata* basis measured by the amounts required to be transferred to such Project Account or sub-account pursuant to this paragraph *Eighth*(i); and

(ii) to each Principal Payment Sub-Account within the Subordinate Obligations Payment Account established in connection with Subordinate Obligations, an

amount equal to the amount necessary to cause the balance on deposit in such Principal Payment Sub-Account to be equal to *the product of* (A) and (B), where:

(A) is a number equal to:

(I) for Subordinate Obligations not constituting Balloon Indebtedness, (a) *divided by* (b), where:

(a) is the number of Transfer Dates that have occurred since:

(x) subject to the succeeding clause (y), the preceding Principal Payment Date for the applicable Subordinate Obligations (including the current Transfer Date but excluding any Transfer Date occurring on which such preceding Principal Payment Date), or

(y) if no Principal Payment Date has yet occurred in respect of the applicable Subordinate Obligations, the Principal Payment Calculation Start Date for the applicable Subordinate Obligations (including the current Transfer Date); and

(b) the total number of Transfer Dates in the Principal Payment Period for the applicable Subordinate Obligations, or

(II) for Subordinate Obligations constituting Balloon Indebtedness:

(a) prior to the applicable Principal Payment Calculation Start Date, zero (0),

(b) on and after the applicable Principal Payment Calculation Start Date and before the first Principal Payment Date pursuant to the Balloon Indebtedness Certificate, (x) the number of Transfer Dates that have occurred since the Principal Payment Calculation Start Date for such Balloon Indebtedness (including the current Transfer Date but, if such Payment Calculation Start Date occurred on a prior Transfer Date, then excluding such Transfer Date), *divided by* (y) the total number of Transfer Dates in the Principal Payment Period outlined in the Balloon Indebtedness Certificate, or

(c) on and after the first Principal Payment Date pursuant to the Balloon Indebtedness Certificate, (x) the number of Transfer Dates that have occurred since the preceding Principal Payment Date outlined in the applicable Balloon Indebtedness Certificate (including the current Transfer Date but excluding any Transfer Date occurring on such preceding Principal Payment Date), *divided by* (y) the total number of Transfer Dates in the Principal Payment Period outlined in such Balloon Indebtedness Certificate; and

(B) is an amount equal to the principal or Accreted Value of such Subordinate Obligation scheduled or assumed (in accordance with the definition of Aggregate Debt Service) to become due and payable on the Principal Payment Date with respect to such Subordinate Obligation occurring on such Transfer Date or immediately thereafter; provided that if a Principal Payment Date for such Subordinate Obligation will occur prior to the next succeeding Transfer Date, in no event shall the amount transferred to the applicable Principal Payment Sub-Account be less than the amount necessary to cause the balance then on deposit in such Principal Payment Sub-Account to be at least equal to the aggregate amount of principal or Accreted Value of such Subordinate Obligation due and payable on such Principal Payment Date; provided, further, that if there are insufficient funds available on the Transfer Date to make the deposits required pursuant to this paragraph *Eighth(ii)*, transfers shall be made to the various Principal Payment Sub-Accounts maintained with respect to any Subordinate Obligations on a *pro rata* basis measured by the amounts required to be transferred to each Project Account or sub-account pursuant to this paragraph *Eighth (ii)*;

9. *Ninth*, to the Port Authority an amount equal to (A) the Subordinate Concessions Revenue Rent, (B) any accumulated and unpaid Deferred Concessions Revenue Rent which are attributable to prior Transfer Dates, together with any interest due and payable thereon pursuant to the Lease Agreement, if applicable, and (C) on the first Transfer Date following the identification of any MAG Deficiency for the preceding year during the Deferral Period, any portion of the MAG Deficiency to the extent not paid pursuant to paragraph Second above, each as due and payable under the Lease Agreement;

10. *Tenth*, all remaining amounts shall be (i) transferred (in whole or in part) to the Operating Cashflow Sub-Account within the Construction Account, or (ii) retained (in whole or in part) in the Pre-Substantial Completion Revenue Account, in each case as directed by the Borrower.

Notwithstanding the foregoing, the Securities Intermediary shall automatically make the transfers described in clauses *First(i)*, *Second(i)*, *Fourth*, and *Fifth*, even if not instructed to do so in the relevant Funds Transfer Certificate from the Borrower.

Not less than three (3) Business Days prior to each such Transfer Date, each Secured Debt Representative, with respect to the applicable Senior Obligation (which in the case of the Series 2022A Bonds shall be the Trustee, solely for purposes of this paragraph), shall notify the Collateral Agents and the Borrower of the amount of the required transfer for payment of fees and expenses with respect to such Senior Obligation as of such Transfer Date.

(c) To the extent that on any date of determination after the Phase 1 End of Funding Date amounts on deposit in (i) the O&M Reserve Account are in excess of the relevant O&M Reserve Requirement, or (ii) the Major Maintenance Reserve Account are in excess of the Major Maintenance Reserve Requirement, as applicable, such excess amounts shall be transferred by the Securities Intermediary to the Pre-Substantial Completion Revenue Account.

(d) On the Phase 2 End of Funding Date, all remaining funds, if any, then on deposit in the Pre-Substantial Completion Revenue Account shall be transferred (i) first, to the Operating Cashflow Sub-Account, in the amount necessary to cause the aggregate amount remaining on deposit in the Sub-Accounts of the Construction Account to equal the sum of the amounts described in the Second priority of Section 5.04(l) and (ii) thereafter, all remaining funds shall be transferred to the Post-Substantial Completion Revenue Account, in each case pursuant to a Funds Transfer Certificate (in substantially the form attached hereto as Exhibit D-2).

(e) If on any Transfer Date the amounts on deposit in the Pre-Substantial Completion Revenue Account are not sufficient to make the transfers required to be made from the Pre-Substantial Completion Revenue Account (i) pursuant to clauses *First* through *Eighth* under Section 5.02(b), inclusive, in full, the Securities Intermediary shall (notwithstanding any other provision hereof and without the need for a Funds Transfer Certificate), transfer funds from the Operating Cashflow Sub-Account (to the extent of the balance therein) in the amounts of the deficiencies to each Person and Project Account described in Section 5.02(b), in accordance with the order of priority and pro rata portions set forth therein, and (ii) after having made such transfers, pursuant to clause *Second* under Section 5.02(b) in full, then the Securities Intermediary shall (notwithstanding any other provision hereof and without the need for a Funds Transfer Certificate) transfer funds in an aggregate amount not exceeding the amount of such deficiency on such date to the Port Authority or to the Operating Account, as applicable, from the O&M Reserve Account.

(f) Funds shall be transferred by the Securities Intermediary from the Pre-Substantial Completion Revenue Account to the applicable Hedge Ordinary Course Payment Account or Interest Payment Sub-Account within the Senior Obligations Payment Account upon receipt by the Securities Intermediary of a Funds Transfer Certificate delivered by the Borrower pursuant to Section 5.06(e) or Section 5.10(e).

### **Section 5.03 Post-Substantial Completion Revenue Account.**

(a) On and after the Phase 2 End of Funding Date, the Borrower shall promptly deposit or cause to be deposited into the Post-Substantial Completion Revenue Account (i) all Project Revenues and all other amounts received by the Borrower from any source whatsoever, except for (x) the Non-Pledged Receipts and (y) amounts required to be deposited in other Project Accounts pursuant to this Article V, and (ii) amounts transferred from other Project Accounts as required by the terms of this Agreement. Pending such deposit, the Borrower will hold all such amounts received by it in trust for the benefit of the Secured Parties in accordance with the terms hereof.

(b) The Securities Intermediary shall, on each Transfer Date occurring on or after the Phase 2 End of Funding Date, make the following withdrawals, transfers and payments from the Post-Substantial Completion Revenue Account (to the extent of funds then available in the Post-Substantial Completion Revenue Account, and in each case to the extent the amounts required to pay such amounts have not been previously transferred, in accordance with the terms hereof, from other Accounts at the direction of the Borrower) in the amounts, at the times and only for the purposes specified below at the request of the Borrower in a Funds Transfer Certificate (in substantially the form attached hereto as Exhibit D-2) and in the following order of priority, after giving effect to any other transfers into the Project Accounts required or permitted to be made prior to such Transfer Date in accordance with the terms hereof (it being agreed that no amount

shall be withdrawn or transferred on any date pursuant to any clause below until amounts sufficient as of that date (to the extent applicable) for all the purposes specified under the prior clauses shall have been withdrawn or transferred):

1. *First*, in the following order of priority: (i) if any Rebate Amount is due under the Indenture, to fund the Rebate Account in an amount equal to such Rebate Amount, and thereafter and (ii) *pro rata* to pay all fees (including commitment fees), administrative costs and expenses then due and payable under the Financing Documents to the Secured Parties;

2. *Second, pro rata* (i) to the Port Authority, an amount equal to the aggregate Ground Rent, First Additional Rent, Second Additional Rental, Third Additional Rent, any other Rental (other than Concessions Revenue Rent, Excess Value Rent or Equity Gain Share) and any MMRA Shortfall Amount, in each case due and payable on the applicable Transfer Date, (ii) to the Port Authority, on the first Transfer Date following the identification of any MAG Deficiency for the preceding year, if applicable, an amount equal to such MAG Deficiency (provided that during any Deferral Period, only fifty percent (50%) of any MAG Deficiency shall be paid at this tier Second and the remaining fifty percent (50%) shall be paid at tier Eleventh), and (iii) to the Operating Account, an amount equal to, together with the amount then on deposit therein, the Permitted O&M Expenses (other than amounts required to be transferred or paid to the Port Authority pursuant to this paragraph *Second*) then due and payable, or reasonably projected to be due and payable prior to the next succeeding Transfer Date, and Major Maintenance expenses (to the extent funds on deposit in the Major Maintenance Reserve Account are not sufficient to pay such Major Maintenance expenses and without duplication of any MMRA Shortfall Amount) then due and payable or that will become due and payable prior to the next succeeding Transfer Date;

3. *Third*, to the Operating Account, an amount equal, when taken together with amounts then on deposit therein, to the O&M Expenses (other than amounts required to be transferred or paid to the Port Authority pursuant to paragraph 2) not constituting Permitted O&M Expenses then due and payable, or reasonably projected to be due and payable, prior to the next succeeding Transfer Date;

4. *Fourth, pro rata*, (i) to the Hedge Ordinary Course Payment Account, an amount equal to the Ordinary Course Payments under any Secured Hedge Agreement then due and payable, or that are projected by the Borrower to become due and payable prior to the next succeeding Transfer Date, and (ii) to each Interest Payment Sub-Account within the Senior Obligations Payment Account established in connection with Senior Obligations (other than Ordinary Course Payments under any Secured Hedge Agreement), an amount equal to the amount necessary to cause the balance on deposit in such Interest Payment Sub-Account to be equal to *the product of* (A) and (B), where:

(A) is a number equal to (I) *divided by* (II), where:

(I) is the number of Transfer Dates that have occurred since:

(a) subject to the succeeding clauses (b) and (c), the preceding Interest Payment Date for the applicable Senior Obligations (including the current Transfer Date but excluding any Transfer Date occurring on such preceding Interest Payment Date),

(b) subject to the succeeding clause (c), if no Interest Payment Date has yet occurred in respect of the applicable Senior Obligations, the date of issuance, Drawing or borrowing for the applicable Senior Obligations (including the current Transfer Date), or

(c) with respect to Deferred Interest Obligations, the applicable Interest Payment Calculation Start Date (including the current Transfer Date); and

(II) is the total number of Transfer Dates in the Interest Payment Period for the applicable Senior Obligation; and

(B) is an amount equal to the aggregate amount of interest on such Senior Obligations scheduled to become due and payable on any Interest Payment Date with respect to such Senior Obligations occurring on such Transfer Date or thereafter prior to the next succeeding Transfer Date, as reasonably projected by the Borrower to become due and payable on such Interest Payment Date; provided that if an Interest Payment Date for such Senior Obligations will occur prior to the next succeeding Transfer Date, in no event shall the amount transferred to the applicable Interest Payment Sub-Account be less than the amount necessary to cause the balance then on deposit in such Interest Payment Sub-Account to be at least equal to the projected aggregate amount of interest on such Senior Obligations due and payable on such Interest Payment Date, as reasonably projected by the Borrower; provided, further, that if there are insufficient funds available on the Transfer Date to make the deposits required pursuant to this paragraph *Fourth* in full, transfers shall be made to the Hedge Ordinary Course Payment Account and the various Interest Payment Sub-Accounts maintained with respect to any Senior Obligations on a *pro rata* basis measured by the amounts required to be transferred to each such Project Account or sub-account pursuant to this paragraph *Fourth*;

5. *Fifth, pro rata*, (i) to the Hedge Termination Payment Account, an amount equal to the Hedge Termination Payments under any Secured Hedge Agreement then due and payable, or that is reasonably projected by the Borrower to become due and payable prior to the next succeeding Transfer Date, and (ii) to each Principal Payment Sub-Account within the Senior Obligations Payment Account established in connection with Senior Obligations (other than Hedge Termination Payments under any Secured Hedge Agreement), an amount equal to the amount necessary to cause the balance on deposit in such Principal Payment Sub-Account to be equal to *the product of* (A) and (B), where:



(A) is a number equal to:

(I) for Senior Obligations not constituting Balloon Indebtedness, (a) *divided by* (b), where:

(a) is the number of Transfer Dates that have occurred since:

(x) subject to the succeeding clause (y), the preceding Principal Payment Date for the applicable Senior Obligations (including the current Transfer Date but excluding any Transfer Date occurring on such preceding Principal Payment Date), or

(y) if no Principal Payment Date has yet occurred in respect of the applicable Senior Obligations, the Principal Payment Calculation Start Date for the applicable Senior Obligations (including the current Transfer Date); and

(b) is the total number of Transfer Dates in the Principal Payment Period for the applicable Senior Obligation; or

(II) for Senior Obligations constituting Balloon Indebtedness:

(a) prior to the applicable Principal Payment Calculation Start Date, zero (0),

(b) on and after the applicable Principal Payment Calculation Start Date and before the first Principal Payment Date pursuant to the Balloon Indebtedness Certificate, (x) the number of Transfer Dates that have occurred since the Principal Payment Calculation Start Date for such Balloon Indebtedness (including the current Transfer Date but, if such Payment Calculation Start Date occurred on a prior Transfer Date, then excluding such Transfer Date), *divided by* (y) the total number of Transfer Dates in the Principal Payment Period outlined in the Balloon Indebtedness Certificate, or

(c) on and after the first Principal Payment Date pursuant to the Balloon Indebtedness Certificate, (x) the number of Transfer Dates that have occurred since the preceding Principal Payment Date outlined in the applicable Balloon Indebtedness Certificate (including the current Transfer Date but excluding any Transfer Date occurring on such preceding Principal Payment Date), *divided by* (y) the total number of Transfer Dates in the Principal Payment Period outlined in such Balloon Indebtedness Certificate; and

(B) is an amount equal to the principal or Accreted Value of such Senior Obligations scheduled or assumed (in accordance with the definition of Aggregate Debt Service) to become due and payable on the Principal Payment Date with respect to such Senior Obligations occurring on such Transfer Date or immediately thereafter; provided that if a Principal Payment Date for such Senior Obligations will occur prior to the next succeeding Transfer Date, in no event shall the amount transferred to the applicable

Principal Payment Sub-Account be less than the amount necessary to cause the balance then on deposit in such Principal Payment Sub-Account to be at least equal to the aggregate amount of principal or Accreted Value of such Senior Obligations due and payable on such Principal Payment Date; provided further that if there are insufficient funds available on the Transfer Date to make the deposits required pursuant to this paragraph *Fifth* in full, transfers shall be made to the Hedge Termination Payment Account and the various Principal Payment Sub-Accounts maintained with respect to any Senior Obligations on a *pro rata* basis measured by the amounts required to be transferred to each such Project Account or sub-account pursuant to this paragraph *Fifth*;

6. *Sixth*, so long as no Default or Event of Default has occurred and is continuing or would result from such payment and to the extent not prohibited by any other Financing Document, to pay Permitted Tax Distributions in the amount and to the Persons requested in the Funds Transfer Certificate (substantially in the form of Exhibit D-2), provided that if, on the applicable Transfer Date, any Deferred Concessions Revenue Rent is owed to the Port Authority under the Lease Agreement, such Permitted Tax Distributions shall instead be paid under tier *Eleventh* below);

7. *Seventh*, in the following order of priority, (i) to the Senior Debt Service Reserve Account, the amount (if any) necessary to fund such account so that the balance therein (taking into account amounts then on deposit therein, and any amount then available for drawing under any Acceptable Letter of Credit provided with respect to the Senior Debt Service Reserve Account) equals the Senior Debt Service Reserve Requirement at such time, and (ii) to the Ramp-Up Reserve Account, the amount (if any) necessary to fund such account so that the balance therein equals the Ramp-Up Reserve Requirement at such time;

8. *Eighth*, to the O&M Reserve Account, the amount (if any) necessary to fund such account so that the balance therein, taking into account amounts then on deposit therein and any amount then available for drawing under any Acceptable Letter of Credit provided with respect to the O&M Reserve Account, equals the O&M Reserve Requirement at such time;

9. *Ninth, pro rata* (i) to the Major Maintenance Reserve Account the amount (if any) necessary to fund such account so that the balance therein, taking into account the amount available for drawing under any Acceptable Letter of Credit provided with respect to the Major Maintenance Reserve Account, equals the Major Maintenance Reserve Requirement at such time, and (ii) to the Handback Reserve Account the amount (if any) necessary to fund such account so that the balance therein, taking into account the amount available for drawing under any Acceptable Letter of Credit provided with respect to the Handback Reserve Account, equals the Handback Reserve Amount at such time;

10. *Tenth*, if applicable, in the following order of priority:

(i) to each Interest Payment Sub-Account within the Subordinate Obligations Payment Account established in connection with the Subordinate Obligations, an

amount equal to the amount necessary to cause the balance on deposit in such Interest Payment Sub-Account to be equal to *the product of* (A) and (B), where:

(A) is a number equal to (I) *divided by* (II), where:

(I) is the number of Transfer Dates that have occurred since:

(a) subject to the succeeding clause (b) and (c), the preceding Interest Payment Date for the applicable Subordinate Obligations (including the current Transfer Date but excluding any Transfer Date occurring on such preceding Interest Payment Date),

(b) subject to the succeeding clause (c), if no Interest Payment Date has yet occurred in respect of the applicable Subordinate Obligations, the date of issuance, Drawing or borrowing for the applicable Subordinate Obligations (including the current Transfer Date), or

(c) with respect to Deferred Interest Obligations, the applicable Interest Payment Calculation Start Date (including the current Transfer Date); and

(II) is the total number of Transfer Dates in the Interest Payment Period for the applicable Subordinate Obligation;

(B) is an amount equal to the aggregate amount of interest on such Subordinate Obligations scheduled to become due and payable on any Interest Payment Date with respect to such Subordinate Obligations occurring on such Transfer Date or thereafter prior to the next succeeding Transfer Date, as reasonably projected by the Borrower to become due and payable on such Interest Payment Date; provided, that if an Interest Payment Date for such Subordinate Obligations will occur prior to the next succeeding Transfer Date, in no event shall the amount transferred to the applicable Interest Payment Sub-Account be less than the amount necessary to cause the balance then on deposit in such Interest Payment Sub-Account to be at least equal to the projected aggregate amount of interest on such Subordinate Obligations due and payable on such Interest Payment Date, as reasonably projected by the Borrower; provided, further, that if there are insufficient funds available on the Transfer Date to make the deposits required pursuant to this paragraph *Tenth*(i), transfers shall be made to the various Interest Payment Sub-Accounts maintained with respect to any Subordinate Obligations on a *pro rata* basis measured by the amounts required to be transferred to such Project Account or sub-account pursuant to this paragraph *Tenth*(i); and

(ii) to each Principal Payment Sub-Account within the Subordinate Obligations Payment Account established in connection with Subordinate Obligations, an amount equal to the amount necessary to cause the balance on deposit in such Principal Payment Sub-Account to be equal to *the product of* (A) and (B), where:

(A) is a number equal to:

(I) for Subordinate Obligations not constituting Balloon Indebtedness, (a) *divided by* (b), where:

(a) is the number of Transfer Dates that have occurred since:

(x) subject to the succeeding clause (y), the preceding Principal Payment Date for the applicable Subordinate Obligations (including the current Transfer Date but excluding the Transfer Date on which such preceding Principal Payment Date occurred), or

(y) if no Principal Payment Date has yet occurred in respect of the applicable Subordinate Obligations, the Principal Payment Calculation Start Date for the applicable Subordinate Obligations (including the current Transfer Date); and

(b) the total number of Transfer Dates in the Principal Payment Period for the applicable Subordinate Obligations, or

(II) for Subordinate Obligations constituting Balloon Indebtedness:

(a) prior to the applicable Principal Payment Calculation Start Date, zero (0),

(b) on and after the applicable Principal Payment Calculation Start Date and before the first Principal Payment Date pursuant to the Balloon Indebtedness Certificate, (x) the number of Transfer Dates that have occurred since the Principal Payment Calculation Start Date for such Balloon Indebtedness (including the current Transfer Date but, if such Payment Calculation Start Date occurred on a prior Transfer Date, then excluding such Transfer Date), *divided by* (y) the total number of Transfer Dates in the Principal Payment Period outlined in the Balloon Indebtedness Certificate, or

(c) on and after the first Principal Payment Date pursuant to the Balloon Indebtedness Certificate, (x) the number of Transfer Dates that have occurred since the preceding Principal Payment Date outlined in the applicable Balloon Indebtedness Certificate (including the current Transfer Date but excluding the Transfer Date on which such preceding Principal Payment Date occurred), *divided by* (y) the total number of Transfer Dates in the Principal Payment Period outlined in such Balloon Indebtedness Certificate; and

(B) is an amount equal to the principal or Accreted Value of such Subordinate Obligation scheduled or assumed (in accordance with the definition of Aggregate Debt Service) to become due and payable on the

Principal Payment Date for such Subordinate Obligations occurring on such Transfer Date or immediately thereafter; provided that if a Principal Payment Date for such Subordinate Obligation will occur prior to the next succeeding Transfer Date, in no event shall the amount transferred to the applicable Principal Payment Sub-Account be less than the amount necessary to cause the balance then on deposit in such Principal Payment Sub-Account to be at least equal to the aggregate amount of principal or Accreted Value of such Subordinate Obligation due and payable on such Principal Payment Date; provided, further, that if there are insufficient funds available on the Transfer Date to make the deposits required pursuant to this paragraph *Tenth(ii)*, transfers shall be made to the various Principal Payment Sub-Accounts maintained with respect to any Subordinate Obligations on a *pro rata* basis measured by the amounts required to be transferred to each Project Account or sub-account pursuant to this paragraph *Tenth(ii)*;

11. *Eleventh*, in the following order of priority: (i) to the Port Authority an amount equal to (A) Subordinate Concessions Revenue Rent, (B) any accumulated and unpaid Deferred Concessions Revenue Rent which is attributable to prior transfer dates, together with any interest due and payable thereon pursuant to the Lease Agreement, and (C) on the first Transfer Date following the identification of any MAG Deficiency for the preceding year during the Deferral Period, any portion of the MAG Deficiency to the extent not paid pursuant to paragraph Second above, each as due and payable under the Lease Agreement, and (ii) to the extent not prohibited by any other Financing Document, Permitted Tax Distributions to the extent not paid pursuant to paragraph *Sixth* above, in the amount and to the Persons requested in the Funds Transfer Certificate;

12. *Twelfth*, all remaining amounts to the Remaining Revenue Account.

Notwithstanding the foregoing, the Securities Intermediary shall automatically make the transfers described in clauses *First(i)*, *Second (i)*, *Fourth*, *Fifth*, and *Sixth* even if not instructed to do so in the relevant Funds Transfer Certificate from the Borrower.

Not less than three (3) Business Days prior to each such Transfer Date, each Secured Debt Representative, with respect to the applicable Senior Obligation (which in the case of the Series 2022A Bonds shall be the Trustee, solely for purposes of this paragraph of this Section 5.03(b)), shall notify the Securities Intermediary, the Senior Collateral Agent and the Borrower of: (ii) the amount of the required transfer for payment of fees and expenses with respect to such Senior Obligation as of the applicable Transfer Date, (iii) the Senior Debt Service Reserve Requirement as of the applicable Transfer Date, (iv) the amount required to restore the balance in the Senior Debt Service Reserve Account (taking into account the amount then on deposit in the Senior Debt Service Reserve Account and any amount then available for drawing under any Acceptable Letter of Credit provided with respect to the Senior Debt Service Reserve Account) to its Debt Service Reserve Requirement as of the applicable Transfer Date, (v) the Ramp-Up Reserve Requirement as of the applicable Transfer Date, and (vi) the amount required to restore the balance in the Ramp-Up Reserve Account (taking into account only the amount then on deposit in the Ramp-Up Reserve Account) to the Ramp-Up Reserve Requirement as of the applicable Transfer Date.

Not less than three (3) Business Days prior to each such Transfer Date, each Secured Debt Representative, with respect to the applicable Subordinate Obligation, shall notify the Securities Intermediary, the Subordinate Collateral Agent and the Borrower of (i) the amount of the required transfer for payment of fees and expenses with respect to such Subordinate Obligation as of the applicable Transfer Date, (iv) the Subordinate Debt Service Reserve Requirement as of the applicable Transfer Date, and (v) the amount of any deficiency required to restore the Subordinate Debt Service Reserve Account (taking into account only the *pro rata* share of the amounts then on deposit in the Subordinate Debt Service Reserve Account (including any amount then available for drawing under any Acceptable Letter of Credit provided with respect to the Subordinate Debt Service Reserve Account) corresponding to such Subordinate Obligation) to the Debt Service Reserve Requirement as of the applicable Transfer Date.

Each of the Borrower and (at the direction of the Secured Parties) each Collateral Agent acknowledges and agrees that payment of any Deferred Concessions Revenue Rent to which the Port Authority is entitled under and subject to the Lease Agreement will be made in the ordinary course to the extent of available funds therefore in accordance with the provisions of this Section 5.03(b).

(c) To the extent that on any date of determination after the Phase 2 End of Funding Date amounts on deposit in (i) the Senior Debt Service Reserve Account are in excess of the Senior Debt Service Reserve Requirement, (ii) the Ramp-Up Reserve Account are in excess of the Ramp-Up Reserve Requirement, (iii) the Subordinate Debt Service Reserve Account are in excess of the Subordinate Debt Service Reserve Requirement, (iv) the O&M Reserve Account are in excess of the relevant O&M Reserve Requirement, or (v) the Major Maintenance Reserve Account are in excess of the Major Maintenance Reserve Requirement, as applicable, such excess amounts shall be transferred by the Securities Intermediary to the Post-Substantial Completion Revenue Account; provided, however, that if any proceeds of a Series of Tax-Exempt Bonds are on deposit in the Senior Debt Service Reserve Account, the Ramp-Up Reserve Account, or the Subordinate Debt Service Reserve Account, such proceeds shall be transferred to the Tax-Exempt Bond Interest Payment Sub-Account established for such Series of Tax-Exempt Bonds.

(d) If on any Transfer Date the amounts on deposit in the Post-Substantial Completion Revenue Account are not sufficient to make the transfers required to be made from the Post-Substantial Completion Revenue Account pursuant to clauses *First* through *Tenth* under Section 5.03(b), inclusive, in full, the Securities Intermediary (or the Deposit Account Bank, with respect to the Operating Account) shall (notwithstanding any other provision hereof and without the need for a Funds Transfer Certificate), transfer funds as follows:

(i) if amounts on deposit in the Post-Substantial Completion Revenue Account are not sufficient to make the transfers required under Section 5.03(b)(1) with respect to amounts then due and payable under the Financing Documents, then funds in an aggregate amount not exceeding the amount of such deficiency shall be transferred on such date to the relevant Secured Parties *first*, from the Remaining Revenue Account, *second*, from the Ramp-Up Reserve Account (provided that the amount on deposit in the Ramp-Up Reserve Account immediately after giving effect to such transfer, when added to the amount then on deposit in the Senior Debt Service Reserve Account (including any amount then available for drawing under any Acceptable Letter of Credit provided with respect to the

Senior Debt Service Reserve Account), shall be at least equal to the Senior Debt Service Reserve Requirement at such time), and *third*, from the O&M Reserve Account;

(ii) if amounts on deposit in the Post-Substantial Completion Revenue Account are not sufficient to make the transfers required under Section 5.03(b)(2) or (3) (in such order of priority) in full on such Transfer Date, then, after application of Section 5.03(d)(i), funds in an aggregate amount not exceeding the amount of such deficiency shall be transferred on such date to the Port Authority or to the Operating Account, as applicable, *first*, from the Remaining Revenue Account, *second*, from the Ramp-Up Reserve Account (provided that the amount on deposit in the Ramp-Up Reserve Account immediately after giving effect to such transfer, when added to the amount then on deposit in the Senior Debt Service Reserve Account (including any amount then available for drawing under any Acceptable Letter of Credit provided with respect to the Senior Debt Service Reserve Account), shall be at least equal to the Senior Debt Service Reserve Requirement at such time), and *third*, from the O&M Reserve Account;

(iii) if amounts on deposit in the Post-Substantial Completion Revenue Account are not sufficient to transfer the full amount due to be transferred to the Hedge Ordinary Course Payment Account and to each Interest Payment Sub-Account within the Senior Obligations Payment Account on such Transfer Date in accordance with Section 5.03(b)(4), then, after application of Sections 5.03(d)(i) and (ii), funds in an aggregate amount not exceeding the amount of such deficiency shall be transferred on such date to the Hedge Ordinary Course Payment Account and to each Interest Payment Sub-Account within the Senior Obligations Payment Account *first*, from the Remaining Revenue Account, *second*, from the Ramp-Up Reserve Account, *third*, from the Senior Debt Service Reserve Account, and *fourth*, from the O&M Reserve Account;

(iv) if amounts on deposit in the Post-Substantial Completion Revenue Account are not sufficient to transfer the full amount due to be transferred to the Hedge Termination Payment Account and to each Principal Payment Sub-Account within the Senior Obligations Payment Account on such Transfer Date in accordance with Section 5.03(b)(5), then, after application of Sections 5.03(d)(i), (ii) and (iii), funds in an aggregate amount not exceeding the amount of such deficiency shall be transferred on such date to the Hedge Termination Payment Account and to each Principal Payment Sub-Account within the Senior Obligations Payment Account, *first*, from the Remaining Revenue Account, *second*, from the Ramp-Up Reserve Account, *third*, from the Senior Debt Service Reserve Account, and *fourth*, from the O&M Reserve Account (provided that no transfer from the Senior Debt Service Reserve Account or the Ramp-Up Reserve Account to the Hedge Termination Payment Account shall be made pursuant to this paragraph (iv));

(v) if amounts on deposit in the Post-Substantial Completion Revenue Account are not sufficient to make the transfers required under Section 5.03(b)(7), (8) or (9) (in such order of priority) in full on such Transfer Date, then, after application of Sections 5.03(d)(i), (ii), (iii) and (iv), funds in an aggregate amount not exceeding the amount of such deficiency shall be transferred on such date to the Senior Debt Service Reserve Account, the O&M Reserve Account or the Major Maintenance Reserve Account, as applicable, from the Remaining Revenue Account;

(vi) if amounts on deposit in the Post-Substantial Completion Revenue Account are not sufficient to transfer the full amount due to be transferred to each Interest Payment Sub-Account and each Principal Payment Sub-Account maintained with respect to any Subordinate Obligations on such Transfer Date in accordance with Section 5.03(b)(10), then, after application of Sections 5.03(d)(i), (ii), (iii), (iv) and (v), funds in an aggregate amount not exceeding the amount of such deficiency shall be transferred on such date to each Interest Payment Sub-Account and each Principal Payment Sub-Account maintained with respect to such Subordinate Obligations, *first*, from the Remaining Revenue Account, *second*, from the Subordinate Debt Service Reserve Account, and *third*, from the O&M Reserve Account; and

(vii) if amounts on deposit in the Post-Substantial Completion Revenue Account are not sufficient to transfer the full amount due to be transferred to the Subordinate Debt Service Reserve Account on such Transfer Date in accordance with Section 5.03(b)(10), then, after application of Sections 5.03(d)(i), (ii), (iii), (iv), (v) and (vi), funds in an aggregate amount not exceeding the amount of such deficiency shall be transferred on such date to the Subordinate Debt Service Reserve Account from the Remaining Revenue Account.

(e) Funds shall be transferred by the Securities Intermediary from the Post-Substantial Completion Revenue Account to the applicable Hedge Ordinary Course Payment Account or Interest Payment Sub-Account within the Senior Obligations Payment Account upon receipt by the Securities Intermediary of a Funds Transfer Certificate delivered by the Borrower pursuant to Section 5.06(e) or Section 5.10(e).

#### **Section 5.04 Construction Account.**

(a) **Maintenance of Construction Accounts.** From and after the Closing Date, the Borrower shall maintain the Construction Account, with the sub-accounts specified in Section 5.01(a)(iii) above.

(b) **Deposits in the Construction Account.** The Securities Intermediary shall deposit (and the Borrower shall cause the same to be deposited with the Securities Intermediary promptly following receipt by the Borrower):

(i) into the Series 2022A Bond Proceeds Sub-Account of the Tax-Exempt Bond Proceeds Sub-Account, (A) on the Initial Drawing Date, all proceeds from the disbursement of the TDC Series 2022A Bond Loans made on such date with the proceeds of the Initial Drawing of the Series 2022A Bonds received by the Borrower pursuant to the TDC Loan Agreements and the applicable Drawing Request, (B) thereafter, on each date on which any proceeds of the Series 2022A Bonds are drawn, all proceeds from the disbursement of the TDC Series 2022A Bond Loans made with the proceeds of such Series 2022A Bonds received by the Borrower pursuant to the terms of the TDC Loan Agreements and the applicable Drawing Request, and (C) any interest earned on such proceeds;

(ii) into the Bank Proceeds Sub-Account, (A) on the Closing Date, all proceeds from the disbursement of TDC Bank Debt Loans made on such date with proceeds from



Senior Loans received by the Borrower pursuant to the TDC Loan Agreements and the applicable Borrowing Request, (B) thereafter, on each date on which any proceeds of the Senior Term Loans are drawn, all proceeds from the disbursement of the TDC Bank Debt Loans made with such Senior Term Loans received by the Borrower pursuant to the terms of the TDC Loan Agreements and the applicable Borrowing Request, and (C) any interest earned on such proceeds;

(iii) into the Milestone Payment Sub-Account, all proceeds of any Port Authority Milestone Payment received by the Borrower from the Port Authority, if any;

(iv) into the Operating Cashflow Sub-Account, the amounts specified in Section 5.02(b)(10);

(v) into the Equity Contribution Sub-Account, all proceeds of all Equity Contributions, including the proceeds of any draw on any Equity Contribution Letter of Credit or any withdrawal from any Equity Collateral Account, made in accordance with the Equity Contribution Agreement and the terms hereof; and

(vi) into the Construction Account all moneys received by the Securities Intermediary that are accompanied by directions, in compliance with the terms hereof, that such moneys are to be deposited into the Construction Account.

(c) **Tax-Exempt Bond Proceeds Sub-Account.** The Tax-Exempt Bond Proceeds Sub-Account will be maintained in order to account for the receipt and transfer of proceeds from each Series of Bonds that are (i) Tax-Exempt Bonds, in accordance with the terms of the Indenture and the Tax Certificate, in accordance with the terms of the Indenture and the TDC Loan Agreements. A separate sub-account may be established by the Securities Intermediary, as a matter of accounting convenience for tracking and segregating funds for each Series of Tax-Exempt Bonds, including the Series 2022A Bond Proceeds Sub-Account. The Series 2022A Bond Proceeds Sub-Account shall constitute Segregated Collateral solely for the benefit of the Bank Finance Parties. The Borrower shall have the right, at any time, to cause the transfer of funds in the Tax-Exempt Bond Proceeds Sub-Account (or any Sub-Account thereof) to the Building Loan Tax-Exempt Bond Proceeds Sub-Account or the Project Loan Tax-Exempt Bond Proceeds Sub-Account or any Sub-Accounts thereof, pursuant to a Construction Account Withdrawal Certificate (substantially in the form of Exhibit E), so long as prior to the Discharge of Senior Bank Obligations, in their entirety, the conditions in Section 4.03 of the Common Terms Agreement shall have been satisfied with respect to the requested transfer as of the date of the requested transfer, as notified in writing by the Administrative Agent to the Senior Collateral Agent and the Securities Intermediary pursuant to Section 4.03 of the Common Terms Agreement (each such notice, an “Additional Conditions Notice”).

(d) **Building Loan and Project Loan Bond Proceeds Sub-Accounts.**

(i) **Building Loan Tax-Exempt Bond Proceeds Sub-Account.** The Building Loan Tax-Exempt Bond Proceeds Sub-Account will be maintained in order to account for the receipt and disbursement of proceeds from each Series of Bonds that are (i) Tax-Exempt Bonds, in accordance with the terms of the Indenture and the Tax Certificate and

(ii) loaned to the Borrower pursuant to the TDC Building Loan Agreement and used for the payment of Building Loan Costs, in accordance with the terms of the Financing Documents. A separate sub-account may be established by the Securities Intermediary, as a matter of accounting convenience for tracking funds for each Series of Tax-Exempt Bonds used for Building Loan Costs, including the Series 2022A Bond Building Proceeds Sub-Account.

(ii) **Project Loan Tax-Exempt Bond Proceeds Sub-Account.** The Project Loan Tax-Exempt Bond Proceeds Sub-Account will be maintained in order to account for the receipt and disbursement of proceeds from each Series of Bonds that are (i) Tax-Exempt Bonds, in accordance with the terms of the Indenture and the Tax Certificate and (ii) loaned to the Borrower pursuant to the TDC Project Loan Agreement and used for the payment of Project Costs, in accordance with the terms of the Financing Documents. A separate sub-account may be established by the Securities Intermediary, as a matter of accounting convenience for tracking funds for each Series of Tax-Exempt Bonds used for Project Costs, including the Series 2022A Bond Project Proceeds Sub-Account.

(e) **Bank Proceeds Sub-Account.** The Bank Proceeds Sub-Account will be maintained in order to account for the receipt and transfer of proceeds from the Senior Term Loans that are used for the payment of Project Costs, in accordance with the terms of the Credit Agreement, the Common Terms Agreement and the TDC Loan Agreements. A separate sub-account may be established by the Securities Intermediary, as a matter of accounting convenience for tracking funds for each Senior Term Loan. The Bank Proceeds Sub-Account shall constitute Segregated Collateral solely for the benefit of the Bank Finance Parties. The Borrower shall have the right, at any time, to cause the transfer of funds in the Bank Proceeds Sub-Account (or any Sub-Account thereof) to the Building Loan Bank Proceeds Sub-Account or the Project Loan Bank Proceeds Sub-Account or any Sub-Accounts thereof pursuant to a Construction Account Withdrawal Certificate (substantially in the form of Exhibit E), so long as prior to the Discharge of Senior Bank Obligations, in their entirety, the conditions in Section 4.03 of the Common Terms Agreement shall have been satisfied with respect to the requested transfer as of the date of the requested transfer, as notified in writing by the Administrative Agent to the Senior Collateral Agent and the Securities Intermediary pursuant to an Additional Conditions Notice. However, for such transfers occurring on or after January 1, 2023, prior to the transfer of any such funds in the Bank Proceeds Sub-Account (or any Sub-Account thereof) to the Building Loan Bank Proceeds Sub-Account or the Project Loan Bank Proceeds Sub-Account (or any Sub-Account thereof), all Proceeds in the Series 2022A Bond Proceeds Sub-Account (or any Sub-Account thereof) must be transferred to the Building Loan Tax-Exempt Bond Proceeds Sub-Account or the Project Loan Tax-Exempt Bond Proceeds Sub-Account (or any Sub-Account thereof), and such amounts must be expended in accordance with 5.04(g); provided, that, if such amounts cannot be expended in accordance with Section 5.04(g)(i)(C) or 5.04(g)(ii)(C), for tax purposes, then amounts from the Bank Proceeds Sub-Account may be expended prior to the amounts in the Series 2022A Bond Proceeds Sub-Account.

(f) **Building Loan and Project Loan Bank Proceeds Sub-Accounts.**

(i) **Building Loan Bank Proceeds Sub-Account.** The Building Loan Bank Proceeds Sub-Account will be maintained in order to account for the receipt and

disbursement of proceeds from the Senior Term Loans that are loaned to the Borrower pursuant to the TDC Building Loan Agreement and used for the payment of Building Loan Costs, in accordance with the terms of the Financing Documents. A separate sub-account may be established by the Securities Intermediary, as a matter of accounting convenience for tracking funds for each Senior Term Loan.

(ii) **Project Loan Bank Proceeds Sub-Account.** The Project Loan Bank Proceeds Sub-Account will be maintained in order to account for the receipt and disbursement of proceeds from the Senior Term Loans that are loaned to the Borrower pursuant to the TDC Project Document and used for the payment of Project Costs, in accordance with the terms of the Financing Documents. A separate sub-account may be established by the Securities Intermediary, as a matter of accounting convenience for tracking funds for each Senior Term Loan.

(g) **Disbursements from Proceeds Sub-Accounts.** So long as no Default or Event of Default has occurred and is continuing, the Borrower shall be entitled to request disbursements of monies in the Building Loan Tax-Exempt Bond Proceeds Sub-Account, Project Loan Tax-Exempt Bond Proceeds Sub-Account, the Building Loan Bank Proceeds Sub-Account, and the Project Loan Bank Proceeds Sub-Account as follows:

(i) For monies on deposit in the Building Loan Tax-Exempt Bond Proceeds Sub-Account, the Building Loan Bank Proceeds Sub-Account and/or any sub-accounts of any of the preceding sub-accounts, at any time (up to a maximum of six (6) times per month) to:

A. pay, or reimburse for a prior payment of, Building Loan Costs due or owing that have been incurred in compliance with the Indenture (in the case of the Building Loan Tax-Exempt Bond Proceeds Sub-Account) and the Senior Bank Financing Documents, upon delivery to the Securities Intermediary and the Senior Collateral Agent, not later than the third (3rd) Business Day prior to the proposed transfer date, of (1) by the Borrower, a Construction Account Withdrawal Certificate, signed by a Responsible Officer of the Borrower, substantially in the form of Exhibit E, setting forth the matters contemplated therein, and a certificate of the Technical Advisor substantially in the form of Exhibit J, setting forth the matters contemplated therein, and (2) prior to the Discharge of Senior Bank Obligations, in their entirety, by the Administrative Agent, an Additional Conditions Notice; provided, that if the Senior Collateral Agent and the Securities Intermediary received a Construction Account Withdrawal Certificate and/or an Additional Conditions Notice to cause the transfers from the Tax-Exempt Bond Proceeds Sub-Account (or any Sub-Accounts thereof) or the Bank Proceeds Sub-Account pursuant to Section 5.04(c) or Section 5.04(e), respectively, and, such transfers occur not earlier than one (1) Business Day prior to the disbursement of funds pursuant to this Section, then the requirement for delivery of a Construction Account Withdrawal Certificate and/or an Additional Conditions Notice in the preceding clause, as applicable, shall be deemed satisfied; and/or

B. fund or partially fund the Hedge Ordinary Course Payment Account (only to the extent Ordinary Course Payments constitute Capitalized Interest) and the Interest Payment Sub-Accounts within the Senior Obligations Payment Account, on a pro rata basis, to pay Capitalized Interest; and/or

C. fund or partially fund, the Senior Debt Service Reserve Account, the Ramp-Up Reserve Account, the Hedge Ordinary Course Payment Account (to the extent that such amounts do not constitute Capitalized Interest), the Hedge Termination Payment Account, or any sub-account of the Senior Obligations Payment Account, provided, that (x) neither the proceeds of Tax-Exempt Obligations nor any investment earnings thereon shall be transferred from the Building Loan Tax-Exempt Bond Proceeds Sub-Account or any Sub-Accounts thereof pursuant to this clause (C), unless, and to the extent that, the Borrower has delivered to the Securities Intermediary and the applicable Secured Debt Representative a Favorable Opinion of Bond Counsel and (y) to the extent any funds are used pursuant to clause (B) and/or (C) to fund or partially fund the Hedge Ordinary Course Payment Account or the Interest Payment Sub-Accounts within the Senior Obligations Payment Account, the aggregate amount of such funding must be allocated *pro rata* between the Hedge Ordinary Course Payment Account and the Interest Payment Sub-Accounts within the Senior Obligations Payment Account to pay, *pro rata*, all Capitalized Interest and Ordinary Course Payments payable in accordance with Section 5.02(b)(4) or Section 5.03(b)(4), as applicable; it being understood that the *pro rata* treatment required by this proviso may be achieved by any combination of funds permitted to be used pursuant to clause (B) and clause (C);

in each case, with respect to clauses (B) and (C) above, only in compliance with the Code and the Tax Certificate, upon delivery by the Borrower to the Securities Intermediary, not later than the third (3rd) Business Day prior to the proposed transfer date (or such shorter period as is provided in Section 5.06(e) or Section 5.10(e)), of a Construction Account Withdrawal Certificate, signed by a Responsible Officer of the Borrower, substantially in the form of Exhibit E.

(ii) For monies on deposit in the Project Loan Tax-Exempt Bond Proceeds Sub-Account, the Project Loan Bank Proceeds Sub-Account, and/or any sub-accounts of any of the Project Loan Tax-Exempt Bond Proceeds Sub-Account, at any time (up to a maximum of six (6) times per month) to:

A. pay, or reimburse for a prior payment of, Project Costs due or owing that have been incurred in compliance with the Indenture (in the case of the Project Loan Tax-Exempt Bond Proceeds Sub-Account) and the Senior Bank Financing Documents, upon delivery to the Securities Intermediary and the Senior Collateral Agent, not later than the third (3rd) Business Day prior to the proposed transfer date, of (1) by the Borrower, a Construction Account Withdrawal Certificate, signed by a Responsible Officer of the

Borrower, substantially in the form of Exhibit E, setting forth the matters contemplated therein, and a certificate of the Technical Advisor substantially in the form of Exhibit J, setting forth the matters contemplated therein, and (2) prior to the Discharge of Senior Bank Obligations, in their entirety, by the Administrative Agent, an Additional Conditions Notice; provided, that if the Senior Collateral Agent and the Securities Intermediary received a Construction Account Withdrawal Certificate and/or an Additional Conditions Notice to cause the transfers from the Tax-Exempt Bond Proceeds Sub-Account (or any Sub-Accounts thereof) or the Bank Proceeds Sub-Account pursuant to Section 5.04(c) or Section 5.04(e), respectively, and, such transfers occur not earlier than one (1) Business Day prior to the disbursement of funds pursuant to this Section, then the requirement for delivery of a Construction Account Withdrawal Certificate and/or an Additional Conditions Notice requirement in the preceding clause, as applicable, shall be deemed satisfied; and/or

B. fund or partially fund the Hedge Ordinary Course Payment Account (only to the extent Ordinary Course Payments constitute Capitalized Interest) and the Interest Payment Sub-Accounts within the Senior Obligations Payment Account, on a pro rata basis, to pay Capitalized Interest; and/or

C. fund or partially fund the Operating Account (to pay O&M Expenses or Major Maintenance that constitute Project Costs), the Senior Debt Service Reserve Account, the Ramp-Up Reserve Account, the Hedge Ordinary Course Payment Account (to the extent that such amounts do not constitute Capitalized Interest), the Hedge Termination Payment Account, Subordinate Debt Service Reserve Account, or any sub-account of the Senior Obligations Payment Account or Subordinate Obligations Payment Account, provided, that (x) neither the proceeds of Tax-Exempt Obligations nor any investment earnings thereon shall be transferred from the Project Loan Tax-Exempt Bond Proceeds Sub-Account or any Sub-Accounts thereof pursuant to this clause (C), unless, and to the extent that, the Borrower has delivered to the Securities Intermediary and the applicable Secured Debt Representative a Favorable Opinion of Bond Counsel and (y) to the extent any funds are used pursuant to clauses (B) and/or (C) to fund or partially fund the Hedge Ordinary Course Payment Account or the Interest Payment Sub-Accounts within the Senior Obligations Payment Account, the aggregate amount of such funding must be allocated *pro rata* between the Hedge Ordinary Course Payment Account and the Interest Payment Sub-Accounts within the Senior Obligations Payment Account to pay, *pro rata*, all Capitalized Interest and Ordinary Course Payments payable in accordance with Section 5.02(b)(4) or Section 5.03(b)(4), as applicable; it being understood that the pro rata treatment required by this proviso may be achieved by any combination of funds permitted to be used pursuant to clause (B) and clause (C);

in each case, with respect to clauses (B) and (C) above, only in compliance with the Code and the Tax Certificate, upon delivery by the Borrower to the Securities Intermediary, not later than the third (3rd) Business Day prior to the proposed transfer date (or such shorter period as is provided in Section 5.06(e) or Section 5.10(e)), of a Construction Account Withdrawal Certificate, signed by a Responsible Officer of the Borrower, substantially in the form of Exhibit E.

(iii) Notwithstanding the foregoing, the Borrower shall be entitled to a disbursement of funds on the date of issuance of a Series of Bonds (including, without limitation, the Series 2022A Bonds) or the applicable Credit Extension Date by providing the Construction Account Withdrawal Certificate and, a certificate of the Technical Advisor contemplated above on or prior to such date of issuance or Credit Extension Date (without giving effect to the three (3) Business Day requirement contemplated above).

(h) **Milestone Payment Sub-Account.** Moneys in the Milestone Payment Sub-Account may be:

(i) withdrawn, transferred and paid (up to a maximum of six (6) times per month) in the amounts required to pay, or reimburse for a prior payment of, Project Costs, (other than Project Costs described in the subsequent clause (ii) or which are to be paid from the Accounts or Sub-Accounts described therein) due and owing at such time, upon delivery by the Borrower to the Securities Intermediary, not later than the third (3rd) Business Day prior to the proposed transfer date, of a Construction Account Withdrawal Certificate, signed by a Responsible Officer of the Borrower, substantially in the form of Exhibit E, setting forth the matters contemplated therein, together with a certificate of the Technical Advisor substantially in the form of Exhibit J, setting forth the matters contemplated therein and/or;

(ii) transferred (up to a maximum of six (6) times per month) to fund or partially fund, the Operating Account (to pay O&M Expenses or Major Maintenance that constitute Project Costs), the Senior Debt Service Reserve Account, Subordinate Debt Service Reserve Account, Hedge Ordinary Course Payment Account, Hedge Termination Payment Account, any sub-account of the Senior Obligations Payment Account or the Subordinate Obligations Payment Account, in each case, only in compliance with the Code and the Tax Certificate, upon delivery by the Borrower to the Securities Intermediary, not later than the third (3rd) Business Day prior to the proposed transfer date (or such shorter period as is provided in Section 5.06(e) or Section 5.10(e)), of a Construction Account Withdrawal Certificate, signed by a Responsible Officer of the Borrower, substantially in the form of Exhibit E.

(i) **Operating Cashflow Sub-Account.** Moneys in the Operating Cashflow Sub-Account may be:

(i) withdrawn, transferred and paid (up to a maximum of six (6) times per month) in the amounts required to pay, or reimburse for a prior payment of, Project Costs, (other than Project Costs described in the subsequent clause (ii) or which are to be paid from the Accounts or Sub-Accounts described therein) due and owing at such time, upon

delivery by the Borrower to the Securities Intermediary, not later than the third (3rd) Business Day prior to the proposed transfer date, of a Construction Account Withdrawal Certificate, signed by a Responsible Officer of the Borrower, substantially in the form of Exhibit E, setting forth the matters contemplated therein, together with a certificate of the Technical Advisor substantially in the form of Exhibit J, setting forth the matters contemplated therein and/or

(ii) transferred (up to a maximum of six (6) times per month) to fund or partially fund, the Operating Account (to pay O&M Expenses or Major Maintenance that constitute Project Costs), the Senior Debt Service Reserve Account, Subordinate Debt Service Reserve Account, Hedge Ordinary Course Payment Account, Hedge Termination Payment Account, any sub-account of the Senior Obligations Payment Account, the Subordinate Obligations Payment Account, or the Ramp-Up Reserve Account, in each case only in compliance with the Code and the Tax Certificate, upon delivery by the Borrower to the Securities Intermediary, not later than the third (3rd) Business Day prior to the proposed transfer date (or such shorter period as is provided in Section 5.06(e) or Section 5.10(e)), of a Construction Account Withdrawal Certificate, signed by a Responsible Officer of the Borrower, substantially in the form of Exhibit E.

**(j) Equity Contribution Sub-Account.**

(i) Proceeds from Equity Contributions in the Equity Contribution Sub-Account will be withdrawn, transferred or paid (up to a maximum of six (6) times per month) at the direction of the Borrower to:

A. pay, or reimburse for a prior payment of, Project Costs, (other than Project Costs described in the subsequent clause (B) or which are to be paid from the Accounts or Sub-Accounts described therein) then due and payable upon delivery by the Borrower to the Securities Intermediary, not later than the third (3rd) Business Day prior to the proposed transfer date, of a Construction Account Withdrawal Certificate, signed by a Responsible Officer of the Borrower, substantially in the form of Exhibit E, setting forth the matters contemplated therein, together with a certificate of the Technical Advisor substantially in the form of Exhibit J, setting forth the matters contemplated therein and/or

B. to fund or partially fund, the Operating Account (to pay O&M Expenses or Major Maintenance that constitute Project Costs), the Senior Debt Service Reserve Account, Subordinate Debt Service Reserve Account, Hedge Ordinary Course Payment Account, Hedge Termination Payment Account, any sub-account of the Senior Obligations Payment Account, the Subordinate Obligations Payment Account or the Ramp-Up Reserve Account, in each case only in compliance with the Code and the Tax Certificate, upon delivery by the Borrower to the Securities Intermediary, not later than the third (3rd) Business Day prior to the proposed transfer date (or such shorter period as is provided in Section 5.06(e) or Section

5.10(e)), of a Construction Account Withdrawal Certificate, signed by a Responsible Officer of the Borrower, substantially in the form of Exhibit E.

C. pursuant to Section 5.04(j)(v), pay the issuer of any Equity Contribution Letter of Credit that has been drawn upon pursuant to Sections 2.3(c) or 2.3(d) of the Equity Contribution Agreement, after the Collateral Agent has received a replacement Equity Contribution Letter of Credit or the applicable Sponsor has made an Equity Deposit into an Equity Collateral Account, in each case, in an amount not to exceed the amount available to be drawn under such replacement Equity Contribution Letter of Credit or the amount available to be withdrawn from such replacement Equity Collateral Account.

(ii) The Borrower may, from time to time, and to the extent permitted pursuant to the terms of the Equity Contribution Agreement, direct the Applicable Collateral Agent to draw on any Equity Contribution Letter of Credit or make a withdrawal from any Equity Collateral Account, in the amount specified by the Borrower. If, by the second (2<sup>nd</sup>) Business Day preceding the date on which transfers contemplated in this paragraph (j) above are directed by the Borrower to be made, the cash funds on deposit in the Equity Contribution Sub-Account are not sufficient to make such transfers in full, the Securities Intermediary shall notify the Borrower and, without direction from the Borrower, issue one or more Shortfall Contribution Notices, in substantially the form attached hereto as Exhibit K-1, to the Sponsors pursuant to the Equity Contribution Agreement requesting the deposit of Equity Contributions in an aggregate amount equal to such shortfall. If an Equity Member fails to make the required Equity Contribution pursuant to such Shortfall Contribution Notice, the Applicable Collateral Agent shall draw on the applicable Equity Contribution Letter of Credit or make a withdrawal from any applicable Equity Collateral Account in an amount equal to the amount requested in the applicable Shortfall Contribution Notice.

(iii) In no event shall the undrawn amount of any Equity Contribution Letter of Credit, or any amount on deposit in an Equity Collateral Account, be deemed to be credited to, or otherwise on deposit in, the Equity Contribution Sub-Account or any other Project Account.

(iv) The Applicable Collateral Agent shall draw on an Equity Contribution Letter of Credit or make withdrawals from any applicable Equity Collateral Accounts, pursuant to the terms of Section 2.3 of the Equity Contribution Agreement (including upon a failure of any Sponsor to make an Equity Contribution required under the Equity Contribution Agreement pursuant to a Contribution Notice delivered in accordance with the terms of the Equity Contribution Agreement, which Contribution Notice shall be in substantially the form attached hereto as Exhibit K-2).

(v) Each Equity Member may provide replacement Equity Support for an Equity Contribution Letter of Credit that has been drawn upon pursuant to Section 2.3(c) or 2.3(d) of the Equity Contribution Agreement. If the Equity Member provides such replacement Equity Support pursuant to the preceding sentence, the Borrower may direct



the Collateral Agent in writing to withdraw an amount equivalent to the amount of the replacement Equity Support from the Equity Contribution Sub-Account and transfer such amount to the issuer of such Equity Contribution Letter of Credit that was drawn upon pursuant to such sections of the Equity Contribution Agreement. Upon such direction by the Borrower, without a Construction Account Withdrawal Certificate or a certificate of the Technical Advisor, the Collateral Agent shall transfer the amount equivalent to the amount of the replacement Equity Contribution Letter of Credit to the issuer of such Equity Contribution Letter of Credit that was drawn upon.

(k) **Requisitions.** So long as no Default or Event of Default has occurred and is continuing, the Securities Intermediary shall comply with any requisition received pursuant to, and in compliance with, this Section 5.04; provided, that if any request for payment, withdrawal or transfer of funds is not in compliance with this Agreement, the Securities Intermediary shall notify the Collateral Agents, Intercreditor Agent and the Borrower in writing of such non-compliance and the Borrower shall not be entitled to cause such proposed payment, withdrawal or transfer until such time as it has submitted a revised requisition which complies with the terms hereof (and upon the Securities Intermediary's receipt and approval of such revised requisition, the Securities Intermediary shall notify the Collateral Agents, Borrower and the Intercreditor Agent in writing of such receipt and approval) and provided, further, that the failure to give any such notice shall not be deemed to be an approval of the proposed payment, withdraw or transfer or a waiver of any rights of the Secured Parties with respect thereto. Except as contemplated in the immediately preceding sentence, the Borrower shall, in the absence of an Event of Default having occurred and being continuing, be entitled to withdraw funds from all of the Sub-Accounts contemplated in this Section 5.04 for the purposes (and in accordance with the terms) set forth herein. Upon receipt of a notice of an Event of Default, and solely during the continuance thereof, the Securities Intermediary shall comply with the requirements of Section 5.22(d) hereof. For the avoidance of doubt, the Intercreditor Agent shall at all times have the right to give the notice contemplated by the first sentence of this paragraph (k) if the relevant requisition does not comply with the terms of this Agreement.

(l) **Transfers on Phase 2 End of Funding Date.** On the Phase 2 End of Funding Date, except as otherwise required by any applicable Law, to the extent that there shall be funds remaining on deposit in any sub-account of the Construction Account, such amounts shall be applied as follows:

*First*, if any Rebate Amount is due under the Indenture, to fund the Rebate Account in an amount equal to such Rebate Amount; and

*Second*, amounts will be retained in the Construction Account in an amount at least equal to the aggregate amount and for the payment of all Project Costs incurred or anticipated to be incurred but not yet paid through and including the Final Completion Date, as certified by the Borrower and confirmed by the Technical Advisor (“Unpaid Project Costs”).

(m) [Reserved].

(n) **Transfer Restrictions on Phase 2 End of Funding Date.** Following compliance with Section 5.04(1), and subject to compliance with the Code (and, with respect to the Tax-Exempt Bond Proceeds Sub-Account, Building Loan Tax-Exempt Bond Proceeds Sub-Account, Project Loan Tax-Exempt Bond Proceeds Sub-Account and any Sub-Accounts thereof, the Tax Certificate), on the Phase 2 End of Funding Date, the funds then on deposit in the Construction Account or any sub-accounts thereof (excluding amounts retained in the Construction Account for the payment of Unpaid Project Costs pursuant to Section 5.04(1)(Second)), shall be transferred to the Post-Substantial Completion Revenue Account, except that no proceeds of the Tax-Exempt Obligations or investment earnings thereon shall be transferred pursuant to this paragraph (n) from the Tax-Exempt Bond Proceeds Sub-Account, Building Loan Tax-Exempt Bond Proceeds Sub-Account, the Project Loan Tax-Exempt Bond Proceeds Sub-Account or any Sub-Accounts thereof, unless, and to the extent that, the Borrower has delivered to the Securities Intermediary and the applicable Secured Debt Representative a Favorable Opinion of Bond Counsel. Any proceeds of the Tax-Exempt Obligations remaining in the Construction Account (or any sub-account thereof) following such transfer to the Post-Substantial Completion Revenue Account (other than amounts retained in the Construction Account for the payment of Unpaid Project Costs pursuant to Section 5.04(1)(Second)) shall be applied, *pro rata*, in consultation with Bond Counsel, to the defeasance or redemption of Tax-Exempt Obligations of the Series of which such amounts are proceeds.

(o) **D&C Letter of Credit.** If the Borrower directs the Senior Collateral Agent to draw on the D&C Letter of Credit, the Senior Collateral Agent shall promptly effectuate such draw in accordance with such direction, provided that the Borrower shall (i) certify to the Senior Collateral Agent that such drawing is permitted pursuant to the terms of the D&C Contract and (ii) identify to the Senior Collateral Agent the basis for such drawing under the applicable D&C Letter of Credit. Further, the Senior Collateral Agent shall (without direction from the Borrower or the Port Authority) draw on a D&C Letter of Credit for the entire available amount if: (i) such letter of credit is not replaced sixty (60) days prior to expiry thereof with immediately available funds or with a replacement Acceptable Letter of Credit or (ii) within five (5) Business Days of being notified by the Borrower or the Intercreditor Agent that the issuer of a D&C Letter of Credit is no longer an Eligible LC Issuer and the Borrower shall not have provided a replacement Acceptable Letter of Credit or deposited cash into the Operating Cashflow Sub-Account or the Post-Substantial Completion Revenue Account (as the case may be, as set forth below in this Section 5.04(o)), in each case in an amount equal to the then available amount of such D&C Letter of Credit. The Borrower shall promptly (and in any event within two (2) Business Days) notify the Senior Collateral Agent upon the Borrower becoming aware that the issuer of a D&C Letter of Credit is no longer an Eligible LC Issuer. The proceeds of any such draw on the D&C Letter of Credit shall be deposited by the Senior Collateral Agent into the Operating Cashflow Sub-Account, if such draw occurs prior to the Phase 2 End of Funding Date, or otherwise into the Post-Substantial Completion Revenue Account, unless such draw was for the purposes of satisfying the D&C Contractor's obligation to pay liquidated damages, in which event the proceeds from such draw shall be deposited into the Pre-Substantial Completion Revenue Account or the Post-Substantial Completion Revenue Account, as applicable. The Borrower shall direct the Senior Collateral Agent to, and upon receipt of such direction the Senior Collateral Agent shall, transfer to the Port Authority a portion of such draw proceeds in the amount of any reimbursement described in Section 54(b) of the Lease Agreement to compensate the Port Authority for performing (or causing to be performed) any Defect (as is defined in the Lease Agreement) rectification in compliance

with the terms of Sections 2(i)(4) and 54 of the Lease Agreement. In the event that the Port Authority has succeeded to the Borrower's position under the D&C Contract pursuant to Section 2(e)(4)(vii) of the Lease Agreement, the Senior Collateral Agent shall, at the direction of the Port Authority following termination of this Agreement in accordance with Section 5.23, transfer and assign its interest in the Construction Security to the Port Authority. Further, the Senior Collateral Agent shall promptly effectuate a draw on the D&C Letter of Credit if and as directed by the Port Authority upon receipt of a certificate of the Port Authority certifying that the Port Authority is entitled to enforce such security under Section 2(f) of the Lease Agreement.

#### **Section 5.05 Concessions Revenue Rent Account.**

(a) The Borrower hereby instructs the Deposit Account Bank to establish the Concessions Revenue Rent Account (the "Concessions Revenue Rent Account") as of the Closing Date. The Borrower shall promptly deposit or cause to be deposited in the Concessions Revenue Rent Account all amounts received by the Borrower from Concession Sublessees that constitute "Gross Rents" as defined in, and for purposes of, the Lease Agreement. The Concessions Revenue Rent Account shall not constitute a Project Account and shall not be subject to any Security Interest pursuant to any Security Document and shall not (including any funds on deposit therein) constitute any part of the Trust Estate or Collateral, and no Secured Party (including the Collateral Agents) shall have any right thereto, including any right to transfer funds out of such account in the case of any insufficiency of the amounts on deposit in the Pre-Substantial Completion Revenue Account or Post-Substantial Completion Revenue Account to make any disbursements contemplated by clauses *First* through *Ninth* under Section 5.02(b), inclusive, or clauses *First* through *Eleventh* under Section 5.03(b), inclusive. The Borrower will confirm such establishment to the Collateral Agents.

(b) The Deposit Account Bank shall, immediately upon receipt of any amounts into the Concessions Revenue Rent Account, and without direction by the Borrower or any other Person, (i) deposit fifty percent (50%) of such funds to the Pre-Substantial Completion Revenue Account or the Post-Substantial Completion Revenue Account, as applicable, and (ii) during the years from and including 2027 to and including the earlier of (x) 2036 and (y) the date of any Recapitalization event (the "Deferral Period"), after complying with the preceding clause (b)(i), deposit an additional fifty percent (50%) of the funds remaining in the Concessions Revenue Rent Account after complying with such preceding clause (b)(i) to the Pre-Substantial Completion Revenue Account or the Post-Substantial Completion Revenue Account, as applicable.

(c) On each Transfer Date and on the 15<sup>th</sup> day of each calendar month, the Deposit Account Bank shall, after application of Section 5.05(b), transfer all amounts then on deposit in the Concessions Revenue Rent Account to the Port Authority.

#### **Section 5.06 Senior and Subordinate Obligations Payment Accounts.**

(a) The Securities Intermediary shall deposit in the Interest Payment Sub-Accounts of the Senior Obligations Payment Account and the Interest Payment Sub-Accounts of the Subordinate Obligations Payment Account, if applicable:

(i) (A) on each Transfer Date, the amount required to be transferred from the Pre-Substantial Completion Revenue Account or the Post-Substantial Completion Revenue Account, as applicable, to the Senior Obligations Payment Account or Subordinate Obligations Payment Account pursuant to Section 5.02(b)(4) or (8), respectively, or Section 5.03(b)(4) or (10), respectively (such amounts to be deposited in the various Interest Payment Sub-Accounts as set forth in Section 5.02(b)(4) or (8), or Section 5.03(b)(4) or (10), as applicable) and (B) any amount transferred from any Sub-Account of the Construction Account in accordance with Section 5.04(g), Section 5.04(h), Section 5.04(i) or Section 5.04(j);

(ii) on any Redemption Date, the interest portion of any Current Interest Bonds to be redeemed (if redemption is other than through a mandatory sinking fund redemption, in which case clause (i) above applies), which interest shall be deposited in the Bond Interest Payment Sub-Account with respect to the Bonds being redeemed, which amount shall be determined by the Trustee and the source of which shall be directed by the Borrower in accordance with this Agreement; provided however that funds used for extraordinary redemptions of any Series of Tax-Exempt Bonds in accordance with the Indenture shall be provided from amounts required to be used therefor in accordance with the Financing Documents, as applicable;

(iii) on any Prepayment Date, the interest portion of the Senior Loans to be prepaid, which shall be deposited in the Senior Loan Interest Payment Sub-Account, which interest shall be determined using the interest payment information provided by the Administrative Agent and the source of which shall be directed by the Borrower in accordance with this Agreement;

(iv) such amounts required to be transferred from the Extraordinary Receipts Account for the payment of the interest portion of the Bonds to be redeemed in accordance with Section 5.15; and

(v) all Ordinary Course Payments received by or on behalf of the Borrower from any Hedge Provider pursuant to any Permitted Hedge Agreements entered into in respect of the Secured Obligations corresponding to such Interest Payment Sub-Account.

(b) The Securities Intermediary shall deposit in the Principal Payment Sub-Accounts of the Senior Obligations Payment Account and Principal Payment Sub-Account of the Subordinate Obligations Payment Account:

(i) (A) on each Transfer Date, the amount required to be transferred from the Pre-Substantial Completion Revenue Account or the Post-Substantial Completion Revenue Account, as applicable, to the Senior Obligations Payment Account or Subordinate Obligations Payment Account pursuant to Section 5.02(b)(5) or (8), respectively, or Section 5.03(b)(5) or (10) (such amounts to be deposited in the various Principal Payment Sub-Accounts as set forth in Section 5.02(b)(5) or (8) or Section 5.03(b)(5) or (10), as applicable) and (B) any amount transferred from any Sub-Account of the Construction Account in accordance with Section 5.04(e), Section 5.04(g), Section 5.04(h), Section 5.04(i) or Section 5.04(j);

(ii) on any Redemption Date, the principal portion or Accreted Value of the Bonds to be redeemed (if redemption is other than through a mandatory sinking fund redemption, in which case clause (i) above applies), which principal or Accreted Value shall be deposited in the Principal Payment Sub-Accounts with respect to the Bonds being redeemed, which amount shall be determined using the principal payment information provided by the Trustee and the source of which shall be directed by the Borrower in accordance with this Agreement; provided however that funds used for extraordinary redemptions of any Series of Tax-Exempt Bonds in accordance with the Indenture shall be provided from amounts required to be used therefor in accordance with the Financing Documents, as applicable;

(iii) on any Prepayment Date, the principal portion of the Senior Loans to be prepaid, which shall be deposited in the Senior Loan Principal Payment Sub-Account, which principal shall be determined using the principal payment information provided by the Administrative Agent and the source of which shall be directed by the Borrower in accordance with this Agreement;

(iv) such amounts required to be transferred from the Extraordinary Receipts Account for the payment of the principal portion or Accreted Value of the Bonds to be redeemed in accordance with Section 5.15.

(c) On or prior to each Interest Payment Date or Redemption Date of any Bonds, as applicable, the Securities Intermediary shall transfer from the various Interest Payment Sub-Accounts of the Senior Obligations Payment Account and the Subordinate Obligations Payment Account corresponding to such Bonds to the corresponding interest subaccounts in the Bond payment account created pursuant to the Indenture, the interest becoming due on such Interest Payment Date or Redemption Date.

(d) On each Interest Payment Date of any Senior Loans, the Securities Intermediary shall transfer from the Senior Loan Interest Payment Sub-Account of the Senior Obligations Payment Account to the Administrative Agent the interest becoming due on such Interest Payment Date.

(e) If prior to any Interest Payment Date, the Borrower has determined that the amounts on deposit in any Interest Payment Sub-Account within the Senior Obligations Payment Account are not sufficient to pay the full amount of interest payable on the applicable Senior Obligation on such Interest Payment Date, then the Borrower may instruct the Securities Intermediary by delivering a Funds Transfer Certificate or a Construction Account Withdrawal Certificate, as applicable, at least one, but no more than three Business Days prior to such Interest Payment Date, to transfer funds in an aggregate amount not exceeding the amount of such deficiency to such Interest Payment Sub-Account, *first*, from the Pre-Substantial Completion Revenue Account in accordance with Section 5.02(f) or the Post-Substantial Completion Revenue Account in accordance with Section 5.03(e), as applicable *second*, from the Remaining Revenue Account, *third*, prior to the Phase 2 End of Funding Date, from the Construction Account in accordance with Section 5.04(g), Section 5.04(h), Section 5.04(i) or Section 5.04(j), *fourth*, from the Ramp-Up Reserve Account (provided that the amount on deposit in the Ramp-Up Reserve Account immediately after giving effect to such transfer, when added to the amount then on deposit in the

Senior Debt Service Reserve Account (including any amount then available for drawing under any Acceptable Letter of Credit provided with respect to the Senior Debt Service Reserve Account), shall be at least equal to the Senior Debt Service Reserve Requirement at such time), and *fifth*, from the O&M Reserve Account; provided that if at the time the above transfers are made, a deficiency also exists in the amount on deposit in the Hedge Ordinary Course Payment Account and the amount on deposit in the above listed accounts is insufficient to cover the deficiency in both the Interest Payment Sub-Account and the Hedge Ordinary Course Payment Account, transfers to the Interest Payment Sub-Account under this paragraph and to the Hedge Ordinary Course Payment under Section 5.10 shall be made pro rata on the basis of the amount of interest and the Ordinary Course Payment with respect to the applicable Senior Obligations payable on such Interest Payment Date.

(f) On or prior to each Principal Payment Date or Redemption Date of any Bonds, the Securities Intermediary shall transfer from the various Bond Principal Payment Subaccounts of the Senior Obligations Payment Account and the Subordinate Obligations Payment Account corresponding to such Bonds to the corresponding principal subaccounts in the Bond payment account created pursuant to the Indenture, the principal becoming due on such Principal Payment Date or Redemption Date.

(g) On each Principal Payment Date of any Senior Loans, the Securities Intermediary shall transfer from the Senior Loan Principal Payment Sub-Account of the Senior Loan Principal Payment Account to the Administrative Agent the principal becoming due on such Principal Payment Date.

(h) [Reserved].

(i) On or prior to each Redemption Date, moneys on deposit for Bonds to be redeemed in the various Bond Principal Payment Subaccounts of the Senior Obligations Payment Account and the Subordinate Obligations Payment Account established for a Series of Bonds, and moneys on deposit in the various Interest Payment Sub-Accounts of the Senior Obligations Payment Account and the Subordinate Obligations Payment Account corresponding to such Series of Bonds, shall be transferred by the Securities Intermediary to the Trustee (without the requirement of a Funds Transfer Certificate) to effectuate any redemption of Bonds of such Series required under Section 3.01 or Section 3.02 of the Indenture, as applicable.

(j) On each Prepayment Date of any Senior Loans (other than with respect to Senior Loans prepayments pursuant to Section 5.15(c)), the Securities Intermediary shall transfer from the Senior Loan Principal Payment Sub-Account to the Administrative Agent the principal becoming due on such Prepayment Date.

(k) On each Prepayment Date of any Senior Loans (other than with respect to Senior Loans prepayments pursuant to Section 5.15(c)), the Securities Intermediary shall transfer from the Senior Loan Interest Payment Sub-Account to the Administrative Agent the interest becoming due on such Prepayment Date.

## **Section 5.07 Senior and Subordinate Debt Service Reserve Accounts.**

(a) The Senior Debt Service Reserve Account and the Subordinate Debt Service Reserve Account (collectively, the “Debt Service Reserve Accounts”) are hereby established, shall be maintained by the Securities Intermediary and shall constitute Segregated Collateral solely for the benefit of the Senior Secured Parties and the Subordinate Secured Parties, respectively, and the Security Interest thereon pursuant to the Senior Security Agreement shall be held by the Senior Collateral Agent for the exclusive benefit of the Senior Secured Parties and pursuant to the Subordinate Security Agreement by the Subordinate Collateral Agent for the exclusive benefit of the Subordinate Secured Parties, respectively. The Senior Debt Service Reserve Account will be funded in accordance with Section 5.03(b)(7), and the Subordinate Debt Service Reserve Account will be funded in accordance with Section 5.03(b)(10). Except as expressly provided in subsection (d) below, any amounts on deposit in (i) the Senior Debt Service Reserve Account in excess of the Senior Debt Service Reserve Requirement and (ii) the Subordinate Debt Service Reserve Account in excess of the Subordinate Debt Service Reserve Requirement shall be applied in accordance with the requirements of Section 5.03(c) hereof.

(b) Moneys on deposit in the Senior Debt Service Reserve Account shall be used by the Senior Collateral Agent (without the requirement of a Funds Transfer Certificate) as follows:

(i) (A) as provided in Sections 5.03(d)(iii) and (iv), and (B) if on any Interest Payment Date or Principal Payment Date, mandatory sinking fund Redemption Date, or any other mandatory prepayment date, as applicable with respect to the Senior Obligations, the funds on deposit in the Interest Payment Sub-Account, Principal Payment Sub-Account or Hedge Ordinary Course Payment Account (but not the Hedge Termination Payment Account), as applicable, established for the payment of such Senior Obligations are insufficient to pay the interest, principal, Accreted Value, Redemption Price, or Ordinary Course Payments on the relevant Senior Obligations, as applicable, due on such date, funds on deposit in the Senior Debt Service Reserve Account in an amount equal to such deficiency will be transferred to the Interest Payment Sub-Account, Principal Payment Sub-Account or Hedge Ordinary Course Payment Account, as applicable, established for such Senior Obligations for payment of interest, principal or Redemption Price, Accreted Value, or Ordinary Course Payments with respect to such Senior Obligations as of such Interest Payment Date or Principal Payment Date or mandatory sinking fund Redemption Date, as applicable; provided that, no proceeds in the Senior Debt Service Reserve Account that have been allocated for tax purposes as the proceeds of Tax-Exempt Obligations shall be transferred to the Hedge Ordinary Course Payment Account for the payment of Ordinary Course Payments until the Borrower has delivered to the Securities Intermediary and the applicable Secured Debt Representative a Favorable Opinion of Bond Counsel; and

(ii) following the taking of an Enforcement Action, moneys in the Senior Debt Service Reserve Account shall be applied in the manner set forth in Section 6.06.

(c) Moneys on deposit in the Subordinate Debt Service Reserve Account shall be used by the Subordinate Collateral Agent (without the requirement of a Funds Transfer Certificate) as follows:

(i) (A) as provided in Sections 5.03(d)(vi), and (B) if on any Interest Payment Date, Principal Payment Date, mandatory sinking fund Redemption Date or any other mandatory prepayment date, as applicable, with respect to the Subordinate Obligations, the funds on deposit in the Interest Payment Sub-Account, or Principal Payment Sub-Account, as applicable, established for the payment of such Subordinate Obligations are insufficient to pay the interest, principal, Accreted Value or Redemption Price, on the relevant Subordinate Obligations, as applicable, due on such date, funds on deposit in the Subordinate Debt Service Reserve Account in an amount equal to such deficiency will be transferred to the Interest Payment Sub-Account, or Principal Payment Sub-Account, as applicable, established for such Subordinate Obligations for payment of interest, principal, Accreted Value or Redemption Price, with respect to such Subordinate Obligations as of such Interest Payment Date, Principal Payment Date, or mandatory sinking fund Redemption Date, as applicable; and

(ii) following the taking of an Enforcement Action, moneys in the Subordinate Debt Service Reserve Account shall be applied in the manner set forth in Section 6.06.

(d) If a Collateral Agent is required to make any transfer of funds from any Debt Service Reserve Account to any Obligations Payment Account, such Collateral Agent shall, on the applicable Transfer Date, send notice to the Borrower and the Intercreditor Agent.

#### **Section 5.08 Reserve Account Letters of Credit.**

(a) Notwithstanding any other provision of this Agreement to the contrary, after the Discharge of Senior Bank Obligations, the Borrower may, upon notice to the relevant Secured Debt Representative, so long as no Event of Default has occurred and is continuing, substitute all or any portion of the cash or Eligible Investments on deposit in a Reserve Account with an Acceptable Letter of Credit in favor of the Applicable Collateral Agent (substantially in the form of Exhibit I hereto or in such other form as acceptable to the Senior Collateral Agent and the relevant Secured Debt Representatives) for purposes of such Reserve Account; provided that, if such Reserve Account holds proceeds of any Tax-Exempt Obligations or any investment earning thereon, no such substitution shall be made until the Borrower has delivered to the Securities Intermediary and the applicable Secured Debt Representative a Favorable Opinion of Bond Counsel. In the event that the Borrower substitutes cash or Eligible Investments on deposit in such Reserve Account with such Acceptable Letter of Credit and delivers any such Acceptable Letter of Credit to the Applicable Collateral Agent, the cash or Eligible Investments so substituted will (notwithstanding the terms of Section 5.03(c)) be transferred to the Post-Substantial Completion Revenue Account. The undrawn face value of any such Acceptable Letter of Credit shall be included when calculating the balance on deposit in such Reserve Account.

(b) The Borrower may, from time to time, direct the Applicable Collateral Agent to draw on any Acceptable Letter of Credit furnished pursuant to Section 5.08(a), in the amount specified by the Borrower. If the cash funds on deposit in such Reserve Account are not sufficient to make in full the transfers required under Section 5.08(a), the Applicable Collateral Agent shall (without direction from the Borrower) draw on any Acceptable Letter of Credit furnished pursuant to Section 5.08(a) in an amount equal to such shortfall. Further, the Applicable Collateral Agent shall (without direction from the Borrower) draw on such Acceptable Letter of Credit for the entire



available amount if: (i) such letter of credit is not replaced thirty (30) days prior to expiry thereof with immediately available funds of equal amount deposited into the Reserve Account or with a replacement Acceptable Letter of Credit for the same available amount, (ii) within twenty (20) days of being notified by the Borrower or the Intercreditor Agent that the issuer thereof is no longer an Eligible LC Issuer, the Borrower shall not have provided a replacement Acceptable Letter of Credit or deposited cash into the Reserve Account, in each case in an amount equal to the then available amount of such Acceptable Letter of Credit, or (iii) the Intercreditor Agent has notified the Senior Collateral Agent that an Event of Default has occurred and is continuing. The Borrower shall promptly notify the Senior Collateral Agent upon the Borrower becoming aware that the issuer of an Acceptable Letter of Credit furnished pursuant to Section 5.08(a) is no longer an Eligible LC Issuer. Proceeds of draws on an Acceptable Letter of Credit substituting for cash or Eligible Investments in the Reserve Account shall be deposited in the Reserve Account and applied in accordance with the terms of this Agreement.

#### **Section 5.09 Tenant Security Deposit Account.**

(a) The Borrower hereby instructs the Deposit Account Bank to establish the Tenant Security Deposit Account (the “Tenant Security Deposit Account”) as of the Closing Date, and such account shall be maintained in the name of the Borrower. The Tenant Security Deposit Account will be funded from time to time with cash security deposits provided to the Borrower by Sublessees. The Borrower will confirm such establishment to the Collateral Agent.

(b) The Tenant Security Deposit Account shall not constitute a Project Account and shall not be subject to any Security Interest pursuant to any Security Document and shall not (including any funds on deposit therein) constitute any part of the Collateral, and no Secured Party (including the Collateral Agents) shall have any right thereto, including any right to transfer funds out of such account in the case of any insufficiency of the amounts on deposit in the Post-Substantial Completion Revenue Account to make any disbursements contemplated by clauses *First through Eleventh* under Section 5.03(b), inclusive.

(c) Transfers from the Tenant Security Deposit Account shall be made, from time to time, by the Deposit Account Bank in accordance with the written instructions of the Borrower in compliance with the applicable Sublease, and the Deposit Account Bank will so transfer such funds and not require compliance with any other conditions hereunder in connection with such transfer.

#### **Section 5.10 Hedge Ordinary Course Payment Account and Hedge Termination Payment Account.**

(a) The Securities Intermediary shall deposit in the Hedge Ordinary Course Payment Account (i) on each Transfer Date, the amount required to be transferred from the Pre-Substantial Completion Revenue Account or the Post-Substantial Completion Revenue Account, as applicable, to the Hedge Ordinary Course Payment Account pursuant to Section 5.02(b)(4) or Section 5.03(b)(4), as applicable, and (ii) any amount transferred from any Sub-Account of the Construction Account in accordance with Section 5.04(g), Section 5.04(h), Section 5.04(i) or Section 5.04(j).

(b) The Securities Intermediary shall deposit in the Hedge Termination Payment Account (i) on each Transfer Date, the amount required to be transferred from the Post-Substantial Completion Revenue Account to the Hedge Termination Payment Account pursuant to Section 5.02(b)(5) or Section 5.03(b)(5) and (ii) any amount transferred from any Sub-Account of the Construction Account in accordance with Section 5.04(g), Section 5.04(h), Section 5.04(i) or Section 5.04(j).

(c) On each date on which Ordinary Course Payments are due and payable, the Securities Intermediary shall transfer from the Hedge Ordinary Course Payment Account to each Hedge Provider an amount equal to such Ordinary Course Payments payable to such Hedge Provider; provided that if the amount on deposit in the Hedge Ordinary Course Payment Account is not sufficient to pay in full all Ordinary Course Payment that have become due and payable and remain unpaid, such payments shall be made *pro rata* on the basis of the aggregate amount of the Ordinary Course Payments owed and payable to all Hedge Providers.

(d) On each date on which Hedge Termination Payments are due and payable, the Securities Intermediary shall transfer from the Hedge Termination Payment Account to each Hedge Provider an amount equal to such Hedge Termination Payments payable to such Hedge Provider; provided that if the amount on deposit in the Hedge Termination Payment Account is not sufficient to pay in full all Hedge Termination Payments that have become due and payable and remain unpaid, such payments shall be made *pro rata* on the basis of the aggregate amount of the Hedge Termination Payments owed and payable to all Hedge Providers.

(e) If prior to any date on which an Ordinary Course Payment is payable by the Borrower, the Borrower has determined that the amounts on deposit in the Hedge Ordinary Course Payment Account are not sufficient to pay the full amount of Ordinary Course Payments payable on such date, then the Borrower may instruct the Securities Intermediary by delivering a Funds Transfer Certificate or a Construction Account Withdrawal Certificate, as applicable, at least one, but no more than three Business Days prior to such Interest Payment Date to transfer funds in an aggregate amount not exceeding the amount of such deficiency to the Hedge Ordinary Course Payment Account *first*, from the Pre-Substantial Completion Revenue Account in accordance with Section 5.02(f) or the Post-Substantial Completion Revenue Account in accordance with Section 5.03(e), as applicable, *second*, from the Remaining Revenue Account, *third*, prior to the Phase 2 End of Funding Date, from the Construction Account in accordance with Section 5.04(g), Section 5.04(h), Section 5.04(i) or Section 5.04(j), *fourth*, from the Ramp-Up Reserve Account (provided that the amount on deposit in the Ramp-Up Reserve Account immediately after giving effect to such transfer, when added to the amount then on deposit in the Senior Debt Service Reserve Account (including any amount then available for drawing under any Acceptable Letter of Credit provided with respect to the Senior Debt Service Reserve Account), shall be at least equal to the Senior Debt Service Reserve Requirement at such time), and *fifth*, from the O&M Reserve Account; provided that if at the time the above transfers are made, a deficiency also exists in the amount on deposit in any Interest Payment Sub-Account for the Senior Obligations associated with the applicable Ordinary Course Payment and the amount on deposit in the above listed accounts is insufficient to cover the deficiency in both the Interest Payment Sub-Account and the Hedge Ordinary Course Payment Account, transfers to the Interest Payment Sub-Account under Section 5.06(e) and to the Hedge Ordinary Course Payment under this paragraph shall be made *pro rata*

on the basis of the amount of interest and the Ordinary Course Payment due with respect to the applicable Senior Obligations.

#### **Section 5.11 Liquidity Reserve Account.**

(a) On the Closing Date, the Liquidity Reserve Account will be funded in cash or an Acceptable Letter of Credit, in an amount of \$100,000,000 with such amounts to be available to address unforeseen liquidity events or any other needs of the Project, as determined by the Borrower.

(b) All amounts on deposit in the Liquidity Reserve Account shall be available as follows:

(i) Prior to the Phase 2 End of Funding Date, to pay Project Costs (including to fund any shortfall in the Pre-Substantial Completion Revenue Account) at the direction of the Borrower pursuant to a Funds Transfer Certificate (substantially in the form of Exhibit D-1); and

(ii) On or after the Phase 2 End of Funding Date, (A) to pay Project Costs (including to fund any shortfall in the Post-Substantial Completion Revenue Account but not pay Permitted Tax Distributions or transfer funds to the Remaining Revenue Account) without the need for a Funds Transfer Certificate and (B) if the amount in the Liquidity Reserve Account exceeds the Required Liquidity Reserve Amount, then any amount in the Liquidity Reserve Account in excess of the Required Liquidity Reserve Amount may be transferred to the Distribution Account (but only if the Restricted Payment Conditions are then satisfied), or may be transferred, at the election of the Borrower pursuant to a Funds Transfer Certificate (substantially in the form of Exhibit D-2), to any other account created under this Agreement, including any reserve account.

(c) Beginning on the first Quarterly Distribution Date following the date on which aggregate distributions made by the Borrower to the Sponsors from the Distribution Account equal the aggregate amount of equity invested by the Sponsors in the Project to such date, so long as no Default or Event of Default has occurred and is continuing, amounts remaining in the Liquidity Reserve Account shall be transferred to the Distribution Account (without (and not subject to) any conditions, restrictions or limitations) for distribution by the Borrower to the Sponsors in equal installments on each Quarterly Distribution Date over the remainder of the Lease Agreement.

#### **Section 5.12 Ramp-Up Reserve Account.**

(a) The Ramp-Up Reserve Account shall be maintained by the Securities Intermediary and shall constitute Segregated Collateral solely for the benefit of the Senior Secured Parties, and the Security Interest thereon pursuant to the Senior Security Agreement shall be held by the Senior Collateral Agent for the exclusive benefit of the Senior Secured Parties. Except as expressly provided in sub-section (c) below, any amounts on deposit in the Ramp-Up Reserve Account in excess of the Ramp-Up Reserve Requirement shall be applied in accordance with the requirements of Section 5.03(c) hereof. The Borrower will fund the Ramp-Up Reserve Account on the Phase 2 End of Funding Date with proceeds from the sub-accounts of the Construction Account allocated for such purpose in an amount equal to the Ramp-Up Reserve Requirement, and thereafter, any

additional deposits to the Ramp-Up Reserve Account shall be made in accordance with Section 5.03(b)(7)(ii). The Borrower shall designate the particular subaccount(s) of the Construction Account from which the deposits will be drawn at the time of such funding, provided that any proceeds of Tax-Exempt Obligations shall only be used for permitted uses. No additional funds will be deposited into the Ramp-Up Reserve Account after the Discharge of the Senior Bank Obligations.

(b) No later than five (5) Business Days after each Calculation Date during the Ramp-Up Period, the Borrower shall deliver to the Intercreditor Agent and the Senior Collateral Agent an Officer's Certificate with its calculation of the Senior Debt Service Coverage Ratio and the Ramp-Up Debt Service Coverage Ratio for the DSCR Calculation Period ended on such Calculation Date. If, on any date on which any Debt Service is due on any Senior Obligations, the Senior Debt Service Coverage Ratio for the DSCR Calculation Period ending on the immediately preceding Calculation Date was less than 1.30:1.00, the Collateral Agent shall transfer from the Ramp-Up Reserve Account to the relevant Sub-Account(s) of the Senior Obligations Payment Account (as directed by the Borrower pursuant to a Funds Transfer Certificate, substantially in the form of Exhibit D-2) funds to make payment of Debt Service due and payable on the applicable Transfer Date in an aggregate amount necessary to cause the Ramp-Up Debt Service Coverage Ratio for such immediately preceding calendar quarter to be equal to 1.30:1.00. On the Ramp-Up End Date, all remaining amounts on deposit in the Ramp-Up Reserve Account shall be transferred, (i) *first*, to the Senior Debt Service Reserve Account, to the extent necessary to bring the balance of the Senior Debt Service Reserve Account up to an amount equal to the Senior Debt Service Reserve Requirement, and (ii) *second*, to the Post-Substantial Completion Revenue Account, provided that any proceeds of Tax-Exempt Obligations shall only be used for permitted uses in accordance with the Code.

(c) If the Senior Collateral Agent is required to make any transfer of funds from the Ramp-Up Reserve Account to any other Project Account, the Senior Collateral Agent shall, on the applicable Transfer Date, send notice to the Borrower, the Intercreditor Agent and the Disclosure Dissemination Agent.

(d) Amounts on deposit in the Ramp-Up Reserve Account shall be available to fund any shortfall in the Post-Substantial Completion Revenue Account in accordance with Section 5.03(d) or to make payments to any Interest Payment Sub-Account or Hedge Ordinary Course Payment Sub-Account in accordance with Section 5.06(e) or Section 5.10(e), as applicable.

### **Section 5.13 O&M Reserve Account.**

(a) On the Transfer Date immediately following the Phase 1 End of Funding Date, the Borrower will direct that the O&M Reserve Account be funded in an amount equal to the then-applicable O&M Reserve Requirement with proceeds from the Sub-Accounts of the Construction Account or from funds in the Pre-Substantial Completion Revenue Account in accordance with Section 5.02(b)(6). On each Transfer Date thereafter, the Securities Intermediary will cause amounts in the Pre-Substantial Completion Revenue Account or the Post-Substantial Completion Revenue Account, as applicable and to the extent available, to be deposited in the O&M Reserve Account in accordance with Section 5.02(b)(6) or Section 5.03(b)(8) hereof, as applicable, in each case so that amounts on deposit in the O&M Reserve Account are equal to the then-applicable

O&M Reserve Requirement. Any amount on deposit in the O&M Reserve Account in excess of the O&M Reserve Requirement shall be applied in accordance with the requirements of Section 5.02(c) or Section 5.03(c) hereof.

(b) Subject to the following sentence, all amounts on deposit in the O&M Reserve Account shall be available exclusively for funding any shortfall in the Pre-Substantial Completion Revenue Account in accordance with Section 5.02(e) or in the Post-Substantial Completion Revenue Account in accordance with Section 5.03(d), to make payments to any Interest Payment Sub-Account or Hedge Ordinary Course Payment Sub-Account in accordance with Section 5.06(e) or Section 5.10(e), as applicable, and as provided in Section 5.13(a) above, and will not be available for any other purpose, except in the event of an Enforcement Action against the Collateral in which case they shall be applied in accordance with Section 6.06. The Borrower shall have the right, at any time, to cause the transfer, pursuant to a Funds Transfer Certificate (substantially in the form of Exhibit D-1 for transfers prior to the Phase 2 End of Funding Date and Exhibit D-2 for transfers on or after the Phase 2 End of Funding Date), of amounts from the O&M Reserve Account directly into the Operating Account in the event that the amount on deposit in the Operating Account is insufficient to satisfy in full the amount of O&M Expenses then due and payable. The Securities Intermediary shall make such transfers instructed by the Borrower from the O&M Reserve Account to the Operating Account prior to complying with Section 5.03(d) above with respect to any shortfall in the Operating Account.

(c) In the event that the Port Authority has succeeded to the Borrower's position under the Management Services Agreement pursuant to Section 2(e)(4)(vii) of the Lease Agreement, the Collateral Agents shall, at the direction of the Port Authority following termination of this Agreement in accordance with Section 5.23, transfer and assign their interests in the Manager Guarantee to the Port Authority.

#### **Section 5.14 Major Maintenance Reserve Account.**

(a) Promptly following the Phase 1 End of Funding Date the Borrower will direct that the Major Maintenance Reserve Account be funded in an amount equal to the Major Maintenance Reserve Requirement at such time from funds available in the Construction Account (excluding any sub-account holding Tax-Exempt Obligations proceeds or investment earnings thereon, unless the Borrower has delivered to the Securities Intermediary, Collateral Agents and the applicable Secured Debt Representative a Favorable Opinion of Bond Counsel) or from funds in the Pre-Substantial Completion Revenue Account in accordance with Section 5.02(b)(7). On each Transfer Date after the Phase 1 End of Funding Date, the Securities Intermediary will cause amounts in the Pre-Substantial Completion Revenue Account or the Post-Substantial Completion Revenue Account, as applicable and to the extent available, to be deposited in the Major Maintenance Reserve Account in accordance with Section 5.02(b)(7) or Section 5.03(b)(9) hereof, respectively. Except as expressly provided in sub-section (c) below, any amount on deposit in the Major Maintenance Reserve Account in excess of the Major Maintenance Reserve Requirement shall be applied in accordance with the requirements of Section 5.02(c) or Section 5.03(c) hereof. For purposes of clarification, the Major Maintenance Reserve Requirement will be determined by reference to the amounts set forth in the Borrower's Asset Preservation Schedule (which need not be uniform from year to year) as the Major Maintenance Reserve Requirement, which is required to be updated from time to time as set forth in the Lease Agreement, and the Major Maintenance

Reserve Requirement will be adjusted to reflect the requirements set forth in the then-current Asset Preservation Schedule. Prior to the Phase 1 End of Funding Date, and thereafter on an annual basis, the Borrower shall deliver to the Collateral Agents a schedule showing the Major Maintenance Reserve Requirement for the five (5) year period commencing with the year during which the schedule is delivered, together with a Borrower certification as to the accuracy of the related calculations.

(b) Subject to the balance of this Section 5.14(b), all amounts on deposit in the Major Maintenance Reserve Account shall be available exclusively for funding Major Maintenance, and application in accordance with Section 5.14(a) and Section 5.18, and will not be available for any other purpose, except in the event of an Enforcement Action against the Collateral. The Borrower shall have the right to cause the transfer, pursuant to a Funds Transfer Certificate (substantially in the form of Exhibit D-1 for transfers prior to the Phase 2 End of Funding Date and Exhibit D-2 for transfers on or after the Phase 2 End of Funding Date), of amounts from the Major Maintenance Reserve Account directly into the Operating Account at any time and from time to time for purposes of paying Major Maintenance and to the Handback Reserve Account as set forth in Section 5.18. The Securities Intermediary shall make such transfers instructed by the Borrower from the Major Maintenance Reserve Account to the Operating Account prior to complying with Section 5.03(d) with respect to any shortfall in the Operating Account, and from the Major Maintenance Reserve Account to the Handback Reserve Account to fund the Handback Reserve Amount as set forth in Section 5.18, but only to the extent that such transfer does not cause the remaining balance in the Major Maintenance Reserve Account to be below the Major Maintenance Reserve Requirement at such time.

(c) Notwithstanding any other provision of this Agreement to the contrary, the Borrower may, upon notice to the Collateral Agents and the Intercreditor Agent, so long as no Event of Default has occurred and is continuing, substitute all or any portion of the cash or Eligible Investments on deposit in the Major Maintenance Reserve Account with an Acceptable Letter of Credit in favor of the Collateral Agents. In the event that the Borrower substitutes cash or Eligible Investments on deposit in the Major Maintenance Reserve Account with such Acceptable Letter of Credit, and delivers any such Acceptable Letter of Credit to the Collateral Agents, the cash or Eligible Investments so substituted will (notwithstanding the terms of Section 5.03(c)) be transferred to the Pre-Substantial Completion Revenue Account (if such substitution is made on or prior to the Phase 2 End of Funding Date) or Post-Substantial Completion Revenue Account (if such substitution is made after the Phase 2 End of Funding Date). The undrawn face value of any such Acceptable Letter of Credit shall be included when calculating the balance on deposit in the Major Maintenance Reserve Account.

(d) The Borrower may, from time to time, direct the Senior Collateral Agent to draw on the Acceptable Letter of Credit furnished pursuant to Section 5.14(c), in the amount specified by the Borrower. If the funds on deposit in the Major Maintenance Reserve Account are not sufficient to make in full the transfers (x) directed in a Funds Transfer Certificate (substantially in the form of Exhibit D-2) delivered by the Borrower in accordance with Section 5.14(b) or (y) required pursuant to Section 5.03(d) or Section 5.18, the Senior Collateral Agent shall (without direction from the Borrower or the Port Authority) draw on such Acceptable Letter of Credit in an amount equal to such shortfall. Further, the Senior Collateral Agent shall (without direction from the Borrower or the Port Authority) draw on such Acceptable Letter of Credit for the entire

available amount if: (i) such letter of credit is not replaced thirty (30) days prior to expiry thereof with immediately available funds of equal amount deposited into the Major Maintenance Reserve Account or with a replacement Acceptable Letter of Credit for the same available amount, (ii) within twenty (20) days of being notified by the Borrower or the Intercreditor Agent that the issuer thereof is no longer an Eligible LC Issuer, the Borrower shall not have provided a replacement Acceptable Letter of Credit or deposited cash into the Major Maintenance Reserve Account, in each case in an amount equal to the then available amount of such Acceptable Letter of Credit, or (iii) the Intercreditor Agent has notified the Collateral Agents that an Event of Default has occurred and is continuing. The Borrower shall promptly notify the Collateral Agents upon the Borrower becoming aware that the issuer of an Acceptable Letter of Credit furnished pursuant to Section 5.14(c) is no longer an Eligible LC Issuer. All funds drawn under such Acceptable Letter of Credit shall be deposited in the Major Maintenance Reserve Account.

(e) The Borrower shall direct the Securities Intermediary to transfer amounts from the Major Maintenance Reserve Account directly to the Port Authority (or as otherwise directed by the Port Authority) in accordance with (i) a Funds Transfer Certificate (substantially in the form of Exhibit D-1 or Exhibit D-2, as applicable) or (ii) a certificate of the Port Authority certifying that the Port Authority is entitled to such funds under Section 54(b) or Section 86(c)(6) of the Lease Agreement, in either case to compensate the Port Authority for performing (or causing to be performed) Major Maintenance in compliance with the terms of Section 54 and Section 86(c)(6) of the Lease Agreement. The Borrower shall cause the transfer, pursuant to a Funds Transfer Certificate, of amounts from the Major Maintenance Reserve Account directly to (I) the Port Authority upon a termination of the Lease in compliance with the terms of Section 86(d) of the Lease (and the Borrower hereby irrevocably instructs the Deposit Account Bank to transfer any such amounts to the Port Authority upon receiving written notice from the Securities Intermediary, the Collateral Agents, the Port Authority or the Borrower specifying that such a termination has occurred and the relevant amount payable) and (II) from and after the date that is five (5) calendar years prior to the projected Expiration Date (as defined in the Lease), for deposit into the Handback Reserve Account in accordance with Section 87 of the Lease Agreement. The Securities Intermediary shall, in accordance with Section 5.14(d), draw on any Acceptable Letter of Credit furnished pursuant to Section 5.14(c) in order to satisfy any such transfer direction.

### **Section 5.15 Extraordinary Receipts Account.**

(a) Insurance and Condemnation Proceeds.

(i) The Borrower shall promptly deposit or cause to be deposited directly into (A) the Casualty Proceeds Sub-Account of the Extraordinary Receipts Account all Borrower Insurance Proceeds (other than insurance proceeds under business interruption, advance of loss of profit or delay in start-up coverage) received by the Borrower or to its order and (B) the Condemnation Proceeds Subaccount of the Extraordinary Receipts Account all condemnation proceeds (or similar compensation, awards, damages and other payments or relief, including any compensation payable in connection with an Expropriation Event) ("Borrower Condemnation Proceeds").

(ii) Except as provided by Section 6.06 and subject to Section 5.15(c), amounts on deposit in the Casualty Proceeds Sub-Account or the Condemnation Proceeds

Subaccount of the Extraordinary Receipts Account will be withdrawn and paid to the Borrower to be applied to restoration of the Premises, or any portion thereof, to the extent required by and otherwise in accordance with the Lease Agreement upon delivery by the Borrower to the Securities Intermediary, not later than the third (3rd) Business Day prior to the proposed transfer date, of a Funds Transfer Certificate, signed by a Responsible Officer of the Borrower, setting forth the matters contemplated therein, and, in the event that restoration with respect to any one or series of related casualty or condemnation events is reasonably expected to cost in excess of \$5 million, together with a certificate of the Technical Advisor substantially in the form of Exhibit J, setting forth the matters contemplated therein; provided that following the Discharge of Senior Bank Obligations or the Condemnation Proceeds Subaccount, no such certificate of the Technical Advisor will be required under this Section 5.15(a)(ii). If any funds remain on deposit in the Casualty Proceeds Subaccount, the Condemnation Proceeds Subaccount or Extraordinary Receipts Account following final completion of such restoration in accordance with the requirements of the Lease Agreement, the Borrower shall direct the Securities Intermediary to transfer such excess fund to the Operating Cashflow Sub-Account of the Construction Account, if before the Substantial Completion Date, or thereafter to the Post-Substantial Completion Revenue Account.

(iii) If any Borrower Insurance Proceeds or Borrower Condemnation Proceeds are deposited into the Extraordinary Receipts Account that are not required to be applied to restoration of the Premises in accordance with the Lease Agreement, the Borrower will instruct the Securities Intermediary, promptly upon deposit thereof into the Extraordinary Receipts Account, to transfer such proceeds (A) if any Senior Obligations are Outstanding, *pro rata* (based on the outstanding principal amounts of the Senior Obligations and, if any, the aggregate Hedge Termination Payment under the Secured Hedge Agreements, as certified to the Securities Intermediary by the Intercreditor Agent) (I) for the Senior Loans, to the Administrative Agent pursuant to Section 5.15(c)(i) or (vi), as applicable, for application in accordance with the Credit Agreement and the Common Terms Agreement, (II) for any Senior Bonds, to the respective Principal Payment Sub-Accounts and Interest Payment Sub-Accounts of the Senior Obligations Payment Account for application in accordance with the Indenture, the Common Terms Agreement, and the Credit Agreement, as applicable, and (III) for the Secured Hedge Agreements to each Hedge Provider for payment of Ordinary Course Payment and Hedge Termination Payments in accordance with the Secured Hedge Agreements and (B) if no Senior Obligations are Outstanding, to the applicable Principal Payment Sub-Accounts and Interest Payment Sub-Accounts of the Subordinate Obligations Payment Account for application in accordance with the Subordinate Financing Documents.

(b) *Borrower Lease Termination Proceeds.* The Borrower shall promptly deposit into the Extraordinary Receipts Account the Port Authority Default Termination Payment or any other payment or proceeds received by the Borrower from the Port Authority in respect of a termination of the Lease Agreement (including, without limitation, amounts under Section 77 of the Lease Agreement) (collectively the “Borrower Lease Termination Proceeds”). The Borrower hereby irrevocably directs the Collateral Agents or Securities Intermediary, as applicable, promptly following its receipt of any Borrower Lease Termination Proceeds, to:



(i) draw on each letter of credit credited to the Debt Service Reserve Accounts, the Ramp-Up Reserve Account, the O&M Reserve Account or the Major Maintenance Reserve Account, in each case for the full amount thereof, and

(ii) promptly transfer such Borrower Lease Termination Proceeds, the proceeds from each such letter of credit draw and the amounts on deposit in the Debt Service Reserve Accounts, the Ramp-up Reserve Account, and the O&M Reserve Account (A) if any Senior Obligations are Outstanding, *pro rata* (based on the outstanding principal amounts of the Senior Loans, the Senior Bonds and the aggregate Hedge Termination Payments under the Secured Hedge Agreements as certified to the Securities Intermediary by the Intercreditor Agent), (I) for the Senior Loans, to the Administrative Agent pursuant to Section 5.15(c)(iii) for application in accordance with the Credit Agreement and Common Terms Agreement and (II) for any Senior Bonds, to the respective Principal Payment Sub-Accounts and Interest Payment Sub-Accounts of the Senior Obligations Payment Account for application in accordance with the Indenture and the Common Terms Agreement, as applicable, and (III) for the Secured Hedge Agreements to each Hedge Provider for payment of Ordinary Course Payments and Hedge Termination Payments in accordance with the Secured Hedge Agreements and (B) if no Senior Obligations are Outstanding, to the respective Principal Payment Sub-Accounts and Interest Payment Sub-Accounts of the Subordinate Obligations Payment Account for application in accordance with the Financing Documents.

(c) *Senior Loan Prepayments.* The following amounts shall be deposited in the Extraordinary Receipts Account (or an applicable Sub-Account thereof) and thereafter transferred by the Securities Intermediary (without the requirement of a Funds Transfer Certificate) *pro rata*, in accordance with Section 2.02(b) and (c) of the Common Terms Agreement, among the Senior Loans, the Series 2022A Bonds, and the Permitted Hedge Agreements, to (I)(x) the Administrative Agent and (y) to the 2022A Tax-Exempt Bond Principal Payment Sub-Account and 2022A Tax Exempt Bond Interest Payment Sub-Account of the Senior Obligations Payment Account, respectively, and (II) the Permitted Hedge Providers and Hedge Providers, in each case, for application in accordance with the Indenture, the Common Terms Agreement, and the Credit Agreement, promptly upon receipt to effectuate any prepayment of any Senior Loans, the redemption of the Series 2022A Bonds, and payment of any amounts required to be paid under the Permitted Hedge Agreements:

(i) all Net Cash Proceeds received by the Borrower as a result of any condemnation or similar event (including any Expropriation Event) that are required to be applied to a mandatory prepayment or redemption of the Senior Bank Obligations in accordance with Section 2.02(a)(i) of the Common Terms Agreement;

(ii) the Net Cash Proceeds received by the Lessee of any Disposition that are required to be applied to a mandatory prepayment or redemption of the Senior Bank Obligations in accordance with Section 2.02(a)(ii) of the Common Terms Agreement;

(iii) any Net Cash Proceeds received by the Lessee as a result of any termination of the Lease Agreement or any other Material Project Document that are required to be

applied to a mandatory prepayment or redemption of the Senior Bank Obligations in accordance with Section 2.02(a)(iii) of the Common Terms Agreement;

(iv) the Net Cash Proceeds received by the Lessee from any payment by a Permitted Hedge Provider following the early termination of any Permitted Hedge Agreement that are required to be applied to a mandatory prepayment or redemption of the Senior Bank Obligations in accordance with Section 2.02(a)(iv) of the Common Terms Agreement;

(v) the Net Cash Proceeds of any Indebtedness received in respect of any refinancing of all or part of the Obligations that are required to be applied to a mandatory prepayment or redemption of the Senior Bank Obligations in accordance with Section 2.02(a)(v) of the Common Terms Agreement;

(vi) to the extent not already applied in accordance with Section 5.15(a)(iii) above, the Net Cash Proceeds received by the Lessee as a result of any casualty event that are required to be applied to a mandatory prepayment or redemption of the Senior Bank Obligations in accordance with Section 2.02(a)(vi) of the Common Terms Agreement; and

(vii) all amounts required to be transferred from the Remaining Revenue Account to the Extraordinary Receipts Account on any Quarterly Distribution Date pursuant to Section 5.17(c)(ii), on such Quarterly Distribution Date.

**Section 5.16 Operating Account.** There shall be transferred to the Operating Account amounts from (i) the Pre-Substantial Completion Revenue Account and the Post-Substantial Completion Revenue Account in accordance with Section 5.02(b)(2) and (3) and Section 5.03(b)(2) and (3), respectively, (ii) the O&M Reserve Account in accordance with Section 5.13(b), (iii) the Remaining Revenue Account, the Ramp-Up Reserve Account and the O&M Reserve Account in accordance with Section 5.03(d)(ii), (iv) the Construction Account in accordance with Section 5.04(g), Section 5.04(h), Section 5.04(i) or Section 5.04(j), and (v) the Major Maintenance Reserve Account in accordance with Section 5.14(b). Withdrawals from the Operating Account may be made by the Borrower (by means of checks or wire transfers) to pay O&M Expenses or Major Maintenance, as contemplated in the relevant disbursement requisition, in accordance with the terms of the Account Control Agreement and will not require compliance with any conditions hereunder other than compliance with the Account Control Agreement.

#### **Section 5.17 Remaining Revenue Account and Distribution Account.**

(a) *Remaining Revenue Account.* On each Transfer Date the Securities Intermediary will cause amounts in the Post-Substantial Completion Revenue Account, to the extent available, to be deposited in the Remaining Revenue Account in accordance with Section 5.03(b)(12). Proceeds of the Remaining Revenue Account shall, until applied pursuant to Section 5.17(c), be used to fund a shortfall in the Post-Substantial Completion Revenue Account, in accordance with Section 5.03(d), or to make payments to any Interest Payment Sub-Account or Hedge Ordinary Course Payment Sub-Account in accordance with Section 5.06(e) or Section 5.10(e), as applicable.

(b) *Distribution Account.* The Borrower hereby instructs the Deposit Account Bank to establish the Distribution Account (the "Distribution Account") as of the Closing Date. The

Distribution Account shall not constitute a Project Account and shall not be subject to any Security Interest pursuant to any Security Document and shall not (including any funds on deposit therein) constitute any part of the Trust Estate or Collateral, and no Secured Party (including the Collateral Agents) shall have any right thereto, including any right to transfer funds out of such account in the case of any insufficiency of the amounts on deposit in the Pre-Substantial Completion Revenue Account or the Post-Substantial Completion Revenue Account to make any disbursements contemplated by clauses *First* through *Ninth* under Section 5.02(b), inclusive, or clauses *First* through *Eleventh* under Section 5.03(b), inclusive. The Borrower will confirm such establishment to the Collateral Agents. Amounts in the Distribution Account may be transferred at the direction of the Borrower to HoldCo, to the Equity Members, to any Project Account, or otherwise, in each case as the Borrower may direct pursuant to a Distribution Account Certificate substantially in the form of Exhibit F.

(c) *Transfers from the Remaining Revenue Account.* On each Quarterly Distribution Date, so long as the Restricted Payment Conditions are satisfied as of such Quarterly Distribution Date, the Securities Intermediary shall transfer amounts held in the Remaining Revenue Account (other than reasonable reserve amounts, as determined by the Borrower and approved by the Port Authority) as follows:

(i) *First*, to the Port Authority, in the amount certified in such Distribution Account Certificate as the amounts of Excess Value Rent and Equity Gain Share, if any, payable to the Port Authority;

(ii) *Second*, so long as the Senior Bank Obligations remain outstanding, to the Extraordinary Receipts Account for *pro rata* application toward a mandatory prepayment of the Senior Loans, mandatory redemption of the Series 2022A Bonds, and payment of any amounts required to be paid under the Permitted Hedge Agreement, in each case, in accordance with Section 5.15(c)(vii) herein and Section 2.02(a)(vii) of the Common Terms Agreement, in an amount equal to 50% (if such Quarterly Distribution Date occurs prior to the first anniversary of the Substantial Completion Date) or 75% (if such Quarterly Distribution Date occurs on or after the first anniversary of Substantial Completion Date) of the funds remaining on deposit in the Remaining Revenue Account after giving effect to the transfer described in clause (i) above; and

(iii) *Third*, to the Distribution Account, in an amount equal to 100% of the funds remaining on deposit in the Remaining Revenue Account after giving effect to the transfer described in clause (ii) above.

(d) *Restricted Payment Conditions.* The “Restricted Payment Conditions” are as follows:

(i) on the Transfer Date immediately preceding the Quarterly Distribution Date on which the Borrower requests that funds be transferred from the Remaining Revenue Account pursuant to Section 5.17(c) (after giving effect to all transfers and deposits required to be made hereunder on such Transfer Date), the Operating Account, the Senior Obligations Payment Accounts, the Hedge Ordinary Course Payment Account, the Hedge Termination Payment Account, the Debt Service Reserve Accounts, O&M Reserve

Account, Major Maintenance Reserve Account, the Ramp-Up Reserve Account and the Handback Reserve Account shall be fully funded to their respective required levels as of such Transfer Date;

(ii) on the Transfer Date immediately preceding the Quarterly Distribution Date on which the Borrower requests that funds be transferred from the Remaining Revenue Account pursuant to Section 5.17(c) (after giving effect to all transfers and deposits required to be made hereunder on such Transfer Date), no Deferred Concessions Revenue Rent is accrued and unpaid;

(iii) for the DSCR Calculation Period ending on the immediately preceding Calculation Date, the Senior Debt Service Coverage Ratio is not less than (x) during the Ramp-Up Period, 1.30:1.00, and (y) on and after the Ramp-Up End Date, 1.20:1.00, and the Total Debt Service Coverage Ratio is not less than (x) during the Ramp-Up Period, 1.25:1.00, and (y) on and after the Ramp-Up End Date, 1.15:1.00;

(iv) for the DSCR Calculation Period commencing on the immediately preceding Calculation Date, the projected Senior Debt Service Coverage Ratio is not less than (x) during the Ramp-Up Period, 1.30:1.00, and (y) on and after the Ramp-Up End Date, 1.20:1.00, and the projected Total Debt Service Coverage Ratio is not less than (x) during the Ramp-Up Period, 1.25:1.00, and (y) on and after the Ramp-Up End Date, 1.15:1.00;

(v) no Default or Event of Default under the Financing Documents has occurred and is continuing or would exist immediately after giving effect to the requested transfer of funds;

(vi) the Port Authority (A) has not exercised its right to terminate the Lease Agreement in respect of an Event of Default under the Lease Agreement or (B) if it has so exercised such right to terminate the Lease Agreement, then it has subsequently rescinded its notice of termination;

(vii) the Substantial Completion of the Project has occurred;

(viii) prior to the Discharge of Senior Bank Obligations, the Additional Restricted Payment Conditions (as defined in the Common Terms Agreement) are satisfied; and

(ix) not later than the third (3rd) Business Day prior to the Quarterly Distribution Date on which the Borrower requests that funds be transferred from the Remaining Revenue Account pursuant to Section 5.17(c), the Borrower shall have delivered to the Securities Intermediary and the Collateral Agents a Distribution Account Certificate, signed by a Responsible Officer of the Borrower, substantially in the form of Exhibit F, representing that the Restricted Payment Conditions were satisfied on the Calculation Date immediately preceding such Quarterly Distribution Date, and certifying the amount of Excess Value Rent, if any, payable to the Port Authority on such date; and

(x) all Second Additional Rental, the payment of which has been deferred in accordance with the terms of the Lease Agreement (if any), has been paid in full.

### **Section 5.18 Handback Reserve Account.**

(a) No later than the date that is five (5) calendar years prior to the scheduled Expiration Date, the Borrower shall establish a Handback Reserve Account (the “Handback Reserve Account”) with the Deposit Account Bank, such account to be maintained in the name of and be subject to control of, the Port Authority. The Borrower will confirm such establishment to the Collateral Agent.

(b) The Handback Reserve Account shall not constitute a Project Account and shall not be subject to any Security Interest pursuant to any Security Document and shall not (including any funds on deposit therein) constitute any part of the Collateral, and no Secured Party (including the Collateral Agents) shall have any right thereto, including any right to transfer funds out of such account in the case of any insufficiency of the amounts on deposit in the Post-Substantial Completion Revenue Account to make any disbursements contemplated by clauses *First* through *Eleventh* under Section 5.03(b), inclusive.

(c) Notwithstanding any other provision of this Agreement to the contrary, the Borrower may, upon notice to the Port Authority, the Collateral Agent, and the Intercreditor Agent, substitute all or any portion of the cash or Eligible Investments on deposit in the Handback Reserve Account with an Acceptable Letter of Credit in favor of the Port Authority, satisfying the requirements of the Handback Performance Security under the Lease Agreement, for purposes of such Handback Reserve Account. In the event that the Borrower substitutes cash or Eligible Investments on deposit in the Handback Reserve Account with such Acceptable Letter of Credit, and delivers any such Acceptable Letter of Credit to the Port Authority, the cash or Eligible Investments so substituted will (notwithstanding the terms of Section 5.03(c)) be transferred to the Distribution Account without (and not subject to) any conditions, restrictions or limitations. The undrawn face value of any such Acceptable Letter of Credit shall be included when calculating the balance on deposit in the Handback Reserve Account.

(d) Promptly following the date that is five (5) calendar years prior to the scheduled Expiration Date, the Borrower shall direct that funds then on deposit in the Major Maintenance Reserve Account shall be transferred (to the extent such transfer does not cause the balance remaining in the Major Maintenance Reserve Account immediately following such transfer to be below the then-applicable Major Maintenance Reserve Requirement) to the Handback Reserve Account in an amount equal to the then applicable Handback Reserve Amount. If amounts in the Major Maintenance Reserve Account are not sufficient to fund the Handback Reserve Account at the Handback Reserve Amount, the Borrower shall, in accordance with the terms hereof, direct the funds be transferred from other sources sufficient to fully fund the Handback Reserve Amount. Thereafter the Handback Reserve Account will be funded in accordance with Section 5.03(b)(9), in the amount equal to the Handback Reserve Amount. The Borrower shall promptly inform the Deposit Account Bank of (i) the delivery of any letter of credit pursuant to Section 5.18(c) and (ii) the date and amount of any draw on such letter of credit. The amount of any such draw shall be deemed credited to the Handback Reserve Account for the purposes of any transfers under Section 5.03(b)(9). The Port Authority shall have the exclusive right to withdraw, direct the transfer of, or otherwise dispose of funds from the Handback Reserve Account in accordance with the terms of the Lease Agreement.

### **Section 5.19 Community Development Reserve Fund Account.**

(a) The Borrower hereby instructs the Deposit Account Bank to establish the Community Development Reserve Fund Account (the “Community Development Reserve Fund Account”) as of the Closing Date, and such account shall be maintained in the name of the Borrower. The Community Development Reserve Fund Account will be funded on the Closing Date in the amount of \$8,000,000. The Borrower will confirm such establishment to the Collateral Agent.

(b) The Community Development Reserve Fund Account shall not constitute a Project Account and shall not be subject to any Security Interest pursuant to any Security Document and shall not (including any funds on deposit therein) constitute any part of the Collateral, and no Secured Party (including the Collateral Agents) shall have any right thereto, including any right to transfer funds out of such account in the case of any insufficiency of the amounts on deposit in the Post-Substantial Completion Revenue Account to make any disbursements contemplated by clauses *First* through *Eleventh* under Section 5.03(b), inclusive.

(c) Transfers from the Community Development Reserve Fund Account shall be made, from time to time, by the Deposit Account Bank in accordance with the written instructions of the Borrower in a form attached hereto as Exhibit G and the Deposit Account Bank will so transfer such funds and not require compliance with any other conditions hereunder in connection with such transfer.

**Section 5.20 Funds as Collateral.** Any deposit made into the Project Accounts hereunder (except through clerical or other manifest error or in a manner that is otherwise inconsistent with this Agreement) shall be irrevocable and all cash, cash equivalents, Eligible Investments, instruments, investments and other securities on deposit in the Project Accounts shall be subject to the Security Interest in favor of the Collateral Agents (on behalf of the Secured Parties) pursuant to the Security Documents and shall be held by the Securities Intermediary for the benefit of the Collateral Agents as Collateral for the benefit of the Secured Parties as provided herein.

### **Section 5.21 Investment.**

(a) Funds in the Project Accounts may be invested and reinvested only in Eligible Investments (at the risk and expense of the Borrower) in accordance with written instructions given to the Securities Intermediary by the Borrower (prior to the occurrence of an Event of Default and, thereafter so long as such Event of Default shall be continuing, as directed by the Intercreditor Agent), and, unless an Event of Default has occurred and is continuing, the Borrower is entitled to instruct the Securities Intermediary to liquidate Eligible Investments in the Project Accounts for purposes of effecting any such investment or reinvestment or for any other purpose permitted hereunder.

(b) The Securities Intermediary shall not be required to take any action with respect to investing the funds in any Project Account in the absence of written instructions by the Borrower or the Intercreditor Agent (to the extent provided in accordance with the terms hereof and of the Intercreditor Agreement). The Securities Intermediary shall not be liable for any loss resulting

from any Eligible Investment or the sale or redemption thereof made in accordance with the terms hereof.

(c) Any such investments shall mature not later than the respective dates when the funds held for the credit of the particular Project Account will be required for the purposes intended for such Account, and no Eligible Investments may mature beyond the latest maturity date of any Bonds Outstanding at the time such Eligible Investments are deposited.

(d) If and when cash is required for disbursement in accordance with this Article or Section 6.06 hereof, the Securities Intermediary is authorized, without instructions from the Borrower, to the extent necessary to make payments or transfers required pursuant to this Article or Section 6.06 hereof, in the event the Borrower fails to direct the Securities Intermediary to do so in a timely manner, to cause Eligible Investments to be sold or otherwise liquidated into cash (without regard to maturity) in such manner as the Securities Intermediary shall deem reasonable under the circumstances.

(e) All funds in the Project Accounts (other than the Operating Account) and all Eligible Investments made in respect thereof shall be held by the Securities Intermediary. The interests of the Borrower in the Project Accounts (including the Operating Account) and all Eligible Investments made in respect thereof shall constitute part of the Collateral subject to the pledge and security interest created by the Security Documents.

(f) Eligible Investments credited to any Project Account or sub-account thereof shall be deemed at all times to be part of such account or sub-account in which such money was originally held. Net income or gain received and collected from such investments shall be credited and losses charged to the Project Account or sub-account thereof from which such investment shall have been made. The Securities Intermediary shall sell or present for redemption any obligations so purchased whenever directed in writing by the Borrower in order to provide money to make any payment or transfer of money from any such Project Account or sub-account thereof.

(g) The Securities Intermediary shall have no obligation to invest or reinvest the funds if all or a portion of the funds is deposited with (or instructions with respect to the same are given to) the Securities Intermediary after 11 a.m. (E.S.T. or E.D.T., as applicable) on the day of deposit. Instructions to invest or reinvest that are received after 11 a.m. (E.S.T. or E.D.T., as applicable) will be treated as if received on the following Business Day.

(h) In the event the Securities Intermediary does not receive investment instructions, the amounts held by the Securities Intermediary pursuant to the provisions of this Agreement shall not be invested and the Securities Intermediary shall not incur any liability for interest or income thereon.

(i) The parties hereto each acknowledge that non-deposit investment products are not obligations of, or guaranteed, by the Securities Intermediary or the Deposit Account Bank nor any of their respective Affiliates; are not FDIC insured; and are subject to investment risks, including the possible loss of principal amount invested in one of the money market funds made available by the Securities Intermediary and initially selected by the Borrower.

(j) Any investment direction contained herein may be executed through an affiliated broker or dealer of the Securities Intermediary and any such affiliated broker or dealer shall be entitled to such broker's or dealer's usual and customary fees for such execution as agreed to by the Borrower. It is agreed and understood that the Securities Intermediary may earn fees associated with the investments outlined above to the extent previously agreed with the Borrower. Neither the Securities Intermediary nor its Affiliates shall have a duty to monitor the investment ratings of any Eligible Investments.

(k) Investments may be held by the Securities Intermediary directly or through any clearing agency or depository (collectively, the "Clearing Agency") including, without limitation, the federal reserve/treasury book-entry system for United States and federal agency securities, and DTC. The Securities Intermediary shall not have any responsibility or liability for the actions or omissions to act on the part of any Clearing Agency.

(l) In all cases, all investments and reinvestments of funds in the Project Accounts shall be in compliance with the Code and the Tax Certificate.

**Section 5.22 Withdrawal and Application of Funds; Priority of Transfers from Project Accounts; Event of Default.**

(a) Except as provided in Sections 5.02 through 5.17 and Section 5.26 of this Agreement and sub-section (d) below, each withdrawal or transfer of funds from the Project Accounts (other than from the Operating Account and the Construction Account and its sub-accounts) by the Securities Intermediary on behalf of the Borrower will be made pursuant to an executed Funds Transfer Certificate, substantially in the form of Exhibit D-1 for transfers prior to the Phase 2 End of Funding Date and Exhibit D-2 for transfers on or after the Phase 2 End of Funding Date, which certificate will be provided and prepared by the Borrower, as applicable and will contain a certification by the Borrower, as applicable, that such withdrawal or transfer complies with the requirements of this Agreement, the Common Terms Agreement and each other Financing Document. A copy of each Funds Transfer Certificate and Construction Account Withdrawal Certificate will be sent by the Borrower to the Port Authority concurrently, for informational purposes only (addressed to the Port Authority's Director of the Office of Financial Planning at the following electronic mail address: acarvajalino@panynj.gov, which the Port Authority may change by notice to the other parties hereto).

(b) Unless a shorter period is expressly contemplated hereby or is acceptable to the Collateral Agents and the Intercreditor Agent, such Funds Transfer Certificate relating to each applicable Project Account (other than the Operating Account) will be delivered to the Securities Intermediary (with a copy to the Collateral Agents and Intercreditor Agent) no later than two (2) Business Days prior to each date on which funds are proposed to be withdrawn or transferred. The Securities Intermediary shall comply with any such Funds Transfer Certificate; provided that, in the event that a certificate does not comply with the requirements of this Agreement and the other Financing Documents, the Securities Intermediary has the right to reject such certificate by delivery of notice of the same to the Borrower and the Borrower will not be entitled to cause the proposed withdrawal or transfer until it has submitted a revised and compliant certificate; and, provided, further, that the failure to give any such notice shall not be deemed to be an approval of the proposed withdrawal or transfer or to be a waiver of any rights of the Secured Parties with



respect thereto. For the avoidance of doubt, the Collateral Agents and the Intercreditor Agent shall at all times have the right to give the notice contemplated by the second sentence of this paragraph (b) if a Funds Transfer Certificate does not comply with the terms of this Agreement.

(c) Subject to the following sub-section, the Borrower will have the right to withdraw or cause to be transferred funds from the Operating Account, solely for the purposes set forth in Section 5.16, at any time without approval or consent of the Intercreditor Agent, the Collateral Agents, or any other Person, so long as such withdrawal is effected in accordance with the terms of this Agreement and the Account Control Agreement.

(d) Notwithstanding anything to the contrary contained in this Agreement, subject to compliance with the Intercreditor Agreement with respect to the taking of any Enforcement Action, the Intercreditor Agent, without consent of the Borrower, may instruct the Collateral Agents in writing to apply proceeds of the Project Accounts to the payment of Secured Obligations, in accordance with the terms of this Agreement and the Intercreditor Agreement and in the order set forth in Section 6.06, provided that any instruction to apply amounts on deposit in the Project Accounts in accordance with this Article V shall not constitute an Enforcement Action.

(e) (i) Notwithstanding anything herein to the contrary, on and after any date on which the Securities Intermediary receives a written notice from the Collateral Agents stating that an Event of Default has occurred and is continuing (the date of receipt by the Depository Agent of any such notice, a “Default Notice Date”), the Securities Intermediary shall thereafter accept all notices and instructions required or permitted to be given to the Securities Intermediary pursuant to the terms of this Agreement only from the Applicable Collateral Agent (in accordance with Sections 5.24(c) and (j)) and not from the Borrower or any other Person (except from the Port Authority to the extent of the Port Authority’s express rights under this Agreement), and the Securities Intermediary shall not withdraw, dispose of, transfer, pay or otherwise distribute any monies in any of the Project Accounts except pursuant to such notices and instructions from the Applicable Collateral Agent (which notices and instructions will continue to direct disbursement of the amounts due and owing to the Port Authority from the Non-Pledged Accounts hereunder) until such time as the Securities Intermediary receives written notice from the Borrower, countersigned by the Applicable Collateral Agent, stating that such Event of Default no longer exists due to the same having been waived (or deemed waived) or cured or no longer existing in accordance with the terms of the Financing Documents.

(ii) Notwithstanding anything herein to the contrary, the Collateral Agents shall, upon written notice from the Required Senior Secured Parties, execute and deliver the Activation Notice or take any such action necessary under the Account Control Agreement to instruct the Deposit Account Bank to accept all notices and instructions required or permitted to be given to the Deposit Account pursuant to the terms of the Account Control Agreement only from the Applicable Collateral Agent and not from the Borrower or any other Person (except from the Port Authority to the extent of the Port Authority’s express rights under this Agreement), and the Deposit Account Bank shall not withdraw, dispose of, transfer, pay or otherwise distribute any monies in the Operating Account except pursuant to such notices and instructions from the Applicable Collateral Agent (which notices and instructions will continue to direct disbursement of the amounts due and owing to the Port Authority from the Operating Account, if any) until such time as the Deposit

Account Bank receives written notice from the Applicable Collateral Agent authorizing the Borrower to provide instructions or notices to the Deposit Account Bank.

(f) Notwithstanding any other provision of this Agreement to the contrary, the Collateral Agents will not be obligated to monitor or verify (i) the accuracy of any Funds Transfer Certificate or Construction Account Withdrawal Certificate or other written instructions provided to the Collateral Agents for the transfer or deposit of funds with respect to any Project Account or any other account described herein, or (ii) the use of amounts withdrawn from any Project Accounts or any other account described herein; and shall be entitled to rely on requisitions or instructions provided hereunder.

(g) With respect to any Funds Transfer Certificate submitted to the Securities Intermediary pursuant to Section 5.02(b) or Section 5.03(b):

(i) Any Secured Debt Representative, acting reasonably, may dispute the application of proceeds in such Funds Transfer Certificate, by delivering notice (such notice must specifically state that the Person delivering it is a Secured Debt Representative and refer to this sub-paragraph (i)), to the Lessee, the Securities Intermediary, the Collateral Agents and the Intercreditor Agent on the grounds that the application of proceeds therein specified is not in accordance with the Financing Documents. The Lessee will have the right thereafter to submit a corrected Funds Transfer Certificate which conforms to the requirements of the Financing Documents or submit the matter to dispute resolution in accordance with the applicable Financing Document;

(ii) The Lessee may, in its discretion, submit a new, updated Funds Transfer Certificate in replacement of any Funds Transfer Certificate in order to correct any certifications, wiring or other payment instructions set forth therein; and

(iii) Any corrected or updated Funds Transfer Certificate submitted pursuant to sub-paragraphs (i) or (ii) must be provided to the Securities Intermediary at least one (1) Business Day prior to the proposed date of the transfers to be made pursuant thereto.

**Section 5.23 Termination of Project Accounts.** This Agreement shall automatically terminate and be of no further force and effect (a) with respect to the Senior Collateral Agent, the Senior Secured Parties and the Senior Obligations, upon the Discharge of Senior Obligations, subject to the rights of the Senior Secured Parties under Section 6.5 of the Intercreditor Agreement; and (b) with respect to the Subordinate Collateral Agent, the Subordinate Secured Parties and the Subordinate Obligations, upon the Discharge of Subordinate Obligations, if applicable; provided, however, that for so long as no Senior Obligations remain Outstanding, as confirmed by the Intercreditor Agent upon written request from the Borrower (which confirmation the Intercreditor Agent shall not unreasonably withhold or delay), all rights and remedies of the Senior Collateral Agent hereunder and under the other Transaction Documents shall be deemed to have been assigned to and vested in the Subordinate Collateral Agent, if applicable. Upon the later to occur of (x) the Discharge of Senior Obligations, or (y) the Discharge of Subordinate Obligations, if applicable, as confirmed by the Intercreditor Agent upon written request from the Borrower (which confirmation the Intercreditor Agent shall not unreasonably withhold or delay), this Agreement will terminate (except as otherwise expressly set out herein) and the Collateral Agents and

Securities Intermediary, as applicable, will (unless a later date is requested by the Borrower) within ten (10) days of receipt of a request from the Borrower, countersigned by the Intercreditor Agent, and at the expense of the Borrower, close the Project Accounts (other than the Operating Account which will remain at the full discretion of the Borrower in accordance with the terms of the Account Control Agreement) and/or liquidate any investments credited thereto and/or transfer the funds deposited therein or credited thereto, as directed by the Borrower. Thereafter, the Collateral Agents and the and the Securities Intermediary will be released from any further obligation to comply with any obligation under any Financing Document except as specifically provided therein, in each case as contemplated therein. Nothing contained in this Section will be construed to modify or otherwise affect the Collateral Agents' Security Interest in the Project Accounts and the funds therein, prior to such transfer in accordance with the terms hereof. Notwithstanding the foregoing, in the event this Agreement is terminated, the Borrower will be required to continue to comply with the priority of payments contemplated by Sections 5.02(b) and 5.03(b) as applicable.

#### **Section 5.24 Securities Intermediary.**

(a) The Project Accounts shall be established and maintained as securities accounts with a securities intermediary (other than the Operating Account, which shall be established and maintained by the Deposit Account Bank pursuant to the Account Control Agreement). Each of the parties to this Agreement hereby agrees that The Bank of New York Mellon (or any successor thereto) shall act as the securities intermediary (in such capacity, the "Securities Intermediary") under and for the purposes of this Agreement and for so long as The Bank of New York Mellon (or any successor thereto) is the Senior Collateral Agent and the Subordinate Collateral Agent.

(b) The Securities Intermediary hereby accepts and agrees to act as such under this Agreement and represents and warrants that it is as of the date hereof, and shall be for so long as it is the Securities Intermediary hereunder, a banking corporation or a national bank that in the ordinary course of its business maintains securities accounts for others, meets the requirements and qualifications set forth in the first sentence of Section 5.24(e) of this Agreement and is acting in that capacity hereunder. The Securities Intermediary agrees with the parties hereto that each of the Project Accounts (except for the Operating Account) shall be an account to which financial assets may be credited and undertake to treat each Collateral Agent, as applicable, as entitled to exercise the rights that comprise such financial assets. The Securities Intermediary agrees with the parties hereto that each item of property credited to each Project Account (except for the Operating Account) shall be treated as a financial asset, including, without limitation, cash and certificates of deposit. Each Collateral Agent and the Securities Intermediary represents and warrants that it has not entered into any agreement or taken any other action that gives any Person other than the Collateral Agents control over any of the Project Accounts (except for the Operating Account) or that is otherwise inconsistent with this Agreement. Each Collateral Agent and the Securities Intermediary agrees that it shall not become a party to any agreement or take any action that gives any Person other than the Collateral Agent control over any of the Project Accounts (except for the Operating Account) or that is otherwise inconsistent with this Agreement. The Securities Intermediary agrees that any financial assets credited to such Project Accounts (except for the Operating Account), or any "securities entitlement" (as defined in Section 8-102(a)(17) of the UCC or, with respect to book-entry securities, in the applicable Federal Book-Entry Regulations) with respect thereto, shall not be subject to any Security Interest or right of setoff in favor of the Securities Intermediary or anyone claiming through the Securities Intermediary (other

than the Collateral Agents). The Securities Intermediary hereby represents that, except for the claims and interests of the Collateral Agents and the Borrower in the Project Accounts and the Deposit Account Bank in the Operating Account, the Securities Intermediary has no knowledge of, and has received no notice of, any claim to, or interest in, any Project Account. If any Person asserts any lien (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against any Project Account (except for the Operating Account), the Securities Intermediary, upon obtaining written notice thereof, will promptly notify the Collateral Agents, the Intercreditor Agent and the Borrower thereof.

(c) It is the intent of the Collateral Agents and the Borrower that the Collateral Agents (for the benefit of the applicable Secured Parties) be the entitlement holders with respect to the Project Accounts (except for the Operating Account). In any event, the Securities Intermediary hereby agrees that until the Discharge of Senior Obligations it will comply with entitlement orders with respect to the Project Accounts (except for the Operating Account) originated by the Senior Collateral Agent without further consent by the Borrower, or any other Person. In the case of a conflict between any instruction or order originated by the Senior Collateral Agent and any instruction or order originated by the Borrower or any other Person other than a court of competent jurisdiction, the instruction or order originated by the Senior Collateral Agent shall prevail. After the Discharge of Senior Obligations and until the Discharge of Subordinate Obligations, if applicable, the Subordinate Collateral Agent shall be entitled to provide, and the Securities Intermediary hereby agrees to comply with entitlement orders with respect to, the Project Accounts (except for the Operating Account) and of the Borrower's "security entitlements". The Securities Intermediary covenants that it will not agree with any Person other than the Collateral Agents to comply with entitlement orders with respect to the Project Accounts (except for the Operating Account) originated by any Person or entity other than the Collateral Agents. In the case of a conflict between any instruction or order originated by the Subordinate Collateral Agent and any instruction or order originated by the Borrower or any other Person other than the Senior Collateral Agent or a court of competent jurisdiction, the instruction or order originated by the Subordinate Collateral Agent shall prevail.

(d) The Securities Intermediary shall not change the name or account number of any Project Account without the prior written consent of the Collateral Agents, as applicable, and the Borrower and at least five (5) Business Days' prior notice to the Intercreditor Agent, and shall not change the entitlement holder. The Securities Intermediary shall at all times act as a "securities intermediary" (within the meaning of Section 8-102(a)(14) of the UCC or, with respect to book-entry securities, in the applicable Federal Book-Entry Regulations) in maintaining the Project Accounts (except for the Operating Account) and shall credit to each Project Account (except for the Operating Account) each financial asset to be held in or credited to each Project Account (except for the Operating Account) pursuant to this Agreement. To the extent, if any, that the Collateral Agents are deemed to hold directly, as opposed to having a security entitlement in, any financial asset held by the Securities Intermediary for the Collateral Agents, the Securities Intermediary hereby agrees that it is holding such financial asset as the agent of the Collateral Agents and hereby expressly acknowledges and agrees that it has received notification of the Collateral Agents' security interest in such financial asset and that it is holding possession of such financial asset for the benefit of the Collateral Agents.

(e) Each Project Account (except for the Operating Account) shall remain at all times with a “securities intermediary” (within the meaning of Section 8-102(a)(14) of the UCC or, with respect to book-entry securities, in the applicable Federal Book-Entry Regulations) that is a bank organized under the laws of the United States of America or any state thereof that has offices in the State of New York with unsecured long-term debt which shall be rated “A” or better by S&P or “A2” or better by Moody’s and that has a total capital stock and unimpaired surplus of not less than \$500,000,000. The Securities Intermediary shall give notice to the Collateral Agents and the Borrower of the location of the Project Accounts (other than the Operating Account) and of any change thereof prior to the use or change thereof. If at any time the Securities Intermediary shall fail to meet such requirements and qualifications set forth in the first sentence above, the Borrower shall replace the Securities Intermediary as soon as practicable with a qualifying Securities Intermediary.

(f) Unless otherwise provided herein, any income received by the Collateral Agents with respect to the balance from time to time on deposit in each Project Account (except for the Operating Account), including any interest or capital gains on investments in overnight securities made with amounts on deposit in each Project Account (except for the Operating Account), shall be transferred to the Pre-Substantial Completion Revenue Account or the Post-Substantial Completion Revenue Account. All right, title and interest in and to the cash amounts on deposit from time to time in each Project Account together with any investments in overnight securities from time to time made pursuant to this Section shall constitute part of the Collateral for the Secured Obligations and shall be held for the benefit of the Secured Parties and the Borrower as their interests shall appear hereunder and shall not constitute payment of the Secured Obligations (or any other obligations to which such funds are provided hereunder to be applied) until applied thereto as provided in this Agreement.

(g) In the event that, notwithstanding the last sentence of subsection (b) above, the Securities Intermediary has or subsequently obtains by agreement, operation of Law or otherwise a Security Interest in any of the Project Accounts, or any financial asset credited thereto, or any “securities entitlement” (as defined in Section 8-102(a)(17) of the UCC or, with respect to book-entry securities, in the applicable Federal Book-Entry Regulations) with respect thereto, the Securities Intermediary hereby agrees that such security interest shall be subordinate to the security interest of the Collateral Agents.

(h) The “securities intermediary’s jurisdiction” of the Securities Intermediary for purposes of the UCC (or the Uniform Commercial Code of any other jurisdiction to the extent applicable) is the State of New York.

(i) Terms used in this Section that are defined in the UCC shall have the meaning set forth in the UCC. Without limiting the foregoing, the term “securities intermediary” shall, with respect to book-entry securities, have the meaning given to it under 31 C.F.R. Part 357 (sale and issue of marketable book-entry Treasury bills, notes and bonds); 12 C.F.R. Part 615 (book-entry securities of the Farm Credit Administration and related conditions); 12 C.F.R. 987 (book-entry securities of the Financial Federal Housing Board), 12 C.F.R. Part 1511 (book-entry securities of the Resolution Funding Corporation); 24 C.F.R. Part 81 (book-entry securities of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation); 31 C.F.R. Part 354 (book-entry securities of the Student Loan Marketing Association); 18 C.F.R. Part 1314

(book-entry securities of Tennessee Valley Authority); and 24 C.F.R. Part 350 (book-entry securities of Government National Mortgage Association).

(j) To the extent that the Project Accounts are not considered “securities accounts” (within the meaning of Section 8-501(a) of the UCC), the Project Accounts shall be deemed to be “deposit accounts” (as defined in Section 9-102(a)(29) of the UCC), which the Collateral Agents shall maintain with the Securities Intermediary acting not as a securities intermediary but as a “bank” (within the meaning of Section 9-102(a)(8) of the UCC). The Borrower hereby irrevocably directs and the Securities Intermediary hereby agrees to comply, at all times prior to the Discharge of the Senior Obligations, with any and all instructions originated by the Senior Collateral Agent directing disposition of funds in the Project Accounts (except for the Operating Account) without any further consent of the Borrower or any other person. In the case of a conflict between any instruction or order originated by the Senior Collateral Agent and any instruction or order originated by the Borrower or any other Person (other than a court of competent jurisdiction), the instruction or order originated by the Senior Collateral Agent shall prevail. The Borrower hereby irrevocably directs, and the Securities Intermediary hereby agrees to, comply at all times following the Discharge of the Senior Obligations but prior to the Discharge of the Subordinate Obligations, with any and all instructions originated by the Subordinate Collateral Agent directing disposition of funds in the Project Accounts (except for the Operating Account) without any further consent of the Borrower or any other person. In the case of a conflict between any instruction or order originated by the Subordinate Collateral Agent and any instruction or order originated by the Borrower or any other Person other than a court of competent jurisdiction, the instruction or order originated by the Subordinate Collateral Agent shall prevail.

(k) The value of the Eligible Investments shall be included on the monthly statements of account delivered by the Collateral Agents to the Borrower.

### **Section 5.25 Appointment and Change of Deposit Account Bank.**

(a) The Bank of New York Mellon, a New York banking corporation, is hereby appointed by the Collateral Agents, as Deposit Account Bank hereunder. The Deposit Account Bank hereby accepts such appointment and agrees to act as Deposit Account Bank in the manner contemplated herein and in the Financing Documents to which the Deposit Account Bank is a party. The Deposit Account Bank is hereby authorized and directed to act in strict accordance with the terms of this Agreement and from and after the Closing Date, the Borrower, the Issuer, the Securities Intermediary, the Trustee and the Collateral Agents each hereby irrevocably instruct and authorize the Deposit Account Bank to deposit funds (promptly upon receipt thereof) into, and transfer and withdraw funds from, the Project Accounts and Non-Pledged Accounts, as applicable, in accordance with the express terms of this Agreement, including without limitation the waterfall provisions described in Sections 5.02 and 5.03, as applicable. None of the provisions hereof or of the other Financing Documents to which the Deposit Account Bank is a party shall be construed to require the Deposit Account Bank to expend or risk its own funds or otherwise to incur any personal liability, financial or otherwise, in the performance of any of its duties hereunder or thereunder, except in instances of fraud, bad faith, gross negligence or willful misconduct.

(b) So long as no Event of Default has occurred and is continuing, upon thirty (30) Business Days’ written notice to the Intercreditor Agent and the Collateral Agents, the Deposit

Account Bank may be changed to another bank by the Borrower; provided, that such bank satisfies the requirements for the Deposit Account Bank set forth in this Section 5.25(b). If the Borrower exercises such right to replace the Deposit Account Bank, the Collateral Agent will deliver a termination notice with respect to the existing Account Control Agreement governing the Operating Account to be effective upon (x) the transfer to the new Deposit Account Bank of all funds of the Borrower held by the retiring Deposit Account Bank in the Operating Account, and (y) execution and delivery of a new Account Control Agreement with the new Deposit Account Bank. If the Deposit Account Bank at any time gives notice that it no longer wishes to act as a Deposit Account Bank or that it will no longer be subject to the terms of an Account Control Agreement, or that it will no longer act upon the instructions of the Borrower or the Collateral Agents in accordance with the applicable Account Control Agreement as a result of its determination that such action would result in the violation of any applicable Law, rule or regulation or for any other reason (a “Deposit Account Bank Termination Notice”), the Borrower shall promptly (and, in any event prior to the effective date of such Deposit Account Bank Termination Notice) appoint a replacement Deposit Account Bank; provided that the Borrower delivers to the Collateral Agents an opinion to the effect that after the appointment of such replacement Deposit Account Bank, the Collateral Agents will remain perfected in any accounts held thereunder; provided, further, that such bank shall be organized under the laws of the United States of America or any state thereof with a branch office in the State of New York having a combined capital and surplus of not less than \$500,000,000. The Operating Account shall at all times be maintained with a single bank. The Borrower shall notify the Collateral Agent and the Intercreditor Agent of any Deposit Account Bank Termination Notice promptly upon receipt thereof by the Borrower.

(c) The new Deposit Account Bank shall be required, prior to becoming the Deposit Account Bank, to (i) enter into one or more Account Control Agreements, substantially in the form of Exhibit C hereto or in such other form as may be approved by the Collateral Agents, with the Borrower and the Collateral Agents and carry out such further acts as the Collateral Agents may reasonably request in order to perfect the security interest of the Collateral Agents in the Operating Account and (ii) agree to provide the reports similar to the reports required to be provided pursuant to Section 2.12(b) and (c).

**Section 5.26 Inadequately Identified Amounts.** In the event that the Securities Intermediary receives any amount which is inadequately or incorrectly identified as to the Project Account into which such amount is to be credited, the Securities Intermediary shall notify the Collateral Agents and the Borrower (with a copy of such notice to the Intercreditor Agent) of such event and shall request instructions as to the Project Account into which such amount should be credited. The Securities Intermediary shall credit such amount to the Pre-Substantial Completion Revenue Account or the Post-Substantial Completion Revenue Account, as applicable, until such time as the Securities Intermediary receives instructions from the Applicable Collateral Agent or, so long as no Event of Default has occurred and is continuing, the Borrower in accordance herewith stating that such amount should be credited to another Project Account in accordance with the Financing Documents, in which case the Securities Intermediary shall credit such amount to the Project Account designated by the Borrower (or, following the occurrence and during the continuance of an Event of Default, the Applicable Collateral Agent).

**Section 5.27 Tax Reporting.** All interest or other earnings, if any, relating to the Project Accounts shall be reported to the Internal Revenue Service and, to the extent applicable, all state and local taxing authorities under the name and taxpayer identification number of the Borrower. The Borrower shall prepare or cause to be prepared any tax returns or other forms or information required to be filed in connection with any such earnings. The Collateral Agents do not have any ownership interest in the Collateral deposited hereunder but is serving as collateral agent only and having only possession thereof. The Borrower shall pay or reimburse the Collateral Agents upon request for any transfer taxes or other taxes relating to the Collateral incurred in connection herewith and shall indemnify and hold harmless the Collateral Agents from any amounts that it is obligated to pay in the way of such taxes. The Borrower will provide the Collateral Agents with appropriate W-9 forms for taxpayer identification numbers, number certifications, or W-8 forms for non-resident alien certifications. This Section shall survive notwithstanding any termination of this Agreement or the resignation or removal of the Collateral Agents.

**Section 5.28 Reserved.**

**Section 5.29 Investment of Funds in Non-Pledged Accounts.** Notwithstanding any provision hereof to the contrary, neither the Borrower nor the Port Authority shall direct the Deposit Account Bank to invest any funds on deposit in a Non-Pledged Account, unless such funds are, in accordance with the terms of this Agreement, expected to be on deposit in such account for at least two (2) Business Days.

**Section 5.30 Escrow of Disputed Amounts.** If directed by the Borrower, payments or other receipts received by the Borrower (including, without limitation, from any airline) that are subject to a dispute (the “Disputed Payment Amounts”) will be deposited into an escrow account established for such purpose with the Deposit Account Bank. Upon resolution of such dispute, amounts due to the Borrower from such escrow account shall be deposited (and the Borrower shall ensure the escrow arrangements governing such escrow account require the Deposit Account Bank to deposit such amounts) directly to Operating Cashflow Sub-Account of the Construction Account, before the Substantial Completion of the Project, and thereafter to the Post-Substantial Completion Revenue Account.

**Section 5.31 Secured Obligations Payment Shortfall Notice.** Following receipt of a Funds Transfer Certificate immediately before an Interest Payment Date or a Principal Payment Date, the Securities Intermediary, shall, after giving effect to the withdrawals, transfers and disbursements requested in such Funds Transfer Certificate (and in any Construction Account Withdrawal Certificate delivered at or around the date of such Funds Transfer Certificate), calculate whether or not there is a shortfall in the Hedge Ordinary Course Payment Account, the Hedge Termination Payment Account, any Sub-Account of the Senior Obligations Payment Account or any Sub-Account of the Subordinate Obligations Payment Account with regards to the Ordinary Course Payment, Interest Payment, Hedge Termination Payment or Principal Payment due on such Interest Payment Date or Principal Payment Date, as applicable. If there is such a shortfall, and the Phase 2 End of Funding Date has occurred, the Securities Intermediary shall promptly give effect to the transfers contemplated in Section 5.03(d) hereof, and calculate whether any such shortfall remains after such transfers. If, after giving effect to all of the transfers described above there remains any such shortfall in the Hedge Ordinary Course Payment Account, the Hedge Termination Payment Account, any Sub-Account of the Senior Obligations Payment



Account or any Sub-Account of the Subordinate Obligations Payment Account, as applicable, the Securities Intermediary shall give notice of the same to the Intercreditor Agent, specifying each Project Account or Sub-Account with such shortfall and the amount of each such shortfall (such notice to be given no later than 10.30 a.m. (E.S.T. or E.D.T., as applicable) on the Business Day following the date on which the Securities Intermediary receives such Funds Transfer Certificate).

## **ARTICLE VI COLLATERAL AND REMEDIES**

**Section 6.01 Administration of Collateral.** The Account Collateral shall be held by the Senior Collateral Agent for the benefit of the Senior Secured Parties and, upon the issuance or incurrence of Additional Subordinate Obligations, by the Subordinate Collateral Agent for the benefit of the Subordinate Secured Parties, in each case, pursuant to the terms hereof and the other applicable Security Documents and shall be administered by the Securities Intermediary and Collateral Agents in the manner contemplated hereby, by the Intercreditor Agreement and by the other Security Documents.

**Section 6.02 Notice of Event of Default.** Notwithstanding anything to the contrary contained in this Agreement or any document executed in connection with any of the Secured Obligations, the Collateral Agents, unless a Responsible Officer of a Collateral Agent shall have actual knowledge thereof, shall not be deemed to have any knowledge of any Event of Default unless and until it shall have received written notice from the Borrower, the Intercreditor Agent, or another Secured Party describing such Event of Default in reasonable detail. If a Collateral Agent receives any such notice from the Borrower, such Collateral Agent shall deliver a copy thereof to the Intercreditor Agent and each other Secured Party, and if a Collateral Agent receives any such notice from a Person other than the Borrower, such Collateral Agent shall deliver a copy thereof to each other Secured Party and the Borrower. Further, each Collateral Agent shall deliver a copy of any such notice it receives to the Port Authority, at the address set forth in Section 33 of the Lease Agreement. In addition, if, (i) a Collateral Agent becomes aware (in accordance with the terms of the Financing Documents) of the occurrence of an Event of Default, it shall promptly give notice thereof to the Intercreditor Agent and each other Secured Party, and (ii) the Intercreditor Agent becomes aware (in accordance with the terms of the Financing Documents) of the occurrence of an Event of Default, it shall promptly give notice thereof to the Collateral Agents.

**Section 6.03 Enforcement of Remedies.** Upon the occurrence and during the continuance of any Event of Default, the Collateral Agents shall, subject to the other provisions of this Agreement, take such Enforcement Action or other actions with respect to such Event of Default as shall be directed by the Intercreditor Agent, acting in accordance with the terms of the Intercreditor Agreement and the Security Documents (such direction, a “Direction Notice”); provided that, in the absence of a Direction Notice, each such Collateral Agent may (but shall not be obligated to) take such action (with notice thereof to the Port Authority, the other Collateral Agent, the Issuer, the Intercreditor Agent and the Borrower), or refrain from taking such action, with respect to such Event of Default as it shall deem advisable in the best interests of the Secured Parties that it represents, and in each case solely to the extent permitted hereunder, under the Intercreditor Agreement and the other Financing Documents. Upon receipt by a Collateral Agent of a Direction Notice to such effect, such Collateral Agent shall seek to enforce the Security Documents (with notice thereof to the Port Authority, the Issuer, any other Collateral Agent, the

Trustee, the Intercreditor Agent, the Administrative Agent and the Borrower) and to realize upon the Collateral in accordance with such Direction Notice and otherwise in accordance with the terms hereof and of the Security Documents; provided, however, that no Collateral Agent shall be obligated to follow any Direction Notice if the Collateral Agents reasonably determines that such Direction Notice is in conflict with any provisions of any applicable Law, the Intercreditor Agreement or any Security Document, and the Collateral Agents shall not, under any circumstances, except in the event of gross negligence or willful misconduct, be liable to any Secured Party, the Borrower, or any other Person for following a Direction Notice. No Secured Party other than the Intercreditor Agent shall have any authority or power, express or implied, to direct the Collateral Agents as to the exercise of rights and remedies, implementation of Enforcement Actions or any other action with respect to the Collateral so long as any Secured Obligation is Outstanding; provided that nothing in this Section shall preclude the Collateral Agents from following the directions of the Borrower (other than following the occurrence and during the continuance of any Event of Default) or the Port Authority, in each case, if and to the extent such instructions are expressly authorized under this Agreement. The Intercreditor Agent shall exercise its powers under this Section in accordance with the provisions of the Intercreditor Agreement.

**Section 6.04 Remedies of the Secured Parties.** Unless expressly permitted by the Intercreditor Agreement or otherwise consented to in writing by the Intercreditor Agent (acting in accordance with the terms of the Intercreditor Agreement), and in any event subject to the provisions of the Intercreditor Agreement, no Secured Party, individually or together with any other Secured Parties (excepting the Collateral Agents in their capacity as Secured Parties), shall have the right to, nor shall it, (i) exercise or enforce any of the rights, powers or remedies which any Collateral Agents are authorized to exercise or enforce under this Agreement or any of the other Security Documents with respect to the Collateral, (ii) sue for or institute any creditor's proceedings (including an injunction garnishment, execution or levy, whether before or after judgment) in respect of any Secured Obligation (whether or not for the payment of money) owing to it under or in respect of any Financing Document, (iii) take any step for the winding-up, administration of or dissolution of, or any insolvency proceeding in relation to, the Borrower, or for a voluntary arrangement, scheme of arrangement or other analogous step in relation to the Borrower, or (iv) apply for any order for an injunction or specific performance in respect of the Borrower in relation to any of the Financing Documents; it being understood that nothing herein shall restrict the Secured Parties' ability to take a Permitted Action in accordance with the Intercreditor Agreement.

**Section 6.05 Secured Party Information.** In the event that a Collateral Agent proceeds to foreclose upon, collect, sell or otherwise dispose of or take any other action with respect to any or all of the Collateral or to enforce any provisions of the Security Documents or takes any other action pursuant to this Agreement or any provision of the Security Documents or requests directions from the Intercreditor Agent as provided herein, in each case in accordance with the terms of the Financing Documents, upon the request of such Collateral Agent, the Intercreditor Agent shall promptly deliver a written notice to such Collateral Agent setting forth (a) the aggregate amount of Secured Obligations owing to such Secured Party as of the date specified by such Collateral Agent in such request and (b) such other information as such Collateral Agent may reasonably request.

## **Section 6.06 Application of Proceeds.**

(a) After the taking of an Enforcement Action, all Proceeds received by a Collateral Agent derived from any Segregated Collateral as set forth in clauses (i), (ii) and (iii) below pursuant to the exercise of any rights or remedies accorded to the Collateral Agents pursuant to, or by the operation of any of the terms of, the Intercreditor Agreement and any of the Security Documents shall be applied as follows:

(i) All amounts on deposit in, and all Proceeds attributable to, the Senior Debt Service Reserve Account and the Ramp-Up Reserve Account shall be transferred to the relevant Senior Secured Parties with respect to the Security Interest granted on such account and proceeds attributable thereto pursuant to the Security Documents, first to the *pro rata* payment of all accrued and unpaid interest on the relevant Senior Obligations and all Ordinary Course Payments, and second, if any unpaid principal, Accreted Value or Redemption Price of any such Senior Obligations is due and payable (by acceleration or otherwise), to the *pro rata* payment of such principal, Accreted Value, or Redemption Price.

(ii) All amounts on deposit in, and all Proceeds attributable to, the Subordinate Debt Service Reserve Account, if applicable, shall be transferred to the relevant Subordinate Secured Parties with respect to the Security Interest granted on such account and proceeds attributable thereto pursuant to the Security Documents, as applicable, first to the *pro rata* payment of all accrued and unpaid interest on the relevant Subordinate Obligations and second, if any unpaid principal of any such Subordinate Obligations is due and payable (by acceleration or otherwise), to the *pro rata* payment of such principal amounts.

(iii) All amounts on deposit in, and all proceeds (as defined in Section 1.148-1 of the Code) allocable to, the Segregated Pledged Proceeds Accounts, if applicable, shall be transferred to the Bank Finance Parties with respect to the Security Interest granted in such accounts and Proceeds attributable thereto pursuant to the Security Documents, as applicable, first to the *pro rata* payment of all accrued and unpaid interest on the relevant Senior Obligations and second, if any unpaid principal of any such Senior Obligations is due and payable (by acceleration or otherwise), to the *pro rata* payment of such principal amounts; provided that amounts held in the Series 2022A Bond Proceeds Sub-Account and all amounts allocable to the Proceeds of the Series 2022A Bonds shall be applied to the payment of the Senior Term Loans, or interest thereon, solely to the extent of the amount specified in a Favorable Opinion of Bond Counsel to the Senior Collateral Agent and the Administrative Agent. If Bond Counsel notifies the Senior Collateral Agent and the Administrative Agent that it will not deliver any such Favorable Opinion of Bond Counsel, or does not respond to a request for such opinion within 20 Business Days, all amounts on deposit in the Series 2022A Bonds Proceeds Sub-Account, and all amounts allocable to the Proceeds of the Series 2022A Bonds, if applicable, shall be transferred to the Trustee for redemption of the Series 2022A Bonds pursuant to Section 2.04(c)(iii) of the First Supplemental Indenture.

(b) Following the taking of an Enforcement Action, notwithstanding any provision contrary in this Agreement or any other Financing Document, the Applicable Collateral Agent, in each case as directed by the Intercreditor Agent in accordance with the Intercreditor Agreement, will have the right to direct the application of all amounts on deposit in or credited to the Project Accounts, and to otherwise deal with the Collateral, without the need for consent of, or any other action by, the Borrower or any other Secured Party. Subject to clause (a) of this Section 6.06, following the taking of an Enforcement Action or the occurrence of a Bankruptcy Related Event, all proceeds of the Collateral shall be applied promptly by the Collateral Agent as directed by the Intercreditor Agent as follows; provided, that, no proceeds of Tax-Exempt Obligations or investment earnings thereon shall be transferred for the payment of interest and principal on Taxable Obligations or any Ordinary Course Payments, unless, and to the extent that, the Securities Intermediary and the applicable Secured Debt Representative have received a Favorable Opinion of Bond Counsel:

(i) *First*, so long as the Discharge of Senior Obligations has not occurred, to the Senior Collateral Agent to be applied in accordance with, and in the order of, the following clauses (A) through (E):

A. *First*, to the *pro rata* payment of the unpaid fees, administrative costs, expenses and indemnities due and payable to the Senior Secured Parties under the Financing Documents, if any;

B. *Second*, to the *pro rata* payment of all Ordinary Course Payments and all accrued and unpaid interest due and payable (including default interest) on all Senior Obligations;

C. *Third*, to the *pro rata* payment of all Hedge Termination Payments and all unpaid principal and Accreted Amounts of any Senior Obligations;

D. *Fourth*, to the *pro rata* payment of all accrued and unpaid redemption or prepayment premiums due and payable, if any, on all Senior Obligations; and

E. *Fifth*, to the *pro rata* payment of and all other amounts, if any, then due and payable under the Financing Documents to the Senior Secured Parties with respect to any Senior Obligations; and

(ii) *Second*, upon the Discharge of Senior Obligations, to the Subordinate Collateral Agent to be applied in accordance with the following clauses (A) through (F):

A. *First*, to the *pro rata* payment of the unpaid fees, administrative costs, expenses and indemnities due and payable to the Subordinate Secured Parties under the Financing Documents, if any;

B. *Second*, to the *pro rata* payment of all accrued and unpaid interest due and payable (including default interest) on all Subordinate Obligations;

C. *Third*, to the *pro rata* payment of any unpaid principal of any Subordinate Obligation that is due and payable (by acceleration or otherwise);

D. *Fourth*, to the *pro rata* payment of all accrued and unpaid redemption or prepayment premiums due and payable, if any, on all Subordinate Obligations;

E. *Fifth*, to the *pro rata* payment of all other amounts, if any, due and payable under the Financing Documents to the Subordinate Secured Parties with respect to any Subordinate Obligations; and

F. *Sixth*, upon the Discharge of Subordinate Obligations, to pay to the Borrower, or as may be directed by the Borrower, or as a court of competent jurisdiction may direct, any Proceeds then remaining;

(c) If at any time any Secured Party shall for any reason obtain any payment or distribution upon or with respect to the Secured Obligations contrary to the terms of this Agreement or the Intercreditor Agreement, whether as a result of any Collateral Agent's exercise of any Enforcement Action in respect of the Collateral or otherwise, such Secured Party agrees that it shall have received such amounts in trust, and shall promptly remit such amount so received in error to the Securities Intermediary to be applied in accordance with the terms of this Agreement and the Intercreditor Agreement; provided that (i) this clause (c) shall not apply to, and shall not be construed to apply to, any Secured Hedge Agreement or any Hedge Provider in connection with any netting, set off, termination or close-out rights (or any other analogous or similar rights) under any Secured Hedge Agreement, and (ii) in the event of conflict between the terms of this Agreement and the terms of the Intercreditor Agreement, as among the Secured Parties, the Intercreditor Agreement shall govern.

**Section 6.07 Reliance on Information.** For purposes of applying payments received in accordance with this Article, the Collateral Agents shall be entitled to rely upon the information received by, and upon the request of, the Collateral Agents for such purpose, pursuant to Sections 2.07 and 6.05 of this Agreement, with respect to the amounts of the Outstanding Secured Obligations owed to the Secured Parties and the amount of any proceeds distributed from the Project Accounts. In the event that the Collateral Agents, in their reasonable discretion, determine that it is unable to determine the amount or order of payments that should be made hereunder, the parties hereto agree that the Collateral Agents shall have the right, at their option, to deposit with, or commence an interpleader proceeding in respect of, such funds in a court of competent jurisdiction for a determination by such court as to the correct application of such funds hereunder.

**Section 6.08 Priority over Construction Liens.** In compliance with Section 13 of the Lien Law, the Senior Collateral Agent will receive the advances secured by this Agreement and the other Senior Collateral Documents and will hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the Building Loan Costs and that the Senior Collateral Agent will apply the same first to the payment of the Building Loan Costs before using any part of the total of the same for any other purpose.

## ARTICLE VII COMPENSATION, INDEMNITY AND EXPENSES

**Section 7.01 Compensation; Fees and Expenses.** The Borrower hereby agrees to pay to the Collateral Agents, the Deposit Account Bank, the Securities Intermediary and the Intercreditor Agent respectively each for its own account compensation in such amount as separately agreed upon in writing between the Borrower and the Collateral Agents, the Deposit Account Bank, the Securities Intermediary and the Intercreditor Agent, respectively. In addition, the Borrower shall pay on the next Transfer Date falling at least ten (10) Business Days after written demand from the Collateral Agents, the Deposit Account Bank, the Securities Intermediary or the Intercreditor Agent the amount of any and all other reasonable out-of-pocket expenses incurred by the Collateral Agents, the Deposit Account Bank, the Securities Intermediary or the Intercreditor Agent, including the reasonable and customary fees, charges and disbursements of any counsel for the Collateral Agents, the Deposit Account Bank, the Securities Intermediary or the Intercreditor Agent, in connection with (a) the preparation of amendments and waivers hereunder and under the other Security Documents requested by the Borrower; (b) the enforcement of the rights or remedies of the Collateral Agents, the Deposit Account Bank, the Securities Intermediary or the Intercreditor Agent under this Agreement or any other Security Document, including all reasonable out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Secured Obligations; (c) the sale of, collection from or other realization upon, the Collateral in accordance with the terms hereof; and (d) lien and security interest searches and filings in connection with the Collateral.

**Section 7.02 Borrower Indemnification.** The Borrower shall indemnify each Collateral Agent, the Deposit Account Bank, the Securities Intermediary, the Intercreditor Agent and any Co-Collateral Agent, and each of their respective officers, directors, employees, agents and attorneys-in-fact (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the reasonable fees, charges and disbursements of any counsel for any Indemnitee, actually incurred by any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of any Security Document or any agreement or instrument contemplated thereby to which such Indemnitee is a party or the performance by the parties hereto of their respective obligations hereunder or the consummation of the transactions contemplated thereby (including the performance by the parties hereto of their respective obligations under the Security Documents), (ii) any actual or alleged presence or release of hazardous materials by the Borrower on or from the Existing Terminal Facilities or the New Terminal Facilities or any property owned or operated by the Borrower, or (iii) any actual claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related fees, charges, disbursements or expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. The obligations of the Borrower under this Section shall survive the payment in full of the Secured Obligations, any resignation or removal of the Collateral Agents and the Securities Intermediary pursuant to Section 2.11 of this Agreement, and the termination of this Agreement pursuant to Article VIII.

**Section 7.03 Deposit Account Bank.** The Deposit Account Bank shall be accorded the same rights, privileges, protections and immunities of the Collateral Agents under this Agreement.

## **ARTICLE VIII TERMINATION**

Upon termination of this Agreement pursuant to Section 5.23, all rights to the Collateral as shall not have been sold or otherwise applied, in each case, pursuant to the terms hereof shall revert to the Borrower, its successors or assigns. Upon any such termination, the Collateral Agents will, at the Borrower's direction and expense, execute and deliver to the Borrower such documents as the Borrower shall reasonably request to evidence such termination.

## **ARTICLE IX ACCESSION**

**Section 9.01 Accession Generally.** Any Person that is to become a party to this Agreement on or after such Person's accession to the Intercreditor Agreement (an "Acceding Party"), including any Person that replaces any Secured Party to this Agreement, shall accede to this Agreement by delivering to the Collateral Agents (with a copy to the Intercreditor Agent and the Borrower) an Accession Agreement, duly executed by that Acceding Party, and, for an Acceding Party that is a Subordinate Collateral Agent pursuant to Section 2.11(c), the Accession Agreement attached hereto as Exhibit J. Upon the execution of such Accession Agreement by an Acceding Party and the Collateral Agents, and acknowledged by the Borrower, such Acceding Party shall be a Secured Party hereunder and shall be bound by and subject to the terms and conditions of this Agreement.

**Section 9.02 Instructions to Collateral Agents.** The Collateral Agents are authorized and instructed to promptly execute any Accession Agreement duly executed and delivered to the Collateral Agents by an Acceding Party, which is acknowledged by the Borrower and accompanied by a fully executed accession agreement to the Intercreditor Agreement.

## **ARTICLE X COVENANTS OF THE BORROWER**

### **Section 10.01 Maintenance of Existence.**

Throughout the term of this Agreement, the Borrower shall maintain (i) its legal existence as a limited liability company, (ii) its good standing and qualification to do business in New York and in every jurisdiction where such qualification is required by applicable Law, and good standing in Delaware and (iii) all material rights, franchises, privileges and consents necessary for the maintenance of its existence and the conduct of its business as contemplated to be conducted on the date hereof.

### **Section 10.02 Compliance with Lease Agreement and Financing Documents.**

(a) The Borrower shall design, construct and operate and maintain the facilities operated or constructed as part of the Project in accordance with the Lease Agreement, and otherwise comply with the Lease Agreement, in all material respects. Upon the occurrence of any

event of default under the Lease Agreement the Borrower shall promptly take such actions as may be necessary to timely effect a cure thereof and shall provide to the Collateral Agents a copy of any remedial plan submitted to the Port Authority pursuant to Section 21(b) of the Lease Agreement contemporaneously with the submission thereof to the Port Authority and shall thereafter keep the Collateral Agents apprised of any acceptance or rejection of such remedial plan by the Port Authority and of the Borrower's efforts to implement such remedial plan. Upon a casualty to or condemnation of all or a portion facilities operated or constructed as part of the Project, the Borrower shall apply casualty or condemnation proceeds and perform such repairs or replacements as are required under the Lease Agreement and this Agreement.

(b) The Borrower shall timely observe, perform and comply in all material respects with its obligations under the Financing Documents to which it is a party and shall maintain, preserve and enforce its material rights and privileges under the Financing Documents in a commercially reasonable manner.

### **Section 10.03 Required Insurance.**

At all times throughout the term of this Agreement, including without limitation during any period of reconstruction of the New Terminal Facilities, the Borrower shall maintain all insurance coverages required under the Lease Agreement, as such requirements may be waived or modified in accordance with the Lease Agreement. Without limiting the foregoing (i) the Borrower shall provide to the Collateral Agents the same notice and evidence of renewal as it provides to the Port Authority and (ii) such insurance policies shall, as applicable, afford to the Collateral Agents the same contractual liability coverage, notice of cancellation rights, waivers of subrogation and non-impairment of coverage rights as they afford to the Port Authority.

Within thirty (30) days following the end of each Fiscal Year, the Borrower shall submit to the Collateral Agents a certificate (i) listing all insurance being carried by, or on behalf of, the Borrower and the expiration date of each insurance policy, (ii) certifying that all insurance required to be maintained pursuant to the Project Documents and the Financing Documents is in full force and effect and that all premiums theretofore due have been fully paid or provided for and (iii) summarizing each event of loss with respect to the Project in such Fiscal Year for which loss proceeds exceed \$5,000,000 (per individual loss) in such Fiscal Year.

The Borrower shall provide to the Collateral Agents certificates stating that its insurance coverage and such insurance policies name the Secured Debt Representatives and the Issuer as additional insureds and loss payees as their interests appear.

In no event will the Collateral Agents have any obligation to determine the sufficiency of any such insurance information or to, in any manner, independently evaluate the Borrower's compliance with any insurance covenants in connection therewith.

### **Section 10.04 Accounts and Reporting.**

(a) The Borrower shall keep proper records and books of accounts in which complete and correct entries shall be made of its transactions in accordance with GAAP and all applicable requirements of any Governmental Authority having legal or regulatory jurisdiction over the Borrower. The Borrower will keep books and records and accounts which, in reasonable detail,



accurately reflect all transactions and disposition of assets. The Borrower shall implement and maintain a system of internal accounting controls sufficient to provide reasonable assurances that its books, records, and accounts accurately reflect all transactions and dispositions of assets. The Borrower shall give each Agent, the Issuer, the Bank Finance Parties and their respective consultants and representatives access to the Premises, at the sole cost of such Persons (unless a Default or an Event of Default has occurred and is continuing), at any reasonable time and as often as may reasonably be requested, in all cases in compliance with the terms of the Lease Agreement (including any safety and security related requirements thereunder) and, upon reasonable prior notice to the Borrower, in each case during official business hours and in a manner that cannot reasonably be expected to materially interfere with or disrupt the performance by the Borrower or any other party of its obligations with respect to the construction and operation of the Existing Terminal Facilities and the New Terminal Facilities, and permit the Agents, the Issuer, the Bank Finance Parties and their consultants and representatives to discuss the Project and the business, accounts, operations, properties and financial and other conditions of the Borrower with the Chief Executive Officer of the Borrower, with any such inquiries made with copy to the Chief Financial Officer of the Borrower, and to witness (but not cause) the performance and other tests conducted pursuant to any Material Project Document, in each case, subject to the terms of the Lease Agreement and to all applicable confidentiality undertakings and operational or contractual requirements or limitations.

(b) The Borrower shall retain independent auditors of nationally recognized standing to audit its annual financial statements.

(c) The Borrower shall deliver the following information to the Collateral Agents:

(i) (x) as soon as available, but no later than one hundred twenty (120) days following the end of each Fiscal Year of the Borrower, a copy of the audited income statement and balance sheet of the Borrower as of the end of such Fiscal Year, and the related audited statements of operations, changes in member capital and cash flows of the Borrower for such Fiscal Year, certified by an independent public accounting firm of national standing, and including the notes thereto, together with such accounting firm's report and comments on the financial statements; and (y) as soon as available, but no later than sixty (60) days following the end of the first, second and third quarterly periods of each Fiscal Year of the Borrower, a copy of the unaudited income statement and balance sheet of the Borrower as of the end of such period and the related unaudited statements of operations, changes in member capital, and cash flows of the Borrower for such period, certified by the chief executive officer or chief financial officer of the Borrower as fairly stating in all material respects the financial condition of the Borrower, the results of its operations, and its cash flows for such period;

(ii) prior to the Substantial Completion Date, monthly progress reports to be delivered to the Collateral Agents by the twenty-eighth (28<sup>th</sup>) day of each calendar month for the preceding calendar month, which progress reports shall (x) provide an assessment of the overall construction progress of the D&C Work since the date of the last report (or, with respect to the first such report, since the Closing Date) and setting forth a reasonable estimate as to the completion date for the applicable D&C Work, and (y) provide a reasonably detailed description of any material delays encountered or anticipated in

connection with such D&C Work, and a reasonably detailed description of the proposed course of action with respect to such delay;

(iii) any written proposal of the Borrower to suspend or abandon the Project which is delivered to the Port Authority (except to the extent the suspension is as a result of an emergency or otherwise permitted under the Lease Agreement);

(iv) with respect to the Borrower, details of any litigation, pending or, if actually known, threatened in writing, by or before any arbitrator or Governmental Authority in which the amount involved exceeds \$10,000,000 for a pending litigation, or \$20,000,000 for a litigation threatened in writing, in each case which is not covered by insurance;

(v) notice of the Borrower committing any “event of default” as defined in, or any material breach under, the Lease Agreement, the Leasehold Mortgages, the TDC Loan Agreements, the Common Terms Agreement or the Credit Agreement;

(vi) no later than thirty (30) days prior to the beginning of each calendar year, the Annual Operating Budget for such calendar year;

(vii) a certification of the Borrower, no later than thirty (30) days after any Calculation Date subsequent to the Substantial Completion Date, as to the Senior Debt Service Coverage Ratio as of such Calculation Date and for each future Calculation Date through the Maturity Dates;

(viii) the Borrower has actual knowledge of the filing or service of any mechanics lien or other claim that creates a lien upon the Project in an amount in excess of \$5,000,000; and

(ix) the receipt of any notice asserting an Event of Default under, or purporting to terminate or suspend performance of, any Financing Document.

(d) Notwithstanding anything to the contrary, in no event shall the Collateral Agents have any obligation to determine the sufficiency of any such financial information or to, in any manner, independently evaluate the Borrower’s compliance with any financial covenants in connection therewith.

**Section 10.05 Project Accounts.** The Borrower shall establish and maintain each account or sub-account, including the Project Accounts and the Operating Account and other accounts and sub-accounts required from time to time by the Lease Agreement and the Financing Documents to be maintained by the Borrower and the Borrower shall not maintain or permit to be maintained any accounts other than as permitted and contemplated in this Agreement and the other Financing Documents or the Lease Agreement.

**Section 10.06 Compliance with Laws.** The Borrower shall obtain on a reasonably timely basis, maintain and comply with, in all material respects, or in the case of such Governmental Approvals as are required to be obtained by third parties, to the extent possible, use reasonable efforts to cause such third parties to obtain and thereafter maintain in full force and effect, all required Governmental Approvals, and the Borrower shall comply with applicable Laws, in each

case except to the extent failure to obtain, maintain, and comply with such Governmental Approvals or comply with applicable Laws would not reasonably be expected to have a Material Adverse Effect.

#### **Section 10.07 Use of Tax-Exempt Obligations Proceeds; Tax Covenant.**

(a) The net proceeds of the Tax-Exempt Obligations shall be loaned to the Borrower pursuant to the terms of the TDC Loan Agreements. Tax-Exempt Obligations loaned to the Borrower pursuant to the TDC Loan Agreements shall be used solely to pay eligible Project Costs as specified in the Tax Certificate (or, to the extent not used therefor, to repay the relevant portion of such indebtedness).

(b) The Borrower covenants for the benefit of the Issuer and the Owners of the Tax-Exempt Obligations that it will not take any action or omit to take any action with respect to the Tax-Exempt Obligations, the proceeds thereof, any other funds of the Borrower or any of the facilities financed with the proceeds of the Tax-Exempt Obligations if such action or omission (i) would cause the interest on the Tax-Exempt Obligations to lose their excludability from gross income for federal income tax purposes under Section 103 of the Code or (ii) would cause interest on the Tax-Exempt Obligations to lose their exemption from income taxation in the State.

(c) The Borrower further covenants, represents and warrants that the procedures set forth in the Tax Certificate implementing the covenant in paragraph (b) above shall be complied with to the extent necessary to comply with the covenant in paragraph (b) above.

(d) The Borrower shall not permit any use of the proceeds of the Tax-Exempt Obligations which would cause the Tax-Exempt Obligations to be classified as “arbitrage bonds” within the meaning of Section 148 of the Code.

(e) The Borrower shall aid and assist the Issuer in connection with preparing and submitting to the IRS a Form 8038 (or other applicable information reporting statement) at the time and in the form required by the Code; provided that the Borrower will not be responsible for late or non-conforming filings (except to the extent Borrower fails to timely provide information required for such filings).

(f) The Borrower will adopt and implement written tax compliance procedures to assure the compliance with the Tax Covenants sufficient (i) to monitor the requirements of Section 148 of the Code and (ii) to ensure that all nonqualified bonds are remediated in accordance with the Code and the regulations thereunder.

(g) In the event that less than ninety-five percent (95%) of the proceeds of the Tax-Exempt Obligations have been spent by the fifth (5th) anniversary of the issue date of the Tax-Exempt Obligations (the “5-year Redemption Date”), at the election of the Borrower by written notice to the Securities Intermediary and the Trustee, the Borrower shall direct the Securities Intermediary to use any proceeds of the Tax-Exempt Obligations remaining on deposit in each Project Account established for the applicable Tax-Exempt Obligations (to the extent not otherwise required to be rebated to the United States in accordance with Section 148(f) of the Code and the Indenture) within ninety (90) days after the 5-year Redemption Date, to either (a) purchase the applicable Tax-Exempt Obligations for cancellation at any reasonable price as determined by

the Borrower, which price, however, shall not exceed the principal amount thereof to be redeemed plus accrued and unpaid interest thereon to the date fixed for redemption, or (b) redeem Tax-Exempt Obligations at the Redemption Price or Accreted Redemption Price, as applicable; unless the Borrower delivers to Collateral Agents, the Issuer and the Trustee an Opinion of Bond Counsel to the effect that the proceeds remaining in such Project Account need not be applied in accordance with the foregoing in order to maintain the tax-exempt status of interest on the applicable Tax-Exempt Obligations.

(h) Notwithstanding any other provision of this Agreement to the contrary, so long as necessary to maintain the exclusion from gross income for federal income tax purposes of interest on the Tax-Exempt Obligations, the covenants contained in this Section shall survive the payment of the Tax-Exempt Obligation and the interest thereon, including any payment or defeasance thereof pursuant to Article VII of the Master Indenture or the applicable TDC Loan Agreement.

**Section 10.08 Borrower Representations.** Whenever under the provisions of this Agreement the approval of the Borrower is required or the Borrower is required to take some action at the request of the other party hereto, such approval or such request shall be given for the Borrower by an Authorized Borrower Representative and the Agents and the Issuer, as applicable, shall be permitted to rely on, and shall be protected in acting upon, such approval.

**Section 10.09 Taxes.** The Borrower shall timely pay and discharge all Taxes before they become delinquent unless they are being contested by appropriate proceedings, and the Borrower has provided adequate reserves which are maintained in accordance with GAAP or unless the failure to pay and discharge could not reasonably be expected to have a Material Adverse Effect.

**Section 10.10 Business Activities.** The Borrower shall not engage in any business other than the Project, including activities related or incidental thereto (including the performance of its obligations under and as contemplated in the Lease Agreement).

**Section 10.11 Limitations on Fundamental Changes; Sale of Assets, Etc.**

(a) The Borrower covenants not to amend or modify its Organizational Documents in a manner that is materially adverse to the interests of the Secured Parties, other than any amendment or modification to permit a transfer of equity interests of the Borrower as permitted pursuant to Section 51 of the Lease Agreement or as otherwise permitted under this Agreement;

(b) The Borrower covenants not to sell, assign or otherwise transfer all or substantially all of the assets owned or leased by the Borrower and related to the Project unless the Borrower, in addition to satisfying the other requirements of the Financing Documents, shall have delivered to the Collateral Agents, the Trustee and the Issuer an Opinion of Bond Counsel to the effect that such transaction will not adversely affect the tax-exempt status of the Tax-Exempt Obligations.

(c) The Borrower shall not, except as permitted under the Project Documents and the Financing Documents, enter into any partnership, joint venture, profit-sharing or similar arrangement whereby the Borrower's income or profits are shared with any person (except as may be contemplated by the organizational agreements of the Borrower or the Sponsors) or form or have any subsidiaries.

**Section 10.12 Arm’s-Length Transactions.** The Borrower shall not enter into any material transactions with any Affiliates unless such transaction is fair and commercially reasonable to the Borrower on an arm’s length basis and contains terms no less favorable to such entity than those which would be included in an arm’s-length transaction with a non-Affiliate; provided that the agreements referenced in Section 3.04(b) of the Common Terms Agreement, and amounts payable to the Sponsors in respect of Project Costs incurred by such Equity Member(s) on behalf of the Borrower prior to the Closing Date or as consideration for the provision of Equity Support (and any amendments or supplements to any of the foregoing) will be deemed not to violate this covenant.

**Section 10.13 Eligible Investments.** The Borrower shall not make or direct the Agents to make any investments other than Eligible Investments and under no circumstances shall the Agents be required to make a determination as to whether an investment is an Eligible Investment.

**Section 10.14 Changes in Name, Place of Business or Fiscal Year.** The Borrower shall not, at any time:

(a) change its name, jurisdiction of formation, or principal place of business without giving the Agents and the Issuer at least thirty (30) days prior written notice; or

(b) change its Fiscal Year without prior written notice sent to the Agents and the Issuer at least thirty (30) days prior to such change.

**Section 10.15 [Reserved]**

**Section 10.16 Negative Pledge.** The Borrower shall not permit any lien upon or with respect to the Existing Terminal Facilities or the New Terminal Facilities or any of the funds established pursuant to this Agreement or the other Financing Documents, other than Permitted Liens.

**Section 10.17 Nationally Recognized Rating Agencies.**

(a) The Borrower shall maintain a credit rating for the Senior Secured Debt from at least one Designated Rating Agency. The Borrower shall use commercially reasonable efforts to cooperate with each Nationally Recognized Rating Agency rating the Senior Secured Debt and, if applicable, any Additional Obligations, in connection with any review which may be undertaken by such Nationally Recognized Rating Agency.

(b) The Borrower shall enter into and comply with a reasonable and customary “ratings surveillance” agreement with at least one Nationally Recognized Rating Agency rating the Senior Secured Debt and, if applicable, any Additional Obligations.

**Section 10.18 Transfer and Deposit of Funds.** The Borrower shall not permit any transfer of funds out of the Remaining Revenue Account unless specifically permitted under this Agreement. In addition, the Borrower shall deposit Disputed Payment Amounts with respect to payments of airline rates and charges in an escrow account established for the purpose of holding disputed amounts under this Agreement in accordance with Section 5.30.

**Section 10.19 Project Revenues.** All Project Revenues received by the Borrower shall be applied in accordance with the Financing Documents, including as set forth under Articles V and VI of this Agreement.

**Section 10.20 Status of Entity.** The Borrower shall use commercially reasonable efforts to maintain its status as a “pass-through” entity for federal income tax purposes.

**Section 10.21 Limitations on Indebtedness.** The Borrower shall not create, incur, assume, suffer to exist or be liable for any Indebtedness, other than Permitted Indebtedness.

**Section 10.22 Public Purpose Covenants.**

(a) [Reserved].

(b) The Borrower shall operate or cause the Existing Terminal Facilities and the New Terminal Facilities to be operated as an authorized project for a purpose and use as provided for under the Act (as in effect on the date hereof) until the expiration or earlier termination of the TDC Loan Agreements.

(c) Within ninety (90) days after the end of each Fiscal Year of the Borrower, the Borrower shall furnish to the Agents and the Issuer the following:

(i) a certification indicating whether or not the Borrower is aware of any condition, event or act which constitutes an Event of Default, or which would constitute an Event of Default with the giving of notice or passage of time, or both, under any of the Financing Documents; and

(ii) a certification indicating the amounts Outstanding for the Series 2022A Bonds and any Additional Bonds issued, and the current interest rates related to such Series 2022A Bonds and Additional Bonds issued.

(d) The Borrower will at all times preserve and protect the Project in accordance with the Lease Agreement.

**Section 10.23 Post-Issuance Tax Compliance.**

(a) The Borrower shall follow their tax procedures adopted pursuant to Section 10.7(f) in order to satisfy its Tax Covenants.

(b) If pursuant to the procedures of the Borrower, the Borrower determines that it must take remedial action to cure a violation of a Tax Covenant, it will promptly notify the Agents and the Issuer as to the action to be taken.

(c) In the event an Agent becomes aware of a possible violation of a Tax Covenant, the Agent shall have the right, upon notice to the Borrower, to conduct its own investigation, and at the sole but reasonable cost and expense of the Borrower, to retain Bond Counsel to determine any and all actions required to remediate such violation.

**Section 10.24 Costs and Expenses of the Issuance of the Bonds.** All reasonable expenses incurred by the Issuer in connection with the preparation, execution, delivery, recording and filing of the Financing Documents, and in connection with the preparation, issuance and delivery of the Series 2022A Bonds, the Issuer's fees as described in Exhibit B to the TDC Loan Agreements, and the reasonable fees and expenses of Bond Counsel shall be paid by the Borrower. The Borrower shall also pay throughout the term of the Senior Loans, the Series 2022A Bonds and any Additional Bonds the Issuer's reasonable fees and expenses incurred pursuant to the terms of the Financing Documents.

**Section 10.25 Rate Covenant/Financial Ratio Covenant for Secured Obligations.**

(a) The Borrower covenants and agrees to take all lawful measures to establish, prescribe and collect Project Revenues sufficient, after paying all O&M Expenses (including all O&M Expenses not constituting Permitted O&M Expenses and all Ground Rent, First Additional Rent, Second Additional Rental, and Third Additional Rent), to achieve, in each DSCR Calculation Period, (i) during the Ramp-Up Period, (A) a Total Debt Service Coverage Ratio of 1.25x and (B) a Senior Debt Service Coverage Ratio of 1.30x, and (ii) after the Ramp-Up End Date, (A) a Total Debt Service Coverage Ratio of 1.15x and (B) a Senior Debt Service Coverage Ratio of 1.20x, both on a prospective basis (based on its forecasts prepared by the Borrower, which forecasts shall be based on reasonable assumptions (on the basis of information known to the Borrower on the date of preparation thereof) as to all factual matters material to the estimates therein) and on a retrospective basis (based on its annual audited and quarterly unaudited financial statements most recently required to be delivered), subject to the terms of Section 5.12.

(b) If the Total Debt Service Coverage Ratio or the Senior Debt Service Coverage Ratio does not meet the conditions outlined in Section 10.25(a) for an upcoming fiscal year, then the Borrower shall request a third party to recommend revisions to its Annual Operating Budget and, after taking into account such recommendations, shall revise its Annual Operating Budget to produce (to the extent practicable using prudent business judgment) sufficient revenues to satisfy such Total Debt Service Coverage Ratio or Senior Debt Service Coverage Ratio requirement.

(c) If the Borrower revises its Annual Operating Budget pursuant to Section 10.25(b), then failure to satisfy the conditions set forth in Section 10.25(a) shall not be deemed an Event of Default under the TDC Loan Agreements, the Credit Agreement or the other Financing Documents.

**Section 10.26 [Reserved].**

**Section 10.27 Additional Obligations.**

(a) *Additional Senior Obligations.* The Borrower shall not incur Additional Senior Obligations unless each of the following additional conditions are satisfied as of the date on which such Additional Senior Obligations are incurred:

(i) The Borrower has provided to the Senior Collateral Agent evidence indicating that, as of the date of incurrence of such Additional Senior Obligations, the Borrower has met the requirements under the Lease Agreement for the incurrence of such

Additional Senior Obligations (as such requirements are in effect on the date hereof without giving effect to any waiver by the Port Authority); and

(ii) The Borrower has provided to the Senior Collateral Agent (A) evidence that, after giving effect to the incurrence of such Additional Senior Obligations the Borrower is in compliance with Section 10.25 and (B) a certificate from an Airport Consultant stating that, based upon reasonable assumptions, projected Project Revenues will be sufficient to satisfy the requirements of Section 10.25(a) (including such Additional Senior Obligations proposed to be incurred but excluding any Senior Obligations proposed to be Refinanced with the proceeds of such Additional Senior Obligations) for each Fiscal Year following the incurrence of such Additional Senior Obligations to the final maturity of all Outstanding Senior Obligations,

(iii) the Rating Agencies then rating the then Outstanding Senior Obligations affirm (A) that such then Outstanding Senior Obligations will maintain an investment grade rating from at least two Rating Agencies after giving pro forma effect to the incurrence of such Additional Senior Obligations, or (B) that the ratings on the then Outstanding Senior Obligations, after giving pro forma effect to the incurrence of such Additional Senior Obligations, will not be lowered as a result of the incurrence of the Additional Senior Obligations; and

(iv) prior to the Discharge of Senior Bank Obligations in their entirety, the conditions set forth in Section 6.18 of the Common Terms Agreement are satisfied as determined by the Required Bank Finance Parties;

provided that, the Borrower need not satisfy the conditions in clause (ii) or (iii) above to (x) incur Additional Senior Obligations that are Completion Obligations, if the aggregate principal amount of such Completion Obligations (together with the principal amount of all previously incurred Completion Obligations) does not exceed 10% of the aggregate original principal amount of all Secured Obligations issued prior to the first incurrence of Completion Obligations, or (y) incur Additional Senior Obligations to Refinance Outstanding Senior Obligations, if the incurrence of such Additional Senior Obligations does not result in an increase in Annual Debt Service in any Fiscal Year on all Outstanding Senior Obligations following the incurrence of such Additional Senior Obligations.

(b) *Additional Subordinate Obligations.* The Borrower shall not incur Additional Subordinate Obligations unless each of the following additional conditions are satisfied as of the date on such Additional Subordinate Obligations are incurred:

(i) The Borrower has provided to the Collateral Agent evidence indicating that, as of the date of incurrence of such Additional Subordinate Obligations, the Borrower has met the requirements under the Lease Agreement for the incurrence of such Additional Subordinate Obligations (as such requirements are in effect on the date hereof without giving effect to any waiver by the Port Authority); and

(ii) The Borrower has provided to the Collateral Agents (A) evidence that, after giving effect to the incurrence of such Additional Subordinate Obligations the Borrower is



in compliance with Section 10.25 and (B) a certificate from an Airport Consultant stating that, based upon reasonable assumptions, projected Project Revenues will be sufficient to satisfy the requirements of Section 10.25(a) (including such Additional Subordinate Obligations proposed to be incurred but excluding any Subordinate Obligations proposed to be Refinanced with the proceeds of such Additional Subordinate Obligations) for each Fiscal Year following the incurrence of the Additional Subordinate Obligations to the final maturity of all Outstanding Subordinate Obligations, provided that with respect to the incurrence of such Additional Subordinate Obligations issued pursuant Section 84(a)(B)(I)(3) of the Lease Agreement, (A) the Borrower will only be required to achieve, in each DSCR Calculation Period, a Total Debt Service Coverage Ratio of 1.10x during the Ramp-up Period and a Total Debt Service Coverage Ratio of 1.0x thereafter and (B) the Borrower need not satisfy the prospective financial ratios in Section 10.25(a) for any periods during which 100% of the Aggregate Debt Service on the Additional Subordinate Obligations is capitalized;

(iii) prior to the Discharge of Senior Bank Obligations in their entirety, the conditions set forth in Section 6.18 of the Common Terms Agreement are satisfied as determined by the Required Bank Finance Parties; and

(iv) no TDC Building Loan Agreement supplement is entered into with respect to such Additional Subordinate Obligations;

provided that, the Borrower need not satisfy the conditions in clause (ii) above to (x) incur Additional Subordinate Obligations that are Completion Obligations, if the aggregate principal amount of such Completion Obligations (together with the principal amount of all previously incurred Completion Obligations) does not exceed 10% of the aggregate original principal amount of all Secured Obligations issued prior to the first incurrence of Completion Obligations, or (y) incur Additional Subordinate Obligations to Refinance Outstanding Subordinate Obligations, if the incurrence of such Additional Subordinate Obligations does not result in an increase in Annual Debt Service in any Fiscal Year on all Outstanding Subordinate Obligations following the incurrence of such Additional Subordinate Obligations.

## **ARTICLE XI COVENANTS OF THE ISSUER**

**Section 11.01 Binding Obligations of the Issuer.** For and in consideration of the benefits accruing and expected to accrue to it as a Secured Party under this Agreement, the Issuer hereby acknowledges, represents and warrants that this Agreement has been duly authorized, executed and delivered by, and is valid and binding on the Issuer. The obligations of the Issuer under this Article XI shall be binding upon it and its successors and assigns, shall be absolute and unconditional, and shall remain in full force and effect until the payment of the Bonds and the satisfaction, discharge and release of the Indenture.

**Section 11.02 Issuer Tax Covenant.** The Issuer covenants that it shall not take any action within its control that would, nor refrain from taking any action reasonably requested by the Borrower, the Trustee or the Collateral Agents, as applicable, if refraining would, cause the interest

on the Tax-Exempt Obligations to become includable in gross income for federal income tax purposes; provided, however, that the breach of this covenant shall not result in any pecuniary liability of the Issuer and the only remedy to which the Issuer shall be subject shall be specific performance. Notwithstanding any other provision of the Indenture to the contrary, so long as it is necessary to maintain the exclusion of interest on the Tax-Exempt Obligations from gross income for federal income tax purposes, the covenants contained in this Section shall survive the payment of the Tax-Exempt Obligations and the interest thereon, including any payment or defeasance thereof pursuant to Section 7.01 of the Master Indenture.

**Section 11.03 Issuer Arbitrage Covenants.** The Issuer covenants and certifies to and for the benefit of the owners of the Tax-Exempt Obligations Outstanding that money on deposit in any Account or Subaccount in connection with the Tax-Exempt Obligations, whether or not such money was derived from proceeds of the sale of the Tax-Exempt Obligations or from any other source, will not be used in a manner which will cause the Tax-Exempt Obligations to be classified as “arbitrage bonds” within the meaning of Section 148 of the Code or “hedge bonds” under Section 149(g) of the Code or otherwise cause the interest on the Tax-Exempt Obligations to be included in gross income for Federal income tax purposes. Pursuant to such covenant, the Issuer obligates itself to comply throughout the term of the Tax-Exempt Obligations with the requirements of Section 148 of the Code, as provided in the Tax Certificate. Further, the Issuer shall make or cause to be made any and all payments required to be made to the United States Department of the Treasury in connection with the Tax-Exempt Obligations pursuant to Code Section 148(f) from amounts made available for such purpose by the Borrower. The Issuer shall keep, or cause to be kept, accurate records of each investment property (as that term is defined in Section 148 of the Code) acquired, directly or indirectly, with the proceeds of the Tax-Exempt Obligations. Notwithstanding any other provision of the Indenture to the contrary, so long as necessary to maintain the exclusion of interest on the Tax-Exempt Obligations from gross income for federal income tax purposes, the covenants contained in this Section shall survive the payment of the Tax-Exempt Obligations and the interest thereon, including any payment or defeasance thereof pursuant to Section 7.01 the Master Indenture. Notwithstanding any provision of this Section 11.03, if the Issuer obtains an Opinion of Bond Counsel to the effect that any action required under this Section 11.03 is no longer required or that some further action is required to maintain the exclusion from federal income tax of interest on the Tax-Exempt Obligations, the Issuer may rely conclusively on such Opinion in complying with the requirements of this Section 11.03, and the covenants contained herein shall be deemed modified to that extent.

**Section 11.04 Further Assurances and Corrective Instruments.** The Issuer agrees that it will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intentions of the Financing Documents and as may be necessary or desirable for establishing, maintaining, assuring, conveying, granting, assigning, securing and confirming the Security Interests (whether now existing or hereafter arising) granted by or on behalf of the Borrower to the Collateral Agents, as applicable, for the benefit of the applicable Secured Parties, pursuant to the Security Documents, or intended so to be granted pursuant to the Security Documents, or which the Borrower may become bound to grant.

**Section 11.05 Amendments Not Requiring Consent of Issuer.** Subject to Section 12.02 hereof, the Issuer acknowledges and agrees that the Collateral Agents (acting upon the instruction

of the Intercreditor Agent), the Intercreditor Agent and the Borrower may amend this Agreement without the consent or approval of the Issuer, provided that such modification or amendment does not, in the good faith opinion of the Collateral Agents (acting upon the instruction of the Intercreditor Agent), the Intercreditor Agent and the Borrower, have an adverse effect on the rights or interests of the Issuer or the Bondholders or the tax-exempt status of the Tax-Exempt Obligations.

## **ARTICLE XII MISCELLANEOUS PROVISIONS**

**Section 12.01 Further Assurances.** The Borrower agrees that it will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intentions of the Financing Documents and as may be necessary or desirable for establishing, maintaining, assuring, conveying, granting, assigning, securing and confirming the applicable Security Interests (whether now existing or hereafter arising) granted by or on behalf of the Borrower to the Collateral Agents, as applicable, for the benefit of the applicable Secured Parties, pursuant to the Security Documents, or intended so to be granted pursuant to the Security Documents, or which the Borrower may become bound to grant, and the subject of each such Security Interest will comply with the requirements under the Financing Documents and the Borrower's representations and warranties in Section 2.2 hereof. The Agents and the Issuer and their respective successors, assignees and agents are each authorized to file or cause to be filed any financing statements, supplements and further instruments in connection with the foregoing, provided that Agents and the Issuer shall have no responsibilities for such filings, other than executing the documents requested by the Borrower. The Agents' and the Issuer's approval shall not be required prior to the release of Security Interests that have been properly discharged.

### **Section 12.02 Amendments; Waivers.**

(a) Any term, covenant, agreement or condition of this Agreement or any of the Security Documents may be amended or waived only by an instrument in writing signed by each Collateral Agent (acting upon the instruction of the Intercreditor Agent), the Intercreditor Agent and the Borrower; provided, that (i) no such amendment or waiver shall violate any restriction or other provision of the Indenture, the Common Terms Agreement or any other Financing Documents and (ii) the consent of the Securities Intermediary shall be required for any amendment to Section 5.24 or any other amendment that would modify the rights or obligations of the Securities Intermediary. Further, the Port Authority shall be a third party beneficiary of the following provisions hereof (and related defined terms), which shall not be amended or modified without the prior written consent of the Port Authority: (i) Sections 5.02(b), 5.02(c), 5.03(a), 5.03(b), 5.04(o), 5.05, 5.13(c), 5.14(e), 5.18, or 5.19, or (ii) any other section to the extent (A) conferring on the Port Authority the right to receive notices or copies of certificates and/or the right to provide written instructions to the Collateral Agents, as applicable, and/or (B) inconsistent with or in conflict with any term of the Lease Agreement.

(b) The waiver (whether express or implied) by the Collateral Agents of any breach of the terms or conditions of this Agreement, and the consent (whether express or implied) of any Secured Party shall not prejudice any remedy of the Collateral Agents or any other Secured Party

in respect of any continuing or other breach of the terms and conditions hereof, and shall not be construed as a bar to any right or remedy which the Collateral Agents or such other Secured Party would otherwise have on any future occasion under this Agreement.

(c) No failure to exercise nor any delay in exercising, on the part of the Collateral Agents or any other Secured Party, of any right, power or privilege under this Agreement shall operate as a waiver thereof; further, no single or partial exercise of any right, power or privilege under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege available to it. All remedies hereunder and under the other Security Documents are cumulative and are not exclusive of any other remedies that may be available to the Collateral Agents, whether at law, in equity or otherwise.

### **Section 12.03 Successors and Assigns.**

(a) Except for the third party beneficiary rights expressly conferred upon the Port Authority under Section 12.02(a) hereof, this Agreement and the other Security Documents shall be binding upon, and inure, solely to the benefit of the Collateral Agents, the Securities Intermediary, the Deposit Account Bank, the Borrower, the Secured Parties and their respective successors and permitted assigns and, subject to Section 6.04 hereof, each Secured Party shall be an express third party beneficiary of this Agreement.

(b) Nothing contained in this Agreement or any other Security Document is intended to limit the right of any Secured Party to assign, transfer or grant participations in its rights in its respective Secured Obligations and Financing Documents.

**Section 12.04 Notices.** Unless otherwise expressly provided herein, all notices, instructions, consents, requests, directions and other communications provided for herein (each, a “Notice”) shall be in writing, and each Notice shall be (a) personally delivered to the duly designated officer or representative of the applicable Party; (b) delivered to the office of such officer or representative during regular business hours or (c) forwarded to such officer or representative at such address by certified or registered mail or a reputable express overnight courier, with delivery receipt requested, in each case addresses as follows:

(i) if to the Port Authority, to the address set forth therefor in the Lease Agreement.

The identity of such Responsible Officers, as well as their specimen signatures, will be delivered to the Collateral Agents in the form of one or more duly completed and executed Incumbency Certificates in the form of Exhibit H each of which will remain in effect until such party notifies the Collateral Agents of any change by delivery of a replacement Incumbency Certificate duly completed and executed in the form of Exhibit H.

In their capacity as Collateral Agents, the Collateral Agents will accept all instructions and documents complying with the above under the indemnities provided in this Agreement, and reserves the right to refuse to accept any instructions or documents which fail, or appear to fail, to comply with the terms hereof; provided that in the event of any such refusal by the Collateral Agents, the Collateral Agents shall promptly notify the relevant Responsible Officer executing the instructions or delivering the documents of such non-compliance and provide a reasonable time

period for the correction thereof. Further to this procedure, the Collateral Agents reserve the right to telephone a Responsible Officer of the Intercreditor Agent or the Borrower to confirm the details of such instructions or documents if they are not already on file with it as standing instructions, and the Collateral Agents agree that they will promptly telephone a Responsible Officer of the Intercreditor Agent or the Borrower, as applicable, if the Collateral Agents have determined that it will refuse to accept any instructions or documents which fail, or appear to fail, to comply. The Collateral Agents and the parties hereto agree that the above constitutes a commercially reasonable security procedure.

Any party hereto may change its address for Notices by notice to the Borrower, the Collateral Agents, and the Intercreditor Agent. All Notices required or permitted to be given pursuant to this Agreement shall be in writing.

Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private carrier or other Person making the delivery. If mailed, the Notices herein required to be served shall be deemed effective and served as of the date of the return of verification of delivery of certified or registered mailing thereof, or one (1) day after deposit with a reputable express overnight courier.

The Collateral Agents shall, upon request, provide written confirmation of its receipt of all such notices. All instructions required under this Agreement will be delivered to the Collateral Agents in writing, in either original or facsimile form, executed by a Responsible Officer.

In addition to the above means of giving notice, the Collateral Agents, the Deposit Account Bank, the Security Intermediary and the Intercreditor Agent (each an “Instructed Party”) shall have the right to accept and act upon instructions, including funds transfer instructions (“Instructions”) given pursuant to (and in accordance with) this Agreement and delivered using Electronic Means; provided, however, that the Borrower shall provide to each Instructed Party an incumbency certificate listing persons with the authority to provide such Instructions (“Authorized Persons”) and containing specimen signatures of such Authorized Persons, which incumbency certificate shall be amended by the Borrower whenever a person is to be added or deleted from the listing. If the Borrower elects to give any Instructed Party any Instructions using Electronic Means, and such Instructed Party, in its discretion, elects to act upon such Instructions, such Instructed Party’s understanding of such Instructions shall be deemed controlling. The Borrower understands and agrees that if an Instructed Party cannot determine the identity of the actual sender of such Instructions, such Instructed Party may conclusively presume that directions that purport to have been sent by an Authorized Person listed on the incumbency certificate provided to such Instructed Party have been sent by such Authorized Persons. The Borrower shall be responsible for ensuring that only Authorized Persons transmit such Instructions to the Instructed Parties and that the Borrower and all Authorized Persons are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the Borrower. No Instructed Party shall be liable for any losses, costs or expenses arising directly or indirectly from such Instructed Party’s reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The Borrower agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Instructed Parties, including without limitation the risk of an Instructed Party

acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Instructed Parties and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Borrower; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Instructed Parties immediately upon learning of any compromise or unauthorized use of the security procedures.

**Section 12.05 Counterparts.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart. Delivery of an executed signature page to this Agreement by electronic transmission shall be as effective as delivery of a manually signed counterpart of this Agreement. Each party hereto acknowledges and agrees that they may execute this Agreement, and any variation or amendment hereto, using Electronic Signatures. Such Electronic Signatures are intended to authenticate this writing and to have the same force and effect as handwritten signatures.

**Section 12.06 Applicable Law; Waiver of Jury Trial.** THE EFFECT AND MEANING OF THIS AGREEMENT AND THE RIGHTS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED ACCORDING TO, THE LAWS OF THE STATE, WITHOUT GIVING EFFECT TO THE PRINCIPLES OF CONFLICTS OF LAWS THEREOF. EACH OF THE ISSUER AND THE BORROWER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**Section 12.07 Captions.** The headings of the several articles and sections and subsections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

**Section 12.08 Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable Law, but if any provision of this Agreement shall be prohibited by or invalid under applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.

**Section 12.09 Collateral Agents' Rights.**

(a) If at any time the Collateral Agents are served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Collateral (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of such property), the Collateral Agents are authorized to comply therewith in any manner it or legal counsel of its own choosing (at the sole cost and expense of the Borrower) reasonably deems appropriate; and if the Collateral Agents comply with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, the Collateral Agents shall not be liable to any of the parties

hereto or to any other Person or entity even though such order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect.

(b) In the event of any dispute between or conflicting claims by or among the Borrower, the Secured Parties and/or any other Person or entity with respect to any property being held by the Collateral Agents in connection with this Agreement or the other Security Documents, the Collateral Agents shall be entitled, in their sole discretion, to refuse to comply with any and all claims, demands or instructions with respect to such property so long as such dispute or conflict shall continue, and the Collateral Agents shall not be or become liable in any way to the Borrower, the Secured Parties or any other party for failure or refusal to comply with such conflicting claims, demands or instructions. Any Collateral Agent shall be entitled to refuse to act with respect to any such dispute or conflicting claims until, in its sole discretion, either (i) such dispute or conflicting claims, demands or instructions shall have been determined by a final order, judgment or decree of a court of competent jurisdiction (at the sole cost and expense of the Borrower), which order, judgment or decree is not subject to appeal, or settled by agreement between the conflicting parties as evidenced in a writing reasonably satisfactory to such Collateral Agents or (ii) such Collateral Agents shall have received security or an indemnity reasonably satisfactory to it sufficient to hold it harmless from and against any and all losses which it may incur by reason of so acting. Any court order, judgment or decree shall be accompanied by a legal opinion by counsel for the presenting party, reasonably satisfactory to the Collateral Agents in such Collateral Agent's sole and absolute discretion, to the effect that said order, judgment or decree represents a final adjudication of the rights of the parties by a court of competent jurisdiction, and that the time for appeal from such order, judgment or decree has expired without an appeal having been perfected (which opinion may be subject to customary assumptions, qualifications or exceptions). The Collateral Agents shall act on such court order and legal opinions without further question.

(c) To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each Person who opens an account. When any account or sub-account is opened, the Collateral Agents shall be entitled to such information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

(d) Whenever reference is made in this Agreement to any action by, consent, designation, specification, requirement or approval of, notice, request or other communication from, or other direction given or action to be undertaken or to be (or not to be) suffered or omitted by the Collateral Agents or to any election, decision, opinion, acceptance, use of judgment, expression of satisfaction or other exercise of discretion, rights or remedies to be made (or not to be made) by the Collateral Agents, it is understood that in all such cases when the Intercreditor Agent has objected or, to the extent the consent of the Intercreditor Agent is required for the same, it has not consented (in either case, acting at the direction of the Required Creditors, in accordance with the Intercreditor Agreement), the Collateral Agents shall be fully justified in failing or refusing to take any such action under this Agreement. This provision is intended solely for the benefit of the Collateral Agents and their successors and permitted assigns and is not intended to

and will not entitle the other parties hereto to any defense, claim or counterclaim, or confer any rights or benefits on any party hereto.

**Section 12.10 Transfers to and from Accounts.** Notwithstanding anything herein to the contrary, all deposits to and withdrawals from the Accounts established herein shall be made via wire transfer.

**Section 12.11 PATRIOT Act Notification.** The Collateral Agents hereby notify the Borrower that pursuant to the requirements of the USA PATRIOT ACT, Title III of Pub. L., 107-56 (signed into law October 26, 2001) (the “PATRIOT Act”), the Collateral Agents may be required to obtain, verify and record information that identifies the Borrower, which information includes the **name, address, tax identification number and other information** regarding the Borrower that will allow the Collateral Agents to identify the Borrower in accordance with the PATRIOT Act.

**Section 12.12 Events Occurring on Days That Are Not Business Days.** Other than as expressly set forth in this Agreement, if the date for making any payment or the last day for the performance of any act or the exercising of any right under this Agreement is a day that is not a Business Day, such payment shall be made, such act shall be performed and such right shall be exercised on the next succeeding Business Day, with the same force and effect as if done on the nominal date herein.

**Section 12.13 Role of the Intercreditor Agent.** The Intercreditor Agent shall be entitled to all of its rights, benefits, protections and immunities set forth in the Intercreditor Agreement. Notwithstanding anything to the contrary herein, the Intercreditor Agent shall not be obligated to provide any consents, directions, determinations, acceptances, rejections or other similar actions pursuant to this Agreement unless it shall have first been so directed by the Required Creditors pursuant to the Intercreditor Agreement, and the Intercreditor Agent shall have no liability for taking any such actions in accordance with such directions and shall not be liable for any failure or delay in taking such actions resulting from any failure or delay by such parties in providing such directions.

**Section 12.14 Issuer Acknowledgement.** The Issuer acknowledges that it has received a copy of the Intercreditor Agreement.

**Section 12.15 Effectiveness Date.** The date of this Agreement is for reference purposes only and shall not be construed to imply that this Agreement was executed as of the date first written above. This Agreement has been executed by the parties hereto and is effective on the Closing Date.

*[Remainder of page deliberately left blank]*



**[SIGNATURE PAGES AND EXHIBITS HAVE BEEN REMOVED]**

**(THIS PAGE INTENTIONALLY LEFT BLANK)**

**FORM FIRST AMENDMENT TO COLLATERAL AGENCY AND ACCOUNTS AGREEMENT**

**(THIS PAGE INTENTIONALLY LEFT BLANK)**

---

---

**FIRST AMENDMENT TO THE COLLATERAL AGENCY AND ACCOUNTS  
AGREEMENT**

Dated as of [•], 2024

among

**JFK MILLENNIUM PARTNERS, LLC,**  
as the Borrower,

**THE BANK OF NEW YORK MELLON,**  
as Senior Collateral Agent,

**THE BANK OF NEW YORK MELLON,**  
as Intercreditor Agent,

**THE BANK OF NEW YORK MELLON,**  
as Securities Intermediary,

**THE BANK OF NEW YORK MELLON,**  
as Trustee,

**ING CAPITAL LLC,**  
as Administrative Agent,

and

**NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION**  
as Issuer

---

---

**TABLE OF CONTENTS**

	<b>Page</b>
Article I. DEFINITIONS; RULES OF INTERPRETATION .....	I-4
Section 1.01 Defined Terms .....	I-4
Section 1.02 Rules of Interpretation.....	I-4
Article II. ESTABLISHMENT OF PROJECT ACCOUNTS FOR SERIES 2024 BONDS ..	II-4
Section 2.01 Establishment of Project Accounts for the Series 2024 Bonds.....	II-4
Article III. AMENDMENTS TO THE ORIGINAL CAAA.....	III-5
Section 3.01 Global Amendment to the Original CAAA. ....	III-5
Section 3.02 Amendment to Section 5.01(e)(iii). ....	III-5
Section 3.03 Amendment to Section 5.03(d). ....	III-5
Section 3.04 Addition of Sub-Sections 5.04(g)(i)(D) and 5.04(g)(ii)(D). ....	III-8
Section 3.05 Amendment to Section 5.06(e). ....	III-9
Section 3.06 Amendment to Section 5.10(e). ....	III-9
Section 3.07 Amendment to Section 5.08(a). ....	III-10
Section 3.08 Amendment to Sections 5.15(a)(iii), (b)(ii) and (c). ....	III-11
Section 3.09 Addition of Sub-Section 5.15(d). ....	III-12
Section 3.10 Amendment to Sections 5.17(a) and (c) ....	III-13
Section 3.11 Amendment to Sections 5.17(d)(i), (ii), (iii), (iv) and (ix) ....	III-15
Section 3.12 Addition of Sub-Sections 5.17(e) and (f). ....	III-16
Section 3.13 Amendment to Section 6.06(a). ....	III-19
Section 3.14 Addition of Sub-Sections 6.06(a)(iv) and (v). ....	III-19
Section 3.15 Amendment to Section 6.06(b)(i)(A). ....	III-20
Section 3.16 Amendment to Section 7.02.....	III-20
Section 3.17 Amendment to Section 10.05.....	III-21
Section 3.18 Amendment to Section 10.13.....	III-21
Section 3.19 Amendment to Section 10.18.....	III-21
Section 3.20 Amendment to Section 10.27(a)(iii). ....	III-21
Section 3.21 Amendment to Article XI. ....	III-22
Section 3.22 Amendment to Section 12.02(a). ....	III-22
Section 3.23 Amendment to Section 12.02.....	III-23
Section 3.24 Amendment to Section 12.03(a). ....	III-24
Section 3.25 Amendment to Section 12.04.....	III-24
Section 3.26 Amendment to Definitions.....	III-25

Section 3.27	Amendment to Schedule of Accounts.....	III-25
Section 3.28	Amendment to Form of Funds Transfer Certificate (through Phase 2 End of Funding Date) .....	III-25
Section 3.29	Amendment to Form of Funds Transfer Certificate (after Phase 2 End of Funding Date) .....	III-25
Section 3.30	Amendment to Construction Account Withdrawal Certificate.....	III-25
Section 3.31	Amendment to Restricted Payment Conditions Satisfaction Transfer Certificate .....	III-25
Section 3.32	Waiver of Informational Right.....	III-25
Section 3.33	Other Provisions Unchanged; Conflict.....	III-25
Article IV.	REPRESENTATIONS AND WARRANTIES.....	IV-26
Section 4.01	No Default or Event of Default.....	IV-26
Section 4.02	Representations and Warranties.....	IV-26
Section 4.03	Authorization .....	IV-26
Section 4.04	Enforceability.....	IV-26
Article V.	MISCELLANEOUS .....	V-26
Section 5.01	Applicable Law; Waiver of Jury Trial .....	V-26
Section 5.02	Counterparts; Electronic Execution .....	V-27
Section 5.03	Severability .....	V-27
Section 5.04	Complete Agreement .....	V-27
Section 5.05	Reference to and Effect on the Senior Financing Documents. ....	V-27
Exhibit A	Definitions and Rules of Interpretation .....	A-1
Exhibit B	Schedule of Accounts.....	B-1
Exhibit D-1	Form of Funds Transfer Certificate (before Phase 2 End of Funding Date) .....	D-1-1
Exhibit D-2	Form of Funds Transfer Certificate (after Phase 2 End of Funding Date).....	D-2-1
Exhibit E	Construction Account Withdrawal Certificate .....	F-1
Exhibit F	Restricted Payment Conditions Satisfaction Transfer Certificate .....	F-1

**THIS FIRST AMENDMENT TO THE COLLATERAL AGENCY AND ACCOUNTS AGREEMENT** (this “First CAAA Amendment”) is made as of [•], 2024, by and among **JFK MILLENNIUM PARTNERS, LLC**, a Delaware limited liability company (the “Borrower”), **THE BANK OF NEW YORK MELLON**, a New York banking corporation in its capacity as senior collateral agent (the “Senior Collateral Agent”), **THE BANK OF NEW YORK MELLON**, a New York banking corporation in its capacity as intercreditor agent (the “Intercreditor Agent”), **THE BANK OF NEW YORK MELLON**, a New York banking corporation in its capacity as securities intermediary (the “Securities Intermediary”), **THE BANK OF NEW YORK MELLON**, a New York banking corporation in its capacity as Trustee (the “Trustee”), **ING CAPITAL LLC**, in its capacity as administrative (the “Administrative Agent”), and **NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION**, a local development corporation formed under Section 1411 of the New York Not-for-Profit Corporation Law, being Chapter 35 of the Consolidated Laws of New York, (the “Issuer”) (each individually, a “Party,” and collectively, the “Parties”).

## RECITALS

**WHEREAS**, The Port Authority of New York and New Jersey, a municipal corporate instrumentality and political subdivision of the States of New York and New Jersey, created and existing by virtue of the Compact of April 30, 1921, made by and between the States of New York and New Jersey, and thereafter consented to by the Congress of the United States (the “Port Authority”) has entered into an Agreement of Lease, dated as of November 17, 2022 (as supplemented and amended from time to time, the “Lease Agreement”), with the Borrower pursuant to which, among other things, the Borrower is obliged to undertake the following (collectively, the “Project”): (i) the operation, maintenance, and demolition of the Existing Terminal Facilities at John F. Kennedy International Airport in Queens, New York (“Airport”), which Existing Terminal Facilities include the existing Terminal 7 facilities, (ii) the design, construction, financing, operation and maintenance of the New Terminal Facilities at the Airport (which New Terminal Facilities include new Terminal 6 facilities and replacement Terminal 7 facilities) and certain ancillary facilities, and (iii) the design and construction of the Off-Premises Facilities at the Airport on behalf of the Port Authority, which Off-Premises Facilities will not be operated or maintained by the Borrower and will not constitute part of the facilities leased to the Borrower under the Lease Agreement;

**WHEREAS**, pursuant to that certain Credit Agreement, dated as of November 1, 2022 (the “Credit Agreement”), among the Issuer, the Borrower, the Lenders, including the Security Deposit Facility Lenders and the Security Deposit Facility LC Issuing Bank, as Bank Lenders, each from time to time party thereto, the Administrative Agent and certain joint lead arrangers and bookrunners, (a) the Lenders have agreed to make certain Senior Term Loans available to the Issuer, (b) the Security Deposit Facility LC Issuing Bank has agreed to make Security Deposit LCs available to the Issuer and (c) the Security Deposit Facility Lender has agreed to make Security Deposit Loans to the Issuer, each on the terms and subject to the conditions set forth therein, and a portion of the proceeds of the Senior Term Loans has been loaned by the Issuer to the Borrower pursuant to the TDC Loan Agreements, and the Borrower has used the proceeds of such Senior Term Loans to finance a portion of the Project Costs;

**WHEREAS**, pursuant to a resolution adopted on October 20, 2022 by the Issuer (the “TDC Resolution”) the Issuer and the Trustee have entered into a TDC Master Bond Indenture of Trust



dated as of November 1, 2022 (as the same may be amended or supplemented from time to time, the “Master Indenture”);

**WHEREAS**, pursuant to the First Supplemental Indenture of Trust dated as of November 1, 2022 (the “First Supplemental Indenture”), the Issuer has issued its New York Transportation Development Corporation Special Facilities Bonds, Senior Series 2022A (Tax-Exempt) (AMT) (JFK Airport Terminal 6-7 Redevelopment Project) in the aggregate principal amount of \$435,000,000 (the “Series 2022A Bonds”), and loaned the Borrower such funds pursuant to the TDC Loan Agreements to partially pay the Project Costs;

**WHEREAS**, the Administrative Agent (on behalf of the Bank Lenders and the Bondholders of the Series 2022A Bonds), the Trustee (on behalf of the Holders of the Additional Bonds) and the Intercreditor Agent (on behalf of each other Senior Secured Party) appointed The Bank of New York Mellon, a banking corporation organized under the State of New York, as Senior Collateral Agent under the Collateral Agency and Accounts Agreement, dated as of November 1, 2022 (the “Original CAAA” as the same may be amended or supplemented from time to time, the “Collateral Agency and Accounts Agreement”);

**WHEREAS**, the Issuer has assigned all of its right, title and interest in and to the TDC Loan Agreements, and the TDC Notes, except for the Reserved Rights, to the Senior Collateral Agent, as security for the Senior Secured Debt, and has endorsed the 2022 TDC Building Notes and the 2022 TDC Project Notes, and will endorse any Additional Note in respect of Senior Secured Debt, in favor of the Senior Collateral Agent, as security for the Senior Secured Debt;

**WHEREAS**, in order to secure the Borrower’s obligations under the Financing Documents, the Borrower has granted mortgage liens on and security interests in all of the interests of the Borrower under the Lease Agreement and security interests in certain additional accounts and property of the Borrower (including a pledge of the Borrower’s Project Revenues) to the Issuer and the Senior Collateral Agent, pursuant to the Leasehold Mortgages and other Senior Collateral Documents;

**WHEREAS**, in order to secure its obligations under the Senior Financing Documents, the Borrower has granted to the Senior Collateral Agent, for the benefit of the Senior Secured Parties, a first-priority security interest (subject to Permitted Liens) in, to and under the Collateral;

**WHEREAS**, the Borrower may request from time to time that the Issuer issue Additional Bonds pursuant to supplemental indentures to the Master Indenture to finance Project Costs;

**WHEREAS**, the Borrower has requested that the Issuer issue its New York Transportation Development Corporation, Special Facilities Revenue Bonds, Senior Series 2024A (Green Bonds)(AMT)(Current Interest Bonds) (JFK Airport Terminal 6 Redevelopment Project) in the aggregate principal amount of \$[•] (the “Series 2024A Bonds”) and its New York Transportation Development Corporation, Special Facilities Revenue Bonds, Senior Series 2024B (AMT) (Convertible Capital Appreciation Bonds) (JFK Airport Terminal 6 Redevelopment Project) in the aggregate principal amount of \$[•] (the “Series 2024B Bonds”) and, together with the Series 2024A Bonds, the “Series 2024 Bonds”), to provide funds to loan to the Borrower pursuant to the provisions of the Senior Financing Documents to refinance a portion of the Senior Term Loans,

redeem a portion of the Series 2022A Bonds, pay certain interest rate swap termination fees and pay certain costs of issuance related to the Series 2024 Bonds;

**WHEREAS**, pursuant to a resolution adopted on [October 1], 2024 by the Issuer (the “Series 2024 TDC Resolution”), the Issuer has duly determined to issue the Series 2024 Bonds under and in accordance with the Master Indenture and the Second Supplemental Indenture (as defined below) as Additional Senior Obligations;

**WHEREAS**, in connection with the execution, issuance and delivery of the Series 2024 Bonds, the Issuer and Trustee have entered into the Second Supplemental Indenture of Trust, dated as of [•], 2024, which supplements and amends the Master Indenture (the “Second Supplemental Indenture”) in order to, among other things, secure on a parity, first-priority basis the payment of the principal of the Series 2024 Bonds and the indebtedness represented thereby and the Accreted Value, Redemption Price, Purchase Price and Sinking Fund Requirements, if any, of and interest on the Series 2024 Bonds according to their tenor and effect and the performance and observance by the Issuer of all the covenants expressed or implied therein and in the Series 2024 Bonds; and

**WHEREAS**, contemporaneously with the execution, issuance and delivery of the Series 2024 Bonds, the Issuer will loan the proceeds of the Series 2024 Bonds to the Borrower pursuant to the terms of the First Amendment to the TDC Building Loan Agreement, dated as of [•] 1, 2024 (the “First Building Loan Agreement Amendment”) and the First Amendment to the TDC Project Loan Agreement, dated as of [•] 1, 2024 (the “First Project Loan Agreement Amendment,” and collectively with the First Building Loan Agreement Amendment, the “First Amendments to TDC Loan Agreements”) in the amount of \$[•] to enable the Borrower to prepay a portion of the Senior Term Loans , redeem a portion of the Series 2022A Bonds, pay certain interest rate swap termination fees and pay certain costs of issuance related to the Series 2024 Bonds;

**WHEREAS**, contemporaneously with the execution and delivery of the First Amendments to TDC Loan Agreements, the Borrower will execute and deliver to the Issuer the Series 2024 Building Note (the “Series 2024 Building Note”) and the Series 2024 Project Note (the “Series 2024 Project Note,” and together with the Series 2024 Building Note, the “Series 2024 Notes”), evidencing the aggregate principal amount of loans made or to be made by the Issuer to the Borrower of the proceeds of the Series 2024 Bonds pursuant to the TDC Loan Agreements;

**WHEREAS**, the Issuer will assign all of its right, title and interest in the First Amendments to TDC Loan Agreements, and the Series 2024 Notes, except for the Reserved Rights, to the Senior Collateral Agent, as security for the Senior Secured Debt;

**WHEREAS**, contemporaneously with the execution and delivery of this First CAAA Amendment, the Series 2024 Bond Insurer has appointed the Trustee as its Secured Debt Representative with respect to the Senior Bond Insurer Obligations pursuant to the Second Supplemental Indenture, and the Trustee wishes to appoint the Senior Collateral Agent, and the Senior Collateral Agent wishes to accept such appointment, to undertake to perform certain duties on behalf of the Series 2024 Bond Insurer with respect thereto in accordance with the Original CAAA as amended by this First CAAA Amendment;

**WHEREAS**, the Parties wish to amend and supplement the Original CAAA to establish additional Accounts, define additional terms and amend certain exhibits in connection with the issuance of the Series 2024 Bonds;

**NOW, THEREFORE**, in consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**Article I.**  
**DEFINITIONS; RULES OF INTERPRETATION**

**Section 1.01 Defined Terms**. Except as otherwise expressly provided herein, capitalized terms used herein but not otherwise defined herein shall have the respective meanings ascribed to such terms in Exhibit A to the Collateral Agency and Accounts Agreement, as amended by Section 3.26 of this First CAAA Amendment.

**Section 1.02 Rules of Interpretation**. Except as otherwise expressly provided or unless the context otherwise requires, the rules of interpretation included in Exhibit A to the Collateral Agency and Accounts Agreement, as amended by Section 3.26 of this First CAAA Amendment, shall apply to this First CAAA Amendment.

**Article II.**  
**ESTABLISHMENT OF PROJECT ACCOUNTS FOR SERIES 2024 BONDS**

**Section 2.01 Establishment of Project Accounts for the Series 2024 Bonds**. The following Accounts (inclusive of any Sub-Accounts) are hereby established and created pursuant to Section 5.01(b) of the Original CAAA, and shall be maintained by the Securities Intermediary as Project Accounts in the name of the Borrower (unless the contrary is expressly noted below), each of which shall be deemed a Project Account for purposes of Section 5.01 of the Original CAAA:

- (a) Within the Senior Obligations Payment Account:
  - (i) a sub-account entitled “2024A Tax-Exempt Bond Interest Payment Sub-Account” (the “2024A Tax-Exempt Bond Interest Payment Sub-Account”);
  - (ii) a sub-account entitled “2024B Tax-Exempt Bond Interest Payment Sub-Account” (the “2024B Tax-Exempt Bond Interest Payment Sub-Account”);
  - (iii) a sub-account entitled “2024A Tax-Exempt Bond Principal Payment Sub-Account” (the “2024A Tax-Exempt Bond Principal Payment Sub-Account”);
  - (iv) a sub-account entitled “2024B Tax-Exempt Bond Principal Payment Sub-Account” (the “2024B Tax-Exempt Bond Principal Payment Sub-Account”);

- (b) Within the Tax-Exempt Bond Proceeds Sub-Account of the Construction Account, a sub-account entitled “Series 2024 Bond Proceeds Sub-Account” (the “Series 2024 Bond Proceeds Sub-Account”);
- (c) Within the Building Loan Tax-Exempt Bond Proceeds Sub-Account of the Construction Account, a sub-account entitled “Series 2024 Bond Building Proceeds Sub-Account” (the “Series 2024 Bond Building Proceeds Sub-Account”); and
- (d) Within the Project Loan Tax-Exempt Bond Proceeds Sub-Account of the Construction Account, a sub-account entitled “Series 2024 Bond Project Proceeds Sub-Account” (the “Series 2024 Bond Project Proceeds Sub-Account”).

**Article III.**  
**AMENDMENTS TO THE ORIGINAL CAAA**

**Section 3.01 Global Amendment to the Original CAAA.** The Original CAAA is hereby amended by replacing each reference to “on behalf of the Bondholders”, “on behalf of the Holders of the Additional Bonds” and “on behalf of the Bondholders of any Additional Bonds” with “on behalf of the Indenture Secured Parties”.

**Section 3.02 Amendment to Section 5.01(e)(iii).** Section 5.01(e)(iii) of the Original CAAA is hereby amended by replacing “The Segregated Pledged Accounts” with “The Segregated Proceeds Pledged Accounts”.

**Section 3.03 Amendment to Section 5.03(d).** Section 5.03(d) of the Original CAAA, is hereby amended to add the double underlined text as follows:

“(d) If on any Transfer Date the amounts on deposit in the Post-Substantial Completion Revenue Account are not sufficient to make the transfers required to be made from the Post-Substantial Completion Revenue Account pursuant to clauses *First* through *Tenth* under Section 5.03(b), inclusive, in full, the Securities Intermediary (or the Deposit Account Bank, with respect to the Operating Account) shall (notwithstanding any other provision hereof and without the need for a Funds Transfer Certificate), transfer funds as follows:

- (i) if amounts on deposit in the Post-Substantial Completion Revenue Account are not sufficient to make the transfers required under Section 5.03(b)(1) with respect to amounts then due and payable under the Financing Documents, then funds in an aggregate amount not exceeding the amount of such deficiency shall be transferred on such date to the relevant Secured Parties *first, pro rata* from the Remaining Revenue Account and the Surplus Remaining Revenue Account, as applicable (provided, however, that if either such account is not sufficiently funded to permit such transfer to occur on a *pro rata* basis, then such transfer shall occur on a *pro rata* basis to the extent possible and otherwise by transferring additional funds from whichever of such accounts has additional funds available, before the

transfers described in the following step *second*, *second*, from the Ramp-Up Reserve Account (provided that the amount on deposit in the Ramp-Up Reserve Account immediately after giving effect to such transfer, when added to the amount then on deposit in the Senior Debt Service Reserve Account (including any amount then available for drawing under any Acceptable Letter of Credit provided with respect to the Senior Debt Service Reserve Account), shall be at least equal to the Senior Debt Service Reserve Requirement at such time), and *third*, from the O&M Reserve Account;

(ii) if amounts on deposit in the Post-Substantial Completion Revenue Account are not sufficient to make the transfers required under Section 5.03(b)(2) or (3) (in such order of priority) in full on such Transfer Date, then, after application of Section 5.03(d)(i), funds in an aggregate amount not exceeding the amount of such deficiency shall be transferred on such date to the Port Authority or to the Operating Account, as applicable, *first*, *pro rata* from the Remaining Revenue Account and the Surplus Remaining Revenue Account, as applicable (provided, however, that if either such account is not sufficiently funded to permit such transfer to occur on a *pro rata* basis, then such transfer shall occur on a *pro rata* basis to the extent possible and otherwise by transferring additional funds from whichever of such accounts has additional funds available, before the transfers described in the following step *second*), *second*, from the Ramp-Up Reserve Account (provided that the amount on deposit in the Ramp-Up Reserve Account immediately after giving effect to such transfer, when added to the amount then on deposit in the Senior Debt Service Reserve Account (including any amount then available for drawing under any Acceptable Letter of Credit provided with respect to the Senior Debt Service Reserve Account), shall be at least equal to the Senior Debt Service Reserve Requirement at such time), and *third*, from the O&M Reserve Account;

(iii) if amounts on deposit in the Post-Substantial Completion Revenue Account are not sufficient to transfer the full amount due to be transferred to the Hedge Ordinary Course Payment Account and to each Interest Payment Sub-Account within the Senior Obligations Payment Account on such Transfer Date in accordance with Section 5.03(b)(4), then, after application of Sections 5.03(d)(i) and (ii), funds in an aggregate amount not exceeding the amount of such deficiency shall be transferred on such date to the Hedge Ordinary Course Payment Account and to each Interest Payment Sub-Account within the Senior Obligations Payment Account *first*, *pro rata* from the Remaining Revenue Account and the Surplus Remaining Revenue Account, as applicable (provided, however, that if either such account is not sufficiently funded to permit such transfer to occur on a *pro rata* basis, then such transfer shall occur on a *pro rata* basis to the extent possible and otherwise by transferring additional funds from

whichever of such accounts has additional funds available, before the transfers described in the following step *second*), *second*, from the Ramp-Up Reserve Account, *third*, from the Senior Debt Service Reserve Account, and *fourth*, from the O&M Reserve Account;

(iv) if amounts on deposit in the Post-Substantial Completion Revenue Account are not sufficient to transfer the full amount due to be transferred to the Hedge Termination Payment Account and to each Principal Payment Sub-Account within the Senior Obligations Payment Account on such Transfer Date in accordance with Section 5.03(b)(5), then, after application of Sections 5.03(d)(i), (ii) and (iii), funds in an aggregate amount not exceeding the amount of such deficiency shall be transferred on such date to the Hedge Termination Payment Account and to each Principal Payment Sub-Account within the Senior Obligations Payment Account, *first, pro rata* from the Remaining Revenue Account and the Surplus Remaining Revenue Account, as applicable (provided, however, that if either such account is not sufficiently funded to permit such transfer to occur on a *pro rata* basis, then such transfer shall occur on a *pro rata* basis to the extent possible and otherwise by transferring additional funds from whichever of such accounts has additional funds available, before the transfers described in the following step *second*), *second*, from the Ramp-Up Reserve Account, *third*, from the Senior Debt Service Reserve Account, and *fourth*, from the O&M Reserve Account (provided that no transfer from the Senior Debt Service Reserve Account or the Ramp-Up Reserve Account to the Hedge Termination Payment Account shall be made pursuant to this paragraph (iv));

(v) if amounts on deposit in the Post-Substantial Completion Revenue Account are not sufficient to make the transfers required under Section 5.03(b)(7), (8) or (9) (in such order of priority) in full on such Transfer Date, then, after application of Sections 5.03(d)(i), (ii), (iii) and (iv), funds in an aggregate amount not exceeding the amount of such deficiency shall be transferred on such date to the Senior Debt Service Reserve Account, the O&M Reserve Account or the Major Maintenance Reserve Account, as applicable, *pro rata* from the Remaining Revenue Account and the Surplus Remaining Revenue Account, as applicable (provided, however, that if either such account is not sufficiently funded to permit such transfer to occur on a *pro rata* basis, then such transfer shall occur on a *pro rata* basis to the extent possible and otherwise by transferring additional funds from whichever of such accounts has additional funds available);

(vi) if amounts on deposit in the Post-Substantial Completion Revenue Account are not sufficient to transfer the full amount due to be transferred to each Interest Payment Sub-Account and each Principal Payment Sub-Account maintained with respect to any Subordinate Obligations on such Transfer Date in accordance with

Section 5.03(b)(10), then, after application of Sections 5.03(d)(i), (ii), (iii), (iv) and (v), funds in an aggregate amount not exceeding the amount of such deficiency shall be transferred on such date to each Interest Payment Sub-Account and each Principal Payment Sub-Account maintained with respect to such Subordinate Obligations, first, *pro rata* from the Remaining Revenue Account and the Surplus Remaining Revenue Account, as applicable (provided, however, that if either such account is not sufficiently funded to permit such transfer to occur on a *pro rata* basis, then such transfer shall occur on a *pro rata* basis to the extent possible and otherwise by transferring additional funds from whichever of such accounts has additional funds available, before the transfers described in the following step *second*), second, from the Subordinate Debt Service Reserve Account, and third, from the O&M Reserve Account; and

(vii) if amounts on deposit in the Post-Substantial Completion Revenue Account are not sufficient to transfer the full amount due to be transferred to the Subordinate Debt Service Reserve Account on such Transfer Date in accordance with Section 5.03(b)(10), then, after application of Sections 5.03(d)(i), (ii), (iii), (iv), (v) and (vi), funds in an aggregate amount not exceeding the amount of such deficiency shall be transferred on such date to the Subordinate Debt Service Reserve Account *pro rata* from the Remaining Revenue Account and the Surplus Remaining Revenue Account, as applicable (provided, however, that if either such account is not sufficiently funded to permit such transfer to occur on a *pro rata* basis, then such transfer shall occur on a *pro rata* basis to the extent possible and otherwise by transferring additional funds from whichever of such accounts has additional funds available).”

**Section 3.04 Addition of Sub-Sections 5.04(g)(i)(D) and 5.04(g)(ii)(D).** The following new sub-sections (g)(i)(D) and (g)(ii)(D) are added to Section 5.04 of the Original CAAA to permit disbursements to the Extraordinary Receipts Account as follows:

**(g)(i) “D.** fund the Extraordinary Receipts Account to the extent such monies constitute any Indebtedness received in respect of any refinancing of all or part of the Obligations that are required to be applied to a mandatory prepayment or redemption of the Senior Bank Obligations in accordance with Section 5.15(c)(v) and such disbursements shall not be subject to the limit on the maximum numbers of disbursements in a month under this Section 5.04(g)(i).”

**(g)(ii) “D.** fund the Extraordinary Receipts Account to the extent such monies constitute any Indebtedness received in respect of any refinancing of all or part of the Obligations that are required to be applied to a mandatory prepayment or redemption of the Senior Bank Obligations in accordance with Section 5.15(c)(v) and such

disbursements shall not be subject to the limit on the maximum number of disbursements in a month under this Section 5.04(g)(ii).”

**Section 3.05 Amendment to Section 5.06(e).** Section 5.06(e) of the Original CAAA, is hereby amended to add the double underlined text as follows:

“(e) If prior to any Interest Payment Date, the Borrower has determined that the amounts on deposit in any Interest Payment Sub-Account within the Senior Obligations Payment Account are not sufficient to pay the full amount of interest payable on the applicable Senior Obligation on such Interest Payment Date, then the Borrower may instruct the Securities Intermediary by delivering a Funds Transfer Certificate or a Construction Account Withdrawal Certificate, as applicable, at least one, but no more than three Business Days prior to such Interest Payment Date, to transfer funds in an aggregate amount not exceeding the amount of such deficiency to such Interest Payment Sub-Account, *first*, from the Pre-Substantial Completion Revenue Account in accordance with Section 5.02(f) or the Post-Substantial Completion Revenue Account in accordance with Section 5.03(e), as applicable *second, pro rata* from the Remaining Revenue Account and the Surplus Remaining Revenue Account, as applicable (provided, however, that if either such account is not sufficiently funded to permit such transfer to occur on a pro rata basis, then such transfer shall occur on a pro rata basis to the extent possible and otherwise by transferring additional funds from whichever of such accounts has additional funds available, before the transfers described in the following step third), *third*, prior to the Phase 2 End of Funding Date, from the Construction Account in accordance with Section 5.04(g), Section 5.04(h), Section 5.04(i) or Section 5.04(j), *fourth*, from the Ramp-Up Reserve Account (provided that the amount on deposit in the Ramp-Up Reserve Account immediately after giving effect to such transfer, when added to the amount then on deposit in the Senior Debt Service Reserve Account (including any amount then available for drawing under any Acceptable Letter of Credit provided with respect to the Senior Debt Service Reserve Account), shall be at least equal to the Senior Debt Service Reserve Requirement at such time), and *fifth*, from the O&M Reserve Account; provided that if at the time the above transfers are made, a deficiency also exists in the amount on deposit in the Hedge Ordinary Course Payment Account and the amount on deposit in the above listed accounts is insufficient to cover the deficiency in both the Interest Payment Sub-Account and the Hedge Ordinary Course Payment Account, transfers to the Interest Payment Sub-Account under this paragraph and to the Hedge Ordinary Course Payment under Section 5.10 shall be made pro rata on the basis of the amount of interest and the Ordinary Course Payment with respect to the applicable Senior Obligations payable on such Interest Payment Date.”

**Section 3.06 Amendment to Section 5.10(e).** Section 5.10(e) of the Original CAAA, is hereby amended to add the double underlined text as follows:

“(a) If prior to any date on which an Ordinary Course Payment is payable by the Borrower, the Borrower has determined that the amounts on deposit in the Hedge Ordinary Course Payment Account are not sufficient to pay the full amount of Ordinary Course Payments payable on such date, then the Borrower may instruct the



Securities Intermediary by delivering a Funds Transfer Certificate or a Construction Account Withdrawal Certificate, as applicable, at least one, but no more than three Business Days prior to such Interest Payment Date to transfer funds in an aggregate amount not exceeding the amount of such deficiency to the Hedge Ordinary Course Payment Account *first*, from the Pre-Substantial Completion Revenue Account in accordance with Section 5.02(f) or the Post-Substantial Completion Revenue Account in accordance with Section 5.03(e), as applicable, *second*, *pro rata* from the Remaining Revenue Account and the Surplus Remaining Revenue Account, as applicable (provided, however, that if either such account is not sufficiently funded to permit such transfer to occur on a *pro rata* basis, then such transfer shall occur on a *pro rata* basis to the extent possible and otherwise by transferring additional funds from whichever of such accounts has additional funds available, before the transfers described in the following step *third*), *third*, prior to the Phase 2 End of Funding Date, from the Construction Account in accordance with Section 5.04(g), Section 5.04(h), Section 5.04(i) or Section 5.04(j), *fourth*, from the Ramp-Up Reserve Account (provided that the amount on deposit in the Ramp-Up Reserve Account immediately after giving effect to such transfer, when added to the amount then on deposit in the Senior Debt Service Reserve Account (including any amount then available for drawing under any Acceptable Letter of Credit provided with respect to the Senior Debt Service Reserve Account), shall be at least equal to the Senior Debt Service Reserve Requirement at such time), and *fifth*, from the O&M Reserve Account; provided that if at the time the above transfers are made, a deficiency also exists in the amount on deposit in any Interest Payment Sub-Account for the Senior Obligations associated with the applicable Ordinary Course Payment and the amount on deposit in the above listed accounts is insufficient to cover the deficiency in both the Interest Payment Sub-Account and the Hedge Ordinary Course Payment Account, transfers to the Interest Payment Sub-Account under Section 5.06(e) and to the Hedge Ordinary Course Payment under this paragraph shall be made *pro rata* on the basis of the amount of interest and the Ordinary Course Payment due with respect to the applicable Senior Obligations.”

**Section 3.07 Amendment to Section 5.08(a).** Section 5.08(a) of the Original CAAA, is hereby amended to add the double underlined text as follows:

“(a) Notwithstanding any other provision of this Agreement to the contrary, after the Discharge of Senior Bank Obligations, the Borrower may, upon notice to the relevant Secured Debt Representative, so long as no Event of Default has occurred and is continuing, substitute all or any portion of the cash or Eligible Investments on deposit in a Reserve Account with an Acceptable Letter of Credit in favor of the Applicable Collateral Agent (substantially in the form of Exhibit I hereto or in such other form as acceptable to the Senior Collateral Agent and the relevant Secured Debt Representatives) for purposes of such Reserve Account; provided that, if such Reserve Account holds proceeds of any Tax-Exempt Obligations or any investment earning thereon, no such substitution shall be made until the Borrower has delivered to the Securities Intermediary and the applicable Secured Debt Representative a Favorable Opinion of Bond Counsel; further provided that, the Borrower shall obtain confirmation (A) that such then Outstanding Senior Obligations will maintain a rating of BBB, Baa2 or its equivalent or higher, from each Rating Agency, but in any event

not less than two Rating Agencies, (without giving effect to any Bond Insurance Policy then in effect) which provided a rating of such then Outstanding Senior Obligations after giving pro forma effect to the substitution of cash or Eligible Investments on deposit in a Reserve Account with an Acceptable Letter of Credit, or (B) that the ratings on the then Outstanding Senior Obligations (without giving effect to any Bond Insurance Policy then in effect), after giving pro forma effect to the substitution of cash or Eligible Investments on deposit in a Reserve Account with an Acceptable Letter of Credit, will not be lowered as a result of the incurrence of the substitution of cash or Eligible Investments on deposit in a Reserve Account with an Acceptable Letter of Credit. In the event that the Borrower substitutes cash or Eligible Investments on deposit in such Reserve Account with such Acceptable Letter of Credit and delivers any such Acceptable Letter of Credit to the Applicable Collateral Agent, the cash or Eligible Investments so substituted will (notwithstanding the terms of Section 5.03(c)) be transferred to the Post-Substantial Completion Revenue Account. The undrawn face value of any such Acceptable Letter of Credit shall be included when calculating the balance on deposit in such Reserve Account.”

**Section 3.08 Amendment to Sections 5.15(a)(iii), (b)(ii) and (c).** Sections 5.15(a)(iii), (b)(ii) and (c) of the Original CAAA, are hereby amended to add the double underlined text and to delete the strikethrough text as follows:

(a)... “(iii) If any Borrower Insurance Proceeds or Borrower Condemnation Proceeds are deposited into the Extraordinary Receipts Account that are not required to be applied to restoration of the Premises in accordance with the Lease Agreement, the Borrower will instruct the Securities Intermediary, promptly upon deposit thereof into the Extraordinary Receipts Account, to transfer such proceeds (A) if any Senior Obligations are Outstanding, *pro rata* (based on the outstanding principal amounts of the Senior Obligations and, if any, the aggregate Hedge Termination Payment under the Secured Hedge Agreements, as certified to the Securities Intermediary by the Intercreditor Agent) (I) for the ~~Senior Loans~~ Loan Facility and the Secured Hedge Agreements, to the Administrative Agent, the Trustee or Hedge Providers, as applicable, pursuant to Section 5.15(c)(i) or (vi), as applicable, for application in accordance with the Credit Agreement, ~~the Secured Hedge Agreements, the Indenture and the Common Terms Agreement, in furtherance of Section 2.02(c) of the Common Terms Agreement~~, (II) for any Senior Bonds (other than the Series 2022A Bonds), to the respective Principal Payment Sub-Accounts and Interest Payment Sub-Accounts of the Senior Obligations Payment Account for application in accordance with the Indenture, the Common Terms Agreement, and the Credit Agreement, as applicable, and (III) ~~for the Secured Hedge Agreements to each Hedge Provider for payment of Ordinary Course Payment and Hedge Termination Payments in accordance with the Secured Hedge Agreements for any other Additional Senior Obligations, to the respective Principal Payment Sub-Accounts and Interest Payment Sub-Accounts of the Senior Obligations Payment Account for application in accordance with the Senior Financing Documents related to such Additional Senior Obligation~~ and (B) if no Senior Obligations are Outstanding, to the applicable Principal Payment Sub-Accounts and Interest Payment Sub-Accounts of the Subordinate Obligations

Payment Account for application in accordance with the Subordinate Financing Documents.”

(b)... “(ii) promptly transfer such Borrower Lease Termination Proceeds, the proceeds from each such letter of credit draw and the amounts on deposit in the Debt Service Reserve Accounts, the Ramp-up Reserve Account, and the O&M Reserve Account (A) if any Senior Obligations are Outstanding, *pro rata* (based on the outstanding principal amounts of the Senior Loans, the Senior Bonds and the aggregate Hedge Termination Payments under the Secured Hedge Agreements as certified to the Securities Intermediary by the Intercreditor Agent), (I) for the ~~Senior Loans~~ Loan Facility and the Secured Hedge Agreements, to the Administrative Agent, the Trustee or Hedge Providers, as applicable, pursuant to Section 5.15(c)(iii) for application in accordance with the Credit Agreement, the Secured Hedge Agreements, the Indenture and the Common Terms Agreement, in furtherance of Section 2.02(c) of the Common Terms Agreement, and (II) for any Senior Bonds (other than the Series 2022A Bonds), to the respective Principal Payment Sub-Accounts and Interest Payment Sub-Accounts of the Senior Obligations Payment Account for application in accordance with the Indenture and the Common Terms Agreement, as applicable, and (III) ~~for the Secured Hedge Agreements to each Hedge Provider for payment of Ordinary Course Payment and Hedge Termination Payments in accordance with the Secured Hedge Agreements for any other Additional Senior Obligations, to the respective Principal Payment Sub-Accounts and Interest Payment Sub-Accounts of the Senior Obligations Payment Account for application in accordance with the Senior Financing Documents related to such Additional Senior Obligation~~ and (B) if no Senior Obligations are Outstanding, to the respective Principal Payment Sub-Accounts and Interest Payment Sub-Accounts of the Subordinate Obligations Payment Account for application in accordance with the Financing Documents.”

(c) “*Senior Loan Prepayments.* The following amounts shall be deposited in the Extraordinary Receipts Account (or an applicable Sub-Account thereof) and thereafter transferred by the Securities Intermediary (without the requirement of a Funds Transfer Certificate) (but, with respect to Sections 5.15(c)(i),(ii),(iii) (solely with respect to Borrower Lease Termination Proceeds) and (vi) only to the extent allocated pursuant to Sections 5.15(a), (b) and (d), as applicable) pro rata, in accordance with Section 2.02(b) and (c) of the Common Terms Agreement, among the Senior Loans, the Series 2022A Bonds, and the Permitted Hedge Agreements, to (I) (x) the Administrative Agent and (y) to the 2022A Tax-Exempt Bond Principal Payment Sub-Account and 2022A Tax Exempt Bond Interest Payment Sub-Account of the Senior Obligations Payment Account, respectively, and (II) the Permitted Hedge Providers and Hedge Providers, in each case, for application in accordance with the Indenture, the Common Terms Agreement, and the Credit Agreement, promptly upon receipt to effectuate any prepayment of any Senior Loans, the redemption of the Series 2022A Bonds, and payment of any amounts required to be paid under the Permitted Hedge Agreements:”

**Section 3.09 Addition of Sub-Section 5.15(d).** The following new sub-section (d) is added to Section 5.15 of the Original CAAA for Disposition Proceeds as follows:

“(d) *Dispositions*. If any Senior Bank Obligations are Outstanding, promptly upon receipt by the Borrower of any Net Cash Proceeds from any Disposition permitted under Section 6.04 of the Common Terms Agreement with a fair market value in excess of \$5,000,000 which are not otherwise applied towards replacement of assets in accordance with Section 6.04 of the Common Terms Agreement (“Disposition Proceeds”), the Borrower shall deposit or cause to be deposited such Disposition Proceeds in the Extraordinary Receipts Account (or an applicable Sub-Account thereof) and thereafter the Securities Intermediary (without the requirement of a Funds Transfer Certificate) shall transfer such Disposition Proceeds *pro rata* (based on the outstanding principal amounts of the Senior Loans and the Senior Bonds as certified to the Securities Intermediary by the Intercreditor Agent), (I) with respect to the Loan Facility and the Secured Hedge Agreements, to the Administrative Agent, the Trustee or Hedge Providers, as applicable, pursuant to Section 5.15(c)(iii), for application in accordance with the Credit Agreement, the Indenture, the Secured Hedge Agreements and the Common Terms Agreement, in furtherance of Section 2.02(c) of the Common Terms Agreement, (II) for any Senior Bonds (other than the Series 2022 Bonds), to the respective Principal Payment Sub-Accounts and Interest Payment Sub-Accounts of the Senior Obligations Payment Account for application in accordance with the Indenture and the Common Terms Agreement, as applicable, and (III) for any other Additional Senior Obligations, to the respective Principal Payment Sub-Accounts and Interest Payment Sub-Accounts of the Senior Obligations Payment Account for application in accordance with the Senior Financing Documents related to such Additional Senior Obligation.”

**Section 3.10 Amendment to Sections 5.17(a) and (c)**. Sections 5.17(a) and (c) of the Original CAAA, are hereby amended to add the double underlined text and to delete the strikethrough text as follows:

“(a) *Remaining Revenue Account*. On each Transfer Date the Securities Intermediary will cause amounts in the Post-Substantial Completion Revenue Account, to the extent available, to be deposited in the Remaining Revenue Account in accordance with Section 5.03(b)(12). Proceeds of the Remaining Revenue Account shall, ~~until~~:

(i) Be applied pursuant to Section 5.17(c) or, if the Surplus RRA Transfer Conditions are met, be transferred to the Surplus Remaining Revenue Account pursuant to Section 5.17(e); and

(ii) Until applied pursuant to Section 5.17(a)(i), be used applied, *pro rata* with funds available in the Surplus Remaining Revenue Account (provided, however, that if either such account is not sufficiently funded to permit such transfer to occur on a *pro rata* basis, then such application shall occur on a *pro rata* basis to the extent possible and otherwise by applying additional funds from whichever of such accounts has additional funds available), to make payments to:

A. Fund a shortfall in the Post-Substantial Completion Revenue Account, in accordance with Section 5.03(d);

B. to make payments to Any Interest Payment Sub-Account, in accordance with Section 5.06(e); or

C. The Hedge Ordinary Course Payment Sub-Account, in accordance with Section 5.06(e) or Section 5.10(e), as applicable.”

“(c) *Transfers from the Remaining Revenue Account.* On each Quarterly Distribution Date, (x) so long as the Restricted Payment Conditions are satisfied as of such Quarterly Distribution Date, or (y) from and after the 10 Year Cash Sweep Date, only for payments pursuant to Sections 5.17(c)(i), if any, and 5.17(c)(ii)(B), without satisfaction of the Restricted Payment Conditions if approved in writing by the Port Authority prior to such Quarterly Distribution Date (and the Borrower will use commercially reasonable efforts to obtain such approval from the Port Authority at the time such approval is needed; provided, that, notwithstanding any provision of the Senior Financing Documents to the contrary, with respect to any provision of the Senior Financing Documents requiring the approval or consent of the Port Authority, the Parties acknowledge and agree that the Port Authority may grant, withhold or condition its approval or consent in its sole and absolute discretion), the Securities Intermediary shall transfer amounts held in the Remaining Revenue Account (other than reasonable reserve amounts, as determined by the Borrower and approved by the Port Authority) as follows:

(i) *First,* to the Port Authority, in the amount certified in such Distribution Account Certificate as the amounts of Excess Value Rent and Equity Gain Share, if any, payable to the Port Authority; provided, that such payments shall be made *pro rata* from the Remaining Revenue Account and the Surplus Remaining Revenue Account, if applicable, on such Quarterly Distribution Date (provided, however, that if either such account is not sufficiently funded to permit such transfer to occur on a *pro rata* basis, then such transfer shall occur on a *pro rata* basis to the extent possible and otherwise by transferring additional funds from whichever of such accounts has additional funds available);

(ii) *Second, (A)* so long as the Senior Bank Obligations remain outstanding, to the Extraordinary Receipts Account for *pro rata* application toward a mandatory prepayment of the Senior Loans, mandatory redemption of the Series 2022A Bonds, and payment of any amounts required to be paid under the Permitted Hedge Agreement, in each case, in accordance with Section 5.15(c)(vii) herein and Section 2.02(a)(vii) of the Common Terms Agreement, in an amount equal to 50% (if such Quarterly Distribution Date occurs prior to the first anniversary of the Substantial Completion Date) or 75% (if such Quarterly Distribution Date occurs on or after the first anniversary of the Substantial Completion Date) of the funds remaining on deposit in the Remaining Revenue Account after giving effect to the transfer described in clause (i) above and (B) from and

after the 10-Year Cash Sweep Date, to the 2024A Tax-Exempt Bond Interest Payment Sub-Account and the 2024A Tax-Exempt Bond Principal Payment Sub-Account for the mandatory optional redemption of Series 2024A Balloon Indebtedness in the amounts required pursuant to Section 2.12 of the Second Supplemental Indenture; provided, that such payments shall be made *pro rata* from the Remaining Revenue Account and the Surplus Remaining Revenue Account, if applicable (provided, however, that if either such account is not sufficiently funded to permit such transfer to occur on a *pro rata* basis, then such transfer shall occur on a *pro rata* basis to the extent possible and otherwise by transferring additional funds from whichever of such accounts has additional funds available); and;

(iii) *Third*, to the Distribution Account, in an amount equal to 100% of the funds remaining on deposit in the Remaining Revenue Account after giving effect to the transfers described in clauses (i) and (ii) above.”

**Section 3.11 Amendment to Sections 5.17(d)(i), (ii), (iii), (iv) and (ix).** Sections 5.17(d)(i), (ii), (iii), (iv) and (ix) of the Original CAAA, are hereby amended to add the double underlined text as follows:

“(i) on the Transfer Date immediately preceding the Quarterly Distribution Date on which the Borrower requests that funds be transferred from the Remaining Revenue Account pursuant to Section 5.17(c) or the Surplus Remaining Revenue Account pursuant to Section 5.17(f)(ii) (after giving effect to all transfers and deposits required to be made hereunder on such Transfer Date), the Operating Account, the Senior Obligations Payment Accounts, the Hedge Ordinary Course Payment Account, the Hedge Termination Payment Account, the Debt Service Reserve Accounts, O&M Reserve Account, Major Maintenance Reserve Account, the Ramp-Up Reserve Account and the Handback Reserve Account shall be fully funded to their respective required levels as of such Transfer Date;”

“(ii) on the Transfer Date immediately preceding the Quarterly Distribution Date on which the Borrower requests that funds be transferred from the Remaining Revenue Account pursuant to Section 5.17(c) or the Surplus Remaining Revenue Account pursuant to Section 5.17(f)(ii) (after giving effect to all transfers and deposits required to be made hereunder on such Transfer Date), no Deferred Concessions Revenue Rent is accrued and unpaid;”

“(iii) for the DSCR Calculation Period ending on the immediately preceding Calculation Date, the Senior Debt Service Coverage Ratio is not less than (x) during the Ramp-Up Period, 1.30:1.00, and (y) on and after the Ramp-Up End Date, 1.20:1.00, and the Total Debt Service Coverage Ratio is not less than (x) during the Ramp-Up

Period, 1.25:1.00, and (y) on and after the Ramp-Up End Date, 1.15:1.00; provided, however, that, subject to the Borrower making an election pursuant to Section 5.17(d)(ix) below, the amount of DSCR Debt Service used to calculate the Senior Debt Service Coverage Ratio and Total Debt Service Coverage Ratio for purposes of this Section 5.17(d)(iii) shall include amounts paid with Equity Contributions;”

“(iv) for the DSCR Calculation Period commencing on the immediately preceding Calculation Date, the projected Senior Debt Service Coverage Ratio is not less than (x) during the Ramp-Up Period, 1.30:1.00, and (y) on and after the Ramp-Up End Date, 1.20:1.00, and the projected Total Debt Service Coverage Ratio is not less than (x) during the Ramp-Up Period, 1.25:1.00, and (y) on and after the Ramp-Up End Date, 1.15:1.00; provided, however, that, subject to the Borrower making an election pursuant to Section 5.17(d)(ix) below, the amount of DSCR Debt Service used to calculate the Senior Debt Service Coverage Ratio and Total Debt Service Coverage Ratio for purposes of this Section 5.17(d)(iv) shall include amounts paid or expected to be paid with Equity Contributions;”

“(ix) not later than the third (3rd) Business Day prior to the Quarterly Distribution Date on which the Borrower requests that funds be transferred from the Remaining Revenue Account pursuant to Section 5.17(c) or the Surplus Remaining Revenue Account pursuant to Section 5.17(f)(ii), the Borrower shall have delivered to the Securities Intermediary and the Collateral Agents a Distribution Account Certificate, signed by a Responsible Officer of the Borrower, substantially in the form of Exhibit F, representing that the Restricted Payment Conditions were satisfied on the Calculation Date immediately preceding such Quarterly Distribution Date (provided that, notwithstanding clause (iii) in the definition of DSCR Debt Service, in determining the amount of DSCR Debt Service for purposes of calculating the Senior Debt Service Coverage Ratio and Total Debt Service Coverage Ratio for purposes of determining satisfaction of the Restricted Payment Conditions contained in Section 5.17(d)(iii) and (iv) above amounts paid from or expected to be paid from (as applicable) Equity Contributions shall not be subtracted from Aggregate Debt Service unless the Borrower has elected to make such subtraction in such Distribution Account Certificate and, provided, further that the Borrower may not make such election (A) with respect to more than four (4) consecutive Calculation Dates immediately preceding such Quarterly Distribution Date or (B) more than ten (10) times in total), and certifying the amount of Excess Value Rent, if any, payable to the Port Authority on such date; and”

**Section 3.12 Addition of Sub-Sections 5.17(e) and (f).** The following new sub-sections (e) and (f) are added to Section 5.17 of the Original CAAA regarding the Surplus Remaining Revenue Account as follows:

“(e) *Surplus Remaining Revenue Account.* The Borrower shall instruct the Senior Collateral Agent to establish and create, pursuant to Section 5.01(b) the Surplus Remaining Revenue Account (the “Surplus Remaining Revenue Account”), as a sub-account within the Remaining Revenue Account, and which shall be deemed a Project Account for purposes of Section 5.01, on and not earlier than the first Quarterly Distribution Date on which all the following conditions occur (collectively, the “Surplus RRA Transfer Conditions”):

(i) Amounts would have been transferred to the 2024A Tax-Exempt Bond Interest Payment Sub-Account and the 2024A Tax-Exempt Bond Principal Payment Sub-Account pursuant to the provisions of Section 5.17(c)(ii)(B) except only for the fact that neither of the conditions to make a transfer from the Remaining Revenue Account pursuant to Section 5.17(c)(x) or (y) was met and without regard as to whether Section 2.12(b) of the Second Supplemental Indenture conditioned any such transfer on such conditions in Section 5.17(c)(x) or (y) being met; and

(ii) Following any transfers from the Remaining Revenue Account pursuant to Section 5.17(a)(ii), the balance of the Remaining Revenue Account is greater than \$0.

The Surplus Remaining Revenue Account shall be maintained by the Securities Intermediary as a Project Account in the name of the Borrower. The Surplus Remaining Revenue Account shall constitute Segregated Collateral only for the benefit of the Holders of the Series 2024A Balloon Indebtedness and the Bond Insurer (solely as an Owner of Series 2024 Bonds and with respect to any subrogated claim with respect to Series 2024 Bonds). The Surplus Remaining Revenue Account shall be subject to a Security Interest pledged to the Trustee only for the benefit of the Holders of the Series 2024A Balloon Indebtedness and the Bond Insurer (solely as an Owner of Series 2024 Bonds and with respect to any subrogated claim with respect to Series 2024 Bonds). On and after the date on which the Surplus Remaining Revenue Account has been established, on each Quarterly Distribution Date that the Surplus RRA Transfer Conditions are met, the Securities Intermediary shall transfer from the Remaining Revenue Account to the Surplus Remaining Revenue Account pursuant to Section 5.17(a) the amounts that would have been payable pursuant to Section 5.17(c)(ii)(B) but for failure of either of the conditions to make a transfer from the Remaining Revenue Account pursuant to Section 5.17(c)(x) or (y) to be met, without regard as to whether Section 2.12(b) of the Second Supplemental Indenture conditioned any such transfer on such conditions in Section 5.17(c)(x) or (y) being met. Notwithstanding anything to the contrary herein or in any other Financing Document, no transfer to the Surplus Remaining Revenue Account shall be made prior to the 10-Year Cash Sweep Date.”

“(f) *Transfers from the Surplus Remaining Revenue Account.* Proceeds of the Surplus Remaining Revenue Account shall be applied as follows:



(i) Until applied pursuant to Section 5.17(f)(ii), *pro rata* with funds available in the Remaining Revenue Account (provided, however, that if either such account is not sufficiently funded to permit such transfer to occur on a *pro rata* basis, then such transfer shall occur on a *pro rata* basis to the extent possible and otherwise by transferring additional funds from whichever of such accounts has additional funds available), to make payments to:

- A. Fund a shortfall in the Post-Substantial Completion Revenue Account, in accordance with Section 5.03(d);
- B. Any Interest Payment Sub-Account, in accordance with Section 5.06(e); or
- C. The Hedge Ordinary Course Payment Sub-Account, in accordance with Section 5.10(e).

(ii) From and after the 10-Year Cash Sweep Date, on each Quarterly Distribution Date, (x) so long as the Restricted Payment Conditions are satisfied as of such Quarterly Distribution Date, or (y) only for payments pursuant to Sections 5.17(f)(ii)(A), if any, and 5.17(f)(ii)(B), without satisfaction of the Restricted Payment Conditions if approved in writing by the Port Authority prior to such Quarterly Distribution Date (and the Borrower will use commercially reasonable efforts to obtain such approval from the Port Authority at the time such approval is needed; provided, that, notwithstanding any provision of the Senior Financing Documents to the contrary, with respect to any provision of the Senior Financing Documents requiring the approval or consent of the Port Authority, the Parties acknowledge and agree that the Port Authority may grant, withhold or condition its approval or consent in its sole and absolute discretion), the Securities Intermediary shall transfer amounts held in the Surplus Remaining Revenue Account (other than reasonable reserve amounts, as determined by the Borrower and approved by the Port Authority) as follows:

- A. *First*, to the Port Authority, in the amount certified in such Distribution Account Certificate as the amounts of Excess Value Rent and Equity Gain Share, if any, payable to the Port Authority; provided, that such payments shall be made *pro rata* from the Remaining Revenue Account and the Surplus Remaining Revenue Account on such Quarterly Distribution Date (provided, however, that if either such account is not sufficiently funded to permit such transfer to occur on a *pro rata* basis, then such transfer shall occur on a *pro rata* basis to the extent possible and otherwise by transferring additional funds from whichever of such accounts has additional funds available);
- B. *Second*, to the 2024A Tax-Exempt Bond Interest Payment Sub-Account and the 2024A Tax-Exempt Bond Principal Payment Sub-Account for the mandatory optional redemption of Series 2024A Balloon Indebtedness in the amounts required pursuant to Section 2.12 of the Second Supplemental Indenture; provided, that such payments shall be made *pro rata* from the Remaining Revenue Account and the Surplus Remaining Revenue Account (provided, however, that if either such account is not sufficiently funded to permit such transfer to occur on a *pro rata* basis, then such transfer shall occur on a *pro rata* basis to the extent possible and otherwise by transferring additional funds from whichever of such accounts has additional funds available); and
- C. *Third*, to the Distribution Account, in an amount equal to 100% of the funds remaining on deposit in the Surplus Remaining Revenue Account after giving effect to the transfers described in clauses (A) and (B) above.

(iii) Following the taking of an Enforcement Action, moneys in the Surplus Remaining Revenue Account shall be applied in the manner set forth in Section 6.06(a).”

**Section 3.13 Amendment to Section 6.06(a).** Section 6.06(a) of the Original CAAA, is hereby amended to delete the strikethrough text as follows:

“(a) After the taking of an Enforcement Action, all Proceeds received by a Collateral Agent derived from any Segregated Collateral as set forth ~~in clauses (i), (ii) and (iii)~~ below pursuant to the exercise of any rights or remedies accorded to the Collateral Agents pursuant to, or by the operation of any of the terms of, the Intercreditor Agreement and any of the Security Documents shall be applied as follows:”

**Section 3.14 Addition of Sub-Sections 6.06(a)(iv) and (v).** Section 6.06(a) of the Original CAAA, is hereby amended to insert new sub-sections (iv) for application of Proceeds from the

Segregated Policy Payment Account and (v) for application of amounts available in the Surplus Remaining Revenue Account, as follows:

“(iv) All Proceeds required to be deposited in any Segregated Policy Payment Account, shall be transferred to the Trustee to be paid to the Owners of the Insured Series 2024 Bonds, the Owners of the Additional Insured Bonds or the applicable Bond Insurer, as applicable, in accordance with the Supplemental Indenture establishing such Segregated Policy Payment Account.

(v) From and after the 10-Year Cash Sweep Date, all amounts on deposit in, and all Proceeds attributable to, the Surplus Remaining Revenue Account, shall be transferred to the Trustee for redemption of the Series 2024A Balloon Indebtedness pursuant to Section 2.07(c)(iii) of the Second Supplemental Indenture. From and after the 10-Year Cash Sweep Date, after the taking of an Enforcement Action, amounts held in the Surplus Remaining Revenue Account shall only be invested as specified by Bond Counsel and subject to the receipt of a Favorable Opinion of Bond Counsel delivered to the Senior Collateral Agent and the Trustee. If Bond Counsel notifies the Senior Collateral Agent and the Trustee that it will not deliver any such Favorable Opinion of Bond Counsel, or does not respond to a request for such opinion within 20 Business Days, all amounts in the Surplus Remaining Revenue Account shall be invested in demand deposit State and Local Government Series securities.”

**Section 3.15 Amendment to Section 6.06(b)(i)(A).** Section 6.06(b)(i)(A) of the Original CAAA, is hereby amended to add the double underlined text as follows:

“(A) *First*, to the *pro rata* payment of the unpaid fees, administrative costs, expenses and indemnities due and payable to the Senior Secured Parties under the Financing Documents, if any, including, any Bond Insurer Premiums then due and payable under the Financing Documents as set forth on the Bond Insurer Premium Schedule, and any costs and expenses then due and payable to the Bond Insurer under the Financing Documents (but not any other Bond Insurer Reimbursement Amounts);”

**Section 3.16 Amendment to Section 7.02.** The following language in Section 7.02 of the Original CAAA:

“**Section 7.02 Borrower Indemnification.** The Borrower shall indemnify each Collateral Agent, the Deposit Account Bank, the Securities Intermediary, the Intercreditor Agent and any Co-Collateral Agent, and each of their respective officers, directors, employees, agents and attorneys-in-fact (each such Person being called an “Indemnitee”)”

is hereby amended and restated in its entirety with the following language:

“**Section 7.02 Borrower Indemnification.** The Borrower shall indemnify each of the Senior Collateral Agent, the Subordinate Collateral Agent, the Deposit Account Bank, the Securities Intermediary, the Intercreditor Agent, the Bond Insurer, and any

Co-Collateral Agent, and each of their respective officers, directors, employees, agents and attorneys-in-fact (each such Person being called an “Indemnitee”)

**Section 3.17 Amendment to Section 10.05.** Section 10.05 of the Original CAAA, is hereby amended to add the double underlined text and to delete the strikethrough text as follows:

**“Project Accounts.** The Borrower shall establish and maintain each account or sub-account, including the Project Accounts and the Operating Account and other accounts and sub-accounts required from time to time by the Lease Agreement and the Financing Documents to be maintained by the Borrower and the Borrower shall not maintain or permit to be maintained any accounts other than (x) the LOC Collateral Account (as defined in the Bank Consent identified in clause (i) of the definition thereof) and (y) after the Discharge of Senior Bank Obligations, other bank accounts (“LC Cash Collateral Accounts”) holding cash collateral for the purpose of securing letters of credit and reimbursement obligations with respect thereto that constitute Permitted Indebtedness and as otherwise permitted and contemplated in this Agreement, and the other Financing Documents, or the Lease Agreement or any Bank Consent and other consents or waivers (if any) from the applicable Required Secured Parties to the Financing Documents (but only to the extent permitted in such Bank Consent, or other consents or waivers and only for so long as such Bank Consent, or other consents or waivers remain in full force and effect).”

**Section 3.18 Amendment to Section 10.13.** Section 10.13 of the Original CAAA, is hereby amended to add the double underlined text and to delete the strikethrough text as follows:

**“Eligible Investments.** The Borrower shall not make or direct the Agents to make any investments other than Eligible Investments or investments permitted pursuant to a Bank Consent and other consents or waivers (if any) from the applicable Required Secured Parties pursuant to the Financing Documents (but only to the extent permitted in such Bank Consent or other consents or waivers and only for so long as such Bank Consents or other consents or waivers remain in full force and effect); provided, that amounts on deposit in LC Cash Collateral Accounts may be invested as agreed between the Borrower and the relevant issuer of the applicable letter of credit. ~~and~~ Under no circumstances shall the Agents be required to make a determination as to whether an investment is an Eligible Investment.”

**Section 3.19 Amendment to Section 10.18.** Section 10.18 of the Original CAAA, is hereby amended to add the double underlined text as follows:

**“Transfer and Deposit of Funds.** The Borrower shall not permit any transfer of funds out of the Remaining Revenue Account or the Surplus Remaining Revenue Account unless specifically permitted under this Agreement. In addition, the Borrower shall deposit Disputed Payment Amounts with respect to payments of airline rates and charges in an escrow account established for the purpose of holding disputed amounts under this Agreement in accordance with Section 5.30.”

**Section 3.20 Amendment to Section 10.27(a)(iii).** Section 10.27(a)(iii) of the Original CAAA, is hereby amended to add the double underlined text and to delete the strikethrough text as follows:

“(iii) the Rating Agencies then rating the then Outstanding Senior Obligations affirm (A) that such then Outstanding Senior Obligations will maintain ~~an investment grade~~ a rating of BBB, Baa2 or its equivalent or higher, from at least two Rating Agencies each Rating Agency, but in any event not less than two Rating Agencies, which provided a rating of such then Outstanding Senior Obligations after giving pro forma effect to the incurrence of such Additional Senior Obligations, or (B) that the ratings on the then Outstanding Senior Obligations, after giving pro forma effect to the incurrence of such Additional Senior Obligations, will not be lowered as a result of the incurrence of the Additional Senior Obligations, in either case without giving effect to any Bond Insurance Policy then in effect; and”

**Section 3.21 Amendment to Article XI.** Article XI of the Original CAAA, is hereby amended to add a new Section 11.06 regarding the *pro-rata* loaning of Building Loans and Project Loans by Class:

“**Section 11.06 Pro-Rata Building/Project Loans.** The Issuer shall loan to the Borrower the principal amount of any Senior Obligations to be loaned or committed to the Borrower under the TDC Building Loan Agreement and the TDC Project Loan Agreement, such that the principal amount of the Senior Bank Obligations loaned or committed to the Borrower from the Senior Secured Parties represented by the Administrative Agent under the Intercreditor Agreement (collectively, the “CTA Obligations”), the principal amount loaned or committed to the Borrower from Senior Secured Parties represented by the Trustee under the Intercreditor Agreement (collectively, the “Indenture Obligations”) and the principal amount loaned or committed to the Borrower from any Additional Senior Creditors that become subject to the Intercreditor Agreement pursuant to an Accession Agreement and are identified therein as a Class (for each Class, an “Additional Class Obligation”) shall be allocated *pro rata* (based on the Outstanding principal amounts of the CTA Obligations, the Indenture Obligations and each of the Additional Class Obligations on the date of any loan) as Building Loans under the TDC Building Loan Agreement and as Project Loans under the TDC Project Loan Agreement. Upon a Refinancing of any Building Loan or Project Loan, the principal amount of such Building Loans and Project Loans shall be reallocated such that the principal amount of all Outstanding Building Loans and Outstanding Project Loans shall be *pro rata* between CTA Obligations, Indenture Obligations and each Additional Class Obligation.”

**Section 3.22 Amendment to Section 12.02(a).** Section 12.02(a) of the Original CAAA, is hereby amended to add the double underlined text and to delete the strikethrough text as follows:

“(a) Any term, covenant, agreement or condition of this Agreement or any of the Security Documents may be amended or waived only by an instrument in writing signed by each Collateral Agent (acting upon the instruction of the Intercreditor Agent), the Intercreditor Agent and the Borrower; provided, that (i) no such amendment or waiver shall violate any restriction or other provision of the Indenture, the Common Terms Agreement or any other Financing Documents, ~~and~~ (ii) the consent of the Securities Intermediary shall be required for any amendment to Section 5.24 or any other amendment that would modify the rights or obligations of the Securities Intermediary, and (iii) no amendment, waiver supplement, modification or waiver hereof, hereto or hereunder requiring the consent of the Bond Insurer pursuant to Section 12.02(d) shall be effective unless the Bond Insurer’s consent thereto has been obtained. Further, the Port Authority shall be a third party beneficiary of the following provisions hereof (and related defined terms), which shall not be amended or modified without the prior written consent of the Port Authority: (i) Sections 5.02(b), 5.02(c), 5.03(a), 5.03(b), 5.04(o), 5.05, 5.13(c), 5.14(e), 5.18, or 5.19, or (ii) any other section to the extent (A) conferring on the Port Authority the right to receive notices or copies of certificates and/or the right to provide written instructions to the Collateral Agents, as applicable, and/or (B) inconsistent with or in conflict with any term of the Lease Agreement.”

**Section 3.23 Amendment to Section 12.02.** Section 12.02 of the Original CAAA, is hereby amended to add the following new sub-section (d) at the end thereof:

“(d) To the extent that this Agreement or any other Senior Financing Document to which the Bond Insurer is not a party, confers upon, gives or grants to the Bond Insurer, itself and not as a Senior Secured Party represented by the Trustee pursuant to the Second Supplemental Indenture or the applicable Supplemental Indenture related to such Senior Bond Insurer Obligations, any right, remedy or claim hereunder or thereunder, the Bond Insurer, in its capacity as such, is intended to be and is hereby explicitly recognized as being a third-party beneficiary of such right, remedy or claim and may exercise all legal rights and remedies in connection herewith and therewith; provided, that any exercise of any right, remedy or claim by the Bond Insurer with respect to the Senior Bond Insurer Obligations (including seeking foreclosure or proceeding against the Senior Collateral) shall be done through the Trustee as the Bond Insurer’s Secured Debt Representative in accordance with the provisions of the Intercreditor Agreement, the Second Supplemental Indenture or the applicable Supplemental Indenture related to such Senior Bond Insurer Obligations, and the other Financing Documents. The Bond Insurer is intended to be and is hereby explicitly recognized as being a third-party beneficiary with respect to Sections 2.4, 3.3(a)(viii), 3.5(a), 4.4(b), 5.4 and 8.3(b)(vi) of the Intercreditor Agreement. For all purposes of this Agreement, “Additional Senior Creditor”, “Secured Parties” and “Senior Secured Parties” shall include the Bond Insurer (but only with respect to the Senior Bond Insurer Obligations), and “Additional Senior Obligations” “Senior Obligations” “Senior Secured Debt” and “Senior Bond Obligations” shall each include the Senior Bond Insurer Obligations. Any amendment, supplement, modification to or waiver of Sections 5.02(b), 5.03(b), 5.03(d), 5.06(e), 5.10(e), 5.17(a), 5.17(c), 5.17(d)(i),(ii),(iii),(iv) or (ix), 5.17(e), 5.17(f), 6.06(a)(iv) and (v), 6.06(b), 7.02, 12.02 and 12.03(a) and definitions related to the Senior Bond Insurer

Obligations (including the definitions of “5 Year Cash Sweep Date”, “10 Year Cash Sweep Date”, “Loan Life Coverage Ratio”, “Remaining Revenue Account Limit”, “Series 2024A Balloon Indebtedness”, “Surplus Remaining Revenue Account”, “Surplus RRA Transfer Conditions” and those definitions specifically listed in this Section 12.02(d)), in each case, that would reasonably be expected to materially adversely affect the rights and interests of the Bond Insurer or the security interest created for the benefit of the Insured Bonds, shall be subject to the prior written consent of the Bond Insurer; provided, that any amendment, supplement, modification or waiver related to the incurrence of Additional Obligations by the Borrower pursuant to Section 10.27 hereof shall not be deemed to materially adversely affect the rights and interests of the Bond Insurer and shall not be subject to the prior written consent of the Bond Insurer under this Agreement, so long as any such Additional Obligations have no greater priority to payment than the existing Senior Obligations pursuant to Section 5.02, Section 5.03 or Section 6.06. Without limiting the foregoing, in determining whether any amendment, supplement, modification, or waiver under this Agreement would reasonably be expected to have a materially adverse effect on the rights and interests of the Bond Insurer or the security for the Insured Bonds, the Senior Collateral Agent shall act upon the reasonable direction of the applicable Bond Insurer. In the event that in connection with the issuance of Additional Insured Bonds, any Bond Insurer of such Additional Insured Bonds obtains terms under the Financing Documents (other than the Bond Insurer Premium amount) that are more favorable than those under the Financing Documents applicable to the Series 2024 Bond Insurer, such terms under the Financing Documents applicable to the Series 2024 Bond Insurer shall be revised at the time of the issuance of such Additional Insured Bonds so that they are as, but no more, favorable than the terms obtained by the Bond Insurers of such Additional Insured Bonds.”

**Section 3.24 Amendment to Section 12.03(a).** Section 12.03(a) of the Original CAAA, is hereby amended to add the double underlined text as follows:

“(a) Except for the third party beneficiary rights expressly conferred upon the Port Authority under Section 12.02(a) hereof, and expressly conferred upon the Bond Insurer under Section 12.02(d) hereof, this Agreement and the other Security Documents shall be binding upon, and inure, solely to the benefit of the Collateral Agents, the Securities Intermediary, the Deposit Account Bank, the Borrower, the Secured Parties and their respective successors and permitted assigns and, subject to Section 6.04 hereof, each Secured Party shall be an express third party beneficiary of this Agreement.”

**Section 3.25 Amendment to Section 12.04.** Section 12.04 of the Original CAAA, is hereby amended to insert new item (x) for notices to Bond Insurer as follows:

“(x) if to the Bond Insurer:  
Assured Guaranty Inc.

\_\_\_\_\_

Attention: \_\_\_\_\_

Telephone: \_\_\_\_\_

In each case in which the notice or other communication refers to a claim on the Bond Insurance Policy or an Event of Default, such notice or other communication shall be marked “URGENT MATERIAL ENCLOSED” and a copy shall also be sent to the attention of the General Counsel of the Bond Insurer at the above address and at  
”

**Section 3.26 Amendment to Definitions.** Exhibit A to the Collateral Agency and Accounts Agreement (Definitions and Rules of Interpretation) is hereby amended and restated in its entirety with Exhibit A attached to this First CAAA Amendment.

**Section 3.27 Amendment to Schedule of Accounts.** Exhibit B to the Collateral Agency and Accounts Agreement (Schedule of Accounts) is hereby amended and restated in its entirety with Exhibit B attached to this First CAAA Amendment.

**Section 3.28 Amendment to Form of Funds Transfer Certificate (through Phase 2 End of Funding Date).** Exhibit D-1 to the Collateral Agency and Accounts Agreement (Form of Funds Transfer Certificate (through Phase 2 End of Funding Date)) is hereby amended and restated in its entirety with Exhibit D-1 attached to this First CAAA Amendment.

**Section 3.29 Amendment to Form of Funds Transfer Certificate (after Phase 2 End of Funding Date).** Exhibit D-2 to the Collateral Agency and Accounts Agreement (Form of Funds Transfer Certificate (after Phase 2 End of Funding Date)) is hereby amended and restated in its entirety with Exhibit D-2 attached to this First CAAA Amendment.

**Section 3.30 Amendment to Construction Account Withdrawal Certificate.** Exhibit E to the Collateral Agency and Accounts Agreement (Construction Account Withdrawal Certificate) is hereby amended and restated in its entirety with Exhibit E attached to this First CAAA Amendment.

**Section 3.31 Amendment to Restricted Payment Conditions Satisfaction Transfer Certificate.** Exhibit F to the Collateral Agency and Accounts Agreement (Restricted Payment Conditions Satisfaction Transfer Certificate) is hereby amended and restated in its entirety with Exhibit F attached to this First CAAA Amendment.

**Section 3.32 Waiver of Informational Right.** Notwithstanding anything in this Agreement or any Financing Document to the contrary, each Secured Debt Representative, both for itself and on behalf of the Class such Secured Debt Representative represents and each other Secured Party party hereto (a) acknowledges and agrees that an unredacted copy of the Bond Insurer Premium Schedule has been delivered to each of the Trustee, the Borrower and the Senior Collateral Agent and (b) waives any right to request a copy of or view such unredacted copy.

**Section 3.33 Other Provisions Unchanged; Conflict.** Except as specifically set forth herein, all terms and conditions of the Original CAAA and the other Senior Financing Documents shall remain unchanged and in full force and effect. In the event that there exists a conflict between any term, condition, or provision contained within this First CAAA Amendment, and in any term, condition, or provision contained within the Original CAAA, the term, condition, or provision contained within this First CAAA Amendment shall control.



**Article IV.**  
**REPRESENTATIONS AND WARRANTIES**

**Section 4.01 No Default or Event of Default.** No Default or Event of Default has occurred and is continuing or would result from the execution and delivery of this First CAAA Amendment or the consummation of the transactions contemplated hereby.

**Section 4.02 Representations and Warranties.** The representations and warranties of the Borrower, contained in each Financing Document to which such Person is a party are true and correct in all material respects (or, in the case of any such representations and warranties qualified as to materiality or Material Adverse Effect, in all respects) on and as of the Series 2024 Closing Date (except where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects (or, in the case of any such representations and warranties qualified as to materiality or Material Adverse Effect, in all respects) as of such earlier date).

**Section 4.03 Authorization; No Contravention.** The execution and delivery by the Borrower of this First CAAA Amendment and the performance of the Collateral Agency and Accounts Agreement has been duly authorized by all necessary limited liability action on the part of the Borrower and will not (a) contravene, conflict with, result in any breach of or constitute a default (i) under the Organizational Documents of the Borrower, or (ii) in any material respect, under any indenture, mortgage, deed of trust, loan, purchase or credit agreement, lease, limited liability agreement or any other agreement or instrument to which the Borrower is a party or by which the Borrower or any of its properties may be bound or affected, (b) contravene, conflict with or violate any order, judgment, decree or ruling of any court, arbitrator or Governmental Authority applicable to the Borrower or any statute or other rule or regulation of any Governmental Authority applicable to the Borrower in any material respect, (c) contravene, conflict with, result in any breach of or constitute a default under the Lease Agreement, or (d) result in the creation of any Lien (except for Permitted Liens) in respect of any property of the Borrower.

**Section 4.04 Enforceability.** This First CAAA Amendment (a) has been duly executed and delivered by the Borrower and (b) when executed and delivered by each of the other parties hereto will be the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**Article V.**  
**MISCELLANEOUS**

**Section 5.01 Applicable Law; Waiver of Jury Trial.** THE EFFECT AND MEANING OF THIS FIRST CAAA AMENDMENT AND THE RIGHTS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED ACCORDING TO, THE LAWS OF THE STATE, WITHOUT GIVING EFFECT TO THE PRINCIPLES OF CONFLICTS OF LAWS THEREOF. EACH OF THE ISSUER AND THE BORROWER HEREBY IRREVOCABLY

WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS FIRST CAAA AMENDMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**Section 5.02 Counterparts; Electronic Execution.** This First CAAA Amendment may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this First CAAA Amendment by signing any such counterpart. Delivery of an executed signature page to this First CAAA Amendment by electronic transmission shall be as effective as delivery of a manually signed counterpart of this First CAAA Amendment. Each party hereto acknowledges and agrees that they may execute this First CAAA Amendment, and any variation or amendment hereto, using Electronic Signatures. Such Electronic Signatures are intended to authenticate this writing and to have the same force and effect as handwritten signatures.

**Section 5.03 Severability.** Whenever possible, each provision of this First CAAA Amendment shall be interpreted in such a manner as to be effective and valid under applicable Law, but if any provision of this First CAAA Amendment shall be prohibited by or invalid under applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this First CAAA Amendment.

**Section 5.04 Complete Agreement.** This First CAAA Amendment, together with the Original CAAA and the other Financing Documents, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

**Section 5.05 Reference to and Effect on the Senior Financing Documents.**

- (a) This First CAAA Amendment is hereby designated a Senior Financing Document and (solely to the extent that it provides for Indebtedness or other obligations related to Subordinate Obligations) a Subordinate Financing Document for all purposes of the Collateral Agency and Accounts Agreement and each other Financing Document.
- (b) On and after the Series 2024 Closing Date, each reference in the Collateral Agency and Accounts Agreement to “this Agreement,” “hereunder,” “hereof,” “herein,” “hereby” or words of like import, and each reference in the other Financing Documents to “the Collateral Agency and Accounts Agreement,” “thereunder,” “thereof,” “therein,” “thereby” or words of like import referring to the Collateral Agency and Accounts Agreement, shall mean and be a reference to the Collateral Agency and Accounts Agreement as hereby amended, as applicable.
- (c) Except as specifically amended above or in other amendments to Senior Financing Documents executed in connection with the issuance of the Series 2024 Bonds, all of the terms and provisions of the Original CAAA and all other Senior Financing Documents are and shall remain in full force and effect and are hereby ratified and confirmed in all respects. Except as expressly provided herein, nothing contained in this First CAAA Amendment and no action by, or inaction on the part of, the Senior Collateral Agent, the Intercreditor

Agent, the Trustee, the Administrative Agent and any other Senior Secured Party shall, or shall be deemed to, directly or indirectly (i) constitute a consent to or waiver of any past, present or future violations of any provisions of the Collateral Agency and Accounts Agreement or any other Senior Financing Document, (ii) amend, modify or operate as a waiver of any provision of the Collateral Agency and Accounts Agreement or, except as expressly set forth herein, of any right, power or remedy of the Senior Collateral Agent, Intercreditor Agreement, Trustee, Administrative Agent or any other Senior Secured Party or the Issuer under the Collateral Agency and Accounts Agreement, or (iii) constitute a course of dealing or other basis for altering any obligations of the Borrower under the Senior Financing Documents or any other contract or instrument, nor shall the entering into this First CAAA Amendment preclude the Senior Collateral Agent, the Intercreditor Agent, the Trustee, the Administrative Agent and any other Senior Secured Party or the Issuer from refusing to enter into any further amendments, waivers or consents with respect to the Collateral Agency and Accounts Agreement or any other Senior Financing Document.

- (d) **Senior Collateral Agent Acknowledgement.** The Senior Collateral Agent acknowledges that it has received a copy of each of the Senior Financing Documents related to the issuance of the Series 2024 Bonds.
- (e) **Effective Date.** The date of this First CAAA Amendment shall be for reference purposes only and shall not be construed to imply that this First CAAA Amendment was executed on the date first written above. This First CAAA Amendment has been executed by the parties hereto and is effective on the Series 2024 Closing Date.

**[SIGNATURE PAGES AND EXHIBITS HAVE BEEN REMOVED]**

**APPENDIX D-3**

**FORM LEASEHOLD MORTGAGES**

**(THIS PAGE INTENTIONALLY LEFT BLANK)**

---

TDC BUILDING LOAN LEASEHOLD MORTGAGE, ASSIGNMENT  
OF LEASES AND RENTS, SECURITY AGREEMENT AND  
FIXTURE FILING

by

JFK MILLENNIUM PARTNERS, LLC,  
a Delaware limited liability company,

as mortgagor

to

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION,

as leasehold mortgagee

and

THE BANK OF NEW YORK MELLON

as Senior Collateral Agent for the benefit of the  
Senior Secured Parties,

as leasehold mortgagee

Dated as of November 1, 2022

---

Block: 14260  
Lot: 1  
JFK Airport  
Queens County

Record and Return to:

Squire Patton Boggs (US) LLP  
1211 Avenue of the Americas, 26<sup>th</sup> Floor  
New York, N.Y. 10036  
Attention: Alethia Nancoo, Esq.

## TABLE OF CONTENTS

	<b>Page</b>
SECTION 1. DEFINITIONS.....	3
SECTION 2. GRANT OF BUILDING LOAN LEASEHOLD MORTGAGE.....	3
SECTION 3. REPRESENTATIONS, WARRANTIES AND COVENANTS.....	7
SECTION 4. PAYMENT OF DEBT SERVICE.....	9
SECTION 5. INSURANCE.....	9
SECTION 6. CONDITION OF PREMISES.....	9
SECTION 7. LEASE AGREEMENT.....	9
SECTION 8. POWER OF ATTORNEY.....	10
SECTION 9. NO ASSUMPTION BY THE LEASEHOLD MORTGAGEE.....	11
SECTION 10. EVENTS OF DEFAULT.....	11
SECTION 11. RIGHTS AND REMEDIES.....	12
SECTION 12. SALE BY THE LEASEHOLD MORTGAGEE.....	19
SECTION 13. RECEIVERS.....	20
SECTION 14. ELECTION OF REMEDIES.....	21
SECTION 15. APPLICATION OF PROCEEDS.....	21
SECTION 16. WAIVER BY THE MORTGAGOR.....	21
SECTION 17. CONDEMNATION.....	22
SECTION 18. COSTS OF LITIGATION AND COLLECTION.....	22
SECTION 19. SECURITY AGREEMENT AND FIXTURE FILING.....	22
SECTION 20. ADDITIONAL SENIOR OBLIGATIONS.....	23
SECTION 21. FURTHER ASSURANCES.....	23
SECTION 22. PAYMENT BY THE LEASEHOLD MORTGAGEE.....	23
SECTION 23. LEASEHOLD MORTGAGEE EXPENSES.....	24
SECTION 24. PAYMENTS SECURED.....	24
SECTION 25. INSPECTION BY THE LEASEHOLD MORTGAGEE.....	24
SECTION 26. COMPROMISE WITHOUT NOTICE.....	24
SECTION 27. SUITS WITHOUT ACCELERATION.....	24
SECTION 28. ESTOPPEL CERTIFICATE.....	25
SECTION 29. INDEMNIFICATION.....	25
SECTION 30. INFORMATION.....	26
SECTION 31. INVALIDITY OF CERTAIN PROVISIONS / SEVERABILITY.....	26
SECTION 32. INTEREST LIMITATION.....	27
SECTION 33. LIEN LAW.....	27
SECTION 34. CONSTRUCTION.....	27
SECTION 35. WAIVER OF REDEMPTION.....	28
SECTION 36. MORTGAGED PERSONAL PROPERTY.....	28
SECTION 37. DISCHARGE OF LEASEHOLD MORTGAGE BY THE LESSEE.....	28
SECTION 38. DELAYS AND OMISSIONS.....	28
SECTION 39. NOTICES.....	29
SECTION 40. LAW GOVERNING THE LEASEHOLD MORTGAGE.....	30
SECTION 41. SALE, CONVEYANCE, TRANSFER, MORTGAGE, PLEDGE, ASSIGNMENT AND MODIFICATION.....	30
SECTION 42. COUNTERPARTS.....	31



**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
SECTION 43. TITLES.....	31
SECTION 44. ASSIGNMENT OF MORTGAGED RENTS.....	31
SECTION 45. MISCELLANEOUS.....	31
SECTION 46. MORTGAGE PRIORITY.....	35
SECTION 47. RELATIVE PRIORITY.....	35
SECTION 48. TDC BUILDING LOAN AGREEMENT.....	35
SECTION 49. STATE-SPECIFIC PROVISIONS.....	36

TDC BUILDING LOAN LEASEHOLD MORTGAGE  
ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT  
AND FIXTURE FILING

THIS TDC BUILDING LOAN LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (hereinafter called the "Leasehold Mortgage"), dated as of November 1, 2022 is made by JFK MILLENNIUM PARTNERS, LLC, a limited liability company organized under the laws of the State of Delaware, having an office and place of business at \_\_\_\_\_, and its successors and assigns (being hereinafter called the "Mortgagor") in favor of (i) NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION, a local development corporation formed under Section 1411 of the New York Not-For-Profit Corporation Law, being Chapter 35 of the Consolidated Laws of New York, created by action of the New York Job Development Authority established under Section 1802, Subtitle I, Title 8, Article 8 of the New York Public Authorities Law and having an address at c/o Empire State Development, \_\_\_\_\_ (the "Issuer") and (ii) THE BANK OF NEW YORK MELLON, a New York banking corporation duly organized and validly existing and authorized to accept and execute trusts of the character set out herein under the laws of the State of New York, as Senior Collateral Agent for the benefit of the Senior Secured Parties and their respective successors and assigns (the "Senior Collateral Agent", together with the Issuer, the "Leasehold Mortgagee").

W I T N E S S E T H:

**WHEREAS**, The Port Authority of New York and New Jersey, a municipal corporate instrumentality and political subdivision of the States of New York and New Jersey, created and existing by virtue of the Compact of April 30, 1921, made by and between the States of New York and New Jersey, and thereafter consented to by the Congress of the United States (the "Port Authority") has entered into a Lease Agreement, dated as of November 17, 2022 (as supplemented and amended from time to time, the "Lease Agreement"), with the Mortgagor, pursuant to which, among other things, the Mortgagor is obliged to consummate the following (collectively, the "Project"): (i) the operation, maintenance, and demolition of the Existing Terminal Facilities at John F. Kennedy International Airport in Queens, New York ("Airport") which Existing Terminal Facilities include the existing Terminal 7 facilities, (ii) the design, development, construction, financing, operation and maintenance of the New Terminal Facilities at the Airport (which New Terminal Facilities include new Terminal 6 facilities and replacement Terminal 7 facilities) and certain ancillary facilities, and (iii) the design, development and construction of the Off-Premises Facilities at the Airport on behalf of the Port Authority, which Off-Premises Facilities will not be operated or maintained by the Mortgagor and will not constitute part of the facilities leased to the Mortgagor under the Lease Agreement; and

**WHEREAS**, pursuant to that certain Credit Agreement, dated as of November 1, 2022 (the "Credit Agreement"), among the Issuer, the Mortgagor, the Lenders, including the Security Deposit Facility Lenders and the Security Deposit Facility LC Issuing Bank, as Bank Lenders, each from time to time party thereto, the Administrative Agent and certain joint lead arrangers and bookrunners, (a) the Lenders have agreed to make certain Senior Term Loans available to the Issuer and (b) the Security Deposit Facility LC Issuing Bank has agreed to make certain Security Deposit LCs available to the Issuer and (c) the Security Deposit Facility Lender has agreed to

make Security Deposit Loans to the Issuer, each on the terms and subject to the conditions set forth therein, the proceeds of the Senior Loan shall be loaned by the Issuer to the Mortgagor, and the Mortgagor will use the proceeds of such Senior Loans to finance a portion of the Project Costs;

**WHEREAS**, pursuant to a resolution adopted on October 20, 2022 by the Issuer (the “TDC Resolution”) and that certain TDC Master Bond Indenture of Trust, dated as of November 1, 2022 between the Issuer and the Trustee (as amended, supplemented and/or otherwise modified from time to time, the “Indenture”), the Issuer has authorized the issuance of its New York Transportation Development Corporation Special Facilities Bonds, Senior Series 2022A (Tax-Exempt) (AMT) (JFK Airport Terminal 6-7 Redevelopment Project) in the aggregate principal amount of up to \$435,000,000 (the “Series 2022A Bonds”);

**WHEREAS**, pursuant to that certain Common Terms Agreement, dated as of November 1, 2022 (as amended, supplemented and/or otherwise modified from time to time, the “Common Terms Agreement”), among the Mortgagor, the Issuer, the Bank Lenders, the Intercreditor Agent, the Administrative Agent, the Series 2022A Bondholder, and the Senior Collateral Agent, the parties have agreed to common terms, conditions and administration of the Series 2022A Bonds and the Senior Loans (collectively, the “Loan Facility”);

**WHEREAS**, the proceeds from the Senior Loans and the sale of the Series 2022A Bonds and any Additional Obligations will be loaned to the Mortgagor pursuant to the terms of the TDC Loan Agreements, and the Mortgagor will execute and deliver the TDC Notes in favor of the Issuer to further evidence the obligations of the Mortgagor under the TDC Loan Agreements (and the Issuer will assign the TDC Notes to the Senior Collateral Agent), and such proceeds will be applied to partially pay the Project Costs;

**WHEREAS**, the Issuer will assign all of its right, title and interest in and to the TDC Building Loan Agreement, except for the Reserved Rights, to the Senior Collateral Agent, as security for the Senior Building Loan Obligations, and will further endorse the TDC Notes and any Additional Note in respect of Senior Building Loan Obligations in favor of the Senior Collateral Agent, as security for the Senior Building Loan Obligations;

**WHEREAS**, concurrently with the execution of this Leasehold Mortgage, the Mortgagor will enter into that certain Project Leasehold Mortgage, Assignment of Leases, Security Agreement and Fixture Filing Agreement in favor of the Leasehold Mortgagee, dated as of November 1, 2022 (the “Project Leasehold Mortgage,” and together with this Leasehold Mortgage, the “Leasehold Mortgages”);

**WHEREAS**, in order to secure its obligations under the Senior Financing Documents, Mortgagor has granted to the Senior Collateral Agent, for the benefit of the Senior Secured Parties, a first-priority security interest (subject to Permitted Liens) in, to and under the Collateral;

**WHEREAS**, pursuant to the Intercreditor Agreement, the Trustee, for and on behalf of the Bondholders (other than the Series 2022A Bondholders), and the Administrative Agent, for and on behalf of the Bank Lenders and the Series 2022A Bondholders, and each of the Hedge Providers, have appointed the Bank of New York Mellon, a banking corporation organized under

the State of New York, as Intercreditor Agent under this Agreement, and as Intercreditor Agent under the Senior Security Documents;

**NOW, THEREFORE**, as a condition precedent to and in consideration of the Issuer's making the loans evidenced by the 2022 TDC Building Notes issued under the TDC Building Loan Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Definitions.

All capitalized terms not defined herein shall have the respective meanings set forth in Exhibit B attached hereto.

Section 2. Grant of Building Loan Leasehold Mortgage.

To secure (i) the payment when due of the total aggregate principal amount of the 2022 TDC Building Notes in an aggregate Outstanding principal amount not to exceed \$2,313,617,415 at any time pursuant to the TDC Building Loan Agreement, and (ii) the payment or performance of all other indebtedness, liabilities, obligations, covenants, and sums due by the Mortgagor to the Senior Collateral Agent for the benefit of the Senior Secured Parties, whether for principal, interest, fees or otherwise, arising out of or related to or in connection with the TDC Building Loan Agreement and the 2022 TDC Building Notes (collectively, without duplication, the "Senior Building Loan Obligations"), the Mortgagor hereby grants, mortgages, pledges, assigns, transfers and sets over to the Leasehold Mortgagee for the benefit of the Senior Secured Parties, equally and ratably, subject to and upon the terms and conditions of this Leasehold Mortgage, all of its right, title and interest in, to and under the following, in each case to the extent permissible under the Lease Agreement, excluding the Excluded Assets (as defined in the Senior Security Agreement) (collectively, the "Mortgaged Property"):

The Lease Agreement and the leasehold estate created pursuant to the Lease Agreement with respect to the real property described on Exhibit A attached hereto and made a part hereof, together with any improvements thereon and any and all other, further or additional estates, rights, titles, interests, benefits and other claims, both at law and in equity, which the Mortgagor now has or may in the future have or acquire under or by the terms of the Lease Agreement, whether by reason of the exercise of options thereunder or by reason of amendments, modifications, supplements, extensions and renewals of the Lease Agreement, of whatsoever nature derived or to be derived by the Mortgagor pursuant to the Lease Agreement, including, without limitation, any and all estate, right, title and interest of the Mortgagor in and to any and all buildings and other improvements now or hereafter located on the Premises, and all appurtenances and additions thereto and betterments, substitutions and replacements thereof acquired by the Mortgagor, in each case pursuant to the Lease Agreement, and the right to exercise all rights of the Mortgagor under the Lease Agreement (including any right or power to voluntarily surrender or terminate the Lease Agreement), except as otherwise provided therein. To the fullest extent possible, the Mortgagor hereby unconditionally delegates to the Leasehold Mortgagee the right to exercise any and all of the Mortgagor's rights under the Lease Agreement, subject to the terms of this Leasehold Mortgage and subject to all of the same terms, covenants, conditions, limitations, reservations and defenses under the Lease Agreement. In accordance with the terms of Section

83(a)(14) of the Lease Agreement, the parties hereto agree to amend Exhibit A, as necessary (i) upon incorporation of the Terminal 7 Premises into the Premises, and (ii) following the date of Substantial Completion of Phase 1 and the date of Substantial Completion of Phase 2 (as each is defined in the Lease Agreement), as applicable, to reflect the lease lines delineating the final Initial Premises, the final Terminal 7 Premises, and the final Premises (as each is defined in the Lease Agreement), which amendment may, in the event the legal description includes property that lies outside such final lease lines, include a non-discretionary partial release of certain parts of the Premises and the Mortgagor's rights therein from the lien under this Leasehold Mortgage.

Any easements, rights of way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Premises, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated, and the reversions and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises, with the appurtenances thereto, in all cases to the extent granted to the Mortgagor pursuant to the Lease Agreement;

All machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), software used in or to operate any of the foregoing, and other property of every kind and nature whatsoever, in each case to the extent leased by Mortgagor under the Lease Agreement, and all building materials and supplies of any nature whatsoever, in all cases now or hereafter located upon the Premises, or appurtenant thereto, and purchased or otherwise acquired for use in the construction of the improvements on the Premises, but excluding any equipment, inventories, trade fixtures and other fixtures permitted to be removed by the Mortgagor pursuant to the Lease Agreement and any other personal property of the Mortgagor, in each case that was not purchased with the proceeds of the Loan Facility (collectively, the "Mortgaged Personal Property"), and the right, title and interest of the Mortgagor in and to any of the Mortgaged Personal Property which may be subject to any security interests, as defined in the UCC, as adopted and enacted by the state or states where any of the Mortgaged Property is located, and all proceeds and products of the above;

All present and future leases, subleases, sub-subleases, lettings, licenses, concessions or other agreements for the use of space in the Premises and every modification, amendment or other agreement relating to such leases, subleases, sub subleases, or other agreements entered into in connection with such leases, subleases, sub subleases, or other agreements, including any guarantee, whether before or after the filing by or against the Mortgagor of any petition for relief under any creditors rights laws (collectively, the "Leases") and all right, title and interest of the Mortgagor, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder, including tenant letters of credit and security deposits, and all rents, additional rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, earnings, royalties, income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of the Mortgagor or its agents or employees from any and all sources arising from or

attributable to the Mortgaged Property, including all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by the Mortgagor (but in all cases excluding all Non-Pledged Receipts) and proceeds, if any, from business interruption or other loss of income insurance paid to the Mortgagor whether paid or accruing before or after the filing by or against the Mortgagor of any petition for relief under any creditors' rights laws including any such amounts deposited or held as security for the Senior Building Loan Obligations under the Collateral Agency and Accounts Agreement (collectively, the "Mortgaged Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Mortgaged Rents to the payment of the Senior Building Loan Obligations; *provided* that the Leasehold Mortgagee shall have no right, title or interest in any such Lease, including without limitation to the rents and other receivables thereunder, unless and until the Leasehold Mortgagee has assumed the rights and obligations of the Mortgagor under such Lease pursuant to the exercise of remedies available to the Leasehold Mortgagee under this Leasehold Mortgage and the other Senior Financing Documents, *provided, further*, that the Leasehold Mortgagee shall have no right, title and interest at any time to the Port Authority's right, title or interest in and to any portion of fees and other payments derived from the Concession Subleases (as defined in the Lease Agreement) payable to the Port Authority;

All condemnation proceeds, including interest thereon, which may heretofore and hereafter be received by the Mortgagor pursuant to the Lease Agreement and which are not required to be paid to or retained by the Port Authority under the Lease Agreement or paid to or retained by the City pursuant to the Basic Lease or the Lease Agreement;

Any Port Authority Default Termination Payment or any other amounts payable by the Port Authority to the Mortgagor, subject in all cases to the Lease Agreement;

Any agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, (other than the leases, subleases, sub-subleases, lettings, licenses, concessions or other agreements for the use of space in the Premises pledged above) now or hereafter entered into, as each of the same may have been and may be further amended, modified or supplemented from time to time, and all rights therein and thereto, to the extent respecting or pertaining to the occupation, development, construction, repair, maintenance, management or operation of the Premises and any part thereof or any business or activity conducted on the Premises and any part thereof and all right, title and interest of the Mortgagor therein and thereunder (provided that, to the extent any third-party consent may be required in connection with the mortgaging of such document, no such document shall be deemed mortgaged until the required consent is obtained or the requirement waived); and

TOGETHER WITH any rights granted to the Mortgagor under the Lease Agreement of ingress and egress to, on and over other portions of the Premises, between the Premises and city streets or public ways outside the Premises by means of existing roadways at the Premises to be used in common with others having rights of passage within the Premises, and any substitute means of ingress and egress, in all cases subject to the Lease Agreement;

TOGETHER WITH all of the Mortgagor's right, title and interest to all proceeds of any sale, transfer, financing, refinancing, or conversion into cash or liquidated claims, whether voluntary or involuntary of any of the Mortgaged Property, including, without limitation, but subject to the terms of the Lease Agreement, all insurance proceeds resulting from damage to or destruction of the Premises; and

TOGETHER WITH all additional estates, right, title and interest of the Mortgagor in and to the Premises, any and all buildings, improvements and fixtures now or hereafter situated thereon and the Mortgaged Property or any part thereof which may from time to time be acquired by the Mortgagor, in each case pursuant to the Lease Agreement; and subject to the same limitations and qualifications set forth in this Section 2 as if such estates, rights, titles and interests of the Mortgagor were estates, rights, titles and interest of the Mortgagor on the date hereof, all rights, titles and interests of the Mortgagor in and to any additional property and rights that may from time to time hereafter be subjected to the lien hereof in writing by the Mortgagor or by anyone on their behalf.

Each of the rights granted in this Leasehold Mortgage is and shall be (a) appurtenant to the leasehold estate in the Premises created by the Lease Agreement, (b) automatically transferred with any permitted assignment or other transfer of the Lease Agreement and the leasehold estate created thereby and (c) coupled with an interest and irrevocable during the term of the Lease Agreement.

Except to the extent required for the performance of any of the obligations of the Mortgagor under the Lease Agreement and as permitted thereunder, nothing contained in this Leasehold Mortgage shall grant to the Leasehold Mortgagee any rights whatsoever in the air space above the Premises in excess of the heights of the structures thereon as set forth in the final Project Documents.

TO HAVE AND TO HOLD the Mortgaged Property, together with all rights and claims of the Mortgagor therein, to the Leasehold Mortgagee, its successors and assigns forever, upon the terms and conditions and for the uses hereinafter set forth.

PROVIDED, HOWEVER, these presents are upon the express condition that, if the Mortgagor shall pay to the owners of the Senior Building Loan Obligations at the time and in the manner provided in each evidence of the Senior Building Loan Obligations, and shall pay and perform the other obligations in full, as set forth in this Leasehold Mortgage, and shall comply with each and every covenant and condition set forth herein and therein, and no Senior Secured Party shall have any commitment to lend or make available any additional funds to the Mortgagor pursuant to any Senior Financing Document and this Leasehold Mortgage, then these presents and the estate hereby granted shall cease, terminate and be void.

The Leasehold Mortgagee may exercise any rights granted hereby in respect of the Mortgaged Property or any remedies (including cure rights) with respect to the Mortgaged Property, subject in all cases to the Lease Agreement; provided, however, so long as an Event of Default shall not have occurred and be continuing, the Leasehold Mortgagee shall not have the right to enter the Premises to cure or prevent any default by the Mortgagor under this Leasehold Mortgage or otherwise take any action that interferes with the Mortgagor's construction, operation

or maintenance of the Mortgaged Property, except as otherwise provided in the Senior Financing Documents.

This Leasehold Mortgage and the lien created hereby are subordinate to the fee estate held by the City in the Mortgaged Property and to the leasehold estate held by the Port Authority pursuant to the Basic Lease. In no event shall the lien created by this Leasehold Mortgage attach to (a) the fee or any other estate held by the City in the Mortgaged Property, (b) any other property which becomes the City's property upon the termination or expiration of the Basic Lease or (c) the leasehold estate from the City or otherwise held by the Port Authority in the Mortgaged Property. This instrument does not extend to or affect, or represent a lien or encumbrance on, the estate or interest of the fee owner of the Premises that are the subject of this instrument or any property located therein or thereon, and in the event of any inconsistent provision in this instrument, this provision shall prevail.

For the avoidance of doubt, the Senior Collateral Agent is a Recognized Mortgagee (as defined in the Lease Agreement).

For the avoidance of doubt, except as may be provided in the Lease Agreement, the Port Authority shall have no liability whatsoever for payment of any principal sum secured by this Leasehold Mortgage, or any interest accrued thereon or any other sum secured hereby or accruing hereunder and, to the fullest extent allowable under applicable Law and except as provided in the Section 83 of the Lease Agreement, the Leasehold Mortgagee affirms and acknowledges that it shall not be entitled to seek any damages or other amounts against the Port Authority for any or all of the same. Further, the Port Authority shall have no obligation to the Leasehold Mortgagee in regard to the enforcement of the Port Authority's rights and remedies under the Lease Agreement or as otherwise provided by applicable Law; except to the extent the Port Authority has expressly agreed in the Lease Agreement that its rights thereunder are subject to the rights of the Recognized Mortgagee (as defined in the Lease Agreement) or granted other rights to the Recognized Mortgagee, in each case, under Section 83 or elsewhere in the Lease Agreement or under the Senior Financing Documents.

For the avoidance of doubt, in no instance shall the Leasehold Mortgagee, by virtue of this Leasehold Mortgage, acquire any greater rights or interest in the Premises than the Mortgagor has at any applicable time under the Lease Agreement (other than such specific rights or interests as may be granted to or acquired by the Leasehold Mortgagee as a Recognized Mortgagee (as defined in the Lease Agreement) in accordance with Section 83 of the Lease Agreement).

### Section 3. Representations, Warranties and Covenants.

The Mortgagor represents, warrants and covenants to and with the Leasehold Mortgagee as follows:

(i) The Mortgagor is a limited liability company duly organized and existing in good standing under the laws of the State of Delaware, is lawfully seized of the Mortgaged Property, has the power and authority to create, pledge and grant the leasehold mortgage as provided in this Leasehold Mortgage, to own its property and assets, to lease the



Premises and to enter into this Leasehold Mortgage, and its execution, delivery and performance of the obligations hereunder has been duly authorized by all necessary action on the part of the Mortgagor;

(ii) The Mortgagor has a valid leasehold interest in the portion of the Premises comprised of real property (other than Permanent Rights of Access (as defined in the Lease Agreement)), subject only to Permitted Liens. The Mortgaged Property is, and the Mortgagor will keep the Mortgaged Property, free and clear of all liens and encumbrances other than the Permitted Liens. Other than Permitted Liens, Mortgagor has not made an assignment of the Mortgaged Property which is assigned hereunder which remains in effect as of the date hereof, except pursuant to the Senior Financing Documents, and will forever warrant and defend the title to the Mortgaged Property against all claims and demands by, through or under the Mortgagor and will maintain and preserve the validity and priority of the lien of this Leasehold Mortgage so long as the 2022 TDC Building Notes or any Note issued under the TDC Building Loan Agreement, is outstanding;

(iii) The Mortgagor agrees that it will promptly and fully comply with all the terms, provisions, covenants, conditions, obligations and agreements imposed upon or assumed by the Mortgagor under the Lease Agreement, this Leasehold Mortgage, and the other Senior Financing Documents, except to the extent any such non-compliance is permitted by the Senior Financing Documents;

(iv) The Mortgagor agrees that in the event that the Mortgagor fails to perform any of its obligations under this Leasehold Mortgage, the Lease Agreement or under the other Senior Financing Documents, the Leasehold Mortgagee shall have the right (but not the obligation), to the extent set forth in the Lease Agreement, to perform such obligations in accordance with the terms and conditions of the Lease Agreement, this Leasehold Mortgage and the other Senior Financing Documents; provided, however, so long as an Event of Default shall not have occurred and be continuing, the Leasehold Mortgagee shall not have the right to enter the Premises to cure or prevent any default by the Mortgagor or otherwise take any action that interferes with the Mortgagor's construction, operation or maintenance of the Mortgaged Property, except as otherwise provided in the Senior Financing Documents; and

(v) The Mortgagor will prepare and execute any documents necessary to record this Leasehold Mortgage. Mortgagor authorizes and directs the Senior Collateral Agent to prepare and file any necessary financing statements and, at periodic intervals, continuation statements pursuant to the Uniform Commercial Code as in effect in the State of Delaware (or any other relevant jurisdiction, including the State of New York) and any other documents required to perfect or continue the perfection of the lien and security interest granted in this Leasehold Mortgage. Mortgagor will pay all filing or recording costs with respect thereto and all costs of filing or recording this Leasehold Mortgage or any other instrument, agreement or document executed and delivered pursuant to this Leasehold Mortgage in all public offices where filing or recording is deemed by the Leasehold Mortgagee to be necessary or desirable.

Section 4. Payment of Debt Service.

Mortgagor will promptly pay, or cause to be paid, all payments due pursuant to the TDC Building Loan Agreement, the 2022 TDC Building Notes and all other sums secured hereby when due and will continue to be liable for the payment of debt service until such sums are paid in full, notwithstanding any actions which may be brought by the Leasehold Mortgagee to recover any amount or amounts for installments of debt service or other sums to which it may be lawfully entitled under this Leasehold Mortgage or the other Senior Financing Documents, or to recover any amount or amounts in respect of taxes, assessments, water rents, sewer rents or other public charges, or fire or other insurance premiums to which it may be lawfully entitled under this Leasehold Mortgage.

Section 5. Insurance.

(a) The Mortgagor shall comply with the requirements of Section 10.03 of the Collateral Agency and Accounts Agreement.

(b) The Mortgagor hereby assigns and shall deliver to the Leasehold Mortgagee all insurance proceeds the Mortgagor is entitled to under the Lease Agreement which are not required to be paid to or retained by the Port Authority under the Lease Agreement or paid to or retained by the City pursuant to the Basic Lease or the Lease Agreement and does receive as collateral and further security for the Senior Building Loan Obligations of the Mortgagor secured hereby, to be applied in accordance with the Lease Agreement, the Intercreditor Agreement and the Collateral Agency and Accounts Agreement.

Section 6. Condition of Premises.

The Mortgagor will comply in all material respects with its obligations under the Lease Agreement with respect to the maintenance of the condition and repair of the Mortgaged Property.

Nothing contained in this Leasehold Mortgage, nor any action or inaction of any Leasehold Mortgagee, shall constitute any consent or request, express or implied, by the Leasehold Mortgagee (a) for the performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof, or (b) as giving the Mortgagor any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property, in such fashion as would permit the making of any claim against any Leasehold Mortgagee in respect thereof or any claim that any lien based on the performance of such labor or services or the furnishing of such materials or other property is superior to this Leasehold Mortgage.

Section 7. Lease Agreement.

(a) The Mortgagor covenants that it will not (i) do, or permit anything to be done, or omit or refrain from doing anything, the doing or omission of which will give the Port Authority a right to terminate the Lease Agreement, and (ii) terminate, or (to the extent it has the right to consent) consent to the termination of, the Lease Agreement without the prior written approval of the Leasehold Mortgagee. Upon the occurrence of any Event of Default under the

Lease Agreement, the Mortgagor shall promptly take such actions as may be necessary to timely effect a cure thereof. To the extent the Mortgagor receives any payment attributable to the Senior Building Loan Obligations, such amounts will be immediately paid to the Senior Collateral Agent for disposition in accordance with the Senior Financing Documents. The obligation under the immediately preceding sentence shall survive any termination of this Leasehold Mortgage for so long as any Senior Building Loan Obligations remain outstanding.

(b) The approval of the Leasehold Mortgagee (such approval not to be unreasonably withheld, delayed or conditioned) is required for any amendment, variation, modification of, or a waiver of the Mortgagor's rights and obligations under the following provisions of the Lease Agreement: Section 2(ee) (*Compensation Events*), Section 2(ff) (*Delay Events*), Section 4 (*Rental*) (other than Excess Value Rent, so long as Excess Value Rent continues to be payable solely from the Remaining Revenue Account on a Quarterly Distribution Date on which the Mortgagor is permitted, pursuant to the Financing Documents, to distribute such cash), Section 19 (*Condemnation*), Section 21 (*Termination by the Port Authority*), Section 23 (*Waiver of Redemption*), Section 24 (*Survival of the Obligations of the Lessee*), Section 25 (*Reletting by the Port Authority*), Section 26 (*Remedies to be Non-Exclusive*), Section 27 (*Delivery of Possession of the Premises at the End of the Term*), Section 28 (*Acceptance of Surrender of Lease*), Section 29 (*Basic Lease*), Section 53 (*Purchase of Property*), Section 76 (*Termination by Lessee*), Section 77 (*Effect of Termination by Lessee*), Section 83 (*Project Financing*) and Section 84 (*Refinancing*) (including, in each case, amendments to or variations or modifications of the defined terms used in such provisions to the extent such amendments, variations or modifications affect the substance of such provisions), or any other amendment, variation or modification of the Lease Agreement that could reasonably be expected to have a material adverse effect on the rights or interests of the Bondholders, the Bank Lenders or Leasehold Mortgagee (or any other Senior Secured Party). The Leasehold Mortgagee will respond to any request from the Mortgagor or the Port Authority for approval of a modification or amendment of the Lease Agreement within a reasonable period of time. The Leasehold Mortgagee acknowledges that its consent shall not be required if an amendment to, or variation or modification of, the Lease Agreement is necessary for the Port Authority, in the Port Authority's sole discretion, to be in compliance with the Basic Lease or any applicable law and, provided, further, the Leasehold Mortgagee shall not require the Port Authority to pay any fee, charge, or other amount (including reimbursement of any cost or expense) in connection with providing the consent of the Leasehold Mortgagee (where such consent is required, as provided in the Lease Agreement or in any other Senior Financing Documents).

(c) The parties hereto acknowledge that, except as otherwise approved in writing by the Port Authority, all rights of the Leasehold Mortgagee in its capacity as a transferee of the Mortgagor's rights under the Lease Agreement shall be subject and subordinate to all of the provisions of the Lease Agreement and to all of the rights of the Port Authority thereunder, including without limitation Section 83 thereof.

#### Section 8. Power of Attorney.

Upon the occurrence and during the continuance of an Event of Default hereunder, the Mortgagor hereby irrevocably constitutes and appoints the Leasehold Mortgagee with full authority in the name, place and stead of Mortgagor to do any and all things required to be done

in the Leasehold Mortgagee's discretion, to carry out the terms and accomplish the purposes of this Leasehold Mortgage as fully and effectively as the Mortgagor could do, including, but not limited to, the power to endorse the Mortgagor's name to checks, notes or other instruments for the payment of money, to deposit the same for the benefit of Leasehold Mortgagee and to institute, prosecute and settle all claims of Mortgagor in connection therewith. This power of attorney is coupled with an interest and shall be irrevocable until all of the Senior Building Loan Obligations is paid or satisfied in full and this Leasehold Mortgage is terminated. This power of attorney shall survive the dissolution and liquidation of Mortgagor. The powers conferred upon Leasehold Mortgagee hereunder are solely to protect its interest and shall not impose any duty upon it to exercise any of such powers.

Section 9. No Assumption by the Leasehold Mortgagee.

Nothing in this Leasehold Mortgage contained, nor any action or inaction on the part of the Leasehold Mortgagee, is intended or shall be construed as establishing between the Leasehold Mortgagee and any sublessee or between the Leasehold Mortgagee and the landlord under the Lease Agreement or any party to the Senior Financing Documents, the relationship of lessor and/or lessee or as rendering the Leasehold Mortgagee responsible or liable to any person for the manner of maintenance of the property demised under or affected by the subleases, the Lease Agreement or the Senior Financing Documents or the conduct of any business therein or as an assumption by the Leasehold Mortgagee of any liability to any Person for the fulfillment of any covenant or obligation of the subleases, the Lease Agreement or the Senior Financing Documents prior to such time as the Leasehold Mortgagee has taken ownership of the Mortgagor's interest in the Lease Agreement by foreclosure or otherwise (including a new lease has been executed between the Port Authority, as lessor and the Leasehold Mortgagee or its designee, as lessee). The Mortgagor shall at all times remain fully liable for the fulfillment of all of the terms and conditions of this Leasehold Mortgage. Further, the parties acknowledge and agree that, in accordance with Section 83(a)(11) of the Lease Agreement, notwithstanding any enforcement of the security under this Leasehold Mortgage or any restrictions contained in the Senior Financing Documents, the Mortgagor shall remain fully liable to the Port Authority for the payment of all sums owing to the Port Authority under the Lease Agreement and the performance and observance of all of the covenants and obligations of the Lessee (as such term is defined in the Lease Agreement) under the Lease Agreement, unless otherwise satisfied.

Section 10. Events of Default.

An event of default ("Event of Default") hereunder shall exist upon the occurrence and during the continuation of any of the following events:

(i) A failure to make payment under the TDC Building Loan Agreement, the 2022 TDC Building Notes or any Note issued under the TDC Building Loan Agreement of any and all amounts required when due for the payment of interest (including any Defaulted Interest), Sinking Fund Requirement, Redemption Price or principal in respect of any Series 2022A Bonds or any Senior Loans, which failure has resulted in the occurrence and continuance of an Event of Default under and as defined in the TDC Building Loan Agreement;

(ii) The Port Authority shall have given an Event of Default Notice as described in Section 21 of the Lease Agreement; or

(iii) An “Event of Default” shall have occurred and is continuing under any other of the Senior Financing Documents, but only for so long as such “Event of Default” is continuing.

Section 11. Rights and Remedies.

(a) General.

The Leasehold Mortgagee shall have those rights and remedies under this Leasehold Mortgage as are specifically provided by this Leasehold Mortgage, the Lease Agreement, the Indenture, and the other Senior Financing Documents subject to the terms and conditions stated herein, therein, at law and in equity, in each case, subject to the terms of the Intercreditor Agreement. Any amounts received by the Leasehold Mortgagee in the exercise of its rights and remedies under this Leasehold Mortgage shall be applied by the Leasehold Mortgagee in accordance with Section 15 hereof.

(b) Mortgagor Deemed Lessee.

(i) Notwithstanding any provisions hereof to the contrary, the Mortgagor, for all purposes under the Lease Agreement, shall be deemed to be the tenant under the Lease Agreement (unless and until the Recognized Mortgagee (as such term is defined in the Lease Agreement) shall have acquired the tenant’s interest in the Lease Agreement or a new lease has been executed between the Port Authority, as lessor, and the Mortgagee, as lessee, pursuant to Section 83 of the Lease Agreement, as the case may be), and the Leasehold Mortgagee shall not have any right to use or occupy the Mortgaged Property for any of the purposes set forth in Section 5 of the Lease Agreement or for any other purpose whatsoever (except as permitted in connection with the exercise of the Leasehold Mortgagee’s rights and remedies under this Leasehold Mortgage, the Lease Agreement or the other Senior Financing Documents, and except for the purpose of preserving the Mortgaged Property to the extent permitted in the Lease Agreement, this Leasehold Mortgage, or the other Senior Financing Documents, as applicable, in each case, subject to the terms of the Intercreditor Agreement), and the Leasehold Mortgagee acknowledges that the consent of the Port Authority to this Leasehold Mortgage has been given expressly upon such condition.

(ii) Except as permitted in connection with the exercise of the Leasehold Mortgagee’s rights and remedies under this Leasehold Mortgage, the Lease Agreement or the other Senior Financing Documents, and except for the purpose of preserving the Mortgaged Property to the extent permitted in the Lease Agreement, this Leasehold Mortgage and the other Senior Financing Documents, the Mortgagor shall have full and complete control of the operation and use of the Mortgaged Property.

(c) Notice of Default, Foreclosure Notice and Port Authority's Right to Purchase.

(i) The Leasehold Mortgagee shall send to the Port Authority a copy of each notice of an Event of Default given under this Leasehold Mortgage or any other Senior Financing Document, and any notice given under any such documents that the Lessee Debt (as defined in the Lease Agreement) secured hereby and then outstanding has become immediately due and payable, in accordance with Section 83(c)(2) of the Lease Agreement (a "Foreclosure Notice"), at the same time as and whenever any such Foreclosure Notice shall have been sent to the Mortgagor, but the Port Authority shall not have the right to cure any such Event of Default or other event that resulted in such Lessee Debt becoming immediately due and payable except to the extent provided in Section 11(c)(ii) below. Together with each Foreclosure Notice, the Leasehold Mortgagee shall give the Mortgagor and the Port Authority written notice, in accordance with Section 83(h)(1) of the Lease Agreement, of the amount of the unpaid principal amount of the 2022 TDC Building Notes, any other Note issued under the TDC Building Loan Agreement, and any accrued and unpaid interest thereon (including any default interest then outstanding under such documents), any prepayment premiums or penalties, make-whole amounts or other prepayment amounts or breakage costs that would be due and payable upon payoff of such amounts, and all other amounts that would be due and owing under the Senior Financing Documents (with good faith estimates provided to the extent of any liabilities, such as termination amounts under hedging arrangements, which cannot be finalized at the time of notice), and the per diem interest which will accrue on the principal amount of such outstanding debt thereunder from and after the date of such notice.

(ii) To the extent provided and in accordance with the terms and conditions of Section 83(h) of the Lease Agreement, the Port Authority shall have the right, but not the obligation, following the giving of a Foreclosure Notice by the Leasehold Mortgagee to purchase this Leasehold Mortgage and the other Senior Financing Documents from the Leasehold Mortgagee by tendering to the Leasehold Mortgagee an amount that shall equal the total amount specified in the Foreclosure Notice, including per diem interest through the date of such tender, and upon such tender this Leasehold Mortgage shall terminate and be of no further force and effect. Promptly following the Port Authority's tender of such amount specified in such Foreclosure Notice, the Mortgagor shall cause to be executed, and the Leasehold Mortgagee shall execute, a satisfaction of this Leasehold Mortgage, cause the same to be filed in the Office of the City Register for Queens County and take all other and additional actions that are required in order to discharge the lien of this Leasehold Mortgage as of record. The Leasehold Mortgagee hereby acknowledges, and agrees to be bound by, the provisions of Section 83(h) of the Lease Agreement (Port Authority's Right to Pay Off Lessee Debt).

(iii) The Leasehold Mortgagee shall give additional notice to the Mortgagor and the Port Authority of the commencement of any proceeding to foreclose upon this Leasehold Mortgage as well as all subsequent pleadings, notices and documents in connection with such proceedings and the termination or discontinuance thereof and any other proceedings to realize on any security interest or separate agreement of the Mortgagor with respect to the Senior Building Loan Obligations, and shall keep the Port Authority advised of the progress of such proceedings.

(iv) Nothing herein shall be deemed to preclude the Port Authority from bidding on the same terms and conditions as independent third parties for or from becoming the owner of the Mortgaged Property and the other property encumbered by the other Senior Security Documents and the Mortgagor's leasehold estate free from any claims, equities or rights of redemption of the Mortgagor, the Bondholders, the Bank Lenders and the Leasehold Mortgagee, (and the other Senior Secured Parties) and the Port Authority shall have the right to bid for the Mortgaged Property and the property encumbered by the other Senior Security Documents and the Mortgagor's leasehold estate on the same terms and conditions as independent third parties at any sale, public or private, whether held pursuant to a judgment of foreclosure or otherwise.

(v) Without limiting any other provisions of the Lease Agreement, if a purchaser at a foreclosure sale shall acquire title to the Lease Agreement and the Mortgagor's leasehold estate thereunder, such purchaser's rights to assign, sell or transfer the leasehold shall be as set forth in the Lease Agreement.

(d) Incorporation of Additional Rights and Remedies.

Pursuant to certain provisions of the Lease Agreement, the Indenture and the other Senior Financing Documents, including, without limitation, Section 83 of the Lease Agreement, the Leasehold Mortgagee has certain rights and remedies upon an Event of Default, including, without limitation, the Foreclosure Rights and the right to compel a New Agreement (as defined in the Lease Agreement), all of which provisions are hereby incorporated herein by reference as if fully set forth herein, and the Leasehold Mortgagee shall have the benefit of and be entitled to rely on such provisions, subject to the terms and conditions stated therein and the terms and conditions of this Leasehold Mortgage, with the same force and effect as if they were set forth in full in this Leasehold Mortgage, in each case, subject to the terms of the Intercreditor Agreement.

(e) Leasehold Mortgagee's Ability to Cure Default.

(i) If an "Event of Default" (under and as defined in the Lease Agreement) shall have occurred and be continuing, Mortgagor acknowledges and agrees that the Port Authority (as lessor under the Lease Agreement) has agreed to accept and permit the curing of any "Event of Default" (under and as defined in the Lease Agreement) by the Recognized Mortgagee (as such term is defined in the Lease Agreement), on behalf of the Senior Secured Parties, or its designee, including, without limitation, any Qualified Terminal Operator (as defined in the Lease Agreement) appointed in accordance with the Lease Agreement or any other designee, agent or assignee of the rights of the Recognized Mortgagee, provided that such designee, agent or assignee of the rights of the Leasehold Mortgagee is not a Prohibited Party (as defined in the Lease Agreement) and cures such default in accordance with the applicable terms of the Lease Agreement, as, if and with the same force and effect as though cured by the Mortgagor. The curing of any such "Event of Default" (under and as defined in the Lease Agreement) by the Recognized Mortgagee shall not be deemed to cure any default by the Mortgagor under this Leasehold Mortgage or the other Senior Financing Documents and shall not relieve the Mortgagor from any obligation to reimburse the Leasehold Mortgagee for any costs and expenses incidental to the curing of such defaults.

(ii) Without limiting the generality of the other provisions of this Leasehold Mortgage, and without waiving or releasing Mortgagor from its obligations hereunder, the Recognized Mortgagee, on behalf of the Senior Secured Parties, may personally, or by its agents or attorneys, including, but not limited to, any Qualified Terminal Operator appointed in accordance with the Lease Agreement, (but shall not be obligated to), subject in each case to the terms of the Intercreditor Agreement, take any action at law or in equity that, subject to the terms and conditions of the Lease Agreement or as otherwise approved in writing by the Port Authority, that the Leasehold Mortgagee, in its capacity as the Recognized Mortgagee, in its sole discretion, deems necessary or desirable to prevent or cure any or “Event of Default” (under and as defined in the Lease Agreement) by the Mortgagor in the performance of or compliance with any of the Mortgagor’s covenants or obligations under the Lease Agreement or any Senior Financing Document, except where non-compliance could not reasonably be expected to result in any of the following: (a) a Material Adverse Effect, (b) a material adverse effect on the Project or the transactions contemplated by the Senior Financing Documents, taken as a whole, or (c) an adverse effect on the validity or enforceability of any such Senior Financing Document against the Mortgagor, and the Leasehold Mortgagee and any Person designated by the Leasehold Mortgagee shall have, and are hereby granted, the right to enter upon the Premises to such extent and as often as the Leasehold Mortgagee in its sole discretion deems necessary or desirable to prevent or cure any such default or “Event of Default” (under and as defined in the Lease Agreement) by the Mortgagor, subject to the terms and conditions of the Lease Agreement or as otherwise approved by the Port Authority in writing; provided, however, so long as an Event of Default shall not have occurred and be continuing, the Leasehold Mortgagee shall not have the right to enter the Premises to cure or prevent any default by the Mortgagor or otherwise take any action that interferes with the Mortgagor’s construction, operation or maintenance of the Mortgaged Property except as otherwise provided in the Senior Financing Documents and the Lease Agreement. The Leasehold Mortgagee may, but shall not be required to, expend such sums of money as the Leasehold Mortgagee, in its sole discretion, deems necessary for any such purpose, and the Mortgagor hereby agrees to pay to the Leasehold Mortgagee, immediately upon demand, all reasonable sums so expended by the Leasehold Mortgagee, together with interest thereon from the date of disbursement at a rate of interest per annum equal two (2) percentage points above the rate published by The Wall Street Journal (or, if The Wall Street Journal or if such rate shall not be published, a domestic financial newspaper of comparable status designated by Leasehold Mortgagee) from time to time as the generally prevailing rate of interest charged by commercial banks on ninety (90) day unsecured loans to their most preferred corporate customers in Queens County (the “Default Rate”). All reasonable sums so expended by the Leasehold Mortgagee, the respective Secured Debt Representative or any Senior Secured Parties and such interest thereon shall be added to the Senior Building Loan Obligations of the Mortgagor to Leasehold Mortgagee and the Senior Secured Parties and secured by the lien of this Leasehold Mortgage.

(f) Remedies.

(i) Subject to the limitations of Section 11(a) hereof and the terms of the Intercreditor Agreement, upon the occurrence and during the continuance of an Event of Default beyond any applicable cure or grace period, the Leasehold Mortgagee may in addition to any rights or remedies available to it hereunder, subject to the terms and conditions of the Lease Agreement (including Section 83 thereof) or as otherwise approved in writing by the Port Authority, without notice or demand, as it deems advisable to protect and enforce its rights against



the Mortgagor and in and to the Mortgaged Property and without impairing or otherwise affecting the other rights and remedies of the Leasehold Mortgagee, take any one or more of the following actions, either personally, or by its agents or attorneys, including, but not limited to, any Qualified Terminal Operator appointed in accordance with the Lease Agreement, at such times and in such order as the Leasehold Mortgagee shall determine in its sole discretion: (A) subject to satisfaction of applicable Port Authority procedures and policies, enter into and upon all or any part of the Premises, and each and every part thereof, and exclude the Mortgagor, its agents and servants wholly therefrom; and (B) having and holding the same, use, operate, manage and control the Mortgaged Property and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receivers; and (C) upon every such entry, at the expense of the Mortgagor, from time to time, either by purchase, repairs or construction, maintain and restore the Mortgaged Property, and insure the same; and (D) likewise, from time to time, at the expense of the Mortgagor, make all necessary or proper repairs, renewals and replacements and such useful alterations, additions, betterments and improvements thereto and thereon as it may seem advisable subject to the satisfaction of applicable Port Authority procedures and policies as required under the Lease Agreement; and (E) in every such case have the right to manage and operate the Mortgaged Property and to carry on the business thereof and exercise all rights and powers of the Mortgagor with respect thereto, either in the name of the Mortgagor or otherwise as it shall deem best.

(ii) Subject to the limitations of Section 11(a) hereof, upon the occurrence and during the continuance of an Event of Default beyond any applicable cure or grace period, without limiting the generality of the other provisions of this Leasehold Mortgage or any other rights at law or in equity, the Leasehold Mortgagee, with or without entry, personally or by its agents or attorneys, including, but not limited to, any Qualified Terminal Operator appointed in accordance with the Lease Agreement, insofar as applicable, may, in each case subject to the applicable provisions of the Lease Agreement (including Section 83 thereof) and the Senior Financing Documents:

(1) sell the Mortgaged Property to the extent permitted and pursuant to the procedures provided by law, and all estate, right, title and interest, claim and demand therein, and right of redemption thereof, at one or more sales as an entirety or in parcels, and at such time and place upon such terms and after such notice thereof as may be required or permitted by law;

(2) institute proceedings for the foreclosure of this Leasehold Mortgage; or

(3) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Lease Agreement, this Leasehold Mortgage or any of the other Senior Financing Documents, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as the Leasehold Mortgagee shall elect.

(iii) Notwithstanding the foregoing, a waiver of an “Event of Default” under the Indenture, the TDC Building Loan Agreement or the Intercreditor Agreement or a rescission of a declaration of acceleration of the Series 2022A Bonds under the Indenture, the Senior Loans under the Credit Agreement, the 2022 TDC Building Notes, or of any Senior Building Loan Obligations pursuant to the Intercreditor Agreement and a rescission and annulment of its consequences shall constitute a waiver of the corresponding Event of Default under this Leasehold Mortgage; provided, that no such waiver or rescission shall extend to or affect any subsequent or other default hereunder or impair any right consequent thereon except to the extent expressly provided in such waiver or rescission; and provided, further that no such waiver or rescission shall constitute a waiver or rescission by the Port Authority with respect to any related default or event of default arising under the Lease Agreement, unless the Port Authority has separately waived or rescinded in writing.

(g) Bankruptcy.

(i) If the Port Authority, or anyone holding by, through or under the Port Authority or a trustee in bankruptcy shall elect to reject the Lease Agreement pursuant to Section 365(a) of the Bankruptcy Code, or a successor statute, thereby giving to Mortgagor the right to elect to treat the Lease Agreement as terminated pursuant to Section 365(h)(1)(A)(i) of the Bankruptcy Code, or a successor statute, Leasehold Mortgagee shall have the exclusive right to exercise said right and Mortgagor hereby assigns said right to Leasehold Mortgagee. Mortgagor shall not, without Leasehold Mortgagee’s prior written consent, elect to treat either the Lease Agreement or the leasehold estate created thereby as terminated under Subsection 365(h)(1)(A)(i) of the Bankruptcy Code or any successor statutory provision, after rejection or disaffirmance of the Lease Agreement by the Port Authority or by any trustee of such party, and any such election made without such consent shall, to the extent permitted by law, be void and ineffective.

(ii) Mortgagor hereby unconditionally assigns, transfers and sets over to Leasehold Mortgagee all of Mortgagor’s claims and rights to the payment of damages that may hereafter arise as a result of any rejection or disaffirmance of the Lease Agreement by the Port Authority or by any trustee of such party, pursuant to the Bankruptcy Code. To the extent Mortgagor fails to timely and reasonably proceed upon reasonable prior written request of Leasehold Mortgagee, Leasehold Mortgagee shall have and is hereby granted the right to proceed, in its own name or in the name of Mortgagor, in respect of any claim, suit, action or proceeding relating to the rejection or disaffirmance of the Lease Agreement (including, without limitation, the right to file and prosecute, to the exclusion of Mortgagor, any proofs of claim, complaints, motions, applications, notices and other documents) in any case in respect of the Port Authority under the Bankruptcy Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until the Senior Building Loan Obligations shall have been satisfied and discharged in full. Any amounts received by Leasehold Mortgagee as damages arising out of any such rejection of the Lease Agreement shall be applied by Leasehold Mortgagee in accordance with Section 15 hereof.

(iii) In the event that any action, proceeding, motion or notice shall be commenced or filed by the Port Authority in respect of the Lease Agreement or the Mortgaged Property or any part thereof, in connection with any case under the Bankruptcy Code, and Mortgagor shall fail to timely and reasonably proceed upon reasonable prior written request by

Leasehold Mortgagee, Leasehold Mortgagee shall have, and is hereby granted, the option, to the exclusion of Mortgagor, exercisable upon notice from Leasehold Mortgagee to Mortgagor, to conduct and control any such litigation with counsel of Leasehold Mortgagee's choice. Leasehold Mortgagee may proceed, in its own name or in the name of Mortgagor, in connection with any such litigation, and Mortgagor agrees to execute any and all powers, authorizations, consents and other documents required by Leasehold Mortgagee in connection therewith. Mortgagor shall, upon demand, pay to Leasehold Mortgagee all reasonable costs and expenses (including, without limitation, reasonable legal fees and disbursements) paid or incurred by Leasehold Mortgagee, before and after judgment, in connection with the prosecution or conduct of any such proceedings, and, to the extent permitted by law, such costs and expenses shall be deemed expenses incurred in upholding the lien of this Leasehold Mortgage and added to the Senior Building Loan Obligations. Mortgagor shall not, without the prior written consent of Leasehold Mortgagee, commence any action, suit, proceeding or case, or file any application or make any motion, in respect of the Lease Agreement in any such case under the Bankruptcy Code.

(iv) In the event that a petition under the Bankruptcy Code shall be filed by or against Mortgagor, and Mortgagor, or anyone claiming through or under Mortgagor or a trustee in bankruptcy shall have the right to reject the Lease Agreement pursuant to Section 365(a) of the Bankruptcy Code or a successor statute, Mortgagor shall give Leasehold Mortgagee and the Port Authority at least thirty (30) days' prior written notice of the date on which application shall be made to the court for authority to reject the Lease Agreement; provided, however, that if a trustee in bankruptcy shall have a right to reject the Lease Agreement in less than thirty (30) days, then Mortgagor shall give such notice to Leasehold Mortgagee and the Port Authority immediately upon Mortgagor's knowledge of such application, provided further, that in the event that Mortgagor or its trustee in bankruptcy shall have decided to reject or disaffirm the Lease Agreement, then prior to making any application to effectuate any such rejection or disaffirmance Mortgagor shall offer instead, upon not less than thirty (30) days written notice to the Leasehold Mortgagee and the Port Authority, to attempt to assign the Lease Agreement to the Leasehold Mortgagee, its designee or nominee, in accordance with, and subject to, the terms and conditions of the Lease Agreement, or as otherwise approved by the Port Authority in writing. In no event shall the Mortgagor have an obligation to cure any outstanding defaults in connection with any such assignments. In the event Leasehold Mortgagee accepts such offer within such thirty (30) day period, as it may be extended by mutual agreement, Mortgagor shall not seek to reject or disaffirm the Lease Agreement and shall instead promptly assign the Lease Agreement to Leasehold Mortgagee, its designee or nominee, in accordance with, and subject to, the terms and conditions of the Lease Agreement, or as otherwise approved by the Port Authority in writing. In the event of any rejection or disaffirmance of the Lease Agreement by Mortgagor or anyone claiming through or under Mortgagor or a trustee in bankruptcy without having first made the preceding written offer to assign, upon written election by the Leasehold Mortgagee such rejection or disaffirmance shall be deemed an assignment of the Lease Agreement to the Leasehold Mortgagee, its designee or nominee, subject to, the terms and conditions of the Lease Agreement, or as otherwise approved by the Port Authority in writing. Furthermore, until such time as the Lease is so rejected or disaffirmed or otherwise assumed by Mortgagor, Leasehold Mortgagee shall have the right to seek adequate protection for payment of the Senior Building Loan Obligations.

(v) If any of the assignments provided for in this Section are held to be unenforceable, then Mortgagor, anyone claiming by, through or under Mortgagor or a trustee in bankruptcy, shall not exercise rights purportedly assigned to Leasehold Mortgagee without the prior written consent of Leasehold Mortgagee, and if Leasehold Mortgagee shall give such consent, Mortgagor, anyone claiming by, through or under Mortgagor or a trustee in bankruptcy shall promptly exercise said rights.

(vi) To the extent permitted by applicable law and to the extent that a petition under the Bankruptcy Code shall have been filed by or against Mortgagor and Mortgagor unreasonably fails to act in a timely manner upon reasonable prior written request of Leasehold Mortgagee, Mortgagor hereby assigns, transfers and sets over to Leasehold Mortgagee a right to apply to the Bankruptcy Court under Subsection 365(d)(4) of the Bankruptcy Code for an order extending the period during which the Lease Agreement may be rejected or assumed after the entry of any order for relief in respect of Mortgagor under Chapter 7 or Chapter 11 of the Bankruptcy Code.

#### Section 12. Sale by the Leasehold Mortgagee.

(a) The Leasehold Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Leasehold Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, the Leasehold Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(b) Upon the completion of any sale or sales made by the Leasehold Mortgagee under or by virtue of this Leasehold Mortgage, the Leasehold Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, assigning and transferring all of the Mortgagor's estate, right, title and interest in and to the property and rights sold. The Leasehold Mortgagee may, at the Leasehold Mortgagee's option, also foreclose this Leasehold Mortgage for any portion of the sums secured hereby which is then due and payable, subject to the continuing lien of this Leasehold Mortgage for the balance of the Senior Building Loan Obligations then due. Upon the occurrence and during the continuance of an Event of Default beyond the applicable cure or grace period, the Leasehold Mortgagee is hereby irrevocably appointed the true and lawful attorney-in-fact of the Mortgagor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold and for that purpose the Leasehold Mortgagee may execute all necessary instruments of assignment and transfer, and may substitute one or more persons with like power, the Mortgagor hereby ratifying and confirming all that its said attorney-in-fact or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, the Mortgagor, if so requested by the Leasehold Mortgagee, shall ratify and confirm any such sale or sales by executing and delivering to the Leasehold Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of the Leasehold Mortgagee, for the purpose, and as may be designated, in such request. Any such sale or sales made under or by virtue of this Leasehold Mortgage, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of the Mortgagor in and to the property and rights so sold,

and shall be a perpetual bar both at law and in equity against the Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under the Mortgagor.

(c) The purchase money, proceeds or avails of any sale made under or by virtue of this Leasehold Mortgage, together with any other sums which then may be held by the Leasehold Mortgagee under this Leasehold Mortgage, whether under the provisions of this Section 12 or otherwise, shall be applied in the order set forth in Section 15 hereof.

(d) Upon any sale made under or by virtue of this Leasehold Mortgage or any of the other Senior Security Documents, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Leasehold Mortgagee may bid for and acquire the Mortgaged Property and the other property encumbered by the other Senior Security Documents or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the indebtedness of the Mortgagor secured by this Leasehold Mortgage the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which the Leasehold Mortgagee are authorized to deduct under this Leasehold Mortgage.

(e) The foregoing paragraphs (a)-(d) shall be subject to the terms and conditions of the Lease Agreement or as otherwise approved by the Port Authority in writing.

### Section 13. Receivers.

(a) Upon the occurrence and during the continuance of an Event of Default beyond the applicable cure or grace period and immediately upon the commencement of any action, suit or other legal proceedings by the Leasehold Mortgagee to obtain judgment for the principal of, and interest on, the 2022 TDC Building Notes, any Note issued under the TDC Building Loan Agreement and other sums required to be paid by the Mortgagor pursuant to any provision of this Leasehold Mortgage, or of any other nature in aid of the enforcement of the Lease Agreement, this Leasehold Mortgage or other Senior Financing Documents, the Mortgagor will and hereby does (i) waive the service of process and enter its voluntary appearance in such action, suit or proceeding, and (ii) if required by the Leasehold Mortgagee, consent to the appointment of a receiver or receivers in respect of the Mortgaged Property (subject to the last sentence of this Section 13(a)). After the happening of any Event of Default and during its continuance, and upon the commencement of any proceedings to foreclose this Leasehold Mortgage, or to enforce the specific performance hereof or in aid thereof or upon the commencement of any other judicial proceeding to enforce any right of the Leasehold Mortgagee, the Leasehold Mortgagee shall be entitled, as a matter of right, if it shall so elect, without the giving of notice to any other party and without regard to the adequacy or inadequacy of any security for the indebtedness, forthwith either before or after declaring the unpaid principal of the 2022 TDC Building Notes or any Note issued under the TDC Building Loan Agreement to be due and payable, to the appointment of such a receiver or receivers. Any receiver appointed hereunder must qualify as a Qualified Terminal Operator.

(b) Upon the occurrence and during the continuance of an Event of Default beyond the applicable cure or grace period, notwithstanding the appointment of any receiver,

liquidator or trustee of the Mortgagor, or of any of its property, or of the Mortgaged Property or any part thereof, the Leasehold Mortgagee shall be entitled to retain possession and control of all property now or hereafter held under this Leasehold Mortgage.

Section 14. Election of Remedies.

(a) If the indebtedness secured hereby is now or hereafter further secured by chattel mortgages, pledges, contracts, guaranties, assignments of leases, or other securities, the Leasehold Mortgagee may at its option exhaust any one or more of said securities and the security hereunder, either concurrently or independently, and in such order as it may determine.

(b) The rights of the Leasehold Mortgagee, granted and arising under the clauses and covenants contained in this Leasehold Mortgage, the Lease Agreement and in the other Senior Financing Documents, shall be separate, distinct and cumulative of other powers and rights herein granted and all other rights which the Leasehold Mortgagee may have in law or equity, and none of them shall be in exclusion of the others; and all of them are cumulative to the remedies for collection of indebtedness, enforcement of rights under mortgages and preservation of security as provided at law. No act of the Leasehold Mortgagee shall be construed as an election to proceed under any one provision herein or under the Lease Agreement, or Senior Financing Documents to the exclusion of any other provision, or an election of remedies to the bar of any other remedy allowed at law or in equity, anything herein or otherwise to the contrary notwithstanding.

Section 15. Application of Proceeds.

All proceeds received by the Leasehold Mortgagee from the sale or other disposition of this Leasehold Mortgage or from the exercise by the Leasehold Mortgagee of any right or remedy under this Leasehold Mortgage, whether received from a new lessee or otherwise, shall be applied in accordance with the Collateral Agency and Accounts Agreement.

Section 16. Waiver by the Mortgagor.

The Mortgagor will not at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Mortgaged Property or any part thereof, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Leasehold Mortgage, nor claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision herein, or pursuant to the decree, judgment or order of any court of competent jurisdiction; nor, after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the property so sold or any part thereof and the Mortgagor hereby expressly waives all benefit or advantage of any such law or laws, and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to the Leasehold Mortgagee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. The Mortgagor, for itself and all who may claim under it, waives, to the extent that it lawfully may, all right to have the Mortgaged Property marshaled upon any foreclosure hereof.

Section 17. Condemnation.

In the event that pursuant to the terms of Section 19 of the Lease Agreement, any portion of the Premises is acquired by a Taking pursuant to Section 19 of the Lease Agreement, such portion that is subject to such Taking shall be free and clear of this Leasehold Mortgage and any interest of the Leasehold Mortgagee in the Mortgaged Property. The Mortgagor hereby assigns to the Leasehold Mortgagee any payments received by the Mortgagor pursuant to Section 19 of the Lease Agreement as collateral and further security for the Senior Building Loan Obligations and the Mortgagor hereby consents to and directs that the Port Authority pay to the Leasehold Mortgagee, to the extent the Port Authority receives any proceeds as a result of or in connection with such Taking in relation to the Premises and to which the Mortgagor is entitled to under the Lease Agreement, such amount provided under Section 19 of the Lease Agreement. Any amount so paid by the Port Authority to the Leasehold Mortgagee shall be applied by the Leasehold Mortgagee in accordance with the Lease Agreement and the Senior Financing Documents.

No sale, transfer or assignment by the Mortgagor of its interest in the Mortgaged Property or the Mortgagor's leasehold estate to the Port Authority shall create a merger between the estates of the Port Authority and the Mortgagor unless the Port Authority, the Mortgagor and the Leasehold Mortgagee consent to such merger in writing, nor shall any such sale, transfer or assignment be deemed to affect or diminish the liabilities of the Mortgagor with respect to the Mortgaged Property, whether for survived damages or otherwise.

Section 18. Costs of Litigation and Collection.

If any action or proceeding is commenced to which the Leasehold Mortgagee is made a party or in which it becomes necessary, in the opinion of the Leasehold Mortgagee's counsel, to defend or uphold the lien of this Leasehold Mortgage, or if this Leasehold Mortgage is put into the hands of an attorney for collection, suit, action or foreclosure, all sums expended by the Leasehold Mortgagee, including reasonable counsel fees, shall be paid by the Mortgagor, together with interest thereon at the Default Rate, and any such sum shall be a further lien on the Mortgaged Property prior to any subsequently attaching or accruing claim or interest and shall be deemed secured by this Leasehold Mortgage; and, in any action or proceedings to foreclose this Leasehold Mortgage, or to recover or collect the indebtedness, the provisions of law respecting the recovery of costs, disbursements and allowances shall prevail unaffected by this covenant.

Section 19. Security Agreement and Fixture Filing.

This Leasehold Mortgage shall also be considered to be and shall be construed as a security agreement with respect to any Mortgaged Property which is not real property. Upon the occurrence and during the continuance of an Event of Default hereunder, the Leasehold Mortgagee may in its discretion, subject to the terms of the Intercreditor Agreement, require the Mortgagor to assemble the collateral and make it available to the Leasehold Mortgagee at a place reasonably convenient to all parties to be designated by the Leasehold Mortgagee. The Leasehold Mortgagee shall give the Mortgagor written notice of the time and place of any public sale of any of the collateral or of the time after which any private sale or other intended disposition thereof is to be made by sending notice to the Mortgagor at least ten (10) days before the time of the sale or other disposition, which provisions for notice the Mortgagor agrees are reasonable.

Certain of the Mortgaged Property is or will become “fixtures” (as that term is defined in the UCC) on the Premises, and this Leasehold Mortgage, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said UCC upon such of the Mortgaged Property that is or may become fixtures.

Section 20. Additional Senior Obligations.

The Mortgagor and the Leasehold Mortgagee understand and agree that, subject to the terms and conditions set forth in the Senior Financing Documents, the Issuer may, from time to time, establish and authorize the issuance and (as applicable) sale of, and the Mortgagor may incur, Additional Senior Obligations for purposes of the Project on a parity basis with the Loan Facility. In the case of any such issuance of Additional Senior Obligations, such Additional Senior Obligations shall have the same notes, pledges, mortgages, security interests and assignments applicable to the Senior Bonds and/or the Loan Facility, as applicable, pursuant to the Supplemental Indenture or Additional Senior Financing Documents, as applicable, authorizing such Additional Senior Obligations, and the Mortgagor and the Leasehold Mortgagee shall execute such documents as may reasonably be required by the Issuer acting at the request of either the Mortgagor or the Intercreditor Agent, as applicable, in accordance with the Intercreditor Agreement, to accomplish such purposes.

Section 21. Further Assurances.

The Mortgagor will from time to time within ten (10) Business Days after written request by the Leasehold Mortgagee, execute, acknowledge and deliver any further instrument or instruments, including but not limited to mortgages, assignments, assignments of leases, security agreements, financing statements, renewal affidavits, certificates, continuation statements, assignments, or other documents or instruments (in each case, provided that such documents do not contravene the Lease Agreement unless otherwise approved in writing by the Port Authority) that the Leasehold Mortgagee may reasonably request in order to reaffirm, correct, protect, preserve, continue, extend or maintain the evidence of the Senior Building Loan Obligations hereby secured and the lien and security interest hereof to all or any part of the Mortgaged Property intended to be hereby mortgaged, whether now mortgaged, later substituted for, or acquired subsequent to the date of this Leasehold Mortgage and any extension or modification thereof. The Mortgagor will, upon demand, pay any reasonable expenses incurred by the Leasehold Mortgagee in the preparation, execution and filing of any such documents.

Section 22. Payment by the Leasehold Mortgagee.

If the Mortgagor (i) fails to pay any claim, lien or encumbrance which is prior or junior to this Leasehold Mortgage, or any rent or payment due under the Lease Agreement when due, or any tax or assessment or insurance premium when due, or (ii) fails to keep the Mortgaged Property or personal property in good repair, or (iii) shall commit or permit physical waste, or if there be commenced any action or proceeding affecting all or any part of the Mortgaged Property or personal property or the title thereto, then the Leasehold Mortgagee, at its option, may pay such claim, lien, encumbrance, rent, payment, tax, assessment, or premium, with right of subrogation thereunder, may make such repairs and take such steps as the Leasehold Mortgagee deems



advisable to prevent or cure, if any, such waste, and may appear in any such action or proceeding and retain counsel therein, and take any action therein as the Leasehold Mortgagee deems advisable, and for any of said purposes the Leasehold Mortgagee may advance such sums of money as it deems necessary; provided, however, so long as an Event of Default shall not have occurred and be continuing, the Leasehold Mortgagee shall not have the right to enter the Premises to cure or prevent any default by the Mortgagor or otherwise take any action that interferes with the Mortgagor's construction, operation or maintenance of the Mortgaged Property, except as otherwise provided in the Lease Agreement and the Senior Financing Documents.

Section 23. Leasehold Mortgagee Expenses.

In addition to securing the payment of the Senior Building Loan Obligations, this Leasehold Mortgage shall further secure payment of any and all additional indebtedness owing by the Mortgagor to the Leasehold Mortgagee for advances, charges, expenses or fees reasonably made, incurred, or expended by the Leasehold Mortgagee pursuant to this Leasehold Mortgage.

Section 24. Payments Secured.

The Mortgagor will pay to the Leasehold Mortgagee within ten (10) Business Days after written notice and without further demand therefor by the Leasehold Mortgagee, all sums of money advanced by the Leasehold Mortgagee to cure a default pursuant to this Leasehold Mortgage, together with interest on each such advancement from the date of disbursement at the Default Rate, and all such sums and such interest thereon shall be secured hereby.

Section 25. Inspection by the Leasehold Mortgagee.

Subject to the terms and conditions of the Lease Agreement, the Leasehold Mortgagee and any persons authorized by the Leasehold Mortgagee shall have the right to enter and inspect the Premises at all reasonable times upon reasonable notice, subject to the terms of the Lease Agreement, provided that such right shall be limited to one time per calendar year unless an Event of Default has occurred and is continuing. The Leasehold Mortgagee shall not have any duty to make any such inspection and shall not incur any liability or obligation for not making such inspection.

Section 26. Compromise Without Notice.

Any action, suit or proceeding brought by the Leasehold Mortgagee pursuant to this Leasehold Mortgage or otherwise, and any claim made by any such person under this Leasehold Mortgage or otherwise, may be compromised, withdrawn or otherwise dealt with by such person without any notice to or approval of the Mortgagor, except as expressly required hereunder.

Section 27. Suits Without Acceleration.

After the expiration of any applicable period of notice, the Leasehold Mortgagee shall have the right from time to time to sue for any sums, whether interest, principal or any installment of either or both, taxes, penalties, or any other sums required to be paid under the terms of this Leasehold Mortgage, as the same become due, without regard to whether or not all of the indebtedness shall be due on demand, and without prejudice to the right of the Leasehold

Mortgagee thereafter to enforce any appropriate remedy against the Mortgagor, including sale under this Leasehold Mortgage, or any other action, for a default or defaults by the Mortgagor existing at the time such earlier action was commenced.

Section 28. Estoppel Certificate.

The Mortgagor, upon request, made either personally or by mail, shall certify by a writing, duly acknowledged, to the Leasehold Mortgagee or to any proposed assignee of any interest in this Leasehold Mortgage, the amount of the Senior Building Loan Obligations then owing under this Leasehold Mortgage and whether any offsets or defenses exist against such indebtedness within ten (10) days after its receipt of such written request.

Section 29. Indemnification.

The Mortgagor shall (regardless of any covenant with respect to insurance) indemnify and save harmless the Leasehold Mortgagee and its members, directors, officers, employees, attorneys and agents (the "Indemnified Parties") against and from any and all liability and expenses arising from their participation in the transactions contemplated hereby, including without limitation (a) any and all claims by or on behalf of any Person arising out of (i) any condition of the Mortgaged Property or any part thereof, or (ii) the acquisition, installation, construction, reconstruction, improvement, use, occupancy, conduct or management of or any work or anything whatsoever done or omitted to be done in or about the Mortgaged Property or any part thereof, or (iii) any accident, injury, or damage whatsoever to or death of any Person occurring in or about the Mortgaged Property or any part thereof, or (iv) any breach or default by the Mortgagor of any of its obligations under the Senior Financing Documents, or (v) any act or omission of the Mortgagor or any of its agents, contractors, servants, employees, or licensees, or (vi) the offering, reoffering, issuance, sale, resale or remarketing of any Series of Bonds or any Senior Loans, or (vii) any action, suit, claim or proceedings instituted or threatened in connection with the transactions contemplated by this Leasehold Mortgage; (b) any and all losses, costs, counsel fees, expenses or liabilities reasonably incurred in connection with any such claim or any action or proceeding brought thereon; and (c) any costs of collection; provided, however, that the Mortgagor shall not be required to indemnify any Person otherwise to be indemnified under this Section 29 for any liabilities or expenses incurred by such Person to the extent caused by or resulting from the bad faith, willful misconduct or gross negligence of such Person. In case any action or proceeding is brought against the Leasehold Mortgagee or any of its members, directors, officers, employees, attorneys or agents by reason of such claim, the Mortgagor, upon notice from the affected party, shall resist or defend such action or proceeding and release the Leasehold Mortgagee or any such member, director, officer, employee, attorney or agent from any such action or claim. Subject to the foregoing, the Leasehold Mortgagee shall cooperate and join with the Mortgagor at the expense of the Mortgagor as may be required in connection with any action taken or defended by the Mortgagor; in so doing, the Mortgagor shall take no action that would result in a determination of guilt or liability against the Leasehold Mortgagee or any of its members, directors, officers, employees, attorneys and agents without the express written consent of such party.

The Leasehold Mortgagee and its members, directors, officers, employees, attorneys and agents shall, in connection with their respective rights under this Section 29, be

entitled to the advice of counsel (who may also be counsel for the Mortgagor) at the Mortgagor's expense, and shall be wholly protected as to action taken or omitted to be taken in good faith in reliance on such advice. They may rely conclusively on any communication or other document furnished to them under the Senior Financing Documents and reasonably believed by them to be genuine. They shall not be liable for any action (i) taken by them in good faith and reasonably believed by them to be within the discretion or powers conferred upon them, or (ii) in good faith not taken by them because reasonably believed to be beyond the discretion or powers conferred upon them, or (iii) taken by them pursuant to any direction or instruction by which they are governed by the Senior Financing Documents, or (iv) omitted to be taken for any of the reasons set forth in the preceding clauses (i) or (iii), or omitted to be taken by them by reason of the lack of any direction or instruction required hereby or by any of the other Senior Financing Documents for such action; nor shall they be responsible for the consequences of any error of judgment reasonably made by them. The Leasehold Mortgagee shall in no event be liable for the application or misapplication of funds, or for other acts or defaults, by any Person, except (i) its own members, directors, officers and employees and (ii) in the case of the Senior Collateral Agent, others specified and only to the extent set forth in Section 2.10 of the Collateral Agency and Accounts Agreement. When any consent or other action by them is called for by the Senior Financing Documents, they may defer such action pending receipt of such certificates, opinions, documents or other supporting evidence as may be required hereunder or under the applicable Senior Financing Documents. They shall not be required to take any remedial action (other than the giving of notice) unless indemnity reasonably satisfactory to them is furnished for any expense or liability to be incurred thereby. They shall be entitled to reimbursement for expenses reasonably incurred or advances reasonably made, in the exercise of their rights or the performance of their obligations hereunder, to the extent that they act without previously obtaining indemnity (in addition to their rights to reimbursement set forth elsewhere herein). No permissive right or power to act which they may have shall be construed as a requirement to act; and no delay in the exercise of a right or power shall affect the subsequent exercise of that right or power. The provisions of this Section shall survive payment in full of the Senior Building Loan Obligations, any resignation or removal of the Leasehold Mortgagee pursuant to this Leasehold Mortgage, and the termination of this Leasehold Mortgage.

### Section 30. Information.

At the time of delivery of financial statements under any applicable Mortgagor Continuing Disclosure Agreement, if any, the Mortgagor will deliver to the Leasehold Mortgagee a certificate stating that, to the best of its knowledge and belief based on reasonable due diligence, no condition or event exists which constitutes, or which (after notice or lapse of time or both) would constitute, an Event of Default, or if any such condition or event exists, specifying the nature and period of existence thereof and what action it is taking or proposes to take with respect thereto.

### Section 31. Invalidity of Certain Provisions / Severability.

All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Leasehold Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Leasehold Mortgage shall be held to be invalid, illegal or unenforceable, the validity, legality and

enforceability of other terms of this Leasehold Mortgage shall in no way be affected thereby. If any provision hereof or of any of the written instruments evidencing part or all of the Senior Building Loan Obligations is invalid or unenforceable under any statute, regulation or rule of law in any jurisdiction such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform to such statute, regulation or rule of law to the extent permitted in keeping with the intentions of the parties hereto, and the remainder of this Leasehold Mortgage and the application of any such invalid or unenforceable provision to parties, jurisdictions or circumstances other than to whom or to which it is held invalid or unenforceable, shall not be affected thereby nor shall same affect the validity or enforceability of any other provision of this Leasehold Mortgage.

Section 32. Interest Limitation.

It is not intended by any provision of this Leasehold Mortgage or other Senior Financing Documents to charge interest or premium at a rate in excess of the maximum rate of interest permitted to be charged to the Mortgagor under applicable law on a cumulative basis. Nevertheless, if by mistake or error interest or premium in excess of such maximum rate shall be paid for any period, the excess amount shall, if permitted by applicable law, be retained by Leasehold Mortgagee as additional cash collateral for the 2022 TDC Building Notes and any Note issued under the TDC Building Loan Agreement to be held without interest or trust or, if not permitted to be so held by Leasehold Mortgagee, shall either be refunded to the Mortgagor or shall be applied in reduction of principal, if permitted by applicable law.

Section 33. Lien Law.

Mortgagor, in compliance with Section 13 of the New York State Lien Law, shall receive all advances secured by this Leasehold Mortgage and shall hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of improvement and shall apply the same first to the payment of the cost of improvement before using any part of the total of the same for any other purpose. This Leasehold Mortgage shall constitute a “construction mortgage” as that term is defined in the version of the Code enacted in the state where the Mortgaged Property is located.

Mortgagor agrees that it shall indemnify and hold Leasehold Mortgagee harmless from and against any loss or liability, cost or expense, including, without limitation, any judgments, attorneys’ fees, costs of appeal bonds and printing costs arising out of or relating to any proceeding instituted by any claimant alleging priority over the lien of this Leasehold Mortgage, and/or if the Mortgaged Property or any part thereof is within the State of New York by any claimant alleging a violation by Mortgagor or Mortgagee of any section of Article 3-A of the New York State Lien Law.

Section 34. Construction.

The clauses and covenants contained in this Leasehold Mortgage which are construed by Sections 254 and 271 of the New York Real Property Law shall be construed as provided in those Sections, except that the provisions of subsection 4 of said Section 254 shall not in any manner apply to or construe the provisions of this Leasehold Mortgage; the additional

clauses and covenants contained herein shall afford rights supplemental to and not exclusive of the rights conferred by the clauses and covenants construed by said Sections 254 and 271 and shall not impair, modify, alter or defeat such rights (except that the provisions of Section 34 hereof shall be exclusive of and shall be in substitution for the rights which would be conferred by the clauses and covenants construed by said subsection 4 of said Section 254), notwithstanding that such additional clauses and covenants may relate to the same subject matter or provide for different or additional rights in the same or similar contingencies as the clauses and covenants construed by said Sections 254 and 271; and in the event of any inconsistencies between the provisions of Sections 254 and 271 and the provisions of this Leasehold Mortgage, the provisions of this Leasehold Mortgage shall prevail.

Section 35. Waiver of Redemption.

The Mortgagor hereby waives any and all rights to recover and regain the Mortgaged Property and all rights of redemption, granted by or under any present or future law in the event it is evicted or dispossessed for any cause, or in the event the Port Authority or Leasehold Mortgagee obtains possession of the Mortgaged Property in any lawful manner.

Section 36. Mortgaged Personal Property.

So long as an Event of Default shall not have occurred and be continuing, the Mortgagor shall have the right to remove free and clear of this Leasehold Mortgage any part or all of the Mortgaged Personal Property, provided such removal does not materially impair the value or function of the Premises, or to substitute therefore any other property of the Mortgagor of a type or character or function similar to that which is removed, in each case subject to the requirements of the Lease Agreement and the Senior Financing Documents.

Section 37. Discharge of Leasehold Mortgage by the Lessee.

This Leasehold Mortgage shall be deemed satisfied, discharged and of no further force and effect upon the retirement, redemption, refunding, defeasance, satisfaction or other payment or discharge of the Senior Building Loan Obligations in full accordance with the provisions of the Senior Financing Documents, and the Leasehold Mortgagee shall execute and deliver to the Port Authority and the Mortgagor all documents, in recordable form, that may be required or reasonably requested to evidence the discharge and satisfaction of this Leasehold Mortgage.

Section 38. Delays and Omissions.

Any failure or delay by the Leasehold Mortgagee to require strict performance by the Mortgagor of any of the provisions, warranties, terms and conditions contained in this Leasehold Mortgage, the other Senior Financing Documents or in any other agreement, document or instrument, shall not affect the right of the Leasehold Mortgagee to demand strict compliance and performance therewith, and any waiver of any default shall not affect or constitute a waiver of any other default, whether prior or subsequent thereto, and whether of the same or of a different type. None of the warranties, conditions, provisions and terms contained in this Leasehold Mortgage, the other Senior Financing Documents or in any other agreement, document or instrument shall be deemed to have been waived by any act or knowledge of the Leasehold

Mortgagee, its agents, officers or employees, but only by an instrument in writing, signed by the Leasehold Mortgagee and specifying such waiver.

The Mortgagor hereby consents to any lawful act by the Leasehold Mortgagee for the purpose of taking lawful possession of the Mortgaged Property after an Event of Default that has occurred and is continuing and subject to the provisions of this Leasehold Mortgage and the Lease Agreement.

Section 39. Notices.

(a) All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by overnight delivery service or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Mortgagor at

JFK Millennium Partners, LLC

\_\_\_\_\_

\_\_\_\_\_

Attention: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

If to the Leasehold Mortgagee at

The Bank of New York Mellon

\_\_\_\_\_

\_\_\_\_\_

Attention: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

If to the Issuer at

New York Transportation Development Corporation

\_\_\_\_\_

\_\_\_\_\_

Attention: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

Alternatively, all notices, certificates or other communications hereunder may be given by Electronic Means. The Mortgagor and the Leasehold Mortgagee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or

other communications shall be sent. Any notice to be sent to the Port Authority hereunder shall be sent to the Port Authority at the address provided by the Port Authority in the Lease Agreement.

In case, by reason of the suspension of regular mail service as a result of a strike, work stoppage or similar activity, it shall be impractical to mail notice of any event when such notice is required to be given pursuant to any provision of this Leasehold Mortgage, any manner of giving notice as shall be satisfactory to the Leasehold Mortgagee shall be deemed to be a sufficient giving of such notice.

(b) Pursuant to Section 83 of the Lease Agreement, if any notice of an Event of Default under any of the Senior Financing Documents is sent to the Mortgagor, the Leasehold Mortgagee will simultaneously send a copy to the Port Authority at the address provided in the Lease Agreement.

Section 40. LAW GOVERNING THE LEASEHOLD MORTGAGE.

THE EFFECT AND MEANING OF THIS LEASEHOLD MORTGAGE AND THE RIGHTS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THEREOF.

Section 41. Sale, Conveyance, Transfer, Mortgage, Pledge, Assignment and Modification.

Any sale or transfer of the Leasehold Mortgagee's interest in this Leasehold Mortgage, or any part hereof, shall be subject to any applicable provisions of the Lease Agreement, including, without limitation, Section 83(e) thereof.

Except as expressly permitted pursuant to the Lease Agreement and the Senior Financing Documents, the Mortgagor shall not cause or permit a sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, grant of any options with respect to, or any other transfer or disposition (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of a legal or beneficial interest in the Mortgaged Property or any part thereof or the Mortgagor, without the prior written consent of Leasehold Mortgagee, other than any pledge or security interest granted in the equity of an indirect equity holder of the Mortgagor, granted by a holder of such equity to its lenders as collateral security. Notwithstanding anything to the contrary contained herein or in any of the other Senior Financing Documents, this Leasehold Mortgage shall survive an assignment of the Lease Agreement, and this Leasehold Mortgage shall remain in full force and effect.

The Mortgagor shall not surrender or terminate the Lease Agreement, or enter into any agreement to do so, without the prior written consent of the Leasehold Mortgagee, but only to the extent the surrender is not in connection with the expiration of the Term (as defined in the Lease Agreement). Any agreement, surrender or termination in violation of the preceding sentence shall be void ab initio.

Section 42. Counterparts.

This Leasehold Mortgage may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The exchange of copies of this Leasehold Mortgage and of signature pages by facsimile or portable document format (“PDF”) transmission shall constitute effective execution and delivery of this Leasehold Mortgage as to the parties hereto. Signatures of the parties hereto transmitted by facsimile, electronic, manual or PDF shall be deemed to be their original signatures for all purposes.

Section 43. Titles.

Titles to the sections of this Leasehold Mortgage are solely for the convenience of the parties and are not an aid in the interpretation of this Leasehold Mortgage or any part hereof.

Section 44. Assignment of Mortgaged Rents.

Subject to and in compliance with the terms of the Lease Agreement, Mortgagor hereby absolutely and unconditionally assigns to Leasehold Mortgagee all of Mortgagor’s right, title and interest in and to all current and future Subleases and Mortgaged Rents; it being intended by the Mortgagor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Senior Security Documents, Leasehold Mortgagee grants to the Mortgagor a revocable license to collect, receive, use and enjoy the Mortgaged Rents and the Mortgagor shall hold the Mortgaged Rents, or a portion thereof sufficient to discharge all current sums due on the Senior Building Loan Obligations, for use in the payment of such sums or as otherwise provided in the Senior Financing Documents.

Section 45. Miscellaneous.

(a) Immunity of Commissioners, Officers, Agents, Representatives and Employees of the Port Authority.

Neither the Commissioners of the Port Authority nor any of the officers, agents, representatives or employees of the Port Authority shall be charged personally with any liability or held liable under any term or provision of this Leasehold Mortgage or any supplement, modification or amendment hereto or because of the consent to this Leasehold Mortgage.

(b) Basic Lease & Lease Agreement Shall Control. Notwithstanding anything contained in this Leasehold Mortgage or any consent or approval of the Port Authority hereto, it is understood, agreed and is hereby expressly provided in this Leasehold Mortgage, that the rights of the Leasehold Mortgagee, or its assignee or its successor-in-interest, as applicable, in its capacity as a transferee of the Mortgagor’s rights under the Lease Agreement, (i) shall in all respects be as specified in and shall be subject and subordinate to the terms, covenants, conditions and provisions set forth in the Lease Agreement and (ii) shall be subject and subordinate to the terms, covenants, conditions, and provisions of the Basic Lease. The terms, covenants, conditions and provisions of the Lease Agreement and the Basic Lease shall govern as between the Port Authority, the Mortgagor, and the Leasehold Mortgagee, in its capacity as a transferee of the Mortgagor’s rights under the Lease Agreement, and in the event of any inconsistency between the



terms, covenants, conditions and provisions of the Lease Agreement and the Basic Lease, as applicable, and the terms, covenants, conditions and provisions of this Leasehold Mortgage, the terms, covenants, conditions, and provisions of the Lease Agreement and the Basic Lease, as applicable, shall control. Further, as between the Port Authority, the Mortgagor, and the Leasehold Mortgagee, to the extent the Port Authority approves this Leasehold Mortgage, the parties acknowledge and agree any such approval shall not be deemed to constitute, nor imply, an amendment to the terms of the Lease Agreement, unless the Port Authority expressly identifies the same as an amendment to the Lease Agreement in its approval.

(c) Port Authority's Copy of Leasehold Mortgage.

Without limiting the Port Authority's right of approval thereof, the Leasehold Mortgagee shall give the Port Authority a true copy of this Leasehold Mortgage and a true copy of any amendments hereof.

(d) Statement Regarding Residential Dwelling Units.

The real property subject to this Leasehold Mortgage is not principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each having its own cooking facilities.

(e) Limitation on Disposition of the Mortgagor's Interest in the Lease Agreement.

The Leasehold Mortgagee shall require that any transferee, assignee or purchaser of the Mortgagor's leasehold estate under the Lease Agreement or any new lessee shall assume the rights and obligations, from and after date of assumption, of the Mortgagor under the Senior Financing Documents.

(f) Non-liability of Individuals; Limitations on Recourse.

(i) Notwithstanding any other provision of this Leasehold Mortgage to the contrary, no (x) commissioner, director, employee, committee member, manager, managing director, officer, agent, representative, nor any (y) owner, shareholder, member, partner, controlling Person, principal, or ultimate beneficial owner, in each case, whether direct or indirect, of the Leasehold Mortgagee or of the Mortgagor or any Affiliate of the Leasehold Mortgagee or the Mortgagor or of any of the foregoing, shall be charged personally or held contractually liable by or to the other party, or any third-party beneficiary hereof, under, or in connection with, any term or provision of this Leasehold Mortgage or of any supplement, modification or amendment to this Leasehold Mortgage or because of any breach thereof, or because of its or their execution or attempted execution.

(ii) Notwithstanding any other provision of this Leasehold Mortgage to the contrary, and as a material consideration for the Mortgagor's entry into this Leasehold Mortgage, it is acknowledged and agreed that neither the Leasehold Mortgagee (or any of its successors or assigns) nor any third party beneficiary hereof shall have any recourse or shall make any claim under or in connection with this Leasehold Mortgage, against any commissioner, director, employee, committee member, manager, managing director, officer, agent,

representative, owner, shareholder, member, partner, controlling Person, principal, or ultimate beneficial owner, in each case, whether direct or indirect, of the Mortgagor or any Affiliate of the Mortgagor under, or in connection with, this Leasehold Mortgage and the sole recourse of the Leasehold Mortgagee (or its successors or assigns) and any third party beneficiary hereof shall be against the Mortgagor's assets irrespective of any failure of the Mortgagor to comply with applicable Law or any provision of this Leasehold Mortgage. The acknowledgements and agreements set forth in this Section are made expressly for the benefit of the Persons referred to herein, individually or collectively.

(iii) For the purposes of this Section, the protections afforded to the Leasehold Mortgagee under this Section shall be deemed to protect the Senior Collateral Agent, nominee of the Senior Collateral Agent, any successor to the Leasehold Mortgagee, any Qualified Terminal Operator and any director, manager, managing director, controlling person, direct or indirect shareholder, member, partner, principal, ultimate or indirect shareholder, owner, officer or agent thereof in respect of any obligations hereunder or under any of the Senior Financing Documents.

(iv) Nothing in this Section will be deemed a release of any member or Affiliate or Mortgagor from their obligations under any guaranty or any other agreement made by such member of Affiliate with, or for the benefit of, the Mortgagor, the Project, the Senior Collateral Agent or any other Senior Secured Parties; provided that neither the Leasehold Mortgagee nor any third party beneficiary hereof shall be subrogated, or have any right of subrogation, to any claim of the Mortgagor for any capital contributions to the Mortgage from any member of the Mortgagor or any associated claims under any guaranty, letter of credit or other security provided by any member of the Mortgagor for the benefit of the Mortgagor, in each case, except to the extent otherwise expressly set forth in the Senior Financing Documents.

(v) The Senior Collateral Agent has executed this Leasehold Mortgage and the other Senior Security Documents not in its individual capacity but solely as Senior Collateral Agent in connection with the rights and obligations of the Senior Collateral Agent. In connection with the Senior Collateral Agent's execution of this Leasehold Mortgage and the other Senior Security Documents, in no event shall the Senior Collateral Agent, in its individual capacity, have any liability for the representations, warranties, covenants, agreements or other obligations of the Senior Collateral Agent hereunder or thereunder or in any of the certificates, notices or agreements delivered pursuant hereto or thereto, except to the extent the Senior Collateral Agent may be liable under the Senior Security Documents. Mortgagor acknowledges and confirms that the indemnity in Section 7.02 of the Collateral Agency and Accounts Agreement and Section 7.2 of the TDC Building Loan Agreement shall apply with respect to the Senior Collateral Agent's performance of its obligations hereunder (as though such indemnity was set forth herein in its entirety).

(vi) All obligations of the Senior Collateral Agent and the other Senior Secured Parties incurred hereunder or under any other Senior Financing Document shall be limited obligations of the Senior Collateral Agent and the other Senior Secured Parties, payable solely and only from proceeds, revenues and other amounts derived by the Senior Collateral Agent from the Trust Estate and security under the Senior Security Documents.

(g) No Merger.

So long as any of the Senior Building Loan Obligations secured hereby shall remain unpaid or unsatisfied, unless Leasehold Mortgagee shall otherwise consent in writing, the leasehold interest in the Premises or any other interest of the Mortgagor or Leasehold Mortgagee in the Mortgaged Property or the Senior Building Loan Obligations or other security therefore shall not merge with any other interest therein, but shall always be kept separate and distinct, notwithstanding the union of said title either in the Mortgagor, Leasehold Mortgagee or in any other party, by purchase or otherwise.

(h) Successors and Assigns.

This Leasehold Mortgage shall be binding upon and solely for the benefit of the parties hereto and their respective permitted successors and assigns. The terms, covenants, conditions and warranties contained herein and the powers granted hereby shall run with the land, shall inure to the benefit of and bind all parties hereto and their respective heirs, executors, administrators, and permitted successors and assigns and all subsequent holders of Senior Security Documents. Except if and as expressly permitted under Section 20 of the Lease Agreement and Section 41 hereof and the other Senior Financing Documents, the Mortgagor shall not assign any of its rights or obligations hereunder to any party without the written consent of the Leasehold Mortgagee. The Leasehold Mortgagee may assign any of its rights or obligations hereunder at any time to any party subject to the terms of the Lease Agreement (including Section 83 thereof) and such assignment shall benefit its heirs, executors, administrators, successors and assigns.

(i) No Partnership.

Nothing contained herein shall be deemed to constitute the parties hereto as partners or joint venturers in any manner or matter whatsoever.

(j) Construction and Interpretation of Agreement.

Whenever appropriate herein or required by the context or circumstances, the masculine shall be construed as a feminine and/or neuter, the singular as the plural and vice versa. All rules of construction of drafting ambiguities applicable under Section 36 of the Lease Agreement shall apply equally to this Leasehold Mortgage.

(k) Limitation of Liability of Leasehold Mortgagee.

Each Leasehold Mortgagee has executed this Leasehold Mortgage not in its individual capacity but solely as Leasehold Mortgagee in connection with the rights and obligations of the Leasehold Mortgagee. In connection with a Leasehold Mortgagee's execution of this Leasehold Mortgage as Leasehold Mortgagee, in no event shall a Leasehold Mortgagee, in its individual capacity, have any liability for the representations, warranties, covenants, agreements or other obligations of a Leasehold Mortgagee hereunder or in any of the certificates, notices or agreements delivered pursuant hereto, except in the case of the Senior Collateral Agent, to the extent the Senior Collateral Agent may be liable under the Senior Security Documents.

(l) Property Clause.

This property is not and will not be improved by a one to six family dwelling or residences.

(m) Date for Reference Purposes Only.

The date of this Leasehold Mortgage is for reference purposes only and shall not be construed to imply that this Leasehold Mortgage was executed as of the date first written above. This Leasehold Mortgage has been executed by the parties hereto and is effective on the Closing Date.

(n) Subordination. The rights and remedies of the Leasehold Mortgagee, in its capacity as a transferee of the Mortgagor's rights under the Lease Agreement, shall be subject and subordinate to the terms and conditions of Section 83 of the Lease Agreement. In the event of any conflict between this Leasehold Mortgage and the Lease Agreement, the terms and conditions of the Lease Agreement shall control and be binding.

Section 46. Mortgage Priority.

This Leasehold Mortgage is being executed contemporaneously with the Project Leasehold Mortgage granted to the Senior Collateral Agent by the Mortgagor with respect to the Lease Agreement and shall be senior in lien priority to such mortgage recording regardless of the order of recording thereof.

Section 47. Relative Priority.

It is the intent of Mortgagor and Leasehold Mortgagee that, with respect to the Mortgaged Property, the relative priority of the respective liens of this Leasehold Mortgage and the Project Leasehold Mortgage shall be as follows: (a) the lien of this Leasehold Mortgage shall have first priority and (b) the lien of the Project Leasehold Mortgage shall have second priority.

Section 48. TDC Building Loan Agreement.

This is a building loan and "construction loan" mortgage, the proceeds of which are loaned for the purpose of financing the construction of certain improvements on the Mortgaged Property. This Leasehold Mortgage is subject to all of the terms, covenants, conditions and provisions of the TDC Building Loan Agreement, which TDC Building Loan Agreement and all of the terms, covenants, conditions and provisions thereof are by this reference incorporated herein and made a part hereof with the same force and effect as if set forth at length herein. The proceeds of the building loan secured hereby are to be advanced by Leasehold Mortgagee to Mortgagor in accordance with the provisions of the TDC Building Loan Agreement. Mortgagor shall observe and perform all of the terms, covenants, conditions and provisions of the TDC Building Loan Agreement on Mortgagor's part to be observed or performed. All advances made and all indebtedness arising and accruing under the TDC Building Loan Agreement from time to time shall be secured hereby. In the event of any conflict or ambiguity between the terms, covenants, conditions and provisions of this Leasehold Mortgage and the TDC Building Loan Agreement, the terms, covenants, conditions and provisions which shall enlarge the rights and remedies of

Leasehold Mortgagee and the interest of Leasehold Mortgagee in the Mortgaged Property, afford Leasehold Mortgagee greater financial security in the Mortgaged Property and better assure payment of the indebtedness in full, shall control.

Section 49. State-Specific Provisions.

(a) Principles of Construction.

In the event of any inconsistencies between the terms and conditions of this Section 49 and the terms and conditions of this Leasehold Mortgage, the terms and conditions of this Section 49 shall control and be binding.

(b) Maximum Secured Amount.

Notwithstanding anything contained herein to the contrary, the maximum amount of indebtedness secured by this Leasehold Mortgage at execution or which under any contingency may become secured hereby at any time hereafter is Three Billion Ninety-Four Million Six Hundred Seventeen Thousand Four Hundred Fifteen dollars \$3,094,617,415, plus interest thereon as provided in the Financing Documents, plus all amounts expended by Leasehold Mortgagee after default by Mortgagor that constitute payment of (i) taxes, charges or assessments that may be imposed by law upon the Mortgaged Property, (ii) premiums on insurance policies covering the Mortgaged Property, (iii) expenses incurred in protecting or upholding the lien of this Leasehold Mortgage, including, but not limited to the expenses of any litigation to prosecute or defend the rights and lien created by this Mortgage, (iv) expenses incurred in protecting the collateral encumbered by this Leasehold Mortgage, or (v) any amount, cost or charge to which Leasehold Mortgagee becomes subrogated upon payment, whether under recognized principles of law or equity, or under express statutory authority.

(c) Section 291-f Agreement.

(i) Mortgagor hereby covenants and agrees with Leasehold Mortgagee that Mortgagor will not, without the prior written consent of Leasehold Mortgagee, accept prepayments of installments of rent to become due thereunder for more than one (1) month in advance, except to the extent that such prepayment is presently expressly permitted to a tenant under the provisions of its respective lease.

(ii) This Leasehold Mortgage is intended to be, and shall operate as, the agreement described in Section 291-f of the Real Property Law of the State of New York and shall be entitled to the benefits afforded thereby. Mortgagor acknowledges and agrees that Leasehold Mortgagee shall have the right to deliver notice of this Leasehold Mortgage in form and substance reasonably acceptable to Mortgagor, to all present and future holders of any interest in any lease (except for such leases to which Section 291-f is inapplicable), by assignment or otherwise, and Mortgagor agrees to take and/or allow Leasehold Mortgagee to take such other action as may now or hereafter be reasonably required to afford Leasehold Mortgagee the full protections and benefits of Section 291-f. Leasehold Mortgagee may request the recipient of any such notice to acknowledge the receipt thereof.

(d) Mortgage Recording Tax; Limited Role of the Co-Leasehold Mortgagee.

(i) The Issuer is acting in the capacity of Leasehold Mortgagee hereunder solely for the purpose of making available to the parties an exemption from mortgage recording tax and to secure certain obligations of the Mortgagor to the Issuer under the Senior Financing Documents. In that connection, the Issuer will and hereby agrees to submit this Leasehold Mortgage to the Office of the City Register, Queens County, for recordation, at Mortgagor's sole cost and expense. The Mortgagor will promptly pay, or cause to be paid, any mortgage recording taxes (if the exemption is not granted), fees or other charges, if any, due in connection with this Leasehold Mortgage and the other Senior Financing Documents. Upon recording this Leasehold Mortgage, the Issuer shall execute one or more assignment agreements evidencing the assignment of all of its legal right, title and interest as Leasehold Mortgagee hereunder to Senior Collateral Agent. The foregoing assignments shall be made without recourse, representation or warranty by the Leasehold Mortgagee, in any case or event or for any purpose whatsoever. Thereafter, Senior Collateral Agent, at Mortgagor's sole cost and expense, shall promptly file such assignment with the Queens County Clerk's Office. Upon such assignment, all references herein to the Leasehold Mortgagee shall mean and apply solely to Senior Collateral Agent as the sole remaining party comprising the Leasehold Mortgagee, and its successors and assigns.

(ii) The Mortgagor acknowledges that the Issuer is entering into this Leasehold Mortgage solely as an accommodation to the other parties hereto, and that the Issuer shall have absolutely no obligations, responsibilities or liabilities under this Leasehold Mortgage. The parties hereto acknowledge that the Issuer is executing this Leasehold Mortgage solely to bind itself with respect to this Leasehold Mortgage and that the Issuer's execution does not amount to or evidence the Issuer's agreement with or endorsement of any other provisions of this Leasehold Mortgage.

(iii) The Senior Collateral Agent and the other Senior Secured Parties hereby release the Issuer from all claims, causes of action, suits, actions, arbitrations, inquiries, litigations, proceedings, controversies, disputes, governmental or regulatory investigations, liabilities, damages, costs, obligations, judgments and covenants at law or in equity incurred or suffered by the Senior Collateral Agent or any other Senior Secured Parties with respect to any assertion by applicable governmental authorities that a mortgage recording tax is due with respect to this Leasehold Mortgage.

(iv) The Issuer shall not be under any duty to examine or pass upon the validity, effectiveness, enforceability, genuineness or value of this Leasehold Mortgage or any document executed in connection therewith, and the Issuer is entitled to assume the validity, enforceability, effectiveness and due authorization thereof.

\* \* \*

**[SIGNATURE PAGES AND EXHIBITS HAVE BEEN REMOVED]**

**(THIS PAGE INTENTIONALLY LEFT BLANK)**



---

TDC PROJECT LOAN LEASEHOLD MORTGAGE, ASSIGNMENT  
OF LEASES AND RENTS, SECURITY AGREEMENT AND  
FIXTURE FILING

by

JFK MILLENNIUM PARTNERS, LLC,  
a Delaware limited liability company,

as mortgagor

to

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION,

as leasehold mortgagee

and

THE BANK OF NEW YORK MELLON

as Senior Collateral Agent for the benefit of the  
Senior Secured Parties,

as leasehold mortgagee

Dated as of November 1, 2022

---

Block: 14260  
Lot: 1  
JFK Airport  
Queens County

Record and Return to:

Squire Patton Boggs (US) LLP  
1211 Avenue of the Americas, 26<sup>th</sup> Floor  
New York, N.Y. 10036  
Attention: Alethia Nancoo, Esq.

## TABLE OF CONTENTS

	<b>Page</b>
SECTION 1. DEFINITIONS.....	3
SECTION 2. GRANT OF PROJECT LOAN LEASEHOLD MORTGAGE.....	3
SECTION 3. REPRESENTATIONS, WARRANTIES AND COVENANTS.....	7
SECTION 4. PAYMENT OF DEBT SERVICE.....	8
SECTION 5. INSURANCE.....	9
SECTION 6. CONDITION OF PREMISES.....	9
SECTION 7. LEASE AGREEMENT.....	9
SECTION 8. POWER OF ATTORNEY.....	10
SECTION 9. NO ASSUMPTION BY THE LEASEHOLD MORTGAGEE.....	11
SECTION 10. EVENTS OF DEFAULT.....	11
SECTION 11. RIGHTS AND REMEDIES.....	12
SECTION 12. SALE BY THE LEASEHOLD MORTGAGEE.....	19
SECTION 13. RECEIVERS.....	20
SECTION 14. ELECTION OF REMEDIES.....	20
SECTION 15. APPLICATION OF PROCEEDS.....	21
SECTION 16. WAIVER BY THE MORTGAGOR.....	21
SECTION 17. CONDEMNATION.....	21
SECTION 18. COSTS OF LITIGATION AND COLLECTION.....	22
SECTION 19. SECURITY AGREEMENT AND FIXTURE FILING.....	22
SECTION 20. ADDITIONAL SENIOR OBLIGATIONS.....	22
SECTION 21. FURTHER ASSURANCES.....	23
SECTION 22. PAYMENT BY THE LEASEHOLD MORTGAGEE.....	23
SECTION 23. LEASEHOLD MORTGAGEE EXPENSES.....	24
SECTION 24. PAYMENTS SECURED.....	24
SECTION 25. INSPECTION BY THE LEASEHOLD MORTGAGEE.....	24
SECTION 26. COMPROMISE WITHOUT NOTICE.....	24
SECTION 27. SUITS WITHOUT ACCELERATION.....	24
SECTION 28. ESTOPPEL CERTIFICATE.....	24
SECTION 29. INDEMNIFICATION.....	25
SECTION 30. INFORMATION.....	26
SECTION 31. INVALIDITY OF CERTAIN PROVISIONS / SEVERABILITY.....	26
SECTION 32. INTEREST LIMITATION.....	27
SECTION 33. LIEN LAW.....	27
SECTION 34. CONSTRUCTION.....	27
SECTION 35. WAIVER OF REDEMPTION.....	28
SECTION 36. MORTGAGED PERSONAL PROPERTY.....	28
SECTION 37. DISCHARGE OF LEASEHOLD MORTGAGE BY THE LESSEE.....	28
SECTION 38. DELAYS AND OMISSIONS.....	28
SECTION 39. NOTICES.....	29
SECTION 40. LAW GOVERNING THE LEASEHOLD MORTGAGE.....	30
SECTION 41. SALE, CONVEYANCE, TRANSFER, MORTGAGE, PLEDGE, ASSIGNMENT AND MODIFICATION.....	30
SECTION 42. COUNTERPARTS.....	30

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
SECTION 43. TITLES.....	31
SECTION 44. ASSIGNMENT OF MORTGAGED RENTS.....	31
SECTION 45. MISCELLANEOUS.....	31
SECTION 46. MORTGAGE PRIORITY.....	35
SECTION 47. RELATIVE PRIORITY.....	35
SECTION 48. TDC PROJECT LOAN AGREEMENT.....	35
SECTION 49. STATE-SPECIFIC PROVISIONS.....	36

TDC PROJECT LOAN LEASEHOLD MORTGAGE  
ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT  
AND FIXTURE FILING

THIS TDC PROJECT LOAN LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (hereinafter called the "Leasehold Mortgage"), dated as of November 1, 2022 is made by JFK MILLENNIUM PARTNERS, LLC, a limited liability company organized under the laws of the State of Delaware, having an office and place of business at \_\_\_\_\_, and its successors and assigns (being hereinafter called the "Mortgagor") in favor of (i) NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION, a local development corporation formed under Section 1411 of the New York Not-For-Profit Corporation Law, being Chapter 35 of the Consolidated Laws of New York, created by action of the New York Job Development Authority established under Section 1802, Subtitle I, Title 8, Article 8 of the New York Public Authorities Law and having an address at c/o Empire State Development, \_\_\_\_\_ (the "Issuer") and (ii) THE BANK OF NEW YORK MELLON, a New York banking corporation duly organized and validly existing and authorized to accept and execute trusts of the character set out herein under the laws of the State of New York, as Senior Collateral Agent for the benefit of the Senior Secured Parties and their respective successors and assigns (the "Senior Collateral Agent", together with the Issuer, the "Leasehold Mortgagee").

W I T N E S S E T H:

**WHEREAS**, The Port Authority of New York and New Jersey, a municipal corporate instrumentality and political subdivision of the States of New York and New Jersey, created and existing by virtue of the Compact of April 30, 1921, made by and between the States of New York and New Jersey, and thereafter consented to by the Congress of the United States (the "Port Authority") has entered into a Lease Agreement, dated as of November 17, 2022 (as supplemented and amended from time to time, the "Lease Agreement"), with the Mortgagor, pursuant to which, among other things, the Mortgagor is obliged to consummate the following (collectively, the "Project"): (i) the operation, maintenance, and demolition of the Existing Terminal Facilities at John F. Kennedy International Airport in Queens, New York ("Airport") which Existing Terminal Facilities include the existing Terminal 7 facilities, (ii) the design, development, construction, financing, operation and maintenance of the New Terminal Facilities at the Airport (which New Terminal Facilities include new Terminal 6 facilities and replacement Terminal 7 facilities) and certain ancillary facilities, and (iii) the design, development and construction of the Off-Premises Facilities at the Airport on behalf of the Port Authority, which Off-Premises Facilities will not be operated or maintained by the Mortgagor and will not constitute part of the facilities leased to the Mortgagor under the Lease Agreement; and

**WHEREAS**, pursuant to that certain Credit Agreement, dated as of November 1, 2022 (the "Credit Agreement"), among the Issuer, the Mortgagor, the Lenders, including the Security Deposit Facility Lenders and the Security Deposit Facility LC Issuing Bank, as Bank Lenders, each from time to time party thereto, the Administrative Agent and certain joint lead arrangers and bookrunners, (a) the Lenders have agreed to make certain Senior Term Loans available to the Issuer and (b) the Security Deposit Facility LC Issuing Bank has agreed to make certain Security Deposit LCs available to the Issuer and (c) the Security Deposit Facility Lender has agreed to make

Security Deposit Loans to the Issuer, each on the terms and subject to the conditions set forth therein, the proceeds of the Senior Loan shall be loaned by the Issuer to the Mortgagor, and the Mortgagor will use the proceeds of such Senior Loans to finance a portion of the Project Costs;

**WHEREAS**, pursuant to a resolution adopted on October 20, 2022 by the Issuer (the “TDC Resolution”) and that certain TDC Master Bond Indenture of Trust, dated as of November 1, 2022 between the Issuer and the Trustee (as amended, supplemented and/or otherwise modified from time to time, the “Indenture”), the Issuer has authorized the issuance of its New York Transportation Development Corporation Special Facilities Bonds, Senior Series 2022A (Tax-Exempt) (AMT) (JFK Airport Terminal 6-7 Redevelopment Project) in the aggregate principal amount of up to \$435,000,000 (the “Series 2022A Bonds”);

**WHEREAS**, pursuant to that certain Common Terms Agreement, dated as of November 1, 2022 (as amended, supplemented and/or otherwise modified from time to time, the “Common Terms Agreement”), among the Mortgagor, the Issuer, the Bank Lenders, the Intercreditor Agent, the Administrative Agent, the Series 2022A Bondholder, and the Senior Collateral Agent, the parties have agreed to common terms, conditions and administration of the Series 2022A Bonds and the Senior Loans (collectively, the “Loan Facility”);

**WHEREAS**, the proceeds from the Senior Loans and the sale of the Series 2022A Bonds and any Additional Obligations will be loaned to the Mortgagor pursuant to the terms of the TDC Loan Agreements, and the Mortgagor will execute and deliver the TDC Notes in favor of the Issuer to further evidence the obligations of the Mortgagor under the TDC Loan Agreements (and the Issuer will assign the TDC Notes to the Senior Collateral Agent), and such proceeds will be applied to partially pay the Project Costs;

**WHEREAS**, the Issuer will assign all of its right, title and interest in and to the TDC Project Loan Agreement, except for the Reserved Rights, to the Senior Collateral Agent, as security for the Senior Project Loan Obligations, and will further endorse the TDC Notes and any Additional Note in respect of Senior Project Loan Obligations in favor of the Senior Collateral Agent, as security for the Senior Project Loan Obligations;

**WHEREAS**, concurrently with the execution of this Leasehold Mortgage, the Mortgagor will enter into that certain Building Leasehold Mortgage, Assignment of Leases, Security Agreement and Fixture Filing Agreement in favor of the Leasehold Mortgagee, dated as of November 1, 2022 (the “Building Leasehold Mortgage,” and together with this Leasehold Mortgage, the “Leasehold Mortgages”);

**WHEREAS**, in order to secure its obligations under the Senior Financing Documents, Mortgagor has granted to the Senior Collateral Agent, for the benefit of the Senior Secured Parties, a first-priority security interest (subject to Permitted Liens) in, to and under the Collateral;

**WHEREAS**, pursuant to the Intercreditor Agreement, the Trustee, for and on behalf of the Bondholders (other than the Series 2022A Bondholders), and the Administrative Agent, for and on behalf of the Bank Lenders and the Series 2022A Bondholders, and each of the Hedge Providers, have appointed the Bank of New York Mellon, a banking corporation organized under

the State of New York, as Intercreditor Agent under this Agreement, and as Intercreditor Agent under the Senior Security Documents;

**NOW, THEREFORE**, as a condition precedent to and in consideration of the Issuer's making the loans evidenced by the 2022 TDC Project Notes issued under the TDC Project Loan Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Definitions.

All capitalized terms not defined herein shall have the respective meanings set forth in Exhibit B attached hereto.

Section 2. Grant of Project Loan Leasehold Mortgage.

To secure (i) the payment when due of the total aggregate principal amount of the 2022 TDC Project Notes in an aggregate Outstanding principal amount not to exceed \$1,138,382,585 at any time pursuant to the TDC Project Loan Agreement, and (ii) the payment or performance of all other indebtedness, liabilities, obligations, covenants, and sums due by the Mortgagor to the Senior Collateral Agent for the benefit of the Senior Secured Parties, whether for principal, interest, fees or otherwise, arising out of or related to or in connection with the TDC Project Loan Agreement and the 2022 TDC Project Notes (collectively, without duplication, the "Senior Project Loan Obligations"), the Mortgagor hereby grants, mortgages, pledges, assigns, transfers and sets over to the Leasehold Mortgagee for the benefit of the Senior Secured Parties, equally and ratably, subject to and upon the terms and conditions of this Leasehold Mortgage, all of its right, title and interest in, to and under the following, in each case to the extent permissible under the Lease Agreement, excluding the Excluded Assets (as defined in the Senior Security Agreement) (collectively, the "Mortgaged Property"):

The Lease Agreement and the leasehold estate created pursuant to the Lease Agreement with respect to the real property described on Exhibit A attached hereto and made a part hereof, together with any improvements thereon and any and all other, further or additional estates, rights, titles, interests, benefits and other claims, both at law and in equity, which the Mortgagor now has or may in the future have or acquire under or by the terms of the Lease Agreement, whether by reason of the exercise of options thereunder or by reason of amendments, modifications, supplements, extensions and renewals of the Lease Agreement, of whatsoever nature derived or to be derived by the Mortgagor pursuant to the Lease Agreement, including, without limitation, any and all estate, right, title and interest of the Mortgagor in and to any and all buildings and other improvements now or hereafter located on the Premises, and all appurtenances and additions thereto and betterments, substitutions and replacements thereof acquired by the Mortgagor, in each case pursuant to the Lease Agreement, and the right to exercise all rights of the Mortgagor under the Lease Agreement (including any right or power to voluntarily surrender or terminate the Lease Agreement), except as otherwise provided therein. To the fullest extent possible, the Mortgagor hereby unconditionally delegates to the Leasehold Mortgagee the right to exercise any and all of the Mortgagor's rights under the Lease Agreement, subject to the terms of this Leasehold Mortgage and subject to all of the same terms, covenants, conditions, limitations, reservations and defenses under the Lease Agreement. In accordance with the terms of Section

83(a)(14) of the Lease Agreement, the parties hereto agree to amend Exhibit A, as necessary (i) upon incorporation of the Terminal 7 Premises into the Premises, and (ii) following the date of Substantial Completion of Phase 1 and the date of Substantial Completion of Phase 2 (as each is defined in the Lease Agreement), as applicable, to reflect the lease lines delineating the final Initial Premises, the final Terminal 7 Premises, and the final Premises (as each is defined in the Lease Agreement), which amendment may, in the event the legal description includes property that lies outside such final lease lines, include a non-discretionary partial release of certain parts of the Premises and the Mortgagor's rights therein from the lien under this Leasehold Mortgage.

Any easements, rights of way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Premises, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated, and the reversions and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises, with the appurtenances thereto, in all cases to the extent granted to the Mortgagor pursuant to the Lease Agreement;

All machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), software used in or to operate any of the foregoing, and other property of every kind and nature whatsoever, in each case to the extent leased by Mortgagor under the Lease Agreement, and all building materials and supplies of any nature whatsoever, in all cases now or hereafter located upon the Premises, or appurtenant thereto, and purchased or otherwise acquired for use in the construction of the improvements on the Premises, but excluding any equipment, inventories, trade fixtures and other fixtures permitted to be removed by the Mortgagor pursuant to the Lease Agreement and any other personal property of the Mortgagor, in each case that was not purchased with the proceeds of the Loan Facility (collectively, the "Mortgaged Personal Property"), and the right, title and interest of the Mortgagor in and to any of the Mortgaged Personal Property which may be subject to any security interests, as defined in the UCC, as adopted and enacted by the state or states where any of the Mortgaged Property is located, and all proceeds and products of the above;

All present and future leases, subleases, sub-subleases, lettings, licenses, concessions or other agreements for the use of space in the Premises and every modification, amendment or other agreement relating to such leases, subleases, sub subleases, or other agreements entered into in connection with such leases, subleases, sub subleases, or other agreements, including any guarantee, whether before or after the filing by or against the Mortgagor of any petition for relief under any creditors rights laws (collectively, the "Leases") and all right, title and interest of the Mortgagor, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder, including tenant letters of credit and security deposits, and all rents, additional rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, earnings, royalties, income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of the Mortgagor or its agents or employees from any and all sources arising from or

attributable to the Mortgaged Property, including all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by the Mortgagor (but in all cases excluding all Non-Pledged Receipts) and proceeds, if any, from business interruption or other loss of income insurance paid to the Mortgagor whether paid or accruing before or after the filing by or against the Mortgagor of any petition for relief under any creditors' rights laws including any such amounts deposited or held as security for the Senior Project Loan Obligations under the Collateral Agency and Accounts Agreement (collectively, the "Mortgaged Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Mortgaged Rents to the payment of the Senior Project Loan Obligations; *provided* that the Leasehold Mortgagee shall have no right, title or interest in any such Lease, including without limitation to the rents and other receivables thereunder, unless and until the Leasehold Mortgagee has assumed the rights and obligations of the Mortgagor under such Lease pursuant to the exercise of remedies available to the Leasehold Mortgagee under this Leasehold Mortgage and the other Senior Financing Documents, *provided, further*, that the Leasehold Mortgagee shall have no right, title and interest at any time to the Port Authority's right, title or interest in and to any portion of fees and other payments derived from the Concession Subleases (as defined in the Lease Agreement) payable to the Port Authority;

All condemnation proceeds, including interest thereon, which may heretofore and hereafter be received by the Mortgagor pursuant to the Lease Agreement and which are not required to be paid to or retained by the Port Authority under the Lease Agreement or paid to or retained by the City pursuant to the Basic Lease or the Lease Agreement;

Any Port Authority Default Termination Payment or any other amounts payable by the Port Authority to the Mortgagor, subject in all cases to the Lease Agreement;

Any agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, (other than the leases, subleases, sub-subleases, lettings, licenses, concessions or other agreements for the use of space in the Premises pledged above) now or hereafter entered into, as each of the same may have been and may be further amended, modified or supplemented from time to time, and all rights therein and thereto, to the extent respecting or pertaining to the occupation, development, construction, repair, maintenance, management or operation of the Premises and any part thereof or any business or activity conducted on the Premises and any part thereof and all right, title and interest of the Mortgagor therein and thereunder (provided that, to the extent any third-party consent may be required in connection with the mortgaging of such document, no such document shall be deemed mortgaged until the required consent is obtained or the requirement waived); and

TOGETHER WITH any rights granted to the Mortgagor under the Lease Agreement of ingress and egress to, on and over other portions of the Premises, between the Premises and city streets or public ways outside the Premises by means of existing roadways at the Premises to be used in common with others having rights of passage within the Premises, and any substitute means of ingress and egress, in all cases subject to the Lease Agreement;

TOGETHER WITH all of the Mortgagor's right, title and interest to all proceeds of any sale, transfer, financing, refinancing, or conversion into cash or liquidated claims, whether



voluntary or involuntary of any of the Mortgaged Property, including, without limitation, but subject to the terms of the Lease Agreement, all insurance proceeds resulting from damage to or destruction of the Premises; and

TOGETHER WITH all additional estates, right, title and interest of the Mortgagor in and to the Premises, any and all buildings, improvements and fixtures now or hereafter situated thereon and the Mortgaged Property or any part thereof which may from time to time be acquired by the Mortgagor, in each case pursuant to the Lease Agreement; and subject to the same limitations and qualifications set forth in this Section 2 as if such estates, rights, titles and interests of the Mortgagor were estates, rights, titles and interest of the Mortgagor on the date hereof, all rights, titles and interests of the Mortgagor in and to any additional property and rights that may from time to time hereafter be subjected to the lien hereof in writing by the Mortgagor or by anyone on their behalf.

Each of the rights granted in this Leasehold Mortgage is and shall be (a) appurtenant to the leasehold estate in the Premises created by the Lease Agreement, (b) automatically transferred with any permitted assignment or other transfer of the Lease Agreement and the leasehold estate created thereby and (c) coupled with an interest and irrevocable during the term of the Lease Agreement.

Except to the extent required for the performance of any of the obligations of the Mortgagor under the Lease Agreement and as permitted thereunder, nothing contained in this Leasehold Mortgage shall grant to the Leasehold Mortgagee any rights whatsoever in the air space above the Premises in excess of the heights of the structures thereon as set forth in the final Project Documents.

TO HAVE AND TO HOLD the Mortgaged Property, together with all rights and claims of the Mortgagor therein, to the Leasehold Mortgagee, its successors and assigns forever, upon the terms and conditions and for the uses hereinafter set forth.

PROVIDED, HOWEVER, these presents are upon the express condition that, if the Mortgagor shall pay to the owners of the Senior Project Loan Obligations at the time and in the manner provided in each evidence of the Senior Project Loan Obligations, and shall pay and perform the other obligations in full, as set forth in this Leasehold Mortgage, and shall comply with each and every covenant and condition set forth herein and therein, and no Senior Secured Party shall have any commitment to lend or make available any additional funds to the Mortgagor pursuant to any Senior Financing Document and this Leasehold Mortgage, then these presents and the estate hereby granted shall cease, terminate and be void.

The Leasehold Mortgagee may exercise any rights granted hereby in respect of the Mortgaged Property or any remedies (including cure rights) with respect to the Mortgaged Property, subject in all cases to the Lease Agreement; provided, however, so long as an Event of Default shall not have occurred and be continuing, the Leasehold Mortgagee shall not have the right to enter the Premises to cure or prevent any default by the Mortgagor under this Leasehold Mortgage or otherwise take any action that interferes with the Mortgagor's construction, operation or maintenance of the Mortgaged Property, except as otherwise provided in the Senior Financing Documents.

This Leasehold Mortgage and the lien created hereby are subordinate to the fee estate held by the City in the Mortgaged Property and to the leasehold estate held by the Port Authority pursuant to the Basic Lease. In no event shall the lien created by this Leasehold Mortgage attach to (a) the fee or any other estate held by the City in the Mortgaged Property, (b) any other property which becomes the City's property upon the termination or expiration of the Basic Lease or (c) the leasehold estate from the City or otherwise held by the Port Authority in the Mortgaged Property. This instrument does not extend to or affect, or represent a lien or encumbrance on, the estate or interest of the fee owner of the Premises that are the subject of this instrument or any property located therein or thereon, and in the event of any inconsistent provision in this instrument, this provision shall prevail.

For the avoidance of doubt, the Senior Collateral Agent is a Recognized Mortgagee (as defined in the Lease Agreement).

For the avoidance of doubt, except as may be provided in the Lease Agreement, the Port Authority shall have no liability whatsoever for payment of any principal sum secured by this Leasehold Mortgage, or any interest accrued thereon or any other sum secured hereby or accruing hereunder and, to the fullest extent allowable under applicable Law and except as provided in the Section 83 of the Lease Agreement, the Leasehold Mortgagee affirms and acknowledges that it shall not be entitled to seek any damages or other amounts against the Port Authority for any or all of the same. Further, the Port Authority shall have no obligation to the Leasehold Mortgagee in regard to the enforcement of the Port Authority's rights and remedies under the Lease Agreement or as otherwise provided by applicable Law; except to the extent the Port Authority has expressly agreed in the Lease Agreement that its rights thereunder are subject to the rights of the Recognized Mortgagee (as defined in the Lease Agreement) or granted other rights to the Recognized Mortgagee, in each case, under Section 83 or elsewhere in the Lease Agreement or under the Senior Financing Documents.

For the avoidance of doubt, in no instance shall the Leasehold Mortgagee, by virtue of this Leasehold Mortgage, acquire any greater rights or interest in the Premises than the Mortgagor has at any applicable time under the Lease Agreement (other than such specific rights or interests as may be granted to or acquired by the Leasehold Mortgagee as a Recognized Mortgagee (as defined in the Lease Agreement) in accordance with Section 83 of the Lease Agreement).

### Section 3. Representations, Warranties and Covenants.

The Mortgagor represents, warrants and covenants to and with the Leasehold Mortgagee as follows:

(i) The Mortgagor is a limited liability company duly organized and existing in good standing under the laws of the State of Delaware, is lawfully seized of the Mortgaged Property, has the power and authority to create, pledge and grant the leasehold mortgage as provided in this Leasehold Mortgage, to own its property and assets, to lease the Premises and to enter into this Leasehold Mortgage, and its execution, delivery and performance of the obligations hereunder has been duly authorized by all necessary action on the part of the Mortgagor;

(ii) The Mortgagor has a valid leasehold interest in the portion of the Premises comprised of real property (other than Permanent Rights of Access (as defined in the Lease Agreement)), subject only to Permitted Liens. The Mortgaged Property is, and the Mortgagor will keep the Mortgaged Property, free and clear of all liens and encumbrances other than the Permitted Liens. Other than Permitted Liens, Mortgagor has not made an assignment of the Mortgaged Property which is assigned hereunder which remains in effect as of the date hereof, except pursuant to the Senior Financing Documents, and will forever warrant and defend the title to the Mortgaged Property against all claims and demands by, through or under the Mortgagor and will maintain and preserve the validity and priority of the lien of this Leasehold Mortgage so long as the 2022 TDC Project Notes or any Note issued under the TDC Project Loan Agreement, is outstanding;

(iii) The Mortgagor agrees that it will promptly and fully comply with all the terms, provisions, covenants, conditions, obligations and agreements imposed upon or assumed by the Mortgagor under the Lease Agreement, this Leasehold Mortgage, and the other Senior Financing Documents, except to the extent any such non-compliance is permitted by the Senior Financing Documents;

(iv) The Mortgagor agrees that in the event that the Mortgagor fails to perform any of its obligations under this Leasehold Mortgage, the Lease Agreement or under the other Senior Financing Documents, the Leasehold Mortgagee shall have the right (but not the obligation), to the extent set forth in the Lease Agreement, to perform such obligations in accordance with the terms and conditions of the Lease Agreement, this Leasehold Mortgage and the other Senior Financing Documents; provided, however, so long as an Event of Default shall not have occurred and be continuing, the Leasehold Mortgagee shall not have the right to enter the Premises to cure or prevent any default by the Mortgagor or otherwise take any action that interferes with the Mortgagor's construction, operation or maintenance of the Mortgaged Property, except as otherwise provided in the Senior Financing Documents; and

(v) The Mortgagor will prepare and execute any documents necessary to record this Leasehold Mortgage. Mortgagor authorizes and directs the Senior Collateral Agent to prepare and file any necessary financing statements and, at periodic intervals, continuation statements pursuant to the Uniform Commercial Code as in effect in the State of Delaware (or any other relevant jurisdiction, including the State of New York) and any other documents required to perfect or continue the perfection of the lien and security interest granted in this Leasehold Mortgage. Mortgagor will pay all filing or recording costs with respect thereto and all costs of filing or recording this Leasehold Mortgage or any other instrument, agreement or document executed and delivered pursuant to this Leasehold Mortgage in all public offices where filing or recording is deemed by the Leasehold Mortgagee to be necessary or desirable.

#### Section 4. Payment of Debt Service.

Mortgagor will promptly pay, or cause to be paid, all payments due pursuant to the TDC Project Loan Agreement, the 2022 TDC Project Notes and all other sums secured hereby when due and will continue to be liable for the payment of debt service until such sums are paid in full, notwithstanding any actions which may be brought by the Leasehold Mortgagee to recover any amount or amounts for installments of debt service or other sums to which it may be lawfully

entitled under this Leasehold Mortgage or the other Senior Financing Documents, or to recover any amount or amounts in respect of taxes, assessments, water rents, sewer rents or other public charges, or fire or other insurance premiums to which it may be lawfully entitled under this Leasehold Mortgage.

Section 5. Insurance.

(a) The Mortgagor shall comply with the requirements of Section 10.03 of the Collateral Agency and Accounts Agreement.

(b) The Mortgagor hereby assigns and shall deliver to the Leasehold Mortgagee all insurance proceeds the Mortgagor is entitled to under the Lease Agreement which are not required to be paid to or retained by the Port Authority under the Lease Agreement or paid to or retained by the City pursuant to the Basic Lease or the Lease Agreement and does receive as collateral and further security for the Senior Project Loan Obligations of the Mortgagor secured hereby, to be applied in accordance with the Lease Agreement, the Intercreditor Agreement and the Collateral Agency and Accounts Agreement.

Section 6. Condition of Premises.

The Mortgagor will comply in all material respects with its obligations under the Lease Agreement with respect to the maintenance of the condition and repair of the Mortgaged Property.

Nothing contained in this Leasehold Mortgage, nor any action or inaction of any Leasehold Mortgagee, shall constitute any consent or request, express or implied, by the Leasehold Mortgagee (a) for the performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof, or (b) as giving the Mortgagor any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property, in such fashion as would permit the making of any claim against any Leasehold Mortgagee in respect thereof or any claim that any lien based on the performance of such labor or services or the furnishing of such materials or other property is superior to this Leasehold Mortgage.

Section 7. Lease Agreement.

(a) The Mortgagor covenants that it will not (i) do, or permit anything to be done, or omit or refrain from doing anything, the doing or omission of which will give the Port Authority a right to terminate the Lease Agreement, and (ii) terminate, or (to the extent it has the right to consent) consent to the termination of, the Lease Agreement without the prior written approval of the Leasehold Mortgagee. Upon the occurrence of any Event of Default under the Lease Agreement, the Mortgagor shall promptly take such actions as may be necessary to timely effect a cure thereof. To the extent the Mortgagor receives any payment attributable to the Senior Project Loan Obligations, such amounts will be immediately paid to the Senior Collateral Agent for disposition in accordance with the Senior Financing Documents. The obligation under the immediately preceding sentence shall survive any termination of this Leasehold Mortgage for so long as any Senior Project Loan Obligations remain outstanding.

(b) The approval of the Leasehold Mortgagee (such approval not to be unreasonably withheld, delayed or conditioned) is required for any amendment, variation, modification of, or a waiver of the Mortgagor's rights and obligations under the following provisions of the Lease Agreement: Section 2(ee) (*Compensation Events*), Section 2(ff) (*Delay Events*), Section 4 (*Rental*) (other than Excess Value Rent, so long as Excess Value Rent continues to be payable solely from the Remaining Revenue Account on a Quarterly Distribution Date on which the Mortgagor is permitted, pursuant to the Financing Documents, to distribute such cash), Section 19 (*Condemnation*), Section 21 (*Termination by the Port Authority*), Section 23 (*Waiver of Redemption*), Section 24 (*Survival of the Obligations of the Lessee*), Section 25 (*Reletting by the Port Authority*), Section 26 (*Remedies to be Non-Exclusive*), Section 27 (*Delivery of Possession of the Premises at the End of the Term*), Section 28 (*Acceptance of Surrender of Lease*), Section 29 (*Basic Lease*), Section 53 (*Purchase of Property*), Section 76 (*Termination by Lessee*), Section 77 (*Effect of Termination by Lessee*), Section 83 (*Project Financing*) and Section 84 (*Refinancing*) (including, in each case, amendments to or variations or modifications of the defined terms used in such provisions to the extent such amendments, variations or modifications affect the substance of such provisions), or any other amendment, variation or modification of the Lease Agreement that could reasonably be expected to have a material adverse effect on the rights or interests of the Bondholders, the Bank Lenders or Leasehold Mortgagee (or any other Senior Secured Party). The Leasehold Mortgagee will respond to any request from the Mortgagor or the Port Authority for approval of a modification or amendment of the Lease Agreement within a reasonable period of time. The Leasehold Mortgagee acknowledges that its consent shall not be required if an amendment to, or variation or modification of, the Lease Agreement is necessary for the Port Authority, in the Port Authority's sole discretion, to be in compliance with the Basic Lease or any applicable law and, provided, further, the Leasehold Mortgagee shall not require the Port Authority to pay any fee, charge, or other amount (including reimbursement of any cost or expense) in connection with providing the consent of the Leasehold Mortgagee (where such consent is required, as provided in the Lease Agreement or in any other Senior Financing Documents).

(c) The parties hereto acknowledge that, except as otherwise approved in writing by the Port Authority, all rights of the Leasehold Mortgagee in its capacity as a transferee of the Mortgagor's rights under the Lease Agreement shall be subject and subordinate to all of the provisions of the Lease Agreement and to all of the rights of the Port Authority thereunder, including without limitation Section 83 thereof.

#### Section 8. Power of Attorney.

Upon the occurrence and during the continuance of an Event of Default hereunder, the Mortgagor hereby irrevocably constitutes and appoints the Leasehold Mortgagee with full authority in the name, place and stead of Mortgagor to do any and all things required to be done in the Leasehold Mortgagee's discretion, to carry out the terms and accomplish the purposes of this Leasehold Mortgagee as fully and effectively as the Mortgagor could do, including, but not limited to, the power to endorse the Mortgagor's name to checks, notes or other instruments for the payment of money, to deposit the same for the benefit of Leasehold Mortgagee and to institute, prosecute and settle all claims of Mortgagor in connection therewith. This power of attorney is coupled with an interest and shall be irrevocable until all of the Senior Project Loan Obligations is paid or satisfied in full and this Leasehold Mortgagee is terminated. This power of attorney shall

survive the dissolution and liquidation of Mortgagor. The powers conferred upon Leasehold Mortgagee hereunder are solely to protect its interest and shall not impose any duty upon it to exercise any of such powers.

Section 9. No Assumption by the Leasehold Mortgagee.

Nothing in this Leasehold Mortgage contained, nor any action or inaction on the part of the Leasehold Mortgagee, is intended or shall be construed as establishing between the Leasehold Mortgagee and any sublessee or between the Leasehold Mortgagee and the landlord under the Lease Agreement or any party to the Senior Financing Documents, the relationship of lessor and/or lessee or as rendering the Leasehold Mortgagee responsible or liable to any person for the manner of maintenance of the property demised under or affected by the subleases, the Lease Agreement or the Senior Financing Documents or the conduct of any business therein or as an assumption by the Leasehold Mortgagee of any liability to any Person for the fulfillment of any covenant or obligation of the subleases, the Lease Agreement or the Senior Financing Documents prior to such time as the Leasehold Mortgagee has taken ownership of the Mortgagor's interest in the Lease Agreement by foreclosure or otherwise (including a new lease has been executed between the Port Authority, as lessor and the Leasehold Mortgagee or its designee, as lessee). The Mortgagor shall at all times remain fully liable for the fulfillment of all of the terms and conditions of this Leasehold Mortgage. Further, the parties acknowledge and agree that, in accordance with Section 83(a)(11) of the Lease Agreement, notwithstanding any enforcement of the security under this Leasehold Mortgage or any restrictions contained in the Senior Financing Documents, the Mortgagor shall remain fully liable to the Port Authority for the payment of all sums owing to the Port Authority under the Lease Agreement and the performance and observance of all of the covenants and obligations of the Lessee (as such term is defined in the Lease Agreement) under the Lease Agreement, unless otherwise satisfied.

Section 10. Events of Default.

An event of default ("Event of Default") hereunder shall exist upon the occurrence and during the continuation of any of the following events:

(i) A failure to make payment under the TDC Project Loan Agreement, the 2022 TDC Project Notes or any Note issued under the TDC Project Loan Agreement of any and all amounts required when due for the payment of interest (including any Defaulted Interest), Sinking Fund Requirement, Redemption Price or principal in respect of any Series of Senior Bonds or any Senior Loans, which failure has resulted in the occurrence and continuance of an Event of Default under and as defined in the TDC Project Loan Agreement;

(ii) The Port Authority shall have given an Event of Default Notice as described in Section 21 of the Lease Agreement; or

(iii) An "Event of Default" shall have occurred and is continuing under any other of the Senior Financing Documents, but only for so long as such "Event of Default" is continuing.

Section 11. Rights and Remedies.

(a) General.

The Leasehold Mortgagee shall have those rights and remedies under this Leasehold Mortgage as are specifically provided by this Leasehold Mortgage, the Lease Agreement, the Indenture, and the other Senior Financing Documents subject to the terms and conditions stated herein, therein, at law and in equity, in each case, subject to the terms of the Intercreditor Agreement. Any amounts received by the Leasehold Mortgagee in the exercise of its rights and remedies under this Leasehold Mortgage shall be applied by the Leasehold Mortgagee in accordance with Section 15 hereof.

(b) Mortgagor Deemed Lessee.

(i) Notwithstanding any provisions hereof to the contrary, the Mortgagor, for all purposes under the Lease Agreement, shall be deemed to be the tenant under the Lease Agreement (unless and until the Recognized Mortgagee (as such term is defined in the Lease Agreement) shall have acquired the tenant's interest in the Lease Agreement or a new lease has been executed between the Port Authority, as lessor, and the Mortgagee, as lessee, pursuant to Section 83 of the Lease Agreement, as the case may be), and the Leasehold Mortgagee shall not have any right to use or occupy the Mortgaged Property for any of the purposes set forth in Section 5 of the Lease Agreement or for any other purpose whatsoever (except as permitted in connection with the exercise of the Leasehold Mortgagee's rights and remedies under this Leasehold Mortgage, the Lease Agreement or the other Senior Financing Documents, and except for the purpose of preserving the Mortgaged Property to the extent permitted in the Lease Agreement, this Leasehold Mortgage, or the other Senior Financing Documents, as applicable, in each case, subject to the terms of the Intercreditor Agreement), and the Leasehold Mortgagee acknowledges that the consent of the Port Authority to this Leasehold Mortgage has been given expressly upon such condition.

(ii) Except as permitted in connection with the exercise of the Leasehold Mortgagee's rights and remedies under this Leasehold Mortgage, the Lease Agreement or the other Senior Financing Documents, and except for the purpose of preserving the Mortgaged Property to the extent permitted in the Lease Agreement, this Leasehold Mortgage and the other Senior Financing Documents, the Mortgagor shall have full and complete control of the operation and use of the Mortgaged Property.

(c) Notice of Default, Foreclosure Notice and Port Authority's Right to Purchase.

(i) The Leasehold Mortgagee shall send to the Port Authority a copy of each notice of an Event of Default given under this Leasehold Mortgage or any other Senior Financing Document, and any notice given under any such documents that the Lessee Debt (as defined in the Lease Agreement) secured hereby and then outstanding has become immediately due and payable, in accordance with Section 83(c)(2) of the Lease Agreement (a "Foreclosure Notice"), at the same time as and whenever any such Foreclosure Notice shall have been sent to the Mortgagor, but the Port Authority shall not have the right to cure any such Event of Default or

other event that resulted in such Lessee Debt becoming immediately due and payable except to the extent provided in Section 11(c)(ii) below. Together with each Foreclosure Notice, the Leasehold Mortgagee shall give the Mortgagor and the Port Authority written notice, in accordance with Section 83(h)(1) of the Lease Agreement, of the amount of the unpaid principal amount of the 2022 TDC Project Notes, any other Note issued under the TDC Project Loan Agreement, and any accrued and unpaid interest thereon (including any default interest then outstanding under such documents), any prepayment premiums or penalties, make-whole amounts or other prepayment amounts or breakage costs that would be due and payable upon payoff of such amounts, and all other amounts that would be due and owing under the Senior Financing Documents (with good faith estimates provided to the extent of any liabilities, such as termination amounts under hedging arrangements, which cannot be finalized at the time of notice), and the per diem interest which will accrue on the principal amount of such outstanding debt thereunder from and after the date of such notice.

(ii) To the extent provided and in accordance with the terms and conditions of Section 83(h) of the Lease Agreement, the Port Authority shall have the right, but not the obligation, following the giving of a Foreclosure Notice by the Leasehold Mortgagee to purchase this Leasehold Mortgage and the other Senior Financing Documents from the Leasehold Mortgagee by tendering to the Leasehold Mortgagee an amount that shall equal the total amount specified in the Foreclosure Notice, including per diem interest through the date of such tender, and upon such tender this Leasehold Mortgage shall terminate and be of no further force and effect. Promptly following the Port Authority's tender of such amount specified in such Foreclosure Notice, the Mortgagor shall cause to be executed, and the Leasehold Mortgagee shall execute, a satisfaction of this Leasehold Mortgage, cause the same to be filed in the Office of the City Register for Queens County and take all other and additional actions that are required in order to discharge the lien of this Leasehold Mortgage as of record. The Leasehold Mortgagee hereby acknowledges, and agrees to be bound by, the provisions of Section 83(h) of the Lease Agreement (Port Authority's Right to Pay Off Lessee Debt).

(iii) The Leasehold Mortgagee shall give additional notice to the Mortgagor and the Port Authority of the commencement of any proceeding to foreclose upon this Leasehold Mortgage as well as all subsequent pleadings, notices and documents in connection with such proceedings and the termination or discontinuance thereof and any other proceedings to realize on any security interest or separate agreement of the Mortgagor with respect to the Senior Project Loan Obligations, and shall keep the Port Authority advised of the progress of such proceedings.

(iv) Nothing herein shall be deemed to preclude the Port Authority from bidding on the same terms and conditions as independent third parties for or from becoming the owner of the Mortgaged Property and the other property encumbered by the other Senior Security Documents and the Mortgagor's leasehold estate free from any claims, equities or rights of redemption of the Mortgagor, the Bondholders, the Bank Lenders and the Leasehold Mortgagee, (and the other Senior Secured Parties) and the Port Authority shall have the right to bid for the Mortgaged Property and the property encumbered by the other Senior Security Documents and the Mortgagor's leasehold estate on the same terms and conditions as independent third parties at any sale, public or private, whether held pursuant to a judgment of foreclosure or otherwise.



(v) Without limiting any other provisions of the Lease Agreement, if a purchaser at a foreclosure sale shall acquire title to the Lease Agreement and the Mortgagor's leasehold estate thereunder, such purchaser's rights to assign, sell or transfer the leasehold shall be as set forth in the Lease Agreement.

(d) Incorporation of Additional Rights and Remedies.

Pursuant to certain provisions of the Lease Agreement, the Indenture and the other Senior Financing Documents, including, without limitation, Section 83 of the Lease Agreement, the Leasehold Mortgagee has certain rights and remedies upon an Event of Default, including, without limitation, the Foreclosure Rights and the right to compel a New Agreement (as defined in the Lease Agreement), all of which provisions are hereby incorporated herein by reference as if fully set forth herein, and the Leasehold Mortgagee shall have the benefit of and be entitled to rely on such provisions, subject to the terms and conditions stated therein and the terms and conditions of this Leasehold Mortgage, with the same force and effect as if they were set forth in full in this Leasehold Mortgage, in each case, subject to the terms of the Intercreditor Agreement.

(e) Leasehold Mortgagee's Ability to Cure Default.

(i) If an "Event of Default" (under and as defined in the Lease Agreement) shall have occurred and be continuing, Mortgagor acknowledges and agrees that the Port Authority (as lessor under the Lease Agreement) has agreed to accept and permit the curing of any "Event of Default" (under and as defined in the Lease Agreement) by the Recognized Mortgagee (as such term is defined in the Lease Agreement), on behalf of the Senior Secured Parties, or its designee, including, without limitation, any Qualified Terminal Operator (as defined in the Lease Agreement) appointed in accordance with the Lease Agreement or any other designee, agent or assignee of the rights of the Recognized Mortgagee, provided that such designee, agent or assignee of the rights of the Leasehold Mortgagee is not a Prohibited Party (as defined in the Lease Agreement) and cures such default in accordance with the applicable terms of the Lease Agreement, as, if and with the same force and effect as though cured by the Mortgagor. The curing of any such "Event of Default" (under and as defined in the Lease Agreement) by the Recognized Mortgagee shall not be deemed to cure any default by the Mortgagor under this Leasehold Mortgage or the other Senior Financing Documents and shall not relieve the Mortgagor from any obligation to reimburse the Leasehold Mortgagee for any costs and expenses incidental to the curing of such defaults.

(ii) Without limiting the generality of the other provisions of this Leasehold Mortgage, and without waiving or releasing Mortgagor from its obligations hereunder, the Recognized Mortgagee, on behalf of the Senior Secured Parties, may personally, or by its agents or attorneys, including, but not limited to, any Qualified Terminal Operator appointed in accordance with the Lease Agreement, (but shall not be obligated to), subject in each case to the terms of the Intercreditor Agreement, take any action at law or in equity that, subject to the terms and conditions of the Lease Agreement or as otherwise approved in writing by the Port Authority, that the Leasehold Mortgagee, in its capacity as the Recognized Mortgagee, in its sole discretion, deems necessary or desirable to prevent or cure any or "Event of Default" (under and as defined in the Lease Agreement) by the Mortgagor in the performance of or compliance with any of the Mortgagor's covenants or obligations under the Lease Agreement or any Senior Financing

Document, except where non-compliance could not reasonably be expected to result in any of the following: (a) a Material Adverse Effect, (b) a material adverse effect on the Project or the transactions contemplated by the Senior Financing Documents, taken as a whole, or (c) an adverse effect on the validity or enforceability of any such Senior Financing Document against the Mortgagor, and the Leasehold Mortgagee and any Person designated by the Leasehold Mortgagee shall have, and are hereby granted, the right to enter upon the Premises to such extent and as often as the Leasehold Mortgagee in its sole discretion deems necessary or desirable to prevent or cure any such default or “Event of Default” (under and as defined in the Lease Agreement) by the Mortgagor, subject to the terms and conditions of the Lease Agreement or as otherwise approved by the Port Authority in writing; provided, however, so long as an Event of Default shall not have occurred and be continuing, the Leasehold Mortgagee shall not have the right to enter the Premises to cure or prevent any default by the Mortgagor or otherwise take any action that interferes with the Mortgagor’s construction, operation or maintenance of the Mortgaged Property except as otherwise provided in the Senior Financing Documents and the Lease Agreement. The Leasehold Mortgagee may, but shall not be required to, expend such sums of money as the Leasehold Mortgagee, in its sole discretion, deems necessary for any such purpose, and the Mortgagor hereby agrees to pay to the Leasehold Mortgagee, immediately upon demand, all reasonable sums so expended by the Leasehold Mortgagee, together with interest thereon from the date of disbursement at a rate of interest per annum equal two (2) percentage points above the rate published by The Wall Street Journal (or, if The Wall Street Journal or if such rate shall not be published, a domestic financial newspaper of comparable status designated by Leasehold Mortgagee) from time to time as the generally prevailing rate of interest charged by commercial banks on ninety (90) day unsecured loans to their most preferred corporate customers in Queens County (the “Default Rate”). All reasonable sums so expended by the Leasehold Mortgagee, the respective Secured Debt Representative or any Senior Secured Parties and such interest thereon shall be added to the Senior Project Loan Obligations of the Mortgagor to Leasehold Mortgagee and the Senior Secured Parties and secured by the lien of this Leasehold Mortgagee.

(f) Remedies.

(i) Subject to the limitations of Section 11(a) hereof and the terms of the Intercreditor Agreement, upon the occurrence and during the continuance of an Event of Default beyond any applicable cure or grace period, the Leasehold Mortgagee may in addition to any rights or remedies available to it hereunder, subject to the terms and conditions of the Lease Agreement (including Section 83 thereof) or as otherwise approved in writing by the Port Authority, without notice or demand, as it deems advisable to protect and enforce its rights against the Mortgagor and in and to the Mortgaged Property and without impairing or otherwise affecting the other rights and remedies of the Leasehold Mortgagee, take any one or more of the following actions, either personally, or by its agents or attorneys, including, but not limited to, any Qualified Terminal Operator appointed in accordance with the Lease Agreement, at such times and in such order as the Leasehold Mortgagee shall determine in its sole discretion: (A) subject to satisfaction of applicable Port Authority procedures and policies, enter into and upon all or any part of the Premises, and each and every part thereof, and exclude the Mortgagor, its agents and servants wholly therefrom; and (B) having and holding the same, use, operate, manage and control the Mortgaged Property and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receivers; and (C) upon every such entry, at the expense of the Mortgagor, from time to time, either by purchase, repairs or construction, maintain and

restore the Mortgaged Property, and insure the same; and (D) likewise, from time to time, at the expense of the Mortgagor, make all necessary or proper repairs, renewals and replacements and such useful alterations, additions, betterments and improvements thereto and thereon as it may seem advisable subject to the satisfaction of applicable Port Authority procedures and policies as required under the Lease Agreement; and (E) in every such case have the right to manage and operate the Mortgaged Property and to carry on the business thereof and exercise all rights and powers of the Mortgagor with respect thereto, either in the name of the Mortgagor or otherwise as it shall deem best.

(ii) Subject to the limitations of Section 11(a) hereof, upon the occurrence and during the continuance of an Event of Default beyond any applicable cure or grace period, without limiting the generality of the other provisions of this Leasehold Mortgage or any other rights at law or in equity, the Leasehold Mortgagee, with or without entry, personally or by its agents or attorneys, including, but not limited to, any Qualified Terminal Operator appointed in accordance with the Lease Agreement, insofar as applicable, may, in each case subject to the applicable provisions of the Lease Agreement (including Section 83 thereof) and the Senior Financing Documents:

(1) sell the Mortgaged Property to the extent permitted and pursuant to the procedures provided by law, and all estate, right, title and interest, claim and demand therein, and right of redemption thereof, at one or more sales as an entirety or in parcels, and at such time and place upon such terms and after such notice thereof as may be required or permitted by law;

(2) institute proceedings for the foreclosure of this Leasehold Mortgage; or

(3) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Lease Agreement, this Leasehold Mortgage or any of the other Senior Financing Documents, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as the Leasehold Mortgagee shall elect.

(iii) Notwithstanding the foregoing, a waiver of an “Event of Default” under the Indenture, the TDC Project Loan Agreement or the Intercreditor Agreement or a rescission of a declaration of acceleration of the Series 2022A Bonds under the Indenture, the Senior Loans under the Credit Agreement, the 2022 TDC Project Notes, or of any Senior Project Loan Obligations pursuant to the Intercreditor Agreement and a rescission and annulment of its consequences shall constitute a waiver of the corresponding Event of Default under this Leasehold Mortgage; provided, that no such waiver or rescission shall extend to or affect any subsequent or other default hereunder or impair any right consequent thereon except to the extent expressly provided in such waiver or rescission; and provided, further that no such waiver or rescission shall constitute a waiver or rescission by the Port Authority with respect to any related default or event of default arising under the Lease Agreement, unless the Port Authority has separately waived or rescinded in writing.

(g) Bankruptcy.

(i) If the Port Authority, or anyone holding by, through or under the Port Authority or a trustee in bankruptcy shall elect to reject the Lease Agreement pursuant to Section 365(a) of the Bankruptcy Code, or a successor statute, thereby giving to Mortgagor the right to elect to treat the Lease Agreement as terminated pursuant to Section 365(h)(1)(A)(i) of the Bankruptcy Code, or a successor statute, Leasehold Mortgagee shall have the exclusive right to exercise said right and Mortgagor hereby assigns said right to Leasehold Mortgagee. Mortgagor shall not, without Leasehold Mortgagee's prior written consent, elect to treat either the Lease Agreement or the leasehold estate created thereby as terminated under Subsection 365(h)(1)(A)(i) of the Bankruptcy Code or any successor statutory provision, after rejection or disaffirmance of the Lease Agreement by the Port Authority or by any trustee of such party, and any such election made without such consent shall, to the extent permitted by law, be void and ineffective.

(ii) Mortgagor hereby unconditionally assigns, transfers and sets over to Leasehold Mortgagee all of Mortgagor's claims and rights to the payment of damages that may hereafter arise as a result of any rejection or disaffirmance of the Lease Agreement by the Port Authority or by any trustee of such party, pursuant to the Bankruptcy Code. To the extent Mortgagor fails to timely and reasonably proceed upon reasonable prior written request of Leasehold Mortgagee, Leasehold Mortgagee shall have and is hereby granted the right to proceed, in its own name or in the name of Mortgagor, in respect of any claim, suit, action or proceeding relating to the rejection or disaffirmance of the Lease Agreement (including, without limitation, the right to file and prosecute, to the exclusion of Mortgagor, any proofs of claim, complaints, motions, applications, notices and other documents) in any case in respect of the Port Authority under the Bankruptcy Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until the Senior Project Loan Obligations shall have been satisfied and discharged in full. Any amounts received by Leasehold Mortgagee as damages arising out of any such rejection of the Lease Agreement shall be applied by Leasehold Mortgagee in accordance with Section 15 hereof.

(iii) In the event that any action, proceeding, motion or notice shall be commenced or filed by the Port Authority in respect of the Lease Agreement or the Mortgaged Property or any part thereof, in connection with any case under the Bankruptcy Code, and Mortgagor shall fail to timely and reasonably proceed upon reasonable prior written request by Leasehold Mortgagee, Leasehold Mortgagee shall have, and is hereby granted, the option, to the exclusion of Mortgagor, exercisable upon notice from Leasehold Mortgagee to Mortgagor, to conduct and control any such litigation with counsel of Leasehold Mortgagee's choice. Leasehold Mortgagee may proceed, in its own name or in the name of Mortgagor, in connection with any such litigation, and Mortgagor agrees to execute any and all powers, authorizations, consents and other documents required by Leasehold Mortgagee in connection therewith. Mortgagor shall, upon demand, pay to Leasehold Mortgagee all reasonable costs and expenses (including, without limitation, reasonable legal fees and disbursements) paid or incurred by Leasehold Mortgagee, before and after judgment, in connection with the prosecution or conduct of any such proceedings, and, to the extent permitted by law, such costs and expenses shall be deemed expenses incurred in upholding the lien of this Leasehold Mortgage and added to the Senior Project Loan Obligations. Mortgagor shall not, without the prior written consent of Leasehold Mortgagee, commence any

action, suit, proceeding or case, or file any application or make any motion, in respect of the Lease Agreement in any such case under the Bankruptcy Code.

(iv) In the event that a petition under the Bankruptcy Code shall be filed by or against Mortgagor, and Mortgagor, or anyone claiming through or under Mortgagor or a trustee in bankruptcy shall have the right to reject the Lease Agreement pursuant to Section 365(a) of the Bankruptcy Code or a successor statute, Mortgagor shall give Leasehold Mortgagee and the Port Authority at least thirty (30) days' prior written notice of the date on which application shall be made to the court for authority to reject the Lease Agreement; provided, however, that if a trustee in bankruptcy shall have a right to reject the Lease Agreement in less than thirty (30) days, then Mortgagor shall give such notice to Leasehold Mortgagee and the Port Authority immediately upon Mortgagor's knowledge of such application, provided further, that in the event that Mortgagor or its trustee in bankruptcy shall have decided to reject or disaffirm the Lease Agreement, then prior to making any application to effectuate any such rejection or disaffirmance Mortgagor shall offer instead, upon not less than thirty (30) days written notice to the Leasehold Mortgagee and the Port Authority, to attempt to assign the Lease Agreement to the Leasehold Mortgagee, its designee or nominee, in accordance with, and subject to, the terms and conditions of the Lease Agreement, or as otherwise approved by the Port Authority in writing. In no event shall the Mortgagor have an obligation to cure any outstanding defaults in connection with any such assignments. In the event Leasehold Mortgagee accepts such offer within such thirty (30) day period, as it may be extended by mutual agreement, Mortgagor shall not seek to reject or disaffirm the Lease Agreement and shall instead promptly assign the Lease Agreement to Leasehold Mortgagee, its designee or nominee, in accordance with, and subject to, the terms and conditions of the Lease Agreement, or as otherwise approved by the Port Authority in writing. In the event of any rejection or disaffirmance of the Lease Agreement by Mortgagor or anyone claiming through or under Mortgagor or a trustee in bankruptcy without having first made the preceding written offer to assign, upon written election by the Leasehold Mortgagee such rejection or disaffirmance shall be deemed an assignment of the Lease Agreement to the Leasehold Mortgagee, its designee or nominee, subject to, the terms and conditions of the Lease Agreement, or as otherwise approved by the Port Authority in writing. Furthermore, until such time as the Lease is so rejected or disaffirmed or otherwise assumed by Mortgagor, Leasehold Mortgagee shall have the right to seek adequate protection for payment of the Senior Project Loan Obligations.

(v) If any of the assignments provided for in this Section are held to be unenforceable, then Mortgagor, anyone claiming by, through or under Mortgagor or a trustee in bankruptcy, shall not exercise rights purportedly assigned to Leasehold Mortgagee without the prior written consent of Leasehold Mortgagee, and if Leasehold Mortgagee shall give such consent, Mortgagor, anyone claiming by, through or under Mortgagor or a trustee in bankruptcy shall promptly exercise said rights.

(vi) To the extent permitted by applicable law and to the extent that a petition under the Bankruptcy Code shall have been filed by or against Mortgagor and Mortgagor unreasonably fails to act in a timely manner upon reasonable prior written request of Leasehold Mortgagee, Mortgagor hereby assigns, transfers and sets over to Leasehold Mortgagee a right to apply to the Bankruptcy Court under Subsection 365(d)(4) of the Bankruptcy Code for an order extending the period during which the Lease Agreement may be rejected or assumed after the entry

of any order for relief in respect of Mortgagor under Chapter 7 or Chapter 11 of the Bankruptcy Code.

Section 12. Sale by the Leasehold Mortgagee.

(a) The Leasehold Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Leasehold Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, the Leasehold Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(b) Upon the completion of any sale or sales made by the Leasehold Mortgagee under or by virtue of this Leasehold Mortgage, the Leasehold Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, assigning and transferring all of the Mortgagor's estate, right, title and interest in and to the property and rights sold. The Leasehold Mortgagee may, at the Leasehold Mortgagee's option, also foreclose this Leasehold Mortgage for any portion of the sums secured hereby which is then due and payable, subject to the continuing lien of this Leasehold Mortgage for the balance of the Senior Project Loan Obligations then due. Upon the occurrence and during the continuance of an Event of Default beyond the applicable cure or grace period, the Leasehold Mortgagee is hereby irrevocably appointed the true and lawful attorney-in-fact of the Mortgagor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold and for that purpose the Leasehold Mortgagee may execute all necessary instruments of assignment and transfer, and may substitute one or more persons with like power, the Mortgagor hereby ratifying and confirming all that its said attorney-in-fact or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, the Mortgagor, if so requested by the Leasehold Mortgagee, shall ratify and confirm any such sale or sales by executing and delivering to the Leasehold Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of the Leasehold Mortgagee, for the purpose, and as may be designated, in such request. Any such sale or sales made under or by virtue of this Leasehold Mortgage, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of the Mortgagor in and to the property and rights so sold, and shall be a perpetual bar both at law and in equity against the Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under the Mortgagor.

(c) The purchase money, proceeds or avails of any sale made under or by virtue of this Leasehold Mortgage, together with any other sums which then may be held by the Leasehold Mortgagee under this Leasehold Mortgage, whether under the provisions of this Section 12 or otherwise, shall be applied in the order set forth in Section 15 hereof.

(d) Upon any sale made under or by virtue of this Leasehold Mortgage or any of the other Senior Security Documents, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Leasehold Mortgagee may bid for and acquire the Mortgaged Property and the other property

encumbered by the other Senior Security Documents or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the indebtedness of the Mortgagor secured by this Leasehold Mortgage the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which the Leasehold Mortgagee are authorized to deduct under this Leasehold Mortgage.

(e) The foregoing paragraphs (a)-(d) shall be subject to the terms and conditions of the Lease Agreement or as otherwise approved by the Port Authority in writing.

### Section 13. Receivers.

(a) Upon the occurrence and during the continuance of an Event of Default beyond the applicable cure or grace period and immediately upon the commencement of any action, suit or other legal proceedings by the Leasehold Mortgagee to obtain judgment for the principal of, and interest on, the 2022 TDC Project Notes, any Note issued under the TDC Project Loan Agreement and other sums required to be paid by the Mortgagor pursuant to any provision of this Leasehold Mortgage, or of any other nature in aid of the enforcement of the Lease Agreement, this Leasehold Mortgage or other Senior Financing Documents, the Mortgagor will and hereby does (i) waive the service of process and enter its voluntary appearance in such action, suit or proceeding, and (ii) if required by the Leasehold Mortgagee, consent to the appointment of a receiver or receivers in respect of the Mortgaged Property (subject to the last sentence of this Section 13(a)). After the happening of any Event of Default and during its continuance, and upon the commencement of any proceedings to foreclose this Leasehold Mortgage, or to enforce the specific performance hereof or in aid thereof or upon the commencement of any other judicial proceeding to enforce any right of the Leasehold Mortgagee, the Leasehold Mortgagee shall be entitled, as a matter of right, if it shall so elect, without the giving of notice to any other party and without regard to the adequacy or inadequacy of any security for the indebtedness, forthwith either before or after declaring the unpaid principal of the 2022 TDC Project Notes or any Note issued under the TDC Project Loan Agreement to be due and payable, to the appointment of such a receiver or receivers. Any receiver appointed hereunder must qualify as a Qualified Terminal Operator.

(b) Upon the occurrence and during the continuance of an Event of Default beyond the applicable cure or grace period, notwithstanding the appointment of any receiver, liquidator or trustee of the Mortgagor, or of any of its property, or of the Mortgaged Property or any part thereof, the Leasehold Mortgagee shall be entitled to retain possession and control of all property now or hereafter held under this Leasehold Mortgage.

### Section 14. Election of Remedies.

(a) If the indebtedness secured hereby is now or hereafter further secured by chattel mortgages, pledges, contracts, guaranties, assignments of leases, or other securities, the Leasehold Mortgagee may at its option exhaust any one or more of said securities and the security hereunder, either concurrently or independently, and in such order as it may determine.

(b) The rights of the Leasehold Mortgagee, granted and arising under the clauses and covenants contained in this Leasehold Mortgage, the Lease Agreement and in the other

Senior Financing Documents, shall be separate, distinct and cumulative of other powers and rights herein granted and all other rights which the Leasehold Mortgagee may have in law or equity, and none of them shall be in exclusion of the others; and all of them are cumulative to the remedies for collection of indebtedness, enforcement of rights under mortgages and preservation of security as provided at law. No act of the Leasehold Mortgagee shall be construed as an election to proceed under any one provision herein or under the Lease Agreement, or Senior Financing Documents to the exclusion of any other provision, or an election of remedies to the bar of any other remedy allowed at law or in equity, anything herein or otherwise to the contrary notwithstanding.

Section 15. Application of Proceeds.

All proceeds received by the Leasehold Mortgagee from the sale or other disposition of this Leasehold Mortgage or from the exercise by the Leasehold Mortgagee of any right or remedy under this Leasehold Mortgage, whether received from a new lessee or otherwise, shall be applied in accordance with the Collateral Agency and Accounts Agreement.

Section 16. Waiver by the Mortgagor.

The Mortgagor will not at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Mortgaged Property or any part thereof, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Leasehold Mortgage, nor claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision herein, or pursuant to the decree, judgment or order of any court of competent jurisdiction; nor, after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the property so sold or any part thereof and the Mortgagor hereby expressly waives all benefit or advantage of any such law or laws, and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to the Leasehold Mortgagee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. The Mortgagor, for itself and all who may claim under it, waives, to the extent that it lawfully may, all right to have the Mortgaged Property marshaled upon any foreclosure hereof.

Section 17. Condemnation.

In the event that pursuant to the terms of Section 19 of the Lease Agreement, any portion of the Premises is acquired by a Taking pursuant to Section 19 of the Lease Agreement, such portion that is subject to such Taking shall be free and clear of this Leasehold Mortgage and any interest of the Leasehold Mortgagee in the Mortgaged Property. The Mortgagor hereby assigns to the Leasehold Mortgagee any payments received by the Mortgagor pursuant to Section 19 of the Lease Agreement as collateral and further security for the Senior Project Loan Obligations and the Mortgagor hereby consents to and directs that the Port Authority pay to the Leasehold Mortgagee, to the extent the Port Authority receives any proceeds as a result of or in connection with such Taking in relation to the Premises and to which the Mortgagor is entitled to under the Lease Agreement, such amount provided under Section 19 of the Lease Agreement. Any



amount so paid by the Port Authority to the Leasehold Mortgagee shall be applied by the Leasehold Mortgagee in accordance with the Lease Agreement and the Senior Financing Documents.

No sale, transfer or assignment by the Mortgagor of its interest in the Mortgaged Property or the Mortgagor's leasehold estate to the Port Authority shall create a merger between the estates of the Port Authority and the Mortgagor unless the Port Authority, the Mortgagor and the Leasehold Mortgagee consent to such merger in writing, nor shall any such sale, transfer or assignment be deemed to affect or diminish the liabilities of the Mortgagor with respect to the Mortgaged Property, whether for survived damages or otherwise.

Section 18. Costs of Litigation and Collection.

If any action or proceeding is commenced to which the Leasehold Mortgagee is made a party or in which it becomes necessary, in the opinion of the Leasehold Mortgagee's counsel, to defend or uphold the lien of this Leasehold Mortgage, or if this Leasehold Mortgage is put into the hands of an attorney for collection, suit, action or foreclosure, all sums expended by the Leasehold Mortgagee, including reasonable counsel fees, shall be paid by the Mortgagor, together with interest thereon at the Default Rate, and any such sum shall be a further lien on the Mortgaged Property prior to any subsequently attaching or accruing claim or interest and shall be deemed secured by this Leasehold Mortgage; and, in any action or proceedings to foreclose this Leasehold Mortgage, or to recover or collect the indebtedness, the provisions of law respecting the recovery of costs, disbursements and allowances shall prevail unaffected by this covenant.

Section 19. Security Agreement and Fixture Filing.

This Leasehold Mortgage shall also be considered to be and shall be construed as a security agreement with respect to any Mortgaged Property which is not real property. Upon the occurrence and during the continuance of an Event of Default hereunder, the Leasehold Mortgagee may in its discretion, subject to the terms of the Intercreditor Agreement, require the Mortgagor to assemble the collateral and make it available to the Leasehold Mortgagee at a place reasonably convenient to all parties to be designated by the Leasehold Mortgagee. The Leasehold Mortgagee shall give the Mortgagor written notice of the time and place of any public sale of any of the collateral or of the time after which any private sale or other intended disposition thereof is to be made by sending notice to the Mortgagor at least ten (10) days before the time of the sale or other disposition, which provisions for notice the Mortgagor agrees are reasonable.

Certain of the Mortgaged Property is or will become "fixtures" (as that term is defined in the UCC) on the Premises, and this Leasehold Mortgage, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said UCC upon such of the Mortgaged Property that is or may become fixtures.

Section 20. Additional Senior Obligations.

The Mortgagor and the Leasehold Mortgagee understand and agree that, subject to the terms and conditions set forth in the Senior Financing Documents, the Issuer may, from time to time, establish and authorize the issuance and (as applicable) sale of, and the Mortgagor may incur, Additional Senior Obligations for purposes of the Project on a parity basis with the Loan

Facility. In the case of any such issuance of Additional Senior Obligations, such Additional Senior Obligations shall have the same notes, pledges, mortgages, security interests and assignments applicable to the Senior Bonds and/or the Loan Facility, as applicable, pursuant to the Supplemental Indenture or Additional Senior Financing Documents, as applicable, authorizing such Additional Senior Obligations, and the Mortgagor and the Leasehold Mortgagee shall execute such documents as may reasonably be required by the Issuer acting at the request of either the Mortgagor or the Intercreditor Agent, as applicable, in accordance with the Intercreditor Agreement, to accomplish such purposes.

Section 21. Further Assurances.

The Mortgagor will from time to time within ten (10) Business Days after written request by the Leasehold Mortgagee, execute, acknowledge and deliver any further instrument or instruments, including but not limited to mortgages, assignments, assignments of leases, security agreements, financing statements, renewal affidavits, certificates, continuation statements, assignments, or other documents or instruments (in each case, provided that such documents do not contravene the Lease Agreement unless otherwise approved in writing by the Port Authority) that the Leasehold Mortgagee may reasonably request in order to reaffirm, correct, protect, preserve, continue, extend or maintain the evidence of the Senior Project Loan Obligations hereby secured and the lien and security interest hereof to all or any part of the Mortgaged Property intended to be hereby mortgaged, whether now mortgaged, later substituted for, or acquired subsequent to the date of this Leasehold Mortgage and any extension or modification thereof. The Mortgagor will, upon demand, pay any reasonable expenses incurred by the Leasehold Mortgagee in the preparation, execution and filing of any such documents.

Section 22. Payment by the Leasehold Mortgagee.

If the Mortgagor (i) fails to pay any claim, lien or encumbrance which is prior or junior to this Leasehold Mortgage, or any rent or payment due under the Lease Agreement when due, or any tax or assessment or insurance premium when due, or (ii) fails to keep the Mortgaged Property or personal property in good repair, or (iii) shall commit or permit physical waste, or if there be commenced any action or proceeding affecting all or any part of the Mortgaged Property or personal property or the title thereto, then the Leasehold Mortgagee, at its option, may pay such claim, lien, encumbrance, rent, payment, tax, assessment, or premium, with right of subrogation thereunder, may make such repairs and take such steps as the Leasehold Mortgagee deems advisable to prevent or cure, if any, such waste, and may appear in any such action or proceeding and retain counsel therein, and take any action therein as the Leasehold Mortgagee deems advisable, and for any of said purposes the Leasehold Mortgagee may advance such sums of money as it deems necessary; provided, however, so long as an Event of Default shall not have occurred and be continuing, the Leasehold Mortgagee shall not have the right to enter the Premises to cure or prevent any default by the Mortgagor or otherwise take any action that interferes with the Mortgagor's construction, operation or maintenance of the Mortgaged Property, except as otherwise provided in the Lease Agreement and the Senior Financing Documents.

Section 23. Leasehold Mortgagee Expenses.

In addition to securing the payment of the Senior Project Loan Obligations, this Leasehold Mortgage shall further secure payment of any and all additional indebtedness owing by the Mortgagor to the Leasehold Mortgagee for advances, charges, expenses or fees reasonably made, incurred, or expended by the Leasehold Mortgagee pursuant to this Leasehold Mortgage.

Section 24. Payments Secured.

The Mortgagor will pay to the Leasehold Mortgagee within ten (10) Business Days after written notice and without further demand therefor by the Leasehold Mortgagee, all sums of money advanced by the Leasehold Mortgagee to cure a default pursuant to this Leasehold Mortgage, together with interest on each such advancement from the date of disbursement at the Default Rate, and all such sums and such interest thereon shall be secured hereby.

Section 25. Inspection by the Leasehold Mortgagee.

Subject to the terms and conditions of the Lease Agreement, the Leasehold Mortgagee and any persons authorized by the Leasehold Mortgagee shall have the right to enter and inspect the Premises at all reasonable times upon reasonable notice, subject to the terms of the Lease Agreement, provided that such right shall be limited to one time per calendar year unless an Event of Default has occurred and is continuing. The Leasehold Mortgagee shall not have any duty to make any such inspection and shall not incur any liability or obligation for not making such inspection.

Section 26. Compromise Without Notice.

Any action, suit or proceeding brought by the Leasehold Mortgagee pursuant to this Leasehold Mortgage or otherwise, and any claim made by any such person under this Leasehold Mortgage or otherwise, may be compromised, withdrawn or otherwise dealt with by such person without any notice to or approval of the Mortgagor, except as expressly required hereunder.

Section 27. Suits Without Acceleration.

After the expiration of any applicable period of notice, the Leasehold Mortgagee shall have the right from time to time to sue for any sums, whether interest, principal or any installment of either or both, taxes, penalties, or any other sums required to be paid under the terms of this Leasehold Mortgage, as the same become due, without regard to whether or not all of the indebtedness shall be due on demand, and without prejudice to the right of the Leasehold Mortgagee thereafter to enforce any appropriate remedy against the Mortgagor, including sale under this Leasehold Mortgage, or any other action, for a default or defaults by the Mortgagor existing at the time such earlier action was commenced.

Section 28. Estoppel Certificate.

The Mortgagor, upon request, made either personally or by mail, shall certify by a writing, duly acknowledged, to the Leasehold Mortgagee or to any proposed assignee of any interest in this Leasehold Mortgage, the amount of the Senior Project Loan Obligations then owing

under this Leasehold Mortgage and whether any offsets or defenses exist against such indebtedness within ten (10) days after its receipt of such written request.

Section 29. Indemnification.

The Mortgagor shall (regardless of any covenant with respect to insurance) indemnify and save harmless the Leasehold Mortgagee and its members, directors, officers, employees, attorneys and agents (the "Indemnified Parties") against and from any and all liability and expenses arising from their participation in the transactions contemplated hereby, including without limitation (a) any and all claims by or on behalf of any Person arising out of (i) any condition of the Mortgaged Property or any part thereof, or (ii) the acquisition, installation, construction, reconstruction, improvement, use, occupancy, conduct or management of or any work or anything whatsoever done or omitted to be done in or about the Mortgaged Property or any part thereof, or (iii) any accident, injury, or damage whatsoever to or death of any Person occurring in or about the Mortgaged Property or any part thereof, or (iv) any breach or default by the Mortgagor of any of its obligations under the Senior Financing Documents, or (v) any act or omission of the Mortgagor or any of its agents, contractors, servants, employees, or licensees, or (vi) the offering, reoffering, issuance, sale, resale or remarketing of any Series of Bonds or any Senior Loans, or (vii) any action, suit, claim or proceedings instituted or threatened in connection with the transactions contemplated by this Leasehold Mortgage; (b) any and all losses, costs, counsel fees, expenses or liabilities reasonably incurred in connection with any such claim or any action or proceeding brought thereon; and (c) any costs of collection; provided, however, that the Mortgagor shall not be required to indemnify any Person otherwise to be indemnified under this Section 29 for any liabilities or expenses incurred by such Person to the extent caused by or resulting from the bad faith, willful misconduct or gross negligence of such Person. In case any action or proceeding is brought against the Leasehold Mortgagee or any of its members, directors, officers, employees, attorneys or agents by reason of such claim, the Mortgagor, upon notice from the affected party, shall resist or defend such action or proceeding and release the Leasehold Mortgagee or any such member, director, officer, employee, attorney or agent from any such action or claim. Subject to the foregoing, the Leasehold Mortgagee shall cooperate and join with the Mortgagor at the expense of the Mortgagor as may be required in connection with any action taken or defended by the Mortgagor; in so doing, the Mortgagor shall take no action that would result in a determination of guilt or liability against the Leasehold Mortgagee or any of its members, directors, officers, employees, attorneys and agents without the express written consent of such party.

The Leasehold Mortgagee and its members, directors, officers, employees, attorneys and agents shall, in connection with their respective rights under this Section 29, be entitled to the advice of counsel (who may also be counsel for the Mortgagor) at the Mortgagor's expense, and shall be wholly protected as to action taken or omitted to be taken in good faith in reliance on such advice. They may rely conclusively on any communication or other document furnished to them under the Senior Financing Documents and reasonably believed by them to be genuine. They shall not be liable for any action (i) taken by them in good faith and reasonably believed by them to be within the discretion or powers conferred upon them, or (ii) in good faith not taken by them because reasonably believed to be beyond the discretion or powers conferred upon them, or (iii) taken by them pursuant to any direction or instruction by which they are governed by the Senior Financing Documents, or (iv) omitted to be taken for any of the reasons

set forth in the preceding clauses (i) or (iii), or omitted to be taken by them by reason of the lack of any direction or instruction required hereby or by any of the other Senior Financing Documents for such action; nor shall they be responsible for the consequences of any error of judgment reasonably made by them. The Leasehold Mortgagee shall in no event be liable for the application or misapplication of funds, or for other acts or defaults, by any Person, except (i) its own members, directors, officers and employees and (ii) in the case of the Senior Collateral Agent, others specified and only to the extent set forth in Section 2.10 of the Collateral Agency and Accounts Agreement. When any consent or other action by them is called for by the Senior Financing Documents, they may defer such action pending receipt of such certificates, opinions, documents or other supporting evidence as may be required hereunder or under the applicable Senior Financing Documents. They shall not be required to take any remedial action (other than the giving of notice) unless indemnity reasonably satisfactory to them is furnished for any expense or liability to be incurred thereby. They shall be entitled to reimbursement for expenses reasonably incurred or advances reasonably made, in the exercise of their rights or the performance of their obligations hereunder, to the extent that they act without previously obtaining indemnity (in addition to their rights to reimbursement set forth elsewhere herein). No permissive right or power to act which they may have shall be construed as a requirement to act; and no delay in the exercise of a right or power shall affect the subsequent exercise of that right or power. The provisions of this Section shall survive payment in full of the Senior Project Loan Obligations, any resignation or removal of the Leasehold Mortgagee pursuant to this Leasehold Mortgage, and the termination of this Leasehold Mortgage.

#### Section 30. Information.

At the time of delivery of financial statements under any applicable Mortgagor Continuing Disclosure Agreement, if any, the Mortgagor will deliver to the Leasehold Mortgagee a certificate stating that, to the best of its knowledge and belief based on reasonable due diligence, no condition or event exists which constitutes, or which (after notice or lapse of time or both) would constitute, an Event of Default, or if any such condition or event exists, specifying the nature and period of existence thereof and what action it is taking or proposes to take with respect thereto.

#### Section 31. Invalidity of Certain Provisions / Severability.

All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Leasehold Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Leasehold Mortgage shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of other terms of this Leasehold Mortgage shall in no way be affected thereby. If any provision hereof or of any of the written instruments evidencing part or all of the Senior Project Loan Obligations is invalid or unenforceable under any statute, regulation or rule of law in any jurisdiction such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform to such statute, regulation or rule of law to the extent permitted in keeping with the intentions of the parties hereto, and the remainder of this Leasehold Mortgage and the application of any such invalid or unenforceable provision to parties, jurisdictions or circumstances other than to whom or to which it is held invalid or unenforceable,

shall not be affected thereby nor shall same affect the validity or enforceability of any other provision of this Leasehold Mortgage.

Section 32. Interest Limitation.

It is not intended by any provision of this Leasehold Mortgage or other Senior Financing Documents to charge interest or premium at a rate in excess of the maximum rate of interest permitted to be charged to the Mortgagor under applicable law on a cumulative basis. Nevertheless, if by mistake or error interest or premium in excess of such maximum rate shall be paid for any period, the excess amount shall, if permitted by applicable law, be retained by Leasehold Mortgagee as additional cash collateral for the 2022 TDC Project Notes and any Note issued under the TDC Project Loan Agreement to be held without interest or trust or, if not permitted to be so held by Leasehold Mortgagee, shall either be refunded to the Mortgagor or shall be applied in reduction of principal, if permitted by applicable law.

Section 33. Lien Law.

Mortgagor, in compliance with Section 13 of the New York State Lien Law, shall receive all advances secured by this Leasehold Mortgage and shall hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of improvement and shall apply the same first to the payment of the cost of improvement before using any part of the total of the same for any other purpose. This Leasehold Mortgage shall constitute a “construction mortgage” as that term is defined in the version of the Code enacted in the state where the Mortgaged Property is located.

Mortgagor agrees that it shall indemnify and hold Leasehold Mortgagee harmless from and against any loss or liability, cost or expense, including, without limitation, any judgments, attorneys’ fees, costs of appeal bonds and printing costs arising out of or relating to any proceeding instituted by any claimant alleging priority over the lien of this Leasehold Mortgage, and/or if the Mortgaged Property or any part thereof is within the State of New York by any claimant alleging a violation by Mortgagor or Mortgagee of any section of Article 3-A of the New York State Lien Law.

Section 34. Construction.

The clauses and covenants contained in this Leasehold Mortgage which are construed by Sections 254 and 271 of the New York Real Property Law shall be construed as provided in those Sections, except that the provisions of subsection 4 of said Section 254 shall not in any manner apply to or construe the provisions of this Leasehold Mortgage; the additional clauses and covenants contained herein shall afford rights supplemental to and not exclusive of the rights conferred by the clauses and covenants construed by said Sections 254 and 271 and shall not impair, modify, alter or defeat such rights (except that the provisions of Section 34 hereof shall be exclusive of and shall be in substitution for the rights which would be conferred by the clauses and covenants construed by said subsection 4 of said Section 254), notwithstanding that such additional clauses and covenants may relate to the same subject matter or provide for different or additional rights in the same or similar contingencies as the clauses and covenants construed by said Sections 254 and 271; and in the event of any inconsistencies between the provisions of

Sections 254 and 271 and the provisions of this Leasehold Mortgage, the provisions of this Leasehold Mortgage shall prevail.

Section 35. Waiver of Redemption.

The Mortgagor hereby waives any and all rights to recover and regain the Mortgaged Property and all rights of redemption, granted by or under any present or future law in the event it is evicted or dispossessed for any cause, or in the event the Port Authority or Leasehold Mortgagee obtains possession of the Mortgaged Property in any lawful manner.

Section 36. Mortgaged Personal Property.

So long as an Event of Default shall not have occurred and be continuing, the Mortgagor shall have the right to remove free and clear of this Leasehold Mortgage any part or all of the Mortgaged Personal Property, provided such removal does not materially impair the value or function of the Premises, or to substitute therefore any other property of the Mortgagor of a type or character or function similar to that which is removed, in each case subject to the requirements of the Lease Agreement and the Senior Financing Documents.

Section 37. Discharge of Leasehold Mortgage by the Lessee.

This Leasehold Mortgage shall be deemed satisfied, discharged and of no further force and effect upon the retirement, redemption, refunding, defeasance, satisfaction or other payment or discharge of the Senior Project Loan Obligations in full accordance with the provisions of the Senior Financing Documents, and the Leasehold Mortgagee shall execute and deliver to the Port Authority and the Mortgagor all documents, in recordable form, that may be required or reasonably requested to evidence the discharge and satisfaction of this Leasehold Mortgage.

Section 38. Delays and Omissions.

Any failure or delay by the Leasehold Mortgagee to require strict performance by the Mortgagor of any of the provisions, warranties, terms and conditions contained in this Leasehold Mortgage, the other Senior Financing Documents or in any other agreement, document or instrument, shall not affect the right of the Leasehold Mortgagee to demand strict compliance and performance therewith, and any waiver of any default shall not affect or constitute a waiver of any other default, whether prior or subsequent thereto, and whether of the same or of a different type. None of the warranties, conditions, provisions and terms contained in this Leasehold Mortgage, the other Senior Financing Documents or in any other agreement, document or instrument shall be deemed to have been waived by any act or knowledge of the Leasehold Mortgagee, its agents, officers or employees, but only by an instrument in writing, signed by the Leasehold Mortgagee and specifying such waiver.

The Mortgagor hereby consents to any lawful act by the Leasehold Mortgagee for the purpose of taking lawful possession of the Mortgaged Property after an Event of Default that has occurred and is continuing and subject to the provisions of this Leasehold Mortgage and the Lease Agreement.

Section 39. Notices.

(a) All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by overnight delivery service or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Mortgagor at

JFK Millennium Partners, LLC

\_\_\_\_\_

Attention: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

If to the Leasehold Mortgagee at

The Bank of New York Mellon

\_\_\_\_\_

Attention: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

If to the Issuer at

New York Transportation Development Corporation

\_\_\_\_\_

Attention: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

Alternatively, all notices, certificates or other communications hereunder may be given by Electronic Means. The Mortgagor and the Leasehold Mortgagee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice to be sent to the Port Authority hereunder shall be sent to the Port Authority at the address provided by the Port Authority in the Lease Agreement.

In case, by reason of the suspension of regular mail service as a result of a strike, work stoppage or similar activity, it shall be impractical to mail notice of any event when such notice is required to be given pursuant to any provision of this Leasehold Mortgage, any manner of giving notice as shall be satisfactory to the Leasehold Mortgagee shall be deemed to be a sufficient giving of such notice.



(b) Pursuant to Section 83 of the Lease Agreement, if any notice of an Event of Default under any of the Senior Financing Documents is sent to the Mortgagor, the Leasehold Mortgagee will simultaneously send a copy to the Port Authority at the address provided in the Lease Agreement.

Section 40. LAW GOVERNING THE LEASEHOLD MORTGAGE.

THE EFFECT AND MEANING OF THIS LEASEHOLD MORTGAGE AND THE RIGHTS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THEREOF.

Section 41. Sale, Conveyance, Transfer, Mortgage, Pledge, Assignment and Modification.

Any sale or transfer of the Leasehold Mortgagee's interest in this Leasehold Mortgage, or any part hereof, shall be subject to any applicable provisions of the Lease Agreement, including, without limitation, Section 83(e) thereof.

Except as expressly permitted pursuant to the Lease Agreement and the Senior Financing Documents, the Mortgagor shall not cause or permit a sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, grant of any options with respect to, or any other transfer or disposition (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of a legal or beneficial interest in the Mortgaged Property or any part thereof or the Mortgagor, without the prior written consent of Leasehold Mortgagee, other than any pledge or security interest granted in the equity of an indirect equity holder of the Mortgagor, granted by a holder of such equity to its lenders as collateral security. Notwithstanding anything to the contrary contained herein or in any of the other Senior Financing Documents, this Leasehold Mortgage shall survive an assignment of the Lease Agreement, and this Leasehold Mortgage shall remain in full force and effect.

The Mortgagor shall not surrender or terminate the Lease Agreement, or enter into any agreement to do so, without the prior written consent of the Leasehold Mortgagee, but only to the extent the surrender is not in connection with the expiration of the Term (as defined in the Lease Agreement). Any agreement, surrender or termination in violation of the preceding sentence shall be void ab initio.

Section 42. Counterparts.

This Leasehold Mortgage may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The exchange of copies of this Leasehold Mortgage and of signature pages by facsimile or portable document format ("PDF") transmission shall constitute effective execution and delivery of this Leasehold Mortgage as to the parties hereto. Signatures of the parties hereto transmitted by facsimile, electronic, manual or PDF shall be deemed to be their original signatures for all purposes.

Section 43. Titles.

Titles to the sections of this Leasehold Mortgage are solely for the convenience of the parties and are not an aid in the interpretation of this Leasehold Mortgage or any part hereof.

Section 44. Assignment of Mortgaged Rents.

Subject to and in compliance with the terms of the Lease Agreement, Mortgagor hereby absolutely and unconditionally assigns to Leasehold Mortgagee all of Mortgagor's right, title and interest in and to all current and future Subleases and Mortgaged Rents; it being intended by the Mortgagor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Senior Security Documents, Leasehold Mortgagee grants to the Mortgagor a revocable license to collect, receive, use and enjoy the Mortgaged Rents and the Mortgagor shall hold the Mortgaged Rents, or a portion thereof sufficient to discharge all current sums due on the Senior Project Loan Obligations, for use in the payment of such sums or as otherwise provided in the Senior Financing Documents.

Section 45. Miscellaneous.

(a) Immunity of Commissioners, Officers, Agents, Representatives and Employees of the Port Authority.

Neither the Commissioners of the Port Authority nor any of the officers, agents, representatives or employees of the Port Authority shall be charged personally with any liability or held liable under any term or provision of this Leasehold Mortgage or any supplement, modification or amendment hereto or because of the consent to this Leasehold Mortgage.

(b) Basic Lease & Lease Agreement Shall Control. Notwithstanding anything contained in this Leasehold Mortgage or any consent or approval of the Port Authority hereto, it is understood, agreed and is hereby expressly provided in this Leasehold Mortgage, that the rights of the Leasehold Mortgagee, or its assignee or its successor-in-interest, as applicable, in its capacity as a transferee of the Mortgagor's rights under the Lease Agreement, (i) shall in all respects be as specified in and shall be subject and subordinate to the terms, covenants, conditions and provisions set forth in the Lease Agreement and (ii) shall be subject and subordinate to the terms, covenants, conditions, and provisions of the Basic Lease. The terms, covenants, conditions and provisions of the Lease Agreement and the Basic Lease shall govern as between the Port Authority, the Mortgagor, and the Leasehold Mortgagee, in its capacity as a transferee of the Mortgagor's rights under the Lease Agreement, and in the event of any inconsistency between the terms, covenants, conditions and provisions of the Lease Agreement and the Basic Lease, as applicable, and the terms, covenants, conditions and provisions of this Leasehold Mortgage, the terms, covenants, conditions, and provisions of the Lease Agreement and the Basic Lease, as applicable, shall control. Further, as between the Port Authority, the Mortgagor, and the Leasehold Mortgagee, to the extent the Port Authority approves this Leasehold Mortgage, the parties acknowledge and agree any such approval shall not be deemed to constitute, nor imply, an amendment to the terms of the Lease Agreement, unless the Port Authority expressly identifies the same as an amendment to the Lease Agreement in its approval.

(c) Port Authority's Copy of Leasehold Mortgage.

Without limiting the Port Authority's right of approval thereof, the Leasehold Mortgagee shall give the Port Authority a true copy of this Leasehold Mortgage and a true copy of any amendments hereof.

(d) Statement Regarding Residential Dwelling Units.

The real property subject to this Leasehold Mortgage is not principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each having its own cooking facilities.

(e) Limitation on Disposition of the Mortgagor's Interest in the Lease Agreement.

The Leasehold Mortgagee shall require that any transferee, assignee or purchaser of the Mortgagor's leasehold estate under the Lease Agreement or any new lessee shall assume the rights and obligations, from and after date of assumption, of the Mortgagor under the Senior Financing Documents.

(f) Non-liability of Individuals; Limitations on Recourse.

(i) Notwithstanding any other provision of this Leasehold Mortgage to the contrary, no (x) commissioner, director, employee, committee member, manager, managing director, officer, agent, representative, nor any (y) owner, shareholder, member, partner, controlling Person, principal, or ultimate beneficial owner, in each case, whether direct or indirect, of the Leasehold Mortgagee or of the Mortgagor or any Affiliate of the Leasehold Mortgagee or the Mortgagor or of any of the foregoing, shall be charged personally or held contractually liable by or to the other party, or any third-party beneficiary hereof, under, or in connection with, any term or provision of this Leasehold Mortgage or of any supplement, modification or amendment to this Leasehold Mortgage or because of any breach thereof, or because of its or their execution or attempted execution.

(ii) Notwithstanding any other provision of this Leasehold Mortgage to the contrary, and as a material consideration for the Mortgagor's entry into this Leasehold Mortgage, it is acknowledged and agreed that neither the Leasehold Mortgagee (or any of its successors or assigns) nor any third party beneficiary hereof shall have any recourse or shall make any claim under or in connection with this Leasehold Mortgage, against any commissioner, director, employee, committee member, manager, managing director, officer, agent, representative, owner, shareholder, member, partner, controlling Person, principal, or ultimate beneficial owner, in each case, whether direct or indirect, of the Mortgagor or any Affiliate of the Mortgagor under, or in connection with, this Leasehold Mortgage and the sole recourse of the Leasehold Mortgagee (or its successors or assigns) and any third party beneficiary hereof shall be against the Mortgagor's assets irrespective of any failure of the Mortgagor to comply with applicable Law or any provision of this Leasehold Mortgage. The acknowledgements and agreements set forth in this Section are made expressly for the benefit of the Persons referred to herein, individually or collectively.

(iii) For the purposes of this Section, the protections afforded to the Leasehold Mortgagee under this Section shall be deemed to protect the Senior Collateral Agent, nominee of the Senior Collateral Agent, any successor to the Leasehold Mortgagee, any Qualified Terminal Operator and any director, manager, managing director, controlling person, direct or indirect shareholder, member, partner, principal, ultimate or indirect shareholder, owner, officer or agent thereof in respect of any obligations hereunder or under any of the Senior Financing Documents.

(iv) Nothing in this Section will be deemed a release of any member or Affiliate of Mortgagor from their obligations under any guaranty or any other agreement made by such member or Affiliate with, or for the benefit of, the Mortgagor, the Project, the Senior Collateral Agent or any other Senior Secured Parties; provided that neither the Leasehold Mortgagee nor any third party beneficiary hereof shall be subrogated, or have any right of subrogation, to any claim of the Mortgagor for any capital contributions to the Mortgage from any member of the Mortgagor or any associated claims under any guaranty, letter of credit or other security provided by any member of the Mortgagor for the benefit of the Mortgagor, in each case, except to the extent otherwise expressly set forth in the Senior Financing Documents.

(v) The Senior Collateral Agent has executed this Leasehold Mortgage and the other Senior Security Documents not in its individual capacity but solely as Senior Collateral Agent in connection with the rights and obligations of the Senior Collateral Agent. In connection with the Senior Collateral Agent's execution of this Leasehold Mortgage and the other Senior Security Documents, in no event shall the Senior Collateral Agent, in its individual capacity, have any liability for the representations, warranties, covenants, agreements or other obligations of the Senior Collateral Agent hereunder or thereunder or in any of the certificates, notices or agreements delivered pursuant hereto or thereto, except to the extent the Senior Collateral Agent may be liable under the Senior Security Documents. Mortgagor acknowledges and confirms that the indemnity in Section 7.02 of the Collateral Agency and Accounts Agreement and Section 7.2 of the TDC Project Loan Agreement shall apply with respect to the Senior Collateral Agent's performance of its obligations hereunder (as though such indemnity was set forth herein in its entirety).

(vi) All obligations of the Senior Collateral Agent and the other Senior Secured Parties incurred hereunder or under any other Senior Financing Document shall be limited obligations of the Senior Collateral Agent and the other Senior Secured Parties, payable solely and only from proceeds, revenues and other amounts derived by the Senior Collateral Agent from the Trust Estate and security under the Senior Security Documents.

(g) No Merger.

So long as any of the Senior Project Loan Obligations secured hereby shall remain unpaid or unsatisfied, unless Leasehold Mortgagee shall otherwise consent in writing, the leasehold interest in the Premises or any other interest of the Mortgagor or Leasehold Mortgagee in the Mortgaged Property or the Senior Project Loan Obligations or other security therefore shall not merge with any other interest therein, but shall always be kept separate and distinct, notwithstanding the union of said title either in the Mortgagor, Leasehold Mortgagee or in any other party, by purchase or otherwise.

(h) Successors and Assigns.

This Leasehold Mortgage shall be binding upon and solely for the benefit of the parties hereto and their respective permitted successors and assigns. The terms, covenants, conditions and warranties contained herein and the powers granted hereby shall run with the land, shall inure to the benefit of and bind all parties hereto and their respective heirs, executors, administrators, and permitted successors and assigns and all subsequent holders of Senior Security Documents. Except if and as expressly permitted under Section 20 of the Lease Agreement and Section 41 hereof and the other Senior Financing Documents, the Mortgagor shall not assign any of its rights or obligations hereunder to any party without the written consent of the Leasehold Mortgagee. The Leasehold Mortgagee may assign any of its rights or obligations hereunder at any time to any party subject to the terms of the Lease Agreement (including Section 83 thereof) and such assignment shall benefit its heirs, executors, administrators, successors and assigns.

(i) No Partnership.

Nothing contained herein shall be deemed to constitute the parties hereto as partners or joint venturers in any manner or matter whatsoever.

(j) Construction and Interpretation of Agreement.

Whenever appropriate herein or required by the context or circumstances, the masculine shall be construed as a feminine and/or neuter, the singular as the plural and vice versa. All rules of construction of drafting ambiguities applicable under Section 36 of the Lease Agreement shall apply equally to this Leasehold Mortgage.

(k) Limitation of Liability of Leasehold Mortgagee.

Each Leasehold Mortgagee has executed this Leasehold Mortgage not in its individual capacity but solely as Leasehold Mortgagee in connection with the rights and obligations of the Leasehold Mortgagee. In connection with a Leasehold Mortgagee's execution of this Leasehold Mortgage as Leasehold Mortgagee, in no event shall a Leasehold Mortgagee, in its individual capacity, have any liability for the representations, warranties, covenants, agreements or other obligations of a Leasehold Mortgagee hereunder or in any of the certificates, notices or agreements delivered pursuant hereto, except in the case of the Senior Collateral Agent, to the extent the Senior Collateral Agent may be liable under the Senior Security Documents.

(l) Date for Reference Purposes Only.

The date of this Leasehold Mortgage is for reference purposes only and shall not be construed to imply that this Leasehold Mortgage was executed as of the date first written above. This Leasehold Mortgage has been executed by the parties hereto and is effective on the Closing Date.

(m) Subordination. The rights and remedies of the Leasehold Mortgagee, in its capacity as a transferee of the Mortgagor's rights under the Lease Agreement, shall be subject and subordinate to the terms and conditions of Section 83 of the Lease Agreement. In the event of any

conflict between this Leasehold Mortgage and the Lease Agreement, the terms and conditions of the Lease Agreement shall control and be binding.

(n) Property Clause.

This property is not and will not be improved by a one to six family dwelling or residences.

Section 46. Mortgage Priority.

This Leasehold Mortgage is being executed contemporaneously with the Building Leasehold Mortgage granted to the Senior Collateral Agent by the Mortgagor with respect to the Lease Agreement and shall be junior in lien priority to such mortgage recording regardless of the order of recording thereof.

Section 47. Relative Priority.

It is the intent of Mortgagor and Leasehold Mortgagee that, with respect to the Mortgaged Property, the relative priority of the respective liens of this Leasehold Mortgage and the Building Leasehold Mortgage shall be as follows: (a) the lien of the Building Leasehold Mortgage shall have first priority and (b) the lien of this Leasehold Mortgage shall have second priority.

Section 48. TDC Project Loan Agreement.

This is a project loan mortgage, the proceeds of which are loaned for the purpose of financing the indirect costs (other than the cost of improvements) in connection with the Property. This Leasehold Mortgage is subject to all of the terms, covenants, conditions and provisions of the TDC Project Loan Agreement, which TDC Project Loan Agreement and all of the terms, covenants, conditions and provisions thereof are by this reference incorporated herein and made a part hereof with the same force and effect as if set forth at length herein. The proceeds of the project loan secured hereby are to be advanced by Leasehold Mortgagee to Mortgagor in accordance with the provisions of the TDC Project Loan Agreement. Mortgagor shall observe and perform all of the terms, covenants, conditions and provisions of the TDC Project Loan Agreement on Mortgagor's part to be observed or performed. All advances made and all indebtedness arising and accruing under the TDC Project Loan Agreement from time to time shall be secured hereby. In the event of any conflict or ambiguity between the terms, covenants, conditions and provisions of this Leasehold Mortgage and the TDC Project Loan Agreement, the terms, covenants, conditions and provisions which shall enlarge the rights and remedies of Leasehold Mortgagee and the interest of Leasehold Mortgagee in the Mortgaged Property, afford Leasehold Mortgagee greater financial security in the Mortgaged Property and better assure payment of the indebtedness in full, shall control.

Section 49. State-Specific Provisions.

(a) Principles of Construction.

In the event of any inconsistencies between the terms and conditions of this Section 49 and the terms and conditions of this Leasehold Mortgage, the terms and conditions of this Section 49 shall control and be binding.

(b) Maximum Secured Amount.

Notwithstanding anything contained herein to the contrary, the maximum amount of indebtedness secured by this Leasehold Mortgage at execution or which under any contingency may become secured hereby at any time hereafter is One Billion Nine Hundred Nineteen Million Three Hundred Eighty-Two Thousand Five Hundred Eighty-Five dollars \$1,919,382,585, plus interest thereon as provided in the Financing Documents, plus all amounts expended by Leasehold Mortgagee after default by Mortgagor that constitute payment of (i) taxes, charges or assessments that may be imposed by law upon the Mortgaged Property, (ii) premiums on insurance policies covering the Mortgaged Property, (iii) expenses incurred in protecting or upholding the lien of this Leasehold Mortgage, including, but not limited to the expenses of any litigation to prosecute or defend the rights and lien created by this Mortgage, (iv) expenses incurred in protecting the collateral encumbered by this Leasehold Mortgage, or (v) any amount, cost or charge to which Leasehold Mortgagee becomes subrogated upon payment, whether under recognized principles of law or equity, or under express statutory authority.

(c) Section 291-f Agreement.

(i) Mortgagor hereby covenants and agrees with Leasehold Mortgagee that Mortgagor will not, without the prior written consent of Leasehold Mortgagee, accept prepayments of installments of rent to become due thereunder for more than one (1) month in advance, except to the extent that such prepayment is presently expressly permitted to a tenant under the provisions of its respective lease.

(ii) This Leasehold Mortgage is intended to be, and shall operate as, the agreement described in Section 291-f of the Real Property Law of the State of New York and shall be entitled to the benefits afforded thereby. Mortgagor acknowledges and agrees that Leasehold Mortgagee shall have the right to deliver notice of this Leasehold Mortgage in form and substance reasonably acceptable to Mortgagor, to all present and future holders of any interest in any lease (except for such leases to which Section 291-f is inapplicable), by assignment or otherwise, and Mortgagor agrees to take and/or allow Leasehold Mortgagee to take such other action as may now or hereafter be reasonably required to afford Leasehold Mortgagee the full protections and benefits of Section 291-f. Leasehold Mortgagee may request the recipient of any such notice to acknowledge the receipt thereof.

(d) Mortgage Recording Tax; Limited Role of the Co-Leasehold Mortgagee.

(i) The Issuer is acting in the capacity of Leasehold Mortgagee hereunder solely for the purpose of making available to the parties an exemption from mortgage recording tax and to secure certain obligations of the Mortgagor to the Issuer under the Senior

Financing Documents. In that connection, the Issuer will and hereby agrees to submit this Leasehold Mortgage to the Office of the City Register, Queens County, for recordation, at Mortgagor's sole cost and expense. The Mortgagor will promptly pay, or cause to be paid, any mortgage recording taxes (if the exemption is not granted), fees or other charges, if any, due in connection with this Leasehold Mortgage and the other Senior Financing Documents. Upon recording this Leasehold Mortgage, the Issuer shall execute one or more assignment agreements evidencing the assignment of all of its legal right, title and interest as Leasehold Mortgagee hereunder to Senior Collateral Agent. The foregoing assignments shall be made without recourse, representation or warranty by the Leasehold Mortgagee, in any case or event or for any purpose whatsoever. Thereafter, Senior Collateral Agent, at Mortgagor's sole cost and expense, shall promptly file such assignment with the Queens County Clerk's Office. Upon such assignment, all references herein to the Leasehold Mortgagee shall mean and apply solely to Senior Collateral Agent as the sole remaining party comprising the Leasehold Mortgagee, and its successors and assigns.

(ii) The Mortgagor acknowledges that the Issuer is entering into this Leasehold Mortgage solely as an accommodation to the other parties hereto, and that the Issuer shall have absolutely no obligations, responsibilities or liabilities under this Leasehold Mortgage. The parties hereto acknowledge that the Issuer is executing this Leasehold Mortgage solely to bind itself with respect to this Leasehold Mortgage and that the Issuer's execution does not amount to or evidence the Issuer's agreement with or endorsement of any other provisions of this Leasehold Mortgage.

(iii) The Senior Collateral Agent and the other Senior Secured Parties hereby release the Issuer from all claims, causes of action, suits, actions, arbitrations, inquiries, litigations, proceedings, controversies, disputes, governmental or regulatory investigations, liabilities, damages, costs, obligations, judgments and covenants at law or in equity incurred or suffered by the Senior Collateral Agent or any other Senior Secured Parties with respect to any assertion by applicable governmental authorities that a mortgage recording tax is due with respect to this Leasehold Mortgage.

(iv) The Issuer shall not be under any duty to examine or pass upon the validity, effectiveness, enforceability, genuineness or value of this Leasehold Mortgage or any document executed in connection therewith, and the Issuer is entitled to assume the validity, enforceability, effectiveness and due authorization thereof.

\* \* \*



**[SIGNATURE PAGES AND EXHIBITS HAVE BEEN REMOVED]**

**(THIS PAGE INTENTIONALLY LEFT BLANK)**

**APPENDIX D-4**

**FORM TDC LOAN AGREEMENTS**

**(TDC PROJECT LOAN AGREEMENT AND TDC BUILDING LOAN AGREEMENT)**

**(THIS PAGE INTENTIONALLY LEFT BLANK)**

**TDC PROJECT LOAN AGREEMENT**

between

**NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION**

as Issuer

and

**JFK MILLENNIUM PARTNERS, LLC**

as Borrower

Dated as of November 1, 2022

Relating to

\$185,000,000

New York Transportation Development Corporation  
Special Facilities Bonds, Senior Series 2022A  
(Tax-Exempt) (AMT)  
(JFK Airport Terminal 6-7 Redevelopment Project)

and

\$953,382,585 Senior Loans

As provided for in the Credit Agreement by and among  
JFK Millennium Partners, LLC, New York Transportation Development Corporation, ING  
Capital LLC as Administrative Agent and the Lenders named therein, dated as of the date of this  
Agreement

Block: 14260

Lot: 1

County: Queens

Record and Return Copy to:  
Squire Patton Boggs (US) LLP  
1211 Avenue of the Americas, 26<sup>th</sup> Floor  
New York, New York 10036  
Attention: Alethia Nancoo, Esq.

## TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS; RULES OF CONSTRUCTION.....	4
Section 1.1    Definitions.....	4
ARTICLE II REPRESENTATIONS.....	5
Section 2.1    Representations by the Issuer.....	5
Section 2.2    Representations by the Borrower.....	8
Section 2.3    Survival of Representations .....	11
Section 2.4    Covenant with the Bank Finance Parties .....	11
ARTICLE III ISSUANCE OF THE LOAN FACILITY .....	13
Section 3.1    Agreement to Issue the Series 2022A Bonds and Enter into the Credit Agreement; Loan of Proceeds.....	13
Section 3.2    Provision of Funds .....	14
Section 3.3    Project Loans to Finance Project Costs; Trust Fund.....	14
Section 3.4    Project Loans as Security for Loan Facility.....	15
Section 3.5    Limitation of Issuer’s Liability .....	15
Section 3.6    Compliance with Indenture, the Credit Agreement, Intercreditor Agreement and Collateral Agency and Accounts Agreement .....	16
Section 3.7    The Letters of Credit.....	16
ARTICLE IV LOAN PROVISIONS.....	17
Section 4.1    Amounts Payable .....	17
Section 4.2    Obligations of Borrower Unconditional .....	20
ARTICLE V PREPAYMENT PROVISIONS AND REDEMPTION .....	21
Section 5.1    Prepayment and Redemption of Series 2022A Bonds.....	21
Section 5.2    Prepayment of TDC Senior Term Loan Project Loan and TDC Security Deposit Project Loan .....	21
ARTICLE VI SPECIAL COVENANTS OF THE BORROWER .....	23
Section 6.1    Borrower Covenants .....	23
Section 6.2    Issuer and Borrower Representations .....	23
ARTICLE VII ASSIGNMENT; INDEMNIFICATION .....	24
Section 7.1    Assignment .....	24
Section 7.2    Release and Indemnification Covenants.....	24
ARTICLE VIII EVENTS OF DEFAULTS AND REMEDIES .....	26
Section 8.1    Events of Default .....	26
Section 8.2    Remedies.....	27
Section 8.3    Rescission and Waiver.....	29
Section 8.4    No Remedy Exclusive.....	30
Section 8.5    Additional Issuer Remedies on Default .....	30
Section 8.6    Agreement to Pay Attorneys’ Fees and Expenses .....	30
Section 8.7    No Additional Waiver Implied by One Waiver.....	31
ARTICLE IX MISCELLANEOUS .....	32
Section 9.1    Term of Agreement.....	32
Section 9.2    Third Party Beneficiaries .....	32

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
Section 9.3 Notices .....	32
Section 9.4 Binding Effect.....	32
Section 9.5 Severability .....	32
Section 9.6 Amendments, Changes and Modifications .....	32
Section 9.7 Execution; Counterparts.....	33
Section 9.8 Applicable Law; Waiver of Jury Trial .....	33
Section 9.9 Captions .....	33
Section 9.10 Limitation of Liability.....	33
Section 9.11 Issuer Related Parties Not Liable.....	34
Section 9.12 Prior Agreements Superseded.....	34
Section 9.13 Date for Reference Purposes Only.....	34
Section 9.14 Amount Secured by Leasehold Mortgages. ....	34

EXHIBIT A-1 SERIES 2022A PROJECT NOTE

EXHIBIT A-2 TDC BANK DEBT PROJECT NOTE

EXHIBIT A-3 TDC SECURITY DEPOSIT PROJECT NOTE

## TDC PROJECT LOAN AGREEMENT

**THIS TDC PROJECT LOAN AGREEMENT**, dated as of November 1, 2022 (as supplemented and amended from time to time, this “Loan Agreement”), is made and entered into by and among the **NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION**, a local development corporation formed under Section 1411 of the New York Not-for-Profit Corporation Law, being Chapter 35 of the Consolidated Laws of New York, created by action of the New York Job Development Authority (“JDA”) established under Section 1802, Subtitle I, Title 8, Article 8 of the New York Public Authorities Law, and having an address c/o Empire State Development, 633 Third Avenue, New York, New York (the “Issuer”), and **JFK MILLENNIUM PARTNERS, LLC**, a Delaware limited liability company, its permitted successors and assigns, having an address at 295 Madison Avenue, Suite 1125, New York, New York 10017 (the “Borrower”). All capitalized terms used herein but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Collateral Agency and Accounts Agreement dated as of November 1, 2022 as further defined in Section 1.1 hereof.

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

**WHEREAS**, The Port Authority of New York and New Jersey, a municipal corporate instrumentality and political subdivision of the States of New York and New Jersey, created and existing by virtue of the Compact of April 30, 1921, made by and between the States of New York and New Jersey, and thereafter consented to by the Congress of the United States (the “Port Authority”) has entered into a Lease Agreement, dated as of November 17, 2022 (as supplemented and amended from time to time, the “Lease Agreement”), with the Borrower, pursuant to which, among other things, the Borrower is obliged to consummate the following (collectively, the “Project”): (i) the operation, maintenance, and demolition of the Existing Terminal Facilities at John F. Kennedy International Airport in Queens, New York (“Airport”), which Existing Terminal Facilities include the existing Terminal 7 facilities, (ii) the design, construction, financing, operation and maintenance of the New Terminal Facilities at the Airport (which New Terminal Facilities include new Terminal 6 facilities and replacement Terminal 7 facilities) and certain ancillary facilities, and (iii) the design and construction of the Off-Premises Facilities at the Airport on behalf of the Port Authority, which Off-Premises Facilities will not be operated or maintained by the Borrower and will not constitute part of the facilities leased to the Borrower under the Lease Agreement;

**WHEREAS**, pursuant to that certain Credit Agreement, dated as of November 1, 2022 (the “Credit Agreement”), among the Issuer, the Borrower, the Lenders, including the Security Deposit Facility Lenders and the Security Deposit Facility LC Issuing Bank, as Bank Lenders, each from time to time party thereto, the Administrative Agent and certain joint lead arrangers and bookrunners, (a) the Lenders have agreed to make certain Senior Term Loans available to the Issuer and (b) the Security Deposit Facility LC Issuing Bank has agreed to make Security Deposit LCs available to the Issuer and (c) the Security Deposit Facility Lender has agreed to make Security Deposit Loans to the Issuer, each on the terms and subject to the conditions set forth therein, the proceeds of the Senior Loans shall be loaned by the Issuer to the Borrower, and the Borrower will use the proceeds of such Senior Loans to finance a portion of the Project Costs;



**WHEREAS**, the Borrower has requested the Issuer to loan a portion of the proceeds it receives under the Senior Loans to the Borrower pursuant to the terms of this Loan Agreement, and the Borrower will execute and deliver the TDC Bank Debt Project Note and the TDC Security Deposit Project Note in favor of the Issuer to further evidence the obligations of the Borrower under this Loan Agreement, and such proceeds will be applied to partially pay the Project Costs;

**WHEREAS**, pursuant to a resolution adopted on October 20, 2022 by the Issuer (the “TDC Resolution”) and that certain TDC Master Bond Indenture of Trust, dated as of November 1, 2022 (the “Master Indenture”), as supplemented by the TDC First Supplemental Bond Indenture of Trust, dated as of November 1, 2022 (the “First Supplemental Indenture” and together with the Master Indenture, as the same may be further supplemented and amended from time to time, the “Indenture”), the Issuer has authorized the issuance of its New York Transportation Development Corporation Special Facilities Bonds, Senior Series 2022A (Tax-Exempt) (AMT) (JFK Airport Terminal 6-7 Redevelopment Project) in the aggregate principal amount of \$435,000,000 (the “Series 2022A Bonds”);

**WHEREAS**, the Borrower has requested the Issuer to loan a portion of the proceeds it receives under the Series 2022A Bonds to the Borrower pursuant to the terms of this Loan Agreement, and the Borrower will execute and deliver the TDC Series 2022A Project Note in favor of the Issuer to further evidence a portion of the obligations of the Borrower under this Loan Agreement, and such proceeds will be applied to partially pay the Project Costs;

**WHEREAS**, at the request of the Borrower and pursuant to the Collateral Agency and Accounts Agreement and the other Financing Documents, the Issuer may issue one or more Series of Additional Obligations in accordance with the provisions of the Financing Documents, which Obligations shall be designated as Senior Obligations or Subordinate Obligations at the time of issuance thereof, and in connection therewith, the Borrower shall be required to execute and deliver, among other things, an Additional Obligations Loan Agreement Supplement and corresponding Note to the Issuer;

**WHEREAS**, pursuant to that certain Common Terms Agreement, dated as of November 1, 2022 (as amended, supplemented and/or otherwise modified from time to time, the “Common Terms Agreement”), among the Borrower, the Issuer, the Bank Lenders, the Series 2022A Bondholder, the Intercreditor Agent, the Administrative Agent, and the Senior Collateral Agent, the parties have agreed to common terms, conditions and administration of the Series 2022A Bonds and the Senior Loans (collectively, the “Loan Facility”);

**WHEREAS**, contemporaneously with the execution of the Indenture, the Credit Agreement and Common Terms Agreement, and at each subsequent issuance of the Series 2022A Bonds and fundings of the Senior Loans, the Issuer will loan a portion of the proceeds thereof to the Borrower pursuant to the terms of this Loan Agreement for purposes of financing a portion of the Project Costs;

**WHEREAS**, contemporaneously with the Issuer and the Borrower entering into this Loan Agreement the parties shall enter into the TDC Building Loan Agreement (as supplemented and amended from time to time, the “TDC Building Loan Agreement”) dated the same date as this Loan Agreement, pursuant to which the Issuer will loan a portion of the proceeds of the Series

2022A Bonds and the Senior Term Loans to the Borrower pursuant to the terms of the TDC Building Loan Agreement for purposes of financing of portion of the Project Costs that are not being financed under this Loan Agreement in the amount of \$2,313,617,415 for the purpose of paying or reimbursing the Borrower for Building Loan Costs;

**WHEREAS**, contemporaneously with the Issuer and the Borrower entering into this Loan Agreement, the Borrower will execute and deliver to the Issuer its Series 2022A Project Note, its TDC Bank Debt Project Note and its TDC Security Deposit Project Note, respectively, each substantially in the form attached hereto as Exhibits A-1, A-2 and A-3, respectively (collectively, “2022 TDC Project Notes”), each evidencing the respective loans by the Issuer to the Borrower of the proceeds of the Loan Facility pursuant to this Loan Agreement, which Series 2022A Project Note, TDC Bank Debt Project Note, and, TDC Security Deposit Project Note, will be assigned by the Issuer, without recourse, to the Senior Collateral Agent pursuant to an Assignment Agreement (Project Loan) between the Issuer and the Senior Collateral Agent dated the same date as this Loan Agreement (the “Issuer Assignment Agreement (Project Loan)”);

**WHEREAS**, in order to secure the Senior Obligations, the Borrower has granted one or more mortgage liens on and security interests in the interests of the Borrower under the Lease Agreement and the Issuer has assigned its interest in the Project Leasehold Mortgage to the Senior Collateral Agent;

**WHEREAS**, the Borrower’s obligations hereunder and under the other Senior Financing Documents will further be secured by the Senior Collateral Documents;

**WHEREAS**, the Borrower has agreed in this Loan Agreement to make, or cause to be made, payments sufficient to pay when due (whether at stated maturity, upon redemption, by acceleration or otherwise) the principal, Redemption Price and Sinking Fund Requirements, if any, of and interest on the Series 2022A Bonds and the debt service on the Senior Loans, subject to the terms of this Loan Agreement, the Series 2022A Project Note, the TDC Bank Debt Project Note, the TDC Security Deposit Project Note and the other Senior Financing Documents;

**WHEREAS**, the Project Leasehold Mortgage and Collateral pledged by the Borrower under the Senior Collateral Documents will be held by the Senior Collateral Agent pursuant to the Collateral Agency and Accounts Agreement (as defined in Section 1.1 hereof), and the Senior Collateral Agent will administer the Project Leasehold Mortgage and other Collateral so pledged for the benefit of the Senior Secured Parties (who will in turn act thereunder for the benefit of the holders of the Series 2022A Bonds, the Bank Lenders with respect to the Senior Loans, and the holders of any Additional Senior Obligations) and other parties secured pursuant to the Collateral Agency and Accounts Agreement, and subject to the terms of the Intercreditor Agreement;

**WHEREAS**, the Series 2022A Bonds shall be designated as Senior Bonds for purposes of the Indenture;

**NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS, THIS LOAN AGREEMENT WITNESSETH**, in consideration of the premises and the respective representations and agreements and mutual covenants contained in this Loan Agreement, the Issuer and the Borrower covenant and agree as follows:

**ARTICLE I**  
**DEFINITIONS; RULES OF CONSTRUCTION**

**Section 1.1 Definitions.** All capitalized terms used herein but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Collateral Agency and Accounts Agreement dated as of November 1, 2022, by and among the Borrower, The Bank of New York Mellon, as the Intercreditor Agent, The Bank of New York Mellon, as the Senior Collateral Agent, The Bank of New York Mellon, as the Securities Intermediary, The Bank of New York Mellon, as the Trustee, ING Capital LLC, as the Administrative Agent, The Bank of New York Mellon, as the Deposit Account Bank and the Issuer, as it may be amended and supplemented or modified from time to time (the “Collateral Agency and Accounts Agreement”). Except as otherwise expressly provided or unless the context otherwise requires, the rules of interpretation included in Exhibit A to the Collateral Agency and Accounts Agreement shall apply to this Loan Agreement.

## ARTICLE II REPRESENTATIONS

**Section 2.1 Representations by the Issuer.** The Issuer represents and warrants to the Borrower as follows:

(a) The Issuer is a local development corporation duly formed and validly existing under Section 1411 of the New York Not-for-Profit Corporation Law, being Chapter 35 of the Consolidated Laws of New York, created by action of the New York Job Development Authority established under Section 1802, Subtitle I, Title 8, Article 8, of the New York Public Authorities Law and has the full power and authority to (i) enter into, execute, deliver and perform its obligations under this Loan Agreement and any other Issuer Documents, (ii) assign its rights (other than Reserved Rights) under this Loan Agreement, the Series 2022A Project Note, the TDC Bank Debt Project Note, the TDC Security Deposit Project Note, the Senior Collateral Documents, and the Project Leasehold Mortgage to the Senior Collateral Agent in accordance with the terms of the Indenture and Collateral Agency and Accounts Agreement, (iii) issue the Series 2022A Bonds and obtain the Senior Loans under the Credit Agreement, and (iv) loan the proceeds of the issuance and sale of the Series 2022A Bonds and make the TDC Senior Term Loan Project Loan under the terms of this Loan Agreement to the Borrower for the purpose of financing the Project Costs and other costs contemplated by Section 3.3 hereof.

(b) The Issuer has complied with the provisions of the Act and has full power and authority pursuant to the Act to consummate all transactions contemplated to be performed by the Issuer by this Loan Agreement, the other Issuer Documents, and all other instruments and documents to be executed and delivered by the Issuer pursuant hereto and thereto and to carry out its obligations hereunder and thereunder. The Issuer has duly authorized (i) the execution and delivery of this Loan Agreement and the other Issuer Documents, and the assignment of its rights (other than the Reserved Rights) under this Loan Agreement to the Senior Collateral Agent in accordance with the terms of the Indenture and the other Issuer Documents, and the performance of its obligations hereunder and thereunder, (ii) the issuance and delivery of the Series 2022A Bonds, (iii) the loan of the proceeds of the Loan Facility to the Borrower for the purpose of financing a portion of the Project Costs and other costs contemplated by Section 3.3 hereof and by the TDC Building Loan Agreement. The Issuer has duly executed and delivered this Loan Agreement, and simultaneously therewith, the Issuer has duly executed and delivered the other Issuer Documents. No such authority or proceedings have been repealed, revoked, rescinded or amended and all such authority and proceedings are in full force and effect.

(c) The Issuer has published notice of public hearing for the Project and held a public hearing for the Project pursuant to Section 147(f) of the Code, and following such public hearing the Governor of the State, based upon a record of such public hearing and the representations made by the Borrower relating to the Project, approved the issuance of the Tax-Exempt Obligations pursuant to Section 147(f) of the Code.

(d) No further approval, consent or withholding of objection on the part of any regulatory body, federal, state or local, is required in connection with (i) the issuance and delivery of the Series 2022A Bonds by the Issuer or (ii) the execution or delivery of or compliance by the Issuer with the terms and conditions of this Loan Agreement or any other Issuer Document. No

authority or proceedings for the issuance of the Series 2022A Bonds, the Issuer Documents or other documents executed in connection therewith have been repealed, revoked, rescinded or superseded. The consummation by the Issuer of the transactions set forth in the manner and under the terms and conditions as provided in this Loan Agreement and the other Issuer Documents will comply with all applicable Laws and all required approvals or consents. Notwithstanding the preceding sentences, no representation is expressed as to any action required under federal or state securities or Blue Sky Laws in connection with the sale or distribution of the Series 2022A Bonds.

(e) The Issuer is not in breach of or in default under this Loan Agreement or the other Issuer Documents or in violation of any applicable constitutional provision, law or administrative regulation of the State or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Issuer is a party or is otherwise subject, in each case which breach, default or violation would have a material adverse effect on, or impede, contradict, prohibit or otherwise limit or condition, the authorization, issuance, sale or delivery of the Series 2022A Bonds, or the authorization, execution, delivery and performance of this Loan Agreement or the other Issuer Documents, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute such a breach, default or violation. The execution, delivery and performance of its obligations under this Loan Agreement or the other Issuer Documents by the Issuer do not and will not conflict with or result in a violation or a breach of any organizational documents of the Issuer or any Law or the terms, conditions or provisions of any restriction under any Law, contract, agreement or instrument to which the Issuer is now a party or by which the Issuer is bound, or constitute a default under any of the foregoing.

(f) There is no action, suit, proceeding or litigation pending or, to the best knowledge of the Issuer, threatened, against the Issuer (i) seeking to restrain or enjoin the issuance, sale, execution or delivery of the Series 2022A Bonds or the execution and delivery of the Indenture or any other Issuer Document, or (ii) in any way contesting or affecting the (1) validity of the Series 2022A Bonds, the Indenture or any other Issuer Documents, or (2) any proceedings of the Issuer taken with respect to the issuance or sale of the Series 2022A Bonds, the borrowing of the proceeds of the Loan Facility by the Issuer, the loan of the proceeds of the Loan Facility by the Issuer to the Borrower, the pledge or application of any monies or security provided for the payment of the Series 2022A Bonds or the Senior Loans, the use of the Series 2022A Bonds proceeds or the Senior Loan proceeds, or the existence or powers of the Issuer or its officers or members.

(g) All corporate action on the part of the Issuer that is required for the execution, delivery, performance and observance by the Issuer of the Series 2022A Bonds, the Issuer Documents and all such other instruments and documents to which it is a party has been duly authorized and effectively taken. Each of this Loan Agreement and the other Issuer Documents constitutes the legal, valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with the terms thereof, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other similar Laws or judicial action affecting the enforcement of creditors' rights generally and the application of general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law). The execution and delivery of this Loan Agreement and the other Issuer Documents, the performance by the Issuer of its obligations hereunder and thereunder and the consummation of the transactions

herein and therein contemplated do not and will not (i) materially conflict with, or constitute a material breach or result in a material violation of any agreement or other instrument to which the Issuer is a party or by which it is bound or (ii) conflict with, or constitute a breach or result in a violation of the Act or bylaws of the Issuer, any constitutional or statutory provision or order, rule, regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over the Issuer or its property.

(h) (i) When the Series 2022A Bonds are issued, transferred, authenticated and delivered in accordance with the provisions of the Indenture and the Common Terms Agreement, the Series 2022A Bonds will have been duly authorized, executed, issued and delivered and will constitute valid, special limited obligations of the Issuer payable solely from the revenue and other monies derived by the Issuer from the Series 2022A Project Note and the Series 2022A Building Note, and nothing in the Series 2022A Bonds, the Indenture or the Common Terms Agreement shall be construed as assigning or pledging therefor any other funds or assets of the Issuer. Neither the State nor any political subdivision nor instrumentality thereof (other than the Issuer, to the extent herein provided) nor the City are obligated to pay, and neither of the faith or credit nor the taxing power of the State nor the City is pledged to the payment of the principal of, Redemption Price, if any, and interest on the Series 2022A Bonds.

(ii) When the Senior Term Loans are made in accordance with the provisions of the Credit Agreement and Common Terms Agreement, the Senior Term Loans will constitute valid, special limited obligations of the Issuer payable solely from the revenue and other monies derived by the Issuer from the TDC Bank Debt Project Note and the TDC Bank Debt Building Note, and nothing in the Credit Agreement or Common Terms Agreement shall be construed as assigning or pledging therefor any other funds or assets of the Issuer. Neither the State nor any political subdivision nor instrumentality thereof (other than the Issuer, to the extent herein provided) nor the City are obligated to pay, and neither of the faith or credit nor the taxing power of the State nor the City is pledged to the repayment of the Senior Term Loans.

(iii) When the Security Deposit Loans are made in accordance with the provisions of the Credit Agreement and Common Terms Agreement, the Security Deposit Loans will constitute valid, special limited obligations of the Issuer payable solely from the revenue and other monies derived by the Issuer from the TDC Security Deposit Project Note and nothing in the Credit Agreement and Common Terms Agreement shall be construed as assigning or pledging therefor any other funds or assets of the Issuer. Neither the State nor any political subdivision nor instrumentality thereof (other than the Issuer, to the extent herein provided) nor the City are obligated to pay, and neither of the faith or credit nor the taxing power of the State nor the City is pledged to the repayment of the Security Deposit Loans.

(i) Any certificate signed by the Chair, President, Chief Financial Officer, or any other Issuer Representative duly authorized by the Issuer shall be deemed a representation and warranty by the Issuer to the respective parties as to the statements made therein.

(j) The Issuer makes no representation as to (i) the financial position or business condition of the Borrower, (ii) the value of the Project or its suitability for any particular

purpose, or (iii) the correctness, completeness or accuracy of any of the statements, materials (financial or otherwise), representations or certifications furnished or to be made by the Borrower in connection with the sale or transfer of the Series 2022A Bonds, the execution and delivery of this Loan Agreement or the consummation of the transactions contemplated hereby.

(k) The Issuer makes no representation or warranty that interest on the Tax Exempt Bonds is or will continue to be exempt from federal or state income taxation.

**Section 2.2 Representations by the Borrower.** The Borrower represents and warrants to the Issuer as follows:

(a) The Borrower is a limited liability company, duly formed, validly existing and in good standing under the laws of the State of Delaware, is qualified to do business in the State and the City and in every jurisdiction where such qualification is required by applicable Law and has all necessary material licenses and permits or other governmental authorizations or approvals required to date to carry on its business and to operate its facilities.

(b) The Borrower has full power and authority to conduct its business as now conducted and as proposed to be conducted and the Borrower has full power and authority to execute, deliver and perform its obligations under each Senior Financing Document to which it is a party.

(c) All necessary limited liability company actions on the part of the Borrower required to authorize the execution, delivery and performance of each of the Senior Financing Documents to which it is a party have been duly taken.

(d) Each of the Senior Financing Documents to which the Borrower is a party has been duly authorized, executed and delivered by the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its respective terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer, liquidation or other similar Laws or judicial action affecting the enforcement of creditors' rights generally (regardless of whether enforceability is controlled in a proceeding in equity or at Law) or by principles of equity which permit the exercise of judicial discretion and except as enforceability of indemnification provisions may be limited by consideration of public policy and, as of the date hereof, all representations and warranties made by the Borrower in such Senior Financing Documents are true and correct in all material respects.

(e) The execution, delivery and performance by the Borrower of each of the Senior Financing Documents to which it is a party does not (i) conflict with its certificate of formation or its operating agreement, (ii) conflict with any contractual obligations binding on or affecting the Borrower, except where such conflict would not reasonably be expected to have a Material Adverse Effect, (iii) violate any provision of any court decree or order binding on or affecting the Borrower in any material respect, except where such violation would not reasonably be expected to have a Material Adverse Effect, (iv) violate any provision of any Law or governmental regulation binding on or affecting the Borrower in any material respect, except where such violation would not reasonably be expected to have a Material Adverse Effect or (v) result in, or require, the creation or imposition of any Security Interest on any of the properties or

revenues of, or interests in, the Borrower, except for Permitted Liens, unless such creation or imposition could not reasonably be expected to have a Material Adverse Effect.

(f) All Security Interests required to be created under the Senior Collateral Documents are valid, legally binding and are ranked as contemplated in the Senior Financing Documents, and all necessary recordings and filings will have been or will be recorded and filed on or promptly following the Closing Date and no Security Interest exists over the Borrower's interest in the Project or over any other of the Borrower's revenues or assets other than Permitted Liens.

(g) The Borrower has a valid leasehold interest in the portion of the Premises comprised of real property (other than such real property to which the Mortgagor instead has been granted Permanent Rights of Access or Temporary Rights of Access (each as defined in and pursuant to the Lease Agreement) under the Lease Agreement), subject only to encumbrances and defects that do not materially impair the Borrower's ability to perform its obligations under the Lease Agreement or the Senior Financing Documents.

(h) (i) The Pledgor directly owns 100% of the equity interests in the Borrower, and (ii) each Equity Member owns, directly or indirectly, the percentage of the equity interests in the Pledgor listed in the Equity Contribution Agreement and, collectively, the Equity Members own 100% of the equity interests in the Pledgor, in each case, free and clear of all Security Interests (other than Permitted Liens), all such equity interests have been duly and validly authorized and issued, and there are no outstanding options, warrants, calls or other rights to subscribe for or otherwise acquire any of such equity interests, except as disclosed by the Borrower to any applicable Secured Parties pursuant to the Financing Documents or as are permitted without disclosure to any applicable Secured Parties pursuant to the Financing Documents.

(i) The Borrower has no subsidiaries.

(j) True and complete copies of all Senior Financing Documents have been duly executed as of the Closing Date, the Senior Financing Documents are in full force and effect as against the Borrower, the Borrower has delivered to the Trustee, the Underwriters, the Bank Lenders, and the Agents, the Senior Financing Documents to which the Borrower is a party, and the Borrower is not in default under any of the Senior Financing Documents pertaining to the Loan Facility to which the Borrower is a party.

(k) The Borrower has no Indebtedness, other than (i) the Series 2022A Bonds, (ii) the TDC Senior Term Loan Project Loan, (iii) other Indebtedness permitted by the Financing Documents, and (iv) any amounts owed to any Equity Member with respect to development fees and Project Costs incurred by such Equity Member on behalf of the Borrower prior to the Closing Date, which amounts will be paid to such Equity Member on the Closing Date.

(l) The Borrower has not engaged in any other activities or business other than the implementation of the Project and activities related or ancillary thereto (including without limitation, the financing thereof).

(m) The Borrower, to the extent applicable, has timely filed (or applied for an extension relating to the same) all federal and state income tax returns related to Taxes it is required



by law to file and has paid all material Taxes that are due and payable, except for such Taxes being contested in good faith and for which the Borrower has established adequate reserves in accordance with GAAP. There is no stamp, registration or similar Tax under applicable Law, as presently in effect, imposed, assessed, levied or collected by a Governmental Authority required to be paid on or in relation to amounts payable by the Borrower pursuant to any Senior Financing Document.

(n) The Borrower is in compliance with any Law or governmental rule applicable to the Borrower, and with the terms of all other governmental authority obtained by it, except to the extent that any failure to comply with any of the above could not reasonably be expected to result in a Material Adverse Effect.

(o) No consent or approval of any trustee or holder of any Indebtedness of the Borrower, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority (except in connection with blue sky proceedings) is necessary (or, in the case of any Senior Financing Documents executed prior to the Closing Date, was necessary) in connection with the execution and delivery of the Senior Financing Documents by the Borrower to which it is a party or the performance by the Borrower of its obligations thereunder or the consummation by the Borrower of any transaction therein contemplated, except in respect of all matters contemplated in this clause (o) (i) as have been obtained or made and as are in full force and effect as of the Closing Date, (ii) for any such consent, approval, authorization, order, license, filing or registration which is not required to have been obtained, made or procured as of the Closing Date, and is expected to be received in the normal course, or (iii) where the failure to obtain such consent, permissions, authorizations, orders or licenses would not reasonably be expected to result in a Material Adverse Effect, and the Borrower has no reason to believe that any such consents, permissions, authorizations, orders or licenses will not be provided in the ordinary course in a timely manner when required.

(p) There is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any court or administrative agency, or to the knowledge of the Borrower threatened against the Borrower or its property, or contesting the due organization of the Borrower wherein an unfavorable decision, ruling or finding, to the extent reasonably expected, would reasonably be expected to (i) have a Material Adverse Effect, (ii) have an adverse effect on the validity or enforceability against the Borrower of the Senior Financing Documents to which it is a party or (iii) in any way adversely affect the federal tax-exempt status of the interest on the Tax-Exempt Bonds or, if applicable, other amounts to be received by the Issuer pursuant to the Indenture, this Loan Agreement, or the TDC Project Loan Agreement.

(q) No ERISA Event with respect to the Borrower has occurred or is reasonably expected to occur, that could reasonably be expected to have a Material Adverse Effect.

(r) No Enforcement Action or Event of Default has occurred and is continuing under the Senior Financing Documents pertaining to the Loan Facility.

(s) The Borrower has not filed an election pursuant to Treasury Regulation 301.7701-3(c) to be treated as an association taxable as a corporation and has not been previously taxed as a corporation.

(t) The Borrower does not maintain any securities accounts or deposit accounts, except for the Project Accounts, the Non-Pledged Accounts and such separate operating accounts as are permitted by the Financing Documents.

(u) The Borrower is not an “investment company,” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended.

(v) Each Key Contract which has been executed and delivered by the Borrower is in full force and effect as against the Borrower, and the Borrower is not in default under any of such Key Contracts, except as could not reasonably be expected to have a Material Adverse Effect.

(w) The Borrower has no reason to believe that sufficient funds are not available (or will not be made available) to the D&C Contractor to perform the portion of the D&C Work that is subject to the D&C Contract.

(x) The availability of the Issuer to issue the Series 2022A Bonds, to borrow the proceeds of the Senior Loans from the Bank Finance Parties, and to loan proceeds of such Series 2022A Bonds and Senior Loans to the Borrower as well as the available exemption from mortgage recording tax has been an important inducement to the Borrower to undertake the Project.

(y) The information relating to the Borrower set forth in its application to the Issuer other than information related to future events, financing related information, projections or other estimates in respect of costs and expenses or transaction amounts, each of which was made in good faith but is subject to change, is true and correct in all material respects as of the date provided.

**Section 2.3 Survival of Representations.** All representations of the Issuer and the Borrower contained in this Loan Agreement, in any other Senior Financing Document to which the Issuer or the Borrower is a party, or in any certificate or other instrument delivered by the Issuer or the Borrower pursuant to this Loan Agreement, or in connection with the transactions contemplated hereby, shall survive the execution and delivery hereof and the issuance, sale and delivery of the Series 2022A Bonds and the making of the Senior Loans under the Credit Agreement, as representations of facts existing as of the date of execution and delivery of the instruments containing such representations (or as of such date stated therein).

**Section 2.4 Covenant with the Bank Finance Parties.**

(a) The Issuer and the Borrower agree that this Loan Agreement and the Tax Certificates are executed in part to induce the purchase by Owners of the Tax-Exempt Bonds and the making of the Senior Loans by the Bank Finance Parties. Accordingly, all covenants and agreements on the part of the Issuer and the Borrower set forth in this Loan Agreement and in the Tax Certificates are hereby declared to be for the benefit of the Owners from time to time of the Tax-Exempt Bonds and the Bank Finance Parties.

(b) Upon the occurrence of a Determination of Taxability, the Borrower agrees to pay or cause to be paid to the Purchaser and any other Owner of the Series 2022A Bonds the amounts payable under Section 4.03 of the Bondholder's Agreement.

**ARTICLE III**  
**ISSUANCE OF THE LOAN FACILITY**

**Section 3.1 Agreement to Issue the Series 2022A Bonds and Enter into the Credit Agreement; Loan of Proceeds.**

(a) The Issuer hereby agrees to issue, sell and deliver the Series 2022A Bonds in accordance with the terms of the Indenture, this Loan Agreement, the TDC Building Loan Agreement, the Bond Purchase Agreement, the Bondholder's Agreement, the Common Terms Agreement, and the Collateral Agency and Accounts Agreement for application to Project Costs. Pursuant to the Indenture, the Series 2022A Bonds shall be issued, delivered and purchased as "draw down" bonds. Upon the terms and conditions of this Loan Agreement, the Indenture, the Common Terms Agreement, the Bond Purchase Agreement, the Bondholder's Agreement and the Collateral Agency and Accounts Agreement, the Issuer hereby agrees to (i) make one or more loans hereunder to the Borrower on the Initial Drawing Date with a portion of the proceeds of the Initial Drawing made on the Initial Drawing Date and (ii) make one or more loans hereunder to the Borrower, from time to time on the date of each Drawing, with all or a portion of the proceeds of each other Drawing loaned to the Issuer on such date of Drawing (collectively, all such loans made to the Borrower pursuant to this paragraph, the "Series 2022A Bond Project Loan" and, together with Series 2022A Bond Building Loan loaned pursuant to the TDC Building Loan Agreement, the "TDC Series 2022A Bond Loans"). The TDC Series 2022A Bond Loans, collectively, shall be in the full amount of the proceeds of the Series 2022A Bonds loaned to the Issuer on each applicable date of Drawing. The Issuer hereby agrees to request Drawings of Series 2022A Bonds (which requests may be made by the Borrower on behalf of the Issuer) on each date of Drawing and upon the Trustee's receipt of a Drawing Request or other written instructions (including from the Borrower on behalf of the Issuer) in accordance with the Indenture, the Bond Purchase Agreement and the Bondholder's Agreement and instruct the Trustee to deliver to the Securities Intermediary the proceeds received from each Drawing in the amounts designated for the applicable date of Drawing in Schedule 2.04 of the Credit Agreement for deposit directly into the Series 2022A Bond Proceeds Sub-Account of the Tax-Exempt Bond Proceeds Sub-Account of the Construction Account maintained by the Securities Intermediary pursuant to the Collateral Agency and Accounts Agreement and as otherwise required by the Collateral Agency and Accounts Agreement.

(b) The Issuer hereby agrees to borrow the Senior Term Loans in accordance with the terms of the Credit Agreement, the Common Terms Agreement, this Loan Agreement, the TDC Building Loan Agreement, and the Collateral Agency and Accounts Agreement for application to Project Costs. Upon the terms and conditions of this Loan Agreement, the Common Terms Agreement, the Credit Agreement and the Collateral Agency and Accounts Agreement, the Issuer hereby agrees to (i) make one or more loans hereunder to the Borrower on the Closing Date in and with a portion of the proceeds of the initial Senior Term Loans made to the Issuer on the Closing Date and (ii) make one or more loans hereunder to the Borrower, from time to time on each date of Borrowing, with all or a portion of the proceeds of each other Senior Term Loan made to the Issuer on such date of Borrowing (collectively, all such loans made to the Borrower pursuant to this paragraph, the "TDC Senior Term Loan Project Loan," and, together with TDC Senior Term Loan Building Loan made pursuant to the TDC Building Loan Agreement, the "TDC Bank Debt Loans"). The TDC Bank Debt Loans, collectively, shall be in the full amount of the proceeds of

the Senior Term Loans made to the Issuer on each applicable date of Borrowing. The Issuer hereby agrees to request Borrowings of Senior Term Loans (which requests may be made by the Borrower on behalf of the Issuer) and upon the Administrative Agent's receipt of a Borrowing Request or other written instructions (including from the Borrower on behalf of the Issuer) on each date of Borrowing pursuant to the Credit Agreement, the Issuer hereby instructs the Administrative Agent to deliver to the Securities Intermediary the proceeds of each Borrowing (as defined in the Common Terms Agreement) of the Senior Term Loans in the amounts designated for the applicable date of Borrowing in Schedule 2.04 of the Credit Agreement, for deposit directly into the Bank Loan Proceeds Sub-Account of the Construction Account maintained by the Securities Intermediary pursuant to the Collateral Agency and Accounts Agreement and as otherwise required by the Collateral Agency and Accounts Agreement.

(c) The Issuer hereby agrees to borrow the Security Deposit Loans in accordance with the terms of the Credit Agreement, the Common Terms Agreement, this Loan Agreement and the Collateral Agency and Accounts Agreement for reimbursement of draws on Security Deposit LCs. Upon the terms and conditions of this Loan Agreement, the Common Terms Agreement, the Credit Agreement and the Collateral Agency and Accounts Agreement, the Issuer hereby agrees it will be deemed to have made one or more loans hereunder to the Borrower, from time to time on the date any Security Deposit Loan is made from the proceeds of the Security Deposit Loans made or deemed made to reimburse drawings of Security Deposit LCs in accordance with Section 3.7(b), in an aggregate amount not to exceed the aggregate principal amount of Security Deposit Loans then outstanding (collectively, all such loans made to the Borrower pursuant to this paragraph, the "TDC Security Deposit Project Loan," and, collectively with the TDC Bank Debt Loans and the TDC Series 2022A Bond Loans, the "Loan Facility Loans").

**Section 3.2 Provision of Funds.** In the event that proceeds from the Series 2022A Bond Project Loan, the TDC Senior Term Loan Building Loan and the TDC Security Deposit Project Loan (collectively, the "Project Loans"), or any other available (or to be available) funds are not sufficient to pay the Project Costs as and when due and payable, the Borrower agrees to pay (or cause to be paid) all of such Project Costs as and when due and payable, and the Borrower will provide any additional funds required to pay Project Costs; provided, however the Borrower shall not be entitled to any reimbursement from the Issuer, the Administrative Agent or the Trustee for the payment of such Project Costs nor shall the Borrower be entitled to any abatement, diminution or postponement of its payments hereunder, unless otherwise provided pursuant to the Collateral Agency and Accounts Agreement or the Intercreditor Agreement.

**Section 3.3 Project Loans to Finance Project Costs; Trust Fund.** The Borrower shall use the proceeds of the Project Loans to pay for Project Costs pursuant to this Loan Agreement. Proceeds of the Project Loans shall be applied only for Projects Costs, and subject to such further limitations as are set forth in the Lease Agreement, the Collateral Agency and Accounts Agreement, the Intercreditor Agreement, the Credit Agreement, the Common Terms Agreement, this Loan Agreement, and the Tax Certificates.

### **Section 3.4 Project Loans as Security for Loan Facility.**

The Borrower acknowledges that payments by the Borrower under this Loan Agreement and the TDC Building Loan Agreement are intended to provide for payment of the interest, principal, premium, if any, and Redemption Price on the Series 2022A Bonds and principal, interest and other amounts on the Senior Loans in addition to any fees required to be paid by the Issuer or the Borrower pursuant to the Credit Agreement and Common Terms Agreement.

**Section 3.5 Limitation of Issuer's Liability.** The Loan Facility is a special and limited obligation of the Issuer, payable solely from and secured exclusively by the Senior Collateral, and, in the case of the Series 2022A Bonds, the Trust Estate, including the payments to be made by the Borrower under this Loan Agreement, and any Additional Obligations Loan Agreement Supplement. The Loan Facility is not payable from taxes or appropriations made by the State, or of any county, municipality or any other political subdivision, agency or instrumentality established under the Laws of the State or the City. The Loan Facility does not constitute an indebtedness, or a pledge of the faith and credit of, the State or any county, municipality or other political subdivision, agency or instrumentality established under the Laws of the State (other than the Issuer), or the City or any political subdivision thereof within the meaning or application of any constitutional provision or limitation. The special limited obligation of the Issuer to pay the amount of the interest, principal, premium, if any, and Redemption Price on the Series 2022A Bonds and the principal, interest and other amounts on the Senior Loans does not constitute a pledge of the faith, credit or taxing power of the State or the City or any county, municipality or any other political subdivision, agency or instrumentality established under the Laws of the State or the City thereof within the meaning or application of any constitutional provision or limitation. The Issuer has no taxing power. The Secured Parties have, individually and collectively, no right to have taxes levied or compel appropriations by the State or the City or any county, municipality or any other political subdivision, agency or instrumentality established under the Laws of the State, or the City of the State or the City for the payment of any or all of the amount of such interest, principal, premium, if any, or Redemption Price on the Series 2022A Bonds or principal, interest or other amounts on the Senior Loans.

No provision, covenant, or agreement contained in this Loan Agreement, or any obligations herein imposed upon the Issuer, or the breach thereof shall give rise to a pecuniary liability of the Issuer or any member, officer or agent of the Issuer or a charge against the Issuer's general credit. In making the agreements, provisions and covenants set forth in this Loan Agreement, the Issuer has not obligated itself except with respect to the application of the payments, as hereinabove provided.

No recourse shall be had for the payment of interest, principal, premium, if any, or Redemption Price of the Series 2022A Bonds or principal, interest or other amounts on the Senior Loans, or for any claim based thereon or upon any obligation, covenant or agreement in this Loan Agreement contained, against any past, present or future officer, director, member, trustee, employee or agent of the Issuer or any officer, director, member, trustee, employee or agent of any successor entity, as such, either directly or through the Issuer or any successor entity, under any rule of law or equity, statute or constitution or by enforcement by any assessment or penalty or otherwise.

All covenants, stipulations, promises, agreements and obligations of the Issuer set forth herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Issuer and not of any member, officer or employee of the Issuer in his or her individual capacity, and no recourse shall be had for the payment of interest, principal, premium, if any, or Redemption Price of the Series 2022A Bonds or principal, interest or other amounts on the Senior Loans or for any claim based thereon or hereunder against any member, officer or employee of the Issuer or any Person executing the Loan Facility in their individual capacity.

**Section 3.6 Compliance with Indenture, the Credit Agreement, Intercreditor Agreement and Collateral Agency and Accounts Agreement.** In accordance with any applicable provisions of the Indenture, the Issuer shall take any action directed by the Borrower to the extent required under, or permitted by, the provisions of the Indenture, this Loan Agreement, the Credit Agreement, the Common Terms Agreement, the Bond Purchase Agreement, the Bondholder's Agreement, the Intercreditor Agreement, and the Collateral Agency and Accounts Agreement.

(b) The Borrower consents to the terms and conditions of the Indenture. The Borrower shall take all action required to be taken by the Borrower in the Indenture as if the Borrower were a party thereto.

**Section 3.7 The Letters of Credit.**

(a) The Issuer agrees that the Borrower may submit on behalf of the Issuer a Letter of Credit Application, appropriately completed and signed by an Authorized Borrower Representative, to the relevant Security Deposit Facility LC Issuing Bank pursuant to Section 2.03(d) of the Credit Agreement during the relevant availability period for such letter of credit facility (in each case upon receipt of a letter of credit application substantially in the form attached to the Credit Agreement or relevant Additional Senior Financing Documents, including agreed-upon draft language for the requested letter of credit reasonably acceptable to such Security Deposit Facility LC Issuing Banks).

(b) The Borrower shall, on behalf of the Issuer, make all reimbursements to the relevant Security Deposit Facility LC Issuing Banks of any drawing under a Security Deposit LC in accordance with Section 2.03(e) of the Credit Agreement. The Borrower shall be deemed to have requested from the Issuer, and the Issuer shall be deemed to have made to the Borrower, a TDC Security Deposit Project Loan, on any Business Day that a Security Deposit Loan is made to the Issuer pursuant to Section 2.03(e) of the Credit Agreement or any similar provision under any Additional Senior Financing Documents.

(c) The Borrower shall pay each Security Deposit Facility LC Issuing Bank a letter of credit fee which shall accrue for each letter of credit issued under and in accordance with the Credit Agreement or any Additional Senior Financing Documents, as applicable, and customary fees and standard costs and charges of such Security Deposit Facility LC Issuing Bank in accordance with the Credit Agreement, the Common Terms Agreement or any Senior Bank Financing Documents.

## ARTICLE IV LOAN PROVISIONS

### Section 4.1 Amounts Payable.

(a) (1) The Borrower hereby covenants and agrees to repay the TDC Series 2022A Bond Loans and interest and other amounts thereon each date that any payment of interest, principal or Redemption Price on the Series 2022A Bonds is required to be made in respect of the Series 2022A Bonds pursuant to the Indenture (provided that amounts deposited into the Accounts under the Collateral Agency and Accounts Agreement with respect to such payments shall be determined with reference to amounts set forth in the Series 2022A Bond Loans Balloon Indebtedness Certificate, attached to the TDC Building Loan Agreement as Exhibit D-1 thereto), until the payment of interest, principal, or Redemption Price on the Series 2022A Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, in immediately available funds, a sum equal to the amount due and payable on such date as interest, principal or Redemption Price on the Series 2022A Bonds as provided in the Indenture.

(2) The Borrower hereby covenants and agrees to repay the TDC Bank Debt Loans and interest and other amounts thereon on each date that any payment of principal, interest or other amount on the Senior Term Loans is required to be made in respect of the Senior Term Loans, (provided that amounts deposited into the Accounts under the Collateral Agency and Accounts Agreement with respect to such payments shall be determined with reference to amounts set forth in the Senior Term Loan Balloon Indebtedness Certificate, attached to the TDC Building Loan Agreement as Exhibit D-2 thereto), until all Senior Term Loan shall have been fully paid, in accordance with the Credit Agreement and the Common Terms Agreement, in immediately available funds.

(3) The Borrower hereby covenants and agrees to repay the TDC Security Deposit Loans and interest and other amounts thereon on each date that any payment of principal, interest or other amount on the Security Deposit Loans is required to be made in respect of the Security Deposit Loans, until all Security Deposit Loans shall have been fully paid, in accordance with the Credit Agreement and the Common Terms Agreement, in immediately available funds.

(4) The Issuer hereby directs the Borrower to and, subject to the Indenture, the Credit Agreement, the Common Terms Agreement or the Collateral Agency and Accounts Agreement, as applicable, the Borrower hereby agrees to pay to, the Senior Collateral Agent all payments payable by the Borrower in respect of the Loan Facility Loans pursuant to the immediately preceding subsections 4.1(a)(1)-(3). All repayments of Loan Facility Loans required to be made by the Borrower to the Issuer pursuant to this Section shall be deemed satisfied by the Borrower, upon the Borrower's making in full the corresponding payment under the Series 2022A Bonds or the Senior Term Loans, as applicable, by causing to be made the transfers required with respect thereto pursuant to Section 5.06(a) through (k) of the Collateral Agency and Accounts Agreement.

(b) The Borrower also shall pay to the Issuer, in accordance with the terms of the Collateral Agency and Accounts Agreement, the Issuer's reasonable costs, fees and expenses



directly related to the issuance of the Series 2022A Bonds and the making of the Senior Loans and any related financing instruments, or any amendments, modifications or waivers related to the issuance of the Series 2022A Bonds and the making of the Senior Loans or any related financing instruments, and its enforcement of Reserved Rights, including the reasonable fees and expenses of its counsel. The fees to be paid to the Issuer include the amount of \$7,457,463.20 which shall be paid to the Issuer on the Closing Date and an annual administrative fee in the amount of \$300,000 not later than the last day of May in each year that the Series 2022A Bonds are Outstanding.

(c) The Borrower also will pay, in accordance with the terms of the Collateral Agency and Accounts Agreement, the reasonable fees and expenses of the Trustee, the Administrative Agent and the Agents, including without limitation (i) any fees or expenses incurred pursuant to Section 8.02(b) of the Master Indenture, and all other amounts which may be payable to the Trustee under the terms of the Indenture or in accordance with any contractual arrangement between the Borrower and the Trustee with respect thereto and (ii) any fees, including commitment fees, or expenses incurred pursuant to the Credit Agreement and Common Terms Agreement, and all other amounts which may be payable to the Administrative Agent under the terms of the Credit Agreement and Common Terms Agreement.

(d) In the event that the Borrower should fail to make any of the payments required in this Section 4.1, the amount so in default shall continue as an obligation of the Borrower until the amount in default shall have been fully paid, and the Borrower agrees to pay the same with interest thereon, to the extent and in such amount as provided under the Indenture, the Credit Agreement, the Common Terms Agreement and the Collateral Agency and Accounts Agreement.

(e) If the principal or Redemption Price and interest on the Series 2022A Bonds shall have been paid sufficiently that payment of all Series 2022A Bonds Outstanding and all interest and other amounts payable thereon shall be deemed to have occurred in accordance with Article VII of the Master Indenture and the Common Terms Agreement, then, with respect to the Series 2022A Bonds no longer Outstanding for purposes of the Indenture, the obligations of the Borrower to make payments pursuant to Section 4.1(a)(1) hereof shall be deemed to have been satisfied in full, and the Borrower's obligations under Section 4.1(a)(1) hereof and this Loan Agreement and the Series 2022A Project Note shall be discharged, as applicable.

(f) If the principal, interest and other amounts on the Senior Term Loans shall have been paid sufficiently that payment of all Senior Term Loans shall be deemed to have occurred and the commitments of the Lenders to make Senior Term Loans have expired or been irrevocably cancelled or terminated in accordance with the terms of the Credit Agreement and the Common Terms Agreement, the obligations of the Borrower to make payments pursuant to Section 4.1(a)(2) hereof shall be deemed to have been satisfied in full, and the Borrower's obligations under Section 4.1(a)(2) hereof and this Loan Agreement and the TDC Bank Debt Project Note shall be discharged.

(g) If the principal, interest and other amounts on the Security Deposit Loans shall have been paid sufficiently that payment of all Security Deposit Loans shall be deemed to have occurred and in accordance with the terms of the Credit Agreement and the Common Terms Agreement and the commitments of the Security Deposit Facility Lenders (as defined in the Credit

Agreement) and Security Deposit Facility LC Issuing Banks to make Security Deposit Loans or issue Security Deposit LCs have expired or been irrevocably cancelled or terminated and the obligations of the Borrower to make payments pursuant to Section 4.1(a)(3) hereof shall be deemed to have been satisfied in full, and the Borrower's obligations under Section 4.1(a)(3) hereof and this Loan Agreement and the TDC Security Deposit Project Note shall be discharged.

(h) The Borrower agrees to make such payments to the Senior Collateral Agent and take such other actions as are required of it under any of the Tax Certificates including any payments to satisfy any Rebate Amount and for any rebate analyst engaged to calculate such Rebate Amount. The obligation of the Borrower to make such payments and to take such other actions shall be absolute and unconditional and shall remain in effect and be binding upon the Borrower notwithstanding the release and discharge of this Loan Agreement or any of the Tax Certificates.

(i) Subject to the provisions of the following sentence, each Loan Facility Loan which shall bear interest on the outstanding principal amount thereof at a rate per annum equal to the applicable interest rate under, and such interest shall be calculated in accordance with, the corresponding Senior Financing Document from which such Loan Facility Loan was funded. If any principal or interest for any Senior Obligations is not paid when due, whether at stated maturity, by acceleration or otherwise in accordance with the applicable Senior Financing Documents, and the Issuer is required to pay interest on the amount past due and unpaid at the applicable default rate and/or pay other fees, penalties or late charges, the Borrower shall make a corresponding payment to the Issuer in an amount equal to the full amount of such payment of default interest, in accordance with the applicable Senior Financing Document and the Collateral Agency and Accounts Agreement. Accrued interest on any Loan Facility Loan shall be due and payable in arrears on each Interest Payment Date applicable to the corresponding Senior Obligations and at such other times as may be specified in the Senior Financing Document from which such Loan Facility Loan was funded; provided that in the event of any repayment or prepayment of any portion of any Loan Facility Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment in accordance with the applicable Senior Financing Document. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

(j) In addition to the other amounts payable by the Borrower pursuant to this Section 4.1, Borrower covenants and agrees to repay any and all amounts payable to the Issuer pursuant to any Additional Bonds Loan Agreement Supplement and corresponding Note in accordance with the terms of this Loan Agreement, as the same shall be supplemented by such Additional Bonds Loan Agreement Supplement, and the Collateral Agency and Accounts Agreement.

(k) All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made from the applicable Subaccount of the Senior Obligations Payment Account, or other applicable Project Account, in accordance with the Collateral Agency and Accounts Agreement to the specified Secured Debt Representative(s) or Senior Secured Party, as applicable, for the account of the respective Senior

Secured Party to which such payment is owed, on the date and at the time and location specified in the relevant Senior Financing Documents, in Dollars, in immediately available funds; provided, however, the insufficiency of funds in any Project Account shall not relieve the Borrower of any payment obligation hereunder.

**Section 4.2 Obligations of Borrower Unconditional.**

The obligations of the Borrower to make the payments required in Section 4.1 hereof and to perform and observe the other agreements contained herein shall be absolute and unconditional and shall not be subject to any defense or any right of setoff, counterclaim or recoupment arising out of (a) any breach by the Issuer, the Trustee, the Administrative Agent, any other Agent or any other Senior Secured Party of any obligation to the Borrower, whether hereunder or otherwise, or (b) any indebtedness or liability at any time owing to the Borrower by the Issuer, the Trustee, the Administrative Agent, any other Agent or any other Senior Secured Party. Until the Discharge of Senior Obligations, the Borrower will not suspend or discontinue any payments provided for in Section 4.1 hereof, and the Borrower (1) will perform and observe all other obligations of the Borrower contained in this Loan Agreement and the Senior Financing Documents and (2) will not terminate this Loan Agreement or any Senior Financing Document, except as permitted by the Senior Financing Documents, for any cause, or any failure of the Issuer, the Trustee the Administrative Agent, any other Agent or any other Senior Secured Party to perform and observe any agreement, whether express or implied, or for any failure of the Issuer, the Trustee, the Administrative Agent, any other Agent or any other Senior Secured Party to comply with any duty, liability or obligation of the Issuer, the Trustee, the Administrative Agent, any other Agent or any other Senior Secured Party, as applicable, arising out of or connected with this Loan Agreement.

**ARTICLE V**  
**PREPAYMENT PROVISIONS AND REDEMPTION**

**Section 5.1 Prepayment and Redemption of Series 2022A Bonds.**

(a) The Borrower shall have the option to prepay all or any part of the Series 2022A Bond Project Loans hereunder at the times and in the amounts as necessary to cause the Issuer to redeem the corresponding Series 2022A Bonds, in accordance with the terms of the Indenture, the Common Terms Agreement, the Bond Purchase Agreement, the Bondholder's Agreement and the Series 2022A Bonds that may be subject to optional redemption. The Issuer, at the request of the Borrower, if applicable, shall forthwith take all steps (other than the payment of funds necessary to effect such redemption (except with respect to funds provided by the Borrower to the Issuer)) necessary under the applicable redemption provisions of the Indenture and the Common Terms Agreement to effect redemption of all or part of the Outstanding Series 2022A Bonds, as may be specified by the Borrower and required by the Indenture and the Common Terms Agreement, on the date established for such redemption.

(b) The Borrower acknowledges that the Series 2022A Bonds are further subject to extraordinary redemption, in whole or in part, as provided in Section 2.04 of the First Supplemental Indenture. To the extent that the Issuer is required to so redeem the Series 2022A Bonds (or any portion thereof) in accordance with the Indenture, the Common Terms Agreement, the Bondholder's Agreement, or any other Senior Financing Document, the Borrower shall prepay the TDC Series 2022A Bond Loans in a principal amount equal to the full amount of such redemption that has been accepted by the relevant holder of the Series 2022A Bonds in accordance with the terms of the relevant Senior Financing Documents. To the extent that the Issuer is required to accompany such redemption payment with (i) a payment of all accrued but unpaid interest on amounts redeemed, (ii) a payment of breakage costs or other amounts related to such redemption, or (iii) a payment of any other relevant amounts, including any fees, make-whole amounts or prepayment premiums, under the terms of the relevant Senior Financing Documents in respect of the Series 2022A Bonds being redeemed, the Borrower shall make a corresponding payment in the aggregate amount of such payments to or on behalf of the Issuer under the relevant Senior Financing Documents pursuant to the terms of the Indenture, the Common Terms Agreement and the Collateral Agency and Accounts Agreement.

**Section 5.2 Prepayment of TDC Senior Term Loan Project Loan and TDC Security Deposit Project Loan.** The Borrower shall have the option to prepay all or any part of the TDC Senior Term Loan Project Loans or the TDC Security Deposit Project Loan hereunder at the times and in the amounts as necessary to cause the Issuer to voluntarily prepay all or a portion of the applicable Senior Loans, in accordance with the terms of the Credit Agreement and the Common Terms Agreement. The Issuer, at the request of the Borrower, if applicable, shall forthwith take all steps (other than the payment of funds necessary to effect such prepayment (except with respect to funds provided by the Borrower to the Issuer)) necessary under the applicable prepayment provisions of the Credit Agreement to effect prepayment of all or part of

the Outstanding Senior Loans, as may be specified by the Borrower and required by the Credit Agreement or the Common Terms Agreement, on the date established for such prepayment.

(b) To the extent that the Issuer is required to so prepay or offer to prepay the Senior Term Loans or the Security Deposit Loans (or any portion thereof) in accordance with the Credit Agreement or the Common Terms Agreement, or any other Senior Financing Document, the Borrower shall prepay the TDC Senior Term Loan Project Loans and/or the TDC Security Deposit Project Loans, as applicable, in a principal amount equal to the full amount of such prepayment or offer to prepay that has been accepted by the relevant Bank Finance Parties in accordance with the terms of the relevant Senior Financing Documents. To the extent that the Issuer is required to accompany such prepayment with (i) a payment of all accrued but unpaid interest on amounts prepaid, (ii) a payment of breakage costs or other amounts related to such prepayment, or (iii) a payment of any other relevant amounts, including any fees, make-whole amounts or prepayment premiums, under the terms of the relevant Senior Financing Documents in respect of the Senior Loans being prepaid, the Borrower shall make a corresponding payment in the aggregate amount of such payments to or on behalf of the Issuer under the relevant Senior Financing Documents pursuant to the terms of the Credit Agreement, the Common Terms Agreement and the Collateral Agency and Accounts Agreement.

**ARTICLE VI**  
**SPECIAL COVENANTS OF THE BORROWER**

**Section 6.1 Borrower Covenants.**

The Borrower shall comply with all Borrower Covenants in accordance with Article 10 of the Collateral Agency and Accounts Agreement and Article V and VI of the Common Terms Agreement. The Borrower acknowledges that the Borrower Covenants under the Collateral Agency and Accounts Agreement shall inure to the benefit of the Issuer under the Collateral Agency and Accounts Agreement as a beneficiary of the Borrower Covenants. The Borrower shall timely observe, perform and comply in all material respects with its obligations under the Senior Financing Documents to which it is a party and shall maintain, preserve and enforce its material rights and privileges under the Senior Financing Documents in a commercially reasonable manner.

**Section 6.2 Issuer and Borrower Representations.**

Whenever under the provisions of this Loan Agreement the approval of the Issuer or the Borrower is required or the Issuer or the Borrower is required to take some action at the request of the other party hereto, such approval or such request shall be given for the Issuer by an Issuer Representative and for the Borrower by an Authorized Borrower Representative and the Trustee and/or the Senior Collateral Agent, as applicable, shall be permitted to rely on, and shall be protected in acting upon, such approval.

**ARTICLE VII**  
**ASSIGNMENT; INDEMNIFICATION**

**Section 7.1 Assignment.**

Except as expressly contemplated herein, in the Indenture, the Credit Agreement, the Common Terms Agreement, the Collateral Agency and Accounts Agreement and the Security Documents, or in the other Financing Documents, neither the Borrower nor the Issuer may assign its interest in this Loan Agreement.

**Section 7.2 Release and Indemnification Covenants.**

(a) The Borrower agrees to and does hereby indemnify and hold harmless the Issuer and any member, principal, officer, director, official, agent, employee, and attorney thereof, any person who “controls” the Issuer (within the meaning of Section 15 of the Securities Act of 1933, as amended, or Section 20 of the Securities Exchange Act of 1934, as amended), the Trustee and any member, principal, officer, director, official, agent, employee, and attorney thereof, the Administrative Agent and any member, principal, officer, director, official, agent, employee, and attorney thereof, the Agents and any member, principal, officer, director, official, agent, employee, and attorney thereof, and the State (collectively, the “Indemnified Parties”) against any and all losses, claims, damages or liabilities (including all costs, expenses and reasonable counsel fees actually incurred in investigating or defending such claim) suffered by any of the Indemnified Parties to the extent caused by, relating to, arising out of, resulting from, or in any way connected with (i) the condition, use, ownership, possession, conduct, management, planning, design, acquisition, construction, installation, financing, or sale of the Project or any part thereof including the payment of the Rebate Amount to the federal government, (ii) the acceptance or administration by the Issuer without gross negligence or willful misconduct of its duties under the Indenture, (iii) any untrue statement of a material fact contained in the Borrower’s application to the Issuer, (iv) any omission by the Borrower of a material fact necessary to be stated in the Borrower’s application to the Issuer, (v) the acceptance and administration of the duties of the Trustee under the Indenture, the Senior Financing Documents and any documents related thereto, and (vi) the acceptance and administration of the duties of the Administrative Agent or any of the Agents under the Senior Financing Documents to which each may be a party. In case any action shall be brought against one or more of the Indemnified Parties based upon any of the above and in respect to which indemnity may be sought against the Borrower, such Indemnified Party shall promptly notify the Borrower in writing, and except where the Borrower is the claimant, the Borrower shall assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party, the payment of all reasonable costs and expenses and the right to negotiate and consent to settlement. Any one or more of the Indemnified Parties shall have the right to employ separate counsel at the expense of the Borrower in any such action and to participate in the defense thereof if, in the reasonable opinion of the Indemnified Party, a conflict of interest could arise out of the representation of the parties by the same counsel. The Borrower shall not be liable for any settlement of any such action effected without the consent of the Borrower, but if settled with the consent of the Borrower, or if there is a final judgment for the claimant on any such action, the Borrower agrees to indemnify and hold harmless the Indemnified Parties from and against any loss or liability by reason of such settlement or judgment.

(b) The Borrower agrees to and does hereby indemnify and hold harmless the Indemnified Parties against any and all losses, claims, damages or liabilities (including all costs, expenses, and reasonable counsel fees actually incurred in investigating or defending such claim) suffered by any of the Indemnified Parties and caused by, relating to, arising out of, resulting from, or in any way connected to an examination, investigation or audit of the Tax-Exempt Bonds by the IRS. In the event of such examination, investigation or audit, the Indemnified Parties shall have the right to employ counsel reasonably satisfactory to the Borrower at the expense of the Borrower. In such event, the Borrower shall assume the primary role in responding to and negotiating with the IRS, but shall inform the Indemnified Parties of the status of the investigation. In the event the Borrower fails to respond adequately and promptly to the IRS, the Issuer shall have the right to assume the primary role in responding to and negotiating with the IRS and shall have the right to enter into a closing agreement, for which the Borrower shall be liable.

(c) Notwithstanding anything in this Loan Agreement to the contrary which may limit recourse to the Borrower or may otherwise purport to limit the liability of the Borrower, the provisions of this Section 7.2 shall control the Borrower's obligations, and shall survive repayment of the Series 2022A Bonds or any Additional Bonds and the Senior Loans.

(d) Notwithstanding anything to the contrary contained herein, the Borrower shall have no liability to indemnify the Issuer, the Senior Collateral Agent, the Administrative Agent or the Trustee against claims or damages resulting from such parties' own gross negligence or willful misconduct.

(e) If the reimbursement provided for in this Section 7.2 is unenforceable, or is unavailable to the Borrower in respect of any losses, claims, damages, or liabilities (or actions in respect thereof) of the type subject to reimbursement herein, then the Borrower shall, in lieu of reimbursing such Indemnified Parties, contribute to the amount paid or payable by such Indemnified Parties as a results of such losses, claims, damages or liabilities (or actions in respect thereof).



**ARTICLE VIII**  
**EVENTS OF DEFAULTS AND REMEDIES**

**Section 8.1 Events of Default.**

(1) Any one or more of the following events shall constitute “Events of Default” for the TDC Senior Term Loan Project Loan, the Series 2022A Bond Project Loan, the Security Deposit Project Loan, the TDC Bank Debt Project Note, the Series 2022A Project Note, and the TDC Security Deposit Project Note under this Loan Agreement:

(a) The Borrower fails to pay any amount required to be paid under Section 4.1(a)(1), (2) or (3) hereof and, in the case of such failure to pay interest with respect to Section 4.1(a)(1), (2) or (3), such failure is not remedied within three (3) Business Days after the applicable due date;

(b) Any representation or warranty made by the Borrower in any Senior Financing Document to which it is a party proves to have been incorrect or misleading in any material respect when made, and a Material Adverse Effect could reasonably be expected to result therefrom unless such misrepresentation is capable of remedy and is remedied within thirty (30) days after the receipt by the Borrower of written notice from the Trustee or Administrative Agent thereof;

(c) The Borrower fails to comply with any affirmative or negative covenant under the Senior Financing Documents (other than those specified in subsection (a) and (b) of this Section 8.1) to which it is a party, unless such failure is capable of being remedied and is remedied within thirty (30) days after the earlier of (i) written notice specifying such failure shall have been given to the Trustee and the Administrative Agent by the Borrower or (ii) written notice specifying such failure and requesting that it be remedied shall have been given to the Borrower by the Trustee or the Administrative Agent, or such longer period as is reasonably necessary under the circumstances to remedy such failure so long as corrective action is instituted by the Borrower within the applicable thirty (30) day period and is diligently pursued until such failure is corrected and in any event not to exceed one hundred and eighty (180) days without the prior written approval of the Required Bank Finance Parties;

(d) Any “Event of Default” by the Borrower under any of the Key Contracts (as defined in the Lease Agreement) that continues beyond any applicable cure or grace period;

(e) The occurrence of an “Event of Default” by the Borrower under the Project Loan Mortgage that continues beyond any applicable cure or grace period;

(f) The occurrence of an “Event of Default” by the Borrower under and as defined in the Lease Agreement, that continues beyond any applicable cure or grace period;

(g) Any Senior Financing Document (other than (i) a Senior Collateral Document or (ii) a Senior Financing Document relating to Indebtedness of the Borrower that has been repaid or otherwise discharged in full) ceases to be in full force and effect unless such document shall be replaced by a contract on substantially similar terms within thirty (30) days following the earlier of (i) the Borrower’s knowledge of such occurrence or (ii) the delivery of

written notice thereof to the Borrower by the Senior Collateral Agent, or such longer period, not exceeding one hundred and eighty (180) days, reasonably necessary to effect such replacement;

(h) A judgment against the Borrower for the payment of money in an amount in excess of \$25,000,000, without taking into account any portion of the amount of such judgment that is covered by insurance or for which the Borrower is entitled to indemnification from any third party, if such judgment remains unsatisfied without any procurement of a stay of execution within sixty (60) days; provided, that any such judgment shall not constitute an Event of Default hereunder during the pendency of an appeal thereof, so long as, during such appeal, execution is effectively stayed or the liability for such judgment is adequately covered by insurance or a performance bond;

(i) The Borrower shall fail to maintain its existence as a Delaware limited liability company or its qualification to do business in New York;

(j) Any Senior Collateral Documents shall cease (other than as expressly permitted under the Senior Financing Documents) to be effective to grant a perfected Security Interest on any material portion of the Collateral described therein other than as a result of actions or failure to act by the applicable Secured Party, and with the priority purported to be created thereby and such event continues for thirty (30) days after the applicable agent giving notice thereof to the Borrower;

(k) The occurrence of an “Event of Default” that continues beyond any applicable cure or grace period under the Indenture, the Credit Agreement, the Common Terms Agreement, any of the Senior Financing Documents, or any additional financing document governing other Secured Obligations, or the occurrence of an “Enforcement Action” under the Collateral Agency and Accounts Agreement;

(l) Failure of the Borrower to achieve Substantial Completion of the Project by the Outside Completion Date (as defined in the Lease Agreement); or

(m) The Borrower institutes a proceeding to be adjudicated as bankrupt or insolvent, or shall consent to the institution of bankruptcy or insolvency proceedings against it, or shall file a petition or answer or consent seeking reorganization or relief under the federal Bankruptcy Code or any other similar applicable federal or state law, or shall consent to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee or sequestrator (or other similar official) of the Borrower or of any substantial part of its property, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due.

## **Section 8.2 Remedies.**

(a) (i) Whenever any Event of Default hereunder shall have occurred and be continuing, subject in all events to the terms of the Intercreditor Agreement, the Trustee, the Administrative Agent or the Issuer with the written consent of the Trustee or the Administrative Agent, as applicable, have the right to, in conjunction with its available remedies under the Indenture, the Credit Agreement, or the Common Terms Agreement, take one or any combination

of the following remedial steps, by notice to the Borrower, the Senior Collateral Agent, and the Port Authority:

(i) Declare that all or any part of any amounts outstanding under the Series 2022A Project Note are (1) immediately due and payable, and/or (2) payable on demand by the Trustee, and any such notice shall take effect in accordance with its terms but only if all amounts payable with respect to the Outstanding Bonds are being accelerated pursuant to Section 8.02(b)(2) of the Master Indenture, or if all of the Outstanding Bonds are being defeased pursuant to Article VII of the Master Indenture or otherwise paid in full;

(ii) Declare that all or any part of any amount outstanding under TDC Bank Debt Project Note and/or the TDC Security Deposit Project Note is immediately due and payable in accordance with this Loan Agreement, the Credit Agreement and the Common Terms Agreement;

(iii) Pursuant to the terms of the Collateral Agency and Accounts Agreement, direct the Senior Collateral Agent to take or cause to be taken any and all actions necessary to implement any available remedies with respect to the Collateral under any of the Senior Collateral Documents;

(iv) Have reasonable access to and inspect, examine and make copies of the books and records and any and all accounts, data and income tax and other tax returns of the Borrower during regular business hours of the Borrower and following prior reasonable notice; or

(v) Take on behalf of the Bank Finance Parties whatever other action under the Senior Collateral Documents, at law or in equity, as may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Loan Agreement or the rights of the Bank Finance Parties, in each case subject to the terms of the Collateral Agency and Accounts Agreement.

(ii) Whenever an Event of Default described in Section 8.01(m) shall have occurred all amounts outstanding under the Series 2022A Building Notes and the TDC Bank Debt Note shall immediately become due and payable, in each case, without presentment, demand, protest or notice any kind, all of which are hereby waived, by the Borrower.

(b) Subject in all events to the terms of the Intercreditor Agreement, upon any Credit Acceleration (as defined in the Common Terms Agreement) and/or any other acceleration of Senior Obligations (other than the Secured Hedge Agreements), the Loan Facility Loans shall be concurrently accelerated hereunder to the same extent and the Borrower shall have an obligation to repay the Loan Facility Loans that have been so accelerated and pay all interest accrued in respect thereof, along with any fees, make-whole amounts, prepayment premiums, breakage costs and any other amounts then due and payable to the Issuer in accordance with this Loan Agreement, the Collateral Agency and Accounts Agreement and the other Senior Financing Documents. All payments by the Borrower to the Issuer under this Article VIII shall be deemed satisfied by the Borrower, upon the Borrower making or causing to be made in accordance with the Collateral

Agency and Accounts Agreement an equivalent payment to the relevant Secured Debt Representative(s) or Secured Party, as applicable, of the accelerated Outstanding Secured Obligations (along with all other fees, make-whole amounts, prepayment premiums, breakage costs and any other amounts then due and payable by the Issuer to the relevant Secured Debt Representative(s) or Secured Party, as applicable, in accordance with the Senior Financing Documents).

(c) Any rights and remedies as are given to the Issuer under this Loan Agreement will also extend to the Bank Finance Parties, the Owners of the Bonds, the Administrative Agent, the Senior Collateral Agent and the Trustee, who will be entitled to the benefit of all covenants and agreements contained in this Loan Agreement, subject to the terms of the Indenture, the Credit Agreement, the Common Terms Agreement, the Senior Collateral Documents, and the Intercreditor Agreement.

(d) Any Enforcement Action and any other exercise of remedies (including acceleration of any Loan Facility Loans) hereunder shall be taken solely in accordance with the Intercreditor Agreement and the Collateral Agency and Accounts Agreement and in accordance with the applicable Senior Financing Document(s) and all amounts paid to or received by the Senior Collateral Agent or any other Secured Party and representing the proceeds of the Collateral or the proceeds of any action taken pursuant to an Enforcement Action shall be subject to Article VI of the Collateral Agency and Accounts Agreement.

(e) If an Enforcement Action has occurred, the Issuer shall, in accordance with the instructions from the Intercreditor Agent, (i) direct the Senior Collateral Agent to take or cause to be taken any and all actions necessary to implement any available remedies with respect to the Collateral under any of the Senior Collateral Documents, and (ii) take on behalf of the Owners and Bank Finance Parties, in accordance with the instructions of the Intercreditor Agent, whatever other action under the Senior Collateral Documents, at law or in equity, as may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Loan Agreement or the rights of the Owners and Bank Finance Parties, in each case subject to the terms of the Collateral Agency and Accounts Agreement and the Intercreditor Agreement.

(f) Any amounts collected pursuant to actions taken under this Section 8.2 and the Senior Collateral Documents shall be applied in accordance with Section 6.06 of the Collateral Agency and Accounts Agreement.

### **Section 8.3 Rescission and Waiver.**

(a) The Issuer shall rescind any acceleration of the Loan Facility Loans and its consequences immediately after the acceleration of the applicable Senior Obligations has been rescinded in accordance with the Senior Financing Documents.

(b) The Issuer shall waive any Event of Default immediately after any such Event of Default has been waived in accordance with the applicable Senior Financing Documents.

(c) The Issuer shall have the right to, but shall be under no obligation to (except with respect to paragraphs (a) and (b) above of this Section 8.3), waive any other Event of Default at any time.

(d) In case of any such waiver or rescission, then and in every such case the Issuer, the Trustee, and the Borrower shall be restored to their former positions and rights, but no such waiver shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

**Section 8.4 No Remedy Exclusive.**

Subject to Section 8.02 of the Master Indenture and the terms of the Intercreditor Agreement, no remedy hereunder is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at Law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer, the Trustee or any Agent to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required by Law or expressly hereunder (or as required under any other Senior Financing Document).

**Section 8.5 Additional Issuer Remedies on Default.**

In addition to the remedies above, if the Borrower commits a breach or threatens to commit a breach of the Reserved Rights, the Issuer shall have the right and remedy, without posting bond or other security, to have such Reserved Rights specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach will cause immediate and irreparable injury to the Issuer and that money damages will not provide an adequate remedy therefor.

**Section 8.6 Agreement to Pay Attorneys' Fees and Expenses.**

Following the occurrence and during the continuance of an Event of Default or upon the request of the Borrower to review or analyze the financing of the Series 2022A Bonds, the Senior Loans or any related financing instruments, if the Issuer shall employ attorneys or incur other expenses for the collection of payments required hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower herein contained, the Borrower agrees that it will therefor pay to the Issuer its share of the reasonable fees of such attorneys and such other reasonable, properly invoiced and documented expenses so incurred by the Issuer in connection with the same.

Following the occurrence and during the continuance of an Event of Default, the Trustee may, at the reasonable and documented costs and expense of the Borrower, employ or retain such counsel, accountants, appraisers or other experts or advisors as it may reasonably require for the purpose of determining and discharging its rights and duties hereunder and, in the absence of the Trustee's gross negligence, bad faith or willful misconduct in employing or retaining any such counsel, accountants, appraisers, experts or advisors, may act and rely and shall be protected in

acting and relying in good faith on the opinion or advice of or information obtained from any counsel, accountant, appraiser or other expert or advisor, whether retained or employed by the Borrower or by the Trustee, in relation to any matter arising in the administration hereof, and shall not be responsible for any act or omission on the part of any of them. In addition, the Trustee shall not be liable for any acts or omissions of its nominees, correspondents, designees, agents, subagents or subcustodians except to the extent of its gross negligence, bad faith or willful misconduct in nominating or appointing such persons and so long as such persons are permitted to act hereunder.

Following the occurrence and during the continuance of an Event of Default, the Administrative Agent may, at the reasonable and documented costs and expense of the Borrower, employ or retain such counsel, accountants, appraisers or other experts or advisors as it may reasonably require for the purpose of determining and discharging its rights and duties hereunder and, in the absence of the Administrative Agent's gross negligence, bad faith or willful misconduct in employing or retaining any such counsel, accountants, appraisers, experts or advisors, may act and rely and shall be protected in acting and relying in good faith on the opinion or advice of or information obtained from any counsel, accountant, appraiser or other expert or advisor, whether retained or employed by the Borrower or by the Administrative Agent, in relation to any matter arising in the administration hereof, and shall not be responsible for any act or omission on the part of any of them. In addition, the Administrative Agent shall not be liable for any acts or omissions of its nominees, correspondents, designees, agents, subagents or subcustodians except to the extent of its gross negligence, bad faith or willful misconduct in nominating or appointing such persons and so long as such persons are permitted to act hereunder.

**Section 8.7 No Additional Waiver Implied by One Waiver.**

In the event any agreement contained in this Loan Agreement should be breached by any party and thereafter waived by another party as permitted hereunder, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**ARTICLE IX  
MISCELLANEOUS**

**Section 9.1 Term of Agreement.**

Except to the extent otherwise provided herein, this Loan Agreement shall be effective upon its execution and delivery and shall expire at such time as the Loan Facility and the fees and expenses of the Issuer, the Trustee and the other Agents shall have been fully paid or provision made for such payments, whichever is later; provided, however, that this Loan Agreement may be terminated prior to such date pursuant to Article V of this Loan Agreement and Article VII of the Master Indenture, but in no event before all of the obligations and duties of the Borrower hereunder have been fully performed, including, without limitation, the payments of all costs and fees mandated hereunder or under the Senior Financing Documents pertaining to the Loan Facility to be paid by the Borrower.

**Section 9.2 Third Party Beneficiaries.**

The Trustee and the Administrative Agent shall be third party beneficiaries of the following provisions hereof (and related defined terms), which shall not be amended or modified without the prior written consent of the Trustee and the Administrative Agent: Article VII Assignment; Indemnification, Article VIII Events of Default, Section 9.3 and Section 9.4 hereof.

**Section 9.3 Notices.**

Notices under this Loan Agreement shall be given in accordance with Section 12.04 of the Collateral Agency and Accounts Agreement.

**Section 9.4 Binding Effect.**

This Loan Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Borrower, the Trustee, and the Bank Finance Parties, and their respective successors and assigns, subject, however, to the limitations contained herein.

**Section 9.5 Severability.**

Whenever possible, each provision of this Loan Agreement shall be interpreted in such a manner as to be effective and valid under applicable Law, but if any provision of this Loan Agreement shall be prohibited by or invalid under applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Loan Agreement.

**Section 9.6 Amendments, Changes and Modifications.**

Prior to the Discharge of Senior Bank Obligations, this Loan Agreement may not be effectively amended, changed, modified, altered or terminated, except in a writing executed by the Borrower and the Issuer, and as otherwise provided in the Indenture or the other Senior Bank Finance Documents.

**Section 9.7 Execution; Counterparts.**

This Loan Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Delivery of an executed signature page to this Loan Agreement by electronic transmission shall be as effective as delivery of a manually signed counterpart of this Loan Agreement. Each party hereto acknowledges and agrees that they may execute this Loan Agreement, and any variation or amendment hereto, using Electronic Signatures. Such Electronic Signatures are intended to authenticate this writing and to have the same force and effect as handwritten signatures.

**Section 9.8 Applicable Law; Waiver of Jury Trial.** THE EFFECT AND MEANING OF THIS LOAN AGREEMENT AND THE RIGHTS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED ACCORDING TO, THE LAWS OF THE STATE, WITHOUT GIVING EFFECT TO THE PRINCIPLES OF CONFLICTS OF LAWS THEREOF. EACH OF THE ISSUER AND THE BORROWER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS LOAN AGREEMENT, THE SERIES 2022A PROJECT NOTE, TDC BANK DEBT PROJECT NOTE, THE TDC SECURITY DEPOSIT PROJECT NOTE, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**Section 9.9 Captions.**

The captions and headings in this Loan Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Loan Agreement.

**Section 9.10 Limitation of Liability.**

(a) No covenant, agreement or obligation contained herein shall be deemed to be a covenant, agreement or obligation of any present or future director, officer, employee or agent of the Issuer or the Borrower in his or her individual capacity so long as such person does not act fraudulently, and no such director, officer, employee or agent thereof shall be subject to any liability under this Loan Agreement or with respect to any other action taken by such person provided that they do not act fraudulently.

(b) Except as otherwise expressly set forth in the Senior Financing Documents, the Senior Secured Parties will have full recourse to the Borrower and all of the Borrower's assets and properties for the liabilities and obligations of the Borrower under the Senior Financing Documents, but in no event will any Affiliates of the Borrower, or any officer, director or holder of any interest in the Borrower or any Affiliates of the Borrower, be liable or obligated for such liabilities and obligations of the Borrower.

(c) Notwithstanding anything in paragraph (b) above of this Section 9.10, nothing in said paragraph (b) above shall limit or affect or be construed to limit or affect the obligations and liabilities of any Affiliate of the Borrower (1) arising under any Senior Financing Document to which such Affiliate of the Borrower is a party, or (2) arising from any liability pursuant to any applicable Law for such fraudulent actions, bad faith or willful misconduct of any Affiliate of the Borrower.



**Section 9.11 Issuer Related Parties Not Liable.** To the extent permitted by law, no recourse shall be had for the enforcement of any obligation, promise or agreement of the Issuer contained herein or in the other Issuer Documents to which the Issuer is a party or for any claim based hereon or thereon or otherwise in respect hereof or thereof against any director, officer, agent, attorney or employee, as such, in his/her individual capacity, past, present or future, of the Issuer or of any successor entity, either directly or through the Issuer or any successor entity whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise. No personal liability whatsoever shall attach to, or be incurred by, any director, officer, agent, attorney or employee as such, past, present or future, of the Issuer or any successor entity, either directly or through the Issuer or any successor entity, under or by reason of any of the obligations, promises or agreements entered into between the Issuer and the Borrower, whether herein contained or to be implied herefrom as being supplemental hereto; and all personal liability of that character against every such director, officer, agent, attorney and employee is, by the execution of this Loan Agreement and as a condition of, and as part of the consideration for, the execution of this Loan Agreement, expressly waived and released. Notwithstanding any other provision of this Loan Agreement, the Issuer shall not be liable to the Borrower or the Trustee or any other Person for any failure of the Issuer to take action under this Loan Agreement unless the Issuer (a) is requested in writing by an appropriate Person to take such action, (b) is assured of payment of, or reimbursement for, any reasonable expenses in such action, and (c) is afforded, under the existing circumstances, a reasonable period to take such action. In acting under this Loan Agreement, or in refraining from acting under this Loan Agreement, the Issuer may conclusively rely on the advice of its counsel.

**Section 9.12 Prior Agreements Superseded.** This Loan Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Issuer and the Borrower relating to the subject matter hereof (other than any Senior Financing Documents or other document being executed contemporaneously herewith in respect of the Loan Facility) with respect to the subject matter hereof.

**Section 9.13 Date for Reference Purposes Only.** The date of this Loan Agreement is for reference purposes only and shall not be construed to imply that this Loan Agreement was executed as of the date first written above. This Loan Agreement has been executed by the parties hereto and is effective on the Closing Date.

**Section 9.14 Amount Secured by Leasehold Mortgages.** The maximum amount secured by the Leasehold Mortgages collectively shall not exceed the maximum amount permitted pursuant to Section 83(a)(4) of the Lease Agreement.

**[SIGNATURE PAGES AND EXHIBITS HAVE BEEN REMOVED]**

**\$2,313,617,415**

**TDC BUILDING LOAN AGREEMENT**

between

**NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION**

as Issuer and conduit lender

and

**JFK MILLENNIUM PARTNERS, LLC**

as Borrower

Dated as of November 1, 2022

Relating to

\$250,000,000

New York Transportation Development Corporation  
Special Facilities Bonds, Senior Series 2022A  
(Tax-Exempt) (AMT)  
(JFK Airport Terminal 6-7 Redevelopment Project)

and

\$2,063,617,415 Senior Term Loans

As provided for in the Credit Agreement by and among  
JFK Millennium Partners, LLC, New York Transportation Development Corporation, ING  
Capital LLC as Administrative Agent and the Lenders named therein, dated as of the date of this  
Agreement

Block: 14260 Lot: 1 County: Queens
--

Record and Return Copy to:  
Squire Patton Boggs (US) LLP  
1211 Avenue of the Americas, 26<sup>th</sup> Floor  
New York, New York 10036  
Attention: Alethia Nancoo, Esq.

## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS; RULES OF CONSTRUCTION.....	4
Section 1.1    Definitions .....	4
ARTICLE II REPRESENTATIONS .....	4
Section 2.1    Representations by the Issuer .....	4
Section 2.2    Representations by the Borrower.....	7
Section 2.3    Survival of Representations .....	10
Section 2.4    Covenant with the Bank Finance Parties .....	11
ARTICLE III ISSUANCE OF THE LOAN FACILITY .....	11
Section 3.1    Agreement to Issue the Series 2022A Bonds and Enter into the Credit Agreement; Loan of Proceeds .....	11
Section 3.2    Provision of Funds .....	12
Section 3.3    Building Loans to Finance Building Loan Costs; Trust Fund.....	12
Section 3.4    Building Loans as Security for Loan Facility .....	13
Section 3.5    Limitation of Issuer’s Liability .....	13
Section 3.6    Compliance with Indenture, the Credit Agreement, Intercreditor Agreement and Collateral Agency and Accounts Agreement.....	14
ARTICLE IV LOAN PROVISIONS.....	14
Section 4.1    Amounts Payable .....	14
Section 4.2    Obligations of Borrower Unconditional .....	17
ARTICLE V PREPAYMENT PROVISIONS AND REDEMPTION .....	17
Section 5.1    Prepayment and Redemption of Series 2022A Bonds.....	17
Section 5.2    Prepayment of TDC Senior Term Loan Building Loan .....	18
ARTICLE VI SPECIAL COVENANTS OF THE BORROWER .....	19
Section 6.1    Borrower Covenants .....	19
Section 6.2    Issuer and Borrower Representations .....	19
ARTICLE VII ASSIGNMENT; INDEMNIFICATION .....	19
Section 7.1    Assignment .....	19
Section 7.2    Release and Indemnification Covenants.....	19
ARTICLE VIII EVENTS OF DEFAULTS AND REMEDIES .....	21
Section 8.1    Events of Default .....	21
Section 8.2    Remedies.....	23
Section 8.3    Rescission and Waiver.....	25
Section 8.4    No Remedy Exclusive .....	25
Section 8.5    Additional Issuer Remedies on Default.....	25
Section 8.6    Agreement to Pay Attorneys’ Fees and Expenses .....	25
Section 8.7    No Additional Waiver Implied by One Waiver.....	26
ARTICLE IX MISCELLANEOUS .....	26
Section 9.1    Term of Agreement.....	26
Section 9.2    Third Party Beneficiaries .....	27

Section 9.3	Notices .....	27
Section 9.4	Binding Effect.....	27
Section 9.5	Severability .....	27
Section 9.6	Amendments, Changes and Modifications .....	27
Section 9.7	Execution; Counterparts .....	27
Section 9.8	Applicable Law; Waiver of Jury Trial.....	28
Section 9.9	Captions .....	28
Section 9.10	Limitation of Liability .....	28
Section 9.11	Issuer Related Parties Not Liable .....	28
Section 9.12	Prior Agreements Superseded.....	29
Section 9.13	Date for Reference Purposes Only .....	29
Section 9.14	Amount Secured by Leasehold Mortgages.....	29

**EXHIBIT A - LEGAL DESCRIPTION – JFK AIRPORT AND PREMISES**

**EXHIBIT B - AFFIDAVIT PURSUANT TO SECTION 22 OF THE LIEN LAW OF THE STATE OF NEW YORK**

**EXHIBIT C-1 – FORM OF SERIES 2022A BUILDING NOTE**

**EXHIBIT C-2 – FORM OF TDC BANK DEBT BUILDING NOTE**

**EXHIBIT D-1 – SERIES 2022A BALLOON INDEBTEDNESS CERTIFICATE**

**EXHIBIT D-2 – SENIOR TERM LOAN BALLOON INDEBTEDNESS CERTIFICATE**

## **TDC BUILDING LOAN AGREEMENT**

**THIS TDC BUILDING LOAN AGREEMENT**, dated as of November 1, 2022 (as supplemented and amended from time to time, this “Loan Agreement”), is made and entered into by and among the **NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION**, a local development corporation formed under Section 1411 of the New York Not-for-Profit Corporation Law, being Chapter 35 of the Consolidated Laws of New York, created by action of the New York Job Development Authority (“JDA”) established under Section 1802, Subtitle I, Title 8, Article 8 of the New York Public Authorities Law, and having an address c/o Empire State Development, 633 Third Avenue, New York, New York (the “Issuer”), and **JFK MILLENNIUM PARTNERS, LLC**, a Delaware limited liability company, its permitted successors and assigns, having an address at 295 Madison Avenue, Suite 1125, New York, New York 10017 (the “Borrower”). All capitalized terms used herein but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Collateral Agency and Accounts Agreement dated as of November 1, 2022 as further defined in Section 1.1 hereof.

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

**WHEREAS**, The Port Authority of New York and New Jersey, a municipal corporate instrumentality and political subdivision of the States of New York and New Jersey, created and existing by virtue of the Compact of April 30, 1921, made by and between the States of New York and New Jersey, and thereafter consented to by the Congress of the United States (the “Port Authority”) has entered into a Lease Agreement, dated as of November 17, 2022 (as supplemented and amended from time to time, the “Lease Agreement”), with the Borrower, pursuant to which, among other things, the Borrower is obliged to consummate the following (collectively, the “Project”): (i) the operation, maintenance, and demolition of the Existing Terminal Facilities at John F. Kennedy International Airport in Queens, New York (“Airport”), which Existing Terminal Facilities include the existing Terminal 7 facilities, (ii) the design, construction, financing, operation and maintenance of the New Terminal Facilities at the Airport (which New Terminal Facilities include new Terminal 6 facilities and replacement Terminal 7 facilities) and certain ancillary facilities, and (iii) the design and construction of the Off-Premises Facilities at the Airport on behalf of the Port Authority, which Off-Premises Facilities will not be operated or maintained by the Borrower and will not constitute part of the facilities leased to the Borrower under the Lease Agreement;

**WHEREAS**, pursuant to that certain Credit Agreement, dated as of November 1, 2022 (as amended, supplemented and/or otherwise modified from time to time, the “Credit Agreement”), among the Issuer, the Borrower, the Lenders, including the Security Deposit Facility Lenders and the Security Deposit Facility LC Issuing Bank, as Bank Lenders, each from time to time party thereto, the Administrative Agent and certain joint lead arrangers and bookrunners, (a) the Lenders have agreed to make certain Senior Term Loans available to the Issuer and (b) the Security Deposit Facility LC Issuing Bank has agreed to make Security Deposit LCs available to the Issuer and (c) the Security Deposit Facility Lender has agreed to make Security Deposit Loans to the Issuer, each on the terms and subject to the conditions set forth therein, the proceeds of the Senior Loans shall be loaned by the Issuer to the Borrower, and the Borrower will use the proceeds of such Senior Loans to finance a portion of the Project Costs;

**WHEREAS**, the Borrower has requested the Issuer to loan a portion of the proceeds it receives under the Senior Term Loans to the Borrower pursuant to the terms of this Loan Agreement, and the Borrower will execute and deliver the TDC Bank Debt Building Note in favor of the Issuer to further evidence the obligations of the Borrower under this Loan Agreement, and such proceeds will be applied to partially pay the Building Loan Costs;

**WHEREAS**, pursuant to a resolution adopted on October 20, 2022 by the Issuer (the “TDC Resolution”) and that certain TDC Master Bond Indenture of Trust, dated as of November 1, 2022 (the “Master Indenture”), as supplemented by the TDC First Supplemental Bond Indenture of Trust, dated as of November 1, 2022 (the “First Supplemental Indenture” and together with the Master Indenture, as the same may be further supplemented and amended from time to time, the “Indenture”), the Issuer has authorized the issuance of its New York Transportation Development Corporation Special Facilities Bonds, Senior Series 2022A (Tax-Exempt) (AMT) (JFK Airport Terminal 6-7 Redevelopment Project) in the aggregate principal amount of \$435,000,000 (the “Series 2022A Bonds”);

**WHEREAS**, the Borrower has requested the Issuer to loan a portion of the proceeds it receives under the Series 2022A Bonds to the Borrower pursuant to the terms of this Loan Agreement, and the Borrower will execute and deliver the Series 2022A Building Note in favor of the Issuer to further evidence a portion of the obligations of the Borrower under this Loan Agreement, and such proceeds will be applied to partially pay the Building Loan Costs;

**WHEREAS**, at the request of the Borrower and pursuant to the Collateral Agency and Accounts Agreement and the other Financing Documents, the Issuer may issue one or more Series of Additional Obligations in accordance with the provisions of the Financing Documents, which Obligations shall be designated as Senior Obligations or Subordinate Obligation at the time of issuance thereof, and in connection therewith, the Borrower shall be required to execute and deliver, among other things, an Additional Obligations Loan Agreement Supplement and corresponding Note to the Issuer;

**WHEREAS**, pursuant to that certain Common Terms Agreement, dated as of November 1, 2022 (as amended, supplemented and/or otherwise modified from time to time, the “Common Terms Agreement”), among the Borrower, the Issuer, the Bank Lenders, the Series 2022A Bondholder, the Intercreditor Agent, the Administrative Agent, and the Senior Collateral Agent, the parties have agreed to common terms, conditions and administration of the Series 2022A Bonds and the Senior Loans (collectively, the “Loan Facility”);

**WHEREAS**, contemporaneously with the execution of the Indenture, the Credit Agreement and Common Terms Agreement, and at each subsequent issuance of the Series 2022A Bonds and fundings of the Senior Loans, the Issuer will loan a portion of the proceeds thereof to the Borrower pursuant to the terms of this Loan Agreement for purposes of financing a portion of the Building Loan Costs, in the aggregate amount of \$2,313,617,415 for the purpose of paying or reimbursing the Borrower for Building Loan Costs as described in Exhibit B hereto;

**WHEREAS**, contemporaneously with the Issuer and the Borrower entering into this Loan Agreement, the parties shall enter into the TDC Project Loan Agreement (as supplemented and amended from time to time, the “TDC Project Loan Agreement”) dated the same date as this Loan Agreement, pursuant to which the Issuer will loan a portion of the proceeds of the Series 2022A

Bonds and the Senior Loans to the Borrower pursuant to the terms of the TDC Project Loan Agreement for purposes of financing a portion of the Project Costs that are not being financed under this Loan Agreement;

**WHEREAS**, contemporaneously with the Issuer and the Borrower entering into this Loan Agreement, the Borrower will execute and deliver to the Issuer its Series 2022A Building Note and its TDC Bank Debt Building Note, each substantially in the form attached hereto as Exhibits C-1 and C-2, respectively (collectively, “2022 TDC Building Notes”), each evidencing the respective loans by the Issuer to the Borrower of the proceeds of the Loan Facility pursuant to this Loan Agreement, which Series 2022A Building Note and TDC Bank Debt Building Note will be assigned by the Issuer, without recourse, to the Senior Collateral Agent pursuant to an Assignment Agreement (Building Loan) between the Issuer and the Senior Collateral Agent dated the same date as this Loan Agreement (the “Issuer Assignment Agreement (Building Loan)”);

**WHEREAS**, in order to secure the Senior Obligations, the Borrower has granted one or more mortgage liens on and security interests in the interests of the Borrower under the Lease Agreement with respect to the real property described on Exhibit A attached hereto and made a part hereof through the Building Leasehold Mortgage in favor of the Senior Collateral Agent and the Issuer, and the Issuer has assigned its interest in the Building Leasehold Mortgage to the Senior Collateral Agent;

**WHEREAS**, the Borrower’s obligations hereunder and under the other Senior Financing Documents will further be secured by the Senior Collateral Documents;

**WHEREAS**, the Borrower has agreed in this Loan Agreement to make, or cause to be made, payments sufficient to pay when due (whether at stated maturity, upon redemption, by acceleration or otherwise) the principal, Redemption Price and Sinking Fund Requirements, if any, of and interest on the Series 2022A Bonds and the debt service on the Senior Term Loans, subject to the terms of this Loan Agreement, the Series 2022A Building Note, the TDC Bank Debt Building Note and the other Senior Financing Documents;

**WHEREAS**, the Building Leasehold Mortgage and Collateral pledged by the Borrower under the Senior Collateral Documents will be held by the Senior Collateral Agent pursuant to the Collateral Agency and Accounts Agreement (as defined in Section 1.1 hereof), and the Senior Collateral Agent will administer the Building Leasehold Mortgage and other Collateral so pledged for the benefit of the Senior Secured Parties (who will in turn act thereunder for the benefit of the holders of the Series 2022A Bonds, the Bank Lenders with respect to the Senior Term Loans, and the holders of any Additional Senior Obligations) and other parties secured pursuant to the Collateral Agency and Accounts Agreement, and subject to the terms of the Intercreditor Agreement;

**WHEREAS**, the Series 2022A Bonds shall be designated as Senior Bonds for purposes of the Indenture;

**NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS, THIS LOAN AGREEMENT WITNESSETH**, in consideration of the premises and the respective representations and agreements and mutual covenants contained in this Loan Agreement, the Issuer and the Borrower covenant and agree as follows:



**ARTICLE I**  
**DEFINITIONS; RULES OF CONSTRUCTION**

**Section 1.1 Definitions.** All capitalized terms used herein but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Collateral Agency and Accounts Agreement dated as of November 1, 2022, by and among the Borrower, The Bank of New York Mellon, as the Intercreditor Agent, The Bank of New York Mellon, as the Senior Collateral Agent, The Bank of New York Mellon, as the Securities Intermediary, The Bank of New York Mellon, as the Trustee, ING Capital LLC, as the Administrative Agent, The Bank of New York Mellon, as the Deposit Account Bank and the Issuer, as it may be amended and supplemented or modified from time to time (the “Collateral Agency and Accounts Agreement”). Except as otherwise expressly provided or unless the context otherwise requires, the rules of interpretation included in Exhibit A to the Collateral Agency and Accounts Agreement shall apply to this Loan Agreement.

**ARTICLE II**  
**REPRESENTATIONS**

**Section 2.1 Representations by the Issuer.** The Issuer represents and warrants to the Borrower as follows:

(a) The Issuer is a local development corporation duly formed and validly existing under Section 1411 of the New York Not-for-Profit Corporation Law, being Chapter 35 of the Consolidated Laws of New York, created by action of the New York Job Development Authority established under Section 1802, Subtitle I, Title 8, Article 8, of the New York Public Authorities Law and has the full power and authority to (i) enter into, execute, deliver and perform its obligations under this Loan Agreement and any other Issuer Documents, (ii) assign its rights (other than Reserved Rights) under this Loan Agreement, the Series 2022A Building Note, the TDC Bank Debt Building Note, the Senior Collateral Documents, and the Building Leasehold Mortgage to the Senior Collateral Agent in accordance with the terms of the Indenture and Collateral Agency and Accounts Agreement, (iii) issue the Series 2022A Bonds and obtain the Senior Term Loan under the Credit Agreement, and (iv) loan the proceeds of the issuance and sale of the Series 2022A Bonds and make the TDC Senior Term Loan Building Loan under the terms of this Loan Agreement to the Borrower for the purpose of financing the Building Loan Costs and other costs contemplated by Section 3.3 hereof.

(b) The Issuer has complied with the provisions of the Act and has full power and authority pursuant to the Act to consummate all transactions contemplated to be performed by the Issuer by this Loan Agreement, the other Issuer Documents, and all other instruments and documents to be executed and delivered by the Issuer pursuant hereto and thereto and to carry out its obligations hereunder and thereunder. The Issuer has duly authorized (i) the execution and delivery of this Loan Agreement and the other Issuer Documents, and the assignment of its rights (other than the Reserved Rights) under this Loan Agreement to the Senior Collateral Agent in accordance with the terms of the Indenture and the other Issuer Documents, and the performance of its obligations hereunder and thereunder, (ii) the issuance and delivery of the Series 2022A Bonds, (iii) the loan of the proceeds of the Loan Facility to the Borrower for the purpose of financing a portion of the Building Loan Costs and other costs contemplated by Section 3.3 hereof

and by the TDC Project Loan Agreement. The Issuer has duly executed and delivered this Loan Agreement, and simultaneously therewith, the Issuer has duly executed and delivered the other Issuer Documents. No such authority or proceedings have been repealed, revoked, rescinded or amended and all such authority and proceedings are in full force and effect.

(c) The Issuer has published notice of public hearing for the Project and held a public hearing for the Project pursuant to Section 147(f) of the Code, and following such public hearing the Governor of the State, based upon a record of such public hearing and the representations made by the Borrower relating to the Project, approved the issuance of the Tax-Exempt Obligations pursuant to Section 147(f) of the Code.

(d) No further approval, consent or withholding of objection on the part of any regulatory body, federal, state or local, is required in connection with (i) the issuance and delivery of the Series 2022A Bonds by the Issuer or (ii) the execution or delivery of or compliance by the Issuer with the terms and conditions of this Loan Agreement or any other Issuer Document. No authority or proceedings for the issuance of the Series 2022A Bonds, the Issuer Documents or other documents executed in connection therewith have been repealed, revoked, rescinded or superseded. The consummation by the Issuer of the transactions set forth in the manner and under the terms and conditions as provided in this Loan Agreement and the other Issuer Documents will comply with all applicable Laws and all required approvals or consents. Notwithstanding the preceding sentences, no representation is expressed as to any action required under federal or state securities or Blue Sky Laws in connection with the sale or distribution of the Series 2022A Bonds.

(e) The Issuer is not in breach of or in default under this Loan Agreement or the other Issuer Documents or in violation of any applicable constitutional provision, law or administrative regulation of the State or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Issuer is a party or is otherwise subject, in each case which breach, default or violation would have a material adverse effect on, or impede, contradict, prohibit or otherwise limit or condition, the authorization, issuance, sale or delivery of the Series 2022A Bonds, or the authorization, execution, delivery and performance of this Loan Agreement or the other Issuer Documents, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute such a breach, default or violation. The execution, delivery and performance of its obligations under this Loan Agreement or the other Issuer Documents by the Issuer do not and will not conflict with or result in a violation or a breach of any organizational documents of the Issuer or any Law or the terms, conditions or provisions of any restriction under any Law, contract, agreement or instrument to which the Issuer is now a party or by which the Issuer is bound, or constitute a default under any of the foregoing.

(f) There is no action, suit, proceeding or litigation pending or, to the best knowledge of the Issuer, threatened, against the Issuer (i) seeking to restrain or enjoin the issuance, sale, execution or delivery of the Series 2022A Bonds or the execution and delivery of the Indenture or any other Issuer Document, or (ii) in any way contesting or affecting the (1) validity of the Series 2022A Bonds, the Indenture or any other Issuer Documents, or (2) any proceedings of the Issuer taken with respect to the issuance or sale of the Series 2022A Bonds, the borrowing of the proceeds of the Loan Facility by the Issuer, the loan of the proceeds of the Loan Facility by the Issuer to the Borrower, the pledge or application of any monies or security provided for the

payment of the Series 2022A Bonds or the Senior Loans, the use of the Series 2022A Bonds proceeds or the Senior Loan proceeds, or the existence or powers of the Issuer or its officers or members.

(g) All corporate action on the part of the Issuer that is required for the execution, delivery, performance and observance by the Issuer of the Series 2022A Bonds, the Issuer Documents and all such other instruments and documents to which it is a party has been duly authorized and effectively taken. Each of this Loan Agreement and the other Issuer Documents constitutes the legal, valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with the terms thereof, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other similar Laws or judicial action affecting the enforcement of creditors' rights generally and the application of general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law). The execution and delivery of this Loan Agreement and the other Issuer Documents, the performance by the Issuer of its obligations hereunder and thereunder and the consummation of the transactions herein and therein contemplated do not and will not (i) materially conflict with, or constitute a material breach or result in a material violation of any agreement or other instrument to which the Issuer is a party or by which it is bound or (ii) conflict with, or constitute a breach or result in a violation of the Act or bylaws of the Issuer, any constitutional or statutory provision or order, rule, regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over the Issuer or its property.

(h) (i) When the Series 2022A Bonds are issued, transferred, authenticated and delivered in accordance with the provisions of the Indenture and the Common Terms Agreement, the Series 2022A Bonds will have been duly authorized, executed, issued and delivered and will constitute valid, special limited obligations of the Issuer payable solely from the revenue and other monies derived by the Issuer from the Series 2022A Building Note and the Series 2022A Project Note and nothing in the Series 2022A Bonds, the Indenture or the Common Terms Agreement shall be construed as assigning or pledging therefor any other funds or assets of the Issuer. Neither the State nor any political subdivision nor instrumentality thereof (other than the Issuer, to the extent herein provided) nor the City are obligated to pay, and neither of the faith or credit nor the taxing power of the State nor the City is pledged to the payment of the principal of, Redemption Price, if any, and interest on the Series 2022A Bonds.

(ii) When the Senior Term Loans are made in accordance with the provisions of the Credit Agreement and Common Terms Agreement, the Senior Term Loans will constitute valid, special limited obligations of the Issuer payable solely from the revenue and other monies derived by the Issuer from the TDC Bank Debt Building Note and the TDC Bank Debt Project Note and nothing in the Credit Agreement or Common Terms Agreement shall be construed as assigning or pledging therefor any other funds or assets of the Issuer. Neither the State nor any political subdivision nor instrumentality thereof (other than the Issuer, to the extent herein provided) nor the City are obligated to pay, and neither of the faith or credit nor the taxing power of the State nor the City is pledged to the repayment of the Senior Term Loans.

(i) Any certificate signed by the Chair, President, Chief Financial Officer, or any other Issuer Representative duly authorized by the Issuer shall be deemed a representation and warranty by the Issuer to the respective parties as to the statements made therein.

(j) The Issuer makes no representation as to (i) the financial position or business condition of the Borrower, (ii) the value of the Project or its suitability for any particular purpose, or (iii) the correctness, completeness or accuracy of any of the statements, materials (financial or otherwise), representations or certifications furnished or to be made by the Borrower in connection with the sale or transfer of the Series 2022A Bonds, the execution and delivery of this Loan Agreement or the consummation of the transactions contemplated hereby.

(k) The Issuer makes no representation or warranty that interest on the Tax Exempt Bonds is or will continue to be exempt from federal or state income taxation.

**Section 2.2 Representations by the Borrower.** The Borrower represents and warrants to the Issuer as follows:

(a) The Borrower is a limited liability company, duly formed, validly existing and in good standing under the laws of the State of Delaware, is qualified to do business in the State and the City and in every jurisdiction where such qualification is required by applicable Law and has all necessary material licenses and permits or other governmental authorizations or approvals required to date to carry on its business and to operate its facilities.

(b) The Borrower has full power and authority to conduct its business as now conducted and as proposed to be conducted and the Borrower has full power and authority to execute, deliver and perform its obligations under each Senior Financing Document to which it is a party.

(c) All necessary limited liability company actions on the part of the Borrower required to authorize the execution, delivery and performance of each of the Senior Financing Documents to which it is a party have been duly taken.

(d) Each of the Senior Financing Documents to which the Borrower is a party has been duly authorized, executed and delivered by the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its respective terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer, liquidation or other similar Laws or judicial action affecting the enforcement of creditors' rights generally (regardless of whether enforceability is controlled in a proceeding in equity or at Law) or by principles of equity which permit the exercise of judicial discretion and except as enforceability of indemnification provisions may be limited by consideration of public policy and, as of the date hereof, all representations and warranties made by the Borrower in such Senior Financing Documents are true and correct in all material respects.

(e) The execution, delivery and performance by the Borrower of each of the Senior Financing Documents to which it is a party does not (i) conflict with its certificate of formation or its operating agreement, (ii) conflict with any contractual obligations binding on or affecting the Borrower, except where such conflict would not reasonably be expected to have a Material Adverse Effect, (iii) violate any provision of any court decree or order binding on or affecting the Borrower in any material respect, except where such violation would not reasonably be expected to have a Material Adverse Effect, (iv) violate any provision of any Law or governmental regulation binding on or affecting the Borrower in any material respect, except where such

violation would not reasonably be expected to have a Material Adverse Effect or (v) result in, or require, the creation or imposition of any Security Interest on any of the properties or revenues of, or interests in, the Borrower, except for Permitted Liens, unless such creation or imposition could not reasonably be expected to have a Material Adverse Effect.

(f) All Security Interests required to be created under the Senior Collateral Documents are valid, legally binding and are ranked as contemplated in the Senior Financing Documents, and all necessary recordings and filings will have been or will be recorded and filed on or promptly following the Closing Date and no Security Interest exists over the Borrower's interest in the Project or over any other of the Borrower's revenues or assets other than Permitted Liens.

(g) The Borrower has a valid leasehold interest in the portion of the Premises comprised of real property (other than such real property to which the Mortgagor instead has been granted Permanent Rights of Access or Temporary Rights of Access (each as defined in and pursuant to the Lease Agreement) under the Lease Agreement), subject only to encumbrances and defects that do not materially impair the Borrower's ability to perform its obligations under the Lease Agreement or the Senior Financing Documents.

(h) (i) The Pledgor directly owns 100% of the equity interests in the Borrower, and (ii) each Equity Member owns, directly or indirectly, the percentage of the equity interests in the Pledgor listed in the Equity Contribution Agreement and, collectively, the Equity Members own 100% of the equity interests in the Pledgor, in each case, free and clear of all Security Interests (other than Permitted Liens), all such equity interests have been duly and validly authorized and issued, and there are no outstanding options, warrants, calls or other rights to subscribe for or otherwise acquire any of such equity interests, except as disclosed by the Borrower to any applicable Secured Parties pursuant to the Financing Documents or as are permitted without disclosure to any applicable Secured Parties pursuant to the Financing Documents.

(i) The Borrower has no subsidiaries.

(j) True and complete copies of all Senior Financing Documents have been duly executed as of the Closing Date, the Senior Financing Documents are in full force and effect as against the Borrower, the Borrower has delivered to the Trustee, the Underwriters, the Bank Lenders, and the Agents, the Senior Financing Documents to which the Borrower is a party, and the Borrower is not in default under any of the Senior Financing Documents pertaining to the Loan Facility to which the Borrower is a party.

(k) The Borrower has no Indebtedness, other than (i) the Series 2022A Bonds, (ii) the TDC Senior Term Loan Building Loan, (iii) other Indebtedness permitted by the Financing Documents, and (iv) any amounts owed to any Equity Member with respect to development fees and Project Costs incurred by such Equity Member on behalf of the Borrower prior to the Closing Date, which amounts will be paid to such Equity Member on the Closing Date.

(l) The Borrower has not engaged in any other activities or business other than the implementation of the Project and activities related or ancillary thereto (including without limitation, the financing thereof).

(m) The Borrower, to the extent applicable, has timely filed (or applied for an extension relating to the same) all federal and state income tax returns related to Taxes it is required by law to file and has paid all material Taxes that are due and payable, except for such Taxes being contested in good faith and for which the Borrower has established adequate reserves in accordance with GAAP. There is no stamp, registration or similar Tax under applicable Law, as presently in effect, imposed, assessed, levied or collected by a Governmental Authority required to be paid on or in relation to amounts payable by the Borrower pursuant to any Senior Financing Document.

(n) The Borrower is in compliance with any Law or governmental rule applicable to the Borrower, and with the terms of all other governmental authority obtained by it, except to the extent that any failure to comply with any of the above could not reasonably be expected to result in a Material Adverse Effect.

(o) No consent or approval of any trustee or holder of any Indebtedness of the Borrower, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority (except in connection with blue sky proceedings) is necessary (or, in the case of any Senior Financing Documents executed prior to the Closing Date, was necessary) in connection with the execution and delivery of the Senior Financing Documents by the Borrower to which it is a party or the performance by the Borrower of its obligations thereunder or the consummation by the Borrower of any transaction therein contemplated, except in respect of all matters contemplated in this clause (o) (i) as have been obtained or made and as are in full force and effect as of the Closing Date, (ii) for any such consent, approval, authorization, order, license, filing or registration which is not required to have been obtained, made or procured as of the Closing Date, and is expected to be received in the normal course, or (iii) where the failure to obtain such consent, permissions, authorizations, orders or licenses would not reasonably be expected to result in a Material Adverse Effect, and the Borrower has no reason to believe that any such consents, permissions, authorizations, orders or licenses will not be provided in the ordinary course in a timely manner when required.

(p) There is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any court or administrative agency, or to the knowledge of the Borrower threatened against the Borrower or its property, or contesting the due organization of the Borrower wherein an unfavorable decision, ruling or finding, to the extent reasonably expected, would reasonably be expected to (i) have a Material Adverse Effect, (ii) have an adverse effect on the validity or enforceability against the Borrower of the Senior Financing Documents to which it is a party or (iii) in any way adversely affect the federal tax-exempt status of the interest on the Tax-Exempt Bonds or, if applicable, other amounts to be received by the Issuer pursuant to the Indenture, this Loan Agreement, or the TDC Project Loan Agreement.

(q) No ERISA Event with respect to the Borrower has occurred or is reasonably expected to occur, that could reasonably be expected to have a Material Adverse Effect.

(r) No Enforcement Action or Event of Default has occurred and is continuing under the Senior Financing Documents pertaining to the Loan Facility.

(s) The Borrower has not filed an election pursuant to Treasury Regulation 301.7701-3(c) to be treated as an association taxable as a corporation and has not been previously taxed as a corporation.

(t) The Borrower does not maintain any securities accounts or deposit accounts, except for the Project Accounts, the Non-Pledged Accounts and such separate operating accounts as are permitted by the Financing Documents.

(u) The Borrower is not an “investment company,” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended.

(v) Each Key Contract which has been executed and delivered by the Borrower is in full force and effect as against the Borrower, and the Borrower is not in default under any of such Key Contracts, except as could not reasonably be expected to have a Material Adverse Effect.

(w) The Borrower has no reason to believe that sufficient funds are not available (or will not be made available) to the D&C Contractor to perform the portion of the D&C Work that is subject to the D&C Contract.

(x) The availability of the Issuer to issue the Series 2022A Bonds, to borrow the proceeds of the Senior Loans from the Bank Finance Parties, and to loan proceeds of such Series 2022A Bonds and Senior Loans to the Borrower as well as the available exemption from mortgage recording tax has been an important inducement to the Borrower to undertake the Project.

(y) The information relating to the Borrower set forth in its application to the Issuer other than information related to future events, financing related information, projections or other estimates in respect of costs and expenses or transaction amounts, each of which was made in good faith but is subject to change, is true and correct in all material respects as of the date provided.

(z) A true, correct and complete affidavit pursuant to Section 22 of the Lien Law of The State Of New York executed and delivered by an Authorized Borrower Representative in connection with the Building Loans is attached hereto as Exhibit B and is made a part hereof. The Section 22 Affidavit attached hereto is in the form required by and complies in all respects with the requirements set forth in Section 22 of the Lien Law of the State of New York.

**Section 2.3 Survival of Representations.** All representations of the Issuer and the Borrower contained in this Loan Agreement, in any other Senior Financing Document to which the Issuer or the Borrower is a party, or in any certificate or other instrument delivered by the Issuer or the Borrower pursuant to this Loan Agreement, or in connection with the transactions contemplated hereby, shall survive the execution and delivery hereof and the issuance, sale and delivery of the Series 2022A Bonds and the funding of the Senior Term Loans under the Credit

Agreement, as representations of facts existing as of the date of execution and delivery of the instruments containing such representations (or as of such date stated therein).

**Section 2.4 Covenant with the Bank Finance Parties.**

(a) The Issuer and the Borrower agree that this Loan Agreement and the Tax Certificates are executed in part to induce the purchase by Owners of the Tax-Exempt Bonds and the making of the Senior Term Loans by the Bank Finance Parties. Accordingly, all covenants and agreements on the part of the Issuer and the Borrower set forth in this Loan Agreement and in the Tax Certificates are hereby declared to be for the benefit of the Owners from time to time of the Tax-Exempt Bonds and the Bank Finance Parties.

(b) Upon the occurrence of a Determination of Taxability, the Borrower agrees to pay or cause to be paid to the Purchaser and any other Owner of the Series 2022A Bonds the amounts payable under Section 4.03 of the Bondholder's Agreement.

**ARTICLE III  
ISSUANCE OF THE LOAN FACILITY**

**Section 3.1 Agreement to Issue the Series 2022A Bonds and Enter into the Credit Agreement; Loan of Proceeds.**

(a) The Issuer hereby agrees to issue, sell and deliver the Series 2022A Bonds in accordance with the terms of the Indenture, this Loan Agreement, the TDC Project Loan Agreement, the Bond Purchase Agreement, the Bondholder's Agreement, the Common Terms Agreement, and the Collateral Agency and Accounts Agreement for application to Building Loan Costs. Pursuant to the Indenture, the Series 2022A Bonds shall be issued, delivered and purchased as "draw down" bonds. Upon the terms and conditions of this Loan Agreement, the Indenture, the Common Terms Agreement, the Bond Purchase Agreement, the Bondholder's Agreement and the Collateral Agency and Accounts Agreement, the Issuer hereby agrees to (i) make one or more loans hereunder to the Borrower on the Initial Drawing Date with a portion of the proceeds of the Initial Drawing made on the Initial Drawing Date and (ii) make one or more loans hereunder to the Borrower, from time to time on the date of each Drawing, with all or a portion of the proceeds of each other Drawing loaned to the Issuer on such date of Drawing (collectively, all such loans made to the Borrower pursuant to this paragraph, the "Series 2022A Bond Building Loan" and, together with Series 2022A Bond Project Loan loaned pursuant to the TDC Project Loan Agreement, the "TDC Series 2022A Bond Loans"). The TDC Series 2022A Bond Loans, collectively, shall be in the full amount of the proceeds of the Series 2022A Bonds loaned to the Issuer on each applicable date of Drawing. The Issuer hereby agrees to request Drawings of Series 2022A Bonds (which requests may be made by the Borrower on behalf of the Issuer) on each date of Drawing and upon the Trustee's receipt of a Drawing Request or other written instructions (including from the Borrower on behalf of the Issuer) in accordance with the Indenture, the Bond Purchase Agreement and the Bondholder's Agreement and instruct the Trustee to deliver to the Securities Intermediary the proceeds received from each Drawing in the amounts designated for the applicable date of Drawing in Schedule 2.04 of the Credit Agreement for deposit directly into the Series 2022A Bond Proceeds Sub-Account of the Tax-Exempt Bond Proceeds Sub-Account of the Construction Account maintained by the Securities Intermediary pursuant to



the Collateral Agency and Accounts Agreement and as otherwise required by the Collateral Agency and Accounts Agreement.

(b) The Issuer hereby agrees to borrow the Senior Term Loans in accordance with the terms of the Credit Agreement, the Common Terms Agreement, this Loan Agreement, the TDC Building Loan Agreement, and the Collateral Agency and Accounts Agreement for application to Building Loan Costs. Upon the terms and conditions of this Loan Agreement, the Common Terms Agreement, the Credit Agreement and the Collateral Agency and Accounts Agreement, the Issuer hereby agrees to (i) make one or more loans hereunder to the Borrower on the Closing Date in and with a portion of the proceeds of the initial Senior Term Loans made to the Issuer on the Closing Date and (ii) make one or more loans hereunder to the Borrower, from time to time on each date of Borrowing, in and with all or a portion of the proceeds of each other Senior Term Loan made to the Issuer on such date of Borrowing (collectively, all such loans made to the Borrower pursuant to this paragraph, the “TDC Senior Term Loan Building Loan,” and, together with TDC Senior Term Loan Project Loan made pursuant to the TDC Project Loan Agreement, the “TDC Bank Debt Loans” and, collectively with the TDC Series 2022A Bond Loans and the TDC Security Deposit Project Loan, the “Loan Facility Loans”). The TDC Bank Debt Loans, collectively, shall be in the full amount of the proceeds of the Senior Term Loans made to the Issuer on each applicable date of Borrowing. The Issuer hereby agrees to request Borrowings of Senior Term Loans (which requests may be made by the Borrower on behalf of the Issuer) on each date of Borrowing and upon the Administrative Agent’s receipt of a Borrowing Request or other written instructions (including from the Borrower on behalf of the Issuer) pursuant to the Credit Agreement, the Issuer hereby instructs the Administrative Agent to deliver to the Securities Intermediary the proceeds of each Borrowing (as defined in the Common Terms Agreement) of the Senior Term Loans in the amounts designated for the applicable date of Borrowing in Schedule 2.04 of the Credit Agreement, for deposit directly into the Bank Loan Proceeds Sub-Account of the Construction Account maintained by the Securities Intermediary pursuant to the Collateral Agency and Accounts Agreement and as otherwise required by the Collateral Agency and Accounts Agreement.

**Section 3.2 Provision of Funds.** In the event that proceeds from the Series 2022A Bond Building Loan and the TDC Senior Term Loan Building Loan (collectively, the “Building Loans”), or any other available (or to be available) funds are not sufficient to pay the Building Loan Costs as and when due and payable, the Borrower agrees to pay (or cause to be paid) all of such Building Loan Costs as and when due and payable, and the Borrower will provide any additional funds required to pay Building Loan Costs; provided, however the Borrower shall not be entitled to any reimbursement from the Issuer, the Administrative Agent or the Trustee for the payment of such Building Loan Costs nor shall the Borrower be entitled to any abatement, diminution or postponement of its payments hereunder, unless otherwise provided pursuant to the Collateral Agency and Accounts Agreement or the Intercreditor Agreement.

**Section 3.3 Building Loans to Finance Building Loan Costs; Trust Fund.** The Borrower shall use the proceeds of the Building Loans to pay for Building Loan Costs pursuant to this Loan Agreement. Proceeds of the Building Loans shall be applied only for Building Loan Costs, and subject to such further limitations as are set forth in the Lease Agreement, the Collateral

Agency and Accounts Agreement, the Intercreditor Agreement, the Credit Agreement, the Common Terms Agreement, this Loan Agreement, and the Tax Certificates.

(b) This Loan Agreement and the Building Leasehold Mortgage are subject to the Trust Fund provisions of Section 13 of the Lien Law of the State. The Borrower shall receive all advances of funds under this Loan Agreement and will hold the right to receive such advances as a trust fund to be applied first to the payment of the “cost of the improvement” under subdivision 5 of Section 2 of the Lien Law of the State before using any part of the same for any other purpose.

**Section 3.4 Building Loans as Security for Loan Facility.**

The Borrower acknowledges that payments by the Borrower under this Loan Agreement and the TDC Project Loan Agreement are intended to provide for payment of the interest, principal, premium, if any, and Redemption Price on the Series 2022A Bonds and principal, interest and other amounts on the Senior Loans in addition to any fees required to be paid by the Issuer or the Borrower pursuant to the Credit Agreement and Common Terms Agreement.

**Section 3.5 Limitation of Issuer’s Liability.** The Loan Facility is a special and limited obligation of the Issuer, payable solely from and secured exclusively by the Senior Collateral, and, in the case of the Series 2022A Bonds, the Trust Estate, including the payments to be made by the Borrower under this Loan Agreement, and any Additional Obligations Loan Agreement Supplement. The Loan Facility is not payable from taxes or appropriations made by the State, or of any county, municipality or any other political subdivision, agency or instrumentality established under the Laws of the State or the City. The Loan Facility does not constitute an indebtedness, or a pledge of the faith and credit of, the State or any county, municipality or other political subdivision, agency or instrumentality established under the Laws of the State (other than the Issuer), or the City or any political subdivision thereof within the meaning or application of any constitutional provision or limitation. The special limited obligation of the Issuer to pay the amount of the interest, principal, premium, if any, and Redemption Price of the Series 2022A Bonds and the principal, interest and other amounts on the Senior Loans, does not constitute a pledge of the faith, credit or taxing power of the State or the City or any county, municipality or any other political subdivision, agency or instrumentality established under the Laws of the State or the City thereof within the meaning or application of any constitutional provision or limitation. The Issuer has no taxing power. The Secured Parties have, individually and collectively, no right to have taxes levied or compel appropriations by the State or the City or any county, municipality or any other political subdivision, agency or instrumentality established under the Laws of the State, or the City of the State or the City for the payment of any or all of the amount of such interest, principal, premium, if any, or Redemption Price of the Series 2022A Bonds or principal, interest or other amounts on the Senior Loans.

No provision, covenant, or agreement contained in this Loan Agreement, or any obligations herein imposed upon the Issuer, or the breach thereof shall give rise to a pecuniary liability of the Issuer or any member, officer or agent of the Issuer or a charge against the Issuer’s general credit. In making the agreements, provisions and covenants set forth in this Loan Agreement, the Issuer has not obligated itself except with respect to the application of the payments, as hereinabove provided.

No recourse shall be had for the payment of interest, principal, premium, if any, or Redemption Price of the Series 2022A Bonds or principal, interest or other amounts on the Senior Loans, or for any claim based thereon or upon any obligation, covenant or agreement in this Loan Agreement contained, against any past, present or future officer, director, member, trustee, employee or agent of the Issuer or any officer, director, member, trustee, employee or agent of any successor entity, as such, either directly or through the Issuer or any successor entity, under any rule of law or equity, statute or constitution or by enforcement by any assessment or penalty or otherwise.

All covenants, stipulations, promises, agreements and obligations of the Issuer set forth herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Issuer and not of any member, officer or employee of the Issuer in his or her individual capacity, and no recourse shall be had for the payment of interest, principal, premium, if any, or Redemption Price of the Series 2022A Bonds or principal, interest and other amounts on the Senior Loans, or for any claim based thereon or hereunder against any member, officer or employee of the Issuer or any Person executing the Loan Facility in their individual capacity.

**Section 3.6 Compliance with Indenture, the Credit Agreement, Intercreditor Agreement and Collateral Agency and Accounts Agreement.** In accordance with any applicable provisions of the Indenture, the Issuer shall take any action directed by the Borrower to the extent required under, or permitted by, the provisions of the Indenture, this Loan Agreement, the Credit Agreement, the Common Terms Agreement, the Bond Purchase Agreement, the Bondholder's Agreement, the Intercreditor Agreement, and the Collateral Agency and Accounts Agreement.

(b) The Borrower consents to the terms and conditions of the Indenture. The Borrower shall take all action required to be taken by the Borrower in the Indenture as if the Borrower were a party thereto.

## **ARTICLE IV LOAN PROVISIONS**

### **Section 4.1 Amounts Payable.**

(a) (1) The Borrower hereby covenants and agrees to repay the TDC Series 2022A Bond Loans and interest and other amounts thereon each date that any payment of interest, principal or Redemption Price on the Series 2022A Bonds is required to be made in respect of the Series 2022A Bonds pursuant to the Indenture (provided that amounts deposited into the Accounts under the Collateral Agency and Accounts Agreement with respect to such payments shall be determined with reference to amounts set forth in the Series 2022A Bond Loans Balloon Indebtedness Certificate attached hereto as Exhibit D-1), until the payment of interest, principal, or Redemption Price on the Series 2022A Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, in immediately available funds, a sum equal to the amount due and payable on such date as interest, principal or Redemption Price on the Series 2022A Bonds as provided in the Indenture.

(2) The Borrower hereby covenants and agrees to repay the TDC Senior Bank Debt Loans and interest and other amounts thereon on each date that any payment of principal, interest or other amount on the Senior Term Loans is required to be made in respect of the Senior Term Loans (provided that amounts deposited into the Accounts under the Collateral Agency and Accounts Agreement with respect to such payments shall be determined with reference to amounts set forth in the Senior Term Loan Balloon Indebtedness Certificate, attached hereto as Exhibit D-2), until all Senior Term Loan shall have been fully paid, in accordance with the Credit Agreement and the Common Terms Agreement, in immediately available funds.

(3) The Issuer hereby directs the Borrower to and, subject to the Indenture, the Credit Agreement, the Common Terms Agreement or the Collateral Agency and Accounts Agreement, as applicable, the Borrower hereby agrees, to pay to the Senior Collateral Agent all payments payable by the Borrower in respect of the Loan Facility Loans pursuant to the immediately preceding subsections 4.1(a)(1)-(2). All repayments of Loan Facility Loans required to be made by the Borrower to the Issuer pursuant to this Section shall be deemed satisfied by the Borrower, upon the Borrower's making in full the corresponding payment under the Series 2022A Bonds or the Senior Term Loans, as applicable, by causing to be made the transfers required with respect thereto pursuant to Section 5.06(a) through (k) of the Collateral Agency and Accounts Agreement.

(b) The Borrower also shall pay to the Issuer, in accordance with the terms of the Collateral Agency and Accounts Agreement, the Issuer's reasonable costs, fees and expenses directly related to the issuance of the Series 2022A Bonds and the making of the Senior Term Loans and any related financing instruments, or any amendments, modifications or waivers related to the issuance of the Series 2022A Bonds and the making of the Senior Term Loans or any related financing instruments, and its enforcement of Reserved Rights, including the reasonable fees and expenses of its counsel. The fees to be paid to the Issuer include the amount of \$7,457,463.20 which shall be paid to the Issuer on the Closing Date and an annual administrative fee in the amount of \$300,000 not later than the last day of May in each year that the Series 2022A Bonds are Outstanding.

(c) The Borrower also will pay, in accordance with the terms of the Collateral Agency and Accounts Agreement, the reasonable fees and expenses of the Trustee, the Administrative Agent and the Agents, including without limitation (i) any fees or expenses incurred pursuant to Section 8.02(b) of the Master Indenture, and all other amounts which may be payable to the Trustee under the terms of the Indenture or in accordance with any contractual arrangement between the Borrower and the Trustee with respect thereto and (ii) any fees, including commitment fees, or expenses incurred pursuant to the Credit Agreement and Common Terms Agreement, and all other amounts which may be payable to the Administrative Agent under the terms of the Credit Agreement and Common Terms Agreement.

(d) In the event that the Borrower should fail to make any of the payments required in this Section 4.1, the amount so in default shall continue as an obligation of the Borrower until the amount in default shall have been fully paid, and the Borrower agrees to pay the same with interest thereon, to the extent and in such amount as provided under the Indenture, the Credit Agreement, the Common Terms Agreement and the Collateral Agency and Accounts Agreement.

(e) If the principal or Redemption Price and interest on the Series 2022A Bonds shall have been paid sufficiently that payment of all Series 2022A Bonds Outstanding and all interest and other amounts payable thereon shall be deemed to have occurred in accordance with Article VII of the Master Indenture and the Common Terms Agreement, then, with respect to the Series 2022A Bonds no longer Outstanding for purposes of the Indenture, the obligations of the Borrower to make payments pursuant to Section 4.1(a)(1) hereof shall be deemed to have been satisfied in full, and the Borrower's obligations under Section 4.1(a)(1) hereof and this Loan Agreement and the Series 2022A Building Note shall be discharged, as applicable.

(f) If the principal, interest and other amounts on the Senior Term Loans shall have been paid sufficiently that payment of all Senior Term Loans shall be deemed to have occurred and the commitments of the Lenders to make Senior Term Loans have expired or been irrevocably cancelled or terminated in accordance with the terms of the Credit Agreement and the Common Terms Agreement, the obligations of the Borrower to make payments pursuant to Section 4.1(a)(2) hereof shall be deemed to have been satisfied in full, and the Borrower's obligations under Section 4.1(a)(2) hereof and this Loan Agreement and the TDC Bank Debt Building Note shall be discharged

(g) The Borrower agrees to make such payments to the Senior Collateral Agent and take such other actions as are required of it under any of the Tax Certificates including any payments to satisfy any Rebate Amount and for any rebate analyst engaged to calculate such Rebate Amount. The obligation of the Borrower to make such payments and to take such other actions shall be absolute and unconditional and shall remain in effect and be binding upon the Borrower notwithstanding the release and discharge of this Loan Agreement or any of the Tax Certificates.

(h) Subject to the provisions of the following sentence, each Loan Facility Loan shall bear interest on the outstanding principal amount thereof at a rate per annum equal to the applicable interest rate under, and such interest shall be calculated in accordance with, the corresponding Senior Financing Document from which such Loan Facility Loan was funded. If any principal or interest for any Senior Obligations is not paid when due, whether at stated maturity, by acceleration or otherwise in accordance with the applicable Senior Financing Documents, and the Issuer is required to pay interest on the amount past due and unpaid at the applicable default rate and/or pay other fees, penalties or late charges, the Borrower shall make a corresponding payment to the Issuer in an amount equal to the full amount of such payment of default interest, in accordance with the applicable Senior Financing Document and the Collateral Agency and Accounts Agreement. Accrued interest on any Loan Facility Loan shall be due and payable in arrears on each Interest Payment Date applicable to the corresponding Senior Obligations and at such other times as may be specified in the Senior Financing Document from which such Loan Facility Loan was funded; provided that in the event of any repayment or prepayment of any portion of any Loan Facility Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment in accordance with the applicable Senior Financing Document. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

(i) In addition to the other amounts payable by the Borrower pursuant to this Section 4.1, Borrower covenants and agrees to repay any and all amounts payable to the Issuer pursuant to any Additional Obligations Loan Agreement Supplement and corresponding Note in accordance with the terms of this Loan Agreement, as the same shall be supplemented by such Additional Obligations Loan Agreement Supplement, and the Collateral Agency and Accounts Agreement.

(j) All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made from the applicable Subaccount of the Senior Obligations Payment Account, or other applicable Project Account, in accordance with the Collateral Agency and Accounts Agreement to the specified Secured Debt Representative(s) or Senior Secured Party, as applicable, for the account of the respective Senior Secured Party to which such payment is owed, on the date and at the time and location specified in the relevant Senior Financing Documents, in Dollars, in immediately available funds; provided, however, the insufficiency of funds in any Project Account shall not relieve the Borrower of any payment obligation hereunder.

#### **Section 4.2 Obligations of Borrower Unconditional.**

The obligations of the Borrower to make the payments required in Section 4.1 hereof and to perform and observe the other agreements contained herein shall be absolute and unconditional and shall not be subject to any defense or any right of setoff, counterclaim or recoupment arising out of (a) any breach by the Issuer, the Trustee, the Administrative Agent, any other Agent or any other Senior Secured Party of any obligation to the Borrower, whether hereunder or otherwise, or (b) any indebtedness or liability at any time owing to the Borrower by the Issuer, the Trustee, the Administrative Agent, any other Agent or any other Senior Secured Party. Until the Discharge of Senior Obligations, the Borrower will not suspend or discontinue any payments provided for in Section 4.1 hereof, and the Borrower (1) will perform and observe all other obligations of the Borrower contained in this Loan Agreement and the Senior Financing Documents and (2) will not terminate this Loan Agreement or any Senior Financing Document, except as permitted by the Senior Financing Documents, for any cause, or any failure of the Issuer, the Trustee, the Administrative Agent, any other Agent or any other Senior Secured Party to perform and observe any agreement, whether express or implied, or for any failure of the Issuer, the Trustee, the Administrative Agent, any other Agent or any other Senior Secured Party to comply with any duty, liability or obligation of the Issuer, the Trustee, the Administrative Agent, any other Agent or any other Senior Secured Party, as applicable, arising out of or connected with this Loan Agreement.

### **ARTICLE V PREPAYMENT PROVISIONS AND REDEMPTION**

#### **Section 5.1 Prepayment and Redemption of Series 2022A Bonds.**

(a) The Borrower shall have the option to prepay all or any part of the Series 2022A Bond Building Loans hereunder at the times and in the amounts as necessary to cause the Issuer to redeem the corresponding Series 2022A Bonds, in accordance with the terms of the Indenture, the Common Terms Agreement, the Bond Purchase Agreement, the Bondholder's Agreement and the Series 2022A Bonds that may be subject to optional redemption. The Issuer, at the request of

the Borrower, if applicable, shall forthwith take all steps (other than the payment of funds necessary to effect such redemption (except with respect to funds provided by the Borrower to the Issuer)) necessary under the applicable redemption provisions of the Indenture and the Common Terms Agreement to effect redemption of all or part of the Outstanding Series 2022A Bonds, as may be specified by the Borrower and required by the Indenture and the Common Terms Agreement, on the date established for such redemption.

(b) The Borrower acknowledges that the Series 2022A Bonds are further subject to extraordinary redemption, in whole or in part, as provided in Section 2.04 of the First Supplemental Indenture. To the extent that the Issuer is required to so redeem the Series 2022A Bonds (or any portion thereof) in accordance with the Indenture, the Common Terms Agreement, the Bondholder's Agreement, or any other Senior Financing Document, the Borrower shall prepay the TDC Series 2022A Bond Loans in a principal amount equal to the full amount of such redemption that has been accepted by the relevant holder of the Series 2022A Bonds in accordance with the terms of the relevant Senior Financing Documents. To the extent that the Issuer is required to accompany such redemption payment with (i) a payment of all accrued but unpaid interest on amounts redeemed, (ii) a payment of breakage costs or other amounts related to such redemption, or (iii) a payment of any other relevant amounts, including any fees, make-whole amounts or prepayment premiums, under the terms of the relevant Senior Financing Documents in respect of the Series 2022A Bonds being redeemed, the Borrower shall make a corresponding payment in the aggregate amount of such payments to or on behalf of the Issuer under the relevant Senior Financing Documents pursuant to the terms of the Indenture, the Common Terms Agreement and the Collateral Agency and Accounts Agreement.

## **Section 5.2 Prepayment of TDC Senior Term Loan Building Loan.**

(a) The Borrower shall have the option to prepay all or any part of the TDC Senior Term Loan Building Loans hereunder at the times and in the amounts as necessary to cause the Issuer to voluntarily prepay all or a portion of the applicable Senior Term Loans, in accordance with the terms of the Credit Agreement and the Common Terms Agreement. The Issuer, at the request of the Borrower, if applicable, shall forthwith take all steps (other than the payment of funds necessary to effect such prepayment (except with respect to funds provided by the Borrower to the Issuer)) necessary under the applicable prepayment provisions of the Credit Agreement to effect prepayment of all or part of the Outstanding Senior Term Loans, as may be specified by the Borrower and required by the Credit Agreement or the Common Terms Agreement, on the date established for such prepayment.

(b) To the extent that the Issuer is required to so prepay or offer to prepay the Senior Term Loans (or any portion thereof) in accordance with the Credit Agreement or the Common Terms Agreement, or any other Senior Financing Document, the Borrower shall prepay the TDC Senior Term Loan Building Loans in a principal amount equal to the full amount of such prepayment or offer to prepay that has been accepted by the relevant Bank Finance Parties in accordance with the terms of the relevant Senior Financing Documents. To the extent that the Issuer is required to accompany such prepayment with (i) a payment of all accrued but unpaid interest on amounts prepaid, (ii) a payment of breakage costs or other amounts related to such prepayment, or (iii) a payment of any other relevant amounts, including any fees, make-whole amounts or prepayment premiums, under the terms of the relevant Senior Financing Documents

in respect of the Senior Term Loans being prepaid, the Borrower shall make a corresponding payment in the aggregate amount of such payments to or on behalf of the Issuer under the relevant Senior Financing Documents pursuant to the terms of the Credit Agreement, the Common Terms Agreement and the Collateral Agency and Accounts Agreement.

## **ARTICLE VI SPECIAL COVENANTS OF THE BORROWER**

### **Section 6.1 Borrower Covenants.**

The Borrower shall comply with all Borrower Covenants in accordance with Article 10 of the Collateral Agency and Accounts Agreement and Article V and VI of the Common Terms Agreement. The Borrower acknowledges that the Borrower Covenants under the Collateral Agency and Accounts Agreement shall inure to the benefit of the Issuer under the Collateral Agency and Accounts Agreement as a beneficiary of the Borrower Covenants. The Borrower shall timely observe, perform and comply in all material respects with its obligations under the Senior Financing Documents to which it is a party and shall maintain, preserve and enforce its material rights and privileges under the Senior Financing Documents in a commercially reasonable manner.

### **Section 6.2 Issuer and Borrower Representations.**

Whenever under the provisions of this Loan Agreement the approval of the Issuer or the Borrower is required or the Issuer or the Borrower is required to take some action at the request of the other party hereto, such approval or such request shall be given for the Issuer by an Issuer Representative and for the Borrower by an Authorized Borrower Representative and the Trustee and/or the Senior Collateral Agent, as applicable, shall be permitted to rely on, and shall be protected in acting upon, such approval.

## **ARTICLE VII ASSIGNMENT; INDEMNIFICATION**

### **Section 7.1 Assignment.**

Except as expressly contemplated herein, in the Indenture, the Credit Agreement, the Common Terms Agreement, the Collateral Agency and Accounts Agreement and the Security Documents, or in the other Financing Documents, neither the Borrower nor the Issuer may assign its interest in this Loan Agreement.

### **Section 7.2 Release and Indemnification Covenants.**

(a) The Borrower agrees to and does hereby indemnify and hold harmless the Issuer and any member, principal, officer, director, official, agent, employee, and attorney thereof, any person who “controls” the Issuer (within the meaning of Section 15 of the Securities Act of 1933, as amended, or Section 20 of the Securities Exchange Act of 1934, as amended), the Trustee and any member, principal, officer, director, official, agent, employee, and attorney thereof, the Administrative Agent and any member, principal, officer, director, official, agent, employee, and attorney thereof, the Agents and any member, principal, officer, director, official, agent, employee, and attorney thereof, and the State (collectively, the “Indemnified Parties”) against any and all



losses, claims, damages or liabilities (including all costs, expenses and reasonable counsel fees actually incurred in investigating or defending such claim) suffered by any of the Indemnified Parties to the extent caused by, relating to, arising out of, resulting from, or in any way connected with (i) the condition, use, ownership, possession, conduct, management, planning, design, acquisition, construction, installation, financing, or sale of the Project or any part thereof including the payment of the Rebate Amount to the federal government, (ii) the acceptance or administration by the Issuer without gross negligence or willful misconduct of its duties under the Indenture, (iii) any untrue statement of a material fact contained in the Borrower's application to the Issuer, (iv) any omission by the Borrower of a material fact necessary to be stated in the Borrower's application to the Issuer, (v) the acceptance and administration of the duties of the Trustee under the Indenture, the Senior Financing Documents and any documents related thereto, and (vi) the acceptance and administration of the duties of the Administrative Agent or any of the Agents under the Senior Financing Documents to which each may be a party. In case any action shall be brought against one or more of the Indemnified Parties based upon any of the above and in respect to which indemnity may be sought against the Borrower, such Indemnified Party shall promptly notify the Borrower in writing, and except where the Borrower is the claimant, the Borrower shall assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party, the payment of all reasonable costs and expenses and the right to negotiate and consent to settlement. Any one or more of the Indemnified Parties shall have the right to employ separate counsel at the expense of the Borrower in any such action and to participate in the defense thereof if, in the reasonable opinion of the Indemnified Party, a conflict of interest could arise out of the representation of the parties by the same counsel. The Borrower shall not be liable for any settlement of any such action effected without the consent of the Borrower, but if settled with the consent of the Borrower, or if there is a final judgment for the claimant on any such action, the Borrower agrees to indemnify and hold harmless the Indemnified Parties from and against any loss or liability by reason of such settlement or judgment.

(b) The Borrower agrees to and does hereby indemnify and hold harmless the Indemnified Parties against any and all losses, claims, damages or liabilities (including all costs, expenses, and reasonable counsel fees actually incurred in investigating or defending such claim) suffered by any of the Indemnified Parties and caused by, relating to, arising out of, resulting from, or in any way connected to an examination, investigation or audit of the Tax-Exempt Bonds by the IRS. In the event of such examination, investigation or audit, the Indemnified Parties shall have the right to employ counsel reasonably satisfactory to the Borrower at the expense of the Borrower. In such event, the Borrower shall assume the primary role in responding to and negotiating with the IRS, but shall inform the Indemnified Parties of the status of the investigation. In the event the Borrower fails to respond adequately and promptly to the IRS, the Issuer shall have the right to assume the primary role in responding to and negotiating with the IRS and shall have the right to enter into a closing agreement, for which the Borrower shall be liable.

(c) Notwithstanding anything in this Loan Agreement to the contrary which may limit recourse to the Borrower or may otherwise purport to limit the liability of the Borrower, the provisions of this Section 7.2 shall control the Borrower's obligations, and shall survive repayment of the Series 2022A Bonds or any Additional Obligations and the Senior Term Loans.

(d) Notwithstanding anything to the contrary contained herein, the Borrower shall have no liability to indemnify the Issuer, the Senior Collateral Agent, the Administrative Agent or the

Trustee against claims or damages resulting from such parties' own gross negligence or willful misconduct.

(e) If the reimbursement provided for in this Section 7.2 is unenforceable, or is unavailable to the Borrower in respect of any losses, claims, damages, or liabilities (or actions in respect thereof) of the type subject to reimbursement herein, then the Borrower shall, in lieu of reimbursing such Indemnified Parties, contribute to the amount paid or payable by such Indemnified Parties as a results of such losses, claims, damages or liabilities (or actions in respect thereof).

## **ARTICLE VIII EVENTS OF DEFAULTS AND REMEDIES**

### **Section 8.1 Events of Default.**

(1) Any one or more of the following events shall constitute "Events of Default" for the Building Loans, the TDC Bank Debt Building Note, the Series 2022A Building Note, and under this Loan Agreement:

(a) The Borrower fails to pay any amount required to be paid under Section 4.1(a)(1) or (2) hereof and, in the case of such failure to pay interest with respect to Section 4.1(a)(1) or (2), such failure is not remedied within three (3) Business Days after the applicable due date;

(b) Any representation or warranty made by the Borrower in any Senior Financing Document to which it is a party proves to have been incorrect or misleading in any material respect when made, and a Material Adverse Effect could reasonably be expected to result therefrom unless such misrepresentation is capable of remedy and is remedied within thirty (30) days after the receipt by the Borrower of written notice from the Trustee or Administrative Agent thereof;

(c) The Borrower fails to comply with any affirmative or negative covenant under the Senior Financing Documents (other than those specified in subsection (a) and (b) of this Section 8.1) to which it is a party, unless such failure is capable of being remedied and is remedied within thirty (30) days after the earlier of (i) written notice specifying such failure shall have been given to the Trustee and the Administrative Agent by the Borrower or (ii) written notice specifying such failure and requesting that it be remedied shall have been given to the Borrower by the Trustee or the Administrative Agent, or such longer period as is reasonably necessary under the circumstances to remedy such failure so long as corrective action is instituted by the Borrower within the applicable thirty (30) day period and is diligently pursued until such failure is corrected and in any event not to exceed one hundred and eighty (180) days without the prior written approval of the Required Bank Finance Parties;

(d) Any "Event of Default" by the Borrower under any of the Key Contracts (as defined in the Lease Agreement) that continues beyond any applicable cure or grace period;

(e) The occurrence of an "Event of Default" by the Borrower under the Building Loan Mortgage that continues beyond any applicable cure or grace period;

(f) The occurrence of an “Event of Default” by the Borrower under and as defined in the Lease Agreement, that continues beyond any applicable cure or grace period;

(g) Any Senior Financing Document (other than (i) a Senior Collateral Document or (ii) a Senior Financing Document relating to Indebtedness of the Borrower that has been repaid or otherwise discharged in full) ceases to be in full force and effect unless such document shall be replaced by a contract on substantially similar terms within thirty (30) days following the earlier of (i) the Borrower’s knowledge of such occurrence or (ii) the delivery of written notice thereof to the Borrower by the Senior Collateral Agent, or such longer period, not exceeding one hundred and eighty (180) days, reasonably necessary to effect such replacement;

(h) A judgment against the Borrower for the payment of money in an amount in excess of \$25,000,000, without taking into account any portion of the amount of such judgment that is covered by insurance or for which the Borrower is entitled to indemnification from any third party, if such judgment remains unsatisfied without any procurement of a stay of execution within sixty (60) days; provided, that any such judgment shall not constitute an Event of Default hereunder during the pendency of an appeal thereof, so long as, during such appeal, execution is effectively stayed or the liability for such judgment is adequately covered by insurance or a performance bond;

(i) The Borrower shall fail to maintain its existence as a Delaware limited liability company or its qualification to do business in New York;

(j) Any Senior Collateral Documents shall cease (other than as expressly permitted under the Senior Financing Documents) to be effective to grant a perfected Security Interest on any material portion of the Collateral described therein other than as a result of actions or failure to act by the applicable Secured Party, and with the priority purported to be created thereby and such event continues for thirty (30) days after the applicable agent giving notice thereof to the Borrower;

(k) The occurrence of an “Event of Default” that continues beyond any applicable cure or grace period under the Indenture, the Credit Agreement, the Common Terms Agreement, any of the Senior Financing Documents, or any additional financing document governing other Secured Obligations, or the occurrence of an “Enforcement Action” under the Collateral Agency and Accounts Agreement;

(l) Failure of the Borrower to achieve Substantial Completion of the Project by the Outside Completion Date (as defined in the Lease Agreement); or

(m) The Borrower institutes a proceeding to be adjudicated as bankrupt or insolvent, or shall consent to the institution of bankruptcy or insolvency proceedings against it, or shall file a petition or answer or consent seeking reorganization or relief under the federal Bankruptcy Code or any other similar applicable federal or state law, or shall consent to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee or sequestrator (or other similar official) of the Borrower or of any substantial part of its property, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due.

## **Section 8.2 Remedies.**

(a) (i) Whenever any Event of Default hereunder shall have occurred and be continuing, subject in all events to the terms of the Intercreditor Agreement, the Trustee, the Administrative Agent or the Issuer with the written consent of the Trustee or the Administrative Agent, as applicable, have the right to, in conjunction with its available remedies under the Indenture, the Credit Agreement, or the Common Terms Agreement, take one or any combination of the following remedial steps, by notice to the Borrower, the Senior Collateral Agent, and the Port Authority:

(A) Declare that all or any part of any amounts outstanding under the Series 2022A Building Note are (1) immediately due and payable, and/or (2) payable on demand by the Trustee, and any such notice shall take effect in accordance with its terms but only if all amounts payable with respect to the Outstanding Bonds are being accelerated pursuant to Section 8.02(b)(2) of the Master Indenture, or if all of the Outstanding Bonds are being defeased pursuant to Article VII of the Master Indenture or otherwise paid in full;

(B) Declare that all or any part of any amount outstanding under TDC Bank Debt Building Note is immediately due and payable in accordance with this Loan Agreement, the Credit Agreement and the Common Terms Agreement;

(C) Pursuant to the terms of the Collateral Agency and Accounts Agreement, direct the Senior Collateral Agent to take or cause to be taken any and all actions necessary to implement any available remedies with respect to the Collateral under any of the Senior Collateral Documents;

(D) Have reasonable access to and inspect, examine and make copies of the books and records and any and all accounts, data and income tax and other tax returns of the Borrower during regular business hours of the Borrower and following prior reasonable notice; or

(E) Take on behalf of the Bank Finance Parties whatever other action under the Senior Collateral Documents, at law or in equity, as may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Loan Agreement or the rights of the Bank Finance Parties, in each case subject to the terms of the Collateral Agency and Accounts Agreement.

(ii) Whenever an Event of Default described in Section 8.01(m) shall have occurred all amounts outstanding under the Series 2022A Building Notes and the TDC Bank Debt Note shall immediately become due and payable, in each case, without presentment, demand, protest or notice any kind, all of which are hereby waived, by the Borrower.

(b) Subject in all events to the terms of the Intercreditor Agreement, upon any Credit Acceleration (as defined in the Common Terms Agreement) and/or any other acceleration of

Senior Obligations (other than the Secured Hedge Agreements), the Loan Facility Loans shall be concurrently accelerated hereunder to the same extent and the Borrower shall have an obligation to repay the Loan Facility Loans that have been so accelerated and pay all interest accrued in respect thereof, along with any fees, make-whole amounts, prepayment premiums, breakage costs and any other amounts then due and payable to the Issuer in accordance with this Loan Agreement, the Collateral Agency and Accounts Agreement and the other Senior Financing Documents. All payments by the Borrower to the Issuer under this Article VIII shall be deemed satisfied by the Borrower, upon the Borrower making or causing to be made in accordance with the Collateral Agency and Accounts Agreement an equivalent payment to the relevant Secured Debt Representative(s) or Secured Party, as applicable, of the accelerated Outstanding Secured Obligations (along with all other fees, make-whole amounts, prepayment premiums, breakage costs and any other amounts then due and payable by the Issuer to the relevant Secured Debt Representative(s) or Secured Party, as applicable, in accordance with the Senior Financing Documents).

(c) Any rights and remedies as are given to the Issuer under this Loan Agreement will also extend to the Bank Finance Parties, the Owners of the Bonds, the Administrative Agent, the Senior Collateral Agent, and the Trustee, who will be entitled to the benefit of all covenants and agreements contained in this Loan Agreement, subject to the terms of the Indenture, the Credit Agreement, the Common Terms Agreement, the Senior Collateral Documents and the Intercreditor Agreement.

(d) Any Enforcement Action and any other exercise of remedies (including acceleration of any Loan Facility Loans) hereunder shall be taken solely in accordance with the Intercreditor Agreement and the Collateral Agency and Accounts Agreement and in accordance with the applicable Senior Financing Document(s) and all amounts paid to or received by the Senior Collateral Agent or any other Secured Party and representing the proceeds of the Collateral or the proceeds of any action taken pursuant to an Enforcement Action shall be subject to Article VI of the Collateral Agency and Accounts Agreement.

(e) If an Enforcement Action has occurred, the Issuer shall, in accordance with the instructions from the Intercreditor Agent, (i) direct the Senior Collateral Agent to take or cause to be taken any and all actions necessary to implement any available remedies with respect to the Collateral under any of the Senior Collateral Documents, and (ii) take on behalf of the Owners and Bank Finance Parties, in accordance with the instructions of the Intercreditor Agent, whatever other action under the Senior Collateral Documents, at law or in equity, as may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Loan Agreement or the rights of the Owners and Bank Finance Parties, in each case subject to the terms of the Collateral Agency and Accounts Agreement and the Intercreditor Agreement.

(f) Any amounts collected pursuant to actions taken under this Section 8.2 and the Senior Collateral Documents shall be applied in accordance with Section 6.06 of the Collateral Agency and Accounts Agreement.

**Section 8.3 Rescission and Waiver.**

(a) The Issuer shall rescind any acceleration of the Loan Facility Loans and its consequences immediately after the acceleration of the applicable Senior Obligations has been rescinded in accordance with the Senior Financing Documents.

(b) The Issuer shall waive any Event of Default immediately after any such Event of Default has been waived in accordance with the applicable Senior Financing Documents.

(c) The Issuer shall have the right to, but shall be under no obligation to (except with respect to paragraphs (a) and (b) above of this Section 8.3), waive any other Event of Default at any time.

(d) In case of any such waiver or rescission, then and in every such case the Issuer, the Trustee, and the Borrower shall be restored to their former positions and rights, but no such waiver shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

**Section 8.4 No Remedy Exclusive.**

Subject to Section 8.02 of the Master Indenture and the terms of the Intercreditor Agreement, no remedy hereunder is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at Law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer, the Trustee or any Agent to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required by Law or expressly hereunder (or as required under any other Senior Financing Document).

**Section 8.5 Additional Issuer Remedies on Default.**

In addition to the remedies above, if the Borrower commits a breach or threatens to commit a breach of the Reserved Rights, the Issuer shall have the right and remedy, without posting bond or other security, to have such Reserved Rights specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach will cause immediate and irreparable injury to the Issuer and that money damages will not provide an adequate remedy therefor.

**Section 8.6 Agreement to Pay Attorneys' Fees and Expenses.**

Following the occurrence and during the continuance of an Event of Default or upon the request of the Borrower to review or analyze the financing of the Series 2022A Bonds, the Senior Term Loans or any related financing instruments, if the Issuer shall employ attorneys or incur other expenses for the collection of payments required hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower herein contained, the Borrower agrees that it will therefor pay to the Issuer its share of the reasonable fees of such

attorneys and such other reasonable, properly invoiced and documented expenses so incurred by the Issuer in connection with the same.

Following the occurrence and during the continuance of an Event of Default, the Trustee may, at the reasonable and documented costs and expense of the Borrower, employ or retain such counsel, accountants, appraisers or other experts or advisors as it may reasonably require for the purpose of determining and discharging its rights and duties hereunder and, in the absence of the Trustee's gross negligence, bad faith or willful misconduct in employing or retaining any such counsel, accountants, appraisers, experts or advisors, may act and rely and shall be protected in acting and relying in good faith on the opinion or advice of or information obtained from any counsel, accountant, appraiser or other expert or advisor, whether retained or employed by the Borrower or by the Trustee, in relation to any matter arising in the administration hereof, and shall not be responsible for any act or omission on the part of any of them. In addition, the Trustee shall not be liable for any acts or omissions of its nominees, correspondents, designees, agents, subagents or subcustodians except to the extent of its gross negligence, bad faith or willful misconduct in nominating or appointing such persons and so long as such persons are permitted to act hereunder.

Following the occurrence and during the continuance of an Event of Default, the Administrative Agent may, at the reasonable and documented costs and expense of the Borrower, employ or retain such counsel, accountants, appraisers or other experts or advisors as it may reasonably require for the purpose of determining and discharging its rights and duties hereunder and, in the absence of the Administrative Agent's gross negligence, bad faith or willful misconduct in employing or retaining any such counsel, accountants, appraisers, experts or advisors, may act and rely and shall be protected in acting and relying in good faith on the opinion or advice of or information obtained from any counsel, accountant, appraiser or other expert or advisor, whether retained or employed by the Borrower or by the Administrative Agent, in relation to any matter arising in the administration hereof, and shall not be responsible for any act or omission on the part of any of them. In addition, the Administrative Agent shall not be liable for any acts or omissions of its nominees, correspondents, designees, agents, subagents or subcustodians except to the extent of its gross negligence, bad faith or willful misconduct in nominating or appointing such persons and so long as such persons are permitted to act hereunder.

**Section 8.7 No Additional Waiver Implied by One Waiver.**

In the event any agreement contained in this Loan Agreement should be breached by any party and thereafter waived by another party as permitted hereunder, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**ARTICLE IX  
MISCELLANEOUS**

**Section 9.1 Term of Agreement.**

Except to the extent otherwise provided herein, this Loan Agreement shall be effective upon its execution and delivery and shall expire at such time as the Loan Facility and the fees and expenses of the Issuer, the Trustee and the other Agents shall have been fully paid or provision

made for such payments, whichever is later; provided, however, that this Loan Agreement may be terminated prior to such date pursuant to Article V of this Loan Agreement and Article VII of the Master Indenture, but in no event before all of the obligations and duties of the Borrower hereunder have been fully performed, including, without limitation, the payments of all costs and fees mandated hereunder or under the Senior Financing Documents pertaining to the Loan Facility to be paid by the Borrower.

**Section 9.2 Third Party Beneficiaries.**

The Trustee and the Administrative Agent shall be third party beneficiaries of the following provisions hereof (and related defined terms), which shall not be amended or modified without the prior written consent of the Trustee and the Administrative Agent: Article VII Assignment; Indemnification, Article VIII Events of Default, Section 9.3 and Section 9.4 hereof.

**Section 9.3 Notices.**

Notices under this Loan Agreement shall be given in accordance with Section 12.04 of the Collateral Agency and Accounts Agreement.

**Section 9.4 Binding Effect.**

This Loan Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Borrower, the Trustee, and the Bank Finance Parties, and their respective successors and assigns, subject, however, to the limitations contained herein.

**Section 9.5 Severability.**

Whenever possible, each provision of this Loan Agreement shall be interpreted in such a manner as to be effective and valid under applicable Law, but if any provision of this Loan Agreement shall be prohibited by or invalid under applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Loan Agreement.

**Section 9.6 Amendments, Changes and Modifications.**

Prior to the Discharge of Senior Bank Obligations, this Loan Agreement may not be effectively amended, changed, modified, altered or terminated, except in a writing executed by the Borrower and the Issuer, and as otherwise provided in the Indenture or the other Senior Bank Finance Documents. Any such amendments to this Loan Agreement shall be filed with the New York County Clerk, Queens County, within ten (10) days or as otherwise provided by the Lien Law of the State.

**Section 9.7 Execution; Counterparts.**

This Loan Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Delivery of an executed signature page to this Loan Agreement by electronic transmission shall be as effective as delivery of a manually signed counterpart of this Loan Agreement. Each party



hereto acknowledges and agrees that they may execute this Loan Agreement, and any variation or amendment hereto, using Electronic Signatures. Such Electronic Signatures are intended to authenticate this writing and to have the same force and effect as handwritten signatures.

**Section 9.8 Applicable Law; Waiver of Jury Trial.** THE EFFECT AND MEANING OF THIS LOAN AGREEMENT AND THE RIGHTS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED ACCORDING TO, THE LAWS OF THE STATE, WITHOUT GIVING EFFECT TO THE PRINCIPLES OF CONFLICTS OF LAWS THEREOF. EACH OF THE ISSUER AND THE BORROWER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS LOAN AGREEMENT, THE SERIES 2022A BUILDING NOTE, TDC BANK DEBT BUILDING NOTE, THE TDC SECURITY DEPOSIT PROJECT NOTE, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**Section 9.9 Captions.**

The captions and headings in this Loan Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Loan Agreement.

**Section 9.10 Limitation of Liability.**

(a) No covenant, agreement or obligation contained herein shall be deemed to be a covenant, agreement or obligation of any present or future director, officer, employee or agent of the Issuer, or the Borrower in his or her individual capacity so long as such person does not act fraudulently, and no such director, officer, employee or agent thereof shall be subject to any liability under this Loan Agreement or with respect to any other action taken by such person provided that they do not act fraudulently.

(b) Except as otherwise expressly set forth in the Senior Financing Documents, the Senior Secured Parties will have full recourse to the Borrower and all of the Borrower's assets and properties for the liabilities and obligations of the Borrower under the Senior Financing Documents, but in no event will any Affiliates of the Borrower, or any officer, director or holder of any interest in the Borrower or any Affiliates of the Borrower, be liable or obligated for such liabilities and obligations of the Borrower.

(c) Notwithstanding anything in paragraph (b) above of this Section 9.10, nothing in said paragraph (b) above shall limit or affect or be construed to limit or affect the obligations and liabilities of any Affiliate of the Borrower (1) arising under any Senior Financing Document to which such Affiliate of the Borrower is a party, or (2) arising from any liability pursuant to any applicable Law for such fraudulent actions, bad faith or willful misconduct of any Affiliate of the Borrower.

**Section 9.11 Issuer Related Parties Not Liable.** To the extent permitted by law, no recourse shall be had for the enforcement of any obligation, promise or agreement of the Issuer contained herein or in the other Issuer Documents to which the Issuer is a party or for any claim based hereon or thereon or otherwise in respect hereof or thereof against any director, officer, agent, attorney or employee, as such, in his/her individual capacity, past, present or future, of the

Issuer or of any successor entity, either directly or through the Issuer or any successor entity whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise. No personal liability whatsoever shall attach to, or be incurred by, any director, officer, agent, attorney or employee as such, past, present or future, of the Issuer or any successor entity, either directly or through the Issuer or any successor entity, under or by reason of any of the obligations, promises or agreements entered into between the Issuer and the Borrower, whether herein contained or to be implied herefrom as being supplemental hereto; and all personal liability of that character against every such director, officer, agent, attorney and employee is, by the execution of this Loan Agreement and as a condition of, and as part of the consideration for, the execution of this Loan Agreement, expressly waived and released. Notwithstanding any other provision of this Loan Agreement, the Issuer shall not be liable to the Borrower or the Trustee or any other Person for any failure of the Issuer to take action under this Loan Agreement unless the Issuer (a) is requested in writing by an appropriate Person to take such action, (b) is assured of payment of, or reimbursement for, any reasonable expenses in such action, and (c) is afforded, under the existing circumstances, a reasonable period to take such action. In acting under this Loan Agreement, or in refraining from acting under this Loan Agreement, the Issuer may conclusively rely on the advice of its counsel.

**Section 9.12**      **Prior Agreements Superseded.** This Loan Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Issuer and the Borrower relating to the subject matter hereof (other than any Senior Financing Documents or other document being executed contemporaneously herewith in respect of the Loan Facility) with respect to the subject matter hereof.

**Section 9.13**      **Date for Reference Purposes Only.** The date of this Loan Agreement is for reference purposes only and shall not be construed to imply that this Loan Agreement was executed as of the date first written above. This Loan Agreement has been executed by the parties hereto and is effective on the Closing Date.

**Section 9.14**      **Amount Secured by Leasehold Mortgages.** The maximum amount secured by the Leasehold Mortgages collectively shall not exceed the maximum amount permitted pursuant to Section 83(a)(4) of the Lease Agreement.

**[SIGNATURE PAGES AND EXHIBITS HAVE BEEN REMOVED]**

**(THIS PAGE INTENTIONALLY LEFT BLANK)**

**FORM FIRST AMENDMENTS TO TDC LOAN AGREEMENTS**  
**(FIRST AMENDMENT TO TDC PROJECT LOAN AGREEMENT AND FIRST AMENDMENT**  
**TO TDC BUILDING LOAN AGREEMENT)**

**(THIS PAGE INTENTIONALLY LEFT BLANK)**

**FIRST AMENDMENT TO THE TDC PROJECT LOAN AGREEMENT**

between

**NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION**

as Issuer and conduit lender

and

**JFK MILLENNIUM PARTNERS, LLC**

as Borrower

Dated as of [•], 2024

Relating to

\$[•] New York Transportation Development Corporation Special Facilities Revenue Bonds, Senior Series 2024A (Green Bonds) (AMT) (Current Interest Bonds) (JFK Airport Terminal 6 Redevelopment Project)	\$[•] New York Transportation Development Corporation Special Facilities Revenue Bonds, Senior Series 2024B (AMT) (Convertible Capital Appreciation Bonds) (JFK Airport Terminal 6 Redevelopment Project)
--	--

Property:

John F. Kennedy International Airport  
Queens, NY 11430

Block: 14260

Lot: 1

Queens County

Record and Return Copy to:  
Squire Patton Boggs (US) LLP  
1120 Avenue of the Americas  
13<sup>th</sup> Floor  
New York, New York 10036  
Attention: Alethia N. Nancoo, Esq.

## TABLE OF CONTENTS

	Page
ARTICLE I PROVISIONS OF ORIGINAL TDC PROJECT LOAN AGREEMENT AND THE FIRST PROJECT LOAN AGREEMENT AMENDMENT .....	4
Section 1.1.    Original TDC Project Loan Agreement.....	4
Section 1.2.    Designations for Senior Financing Documents .....	4
Section 1.3.    Designations for this First Project Loan Agreement Amendment. ....	4
ARTICLE II REPRESENTATIONS .....	5
Section 2.1.    Representations by the Issuer .....	5
Section 2.2.    Representations by the Borrower.....	5
Section 2.3.    Survival of Representations.....	8
Section 2.4.    Covenant with Owners of Bonds.....	8
ARTICLE III ISSUANCE OF THE BONDS.....	9
Section 3.1.    Agreement to Issue the Series 2024 Bonds; Application of Proceeds.....	9
Section 3.2.    Provision of Funds.....	9
Section 3.3.    Limitation of Issuer’s Liability .....	9
Section 3.4.    Compliance with Indenture, the Credit Agreement, Intercreditor Agreement and Collateral Agency and Accounts Agreement .....	10
ARTICLE IV LOAN; PAYMENT PROVISIONS.....	10
Section 4.1.    Amounts Payable .....	10
Section 4.2.    Unconditional Obligations.....	14
Section 4.3.    Borrower Approval of Indenture .....	14
ARTICLE V PREPAYMENT PROVISIONS AND REDEMPTION .....	14
Section 5.1.    Prepayments and Redemption of the Series 2024 Bonds .....	14
Section 5.2.    Mandatory Optional Redemption of the Series 2024A Bonds .....	15
ARTICLE VI AMENDMENTS TO ORIGINAL TDC PROJECT LOAN AGREEMENT .....	16
Section 6.1.    Amendment to Section 8.1 to the Original TDC Project Loan Agreement .....	16
Section 6.2.    Amendment to Exhibit A-1 of the Original TDC Project Loan Agreement.....	16
Section 6.3.    Amendment to Exhibit A-2 of the Original TDC Project Loan Agreement.....	16
ARTICLE VII ASSIGNMENT; INDEMNIFICATION .....	17
Section 7.1.    Assignment .....	17
Section 7.2.    Release and Indemnification Covenants.....	17
ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES.....	18
Section 8.1.    Events of Default Defined .....	18
Section 8.2.    Remedies on Default.....	20



Section 8.3.	Rescission and Waiver.....	21
Section 8.4.	No Remedy Exclusive .....	22
Section 8.5.	Additional Issuer Remedies on Default. ....	22
Section 8.6.	Agreement to Pay Attorneys’ Fees and Expenses. ....	22
Section 8.7.	No Additional Waiver Implied by One Waiver.....	22
ARTICLE IX MISCELLANEOUS .....		23
Section 9.1.	Term of Agreement.....	23
Section 9.2.	Third Party Beneficiaries .....	23
Section 9.3.	Notices .....	23
Section 9.4.	Binding Effect.....	23
Section 9.5.	Severability .....	23
Section 9.6.	Amendments, Changes and Modifications .....	23
Section 9.7.	Execution in Counterparts .....	24
Section 9.8.	Applicable Law; Waiver of Jury Trial .....	24
Section 9.9.	Captions .....	24
Section 9.10.	Limitation of Liability .....	25
Section 9.11.	Issuer Related Parties Not Liable.....	25
Section 9.12.	Provision of Information to Bond Insurer.....	25
Section 9.13.	Bond Insurer Access to Information .....	27
Section 9.14.	Trustee as Representative of the Bond Insurer. ....	27
Section 9.15.	Bond Insurer Unsecured Obligations.....	27
Section 9.16.	Complete Agreement .....	27
Section 9.17.	Date for Reference Purposes Only.....	27
Section 9.18.	Amount Secured by Leasehold Mortgages .....	27

EXHIBIT A – FORM OF SERIES 2024 PROJECT NOTE

EXHIBIT B – DEBT SERVICE SCHEDULE

EXHIBIT C-1 – FORM OF AMENDED AND RESTATED SERIES 2022A PROJECT NOTE

EXHIBIT C-2 – FORM OF AMENDED AND RESTATED TDC BANK DEBT PROJECT NOTE

## FIRST AMENDMENT TO THE TDC PROJECT LOAN AGREEMENT

**THIS FIRST AMENDMENT TO THE TDC PROJECT LOAN AGREEMENT**, dated as of [•], 2024 (this “First Project Loan Agreement Amendment”), which amends and supplements the Original TDC Project Loan Agreement (as hereinafter defined) is made and entered into by and between the **NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION**, a local development corporation formed under Section 1411 of the New York Not-for-Profit Corporation Law, being Chapter 35 of the Consolidated Laws of New York, created by action of the New York Job Development Authority (“JDA”) established under Section 1802, Subtitle I, Title 8, Article 8 of the New York Public Authorities Law, its permitted successors and assigns, having an address c/o Empire State Development, \_\_\_\_\_ (the “Issuer”), and **JFK MILLENNIUM PARTNERS, LLC**, a Delaware limited liability company, its permitted successors and assigns, having an address at \_\_\_\_\_ (the “Borrower”). All capitalized terms used herein but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Collateral Agency and Accounts Agreement.

### WITNESSETH:

**WHEREAS**, The Port Authority of New York and New Jersey, a municipal corporate instrumentality and political subdivision of the States of New York and New Jersey, created and existing by virtue of the Compact of April 30, 1921, made by and between the States of New York and New Jersey, and thereafter consented to by the Congress of the United States (the “Port Authority”) has entered into a Lease Agreement, dated as of November 17, 2022 (as supplemented and amended from time to time, the “Lease Agreement”), with the Borrower, pursuant to which, among other things, the Borrower is obliged to consummate the following (collectively, the “Project”): (i) the operation, maintenance, and demolition of the Existing Terminal Facilities at John F. Kennedy International Airport in Queens, New York (“Airport”), which Existing Terminal Facilities include the existing Terminal 7 facilities, (ii) the design, construction, financing, operation and maintenance of the New Terminal Facilities at the Airport (which New Terminal Facilities include new Terminal 6 facilities and replacement Terminal 7 facilities) and certain ancillary facilities, and (iii) the design and construction of the Off-Premises Facilities at the Airport on behalf of the Port Authority, which Off-Premises Facilities will not be operated or maintained by the Borrower and will not constitute part of the facilities leased to the Borrower under the Lease Agreement;

**WHEREAS**, pursuant to that certain Credit Agreement, dated as of November 1, 2022 (as amended, supplemented and/or otherwise modified from time to time, the “Credit Agreement”), among the Issuer, the Borrower, the Lenders, including the Security Deposit Facility Lenders and the Security Deposit Facility LC Issuing Bank, as Bank Lenders, each from time to time party thereto, the Administrative Agent and certain joint lead arrangers and bookrunners, (a) the Lenders have agreed to make certain Senior Term Loans available to the Issuer and (b) the Security Deposit Facility LC Issuing Bank has agreed to make Security Deposit LCs available to the Issuer and (c) the Security Deposit Facility Lender has agreed to make Security Deposit Loans to the Issuer, each on the terms and subject to the conditions set forth therein, and a portion of the proceeds of the Senior Loans has been loaned by the Issuer to the Borrower pursuant to the TDC Loan Agreements, and the Borrower has used such proceeds of such Senior Loans to finance a portion of the Project Costs;

**WHEREAS**, pursuant to a resolution adopted on October 20, 2022 by the Issuer (the “TDC Resolution”) the Issuer and the Trustee have entered into a TDC Master Bond Indenture of Trust dated as of November 1, 2022 (as the same may be amended or supplemented from time to time, the “Master Indenture”);

**WHEREAS**, pursuant to the TDC First Supplemental Bond Indenture of Trust dated as of November 1, 2022 (the “First Supplemental Indenture”), by and between the Issuer and the Trustee, the

Issuer has issued its New York Transportation Development Corporation Special Facilities Bonds, Senior Series 2022A (Tax-Exempt) (AMT) (JFK Airport Terminal 6-7 Redevelopment Project) in the aggregate principal amount of \$435,000,000 (the “Series 2022A Bonds”), and loaned the Borrower such funds pursuant to the TDC Loan Agreements for Project Costs;

**WHEREAS**, in connection with the issuance of the Series 2022A Bonds, the Issuer and the Borrower entered into a TDC Project Loan Agreement dated as of November 1, 2022 (the “Original TDC Project Loan Agreement”);

**WHEREAS**, the Original TDC Project Loan Agreement, together with this First Project Loan Agreement Amendment, as may be further supplemented or amended from time to time (the “TDC Project Loan Agreement”), the Collateral Agency and Accounts Agreement and certain other Financing Documents permit the Issuer to issue one or more Series of Additional Obligations in accordance with the provisions of the Financing Documents, which Obligations shall be designated as Senior Obligations or Subordinate Obligations at the time of issuance thereof, and in connection therewith, the Borrower shall be required to execute and deliver, among other things, an Additional Obligations Loan Agreement Supplement and corresponding Note to the Issuer;

**WHEREAS**, this First Project Loan Agreement Amendment and the First Building Loan Agreement Amendment (as herein defined) are each deemed an Additional Obligations Loan Agreement Supplement authorized by the TDC Loan Agreements and the Financing Documents;

**WHEREAS**, the Borrower may request from time to time that the Issuer issue Additional Bonds pursuant to supplemental indentures to the Master Indenture to finance Project Costs;

**WHEREAS**, the Borrower has requested that the Issuer issue its New York Transportation Development Corporation, Special Facilities Revenue Bonds, Senior Series 2024A (Green Bonds)(AMT)(Current Interest Bonds) (JFK Airport Terminal 6 Redevelopment Project), in the aggregate principal amount of \$[•] (the “Series 2024A Bonds”) and its New York Transportation Development Corporation, Special Facilities Revenue Bonds, Senior Series 2024B (AMT) (Convertible Capital Appreciation Bonds) (JFK Airport Terminal 6 Redevelopment Project), in the aggregate principal amount of \$[•] (the “Series 2024B Bonds”) and, together with the Series 2024A Bonds, the “Series 2024 Bonds”), to provide funds to loan to the Borrower pursuant to the provisions of the Senior Financing Documents to refinance a portion of the Senior Term Loans , redeem a portion of the Series 2022A Bonds, pay certain interest rate swap termination fees and pay certain costs of issuance related to the Series 2024 Bonds;

**WHEREAS**, pursuant to a resolution adopted on [October 1], 2024 by the Issuer (the “Series 2024 TDC Resolution”) the Issuer has duly determined to issue the Series 2024 Bonds under the Financing Documents under and in accordance with the Master Indenture and the Second Supplemental Indenture as Additional Senior Obligations;

**WHEREAS**, contemporaneously with the execution of this First Project Loan Agreement Amendment, the Issuer and Trustee have entered into the TDC Second Supplemental Bond Indenture of Trust, dated as of [•], 2024, which supplements and amends the Master Indenture (the “Second Supplemental Indenture”) in order to, among other things, secure on a parity, first-priority basis the payment of the principal of the Series 2024 Bonds and the indebtedness represented thereby and the Accreted Value, Redemption Price and Sinking Fund Requirements, if any, of and interest on the Series 2024 Bonds according to their tenor and effect and the performance and observance by the Issuer of all the covenants expressed or implied therein and in the Series 2024 Bonds;

**WHEREAS**, in connection with the execution of the Second Supplemental Indenture and the issuance of the Series 2024 Bonds, the Issuer will loan a portion of the proceeds of the Series 2024 Bonds to the Borrower pursuant to the terms of this First Project Loan Agreement Amendment in the amount of \$[•] to enable the Borrower to refinance a portion of the Senior Term Loans, redeem a portion of the Series 2022A Bonds, pay certain interest rate swap termination fees and pay certain costs of issuance related to the Series 2024 Bonds;

**WHEREAS**, contemporaneously with the Issuer and the Borrower entering into this First Project Loan Agreement Amendment, the parties shall enter into the First Amendment to the TDC Building Loan Agreement dated as of [•], 2024 (the “First Building Loan Agreement Amendment,” and together with this First Project Loan Agreement Amendment, the “First Amendments to TDC Loan Agreements”), which amends and supplements the TDC Building Loan Agreement dated as of November 1, 2022 (the “Original TDC Building Loan Agreement,” and together with the First Building Loan Agreement Amendment, as may be further supplemented or amended from time to time, the “TDC Building Loan Agreement,” and the TDC Building Loan Agreement together with the TDC Project Loan Agreement, the “TDC Loan Agreements”), pursuant to which the Issuer will loan a portion of the proceeds of the Series 2024 Bonds to the Borrower for the purpose of refinancing a portion of the Senior Term Loans, redeeming a portion of the Series 2022A Bonds, paying certain interest rate swap termination fees and paying certain costs of issuance related to the Series 2024 Bonds (the “Series 2024 Bond Building Loan” and, together with the Series 2024 Bond Project Loan (as defined herein), the “Series 2024 Loans”);

**WHEREAS**, contemporaneously with the issuance of the Series 2024 Bonds, the Borrower will execute and deliver to the Issuer the Series 2024 Project Note substantially in the form attached hereto as Exhibit A (the “Series 2024 Project Note”) and the Series 2024 Building Note substantially in the form attached to the First Building Loan Agreement Amendment as Exhibit B (the “Series 2024 Building Note”, and collectively with the Series 2024 Project Note, the “Series 2024 Notes”), each evidencing (i) the respective loans by the Issuer to the Borrower of the proceeds of the Series 2024 Bonds pursuant to the First Amendments to TDC Loan Agreements and (ii) the obligations of the Borrower under the TDC Loan Agreements with respect to the Series 2024 Loans;

**WHEREAS**, the Borrower has agreed in the TDC Loan Agreements to make, or cause to be made, payments sufficient to pay when due (whether at stated maturity, upon redemption, by acceleration or otherwise) the principal, Accreted Value, Redemption Price and Sinking Fund Requirements, if any, of and interest on the Series 2024 Bonds, subject to the terms of the TDC Loan Agreements, the Series 2024 Project Note, and the other Series 2024 Financing Documents;

**WHEREAS**, in order to secure the Senior Obligations, the Borrower has granted one or more mortgage liens on and security interests in the interests of the Borrower under the Lease Agreement, and the Issuer has assigned its interest in the Project Leasehold Mortgage to the Senior Collateral Agent;

**WHEREAS**, the Project Leasehold Mortgage and Collateral pledged by the Borrower under the Senior Collateral Documents are held by the Senior Collateral Agent pursuant to the Collateral Agency and Accounts Agreement, and the Senior Collateral Agent will administer the Project Leasehold Mortgage and other Collateral so pledged for the benefit of the Senior Secured Parties, acting thereunder for the benefit of the holders of the Senior Obligations and other parties secured pursuant to the Collateral Agency and Accounts Agreement, subject to the terms of the Intercreditor Agreement;

**WHEREAS**, the Series 2024 Bonds shall be designated as Senior Bonds for purposes of the Indenture and Senior Obligations for the purposes of the Senior Financing Documents;

**NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS, THIS FIRST PROJECT LOAN AGREEMENT AMENDMENT WITNESSETH**, in consideration of the premises and the respective representations and agreements and mutual covenants contained in this First Project Loan Agreement Amendment, the Issuer and the Borrower covenant and agree as follows:

## **ARTICLE I**

### **PROVISIONS OF ORIGINAL TDC PROJECT LOAN AGREEMENT AND THE FIRST PROJECT LOAN AGREEMENT AMENDMENT**

**Section 1.1. Original TDC Project Loan Agreement.** The provisions of the Original TDC Project Loan Agreement remain in full force and effect, except to the extent expressly amended by this First Project Loan Agreement Amendment, and shall apply to the Series 2024 Bonds and Series 2024 Bond Project Loan, provided that any provisions of the Original TDC Project Loan Agreement that specifically relate only to the Series 2022A Bonds, the Series 2022A Bond Project Loan, the Series 2022A Project Note, the Senior Term Loan, the TDC Senior Term Loan Project Loan, the TDC Bank Debt Project Note, the Security Deposit LCs, the Security Deposit Loans, the TDC Security Deposit Project Loan or the TDC Security Deposit Project Note, as applicable, shall not apply to the Series 2024 Bonds, the Series 2024 Bond Project Loan or the Series 2024 Project Note. Any inconsistency or conflict between the provisions of the Original TDC Project Loan Agreement and the provisions of this First Project Loan Agreement Amendment, as the same relate to the Series 2024 Bonds and the Series 2024 Bond Project Loan, will be governed by this First Project Loan Agreement Amendment and not the Original TDC Project Loan Agreement.

**Section 1.2. Designations for Senior Financing Documents.** For the purposes of the Senior Financing Documents:

- (i) This First Project Loan Agreement Amendment is an Additional Senior Obligations Loan Agreement Supplement;
- (ii) The Series 2024 Bond Project Loan is a Project Loan;
- (iii) The Series 2024 Project Note is a TDC Note;
- (iv) The Series 2024 Bond Project Loan and Series 2024 Project Note are Senior Secured Debt;
- (v) The Bond Insurer, with respect to the Senior Bond Insurer Obligations, is a Secured Party and a Senior Secured Party;
- (vi) The Senior Bond Insurance Obligations, including all amounts owed to the Bond Insurer pursuant to this First Project Loan Agreement Amendment and any other Senior Financing Documents, are Additional Senior Obligations, Senior Obligations, Senior Secured Debt and Senior Bond Obligations; and
- (vii) Any unpaid Bond Insurer Premium is a fee, administrative cost and expense due and payable under the Financing Documents.

**Section 1.3. Designations for this First Project Loan Agreement Amendment.** For the purposes of this First Project Loan Agreement Amendment, unless expressly indicated otherwise, the Bond

Insurer is the Series 2024 Bond Insurer, and each reference to the “Bond Insurance Policy”, the “Bond Insurer Advances”, the “Bond Insurer Fees”, the “Bond Insurer Late Payment Interest”, “the Bond Insurer Premium”, the “Bond Insurer Premium Schedule”, and the “Bond Insurer Reimbursement Amounts”, is in reference to such term only with respect to the Insured Series 2024 Bonds.

## ARTICLE II

### REPRESENTATIONS

**Section 2.1. Representations by the Issuer.** The Issuer represents and warrants to the Borrower and the Bond Insurer, as follows:

The representations of the Issuer contained in the Original TDC Project Loan Agreement are reaffirmed in this First Project Loan Agreement Amendment as of the date hereof. References in such representations to the Series 2022A Bonds shall also include the Series 2024 Bonds; and references to Series 2022A Project Note shall also include the Series 2024 Project Note; and references to the Issuer Documents shall also include the Series 2024 Issuer Documents.

**Section 2.2. Representations by the Borrower.** The Borrower represents and warrants to the Issuer and the Bond Insurer, as follows:

(a) The Borrower is a limited liability company, duly formed, validly existing and in good standing under the laws of the State of Delaware, is qualified to do business in the State and the City and in every jurisdiction where such qualification is required by applicable Law and has all necessary material licenses and permits or other governmental authorizations or approvals required to date to carry on its business and to operate its facilities.

(b) All necessary limited liability company actions on the part of the Borrower required to authorize the execution and delivery of the Series 2024 Financing Documents to which it is a party, and the performance of each of the Senior Financing Documents to which it is a party, have been duly taken.

(c) Each of the Series 2024 Financing Documents to which the Borrower is a party has been duly authorized, executed and delivered by the Borrower and each of the Senior Financing Documents to which the Borrower is a party constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its respective terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer, liquidation or other similar Laws or judicial action affecting the enforcement of creditors’ rights generally (regardless of whether enforceability is controlled in a proceeding in equity or at Law) or by principles of equity which permit the exercise of judicial discretion and except as enforceability of indemnification provisions may be limited by consideration of public policy and, as of the date hereof, all representations and warranties made by the Borrower in the Series 2024 Financing Documents are true and correct in all material respects.

(d) The execution and delivery by the Borrower of each of the Series 2024 Financing Documents to which it is a party, and the performance by the Borrower of each of the Senior Financing Documents to which it is a party, do not (i) conflict with its certificate of formation or its operating agreement, (ii) conflict with any contractual obligations binding on or affecting the Borrower, except where such conflict would not reasonably be expected to have a Material Adverse Effect, (iii) violate any provision of any court decree or order binding on or affecting the Borrower in any material respect, except where such violation would not reasonably be expected to have a Material Adverse Effect, (iv) violate any provision of any Law or governmental regulation binding on or affecting the Borrower in any material

respect, except where such violation would not reasonably be expected to have a Material Adverse Effect or (v) result in, or require, the creation or imposition of any Security Interest on any of the properties or revenues of, or interests in, the Borrower, except for Permitted Liens, unless such creation or imposition could not reasonably be expected to have a Material Adverse Effect.

(e) All Security Interests required to be created under the Senior Collateral Documents are valid, legally binding and are ranked as contemplated in the Senior Financing Documents, and all recordings and filings required to be filed in connection with the issuance of the Series 2024 Bonds will have been or will be recorded and filed on or promptly following the Series 2024 Closing Date and no Security Interest exists over the Borrower's interest in the Project or over any other of the Borrower's revenues or assets other than Permitted Liens.

(f) The Borrower has a valid leasehold interest in the portion of the Premises comprised of real property (other than such real property to which the Mortgagor instead has been granted Permanent Rights of Access or Temporary Rights of Access (each as defined in and pursuant to the Lease Agreement) under the Lease Agreement), subject only to encumbrances and defects that do not materially impair the Borrower's ability to perform its obligations under the Lease Agreement or the Senior Financing Documents.

(g) The Pledgor directly owns 100% of the equity interests in the Borrower, and each Equity Member owns, directly or indirectly, the percentage of the equity interests in the Pledgor listed in the Equity Contribution Agreement and, collectively, the Equity Members own 100% of the equity interests in the Pledgor, in each case, free and clear of all Security Interests (other than Permitted Liens), all such equity interests have been duly and validly authorized and issued, and there are no outstanding options, warrants, calls or other rights to subscribe for or otherwise acquire any of such equity interests other than as disclosed in the Preliminary Official Statement and the Official Statement in respect to the Series 2024 Bonds.

(h) The Borrower has no subsidiaries.

(i) True and complete copies of all Series 2024 Financing Documents have been duly executed as of the Series 2024 Closing Date, the Senior Financing Documents are in full force and effect as against the Borrower, the Borrower has delivered to the Trustee, the Underwriters, and the Agents, the Series 2024 Financing Documents to which the Borrower is a party.

(j) The Borrower has no Indebtedness, other than (i) the Series 2024 Bonds, (ii) the Series 2022A Bonds, (iii) the TDC Senior Term Loan Project Loan, (iv) the TDC Security Deposit Project Loan, (iv) other Indebtedness permitted by the Financing Documents or otherwise consented to by the Required Bank Finance Parties pursuant to the Bank Consents, and (v) any amounts owed to any Equity Member with respect to development fees and Project Costs incurred by such Equity Member on behalf of the Borrower prior to the Series 2024 Closing Date, which amounts will be paid to such Equity Member on the Series 2024 Closing Date.

(k) The Borrower has not engaged in any other activities or business other than the implementation of the Project and activities related or ancillary thereto (including, without limitation, the financing thereof).

(l) The Borrower, to the extent applicable, has timely filed (or applied for an extension relating to the same) all federal and state income tax returns related to Taxes it is required by law to file and has paid all material Taxes that are due and payable, except for such Taxes being contested in good faith and for which the Borrower has established adequate reserves in accordance with GAAP. There is no

stamp, registration or similar Tax under applicable Law, as presently in effect, imposed, assessed, levied or collected by a Governmental Authority required to be paid on or in relation to amounts payable by the Borrower pursuant to any Senior Financing Document.

(m) The Borrower is in compliance with any Law or governmental rule applicable to the Borrower, and with the terms of all other governmental authority obtained by it, except to the extent that any failure to comply with any of the above could not reasonably be expected to result in a Material Adverse Effect.

(n) No consent or approval of any trustee or holder of any Indebtedness of the Borrower, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority (except in connection with blue sky proceedings) is necessary (or, in the case of any Series 2024 Financing Documents executed prior to the Series 2024 Closing Date, was necessary) in connection with the execution and delivery of the Series 2024 Financing Documents by the Borrower to which it is a party or the performance by the Borrower of its obligations under the Senior Financing Documents or the consummation by the Borrower of any transaction therein contemplated, except in respect of all matters contemplated in this clause (o) (i) as have been obtained or made and as are in full force and effect as of the Series 2024 Closing Date, (ii) for any such consent, approval, authorization, order, license, filing or registration which is not required to have been obtained, made or procured as of the Series 2024 Closing Date, and is expected to be received in the normal course, or (iii) where the failure to obtain such consent, permissions, authorizations, orders or licenses would not reasonably be expected to result in a Material Adverse Effect, and the Borrower has no reason to believe that any such consents, permissions, authorizations, orders or licenses will not be provided in the ordinary course in a timely manner when required.

(o) There is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any court or administrative agency, or to the knowledge of the Borrower threatened against the Borrower or its property, or contesting the due organization of the Borrower wherein an unfavorable decision, ruling or finding, to the extent reasonably expected, would reasonably be expected to (i) have a Material Adverse Effect, (ii) have an adverse effect on the validity or enforceability against the Borrower of the Senior Financing Documents to which it is a party or (iii) in any way adversely affect the federal tax-exempt status of the interest on the Tax-Exempt Bonds or, if applicable, other amounts to be received by the Issuer pursuant to the Indenture or the TDC Loan Agreements.

(p) No ERISA Event with respect to the Borrower has occurred or is reasonably expected to occur, that could reasonably be expected to have a Material Adverse Effect.

(q) No Enforcement Action or Event of Default has occurred and is continuing under the Senior Financing Documents pertaining to the Outstanding Senior Obligations.

(r) The Borrower has not filed an election pursuant to Treasury Regulation 301.7701-3(c) to be treated as an association taxable as a corporation and has not been previously taxed as a corporation.

(s) The Borrower does not maintain any securities accounts or deposit accounts, except for the Project Accounts, the Non-Pledged Accounts and such separate operating accounts as are permitted by the Financing Documents, and except as previously approved in writing by the Required Bank Finance Parties pursuant to the Bank Consents.

(t) The Borrower is not an “investment company,” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended.



(u) Each Key Contract which has been executed and delivered by the Borrower is in full force and effect as against the Borrower, and the Borrower is not in default under any of such Key Contracts, except as could not reasonably be expected to have a Material Adverse Effect.

(v) The Borrower has no reason to believe that sufficient funds are not available (or will not be made available) to the D&C Contractor to perform the portion of the D&C Work that is subject to the D&C Contract.

(w) The availability of the Issuer to issue the Series 2024 Bonds and to loan proceeds of such Series 2024 Bonds to the Borrower as well as the available exemption from mortgage recording tax has been an important inducement to the Borrower to undertake the Project.

(x) The information relating to the Borrower set forth in its application to the Issuer with respect to the issuance of the Series 2024 Bonds, other than information related to future events, financing related information, projections or other estimates in respect of costs and expenses or transaction amounts, each of which was made in good faith but is subject to change, is true and correct in all material respects as of the date provided.

(y) The statements, information, representations and warranties of the Borrower contained in the Tax Certificate with respect to the Series 2024 Bonds are true and correct as of the date of such Tax Certificate and are hereby incorporated herein by reference as if fully set forth herein.

(z) The Borrower will operate the Facilities as airport terminal facilities until the Series 2024 Bonds have been paid or deemed paid in full.

(aa) The Project is substantially the same in all material respects to that described in the notice of public hearing published on April 26, 2022.

### **Section 2.3. Survival of Representations.**

The representations of the Issuer and the Borrower contained in this First Project Loan Agreement Amendment, in any other Senior Financing Document pertaining to the Series 2024 Bonds to which the Issuer or the Borrower, as the case may be, is a party, or in any certificate or other instrument delivered by the Issuer or the Borrower pursuant to this First Project Loan Agreement Amendment, or in connection with the transactions contemplated hereby, shall survive the execution and delivery hereof and the issuance, sale and delivery of the Series 2024 Bonds, as representations of facts existing as of the date of execution and delivery of the instruments containing such representations (or as of such date stated therein).

### **Section 2.4. Covenant with Owners of Bonds.**

The Issuer and the Borrower agree that this First Project Loan Agreement Amendment and the Tax Certificate with respect to the Series 2024 Bonds are executed in part to induce the purchase by Owners of the Series 2024 Bonds. Accordingly, all covenants and agreements on the part of the Issuer and the Borrower set forth in this First Project Loan Agreement Amendment and in the Tax Certificate with respect to the Series 2024 Bonds are hereby declared to be for the benefit of the Owners from time to time of the Series 2024 Bonds.

## ARTICLE III

### ISSUANCE OF THE BONDS

**Section 3.1. Agreement to Issue the Series 2024 Bonds; Application of Proceeds.** The Issuer hereby agrees to issue, sell and deliver the Series 2024 Bonds in accordance with the terms of the Senior Financing Documents in order to provide for the refinancing of a portion of the Senior Term Loans and redemption of a portion of the Series 2022A Bonds. Upon the terms and conditions of the Senior Financing Documents, the Issuer hereby agrees to lend to the Borrower on the Series 2024 Closing Date the proceeds of the Series 2024 Bonds, which shall reflect \$[•] loaned to the Borrower pursuant to this First Project Loan Agreement Amendment (the “Series 2024 Bond Project Loan”) and \$[•] loaned to the Borrower pursuant to the First Building Loan Agreement Amendment (the “Series 2024 Bond Building Loan”). Upon written instructions from the Borrower, the Issuer hereby agrees to instruct the Trustee to deliver to the Senior Collateral Agent the proceeds received from the sale of the Series 2024 Bonds with instruction to deposit such proceeds directly into the Series 2024 Bond Proceeds Sub-Account of the Tax-Exempt Bond Proceeds Sub-Account of the Construction Account held by the Senior Collateral Agent pursuant to Section 5.04 of the Collateral Agency and Accounts Agreement and as otherwise required by the Collateral Agency and Accounts Agreement.

**Section 3.2. Provision of Funds.** In the event that proceeds from the Series 2024 Bond Project Loan, Series 2022A Bond Project Loan, the TDC Senior Term Loan Project Loan and the TDC Security Deposit Project Loan or any other available (or to be available) funds are not sufficient to pay the Project Costs as and when due and payable, the Borrower agrees to pay (or cause to be paid) all of such Project Costs as and when due and payable, and the Borrower will provide any additional funds required to pay Project Costs; provided, however the Borrower shall not be entitled to any reimbursement from the Issuer, or the Trustee for the payment of such Project Costs nor shall the Borrower be entitled to any abatement, diminution or postponement of its payments hereunder, unless otherwise provided pursuant to the Collateral Agency and Accounts Agreement or the Intercreditor Agreement.

**Section 3.3. Limitation of Issuer’s Liability.** The Series 2024 Bonds are special and limited obligations of the Issuer, payable solely from and secured exclusively by the Senior Collateral and the Trust Estate, including the payments to be made by the Borrower under this First Project Loan Agreement Amendment and any Additional Obligations Loan Agreement Supplement. The Series 2024 Bonds are not payable from taxes or appropriations made by the State, or of any county, municipality or any other political subdivision, agency or instrumentality established under the Laws of the State or the City. The Series 2024 Bonds do not constitute an indebtedness, or a pledge of the faith and credit of, the State or any county, municipality or other political subdivision, agency or instrumentality established under the Laws of the State (other than the Issuer), or the City or any political subdivision thereof within the meaning or application of any constitutional provision or limitation. The special limited obligation of the Issuer to pay the amount of the interest, principal, premium, if any, Accreted Value, and Redemption Price of the Series 2024 Bonds does not constitute a pledge of the faith, credit or taxing power of the State or the City or any county, municipality or any other political subdivision, agency or instrumentality established under the Laws of the State or the City thereof within the meaning or application of any constitutional provision or limitation. The Issuer has no taxing power. The Owners of the Series 2024 Bonds have, individually and collectively, no right to have taxes levied or compel appropriations by the State or the City or any county, municipality or any other political subdivision, agency or instrumentality established under the Laws of the State, or the City of the State or the City for the payment of any or all of the amount of such interest, principal, premium, if any, Accreted Value, and Redemption Price of the Series 2024 Bonds.

No provision, covenant, or agreement contained in this First Project Loan Agreement Amendment, or any obligations herein imposed upon the Issuer, or the breach thereof shall give rise to a pecuniary liability of

the Issuer or any member, officer or agent of the Issuer or a charge against the Issuer's general credit. In making the agreements, provisions and covenants set forth in this First Project Loan Agreement Amendment, the Issuer has not obligated itself except with respect to the application of the payments, as hereinabove provided.

No recourse shall be had for the payment of interest, principal, premium, if any, Accreted Value, and Redemption Price of any of the Series 2024 Bonds or for any claim based thereon or upon any obligation, covenant or agreement in this First Project Loan Agreement Amendment contained, against any past, present or future officer, director, member, trustee, employee or agent of the Issuer or any officer, director, member, trustee, employee or agent of any successor entity, as such, either directly or through the Issuer or any successor entity, under any rule of law or equity, statute or constitution or by enforcement by any assessment or penalty or otherwise.

All covenants, stipulations, promises, agreements and obligations of the Issuer set forth herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Issuer and not of any member, officer or employee of the Issuer in his or her individual capacity, and no recourse shall be had for the payment of interest, principal, premium, if any, Accreted Value, and Redemption Price of the Series 2024 Bonds or for any claim based thereon or hereunder against any member, officer or employee of the Issuer or any Person executing the Series 2024 Bonds in their individual capacity.

**Section 3.4. Compliance with Indenture, the Credit Agreement, Intercreditor Agreement and Collateral Agency and Accounts Agreement.** In accordance with any applicable provisions of the Indenture, the Issuer shall take any action directed by the Borrower to the extent required under, or permitted by, the provisions of the Senior Financing Documents with respect to the Series 2024 Bonds.

## ARTICLE IV

### LOAN; PAYMENT PROVISIONS

#### **Section 4.1. Amounts Payable.**

(a) (i) The Borrower hereby covenants and agrees to repay the Series 2024 Bond Project Loan, as follows: on or before any Interest Payment Date for the Series 2024 Bonds or any other date that any payment of interest, principal, Accreted Value, and Redemption Price on the Series 2024 Bonds is required to be made in respect of the Series 2024 Bonds pursuant to the Indenture (which payments of principal and interest will be in the respective amounts set forth on the debt service schedule attached hereto as Exhibit B and as amended from time to time pursuant to the Indenture; provided, that amounts deposited into the Accounts under the Collateral Agency and Accounts Agreement with respect to such payments shall be determined with reference to amounts set forth in the Series 2024A Bonds Balloon Indebtedness Certificate attached as Exhibit G-1 to the First Building Loan Agreement Amendment), until the payment of interest, principal, Accreted Value, and Redemption Price on the Series 2024 Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture and the Collateral Agency and Accounts Agreement, in immediately available funds, a sum which, together with any other moneys available for such payment in the applicable 2024A Tax-Exempt Bond Interest Payment Sub-Account, 2024A Tax-Exempt Bond Principal Payment Sub-Account, 2024B Tax-Exempt Bond Interest Payment Sub-Account and 2024B Tax-Exempt Bond Principal Payment Sub-Account, each in the Senior Obligations Payment Account, will enable the Senior Collateral Agent to transfer to the Trustee sufficient funds to pay to the Owners of the Series 2024 Bonds the amount due and payable on such date as interest, principal, Accreted Value, and Redemption Price on the Series 2024 Bonds as provided in the Indenture; provided however, that amounts to be applied to the optional or extraordinary redemption of Series 2024A Bonds pursuant to Section 2.07 of the Second Supplemental Indenture shall

be deposited in the applicable 2024A Tax-Exempt Bond Interest Payment Sub-Account or 2024A Tax-Exempt Bond Principal Payment Sub-Account and amounts to be applied to the optional or extraordinary redemption of Series 2024B Bonds pursuant to Section 2.08 of the Second Supplemental Indenture shall be deposited in the applicable 2024B Tax-Exempt Bond Interest Payment Sub-Account or 2024B Tax-Exempt Bond Principal Payment Sub-Account as required by the Indenture and the Collateral Agency and Accounts Agreement. The Borrower shall deliver the Series 2024A Balloon Indebtedness Certificate to the Senior Collateral Agent on the Series 2024 Closing Date.

(ii) The Issuer hereby directs the Borrower and, subject to the Indenture, the Credit Agreement, the Common Terms Agreement or the Collateral Agency and Accounts Agreement, as applicable, the Borrower hereby agrees to pay to the Senior Collateral Agent all payments payable by the Borrower in respect of the Series 2024 Bond Project Loan pursuant to subsection 4.1(a)(i).

(b) The Borrower will also, in accordance with the terms of the Collateral Agency and accounts Agreement, pay when due and payable the reasonable fees and expenses of the Issuer related to the issuance of the Series 2024 Bonds, including without limitation, reasonable attorneys and consultants' fees and expenses. The fees to be paid to the Issuer include (i) the Issuance Fee, which shall be paid on the Series 2024 Closing Date and (ii) the Annual Administrative Fee, which shall be paid on the Series 2024 Closing Date and thereafter on an annual basis, beginning on the first anniversary of the Series 2024 Closing Date, in each subsequent year the Series 2024 Bonds are Outstanding, and which Annual Administrative Fee shall, for the avoidance of doubt, supersede and replace the annual administrative fee payable by the Borrower pursuant to Section 4.1(b) of the Original TDC Project Loan Agreement, each of (i) and (ii) as described in Exhibit E to the First Building Loan Agreement Amendment. For the avoidance of doubt, the fees to be paid to the Issuer pursuant to this Section 4.1(b) are the same as (and not in addition to) the fees required to be paid under Section 4.1(b) of the First Building Loan Agreement Amendment.

(c) The Borrower also will pay, in accordance with the terms of the Collateral Agency and Accounts Agreement, the reasonable fees and expenses of the Trustee and the Agents, including, without limitation, any fees or expenses incurred pursuant to Section 8.02(b) of the Master Indenture, and all other amounts which may be payable to the Trustee under the terms of the Indenture or in accordance with any contractual arrangement between the Borrower and the Trustee with respect thereto.

(d) The Borrower hereby covenants and agrees to pay, or cause to be paid, to the Bond Insurer, the Bond Insurer Reimbursement Amounts, the Bond Insurer Premium and the Bond Insurer Fees, as follows:

- (i) Subject to the last sentence of this Section 4.1(d)(i), the Borrower hereby covenants and agrees to pay, or cause to be paid, to the Senior Collateral Agent for the benefit of the Bond Insurer any Bond Insurer Advances, as provided in Section 4.02 of the Second Supplemental Indenture and Section 5.02(b)(4), Section 5.02(b)(5), Section 5.03(b)(4), Section 5.03(b)(5), Section 6.06(b)(i)(B), or Section 6.06(b)(i)(C) (as applicable) of the Collateral Agency and Accounts Agreement. The Borrower shall cause the Senior Collateral Agent to receive sufficient funds to pay the Bond Insurer Reimbursement Amounts in the same manner as the payment of interest, principal, Accreted Value, and Redemption Price on the Insured Series 2024 Bonds pursuant to Section 4.1(a) hereof. The Borrower shall pay to the Senior Collateral Agent for the benefit of the Bond Insurer any Bond Insurer Late Payment Interest in accordance with the Second Supplemental Indenture. The Borrower's obligations under this Section 4.1(d)(i) shall be deemed

satisfied to the extent the Bond Insurer has received payment of the Bond Insurer Reimbursement Amounts due to the Bond Insurer pursuant to the Second Supplemental Indenture.

- (ii) Subject to the last sentence of this Section 4.1(d)(ii), the Borrower hereby covenants and agrees to pay, or cause to be paid, to the Senior Collateral Agent for the benefit of the Bond Insurer, any unpaid Bond Insurer Premium, as a fee, administrative cost and expense due and payable under the Financing Documents, as and when due under the terms of the Bond Insurer Premium Schedule; it being understood that in no event will the Bond Insurer be entitled to accelerate or otherwise demand payment of the Bond Insurer Premium prior to the date scheduled for payment thereof under the Bond Insurer Premium Schedule. To the extent that any payment of the Bond Insurer Premium is not paid when due, interest shall accrue on such unpaid amounts from the date such amount is due until the date the Bond Insurer is paid in full at a rate equal to the Bond Insurer Late Payment Rate. Such Bond Insurer Premium, together with any unpaid amounts and any interest that may accrue thereon, shall be payable to the Senior Collateral Agent for the benefit of the Bond Insurer by the Senior Collateral Agent pursuant to Section 5.02(b)(1), Section 5.03(b)(1) or Section 6.06(b)(i)(A) of the Collateral Agency and Accounts Agreement, as applicable. The Borrower's obligations under this Section 4.1(d)(ii) shall be deemed satisfied to the extent the Bond Insurer has received payment of the Bond Insurer Premium due from or on behalf of the Borrower to the Senior Collateral Agent for the benefit of the Bond Insurer as a Senior Secured Party pursuant to the terms of the Collateral Agency and Accounts Agreement.
  
- (iii) Subject to the last sentence of this Section 4.1(d)(iii), the Borrower hereby covenants and agrees to pay or reimburse, or cause to be paid or reimbursed, the Bond Insurer, for any and all documented charges, fees, costs and expenses that the Bond Insurer may reasonably pay or incur in connection with (i) the administration, enforcement, defense or preservation of any rights under this First Project Loan Agreement Amendment or any other Senior Financing Document or the Bond Insurance Policy, (ii) the pursuit of any remedies under this First Project Loan Agreement Amendment or any other Senior Financing Document or the Bond Insurance Policy or otherwise afforded by law or equity, (iii) any amendment, waiver or other action with respect to, or related to this First Project Loan Agreement Amendment or any other Senior Financing Document, whether or not executed or completed, or (iv) any litigation or other dispute in connection with the Indenture or the transactions contemplated thereby initiated by third parties, in each case, other than any charges, fees, costs or expenses resulting from the failure to honor the Bond Insurer's obligations under the Bond Insurance Policy or any other Financing Document, its willful misconduct or gross negligence (collectively, the "Bond Insurer Fees"). The Borrower will pay the Bond Insurer Fees to the Senior Collateral Agent for the benefit of the Bond Insurer in accordance with the Second Supplemental Indenture. The Bond Insurer reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver or consent proposed in respect of this

First Project Loan Agreement Amendment or any other Senior Financing Document. The Borrower shall cause the Senior Collateral Agent to receive sufficient funds to enable the Senior Collateral Agent to transfer to the Bond Insurer the Bond Insurance Fees due and payable as administrative costs of the Bond Insurer pursuant to Section 5.02(b)(1), Section 5.03(b)(1) or 6.06(b)(i) of the Collateral Agency and Accounts Agreement, as applicable. The Borrower's obligations under this Section 4.1(d)(iii) shall be deemed satisfied to the extent the Bond Insurer has received payment of the Bond Insurer Fees due from or on behalf of the Borrower to the Senior Collateral Agent for the benefit of the Bond Insurer as a Senior Secured Party pursuant to the terms of the Collateral Agency and Accounts Agreement.

- (iv) For the avoidance of doubt, the amounts to be paid to the Bond Insurer pursuant to this Section 4.1(d) are the same as (and not in addition to) the amounts required to be paid under Section 4.1(d) of the First Building Loan Agreement Amendment.

(e) Notwithstanding anything to the contrary in any other Financing Documents, the Borrower shall not pay, distribute, declare the payment of or make any Permitted Tax Distributions, whether as a dividend, loan, investment, loan repayment or in any other form, (i) pursuant to Section 5.03(b)(6) of the Collateral Agency and Account Agreement, in an amount exceeding \$20 million per calendar year, and (ii) pursuant to Section 5.03(b)(11) of the Collateral Agency and Account Agreement, in any amount at any time.

(f) In the event that the Borrower should fail to make any of the payments required in this Section 4.1, the amount so in default shall continue as an obligation of the Borrower until the amount in default shall have been fully paid, and the Borrower agrees to pay the same with interest thereon, to the extent and in such amount as provided under the Indenture and the Collateral Agency and Accounts Agreement.

(g) To the extent any moneys have been deposited by the Borrower, or on the Borrower's behalf, pursuant to the Collateral Agency and Accounts Agreement, into the 2024A Tax-Exempt Bond Interest Payment Sub-Account or the 2024A Tax-Exempt Bond Principal Payment Sub-Account for the purpose of paying interest on and principal of the Series 2024A Bonds when due and into the 2024B Tax-Exempt Bond Interest Payment Sub-Account or the 2024B Tax-Exempt Bond Principal Payment Sub-Account for the purpose of paying interest on and principal of the Series 2024B Bonds when due, the Borrower's payment obligations pursuant to this Section 4.1 with respect to the applicable payment of interest, principal, Accreted Value, and Redemption Price in respect of such Bonds will be deemed satisfied. If the principal or Redemption Price and interest on the Series 2024 Bonds shall have been paid sufficiently that payment of all Series 2024 Bonds Outstanding and all interest and other amounts payable thereon shall be deemed to have occurred in accordance with Article VII of the Master Indenture, then, with respect to the Series 2024 Bonds no longer Outstanding for purposes of the Indenture, the obligations of the Borrower to make payments pursuant to Section 4.1(a)(i) hereof shall be deemed to have been satisfied in full, and the Borrower's obligations under Section 4.1(a)(i) hereof and this First Project Loan Agreement Amendment and the Series 2024 Project Note shall be discharged, as applicable.

(h) The Borrower agrees to make such payments to the Senior Collateral Agent and take such other actions as are required of it under any of the Tax Certificates including any payments to satisfy any Rebate Amount and for any rebate analyst engaged to calculate such Rebate Amount. The obligation of the Borrower to make such payments and to take such other actions shall be absolute and

unconditional and shall remain in effect and be binding upon the Borrower notwithstanding the release and discharge of this First Project Loan Agreement Amendment or any of the Tax Certificates.

(i) All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made from the applicable Subaccount of the Senior Obligations Payment Account, or other applicable Project Account, in accordance with the Collateral Agency and Accounts Agreement to the specified Secured Debt Representative(s) or Senior Secured Party, as applicable, for the account of the respective Senior Secured Party to which such payment is owed, on the date and at the time and location specified in the relevant Senior Financing Documents, in Dollars, in immediately available funds; provided, however, the insufficiency of funds in any Project Account shall not relieve the Borrower of any payment obligation hereunder.

**Section 4.2. Unconditional Obligations.** The obligations of the Borrower to make the payments required in Section 4.1 hereof and to perform and observe the other agreements contained herein shall be absolute and unconditional and shall not be subject to any defense or any right of setoff, counterclaim or recoupment arising out of (a) any breach by the Issuer, the Trustee, or any other Agent or any other Senior Secured Party of any obligation to the Borrower, whether hereunder or otherwise, or (b) any indebtedness or liability at any time owing to the Borrower by the Issuer, the Trustee, any other Agent or any other Senior Secured Party. Until the Discharge of Senior Obligations, the Borrower will not suspend or discontinue any payments provided for in Section 4.1 hereof, and the Borrower (1) will perform and observe all other obligations of the Borrower contained in this First Project Loan Agreement Amendment and the Senior Financing Documents and (2) will not terminate this First Project Loan Agreement Amendment or any Senior Financing Document, except as permitted by the Senior Financing Documents, for any cause, or any failure of the Issuer, the Trustee, any other Agent or any other Senior Secured Party to perform and observe any agreement, whether express or implied, or for any failure of the Issuer, the Trustee, any other Agent or any other Senior Secured Party to comply with any duty, liability or obligation of the Issuer, the Trustee, any other Agent or any other Senior Secured Party, as applicable, arising out of or connected with this First Project Loan Agreement Amendment.

**Section 4.3. Borrower Approval of Indenture.** A copy of the Indenture has been submitted to the Borrower for its examination and review. By its execution of this First Project Loan Agreement Amendment, the Borrower acknowledges that it has approved, has agreed to and is bound by the provisions of the Indenture, as incorporated herein. The Borrower agrees that the Trustee, as assignee of the Issuer pursuant to the Indenture, shall be entitled to enforce and to benefit from the terms and conditions of the Series 2024 Project Note and of this First Project Loan Agreement Amendment that relate to it notwithstanding the fact that it is not a signatory to either.

## **ARTICLE V PREPAYMENT PROVISIONS AND REDEMPTION**

**Section 5.1. Prepayments and Redemption of the Series 2024 Bonds.** The Borrower shall have the option to prepay all or any part of the Series 2024 Bond Project Loan hereunder at the times and in the amounts as necessary to cause the Issuer to redeem the Series 2024 Bonds, as applicable, in accordance with the terms of the Indenture, the Common Terms Agreement and the Series 2024 Bonds that may be subject to optional redemption. The Issuer, at the request of the Borrower, if applicable, shall forthwith take all steps (other than the payment of funds necessary to effect such redemption (except with respect to funds provided by the Borrower to the Issuer)) necessary under the applicable redemption provisions of the Indenture and the Common Terms Agreement to effect redemption of all or part of the Outstanding Series 2024 Bonds, as may be specified by the Borrower and required by the Indenture and the Common Terms Agreement, on the date established for such redemption. The Series 2024 Bonds shall

further be subject to extraordinary redemption and mandatory sinking fund redemption as provided in Sections 2.07 and 2.08 of the Second Supplemental Indenture. Upon any such redemption in full and payment of all amounts required by Article VII of the Master Indenture, the Series 2024 Bond Project Loan shall terminate as provided in Section 9.1 hereof.

**Section 5.2. Mandatory Optional Redemption of the Series 2024A Bonds.**

(a) *Mandatory Optional Redemption Definitions:* The following terms used in this Section 5.2 have the meanings ascribed to them below:

(i) “10 Year Cash Sweep Date” means the date ten (10) years preceding the maturity date of the Series 2024A Balloon Indebtedness.

(ii) “5 Year Cash Sweep Date” means the date five (5) years preceding the maturity date of the Series 2024A Balloon Indebtedness.

(iii) “Calculation Period” means a period beginning on a Calculation Date and ending on the day preceding the following Calculation Date (i.e. the quarter following a Calculation Date, starting on the Calculation Date).

(iv) “Loan Life Coverage Ratio” means, as of any Calculation Date, (A) the present value of the projected amount of Free Cash Flow from such Calculation Date through the maturity date of the Series 2024A Balloon Indebtedness, discounted at the weighted average coupon of all of the Senior Obligations with scheduled principal payments (including both maturities and mandatory sinking fund redemption) between such Calculation Date and the maturity date of the Series 2024A Balloon Indebtedness, *divided by* (B) all principal due and payable (including both maturities and mandatory sinking fund redemption; and, for the avoidance of doubt, the calculation of such principal due and payable shall not take into account the projected debt service upon refinancing of any Series 2024A Bond maturing on \_\_\_ 1, 2054 as outlined in the Anticipated Debt Service Schedule of the Series 2024A Balloon Indebtedness Certificate, but instead shall be all the principal due and payable on such Series 2024A Bond maturing on \_\_\_ 1, 2054 pursuant to the terms of the Second Supplemental Indenture) of all Senior Obligations between the Calculation Date through the maturity date of the Series 2024A Balloon Indebtedness.

(v) “Remaining Revenue Account Limit” means, as of any Quarterly Distribution Date, (A) the amount on deposit in the Remaining Revenue Account *minus* any transfers to the Port Authority pursuant to Section 5.17(c)(i) of the Collateral Agency and Accounts Agreement on such Quarterly Distribution Date *plus* (B) the amount on deposit in the Surplus Remaining Revenue Account *minus* any transfers to the Port Authority pursuant to Section 5.17(f)(ii)(A) of the Collateral Agency and Accounts Agreement on such Quarterly Distribution Date.

(b) The Borrower shall direct the Trustee to redeem the Series 2024A Balloon Indebtedness, pursuant to the optional redemption provisions of Section 2.07(a) of the Second Supplemental Indenture, in the amounts and on the dates as follows, so long as, and only to the extent that, the applicable transfers from the Remaining Revenue Account and the Surplus Remaining Revenue Account are then permitted pursuant to Sections 5.17(c)(x) or (y) and 5.17(f)(ii)(x) or (y) of the Collateral Agency and Accounts Agreement, as applicable:

(i) As soon as reasonably practicable after each Quarterly Distribution Date occurring on and after the 10 Year Cash Sweep Date, if the Loan Life Coverage Ratio as of the immediately preceding Calculation Date is less than 1.10:1.00 pursuant to the calculations of an independent



consultant who is experienced in traffic and revenue studies for airports, in a report delivered to the Senior Collateral Agent by the request of the Borrower on any day from the date preceding such Calculation Date by fourteen (14) months until such Calculation Date, in an amount equal to the least of: (A) the amount that will make the Loan Life Coverage Ratio greater than 1.10:1.00, (B) one hundred percent (100%) of the amount deposited into the Remaining Revenue Account pursuant to the terms of the Financing Documents from and after the Calculation Date immediately preceding the 10 Year Cash Sweep Date, and (C) the Remaining Revenue Account Limit. The Borrower shall cause the independent consultant to provide the report contemplated above at any time within the fourteen (14) month period prior to the applicable Calculation Date.

(ii) As soon as reasonably practicable after each Quarterly Distribution Date occurring on and after the 5 Year Cash Sweep Date, in an amount equal to (A) the lesser of (x) the greater of (I) (a) eighty percent (80%) of the amount deposited into the Remaining Revenue Account pursuant to the terms of the Financing Documents from and after the Calculation Date immediately preceding the 5 Year Cash Sweep Date *minus* (b) all amounts previously applied to redeem the Series 2024A Balloon Indebtedness pursuant to this Section 5.2(b)(ii) and (II) the amount calculated in (b)(i) above, and (y) the Remaining Revenue Account Limit, *minus* (B) any amount required to be applied to redeem Series 2024A Balloon Indebtedness pursuant to Section 5.2(b)(i) on such date; provided that the amount determined pursuant to this Section 5.2(b)(ii) shall in no event be less than \$0.

## ARTICLE VI AMENDMENTS TO ORIGINAL TDC PROJECT LOAN AGREEMENT

**Section 6.1. Amendment to Section 8.1 to the Original TDC Project Loan Agreement.**  
Section 8.1(1) of the Original TDC Project Loan Agreement is hereby amended to add the double underlined text as follows:

(1) Any one or more of the following events shall constitute “Events of Default” for the TDC Senior Term Loan Project Loan, the Series 2022A Bond Project Loan, the TDC Security Deposit Project Loan, the TDC Bank Debt Project Note, the Series 2022A Project Note, and the TDC Security Deposit Project Note, and under this Loan Agreement (but only as this Loan Agreement relates to the Series 2022A Bonds, the Series 2022A Bond Project Loan, the Series 2022A Project Note, the Senior Term Loan, the TDC Senior Term Loan Project Loan, the TDC Bank Debt Project Note, the Security Deposit Loans, the Security Deposit LC, the TDC Security Deposit Project Loan or the TDC Security Deposit Project Note):

**Section 6.2. Amendment to Exhibit A-1 of the Original TDC Project Loan Agreement.**  
Exhibit A-1 of the Original TDC Project Loan Agreement (FORM OF SERIES 2022A PROJECT NOTE) is hereby amended and restated in its entirety as Exhibit B-1 to this First Project Loan Agreement Amendment.

**Section 6.3. Amendment to Exhibit A-2 of the Original TDC Project Loan Agreement.**  
Exhibit A-2 of the Original TDC Project Loan Agreement (FORM OF TDC BANK DEBT PROJECT NOTE) is hereby amended and restated in its entirety as Exhibit B-2 to this First Project Loan Agreement Amendment.

**ARTICLE VII**  
**ASSIGNMENT; INDEMNIFICATION**

**Section 7.1. Assignment.** Except as expressly contemplated herein, in the Indenture, the Credit Agreement, the Common Terms Agreement, the Collateral Agency and Accounts Agreement and the Security Documents, or in the other Financing Documents, neither the Borrower nor the Issuer may assign its interest in this First Project Loan Agreement Amendment.

**Section 7.2. Release and Indemnification Covenants.**

(a) The Borrower agrees to and does hereby indemnify and hold harmless the Issuer and any member, principal, officer, director, official, agent, employee, and attorney thereof, any person who “controls” the Issuer (within the meaning of Section 15 of the Securities Act of 1933, as amended, or Section 20 of the Securities Exchange Act of 1934, as amended), the Trustee and any member, principal, officer, director, official, agent, employee, and attorney thereof, the Administrative Agent and any member, principal, officer, director, official, agent, employee, and attorney thereof, the Agents and any member, principal, officer, director, official, agent, employee, and attorney thereof, and the State (collectively, the “Indemnified Parties”) against any and all losses, claims, damages or liabilities (including all costs, expenses and reasonable counsel fees actually incurred in investigating or defending such claim) suffered by any of the Indemnified Parties to the extent caused by, relating to, arising out of, resulting from, or in any way connected with (i) the condition, use, ownership, possession, conduct, management, planning, design, acquisition, construction, installation, financing, or sale of the Project or any part thereof including the payment of the Rebate Amount to the federal government, (ii) the acceptance or administration by the Issuer without gross negligence or willful misconduct of its duties under the Indenture, (iii) any untrue statement of a material fact contained in the Borrower’s application to the Issuer, (iv) any omission by the Borrower of a material fact necessary to be stated in the Borrower’s application to the Issuer, (v) the acceptance and administration of the duties of the Trustee under the Indenture, the Senior Financing Documents and any documents related thereto, and (vi) the acceptance and administration of the duties of the Administrative Agent or any of the Agents under the Senior Financing Documents to which each may be a party. In case any action shall be brought against one or more of the Indemnified Parties based upon any of the above and in respect to which indemnity may be sought against the Borrower, such Indemnified Party shall promptly notify the Borrower in writing, and except where the Borrower is the claimant, the Borrower shall assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party, the payment of all reasonable costs and expenses and the right to negotiate and consent to settlement. Any one or more of the Indemnified Parties shall have the right to employ separate counsel at the expense of the Borrower in any such action and to participate in the defense thereof if, in the reasonable opinion of the Indemnified Party, a conflict of interest could arise out of the representation of the parties by the same counsel. The Borrower shall not be liable for any settlement of any such action effected without the consent of the Borrower, but if settled with the consent of the Borrower, or if there is a final judgment for the claimant on any such action, the Borrower agrees to indemnify and hold harmless the Indemnified Parties from and against any loss or liability by reason of such settlement or judgment.

(b) The Borrower agrees to and does hereby indemnify and hold harmless the Indemnified Parties against any and all losses, claims, damages or liabilities (including all costs, expenses, and reasonable counsel fees actually incurred in investigating or defending such claim) suffered by any of the Indemnified Parties and caused by, relating to, arising out of, resulting from, or in any way connected to an examination, investigation or audit of the Tax-Exempt Bonds by the IRS. In the event of such examination, investigation or audit, the Indemnified Parties shall have the right to employ counsel reasonably satisfactory to the Borrower at the expense of the Borrower. In such event, the Borrower shall assume the primary role in responding to and negotiating with the IRS but shall inform the Indemnified Parties of the status of the investigation. In the event the Borrower fails to respond adequately and promptly

to the IRS, the Issuer shall have the right to assume the primary role in responding to and negotiating with the IRS and shall have the right to enter into a closing agreement, for which the Borrower shall be liable.

(c) Notwithstanding anything in this First Project Loan Agreement Amendment to the contrary which may limit recourse to the Borrower or may otherwise purport to limit the liability of the Borrower, the provisions of this Section 7.2 shall control the Borrower's obligations and shall survive repayment of the Series 2024 Bonds.

(d) Notwithstanding anything to the contrary contained herein, the Borrower shall have no liability to indemnify the Issuer, the Senior Collateral Agent, the Administrative Agent or the Trustee against claims or damages resulting from such parties' own gross negligence or willful misconduct.

(e) If the reimbursement provided for in this Section 7.2 is unenforceable, or is unavailable to the Borrower in respect of any losses, claims, damages, or liabilities (or actions in respect thereof) of the type subject to reimbursement herein, then the Borrower shall, in lieu of reimbursing such Indemnified Parties, contribute to the amount paid or payable by such Indemnified Parties as a result of such losses, claims, damages or liabilities (or actions in respect thereof).

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES

**Section 8.1. Events of Default Defined.** Any one or more of the following events shall constitute "Events of Default" for the Project Loans (except for the TDC Senior Term Loan Project Loan and the Series 2022A Bond Project Loan), the Series 2024 Project Note, any Additional Notes issued in connection with Project Loans and under this TDC Project Loan Agreement (except for any provisions of this TDC Project Loan Agreement that relate to the Series 2022A Bonds, the Series 2022A Bond Project Loan, the Series 2022A Project Note, the Senior Term Loan, the TDC Senior Term Loan Project Loan, the TDC Bank Debt Project Note, Security Deposit LCs, Security Deposit Loans, the Security Deposit Project Loan or the TDC Security Deposit Project Note):

(a) Any failure by the Borrower to make any payments required to be paid pursuant to the TDC Project Loan Agreement (other than payments required pursuant to the Original TDC Project Loan Agreement), and such failure is not remedied within three (3) Business Days after the applicable due date;

(b) Any representation or warranty made by the Borrower in any Senior Financing Document to which it is a party proves to have been incorrect or misleading in any material respect when made, and a Material Adverse Effect on the Project or the transaction contemplated by the Senior Financing Documents, taken as a whole, could reasonably be expected to result therefrom unless such misrepresentation is capable of remedy and is remedied within thirty (30) days after the receipt by the Borrower of written notice from the Secured Debt Representative thereof;

(c) The Borrower fails to comply with any affirmative or negative covenant under the Senior Financing Documents (other than those specified in subsection (a) and (b) of this Section 8.1) to which it is a party, unless such failure is capable of being remedied and is remedied within thirty (30) days after the earlier of (i) written notice specifying such failure shall have been given to the applicable Secured Debt Representative by the Borrower or (ii) written notice specifying such failure and requesting that it be remedied shall have been given to the Borrower by the applicable Secured Debt Representative, or such longer period as is reasonably necessary under the circumstances to remedy such failure so long as corrective action is instituted by the Borrower within the applicable thirty (30) day period and is diligently

pursued until such failure is corrected and in any event not to exceed one hundred and eighty (180) days without the prior written approval of the applicable Secured Debt Representative; provided, that if such Event of Default under the applicable Senior Financing Document is due to a cross default with the Common Terms Agreement or Credit Agreement, such cross default shall not constitute an Event of Default hereunder during the Cross-Default Standstill Period pursuant to the terms of the Intercreditor Agreement;

(d) Any “Event of Default” by the Borrower under any of the Key Contracts (as defined in the Lease Agreement) that continues beyond any applicable cure or grace period;

(e) The occurrence of an “Event of Default” by the Borrower under and as defined in the Lease Agreement, that continues beyond any applicable cure or grace period; provided, that if such Event of Default under the Lease Agreement is due to a cross default with the Common Terms Agreement or Credit Agreement, such cross default shall not constitute an Event of Default hereunder during the Cross-Default Standstill Period pursuant to the terms of the Intercreditor Agreement;

(f) The occurrence of an “Enforcement Action” under the Collateral Agency and Accounts Agreement;

(g) The occurrence of an “Event of Default” that continues beyond any applicable cure or grace period under the Indenture, Leasehold Mortgages or any of the Senior Financing Documents (except for the Common Terms Agreement or Credit Agreement); provided, that if such Event of Default under the applicable Senior Financing Document is due to a cross default with the Common Terms Agreement or Credit Agreement, such cross default shall not constitute an Event of Default hereunder during the Cross-Default Standstill Period pursuant to the terms of the Intercreditor Agreement;

(h) Any Senior Financing Document (other than (i) a Senior Collateral Document or (ii) a Senior Financing Document relating to Indebtedness of the Borrower that has been repaid or otherwise discharged in full) ceases to be in full force and effect unless such document shall be replaced by a contract on substantially similar terms within thirty (30) days following the earlier of (i) the Borrower’s knowledge of such occurrence or (ii) the delivery of written notice thereof to the Borrower by the Senior Collateral Agent, or such longer period, not exceeding one hundred and eighty (180) days, reasonably necessary to effect such replacement;

(i) A judgment against the Borrower for the payment of money in an amount in excess of \$25,000,000, without taking into account any portion of the amount of such judgment that is covered by insurance or for which the Borrower is entitled to indemnification from any third party, if such judgment remains unsatisfied without any procurement of a stay of execution within sixty (60) days of the judgment being rendered; provided, that any such judgment shall not constitute an Event of Default hereunder during the pendency of an appeal thereof, so long as, during such appeal, execution is effectively stayed or the liability for such judgment is adequately covered by insurance or a performance bond;

(j) The Borrower shall fail to maintain its existence as a Delaware limited liability company or its qualification to do business in New York;

(k) Any Senior Collateral Documents shall cease (other than as expressly permitted under the Senior Financing Documents) to be effective to grant a perfected Security Interest on any material portion of the Collateral described therein other than as a result of actions or failure to act by the applicable Secured Party, and with the priority purported to be created thereby and such event continues for thirty (30) days after the applicable agent giving notice thereof to the Borrower;

(l) Failure of the Borrower to achieve Substantial Completion of the Project by the Outside Completion Date (as defined in the Lease Agreement); or

(m) The Borrower institutes a proceeding to be adjudicated as bankrupt or insolvent, or shall consent to the institution of bankruptcy or insolvency proceedings against it, or shall file a petition or answer or consent seeking reorganization or relief under the federal Bankruptcy Code or any other similar applicable federal or state law, or shall consent to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee or sequestrator (or other similar official) of the Borrower or of any substantial part of its property, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due.

## **Section 8.2. Remedies on Default.**

(a) Whenever any Event of Default hereunder shall have occurred and be continuing, subject in all events to the terms of the Intercreditor Agreement, the Trustee, or the Issuer with the written consent of the Trustee, have the right to, in conjunction with its available remedies under the Indenture, take one or any combination of the following remedial steps, by notice to the Borrower, the Senior Collateral Agent, and the Port Authority:

(i) Declare that all or any part of any amounts outstanding under the Series 2024 Project Note are (1) immediately due and payable, and/or (2) payable on demand by the Trustee, and any such notice shall take effect in accordance with its terms but only if all amounts payable with respect to the Outstanding Bonds are being accelerated pursuant to Section 8.02(b)(2) of the Master Indenture, or if all of the Outstanding Bonds are being defeased pursuant to Article VII of the Master Indenture or otherwise paid in full;

(ii) Pursuant to the terms of the Collateral Agency and Accounts Agreement, direct the Senior Collateral Agent to take or cause to be taken any and all actions necessary to implement any available remedies with respect to the Collateral under any of the Senior Collateral Documents;

(iii) Have reasonable access to and inspect, examine and make copies of the books and records and any and all accounts, data and income tax and other tax returns of the Borrower during regular business hours of the Borrower and following prior reasonable notice; or

(iv) Take on behalf of the Owners of the Series 2024 Bonds whatever other action under the Senior Collateral Documents, at law or in equity, as may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this First Project Loan Agreement Amendment or the rights of the Owners of the Series 2024 Bonds, in each case subject to the terms of the Collateral Agency and Accounts Agreement.

(b) Whenever an Event of Default described in Section 8.01(m) of the Original TDC Project Loan Agreement shall have occurred all amounts outstanding under the Series 2024 Project Notes shall immediately become due and payable, in each case, without presentment, demand, protest or notice any kind, all of which are hereby waived, by the Borrower.

(c) Subject in all events to the terms of the Intercreditor Agreement, upon any Credit Acceleration (as defined in the Common Terms Agreement) and/or any other acceleration of Senior Obligations (other than the Secured Hedge Agreements), the Series 2024 Bond Loans shall be concurrently accelerated hereunder to the same extent and the Borrower shall have an obligation to repay the Series 2024

Bond Loans that have been so accelerated and pay all interest accrued in respect thereof, along with any fees, make-whole amounts, prepayment premiums, and any other amounts then due and payable to the Issuer in accordance with this First Project Loan Agreement Amendment, the Collateral Agency and Accounts Agreement and the other Senior Financing Documents. All payments by the Borrower to the Issuer under this Article VIII shall be deemed satisfied by the Borrower, upon the Borrower making or causing to be made in accordance with the Collateral Agency and Accounts Agreement an equivalent payment to the relevant Secured Debt Representative(s) or Secured Party, as applicable, of the accelerated Outstanding Secured Obligations (along with all other fees, make-whole amounts, prepayment premiums, and any other amounts then due and payable by the Issuer to the relevant Secured Debt Representative(s) or Secured Party, as applicable, in accordance with the Senior Financing Documents).

(d) Any rights and remedies as are given to the Issuer under this First Project Loan Agreement Amendment will also extend to the Owners of the Series 2024 Bonds, the Senior Collateral Agent, and the Trustee, who will be entitled to the benefit of all covenants and agreements contained in this First Project Loan Agreement Amendment, subject to the terms of the Indenture, the Senior Collateral Documents and the Intercreditor Agreement.

(e) Any Enforcement Action and any other exercise of remedies hereunder shall be taken solely in accordance with the Intercreditor Agreement and the Collateral Agency and Accounts Agreement and in accordance with the applicable Senior Financing Document(s) and all amounts paid to or received by the Senior Collateral Agent or any other Secured Party and representing the proceeds of the Collateral or the proceeds of any action taken pursuant to an Enforcement Action shall be subject to Article VI of the Collateral Agency and Accounts Agreement.

(f) If an Enforcement Action has occurred, the Issuer shall, in accordance with the instructions from the Intercreditor Agent, (i) direct the Senior Collateral Agent to take or cause to be taken any and all actions necessary to implement any available remedies with respect to the Collateral under any of the Senior Collateral Documents, and (ii) take on behalf of the Owners and Bank Finance Parties, in accordance with the instructions of the Intercreditor Agent, whatever other action under the Senior Collateral Documents, at law or in equity, as may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this First Project Loan Agreement Amendment or the rights of the Owners and Bank Finance Parties, in each case subject to the terms of the Collateral Agency and Accounts Agreement and the Intercreditor Agreement.

(g) Any amounts collected pursuant to actions taken under this Section 8.2 and the Senior Collateral Documents shall be applied in accordance with Section 6.06 of the Collateral Agency and Accounts Agreement.

### **Section 8.3. Rescission and Waiver.**

(a) The Issuer shall waive any Event of Default immediately after any such Event of Default has been waived in accordance with the applicable Senior Financing Documents.

(b) The Issuer shall have the right to, but shall be under no obligation to (except with respect to paragraph (a) above of this Section 8.3), waive any other Event of Default at any time.

(c) In case of any such waiver or rescission, then and in every such case the Issuer, the Trustee, and the Borrower shall be restored to their former positions and rights, but no such waiver shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

**Section 8.4. No Remedy Exclusive.** Subject to Section 8.02 of the Master Indenture and the terms of the Intercreditor Agreement, no remedy hereunder is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this First Project Loan Agreement Amendment or now or hereafter existing at Law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer, the Trustee or any Agent to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required by Law or expressly hereunder (or as required under any other Senior Financing Document).

**Section 8.5. Additional Issuer Remedies on Default.**

In addition to the remedies above, if the Borrower commits a breach or threatens to commit a breach of the Reserved Rights, the Issuer shall have the right and remedy, without posting bond or other security, to have such Reserved Rights specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach will cause immediate and irreparable injury to the Issuer and that money damages will not provide an adequate remedy therefor.

**Section 8.6. Agreement to Pay Attorneys' Fees and Expenses.**

(a) Following the occurrence and during the continuance of an Event of Default or upon the request of the Borrower to review or analyze the financing of the Series 2024 Bonds or any related financing instruments, if the Issuer shall employ attorneys or incur other expenses for the collection of payments required hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower herein contained, the Borrower agrees that it will therefor pay to the Issuer its share of the reasonable fees of such attorneys and such other reasonable, properly invoiced and documented expenses so incurred by the Issuer in connection with the same.

(b) Following the occurrence and during the continuance of an Event of Default, the Trustee may, at the reasonable and documented costs and expense of the Borrower, employ or retain such counsel, accountants, appraisers or other experts or advisors as it may reasonably require for the purpose of determining and discharging its rights and duties hereunder and, in the absence of the Trustee's gross negligence, bad faith or willful misconduct in employing or retaining any such counsel, accountants, appraisers, experts or advisors, may act and rely and shall be protected in acting and relying in good faith on the opinion or advice of or information obtained from any counsel, accountant, appraiser or other expert or advisor, whether retained or employed by the Borrower or by the Trustee, in relation to any matter arising in the administration hereof, and shall not be responsible for any act or omission on the part of any of them. In addition, the Trustee shall not be liable for any acts or omissions of its nominees, correspondents, designees, agents, subagents or subcustodians except to the extent of its gross negligence, bad faith or willful misconduct in nominating or appointing such persons and so long as such persons are permitted to act hereunder.

**Section 8.7. No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this First Project Loan Agreement Amendment should be breached by any party and thereafter waived by another party as permitted hereunder, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

## ARTICLE IX

### MISCELLANEOUS

**Section 9.1. Term of Agreement.** The term of this First Project Loan Agreement Amendment shall commence on the date of execution and delivery of this First Project Loan Agreement Amendment and shall expire on the date that all Senior Obligations and the fees and expenses of the Issuer and the Trustee shall have been fully paid or provision made for such payments; *provided, however*, that this First Project Loan Agreement Amendment may be terminated prior to such date pursuant to Article V of this First Project Loan Agreement Amendment and Article VII of the Master Indenture, but in no event before all of the obligations and duties of the Borrower hereunder have been fully performed, including, without limitation, the payments of all costs and fees mandated hereunder or under the Senior Financing Documents pertaining to the Senior Obligations to be paid by the Borrower.

**Section 9.2. Third Party Beneficiaries.** The Trustee shall be a third party beneficiary of the following provisions hereof (and related defined terms), which shall not be amended or modified without the prior written consent of the Trustee: Article VII Assignment; Indemnification, Article VIII Events of Default, Section 9.3 and Section 9.4 hereof. To the extent that this First Project Loan Agreement Amendment or any other Senior Financing Document to which the Bond Insurer is not a party confers upon, gives or grants to the Bond Insurer, itself and not as a Senior Secured Party represented by the Trustee pursuant hereto, any right, remedy or claim hereunder or thereunder, the Bond Insurer, in its capacity as such, is intended to be and is hereby explicitly recognized as being a third-party beneficiary of such right, remedy or claim and may exercise all legal rights and remedies in connection herewith and therewith; provided, that any exercise of any right, remedy or claim by the Bond Insurer with respect to the Senior Bond Insurer Obligations (including seeking foreclosure or proceeding against the Senior Collateral) shall be done through the Trustee as the Bond Insurer's Secured Debt Representative in accordance with the provisions of the Intercreditor Agreement, the Second Supplemental Indenture and the other Financing Documents.

**Section 9.3. Notices.** Notices under this First Project Loan Agreement Amendment shall be given in accordance with Section 12.04 of the Collateral Agency and Accounts Agreement.

**Section 9.4. Binding Effect.** This First Project Loan Agreement Amendment shall inure to the benefit of and shall be binding upon the Issuer, the Borrower, the Trustee (on behalf of the Indenture Secured Parties), the Administrative Agent (on behalf of the Bank Finance Parties) and the Intercreditor Agent (on behalf of the Senior Secured Parties), and their respective successors and assigns, subject, however, to the limitations contained herein.

**Section 9.5. Severability.** Whenever possible, each provision of this First Project Loan Agreement Amendment shall be interpreted in such a manner as to be effective and valid under applicable Law, but if any provision of this First Project Loan Agreement Amendment shall be prohibited by or invalid under applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this First Project Loan Agreement Amendment.

**Section 9.6. Amendments, Changes and Modifications.**

(a) Subsequent to the issuance of the Series 2024 Bonds and prior to payment in full of the Series 2024 Bonds issued hereunder (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), and except as otherwise expressly provided in the Indenture, the Intercreditor Agreement and the Collateral Agency and Accounts Agreement, this First



Project Loan Agreement Amendment may not be effectively amended, changed, modified, altered or terminated except in a writing executed by the Borrower and the Issuer, and otherwise in accordance with the Indenture, the Intercreditor Agreement, the Collateral Agency and Accounts Agreement and the other Senior Financing Documents, as applicable. Any amendment, supplement, modification to, or waiver of, this First Project Loan Agreement Amendment that requires the consent of the Owners of the Insured Series 2024 Bonds or that materially adversely affects the rights and interests of the Bond Insurer or the security for the Insured Series 2024 Bonds shall be subject to the prior written consent of the Bond Insurer; provided, that any amendment, supplement, modification or waiver related to the incurrence of Additional Obligations by the Borrower pursuant to Section 10.27 of the Collateral Agency and Accounts Agreement shall not be deemed to materially adversely affect the rights and interests of the Bond Insurer and shall not be subject to the prior written consent of the Bond Insurer under this First Project Loan Agreement Amendment, so long as any such Additional Obligations have no greater priority to payment than the existing Senior Obligations. Without limiting the foregoing, in determining whether any amendment, supplement, modification, waiver, consent, or other action to be taken, or any failure to take action, under this First Project Loan Agreement Amendment that would reasonably be expected to have a material adverse effect on the rights and interests of the Bond Insurer or the security for the Insured Series 2024 Bonds, the Issuer shall act upon the reasonable direction of the Bond Insurer. In the event that in connection with the issuance of Additional Insured Bonds, the Bond Insurer of such Additional Insured Bonds obtains terms under this First Project Loan Agreement Amendment (other than the Bond Insurer Premium amount) that are more favorable than those under this First Project Loan Agreement Amendment applicable to the Bond Insurer of the Insured 2024 Bonds, such terms under this First Project Loan Agreement Amendment applicable to the Bond Insurer of the Insured 2024 Bonds shall be revised at the time of the issuance of such Additional Insured Bonds so that they are as, but no more favorable.

(b) Without the Bond Insurer's prior written consent, the Borrower shall not agree to any amendment to the Senior Bank Financing Documents that would extend the final maturity date of the Senior Bank Obligations beyond November 17, 2031.

**Section 9.7. Execution in Counterparts.** This First Project Loan Agreement Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Delivery of an executed signature page to this First Project Loan Agreement Amendment by electronic transmission shall be as effective as delivery of a manually signed counterpart of this First Project Loan Agreement Amendment. Each party hereto acknowledges and agrees that they may execute this First Project Loan Agreement Amendment, and any variation or amendment hereto, using Electronic Signatures. Such Electronic Signatures are intended to authenticate this writing and to have the same force and effect as handwritten signatures.

**Section 9.8. Applicable Law; Waiver of Jury Trial. THE EFFECT AND MEANING OF THIS FIRST PROJECT LOAN AGREEMENT AMENDMENT AND THE RIGHTS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED ACCORDING TO, THE LAWS OF THE STATE, WITHOUT GIVING EFFECT TO THE PRINCIPLES OF CONFLICTS OF LAWS THEREOF. EACH OF THE ISSUER AND THE BORROWER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS FIRST PROJECT LOAN AGREEMENT AMENDMENT, THE SERIES 2024 PROJECT NOTE, OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

**Section 9.9. Captions.** The captions and headings in this First Project Loan Agreement Amendment are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this First Project Loan Agreement Amendment.

**Section 9.10. Limitation of Liability.**

(a) No covenant, agreement or obligation contained herein shall be deemed to be a covenant, agreement or obligation of any present or future director, officer, employee or agent of the Issuer, or the Borrower in his or her individual capacity so long as such person does not act fraudulently, and no such director, officer, employee or agent thereof shall be subject to any liability under this First Project Loan Agreement Amendment or with respect to any other action taken by such person provided that they do not act fraudulently.

(b) Except as otherwise expressly set forth in the Senior Financing Documents, the Senior Secured Parties will have full recourse to the Borrower and all of the Borrower's assets and properties for the liabilities and obligations of the Borrower under the Senior Financing Documents, but in no event will any Affiliates of the Borrower, or any officer, director or holder of any interest in the Borrower or any Affiliates of the Borrower, be liable or obligated for such liabilities and obligations of the Borrower.

(c) Notwithstanding anything in paragraph (b) above of this Section 9.10, nothing in said paragraph (b) above shall limit or affect or be construed to limit or affect the obligations and liabilities of any Affiliate of the Borrower (1) arising under any Senior Financing Document to which such Affiliate of the Borrower is a party, or (2) arising from any liability pursuant to any applicable Law for such fraudulent actions, bad faith or willful misconduct of any Affiliate of the Borrower.

**Section 9.11. Issuer Related Parties Not Liable.** To the extent permitted by law, no recourse shall be had for the enforcement of any obligation, promise or agreement of the Issuer contained herein or in the other Issuer Documents to which the Issuer is a party or for any claim based hereon or thereon or otherwise in respect hereof or thereof against any director, officer, agent, attorney or employee, as such, in his/her individual capacity, past, present or future, of the Issuer or of any successor entity, either directly or through the Issuer or any successor entity whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise. No personal liability whatsoever shall attach to, or be incurred by, any director, officer, agent, attorney or employee as such, past, present or future, of the Issuer or any successor entity, either directly or through the Issuer or any successor entity, under or by reason of any of the obligations, promises or agreements entered into between the Issuer and the Borrower, whether herein contained or to be implied herefrom as being supplemental hereto; and all personal liability of that character against every such director, officer, agent, attorney and employee is, by the execution of this First Project Loan Agreement Amendment and as a condition of, and as part of the consideration for, the execution of this First Project Loan Agreement Amendment, expressly waived and released. Notwithstanding any other provision of this First Project Loan Agreement Amendment, the Issuer shall not be liable to the Borrower or the Trustee or any other Person for any failure of the Issuer to take action under this First Project Loan Agreement Amendment unless the Issuer (a) is requested in writing by an appropriate Person to take such action, (b) is assured of payment of, or reimbursement for, any reasonable expenses in such action, and (c) is afforded, under the existing circumstances, a reasonable period to take such action. In acting under this First Project Loan Agreement Amendment, or in refraining from acting under this First Project Loan Agreement Amendment, the Issuer may conclusively rely on the advice of its counsel.

**Section 9.12. Provision of Information to Bond Insurer.**

(a) The Borrower shall promptly deliver, or cause to be delivered, to the Bond Insurer, unless published on EMMA:

- (i) copies of all financial statements, reports (including the independent consultant reports delivered to the Senior Collateral Agent under Section

5.2(b) hereof), notices, certificates and other information and communications that the Borrower is required to deliver to the Trustee, the Collateral Agent, the Intercreditor Agent or the Issuer pursuant to the TDC Project Loan Agreement, the Collateral Agency and Accounts Agreement the Intercreditor Agreement or any other Financing Document concurrently with providing such information to the Trustee, the Collateral Agent, the Intercreditor Agent, or the Issuer, as applicable (and the Borrower acknowledges that in each instance where the Trustee, Collateral Agent, the Intercreditor Agent or Issuer can request information under the TDC Project Loan Agreement, the Collateral Agency and Accounts Agreement, the Intercreditor Agreement and any other Financing Document, the Bond Insurer shall equally have the right to make any such request);

- (ii) copies of the information that the Trustee, the Collateral Agent or the Intercreditor Agent is required to furnish or forward to the Borrower under the Financing Documents promptly after such information is received by the Borrower under the Financing Documents;
- (iii) copies of any proposed amendment, supplement or waiver of any of the Financing Documents at the time of their proposal, and a full set of executed documents evidencing or memorializing any amendment, supplement or waiver of any of the Financing Documents or Material Project Documents and all certificates and instruments delivered to the Trustee, the Collateral Agent or the Intercreditor Agent in connection therewith within 30 days of the execution of such documents;
- (iv) copies of certificates of insurance evidencing the renewal of any insurance required by the Lease Agreement, the TDC Project Loan Agreement and the Collateral Agency and Accounts Agreement, promptly upon request from the Bond Insurer or after such certificates are furnished to the Trustee or the Collateral Agent pursuant to the Lease Agreement, the TDC Project Loan Agreement and the Collateral Agency and Accounts Agreement;
- (v) annually, and together with the Borrower's annual financial statements, the balances (together with reasonably detailed supporting documentation if requested by the Bond Insurer) of each of the Reserve Accounts;
- (vi) copies of each Restricted Payment Conditions Satisfaction Transfer Certificate within 10 Business Days of issuance;
- (vii) a copy of each Asset Preservation Schedule (as defined in the Lease Agreement) and updates thereto provided to the Port Authority under Section 86 of the Lease Agreement, within 30 days of the Borrower furnishing the same;
- (viii) a copy of the final audited version of the Financial Model for the Closing Date and any revisions to the Financial Model or any replacement model (which revisions or replacements need not be audited), as well as updated versions of the Financial Model when delivered under the Lease

Agreement, in each case without further request from the Bond Insurer, in each case within 30 days of the Borrower furnishing the same; and

(ix) copies of the Technical Advisor reports within ten (10) business days of such reports becoming available;

(b) Each of the Trustee, the Issuer, and the Borrower shall promptly notify the Bond Insurer of any failure of the Borrower to provide it with any certificates, reports, financial statements and other information, notices and communications that the Borrower is required to provide under any of the Financing Documents.

(c) The Borrower shall notify the Bond Insurer within ten (10) Business Days:

(i) of any amounts transferred to or from the Distribution Account; and

(ii) if it submits any application to a Rating Agency for a Rating Confirmation.

(d) The Borrower shall provide the Bond Insurer with any information reasonably requested by the Bond Insurer regarding the security for the Insured Series 2024 Bonds.

**Section 9.13. Bond Insurer Access to Information.** At the Bond Insurer's reasonable request, the Borrower shall (i) cause its appropriate officers or representatives to discuss with the Bond Insurer the affairs, finances and accounts of the Borrower, (ii) provide the Bond Insurer and its consultants and representatives access to the Project and the books and records of the Borrower on any Business Day upon reasonable prior notice (and the right to make copies of any such books and records).

**Section 9.14. Trustee as Representative of the Bond Insurer.** The parties acknowledge that the Bond Insurer has appointed the Trustee as its Secured Debt Representative, pursuant to Section 4.14 of the Second Supplemental Indenture.

**Section 9.15. Bond Insurer Unsecured Obligations.** Notwithstanding anything to the contrary in any of the Financing Documents, the Bond Insurer Unsecured Obligations shall not be secured by the Senior Collateral; provided, that, each monetary judgment arising from non-monetary claims under the Senior Financing Documents shall constitute Senior Bond Insurer Obligations and shall be secured by the Senior Collateral.

**Section 9.16. Complete Agreement.** This First Project Loan Agreement Amendment, together with the Original TDC Project Loan Agreement and the other Financing Documents, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

**Section 9.17. Date for Reference Purposes Only.** The date of this First Project Loan Agreement Amendment shall be for reference purposes only and shall not be construed to imply that this First Project Loan Agreement Amendment was executed on the date first above written. This First Project Loan Agreement Amendment has been executed by the parties hereto and is effective on the Series 2024 Closing Date.

**Section 9.18. Amount Secured by Leasehold Mortgages.** The maximum amount secured by the Leasehold Mortgages collectively shall not exceed the maximum amount permitted pursuant to Section 83(a)(4) of the Lease Agreement.

**[SIGNATURE PAGES AND EXHIBITS HAVE BEEN REMOVED]**

**(THIS PAGE INTENTIONALLY LEFT BLANK)**

**LOAN AMOUNT: \$2,313,617,415**

**FIRST AMENDMENT TO THE TDC BUILDING LOAN AGREEMENT**

between

**NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION**

as Issuer and conduit lender

and

**JFK MILLENNIUM PARTNERS, LLC**

as Borrower

Dated as of [•], 2024

Relating to

\$[•]	\$[•]
New York Transportation Development Corporation Special Facilities Revenue Bonds, Senior Series 2024A (Green Bonds) (AMT) (Current Interest Bonds) (JFK Airport Terminal 6 Redevelopment Project)	New York Transportation Development Corporation Special Facilities Revenue Bonds, Senior Series 2024B (AMT) (Convertible Capital Appreciation Bonds) (JFK Airport Terminal 6 Redevelopment Project)

Property:

John F. Kennedy International Airport  
Queens, NY 11430

Block: 14260

Lot: 1

Queens County

Record and Return Copy to:  
Squire Patton Boggs (US) LLP  
1120 Avenue of the Americas  
13<sup>th</sup> Floor  
New York, New York 10036  
Attention: Alethia N. Nancoo, Esq.

## TABLE OF CONTENTS

	Page
<b>ARTICLE I PROVISIONS OF ORIGINAL TDC BUILDING LOAN AGREEMENT AND THE FIRST BUILDING LOAN AGREEMENT AMENDMENT</b> .....	4
Section 1.1. <u>Original TDC Building Loan Agreement</u> .....	4
Section 1.2. <u>Designations for Senior Financing Documents</u> .....	4
Section 1.3. <u>Designations for this First Building Loan Agreement Amendment</u> .....	5
<b>ARTICLE II REPRESENTATIONS</b> .....	5
Section 2.1. <u>Representations by the Issuer</u> .....	5
Section 2.2. <u>Representations by the Borrower</u> .....	5
Section 2.3. <u>Survival of Representations</u> .....	8
Section 2.4. <u>Covenant with Owners of Bonds</u> .....	8
<b>ARTICLE III ISSUANCE OF THE BONDS</b> .....	9
Section 3.1. <u>Agreement to Issue the Series 2024 Bonds; Application of Proceeds</u> .....	9
Section 3.2. <u>Provision of Funds</u> .....	9
Section 3.3. <u>Limitation of Issuer’s Liability</u> .....	9
Section 3.4. <u>Compliance with Indenture, the Credit Agreement, Intercreditor Agreement and Collateral Agency and Accounts Agreement</u> .....	10
<b>ARTICLE IV LOAN; PAYMENT PROVISIONS</b> .....	11
Section 4.1. <u>Amounts Payable</u> .....	11
Section 4.2. <u>Unconditional Obligations</u> .....	14
Section 4.3. <u>Borrower Approval of Indenture</u> .....	15
<b>ARTICLE V PREPAYMENT PROVISIONS AND REDEMPTION</b> .....	15
Section 5.1. <u>Prepayments and Redemption of the Series 2024 Bonds</u> .....	15
Section 5.2. <u>Mandatory Optional Redemption of the Series 2024A Balloon Indebtedness</u> .....	15
<b>ARTICLE VI AMENDMENTS TO ORIGINAL TDC BUILDING LOAN AGREEMENT</b> .....	17
Section 6.1. <u>Amendment to Section 8.1 to the Original TDC Building Loan Agreement</u> .....	17
Section 6.2. <u>Amendment to Exhibit C-1 of the Original TDC Building Loan Agreement</u> .....	17
Section 6.3. <u>Amendment to Exhibit C-2 of the Original TDC Building Loan Agreement</u> .....	17
Section 6.4. <u>Amendment to Exhibit D-1 of the Original TDC Building Loan Agreement</u> .....	17



Section 6.5.	<u>Amendment to Exhibit D-2 of the Original TDC Building Loan Agreement</u> .....	17
<b>ARTICLE VII ASSIGNMENT; INDEMNIFICATION</b> .....		17
Section 7.1.	<u>Assignment</u> .....	17
Section 7.2.	<u>Release and Indemnification Covenants</u> .....	17
<b>ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES</b> .....		19
Section 8.1.	<u>Events of Default Defined</u> . ....	19
Section 8.2.	<u>Remedies on Default</u> .....	20
Section 8.3.	<u>Rescission and Waiver</u> .....	22
Section 8.4.	<u>No Remedy Exclusive</u> .....	22
Section 8.5.	<u>Additional Issuer Remedies on Default</u> .....	22
Section 8.6.	<u>Agreement to Pay Attorneys’ Fees and Expenses</u> .....	23
Section 8.7.	<u>No Additional Waiver Implied by One Waiver</u> .....	23
<b>ARTICLE IX MISCELLANEOUS</b> .....		23
Section 9.1.	<u>Term of Agreement</u> .....	23
Section 9.2.	<u>Third Party Beneficiaries</u> .....	23
Section 9.3.	<u>Notices</u> .....	24
Section 9.4.	<u>Binding Effect</u> .....	24
Section 9.5.	<u>Severability</u> .....	24
Section 9.6.	<u>Amendments, Changes and Modifications</u> .....	24
Section 9.7.	<u>Execution in Counterparts</u> .....	25
Section 9.8.	<u>Applicable Law; Waiver of Jury Trial</u> .....	25
Section 9.9.	<u>Captions</u> .....	25
Section 9.10.	<u>Limitation of Liability</u> .....	25
Section 9.11.	<u>Issuer Related Parties Not Liable</u> .....	26
Section 9.12.	<u>Provision of Information to Bond Insurer</u> .....	26
Section 9.13.	<u>Bond Insurer Access to Information</u> .....	28
Section 9.14.	<u>Trustee as Representative of the Bond Insurer</u> .....	28
Section 9.15.	<u>Bond Insurer Unsecured Obligations</u> .....	28
Section 9.16.	<u>Complete Agreement</u> .....	28
Section 9.17.	<u>Date for Reference Purposes Only</u> .....	28
Section 9.18.	<u>Amount Secured by Leasehold Mortgages</u> .....	28
<b>EXHIBIT A – LEGAL DESCRIPTION – JFK AIRPORT AND PREMISES</b>		
<b>EXHIBIT B – FORM OF SERIES 2024 BUILDING NOTE</b>		
<b>EXHIBIT C – SECTION 22 AFFIDAVIT</b>		

**EXHIBIT D** – DEBT SERVICE SCHEDULE

**EXHIBIT E** – ISSUER FINANCING FEES

**EXHIBIT F-1** – FORM OF AMENDED AND RESTATED SERIES 2022A BUILDING NOTE

**EXHIBIT F-2** – FORM OF AMENDED AND RESTATED TDC BANK DEBT BUILDING NOTE

**EXHIBIT G-1** – SERIES 2024A BALLOON INDEBTEDNESS CERTIFICATE

**EXHIBIT G-2** – AMENDED AND RESTATED SERIES 2022A BALLOON INDEBTEDNESS  
CERTIFICATE

**EXHIBIT G-3** – AMENDED AND RESTATED SENIOR TERM LOAN BALLOON  
INDEBTEDNESS CERTIFICATE

## FIRST AMENDMENT TO THE TDC BUILDING LOAN AGREEMENT

**THIS FIRST AMENDMENT TO THE TDC BUILDING LOAN AGREEMENT**, dated as of [•], 2024 (this “First Building Loan Agreement Amendment”), which amends and supplements the Original TDC Building Loan Agreement (as hereinafter defined) is made and entered into by and between the **NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION**, a local development corporation formed under Section 1411 of the New York Not-for-Profit Corporation Law, being Chapter 35 of the Consolidated Laws of New York, created by action of the New York Job Development Authority (“JDA”) established under Section 1802, Subtitle I, Title 8, Article 8 of the New York Public Authorities Law, its permitted successors and assigns, having an address c/o Empire State Development, \_\_\_\_\_ (the “Issuer”), and **JFK MILLENNIUM PARTNERS, LLC**, a Delaware limited liability company, its permitted successors and assigns, having an address at \_\_\_\_\_ (the “Borrower”). All capitalized terms used herein but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Collateral Agency and Accounts Agreement.

### WITNESSETH:

**WHEREAS**, The Port Authority of New York and New Jersey, a municipal corporate instrumentality and political subdivision of the States of New York and New Jersey, created and existing by virtue of the Compact of April 30, 1921, made by and between the States of New York and New Jersey, and thereafter consented to by the Congress of the United States (the “Port Authority”) has entered into a Lease Agreement, dated as of November 17, 2022 (as supplemented and amended from time to time, the “Lease Agreement”), with the Borrower, pursuant to which, among other things, the Borrower is obliged to consummate the following (collectively, the “Project”): (i) the operation, maintenance, and demolition of the Existing Terminal Facilities at John F. Kennedy International Airport in Queens, New York (“Airport”), which Existing Terminal Facilities include the existing Terminal 7 facilities, (ii) the design, construction, financing, operation and maintenance of the New Terminal Facilities at the Airport (which New Terminal Facilities include new Terminal 6 facilities and replacement Terminal 7 facilities) and certain ancillary facilities, and (iii) the design and construction of the Off-Premises Facilities at the Airport on behalf of the Port Authority, which Off-Premises Facilities will not be operated or maintained by the Borrower and will not constitute part of the facilities leased to the Borrower under the Lease Agreement;

**WHEREAS**, pursuant to that certain Credit Agreement, dated as of November 1, 2022 (as amended, supplemented and/or otherwise modified from time to time, the “Credit Agreement”), among the Issuer, the Borrower, the Lenders, including the Security Deposit Facility Lenders and the Security Deposit Facility LC Issuing Bank, as Bank Lenders, each from time to time party thereto, the Administrative Agent and certain joint lead arrangers and bookrunners, (a) the Lenders have agreed to make certain Senior Term Loans available to the Issuer and (b) the Security Deposit Facility LC Issuing Bank has agreed to make Security Deposit LCs available to the Issuer and (c) the Security Deposit Facility Lender has agreed to make Security Deposit Loans to the Issuer, each on the terms and subject to the conditions set forth therein, and a portion of the proceeds of the Senior Loans has been loaned by the Issuer to the Borrower pursuant to the TDC Loan Agreements, and the Borrower has used such proceeds of such Senior Loans to finance a portion of the Project Costs;

**WHEREAS**, pursuant to a resolution adopted on October 20, 2022 by the Issuer (the “TDC Resolution”) the Issuer and the Trustee have entered into a TDC Master Bond Indenture of Trust dated as of November 1, 2022 (as the same may be amended or supplemented from time to time, the “Master Indenture”);

**WHEREAS**, pursuant to the TDC First Supplemental Bond Indenture of Trust dated as of November 1, 2022 (the “First Supplemental Indenture”), by and between the Issuer and the Trustee, the

Issuer has issued its New York Transportation Development Corporation Special Facilities Bonds, Senior Series 2022A (Tax-Exempt) (AMT) (JFK Airport Terminal 6-7 Redevelopment Project) in the aggregate principal amount of \$435,000,000 (the “Series 2022A Bonds”), and loaned the Borrower such funds pursuant to the TDC Loan Agreements for Project Costs;

**WHEREAS**, in connection with the issuance of the Series 2022A Bonds, the Issuer and the Borrower entered into a TDC Building Loan Agreement, dated as of November 1, 2022, between JFK Millennium Partners, LLC, a Delaware limited liability company, as Borrower and the New York Transportation Development Corporation, as Issuer, TDC Building Loan Agreement dated as of November 1, 2022 (the “Original TDC Building Loan Agreement”); filed with the Queens County Clerk on November 23, 2022 (filing number BL2538448), loaning a portion of the proceeds of the Senior Loans and the Series 2022A Bonds in the aggregated amount of \$2,313,617,415 for the purpose of paying or reimbursing the Borrower for Building Loan Costs;

**WHEREAS**, the Original TDC Building Loan Agreement, together with this First Building Loan Agreement Amendment, as may be further supplemented or amended from time to time (the “TDC Building Loan Agreement”), the Collateral Agency and Accounts Agreement and certain other Financing Documents permit the Issuer to issue one or more Series of Additional Obligations in accordance with the provisions of the Financing Documents, which Obligations shall be designated as Senior Obligations or Subordinate Obligations at the time of issuance thereof, and in connection therewith, the Borrower shall be required to execute and deliver, among other things, an Additional Obligations Loan Agreement Supplement and corresponding Note to the Issuer;

**WHEREAS**, this First Building Loan Agreement Amendment and the First Project Loan Agreement Amendment (as herein defined) are each deemed an Additional Obligations Loan Agreement Supplement authorized by the TDC Loan Agreements and the Financing Documents;

**WHEREAS**, the Borrower may request from time to time that the Issuer issue Additional Bonds pursuant to supplemental indentures to the Master Indenture to finance Project Costs;

**WHEREAS**, the Borrower has requested that the Issuer issue its New York Transportation Development Corporation, Special Facilities Revenue Bonds, Senior Series 2024A (Green Bonds)(AMT)(Current Interest Bonds) (JFK Airport Terminal 6 Redevelopment Project), in the aggregate principal amount of \$[•] (the “Series 2024A Bonds”) and its New York Transportation Development Corporation, Special Facilities Revenue Bonds, Senior Series 2024B (AMT) (Convertible Capital Appreciation Bonds) (JFK Airport Terminal 6 Redevelopment Project), in the aggregate principal amount of \$[•] (the “Series 2024B Bonds”) and, together with the Series 2024A Bonds, the “Series 2024 Bonds”), to provide funds to loan to the Borrower pursuant to the provisions of the Senior Financing Documents to refinance a portion of the Senior Term Loans, redeem a portion of the Series 2022A Bonds, pay certain interest rate swap termination fees and pay certain costs of issuance related to the Series 2024 Bonds;

**WHEREAS**, pursuant to a resolution adopted on [October 1], 2024 by the Issuer (the “Series 2024 TDC Resolution”) the Issuer has duly determined to issue the Series 2024 Bonds under the Financing Documents under and in accordance with the Master Indenture and the Second Supplemental Indenture as Additional Senior Obligations;

**WHEREAS**, contemporaneously with the execution of this First Building Loan Agreement Amendment, the Issuer and Trustee have entered into the TDC Second Supplemental Bond Indenture of Trust, dated as of [•], 2024, which supplements and amends the Master Indenture (the “Second Supplemental Indenture”) in order to, among other things, secure on a parity, first-priority basis the payment of the principal of the Series 2024 Bonds and the indebtedness represented thereby and the Accreted Value,

Redemption Price and Sinking Fund Requirements, if any, of and interest on the Series 2024 Bonds according to their tenor and effect and the performance and observance by the Issuer of all the covenants expressed or implied therein and in the Series 2024 Bonds;

**WHEREAS**, in connection with the execution of the Second Supplemental Indenture and the issuance of the Series 2024 Bonds, the Issuer will loan a portion of the proceeds of the Series 2024 Bonds to the Borrower pursuant to the terms of this First Building Loan Agreement Amendment in the amount of \$[•] to enable the Borrower to refinance a portion of the Senior Term Loans, redeem a portion of the Series 2022A Bonds, and pay certain costs of issuance related to the Series 2024 Bonds;

**WHEREAS**, contemporaneously with the Issuer and the Borrower entering into this First Building Loan Agreement Amendment, the parties shall enter into the First Amendment to the TDC Project Loan Agreement dated as of [•], 2024 (the “First Project Loan Agreement Amendment,” and together with this First Building Loan Agreement Amendment, the “First Amendments to TDC Loan Agreements”), which amends and supplements the TDC Project Loan Agreement dated as of November 1, 2022 (the “Original TDC Project Loan Agreement,” and together with the First Project Loan Agreement Amendment, as may be further supplemented or amended from time to time, the “TDC Project Loan Agreement,” and the TDC Project Loan Agreement together with the TDC Building Loan Agreement, the “TDC Loan Agreements”), pursuant to which the Issuer will loan a portion of the proceeds of the Series 2024 Bonds to the Borrower for the purpose of refinancing a portion of the Senior Term Loans, redeeming a portion of the Series 2022A Bonds, paying certain interest rate swap termination fees and paying certain costs of issuance related to the Series 2024 Bonds (the “Series 2024 Bond Project Loan” and, together with the Series 2024 Bond Building Loan (as defined herein), the “Series 2024 Loans”);

**WHEREAS**, contemporaneously with the issuance of the Series 2024 Bonds, the Borrower will execute and deliver to the Issuer the Series 2024 Building Note substantially in the form attached hereto as Exhibit B (the “Series 2024 Building Note”) and the Series 2024 Project Note substantially in the form attached to the First Project Loan Agreement Amendment as Exhibit A (the “Series 2024 Project Note”, and collectively with the Series 2024 Building Note, the “Series 2024 Notes”), each evidencing (i) the respective loans by the Issuer to the Borrower of the proceeds of the Series 2024 Bonds pursuant to the First Amendments to TDC Loan Agreements and (ii) the obligations of the Borrower under the TDC Loan Agreements with respect to the Series 2024 Loans;

**WHEREAS**, the Borrower has agreed in the TDC Loan Agreements to make, or cause to be made, payments sufficient to pay when due (whether at stated maturity, upon redemption, by acceleration or otherwise) the principal, Accreted Value, Redemption Price and Sinking Fund Requirements, if any, of and interest on the Series 2024 Bonds, subject to the terms of the TDC Loan Agreements, the Series 2024 Building Note, and the other Series 2024 Financing Documents;

**WHEREAS**, in order to secure the Senior Obligations, the Borrower has granted one or more mortgage liens on and security interests in the interests of the Borrower under the Lease Agreement with respect to the real property described on Exhibit A attached hereto and made a part hereof through the Building Leasehold Mortgage in favor of the Senior Collateral Agent and the Issuer, and the Issuer has assigned its interest in the Building Leasehold Mortgage to the Senior Collateral Agent;

**WHEREAS**, the Building Leasehold Mortgage and Collateral pledged by the Borrower under the Senior Collateral Documents are held by the Senior Collateral Agent pursuant to the Collateral Agency and Accounts Agreement, and the Senior Collateral Agent will administer the Building Leasehold Mortgage and other Collateral so pledged for the benefit of the Senior Secured Parties, acting thereunder for the benefit of the holders of the Senior Obligations and other parties secured pursuant to the Collateral Agency and Accounts Agreement, subject to the terms of the Intercreditor Agreement;

**WHEREAS**, the Series 2024 Bonds shall be designated as Senior Bonds for purposes of the Indenture and Senior Obligations for the purposes of the Senior Financing Documents;

**NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS, THIS FIRST BUILDING LOAN AGREEMENT AMENDMENT WITNESSETH**, in consideration of the premises and the respective representations and agreements and mutual covenants contained in this First Building Loan Agreement Amendment, the Issuer and the Borrower covenant and agree as follows:

## **ARTICLE I**

### **PROVISIONS OF ORIGINAL TDC BUILDING LOAN AGREEMENT AND THE FIRST BUILDING LOAN AGREEMENT AMENDMENT**

**Section 1.1. Original TDC Building Loan Agreement.** The provisions of the Original TDC Building Loan Agreement remain in full force and effect, except to the extent expressly amended by this First Building Loan Agreement Amendment, and shall apply to the Series 2024 Bonds and Series 2024 Bond Building Loan, provided that any provisions of the Original TDC Building Loan Agreement that specifically relate only to the Series 2022A Bonds, the Series 2022A Bond Building Loan, the Series 2022A Building Note, the Senior Term Loan, the TDC Senior Term Loan Building Loan or the TDC Bank Debt Building Note as applicable, shall not apply to the Series 2024 Bonds, the Series 2024 Bond Building Loan or the Series 2024 Building Note. Any inconsistency or conflict between the provisions of the Original TDC Building Loan Agreement and the provisions of this First Building Loan Agreement Amendment, as the same relate to the Series 2024 Bonds and the Series 2024 Bond Building Loan, will be governed by this First Building Loan Agreement Amendment and not the Original TDC Building Loan Agreement.

**Section 1.2. Designations for Senior Financing Documents.** For the purposes of the Senior Financing Documents:

- (i) This First Building Loan Agreement Amendment is an Additional Senior Obligations Loan Agreement Supplement;
- (ii) The Series 2024 Bond Building Loan is a Building Loan;
- (iii) The Series 2024 Building Note is a TDC Note;
- (iv) The Series 2024 Bond Building Loan and Series 2024 Building Note are Senior Secured Debt;
- (v) The Bond Insurer, with respect to the Senior Bond Insurer Obligations, is a Secured Party and a Senior Secured Party;
- (vi) The Senior Bond Insurance Obligations, including all amounts owed to the Bond Insurer pursuant to this First Building Loan Agreement Amendment and any other Senior Financing Documents, are Additional Senior Obligations, Senior Obligations, Senior Secured Debt and Senior Bond Obligations; and
- (vii) Any unpaid Bond Insurer Premium is a fee, administrative cost and expense due and payable under the Financing Documents.

**Section 1.3. Designations for this First Building Loan Agreement Amendment.** For the purposes of this First Building Loan Agreement Amendment, unless expressly indicated otherwise, the Bond Insurer is the Series 2024 Bond Insurer, and each reference to the “Bond Insurance Policy”, the “Bond Insurer Advances”, the “Bond Insurer Fees”, the “Bond Insurer Late Payment Interest”, “the Bond Insurer Premium”, the “Bond Insurer Premium Schedule”, and the “Bond Insurer Reimbursement Amounts”, is in reference to such term only with respect to the Insured Series 2024 Bonds.

## ARTICLE II

### REPRESENTATIONS

**Section 2.1. Representations by the Issuer.** The Issuer represents and warrants to the Borrower and the Bond Insurer, as follows:

The representations of the Issuer contained in the Original TDC Building Loan Agreement are reaffirmed in this First Building Loan Agreement Amendment as of the date hereof. References in such representations to the Series 2022A Bonds shall also include the Series 2024 Bonds; and references to Series 2022A Building Note shall also include the Series 2024 Building Note; and references to the Issuer Documents shall also include the Series 2024 Issuer Documents.

**Section 2.2. Representations by the Borrower.** The Borrower represents and warrants to the Issuer and the Bond Insurer, as follows:

(a) The Borrower is a limited liability company, duly formed, validly existing and in good standing under the laws of the State of Delaware, is qualified to do business in the State and the City and in every jurisdiction where such qualification is required by applicable Law and has all necessary material licenses and permits or other governmental authorizations or approvals required to date to carry on its business and to operate its facilities.

(b) All necessary limited liability company actions on the part of the Borrower required to authorize the execution and delivery of the Series 2024 Financing Documents to which it is a party, and the performance of each of the Senior Financing Documents to which it is a party, have been duly taken.

(c) Each of the Series 2024 Financing Documents to which the Borrower is a party has been duly authorized, executed and delivered by the Borrower and each of the Senior Financing Documents to which the Borrower is a party constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its respective terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer, liquidation or other similar Laws or judicial action affecting the enforcement of creditors’ rights generally (regardless of whether enforceability is controlled in a proceeding in equity or at Law) or by principles of equity which permit the exercise of judicial discretion and except as enforceability of indemnification provisions may be limited by consideration of public policy and, as of the date hereof, all representations and warranties made by the Borrower in the Series 2024 Financing Documents are true and correct in all material respects.

(d) The execution and delivery by the Borrower of each of the Series 2024 Financing Documents to which it is a party, and the performance by the Borrower of each of the Senior Financing Documents to which it is a party, do not (i) conflict with its certificate of formation or its operating agreement, (ii) conflict with any contractual obligations binding on or affecting the Borrower, except where such conflict would not reasonably be expected to have a Material Adverse Effect, (iii) violate any provision of any court decree or order binding on or affecting the Borrower in any material respect, except where

such violation would not reasonably be expected to have a Material Adverse Effect, (iv) violate any provision of any Law or governmental regulation binding on or affecting the Borrower in any material respect, except where such violation would not reasonably be expected to have a Material Adverse Effect or (v) result in, or require, the creation or imposition of any Security Interest on any of the properties or revenues of, or interests in, the Borrower, except for Permitted Liens, unless such creation or imposition could not reasonably be expected to have a Material Adverse Effect.

(e) All Security Interests required to be created under the Senior Collateral Documents are valid, legally binding and are ranked as contemplated in the Senior Financing Documents, and all recordings and filings required to be filed in connection with the issuance of the Series 2024 Bonds will have been or will be recorded and filed on or promptly following the Series 2024 Closing Date and no Security Interest exists over the Borrower's interest in the Project or over any other of the Borrower's revenues or assets other than Permitted Liens.

(f) The Borrower has a valid leasehold interest in the portion of the Premises comprised of real property (other than such real property to which the Mortgagor instead has been granted Permanent Rights of Access or Temporary Rights of Access (each as defined in and pursuant to the Lease Agreement) under the Lease Agreement), subject only to encumbrances and defects that do not materially impair the Borrower's ability to perform its obligations under the Lease Agreement or the Senior Financing Documents.

(g) The Pledgor directly owns 100% of the equity interests in the Borrower, and each Equity Member owns, directly or indirectly, the percentage of the equity interests in the Pledgor listed in the Equity Contribution Agreement and, collectively, the Equity Members own 100% of the equity interests in the Pledgor, in each case, free and clear of all Security Interests (other than Permitted Liens), all such equity interests have been duly and validly authorized and issued, and there are no outstanding options, warrants, calls or other rights to subscribe for or otherwise acquire any of such equity interests other than as disclosed in the Preliminary Official Statement and the Official Statement in respect to the Series 2024 Bonds.

(h) The Borrower has no subsidiaries.

(i) True and complete copies of all Series 2024 Financing Documents have been duly executed as of the Series 2024 Closing Date, the Senior Financing Documents are in full force and effect as against the Borrower, the Borrower has delivered to the Trustee, the Underwriters, and the Agents, the Series 2024 Financing Documents to which the Borrower is a party.

(j) The Borrower has no Indebtedness, other than (i) the Series 2024 Bonds, (ii) the Series 2022A Bonds, (iii) the TDC Senior Term Loan Building Loan, (iv) other Indebtedness permitted by the Financing Documents or otherwise consented to by the Required Bank Finance Parties pursuant to the Bank Consents, and (v) any amounts owed to any Equity Member with respect to development fees and Project Costs incurred by such Equity Member on behalf of the Borrower prior to the Series 2024 Closing Date, which amounts will be paid to such Equity Member on the Series 2024 Closing Date.

(k) The Borrower has not engaged in any other activities or business other than the implementation of the Project and activities related or ancillary thereto (including, without limitation, the financing thereof).

(l) The Borrower, to the extent applicable, has timely filed (or applied for an extension relating to the same) all federal and state income tax returns related to Taxes it is required by law to file and has paid all material Taxes that are due and payable, except for such Taxes being contested in good faith



and for which the Borrower has established adequate reserves in accordance with GAAP. There is no stamp, registration or similar Tax under applicable Law, as presently in effect, imposed, assessed, levied or collected by a Governmental Authority required to be paid on or in relation to amounts payable by the Borrower pursuant to any Senior Financing Document.

(m) The Borrower is in compliance with any Law or governmental rule applicable to the Borrower, and with the terms of all other governmental authority obtained by it, except to the extent that any failure to comply with any of the above could not reasonably be expected to result in a Material Adverse Effect.

(n) No consent or approval of any trustee or holder of any Indebtedness of the Borrower, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority (except in connection with blue sky proceedings) is necessary (or, in the case of any Series 2024 Financing Documents executed prior to the Series 2024 Closing Date, was necessary) in connection with the execution and delivery of the Series 2024 Financing Documents by the Borrower to which it is a party or the performance by the Borrower of its obligations under the Senior Financing Documents or the consummation by the Borrower of any transaction therein contemplated, except in respect of all matters contemplated in this clause (o) (i) as have been obtained or made and as are in full force and effect as of the Series 2024 Closing Date, (ii) for any such consent, approval, authorization, order, license, filing or registration which is not required to have been obtained, made or procured as of the Series 2024 Closing Date, and is expected to be received in the normal course, or (iii) where the failure to obtain such consent, permissions, authorizations, orders or licenses would not reasonably be expected to result in a Material Adverse Effect, and the Borrower has no reason to believe that any such consents, permissions, authorizations, orders or licenses will not be provided in the ordinary course in a timely manner when required.

(o) There is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any court or administrative agency, or to the knowledge of the Borrower threatened against the Borrower or its property, or contesting the due organization of the Borrower wherein an unfavorable decision, ruling or finding, to the extent reasonably expected, would reasonably be expected to (i) have a Material Adverse Effect, (ii) have an adverse effect on the validity or enforceability against the Borrower of the Senior Financing Documents to which it is a party or (iii) in any way adversely affect the federal tax-exempt status of the interest on the Tax-Exempt Bonds or, if applicable, other amounts to be received by the Issuer pursuant to the Indenture or the TDC Loan Agreements.

(p) No ERISA Event with respect to the Borrower has occurred or is reasonably expected to occur, that could reasonably be expected to have a Material Adverse Effect.

(q) No Enforcement Action or Event of Default has occurred and is continuing under the Senior Financing Documents pertaining to the Outstanding Senior Obligations.

(r) The Borrower has not filed an election pursuant to Treasury Regulation 301.7701-3(c) to be treated as an association taxable as a corporation and has not been previously taxed as a corporation.

(s) The Borrower does not maintain any securities accounts or deposit accounts, except for the Project Accounts, the Non-Pledged Accounts and such separate operating accounts as are permitted by the Financing Documents, and except as previously approved in writing by the Required Bank Finance Parties pursuant to the Bank Consents.

(t) The Borrower is not an “investment company,” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended.

(u) Each Key Contract which has been executed and delivered by the Borrower is in full force and effect as against the Borrower, and the Borrower is not in default under any of such Key Contracts, except as could not reasonably be expected to have a Material Adverse Effect.

(v) The Borrower has no reason to believe that sufficient funds are not available (or will not be made available) to the D&C Contractor to perform the portion of the D&C Work that is subject to the D&C Contract.

(w) The availability of the Issuer to issue the Series 2024 Bonds and to loan proceeds of such Series 2024 Bonds to the Borrower as well as the available exemption from mortgage recording tax has been an important inducement to the Borrower to undertake the Project.

(x) The information relating to the Borrower set forth in its application to the Issuer with respect to the issuance of the Series 2024 Bonds, other than information related to future events, financing related information, projections or other estimates in respect of costs and expenses or transaction amounts, each of which was made in good faith but is subject to change, is true and correct in all material respects as of the date provided.

(y) A true, correct and complete supplemental affidavit pursuant to Section 22 of the Lien Law of The State Of New York executed and delivered by an Authorized Borrower Representative in connection with the Building Loans is attached hereto as Exhibit C. The Supplemental Section 22 Affidavit is in the form required by and complies in all respects with the requirements set forth in Section 22 of the Lien Law of the State of New York.

(z) The statements, information, representations and warranties of the Borrower contained in the Tax Certificate with respect to the Series 2024 Bonds are true and correct as of the date of such Tax Certificate and are hereby incorporated herein by reference as if fully set forth herein.

(aa) The Borrower will operate the Facilities as airport terminal facilities until the Series 2024 Bonds have been paid or deemed paid in full.

(bb) The Project is substantially the same in all material respects to that described in the notice of public hearing published on April 26, 2022.

### **Section 2.3. Survival of Representations.**

The representations of the Issuer and the Borrower contained in this First Building Loan Agreement Amendment, in any other Senior Financing Document pertaining to the Series 2024 Bonds to which the Issuer or the Borrower, as the case may be, is a party, or in any certificate or other instrument delivered by the Issuer or the Borrower pursuant to this First Building Loan Agreement Amendment, or in connection with the transactions contemplated hereby, shall survive the execution and delivery hereof and the issuance, sale and delivery of the Series 2024 Bonds, as representations of facts existing as of the date of execution and delivery of the instruments containing such representations (or as of such date stated therein).

### **Section 2.4. Covenant with Owners of Bonds.**

The Issuer and the Borrower agree that this First Building Loan Agreement Amendment and the Tax Certificate with respect to the Series 2024 Bonds are executed in part to induce the purchase by Owners

of the Series 2024 Bonds. Accordingly, all covenants and agreements on the part of the Issuer and the Borrower set forth in this First Building Loan Agreement Amendment and in the Tax Certificate with respect to the Series 2024 Bonds are hereby declared to be for the benefit of the Owners from time to time of the Series 2024 Bonds.

### ARTICLE III

#### ISSUANCE OF THE BONDS

##### **Section 3.1. Agreement to Issue the Series 2024 Bonds; Application of Proceeds.**

(a) The Issuer hereby agrees to issue, sell and deliver the Series 2024 Bonds in accordance with the terms of the Senior Financing Documents in order to provide for the refinancing of a portion of the Senior Term Loans and redemption of a portion of the Series 2022A Bonds. Upon the terms and conditions of the Senior Financing Documents, the Issuer hereby agrees to lend to the Borrower on the Series 2024 Closing Date the proceeds of the Series 2024 Bonds, which shall reflect \$[•] loaned to the Borrower pursuant to this First Building Loan Agreement Amendment (the “Series 2024 Bond Building Loan”) and \$[•] loaned to the Borrower pursuant to the First Project Loan Agreement Amendment (the “Series 2024 Bond Project Loan”). Upon written instructions from the Borrower, the Issuer hereby agrees to instruct the Trustee to deliver to the Senior Collateral Agent the proceeds received from the sale of the Series 2024 Bonds with instruction to deposit such proceeds directly into the Series 2024 Bond Proceeds Sub-Account of the Tax-Exempt Bond Proceeds Sub-Account of the Construction Account held by the Senior Collateral Agent pursuant to Section 5.04 of the Collateral Agency and Accounts Agreement and as otherwise required by the Collateral Agency and Accounts Agreement.

(b) The TDC Building Loan Agreement and the Building Leasehold Mortgage are subject to the trust fund provisions of Section 13 of the Lien Law. The Borrower has or shall receive all advances of funds under the TDC Building Loan Agreement and has or will hold the right to receive such advances as a trust fund to be applied first to the payment of the “cost of the improvement” under subdivision 5 of Section 2 of the Lien Law before using any part of the same for any other purpose. In addition, a true statement under oath, verified by the Borrower, as required by Section 22 of such Lien Law, was attached to the Original TDC Building Loan Agreement as Exhibit C and a supplement to such statement is attached hereto as Exhibit C.

**Section 3.2. Provision of Funds.** In the event that proceeds from the Series 2024 Bond Building Loan, Series 2022A Bond Building Loan and the TDC Senior Term Loan Building Loan or any other available (or to be available) funds are not sufficient to pay the Building Loan Costs as and when due and payable, the Borrower agrees to pay (or cause to be paid) all of such Building Loan Costs as and when due and payable, and the Borrower will provide any additional funds required to pay Building Loan Costs; provided, however the Borrower shall not be entitled to any reimbursement from the Issuer, or the Trustee for the payment of such Building Loan Costs nor shall the Borrower be entitled to any abatement, diminution or postponement of its payments hereunder, unless otherwise provided pursuant to the Collateral Agency and Accounts Agreement or the Intercreditor Agreement.

##### **Section 3.3. Limitation of Issuer’s Liability.**

(a) The Series 2024 Bonds are special and limited obligations of the Issuer, payable solely from and secured exclusively by the Senior Collateral and the Trust Estate, including the payments to be made by the Borrower under this First Building Loan Agreement Amendment and any Additional Obligations Loan Agreement Supplement. The Series 2024 Bonds are not payable from taxes or appropriations made by the State, or of any county, municipality or any other political subdivision, agency

or instrumentality established under the Laws of the State or the City. The Series 2024 Bonds do not constitute an indebtedness, or a pledge of the faith and credit of, the State or any county, municipality or other political subdivision, agency or instrumentality established under the Laws of the State (other than the Issuer), or the City or any political subdivision thereof within the meaning or application of any constitutional provision or limitation. The special limited obligation of the Issuer to pay the amount of the interest, principal, premium, if any, Accreted Value, and Redemption Price of the Series 2024 Bonds does not constitute a pledge of the faith, credit or taxing power of the State or the City or any county, municipality or any other political subdivision, agency or instrumentality established under the Laws of the State or the City thereof within the meaning or application of any constitutional provision or limitation. The Issuer has no taxing power. The Owners of the Series 2024 Bonds have, individually and collectively, no right to have taxes levied or compel appropriations by the State or the City or any county, municipality or any other political subdivision, agency or instrumentality established under the Laws of the State, or the City of the State or the City for the payment of any or all of the amount of such interest, principal, premium, if any, Accreted Value, and Redemption Price of the Series 2024 Bonds.

No provision, covenant, or agreement contained in this First Building Loan Agreement Amendment, or any obligations herein imposed upon the Issuer, or the breach thereof shall give rise to a pecuniary liability of the Issuer or any member, officer or agent of the Issuer or a charge against the Issuer's general credit. In making the agreements, provisions and covenants set forth in this First Building Loan Agreement Amendment, the Issuer has not obligated itself except with respect to the application of the payments, as hereinabove provided.

No recourse shall be had for the payment of interest, principal, premium, if any, Accreted Value, and Redemption Price of any of the Series 2024 Bonds or for any claim based thereon or upon any obligation, covenant or agreement in this First Building Loan Agreement Amendment contained, against any past, present or future officer, director, member, trustee, employee or agent of the Issuer or any officer, director, member, trustee, employee or agent of any successor entity, as such, either directly or through the Issuer or any successor entity, under any rule of law or equity, statute or constitution or by enforcement by any assessment or penalty or otherwise.

All covenants, stipulations, promises, agreements and obligations of the Issuer set forth herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Issuer and not of any member, officer or employee of the Issuer in his or her individual capacity, and no recourse shall be had for the payment of interest, principal, premium, if any, Accreted Value, and Redemption Price of the Series 2024 Bonds or for any claim based thereon or hereunder against any member, officer or employee of the Issuer or any Person executing the Series 2024 Bonds in their individual capacity.

**Section 3.4. Compliance with Indenture, the Credit Agreement, Intercreditor Agreement and Collateral Agency and Accounts Agreement.**

(a) In accordance with any applicable provisions of the Indenture, the Issuer shall take any action directed by the Borrower to the extent required under, or permitted by, the provisions of the Senior Financing Documents with respect to the Series 2024 Bonds.

## ARTICLE IV

### LOAN; PAYMENT PROVISIONS

#### Section 4.1. Amounts Payable.

(a) (i) The Borrower hereby covenants and agrees to repay the Series 2024 Bond Building Loan, as follows: on or before any Interest Payment Date for the Series 2024 Bonds or any other date that any payment of interest, principal, Accreted Value, and Redemption Price on the Series 2024 Bonds is required to be made in respect of the Series 2024 Bonds pursuant to the Indenture (which payments of principal and interest will be in the respective amounts set forth on the debt service schedule attached hereto as Exhibit D and as amended from time to time pursuant to the Indenture; provided, that amounts deposited into the Accounts under the Collateral Agency and Accounts Agreement with respect to such payments shall be determined with reference to amounts set forth in the Series 2024A Bonds Balloon Indebtedness Certificate attached hereto as Exhibit G-1), until the payment of interest, principal, Accreted Value, and Redemption Price on the Series 2024 Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture and the Collateral Agency and Accounts Agreement, in immediately available funds, a sum which, together with any other moneys available for such payment in the applicable 2024A Tax-Exempt Bond Interest Payment Sub-Account, 2024A Tax-Exempt Bond Principal Payment Sub-Account, 2024B Tax-Exempt Bond Interest Payment Sub-Account and 2024B Tax-Exempt Bond Principal Payment Sub-Account, each in the Senior Obligations Payment Account, will enable the Senior Collateral Agent to transfer to the Trustee sufficient funds to pay to the Owners of the Series 2024 Bonds the amount due and payable on such date as interest, principal, Accreted Value, and Redemption Price on the Series 2024 Bonds as provided in the Indenture; provided however, that amounts to be applied to the optional or extraordinary redemption of Series 2024A Bonds pursuant to Section 2.07 of the Second Supplemental Indenture shall be deposited in the applicable 2024A Tax-Exempt Bond Interest Payment Sub-Account or 2024A Tax-Exempt Bond Principal Payment Sub-Account and amounts to be applied to the optional or extraordinary redemption of Series 2024B Bonds pursuant to Section 2.08 of the Second Supplemental Indenture shall be deposited in the applicable 2024B Tax-Exempt Bond Interest Payment Sub-Account or 2024B Tax-Exempt Bond Principal Payment Sub-Account as required by the Indenture and the Collateral Agency and Accounts Agreement. The Borrower shall deliver the Series 2024A Balloon Indebtedness Certificate to the Senior Collateral Agent on the Series 2024 Closing Date.

(ii) The Issuer hereby directs the Borrower and, subject to the Indenture, the Credit Agreement, the Common Terms Agreement or the Collateral Agency and Accounts Agreement, as applicable, the Borrower hereby agrees to pay to the Senior Collateral Agent all payments payable by the Borrower in respect of the Series 2024 Bond Building Loan pursuant to subsection 4.1(a)(i).

(b) The Borrower will also, in accordance with the terms of the Collateral Agency and accounts Agreement, pay when due and payable the reasonable fees and expenses of the Issuer related to the issuance of the Series 2024 Bonds, including without limitation, reasonable attorneys and consultants' fees and expenses. The fees to be paid to the Issuer include (i) the Issuance Fee, which shall be paid on the Series 2024 Closing Date and (ii) the Annual Administrative Fee, which shall be paid on the Series 2024 Closing Date and thereafter on an annual basis, beginning on the first anniversary of the Series 2024 Closing Date, in each subsequent year the Series 2024 Bonds are Outstanding, and which Annual Administrative Fee shall, for the avoidance of doubt, supersede and replace the annual administrative fee payable by the Borrower pursuant to Section 4.1(b) of the Original TDC Building Loan Agreement, each of (i) and (ii) as described in Exhibit E hereto. For the avoidance of doubt, the fees to be paid to the Issuer pursuant to this Section 4.1(b) are the same as (and not in addition to) the fees required to be paid under Section 4.1(b) of the First Project Loan Agreement Amendment.

(c) The Borrower also will pay, in accordance with the terms of the Collateral Agency and Accounts Agreement, the reasonable fees and expenses of the Trustee and the Agents, including, without limitation, any fees or expenses incurred pursuant to Section 8.02(b) of the Master Indenture, and all other amounts which may be payable to the Trustee under the terms of the Indenture or in accordance with any contractual arrangement between the Borrower and the Trustee with respect thereto.

(d) The Borrower hereby covenants and agrees to pay, or cause to be paid, to the Bond Insurer, the Bond Insurer Reimbursement Amounts, the Bond Insurer Premium and the Bond Insurer Fees, as follows:

- (i) Subject to the last sentence of this Section 4.1(d)(i), the Borrower hereby covenants and agrees to pay, or cause to be paid, to the Senior Collateral Agent for the benefit of the Bond Insurer any Bond Insurer Advances, as provided in Section 4.02 of the Second Supplemental Indenture and Section 5.02(b)(4), Section 5.02(b)(5), Section 5.03(b)(4), Section 5.03(b)(5), Section 6.06(b)(i)(B), or Section 6.06(b)(i)(C) (as applicable) of the Collateral Agency and Accounts Agreement. The Borrower shall cause the Senior Collateral Agent to receive sufficient funds to pay the Bond Insurer Reimbursement Amounts in the same manner as the payment of interest, principal, Accreted Value, and Redemption Price on the Insured Series 2024 Bonds pursuant to Section 4.1(a) hereof. The Borrower shall pay to the Senior Collateral Agent for the benefit of the Bond Insurer any Bond Insurer Late Payment Interest in accordance with the Second Supplemental Indenture. The Borrower's obligations under this Section 4.1(d)(i) shall be deemed satisfied to the extent the Bond Insurer has received payment of the Bond Insurer Reimbursement Amounts due to the Bond Insurer pursuant to the Second Supplemental Indenture.
- (ii) Subject to the last sentence of this Section 4.1(d)(ii), the Borrower hereby covenants and agrees to pay, or cause to be paid, to the Senior Collateral Agent for the benefit of the Bond Insurer, any unpaid Bond Insurer Premium, as a fee, administrative cost and expense due and payable under the Financing Documents, as and when due under the terms of the Bond Insurer Premium Schedule; it being understood that in no event will the Bond Insurer be entitled to accelerate or otherwise demand payment of the Bond Insurer Premium prior to the date scheduled for payment thereof under the Bond Insurer Premium Schedule. To the extent that any payment of the Bond Insurer Premium is not paid when due, interest shall accrue on such unpaid amounts from the date such amount is due until the date the Bond Insurer is paid in full at a rate equal to the Bond Insurer Late Payment Rate. Such Bond Insurer Premium, together with any unpaid amounts and any interest that may accrue thereon, shall be payable to the Senior Collateral Agent for the benefit of the Bond Insurer by the Senior Collateral Agent pursuant to Section 5.02(b)(1), Section 5.03(b)(1) or Section 6.06(b)(i)(A) of the Collateral Agency and Accounts Agreement, as applicable. The Borrower's obligations under this Section 4.1(d)(ii) shall be deemed satisfied to the extent the Bond Insurer has received payment of the Bond Insurer Premium due from or on behalf of the Borrower to the Senior Collateral Agent for the benefit of the Bond Insurer

as a Senior Secured Party pursuant to the terms of the Collateral Agency and Accounts Agreement.

- (iii) Subject to the last sentence of this Section 4.1(d)(iii), the Borrower hereby covenants and agrees to pay or reimburse, or cause to be paid or reimbursed, the Bond Insurer, for any and all documented charges, fees, costs and expenses that the Bond Insurer may reasonably pay or incur in connection with (i) the administration, enforcement, defense or preservation of any rights under this First Building Loan Agreement Amendment or any other Senior Financing Document or the Bond Insurance Policy, (ii) the pursuit of any remedies under this First Building Loan Agreement Amendment or any other Senior Financing Document or the Bond Insurance Policy or otherwise afforded by law or equity, (iii) any amendment, waiver or other action with respect to, or related to this First Building Loan Agreement Amendment or any other Senior Financing Document, whether or not executed or completed, or (iv) any litigation or other dispute in connection with the Indenture or the transactions contemplated thereby initiated by third parties, in each case, other than any charges, fees, costs or expenses resulting from the failure to honor the Bond Insurer's obligations under the Bond Insurance Policy or any other Financing Document, its willful misconduct or gross negligence (collectively, the "Bond Insurer Fees"). The Borrower will pay the Bond Insurer Fees to the Senior Collateral Agent for the benefit of the Bond Insurer in accordance with the Second Supplemental Indenture. The Bond Insurer reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver or consent proposed in respect of this First Building Loan Agreement Amendment or any other Senior Financing Document. The Borrower shall cause the Senior Collateral Agent to receive sufficient funds to enable the Senior Collateral Agent to transfer to the Bond Insurer the Bond Insurance Fees due and payable as administrative costs of the Bond Insurer pursuant to Section 5.02(b)(1), Section 5.03(b)(1) or 6.06(b)(i) of the Collateral Agency and Accounts Agreement, as applicable. The Borrower's obligations under this Section 4.1(d)(iii) shall be deemed satisfied to the extent the Bond Insurer has received payment of the Bond Insurer Fees due from or on behalf of the Borrower to the Senior Collateral Agent for the benefit of the Bond Insurer as a Senior Secured Party pursuant to the terms of the Collateral Agency and Accounts Agreement.
- (iv) For the avoidance of doubt, the amounts to be paid to the Bond Insurer pursuant to this Section 4.1(d) are the same as (and not in addition to) the amounts required to be paid under Section 4.1(d) of the First Project Loan Agreement Amendment.

(e) Notwithstanding anything to the contrary in any other Financing Documents, the Borrower shall not pay, distribute, declare the payment of or make any Permitted Tax Distributions, whether as a dividend, loan, investment, loan repayment or in any other form, (i) pursuant to Section 5.03(b)(6) of the Collateral Agency and Account Agreement, in an amount exceeding \$20 million per calendar year, and (ii) pursuant to Section 5.03(b)(11) of the Collateral Agency and Account Agreement, in any amount at any time.

(f) In the event that the Borrower should fail to make any of the payments required in this Section 4.1, the amount so in default shall continue as an obligation of the Borrower until the amount in default shall have been fully paid, and the Borrower agrees to pay the same with interest thereon, to the extent and in such amount as provided under the Indenture and the Collateral Agency and Accounts Agreement.

(g) To the extent any moneys have been deposited by the Borrower, or on the Borrower's behalf, pursuant to the Collateral Agency and Accounts Agreement, into the 2024A Tax-Exempt Bond Interest Payment Sub-Account or the 2024A Tax-Exempt Bond Principal Payment Sub-Account for the purpose of paying interest on and principal of the Series 2024A Bonds when due and into the 2024B Tax-Exempt Bond Interest Payment Sub-Account or the 2024B Tax-Exempt Bond Principal Payment Sub-Account for the purpose of paying interest on and principal of the Series 2024B Bonds when due, the Borrower's payment obligations pursuant to this Section 4.1 with respect to the applicable payment of interest, principal, Accreted Value, and Redemption Price in respect of such Bonds will be deemed satisfied. If the principal or Redemption Price and interest on the Series 2024 Bonds shall have been paid sufficiently that payment of all Series 2024 Bonds Outstanding and all interest and other amounts payable thereon shall be deemed to have occurred in accordance with Article VII of the Master Indenture, then, with respect to the Series 2024 Bonds no longer Outstanding for purposes of the Indenture, the obligations of the Borrower to make payments pursuant to Section 4.1(a)(i) hereof shall be deemed to have been satisfied in full, and the Borrower's obligations under Section 4.1(a)(i) hereof and this First Building Loan Agreement Amendment and the Series 2024 Building Note shall be discharged, as applicable.

(h) The Borrower agrees to make such payments to the Senior Collateral Agent and take such other actions as are required of it under any of the Tax Certificates including any payments to satisfy any Rebate Amount and for any rebate analyst engaged to calculate such Rebate Amount. The obligation of the Borrower to make such payments and to take such other actions shall be absolute and unconditional and shall remain in effect and be binding upon the Borrower notwithstanding the release and discharge of this First Building Loan Agreement Amendment or any of the Tax Certificates.

(i) All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made from the applicable Subaccount of the Senior Obligations Payment Account, or other applicable Project Account, in accordance with the Collateral Agency and Accounts Agreement to the specified Secured Debt Representative(s) or Senior Secured Party, as applicable, for the account of the respective Senior Secured Party to which such payment is owed, on the date and at the time and location specified in the relevant Senior Financing Documents, in Dollars, in immediately available funds; provided, however, the insufficiency of funds in any Project Account shall not relieve the Borrower of any payment obligation hereunder.

**Section 4.2. Unconditional Obligations.** The obligations of the Borrower to make the payments required in Section 4.1 hereof and to perform and observe the other agreements contained herein shall be absolute and unconditional and shall not be subject to any defense or any right of setoff, counterclaim or recoupment arising out of (a) any breach by the Issuer, the Trustee, or any other Agent or any other Senior Secured Party of any obligation to the Borrower, whether hereunder or otherwise, or (b) any indebtedness or liability at any time owing to the Borrower by the Issuer, the Trustee, any other Agent or any other Senior Secured Party. Until the Discharge of Senior Obligations, the Borrower will not suspend or discontinue any payments provided for in Section 4.1 hereof, and the Borrower (1) will perform and observe all other obligations of the Borrower contained in this First Building Loan Agreement Amendment and the Senior Financing Documents and (2) will not terminate this First Building Loan Agreement Amendment or any Senior Financing Document, except as permitted by the Senior Financing Documents, for any cause, or any failure of the Issuer, the Trustee, any other Agent or any other Senior Secured Party



to perform and observe any agreement, whether express or implied, or for any failure of the Issuer, the Trustee, any other Agent or any other Senior Secured Party to comply with any duty, liability or obligation of the Issuer, the Trustee, any other Agent or any other Senior Secured Party, as applicable, arising out of or connected with this First Building Loan Agreement Amendment.

**Section 4.3. Borrower Approval of Indenture.** A copy of the Indenture has been submitted to the Borrower for its examination and review. By its execution of this First Building Loan Agreement Amendment, the Borrower acknowledges that it has approved, has agreed to and is bound by the provisions of the Indenture, as incorporated herein. The Borrower agrees that the Trustee, as assignee of the Issuer pursuant to the Indenture, shall be entitled to enforce and to benefit from the terms and conditions of the Series 2024 Building Note and of this First Building Loan Agreement Amendment that relate to it notwithstanding the fact that it is not a signatory to either.

## **ARTICLE V PREPAYMENT PROVISIONS AND REDEMPTION**

**Section 5.1. Prepayments and Redemption of the Series 2024 Bonds.** The Borrower shall have the option to prepay all or any part of the Series 2024 Bond Building Loan hereunder at the times and in the amounts as necessary to cause the Issuer to redeem the Series 2024 Bonds, as applicable, in accordance with the terms of the Indenture, the Common Terms Agreement and the Series 2024 Bonds that may be subject to optional redemption. The Issuer, at the request of the Borrower, if applicable, shall forthwith take all steps (other than the payment of funds necessary to effect such redemption (except with respect to funds provided by the Borrower to the Issuer)) necessary under the applicable redemption provisions of the Indenture and the Common Terms Agreement to effect redemption of all or part of the Outstanding Series 2024 Bonds, as may be specified by the Borrower and required by the Indenture and the Common Terms Agreement, on the date established for such redemption. The Series 2024 Bonds shall further be subject to extraordinary redemption and mandatory sinking fund redemption as provided in Sections 2.07 and 2.08 of the Second Supplemental Indenture. Upon any such redemption in full and payment of all amounts required by Article VII of the Master Indenture, the Series 2024 Bond Building Loan shall terminate as provided in Section 9.1 hereof.

### **Section 5.2. Mandatory Optional Redemption of the Series 2024A Balloon Indebtedness.**

(a) *Mandatory Optional Redemption Definitions:* The following terms used in this Section 5.2 have the meanings ascribed to them below:

(i) “10 Year Cash Sweep Date” means the date ten (10) years preceding the maturity date of the Series 2024A Balloon Indebtedness.

(ii) “5 Year Cash Sweep Date” means the date five (5) years preceding the maturity date of the Series 2024A Balloon Indebtedness.

(iii) “Calculation Period” means a period beginning on a Calculation Date and ending on the day preceding the following Calculation Date (i.e. the quarter following a Calculation Date, starting on the Calculation Date).

(iv) “Loan Life Coverage Ratio” means, as of any Calculation Date, (A) the present value of the projected amount of Free Cash Flow from such Calculation Date through the maturity date of the Series 2024A Balloon Indebtedness, discounted at the weighted average coupon of all of the Senior Obligations with scheduled principal payments (including both maturities and mandatory sinking fund redemption) between such Calculation Date and the maturity date of the

Series 2024A Balloon Indebtedness, *divided by* (B) all principal due and payable (including both maturities and mandatory sinking fund redemption; and, for the avoidance of doubt, the calculation of such principal due and payable shall not take into account the projected debt service upon refinancing of any Series 2024A Bond maturing on \_\_\_\_ 1, 2054 as outlined in the Anticipated Debt Service Schedule of the Series 2024A Balloon Indebtedness Certificate, but instead shall be all the principal due and payable on such Series 2024A Bond maturing on \_\_\_\_ 1, 2054 pursuant to the terms of the Second Supplemental Indenture) of all Senior Obligations between the Calculation Date through the maturity date of the Series 2024A Balloon Indebtedness.

(v) “Remaining Revenue Account Limit” means, as of any Quarterly Distribution Date, (A) the amount on deposit in the Remaining Revenue Account *minus* any transfers to the Port Authority pursuant to Section 5.17(c)(i) of the Collateral Agency and Accounts Agreement on such Quarterly Distribution Date *plus* (B) the amount on deposit in the Surplus Remaining Revenue Account *minus* any transfers to the Port Authority pursuant to Section 5.17(f)(ii)(A) of the Collateral Agency and Accounts Agreement on such Quarterly Distribution Date.

(b) The Borrower shall direct the Trustee to redeem the Series 2024A Balloon Indebtedness, pursuant to the optional redemption provisions of Section 2.07(a) of the Second Supplemental Indenture, in the amounts and on the dates as follows, so long as, and only to the extent that, the applicable transfers from the Remaining Revenue Account and the Surplus Remaining Revenue Account are then permitted pursuant to Sections 5.17(c)(x) or (y) and 5.17(f)(ii)(x) or (y) of the Collateral Agency and Accounts Agreement, as applicable:

(i) As soon as reasonably practicable after each Quarterly Distribution Date occurring on and after the 10 Year Cash Sweep Date, if the Loan Life Coverage Ratio as of the immediately preceding Calculation Date is less than 1.10:1.00 pursuant to the calculations of an independent consultant who is experienced in traffic and revenue studies for airports, in a report delivered to the Senior Collateral Agent by the request of the Borrower on any day from the date preceding such Calculation Date by fourteen (14) months until such Calculation Date, in an amount equal to the least of: (A) the amount that will make the Loan Life Coverage Ratio greater than 1.10:1.00, (B) one hundred percent (100%) of the amount deposited into the Remaining Revenue Account pursuant to the terms of the Financing Documents from and after the Calculation Date immediately preceding the 10 Year Cash Sweep Date, and (C) the Remaining Revenue Account Limit. The Borrower shall cause the independent consultant to provide the report contemplated above at any time within the fourteen (14) month period prior to the applicable Calculation Date.

(ii) As soon as reasonably practicable after each Quarterly Distribution Date occurring on and after the 5 Year Cash Sweep Date, in an amount equal to (A) the lesser of (x) the greater of (I) (a) eighty percent (80%) of the amount deposited into the Remaining Revenue Account pursuant to the terms of the Financing Documents from and after the Calculation Date immediately preceding the 5 Year Cash Sweep Date *minus* (b) all amounts previously applied to redeem the Series 2024A Balloon Indebtedness pursuant to this Section 5.2(b)(ii) and (II) the amount calculated in (b)(i) above, and (y) the Remaining Revenue Account Limit, *minus* (B) any amount required to be applied to redeem Series 2024A Balloon Indebtedness pursuant to Section 5.2(b)(i) on such date; provided that the amount determined pursuant to this Section 5.2(b)(ii) shall in no event be less than \$0.

**ARTICLE VI**  
**AMENDMENTS TO ORIGINAL TDC BUILDING LOAN AGREEMENT**

**Section 6.1. Amendment to Section 8.1 to the Original TDC Building Loan Agreement.**  
Section 8.1(1) of the Original TDC Building Loan Agreement is hereby amended to add the double underlined text and delete the strikethrough text as follows:

(1) Any one or more of the following events shall constitute “Events of Default” for ~~the Building Loans, the TDC Senior Term Loan Building Loan, the Series 2022A Bond Building Loan~~, the TDC Bank Debt Building Note, the Series 2022A Building Note, and under this Loan Agreement (but only as this Loan Agreement relates to the Series 2022A Bonds, the Series 2022A Bond Building Loan, the Series 2022A Building Note, the Senior Term Loan, the TDC Senior Term Loan Building Loan or the TDC Bank Debt Building Note):

**Section 6.2. Amendment to Exhibit C-1 of the Original TDC Building Loan Agreement.**  
Exhibit C-1 of the Original TDC Building Loan Agreement (FORM OF SERIES 2022A BUILDING NOTE) is hereby amended and restated in its entirety as Exhibit F-1 to this First Building Loan Agreement Amendment.

**Section 6.3. Amendment to Exhibit C-2 of the Original TDC Building Loan Agreement.**  
Exhibit C-2 of the Original TDC Building Loan Agreement (FORM OF TDC BANK DEBT BUILDING NOTE) is hereby amended and restated in its entirety as Exhibit F-2 to this First Building Loan Agreement Amendment.

**Section 6.4. Amendment to Exhibit D-1 of the Original TDC Building Loan Agreement.**  
Exhibit D-1 of the Original TDC Building Loan Agreement (SERIES 2022A BALLOON INDEBTEDNESS CERTIFICATE) is hereby amended and restated in its entirety as Exhibit G-2 to this First Building Loan Agreement Amendment.

**Section 6.5. Amendment to Exhibit D-2 of the Original TDC Building Loan Agreement.**  
Exhibit D-2 of the Original TDC Building Loan Agreement (SENIOR TERM LOAN BALLOON INDEBTEDNESS CERTIFICATE) is hereby amended and restated in its entirety as Exhibit G-3 to this First Building Loan Agreement Amendment.

**ARTICLE VII**  
**ASSIGNMENT; INDEMNIFICATION**

**Section 7.1. Assignment.** Except as expressly contemplated herein, in the Indenture, the Credit Agreement, the Common Terms Agreement, the Collateral Agency and Accounts Agreement and the Security Documents, or in the other Financing Documents, neither the Borrower nor the Issuer may assign its interest in this First Building Loan Agreement Amendment.

**Section 7.2. Release and Indemnification Covenants.**

(a) The Borrower agrees to and does hereby indemnify and hold harmless the Issuer and any member, principal, officer, director, official, agent, employee, and attorney thereof, any person who “controls” the Issuer (within the meaning of Section 15 of the Securities Act of 1933, as amended, or Section 20 of the Securities Exchange Act of 1934, as amended), the Trustee and any member, principal, officer, director, official, agent, employee, and attorney thereof, the Administrative Agent and any member, principal, officer, director, official, agent, employee, and attorney thereof, the Agents and any member, principal, officer, director, official, agent, employee, and attorney thereof, and the State (collectively, the

“Indemnified Parties”) against any and all losses, claims, damages or liabilities (including all costs, expenses and reasonable counsel fees actually incurred in investigating or defending such claim) suffered by any of the Indemnified Parties to the extent caused by, relating to, arising out of, resulting from, or in any way connected with (i) the condition, use, ownership, possession, conduct, management, planning, design, acquisition, construction, installation, financing, or sale of the Project or any part thereof including the payment of the Rebate Amount to the federal government, (ii) the acceptance or administration by the Issuer without gross negligence or willful misconduct of its duties under the Indenture, (iii) any untrue statement of a material fact contained in the Borrower’s application to the Issuer, (iv) any omission by the Borrower of a material fact necessary to be stated in the Borrower’s application to the Issuer, (v) the acceptance and administration of the duties of the Trustee under the Indenture, the Senior Financing Documents and any documents related thereto, and (vi) the acceptance and administration of the duties of the Administrative Agent or any of the Agents under the Senior Financing Documents to which each may be a party. In case any action shall be brought against one or more of the Indemnified Parties based upon any of the above and in respect to which indemnity may be sought against the Borrower, such Indemnified Party shall promptly notify the Borrower in writing, and except where the Borrower is the claimant, the Borrower shall assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party, the payment of all reasonable costs and expenses and the right to negotiate and consent to settlement. Any one or more of the Indemnified Parties shall have the right to employ separate counsel at the expense of the Borrower in any such action and to participate in the defense thereof if, in the reasonable opinion of the Indemnified Party, a conflict of interest could arise out of the representation of the parties by the same counsel. The Borrower shall not be liable for any settlement of any such action effected without the consent of the Borrower, but if settled with the consent of the Borrower, or if there is a final judgment for the claimant on any such action, the Borrower agrees to indemnify and hold harmless the Indemnified Parties from and against any loss or liability by reason of such settlement or judgment.

(b) The Borrower agrees to and does hereby indemnify and hold harmless the Indemnified Parties against any and all losses, claims, damages or liabilities (including all costs, expenses, and reasonable counsel fees actually incurred in investigating or defending such claim) suffered by any of the Indemnified Parties and caused by, relating to, arising out of, resulting from, or in any way connected to an examination, investigation or audit of the Tax-Exempt Bonds by the IRS. In the event of such examination, investigation or audit, the Indemnified Parties shall have the right to employ counsel reasonably satisfactory to the Borrower at the expense of the Borrower. In such event, the Borrower shall assume the primary role in responding to and negotiating with the IRS but shall inform the Indemnified Parties of the status of the investigation. In the event the Borrower fails to respond adequately and promptly to the IRS, the Issuer shall have the right to assume the primary role in responding to and negotiating with the IRS and shall have the right to enter into a closing agreement, for which the Borrower shall be liable.

(c) Notwithstanding anything in this First Building Loan Agreement Amendment to the contrary which may limit recourse to the Borrower or may otherwise purport to limit the liability of the Borrower, the provisions of this Section 7.2 shall control the Borrower’s obligations and shall survive repayment of the Series 2024 Bonds.

(d) Notwithstanding anything to the contrary contained herein, the Borrower shall have no liability to indemnify the Issuer, the Senior Collateral Agent, the Administrative Agent or the Trustee against claims or damages resulting from such parties’ own gross negligence or willful misconduct.

(e) If the reimbursement provided for in this Section 7.2 is unenforceable, or is unavailable to the Borrower in respect of any losses, claims, damages, or liabilities (or actions in respect thereof) of the type subject to reimbursement herein, then the Borrower shall, in lieu of reimbursing such Indemnified Parties, contribute to the amount paid or payable by such Indemnified Parties as a results of such losses, claims, damages or liabilities (or actions in respect thereof).

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES

**Section 8.1. Events of Default Defined.** Any one or more of the following events shall constitute “Events of Default” for the Building Loans (except for the TDC Senior Term Loan Building Loan and the Series 2022A Bond Building Loan), the Series 2024 Building Note, any Additional Notes issued in connection with Building Loans and under this TDC Building Loan Agreement (except for any provisions of this TDC Building Loan Agreement that relate to the Series 2022A Bonds, the Series 2022A Bond Building Loan, the Series 2022A Building Note, the Senior Term Loan, the TDC Senior Term Loan Building Loan or the TDC Bank Debt Building Note):

(a) Any failure by the Borrower to make any payments required to be paid pursuant to the TDC Building Loan Agreement (other than payments required pursuant to the Original TDC Building Loan Agreement), and such failure is not remedied within three (3) Business Days after the applicable due date;

(b) Any representation or warranty made by the Borrower in any Senior Financing Document to which it is a party proves to have been incorrect or misleading in any material respect when made, and a Material Adverse Effect on the Project or the transaction contemplated by the Senior Financing Documents, taken as a whole, could reasonably be expected to result therefrom unless such misrepresentation is capable of remedy and is remedied within thirty (30) days after the receipt by the Borrower of written notice from the Secured Debt Representative thereof;

(c) The Borrower fails to comply with any affirmative or negative covenant under the Senior Financing Documents (other than those specified in subsection (a) and (b) of this Section 8.1) to which it is a party, unless such failure is capable of being remedied and is remedied within thirty (30) days after the earlier of (i) written notice specifying such failure shall have been given to the applicable Secured Debt Representative by the Borrower or (ii) written notice specifying such failure and requesting that it be remedied shall have been given to the Borrower by the applicable Secured Debt Representative, or such longer period as is reasonably necessary under the circumstances to remedy such failure so long as corrective action is instituted by the Borrower within the applicable thirty (30) day period and is diligently pursued until such failure is corrected and in any event not to exceed one hundred and eighty (180) days without the prior written approval of the applicable Secured Debt Representative; provided, that if such Event of Default under the applicable Senior Financing Document is due to a cross default with the Common Terms Agreement or Credit Agreement, such cross default shall not constitute an Event of Default hereunder during the Cross-Default Standstill Period pursuant to the terms of the Intercreditor Agreement;

(d) Any “Event of Default” by the Borrower under any of the Key Contracts (as defined in the Lease Agreement) that continues beyond any applicable cure or grace period;

(e) The occurrence of an “Event of Default” by the Borrower under and as defined in the Lease Agreement, that continues beyond any applicable cure or grace period; provided, that if such Event of Default under the Lease Agreement is due to a cross default with the Common Terms Agreement or Credit Agreement, such cross default shall not constitute an Event of Default hereunder during the Cross-Default Standstill Period pursuant to the terms of the Intercreditor Agreement;

(f) The occurrence of an “Enforcement Action” under the Collateral Agency and Accounts Agreement;

(g) The occurrence of an “Event of Default” that continues beyond any applicable cure or grace period under the Indenture, Leasehold Mortgages or any of the Senior Financing Documents (except for the Common Terms Agreement or Credit Agreement); provided, that if such Event of Default under the applicable Senior Financing Document is due to a cross default with the Common Terms Agreement or Credit Agreement, such cross default shall not constitute an Event of Default hereunder during the Cross-Default Standstill Period pursuant to the terms of the Intercreditor Agreement;

(h) Any Senior Financing Document (other than (i) a Senior Collateral Document or (ii) a Senior Financing Document relating to Indebtedness of the Borrower that has been repaid or otherwise discharged in full) ceases to be in full force and effect unless such document shall be replaced by a contract on substantially similar terms within thirty (30) days following the earlier of (i) the Borrower’s knowledge of such occurrence or (ii) the delivery of written notice thereof to the Borrower by the Senior Collateral Agent, or such longer period, not exceeding one hundred and eighty (180) days, reasonably necessary to effect such replacement;

(i) A judgment against the Borrower for the payment of money in an amount in excess of \$25,000,000, without taking into account any portion of the amount of such judgment that is covered by insurance or for which the Borrower is entitled to indemnification from any third party, if such judgment remains unsatisfied without any procurement of a stay of execution within sixty (60) days of the judgment being rendered; provided, that any such judgment shall not constitute an Event of Default hereunder during the pendency of an appeal thereof, so long as, during such appeal, execution is effectively stayed or the liability for such judgment is adequately covered by insurance or a performance bond;

(j) The Borrower shall fail to maintain its existence as a Delaware limited liability company or its qualification to do business in New York;

(k) Any Senior Collateral Documents shall cease (other than as expressly permitted under the Senior Financing Documents) to be effective to grant a perfected Security Interest on any material portion of the Collateral described therein other than as a result of actions or failure to act by the applicable Secured Party, and with the priority purported to be created thereby and such event continues for thirty (30) days after the applicable agent giving notice thereof to the Borrower;

(l) Failure of the Borrower to achieve Substantial Completion of the Project by the Outside Completion Date (as defined in the Lease Agreement); or

(m) The Borrower institutes a proceeding to be adjudicated as bankrupt or insolvent, or shall consent to the institution of bankruptcy or insolvency proceedings against it, or shall file a petition or answer or consent seeking reorganization or relief under the federal Bankruptcy Code or any other similar applicable federal or state law, or shall consent to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee or sequestrator (or other similar official) of the Borrower or of any substantial part of its property, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due.

## **Section 8.2. Remedies on Default.**

(a) Whenever any Event of Default hereunder shall have occurred and be continuing, subject in all events to the terms of the Intercreditor Agreement, the Trustee, or the Issuer with the written consent of the Trustee, have the right to, in conjunction with its available remedies under the Indenture, take one or any combination of the following remedial steps, by notice to the Borrower, the Senior Collateral Agent, and the Port Authority:

(i) Declare that all or any part of any amounts outstanding under the Series 2024 Building Note are (1) immediately due and payable, and/or (2) payable on demand by the Trustee, and any such notice shall take effect in accordance with its terms but only if all amounts payable with respect to the Outstanding Bonds are being accelerated pursuant to Section 8.02(b)(2) of the Master Indenture, or if all of the Outstanding Bonds are being defeased pursuant to Article VII of the Master Indenture or otherwise paid in full;

(ii) Pursuant to the terms of the Collateral Agency and Accounts Agreement, direct the Senior Collateral Agent to take or cause to be taken any and all actions necessary to implement any available remedies with respect to the Collateral under any of the Senior Collateral Documents;

(iii) Have reasonable access to and inspect, examine and make copies of the books and records and any and all accounts, data and income tax and other tax returns of the Borrower during regular business hours of the Borrower and following prior reasonable notice; or

(iv) Take on behalf of the Owners of the Series 2024 Bonds whatever other action under the Senior Collateral Documents, at law or in equity, as may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this First Building Loan Agreement Amendment or the rights of the Owners of the Series 2024 Bonds, in each case subject to the terms of the Collateral Agency and Accounts Agreement.

(b) Whenever an Event of Default described in Section 8.01(m) of the Original TDC Building Loan Agreement shall have occurred all amounts outstanding under the Series 2024 Building Notes shall immediately become due and payable, in each case, without presentment, demand, protest or notice any kind, all of which are hereby waived, by the Borrower.

(c) Subject in all events to the terms of the Intercreditor Agreement, upon any Credit Acceleration (as defined in the Common Terms Agreement) and/or any other acceleration of Senior Obligations (other than the Secured Hedge Agreements), the Series 2024 Bond Loans shall be concurrently accelerated hereunder to the same extent and the Borrower shall have an obligation to repay the Series 2024 Bond Loans that have been so accelerated and pay all interest accrued in respect thereof, along with any fees, make-whole amounts, prepayment premiums, and any other amounts then due and payable to the Issuer in accordance with this First Building Loan Agreement Amendment, the Collateral Agency and Accounts Agreement and the other Senior Financing Documents. All payments by the Borrower to the Issuer under this Article VIII shall be deemed satisfied by the Borrower, upon the Borrower making or causing to be made in accordance with the Collateral Agency and Accounts Agreement an equivalent payment to the relevant Secured Debt Representative(s) or Secured Party, as applicable, of the accelerated Outstanding Secured Obligations (along with all other fees, make-whole amounts, prepayment premiums, and any other amounts then due and payable by the Issuer to the relevant Secured Debt Representative(s) or Secured Party, as applicable, in accordance with the Senior Financing Documents).

(d) Any rights and remedies as are given to the Issuer under this First Building Loan Agreement Amendment will also extend to the Owners of the Series 2024 Bonds, the Senior Collateral Agent, and the Trustee, who will be entitled to the benefit of all covenants and agreements contained in this First Building Loan Agreement Amendment, subject to the terms of the Indenture, the Senior Collateral Documents and the Intercreditor Agreement.

(e) Any Enforcement Action and any other exercise of remedies hereunder shall be taken solely in accordance with the Intercreditor Agreement and the Collateral Agency and Accounts

Agreement and in accordance with the applicable Senior Financing Document(s) and all amounts paid to or received by the Senior Collateral Agent or any other Secured Party and representing the proceeds of the Collateral or the proceeds of any action taken pursuant to an Enforcement Action shall be subject to Article VI of the Collateral Agency and Accounts Agreement.

(f) If an Enforcement Action has occurred, the Issuer shall, in accordance with the instructions from the Intercreditor Agent, (i) direct the Senior Collateral Agent to take or cause to be taken any and all actions necessary to implement any available remedies with respect to the Collateral under any of the Senior Collateral Documents, and (ii) take on behalf of the Owners and Bank Finance Parties, in accordance with the instructions of the Intercreditor Agent, whatever other action under the Senior Collateral Documents, at law or in equity, as may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this First Building Loan Agreement Amendment or the rights of the Owners and Bank Finance Parties, in each case subject to the terms of the Collateral Agency and Accounts Agreement and the Intercreditor Agreement.

(g) Any amounts collected pursuant to actions taken under this Section 8.2 and the Senior Collateral Documents shall be applied in accordance with Section 6.06 of the Collateral Agency and Accounts Agreement.

**Section 8.3. Rescission and Waiver.**

(a) The Issuer shall waive any Event of Default immediately after any such Event of Default has been waived in accordance with the applicable Senior Financing Documents.

(b) The Issuer shall have the right to, but shall be under no obligation to (except with respect to paragraph (a) above of this Section 8.3), waive any other Event of Default at any time.

(c) In case of any such waiver or rescission, then and in every such case the Issuer, the Trustee, and the Borrower shall be restored to their former positions and rights, but no such waiver shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

**Section 8.4. No Remedy Exclusive.** Subject to Section 8.02 of the Master Indenture and the terms of the Intercreditor Agreement, no remedy hereunder is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this First Building Loan Agreement Amendment or now or hereafter existing at Law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer, the Trustee or any Agent to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required by Law or expressly hereunder (or as required under any other Senior Financing Document).

**Section 8.5. Additional Issuer Remedies on Default.**

In addition to the remedies above, if the Borrower commits a breach or threatens to commit a breach of the Reserved Rights, the Issuer shall have the right and remedy, without posting bond or other security, to have such Reserved Rights specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach will cause immediate and irreparable injury to the Issuer and that money damages will not provide an adequate remedy therefor.



**Section 8.6. Agreement to Pay Attorneys' Fees and Expenses.**

(a) Following the occurrence and during the continuance of an Event of Default or upon the request of the Borrower to review or analyze the financing of the Series 2024 Bonds or any related financing instruments, if the Issuer shall employ attorneys or incur other expenses for the collection of payments required hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower herein contained, the Borrower agrees that it will therefor pay to the Issuer its share of the reasonable fees of such attorneys and such other reasonable, properly invoiced and documented expenses so incurred by the Issuer in connection with the same.

(b) Following the occurrence and during the continuance of an Event of Default, the Trustee may, at the reasonable and documented costs and expense of the Borrower, employ or retain such counsel, accountants, appraisers or other experts or advisors as it may reasonably require for the purpose of determining and discharging its rights and duties hereunder and, in the absence of the Trustee's gross negligence, bad faith or willful misconduct in employing or retaining any such counsel, accountants, appraisers, experts or advisors, may act and rely and shall be protected in acting and relying in good faith on the opinion or advice of or information obtained from any counsel, accountant, appraiser or other expert or advisor, whether retained or employed by the Borrower or by the Trustee, in relation to any matter arising in the administration hereof, and shall not be responsible for any act or omission on the part of any of them. In addition, the Trustee shall not be liable for any acts or omissions of its nominees, correspondents, designees, agents, subagents or subcustodians except to the extent of its gross negligence, bad faith or willful misconduct in nominating or appointing such persons and so long as such persons are permitted to act hereunder.

**Section 8.7. No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this First Building Loan Agreement Amendment should be breached by any party and thereafter waived by another party as permitted hereunder, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**ARTICLE IX**

**MISCELLANEOUS**

**Section 9.1. Term of Agreement.** The term of this First Building Loan Agreement Amendment shall commence on the date of execution and delivery of this First Building Loan Agreement Amendment and shall expire on the date that all Senior Obligations and the fees and expenses of the Issuer and the Trustee shall have been fully paid or provision made for such payments; *provided, however*, that this First Building Loan Agreement Amendment may be terminated prior to such date pursuant to Article V of this First Building Loan Agreement Amendment and Article VII of the Master Indenture, but in no event before all of the obligations and duties of the Borrower hereunder have been fully performed, including, without limitation, the payments of all costs and fees mandated hereunder or under the Senior Financing Documents pertaining to the Senior Obligations to be paid by the Borrower.

**Section 9.2. Third Party Beneficiaries.** The Trustee shall be a third party beneficiary of the following provisions hereof (and related defined terms), which shall not be amended or modified without the prior written consent of the Trustee: Article VII Assignment; Indemnification, Article VIII Events of Default, Section 9.3 and Section 9.4 hereof. To the extent that this First Building Loan Agreement Amendment or any other Senior Financing Document to which the Bond Insurer is not a party confers upon, gives or grants to the Bond Insurer, itself and not as a Senior Secured Party represented by the Trustee pursuant hereto, any right, remedy or claim hereunder or thereunder, the Bond Insurer, in its capacity as such, is intended to be and is hereby explicitly recognized as being a third-party beneficiary of such right,

remedy or claim and may exercise all legal rights and remedies in connection herewith and therewith; provided, that any exercise of any right, remedy or claim by the Bond Insurer with respect to the Senior Bond Insurer Obligations (including seeking foreclosure or proceeding against the Senior Collateral) shall be done through the Trustee as the Bond Insurer's Secured Debt Representative in accordance with the provisions of the Intercreditor Agreement, the Second Supplemental Indenture and the other Financing Documents.

**Section 9.3. Notices.** Notices under this First Building Loan Agreement Amendment shall be given in accordance with Section 12.04 of the Collateral Agency and Accounts Agreement.

**Section 9.4. Binding Effect.** This First Building Loan Agreement Amendment shall inure to the benefit of and shall be binding upon the Issuer, the Borrower, the Trustee (on behalf of the Indenture Secured Parties), the Administrative Agent (on behalf of the Bank Finance Parties) and the Intercreditor Agent (on behalf of the Senior Secured Parties), and their respective successors and assigns, subject, however, to the limitations contained herein.

**Section 9.5. Severability.** Whenever possible, each provision of this First Building Loan Agreement Amendment shall be interpreted in such a manner as to be effective and valid under applicable Law, but if any provision of this First Building Loan Agreement Amendment shall be prohibited by or invalid under applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this First Building Loan Agreement Amendment.

**Section 9.6. Amendments, Changes and Modifications.**

(a) Subsequent to the issuance of the Series 2024 Bonds and prior to payment in full of the Series 2024 Bonds issued hereunder (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), and except as otherwise expressly provided in the Indenture, the Intercreditor Agreement and the Collateral Agency and Accounts Agreement, this First Building Loan Agreement Amendment may not be effectively amended, changed, modified, altered or terminated except in a writing executed by the Borrower and the Issuer, and otherwise in accordance with the Indenture, the Intercreditor Agreement, the Collateral Agency and Accounts Agreement and the other Senior Financing Documents, as applicable. Any amendment, supplement, modification to, or waiver of, this First Building Loan Agreement Amendment that requires the consent of the Owners of the Insured Series 2024 Bonds or that materially adversely affects the rights and interests of the Bond Insurer or the security for the Insured Series 2024 Bonds shall be subject to the prior written consent of the Bond Insurer; provided, that any amendment, supplement, modification or waiver related to the incurrence of Additional Obligations by the Borrower pursuant to Section 10.27 of the Collateral Agency and Accounts Agreement shall not be deemed to materially adversely affect the rights and interests of the Bond Insurer and shall not be subject to the prior written consent of the Bond Insurer under this First Building Loan Agreement Amendment, so long as any such Additional Obligations have no greater priority to payment than the existing Senior Obligations. Without limiting the foregoing, in determining whether any amendment, supplement, modification, waiver, consent, or other action to be taken, or any failure to take action, under this First Building Loan Agreement Amendment that would reasonably be expected to have a material adverse effect on the rights and interests of the Bond Insurer or the security for the Insured Series 2024 Bonds, the Issuer shall act upon the reasonable direction of the Bond Insurer. In the event that in connection with the issuance of Additional Insured Bonds, the Bond Insurer of such Additional Insured Bonds obtains terms under this First Building Loan Agreement Amendment (other than the Bond Insurer Premium amount) that are more favorable than those under this First Building Loan Agreement Amendment applicable to the Bond Insurer of the Insured 2024 Bonds, such terms under this First Building Loan Agreement Amendment applicable to the Bond Insurer of the Insured 2024 Bonds shall be revised at the

time of the issuance of such Additional Insured Bonds so that they are as, but no more, favorable. Any such amendments to this First Building Loan Agreement Amendment shall be filed with the New York County Clerk, Queens County, within ten (10) days or as otherwise provided by the Lien Law.

(b) Without the Bond Insurer's prior written consent, the Borrower shall not agree to any amendment to the Senior Bank Financing Documents that would extend the final maturity date of the Senior Bank Obligations beyond November 17, 2031.

**Section 9.7. Execution in Counterparts.** This First Building Loan Agreement Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Delivery of an executed signature page to this First Building Loan Agreement Amendment by electronic transmission shall be as effective as delivery of a manually signed counterpart of this First Building Loan Agreement Amendment. Each party hereto acknowledges and agrees that they may execute this First Building Loan Agreement Amendment, and any variation or amendment hereto, using Electronic Signatures. Such Electronic Signatures are intended to authenticate this writing and to have the same force and effect as handwritten signatures.

**Section 9.8. Applicable Law; Waiver of Jury Trial.** THE EFFECT AND MEANING OF THIS FIRST BUILDING LOAN AGREEMENT AMENDMENT AND THE RIGHTS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED ACCORDING TO, THE LAWS OF THE STATE, WITHOUT GIVING EFFECT TO THE PRINCIPLES OF CONFLICTS OF LAWS THEREOF. EACH OF THE ISSUER AND THE BORROWER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS FIRST BUILDING LOAN AGREEMENT AMENDMENT, THE SERIES 2024 BUILDING NOTE, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**Section 9.9. Captions.** The captions and headings in this First Building Loan Agreement Amendment are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this First Building Loan Agreement Amendment.

**Section 9.10. Limitation of Liability.**

(a) No covenant, agreement or obligation contained herein shall be deemed to be a covenant, agreement or obligation of any present or future director, officer, employee or agent of the Issuer, or the Borrower in his or her individual capacity so long as such person does not act fraudulently, and no such director, officer, employee or agent thereof shall be subject to any liability under this First Building Loan Agreement Amendment or with respect to any other action taken by such person provided that they do not act fraudulently.

(b) Except as otherwise expressly set forth in the Senior Financing Documents, the Senior Secured Parties will have full recourse to the Borrower and all of the Borrower's assets and properties for the liabilities and obligations of the Borrower under the Senior Financing Documents, but in no event will any Affiliates of the Borrower, or any officer, director or holder of any interest in the Borrower or any Affiliates of the Borrower, be liable or obligated for such liabilities and obligations of the Borrower.

(c) Notwithstanding anything in paragraph (b) above of this Section 9.10, nothing in said paragraph (b) above shall limit or affect or be construed to limit or affect the obligations and liabilities of any Affiliate of the Borrower (1) arising under any Senior Financing Document to which such Affiliate of the Borrower is a party, or (2) arising from any liability pursuant to any applicable Law for such fraudulent actions, bad faith or willful misconduct of any Affiliate of the Borrower.

**Section 9.11. Issuer Related Parties Not Liable.** To the extent permitted by law, no recourse shall be had for the enforcement of any obligation, promise or agreement of the Issuer contained herein or in the other Issuer Documents to which the Issuer is a party or for any claim based hereon or thereon or otherwise in respect hereof or thereof against any director, officer, agent, attorney or employee, as such, in his/her individual capacity, past, present or future, of the Issuer or of any successor entity, either directly or through the Issuer or any successor entity whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise. No personal liability whatsoever shall attach to, or be incurred by, any director, officer, agent, attorney or employee as such, past, present or future, of the Issuer or any successor entity, either directly or through the Issuer or any successor entity, under or by reason of any of the obligations, promises or agreements entered into between the Issuer and the Borrower, whether herein contained or to be implied herefrom as being supplemental hereto; and all personal liability of that character against every such director, officer, agent, attorney and employee is, by the execution of this First Building Loan Agreement Amendment and as a condition of, and as part of the consideration for, the execution of this First Building Loan Agreement Amendment, expressly waived and released. Notwithstanding any other provision of this First Building Loan Agreement Amendment, the Issuer shall not be liable to the Borrower or the Trustee or any other Person for any failure of the Issuer to take action under this First Building Loan Agreement Amendment unless the Issuer (a) is requested in writing by an appropriate Person to take such action, (b) is assured of payment of, or reimbursement for, any reasonable expenses in such action, and (c) is afforded, under the existing circumstances, a reasonable period to take such action. In acting under this First Building Loan Agreement Amendment, or in refraining from acting under this First Building Loan Agreement Amendment, the Issuer may conclusively rely on the advice of its counsel.

**Section 9.12. Provision of Information to Bond Insurer.**

(a) The Borrower shall promptly deliver, or cause to be delivered, to the Bond Insurer, unless published on EMMA:

- (i) copies of all financial statements, reports (including the independent consultant reports delivered to the Senior Collateral Agent under Section 5.2(b) hereof), notices, certificates and other information and communications that the Borrower is required to deliver to the Trustee, the Collateral Agent, the Intercreditor Agent or the Issuer pursuant to the TDC Building Loan Agreement, the Collateral Agency and Accounts Agreement the Intercreditor Agreement or any other Financing Document concurrently with providing such information to the Trustee, the Collateral Agent, the Intercreditor Agent, or the Issuer, as applicable (and the Borrower acknowledges that in each instance where the Trustee, Collateral Agent, the Intercreditor Agent or Issuer can request information under the TDC Building Loan Agreement, the Collateral Agency and Accounts Agreement, the Intercreditor Agreement and any other Financing Document, the Bond Insurer shall equally have the right to make any such request);
- (ii) copies of the information that the Trustee, the Collateral Agent or the Intercreditor Agent is required to furnish or forward to the Borrower under

the Financing Documents promptly after such information is received by the Borrower under the Financing Documents;

- (iii) copies of any proposed amendment, supplement or waiver of any of the Financing Documents at the time of their proposal, and a full set of executed documents evidencing or memorializing any amendment, supplement or waiver of any of the Financing Documents or Material Project Documents and all certificates and instruments delivered to the Trustee, the Collateral Agent or the Intercreditor Agent in connection therewith within 30 days of the execution of such documents;
- (iv) copies of certificates of insurance evidencing the renewal of any insurance required by the Lease Agreement, the TDC Building Loan Agreement and the Collateral Agency and Accounts Agreement, promptly upon request from the Bond Insurer or after such certificates are furnished to the Trustee or the Collateral Agent pursuant to the Lease Agreement, the TDC Building Loan Agreement and the Collateral Agency and Accounts Agreement;
- (v) annually, and together with the Borrower's annual financial statements, the balances (together with reasonably detailed supporting documentation if requested by the Bond Insurer) of each of the Reserve Accounts;
- (vi) copies of each Restricted Payment Conditions Satisfaction Transfer Certificate within 10 Business Days of issuance;
- (vii) a copy of each Asset Preservation Schedule (as defined in the Lease Agreement) and updates thereto provided to the Port Authority under Section 86 of the Lease Agreement, within 30 days of the Borrower furnishing the same;
- (viii) a copy of the final audited version of the Financial Model for the Closing Date and any revisions to the Financial Model or any replacement model (which revisions or replacements need not be audited), as well as updated versions of the Financial Model when delivered under the Lease Agreement, in each case without further request from the Bond Insurer, in each case within 30 days of the Borrower furnishing the same; and
- (ix) copies of the Technical Advisor reports within ten (10) business days of such reports becoming available;

(b) Each of the Trustee, the Issuer, and the Borrower shall promptly notify the Bond Insurer of any failure of the Borrower to provide it with any certificates, reports, financial statements and other information, notices and communications that the Borrower is required to provide under any of the Financing Documents.

- (c) The Borrower shall notify the Bond Insurer within ten (10) Business Days:
  - (i) of any amounts transferred to or from the Distribution Account; and
  - (ii) if it submits any application to a Rating Agency for a Rating Confirmation.

(d) The Borrower shall provide the Bond Insurer with any information reasonably requested by the Bond Insurer regarding the security for the Insured Series 2024 Bonds.

**Section 9.13. Bond Insurer Access to Information.** At the Bond Insurer's reasonable request, the Borrower shall (i) cause its appropriate officers or representatives to discuss with the Bond Insurer the affairs, finances and accounts of the Borrower, (ii) provide the Bond Insurer and its consultants and representatives access to the Project and the books and records of the Borrower on any Business Day upon reasonable prior notice (and the right to make copies of any such books and records).

**Section 9.14. Trustee as Representative of the Bond Insurer.** The parties acknowledge that the Bond Insurer has appointed the Trustee as its Secured Debt Representative, pursuant to Section 4.14 of the Second Supplemental Indenture.

**Section 9.15. Bond Insurer Unsecured Obligations.** Notwithstanding anything to the contrary in any of the Financing Documents, the Bond Insurer Unsecured Obligations shall not be secured by the Senior Collateral; provided, that, each monetary judgment arising from non-monetary claims under the Senior Financing Documents shall constitute Senior Bond Insurer Obligations and shall be secured by the Senior Collateral.

**Section 9.16. Complete Agreement.** This First Building Loan Agreement Amendment, together with the Original TDC Building Loan Agreement and the other Financing Documents, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

**Section 9.17. Date for Reference Purposes Only.** The date of this First Building Loan Agreement Amendment shall be for reference purposes only and shall not be construed to imply that this First Building Loan Agreement Amendment was executed on the date first above written. This First Building Loan Agreement Amendment has been executed by the parties hereto and is effective on the Series 2024 Closing Date.

**Section 9.18. Amount Secured by Leasehold Mortgages.** The maximum amount secured by the Leasehold Mortgages collectively shall not exceed the maximum amount permitted pursuant to Section 83(a)(4) of the Lease Agreement.

[SIGNATURE PAGE FOLLOWS]

**[SIGNATURE PAGES AND EXHIBITS OTHER THAN THE BALLOON INDEBTEDNESS  
CERTIFICATES HAVE BEEN REMOVED]**

**EXHIBIT G-1**

\$[•]  
New York Transportation Development Corporation  
Special Facilities Revenue Bonds, Senior Series 2024A  
(Green Bonds) (AMT)  
(Current Interest Bonds)  
(JFK Airport Terminal 6 Redevelopment Project)

[•], 2024

**SERIES 2024A BONDS BALLOON INDEBTEDNESS CERTIFICATE**

Pursuant to the terms of the TDC Building Loan Agreement dated November 1, 2022 (the “Original TDC Building Loan Agreement”), as amended by the First Amendment to the TDC Building Loan Agreement dated [•] 1, 2024 (the “First Building Loan Agreement Amendment,” and together with the Original TDC Building Loan Agreement, the “TDC Building Loan Agreement”), each between New York Transportation Development Corporation (the “Issuer”) and JFK Millennium Partners, LLC (the “Borrower”), relating to the above captioned bonds (the “Series 2024A Bonds”) of the Issuer, the undersigned Authorized Borrower Representative hereby delivers this Series 2024A Bonds Balloon Indebtedness Certificate (the “Certificate”) to the Issuer and certifies as follows (all capitalized terms used in this Certificate and not otherwise defined herein having the meanings given to them in the First Building Loan Agreement Amendment):

**1. Designation.** The principal portion of the Series 2024A Bonds maturing in the years and amounts outlined below (the “Series 2024A Balloon Indebtedness”) is designated as Balloon Indebtedness, as such principal portion of the Series 2024A Bonds maturing on a single date or within a Fiscal Year equals or exceeds 10% of the aggregate amount of all Series 2024A Bonds.

Year	Amount
20[•]	\$[•] <sup>1</sup>

**2. Anticipated Refinancing of Series 2024A Balloon Indebtedness.** The Borrower intends to refinance the Series 2024A Balloon Indebtedness at an anticipated interest rate of [•]% (“Anticipated Refinancing Rate”). The Anticipated Refinancing Rate is the rate determined by a Consultant to be a reasonable market rate assuming that such Outstanding Secured Obligations were being refinanced pursuant to the terms of the Anticipated Debt Service Schedule, with no credit enhancement and bearing interest which is excluded from gross income for federal income tax purposes.

---

<sup>1</sup> Bond Insurer Note: The Series 2024 Balloon Indebtedness is expected to be covered by a Bond Insurance Policy and will be subject to the mandatory optional redemption provisions outlined in Section 5.2 of the First Building Loan Agreement Amendment.



**3. Anticipated Debt Service Schedule.** The Anticipated Debt Service Schedule attached hereto as Schedule 1 (the “Anticipated Debt Service Schedule”) is an accurate estimate of the projected debt service of the Series 2024A Balloon Indebtedness upon refinancing. The Anticipated Debt Service Schedule includes the Anticipated Refinancing Rate, the final maturity date and principal amortization and sinking fund deposits of such refinancing (provided that such refinanced Outstanding Secured Obligations shall be amortized over a term of not more than the remaining term of the Lease Agreement).

**4. Borrower Debt Capacity.** The debt capacity of the Borrower is sufficient to successfully refinance the Series 2024A Balloon Indebtedness pursuant to the terms outlined in this Certificate.

**5. Amendments to the Anticipated Debt Service Schedule.** The Borrower may without consent, amend the terms of the Anticipated Debt Service Schedule by providing evidence to the Trustee that, after giving effect to such amendment to the Anticipated Debt Service Schedule, the Borrower is in compliance with Section 10.25 of the Collateral Agency and Accounts Agreement. The Borrower may provide such evidence through the delivery of a certificate from an Airport Consultant stating that, based upon reasonable assumptions, projected Project Revenues will be sufficient to satisfy the requirements of Section 10.25(a) of the Collateral Agency and Accounts Agreement for each Fiscal Year included in the amendment to the Anticipated Debt Service Schedule. The Borrower shall deliver an amended Anticipated Debt Service Schedule to this Certificate to the Issuer, the Administrative Agent (so long as the Senior Bank Obligations are Outstanding), the Trustee and the Senior Collateral Agent.

**6. Amendments to the Anticipated Refinancing Terms.** The Borrower may amend any terms of the anticipated refinancing of the Series 2024A Balloon Indebtedness in this Certificate, other than the Anticipated Debt Service Schedule which shall be amended pursuant to Section 5 hereof, if such amendment is not materially adverse to the interests of the Holders of the Series 2024A Bonds and the Trustee consents to such amendment in writing. Upon receipt of written consent from the Trustee, the Borrower shall deliver an amended Certificate to the Issuer, the Administrative Agent (so long as the Senior Bank Obligations are Outstanding), the Trustee and the Senior Collateral Agent, including, if applicable, a revised Anticipated Debt Service Schedule.

[Remaining Portion of this Page Intentionally Left Blank]

**JFK MILLENNIUM PARTNERS, LLC**

By: \_\_\_\_\_  
Name:  
Title:

[Signature Page – Series 2024A Bonds Balloon Indebtedness Certificate]

**SCHEDULE 1**  
**ANTICIPATED DEBT SERVICE SCHEDULE**

**EXHIBIT G-2**

\$435,000,000  
New York Transportation Development Corporation  
Special Facilities Bonds, Senior Series 2022A  
(Tax-Exempt)  
(JFK Airport Terminal 6-7 Redevelopment Project)

[•], 2024

**AMENDED AND RESTATED SERIES 2022A BONDS BALLOON INDEBTEDNESS  
CERTIFICATE**

Pursuant to the terms of the TDC Building Loan Agreement, dated November 1, 2022, as amended by the First Amendment to the TDC Building Loan Agreement, dated [•] 1, 2024 (collectively, the “TDC Building Loan Agreement”), between New York Transportation Development Corporation (the “Issuer”) and JFK Millennium Partners, LLC (the “Borrower”), relating to the above captioned bonds (the “Series 2022A Bonds”) of the Issuer, the undersigned Authorized Borrower Representative hereby delivers this Amended and Restated Series 2022A Bonds Balloon Indebtedness Certificate (the “Certificate”), amending the Series 2022A Bonds Balloon Indebtedness Certificate (the “Original Certificate”), dated November 17, 2022 pursuant to Section 5 of the Original Certificate, to the Issuer and certifies as follows (all capitalized terms used in this Certificate and not otherwise defined herein having the meanings given to them in the TDC Building Loan Agreement):

**1. Designation.** The principal portion of the Series 2022A Bonds maturing in the years and amounts outlined below (the “Series 2022A Balloon Indebtedness”) is designated as Balloon Indebtedness, as such principal portion of the Series 2022A Bonds maturing on a single date or within a Fiscal Year equals or exceeds 10% of the aggregate amount of all Bank Commitments, assuming the Bank Commitments are fully utilized.

Year	Amount
2029	\$435,000,000

**2. Anticipated Refinancing of Series 2022A Balloon Indebtedness.** The Borrower intends to refinance the Series 2022A Balloon Indebtedness at an anticipated interest rate of [5.17%]<sup>2</sup> (“Anticipated Refinancing Rate”). The Anticipated Refinancing Rate is the rate determined by a Consultant to be a reasonable market rate assuming that such Outstanding Secured Obligations were being refinanced pursuant to the terms of the Anticipated Debt Service Schedule, with no credit enhancement and bearing interest which is excluded from gross income for federal income tax purposes.

---

<sup>2</sup> Goldman Sachs Note: Effective rate to be calculated from blended rates of remaining to-be refinanced amounts of the Bank Loan or 2022A bonds using the same assumptions as the Closing Model from 2022.

**3. Anticipated Debt Service Schedule.** The Anticipated Debt Service Schedule attached hereto as Schedule 1 (the “Anticipated Debt Service Schedule”) is an accurate estimate of the projected debt service of the Series 2022A Balloon Indebtedness upon refinancing. The Anticipated Debt Service Schedule includes the Anticipated Refinancing Rate, the final maturity date and principal amortization and sinking fund deposits of such refinancing (provided that such refinanced Outstanding Secured Obligations shall be amortized over a term of not more than the remaining term of the Lease Agreement).

**4. Borrower Debt Capacity.** The debt capacity of the Borrower is sufficient to successfully refinance the Series 2022A Balloon Indebtedness pursuant to the terms outlined in this Certificate.

**5. Amendments to this Certificate.** In connection with any redemption of Series 2022A Bonds and reduction in the amount of Series 2022A Balloon Indebtedness, this Certificate may be amended by the Borrower without consent from the Series 2022A Bondholders or their Secured Debt Representative if:

- a. The Borrower provides evidence to the Issuer, the Administrative Agent, the Trustee and the Senior Collateral Agent that, after giving effect to such amendment to this Certificate, the Borrower is in compliance with Section 10.25 of the Collateral Agency and Accounts Agreement and such evidence is reasonably satisfactory to the Administrative Agent (which determination by the Administrative Agent shall not require the direction of the Required Bank Finance Parties). The Borrower may provide such evidence through the delivery of a certificate from an Airport Consultant stating that, based upon reasonable assumptions, projected Project Revenues will be sufficient to satisfy the requirements of Section 10.25(a) of the Collateral Agency and Accounts Agreement for each for each Fiscal Year included amended Anticipated Refinancing Schedule attached to the amended Certificate (the “Amended Anticipated Refinancing Schedule”); and
- b. The Anticipated Refinancing Rate in the amended Certificate does not increase or decrease more than twenty-five basis points; and
- c. The change in the amortization in the Series 2022A Balloon Indebtedness as indicated in the Amended Anticipated Refinancing Schedule is (within rounding to the nearest \$5,000) based on the amount of the Series 2022A Bonds redeemed; and
- d. The Borrower provides evidence of *one* of the following conditions and such evidence is reasonably satisfactory to the Administrative Agent (which determination by the Administrative Agent shall not require the direction of the Required Bank Finance Parties):
  - i. Both (1) the total amortization of the Series 2022A Balloon Indebtedness as indicated in the Amended Anticipated Refinancing Schedule is reduced by the amount of Series 2022A Bonds

redeemed, and (2) for every period where the amortization of the Series 2022A Balloon Indebtedness in the Amended Anticipated Refinancing Schedule differs from the amortization of the Series 2022A Balloon Indebtedness in the existing Anticipated Refinancing Schedule, the difference between the dollar amount of or the ratio of (A) Aggregate Debt Service taking into account only the existing Anticipated Refinancing Schedule and (B) Aggregate Debt Service taking into account the Amended Anticipated Refinancing Schedule and the Debt Service on any Senior Obligations used to redeem all or a portion of the Series 2022A Bonds, for each period is the same dollar amount or same ratio as in each other period, as applicable; or

- ii. After taking into account the changes in the Series 2022A Balloon Indebtedness in clause (d)(i) above (if any), the amortization of the Series 2022A Balloon Indebtedness as indicated in the Amended Anticipated Refinancing Schedule is not (1) increased in any period by more than the greater of: (A) \$5,000,000 and (B) 5% of the amortization in such period; and (2) the amortization is not decreased in any period by more than the greater of: (A) \$20,000,000 and (B) 20% of the amortization in such period.

The Borrower shall deliver to the Issuer, the Administrative Agent, the Trustee and the Senior Collateral Agent (i) a Certificate in form and substance reasonably satisfactory to the Administrative Agent (which determination by the Administrative Agent shall not require the direction of the Required Bank Finance Parties), signed by an Authorized Borrower Representative indicating that the amended Certificate is in compliance with this Section 5 and (ii) an amended Certificate including the Amended Anticipated Debt Service Schedule.

[Remaining Portion of this Page Intentionally Left Blank]

**JFK MILLENNIUM PARTNERS, LLC**

By: \_\_\_\_\_  
Name:  
Title:

[Signature Page – A&R Series 2022A Bonds Balloon Indebtedness Certificate]

**SCHEDULE 1**  
**ANTICIPATED DEBT SERVICE SCHEDULE**



**EXHIBIT G-3**

\$3,009,000,000 Senior Term Loans  
As provided for in the Credit Agreement by and among  
JFK Millennium Partners, LLC, New York Transportation Development Corporation, ING  
Capital LLC as Administrative Agent and the Lenders named therein, dated as of November 1,  
2022

[•], 2024

**AMENDED AND RESTATED SENIOR TERM LOANS BALLOON INDEBTEDNESS  
CERTIFICATE**

Pursuant to the terms of the TDC Building Loan Agreement, dated November 1, 2022, as amended by the First Amendment to the TDC Building Loan Agreement, dated [•] 1, 2024 (collectively, the “TDC Building Loan Agreement”), between New York Transportation Development Corporation (the “Issuer”) and JFK Millennium Partners, LLC (the “Borrower”), relating to the above captioned loans (the “Senior Term Loans”), the undersigned Authorized Borrower Representative, hereby delivers this Amended and Restated Senior Term Loans Balloon Indebtedness Certificate (the “Certificate”), amending the Senior Term Loans Balloon Indebtedness Certificate (the “Original Certificate”), dated November 17, 2022 pursuant to Section 5 of the Original Certificate, to the Issuer and certifies as follows (all capitalized terms used in this Certificate and not otherwise defined herein having the meanings given to them in the TDC Building Loan Agreement):

**1. Designation.** The principal portion of the Senior Term Loans due and payable in the years and amounts outlined below (the “Senior Term Loans Balloon Indebtedness”) is designated as Balloon Indebtedness, as such principal portion of the Senior Term Loans maturing on a single date or within a Fiscal Year equals or exceeds 10% of the aggregate amount of all Bank Commitments, assuming the Bank Commitments are fully utilized.

Year	Amount
2029	\$3,009,000,000

**2. Anticipated Refinancing of Senior Term Loans Balloon Indebtedness.** The Borrower intends to refinance the Senior Term Loans Balloon Indebtedness at an anticipated interest rate of [5.17%]<sup>3</sup> (“Anticipated Refinancing Rate”). The Anticipated Refinancing Rate is the rate determined by a Consultant to be a reasonable market rate assuming that such Outstanding Secured Obligations were being refinanced pursuant to the terms of the Anticipated Debt Service

---

<sup>3</sup> Goldman Sachs Note: Effective rate to be calculated from blended rates of remaining to-be refinanced amounts of the Bank Loan or 2022A bonds using the same assumptions as the Closing Model from 2022.

Schedule, with no credit enhancement and bearing interest which is excluded from gross income for federal income tax purposes.

**3. Anticipated Debt Service Schedule.** The Anticipated Debt Service Schedule attached hereto as Schedule 1 (the “Anticipated Debt Service Schedule”) is an accurate estimate of the projected debt service of the Senior Term Loan Balloon Indebtedness upon refinancing. The Anticipated Debt Service Schedule includes the Anticipated Refinancing Rate, the final maturity date and principal amortization and sinking fund deposits of such refinancing (provided that such refinanced Outstanding Secured Obligations shall be amortized over a term of not more than the remaining term of the Lease Agreement).

**4. Borrower Debt Capacity.** The debt capacity of the Borrower is sufficient to successfully refinance the Balloon Indebtedness pursuant to the terms outlined in this Certificate.

**5. Amendments to this Certificate.** In connection with any prepayment of the Senior Term Loans and reduction in the amount of Senior Term Loans Balloon Indebtedness, this Certificate may be amended by the Borrower without consent from the Lenders or their Secured Debt Representative if:

- e. The Borrower provides evidence to the Issuer, the Administrative Agent, the Trustee and the Senior Collateral Agent that, after giving effect to such amendment to this Certificate, the Borrower is in compliance with Section 10.25 of the Collateral Agency and Accounts Agreement and such evidence is reasonably satisfactory to the Administrative Agent (which determination by the Administrative Agent shall not require the direction of the Required Bank Finance Parties). The Borrower may provide such evidence through the delivery of a certificate from an Airport Consultant stating that, based upon reasonable assumptions, projected Project Revenues will be sufficient to satisfy the requirements of Section 10.25(a) of the Collateral Agency and Accounts Agreement for each Fiscal Year included amended Anticipated Refinancing Schedule attached to the amended Certificate (the “Amended Anticipated Refinancing Schedule”); and
- f. The Anticipated Refinancing Rate in the amended Certificate does not increase or decrease more than twenty-five basis points; and
- g. The change in the amortization in the Senior Term Loans Balloon Indebtedness as indicated in the Amended Anticipated Refinancing Schedule is (within rounding to the nearest \$5,000) based on the amount of the Senior Term Loans prepaid; and
- h. The Borrower provides evidence of *one* of the following conditions, and such evidence is reasonably satisfactory to the Administrative Agent (which determination by the Administrative Agent shall not require the direction of the Required Bank Finance Parties):
  - i. Both (1) the total amortization of the Senior Term Loans Balloon Indebtedness as indicated in the Amended Anticipated Refinancing

Schedule is reduced by the amount of Senior Term Loans prepaid, and (2) for every period where the amortization of the Senior Term Loans Balloon Indebtedness in the Amended Anticipated Refinancing Schedule differs from the amortization of the Senior Term Loans Balloon Indebtedness in the existing Anticipated Refinancing Schedule, the difference between the dollar amount of or the ratio of (A) Aggregate Debt Service taking into account only the existing Anticipated Refinancing Schedule and (B) Aggregate Debt Service taking into account the Amended Anticipated Refinancing Schedule and the Debt Service on any Senior Obligations used to prepay all or a portion of the Senior Term Loans, for each period is the same dollar amount or the same ratio as in each other period, as applicable; or

- ii. After taking into account the changes in the Senior Term Loans Balloon Indebtedness in clause (d)(i) above (if any), the amortization of the Senior Term Loans Balloon Indebtedness as indicated in the Amended Anticipated Refinancing Schedule is not (1) increased in any period by more than the greater of: (A) \$5,000,000 and (B) 5% of the amortization in such period; and (2) the amortization is not decreased in any period by more than the greater of: (A) \$20,000,000 and (B) 20% of the amortization in such period.

The Borrower shall deliver to the Issuer, the Administrative Agent, the Trustee and the Senior Collateral Agent (i) a Certificate in form and substance reasonably satisfactory to the Administrative Agent (which determination by the Administrative Agent shall not require the direction of the Required Bank Finance Parties), signed by an Authorized Borrower Representative indicating that the amended Certificate is in compliance with this Section 5 and (ii) an amended Certificate including the Amended Anticipated Debt Service Schedule.

[Remaining Portion of this Page Intentionally Left Blank]

**JFK MILLENNIUM PARTNERS, LLC**

By: \_\_\_\_\_  
Name:  
Title:

[Signature Page – A&R Senior Term Loans Balloon Indebtedness Certificate]

**SCHEDULE 1**  
**ANTICIPATED DEBT SERVICE SCHEDULE**

**(THIS PAGE INTENTIONALLY LEFT BLANK)**

**APPENDIX D-5**

**FORM INTERCREDITOR AGREEMENT**

**(THIS PAGE INTENTIONALLY LEFT BLANK)**



**Execution Version**

**INTERCREDITOR AGREEMENT**

Dated as of November 1, 2022

by and among

**JFK MILLENNIUM PARTNERS, LLC,**  
as Lessee

**THE BANK OF NEW YORK MELLON,**  
as Trustee

**ING CAPITAL LLC,**  
as Administrative Agent

**THE BANK OF NEW YORK MELLON,**  
as Intercreditor Agent

**THE BANK OF NEW YORK MELLON,**  
as Senior Collateral Agent

**ING CAPITAL MARKETS LLC, JPMORGAN CHASE BANK, N.A., KEYBANK NATIONAL ASSOCIATION, MIZUHO CAPITAL MARKETS LLC, MUFG BANK, LTD., ROYAL BANK OF CANADA, SMBC CAPITAL MARKETS INC., AND THE BANK OF NOVA SCOTIA,**  
as Hedge Providers

and

**EACH OTHER PERSON PARTY HERETO FROM TIME TO TIME**

## TABLE OF CONTENTS

	<b>Page</b>
1. DEFINITIONS.....	3
1.1 Defined Terms .....	3
1.2 Rules of Interpretation .....	3
1.3 Certifications, Etc. ....	3
1.4 Divisions .....	3
2. ACKNOWLEDGEMENT OF SECURITY INTERESTS .....	3
2.1 Grant; Relative Priorities .....	3
2.2 Prohibition on Contesting Security Interests; No Marshalling .....	5
2.3 No New Security Interests .....	5
2.4 Similar Security Interests and Agreements; Segregated Pledged Accounts .....	6
2.5 Nature of Obligations.....	6
2.6 Subordination Agreement .....	7
2.7 Reliance by Senior Secured Parties .....	7
2.8 Pro Rata Prepayments.....	7
3. ENFORCEMENT .....	7
3.1 Exercise of Remedies.....	7
3.2 Enforcement of Security Interests.....	8
3.3 Permitted Actions of Senior Secured Parties .....	12
3.4 Permitted Actions of Subordinate Secured Parties .....	14
3.5 Unilateral Enforcement Exceptions .....	14
3.6 Certain Actions .....	16
3.7 Other Remedial Action .....	17
4. PAYMENTS.....	18
4.1 Application of Proceeds.....	18
4.2 Limitations on Payment Post Default .....	18
4.3 Turnover.....	18
4.4 Debt Balances .....	19
5. OTHER AGREEMENTS .....	20
5.1 Releases .....	20
5.2 Insurance .....	23
5.3 Amendments to Financing Documents; Class Voting .....	23
5.4 Cash Collateral Accounts; Amounts Not Subject to Sharing.....	27
5.5 Additional Secured Obligations; Accession Agreement.....	27
5.6 Gratuitous Bailee/Agent for Perfection .....	29
6. INSOLVENCY OR LIQUIDATION PROCEEDINGS.....	30
6.1 Finance and Sale Issues .....	30
6.2 Relief from the Automatic Stay .....	32
6.3 Adequate Protection.....	32
6.4 No Waiver.....	34
6.5 Avoidance Issues .....	34
6.6 Reorganization Securities .....	35

6.7	Post-Petition Interest.....	35
6.8	Waiver.....	35
6.9	Effectiveness in Insolvency Proceedings.....	35
6.10	Limitations.....	36
6.11	Voting for Plan of Reorganization.....	36
6.12	Subordinate Secured Party Rights to Collateral.....	36
6.13	Determination of Distributions on Account of Security Interests on Collateral.....	37
7.	THE INTERCREDITOR AGENT.....	37
7.1	Appointment.....	37
7.2	Intercreditor Agent’s Rights and Obligations.....	37
8.	ACTIONS FOR INTERCREDITOR VOTE.....	40
8.1	Decision Making.....	40
8.2	Voting Generally; Intercreditor Votes.....	40
8.3	Intercreditor Votes; Each Party’s Entitlement to Vote.....	41
8.4	Instructions; Other Relationships.....	41
8.5	Saving of Rights.....	43
9.	RELIANCE; WAIVERS; ETC.....	44
9.1	Reliance.....	44
9.2	No Warranties or Liability.....	44
9.3	No Waiver of Security Interest Priorities.....	44
9.4	Obligations Unconditional.....	45
10.	MISCELLANEOUS.....	45
10.1	Conflicts.....	45
10.2	Effectiveness; Continuing Nature of this Agreement; Severability.....	45
10.3	Amendments; Waivers.....	46
10.4	Information Concerning Financial Condition of the Obligors.....	49
10.5	Consent to Jurisdiction and Service of Process; Waiver of Jury Trial.....	50
10.6	Notices.....	51
10.7	Further Assurances.....	51
10.8	Applicable Law.....	51
10.9	Binding on Successors and Assigns.....	52
10.10	Specific Performance.....	52
10.11	Headings.....	52
10.12	Counterparts; Integration.....	52
10.13	Authorization.....	52
10.14	Third Party Beneficiaries.....	52
10.15	Provisions Solely to Define Relative Rights.....	53
10.16	Limitation on Liability.....	53
10.17	Force Majeure.....	54
10.18	Consequential Damages.....	54
10.19	Electronic Execution.....	54
10.20	Effectiveness Date.....	54

## **Index of Annexes and Exhibits**

### **Annexes**

Annex I	Notices
Annex II	Fundamental Events of Default

### **Exhibits**

Exhibit A	Form of Accession Agreement
-----------	-----------------------------

## INTERCREDITOR AGREEMENT

This INTERCREDITOR AGREEMENT, dated as of November 1, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, this “**Agreement**”), is entered into by and among JFK Millennium Partners, LLC, a Delaware limited liability company (the “**Lessee**”), The Bank of New York Mellon, as Intercreditor Agent, as appointed pursuant to Section 7.1 hereto (in such capacity, together with its successors and permitted assigns in such capacity, the “**Intercreditor Agent**”), The Bank of New York Mellon, as trustee under the Indenture described herein (in such capacity, together with its successors and permitted assigns in such capacity, the “**Trustee**”) and acting hereunder as Senior Secured Debt Representative for the Senior Bondholders (other than the Series 2022A Bonds), ING Capital LLC, as administrative agent for the Bank Finance Parties (in such capacity, together with its successors and permitted assigns in such capacity, the “**Administrative Agent**”), The Bank of New York Mellon, as collateral agent for the Senior Secured Parties (as defined herein) (in such capacity, together with its successors and assigns in such capacity, “**Senior Collateral Agent**”), ING Capital Markets LLC, JPMorgan Chase Bank, N.A., KeyBank National Association, Mizuho Capital Markets LLC, MUFG Bank, Ltd., Royal Bank of Canada, SMBC Capital Markets Inc., and The Bank of Nova Scotia as Hedge Providers, and each of the other Persons party hereto from time to time in accordance with the terms hereof, including any Subordinate Collateral Agent. Capitalized terms used in this Agreement have the meanings assigned to them in the recitals or in Section 1 below.

### WITNESSETH

- (A) **WHEREAS**, the Port Authority of New York and New Jersey, a municipal corporate instrumentality and political subdivision of the States of New York and New Jersey, created and existing by virtue of the Compact of April 30, 1921, made by and between the States of New York and New Jersey, and thereafter consented to by the Congress of the United States has entered into an Agreement of Lease, dated as of November 17, 2022 (as supplemented and amended from time to time, the “Lease Agreement”), with the Lessee pursuant to which, among other things, the Lessee is obliged to undertake the following: (i) the operation, maintenance, and demolition of the Existing Terminal Facilities at John F. Kennedy International Airport in Queens, New York, which Existing Terminal Facilities include the existing Terminal 7 facilities, (ii) the design, construction, financing, operation and maintenance of the New Terminal Facilities at the Airport (which New Terminal Facilities include new Terminal 6 facilities and replacement Terminal 7 facilities) and certain ancillary facilities, and (iii) the design and construction of the Off-Premises Facilities at the Airport on behalf of the Port Authority, which Off-Premises Facilities will not be operated or maintained by the Lessee and will not constitute part of the facilities leased to the Lessee under the Lease Agreement;
- (B) **WHEREAS**, pursuant to that certain Credit Agreement, dated as of the date hereof, among the Issuer in its capacity as borrower thereunder, the Lessee, the Bank Lenders from time to time party thereto and the Administrative Agent, the Senior Term Lenders have agreed to make Senior Loans available to the Issuer, the proceeds of which will be loaned to the Lessee pursuant to the TDC Loan Agreements to finance a portion of the Project Costs, and the Security Deposit Facility Lenders have agreed to make Security Deposit Loans available to the Issuer and the Security Deposit Facility LC Issuing Bank has agreed to make Security Deposit LCs available to the Lessee on behalf of the Issuer, on the terms and subject to the conditions set forth therein;
- (C) **WHEREAS**, pursuant to a bond resolution adopted on October 20, 2022 by the Issuer and that certain TDC Master Bond Indenture of Trust, dated as of November 1, 2022, between the Issuer and the Trustee, the Issuer has authorized the issuance of its New York Transportation Development Corporation Special Facilities Bonds, Senior Series 2022A (Tax-Exempt) (AMT)

(JFK Airport Terminal 6-7 Redevelopment Project) in the aggregate principal amount of \$435,000,000;

- (D) **WHEREAS** the Issuer and the Lessee have entered into the Series 2022A Bond Purchase Agreement with RBC, as Series 2022A Bondholder, and RBC Capital Markets LLC, as initial purchaser, and the Initial Purchaser and the Series 2022A Bondholder are willing to purchase the Series 2022A Bonds on the terms and conditions and in the respective principal amounts and stated amounts set forth in the Series 2022A Bond Purchase Agreement and subject to the terms and conditions of this Agreement and the other Financing Documents;
- (E) **WHEREAS**, the Lessee has executed and delivered the 2022 TDC Building Notes, and the 2022 TDC Project Notes in favor of the Issuer to evidence the obligations of the Lessee under each of the TDC Building Loan Agreement and the TDC Project Loan Agreement, respectively;
- (F) **WHEREAS**, the Issuer will assign all of its right, title and interest in and to the TDC Loan Agreements, except for the Reserved Rights, to the Senior Collateral Agent, as security for the Senior Secured Debt, and will further endorse the 2022 TDC Notes and any Additional Note in respect of Senior Secured Debt in favor of the Senior Collateral Agent, as security for the Senior Secured Debt;
- (G) **WHEREAS**, in order to secure the Lessee's obligations under the Financing Documents, the Lessee has granted mortgage liens on and security interests in all of the interests of the Lessee under the Lease Agreement and a security interest in certain additional accounts and property of the Lessee (including a pledge of the Lessee's Project Revenues, to the Senior Collateral Agent) to the Issuer and the Senior Collateral Agent, pursuant to the Leasehold Mortgages and certain other Senior Collateral Documents;
- (H) **WHEREAS**, in order to secure its obligations under the Senior Financing Documents, the Lessee has granted to the Senior Collateral Agent, for the benefit of the Senior Secured Parties, a first-priority security interest (subject to Permitted Liens) in, to and under the Collateral;
- (I) **WHEREAS**, on the date hereof, the Issuer, the Lessee, the Senior Collateral Agent, the Intercreditor Agent, the Trustee, the Administrative Agent and The Bank of New York Mellon, in its capacity as Deposit Account Bank and Securities Intermediary, among others, have entered into that certain Collateral Agency and Accounts Agreement, dated as of the date hereof, pursuant to which, among other things, The Bank of New York Mellon was appointed as Senior Collateral Agent, Deposit Account Bank and Securities Intermediary, certain securities and/or deposit accounts were established, and the parties thereto agreed as to the transfer and application of funds on deposit in or credited to such accounts; and
- (J) **WHEREAS**, after the Closing Date, additional Secured Parties may become party hereto in connection with the incurrence of Additional Obligations;

**NOW, THEREFORE**, in consideration of the mutual agreements in this Agreement contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Lessee, the Trustee, the Senior Collateral Agent and each Senior Secured Debt Representative (for itself and on behalf of the Senior Secured Parties of the Class it represents) agree as follows:

## **1. DEFINITIONS**

### **1.1 Defined Terms**

Unless otherwise specified, capitalized terms used in this Agreement have the meaning assigned to them in Exhibit A to the Collateral Agency and Accounts Agreement.

### **1.2 Rules of Interpretation**

Except as otherwise expressly provided, the rules of interpretation set forth in Exhibit A of the Collateral Agency and Accounts Agreement shall apply to this Agreement and the other Senior Collateral Documents and Subordinate Collateral Documents.

### **1.3 Certifications, Etc.**

All certifications, notices, declarations, representations, warranties and statements made by any officer, director or employee of an Obligor pursuant to or in connection with this Agreement shall be made in such person's capacity as officer, director or employee on behalf of such Obligor and not in such Person's individual capacity.

### **1.4 Divisions**

For all purposes under the Financing Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

## **2. ACKNOWLEDGEMENT OF SECURITY INTERESTS**

### **2.1 Grant; Relative Priorities**

(a) The parties hereto acknowledge and agree that (i) pursuant to the applicable Senior Collateral Documents, each Obligor has granted (or may grant, as applicable) to the Senior Collateral Agent, for the benefit of the Senior Secured Parties, a security interest in all such Obligor's rights, title and interest in, to and under the Senior Collateral owned by such Obligor to secure the payment and performance of all present and future Senior Obligations and (ii) pursuant to the applicable Subordinate Collateral Documents, each Obligor may grant, from time to time, to the Subordinate Collateral Agent, for the benefit of the Subordinate Secured Parties, a security interest in all such Obligor's rights, title and interest in, to and under the Subordinate Collateral owned by such Obligor to secure the payment and performance of all Subordinate Obligations.

(b) Notwithstanding, among other things, (i) the date, time, method, manner or order of grant, attachment or perfection of any Security Interests securing the Senior Obligations granted on the Collateral or any Security Interests securing the Subordinate Obligations granted on the Collateral, (ii) anything contained in any filing or agreement to which any Agent or other Senior Secured Party or Subordinate Secured Party (either individually or collectively) or in the case of any Agent, for its own behalf or on behalf of any other Senior

Secured Parties or Subordinate Secured Parties, now or hereafter may be a party, (iii) the perfection of or avoidability of such Security Interests or claims securing the Senior Obligations or the Subordinate Obligations, as the case may be, (iv) any provision of the UCC, any other applicable Law, including the New York State Lien Law (Chapter 33 of the Consolidated Laws of New York), or any provision of the Subordinate Debt Documents, (v) any defect or deficiencies in, or failure to perfect or lapse in perfection of, or avoidance as a fraudulent conveyance or otherwise of, the Security Interests securing the Senior Obligations or the Subordinate Obligations or (vi) any other circumstance whatsoever, in each case, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Lessee or any other Obligor, each of the Subordinate Collateral Agent (on behalf of itself and the Subordinate Secured Parties) and the Trustee (on behalf of each Subordinate Bondholder) hereby agrees that:

- (i) any Security Interest on the Collateral securing any Senior Obligations now or hereafter held by or on behalf of any Senior Secured Party or any agent or trustee therefor, regardless of how acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be senior in all respects and prior to any Security Interest on the Collateral securing any Subordinate Obligations; and
  - (ii) any Security Interest on the Collateral securing any Subordinate Obligations now or hereafter held by or on behalf of the Subordinate Collateral Agent, any Subordinate Secured Party or any agent or trustee therefor regardless of how acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be junior and subordinate in all respects to all Security Interests in the Collateral securing any Senior Obligations. All Security Interests in the Collateral securing any Senior Obligations shall be and remain in all respects prior to all Security Interests in the Collateral securing any Subordinate Obligations for all purposes, whether or not such Security Interests securing any Senior Obligations are subordinated to any Security Interest securing any other obligation of the Lessee, any other Obligor or any other Person.
- (c) Each of the Subordinate Collateral Agent (on behalf of itself and the Subordinate Secured Parties), the Senior Collateral Agent (on behalf of itself and the Senior Secured Parties), and each Senior Secured Party party hereto and each Subordinate Secured Party party hereto acknowledges and agrees that:
- (i) the grants of Security Interests pursuant to the Senior Collateral Documents and the Subordinate Collateral Documents constitute two separate and distinct grants of Security Interests: (A) the Security Interest under the Senior Collateral Documents securing the payment and performance of the Senior Obligations to the extent provided therein and (B) the Security Interest under the Subordinate Collateral Documents securing the payment and performance of the Subordinate Obligations to the extent provided therein;
  - (ii) the Security Interests under the Subordinate Collateral Documents securing the Subordinate Obligations are subject and subordinate on the terms contained in this Agreement to the Security Interests under the Senior Collateral Documents securing the Senior Obligations; and



- (iii) because of, among other things, their differing rights in the Collateral, the Subordinate Obligations are fundamentally different from the Senior Obligations and must be separately classified in any Plan of Reorganization proposed or adopted in an Insolvency or Liquidation Proceeding with respect to any Obligor.

To further effectuate the intent of the parties as provided in the immediately preceding paragraph, if a court in any Insolvency or Liquidation Proceeding or otherwise holds that the claims of the Senior Secured Parties and the Subordinate Secured Parties in respect of the Collateral constitute only one secured claim (rather than separate classes of senior and junior secured claims), then each of the parties hereto hereby acknowledges and agrees that, all distributions shall be made as if there were separate classes of senior and junior secured claims against the Obligors in respect of the Collateral (with the effect being that, to the extent that the aggregate value of the Collateral is sufficient (for this purpose ignoring all claims held by the Subordinate Secured Parties), the Senior Secured Parties shall be entitled to receive, on a *pro rata* basis, in addition to amounts distributed to them in respect of principal, pre-petition interest and other claims, all amounts owing (or that would be owing if there were such separate classes of senior and junior secured claims) in respect of post-petition interest, fees, expenses, make-whole or similar amounts that are due and owing under the Senior Financing Documents, including any additional interest payable pursuant to the Senior Financing Documents, arising from or related to a default, in each case whether allowed or disallowed as a claim in any Insolvency or Liquidation Proceeding) before any distribution is made in respect of the claims held by the Subordinate Secured Parties with respect to the Collateral, with each of the Subordinate Collateral Agent (on behalf of itself and the Subordinate Secured Parties) and the Trustee (on behalf of each Subordinate Bondholder), hereby acknowledging and agreeing to turn over to the Senior Collateral Agent, for itself and on behalf of the Senior Secured Parties, Collateral or proceeds thereof otherwise received or receivable by them to the extent necessary to effectuate the intent of this sentence, even if such turnover has the effect of reducing the claim or recovery of the Subordinate Secured Parties.

## **2.2 Prohibition on Contesting Security Interests; No Marshalling**

Each of the Subordinate Collateral Agent (for itself and on behalf of each Subordinate Secured Party), the Senior Collateral Agent (for itself and on behalf of each Senior Secured Party), and each Senior Secured Party party hereto agrees that it will not (and hereby waives any right to) directly or indirectly contest or support any other Person in contesting, in any proceeding (including any Insolvency or Liquidation Proceeding), the priority, validity, perfection, extent or enforceability of a Security Interest held, or purported to be held, by or on behalf of any of the Senior Secured Parties in the Senior Collateral or by or on behalf of any of the Subordinate Secured Parties in the Subordinate Collateral, as the case may be, or the provisions of this Agreement; provided, that nothing in this Agreement shall be construed to prevent or impair the rights of the Senior Collateral Agent or any Senior Secured Party to enforce this Agreement, including the provisions of this Agreement relating to the priority of the Security Interests securing the Senior Obligations as provided in Sections 2.1 and 3.1. Until the Discharge of Senior Obligations, neither the Subordinate Collateral Agent nor any Subordinate Secured Party will assert (and each of the Subordinate Collateral Agent (for itself and on behalf of each Subordinate Secured Party) and each Subordinate Secured Party hereby waives) any marshaling, appraisal, valuation or other similar right that may otherwise be available to a junior secured creditor.

## **2.3 No New Security Interests**

- (a) So long as the Discharge of Senior Obligations has not occurred, and regardless of whether or not an Insolvency or Liquidation Proceeding has been commenced by or against the

Lessee or any other Obligor, the parties hereto agree that no Obligor shall (other than with respect to the Segregated Collateral securing the applicable Secured Obligations):

- (i) grant or permit any additional Security Interests in any asset or property to secure any Subordinate Obligation unless it has granted or concurrently grants a Security Interest on such asset or property to secure the Senior Obligations; or
  - (ii) grant or permit any additional Security Interests in any asset or property to secure any Senior Obligations unless it has granted or concurrently grants a Security Interest on such asset or property to secure the Subordinate Obligations; provided, that this provision will not be violated if the Subordinate Collateral Agent is given a reasonable opportunity to accept a Security Interest on any asset or property and the Subordinate Collateral Agent states in writing that the Subordinate Financing Documents prohibit the Subordinate Collateral Agent from accepting a Security Interest on such asset or property or if the Subordinate Collateral Agent otherwise expressly declines to accept a Security Interest on such asset or property.
- (b) To the extent that the foregoing provisions of this Section 2.3 are not complied with for any reason, without limiting any other rights and remedies available to the Senior Collateral Agent and/or the Senior Secured Parties, the Subordinate Collateral Agent, on behalf of the Subordinate Secured Parties, agrees that any amounts received by or distributed to any Subordinate Secured Party pursuant to or as a result of Security Interests granted in contravention of Section 2.3(a) shall be subject to Section 4.3.

#### **2.4 Similar Security Interests and Agreements; Segregated Pledged Accounts**

The parties hereto agree that it is their intention that the Senior Collateral and the Subordinate Collateral be identical, other than with respect to (a) the Senior Debt Reserve Account and the Ramp-up Reserve Account, which shall constitute Senior Collateral available only to the Senior Secured Parties, (b) the Subordinate Debt Service Reserve Account, if any, which shall constitute Subordinate Collateral available only to the Subordinate Secured Parties, (c) any Senior Cash Collateral Account, which shall constitute Senior Collateral available only to the applicable Senior Secured Parties, and (d) the Segregated Proceeds Pledged Accounts which shall constitute Senior Collateral available only to the Bank Finance Parties. In furtherance of the foregoing, the parties hereto agree, subject to the other provisions of this Agreement upon request by the Senior Collateral Agent or the Subordinate Collateral Agent, to cooperate in good faith (and to direct their counsel to cooperate in good faith) from time to time in order to determine the specific items included in the Senior Collateral and the Subordinate Collateral and the steps taken to perfect their respective Security Interests thereon and the identity of the respective parties obligated under the Senior Financing Documents and the Subordinate Financing Documents.

#### **2.5 Nature of Obligations**

The priorities of the Security Interests provided in Section 2.1 hereof shall not be altered or otherwise affected by (a) any Refinancings of the Senior Obligations or the Subordinate Obligations

nor (b) any action or inaction which any of the Senior Secured Parties or Subordinate Secured Parties may take or fail to take in respect of the Collateral.

## **2.6 Subordination Agreement**

The parties hereto intend that the provisions of this Agreement be a subordination agreement within the meaning of Section 510(a) of the Bankruptcy Laws or any successor statute.

## **2.7 Reliance by Senior Secured Parties**

The Trustee, as agent for and on behalf of the Subordinate Bondholders, acknowledges and agrees that the provisions of this Agreement are, and are intended to be, an inducement and a consideration to each Senior Secured Party, whether the Senior Obligations held by any Senior Secured Party were created or acquired before or after the issuance of any or all of the Subordinate Obligations, to acquire and continue to hold such Senior Obligations and such Senior Secured Party shall be deemed conclusively to have relied on such subordination provisions in acquiring and continuing to hold, or in continuing to hold, such obligations.

## **2.8 Pro Rata Prepayments.**

If at the time any prepayment, redemption or repurchase of any Senior Secured Debt would be required to be made with any Net Cash Proceeds (or any similar amount, however denominated) pursuant to any Senior Financing Document, the Issuer or the Lessee is required to redeem, prepay or offer to repurchase (or to cause such prepayment, redemption or repurchase) any other Senior Secured Debt with such Net Cash Proceeds (or such similar amount, however denominated) pursuant to the terms of the documentation governing such other Senior Secured Debt, then the Lessee shall cause such Net Cash Proceeds to be applied on a *pro rata* basis to the prepayment, redemption or repurchase of all Senior Secured Debt that is required to be so prepaid, redeemed or repurchased (determined on the basis of the aggregate outstanding principal amount of the applicable Senior Secured Debt at such time) in accordance with the terms of the Collateral Agency and Accounts Agreement. Notwithstanding anything to the contrary in any other Financing Document, no prepayment or redemption of Subordinate Secured Debt shall be made prior to the Discharge of Senior Obligations.

## **3. ENFORCEMENT**

### **3.1 Exercise of Remedies**

Each Secured Party that is party to this agreement (or, in the case of any Secured Party that is not party to this Agreement, the Agent acting on behalf of such Secured Party) agrees that at any time, including upon the occurrence and continuation of an Event of Default, no Secured Party shall take any Enforcement Action or instruct any Agent to take any Enforcement Action, against any Obligor or any Collateral, except through an Act of Secured Parties as provided for in Article 8 or pursuant to an Enforcement Exception. The Applicable Collateral Agent, acting upon an Act of Secured Parties or pursuant to an Enforcement Exception, shall have the exclusive right to take any Enforcement Action or to otherwise exercise remedies (including setoff (but subject to Section 5.4(a)) and the right to Credit Bid all of the Senior Obligations or, after the Discharge of Senior Obligations, the Subordinate Obligations, as applicable) and make determinations regarding the release, sale, disposition or restrictions with respect to the Collateral in accordance with the applicable Senior Collateral Documents or Subordinate Collateral Documents. In exercising rights and remedies with respect to the Collateral, the Applicable Collateral Agent, acting upon an Act of

Secured Parties, may enforce the provisions of the Senior Collateral Documents or the Subordinate Collateral Documents, as applicable, and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion, subject in each case to the terms and conditions of this Agreement, the Senior Collateral Documents and the Subordinate Collateral Documents, as applicable, and applicable Law. Such exercise and enforcement shall include the rights of the Applicable Collateral Agent (or any other agent appointed pursuant to an Act of Secured Parties) to sell or otherwise dispose of Collateral upon foreclosure, to incur expenses in connection with such sale or disposition, and to exercise all the rights and remedies of a secured creditor under the UCC and the Senior Collateral Documents or the Subordinate Collateral Documents, as applicable, and of a secured creditor under the Bankruptcy Laws of any applicable jurisdiction (including set-off (but subject to Section 5.4) and the right to Credit Bid all (but not less than all) of the Senior Obligations or the Subordinate Obligations, as applicable).

### **3.2 Enforcement of Security Interests**

- (a) The Required Senior Secured Parties and the Required Subordinate Secured Parties will have, subject in all cases to the terms of this Agreement, the right to authorize and direct the Applicable Collateral Agent with respect to the Senior Collateral Documents or the Subordinate Collateral Documents, as the case may be, and the Collateral, including the exclusive right to authorize or direct the Applicable Collateral Agent to enforce, collect or realize on any Collateral or exercise any other right or remedy with respect to the Collateral, subject in each case to the terms and conditions of the Senior Collateral Documents and the Subordinate Collateral Documents, as applicable, and applicable Law.
- (b) Until the Discharge of Senior Obligations, and regardless of whether an Insolvency or Liquidation Proceeding has been commenced by or against the Lessee or any other Obligor, except to the extent directed or consented to by the Required Senior Secured Parties, the Subordinate Collateral Agent on behalf of itself and each Subordinate Secured Party agrees that it will not:
  - (i) request judicial relief, in any Insolvency or Liquidation Proceeding or in any other court, that would hinder, delay, limit or prohibit the lawful exercise or enforcement of any right or remedy otherwise available to the Senior Secured Parties in respect of the Security Interests granted to the Senior Collateral Agent, for the benefit of the Senior Secured Parties;
  - (ii) oppose or otherwise contest any motion for relief from the automatic stay or for any injunction against foreclosure or enforcement of Security Interests granted to the Senior Collateral Agent, for the benefit of the Senior Secured Parties, or any Senior Secured Party, or made or supported by the Senior Collateral Agent, acting at the direction of, or as consented to by, the Required Senior Secured Parties, or by any Senior Secured Party in any Insolvency or Liquidation proceeding;
  - (iii) oppose or otherwise contest any lawful exercise by the Senior Collateral Agent, acting at the direction of, or as consented to by, the Required Senior Secured Parties, of the right to Credit Bid the Senior Obligations at any sale in foreclosure of the Security Interests granted to the Senior Collateral Agent, for the benefit of the Senior Secured Parties, or otherwise;
  - (iv) oppose or otherwise contest any other request for judicial relief made in any court by the Senior Collateral Agent, acting at the direction of, or as consented to by, the

Required Senior Secured Parties, relating to the lawful enforcement of any Senior Secured Party;

- (v) exercise or seek to exercise any rights or remedies (including the right to Credit Bid) with respect to any Collateral or institute any action or proceeding with respect to such rights or remedies (including any action of foreclosure, enforcement, collection or execution, or any Insolvency or Liquidation Proceeding);
- (vi) object to the forbearance by the Senior Secured Parties from bringing or pursuing any foreclosure proceeding or action or any other exercise of any rights or remedies relating to the Collateral;
- (vii) oppose or otherwise contest any claim by any Senior Secured Party for allowance in any Insolvency or Liquidation Proceeding of an Obligor of Senior Obligations consisting of post-petition interest, fees or expenses; and
- (viii) challenge the validity, enforceability, perfection or priority of the Security Interests held by or for the benefit of any Senior Secured Party;

provided, that, so long as the Discharge of Senior Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Lessee or any other Obligor, the Senior Collateral Agent shall have the exclusive right, and the Required Senior Secured Parties shall have the exclusive right to instruct the Senior Collateral Agent, to enforce rights, exercise remedies (including set off and the right to Credit Bid their debt) and make determinations regarding the release, disposition, or restrictions with respect to the Collateral without any consultation with or the consent of any Subordinate Collateral Agent or any other Subordinate Secured Parties, in each case, all as though the Subordinate Obligations did not exist.

- (c) Notwithstanding the foregoing, the Subordinate Collateral Agent (on behalf of itself and the Subordinate Secured Parties) or any Subordinate Secured Party, as applicable, may:
  - (i) file a claim or statement of interest with respect to the Subordinate Obligations; provided, that an Insolvency or Liquidation Proceeding has been commenced by or against the Lessee (or the applicable Obligor);
  - (ii) with respect to the Subordinate Collateral Agent (on behalf of itself and the Subordinate Secured Parties), take any action (not adverse to the priority status of the Security Interests in the Collateral securing the Senior Obligations, or the rights of the Senior Secured Parties to exercise remedies in respect thereof) in order to create, perfect, preserve or protect, but not enforce, its Security Interest on the Collateral;
  - (iii) with respect to the Subordinate Collateral Agent (on behalf of itself and the Subordinate Secured Parties), file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any Person objecting to or otherwise seeking the disallowance of the claims of the Subordinate Secured Parties, including any claims secured by the Collateral, if any, in each case in accordance with the terms of this Agreement and the Subordinate Collateral Documents;

- (iv) vote on any Plan of Reorganization, arrangement, compromise or liquidation, file any proof of claim, make other filings and make any arguments and motions that are, in each case, in accordance with the terms of this Agreement and the Subordinate Collateral Documents, with respect to the Subordinate Obligations and the Collateral, in each case not inconsistent with the provisions of this Agreement; and
- (v) bid for or purchase Collateral at any public, private or judicial foreclosure upon such Collateral initiated by the Senior Collateral Agent or any Senior Secured Party, or any sale of Collateral during an Insolvency or Liquidation Proceeding of the Lessee; provided, that such bid may not include a “Credit Bid” in respect of any Subordinate Obligations unless the cash proceeds of such bid are otherwise sufficient to cause the Discharge of Senior Obligations.

The Subordinate Collateral Agent (on behalf of itself and the Subordinate Secured Parties) and the Trustee (on behalf of each Subordinate Bondholder) agrees that it will not take or receive any Collateral or any proceeds of Collateral in connection with the exercise of any right or remedy (including set-off and recoupment) with respect to any Collateral in its capacity as a creditor, unless and until the Discharge of Senior Obligations has occurred, as confirmed in writing by each Secured Debt Representative in respect of Senior Obligations to the Senior Collateral Agent, the Lessee and the Senior Secured Parties.

Without limiting the generality of the foregoing, unless and until the Discharge of Senior Obligations has occurred, as confirmed in writing by each Secured Debt Representative in respect of Senior Obligations, to the Senior Collateral Agent, the Lessee and the Senior Secured Parties, except as expressly provided in Section 6.3(b) and this Section 3.2(c), the sole right of the Subordinate Collateral Agent and the Subordinate Secured Parties with respect to the Collateral is to hold a Security Interest on the Collateral pursuant to the Subordinate Collateral Documents for the period and to the extent granted therein and to receive a share of the proceeds of Collateral, if any, after the Discharge of Senior Obligations has occurred, in accordance with Section 6.06 of the Collateral Agency and Accounts Agreement and the Subordinate Financing Documents.

- (d) Each of the Subordinate Collateral Agent (on behalf of itself and the Subordinate Secured Parties) and the Trustee (on behalf of each Subordinate Bondholder) hereby:
  - (i) agrees not to take any action that would hinder, delay, limit, or prohibit any exercise of remedies under any of Senior Financing Documents or which is otherwise prohibited hereunder, including any collection, sale, lease, exchange, transfer or other disposition of the Collateral, whether by foreclosure or otherwise (including, without limitation, any action that would limit, invalidate, avoid, or set aside any Security Interest or Senior Collateral Document or subordinate the priority of the Senior Obligations to the Subordinate Obligations or grant the Security Interests securing the Subordinate Obligations equal ranking to the Security Interests securing the Senior Obligations);
  - (ii) waives any and all rights it may have as a subordinate creditor or otherwise to object to the manner in which any of the Senior Secured Parties seek to exercise any rights in respect of the Collateral or to enforce or collect the Senior Obligations or the Security Interests securing the Senior Obligations granted in any of the Collateral undertaken in accordance with this Agreement, regardless of whether

any action or failure to act by or on behalf of the Senior Secured Parties is adverse to the interest of any of the Subordinate Secured Parties; and

- (iii) acknowledges and agrees that no covenant, agreement or restriction contained in the Subordinate Collateral Documents or any other Subordinate Financing Document (other than this Agreement) shall be deemed to restrict in any way the rights and remedies of Senior Secured Parties with respect to the Collateral as set forth in this Agreement and the Senior Financing Documents.
- (e) The Subordinate Collateral Agent (on behalf of itself or the Subordinate Secured Parties) or any Subordinate Secured Party may exercise rights and remedies as an unsecured creditor against the Lessee or any other Obligor that has granted Security Interests to secure the Subordinate Obligations in accordance with the terms of the Subordinate Financing Documents and applicable Law (other than initiating or joining in an involuntary case or proceeding under any Insolvency or Liquidation Proceeding with respect to any Obligor) subject in all cases to the terms of this Agreement, including the provisions in Sections 2, 4 and 6 of this Agreement; it being understood, that in the event that any Subordinate Secured Party becomes a judgment lien creditor in respect of Collateral as a result of its enforcement of its rights as an unsecured creditor with respect to the Subordinate Obligations, such judgment lien shall also be subject to the terms of this Agreement for all purposes (including in relation to the Senior Obligations) as the other Security Interests securing the Subordinate Obligations are subject to this Agreement.
- (f) Notwithstanding anything to the contrary herein or in any of the Financing Documents, with respect to the exercise of any rights or remedies of any of the Secured Parties with respect to the Collateral, the Applicable Collateral Agent shall act solely as directed pursuant to an Act of Secured Parties; provided, that any such exercise (i) shall only occur after the occurrence and during the continuance of an Event of Default under the applicable Financing Documents and (ii) shall only be made in accordance with the terms set forth in this Agreement and the applicable Senior Collateral Documents and Subordinate Collateral Documents, as the case may be.
- (g) Subject to the provisions of Sections 3.1 and 5.3, the Senior Secured Parties may, at any time and from time to time in accordance with the Senior Financing Documents and applicable Law, without the consent of, or notice to, any Subordinate Secured Party, without incurring responsibility to any Subordinate Secured Party and without impairing or releasing the Security Interest priorities and other benefits provided in this Agreement (even if any right of subrogation or other right or remedy of any Subordinate Secured Party is affected, impaired or extinguished thereby), do one or more of the following:
  - (i) change the manner, place or terms of payment or change or extend the time of payment of, or amend, renew, exchange, increase or alter, the terms of any of the Senior Obligations or any Security Interest on any Senior Collateral or guaranty thereof or any liability of any Obligor, or any liability incurred directly or indirectly in respect thereof (including any increase in or extension of the Senior Obligations, without any restriction as to the tenor or terms of any such increase or extension) or otherwise amend, renew, exchange, extend, modify or supplement in any manner any Security Interests held by any Senior Secured Party, the Senior Obligations or any of the Senior Financing Documents;

- (ii) sell, exchange, release, surrender, realize upon, enforce or otherwise deal with in any manner and in any order any part of the Senior Collateral or any liability of any Obligor to the Senior Secured Parties, or any liability incurred directly or indirectly in respect thereof;
  - (iii) settle or compromise any Senior Obligation or any other liability of any Obligor or any security therefor or any liability incurred directly or indirectly in respect thereof and apply any sums by whomsoever paid and however realized to any liability (including the Senior Obligations) in any manner or order; and
  - (iv) exercise or delay in or refrain from exercising any right or remedy against any Obligor or any other Person, elect any remedy and otherwise deal freely with any Obligor or any Senior Collateral and any security and any guarantor or any liability of any Obligor to the Senior Secured Parties or any liability incurred directly or indirectly in respect thereof.
- (h) Following notice of any Event of Default under the applicable Financing Documents received pursuant to Section 3.6, any applicable Secured Debt Representative may request in writing that the Applicable Collateral Agent pursue any lawful action in respect of the Collateral in accordance with the terms of the Senior Collateral Documents or the Subordinate Collateral Documents, as applicable. Upon any such written request, the Applicable Collateral Agent shall seek the consent of the applicable Secured Parties (such consent, if granted, to be provided in an Act of Secured Parties) to pursue such action (provided, that the Applicable Collateral Agent shall not be required to advise the applicable Secured Parties whether or not to pursue any such action). Following receipt of any notice that any such Event of Default has occurred, the Applicable Collateral Agent may await direction from the applicable Secured Parties (as set forth in an Act of Secured Parties) and will act, or decline to act, as so directed in such Act of Secured Parties, in the exercise and enforcement of the Applicable Collateral Agent's interests, rights, powers and remedies in respect of the Collateral or under the Senior Collateral Documents or the Subordinate Collateral Documents, as applicable, or applicable Law and, following the initiation of such exercise of remedies, the Applicable Collateral Agent will act, or decline to act, with respect to the manner of such exercise of remedies as directed by the applicable Secured Parties pursuant to an Act of Secured Parties. Subsequent to the Applicable Collateral Agent receiving written notice that any such Event of Default has occurred entitling the Applicable Collateral Agent to foreclose upon, collect or otherwise enforce the Security Interests granted to it pursuant to the Senior Collateral Documents or Subordinate Collateral Documents, as applicable, then, unless it has been directed to the contrary in an Act of Secured Parties, the Applicable Collateral Agent in any event may (but will not be obligated to) take all lawful and commercially reasonable actions permitted under the Senior Collateral Documents or the Subordinate Collateral Documents, as applicable, to the extent not prohibited or inconsistent with the terms hereof, that it may deem necessary or advisable in its reasonable judgment to protect or preserve its interest in the Collateral and the interests, rights, powers and remedies granted or available to the Applicable Collateral Agent under, pursuant to or in connection with the Senior Collateral Documents or the Subordinate Collateral Documents, as applicable.

### **3.3 Permitted Actions of Senior Secured Parties**

- (a) Notwithstanding anything to the contrary herein, but subject to and in accordance with the terms and provisions of the applicable Financing Documents, each Class of Senior Secured



Parties acting through the applicable Secured Debt Representative shall be permitted (without an Act of Secured Parties or an Intercreditor Vote) to take any of the following “**Permitted Actions**”:

- (i) declare Events of Default (or any other default, event of default or termination events, howsoever defined or described) under the Financing Documents relating to the Senior Secured Party’s respective Senior Obligations;
  - (ii) cancel or terminate any available commitments, terminate, close-out or liquidate any obligations under its Financing Documents, declare a termination or termination date to have occurred under its Financing Documents, undertake or perform any determinations, valuations or calculations, demand or request the payment of any amounts due and payable to it, or send any notices in connection with any of the foregoing;
  - (iii) exercise any rights to withhold its payment or performance under its Financing Documents;
  - (iv) make any Modifications to its Financing Documents in accordance with Section 5.3;
  - (v) exercise any Other Remedial Action described in Section 3.7;
  - (vi) issue a notification to the Borrower or the Lessee of the taking of any other Permitted Action;
  - (vii) exercise any rights pursuant to Section 2 (*Assignments*), Section 7 (*Remedies*) or Section 8 (*Power of Attorney*) of the Assignment of Leases and Rents (Building); or
  - (viii) subject to compliance with Section 3.5(a), instruct the application of the moneys on deposit in the Segregated Proceeds Pledged Accounts in accordance with 6.06(a)(iii) of the Collateral Agency and Accounts Agreement, and causing the payments and redemptions contemplated thereby to be made in accordance with the Senior Bank Financing Documents.
- (b) Upon an Agent's authorization by the Senior Secured Parties required under any Financing Document to take any such Permitted Actions, the Agent for such Senior Secured Parties shall promptly deliver written notice of such Permitted Action to the Intercreditor Agent and the other Agents (“**Permitted Action Notice**”) in accordance with Section 7.2(c).
- (c) The Senior Collateral Agent, the Trustee, the Administrative Agent and each other Senior Secured Debt Representative, on behalf of each applicable Senior Secured Party, hereby agree that (i) the Security Interests securing each Class of Senior Obligations on any Shared Collateral shall be of equal priority and (ii) the benefits and proceeds of the Shared Collateral shall be shared, pro-rata among the Secured Parties as provided in accordance with Section 2.1 and the Financing Documents.

### **3.4 Permitted Actions of Subordinate Secured Parties**

- (a) Except as expressly permitted in accordance with Sections 3.4(b) and 6.12 below, (i) no Subordinate Secured Party shall exercise or seek to exercise any rights or remedies with respect to the Subordinate Obligations or the Collateral, or institute any action or proceeding with respect to such rights or remedies, whether against the Issuer, any Obligor or otherwise, including (A) any action of foreclosure or proceeding, (B) the issuance of any notice directing the Collateral Agents to exercise any remedies, or (C) any contest or objection (or the support of any objection) to any exercise by the Collateral Agents relating to the Senior Obligations or the Collateral, and (ii) the Collateral Agents (acting at the direction of the Intercreditor Agent) shall have the exclusive right to enforce rights and exercise remedies without the consent of the Subordinate Secured Parties. No Subordinate Secured Party shall accelerate any Subordinate Obligation unless all of the Senior Obligations have been accelerated.
- (b) Subject to subsection (c) below and the terms of the applicable Financing Documents, each Subordinate Secured Party may upon any breach by the Lessee of any non-monetary covenant or term of any Subordinate Financing Document to which such Subordinate Secured Party is a party that results in an Event of Default (as such term is defined in such Subordinate Financing Document) thereunder, bring suit against the Lessee seeking an order directing specific performance of such covenant or an order of injunction against the Lessee restraining it from any further breach of such covenant; provided, that such suit does not involve a suit for monetary damages against the Lessee (other than in respect of indemnification and fees under the Financing Documents), and provided further that, in the case of a breach of a covenant or term relating to the acquisition, construction, use, lease, ownership, operation, maintenance, repair, restoration or modification of the Project, such Subordinate Secured Party shall first provide written notice to and consult with the Intercreditor Agent with respect thereto and shall not bring a suit relating thereto if the Intercreditor Agent advises such Subordinate Secured Party in writing within ten (10) Business Days of receiving such notice from such Subordinate Secured Party that, in the determination of the Intercreditor Agent, enforcement of the performance of such covenant or restraining the Lessee from any further breach of such covenant, as the case may be, is not in the best interests of the Senior Secured Parties.
- (c) The following restrictions will apply with respect to the exercise of any of the Subordinate Secured Parties' rights under Section 3.4(b):
  - (i) any net proceeds resulting from any permitted action under Section 3.4(b) shall be applied in accordance with Article V or Article VI, as applicable, of the Collateral Agency and Accounts Agreement; and
  - (ii) for the avoidance of doubt, any such action shall not include the exercise of any remedies against the Collateral or the filing of any involuntary petition in bankruptcy against the Lessee.

### **3.5 Unilateral Enforcement Exceptions**

- (a) **Segregated Collateral**
  - (i) The Senior Collateral Agent acting at the direction of the Required Bank Finance Parties or the Trustee acting in accordance with the Indenture or any other Secured

Debt Representative acting in accordance with its applicable Financing Documents, subject to delivering at least one (1) day advance written notification to the Intercreditor Agent and to satisfying the requirements under its applicable Financing Documents, may instruct the Applicable Collateral Agent, under and in accordance with such Financing Documents to take an Enforcement Action against the Segregated Collateral for the sole benefit of the applicable Secured Parties, including instructing the use of the funds in the Segregated Proceeds Pledged Accounts to repay the Senior Loans and redeem the Series 2022A Bonds pursuant to Section 6.06(a)(iii) of the Collateral Agency and Accounts Agreement.

(ii) No other Party or other Secured Party:

(A) will have any rights or interests in any Segregated Collateral that is not for the benefit of such Party; or

(B) may exercise any Enforcement Action against any Segregated Collateral that is solely for the benefit of another Party.

(b) **Fundamental Enforcement Rights of Senior Secured Parties**

(i) **Fundamental Events of Default** - Notwithstanding any other provision of this Agreement, the Administrative Agent acting at the direction of the Required Bank Finance Parties or the Trustee acting in accordance with the Indenture may, subject to:

(A) providing advance written notice to the Intercreditor Agent; and

(B) if any Secured Obligations other than the Senior Bank Obligations and obligations under the Permitted Hedge Agreements, are outstanding, expiration of the Standstill Period,

unilaterally instruct the Intercreditor Agent to instruct the Senior Collateral Agent to (1) take any Enforcement Action (excluding initiating an involuntary bankruptcy proceeding against the Lessee, unless approved by the Required Senior Secured Parties), without an Intercreditor Vote or an Act of Secured Parties, with respect to the Fundamental Events of Default identified and described in detail in Annex II or (2) exercise any Collateral Agent cure rights under the Direct Agreements and the Lease Agreement (collectively, (1) and (2) the “**Fundamental Enforcement Rights**”).

(ii) **Adverse Action** - No Senior Secured Party may exercise any Fundamental Enforcement Rights in a manner, or with an effect, that is inconsistent with the terms of this Agreement, adverse to the Security Interests of any other Senior Secured Party or materially impairs any Collateral (excluding such Senior Secured Party's Segregated Collateral) to the detriment of any other Senior Secured Party (“**Adverse Action**”).

(iii) **Standstill** - Except with respect to any Lessee Bankruptcy Event, prior to the Senior Collateral Agent exercising any Fundamental Enforcement Rights in connection with the Intercreditor Agent's notification under Section 3.5(b)(i), if any Secured Obligations, other than the Senior Bank Obligations and obligations

under the Secured Hedge Agreements, are outstanding, the applicable Senior Secured Party and its Agent, must allow for an initial 150-day standstill period to expire from the later of the date on which (x) the Intercreditor Agent has notified each of the Parties to this Agreement and (y) the Intercreditor Agent notifies the Bondholders by notice to EMMA of such exercise of a Fundamental Enforcement Right in accordance with Section 7.2(c) (the “**Standstill Period**”) by such Senior Secured Parties and what actions will be taken upon the expiration of the Standstill Period if no other Senior Secured Party takes action during the Standstill Period.

If any Secured Obligations, other than the Senior Bank Obligations and obligations under the Permitted Hedge Agreements, are outstanding, during the Standstill Period:

(A) the other Senior Secured Parties may choose to join the enforcing Senior Secured Party in its Enforcement Action;

(B) the Parties will work together in good faith to resolve any disputes and coordinate, as reasonably necessary, in order to avoid the occurrence of any Adverse Action;

(C) the Intercreditor Agent will provide a second duplicate notice to EMMA once 50% of the Standstill Period has expired;

(D) the Required Senior Secured Parties, pursuant to an Intercreditor Vote, may alter or stop any such exercise of any Fundamental Enforcement Rights. Any such Act of Secured Parties will be final and binding on the Senior Secured Parties and their respective Agents; and

(E) the Standstill Period will not apply where the enforcing Senior Secured Party is taking any Enforcement Action or exercising any cure rights, under and in accordance with any of the Direct Agreements and the Lease Agreement or in connection with any Bankruptcy Related Event.

### **3.6 Certain Actions**

So long as any Senior Obligations or Subordinate Obligations remain outstanding in respect of more than one Class of Secured Parties, the following provisions shall apply:

- (a) Each Secured Debt Representative shall deliver prompt written notice in accordance with Section 7.2(c) to the Intercreditor Agent of (i) the occurrence of (A) any Event of Default (or any other default, event of default or termination events, howsoever defined or described) under such Secured Debt Representative’s Financing Documents, as applicable, of which such Person has written notice, and (B) if applicable, any acceleration of the maturity of any Senior Obligations or Subordinate Obligations, as applicable, under any of the Financing Documents for which it acts as a Secured Debt Representative wherein such Senior Obligations or Subordinate Obligations, as applicable, have been declared to be or have automatically become due and payable prior to the scheduled maturity thereof or termination date thereunder (or similar remedial actions including demands for cash collateral, have been taken) and setting forth the aggregate amount of Senior Obligations or Subordinate Obligations, as applicable, that have been so accelerated under such Financing Documents, in each case, as soon as practicable after the occurrence thereof

(and, in any event, within five Business Days after the occurrence thereof) (a “**Default Notice**”), and (ii) if applicable, as soon as a Hedge Termination Payment amount related thereto is determined, the amount of such Hedge Termination Payment. The Intercreditor Agent shall provide a copy of such Default Notice and notice of amount of the Hedge Termination Payment to the other Agents and the Hedge Providers in accordance with Section 7.2(b)(i); provided, that the failure to provide such Default Notice shall not limit or impair the rights of the Secured Parties, as applicable, or the obligations of the Lessee or any other Obligor, hereunder or under the other Financing Documents; provided, further, that, if such Default Notice entitles any Agent to take any Permitted Action or Enforcement Action, such notice shall include a statement to such effect. No Agent or Hedge Provider shall be deemed to have knowledge or notice of the occurrence of an Event of Default under the Financing Documents to which it is a party until such Agent or Hedge Provider has received a Default Notice or notice of such Event of Default from the Lessee.

- (b) Each Obligor, at any time and from time to time, at its sole cost and expense, shall promptly execute and deliver all further agreements, instruments, documents and certificates and take all further action that may be necessary in order to fully effect the purposes of this Agreement, the Senior Collateral Documents and the Subordinate Collateral Documents (including, to the extent required by any Senior Collateral Document or Subordinate Collateral Document, the delivery of possession of any Collateral represented by certificated securities that hereafter comes into existence or is acquired in the future by the Senior Collateral Agent as pledgee for the benefit of the Senior Secured Parties or the Subordinate Collateral Agent as pledgee for the benefit of the Subordinate Secured Parties, as applicable) and to enable the Applicable Collateral Agent to exercise and enforce its rights and remedies under the Senior Collateral Documents or the Subordinate Collateral Documents, as applicable, with respect to the Collateral or any part thereof.

### 3.7 Other Remedial Action

(a) **Specific Performance**

Notwithstanding any other provision of this Agreement to the contrary, each of the Administrative Agent acting at the direction of the Required Bank Finance Parties the Trustee acting in accordance with the Indenture, and the Hedge Providers may, under and in accordance with their respective Financing Documents (without an Act of Secured Parties or an Intercreditor Vote), take the following remedial actions (“**Other Remedial Action**”), upon any breach by the Lessee of any non-monetary covenant, representation, warranty, or term under any such Senior Secured Party's Financing Documents resulting in an Event of Default (or any other default or termination event (howsoever defined or described) (other than a Default)):

- (i) bring suit against the Lessee seeking an order directing specific performance of such covenant or an order of injunction against the Lessee restraining it from any further breach of such covenant,
- (ii) seek a declaratory judgment or exercise any other right under the Financing Documents,

that in each case, does not involve a foreclosure or proceeding against the Collateral or a suit for monetary damages against the Lessee (other than in respect of indemnification and fees under the Financing Documents).

(b) **Administrative Action**

Except:

- (i) for the limitation on the enforcement of rights, remedies and powers under this Agreement,
- (ii) for matters requiring an Intercreditor Vote or an Act of Secured Parties; or
- (iii) as otherwise expressly provided for in the applicable Financing Documents,

the respective Senior Secured Parties may make all decisions, determine the acceptability of and rely on certificates, exercise discretion, execute Modifications and grant waivers as are contemplated by any of their respective Financing Documents.

**4. PAYMENTS**

**4.1 Application of Proceeds**

Whether or not any Insolvency or Liquidation Proceeding has been commenced by or against any Obligor, any Collateral or any proceeds thereof received in connection with the sale or other disposition of, or collection or realization on, such Collateral and proceeds thereof shall be made in accordance with Section 6.06 of the Collateral Agency and Accounts Agreement; provided that, (x) if for any reason a Senior Secured Party or a Subordinate Secured Party does not have a valid and perfected Security Interest (either directly or through the Senior Collateral Agent or the Subordinate Collateral Agent, as applicable) on any portion of the Collateral but was entitled to such Security Interest pursuant to the terms of the Senior Financing Documents or the Subordinate Financing Documents, as applicable, any proceeds on such portion of Collateral received by the other Senior Secured Parties or the other Subordinate Secured Parties, as applicable, will be paid over to such Senior Secured Party or Subordinate Secured Party, as the case may be, to the extent necessary to reflect the distribution provisions in Section 6.06 of the Collateral Agency and Accounts Agreement as if all Senior Secured Parties or Subordinate Secured Parties, as applicable, held such a Security Interest; and (y) Excluded Swap Obligations with respect to any Obligor shall not be paid with amounts received from such Obligor or its assets, but appropriate adjustments shall be made with respect to payments, distributions or proceeds from the Collateral to preserve the allocation to Secured Obligations otherwise set forth above.

**4.2 Limitations on Payment Post Default**

After the commencement of any Enforcement Action, no payment of Cash (or the equivalent of Cash) shall be made from the proceeds of Collateral (including any insurance or condemnation proceeds) by any Obligor to any Collateral Agent for the benefit of any Secured Party, except as provided for in Section 6.06 of the Collateral Agency and Accounts Agreement.

**4.3 Turnover**

- (a) So long as the Discharge of Senior Obligations has not occurred, and regardless of whether an Insolvency or Liquidation Proceeding has been commenced by or against any Obligor, any Collateral or proceeds thereof (including assets or proceeds subject to Security Interests referred to in Section 2.3(b), and any assets or proceeds subject to Security Interests that have been avoided or otherwise invalidated) or any other distribution (whether or not expressly characterized as such) in respect of the Collateral or any Security

Interests in the Collateral (including in connection with any Disposition of any Collateral) (other than, in each case, in respect of the Segregated Collateral of the Subordinate Secured Parties) received by the Subordinate Collateral Agent or any Subordinate Secured Party in connection with any enforcement action or other exercise of any right or remedy (including set-off or recoupment) relating to the Collateral, in any Insolvency or Liquidation Proceeding, or otherwise in contravention of this Agreement, or received by any Subordinate Collateral Agent or any other Subordinate Secured Parties in connection with any insurance policy claim or any condemnation award (or deed in lieu of condemnation), in each case, shall be segregated and held in trust and forthwith paid over to the Senior Collateral Agent for the benefit of the Senior Secured Parties in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. The Senior Collateral Agent is hereby authorized to make any such endorsements as agent for the Subordinate Collateral Agent or any such Subordinate Secured Parties. This authorization is coupled with an interest and is irrevocable until the Discharge of Senior Obligations.

- (b) So long as the Discharge of Senior Obligations has not occurred, if, in any Insolvency or Liquidation Proceeding, any Subordinate Secured Party shall receive any distribution of money or other property in respect of the Collateral or any Security Interests in the Collateral (including any assets or proceeds subject to Security Interests that have been avoided or otherwise invalidated) (other than, in each case, in respect of the Segregated Collateral of the Subordinate Secured Parties), such money or other property shall be segregated and held in trust and forthwith paid over to the Senior Collateral Agent for the benefit of the Senior Secured Parties in the same form as received, with any necessary endorsements. Any Security Interest received by any Subordinate Secured Party in respect of any of the Subordinate Obligations in any Insolvency or Liquidation Proceeding shall be subject to the terms of this Agreement and the Collateral Agency and Accounts Agreement.
- (c) If any Secured Party (including any Collateral Agent to the extent any such payments are in such party's possession) shall obtain or receive any amount or payment in respect of any Senior Obligation or Subordinate Obligation owed to such Secured Party other than in accordance with the express terms of this Agreement or the Collateral Agency and Accounts Agreement, such Secured Party shall notify each Secured Debt Representative thereof and shall promptly, and in any event within ten Business Days of it so obtaining the same, pay such amount (less any reasonable costs and expenses incurred by such Secured Party in obtaining such amount) to the Applicable Collateral Agent for the account of the applicable Secured Parties, to be shared in accordance with Section 6.06 of the Collateral Agency and Accounts Agreement.
- (d) Notwithstanding anything herein to the contrary, any amounts received by a Secured Party in accordance with the Collateral Agency and Accounts Agreement will not be required to be segregated and held in trust or paid over to any other party pursuant to this Section 4.3.

#### **4.4 Debt Balances**

- (a) Upon the written request of the Intercreditor Agent, each Secured Debt Representative shall promptly (and, in any event, within three Business Days) give the Intercreditor Agent written notice of the aggregate amount of the Senior Obligations or Subordinate Obligations, as applicable, then outstanding and owed by the Lessee to the Secured Parties represented by such Secured Debt Representative, as applicable, under the applicable

Financing Documents (including, without limitation, any early termination amount, close-out amount, mark-to-market amount, or any other similar amounts) and any other information that the Applicable Collateral Agent may reasonably request including any information that the Applicable Collateral Agent may require in order to confirm an act or decision by the requisite Required Senior Secured Parties or the requisite Required Subordinate Secured Parties, or that an Act of Secured Parties has occurred in accordance with Article 8 hereof. The Intercreditor Agent agrees that it will share such information with any Secured Party, upon request by such Secured Party. The Intercreditor Agent may conclusively rely upon any statement of Senior Obligations or Subordinate Obligations provided to it by any Secured Debt Representative pursuant to this Section 4.4(a) without further inquiry.

- (b) Without limiting the foregoing, upon receipt of any monies in accordance with Section 6.06 of the Collateral Agency and Accounts Agreement, the Applicable Collateral Agent shall promptly provide notice to the Intercreditor Agent who shall promptly provide notice to each Secured Debt Representative of the receipt of such monies. Within ten Business Days of the receipt of such notice, each Secured Debt Representative shall give the Intercreditor Agent written certification by an authorized officer or representative thereof of the aggregate amount of the Senior Obligations or the Subordinate Obligations, as applicable, then outstanding owed by the Lessee to the Secured Parties represented by such Secured Debt Representative under the applicable Financing Documents to be certified to as presently due and owing after taking into account any funds on deposit in any Segregated Pledged Account or Senior Cash Collateral Account in respect of such Class of Senior Obligations or Subordinate Obligations, as applicable (and, promptly upon receipt thereof, the Intercreditor Agent shall provide a copy of each such certification to each other Secured Debt Representative). Unless any Senior Secured Party has provided notice to the Intercreditor Agent that it objects to the amount of Senior Obligations or Subordinate Obligations owed to any Secured Party provided to such Secured Party in accordance with the preceding sentence within ten Business Days after receipt of notice thereof, the Intercreditor Agent shall instruct the Applicable Collateral Agent to use the information provided for in such certifications of the Secured Debt Representatives as the basis for applying such monies in accordance with Section 6.06 of the Collateral Agency and Accounts Agreement. In the event the Intercreditor Agent receives notice of any dispute in accordance with the preceding sentence, it shall instruct the Applicable Collateral Agent to, and the Applicable Collateral Agent shall distribute all undisputed amounts in accordance with Section 6.06 of the Collateral Agency and Accounts Agreement.

## **5. OTHER AGREEMENTS**

### **5.1 Releases**

- (a)
  - (i) If in connection with any exercise of the Senior Collateral Agent's or any other Senior Secured Party's remedies in respect of any Collateral, in each case prior to the Discharge of Senior Obligations, the Senior Collateral Agent, for itself or on behalf of any of the Senior Secured Parties, releases any of its Security Interests in any part of the Collateral (including in connection with the foreclosure upon, or other disposition of, the Equity Interests in any Person), then the Security Interests, if any, of the Subordinate Collateral Agent, for itself or for the benefit of the Subordinate Secured Parties, on such Collateral shall be automatically,



unconditionally and simultaneously released. The Subordinate Collateral Agent, for itself or on behalf of the Subordinate Secured Parties, promptly shall execute and deliver to the Senior Collateral Agent or the Lessee such termination statements, releases and other documents as the Senior Collateral Agent or the Lessee may request to effectively evidence the foregoing releases; provided, that in each case, delivery of such documents is not required for release of such Security Interests and such release of Security Interests shall be automatic and unconditional. Notwithstanding anything to the contrary herein or in any other Financing Document, the Subordinate Secured Debt Representative (for itself and on behalf of each Subordinate Secured Party) hereby acknowledges and agrees that, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against any Obligor, in the event of a foreclosure or sale by the Senior Collateral Agent on all or substantially all of the Collateral pursuant to a public or private sale or other disposition of any of the Collateral (including any foreclosure on and sale of Equity Interests of the Lessee), the Subordinate Obligations shall only survive if and to the extent that the proceeds of any such foreclosure and sale are sufficient to cause the Discharge of Senior Obligations, and the Subordinate Obligations of each Subordinate Secured Party shall otherwise be extinguished by such foreclosure or sale and the unsecured claims of such Subordinate Secured Party shall be deemed to be released.

- (ii) Upon the request of the Lessee, in connection with (A) any Disposition (other than in connection with the exercise of any Senior Secured Party's rights and remedies in respect of the Collateral provided for in Sections 3.1 and 3.2, which shall be governed by clause (i) above) by the Lessee permitted by (or, if not addressed therein, not prohibited by) the Senior Financing Documents, or (B) the release of any Collateral with the consent of the Required Senior Secured Parties, or as otherwise permitted by the Senior Financing Documents (other than in connection with the exercise of any Senior Secured Party's rights and remedies in respect of the Collateral provided for in Sections 3.1 and 3.2, which shall be governed by clause (i) above) then, in each case, prior to the Discharge of Senior Obligations and to the extent permitted, the Senior Collateral Agent shall, at the Lessee's expense, execute and deliver to the Lessee such documents (including UCC termination statements, reconveyances, customary pay-off letters, and return of Collateral) and take such other action as the Lessee may request to evidence the irrevocable and concurrent release of any Security Interest granted or purported to be granted under any of the Senior Collateral Documents in the applicable Collateral subject to release as contemplated by the foregoing clauses (A) or (B), as applicable; and provided further, that, except for releases contemplated by Section 5.1(a)(i) in connection with the Senior Collateral Agent's remedies under the Senior Collateral Documents the proceeds of which will be distributed in accordance with Section 6.06 of the Collateral Agency and Accounts Agreement, (1) in no event shall the Equity Interests in the Lessee pledged pursuant to the Senior Pledge Agreement or any Subordinate Collateral Document, be released pursuant to this Section 5.1(a) and (2) in no event shall all or substantially all of the Collateral be released pursuant to this Section 5.1(a) except, in each case, to the extent that the Senior Collateral Agent (for itself or on behalf of any of the Senior Secured Parties), is simultaneously releasing its Security Interests in the Collateral in connection with the Discharge of Senior Obligations or the Subordinate Collateral Agent (for itself or on behalf of any of the Subordinate Secured Parties) is simultaneously releasing its Security Interests in the Collateral

in connection with the Discharge of Subordinate Obligations. Upon any such release described in the preceding sentence, the Security Interests, if any, of the Subordinate Collateral Agent, for itself or for the benefit of the Subordinate Secured Parties, on the applicable Collateral and, if applicable, the Subordinate Obligations of such Obligor under the Subordinate Financing Documents shall be automatically, unconditionally and simultaneously released. The Subordinate Collateral Agent, at the Lessee's expense, shall promptly execute and deliver to the Senior Collateral Agent or the Lessee such termination statements, releases and other documents as the Senior Collateral Agent or the Lessee may request to evidence the foregoing releases. In connection with any such release, the Senior Collateral Agent and each applicable Secured Debt Representative shall be entitled to conclusively and exclusively rely (without further investigation) on the written requests and related certifications of the Lessee delivered in connection therewith in delivering the applicable documents relating to any such Disposition or release.

- (iii) Prior to or concurrently with any release contemplated by Section 5.1(a)(ii), the Lessee shall deliver to the Senior Collateral Agent and each Secured Debt Representative of a Senior Secured Party, written notice identifying the relevant Collateral to be released from the Security Interests under the Senior Collateral Documents and, to the extent applicable, Senior Obligations under the Senior Financing Documents, together with a certification by the Lessee stating that such release is in compliance with the terms of all of the Financing Documents.
- (b) Until the Discharge of Senior Obligations occurs, each of the Subordinate Collateral Agent (for itself and on behalf of the Subordinate Secured Parties) and each Subordinate Secured Party, hereby irrevocably constitutes and appoints the Senior Collateral Agent and any officer or agent of the Senior Collateral Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Subordinate Collateral Agent or such holder or in the Senior Collateral Agent's own name, from time to time in the Senior Collateral Agent's discretion, for the purpose of carrying out the terms of this Section 5.1, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary to accomplish the purposes of this Section 5.1, including any endorsements or other instruments of transfer or release. This power is coupled with an interest and is irrevocable until the Discharge of Senior Obligations.
- (c) Until the Discharge of Senior Obligations occurs, to the extent that the Senior Secured Parties (i) have released any Security Interest on Collateral and any such Security Interests are later reinstated or (ii) obtain any new Security Interests, then the Subordinate Collateral Agent, for itself and for the Subordinate Secured Parties, shall be granted a Security Interest on any such Collateral, subject to the Security Interest subordination provisions of this Agreement.
- (d) Upon the release of any Collateral Agent's Security Interests in any portion of the Collateral pursuant to this Section 5.1, such Collateral Agent shall without further written consent or authorization from any Secured Party (at the sole cost and expense of the Obligors) promptly execute and deliver to the applicable Obligor at its written request upon such release such UCC termination statements or amendments to existing UCC financing statements, and such other documentation and take such other action as shall be reasonably requested by such Obligor to evidence the termination and release of the Security Interests in the Collateral so released; provided, that such evidence of the termination and release of

the Security Interests shall not be required for release of the Security Interests if the Security Interests are permitted to be automatically released without further action by any person pursuant to the relevant Senior Financing Documents.

- (e) Upon the later of the Discharge of Senior Obligations and the Discharge of Subordinate Obligations, all rights to the Collateral shall revert to the applicable Obligor and, upon the written request of the Lessee, the Collateral Agents will, at the Lessee's expense, (i) promptly cause to be transferred and delivered, without any recourse, warranty or representation whatsoever, any Collateral and any proceeds received in respect thereof and (ii) execute and deliver to the Obligors such UCC termination statements and other documentation and take such other action as such Obligors may reasonably request to evidence the termination and release of the Security Interests in the Collateral; provided that such evidence of the termination and release of the Security Interests shall not be required for release of the Security Interests if the Security Interests are permitted to be automatically released without further action by any person pursuant to the relevant Senior Financing Documents.

## **5.2 Insurance**

Until the Discharge of Senior Obligations has occurred, subject to the terms of, and the rights of the Obligors under, the Senior Financing Documents and the rights of the Port Authority under the Lease Agreement, the Senior Collateral Agent on behalf of the Senior Secured Parties, subject to the last sentence of this Section 5.2, will have the right to (a) be named as an additional insured (other than for worker's compensation and employer's liability) and (in the case of policies covering real or personal property or business interruption) lender's loss payee under any insurance policies maintained from time to time by the Lessee, (b) to the extent provided in the Senior Financing Documents, (A) adjust or settle any insurance policy or claim covering the Collateral in the event of any loss thereunder and (B) approve any award granted in any condemnation or similar proceedings (including any deed in lieu thereof) affecting the Collateral and received by the Lessee in accordance with the Lease Agreement. Following the Discharge of Senior Obligations and until the Discharge of Subordinate Obligations has occurred, the Subordinate Collateral Agent on behalf of the Subordinate Secured Parties will be named as an additional insured (other than for worker's compensation and employer's liability) and shall otherwise have the rights granted to the Senior Collateral Agent as described in the preceding sentence. Until the Discharge of Senior Obligations has occurred, if any Subordinate Secured Party shall, at any time, receive any proceeds of any such insurance policy or any such award or payment in contravention of this Agreement, it shall segregate and hold in trust and forthwith pay such proceeds over to the Senior Collateral Agent in accordance with Section 4.3. Notwithstanding the foregoing, the Port Authority Indemnified Parties (as defined in the Lease Agreement) and the City Insureds (as defined in the Lease Agreement) will have the sole exclusive right to be named as (a) additional insureds and loss payee as their respective interests may appear in the Lease Agreement in all property damage insurance policies required under the Lease Agreement and (b) additional insured in all liability insurance policies required under the Lease Agreement (other than professional liability, employer's liability and workers' compensation).

## **5.3 Amendments to Financing Documents; Class Voting**

- (a) Subject to the provisions of this Section 5.3, any Agent or Class of Secured Parties may, without an Act of Secured Parties, or the consent of any other Secured Party that is not party to such Financing Document, enter into such amendments, supplements or modifications with the Lessee, the Issuer, the Pledgor or any other Person, or grant such

waivers or consents to the Lessee, the Issuer, the Pledgor or any other Person (any of the foregoing a “**Modification**”), as such Agent or Secured Party deems proper in connection with its respective Financing Documents pursuant to the terms of such Financing Documents; provided, that no such Modification shall:

- (i) increase the lending commitments by more than ten percent of the amount thereof as of the Closing Date (provided that this paragraph (i) shall not prevent any Modification to reflect any incurrence of Additional Obligations in compliance with the Financing Documents), shorten the fixed maturity, alter the prepayment or cash sweep provisions so as to accelerate the repayment of any Secured Obligations, or shorten the amortization schedule of any Senior Obligations;
  - (ii) modify the rate or change the method of calculation of interest upon any Secured Obligations in a manner that increases the interest rate (in the case of any Senior Obligation, by more than 2% per annum), or shorten the time for payment of interest on the applicable Secured Obligations, except in each case with respect to Section 2.21 under the Credit Agreement;
  - (iii) authorize any additional exceptions which would constitute Enforcement Exceptions under this Agreement;
  - (iv) increase the rate of any letter of credit fees by more than 2% per annum in the aggregate or other fees payable under such Financing Document by more than 2% in the aggregate, or shorten the scheduled date of any payment under such agreement;
  - (v) permit the amendment of any Financing Documents in a manner that would materially and adversely impact the rights of any Secured Party;
  - (vi) reduce the percentage or other voting thresholds specified in respect of matters requiring approval of the Senior Secured Parties (other than solely with respect to its own Secured Obligations);
  - (vii) reduce the amount of proceeds of any disposition of Collateral that is required to be used to repay Senior Obligations or Subordinate Obligations (other than solely with respect to its own Secured Obligations);
  - (viii) cause any Adverse Action with respect to any Senior Secured Party or any Agent thereof; or
  - (ix) create an inconsistency with respect to the terms of this Agreement.
- (b) Notwithstanding anything herein to the contrary, during the continuance of any Event of Default, to the extent permitted or not prohibited by the applicable Financing Documents any Secured Party shall be entitled in its reasonable discretion to make payments or advances to any Collateral Agent, the Lessee or any third party for the purpose of protecting, preserving or defending the value of the Collateral; provided, that any such payment or advance shall be deemed to constitute part of the Senior Obligations or Subordinate Obligations, as applicable hereunder.

(c) Notwithstanding anything to the contrary in the Financing Documents but subject to the amendments, consents and waivers provisions of any Senior Debt Document and Sections 5.3(e) and 10.3 hereof, without the consent of any other Person other than the signatories to the applicable Senior Collateral Document, if required, the Required Senior Secured Parties may agree to amend, modify, terminate or waive of any provision of the Senior Collateral Documents (other than this Agreement and the Collateral Agency and Accounts Agreement, which may only be amended, modified, terminated or waived in accordance with Section 10.3 hereof and Section 12.02 of the Collateral Agency and Accounts Agreement) or consent to any such departure therefrom. If the Required Senior Secured Parties consent to any such amendment, modification, termination or waiver of any provision of any such Senior Collateral Documents, or consent to any departure by any Obligor therefrom, then such amendment, modification, termination, waiver or consent shall apply automatically (proportionately adjusted to preserve any cushions and set-backs in the Subordinate Collateral Documents relative to the Senior Collateral Documents) to the comparable (if any) provision in the comparable Subordinate Collateral Document (other than this Agreement) without further action by, or consent of, any other Secured Party.

(d) The Lessee agrees that each Subordinate Collateral Document shall include the following language (or language to similar effect reasonably approved by the Senior Collateral Agent on behalf of the Senior Secured Parties):

“Notwithstanding anything herein to the contrary, the lien and security interest granted to the Subordinate Collateral Agent pursuant to this Agreement and the exercise of any right or remedy by the Subordinate Collateral Agent hereunder are subject to the provisions of the Intercreditor Agreement, dated as of November 1, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “**Intercreditor Agreement**”), among JFK Millennium Partners, LLC, as Lessee, The Bank of New York Mellon, as the Trustee, the Senior Collateral Agent (as defined therein), the Subordinate Collateral Agent (as defined therein) and the Intercreditor Agent (as defined therein), ING Capital LLC, as Administrative Agent (as defined therein), the Hedge Providers (as defined therein) and certain other persons party or that may become party thereto from time to time. In the event of any conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement shall govern and control.”

(e)

(i) Subject in each case to Section 5.1, Section 5.5, and Section 5.3(e)(ii),

(A) No amendment, modification, termination, waiver, or consent in respect of any Senior Collateral Document may be made or provided by any Senior Secured Party (or Secured Debt Representative on its behalf) without the consent of the Required Senior Secured Parties (or Secured Debt Representative on their behalf) and notwithstanding anything to the contrary in this Agreement or in any of the Senior Collateral Documents, no amendment, modification, termination, waiver or consent in respect of this Agreement or the Senior Collateral Documents shall be effective without the written consent of each Senior Secured Party (or its Secured Debt Representative acting with the consent of the Required Bank Finance Parties, the Required Bondholders or the Required Percentage of such other applicable Senior Secured Parties) that would be affected thereby; and

(B) No amendment, modification, termination, waiver, or consent in respect of any Subordinate Collateral Document may be made or provided by any Subordinate Secured Party (or Secured Debt Representative on its behalf) without the consent of the Required Subordinate Secured Parties (or Secured Debt Representative on their behalf). Notwithstanding anything to the contrary in this Agreement or in any of the Subordinate Collateral Documents no amendment, modification, termination, waiver or consent in respect of this Agreement or the Subordinate Collateral Documents that constitutes a Subordinate Secured Party Unanimous Decision shall be effective without the written consent of each Subordinate Secured Party (or its Secured Debt Representative acting with the consent of the Required Bank Finance Parties, the Required Bondholders or the Required Percentage of such other applicable Senior Secured Parties) that would be affected thereby.

(ii) Notwithstanding anything to the contrary herein, no Hedge Provider shall have any right to consent to or approve any amendment, modification or waiver of this Agreement or any Senior Collateral Documents, except as set forth in Section 10.3.

(f) Notwithstanding the foregoing provisions of this Section 5.3, the Obligors, the Senior Collateral Agent and/or the Subordinate Collateral Agent, as applicable, may amend, supplement or modify the Senior Collateral Documents or Subordinate Collateral Documents, as applicable, without the consent of any Secured Party: (i) to cure any ambiguity, defect or inconsistency to correct any typographical errors or other similar mistakes that do not modify the rights and obligations of the parties hereto; (ii) subject to Section 2.3 and subject to the Security Interest priority and subordination provisions of this Agreement, to (A) make any change that would provide any additional rights or benefits to the Secured Parties or (B) make, complete or confirm any grant of Collateral permitted or required by this Agreement or any of the Senior Collateral Documents or any Subordinate Collateral Documents, as applicable, or any release of any Collateral that is otherwise permitted (or, if not addressed therein, not prohibited) under the terms of the Financing Documents; and (C) to make administrative or mechanical amendments to this Agreement or any Senior Collateral Document or Subordinate Collateral Document, as applicable, to provide for the addition of obligations secured by the Collateral and the related Secured Parties under the Financing Documents so long as such amendments do not modify the rights and obligations of the parties hereto (other than as may result from having additional secured obligations benefiting from the Collateral and additional Secured Parties voting as provided herein and having other rights of Secured Parties under this Agreement and under the Senior Collateral Documents or the Subordinate Collateral Documents, as applicable). In furtherance of the foregoing, in connection with any such amendment, supplement or modification described in this Section 5.3(f), (A) the Lessee shall notify the applicable Collateral Agent(s) and the Intercreditor Agent in writing of its intent to enter into such amendment, supplement or modification, as applicable, which notice shall include a certification regarding compliance with this Section 5.3(f) and attach the applicable amendment, supplement or modification, and (B) such Collateral Agent(s) shall, within ten Business Days after receipt of such written notice from the Lessee, execute and deliver the requested amendment, supplement or modification and such other documents and instruments as the Lessee may reasonably request to effectuate such amendment, supplement or modification.

#### 5.4 Cash Collateral Accounts; Amounts Not Subject to Sharing

- (a) Notwithstanding anything in this Agreement to the contrary but subject to the terms of this Section 5.4(a), nothing contained in this Agreement shall be construed to impair the rights of any Hedge Provider to exercise its rights to recoup, set-off, close-out, off-set or net amounts under and among any Secured Hedge Agreements to which it is a party to the extent permitted under such Secured Hedge Agreements, or require any Hedge Provider to share any amounts received or deemed received by it in respect of any obligation owed to it as a result of any such recoupment, set-off, close-out, off-set or netting to the extent permitted under such Secured Hedge Agreements (which amounts shall be solely for the benefit of such Hedge Provider and not for the benefit of any other Secured Party); provided, that each such applicable Hedge Provider agrees that it shall only exercise such rights of recoupment, set-off, close-out, off-set and netting with respect to amounts under such Secured Hedge Agreements and not any other agreements.
- (b) The Class of Secured Parties for whom any Segregated Pledged Account is established pursuant to the Collateral Agency and Accounts Agreement shall have a first priority Security Interest in the funds deposited into such account. Nothing contained in this Agreement shall be construed to impair the rights of any such Class of Secured Parties referenced in the first sentence of this clause (b) to exercise its rights and remedies with respect to any funds available in such Segregated Pledged Account. Except as expressly provided in the Collateral Agency and Accounts Agreement, the Class of Secured Parties referenced in the first sentence of this clause (b) shall not have any obligation to share any amounts received or deemed received from funds on deposit in such Segregated Pledge Account with any other Person.
- (c) In the event any Cash Collateral account is established in connection with cash collateralizing Letters of Credit as contemplated by the definition of Discharge of Senior Obligations or the other Senior Financing Documents (any such Cash Collateral account, a “**Senior Cash Collateral Account**”), the particular Senior Secured Party being cash collateralized shall have a first priority security interest in such Senior Cash Collateral Account (and the funds on deposit therein), and the funds on deposit in any Senior Cash Collateral Account shall be applied in accordance with the applicable Senior Financing Documents.
- (d) Notwithstanding anything to the contrary, no Secured Party shall have any obligation to share any amounts received or deemed received by it in respect of any Senior Obligations or Subordinate Obligations owed to it from separate insurance, credit default swap protection or other similar protection against loss arranged by such Secured Party for its own account in respect of any such Senior Obligations or Subordinate Obligations, as applicable (which amounts shall be for the sole benefit of such Secured Party).

#### 5.5 Additional Secured Obligations; Accession Agreement

- (a) Subject to the limitations set forth herein and in the Financing Documents, the Lessee and each Secured Party acknowledges and agrees that the Collateral may secure additional obligations of the Lessee after the Closing Date in respect of (i) additional Secured Hedge Agreements, (ii) Indebtedness permitted to be incurred and secured by the Senior Collateral pursuant to the Senior Financing Documents and the Subordinate Financing Documents, and (iii) Indebtedness permitted to be incurred and secured by the Subordinate

Collateral pursuant to the Senior Financing Documents and Subordinate Financing Documents.

- (b) Subject to clause (d) below, upon (A) execution and delivery to the Collateral Agents of an Accession Agreement substantially in the form of Exhibit A by the Persons to whom the obligations referred to in the immediately preceding paragraph (a) are owed (or by the agent or trustee representing such Person), or if such Person is Subordinate Collateral Agent for the Subordinate Secured Parties, execution and delivery to the Senior Collateral Agent of an Accession Agreement, (B) delivery of the certificate and written notice set forth in Section 5.5(c) below, and (C) satisfaction of all requirements set forth in this Agreement and the Senior Collateral Documents and/or Subordinate Collateral Documents as to the confirmation, grant or perfection of the applicable Collateral Agent's Security Interest to secure such obligations, such Persons shall become "Secured Parties" (and Senior Secured Parties or Subordinate Secured Parties, as applicable) hereunder, and the Lessee's obligations to such Persons shall become "Senior Obligations" or "Subordinate Obligations", as applicable, hereunder, and the agreements representing such obligations shall become "Financing Documents", "Senior Financing Documents" or "Subordinated Financing Documents", as applicable, hereunder, in each case automatically without the need of any Person taking any action hereunder. Each Accession Agreement shall indicate whether the Indebtedness to which it relates constitutes Senior Obligations or Subordinate Obligations.
- (c) With respect to any additional obligations referred to in Section 5.5(a) above to be secured hereunder after the Closing Date, the Lessee will be permitted to designate as an additional holder of Senior Obligations or Subordinate Obligations, as applicable, hereunder each Person who is, or who becomes, the holder of Senior Obligations or Subordinate Obligations, as applicable, incurred by the Lessee subject to the limitations set forth herein. The Lessee may effect such designation by delivering to the Intercreditor Agent, with copies to each Secured Debt Representative, each of the following:
  - (i) a certificate of a Responsible Officer of the Lessee stating that the Lessee has incurred such additional obligations referred to in Section 5.5(a) above and such obligations are Senior Obligations or Subordinate Obligations, as applicable, and at the time incurred were permitted by (or if not specifically addressed, not prohibited by) the terms of the Senior Financing Documents or Subordinate Financing Documents, as applicable, to be incurred by the Lessee and secured by a Security Interest on the Senior Collateral or the Subordinate Collateral, as applicable, equally and ratably with all previously existing and future Senior Obligations or Subordinate Obligations, as applicable; and
  - (ii) a written notice specifying the name and address of the Secured Debt Representative for such additional obligations for purposes of this Agreement.
- (d) Notwithstanding the foregoing and notwithstanding any other provision to the contrary contained in this Agreement or in any other Financing Document, any additional Hedge Provider shall become a Secured Party and a Senior Secured Party hereunder and under the Senior Collateral Documents on the date of execution of the applicable additional Secured Hedge Agreement regardless of whether an Accession Agreement shall have been executed and delivered to the Collateral Agents on or prior to such date (it being understood and agreed that each Hedge Provider party to a Secured Hedge Agreement, shall be a Secured Party and a Senior Secured Party hereunder and under the Senior Collateral Documents as



and from such date); provided, that each such additional Hedge Provider shall, unless such Hedge Provider is already a party hereto (whether as a result of executing an Accession Agreement or otherwise) within ten Business Days after the execution (or novation to the Lessee) of the applicable Secured Hedge Agreement execute and deliver to the Collateral Agents an Accession Agreement and such Accession Agreement executed by the applicable additional Hedge Provider shall be conclusive evidence of the status of the Lessee's obligations under such Secured Hedge Agreement as Senior Obligations.

## **5.6 Gratuitous Bailee/Agent for Perfection**

- (a) Each Collateral Agent agrees to hold that part of the Collateral that is in its possession or control (or in the possession or control of its agents or bailees) (i) in the case of the Senior Collateral Agent, as collateral agent for the Senior Secured Parties and as gratuitous bailee for the Subordinate Collateral Agent, if any, and (ii) in the case of the Subordinate Collateral Agent, as collateral agent for the Subordinate Secured Parties and as gratuitous bailee for the Senior Collateral Agent (each such bailment being intended, among other things, to satisfy the requirements of Sections 8-106(d)(3), 8-301(a)(2), 9-313(a) and 9-313(c) of the UCC) and any assignee solely for the purpose of perfecting the security interest granted under the Senior Collateral Documents and the Subordinate Collateral Documents, respectively, subject to the terms and conditions of this Section 5.6. Solely with respect to any deposit accounts under the control (within the meaning of Section 9-104 of the UCC) of any Collateral Agent, such Collateral Agent agrees to also hold control over such deposit accounts as gratuitous agent for the other Collateral Agent, subject to the terms and conditions of this Section 5.6.
- (b) No Collateral Agent shall have any obligation whatsoever to the other Collateral Agent, any Senior Secured Party or any Subordinate Secured Party to ensure that the Collateral is genuine or owned by any of the Obligors or to preserve the rights or benefits of any Person except as expressly set forth in this Section 5.6. The duties or responsibilities of the Collateral Agents under this Section 5.6 shall be limited solely to holding the Collateral delivered to it as bailee (and with respect to deposit accounts, agent) in accordance with this Section 5.6 and delivering such Collateral upon a Discharge of Senior Obligations or a Discharge of Subordinate Obligations, as applicable, as provided in clause (d) below.
- (c) None of the Senior Collateral Agent or the Senior Secured Parties shall have by reason of the Senior Collateral Documents, the Subordinate Collateral Documents, this Agreement or any other document a fiduciary relationship in respect of the Subordinate Collateral Agent or any Subordinate Secured Party. None of the Subordinate Collateral Agent or the Subordinate Secured Parties shall have by reason of the Subordinate Collateral Documents, the Senior Collateral Documents, this Agreement or any other document a fiduciary relationship in respect of the Senior Collateral Agent or any Senior Secured Party.
- (d) Upon the Discharge of Senior Obligations, the Senior Collateral Agent shall deliver all (or the remaining applicable portion of the) Collateral in its possession (if any) together with any necessary endorsements (such endorsement shall be without recourse and without any representation or warranty), *first*, to the Subordinate Collateral Agent to the extent any Subordinate Obligations remain outstanding and *second*, to the applicable Obligor to the extent no Subordinate Obligations remain outstanding (in each case, so as to allow such Person to obtain possession or control of such Collateral) or as a court of competent jurisdiction may otherwise direct. Upon the Discharge of Senior Obligations, the Senior Collateral Agent further agrees to take all other action reasonably requested by the

Subordinate Collateral Agent in connection with the Subordinate Collateral Agent obtaining a first priority security interest in the Collateral, subject to Security Interests permitted (or, if not addressed therein, not prohibited) under the Financing Documents. Upon the Discharge of Subordinate Obligations, the Subordinate Collateral Agent shall deliver all (or the remaining applicable portion of the) Collateral in its possession (if any) together with any necessary endorsements (such endorsement shall be without recourse and without any representation or warranty), to the applicable Obligor (so as to allow such Obligor to obtain possession or control of such Collateral) or as a court of competent jurisdiction may otherwise direct.

## **6. INSOLVENCY OR LIQUIDATION PROCEEDINGS.**

### **6.1 Finance and Sale Issues**

- (a) Until the Discharge of Senior Obligations has occurred, if the Lessee shall be subject to any Insolvency or Liquidation Proceeding and the Senior Collateral Agent (acting pursuant to instructions from the Required Senior Secured Parties) shall desire to permit or not object to the use of “Cash Collateral” (as such term is defined in Section 363(a) of the Bankruptcy Code) (“**Cash Collateral**”) on which the Senior Collateral Agent or any other creditor has a Security Interest, or to permit the Lessee to obtain financing, whether from the Senior Secured Parties or any other Person under Section 364 of the Bankruptcy Code or any similar Bankruptcy Law (“**DIP Financing**”), then the Senior Collateral Agent (on behalf of itself and the Senior Secured Parties), the Subordinate Collateral Agent (on behalf of itself and the Subordinate Secured Parties), the Administrative Agent (on behalf of itself and the Bank Finance Parties), the Trustee (on behalf of itself, each Senior Bondholder (other than the Series 2022A Bonds) and each Subordinate Bondholder) and each Senior Secured Party party hereto (in the case of the Senior Secured Parties, subject to Section 6.1(b) below) agrees that it will raise no objection to such Cash Collateral use or DIP Financing (including any proposed orders for such Cash Collateral use or DIP Financing which are acceptable to the Senior Collateral Agent (at the direction of the Required Senior Secured Parties)), and to the extent the Security Interests securing the Senior Obligations are subordinated to or *pari passu* with such DIP Financing, the Subordinate Collateral Agent (on behalf of the Subordinate Secured Parties) will subordinate its Security Interests in the Collateral to the Security Interests securing such DIP Financing (and continue to be subordinated to all Senior Obligations) and any “carve-out” for professional and United States Trustee fees, and the Subordinate Collateral Agent (on behalf of the Subordinate Secured Parties) will not request adequate protection or any other relief in connection therewith (except as expressly agreed by the Senior Collateral Agent or to the extent permitted by Section 6.3(b)). Each Subordinate Secured Party agrees that it will not seek consultation rights in connection with, and it will raise no objection or oppose, and will be deemed to consent to, any sale, liquidation or other disposition of Collateral under Section 363 of the Bankruptcy Code, pursuant to a Plan of Reorganization or liquidation, or otherwise, if the Required Senior Secured Parties have consented to such sale, liquidation or other disposition. The Subordinate Collateral Agent (on behalf of itself and the Subordinate Secured Parties) and the Trustee (on behalf of each Subordinate Bondholder) each further agrees that it will not directly or indirectly oppose or impede entry of any order (including, without limitation, with respect to any bidding or sale procedures or the retention of professionals) in connection with such sale, liquidation or other disposition of Collateral if the Required Senior Secured Parties have consented to such sale, liquidation or disposition and such order does not impair the rights of the Subordinate Secured Parties under Section 363(k) of the Bankruptcy Code (so long as the

cash proceeds of any such Credit Bid are sufficient (and are applied) to cause the Discharge of Senior Obligations upon the consummation of any such sale or other disposition).

- (b) If the Lessee shall be subject to any Insolvency or Liquidation Proceeding and the Senior Collateral Agent (acting pursuant to an Act of Secured Parties) shall desire to permit the use of Cash Collateral on which the Senior Collateral Agent or any other creditor has a Security Interest, or to permit the Lessee to obtain DIP Financing, then the Administrative Agent (on behalf of itself and the Bank Finance Parties), the Trustee (on behalf of itself and each Senior Bondholder (other than the Series 2022A Bonds)), each Hedge Provider and each other Senior Secured Party party hereto agrees that it will raise no objection to such Cash Collateral use or DIP Financing, and agrees, to the extent consented to by the Senior Collateral Agent (acting pursuant to an Act of Secured Parties), to subordinate their Security Interests in the Collateral to the Security Interests securing such DIP Financing, so long as: (i) each Senior Secured Party (or its Secured Debt Representative) retains the right to object to any ancillary agreements or ancillary arrangements regarding the Cash Collateral use or DIP Financing that are materially prejudicial to its interests (unless such ancillary agreements or arrangements, including any adequate protection orders, are equally materially prejudicial to all Senior Secured Parties, in which case there shall be no independent right of a Senior Secured Party to object); (ii) the DIP Financing does not compel the Lessee to seek confirmation of a specific Plan of Reorganization for which all or substantially all of the material terms are set forth in the DIP Financing documentation or a related document; (iii) the DIP Financing documentation or Cash Collateral order does not expressly require the liquidation of the Collateral prior to a default under the DIP Financing documentation or Cash Collateral order; (iv) the Senior Secured Parties of each Class of Senior Obligations retain the benefit of their Security Interests on all Collateral pledged to the lenders providing the DIP Financing, including proceeds thereof arising after the commencement of such proceeding, with the same priority relative to all the other Senior Secured Parties (other than any Security Interests of the Senior Secured Parties constituting Security Interests on Collateral securing the DIP Financing) as existed prior to the commencement of the Insolvency or Liquidation Proceeding; (v) the Senior Secured Parties of each series of Senior Obligations are granted Security Interests on any additional Collateral pledged to any Senior Secured Parties as adequate protection in connection with such use of Cash Collateral or DIP Financing, with the same priority relative to the Senior Secured Parties as set forth in this Agreement; (vi) if any amount of such Cash Collateral or the proceeds of the DIP Financing are applied to repay any of the Senior Obligations, such amount is applied pursuant to Section 6.06 of the Collateral Agency and Accounts Agreement; and (vii) if any Senior Secured Parties are granted adequate protection, including in the form of periodic payments, in connection with such use of Cash Collateral or DIP Financing, the proceeds of such adequate protection are applied pursuant to Section 6.06 of the Collateral Agency and Accounts Agreement; provided, that the Senior Secured Parties receiving adequate protection shall not object to any other Senior Secured Party receiving adequate protection comparable to any adequate protection granted to such Senior Secured Parties in connection with a DIP Financing or use of Cash Collateral; and provided, further, that (A) with respect to the requirements set forth in clauses (i) through (vii), the Senior Secured Parties shall retain the right to object to such proposed use of Cash Collateral or DIP Financing solely with respect to such terms and (B) the Senior Secured Parties of each Class shall have a right to object to the grant of a Security Interest to secure the DIP Financing over any Collateral subject to Security Interests in favor of the Senior Secured Parties of such Class or its Agent that does not constitute Shared Collateral.

- (c) Prior to the Discharge of Senior Obligations, without the consent of the Senior Collateral Agent (at the direction of the Required Senior Secured Parties, in their sole discretion), the Subordinate Collateral Agent, for itself and on behalf of each Subordinate Secured Party, agrees that no Subordinate Secured Party (or any affiliate or managed fund thereof) shall propose or enter into any DIP Financing unless:
- (i) each of the following shall have occurred:
    - (A) the Lessee shall have offered each Senior Secured Party in writing the opportunity to provide DIP Financing; and
    - (B) each Senior Secured Party has notified the Lessee it does not intend to provide such DIP Financing;
- provided that (x) any such DIP Financing proposed or entered into by any Subordinate Secured Party (or any affiliate or managed fund thereto) does not include a “roll-up” of the Subordinate Obligations that existed prior to the commencement of the case under the Bankruptcy Code, (y) any such DIP Financing is secured only by Security Interests which are junior in priority to any and all of the Security Interests securing the Senior Obligations (including any adequate protection liens), in each case of the foregoing clauses (x) or (y), unless such DIP Financing also causes the Discharge of Senior Obligations to occur upon entry of a final order approving such DIP Financing.

## **6.2 Relief from the Automatic Stay**

Until the Discharge of Senior Obligations has occurred, each of the Subordinate Secured Parties agrees that none of them shall: (a) seek (or support any other Person seeking) relief from the automatic stay or any other stay in any Insolvency or Liquidation Proceeding in respect of the Collateral, without the prior written consent of the Senior Collateral Agent (acting at the direction of the Required Senior Secured Parties), or (b) oppose (or support any other Person in opposing) any request by the Senior Collateral Agent for relief from such stay.

## **6.3 Adequate Protection**

- (a) So long as the Discharge of Senior Obligations has not occurred, each of the Subordinate Collateral Agent (on behalf of itself and the Subordinate Secured Parties) and the Trustee (on behalf of each Subordinate Secured Party), agrees that none of them shall oppose, raise any objection to, or contest (or join with or support any other Person opposing, objecting to or contesting):
- (i) any request by the Senior Collateral Agent (on behalf of the Senior Secured Parties) for adequate protection under any Bankruptcy Law or the granting of any such request; or
  - (ii) any objection by any Senior Collateral Agent (on behalf of the Senior Secured Parties) or any Senior Secured Party to any motion, relief, action or proceeding based on the Senior Collateral Agent (on behalf of the Senior Secured Parties) or any Senior Secured Party claiming a lack of adequate protection.
- (b) Each of the Subordinate Collateral Agent (on behalf of itself and the Subordinate Secured Parties) and the Trustee (on behalf of each Subordinate Bondholder), agrees that none of

them shall seek or accept any form of adequate protection under any of Sections 362, 363 and/or 364 of the Bankruptcy Code (or any similar provision under any other Bankruptcy Law) with respect to the Collateral in any Insolvency or Liquidation Proceeding of the Lessee, except that:

- (i) if the Senior Secured Parties (or any subset thereof) are granted adequate protection in the form of replacement Security Interests on any Obligor's assets, the Subordinate Secured Parties or the Subordinate Collateral Agent on their behalf may seek or request adequate protection in the form of a replacement Security Interest on the same assets of such Obligor as awarded to the Senior Secured Parties, which Security Interest will be subordinated to the Security Interests securing the Senior Obligations (including any replacement Security Interests granted in respect of the Senior Obligations), any DIP Financing (and all obligations relating thereto) and any "carve-out" in respect of professional and United States Trustee fees or otherwise agreed to by the Senior Collateral Agent on the same basis as the other Security Interests securing the Subordinate Obligations are so subordinated to the Senior Obligations under this Agreement;
- (ii) if the Senior Secured Parties (or any subset thereof) are granted adequate protection in the form of additional collateral in connection with any Cash Collateral use or DIP Financing, then the Subordinate Collateral Agent (on behalf of itself or any of the Subordinate Secured Parties), may seek or request adequate protection in the form of a Security Interest on such additional collateral, which Security Interest will be subordinated to the Security Interests securing the Senior Obligations (including any replacement Security Interests granted in respect of the Senior Obligations) and any DIP Financing (and all obligations relating thereto) and any "carve-out" in respect of professional and United States Trustee fees or otherwise agreed to by the Senior Collateral Agent on the same basis as the other Security Interests securing the Subordinate Obligations are so subordinated to the Senior Obligations under this Agreement;
- (iii) if the Senior Secured Parties are granted adequate protection in the form of an administrative expense claim, then the Subordinate Collateral Agent (on behalf of itself or any of the Subordinate Secured Parties), may seek or request adequate protection in the form of an administrative expense claim, which administrative expense claim will be subject and subordinated to any claims of the Senior Collateral Agent and/or the Senior Secured Parties (including any administrative expense claim) in respect of the Senior Obligations, and to any DIP Financing (and all obligations relating thereto) and any "carve-out" in respect of professional and United States Trustee fees or otherwise agreed to by the Senior Collateral Agent, and the Subordinate Collateral Agent (on behalf of itself or any of the Subordinate Secured Parties) and each Subordinate Secured Party hereby waives any rights under Section 1129(a)(9) of the Bankruptcy Code (or any similar provision under any other Bankruptcy Law) with respect to any adequate protection claims they are granted, and hereby consents and agrees that any such adequate protection claims may be paid under a Plan of Reorganization or similar dispositive restructuring plan in any form having a value on the effective date thereof equal to the allowed amount of such administrative claims; and
- (iv) if the Senior Secured Parties are granted cash payments with respect to interest on the Senior Obligations, then the Subordinate Collateral Agent (on behalf of itself

or any of the Subordinate Secured Parties) may seek or request adequate protection in the form of cash payments with respect to interest on the Subordinate Obligations; provided, such cash payments do not exceed an amount equal to the interest accruing on the principal amount of Subordinate Obligations outstanding on the date such relief is granted at the interest rate under the Subordinate Financing Documents and accruing from the date the Subordinate Collateral Agent is granted such relief. If any Subordinate Secured Party receives post-petition interest and/or adequate protection payments in an Insolvency or Liquidation Proceeding of any Obligor (“**Subordinate Adequate Protection Payments**”), and the Discharge of Senior Obligations does not occur upon the effectiveness of the Plan of Reorganization for, or conclusion of, such Insolvency or Liquidation Proceeding, then, each Subordinate Secured Party shall pay over to the Senior Secured Parties an amount (the “**Pay-Over Amount**”) equal to the lesser of (x) the Subordinate Adequate Protection Payments received by such Subordinate Secured Parties and (y) the amount of the shortfall (the “**Shortfall**”) in payments needed to achieve the Discharge of Senior Obligations; provided, that to the extent any portion of the Shortfall represents payments received by the Senior Secured Parties in the form of promissory notes, equity or other property, equal in value to the cash paid in respect of the Pay-Over Amount, the Senior Secured Parties shall, upon receipt of the Pay-Over Amount, transfer those promissory notes, equity or other property, pro rata, equal in value to the cash paid in respect of the Pay-Over Amount to the applicable Subordinate Secured Parties in exchange for the Pay-Over Amount.

- (c) Notwithstanding anything herein to the contrary, the Senior Secured Parties shall not be deemed to have consented to, and expressly retain their rights to object to any grant of adequate protection to the Subordinate Secured Parties made pursuant to Section 6.3(b).

#### **6.4 No Waiver**

Except as otherwise expressly agreed to herein, nothing contained herein shall prohibit or in any way limit the Senior Collateral Agent or any Senior Secured Party from objecting in any Insolvency or Liquidation Proceeding with respect to any Obligor or otherwise to any action taken by the Subordinate Collateral Agent or any of the Subordinate Secured Parties, including the seeking by the Subordinate Collateral Agent or any Subordinate Secured Parties of adequate protection or the asserting by the Subordinate Collateral Agent or any Subordinate Secured Party of any of its rights and remedies under the Subordinate Financing Documents or otherwise.

#### **6.5 Avoidance Issues**

If any Senior Secured Party is required in any Insolvency or Liquidation Proceeding or otherwise to turn over or otherwise pay to the estate of the Lessee or any other Obligor any amount paid in respect of the Senior Obligations (a “**Recovery**”), then such Senior Secured Party shall be entitled to a reinstatement of Senior Obligations with respect to all such recovered amounts on the date of such Recovery. In such event, (a) the Discharge of Senior Obligations or the Discharge of Senior Bank Obligations, as applicable, shall be deemed not to have occurred and (b) if this Agreement shall have been terminated prior to such Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto from such date of reinstatement. Any amounts received by any Subordinate Collateral Agent or other Subordinate Secured Party on account of the Subordinate Obligations after the termination of this Agreement shall, in the event of a

reinstatement of this Agreement pursuant to this Section 6.5, be held in trust for and paid over to the Senior Collateral Agent for the benefit of the Senior Secured Parties, for application to the reinstated Senior Obligations. This Section 6.5 shall survive termination of this Agreement.

## **6.6 Reorganization Securities**

Notwithstanding Section 4.3 hereof, and regardless of whether a Discharge of Senior Obligations shall occur in connection with a confirmed Plan of Reorganization in any Insolvency or Liquidation Proceeding, if debt obligations of the reorganized debtor secured by Security Interests in any property of the reorganized debtor are distributed pursuant to a Plan of Reorganization or similar dispositive restructuring plan, both on account of Senior Obligations and on account of Subordinate Obligations, then, to the extent the debt obligations distributed on account of the Senior Obligations and on account of the Subordinate Obligations are secured by Security Interests in the same property, the provisions of this Agreement will survive the distribution of such debt obligations pursuant to such plan and will apply with like effect to the Security Interests securing such debt obligations.

## **6.7 Post-Petition Interest**

Neither the Subordinate Collateral Agent nor any Subordinate Secured Party shall oppose or seek to challenge any claim by the Senior Collateral Agent or any Senior Secured Party for allowance in any Insolvency or Liquidation Proceeding with respect to any Obligor of Senior Obligations consisting of post-petition interest, fees or expenses. Regardless of whether any such claim for post-petition interest, fees or expenses is allowed or allowable, and without limiting the generality of the other provisions of this Agreement, this Agreement expressly is intended to include and does include the “rule of explicitness” in that this Agreement expressly entitles the Senior Secured Parties, and is intended to provide the Senior Secured Parties with the right, to receive payment of all post-petition interest, fees or expenses through distributions made pursuant to the provisions of this Agreement even if such interest, fees and expenses are not or may not be allowed or allowable against the bankruptcy estate of the Lessee or any other Obligor under Section 502(b)(2) or Section 506(b) of the Bankruptcy Code or under any other provision of the Bankruptcy Code or any other Bankruptcy Law.

## **6.8 Waiver**

The Subordinate Collateral Agent, for itself and on behalf of the Subordinate Secured Parties waives any claim it may hereafter have against any Senior Secured Party arising out of the election of any Senior Secured Party of the application of Section 1111(b)(2) of the Bankruptcy Code, and/or out of any Cash Collateral or financing arrangement or out of any grant of a security interest in connection with the Collateral in any Insolvency or Liquidation Proceeding, including, without limitation, any claim under Sections 506(c) or 552 of the Bankruptcy Code.

## **6.9 Effectiveness in Insolvency Proceedings.**

This Agreement shall be effective before, during and after the commencement of an Insolvency or Liquidation Proceeding. The relative rights as to the Collateral and proceeds thereof shall continue after the commencement of any Insolvency or Liquidation Proceeding on the same basis as prior to the date of the petition therefor, subject to any court order approving the financing of, or use of cash collateral by, any Obligor. All references herein to any “Obligor” shall include such Obligor as a debtor-in-possession and any receiver or trustee for such Obligor.

## **6.10 Limitations.**

None of the Subordinate Collateral Agent or any of the Subordinate Secured Parties, as applicable, shall oppose, object to or contest (or join with or support any third party in opposing, objecting or contesting, as the case may be) in any Insolvency or Liquidation Proceeding involving any Secured Obligation, (i) the determination of the extent of any Security Interests held by any of the Senior Secured Parties or the value of any claims of Senior Secured Parties under Section 506(a) of the Bankruptcy Code or otherwise, or (ii) the payment to the Senior Secured Parties of interest, fees or expenses under Section 506(b) of the Bankruptcy Code or otherwise. None of the Subordinate Collateral Agent or any of the Subordinate Secured Parties shall assert or support any assertion of, and hereby waive any right that they may have to assert or support any claim for costs or expenses of preserving or disposing of any Collateral under Section 506(c) of the Bankruptcy Code or any similar provision of any other Bankruptcy Law.

## **6.11 Voting for Plan of Reorganization.**

- (a) Each of the Senior Secured Parties and the Subordinate Secured Parties shall be entitled to vote as separate classes with respect to any Plan of Reorganization or arrangement in connection with any Insolvency or Liquidation Proceeding.
- (b) The Subordinate Secured Parties shall be entitled to vote to accept or reject any Plan of Reorganization in connection with any Insolvency or Liquidation Proceeding so long as such Plan of Reorganization is a Conforming Plan of Reorganization and shall be entitled to vote to reject any such Plan of Reorganization that is a Non-Conforming Plan of Reorganization; provided, that the Subordinate Collateral Agent, on behalf of itself and the related Subordinate Secured Parties and each Subordinate Secured Party (by its acceptance of the benefits of the Subordinate Financing Documents) agrees that none of the Subordinate Secured Parties shall be entitled to take any action or vote in any way that supports any Non-Conforming Plan of Reorganization unless such Non-Conforming Plan of Reorganization has been approved by the requisite amount and number of Senior Secured Parties or to object to a Plan of Reorganization to which the requisite holders of Senior Obligations have consented on the grounds that any sale of Collateral thereunder or pursuant thereto is for inadequate consideration, or that the sale process in respect thereof was inadequate. Without limiting the generality of the foregoing or of the other provisions of this Agreement, any vote to accept, and any other act to support the confirmation or approval of, any Non-Conforming Plan of Reorganization by any Subordinate Secured Party shall be inconsistent with and accordingly, a violation of the terms of this Agreement, and the Senior Collateral Agent shall be entitled (and is hereby authorized by the Subordinate Secured Parties) to have any such vote to accept a Non-Conforming Plan of Reorganization changed and any such support of any such Non-Conforming Plan of Reorganization withdrawn.

## **6.12 Subordinate Secured Party Rights to Collateral**

To the extent that any Subordinate Collateral Agent or any Subordinate Secured Party has or acquires rights under Section 363 or Section 364 of the Bankruptcy Code with respect to any of the Collateral, each Subordinate Collateral Agent agrees, on behalf of itself and the related Subordinate Secured Parties, not to assert any of such rights without the prior written consent of the Senior Collateral Agent; provided, that if requested by the Senior Collateral Agent, each Subordinate Collateral Agent shall timely exercise such rights in the manner requested by the Senior Collateral Agent, including any rights to payments in respect of such rights.



## **6.13 Determination of Distributions on Account of Security Interests on Collateral**

For the purposes of this Agreement, including for the purposes of Sections 4.3 and 6 hereof, there shall be a presumption that any distribution to or for the benefit of the Subordinate Secured Parties under any Plan of Reorganization for any Obligor shall be on account of or by virtue of the Subordinate Collateral. Each of the Subordinate Collateral Agent and the Trustee (in its capacity as the Subordinate Secured Debt Representative, on behalf of itself and the Subordinate Bondholders), shall have the burden of rebutting that presumption, and of proving the portion (if any) of any distribution under any Plan of Reorganization to, or for the benefit of, any Subordinate Bondholders that does not consist of proceeds of (or is not otherwise on account of or by virtue of) such Security Interest in the Collateral, in each case by clear and convincing evidence.

## **7. THE INTERCREDITOR AGENT**

### **7.1 Appointment**

Each Senior Secured Party that is a Party to this Agreement (or, in the case that any Senior Secured Party is not a Party to this Agreement, the Secured Debt Representative or Agent acting on behalf of such Senior Secured Party), the Trustee on behalf of each Subordinate Bondholder and each other Subordinate Secured Party that is a Party to this Agreement (or, in the case that any Subordinate Secured Party is not a Party to this Agreement, the Secured Debt Representative or Agent acting on behalf of such Subordinate Secured Party) hereby appoints The Bank of New York Mellon to act as its intercreditor agent in connection with this Agreement and the Financing Documents to which the Intercreditor Agent is a party (or which contemplate the participation of the Intercreditor Agent) and authorizes it to execute and deliver, and perform its obligations under, each of the Financing Documents to which the Intercreditor Agent is a party and to exercise such rights, powers and authorities as are specifically delegated to the Intercreditor Agent by the terms in this Agreement and any of the Financing Documents together with all such rights, powers and authorities as are reasonably incidental to this Agreement. Each of the Senior Secured Parties that is a Party to this Agreement (or, in the case that any Senior Secured Party is not a Party to this Agreement, the Secured Debt Representative or Agent acting on behalf of such Senior Secured Party for itself, each Person on whose behalf it executes this Agreement), the Trustee on behalf of each Subordinate Bondholder, and each other Subordinate Secured Party that is a Party to this Agreement (or, in the case that any Subordinate Secured Party is not a Party to this Agreement, the Agent acting on behalf of such Subordinate Secured Party), in each case, and in each case any Person claiming through it, agrees to be bound by the exercise of such rights, powers and authorities by the Intercreditor Agent as are contained in, and exercised in accordance with the terms of, the Financing Documents. The Intercreditor Agent shall have no duties or obligations except those expressly in this Agreement and in the Financing Documents to which the Intercreditor Agent is a party. By its signature to this Agreement, The Bank of New York Mellon accepts such appointment.

### **7.2 Intercreditor Agent's Rights and Obligations**

- (a) **Intercreditor Agent's Rights.** In connection with this Agreement and the Financing Documents, the Intercreditor Agent may at all times:
  - (i) assume, absent written notice to the contrary, that (A) any representation warranty, recital or statement made by any other Senior Secured Party, Subordinate Secured Party or the Lessee is true, (B) no Event of Default exists and (C) none of the other

Senior Secured Parties, Subordinate Secured Parties nor the Lessee is in breach or default of its obligations under any Financing Document;

- (ii) assume any notice, certificate or report given by any other Senior Secured Party, Subordinate Secured Party or Agent has been validly given by a Person authorized to do so as evidenced by a writing which states that such Person is an authorized representative of such Senior Secured Party, Subordinate Secured Party or Agent and act upon such notice or certificate unless the same is revoked or superseded by a further notice or certificate;
- (iii) assume that the address, e-mail addresses, telefax and telephone numbers for the giving of any written notice to any Person under this Agreement are those identified in this Agreement, until it has received from such Person a written notice designating some other office of such Person to replace any such address, e-mail addresses, telefax and telephone numbers, and act upon any such notice until the same is superseded by a further written notice;
- (iv) rely and (except as otherwise provided herein) act upon a certificate or request signed by or on behalf of any other Senior Secured Party, Subordinate Secured Party or Agent with respect to any matters of fact represented to be within the knowledge of such Senior Secured Party, Subordinate Secured Party or Agent and which states that the Person signing such certificate is an authorized representative of such Senior Secured Party, Subordinate Secured Party or Agent and, where applicable, states specifically the Financing Document and provision thereof pursuant to which the Intercreditor Agent is being directed to act;
- (v) rely upon any communication (including, but not limited to, any note, letter, cablegram, telegram, teletype message, facsimile or e-mail) or document reasonably believed by it to be genuine and to have been signed or sent by an authorized representative of a Senior Secured Party, Subordinate Secured Party or Agent and not inconsistent with any requirement of this Agreement;
- (vi) seek instructions from:
  - (A) the Required Senior Secured Parties;
  - (B) Secured Debt Representatives; or
  - (C) as applicable, any other Senior Secured Party (the “**Unilaterally Enforcing Senior Creditor**”) properly acting under and in accordance with an Enforcement Exception authorized in this Agreement,

as to the exercise of any of their rights, powers or discretion under this Agreement and, in the event that it does so, it shall not be considered as having acted unreasonably when acting in accordance with such instructions or, in the absence of any (or any clear) instructions, when refraining from taking any action or exercising any right, power or discretion under this Agreement.

- (vii) subject to the limitations in this Agreement, be entitled to all of the rights, privileges and immunities afforded it in its capacities as Senior Collateral Agent and Subordinate Collateral Agent under the Collateral Agency and Accounts Agreement, as may be applicable.

- (b) **Notice.** The Intercreditor Agent shall, subject to Section 7.2(a):
- (i) promptly provide each Agent with a copy of any notice, report, certificate or other document which it, in its capacity as Intercreditor Agent, receives from or delivers to: (A) any Senior Secured Party; (B) the Lessee or Lessee's subcontractor; (C) any other Agent; or (D) any Governmental Authority;
  - (ii) except as otherwise provided herein, act as Intercreditor Agent under this Agreement in accordance with any instructions given to it by the Required Senior Secured Parties or any Unilaterally Enforcing Senior Creditor in accordance with the terms of this Agreement and of the Financing Documents; and
  - (iii) if so instructed by the Required Senior Secured Parties or any Unilaterally Enforcing Senior Creditor, in accordance with the terms of this Agreement, refrain from exercising any right, power or discretion vested in it as the Intercreditor Agent under this Agreement.
- (c) **Notice Detail Requirement.**
- (i) Any notice delivered by any Agent or Senior Secured Party to the Intercreditor Agent shall include reasonable detail describing the event, action or proposed action of such Agent or Senior Secured Party.
  - (ii) The Intercreditor Agent agrees that it will post to EMMA, within 24 hours of its receipt, any notice received from any Agent or Senior Secured Party under, or in accordance with, this Agreement.
- (d) **Removal of the Intercreditor Agent.** The Required Senior Secured Parties may remove the Intercreditor Agent from its appointment hereunder with or without cause by giving not less than thirty (30) days prior written notice to that effect to the Intercreditor Agent, the Lessee and each Agent; provided, that no such removal shall be effective until a successor for the Intercreditor Agent is appointed and the resigning Intercreditor Agent has transferred to its successor all of its rights and obligations in its capacity as Intercreditor Agent and the successor Intercreditor Agent has executed and delivered an agreement to be bound by the terms of this Agreement and the Financing Documents and to perform all duties required of the Intercreditor Agent hereunder and under the Financing Documents. If the entity serving as Intercreditor Agent is also the entity serving as Collateral Agent, it must also forfeit such role if removed by the Required Senior Secured Parties as Intercreditor Agent; provided, that such forfeiture of the Collateral Agent role shall only be effective upon the appointment of a successor Collateral Agent pursuant to and in accordance with the Collateral Agency and Accounts Agreement.
- (e) **Successor Intercreditor Agent.** If the Required Senior Secured Parties give the Intercreditor Agent notice of removal pursuant to Section 7.2(d), then a successor to the Intercreditor Agent may be appointed by the Required Senior Secured Parties during a sixty (60) day period beginning on the date of such notice but, if no such successor is so appointed within sixty (60) days after the above notice, the resigning Intercreditor Agent may appoint such a successor or petition to a court of competent jurisdiction to appoint such a successor, and all costs and expenses (including attorneys' fees and expenses) incurred by the Intercreditor Agent in connection with such petition to a court shall be paid by the Lessee.

- (i) If a successor to the Intercreditor Agent is appointed under the provisions of this Section 7.2(e), then:
  - (A) the predecessor Intercreditor Agent shall be discharged from any further obligation hereunder (but without prejudice to any accrued liabilities);
  - (B) the removal pursuant to Section 7.2(d) of the predecessor Intercreditor Agent notwithstanding, the provisions of this Agreement shall inure to the predecessor Intercreditor Agent's benefit as to any actions taken or omitted to be taken by it under this Agreement and the other Financing Documents while it was the Intercreditor Agent;
  - (C) the predecessor Intercreditor Agent shall continue to be entitled to the rights, privileges, protections, exculpations and indemnities available to the Intercreditor Agent with respect to the periods prior to such Person's removal from that capacity; and
  - (D) the successor Intercreditor Agent and each of the other parties hereto shall have the same rights and obligations amongst themselves as they would have had if such successor Intercreditor Agent had been a party hereto beginning on the date of this Agreement.

## **8. ACTIONS FOR INTERCREDITOR VOTE**

### **8.1 Decision Making**

Each Secured Party that is a Party to this Agreement (or, in the case that any Secured Party is not a Party to this Agreement, the Agent acting on behalf of such Secured Party) agrees, that each decision made in accordance with the terms of this Agreement shall be binding upon each Secured Party to the applicable Financing Documents.

### **8.2 Voting Generally; Intercreditor Votes**

- (a) Subject to the Enforcement Exceptions and Permitted Actions, where, in accordance with this Agreement or any other Financing Document, the direction or other decision or action of the Intercreditor Agent or the applicable Collateral Agent is requested or required, the giving of such direction, the making of such decision, or the taking of such action by the Intercreditor Agent, the applicable Collateral Agent, the Required Senior Secured Parties or Required Subordinate Secured Parties, as applicable, shall be decided by an Act of Secured Parties determined in accordance with voting procedures set forth in Section 8.3 and Section 8.4 (an "**Intercreditor Vote**") other than to the extent expressly permitted under the applicable Financing Document.
- (b) In connection with any Act of Secured Parties or any consent or other direction of the applicable Secured Parties pursuant to this Agreement, the amount of votes which each applicable series of Senior Obligations or Subordinate Obligations, as applicable, is entitled to vote hereunder shall be determined on and as of the date the matter to be voted on is presented to such series for vote.
- (c) Except where such right is expressly reserved to the discretion of the applicable Bank Finance Party, none of the Bank Finance Parties shall exercise any voting, consent,

direction or other right under this Agreement in a manner that is inconsistent with a determination made by the Required Bank Finance Parties or otherwise by the applicable Bank Finance Parties in accordance with the Common Terms Agreement or any other Senior Bank Financing Documents.

### **8.3 Intercreditor Votes; Each Party's Entitlement to Vote**

- (a) Subject to Sections 8.3(b) and 8.4 below, each Senior Secured Party shall be entitled to vote in each Intercreditor Vote conducted under this Agreement. The purpose of each Intercreditor Vote will be to determine the decision of the Required Senior Secured Parties with respect to the instruction or other decision that is the subject of such Intercreditor Vote.
- (b) Notwithstanding anything to the contrary in this Agreement or in any Financing Document, none of:
  - (i) the Lessee, any Sponsor or any of their respective Affiliates that from time to time holds any Senior Obligation;
  - (ii) any Senior Secured Party that has agreed to vote in respect of the Senior Obligations held by it at the direction or subject to the approval or disapproval of the Lessee, any Sponsor or any of their respective Affiliates;
  - (iii) any Prohibited Person, Disqualified Institution, Defaulting Bank Finance Party or Defaulting Lender (each as defined in the Common Terms Agreement);
  - (iv) solely during the period prior to any Enforcement Action, the Hedge Providers; and
  - (v) the holders of any Senior Obligations if the principal of, and interest accrued on, such Senior Obligations have been fully paid, discharged or legally defeased pursuant to the terms of the applicable Financing Document,

shall be entitled to participate in any Intercreditor Vote (each of the parties referred to in clauses (i) through (v) above, a “**Non-Voting Senior Creditor**”), and the Intercreditor Agent, in determining the percentage of votes cast (and instructions of the Required Senior Secured Parties), shall disregard the principal amount of Secured Obligations held by Non-Voting Senior Creditor in both the numerator and denominator of the calculation in determining the outcome of such vote. Prior to the taking of any Intercreditor Vote, upon the request of the Intercreditor Agent pursuant to the Collateral Agency and Accounts Agreement, the Lessee shall provide prompt written notice to the Intercreditor Agent and each Agent of the identity of all Non-Voting Senior Creditors and the principal amount of Senior Obligations held by each such Non-Voting Senior Creditor.

### **8.4 Instructions; Other Relationships**

#### **(a) Agent Limited Authority without Intercreditor Vote**

Excluding the Enforcement Exceptions and Permitted Actions, and without limiting anything contained herein (including Sections 5.1, 5.3, and 5.6):

- (i) no instruction shall be given to the Intercreditor Agent or any Collateral Agent under or with respect to any Financing Document;
- (ii) no action shall be taken, or discretion exercised, by the Intercreditor Agent or any Collateral Agent under or with respect to any Financing Document (other than to the extent expressly permitted under the applicable Financing Document), including, in each case, in connection with any proposed Modification to any Financing Document to which such Agent is party,

unless and to the extent directed by an Act of Secured Parties pursuant to an Intercreditor Vote taken in accordance with the procedures set forth in Section 8.4(b) below.

(b) **Certain Procedures Relating to Instructions and Exercises of Discretion**

- (i) **Notification** - Subject to the Enforcement Exceptions and Permitted Actions, if at any time:

- (A) the Intercreditor Agent or a Collateral Agent (x) proposes to exercise any discretion conferred on it under any Financing Document or (y) proposes a matter with respect to which it believes the Intercreditor Agent or such Collateral Agent should exercise its discretion, including, in each case, in connection with any proposed Modification to any Financing Document to which such Agent is party (other than to the extent expressly permitted under the applicable Financing Document and not prohibited or limited hereby);

- (B) one or more Agents or the Lessee proposes to provide the Intercreditor Agent or a Collateral Agent with instructions regarding the Financing Documents, and, in each case, notifies the Intercreditor Agent or such Collateral Agent (in which case such Collateral Agent shall notify the Intercreditor Agent) to that effect; or

- (C) this Agreement otherwise requires an Act of Secured Parties;

then the Intercreditor Agent shall promptly notify each Agent, that an Intercreditor Vote is being taken with respect to the matter in question, specifying:

- (A) the nature of the instruction, exercise of discretion or decision that is at issue (which shall be conspicuously stated);

- (B) the Secured Parties applicable to the decision; and

- (C) the Decision Period determined by the Intercreditor Agent within which each Agent or representative must provide the Intercreditor Agent with an account of the votes cast by the Secured Parties it represents with respect to such decision.

- (ii) **Voting** – Each Agent shall, within the Decision Period, provide a written certificate (“**Voting Certification**”) to the Intercreditor Agent setting forth:

- (A) whether the Required Percentage of Senior Secured Parties, or if applicable the Required Percentage of Subordinate Secured Parties, under the applicable Financing Document, voted for, or against, any subject decision or action;

(B) in the case of any Agent representing Senior Secured Parties, the total applicable Class Percentage represented, based on either, (1) prior to Enforcement Action, the Total Pre-Enforcement Senior Secured Voting Value or (2) following Enforcement Action, the Total Post-Enforcement Senior Secured Voting Value; and

(C) in the case of any Agent representing Subordinate Secured Parties, the total applicable Class Percentage represented, based on either, (1) prior to any Enforcement Action, the Total Pre-Enforcement Subordinate Secured Voting Value or (2) following any Enforcement Action, the Total Post-Enforcement Subordinate Secured Voting Value.

**(iii) Determination of Required Senior Secured Parties –**

(A) Upon receipt of each Voting Certification in connection with any Intercreditor Vote, the Intercreditor Agent will calculate the sum of all Class Percentages certified in each Classes' Voting Certification to determine whether the threshold percentage for Required Senior Secured Parties has been met by any Senior Secured Parties.

(B) Once (A) above is determined, the vote either for, or against, any subject decision or action, of the Senior Secured Parties which have a Class Percentage, either individually or collectively, that meets or exceeds the threshold for Required Senior Secured Parties will determine the outcome of each Intercreditor Vote. The Intercreditor Agent shall promptly notify each Agent of the outcome of each Intercreditor Vote.

**(iv) Determination of Required Subordinate Secured Parties –**

(A) The Intercreditor Agent shall be able to rely on the Voting Certification of the Subordinate Secured Debt Representative to determine if the threshold for Required Subordinate Secured Parties has been met.

(B) Upon receipt of each Voting Certification in connection with any Intercreditor Vote, the Intercreditor Agent will calculate the sum of all Class Percentages certified in each Classes' Voting Certification to determine whether the threshold percentage for Required Subordinate Secured Parties has been met by any Subordinate Secured Parties.

(C) Once (A) above is determined, the vote either for, or against, any subject decision or action, of the Subordinate Secured Parties which have a Class Percentage, either individually or collectively, that meets or exceeds the threshold for Required Subordinate Secured Parties will determine the outcome of each Intercreditor Vote. The Intercreditor Agent shall promptly notify each Agent of the outcome of each Intercreditor Vote.

## **8.5 Saving of Rights.**

Notwithstanding any other provision of this Agreement to the contrary, nothing in this Agreement shall limit or otherwise modify any of the rights of any Secured Party to enforce any obligation of any Collateral Agent, the Intercreditor Agent or any other Secured Party arising under this Agreement or any Financing Document.

## **9. RELIANCE; WAIVERS; ETC.**

### **9.1 Reliance**

Other than any reliance on the terms of this Agreement, the Senior Collateral Agent (on behalf of itself and the Senior Secured Parties), the Administrative Agent (on behalf of itself and each Bank Finance Party), the Trustee on behalf of the Senior Bondholders (other than the Series 2022A Bonds) and the Subordinate Bondholders, each applicable Secured Debt Representative (for itself and on behalf of each Additional Senior Creditor for which it acts), the Subordinate Collateral Agent (on behalf of itself and the Subordinate Secured Parties), each applicable Secured Debt Representative (for itself and on behalf of each Additional Subordinate Creditor for which it acts), each Hedge Provider and each other Secured Party acknowledges that it and each other Secured Party has, independently and without reliance on any other Secured Party and based on documents and information deemed by it appropriate, made its own credit analysis and decision to enter into the applicable Financing Documents and be bound by the terms of this Agreement and it will continue to make its own credit decision in taking or not taking any action under the Financing Documents to which it is a party or this Agreement.

### **9.2 No Warranties or Liability**

The Senior Collateral Agent (on behalf of itself and the Senior Secured Parties), the Administrative Agent (on behalf of itself and each Bank Finance Party), the Trustee (on behalf of itself, the Senior Bondholders (other than the Series 2022A Bonds) and the Subordinate Bondholders), each applicable Secured Debt Representative (for itself and on behalf of each Additional Senior Creditor for which it acts), the Subordinate Collateral Agent (on behalf of itself and the Subordinate Secured Parties), each applicable Secured Debt Representative (for itself and on behalf of each Additional Subordinate Creditor for which it acts), each Hedge Provider and each other Secured Party acknowledges and agrees that no Secured Party has made any express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the Financing Documents, the ownership of any Collateral or the perfection or priority of any Security Interests thereon. Except as otherwise expressly provided herein, the Secured Parties will be entitled to manage and supervise the Indebtedness under their respective Financing Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate.

### **9.3 No Waiver of Security Interest Priorities**

No right of the Secured Parties, the Senior Collateral Agent, the Subordinate Collateral Agent or any of them to enforce any provision of this Agreement or any other Financing Document shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of any Obligor or by any act or failure to act by any Secured Party, the Senior Collateral Agent or the Subordinate Collateral Agent, or by any noncompliance by any Person with the terms, provisions and covenants of this Agreement or any other Financing Document, regardless of any knowledge thereof which the Senior Collateral Agent, the Subordinate Collateral Agent or any Secured Party, or any of them, may have or be otherwise charged with.



## **9.4 Obligations Unconditional**

Subject to Section 10.2(c), all rights of the Senior Collateral Agent and the Senior Secured Parties and the Subordinate Collateral Agent and the Subordinate Secured Parties, respectively, hereunder, shall remain in full force and effect irrespective of:

- (a) any lack of validity or enforceability of any of the Senior Financing Documents or any of the Subordinate Financing Documents;
- (b) except as otherwise expressly set forth in this Agreement, any change in the time, manner or place of payment of, or in any other terms of, all or any of the Senior Obligations or any of the Subordinate Obligations or any amendment or waiver or other modification, including any increase in the amount thereof and with respect to Secured Hedge Agreements, the entry into additional transactions thereunder, whether by course of conduct or otherwise, of the terms of any of the Senior Financing Documents or any of the Subordinate Financing Documents;
- (c) except as otherwise expressly set forth in this Agreement, any exchange of any security interest in any Collateral or any other collateral, or any amendment, waiver or other modification, whether in writing or by course of conduct or otherwise, of all or any of the Senior Obligations or the Subordinate Obligations;
- (d) the commencement of any Insolvency or Liquidation Proceeding in respect of any Obligor; or
- (e) any other circumstances which otherwise might constitute a defense available to, or a discharge of, any Obligor in respect of the Senior Collateral Agent, the Senior Obligations, any Senior Secured Party, the Subordinate Collateral Agent, the Subordinate Obligations or any Subordinate Secured Party in respect of this Agreement.

## **10. MISCELLANEOUS**

### **10.1 Conflicts**

In the event of any conflict between the provisions of this Agreement and the provisions of any other Financing Document, the provisions of this Agreement shall govern and control.

### **10.2 Effectiveness; Continuing Nature of this Agreement; Severability**

- (a) This Agreement shall become effective when executed and delivered by each of the parties hereto.
- (b) If any provision of this Agreement is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. All references to any Obligor shall include such Obligor as debtor and debtor-in-possession and any

receiver or trustee for such Obligor (as the case may be) in any Insolvency or Liquidation Proceeding.

- (c) This Agreement shall automatically terminate and be of no further force and effect without any further action of or notice by any party:
  - (i) with respect to the Senior Collateral Agent, the Senior Secured Parties and the Senior Obligations, upon the Discharge of Senior Obligations, subject to the rights of the Senior Secured Parties under Section 6.5;
  - (ii) with respect to the Subordinate Collateral Agent, the Subordinate Secured Parties and the Subordinate Obligations, upon the Discharge of Subordinate Obligations; and
  - (iii) upon the later to occur of (x) the Discharge of the Senior Obligations, or (y) to the extent of any Subordinate Obligations, the Discharge of Subordinate Obligations.

### **10.3 Amendments; Waivers**

- (a) No failure or delay on the part of any Party to this Agreement in exercising any right or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the parties to this Agreement are cumulative and are not exclusive of any rights or remedies that they would otherwise have.

No waiver of any provision of this Agreement or consent to any departure by any party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section 10.3, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given and shall in no way impair the rights of the parties making such waiver in any other respect or at any other time. No notice or demand on any party to this Agreement in any case shall entitle such party to any other or further notice or demand in similar or other circumstances.

- (b) Neither this Agreement nor the Security Documents, nor any provision hereof, or thereof, may be terminated, waived, amended or modified (other than pursuant to any Accession Agreement consistent with the Financing Documents) except pursuant to an agreement or agreements in writing entered into by the Senior Collateral Agent, the Subordinate Collateral Agent, the Intercreditor Agent, the Trustee acting upon the direction of the Bondholders (other than the Series 2022A Bondholder) in accordance with the Indenture, the Administrative Agent acting upon the instruction of the Bank Finance Parties in accordance with the Senior Bank Financing Documents and, if any, each applicable Secured Debt Representative acting upon direction of the applicable Additional Senior Creditor or Additional Subordinate Creditor; provided, that:
  - (i) the consent of each Hedge Provider shall also be required for any amendments, waivers or modifications (including any Modifications) to this Agreement or the Security Documents that would result in any of the following:
    - (A) a change in the priority or the ratable treatment of the Security Interests on the Collateral or the order or priority of application of proceeds of Collateral

and other payments set forth in Section 6.06 of the Collateral Agency and Accounts Agreement, or any other provision in any of the Financing Documents or the Security Documents setting forth a Security Interest, priority of payment, or the ratable treatment order or portion of amounts of any payment, in each case, in respect of the Senior Obligations in a manner adverse to such Hedge Provider;

(B) cause the Senior Obligations owed under the Senior Financing Documents or Secured Hedge Agreements to cease to be secured on at least a *pari passu* basis with all other Senior Obligations (other than as set forth in Section 2.4);

(C) cause the release of all or substantially all of the Collateral under the Senior Collateral Documents;

(D) result in an amendment, waiver or modification (including any Modification) of Section 5.3 and Section 10.3 hereof, Section 12.02 of the Collateral Agency and Accounts Agreement, or Section 10.02 of the Common Terms Agreement;

(E) result in any amendment, waiver or modification (including any Modification) to any of the following definitions set forth in the Collateral Agency and Accounts Agreements (or any other definitions or provisions referenced in any such definitions, or any definitions or provisions referencing any such definitions): of “Act of Secured Parties”, “Borrower” or “Lessee”, “Class”, “Class Percentage”, “Collateral”, “Discharge of Senior Obligations”, “Enforcement Action”, “Excluded Swap Obligation”, “Financing Documents”, “Hedge Agreement”, “Hedge Termination Payments”, “Ordinary Course Payments”, “Permitted Hedge Agreements”, “Permitted Hedge Provider”, “Required Senior Secured Parties”, “Secured Debt Representative”, “Secured Hedge Agreement”, “Secured Obligations”, “Secured Parties” and “Secured Party”, “Security Documents”, “Senior Collateral”, “Senior Collateral Documents”, “Senior Secured Parties”, “Total Post-Enforcement Senior Secured Voting Value”, or “Total Pre-Enforcement Senior Secured Voting Value”, in a manner adverse to such Hedge Provider;

(F) change the priority or impact the rights of such Hedge Provider in a manner adversely different from the impact on any other Senior Secured Party;

(G) restrict any recoupment, netting, close-out or set-off rights of an Hedge Provider; and

(H) otherwise amend, waive, supplement or modify (including any Modification) any Financing Document or Security Documents in a manner that materially and adversely affects any Hedge Provide relative to the other Senior Secured Parties.

(ii) no amendment to this Agreement which contemplates any of the following shall be made unless the same shall be in writing and signed on behalf of each Subordinate Secured Party party hereto or its authorized agent or the Subordinate Secured Debt Representative and the Lessee (any decision, determination, approval, consent, or confirmation under the Subordinate Financing Documents that would result in any of the following, a “**Subordinate Secured Party Unanimous Decision**” and collectively, “**Subordinate Secured Party Unanimous Decisions**”);

(A) a change in the Security Interest priorities on the Collateral or the order or priority of application of proceeds of Collateral and other payments set forth in Section 4.1 or any other provision setting forth a Security Interest priority or priority, order or portion of amounts of payment in respect of the Subordinate Obligations;

(B) the release of all or substantially all of the Collateral under the Subordinate Financing Documents (in each case, except as provided in Section 5.1);

(C) amendment, waiver or modification of Section 5.3 or the definition of “Act of Secured Parties”; “Required Subordinate Secured Parties” or “Discharge of Subordinate Obligations”;

(D) amend or otherwise modify the order or priority of application of payments set forth in Section 5.02 or 5.03 of the Collateral Agency and Accounts Agreement in a manner that could reasonably be materially adverse to the Subordinate Secured Parties; and

(iii) (A) any such amendment, modification or waiver that materially adversely or disproportionately affects the rights of any Senior Secured Party as compared to the other Senior Secured Parties shall require the consent of such Senior Secured Party, (B) any such amendment, modification or waiver that materially adversely or disproportionately affects the rights of any Subordinate Secured Party as compared to the other Subordinate Secured Parties shall require the consent of such Subordinate Secured Party, (C) any such amendment, modification or waiver that relates solely to provisions relating to the rights of the Senior Secured Parties as among themselves and that do not adversely affect any Subordinate Secured Party shall not require the consent of the Subordinate Collateral Agent or any other Subordinate Secured Party, and (D) any such amendment, modification or waiver that relates solely to provisions relating to the rights of the Subordinate Secured Parties as among themselves and that do not adversely affect any Senior Secured Party shall not require the consent of the Senior Collateral Agent or any other Senior Secured Party; and (E) any Modification to any Financing Document or instruction to the Intercreditor Agent or any Collateral Agent solely in respect of Segregated Collateral, shall require only the consent of the Secured Parties benefitting from such Segregated Collateral in accordance with the terms of the applicable Financing Document.

(c) The Lessee and each Secured Debt Representative (on behalf of itself and the Secured Parties it represents) agree that this Agreement and the Senior Collateral Documents or Subordinate Collateral Documents, as applicable, may be amended by the Lessee, the Senior Collateral Agent or the Subordinate Collateral Agent, as applicable, without the consent of any other Secured Party, but subject to Section 5.3, to the extent necessary or desirable to (x) effectuate the intent of Section 5.5, (y) cause the Security Interests granted thereby to be in favor of such Persons (to the extent Security Interests in favor of such Persons are permitted (if addressed therein, or, otherwise, not prohibited) by the terms of the Senior Financing Documents and the other applicable Financing Documents) and (z) cause such Persons to be treated in the same manner as the other Secured Parties under this Agreement and the Senior Collateral Documents or Subordinate Collateral Documents, as applicable. Nothing in this Agreement will be construed to allow any Obligor to incur additional Indebtedness or grant additional Security Interests unless in each case otherwise permitted (if addressed therein, or, otherwise, not prohibited) by the Senior Financing

Documents and (if not specifically addressed therein, not prohibited) by the terms of the other Financing Documents.

- (d) Notwithstanding the foregoing provisions of this Section 10.3, the Lessee and the Senior Collateral Agent and/or the Subordinate Collateral Agent, as applicable, may amend, supplement or modify this Agreement without the consent of any Secured Party: (i) to cure any ambiguity, defect or inconsistency to correct any typographical errors or other similar mistakes that do not modify the rights and obligations of the parties hereto; (ii) subject to Section 2.3 and Section 10.3(a) and (b), and subject to the Security Interest priority and subordination provisions of this Agreement, to (A) make any change that would provide any additional rights or benefits to the Secured Parties or (B) make, complete or confirm any grant of Collateral permitted or required by this Agreement or any of the Senior Collateral Documents or any Subordinate Collateral Documents, as applicable, or any release of any Collateral that is otherwise permitted (or, if not addressed therein, not prohibited) under the terms of the Financing Documents; (iii) to reflect any incurrence of any Additional Senior Obligations, or Additional Subordinate Obligations, in compliance with the Financing Documents; and (iv) to make administrative or mechanical amendments to this Agreement, to provide for the addition of obligations secured by the Collateral and the related Secured Parties or the addition of any Obligor as permitted or required (or, if not addressed therein, not prohibited) under the Financing Documents so long as such amendments do not modify the rights and obligations of the parties hereto (other than as may result from having additional secured obligations benefiting from the Collateral and additional Secured Parties voting as provided herein). In furtherance of the foregoing, in connection with any such amendment, supplement or modification described in this Section 10.3(d), (A) the Lessee shall notify the applicable Collateral Agent(s) in writing of its intent to enter into such amendment, supplement or modification, as applicable, which notice shall include a certification regarding compliance with this Section 10.3(d) and attach the applicable amendment, supplement or modification, and (B) such Collateral Agent(s) shall, within five Business Days after receipt of such written notice from the Lessee, execute and deliver the requested amendment, supplement or modification and such other documents and instruments as the Lessee may reasonably request to effectuate such amendment, supplement or modification.

#### **10.4 Information Concerning Financial Condition of the Obligors**

The Agents (other than the Intercreditor Agent and each Collateral Agent) and the Secured Parties (other than the Intercreditor Agent and each Collateral Agent) shall each be responsible for keeping themselves informed of (x) the financial condition of the Obligors and (y) all other circumstances bearing upon the risk of nonpayment of the Senior Obligations or the Subordinate Obligations. Subject to Section 3.6(a), none of the Agents or any of the Secured Parties shall have any duty to advise any other Agent or Secured Party of information known to it or them regarding such condition or any such circumstances or otherwise. In the event that any Agent or Secured Party, in its or their sole discretion, undertakes at any time or from time to time to provide any such information to any other Agent or Secured Party, it or they shall be under no obligation:

- (a) to make, and the Agents and the Secured Parties shall not make, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness or validity of any such information so provided;
- (b) to provide any additional information or to provide any such information on any subsequent occasion;

- (c) to undertake any investigation; or
- (d) to disclose any information, which pursuant to accepted or reasonable commercial finance practices, such party wishes to maintain confidential or is otherwise required to maintain confidential.

**10.5 Consent to Jurisdiction and Service of Process; Waiver of Jury Trial**

- (a) **EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE BROUGHT IN OR REMOVED TO SUCH NEW YORK STATE COURT OR IN SUCH FEDERAL COURT. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS SECTION 10.5 SHALL AFFECT ANY RIGHT THAT THE TRUSTEE, THE ADMINISTRATIVE AGENT OR ANY SECURED PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT AGAINST THE OBLIGORS OR THEIR RESPECTIVE PROPERTIES IN THE COURTS OF ANY JURISDICTION.**
- (b) EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT IN ANY COURT REFERRED TO IN SECTION 10.5(a). EACH OF THE PARTIES HERETO HEREBY WAIVES ANY RIGHT TO STAY OR DISMISS ANY ACTION OR PROCEEDING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT BROUGHT BEFORE THE FOREGOING COURTS ON THE BASIS OF FORUM NON-CONVENIENS.
- (c) Each of the parties hereto irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to Secured Parties or any Obligor, as the case may be, at their respective addresses for notices as specified herein and that such service shall be effective five (5) Business Days after such mailing. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by applicable Law.
- (d) **EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY, IRREVOCABLY, AND INTENTIONALLY WAIVE TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR**

**ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY FINANCING DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY). THIS PROVISION IS A MATERIAL INDUCEMENT FOR EACH PARTY HERETO TO ENTER INTO THIS AGREEMENT.**

#### **10.6 Notices**

For the purposes hereof, the addresses of the parties hereto shall be as set forth on Annex I hereto, or, as to each party, at such other address as may be designated by such party on its signature page hereto or in a written notice to all of the other parties. All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by overnight delivery service, (c) if mailed by first-class mail, postage prepaid, registered or certified with return receipt requested, or (d) if sent by facsimile, email or other direct written electronic means with a confirmation of receipt. Any notice or other communication so given shall be effective upon receipt by the addressee, except that any notice or other communication so transmitted by facsimile shall be deemed to have been validly and effectively given on the day (if a Business Day and, if not, on the next following Business Day) on which it is transmitted if transmitted before 5:00 p.m., recipient's time, and if transmitted after that time, on the next following Business Day; provided, that if any notice or other communication is tendered to an addressee and the delivery thereof is refused by such addressee, such notice or other communication shall be effective upon such tender. Any party shall have the right to change its address for notice hereunder to any other location within the United States by giving written notice of such change to the other parties in the manner set forth in this Section.

#### **10.7 Further Assurances**

The Senior Collateral Agent, on behalf of itself and the Senior Secured Parties, the Subordinate Collateral Agent, on behalf of itself and the Subordinate Secured Parties, each other Secured Debt Representative, on behalf of itself and the Secured Parties represented by it, and the Lessee agree that each of them shall take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as the Lessee, the Senior Collateral Agent or the Subordinate Collateral Agent may reasonably request to effectuate the terms of, and the Security Interest priorities contemplated by, this Agreement.

#### **10.8 Applicable Law**

**THIS AGREEMENT, AND ANY INSTRUMENT OR AGREEMENT REQUIRED HEREUNDER OR THEREUNDER (TO THE EXTENT NOT EXPRESSLY PROVIDED FOR THEREIN) AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT (EXCEPT, AS TO ANY OTHER SECURED DEBT DOCUMENT, AS EXPRESSLY SET FORTH THEREIN), SHALL BE GOVERNED BY, AND CONSTRUED UNDER, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE AND WITHOUT REFERENCE TO CONFLICT OF LAWS PRINCIPLES (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW).**

### **10.9 Binding on Successors and Assigns**

This Agreement shall be binding upon and inure to the benefit of the parties hereto, the Senior Collateral Agent, the Senior Secured Parties, the Subordinate Collateral Agent and the Subordinate Secured Parties, and their respective successors and assigns. If either of the Senior Collateral Agent or the Subordinate Collateral Agent resigns or is replaced pursuant to this Agreement, its successor shall be deemed to be a party to this Agreement and shall have all the rights of, and be subject to all the obligations of, this Agreement.

### **10.10 Specific Performance**

Each of the Senior Collateral Agent and the Subordinate Collateral Agent may demand specific performance of this Agreement. The Senior Collateral Agent, on behalf of itself and the Senior Secured Parties, and the Subordinate Collateral Agent, on behalf of itself and the Subordinate Secured Parties, hereby irrevocably waive any defense based on the adequacy of a remedy at law and any other defense which might be asserted to bar the remedy of specific performance in any action which may be brought by the Senior Collateral Agent or the Senior Secured Parties or the Subordinate Collateral Agent or the Subordinate Secured Parties, as the case may be.

### **10.11 Headings**

Article, Section and paragraph headings and a table of contents have been inserted in this Agreement as a matter of convenience for reference only and it is agreed that such Article, Section and paragraph headings and such table of contents are not a part of this Agreement and shall not be used in the interpretation of any provision of this Agreement.

### **10.12 Counterparts; Integration**

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart. This Agreement and the other Financing Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

### **10.13 Authorization**

By its signature, each Person executing this Agreement on behalf of a party hereto represents and warrants to the other parties hereto that it is duly authorized to execute this Agreement.

### **10.14 Third Party Beneficiaries**

This Agreement and the rights and benefits hereof shall inure to the benefit of each of the parties hereto and their respective successors and assigns and shall inure to the benefit of each of the Secured Parties. Nothing in this Agreement shall impair, (a) as between the Obligors on the one hand and the Senior Collateral Agent and the Senior Secured Parties, on the other hand, or (b) as between the Obligors on the one hand and the Subordinate Collateral Agent and the Subordinate Secured Parties, on the other hand, the obligations of the Obligors set forth in the Financing Documents.



## **10.15 Provisions Solely to Define Relative Rights**

The provisions of this Agreement are and are intended for the purpose of defining the relative rights of (i) the Senior Secured Parties amongst them, (ii) the Senior Collateral Agent and the Senior Secured Parties, on the one hand, and the Subordinate Collateral Agent and the Subordinate Secured Parties, on the other hand, (iii) the Subordinate Secured Parties amongst them, and (iv) for the other express purposes provided herein. Nothing in this Agreement is intended to or shall impair the obligations of any Obligor, which are absolute and unconditional, to pay the Senior Obligations and the Subordinate Obligations as and when the same shall become due and payable in accordance with their terms.

## **10.16 Limitation on Liability**

Notwithstanding anything herein or in any other Financing Document to the contrary, the obligations of the Obligors under this Agreement and each other Financing Document to which any Obligor is a party, and any certificate, notice, instrument or document delivered pursuant to hereto or thereto, are obligations of such Obligors and do not constitute a debt or obligation of (and no recourse shall be made with respect to) any present or future holder (whether direct or indirect) of any Equity Interests in any Obligor, or any of their respective Affiliates (in each case other than the Obligors) (except, in each case, to the extent set forth in the Financing Documents to which the Obligors are party), or any shareholder, partner, member, officer, director or employee of any Obligor or such Affiliates (collectively, the “**Non-Recourse Parties**”), except as hereinafter set forth in this Section 10.16 or as expressly provided in any Financing Document to which such Non-Recourse Party is a party. No action under or in connection with this Agreement or any other Financing Document to which any Obligor is a party shall be brought against any Non-Recourse Party, and no judgment for any deficiency upon the obligation hereunder or thereunder shall be obtainable by any Secured Party against any Non-Recourse Party, except as hereinafter expressly set forth in this Section 10.16 or as expressly provided in any Financing Document to which such Non-Recourse Party is a party. Notwithstanding any of the foregoing, it is expressly understood and agreed that the foregoing provisions in this Section 10.16 shall not (a) constitute a waiver, release or discharge (or otherwise impair the enforceability) of any of the Secured Obligations, or of any of the terms, covenants, conditions, or provisions of this Agreement or any other Financing Document and the same shall continue (subject to clause (d) below, but without personal liability of the Non-Recourse Parties) until fully paid, discharged, observed, or performed, (b) restrict the remedies available to any Secured Party to realize upon the Collateral or under any applicable Financing Document, or constitute or be deemed to be a, waiver, release or discharge of the obligations secured by (or impair the enforceability of) the Security Interests and security interests and possessory rights created by or arising from any Financing Document (or otherwise impair the ability of any Secured Party to realize or foreclose upon any Collateral); (c) limit or restrict the right of the Trustee, the Administrative Agent, the Applicable Collateral Agent or any other Secured Party (or any assignee, beneficiary or successor to any of them) to name any Obligor or any other person as a defendant in any action or suit for a judicial foreclosure or for the exercise of any other remedy under or with respect to this Agreement or any other Financing Document, so long as no judgment in the nature of a deficiency judgment shall be enforced against any Non-Recourse Party, except as set forth in other provisions of this Section 10.16; or (d) release, or be deemed to release, any Non-Recourse Party from liability for its own willful misrepresentation, gross negligence or willful misconduct, or from any of its obligations or liabilities under any Financing Document to which such Non-Recourse Party is a party.

### **10.17 Force Majeure**

Neither the Intercreditor Agent nor any Collateral Agent shall incur any liability for not performing any act or not fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Intercreditor Agent or such Collateral Agent (including any act or provision of any present or future law or regulation or governmental authority, any act of God or war, civil unrest, strikes or labor disputes, local or national disturbance or disaster, any act of terrorism, or the unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility); it being understood that the Intercreditor Agent or such Collateral Agent, as applicable, shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

### **10.18 Consequential Damages**

NO CLAIM SHALL BE MADE BY ANY PARTY HERETO OR ANY OF ITS AFFILIATES, DIRECTORS, EMPLOYEES, ATTORNEYS OR AGENTS AGAINST ANY OTHER PARTY HERETO OR ANY OF ITS AFFILIATES, DIRECTORS, EMPLOYEES, ATTORNEYS OR AGENTS FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (WHETHER OR NOT THE CLAIM THEREFOR IS BASED ON CONTRACT, TORT, DUTY IMPOSED BY LAW OR OTHERWISE) IN CONNECTION WITH, ARISING OUT OF OR IN ANY WAY RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY ACT OR OMISSION OR EVENT OCCURRING IN CONNECTION THEREWITH; AND EACH PARTY HERETO HEREBY WAIVES, RELEASES AND AGREES NOT TO SUE UPON ANY SUCH CLAIM FOR ANY SUCH SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR, EXCEPT FOR ALL SUCH SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING FROM ANY THIRD-PARTY CLAIM OR CAUSES OF ACTION IN RESPECT OF WHICH THE INDEMNIFYING PARTY INDEMNIFIES THE OTHER PARTY UNDER THIS AGREEMENT.

### **10.19 Electronic Execution**

The words “execution,” “execute”, “signed,” “signature,” and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation amendments, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by any Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

### **10.20 Effectiveness Date**

The date of this Agreement is for reference purposes only and shall not be construed to imply that this Agreement was executed as of the date first written above. This Agreement has been executed by the parties hereto and is effective on the Closing Date.

*[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]*

[SIGNATURE PAGES, ANNEXES AND EXHIBITS HAVE BEEN REMOVED]

**(THIS PAGE INTENTIONALLY LEFT BLANK)**

**FORM FIRST AMENDMENT TO INTERCREDITOR AGREEMENT**

**(THIS PAGE INTENTIONALLY LEFT BLANK)**

**FIRST AMENDMENT TO  
INTERCREDITOR AGREEMENT**

Dated as of November [●], 2024

by and among

**JFK MILLENNIUM PARTNERS, LLC,**  
as Lessee

**THE BANK OF NEW YORK MELLON,**  
as Intercreditor Agent

**THE BANK OF NEW YORK MELLON,**  
as Trustee

**ING CAPITAL LLC,**  
as Administrative Agent

**THE BANK OF NEW YORK MELLON,**  
as Senior Collateral Agent

and

**ING CAPITAL MARKETS LLC, JPMORGAN CHASE BANK, N.A., KEYBANK NATIONAL  
ASSOCIATION, MIZUHO CAPITAL MARKETS LLC, MUFG BANK, LTD., ROYAL BANK OF  
CANADA, SMBC CAPITAL MARKETS INC., AND THE BANK OF NOVA SCOTIA,**  
as Hedge Providers

## TABLE OF CONTENTS

	<b>Page</b>
1. DEFINITIONS.....	3
1.1 Defined Terms .....	3
1.2 Rules of Interpretation .....	4
2. AMENDMENTS TO INTERCREDITOR AGREEMENT.....	4
2.1 Amendment to Section 2.4 of the Intercreditor Agreement.....	4
2.2 Amendment to Section 3.3(a)(viii) of the Intercreditor Agreement .....	5
2.3 Amendment to Section 3.5(a) of Intercreditor Agreement .....	5
2.4 Amendment to Section 3.5(b)(i) of Intercreditor Agreement .....	6
2.5 New Section 3.8 of Intercreditor Agreement.....	6
2.6 Amendment to Section 4.4(b) of Intercreditor Agreement .....	7
2.7 Amendment to Section 5.3(a) of the Intercreditor Agreement .....	8
2.8 Amendment to Section 5.4 of Intercreditor Agreement.....	8
2.9 Amendment to Section 8.3(b) of Intercreditor Agreement .....	9
2.10 Amendment to Annex II to Intercreditor Agreement.....	9
3. MISCELLANEOUS .....	10
3.1 Conflicts.....	10
3.2 Effectiveness; Continuing Nature of this Amendment; Severability.....	10
3.3 Amendments; Waivers.....	11
3.4 Consent to Jurisdiction and Service of Process; Waiver of Jury Trial.....	11
3.5 Applicable Law.....	12
3.6 Headings .....	12
3.7 Counterparts; Integration .....	12
3.8 Authorization .....	13
3.9 Electronic Execution.....	13
3.10 Effectiveness Date .....	13



This FIRST AMENDMENT TO INTERCREDITOR AGREEMENT, dated as of November [●], 2024 (this “**Amendment**”), is entered into by and among JFK Millennium Partners, LLC, a Delaware limited liability company (the “**Lessee**”), The Bank of New York Mellon, as Intercreditor Agent (in such capacity, together with its successors and permitted assigns in such capacity, the “**Intercreditor Agent**”), The Bank of New York Mellon, as trustee under the Indenture (in such capacity, together with its successors and permitted assigns in such capacity, the “**Trustee**”) and acting hereunder as Senior Secured Debt Representative for the Senior Bondholders (including the Series 2024 Bondholders, but excluding the Series 2022A Bondholders) and each Bond Insurer who has appointed the Trustee as its Secured Debt Representative pursuant to the Indenture (but only with respect to Senior Obligations and the other obligations owing to, rights of and claims held by such Bond Insurer for which the Trustee has been so appointed), ING Capital LLC, as administrative agent for the Bank Finance Parties (in such capacity, together with its successors and permitted assigns in such capacity, the “**Administrative Agent**”), The Bank of New York Mellon, as collateral agent for the Senior Secured Parties (as defined herein) (in such capacity, together with its successors and assigns in such capacity, “**Senior Collateral Agent**”) and ING Capital Markets LLC, JPMorgan Chase Bank, N.A., KeyBank National Association, Mizuho Capital Markets LLC, MUFG Bank, Ltd., Royal Bank of Canada, SMBC Capital Markets Inc., and The Bank of Nova Scotia as Hedge Providers.

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

- (A) **WHEREAS**, the Port Authority of New York and New Jersey, a municipal corporate instrumentality and political subdivision of the States of New York and New Jersey, created and existing by virtue of the Compact of April 30, 1921, made by and between the States of New York and New Jersey, and thereafter consented to by the Congress of the United States has entered into an Agreement of Lease, dated as of November 17, 2022 (as supplemented and amended from time to time, the “**Lease Agreement**”), with the Lessee pursuant to which, among other things, the Lessee is obliged to undertake the following: (i) the operation, maintenance, and demolition of the Existing Terminal Facilities at John F. Kennedy International Airport in Queens, New York, which Existing Terminal Facilities include the existing Terminal 7 facilities, (ii) the design, construction, financing, operation and maintenance of the New Terminal Facilities at the Airport (which New Terminal Facilities include new Terminal 6 facilities and replacement Terminal 7 facilities) and certain ancillary facilities, and (iii) the design and construction of the Off-Premises Facilities at the Airport on behalf of the Port Authority, which Off-Premises Facilities will not be operated or maintained by the Lessee and will not constitute part of the facilities leased to the Lessee under the Lease Agreement;
- (B) **WHEREAS**, pursuant to that certain Credit Agreement, dated as of November 1, 2022, among the Issuer in its capacity as borrower thereunder, the Lessee, the Bank Lenders from time to time party thereto and the Administrative Agent, the Senior Term Lenders have made, and have agreed to make, Senior Loans available to the Issuer, the proceeds of which have been, and will be, loaned to the Lessee pursuant to the TDC Loan Agreements to finance a portion of the Project Costs, and the Security Deposit Facility Lenders have made, and have agreed to make, Security Deposit Loans available to the Issuer and the Security Deposit Facility LC Issuing Bank has agreed to make Security Deposit LCs available to the Lessee on behalf of the Issuer, on the terms and subject to the conditions set forth therein;
- (C) **WHEREAS**, pursuant to a bond resolution adopted on October 20, 2022 by the Issuer and that certain TDC Master Bond Indenture of Trust, dated as of November 1, 2022, between the Issuer and the Trustee, the Issuer authorized the issuance of its New York Transportation Development Corporation Special Facilities Bonds, Senior Series 2022A (Tax-Exempt) (AMT) (JFK Airport Terminal 6-7 Redevelopment Project) in the aggregate principal amount of \$435,000,000;

- (D) **WHEREAS** the Issuer and the Lessee entered into the Series 2022A Bond Purchase Agreement with RBC, as the Series 2022A Bondholder, and RBC Capital Markets LLC, as initial purchaser, and the Initial Purchaser and the Series 2022A Bondholder have purchased the Series 2022A Bonds on the terms and conditions and in the respective principal amounts and stated amounts set forth in the Series 2022A Bond Purchase Agreement and subject to the terms and conditions of the Intercreditor Agreement and the other Financing Documents;
- (E) **WHEREAS**, the Lessee has executed and delivered the 2022 TDC Building Notes, and the 2022 TDC Project Notes in favor of the Issuer to evidence the obligations of the Lessee under each of the TDC Building Loan Agreement and the TDC Project Loan Agreement, respectively;
- (F) **WHEREAS**, the Issuer has assigned all of its right, title and interest in and to the TDC Loan Agreements, except for the Reserved Rights, to the Senior Collateral Agent, as security for the Senior Secured Debt, and will further endorse the 2022 TDC Notes and any Additional Note in respect of Senior Secured Debt in favor of the Senior Collateral Agent, as security for the Senior Secured Debt;
- (G) **WHEREAS**, in order to secure the Lessee's obligations under the Financing Documents, the Lessee has granted mortgage liens on and security interests in all of the interests of the Lessee under the Lease Agreement and a security interest in certain additional accounts and property of the Lessee (including a pledge of the Lessee's Project Revenues, to the Senior Collateral Agent) to the Issuer and the Senior Collateral Agent, pursuant to the Leasehold Mortgages and certain other Senior Collateral Documents;
- (H) **WHEREAS**, in order to secure its obligations under the Senior Financing Documents, the Lessee has granted to the Senior Collateral Agent, for the benefit of the Senior Secured Parties, a first-priority security interest (subject to Permitted Liens) in, to and under the Collateral;
- (I) **WHEREAS**, on November 1, 2022, the Issuer, the Lessee, the Senior Collateral Agent, the Intercreditor Agent, the Trustee, the Administrative Agent and The Bank of New York Mellon, in its capacity as Deposit Account Bank and Securities Intermediary, among others, have entered into that certain Collateral Agency and Accounts Agreement, dated as of November 1, 2022, pursuant to which, among other things, The Bank of New York Mellon was appointed as Senior Collateral Agent, Deposit Account Bank and Securities Intermediary, certain securities and/or deposit accounts were established, and the parties thereto agreed as to the transfer and application of funds on deposit in or credited to such accounts;
- (J) **WHEREAS**, in connection with the foregoing, the Lessee, the Intercreditor Agent, The Bank of New York Mellon, as Trustee and as Senior Secured Debt Representative for the Senior Bondholders (other than the Series 2022A Bonds), the Administrative Agent for the Bank Finance Parties, the Senior Collateral Agent, and ING Capital Markets LLC, JPMorgan Chase Bank, N.A., KeyBank National Association, Mizuho Capital Markets LLC, MUFG Bank, Ltd., Royal Bank of Canada, SMBC Capital Markets Inc. and The Bank of Nova Scotia, as Hedge Providers, entered into the Intercreditor Agreement, dated as of November 1, 2022 (the "**Intercreditor Agreement**");
- (K) **WHEREAS**, after the Closing Date, pursuant to Section 5.5 of the Intercreditor Agreement additional Secured Parties may become party to the Intercreditor Agreement in connection with the incurrence of Additional Obligations;
- (L) **WHEREAS**, pursuant to a bond resolution adopted on [●], 2024 by the Issuer and that certain Second Supplemental Bond Indenture of Trust, dated as of October [●], 2024, among the Issuer,

the Trustee and the Bond Insurer, the Issuer has authorized the issuance of its (a) New York Transportation Development Corporation Special Facilities Revenue Bonds, Senior Series 2024A (Green Bonds) (AMT) (Current Interest Bonds) (JFK Airport Terminal 6-7 Redevelopment Project) in the aggregate principal amount of \$[●] and (b) New York Transportation Development Corporation Special Facilities Revenue Bonds, Senior Series 2024B (Green Bonds) (AMT) (Convertible Capital Appreciation Bonds) (JFK Airport Terminal 6-7 Redevelopment Project) in the aggregate principal amount of \$[●];

- (M) **WHEREAS**, at the request of the Lessee, Assured Guaranty Inc. (the “**Series 2024 Bond Insurer**”) has agreed to issue a Bond Insurance Policy to guarantee certain of the Series 2024 Bonds, and the Lessee and the Series 2024 Bond Insurer have entered into a Bond Insurance Premium Letter, dated as of the date hereof, whereby the Lessee has agreed to pay premiums in respect of the Series 2024 Bond Insurer’s Bond Insurance Policy on the Series 2024 Closing Date and, thereafter, on a semiannual basis starting on [●], 2034;
- (N) **WHEREAS**, in connection with the issuance and sale of the Series 2024 Bonds and the issuance of the Bond Insurance Policy with respect to the Insured Series 2024 Bonds, on the Series 2024 Closing Date, the parties hereto have entered into additional Financing Documents and certain amendments to the existing Financing Documents, and the Lessee has requested the consent of the Bank Finance Parties to the execution and delivery of such additional Financing Documents and amendments pursuant to a letter from the Lessee to the Administrative Agent, dated as of September [●], 2024;
- (O) **WHEREAS**, pursuant to Section 10.3 of the Intercreditor Agreement, the Intercreditor Agreement may be amended by an agreement in writing entered into by the Senior Collateral Agent, the Subordinate Collateral Agent, the Intercreditor Agent, the Trustee acting upon the direction of the Bondholders (other than the Series 2022A Bondholder) in accordance with the Indenture, the Administrative Agent acting upon the instruction of the Bank Finance Parties in accordance with the Senior Bank Financing Documents, and without requiring the consent of the Hedge Providers;
- (P) **WHEREAS**, in connection with the issuance and sale of the Series 2024 Bonds and the issuance of the Bond Insurance Policy with respect to the Insured Series 2024 Bonds, the signatories hereof, for themselves and, if applicable, on behalf of the Secured Parties they represent, desire to make certain amendments to the Intercreditor Agreement;

**NOW, THEREFORE**, in consideration of the mutual agreements in this Amendment and the other Financing Documents and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the signatories hereto hereby enter into this Amendment and agree as follows:

**1. DEFINITIONS**

**1.1 Defined Terms**

Unless otherwise specified herein, capitalized terms used in this Amendment have the meanings assigned to them in the Intercreditor Agreement, including by reference to Exhibit A to the

Collateral Agency and Accounts Agreement, as amended on the date hereof. As used in this Amendment, the following terms shall have the following meanings:

“**Administrative Agent**” has the meaning assigned to such term in the preamble.

“**Amendment**” has the meaning assigned to such term in the preamble.

“**Intercreditor Agent**” has the meaning assigned to such term in the preamble.

“**Intercreditor Agreement**” has the meaning assigned to such term in Recital (J).

“**Lease Agreement**” has the meaning assigned to such term in Recital (A).

“**Lessee**” has the meaning assigned to such term in the preamble.

“**Senior Collateral Agreement**” has the meaning assigned to such term in the preamble.

“**Series 2024 Bond Insurer**” has the meaning assigned to such term in Recital (M).

“**Trustee**” has the meaning assigned to such term in the preamble.

## **1.2 Rules of Interpretation**

Except as otherwise expressly provided, the rules of interpretation set forth in Exhibit A of the Collateral Agency and Accounts Agreement shall apply to this Amendment.

## **2. AMENDMENTS TO INTERCREDITOR AGREEMENT**

### **2.1 Amendment to Section 2.4 of the Intercreditor Agreement**

Section 2.4 of the Intercreditor Agreement is amended by inserting therein the double underlined text and deleting the stricken text as shown below:

#### **“2.4 Similar Security Interests and Agreements; Segregated Pledged Accounts**

The parties hereto agree that it is their intention that the Senior Collateral and the Subordinate Collateral be identical, other than with respect to (a) the Senior Debt Reserve Account and the Ramp-up Reserve Account, which shall constitute Senior Collateral available only to the Senior Secured Parties, (b) the Subordinate Debt Service Reserve Account, if any, which shall constitute Subordinate Collateral available only to the Subordinate Secured Parties, (c) any Senior Cash Collateral Account, which shall constitute Senior Collateral available only to the applicable Senior Secured Parties, ~~and~~ (d) the Segregated Proceeds Pledged Accounts which shall constitute Senior Collateral available only to the Bank Finance Parties, (e) each Segregated Policy Payment Account, which shall constitute Senior Collateral available only to the applicable Owners of Insured Bonds and the applicable Bond Insurer of such Insured Bonds, and (f) the Surplus Remaining Revenue Account, which, from and after the 10-Year Cash Sweep Date, shall constitute Senior Collateral available only to the Owners of the Series 2024A Balloon Indebtedness and the Bond Insurer (solely as an Owner of Series 2024 Bonds and with respect to any subrogated claim with respect to Series 2024 Bonds). In furtherance of the foregoing, the parties hereto agree, subject to the other provisions of this Agreement upon request by the Senior Collateral Agent or the Subordinate Collateral Agent, to cooperate in good faith (and to direct their counsel to cooperate in good faith) from time to time in order to determine the specific items included in the Senior Collateral and the

Subordinate Collateral and the steps taken to perfect their respective Security Interests thereon and the identity of the respective parties obligated under the Senior Financing Documents and the Subordinate Financing Documents”.

## 2.2 Amendment to Section 3.3(a)(viii) of the Intercreditor Agreement

Section 3.3(a)(viii) of the Intercreditor Agreement is amended by inserting therein the double underlined text as shown below:

“(viii) subject to compliance with Section 3.5(a), instruct the application of the moneys on deposit in (A) the Segregated Proceeds Pledged Accounts in accordance with Section 6.06(a)(iii) of the Collateral Agency and Accounts Agreement and causing the payments and redemptions contemplated thereby to be made in accordance with the Senior Bank Financing Documents, (B) the applicable Segregated Policy Payment Account, if any, in accordance with the applicable Supplemental Indenture, and causing the payments contemplated thereby to be made in accordance with such Supplemental Indenture, and (C) the Surplus Remaining Revenue Account in accordance with Section 6.06(a)(v) of the Collateral Agency and Accounts Agreement and causing the payments and redemptions contemplated thereby to be made in accordance with the Second Supplemental Indenture.

## 2.3 Amendment to Section 3.5(a) of Intercreditor Agreement

Section 3.5(a) of the Intercreditor Agreement is amended by inserting therein the double underlined text as show below:

### (a) Segregated Collateral

#### (i)

(A) The Senior Collateral Agent acting at the direction of the Required Bank Finance Parties or the Trustee acting in accordance with the Indenture or any other Secured Debt Representative acting in accordance with its applicable Financing Documents, subject to delivering at least one (1) day advance written notification to the Intercreditor Agent and to satisfying the requirements under its applicable Financing Documents, may instruct the Applicable Collateral Agent, under and in accordance with such Financing Documents to take an Enforcement Action against the Segregated Collateral for the sole benefit of the applicable Secured Parties, including instructing the use of the funds in the Segregated Proceeds Pledged Accounts to repay the Senior Loans and redeem the Series 2022A Bonds pursuant to Section 6.06(a)(iii) of the Collateral Agency and Accounts Agreement; and

(B) The Trustee acting in accordance with the Indenture, subject to delivering at least one (1) day advance written notification to the Intercreditor Agent and to satisfying the requirements under the Indenture, may use the funds in any Segregated Policy Payment Account and, from and after the 10-Year Cash Sweep Date, the Surplus Remaining Revenue Account to make payments due to the applicable Owners and the applicable Bond Insurer, including under the Indenture or redeem the applicable Senior Bonds, in each case, in accordance with the Indenture.

#### (ii) No other Party or other Secured Party:

- (A) will have any rights or interests in any Segregated Collateral that is not for the benefit of such Party; or
- (B) may exercise any Enforcement Action against any Segregated Collateral that is solely for the benefit of another Party.

#### 2.4 Amendment to Section 3.5(b)(i) of Intercreditor Agreement

Section 3.5(b)(i) of the Intercreditor Agreement is amended by inserting therein the double underlined text as shown below:

“(i) Fundamental Events of Default - Notwithstanding any other provision of this Agreement, until the Discharge of Senior Bank Obligations, the Administrative Agent acting at the direction of the Required Bank Finance Parties or the Trustee acting in accordance with the Indenture may, subject to:

- (A) providing advance written notice to the Intercreditor Agent; and
- (B) if any Secured Obligations other than the Senior Bank Obligations and obligations under the Permitted Hedge Agreements, are outstanding, expiration of the Standstill Period,

unilaterally instruct the Intercreditor Agent to instruct the Senior Collateral Agent to (1) take any Enforcement Action (excluding initiating an involuntary bankruptcy proceeding against the Lessee, unless approved by the Required Senior Secured Parties), without an Intercreditor Vote or an Act of Secured Parties, with respect to the Fundamental Events of Default identified and described in detail in Annex II or (2) exercise any Collateral Agent cure rights under the Direct Agreements and the Lease Agreement (collectively, (1) and (2) the “**Fundamental Enforcement Rights**”).”

#### 2.5 New Section 3.8 of Intercreditor Agreement

Article 3 of the Intercreditor Agreement is amended by inserting the following new Section 3.8 at the end thereof:

##### “3.8 Restricted Enforcement Actions with Respect to Bond Cross-Default

Notwithstanding anything to the contrary in this Agreement or any other Financing Document, prior to the Discharge of Senior Bank Obligations, none of the Senior Bondholders (other than the Senior 2022A Bondholders), any Bond Insurer, any other Additional Senior Creditor, and their respective Secured Debt Representatives may or may instruct the Intercreditor Agent or the Senior Collateral Agent to take any Enforcement Action or any Permitted Action of the type contemplated in Section 3.3(a)(ii), Section 3.3(a)(iii) or Section 3.3(a)(vii) with respect to any Event of Default that has occurred under any Financing Document solely as a result, directly or indirectly, of the occurrence of :

- (a) a Default or Event of Default under, or other breach or failure to comply with the terms of, any Senior Bank Financing Document, including any Event of Default that has occurred pursuant to Section 8.1(c), (e) or (g) of the First Building Loan Agreement Amendment, Section 8.1(c), (e) or (g) of the First Project Loan Agreement Amendment or the equivalent sections of any other Additional

Obligations Loan Agreement Supplement because of a cross-default to such Default or Event of Default, breach or failure to comply ; or

- (b) an Enforcement Action, with respect to any such Default, Event of Default, breach or failure, other than the acceleration of the Senior Bank Obligations or an Enforcement Action of the types contemplated in clauses (a) or (c) of the definition thereof (other than solely with respect to Segregated Collateral of the Bank Finance Parties),

unless (x) the Standstill Period has expired, (y) the Senior Bank Obligations have been accelerated in accordance with the Senior Bank Financing Documents, and (z) the Administrative Agent (at the direction of the Required Bank Finance Parties) has instructed the Intercreditor Agent to instruct the Senior Collateral Agent to exercise an Enforcement Action of the types contemplated in clauses (a) or (c) of the definition thereof (other than solely with respect to Segregated Collateral of the Bank Finance Parties) with respect to such Default or Event of Default under, or other breach or failure to comply with the terms of the Senior Bank Financing Documents (the period prior to the satisfaction of all conditions in clauses (x), (y) and (z) above, the “**Cross-Default Standstill Period**”).”

## **2.6 Amendment to Section 4.4(b) of Intercreditor Agreement**

Section 4.4(b) of the Intercreditor Agreement is amended by inserting therein the double underlined text as shown below:

- “(b) Without limiting the foregoing, upon receipt of any monies in accordance with Section 6.06 of the Collateral Agency and Accounts Agreement, the Applicable Collateral Agent shall promptly provide notice to the Intercreditor Agent who shall promptly provide notice to each Secured Debt Representative of the receipt of such monies. Within ten Business Days of the receipt of such notice, each Secured Debt Representative shall give the Intercreditor Agent written certification by an authorized officer or representative thereof of the aggregate amount of the Senior Obligations or the Subordinate Obligations, as applicable, then outstanding owed by the Lessee to the Secured Parties represented by such Secured Debt Representative under the applicable Financing Documents to be certified to as presently due and owing after taking into account any funds on deposit in any Segregated Policy Payment Account, any Segregated Pledged Account or Senior Cash Collateral Account in respect of such Class of Senior Obligations or Subordinate Obligations, as applicable (and, promptly upon receipt thereof, the Intercreditor Agent shall provide a copy of each such certification to each other Secured Debt Representative). Unless any Senior Secured Party has provided notice to the Intercreditor Agent that it objects to the amount of Senior Obligations or Subordinate Obligations owed to any Secured Party provided to such Secured Party in accordance with the preceding sentence within ten Business Days after receipt of notice thereof, the Intercreditor Agent shall instruct the Applicable Collateral Agent to use the information provided for in such certifications of the Secured Debt Representatives as the basis for applying such monies in accordance with Section 6.06 of the Collateral Agency and Accounts Agreement. In the event the Intercreditor Agent receives notice of any dispute in accordance with the preceding sentence, it shall instruct the Applicable Collateral Agent to, and the Applicable Collateral Agent shall distribute all undisputed amounts in accordance with Section 6.06 of the Collateral Agency and Accounts Agreement.

## **2.7 Amendment to Section 5.4 of Intercreditor Agreement**

Section 5.4 of the Intercreditor Agreement is amended by inserting the following new paragraphs(e) and (f) at the end thereof:

- “(e) The Owners and the Bond Insurer of the applicable Senior Bonds shall have a first priority Security Interest in the funds deposited into the Segregated Policy Payments Account established with respect to such Senior Bonds; it being understood that such Security Interest does not secure the Bond Insurer Unsecured Obligations. Nothing contained in this Agreement shall be construed to impair the rights of such Owners or such Bond Insurer referenced in the first sentence of this clause (e) to exercise their rights and remedies with respect to any funds available in such Segregated Policy Payments Account. Except as expressly provided in the Collateral Agency and Accounts Agreement, neither such Owners nor such Bond Insurer shall have any obligation to share any amounts received or deemed received from funds on deposit in such Segregated Policy Payments Account with any other Person.
  
- (f) From and after the 10-Year Cash Sweep Date, the Owners of the Series 2024A Balloon Indebtedness and the applicable Bond Insurer shall have a first priority Security Interest in the funds deposited into the Surplus Remaining Revenue Account; it being understood that such Security Interest does not secure the Bond Insurer Unsecured Obligations. Nothing contained in this Agreement shall be construed to impair the rights of such Owners or such Bond Insurer referenced in the first sentence of this clause (f) to exercise their rights and remedies with respect to any funds available in the Surplus Remaining Revenue Account as Segregated Collateral from and after the 10-Year Cash Sweep Date. Except as expressly provided in the Collateral Agency and Accounts Agreement, from and after the 10-Year Cash Sweep Date, neither such Owners nor such Bond Insurer shall have any obligation to share any amounts received or deemed received from funds on deposit in the Surplus Remaining Revenue Account with any other Person.”

## **2.8 Amendment to Section 5.7 of the Intercreditor Agreement**

Article 5 of the Intercreditor Agreement is amended by inserting a new Section 5.7 at the end thereof as follows:

- “(a) Until the Discharge of Senior Bank Obligations, no Modification of any Financing Document shall, without the prior written consent of the Administrative Agent (acting upon instruction of the Required Bank Finance Parties):
  - (i) remove or modify any provision, requirement or condition in the Financing Documents that contemplates that the Discharge of Senior Bank Obligations, the Bank Financing Maturity Date (as defined in the Common Terms Agreement), the 10-Year Cash Sweep Date (as defined on the Series 2024 Closing Date) or the 5-Year Cash Sweep Date (as defined on the Series 2024 Closing Date) shall have occurred, including howsoever such date is otherwise referenced or designated, including by reference to the actual date on which such it occurs; or
  - (ii) modify any provision that prohibits or restricts the ability of the Borrower or the Lessee to agree to an extension of the Bank Financing Maturity Date.



## 2.9 Amendment to Section 8.3(b) of Intercreditor Agreement

Section 8.3(b) of the Intercreditor Agreement is amended by inserting therein the double underlined text as shown below:

- “(b) (b) Notwithstanding anything to the contrary in this Agreement or in any Financing Document, none of:
- (i) the Lessee, any Sponsor or any of their respective Affiliates that from time to time holds any Senior Obligation;
  - (ii) any Senior Secured Party that has agreed to vote in respect of the Senior Obligations held by it at the direction or subject to the approval or disapproval of the Lessee, any Sponsor or any of their respective Affiliates;
  - (iii) any Prohibited Person, Disqualified Institution, Defaulting Bank Finance Party or Defaulting Lender (each as defined in the Common Terms Agreement);
  - (iv) solely during the period prior to any Enforcement Action, the Hedge Providers; ~~and~~
  - (v) the holders of any Senior Obligations if the principal of, and interest accrued on, such Senior Obligations have been fully paid, discharged or legally defeased pursuant to the terms of the applicable Financing Document; ~~and~~
  - (vi) solely with respect to any Act of Secured Parties to permit the Lessee to incur DIP Financing in an amount that exceeds \$250,000,000, any Senior Secured Party that has agreed to provide all or a portion of such DIP Financing.

shall be entitled to participate in any Intercreditor Vote (each of the parties referred to in clauses (i) through (v) above, a “**Non-Voting Senior Creditor**”), and the Intercreditor Agent, in determining the percentage of votes cast (and instructions of the Required Senior Secured Parties), shall disregard the principal amount of Secured Obligations held by Non-Voting Senior Creditor in both the numerator and denominator of the calculation in determining the outcome of such vote. Prior to the taking of any Intercreditor Vote, upon the request of the Intercreditor Agent pursuant to the Collateral Agency and Accounts Agreement, the Lessee shall provide prompt written notice to the Intercreditor Agent and each Agent of the identity of all Non-Voting Senior Creditors and the principal amount of Senior Obligations held by each such Non-Voting Senior Creditor.”

## 2.10 Amendment to Section 10.3(b) of Intercreditor Agreement

The lead in paragraph of Section 10.3(b) of the Intercreditor Agreement is amended by inserting therein the double underlined text and deleting the stricken text as shown below:

- “(b) Neither this Agreement nor any Security Document, nor any provision hereof, or thereof, may be terminated, waived, amended or modified (other than pursuant to any Accession Agreement consistent with the Financing Documents) except pursuant to one or more consents, instruments ~~agreement~~ or agreements in writing ~~entered into~~ executed by the Senior Collateral Agent, the Subordinate Collateral Agent (if applicable), the Intercreditor Agent, the Trustee acting ~~upon the direction of the Bondholders (other than the Series 2022A Bondholder)~~ in accordance with the Indenture (including (x) without Bondholder

consent, if such termination, waiver, amendment or modification to the applicable Security Document is permitted under Section 10.06 of the Master Indenture or (y) upon the direction of the Bondholders (other than the Series 2022A Bondholders) pursuant to Section 10.07 of the Master Indenture), the Administrative Agent acting upon the instruction of the Bank Finance Parties until the Discharge of Senior Bank Obligations in accordance with the Senior Bank Financing Documents and, if any, each applicable Secured Debt Representative acting upon direction of the applicable Additional Senior Creditor or Additional Subordinate Creditor; provided, that:"

## **2.11 Amendment to Annex II to Intercreditor Agreement**

Annex II to the Intercreditor Agreement is amended and restated by deleting it in its entirety and inserting the new Annex II attached hereto as Schedule 2.11.

## **2.12 Global Amendment to Intercreditor Agreement**

The Intercreditor Agreement is amended by inserting the phrase “and each Bond Insurer who has appointed the Trustee as its Secured Debt Representative (but only with respect to the Senior Obligations and the other obligations owing to, rights of and claims held by such Bond Insurer in respect of which the Trustee has been so appointed)” in each place in the Intercreditor Agreement where a reference to the Trustee acting “on behalf of itself, the Senior Bondholders (other than the Series 2022A Bondholder)”, “on behalf of itself and the Senior Bondholders” or “on behalf of the Senior Bondholders (other than the Series 2022A Bonds)” appears.

## **3. MISCELLANEOUS**

### **3.1 Conflicts**

In the event of any conflict between the provisions of the Intercreditor Agreement as amended hereby and the provisions of any other Financing Document, the provisions of the Intercreditor Agreement, as amended hereby, shall govern and control.

### **3.2 Effectiveness; Continuing Nature of this Amendment; Severability**

- (a) This Amendment shall become effective when executed and delivered by each of the parties hereto.
- (b) If any provision of this Amendment is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Amendment shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. All references to any Obligor shall include such Obligor as debtor and debtor-in-possession and any receiver or trustee for such Obligor (as the case may be) in any Insolvency or Liquidation Proceeding.

- (c) This Amendment shall automatically terminate and be of no further force and effect without any further action of or notice by any party:
  - (i) with respect to the Senior Collateral Agent, the Senior Secured Parties and the Senior Obligations, upon the Discharge of Senior Obligations, subject to the rights of the Senior Secured Parties under Section 6.5 of the Intercreditor Agreement;
  - (ii) with respect to the Subordinate Collateral Agent, the Subordinate Secured Parties and the Subordinate Obligations, upon the Discharge of Subordinate Obligations; and
  - (iii) upon the later to occur of (x) the Discharge of the Senior Obligations, or (y) to the extent of any Subordinate Obligations, the Discharge of Subordinate Obligations.

### **3.3 Amendments; Waivers**

- (a) Except as specifically amended hereby, all the terms and provisions of the Intercreditor Agreement are and shall remain in full force and effect and are hereby ratified and confirmed in all respects.
- (b) This Amendment constitutes a Financing Document, a Senior Financing Document, a Senior Collateral Document for all purposes of the Financing Documents.

### **3.4 Consent to Jurisdiction and Service of Process; Waiver of Jury Trial**

- (a) **EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AMENDMENT OR ANY OTHER FINANCING DOCUMENT OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE BROUGHT IN OR REMOVED TO SUCH NEW YORK STATE COURT OR IN SUCH FEDERAL COURT. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS SECTION 4.3 SHALL AFFECT ANY RIGHT THAT THE TRUSTEE, THE ADMINISTRATIVE AGENT OR ANY SECURED PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AMENDMENT OR ANY OTHER FINANCING DOCUMENT AGAINST THE OBLIGORS OR THEIR RESPECTIVE PROPERTIES IN THE COURTS OF ANY JURISDICTION.**
- (b) EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AMENDMENT OR ANY OTHER FINANCING DOCUMENT IN ANY COURT REFERRED TO IN SECTION 4.3(a). EACH OF THE PARTIES HERETO HEREBY

WAIVES ANY RIGHT TO STAY OR DISMISS ANY ACTION OR PROCEEDING UNDER OR IN CONNECTION WITH THIS AMENDMENT OR ANY OTHER FINANCING DOCUMENT BROUGHT BEFORE THE FOREGOING COURTS ON THE BASIS OF FORUM NON-CONVENIENS.

- (c) Each of the parties hereto irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to Secured Parties or any Obligor, as the case may be, at their respective addresses for notices as specified herein and that such service shall be effective five (5) Business Days after such mailing. Nothing in this Amendment will affect the right of any party hereto to serve process in any other manner permitted by applicable Law.
- (d) **EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY, IRREVOCABLY, AND INTENTIONALLY WAIVE TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AMENDMENT OR ANY FINANCING DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY). THIS PROVISION IS A MATERIAL INDUCEMENT FOR EACH PARTY HERETO TO ENTER INTO THIS AMENDMENT.**

### **3.5 Applicable Law**

**THIS AMENDMENT, AND ANY INSTRUMENT OR AGREEMENT REQUIRED HEREUNDER OR THEREUNDER (TO THE EXTENT NOT EXPRESSLY PROVIDED FOR THEREIN) AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AMENDMENT (EXCEPT, AS TO ANY OTHER SECURED DEBT DOCUMENT, AS EXPRESSLY SET FORTH THEREIN), SHALL BE GOVERNED BY, AND CONSTRUED UNDER, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE AND WITHOUT REFERENCE TO CONFLICT OF LAWS PRINCIPLES (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW).**

### **3.6 Headings**

Article, Section and paragraph headings and a table of contents have been inserted in this Amendment as a matter of convenience for reference only and it is agreed that such Article, Section and paragraph headings and such table of contents are not a part of this Amendment and shall not be used in the interpretation of any provision of this amendment.

### **3.7 Counterparts; Integration**

This Amendment may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Amendment by signing any such counterpart. This Amendment and the other Financing Documents constitute

the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

**3.8 Authorization**

By its signature, each Person executing this Amendment on behalf of a party hereto represents and warrants to the other parties hereto that it is duly authorized to execute this Amendment.

**3.9 Electronic Execution**

The words “execution,” “execute”, “signed,” “signature,” and words of like import in or related to any document to be signed in connection with this Amendment and the transactions contemplated hereby (including without limitation amendments, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by any Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

**3.10 Effectiveness Date**

The date of this Intercreditor Amendment shall be for reference purposes only and shall not be construed to imply that this Intercreditor Amendment was executed on the date first written above. This Intercreditor Amendment has been executed by the parties hereto and is effective on the Series 2024 Closing Date.

*[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]*

**[SIGNATURE PAGES HAVE BEEN REMOVED]**

Each of the following shall constitute a Fundamental Event of Default:

1. With respect to the Common Terms Agreement, Events of Default pursuant to the following Sections thereof:
  - 1.1 Section 5.06
  - 1.2 Section 5.09
  - 1.3 Section 7.01(a)
  - 1.4 Section 7.01(b)
  - 1.5 Section 7.01(c) (with respect to Sections 5.06 and 5.09 only)
  - 1.6 Section 7.01(h)
  - 1.7 Section 7.01(i)
  - 1.8 Section 7.01(j)
  - 1.9 Section 7.01(l)
  - 1.10 Section 7.01(m)
  - 1.11 Section 7.01(n)
  - 1.12 Section 7.01(p)
  - 1.13 Section 7.01(q)
  - 1.14 Section 7.01(r)
  - 1.15 Section 7.01(t)
  - 1.16 Section 7.01(u)
  - 1.17 Section 7.01(v)
  - 1.18 Section 7.01(w)
  - 1.19 Section 7.01(x)
2. With respect to the TDC Loan Agreements (but excluding the First Building Loan Agreement Amendment and First Project Loan Agreement Amendment), Events of Default pursuant to the following Sections of each of the TDC Loan Agreements:
  - 2.1 Section 8.1(a) (Failure to Pay)
  - 2.2 Section 8.1(g) (Invalidity of Financing Documents)
  - 2.3 Section 8.1(i) (Failure to Maintain Corporate Existence)
  - 2.4 Section 8.1(j) (Invalidity of Security Documents)
  - 2.5 Section 8.1(l) (Failure to Achieve Substantial Completion of the Project)

- 2.6 Section 8.1(m) (Bankruptcy Related Events)
  
- 3. With respect to the First Building Loan Agreement Amendment and First Project Loan Agreement Amendment, Events of Default pursuant to the following Sections of each of the TDC Loan Agreements:
  - 3.1 Section 8.1(a) (Failure to Pay)
  - 3.2 Section 8.1(h) (Invalidity of Financing Documents)
  - 3.3 Section 8.1(j) (Failure to Maintain Corporate Existence)
  - 3.4 Section 8.1(k) (Invalidity of Security Documents)
  - 3.5 Section 8.1(l) (Failure to Achieve Substantial Completion of the Project)
  - 3.6 Section 8.1(m) (Bankruptcy Related Events)



## APPENDIX E

### SUMMARY OF CERTAIN PROVISIONS OF THE LEASE AGREEMENT

*The following is a summary of selected provisions of the Lease Agreement and is not a full statement of the terms of such agreement. Accordingly, the following summary is qualified in its entirety by reference to such agreement and is subject to the full text of such agreement. Unless otherwise stated, any reference in this Official Statement to the Lease Agreement shall mean such agreement and all schedules, exhibits and attachments thereto, as amended, supplemented or otherwise modified and in effect as of the date hereof. Capitalized terms used in this Appendix E but not otherwise defined in this Appendix E have the meanings given to such terms in Exhibit A to this Appendix E.*

#### ***Letting***

On November 17, 2022, the Port Authority and Lessee entered into the Lease Agreement. Pursuant to the Lease Agreement, the Port Authority, as lessor, leased to the Lessee the Initial Premises, consisting of the Terminal 6 Parcel and the improvements thereon, and on December 1, 2022, the Port Authority leased to the Lessee the Terminal 7 Premises, consisting of the Terminal 7 Parcel and the improvements thereon, subject in each case to certain conditions. The Initial Premises and the Terminal 7 Premises, in each case to the extent subject to the Lease Agreement, are referred to herein as the “Premises.” The Lease Agreement excludes from the leasehold interests the AirTrain, the Cogeneration Facility, the traffic systems, and the airport fuel storage and distribution system on or relating to the Premises.

Under the Lease Agreement, the Lessee will not require existing Terminal 7 airlines to relocate but will try to accommodate them in the new Terminal 6 facilities. The Port Authority and Lessee will cooperate to accommodate additional airlines in Terminal 7 before its decommissioning. Pursuant to the Lease Agreement, the Lessee can charge airlines for using Terminal 7 and has exclusive rights to maintain and operate the Premises and collect revenues.

The Lessee agreed to accept the Premises “as is” in the condition as of the applicable Lease Commencement Date. The Lessee agreed to indemnify and hold harmless the Port Authority Indemnified Parties for certain risks, responsibilities, costs and expenses as set forth in the Lease Agreement, and the Lessee assumed responsibility for risks, costs and expenses arising out of or in connection with certain Environmental Requirements. Under the Lease Agreement, the Port Authority shall not have any responsibility for any work or installation to the Premises to make the same usable by the Lessee, to place it in any particular condition or to reimburse the Lessee for any work or installation as may be made by or on behalf of the Lessee, except as expressly set forth in the Lease Agreement.

The Premises are leased to the Lessee and the Lessee takes the same subject to all the following: (i) easements, restrictions, reservations, covenants and agreements, if any, to which the Premises are subject as of the applicable Lease Commencement Date, and rights of the public in and to any public street; (ii) rights, if any, of any enterprise, public or private, which is engaged in furnishing heating, light, power, gas, telecommunications, telephone, steam, or other utility services and of New York City and the State of New York; (iii) Applicable Laws and Governmental Approvals, if any, of the United States of America, New York City or the State of New York or other Governmental Authority, (iv) the Basic Lease, and (v) any other matters stated in the Lease Agreement to which the Premises are subject, including rights of access by the Port Authority to the extent set forth in the Lease Agreement.

## ***Design and Construction by the Lessee***

During the D&C Work Period and with respect to the D&C Work only and not (i) the operations of the Existing Terminal Facilities prior to the Terminal 7 Parcel Lease Commencement Date or (ii) the Operations and Maintenance Work in respect of the New Terminal Facilities, the Lessee shall be obligated to conduct the D&C Work as described below.

### D&C Work

The Lessee agreed pursuant to the Lease Agreement, at its sole cost and expense (except as otherwise provided in the Lease Agreement), to complete the Construction Project, including to (x) design and construct the New Terminal Facilities on the Premises and (y) design and/or construct all or a portion of the Off-Premises Facilities outside the Premises, all as set forth in the Lease Agreement and Project Documents and in accordance with Good Order Requirements, Applicable Law and Applicable Standards. The Lessee is required to comply with Best Management Practices in the performance of the D&C Work.

### Scope of Work for the Construction Project

The D&C Work shall include the Design Work and the Construction Work required by the Lease Agreement and the other Project Documents. The D&C Work shall be separated into phases. The D&C Work related to the New Terminal Facilities and the Ground Transportation Center, in each case, shall be or become a part of the Premises under the Lease Agreement. The work shall include, without limitation,

- the decommissioning and demolition of certain existing structures, fixtures and other improvements comprising the Existing Terminal Facilities; and
- the design and construction on and under the Premises of, among other things
  - the New Terminal Building consisting of approximately 1,150,000 square feet of floor space, including a consolidated Federal Inspection Services (FIS) facility replacing the existing Terminal 7 FIS facilities;
  - aircraft ramp and apron areas serving the New Terminal Building;
  - adjustment to the taxiway on the north side of the Terminal 6 Parcel;
  - work related to terminal frontage and access roads;
  - work related to connecting the New Terminal Building with Terminal 5;
  - work on related infrastructure and facilities; and
  - transformation of the ground floor of the Terminal 5 Parking Garage, also known as the Yellow Garage, and the adjacent portion of the roadway network into the Ground Transportation Center servicing the New Terminal Facilities.

### Scope of D&C Work for the Off-Premises Facilities

The Lessee is obligated to perform certain D&C Work off the Premises. The D&C Work related to the Off-Premises Facilities shall be performed by the Lessee off the Premises and, in each case, shall not be or become a part of the Premises under the Lease Agreement.

### Port Authority Enabling Work.

Under the Lease Agreement, the Lessee and the Port Authority acknowledge that the Port Authority shall perform, at no cost or expense to the Lessee (except as otherwise provided in the Lease Agreement), certain work, which shall include the following work and which shall not constitute part of the D&C Work or the Construction Project:

(A) roadways connecting the CTA roadways to Terminal 5 and the New Terminal Facilities; and

(B) construction of new Central Substation 2, along with a back-up power source connected to the 15 kv supply to the Premises, as required for operation of the New Terminal Facilities.

### Phases of D&C Work

As set forth in the Lease Agreement, the Lessee shall cause the construction of the D&C Work to be performed in two phases: Phase 1 D&C Work and Phase 2 D&C Work shall include, among other things, the following elements:

- construction of the portion of the New Terminal Facilities on the Terminal 6 Parcel expanded to the east building edge of the Existing Terminal Facilities on the Terminal 7 Parcel;
- decommissioning of two Gates on the east side of the existing Terminal 7
- construction of the Ground Transportation Center; and
- construction of the associated Off-Premises Facilities.

The Phase 2 D&C Work shall include, among other things, the following elements:

- demolition of the Existing Terminal Facilities on the Terminal 7 Parcel;
- construction of the remaining portion of the New Terminal Facilities on the Terminal 7 Parcel; and
- construction of the associated Off-Premises Facilities.

Without limiting the Lessee's obligations regarding the Phase 2 D&C Work, the Lessee agrees that the commencement of the Phase 2 D&C Work shall be conditioned upon the Lessee having satisfied in full certain conditions, unless waived in writing by the Port Authority, including, among other things, delivery of an updated Baseline Schedule, certain project plans and manuals, copies of Key Contracts, an updated Transportation Management Plan (if required), and an updated environmental management plan.

### Pre-Term Work

Under the Lease Agreement, the Parties acknowledge that the Lessee and/or Lessee-Related Entities have performed (or had performed on their behalf) certain Pre-Term Work, including geotechnical and environmental testing. The terms and conditions of the Lease Agreement (other than the insurance requirements thereunder) and the Lessee's obligations thereunder with respect to correcting and rectifying any Defects, Nonconforming Work or other defects and deficiencies in the D&C Work or in the Off-Premises Facilities at the Lessee's sole cost and expense shall apply to any and all Pre-Term Work

performed prior to the Effective Date pursuant to the Pre-Term Work Agreement, including obligations of the Lessee to correct and rectify any Defects, Nonconforming Work or other defects and deficiencies.

#### Estimated Construction Amount

Under the Lease Agreement, the Lessee is expected to expend not less than \$4 billion for the D&C Work, which excludes costs that are to be reimbursed pursuant to the Port Authority Milestone Payment.

#### Perimeter Intrusion Detection System (PIDS)

The Lessee acknowledges that modifications to the PIDS, which protects the Airport, are required to accommodate the Construction Project. The Port Authority's PIDS provider shall be responsible for implementing such modifications and the Port Authority shall provide all final end equipment including, but not limited to, intrusion detection sensors, CCTV surveillance, digital recording and display equipment, conduit, wiring, and mounting devices, all as more fully set forth in the Requirements and Provisions for Work. The Lessee agrees to reimburse the Port Authority promptly upon demand for all costs incurred by the Port Authority in connection with the PIDS Work.

#### Project Schedule

The Baseline Schedule for the Construction Project was delivered to the Port Authority as of the Effective Date and is the basis for monitoring the timely performance of the D&C Work by the Lessee. The Lessee is responsible for providing the Port Authority with updates to the Baseline Schedule in accordance with the Lease Agreement.

If the Lessee fails to achieve (x) DBO of the Phase 1 D&C Work by the date which is thirty (30) calendar days following the Scheduled Phase 1 DBO Date, or (y) DBO of the Phase 2 D&C Work by the date which is thirty (30) calendar days following the Scheduled Phase 2 DBO Date (each, a "Completion Milestone"), in each case as the same may be extended in connection pursuant to any Delay Event, the Lessee shall be required to pay the D&C Work Delay Payments. The failure of the Lessee to achieve Substantial Completion of Phase 2 by the Outside Completion Date shall be deemed to be an Event of Default that is continuing under the Lease Agreement until the achievement of Substantial Completion of Phase 2, notwithstanding that the Lessee may be current in the payments of any D&C Work Delay Payments then due and payable.

#### Key Contracts

With certain exceptions, the Lease Agreement requires that all Key Contracts are competitively procured by the Lessee to enable the receipt of fixed price or guaranteed maximum price bids. The Lease Agreement requires the Lessee to observe all of the provisions of the Key Contracts and to diligently and without delay enforce their terms and conditions. The Lease Agreement further prohibits the Lessee from taking certain actions related to the Key Contracts without the prior written consent of the Port Authority, including, without limitation, the following:

- (i) terminating any part of any Key Contract (subject to limited exceptions);
- (ii) amending or varying any Key Contract in any material respect, other than to the extent required to comply with any amendment of the Lease Agreement or pursuant to change orders implemented in accordance with the Lease Agreement;

- (iii) consenting, approving or authorizing an assignment or replacement of such Key Contract, except as permitted by the Lease Agreement;
- (iv) in any material respect, departing from its obligations under any Key Contract; or
- (v) entering into any agreement replacing all or part of any Key Contract, unless as permitted under the Lease Agreement.

With certain permitted exceptions, the Lessee is required to include in all Contracts it executes for the performance of the D&C Work a provision that obligates each Contractor to be subject to certain payment requirements specified in the Lease Agreement. The Lessee is also obligated to require that its Contractors include the same provisions in all of their respective Contracts for the performance of the D&C Work.

Subject to certain other provisions in the Lease Agreement, the Lessee is obligated to (1) exercise Best Management Practice in each (x) Key Contract for any part of the D&C Work, and (y) Contract for the performance of the D&C Work in excess of Ten Million Dollars (\$10,000,000) that the Lessee executes, and (2) at a minimum (i) require each Contractor to carry out the D&C Work in accordance with (A) Good Order Requirements, Applicable Laws, Applicable Standards, and Best Management Practice, and (B) the terms, conditions and standards set forth in the Project Documents applicable to such Contractor, and (ii) include a covenant to maintain (other than Port Authority Governmental Approvals) and comply with all Governmental Approvals applicable to the performance of the applicable D&C Work, among other required actions related to the performance of the D&C Work set forth in the Lease Agreement.

#### Risk of Loss; Indemnification

The Lessee assumes the risk of loss or damage to all of the D&C Work prior to the completion thereof and the risk of loss or damage to all property of the Port Authority arising out of or in connection with the performance of the D&C Work. In the event of such loss or damage, the Lessee shall forthwith repair, replace and make good the D&C Work and the property of the Port Authority without cost or expense to the Port Authority.

The Lessee is required to impose and enforce obligations on its Contractors to indemnify and hold harmless the Port Authority Indemnified Parties from and against all Third-Party Claims arising or alleged to arise out of the performance of the D&C Work and for all expenses incurred by it and by them in the defense, settlement or satisfaction thereof, excepting only such risks, responsibilities, costs and expenses arising solely from the gross negligence or willful misconduct of the Port Authority. The Lessee also indemnifies and holds harmless the Port Authority Indemnified Parties from Third-Party Claims made by any Contractors for unpaid amounts for the performance of any Work.

#### Construction Security

The Lessee is obligated to cause each of its Lead Contractors to provide Construction Security, including, without limitation, the following: (x) one or more parent guaranties (if more than one, such guarantee shall be issued on a joint and several basis) from reputable parent guarantors acceptable to the Port Authority, or (y) one or more D&C Letters of Credit, or (z) a payment and performance bond from a surety acceptable to the Port Authority, or a combination of the foregoing security provided in clauses (x), (y) and (z), in each case in amounts, on terms, and in form and substance reasonably acceptable to the Port Authority and the Recognized Mortgagee and sufficient for the financing evidenced and secured by the then-applicable Financing Documents to achieve an investment grade rating.

### Construction Application

Prior to the commencement of each Phase of the D&C Work (except as permitted by the Lease Agreement), the Lessee shall execute and submit to the Port Authority for the Port Authority's approval one or more Construction Applications, which shall set forth in detail, by appropriate plans and specifications, the scope of D&C Work that the Lessee proposes to perform and the manner of and time periods for performing the same. All D&C Work shall be performed in accordance with the Construction Application submitted to and approved by the Port Authority prior to the commencement of the applicable portion of the D&C Work. The Port Authority may approve the Construction Application or may, in accordance with the TCAP Process, issue a "Conditional Approval to Construct Letter", in each case within the time periods provided under the Requirements and Provisions for Work. Upon issuance of such conditional approval by the Port Authority, the Lessee may commence relevant D&C Work only in the approved areas. If the Port Authority approves or conditionally approves a Construction Application, the Lessee may, subject to of the terms of the Lease Agreement, commence performance of the proposed D&C Work as set forth therein. In the event that the Lessee disputes the Port Authority's rejection of any Construction Application, in whole or in part, then such dispute shall be referred to the Chief Engineer pursuant to the Lease Agreement.

### Governmental Approvals

The Lessee is solely responsible for securing, obtaining and maintaining all Governmental Approvals (including any revision, modification, amendment, supplement, renewal or extension thereof) required in connection with the performance of its obligations or exercise of its rights under the Project Documents, except for the Port Authority Governmental Approvals, in each case in accordance with the provisions of the Lease Agreement.

### Warranties; Nonconforming Work

The Lessee is responsible for the rectification at its own expense of all Nonconforming Work, including, to the extent necessary, through removal and/or replacement, whether discovered by the Lessee or by the Port Authority. Under the Lease Agreement, the Lessee makes certain Warranties to the Port Authority.

In addition, the Lessee is obligated to obtain from all Contractors appropriate representations, warranties, guarantees and obligations in accordance with the Lease Agreement and other Project Documents, for work all as set forth in the Lease Agreement. The Lessee shall cause any warranties so obtained to be expressly extended to the Port Authority.

The Warranty with respect to each Phase shall be for a term of two (2) years from the issuance by the Port Authority of the Phase 1 Completion Certificate or the Completion Certificate, as applicable, but, with respect to any portion of the D&C Work that is repaired or replaced during such two (2)-years periods, such term shall be for two (2) years from the date of repair or replacement of such portion of the D&C Work; provided, that the Warranty with respect to any Installation Portion or Partial Occupancy Portion that has achieved partial completion prior to the Phase 1 Completion Date or the Completion Date, as applicable, shall commence from the issuance by the Port Authority of a "Temporary Certificate of Authorization to Occupy or Use" with respect to such Installation Portion or Partial Occupancy Portion, as applicable; and provided, further, that the Lessee shall not have any Warranty obligations with respect to any Off-Premises Facilities (or a portion thereof) once such Off-Premises Facilities (or a portion thereof) have been turned over to the Port Authority in accordance with the Lease Agreement and the related construction warranties have been assigned to the Port Authority in accordance with the Lease Agreement.

If (i) any D&C Work is identified as being Nonconforming Work at any time during the Term, or (ii) a Defect in the D&C Work encompassed by the Warranty has occurred during the applicable Warranty Period, then at any time during the Term with respect to clause (i) and at any time during the D&C Work Period and thereafter during the Warranty Period with respect to clause (ii), as applicable, the Port Authority shall be entitled to require that the Lessee (or a Contractor on its behalf), at its sole expense, rectify such Nonconforming Work or Defect, as applicable. The Lessee shall prepare, submit and, upon Port Authority approval, promptly implement a Corrective Action Plan meeting the requirements of the Lease Agreement developed by the Lessee with respect to such Nonconforming Work or Defect in the D&C Work, as applicable. If the Lessee and the Contractor have failed within thirty (30) days after receipt of written notice from the Port Authority of any Nonconforming Work or Defect, as applicable, to provide a Corrective Action Plan acceptable to the Port Authority or thereafter fail to commence and diligently continue correction of such Nonconforming Work or Defect, as applicable, pursuant to, and within the time permitted in, the Corrective Action Plan, the Port Authority shall be entitled to rectify such Nonconforming Work or Defect, in accordance with the Lease Agreement, including the right to be reimbursed for such efforts.

#### Completion of the Phase 1 D&C Work

The Lessee is obligated to achieve DBO of the Phase 1 D&C Work (other than punch list items approved by the Port Authority) by no later than the Scheduled Phase 1 DBO Date; provided, however, that the failure of the Lessee to complete such work by such date shall not constitute a default under the Lease Agreement and the sole remedy under such circumstances shall be payment of D&C Work Delay Payments pursuant to the terms of the Lease Agreement. When the Lessee believes that it has satisfied all of the requirements in order to achieve Substantial Completion of Phase 1, the Lessee shall advise the Port Authority and shall deliver to the Port Authority a certificate by an authorized officer of the Architect of Record or Engineer of Record certifying that the applicable requirements of the Lease Agreement have been met.

Following (and subject to) delivery of the above-referenced certificate to the Port Authority, the Phase 1 D&C Work will be inspected by the Port Authority (and the Lessee shall be required to cooperate and coordinate with the Port Authority to facilitate such inspection and allow the Port Authority to perform an audit review of all compliance-related documents in accordance with the TCAP Process, the Airport Security Guidelines Manual, the Requirements and Provisions for Work and within the timeframes set forth in the Requirements and Provisions for Work in order to permit the Port Authority to certify that the conditions for Substantial Completion of Phase 1 have (or have not) been met), and if the same has been completed as certified by the Lessee and the Architect of Record or Engineer of Record, and the Lessee has complied, in all respects, with the requirements of the Lease Agreement, the other Project Documents, Good Order Requirements, Applicable Standards and Applicable Law with respect to such Phase 1 D&C Work, a certificate to such effect shall be issued to the Lessee by the Port Authority (the “**Phase 1 Completion Certificate**”). The Lessee shall promptly transfer custody and control of the Off-Premises Facilities forming part of the Phase 1 Improvements to the Port Authority following receipt of the Phase 1 Completion Certificate (if not previously transferred upon completion thereof pursuant to the Lease Agreement (as described below), and the Lessee shall have no further obligations with respect to such Off-Premises Facilities and the associated Temporary Rights of Access except as otherwise set forth in the Lease Agreement or the other Project Documents. The date specified in the Phase 1 Completion Certificate is referred to in the Lease Agreement as the “Phase 1 Completion Date.”

Following Substantial Completion of Phase 1, the Lessee shall promptly proceed to achieve DBO of the Phase 1 D&C Work. The requirements for DBO of the Phase 1 D&C Work shall be as follows: (A) the Port Authority shall have delivered the Phase 1 Completion Certificate; (B) the concession spaces required to be opened and operating upon DBO of the Phase 1 D&C Work, as set forth in the Approved Pro Forma Concessions Plan or then-effective Comprehensive Concessions Plan, as applicable, shall be

substantially complete and ready for use (other than additional punch list items approved by the Port Authority), including the fit-out of such concession spaces; (C) the Phase 1 D&C Work specifically identified in the Baseline Schedule as extending beyond Substantial Completion of Phase 1 shall be substantially complete and ready for use (other than additional punch list items approved by the Port Authority); (D) the completion of Operational Readiness Activation and Transition (ORAT) for Phase 1 D&C Work; and (E) the Phase 1 D&C Work shall be fit for its intended purpose and functional to commence regular revenue passenger operations including required tenant spaces, support spaces, U.S. Customs and Border Protection/TSA spaces, furniture, fixtures and equipment, art and branding, advertising, feature zones, landscaping, and employee and passenger amenities. Subject to the Lease Agreement, the Lessee shall not use or permit the use of the Phase 1 D&C Work with respect to the New Terminal Facilities or any portion thereof by passengers or any other third parties until the Port Authority and the Lessee agree that DBO of the Phase 1 D&C Work has been achieved.

Following DBO of the Phase 1 D&C Work, the Lessee shall promptly proceed to complete all outstanding punch list items for the Phase 1 D&C Work and submit to the Port Authority a "Request for Final Inspection" with respect to the Phase 1 D&C Work in accordance with the TCAP Process. Following (A) a final inspection by the Port Authority of the Phase 1 D&C Work under the TCAP Process, (B) confirmation by the Port Authority that all outstanding punch list items for the Phase 1 D&C Work have been completed and (C) the submission of all required documentation by the Lessee to the Port Authority and the approval thereof by the Port Authority where such approval is required in accordance with the Project Documents, Good Order Requirements, Applicable Law or Applicable Standards, the Port Authority shall promptly issue a "Final Certificate of Authorization to Occupy or Use" under the TCAP Process with respect to the Phase 1 D&C Work.

#### Completion of the Phase 2 D&C Work

The Lessee is obligated to substantially complete the Phase 2 D&C Work (other than punch list items approved by the Port Authority and the Phase 2 D&C Work specifically identified in the Baseline Schedule as extending beyond Substantial Completion of Phase 2) by no later than the Outside Completion Date; provided, however, that the failure of the Lessee to complete such work by the Scheduled Completion Date (as opposed to the Outside Completion Date) shall not constitute a default under the Lease Agreement and the sole remedy under such circumstances shall be payment of D&C Work Delay Payments pursuant to the Lease Agreement.

When the Lessee believes that it has satisfied all of the requirements in order to achieve Substantial Completion of Phase 2, the Lessee shall advise the Port Authority to such effect in accordance with the Lease Agreement and other Project Documents and shall deliver to the Port Authority a certificate by an authorized officer of the Lessee and the Architect of Record or Engineer of Record certifying that the requirements of the Lease Agreement have been met and that the Phase 2 D&C Work has been constructed in accordance with the requirements of the Lease Agreement.

Following (and subject to) delivery of the above-referenced certificate to the Port Authority, the Phase 2 D&C Work will be inspected by the Port Authority (and the Lessee shall be required to cooperate and coordinate with the Port Authority to facilitate such inspection and allow the Port Authority to perform an audit review of all compliance-related documents in accordance with the TCAP Process, the Airport Security Guidelines Manual, the Requirements and Provisions for Work and within the timeframes set forth in the Requirements and Provisions for Work in order to permit the Port Authority to certify that the conditions for Substantial Completion of Phase 2 have (or have not) been met), and if the same has been completed as certified by the Lessee and the Architect of Record or Engineer of Record, and the Lessee has complied, in all respects, with the requirements of the Lease Agreement, the other Project Documents, Good Order Requirements, Applicable Standards and Applicable Law with respect to such Phase 2 D&C Work,



a certificate to such effect shall be issued to the Lessee by the Port Authority (the “**Completion Certificate**”). The Lessee shall promptly transfer, following receipt of the Completion Certificate, custody and control to the Port Authority of the Off-Premises Facilities not previously transferred to the Port Authority, and the Lessee shall have no further obligations with respect to such Off-Premises Facilities and the associated Temporary Rights of Access except as otherwise set forth in the Lease Agreement and the other Project Documents.

Following Substantial Completion of Phase 2, the Lessee shall promptly proceed to achieve DBO of the Phase 2 D&C Work. The requirements for DBO of the Phase 2 D&C Work shall be as follows: (A) the Port Authority shall have delivered the Completion Certificate; (B) the concession spaces required to be opened and operating upon DBO of the Phase 2 D&C Work, as set forth in the Approved Pro Forma Concessions Plan or then-effective Comprehensive Concessions Plan, as applicable, shall be substantially complete and ready for use (other than additional punch list items approved by the Port Authority), including the fit-out of such concession spaces; (C) the Phase 2 D&C Work specifically identified in the Baseline Schedule as extending beyond Substantial Completion of Phase 2 shall be substantially complete and ready for use (other than additional punch list items approved by the Port Authority); (D) the completion of Operational Readiness Activation and Transition (ORAT) for Phase 2 D&C Work; and (E) the Phase 2 D&C Work shall be fit for its intended purpose and functional to commence regular revenue passenger operations including required tenant spaces, support spaces, U.S. Customs and Border Protection/TSA spaces.

Subject to the terms of the Lease Agreement, the Lessee shall not use or permit the use of the Phase 2 D&C Work with respect to the New Terminal Facilities or any portion thereof by passengers or any other third parties until the Port Authority and the Lessee agree that DBO of the Phase 2 D&C Work has been achieved.

Following DBO of the Phase 2 D&C Work, the Lessee shall promptly proceed to complete all outstanding punch list items for the Phase 2 D&C Work and submit to the Port Authority a “Request for Final Inspection” with respect to the Phase 2 D&C Work in accordance with the TCAP Process. Following (a final inspection and confirmation by the Port Authority that all outstanding conditions have been completed as of the Completion Date, the Port Authority shall promptly issue a “Final Certificate of Authorization to Occupy or Use” under the TCAP Process with respect to the Phase 2 D&C Work.

#### Partial Completion

Notwithstanding the other provisions of the Lease Agreement regarding completion of D&C Work, when a material portion of the D&C Work is substantially completed or is properly usable for the purposes set forth the Lease Agreement, the Lessee may, at its discretion, advise the Port Authority to such effect and deliver to the Port Authority (i) a certificate of the Lessee certifying that the applicable requirements of the Lease Agreement with respect to such Installation Portion or Partial Occupancy Portion have been met and that such Installation Portion or the Partial Occupancy Portion, as applicable, has been constructed, in all respects, in accordance with all approved Construction Applications and the provisions of the Lease Agreement and Project Documents, and (ii) a certificate of the Architect of Record certifying that the approved Construction Applications relating to such Installation Portion or Partial Occupancy Portion are in compliance with the Project Documents, Good Order Requirements, Applicable Law and Applicable Standards, and (iii) a certificate of the Engineer of Record certifying that such Installation Portion or Partial Occupancy Portion has been constructed in accordance with the Project Documents, Good Order Requirements, Applicable Law and Applicable Standards. The Lessee shall also certify that such Installation Portion or Partial Occupancy Portion, as applicable, can be properly used without interfering in any material respect with the completion of the remaining D&C Work of the applicable Phase.

Following (and subject to) delivery of the above-referenced certificates to the Port Authority, the Port Authority may inspect and test all life safety systems of the Installation Portion or Partial Occupancy Portion, as applicable, and perform an audit review of all compliance-related documents. The Port Authority in its discretion may issue a “Temporary Certificate of Authorization to Occupy or Use” in accordance with the TCAP Process with respect to such Installation Portion or Partial Occupancy Portion.

#### Other Redevelopments

The Lessee and the Port Authority each acknowledges in the Lease Agreement the execution and delivery by it of the Construction Coordination Agreement. The Port Authority covenants in the Lease Agreement to use reasonable efforts to coordinate the D&C Work (which is being performed during the same time period as the Other Redevelopments) and such Other Redevelopments in a Non-Discriminatory Manner to the extent that unanticipated conflicts arise, so as to enable the D&C Work to continue, minimize any disruption to the traveling public, address Good Order Requirements, and accommodate performance of the Port Authority Enabling Work in each case in accordance with applicable provisions of the Lease Agreement and the Construction Coordination Agreement.

#### Shared Taxilanes: Aircraft Start-Up Positions

The Port Authority and the Lessee have agreed to comprehensive plans addressing the control and use of shared taxilanes and Aircraft start-up positions during the D&C Work Period and during the Term. The Lessee is obligated to comply with its obligations under such plans during the D&C Work Period and the Term, as applicable.

#### D&C Work Changes

The Lease Agreement permits negotiated changes to the D&C Work, and requires the Parties to use good faith efforts to negotiate a program to achieve at least \$25 million in D&C Work Cost savings, by implementing some or all of the changes to the D&C Work identified in the Lease, with such additional changes as may be agreed to by the Parties and added to an exhibit to the Lease setting forth the same.

#### Port Authority Changes

Subject to other provisions in the Lease Agreement, the Port Authority has the right from time to time during the D&C Work Period to effect a Port Authority Change affecting the design and/or the construction of the D&C Work.

Subject to other provisions in the Lease Agreement, as soon as practicable, the Lessee shall submit to the Port a proposed Change Order Proposal covering the requested Port Authority Change. If the Port Authority approves the Change Order Proposal, under the Lease Agreement, the Port Authority and the Lessee shall enter into a change order and the Lessee shall implement such change order.

The Lessee may reject a proposed Port Authority Change by notifying the Port Authority of a Rejected Port Authority Change if the Lessee can demonstrate that such Port Authority Change would either (A) materially delay achieving DBO with respect to any applicable Phase of the D&C Work, achieving Substantial Completion of Phase 1, or achieving Substantial Completion of Phase 2, or (B) materially increase direct costs to perform the Project Work.

In the event of a Rejected Port Authority Change, the Port Authority may, in its absolute discretion, direct the Lessee to proceed with implementing a Rejected Port Authority Change. In such event (w) the applicable milestone date that would be delayed by such Rejected Port Authority Change will be extended for

a period equal to the delay caused by the change, (x) Lessee shall be entitled to Lessee Damages, (y) the Lessee shall be entitled to appropriate adjustments to any KPIs under the Lease Agreement, and (z) the Lessee shall be entitled to reimbursement by the Port Authority for any net adverse impact to its forecasted costs and revenues.

If the parties are unable to reach an agreement on a proposed Port Authority Change (other than a Rejected Port Authority Change), the Port Authority may, in its sole and absolute discretion, direct the Lessee to proceed with the implementation of such Port Authority Change, and the Lessee shall perform the work in question as so directed and will be entitled to claim reimbursement from the Port Authority for any actual and reasonable incremental costs incurred by the Lessee during the D&C Work Period and the estimated incremental costs of the Lessee's performance of the Operations and Maintenance Work to the extent such Port Authority Change increases the square footage of the New Terminal Facilities or requires the use of materials or components that have materially higher costs of operations or maintenance than prior to such Port Authority Change.

#### Rules and Regulations Changes; RPW Changes and Changes to the New Airport Design Guidelines.

The Lessee is required to comply at all times with all Rules and Regulations, the New Airport Design Guidelines and the Requirements and Provisions for Work and any changes thereto (including Rules and Regulations Changes and RPW Changes), in addition to, Good Order Requirements, Applicable Law, Applicable Standards and the requirements set forth in the Lease Agreement and the other Project Documents. However, if, during the D&C Work Period, the Port Authority issues or publishes any Rules and Regulations Change or any RPW Change or informs the Lessee of any change to the New Airport Design Guidelines, which, in each case, takes or took effect after the earlier of (i) the Effective Date and (ii) the GMP Contract Date (such a change, a "Qualifying D&C Change"), and such Qualifying D&C Change cannot be complied with by the Lessee without the Lessee incurring cumulative additional D&C Work Costs for the D&C Work of not less than \$25,000,000, then such Qualifying D&C Change shall be treated, subject to certain exceptions, in all respects under the Lease Agreement as a Port Authority Change.

#### Lessee Changes

The Lessee may propose to the Port Authority during the D&C Work Period, for the Port Authority's approval, (A) with respect to the New Terminal Facilities, a change in the D&C Work that increases or reduces the scope or changes the function or intent of such D&C Work as described in the Project Documents, or deviates from the requirements of the Project Documents or the Parties' rights and/or obligations therein, or that is required to conform the D&C Work to Applicable Law or Applicable Standards, (B) with respect to the Off-Premises Facilities, a change in the D&C Work that is required to conform the D&C Work to Applicable Law or Applicable Standards, or (C) a variance from the Rules and Regulations or Good Order Requirements, but in each case excluding any proposed variance that is related to a Value Engineering Lessee Change (each such change, a "**Lessee Change**").

As soon as practicable after the Port Authority receives the proposed Lessee Change, the Port Authority and the Lessee shall meet and discuss the matters referred to therein. The Port Authority may reject the Lessee Change in the Port Authority's sole and absolute discretion; provided that the Port Authority shall not reject any proposed Lessee Change required to conform the D&C Work to Good Order Requirements, Applicable Law or Applicable Standards. Following such discussions and receipt of any additional information the Port Authority has requested, the Port Authority shall issue a response to the Lessee within the timeframes set forth in the Lease Agreement and other Project Documents. If the Port Authority rejects any proposed Lessee Change, such rejection shall not be subject to challenge by the Lessee

except with respect to rejection of a proposed Lessee Change that the Lessee asserts is required to conform the D&C Work to Good Order Requirements, Applicable Law or Applicable Standards.

If the Port Authority approves the Lessee Change, the Lessee shall prepare and submit to the Port Authority for its approval a proposed change order covering the approved Lessee Change. If the Port Authority approves the proposed change order, the Port Authority and the Lessee shall enter into a change order, which will become a part of the Construction Application and the Lessee shall design and perform all D&C Work required to implement such Lessee Changes at the Lessee's sole cost and expense. If applicable, the Scheduled Phase 1 Completion Date, the Scheduled Phase 1 DBO Date, the Scheduled Completion Date and/or the Scheduled Phase 2 DBO Date shall be extended to a new date reflected in the approved change order.

#### Value Engineering Lessee Changes

If the Parties shall have determined the existence of a Delay Event that is affecting the performance of the D&C Work in accordance with the Lease Agreement, the Lessee shall be entitled, notwithstanding the requirements for a Lessee Change set forth in the Lease Agreement, to make adjustments to implement changes in the D&C Work that represent value engineering modifications to the scope of the D&C Work that satisfy the requirements of the Lease Agreement ("Value Engineering Lessee Changes"). The Lessee shall be entitled to implement any Value Engineering Lessee Change that achieves Project Work cost savings to minimize the impact of a Delay Event on Project Work cost so long as the Port Authority determines, in its reasonable discretion, that such Value Engineering Lessee Change meet certain conditions, including, without limitation, that the change is consistent with achieving world-class New Terminal Facilities, and does not have an adverse impact on critical path items in the Baseline Schedule. As soon as practicable after the Port Authority receives the proposed Value Engineering Lessee Change, the Port Authority and the Lessee shall meet and discuss the matters referred to therein. Following such discussions and receipt of any additional information the Port Authority has requested, the Port Authority shall issue a response to the Lessee. If the Port Authority approves the proposed Value Engineering Lessee Change, the Lessee shall prepare and submit to the Port Authority a change order reflecting the Value Engineering Lessee Change and, assuming the sufficiency of the same, the Port Authority and the Lessee shall enter into such change order. Upon entering into the change order, the Lessee shall design and/or make such Value Engineering Lessee Changes at the Lessee's sole cost and expense.

#### Compliance Directives; Suspension of D&C Work

The Lease Agreement requires, in performing the D&C Work, that the Lessee shall, and shall cause its Contractor to, promptly comply, at the Lessee's cost and expense (except as otherwise provided in the Lease Agreement), with any direction issued by the Port Authority to (i) remedy any Emergency, (ii) cause the Lessee or its Contractor to comply with any Applicable Law, Applicable Standard, the Comprehensive Security Plan, the Airport Security Program (including the Exclusive Area Agreement) or any TSA-issued security directives, information circulars and public advisories which the Lessee or its Contractor has failed to comply with, and (iii) respond to Good Order Requirements.

The Port Authority, acting through the Resident Engineer or the General Manager of the Airport, shall at any time have the right and authority to suspend, in whole or in part, the D&C Work by written order to the Lessee pursuant to the Lease Agreement.

#### Compensation Events

Under the Lease Agreement, certain activities are deemed to be "Compensation Events" triggering compensation obligations of the Port Authority in favor of the Lessee. The Lessee is obligated to give

written notice to the Port Authority within twenty (20) Business Days following the date on which the Lessee first becomes aware (or should have become aware, using all reasonable due diligence) that an event has occurred that the Lessee claims is a Compensation Event (a “Compensation Event Notice”). The Compensation Event Notice will set forth the pertinent details regarding the Compensation Event as required by the Lease Agreement. The Lessee will bear the burden of proving the occurrence of a claimed Compensation Event and the resulting impacts, including the Lessee Damages. If, for any reason, the Lessee fails to give the written Compensation Event Notice within the time period required by the Lease Agreement, the Lessee will be deemed to have irrevocably and forever waived and released any Claim or right to Lessee Damages or other adverse effects on costs, expenses and liabilities attributable to such event that the Lessee may otherwise have been able to claim as a Compensation Event.

After the Lessee submits a Compensation Event Notice, the Port Authority may, but is not required to, obtain, at its sole cost and expense from a technical consultant, a comprehensive report as to the Lessee’s estimate of the Lessee Damages attributable to the claimed Compensation Event. Without prejudice to the foregoing, the Port Authority may, but is not required to, prepare any such report or study on its own behalf. If it is finally determined in accordance with the Lease Agreement that the Lessee’s estimate of the Lessee Damages is materially incorrect, the Lessee will reimburse the Port Authority for its reasonable costs and expenses in connection with the preparation of any such report or study by the Port Authority or a consultant.

The Lessee damages with respect to any Compensation Event will be calculated as the sum of (A) any adverse Net Cost Impact calculated pursuant to the Lease Agreement and (B) solely with respect to a Port Authority Change (including a Rejected Port Authority Change), any additional amount payable to the Lessee pursuant to the Lease Agreement, without duplication (“Lessee Damages”). The Lessee Damages will be net of all applicable insurance proceeds payable (or that would have been payable but for certain conditions as described in the Lease Agreement) to the Lessee or its Contractors on account of the Compensation Event.

The Port Authority shall not be required to pay any Lessee Damages until such Lessee Damages exceed the Port Authority Contingency Amount. Without limiting the requirements in respect of Compensation Event payments generally, to the extent any Lessee Damages calculation includes an amount designated to reimburse the Lead Contractor for delay liquidated damages paid by such Lead Contractor, such designated amount of Lessee Damages shall be payable no earlier than the date of receipt by the Lessee of the corresponding delay liquidated damages by the Lessee (whether by payment by the Lead Contractor or through offset against amounts payable by the Lessee to the Lead Contractor), and, when received from the Port Authority, such designated amount shall be applied by the Lessee exclusively towards reimbursement of the Lead Contractor for any such reimbursable delay liquidated damages.

In addition, the Lessee Damages shall also be net of all amounts recovered, or made available to the Lessee from any Sublessee or other third-party source, with respect to the adverse Lessee Damages attributable to such Compensation Event. The Lessee shall use reasonable efforts to pursue any and all potential sources of funds or reimbursement from any Sublessee or other third-party source to offset Lessee Damages.

Without limiting the Lessee’s rights with respect to non-monetary relief for Delay Events or the termination provisions of the Lease Agreement, the Lessee Damages as determined according to the Lease Agreement for Compensation Events will represent the sole right to compensation and damages for the adverse effects of a Compensation Event against the Port Authority and the Port Authority and its officers, directors, Commissioners, agents, authorized representatives, consultants and employees. Compensation Events can occur only during the D&C Period.

If the Port Authority and Lessee cannot agree on the amount of Lessee Damages or method of payment thereof in connection with a Compensation Event, or if the Port Authority disagrees that a claimed Compensation Event has occurred (or as to its consequences) or that the Lessee is entitled to relief under the Lease Agreement, the Parties shall resolve such dispute in accordance with the dispute resolution provisions of the Lease Agreement.

Following a determination of the Lessee Damages pursuant to the Lease Agreement, the Port Authority will pay the Lessee for such Lessee Damages in accordance with the following terms and conditions:

- (a) if any portion of Lessee Damages is to pay for prior D&C Work Costs during the D&C Work Period which have already been incurred by the Lessee or its Contractor, the Port Authority shall pay such portion in lump sum within forty (40) Business Days after the final determination of such portion of Lessee Damages, unless otherwise agreed to by the Lessee;
- (b) if any portion of Lessee Damages is to pay for future D&C Work Costs during the D&C Work Period, then the Port Authority shall have no obligation to make advance payments with respect thereof and shall have the right to pay such portion of the Lessee Damages as such costs are incurred or paid by the Lessee in periodic progress payments in arrears or otherwise in accordance with the Port Authority's standard practices and procedures for paying its contractors and Applicable Law;
- (c) if any portion of Lessee Damages is to pay for future D&C Work Costs during the D&C Work Period and the Port Authority elects, at its option, to pay such portion as a direct, lump-sum payment, the net present value of such portion of the Lessee Damages will be determined using a discount rate mutually agreed by the Parties; and
- (d) if the Port Authority elects to make periodic payments, at any time subsequent to such election described in paragraph (b) above, the Port Authority may elect to complete payment of such Lessee Damages by lump sum payment of the present value of the remaining balance of such Lessee Damages (or portion thereof) using the discount rate specified in paragraph (c) above;

provided that (i) to the extent the Parties mutually agree to a schedule for the payment of any Lessee Damages, the Port Authority shall pay such Lessee Damages in accordance with such schedule, and (ii) only with respect to Lessee Damages (or a portion thereof) payable from and after the commencement of payment by the Lessee of rentals under the Lease Agreement, the Port Authority may elect to pay for such Lessee Damages by one or more adjustments to such rentals.

#### Delay Events

The term "Delay Event" means any of the following events or conditions (subject to certain limitations set forth in the Lease Agreement), which occurs during the D&C Work Period that causes a delay in the Lessee's performance of the Project Work or otherwise adversely affects the Lessee's ability to perform the D&C Work in compliance with the Project Documents):

- the occurrence of any Force Majeure event with respect to the Lessee or any Lessee-Related Entity;
- the discovery of any Unknown Condition by the Lessee during the performance of the D&C Work that adversely impacts the Lessee's performance of the D&C Work;
- the existence of any agreement, easement, right of entry, covenant, condition, restriction or other instrument to which the New Terminal Facilities or Off-Premises Facilities are subject and which

materially interferes with the performance of the D&C Work and such agreement, easement, right of entry, covenant, condition, restriction or other instrument (A) is not known to the Lessee or any Lessee-Related Entity (it being understood that the Lessee will be charged with the knowledge of JetBlue as a result of JetBlue's operations as lessee on the Initial Premises prior to the Terminal 6 Parcel Lease Commencement Date), (B) was not notified to the Lessee by the Port Authority in, or cannot be reasonably inferred from the Disclosed Documents, (C) is not identified in, or is not apparent upon inspection of public records, or cannot be reasonably inferred from, the Available Documents or publicly available information, and (D) could not reasonably have been identified through review and analysis of Available Documents or publicly available information;

- the issuance of any injunction, restraining order or other similar legal order by a court of competent jurisdiction under Applicable Law based on a claim that challenges the Port Authority's authority to enter into the Lease Agreement or the transactions contemplated thereby, which injunction or order prohibits or enjoins prosecution of the D&C Work;
- any Rules and Regulations Change or RPW Change (to the extent not covered otherwise by any of the other Delay Events or in an approved change order implementing a Port Authority Change) that materially and adversely impacts the Lessee's performance of the D&C Work;
- any suspension of the D&C Work by the Port Authority in excess of twenty-four (24) hours made in response to (a) the existence of conditions unsafe for workers, other personnel or the general public, (b) an Emergency, (c) a Force Majeure event, (d) the presence of a "VIP," dignitary or other person requiring special security arrangements or expedited handling at the Airport, or (e) as the Port Authority reasonably determines to be necessary to respond to Good Order Requirements;
- the occurrence of any Compensation Event or event that would have constituted a Compensation Event but for a Force Majeure event with respect to the Port Authority or an Emergency;
- any breach by the Port Authority of any material obligation under the Lease Agreement or the Construction Coordination Agreement (to the extent not covered otherwise by any of the other Delay Events); or
- any failure by British Airways to comply with the surrender obligations set forth in the British Airways Lease with respect to the Terminal 7 Parcel on or prior to the end of the Existing Terminal Facilities Stub Operating Period as a result of a delay to the completion of the Terminal 8 site at the Airport required for British Airways' relocation to the Terminal 8 site at the Airport;

except, in each case, to the extent arising by reason of or attributable to (A) the negligence or willful misconduct of a Lessee-Related Entity or (B) any act or omission by a Lessee-Related Entity in breach of the provisions of the Lease Agreement or any other Project Document.

In the event of the occurrence of a Delay Event, the Lessee shall give a Delay Event Notice. The Delay Event Notice will include certain pertinent details set forth in the Lease Agreement. If for any reason the Lessee fails to give such written Delay Event Notice within the time period required by the Lease Agreement, the Lessee will be deemed to have irrevocably and forever waived and released any Claim or right to time extensions or any other relief with respect to such event that the Lessee may otherwise have been able to claim as a Delay Event pursuant to the Lease Agreement or any Project Document.

Upon the occurrence of an event that is or may be a Delay Event, the Lessee will, and will cause each of its Contractors to, take all steps reasonably necessary to mitigate the effects of such event, including

all steps that would generally be taken in accordance with Best Management Practice. The Lessee will promptly deliver to the Port Authority an explanation of the measures being undertaken to mitigate the delay and other consequences of such event. The Lessee will notify the Port Authority within fifteen (15) days following the date on which it first became aware (or should have become aware, using all reasonable due diligence) that such event has ceased. In the event that the Lessee fails to take (or to cause its Contractors to take) mitigation measures as required pursuant to the Lease Agreement, the delay and excuse of performance permitted under the Lease Agreement shall be reduced to the extent that such mitigation measures, if taken, would have reduced the impact of such event on the Lessee.

Notwithstanding the occurrence of an event that is or may be a Delay Event, the Lessee will continue its performance and observance pursuant to the Lease Agreement of all of its obligations and covenants to be performed to the extent that it is reasonably able to do so and will use reasonable efforts to, and will cause each of its Contractors to use reasonable efforts to, minimize the effect and duration of such event. Without limiting the foregoing, the occurrence of a Delay Event will not excuse the Lessee from timely payment of monetary obligations pursuant to the Lease Agreement (except as otherwise set forth in the Lease Agreement) or compliance with Good Order Requirements, Applicable Law, Applicable Standards, the Requirements and Provisions for Work and other Project Documents, except temporary inability to comply as a direct result of the Delay Event or other excuse from compliance with respect to performance of the D&C Work or performance of the Operations and Maintenance Work as summarized below.

#### Delay Events Affecting Performance of the D&C Work

Subject to the provisions of the Lease Agreement, a Delay Event that is agreed between the Parties occurring during the D&C Work Period affecting the performance of the D&C Work will (A) excuse the Lessee from performance of its obligations to perform the D&C Work pursuant to the Lease Agreement but only to the extent that such D&C Work is directly affected by such Delay Event, (B) extend the Scheduled Phase 1 Completion Date, the Scheduled Phase 1 DBO Date, the Scheduled Completion Date and/or the Scheduled Phase 2 DBO Date day-for-day for any delays in the performance of the D&C Work directly caused by such Delay Event using a Time Impact Analysis, in each case, based on the then-effective Baseline Schedule and taking into account impacts of the Delay Event on critical path items in accordance with the Requirements and Provisions for Work, but only to the extent the Delay Event actually delays the performance of the D&C Work beyond such applicable date, and (C) permit the Lessee to implement a Value Engineering Lease Change to achieve cost savings to minimize the impact of such Delay Event.

#### Delay Events Affecting Performance of the Operations and Maintenance Work

Subject to the terms of the Lease Agreement, a Delay Event that is agreed between the Parties affecting performance of the Operations and Maintenance Work will (i) excuse the Lessee from its obligations to perform Operations and Maintenance Work during the pendency of such Delay Event pursuant to the Lease Agreement but only to the extent that such Operations and Maintenance Work is directly affected by such Delay Event and (ii) with respect to the Lessee's obligations to satisfy and achieve KPIs as more particularly described in the Lease Agreement shall entitle the Lessee to adjustments (either temporary or permanently) as necessary to reflect the impact of such Delay Event upon the Lessee's ability to satisfy such obligations.

#### Sole Remedy and Release of Claims

Without limiting the Lessee's rights with respect to monetary relief for Compensation Events, the delay incurred or schedule relief from the Lessee's obligations under the Lease Agreement as determined according to the Lease Agreement with respect to a Delay Event during the D&C Work Period will



represent the sole and exclusive right to relief for the adverse effects of a Delay Event with respect to the D&C Work against the Port Authority and the Port Authority and its related parties; provided that the foregoing limitation shall not apply to any Claims of the Lessee against the Port Authority during the D&C Work Period arising out of or relating to certain actions or omissions of the Port Authority in violation of the Lease Agreement. If (i) the Parties cannot agree on the extent of any delay incurred or non-monetary relief from the Lessee's obligations under the Lease Agreement, or (ii) the Port Authority disagrees that a claimed Delay Event has occurred (or as to its consequences) or that the Lessee is entitled to relief under the Lease Agreement, the Parties shall resolve such dispute in accordance with the dispute resolution provisions of the Lease Agreement.

### ***Term***

The term of the Lease Agreement (the "Term") shall commence as to any portion of the Premises on the applicable Lease Commencement Date and shall expire on the earlier of (i) the Expiration Date and (ii) any earlier termination of the Lease Agreement in accordance with its terms

### ***Rental***

#### Ground Rent

For each year or portion thereof occurring during the Term, the Lessee shall pay to the Port Authority Ground Rent with respect to (x) Terminal 6 Parcel from and after the Effective Date, and (y) the Terminal 7 Parcel from and after the Terminal 7 Parcel Lease Commencement Date.

As further specified in the Lease Agreement, Ground Rent shall be payable by the Lessee in advance on the Effective Date and monthly thereafter on the first day of each calendar month, in an amount equal to one-twelfth (1/12) of the annual applicable Ground Rent. On January 1 of each applicable New Year following the Effective Date, the Ground Rental Rate for such New Year will equal the sum of (A) Ground Rent for the previous Calendar Year *plus* (B) the product of (x) Ground Rent for the previous Calendar Year and (y) the greater of (I) 4% and (II) fifty percent (50%) of the CPI Percentage Increase for the New Year. The payment of Ground Rent shall be pro-rated for stub periods, as applicable. The payment of Ground Rent shall be senior and prior to the payment of any Lessee Debt or any debt service thereof and payable as a Permitted O&M Expense.

#### First Additional Rent

In the event that the Lessee has entered into a Leasehold Mortgage, in addition to all other Rentals due under the Lease Agreement, the Lessee shall pay the Port Authority the **First Additional Rent**; provided that if more than one Leasehold Mortgage is entered into contemporaneously with respect to a single debt financing, only one First Additional Rent payment will be due annually with respect to such Leasehold Mortgages collectively. Further, any financing for Phase 2 may constitute additional indebtedness contemplated under the Financing Documents and Leasehold Mortgage(s) entered into in connection with Phase 1, and shall not be subject to a separate leasehold mortgage fee or rental payment under the Lease Agreement. The payment of the First Additional Rent shall be pro-rated for stub periods, as applicable, and shall be senior and prior to the payment of any Lessee Debt or any debt service thereof and payable as a Permitted O&M Expense.

#### Second Additional Rental

For each year or portion thereof occurring during the Term, commencing on the Terminal 7 Parcel Lease Commencement Date and continuing to and including the Expiration Date, in addition to all other

Rentals due under the Lease Agreement, the Lessee shall pay to the Port Authority the **Second Additional Rental** in an amount equal to the Second Additional Rental Rate for such year, as set forth in an exhibit to the Lease Agreement describing such *Second Additional Rental Rate*. The Second Additional Rental shall be payable by the Lessee in advance on the Terminal 7 Parcel Lease Commencement Date and monthly thereafter on the first day of each calendar month, in an amount equal to one-twelfth (1/12) of the annual Second Additional Rental. The payment of Second Additional Rental shall be pro-rated for stub periods, as applicable.

Notwithstanding the above paragraph, during each month during the years from and including 2030 to and including 2035 (the “Second Additional Rent Deferral Period”), no Second Additional Rental shall be due or payable in such month, and the Lessee’s obligation to pay the amount of such Second Additional Rental shall be deferred as described below, if the Lessee’s projected Senior Debt Service Coverage Ratio for the 12-month period including such month, as calculated as of the most recent Calculation Date preceding such month and assuming payment of such Second Additional Rental, would be less than 1.2x, provided that:

(i) the amount of Second Additional Rental that may be deferred in any Calendar Year shall not exceed Twenty-five Million Dollars (\$25,000,000) and the amount of Second Additional Rental that may be deferred throughout the entirety of the Second Additional Rent Deferral Period shall not exceed One Hundred Million Dollars (\$100,000,000) in the aggregate;

(ii) any Second Additional Rental amounts that are deferred in accordance with the Lease Agreement (“Deferred Second Additional Rent”) shall accrue interest at a rate of 7.5% per year (with interest accruing from the date such Second Additional Rental amount was deferred through the date of payment);

(iii) Deferred Second Additional Rent, and interest thereon, shall become due and payable beginning in January 2036, in each month only to the extent that Lessee’s projected Senior Debt Service Coverage Ratio for the 12-month period including such month, as calculated as of the most recent Calculation Date preceding such month and assuming payment of such Deferred Second Additional Rent and interest thereon, would equal or exceed 1.3x;

(iv) no Distributions shall be permitted if at any time there is Deferred Second Additional Rent and/or any interest thereon then accrued and unpaid; and

(v) upon the consummation of any Recapitalization event, prior to any application of distributable proceeds from such Recapitalization event to Distributions, such proceeds shall be applied to payment of Deferred Second Additional Rent, and interest thereon, until Deferred Second Additional Rent, and interest thereon, are paid in full.

The payment of Second Additional Rental shall be senior and prior to the payment of any Lessee Debt or any debt service thereof and payable as a Permitted O&M Expense. Deferred Second Additional Rent, and any accrued interest thereon, shall constitute Second Additional Rent and shall be payable at the same priority of payment as Second Additional Rent that has not been deferred. The deferral of any portion of Second Additional Rental pursuant to the Lease Agreement shall not defer or otherwise impact the Lessee’s obligations under the Lease Agreement to pay all other Rentals in accordance with the terms and conditions of the Lease Agreement.

### Third Additional Rental

The Lessee shall pay to the Port Authority the **Third Additional Rental** pursuant to the Lease Agreement. The payment of Third Additional Rent shall be senior and prior to the payment of any Lessee Debt or any debt service thereof and payable as a Permitted O&M Expense.

### Excess Value Rent

Certain additional rental amounts due under the Lease Agreement are referred to as “**Excess Value Rent**” and shall be due to the Port Authority only after the Lessee has received certain specified levels of internal rate of return on sponsor investment.

### Concessions Revenue Rents

From and following the Terminal 7 Parcel Lease Commencement Date and throughout the Term, the Lessee shall require each Concession Sublessee operating in the Existing Terminal Facilities to pay rentals to the Lessee on terms and conditions specified in the applicable Concession Sublease. For each Calendar Year, or portion thereof, occurring on and after the Terminal 7 Parcel Lease Commencement Date and throughout the Term, the Lessee, in addition to all other Rentals due under the Lease Agreement, shall pay Concessions Revenue Rent to the Port Authority with respect to any rentals received from Concession Sublessees operating in the Existing Terminal Facilities on the Terminal 7 Parcel, calculated in accordance with the Lease Agreement.

Throughout the **Concession Period**, the Lessee shall require each Concession Sublessee operating in the New Terminal Facilities to pay rentals to the Lessee on terms and conditions specified in the applicable Concession Sublease. For each Calendar Year, or portion thereof, occurring during the Concession Period, the Lessee, in addition to all other Rentals due under the Lease Agreement, shall pay **Concessions Revenue Rent** within thirty (30) days after the end of each Current Calendar Year.

During the Deferral Period, payment of a portion of the Concessions Revenue Rent equal to 50% of the Concessions Revenue Rent for the then Current Calendar Year shall be paid to the Port Authority senior and prior to the payment of any Lessee Debt or any debt service thereof, and payment of the remaining portion of the Concessions Revenue Rent (the “Subordinate Concessions Revenue Rent”), including any amounts attributable to any minimum guaranteed rent, shall be subordinate to payment of Lessee Debt constituting senior debt or subordinate debt (of any tier) extended to the Lessee by any party other than a direct or indirect constituent owner of the Lessee, but senior and prior to the payment of Lessee Debt constituting loans made by the direct or indirect constituent owners of the Lessee to the Lessee (whether structured as loans or preferred equity). To the extent Lessee does not have sufficient funds available to pay any amount of Subordinate Concessions Revenue Rent when due, then Lessee may defer payment of such Subordinate Concessions Revenue Rent (“Deferred Concessions Revenue Rent”); provided, that (y) any Deferred Concessions Revenue Rent shall accrue interest at the rate of 7.5%, and (z) no Distributions shall be permitted if at any time there is Deferred Concessions Revenue Rent then accrued and unpaid.

Solely for purposes of the Lease Agreement provisions related to Concession Revenue Rents, the Gross Rents received by the Lessee under any arrangement whereby the Lessee engages in the concession sales of goods or services to the general public at the Premises pursuant to the Lease Agreement shall be included in the Gross Rents.

### Port Authority Cost Reimbursement

The Lessee will reimburse the Port Authority for reasonable third-party out-of-pocket expenses incurred by the Port Authority directly related to the development of the Premises pursuant to the Lease Agreement in an aggregate amount not to exceed \$40,000,000. Amounts equal to \$25,000,000 shall be paid during the construction of the New Terminal Facilities on the Terminal 6 Parcel, and an amount equal to \$15,000,000 shall be paid during the Phase 2 Term of Months. Any such costs or sums incurred by the Port Authority and reimbursed by the Lessee shall constitute additional rental under the Lease Agreement *pari passu* in priority to Ground Rent.

### O&M Expenses

In addition to the Rentals required to be paid under the Lease Agreement, the Lessee shall pay Permitted O&M Expenses as and when such amounts shall become due and payable. The payment of Permitted O&M Expenses shall be, and the payment of Other O&M Expenses may be, senior and prior to the payment of any Lessee Debt or any debt service thereof, and the payment of Rentals required to be paid under the Lease Agreement (other than Excess Value Rent) shall be senior and prior to the payment of any Other O&M Expenses.

### *Use of Premises*

#### General

The Lessee shall use and operate the Premises as an airline passenger terminal and related purposes, including the use and occupancy by (i) the Lessee, (ii) Scheduled Aircraft Operators who are Airline Sublessees, (iii) Concession Sublessees and other Sublessees, (iv) Governmental Authorities and (v) the Port Authority, in each instance in accordance with, pursuant to and subject to the terms of the Lease Agreement. In connection with such use and operation of the Premises, the Lessee is obligated to perform the Operations and Maintenance Work; provided that the Lessee's maintenance and repair obligations with respect to the Ground Floor of the Yellow Garage portion of the Ground Transportation Center shall be limited to light maintenance and repairs.

#### Use for Passenger Terminal Related Services

The Lease Agreement contemplates the Existing Terminal Facilities and the New Terminal Facilities being used by Scheduled Aircraft Operators who are Airline Sublessees pursuant to the Lease Agreement or who have arrangements with an Airline Sublessee solely, and by the Lessee, in connection with such Scheduled Aircraft Operators' business of transportation by Aircraft and for activities reasonably required only for such purposes as described in the Lease Agreement, including aircraft transportation and ancillary uses customary for a commercial air terminal and air transportation business.

#### Conduct of Operations

The Lessee is required to diligently conduct all its operations at the Premises in a safe and careful manner, in accordance with Best Management Practice, Applicable Laws, the Applicable Standards and Good Order Requirements; provided that, from and after the Terminal 7 Parcel Lease Commencement Date, the Lessee shall diligently operate the Existing Terminal Facilities on the Terminal 7 Parcel (or any portion thereof) at a standard and level of quality consistent with Applicable Laws, all Applicable Standards and Good Order Requirements.

### Concessions

Subject to the terms of the Lease Agreement, the Existing Terminal Facilities and the New Terminal Facilities shall be used by Concession Sublessees solely in connection with retail sales of goods and services (including food and beverage, news and gifts, duty free, retail and specialty retail, spas, shoe shines, foreign currency exchange, and automated retail machines) at the Premises and for activities reasonably required for such purposes and for such purposes and activities only.

### Reciprocal Rights Agreement

The Lessee is obligated under the Lease Agreement to comply with and perform its obligations under the Reciprocal Rights Agreement that it has entered into with JetBlue. As between the Lessee and the Port Authority, the Lessee is solely responsible for the JMP RRA Work. If (i) the JetBlue T5 Lease terminates and is not renewed on similar terms, and (ii) either (x) a substitute lease permitting the use of Terminal 5 existing infrastructure as a passenger terminal is entered into by the Port Authority or (y) the use of the Terminal 5 existing infrastructure as a passenger terminal is continued directly by the Port Authority, the Port Authority is obligated to use reasonable efforts to provide access to, and maintain the right to the areas provided to the Lessee under the Reciprocal Rights Agreement. Further, if the JetBlue T5 Lease terminates and is not renewed on similar terms, the Port Authority will (a) provide access to, and maintain the right to certain easement area that is being provided to the Lessee under the Reciprocal Rights Agreement or (b) provide the Lessee with other alternative airside access to runways and taxiways at the Airport from certain areas at Gate 31 as further described in the Reciprocal Rights Agreement.

The Lessee is obligated to permit JetBlue to use the Ground Transportation Center and other portions of the Premises in accordance with the Reciprocal Rights Agreement and related easements. The Lessee must cooperate with the Port Authority in exercising its rights under the Terminal 5 Lease if in the event of a JetBlue default thereunder (including permitting the Port Authority such rights otherwise exercisable by JetBlue under the Reciprocal Rights Agreement to the extent such remedy is available under the Terminal 5 Lease) and the Port Authority's rights of entry under the Lease Agreement shall include areas as to which the Lessee has a right of access pursuant to the Reciprocal Rights Agreement.

### ***Security***

#### Comprehensive Security Plan

The Lessee and the Port Authority have agreed upon a **Comprehensive Security Plan or CSP**, which describes security to be performed by the Lessee throughout the Term on or at the Premises. The Comprehensive Security Plan is required to be maintained by Lessee throughout the Term, and the Lessee shall impose and enforce the applicable requirements of the Comprehensive Security Plan on its Sublessees. The Comprehensive Security Plan shall at all times throughout the Term comply with the requirements of 49 C.F.R. Parts 1520 and 1542, in addition to Port Authority CSO security requirements for airport terminals, including the requirements identified in the Lease Agreement.

The Lessee has agreed to assume and fulfill all of the Port Authority's obligations and responsibilities with respect to the Premises under the Comprehensive Security Plan and to take all measures required, necessary or appropriate to implement and carry out the requirements of the Comprehensive Security Plan. The Lessee shall investigate each and every security violation or breach with respect to the Premises, determine the cause thereof and take appropriate and timely action in response thereto.

In the event of a Lessee failure to comply with any security requirement, pursuant to the Comprehensive Security Plan, or ASP, or failure to achieve compliance by the relevant Airline Sublessees with any EAA or any applicable federal regulation, the Airport Security Manager may halt Project Work until compliance by the Lessee is satisfied and/or the Port Authority may perform on behalf of the Lessee to ensure the security requirements are satisfied and one hundred fifteen percent (115%) of all costs and expenses of the Port Authority in connection therewith shall be payable by the Lessee to the Port Authority on demand without any days of grace and without prejudice to any other rights and remedies of the Port Authority under the Lease Agreement. Such amount, if any, shall constitute additional rental due and payable to the Port Authority under the Lease Agreement, *pari passu* in priority to Ground Rent.

### Security Systems

The Lease Agreement requires the Lessee to regularly conduct inspections of its security systems, keep the security systems operational and in compliance with the Comprehensive Security Plan, the ASP, each EAA, the Rules and Regulations, Applicable Laws and Applicable Standards, maintain the capabilities to immediately deactivate Airport security identification cards or badges to prevent access to restricted security areas, maintain and operate its security access control system, and immediately report deficiencies to the Airport Security Manager.

### ***Insurance***

The Lessee must procure and maintain, and where applicable and expressly provided for in the Lease Agreement cause to be procured and maintained by third parties, insurance policies required under the Lease Agreement, including, but not limited to, casualty insurance for the full replacement cost of the Premises, Commercial General Liability, Commercial Automobile Liability, Pollution Legal Liability and OCIP Contractors Pollution Liability, Professional Liability Insurance, and other liability insurance, including Liquor Liability Insurance, Cyber Liability, Network Security and Data Breach Insurance, builder's risk insurance and business interruption insurance, each at amounts specifically set forth in the Lease Agreement. The Lessee is required to use the proceeds of any property insurance policy (other than business interruption insurance) for the repair, replacement or rebuilding of the Premises, subject to the Financing Documents. Except as expressly provided in the Lease Agreement, all losses within the scope of the insurance requirements under the Lease Agreement which are not recoverable by insurance or deductible will be the responsibility of and paid by the Lessee.

### ***Damage to or Destruction of the Premises***

If the Premises, or any part thereof, shall be damaged by fire, the elements, the public enemy or other casualty, the Lessee shall promptly remove all debris resulting from such damage from the Premises, and to the extent, if any, that the removal of debris under such circumstances is covered by insurance, the proceeds thereof (other than proceeds of any business interruption insurance) actually made available to the Lessee shall be used by the Lessee for that purpose in compliance with the Lease Agreement, subject to any requirements in the Financing Documents, if any, regarding the conditions to the release of the proceeds of casualty insurance from the applicable collateral account of the Lessee.

If the Premises, or any part thereof, shall be damaged by fire, the elements, the public enemy or other casualty, the Premises shall be restored, replaced and rebuilt by the Lessee with due diligence in accordance with the plans and specifications for the Premises approved by the Port Authority as they existed prior to such damage by and at the expense of the Lessee and if such damage is covered by insurance, the proceeds thereof (other than proceeds of any business interruption or similar insurance) actually made available to the Lessee

shall be used by the Lessee for that purpose, subject to any requirements in the Financing Documents if any, and the terms of the Lease Agreement.

The Lessee has agreed that, except to the extent expressly provided in the Lease Agreement, no damage or destruction of the Premises shall entitle the Lessee to terminate the Lease Agreement, or to be released or relieved of its obligations thereunder, including without limitation the obligation to pay all Rentals.

### ***Indemnity***

Without limiting any other indemnity, hold harmless or defense obligations of the Lessee under the Lease Agreement, or any rights and remedies available to the Port Authority at law or in equity or under the Lease Agreement, the Lessee must indemnify and hold harmless the Port Authority Indemnified Parties, from and against any and all Claims and Losses, and shall reimburse such Port Authority Indemnified Parties for such Port Authority Indemnified Parties' Losses, in each case incurred in connection with the defense of all Third-Party Claims, including, but not limited to, Third-Party Claims for death or personal injuries or for property damages and Claims of the City against the Port Authority pursuant to the provision of the Basic Lease whereby the Port Authority has agreed to indemnify the City against Claims, in each case to the extent arising out of: (i) any breach or default of any term or provision of the Lease Agreement or any other Project Document by any Lessee-Related Entity and/or Equity Member, including, without limitation, the representations, warranties or covenants made under the Lease Agreement; (ii) the use, occupancy, operation, design, construction and financing of the Premises, the Rights of Access and the O&M Access Areas, and any and all activities incidental to or in furtherance thereof, including the performance of the D&C Work, in each case by Lessee, any Lessee-Related Entity and/or Equity Member or others with the consent of a Lessee-Related Entity and/or any Equity Member; (iii) any other acts or omissions of any Lessee-Related Entity and/or Equity Member, or their respective guests, invitees or other persons who are doing business with such Lessee-Related Entity and/or Equity Member, in each case, on the Premises, the Rights of Access and/or the O&M Access Areas; (iv) any other acts or omissions of any Lessee-Related Entity and/or Equity Member in connection with the Project Work (whether on Premises or on any other portion of the Airport); and (v) any claim by any Contractor for Losses caused by interference by the Lessee or any other Lessee-Related Entity with, or hindering the progress of, completion of Project Work being performed by such Contractor, or resulting from failure of the Lessee or any other Lessee-Related Entity to cooperate in the performance of such Project Work (any such Claim, an "Indemnified Claim"); provided, that the indemnity provided in this paragraph shall not apply to (1) Losses (x) arising from any Excluded Liabilities, (y) arising from the gross negligence or willful misconduct of the Port Authority or any of its officers, employees and agents, (z) to the extent that indemnity would be precluded pursuant to the provisions of Section 5-321 of the General Obligations Law of the State of New York or (2) Lessee Damages to be paid by the Port Authority pursuant to the Lease Agreement; and provided further that the indemnity provided this paragraph shall not apply to Losses suffered by the Port Authority Indemnified Parties caused solely as a result of the negligence of the Port Authority, as finally determined pursuant to a non-appealable judgment of a court of competent jurisdiction.

### ***Condemnation***

If a Taking covers the entire Premises, then the Lease Agreement shall, as of the Date of the Taking, cease and terminate in the same manner and with the same effect as if such date were the original date of expiration of the Lease Agreement. In such event, the Port Authority shall pay to the Lessee fair value of Lessee's leasehold interests in the Premises; provided, however, that (x) the Port Authority's foregoing payment obligation to the Lessee shall be limited to a proportionate share (as determined by the Port Authority in its sole and absolute discretion following consultation with affected tenants at the Airport) of the condemnation proceeds available

to be paid to the Lessee and the Port Authority's other affected tenants at the Airport, and (y) such available condemnation proceeds shall be limited to the amount of the condemnation proceeds received by the Port Authority from the condemning authority and remaining after the Port Authority has been compensated for (A) the value of its leasehold interest in the portion of the Airport subject to the Taking or (B) the sum of the unamortized portion of the Port Authority's investment in improvements at the portion of the Airport subject to the Taking and any remaining deferred charges for equipment acquired by the Port Authority for use at or in connection with its operation of the portion of the Airport subject to the Taking, whichever of (A) or (B) is greater. In making the determination of "proportionate share" provided in the first proviso of the preceding sentence, the Port Authority's determination shall be final and binding on the Lessee. Any payment made by the Port Authority as described in this paragraph is subject and subordinate in all respects to payment of debt service on Consolidated Bonds as required by the applicable provisions of the Consolidated Bond Resolution and payment into the General Reserve Fund of the amount necessary to maintain the General Reserve Fund at the amount specified in the General Reserve Fund Statutes. Any payment made by the Port Authority as described in this paragraph is not secured by or payable from the General Reserve Fund. Additionally, the Port Authority's obligation to pay any amount as described in this paragraph does not create any lien on, pledge of or security interest in any revenues, reserve funds or other property of the Port Authority.

If the Taking covers a Material Part of the Premises or of the Public Landing Area, then the Lessee and the Port Authority shall each have an option exercisable by notice given within ten (10) Business Days after the Date of the Taking to terminate the Lease Agreement with respect to the Premises not taken, as of the Date of the Taking, and such termination shall be effective as if the Date of the Taking were the original date of expiration of the Lease Agreement. If either Party exercises this option, the Port Authority shall pay to the Lessee fair value of Lessee's leasehold interests in the Premises; provided, however, that any such payment shall be limited in a manner similar to the limits described above.

If a Taking covers less than a Material Part of the Premises or the Public Landing Area, or if a Taking covers a Material Part of the Premises or of the Public Landing Area but neither party exercises its option to terminate the letting of the Premises not taken, then: (i) the Term shall continue as to the portion of the Premises not so taken, and the letting as to the part of the Premises so taken shall, as of the Date of the Taking, cease and terminate in the same manner and with the same effect as if the Term had on that date expired, (ii) Ground Rent shall be reduced, pro-rata, based on the number of acres which are the subject of the Taking, (iii) the Lessee (subject to all other applicable terms and provisions of the Lease Agreement) shall proceed diligently to restore any remaining part of the Premises not so taken so that the Premises shall be a complete, operable, self-contained architectural unit in good condition and repair, and the proceeds of that portion of any award paid in trust to the Port Authority pursuant to Section 23.3 of the Basic Lease attributable to the improvements on the Premises not so taken shall be made available by the Port Authority to and be used by the Lessee for that purpose. The Port Authority shall retain any excess of such award over the costs of the restoration.

Notwithstanding the other condemnation provisions in the Lease Agreement to the contrary, if a Taking of all or a Material Part of the Premises or the Public Landing Area is effected by the Port Authority as the condemning authority, the Lessee shall be entitled to (x) pursue rights and remedies available at law or in equity for fair and reasonable compensation as available under Applicable Law (based on the fair value of the leasehold interest condemned taking into account, and being reduced for, any abatements of Rentals), and (y) Ground Rent shall be reduced for the period of such Taking based on the number of acres so taken, and (z) Second Additional Rental shall be reduced for the period of such Taking in an equitable manner as determined by the Port Authority.



Notwithstanding any of the condemnation provisions in the Lease Agreement providing for payment by the Port Authority to the Lessee, to the extent the City is the condemning authority and the City affords the Lessee, and the Lessee accepts, the option to attorn to, or enter into a direct lease with, the City, and continue to operate the New Terminal Facilities on terms that are not materially less favorable to the Lessee than the terms of the Lease Agreement, the Lessee shall not be entitled to any payments as described above. If the City's offer as aforesaid is not materially less favorable to the Lessee than the terms of the Lease Agreement and the Lessee does not accept such offer, then such rejection of the City's offer shall constitute, and be deemed to constitute, a full and complete release of the Port Authority and relinquishment of the Lessee's right to receive payments from the Port Authority as described above.

### ***Assignment and Sublease***

#### Assignment

Except as expressly provided or permitted under the Lease Agreement, no Transfer, Assignment, or Interest Disposition may occur without the prior written consent of the Port Authority, which consent may be given or withheld by the Port Authority in its sole and absolute discretion. Any Transfer, Assignment or Interest Disposition not made in accordance with the provisions of the Lease Agreement shall be null and void *ab initio* and of no force or effect. Any consent granted by the Port Authority to any Transfer, Assignment or Interest Disposition shall not be construed or deemed to release, relieve or discharge the Lessee or any other person claiming any right, title or interest in the Lease Agreement from any applicable requirement to obtain the prior written consent of the Port Authority to a subsequent Transfer, Assignment or Interest Disposition; and such assignee, successor or transferee or other Person claiming any right, title or interest in the Lease Agreement shall not effect or allow a Transfer, Assignment or Interest Disposition without such prior written consent of the Port Authority. The Lessee shall not use or permit any Person to use the Premises or any portion thereof for any purpose other than the purposes stated in the Lease Agreement. Except as provided in the Lease Agreement or otherwise permitted in writing by the Port Authority, the Lessee shall not permit the Premises to be used or occupied by any Person other than its and its Sublessees' officers, employees, guests, passengers, contractors and representatives. The foregoing restrictions shall not restrict or prohibit the exercise by a Recognized Mortgagee, or a designee, agent or assignee of the rights of such Recognized Mortgagee, of its rights under the Financing Documents in accordance with the Lease Agreement.

#### Subleases

The Lessee shall not sublet, license or grant occupancy rights in or to the Premises or any portion thereof, or enter into any Sublease or enter into any amendment or modification to or permit any extension of an existing Sublease (other than an extension of an existing Sublease pursuant to the express terms thereof as long as such option to extend was approved by the Port Authority in connection with any Consent to Sublease), in each case, without the prior written consent of the Port Authority as provided in the Lease Agreement.

The Port Authority may not withhold its consent for any Exempt Airline Sublease if in connection with such matter (A) the Lessee has provided all of the materials required by the Lease Agreement, (B) the Exempt Airline Sublease complies with and includes all of the terms required by the Lease Agreement, and (C) in the case of an Exempt Airline Sublease that qualifies as such under clause (A), (B) or (C) of the definition thereof, the operations of the applicable Airline Sublessee under such Exempt Airline Sublease are consistent with, and could not be reasonably expected to exceed the enplanements and time-of-use passenger flow set forth in the Comprehensive Terminal Leasing Plan then in effect. The Port Authority's consent to other Subleases shall not be unreasonably withheld, conditioned, or delayed, nor applied in a discriminatory fashion, so long as the applicable requirements of the Lease Agreement have been satisfied.

Subject to the terms and conditions of the Lease Agreement, including the consent of the Port Authority to the extent required thereby, the Lessee may enter into Subleases with any of the following Sublessees: (i) Airline Sublessees, (ii) Concession Sublessees, (iii) Governmental Agencies, (iv) Contractors performing Project Work on the Premises or otherwise providing services to Lessee or any Sublessee, provided that any such Subleases shall be for temporary Subleases for office and/or storage space only; and (v) such other Persons for such other purposes as are permitted under the Lease Agreement.

#### Terminal Leasing Plan

The Lessee and the Port Authority have developed and mutually agreed to the Comprehensive Terminal Leasing Plan. The Lease Agreement requires the Lessee to submit to the Port Authority a written statement indicating whether or not there are any updates to the Comprehensive Terminal Leasing Plan at least ninety (90) days prior to the start of each Calendar Year during the Term. If so, the Lessee shall include in the written statement a reasonably detailed narrative of such updates. If any such update sets forth a change to the principles and methodologies of Airline Terminal Rates applicable to Airline Subleases as set forth in the most recently approved Comprehensive Terminal Leasing Plan, the Lessee shall submit to the Port Authority an updated Financial Model reflecting such change.

In addition to the annual updates to the Comprehensive Terminal Leasing Plan delivered pursuant to the Lease Agreement, the Lessee shall submit for the approval of the Port Authority an update to the Approved Pro Forma Terminal Leasing Plan with respect to the New Terminal Facilities, at least eighteen (18) months prior to the projected Completion Date of the applicable New Terminal Facilities. Such update to the Approved Pro Forma Terminal Leasing Plan shall be accompanied by (i) a certificate of the Lessee, signed by a responsible officer thereof, stating that the Lessee reasonably believes that the proposed Comprehensive Terminal Leasing Plan is consistent with the applicable provisions of the Lease Agreement and (ii) a written narrative describing in reasonably sufficient detail any differences between such revised Comprehensive Terminal Leasing Plan and the Comprehensive Terminal Leasing Plan then in effect. The update to the Approved Pro Forma Terminal Leasing Plan, as approved by the Port Authority, shall be the Comprehensive Terminal Leasing Plan for the first year of operations of the applicable New Terminal Facilities.

#### Concession Subleases

Between the Terminal 7 Parcel Lease Commencement Date and the decommissioning of the Existing Terminal Facilities on the Terminal 7 Parcel (or any portion thereof) in anticipation of the demolition thereof, the Lessee shall diligently operate the concession program at the operating portions of the Existing Terminal Facilities at a level of quality at or above the current operations of such concession program as of the Terminal 7 Parcel Lease Commencement Date. The Lessee shall be required to develop a premier world-class concession program at the New Terminal Facilities that will support and advance the role of the New Terminal Facilities in providing a convenient and comfortable arrival to and departure from the Airport, consistent with the image and status of New York City as a foremost domestic gateway and America's foremost international gateway. Subject in each case to the requirements set forth in the Lease Agreement, the Lessee's concession program shall embody the Lessee's full commitment to quality, value and customer service, evidence operations in accordance with the Best Management Practice, evidence compliance with the Port Authority's Customer Care Standards, and evidence the Lessee's full commitment to the optimal financial return to the Lessee and the Port Authority in light of the concession program goals and requirements set forth in the Lease Agreement and in the Comprehensive Concessions Plan.

The Lessee is obligated, either directly, through the Manager or through a separate concession manager as described in the Lease Agreement, to employ or retain a full-time trained professional staff at all

times during the Term of sufficient size, expertise, ability, suitability and experience to carry out its responsibilities under the Lease Agreement with respect to Concession Subleases.

***Termination by the Port Authority (Events of Default)***

The occurrence of any of the events described in such section, including without limitation, the following events shall constitute an “Event of Default” under the Lease Agreement:

- the Lessee shall become insolvent or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States of America or of any state thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property or takes any action in furtherance of the foregoing; or
- by order or decree of a court the Lessee shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of the stockholders (or partners, members or equityholders, as applicable) of the Lessee seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States of America or of any state thereof, in each case, which decree, judgment or order is not stayed or vacated within sixty (60) days after the entry thereof; or
- (i) the Lessee shall voluntarily abandon, desert or vacate the Premises or discontinue its operations at the Airport or its performance of the Project Work (other than a discontinuance in connection with any condemnation, Delay Event, Force Majeure or any other event that, with the passage of time, would constitute an Unavailability Event) for a period of thirty (30) or more consecutive days, or, (ii) after exhausting or abandoning any right of further appeal, the Lessee shall be prevented for a period of sixty (60) days by action of any Governmental Authority having jurisdiction thereof, from conducting its operations or the Project Work at the Airport, due to any act or omission of any Lessee-Related Entity; or
- any lien (other than a Permitted Lien) is filed against the Premises because of any act or omission of the Lessee, any Lessee-Related Entity and/or any Equity Member, and shall not be discharged of record, or by bonding through an insurance company duly authorized to write such bonds in New York State, in each case within ninety (90) days after the Lessee has knowledge thereof or has received notice thereof; or
- upon any Sublease, Transfer, Assignment or Interest Disposition, except as expressly permitted under the Lease Agreement; or
- except as expressly permitted in the Lease Agreement, the Lessee shall, without the prior written approval of the Port Authority, become a possessor or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or
- the Lessee shall fail (x) duly and punctually to pay the Rentals due pursuant to the Lease Agreement and such failure shall continue unremedied for five (5) days following the date on which such payment was due, (y) to make any other payment of fees or charges required under the Lease Agreement when due to the Port Authority and such failure shall continue unremedied for thirty (30) days following the date on which such payment was

due, or (z) to deposit or cause the deposit of funds to any reserve accounts in the amounts and within the time periods required by the Security Agreement and the Lease Agreement and such failure shall continue for ten (10) days after receipt of notice of default from the Port Authority; or

- the Lessee shall fail to keep, perform and observe each and every promise, covenant and agreement set forth in the Lease Agreement or any other document incorporated by reference in the Lease Agreement on its part to be kept, performed, or observed, within thirty (30) days after receipt of written notice of default thereunder from the Port Authority or within such shorter period as may be required by any applicable Governmental Authority; or
- any representation or warranty made or deemed to be made by the Lessee in the Lease Agreement or in any other certificates or agreements delivered by Lessee to the Port Authority in connection with the Lease Agreement shall be found to be incorrect, false or misleading in any material respect as of the time made (whether by affirmative statement or omission of such statement), unless cured within ninety (90) days following the earlier of (x) the date the Lessee obtained actual or constructive knowledge of such incorrect, false or misleading representation, warranty or omission or (y) the date of notice thereof from the Port Authority to the Lessee; or
- failure by the Lessee to comply with Applicable Laws and such failure is not cured within thirty (30) days (provided that the time period for cure may be extended in certain circumstances) after the earlier of the Lessee having knowledge of such failure and receipt of notice of such failure from the Port Authority or the applicable Governmental Authority, or such shorter period as may be required by any applicable Governmental Authority; or
- the Lessee fails to keep, perform, and observe every direction issued by the Port Authority pursuant to the Lease Agreement (including any bulletin, directive, or other instruction issued by the General Manager of the Airport or the Chief Security Officer) or issued by the Port Authority in its capacity as a bi-state agency, an airport operator, or the tenant under the Basic Lease, if such failure shall continue unremedied or unwaived for a period of ten days (provided that the time period for cure may be extended in certain circumstances), or
- the Lessee fails to keep, perform or observe any promise, covenant or agreement in the Lease Agreement or any document incorporated by reference into the Lease Agreement and such failure shall continue unremedied or unwaived for a period of 30 days after the date on which the Lessee receives written notice thereof from the Port Authority, or within such shorter period as may be required by any applicable governmental authority (provided that the time period for cure may be extended in certain circumstances)
- the Lessee fails to maintain (or cause to be obtained and maintained) insurance coverage required by the Lease Agreement in accordance with the applicable provisions of the Lease Agreement, including failure to comply with the requirements relating to the amount, terms or coverage, and, with respect to any such failure that results from a change by the Port Authority to the insurance coverage requirements under the Lease Agreement or the failure by an insurance carrier to maintain the ratings required pursuant to the Lease Agreement, such failure continues without cure for a period of five Business Days after the initial date of such failure,
- failure by the Lessee to achieve Substantial Completion of Phase 2 by the Outside Completion Date, as such date may be adjusted from time to time as expressly provided the Lease Agreement; or

- certain other events described in the Lease Agreement.

In the case of any Event of Default, subject to certain exceptions, the Lessee is entitled to cure such Event of Default by preparing and submitting for Port Authority approval a remedial plan that shall set forth a schedule and specific actions to be taken by the Lessee to cure such Event of Default and, if applicable, reduce the likelihood of such defaults occurring in the future. Any failure of the Lessee to comply diligently with such approved remedial plan shall be deemed to be an Event of Default, provided that the Port Authority shall have the right to terminate the Lease Agreement without any further entitlement of the Lessee to a cure period, or any further notices of any kind, for such Event of Default or to the proposal of another remedial plan (but subject only to the notice and cure rights of the Recognized Mortgagees pursuant to the Lease Agreement).

Upon the occurrence and during the continuation of an Event of Default, the Port Authority may, by written notice to the Lessee with a copy to the Recognized Mortgagees, declare that an Event of Default has occurred (such notice, an "Event of Default Notice"). Thereafter, subject to the cure rights of the Recognized Mortgagees, the Port Authority may terminate the rights of the Lessee under the Lease. The Port Authority's right of termination under the Lease Agreement and the exercise thereof, shall, subject to any and all applicable notice and cure periods under the Lease Agreement, be and operate as a conditional limitation.

In the event the Port Authority exercises its right to terminate the Lease Agreement, the Lessee shall be obligated to pay to the Port Authority an amount equal to all costs and expenses incurred by the Port Authority in connection with such termination, including, without limitation, any re-entry, regaining or resumption of possession, collecting all amounts due to the Port Authority, the cleaning, repair or restoration of any space which may be used and occupied under the Lease Agreement (on failure of the Lessee to have it cleaned, repaired or restored), the care and maintenance of such space during any period of non-use of the space, the foregoing to include, without limitation, personnel costs and legal expenses (including but not limited to the reasonable cost to the Port Authority of in-house legal services), repairing the space and putting the space in order (such as but not limited to repairing, cleaning and restoring the same pursuant to the Lease Agreement). Unless sooner terminated, the term of the letting under the Lease Agreement shall expire in any event upon the Expiration Date. Termination shall not relieve the Lessee of any liabilities or obligations under the Lease Agreement which shall have accrued on or prior to the effective date of termination.

### ***Survival of the Obligations of the Lessee***

In the event that the letting shall have been terminated in accordance with a Port Authority Termination Notice, or the interest of the Lessee canceled pursuant thereto, or in the event that the Port Authority has re-entered, regained or resumed possession of the Premises in accordance with its rights of re-entry under the Lease Agreement, all the Rental obligations of the Lessee under the Lease Agreement (and all other obligations of the Lessee that have not been fully performed) shall survive such termination or cancellation, or re-entry, regaining or resumption of possession and shall remain in full force and effect for the full term of the letting under the Lease Agreement as if the same had not been terminated. The amount of damages for the period of time subsequent to termination or cancellation (or re-entry, regaining or resumption of possession) on account of the Lessee's Rental obligations, shall be calculated pursuant to the Lease Agreement.

### ***Basic Lease***

The Lease Agreement provides that it shall terminate with the termination or expiration of the Basic Lease (subject to the Lessee's obligation to attorn to, or enter into a direct lease on identical terms with, New York City, at the option of the City), such termination to be effective on such date and to have the same effect as if the Term had expired on that date. If (i) such termination is due to a default arising under Section 25.1 of the Basic Lease from the gross negligence or willful misconduct of the Port Authority, as finally determined pursuant to a non-appealable judgment of a court of competent jurisdiction (and not a breach or default arising from or related to any act or failure to act by the Lessee or any Lessee-Related Entity) and (ii) the City does not afford the Lessee the option to attorn to, or enter into a direct lease with, the City on the terms that are substantially the same as the terms of the Lease Agreement, then the Lessee shall be entitled to termination compensation in accordance with the Lease Agreement but only to the extent that such termination is determined pursuant to a final, non-appealable judgment of a court of competent jurisdiction to be a failure of quiet enjoyment in accordance with the Lease Agreement. If such termination is due to any act or failure to act *by* the Lessee or any *Lessee-Related Entity*, the Lessee will be solely responsible for any loss or damages resulting therefrom.

Under the Lease Agreement, the Port Authority and the Lessee agree to certain terms related to the Basic Lease, including, without limitation, the following:

- The Lease Agreement is subject and subordinate to the Basic Lease and to any interest superior to that of the Port Authority;
- The Lessee shall not pay rent or other sums under the Lease Agreement for more than one (1) month in advance (excluding security and other deposits required under the Lease Agreement);
- Future amendments to the terms and provisions of the Basic Lease may require certain modifications to the Lease Agreement; provided that the Port Authority will meet and confer with the Lessee at the Lessee's request to determine whether any steps may be taken to mitigate any material adverse effects on the Lessee as a direct and sole result of such amendment to the Basic Lease.

### ***Force Majeure***

Following a Force Majeure event, the Affected Party shall not be deemed to be in violation of the Lease Agreement, and the Affected Party shall be excused from performance of its obligations in accordance with the Lease Agreement but only to the extent that such performance is prevented by such Force Majeure, unless, in any case, the delay or prevention of performance shall result from failure on the part of the Affected Party to use reasonable care to prevent the events claimed as Force Majeure or avoid the delay resulting from such events, or use reasonable efforts to cure such delay or mitigate the impacts upon of performance; provided, however, that except to the extent expressly provided for in any other provision of the Lease Agreement nothing in this paragraph shall relieve the Lessee of any obligation to pay any Rentals specified under the Lease Agreement or any other fees, charges or money payments due by the Lessee.

### ***Quiet Enjoyment***

The Port Authority covenants and agrees in the Lease Agreement that the Lessee, so long as it pays all Rentals under the Lease Agreement and performs all the covenants, conditions and provisions of the Lease Agreement on its part to be performed, shall and may peacefully and quietly have and enjoy the Premises throughout the Term free of any act or acts of the Port Authority except as expressly agreed

upon in the Lease Agreement. The Port Authority has sufficient rights, title and interest pursuant to the Basic Lease to grant to the Lessee the rights, title and interest granted under the Lease Agreement, subject only to the terms and conditions of the Lease Agreement and the Basic Lease.

### ***One JFK and New York Experience***

The design and architectural appearance of the New Terminal Facilities is required to be consistent with the Airport advisory panel's master vision for the Airport as described in its Vision Plan Recommendations for a 21st Century Airport for the State of New York and the accommodation of a Port Authority approved connected, architecturally consistent character for the Airport to result in a consistent appearance throughout the Airport that embodies the spirit, resiliency and dynamism of New York (the "One JFK Environment"). The Lessee is required to comply with the Requirements and Provisions for Work and New Airport Design Guidelines with respect to such branding, design elements and materials as the Port Authority has set forth in order to achieve the One JFK Environment, including changes thereto in accordance with the Lease Agreement. The Lessee is also required to include within the New Terminal Facilities operations and concessions intended to promote the "Taste NY" campaign, or at the direction of the Port Authority, such other campaigns as may be developed by the Port Authority or by Governmental Authorities from time to time during the Term, in each case in accordance with any applicable terms of the Requirements and Provisions for Work.

### ***Interest Dispositions***

#### Permitted Interest Dispositions

Certain Interest Dispositions may be made without regard to other restrictions under the Lease Agreement, including, without limitation, the following:

- Transfers of Equity Interests, securities evidencing ownership or any other ownership interests, pursuant to bona fide open market transactions on a recognized stock exchange or any initial or subsequent public offerings on such a recognized stock exchange provided that, in connection with any such initial or subsequent public offerings, the direct or indirect ownership interest in the Lessee of the entity whose securities are listed or being listed does not represent, directly or indirectly, more than thirty percent (30%) of the value of the assets of such entity;
- Transfers of (x) Equity Interests in the Lessee or HoldCo or (y) direct or indirect Equity Interests in an Equity Member's beneficial owners, in each case, between or among Persons that are under common Control;
- Transfers of (x) Equity Interests in the Lessee or HoldCo by an Equity Member, or (y) direct or indirect Equity Interests in an Equity Member's beneficial owners, in each case, to a pension fund or employee equity compensation plan sponsored, maintained and Controlled by such Equity Member or its Affiliates;
- Transfers of (x) Equity Interests in the Lessee or HoldCo or (y) direct or indirect Equity Interests in an Equity Member's beneficial owners, in each case, by a Governmental Authority;
- Transfers of (x) Equity Interests in the Lessee or HoldCo or (y) direct or indirect Equity Interests in an Equity Member's beneficial owners; provided that for purposes of this clause there occurs

no change in the Person(s) with ultimate power to Control such Equity Member or the Lessee, as applicable;

- Subject to compliance with the foreclosure provisions of the Lease Agreement, foreclosure by a Recognized Mortgagee in respect of a pledge of any Equity Interests of the Lessee or any other exercise of rights or remedies pursuant to the terms of any Equity Pledge;
- Transfers of direct or indirect Equity Interests in an Equity Member, provided that, in connection with such Transfer, the direct or indirect interest in the Lessee held by the entity in which the Equity Interests are being directly Transferred does not represent more than twenty percent (20%) of the value of such entity; or
- Transfers of (x) Equity Interests in the Lessee or HoldCo, or (y) direct or indirect Equity Interests in an Equity Member's beneficial owners, in each case, to employee(s) of such Interest Transferor as part of an employee incentive program;

provided, that any Interest Disposition which is either to a Prohibited Party or in violation of Applicable Laws, even if otherwise permitted shall as described above, be void *ab initio*.

#### Other Interest Dispositions

Except for the Interest Dispositions permitted as described above, no Interest Disposition may be made prior to the first (1<sup>st</sup>) anniversary of Substantial Completion of the Project without the Port Authority's consent. From and after the first (1<sup>st</sup>) anniversary of Substantial Completion of the Project, all Interest Dispositions will be permitted, except to the extent (w) the Interest Disposition results in a Change in Lessee Control, (x) there exists an uncured Event of Default, (y) the proposed transferee is a Prohibited Party, or (z) the Lessee has failed to sufficiently demonstrate that the Premises will continue to be operated and maintained by a Qualified Terminal Operator.

Further, except for the Interest Dispositions permitted as described above under "*Permitted Interest Dispositions*," and notwithstanding the immediately preceding paragraph, prior to the fifth (5<sup>th</sup>) anniversary of Substantial Completion of the Project, no Interest Disposition may be made by any QTO Equity Member without the Port Authority's consent, which would result in such QTO Equity Member holding less than fifteen percent (15%) of the Equity Interests in the Lessee.

From and after the fifth (5<sup>th</sup>) anniversary of Substantial Completion of the Project, the Port Authority will not unreasonably withhold its consent to any Interest Disposition for which the Port Authority's consent is required if the Lessee has sufficiently demonstrated that the Premises will be operated and maintained by a Qualified Terminal Operator.

#### Equity Gain Share

Except for (A) Interest Dispositions described in paragraph 1 or paragraph 8 above under the heading "Permitted Interest Dispositions"; (B) Interest Dispositions described in paragraph 7 above under the heading "Permitted Interest Dispositions" by an entity that is not (i) an Equity Member, (ii) a Parent Fund, (iii) an entity that owns a direct Equity Interest in a Parent Fund, (iv) an entity Controlled by any of the entities described in the foregoing clauses (i)-(iii), or (v) a Parent or an entity Controlled by a Parent unless, in the case of this clause (v), such Interest Disposition does not result in a change of control of the entity in which the applicable interest is being transferred; (C) Transfers of (y) Equity Interests in the



Lessee or HoldCo or (z) direct or indirect Equity Interests in an Equity Member's beneficial owners, in each case, between or among Persons that are under common Control and that do not result in cash proceeds; and (D) Transfers of indirect Equity Interests in the Lessee effectuated by the Transfer of indirect Equity Interests in a Parent Fund by Non-Controlled Persons provided that:

- (i) such indirect Equity Interests in the Parent Fund were not established and/or sold to circumvent the payment of the Equity Gain Share;
- (ii) the indirect Equity Interest in the Lessee was not the only asset and did not represent substantially all of the assets held by the entity in which the Non-Controlled Person is transferring its interest as of the date such interest was acquired by the Non-Controlled Person; and
- (iii) no Equity Member or its Affiliate could be entitled to a management fee, performance fee, incentive allocation or promote based upon the consideration paid to the Non-Controlled Person for such indirect Equity Interest;

upon an Interest Disposition the Lessee shall pay or cause to be paid to the Port Authority the Equity Gain Share.

### ***Environmental Obligations***

Under the Lease Agreement, the Lessee is generally responsible for compliance with, and for causing Lessee-Related Entities, Sublessees, guests, patrons, invitees, business visitors, Contractors, Suppliers and furnishers of services and those doing business with it, to comply with, all Environmental Requirements.

The Lessee is responsible for the management, treatment, storage, transportation, or disposal of any Hazardous Substances encountered in soils, construction debris, storm-water and groundwater in the areas excavated as part of the D&C Work. The Lessee is not required to remediate Hazardous Substances present on, in or under the Premises or the Temporary Rights of Access on or prior to the commencement date of the Lease Agreement that are outside of the Excavation Boundary, unless required to do so by a Governmental Authority. If any such contamination is on the Terminal 7 Parcel, the Lease Agreement provides that the Lessee may exercise any rights the Port Authority may have under its lease with British Airways to recover such costs.

The Lessee is generally responsible for all costs, losses, liabilities, damages and operational requirements arising under or with respect to compliance with Environmental Requirements. The Lessee's liability is subject to certain exclusions, risk re-allocation and remedies. The Lessee is not responsible for remedial action or environmental liabilities arising from (i) a Hazardous Substance release occurring or existing outside of the Premises and the Temporary Rights of Access on or prior to the commencement date of the Lease Agreement; (ii) pre-existing Hazardous Substances that are present on, in, or under the Premises or Rights of Access as a result of migration from another location, except to the extent caused by the Lessee or a lessee-related entity; (iii) fines and penalties imposed by any Governmental Authority with respect to violations of Environmental Requirements based on facts, circumstances or events existing or occurring prior to the commencement date of the Lease Agreement; and (iv) the presence at approved disposal locations of pre-existing Hazardous Substances disposed of by the Lessee during the D&C Work in compliance with the Lease Agreement. In addition, the Lessee has the right to make a claim for delay if, without the negligence or culpable act or omission of the Lessee or any occupant, it incurs certain environmental damages in connection with unknown Hazardous Substances required to be managed as part of the D&C Work.

### ***Reserved Uses***

The Port Authority has reserved exclusively to itself and its designees the right to implement, conduct, control, approve and receive any fees, rents or profits, with respect to the Reserved Uses.

### ***Termination by Lessee***

The Lessee may terminate the Lease Agreement with sixty (60) days' written notice to the Port Authority, effective upon the date set forth in such notice, if any one or more of the following events shall occur:

- (a) failure by the Port Authority, within thirty (30) days following receipt of notice by the Lessee, to make payment of any undisputed amounts owed to the Lessee; or
- (b) the Port Authority expressly repudiates or willfully (with an intent to deprive the Lessee of its rights to quiet enjoyment) fails to provide or defend, Lessee's right to quiet enjoyment of the Premises pursuant to the terms of the Lease Agreement such that the Lessee is unable to (x) construct the New Terminal Facilities or (y) operate the Existing Terminal Facilities (prior to the decommissioning of the Existing Terminal Facilities) and/or the New Terminal Facilities, in each case for a period of not less than one hundred eighty (180) consecutive days, unless arising out of action or omission of the Lessee or another Lessee-Related Entity; or
- (c) the Port Authority willfully fails to tender the Premises or any portion thereof to the Lessee in accordance with the time periods required by the terms of the Lease Agreement.

The sole remedy upon the occurrence of an event set forth above shall be the right of termination described above, subject to certain other provisions of the Lease Agreement. Notwithstanding the foregoing, to the extent that the Lessee elects not to terminate the Lease Agreement as described above, then the Lessee shall retain each and every remedy for breach of the Lease Agreement which it has in law and in equity.

### ***Effect of Termination by Lessee***

If the Lessee terminates the letting pursuant to paragraph (b) above under the heading "Termination by Lessee," then the Port Authority shall pay compensation to the Lessee in the amount of the Port Authority Default Termination Payment. Any Port Authority Default Termination Payment is subject and subordinate in all respects to payment of debt service on Consolidated Bonds as required by the applicable provisions of the Consolidated Bond Resolution and payment into the General Reserve Fund of the amount necessary to maintain the General Reserve Fund at the amount specified in the General Reserve Fund Statutes. Any Port Authority Default Termination Payment obligation is not secured by or payable from the General Reserve Fund. Additionally, the Port Authority's obligation to pay any Port Authority Default Termination Payment does not create any lien on, pledge of or security interest in any revenues, reserve funds or other property of the Port Authority.

### ***Airport-Wide Facilities and Services***

The Lessee has agreed to pay a portion of the capital expenditures and operating expenditures relating to any development by the Port Authority of any Airport-wide facilities during the Term to the extent that such Airport-wide facility (i) (A) demonstrably benefits the Premises, directly or indirectly or (B) is used

by either the Lessee or any of its tenants in connection with their activities at the Premises, in each case, on a fair and reasonable basis relative to all others who receive benefits or use of such Airport-wide facility, and (ii) is implemented by the Port Authority to facilitate safety, security or operational efficiencies at the Airport; provided, that such expenditures reflect actual, direct and allocable indirect expenditures of the Port Authority and are fairly and reasonably allocated by the Port Authority among the Lessee and other terminal operators and other users at the Airport and the requirement to pay for such capital expenditures and operating expenditures is applied with transparency to Lessee and in a Non-Discriminatory Manner and that all terminal operators will be required to assume responsibility for their respective allocated shares of the expenditures at substantially the same time.

The Lessee has agreed to (x) make a contribution to the Port Authority in an amount up to \$13,847,323 to support Airport-wide traffic mitigation efforts (the “Airport Traffic Mitigation”), which contribution shall be made during the performance of the D&C Work, and (y) during the D&C Work Period, spend an amount up to the Traffic Mitigation Capital Amount for traffic mitigation directly related to the roadway network that supports Terminal 5 and the New Terminal Facilities (the “New Terminal Facilities Traffic Mitigation Plan”), which Traffic Mitigation Capital Amount shall be disbursed as directed by the Port Authority.

To the extent the Lessee incurs less than the Traffic Mitigation Capital Amount for the New Terminal Facilities Traffic Mitigation Plan (the difference between the Traffic Mitigation Capital Amount and the actual costs of the New Terminal Facilities Traffic Mitigation Plan, the “Traffic Mitigation Savings Amount”) and the Port Authority incurs additional traffic mitigation costs for the Airport Traffic Mitigation (i) as a result of the Project Work, and (ii) to implement the New Terminal Facilities Traffic Mitigation Plan, on the Effective Date, Lessee will reimburse the Port Authority for an amount equal to the lesser of (1) the Traffic Mitigation Savings Amount, and (2) the portion of the total costs of implementing the New Terminal Facilities Traffic Mitigation Plan which the Parties agree is reasonably allocated to Terminal 5 and the New Terminal Facilities.

#### ***Milestone Payments for the Cost of the Redevelopment Work***

The Lessee and Port Authority have agreed to certain fixed payments to be paid by the Parties as follows:

- On the Milestone Payment Date, the Port Authority Milestone Payment with respect to the KIAC Fuel Line; and
- On the Milestone Payment Date, the Lessee Milestone Payment for Roadways with respect to the roadways; and
- On the Milestone Payment Date, the Lessee Milestone Payment for Backup Power Supply and together with the Lessee Milestone Payment for Roadways.

Except for (x) Lessee Damages with respect to any Compensation Event (including for greater certainty any amount payable by the Port Authority in connection with a Port Authority Change), if any, and (y) the Port Authority Milestone Payment, the Port Authority shall have no other obligation or liability with respect to the cost of the Lessee’s D&C Work, and the Lessee shall be responsible for all increases to costs for the D&C Work and any reduction in revenues resulting from any failure of performance (including delays) of the D&C Work.

## **Project Financing**

### **Leasehold Mortgage**

Except as expressly authorized in the Lease Agreement, the Lessee shall not mortgage the Lessee's interest in the Lease Agreement or the letting under the Lease Agreement in whole or in part, or any portion of the Premises in whole or in part, directly or indirectly, by operation of law or otherwise. The Parties acknowledge that the Lessee intends to enter into one or more financings or series of financings to incur Lessee Debt, including any Refinancings, from time to time during the Term. The Lessee shall have the right, at its sole cost and expense, in connection with incurring (i) the Initial Lessee Debt under the initial Security Documents, (ii) Lessee Debt incurred in connection with Phase 2 D&C Work under Financing Documents applicable thereto, or (iii) subject to the refinancing provisions of the Lease Agreement, any subsequent Lessee Debt (including any other Lessee Debt issued in accordance with the terms of then-existing Financing Documents that were approved by the Port Authority in accordance with the Lease Agreement to the extent such approval was required), to grant a Leasehold Mortgage to secure the obligations of the Lessee with respect to such Lessee Debt; provided, that at the time of execution and delivery of any such Leasehold Mortgage, no Event of Default has occurred and shall be continuing and certain conditions shall be satisfied, including, without limitation, the following:

- the Leasehold Mortgage (A) may not cover any property of, or secure any debt issued or guaranteed by, any Person other than the Lessee (or a financial institution providing a financial guaranty or similar credit enhancement in respect of any debt of the Lessee), (B) shall only secure the obligations of the Lessee under the then-existing Financing Documents, (C) shall not be cross-defaulted with any other agreement or document made by the Lessee and/or a Recognized Mortgagee in connection with any indebtedness other than the Financing Documents, and (D) shall be in compliance with the terms of the Lease Agreement;
- no Leasehold Mortgage shall encumber less than the entire interest of the Lessee under the Lease Agreement, except as expressly permitted by the Lease Agreement;
- no Leasehold Mortgage or other Financing Document shall encumber any property other than the Premises, the Lessee's assets (including Lessee's Personal Property, subject to certain other terms of the Lease Agreement) and the Equity Interests in the Lessee, or contain any cross-default, cross-collateral or similar provisions with respect to any such other property other than such assets and property as are covered by other Security Documents under the Financing Documents;
- the aggregate principal amount of Lessee Debt secured by the Leasehold Mortgage shall not exceed a maximum amount of \$4,225,000,000 (excluding the amount of any Lessee Debt issued in connection with certain refinancings) of the Lease Agreement, determined without reduction for any prepayments, redemptions or refunds made pursuant to any of the Financing Documents at any time during the term thereof, unless otherwise agreed by the Port Authority; provided that the Lessee shall not incur any Refinancing to refinance all or any portion of the Initial Bank Lessee Debt without the prior written consent of the Port Authority (not to be unreasonably withheld or delayed) if such Refinancing would cause the aggregate principal amount of Lessee Debt secured by the Leasehold Mortgage (disregarding any Lessee Debt previously issued in connection with certain other refinancings) to exceed \$4,225,000,000;
- no Leasehold Mortgage or other instrument purporting to mortgage, pledge, encumber or create a lien, charge or security interest on or against any or all of the Lessee's interest in the Lease

Agreement shall extend to or affect the fee simple interest in the Premises, the Port Authority's interest under the Basic Lease or the Lease Agreement or the Port Authority's or the City's reversionary interest and estate in and to the Premises or any part thereof;

- the Port Authority shall have no liability whatsoever for payment of the principal sum secured by any Leasehold Mortgage, or any interest accrued thereon or any other sum secured thereby or accruing thereunder and, except for violation by the Port Authority of the express obligations to a Recognized Mortgagee set forth in the Lease Agreement and for any remedies of the Recognized Mortgagee provided by Applicable Law, no Recognized Mortgagee shall be entitled to seek any damages or other amounts against the Port Authority for any or all of the same, or
- various other restrictions set forth in the Lease Agreement.

### Recognized Mortgagee

A Person that (A) holds a Leasehold Mortgage that complies with the terms and conditions set forth in of the Lease Agreement and (B) is an Institutional Lender or an agent or trustee acting on behalf of one or more Institutional Lenders, shall be entitled to the benefits and protections provided to a Recognized Mortgagee pursuant to the Lease Agreement (such Person, a "Recognized Mortgagee"), and shall be considered a third-party beneficiary of the project finance and refinancing provisions of the Lease Agreement. In all events, at any one time there shall not be more than two (2) Recognized Mortgagees entitled to the benefits and protections of the Lease Agreement. The Lessee shall deliver to the Port Authority copies of all financial statements delivered to the Recognized Mortgagee under the Financing Documents and certain reports and notices delivered under the Collateral Agency and Accounts Agreement and the Common Terms Agreement.

The Port Authority is obligated to deliver to the Recognized Mortgagee a copy of each Event of Default Notice given under the Lease Agreement, or otherwise at the same time as and whenever any such Event of Default Notice shall have been sent to the Lessee, and (so long as the Leasehold Mortgage is in effect and a Recognized Mortgagee is named therein), as between the Port Authority and such named Recognized Mortgagee, no Event of Default Notice shall be deemed to have been given unless and until a copy thereof shall have been so sent by the Port Authority to such named Recognized Mortgagee (with such copy deemed to have been sent when it is received by the Recognized Mortgagee). If the Port Authority shall elect to terminate the letting of the Premises under the Lease Agreement in connection with an Event of Default, the Port Authority shall at the same time send to the Recognized Mortgagee a copy of the Port Authority Termination Notice, and (so long as the Leasehold Mortgage is in effect and a Recognized Mortgagee is named therein), as between the Port Authority and such named Recognized Mortgagee, no Port Authority Termination Notice shall be deemed to have been given unless and until a copy thereof shall have been so sent by the Port Authority to such named Recognized Mortgagee (with such copy deemed to have been sent when it is received by the Recognized Mortgagee). The effective time and date of such termination, so long as the Leasehold Mortgage is in effect (A) shall not be before 11:59 p.m. New York City time on (i) the tenth (10<sup>th</sup>) day after the date of the sending of the Port Authority Termination Notice if the Event of Default triggering such notice is a Payment Event of Default, (ii) the ninetieth (90th) Business Day after the date of sending of the Port Authority Termination Notice if the Event of Default triggering such notice is an Other Event of Default and, in each case of (i) and (ii) shall be subject to the extension and/or stay provided in the Lease Agreement, and (B) if a Personal Default has occurred and is continuing and the Recognized Mortgagee has notified the Port Authority that it will exercise its Foreclosure Rights

and/or an Equity Foreclosure, and has started to exercise such rights within ninety (90) Business Days of its receipt of the related Event of Default Notice from the Port Authority, shall not be before the execution and delivery of a Lessee Assignment and Assumption Agreement pursuant to the foreclosure provisions of the Lease Agreement.

The Recognized Mortgagee shall have a period of (i) ten (10) days with respect to any Payment Event of Default, (ii) ninety (90) Business Days with respect to any Other Event of Default (other than certain bankruptcy related Events of Default or a Personal Default, as to which no cure shall be required), and (iii) one hundred eighty (180) days with respect to a Completion Event of Default, in each case beyond any cure period expressly provided to the Lessee herein, in which to cure or cause to be cured any such Event of Default; provided, however, that (x) in the case of clause (ii), the Recognized Mortgagee shall diligently and continuously work to cure the Other Event of Default during the ninety (90) Business Day period and such ninety (90) Business Day period shall be extended (A) with respect to an Event of Default that may be cured without possession, but (1) such cure cannot reasonably be accomplished during such ninety (90) Business Day period, (2) the Recognized Mortgagee provides no less than thirty (30) days' notice to the Port Authority that the Recognized Mortgagee cannot accomplish such cure within such ninety (90) Business Day period and (3) the Recognized Mortgagee begins to and is diligently working to cure such Event of Default within such ninety (90) Business Day period, such additional period of time as is (I) reasonably necessary to effectuate cure with the exercise of reasonable diligence, but in no event more than one hundred twenty (120) days, and (II) acceptable to the Port Authority in its sole and absolute discretion, and (B) if possession is necessary in order to effect such cure, the Recognized Mortgagee, within such ninety (90) Business Day period, files the appropriate legal action, subject to certain conditions, to commence foreclosure on the liens of the Leasehold Mortgage and the Recognized Mortgagee is diligently and continuously working to cure such Event of Default during such ninety (90) Business Day period (including by proceeding with all due diligence to effect such foreclosure) and thereafter to effect such a cure, such additional period of time as is (I) reasonably necessary, with the exercise of diligence, to complete foreclosure and effectuate cure and (II) acceptable to the Port Authority in its sole and absolute discretion; and (y) if any Recognized Mortgagee is prohibited from curing any Event of Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding involving the Lessee, then the time periods specified in the Lease Agreement for curing such Event of Default shall be extended for the shorter of the period of such prohibition and one hundred fifty (150) days. If the Recognized Mortgagee is acting to cure an Event of Default in accordance with the rights accorded to it under the Lease Agreement then the Port Authority shall not exercise its right to terminate the Lease Agreement by reason of such Event of Default; provided, however, that the Port Authority may exercise any of its other rights and remedies provided for under the Lease Agreement, including, without limitation, its rights to perform the Lessee's obligations, or under the Construction Security, or at law or in equity and the exercise of such rights by the Port Authority shall not be deemed to constitute interference with the Recognized Mortgagee's rights under the Lease Agreement. In furtherance of the foregoing, the Lessee acknowledges and agrees that prior to possession by the Recognized Mortgagee, the Port Authority shall permit the Recognized Mortgagee and its designees the same access to the Premises as is permitted to the Lessee under the Lease Agreement (subject to, among other requirements, the security requirements of the Lease Agreement) and permit the Recognized Mortgagee or its designees to take all actions and exercise all rights of the Lessee under the Lease Agreement (all at the Lessee's or Recognized Mortgagee's sole cost and expense); provided, that any actions to be taken or taken by a Recognized Mortgagee or its designees pursuant to its cure rights under the Lease Agreement shall be undertaken only in accordance with the provisions of the Lease Agreement that would be applicable to the Lessee were it taking such actions, and so as not to cause or result in an Event of Default, and in no event

shall any such action be taken by a Prohibited Party or an affiliate, agent, employee, officer or director of a Prohibited Party.

#### Assignment of Leasehold Mortgage

A Recognized Mortgagee shall not assign or transfer the Leasehold Mortgage to any Person other than a Successor Recognized Mortgagee without the prior written consent of the Port Authority in its sole and absolute discretion. Any approval or consent given by the Port Authority under the Lease Agreement to such assignment or transfer of the Leasehold Mortgage to another Person, shall apply only to the specific transaction thereby authorized and shall not relieve the Lessee or the Recognized Mortgagee from the requirement of obtaining the prior approval or consent of the Port Authority to each and every further assignment or transfer of the Leasehold Mortgage. Each Successor Recognized Mortgagee shall hold the Leasehold Mortgage subject to all the project financing terms and provisions of the Lease Agreement as if it were the original Recognized Mortgagee.

#### Foreclosure

Subject in all events to certain bankruptcy terms and provisions of the Lease Agreement, the Recognized Mortgagee may exercise its Foreclosure Rights and/or an Equity Foreclosure (or any contractual or statutory power of sale under the applicable Financing Documents or an assignment in lieu) and enforce any applicable Financing Document in any lawful way, provided that (A) the Recognized Mortgagee is not then a Prohibited Party, and (B) in connection with the exercise of its Foreclosure Rights and/or an Equity Foreclosure (or any contractual or statutory power of sale under the applicable Financing Documents or an assignment in lieu): (i) the rights of the Lessee under the Lease Agreement may be assigned or transferred only to a Person that is approved as a Qualified Terminal Operator pursuant to the Lease Agreement, (ii) any Person to whom the Recognized Mortgagee transfers or assigns the Lessee's interest in the Lease Agreement (including the Recognized Mortgagee) pursuant to clause (B)(i) above shall enter into an assignment and assumption agreement (the "Lessee Assignment and Assumption Agreement"), pursuant to which such Person shall have the rights and powers of, and assume the obligations of, the Lessee under the Lease Agreement; (iv) if any such foreclosure proceedings occur during the D&C Work Period, the Person to whom the Recognized Mortgagee transfers or assigns the Lessee's interest in the Lease Agreement (including the Recognized Mortgagee) pursuant to clause (B)(i) above shall demonstrate, to the satisfaction of the Port Authority, that it has the financial standing and capability to complete, or to arrange for the completion of, the D&C Work; (v) the Recognized Mortgagee is not permitted in connection with its enforcement of its lien under the Leasehold Mortgage to do anything that would materially and adversely affect the Premises, the Operations and Maintenance Work or is otherwise inconsistent with the Lease Agreement, (vi) such Qualified Terminal Operator (or its designee or nominee) shall pay or cause to be paid to the Port Authority, at the time of the execution and delivery of such Lessee Assignment and Assumption Agreement, all amounts set forth in a Statement of Estimated Liabilities which are past-due or due and payable in accordance with the provisions of the Lease Agreement and the Statement of Estimated Liabilities provided pursuant to the Lease Agreement; and (vi) upon certain other conditions as set forth in the project finance provisions of the Lease Agreement.

#### New Agreement

Without prejudice to the cure rights of a Recognized Mortgagee under the Lease Agreement, if the Lease Agreement is rejected or disaffirmed pursuant to any bankruptcy law or proceeding or other similar law or proceeding affecting creditors' rights generally with respect to a bankruptcy proceeding relating to the Lessee or otherwise or is terminated as a result of any other Personal Default, then the Port Authority agrees, if there are outstanding obligations to a Recognized Mortgagee (subject to the receipt of all necessary

Governmental Approvals, which the Port Authority agrees to use commercially reasonable efforts to obtain), to enter into a new lease of the Premises (a “New Agreement”) with the Recognized Mortgagee (or its designee or nominee that is not a Prohibited Party) and any ancillary documents or agreements as may be necessary or desirable to give full effect to the New Agreement for the remainder of the Term upon all of the remaining, unperformed covenants, agreements, terms, provisions and limitations of the Lease Agreement, effective as of the date of such termination; provided that the Port Authority’s obligation to enter into a New Agreement is subject to the satisfaction of various requirements and conditions precedent set forth in the Lease Agreement.

#### Port Authority’s Right to Pay Off Lessee Debt

At any time, within ten (10) days after the Port Authority’s request, the Recognized Mortgagee shall give the Port Authority written notice which shall state the principal amount of Lessee Debt then outstanding and secured by the Leasehold Mortgage or other Collateral Documents, including the amount of accrued and unpaid interest thereon (including any default interest then outstanding under the Financing Documents), any prepayment premiums or penalties, make-whole amounts or other prepayment amounts or breakage costs that would be due and payable upon payoff of such Lessee Debt, and all other amounts that would be due and owing under the Financing Documents with respect to such Lessee Debt and secured thereby, and the per diem interest which will accrue on the principal amount of such outstanding Lessee Debt from and after the date of such notice.

The Port Authority shall have the right, without the obligation, after the occurrence and during the continuation of a Lessee default under the Leasehold Mortgage, written notice has been received from the Recognized Mortgagee pursuant to the Lease Agreement that the Lessee Debt outstanding under the Financing Documents has become immediately due and payable, and (z) termination of the rights of the Lessee and the letting under the Lease Agreement in connection with an Event of Default, to tender to the Recognized Mortgagee an amount equal to the total amount specified in the notice described in the preceding paragraph, including per diem interest through the date of such tender, and upon such tender the Leasehold Mortgage shall terminate and be of no further force and effect. Promptly following the Port Authority’s tender of such amount specified in such notice, the Lessee shall cause to be executed, and the Recognized Mortgagee shall execute a satisfaction of the Leasehold Mortgage, cause the same to be filed in the Office of the City Register for Queens County and take all other and additional actions that are required in order to discharge the lien of the Leasehold Mortgage as of record.

#### Statement of Estimated Liabilities

The Port Authority shall provide a Statement of Estimated Liabilities from time to time, and update any previously delivered Statement of Estimated Liabilities, at the reasonable request of the Recognized Mortgagee in order to allow the Recognized Mortgagee to comply with certain requirements in the Lease Agreement. Any omission from a Statement of Estimated Liabilities of (A) any amounts payable to the Port Authority under the Lease Agreement (including, without limitation, amounts incurred by the Port Authority in connection with its rights to perform Lessee obligations whether during the pendency of a foreclosure action or otherwise), (B) any unperformed obligations of the Lessee under the Lease Agreement or (C) any other costs of the Port Authority shall be without prejudice against the Port Authority and not excuse the payment of such amounts or costs or the performance of such unperformed obligations.



### Port Authority Consent to Financing Documents

The Lessee shall deliver to the Port Authority a true, correct and complete copy of a substantially final draft of each Financing Document contemplated to be entered into with respect to any Lessee Debt no later than ten (10) Business Days prior to the intended execution date of the same (or such shorter period as the Port Authority may approve). Each such proposed Financing Document must be approved by the Port Authority, subject to certain exceptions, including Financing Documents effectuating a Refinancing incurred to refinance all or any portion of the Initial Bank Lessee Debt originated under the initial Bank Financing Documents, which does not require Port Authority.

### Security Documents and Equity Pledge

The Lessee shall have the right, at its sole cost and expense, in connection with incurring (i) the Initial Bank Lessee Debt under the initial Bank Financing Documents applicable to the Initial Bank Lessee Debt, (ii) Lessee Debt incurred in connection with the Construction Project under Financing Documents applicable thereto, or (iii) subject to the refinancing provisions of the Lease Agreement, any subsequent Lessee Debt (including any other Lessee Debt issued in accordance with the terms of then-existing Financing Documents that were approved by the Port Authority in accordance with the Lease Agreement), to enter into the Financing Documents and cause each Equity Member to pledge its Equity Interests in HoldCo or the Lessee, as applicable, pursuant to one or more Equity Pledges, in each case to secure the obligations of the Lessee with respect to such Lessee Debt.

Notwithstanding anything to the contrary contained in the Lease Agreement, the Port Authority agrees that the Recognized Mortgagee may, subject to compliance with the Lease Agreement and the consent of the Port Authority contemplated in the definition of Qualified Terminal Operator, exercise its Equity Foreclosure rights without any further consent of the Port Authority.

To the extent Lessee desires to exercise its rights under the Collateral Agency and Accounts Agreement to terminate all or any of the Project Accounts (as defined in the Collateral Agency and Accounts Agreement), the Lessee shall provide thirty (30) days advance notice to the Port Authority (together with a description of how payments will continue to be made to the Port Authority under the Lease Agreement and through which of the remaining Project Accounts) for the Port Authority's review, and the Lessee will in any event ensure that withdrawals from the Post-Completion Revenue Account (as defined in the Collateral Agency and Accounts Agreement) continue to be made by the Collateral Agents pursuant to a Funds Transfer Certificate in accordance with the provisions of the Collateral Agency and Accounts Agreement unless otherwise authorized in writing by the Port Authority.

### ***Refinancing***

The Lessee shall obtain the Port Authority's prior written consent to any proposed Refinancing; provided that, subject to the cap on Lessee Debt as described above under the heading "*Project Financing*" – Leasehold Mortgage," no such consent shall be required if the Lessee first demonstrates to the Port Authority that it has met certain conditions, including, without limitation, that:

- (a) the proposed Refinancing is incurred to refinance all or any portion of the Initial Bank Lessee Debt originated under the initial Bank Financing Documents; or

- (b) (1)(A) the proposed Refinancing does not increase either (x) the weighted average maturity or (y) the borrowing cost of the Lessee Debt (after taking into account any reduction in Refinancing proceeds required to refinance Lessee Debt due to the application towards such refinancing of any settlement or termination payments required to be made to the Lessee pursuant to Swap Documents entered into prior to such Refinancing and approved by the Port Authority in accordance with the Lease Agreement and (B) the proceeds of the proposed Refinancing refinances Lessee Debt without increasing the principal amount of replacement Lessee Debt then outstanding other than by an amount equal to the reasonable costs of closing the Refinancing and results in projected debt service costs in each year to the end of the Term that are no greater than the corresponding debt service costs projected for each year immediately prior to such Refinancing; or
- (2) the proposed Refinancing: (w) will occur during the D&C Work Period, (x) is for the purpose of obtaining additional funds required to reach the applicable Completion Date, and the proceeds of the proposed Refinancing will be used exclusively to pay, reimburse or refinance the costs and expenses incurred by or on behalf of Lessee directly in connection with the D&C Work, (y) is on terms consistent with the terms of, and is otherwise permitted under, the initial Financing Documents, and (z) does not result in an increase in the aggregate outstanding principal amount secured by the Leasehold Mortgage then in effect by more than 10%; or
- (3) the proceeds of the proposed Refinancing will be used exclusively (x) to finance up to \$150 million of additional liquidity reserve to be established and used exclusively during periods of Force Majeure (regardless of whether the Lessee or the Port Authority is the Affected Party), Unavailability Events or Port Authority Breach; or (y) to pay increased D&C Work costs and/or other capital expenditures resulting from changes in (i) Applicable Law, (ii) Applicable Standards (including Rules and Regulations Changes), (iii) Good Order Requirements or (iv) RPW Changes; provided, that (I) in the case of clause (x), (A) such Refinancing can only be incurred if the applicable Force Majeure, Unavailability Event or Port Authority Breach extends for a period in excess of 90 days, and (B) any such Refinancing shall be fully amortized over a period not extending longer than the earlier of (1) the date that is three years after the replenishment of senior reserve accounts under the Financing Documents, and (2) the date that is seven years following issuance of the debt constituting such Refinancing; (II) in the case of clause (y), (A) no such Refinancing may occur unless, at the time of such Refinancing, the Senior Debt Service Coverage Ratio for each year that such debt will be outstanding is projected to be not less than 1.25x, based on the report of an independent airport consultant, which report shall be approved by the Port Authority, such approval not to be unreasonably withheld, (B) an independent third party advisor (which may include any existing lender's technical advisor) has determined that the amount of proceeds of such proposed Refinancing will not exceed the sum of such increased D&C Work costs and/or other capital expenditures, as applicable, plus any reasonably required reserves and reasonable costs of issuance, (C) the scope of such increased D&C Work and/or other capital improvement has been consented to by the Port Authority, which consent shall not be unreasonably withheld, (D) any such Refinancing will be amortized so as to provide for level debt service over the useful life of the assets being financed, and (III) while any Refinancing incurred in connection with this paragraph remains outstanding, the Lessee shall be prohibited from making any distributions to Equity Members unless, at the time of such distribution, the Senior Debt Service Coverage Ratio for the immediately preceding twelve-month calculation period was not less than 1.20x; and (II) the proposed Refinancing shall not: (i) cause any change or series of changes in the obligations of the Lessee that would, or could be expected to, result in an increase in the Port Authority's liabilities, obligations or risks under the Lease Agreement; (ii) result, or could reasonably be expected to result, in an adverse effect on the ability of the Lessee to perform its obligations under the Lease Agreement; or (iii) result in any portion of the proceeds of the Refinancing being used to make distributions or (except with respect to any Refinancing permitted pursuant to clause (x) of the preceding paragraph) to pay

non-capital costs and expenses other than customary and normal costs, fees and expenses associated with such Refinancing; provided, however, a portion of the proceeds may be used to reimburse the Lessee for reasonable capital expenditures, costs, fees and expenses previously expended by or on behalf of the Lessee in connection with the Lessee's operations at, management of, and construction of the New Terminal Facilities.

Notwithstanding the preceding paragraphs under this heading, any Recapitalization shall be permitted without the consent of the Port Authority as long as:

- to the extent the Lessee Debt incurred in connection with such Recapitalization is Senior Debt, then after giving pro forma effect to the incurrence of such Senior Debt, (i) the aggregate Senior Debt then encumbering the Premises shall obtain an investment grade rating from at least two Rating Agencies, one of which must be either Standard & Poor's Financial Services LLC or Moody's Investor Services, Inc., and (ii) the consolidated debt service coverage ratio for all Senior Debt and Subordinated Debt, on a pro forma forward looking basis, is at least 1.45x; and
- to the extent the Lessee Debt incurred in connection with such Recapitalization is Subordinated Debt, then after giving pro forma effect to the incurrence of such Subordinated Debt, the consolidated debt service coverage ratio for all Senior Debt and Subordinated Debt, on a pro forma forward looking basis, is at least 1.45x.

Proceeds from any Recapitalization may be used by Lessee for any purpose, including Distributions to the Equity Members, subject to amounts which may be distributable to the Port Authority as Excess Value Rent.

***Minority Business Enterprises, Women-Owned Business Enterprises and Local Business Enterprises Commitment***

Throughout the Term of the Lease Agreement, the Lessee commits to use good faith efforts to implement an extensive program to ensure maximum opportunities for MBEs and WBEs and to maximum the use of LBEs in accordance with the requirements of the Lease Agreement.

The Lessee shall document its efforts to ensure maximum opportunities for MBEs and WBEs and to maximize the use of LBEs in accordance with the Lease Agreement. The Lessee shall keep the Port Authority fully advised of the Lessee's progress in implementing such programs and shall supply the Port Authority with such information, data and documentation with respect thereto as the Port Authority may from time to time request, including but not limited to annual reports.

The Lessee's non-compliance with these provisions shall constitute a material breach of the Lease Agreement. Nothing in the Lease Agreement shall be construed as a limitation upon the application of any laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents. Nothing in the Lease Agreement shall grant or be deemed to grant to the Lessee the right to make any agreement or award for concessions or consumer services at the Airport. In addition to and without limiting any other term or provision of the Lease Agreement, the Lessee has agreed to comply with the Service-disabled Veteran Owned Business requirements set forth in Schedule I attached to the Lease Agreement.

### ***Minimum Wage Requirements / Labor Harmony***

Under the Lease Agreement, the Lessee, its Contractors and Sublessees must comply with the Port Authority's Minimum Wage Policy and Labor Harmony requirements. The Port Authority's Minimum Wage Policy applies to workers performing under non-trade labor service contracts at all Port Authority facilities. At the request of the Port Authority, the Lessee must terminate any agreements related to Covered Services (as defined in the Minimum Wage Policy) with parties that fail to comply with the Minimum Wage Policy.

With respect to Labor Harmony, the Lessee agreed to enter into and comply with a project labor agreement with The Building and Construction Trades Council of Greater New York with respect to the D&C Work (and to cause its Contractors to do the same). In performing the D&C Work, the Lessee agrees to prevent any situation or condition that causes Labor Troubles at the Premises. The Port Authority's determination of the existence of Labor Troubles shall be conclusive on the Lessee. Upon written notice, the Lessee will (or will cause its Contractors to) promptly rectify any such condition. Under the Lease Agreement, neither the Lessee nor its Contractors waive legal rights to challenge allegations regarding Labor Troubles under Applicable Laws or pursuant to the project labor agreement. The Port Authority's remedies for breaching Lessee's obligations related to Labor Troubles include suspending the Port Authority's permission to proceed with the applicable portion of the D&C Work. Once Labor Troubles are settled and the Lessee (or its Contractor, as applicable) is in compliance, the Port Authority will promptly reinstate the permission to recommence the D&C Work on the same terms and conditions as before.

### ***Dispute Resolution***

Except as expressly set out otherwise in the Lease Agreement, upon the referral of a dispute between the Port Authority and the Lessee regarding any matter in the Lease Agreement, designated senior representatives of each of the Port Authority and the Lessee will meet and use commercially reasonable efforts resolve such dispute for at least 15 days. If resolution is not reached within 15 days, unless the parties agree to extend the 15 day negotiation period, either the Port Authority or the Lessee may proceed pursuant to the litigation rules and procedures outlined in the Lease Agreement. Any dispute that involves a technical or engineering matter with respect to the D&C Work and any capital improvements or replacement or renovation work performed by the Lessee on the Premises during the O&M Period, will be determined by the Port Authority's Chief Engineer in his or her sole discretion and (subject to any remedies the Lessee may have as matter of public law in respect of the Chief Engineer's determination) such determination will be conclusive, final and binding.

### ***Governing Law***

The Lease Agreement and any claim, controversy or dispute arising under or related to the Lease Agreement and the letting thereunder will be governed by, and be construed in accordance with, the laws of the State of New York applicable to contracts made, and to be performed solely within, such State, without regard to choice of law principles.

**EXHIBIT A – DEFINITIONS TO APPENDIX E  
SUMMARY OF CERTAIN PROVISIONS OF THE LEASE AGREEMENT**

**Rules of Interpretation**

1. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation.”
2. Definitions of terms shall apply equally to the singular and plural forms of the terms defined.
3. The word “will” shall be construed to have the same meaning and effect as the word “shall.”
4. A reference to a Person shall be construed to include its successors and permitted assigns.
5. In this Exhibit A to Appendix E, references to a Section, Exhibit, Schedule or Annex that do not specifically refer to another document shall mean a Section, Exhibit, Schedule, or Annex to the Lease Agreement.
6. Any definition of or reference to any agreement, instrument or other document shall be construed (a) including all exhibits, schedules and other attachments thereto, (b) as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented and/or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth in the Financing Documents) and (c) including all documents, instruments or agreements issued or executed in replacement or substitution thereof.
7. The words “hereof,” “herein” and “hereunder” and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document.
8. References to “days” means calendar days, unless the term “Business Days” shall be used. References to a time of day means such time in New York, New York, unless otherwise specified.
9. A reference to a day as it relates to a transfer of funds, if such day is not a Business Day, shall mean the next day that is a Business Day.
10. All accounting terms used which are not expressly defined herein have the meanings given to them in accordance with GAAP. Except as otherwise specifically provided herein, all computations made shall be made in accordance with GAAP.

Unless otherwise specified in the body of Appendix E, capitalized terms used in Appendix E shall have the meanings set forth below:

“**2018 Ground Rental Rate**” shall mean, as of the date of calculation, an annual per acre rent equal to \$148,300 increased by the greater of (I) four percent (4%) and (II) fifty percent (50%) of the CPI Percentage Increase, compounded annually, for each January 1<sup>st</sup> that occurs between December 31, 2018 and such calculation date (e.g., for a calculation date occurring in 2021, if the CPI Percentage Increase is four percent (4%) per year, the 2018 Ground Rental Rate would equal \$166,817.33  $((\$148,300*1.04)*1.04)*1.04$ ).

“**ABO(s)**” means the uppermost level of Person(s) that directly or indirectly own an Interest Transferor’s Equity Interest in the Lessee and who, if such Person(s) were the Interest Transferor of an Interest Disposition, would be subject to the payment of Equity Gain Share.

“**Accommodations**” shall mean and include:

- (i) Use by a Requesting Airline of Gate(s) and Gate Related Premises for its scheduled passenger flight operations;
- (ii) Utilities, janitorial services, security, maintenance and repair and other services and facilities necessary or desirable in connection with the use described in clause (i) above of this definition; and
- (iii) Relocation of one or more of the scheduled flight operations of an Airline Sublessee to accommodate such Requesting Airline.

“**Affected Party**” has the meaning set forth above under the heading “Force Majeure.”

“**Aggregate Enplanements**” means, in any Calendar Year, the aggregate sum of all Domestic Enplanements and International Enplanements.

“**Aggregate Reimbursement Amount**” means the amount that the Lessee will reimburse the Port Authority for reasonable third-party out-of-pocket expenses incurred by the Port Authority directly related to the development of the Premises pursuant to the Lease Agreement (including reasonable attorney’s fees, costs and expenses) in an aggregate amount not to exceed \$40,000,000.

“**Airline Sublessee**” shall mean (x) any Scheduled Aircraft Operator with which the Lessee has entered into an Airline Sublease and (y) any affiliated airline of any such Scheduled Aircraft Operator that is using or occupying or otherwise operating at the Premises, including, without limitation, any affiliated airline operating (1) flights at the Premises pursuant to a code share agreement with any such Scheduled Aircraft Operator, on which seats are sold into and/or out of the Premises and are operated under the same airline code designator as the Scheduled Aircraft Operator and (2) at the Premises and whose outstanding capital stock is at least twenty-five percent (25%) owned by such Scheduled Aircraft Operator or the parent company of such Scheduled Aircraft Operator, or that owns at least twenty-five percent (25%) of the outstanding capital stock of such Scheduled Aircraft Operator.

“**Airport Security Guidelines Manual**” means the Airport Security Guidelines Manual for Port Authority of New York and New Jersey Airports (dated December 30, 2019), and any subsequent editions or replacements thereof.

“**Airport Security Manager**” means the Airport’s primary contact for civilian security related activities at the Airport, who is designated the “Airport Security Coordinator” as specified in 49 C.F.R. Part 1542.

“**Airport Security Program**” or “**ASP**” means an airport security program approved by the TSA, which complies with 49 C.F.R. Part 1542 and includes, as a portion thereof, the Port Authority’s obligations under 49 C.F.R. Part 1542 to provide security within the Airport, including the Premises.

“**Airport Traffic Mitigation**” has the meaning set forth above under the heading “Airport-Wide Facilities and Services.”

“**Applicable Law**” or “**Applicable Laws**” shall mean any statute, law, code, regulation, ordinance, rule, common law, judgment, judicial or administrative order, decree, directive or other requirement having the force of law or other governmental restriction (including those resulting from the initiative or referendum process) or any similar form of decision of or determination by any Governmental Authority (including any applicable regulation, order or statement of policy of the Administrator of the FAA or any other governmental officer or body having jurisdiction over the enforcement of the obligations of the Port Authority under federal law), including any Environmental Requirements, whether taking effect before or after the Effective Date, in each case, as amended, revised, supplemented or otherwise modified from time to time and including requirements for operation of the Premises whether imposed upon the Premises operator or the Port Authority, as lessor. For the avoidance of doubt, the term “Applicable Laws” includes FAA Grant Assurances, TSA-issued requirements, PFC assurances and decisions and the Airport Operating Certificate, but excludes the Applicable Standards, the Rules and Regulations and Good Order Requirements.

“**Applicable Standards**” means (i) the Rules and Regulations, (ii) all applicable codes, standards, regulations, manuals, references, guidelines, policies, specifications, handbooks and advisory circulars, including such codes, standards, regulations, manuals, references, guidelines, policies, specifications, handbooks, advisory circulars and similar documents referenced within the Lease Agreement and the Requirements and Provisions for Work issued or published by the Port Authority or a Governmental Authority and any similar applicable documents referenced in the Basic Lease, as amended, revised, supplemented or otherwise modified from time to time, and (iii) all applicable codes, references, and specifications issued or published by the Port Authority.

“**Approved Pro Forma Terminal Leasing Plan**” means the pro forma plan that was developed and mutually agreed to by the Lessee and the Port Authority for the operation of the Premises for passenger air transportation-related uses with respect to the New Terminal Facilities.

“**Architect of Record**” means the licensed professional architect in the State of New York employed by the Lessee with respect to the D&C Work.

“**Assignment**” shall mean any sale, exchange, assignment or other disposition, whether by operation of law or otherwise, of all or any portion of the Lessee’s interest in the Lease Agreement or the Leasehold estate created thereby.

“**Baseline Schedule**” means the “Detailed Baseline Schedule” for the D&C Work prepared by the Lessee and approved by the Port Authority in form and substance.

“**Basic Lease**” means the Amended and Restated Agreement of Lease Agreement of the Municipal Air Terminals between The City of New York, as landlord, and the Port Authority, as tenant, dated as of November 24, 2004 and recorded in the office of the City Register of the City on December 3, 2004 under City Register File No. 2004000748687, as the same from time to time may have been or may be supplemented, amended and/or restated.

“**Best Management Practice**” means the exercise of the degree of skill, diligence, prudence and foresight that would reasonably and ordinarily be expected from time to time from a skilled and experienced airport terminal operator or airport management services provider, or a skilled and experienced designer,

engineer or contractor, as applicable, seeking in good faith to comply with its contractual obligations (including, in the case of an airport terminal operator or airport management services provider, obligations to consistently operate and maintain world-class terminal facilities), complying with Applicable Law, Governmental Approvals and Applicable Standards, and engaged in the same type of undertaking under similar circumstances and conditions. Best Management Practice is not static but rather will change over time; provided, however, that Best Management Practice with respect to any particular activity will be determined at the time when such particular activity is performed.

“**Business Day**” shall mean any day occurring Monday through Friday except Business Day shall not include any legal holiday in the State of New York or any other days on which the executive offices of the Port Authority are closed.

“**Calculation Date**” means each March 31, June 30, September 30 and December 31 following the first day of the month (or if such day is not a Business Day, then the next succeeding Business Day) following the month in which Substantial Completion of Phase 2 occurs.

“**Cash Available for Distribution**” means as of each Calculation Date, all cash, cash equivalents and liquid investments held by or on behalf of the Lessee as of such Calculation Date in the Remaining Revenue Account pursuant to Section 5.17 of the Collateral Agency and Accounts Agreement.

“**Change Order Proposal**” means a proposed change order covering a requested Port Authority Change that is prepared and submitted by the Lessee for the Port Authority’s approval as soon as practicable but in no event later than fifteen (15) Business Days after the receipt of the Port Authority request by the Lessee, including the elements therefor required under the Lease Agreement.

“**Claim**” shall mean any and all claims, disputes, allegations, causes of action, demands, suits or proceedings alleging or seeking Losses.

“**Collateral Agency and Accounts Agreement**” means that certain Collateral Agency and Accounts Agreement, dated as of November 1, 2022, by and among the Lessee and the other parties thereto.

“**Common Terms Agreement**” means that certain Common Terms Agreement, dated as of November 1, 2022, by and between, among others, the New York Transportation Development Corporation, the Lessee, The Bank of New York Mellon, as intercreditor agent, collateral agent and trustee, and any other secured party thereto from time to time, with respect to certain Lessee Debt to be incurred in connection with the Construction Project.

“**Compensation Event**” means any of the following events or conditions which occur during the D&C Work Period (subject to the limitations and other provisions set forth in the Lease Agreement):

- (i) any Port Authority Change;
- (ii) any willful failure of the Port Authority to provide the Lessee with Temporary Rights of Access by the applicable specified date in accordance with the Lease Agreement; provided, that no such failure shall be deemed to be a Compensation Event to the extent that it is (x) due to the performance of work by the Port Authority or its contractors on the Airport necessitated by an Emergency, or (y) in response to a Force Majeure event with respect to the Port Authority, for so long as the Parties are coordinating the resumption of performance pursuant to the Lease Agreement;



(iii) any willful failure of the Port Authority to (A) provide the Lessee with access to the applicable sites necessary for the Lessee to be able to construct the Off-Premises Facilities, within the time periods specified in the Baseline Schedule or the Master Schedule, as applicable, and/or (B) provide the Lessee with power required for testing and commissioning of the New Terminal Facilities by the later of February 19, 2025 (which shall be extended day-for-day for any extension to the date for Substantial Completion of Phase 1 that is initially set forth in the Baseline Schedule) and when the substations and the associated connected loads at the New Terminal Facilities are ready and able to receive the power, and/or (C) provide the Lessee with power required for operations of the New Terminal Facilities by the Scheduled Phase 1 DBO Date (which shall be extended day-for-day for any extension to such date); provided, that no such failure shall be deemed to be a Compensation Event to the extent that it is (x) due to the performance of work by the Port Authority or its contractors on the Airport necessitated by an Emergency or (y) in response to a Force Majeure event with respect to the Port Authority, for so long as the Parties are coordinating the resumption of performance pursuant to the Lease Agreement;

(iv) any suspension of the D&C Work by the Port Authority in excess of twenty-four (24) hours for reasons other than certain events described in the Lease Agreement;

(v) the Port Authority's direction to uncover, remove, and restore D&C Work, (A) if the Port Authority had the opportunity to inspect the D&C Work before it was covered and was given reasonable prior notice that the D&C Work was being covered, (B) if the Port Authority orders the D&C Work uncovered after the fact, and (C) the D&C Work exposed proves in compliance with Good Order Requirements, Applicable Laws, Applicable Standards, the Lease Agreement, the Requirements and Provisions for Work and the other Project Documents; provided, that no such event shall be deemed to be a Compensation Event to the extent that it is (x) conducted at the direction of any Governmental Authority, or (y) in response to a Force Majeure event, in each case for so long as the Parties are coordinating the resumption of performance pursuant to the Lease Agreement;

(vi) any failure of the Port Authority to respond to any request from the Lessee for review and/or approval of such schedules, plans, design documents, or other submittals within the applicable time period set forth in the Lease Agreement (the "**Submittal Review Period**"); provided that failure to respond within the Submittal Review Period will not be a Compensation Event unless the Lessee shall have provided notice of the failure within three (3) Business Days of the expiration of the Submittal Review Period to the Port Authority with the following caption in bold and capitalized type: "**THIS IS A NOTICE REQUESTING YOUR [REVIEW/APPROVAL] TO THE PROPOSED [DESCRIBED SCHEDULE, PLAN, DESIGN DOCUMENT, OR OTHER SUBMITTAL] AFFECTING THE D&C WORK. FAILURE TO RESPOND TO THIS NOTICE WITHIN FIVE (5) BUSINESS DAYS OF RECEIPT OR DEEMED RECEIPT SHALL CONSTITUTE A COMPENSATION EVENT**" and the Port Authority shall have failed to respond to such notice within the five (5) Business Day period; and provided further, that it shall not be deemed a failure to timely respond if such failure results, in whole or in part, from (A) failure of the Lessee or any Lessee-Related Entity to provide a complete and accurate submission or a submission that does not comply with the requirements of the Lease Agreement or the other Project Documents (including compliance with Applicable Standards), or (B) required review by Governmental Authorities in connection with any such schedules, plans, design documents, or other submittals for the Port Authority's approval where such review is required and cannot be completed or independently obtained by the Lessee, or (C) failure by the Lessee to obtain a Governmental Approval that is required in connection with any such schedules, plans, design documents, or other submittals in order for the Port Authority to provide its response or complete its review; and provided further, that no such failure shall be deemed to be a Compensation

Event to the extent it is in response to a Force Majeure event with respect to the Port Authority and for so long as the Parties are coordinating the resumption of performance pursuant to the Lease Agreement; or

(vii) with respect to Governmental Approvals the Lessee is required to obtain pursuant to the Project Documents during the D&C Work Period (A) any willful failure or delay by the Port Authority to provide information required by Applicable Law or Applicable Standards for the Lessee to obtain or comply with such Governmental Approvals that is specifically identified in a written request from the Lessee to the Port Authority, is in the possession of the Port Authority and is not otherwise available to the Lessee within a time period reasonably specified by the Lessee in such request (but not less than thirty (30) days after receipt of such written request), or, if no time period is specified, then within a reasonable time period after the request from the Lessee to provide such information (but not less than thirty (30) days), or (B) the willful failure of the Port Authority to provide a signature of a Port Authority official within a reasonable period (but not less than ten (10) Business Days) after such signature is requested in writing by the Lessee with respect to documentation reviewed and approved by the Port Authority prior to the submission of such request by the Lessee in connection with the applications for such Governmental Approvals that cannot otherwise be obtained by the Lessee, and the Lessee has expressly stated in such written request the requested return date for such signature (which shall be not less than ten (10) Business Days after such request); provided, that no such willful failure or delay shall be deemed to be a Compensation Event to the extent it results from the denial or disapproval of documentation submitted to the Port Authority for signature or results from a Force Majeure event with respect to the Port Authority and for so long as the Parties are coordinating the resumption of performance pursuant to the Lease Agreement;

except, in each case, to the extent arising by reason of or attributable to (A) the negligence or willful misconduct of the Lessee or a Lessee-Related Entity, (B) any act or omission by the Lessee or a Lessee-Related Entity in breach of the provisions of the Lease Agreement or any other Project Document, (C) the Port Authority's need to comply with Applicable Laws or Applicable Standards (provided such Applicable Standards apply to other Airport facilities and are applied to the Lessee in a Non-Discriminatory Manner), (D) a contractual requirement which is legally binding on the Port Authority, which contract has been entered into in the ordinary course of the Port Authority's operations at the Airport (which requirements, if incurred following the execution of the Lease Agreement, will not include obligations under a new or substantially modified Lease Agreement with a passenger terminal operator providing for substantial new construction, other than those obligations which are not, according to their terms, unduly discriminatory and which relate to construction coordination), or (E) the failure of the Port Authority to address disagreements between a Lessee-Related Entity and any other party conducting construction work at the Airport under various cooperation agreements or arrangements (including the Construction Coordination Agreement) between them.

If any of the events described in clauses (ii), (iii) and (v) through (vii) above are deemed not to be a Compensation Event due to the occurrence of a Force Majeure event with respect to the Port Authority, the Parties shall coordinate with each other in good faith to resume the performance relevant to the event as soon as reasonably practicable following the cessation of such Force Majeure event, with the Parties' understanding that the nature of certain Force Majeure events may preclude or hamper the Port Authority's ability to resume performance immediately, notwithstanding that the Force Majeure event has ceased.

**“Compensation Event Notice”** means written notice given by the Lessee to the Port Authority within twenty (20) Business Days following the date on which the Lessee first becomes aware (or should

have become aware, using all reasonable due diligence) that an event has occurred that the Lessee claims is a Compensation Event.

“**Completion Date**” means the date on which substantial completion of the entire D&C Work (i.e., completion of all D&C Work other than punch list items approved by the Port Authority and D&C Work specifically identified in the Baseline Schedule as extending beyond Substantial Completion of Phase 2) has been achieved.

“**Completion Milestone**” has the meaning set forth under the heading “Project Schedule” in this Appendix E.

“**Comprehensive Security Plan**” or “**CSP**” means a comprehensive security plan, which describes security to be performed by the Lessee throughout the Term on or at the Premises, which is in compliance with the TCAP Process, the Requirements and Provisions for Work and the Airport Security Guidelines Manual, and which (A) shall, if requested by the Port Authority, include one (1) or more exclusive area agreements pursuant to 49 C.F.R. 1542.111 (each, an “**Exclusive Area Agreement**” or “**EAA**”) or, if an entity is not an aircraft operator pursuant to 1544 or 1546, a tenant security plan that details all TSA regulatory requirements that a lessee or sublessee must address, as applicable, which will be integrated into the Airport Security Program, (B) may include additional security measurements as required by the CSO, and (C) will include additional requirements with respect to security measures as required by the Lease Agreement.

“**Comprehensive Terminal Leasing Plan**” means the pro forma plan that was developed and mutually agreed to by the Lessee and the Port Authority for the operation of the Premises for passenger air transportation-related uses with respect to the New Terminal Facilities, which sets forth, *inter alia*, (A) principles and methodology of Airline Terminal Rates; (B) assignment and use of Gates (including the types of Aircraft permitted at any particular Gate), hold rooms, ticket counter positions, office and other space; (C) Gate and other facility usage standards, including designated Scheduled Periods of Use in connection with Lessee’s obligations under the Lease Agreement to provide Accommodations for Requesting Airlines; (D) projected Gate utilization; (E) a narrative describing in broad terms the principles and methodologies of Airline Terminal Rates and the utilization of Gates and other facilities at the New Terminal Facilities and the basis on which such principles and methodologies are intended to comply with FAA rules and regulations (including FAA Grant Assurances); and (F) the structure and level of any common area maintenance fees, marketing fees and utility recoveries (if any) to be charged to the Airline Sublessees; etc.

“**Concession Period**” means from and following the Substantial Completion of Phase 1 or Substantial Completion of Phase 2, as applicable, and throughout the Term.

“**Concessions Revenue Rent**” means for each Calendar Year, or portion thereof, occurring during the Concession Period:

(i) prior to the Phase 2 Opening Date, an amount equal to the greater of: (x) 50% of the Gross Rents for the Current Calendar Year, and (y) the sum of (I) the product of the Pre-Opening International Enplanement Rate and the International Enplanements during the Current Calendar Year, and (II) the product of the Pre-Opening Domestic Enplanement Rate and the Domestic Enplanements during the Current Calendar Year;

(ii) following the Phase 2 Opening Date, an amount equal to the greater of: (x) 50% of the Gross Rents for the Current Calendar Year, and (y) the greater of (1) the product of (I) the quotient obtained by dividing (a) 80% of the Concessions Revenue Rent paid or payable with respect to the Calendar Year immediately preceding the Current Calendar Year by (b) the Aggregate Enplanements during that preceding Calendar Year, and (II) the Aggregate Enplanements during the Current Calendar Year; and (2) the sum of (I) the product of the Post-Opening International Enplanement Rate and the International Enplanements during the Current Calendar Year and (II) the product of the Post-Opening Domestic Enplanement Rate and the Domestic Enplanements during the Current Calendar Year.

“**Concession Sublessees**” means providers of concession goods and services in accordance with the Lease Agreement or providers of other consumer services with which the Lessee has entered into a Concession Sublease.

“**Consolidated Bond Resolution**” means the resolution of the Port Authority adopted October 9, 1952, entitled “*Consolidated Bonds — Establishment of Issue*”.

“**Consolidated Bonds**” means the issue of obligations of the Port Authority known as “**Consolidated Bonds**” (which also includes short-term bonds known as “**Consolidated Notes**”) established under the Consolidated Bond Resolution.

“**Construction Application**” means one or more construction applications in the form prescribed by the Port Authority from time to time under the TCAP Process; provided that any Construction Application with respect to the D&C Work shall be deemed to include all plans and specifications of the D&C Work pursuant to and in accordance with the TCAP Process, the Airport Security Guidelines Manual and the Requirements and Provisions for Work.

“**Construction Coordination Agreement**” means the Construction Coordination Agreement, dated as of November 17, 2022, by and between the Port Authority and the Lessee, as amended, supplemented or otherwise modified from time to time.

“**Construction Project**” means the design and construction of the New Terminal Facilities on the Premises and the design and/or construction of all or a portion of the Off-Premises Facilities outside the Premises by the Lessee as set forth in the Lease Agreement and the Project Documents and in accordance with Good Order Requirements, Applicable Law and Applicable Standards.

“**Construction Security**” means the provision by each of the Lessee’s Lead Contractors of (x) one or more parent guaranties (if more than one, such guarantee shall be issued on a joint and several basis) from reputable parent guarantors acceptable to the Port Authority, or (y) one or more D&C Letters of Credit, or (z) a payment and performance bond from a surety acceptable to the Port Authority, or a combination of the foregoing security provided in clauses (x), (y) and (z), in each case in amounts, on terms, and in form and substance reasonably acceptable to the Port Authority and the Recognized Mortgagee and sufficient for the financing evidenced and secured by the then-applicable Financing Documents to achieve an investment grade rating.

“**Construction Work**” means all work related to the building, constructing, making, forming, manufacturing, furnishing, installing, supplying, delivering, landscaping, equipping and completing the Construction Project and decommissioning, demolishing and removing the Existing Terminal Facilities, all

in accordance with the Project Documents, but excluding Design Work and Operations and Maintenance Work.

“**Contractor**” shall mean any Person with whom the Lessee has entered into any Contract, and any other Person with whom any Contractor has further subcontracted any part of the Project Work, at all tiers.

“**Control,**” “**Controlling,**” “**Controlled by**” and “**under common Control with**” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of Voting Securities, by contract or otherwise. A Person may have Control of a specified Person notwithstanding that (i) one or more third parties may have rights to participate in major decisions of such specified Person and/or (ii) it does not own 50% or more of the beneficial interests of such specified Person.

“**Corrective Action Plan**” means a plan prepared by Lessee meeting the requirements of Chapter 6.10 of the General Provisions with respect to Nonconforming Work or Defect(s) in the D&C Work, as applicable.

“**CPI Percentage Increase**” means with respect to any applicable Calendar Year, the annual percentage increase, if any, in the CPI yielded by dividing (x) the amount of the increase, if any, in the CPI for the Reference Month of the year that is immediately preceding such Calendar Year, as compared to the CPI for the Reference Month (the “**Base Reference Month**”) of the year that is two (2) years prior to such Calendar Year, by (y) the CPI for the Base Reference Month.

“**Current Calendar Year**” means the Calendar Year having just ended.

“**D&C Contract**” means any Contract entered into by the Lessee for third party management, direction, supervision or performance of the D&C Work or any significant portion thereof. There may be more than one D&C Contract concurrently in effect.

“**D&C Letter of Credit**” shall mean a standby letter of credit, in form and substance reasonably acceptable to the Port Authority, issued by an Eligible LC Issuer as security for the performance of any D&C Contractor’s obligations under a D&C Contract.

“**D&C Work**” means the Design Work and the Construction Work.

“**D&C Work Costs**” means the costs for or in connection with the D&C Work, including without limitation, all fees, costs or reserves related to the financing, refinancing, construction or installation of the New Terminal Facilities and the Off-Premises Facilities or in connection with the issuance of the Lessee Debt to finance D&C Work Costs.

“**D&C Work Delay Payments**” means payments of liquidated damages required to be made by the Lessee equal to Forty Thousand Dollars (\$40,000) per day for every day a Completion Milestone remains unachieved.

“**D&C Work Period**” means the period from the Effective Date until the Port Authority issues a “Final Certificate of Authorization to Occupy or Use;” provided, however, that (i) with respect to obligations specific to the Phase 1 D&C Work, the period from the Effective Date until the Port Authority issues a “Final Certificate of Authorization to Occupy or Use” and (ii) with respect to obligations specific

to the Phase 2 D&C Work, the period from the Port Authority’s approval of the Construction Application or Partial Approval Work Plans relating to all or a portion of such Phase 2 D&C Work until the Port Authority issues a “Final Certificate of Authorization to Occupy or Use.”

“**Date of the Taking**” shall mean the date on which title to all or any portion of the Premises, as the case may be, has vested in any lawful power or authority pursuant to a Taking.

“**DBO**” means (i) with respect to any Partial Occupancy Portion, the date on which the Partial Occupancy Portion is substantially complete, (ii) with respect to any Off-Premises Facilities or Installation Portion, the effective date of the applicable “Temporary Certificate of Authorization to Occupy or Use” issued by the Port Authority with respect to such Off-Premises Facilities or Installation Portion, (iii) with respect to the Phase 1 D&C Work, the date on which the conditions set forth in the Lease Agreement related to “– Design & Construction by the Lessee – Completion of the Phase 1 D&C Work” are satisfied, and (iv) with respect to the Phase 2 D&C Work, the date on which the conditions related to “– Design & Construction by the Lessee – Completion of the Phase 2 D&C Work” are satisfied.

“**Defect**” means a defect or deficiency in the condition or performance of any component of the Construction Project, whether by design, construction, installation, damage or wear, affecting the condition, use, functionality or operation of any component of the Construction Project that would cause or have the potential to cause one or more of the following:

- (a) a hazard, nuisance or other risk to public or worker health or safety, including the health and safety of Persons;
- (b) a structural deterioration of the affected New Terminal Facilities or Off-Premises Facilities or any other component of the Construction Project;
- (c) damage to a third party’s property or equipment;
- (d) damage to the environment to the extent arising from a breach of the Lease Agreement by the Lessee; or
- (e) failure of the affected New Terminal Facilities or Off-Premises Facilities or any component of the Construction Project to meet any of the requirements or standards referred to in Exhibit 8 (*Performance Standards and Measurement Provisions*) to the Lease Agreement.

“**Deferral Period**” means during the years from and including 2027 to and including the earlier of (x) 2036 and (y) the date of any Recapitalization event.

“**Deferred Concessions Revenue Rent**” has the meaning set forth above under the heading “Concessions Revenue Rents.”

“**Deferred Second Additional Rent**” means any Second Additional Rental amounts that are deferred in accordance with Section 4(c)(3) of the Lease Agreement.

“**Delay Event**” has the meaning set forth above under the heading “Delay Events.”

**“Delay Event Notice”** means a written notice from the Lessee to the Port Authority within twenty (20) Business Days following the date on which the Lessee first became aware (or should have become aware, using all reasonable due diligence) that an event has occurred that the Lessee claims is or is likely to become a Delay Event.

**“Design Work”** means all work related to the design, redesign, engineering and architecture for the Construction Project (including the Off-Premises Facilities) in accordance with the Project Documents, but excluding Construction Work and Operations and Maintenance Work.

**“Distributable Cash”** means all Cash Available for Distribution in the Remaining Revenue Account, other than reasonable reserve amounts, as determined by the Lessee in its reasonable discretion and approved by the Port Authority in its reasonable discretion that shall be distributed in accordance with Section 5.17(c) of the Collateral Agency and Accounts Agreement.

**“Domestic Enplanements”** shall mean an Enplanement which is on a flight bound for any destination with the United States of America (and territories thereof).

**“Effective Date”** means November 17, 2022.

**“Emergency”** shall mean any unplanned event affecting the Premises that:

- (a) presents an immediate or imminent hazard to workers, other personnel or the general public, or a risk of immediate or imminent structural failure, or an immediate or imminent risk of material damage to a third party’s property or equipment, or an immediate or imminent risk of a Release of Hazardous Substances or a threat to the long-term integrity of any part of the Premises;
- (b) has jeopardized the safety of workers, other personnel or the general public at the Premises;
- (c) will result in unreasonable interference with operations by any Person at the Airport, as determined by the General Manager of the Port Authority (it being expressly understood and agreed that construction in the ordinary course in connection with the approved Construction Applications shall not be deemed, in and of itself, to constitute interference);
- (d) is a declared state of emergency pursuant to state or Federal law; or
- (e) is recognized or declared by (x) the General Manager of the Airport, (y) a designee of the Port Authority or the General Manager of the Airport, or (z) any Governmental Authority as an emergency.

**“Employee Surface Carrier(s)”** means surface carrier or carriers arranged either directly or by contract for the transportation to and from the Airport of (x) if Lessee, an Airline Sublessee’s employees and their baggage or (y) if an Airline Sublessee, its employees and their baggage (and such employees and baggage only).

**“Engineer of Record”** means the licensed professional engineer in the State of New York employed by the Lessee with respect to the D&C Work.

**“Environmental Requirement”** shall mean in the singular and **“Environmental Requirements”** shall mean in the plural all (i) common law and all past, present and future laws, statutes, enactments, regulations, rules, directives, ordinances, codes, licenses, permits, orders, memoranda of understanding and memoranda of agreement, guidance, approvals, plans, authorizations, requirements and similar items of all Governmental Agencies, (ii) all pollution prevention programs, “best management practices plans”, and other programs adopted and agreements made by the Port Authority (whether adopted or made with or without consideration or with or without compulsion), with any Governmental Agencies, and (iii) all judicial, administrative, voluntary and regulatory decrees, judgments, orders and agreements, in each case relating to the protection of human health or the environment, the foregoing to include without limitation:

(i) All requirements pertaining to reporting, licensing, permitting, investigation and Remediation of emissions, discharges, Releases or threatened Releases of Hazardous Substances into the air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances, or the transfer of property on which Hazardous Substances exist;

(ii) All requirements pertaining to the health and safety of employees or the public;

(iii) The Atomic Energy Act of 1954, 42 U.S.C. Section 2011 et seq.; the Clean Water Act also known as the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 et seq.; the Superfund Amendments and Reauthorization Act of 1986, Section 2701 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. Section 11001 et seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Safe Drinking Water Act of 1974, 42 U.S.C. Sections 300f-300h-11 et seq.; the New York State Environmental Conservation Law; the New York State Navigation Law; together, in each case, with any amendment thereto, and the regulations adopted, guidance, memoranda and publications promulgated thereunder and all substitutions thereof;

(iv) The SPDES Permit; and

(v) NEPA and the NEPA Approval Documents.

**“Equity Foreclosure”** means the foreclosure by a Recognized Mortgagee in respect of a pledge of any Equity Interests of the Lessee or any other exercise of rights or remedies pursuant to the terms of any Equity Pledge (or any contractual or statutory power of sale under the Equity Pledge or an assignment in lieu thereof), including (x) any transfer to or registration in the name of the Recognized Mortgagee or any of its nominees of any of the Equity Interests of the Lessee, or (y) any subsequent transfer or assignment of such Equity Interests provided, that, after giving effect to and taking into consideration such subsequent transfer or assignment, the Lessee continues to be a Qualified Terminal Operator;

**“Equity Gain Share”** means an amount equal to:

(a) in the event that an Interest Transferor is an ABO, a 15% share of any Excess Equity Gain resulting from such Interest Disposition; and



(b) in the event an Interest Transferor is not an ABO, a 15% share of any Excess Equity Gain(s) that would have resulted from such Interest Disposition if the Interest Transferor's ABO(s) had been the Interest Transferor(s) of such Interest Disposition.

**“Equity Interests”** shall mean, with respect to a Person, the direct or indirect equity interests in such Person.

**“Equity Member”** shall mean any Person that owns a direct equity interest in HoldCo, which owns 100% of the direct Equity Interests in the Lessee. As of the Effective Date, the Equity Members are Corsair-Vantage Airport Fund Aggregator, L.P., ATI Javelin Holdings, L.P, RXR JFK MP Holdings Member LLC and JetBlue Airways Corporation, as reflected in the Lease Agreement.

**“Estimated Construction Amount”** means not less than \$4 billion.

**“Event of Default”** means the occurrence of any one or more of the following events:

(1) the Lessee shall become insolvent or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States of America or of any state thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property or takes any action in furtherance of the foregoing; or

(2) by order or decree of a court the Lessee shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of the stockholders (or partners, members or equityholders, as applicable) of the Lessee seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States of America or of any state thereof, in each case, which decree, judgment or order is not stayed or vacated within sixty (60) days after the entry thereof; or

(3) by, or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or Governmental Authority, agency or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of the Lessee, and such possession or control shall continue in effect for a period of sixty (60) days; or

(4) a petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Lessee and shall not be dismissed within sixty (60) days after the filing thereof; or

(5) (i) the Lessee shall voluntarily abandon, desert or vacate the Premises or discontinue its operations at the Airport or its performance of the Project Work (other than a discontinuance in connection with any condemnation, Delay Event, Force Majeure or any other event that, with the passage of time, would constitute an Unavailability Event) for a period of thirty (30) or more consecutive days, or, (ii) after exhausting or abandoning any right of further appeal, the Lessee shall be prevented for a period of sixty (60) days by action of any Governmental Authority having jurisdiction thereof, from conducting its operations or the Project Work at the Airport, due to any act or omission of any Lessee-Related Entity; or

(6) any lien (other than a Permitted Lien) is filed against the Premises because of any act or omission of the Lessee, any Lessee-Related Entity and/or any Equity Member, and shall not be discharged of record, or by bonding through an insurance company duly authorized to write such bonds in New York State, in each case within ninety (90) days after the Lessee has knowledge thereof or has received notice thereof (it being agreed that proper delivery of service of process shall be deemed notice), in all cases subject to any lien-related restrictions in the Basic Lease (which shall supersede and control); or

(7) except as expressly permitted in the Lease Agreement, any Sublease, Transfer, Assignment or Interest Disposition (except if such Transfer, Assignment or Interest Disposition is of an indirect minority interest in the Lessee, then such Transfer, Assignment or Interest Disposition shall be subject to an ability to cure by making it comply with the terms of the Lease Agreement within five (5) Business Days after the date on which the Lessee receives written notice of such default); or

(8) except as expressly permitted in the Lease Agreement, the Lessee shall not, without the prior written approval of the Port Authority, become a possessor or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or

(9) the Lessee shall fail (x) duly and punctually to pay the Rentals due pursuant to the Lease Agreement and such failure shall continue unremedied for five (5) days following the date on which such payment was due, (y) to make any other payment of fees or charges required under the Lease Agreement when due to the Port Authority and such failure shall continue unremedied for thirty (30) days following the date on which such payment was due, or (z) to deposit or cause the deposit of funds to any reserve accounts in the amounts and within the time periods required by the Security Agreement and the Lease Agreement and such failure shall continue for ten (10) days after receipt of notice of default from the Port Authority; or

(10) the Lessee shall fail to keep, perform and observe (other than as otherwise set forth in the Lease Agreement) each and every promise, covenant and agreement set forth in the Lease Agreement or any other document incorporated by reference herein on its part to be kept, performed, or observed, within thirty (30) days after receipt of written notice of default thereunder from the Port Authority or within such shorter period as may be required by any applicable Governmental Authority, including, without limitation, the City (except where fulfillment of its obligation requires activity over a period of time and the Lessee shall have commenced to perform whatever may be required for fulfillment within the applicable cure period and diligently continues such performance without interruption, except for causes beyond its control, to completion); or

(11) any representation or warranty made or deemed to be made by the Lessee in the Lease Agreement or in any other certificates or agreements delivered by Lessee to the Port Authority in connection with the Lease Agreement shall be found to be incorrect, false or misleading in any material respect as of the time made (whether by affirmative statement or omission of such statement), unless the facts and circumstances that caused such representation, warranty, statement or omission to be incorrect, false or misleading are capable of being remedied, and such incorrect, false or misleading representation, warranty, statement or omission is rendered no longer incorrect, false or misleading in any material respect within ninety (90) days following the earlier of (x) the date that the Lessee obtained actual or constructive knowledge of such incorrect, false or misleading representation, warranty or omission or (y) the date of notice thereof from the Port Authority to the Lessee; or

(12) failure by the Lessee to comply with Applicable Laws and such failure is not cured within thirty (30) days after the earlier of the Lessee having knowledge of such failure and receipt of notice of such failure from the Port Authority or the applicable Governmental Authority, or such shorter period as may be required by any applicable Governmental Authority (except where fulfillment of its obligation requires activity over a period of time and the Lessee shall have commenced to perform whatever may be required for fulfillment within thirty (30) days after receipt of notice and diligently continues such performance without interruption, except for causes beyond its control, to completion); or

(13) failure by the Lessee, its Contractors, Suppliers, Sublessees and/or the Manager to cooperate with the Office of the Inspector General of the U.S. Department of Homeland Security (or any reconstituted or successor agency thereof), including, without limitation, with its integrity monitor, and such failure (other than in the case of a failure by the Lessee) continues without cure or removal of the failing entity by the Lessee for a period of three (3) Business Days or such shorter period as may be required by the Office of the Inspector General of the U.S. Department of Homeland Security; or

(14) failure by the Lessee to comply with certain provisions relating to rules and regulations or governmental requirements if such failure causes, or in the reasonable opinion of the Port Authority, is likely to cause, the termination, revocation or suspension of the Airport Operating Certificate, and if such failure is likely to cause the termination, revocation or suspension of the Airport Operating Certificate, such failure continues without full and complete cure for a period of ten (10) days (or such shorter period of time as may be required to comply with FAA direction or requirement with respect to such failure so as to ensure that the Airport Operating Certificate is not terminated, revoked or suspended, temporarily or permanently) after the earlier of the Lessee having knowledge of such failure and receipt of notice of such failure from the Port Authority or the applicable Governmental Authority, or such shorter period as may be required by any applicable Governmental Authority; or

(15) failure by the Lessee to maintain (or cause to be obtained and maintained) insurance coverage in accordance with the Lease Agreement, including, without limitation, failure to comply with the requirements relating to the amount, terms or coverage, and, with respect to any such failure (other than a lapse in insurance coverage required pursuant to the Lease Agreement) which results from (x) a change by the Port Authority to the insurance coverage requirements under the Lease Agreement or (y) the failure by an insurance carrier to maintain the rating required by the Lease Agreement, such failure is not cured within five (5) Business Days after the initial date of such failure; or

(16) failure by the Lessee to comply with any written order issued to the Lessee by the Port Authority in accordance with the Lease Agreement to suspend, in whole or in part, the D&C Work (x) within five (5) days following receipt of such written order or (y) such shorter period as may be required in cases of an Emergency or a life, health, security, safety, or environmental hazard, or a breach of the Good Order Requirements; or

(17) failure by the Lessee to begin the D&C Work with respect to either the Phase 1 D&C Work or the Phase 2 D&C Work, within sixty (60) days of the Port Authority's issuance of the applicable Partial Approval; or

(18) failure by the Lessee to achieve Substantial Completion of Phase 2 by the Outside Completion Date, as such date may be adjusted from time to time as expressly provided in the Lease Agreement; or

(19) failure of the Lessee to comply with certain other enumerated provisions of the Lease Agreement, and such failure is not cured within thirty (30) days after the earlier of the Lessee having knowledge of such failure and receipt of notice of such failure from the Port Authority or the applicable Governmental Authority, or such shorter period as may be required by any applicable Governmental Authority (except where fulfillment of its obligation requires activity over a period of time and the Lessee shall have commenced to perform whatever may be required for fulfillment within thirty (30) days after receipt of notice and diligently continues such performance without interruption, except for causes beyond its control, to completion); or

(20) failure by the Lessee to keep, perform and observe each and every direction (x) issued by the Port Authority in accordance with the terms and provisions of the Lease Agreement (including any bulletin, directive or other instruction issued by the General Manager of the Airport or Chief Security Officer), or (y) issued by the Port Authority in its capacity as a bi-state agency, an airport operator, or the tenant under the Basic Lease, provided that in either case of (x) or (y), such failure continues without cure for a period of ten (10) days (except where fulfillment of its obligation requires activity over a period of time and the Lessee shall have commenced to perform whatever may be required for fulfillment within ten (10) days after receipt of notice and diligently continues such performance without interruption, except for causes beyond its control, to completion); or

(21) failure by an Interest Transferor, or its designee, or the Lessee, to pay the Equity Gain Share in accordance with the Lease Agreement within three (3) Business Days after the earlier of the date of Lessee's actual knowledge of such failure and the date on which Lessee receives written notice of such failure from the Port Authority; or

(22) failure by the Lessee to comply with Chapter 4.1 (*Prevailing Rate of Wage*) of the General Provisions and such failure is not cured within thirty (30) days after notice of such failure from the Port Authority (except where fulfillment of such obligation requires activity over a period of time and the Lessee shall have commenced to perform whatever may be required for fulfillment within thirty (30) days after receipt of notice and diligently continues such performance without interruption, except for causes beyond its control, to completion); or

(23) failure to comply in any material respect with the OIG or the Project Integrity Monitor as set forth in the Lease Agreement and such failure is not cured within ten (10) Business Days after notice of such failure from the Port Authority.

“**Event of Default Notice**” has the meaning set forth above under the heading “Termination by the Port Authority (Events of Default).”

“**Excavation Boundary**” shall mean the applicable Perimeter Dig Area, plus a ten (10) foot wide (measured at the surface of the ground from the boundary of the Perimeter Dig Area) strip of land adjacent to the Perimeter Dig Area; provided, that the ten (10) foot wide strip will (i) be limited to five (5) feet on either side of an excavation that is less than ten (10) feet wide, (ii) end at the nearest property boundary, building or structure if that distance is less than ten (10) feet from the excavation (or five (5) feet if clause (i) above is applicable), and (iii) be limited in depth to the depth of the shallower of average groundwater depth or one (1) foot below the intended bottom depth of the excavation within the Perimeter Dig Area.

**“Excess Value Rent”** generally means certain additional rent amounts due to the Port Authority in addition to all other Rentals due under the Lease Agreement and shall be additional rent. Excess Value Rent amounts will be due for any Distribution Date on which (x) the Lessee is permitted, pursuant to the terms of the Financing Documents, to distribute cash from the Remaining Revenue Account, and (y) there is Cash Available for Distribution, with such Distributable Cash to be distributed in accordance with applicable provisions of the Collateral Agency and Accounts Agreement on such Distribution Date.

**“Excluded Liabilities”** shall mean all debts, liabilities and obligations with respect to the following: (i) the Port Authority’s obligations under the Lease Agreement; and (ii) any Claims or Liens arising out of the operation or maintenance of the Existing Terminal Facilities and incurred or accrued during the period prior to the Terminal 7 Parcel Lease Commencement Date (including any Claims arising under employment or labor law or under contracts or arrangements with or regarding employees of the Port Authority including obligations in respect of benefits accrued but not vested at the Terminal 7 Parcel Lease Commencement Date, but expressly excluding environmental claims and liens arising under Section 57 and Section 62 of the Lease Agreement.

**“Exclusive Area Agreement (EAA)”** has the meaning set forth in the definition of Comprehensive Security Plan.

**“Exempt Airline Sublease”** means (A) a Sublease to an Airline Sublessee that is (I) an airline not operating at the Airport as of the date such Sublease is entered into, (II) JetBlue or a wholly-owned Subsidiary of JetBlue or another airline that is under common Control with JetBlue, (III) an airline that is currently operating at another terminal within the Airport that is told by the operator of such terminal that it or its anticipated growth can no longer be accommodated at such terminal and it needs to find a new terminal out of which to operate, (IV) an airline which as of the Effective Date is operating in the Existing Terminal Facility located on the Terminal 7 Parcel, or splitting operations between the Existing Terminal Facility located on the Terminal 7 Parcel and another terminal at the Airport, (V) as of the Effective Date, an airline that is operating in a terminal at the Airport other than Terminal 5 or the Existing Terminal Facility located on the Terminal 7 Parcel, as long as (y) an airline which as of the Effective Date is operating in the Existing Terminal Facility located on the Terminal 7 Parcel (other than British Airways) and which airline elects to vacate its subtenancy at the Existing Terminal Facility located on the Terminal 7 Parcel and relocate to another terminal at the Airport, and (z) such Airline Sublessee has a similar profile for use of the Premises (or one that will be more easily accommodated at the Premises) for overall number of enplanement and time-of-use passenger flow as the applicable airline which elected to vacate the Existing Terminal Facility located on the Terminal 7 Parcel; (B) an Airline Sublease that has a term (including all automatic or optional extensions) of less than one (1) year; or (C) is an Airline Sublease in existence as of the Effective Date; provided, that (x) with respect to any Airline Sublease described in the foregoing clauses (A), (B) or (C), such Airline Sublease is contemplated by, and entered into in accordance with, the Comprehensive Terminal Leasing Plan, and (y) the Lessee has given to the Port Authority prior written notice of the proposed Exempt Airline Sublease in accordance with the Lease Agreement, together with the certification that the conditions set forth above in clauses (A), (B) or (C) have been satisfied with respect to the proposed Exempt Airline Sublease. The consent of the Port Authority shall be required for any amendment or modification to, or extension of, an Exempt Airline Sublease, except to the extent that if the terms of the amendment, modification or extension, as applicable, were included in the Sublease such Sublease would continue to qualify as an Exempt Airline Sublease. Lessee will deliver to the Port Authority a fully executed copy of any Exempt Airline Sublease promptly following the execution of the same, which shall be prior to occupancy by the applicable Airline Sublessee.

**“Existing Terminal Facilities”** means the existing terminal buildings located on either (x) the Terminal 6 Parcel or (y) the Terminal 7 Parcel.

**“Existing Terminal Facilities Stub Operating Period”** means on or prior to the Terminal 7 Parcel Lease Agreement Commencement Date, the Lessee will enter into an agreement with British Airways pursuant to which British Airways shall be permitted to remain in the Existing Terminal Facilities on the Terminal 7 Parcel through May 31, 2023; provided that such period may be extended for up to an additional period of six (6) months if the Terminal 8 site at the Airport is not ready for British Airways' relocation.

**“Expiration Date”** means the earlier of (i) 11:59 p.m. on the 30th day of December 2060, or (ii) the date of termination of the Basic Lease.

**“FAA”** means the United States Federal Aviation Administration.

**“FAA Approval”** shall mean the FAA's approval of changes to the Airport Operating Certificate and Airport layout plan required to implement the Construction Project, which approval requires the NEPA Approval Documents to be complete.

**“FAA Grant Assurances”** shall mean certain obligations with respect to the maintenance and operation of the Airport facilities required by the FAA in connection with any FAA-administered airport financial assistance programs.

**“Final Design Documents”** means the complete final Construction Application, including all construction drawings, plans, profiles, cross-sections, notes, elevations, typical sections, details and diagrams, design criteria, specifications, reports, studies, calculations, electronic files, records and submittals prepared by the Lessee and approved by the Port Authority, necessary or related to construction and maintenance of the Construction Project.

**“Financing Documents”** shall mean the Security Documents and any Refinancing Documents.

**“First Additional Rent”** means in the event that the Lessee has entered into a Leasehold Mortgage, the Lessee, in addition to all other Rentals due under the Lease Agreement, agrees to pay the Port Authority Five Hundred Thousand Dollars (\$500,000) for each such Leasehold Mortgage on December 1st of each Calendar Year commencing in the Calendar Year in which Substantial Completion of Phase 1 shall occur, and thereafter on December 1st of each Calendar Year until all amounts secured by such Leasehold Mortgage have been repaid in full and such Leasehold Mortgage shall have been released.

**“Force Majeure”** means if the performance by the Port Authority or the Lessee (for such purposes, the **“Affected Party”**) of any of its obligations under the Lease Agreement is delayed or prevented in whole or in part by (A) any unforeseeable law, rule, regulation, order, injunction, or other action adopted or taken after the Effective Date by any Governmental Authority with jurisdiction over (i) the Airport or (ii) actions taken by Lessee-Related Entities pursuant to the Lease Agreement, or by (B) any acts of God, floods, storms, war, civil disorder, terrorist act (including cyber terrorism, cyber sabotage or cyber vandalism), public enemy, strike, labor dispute, shortages of materials, fuel, power, or by (C) any other cause not within the control of the Affected Party to remedy, including a pandemic or epidemic health event officially declared by a federal or New York State Governmental Authority.

“**Gate**” shall mean in the singular an airline passenger Aircraft loading and unloading building gate position at the Premises and “**Gates**” shall mean in the plural more than one airline passenger Aircraft loading and unloading building gate position at the Premises.

“**Gate Related Premises**” shall mean as to each Gate in the Premises, all related (as determined by the Port Authority) Aircraft ramp and gate position capacity and related passenger terminal space and facilities including, but not limited to, passenger ticketing, passenger check-in, baggage handling and flight information systems, passenger lounge and waiting areas, holding rooms, loading bridges, baggage claims and appropriate signage and public identification, and such other facilities reasonably required for the functional use of a Gate or Gates.

“**General Provisions**” shall mean the “Requirements & Provisions for Design & Construction Work – General Provisions,” set forth as Section A of the Requirements and Provisions for Work, as may be amended, revised, supplemented or otherwise modified from time to time by the Port Authority in accordance with the terms of the Lease Agreement.

“**General Manager of the Airport**” shall mean the person or persons from time to time exercising the powers and functions at the Airport vested in the said General Manager (as may be designated by the Port Authority, whether in a temporary capacity, acting capacity or otherwise) or his duly designated representative or representatives.

“**General Reserve Fund**” means the special fund by that name established by the General Reserve Fund Statutes.

“**General Reserve Fund Statutes**” shall mean Chapter 5 of the Laws of New Jersey of 1931, as amended, and Chapter 48 of the Laws of New York of 1931, as amended.

“**GMP Contract Date**” means the date on which the guaranteed maximum price with the Lead Contractor was determined.

“**Good Order Requirements**” means actions instituted by the Port Authority in a Non-Discriminatory Manner to preserve, maintain, improve or restore good order at the Airport which result in, or alleviate circumstances which derogate from, the Port Authority’s ability to (i) provide predictable, consistent or non-discriminatory service to Airport users or (ii) mitigate the risks that chaotic or uncontrolled situations arise on Airport premises which may, in the Port Authority’s sole and absolute discretion, lead to unsafe or insecure conditions.

“**Governmental Approvals**” shall mean all approvals, permits, permissions, consents, licenses, certificates (including sales tax exemption certificates), registrations, notices, exemptions, exceptions, waivers, filings and authorizations (whether statutory or otherwise), which are required from time to time under Applicable Law in order to authorize the Port Authority or the Lessee to perform all or any part of the D&C Work or take actions required to complete obligations in connection with the D&C Work, the Operations and Maintenance Work, or the Lease Agreement and management of the Premises as provided for under the Lease Agreement and that are issued or authorized by any Governmental Authority.

“**Governmental Authority**” and “**Governmental Agency**” shall each mean federal, state, municipal and other governmental authorities, boards and agencies of any state, nation or government, including, without limitation, any court, and all agencies under the United States Departments of Interior,

Commerce and Agriculture, the United States Food and Drug Administration and the United States Centers for Disease Control and Prevention, except that they shall not be construed to include The Port Authority of New York and New Jersey, the lessor under the Lease Agreement.

“**Ground Rent**” means for each year or portion thereof occurring during the Term, the Lessee shall pay to the Port Authority a rental amount equal to the Ground Rental Rate, as such amount is adjusted annually.

“**Ground Rental Rate**” shall mean (x) from the Effective Date through December 31 of the Calendar Year during which the Effective Date occurred, an amount equal to the 2018 Ground Rental Rate, and (y) from January 1 of the first full Calendar Year following the Effective Date through the end of such Calendar Year, the 2018 Ground Rental Rate as escalated by the greater of (I) 4% and (II) fifty percent (50%) of the CPI Percentage Increase for the new year, and (z) for each Calendar Year thereafter until the Expiration Date, the Ground Rental Rate in effect for the prior Calendar Year as escalated by the greater of (I) 4% and (II) fifty percent (50%) of the CPI Percentage Increase for the new year.

“**Ground Transportation Center**” means transformation of the ground floor of the Terminal 5 Parking Garage, also known as the Yellow Garage, and the adjacent portion of the roadway network into a new ground transportation center servicing the New Terminal Facilities, including for-hire-vehicle (FHV) parking and personal vehicles loading area.

“**Hazardous Substance**” shall mean and include in the singular and “**Hazardous Substances**” shall mean and include in the plural, any pollutant, contaminant, toxic or Hazardous Waste, dangerous substance, noxious substance, toxic substance, flammable, explosive or radioactive material, urea formaldehyde foam insulation, asbestos, polychlorinated biphenyls, chemicals known to cause cancer, endocrine disruption or reproductive toxicity, petroleum and petroleum products and other substances which have been or in the future shall be declared to be hazardous or toxic under Environmental Requirements.

“**HoldCo**” shall mean JFK Millennium Partners Holdings, LLC, a Delaware limited liability company.

“**Initial Bank Lessee Debt**” shall mean the first issuance or incurrence (an incurrence being deemed to include all Lessee Debt, whether drawn or undrawn, evidenced and secured by Bank Financing Documents that have been unconditionally executed and delivered by Lessee and a third-party lender pursuant to which bond proceeds pursuant to the Bank Financing Documents described under clause (ii) of the definition of Bank Financing Documents or loan proceeds pursuant to the Bank Financing Documents described under clause (i) of the definition of Bank Financing Documents have been advanced, even if only partially) of Lessee Debt in respect of each of the Phase 1 D&C Work and the Phase 2 D&C Work, together with any payment obligations under swaps, option, derivatives or other arrangements hedging the Lessee’s exposures to interest rates or inflation (the “**Swap Documents**”) in connection therewith, in each case pursuant to Bank Financing Documents approved by the Port Authority in accordance with the Lease Agreement.

“**Initial Lessee Debt**” shall mean the first issuance or incurrence (an incurrence being deemed to include all Lessee Debt, whether drawn or undrawn, evidenced and secured by Security Documents that have been unconditionally executed and delivered by Lessee and a third-party lender) of Lessee Debt pursuant to the Security Documents.



**“Initial Premises”** means the land marked as area 1 in the Lease Agreement at the Airport in the County of Queens, City and State of New York, constituting 23.1 acres (the **“Terminal 6 Parcel”**), the aforesaid land, together with any property of the Port Authority and all structures, improvements, additions, buildings, installations, fixtures, facilities and other property located, constructed or installed, or which may be located, constructed or installed in, on, or under the Terminal 6 Parcel, and the equipment permanently affixed or permanently located therein, such as (without limitation) electrical, plumbing, sprinkler, fire detection, fire protection and fire alarm, heating, air conditioning, steam, sewage, drainage, refrigerating, communications, security systems, gas and other systems, and their pipes, wires, mains, lines, tubes, conduits, equipment and fixtures, and all paving, drains, culverts, ditches and catch-basins constructed in, on, or under the Terminal 6 Parcel.

**“Installation Portion”** means any portion of an Installation when a material portion of the D&C Work related to such Installation is substantially completed or is properly usable for the purposes set forth in the Lease Agreement.

**“Institutional Lender”** shall mean (i) the United States of America, any state or commonwealth thereof or any agency or instrumentality of any of them, any municipal agency, public benefit corporation or public authority, advancing or insuring mortgage loans or making payments which, in any manner, assist in the financing, development, operation and maintenance of projects, (ii) any (A) savings bank, savings and loan association, commercial bank, trust company (whether acting individually or in a fiduciary capacity) or insurance company organized and existing under the laws of the United States of America or any state or commonwealth thereof, (B) foreign insurance company or commercial bank qualified to do business as an insurer or commercial bank as applicable under the laws of the United States of America (if such qualification is necessary in connection with the acquisition of Lessee Debt), (C) pension fund, foundation or university or college or other endowment fund or (D) real estate investment fund, infrastructure investment fund, investment bank, pension advisory firm, mutual fund, investment company or money management firm, (iii) any “qualified institutional buyer” under Rule 144(A) under the Securities Act of 1933, as amended, or any other similar law hereinafter enacted that defines a similar category of investors by substantially similar terms, (iv) a Governmental Authority acting (directly or through a trust or other single purpose vehicle Controlled by it) as a conduit for the purpose of issuing private activity bonds authorized by law for the benefit of the Lessee or (v) any other financial institution or entity designated by the Lessee and approved by the Port Authority; provided, however, that each such entity or combination of such entities, if the Institutional Lender shall be a combination of such entities, shall have individual or combined assets, as the case may be, of not less than \$1,000,000,000 and in no event shall be a Prohibited Party.

**“Interest Dispositions”** means any merger, consolidation, assignment, transfer, conveyance or sale of Equity Interests in the Lessee or HoldCo or other similar transaction involving the Lessee, HoldCo, or an Equity Member (including, as applicable, any redemption of any interest therein but excluding the issuance of any additional interest therein) in each case, whether voluntarily, involuntarily, by operation of law or otherwise and whether resulting from a single transaction, a series of related transactions or otherwise. The term “Interest Disposition” shall also include any revision of the beneficial ownership structure of such Person or any direct or indirect constituent entity of such Person.

**“Interest Transferor”** shall mean, in connection with any Interest Disposition, the transferor of the Equity Interests in the Lessee.

**“International Enplanements”** means an Enplanement which is on a flight bound for any destination outside of the United States of America.

**“JetBlue”** means JetBlue Airways Corporation and its permitted successors and assignees under any Airline Sublease between Lessee and JetBlue Airways Corporation.

**“JetBlue T5 Lease”** shall mean that certain Lease (AYD-350), dated as of May 6, 2005, by and between the Port Authority and JetBlue, as amended, modified and/or supplemented prior to the Effective Date.

**“JMP RRA Work”** shall mean (a) improvement to the Terminal 5 arrival and departure roads; (b) design and construction of a taxi stand and consolidated bus frontage area for use by the Lessee and JetBlue, and a screen structure adjacent to the Terminal 5 taxi stand for use by the Lessee; (c) improvements to Gates 29 and 30; (d) design and construction of a connector area between Terminal 5 and Terminal 6; (e) redevelopment of a portion of the Ground Transportation Center currently serving vehicles accessing Terminal 5, so that it will jointly serve Terminals 5 and Terminal 6; and (f) design and construction of areas for muster of Terminal 5 and Terminal 6 personnel and passengers.

**“Key Contract(s)”** means:

- (a) the D&C Contract with the Lead Contractor for the D&C Work with a guaranteed maximum price;
- (b) any Construction Security;
- (c) any MSA;
- (d) any O&M Contract,
- (e) the RXR Subcontract; and
- (f) a management agreement with a concessions manager, if any.

**“KIAC Fuel Line”** means the KIAC fuel line as described in the Lease Agreement.

**“KPIs”** shall mean, collectively, the performance standards and measurements designated as such and as further described in the Lease Agreement.

**“Lead Contractor”** shall mean the entity, whether a single entity or a joint venture, that will be primarily responsible for performing the Construction Work.

**“Lead Personnel”** means, collectively, the “Project Manager”, “Project Executive”, “Project Director”, and “Design Manager”.

**“Lease Commencement Date”** means the Terminal 6 Parcel Lease Agreement Commencement Date or the Terminal 7 Parcel Lease Agreement Commencement Date, as applicable.

**“Leasehold Mortgage”** shall mean, depending on the context, (i) collectively, any and all Leasehold mortgages with respect to the rights of the Lessee under the Lease Agreement entered into to secure the

obligations of the Lessee under the other Security Documents, or (ii) collectively, any and all Leasehold mortgages with respect to the rights of the Lessee under the Lease Agreement entered into in connection with any Refinancing permitted under the Lease Agreement, in each case in favor of the Recognized Mortgagee, in each case together with any amendment of or supplement thereto and, to the extent of any amendment or supplement that could reasonably be expected to have an adverse effect on the Port Authority or its rights or obligations under the Lease Agreement, approved and consented to by the Port Authority to the extent such approval is required under the Lease Agreement.

**“Lease Agreement”** means the Agreement of Lease, made as of the 17th day of November, 2022, by and between the Port Authority and the Lessee, a Delaware limited liability company, with an office and place of business c/o 295 Madison Ave., Suite 1125, New York, New York 10017, whose representative is Kenneth A. Schuhmacher, Chief Legal Officer.

**“Lessee”** means JFK Millennium Partners, LLC, a Delaware limited liability company, with an office and place of business c/o 295 Madison Ave., Suite 1125, New York, New York 10017.

**“Lessee Assignment and Assumption Agreement”** has the meaning set forth above under “Foreclosure.”

**“Lessee’s Basis of Design”** means the document entitled “Terminal 6 Comprehensive Basis of Design,” prepared by the Lessee and approved by the Port Authority as of the Effective Date, and included as a Reference Document. For the avoidance of doubt, Lessee’s Basis of Design shall be required to satisfy the standards set forth in the Lease Agreement.

**“Lessee Change”** has the meaning set forth above under the heading “Lessee Changes.”

**“Lessee Damages”** has the meaning set forth above under the heading “Compensation Events.”

**“Lessee Milestone Payment for Backup Power Supply”** means on the Milestone Payment Date, a one-time, fixed payment of \$9 million shall be due by the Lessee to the Port Authority (the “Lessee Milestone Payment for Backup Power Supply” and together with the Lessee Milestone Payment for Roadways, collectively, the “Lessee Milestone Payment”) with respect to the backup power source.

**“Lessee Milestone Payment for Roadways”** means a one-time, fixed payment of \$23 million shall be due by the Lessee on the applicable Milestone Payment Date to the Port Authority with respect to the roadways.

**“Lessee-Related Entity”** shall mean (a) the Lessee, (b) Contractors and Suppliers, (c) any other Persons performing any of the Project Work for or on behalf of the Lessee, including any Manager, (d) any other Persons for whom the Lessee may be legally or contractually responsible, and (e) the employees, agents, officers, directors, shareholders, managers and members (if the Lessee is a limited liability company), partners (if the Lessee is a limited partnership or a general partnership), authorized representatives, consultants, successors, and assigns of any of the foregoing. For the avoidance of doubt, the term "Lessee-Related Entity" shall not include the general public. “Lessee-Related Entity” shall not include JetBlue in relation to their tenancy and operations at Terminal 5 at any time or in relation to their tenancy and operations at Terminal 6 prior to the Term.

“**Losses**” shall mean any loss, damage, injury, liability, obligation, cost, response cost, expense (including the fees and expenses of attorneys (whether those of the Port Authority Law Department or otherwise), accountants and expert witnesses incurred in connection with the enforcement of any provision of this Agreement), fee, charge, judgment, penalty, or fine (including, but not limited to, fines imposed by the TSA and liquidated damages), including as a result of any injury to or death of persons, or damage or loss of property.

“**Material Part**” means with reference to the Premises or with reference to the Public Landing Area shall mean such portion of the Premises or the Public Landing Area as when so taken would leave remaining a balance of the Premises, whether due to (i) the area so taken or (ii) the location of the part so taken in relation to the part not so taken or (iii) the time and cost incurred in any restoration at the remaining balance of the Premises, in each case, (A) would cause the New Terminal Facilities to cease to be an economically viable operation as a result of such Taking or (B) would not under economic conditions and after performance by the Lessee of all covenants, agreements, terms and provisions contained herein or required by law to be observed or performed by the Lessee, permit the restoration of the Premises so as to enable the Lessee to operate, maintain and develop the Premises in accordance with the Lease Agreement.

“**MBE**” means any business enterprise that is at least fifty-one percent (51%) owned by, or in the case of a corporation, at least fifty-one percent (51%) of the stock of which is owned by one (1) or more minority groups; and whose management and daily business operations are Controlled by one or more such individuals who are citizens or permanent resident aliens and such ownership is real, substantial and continuing.

“**Minimum Wage Policy**” means the policy developed by the Port Authority governing wage policy for workers performing under non-trade labor service contracts at all Port Authority facilities.

“**MSA**” shall mean any management services agreement for management of the Operations and Maintenance Work.

“**NEPA**” shall mean the National Environmental Policy Act, 42 U.S.C. §4321 et seq., as amended.

“**NEPA Approval Documents**” shall mean the environmental assessment and finding of no significant impact and/or record of decision issued by FAA under NEPA with respect to the Construction Project.

“**Net Cost Impact**” shall mean the aggregate value of any net increase or decrease in the D&C Work Costs incurred by (a) the Lessee (including overhead and profit on any increased costs in accordance with Exhibit 9 (*Overhead and Profit*)) that are directly attributable to a Compensation Event or (b) (i) any Contractor with respect to performance of any Key Contract that are directly attributable to a Compensation Event and payable by the Lessee from Lessee Damages received by the Lessee under the Lease Agreement and (ii) delay liquidated damages paid by any such Contractor, in each case, over the remainder of the Term, reflected on an annual basis, as compared with what the Lessee’s or such Contractor’s costs would have been absent the occurrence of the Compensation Event.

“**New Agreement**” has the meaning set forth above under the heading “New Agreement.”

“**New Airport Design Guidelines**” means the Design and Guideline Procedures (February 21, 2018), as amended, revised, supplemented or otherwise modified from time to time, and included as a Reference Document.

“**New Terminal Building**” has the meaning set forth in the definition of New Terminal Facilities.

“**New Terminal Facilities**” means (i) a unified inter-connected passenger terminal building (the “**New Terminal Building**”) consisting of approximately 1,150,000 square feet of floor space, including a consolidated Federal Inspection Services (FIS) facility replacing the existing Terminal 7 FIS facilities and, upon completion, accessible to both the New Terminal Building and Terminal 5 for international flights, the foregoing together with all associated and related areas and facilities, including but not limited to concourses, supporting buildings, utility and mechanical rooms, concession areas, stairwells, stairways, escalators and elevators, and all fixtures, furnishings and equipment necessary for the operation of a world-class international and domestic airport passenger terminal facility, to replace the Existing Terminal Facilities on the Terminal 7 Parcel and the apron and taxi lanes on the Terminal 6 Parcel, (ii) all necessary and appropriate contiguous aircraft ramp and apron areas to serve the New Terminal Building, and (iii) the other structures, systems and improvements resulting from the D&C Work as set forth in the Lease Agreement

“**New Terminal Facilities Traffic Mitigation Plan**” has the meaning set forth above under the heading “Airport-Wide Facilities and Services.”

“**New Year**” means January 1 of each Calendar Year.

“**Non-Discriminatory Manner**” means, with respect to requirements of the Port Authority that are imposed pursuant to the Lease Agreement, that the Port Authority imposes substantially similar requirements on all subtenants at the Airport that are subject to substantially similar factual circumstances and legal requirements, including the relevant time period during which such requirements are implemented.

“**Nonconforming Work**” means any D&C Work that does not conform to the requirements of the Project Documents, Applicable Standards, the Rules and Regulations or Applicable Law.

“**O&M Access Areas**” means areas over which the Port Authority grants Lessee rights of way, access and use rights, whether temporary, or permanent for the Term, authorized in writing by the Port Authority for the purpose of performing Operations and Maintenance Work outside of the Premises (and not including Temporary Rights of Access for D&C Work), including for the maintenance, replacement, repair and upkeep of Operational Systems. All such rights of way, access and use rights to the O&M Access Areas are non-exclusive in nature and use of any property subject to such rights is subject to any prior rights, interests, or charge or encumbrance of any kind.

“**O&M Contract**” means a contract between the Lessee and a QTO Equity Member, under which the QTO Equity Member, as the operator or manager of the Existing Terminal Facilities or New Terminal Facilities, as applicable, performs or manages substantially all of the Operations and Maintenance Work.

“**Off-Premises Facilities**” means the improvements comprising the D&C Work off the Premises that the Lessee is required to perform pursuant to the Lease Agreement, including certain adjustments to terminal frontage and access roads on the Terminal 5 premises, off-Premises infrastructure supporting the

New Terminal Building, adjustments to the Yellow Garage ground floor entrance, relocation of existing Terminal 5 Gate 30, and other improvements, as further described in the Lease Agreement.

“**One JFK Environment**” has the meaning set forth above under the heading “One JFK and New York Experience.”

“**Operational Systems**” shall mean the operating systems, components, information technology hardware and software, and equipment that are necessary to the Lessee’s performance of the Operations and Maintenance Work in the ordinary course at any time during the Term, including, without limitation, elevators, escalators, fire detection and suppression systems, HVAC and security systems and the computer hardware and software relating thereto.

“**Operations and Maintenance Work**” means all work related to the operation, management, administration and maintenance of the Premises for its permitted use and any repair, modification, reconstruction, rehabilitation, restoration, renewal and replacement thereof all as required under the Lease Agreement including any work required in connection with a Condition Survey Report but excluding the D&C Work.

“**Other Event of Default**” means an Event of Default triggering a Port Authority Termination Notice that is not capable of being cured solely by the payment of money.

“**Other Redevelopments**” means private redevelopments at the Airport authorized by the Port Authority not contemplated by the Lease Agreement.

“**Outside Completion Date**” means the date that is twelve (12) months after the Scheduled Completion Date (as such date may be adjusted from time to time only as expressly permitted under the Lease Agreement).

“**Parent**” means (i) RXR Realty LLC, Corsair Infrastructure Partners Management GP, Ltd., American Triple I, LLC, or their respective successors in interest by merger, consolidation or otherwise, (ii) upon the Transfer by a Parent (the “**Selling Parent**”) of interests in a Parent Fund to a transferee (the “**Buying Parent**”) that results in such Parent Fund becoming Controlled by the Buying Parent, the term “Parent” shall no longer include the Selling Parent and shall include the Buying Parent and (iii) upon a transfer of a Parent Fund’s direct or indirect Equity Interest in the Lessee to an entity (the “**New Parent Fund**”) that would constitute a Parent Fund under the Lease Agreement if the entity (the “**New Parent**”) that Controlled such New Parent Fund were a Parent, upon such New Parent’s submission of documentation and information reasonably acceptable to the Port Authority with respect to its and the New Parent Fund’s organizational structure to confirm the requirements of this clause (iii), the New Parent.

“**Parent Fund**” means any investment fund or other investment vehicle (including any general or limited partnership, trust or limited liability company), (a) Controlled by a Parent directly or indirectly (by virtue of the Parent Controlling such investment fund or other investment vehicle either directly or indirectly through another investment fund or other investment vehicle), and (b) from which such Parent or a Person Controlled directly or indirectly by such Parent is entitled to receive management fees, performance fees, incentive allocations or promote.

**“Partial Occupancy Portion”** means any portion of the D&C Work relating to the New Terminal Facilities that is substantially completed or is properly usable for the purposes set forth in the Lease Agreement.

**“Passenger Surface Carrier(s)”** means surface carrier or carriers arranged either directly or by contract by an Airline Sublessee for the transportation to and from the Airport of passengers and their baggage (and such passengers and baggage only).

**“Payment Event of Default”** means an Event of Default triggering a Port Authority Termination Notice that is capable of being cured solely by the payment of money.

**“Perimeter Dig Area”** shall mean the perimeter of an area that is actually excavated as part of the applicable D&C Work.

**“Permitted O&M Expense”** means in respect of any period, any expenditure by the Lessee incurred or paid (and calculated in accordance with generally acceptable accounting principles, as applicable) in performing Operations and Maintenance Work that would be customarily and properly included as an operation and maintenance cost, and as would reasonably be incurred by a prudent operator in the conduct of or relating to the operation of a world-class airline terminal, including (a) wages, salaries, fringe benefits and other payroll costs or remuneration (including reimbursement of employee expenses) paid to or for employees employed at the New Terminal Facilities to perform the Operations and Maintenance Work (provided that compensation paid to executives of the Manager shall only constitute Permitted O&M Expenses to the extent that such compensation is market-based), (b) the cost of routine maintenance, repairs, improvements, alterations and changes related to the areas in the Premises, including payments to Contractors and Suppliers for cleaning, rubbish removal, snow removal, facility maintenance, equipment maintenance, extermination and other cleaning and maintenance services furnished by such Contractors and Suppliers, (c) payments for electricity, water, sewer rents and other fuel and Utility services, (d) the cost of provision, maintenance, repair and replacement of fixtures, furniture, furnishings, operating supplies, equipment and tools, (e) (i) the cost of any insurance carried by the Lessee with respect to the Premises or the Operations and Maintenance Work or with respect to any accident or casualty occurring with respect thereto and (ii) the cost of any such accident or casualty paid for by the Lessee to the extent such accident or casualty is not reimbursed by insurance proceeds and such accident or casualty was not caused by the breach, willful misconduct or negligence of the Lessee, (f) the costs of (i) telephone, telegraph, postage, messenger service and other communications services and (ii) trucking and other shipping services, (g) payments for rental of Lease Agreement equipment and supplies, (h) [reserved], (i) taxes actually paid by the Lessee including excise taxes, New York City sales and use tax and taxes on utilities or on the provision of utility services but excluding New York State Corporation Franchise tax, New York City General Corporation tax and New York City Unincorporated Business tax, (j) costs and fees incurred in connection with the obtaining and maintaining in effect of any Governmental Approval from any Governmental Authority and filing any reports or requests for review with any Governmental Authority, (k) any fees, charges, penalties, judgments or other amounts assessed against the Lessee by any Governmental Authority except as expressly excluded below, (l) costs and fees incurred in the development, implementation and operation of computer systems, (m) amounts payable to third parties for services provided in connection with the Operations and Maintenance Work, including financial services and any other services, (n) amounts refunded to Sublessees and other third parties with respect to amounts overpaid by such Persons, (o) amounts payable in respect of the Lessee’s indemnification obligations to the Port Authority or third parties, (p) [reserved], (q) [reserved], (r) Ground Rent, Third Additional Rental, Second

Additional Rental, First Additional Rent and Concessions Revenue Rent, (s) subject to clauses (ix)-(xii) below (which clauses (ix)-(xii) shall be deemed excluded from fees and other amounts payable to the Manager under the MSA solely for the purposes of this definition of “Permitted O&M Expenses” and related provisions of the Lease Agreement), fees and other amounts that are payable to the Manager under the MSA (approved, to the extent required, pursuant to the Lease Agreement), (t) certain amounts reimbursed by the Lessee to the Port Authority, (u) any Condition Survey Costs paid, or reimbursed to the Port Authority, by the Lessee, and (v) any other amounts specified in the Lease Agreement to constitute or be payable as Permitted O&M Expenses.

Notwithstanding the above, and without otherwise limiting the generality thereof, the following shall be excluded or deducted from the Permitted O&M Expenses:

(i) transfer, gains, franchises, inheritance, estate and income taxes imposed upon any Affiliate or any Person other than the Lessee;

(ii) legal, accounting, tax-related and other professional fees, charges and disbursements paid or incurred by the Lessee or any Affiliate in connection with the legal, accounting, tax-related (excluding taxes set forth in clause (i) in the list of Permitted O&M Expenses above) or other interests of Affiliates of the Lessee;

(iii) excluding the fees described in clause (s) above, any allocation of overhead, charges, fees or disbursements for goods or services provided by any Affiliate of the Lessee;

(iv) any other fee, payment or disbursement to an Affiliate of the Lessee (excluding any fee, payment or disbursement pursuant to an arm’s-length agreement on terms not less favorable to the Lessee than if the Lessee had entered into an agreement for similar fees, payments or disbursements with a third party);

(v) penalties assessed against the Lessee for the failure to cure a violation of any Applicable Law, the Rules and Regulations or Applicable Standards in circumstances in which Lessee’s violation, or failure to cure such violation, was caused by the breach, willful misconduct or negligence of the Lessee;

(vi) any costs or charges for goods or services provided or performed in connection with common area maintenance, concession marketing and other services that (i) have been incurred by the Lessee and (ii) have been directly reimbursed by a Concession Sublessee, Airline Sublessee, Sublessee or other sub-tenant or permittee as a separate item of additional rent or fee, except, in each case, to the extent the revenues associated with such cost or charge are included in the gross revenues of the Lessee;

(vii) any payment, fee, disbursement or other cost, or part thereof, to any third-party Contractor, agent, Supplier, or other Person whatsoever, that is above the fair market value under the circumstances for the good or service that is being provided except to the extent incurred pursuant to an arrangement previously entered into at fair market value;

(viii) payment of certain liquidated damages;

(ix) the amount of any penalty assessed with respect to the failure to achieve certain KPIs;



(x) any amounts or costs incurred by the Lessee arising or resulting from the Lessee's indemnification obligations under Section 16.1 of the MSA;

(xi) any costs and expenses incurred by the Lessee in the exercise of its remedies under the MSA or otherwise arising from a dispute between the Manager and the Lessee (in each case, including attorneys' fees);

(xii) any interest or penalties under the MSA due from the Lessee to the Manager; and

(xiii) certain other amounts approved by the Port Authority payable pursuant to the Lease Agreement.

**"Personal Default"** means any Event of Default described in Section 21(a)(1) of the Lease Agreement (other than consent by or at the direction of the Recognized Mortgagee to the appointment of a receiver, trustee, or liquidator or any action in furtherance of such an appointment), (2), (3) (other than a receiver, trustee, or liquidator taking possession or control of all or substantially all of the property of the Lessee at the direction of the Recognized Mortgagee), (4), (7), (8), (9) (only with respect to the payment of Equity Gain Share), (11) (provided that, for the avoidance of doubt, the foregoing shall not excuse the Recognized Mortgagee from any requirement to make or remake any representations or warranties to the Port Authority in its own name in connection with entering into a Lessee Assignment and Assumption Agreement or a New Agreement), (12) (to the extent specifically related to the Lessee, HoldCo, or the Equity Members (as opposed to the ownership or operation of Premises or the performance of the obligations of a lessee under the Agreement)), (13) (to the extent specifically related to the Lessee, HoldCo, or the Equity Members (as opposed to the ownership or operation of Premises or the performance of the obligations of a lessee under the Agreement)), and (21).

**"Phase 1 Completion Certificate"** has the meaning set forth above under the heading "Completion of the Phase 1 D&C Work."

**"Phase 1 Completion Date"** means the date specified in the Phase 1 Completion Certificate.

**"Phase 1 D&C Work"** means the first phase of D&C Work as described above under the heading "Phases of D&C Work."

**"Phase 2 D&C Work"** means the second phase of D&C Work as described above under the heading "Phases of D&C Work."

**"PIDS"** means Perimeter Intrusion Detection System.

**"Port Authority"** means the Port Authority of New York and New Jersey, a body corporate and politic, established by Compact between the States of New Jersey and New York with the consent of the Congress of the United States of America, and having an office at 4 World Trade Center, 150 Greenwich Street, 19th Floor, New York, New York 10007, in the Borough of Manhattan, City, County and State of New York.

**"Port Authority Change"** means the Port Authority's right from time to time during the D&C Work Period to effectuate changes in the design and in the construction of the D&C Work, to substitute materials and methods and to order extra work that the Port Authority, in its discretion, deems necessary or appropriate, in each case that take effect after the GMP Contract Date, so long as such change is not arbitrary and capricious

or unduly discriminatory and is not effectuated by the Port Authority in order to avoid the qualification of any such change as a Qualifying D&C Change.

**“Port Authority Default Termination Payment”** means an aggregate amount calculated as of the effective date of the termination as equal to (without double counting) the fair market value (had the Lease Agreement not been terminated) of the Lessee’s Leasehold interest and its rights and obligations during the unexpired term of this Agreement, determined in accordance with the procedures set forth in the Lease Agreement.

**“Port Authority Government Approvals”** means certain Governmental Approvals enumerated in the Lease Agreement.

**“Port Authority Indemnified Parties”** shall mean the City, EDC and the Port Authority, each commissioner of the Port Authority and each officer, director, agent, employee and authorized representative of the City, EDC and the Port Authority.

**“Port Authority Milestone Payment”** means on the Milestone Payment Date, a one-time fixed payment of \$900,000 shall be due by the Port Authority to the Lessee.

**“Port Authority Termination Notice”** means a written termination notice served on the Lessee specifying that an Event of Default has occurred entitling the Port Authority to terminate and, subject to the rights of the Recognized Mortgagees, that the Lease Agreement will terminate upon the date specified in such notice pursuant to the terms of the Lease Agreement.

**“Post-Opening Domestic Enplanement Rate”** means (I) for the period commencing on the Phase 2 Opening Date and ending on the first December 31 to occur thereafter, an amount equal to the sum of (A) \$0.91 and (B) the product of (x) \$0.91 and (y) the aggregate CPI Percentage Increase from 2021 through the Phase 2 Opening Date, such CPI Percentage Increase to be compounded annually, and (II) for each Calendar Year that occurs after the Calendar Year in which the Phase 2 Opening Date occurs, the sum of (x) the Post-Opening Domestic Enplanement Rate in effect for the prior Calendar Year, and (y) the product of (i) the Post-Opening Domestic Enplanement Rate for such prior Calendar Year and (ii) the CPI Percentage Increase for the current Calendar Year.

**“Post-Opening International Enplanement Rate”** means (I) for the period commencing on the Phase 2 Opening Date and ending on the first December 31 to occur thereafter, an amount equal to the sum of (A) \$2.75 and (B) the product of (x) \$2.75 and (y) the aggregate CPI Percentage Increase from 2021 through the Phase 2 Opening Date, such CPI Percentage Increase to be compounded annually, and (II) for each Calendar Year that occurs after the Calendar Year in which the Phase 2 Opening Date occurs, the sum of (x) the Post-Opening International Enplanement Rate in effect for the prior Calendar Year, and (y) the product of (i) the Post-Opening International Enplanement Rate for such prior Calendar Year and (ii) the CPI Percentage Increase for the current Calendar Year.

**“Pre-Opening Domestic Enplanement Rate”** means (I) for the period commencing on the Effective Date and ending on the first December 31 to occur thereafter, an amount equal to the sum of (A) \$2.00 and (B) the product of (x) \$2.00 and (y) the aggregate CPI Percentage Increase from 2016 through the Effective Date, such CPI Percentage Increase to be compounded annually, and (II) for each Calendar Year that occurs after the Calendar Year in which the Effective Date occurs, the sum of (x) the Pre-Opening Domestic Enplanement Rate in effect for the prior Calendar Year, and (y) the product of (i) the Pre-Opening Domestic Enplanement Rate for such prior Calendar Year and (ii) the CPI Percentage Increase for the current Calendar Year.

**“Pre-Opening International Enplanement Rate”** means (I) for the period commencing on the Effective Date and ending on the first December 31 to occur thereafter, an amount equal to the sum of (A) \$5.00 and (B) the product of (x) \$5.00 and (y) the aggregate CPI Percentage Increase from 2016 through the Effective Date, such CPI Percentage Increase to be compounded annually, and (II) for each Calendar Year that occurs after the Calendar Year in which the Effective Date occurs, the sum of (x) the Pre-Opening International Enplanement Rate in effect for the prior Calendar Year, and (y) the product of (i) the Pre-Opening International Enplanement Rate for such prior Calendar Year and (ii) the CPI Percentage Increase for the current Calendar Year.

**“Pre-Term Work”** means all work performed by any Lessee-Related Entity or its Contractors pursuant to the terms of the Pre-Term Work Agreement.

**“Pre-Term Work Agreement”** means the certain Right of Entry – Site Investigation Agreement – AYE-968, among the Port Authority, Vantage Airport Group (US) Ltd. and Hunt Construction Group, Inc., dated as of November 2, 2021, as may be amended, revised, supplemented or otherwise modified from time to time.

**“Premises”** means the Initial Premises and the Terminal 7 Premises.

**“Project Documents”** shall mean (i) the Lease Agreement and exhibits thereto, (ii) the Reference Documents, (iii) the Pre-Term Work Agreement, and (iv) the Construction Coordination Agreement, and any amendments to or replacements of any of the foregoing undertaken in accordance with the terms of the Lease Agreement or thereof, and any other document that the Port Authority and the Lessee may jointly designate in writing as a **“Project Document”** from time to time after the date of the Lease Agreement, together with any amendments of or supplements thereto.

**“Project Manager”** means a full-time project manager with sufficient expertise, ability, suitability and experience to interface with the Port Authority team and make on-field decisions regarding the D&C Work that is employed and retained by the Lessee (or by the Manager on Lessee’s behalf).

**“Public Landing Area”** shall mean the area of land at the Airport including Runways, Taxiways and the areas between and adjacent to Runways and Taxiways, designated and made available from time to time by the Port Authority for the landing and taking off of aircraft.

**“QTO Equity Member”** means an Equity Member that is a Qualified Terminal Operator.

**“Qualified Terminal Operator”** or **“QTO”** shall mean a Person who is not a Prohibited Party and who has been determined by the Port Authority, acting at its sole and absolute discretion, to be a qualified terminal operator. In determining whether to issue such determination, the Port Authority will only consider whether such Person has: (w) sufficient experience or personnel, or access to sufficient experience or personnel of an Affiliate under common Control with it, with sufficient experience in operating and maintaining airline passenger terminals on a basis consistent with the standards and requirements set forth in the Lease Agreement, (x) a reputation for honesty, integrity and reliability and (y) the financial capability to operate and maintain the Premises on a basis consistent with the standards set forth in the Lease Agreement, with such Person being deemed to have such requisite financial capability if such Person has or is projected to have sufficient capital (or access to capital), whether by virtue of cash on hand, sponsor support commitments, projected revenues, any combination thereof, or otherwise, to meet all of such Person’s operations and maintenance expenses and, to the extent the Qualified Terminal Operator is the Lessee, obligations to make Rental and other payments to

the Port Authority in respect of the Premises. As of the Effective Date, Corsair-Vantage Airport Fund Aggregator, L.P. is a QTO.

“**Qualifying D&C Change**” has the meaning set forth above under the heading “Rules and Regulations; RPW Changes and Changes to the New Airport Design Guidelines.”

“**Rating Agencies**” means any of Standard & Poor’s Financial Services LLC, Moody’s Investor Services, Inc., Fitch Investors Services, Inc., Kroll Bond Rating Agency, or any other nationally-recognized statistical credit rating organization.

“**Recapitalization**” shall mean any Lessee Debt incurred by Lessee that complies with the provisions of the Lease Agreement.

“**Reciprocal Rights Agreement**” means the Reciprocal Rights Agreement, dated as of November 17, 2022, by and between the Lessee and JetBlue.

“**Recognized Mortgagee**” has the meaning set forth above under the heading “Recognized Mortgagee.”

“**Reference Documents**” shall mean (i) the Requirements and Provisions for Work, (ii) the Lessee’s Basis of Design, (iii) the New Airport Design Guidelines and (iv) any approved Construction Applications.

“**Refinancing**” shall mean the incurrence by the Lessee, in accordance with the provisions of the Lease Agreement, of any bona fide Lessee Debt that is incurred or issued subsequent to the date of closing of the Initial Lessee Debt.

“**Refinancing Documents**” shall mean such documents executed after the date of the Lease Agreement in connection with a Refinancing permitted to be incurred in accordance with the Lease Agreement, that are designated by the Lessee as “Refinancing Documents,” together with any amendment of or supplement thereto designated by the Lessee.

“**Rejected Port Authority Change**” means any proposed Port Authority Change or any portion thereof rejected by the Lessee within fifteen (15) Business Days from the receipt of such proposed Port Authority Change.

“**Remaining Revenue Account**” shall have the meaning assigned to such term in the Collateral Agency and Accounts Agreement.

“**Remediate**” or “**Remediation**” shall mean the investigation (including any feasibility studies or reports), cleanup, removal, abatement, transportation, disposal, treatment (including in-situ treatment), management, stabilization, neutralization, collection, or containment of Hazardous Substances implemented to comply with Environmental Requirements or more stringent standards established by the Lease Agreement including, without limitation, any closure, restoration or monitoring, operations and maintenance activities that are required by any Governmental Authority after the completion of such investigation, cleanup, removal, transportation, disposal, treatment, neutralization, collection, or containment activities as well as the performance of any and all obligations imposed by any Governmental Agency in connection with such investigation, cleanup, removal, transportation, disposal, treatment (including in situ treatment), management, stabilization, neutralization, collection, or containment (including any such obligation that is

imposed pursuant to an environmental permit or a consent order), provided however, that “Remediate” or “Remediation” do not include the activities described in the Lease Agreement.

“**Requesting Airline**” shall mean any Scheduled Aircraft Operator which has advised the Lessee that it would like the Lessee to make Accommodations available to it at the Premises and any Scheduled Aircraft Operator that the Port Authority has determined must be accommodated at the Premises as provided for in the Lease Agreement.

“**Requirements and Provisions for Work**” means a Reference Document consisting of (i) the General Provisions, (ii) the Design and Construction Requirements and (iii) the Operations and Maintenance Term Requirements.

“**Reserved Uses**” means the right to implement, conduct, control, approve and receive any fees, rents or profits, with respect to any and all of the specified uses, operations or installations on the Premises, that the Port Authority reserved exclusively to itself and its designees, including, without limitation, the following:

- advertising (other than branding and promotions by Concession Sublessees or by Airline Sublessees and/or Scheduled Aircraft Operators in non-public, exclusive spaces), including static display, interactive display (other than interactive displays for wayfinding, operations use related audio-visual display and broadcast), audio-visual display, broadcast and other;
- except as otherwise provided in the Lease Agreement, public telephones (sometimes also referred to as “pay phones” or “pay telephones”), pre-paid phone cards, facsimile transmission machines and other communications services and facilities, including any technology or system that substitutes for, replaces or is used in conjunction with the technology commonly known as “Wi-Fi” and also including all Port Authority-owned or operated information and communications technology infrastructure for common Airport use;
- except as otherwise provided in the Lease Agreement, “cellphone”/cellular technology and any technology or system that substitutes for, replaces or is used in conjunction with cellphone/cellular technology;
- vending machines other than automated retail machines and food and beverage vending machines in non-public spaces;
- concierge services (i.e., the Welcome Center or other location which offers a variety of services for passengers (including, but not limited to, hotel reservations, sale of entertainment events tickets and lottery tickets, luggage storage and delivery, sightseeing tours, business services and provision of touring information)); provided, however, that, Airline Sublessees shall be permitted to offer and provide concierge services to their airline passengers so long as such services are provided free of charge (i.e., no additional charges or fees shall be paid or payable by an airline passenger in connection with such services beyond the applicable airline ticket price);
- ground transportation, including vehicle rentals, taxi dispatchers, and preferential allocation of or access to ground transportation services at the Ground Transportation Center or other parts of the Airport, but excluding Employee Surface Carriers and Passenger Surface Carriers permitted pursuant to the Lease Agreement;

- provision of certain on-airport baggage carts or other on-airport baggage moving devices;
- any and all developments at the Ground Transportation Center (including retail, food and beverage and hotel opportunities);
- any and all sponsorship and naming rights available to the Port Authority at the Airport;
- premium or convenience services or space offered at the New Terminal Facilities or at other parts of the Airport; provided, however, that, Airline Sublessees shall be permitted to offer and provide such premium or convenience services to their airline passengers so long as such services are provided free of charge (i.e., no additional charges or fees shall be paid or payable by an airline passenger in connection with such services beyond the applicable airline ticket price); and
- such further uses, operations or installations that may arise through any technological development or emerging technology.

“**Resident Engineer**” shall mean the person or persons from time to time designated by the Port Authority to exercise the powers and functions vested in the said Resident Engineer by the Lease Agreement; but until further notice from the Port Authority to the Lessee it shall mean the Port Authority Program Director (or the temporary or acting Port Authority Program Director) located in Building 14 of the Airport for the time being, or his duly designated representative or representatives.

“**Rights of Access**” shall mean the Temporary Rights of Access.

“**Rules and Regulations**” shall mean, individually and collectively, applicable rules, regulations, policies, manuals, publications, handbooks, advisory circulars, standards, practices and guidelines issued or published by the Port Authority (including, without limitation, any bulletin, directive or other official instruction issued by the General Manager of the Airport or the Chief Security Officer of the Port Authority and any code of ethics established by the Port Authority applicable to lessees and/or sublessees, contractors, furnishers of services or other Persons at the Airport); in each case, as may be amended, revised, supplemented or otherwise modified from time to time pursuant to a Rules and Regulations Change.

“**Rules and Regulations Change**” means (i) any new Rule and Regulation, (ii) any change to an existing Rule and Regulation (including by an amendment or supplement thereto) or (iii) a repeal of any existing Rule and Regulation; in each case that takes effect, except for purposes of establishing a Qualifying D&C Change as set forth in the Lease Agreement, after the Effective Date; provided, that, (a) any new, modified or changed Rule and Regulation related to safety (including health and sanitation), security and/or Good Order Requirements, or required to comply with Applicable Laws, shall not be unjustly or unduly discriminatory and (b) any new, modified or changed Rule and Regulation with respect to any matter other than safety (including health and sanitation), security or Good Order Requirements, and not required to comply with Applicable Laws, shall be reasonable (taking into account the Port Authority’s role and obligations as an airport operator) and shall not be unjustly or unduly discriminatory.

“**RXR Subcontract**” means the Subcontractor Services Agreement between the Manager and RXR JMP Development Services LLC dated on or about the date of the Lease Agreement.

“**Scheduled Completion Date**” means February 23, 2028 (as such date may be adjusted only as expressly permitted under the Lease Agreement).

**“Scheduled Phase 1 DBO Date”** means February 10, 2026 (as such date may be adjusted only as expressly permitted under the Lease Agreement).

**“Scheduled Phase 2 DBO Date”** means April 19, 2028 (as such date may be adjusted only as expressly permitted under the Lease Agreement).

**“Second Additional Rent Deferral Period”** means each month during the years from and including 2030 to and including 2035, in which no Second Additional Rental shall be due or payable in such month, and the Lessee’s obligation to pay the amount of such Second Additional Rental shall be deferred as described in the Lease Agreement.

**“Second Additional Rental”** means for each year or portion thereof occurring during the Term, commencing on the Terminal 7 Parcel Lease Agreement Commencement Date and continuing to and including the Expiration Date, in addition to all other Rentals due under the Lease Agreement, the Lessee shall pay to the Port Authority a rental in an amount equal to the Second Additional Rental Rate for such year, as set forth in the Lease Agreement.

**“Security Documents”** shall mean all documents executed and delivered by the Lessee in connection with the incurrence (an incurrence being deemed to include all Lessee Debt, whether drawn or undrawn, evidenced and secured by documents executed and delivered by the Lessee that have been unconditionally executed and delivered by Lessee and a third-party lender) of Lessee Debt on the Effective Date in accordance with the Lease Agreement evidencing or securing the same, the repayment obligations of which are secured by one or more Leasehold Mortgages or other Collateral Documents, and any subsequent amendment of or supplement to any such documents (other than amendments or supplements entered into in connection with effectuating a Refinancing).

**“Scheduled Aircraft Operator”** shall mean a Civil Aircraft Operator engaged in transportation by Aircraft operated wholly or in part on regular flights to and from the Airport in accordance with published schedules; but so long as the Federal Aviation Act of 1958, or any similar federal statute providing for the issuance of foreign air carrier permits or certificates of public convenience and necessity or substantially similar permits or certificates, is in effect, no Person shall be deemed to be a Scheduled Aircraft Operator within the meaning of the Lease Agreement unless it also holds such a permit or certificate.

**“Shock Event”** means an event which is outside the control of Lessee which impacts the ability to operate the Premises in the ordinary course of business for a period in excess of ninety (90) consecutive days.

**“Statement of Estimated Liabilities”** shall mean a statement by the Port Authority setting forth (i) all amounts that (A) are estimated to be due and payable by the Lessee to the Port Authority under the Lease Agreement as of the date of such statement (other than Equity Gain Share) or (B) to the best of the Port Authority’s knowledge, are expected to become due and payable by the Lessee under the Lease Agreement on or prior to the date that is thirty (30) days after the date of such statement, (ii) to the extent not included in clause (i) above, all other obligations of the Lessee under the Lease Agreement known to the Port Authority that should have been, but have not been, performed as of the date of such statement and (iii) to the extent not included in clauses (i) or (ii) above, all costs and expenses (including legal fees), taxes, fees, charges and disbursements estimated to be paid or incurred by the Port Authority in connection with any applicable Event of Default, the termination of the Lease Agreement, the recovery of possession from the

Lessee, and the preparation, execution and delivery of the New Agreement and related agreements, in each case, to the extent applicable.

“**Sublease**” or “**sublease**” shall mean any sublease (including a sub-sublease or any further level of subletting) and any occupancy, use, license, franchise or concession agreement applicable to the Premises or any portion thereof which shall be, unless otherwise approved by the Port Authority, in the form of Exhibit 15 (Form of Airline Sublease) to the Lease Agreement for Airline Subleases and Exhibit 16 (Form of Concession Sublease) to the Lease Agreement for Concession Subleases.

“**Sublessee**” shall mean any of the following Persons: (i) an Airline Sublessee, (ii) a Concession Sublessee, (iii) Governmental Agencies, and (iv) such other Persons for such other purposes as are permitted under the Lease Agreement.

“**Subordinate Concessions Revenue Rent**” has the meaning set forth above under the heading “Concessions Revenue Rents.”

“**Substantial Completion of Phase 1**” means, with respect to the substantial completion of the Phase 1 D&C Work, the point when Lessee shall have satisfied (x) all of the applicable conditions set forth in the Requirements and Provisions for Work, the TCAP Process and the Airport Security Guidelines Manual with respect to the Phase 1 D&C Work, and (y) the following conditions:

(A) (1) all certifications for mechanical, electrical, electronics, structural, plumbing, architectural and other systems that are essential to the operation, functionality and safety of the Phase 1 Improvements, as identified by and agreed to by the Lessee and the Port Authority in the Project Documents, (other than such certifications that shall be delivered in connection with the Phase 2 Improvements) shall have been received; and (2) all inspection reports for such systems shall have been made; in each case in accordance with the requirements of the Project Documents, Applicable Laws and Applicable Standards;

(B) the Lessee shall have certified that it has received, and paid all associated fees due and owing for, all applicable Governmental Approvals (other than Port Authority Governmental Approvals) required for performing Operations and Maintenance Work with respect to the Phase 1 Improvements, and shall have provided accurate and complete copies thereof to the Port Authority, such Governmental Approvals shall be in full force and effect, and there shall exist no uncured violation of the terms and conditions of any such Governmental Approval;

(C) all plans and manuals for mechanical, electrical, electronics, structural, plumbing, architectural and other systems that are essential to the operation, functionality and safety of the Phase 1 Improvements, as identified by and agreed to by the Lessee and the Port Authority in the Project Documents, and are required in accordance with the Project Documents, Good Order Requirements, Applicable Laws, or Applicable Standards (other than such plans and manuals that shall be delivered in connection with the Phase 2 Improvements) shall have been submitted and, if required under the Project Documents, Good Order Requirements, Applicable Law or Applicable Standards, shall have received Port Authority approval;

(D) all other submittals required by the Project Documents, Good Order Requirements, Applicable Law or Applicable Standards to have been provided by the Lessee prior to or at Substantial Completion of Phase 1 shall have been submitted and, if required under the Lease Agreement, the other Project Documents, Good Order Requirements, Applicable Law or Applicable Standards, shall have received Port Authority approval;



(E) the Lessee shall have prepared, in consultation with the Port Authority (including with respect to the Port Authority's right to add or remove items to or from the punch list in its discretion), the punch list in respect of the Phase 1 D&C Work, and such punch list shall have received Port Authority approval;

(F) with respect to the individual tenant spaces in the New Terminal Facilities intended to be subleased to Concession Sublessees or Airline Sublessees (to the extent of any Subleases for portions of the New Terminal Facilities related to airline passenger services), the Lessee shall only be required to have installed the basic infrastructure and equipment for the supply of necessary Utilities to such tenant spaces and to have provided fire alarm, fire protection and space separation between occupied and construction sites; provided that nothing in the Lease Agreement shall prevent the Lessee or any of its Contractors from performing the Phase 1 D&C Work in said individual tenant spaces concurrently with the performance of tenant fit-out, but shall not be required to install the fit-out of such tenant spaces to the individual specifications and needs of each Sublessee in order to achieve Substantial Completion of Phase 1; and

(G) with respect to the Phase 1 D&C Work specifically identified in the Baseline Schedule as extending beyond Substantial Completion of Phase 1, the Lessee shall only be required to have installed the basic infrastructure and equipment for the supply of necessary Utilities for such items and to have provided fire alarm, fire protection and space separation as deemed necessary to achieve Substantial Completion of Phase 1.

**“Substantial Completion of Phase 2”** means, with respect to the substantial completion of the Phase 2 D&C Work, the point when Lessee shall have (x) obtained a Phase 1 Completion Certificate with respect to the Phase 1 D&C Work as set forth in the Lease Agreement, (y) satisfied all of the applicable conditions set forth in the Requirements and Provisions for Work, the TCAP Process and the Airport Security Guidelines Manual with respect to the Phase 2 D&C Work, and (z) satisfied the following conditions:

(A) (1) all certifications for mechanical, electrical, electronics, structural, plumbing, architectural and other systems that are essential to the operation, functionality and safety of the New Terminal Facilities, as identified by and agreed to by the Lessee and the Port Authority in the Project Documents, shall have been received; and (2) all inspection reports for such systems shall have been made; in each case in accordance with the requirements of the Project Documents, Good Order Requirements, Applicable Law and Applicable Standards;

(B) the Lessee shall have certified that the Lessee has received, and paid all associated fees due and owing for, all applicable Governmental Approvals (other than Port Authority Governmental Approvals) required for performing Operations and Maintenance Work with respect to the New Terminal Facilities, and shall have provided accurate and complete copies thereof to the Port Authority, such Governmental Approvals shall be in full force and effect, and there shall exist no uncured violation of the terms and conditions of any such Governmental Approval;

(C) all plans and manuals for mechanical, electrical, electronics, structural, plumbing, architectural and other systems that are essential to the operation, functionality and safety of the New Terminal Facilities, as identified by and agreed to by the Lessee and the Port Authority in the Project Documents, and are required in accordance with the Project Documents, Good Order Requirements, Applicable Law or Applicable Standards shall have been submitted and, if required under the Project Documents, Good Order Requirements, Applicable Law or Applicable Standards, shall have received Port Authority approval;

(D) all other submittals required by the Project Documents, Good Order Requirements, Applicable Law or Applicable Standards to have been provided by the Lessee prior to or at Substantial

Completion of Phase 2 shall have been submitted and, if required under the Lease Agreement, the other Project Documents, Good Order Requirements, Applicable Law or Applicable Standards, shall have been approved by the Port Authority;

(E) the Lessee shall have prepared, in consultation with the Port Authority (including with respect to the Port Authority's right to add or remove items to or from the punch list in its discretion), the punch list in respect of the Phase 2 D&C Work, and such punch list shall have received Port Authority approval;

(F) with respect to the individual tenant spaces in the New Terminal Facilities intended to be subleased to Concession Sublessees or Airline Sublessees (to the extent of any Subleases for portions of the New Terminal Facilities related to airline passenger services), the Lessee shall only be required to have installed the basic infrastructure and equipment for the supply of necessary Utilities to such tenant spaces and to have provided fire alarm, fire protection and space separation between occupied and construction sites; provided that nothing in the Lease Agreement shall prevent the Lessee or any of its Contractors from performing the Phase 2 D&C Work in said individual tenant spaces concurrently with the performance of tenant fit-out, but shall not be required to install the fit-out of such tenant spaces to the individual specifications and needs of each Sublessee in order to achieve Substantial Completion of Phase 2; and

(G) with respect to the Phase 2 D&C Work specifically identified in the Baseline Schedule as extending beyond Substantial Completion of Phase 2, the Lessee shall only be required to have installed the basic infrastructure and equipment for the supply of necessary Utilities for such items and to have provided fire alarm, fire protection and space separation as deemed necessary to achieve Substantial Completion of Phase 2.

**"Taking"** shall mean the acquisition of a real property interest, through condemnation or the exercise of the power of eminent domain, by anybody having a superior power of eminent domain.

**"TCAP Process"** means the Port Authority's Tenant Construction and Alteration Process, which is described in:

- (a) the TCAP Manual;
- (b) the Port Authority's Tenant Construction Review Manual (TCRM);
- (c) the Tenant Construction and Alteration Process Portal Guide;
- (d) the TCAP bulletins; and
- (e) any additional or modified manual updates, guidances, bulletins or the like issued by the Port Authority from time to time, and any subsequent editions, restatements or replacements of any of the above.

**"Temporary Rights of Access"** means certain rights of way and access and use of those off-Premises portions of the Airport shown on Exhibit 6 to the Lease Agreement.

**"Term"** has the meaning set forth above under the heading "Term."

**"Terminal 6 Parcel"** has the meaning set forth in the definition Initial Premises herein.

**"Terminal 7 Parcel"** has the meaning set forth in the definition Terminal 7 Premises herein.

“**Terminal 7 Premises**” means the land marked as area 2 on Exhibit 1 (*Terminal 6/7 Proposed Future Leasehold*) to the Lease Agreement at the Airport in the County of Queens, City and State of New York, constituting 35.4 acres (the “**Terminal 7 Parcel**”), the aforesaid land, together with any property of the Port Authority and all structures, improvements, additions, buildings, installations, fixtures, facilities and other property located, constructed or installed, or which may be located, constructed or installed in, on, or under the Terminal 7 Parcel, and the equipment permanently affixed or permanently located therein, such as (without limitation) electrical, plumbing, sprinkler, fire detection, fire protection and fire alarm, heating, air conditioning, steam, sewage, drainage, refrigerating, communications, security systems, gas and other systems, and their pipes, wires, mains, lines, tubes, conduits, equipment and fixtures, and all paving, drains, culverts, ditches and catch-basins constructed in, on, or under the Terminal 7 Parcel.

“**Terminal 7 Lease Agreement Commencement Date**” means effective at 12:01 a.m. on December 1, 2022.

“**Third Additional Rent**” means additional compensation to the Port Authority for letting the Premises, in the amounts of: (i) Thirty-three Million Dollars (\$33,000,000) to be paid to the Port Authority on the Effective Date, and an additional (ii) One Million Dollars (\$1,000,000) annually for each year of the Term, beginning in 2027, payable in equal monthly installments due on the first day of each calendar month.

“**Third-Party Claims**” shall mean any Claim asserted against a Port Authority Indemnified Party by any Person who is not a party to the Lease Agreement.

“**Traffic Mitigation Capital Amount**” means an amount up to \$35,000,000.

“**Traffic Mitigation Savings Amount**” has the meaning set forth above under the heading “Airport-Wide Facilities and Services.”

“**Transfer**” shall mean any assignment, transfer, sale, conveyance, mortgage, pledge, encumbrance, hypothecation, sublease or other disposition of all or any portion of (i) the Lessee’s interest in the Lease Agreement, (ii) the Leasehold estate created by the Lease Agreement, or (iii) any direct or indirect interest in the Lessee, in each case, whether voluntarily, involuntarily, by operation of law or otherwise and whether resulting from a single transaction, a series of related transactions or otherwise.

“**Transportation Deficiency Plan of Action**” means a plan of action that Lessee is required to prepare to resolve any unavailability of parking spaces at the Airport that is projected to result from Lessee’s failure to comply with the Transportation Management Plan and its other obligations set forth in the Lease Agreement, such plan of action resolving such parking deficiency by a date certain (including by implementing alternative modes of parking or ground transportation), mitigating any damages and addressing any dissatisfaction of airline passengers and customers caused by and during such condition.

“**Transportation Management Plan**” means a parking and traffic mitigation plan, submitted by the Lessee and approved by the Port Authority, that describes, to the extent applicable, alternative parking solutions for each Phase of the D&C Work and traffic circulation and control management, roadway paving, staging, level of maintenance service, pedestrian walkways and site logistics, during the D&C Work Period.

“**Unavailability Event**” shall mean the occurrence of any event or circumstance that renders the Premises or the Public Landing Area inaccessible or otherwise unusable by the Lessee for a period covering more than ninety (90) consecutive days; provided that an Unavailability Event shall not commence until the later of (i) the ninety-first (91st) consecutive day of such period inaccessibility or unusability or (ii) if

business interruption insurance proceeds are available to be collected by the Lessee in connection with such event or circumstance, the date on which such proceeds are exhausted.

**“Unknown Condition(s)”** means (i) Unknown Archeological Remains, (ii) Unknown Endangered Species, (iii) Unknown Facilities, and/or (iv) Unknown Hazardous Substances, but specifically excluding any Unknown Archeological Remains, Unknown Endangered Species, Unknown Facilities and Unknown Hazardous Substances which the Lessee should have known or is deemed to have known as a result of the ownership or operations of the Premises by Lessee, its Affiliates, or any of its or their beneficial owners, prior to the Effective Date or as a result of any obligations from prior users of the Premises which the Lessee, its Affiliates, or any of its or their beneficial owners, has assumed expressly by agreement or is deemed to have assumed by operation of law or as a result of its operations.

**“Utility”** or **“Utilities”** shall mean a privately, publicly, or cooperatively owned line, facility, or system (including conduits and concrete structures in which utility lines are contained) for transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with the highway drainage, or other similar commodities, including wireless telecommunications, television transmission signals and publicly owned fire and police signal systems. The necessary appurtenances to each Utility facility shall be considered part of such Utility.

**“Value Engineering Lessee Changes”** has the meaning set forth above under the heading “Value Engineering Lessee Changes.”

**“Warranty”** means the Lessee’s warranty and guaranty to the Port Authority that:

(i) the design of the Construction Project shall satisfy the requirements of the Lease Agreement, the Requirements and Provisions for Work and the other Project Documents;

(ii) all D&C Work, including materials and equipment furnished as part of the construction, shall be (A) complete and conform to Best Management Practice, (B) new or approved recycled materials, of good quality, in conformance with Good Order Requirements, Applicable Laws, Applicable Standards, the Lease Agreement, the Requirements and Provisions for Work and the other Project Documents, and (C) once completed, free of all Defects in design, materials and workmanship and fit for its intended purpose; and

(iii) the Final Design Documents, including all final Construction Applications approved by the Port Authority shall (A) be accurate and complete, (B) comply with the requirements of the Project Documents, and (C) accurately reflect the condition of the Construction Project as of the Completion Date.

**“Warranty Period”** means with respect to each Phase shall be for a term of two (2) years from the issuance by the Port Authority of the Phase 1 Completion Certificate or the Completion Certificate, as applicable, but, with respect to any portion of the D&C Work that is repaired or replaced during such two (2)-years periods, such term shall be for two (2) years from the date of repair or replacement of such portion of the D&C Work; provided, that the Warranty with respect to any Installation Portion or Partial Occupancy Portion that has achieved partial completion prior to the Phase 1 Completion Date or the Completion Date, as applicable, shall commence from the issuance by the Port Authority of a “Temporary Certificate of Authorization to Occupy or Use” with respect to such Installation Portion or Partial Occupancy Portion, as applicable; and provided, further, that the Lessee shall not have any Warranty obligations with respect to any Off-Premises Facilities (or a portion thereof) once such Off-Premises Facilities (or a portion thereof) have been turned over to the Port Authority and the related construction warranties have been assigned to the Port Authority.

**“WBE”** means any business enterprise which is at least fifty-one percent (51%) owned by, or in the case of a corporation, at least fifty-one percent (51%) of the stock of which is owned by one (1) or more women; and whose management and daily business operations are Controlled by one or more women who are citizens or permanent resident aliens and such ownership is real, substantial and continuing.

**“Yellow Garage”** means the Terminal 5 Parking Garage.

**(THIS PAGE INTENTIONALLY LEFT BLANK)**

**APPENDIX F-1**

**FORM OF COMMON TERMS AGREEMENT**

**(THIS PAGE INTENTIONALLY LEFT BLANK)**



---

**COMMON TERMS AGREEMENT**

dated as of November 1, 2022

by and among

**NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION,**  
as Issuer,

**JFK MILLENNIUM PARTNERS, LLC,**  
as Lessee,

[REDACTED]  
as Senior Collateral Agent,

[REDACTED]  
as Intercreditor Agent,

[REDACTED]  
as Administrative Agent,

and

[REDACTED],  
as Series 2022A Bondholder,

and

**THE FINANCIAL INSTITUTIONS NAMED HEREIN**  
as Lenders and as the Security Deposit Facility LC Issuing Bank

---

## Table of Contents

Article I DEFINITIONS; RULES OF INTERPRETATION.....	2
Section 1.01 Certain Defined Terms .....	2
Section 1.02 Terms Generally .....	2
Section 1.03 Financing Documents.....	2
Article II PAYMENTS .....	3
Section 2.01 Payments Generally; Pro Rata Treatment. ....	3
Section 2.02 Mandatory prepayments; Mandatory Redemptions. ....	3
Article III REPRESENTATIONS AND WARRANTIES.....	6
Section 3.01 Organization; Power and Authority .....	6
Section 3.02 Authorization, Enforceability .....	6
Section 3.03 Disclosure.....	6
Section 3.04 Capitalization; Business Activities.....	7
Section 3.05 Financial Statements; Material Liabilities.....	8
Section 3.06 No Contravention .....	8
Section 3.07 Governmental and Other Authorizations .....	8
Section 3.08 Litigation; Compliance with Law .....	9
Section 3.09 Taxes .....	9
Section 3.10 Title .....	9
Section 3.11 Licenses; Permits.....	9
Section 3.12 ERISA .....	10
Section 3.13 Use of Proceeds; Margin Regulations .....	10
Section 3.14 Indebtedness.....	10
Section 3.15 Foreign Assets Control Regulations; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws .....	11
Section 3.16 Investment Company Act.....	11
Section 3.17 Ranking .....	11
Section 3.18 Environmental Matters.....	12
Section 3.19 Solvency .....	12
Section 3.20 Material Project Documents; Project Related Matters .....	13
Section 3.21 Adequacy of Rights and Interest .....	13
Section 3.22 Commercial Activity; Absence of Immunity .....	13
Section 3.23 No Default or Event of Default .....	13
Section 3.24 Bank Accounts .....	13
Section 3.25 Insurance .....	13
Section 3.26 No Election.....	13
Section 3.27 Sufficient funds .....	14
Article IV CONDITIONS PRECEDENT.....	14
Section 4.01 Closing Date.....	14
Section 4.02 Each Credit Extension.....	20
Section 4.03 Additional Conditions to Construction Accounts Withdrawals .....	21
Section 4.04 Funding of Credit Extensions.....	22
Article V AFFIRMATIVE COVENANTS.....	23
Section 5.01 Compliance with Law, Material Contractual Obligations.....	23
Section 5.02 Insurance .....	23
Section 5.03 Maintenance of Property .....	23
Section 5.04 Payment of Taxes and Claims .....	24
Section 5.05 Credit Extensions to Rank Pari Passu .....	24
Section 5.06 Use of Proceeds; Project Accounts .....	24

Section 5.07	Material Project Documents.....	24
Section 5.08	Intellectual Property.....	25
Section 5.09	Financial Covenant.....	25
Section 5.10	Further Assurances.....	25
Section 5.11	Separate Conduct of Business.....	26
Section 5.12	Maintenance of Title.....	26
Section 5.13	Hedging.....	26
Section 5.14	Financial and Business Information.....	28
Article VI NEGATIVE COVENANTS.....		32
Section 6.01	Transactions with Affiliates.....	32
Section 6.02	Fundamental Changes.....	33
Section 6.03	Limitation on Liens.....	33
Section 6.04	Sale of Assets.....	33
Section 6.05	Material Changes to Organizational Documents.....	33
Section 6.06	Subsidiaries.....	33
Section 6.07	Material Project Documents; Other Agreements.....	33
Section 6.08	Accounting Changes.....	37
Section 6.09	Investments.....	37
Section 6.10	Restricted Payments.....	37
Section 6.11	Permitted Hedge Agreements.....	38
Section 6.12	Capital Expenditures.....	38
Section 6.13	ERISA.....	38
Section 6.14	Permitted Accounts.....	38
Section 6.15	Sanctions; Anti-Corruption Law; Economic Sanctions, Etc.....	38
Section 6.16	Purchase of Capital Stock.....	39
Section 6.17	Termination of Lease Agreement.....	39
Section 6.18	Additional Obligations.....	39
Section 6.19	Permitted Tax Distributions.....	41
Article VII EVENTS OF DEFAULT.....		42
Section 7.01	Events of Default.....	42
Article VIII CREDIT EXTENSIONS TRUE UP; DEEMED DRAWINGS.....		47
Section 8.01	True-up; Pro-Rata Result.....	47
Section 8.02	Tax Exempt Status Change in Law.....	49
Article IX THE AGENTS.....		50
Section 9.01	Appointment and Authorization of the Administrative Agent.....	50
Section 9.02	Administrative Agent's Rights as a Bank Finance Party.....	50
Section 9.03	Duties of the Administrative Agent; Exculpatory Provisions.....	50
Section 9.04	Reliance by the Administrative Agent.....	51
Section 9.05	Delegation of Duties of the Administrative Agent.....	51
Section 9.06	Withholding of Taxes by the Administrative Agent; Indemnification.....	51
Section 9.07	Resignation of the Administrative Agent.....	51
Section 9.08	Non-Reliance on the Administrative Agent or Other Bank Finance Parties.....	52
Section 9.09	No Other Duties; Etc.....	52
Section 9.10	Non-Receipt of Funds by Administrative Agent; Erroneous Payments.....	52
Section 9.11	Force Majeure.....	54
Section 9.12	Certain ERISA Matters.....	54

Article X MISCELLANEOUS .....	55
Section 10.01 Notices.....	55
Section 10.02 Waivers; Amendments .....	58
Section 10.03 Expenses; Indemnity; Damage Waiver .....	60
Section 10.04 Successors and Assigns.....	62
Section 10.05 Survival; Entire Agreement.....	62
Section 10.06 Counterparts; Electronic Execution of Senior Bank Financing Documents .....	62
Section 10.07 Severability .....	63
Section 10.08 Right of Setoff.....	63
Section 10.09 Governing Law; Jurisdiction; Etc.....	63
Section 10.10 Headings.....	64
Section 10.11 Treatment of Certain Information; Confidentiality .....	64
Section 10.12 No Third-Party Beneficiaries .....	65
Section 10.13 Reinstatement .....	65
Section 10.14 Limited Recourse .....	65
Section 10.15 USA PATRIOT Act .....	66
Section 10.16 Acknowledgment and Consent to Bail-In of Affected Financial Institutions .....	66
Section 10.17 Acknowledgement Regarding Any Supported QFCs .....	66
Section 10.18 Effectiveness Date.....	67

APPENDIX:

APPENDIX A - Definitions

EXHIBITS:

EXHIBIT A - Form of Accession Agreement

EXHIBIT B - Form of Airport Consultant Certificate

EXHIBIT C - Form of Officer Certificate

EXHIBIT D - Form of Responsible Officer Certificate

EXHIBIT E - Form of Solvency Certificate

EXHIBIT F - Form of Pledgor Certificate

EXHIBIT G - [Reserved]

EXHIBIT H - Form of Material Sublease Direct Agreement

EXHIBIT I - Form of Sponsor Certificate

EXHIBIT J - Form of True-up Notice

SCHEDULES:

- Schedule 3.04(a) - Directors and Officers of the Lessee
- Schedule 3.04(b) - Transactions with Affiliates on Closing Date
- Schedule 3.04(e) - Lessee Ownership Structure
- Schedule 3.18 - Environmental
- Schedule 4.01(1)(i) - Insurance Endorsements Not Provided
- Schedule 5.02 - Insurance

**COMMON TERMS AGREEMENT**, dated as of November 1, 2022 (this “Agreement”), among **NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION**, a local development corporation formed under Section 1411 of the New York Not-for-Profit Corporation Law, being Chapter 35 of the Consolidated Laws of New York, created by action of the New York Job Development Authority established under Section 1802, Subtitle I, Title 8, Article 8, of the New York Public Authorities Law (the “Issuer”); **JFK MILLENNIUM PARTNERS, LLC**, a Delaware limited liability company (the “Lessee”);

\_\_\_\_\_, in its capacity as collateral agent on behalf of itself and the Senior Secured Parties (in such capacity, the “\_\_\_\_\_”, \_\_\_\_\_, in its capacity \_\_\_\_\_, in its capacity as administrative agent under the Credit Agreement on behalf of itself and the Lenders (the “\_\_\_\_\_”, \_\_\_\_\_, in its capacity as Series 2022A Bondholder (“Series 2022A Bondholder”)); and the banks and other financial institutions or entities from time to time party to this Agreement as Lenders or as the Security Deposit Facility LC Issuing Bank.

W I T N E S S E T H:

**WHEREAS**, The Port Authority of New York and New Jersey, a municipal corporate instrumentality and political subdivision of the States of New York and New Jersey, created and existing by virtue of the Compact of April 30, 1921, made by and between the States of New York and New Jersey, and thereafter consented to by the Congress of the United States has entered into an Agreement of Lease, dated as of November 17, 2022, with the Lessee pursuant to which, among other things, the Lessee is obliged to undertake the following: (i) the operation, maintenance, and demolition of the Existing Terminal Facilities at John F. Kennedy International Airport in Queens, New York, which Existing Terminal Facilities include the existing Terminal 7 facilities, (ii) the design, construction, financing, operation and maintenance of the New Terminal Facilities at the Airport (which New Terminal Facilities include new Terminal 6 facilities and replacement Terminal 7 facilities) and certain ancillary facilities, and (iii) the design and construction of the Off-Premises Facilities at the Airport on behalf of the Port Authority, which Off-Premises Facilities will not be operated or maintained by the Lessee and will not constitute part of the facilities leased to the Lessee under the Lease Agreement;

**WHEREAS**, in order to finance certain costs and expenditures associated with the transactions contemplated by the Lease Agreement, the Lessee has requested that the Lenders and the Issuer enter into the Credit Agreement providing for a term loan facility, the proceeds of which will be loaned by the Issuer to the Lessee in accordance with the TDC Loan Agreements, in order to pay Project Costs, and a letter of credit facility to issue letters of credit to secure Lessee’s obligations under the Lease Agreement, and the Lenders are willing to provide such term loan facilities, and the Security Deposit LC Facility Lender and Security Deposit Facility LC Issuing Bank is willing to provide the letter of credit facility and issue the Security Deposit LCs, in each case, on the terms and conditions and in the respective principal amounts and stated amounts set forth in the Credit Agreement and subject to the terms and conditions of this Agreement and the other Senior Bank Financing Documents;

**WHEREAS**, pursuant to a bond resolution adopted on October 20, 2022 by the Issuer and that certain TDC Master Bond Indenture of Trust, dated as of November 1, 2022, between the Issuer and the Trustee, as supplemented and amended from time to time, including by the First Supplemental Indenture, the Issuer has authorized the issuance of its New York Transportation Development Corporation Special Facilities Bonds, Senior Series 2022A (Tax-Exempt) (AMT) (JFK Airport Terminal 6-7 Redevelopment Project) in the aggregate principal amount of \$435,000,000;

**WHEREAS**, the Issuer and the Lessee have entered into that certain Bond Purchase Agreement with the Initial Purchaser and \_\_\_\_\_, and the Initial Purchaser and \_\_\_\_\_ are willing to purchase the Series

2022A Bonds on the terms and conditions set forth in the Series 2022A Bond Purchase Agreement and the Bondholder's Agreement and subject to the terms and conditions of this Agreement and the other Senior Bank Financing Documents, the proceeds of which will be loaned to the Lessee by the Issuer pursuant to the TDC Loan Agreements, in order to pay Project Costs;

**WHEREAS**, the Lessee has entered into, and will from time to time enter into, certain Permitted Hedge Agreements with Permitted Hedge Providers to hedge interest rate risk associated with the Senior Bank Obligations;

**NOW, THEREFORE**, in consideration of the foregoing and other good and valid consideration, the receipt and adequacy of which are hereby expressly acknowledged, and the parties hereto agree as follows:

## **ARTICLE I**

### **DEFINITIONS; RULES OF INTERPRETATION**

Section 1.01 **Certain Defined Terms**. Unless otherwise specified, capitalized terms used in this Agreement have the meanings assigned to them in Appendix A hereto or, to the extent not defined therein, in Exhibit A to the Collateral Agency and Accounts Agreement. In the event of conflict between the definition of a term in Appendix A hereto and the definition of the same term in the Collateral Agency and Accounts Agreement the definition in Appendix A hereto shall prevail.

Section 1.02 **Terms Generally**. Except as otherwise expressly provided or unless the context otherwise requires, the rules of interpretation included in Exhibit A to the Collateral Agency and Accounts Agreement shall apply to this Agreement.

Section 1.03 **Financing Documents**.

(a) This Agreement, including its definitions, conditions of disbursement, representations and warranties, covenants, events of default, principles of construction, rules of interpretation and its jurisdiction, governing law and notice provisions, is incorporated by reference in and made a part of each of the Credit Agreement, the Series 2022A Bond Purchase Agreement, the Series 2022A Bondholder's Agreement and, until the Credit Termination Date, the TDC Building Loan Agreement and the TDC Project Loan Agreement. After the Credit Termination Date, this Agreement shall no longer be incorporated in, nor be a part of, the TDC Loan Agreements.

(b) If any provision of this Agreement conflicts with any provision of the Credit Agreement, the Series 2022A Bond Purchase Agreement, the Bondholder's Agreement, the TDC Building Loan Agreement and/or the TDC Project Loan Agreement, then the provisions of the Credit Agreement, the Series 2022A Bond Purchase Agreement, the Bondholder's Agreement, the TDC Building Loan Agreement or the TDC Project Loan Agreement (as applicable) shall prevail, except with respect to the rights, protections, and obligations of the Administrative Agent, which in any event shall be governed and controlled by the terms of this Agreement. In the case of any conflict between the provisions of this Agreement and the provisions of the Intercreditor Agreement, the provisions of the Intercreditor Agreement shall control as among the Secured Parties and the provisions of this Agreement shall control as between the Administrative Agent and the Bank Finance Parties on the one hand and the Lessee on the other.

## ARTICLE II

### PAYMENTS

#### Section 2.01 Payments Generally; Pro Rata Treatment.

(a) Payments under Senior Bank Financing Documents. All payments to be made by the Issuer, the Securities Intermediary or the Lessee to the Bank Finance Parties and by the Lessee to the Issuer under the Senior Bank Financing Documents shall be made in immediately available funds without condition or deduction for any counterclaim, defense, recoupment or setoff. Unless otherwise expressly specified in this Agreement, (x) the Issuer, the Securities Intermediary or the Lessee shall pay, or cause to be paid (including by causing the Senior Collateral Agent and the Securities Intermediary to make the deposits, withdrawals and transfers contemplated in the Collateral Agency and Accounts Agreement), each payment required to be made by it hereunder, under the Credit Agreement, the Series 2022A Bonds or under any other Senior Bank Financing Document (whether of principal, interest, fees, under Section 2.12, Section 2.14 or Section 2.17 of the Credit Agreement, or otherwise) prior to 1:00 p.m., New York City time, on the date when due; and (y) the Lessee shall pay, or cause to be paid (including by causing the Senior Collateral Agent and the Securities Intermediary to make the deposits, withdrawals and transfers contemplated in the Collateral Agency and Accounts Agreement) each payment required to be made by it hereunder, under the TDC Building Loan Agreement, the TDC Project Loan Agreement or under any other Senior Bank Financing Document (whether of principal, interest, fees or otherwise) prior to 1:00 p.m., New York City time, on the date when due. Any amounts received after such time on any date will be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon or any fees. All such payments under this Agreement and the Credit Agreement shall be made to the Administrative Agent at its offices at [REDACTED] (payment instructions: [REDACTED]; ABA/Routing No.: [REDACTED]; SWIFT ID.: [REDACTED]; Beneficiary Name: [REDACTED]; Beneficiary Account: [REDACTED]; Attention: [REDACTED]; Reference: [REDACTED]), except for payments pursuant to Section 2.12, Section 2.14, Section 2.17 and Section 8.03 of the Credit Agreement, which shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be reflected in computing interest or fees, as the case may be; provided that, if such next succeeding Business Day would fall after the Bank Financing Maturity Date, payment shall be made on the immediately preceding Business Day. All amounts owing under the Senior Bank Financing Documents are payable in Dollars.

(b) Application of Insufficient Payments. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest, fees and other amounts then due under the Credit Agreement, such funds shall be applied (i) *first*, to pay interest, fees and other amounts (except for the amounts required to be paid pursuant to the following clause (ii)) then due under the Senior Bank Financing Documents, ratably among the parties entitled thereto in accordance with the amounts of interest, fees and such other amounts then due to such parties, and (ii) *second*, to pay principal then due under the Senior Bank Financing Documents, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

#### Section 2.02 Mandatory prepayments; Mandatory Redemptions.

(a) Subject to Section 2.8 of the Intercreditor Agreement and clause (c) below, unless otherwise instructed by the Required Bank Finance Parties, the Lessee shall mandatorily cause the prepayment of the Senior Loans and redemption of the Series 2022A Bonds (on a pro rata basis based on the respective principal amounts of the outstanding Senior Loans and the Outstanding Series 2022A Bonds),



in accordance with Section 5.02(b), Section 5.03(b), Section 5.15 or Section 5.17 of the Collateral Agency and Accounts Agreement, as applicable, with the following amounts (or such portion thereof as is allocable to the Senior Loans and the Series 2022A Bonds pursuant to the Collateral Agency and Accounts Agreement) and at such times as set forth below:

(i) the Net Cash Proceeds received by the Lessee as a result of any condemnation or similar event (including any Expropriation Event), on or as soon as practicable after the date received (which shall in any event be no later than five (5) Business Days following receipt thereof); provided that, in the case of any condemnation or similar event (including any Expropriation Event) that only affected part of the Premises, the Net Cash Proceeds thereof shall not be required to be applied pursuant to this clause to the extent such amounts are required pursuant to Section 19(a)(3) of the Lease Agreement to be applied in the restoration of the remaining part of the Premises;

(ii) the Net Cash Proceeds received by the Lessee of any Disposition permitted under Section 6.04 with a fair market value in excess of \$5,000,000 which are not otherwise applied towards replacement of assets in accordance with Section 6.04, on or as soon as practicable after the date received (which shall in any event be no later than five (5) Business Days following receipt thereof);

(iii) any Net Cash Proceeds received by the Lessee as a result of any termination of the Lease Agreement or any other Material Project Document (including pursuant to any legal claim related thereto), but in the case of termination of Material Project Documents other than the Lease Agreement, such payments shall not be required if such Net Cash Proceeds are otherwise applied or projected by the Lessee in its commercially reasonable business judgment to be applied within 90 days of receipt toward replacement contracts, and (provided that if such Net Cash Proceeds (or any portion thereof) are not so applied within such 90 day period, such Net Cash Proceeds (or portion thereof) shall be used to make a prepayment of the Senior Loans and redemption of the Series 2022A Bonds pursuant to this paragraph within five (5) Business Days after expiration of such 90 day period) any such required payment amounts shall be net of transaction costs and expenses incurred by or on behalf of Lessee to rectify any damages or losses incurred by Lessee resulting from the breach of such Material Project Document, on or as soon as practicable after the date received (which shall in any event be no later than five (5) Business Days following receipt thereof);

(iv) the Net Cash Proceeds received by the Lessee from any payment by a Permitted Hedge Provider following the early termination of any Permitted Hedge Agreement (except to the extent such proceeds are (A) used to offset the costs to the Lessee of entering into a replacement Permitted Hedge Agreement, or (B) used to pay, or projected by the Lessee in its commercially reasonable business judgment to be used to pay, any Obligation owed to a Permitted Hedge Provider with respect to an early termination of any Permitted Hedge Agreement within thirty (30) days of receipt (it being understood that if such proceeds are not used for such purpose within such thirty (30) day period, such proceeds shall be subject to this clause (iv))), on or as soon as practicable after the date received (which shall in any event be no later than ten (10) Business Days following receipt thereof), *provided* that such Net Cash Proceeds shall be used to prepay only the Senior Obligations which interest is hedged by the terminated Permitted Hedge Agreement;

(v) the Net Cash Proceeds of any Indebtedness received in respect of any Permitted Refinancing less any amounts used to fund the Debt Service Reserve Account

of such Indebtedness in accordance with the Debt Service Reserve Requirement thereof, simultaneously with the incurrence thereof;

(vi) the Net Cash Proceeds received by the Lessee as a result of any Casualty Event (including Borrower Insurance Proceeds, but excluding insurance proceeds under business interruption, advance of loss of profit or delay in start-up coverage) with respect to the Premises, to the extent such Net Cash Proceeds are not required by the Lease Agreement to be used for restoration of the Premises, on or as soon as practicable after the date received (which shall in any event be no later than five (5) Business Days following receipt thereof);

(vii) upon any redemption or repurchase of Additional Obligations, other than a redemption or repurchase of tax-exempt Additional Obligations upon the occurrence of a Determination of Taxability or to preserve the tax-exempt status of such Additional Obligations, in an amount that would result in a *pro rata* prepayment of the Senior Loans and redemption of the Series 2022A Bonds and such Additional Obligations (determined on the basis of the aggregate outstanding principal amount of such Additional Obligations, the Senior Loans and the Series 2022A Bonds at such time), simultaneously with the payment of such redemption or repurchase;

(viii) all amounts transferred from the Remaining Revenue Account to the Extraordinary Receipts Account on any Quarterly Distribution Date pursuant to Section 5.17(c)(ii) of the Collateral Agency and Accounts Agreement, on such Quarterly Distribution Date; or

(ix) if for any reason the Total Security Deposit Outstandings at any time exceed the amount of the Security Deposit Facility in respect thereof (including after giving effect to any reduction in the Security Deposit Facility Commitments pursuant to Section 2.07 of the Credit Agreement), the Lessee shall immediately prepay the Security Deposit Loans under the applicable Security Deposit Facility in an aggregate amount equal to such excess.

(b) The Lessee shall cause the prepayment of any Senior Loans and redemption of the Series 2022A Bonds (other than in the case of redemptions or repurchase of Series 2022A Bonds as a result of a Determination of Taxability or to preserve the tax-exempt status of any Series 2022 Bonds or to the extent paragraph (a)(iv) above requires the prepayment or redemption of only one Class of Senior Obligations), on a *pro rata* basis based on the respective principal amounts of the outstanding Senior Loans and the Outstanding Series 2022A Bonds, together with payment of all accrued interest on the amount so prepaid or redeemed.

(c) Amounts to be applied in connection with prepayments of Senior Loans and redemption of Series 2022A Bonds pursuant to this Section shall be applied without penalty or premium (except for compensation costs, if any) *pro rata*: (i) to prepayment of the Senior Loans and redemption of Series 2022A Bonds, as applicable, and accrued interest thereon, and (ii) to pay any Hedge Termination Payments required to be paid under any Permitted Hedge Agreements in connection with the termination (in whole or in part) of such Permitted Hedge Agreements; except to the extent paragraph (a)(iv) above requires applying Net Cash Proceeds to the payment of only one Class of Senior Obligations, in which case such Net Cash Proceeds will be applied without penalty or premium (except for compensation costs, if any) *pro rata* (x) to prepayment or redemption of such Class of Senior Obligations only, and accrued interest thereon and (y) to pay any termination payments required to be paid under the Permitted Hedge Agreement entered in connection with such Class of Senior Obligations, in connection with the termination (in whole or in part) of any such Permitted Hedge Agreements.

(d) No prepayment of a SOFR Loan shall be made on any day that is not a U.S. Government Securities Business Day, and if any prepayment would be required to be made on a day that is not a U.S. Government Securities Business Day, payment shall be made on the next succeeding U.S. Government Securities Business Day and such extension of time shall be reflected in computing interest or fees, as the case may be.

(e) Anything herein to the contrary notwithstanding, except in the case of a redemption or repurchase of Series 2022A Bonds as a result of a Determination of Taxability or to preserve the tax-exempt status of the Series 2022A Bonds or to the extent Section 2.02(a)(iv) requires the prepayment or redemption of only one Class of Senior Obligations, each prepayment of Senior Loans and each redemption or repurchase of Series 2022A Bonds under this Section 2.02 shall occur on the same Business Day.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES

As of the Closing Date, each Credit Extension Date and each date on which a transfer, disbursement or withdrawal is made from the Bank Proceeds Sub-Account of the Construction Account or the Series 2022A Bond Proceeds Sub-Account of the Tax-Exempt Bond Proceeds Sub-Account of the Construction Account is made, the Lessee represents and warrants to the Administrative Agent and each Bank Finance Party that:

Section 3.01 **Organization; Power and Authority.** The Lessee is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and is duly qualified as a foreign corporation and is in good standing in each jurisdiction in which such qualification is required by law. The Lessee has the limited liability company power and authority to own or hold under lease the properties it purports to own or hold under lease, to transact the business it transacts and proposes to transact, to execute and deliver this Agreement, the other Senior Bank Financing Documents and the Material Project Documents and to perform its obligations hereunder and thereunder.

Section 3.02 **Authorization, Enforceability.** This Agreement, the other Senior Bank Financing Documents and the Material Project Documents, in each case, to which the Lessee is a party have been duly authorized by all necessary limited liability action on the part of the Lessee, and each of this Agreement, each other Senior Bank Financing Document and each Material Project Document, in each case, to which the Lessee is a party, constitutes a legal, valid and binding obligation of the Lessee enforceable against the Lessee in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

Section 3.03 **Disclosure.**

(a) The written information furnished by or on behalf of the Lessee to the Administrative Agent and the Bank Finance Parties and their respective representatives, advisors, counsel or consultants (including, but not limited to, the Technical Advisor, the Traffic Advisor, the Insurance Consultant, the Model Auditor, Roux Associates, Inc., Pragma Consulting Limited and White & Case LLP) in connection with the Lessee, the Project, the Financing Documents or the other Transaction Documents or delivered thereunder (such written information, including such documents, certificates or other writings delivered by or on behalf of the Lessee, the "Disclosure Documents") (other than Projections and forward-looking information and other information of a general economic or industry nature), taken as a whole (as modified or supplemented by other information so delivered), was true, and correct in all material respects at the time delivered (or at the time such modification or supplement was delivered) and did not contain any untrue statement of a material fact or omit any material fact necessary to make the statements contained

therein not misleading in any material respect in light of the circumstances under which such statements were made.

(b) The Base Case Financial Model, the Construction Schedule and Budget and each other projection, forecast and forward-looking information furnished or to be furnished to any Bank Finance Party by or on behalf of the Lessee or any Sponsor (collectively, the “Projections”) and the summaries of significant assumptions related thereto (i) have been or will be prepared in good faith with due care, based upon assumptions that are believed by the Lessee to be reasonable as of the time made or at the time such Projections are so furnished to the Bank Finance Parties, as applicable, and (ii) represent, in the reasonable opinion of the Lessee, reasonable estimates of the future performance of the Lessee. There are no statements or conclusions in any of the Projections (including the Construction Schedule and Budget) which are based upon or include information known to the Lessee as of the date of such Projections to be materially misleading or which fail to take into account material information known to the Lessee regarding the matters reported therein.

Section 3.04 **Capitalization; Business Activities.**

(a) Schedule 3.04(a) contains a complete and correct list of the Lessee’s directors and senior officers as of the Closing Date.

(b) Schedule 3.04(b) contains a complete and correct list of all agreements entered into between the Lessee and any of its Affiliates as of the Closing Date (and the Lessee confirms such agreements (other than (i) the Equity Contribution Agreement, (ii) the Management Services Agreement, (iii) the Manager Guarantee, (iv) the Manager Direct Agreement, (v) the JetBlue ATA and Sublease, (vi) the Consent to Assignment dated on or about the Closing Date among JetBlue Airways Corporation, the Lessee and the Senior Collateral Agent, (vii) the Reciprocal Rights Agreement, (viii) the Environmental Agreement between the Lessee and JetBlue Airways Corporation, (ix) Right-of-Entry Agreement JFK Millennium Partners, LLC dated on or about the Closing Date between JetBlue Airways Corporation and JFK Millennium Partners, LLC, (x) the Assignment and Assumption Agreement dated on or about the Closing Date among Vantage Airport Group Ltd., RXR VAF III JFK Millennium Partners Vehicle LLC, JetBlue Airways Corporation, American Triple I Holdings, LLC, and Lessee, (xi) the Assignment and Assumption Agreement dated on or about the Closing Date among Vantage Airport Group Ltd., RXR VAF III JFK Millennium Partners Vehicle LLC, JetBlue Airways Corporation, and Lessee; (xii) the Assignment and Assumption Agreement dated on or about the Closing Date among Vantage Airport Group Ltd., RXR VAF III JFK Millennium Partners Vehicle LLC, American Triple I Holdings, LLC, and Lessee, (xiii) the Assignment and Assumption Agreement dated on or about the Closing Date among Vantage Airport Group Ltd., RXR VAF III JFK Millennium Partners Vehicle LLC, and Lessee; (xiv) the Assignment and Assumption Agreement dated on or about the Closing Date between Vantage Airport Group Ltd. and Lessee; (xv) [Reserved]; (xvi) the Assignment and Assumption Agreement dated on or about the Closing Date among Vantage Airport Group Ltd., RXR Real Estate Value Added Fund – Fund III LP and Lessee; (xvii) the Assignment and Assumption Agreement dated on or about the Closing Date among Vantage Airport Group (US) Ltd. and Lessee and (xviii) the Letter of Intent for ATI Services Agreement) were entered into in the ordinary course and upon fair and reasonable terms no less favorable to the Lessee than would be obtainable in a comparable arm’s-length transaction with a Person not an Affiliate).

(c) The Lessee has no Subsidiaries and does not own any Equity Interest in, otherwise control any voting stock of, or otherwise have any ownership interest in, any Person.

(d) The Lessee has not engaged in any business other than the Project (and, on and after the Lease Effective Date, such business is in accordance with the Lease Agreement and the other Material Project Documents) and the activities related or incidental thereto, and the Lessee has no

obligations or liabilities other than those arising out of or relating to the conduct of such business or activities related or incidental thereto.

(e) As of the Closing Date, each Sponsor owns, indirectly, the percentage of the equity interests in the Lessee listed opposite its name in Schedule 3.04(e), and, collectively, the Sponsors, indirectly, own 100% of the equity interest in the Lessee. The Pledgor, directly, owns 100% of the equity interests in the Lessee free and clear of all Liens (other than the Liens created under the Senior Equity Pledge Agreement, the Subordinate Equity Pledge Agreement and non-consensual Permitted Liens created after the Closing Date), such equity interests have been duly and validly authorized and issued, and there are no outstanding options, warrants, calls or other rights to subscribe for or otherwise acquire any of such equity interests.

Section 3.05 **Financial Statements; Material Liabilities**. Each of the financial statements (including in each case the related schedules and notes) of the Lessee delivered pursuant to Section 5.14(a) and Section 5.14(b) fairly presents in all material respects the financial position of the Lessee as of the respective dates specified thereon and the results of its operations and cash flows for the respective periods so specified and has been prepared in accordance with GAAP consistently applied throughout the periods involved except as set forth in the notes thereto (subject, in the case of any interim financial statements, to normal year-end adjustments). The Lessee does not have any material liabilities that are not disclosed in the Disclosure Documents (including the financial statements delivered pursuant to Section 5.14(a) and Section 5.14(b)).

Section 3.06 **No Contravention**. The execution, delivery and performance by the Lessee of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby will not (a) contravene, conflict with, result in any breach of or constitute a default (i) under the Organizational Documents of the Lessee, or (ii) in any material respect, under any indenture, mortgage, deed of trust, loan, purchase or credit agreement, lease, limited liability agreement or any other agreement or instrument to which the Lessee is a party or by which the Lessee or any of its properties may be bound or affected, (b) contravene, conflict with or violate any order, judgment, decree or ruling of any court, arbitrator or Governmental Authority applicable to the Lessee or any statute or other rule or regulation of any Governmental Authority applicable to the Lessee in any material respect, (c) contravene, conflict with, result in any breach of or constitute a default under the Lease Agreement, or (d) result in the creation of any Lien (except for Permitted Liens) in respect of any property of the Lessee.

Section 3.07 **Governmental and Other Authorizations**. No Authorization of or with, or other action by, any Governmental Authority or any other third party is required for (a) the due execution, delivery and performance by the Lessee of this Agreement and the other Transaction Documents, (b) the grant by the Lessee of the Security Interests granted by it pursuant to the Senior Collateral Documents or (c) the perfection or maintenance of the Security Interests created by the Senior Collateral Documents in the Collateral granted by the Lessee or the Pledgor, except for those which have been duly obtained, taken, given or made prior to the Closing Date and are in full force and effect and not subject to appeal, or those filings or recordations with respect to the Security Interests being made substantially concurrently with the Closing Date and periodic filings required to be made pursuant to the UCC to maintain the perfection of such Security Interests. It is not necessary to ensure the legality, validity, enforceability or admissibility into evidence in the State of New York of this Agreement, or any other Transaction Document to which the Lessee is a party that any of the foregoing or any other document be filed, recorded or enrolled with any Governmental Authority, or that any such agreement or document be stamped with any stamp, registration or similar transaction tax, except for such filings, recordations, enrollments and stamps as have been obtained prior to or will be obtained on the Closing Date and for filings and recordings related to the Security Interests expressly contemplated by the Financing Documents to be completed on or after the date on which this representation is made or deemed to be made.

Section 3.08 **Litigation; Compliance with Law.**

(a) There are no actions, suits, investigations or proceedings pending or, to the best knowledge of the Lessee, threatened against or affecting (i) the Lessee or any property of the Lessee or (ii) to the best knowledge of the Lessee, any Material Project Party or any of their properties, in either case in any court or before any arbitrator of any kind or before or by any Governmental Authority that, individually or in the aggregate, has or could reasonably be expected to have a Material Adverse Effect.

(b) The Lessee is not (i) in default under any agreement or instrument to which it is a party or by which it or any of its properties may be bound or affected, (ii) in violation of any order, judgment, decree or ruling of any court, any arbitrator of any kind or any Governmental Authority or (iii) in violation of any Applicable Law, ordinance, rule or regulation of any Governmental Authority (including Environmental Laws, the USA PATRIOT Act or any of the other laws and regulations that are referred to in Section 3.15 and Section 3.18, but without diminishing in any way the representations and warranties contained in such Sections), which default or violation, individually or in the aggregate, has or could reasonably be expected to have a Material Adverse Effect.

Section 3.09 **Taxes.** The Lessee has filed all tax returns that are required to have been filed in any jurisdiction, and has paid all taxes shown to be due and payable on such returns and all other taxes and assessments levied upon it or its properties, assets, income or franchises, to the extent such taxes and assessments have become due and payable and before they have become delinquent, except for any failure to timely file such tax returns or pay any such taxes and assessments (i) the amount of which, individually or in the aggregate, is not material or (ii) the amount, applicability or validity of which is currently being diligently contested in good faith by appropriate proceedings and with respect to which the Lessee has established adequate reserves in accordance with GAAP. The charges, accruals and reserves on the books of the Lessee in respect of U.S. federal, state or other material taxes for all fiscal periods are adequate. There is no stamp, registration or similar tax to be paid on or in relation to amounts payable pursuant to any Financing Document which has not been paid or the failure of which to pay would not reasonably be expected to result in a Material Adverse Effect. The Lessee knows of no basis for the imposition of any other tax or assessment that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 3.10 **Title.** The Lessee has good and sufficient title to, leasehold rights to, licenses or other rights to use its material properties and all other assets and property necessary to perform its obligations under the Transaction Documents, in each case free and clear of Liens other than Permitted Liens. All material leasehold rights of the Lessee, including the Lease Agreement, are valid and subsisting and are in full force and effect.

Section 3.11 **Licenses; Permits.**

(a) All Authorizations that are required to have been obtained in accordance with Applicable Law for the then-current stage of development, construction or operation of the Project (i) have been obtained, (ii) are held in the name of the Lessee or a Material Project Party, as required, (iii) are not the subject of any appeal, intervention or similar proceeding, except for those appeals, interventions or similar proceedings that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, (iv) are free from any material conditions or requirements that have not been satisfied, except for those conditions or requirements which failure to satisfy, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, and (v) the Lessee has delivered to the Administrative Agent true, correct and complete copies of (A) as of the Closing Date, all material Authorizations, or any material modification thereto, issued to or obtained by the Lessee, or, if actually received by the Lessee, by its contractors or subcontractors for the development, construction or operation of the Project on or prior to the Closing Date, and (B) as of each other date on which this

representation is made or deemed to be made, each Authorization required to be delivered to the Administrative Agent pursuant to Section 5.14(l).

(b) The Lessee owns and possesses or has rights to use all of its material patent, copyright, proprietary software, service mark, trademark, trade name or similar rights. To the best knowledge of the Lessee, there is no material violation by any Person of any right of the Lessee with respect to any material patent, copyright, proprietary software, service mark, trademark, trade name or other right owned or used by the Lessee.

Section 3.12 **ERISA**. Neither the Lessee nor Pledgor maintains, sponsors or contributes to, nor has at any time maintained, sponsored or contributed to, any employee benefit plan subject to ERISA or the Code. The Lessee does not have any ERISA Affiliates other than Pledgor. Neither the Lessee nor Pledgor is a “party in interest” (as defined in section 3(14) of ERISA) or a “disqualified person” (as defined in section 4975 of the Code) with respect to any employee benefit plan (as defined in section 3(3) of ERISA). Neither the Lessee nor Pledgor maintains, sponsors or contributes to, nor has at any time maintained, sponsored or contributed to, any Non-U.S. Plan.

Section 3.13 **Use of Proceeds; Margin Regulations**. The Lessee will apply the proceeds of the Credit Extensions as described in Section 5.06. No part of the proceeds of the Credit Extensions will be used, directly or indirectly, for the purpose of buying or carrying any margin stock within the meaning of Regulation U of the Board of Governors of the Federal Reserve System (12 CFR 221), or for the purpose of buying or carrying or trading in any securities under such circumstances as to involve the Lessee in a violation of Regulation X of said Board (12 CFR 224) or to involve any broker or dealer in a violation of Regulation T of said Board (12 CFR 220). Margin stock does not constitute more than 5% of the value of the assets of the Lessee and the Lessee does not have any present intention that margin stock will constitute more than 5% of the value of such assets. As used in this Section 3.13, the terms margin stock and purpose of buying or carrying shall have the meanings assigned to them in said Regulation U. The Lessee has only used the Security Deposit LCs to deliver to the Port Authority the “Letter of Credit” referred to in the Security Agreement (as defined in the Lease Agreement).

Section 3.14 **Indebtedness**.

(a) The Lessee has no outstanding Indebtedness other than Indebtedness permitted pursuant to this Agreement and the other Financing Documents. The Lessee is not in default and no waiver of default is currently in effect, in the payment of any principal or interest on any Indebtedness of the Lessee in excess of \$25,000,000 and no event or condition exists with respect to any such Indebtedness of the Lessee that would permit (or that with notice or the lapse of time, or both, would permit) one or more Persons to cause such Indebtedness to become due and payable before its stated maturity or before its regularly scheduled dates of payment.

(b) The Lessee has not agreed or consented to cause or permit any of its property, whether now owned or hereafter acquired, to be subject to a Lien other than Permitted Liens, or to cause or permit in the future (upon the happening of a contingency or otherwise) any of its property, whether now owned or hereafter acquired, to be subject to a Lien other than Permitted Liens.

(c) The Lessee is not a party to, or otherwise subject to any provision contained in, any instrument evidencing Indebtedness of the Lessee, any agreement relating thereto or any other agreement (including, but not limited to, its Organizational Documents), other than the Transaction Documents, which limits the amount of, or otherwise imposes restrictions on the incurring of, Indebtedness of the Lessee under the Financing Documents.

Section 3.15 **Foreign Assets Control Regulations; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws.**

(a) Neither the Lessee nor any Controlled Entity is a Sanctioned Person. To the Lessee's knowledge, no Sanctioned Person, directly or indirectly, owns more than 5% of the Equity Interests in the Lessee.

(b) Neither the Lessee nor any Controlled Entity, or any of its or, to the Lessee's knowledge, their directors, officers, employees, or, to the knowledge of the Lessee, any agent or other Person acting on behalf of the Lessee, or Controlled Entity, has not taken any action in connection with the performance of this Agreement of the transactions contemplated hereunder, directly or indirectly, that would result in a violation of Anti-Corruption Laws and/or Anti-Money Laundering Laws.

(c) Neither the Lessee nor any Controlled Entity, or any of its or, to the Lessee's knowledge, their directors, officers, employees, or, to the knowledge of the Lessee, any agent or other Person acting on behalf of the Lessee, or any Controlled Entity in any capacity in connection with this Agreement or the transactions contemplated hereunder is engaged in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions Laws.

(d) No part of the proceeds of the Credit Extensions:

(i) will be used by the Lessee or any Controlled Entities, directly or indirectly, (A) in connection with any investment in, or any transactions or dealings with, any Sanctioned Person or Sanctioned Country, (B) for any purpose that would cause any person to be in violation of any Sanctions Laws or (C) otherwise in violation of any Sanctions Laws;

(ii) will knowingly be used, directly or indirectly, in violation of, or cause any Bank Finance Party to be in violation of, any applicable Anti-Money Laundering Laws; or

(iii) will knowingly be used, directly or indirectly, for the purpose of making any improper payments, including bribes, to any Governmental Official or commercial counterparty in order to obtain, retain or direct business or obtain any improper advantage, in each case which would be in violation of, or cause any Bank Finance Party to be in violation of, any applicable Anti-Corruption Laws.

Section 3.16 **Investment Company Act.** The Lessee is not (a) subject to regulation under the Investment Company Act of 1940 or (b) a "covered fund" under the Volcker Rule (Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act).

Section 3.17 **Ranking.**

(a) The Lessee's obligations under this Agreement and the other Senior Bank Financing Documents constitute direct, unconditional, unsubordinated and secured obligations of the Lessee and do rank and will rank (i) *pari passu* in right of payment with the other Senior Secured Debt of the Lessee (except for obligations mandatorily preferred by law) and (ii) *pari passu* in right of security with the other Senior Secured Debt, without any preference or priority among the Senior Secured Parties (except as expressly provided in the Financing Documents) and senior in right of security to all other Indebtedness of the Lessee other than Permitted Indebtedness pursuant to clause (e) of the definition of Permitted Indebtedness.

(b) The provisions of the Senior Collateral Documents are effective to create, in favor of the Senior Collateral Agent, for the benefit of the Senior Secured Parties, valid and enforceable perfected



Security Interests on the Senior Collateral described therein prior and superior to all other Security Interests (other than Permitted Liens having priority by operation of Law), subject to no other Security Interests except for Permitted Liens. Each Security Interest granted in the Senior Collateral pursuant to the Senior Collateral Documents (i) will, upon the filings, recordations and delivery of possessory collateral contemplated by the Senior Financing Documents to be made on the Closing Date (or in the case of the recordation of the Senior Leasehold Mortgage and related fixture filing on or as promptly as practicable following the filing thereof on the Closing Date) or upon acquiring the applicable Senior Collateral, constitute as to personal property included in the Senior Collateral (other than Excluded Perfection Collateral) a perfected Security Interest under Applicable Law, and (ii) is, as to Senior Collateral perfected under Applicable Law as aforesaid, superior and prior to the rights of all third Persons now existing or hereafter arising whether by way of mortgage, lien, security interest, encumbrance, assignment or otherwise (except for Permitted Liens having priority by operation of law). All such action as is necessary has been or will be taken, within the time periods required by the Senior Financing Documents, to establish and perfect the rights of the Senior Collateral Agent, for the benefit of the Senior Secured Parties in and to the Senior Collateral, including any recording, filing, registration, giving of notice or other similar action (other than actions with respect to the Excluded Perfection Collateral). Except for the filing of UCC financing statements, recordation of the Senior Leasehold Mortgage, notations on certificates of title, and, with respect to any trademark, patent, patent application or registered copyrights constituting Collateral, if any, filings with the United States Patent and Trademark Office or the United States Copyright Office, as applicable, no filing or recordation is necessary to perfect the Security Interests created by the Senior Collateral Documents.

Section 3.18 **Environmental Matters.**

(a) Except as disclosed in Schedule 3.18 or as otherwise notified to the Administrative Agent, the Lessee has no knowledge of any claim and has not received any notice of any claim, and no proceeding has been instituted asserting any claim against either of the Terminal Facilities, the Project, the Lessee or any real property or other asset now or formerly owned, leased or operated by the Lessee, alleging any damage to the environment or violation of any Environmental Laws.

(b) The Lessee (i) is in compliance in all material respects with all applicable Environmental Laws and (ii) does not have any knowledge of any facts which would give rise to any claim, public or private, of violation of Environmental Laws or damage to the environment emanating from, occurring on or in any way related to either of the Terminal Facilities, the Project, the Lessee or any real property or other assets now or formerly owned, leased or operated by the Lessee or their use, which could, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(c) The Lessee has not stored any Hazardous Materials on real property now or formerly owned, leased or operated by the Lessee and has not disposed of any Hazardous Materials in a manner in violation of any Environmental Laws and which could, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(d) To the Lessee's knowledge, all buildings on all real property now owned, leased or operated by the Lessee are in compliance with applicable Environmental Laws, except where failure to comply could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

Section 3.19 **Solvency.** Immediately after giving effect to the transactions to occur on the Closing Date and upon the making of any Credit Extensions on each Credit Extension Date, (i) the aggregate fair value of the assets of the Lessee, at a fair valuation, will exceed the aggregate debts and liabilities, direct, subordinated, contingent or otherwise, of the Lessee, (ii) the Lessee will be able to pay its debts and liabilities, direct, subordinated, contingent or otherwise, as such debts and liabilities become

absolute and matured, and (iii) the Lessee will not have unreasonably small capital with which to conduct the business in which it is engaged as such business is proposed to be conducted following the Closing Date.

Section 3.20 **Material Project Documents; Project Related Matters.** Copies of all Material Project Documents and the Basic Lease, in each case as in effect as of the date when executed and delivered, have been delivered to the Bank Finance Parties by the Lessee. Except to the extent permitted pursuant to the Financing Documents, none of the Material Project Documents have been amended, modified or terminated. The Lessee is in compliance in all material respects with each Material Project Document. Each Material Project Document and, to the Lessee's knowledge, the Basic Lease are in full force and effect (except for any Material Project Document which term has expired on the scheduled expiration date thereof in accordance with its terms or which has been terminated in compliance with the terms of the Financing Documents) and, to the Lessee's knowledge, no defaults have occurred and are continuing thereunder, except where such default could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. To the Lessee's knowledge, no Casualty Event or Expropriation Event has occurred that could reasonably be expected to have a Material Adverse Effect.

Section 3.21 **Adequacy of Rights and Interest.** There are no services (including utility and other services), materials or rights required for the Lessee to meet its obligations contemplated by the Material Project Documents, in accordance with such documents and the assumptions that form the basis of the Base Case Financial Model other than those (i) to be provided under the Material Project Documents, (ii) that are not material to the Lessee's obligations in connection with the Project or (iii) that can reasonably be expected to be available on commercially reasonable terms consistent with the Base Case Financial Model.

Section 3.22 **Commercial Activity; Absence of Immunity.** The Lessee is subject to civil and commercial law with respect to its obligations under the Transaction Documents, and the making and performance of the Transaction Documents by the Lessee constitute private and commercial acts rather than public or governmental acts. Neither the Lessee nor any of its properties enjoys any right of immunity from any judicial proceedings.

Section 3.23 **No Default or Event of Default.** No Default or Event of Default has occurred and is continuing.

Section 3.24 **Bank Accounts.** The Lessee has not opened or maintained or instructed the opening or maintenance of any accounts other than the Project Accounts and the Non-Pledged Accounts.

Section 3.25 **Insurance.** Except to the extent the Lessee is excused from maintaining such insurance policies pursuant to Section 5.02, all insurance policies required to be obtained under this Agreement and the Lease Agreement (as such requirements are in effect on the Closing Date without giving effect to any waiver or consent by the Port Authority, or if requiring higher or additional coverage, lower deductibles, less exceptions or terms that are otherwise more stringent, as modified by the Port Authority in accordance with the Lease Agreement) have been obtained and are in full force and effect and all premiums due and payable thereon have been paid in full. The Lessee has not received any notice from any insurer that any insurance policy has ceased to be in full force and effect or claiming that the insurer's liability under any such insurance policy can be reduced or avoided.

Section 3.26 **No Election.** The Lessee is properly treated as either a partnership or disregarded entity for U.S. federal income tax purposes, has not filed an election pursuant to Treasury Regulation 301.7701-3(c) to be treated as an association taxable as a corporation and has not been previously taxed as a corporation.

Section 3.27 **Sufficient funds.** The Lessee has no reason to believe that sufficient funds are not available (or will not be made available) to the D&C Contractor to perform the portion of the D&C Work that is subject to the D&C Contract.

## ARTICLE IV

### CONDITIONS PRECEDENT

Section 4.01 **Closing Date.** The effectiveness of this Agreement and the obligation of each Bank Finance Party to make any Credit Extension under any Senior Bank Financing Document (including (x) in the case of Initial Purchaser and Purchaser, the purchase of the Series 2022A Bonds and the funding of Drawings with respect thereto and (y) in the case of the Security Deposit Facility LC Issuing Bank, the issuance of the Security Deposit LC) are subject to the receipt by the Administrative Agent (except as set forth otherwise below) of each of the following documents and the satisfaction of each other condition precedent in this Section 4.01, in each case in form and substance satisfactory to each Bank Finance Party, or the waiver of such receipt or satisfaction, as applicable, by each Bank Finance Party.

(a) **Certificates.**

(i) **Officer Certificate.** The Lessee shall have delivered to the Administrative Agent and the Permitted Hedge Providers an Officer's Certificate in the form of Exhibit C hereto, dated the Closing Date, certifying that the conditions specified in this Section 4.01 (except with respect to the applicable deliverable being in form satisfactory to or with respect to any determination to be made by any Bank Finance Party or the Administrative Agent or any condition precedent or time periods for delivery of items thereunder that have been waived by the Bank Finance Parties in accordance with the terms hereof) have been satisfied.

(ii) **Responsible Officer Certificate.** The Lessee shall have delivered to the Administrative Agent a certificate of its secretary or a Responsible Officer of the Lessee in the form of Exhibit D hereto, dated the Closing Date, (i) certifying as to the resolutions attached thereto and other corporate proceedings relating to the authorization, execution and delivery of this Agreement, the other Financing Documents to which the Lessee is a party and the Material Project Documents to which the Lessee is a party, (ii) certifying that copies of the Organizational Documents attached thereto are true, correct and complete copies thereof are in full force and effect without modification or amendment, (iii) attaching an incumbency certificate with the name, title and specimen signature of the individuals authorized to execute and deliver this Agreement, the other Financing Documents and all certificates and documents delivered or to be delivered on behalf of the Lessee under this Agreement and the other Financing Documents, and (iv) attaching a certificate as to the good standing of the Lessee and payment of franchise Taxes by the Lessee from the Secretary of State of the State of Delaware dated as of a recent date and a certificate as to the Lessee's qualification to do business in the State of New York, (v) certifying that since July 1, 2022, there has been no event or circumstance that, either individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect, (vi) certifying as to the absence of any amendment, modification or waiver of any Transaction Document except for those entered prior to the Closing Date and (vii) certifying that true, correct and complete copies of each material Transaction Document (including all amendments, modifications and waivers thereto or thereunder) have been delivered to the Administrative Agent.

(iii) Solvency Certificate. The Lessee shall have delivered to the Administrative Agent a Solvency Certificate in the form of Exhibit E hereto, dated the Closing Date, certifying the Lessee's solvency as of the Closing Date (after giving effect to the transactions contemplated hereby on the Closing Date and the application of proceeds therefrom).

(iv) Pledgor Certificate. The Pledgor shall have delivered to the Administrative Agent a certificate of its Secretary or an Assistant Secretary or a Responsible Officer of the Pledgor in the form of Exhibit F hereto, dated as of the Closing Date, (i) certifying as to the resolutions attached thereto and other corporate proceedings relating to the authorization, execution and delivery of the Financing Documents to which it is a party, (ii) attaching a copies of the Pledgor's Organizational Documents and certifying that such copies are true, correct and complete copies thereof and remain in full force and effect without modification or amendment, (iii) attaching an incumbency certificate with the name, title and specimen signature of the individuals authorized to execute and deliver the Financing Documents to which it is a party and all certificates and documents delivered or to be delivered on behalf of the Pledgor under this Agreement and the other Financing Documents, and (iv) attaching a certificate as to the good standing good standing of the Pledgor from the Secretary of State of the State of Delaware.

(v) Sponsor Certificates. Each Sponsor shall have delivered to the Administrative Agent a certificate of its Secretary or an Assistant Secretary or a Director or other Responsible Officer of such Sponsor in the form of Exhibit I hereto, dated as of the Closing Date, (i) certifying as to the resolutions attached thereto and other corporate proceedings relating to the authorization, execution and delivery of the Financing Documents to which it is a party, (ii) attaching copies of such Sponsor's Organizational Documents and certifying that such copies are true, correct and complete copies thereof and remains in full force and effect without modification or amendment, (iii) attaching an incumbency certificate with the name, title and specimen signature of the individuals authorized to execute and deliver the Financing Documents to which it is a party and all certificates and documents delivered or to be delivered on behalf of such Sponsor under this Agreement and the other Financing Documents, and (iv) attaching a certificate as to the good standing of such Sponsor (or the equivalent thereof) from the applicable authority in its jurisdiction of organization.

(b) Opinions of Counsel. The Administrative Agent shall have received the following written opinions (each dated the Closing Date and addressed to the Administrative Agent, the Bank Finance Parties, the Senior Collateral Agent and the Permitted Hedge Providers) in form and substance satisfactory to Administrative Agent, the Bank Finance Parties, the Senior Collateral Agent and the Permitted Hedge Providers:

(i) O'Melveny and Myers LLP, as legal counsel for the Lessee and the Pledgor;

(ii) Simpson Thacher & Bartlett LLP, as legal counsel for Corsair-Vantage Airport Fund Aggregator, L.P.;

(iii) Richards, Layton & Finger, P.A., as legal counsel for Corsair-Vantage Airport Fund Aggregator, L.P.;

(iv) Neuberger Quinn, Gielen, Rubin & Gibber P.A., as legal counsel for RXR VAF III JFK Millennium Partners Vehicle LLC and RXR JFK MP Holdings Member LLC;

- (v) Latham & Watkins, as legal counsel ATI Javelin Holdings, LP;
- (vi) Skadden, Arps, Slate, Meagher & Flom LLP, as legal counsel for the Port Authority;
- (vii) the Port Authority's in-house counsel;
- (viii) the Issuer's in-house counsel;
- (ix) Troutman Pepper Hamilton Sanders LLP, as legal counsel for the Lessee with respect to the D&C Contract;
- (x) Pillsbury Winthrop Shaw Pittman LLP, as legal counsel for the D&C Contractor and D&C Guarantor;
- (xi) Dorsey & Whitney LLP, as legal counsel for the Manager;
- (xii) Dorsey & Whitney LLP, as legal counsel for the MSA Guarantor; and
- (xiii) JetBlue Airways Corporation's General Counsel.

(c) Payment of Counsel Fees; Filing Fees. All stamp, registration, transfer, documentary or similar Taxes, fees and other costs then payable in connection with the execution, delivery, recordation and filing of the Financing Documents entered into as of the Closing Date (including the reasonable and documented out-of-pocket fees and expenses of White & Case LLP, as the Bank Finance Parties' counsel, for all services rendered and billed at least three (3) Business Days prior to the Closing Date) shall have been paid in full by the Lessee (or shall contemporaneously be paid by the Lessee) or otherwise reasonably provided for.

(d) Changes in Corporate Structure. The Lessee shall not have changed its jurisdiction of incorporation or organization, as applicable, or been a party to any merger or consolidation or succeeded to all or any substantial part of the liabilities of any other entity, at any time.

(e) Lien Searches. The Administrative Agent shall have received results of a recent search of all effective UCC financing statements and fixture filings and all judgment and Tax lien filings that have been made with respect to any personal or mixed property of the Lessee and the Pledgor, together with copies of all such filings disclosed by such search and UCC termination statements for filing in all applicable jurisdictions as may be necessary to terminate any effective UCC financing statements or fixture filings disclosed in such search (other than any such financing statements or fixture filings in respect of Permitted Liens).

(f) Collateral Matters. The Security Interests in and to the Senior Collateral intended to be created under the Senior Collateral Documents shall have been created in favor of the Senior Collateral Agent for the benefit of the Senior Secured Parties including the Bank Finance Parties and shall be in full force and effect and the necessary notices, consents, acknowledgments, filings, registrations and recordings to create, preserve, protect and (other than with respect to Excluded Perfection Collateral) perfect the Security Interests in the Senior Collateral shall have been made prior to or substantially concurrently with the Closing Date such that the Security Interests granted in favor of the Senior Collateral Agent for the benefit of the Senior Secured Parties including the Bank Finance Parties will constitute a first priority (subject to Permitted Liens), perfected (other than with respect to Excluded Perfection Collateral) Security Interest in the Senior Collateral free and clear of any liens, other than Permitted Liens, and all related recordation, registration and/or notarial fees of such Senior Collateral will have been paid or substantially concurrently with the Closing Date will be paid to the extent required.

(g) Financing Documents; Material Project Documents and Related Documents.

(i) Financing Documents. Each of this Agreement and the other Financing Documents shall have been duly executed and delivered by the Persons party thereto and shall be in full force and effect, and the Lessee shall have delivered true, correct and complete copies thereof to the Administrative Agent. The “Effective Date” under and as defined in the Series 2022A Bond Purchase Agreement shall have occurred or shall occur substantially simultaneously with the Closing Date.

(ii) Material Project Documents. An original or copy (certified by the Lessee to be true, correct and complete to the Lessee’s knowledge) of the Basic Lease, and an original or copy (certified by the Lessee to be true, correct and complete) of the Lease Agreement, the D&C Contract, the Construction Security, the Management Services Agreement, the Manager Parent Guaranty, the Reciprocal Rights Agreement, the Environmental Cooperation Agreements, the JetBlue ATA and Sublease, the Consent to Airline Sublease (as defined in the Lease Agreement) with respect to the JetBlue ATA and Sublease, and all Performance Security delivered to the Lessee in connection with the foregoing, shall have been delivered to the Administrative Agent and each such agreement and Performance Security shall be in full force and effect. No breach, “default”, “event of default” or equivalent event by the Lessee or, to the Lessee’s knowledge, any other party to a Material Project Document shall have occurred and be continuing under any Material Project Document;

(iii) The DB D&C Work Commencement Date (as defined in the D&C Contract) shall have occurred under and pursuant to the D&C Contract prior to or shall occur concurrently with the occurrence of the Closing Date.

(iv) Project Reports. The Administrative Agent shall have received true, correct and complete copies of each Project Report, together with reliance letters for the benefit of each Bank Finance Party from the preparers of such Project Report in respect thereof (to the extent any such Project Report is not directly for the benefit of the Bank Finance Parties or does not by its terms provide for reliance thereon).

(h) Financial Statements; Financial Model; Budgets.

(i) Financial Statements. The Administrative Agent shall have received (A) copies of (1) the unaudited financial statements of the D&C Guarantor as of June 30, 2022 and the related statements of income, changes in members’ equity and cash flows for the quarterly period ending June 30, 2022, and (2) the audited financial statements of the D&C Guarantor as of December 31, 2021 and the related statements of income, changes in members’ equity and cash flows for the year ended December 31, 2021, (B) copies of (1) the unaudited consolidated financial statements of Vantage Airport Group Ltd. for the quarterly period ending June 30, 2022, and (2) the unaudited financial consolidated financial statements of Vantage Airport Group Ltd. for the year ended December 31, 2021, and (C) an Officer’s Certificate of the Lessee certifying that, as of the Closing Date, there are no balance sheet, statements of income or member’s equity and cash flows of the Lessee.

(ii) Financial Model. The Lessee shall have delivered to each Bank Finance Party the Base Case Financial Model, and a certification by a Responsible Officer of the Lessee that the same was prepared on the basis of assumptions and projections that are reasonable in light of the then-current circumstances, which demonstrates for each DSCR Calculation Period a minimum Total Debt Service Coverage Ratio of at least 1.25 to 1.00

and a minimum Senior Debt Service Coverage Ratio of at least 1.30 to 1.00, together with the summaries of significant assumptions related thereto, a report of the Model Auditor in respect of the Base Case Financial Model and a reliance letter (to the extent any such report is not directly for the benefit of the Bank Finance Parties or does not by its terms provide for reliance thereon).

(iii) Construction Schedule and Budget.

(A) The Lessee shall have delivered to the Administrative Agent the then current Construction Schedule and Budget; and

(B) The Technical Advisor shall have delivered to the Administrative Agent a certificate, dated as of the Closing Date, certifying that the then current Construction Schedule and Budget are consistent with the project completion date and total construction cost reflected in the Base Case Financial Model.

(i) Project Accounts and Non-Pledged Accounts.

(i) The Lessee shall have established the Project Accounts and the Non-Pledged Accounts in accordance with the Collateral Agency and Accounts Agreement, and the Project Accounts (excluding, for the avoidance of doubt, the Non-Pledged Accounts) shall be subject to the Security Interest of the Senior Collateral Agent under the Senior Collateral Documents for the benefit of the Senior Secured Parties (subject to the terms of the Collateral Agency and Accounts Agreement).

(ii) The Liquidity Reserve Account (as defined in the Collateral Agency and Accounts Agreement) shall have been funded in cash or an Acceptable Letter of Credit in an amount of at least \$100,000,000, or such funding shall have been reasonably provided for.

(j) Title Report. The Administrative Agent shall have received a title report for the real property of the Project showing no Liens (other than Permitted Liens) or other matters which could reasonably be expected to have a Material Adverse Effect.

(k) NEPA Approval Documents. Evidence that the NEPA Approval Documents (as defined in the Lease Agreement) have been issued.

(l) Insurance.

(i) The Administrative Agent shall have received customary certificates of insurance evidencing the existence of all insurance required under Section 5.02 as of such date, including evidence that the Senior Collateral Agent is included as additional insured as its interests may appear under each such insurance and the Senior Collateral Agent is a loss payee under each such insurance related to property damage, and including such additional endorsement and terms identified in Section 27 of the Project Report prepared by the Insurance Consultant, other than the endorsements listed in Schedule 4.01(l)(i).

(ii) The Lessee shall have delivered to the Administrative Agent a certificate of the Insurance Consultant, dated as of the Closing Date, certifying the existence of all insurance coverage and other terms required pursuant to Section 5.02 as of such date, that such insurance is in full force and effect and that all premiums then due and payable have been paid.

(iii) The Lessee shall have delivered to the Administrative Agent a letter of confirmation and undertaking from the Lessee's insurance broker identifying the underwriters, types of insurance, applicable insurance limits and policy terms consistent with the Project Report prepared by the Insurance Consultant and delivered pursuant to Section 4.01(g)(iv) above, and the requirements of Section 5.02 as of such date.

(iv) The Lessee shall have delivered to the Administrative Agent a "life of loan" Federal Emergency Management Agency Standard Flood Hazard Determination with respect to the real property subject to the Leasehold Mortgage.

(m) KYC Deliverables.

(i) At least thirty (30) Business Days prior to the Closing Date, each Bank Finance Party shall have received, such information and documents required by bank regulatory authorities or its applicable internal policies and procedures that are requested in writing by such Bank Finance Party to allow such Bank Finance Party to comply with Applicable Law and internal policies relating to "know your client," as well as "anti-money laundering" and "anti-terrorist financing" requirements (including the USA PATRIOT Act).

(ii) At least ten (10) Business Days prior to the Closing Date, the Administrative Agent and each Bank Finance Party shall have received a Beneficial Ownership Certification in relation to the Lessee.

(n) Funds Flow Memorandum. The Lessee shall have delivered to the Administrative Agent a copy of the Funds Flow Memorandum detailing all payments to be made on the Closing Date signed by a Responsible Officer of the Lessee.

(o) Representations and Warranties. The representations and warranties of the Lessee, the Pledgor and each Sponsor contained in each Financing Document to which such Person is a party shall be true and correct in all material respects (or, in the case of any such representations and warranties qualified as to materiality or Material Adverse Effect, in all respects) when made and on the Closing Date (except where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects (or, in the case of any such representations and warranties qualified as to materiality or Material Adverse Effect, in all respects) as of such earlier date).

(p) Performance; No Default. The Lessee shall have performed and complied with all agreements and conditions contained in this Agreement and each other Financing Document required to be performed or complied with by it prior to or on the Closing Date. Before and after giving effect to the transactions contemplated on the Closing Date, no Default or Event of Default shall have occurred and be continuing.

(q) Equity Contribution. The Administrative Agent shall have received evidence that the Equity Contributions and/or Equity Support required to be made or procured (as applicable) by the Sponsors on or prior to the Closing Date pursuant to the Equity Contribution Agreement have been deposited or made available in accordance with the terms thereof or shall be deposited or made available concurrently with the transactions contemplated hereby on the Closing Date.

(r) Authorizations. The Administrative Agent shall have received evidence that (i) the Lessee has obtained all Authorizations required under Applicable Law to be issued or obtained on or before the Closing Date for the execution, delivery and performance by the Lessee of this Agreement and the other



Transaction Documents to which it is a party and (ii) such Authorizations are in full force and effect and are not subject to appeal.

(s) No Litigation. No pending or, to the Lessee's knowledge, threatened litigation or proceeding against the Lessee exists which if determined adversely to the Lessee would reasonably be expected to have or does have a Material Adverse Effect.

(t) Recognized Mortgagee. The Administrative Agent shall have received the acknowledgement from the Port Authority stating that the Senior Collateral Agent is a Recognized Mortgagee in accordance with Section 83(b)(1) of the Lease Agreement.

(u) Port Authority Consent. The Administrative Agent shall have received a copy of the Consent to Leasehold Mortgage and other Financing Documents, executed by the Port Authority, dated as of November 17, 2022.

(v) Rating Letter. The Administrative Agent has received a final ratings letter from Moody's confirming that based on assumptions consistent with the Base Case Financial Model delivered pursuant to Section 4.01(h)(ii), the corporate structure, the Financing Documents and the Material Project Documents, the rating on the Senior Term Loans and the Series 2022A Bonds shall be at least Baa3 or better by Moody's.

Section 4.02 Each Credit Extension. The obligation of each Bank Finance Party or the Security Deposit Facility LC Issuing Bank to make any Credit Extension is additionally subject to the satisfaction or waiver by the Required Bank Finance Parties of the following conditions, in each case in form and substance satisfactory to the Required Bank Finance Parties and the Required Security Deposit Facility Lenders, respectively, as notified by the Administrative Agent to each Bank Finance Party and the Security Deposit Facility LC Issuing Bank, pursuant to Section 4.04:

(a) Closing Date. The Closing Date shall have occurred.

(b) Injunctions; Other Actions. (i) There shall be no preliminary or permanent injunction or temporary restraining order or other order issued by a Governmental Authority of competent jurisdiction or any other legal restraint then in effect, in each case, prohibiting, enjoining or preventing the consummation or performance of the transactions contemplated by this Agreement, the other Financing Documents or the Material Project Documents, including (in the case of a Credit Extension consisting of the purchase of the Series 2022A Bonds) the issuance or sale of the Series 2022A Bonds, (ii) there shall be no action taken, or any Applicable Law enacted, entered, enforced or deemed applicable to such transactions by any Governmental Authority of competent jurisdiction, including the Commission or any State of New York securities division, that makes the consummation or performance of any such transaction, including, in the case of a Credit Extension consisting of the purchase of the Series 2022A Bonds, the issuance or sale of the Series 2022A Bonds and the execution and delivery of the Senior Financing Documents, to be in violation of any law, rule or regulation, including any provision of applicable federal securities laws, including the Securities Act, the Securities Exchange Act of 1934 or the Trust Indenture Act, each as amended and then in effect, (iii) with respect to any Drawing Request, there shall be no proceeding pending or threatened by the Commission or any State of New York securities division against the Issuer or the Lessee which shall prohibit or impair the Issuer's ability to issue securities, and (iv) in the case of a Credit Extension consisting of the purchase of the Series 2022A Bonds, no event or circumstance shall have occurred, including a general banking moratorium declared by the United States of America or the State of New York authorities, if and only to the extent such event or circumstance legally prohibits the funding by the Initial Purchaser of the related Drawing and the delivery of beneficial ownership of the related Series 2022A Bonds by the Securities Depository in the principal amount of the related Drawing on the applicable Credit Extension Date. The Administrative Agent or, in the case of any Credit Extension consisting of a Drawing under the Series 2022A Bond Purchase Agreement, the Initial Purchaser, shall have received an

Officer's Certificate certifying the absence of the foregoing matters, which Officer's Certificate can be included within the applicable Credit Extension Request.

(c) Fees. The Lessee shall have paid or arranged for the payment when due of all fees, expenses and other charges payable by it on or prior to such date under this Agreement or under any other Senior Bank Financing Document.

(d) Bond Counsel Opinion. Neither the Initial Purchaser nor the Purchaser shall have received advice from Bond Counsel that the opinion required by Section 6(b)(iv) of the Series 2022A Bond Purchase Agreement may no longer be relied upon.

(e) No Default or Event of Default. At the time of and immediately after giving effect to such Credit Extension, no Default or Event of Default shall have occurred and be continuing.

(f) Credit Agreement and Bond Purchase Agreement Conditions.

(i) In the case of Senior Term Loans, the conditions set forth in Section 4.01 of the Credit Agreement shall have been satisfied or waived by the Required Bank Finance Parties.

(ii) In the case of Credit Extensions under the Series 2022A Bond Purchase Agreement, the conditions set forth in Section 6(b) of the Series 2022A Bond Purchase Agreement shall have been satisfied or waived by the Required Bank Finance Parties.

Each issuance, amendment, renewal or extension of a Credit Extension shall be deemed to constitute a representation and warranty by the Lessee on the date thereof as to the satisfaction of the requirements specified in this Section 4.02.

Section 4.03 **Additional Conditions to Construction Accounts Withdrawals.** No transfer, withdrawal or disbursement from the Segregated Proceeds Pledged Accounts shall be made unless each of the following conditions shall have been satisfied or waived by the Required Bank Finance Parties, in each case in form and substance satisfactory to the Required Bank Finance Parties, as notified by the Administrative Agent to each Bank Finance Party, the Senior Collateral Agent and the Securities Intermediary:

(a) Injunctions; Other Actions. (i) There shall be no preliminary or permanent injunction or temporary restraining order or other order issued by a Governmental Authority of competent jurisdiction or any other legal restraint then in effect, in each case, prohibiting, enjoining or preventing the consummation or performance of the transactions contemplated by this Agreement, the other Financing Documents or the Material Project Documents and (ii) there shall be no action taken, or any Applicable Law enacted, entered, enforced or deemed applicable to such transactions by any Governmental Authority of competent jurisdiction, including the Commission or any State of New York securities division, that makes the consummation or performance of any such transaction to be in violation of any law, rule or regulation, including any provision of applicable federal securities laws, including the Securities Act, the Securities Exchange Act of 1934 or the Trust Indenture Act, each as amended and then in effect.

(b) Invoices; Lien Waivers; Construction Withdrawal Request; Updated Base Case Financial Model. No later than the third (3<sup>rd</sup>) Business Day prior to the requested transfer, withdrawal or disbursement date:

(i) The Lessee shall have delivered to the Administrative Agent a Construction Account Withdrawal Certificate pursuant to Section 5.04 of the Collateral Agency and Accounts Agreement;

(ii) The Lessee shall have delivered to the Administrative Agent a list of the invoices due and payable by the Lessee under the Material Project Documents which constitute Project Costs payable by the Lessee, together with such supporting documentation in connection therewith, and which the Lessee intends to pay with the funds transferred, withdrawn or disbursed from the Construction Account, together with all Lien waivers received by the Lessee from the relevant counterparties which were to be paid with funds requested in the previous Construction Account Withdrawal Certificate, or in the case of the first Construction Account Withdrawal Certificate, since the Closing Date; and

(iii) If applicable, the Lessee shall have delivered to the Administrative Agent the updated Base Case Financial Model most recently required to be delivered pursuant to Section 5.14(d).

(c) Technical Advisor and Borrower Certificate. No later than the third (3rd) Business Day prior to the requested transfer, withdraw, or disbursement date (or in the case of the case of transfers, withdrawals or disbursements requested to be made on the Closing Date, no later than one (1) Business Day prior to the Closing Date), the Administrative Agent shall have received (i) a certificate of the Technical Advisor substantially in the form of Exhibit J to the Collateral Agency and Accounts Agreement setting forth the matters contemplated therein, and (ii) a certificate from the Lessee certifying that it is not aware of any fact or circumstance that the Technical Advisor has not considered that could reasonably be expected to have a Material Adverse Effect.

(d) Representations and Warranties. The representations and warranties of the Lessee and the Pledgor contained in each Financing Document to which such Person is a party shall be true and correct in all material respects (or, in the case of any such representations and warranties qualified as to materiality or Material Adverse Effect, in all respects) when made (except where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects (or, in the case of any such representations and warranties qualified as to materiality or Material Adverse Effect, in all respects) as of such earlier date).

(e) No Default or Event of Default. At the time of and immediately after giving effect to such transfer, withdrawal or disbursement, no Default or Event of Default shall have occurred and be continuing.

Section 4.04 **Funding of Credit Extensions and Drawings; Disbursements.**

(a) Notice by Administrative Agent to Bank Finance Parties. Promptly following receipt of a Credit Extension Request or a Construction Account Withdrawal Certificate, the Administrative Agent shall forward a copy thereof to each Bank Finance Party and, in the case of a Credit Extension Request, advise each Bank Finance Party of its portion of each resulting Borrowing or Drawing.

(b) Presumption by Administrative Agent.

(i) Unless the Administrative Agent shall have received notice from a Bank Finance Party, prior to 8:00a.m. New York City time on the Business Day immediately preceding the applicable Credit Extension Date of any Borrowing or Drawing that such Bank Finance Party is not satisfied that the conditions set forth in Section 4.02 hereof have been satisfied with respect to the requested Credit Extension, the Administrative Agent may assume that such Bank Finance Party is satisfied that such conditions have been satisfied. If the Administrative Agent has received notice, or is entitled to assume that, the Required Bank Finance Parties are satisfied that the conditions set forth in Section 4.02 hereof have been satisfied it shall so notify to each Bank Finance Party no later than 10:00a.m. on the Business Day immediately preceding such Credit Extension Date.

(i) Unless the Administrative Agent shall have received notice from a Bank Finance Party, prior to 8:00a.m. New York City time on the Business Day immediately preceding the date on which a transfer, withdrawal or disbursements from the Construction Account is scheduled to be made that such Bank Finance Party is not satisfied that the conditions set forth in Section 4.03 hereof have been satisfied with respect to the requested transfer, withdrawal or disbursement, the Administrative Agent may assume that such Bank Finance Party is satisfied that such conditions have been satisfied. If the Administrative Agent has received notice, or is entitled to assume that, the Required Bank Finance Parties are satisfied that the conditions set forth in Section 4.03 hereof have been satisfied it shall so notify to each Bank Finance Party no later than 10:00a.m. on the Business Day immediately preceding such transfer, withdrawal or disbursement.

## ARTICLE V

### AFFIRMATIVE COVENANTS

The Lessee covenants that until the Credit Termination Date, it will comply with (a) each covenant set forth in Article X of the Collateral Agency and Accounts Agreement, and (b) each covenant set forth below:

Section 5.01 **Compliance with Law, Material Contractual Obligations.** Without prejudice to the Lessee's obligations under Section 6.15, the Lessee will comply with all Applicable Laws (including ERISA, Sanctions Laws, Anti-Corruption Laws and Anti-Money Laundering Laws, Environmental Laws, the USA PATRIOT Act and the other laws and regulations that are referred to in Section 3.15) and will obtain and maintain in effect all Authorizations necessary in respect of the ownership of its properties or to the conduct of its businesses, in each case to the extent necessary to ensure that non-compliance with such laws, ordinances or governmental rules or regulations or failures to obtain or maintain in effect such Authorizations could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 5.02 **Insurance.** Except as set forth in Schedule 5.02 or except to the extent expressly waived by the Required Bank Finance Parties in accordance with the terms hereof, the Lessee will maintain, with an Approved Insurer, insurance with respect to its properties and businesses against such casualties and contingencies, of such types, on such terms and in such amounts (including deductibles, co-insurance and self-insurance, if adequate reserves are maintained with respect thereto) required to be maintained under the Lease Agreement (as such requirements are in effect on the Closing Date without giving effect to any waiver or consent by the Port Authority, or if requiring higher or additional coverage, lower deductibles, less exceptions or terms that are otherwise more stringent, as modified by the Port Authority in accordance with the Lease Agreement), and except as set forth in Schedule 4.01(1)(i), naming the Senior Collateral Agent as an additional insured as its interests may appear under each such insurance and the Senior Collateral Agent as loss payee under each such insurance related to property damage, including such additional endorsement and terms identified in Section 27 of the Project Report prepared by the Insurance Consultant, and otherwise satisfying the requirements set forth in Section 10.03 of the Collateral Agency and Accounts Agreement. Without limiting the foregoing, (i) the Lessee shall provide the same notice and evidence of renewal to the Senior Collateral Agent as it is required to provide to the Port Authority and (ii) such insurance policies shall, as applicable, afford to the Senior Collateral Agent the same contractual liability coverage, notice of cancellation rights, waivers of subrogation and non-impairment of coverage rights to the Senior Collateral Agent as they are required to afford to the Port Authority.

Section 5.03 **Maintenance of Property.** The Lessee will maintain and keep, or cause to be maintained and kept, the Terminal Facilities and its properties in good repair, working order and condition (other than ordinary wear and tear) and shall operate and maintain the Terminal Facilities in all material respects in accordance with the requirements of the Transaction Documents and the terms of its insurance

policies, so that the business carried on in connection therewith may be properly conducted at all times, provided that this Section 5.03 shall not prevent the Lessee from discontinuing the operation and the maintenance of any of its properties if such discontinuance is desirable in the conduct of its business, such discontinuance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 5.04 **Payment of Taxes and Claims.** The Lessee will file all tax returns required to be filed in any jurisdiction and pay and discharge all taxes shown to be due and payable on such returns and all other taxes, assessments, governmental charges or levies imposed on it or any of its properties, assets, income or franchises, to the extent the same have become due and payable and before they have become delinquent and all claims for which sums have become due and payable that have or might become or otherwise give rise to a Lien on properties or assets of the Lessee, provided that the Lessee need not timely file such tax returns or pay any such tax, assessment, charge, levy or claim if the amount, applicability or validity thereof is contested by the Lessee on a timely basis in good faith and in appropriate proceedings, and the Lessee has established adequate reserves therefor in accordance with GAAP on the books of the Lessee.

Section 5.05 **Credit Extensions to Rank Pari Passu.** The Lessee will ensure that its payment obligations under the TDC Building Loan Agreement and the TDC Project Loan Agreement will at all times constitute direct, unconditional, unsubordinated Senior Obligations of the Lessee and rank at least *pari passu* in priority of payment and in all other respects with all other Senior Secured Debt of the Lessee and the Lessee will ensure that its payment obligations under the TDC Building Loan Agreement and the TDC Project Loan Agreement will at all times rank senior to all its Indebtedness other than Senior Secured Debt or Permitted Indebtedness described in clauses (e) and (f) of the definition of “Permitted Indebtedness” in priority of payment and in all other respects.

Section 5.06 **Use of Proceeds; Project Accounts.**

(a) The Lessee will use the proceeds of the Credit Extensions to pay, or reimburse the Lessee for the payment of, Project Costs (or, to the extent not used therefor, to repay the relevant portion of such Credit Extension).

(b) The Lessee will at all times maintain the Project Accounts and the Non-Pledged Accounts in accordance with the Collateral Agency and Accounts Agreement and the other Financing Documents.

(c) The Lessee shall apply or direct the application of funds in the Project Accounts and the Non-Pledged Accounts in accordance with the Collateral Agency and Accounts Agreement.

(d) At all times the Lessee shall deposit and maintain, or cause to be deposited and maintained, all Project Revenues, insurance proceeds and other amounts received into the Project Accounts or the Non-Pledged Accounts in accordance with the Collateral Agency and Accounts Agreement and request or make only such payments out of the Project Accounts and Non-Pledged Accounts as permitted by the Collateral Agency and Accounts Agreement and the other Financing Documents.

Section 5.07 **Material Project Documents.**

(a) The Lessee will develop, design, construct, operate and maintain the Project in accordance with the Lease Agreement, the Authorizations and the insurance policies in place regarding the Project.

(b) The Lessee will (i) perform and observe its material covenants and obligations under all Material Project Documents, and (ii) enforce against any counterparty to a Material Project Document each material covenant or obligation of such party in accordance with its terms, except, in each

case, to the extent that the failure to do any of the foregoing would not reasonably be expected to have a Material Adverse Effect.

Section 5.08 **Intellectual Property**. The Lessee shall maintain rights to all patents, copyrights and intellectual property required for the development, construction and maintenance and operation of the Project, the failure to maintain which could reasonably be expected to have a Material Adverse Effect.

Section 5.09 **Financial Covenant**. The Lessee will maintain for each DSCR Calculation Period ending and commencing on each Calculation Date occurring after the Phase 2 End of Funding Date, a Total Debt Service Coverage Ratio of not less than 1.10 to 1.00 and a Senior Debt Service Coverage Ratio of not less than 1.15 to 1.00, on a retrospective basis (based on its annual audited and quarterly unaudited financial statements most recently required to be delivered pursuant hereto) and prospective basis (as set forth in forecasts prepared in good faith by the Lessee, which forecasts shall be based on reasonable assumptions (on the basis of information known to the Lessee on the date of preparation thereof)); provided that the Lessee will have the right to cure (each exercise of such right, an “Equity Cure”) any breach of the financial covenant set forth in this Section 5.09 or any Event of Default related thereto in respect of any DSCR Calculation Period if within ten Business Days after the date on which the Lessee is required to deliver the officer’s certificate contemplated in Section 5.14(d) for such DSCR Calculation Period the Pledgor makes an equity contribution to the Lessee for deposit into the Post-Substantial Completion Revenue Account in such aggregate amount (such amount, the “Equity Cure Amount”) as, once added to Free Cash Flow for such period, would have been sufficient to cause the Lessee to achieve a Total Debt Service Coverage Ratio of at least 1.10 to 1.00 and a Senior Debt Service Coverage Ratio of at least 1.15 to 1.00 for such DSCR Calculation Period on which the financial covenant set forth in this Section 5.09 was not satisfied, it being understood that the Equity Cure Amount will be deemed to increase Project Revenue as of the first day of such DSCR Calculation Period solely for purposes of this Section 5.09 and no other purposes. There shall be no more than two Equity Cures in respect of successive DSCR Calculation Periods and no more than three Equity Cures in the aggregate until the Credit Termination Date. Notwithstanding anything herein or in the other Financing Documents to the contrary, if the Lessee notifies in writing the Administrative Agent that the Pledgor intends to make an Equity Cure with respect to any DSCR Calculation Period, no Agent or Bank Finance Party will exercise any right or remedy in respect of any breach of the financial covenant set forth in this Section 5.09 or any Event of Default related thereto in respect of such DSCR Calculation Period prior to the date that is ten Business Days after the date the Lessee is required to deliver the officer’s certificate contemplated in Section 5.14(d) for such DSCR Calculation Period and if an Equity Cure is effectuated as set forth in this Section, any breach or Event of Default which was cured by such Equity Cure shall be deemed to not have existed.

Section 5.10 **Further Assurances**. The Lessee shall preserve and maintain the Security Interests granted under the Senior Collateral Documents and will, promptly upon request by the Senior Collateral Agent or any Bank Finance Party, (a) correct any material defect or error that may be discovered in any Financing Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments (other than with respect to Excluded Perfection Collateral) as the Senior Collateral Agent or such Bank Finance Party may reasonably require from time to time in order to (i) subject the Lessee’s properties, assets, rights or interest that are intended to be part of the Senior Collateral to the Security Interests intended to be covered by any of the Senior Collateral Documents, (ii) perfect and maintain the validity, effectiveness and priority of any of the Senior Collateral Documents and any of the Security Interests intended to be created thereunder and (iii) assure, convey, grant, assign, transfer, preserve and protect the rights granted or now or hereafter intended to be granted to the Bank Finance Parties under any Financing Document or under any other instrument executed in connection with any Financing Document to which the Lessee is or is to be a party.

Section 5.11 **Separate Conduct of Business.** The Lessee will (a) act solely in its name and through its duly authorized officers, managers or agents in the conduct of its businesses, (b) conduct its business solely in its own name and in a manner not misleading to other Persons as to its identity, (c) maintain its books, records and accounts separately from any other entity and (d) comply in all material respects with the terms of its organizational documents.

Section 5.12 **Maintenance of Title.** The Lessee will maintain (a) good title to the material property owned by the Lessee free and clear of Liens, other than Permitted Liens, and (b) legal and valid and subsisting leasehold or other interests to the material properties (including surface leases or rights-of-way necessary to the operation of the Project) leased or otherwise held by the Lessee, free and clear of Liens, other than Permitted Liens.

Section 5.13 **Hedging.**

(a) The Lessee shall, on or prior to the date that is two (2) Business Days after the Closing Date,

(i) with respect to the Senior Term Loans (to which the Lessee is exposed, on a pass-through basis pursuant to the terms of the TDC Loan Agreements, to the interest rate risk of the borrower thereunder) enter into (and thereafter maintain) Permitted Hedge Agreements (collectively, the “Senior Term Loans Permitted Hedge Agreements”) that collectively have (A) for the period commencing on, and including such date and ending on, but excluding, the Substantial Completion Date, an effective notional amount of not less than 100% of the projected aggregate outstanding principal amount of the Senior Term Loans as of each Scheduled Credit Extension Date; (B) for the period commencing on, and including the Substantial Completion Date and ending on, but excluding, the first anniversary thereof, an effective notional amount of not less than 90% of the projected aggregate outstanding principal amount of the Senior Term Loans as of each Interest Payment Date and (C) thereafter, until the Bank Financing Maturity Date, an effective notional amount of not less than 75% of the projected aggregate outstanding principal amount of the Senior Term Loans as of each Interest Payment Date, in each case calculated in accordance with the Base Case Financial Model as of the Closing Date; provided that, from and after the second Business Day following the Closing Date, if the aggregate effective notional amount of the Senior Term Loans Permitted Hedge Agreements is greater than 100% of the projected aggregate principal amount of the Senior Term Loans, in each case, calculated in accordance with the Base Case Financial Model, the Lessee shall within five (5) Business Days thereafter partially terminate, on a *pro rata* basis, the Senior Term Loans Permitted Hedge Agreements in the amount necessary to ensure that the effective notional amount of the Senior Term Loans Permitted Hedge Agreements do not exceed 100% of the projected outstanding principal amount of the Senior Term Loans, in each case, calculated in accordance with the Base Case Financial Model; and

(ii) with respect to the Series 2022A Bonds (to which the Lessee is exposed, on a pass-through basis pursuant to the terms of the TDC Loan Agreements, to the interest rate risk of the Borrower thereunder), Permitted Hedge Agreements (collectively, the “Series 2022A Bonds Permitted Hedge Agreements”) that collectively have (A) for the period commencing on, and including such date and ending on, but excluding, the Substantial Completion Date, an effective notional amount of not less than 100% of the projected par value of the outstanding Series 2022A Bonds as of each Scheduled Drawing Date, provided that if the Purchaser exercises its right to advance a Drawing of the remaining available ██████ Commitment pursuant to Section 8.02, from the date that is five (5) Business Days after the applicable Drawing, the effective notional amount shall be not

less than 100% of the actual par value of the outstanding Series 2022A Bonds; (B) for the period commencing on, and including, the Substantial Completion Date and ending on, but excluding, the first anniversary thereof, an effective notional amount of not less than 90% of the projected par value of the outstanding Series 2022A Bonds as of each Interest Payment Date (as defined in Exhibit A to the Collateral Agency and Accounts Agreement) and (C) thereafter, until the Bank Financing Maturity Date, an effective notional amount of not less than 75% of the projected par value of the outstanding Series 2022A Bonds as of each Interest Payment Date (as defined in Exhibit A to the Collateral Agency and Accounts Agreement), in each case, calculated in accordance with the Base Case Financial Model as of the Closing Date; provided that, from and after the second Business Day following the Closing Date, if the aggregate effective notional amount of the Series 2022A Bonds Permitted Hedge Agreements is greater than 100% of the projected aggregate par value of the outstanding Series 2022A Bonds on any Interest Payment Date (as defined in Exhibit A to the Collateral Agency and Accounts Agreement), in each case, calculated in accordance with the Base Case Financial Model, the Lessee shall within five (5) Business Days thereafter partially terminate, on a *pro rata* basis, the Series 2022A Bonds Permitted Hedging Agreements, in the amount necessary to ensure that the effective notional amount of the Series 2022A Bonds Permitted Hedging Agreements do not exceed 100% of the projected par value of the outstanding Series 2022A Bonds, in each case, calculated in accordance with the Base Case Financial Model.

(b) If on any Interest Payment Date occurring from and after the Closing Date, the effective notional amount of the Senior Term Loans Permitted Hedge Agreements entered pursuant to clause (a)(i) above or the Series 2022A Bonds Permitted Hedge Agreements entered into pursuant to clause (a)(ii) above, as applicable, exceeds 100% of the projected outstanding principal amount of the Senior Term Loans or the projected par value of the outstanding Series 2022A Bonds, respectively, in each case, calculated in accordance with the Base Case Financial Model, the Lessee shall within five (5) Business Days thereafter partially terminate, on a *pro rata* basis, the Senior Term Loans Permitted Hedge Agreements or the Series 2022A Bonds Permitted Hedging Agreements, as applicable, in the amount necessary to ensure that the effective notional amount of the Senior Term Loans Permitted Hedge Agreements do not exceed 100% of the projected outstanding principal amount of the Senior Term Loans or the Series 2022A Bonds Permitted Hedging Agreements do not exceed 100% of the projected par value of the outstanding Series 2022A Bonds, respectively; in each case, calculated in accordance with the Base Case Financial Model, and without prejudice of the Lessee's obligation to maintain Senior Term Loans Permitted Hedge Agreements and Series 2022A Bonds Permitted Hedge Agreements with the required effective notional amount pursuant to clause (a)(i) and clause (a)(ii), respectively, with respect to any subsequent Interest Payment Date.

(c) On or prior to the date that is two (2) Business Days after the Closing Date, the Lessee shall enter into Permitted Hedge Agreements that, for the period commencing on, and including, the Bank Financing Maturity Date through, and including, December 31, 2060, effectively hedge or mitigate at all times during such period, on an aggregate basis, not less than 75% of the effective projected interest rate exposure of the Lessee (whether direct or indirect) during such period on the projected principal amount or par value, as the case may be, of the Indebtedness intended to repay the Senior Term Loans and redeem the Series 2022A Bonds in full upon occurrence of the Bank Financing Maturity Date as of each projected interest payment date of such Indebtedness, in each case, as shown in the Base Case Financial Model delivered on the Closing Date.



Section 5.14 **Financial and Business Information**. Commencing on the Closing Date, the Lessee shall deliver to the Administrative Agent within the time period set forth below:

(a) **Quarterly Statements**. Promptly after the same are available and in any event within 60 days after the end of each quarterly fiscal period in each fiscal year of the applicable Person (other than the last quarterly fiscal period of each such fiscal year), duplicate copies of:

(i) a balance sheet of each of the Lessee, the D&C Guarantor and the MSA Guarantor as at the end of such quarter (it being understood that, with respect to the D&C Guarantor and the MSA Guarantor (i) the Lessee shall only be required to deliver such balance sheet while any obligations of the D&C Contractor or the Manager remain outstanding under the D&C Contract or the Management Services Agreement, respectively, and (ii) if such balance sheet is publicly available the Lessee may satisfy its obligation under this clause Section 5.14(a)(i) by delivering a copy of such publicly available balance sheet, or providing a link thereto to the Administrative Agent), and

(ii) statements of income, changes in members' equity and cash flows of the Lessee, the D&C Guarantor and the MSA Guarantor for such quarter and (in the case of the second and third quarters) for the portion of the fiscal year ending with such quarter, setting forth, in each case, in comparative form the figures for the corresponding periods in the previous fiscal year (except for the first fiscal year for which they are prepared), all in reasonable detail, prepared in accordance with GAAP applicable to quarterly financial statements generally, with respect to such information related to the Lessee, and certified by a Senior Financial Officer as fairly presenting, in all material respects, the financial position of the Lessee and its results of operations and cash flows, subject to changes resulting from year-end adjustments, (it being understood that, with respect to the D&C Guarantor and the MSA Guarantor (i) the Lessee shall only be required to deliver such statement while any obligations of the D&C Contractor or the Manager remain outstanding under the D&C Contract or the Management Services Agreement, respectively, and (ii) if such statements are publicly available the Lessee may satisfy its obligations under this Section 5.14(a)(ii) by delivering a copy of such publicly available statement, or providing a link thereto to the Administrative Agent),

provided that, so long as the financial results of the MSA Guarantor are consolidated with those of Vantage Airport Group Ltd., the Lessee may satisfy its obligation to deliver the financial information of the MSA Guarantor required by this Section 5.14(a) by delivering the required balance sheets and statements of Vantage Airport Group Ltd;

(b) **Annual Statements**. Promptly after the same are available and in any event within 120 days after the end of each fiscal year of the applicable Person Lessee and 150 days after the end of each fiscal year of the D&C Guarantor and the MSA Guarantor, duplicate copies of:

(i) an audited balance sheet of the Lessee, the D&C Guarantor and the MSA Guarantor as at the end of such year (it being understood that, with respect to the D&C Guarantor and the MSA Guarantor (i) the Lessee shall only be required to deliver such balance sheet while any obligations of the D&C Contractor or the Manager remain outstanding under the D&C Contract or the Management Services Agreement, respectively, and (ii) if such balance sheet is publicly available the Lessee may satisfy its obligation under this clause Section 5.14(b)(i) by delivering a copy of such publicly available balance sheet, or providing a link thereto to the Administrative Agent), and

(ii) audited statements of income, changes in members' equity and cash flows of the Lessee, the D&C Guarantor and the MSA Guarantor for such year, setting forth, in

each case in comparative form the figures for the previous fiscal year (except for the first fiscal year for which they are prepared), all in reasonable detail, prepared in accordance with GAAP, and, in the case of the Lessee and D&C Guarantor, accompanied by opinions thereon (without a “going concern” or similar qualification or exception and without any qualification or exception as to the scope of the audit on which such opinion is based) of independent public accountants of recognized national standing, which opinions shall state that such financial statements present fairly, in all material respects, the financial position of the Lessee or the D&C Guarantor or the MSA Guarantor, as applicable, and its results of operations and cash flows and have been prepared in conformity with GAAP, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and that such audit provides a reasonable basis for such opinion in the circumstances (it being understood that, with respect to the D&C Guarantor and the MSA Guarantor (i) the Lessee shall only be required to deliver such statement while any obligations of the D&C Contractor or the Manager remain outstanding under the D&C Contract or the Management Services Agreement, respectively, and (ii) if such statements are publicly available the Lessee may satisfy its obligations under this Section 5.14(b)(ii) by delivering a copy of such publicly available statement, or providing a link thereto to the Administrative Agent),

provided that, so long as the financial results of the MSA Guarantor are consolidated with those of Vantage Airport Group Ltd., the Lessee may satisfy its obligation to deliver the financial information of the MSA Guarantor required by this Section 5.14(b) by delivering the required balance sheets and statements of Vantage Airport Group Ltd;

(c) Officer’s Certificate. At the time it furnishes each set of financial statements of the Lessee pursuant to Section 5.14(a) or Section 5.14(b), an Officer’s Certificate to the effect that no Default or Event of Default has occurred and is continuing (or, if any Default or Event of Default has occurred and is continuing, describing the same in reasonable detail and describing what action the Lessee has taken and proposes to take with respect thereto);

(d) Updated Base Case Financial Model; Ratio and Other Calculations.

(i) At least once per fiscal year following the Phase 2 End of Funding Date, an updated Base Case Financial Model, certified by a Responsible Officer of the Lessee as (A) having been prepared in good faith with due care, based upon assumptions that are believed by the Lessee to be reasonable as of the time made or at the time such Base Case Financial Model is so furnished to the Administrative Agent, as applicable, and (B) representing, in the reasonable opinion of the Lessee, reasonable estimates of the future performance of the Lessee.

(ii) No later than November 30 and May 31 (and not earlier than November 1 and May 1, respectively) of each year prior to the Phase 2 End of Funding Date, the Lessee shall deliver to the Administrative Agent either (A) a certificate from a Senior Financial Officer or other similar Responsible Officer of the Lessee to the effect that the assumptions and projections contained in the Base Case Financial Model most recently delivered by the Lessee to the Administrative Agent remain reasonable in light of the circumstances existing at the time such certificate is delivered, or (B) an updated Base Case Financial Model certified by a Senior Financial Officer or other similar Responsible Officer of the Lessee as (1) having been prepared in good faith with due care, based upon assumptions that are believed by the Lessee to be reasonable as of the time made or at the time such Base Case Financial Model is so furnished to the Administrative Agent, and (2) representing, in the reasonable opinion of the Lessee, reasonable estimates of the future performance of the Lessee . Any update to the Base Case Financial Model delivered after the Effective Date and prior to the Phase 2 End of Funding Date shall be accompanied by a certificate

of the Airport Consultant, in the form of Exhibit B attached hereto, certifying that the assumptions and projections in such Base Case Financial Model are reasonable in light of the then-current circumstances.

(iii) Promptly (and in any event no later than thirty (30) days) after each Calculation Date occurring after the Phase 2 End of Funding Date, a certificate duly executed by the Senior Financial Officer or other similar Responsible Officer of the Lessee setting forth the calculation of the following ratios and amounts, together with supporting data in reasonable detail:

(A) the Total Debt Service Coverage Ratio for each DSCR Calculation Period ending and beginning on such Calculation Date;

(B) the Senior Debt Service Coverage Ratio for each DSCR Calculation Period ending and beginning on such Calculation Date;

(C) during the Ramp-up Period only, the Ramp-Up Debt Service Coverage Ratio for each DSCR Calculation Period ending and beginning on such Calculation Date; and

(D) (x) the Major Maintenance Reserve Requirement and the O&M Reserve Requirement and (y) the outstanding balance in each of the Major Maintenance Reserve Account and the O&M Reserve Account, each as of such Calculation Date.

(e) Notice of other Material Events. Promptly, and in any event within five (5) Business Days after a Responsible Officer becoming aware of the existence of (i) any Default or Event of Default, (ii) any event of default, event of force majeure or any other event entitling any party to suspend performance, extend the deadlines to perform its obligations or terminate its obligations or making any party liable to pay any damages or liquidated damages, under a Material Project Document, (iii) with respect to the Lessee, any litigation, pending or, if actually known, threatened in writing, by or before any arbitrator or Governmental Authority in which the amount involved exceeds \$10,000,000 for a pending litigation or \$20,000,000 for a litigation threatened in writing, in each case which is not covered by insurance, and of any material development or milestone therein, or (iv) any material dispute with respect to or material challenge of a Material Project Document, (v) any amendment of, supplement to, waiver of, or other modification of any Material Project Document, other than change orders, change directives, directions, amendments, supplements or other modifications that result in costs less than \$25,000,000 in the aggregate with respect to the agreements, instruments and other documents governing the D&C Work (taken as a whole), (vi) any litigation or other proceeding or claim by any Person against, or with respect to the activities of, the Lessee or the Project alleging a violation of or non-compliance with any Environmental Laws that could be reasonably expected to result (after taking into account any insurance and any indemnification obligations of the Port Authority, the Airline Sublessees or the Concession Sublessees pursuant to the Lease Agreement or the Material Subleases, as the case may be) in liabilities to the Lessee in the amount of \$10,000,000 or more, (vii) any Delay Event or Compensation Event, (viii) any suspension of or delay in the development and construction of the Project that has or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or a material adverse impact on the Construction Schedule and Budget or cause the Lessee to fail to achieve Substantial Completion of the Project by the date that is six months prior to the Outside Completion Date, (ix) any Casualty Event that has or could reasonably be expected to result in insurance claims in the amount of \$10,000,000 or more or (ix) any other occurrence that has or could reasonably be expected to have a Material Adverse Effect, in each case, written notice specifying (A) the nature (including a reasonably detailed description of the event or circumstance), period of existence thereof, expected duration thereof and what action the Lessee is taking or proposes to take with respect thereto (together with a copy of any notice received from another

party in connection with such event or circumstance (if applicable)) and any other information or details that the Required Bank Finance Parties may reasonably request and (B) in the case of clause (v), a copy of such amendment, supplement, waiver or modification (as applicable);

(f) Notices from Governmental Authority. Promptly, and in any event within 30 days of receipt thereof, copies of any notice to the Lessee from any Governmental Authority relating to any order, ruling, direction, demand, statute or other law or regulation that could reasonably be expected to have a Material Adverse Effect;

(g) Construction Schedule and Budget. Promptly after the same is available, at any time prior to the Substantial Completion Date, a copy of any updated Construction Schedule and Budget, accompanied by a certificate from the Technical Advisor certifying that the updated Construction Schedule and Budget is consistent with the project completion date and total construction cost reflected in the then-current Base Case Financial Model.

(h) Construction Progress Reports. Promptly after the same is available and in any event on or prior to the fifteenth (15th) day following the last day of each calendar month prior to the Substantial Completion Date, a monthly construction progress report of the D&C Contractor;

(i) Operating Reports; Plans. Promptly and not later than thirty (30) days after the end of each fiscal quarter of the Lessee, (i) aggregate enplanement numbers and aggregate concessions sales numbers for such fiscal quarter and (ii) true, correct and complete copies of each approval of, amendment or update to any Approved Pro-Forma Terminal Leasing Plan, Comprehensive Terminal Leasing Plan, Approved Pro Forma Concessions Plan or Comprehensive Concessions Plan (each as defined in the Lease Agreement) submitted or agreed by the Lessee during such fiscal quarter, if any;

(j) Annual Operating Budget. (i) Promptly after the same is available and in any event not less than 30 days prior to the start of each fiscal year of the Lessee, each Annual Operating Budget, and (ii) any update or amendment to the Annual Operating Budget then in effect promptly after the same is available;

(k) Information Delivered pursuant to the Lease Agreement. Promptly upon their becoming available (but in any event within five (5) Business Days after delivery or receipt thereof), one copy of (i) any notice of the occurrence of any Event of Default, event, omission or circumstance that with the passage of time, the giving of notice or both could reasonably be expected to result in such Event of Default, Compensation Event, Delay Event, Force Majeure, Shock Event, Unavailability Event, Lessee Change and Port Authority Change (each capitalized term in this clause (i) is used as defined in the Lease Agreement), (ii) each periodic report, schedule, budget, or plan required to be sent by the Lessee to the Port Authority in accordance with the Lease Agreement and (iii) any other notice relating to any event, omission or circumstance that could reasonably be expected to result in a Material Adverse Effect;

(l) Authorizations. Promptly, and in any event within ten (10) Business Days of receipt thereof, copies of all material Authorizations, or any material modification thereto, issued to or obtained by the Lessee, or, if actually received by the Lessee, by its contractors or subcontractors for the development, construction or operation of the Project; provided that (x) the Lessee may redact sensitive security information contained in such Authorizations to the extent required by Applicable Law, and (y) Lessee shall have no obligation to deliver copies of an Authorization (or only part thereof) to the Administrative Agent to the extent that such delivery is prohibited by Applicable Law and the consent to such delivery from the applicable Governmental Authority may not be obtained by the exercise of commercially reasonable efforts;

(m) Resignation or Replacement of Auditors. Within ten (10) Business Days following the date on which the Lessee's auditors resign or the Lessee elects to change auditors, as the case may be, notification thereof, together with such further information as any Bank Finance Party may reasonably request;

(n) Know Your Customer Information. Promptly following a written request by a Bank Finance Party, such documentation or other information that such Bank Finance Party requires pursuant to Applicable Law or reasonably requests, in any such case, in order to comply with its ongoing obligations under applicable Anti-Money Laundering Laws and Anti-Corruption Laws (including any updated Beneficial Ownership Certification);

(o) Insurance. Promptly, and in any event within ten (10) Business Days of receipt thereof, copies of the certificates of insurance with respect to each renewal policy and each other insurance policy required to be in effect under Section 5.02 that has not previously been furnished to the Administrative Agent;

(p) Requested Information. With reasonable promptness, such other data and information relating to the business, operations, affairs, financial condition, assets or properties of the Lessee or relating to the ability of the Lessee to perform its obligations under this Agreement, the other Financing Documents or the Material Project Documents, as from time to time may be reasonably requested by any Bank Finance Party;

(q) Disclosure under Continuing Disclosure Agreement. Simultaneously with the publication of any notice or other information submitted to EMMA and not previously delivered to the Administrative Agent pursuant to this Agreement, the Lessee shall deliver a copy of the information or documents published by the Lessee pursuant to the Lessee Continuing Disclosure Agreement; and

(r) Change in Ownership. Promptly, and in any event within ten (10) Business Days after the occurrence thereof, notice of (i) any direct Disposition of any Equity Interests in the Pledgor by any Sponsor, including through the issuance of Equity Interests in or merger, spin off or division of any Subsidiary of such Sponsor, and (ii) any indirect Disposition of 10% or more of the Equity Interests in the Pledgor, including through the issuance of Equity Interests in or merger, spin off or division of any Subsidiary of any Sponsor.

## ARTICLE VI

### NEGATIVE COVENANTS

The Lessee covenants that until the Credit Termination Date, it will comply with (a) each of the covenants set forth in Sections 10.10 through 10.14, 10.16, 10.18 and 10.21 of the Collateral Agency and Accounts Agreement, and (b) each covenant set forth below:

Section 6.01 Transactions with Affiliates. The Lessee will not enter into directly or indirectly any transaction or group of related transactions (including the purchase, lease, sale or exchange of properties of any kind or the rendering of any service) with any Affiliate, except in the ordinary course of business, pursuant to the reasonable requirements of the Project and upon fair and reasonable terms no less favorable to the Lessee than would be obtainable in a comparable arm's-length transaction with a Person not an Affiliate; provided that (a) the agreements listed in Schedule 3.04(b) (as in effect on the Closing Date or as modified with the consent of the Required Bank Finance Parties), (b) payment of amounts owed and payable to the Sponsors in respect of development fees and Project Costs incurred by such Sponsors on behalf of the Lessee on or prior to the Closing Date, in amounts not to exceed the amount set forth in Section 85(a)(15) of the Lease Agreement, (c) payment of fees incurred by the Sponsors in connection with the delivery or

issuance of Equity Support and the maintenance thereof, provided that such maintenance fees shall be at a rate of no more than [ ]% per annum of the available amount thereunder, (d) any Restricted Payments, permitted to be made under the Senior Bank Financing Documents in compliance with the Collateral Agency and Accounts Agreement, and (e) any other transactions entered into with the consent of the Required Bank Finance Parties, will be deemed not to violate this covenant.

Section 6.02 **Fundamental Changes**. The Lessee will not (i) change its name or legal form, (ii) merge or consolidate with or into any Person or liquidate, dissolve, wind up or otherwise dispose, convey or transfer all or substantially all of its assets, whether in one transaction or a series of related transactions, (iii) divide into two or more Persons pursuant to a “plan of division” or similar method, or (iv) create, or reorganize into, one or more series, in each case, as contemplated under any Applicable Law.

Section 6.03 **Limitation on Liens**. The Lessee will not create, assume or suffer to exist any Lien on or with respect to its assets or properties whether now owned or hereafter acquired, or any other part of the Collateral, other than Permitted Liens.

Section 6.04 **Sale of Assets**. The Lessee will not sell, lease, transfer or otherwise dispose of any of its assets (any of the foregoing, a “Disposition”) other than:

- (a) worn out or defective equipment, in each case, promptly replaced by the Lessee with suitable substitute equipment of substantially the same character and quality and at least equivalent useful life;
- (b) other equipment no longer used or useful to the Project in the ordinary course of business; or
- (c) in the ordinary course of business; provided that (x) the proceeds of such Disposition will be applied to the purchase price of replacement assets promptly and in any event by the earlier of 180 days after the sale, lease, transfer or disposition thereof and the date required under the Lease Agreement or the Lessee’s insurance policies or (y) the aggregate amount of assets sold, leased, transferred or disposed under this clause (c) shall not exceed \$10,000,000.

Section 6.05 **Material Changes to Organizational Documents**. Without prejudice to the Lessee’s obligations under Section 6.02, the Lessee will not amend its Organizational Documents in any manner that (i) is materially adverse to the interest of the Bank Finance Parties, (ii) could reasonably be expected to impair the value of the Senior Collateral or (iii) materially changes its corporate structure or legal form.

Section 6.06 **Subsidiaries**. The Lessee will not create, form or acquire any Subsidiary or enter into any partnership, joint venture, profit-sharing or similar arrangement whereby the Lessee’s income or profits are shared with any person.

Section 6.07 **Material Project Documents; Other Agreements**.

- (a) The Lessee will not amend or otherwise modify, or grant any waiver or consent under, or permit the full or partial termination (unless such full or partial termination occurs in accordance with the terms of the normal course of performance of the relevant Material Project Document) prior to expiry of, any Material Project Document, without the consent of the Required Bank Finance Parties other than:

(i) with respect to the D&C Contract,

(A) any change order, change directive, direction, amendment, waiver, consent supplement or other modification, solely to the extent that such change order, change directive, direction, amendment, waiver, consent, supplement or modification that either:

(1) (x) is required as the result of any Port Authority Change (as defined in the Lease Agreement) and is paid for from additional payments to the Lessee pursuant to Section 2(cc)(2)(iii) or (iv) or Section 2(ee)(3) or (4) of the Lease Agreement, as applicable, (y) could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or a material adverse impact on the Construction Schedule and Budget or the Annual Operating Budget (as applicable), as certified by a Responsible Officer of the Lessee and (z) will not result in a Completion Event of Default (as defined in the Lease Agreement); or

(2) arises from any Lessee Change or Lessee Value Engineering Change that (x) results in a cost that does not exceed \$25,000,000 individually or (together with the those permitted pursuant to clause (3) below) in the aggregate in any 12 month period, (y) could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or a material adverse impact on the Construction Schedule and Budget or the Annual Operating Budget (as applicable), as certified by a Responsible Officer of the Lessee and (z) will not result in Completion Event of Default (as defined in the Lease Agreement); or

(3) (x) results in a cost that does not exceed \$1,000,000 individually or, (together with those permitted pursuant to clause (2) above) \$25,000,000 in the aggregate in any 12 month period, (y) could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or a material adverse impact on the Construction Schedule and Budget or the Annual Operating Budget (as applicable), as certified by a Responsible Officer of the Lessee and (z) will not result in a Completion Event of Default (as defined in the Lease Agreement);

(ii) with respect to the Lease Agreement,

(A) any Lessee Change (1) the cost of which does not exceed \$25,000,000 (individually or (together with those permitted pursuant to clause (B) below) in the aggregate in any 12 month period), (2) that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or a material adverse impact on the Construction Schedule and Budget or the Annual Operating Budget (as applicable), as certified by a Responsible Officer of the Lessee and (3) that will not result in a DB Event of Default for failure to achieve Substantial Completion of the Project by the DB Outside Completion Date; or

(B) any other change order, change directive, direction, amendment, waiver, consent, supplement or other modification, solely to the extent that such change order, change directive, direction, amendment, waiver, consent, supplement or modification results in a cost that does not exceed \$1,000,000 individually or (together with those permitted pursuant to clause (A) above) \$25,000,000 in the aggregate in any 12 month period, (y) could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or a material adverse impact on the Construction Schedule and Budget or the Annual Operating Budget (as applicable), as certified by a Responsible

Officer of the Lessee and (z) will not result in a DB Event of Default for failure to achieve Substantial Completion of the Project by the DB Outside Completion Date;

(C) any other Lessee Change to which the Required Bank Finance Parties have provided prior written approval;

(iii) with respect to the Management Services Agreement, the Lessee must not amend or otherwise modify, or grant any waiver or consent under, the Management Services Agreement if such amendment, modification, waiver or consent would cause the Lessee to incur liabilities in excess of \$3,000,000;

(iv) with respect to any termination of the Management Services Agreement, the MSA Subcontract or the D&C Contract or any replacement of the Manager, the MSA Subcontractor or the D&C Contractor, the Required Bank Finance Parties shall have given their prior written consent to such termination and to both the terms of such replacement Management Services Agreement, MSA Subcontract or D&C Contract, as applicable, and the counterparty thereto (such consent not to be unreasonably delayed or withheld),

(v) with respect to any Material Sublease, any amendment, modification, waiver or consent which is not prohibited by the terms of the Lease Agreement and would not cause the Lessee to incur additional liabilities (actual or contingent) in excess of \$3,000,000 individually or in the aggregate under or in connection with all amendments, modifications, waivers or consents related to such Material Sublease,

it being understood that nothing in this Section 6.07 shall be deemed to permit the Lessee to amend, or otherwise modify or grant any waiver or consent, or partially terminate any Material Project Document without satisfying each other applicable covenant, obligation or agreement of the Lessee hereunder or under any other Senior Bank Financing Document.

(b) The Lessee will not enter into (i) any agreements unrelated to the Project or (ii) additional agreements related to the Project other than (A) the Material Project Documents and renewals or replacements of Performance Security expressly permitted hereby, (B) Airline Subleases or Concession Subleases, other than, in each case, Material Subleases (which shall be subject to the preceding clause (A)), and (C) those agreements that are not prohibited by the terms of the Transaction Documents, *so long as* (x) such obligations and liabilities are contemplated in the then current Construction Schedule and Budget or the Annual Operating Budget (as applicable), and (y) the Lessee does not incur obligations or actual or potential liabilities thereunder in excess of \$40,000,000 in the aggregate during any fiscal year, provided, that this prohibition shall not apply to any agreement permitted pursuant to this Section 6.07 and Section 7.01(l).

(c) The Lessee will not enter into any Concession Management Services Agreement or a replacement Material Project Document related to such Concession Management Services Agreement (other than any renewal or replacement of Performance Security expressly permitted hereby) unless (i)(A) the Lessee has first obtained prior written consent of the Administrative Agent (acting at the direction of the Required Bank Finance Parties provided that such Required Bank Finance Parties shall not unreasonably withhold, condition, or delay their instruction to provide such approval), or (B) such Concession Management Services Agreement (1) is between the Lessee and the Manager and (2) conforms to the requirements of Section 20(d)(9)(ii) of the Lease Agreement, and (3) the Lessee's position in respect of its aggregate expenditures and liabilities and the performance security provided for the Lessee's benefit, in each case in connection with the services provided under such Concession Management Services Agreement, shall be no worse than its position prior to execution of such Concession Management Services Agreement when such services were being performed by the Manager pursuant to the Management Services Agreement and, (ii) simultaneous with the entry into the Concession Management Services Agreement or



replacement Material Project Document, the Lessee enters into a direct agreement with respect to the Concession Management Services Agreement with the Senior Collateral Agent and the counterparty to the Concession Management Services Agreement, in form and substance satisfactory to the Administrative Agent (acting at the direction of the Required Bank Finance Parties, provided that such Required Bank Finance Parties shall not unreasonably withhold, condition, or delay their instruction to provide such approval); provided that this prohibition shall not apply to any replacement Material Project Document permitted pursuant to Section 7.01(l).

(d) The Lessee will not enter into any Material Sublease unless, either (i) (A) the Material Sublease is substantially in the form of Airline Sublease or Concession Sublease (as applicable) attached to the Lease Agreement on the date of execution thereof and, (B) simultaneous with the entry into the Material Sublease, the Lessee enters into a direct agreement with respect to the Material Sublease with the Senior Collateral Agent and the counterparty to the Material Sublease, substantially in the form of Exhibit H hereto, or (ii) in the event that the Material Sublease shall not be substantially in the form of Airline Sublease or Concession Sublease (as applicable) attached to the Lease Agreement on the Closing Date, (A) the Lessee delivers to the Administrative Agent at least 15 Business Days prior to the proposed signing date, a substantially final draft of the proposed Material Sublease together with summary of material deviations from the form of Airline Sublease or Concession Sublease (as applicable) attached to the Lease Agreement on the Closing Date, (B) any material deviations from the form of Airline Sublease or Concession Sublease (as applicable) attached to the Lease Agreement on the Closing Date are approved by the Administrative Agent (acting on the instructions of the Required Bank Finance Parties, provided that (1) such Required Bank Finance Parties shall not unreasonably withhold, condition, or delay their instruction to provide such approval, and shall neither request inclusion of provisions that are not permitted by the Lease Agreement or approved by the Port Authority or request exclusion of provisions that have been requested by the Port Authority, and (2) if the Administrative Agent fails to notify the Lessee in writing of its approval or withholding of approval of such Material Sublease within 15 Business Days of receipt of the substantially final draft thereof and all other information delivered pursuant to clause (ii)(A) above, the Administrative Agent will be deemed to have approved such Material Sublease, and (C) simultaneous with the entry into the Material Sublease, the Lessee enters into a direct agreement with respect to the Material Sublease with the Senior Collateral Agent and the counterparty to the Material Sublease, substantially in the form of Exhibit H hereto and otherwise reflecting all changes to the form of such direct agreement reasonably requested by any party thereto or by the Administrative Agent (acting on the instructions of the Required Bank Finance Parties, provided that such Required Bank Finance Parties may not (1) unreasonably withhold, condition or delay their instruction to approve the form of direct agreement, or (2) request (x) including provisions that are not permitted by the Lease Agreement or approved by the Port Authority or (y) excluding provisions that have been requested by the Port Authority) as a result of the deviations from the form of Airline Sublease or Concession Sublease (as applicable) attached to the Lease Agreement on the Closing Date, and in each case the Lessee shall deliver to the Administrative Agent true copies of all Material Subleases entered into after the Closing Date promptly (and in any event within three Business Days) after execution and delivery thereof.

(e) The Lessee will not accept any Performance Security provided to the Lessee by any Material Project Party in satisfaction of such Material Project Party's obligation to provide Performance Security under the Material Project Document to which such person is a party at any time after the Closing Date (including, without limitation, any amendment, replacement or variation of any Performance Security provided to the Lessee on or prior to the Closing Date) without the prior written consent of the Administrative Agent (acting on the instructions of the Required Bank Finance Parties, provided that such Required Bank Finance Parties shall not unreasonably withhold, condition, or delay their instruction to provide such approval), except for any replacement Performance Security in the terms required by, and being delivered as expressly contemplated by such Material Project Document, without modification of, waiver of or consent to departure from its terms.

(f) Without the Required Bank Finance Parties' prior written consent, not to be unreasonably withheld or conditioned, the Lessee will not:

(i) reject any qualifying Subcontractor (as defined in the D&C Contract) pursuant to Section 9.3.1 of the D&C Contract if such rejections could reasonably be expected to have a material adverse impact on any of the GMP, Baseline Schedule, Milestone Event Dates or Scheduled Completion Date (each as defined in the D&C Contract);

(ii) request the termination or replacement of any Subcontract (as defined in the D&C Contract) for convenience pursuant to Section 9.5.3 of the D&C Contract if such termination or replacement could reasonably be expected to result in an extension of the Baseline Schedule, Milestone Event Dates or Scheduled Completion Date (each as defined in the D&C Contract) or to increase the costs for the work that is the subject to the applicable Subcontract by more than \$2,000,000;

(iii) consent to or instruct the D&C Contractor to retain any Subcontractor (as defined in the D&C Contract) that does not provide payment and performance bonds and is not enrolled in the SDI (as defined in the D&C Contract) other than to the extent necessary to permit satisfaction of the requirements set forth in Section 65 and Part II of Schedule E to the Lease Agreement; or

(iv) consent to the D&C Contractor providing for retainage under any Subcontract (as defined in the D&C Contract) that is more favorable to the Subcontractor (as defined in the D&C Contract) thereunder than the Required Subcontractor Retainage (as defined in the D&C Contract) or otherwise in terms that would result in retaining less than 5% of the applicable aggregate contract price at all times prior to substantial completion under such Subcontract; or

(v) consent to the assignment of the D&C Guaranty other than as permitted by the Financing Documents and Lease Agreement.

Section 6.08 **Accounting Changes**. (a) The Lessee will not change its fiscal year or make or permit any material change in accounting policies or reporting practices, except as required by GAAP or Applicable Law, and (b) the Lessee shall not change its auditor without the prior written consent of the Administrative Agent, unless such change is to an Independent Auditor.

Section 6.09 **Investments**. The Lessee will not make any investments (whether by purchase of stock, bonds, notes or other securities, loan, extension of credit, advance or otherwise), other than:

(a) Cash and Eligible Investments;

(b) extensions of trade credit (for no longer than 90 days) in the ordinary course of business;

(c) investments received in connection with the bankruptcy or reorganization of suppliers and customers and in settlement of delinquent obligations of, and other disputes with, customers arising in the ordinary course of business; or

(d) Capital Expenditures permitted pursuant to Section 6.12.

Section 6.10 **Restricted Payments**. The Lessee shall not make transfers to the Distribution Account from the Remaining Revenue Account or otherwise declare or make any Restricted Payment,

unless the CAAA Restricted Payment Conditions and each of the following conditions (the “Additional Restricted Payment Conditions”) have been satisfied:

- (a) the Restricted Payment is made on a Quarterly Distributions Date;
- (b) the Restricted Payment is made with funds on deposit in the Remaining Revenue Account (or the Distribution Account (with funds that have been transferred from the Remaining Revenue Account));
- (c) for the DSCR Calculation Period ending on the most recent Calculation Date, the RP Senior DSCR is not less than 1.30:1.00 and the RP Total DSCR is not less than 1.25:1.00;
- (d) for the DSCR Calculation Period commencing on the most recent Calculation Date, the projected RP Senior DSCR is not less than 1.30:1.00, and the projected RP Total DSCR is not less than 1.25:1.00;
- (e) the Lessee, no earlier than thirty (30) days nor later than ten (10) days prior to making the proposed Restricted Payment shall have provided the Bank Finance Parties with a certificate from a Responsible Officer certifying as to the satisfaction of the Restricted Payment Conditions and including detailed calculations of the RP Total Debt Service Coverage Ratio and the RP Senior Debt Service Coverage Ratio that demonstrate the Lessee was in compliance with clauses (c) and (d) above.

Section 6.11 **Permitted Hedge Agreements**. The Lessee will not enter into any Hedge Agreements other than Permitted Hedge Agreements in accordance with the terms hereof that are entered into in the ordinary course of business and not for speculative purposes.

Section 6.12 **Capital Expenditures**. The Lessee will not make or commit to make any Capital Expenditures, except:

- (a) expenditures in connection with the design, development, replacement and construction of the Terminal Facilities or any part thereof in accordance with the Construction Schedule and Budget;
- (b) expenditures in connection with the repair and replacement of elements of the Project pursuant to the Lease Agreement in accordance with the Construction Schedule and Budget or Annual Operating Budget (as applicable); and
- (c) Capital Expenditures required pursuant to Applicable Law or the Lease Agreement.

Section 6.13 **ERISA**. The Lessee will not, and will not permit any ERISA Affiliate to, (a) maintain, sponsor or contribute to any employee benefit plan subject to ERISA or the Code or (b) become a “party in interest” (as defined in section 3(14) of ERISA) or a “disqualified person” (as defined in section 4975 of the Code) with respect to any employee benefit plan (as defined in section 3(3) of ERISA).

Section 6.14 **Permitted Accounts**. The Lessee will not establish or maintain any bank accounts other than the Project Accounts and the Non-Pledged Accounts.

Section 6.15 **Sanctions; Anti-Corruption Law; Economic Sanctions, Etc.**

- (a) The Lessee will not, directly or, to the Lessee’s knowledge indirectly, use the proceeds of the Credit Extensions, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person, (i) to fund any activities or business of or with any

Sanctioned Person, or in any Sanctioned Country, or (ii) in any other manner that would result in any person being in violation of Sanctions Laws.

(b) The Lessee shall use commercially reasonable efforts to ensure that no funds used to pay the obligations under the Financing Documents (i) constitute the property of, or are beneficially owned, directly or, to the Lessee's knowledge indirectly by any Sanctioned Person, (ii) are derived from any transactions or business with any Sanctioned Person or Sanctioned Country, or (iii) are derived from any unlawful activity, including activity in violation of Anti-Money Laundering Laws.

(c) The Lessee, its Affiliates, directors, officers, employees, agents or other Persons acting on behalf of the Lessee shall use no part of the proceeds of the Credit Extensions, directly or, to the Lessee's knowledge, indirectly, in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of Anti-Corruption Laws and/or Anti-Money Laundering Laws. The Lessee will maintain and enforce policies and procedures designed to ensure continued compliance with Sanctions Laws, Anti-Corruption Laws and Anti-Money Laundering Laws by the Lessee, its Subsidiaries, Affiliates, directors, officers, employees, agents or other Persons acting on behalf of the Lessee or any of its Subsidiaries.

(d) Neither the Lessee nor, to the knowledge of the Lessee, any Affiliate or any director, officer, employee, agent or other Person acting on behalf of the Lessee in any capacity in connection with this Agreement or the transactions contemplated hereunder will engage in, or will conspire to engage in, any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Corruption Laws, Anti-Money Laundering Laws and/or Sanctions Laws.

Section 6.16 **Purchase of Capital Stock.** The Lessee shall not purchase, redeem or otherwise acquire any of the Lessee's issued Capital Stock or otherwise reduce its Capital Stock. The Lessee shall cause any of its members purchasing or otherwise acquiring any of the Lessee's Capital Stock to execute and deliver to the Senior Collateral Agent a pledge agreement in substantially the same form as the Senior Equity Pledge Agreement and take whatever actions as may be necessary or desirable and requested by an Agent to perfect and preserve a first priority security interest in such Capital Stock in favor of the Senior Collateral Agent.

Section 6.17 **Termination of Lease Agreement.** The Lessee shall not elect to terminate the Lease Agreement without the prior written consent of the Required Bank Finance Parties.

Section 6.18 **Additional Obligations.** Neither the Issuer nor the Lessee shall incur any Additional Obligations, unless the conditions to the incurrence thereof in Section 10.27 of the Collateral Agency and Accounts Agreement have been satisfied or waived by the Required Bank Finance Parties and each of the following conditions has been satisfied or waived by the Required Bank Finance Parties, in each case in form and substance satisfactory to the Required Bank Finance Parties:

- (a) such Additional Obligations are:
  - (i) Completion Obligations;
  - (ii) incurred pursuant to Section 84(a)(B)(I)(3) of the Lease Agreement, and so long as, (A) in the case of Additional Obligations incurred under Section 84(a)(B)(I)(3)(x), the full amount of the Net Cash Proceeds thereof is deposited into the Liquidity Reserve Account, and (B) in each case, the conditions to permit the incurrence of such Indebtedness set forth in Section 84(a) of the Lease Agreement have been satisfied or waived by each of the Port Authority and the Required Bank Finance Parties; or

(iii) incurred in connection with the Refinancing of the Senior Bank Obligations or Hedge Termination Payments under Permitted Hedge Agreements;

(b) at all times while such Additional Obligations are outstanding,

(i) such Additional Obligations have a final maturity date later than the Bank Financing Maturity Date and no scheduled amortization prior to the Bank Financing Maturity Date, except in each case, with respect to Additional Obligations described in clause (a)(ii), to the extent necessary to satisfy the conditions in clauses (I)(B) or (II)(D), as applicable, of the proviso in 84(a)(B)(I)(3) of the Lease Agreement,

(ii) such Additional Obligations have a weighted average life to maturity equal to or greater than the weighted average life to maturity of the outstanding principal amount of the Senior Bank Obligations, except in each case, with respect to Additional Obligations described in clause (a)(ii), to the extent necessary to satisfy the conditions in clauses (I)(B) or (II)(D), as applicable, of the proviso in 84(a)(B)(I)(3) of the Lease Agreement;

(iii) the rights of the holders of such Additional Obligations (in each case in respect of payment and as to collateral) shall rank pari passu with or be subordinated the rights of the Bank Finance Parties under the Financing Documents in respect of the Senior Obligations; and

(iv) the holders of such Additional Obligations shall not benefit from any collateral or guarantees or other credit enhancement that the Bank Finance Parties under the Financing Documents in respect of the Senior Bank Obligations do not benefit from;

(c) the holders of such Additional Obligations (or an agent or trustee on their behalf) accede to the Collateral Agency and Accounts Agreement and the Intercreditor Agreement, in each case if not already parties thereto in such capacity, as additional Senior Secured Parties or Subordinate Secured Parties, as applicable;

(d) on the date such Additional Obligations are incurred, the Senior Debt Service Reserve Account and the Subordinate Debt Service Reserve Account are funded in accordance with the Collateral Agency and Accounts Agreement with an amount at least equal to the Senior Debt Service Reserve Requirement and the Subordinate Debt Service Reserve Requirement, respectively, calculated after giving effect to the incurrence of such Indebtedness;

(e) immediately after giving effect to the incurrence of such Additional Obligations, the Lessee will be in compliance with Section 5.13 of the Common Terms Agreement.

(f) the Lessee shall have delivered to each Bank Finance Party an updated Base Case Financial Model;

(i) certified by a Senior Financial Officer, or other similar Responsible Officer, of the Lessee as (A) having been prepared in good faith with due care, based upon assumptions that are believed by the Lessee to be reasonable as of the time made and the time the Base Case Financial Model is delivered, and (B) representing, in the reasonable opinion of the Lessee, reasonable estimates of the future performance of the Lessee with such certification being confirmed by the Technical Advisor;

(ii) updated solely to reflect the incurrence of such partial refinancing;

(iii) assuming that the portion of the remaining Senior Bank Obligations that are not required to be the subject of Hedge Agreements pursuant to Section 5.13 hereof

will be Refinanced with proceeds from future Additional Obligations that have an average life similar to the refinancing Indebtedness being incurred and is subject to an interest rate similar to that of the Additional Obligations being incurred plus 1.00%;

(iv) demonstrates for each DSCR Calculation Period until the Bank Financing Maturity Date, a minimum projected Total Debt Service Coverage Ratio of at least 1:25 to 1.00 and a minimum projected Senior Debt Service Coverage Ratio of at least 1.30 to 1.00 (in each case, giving effect to the incurrence of such Indebtedness and the repayment of the refinanced Indebtedness); and

(v) accompanied by the summaries of significant assumptions related thereto, a report of the Model Auditor in respect of such updated Base Case Financial Model and a reliance letter addressed to each Bank Finance Party (to the extent any such report is not directly for the benefit of the Bank Finance Parties or does not by its terms provide for reliance thereon);

(g) the Nationally Recognized Rating Agency then rating the existing Senior Obligations has confirmed that the ratings on such then-existing Indebtedness, after giving pro forma effect to the incurrence of such refinancing, will not be lowered as a result of the incurrence thereof;

(h) no Event of Default or Default exists or would exist after giving effect thereto;

(i) such Additional Obligations are not incurred to Refinance any Indebtedness other than Senior Bank Obligations and Hedge Termination Payments payable by the Lessee under the Permitted Hedge Agreements;

(j) in the case of any Additional Obligations incurred in connection with any partial Refinancing of the Senior Bank Obligations and/or Hedge Termination Payments,

(i) 100% of the Net Cash Proceeds of such Additional Obligations are applied exclusively towards the payment of Senior Bank Obligations and any applicable Hedge Termination Payment payable by the Lessee in connection therewith;

(ii) the amount of such Additional Obligations does not exceed the sum of (A) the amount of Senior Bank Obligations so refinanced *plus* (B) all accrued and unpaid interest thereon and such costs and expenses incurred in connection therewith (including any compensation costs and fees associated with the Senior Bank Obligations so refinanced and the cost of issuance of such Additional Obligations) *plus* (C) the amount used to fund any required debt service reserve pursuant to such Additional Obligations *plus* (D) any Hedge Termination Payments payable by the Lessee in respect of terminating any Permitted Hedge Agreements in connection therewith, if applicable; and

(iii) such Additional Obligations are applied exclusively towards refinancing the Senior Bank Obligations on a pro rata basis.

Section 6.19 **Permitted Tax Distributions**. Notwithstanding anything contained in any other Financing Documents, the Lessee shall not pay, distribute, declare the payment of or make any Permitted Tax Distributions, whether as a dividend, loan, investment, loan repayment or in any other form, prior to the Credit Termination Date.

## ARTICLE VII

### EVENTS OF DEFAULT

Section 7.01 **Events of Default**. An “Event of Default” shall exist if any of the following conditions or events shall occur:

(a) the Lessee fails to pay any principal of any loan under the TDC Building Loan Agreement or the TDC Project Loan Agreement when the same becomes due and payable, whether at the due date thereof or by declaration or otherwise; or

(b) the Lessee fails to pay any interest on any loan under the TDC Building Loan Agreement or the TDC Project Loan Agreement or any fee payable pursuant to any Financing Document, or any other amount payable hereunder or under any Financing Document (other than the amounts referred to in clause (a) above; and including Ordinary Course Payments and Hedge Termination Payments), for more than three (3) Business Days after the same becomes due and payable; or

(c) the Lessee fails to perform or comply with any term contained in (i) Section 5.06, Section 5.09 (subject to the Equity Cure), Section 5.14(d), Section 5.14(e)(i), Section 5.14(e)(ii), Section 5.14(e)(iii), Section 5.14(e)(vii), Section 5.14(e)(viii) or Article VI of this Agreement, or (ii) Section 10.01, Section 10.10, Section 10.13, Section 10.14, Section 10.16, Section 10.18 and Section 10.21 of the Collateral Agency and Accounts Agreement;

(d) the Lessee fails to perform or comply with the terms contained in Section 5.13, and such failure is not remedied within five (5) Business Days after the occurrence thereof; or

(e) the Lessee or the Pledgor fails to perform or comply with any term contained herein or in any other Financing Document to which it is a party (other than those referred to in clause (a), (b) or (c) above or (r) below) and such failure is not remedied within thirty (30) days after the earlier of (i) a Responsible Officer obtaining actual knowledge of such default and (ii) the Lessee receiving written notice of such default from the Administrative Agent, any Bank Finance Party or any Hedge Provider; or

(f) any representation, warranty or certification made or deemed made by or on behalf of the Lessee, the Pledgor or any Sponsor in any Financing Document or in any certificate, notice, agreement or other document delivered pursuant hereto or thereto proves to have been false, incorrect or misleading in any material respect (except to the extent that such representation or warranty is already qualified by materiality or Material Adverse Effect, in which case such representation or warranty shall prove to have been false, incorrect or misleading in any respect) on the date as of which made or deemed made, and the underlying event or circumstance that made such representation and warranty false, incorrect or misleading (together with any adverse results resulting therefrom), if capable of cure, has not been cured within thirty (30) days after the earlier of (i) a Responsible Officer obtaining actual knowledge of such misrepresentation and (ii) the Lessee receiving written notice of such misrepresentation from the Administrative Agent or any Bank Finance Party; or

(g) (i) the Lessee is in default (as principal or as guarantor or other surety) in the payment of any principal of or premium or make-whole amount, interest or any other amounts on any Secured Obligations (other than the Credit Extensions; and including all payments and other obligations under any Hedge Agreement) or any other Indebtedness that is outstanding in an aggregate principal amount (or, with respect to any Hedge Agreement, a termination amount (however defined or described) that is, or would be, payable in connection with any such default) of at least \$25,000,000 (or its equivalent in the relevant currency of payment), in each case beyond any period of grace provided with respect thereto, or (ii) the Lessee is in default in the performance of or compliance with any term of any Secured Obligations (other than the Credit Extensions) or any other Indebtedness that is outstanding, in each case, in an

aggregate principal amount (or, with respect to any Hedge Agreement, a termination amount (however defined or described) that is, or would be, payable in connection with any such default) of at least \$25,000,000 (or its equivalent in the relevant currency of payment) or of any mortgage, indenture or other agreement relating thereto or any other event or condition (other than the need to terminate or partially terminate Hedge Agreements to comply with Section 5.13) exists and, in each case, as a consequence of such default, event or condition such Indebtedness is, has become, or has been declared (or one or more Persons are entitled to declare such Indebtedness to be), terminated, closed-out, liquidated or due and payable before its stated maturity or termination or before its regularly scheduled dates of payment, or (iii) as a consequence of the occurrence or continuation of any event or condition (other than the passage of time or the right of the holder of Indebtedness to convert such Indebtedness into equity interests or the need to terminate or partially terminate Hedge Agreements to comply with Section 5.13), (A) either the Lessee has become obligated to purchase, pay or repay any Secured Obligation (other than the Credit Extensions; and including, for the avoidance of doubt, all payments and other obligations under any Hedge Agreement) or any other Indebtedness or any Secured Obligation (other than the Credit Extensions) or any other Indebtedness have otherwise been terminated, closed-out or liquidated that is outstanding in an aggregate principal amount (or, with respect to any Hedge Agreement, a termination amount (however defined or described) that is, or would be, payable in connection with any such event or condition) of at least \$25,000,000 (or its equivalent in the relevant currency of payment), or (B) one or more Persons have the right to require the Lessee so to terminate, close-out, purchase, pay, or repay such Secured Obligation or other Indebtedness, in the case of each of clauses (A) and (B), before its regular or stated maturity or termination or before its regularly scheduled dates of payment, or otherwise as a result of a close-out, termination or liquidation of the applicable Secured Obligations or Indebtedness; provided that this clause (g)(iii) shall not apply to mandatory prepayments or mandatory redemptions of the Secured Obligations required by the terms of the Financing Documents other than as a result of a breach thereof; or

(h) the Lessee, the Pledgor or, so long as any of their obligations under the Equity Contribution Agreement remains outstanding, any Sponsor (i) is generally not paying, or admits in writing its inability to pay, its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, reorganization, moratorium or other similar law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, (v) is adjudicated as insolvent or to be liquidated, or (vi) takes corporate action for the purpose of any of the foregoing; or

(i) a court or other Governmental Authority of competent jurisdiction enters an order appointing a custodian, receiver, trustee or other officer with similar powers with respect to the Lessee, the Pledgor or, so long as any of their obligations under the Equity Contribution Agreement remains outstanding, any Sponsor or with respect to any substantial part of their respective properties, in each case without the consent of such Person, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of any such Person, or any such petition shall be filed against any such Person and such petition shall not be dismissed within sixty (60) days; or

(j) any event occurs with respect to the Lessee, the Pledgor or, so long as any of their obligations under the Equity Contribution Agreement remains outstanding, any Sponsor that, under the laws of any jurisdiction, is analogous to any of the events described in clause (h) or (i) above, provided that the applicable grace period, if any, which shall apply shall be the one applicable to the relevant proceeding which most closely corresponds to the proceeding described in clause (h) or (i) above; or



(k) a final judgment or judgments or orders for the payment of money aggregating in excess of \$25,000,000 (or its equivalent in the relevant currency of payment), including any such final order enforcing a binding arbitration decision, are rendered against the Lessee, the Pledgor or, so long as any of their obligations under the Equity Contribution Agreement remains outstanding, any Sponsor and which judgments are not, within sixty (60) days after entry thereof, bonded, discharged or stayed pending appeal, or are not discharged within sixty (60) days after the expiration of such stay; or

(l) (i) any Material Project Document or material provision thereof shall terminate, shall be declared null and void or shall otherwise cease to be in full force and effect (except upon fulfillment of all obligations thereunder or the scheduled expiration of the term of such Material Project Document) or shall be revoked or repudiated by any party thereto (other than the Lessee) and, in the case of a Material Sublease, such termination, revocation or repudiation has had or could reasonably be expected to have a Material Adverse Effect, (ii) the Lessee or any Material Project Party shall be in breach of, or in default under, a Material Project Document and such breach or default individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect or (iii) the Port Authority, the D&C Guarantor or the MSA Guarantor shall be subject to any of the events, circumstances or condition described in clauses (h), (i), (j) and (k) above of this Section 7.01 or (iv) any Material Project Party party to any Financing Document shall fail to perform or comply with any of the material covenants or agreements contained in such Financing Document and, in the case of a Material Project Party party to a Material Sublease, such failure has had or could reasonably be expected to have a Material Adverse Effect; provided that (A) any event described in clause (i) (other than with respect to the Lease Agreement) above or clause (ii) (other than with respect to a breach or default by the Lessee) above of this Section 7.01(l) shall not be an Event of Default if (x) the Lessee notifies the Administrative Agent of its intention to replace the affected Material Project Document and (y) within ninety (90) days after such notification the Lessee has replaced such Material Project Document with a substitute agreement and a substitute counterparty that are, in each case, reasonably acceptable to the Required Bank Finance Parties, (B) any event described in clause (iii) (other than with respect to the Port Authority) above of this Section 7.01(l) shall not be an Event of Default if (x) the Lessee notifies the Administrative Agent of its intention to replace the D&C Guaranty (in case the D&C Guarantor is the affected party) or the Manager Parent Guaranty (in case the Manager is the affected party) and (y) within ninety (90) days after such notification the Lessee has replaced such Material Project Document with a substitute agreement and a substitute counterparty that are, in each case, reasonably acceptable to the Required Bank Finance Parties and (C) no Event of Default shall occur under clause (iv) above of this Section 7.01(l) if such failure is cured within thirty (30) days after the earlier of (x) notice from the Administrative Agent or any Bank Finance Party of such default and (y) a Responsible Officer obtaining actual knowledge of such default; or

(m) an event or circumstance shall arise which shall give the Port Authority the right to terminate the Lease Agreement and such event or circumstance shall have been outstanding for more than the cure or grace period available to the Lessee (but without taking into account the period available to the Recognized Mortgagee) pursuant to the Lease Agreement; or

(n) the obligations of the Lessee under this Agreement and the other Senior Bank Financing Documents shall fail to rank at least *pari passu* with all other Senior Secured Debt of the Lessee and senior to all Indebtedness of the Lessee other than Senior Secured Debt (other than Permitted Indebtedness described in clause (e) or (f) thereof), or any Security Interest in a material portion of the Senior Collateral purported to be created by any Senior Collateral Document shall cease to be a valid, perfected Security Interest having the priority specified in the applicable Senior Collateral Document or on the property covered thereby for any reason (other than Senior Collateral which is sold, transferred or otherwise disposed of in a transaction permitted under the Financing Documents); or

(o) any Authorization shall cease to be in full force and effect, and such event has had or could reasonably be expected to have a Material Adverse Effect; or

(p) any Senior Collateral Document or any material provision thereof:

(i) is revoked, terminated prior to its scheduled date of termination, ceases to be in full force and effect or ceases to provide the first-priority perfected Security Interest (subject only to Permitted Liens having priority by operation of law) intended thereby with respect to any portion of the Senior Collateral;

(ii) becomes unlawful or is declared void; or

(iii) is repudiated or its validity or enforceability is challenged by any party thereto (other than any Secured Party); or

(q) any Senior Bank Financing Document (other than a Senior Collateral Document) or any material provision thereof:

(i) is revoked, terminated prior to its scheduled termination date or expires or otherwise ceases to be in full force and effect (other than in accordance with its terms);

(ii) becomes unlawful or is declared void;

(iii) is repudiated or its validity or enforceability is challenged by any party thereto (other than any Senior Bank Creditor); or

(iv) its validity or enforceability is challenged by any Person who is not a party thereto, which challenge has had or could reasonably be expected to have a Material Adverse Effect; or

(r) (i) The provider of any Equity Letter of Credit fails to honor its obligations to fund any draw request appropriately submitted thereunder and either (A) a replacement Acceptable Letter of Credit is not issued within ten (10) Business Days following such failure on substantially the same terms or (B) the applicable Sponsor has not cash collateralized its respective obligations in substitution of such Equity Letter of Credit by deposit of amounts into an Equity Collateral Account or the Equity Contribution Sub-Account of the Construction Account under the Collateral Agency and Accounts Agreement within ten (10) Business Days following such failure or (ii) any Sponsor shall fail to make in full any Equity Contribution when required in accordance with the terms of the Equity Contribution Agreement (provided that if such Sponsor's obligations are secured by Equity Support with an undrawn or available amount equal to or greater than the amount of such Equity Contribution (or an applicable Equity Letter of Credit shall have been previously drawn or funds have been withdrawn from an Equity Collateral Account and the proceeds thereof shall have been deposited in the Equity Contribution Sub-Account of the Construction Account under the Collateral Agency and Accounts Agreement), before any such failure shall constitute an Event of Default, the Senior Collateral Agent shall have made a drawing under the applicable Equity Letter of Credit supplied by such Sponsor or a withdrawal from the applicable Equity Collateral Account pursuant to the Equity Contribution Agreement (or shall have access to the applicable amount from the Equity Contribution Sub-Account of the Construction Account under the Collateral Agency and Accounts Agreement), and the proceeds of such drawing or withdrawal (if any) shall have been insufficient to make the amount of such Equity Contribution in full), and such failure shall continue unremedied or unwaived for a period of ten (10) Business Days; provided that with respect to each of clauses (i) and (ii) above, no Event of Default shall occur if before the last day in which such Default could have been remedied prior to an Event of Default occurring, any one or more of the Sponsors or their Affiliates has made a cash contribution to an Equity Collateral Account or to the Equity Contribution Sub-Account of the Construction Account under the Collateral Agency and Accounts Agreement, or the Equity Letter of Credit has been replaced with an Acceptable Letter of Credit, sufficient to fund any deficiencies resulting after the applicable Equity Letters of Credit have been drawn (or after the withdrawal of any applicable cash

collateral (it being understood that, in each case, any withdrawal from an Equity Collateral Account or any draw on a letter of credit, in each case provided by a Sponsor pursuant to the Equity Contribution Agreement within the cure periods described above shall satisfy the obligations of such Sponsor with respect to Equity Contributions to be made by such Sponsor and cure any default in respect thereof)); provided, however, that if any of the events set forth above is caused by, or results from the action or inaction of, one (and not all) of the Sponsors, such event shall not constitute an Event of Default so long as such event is capable of being remedied by the other Sponsors and is remedied within ten (10) Business Days after the Administrative Agent gives written notice thereof to such Sponsors, or, with the prior written approval of the Required Bank Finance Parties, such longer period as is reasonably necessary under the circumstances to remedy such event; or

(s) the occurrence of an ERISA Event; or

(t) Substantial Completion of Phase 2 shall not have occurred on or before the date that is six months prior to the Outside Completion Date (as such date may be adjusted from time to time as expressly provided in the Lease Agreement); provided that an Event of Default under this clause (t) shall not occur so long as, at least 30 days prior to such date that is six months prior to the Outside Completion Date and monthly thereafter until the earlier of the date of Substantial Completion of Phase 2 has occurred or the Outside Completion Date, the Technical Advisor certifies that Substantial Completion of Phase 2 is reasonably expected to occur on or before the Outside Completion Date; or

(u) the Project (or any substantial portion thereof) shall have been abandoned by the Lessee for a period of at least thirty (30) consecutive days or sixty (60) non-consecutive days in any twelve (12) month period; or

(v) the occurrence of a Total Loss; or

(w) the occurrence of a Change of Control; or

(x) any Funding Shortfall occurs, as determined by the Technical Advisor at the request of any Bank Finance Party, and continues unwaived and unremedied for a period in excess of fifteen (15) days after the earlier of (i) the date on which the Administrative Agent or any Bank Finance Party give written notice thereof to the Lessee and (ii) the date on which the Lessee should have known that such Funding Shortfall exists; or

(y) the occurrence of an “Event of Default” under and as defined in any of the Collateral Agency and Accounts Agreement, the Credit Agreement, the Indenture, the Bondholder’s Agreement, the TDC Building Loan Agreement or the TDC Project Loan Agreement that continues beyond any grace or cure period provided for thereunder,

then, so long as such event shall be continuing (other than an event with respect to the Lessee described in Section 7.01(h), Section 7.01(i) or Section 7.01(j)), the Administrative Agent shall, at the request of the Required Bank Finance Parties, by notice to the Lessee, take any or all of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately (“Credit Termination”); (ii) subject to Section 3.3(a)(v) of the Intercreditor Agreement, declare the Credit Extensions (including, without limitation, the Series 2022A Bonds) (with accrued interest thereon) and all other amounts owing under the Credit Agreement, the Series 2022A Bond Purchase Agreement, the Bondholder’s Agreement and the other Senior Bank Financing Documents (excluding, for the avoidance of doubt, all obligations under Permitted Hedge Agreements) to be due and payable forthwith, whereupon the same shall immediately become due and payable, and in case of any event with respect to the Lessee described in Section 7.01(h), Section 7.01(i) or Section 7.01(j), the Commitments shall automatically terminate and the Credit Extensions (with accrued interest thereon) and all other amounts owing under the Credit Agreement (including, without limitation, the Series 2022A Bonds, the Series

2022A Bond Purchase Agreement, the Bondholder's Agreement and the other Senior Bank Financing Documents (excluding, for the avoidance of doubt, all obligations under Permitted Hedge Agreements) shall immediately become due and payable, in each case without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Lessee, and (iii) take any other action at law or in equity, including mandamus, specific performance or injunctive relief.

## ARTICLE VIII

### CREDIT EXTENSIONS TRUE UP; DEEMED DRAWINGS

#### Section 8.01 True-up; Pro-Rata Result.

(a) If an Event of Default shall have occurred and is continuing, and any Bank Finance Party (an "Overdrawn Bank") shall determine that, as a result of any Credit Extension made by it, its Bank Finance Party Funded Exposure exceeds its pro rata portion of the Aggregate Bank Finance Party Exposure, then, such Overdrawn Bank may (and is hereby authorized by the Lessee and the other Bank Finance Parties to) deliver a written notice to the Administrative Agent (the "True-Up Notice") in the form of Exhibit J (copied to the Lessee and each Bank Finance Party) requesting that the other Bank Finance Parties (the "Underdrawn Banks") make Credit Extensions in the amount necessary to ensure that, after giving effect to the prepayments and redemptions contemplated by this Section 8.01, the Overdrawn Bank's Bank Finance Party Funded Exposure is equal to its *pro rata* portion of the Aggregate Bank Finance Party Exposure (without giving effect to any termination of the Commitments other than due to their full utilization or originally scheduled expiration) (the "Pro Rata Result"), and specifying the aggregate amount to be disbursed by the Underdrawn Banks to ensure the Pro Rata Result (the "True-up Amount"); provided that (i) no Underdrawn Bank shall be required to make a Credit Extension in excess of (x) its available Commitments (without giving effect to any termination of such Commitments other than due to their full utilization or originally scheduled expiration) or (y) an amount that would cause such Underdrawn Bank's Bank Finance Party Funded Exposure to be equal to its pro rata portion of the Aggregate Bank Finance Party Exposure and (ii) neither the Purchaser nor any other holder of Series 2022A Bonds shall be required to make a Credit Extension to satisfy its obligations pursuant to this Section 8.01 unless the Administrative Agent has received a Favorable Opinion of Bond Counsel.

(b) Notwithstanding anything to the contrary in Article II or Article IV of the Credit Agreement or Section 1 or Section 6 of the Series 2022A Bond Purchase Agreement, on the second Business Day after its receipt of the True-Up Notice from the Overdrawn Bank:

(i) if the Overdrawn Bank is the Purchaser or other holder of any Series 2022A Bonds, each Underdrawn Bank shall make a Credit Extension in an amount equal to its pro rata portion of the True-Up Amount calculated on the basis of the available Commitments of all Underdrawn Banks by transferring such amount in Dollars and immediately available funds directly to the Trustee with written notice to redeem the applicable principal amount of Series 2022A Bonds pursuant to Section 2.04(c)(ii) of the First Supplemental Indenture; or

(ii) if the Overdrawn Bank is a Senior Lender:

(A) each Underdrawn Bank that is a Senior Lender shall make a Credit Extension in an amount equal to its pro rata portion of the True-up Amount calculated on the basis of the available Commitments of all Underdrawn Banks by transferring such amount, or causing such amount, to be transferred, in Dollars and immediately available funds directly to the Overdrawn Bank to be applied in accordance with paragraph (d) below; and

(B) each Underdrawn Bank that is the Purchaser or other holder of Series 2022A Bonds shall make, or cause the Initial Purchaser to make, a Credit Extension in an amount equal to its pro rata portion of the True-up Amount calculated on the basis of the available Commitments of all Underdrawn Banks by transferring the purchase price for the Drawing in Dollars and immediately available funds to the Trustee to be applied in accordance with paragraph (d) below.

Document:

(c) Notwithstanding anything to the contrary in any Senior Bank Financing

(i) none of the conditions to the obligation to make a Credit Extension specified in Section 4.02 hereof or Article IV of the Credit Agreement shall be required to be satisfied as a condition to the Credit Extension contemplated to be made by Senior Lenders in this Section 8.01; and

(ii) No condition to the obligation to advance a Drawing specified in Section 6(b) of the Series 2022A Bond Purchase Agreement, other than receipt of a Favorable Opinion of Bond Counsel, shall be required to be satisfied as a condition to the True-Up Drawing contemplated to be made by the Initial Purchaser (or other holder of Series 2022A Bonds), other than, if such True-Up Drawing would constitute the Initial Drawing, in which case the conditions set forth in Section 6(b)(iii) and (iv) of the Series 2022A Bond Purchase Agreement shall be satisfied as a condition to the obligation of the Purchaser (or other holder of Series 2022A Bonds) to advance, or cause the Initial Purchaser to advance, such True-Up Drawing; it being understood that the Lessee and such Purchaser (or other holder of Series 2022A Bonds) shall make commercially reasonable efforts to cause such conditions to be satisfied.

(d) If any Underdrawn Bank makes a Credit Extension pursuant to this Section 8.01:

(i) If the Underdrawn Bank is the Purchaser or other holder of the Series 2022A Bonds, upon the Trustee's receipt of the purchase price of such Credit Extension the Trustee shall:

(A) if the Overdrawn Bank is a Senior Lender, deliver the proceeds of such purchase price in the form received to the Administrative Agent, who shall then deliver such proceeds in the form received to each applicable Overdrawn Bank, and such Overdrawn Bank shall apply the proceeds of such Credit Extension to the payment of such Overdrawn Bank's Credit Extensions, or,

(B) if the Overdrawn Bank is the Purchaser or other holder of the Series 2022A Bonds, apply or cause to be applied such purchase price in the form received to the redemption of Series 2022A Bonds held by, or for the benefit of, such Overdrawn Bank; and

(ii) if the Underdrawn Bank is a Senior Lender:

(A) if the Overdrawn Bank is a Senior Lender, upon the Overdrawn Bank's receipt of the proceeds of such Credit Extension, it shall apply such proceeds to the payment of such Overdrawn Bank's Credit Extensions, or,

(B) if the Overdrawn Bank is the Purchaser or other holder of the Series 2022A Bonds, upon the Trustee's receipt of the proceeds of such Credit Extension, it shall apply such proceeds to the redemption of Series 2022A Bonds.

(e) The Lessee shall perform such actions as are reasonably requested in writing by the Overdrawn Bank to effect such Credit Extension. The Lessee shall not be required to pay any fees, penalties or premiums as a result of any payments of the Senior Loans or redemption of Series 2022A Bonds pursuant to this Section 8.01.

(f) If the transactions contemplated by this Section 8.01 are completed prior to a Credit Acceleration, the available Commitments of (i) an Overdrawn Bank shall be increased by the aggregate amount of proceeds of Credit Extensions received by such Overdrawn Bank or if such Overdrawn Bank is the Purchaser, the principal amount of Series 2022A Bonds that are redeemed with the proceeds of such Credit Extension, and (ii) each Underdrawn Bank shall be decreased by the aggregate amount of the proceeds of Credit Extensions made by such Underdrawn Bank, in each case pursuant to this Section 8.01.

(g) Each of the Issuer and Lessee hereby consents to the application of the proceeds of the Credit Extensions in accordance with this Section 8.01. Each Overdrawn Bank that is a Senior Lender shall notify in writing the Administrative Agent (with copy to the Lessee) the type and amount of its Senior Loans that were paid with the proceeds of Credit Extensions made under this Section. Each Overdrawn and each Underdrawn Bank shall notify the Administrative Agent, the Senior Collateral Agent, the Intercreditor Agent and, in the case of the Purchaser or other holder of Series 2022A Bonds, the Trustee, of the updated amount of its available Commitments in accordance with paragraph (f) above.

Section 8.02 **Tax Exempt Status Change in Law.**

(a) If at any time during the Availability Period,

(i) any legislation shall be enacted by the Congress of the United States or recommended to the Congress for passage by the President of the United States, or the Treasury Department of the United States or the Internal Revenue Service or the New York State Legislature or favorably reported for passage to either House of the Congress by any committee of such House to which such legislation has been referred for consideration,

(ii) a decision by a court of the United States or of the State of New York or the United States Tax Court shall be rendered, or

(iii) an order, ruling, regulation (final, temporary or proposed), determination by or on behalf of the Treasury Department of the United States, the Internal Revenue Service or other governmental agency shall be made or proposed,

the effect of any or all of which would be to impose, directly or indirectly, federal income taxation or state income taxation upon interest received on obligations of the general character of the Series 2022A Bonds, or other action or events shall have transpired which may have the purpose or effect, directly or indirectly, of changing the federal or state income tax consequences of the transaction contemplated by the Series 2022A Bond Purchase Agreement, then, upon the Purchaser giving written notice to the Administrative Agent, with a copy to the Lessee, the Lessee shall be deemed to have delivered a Drawing Request requesting a Drawing of the full amount of the remaining Available Commitment (as defined in the Series 2022A Bondholder Agreement) and, notwithstanding anything to the contrary in the Senior Financing Documents, the Purchaser shall make such Credit Extension no later than on the second (2<sup>nd</sup>) Business Day after such notice by transferring such amount in Dollars and immediately available funds to the Trustee against delivery of an equal principal amount of Series 2022A Bonds and the Trustee shall transfer such funds directly to the Securities Intermediary for the deposit into the Series 2022A Bond Proceeds Sub-Account of the Construction Account.

## ARTICLE IX

### THE AGENTS

#### Section 9.01 **Appointment and Authorization of the Administrative Agent.**

(a) Each Bank Finance Party hereby irrevocably designates and appoints the Administrative Agent, to act on its behalf as its agent hereunder and under the other Senior Bank Financing Documents and authorizes the Administrative Agent in such capacity, to take such actions on its behalf and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Each Agent, by executing this Agreement, hereby accepts such appointment.

(b) Each Bank Finance Party irrevocably authorizes the Administrative Agent to enter into the Collateral Agency and Accounts Agreement and to appoint the Senior Collateral Agent pursuant to the terms of the Collateral Agency and Accounts Agreement.

(c) The Administrative Agent is hereby authorized to execute, deliver and perform each Senior Bank Financing Document to which it is intended to be a party. The Administrative Agent hereby agrees and each Bank Finance Party hereby authorizes the Administrative Agent, to enter into the amendments and other modifications of the Senior Collateral Documents in accordance with the terms of the Collateral Agency and Accounts Agreement (and subject to Section 10.02(b)).

Section 9.02 **Administrative Agent's Rights as a Bank Finance Party.** The Administrative Agent shall have the same rights and powers in its capacity as a Bank Finance Party as any other Bank Finance Party and may exercise the same as though it were not Administrative Agent, and the Administrative Agent and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Lessee or any Affiliate thereof as if it were not the Administrative Agent hereunder.

Section 9.03 **Duties of the Administrative Agent; Exculpatory Provisions.** The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Senior Bank Financing Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing, (b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Senior Bank Financing Documents that the Administrative Agent is required to exercise in writing by the Required Bank Finance Parties, the Required Lenders or the Required Security Deposit Facility Lenders, as applicable, and (c) except as expressly set forth herein and in the other Senior Bank Financing Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Lessee that is communicated to or obtained by the bank serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Bank Finance Parties, the Required Lenders or the Required Security Deposit Facility Lenders, as applicable, or in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall not be deemed to have knowledge of any Default or Event of Default unless and until written notice thereof is given to the Administrative Agent by the Lessee or a Bank Finance Party, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Financing Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein, (iv) the validity,

enforceability, effectiveness or genuineness of this Agreement, any other Financing Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein or therein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

Section 9.04 **Reliance by the Administrative Agent.** The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing reasonably believed by it to be genuine and to have been signed or sent by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and reasonably believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. The Administrative Agent may consult with legal counsel (who may be counsel for the Lessee), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the reasonable advice of any such counsel, accountants or experts.

Section 9.05 **Delegation of Duties of the Administrative Agent.** The Administrative Agent may perform any of its duties and exercise any of its rights and powers by or through any one or more sub-agents appointed by the Administrative Agent with reasonable care. The Administrative Agent shall not be responsible for the acts or omissions of any sub-agent or attorney-in-fact that Administrative Agent selects unless such selection is finally determined to have been grossly negligent or involved willful misconduct on the Administrative Agent's part.

Section 9.06 **Withholding of Taxes by the Administrative Agent; Indemnification.** To the extent required by any Applicable Law, the Administrative Agent may withhold from any payment to any Bank Finance Party an amount equivalent to any applicable withholding Taxes. If any Governmental Authority asserts a claim that the Administrative Agent did not properly withhold Taxes from amounts paid to or for the account of any Bank Finance Party because the appropriate form was not delivered by the Bank Finance Party or was not properly executed by the Bank Finance Party or because such Bank Finance Party failed to notify the Administrative Agent of a change in circumstance which rendered the exemption from, or reduction of, withholding Taxes ineffective, such Bank Finance Party shall indemnify the Administrative Agent fully for all amounts paid, directly or indirectly, by Administrative Agent as Taxes or otherwise (except, in the case of any Indemnified Taxes, to the extent the Lessee has already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Lessee to do so), including any penalties or interest and together with reasonable expenses incurred and documented except that no Bank Finance Party shall be liable to the Administrative Agent for any portion of such amounts resulting from the gross negligence or willful misconduct of the Administrative Agent as determined by a final, non-appealable judicial order of a court having jurisdiction over the subject matter.

Section 9.07 **Resignation of the Administrative Agent.** The Administrative Agent (i) may resign at any time upon thirty (30) days' notice by notifying the Bank Finance Parties and the Lessee in writing, and (ii) may be removed at any time (x) by the Required Bank Finance Parties with or without cause or (y) by the Lessee due to the Administrative Agent's gross negligence or willful misconduct. Upon any such resignation or removal, the Required Bank Finance Parties shall have the right, subject to the consent of the Lessee (such consent not to be unreasonably withheld), to appoint a successor. If no successor shall have been so appointed by the Required Bank Finance Parties and approved by the Lessee and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives written notice of its resignation or after the Required Bank Finance Parties' removal of the retiring Administrative Agent, then the retiring Administrative Agent may, subject to the consent of the Lessee (unless an Event of Default has occurred and is continuing) (such consent not to be unreasonably withheld), on behalf of the Bank Finance Parties, appoint a successor Administrative Agent, which shall be a Bank Finance Party, an Affiliate of a Bank Finance Party or a financial institution having a combined capital and surplus that is not less than \$500,000,000. Upon the acceptance of its appointment as Administrative Agent hereunder by a



successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder (if not already discharged therefrom as provided above in this Section 9.07). The fees payable by the Lessee to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Lessee and such successor. After the Administrative Agent's resignation or removal hereunder, the provisions of this Article IX and Section 10.03 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Administrative Agent.

**Section 9.08 Non-Reliance on the Administrative Agent or Other Bank Finance Parties.** Each Bank Finance Party acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Bank Finance Party and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Bank Finance Party also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Bank Finance Party, and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Financing Document or any related agreement or any document furnished hereunder or thereunder.

**Section 9.09 No Other Duties; Etc.** The parties agree that none of the Agents shall have any obligations, liabilities or responsibilities except for those expressly set forth herein and in the other Senior Bank Financing Documents.

**Section 9.10 Non-Receipt of Funds by Administrative Agent; Erroneous Payments; Netting and Set Off Exclusion for Hedge Agreement.**

(a) Unless the Administrative Agent shall have received notice from a Bank Finance Party or Lessee (either one as appropriate being the "Payor") prior to the date on which such Bank Finance Party is to make payment hereunder to Administrative Agent of the proceeds of a Loan or Lessee is to make payment to Administrative Agent, as the case may be (either such payment being a "Required Payment"), which notice shall be effective upon receipt, that the Payor will not make the Required Payment in full to Administrative Agent, Administrative Agent may assume that the Required Payment has been made in full to Administrative Agent on such date, and Administrative Agent in its sole discretion may, but shall not be obligated to, in reliance upon such assumption, make the amount thereof available to the intended recipient on such date. If and to the extent the Payor shall not have in fact so made the Required Payment in full to Administrative Agent, the recipient of such payment shall repay to Administrative Agent forthwith on demand such amount made available to it together with interest thereon, for each day from the date such amount was so made available by Administrative Agent until the date Administrative Agent recovers such amount, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

(b)

(i) Each Bank Finance Party hereby agrees that (x) if the Administrative Agent notifies such Bank Finance Party that the Administrative Agent has determined in its sole discretion that any funds received by such Bank Finance Party from the Administrative Agent or any of its Affiliates (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, a "Payment") were erroneously transmitted to such Bank Finance Party (whether or not known to such Bank Finance Party), and demands the return of such Payment (or a portion thereof), such Bank Finance Party shall promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or

portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Bank Finance Party to the date such amount is repaid to the Administrative Agent at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect, and (y) to the extent permitted by applicable law, such Bank Finance Party shall not assert, and hereby waives, as to the Administrative Agent, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Payments received, including without limitation any defense based on “discharge for value” or any similar doctrine. A notice of the Administrative Agent to any Bank Finance Party under this Section 9.10 shall be conclusive, absent manifest error.

(ii) Each Bank Finance Party hereby further agrees that if it receives a Payment from the Administrative Agent or any of its Affiliates (x) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by the Administrative Agent (or any of its Affiliates) with respect to such Payment (a “Payment Notice”) or (y) that was not preceded or accompanied by a Payment Notice, it shall be on notice, in each such case, that an error has been made with respect to such Payment. Each Bank Finance Party agrees that, in each such case, or if it otherwise becomes aware a Payment (or portion thereof) may have been sent in error, such Bank Finance Party shall promptly notify the Administrative Agent of such occurrence and, upon demand from the Administrative Agent, it shall promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Bank Finance Party to the date such amount is repaid to the Administrative Agent at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

(iii) The Lessee hereby agrees that (x) in the event an erroneous Payment (or portion thereof) is not recovered from any Bank Finance Party that has received such Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights of such Bank Finance Party with respect to such amount and (y) an erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Lessee, except, in each case, to the extent such erroneous Payment is, and solely with respect to the amount of such erroneous Payment that is, comprised of funds received by the Administrative Agent from the Lessee for the purpose of making a payment of the Senior Bank Obligations.

(iv) Each party’s obligations under this Section 9.10 shall survive the resignation or replacement of the Administrative Agent or any transfer of rights or obligations by, or the replacement of, a Bank Finance Party, the termination of the Senior Term Loan Commitments or the repayment, satisfaction or discharge of all Obligations under any Financing Document.

(c) Nothing contained in this Agreement or any other Financing Document shall be construed to impair the rights of any Permitted Hedge Provider to exercise its rights to setoff and net amounts under and among any Permitted Hedge Agreements to which it is a party, to the extent permitted under such Permitted Hedge Agreements; provided that each Permitted Hedge Provider agrees that it shall

only exercise such rights of setoff and netting among amounts owing by or to such Permitted Hedge Provider, as applicable, under the Permitted Hedge Agreements, to which it is a party.

Section 9.11 **Force Majeure**. In no event shall the Administrative Agent be responsible or liable for any failure or delay in the performance of its obligations under the Senior Bank Financing Documents arising out of or caused by, directly or indirectly, forces beyond its control, including strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services, the unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility or any act or provision of any present or future law; it being understood that the Administrative Agent shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 9.12 **Certain ERISA Matters**

(a) Each Bank Finance Party (x) represents and warrants, as of the date such Person became a Bank Finance Party party hereto, and (y) covenants, from the date such Person became a Bank Finance Party party hereto to the date such Person ceases being a Bank Finance Party party hereto, for the benefit of, the Administrative Agent and its respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Lessee, that at least one of the following is and will be true:

(b) such Bank Finance Party is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) of one or more Benefit Plans in connection with such Bank Finance Party’s entrance into, participation in, administration of and performance of the Credit Extensions, the Commitments or the Senior Bank Financing Documents,

(c) the prohibited transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable so as to exempt from the prohibitions of Section 406 of ERISA and Section 4975 of the Code such Bank Finance Party’s entrance into, participation in, administration of and performance of the Credit Extensions or the Commitments and the Senior Bank Financing Documents,

(i) (A) such Bank Finance Party is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Bank Finance Party to enter into, participate in, administer and perform the Credit Extensions or the Commitments and the Senior Bank Financing Documents, (C) the entrance into, participation in, administration of and performance of the Credit Extensions or the Commitments and the Senior Bank Financing Documents satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Bank Finance Party, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Bank Finance Party’s entrance into, participation in, administration of and performance of the Credit Extensions or the Commitments and the Senior Bank Financing Documents, or

(ii) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Bank Finance Party.

(d) In addition, unless either (i) sub-clause (b) in the immediately preceding clause (a) is true with respect to a Bank Finance Party or (ii) a Bank Finance Party has provided another representation, warranty and covenant as provided in sub-clause (ii) in the immediately preceding clause 0, such Bank Finance Party further (x) represents and warrants, as of the date such Person became a Bank Finance Party party hereto, and (y) covenants, from the date such Person became a Bank Finance Party party hereto to the date such Person ceases being a Bank Finance Party party hereto, for the benefit of, the Administrative Agent and its respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Lessee, that neither the Administrative Agent nor any of its Affiliates is a fiduciary with respect to the assets of such Bank Finance Party involved in such Bank Finance Party's entrance into, participation in, administration of and performance of the Credit Extensions or the Commitments and the Senior Bank Financing Documents (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Senior Bank Financing Document or any documents related hereto or thereto).

## ARTICLE X

### MISCELLANEOUS

#### Section 10.01 Notices.

(a) Except as otherwise expressly provided herein or in any other Financing Document, all notices and communications provided for hereunder shall be in writing (including, unless the context otherwise expressly provides, by facsimile or electronic transmission, including email) and delivered personally, or by registered or certified first-class mail with postage prepaid, or made, given or furnished in writing by confirmed facsimile or by prepaid courier service or electronic communication if the sender on the same day promptly confirms delivery thereof telephonically and, if requested by the recipient, sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid). Any such notice must be sent:

(i) **Issuer:**

New York Transportation Development Corporation

[REDACTED]

With a copy to:

Squire Patton Boggs (US) LLP

[REDACTED]

(ii) **Lessee:**

JFK Millennium Partners, LLC

[REDACTED]

With a copy to

O'Melveny & Myers

[REDACTED]

(iii) **Intercreditor Agent:**

[REDACTED]

[REDACTED]

(iv) **Senior Collateral Agent:**

[REDACTED]

[REDACTED]

(v) **Administrative Agent:**

[REDACTED]

[REDACTED]

(vi) **Trustee**

[REDACTED]

[REDACTED]

(vii) **Series 2022A Bondholder:**

[REDACTED]

and

[REDACTED]

and

[REDACTED]

(viii) If to a Bank Finance Party, to it at its address (or facsimile or email address) set forth in its Administrative Questionnaire.

Any notice given to a party by mail or by courier shall be deemed delivered upon receipt thereof (unless the party refuses to accept delivery, in which case the party shall be deemed to have accepted delivery upon presentation). Any notice given to a party by facsimile or email transmission shall be deemed effective on the date it is actually sent to the intended recipient by confirmed email transmission in accordance with the procedures established in the first clause of this Section 10.01 to the email address referenced above, as applicable.

(b) Electronic Communications. Notices and other communications to the Bank Finance Parties hereunder may be delivered or furnished by electronic communication (including e-mail, FpML, and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent. The Administrative Agent or the Lessee may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours

of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

Section 10.02 **Waivers; Amendments.**

(a) **No Waiver; Remedies Cumulative; Enforcement.** No failure or delay by the Administrative Agent or any Bank Finance Party in exercising any right, remedy, power or privilege hereunder or under any other Financing Document, and no course of dealing between the Lessee, or any of its Affiliates, on the one hand, and the Administrative Agent or any Bank Finance Party on the other hand, shall impair any such right, power or privilege or operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege, or any abandonment or discontinuance of steps to enforce such a right remedy, power or privilege, preclude any other or further exercise thereof or the exercise of any other right remedy, power or privilege. The rights, remedies, powers and privileges of the Administrative Agent and the Bank Finance Parties hereunder and under the Senior Bank Financing Documents are cumulative and are not exclusive of any rights, remedies, powers or privileges that any such Person would otherwise have.

(b) **Amendments, Etc.** Except as otherwise expressly set forth in this Agreement, no amendment or waiver of any provision of this Agreement or any other Senior Bank Financing Document, and no consent to any departure by the Lessee therefrom, shall be effective unless in writing executed by the Lessee and the Required Bank Finance Parties, and acknowledged by the Administrative Agent, or by the Lessee and the Administrative Agent with the consent of the Required Bank Finance Parties (other than with respect to any amendment or waiver contemplated in clauses (B), (C) or (D) of Section 10.02(b)(vii), which shall only require the consent of the Required Lenders, the Required Senior Term Lenders, the Required Security Deposit Facility Lenders and the Security Deposit Facility LC Issuing Bank), and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided that no such amendment, waiver or consent shall:

(i) extend or increase any Commitment of any Bank Finance Party without the written consent of such Bank Finance Party (it being understood that a waiver of any condition precedent set forth in Article IV or the waiver of any Default or Event of Default shall not constitute an extension or increase of any Commitment of any Bank Finance Party);

(ii) reduce the principal or par value of, or rate of interest on, any Credit Extension, or any fees or other amounts payable hereunder or under any other Financing Document, without the written consent of each Bank Finance Party directly and adversely affected thereby (provided that only the consent of the Required Bank Finance Parties shall be necessary to amend the definition of “Post-Default Rate” or to waive the obligation of the Lessee to pay interest at the Post-Default Rate under any applicable Senior Bank Financing Document);

(iii) postpone any date scheduled for any payment of principal or redemption of, or interest on, any Credit Extension, or any fees or other amounts payable hereunder or under any other Senior Bank Financing Document, or reduce the amount of, waive or excuse any such payment, without the written consent of each Bank Finance Party directly and adversely affected thereby (provided that only the consent of the Required Bank Finance Parties shall be necessary to amend the definition of “Post-Default Rate” or to waive the obligation of the Lessee to pay interest at the Post-Default Rate under any applicable Senior Bank Financing Document);

(iv) amend or modify Section 2.01(b) or Section 10.08, in each case, without the written consent of each Bank Finance Party directly and adversely affected thereby;

(v) amend, modify or waive any provision of Section 10.03 without the written consent of each Bank Finance Party directly and adversely affected thereby;

(vi) waive any condition set forth in Section 4.01 without the written consent of each Bank Finance Party;

(vii) change any provision of this Section or the percentage in the definition of “Required Bank Finance Parties” or any other provision hereof specifying the number or percentage of Bank Finance Parties required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder (other than the definitions of “Required Lenders”, “Required Senior Term Lenders” or “Required Security Deposit Facility Lender”), without the written consent of each Bank Finance Party, (B) the definition of “Required Senior Term Lenders”, without the written consent of each Senior Term Lender, (C) the definition of “Required Security Deposit Facility Lender”, without the written consent of each Security Deposit Facility Lender or (D) the definition of “Required Lender”, without the written consent of each Lender;

(viii) (A) consent to the assignment or transfer by the Lessee of any of its rights and obligations under this Agreement and the other Senior Bank Financing Documents, (B) release all or any material part of the Senior Collateral (except as expressly permitted by the Senior Bank Financing Documents), (C) release the Pledgor from its obligations under the Senior Equity Pledge Agreement, or (D) release any Equity Provider from its obligations under the Equity Contribution Agreement, in each case without the written consent of all Bank Finance Parties; or

(ix) cause any Senior Bank Obligations to cease to be secured on a pari passu basis with all other Senior Obligations or add, modify or waive any provision of the Financing Documents so as to subordinate the Senior Bank Obligations to any other Obligations without the prior written consent of each Lender affected thereby;

provided, further, that no such amendment, waiver or consent shall amend, modify or otherwise affect the rights or duties hereunder or under any other Financing Document of the Administrative Agent, unless in writing executed by the Administrative Agent, in each case in addition to the Lessee and the Bank Finance Parties required above.

In addition, notwithstanding anything in this Section to the contrary, if (i) the Administrative Agent and the Lessee shall have jointly identified an obvious error or any error or omission of a technical nature, in each case, in any provision of the Senior Bank Financing Documents, then the Administrative Agent and the Lessee shall be permitted to amend such provision, or (ii) the Lessee and the Port Authority enter into the amendment contemplated by the letter agreement, dated as of the Closing Date, between the Port Authority and the Lessee related to the agreement to amend the Lease Agreement (a copy of which has been delivered by the Lessee to the Bank Finance Parties on the Closing Date), (A) the Administrative Agent and the Lessee shall be permitted to amend this Agreement, and consent to the amendment of the other Senior Bank Financing Documents, as may be necessary, and only to the extent necessary, to reflect the changes described in Exhibit A to such letter agreement; it being understood that nothing herein shall allow the Administrative Agent or the Lessee to consent to any modification (whether directly or indirectly) to the priority of transfers and disbursements contemplated in Sections 5.02(b) or 5.03(b) of the Collateral Agency and Accounts Agreement, (B) notwithstanding anything to the contrary in Section 6.07 hereof, the Bank Finance Parties and the Senior Collateral Agent, in its role as Leasehold Mortgagee under the Leasehold Mortgages, hereby consent to the Lessee’s entry into an amendment to the Lease Agreement implementing the changes that are necessary, and only to the extent that is necessary, to implement only the modified terms described in Exhibit A to such letter agreement, in each case of clauses (i) and (ii)(A), such



amendment shall become effective without any further action or consent of any other party hereto if the same is not objected to in writing by the Required Bank Finance Parties to the Administrative Agent within ten (10) Business Days following receipt of notice thereof.

In addition, notwithstanding anything to the contrary contained in this Agreement or the other Senior Bank Financing Documents, no amendment, modification, supplement or waiver under this Agreement or any other such Financing Document that discriminates against or adversely affects any or all of the Permitted Hedge Providers or its or their rights hereunder or thereunder and does not affect the other Bank Finance Parties at least equally adversely in relation to their respective rights hereunder or thereunder, shall be agreed or become effective without the prior written consent of such Permitted Hedge Providers or the affected Permitted Hedge Providers (and each Permitted Hedge Provider shall be a third party beneficiary under this Agreement with respect to all such rights, benefits and privileges set forth under the Senior Bank Financing Documents shall have all of the rights, benefits and privileges of a third party beneficiary).

Notwithstanding anything to the contrary contained in this Agreement or the other Senior Bank Financing Documents, no amendment, modification, supplement or waiver under this Agreement or any other Financing Document that (A) removes any right of the Port Authority to receive notices or copies of certificates and/or the right to provide written instructions to the Collateral Agents, as applicable, and/or (B) is inconsistent with or conflicts with any term of the Lease Agreement, shall be agreed or become effective without the prior written consent of the Port Authority.

**Section 10.03 Expenses; Indemnity; Damage Waiver.**

(a) Costs and Expenses. The Lessee shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, the Bank Finance Parties and their respective Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent) in connection with the preparation, negotiation, execution, delivery and administration of the Senior Bank Financing Documents, or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), and (ii) all out-of-pocket expenses incurred by the Administrative Agent or any Bank Finance Party (including the fees, charges and disbursements of any counsel for the Administrative Agent or any Bank Finance Party) in connection with the enforcement or protection of its rights (A) in connection with the Senior Bank Financing Documents, including its rights under this Section, or (B) in connection with the Credit Extensions, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Credit Extensions; provided that, in the case of fees and expenses of counsel, the Lessee's obligation under this Section 10.03(a) shall be limited to the fees, charges and disbursements of one primary counsel, one local counsel in each relevant jurisdictions, one specialty counsel for each relevant specialty, in each case for the Administrative Agent and the Bank Finance Parties, taken as a whole, and one or more additional counsel (for each such category of counsel) if one or more conflicts of interest, or perceived conflicts of interest arise.

(b) Indemnification by the Lessee. The Lessee shall indemnify the Administrative Agent (and any sub-agent thereof) and each Bank Finance Party, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnatee") against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnatee) incurred by any Indemnatee or asserted against any Indemnatee by any Person (including the Lessee) arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Senior Bank Financing Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto or thereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Credit Extensions or the use or proposed use of the proceeds

therefrom, (iii) any actual or alleged presence or Release of Hazardous Materials on or from any property owned or operated by the Lessee, or any Environmental Liability related in any way to the Project, the Lessee or any of its Subsidiaries, (iv) the issuance, offering, purchase, sale or resale of the Series 2022A Bonds, (v) the use of the proceeds of the Series 2022A Bonds, or (vi) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Lessee, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee, (y) result from a claim brought by the Lessee against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Financing Document, if the Lessee has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction or (z) result from a claim not involving an act or omission of the Lessee and that is brought by an Indemnitee against another Indemnitee (other than against the arranger or the Administrative Agent in their capacities as such); provided that, in the case of fees and expenses of counsel, the Lessee's obligation under this Section 10.03(b) shall be limited to the fees, charges and disbursements of one primary counsel, one local counsel in each relevant jurisdictions, one specialty counsel for each relevant specialty, in each case for the Administrative Agent and the Bank Finance Parties, taken as a whole, and one or more additional counsel (for each such category of counsel) if one or more conflicts of interest, or perceived conflicts of interest arise. Clause (b) of this Section shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Bank Finance Parties. To the extent that the Lessee for any reason fails to indefeasibly pay any amount required under clause (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, each Bank Finance Party severally agrees to pay to the Administrative Agent (or any such sub-agent) or such Related Party, as the case may be, such Bank Finance Party's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Bank Finance Party's Applicable Percentage at such time) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) in connection with such capacity. The obligations of the Bank Finance Parties under this clause (c) are several.

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by Applicable Law, each party hereto shall not assert, and hereby waives, any claim against any other party hereto and any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Financing Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Credit Extensions, or the use of the proceeds thereof; provided that nothing herein shall limit the Lessee's indemnification obligations set forth herein to the extent such indirect, special, punitive or consequential damages are included in any third party claim in connection with which an Indemnitee is entitled to indemnification hereunder. No Indemnitee referred to in clause (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Senior Bank Financing Documents or the transactions contemplated hereby or thereby, except to the extent that such damages have resulted from the willful misconduct or gross negligence of such Indemnitee (as determined by a court of competent jurisdiction in a final and non-appealable judgment).

(e) Payments. All amounts due under this Section shall be payable promptly after demand therefor.

(f) **Survival.** Each party's obligations under this Section shall survive the termination of the Senior Bank Financing Documents and payment of the obligations hereunder and thereunder and be enforceable by the Related Parties of the Administrative Agent and the Bank Finance Parties as third party beneficiaries hereof.

Section 10.04 **Successors and Assigns.** All covenants and other agreements contained in this Agreement by or on behalf of any of the parties hereto bind and inure to the benefit of their respective successors and assigns whether so expressed or not, except that (i) the Lessee may not assign or otherwise transfer any of its rights or obligations hereunder (and any attempted assignment or transfer by the Lessee without such consent shall be null and void) without the prior written consent of each Bank Finance Party, and (ii) no Bank Finance Party may assign or transfer any of its rights or obligations hereunder unless such assignment or transfer is being made in accordance with the applicable provisions of the relevant Senior Bank Financing Document and such successor or assignee Bank Finance Party has signed and delivered an Accession Agreement to each of the Issuer, the Lessee and the Administrative Agent, and any assignment or transfer in violation of this provision shall be null and void. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in Section 8.04(e) of the Credit Agreement) and, to the extent expressly contemplated hereby, the Related Parties of the Administrative Agent and the Bank Finance Parties referred to in Section 10.03) any legal or equitable right, remedy or claim under or by reason of this Agreement.

Section 10.05 **Survival; Entire Agreement.** All covenants, agreements, representations and warranties contained herein and in each Senior Bank Financing Document shall survive the execution and delivery of this Agreement and the making of any Credit Extensions and other extensions of credit under the Senior Bank Financing Documents, regardless of any investigation made at any time by or on behalf of any Bank Finance Party and notwithstanding that the Administrative Agent or any Bank Finance Party may have had notice or knowledge of any Default or Event of Default at the time of any Credit Extension, and shall continue in full force and effect until the Credit Termination Date. This Agreement and the Senior Bank Financing Documents embody the entire agreement and understanding between each Bank Finance Party, the Administrative Agent and the Lessee and supersede all prior agreements and understandings relating to the subject matter hereof; *it being understood* that notwithstanding anything to the contrary contained herein, in the Mandate Letter or any other Senior Bank Financing Document, the provisions of Section 2 of the Mandate Letter shall survive until the Syndication Date (as defined in the Mandate Letter). The provisions of Section 10.03 and Article IX shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Credit Extensions, the expiration or termination of the Commitments or the termination of this Agreement or any provision hereof or the resignation or removal of the Agents.

Section 10.06 **Counterparts; Electronic Execution of Senior Bank Financing Documents.** This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the parties hereto. Delivery of an executed counterpart of a signature page to this Agreement by electronic transmission (i.e., a "pdf" or "tiff"), including email, shall be effective as delivery of a manually executed counterpart of this Agreement. The words "execution," "signed," "signature," and words of like import in this Agreement and the other Senior Bank Financing Documents, including any Assignment and Assumption or Accession Agreement, shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 10.07 **Severability**. Any provision of this Agreement or any other Financing Document that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall (to the full extent permitted by law) not invalidate or render unenforceable such provision in any other jurisdiction.

Section 10.08 **Right of Setoff**. Subject in all respects to the Collateral Agency and Accounts Agreement and the Intercreditor Agreement, if an Event of Default shall have occurred and be continuing, each Bank Finance Party is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held, and any other obligations at any time owing, by such Bank Finance Party to or for the credit or the account of the Lessee against any of and all the obligations of the Lessee now or hereafter existing under this Agreement or any other Senior Bank Financing Document to such Bank Finance Party, irrespective of whether or not such Bank Finance Party shall have made any demand under this Agreement or any other Financing Document and although such obligations may be contingent or unmatured or are owed to a branch office of such Bank Finance Party different from the branch office holding such deposit or obligated on such indebtedness. Each Bank Finance Party agrees to promptly notify the Lessee, the Administrative Agent, Collateral Agents and Intercreditor Agents after any such application made by such Bank Finance Party; provided that the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Bank Finance Party under this Section 10.08 are in addition to other rights and remedies (including other rights of setoff) which such Bank Finance Party may have.

Section 10.09 **Governing Law; Jurisdiction; Etc.**

(a) **Governing Law**. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State that would require the application of the laws of a jurisdiction other than such State.

(b) **Submission to Jurisdiction**. The Lessee irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against the Administrative Agent, any Bank Finance Party, or any Related Party of the foregoing in any way relating to this Agreement or any other Financing Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by Applicable Law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Financing Document shall affect any right that the Administrative Agent or any Bank Finance Party may otherwise have to bring any action or proceeding relating to this Agreement or any other Financing Document against the Lessee or its properties in the courts of any jurisdiction.

(c) **Waiver of Venue**. The Lessee irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Financing Document in any court referred to in Section 10.09(b). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

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

(e) **Service of Process.** Each party hereto consents to process being served by or on behalf of any Bank Finance Party in any suit, action or proceeding arising out of or relating to this Agreement by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, return receipt requested, to its address specified in Section 10.01 or at such other address of which such Person shall then have been notified pursuant to said Section. Each party hereto agrees that such service upon receipt (i) shall be deemed in every respect effective service of process upon it in any such suit, action or proceeding and (ii) shall, to the fullest extent permitted by Applicable Law, be taken and held to be valid personal service upon and personal delivery to it. Notices hereunder shall be conclusively presumed received as evidenced by a delivery receipt furnished by the United States Postal Service or any reputable commercial delivery service. Nothing in this Section 10.09 shall affect the right of any Bank Finance Party to serve process in any manner permitted by law.

(f) **Waiver of Immunity.** To the extent that the Lessee has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution, sovereign immunity or otherwise) with respect to itself or its property, it hereby irrevocably waives such immunity, to the fullest extent permitted by law, in respect of its obligations under this Agreement and the other Senior Bank Financing Documents to which it is a party.

Section 10.10 **Headings.** Article and Section headings and the table of contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 10.11 **Treatment of Certain Information; Confidentiality.** Each of the Administrative Agent, the Bank Finance Parties and the Lessee agree to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its branches and Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners); (c) to the extent required by Applicable Laws or by any subpoena or similar legal process, in which case, to the extent practicable and not prohibited by Applicable Law, the Administrative Agent or the applicable Bank Finance Party shall (except with respect to any audit or examination conducted by bank accountants or any governmental or self-regulatory authority exercising examination or regulatory authority) inform the Lessee thereof prior to disclosure; (d) to any other party hereto; (e) in connection with the exercise of any remedies hereunder or under any other Financing Document or any action or proceeding relating to this Agreement or any other Financing Document or the enforcement of rights hereunder or thereunder; (f) subject to an agreement containing provisions substantially the same as (or no less restrictive

than) those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement, or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Lessee and its obligations, this Agreement or payments hereunder; (g) on a confidential basis to any rating agency in connection with rating the Lessee or its Subsidiaries or any Facility; (h) with the consent of the Lessee; (i) on a confidential basis to any insurers, re-insurers and other credit support providers, or (j) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section, or (y) becomes available to the Administrative Agent, any Bank Finance Party or any of their respective branches or Affiliates on a nonconfidential basis from a source other than the Lessee. In addition, the Administrative Agent and the Bank Finance Parties may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Agents or any Bank Finance Party in connection with the administration of this Agreement, the other Senior Bank Financing Documents, and the Commitments.

For purposes of this Section, “Information” means all information received from the Issuer or the Lessee relating to the Issuer or the Lessee or their respective business, other than any such information that is available to the Administrative Agent or any Bank Finance Party on a nonconfidential basis prior to disclosure by the Lessee; provided that, in the case of information received from the Issuer or the Lessee after the Closing Date, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Section 10.12 **No Third-Party Beneficiaries.** Except as expressly set forth in Section 8.01(a) and Section 10.14(c), the agreement of the Bank Finance Parties to make the Credit Extensions and other extensions of credit to the Issuer on the terms and conditions set forth in the Senior Bank Financing Documents, is solely for the benefit of the Issuer and the Lessee, the Bank Finance Parties and the Agents, and no other Person (including any Material Project Party, contractor, subcontractor, supplier, workman, carrier, warehouseman or materialman furnishing labor, supplies, goods or services to or for the benefit of the Project) shall have any rights under this any other Senior Bank Financing Document or Material Project Document as against the Agents or any Bank Finance Party or with respect to any extension of credit contemplated by the Senior Bank Financing Documents.

Section 10.13 **Reinstatement.** The obligations of the Issuer and the Lessee under this Agreement shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Lessee in respect of the Secured Obligations under this Agreement is rescinded or must be otherwise restored by any holder of any of such Secured Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and the Lessee agrees that it will indemnify the Administrative Agent and each Bank Finance Party under this Agreement on demand for all reasonable costs and expenses (including reasonable fees of counsel) incurred by the Administrative Agent or such Bank Finance Party in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any Bankruptcy Law.

Section 10.14 **Limited Recourse.**

(a) The Bank Finance Parties (and the Senior Collateral Agent (acting on behalf of the Senior Secured Parties)) will have full recourse to the Lessee and to all the Senior Collateral pursuant to the Senior Bank Financing Documents, but, subject to Section 10.14(b), in no event will the Pledgor, any Sponsor, Equity Provider or any of its or their Affiliates (other than the Lessee) (collectively, the “Non-Recourse Parties”), or any director, officer, agent, consultant or employee of any Non-Recourse Party, the

Lessee or any direct or indirect holder of any interest in the Lessee or any Non-Recourse Party, in any such case, be personally liable or obligated for such liabilities and obligations of the Lessee, except in each case as may be specifically provided in any Financing Document to which such Non-Recourse Party is a party (and, with respect to the Pledgor, recourse shall be limited to the Equity Interests of the Lessee being pledged under the relevant Equity Interest Pledge Agreement).

(b) Nothing contained in this Agreement or any other Financing Document shall limit or be construed to (i) release any Non-Recourse Party from liability for gross negligence, fraudulent actions (including collusive bankruptcy) or misappropriation of funds or willful misconduct, or from any of its obligations or liabilities under any Financing Document executed by such Non-Recourse Party in its individual capacity, (ii) except as contemplated under the Intercreditor Agreement, limit or impair the exercise of remedies with respect to (A) the pledge of the Pledgor's Equity Interests in the Lessee that are subject to the Senior Equity Pledge Agreement, or (B) any other Senior Collateral, or (iii) limit the liability of any Person who is a party to any agreement relating to the Project with respect to such liability as may arise by reason of the terms and conditions of such agreement (but subject to any limitation of liability contained in such agreement).

(c) The foregoing acknowledgments, agreements and waivers shall survive termination of this Agreement and be enforceable by any Non-Recourse Party as a third party beneficiary hereof.

Section 10.15 **USA PATRIOT Act.** Each Bank Finance Party hereby notifies the Issuer and the Lessee that pursuant to the requirements of the USA PATRIOT Act and the requirements of 31 C.F.R. §1010.230, it is required to obtain, verify and record information that identifies the Lessee, which information includes the name and address of the Issuer and the Lessee and other information that will allow such Bank Finance Party to identify the Issuer and the Lessee in accordance with the USA PATRIOT Act and the requirements of 31 C.F.R. §1010.230.

Section 10.16 **Acknowledgment and Consent to Bail-In of Affected Financial Institutions.** Notwithstanding anything to the contrary in any Financing Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Bank Finance Party or the Lessee that is an Affected Financial Institution arising under any Financing Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable, (i) a reduction in full or in part or cancellation of any such liability, (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Financing Document, or (iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any applicable Resolution Authority.

Section 10.17 **Acknowledgement Regarding Any Supported QFCs.** To the extent that the Senior Bank Financing Documents provide QFC Credit Support, the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act

(together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below (including the defined terms used therein) applicable notwithstanding that the Senior Bank Financing Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Senior Bank Financing Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Senior Bank Financing Documents were governed by the laws of the United States or a state of the United States.

Section 10.18 **Effectiveness Date**. The date of this Agreement is for reference purposes only and shall not be construed to imply that this Agreement was executed as of the date first written above. This Agreement has been executed by the parties hereto and is effective on the Closing Date.

[Remainder of page intentionally left blank]



**[SIGNATURE PAGES HAVE BEEN REMOVED]**

## Appendix A

## DEFINITIONS

“ABR” means, for any day, a rate per annum equal to the highest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Rate in effect on such day plus [ ]%, and (c) Daily Compounded SOFR in effect on such day plus [ ]%. Any change in the ABR due to a change in the Prime Rate, the Federal Funds Rate or Daily Compounded SOFR shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Rate or Daily Compounded SOFR, respectively.

“ABR Borrowing” means, as to any Borrowing, the ABR Loans comprising such Borrowing.

“ABR Loans” means Senior Loans the rate of interest applicable to which is based upon the ABR.

“Acceptable Accounting Firm” means any “big four” accounting firm.

“Accession Agreement” means an accession agreement substantially in the form of Exhibit A to the Common Terms Agreement.

“Additional Restricted Payment Conditions” has the meaning assigned to such term in Section 6.10 of the Common Terms Agreement.

“Administrative Agency Fee Letter” means that certain Administrative Agency Fee Letter, dated on or about the Closing Date, between the Lessee and the Administrative Agent setting forth the fees payable to the Administrative Agent.

“Administrative Questionnaire” means a questionnaire, in a form supplied by the Administrative Agent, completed by a Bank Finance Party.

“Affected Financial Institution” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“Agents” means any or each of the Administrative Agent, the Senior Collateral Agent, the Intercreditor Agent and the Deposit Account Bank (as the context may require).

“Agent-Related Persons” means the Administrative Agent, together with its Related Parties.

“Aggregate Bank Finance Party Exposure” means the sum of the Bank Finance Party Exposure of all Bank Finance Parties.

“Aggregate Bank Finance Party Funded Exposure” means, as of any date of determination, the sum of the aggregate principal amount outstanding of Senior Loans plus the aggregate principal amount of all outstanding Series 2022A Bonds, in each case, as of such date.

“Airline Sublease” has the meaning assigned to such term in the Lease Agreement.

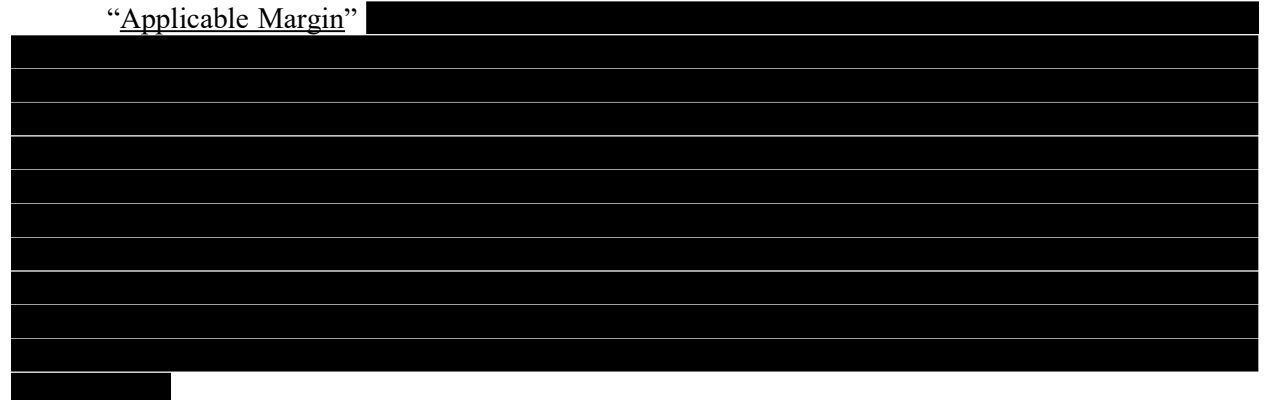
“Airline Sublessee” has the meaning assigned to such term in the Lease Agreement.

“Airport Consultant” means Ricondo and Associates, Inc. or such other firm or firms of national recognition experienced in the field of planning the development, operation and management of airports and aviation facilities, selected and employed by the Lessee from time to time and reasonably acceptable to the Required Bank Finance Parties.

“Anti-Corruption Laws” means the U.S. Foreign Corrupt Practices Act of 1977 (as amended), the UK Bribery Act 2010, and the rules and regulations promulgated thereunder, and all other laws, and regulations of any jurisdiction that are applicable to the Lessee or any of its Subsidiaries concerning or relating to bribery or corruption.

“Anti-Money Laundering Laws” means the USA PATRIOT Act, the Money Laundering Control Act of 1986, the Bank Secrecy Act, and the rules and regulations promulgated thereunder, and corresponding laws of the jurisdictions in which the Lessee or any of its Subsidiaries operates or in which the proceeds of the Credit Extensions will be used.

“Applicable Margin”



“Applicable Percentage” means, as of any date of determination, with respect to any Bank Finance Party the percentage of the total Bank Finance Party Exposure of all Bank Finance Parties represented by such Bank Finance Party’s Bank Finance Party Exposure on such date.

“Approved Insurer” means an insurer or underwriter having the Minimum Insurance Carrier Rating (as defined in the Lease Agreement as in effect on the Closing Date) or as otherwise acceptable to the Required Bank Finance Parties.

“Assignment and Assumption” means an assignment and assumption entered into by a Bank Finance Party and an assignee (with the consent of any party whose consent is required by Section 8.04 of the Credit Agreement), substantially in the form of Exhibit A to the Credit Agreement.

“Authorization” means any consent, waiver, registration, filing, notarization, certificate, license, approval, permit, authorization, exception or exemption from, by or with any Governmental Authority (including any Approval), whether given by express action or deemed given by failure to act within any specified period.

“Authorized Lessee Representative” means (a) the Chief Executive Officer of Lessee; or (b) any other individual (or individuals) so designated by Lessee to act as Authorized Lessee Representative by written certificate of Lessee furnished to the Administrative Agent, containing the specimen signature of such Person.

“Authorized Persons” has the meaning a specified in Section 5.08(c) of the Credit Agreement.

“Availability Period” means the period commencing on the Bank Financing Effective Date and ending on the earliest to occur of (a) termination of the Senior Term Loan Commitments pursuant to the provisions of the Credit Agreement, (b) the termination of the Series 2022A Bond Availability Period pursuant to the terms of the Series 2022A Bond Purchase Agreement for any reason other than the full utilization thereof, and (c) the last Scheduled Credit Extension Date.

“Available Tenor” shall mean, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 2.21(d) of the Credit Agreement.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“Bail-In Legislation” means, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their Affiliates (other than through liquidation, administration or other insolvency proceedings).

“Bank Finance Party Exposure” means, with respect to any Bank Finance Party as of any date of determination, such Bank Finance Party’s available Commitments, and, without duplication, the outstanding principal amount of Senior Loans and Total Security Deposit Outstandings held by such Bank Finance Party and the principal of Series 2022A Bonds purchased by such Bank Finance Party that is then outstanding (so long as such Bank Finance Party continues to own such Series 2022A Bonds or beneficial interest therein), in each case as of such date of determination. For clarity, the Bank Finance Party Exposure of the Purchaser is equal to the sum of the [REDACTED] Commitment and the outstanding principal amount of the Series 2022A Bonds held by the Purchaser and/or the Trust as of the date of determination.

“Bank Finance Party Funded Exposure” means, with respect to any Bank Finance Party as of any date of determination, the sum of, without duplication, the outstanding principal amount of Senior Loans and Total Security Deposit Outstandings held by such Bank Finance Party and the principal amount of Series 2022A Bonds purchased by such Bank Finance Party that is then outstanding (so long as such Bank Finance Party continues to own such Series 2022A Bonds or beneficial interest therein), in each case as of such date of determination. For clarity, the Bank Finance Party Funded Exposure of the Purchaser is equal to the outstanding principal amount of the Series 2022A Bonds held by the Purchaser and/or the Trust as the date of determination.

“Bank Financing Effective Date” means the date on which all conditions precedent specified in Section 4.01 of the Common Terms Agreement are satisfied or waived in accordance therewith.

“Bank Financing Maturity Date” means the date that is the seventh anniversary of the Bank Financing Effective Date.

“Bankruptcy Law” means Title 11, U.S. Code or any similar Federal or state law for the relief of debtors.

“Benchmark” means, initially, the Daily Compounded SOFR; provided that if a Benchmark Transition Event has occurred with respect to the Daily Compounded SOFR or the then-current Benchmark,

then “Benchmark” shall mean the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.21(a) of the Credit Agreement.

“Benchmark Replacement” means, with respect to any Benchmark Transition Event, (a) if (i) the administrator of the applicable benchmark under the Permitted Hedge Agreements has recommended a benchmark replacement for the benchmark used in the Permitted Hedge Agreements, the benchmark replacement so recommended by such administrator, or (ii) such administrator does not make a recommendation, a committee officially endorsed or convened by the Federal Reserve Board or the Federal Reserve Bank of New York or the supervisor for the administrator for the purpose of recommending an applicable benchmark replacement for Daily Compounded SOFR (which rate may be produced by the SOFR Administrator or another administrator) and as provided by the administrator of that rate or, if that rate is not provided by the administrator thereof, published by an authorized distributor, the benchmark replacement so recommended by such committee or supervisor (together, the “Fed Recommended Rate”), (b) if (i) there is no Fed Recommended Rate is available before the end of the first U.S. Government Securities Business Day following the Benchmark Transition Event, or (ii) a Benchmark Transition Event subsequently occurs with respect to the Fed Recommended Rate so recommended, OBFR, (c) if (i) there is no OBFR available before the end of the first U.S. Government Securities Business Day following the Benchmark Transition Event, or (ii) a Benchmark Transition Event subsequently occurs with respect to the OBFR so recommended, and, in either case, the Fed Recommended Rate is not available, the FOMC Target Rate, and (d) if (i) there is no FOMC Target Rate available before the end of the first U.S. Government Securities Business Day following the Benchmark Transition Event, or (ii) a Benchmark Transition Event subsequently occurs with respect to the FOMC Target Rate so recommended, and, in either case, the Fed Recommended Rate or OBFR is not available, the sum of: (i) the alternate benchmark rate that has been selected by the Administrative Agent and the Issuer (in the case of the Issuer, at the direction of Lessee) giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities at such time and (ii) the related Benchmark Replacement Adjustment.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Issuer (at the direction of the Lessee), giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time.

“Benchmark Replacement Date” means the earliest to occur of the following events with respect to the then-current Benchmark:

- (i) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(ii) in the case of clause (c) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(i) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(ii) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component thereof), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component thereof) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component thereof) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(iii) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Start Date” means, in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

“Benchmark Unavailability Period” means, the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Financing Document in accordance with Section 2.20 of the Credit Agreement and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Financing Document in accordance with Section 2.21 of the Credit Agreement.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

“Board” means the Board of Governors of the Federal Reserve System (or any successor).

“Borrowing” means (a) all ABR Loans made, converted or continued on the same date or (b) all SOFR Loans which have the same Interest Period.

“CAAA Restricted Payment Conditions” has the meaning assigned to “Restricted Payment Conditions” in the Collateral Agency and Accounts Agreement.

“Change in Law” means (a) the adoption of any law, rule or regulation after the Closing Date, (b) any change in any law, rule or regulation or any change in the interpretation or application thereof by any Governmental Authority after the Closing Date or (c) compliance by any Lender (or, for purposes of Section 2.12(b) of the Credit Agreement, by any lending office of such Lender or by the Lender’s holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the Closing Date. Notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States of America or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“Change of Control” means (a) any direct or indirect assignment or transfer of the shares in, or change in beneficial ownership of, the Lessee and (b) any Change in Lessee Control (as defined in the Lease Agreement as in effect on the Closing Date), in the case of each of clause (a) and (b), other than any such assignment, transfer, change or Change in Lessee Control that is made (i) in accordance with the requirements of Section 51 of the Lease Agreement as in effect on the Closing Date and (ii) if consent of the Port Authority is required under the Lease Agreement, with the prior written consent of the Administrative Agent (acting on the instructions of the Required Bank Finance Parties).

“Code” means the Internal Revenue Code of 1986, as amended.

“Collateral Agency and Accounts Agreement” means that certain Collateral Agency and Accounts Agreement, dated as of November 1, 2022, by and among the Lessee, [REDACTED] as Intercreditor Agent, Senior Collateral Agent, Subordinate Collateral Agent, Securities Intermediary and Trustee and Deposit Account Bank, the Administrative Agent and the Issuer.

“Commitments” means the Senior Term Loan Commitments, the [REDACTED] Commitment and the Security Deposit Facility Commitment.

“Conforming Changes” means, with respect to either the use or administration of Daily Compounded SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “ABR,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 2.17 of the Credit Agreement and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of Daily Compounded SOFR or any such Benchmark Replacement or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Financing Documents); provided that notwithstanding anything herein to the contrary, no “Conforming Changes” shall result in any material change on the timing or amount of payments or Borrowings.

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Credit Acceleration” means that all Credit Extensions and all other amounts owing under the Credit Agreement, the Series 2022A Bond Purchase Agreement, the Bondholder’s Agreement and the other Senior Bank Financing Documents have become due and payable (whether by declaration, automatically or otherwise) pursuant to clause (ii) of the post-amble of Section 7.01 of the Common Terms Agreement.

“Credit Extension Date” means the date on which a Credit Extension under the Credit Agreement or the Series 2022A Bond Purchase Agreement, as applicable, is made.

“Credit Extension Request” means a Borrowing Request, Drawing Request or a Letter of Credit Application.

“Credit Termination” has the meaning specified in Section 7.01 of the Common Terms Agreement.

“Credit Termination Date” means the date on which (i) all Senior Term Loan Commitments, the Security Deposit Facility Commitments and the ██████ Commitment have expired or been terminated, (ii) all Senior Bank Obligations under the Senior Bank Financing Documents (excluding contingent indemnification and reimbursement obligations for which no claim has been asserted) have been irrevocably and indefeasibly paid in full in cash, (iii) all Security Deposit LCs have expired or been terminated or cash collateralized to the satisfaction of the Security Deposit Facility LC Issuing Bank and there is no outstanding Unreimbursed Amount, and (iv) the Discharge of the Senior Bank Obligations has occurred.

“Daily Compounded SOFR” has the meaning specified in Schedule 1.01 of Credit Agreement.

“DBO” has the meaning assigned to such term in the Lease Agreement.

“Default” means an event or condition the occurrence or existence of which would, with the lapse of time or the giving of notice or both, become an Event of Default.

“Defaulting Bank Finance Party” means any Bank Finance Party that (a) has failed to (i) fund all or any portion of its Credit Extensions within two (2) Business Days of the date such Credit Extensions



were required to be funded under the applicable Financing Document unless such Bank Finance Party notifies the Administrative Agent and the Lessee in writing that such failure is the result of such Bank Finance Party's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable failure, shall be specifically identified in such writing) have not been satisfied in accordance with the terms of this Agreement, or (ii) pay to the Administrative Agent or any Bank Finance Party any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, (b) has notified the Lessee or the Administrative Agent in writing that it does not intend to comply with its funding obligations under the applicable Financing Document, or has made a public statement to that effect (unless such writing or public statement relates to such Bank Finance Party's obligation to fund a Credit Extension and states that such position is based on such Bank Finance Party's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable failure, shall be specifically identified in such writing or public statement) have not been satisfied in accordance with the terms of this Agreement), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Lessee, to confirm in writing to the Administrative Agent and the Lessee that it will comply with its prospective funding obligations under the applicable Financing Document; provided, that such Bank Finance Party shall cease to be a Defaulting Bank Finance Party pursuant to this clause (c) (after such three (3) Business Day period) upon receipt of such written confirmation by the Administrative Agent and the Lessee, or (d) has, or has a direct or indirect parent company that has, voluntarily or involuntarily (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state, federal or national regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-In Action; provided, that for the avoidance of doubt, a Bank Finance Party shall not be a Defaulting Bank Finance Party solely by virtue of (A) the ownership or acquisition of any Equity Interest in that Bank Finance Party or any direct or indirect parent company thereof by a Governmental Authority or (B) in the case of a solvent Bank Finance Party, the precautionary appointment of an administrator, guardian, custodian or other similar official by a Governmental Authority under or based on the law of the country where such Bank Finance Party is subject to home jurisdiction supervision if applicable law requires that such appointment not be publicly disclosed, so long as such ownership interest or appointment does not result in or provide such Bank Finance Party with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Bank Finance Party (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Bank Finance Party. Any determination by the Administrative Agent that a Bank Finance Party is a Defaulting Bank Finance Party under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Bank Finance Party shall be deemed to be a Defaulting Bank Finance Party upon delivery of written notice of such determination to the Lessee and each Bank Finance Party.

"Defaulting Lender" means any Lender that (a) has failed to (i) fund all or any portion of its Senior Term Loans within two (2) Business Days of the date such Senior Term Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Lessee in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable failure, shall be specifically identified in such writing) have not been satisfied in accordance with the terms of this Agreement, or (ii) pay to the Administrative Agent or any Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, (b) has notified the Lessee or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Borrowing hereunder and states that such position is based on such Lender's determination that one or more condition precedent to funding

(each of which conditions precedent, together with any applicable failure, shall be specifically identified in such writing or public statement) have not been satisfied in accordance with the terms of this Agreement), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Lessee, at the request of the Lessee, to confirm in writing to the Administrative Agent and the Lessee that it will comply with its prospective funding obligations hereunder; provided, that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) (after such 3 (three) Business Day period) upon receipt of such written confirmation by the Administrative Agent and the Lessee, or (d) has, or has a direct or indirect parent company that has, voluntarily or involuntarily (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state, federal or national regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-In Action; provided, that for the avoidance of doubt, a Lender shall not be a Defaulting Lender solely by virtue of (A) the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority or (B) in the case of a solvent Lender, the precautionary appointment of an administrator, guardian, custodian or other similar official by a Governmental Authority under or based on the law of the country where such Lender is subject to home jurisdiction supervision if applicable law requires that such appointment not be publicly disclosed, so long as such ownership interest or appointment does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender upon delivery of written notice of such determination to the Lessee and each Lender.

“Disclosure Documents” has the meaning assigned to such term in Section 3.03(a) of the Common Terms Agreement.

“Disqualified Institution” means (a) each Person identified as a “Disqualified Institution” on a list delivered to the Administrative Agent and made available by the Administrative Agent to all the Bank Finance Parties prior to the Bank Financing Effective Date and, after the Bank Financing Effective Date, each Person identified as a “Disqualified Institution” to the Administrative Agent by the Lessee with the consent of the Administrative Agent (acting upon instructions from the Required Bank Finance Parties) and made available by the Administrative Agent to the Bank Finance Parties, (b) any Person that competes with the business of the Lessee from time to time as a result of developing, owning or operating airports located in North America that is identified on a list delivered to the Administrative Agent by the Lessee and made available by the Administrative Agent to the Bank Finance Parties from time to time and (c) as to any entity referenced in each of clauses (a) and (b) above (the “Primary Disqualified Institution”), any of such Primary Disqualified Institution’s Affiliates readily identifiable as such solely by name, but excluding any Affiliate that is primarily engaged in, or that advises funds or other investment vehicles that are engaged in, making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit or securities in the ordinary course and with respect to which the Primary Disqualified Institution does not, directly or indirectly, possess the power to direct or cause the direction of the investment policies of such entity. Any designation of a Disqualified Institution made after the Bank Financing Effective Date pursuant to this definition or of an Affiliate thereof shall not apply retroactively to disqualify any Person that has previously acquired any assignment or participation interest that is otherwise permitted.

“Drawing Request” has the meaning assigned thereto in Section 1(b) of the Series 2022A Bond Purchase Agreement.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a Subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Eligible Assignee” means (a) any Bank Finance Party or an Affiliate thereof, (b) any fund that invests in commercial loans and is managed by a Bank Finance Party, an Affiliate of a Bank Finance Party or an Affiliate of an entity that manages such Bank Finance Party, (c) any Institutional Lender, and (d) if a Default or an Event of Default has occurred and is continuing, any Person (other than a Prohibited Person); provided that (i) none of the Issuer, the Lessee, HoldCo, nor any Sponsor nor any Affiliate of any of the foregoing and no Defaulting Lender shall be an Eligible Assignee, and (ii) unless a Default or Event of Default has occurred and is continuing, no Disqualified Institution may be an Eligible Assignee.

“Equity Commitment” means in respect of each Sponsor, the maximum amount of Equity Contributions that such Sponsor is required to make to the Lessee, as set out in the Equity Contribution Agreement.

“Equity Cure” has the meaning assigned to such term in Section 5.09 of the Common Terms Agreement.

“Equity Cure Amount” has the meaning assigned to such term in Section 5.09 of the Common Terms Agreement.

“ESD” means the New York State Urban Development Corporation (d/b/a Empire State Development).

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“Event of Default” has the meaning assigned to such term in Section 7.01 of the Common Terms Agreement.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to (or required to be deducted from any payment made to) any Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of TDC under the Credit Agreement, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Person being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Senior Loan, or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Senior Loan Commitment (other than pursuant to an assignment request by TDC under Section 2.17 of the Credit Agreement) or (ii) such Lender changes its lending office,

except in each case to the extent that, pursuant to Section 2.14 of the Credit Agreement, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party to the Credit Agreement or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Person's failure to comply with Section 2.14(e) of the Credit Agreement and (d) any Taxes imposed under FATCA.

“FATCA” means (a) sections 1471 through 1474 of the Code, as of the Closing Date (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), together with any current or future regulations or official interpretations thereof, (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the United States of America and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation (or official interpretation thereof) referred to in the foregoing clause (a), and (c) any agreements entered into pursuant to section 1471(b)(1) of the Code.

“Fed Recommended Rate” has the meaning assigned to such term in the definition of “Benchmark Replacement”.

“Federal Funds Rate” means, for any day, the greater of (a) the rate calculated by the Federal Reserve Bank of New York based on such day's Federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the Federal funds effective rate and (b) 0%.

“FOMC Target Rate” means, in respect of any relevant day, the short-term interest rate target set by the Federal Open Market Committee or, if the federal open market committee does not target a single rate, the mid-point of the short-term interest rate target range set by the federal open market committee (calculated as the arithmetic average of the upper bound of the target range and the lower bound of the target range, rounded, if necessary, in accordance with the method set forth in Section 4.8.2 (*Rounding of Amounts*) of the 2021 ISDA Interest Rate Derivatives Definitions), in respect of that day.

“Funds Flow Memorandum” means that certain Funds Flow Memorandum, to be dated as of the Bank Financing Effective Date, in form and substance reasonably satisfactory to each Bank Finance Party, detailing the proposed flow and use of the proceeds of funds as of the Bank Financing Effective Date.

“GAAP” means generally accepted accounting principles as in effect from time to time in the United States.

“Governmental Authority” means any multinational, federal, state, municipal and other governmental authorities, boards, central bank and agencies of any state, nation or government (or any other political subdivision thereof) and any other entity exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, any such state, nation or government (or any other political subdivision thereof), domestic or foreign, or any quasi-governmental or private body exercising any regulatory, self-regulatory, expropriation or taxing authority under or for the account of any of the foregoing, including any supra-national bodies (such as the European Union or the European Central Bank), except that it shall not be construed to include The Port Authority of New York and New Jersey, solely in its capacity as lessor under the Lease Agreement.

“Governmental Official” means any governmental official or employee, employee of any government-owned or government-controlled entity, political party, any official of a political party, candidate for political office, official of any public international organization or anyone else acting in an official capacity on behalf of any of the foregoing.

“Hazardous Materials” means all pollutants, contaminants, wastes, chemicals, materials and substances subject to regulation or which can give rise to liability under any Environmental Law, including explosive or radioactive substances, lead, per- and polyfluoroalkyl substances, petroleum, petroleum breakdown products, petroleum by products, petroleum distillates, asbestos, asbestos-containing materials, polychlorinated biphenyls, radon gas, toxic mold, pesticides, fungicides, fertilizers, or other agricultural chemicals and includes any “Hazardous Substance” (as defined in the Lease Agreement).

“Honor Date” has the meaning assigned to such term in Section 2.03(g) of the Credit Agreement.

“Indemnified Taxes” means (a) Taxes other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Lessee under any Financing Document and (b) to the extent not otherwise described in (a), Other Taxes.

“Indemnitee” has the meaning assigned to such term in Section 10.03(b) of the Common Terms Agreement.

“Independent Auditor” means (a) any Acceptable Accounting Firm selected by Lessee and notified to the Administrative Agent, or (b) such other firm of independent public accountants of recognized national standing in the United States selected by Lessee and approved by the Administrative Agent.

“Information” has the meaning assigned to such term in Section 10.11 of the Common Terms Agreement.

“Initial Lenders” means each of the Persons listed on Schedule 2.01 or Schedule 2.03 of the Credit Agreement.

“Institutional Lender” means any (i) savings bank, savings and loan association, commercial bank, central government bank, trust company (whether acting individually or in a fiduciary capacity) or insurance company organized and existing under the laws of the United States of America or any state thereof, excluding any investment fund of which such institution (or one of its Affiliates) is a general partner or investor, (ii) foreign insurance company or commercial bank qualified to do business as an insurer or commercial bank as applicable under the laws of the United States of America, excluding any investment fund of which such institution (or one of its Affiliates) is a general partner or investor, or (iii) any other financial institution or entity designated by the Lessee; provided, that each such entity or combination of such entities shall have individual or combined assets, as the case may be, of not less than (x) in the case of an entity that will serve as Senior Collateral Agent, \$1,000,000,000, and (y) in each other case, \$500,000,000 which shall include, in the case of an investment or advisory firm, assets controlled by it or under management.

“Interest Payment Date” means (a) as to any ABR Loan, the last calendar day of each March, June, September and December, and (b) as to any SOFR Loan, the last calendar day of each March, June, September and December; provided that, in each case, (i) the first Interest Payment Date shall be December 30, 2022 and the final Interest Payment Date shall be the Bank Financing Maturity Date and (ii) if any Interest Payment Date would fall on a day that is not a U.S. Government Securities Business Day, it shall instead fall on the next succeeding U.S. Government Securities Business Day unless such next succeeding U.S. Government Securities Business Day would fall in the next calendar month, in which case it shall instead fall on the next preceding U.S. Government Securities Business Day.

“Interest Period” means, as to any Senior Loan or Borrowing, (a) initially, the period commencing on the date of such Senior Loan or Borrowing and ending on, but excluding, the immediately following Interest Payment Date, and (b) thereafter, each period from, and including, an Interest Payment Date to, but excluding, the next following Interest Payment Date. For purposes hereof, the date of a Senior Loan or

Borrowing initially shall be the date on which such Senior Loan or Borrowing is made or deemed made and thereafter shall be the effective date of the most recent conversion of such Senior Loan or Borrowing.

“ISP” means, with respect to any Security Deposit LC, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance and to which such Security Deposit LC is subject).

“Issuer Indemnified Parties” means the State, the Port Authority, the JDA, ESD, and any member, principal, officer, director, official, agent, employee, and attorney of any of the foregoing entities, of the Issuer, and of any Person who “controls” the Issuer (within the meaning of Section 15 of the Securities Act of 1933, as amended, or Section 20 of the Securities Exchange Act of 1934, as amended).

“Issuing Document” with respect to any Security Deposit LC, the Letter of Credit Application, and any other document, agreement and instrument entered into by the Security Deposit Facility LC Issuing Bank, the Lessee and, if applicable, the Issuer (at the direction of the Lessee and subject to the consent of the Issuer, which consent shall not be unreasonably withheld, delayed or conditioned) or in favor of such LC Issuing Bank and relating to such Security Deposit LC.

“JDA” has the meaning assigned to such term in the preamble of the Credit Agreement.

“JetBlue ATA and Sublease” means the Anchor Tenant Agreement and Sublease to be entered between JetBlue Airways Corporation and the Lessee.

“Lenders” means the Initial Lenders and any other Person that shall have become a party to the Credit Agreement pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party to the Credit Agreement pursuant to an Assignment and Assumption, and means a Lender with (a) a Senior Term Loan Commitment, (b) any outstanding Senior Term Loans, (c) a Security Deposit Facility Commitment, or (d) any outstanding Security Deposit Loans.

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Security Deposit LC in the form from time to time in use by the Security Deposit Facility LC Issuing Bank, together with a request for a Security Deposit LC Credit Extension, substantially in the form of Exhibit C to the Credit Agreement.

“Letter of Intent for ATI Services Agreement” means that certain Letter of Intent for ATI Services Agreement dated as of August 17, 2022 between the Lessee and American Triple I.

“Non-Defaulting Lender” means any Lender other than a Defaulting Lender.

“Non-Recourse Parties” has the meaning assigned to such term in Section 10.14(a) of the Common Terms Agreement.

“OBFR” means, in respect of any relevant day, the overnight bank funding rate administered by the Federal Reserve Bank of New York (or a successor administrator), in respect of that day.

“Organizational Documents” means, (a) with respect to any Person that is a Governmental Authority, (i) the constitutional and statutory provisions that are the basis for the existence and authority of such Governmental Authority, including any enabling statutes, ordinances or public charters and any other organic laws establishing such Governmental Authority and (ii) the bylaws, code of regulations, operating procedures or other organizational documents of or adopted by such Governmental Authority by which such Governmental Authority, its powers, operations or procedures or its securities, bonds, notes or other obligations are governed or from which such powers are derived; and (b) with respect to any other Person, the charter, articles or certificate of organization, formation or incorporation, limited liability company

agreement, operating agreement, by-laws or partnership agreement, as applicable, or other similar or equivalent organizational documents of such Person.

“Other Connection Taxes” means, with respect to any Bank Finance Party or the Administrative Agent, Taxes imposed as a result of a present or former connection between such Person and the jurisdiction imposing such Tax (other than connections arising solely from such Person having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Financing Document, or sold or assigned an interest in any Credit Extension or Financing Document).

“Other Taxes” means any and all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Financing Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.18 of the Credit Agreement).

“Outstanding Amount” means, with respect to Credit Extensions on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Credit Extensions occurring on such date.

“Overdrawn Bank” has the meaning assigned to such term in Section 8.01(a) of the Credit Agreement.

“Participant” has the meaning assigned to such term in Section 8.04(e) of the Credit Agreement.

“Participant Register” has the meaning assigned to such term in Section 8.04(e) of the Credit Agreement.

“Payment” has the meaning assigned to such term in Section 9.10(b)(i) of the Common Terms Agreement.

“Payment Notice” has the meaning assigned to such term in Section 9.10(b)(ii) of the Common Terms Agreement.

“Payor” has the meaning assigned to such term in Section 9.10(a) of the Common Terms Agreement.

“Phase 2” has the meaning assigned to such term in the Lease Agreement.

“Prime Rate” means the rate of interest per annum publicly announced from time to time by the Administrative Agent as its prime commercial lending rate for extensions of credit in Dollars in effect at its principal office in New York City; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective.

“Pro Rata Result” has the meaning assigned to such term in Section 8.01(a) of the Credit Agreement.

“Prohibited Person” means any Person (a) that is a target of (or will cause the Lessee to become a target of) Anti-Money Laundering Laws, criminal actions, civil complaints predicated on fraud or securities laws violations, or laws or proceedings similar to the foregoing; (b) is an Affiliate of any Person described in clause (a), to the extent that such Affiliate is identified in writing or clearly identifiable solely on the basis of their name; (c) is a Sanctioned Person or (d) is a Defaulting Bank Finance Party, provided, however,





“Required Lenders” means, at any time, Lenders having more than 50% of, without duplication, the sum of the aggregate unpaid principal amount of the Senior Loans then outstanding (plus, prior to the expiration of the Availability Period, the unused Senior Term Loan Commitments), the Total Security Deposit Outstandings and the unused Security Deposit Facility Commitments. The Senior Term Loan Commitments and Senior Term Loans of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

“Required Payment” has the meaning assigned to such term in Section 9.10(a) of the Common Terms Agreement.

“Required Security Deposit Facility Lenders” means, at any time, Security Deposit Facility Lenders having more than 50% of, without duplication the sum of (a) the Total Security Deposit Outstandings and (b) aggregate unused Security Deposit Facility Commitments; provided that the unused Security Deposit Facility Commitment of, and the portion of the Total Security Deposit Outstandings held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Security Deposit Facility Lenders.

“Required Senior Term Lenders” means, at any time, Lenders having more than 50% of, without duplication, the sum of the aggregate unpaid principal amount of the Senior Term Loans then outstanding (plus, prior to the expiration of the Availability Period, the unused Senior Term Loan Commitments). The Senior Term Loan Commitments and Senior Term Loans of any Defaulting Bank Finance Party shall be disregarded in determining Required Lenders at any time.

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Restricted Payment Conditions” means, collectively, (a) the CAAA Restricted Payment Conditions and (b) the Additional Restricted Payment Conditions.

“RP Aggregate Debt Service” means, for any applicable period,

- (a) when calculating “RP Aggregate Debt Service” on a historical basis, such amount shall consist of:
- (i) all interest accrued during such period (whether paid or unpaid) in respect of Secured Obligations (other than interest accreting with respect to Compounding Interest Bonds), (A) plus the net amounts payable by the Lessee as Ordinary Course Payments under Secured Hedge Agreements in respect of such period, or (B) minus the net amounts receivable by the Lessee as Ordinary Course Payments under Secured Hedge Agreements in respect of such period; plus
  - (ii) all principal due during such period in respect of Secured Obligations (including, without limitation, the Accreted Value of any Compounding Interest Bonds accreting, maturing or scheduled for redemption in such applicable period);
- (b) when calculating “RP Aggregate Debt Service” on a prospective basis with respect to any Secured Obligations, the aggregate amount of Debt Service on such Secured Obligations for such applicable period, provided that:
- (i) in determining the amount of principal to be funded in such applicable period, payment shall (unless a different clause of this definition of RP Aggregate Debt Service applies for purposes of determining principal maturities or amortization) be

assumed to be made on Outstanding Secured Obligations in accordance with any amortization schedule established by the applicable Financing Document setting forth the terms of such Secured Obligations, including, as a principal payment, the Accreted Value of any Compounding Interest Bonds accreting, maturing or scheduled for redemption in such applicable period; in determining the amount of interest to be funded in such applicable period, interest payable at a fixed rate shall (except to the extent clause (ii) or (iii) of this definition of RP Aggregate Debt Service applies) be assumed to be made at such fixed rate and on the required funding dates as provided in the applicable Financing Document; provided, however, that interest payable on any Secured Obligations shall be excluded to the extent such payments are to be capitalized and added to principal outstanding during such applicable period;

- (ii) Balloon Indebtedness shall be treated in accordance with the terms set out in the applicable Balloon Indebtedness Certificate, including amortization over the term specified in such Balloon Indebtedness Certificate (provided that such term shall be not more than the remaining term of the Lease Agreement or 35 years, whichever is shorter); and with respect to any Secured Obligations only a portion of which constitutes Balloon Indebtedness, the remaining portion will be treated as described in clause (i) or such other provision of this definition of RP Aggregate Debt Service;
- (iii) Tender Indebtedness shall be treated as if the principal amount of such Secured Obligations were to be amortized over a term as specified in a Tender Indebtedness Certificate or of not more than the remaining term of the Lease Agreement and with principal amortization and sinking funds as specified in a certificate signed by the Authorized Lessee Representative attached to the Financing Document setting forth the terms of such Secured Obligations that constitutes Tender Indebtedness (the “Tender Indebtedness Certificate”); the interest rate used for such computation shall be a rate determined by a Consultant to be a reasonable market rate for fixed-rate Secured Obligations of a corresponding term on the date of such calculation, with no credit enhancement and taking into consideration whether such Secured Obligations bear interest which is or is not excluded from gross income for federal income tax purposes; and with respect to all funding requirements of principal and interest payments becoming due prior to the year in which such Tender Indebtedness is first subject to tender, such payments shall be treated as described in clause (b)(i) of this definition of RP Aggregate Debt Service unless the interest during that period is subject to fluctuation, in which case the interest becoming due prior to such first tender date shall be determined as provided in clause (v) of this definition of RP Aggregate Debt Service;
- (iv) for Variable Rate Indebtedness, unless otherwise provided in the particular Financing Document governing particular Secured Obligations (except to the extent otherwise provided in an applicable Balloon Indebtedness Certificate or Tender Indebtedness Certificate, or to the extent clause (b)(vi) of this definition of RP Aggregate Debt Service applies), the interest rate on such Secured Obligations shall be the sum of (A) the swap rate for the applicable index and corresponding term, plus (B) the Applicable Spread or Applicable Margin, as applicable;
- (v) Debt Service on Repayment Obligations; and

- (vi) for Secured Obligations with respect to which a corresponding Secured Hedge Agreement applies (except to the extent otherwise provided in an applicable Balloon Indebtedness Certificate), all interest to be accrued during such period (whether to be paid or unpaid in such period) in respect of Secured Obligations, (A) plus the net amounts payable by the Lessee as Ordinary Course Payments under the applicable Secured Hedge Agreements in respect of such period, or (B) minus the net amounts receivable by the Lessee as Ordinary Course Payments under the applicable Secured Hedge Agreements in respect of such period; plus all principal due during such period in respect of such Secured Obligations.

provided that, in all cases, on a prospective basis, the amounts projected to be paid from, and on a historical basis, the amounts actually paid from, amounts not constituting Project Revenues (including, without limitation, the proceeds of any permitted Refinancing, interest payable on Secured Obligations from proceeds on deposit in the Construction Account and Equity Contributions) shall be excluded from the calculation of RP Aggregate Debt Service for the purposes of calculating the RP Senior Debt Service Coverage Ratio and the RP Total Debt Service Coverage Ratio.

“RP Senior Debt Service Coverage Ratio” or “RP Senior DSCR” means, for any DSCR Calculation Period, the ratio of A divided by B where:

A = the Free Cash Flow for such period; and

B = the RP Aggregate Debt Service for such period with respect to the Senior Obligations, if any.

“RP Total Debt Service Coverage Ratio” or “RP Total DSCR” means, for any DSCR Calculation Period, the ratio of A divided by B where:

A = the Free Cash Flow for such period; and

B = the RP Aggregate Debt Service for such period with respect to all Secured Obligations, if any.

“Security Deposit Facility” means the security deposit facility made available by the Security Deposit Facility Lender under the Credit Agreement as described in Section 2.03 of the Credit Agreement.

“Security Deposit Facility Commitment” means, as to each Security Deposit Facility Lender, its obligation to make Security Deposit Loans pursuant to Section 2.03(e) of the Credit Agreement in an aggregate principal amount not to exceed the amount set forth under the heading “Security Deposit Facility Commitment” opposite such Security Deposit Facility Lender’s name on Schedule 2.03 to the Credit Agreement, or the amount set forth in the Assignment and Assumption pursuant to which such Security Deposit Facility Lender became a party to the Credit Agreement, as the same may be adjusted from time to time in accordance with the Credit Agreement. The original amount of the Security Deposit Facility Commitments shall be (\$8,000,000) on the date of the Credit Agreement.

“Security Deposit Facility LC Issuing Bank” means (a) the Security Deposit Facility LC Issuing Bank identified on Schedule 2.03 to the Credit Agreement in its capacity as an issuer of Security Deposit LCs thereunder or (b) any other Eligible LC Issuer that is an Eligible Assignee and agrees to issue Security Deposit LCs pursuant to the Credit Agreement, in each case in its capacity as an issuer of Security Deposit LCs hereunder, or any successor issuer of Security Deposit LCs hereunder.

“Security Deposit Facility Lender” means, at any time, any Lender that has a Security Deposit Facility Commitment at such time (and after the termination of all Security Deposit Facility Commitments, any Lender that holds any Outstanding Amount in respect of Security Deposit Loans and/or Security Deposit LC Obligations).

“Security Deposit LC” means any letter of credit issued, renewed, extended or amended under the Credit Agreement by the Security Deposit Facility LC Issuing Bank.

“Security Deposit LC Borrowing” means an extension of credit resulting from a drawing under any Security Deposit LC which has not been reimbursed by the Lessee on the date required under Section 2.03(e) of the Credit Agreement.

“Security Deposit LC Credit Extension” means, with respect to any Security Deposit LC, the issuance thereof or extension of the expiry date thereof, or the renewal or increase of the amount thereof.

“Security Deposit LC Expiration Date” means, subject to Section 2.03(b)(iii) of the Credit Agreement, the day that is three (3) Business Days prior to the Bank Financing Maturity Date (or, if such day is not a Business Day, the next preceding Business Day).

“Security Deposit LC Obligations” means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Security Deposit LCs plus the aggregate of all Unreimbursed Amounts in respect of Security Deposit LCs, but excluding, for the avoidance of doubt, any Security Deposit Loans. For purposes of computing the amount available to be drawn under any Security Deposit LC, the amount of such Security Deposit LC shall be determined in accordance with Section 1.03 of the Credit Agreement. For all purposes of the Credit Agreement, if on any date of determination a Security Deposit LC has expired by its terms but (a) any amount may still be drawn thereunder by reason of the operation of Rule 3.13 or Rule 3.14 of the ISP, such Security Deposit LC shall be deemed to be “outstanding” in the amount so remaining available to be drawn, or (b) any drawing was made thereunder on or before the last day permitted thereunder and such drawing has not been honored or refused by the Security Deposit Facility LC Issuing Bank, such Security Deposit LC shall be deemed to be “outstanding” in the amount of such drawing.

“Security Deposit Loan” has the meaning assigned to such term in Section 2.03(e) of the Credit Agreement.

“Senior Financial Officer” means the chief financial officer, principal accounting officer, treasurer, comptroller or similar officer or authorized signatory of the Lessee.

“Senior Loans” means the Senior Term Loans and the Security Deposit Loans.

“Senior Term Lender” means, at any time, any Lender having a Senior Term Loan Commitment and/or holding Senior Term Loans.

“Senior Term Loans Permitted Hedge Agreements” has meaning assigned to such term in Section 5.13(a)(i) of the Common Terms Agreement.

“Series 2022A Bond Availability Period” means the period commencing on the Bank Financing Effective Date and ending on the Commitment End Date (as defined in the Series 2022A Bond Purchase Agreement).

“Series 2022A Bonds Permitted Hedge Agreements” has the meaning assigned to such term in Section 5.13(a)(ii) of the Common Terms Agreement.

“SOFR” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“SOFR Administrator” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“SOFR Borrowing” means, as to any Borrowing, the SOFR Loans comprising such Borrowing.

“SOFR Loan” means a Senior Loan that bears interest at a rate based on Daily Compounded SOFR, other than pursuant to clause (c) of the definition of “ABR”.

“SOFR Unavailability Period” means, the period (if any) (a) beginning at the time that either (i) the SOFR Administrator permanently or indefinitely has ceased to provide SOFR or (ii) the SOFR Administrator has announced that SOFR is no longer representative and (b) ending at the time that either (i) the SOFR Administrator has resumed providing SOFR or (ii) the SOFR Administrator has announced that SOFR is representative, as applicable.

“Tax” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Total Security Deposit Outstandings” means, without duplication, the aggregate Outstanding Amount of all Security Deposit Loans and Security Deposit LC Obligations.

“True-Up Notice” has the meaning assigned to such term in Section 8.01(a) of the Credit Agreement.

“Type”, when used in reference to any Senior Loan or Borrowing, refers to whether the rate of interest on such Senior Loan, or on the Senior Loans constituting such Borrowing, is determined by reference to the Daily Compounded SOFR or the ABR.

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“Underdrawn Bank” has the meaning assigned to such term in Section 8.01(a) of the Credit Agreement.

“United States Person” has the meaning set forth in section 7701(a)(30) of the Code.

“Unreimbursed Amount” has the meaning assigned to such term in Section 2.03(e) of the Credit Agreement.

“U.S. Government Securities Business Day” means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed

income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“U.S. Special Resolution Regimes” has the meaning assigned to such term in Section 10.17 of the Common Terms Agreement.

“U.S. Tax Compliance Certificate” has the meaning assigned to such term in Section 2.14(f)(iv)(C) of the Credit Agreement.

“USA PATRIOT Act” means United States Public Law 107-56, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

“Whitelisted Assignee” means (a) each Person identified as a “Whitelisted Assignee” on a list delivered to the Lessee by any Bank Loan Arranger (as defined in the Mandate Letter) prior to the Closing Date, and confirmed in writing by the Lessee and the Issuer as satisfactory (which confirmation may not be unreasonably withheld or delayed) and, (b) after the Closing Date, each Person identified as a “Whitelisted Assignee” to the Administrative Agent by the Lessee and the Issuer from time to time.

“Write-Down and Conversion Powers” means (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under the Bail-In Legislation that are related to or ancillary to any of those powers.

**[OTHER EXHIBITS HAVE BEEN REMOVED]**

**(THIS PAGE INTENTIONALLY LEFT BLANK)**



**APPENDIX F-2**

**FORM OF CREDIT AGREEMENT**

**(THIS PAGE INTENTIONALLY LEFT BLANK)**

---

---

CREDIT AGREEMENT

dated as of November 1, 2022

by and among

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION  
as Issuer

JFK MILLENNIUM PARTNERS, LLC,  
as Lessee

[REDACTED]  
as Administrative Agent

[REDACTED]

[REDACTED]

[REDACTED],  
as Coordinating Lead Arrangers and Joint Bookrunners

[REDACTED],  
as Senior Joint Lead Arranger

[REDACTED]  
as Joint Lead Arrangers

[REDACTED]

[REDACTED],  
as Mandated Lead Arrangers

[REDACTED],  
as Senior Managing Agent

and

THE FINANCIAL INSTITUTIONS NAMED HEREIN,  
as Lenders and Security Deposit Facility LC Issuing Bank

## Table of Contents

	Page
Article I DEFINITIONS; RULES OF INTERPRETATION.....	2
Section 1.01 Certain Defined Terms.....	2
Section 1.02 Terms Generally .....	2
Section 1.03 Security Deposit LC Amounts.....	2
Article II SENIOR TERM LOAN COMMITMENTS AND BORROWINGS .....	3
Section 2.01 Senior Term Loan Commitments .....	3
Section 2.02 Senior Term Loans and Borrowings.....	3
Section 2.03 Security Deposit LCs.....	3
Section 2.04 Borrowing Requests.....	11
Section 2.05 Funding of Senior Term Loan Borrowings .....	11
Section 2.06 Interest Elections .....	12
Section 2.07 Termination and Reduction of the Senior Term Loan Commitments.....	13
Section 2.08 Repayment of Senior Loans; Evidence of Debt .....	14
Section 2.09 Interest.....	14
Section 2.10 Prepayment of Senior Loans .....	15
Section 2.11 Fees .....	15
Section 2.12 Increased Costs.....	16
Section 2.13 Illegality .....	17
Section 2.14 Taxes .....	17
Section 2.15 Payments Generally; Pro Rata Treatment; Sharing of Setoffs .....	20
Section 2.16 Several Obligations of Lenders .....	21
Section 2.17 Compensation for Losses .....	21
Section 2.18 Mitigation Obligations; Replacement of Lenders.....	22
Section 2.19 Defaulting Lenders .....	22
Section 2.20 Inability to Determine Rates.....	24
Section 2.21 Benchmark Replacement Setting.....	24
Article III REPRESENTATIONS AND WARRANTIES.....	25
Section 3.01 Issuer Representations and Warranties .....	25
Article IV CONDITIONS PRECEDENT TO EACH BORROWING.....	27
Section 4.01 Each Borrowing of Senior Term Loans .....	27
Section 4.02 Each Security Deposit LC Credit Extension .....	28
Article V NATURE OF THE ISSUER’S OBLIGATIONS; COVENANTS .....	28
Section 5.01 Issuer’s Obligations Not to Create a Pecuniary Liability.....	28
Section 5.02 Payment of Principal and Interest.....	28
Section 5.03 Performance of Covenants.....	29
Section 5.04 Books and Records; Certificate as to Defaults.....	29
Section 5.05 Bank Financing TDC Loan Agreements.....	29
Section 5.06 Creation of Liens; Indebtedness.....	29
Section 5.07 Ownership; Instruments of Further Assurance.....	30
Section 5.08 Notices, Etc.....	30
Section 5.09 Maintenance of Existence.....	31
Section 5.10 Cooperation.....	31
Section 5.11 Compliance with Law.....	31
Section 5.12 Know Your Customer Information.....	31

	<b>Page</b>
Article VI EVENTS OF DEFAULT .....	31
Section 6.01 Events of Default. ....	31
Article VII THE ADMINISTRATIVE AGENT.....	33
Section 7.01 Appointment and Authorization of the Administrative Agent .....	33
Section 7.02 Rates .....	33
Article VIII MISCELLANEOUS.....	33
Section 8.01 Notices .....	33
Section 8.02 Waivers; Amendments.....	36
Section 8.03 Damages Waiver.....	37
Section 8.04 Successors and Assigns.....	38
Section 8.05 Survival; Entire Agreement.....	41
Section 8.06 Counterparts; Electronic Execution of Financing Documents .....	41
Section 8.07 Severability.....	42
Section 8.08 Right of Setoff.....	42
Section 8.09 Governing Law; Jurisdiction; Etc.....	42
Section 8.10 Headings.....	43
Section 8.11 No Third-Party Beneficiaries .....	43
Section 8.12 Reinstatement .....	44
Section 8.13 USA PATRIOT Act.....	44
Section 8.14 Acknowledgment and Consent to Bail-In of Affected Financial Institutions .....	44
Section 8.15 Acknowledgement Regarding Any Supported QFCs .....	44
Section 8.16 Exculpation of Issuer; Issuer Payments .....	45
Section 8.17 Issuer Not Responsible for Insurance, Taxes, or Application of Moneys Applied in Accordance with this Agreement.....	45
Section 8.18 Issuer May Rely on Certificates .....	45
Section 8.19 Limitation of Issuer’s Liability.....	46
Section 8.20 Issuer Standing Instructions .....	46
Section 8.21 Additional Documents and Further Assurances .....	46
Section 8.22 Effective Date.....	47

EXHIBITS:

EXHIBIT A - Form of Assignment and Assumption

EXHIBIT B - Form of Borrowing Request

EXHIBIT C - Form of Letter of Credit Application

SCHEDULES:

Schedule 1.01 - Non-Cumulative Compounded Rate Formula

Schedule 2.01 - Senior Term Loan Commitments

Schedule 2.03 - Security Deposit Facility Commitments; Security Deposit Facility LC Issuing Bank

Schedule 2.04 - Scheduled Credit Extension Dates; Borrowing Amounts

**THIS CREDIT AGREEMENT**, dated as of November 1, 2022 (this “Agreement”), among New York Transportation Development Corporation, a local development corporation formed under Section 1411 of the New York Not-for-Profit Corporation Law, being Chapter 35 of the Consolidated Laws of New York, created by action of the New York Job Development Authority (“JDA”) established under Section 1802, Subtitle I, Title 8, Article 8, of the New York Public Authorities Law, and having an address c/o Empire State Development, 633 Third Avenue, New York, New York 10017 as borrower (the “Issuer”), JFK Millennium Partners, LLC, a Delaware limited liability company (the “Lessee”), the banks and other financial institutions or entities from time to time party to this Agreement as Lenders, the security deposit letter of credit issuing banks from time to time party to this Agreement as Security Deposit Facility LC Issuing Banks,

[REDACTED], as coordinating lead arrangers and joint bookrunners,

[REDACTED], as mandated lead arrangers and Siemens Financial Services Inc., as senior managing agent (collectively, such coordinating lead arrangers, senior joint lead arranger, joint lead arrangers, mandated lead arrangers and senior managing agent, in such capacities, the “Lead Arrangers”), and [REDACTED], as administrative agent (in such capacity, the “Administrative Agent”).

WITNESSETH:

**WHEREAS**, The Port Authority of New York and New Jersey, a municipal corporate instrumentality and political subdivision of the States of New York and New Jersey, created and existing by virtue of the Compact of April 30, 1921, made by and between the States of New York and New Jersey, and thereafter consented to by the Congress of the United States has entered into an Agreement of Lease, dated as of November 17, 2022, with the Lessee pursuant to which, among other things, the Lessee is obliged to undertake the following: (i) the operation, maintenance, and demolition of the Existing Terminal Facilities at John F. Kennedy International Airport in Queens, New York, which Existing Terminal Facilities include the existing Terminal 7 facilities, (ii) the design, construction, financing, operation and maintenance of the New Terminal Facilities at the Airport (which New Terminal Facilities include new Terminal 6 facilities and replacement Terminal 7 facilities) and certain ancillary facilities, and (iii) the design and construction of the Off-Premises Facilities at the Airport on behalf of the Port Authority, which Off-Premises Facilities will not be operated or maintained by the Lessee and will not constitute part of the facilities leased to the Lessee under the Lease Agreement;

**WHEREAS**, the Lessee has requested that the Lenders provide each Senior Term Loan to the Issuer, and the Lenders are willing to provide a senior secured credit facility on the terms and conditions and in the respective principal amounts and stated amounts set forth in this Agreement;

**WHEREAS**, the Lessee has requested that the Security Deposit Facility Lenders provide each Security Deposit Loan to the Issuer, and the Security Deposit Facility Lenders are willing to provide a senior secured letter of credit facility on the terms and conditions and in the respective principal amounts and stated amounts set forth in this Agreement;

**WHEREAS**, the Lessee has requested that the Security Deposit Facility LC Issuing Bank issue Security Deposit LCs, and the Security Deposit Facility LC Issuing Bank is willing to do so on the terms and conditions and in the principal amount and stated amounts set forth in this Agreement;

**WHEREAS**, the proceeds of each Senior Term Loan and any Security Deposit Loan will be loaned by the Issuer to the Lessee in accordance with the Bank Financing TDC Loan Agreements, and the Lessee will apply the proceeds of such to pay Project Costs;

**WHEREAS**, the Lessee will execute and deliver the TDC Bank Debt Building Note, the TDC Bank Debt Project Note and the TDC Security Deposit Project Note in favor of the Issuer to evidence a portion of the obligations of the Lessee under the Bank Financing TDC Loan Agreements;

**WHEREAS**, as security for its obligations under the TDC Building Loan Agreement and the TDC Project Loan Agreement, respectively, the Lessee will, pursuant to the Building Leasehold Mortgage and the Project Leasehold Mortgage, grant mortgage liens on and security interests in the interests of the Lessee under the Lease Agreement to the Issuer; and

**WHEREAS**, the Issuer will assign all of its right, title and interest in and to the TDC Loan Agreements, the TDC Bank Debt Building Note, the TDC Bank Debt Project Note, the TDC Security Deposit Project Note and the Leasehold Mortgages, except for the Reserved Rights, to the Senior Collateral Agent as security for the Senior Obligations, pursuant to the Issuer Assignment Agreements, and will further endorse the TDC Bank Debt Building Note, the TDC Bank Debt Project Note and the TDC Security Deposit Project Note in favor of the Senior Collateral Agent as security for the Senior Obligations;

**NOW, THEREFORE**, in consideration of the foregoing and other good and valid consideration, the receipt and adequacy of which are hereby expressly acknowledged, the parties hereto agree as follows:

## **Article I**

### **DEFINITIONS; RULES OF INTERPRETATION**

Section 1.01 **Certain Defined Terms.** Unless otherwise specified, capitalized terms used in this Agreement have the meanings assigned to them in Appendix A to the Common Terms Agreement, dated as of the date hereof, by and among the Issuer, the Lessee, [REDACTED], as Senior Collateral Agent, the Intercreditor Agent, the Administrative Agent, [REDACTED], as Series 2022A Bondholder and the Lenders, or if not defined therein, in the Exhibit A to the Collateral Agency and Accounts Agreement. In the event of conflict between the definition of a term in the Common Terms Agreement and the definition of the same term in the Collateral Agency and Accounts Agreement, the definition in the Common Terms Agreement shall prevail.

Section 1.02 **Terms Generally.** Except as otherwise expressly provided or unless the context otherwise requires, the rules of interpretation included in Exhibit A to the Collateral Agency and Accounts Agreement shall apply to this Agreement.

Section 1.03 **Security Deposit LC Amounts.** Unless otherwise specified herein, the amount of a Security Deposit LC at any time shall be deemed to be the stated amount of such Security Deposit LC in effect at such time after giving effect to any expiration periods applicable thereto; provided, however, that (a) if any presentation of drawing documents shall have been made on or prior to the expiration date of such Security Deposit LC and the Security Deposit Facility LC Issuing Bank shall not yet have honored such drawing or given notice of dishonor, the amount of such Security Deposit LC that is the subject of such drawing shall be treated as still outstanding and (b) with respect to any Security Deposit LC that, by its terms or the terms of any Issuing Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Security Deposit LC shall be deemed to be the maximum stated amount of such Security Deposit LC after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.



## Article II

### SENIOR TERM LOAN COMMITMENTS AND BORROWINGS

Section 2.01 **Senior Term Loan Commitments.** Subject to and upon the terms and conditions set forth herein, each Senior Term Lender severally agrees to make, on each Scheduled Credit Extension Date during the Availability Period, a term loan or term loans (each, a “Senior Term Loan” and, collectively, the “Senior Term Loans”) to the Issuer, which Senior Term Loans (i) shall be denominated in Dollars, (ii) except as hereinafter provided, shall be incurred and maintained as SOFR Loans or ABR Loans, and (iii) shall be made by each such Senior Term Lender in that aggregate principal amount which does not exceed the unutilized Senior Term Loan Commitment of such Senior Term Lender at such time; *provided* that such Senior Term Lender’s Senior Term Loan made on the Closing Date shall not exceed the amount set forth opposite its name in Schedule 2.01 under the column “Maximum Closing Date Senior Term Loan”. Once repaid, Senior Term Loans incurred hereunder may not be reborrowed.

Section 2.02 **Senior Term Loans and Borrowings.**

(a) **Borrowings.** Each Senior Term Loan shall be made as part of a Borrowing consisting of Senior Term Loans of the same Type made by the Senior Term Lenders ratably in accordance with their respective Senior Term Loan Commitment, except for the Senior Term Loans made on the Closing Date, which shall be made by each Senior Term Lender in the amount set forth opposite its name in Schedule 2.01 under the column “Maximum Closing Date Senior Term Loan”.

(b) **Types of Loans.** Each Borrowing shall be comprised entirely of ABR Loans or SOFR Loans; *provided* that the Lessee may only request Borrowings of, or convert Borrowings to, ABR Loans when required pursuant to Section 2.13, Section 2.20 or Section 2.21. Each Senior Term Lender at its option may make any Senior Term Loan by causing any domestic or foreign branch or Affiliate of such Lender to make or hold such Senior Term Loan at such Senior Term Lender’s applicable lending office; *provided* that any exercise of such option shall not affect the obligation of the Issuer to repay such Senior Term Loan in accordance with the terms of this Agreement, the Collateral Agency and Accounts Agreement and the other Senior Bank Financing Documents.

(c) **Minimum Amounts; Limitation on Number of Borrowings.**

(i) The Lessee may not request more than one (1) Borrowing of Senior Term Loans on each Scheduled Credit Extension Date.

(ii) Each Senior Term Loan Borrowing shall be in the amount opposite the applicable Scheduled Credit Extension Date in Schedule 2.04.

Section 2.03 **Security Deposit LCs.**

(a) **Security Deposit Facility Commitment.** Subject to the terms and conditions set forth herein, the Security Deposit Facility LC Issuing Bank agrees (i) from time to time on any Business Day during the period from the Closing Date until the Security Deposit LC Expiration Date, to issue Security Deposit LCs denominated in Dollars for the account of the Issuer on behalf of the Lessee and to amend or renew Security Deposit LCs previously issued by it, in accordance with Section 2.03(d), and (ii) to honor drafts under the Security Deposit LCs; *provided* that the Security Deposit Facility LC Issuing Bank shall not be obligated to make any Security Deposit LC Credit Extension with respect to any Security Deposit LC if as of the date of such Security Deposit LC Credit Extension (x) the Total Security Deposit Outstandings would exceed the Security Deposit Facility or (y) the aggregate Outstanding Amount of the Security Deposit Loans of such Security Deposit Facility Lender, plus such Security Deposit Facility Lender’s Outstanding Amount of all Security Deposit LC Obligations would exceed such Security Deposit

Facility Lender's Security Deposit Facility Commitment. Within the foregoing limits, and subject to the terms and conditions hereof, the Issuer's ability to obtain (at the direction of the Lessee) Security Deposit LCs shall be fully revolving, and accordingly the Issuer (at the direction of the Lessee) may, during the foregoing period, obtain Security Deposit LCs to replace Security Deposit LCs that have expired or been terminated or that have been drawn upon and reimbursed.

(b) The Security Deposit Facility LC Issuing Bank shall not be obligated to issue any letters of credit hereunder other than standby letters of credit. Additionally, the Security Deposit Facility LC Issuing Bank shall not be under any obligation to issue any Security Deposit LCs (and, in the case of sub-paragraphs (ii) and (iii) below, unless the applicable requisite consents specified therein have been obtained, no Security Deposit Facility LC Issuing Bank shall issue any Security Deposit LC) if:

(i) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Security Deposit Facility LC Issuing Bank from issuing such Security Deposit LC, or any Law applicable to such Security Deposit Facility LC Issuing Bank or any request or directive (whether or not having the force of Law) from any Governmental Authority with jurisdiction over such Security Deposit Facility LC Issuing Bank shall prohibit, or request that such Security Deposit Facility LC Issuing Bank refrain from, the issuance of letters of credit generally or such Security Deposit LC in particular or shall impose upon such Security Deposit Facility LC Issuing Bank with respect to such Security Deposit LC any restriction, reserve or capital requirement (for which such Security Deposit Facility LC Issuing Bank is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such Security Deposit Facility LC Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which, in each case, such Security Deposit Facility LC Issuing Bank in good faith deems material to it;

(ii) subject to sub-paragraph (iii) below, the expiry date of such requested Security Deposit LC would occur after the earlier of (x) three (3) Business Days prior to the scheduled Bank Financing Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day) and (y) more than twelve (12) months after the date of issuance or last renewal, unless the Security Deposit Facility LC Issuing Bank, in its sole discretion, has approved such expiry date;

(iii) the expiry date of such requested Security Deposit LC would occur after the Security Deposit LC Expiration Date unless the Security Deposit Facility LC Issuing Bank has approved such expiry date at least three (3) Business Days prior to the Security Deposit LC Expiration Date;

(iv) such Security Deposit LC is in an initial stated amount of less than five thousand Dollars (\$5,000) or such lesser amount as is acceptable to the Security Deposit Facility LC Issuing Bank in its sole discretion;

(v) if the proceeds of any Security Deposit LC would be made available to any Person (A) to fund any activity or business of or with any Sanctioned Person, or in any country or territory that, at the time of such funding, is the subject of any sanctions, in each case, in violation of Sanctions Laws or (B) in any manner that would result in a violation of any Sanctions Laws by any party to this Agreement; or

(vi) such Security Deposit LC is denominated in a currency other than Dollars.

(c) The Security Deposit Facility LC Issuing Bank shall not be under any obligation to amend any Security Deposit LC if (A) such Security Deposit Facility LC Issuing Bank would have no obligation at such time to issue such Security Deposit LC in its amended form under the terms hereof or (B) the beneficiary of such Security Deposit LC does not accept the proposed amendment to such Security Deposit LC.

(d) Procedures for Issuance and Amendment of Security Deposit LCs; Auto-Renewal Letters of Credit.

(i) Each Security Deposit LC shall be issued or amended, as the case may be, upon the request of the Issuer, at the direction of the Lessee, delivered to the Security Deposit Facility LC Issuing Bank (with a copy to the Administrative Agent and the Lessee) in the form of an irrevocable Letter of Credit Application, including agreed-upon draft language for such Security Deposit LC reasonably acceptable to such Security Deposit Facility LC Issuing Bank, appropriately completed and signed by a Responsible Officer of the Lessee. Such Letter of Credit Application must be received by the Security Deposit Facility LC Issuing Bank and the Administrative Agent not later than 2:00 p.m. (New York City time) at least three (3) U.S. Government Securities Business Days or in the case of a Security Deposit LC requested to be issued on the Closing Date, at least three (3) U.S. Government Securities Business Days (in each case, or such shorter period as such Security Deposit Facility LC Issuing Bank and the Administrative Agent may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Security Deposit LC, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the Security Deposit Facility LC Issuing Bank: (A) the proposed issuance date of the requested Security Deposit LC (which shall be a Business Day not later than thirty (30) days prior to the Bank Financing Maturity Date, unless the Administrative Agent and the Security Deposit Facility LC Issuing Bank otherwise agree); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof, which shall be the Port Authority; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate or other documents to be presented by such beneficiary in case of any drawing thereunder; and (G) such other matters as the Security Deposit Facility LC Issuing Bank may reasonably request. In the case of request for an amendment of any outstanding Security Deposit LC, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the Security Deposit Facility LC Issuing Bank: (1) the Security Deposit LC to be amended; (2) the proposed date of amendment thereof (which shall be a Business Day); (3) the nature of the proposed amendment; and (4) such other matters as the Security Deposit Facility LC Issuing Bank may reasonably request.

(ii) Promptly following delivery of any Letter of Credit Application to the Security Deposit Facility LC Issuing Bank, the Lessee will confirm with the Administrative Agent that the Administrative Agent has received a copy of such Letter of Credit Application and, if the Administrative Agent has not received a copy of such Letter of Credit Application, then the Lessee will provide the Administrative Agent with a copy thereof. Upon receipt by such Security Deposit Facility LC Issuing Bank of confirmation from the Administrative Agent that the requested issuance or amendment is permitted in accordance with the terms hereof, then, subject to the terms and conditions hereof, such Security Deposit Facility LC Issuing Bank shall, on the requested date, issue Security Deposit LC for the account of the Issuer or enter into the applicable amendment, as the case may be.

(iii) If the Lessee so requests in any applicable Letter of Credit Application, the Security Deposit Facility LC Issuing Bank may, in its sole and absolute discretion, agree to issue a Security Deposit LC that has automatic renewal provisions (each, an “Auto-Renewal Letter of Credit”); provided that any such Auto-Renewal Letter of Credit must permit such Security Deposit Facility LC Issuing Bank to prevent any such automatic renewal at least once in each twelve (12)-month period (commencing with the date of issuance of such Security Deposit LC) by giving prior notice to the beneficiary thereof not later than a day in each such twelve (12)-month period to be agreed upon at the time such Security Deposit LC is issued. Unless otherwise directed by the Security Deposit Facility LC Issuing Bank, the Issuer shall not be required to make a specific request to such Security Deposit Facility LC Issuing Bank for any such renewal. Once an Auto-Renewal Letter of Credit has been issued, the Security Deposit Facility Lender shall be deemed to have authorized (but may not require) the Security Deposit Facility LC Issuing Bank to permit the automatic renewal of such Security Deposit LC at any time prior to an expiry

date to be set forth in such Auto-Renewal Letter of Credit not later than the Security Deposit LC Expiration Date, as applicable; provided, however, that such Security Deposit Facility LC Issuing Bank shall not permit any such automatic renewal if such Security Deposit Facility LC Issuing Bank has determined that it would have no obligation at such time to issue such Security Deposit LC in its renewed form under the terms hereof (by reason of the provisions of Section 2.03(d)(ii)).

(iv) Promptly upon request thereof by the Issuer, the Lessee or the Administrative Agent and after its delivery of any Security Deposit LC or any amendment to a Security Deposit LC to an advising bank with respect thereto or to the beneficiary thereof, the Security Deposit Facility LC Issuing Bank will also (A) deliver to the Issuer, the Lessee and the Administrative Agent a true and complete copy of such Security Deposit LC or amendment and (B) the Administrative Agent in turn will notify the Security Deposit Facility Lenders of such issuance or amendment and the amount of each Security Deposit Facility Lender's pro rata share therein.

(v) Notwithstanding anything to the contrary set forth above, the issuance of any Security Deposit LC by any Security Deposit Facility LC Issuing Bank under this Agreement shall be subject to such reasonable additional letter of credit issuance procedures and requirements as may be required by such Security Deposit Facility LC Issuing Bank's internal letter of credit issuance policies and procedures, in its sole discretion, as in effect at the time of such issuance, including requirements with respect to the prior receipt by such Security Deposit Facility LC Issuing Bank of customary "know your customer" information regarding a prospective account party or applicant that is not the Issuer (or the Lessee), as well as regarding any beneficiaries of a requested Security Deposit LC.

(e) Drawings and Reimbursements. Upon receipt from the Port Authority of any drawing documents under a Security Deposit LC, the Security Deposit Facility LC Issuing Bank shall, within the period determined by applicable Law or rules specified in such Security Deposit LC, examine the drawing document(s). After such examination of drawing document(s), the Security Deposit Facility LC Issuing Bank shall notify the Issuer and the Lessee of the date and the amount of a draft presented under any Security Deposit LC and paid by such Security Deposit Facility LC Issuing Bank; provided, that any failure to give or delay in giving such notice shall not relieve the Issuer and the Lessee of their obligations to reimburse upon receipt of such notice. Each Security Deposit Facility LC Issuing Bank shall notify the Issuer and the Lessee on the date of any payment by such Security Deposit Facility LC Issuing Bank under a Security Deposit LC (each such date, an "Honor Date"), and the Lessee, on behalf of the Issuer, shall reimburse such Security Deposit Facility LC Issuing Bank through the Administrative Agent in an amount equal to the amount of such drawing with interest on the amount so paid or disbursed by such Security Deposit Facility LC Issuing Bank, to the extent not reimbursed prior to 3:00 p.m. (New York City time) on the applicable Honor Date, from and including the date paid or disbursed to but excluding the date such Security Deposit Facility LC Issuing Bank was reimbursed by the Lessee therefor at a rate per annum equal to the ABR as in effect from time to time plus the Applicable Margin as in effect from time to time for Security Deposit Loans, as applicable, that are maintained as ABR Loans, in each case no later than on the next succeeding Business Day (and any reimbursement made on such next Business Day shall be taken into account in computing interest and fees in respect of any such Security Deposit LC) after the Issuer and the Lessee shall have received notice of such payment. If the Issuer (or the Lessee on its behalf) fails to so reimburse such Security Deposit Facility LC Issuing Bank on such next Business Day, such Security Deposit Facility LC Issuing Bank will notify the Administrative Agent thereof and the Administrative Agent shall promptly notify each Security Deposit Facility Lender and the Lessee, on behalf of the Issuer, shall be deemed to have requested a Security Deposit LC Borrowing of ABR Loans in Dollars to be disbursed on such date in an amount equal to the amount of the unreimbursed drawing (the "Unreimbursed Amount"), subject to the amount of the unused portion of the Security Deposit Facility Commitments (such loan, a "Security Deposit Loan") and an equivalent Project Loan shall be made by the Issuer to the Lessee pursuant to the TDC Project Loan Agreement. Any notice given by a Security Deposit Facility LC Issuing

Bank or the Administrative Agent pursuant to this Section 2.03(e) may be given by telephone if promptly confirmed in writing; provided that the lack of such a prompt confirmation shall not affect the conclusiveness or binding effect of such notice.

(f) Participations. By the issuance of any Security Deposit LC, or an amendment to or renewal of any Security Deposit LC increasing the amount thereof, by a Security Deposit Facility LC Issuing Bank, and without any further action on the part of the Security Deposit Facility LC Issuing Bank or any Security Deposit Facility Lender, the Security Deposit Facility LC Issuing Bank hereby grants to each Security Deposit Facility Lender with a Security Deposit Facility Commitment and each Security Deposit Facility Lender hereby acquires from the Security Deposit Facility LC Issuing Bank, without any separate action or agreement, a participation in such Security Deposit LC equal to such Security Deposit Facility Lender's pro rata share of the aggregate amount available to be drawn under such Security Deposit LC. Each Security Deposit Facility Lender acknowledges and agrees that its obligation to acquire participations pursuant to this Section 2.03(f) in respect of Security Deposit LCs is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Security Deposit LC or the occurrence and continuance of a Default or Event of Default or reduction or termination of Security Deposit Facility Commitments.

In consideration and in furtherance of the foregoing, each Security Deposit Facility Lender with a Security Deposit Facility Commitment in respect of a Security Deposit LC hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for account of the Security Deposit Facility LC Issuing Bank of such Security Deposit LC (unless such Security Deposit Facility Lender is also the Security Deposit Facility LC Issuing Bank), such Security Deposit Facility Lender's pro rata share of each Security Deposit LC Borrowing made by the Security Deposit Facility LC Issuing Bank under such Security Deposit LC on the Business Day following the date of the Security Deposit LC Borrowing in respect of such Security Deposit LC Borrowing. Such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each such payment shall be made in the manner set forth in Section 2.15 and the Administrative Agent shall promptly pay to the Security Deposit Facility LC Issuing Bank the amounts so received by it from the applicable Security Deposit Facility Lenders.

(g) Obligations Absolute. Subject in all respects to Section 8.19, the obligation of the Issuer (or the Lessee on its behalf) to reimburse the Security Deposit Facility LC Issuing Bank for each drawing under each Security Deposit LC and to repay each Security Deposit LC Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Security Deposit LC, this Agreement, or any other agreement or instrument relating thereto;

(ii) the existence of any claim, counterclaim, set-off, defense or other right that the Lessee or Issuer may have at any time against any beneficiary or any transferee of such Security Deposit LC (or any Person for whom any such beneficiary or any such transferee may be acting), the Security Deposit Facility LC Issuing Bank or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Security Deposit LC or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Security Deposit LC proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Security Deposit LC;

(iv) any payment by the Security Deposit Facility LC Issuing Bank under such Security Deposit LC against presentation of a draft, certificate or other drawing document that does not comply with the terms of such Security Deposit LC; or any payment made by the Security Deposit Facility LC Issuing Bank under such Security Deposit LC to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, administrator, administrative receiver, judicial manager, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Security Deposit LC, including any arising in connection with any proceeding under any Debtor Relief Law; in each case other than any such payment made as a result of Security Deposit Facility LC Issuing Bank's bad faith, gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final and non-appealable judgment;

(v) any exchange, release or non-perfection of any Collateral, or any release or amendment or waiver of or consent to departure from any guarantee, for all or any of the Obligations of the Issuer or the Lessee in respect of such Security Deposit LC; or

(vi) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a legal or equitable discharge of, or provide a right of set-off against the Lessee's or the Issuer's obligations hereunder (other than a defense of proper payment or performance).

The Lessee shall promptly examine a copy of each Security Deposit LC and each amendment thereto that is delivered to them and, in the event of any claim of non-compliance with the instructions of the Issuer or other irregularity, the Lessee will promptly notify the Security Deposit Facility LC Issuing Bank. The Lessee and the Issuer shall be conclusively deemed to have waived any such claim against any Security Deposit Facility LC Issuing Bank unless such notice is given as aforesaid.

(h) Role of Security Deposit Facility LC Issuing Bank. Each of the Issuer and the Lessee agrees that, in paying any drawing under a Security Deposit LC, the Security Deposit Facility LC Issuing Bank shall not have any responsibility to obtain any document (other than any sight draft, certificates and other documents expressly required by the Security Deposit LC) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. No Security Deposit Facility LC Issuing Bank, Agent-Related Person nor any of their respective correspondents, participants or assignees shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of any Security Deposit Facility Lender; (ii) any action taken or omitted in the absence of bad faith, gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final and non-appealable judgment; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Security Deposit LC or Letter of Credit Application. The Lessee hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its or the Issuer's use of any Security Deposit LC; provided, however, that this assumption is not intended to, and shall not, preclude the Lessee or the Issuer from pursuing such rights and remedies as they may have against the beneficiary or transferee at Law or under any other agreement. No Security Deposit Facility LC Issuing Bank, Agent-Related Person, nor any of their respective participants or assignees, shall be liable or responsible for any of the matters described in sub-paragraphs (i) to (vi) of Section 2.03(g); provided, however, that anything in such sub-paragraphs to the contrary notwithstanding, the Lessee or the Issuer may have a claim against such Security Deposit Facility LC Issuing Bank, and such Security Deposit Facility LC Issuing Bank may be liable to the Lessee or the Issuer, to the extent, but only to the extent, of any direct, as opposed to indirect, special, punitive, consequential or exemplary, damages suffered by the Lessee or the Issuer which a court of competent jurisdiction determines in a final non-appealable judgment were caused by such Security Deposit Facility LC Issuing Bank's bad faith, willful misconduct or gross negligence. In furtherance and not in limitation of the foregoing, the Security Deposit Facility LC Issuing Bank may, in its sole discretion, either accept

documents that appear on their face to be in order and make payment upon such documents, without responsibility for further investigation, regardless of any notice or information to the contrary, and such Security Deposit Facility LC Issuing Bank shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Security Deposit LC or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Security Deposit LC.

(i) Security Deposit LC Fees. Pursuant to the procedure set forth in this Section 2.03(i), the Lessee, on behalf of the Issuer, shall pay to the Administrative Agent, for the account of each Security Deposit Facility LC Issuing Bank, a Security Deposit LC fee in Dollars which shall accrue for each Security Deposit LC on the amount thereof in an amount equal to the Applicable Margin then in effect for SOFR Loans with respect to the Security Deposit Facility in the case of Security Deposit LCs, in each case multiplied by the average daily maximum amount then available to be drawn under such Security Deposit LC (whether or not such maximum amount is then in effect under such Security Deposit LC if such maximum amount increases automatically pursuant to the terms of such Security Deposit LC) during the applicable period; provided, however, that no Security Deposit LC fees shall be paid to a Security Deposit Facility LC Issuing Bank that is a Defaulting Lender. Such Security Deposit LC fees shall be computed on a monthly basis in arrears and shall be due and payable on the last Business Day of each month, in respect of the monthly period then ending (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Security Deposit LC, on Security Deposit LC Expiration Date and thereafter on demand. If there is any change in the Applicable Margin during any month, the daily maximum amount of each Security Deposit LC shall be computed and multiplied by the Applicable Margin separately for each period during such month that such Applicable Margin was in effect. The Issuer shall be deemed to have made a payment of any Security Deposit LC fee under this Section 2.03(i) upon the making of an equivalent payment by the Lessee to the Administrative Agent for the account of each Security Deposit Facility LC Issuing Bank pursuant to the TDC Project Loan Agreement and pursuant to the Collateral Agency and Accounts Agreement. Without limitation of any obligation of the Lessee under the Senior Financing Documents, under no circumstances shall the Issuer be required to make any payment of Security Deposit LC fees or have any obligation with respect to any such payment, other than from amounts received by the Issuer from the Lessee for payment pursuant to the terms of the TDC Building Loan Agreement, the TDC Project Loan Agreement, any Senior Collateral Document or the Common Terms Agreement.

(j) Documentary and Processing Charges Payable to a Security Deposit Facility LC Issuing Bank. The Issuer shall pay (at the direction of the Lessee), or the Lessee shall cause, on behalf of the Issuer, to be paid pursuant to and in accordance with the Collateral Agency and Accounts Agreement, directly to the Security Deposit Facility LC Issuing Bank for its own account, without duplication, the customary and documented issuance, presentation, administration, amendment and other processing fees, and other standard costs and charges, of such Security Deposit Facility LC Issuing Bank relating to letters of credit as from time to time in effect. Such customary and documented fees and standard costs and charges are due and payable within five Business Days of demand and are non-refundable. The Issuer shall be deemed to have made a payment of any such customary fees and standard costs and charges under this Section 2.03(j) upon the making of an equivalent payment by the Lessee to the Administrative Agent for the account of each Security Deposit Facility LC Issuing Bank pursuant to the TDC Project Loan Agreement and the Collateral Agency and Accounts Agreement. Without limitation of any obligations of the Lessee under the Financing Documents, under no circumstances shall the Issuer be required to make any payment of such customary and documented fees and standard costs and charges or have any obligation with respect to any such payment, other than from amounts received by the Issuer from the Lessee for payment pursuant to the terms of the Bank Financing TDC Loan Agreements, any Senior Collateral Document or the Common Terms Agreement.

(k) Conflict with Letter of Credit Application. In the event of any conflict between the terms hereof and the terms of any Letter of Credit Application, the terms hereof shall control.

(l) Reporting. Each Security Deposit Facility LC Issuing Bank shall furnish to the Administrative Agent a report detailing the daily Security Deposit LC Obligations, as applicable, outstanding under all Security Deposit LCs issued by it, such report to be in a form and at reporting intervals as shall be agreed between the Administrative Agent and such Security Deposit Facility LC Issuing Bank; provided that in no event shall such reports be furnished at intervals greater than thirty-one (31) days (and in no event shall any such report be provided earlier than the fifth (5th) Business Day after the end of any calendar month in respect of a calendar month period). The Security Deposit Facility LC Issuing Bank shall promptly notify the Administrative Agent, the Lessee and the Issuer in the event that it no longer is an Eligible LC Issuer.

(m) Applicability of ISP. Unless otherwise expressly agreed in writing by the Security Deposit Facility LC Issuing Bank and the Lessee when a Security Deposit LC is issued by such Security Deposit Facility LC Issuing Bank, the rules of the ISP shall apply to each Security Deposit LC. Notwithstanding the foregoing, no Security Deposit Facility LC Issuing Bank shall be responsible to the Issuer or Lessee for, and such Security Deposit Facility LC Issuing Bank's rights and remedies against the Issuer or Lessee shall not be impaired by, any action or inaction of such Security Deposit Facility LC Issuing Bank required or permitted under any law, order, or practice that is required or permitted to be applied to any Security Deposit LC or this Agreement, including the Laws or any order of a jurisdiction where such Security Deposit Facility LC Issuing Bank or the beneficiary is located, the practice stated in the ISP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the International Chamber of Commerce Banking Commission, the Bankers Association for Finance and Trade (BAFT), or the Institute of International Banking Law & Practice, whether or not any Security Deposit LC chooses such laws or practice rules.

(n) Replacement of Security Deposit Facility LC Issuing Bank. Subject to the appointment and acceptance of a successor Security Deposit Facility LC Issuing Bank as provided below, the Security Deposit Facility LC Issuing Bank may be replaced at any time if it no longer is an Eligible LC Issuer, by written agreement among the Lessee, the Administrative Agent, the Required Security Deposit Facility Lenders, at such time, the assigning Security Deposit Facility LC Issuing Bank and the successor Security Deposit Facility LC Issuing Bank. Upon any such removal, the Required Security Deposit Facility Lenders shall have the right to appoint a successor Security Deposit Facility LC Issuing Bank (which is reasonably acceptable to the Lessee if no Default or Event of Default has occurred and is continuing), which shall be an Eligible LC Issuer and otherwise satisfy the requirements of the Lease Agreement. If no successor Security Deposit Facility LC Issuing Bank shall have been appointed within thirty (30) days after the retiring Security Deposit Facility LC Issuing Bank is given notice of such removal, then the retiring Security Deposit Facility LC Issuing Bank may, on behalf of the Required Security Deposit Facility Lenders, appoint a successor Security Deposit Facility LC Issuing Bank, which shall be an Eligible LC Issuer and otherwise be in compliance with the Lease Agreement and have an office in New York, New York (or any other location in the United States that is satisfactory to the beneficiary of the Security Deposit LC issued hereunder), which successor Security Deposit Facility LC Issuing Bank shall (so long as no Default or Event of Default has occurred and is continuing) be reasonably acceptable to the Lessee. Any such replacement of the Security Deposit Facility LC Issuing Bank shall be made in accordance with and subject to the requirements of Section 8.04(b). At the time any such replacement shall become effective, the Lessee, on behalf of the Issuer, shall pay (which payment shall be made pursuant to and in accordance with the Collateral Agency and Accounts Agreement) all unpaid fees accrued for account of the replaced or assigning Security Deposit Facility LC Issuing Bank pursuant to Section 2.03(i). From and after the effective date of any such replacement, the successor Security Deposit Facility LC Issuing Bank shall have all the rights and obligations of the replaced Security Deposit Facility LC Issuing Bank under this



Agreement with respect to the Security Deposit Facility. After the replacement of the Security Deposit Facility LC Issuing Bank hereunder, (x) the Lessee shall use reasonable commercial efforts to replace the outstanding Security Deposit LC or Security Deposit LCs issued by the replaced Security Deposit Facility LC Issuing Bank by a Security Deposit LC or Security Deposit LCs issued by the successor Security Deposit Facility LC Issuing Bank in the relevant amounts, and (y) the replaced Security Deposit Facility LC Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of a Security Deposit Facility LC Issuing Bank under this Agreement with respect to Security Deposit LCs issued by it prior to such replacement in respect of which Security Deposit Loans or other Unreimbursed Amounts in respect of Security Deposit LCs that remain outstanding, but shall not be required to issue additional Security Deposit LCs to the extent replaced.

(o) The Security Deposit Facility LC Issuing Bank shall act on behalf of the Security Deposit Facility Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and each Security Deposit Facility LC Issuing Bank shall have all of the benefits and immunities (i) provided to the Administrative Agent in Article IX of the Common Terms Agreement with respect to any acts taken or omissions suffered by such Security Deposit Facility LC Issuing Bank in connection with Letters of Credit issued by it or proposed to be issued by it and Issuing Documents pertaining to such Letters of Credit as fully as if the term “Administrative Agent” as used in Article IX of the Common Terms Agreement included each Security Deposit Facility LC Issuing Bank with respect to such acts or omissions, and (ii) as additionally provided herein with respect to each Security Deposit Facility LC Issuing Bank.

Section 2.04 **Borrowing Requests.**

(a) **Notice by Lessee.** Each Borrowing of Senior Term Loans shall be made on a Scheduled Credit Extension Date in accordance with Schedule 2.04. The Lessee shall deliver to the Administrative Agent a written Borrowing Request, appropriately completed and signed by an Authorized Lessee Representative, and must be received by the Administrative Agent not later than 11:00 a.m. (New York City time) three (3) U.S. Government Securities Business Days (or in the case of a Borrowing on the Closing Date, two (2) U.S. Government Securities Business Days) prior to the applicable Scheduled Credit Extension Date.

(b) **Content of Borrowing Requests.** Each Borrowing Request for a Borrowing pursuant to this Section shall be substantially in the form of Exhibit B attached hereto and specify the following information in compliance with Section 2.02: (i) the aggregate amount of the requested Borrowing; (ii) the date of such Borrowing; (iii) instructions to deposit the proceeds from such Borrowing in the Bank Proceeds Sub-Account of the Construction Account pursuant to Section 5.04 of the Collateral Agency and Accounts Agreement.

(c) **Failure to Deliver Borrowing Request.** If the Lessee does not deliver a Borrowing Request, then the Issuer shall be deemed to have requested a Borrowing on the applicable Scheduled Credit Extension Date in the amount set forth in Schedule 2.04 opposite such Scheduled Credit Extension Date for deposit into the Bank Proceeds Sub-Account of the Construction Account.

Section 2.05 **Funding of Senior Term Loan Borrowings.**

(a) **Funding by Lender.** Upon satisfaction of the applicable conditions set forth in Article IV, the applicable Senior Term Lenders shall make their ratable shares of each Senior Term Loan to be made hereunder by wire transfer of immediately available funds, in Dollars, by 12:00 noon New York City time on the Scheduled Credit Extension Date, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Senior Term Lenders. The Issuer hereby authorizes and instructs the Administrative Agent to, and the Administrative Agent on behalf of the Issuer will, make such Senior Term Loans available to the Lessee, pursuant to the terms of the Bank Financing TDC Loan

Agreements by promptly crediting the amounts so received, in like funds, to the Bank Proceeds Sub-Account of the Construction Account pursuant to Section 5.04 of the Collateral Agency and Accounts Agreement. The failure of any Senior Term Lender to make any Senior Term Loan required to be made by it shall not relieve any other Senior Term Lender of its obligations hereunder; provided that the Senior Term Loan Commitments of the Senior Term Lenders are several and no Senior Term Lender shall be responsible for any other Senior Term Lender's failure to make Senior Term Loans on the Scheduled Credit Extension Date as required hereby.

(b) Presumption by Administrative Agent.

(i) Unless the Administrative Agent shall have received notice from a Bank Finance Party, prior to 8:00a.m. New York City time on the Business Day immediately preceding the applicable Scheduled Credit Extension Date that such Bank Finance Party is not satisfied that the conditions set forth in Section 4.01 hereof and/or Section 4.02 of the Common Terms Agreement have been satisfied with respect to the requested Borrowing, the Administrative Agent may assume that such Bank Finance Party is satisfied that such conditions have been satisfied. If the Administrative Agent has received notice, or is entitled to assume that, the Required Bank Finance Parties are satisfied that the conditions set forth in Section 4.01 hereof and Section 4.02 of the Common Terms Agreement have been satisfied it shall so notify to each Bank Finance Party no later than 10:00a.m. on the Business Day immediately preceding such Scheduled Credit Extension Date. Upon receipt of such notice from the Administrative Agent, each Lender shall fund its ratable share of each Senior Term Loan, if any, in accordance with and subject to the terms hereof.

(ii) Unless the Administrative Agent shall have received notice from a Senior Term Lender, prior to the applicable Scheduled Credit Extension Date that such Senior Term Lender will not make available to the Administrative Agent such Senior Term Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with the terms hereof and may, in reliance upon such assumption, make available to the Lessee a corresponding amount. In such event, if a Senior Term Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Senior Term Lender and the Lessee severally agree to pay (or in the case of the Lessee, agrees to cause to be paid, on behalf of the Issuer, in accordance with the Collateral Agency and Accounts Agreement) to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Lessee but excluding the date of payment to the Administrative Agent, at (i) in the case of a payment to be made by such Senior Term Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, and (ii) in the case of a payment to be caused by Issuer to be made by the Lessee, the interest rate applicable to ABR Loans. If the Lessee and such Senior Term Lender shall pay or cause to be paid such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to Lessee, for deposit into the Bank Proceeds Sub-Account of the Construction Account the amount of such interest caused by Lessee to be paid for such period. If such Senior Term Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Senior Term Lender's Term Loan included in such Borrowing. Any payment caused by Lessee to be made under this provision shall be without prejudice to any claim the Issuer or Lessee may have against a Lender that shall have failed to make such payment to the Administrative Agent.

Section 2.06 Interest Elections.

(a) Subject to Section 2.02, the Senior Loans comprising each Borrowing initially shall be a SOFR Borrowing. Thereafter, subject to Section 2.13, Section 2.20 and Section 2.21, such Borrowing shall be continued as a Borrowing of the same Type. Upon notice by the Administrative Agent

to the Issuer and the Lessee that the event that caused any Borrowing to be converted to and continued as an ABR Borrowing pursuant to Section 2.13, Section 2.20 or Section 2.21 has ceased, and that the Lessee (on behalf of the Issuer) is again entitled to continue Borrowings as SOFR Borrowings, such Borrowing shall be converted into a SOFR Borrowing effective as of the end of the last U.S. Government Securities Business Day of the then applicable Interest Period.

(b) Notice by Administrative Agent to Lenders. The Administrative Agent shall advise each applicable Lender of the details of the conversion of any Borrowing and such Lender's portion of such resulting Borrowing no less than one Business Day before the effective date of the conversion.

Section 2.07 **Termination and Reduction of the Senior Term Loan Commitments.**

(a) Scheduled Reduction and Termination. Unless previously terminated in accordance with this Agreement, the Senior Term Loan Commitment shall terminate on the last day of the Availability Period and the Security Deposit Facility Commitment shall terminate on the Bank Financing Maturity Date.

(b) Voluntary Termination or Reduction. Lessee may at any time terminate, or from time to time reduce, the unutilized portion of the Senior Term Loan Commitments or the Security Deposit Facility Commitments; provided that (i) the Administrative Agent shall have received, as a condition precedent to such reduction, (x) a certificate from the Technical Advisor to the effect that, after giving effect to such reduction, the Available Funding is or will be sufficient to pay all Project Costs (including all financing costs such as capitalized interest) necessary to achieve Substantial Completion of the Project on or prior to the Outside Completion Date, and (y) documentation satisfactory to the Required Lenders evidencing that the Lessee has, or will, effect an equivalent termination or reduction pursuant to the Bank Financing TDC Loan Agreements, (ii) any partial reduction of such Senior Term Loan Commitment pursuant to this Section 2.07(b) shall be in an amount that is \$500,000 or a larger multiple of \$100,000, (iii) no Funding Shortfall shall arise as a result of such termination or reduction of the Senior Term Loan Commitment, (iv) each reduction or termination of such Senior Term Loan Commitment shall be made ratably among the Lenders holding such Senior Term Loan Commitment in accordance with their respective amounts of such Senior Term Loan Commitment, (v) shall be applied to reduce the Borrowing amount on each Scheduled Credit Extension Date in inverse order of Borrowing, (vi) the Lessee may not terminate or reduce the Commitments under the Security Deposit Facility if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Security Deposit Outstandings would exceed the Security Deposit Facility Commitments.

(c) Notice of Voluntary Termination or Reduction. Lessee shall notify the Administrative Agent of any election to terminate or reduce the Senior Term Loan Commitments or the Security Deposit Facility Commitments pursuant to Section 2.07(b) at least two Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders and the Security Deposit Facility LC Issuing Bank of the contents thereof. Each notice delivered by Lessee pursuant to this Section 2.07 shall be, absent manifest error, irrevocable.

(d) Effect of Termination or Reduction. Any termination or reduction of any Senior Term Loan Commitment or Security Deposit Facility Commitment pursuant to this Section 2.07 shall be, absent manifest error, permanent.

(e) True-up Adjustments. In addition to the foregoing the Senior Term Loan Commitments shall be increased or decreased in accordance with Section 8.01(f) of the Common Terms Agreement.

Section 2.08 **Repayment of Senior Loans; Evidence of Debt.**

(a) **Repayment of Senior Loans.** Subject to Section 2.10, the principal amount of all Senior Loans, together with accrued interest and fees with respect thereto, shall be due and payable on the Bank Financing Maturity Date.

(b) **Evidence of Debt.** Each Lender may maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Issuer to such Lender resulting from each Senior Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder. Such account or accounts shall, to the extent not inconsistent with the notations made by the Administrative Agent in the Register, be conclusive and binding on the Issuer absent manifest error; provided that the failure of any Lender to maintain such account or accounts or any error in any such account shall not limit or otherwise affect any obligations of the Issuer and such account or accounts shall not limit, increase or otherwise affect the obligations of the Issuer as set forth herein.

Section 2.09 **Interest.**

(a) **Interest Rates.** Subject to paragraph (b) of this Section, (i) each ABR Loan shall bear interest at a rate per annum equal to the ABR plus the Applicable Margin; and (ii) each SOFR Loan shall bear interest at a rate per annum equal to Daily Compounded SOFR plus the Applicable Margin.

(b) **Default Interest.** If any amount payable to the Lenders or the Security Deposit Facility LC Issuing Bank under this Agreement or any other Financing Document (including principal of any Senior Loan, interest, fees and other amount) is not paid when due, whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a rate per annum equal to the applicable Post-Default Rate. While any Event of Default exists, at the election of Required Lenders, the Lessee, on behalf of the Issuer, shall pay interest on the principal amount of all Senior Loans outstanding hereunder at a rate per annum equal to the applicable Post-Default Rate.

(c) **Payment Dates.** Accrued interest on each Senior Loan shall be payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein; provided that (i) interest accrued pursuant to paragraph (b) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Senior Loan (other than a prepayment of an ABR Loan prior to the Bank Financing Maturity Date), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any SOFR Borrowing prior to the end of the Interest Period therefor, accrued interest on such Borrowing shall be payable on the effective date of such conversion.

(d) **Interest Computation.** All interest hereunder shall be computed on the basis of a year of 360 days (or in the case of interest computed by reference to the ABR at times when the ABR is based on the Prime Rate, such interest shall be computed on the basis of a year of 365 days (or 366 days in a leap year)), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). All interest hereunder on any Senior Loan shall be computed on a daily basis based upon the outstanding principal amount of such Senior Loan as of the applicable date of determination. The applicable ABR or Daily Compounded SOFR shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

(e) **Daily Compounded SOFR Conforming Changes.** In connection with the use or administration of Daily Compounded SOFR, the Administrative Agent will have the right to make Conforming Changes from time to time, in consultation with the Lessee, and, notwithstanding anything to the contrary herein or in any other Financing Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Financing Document. The Administrative Agent will promptly notify the Issuer, the Lessee

and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of Daily Compounded SOFR.

Section 2.10 **Prepayment of Senior Loans.**

(a) **Optional Prepayments.** Lessee shall have the right at any time and from time to time to cause the prepayment of any Senior Loans in whole or in part, without premium or penalty (other than amounts payable under Section 2.17, if any), subject to the requirements of this Section 2.10. Each partial prepayment of any Senior Loan under this Section 2.10(a) shall be in an aggregate amount at least equal to \$1,000,000 and an integral multiple of \$500,000 in excess thereof (or such lesser amount as may be necessary to prepay the aggregate principal amount then outstanding with respect to such Borrowing).

(b) **Terms of Optional Prepayments.** Any prepayment of Senior Loans pursuant to Section 2.10(a) shall be applied as directed by the Lessee and in accordance with the Collateral Agency and Accounts Agreement. Each prepayment of Senior Loans shall be accompanied by payment of all accrued and unpaid interest on principal amounts prepaid, and any additional amounts required pursuant to Section 2.17. The Lessee, on behalf of the Issuer, shall pay costs contemplated in Section 2.17 in respect of any prepayment made of any principal of any SOFR Loan other than on the last day of an Interest Period therefor, which costs shall be paid in accordance with the Collateral Agency and Accounts Agreement.

(c) **Notices, Etc.** The Lessee shall notify the Administrative Agent in writing of any prepayment hereunder not later than 2:00 p.m., New York City time (i) in the case of SOFR Borrowings, three (3) U.S. Government Securities Business Days before the date of prepayment or (ii) in the case of ABR Loans, one (1) Business Day before the date of prepayment. Each such notice shall specify (i) the prepayment date, and (ii) the principal amount of each Borrowing or portion thereof to be prepaid. Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the relevant Lenders of the contents thereof. Each prepayment of a Borrowing shall be applied ratably to the Senior Loans included in the prepaid Borrowing. No prepayment of a SOFR Loan hereunder shall be made on any day that is not a U.S. Government Securities Business Day, and if any prepayment to be made hereunder shall fall due on a day that is not a U.S. Government Securities Business Day, payment shall be made on the next succeeding U.S. Government Securities Business Day and such extension of time shall be reflected in computing interest or fees, as the case may be.

(d) **Mandatory Prepayments.** Unless otherwise instructed by the Required Lenders, the Issuer shall mandatorily prepay the Senior Loans at par (together with accrued and unpaid interest thereon to the applicable repayment date with respect to the principal amount being repaid) when and as required pursuant to Section 2.02 of the Common Terms Agreement.

(e) **True-up Prepayments.** The Senior Loans shall be subject to mandatory prepayment with the proceeds of Credit Extensions made pursuant to Section 8.01 of the Common Terms Agreement, without requiring any notice other than a True-Up Notice, subject to and in accordance with the terms of such Section 8.01.

Section 2.11 **Fees.**

(a) **Commitment Fees.** The Lessee shall pay to the Administrative Agent in accordance with Sections 5.02 and 5.03 of the Collateral Agency and Accounts Agreement for the account of each Lender a commitment fee, which shall accrue on (i) the aggregate average daily unused amount of the Senior Term Loan Commitments of such Lender and (ii) the amount by which the Security Deposit Facility Commitments of such Lender exceeds its pro rata share of the outstanding Security Deposit LC Obligations and Security Deposit Loans, in each case, during the period from and including the Closing Date to but excluding the date such Senior Term Loan Commitments or Security Deposit Facility Commitments expire or are otherwise terminated, at a rate per annum equal to ■% of the Applicable

Margin. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). For purposes of computing commitment fees, (x) a Lender's Senior Term Loan Commitment shall be deemed to be used to the extent such Lender has made a Senior Term Loan in respect thereof and (y) "Applicable Margin" shall mean the margin that would apply to any SOFR Loans bearing interest at a rate determined by reference to Daily Compounded SOFR at such time (as set forth in limb (b) of the definition of "Applicable Margin"). Accrued commitment fees shall be due and payable in arrears (i) on each Interest Payment Date, commencing on the first such date to occur after the Closing Date, and (ii) on the Bank Financing Maturity Date.

(b) Payment of Fees. All fees payable hereunder shall be paid on the dates due, in Dollars and immediately available funds. Fees paid shall not be refundable under any circumstances absent manifest error.

Section 2.12 **Increased Costs.**

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

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge, capital adequacy or similar requirement (including any such requirement imposed by the Board under Regulation D or otherwise) against assets of, deposits with or for account of, or credit extended by, any Lender;

(ii) subject any Lender to any Taxes (other than (x) Indemnified Taxes and Excluded Taxes) on or with respect to loans, letters of credit, commitments, or other obligations or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender any other condition (other than Taxes) not otherwise contemplated hereunder affecting this Agreement or Senior Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining any Senior Loan or of maintaining its obligation to make any such Senior Loan, or to increase the cost to such Lender, or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, the Lessee will pay to such Lender in accordance with the Collateral Agency and Accounts Agreement such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law regarding capital requirements or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or liquidity or on the capital or liquidity of such Lender's holding company, if any, as a consequence of this Agreement or its obligations hereunder in respect of the Senior Loans made by it hereunder, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy and liquidity), then from time to time the Lessee will pay to such Lender in accordance with the Collateral Agency and Accounts Agreement, as the case may be, such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates from Lenders. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in Section 2.12(a) or (b) shall be delivered to the Lessee and shall be conclusive absent manifest error. The

Lessee shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.12 shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Lessee shall not be required to compensate any Lender pursuant to this Section 2.12 for any increased costs or reductions incurred more than 180 days prior to the date that such Lender notifies the Lessee of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof).

Section 2.13 Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make, maintain or fund Senior Loans whose interest is determined by reference to SOFR or Daily Compounded SOFR, or to determine or charge interest based upon SOFR or Daily Compounded SOFR, then, upon notice thereof by such Lender to the Lessee (through the Administrative Agent) (an "Illegality Notice"), (a) any obligation of the Lenders to make SOFR Loans, and any right of the Lessee to continue SOFR Loans or to convert ABR Loans to SOFR Loans, shall be suspended, and (b) the interest rate on which ABR Loans shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to paragraph (c) of the definition of "ABR", in each case until each affected Lender notifies the Administrative Agent and the Lessee that the circumstances giving rise to such determination no longer exist. Upon receipt of an Illegality Notice, the Lessee shall, upon demand from any Lender (with a copy to the Administrative Agent), cause to be prepaid or, if applicable, convert all SOFR Loans to ABR Loans (the interest rate on which ABR Loans shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to clause (c) of the definition of "ABR"), on the Interest Payment Date therefor, if all affected Lenders may lawfully continue to maintain such SOFR Loans to such day, or immediately, if any Lender may not lawfully continue to maintain such SOFR Loans to such day. Upon any such prepayment or conversion, the Lessee shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 2.17.

Section 2.14 Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Issuer or the Lessee hereunder or under any other Financing Document shall be made free and clear of and without withholding or deduction for any Taxes, except as required by Applicable Law; provided that if the Issuer, the Lessee, or the Administrative Agent, as applicable, shall be required by Applicable Law to withhold or deduct any Indemnified Taxes from such payments, then (i) the sum payable shall be increased by the Lessee as necessary so that after the making of all required deductions or withholdings of Indemnified Taxes (including deductions or withholdings of Indemnified Taxes applicable to additional sums payable under this Section 2.14) the Administrative Agent or Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) the Lessee or the Administrative Agent, as applicable, shall timely make or shall cause to be made such deductions or deductions and (iii) the Lessee or its withholding agent shall pay or shall cause to be paid, the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law.

(b) Payment of Other Taxes. The Lessee for itself or on behalf of the Issuer shall timely pay or cause to be paid any Other Taxes to the relevant Governmental Authority in accordance with Applicable Law or, at the option of the Administrative Agent, timely reimburse the Administrative Agent for the payment of, any Other Taxes.

(c) Indemnification. The Lessee shall indemnify or cause to be indemnified the Administrative Agent and each Lender, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes and Other Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.14) payable or paid by such Lender or Agent or required to be withheld or deducted from a payment to such Lender or Agent and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability and the basis for calculation thereof delivered to the Lessee by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of the Senior Collateral Agent or a Lender, shall be conclusive absent manifest error.

(d) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Lessee has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Lessee to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 8.04(b)(i)(E) and Section 8.04(e) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (d).

(e) Evidence of Payments. As soon as practicable after any payment of Excluded Taxes or Indemnified Taxes by the Lessee to a Governmental Authority pursuant to this Section 2.14, the Lessee shall deliver or cause to be delivered to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(f) Forms.

(i) Any of the Administrative Agent, the Senior Collateral Agent or any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Financing Document shall deliver to the Lessee (with a copy to the Administrative Agent), at the time or times reasonably requested by the Lessee or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Lessee or the Administrative Agent as will permit such payments to be made without, or at a reduced rate of, withholding. In addition, any of the Administrative Agent, the Senior Collateral Agent or any Lender, if reasonably requested by the Lessee or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Lessee or the Administrative Agent as will enable the Lessee or the Administrative Agent to determine whether or not such Administrative Agent, Senior Collateral Agent or Lender, as the case may be, is subject to any withholding tax or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in paragraphs (e)(ii), (iii) or (iv)) shall not be required if in a Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.



(ii) If a payment made to any Lender under any Financing Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Lessee and the Administrative Agent at the time or times prescribed by Applicable Law and at such time or times reasonably requested by the Lessee or the Administrative Agent such documentation prescribed by Applicable Law (including as prescribed by section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Lessee or the Administrative Agent as may be necessary for the Lessee and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this paragraph (ii), "FATCA" shall include any amendments made to FATCA after the Closing Date.

(iii) Any Lender that is a United States person (as defined in section 7701(a)(30) of the Code) shall deliver to the Lessee and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Lessee or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax.

(iv) Any Lender that is not a United States person (as defined in section 7701(a)(30) of the Code) shall, to the extent it is legally entitled to do so, deliver to the Lessee and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Lessee or the Administrative Agent), whichever of the following is applicable:

(A) in the case of a Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Financing Document, executed copies of IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Financing Document, IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(B) executed copies of IRS Form W-8ECI;

(C) in the case of a Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (x) a certificate to the effect that such Lender is not a "bank" within the meaning of section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Issuer or the Lessee within the meaning of section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN or W-8BEN-E, as applicable; and

(D) to the extent a Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Lender is a partnership and one or more direct or indirect partners of such Lender are claiming the portfolio interest exemption, such Lender may provide a U.S. Tax Compliance Certificate on behalf of each such direct and indirect partner.

(v) Any Lender that is not a United States person (as defined in section 7701(a)(30) of the Code) shall, to the extent it is legally entitled to do so, deliver to the Lessee and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Lessee or the Administrative Agent), executed copies of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit the Lessee or the Administrative Agent to determine the withholding or deduction required to be made.

(vi) Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Lessee and the Administrative Agent in writing of its legal inability to do so.

(g) **Treatment of Certain Refunds.** If the Administrative Agent, the Senior Collateral Agent or any Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by the Lessee or with respect to which the Lessee has paid additional amounts pursuant to this Section 2.14, it shall pay over such refund to the Lessee (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all of its out-of-pocket expenses incurred in order to obtain such refund (including Taxes with respect to such refund) and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that the Lessee, upon the request of the Administrative Agent or any Lender, as the case may be, agrees to repay to such party as soon as reasonably practicable the amount paid over to the Lessee pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event such party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the party be required to pay any amount to the Lessee pursuant to this Section 2.14 the payment of which would place the indemnified party in a less favorable net after-Tax position than it would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes which it deems confidential) to the Lessee or any other Person.

(h) **Survival.** Each party's obligations under this Section 2.14 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Financing Document.

(i) For purposes of this Section 2.14, the term "Applicable Law" includes FATCA.

**Section 2.15 Payments Generally; Pro Rata Treatment; Sharing of Setoffs.**

(a) **Payments by the Issuer.** Unless otherwise specified, the Lessee or the Issuer, as applicable, shall make or cause to be made each payment required to be made by it hereunder (whether of principal, interest, fees or under Section 2.12, Section 2.14 or Section 2.17 or otherwise) or under any other Financing Document (other than the Fee Letters and except to the extent otherwise provided therein) (whether of principal, interest, fees, under Section 2.12, Section 2.14 or Section 2.17, or otherwise) prior to 3:00 p.m., New York City time, on the date when due, in immediately available funds, without setoff or counterclaim. Any amounts received after such time on any date will be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments (other than those under the Fee Letters) shall be made to the Administrative Agent at its offices at [REDACTED]

(payment instructions: Bank Name: [REDACTED]; ABA/Routing No.: [REDACTED]; SWIFT ID.: [REDACTED]; Beneficiary Name: [REDACTED]; Beneficiary Account: [REDACTED], Attention: [REDACTED];

Reference: NYTDC – JFK Millennium Partners), except as otherwise expressly provided in the relevant Financing Document and, except payments pursuant to Section 2.12, Section 2.14, Section 2.17 and Section 8.03, which shall be made directly to the Persons entitled thereto, in each case subject to the terms of the Intercreditor Agreement. The Administrative Agent shall distribute any such payments received by it for account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day; provided that, if such next succeeding Business Day would fall after the Bank Financing Maturity Date, payment shall be made on the immediately preceding Business Day. All amounts owing under this Agreement are payable in Dollars.

(b) Application of Insufficient Payments. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest, fees and other amounts then due hereunder, such funds shall be applied (i) first, to pay interest, fees and other amounts (except for the amounts required to be paid pursuant to the following paragraph (ii)) then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest, fees and such other amounts then due to such parties, and (ii) second, to pay principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(c) Pro Rata Treatment. Each Borrowing shall be made from the relevant Lenders, each payment of a commitment fee under Section 2.11(a) in respect of Commitments shall be made for account of the Lenders, and each termination or reduction of the amount of the Commitments under Section 2.07 shall be applied to the respective Commitments of the Lenders, pro rata according to the amounts of their respective Commitments. Each Borrowing shall be allocated pro rata among the Lenders according to the amounts of their respective Commitments (in the case of the making of Senior Loans) or their respective Senior Loans that are to be included in such Borrowing (in the case of conversions and continuations of Senior Loans).

(d) Certain Deductions by the Administrative Agent. If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.05, then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

Section 2.16 Several Obligations of Lenders. The obligations of the Lenders hereunder to make Senior Loans are several and not joint. The failure of any Lender to make any Senior Loan or to make any such payment on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to make its Senior Loan.

Section 2.17 Compensation for Losses. In the event of (a) the payment of any principal of any SOFR Loan other than on the last day of the Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any SOFR Loan other than on the last day of the Interest Period applicable thereto, the failure to borrow, convert, continue or prepay any SOFR Loan on the date specified in any notice delivered pursuant hereto, or (d) the assignment of any SOFR Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Lessee pursuant to Section 2.18(b), then, in any such event, the Lessee shall compensate each Lender for any loss, cost and expense attributable to such event, including any loss, cost or expense arising from the liquidation or redeployment of funds or from any fees payable. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Lessee and shall be conclusive absent

manifest error. The Lessee or the Issuer, as applicable, shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

Section 2.18 **Mitigation Obligations; Replacement of Lenders.**

(a) **Designation of a Different Lending Office.** If any Lender requests compensation under Section 2.12, or if the Lessee or the Issuer, as applicable, is required to pay any additional amount to any Lender or any Governmental Authority for account of any Lender pursuant to Section 2.14, then such Lender shall (at the request of the Lessee) use reasonable efforts to designate a different lending office for funding or booking its Senior Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the sole judgment of such Lender, such designation or assignment (i) would eliminate or reduce such amounts payable pursuant to Section 2.12 or Section 2.14, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Lessee or, subject to Section 5.02, the Issuer, as applicable, hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) **Replacement of Lenders.** If any Lender (i) requests compensation under Section 2.12, or if the Lessee or the Issuer, as applicable, is required to indemnify, or pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.14, and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with paragraph (a) of this Section 2.18, (ii) is a Defaulting Lender or (iii) refuses or fails to consent to a proposed change, waiver, discharge or termination which has otherwise been approved by the Required Lenders as (and to the extent) provided in Section 8.02(b), then, in any such case, the Lessee may, at its sole expense, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 8.04), all its interests, rights and obligations under this Agreement (other than its existing rights to payments pursuant to Section 2.11 or Section 2.13) to an assignee that shall assume such obligations which assignee may be another Lender if a Lender accepts such assignment; provided that (A) such Lender shall have received payment of an amount equal to the outstanding principal of its Senior Loans, accrued interest thereon, accrued fees and all other amounts then payable to it hereunder and under the other Financing Documents (including any break costs), from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Lessee or, subject to Section 5.02, the Issuer, as applicable (in the case of all other amounts), (B) in the case of any such assignment resulting from a claim for compensation under Section 2.12 or payments required to be made pursuant to Section 2.14, such assignment will result in the elimination or a reduction in such compensation or payments; (C) such assignment does not conflict with Applicable Law; (D) in the case of any assignment resulting from a Lender refusing or failing to consent to a proposed change, waiver, discharge or termination, the applicable assignee shall have consented to the applicable proposed change, waiver, discharge or termination. Such assignee(s) or transferee(s) shall execute any required assignment and accession or novation documentation and comply with the Financing Documents and the Collateral Agency and Accounts Agreement.

Section 2.19 **Defaulting Lenders.** Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) the Senior Loans and unused Commitments of such Defaulting Lender shall not be included in determining whether the Required Lenders, Required Security Deposit Facility Lenders or Required Bank Finance Parties have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to Section 8.02); provided, however, that a Defaulting Lender shall retain its voting rights where its outstanding Commitments or Senior Loans

are being extended or increased, where payments of outstanding interest and principal are being reduced or waived, or where the applicable interest rate thereon is being reduced or waived;

(b) Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VI or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 8.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, as the Lessee may request (so long as no Default or Event of Default exists), to the funding of any Senior Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; third, if so determined by the Administrative Agent and the Lessee, to be held in a deposit account and released *pro rata* in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Senior Loans under this Agreement in form and substance satisfactory to the Administrative Agent; fourth, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; fifth, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Lessee or the Issuer, as applicable, as a result of any judgment of a court of competent jurisdiction obtained by the Lessee or the Issuer, as applicable, against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and sixth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(c) No Defaulting Lender shall be entitled to receive any commitment fee pursuant to Section 2.11(a) for any period during which that Lender is a Defaulting Lender (and the Lessee or the Issuer, as applicable, shall not be required to pay any commitment fee pursuant to Section 2.11(a) that otherwise would have been required to have been paid to such Defaulting Lender).

(d) During any period in which there is a Defaulting Lender, for purposes of computing the amount of the obligation of each Non-Defaulting Lender to acquire or refinance a Security Deposit LC pursuant to Section 2.03, the pro rata share of each Non-Defaulting Lender under the Security Deposit Facility shall be determined without giving effect to the Commitment under the Security Deposit Facility of such Defaulting Lender; provided that the aggregate obligation of each Non-Defaulting Lender under the Security Deposit Facility to acquire or refinance a Security Deposit LC issued under the Security Deposit Facility shall not exceed the positive difference if any of (i) the Security Deposit Facility Commitment of that Non-Defaulting Lender minus (ii) the aggregate Outstanding amount of the Security Deposit Loans of that Security Deposit Facility Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(e) If the Lessee and the Administrative Agent agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase at par that portion of outstanding Senior Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Senior Loans to be held pro rata by the Lenders under the applicable Commitment, whereupon such Lender will cease to be a Defaulting Lender; provided that no

adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Lessee while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

Section 2.20 **Inability to Determine Rates**. Subject to Section 2.21, if, on or prior to the first day of any Interest Period for any SOFR Loan, (i) the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that Daily Compounded SOFR cannot be determined pursuant to the definition thereof or (ii) the Required Lenders determine that for any reason in connection with any request for a SOFR Loan or a conversion thereto or a continuation thereof that Daily Compounded SOFR for any requested Interest Period with respect to a proposed SOFR Loan does not adequately and fairly reflect the cost to such Lenders of making and maintaining such Senior Loan, and the Required Lenders have provided notice of such determination to the Administrative Agent, the Administrative Agent will promptly so notify the Issuer, the Lessee and each Lender. Upon notice thereof by the Administrative Agent to the Lessee, (a) any obligation of the Lenders to make SOFR Loans, and any right of the Lessee to continue SOFR Loans or to convert ABR Loans to SOFR Loans, shall be suspended and (b) all SOFR Loans shall be immediately converted to ABR Loans and (c) the component of ABR based upon Daily Compounded SOFR will not be used in any determination of ABR, in each case until the Administrative Agent (at the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Lessee may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Loans (to the extent of the affected SOFR Loans) or, failing that, the Lessee will be deemed to have converted any such request into a request for a Borrowing of or conversion to ABR Loans in the amount specified therein. Upon any such conversion, the Lessee, on behalf of the Issuer, shall also pay any additional amounts required pursuant to Section 2.17.

Section 2.21 **Benchmark Replacement Setting**.

(a) **Benchmark Replacement**.

(i) Notwithstanding anything to the contrary herein or in any other Financing Document, upon the occurrence of a Benchmark Transition Event, the Administrative Agent and the Issuer (in the case of the Issuer, at the direction of the Lessee) may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. (New York City time) on the fifth (5<sup>th</sup>) Business Day after the Administrative Agent has posted such proposed amendment to all affected Lenders and the Lessee so long as, if the Benchmark Replacement has been selected pursuant to paragraph (b) of the definition of "Benchmark Replacement", the Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section 2.21(a) will occur prior to the applicable Benchmark Transition Start Date.

(ii) No Hedge Agreement shall be deemed to be a "Financing Document" for the purposes of this Section 2.21.

(b) **Benchmark Replacement Conforming Changes**. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Conforming Changes from time to time in consultation with the Issuer and the Lessee and, notwithstanding anything to the contrary herein or in any other Financing Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Financing Document.

(c) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Issuer, the Lessee and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will notify the Lessee and the Issuer of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.21(d) and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.21, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Financing Document, except, in each case, as expressly required pursuant to this Section 2.21.

(d) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Financing Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to paragraph (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(e) Benchmark Unavailability Period. Upon the Lessee’s and Issuer’s receipt of notice of the commencement of a Benchmark Unavailability Period, any pending request for a SOFR Borrowing will be deemed to have converted into a request for a Borrowing of ABR Loans and (ii) any outstanding affected SOFR Loans will be deemed have been converted to ABR Loans immediately. During a SOFR Unavailability Period, the component of ABR based upon Daily Compounded SOFR, will not be used in any determination of ABR.

### Article III

#### REPRESENTATIONS AND WARRANTIES

Section 3.01 Issuer Representations and Warranties. The Issuer represents and warrants to the Administrative Agent and the Lenders that:

(a) Organization; Good Standing. The Issuer is a local development corporation formed under Section 1411 of the New York Not-for-Profit Corporation Law, being Chapter 35 of the Consolidated Laws of New York, created by action of the New York Job Development Authority established under Section 1802, Subtitle I, Title 8, Article 8, of the New York Public Authorities Law, is validly existing and in good standing under the laws of its jurisdiction of organization, is qualified to do business in the State of New York. The Issuer is a “governmental unit of a state” as such term is defined in Section 9-102(45) of the UCC.

(b) Authorization, Enforceability.

(i) The Issuer has full power and authority to conduct its business as now conducted and as proposed to be conducted and the Issuer has full power and authority to execute, deliver and perform its obligations under the Financing Documents to which it is a party.

(ii) The Issuer is duly authorized under the Act and the laws of the State of New York to execute this Agreement, the Common Terms Agreement and each other Financing Document to which it is a party, to request the Borrowings hereunder, to make the loan pursuant to the TDC Loan Agreements, any 2022 TDC Building Notes and any 2022 TDC Project Notes, to assign its rights under the TDC Loan Agreements including the loan payments made by the Lessee thereunder), any 2022 TDC Building Notes, any 2022 TDC Project Notes and the Leasehold Mortgages, to pledge the Collateral created pursuant to the Senior Collateral Documents to which it is party, including the loan payments made by the Lessee under the TDC Loan Agreements, and to otherwise perform its obligations in accordance with the terms of the Financing Documents; and that all action on its part for the execution and delivery of this Agreement has been duly and effectively taken. No such authority has been repealed, revoked, rescinded or amended and all such authorities are in full force and effect.

(iii) Each of the Financing Documents to which the Issuer is a party is in full force and effect and has been duly authorized, executed and delivered by the Issuer and constitutes a legal, valid and binding special limited obligation of the Issuer, enforceable against the Issuer in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer, liquidation or other similar Laws or judicial action affecting the enforcement of creditors' rights generally or by principles of equity which permit the exercise of judicial discretion (regardless of whether enforceability is considered in a proceeding in equity or at law) and except as enforceability of indemnification provisions may be limited by consideration of public policy.

(c) No Contravention. The execution, delivery and performance by the Issuer of this Agreement and the consummation of the transactions contemplated hereby will not contravene, conflict with, result in any breach of or constitute a default under (i) the Organizational Documents of the Issuer, (ii) any indenture, mortgage, deed of trust, loan, purchase or credit agreement, lease or any other agreement or instrument to which the Issuer is a party or by which the Issuer or any of its properties may be bound or affected, except as would not reasonably be expected to have a Material Adverse Effect, (iii) any order, judgment, decree or ruling of any court, arbitrator or Governmental Authority applicable to the Issuer, except as would not reasonably be expected to have a Material Adverse Effect, (iv) any statute or other rule or regulation of any Governmental Authority applicable to the Issuer, except as would not reasonably be expected to have a Material Adverse Effect, or (v) result in, or require, the creation or imposition of any Lien on any of the properties or revenues of, or interests in, the Lessee, except for Permitted Liens, unless such creation or imposition would not reasonably be expected to have a Material Adverse Effect; provided, however, in no event shall the foregoing be deemed to refer to or apply to any agreement to which the Issuer is not a direct party and signatory, including, without limitation, the Lease.

(d) Governmental and Other Authorizations. No approval, consent or withholding or objection on the part of any regulatory body, federal, state or local, is required in connection with the execution or delivery of or compliance by the Issuer of the terms and conditions of this Agreement, the Common Terms Agreement or any other Financing Document to which it is party, except for such approvals or consents as have been obtained. The consummation by the Issuer of the transactions set forth in the



manner and under the terms and conditions as provided in this Agreement, the Common Terms Agreement and each other Financing Documents to which it is party will comply with all Applicable Laws.

(e) Lawsuit; Compliance with Law.

(i) There are no actions, suits, investigations or proceedings pending or, to the best knowledge of the Issuer, threatened against or affecting the Issuer or any property of the Issuer in any court or before any arbitrator of any kind or before or by any Governmental Authority that, individually or in the aggregate, has or could reasonably be expected to have a Material Adverse Effect.

(ii) The Issuer is not (i) in default under any agreement or instrument to which it is a party or by which it or any of its properties may be bound or affected, (ii) in violation of any order, judgment, decree or ruling of any court, any arbitrator of any kind or any Governmental Authority or (iii) in violation of any Applicable Law, ordinance, rule or regulation of any Governmental Authority, which default or violation (with respect to (i), (ii), or (iii)), individually or in the aggregate, has or could reasonably be expected to have a Material Adverse Effect.

(f) Foreign Assets Control Regulations; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws.

(i) Neither the Issuer nor any of its Affiliates is a Sanctioned Person.

(ii) Neither the Issuer nor any of its Affiliates, nor any of the Issuer's nor, to the Issuer's knowledge, any of its Affiliate's directors, officers, employees, or, to the knowledge of the Issuer, any agent or other Person acting on behalf of the Issuer, or of its Affiliates, has taken any action in connection with the performance of this Agreement of the transactions contemplated hereunder, directly or indirectly, that would result in a violation of Anti-Corruption Laws and/or Anti-Money Laundering Laws.

(iii) Neither the Issuer nor any of its Affiliates, nor any of the Issuer's nor, to the Issuer's knowledge, any of its Affiliate's directors, officers, employees, or, to the knowledge of the Issuer, any agent or other Person acting on behalf of the Issuer, or any of its Affiliates in any capacity in connection with this Agreement or the transactions contemplated hereunder is engaged in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions Laws.

## Article IV

### CONDITIONS PRECEDENT TO EACH BORROWING

Section 4.01 Each Borrowing of Senior Term Loans. The obligation of each Lender to make the Borrowing of Senior Term Loans is subject to the satisfaction (or waiver by the Required Lenders) of the following conditions, in each case in form and substance satisfactory to the Required Senior Term Lenders:

(a) Common Conditions Precedent. Each of the conditions precedent set forth in Section 4.02 of the Common Terms Agreement shall have been satisfied.

(b) Borrowing Request. The Lessee shall have delivered to the Administrative Agent a Borrowing Request in accordance with Section 2.04.

(c) **Commitment.** For each Borrowing other than any Borrowing made on the Closing Date, the **Commitment** shall have been fully utilized or shall be utilized in full simultaneously with such Borrowing.

Section 4.02 **Each Security Deposit LC Credit Extension.** The obligation of the Security Deposit Facility LC Issuing Bank to issue any Security Deposit LC is subject to the satisfaction, or waiver by the Required Security Deposit Facility Lenders and Security Deposit Facility LC Issuing Bank of each of the following conditions, each of which shall be in form and substance satisfactory to the Required Security Deposit Facility Lenders and Security Deposit Facility LC Issuing Bank:

(a) **Common Conditions Precedent.** Each of the conditions precedent set forth in Section 4.02 of the Common Terms Agreement shall have been satisfied.

(b) **Credit Extension Request.** The Lessee shall have delivered to the Administrative Agent and the Security Deposit Facility LC Issuing Bank a Letter of Credit Application in accordance with **Section 2.03.**

(c) **Representations and Warranties.** The representations and warranties of the Lessee and the Pledgor contained in each Financing Document to which such Person is a party shall be true and correct in all material respects (or, in the case of any such representations and warranties qualified as to materiality or Material Adverse Effect, in all respects) when made (except where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects (or, in the case of any such representations and warranties qualified as to materiality or Material Adverse Effect, in all respects) as of such earlier date).

## Article V

### NATURE OF THE ISSUER'S OBLIGATIONS; COVENANTS

Section 5.01 **Issuer's Obligations Not to Create a Pecuniary Liability.** Each and every covenant herein made, including all covenants made in the various sections of this **Article V,** is predicated upon the condition that any obligation for the payment of money incurred by the Issuer (or the Lessee) shall not create a debt of the State, the Port Authority, JDA, ESD or any local development corporation, agency, authority or political subdivision of the State (other than the Issuer), and the State, the Port Authority, JDA, ESD or any local development corporation, agency, authority or political subdivision of the State (other than the Issuer) shall not be liable on any obligation so incurred, and any Borrowing shall not be payable out of any funds of the Issuer other than those pledged therefor but shall be payable by the Issuer solely from the payments made by the Lessee under the TDC Bank Debt Building Note or the TDC Bank Debt Project Note, and the revenues and receipts pledged to the payment thereof in the manner and to the extent in this Agreement and other Financing Documents specified, and nothing in this Agreement, in the TDC Loan Agreements or in any other Financing Document shall be considered as pledging any other funds or assets of the Issuer, in each case, without prejudice to the Senior Secured Parties recourse to the Collateral or against the Lessee.

Section 5.02 **Payment of Principal and Interest.** Subject in all respects to **Section 8.16,** the Issuer covenants that it will, solely from amounts received from or paid by the Lessee pursuant to the terms of the Bank Financing TDC Loan Agreements, promptly pay or cause to be paid (to the extent not already paid by the Lessee directly) the principal of and interest on the Senior Loans and other amounts payable by the Issuer hereunder, at the place, on the dates and in the manner provided in this Agreement, the Common Terms Agreement, TDC Bank Debt Building Note, the TDC Bank Debt Project Note, the TDC Security Deposit Project Note, the Bank Financing TDC Loan Agreements and the Senior Collateral Documents to

which it is a party, without prejudice to the Senior Secured Parties' recourse to the Collateral or against the Lessee. All covenants, stipulations, promises, agreements and obligations of the Issuer contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the Issuer and not of any member, officer, director, employee or agent thereof in his individual capacity, and no resort shall be had for the payment of the principal or interest on any Senior Loan or for any claim based thereon or hereunder against any such member, officer, director, employee or agent or against any natural person executing this Agreement.

Section 5.03 **Performance of Covenants.** The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Agreement and in all proceedings pertaining thereto.

Section 5.04 **Books and Records; Certificate as to Defaults.** The Issuer covenants and agrees that, so long as any of the Senior Loans shall remain outstanding, proper books of record and account will be kept showing complete and correct entries of all transactions relating to the Project and that the Lessee and the Lenders shall have the right at all reasonable times to inspect all records, accounts and data relating thereto. In this regard, so long as the Bank Financing TDC Loan Agreements are in full force and effect, records furnished by the Lessee (provided, however, that the Issuer shall not be liable for the failure of Lessee to keep any records), or kept by the Administrative Agent in connection with its duties as much shall be deemed to be in compliance with the Issuer's obligations under this Section 5.04.

Section 5.05 **Bank Financing TDC Loan Agreements.** It is understood and agreed that the Issuer will, pursuant to the Bank Financing TDC Loan Agreements, loan to the Lessee an amount equal to the principal amount of each Borrowing. Executed copies of the Bank Financing TDC Loan Agreements, the TDC Bank Debt Building Note and TDC Bank Debt Project Note will be on file in the office of the Issuer and in the designated corporate office of the Intercreditor Agent and the Administrative Agent. Reference is hereby made to the Bank Financing TDC Loan Agreements for a detailed statement of the terms and conditions thereof and for a statement of the rights and obligations of the parties thereunder. All covenants and obligations of the Lessee under the Bank Financing TDC Loan Agreements shall be enforceable either by the Issuer, acting on the direction of the Senior Collateral Agent, or by the Senior Collateral Agent, to whom (in the case of the Senior Collateral Agent, in its own name or in the name of the Issuer) is hereby granted the right (to the extent provided therefor in this Section 5.05 and subject to the terms of the Collateral Agency and Accounts Agreement and the Intercreditor Agreement) to enforce all rights of the Issuer and all obligations of the Lessee under the Bank Financing TDC Loan Agreements, whether or not the Issuer is enforcing such rights and obligations. Unless such action is reserved to the Senior Collateral Agent pursuant to other Senior Financing Document, the Administrative Agent may (upon direction of the Required Lenders) take such action in respect of any matter as is provided to be taken by the Issuer in the Bank Financing TDC Loan Agreements, upon compliance or noncompliance by the Lessee or the Issuer with the provisions of the Bank Financing TDC Loan Agreements relating to the same, subject to the terms hereof.

Section 5.06 **Creation of Liens; Indebtedness.** The Issuer shall not create or suffer to be created, or incur or issue any evidences of indebtedness secured by, any lien or charge upon or pledge of its rights under this Agreement or the Bank Financing TDC Loan Agreements, including the revenues and payments required to be made under the Bank Financing TDC Loan Agreements, except for Permitted Liens created by operation of law or the lien, charge and pledge created by Senior Collateral Documents or the Subordinate Collateral Documents. Except with respect to any breach of its obligations hereunder, the Common Terms Agreement, the Indenture or the Senior Leasehold Mortgage, the Issuer shall have no pecuniary liability (other than payment of principal, interest and other amounts, and from the sources, expressly contemplated herein) for its covenants set forth in this Agreement, including under this Section 5.06, and the Senior Leasehold Mortgage.

Section 5.07 **Ownership; Instruments of Further Assurance.** Subject to the terms of the Intercreditor Agreement, unless such action is reserved to the Senior Collateral Agent pursuant to other Senior Financing Document, the Administrative Agent, on behalf of the Issuer, at the expense of the Lessee, shall defend the rights of the Issuer under the Financing Documents for the benefit of the Lenders under this Agreement, to the extent permitted by law, against the claims and demands of all Persons. The Issuer covenants that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such Financing Documents and such further acts, instruments and transfers as the Administrative Agent may reasonably require for the better assuring, transferring, conveying, pledging, assigning and confirming unto the Senior Collateral Agent, any and all property described in the Senior Collateral Documents, subject to the liens, pledge and security interests of the Senior Collateral Documents, and the payments received under the Bank Financing TDC Loan Agreements, revenues and receipts pledged thereby to the payment of the principal and interest under the Bank Financing TDC Loan Agreements. Any and all property hereafter acquired that is of the kind or nature provided to be and become subject to the lien, pledge and security interest created by the Senior Financing Documents shall ipso facto, and without any further conveyance, assignment or act on the part of the Issuer or the Administrative Agent, become and be subject to the liens, pledge and security interests created by the Senior Financing Documents as fully and completely as though specifically described therein, but nothing in this sentence contained shall be deemed to modify or change the obligations of the Issuer heretofore made by this Section 5.07.

Section 5.08 **Notices, Etc.** The Administrative Agent shall promptly deliver to the Issuer, the Intercreditor Agent, and the Senior Collateral Agent:

(a) any notice provided to it by the Lessee under the terms of any Bank Financing TDC Loan Agreement or this Agreement;

(b) after acquiring actual knowledge thereof, written notice of the occurrence of any Event of Default under this Agreement (with a description of any action being taken or proposed to be taken with respect thereto), including any payment defaults under Section 6.01(a) and (b) hereof and any Event of Default (as defined in any Bank Financing TDC Loan Agreement) pursuant to any TDC Loan Agreement; and

(c) written notice of any Security Interest placed on, or any claim against, this Agreement (other than the Security Interests created under the Senior Collateral Documents or the other Financing Documents or any other Permitted Lien created by operation of law) to the extent it has knowledge thereof. In addition to the above means of giving notice, the Administrative Agent shall have the right to accept and act upon instructions, including funds transfer instructions ("Instructions") given pursuant to (and in accordance with) this Agreement and delivered using Electronic Means; provided, however, that the Issuer and the Lessee shall provide to the Administrative Agent an incumbency certificate listing persons with the authority to provide such Instructions ("Authorized Persons") and containing specimen signatures of such Authorized Persons, which incumbency certificate shall be amended by the Issuer and the Lessee whenever a person is to be added or deleted from the listing. If the Lessee elects to give the Administrative Agent any Instructions using Electronic Means, and the Administrative Agent, in its discretion, elects to act upon such Instructions, the Administrative Agent's understanding of such Instructions shall be deemed controlling. The Lessee understands and agrees that if the Administrative Agent cannot determine the identity of the actual sender of such Instructions, the Administrative Agent may conclusively presume that directions that purport to have been sent by an Authorized Person listed on the incumbency certificate provided to the Administrative Agent have been sent by such Authorized Persons. The Lessee shall be responsible for ensuring that only Authorized Persons transmit such Instructions to the Administrative Agent and that the Lessee and all Authorized Persons are solely responsible to safeguard the use and confidentiality of applicable user and

authorization codes, passwords and/or authentication keys upon receipt by the Lessee. The Administrative Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Administrative Agent's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction; provided that the Administrative Agent will not be relieved from liability for its own bad faith, negligence or willful misconduct. Except as provided above in this paragraph, the Lessee agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Administrative Agent, including without limitation the risk of the Administrative Agent acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Administrative Agent and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Lessee; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Administrative Agent immediately upon learning of any compromise or unauthorized use of the security procedures.

Section 5.09 **Maintenance of Existence.** The Issuer shall maintain its legal existence under the laws of the State and preserve all of its rights and powers under the JDA.

Section 5.10 **Cooperation.** The Issuer agrees that it will cooperate with the Administrative Agent in connection with its obligation to cause all documents, statements, memoranda or other instruments to be registered, filed or recorded in such manner and at such places as may be required by Laws to fully protect the security of the Administrative Agent and Lenders and the right, title and interest of the Senior Collateral Agent in and to the Security Interests (whether now existing or hereafter arising) and any moneys or securities held hereunder or any part thereof and to perfect and maintain the perfection of the same (including any re-filings, continuation statements or such other documents as may be required). The Issuer shall have no responsibilities for such filings whatsoever, other than executing the documents reasonably requested by the Administrative Agent. The Issuer's approval shall not be required prior to the release of liens that have been properly discharged in accordance with applicable Law.

Section 5.11 **Compliance with Law.** The Issuer shall comply with all Laws and regulations, the State's Constitution, and all other State Laws relating to the this Agreement, the TDC Loan Agreements and the other Financing Documents, the Project, and the organization and operation of the Issuer.

Section 5.12 **Know Your Customer Information.** The Issuer shall deliver, promptly following a written request by a Bank Finance Party, such documentation or other information that such Bank Finance Party requires pursuant to Applicable Law or reasonably requests, in any such case, in order to comply with its ongoing obligations under applicable Anti-Money Laundering Laws and Anti-Corruption Laws.

## Article VI

### EVENTS OF DEFAULT

Section 6.01 **Events of Default.** An "Event of Default" shall exist if any of the following conditions or events shall occur:

(a) The Lessee or the Issuer fails to pay, or cause to be paid, when and as required to be paid by it pursuant to this Agreement, any principal of any Senior Loan when the same becomes due and payable, whether at the due date thereof or by declaration or otherwise; or

(b) The Lessee or the Issuer fails pay, or cause to be paid, when and as required to be paid by it pursuant to this Agreement, any interest on any Senior Loan or any fee payable pursuant

to Section 2.11, or any other amount payable hereunder or under any Financing Document (other than the amounts referred to in paragraph (a) above) for more than three (3) Business Days after the same becomes due and payable; or

(c) The Issuer fails to perform or comply with any term contained in Section 5.06, Section 5.09 or Section 5.11; or

(d) The Issuer fails to perform or comply with any term contained herein or in any other Financing Document to which it is a party (other than those referred to in paragraph (a), (b) or (c) above) and such failure is not remedied within thirty (30) days after the earlier of (i) a Responsible Officer obtaining actual knowledge of such default and (ii) the Issuer receiving written notice of such default from the Administrative Agent or any Lender; or

(e) any representation, warranty or certification made or deemed made by or on behalf of the Issuer or the Lessee, as applicable, in this Agreement, any other Financing Document or in any certificate, notice, agreement or other document delivered pursuant hereto or thereto proves to have been false, incorrect or misleading in any material respect (except to the extent that such representation or warranty is already qualified by materiality or Material Adverse Effect, in which case such representation or warranty shall prove to have been false, incorrect or misleading in any respect) on the date as of which made or deemed made, and the underlying event or circumstance that made such representation and warranty false, incorrect or misleading (together with any adverse results resulting therefrom), if capable of cure, has not been cured within thirty (30) days after the earlier of (i) an Authorized Lessee Representative obtaining actual knowledge of such misrepresentation and (ii) the Issuer or the Lessee, as applicable, receiving written notice of such misrepresentation from the Administrative Agent or any Lender; or

(f) The Issuer (i) is generally not paying, or admits in writing its inability to pay, its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, reorganization, moratorium or other similar law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, (v) is adjudicated as insolvent or to be liquidated, or (vi) takes corporate action for the purpose of any of the foregoing; or

(g) the occurrence of an “Event of Default” under and as defined in the Common Terms Agreement or the Senior Leasehold Mortgage that continues beyond any grace or cure period provided for under the applicable Senior Financing Document.

If an Event of Default shall occur and be continuing, the Administrative Agent shall, at the request of the Required Bank Finance Parties, by notice to the Issuer and subject to the terms of the Intercreditor Agreement, take, or request to be taken, any or all of the actions described in the post-amble of Section 7.01 of the Common Terms Agreement.

The Administrative Agent shall, within thirty (30) days of having actual knowledge of the occurrence of an Event of Default or of any event of which the Administrative Agent receives written notice and which would result in an Event of Default with the passage of time or the giving of notice, notify the Issuer, the Lessee, the Senior Collateral Agent, the Intercreditor Agent, and all Lenders of the occurrence of such Event of Default or such other event.

## Article VII

### THE ADMINISTRATIVE AGENT

#### Section 7.01 Appointment and Authorization of the Administrative Agent.

(a) Each Lender hereby confirms the Administrative Agent's designation and appointment pursuant to the Common Terms Agreement, to act on its behalf as its agent hereunder and under the other Financing Documents and Administrative Agent's authorization to act in such capacity, to take such actions on its behalf and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The Administrative Agent, by executing this Agreement, hereby confirms its acceptance of such appointment.

(b) The Administrative Agent shall enjoy all rights and privileges and have the obligations and duties attributed to it pursuant to Article IX of the Common Terms Agreement.

Section 7.02 Rates. The Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to ABR, Daily Compounded SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, ABR, Daily Compounded SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of ABR, Daily Compounded SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Issuer or Lessee. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain ABR, Daily Compounded SOFR or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to the Issuer, Lessee, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

## Article VIII

### MISCELLANEOUS

#### Section 8.01 Notices.

(a) Except as otherwise expressly provided herein or in any other Financing Document, all notices and communications provided for hereunder shall be in writing (including, unless the context otherwise expressly provides, by facsimile or electronic transmission, including email) and delivered personally, or by registered or certified first-class mail with postage prepaid, or made, given or furnished in writing by confirmed facsimile or by prepaid courier service or electronic communication if the sender on the same day promptly confirms delivery thereof telephonically and, if requested by the recipient, sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid). Any such notice must be sent:

(i) **The Issuer:**

[REDACTED]

With a copy to:

[REDACTED]

With a copy to the Lessee at the address designated below

(ii) **Administrative Agent:**

[REDACTED]

With a copy to:

White & Case LLP

[REDACTED]

With a copy to the Issuer at the address designated above

(iii) **Lessee:**

JFK Millennium Partners, LLC

[REDACTED]

With a copy to:

O'Melveny & Myers

[REDACTED]



With a copy to the Issuer at the address designated above

**(iv) Security Deposit Facility LC Issuing Bank:**

[REDACTED]

With a copy to:

White & Case LLP

[REDACTED]

(v) If to a Lender, to it at its address (or facsimile or email address) set forth in its Administrative Questionnaire.

Any notice given to a party by mail or by courier shall be deemed delivered upon receipt thereof (unless the party refuses to accept delivery, in which case the party shall be deemed to have accepted delivery upon presentation). Any notice given to a party by facsimile or email transmission shall be deemed effective on the date it is actually sent to the intended recipient by confirmed facsimile or email transmission in accordance with the procedures established in the first paragraph of this Section 8.01 to (a) the telecopier number referenced above or (b) the email address referenced above, as applicable.

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail, FpML, and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. Each of the Administrative Agent, the Issuer or the Lessee may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications and it being understood that the parties hereto, have agreed to receive notices and other communications to the email addresses indicated above.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing paragraph (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both paragraphs (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

Section 8.02 **Waivers; Amendments.**

(a) **No Waiver; Remedies Cumulative; Enforcement.** No failure or delay by the Administrative Agent or any Lender in exercising any right, remedy, power or privilege hereunder or under any other Financing Document, and no course of dealing between the Issuer, or any of its Affiliates, on the one hand, and the Administrative Agent or any Lender on the other hand, shall impair any such right, power or privilege or operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege, or any abandonment or discontinuance of steps to enforce such a right remedy, power or privilege, preclude any other or further exercise thereof or the exercise of any other right remedy, power or privilege. The rights, remedies, powers and privileges of the Administrative Agent and the Lenders hereunder and under the Financing Documents are cumulative and are not exclusive of any rights, remedies, powers or privileges that any such Person would otherwise have.

(b) **Amendments, Etc.** Except as otherwise expressly set forth in this Agreement (including Section 2.21) or the other Senior Bank Financing Documents and subject to the terms of the Common Terms Agreement and the Intercreditor Agreement, no amendment or waiver of any provision of this Agreement or any other Senior Bank Financing Document, and no consent to any departure by the Issuer or the Lessee, as applicable, therefrom, shall be effective unless in writing executed by the Lessee and the Required Lenders, and acknowledged by the Administrative Agent, or by the Issuer, the Lessee and the Administrative Agent with the consent of the Required Lenders (other than with respect to any amendment or waiver contemplated in paragraph (vi), which shall only require the consent of the Required Security Facility Lenders and the Security Deposit Facility LC Issuing Bank), and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided that no such amendment, waiver or consent shall:

(i) extend or increase any Commitment of any Lender without the written consent of such Lender (it being understood that a waiver of any condition precedent set forth in Article IV or the waiver of any Default shall not constitute an extension or increase of any Commitment of any Lender);

(ii) reduce the principal of, or rate of interest specified herein on, any Senior Loan, or any fees or other amounts payable hereunder or under any other Financing Document, without the written consent of each Lender directly and adversely affected thereby (provided that only the consent of the Required Lenders shall be necessary to amend the definition of “Post-Default Rate” or to waive the obligation of the Issuer to pay interest at the Post-Default Rate);

(iii) postpone any date scheduled for any payment of principal of, or interest on, any Senior Loan, or any fees or other amounts payable hereunder or under any other Financing Document, or reduce the amount of, waive or excuse any such payment, without the written consent of each Lender directly and adversely affected thereby (provided that only the consent of the Required Lenders shall be necessary to amend the definition of “Post-Default Rate” or to waive the obligation of the Issuer to pay interest at the Post-Default Rate);

(iv) change Section 2.15(b), Section 2.15(c), Section 2.15(d) or Section 8.08, in each case, without the written consent of each Lender directly and adversely affected thereby;

(v) amend, modify or waive any provision of Section 8.03 without the written consent of each Lender directly and adversely affected thereby;

(vi) change Section 2.03 without the consent of the Required Security Deposit Facility Lenders and the Security Deposit Facility LC Issuing Bank;

(vii) change (A) any provision of this Section or the percentage in the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder (other than the definitions of “Required Senior Term Lenders” or “Required Security Deposit Facility Lender”), without the written consent of each Lender, (B) the definition of “Required Senior Term Lenders”, without the written consent of each Senior Term Lender, or (C) the definition of “Required Security Deposit Facility Lender”, without the written consent of each Security Deposit Facility Lender;

(viii) (A) consent to the assignment or transfer by the Issuer or Lessee, as applicable, of any of its rights and obligations under this Agreement and the other Financing Documents, or (B) release all or any material part of the Senior Collateral (except as expressly permitted by the Financing Documents) in each case without the written consent of all Lenders and the Security Deposit Facility LC Issuing Bank; or

(ix) cause any Senior Bank Obligations to cease to be secured on a pari passu basis with all other Senior Obligations or add, modify or waive any provision of the Financing Documents so as to subordinate the Senior Bank Obligations to any other Obligations without the prior written consent of each Lender affected thereby;

provided, further, that no such amendment, waiver or consent shall amend, modify or otherwise affect the rights or duties hereunder or under any other Financing Document of the Administrative Agent, unless in writing executed by the Administrative Agent, in each case in addition to the Issuer, the Lessee and the Lenders required above.

In addition, notwithstanding anything in this Section to the contrary, if the Administrative Agent and the Issuer or the Lessee shall have jointly identified an obvious error or any error or omission of a technical nature, in each case, in any provision of the Financing Documents, then the Administrative Agent and the Issuer or Lessee shall be permitted to amend such provision, and, in each case, such amendment shall become effective without any further action or consent of any other party to any Financing Document if the same is not objected to in writing by the Required Lenders to the Administrative Agent within ten Business Days following receipt of notice thereof.

Section 8.03 **Damages Waiver.**

(a) Waiver of Consequential Damages, Etc. To the fullest extent permitted by Applicable Law, no party hereto shall assert, and each party hereto hereby waives, any claim against any other party hereto, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Financing Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Credit Extensions, or the use of the proceeds thereof; provided that nothing herein shall limit the Lessee’s indemnification obligations set forth herein to the extent such indirect, special, punitive or consequential damages are included in any third party claim in connection with which an Indemnitee is entitled to indemnification hereunder. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Senior Bank Financing Documents or the transactions contemplated hereby or thereby, except to the extent that such damages have resulted from the willful misconduct or gross

negligence of such Indemnitee (as determined by a court of competent jurisdiction in a final and non-appealable judgment).

(b) Payments. All amounts due under this Section shall be payable promptly after demand therefor.

(c) Survival. Each party's obligations under this Section shall survive the termination of the Financing Documents and payment of the obligations hereunder and be enforceable by the Related Parties of the Administrative Agent and the Lenders as third party beneficiaries hereof.

#### Section 8.04 Successors and Assigns.

(a) Assignments Generally. All covenants and other agreements contained in this Agreement by or on behalf of any of the parties hereto bind and inure to the benefit of their respective successors and assigns whether so expressed or not, except that (i) the Issuer and the Lessee may not assign or otherwise transfer any of its rights or obligations hereunder (and any attempted assignment or transfer by the Issuer or the Lessee without such consent shall be null and void) without the prior written consent of each Lender and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 8.04. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in Section 8.04(e)) and, to the extent expressly contemplated hereby, the Related Parties of the Administrative Agent and the Lenders referred to in Section 8.03) any legal or equitable right, remedy or claim under or by reason of this Agreement.

#### (b) Assignments by Lenders.

(i) Any Lender or the Security Deposit Facility LC Issuing Bank may assign to one or more Eligible Assignees (in the case of an assignment by the Security Deposit Facility LC Issuing Bank, that is also an Eligible LC Issuer) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments and the Senior Loans at the time owing to it); provided that:

(A) unless a Default or an Event of Default has occurred and is continuing at the time of such assignment, prior to the end of the Availability Period, a Lender may only assign all or any portion of its Senior Term Loan Commitments to (1) an Eligible Assignee whose or whose parent's long term debt has a rating at least equal to the rating assigned by any Rating Agency to the Senior Secured Debt (or the equivalent rating by any other Rating Agency) at the time of such assignment, or to a Bank Finance Party or (2) so long as Lenders (x) whose long term debt is not rated by any Rating Agency or whose long term debt has a rating that is not equal to or better than the rating assigned by any Rating Agency to the Senior Secured Debt (or the equivalent rating by any other Rating Agency) and (y) that do not have a direct or indirect parent whose long term debt has a rating that is at least equal to the rating assigned by any Rating Agency to the Senior Secured Debt (or the equivalent rating by any other Rating Agency), hold, in the aggregate no more than \$250,000,000 of Senior Term Loan Commitments, after giving effect to such assignment, to any other Eligible Assignee whose long term debt is not rated by any Rating Agency;

(B) unless a Default or an Event of Default has occurred and is continuing at the time of such assignment, the Issuer and the Lessee shall have given its prior written consent to such assignment (such consent not to be unreasonably withheld or delayed); provided, that (1) no consent of the Issuer or the Lessee shall be required for (I) an assignment to an Eligible Assignee (other than an Institutional Lender), a Bank Finance Party, an Affiliate of a Lender or a Whitelisted Assignee or (II) its collateral assignment to

a central bank or federal reserve bank, (2) the Administrative Agent shall provide notice to the Issuer and the Lessee of any such assignment under this Section 8.04(b) and (3) the Issuer and the Lessee shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within seven (7) Business Days after having received notice thereof;

(C) any assignment of a Lender's Commitment(s) or Senior Loans to a Prohibited Person or a Disqualified Institution shall not be permitted unless the Issuer and the Lessee otherwise consent in writing;

(D) no assignment shall be made to the Issuer, the Lessee, Pledgor or any Sponsor, or any of the Issuer's, the Lessee's, Pledgor's or any Sponsor's Affiliates, or a natural person;

(E) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement;

(F) except in the case of an assignment to an Affiliate, the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of [REDACTED];

(G) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire;

(H) any costs, fees and expenses relating to any such assignment shall be borne by the assigning Lender and/or the assignee, and in no event by the Issuer or the Lessee; and

(I) the consent of the Security Deposit Facility LC Issuing Bank shall be required for any assignment in respect of the Security Deposit Facility.

Upon acceptance and recording pursuant to paragraph (d) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Section 2.12, Section 2.14, Section 2.17, and Section 8.03 in respect of the period prior to the date of the assignment). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 8.04(b) shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance Section 8.04(e).

(c) Maintenance of Register by the Administrative Agent. The Administrative Agent, acting for this purpose as an agent of the Issuer, shall maintain at one of its offices in New York City a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amount of (and stated interest on) the Senior Loans owing to each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Issuer, the Lessee, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, absent manifest

error. The Register shall be available for inspection by the Issuer, the Lessee and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Effectiveness of Assignments. Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in Section 8.04(b)(i)(F) and any written consent to such assignment required by Section 8.04(b), the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this Section 8.04(d).

(e) Participations. Any Lender may, without the consent of the Issuer, the Lessee or the Administrative Agent, sell participations to any Person (other than a natural Person, any Defaulting Lender, any Disqualified Institution, any Prohibited Person, the Issuer, the Lessee or any of the Issuer's or Lessee's Affiliates) (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitments and the Senior Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Issuer, the Lessee, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in Section 8.02 that requires the unanimous consent of the Lenders and that affects such Participant. Subject to Section 8.04(f), the Issuer and the Lessee each agree that each Participant shall be entitled to the benefits of Section 2.12, Section 2.14 and Section 2.17 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 8.04(b). Each Lender that grants a participation shall, acting for this purpose as a non-fiduciary agent of the Issuer and the Lessee, as applicable, maintain a register on which it enters the name and address of each participant and the principal and interest amount of each participant's interest in the Senior Loans held by it (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under this Agreement) except to the extent that such disclosure is necessary to establish that such Commitment, Senior Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations and Section 1.163-5(b) of the United States Proposed Treasury Regulations (or any amended or successor version). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

(f) Limitations on Rights of Participants. A Participant shall not be entitled to receive any greater payment under Section 2.12 or Section 2.14, with respect to any participation, than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. A Participant shall not be entitled to the benefits of Section 2.14 unless the Participant agrees, for the benefit of the Issuer and the Lessee, to comply with Section 2.14(f) as though it were a Lender (it being understood that the documentation required under Section 2.14(f) shall be delivered to the participating Lender).

(g) **Certain Pledges.** Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any such pledge or assignment to a Federal Reserve Bank, the European Central Bank or any other central bank or similar monetary authority in the jurisdiction of such Lender, and this Section 8.04 shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(h) Notwithstanding anything to the contrary herein, the Security Deposit Facility LC Issuing Bank may, upon thirty (30) days' notice to the Issuer and the Lessee and the Administrative Agent, resign as Security Deposit Facility LC Issuing Bank; provided that on or prior to the expiration of such thirty (30)-day period with respect to such resignation, the Security Deposit Facility LC Issuing Bank shall have identified a successor Security Deposit Facility LC Issuing Bank that is an Eligible LC Issuer Bank willing to accept its appointment as successor Security Deposit Facility LC Issuing Bank, and the effectiveness of such resignation shall be conditioned upon such successor assuming the rights and duties of the Security Deposit Facility LC Issuing Bank. In the event of any such resignation as Security Deposit Facility LC Issuing Bank, the Lessee, on behalf of the Issuer, shall be entitled to appoint from among the Lenders agreeing to accept such appointment a successor Security Deposit Facility LC Issuing Bank hereunder; provided that no failure by the Lessee to appoint any such successor shall affect the resignation of the Security Deposit Facility LC Issuing Bank. If a Security Deposit Facility LC Issuing Bank resigns as Security Deposit Facility LC Issuing Bank, it shall retain all the rights and obligations of an LC Issuing Bank hereunder with respect to all Security Deposit LCs outstanding as of the effective date of such resignation and all Security Deposit LC Obligations with respect thereto (including the right to require the Lenders to make Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(n)). Upon the appointment of a successor Security Deposit Facility LC Issuing Bank, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Security Deposit Facility LC Issuing Bank and (ii) the successor Security Deposit Facility LC Issuing Bank shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring Security Deposit Facility LC Issuing Bank to effectively assume the obligations of the retiring Security Deposit Facility LC Issuing Bank with respect to such Security Deposit LCs.

**Section 8.05 Survival; Entire Agreement.** All covenants, agreements, representations and warranties contained herein and in each Financing Document shall survive the execution and delivery of this Agreement and the making of any Senior Loans or Security Deposit LC Credit Extension and other extensions of credit hereunder, regardless of any investigation made at any time by or on behalf of any Lender and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default or Event of Default at the time of any Borrowing, and shall continue in full force and effect until the Credit Termination Date. This Agreement and the other Financing Documents embody the entire agreement and understanding between each Lender, the Administrative Agent, the Lessee and the Issuer and supersede all prior agreements and understandings relating to the subject matter hereof. The provisions of Section 2.12, Section 2.14, Section 2.17, and Section 8.03 and Article VII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Senior Loans, the expiration or termination of the Commitments, the cancellation of the Security Deposit LCs, the discharge of the Senior Deposit LC Obligations or the termination of this Agreement or any provision hereof or the resignation or removal of the Agents.

**Section 8.06 Counterparts; Electronic Execution of Financing Documents.** This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the parties hereto. Delivery of an executed counterpart of a

signature page to this Agreement by electronic transmission (i.e., a “pdf” or “tiff”), including email, shall be effective as delivery of a manually executed counterpart of this Agreement. The words “execution,” “signed,” “signature,” and words of like import in this Agreement and the other Financing Documents, including any Assignment and Assumption, shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 8.07 **Severability.** Any provision of this Agreement or any other Financing Document that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall (to the full extent permitted by law) not invalidate or render unenforceable such provision in any other jurisdiction.

Section 8.08 **Right of Setoff.** If an Event of Default shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held, and any other obligations at any time owing, by such Lender to or for the credit or the account of the Lessee against any of and all the obligations of the Issuer and the Lessee now or hereafter existing under this Agreement or any other Senior Bank Financing Document to such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Senior Bank Financing Document and although such obligations may be contingent or unmaturing or are owed to a branch office of such Lender different from the branch office holding such deposit or obligated on such indebtedness. Each Lender agrees to promptly notify the Lessee and the Administrative Agent after any such application made by such Lender; provided that the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Lender under this Section 8.08 are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

Section 8.09 **Governing Law; Jurisdiction; Etc..**

(a) **Governing Law.** This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State that would require the application of the laws of a jurisdiction other than such State.

(b) **Submission to Jurisdiction.** The Lessee irrevocably and unconditionally agree that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against the Administrative Agent, any Lender, or any Related Party of the foregoing in any way relating to this Agreement or any other Financing Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by Applicable Law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Financing Document shall affect any right that the Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Financing Document against the Lessee or its properties in the courts of any jurisdiction.



(c) Waiver of Venue. The Lessee irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Financing Document in any court referred to in Section 8.09(b). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

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

(e) Service of Process. Each party hereto consents to process being served by or on behalf of any Lender in any suit, action or proceeding arising out of or relating to this Agreement by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, return receipt requested, to its address specified in Section 8.01 or at such other address of which such Person shall then have been notified pursuant to said Section. Each party hereto agrees that such service upon receipt (i) shall be deemed in every respect effective service of process upon it in any such suit, action or proceeding and (ii) shall, to the fullest extent permitted by Applicable Law, be taken and held to be valid personal service upon and personal delivery to it. Notices hereunder shall be conclusively presumed received as evidenced by a delivery receipt furnished by the United States Postal Service or any reputable commercial delivery service. Nothing in this Section 8.09 shall affect the right of any Lender to serve process in any manner permitted by law.

(f) Waiver of Immunity. To the extent that the Lessee has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution, sovereign immunity or otherwise) with respect to itself or its property, it hereby irrevocably waives such immunity, to the fullest extent permitted by law, in respect of its obligations under this Agreement and the other Financing Documents to which it is a party.

Section 8.10 **Headings**. Article and Section headings and the table of contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 8.11 **No Third-Party Beneficiaries**. Except as expressly set forth in Section 8.04(a), the agreement of the Lenders to make the Senior Loans, the Security Deposit LC Credit Extensions and other extensions of credit to the Issuer or the Lessee, on the terms and conditions set forth in this Agreement, is solely for the benefit of the Issuer, the Agents, the Lessee and the Lenders, and no other Person (including any contractor, subcontractor, supplier, workman, carrier, warehouseman or materialman furnishing labor, supplies, goods or services to or for the benefit of the Project) shall have any rights under this Agreement or under any other Financing Document as against the Agents or any Lender or with respect to any extension of credit contemplated by this Agreement.

Section 8.12 **Reinstatement.** The obligations of the Issuer and the Lessee under this Agreement shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Issuer or the Lessee in respect of the Senior Obligations under this Agreement is rescinded or must be otherwise restored by any holder of any of such Senior Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and the Issuer or the Lessee, as applicable, agrees that it will indemnify each Secured Party under this Agreement on demand for all reasonable and documented costs and expenses (including reasonable fees of counsel) incurred by such Secured Party in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any Bankruptcy Law.

Section 8.13 **USA PATRIOT Act.** Each Lender hereby notifies the Issuer and the Lessee that pursuant to the requirements of the USA PATRIOT Act and the requirements of 31 C.F.R. §1010.230, it is required to obtain, verify and record information that identifies the Issuer and the Lessee, which information includes the name and address of the Issuer and the Lessee and other information that will allow such Lender to identify the Issuer and the Lessee in accordance with the USA PATRIOT Act and the requirements of 31 C.F.R. §1010.230.

Section 8.14 **Acknowledgment and Consent to Bail-In of Affected Financial Institutions.** Notwithstanding anything to the contrary in any Financing Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Financing Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable, (i) a reduction in full or in part or cancellation of any such liability, (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Financing Document, or (iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any applicable Resolution Authority.

Section 8.15 **Acknowledgement Regarding Any Supported QFCs.** To the extent that the Financing Documents provide QFC Credit Support, the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below (including the defined terms used therein) applicable notwithstanding that the Financing Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported

QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Financing Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Financing Documents were governed by the laws of the United States or a state of the United States.

Section 8.16 **Exculpation of Issuer; Issuer Payments.** In the exercise of the powers of the Issuer and its members, officers, employees or agents under this Agreement, and including without limitation the application of moneys, the investment of funds, or the assignment or other disposition of the funds in the Project Account in the case of an Event of Default by the Issuer, neither the Issuer nor any Issuer Indemnified Party shall be accountable, except for the Issuer in the case of acts or omissions of gross negligence or willful misconduct of such parties as determined by a court of competent jurisdiction in a final and non-appealable judgment, to the Lenders or the Lessee for any action taken or omitted by it or them in good faith and believed by it or them to be authorized or within the discretion or rights or powers conferred thereto. The Issuer and the Issuer Indemnified Parties shall be protected in acting upon any paper or document believed by it or them to be genuine, they may conclusively rely upon the advice of counsel and they may (but need not) require further evidence of any fact or matter before taking any action. Without limiting any obligation of the Lessee under the Financing Documents, the Issuer shall not (except in the case of acts or omissions of gross negligence or willful misconduct of the Issuer or any Issuer Indemnified Party as determined by a court of competent jurisdiction in a final and non-appealable judgment) be required to make any payment to any Lender or Governmental Authority hereunder or have any obligation with respect to any payment herein, other than as expressly contemplated, and subject to the limitations, in this Agreement. In no event will the officers, directors, employees, or agent of Issuer have any liability under this Agreement or any of the Financing Documents.

Section 8.17 **Issuer Not Responsible for Insurance, Taxes, or Application of Moneys Applied in Accordance with this Agreement.**

(a) The Issuer is not under any obligation to effect or maintain insurance or to renew any policies of insurance or to inquire as to the sufficiency of any policies of insurance carried by the Lessee, or to report, or make or file claims or proof of loss for, any loss or damage insured against or which may occur, or to keep itself informed or advised as to the payment of any taxes or assessments, or to require any such payment to be made. The Issuer shall have no responsibility in respect of the sufficiency of the security provided by the Senior Collateral Documents. The Issuer shall not be under any obligation to see that any duties herein imposed upon any party other than itself, or any covenants herein contained on the part of any party other than itself to be performed, shall be done or performed, and the Issuer shall not be under any liability for failure to see that any such duties or covenants are so done or performed.

(b) The immunities and exemptions from liability of the Issuer hereunder shall extend to its directors, members, attorneys, officers, employees and agents.

Section 8.18 **Issuer May Rely on Certificates.** The Issuer shall be protected and shall incur no liability in acting or proceeding, or in not acting or not proceeding, in good faith, in a reasonable manner and in accordance with the terms of this Agreement, upon any resolution, order, notice, request, consent, waiver, certificate, statement, affidavit, requisition, bond or other paper or document which it shall in good faith reasonably believe to be genuine and to have been adopted or signed by the proper board or Person or

to have been prepared and furnished pursuant to any of the provisions of this Agreement or any other Financing Document, or upon the written opinion of any attorney, engineer, accountant or other expert reasonably believed by it to be qualified in relation to the subject matter and otherwise permitted hereunder, and the Issuer shall not be under any duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument.

Section 8.19 **Limitation of Issuer's Liability.**

(a) Anything in this Agreement, any other Financing Document, the TDC Loan Agreements or any Security Document to the contrary notwithstanding, any obligations of the Issuer for the payment of money under this Agreement, any other Financing Document, the TDC Loan Agreements, any Senior Collateral Document or related document are the special limited obligations of the Issuer secured and payable solely as provided in this Agreement and the other Senior Financing Documents and none of the State, the Port Authority, the JDA, ESD, or any other local development corporation, agency, or authority of the State (other than the Issuer) shall be liable thereon, nor shall any such amounts be payable out of any funds of the Issuer (other than in the case of any liability of the Issuer arising from the gross negligence or willful misconduct of the Issuer or any of its members, officers, employees or agents) other than those pledged therefor.

(b) Amounts payable by the Issuer hereunder shall be payable solely from the Collateral, including the right to collect from and payments made by the Lessee under the TDC Loan Agreements, the revenues and receipts pledged to the payment thereof and funds on deposit in the Project Accounts in the manner and to the extent specified in this Agreement and the other Senior Bank Financing Documents, and nothing in this Agreement, the Common Terms Agreement, the TDC Loan Agreements or any other Financing Document shall be considered as pledging any other funds or assets of the Issuer other than those expressly pledged therefor hereunder or under the other Financing Documents.

(c) The Issuer shall not be required under this Agreement, the Common Terms Agreement, the TDC Loan Agreements or any other Security Document to expend any of its funds (in each case other than with respect to any liability of the Issuer arising from the gross negligence or willful misconduct of the Issuer or any of its members, officers, employees or agents) other than (a) the proceeds of the Senior Term Loans, (b) the loan payments, revenues, receipts and proceeds of the Collateral pledged to the payment of the Senior Loans under the Security Documents, and (c) investment earnings, if any, on the amounts identified in paragraph (a) or (b) above, in each case to the extent received by the Issuer. In no event will the Issuer, or any of its officers, directors, employees, or agents, be liable or obligated for liabilities and obligations of the Lessee.

(d) Nothing in this Section 8.19 or elsewhere in this Agreement shall affect the Senior Secured Parties' recourse to the Collateral or against the Lessee.

Section 8.20 **Issuer Standing Instructions.** Anything in this Agreement to the contrary notwithstanding, the Issuer hereby instructs and authorizes the Lessee to take any and all actions on behalf of the Issuer under and in accordance with this Agreement in the name of and on behalf of the Issuer solely in its capacity as a "borrower" hereunder or thereunder and any and all other actions that the Lessee is entitled to perform in accordance with this Agreement and the other Senior Bank Financing Documents, in each case at the Lessee's discretion, subject to compliance with its obligations and other terms hereunder and the terms of each other Senior Bank Financing Agreement, including delivering Borrowing Requests and any and all documentation to satisfy the conditions precedent to the Lenders' obligations to make a Borrowing.

Section 8.21 **Additional Documents and Further Assurances.** To the extent that any Party requests that the Issuer enter into any additional agreement, supplement, amendment or any other document

in connection with or pursuant to any Financing Documents, the provisions of Sections 8.15, 8.16, 8.17, 8.18 and 8.19 shall apply to such additional agreement, supplement, amendment or any other document as if fully set forth therein.

Section 8.22 **Effective Date.** The date of this Agreement shall be for reference purposes only and shall not be construed to imply that this Agreement was executed on the date first written above. This Agreement shall be deemed to be executed by the parties hereto and effective on the Closing Date.

[Remainder of page intentionally left blank]

**[SIGNATURE PAGES AND EXHIBITS HAVE BEEN REMOVED]**

**APPENDIX F-3**

**FORM OF SERIES 2022 BONDHOLDER AGREEMENT**

**(THIS PAGE INTENTIONALLY LEFT BLANK)**



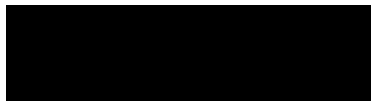
BONDHOLDER'S AGREEMENT

dated as of November 1, 2022,

between

JFK MILLENNIUM PARTNERS, LLC

and



relating to

NOT TO EXCEED \$435,000,000  
NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION  
SPECIAL FACILITIES BONDS,  
SENIOR SERIES 2022A (TAX-EXEMPT) (AMT)  
(JFK AIRPORT TERMINAL 6-7 REDEVELOPMENT PROJECT)

---

---

## TABLE OF CONTENTS

SECTION	HEADING	PAGE
ARTICLE I	DEFINITIONS .....	4
Section 1.01.	Certain Defined Terms .....	4
Section 1.02.	Computation of Time Periods .....	11
Section 1.03.	Construction .....	11
Section 1.04.	Accounting Terms and Determinations .....	12
Section 1.05.	Relation to Other Documents; Acknowledgment of Different Provisions of Related Documents; Incorporation by Reference .....	12
ARTICLE II	DRAWDOWN PURCHASE OF SERIES 2022A BONDS .....	13
Section 2.01.	Drawdown Purchase of Series 2022A Bonds .....	13
ARTICLE III	CONDITIONS PRECEDENT TO EFFECTIVENESS AND INITIAL DRAWING .....	13
Section 3.01.	Effectiveness .....	13
Section 3.02.	Initial Drawing .....	14
ARTICLE IV	THE BORROWER’S OBLIGATIONS .....	14
Section 4.01.	[Reserved] .....	14
Section 4.02	Post-Default Rate .....	15
Section 4.03.	Determination of Taxability .....	15
Section 4.04.	Fees, Costs and Expenses .....	16
Section 4.05.	Computation of Fees .....	16
Section 4.06.	Increased Payments .....	16
Section 4.07.	Taxes .....	18
Section 4.08.	Method and Application of Payments .....	20
Section 4.09.	Maintenance of Accounts .....	20
Section 4.10.	Cure .....	21
Section 4.11.	Maximum Interest Rate .....	21
Section 4.12.	Obligations Absolute .....	21
Section 4.13.	Obligations .....	22
ARTICLE V	REPRESENTATIONS AND WARRANTIES .....	22
Section 5.01.	Incorporation by Reference .....	22
Section 5.02.	Representations Ongoing; Incorporation by Reference .....	22
Section 5.03.	Arm’s Length Transaction .....	22
Section 5.04.	Sale of Tax-Exempt Status of Series 2022A Bonds .....	23
Section 5.05.	Sale of Series 2022A Bonds to Underwriter .....	23
ARTICLE VI	COVENANTS OF THE BORROWER .....	23

Section 6.01.	Terms in Common Terms Agreement .....	23
Section 6.02.	Reporting .....	23
Section 6.03.	Incorporation by Reference; Other Agreements.....	24
Section 6.04.	[Reserved].....	24
Section 6.05.	Notice of Redemption.....	24
Section 6.06.	Disclosure to Participants, Bank Transferees and Non-Bank Transferees .....	25
Section 6.07.	Use of Purchaser’s Name .....	25
Section 6.08.	Exempt Status .....	25
Section 6.09.	Filing of Agreement .....	25
Section 6.10.	Calculation Agent .....	25
ARTICLE VII	EVENTS OF DEFAULT .....	25
Section 7.01.	Events of Default .....	25
Section 7.02.	Consequences of an Event of Default .....	26
Section 7.03.	Remedies Cumulative; Solely for the Benefit of Purchaser .....	26
Section 7.04.	Waivers or Omissions.....	26
Section 7.05.	Discontinuance of Proceedings .....	27
ARTICLE VIII	INDEMNIFICATION .....	27
Section 8.01.	Indemnification.....	27
Section 8.02.	Survival.....	27
ARTICLE IX	MISCELLANEOUS .....	27
Section 9.01.	Patriot Act Notice .....	27
Section 9.02.	Further Assurances .....	27
Section 9.03.	Amendments and Waivers; Enforcement .....	28
Section 9.04.	No Implied Waiver; Cumulative Remedies .....	28
Section 9.05.	Notices .....	28
Section 9.06.	Right of Setoff .....	28
Section 9.07.	No Third-Party Rights .....	28
Section 9.08.	Severability .....	28
Section 9.09.	Governing Law; Jurisdiction; Etc.....	29
Section 9.10.	Prior Understandings .....	30
Section 9.11.	Duration .....	30
Section 9.12.	Counterparts .....	30
Section 9.13.	Successors and Assigns .....	30
Section 9.14.	Headings .....	32
Section 9.15.	No Fiduciary Relationship.....	32
Section 9.16.	Electronic Signatures .....	33
Section 9.17.	EMMA Postings .....	33

## BONDHOLDER'S AGREEMENT

THIS BONDHOLDER'S AGREEMENT, dated as of November 1, 2022 (as amended, modified or restated from time to time, this "*Agreement*"), is between JFK MILLENNIUM PARTNERS, LLC, a Delaware limited liability company (the "*Borrower*" or the "*Lessee*"), and [REDACTED] (as more particularly defined herein, the "*Purchaser*").

### RECITALS

WHEREAS, New York Transportation Development Corporation, a local development corporation formed under Section 1411 of the New York Not-for-Profit Corporation Law, being Chapter 35 of the Consolidated Laws of New York, created by action of the New York Job Development Authority ("*JDA*") established under Section 1802, Subtitle I, Title 8, Article 8, of the New York Public Authorities Law (the "*Issuer*"), is issuing its Special Facilities Bonds, Senior Series 2022A (Tax-Exempt) (AMT) (JFK Airport Terminal 6-7 Redevelopment Project) in the original aggregate principal amount not to exceed \$435,000,000 (the "*Series 2022A Bonds*") pursuant to a bond resolution adopted on October 20, 2022, by the Issuer (the "*Resolution*") and that certain TDC Master Bond Indenture of Trust dated as of November 1, 2022 (the "*Master Indenture*"), as supplemented by that certain TDC First Supplemental Bond Indenture of Trust dated as of November 1, 2022 (the "*First Supplemental Indenture*" and, together with the Master Indenture, as the same may be further amended, restated, supplemented or otherwise modified from time to time (subject to any restrictions on such amendments, restatements, supplements or modifications set forth in the Financing Documents), the "*Indenture*"), each by and between the Issuer and [REDACTED], as trustee (the "*Trustee*"); and

WHEREAS, subject to: (1) that certain Collateral Agency and Accounts Agreement dated as of November 1, 2022 (as amended, restated, supplemented or otherwise modified from time to time (subject to any restrictions on such amendments, restatements, supplements or modifications set forth in the Financing Documents) the "*Collateral Agency and Accounts Agreement*"), by and among the Issuer, the Borrower, [REDACTED] as the intercreditor agent (in such capacity, the "*Intercreditor Agent*" [REDACTED], as the Senior Collateral Agent on behalf of itself and the other parties thereto in such capacity, the "*Senior Collateral Agent*"), [REDACTED] as securities intermediary (in such capacity, the "*Securities Intermediary*" [REDACTED], as the Administrative Agent under the Credit Agreement (referred to in such capacity as the "*Administrative Agent*"), the other parties thereto from time to time and [REDACTED], as the Deposit Account Bank, and (2) that certain Intercreditor Agreement dated as of November 1, 2022 (as amended, restated, supplemented or otherwise modified from time to time (subject to any restrictions on such amendments, restatements, supplements or modifications set forth in the Financing Documents), the "*Intercreditor Agreement*"), among the Administrative Agent, the Trustee, the Intercreditor Agent, the Senior Collateral Agent, the Borrower, each Hedge Provider (as defined in the Intercreditor Agreement) and the other parties thereto from time to time, the Series 2022A Bonds will be payable from and secured by the Trust Estate established under the Indenture, which includes the Trustee's interest in the Collateral pledged in favor of the Collateral Agents for the benefit of the Trustee; and

WHEREAS, the Issuer is loaning the proceeds of the Series 2022A Bonds to the Borrower pursuant to the terms of (i) that certain TDC Building Loan Agreement dated as of November 1, 2022 (as amended, restated, supplemented or otherwise modified from time to time (subject to any restrictions on such amendments, restatements, supplements or modifications set forth in the Financing Documents), the “*TDC Building Loan Agreement*”), between the Borrower and the Issuer, and (ii) that certain TDC Project Loan Agreement dated as of November 1, 2022 (as amended, restated, supplemented or otherwise modified from time to time (subject to any restrictions on such amendments, restatements, supplements or modifications set forth in the Financing Documents), the “*TDC Project Loan Agreement*,” and together with the TDC Building Loan Agreement, the “*TDC Loan Agreements*”), between the Borrower and the Issuer; and

WHEREAS, the obligation of the Borrower to pay the amounts payable under the TDC Building Loan Agreement with respect to the Series 2022A Bonds will be evidenced by the Series 2022A Building Note. All rights of the Issuer under the TDC Building Loan Agreement (other than Reserved Rights) and the Series 2022A Building Note will be assigned by the Issuer, without recourse, to the Senior Collateral Agent pursuant to the Assignment Agreement (Building Loan) dated as of November 1, 2022, between the Issuer and the Senior Collateral Agent, and the Borrower hereby consents to such assignment; and

WHEREAS, the obligation of the Borrower to pay the amounts payable under the TDC Project Loan Agreement with respect to the Series 2022A Bonds will be evidenced by the Series 2022A Project Note. All rights of the Issuer under the TDC Project Loan Agreement (other than Reserved Rights) and the Series 2022A Project Note will be assigned by the Issuer, without recourse, to the Senior Collateral Agent pursuant to the Assignment Agreement (Project Loan) dated as of November 1, 2022, between the Issuer and the Senior Collateral Agent, and the Borrower hereby consents to such assignment; and

WHEREAS, the Port Authority of New York and New Jersey, a municipal corporate instrumentality and political subdivision of the States of New York and New Jersey, created and existing by virtue of the Compact of April 30, 1921, made by and between the States of New York and New Jersey, and thereafter consented to by the Congress of the United States (the “*Port Authority*”), has entered into an Agreement of Lease dated as of November 17, 2022 (as amended, restated, supplemented or otherwise modified from time to time (subject to any restrictions on such amendments, restatements, supplements or modifications set forth in the Financing Documents), the “*Lease Agreement*”), with the Borrower, pursuant to which, among other things, the Borrower is obligated to implement the following (collectively, the “*Project*”): (i) the operation, maintenance and demolition of the Existing Terminal Facilities (as defined in the Lease Agreement) at John F. Kennedy International Airport in Queens, New York (“*Airport*”), (ii) the design, construction, financing, operation and maintenance of the New Terminal Facilities (as defined in the Lease Agreement) at the Airport and certain ancillary facilities, and (iii) the design and construction of certain Off-Premises Facilities (as defined in the Lease Agreement) at the Airport on behalf of the Port Authority, which Off-Premises Facilities will not be operated or maintained by the Borrower and will not constitute part of the facilities leased to the Borrower under the Lease Agreement, which Project will be funded, in part, with the proceeds of the Series 2022A Bonds loaned to the Borrower pursuant to the terms of the TDC Loan Agreements; and

WHEREAS, in order to secure the Borrower's obligations under the hereinafter defined Senior Bank Financing Documents, the Borrower, as leasehold mortgagor, is delivering, as security for the Senior Obligations, to the Issuer, as leasehold mortgagee, and to the Senior Collateral Agent, for the benefit of the Senior Secured Parties, as leasehold mortgagee, (i) that certain TDC Building Loan Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of November 1, 2022 (as amended, restated, supplemented or otherwise modified from time to time (subject to any restrictions on such amendments, restatements, supplements or modifications set forth in the Financing Documents), the "*Building Leasehold Mortgage*"), pursuant to which Building Leasehold Mortgage the Borrower will grant mortgage liens on and security interests in the interests of the Borrower under the Lease Agreement in favor of the Senior Collateral Agent and the Issuer, and the Issuer will assign its interest in the Building Leasehold Mortgage to the Senior Collateral Agent, and (ii) that certain TDC Project Loan Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of November 1, 2022 (as amended, restated, supplemented or otherwise modified from time to time (subject to any restrictions on such amendments, restatements, supplements or modifications set forth in the Financing Documents), the "*Project Leasehold Mortgage*"), pursuant to which Project Leasehold Mortgage the Borrower will grant mortgage liens on and security interests in the interests of the Borrower under the Lease Agreement in favor of the Senior Collateral Agent and the Issuer, and the Issuer will assign its interest in the Project Leasehold Mortgage to the Senior Collateral Agent; and

WHEREAS, as additional security for the Senior Obligations, pursuant to that certain Senior Security Agreement dated as of November 1, 2022 (as amended, restated, supplemented or otherwise modified from time to time (subject to any restrictions on such amendments, restatements, supplements or modifications set forth in the Financing Documents), the "*Senior Security Agreement*"), between the Borrower and the Senior Collateral Agent, simultaneously with the execution and delivery of this Agreement, the Borrower is granting to the Senior Collateral Agent, for the benefit of the Senior Secured Parties, a first-priority security interest (subject to Permitted Liens) in, to and under the Collateral; and

WHEREAS, simultaneously with the execution and delivery of this Agreement, the Issuer and the Borrower are entering into that certain Credit Agreement dated as of November 1, 2022 (as amended, restated, supplemented or otherwise modified from time to time (subject to any restrictions on such amendments, restatements, supplements or modifications set forth in the Financing Documents), the "*Credit Agreement*"), among the Issuer, the Lessee, [REDACTED] as administrative agent (in such capacity, the "*Administrative Agent*"), the Facility LC Issuing Bank and the Bank Lenders identified therein; and

WHEREAS, simultaneously with the execution of the Credit Agreement, the Borrower and the Issuer are entering into that certain Common Terms Agreement dated as of November 1, 2022 (as amended, restated, supplemented or otherwise modified from time to time, the "*Common Terms Agreement*"), by and among the Issuer, the Lessee, the Senior Collateral Agent, the Intercreditor Agent, the Administrative Agent, [REDACTED], in its capacity as Series 2022A Bondholder, and the Bank Lenders; and

WHEREAS, pursuant to the Bond Purchase Agreement (as hereinafter defined), the Underwriter (as hereinafter defined) has agreed to purchase the Series 2022A Bonds and make advances on a “draw-down” basis pursuant to one or more Drawings (as hereinafter defined) under and with respect to the Series 2022A Bonds from time to time on each Scheduled Borrowing Date, subject to the terms and conditions set forth in the Bond Purchase Agreement and herein, and, upon each such Drawing, the Underwriter intends to transfer such Series 2022A Bonds to the Purchaser, as assignee of the Underwriter, and, as a condition to such Drawings, the Purchaser has required the Borrower to enter into this Agreement; and

WHEREAS, upon each such transfer of Series 2022A Bonds from the Underwriter to the Purchaser, the Purchaser intends to transfer its interest in the Series 2022A Bonds into a custodial receipts Trust (as hereinafter defined) and then act as a Credit Protection Provider (as hereinafter defined) with respect to the Series 2022A Bonds held by a custodian under a custodial arrangement to issue a letter of credit providing credit enhancement with respect to such Series 2022A Bonds in order to obtain a rating on the related custodial receipts from at least one Rating Agency thereon, and thereafter intends to place such custodial receipts into a tender option bond Trust and sell interests therein to various institutional investors in order to reimburse the Underwriter for its advance of each Drawing under and with respect to the Series 2022A Bonds on the related Scheduled Borrowing Date.

NOW, THEREFORE, to induce the Underwriter and the Purchaser to purchase the Series 2022A Bonds and advance Drawings on a draw-down basis, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Borrower and the Purchaser hereby agree as follows:

## ARTICLE I

### DEFINITIONS

*Section 1.01. Certain Defined Terms.* Unless otherwise specified, capitalized terms used in this Agreement have the meanings assigned to them in Appendix A to the Common Terms Agreement. In the event of conflict between the definition of a term in Appendix A to the Common Terms Agreement and the definition of the same term in Exhibit A to the Collateral Agency and Accounts Agreement, the definition in Appendix A to the Common Terms Agreement shall prevail. Except as otherwise expressly provided or unless the context otherwise requires, the rules of interpretation included in Exhibit A to the Collateral Agency and Accounts Agreement shall apply to this Agreement. In addition to the terms defined in the recitals and as set in the preceding sentence, the following terms shall have the following meanings:

“*Administrative Agent*” has the meaning set forth in the recitals hereof.

“*Affiliate*” has the meaning assigned to such term in Exhibit A to the Collateral Agency and Accounts Agreement.

“*Agreement*” has the meaning set forth in the introductory paragraph hereof.

“*Applicable Law*” has the meaning assigned to such term in Exhibit A to the Collateral Agency and Accounts Agreement.

“*Applicable Spread*” has the meaning assigned to such term in Exhibit A to the Collateral Agency and Accounts Agreement.

“*Available Commitment*” means, as of the Closing Date, an amount equal to the Commitment Amount, and thereafter such amount adjusted from time to time as follows: (a) downward in an amount equal to the principal amount of each Drawing (including, without limitation the Initial Drawing) by the Underwriter pursuant to the Bond Purchase Agreement, and (b) downward to zero upon the expiration or termination of the Commitment in accordance with the terms hereof and the Bond Purchase Agreement; *provided* that after giving effect to any of the foregoing adjustments, the Available Commitment shall never exceed the Commitment Amount at any one time.

“*Bank Lenders*” means the “Lenders” as defined in the Credit Agreement.

“*Bond Counsel*” has the meaning assigned to such term in Exhibit A to the Collateral Agency and Accounts Agreement.

“*Bond Purchase Agreement*” means the Bond Purchase Agreement, dated October 21, 2022, among the Underwriter, the Purchaser, the Borrower and the Issuer, and related to the Series 2022A Bonds, as amended, restated, modified or supplemented from time to time in accordance with the terms thereof.

“*Borrower*” has the meaning set forth in the introductory paragraph hereof.

“*Business Day*” has the meaning assigned to such term in Exhibit A to the Collateral Agency and Accounts Agreement.

“*Calculation Agent*” has the meaning assigned to such term in Exhibit A to the Collateral Agency and Accounts Agreement.

“*Change in Law*” means (a) the adoption of any law, rule or regulation after the Closing Date, (b) any change in any law, rule or regulation or any change in the interpretation or application thereof by any Governmental Authority after the Closing Date or (c) compliance by the Purchaser with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the Closing Date. Notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States of America or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.



“*Closing Date*” means November 17, 2022, subject to the satisfaction or waiver by the Underwriter of the conditions precedent set forth in Article III hereof.

“*Code*” means the Internal Revenue Code of 1986, as amended.

“*Collateral*” has the meaning assigned to such term in Exhibit A to the Collateral Agency and Accounts Agreement.

“*Collateral Agency and Accounts Agreement*” has the meaning set forth in the recitals hereof.

“*Collateral Agents*” means each of the Senior Collateral Agent and the Subordinate Collateral Agent.

“*Commitment*” means the Underwriter’s commitment to purchase Series 2022A Bonds and fund Drawings with respect thereto pursuant to the terms and conditions of the Bond Purchase Agreement.

“*Commitment Amount*” means, as of the Closing Date, \$435,000,000.

“*Commitment End Date*” has the meaning set forth in the Bond Purchase Agreement.

“*Common Terms Agreement*” has the meaning set forth in the recitals hereof.

“*Credit Agreement*” has the meaning set forth in the recitals hereof.

“*Credit Protection Provider*” means, collectively, (a) any Person, including any bondholder and [REDACTED], that provides credit protection or liquidity support with respect to the Ser [REDACTED] certificate representing an undivided interest in the Series 2022A Bonds, in each case in favor of the Trust and (b) any Person that participates in any such credit protection or liquidity support.

“*Custodial Trustee*” means the trustee or custodian, as applicable, of the related Trust.

“*Deemed Drawing*” has the meaning set forth in the Bond Purchase Agreement.

“*Default*” means any event or condition which, with notice, the passage of time or any combination of the foregoing, would constitute an Event of Default.

“*Determination of Taxability*” has the meaning assigned to such term in Exhibit A to the Collateral Agency and Accounts Agreement.

“*Drawing*” has the meaning set forth in the Bond Purchase Agreement.

“*Event of Default*” with respect to this Agreement has the meaning set forth in Section 7.01 hereof.

*“Excess Interest Amount”* has the meaning set forth in Section 4.11(b) hereof.

*“Excluded Taxes”* means, with respect to the Purchaser, any Owner or the Credit Protection Provider, (a) Taxes imposed on or measured by its overall net income (however denominated), franchise Taxes and branch profits Taxes, in each case, imposed on it, by the jurisdiction (or any political subdivision thereof) under the laws of which the Purchaser, such Owner or the Credit Protection Provider is organized or in which its principal office is located or that are Other Connection Taxes, (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which the Borrower is located, (c) with respect to any Owner, U.S. federal withholding Taxes imposed on amounts payable to or for the account of any Owner with respect to an applicable interest in a Commitment, a Drawing or the Series 2022A Bonds pursuant to a law in effect on the date on which such Owner acquires such interest, (d) Taxes attributable to such party’s failure to comply with Section 4.07(f) and (e) any withholding Taxes imposed under FATCA.

*“FATCA”* means Sections 1471 through 1474 of the Code, as of the Closing Date (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

*“Financing Document”* has the meaning assigned to such term in Exhibit A to the Collateral Agency and Accounts Agreement.

*“First Supplemental Indenture”* has the meaning set forth in the recitals hereof.

*“Indebtedness”* has the meaning assigned to such term in Exhibit A to the Collateral Agency and Accounts Agreement.

*“Indemnified Taxes”* means (a) Taxes other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrower under any Related Document and (b) to the extent not otherwise described in (a), Other Taxes.

*“Indenture”* has the meaning set forth in the recitals hereof.

*“Initial Drawing”* has the meaning set forth in the Bond Purchase Agreement.

*“Initial Drawing Date”* has the meaning set forth in the Bond Purchase Agreement.

*“Intercreditor Agent”* has the meaning set forth in the recitals hereof.

*“Intercreditor Agreement”* has the meaning set forth in the recitals hereof.

*“Issuer”* has the meaning set forth in the recitals hereof.

“*Law*” has the meaning assigned to such term in Exhibit A to the Collateral Agency and Accounts Agreement.

“*Lease Agreement*” has the meaning set forth in the recitals hereof.

“*Letter of Representation*” means the Borrower’s Letter of Representation, substantially in the form attached to the Bond Purchase Agreement as Exhibit A.

“*Majority Bondholder*” means the Owner(s) with a majority of the aggregate principal amount of Series 2022A Bonds from time to time. As of the Initial Drawing Date, [REDACTED] shall be the Majority Bondholder.

“*Master Indenture*” has the meaning set forth in the recitals hereof.

“*Maximum Interest Rate*” has the meaning assigned to such term in Exhibit A to the Collateral Agency and Accounts Agreement.

“*Notice of Proposed Adverse Determination*” means, with respect to the Series 2022A Bonds, the date on which the Issuer or the Borrower shall have received a “Letter 4413, Notice of Proposed Adverse Determination” (or any document serving a substantially similar purpose) by the Commissioner or any District Director of the Internal Revenue Service (or any other official of a Governmental Authority exercising the same or a substantially similar function from time to time) or any other employee of the Internal Revenue Service acting on behalf of one of the above.

“*Notice of Proposed Issue*” means, with respect to the Series 2022A Bonds, the date on which the Issuer or the Borrower shall have received a “IRS Form 5701 TEB” (or any successor document serving a substantially similar purpose) by the Commissioner or any District Director of the Internal Revenue Service (or any other official of a Governmental Authority exercising the same or a substantially similar function from time to time) or any other employee of the Internal Revenue Service acting on behalf of one of the above.

“*Obligations*” means all amounts payable by the Borrower hereunder and under the other Related Documents, and all other obligations to be performed by the Borrower, to the Purchaser, any other Owner or the Credit Protection Provider pursuant to this Agreement and the other Related Documents (including, without limitation, all obligations of the Borrower to pay principal of and interest on the Series 2022A Bonds when due), and any amounts advanced by the Purchaser pursuant to Section 4.10 of this Agreement.

“*Other Connection Taxes*” means, with respect to any recipient, Taxes imposed as a result of a present or former connection between such recipient and the jurisdiction imposing such Tax (other than connections arising from such recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Related Document, or sold or assigned an interest in any Series 2022A Bond or Related Document).

“*Other Taxes*” means all present or future stamp or documentary Taxes or any other excise or property Taxes, charges or similar levies arising from any payment made hereunder or under any other Related Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Related Document.

“*Owner*” means the registered owner of a Series 2022A Bond; *provided, however*, that at any time that the Series 2022A Bonds are held in the Book-Entry System, “*Owner*” means the “Beneficial Owner” of such Series 2022A Bonds. As the Series 2022A Bonds will be initially held in the Book-Entry System, the registered owner as of the Initial Drawing Date will be Cede & Co., as nominee of DTC, and the initial “*Owner*” prior to the transfer of such Series 2022A Bonds to any Trust shall be the Purchaser, and upon such transfer to such Trust shall be the Custodial Trustee on behalf of such Trust, subject to any subsequent transfer of such Series 2022A Bonds pursuant to Section 9.13 hereof.

“*Participant(s)*” means any bank(s), other financial institution(s) or other Qualified Buyer(s) which may purchase a participation interest from the Purchaser in this Agreement and certain of the other Related Documents pursuant to a participation agreement between the Purchaser and the Participant(s).

“*Patriot Act*” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Title III of Pub. L. 107-56 (signed into law October 26, 2001).

“*Permitted Liens*” has the meaning assigned to such term in Exhibit A to the Collateral Agency and Accounts Agreement.

“*Person*” has the meaning assigned to such term in Exhibit A to the Collateral Agency and Accounts Agreement.

“*Post-Default Rate*” has the meaning assigned to such term in Exhibit A to the Collateral Agency and Accounts Agreement.

“*Purchaser*” means, initially, [REDACTED], and its successors and assigns, and upon the receipt from time to time by [REDACTED] described in Section 9.13(b) hereof from time to time means, subject to the provisions of such Section 9.13(b), the Person designated in such notice.

“*Qualified Buyer*” means a “qualified institutional buyer,” as defined in Rule 144A promulgated under the 1933 Act.

“*Rating Agencies*” has the meaning assigned to such term in Exhibit A to the Collateral Agency and Accounts Agreement.

“*Related Documents*” means, collectively, this Agreement, the Bond Purchase Agreement, the Credit Agreement, the Common Terms Agreement and the other Senior Bank Financing Documents, and any other documents related to any of the foregoing or executed in connection

therewith, and any and all future renewals and extensions or restatements of, or amendments or supplements to, any of the foregoing.

“*Related Party*” or “*Related Parties*” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person’s Affiliates.

“*Reserved Rights*” has the meaning assigned to such term in Exhibit A to the Collateral Agency and Accounts Agreement.

“*Scheduled Drawing*” has the meaning set forth in the Bond Purchase Agreement.

“*Scheduled Drawing Date*” has the meaning set forth in the Bond Purchase Agreement.

“*Secured Obligations*” has the meaning assigned to such term in Exhibit A to the Collateral Agency and Accounts Agreement.

“*Senior Bank Financing Documents*” has the meaning assigned to such term in Exhibit A to the Collateral Agency and Accounts Agreement.

“*Senior Collateral Agent*” has the meaning set forth in the recitals hereof.

“*Senior Obligations*” has the meaning assigned to such term in Exhibit A to the Collateral Agency and Accounts Agreement.

“*Senior Secured Parties*” has the meaning assigned to such term in Exhibit A to the Collateral Agency and Accounts Agreement.

“*Series 2022A Bonds*” has the meaning set forth in the recitals hereof.

“*Series 2022A Building Note*” has the meaning assigned to such term in Exhibit A to the Collateral Agency and Accounts Agreement.

“*Series 2022A Project Note*” has the meaning assigned to such term in Exhibit A to the Collateral Agency and Accounts Agreement.

“*State*” means the State of New York.

“*Subordinate Collateral Agent*” has the meaning assigned to such term in Exhibit A to the Collateral Agency and Accounts Agreement.

“*Tax Certificate*” has the meaning assigned to such term in Exhibit A to the Collateral Agency and Accounts Agreement.

“*Taxable Period*” has the meaning assigned to such term in Exhibit A to the Collateral Agency and Accounts Agreement.

“*Taxable Rate*” has the meaning assigned to such term in Exhibit A to the Collateral Agency and Accounts Agreement.

“*Taxes*” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“*TDC Building Loan Agreement*” has the meaning set forth in the recitals hereof.

“*Transferee*” has the meaning set forth in Section 6.06 hereof.

“*True-Up Drawing*” has the meaning set forth in the Bond Purchase Agreement.

“*Trust*” means (a) a common law trust established by the Purchaser or an Affiliate of the Purchaser under the laws of the State of New York, (b) a statutory trust established by the Purchaser or an Affiliate of the Purchaser under the Delaware statutory trust statute or (c) any other type of trust, including, without limitation, a custodial arrangement established by the Purchaser or any Affiliate, which, in any case, has an interest in any Series 2022A Bonds.

“*Trustee*” means [REDACTED], and its successors and assigns, as master trustee under the Indenture

“*Trust Estate*” means all property pledged to the Trustee in the granting clauses of the Master Indenture.

“*Underwriter*” means [REDACTED], as the initial purchaser of Series 2022A Bonds under the Bond Purchase Agreement

“*Unutilized Fee Rate*” means the product of (i) [REDACTED] times (ii) the Applicable Spread as from time to time in effect; *provided* that the Unutilized Fee Rate from and including the Closing Date to but not including the Initial Drawing Date shall be equal to the product of (x) [REDACTED] times (y) [REDACTED]

“*U.S. Person*” means any person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

*Section 1.02. Computation of Time Periods.* In this Agreement, in the computation of a period of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding.”

*Section 1.03. Construction.* Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, to the singular include the plural and to the part include the whole. The word “including” shall be deemed to mean “including but not limited to,” and “or” has the inclusive meaning represented by the phrase “and/or.” The words “hereof,” “herein,” “hereunder” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The article, section and subsection headings

contained in this Agreement and the table of contents preceding this Agreement are for reference purposes only and shall not control or affect the construction of this Agreement or the interpretation thereof in any respect. Article, section, subsection, schedule and exhibit references are to this Agreement unless otherwise specified. Except as otherwise expressly set forth in this Agreement, whenever the phrase “satisfactory to the Purchaser” or “acceptable to the Purchaser” or any other phrase of similar connotation is used in this Agreement, such phrase means “satisfactory to the Purchaser in its sole and absolute discretion.” Any exhibit, schedule or annex attached hereto is incorporated by reference herein and is a constituent part of this Agreement. The recitals hereto are true and correct and are incorporated into this Agreement. Defaults and Events of Default are deemed to be “continuing” and upon their occurrence shall at all times thereafter “exist” unless cured or waived as and to the extent provided for in the Common Terms Agreement.

*Section 1.04. Accounting Terms and Determinations.* Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared, in accordance with GAAP. If, after the Closing Date, there shall occur any change in GAAP from those used in the preparation of the financial statements referred to in Section 6.05 hereof and such change shall result in a change in the method of calculation of any financial covenant, standard or term found in this Agreement including, without limitation, a recharacterization of operating leases to the effect that certain operating leases are to be treated as capital leases, either the Borrower or the Purchaser may by notice to the other party hereto, require that the Purchaser and the Borrower negotiate in good faith to amend such covenants, standards, and terms so as equitably to reflect such change in accounting principles, with the desired result being that the criteria for evaluating the financial condition of the Borrower shall be the same as if such change had not been made. No delay by the Borrower or the Purchaser in requiring such negotiation shall limit their right to so require such a negotiation at any time after such a change in accounting principles. Until any such covenant, standard, or term is amended in accordance with this Section 1.04, financial covenants shall be computed and determined in accordance with GAAP in effect prior to such change in accounting principles. Notwithstanding the foregoing, operating leases and capital leases will be treated as constituting Indebtedness or not constituting Indebtedness under this Agreement in a manner consistent with the treatment thereof under GAAP as of December 31, 2017 notwithstanding any modifications or interpretive changes thereto that have occurred or may occur after December 31, 2017.

*Section 1.05. Relation to Other Documents; Acknowledgment of Different Provisions of Related Documents; Incorporation by Reference.* (a) Nothing in this Agreement shall be deemed to amend, or relieve the Borrower of its obligations under, any Related Document to which it is a party. Conversely, to the extent that the provisions of any Related Document allow the Borrower to take certain actions, or not to take certain actions, with regard for example to permitted liens, transfers of assets, maintenance of financial ratios and similar matters, the Borrower nevertheless shall be fully bound by the provisions of this Agreement.

(b) Except as provided in subsection (c) of this Section 1.05, all references to other documents shall be deemed to include all amendments, modifications and supplements thereto to

the extent such amendment, modification or supplement is made in accordance with the provisions of such document and this Agreement.

(c) All provisions of this Agreement making reference to specific Sections of any Related Document shall be deemed to incorporate such Sections into this Agreement by reference as though specifically set forth herein (with such changes and modifications as may be herein provided) and shall continue in full force and effect with respect to this Agreement notwithstanding payment of all amounts due under or secured by the Related Documents, the termination or defeasance thereof or any amendment thereto or any waiver given in connection therewith, so long as this Agreement is in effect and until all Obligations are paid in full (other than contingent indemnification and expense reimbursement obligations for which no claim has been made). No amendment, modification, consent, waiver or termination with respect to any of such Sections shall be effective as to this Agreement until specifically agreed to in writing by the parties hereto with specific reference to this Agreement.

## **ARTICLE II**

### **DRAWDOWN PURCHASE OF SERIES 2022A BONDS**

*Section 2.01. Drawdown Purchase of Series 2022A Bonds.* The terms and conditions of the Bond Purchase Agreement shall govern each Drawing to be made on each Scheduled Borrowing Date, the date of any Deemed Drawing and the date of any True-Up Drawing, including the Initial Drawing Date, and such terms and conditions are hereby incorporated by reference as if set forth herein.

## **ARTICLE III**

### **CONDITIONS PRECEDENT TO EFFECTIVENESS AND INITIAL DRAWING**

*Section 3.01. Effectiveness.* This Agreement shall become effective as of November 17, 2022 (the “Closing Date”) provided each of the following conditions have been fulfilled to the satisfaction of the Purchaser, the Underwriter and their counsel, and, for each documentary condition, each in form and substance satisfactory to the Purchaser, the Underwriter and their counsel:

- (a) an executed copy of this Agreement and a PDF copy of each of the executed Senior Bank Financing Documents and the Lease Agreement;
- (b) satisfaction of each of the conditions in Section 4.01 of the Common Terms Agreement, as confirmed by the Administrative Agent to the Underwriter and the Purchaser;
- (c) (i) the MSRB G-17 Letter, delivered by the Underwriter and acknowledged by the Borrower through either an email response or countersigned copy; and (ii) the



MSRB G-17 Letter, delivered by the Underwriter and acknowledged on behalf the Issuer through either an email response or countersigned copy;

(d) a certificate dated the Closing Date and executed by an authorized representative of the Issuer, certifying: (i) that the Resolution remains in full force and effect and has not been rescinded, repealed or modified; (ii) the representations and warranties of the Issuer contained each of the Senior Bank Financing Documents to which the Issuer is a party are true and correct on and as of the Closing Date as though made on such date; (iii) reserved; (iv) the specimen signatures of the officers of the Issuer authorized to sign the Senior Bank Financing Documents to which the Issuer is a party; (v) to the effect that all actions required to be taken by, and all resolutions required to be adopted by it under applicable law in connection with the authorization, execution, delivery and performance of and under the Senior Bank Financing Documents to which it is a party have been done and adopted; and (vi) as to other matters of fact as shall reasonably be requested by the Purchaser or the Underwriter; and

(e) from counsel to the Issuer, an opinion as to the due authorization, execution, delivery, validity and enforceability of the Bond Purchase Agreement and the other Senior Bank Financing Documents to which the Issuer is a party, and such other customary matters as the Underwriter or the Purchaser may reasonably request.

*Section 3.02. Initial Drawing.* The obligation of the Purchaser to make the Initial Drawing on a date subsequent to the Closing Date, as determined by the Borrower, is subject to the satisfaction of the conditions precedent set forth in Section 6(b) of the Bond Purchase Agreement, and that the Purchaser and the Underwriter shall have received, on or before the Initial Drawing Date, the items listed below in this Section 3.02, each dated and in form and substance as is satisfactory to the Purchaser, the Underwriter and their counsel.

(a) A specimen copy of the Series 2022A Bonds.

(b) An executed copy of the Tax Certificate related to the Series 2022A Bonds, dated the Initial Drawing Date.

(c) The Issuer shall have delivered or caused to be delivered the Series 2022A Bonds in book-entry form to Cede & Co., nominee for DTC, as securities depository, and the beneficial interests in the Series 2022A Bonds so registered will be credited to such accounts with DTC as the Purchaser shall designate, duly executed, authenticated and delivered, such delivery to be against payment by the Underwriter to the Trustee of the applicable purchase price thereof.

## **ARTICLE IV**

### **THE BORROWER'S OBLIGATIONS**

*Section 4.01. [Reserved].*

*Section 4.02 Post-Default Rate.* If any amount payable by the Borrower under this Agreement (including the principal of and interest on any Obligation (other than the Series 2022A Bonds), fees and other amounts) is not paid when due, whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a rate per annum equal to the applicable Post-Default Rate. While any Event of Default exists, the Borrower shall pay interest on the principal amount of all Obligations (other than the Series 2022A Bonds) outstanding hereunder at a rate per annum equal to the applicable Post-Default Rate. Notwithstanding the foregoing, as provided in the First Supplemental Indenture, from and after the occurrence and continuance of an Event of Default, the Series 2022A Bonds shall bear interest at a rate at all times equal to the greater of (i) the applicable Post-Default Rate and (ii) the interest rate that otherwise would be applicable to the Series 2022A Bonds.

*Section 4.03. Determination of Taxability.* (a) Upon the occurrence of a Determination of Taxability, in addition to (but not in duplication of) the amounts required to be paid pursuant to the Related Documents, the Borrower hereby agrees to pay or cause to be paid to the Purchaser and any other Owner (past or present), as applicable, on demand therefor (i) an amount equal to the difference, if any, between (A) the amount of interest that would have been payable to the Purchaser and such other Owner during such Taxable Period if the Series 2022A Bonds had then borne interest at the Taxable Rate during such Taxable Period and (B) the amount of interest actually paid to the Purchaser and such other Owner on the Series 2022A Bonds during the Taxable Period, and (ii) an amount equal to any interest, penalties or charges owed by the Purchaser and such other Owner as a result of interest on any of the Series 2022A Bonds becoming includable in the gross income of the Purchaser or such other Owner, together with any and all reasonable and documented attorneys' fees, court costs, or other out of pocket costs incurred by the Purchaser or such other Owner in connection therewith.

(b) Subject to the provisions of subsections (c) and (d) below, the Purchaser or such other Owner, as applicable, shall afford the Borrower and the Issuer the opportunity, at the Borrower's sole cost and expense, to contest (i) the validity of any Determination of Taxability (or any ruling, memorandum, determination or notice that is the basis therefor) or (ii) any challenge to the validity of the tax exemption with respect to the interest on the Series 2022A Bonds, including the right to direct the necessary litigation contesting such challenge (including administrative audit appeals).

(c) As a condition precedent to the exercise by the Borrower or the Issuer of its right to contest set forth in subsection (b) above, the Borrower shall, on demand, immediately reimburse the Purchaser and such other Owner, as applicable, for (i) any and all out-of-pocket documented expenses (including reasonable attorneys' fees for services that may be required or desirable, as determined by the Purchaser and such other Owner, as applicable, in their sole discretion) that may be incurred by the Purchaser and such other Owner, as applicable, in connection with any such contest, and (ii) any and all penalties or other charges payable by the Purchaser and such other Owner, as applicable, for failure to include such interest in its gross income.

(d) The obligations of the Borrower under this Section shall survive the termination of this Agreement and the payment in full of the Series 2022A Bonds and the other Obligations.

*Section 4.04. Fees, Costs and Expenses.* The Borrower shall pay or cause to be paid to the Purchaser within thirty (30) days after demand:

(a) a fee (the “*Unutilized Fee*”) equal to the product of (a) the Available Commitment for each day during the related period and (b) the Unutilized Fee Rate for each day during the related period. The Unutilized Fee will be payable quarterly in arrears commencing on December 30, 2022 (for the period from and including the Closing Date to and including December 30, 2022) and continuing on the last Business Day of each March, June, September and December thereafter, continuing through and including the Commitment End Date; and

(b) all costs and expenses of the Purchaser and the Underwriter in connection with the commitment to purchase, and the purchase of Series 2022A Bonds provided for in the Bond Purchase Agreement and this Agreement that are not otherwise payable pursuant to Section 10.03 of the Common Terms Agreement, including, without limitation, the reasonable fees, charges and disbursements of counsel to the Purchaser and the Underwriter, the applicable day loan and the CUSIP Service Bureau service charge for the assignment of a CUSIP number for the Series 2022A Bonds.

*Section 4.05. Computation of Fees.* Fees and other amounts payable hereunder shall be calculated on the basis of a year of 360 days for the actual number of days elapsed. Interest shall accrue during each period for which interest is computed from and including the first day thereof to but excluding the last day thereof.

*Section 4.06. Increased Payments.*

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

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, capital or liquidity ratio, insurance charge or similar requirement against assets of, deposits with or for the account of, or advances, loans or other credit extended or participated in by, the Purchaser, any Owner or the Credit Protection Provider;

(ii) subject the Purchaser, any Owner or the Credit Protection Provider to any Tax of any kind whatsoever with respect to this Agreement or the Series 2022A Bonds, or change the basis of taxation of payments to the Purchaser, such Owner or the Credit Protection Provider in respect thereof (except for Indemnified Taxes or Excluded Taxes); or

(iii) impose on the Purchaser, any Owner or the Credit Protection Provider any other condition, cost or expense affecting this Agreement or the Series 2022A Bonds;

and the result of any of the foregoing shall be to increase the cost to the Purchaser, such Owner or the Credit Protection Provider of owning the Series 2022A Bonds (or of maintaining its obligation to purchase the Series 2022A Bonds), or to reduce the amount of any sum received or receivable by the Purchaser, such Owner or the Credit Protection Provider hereunder or under the Series 2022A Bonds (whether of principal, interest or any

other amount) then, upon written request of the Purchaser, such Owner or the Credit Protection Provider, the Borrower shall promptly pay or cause to be paid to the Purchaser, such Owner or the Credit Protection Provider, as the case may be, such additional amount or amounts as will compensate the Purchaser, such Owner or the Credit Protection Provider, as the case may be, for such additional costs incurred or reduction suffered.

(b) *Capital Requirements.* If the Purchaser, any Owner or the Credit Protection Provider determines that any Change in Law affecting the Purchaser, such Owner or the Credit Protection Provider or the Purchaser's, such Owner's or the Credit Protection Provider's parent or holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on the Purchaser's, such Owner's or the Credit Protection Provider's capital or liquidity or the capital or liquidity of the Purchaser's, such Owner's or the Credit Protection Provider's parent or holding company, if any, as a consequence of this Agreement, or ownership of the Series 2022A Bonds, to a level below that which the Purchaser, such Owner or the Credit Protection Provider or the Purchaser's, such Owner's or the Credit Protection Provider's parent or holding company could have achieved but for such Change in Law (taking into consideration the Purchaser's or such Owner's policies and the policies of the Purchaser's, such Owner's or the Credit Protection Provider's parent or holding company with respect to capital adequacy), then from time to time upon written request of the Purchaser, such Owner or the Credit Protection Provider, the Borrower shall promptly pay or cause to be paid to the Purchaser, such Owner or the Credit Protection Provider, as the case may be, such additional amount or amounts as will compensate the Purchaser, such Owner or the Credit Protection Provider or the Purchaser's, such Owner's or the Credit Protection Provider's parent or holding company for any such reduction suffered.

(c) *Certificates for Reimbursement.* A certificate of the Purchaser, an Owner or the Credit Protection Provider setting forth the amount or amounts necessary to compensate the Purchaser, any such Owner or the Credit Protection Provider, or the Purchaser's, any such Owner's or the Credit Protection Provider's parent or holding company, as the case may be, as specified in paragraph (a) or (b) of this Section and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay or cause to be paid the Purchaser, any such Owner or the Credit Protection Provider, as the case may be, the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof.

(d) *Delay in Requests.* Failure or delay on the part of the Purchaser, any such Owner or the Credit Protection Provider to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of the Purchaser's, any such Owner's or the Credit Protection Provider's right to demand such compensation; *provided*, that the Borrower shall not be required to compensate the Purchaser, any such Owner or the Credit Protection Provider pursuant to this Section 4.06 for any increased costs or reductions incurred more than 180 days prior to the date that the Purchaser, any such Owner or the Credit Protection Provider, as applicable, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of the Purchaser's, any such Owner's or the Credit Protection Provider's, as applicable, intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof).

(e) *Survival.* Without prejudice to the survival of any other agreement of the Borrower hereunder, the agreements and obligations of the Borrower contained in this Section shall survive the termination of this Agreement and the payment in full of the Series 2022A Bonds and the other Obligations.

*Section 4.07. Taxes.*

(a) *Payments Free of Taxes.* Any and all payments to the Purchaser, the Owners and the Credit Protection Provider by or on account of any obligation of the Borrower hereunder or under the Series 2022A Bonds shall be made free and clear of and without reduction or withholding for any Indemnified Taxes; *provided, however,* that if the Borrower shall be required by Applicable Law to deduct any Indemnified Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Purchaser or such Owner or the Credit Protection Provider receives an amount equal to the sum it would have received had no such deductions for Indemnified Taxes been made, and the Borrower shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with Applicable Law.

(b) *Payment of Other Taxes.* Without limiting the provisions of paragraph (a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with Applicable Law.

(c) *Indemnification.* The Borrower shall indemnify the Purchaser, the Owners and the Credit Protection Provider, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Purchaser, such Owner or the Credit Protection Provider and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate stating the amount of such payment or liability delivered to the Borrower by the Purchaser, such Owner or the Credit Protection Provider shall be conclusive absent manifest error.

(d) *Evidence of Payments.* As soon as practicable after any payment of Indemnified Taxes by the Borrower to a Governmental Authority, the Borrower shall deliver to the Purchaser, the Owners and the Credit Protection Provider, as applicable, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Purchaser, such Owner or the Credit Protection Provider, as applicable.

(e) *Treatment of Certain Refunds.* If the Purchaser, any Owners or the Credit Protection Provider determines, in its sole discretion, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section (including additional amounts paid by the Borrower pursuant to this Section), it shall pay to the applicable indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses of the Purchaser, such Owner or the Credit Protection Provider, as applicable, incurred in order to

obtain such refund, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided, however*, that the applicable indemnifying party, upon the request of the Purchaser, such Owner or the Credit Protection Provider, as applicable, agrees to repay the amount paid over pursuant to this Section (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Purchaser, such Owner or the Credit Protection Provider, as applicable, in the event the Purchaser, such Owner or the Credit Protection Provider, as applicable, is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (e), in no event will the Purchaser, such Owner or the Credit Protection Provider, as applicable, be required to pay any amount to an indemnifying party pursuant to this paragraph (e) the payment of which would place the Purchaser, such Owner or the Credit Protection Provider, as applicable, in a less favorable net after-Tax position than the Purchaser, such Owner or the Credit Protection Provider, as applicable, would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph shall not be construed to require the Purchaser, such Owner or the Credit Protection Provider, as applicable, to make available its tax returns (or any other information relating to its taxes which it deems confidential) to the Borrower or any other Person.

(f) *Status of Lenders.* (i) Any Owner that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Related Document shall deliver to the Borrower, at the time or times reasonably requested by the Borrower, such properly completed and executed documentation reasonably requested by the Borrower as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Owner, if reasonably requested by the Borrower, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower as will enable the Borrower to determine whether or not such Owner is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in paragraph (f)(ii) of this Section) shall not be required if in the Owner's reasonable judgment such completion, execution or submission would subject such Owner to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Owner.

(ii) Without limiting the generality of the foregoing:

(A) any Owner that is a U.S. Person shall deliver to the Borrower on or about the date on which such Owner becomes an Owner under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower), executed copies of IRS Form W-9 certifying that such Owner is exempt from U.S. federal backup withholding tax;

(B) any Owner that is not a U.S. Person, to the extent it is legally entitled to do so, deliver to the Borrower (in such number of copies as shall be requested by the recipient) on or about the date on which such Owner becomes a Owner under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower), executed copies of whichever IRS Form W-8 certifying that such Owner is exempt from U.S. federal backup withholding tax; and

(C) if a payment made to an Owner under any Related Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Owner were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Owner shall deliver to the Borrower at the time or times prescribed by law and at such time or times reasonably requested by the Borrower such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower as may be necessary for the Borrower to comply with its obligations under FATCA and to determine that such Owner has complied with such Owner's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (C), "FATCA" shall include any amendments made to FATCA after the Closing Date.

Each Owner agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower in writing of its legal inability to do so.

(g) *Survival.* Without prejudice to the survival of any other agreement of the Borrower hereunder, the agreements and obligations of the Borrower contained in this Section shall survive the termination of this Agreement and the payment in full of the Series 2022A Bonds and the other Obligations.

*Section 4.08. Method and Application of Payments.* All payments by or on behalf of the Borrower to the Purchaser hereunder shall be fully earned when due and nonrefundable when paid and made in lawful currency of the United States of America and in immediately available funds. Any payment received by the Purchaser after 3:30 p.m., New York City time, on the date payment is due shall be deemed to have been received by the Purchaser on the next Business Day. If any payment hereunder is due on a day that is not a Business Day, then such payment shall be due on the next succeeding Business Day, and, in the case of the computation of the interest or fees hereunder, such extension of time shall, in such case, be included in the computation of the payment due hereunder. Payments received by the Purchaser shall be applied, first, to any fees, costs, charges or expenses payable by the Borrower under this Agreement; second, to past due interest; third, to current interest; and, fourth, to principal. All payments hereunder to the Purchaser shall be made by wire transfer of funds to the following account: U.S. Bank, ABA#

Account Name: (or to such other account as the Purchaser may specify in writing from time to time). Notwithstanding anything in this Section 4.08 to the contrary, so long as the Series 2022A Bonds are held in the Book-Entry System, all payments with respect to the principal of and interest on the Series 2022A Bonds and all notices with respect to such Series 2022A Bonds shall be made and given, respectively, to DTC as provided in the DTC Letter of Representation.

*Section 4.09. Maintenance of Accounts.* The Purchaser shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower and the amounts payable and paid from time to time hereunder. In any legal action or proceeding in respect of this Agreement, the entries made in such account or accounts shall be presumptive evidence of the existence and amounts of the obligations of the Borrower therein recorded. The failure to

record any such amount shall not, however, limit or otherwise affect the obligations of the Borrower hereunder to repay all amounts owed hereunder, together with all interest accrued thereon as provided herein.

*Section 4.10. Cure.* The Purchaser shall have the right, but not the obligation, to cure any Default, Event of Default or event of nonperformance. The Borrower agrees to pay or cause to be paid to the Purchaser on demand, any amounts advanced by or on behalf of the Purchaser, to the extent required to cure any Default, Event of Default or event of nonperformance under this Agreement or any Related Document, together with interest thereon at the Post-Default Rate.

*Section 4.11. Maximum Interest Rate.* (a) If the amount of interest payable for any period in accordance with the terms hereof or the Series 2022A Bonds exceeds the amount of interest that would be payable for such period had interest for such period been calculated at the Maximum Interest Rate, then interest for such period shall be payable in an amount calculated at the Maximum Interest Rate for such period.

(b) Any interest that would have been due and payable for any period but for the operation of subsection (a) above shall accrue and be payable as provided in this subsection (b) and shall, less interest actually paid to the Purchaser or any other Owner, as applicable, for such period, constitute the “*Excess Interest Amount.*” If there is any accrued and unpaid Excess Interest Amount as of any date then the principal amount with respect to which interest is payable shall bear interest at the Maximum Interest Rate, until payment to the Purchaser and each other Owner, as applicable, of the entire Excess Interest Amount.

(c) Notwithstanding the foregoing, on the date on which no principal amount hereunder remains unpaid, to the extent possible without violating Applicable Law, the Borrower shall pay or cause to be paid to the Purchaser and each other Owner, as applicable, a fee equal to any accrued and unpaid Excess Interest Amount.

*Section 4.12. Obligations Absolute.* The obligations of the Borrower under this Agreement shall be unconditional and irrevocable and shall be paid and performed strictly in accordance with the terms of this Agreement under all circumstances, including without limitation the following:

(a) any lack of validity or enforceability of this Agreement, the Series 2022A Bonds or any of the other Related Documents;

(b) any amendment or waiver of or any consent to departure from all or any of the Related Documents;

(c) the existence of any claim, set-off, defense or other right (other than a defense of payment in full of the Obligations) which the Borrower may have at any time against the Purchaser, any other Owner or any other person or entity, whether in connection with this Agreement, the other Related Documents, the transactions contemplated herein or therein or any unrelated transaction; or



(d) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

*Section 4.13. Obligations.* The Borrower hereby acknowledges and agrees that the Obligations payable to the Purchaser hereunder are the obligations of the Borrower and are absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever by the Purchaser. By the execution and delivery of this Agreement by the Borrower hereby expressly waives and surrenders any defense to its obligation with respect to the Obligations based upon any of the foregoing.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES

In order to induce the Purchaser to enter into this Agreement, the Borrower hereby makes the following representations and warranties to the Purchaser and each other Owner as of the Closing Date, each Scheduled Drawing Date, the date of any Deemed Drawing and each other date required under the Common Terms Agreement:

*Section 5.01. Incorporation by Reference.* The representations and warranties of the Borrower set forth in Article III of the Common Terms Agreement are hereby incorporated by reference in this Agreement as if set forth herein in their entirety.

*Section 5.02. Representations Ongoing; Incorporation by Reference.* The Borrower hereby makes to the Underwriter the same representations and warranties of the Borrower as are set forth in the TDC Loan Agreements and each other Senior Bank Financing Document to which the Borrower is a party, which representations and warranties, as well as the related defined terms contained therein, are hereby incorporated by reference for the benefit of the Underwriter with the same effect as if each and every such representation and warranty and defined term were set forth herein in its entirety. Any certificate signed by the Borrower and delivered to any of the Underwriter, the Purchaser, the Issuer or Bond Counsel shall be deemed a representation and warranty by the Borrower to the Underwriter, the Purchaser, the Issuer and Bond Counsel, as the case may be, as to the truth of the statements made by the Borrower therein.

*Section 5.03. Arm's Length Transaction .* The Borrower acknowledges and agrees that (i) the transaction contemplated by the Bond Purchase Agreement is an arm's length, commercial transaction among the Issuer, the Borrower and the Underwriter in which the Underwriter is acting solely as a principal and is not acting as a municipal advisor (within the meaning of Section 15B of the Securities Exchange Act of 1934, as amended), financial advisor or fiduciary to the Borrower, (ii) the Underwriter has not assumed any advisory or fiduciary responsibility to the Borrower with respect to the Bond Purchase Agreement, the sale of the Series 2022A Bonds and the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriter or any affiliate of the Underwriter has provided other services or is currently providing other services to the Borrower on other matters), (iii) the only contractual obligations the Underwriter has to the Borrower and the Issuer with respect to the transactions contemplated hereby are the contractual obligations set forth in the Bond Purchase Agreement, (iv) the

Underwriter has financial and other interests that differ from those of the Borrower and (v) the Borrower and the Underwriter have consulted with their own municipal, legal, accounting, tax, financial and other advisors, as applicable, to the extent they have deemed appropriate. Nothing in the foregoing paragraph is intended to limit the Underwriters' obligations of fair dealing under MSRB Rule G-17.

*Section 5.04. Tax-Exempt Status of Series 2022A Bonds.* The Borrower has not taken or failed to take any action which action or omission would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Series 2022A Bonds or in any way cause the proceeds from the sale of the Series 2022A Bonds to be applied in a manner contrary to that provided for in the Indenture, the TDC Loan Agreements, the Collateral Agency and Accounts Agreement and the Tax Certificate related to the Series 2022A Bonds.

*Section 5.05. Sale of Series 2022A Bonds to Underwriter.* Neither the Borrower nor anyone authorized to act on its behalf, directly or indirectly, has offered the Series 2022A Bonds for sale to, or solicited any offer to buy the Series 2022A Bonds from, anyone other than the Underwriter in accordance with the terms hereof and of the other Financing Documents.

## ARTICLE VI

### COVENANTS OF THE BORROWER

The Borrower covenants and agrees that it will do the following, until the full and final payment and satisfaction of the principal of and interest on the Series 2022A Bonds and all other Obligations, except in any instance in which the Required Bank Finance Parties specially agree in writing to any nonperformance or noncompliance:

*Section 6.01. Terms in Common Terms Agreement.* The Borrower agrees that it will perform and comply with each and every covenant and agreement of the Borrower set forth in Article V and Article VI of the Common Terms Agreement, which provisions, as well as the related defined terms contained therein, are hereby incorporated by reference herein with the same effect as if each and every such provision were set forth herein in its entirety, all of which shall be deemed to be made for the benefit of the Purchaser and, subject to the Common Terms Agreement and the Intercreditor Agreement, shall be enforceable against the Borrower.

*Section 6.02. Reporting.* In addition to the items to be delivered pursuant to Section 5.16 of the Common Terms Agreement, the Borrower shall deliver to the Purchaser:

(a) *Trustee Notices.* As soon as available, all notices, certificates, instruments, letters and written commitments in connection with the Series 2022A Bonds provided to the Trustee other than those notices, certificates, instruments, letters and written commitments that relate solely to the routine issuance and payment of the Series 2022A Bonds;

(b) *Notices Relating to the Trustee.* As promptly as practicable, (i) written notice of any resignation of the Trustee immediately upon receiving notice of the same and (ii) in any event not less than thirty (30) days prior to the appointment of a successor or replacement Trustee, written

notice of the Person to be appointed as successor or replacement Trustee, together with the notice address for such Person; and

(c) *Taxability.* (i) Within five (5) Business Days after (1) a Determination of Taxability with respect to the Series 2022A Bonds, (2) determination by the Borrower that a Determination of Taxability has occurred with respect to the Series 2022A Bonds, or (3) receipt by the Borrower of any other material event or notice affecting the tax-exempt status of the Series 2022A Bonds, the Borrower will furnish or cause to be furnished to the Purchaser written notice thereof and a certificate signed by an Authorized Lessee Representative specifying in reasonable detail the nature and period of existence.

(ii) Promptly upon receipt of a Notice of Proposed Adverse Determination or a Notice of Proposed Issue, and in any event within five (5) Business Days of such receipt, the Borrower will furnish or cause to be furnished to the Purchaser written notice of such Notice of Proposed Adverse Determination or Notice of Proposed Issue.

(iii) The Borrower will furnish the information referred to in this paragraph (c), at its option, either (A) by delivery directly to the Purchaser or (B) by publication on EMMA (at any time it has other bonds outstanding subject to a continuing disclosure undertaking pursuant to Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, as amended, using the CUSIP numbers for such bonds); and *provided, further*, to the extent such information shall be provided through publication on EMMA, such information shall be in a format consistent with the most recent continuing disclosure undertaking of the Borrower, if any.

*Section 6.03. Incorporation by Reference; Other Agreements.* The Borrower shall perform and comply with, abide by, and be restricted by each and every agreement, covenant, obligation and undertaking applicable to it and contained in the Collateral Agency and Accounts Agreement, the TDC Loan Agreements and the Common Terms Agreement, subject in each case to the cure periods, materiality standards and exceptions set forth therein. Each covenant, agreement, obligation and undertaking of the Borrower set forth in the Collateral Agency and Accounts Agreement, the TDC Loan Agreements and the Common Terms Agreement, as well as related defined terms, exhibits, schedules, annexes and ancillary provisions contained or incorporated by reference therein (collectively, the “*Incorporated Provisions*”), are hereby incorporated by reference herein, *mutatis mutandis*, with the same effect as if each and every such Incorporated Provision were set forth in this Agreement in its entirety for the benefit of the Purchaser and shall be enforceable by the Purchaser against the Borrower. All such Incorporated Provisions shall be in addition to the express covenants contained herein and shall not be limited by the express covenants contained herein, nor shall such Incorporated Provisions be a limitation on the express covenants contained herein.

*Section 6.04. [Reserved].*

*Section 6.05. Notice of Redemption.* The Borrower shall provide the Purchaser with a copy of any notice of redemption provided to the Trustee under the terms of the Indenture with respect to any redemption of the Series 2022A Bonds.

*Section 6.06. Disclosure to Participant.* The Borrower (a) shall permit the Purchaser to disclose the Related Documents (to the extent not readily available on EMMA) and the financial information received by it pursuant to this Agreement to each actual or prospective Participant of the Purchaser and each other permitted transferee (each, a “*Transferee*”), and (b) hereby consents to, ratifies and approves of any disclosure by the Purchaser of the Related Documents (to the extent not readily available on EMMA) and of any financial information received by it to the Underwriter and to any actual or prospective Participant or Transferee; *provided* that the Underwriter or actual or prospective Participant or Transferee shall have agreed to customary confidentiality undertakings with respect to such information.

*Section 6.07. Use of Purchaser’s Name.* Except as may be required by law (including, but not limited to, federal and state securities laws), the Borrower shall not use the Purchaser’s or Underwriter’s name in any published materials (other than the Borrower’s staff reports, annual statements, audited financial statements, rating agency presentations, or disclosure materials in connection with any other Secured Obligations of the Borrower) without the prior written consent of the Purchaser or the Underwriter, as applicable.

*Section 6.08. Exempt Status.* The Borrower shall not take any action or omit to take any action that, if taken or omitted, would adversely affect the excludability of interest on the Series 2022A Bonds from the gross income of the Owners thereof for purposes of federal income taxation under the Code.

*Section 6.09. Filing of Agreement.* In the event the Borrower delivers or permits, authorizes or consents to the delivery of this Agreement to any Person for delivery to the Municipal Securities Rulemaking Board, prior to such delivery the Borrower agrees that it shall redact such information contained herein as may be requested by the Purchaser and which is consistent with MSRB Notice 2011-17 (February 23, 2011). Only such copy of this Agreement reflecting such redacted material shall be delivered to the Municipal Securities Rulemaking Board.

*Section 6.10. Calculation Agent.* The Borrower shall not remove, or seek to remove, the Calculation Agent. The Borrower shall at all times maintain a Calculation Agent pursuant to the terms of the Indenture that is acceptable to the Purchaser; *provided* that the parties agree that the Trustee is an acceptable Calculation Agent.

## ARTICLE VII

### EVENTS OF DEFAULT

*Section 7.01. Events of Default.* The occurrence of any of the following events (whatever the reason for such event and whether voluntary, involuntary, or effected by operation of Law) shall be an “Event of Default” hereunder:

- (a) the Borrower shall default in the due performance or observance of any of the covenants set forth in any of the following Sections: 6.02(c), 6.05, 6.07, 6.08, 6.09 or 6.10 hereof; or

(b) any “Event of Default” under Section 7.01 of the Common Terms Agreement shall have occurred and is continuing and any applicable cure periods have expired.

*Section 7.02. Consequences of an Event of Default.* If an Event of Default specified in Section 7.01 shall occur and be continuing, the Required Bank Finance Parties may take one or more of the following actions at any time and from time to time (regardless of whether the actions are taken at the same or different times):

(a) subject to the terms of Section 7.01 of the Common Terms Agreement and the Intercreditor Agreement, direct the Administrative Agent to take any action permitted to be taken under the Common Terms Agreement;

(b) subject to the terms of Section 7.01 of the Common Terms Agreement and the Intercreditor Agreement, terminate the Commitment of the Purchaser and the Underwriter and any obligation of the Purchaser and/or the Underwriter with respect to any future Drawings; or

(c) subject to the terms of Section 7.01 of the Common Terms Agreement and the Intercreditor Agreement, exercise, or cause to be exercised, any and all remedies as it may have under the Related Documents and as otherwise available at law and at equity.

*Section 7.03. Remedies Cumulative; Solely for the Benefit of Purchaser.* To the extent permitted by, and subject to the mandatory requirements of, applicable Law, and subject to the terms of the Common Terms Agreement and the Intercreditor Agreement, each and every right, power and remedy herein specifically given to the Purchaser in the Related Documents shall be cumulative, concurrent and nonexclusive and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy (whether specifically herein given or otherwise existing) may be exercised from time to time and as often and in such order as may be deemed expedient by the Purchaser, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy.

The rights and remedies of the Purchaser specified herein are for the sole and exclusive benefit, use and protection of the Purchaser, and subject to the terms of the Common Terms Agreement and the Intercreditor Agreement, the Purchaser is entitled, but shall have no duty or obligation to the Borrower, the Trustee or any other Person or otherwise, to exercise or to refrain from exercising any right or remedy reserved to the Purchaser hereunder or under any of the other Related Documents.

*Section 7.04. Waivers or Omissions.* No delay or omission by the Purchaser in the exercise of any right, remedy or power or in the pursuit of any remedy shall impair any such right remedy or power or be construed to be a waiver of any default on the part of the Purchaser or to be acquiescence therein. No express or implied waiver by the Purchaser of any Event of Default shall in any way be a waiver of any future or subsequent Event of Default.

*Section 7.05. Discontinuance of Proceedings.* Subject to the terms of the Common Terms Agreement, in case the Purchaser shall proceed to invoke any right, remedy or recourse permitted hereunder or under the Related Documents and shall thereafter elect to discontinue or abandon the same for any reason, the Purchaser shall have the unqualified right so to do and, in such event, the Borrower and the Purchaser shall be restored to their former positions with respect to the Obligations, the Related Documents and otherwise, and the rights, remedies, recourse and powers of the Purchaser hereunder shall continue as if the same had never been invoked.

## **ARTICLE VIII**

### **INDEMNIFICATION**

*Section 8.01. Indemnification.* The Borrower shall perform and comply with the provisions of Section 10.03(b) of the Common Terms Agreement, which provisions, as well as the related defined terms contained therein, are hereby incorporated by reference herein with the same effect as if each and every such provision were set forth herein in its entirety, all of which shall be deemed to be made for the benefit of the Purchaser and the Underwriter and each Related Party and, subject to the Common Terms Agreement, shall be enforceable against the Borrower.

*Section 8.02. Survival.* The obligations of the Borrower under this Article VIII shall survive the payment of the Series 2022A Bonds and the termination of this Agreement.

## **ARTICLE IX**

### **MISCELLANEOUS**

*Section 9.01. Patriot Act Notice.* The Purchaser hereby notifies the Borrower that pursuant to the requirements of the Patriot Act it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow the Purchaser to identify the Borrower in accordance with the Patriot Act. The Borrower hereby agrees that it shall promptly provide such information upon request by the Purchaser.

*Section 9.02. Further Assurances.* From time to time upon the request of either party hereto, the other shall promptly and duly execute, acknowledge and deliver any and all such further instruments and documents as the requesting party may in its reasonable discretion deem necessary or desirable to confirm this Agreement, and the other Related Documents, to carry out the purpose and intent hereof and thereof or to enable the requesting party to enforce any of its rights hereunder or thereunder. At any time, and from time to time, upon request by the Purchaser, the Borrower will, at the Borrower's expense, correct any defect, error or omission which may be discovered in the form or content of this Agreement. Upon any failure by the Borrower to do so, the Purchaser may make, execute and record any and all such instruments, certificates and other documents for and in the name of the Borrower, all at the sole expense of the Borrower, and the Borrower hereby appoints the Purchaser the agent and attorney-in-fact of the Borrower to do so, this appointment being coupled with an interest and being irrevocable. In addition, at any time, and from time to

time, upon request by the Purchaser, the Borrower will, at the Borrower's expense, provide any and all further instruments, certificates and other documents as may, in the opinion of the Purchaser, be necessary or desirable in order to verify the Borrower's identity and background in a manner satisfactory to the Purchaser.

*Section 9.03. Amendments and Waivers; Enforcement.* Subject to the terms and provisions of Section 10.02 of the Common Terms Agreement, the Purchaser, the Underwriter and the Borrower may from time to time enter into agreements amending, modifying or supplementing this Agreement or the other Related Documents or changing the rights of the Purchaser or the Borrower hereunder or thereunder, and the Purchaser may from time to time grant waivers or consents to a departure from the due performance of the obligations of the Borrower hereunder or thereunder. Any such agreement, waiver or consent must be in writing and shall be effective only to the extent specifically set forth in such writing. Subject to the terms and provisions of Section 10.02 of the Common Terms Agreement, in the case of any such waiver or consent relating to any provision hereof, any Default or Event of Default so waived or consented to shall be deemed to be cured and not continuing, but no such waiver or consent shall extend to any other or subsequent Default or Event of Default or impair any right consequent thereto.

*Section 9.04. No Implied Waiver; Cumulative Remedies.* No course of dealing and no delay or failure of the Purchaser in exercising any right, power or privilege under this Agreement or the other Related Documents shall affect any other or future exercise thereof or exercise of any right, power or privilege; nor shall any single or partial exercise of any such right, power or privilege or any abandonment or discontinuance of steps to enforce such a right, power or privilege preclude any further exercise thereof or of any other right, power or privilege. The rights and remedies of the Purchaser under this Agreement are cumulative and not exclusive of any rights or remedies which the Purchaser would otherwise have under any Related Document, at law or in equity.

*Section 9.05. Notices.* Any notice or other communication to be given to the Issuer, the Borrower, the Trustee or the Purchaser under this Agreement may be given in the manner set forth in Section 10.01 of the Common Terms Agreement.

*Section 9.06. Right of Setoff.* Upon the occurrence of an Event of Default, each Owner and the Credit Protection Provider shall have the rights of a Bank Finance Party under the provisions of Section 10.08 of the Common Terms Agreement, which provisions, as well as the related defined terms contained therein, are hereby incorporated by reference herein with the same effect as if each and every such provision were set forth herein in its entirety, all of which shall be deemed to be made for the benefit of the Purchaser.

*Section 9.07. No Third-Party Rights.* Nothing in this Agreement, whether express or implied, shall be construed to give to any Person other than the parties hereto and the Owners any legal or equitable right, remedy or claim under or in respect of this Agreement, which is intended for the sole and exclusive benefit of the parties hereto.

*Section 9.08. Severability.* The provisions of this Agreement are intended to be severable. If any provision of this Agreement shall be held invalid or unenforceable in whole or in part in any

jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

*Section 9.09. Governing Law; Jurisdiction; Etc.* (a) *Governing Law.* This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State that would require the application of the laws of a jurisdiction other than such State.

(b) *Submission to Jurisdiction.* The Borrower irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against the Purchaser or any Related Party thereof in any way relating to this Agreement or any other Related Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by Applicable Law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Related Document shall affect any right that the Purchaser may otherwise have to bring any action or proceeding relating to this Agreement or any other Related Document against the Borrower or its properties in the courts of any jurisdiction.

(c) *Waiver of Venue.* The Borrower irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Related Document in any court referred to in Section 9.09(b) hereof. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

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



**AGREEMENT AND THE OTHER RELATED DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.**

(e) *Service of Process.* Each party hereto consents to process being served by or on behalf of the Purchaser in any suit, action or proceeding arising out of or relating to this Agreement by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, return receipt requested, to its address specified in Section 9.05 hereof or at such other address of which such Person shall then have been notified pursuant to said Section. Each party hereto agrees that such service upon receipt (i) shall be deemed in every respect effective service of process upon it in any such suit, action or proceeding and (ii) shall, to the fullest extent permitted by Applicable Law, be taken and held to be valid personal service upon and personal delivery to it. Notices hereunder shall be conclusively presumed received as evidenced by a delivery receipt furnished by the United States Postal Service or any reputable commercial delivery service. Nothing in this Section 9.09 shall affect the right of the Purchaser to serve process in any manner permitted by law.

(f) *Waiver of Immunity.* To the extent that the Borrower has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution, sovereign immunity or otherwise) with respect to itself or its property, it hereby irrevocably waives such immunity, to the fullest extent permitted by law, in respect of its obligations under this Agreement and the other Related Documents to which it is a party.

*Section 9.10. Prior Understandings.* This Agreement and the other Related Documents supersede all other prior understandings and agreements, whether written or oral, among the parties hereto relating to the transactions provided for herein and therein.

*Section 9.11. Duration.* All representations and warranties of the Borrower contained herein or made in connection herewith shall survive the making of and shall not be waived by the execution and delivery of this Agreement or the other Related Documents. All covenants and agreements of the Borrower contained herein shall continue in full force and effect from and after the Closing Date until the Obligations (other than contingent indemnification and expense reimbursement obligations for which no claim has been made) have been fully discharged.

*Section 9.12. Counterparts.* This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument.

*Section 9.13. Successors and Assigns.*

(a) *Generally.* This Agreement is a continuing obligation and shall be binding upon the Borrower, its respective successors, transferees and assigns and shall inure to the benefit of the Purchaser and each Transferee and their respective permitted successors, transferees and assigns. None of the Borrower may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Purchaser. The Purchaser and each Transferee may, in its

sole discretion and in accordance with Applicable Law, from time to time assign, sell or transfer in whole or in part, this Agreement, its interest in the Series 2022A Bonds and the other Related Documents in accordance with the provisions of subsections (c) or (d) below. The Purchaser and each Transferee may at any time and from time to time pledge or assign a certain security interest in accordance with the provisions of subsection (e) below and enter into participation agreements in accordance with the provisions of subsection (f) below.

(b) *Designation of Purchaser.* (i) [REDACTED] shall be the Purchaser hereunder until such time as the Majority Bondholder [REDACTED] in consent of the Borrower (such consent not to be unreasonably withheld or delayed), designates an alternate Person to serve as the Purchaser hereunder by delivery of written notice to the Trustee and such Person accepts and agrees to act as the Purchaser hereunder and under the Related Documents. The Majority Bondholder, with the prior written consent of the Borrower (such consent not to be unreasonably withheld or delayed), may so designate an alternate Person to act as the Purchaser from time to time. Upon acceptance and notification thereof to the Borrower and the Trustee, the successor to the Purchaser for such purposes shall thereupon succeed to and become vested with all of the rights, powers, privileges and responsibilities of the Purchaser, and [REDACTED] or any other Person being replaced as the Purchaser shall be discharged from [REDACTED] obligations as the Purchaser hereunder, *provided* that the predecessor Purchaser will continue to be entitled to the benefits of Article IV and Article VIII hereof and of each other provision of any other Related Document granting a right of indemnity or reimbursement in favor of the Purchaser. Anything in this Section 9.13(b)(i) to the contrary notwithstanding, upon the occurrence and during the continuance of any Event of Default, the Borrower shall have no consent rights under this Section 9.13(b) so long as the action taken by the Majority Bondholder hereunder is otherwise in accordance with the terms and conditions set forth herein.

(ii) The Purchaser may designate any nominee, designee or agent to act for and in the name of the Purchaser by written notice to the Borrower, and any such duly designated nominee, designee or agent will thereupon be empowered to act for and on behalf of the Purchaser and exercise the rights, powers, privileges and responsibilities of the Purchaser in each of the Related Documents.

(c) *Transfer to Trust or Affiliates.* The Purchaser has the right at any time on or after the Closing Date to transfer the Series 2022A Bonds or any portion thereof or interest therein to any Trust or any Affiliate without the need for the consent of the Borrower or any other party; *provided, however,* that no such sale or transfer referred to in this clause (c) shall in any way affect the obligation, if any, of the Purchaser to purchase Series 2022A Bonds hereunder.

(d) *Transfer to QIBs.* Each Owner of Series 2022A Bonds, including any Trust or Custodial Trustee on its behalf, may at any time sell or otherwise transfer, without the need for consent of the Borrower or any other party, all or any portion of or interest in such Series 2022A Bonds to a “qualified institutional buyer” as defined in Rule 144A promulgated under the Securities Act; *provided, however,* that no such sale or transfer referred to in this clause (d) shall in any way affect the obligation, if any, of the Purchaser to purchase Series 2022A Bonds hereunder.

(e) *Certain Pledges.* The Purchaser may at any time pledge or grant a security interest in all of its rights under this Agreement, the Series 2022A Bonds and the other Related Documents to secure obligations of the Purchaser, including any pledge or assignment to secure obligations to a Federal Reserve Bank, or the United States Treasury or to any state or local governmental entity or with respect to public deposits; *provided, however*, that no such pledge or assignment shall release the Purchaser from any of its obligations hereunder or substitute any such pledgee or assignee for the Purchaser as a party hereto.

(f) *Participations.* The Purchaser shall have the right to grant participations in all of the Purchaser's interest in this Agreement, the Series 2022A Bonds and the other Related Documents to a single Participant, and such Participant shall, except as set forth in the clause (ii) of this subsection, be entitled to the benefits of the this Agreement and the Related Documents to the same extent as if they were a direct party to this Agreement; *provided, however*, that (i) no such participation by any such Participant shall in any way affect the obligations of the Purchaser hereunder and (ii) the Issuer, the Trustee and the Borrower shall be required to deal only with the Purchaser with respect to any matters under this Agreement and the Related Documents and no such Participant shall be entitled to enforce against the Borrower any provision hereunder.

*Section 9.14. Headings.* Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

*Section 9.15. No Fiduciary Relationship.* The Borrower acknowledges and agrees that in connection with all aspects of the transactions contemplated by this Agreement and the Related Documents (including in connection with any amendment, waiver or other modification of this Agreement or of any Related Document): (a)(i) any arranging, structuring and other services regarding this Agreement and the Related Documents provided by the Purchaser, the Underwriter or any of their respective Affiliates are arm's length commercial transactions between the Borrower on the one hand, and the Purchaser, the Underwriter and any of their respective Affiliates on the other hand, (ii) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated by this Agreement and the Related Documents; (b)(i) the Purchaser, the Underwriter and each of their respective Affiliates is and has been acting solely as a principal and has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any other Person and (ii) none of the Purchaser, the Underwriter nor any of their respective Affiliates has any obligation to the Borrower with respect to the transactions contemplated by this Agreement and the Related Documents, except those obligations expressly set forth herein; and (c) the Purchaser, the Underwriter and each of their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, and none of the Purchaser, the Underwriter nor any of their respective Affiliates has any obligation to disclose any of such interests to the Borrower. To the fullest extent permitted by Applicable Laws, the Borrower hereby waives and releases any claims that it may have against the Purchaser, the Underwriter and each of their respective Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of the transactions contemplated by this Agreement and the Related Documents.

*Section 9.16. Electronic Signatures.* The parties agree that the Electronic Signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties agree that any electronically signed document (including this Agreement) shall be deemed (a) to be “written” or “in writing,” (b) to have been signed and (c) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such paper copies or “printouts,” if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule. This Agreement may be in the form of an Electronic Record and may be executed using Electronic Signatures, including, without limitation, facsimile and/or .pdf. Each party hereto agrees that any Electronic Signature (including, without limitation, facsimile or .pdf) on this Agreement shall be valid and binding on the other counterparties, and have the same force and effect, to the same extent as a manual, original signature. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the Purchaser of a manually signed paper counterpart which has been converted into electronic form (such as scanned into PDF format), or an electronically signed counterpart converted into another format, for transmission, delivery and/or retention. The Purchaser may, at their option, create one or more copies of this Agreement in the form of an imaged Electronic Record (“*Electronic Copy*”), which shall be deemed created in the ordinary course of the Purchaser’s business, and destroy the original paper document. This Agreement in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, (a) the Purchaser shall be entitled to rely on any such Electronic Signature without further verification and (b) upon the request of the Purchaser any Electronic Signature shall be promptly followed by a manually executed, original counterpart. For purposes hereof, “*Electronic Record*” and “*Electronic Signature*” shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

*Section 9.17. EMMA Postings.* The Borrower agrees that it shall not post this Agreement or the Bond Purchase Agreement or any amendment hereto or thereto on EMMA or any other website or attach the same to any offering or disclosure document until the Purchaser or its counsel has provided redacted versions of this Agreement, the Bond Purchase Agreement or such amendment, as applicable.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE.]

**[SIGNATURE PAGES AND EXHIBITS HAVE BEEN REMOVED]**

**(THIS PAGE INTENTIONALLY LEFT BLANK)**

## APPENDIX G

### SUMMARY OF CERTAIN PROVISIONS OF THE D&C CONTRACT

*The following is a summary of selected provisions of the D&C Contract and is not a full statement of the terms of such agreement. Accordingly, the following summary is qualified in its entirety by reference to such agreement and is subject to the full text of such agreement. Unless otherwise stated, any reference in this Official Statement to the D&C Contract shall mean such agreement and all schedules, exhibits and attachments thereto, as amended, supplemented or otherwise modified and in effect as of the date hereof. Capitalized terms used in this Appendix G but not otherwise defined in this Official Statement have the meanings given to such terms in the Exhibit A to this Appendix G.*

#### 1. OVERARCHING REQUIREMENTS.

##### a. **Back-to-Back Obligations** (Section 2.6.2 of the D&C Contract)

The Borrower and the D&C Contractor agree in the D&C Contract that the obligations and liabilities imposed on the D&C Contractor under the D&C Contract, subject to the terms and conditions set forth therein (including, without limitation, such terms and conditions that explicitly impose an obligation on the Borrower and the limitation of the D&C Contractor's liability (see "– Consequential Damages; Limitations on Liability" in this Appendix G)), are "back-to-back" with the obligations and liabilities imposed on the Borrower in the Lease Agreement to the extent applicable to the DB D&C Work. The D&C Contractor acknowledges and agrees in the D&C Contract that it is familiar with and also will comply with all other obligations and liabilities imposed by the Port Authority under the Lease Agreement that are applicable to the D&C Contractor due to its status as the Lead Contractor, the D&C Contractor, a contractor and a party to a Key Contract.

##### b. **Term** (Section 2.1.8 of the D&C Contract)

The term of the D&C Contract commenced on the date the D&C Contractor first performed any portion of the DB D&C Work on the Project under the Field Services Agreement and will continue until all of the D&C Contractor's and the Borrower's respective obligations under the D&C Contract have been fully discharged, unless earlier terminated in accordance with the termination provisions of the D&C Contract and/or the Lease Agreement.

#### 2. DESIGN AND CONSTRUCTION OF THE PROJECT

##### a. **Scope of Work** (Article 2 of the D&C Contract)

The D&C Contractor is responsible for performing the DB D&C Work.

##### b. **Governmental Approvals** (Sections 2.8 and 5.8 of the D&C Contract)

Unless otherwise noted in the permit matrix agreed to by the Borrower and the D&C Contractor, the D&C Contractor shall be solely responsible for securing, obtaining and maintaining all Governmental Approvals required in connection with the performance of the DB D&C Work in accordance with the D&C Contract and shall perform all of the Borrower's obligations under and expressly comply with the Lease Agreement to the extent those obligations apply to the DB D&C Work.

The D&C Contractor shall, prior to the submission of any materials pertaining to a Governmental Approval to the Port Authority, obtain prior written approval of such materials from the Borrower or the Borrower's Representative (which approval or rejection shall not be unreasonably withheld or delayed). The D&C Contractor shall allocate reasonable time for the Borrower and the Borrower's Representative to review, comment on, and approve all of the D&C Contractor's proposed submissions to the Port Authority. Notwithstanding the foregoing, the D&C Contractor shall not engage in any communications with the Port Authority without (i) prior approval of the Borrower and the Borrower's Representative in each instance, (ii) copying the Borrower and the Borrower's Representative on all written communications, and (iii) inviting the Borrower and/or the Borrower's Representative to any meetings between the D&C Contractor and the Port Authority; provided that the Borrower acts reasonably and without unreasonable delay in providing any approval and/or participating in meetings and communications.

The D&C Contractor is responsible for obtaining all Permits for which it is responsible, including expediting where appropriate by the D&C Contractor, except for those Permits agreed to be obtained by the Borrower and as otherwise noted in the Permit Matrix. The D&C Contractor is responsible for obtaining any and all after hours Permits.

*c. **Other Redevelopments** (Sections 2.6 and 5.4 of the D&C Contract)*

The D&C Contractor has included the known costs of compliance with the Construction Coordination Agreement in the GMP. The D&C Contractor acknowledges that the Borrower has entered or will enter into certain agreements (of which the D&C Contractor may be a party to) with certain stakeholders at the Project and at the Airport ("Interface Agreements"). The D&C Contractor shall comply with the terms and requirements of all Interface Agreements to the extent they are incorporated into the D&C Contract (either at execution or by Change thereafter) and apply to the DB D&C Work and to the D&C Contractor's obligations under the D&C Contract and to cause its Subcontractors to do the same. The D&C Contractor acknowledges and agrees that any required coordination work in connection with, required by, or related to the Interface Agreements shall not constitute a Change to the extent that the work is coordination and does not require additional work either due to a change to a DB D&C Work element previously purchased or installed.

The D&C Contractor shall not cause any unnecessary hindrance or delay to the progress of the work being performed by separate contractors of the Port Authority or developers of Other Redevelopments (collectively "JFK Separate Contractors"). If any JFK Separate Contractor sustains any damage through any act or omission of the D&C Contractor or its Subcontractors, the D&C Contractor shall indemnify and hold harmless the Borrower from any losses incurred by the Borrower by reason of such damage.

The D&C Contractor shall coordinate with the JFK Separate Contractors, the Borrower and Port Authority in accordance with the Lease Agreement and the Construction Coordination Agreement so that it has a full understanding of the extent of the geographically overlapping work zones. The D&C Contractor shall coordinate with the Borrower and Port Authority in advance of the DB D&C Work such that both the D&C Contractor and the JFK Separate Contractors can agree to an approach that allows the work of each to proceed within their respective schedules. At times this will mean that the work of one will be in advance of the initial schedule and resulting effects will be absorbed accordingly by each.

*d. **Required Coordination** (Section 2.17 of the D&C Contract)*

Subject to the terms of the D&C Contract, the D&C Contractor shall coordinate the DB D&C Work with the Borrower, the Port Authority (and its contractors and/or consultants), the Borrower's Representative and Separate Contractors. The D&C Contractor acknowledges that the Borrower, directly



and through its Separate Contractors, is and shall be actively involved in the development of the Project, and in interaction with the D&C Contractor.

The D&C Contractor shall cooperate with all Governmental Authorities and the Port Authority, with respect to any reasonable requests made in connection with the DB D&C Work or D&C Work, including without limitation attending meetings with such Governmental Authorities and the Port Authority. The D&C Contractor shall coordinate all of its DB D&C Work with any other D&C Work, Governmental Authorities, the Port Authority, and Other Redevelopments, including landscape and utility D&C Work being performed within the Project Site. The D&C Contractor shall take all reasonable steps to protect the DB D&C Work and Project Site from all work performed in connection with the Other Redevelopments.

The D&C Contractor shall be responsible for managing and coordinating the applications required for, and the installation performed by, telecommunications and utility companies applicable to the DB D&C Work. The D&C Contractor shall be required to coordinate the process for obtaining approvals required by the New York City Department of Environmental Protection applicable to the DB D&C Work.

e. ***Cooperation with the Port Authority (Section 2.18 of the D&C Contract)***

The D&C Contractor shall be solely responsible for compliance with the cooperation requirements of the Lease Agreement in connection with the performance of the DB D&C Work and shall perform all of the Borrower's obligations and be subject to any limitations relation to cooperation requirements under the Lease Agreement to the extent those obligations apply to the DB D&C Work.

f. ***Compliance with the Law, Other Lease Agreement Requirements, and Future Agreements (Sections 2.19 through 2.24 of the D&C Contract)***

i. Compliance with Applicable Provisions and Future Agreements

If the Borrower enters into any future agreements that may contain provisions relating to the Borrower's operation of the Project Site, the Project, D&C Work and/or the DB D&C ("Applicable Provisions") and supplies the Borrower with notice of such agreement(s), the D&C Contractor shall comply with all Applicable Provisions, and, if requested in connection with the Borrower's obligations under any such Applicable Provisions shall assist and cooperate with the Borrower; such assistance and cooperation shall include without limitation responding promptly to any reasonable inquiries or requests by the Port Authority or any Governmental Authority related to the DB D&C Work, but only after the Borrower has approved of such response. The D&C Contractor assumes no responsibility or liability for the terms and conditions of the Applicable Provisions being in contravention of the Lease Agreement, but has a responsibility at the same time to notify the Borrower in writing as soon as practicable if, to the best knowledge of the D&C Contractor, an Applicable Provision (or potential Applicable Provision) is identified.

ii. Lease Agreement Requirements

The D&C Contractor shall perform the DB D&C Work in compliance with, and ensure that the performance of the DB D&C Work by each Subcontractor conforms to all terms and conditions of the Lease Agreement applicable to the DB D&C Work, including without limitation Governmental Approvals, Applicable Laws, Applicable Standards, Rules and Regulations, Rules and Regulations Changes, Requirements and Provisions for Work, Good Order Requirements, New Airport Design Guidelines (including the design and construction elements as necessary to achieve the One JFK Environment in accordance with the Lease Agreement), and the requirements of Governmental Authorities and the Port

Authority. In addition, the D&C Contract provides that in the event that a change in Applicable Law impacts the GMP or causes a delay to the critical path of the Baseline Schedule and/or Milestone Events, which change in Applicable Laws was not reasonably foreseeable by the D&C Contractor prior to the date of the D&C Contract, did not result from a failure by the D&C Contractor to comply with the D&C Contract, and could not have been reasonably mitigated any time without material cost, the D&C Contractor shall be entitled to a Material Borrower Change reflecting an adjustment to the GMP and/or the Baseline Schedule (subject to approval by the Port Authority, if required to adjust a date on the Baseline Schedule) and/or Milestone Event Dates.

iii. Employment/Affirmative Action/Equal Employment Opportunity/Diversity/M/WBE/LBE/SDVOB/Non-Discrimination

To the extent applicable to the DB D&C Work, the D&C Contractor shall be solely responsible for compliance with the requirements of, and shall cause its Subcontractors to comply with the provisions in the Lease Agreement related to employment, affirmative action, equal opportunity, minority business enterprises, women-owned business enterprises and local business enterprises commitment.

iv. Labor and Labor Relations

The D&C Contractor has entered into a project labor agreement for the Project. The D&C Contractor shall use all reasonable efforts to maintain good relations with labor unions as well as minority and other related interest groups to maintain peaceful labor relations and a trouble-free job site for the duration of the DB D&C Work and advise the Borrower of any anticipated problems in connection therewith. Further, the D&C Contractor has entered into a project labor agreement, which sets forth certain terms related to the hiring of union labor for the project. The D&C Contractor shall be solely responsible for compliance with Port Authority labor requirements as well. The Borrower shall have the same rights and remedies against the D&C Contractor as the Port Authority has against the Borrower in the event of non-compliance related to the DB D&C Work. The D&C Contractor also warrants that it has not violated any ethical standards imposed by the Lease Agreement, engaged in any form of bribery or corruption, direct or indirect, or otherwise violated the United States Foreign Corrupt Practices Act of 1977 in any form.

v. No Discrimination

Without limiting the generality of any of the provisions of the D&C Contract, the D&C Contractor, for itself, its successors in interest and assigns, as part of the consideration therein, covenants and agrees that (i) no person on the grounds of race, creed or religion, color, sex, national origin, handicap or disability, or age shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises by it, (ii) in the construction of any improvements on, over, or under the Premises and furnishing of services thereon by it, no person on the ground of race, creed or religion, color, sex, national origin, handicap or disability, or age shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination in the use of the Premises by it, (iii) that the D&C Contractor shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 22, Non-discrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended, and any other present or future laws, rules, regulations, orders or directions of the United States of America with respect thereto which from time to time may be applicable to the D&C Contractor's operations at the Airport, whether by reason of agreement between the Port Authority and the United States of America or otherwise. The Port Authority shall have the right to take such action as the United States of America may direct to enforce such covenant. Further, the D&C Contractor is required to comply with all applicable laws and other requirements set forth in the Lease Agreement. These requirements are also passed down to the D&C Contractor's Subcontractors and consultants.

**g. *Traffic Management* (Section 2.27 of the D&C Contract)**

The D&C Contractor shall perform the DB D&C Work in accordance with the Port Authority approved parking and traffic mitigation plan that describes, to the extent applicable, alternative parking solutions for each Phase of the DB D&C Work and traffic circulation and control management, roadway paving, staging, level of maintenance service, pedestrian walkways and site logistics, during the DB D&C Work Period which is referred to herein as the Transportation Management Plan. The D&C Contractor shall be responsible for all costs and expenses associated with the compliance with the Transportation Management Plan which are included in the GMP.

Failure of the D&C Contractor to comply with the approved Transportation Management Plan and the Port Authority's airport-wide transportation management plan shall allow the Borrower or the Port Authority to require the D&C Contractor to prepare a Transportation Deficiency Plan of Action, which shall be subject to the Borrower's and Port Authority's prior written approval. Any increased costs resulting therefrom shall be the responsibility of the D&C Contractor.

**h. *Site Access; Coordination between the Borrower and the D&C Contractor* (Sections 2.29 and 8.3 of the D&C Contract)**

Subject to the terms and conditions set forth in the Lease Agreement and to the extent provided to the Borrower by the Port Authority, the Borrower shall provide the D&C Contractor with access to the Premises for the performance of the DB D&C Work as and when required by the Baseline Schedule. The D&C Contractor shall comply with any site access requirements of the Port Authority as required by the Lease Agreement, including without limitation the Port Authority's right to inspect the D&C Work and any plans and specifications. The D&C Contractor agrees to advise the Borrower of certain site access requirements with respect to the Project Site and the Borrower's representatives will undergo appropriate and applicable training and obtain appropriate credentials, such as, but not limited to, construction site badging, OSHA cards, scaffold training and site-specific safety training, in accordance with such requirements.

Subject to the immediately preceding paragraph, the D&C Contractor will provide access to all areas of the Project Site requested by the Borrower for itself and for its officers, employees, agents, authorized representatives, designees, designers, sublessees, Separate Contractors, and lenders (if applicable), at all times for any purpose whatsoever; provided, that the parties shall cooperate with one another in coordinating their respective activities within the Project Site so as to minimize each party's (or their representatives' or contracted parties') interference with the activities of the other party. The D&C Contractor shall not take or permit any action or inaction to be taken to interfere, hinder, or delay the Borrower's Rights of Access to the Project Site. The D&C Contractor shall not be responsible for the cost to repair any damage caused to the Premises by the Borrower, the Separate Contractors or the Manager. Each party will cooperate in providing such information and taking such actions as the other party may reasonably require in connection with the D&C Work or the DB D&C work, as the case may be.

The Borrower shall not permit any Operations and Maintenance Work or the work of the Separate Contractors to be performed in a manner that (a) fails to comply with the D&C Contract, the DB Project Documents, Applicable Laws, Applicable Standard or Governmental Approvals, and (b) interferes in any material respect with the D&C Contractor's ability to discharge its own obligations to the Borrower under the D&C Contract as a result of such failure

### **3. DB PROJECT DOCUMENTS / ORDER OF PRECEDENCE** *(Article 3 of the D&C Contract)*

The D&C Contract incorporates the Order of Precedence from the Lease Agreement. As compliance with the terms of the Lease Agreement is required to achieve Equivalent Project Relief, the order of precedence for the D&C Contract follows the Lease Agreement except as explicitly excluded by the Qualifications and Assumptions in the GMP.

### **4. DB DESIGN WORK** *(Article 4 of the D&C Contract)*

The D&C Contract sets forth the process for developing the DB Design Work for the Project, including without limitation design submittals, preparation of work product, design coordination and input (e.g., the Borrower and the Port Authority), the design review process, and submission of work product to receive the Port Authority's approval.

### **5. CONSTRUCTION MANAGEMENT SERVICES** *(Article 5 of the D&C Contract)*

The D&C Contract details the D&C Contractor's preconstruction and construction related services for the Project, including without limitation continuation of procurement analysis and pre-purchasing, value analysis, investigation of existing conditions, coordination and response to existing conditions and adjacent work at the Airport (e.g., the Port Authority, other developers, and utility companies), implementation of safety programs and procedures and obtaining permits. Certain other provisions from Article 5 include the following:

- a. The D&C Contractor Obligations with respect to Known Non-Environmental Site Conditions  
*(Section 5.3 of the D&C Contract)*

The D&C Contractor has been provided and reviewed the Available Documents, and solely as between the D&C Contractor and the Borrower, the D&C Contractor may rely on the content of the Available Documents solely for the purpose of calculating the cost of the DB D&C Work with respect to existing environmental conditions and non-environmental conditions. In addition, the D&C Contractor has been provided with additional supplementary examinations, investigations, explorations, tests, studies, and data analysis concerning conditions (surface, subsurface, and underground facilities, both natural and man-made, and surface and subsurface water conditions of the Project Site and surrounding areas) at or contiguous to the Project Site, and the D&C Contractor has performed certain examinations, investigations, explorations, tests, studies and data analysis pursuant to the Rights of Entry Agreements, including an investigation of environmental conditions (some Rights of Entry Agreements remain ongoing at the time of signing of the D&C Contract). To the extent access is granted to the D&C Contractor, the D&C Contractor shall also examine the Adjoining Premises to determine whether it may interfere with the DB D&C Work.

Notwithstanding anything to the contrary in the D&C Contract and except as set forth in Borrower's allowance set forth in the D&C Contract, the D&C Contractor shall be responsible for all increased costs and delays to the extent caused by any existing non-environmental subsurface condition at the Project Site forming part of the DB D&C Work that: (a) were caused by the D&C Contractor or any party for which it is responsible, (b) were known to the D&C Contractor based on and reasonably inferable from the site conditions report annexed to the D&C Contract, (c) should have or could have reasonably been identified through implementation of Best Management Practices through review and analysis of (or to the extent such information was reasonably inferable from): (i) the DB Project Documents, (ii) the Available Documents, or (iii) publicly available information. For the avoidance of doubt, the D&C Contractor will only be entitled to a Material Borrower Change or Unavoidable Delay for any existing conditions encountered at the Project Site other than those described in (a)-(c) listed in the previous sentence. For the

avoidance of doubt, the D&C Contractor shall not be permitted to make any claims against the Port Authority for any errors, omissions, inconsistencies, or ambiguities contained in Project Documents, the Available Documents and/or Environmental Report.

b. The D&C Contractor Obligations with respect to Known Environmental Site Conditions  
*(Section 5.14 of the D&C Contract)*

Subject to the terms of the D&C Contract, the D&C Contractor shall perform the DB D&C Work in full accordance and compliance with the Lease Agreement and shall perform all of the Borrower's obligations under environmental obligations of the Lease Agreement to the extent those obligations apply to the DB D&C Work, provided, however, that the D&C Contractor shall without interruption or suspension perform all DB D&C Work unless and only to the extent that any such work is ordered to cease by any Governmental Authority with jurisdiction over the Airport or the DB D&C Work. The D&C Contractor acknowledges that it has received the DB Project Documents from the Borrower, and the D&C Contractor represents that it has reviewed the DB Project Documents, understands the conditions of the subject property as defined in the DB Project Documents, performed its own independent investigation of the conditions of the subject property, and has accounted for all such conditions in the planning, design, and performance of the DB D&C Work and the GMP. The D&C Contractor shall not be deemed to be the generator and/or transporter of waste materials disposed of from the Project Site or otherwise on behalf of the Borrower, including any tanks or tank systems or parts thereof encountered during the DB D&C Work that must be disposed of as waste materials. the Borrower agrees that title and ownership of any tanks or tank systems does not vest and is not transferred to the D&C Contractor. For the avoidance of doubt, the D&C Contractor's compliance with the foregoing shall not relieve the D&C Contractor of compliance with the requirements of environmental obligations of the Lease Agreement to the extent they apply to the DB D&C Work. The D&C Contractor shall have the full extent of rights, responsibilities and entitlements as well as any requirements or limitations afforded to or imposed on the Borrower under the environmental obligations of the Lease Agreement on the basis of Equivalent Project Relief as set forth in Part 12 of this Official Statement, except to the extent otherwise limited by the D&C Contract.

The D&C Contractor is required to, among other things, (a) perform management, excavation, treatment, storage, handling, characterization for use or disposal, transportation, and disposal of soil, other debris, storm water or groundwater containing Hazardous Substances in connection with the DB D&C Work, and (b) any Remediation required under the Lease Agreement. To the extent that the D&C Contractor encounters at the Project Site materials reasonably believed to be Hazardous Substances, which have not been previously identified in, or reasonably inferred from, the DB Project Documents and which require action pursuant to Environmental Requirements, the D&C Contractor shall immediately notify the Borrower of the condition in writing; provided, however, that the D&C Contractor shall without interruption or suspension perform all DB D&C Work unless and only to the extent that any such work is ordered to cease pursuant to the Lease Agreement or by any Governmental Authority with jurisdiction over the Airport or the DB D&C Work or is otherwise required to cease pursuant to Environmental Requirements.

The D&C Contractor shall perform any necessary environmental remediation work at no additional cost to the Borrower to the extent that such environmental condition (a) was caused by the D&C Contractor or any party for which it is responsible, (b) was known to the D&C Contractor based on or reasonably inferable from the environmental site conditions report annexed to the D&C Contract, subject to the qualifications, assumptions and exclusions of the GMP, or (c) related to the presence of petroleum hydrocarbons in surface materials, soils or other subsurface materials, soil vapor, or groundwater at the Project Site subject to the qualifications, assumptions and exclusions of the GMP. Notwithstanding the foregoing, certain environmental conditions are carried as a Borrower Allowance and is included in the GMP to address unknown environmental site conditions. The D&C Contractor shall perform any necessary

remediation work, provided, however, that such work that does not qualify as (a)–(c) shall constitute a Material Borrower Change.

## **6. REPORTING REQUIREMENTS** *(Article 6 of the D&C Contract)*

Article 6 of the D&C Contract details the reporting requirements for the DB D&C Work, which includes the generation of certain daily, weekly, and monthly reports, forecasts, studies, and analyses that are typically generated by general contractors engaged in similar work and applicable to the DB D&C Work, or otherwise required by, the Lease Agreement or the RPWs or at the request of the Port Authority. This article also incorporates the Lease Agreement requirements regarding reporting for MWBE/LBE/SDVOB and Workforce Compliance Reporting Requirements.

## **7. CHANGES IN THE DB D&C WORK** *(Article 7 of the D&C Contract)*

### **a. Changes Generally** *(Section 7.1 of the D&C Contract)*

The D&C Contractor acknowledges and agrees that the Borrower shall have the right from time to time during the DB D&C Work Period to effectuate changes to the DB D&C Work, to substitute materials, require different methods, to add to or remove portions of the DB D&C Work, or alter the time, method, or cost of the D&C Contractor's execution of the DB D&C Work as the Borrower deems necessary or appropriate (each, a "Change"). The cost and expenses of Changes shall not be paid from the Construction Contingency.

### **b. Change Order Procedure** *(Section 7.1 of the D&C Contract)*

A Change may be initiated (i) by the Borrower (a "Borrower Change"), (ii) as a result of a Port Authority Change or any other Qualifying D&C Change, (iii) as a result of any other Change permitted by the Lease Agreement for which the D&C Contractor is entitled to Equivalent Project Relief, (iv) as a result of a Change expressly permitted by the D&C Contract, (v) through a Site Instructive, or (vi) through a Field Proceed Order. The D&C Contractor acknowledges and agrees that the volume and/or extent of Changes ordered by the Borrower may be substantial and that the D&C Contractor shall make no Claims for additional compensation based solely on the number or extent of the approved Changes; provided however, that the D&C Contractor's Design Professionals assistance with the preparation of Contemplated Change Order Requests shall be compensated as a time and materials design fee as a percentage of the total cost of the Change Order. The review of a proposed Change or Changes by the D&C Contractor and any Subcontractor, regardless of the number of such reviews, is included in the D&C Contractor's General Conditions Costs, and shall not be included as an additional cost to the Borrower on any Change Order. All Change Orders, Change Order Proposals, Contemplated Change Order Requests and Compensation Event Notices must be prepared through the Borrower's electronic system. The D&C Contractor shall also prepare any necessary documents, including without limitation drawings, sketches, specifications, studies, etc. to support the development of a Borrower Change or Contemplated Change Order Request. If requested by the Borrower on multi-trade scope packages, the D&C Contractor shall submit detailed estimates of cost from additional subcontractors (as agreed to by the Borrower and the D&C Contractor) in addition to the proposal submitted by the Subcontractor, provided that the D&C Contractor shall be entitled to recover any time and cost related to soliciting the additional estimates. Preparation of such supporting documentation shall be commenced within five (5) Days of the Borrower's request to minimize risk of cost and delay impact to the DB D&C Work.

Changes may be initiated by the Borrower, including Changes requested by the Port Authority, by submitting to the D&C Contractor a Contemplated Change Order Request setting forth in detail the nature of the Change. As soon as practicable, but in no event later than twenty (20) Days or as otherwise agreed

to by the Borrower and the D&C Contractor (provided that such time period satisfies RPW requirements) after the receipt of the Contemplated Change Order Request, the D&C Contractor shall prepare and submit to the Borrower a Change Order Proposal; provided, however, that prior to the expiration of the initial ten (10) Day period, the D&C Contractor may submit a written request to the Borrower, together with the explanation of the reasons therefor, to extend the time to provide the Change Order Proposal, which request the Borrower shall consider in good faith and submit to the Port Authority for its consideration pursuant to the Lease Agreement, if required; provided further that the Borrower or the Port Authority may in such case require the D&C Contractor to provide to the Borrower such information it prepared within the initial ten (10) Day period and deliver the remaining information to the Borrower within the time period agreed to by the Borrower, but subject in all cases to approval by the Borrower and the Port Authority. If the Change proposed would not constitute a Borrower Change, and therefore, would not require the review or approval of the Port Authority, the D&C Contractor shall submit the complete Change Order Proposal to the Borrower, and the Borrower shall approve such request, reject such request or provide such other direction (e.g., Borrower Change Directive or request for additional information) within ten (10) business Days after receipt thereof from the D&C Contractor.

Each Change Order Proposal shall include the following, as applicable, in each case, that are directly associated with the requested Change:

- i) the estimated incremental DB D&C Work Costs (including applicable soft costs) during the DB D&C Work Period, including any applicable adjustments to the critical path or otherwise to the Baseline Schedule;
- ii) the time impact analysis of the proposed change to the Baseline Schedule, including to any Milestone Event Date (unless there is no impact to the Baseline Schedule);
- iii) any other deviation from the D&C Contractor's obligations under the D&C Contract or from the Requirements and Provisions for Work that would result from the implementation of the proposed Change; and
- iv) such other supporting documentation as may be reasonably requested by the Port Authority or the Borrower, as applicable.

DB D&C Work that is performed on a time and material basis shall be documented (i.e., daily tickets) on a Day-to-Day basis within forty-eight (48) hours after covered DB D&C Work is accomplished. When a schedule of unit prices for additions to or deletions from the DB D&C Work is made a part of the D&C Contract or a Subcontract, and the Change Order Proposal contains unit pricing, such unit pricing shall conform to such schedule of unit prices.

If the Borrower (and, if required under the Lease Agreement, the Port Authority) approves a Change Order Proposal, the Borrower shall issue a Change Order that includes the agreed terms (including the payment terms) for that Change, which Change Order shall reflect the terms of the approved Change Order Proposal and, upon execution, shall become a part of the Construction Application and the D&C Contract. If applicable, the Baseline Schedule and/or Milestone Event Dates shall be extended to a new date reflected in the approved Change Order.

c. *Limitation for Port Authority Change or Qualifying D&C Change (Section 7.1.6 of the D&C Contract)*

The D&C Contractor's remedies against the Borrower under the D&C Contract due to a Port Authority Change or Qualifying D&C Change arising under the Lease Agreement, including additional

compensation, extension of the Baseline Schedule or Milestone Event Dates, or relief from Liquidated Damages, shall be limited against the Borrower in all instances to Equivalent Project Relief payable or provided by the Borrower (it being understood that the D&C Contractor is not entitled to any relief or compensation directly from the Port Authority). Where a Change Order Proposal is issued pursuant to the D&C Contract as a result of a Port Authority Change or Qualifying D&C Change under the Lease Agreement, and Port Authority Change or Qualifying D&C Change is deemed to be withdrawn under the Lease Agreement (which the Borrower shall promptly notify the D&C Contractor of), the applicable Change Order Proposal shall also be deemed to be withdrawn under the D&C Contract.

d. ***Borrower Change Directives (Section 7.1.8 of the D&C Contract)***

If the Borrower and the D&C Contractor (and the Port Authority, in the event Port Authority Approval is required under the Lease Agreement) are unable to reach an agreement on a Change Order proposal within seven (7) Days of submission, the Borrower may, in its sole and absolute discretion, issue a Borrower Change Directive directing the D&C Contractor to proceed with the DB D&C Work constituting such Change and, if applicable, providing for any adjustment in the Cost of the DB D&C Work, Baseline Schedule, Milestone Events, and/or Milestone Event Dates (in the case of the Baseline Schedule, subject to approval by the Port Authority, if required to adjust a date on the Baseline Schedule) resulting from such Change. Any such adjustment to (a) the GMP, General Requirements Costs or General Conditions Costs shall, at the Borrower's election, equal either (i) the respective lump sum amounts and paid pursuant to the terms set forth in such Borrower Change Directive as mutually agreed, or (ii) the actual net increase or decrease (i.e., time and materials), as the case may be, in the Direct DB D&C Work Cost, General Requirements Costs or General Conditions Costs, and Base Fee as the case may be, attributable to such Change (in which latter case, such adjustments shall be determined and set forth in writing by the Borrower and the D&C Contractor within twenty (20) Days after completion of that portion of the DB D&C Work constituting such Change), or (b) the Baseline Schedule and/or Milestone Event Dates, if applicable, shall, at the Borrower's election, equal the period of time set forth in such Borrower Change Directive or, if no period is set forth therein, then the period of time, if any, fairly attributable, in the aggregate, to such Change which can be shown to have impacted the Baseline Schedule and/or Milestone Event Dates (in the case of the Baseline Schedule, subject to approval by the Port Authority, if required to adjust a date on the Baseline Schedule).

Upon the D&C Contractor's receipt of a Borrower Change Directive, the D&C Contractor shall proceed with the DB D&C Work constituting the Change provided for therein, promptly after such receipt or as otherwise may be required in such Borrower Change Directive; provided that the D&C Contractor retains the right to dispute a Borrower Change Directive pursuant to Section 16 of this Appendix G, and provided further that, if the value of the Borrower Change Directive(s), Field Proceed Order(s) and other amounts in dispute arising from this Agreement is equal to Ten Million Dollars (\$10,000,000) in the aggregate at any given time, then the Borrower and the D&C Contractor shall proceed with interim dispute resolution under the procedures outlined in Section 16 of this Appendix G.

If the D&C Contractor fails to object to a Borrower Change Directive or any portion thereof within twenty-one (21) days after the D&C Contractor's receipt of same, then the D&C Contractor shall thereby be deemed to have (a) waived any right to object to any adjustments (or absence of adjustments) in the Cost of the DB D&C Work, Baseline Schedule, Milestone Events, and/or Milestone Event Dates provided for in such Borrower Change Directive or portion thereof, (b) agreed to any such adjustment, and (c) acknowledged that such adjustments, if any, shall constitute the complete and final consideration for all costs, claims, delays, or damages incurred by the D&C Contractor as a consequence of the change provided for in such Borrower Change Directive or portion thereof; in such event, such Borrower Change Directive or portion thereof shall thereupon be deemed to constitute a Change Order for all purposes under the D&C Contract. Notwithstanding anything to the contrary in the D&C Contract, (a) the Borrower agrees to make



payment (otherwise in accordance with the terms of the D&C Contract) to the D&C Contractor of amounts not in dispute related to Borrower Change Directives, and (b) the D&C Contractor shall not be deemed to waive a claim for Equivalent Project Relief if such relief is available to the Borrower pursuant to the Lease Agreement.

e. *Material Borrower Changes (Section 7.2 of the D&C Contract)*

A Borrower Change shall only be compensable under the D&C Contract if it satisfies the following criteria (a “Material Borrower Change”):

- i. it is requested by the Borrower (including third-party requests made through authorized representatives of the Borrower);
- ii. it either (i) arises out of a specific right or entitlement granted to the D&C Contractor by the terms of the D&C Contract (including the D&C Contractor’s breach of the D&C Contract), or (ii) was not reasonably inferable from the DB Project Documents by the D&C Contractor and was not capable of having been clarified by the D&C Contractor prior to the date of the D&C Contract;
- iii. it cannot be reasonably anticipated from the Basis of Design; and
- iv. it is material in nature (either alone or in the aggregate).

For the avoidance of doubt, the following without limitation shall not constitute a Material Borrower Change: (1) any changes resulting from errors and omissions in the DB Project Documents, (2) coordinating separate contractors engaged by the Borrower or third-parties that are performing work at the Airport as required by the Lease Agreement or the D&C Contract, (3) reasonably anticipated coordination of the DB D&C Work with separate contractors engaged by the Borrower or third-parties that are performing work on the Project or other construction projects underway at the Airport, and (4) unforeseen conditions, including environmental conditions, except as otherwise provided for in Section 5 of this Appendix G.

If a Material Borrower Change may increase the actual Direct DB D&C Work Cost or GMP or extends the Baseline Schedule and/or Milestone Event Date, then the Direct DB D&C Work Cost, General Requirements Costs, General Conditions Costs, GMP, Baseline Schedule and/or Milestone Event Date, and Base Fee shall be adjusted only to the extent as follows:

- i. the Direct DB D&C Work Cost shall be increased by the amount of the actual net increase in Direct DB D&C Work Cost attributable to such Material Borrower Change, resulting in a corresponding increase in the Direct DB D&C Work Cost and SDI components of the GMP;
- ii. if the Baseline Schedule and/or Milestone Event Dates are impacted by such Material Borrower Change, the Baseline Schedule and/or Milestone Event Dates shall be extended by the impact to the DB D&C Work’s critical path attributable to the Material Borrower Change (in the case of the Baseline Schedule, subject to approval by the Port Authority, if required to adjust a date on the Baseline Schedule);
- iii. the General Conditions Costs shall be increased by five percent (5%) of the net amount that the Direct DB D&C Work Cost actually attributable to such Material Borrower Changes, resulting in a corresponding increase in the GMP;

- iv. the General Requirements Costs shall be increased by five percent (5%) of the net amount that the Direct DB D&C Work Cost actually attributable to such Material Borrower Changes, resulting in a corresponding increase in the GMP;
- v. the Design Costs shall be increased based upon a time and materials design fee as a percentage of the total cost of the Change Order attributable to such Material Borrower Changes, resulting in a corresponding increase in the GMP;
- vi. the Construction Contingency shall be increased by five percent (5%) only for changes that involve two or more subtrade work scopes, of the net amount that the Direct DB D&C Work Cost actually attributable to such Material Borrower Changes attributable solely to any new scope of DB D&C Work, resulting in a corresponding increase in the GMP; and
- vii. if the aggregate amount of all Material Borrower Changes exceeds the Covered Increase Amount, the D&C Contractor shall be entitled to receive a fee of four percent (4%) of the net amount that the DB D&C Work Cost actually attributable to such Material Borrower Changes exceed the Covered Increase Amount, resulting in a corresponding increase in the GMP.

In the event of a Material Borrower Change that decreases the actual Direct DB D&C Work Cost or reduces the DB D&C Work period in the Baseline Schedule, the Direct DB D&C Work Cost and GMP shall be reduced by the actual net decrease in the Direct DB D&C Work Cost, including the applicable SDI amounts. For the sake of clarity, General Requirements Costs, the General Conditions Costs and the D&C Contractor's Base Fee shall not be reduced.

f. ***Compensation Event Notice (Section 7.3.2 of the D&C Contract)***

The D&C Contractor shall fully cooperate and assist the Borrower with all submissions, discussions and negotiations with the Port Authority in connection with the Borrower's submission of a Compensation Event Notice and the determination of any Lessee Damages in accordance with the provisions of the Lease Agreement. The D&C Contractor shall share with the Borrower all data, documents and information pertaining to the relevant claimed Compensation Event by the Borrower to the Port Authority, on an open book basis. The D&C Contractor shall submit any documents required for a Compensation Event Notice to the Borrower at least five (5) Business Days prior to the deadline for submitting such Compensation Event Notice to the Port Authority as set forth in the Lease Agreement.

Upon the occurrence of a claimed Compensation Event, the D&C Contractor shall, and shall cause each of its Subcontractors to, take all steps reasonably necessary to mitigate the amount of change in the Cost of the DB D&C Work or schedule impact attributable to, and other consequences of, such event, including all steps that would generally be taken in accordance with Best Management Practice, including filing a timely claim for insurance and pursuing such claims in accordance with the D&C Contract. In the event that the D&C Contractor fails to take (or to cause its Subcontractors to take) mitigation measures required pursuant to the D&C Contract, the amount of the compensation recoverable by the D&C Contractor for a Compensation Event shall be reduced to the extent that such mitigation measures, if taken, would have reduced the amount of the Borrower Damages under the Lease Agreement.

g. ***Delay Events Notice (Section 7.3.3 of the D&C Contract)***

In addition to any other requirements set forth in the D&C Contract for Unavoidable Delays, the D&C Contractor shall fully cooperate and assist the Borrower with all submissions, discussions and negotiations with the Port Authority in connection with the Borrower's submission of a Delay Event Notice

and the determination of any the Borrower Damages as set forth in Part 10 of this Official Statement. The D&C Contractor shall share with the Borrower all data, documents and information pertaining to the relevant claimed Delay Event by the Borrower to the Port Authority, on an open book basis. Notwithstanding anything to the contrary contained in the D&C Contract, the D&C Contractor shall submit any documents required for a Delay Event Notice to the Borrower at least five (5) Business Days prior to the deadline for submitting such Delay Event Notice to the Port Authority as set forth in the Lease Agreement.

*h. The D&C Contractor Claims for Equivalent Project Relief (Section 7.3 of the D&C Contract)*

Except as expressly set forth in the D&C Contract, the D&C Contractor shall have the same rights, benefits and entitlements, including to financial compensation or any extension of time or relief from performance of DB D&C Work obligations under the D&C Contract (“Equivalent Project Relief”), as the Borrower has with respect to the D&C Work under the Lease Agreement (“Primary Project Relief”). The D&C Contractor shall not be entitled to any form of Equivalent Project Relief unless and only to the extent that the Borrower is able to and does actually secure such Primary Project Relief under the Lease Agreement including, if applicable, with respect to a Compensation Event, approval from the Port Authority to utilize a portion of the Port Authority Contingency Amount. The D&C Contractor shall have no right to assert any claim for Equivalent Project Relief or Primary Project Relief directly against the Port Authority.

At the Borrower’s request, the D&C Contractor shall participate in discussions with the Port Authority with respect to any claim for Primary Project Relief relating to the D&C Contractor’s obligations under the D&C Contract. To the extent that the Borrower has not requested the D&C Contractor’s participation in such discussions, the D&C Contractor shall have the right to: (i) consult with the Borrower; (ii) participate in such discussions solely with respect to Claims of a technical nature or with respect to Reasonable D&C Contractor Claims; and (iii) attend and observe such discussions with respect to all other Claims that pertain to the D&C Contractor. In all discussions with the Port Authority, the Borrower will take the lead, and the D&C Contractor shall not initiate discussions with the Port Authority with respect to any claim for Primary Project Relief relating to the D&C Contractor’s obligations under the D&C Contract without the prior written consent of the Borrower. Except as expressly provided in the D&C Contract, the D&C Contractor shall have no separate right to claim against the Borrower or its designees in connection with a Claim for Primary Project Relief.

The D&C Contractor shall use commercially reasonable efforts to assist the Borrower in the Borrower’s pursuit of potential sources of funds or reimbursement from any third-party source to offset the Borrower’s damages, including as permitted by the Lease Agreement.

The D&C Contractor shall provide to the Borrower any Claim for Equivalent Project Relief within sufficient time and in sufficient detail to enable the Borrower to review such Claim and to submit such Claim for which Primary Project Relief may be available to the Borrower to the Port Authority in accordance with the requirements of the Lease Agreement. Provided that the D&C Contractor complies with the foregoing, the Borrower shall coordinate such Reasonable D&C Contractor Claim with any other the Borrower or Separate Contractor claims arising from the same event and shall ensure that all Reasonable D&C Contractor Claims are promptly submitted to the Port Authority in accordance with the Lease Agreement. If, for any reason, the D&C Contractor fails to provide proper notice of a Claim and that failure forecloses the Borrower’s right to Equivalent Project Relief under the Lease Agreement, the D&C Contractor will be deemed to have irrevocably and forever waived and released any Claim against the Borrower or right to Equivalent Project Relief. The D&C Contractor acknowledges and agrees that its Claim(s) for damages and Equivalent Project Relief are subject to the terms, conditions, requirements and

limitations set forth in the Lease Agreement for Compensation Events and Delay Events, and the D&C Contractor shall comply with such provisions to the same extent as required by the Borrower.

The Borrower shall promptly forward and process all Reasonable D&C Contractor Claims to the Port Authority as Claims for Primary Project Relief. The Borrower shall use all reasonable efforts to pursue and prosecute diligently all such Claims for Primary Project Relief in good faith with the Port Authority, and the Borrower and the D&C Contractor shall pay their own respective costs and expenses incurred in the pursuit of any such Reasonable D&C Contractor Claim, including reporting and compliance expenses, subject to any reimbursement thereof to the D&C Contractor to the extent any such costs and expenses are included in the final payment issued by the Port Authority after resolution of claim for Primary Project Relief. Notwithstanding the immediately preceding sentence, the Borrower may decline to pursue any Claim provided by the D&C Contractor that the Borrower determines (in its reasonable discretion) is not a Reasonable D&C Contractor Claim, and informs the D&C Contractor thereof in writing, within two (2) Business Days of receipt from the D&C Contractor of the Claim for Equivalent Project Relief (including all required supporting documentation). If the D&C Contractor disagrees with such action, the D&C Contractor shall direct the Borrower to pursue such claim at the D&C Contractor's sole cost and expense.

The Borrower may also settle any Reasonable D&C Contractor Claim (in whole or in part) without the prior consent of the D&C Contractor; provided that if the amount requested in a Reasonable D&C Contractor Claim is greater than the amount for which the Borrower settles such claim, then (i) the D&C Contractor will be paid the percentage of the total amount (e.g., the pro rata portion) to be paid by the Port Authority that such Reasonable D&C Contractor Claim bears to all the claims that were submitted to the Port Authority and settled or resolved through such settlement or dispute process) or (ii) the D&C Contractor may bring a Claim against the Borrower to recover such difference pursuant to the dispute resolution provisions as described in Section 16 below. In the event that any third-party sources (such as insurance) provide coverage for a Reasonable D&C Contractor claim, the D&C Contractor shall be entitled to payment of such amounts recovered from third-party sources, in an amount not to exceed the full value of such claim, and promptly upon receipt of the same by the Borrower from the applicable third-party source. In the event that the Port Authority elects to prepay any Lessee Damages, the Borrower shall not be required to prepay to the D&C Contractor: (i) any damages attributable to the D&C Contractor; or (ii) any future costs not yet incurred by the D&C Contractor, provided that such future costs shall become payable when they are paid or incurred by the D&C Contractor. Notwithstanding anything to the contrary in the D&C Contract, the D&C Contractor's remedies for any Compensation Events or Delay Events shall be limited to Equivalent Project Relief.

## **8. QUALITY CONTROL AND QUALITY ACCEPTANCE; TESTS; INSPECTIONS** *(Article 8 of the D&C Contract)*

Article 8 of the D&C Contract requires that the D&C Contractor establish a quality control program for the DB D&C Work that must comply with (i) Section 6 of the General Provisions, and (ii) all quality control and quality acceptance requirements of the Borrower and the Port Authority, for all stages of construction, including the turn-over of each DB D&C Work area. The Borrower will also establish its own quality assurance program ("Borrower's QAP") for the Project that the D&C Contractor must cooperate and coordinate with; provided, in no event shall any result, conclusion, implementation, or aspect of the Borrower's QAP relieve or be deemed to relieve the D&C Contractor of its obligation to perform the DB D&C Work in accordance with the terms of the D&C Contract, other DB Project Documents, and all Applicable Laws, Applicable Standards, Best Management Practices, and Rules and Regulations. Any acceptance by the Borrower or the Borrower's Representative of test data or inspections of any portion of the DB D&C Work shall not relieve the D&C Contractor of its obligation to cause the DB D&C Work to be performed in accordance with the DB Project Documents. Notwithstanding the General Provisions

requirements and its right arising from the Lease Agreement, the Port Authority also has no duty to inspect the DB D&C Work.

**9. SUBCONTRACTORS** (*Article 9 of the D&C Contract*)

Article 9 of the D&C Contract sets forth the requirements related to subcontracting the DB D&C Work to qualified subcontracting firms. Specifically, Article 9 notes that: (i) the Borrower approval is required before hiring, terminating, or replacing a Subcontractor; and (ii) Subcontracts must include certain language that: (a) incorporates the D&C Contractor's obligations to the Borrower in the D&C Contract, including all Lease Agreement provisions (to the extent applicable to the Subcontractor's scope of the DB D&C Work), (b) imposes liquidated damages of ten (10%) of the amount of any lien filed without thirty days written notice in advance to the D&C Contractor, which amount shall be payable to the Borrower, (c) provides for "no-damages-for-delays," (d) allows for the Borrower to take assignment of the subcontract upon termination of the D&C Contractor and to further assign a Subcontract, and (e) designates the Borrower as a third-party beneficiary of the Subcontract. Article 9 further makes the D&C Contractor expressly responsible to the Borrower and the Port Authority for the acts and omissions of all Subcontractors and their respective agents and employees. The D&C Contractor must also use commercially reasonable efforts to resolve all disputes between Subcontractors and have all Subcontractors agree to continue performance of their work notwithstanding their dispute with another Subcontractor.

**10. BASELINE SCHEDULE** (*Article 10 of the D&C Contract*)

a. **Facilitation of the DB D&C Work** (*Section 10.2.1 of the D&C Contract*)

The D&C Contractor shall perform, and cause to be performed, the DB D&C Work in compliance with the Baseline Schedule. The D&C Contractor shall provide, and cause to be provided, an adequate workforce and sufficient equipment, materials, tools and supplies so that the DB D&C Work is performed in compliance with the Baseline Schedule. Time shall be of the essence for the D&C Contractor's performance of the DB D&C Work. The D&C Contractor shall perform the DB D&C Work, and cause the DB D&C Work to be performed, in a diligent manner. The D&C Contractor shall maintain, and cause to be maintained, the progress of the DB D&C Work so as to achieve each Milestone Event on or before the applicable Milestone Event Dates.

b. **Schedules** (*Section 10.1 of the D&C Contract*)

i. Baseline Schedule (*Section 10.1 of the D&C Contract*)

The Baseline Schedule shall be produced using Primavera P6 software in "Critical Path Method" format with monthly updates in ".xer" format and ".pdf" format, and shall set forth the Milestone Events and Milestone Event Dates, the Scheduled Phase 1 Completion Date, the Scheduled Completion Date, and all other requirements provided in the Requirements and Provisions for Work. The Baseline Schedule shall fully describe the intended sequence of accomplishing all the various portions of the DB D&C Work, relevant portions of the D&C Work and related activities necessary to complete the DB D&C Work, D&C Work and DBO for each Phase. The Baseline Schedule shall demonstrate, to the reasonable satisfaction of the Borrower (and subject to the approval of the Port Authority, if applicable), an expeditious, practicable and reasonable plan for achieving the Milestone Events by the Milestone Event Dates. In no event shall the Baseline Schedule contain any extension of a Milestone Event Date or any other revisions which would result in any Milestone Event not being achieved by the relevant Milestone Event Date, without in either such instance obtaining the prior written consent of the Borrower (and the Port Authority, if applicable) to such extension or other revision. The D&C Contractor shall apply Best Management Practices for scheduling, and shall: (i) be responsible for providing the Borrower and the Port Authority with updates to

the Baseline Schedule in accordance with the Requirements and Provisions for Work or as may be required sooner pursuant to a provision of the D&C Contract; and (ii) be responsible for providing a written general description of the D&C Contractor's proposed means and methods that will be used in executing the DB D&C Work. The D&C Contractor shall also prepare detailed trade-by-trade critical path method schedules for each Subcontract. These Subcontract Schedules shall be integrated into the Baseline Schedule. The Borrower, the Port Authority, and the Borrower's Representative shall be entitled to rely fully on the content of the Baseline Schedule in planning and scheduling performance of their obligations under the DB Project Documents or of interrelated work by their own forces or Managed Contractors and Separate Contractors. The D&C Contractor may also alter the Baseline Schedule, upon the Borrower's prior written consent, and also subject to the review and comment or approval of the Port Authority, as applicable, in accordance with the provisions of the Lease Agreement for the Project Schedule.

ii. Recovery Schedules and Remedial Plan (*Sections 10.1.8 and 10.7.1 of the D&C Contract*)

The D&C Contractor shall submit immediate reports of any delay in the DB D&C Work, which reports shall identify the cause for the delay, the estimated duration and cost of the delay, and a specific remedy of the delay. To the fullest extent possible, notifications shall be submitted to the Borrower in advance of the anticipated delay to allow for all reasonable action on behalf of all involved parties to achieve a resolution minimizing schedule or cost impact. If any critical path element of the DB D&C Work (including any Milestone Event) is not achieved by its corresponding critical path date, or the Borrower believes, in the exercise of its reasonable judgment, that any critical path element of the DB D&C Work will not be achieved by its corresponding critical path date due to the fault, act or omission of the D&C Contractor or any Subcontractor, then, upon written notice from the Borrower, the D&C Contractor shall cause its employees and Subcontractors, at its own expense, to perform and work at hours and on Days, in addition to the normal working hours and normal working Days, whatever overtime work or shift work is necessary to return such critical path elements of the DB D&C Work to being in compliance with the Baseline Schedule. Notwithstanding the foregoing, if the critical path progress of the DB D&C Work is more than thirty (30) Days behind the then-current Baseline Schedule (or if otherwise required by the Project Documents), the D&C Contractor shall submit an "Alternative Solutions report" in accordance with, and as referred to in, Chapter 3.2.8(d) of the General Provisions that includes a proposed schedule recovery efforts such as multiple shifts or overtime to mitigate any potential delay, and will reasonably consider revisions to the Baseline Schedule proposed by the Borrower and the Port Authority to achieve completion within the timeframe set forth in the D&C Contract. The D&C Contractor shall work "premium" time and shifts and incur any other costs necessary to recover or accelerate the Baseline Schedule with no increase in the GMP for the relevant Phase, unless GMP adjustments and/or Baseline Schedule recovery is necessary due to Material Borrower Changes or available via Equivalent Project Relief. The D&C Contractor may propose schedule recovery options for the acceleration of work in lieu of overtime, subject to the Borrower's prior written approval in its sole discretion (and Port Authority approval, if applicable). To the extent that the D&C Contractor is unable to obtain any permits or approvals required for overtime work from the Port Authority or Governmental Authorities, or the Borrower is unable to obtain any required consent of a tenant to perform overtime work, it shall, to the extent reasonably practicable, revise its means and methods of construction, including increasing the amount of labor and equipment, in order to achieve such compliance. In addition to (and without limiting) any step-in or other rights of the Port Authority under the Project Documents, if the D&C Contractor fails to take prompt and adequate corrective action to bring the DB D&C Work back on schedule to the satisfaction of the Borrower, the Borrower reserves the right, on five (5) Days' notice to the D&C Contractor, to perform such DB D&C Work as it deems necessary and to back charge the cost thereof against payments due to the D&C Contractor under the D&C Contract.

If (i) the D&C Contractor fails to achieve any interim Milestone Events identified on the "Project Summary" section of the Baseline Schedule, within thirty (30) Days of the scheduled date therefor as set forth in the Baseline Schedule, or (ii) a remedial plan is otherwise required pursuant to the Lease

Agreement, the D&C Contractor shall be required to prepare and deliver to the Borrower and, if required by the Lease Agreement, the Port Authority, within thirty (30) Days of failing to achieve such interim Milestone Event (or, if sooner, within the time period required by the Lease Agreement), a Remedial Plan (in accordance with the Borrower's obligation to cure an event of default under the Lease Agreement and otherwise required by the D&C Contract) to address such failure, setting out a program (e.g., accelerated work program) providing reasonable assurance that the applicable Milestone Event will be achieved by the completion date set forth in such Remedial Plan, provided that such Remedial Plan is subject to the Borrower's approval and, if applicable, the Port Authority. Unless otherwise provided in the D&C Contract, the D&C Contractor shall not be deemed to be in breach of the D&C Contract for failing to achieve interim Milestone Event(s) unless the D&C Contractor is not using all reasonable and diligent efforts to comply with the terms of the Remedial Plan.

c. ***Completion of the DB D&C Work (Section 10.4 of the D&C Contract)***

i. ***Completion of the Phase 1 DB D&C Work (Section 10.4.1 of the D&C Contract)***

The D&C Contractor shall substantially complete the Phase 1 DB D&C Work (other than Punch List items approved by the Borrower and the Port Authority) by no later than the Scheduled Phase 1 DB Completion Date as adjusted in accordance with the terms of the D&C Contract. Subject to Borrower's right to assess Liquidated Damages against the D&C Contractor, the Borrower's remedy in the event of the D&C Contractor's failure to meet a Liquidated Damages Milestone Event by the applicable Milestone Event Date shall be limited to the assessment of Liquidated Damages.

When the D&C Contractor believes that it has satisfied all of the requirements in order to achieve Substantial Completion of Phase 1, the D&C Contractor shall advise the Borrower in accordance with this Agreement, the Lease Agreement and the Requirements and Provisions for Work and shall deliver to the Borrower and, if requested by the Borrower, the Port Authority a certificate by an authorized officer of the Architect of Record or Engineer of Record certifying that the underlying requirements have been met and complying with the Lease Agreement and that the Phase 1 DB D&C Work has been constructed in accordance with this Agreement, the Lease Agreement and the other DB Project Documents and in compliance with all Good Order Requirements, Applicable Laws and Applicable Standards (including installation, commissioning and activation of all equipment and systems required to be installed, commissioned and activated by the D&C Contractor and/or Borrower in accordance with the this Agreement, Lease Agreement and the other Project Documents.

In addition to the requirements of the foregoing two paragraphs, substantial completion of the Phase 1 DB D&C Work ("Substantial Completion of Phase 1") shall only occur if the D&C Contractor has satisfied (x) all of the applicable conditions set forth in the RPWs, TCAP Process and the Airport Security Guidelines Manual with respect to the Phase 1 DB D&C Work, and (y) the following conditions:

i. all certifications for mechanical, electrical, electronics, structural, plumbing, architectural and other systems that are essential to the operation, functionality and safety of the Phase 1 Improvements, as identified by and agreed to by the D&C Contractor, the Borrower and the Port Authority in the DB Project Documents (other than such certifications that shall be delivered in connection with the Phase 2 Improvements) shall have been received; and (2) all inspection reports for such systems shall have been made; in each case in accordance with the requirements of the DB Project Documents, Applicable Laws and Applicable Standards;

ii. all plans and manuals for mechanical, electrical, electronics, structural, plumbing, architectural and other systems that are essential to the operation, functionality and safety of the Phase 1 Improvements, as identified by and agreed to by the D&C Contractor, the Borrower and the Port Authority in the DB Project Documents, and are required in accordance with the DB Project Documents, Good Order

Requirements, Applicable Laws, or Applicable Standards (other than such plans and manuals that shall be delivered in connection with the Phase 2 Improvements) shall have been submitted and, if required under the DB Project Documents, Good Order Requirements, Applicable Law or Applicable Standards, shall have received the Port Authority approval and, if applicable, the Borrower approval;

iii. all other submittals required by the DB Project Documents, Good Order Requirements, Applicable Law or Applicable Standards to have been provided by the D&C Contractor prior to or at Substantial Completion of Phase 1 shall have been submitted and, if required under this Agreement, the other DB Project Documents, Good Order Requirements, Applicable Law or Applicable Standards, shall have received the Port Authority approval and, if applicable, the Borrower approval;

iv. the D&C Contractor shall have prepared, in consultation with the Borrower and the Port Authority (including with respect to the Port Authority's right to add or remove items to or from the punch list in its discretion), the punch list in respect of the Phase 1 DB D&C Work, and such punch list for all D&C Work shall have received Port Authority and the Borrower approval; and

v. with respect to the individual tenant spaces in the New Terminal Facilities intended to be subleased to Concession Sublessees or Airline Sublessees (to the extent of any Subleases for portions of the New Terminal Facilities related to airline passenger services), the D&C Contractor shall be required to have installed the basic infrastructure and equipment for the supply of necessary Utilities to such tenant spaces and to have provided fire alarm, fire protection and space separation between occupied and construction sites.

Following (and subject to) delivery of the certificate(s) as required in subsections above to the Borrower and the provision of the certificate required by the Lease Agreement from the Borrower to the Port Authority, the Phase 1 DB D&C Work will be inspected by the Port Authority and the Borrower (and the D&C Contractor shall be required to cooperate and coordinate with the Port Authority and the Borrower to facilitate such inspection and allow the Port Authority to perform an audit review of all compliance-related documents in accordance with the TCAP Process, the Airport Security Guidelines Manual, the Requirements and Provisions for Work (including Chapter 21.2.8 of the General Provisions) and within the timeframes set forth in the Requirements and Provisions for Work in order to Permit the Port Authority and the Borrower to certify that the conditions for Substantial Completion of Phase 1 have (or have not) been met), and if the same has been completed as certified by the D&C Contractor and the Architect of Record or Engineer of Record, and the D&C Contractor and the Borrower have been found in compliance by the Port Authority, in all respects, with the requirements of the Lease Agreement, the other DB Project Documents, Good Order Requirements, Applicable Standards and Applicable Law with respect to such Phase 1 D&C Work, a certificate to such effect shall be issued to the Borrower by the Port Authority (as so issued by the Port Authority, the "Phase 1 Completion Certificate"). The D&C Contractor shall promptly transfer custody and control of the Off-Premises Facilities forming part of the Phase 1 Improvements to the Borrower following receipt of the Phase 1 Completion Certificate (if not previously transferred upon completion thereof), and the D&C Contractor shall have no further obligations with respect to such Off-Premises Facilities and the associated Temporary Rights of Access except as otherwise set forth in this Agreement or the other DB Project Documents. The date specified in the Phase 1 Completion Certificate shall be referred to in this Agreement as the "Phase 1 Completion Date" and shall be the date on which substantial completion of the Phase 1 D&C Work (i.e., completion of all Phase 1 D&C Work other than Punch List items approved by the Port Authority and the Borrower and the Phase 1 D&C Work specifically identified in the Baseline Schedule as extended beyond Substantial Completion) has been achieved.

Following Substantial Completion of Phase 1, the D&C Contractor shall promptly proceed to complete any remaining Phase 1 DB D&C Work required to achieve DBO, and assist the Borrower in the achievement of DBO for the Phase 1 D&C Work in accordance with the Lease Agreement.



Following DBO of the Phase 1 D&C Work, the D&C Contractor shall promptly proceed to complete all outstanding Punch List items for the Phase 1 DB D&C Work and, in coordination with the Borrower, prepare a “Request for Final Inspection” of the Phase 1 D&C Work in accordance with the TCAP Process for submission to the Port Authority. Following (A) a final inspection by the Port Authority and the Borrower of the Phase 1 D&C Work under the TCAP Process, (B) confirmation by the Port Authority and the Borrower that all outstanding Punch List items for the Phase 1 D&C Work have been completed and (C) the submission of all required documentation by the D&C Contractor to the Port Authority and the Borrower and the approval thereof by the Port Authority and the Borrower where such approval is required in accordance with the DB Project Documents, Good Order Requirements, Applicable Law or Applicable Standards, the Lease Agreement provides that the Port Authority shall promptly issue a “Final Certificate of Authorization to Occupy or Use” under the TCAP Process with respect to the Phase 1 D&C Work.

ii. Completion of the Phase 2 DB D&C Work (*Section 10.4.2 of the D&C Contract*)

The D&C Contractor shall substantially complete the Phase 2 DB D&C Work (other than Punch List items approved by Borrower and the Port Authority) by no later than the Scheduled DB Completion Date. Subject to Borrower’s right to assess Liquidated Damages against the D&C Contractor, the Borrower’s remedy in the event of the D&C Contractor’s failure to meet such Liquidated Damages Milestone Event by the applicable Milestone Event Date shall be limited to the assessment of Liquidated Damages.

When the D&C Contractor believes that it has satisfied all of the requirements in order to achieve Substantial Completion of Phase 2, the D&C Contractor shall advise the Borrower to such effect in accordance with this Agreement, the Lease Agreement and the Requirements and Provisions for Work and shall deliver the Borrower, and, if requested by the Borrower, to the Port Authority a certificate by an authorized officer of the D&C Contractor and the Architect of Record or Engineer of Record certifying that the underlying requirements of the Lease Agreement have been met and that the Phase 2 of the DB D&C Work has been constructed in accordance with the DB Project Documents, approved Construction Applications (including all Drawings and Specifications thereof) and the provisions of this Agreement, the Lease Agreement and in compliance with all Good Order Requirements, Applicable Laws and Applicable Standards (including installation, commissioning and activation of all equipment and systems required to be installed, commissioned and activated by the D&C Contractor and/or the Borrower in accordance with the Lease Agreement, the D&C Contract and other DB Project Documents).

Without limiting the generality of the foregoing, substantial completion of the Phase 2 DB D&C Work (“Substantial Completion of Phase 2”) shall only occur if the D&C Contractor, and the Borrower so concurs, shall have: (i) obtained a Phase 1 Completion Certificate with respect to the Phase 1 D&C Work, (ii) satisfied all of the applicable conditions set forth in the Requirements and Provisions for Work, the TCAP Process, the Lease Agreement and the Airport Security Guidelines Manual with respect to the Phase 2 D&C Work; and (iii) satisfied the following conditions

i. all certifications for mechanical, electrical, electronics, structural, plumbing, architectural and other systems that are essential to the operation, functionality and safety of the New Terminal Facilities, as identified by and agreed to by the D&C Contractor, the Borrower and the Port Authority in the DB Project Documents, shall have been received; and (2) all inspection reports for such systems shall have been made; in each case in accordance with the requirements of the DB Project Documents, Good Order Requirements, Applicable Law and Applicable Standards;

ii. all plans and manuals for mechanical, electrical, electronics, structural, plumbing, architectural and other systems that are essential to the operation, functionality and safety of the New

Terminal Facilities, as identified by and agreed to by the D&C Contractor, the Borrower and the Port Authority in the DB Project Documents, and are required in accordance with the DB Project Documents, Good Order Requirements, Applicable Law or Applicable Standards shall have been submitted and, if required under the DB Project Documents, Good Order Requirements, Applicable Law or Applicable Standards, shall have received Port Authority approval and, if applicable, the Borrower approval;

iii. all other submittals required by the DB Project Documents, Good Order Requirements, Applicable Law or Applicable Standards to have been provided by the D&C Contractor prior to or at Substantial Completion of Phase 2 shall have been submitted and, if required under this Agreement, the other DB Project Documents, Good Order Requirements, Applicable Law or Applicable Standards, shall have been approved by the Port Authority approval and, if applicable, the Borrower approval;

iv. the D&C Contractor shall have prepared, in consultation with the Borrower and Port Authority (including with respect to the Port Authority's right to add or remove items to or from the punch list in its discretion), the punch list in respect of the Phase 2 D&C Work, and such punch list shall have received the Port Authority and the Borrower approval; and

v. with respect to the individual tenant spaces in the New Terminal Facilities intended to be subleased to Concession Sublessees or Airline Sublessees (to the extent of any Subleases for portions of the New Terminal Facilities related to airline passenger services), the D&C Contractor shall be required to have installed the basic infrastructure and equipment for the supply of necessary Utilities to such tenant spaces and to have provided fire alarm, fire protection and space separation between occupied and construction sites.

Following (and subject to) delivery of the certificate(s) as required in this subsection above made to the Borrower and the provision of the certificate required by the Lease Agreement from the Borrower to the Port Authority, the Phase 2 DB D&C Work will be inspected by the Port Authority and the Borrower (and the D&C Contractor shall be required to cooperate and coordinate with the Port Authority and the Borrower to facilitate such inspection and allow the Port Authority to perform an audit review of all compliance-related documents in accordance with the TCAP Process, the Airport Security Guidelines Manual, the Requirements and Provisions for Work (including Chapter 21.2.8 of the General Provisions) and within the timeframes set forth in the Requirements and Provisions for Work in order to permit the Port Authority and the Borrower to certify that the conditions for Substantial Completion of Phase 2 have (or have not) been met), and if the same has been completed as certified by the D&C Contractor and Architect of Record or Engineer of Record, and the D&C Contractor and the Borrower have been found in compliance by the Port Authority, in all respects, with the requirements of the Lease Agreement, the other DB Project Documents, Good Order Requirements, Applicable Standards and Applicable Laws with respect to such Phase 2 D&C Work, a certificate to such effect shall be issued to the Borrower by the Port Authority (as so issued by the Port Authority, the "Completion Certificate"). The D&C Contractor shall promptly transfer, following receipt of the Completion Certificate, custody and control to the Borrower of the Off-Premises Facilities not previously transferred to the Borrower, and the D&C Contractor shall have no further obligations with respect to such Off-Premises Facilities and the associated Temporary Rights of Access except as otherwise set forth in this Agreement, the Lease Agreement and the other DB Project Documents.

The date specified in the Completion Certificate shall be referred to in this Agreement as the "Completion Date" and shall be the date on which substantial completion of the entire D&C Work (i.e., completion of all D&C Work other than Punch List items approved by the Port Authority and the Borrower and D&C Work specifically identified in the Baseline Schedule as extending beyond Substantial Completion of Phase 2) has been achieved.

Following Substantial Completion of Phase 2, the D&C Contractor shall promptly proceed to complete any remaining Phase 2 DB D&C Work required to achieve DBO, and assist the Borrower in the achievement DBO of the Phase 2 D&C Work in accordance with the Lease Agreement.

When a Phase of the DB D&C Work or designated portion thereof shall have achieved substantial completion and the Borrower has so concurred, the D&C Contractor shall, with respect to the Punch List that has been approved by the Borrower and the Port Authority: (a) review the Punch List with the Borrower and the Borrower's Representative; (b) schedule, coordinate, and perform or cause to be performed the prompt correction and completion of the items on the Punch List; and (c) institute a comprehensive and detailed Punch List management system that includes repetitive follow-up with all Subcontractors, Design Professionals and others as required until the Borrower and the Port Authority have accepted the correction of each deficient item on the Punch List. Punch List tracking documents shall be issued on a regular basis no less frequently than once a week. The D&C Contractor shall promptly perform all Punch List work at such times and in such a manner so as to not unreasonably interfere with the use or occupancy of the Project Site. Failure to include an item in any punch list does not alter the responsibility of the D&C Contractor to complete all DB D&C Work in accordance with the DB Project Documents. Upon notice from the D&C Contractor that it has completed or corrected the items contained on the Punch List, the Borrower and, pursuant to the terms of the Lease Agreement, the Port Authority will make an inspection to determine whether the DB D&C Work or designated portion thereof has achieved substantial completion. If such inspection discloses any item other than minor Punch List or corrective work, whether or not included on the D&C Contractor's list, which is incomplete or not in accordance with the requirements of the Contract Documents, the D&C Contractor shall, as a condition to the issuance of the Completion Certificate, complete or correct such item upon notification by the Borrower or the Borrower's Representative. The D&C Contractor shall then submit a request for another inspection by the Borrower or the Borrower's Representative, and the Port Authority to determine whether substantial completion shall have occurred. Only two such inspections shall be made at the Borrower's cost as a component of the GMP. The cost of all subsequent inspections requested by the D&C Contractor shall be paid by the D&C Contractor, at its sole cost and expense.

Following DBO of Phase 2, the D&C Contractor shall promptly proceed to complete all outstanding Punch List items for the Phase 2 DB D&C Work and submit to the Borrower a Request for Final Inspection in accordance with the TCAP Process for submission to the Port Authority. Following (i) a final inspection by the Port Authority and the Borrower of the Phase 2 D&C Work under the TCAP Process, (ii) confirmation by the Port Authority and the Borrower that all outstanding Punch List items for the Phase 2 D&C Work have been completed, (iii) the submission of all required documentation by the D&C Contractor to the Port Authority and the Borrower and the approval thereof by the Port Authority and the Borrower where such approval is required in accordance with the DB Project Documents, Good Order Requirements, Applicable Law or Applicable Standards, and (iv) the payment by the Borrower to the Port Authority of the remaining portion of the Port Authority Contingency Amount, if any, as of the Completion Date (less, if applicable, the Negotiated Change Adjustment (as defined in the Lease Agreement)), the Lease Agreement provides that the Port Authority shall promptly issue a Final Certificate of Authorization to Occupy or Use under the TCAP Process with respect to the Phase 2 D&C Work.

iii. Partial and Final Completion of the DB D&C Work *(Section 10.4.3 of the D&C Contract)*

Notwithstanding the provisions in the D&C Contract affecting the D&C Contractor's obligations to achieve Substantial Completion of Phase 1 and Substantial Completion of Phase 2, when a material portion of the D&C Work is substantially completed or is properly usable for the purposes set forth in the Lease Agreement (any portion of an Installation, hereinafter called an "Installation Portion," and any portion of the D&C Work relating to the New Terminal Facilities, hereinafter called a "Partial Occupancy Portion"), the D&C Contractor shall advise the Borrower to such effect and, if the Borrower concurs, deliver

to the Borrower: (a) a certificate signed by an authorized officer of the D&C Contractor certifying that the requirements of Section 10(c)(i) of this Appendix G (if such Installation Portion or Partial Occupancy Portion is part of the Phase 1 D&C Work) or Section 10(c)(i) of this Appendix G (if such Installation Portion or Partial Occupancy Portion is part of the Phase 2 D&C Work) of the Design Build Contract with respect to such Installation Portion or Partial Occupancy Portion have been met and that such Installation Portion or the Partial Occupancy Portion, as applicable, has been constructed, in all respects, in accordance with all approved Construction Applications (including all Drawings and Specifications thereof) and the provisions of the DB Project Documents and all Good Order Requirements, Applicable Law and Applicable Standards (including installation, commissioning and activation of all equipment and systems required to be installed, commissioned and activated by the D&C Contractor and/or the Borrower in accordance with this Agreement, the Lease Agreement and the other DB Project Documents), (b) a certificate substantially in the form required by the Lease Agreement signed and sealed on behalf of the Architect of Record by a New York State licensed architect on its staff certifying that the approved Construction Application (including all Drawings and Specifications thereof) relating to such Installation Portion or Partial Occupancy Portion, as applicable, are in compliance, in all respects, with the DB Project Documents, Good Order Requirements, Applicable Law and Applicable Standards, and (c) a certificate in substantially in the form required by the Lease Agreement signed and sealed on behalf of the Engineer of Record by a New York State licensed engineer on its staff certifying that such Installation Portion or Partial Occupancy Portion, as applicable, has been constructed, in all respects, in accordance with the DB Project Documents, Good Order Requirements, Applicable Law and Applicable Standards. The D&C Contractor shall also certify that such Installation Portion or Partial Occupancy Portion, as applicable, can be properly used without interfering in any material respect with the completion of the remaining DB D&C Work of the applicable Phase. Without limiting the generality of the foregoing, the D&C Contractor shall have satisfied all of the applicable conditions set forth in the TCAP Process and the conditions set forth Section 10(c)(i) of this Appendix G (if such Installation Portion or Partial Occupancy Portion is part of the Phase 1 D&C Work) or Section 10(c)(i) of this Appendix G (if such Installation Portion or Partial Occupancy Portion is part of the Phase 2 D&C Work), but solely with respect to the Installation Portion or the Partial Occupancy Portion.

After conducting an inspection, if any, the Port Authority may, in its discretion, issue a “Temporary Certificate of Authorization to Occupy or Use” with respect to such Installation Portion or Partial Occupancy Portion, as applicable; provided that, (a) the D&C Contractor shall not use or permit the use of any Partial Occupancy Portion until such Temporary Certificate of Authorization to Occupy or Use is received, (b) the D&C Contractor shall assist the Borrower, if requested, in the transfer of custody and control of any Installation Portion to the Port Authority following receipt of such Temporary Certificate of Authorization to Occupy or Use with respect to an Installation Portion, and (c) the D&C Contractor shall have no further obligations with respect to such Installation Portion and the associated Temporary Rights of Access except as otherwise set forth in this Agreement, the Lease Agreement and the other DB Project Documents. The effective date of the Temporary Certificate of Authorization to Occupy or Use shall be the date on which substantial completion of the Installation Portion or Partial Occupancy Portion has been achieved and DBO for such portion(s) has occurred. Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the DB D&C Work shall not constitute acceptance of DB D&C Work not complying with the requirements of the DB Project Documents.

Final Completion of the DB D&C Work occurs when all of the following items are completed: (i) the Port Authority issues a Final Certificate of Authorization to Occupy or Use for both Phases; (ii) the D&C Contractor completes all of the DB D&C Work in accordance with the DB Project Documents to the satisfaction of the Borrower; (iii) all equipment passes respective acceptance tests; (iv) all Punch List items are completed and/or corrected to the satisfaction of the Borrower’s Representative; (v) all mechanics’, materialmen’s and similar liens, are released or adequate security for those liens is otherwise provided, as determined in the Borrower’s sole and absolute discretion; (vi) all Warranties and guarantees, air balance reports, equipment operation and maintenance manuals, Subcontractors’ As-built Drawings, Architect and

Engineer of Record Drawings, and the final BIM model deliverables in accordance with the General Provisions have been delivered; (vii) all rubbish, tools, scaffolding and surplus materials and equipment from the Project Site have been removed; (viii) the D&C Contractor has executed its Final Affidavit and Release of Claims; and (ix) each Subcontractor (and any person who has filed a lien against the Project Site) has executed a Subcontractor's Final Affidavit and Release of Claims, to the extent the D&C Contractor has not provided adequate security as required by the D&C Contract. The D&C Contractor shall also: (i) assist the Borrower in resolving any disputes with the Port Authority with respect to the Port Authority's award, issuance, or approval of Partial Approvals, Partial Approval Work Plans, Temporary Certificates of Authorization to Occupy or Use, substantial completion, Final Certificates of Authorization to Occupy or Use, or Completion Certificates for the DB D&C Work; and (ii) provide appropriate support and assistance to, and cooperate and coordinate with, the facilities manager for initial operating services at the Project, including without limitation the ORAT Service Provider.

d. *Unavoidable Delay Events/Entitlement to Extension of Time (Section 10.8 of the D&C Contract)*

If an Unavoidable Delay results from one of the following Unavoidable Delay Events:

- i. terrorism or war;
- ii. strikes (not specific to the DB D&C Work) that are beyond the D&C Contractor's or its Subcontractors' reasonable control;
- iii. fire or other casualty resulting in property damage to the DB D&C Work (not caused by the D&C Contractor or any Subcontractor's negligence or willful misconduct);
- iv. other Force Majeure events, subject to terms and conditions of the D&C Contract and the Lease Agreement;
- v. Compensation Events, subject to terms and conditions of the D&C Contract and the Lease Agreement; and
- vi. acts or omissions or willful misconduct of the Borrower-Related Entities (or their agents, including without limitation ORAT, operation and maintenance contractors of the Borrower, the Manager, the Borrower's Separate Contractors, and not subject to Equivalent Project Relief), subject to a notice and ten (10) Day opportunity to cure;

then, subject to the terms of the D&C Contract and the terms of the Lease Agreement, and except, in each case, to the extent arising by reason of or attributable to (i) the negligence or willful misconduct of the D&C Contractor or its Subcontractors or (ii) any act or omission by the D&C Contractor or its Subcontractors in breach of the provisions of the D&C Contract or any other DB Project Documents, the Milestone Event Date (and each subsequent related Milestone Event Date) for the applicable Milestone Event shall be extended for each Day of delay to the critical path of the DB D&C Work attributable to the Unavoidable Delay Event, provided that the D&C Contractor strictly complies with its Unavoidable Delay Event Notice requirements, including demonstrating to the Borrower (a) the amount of time past the applicable Milestone Event Date that achievement of the Milestone Event will be delayed by reason of such Unavoidable Delay Event, and (b) that such delay was caused specifically by such Unavoidable Delay Event.

Should an Unavoidable Delay event specified in (i) – (iv) of the Unavoidable Delay Events listed above occur, the D&C Contractor shall only be entitled to non-monetary relief unless the Borrower is

granted Primary Project Relief by the Port Authority under the Lease Agreement. Should an Unavoidable Delay Event specified in subsection (v) above occur, and notwithstanding anything to the contrary in the D&C Contract, the D&C Contractor shall only be entitled to Equivalent Project Relief and only to the extent the Borrower is granted such Primary Project Relief by the Port Authority under the Lease Agreement. Unavoidable Delay events described in subsection (vi) above shall be deemed a Material Borrower Change.

The D&C Contractor shall give written notice to the Borrower within fourteen (14) Days following the date following the D&C Contractor's knowledge of the occurrence of any Unavoidable Delay Event (or event likely to become an Unavoidable Delay Event ) (or such shorter period as may be required by the Lease Agreement), provided that in the case of the same Unavoidable Delay Event being a continuing cause of delay, only one (1) notice shall be necessary) (an "Unavoidable Delay Event Notice"). The Unavoidable Delay Event Notice must include (A) a detailed description of what is known about the Unavoidable Delay Event claimed by the D&C Contractor, (B) details of the circumstances from which the claimed Unavoidable Delay Event arises, (C) an estimate of the duration of the delay in the performance of obligations pursuant to the D&C Contract attributable to such Unavoidable Delay Event as shown on a time impact analysis in accordance with the requirements set forth in the General Provisions, together with such other information in support thereof, if known at that time, and (D) evidence reasonably satisfactory to the Borrower that such event could not reasonably be avoided by the D&C Contractor without material cost or delay, including by re-sequencing, reallocating or redeploying its forces to other portions of the DB D&C Work. The D&C Contractor shall also provide such further information relating to the claimed Unavoidable Delay Event as the Borrower may reasonably require or as required to pursue a claim for Equivalent Project Relief pursuant to the Lease Agreement. The D&C Contractor may update the information provided in the Unavoidable Delay Event Notice within the seven (7) Day period commencing at the submission of the Unavoidable Delay Event Notice (or at other times, if reasonably requested by the Borrower or agreed to by the Borrower), which information shall be subject to further updates until the Borrower and the D&C Contractor agree to the duration of the Unavoidable Delay Event. The Borrower agrees that any Unavoidable Delay Event Notice issued by the D&C Contractor may be included as part of a Compensation Event Notice or Delay Event Notice, if applicable.

If for any reason the D&C Contractor fails to deliver such written Unavoidable Delay Event Notice within the time period required above or such shorter period as required by the Lease Agreement, the D&C Contractor shall be deemed to have irrevocably and forever waived and released any Claim or right to time extensions or any other relief, with respect to such event that the D&C Contractor may otherwise have been able to claim as an Unavoidable Delay Event pursuant to the D&C Contract.

Upon the D&C Contractor's knowledge (based upon the applicable standard of care) of an event that is or may be an Unavoidable Delay Event, the D&C Contractor shall, and shall cause each of its Subcontractors to take all steps reasonably necessary to mitigate the effects of such event, including all steps that would generally be taken in accordance with Best Management Practice. The D&C Contractor shall promptly deliver to the Borrower an explanation of the measures being undertaken to mitigate the delay and other consequences of such event. The D&C Contractor shall notify the Borrower within ten (10) Days following the date on which it first became aware (or should have become aware, using all reasonable due diligence) that such event has ceased. In the event that the D&C Contractor fails to take (or to cause its Subcontractors to take) mitigation measures as required pursuant to the D&C Contract, the delay and excuse of performance permitted shall be reduced to the extent that such mitigation measures, if taken, would have reduced the impact of such event on the D&C Contractor.

Notwithstanding the occurrence of an event that is or may be an Unavoidable Delay Event, the D&C Contractor shall continue its performance and observance pursuant to the D&C Contract of all of its obligations and covenants to be performed to the extent that it is reasonably able to do so and shall use reasonable efforts to, and shall cause each of its Subcontractors to use reasonable efforts to, minimize the

effect and duration of such event. Without limiting the foregoing, the occurrence of an Unavoidable Delay Event shall not excuse the D&C Contractor from timely payment of its payment obligations to Subcontractors pursuant to the D&C Contract or compliance with Applicable Law, Applicable Standards, and the DB Project Documents, except temporary inability to comply as a direct result of the Unavoidable Delay Event or Delay Event affecting the performance of the DB D&C Work.

Notwithstanding anything to the contrary contained in the D&C Contract, no extension of time shall be granted by reason of an Unavoidable Delay Event if and to the extent that the D&C Contractor could have avoided or mitigated the resulting delay and such mitigation steps were approved by the Borrower. If the D&C Contractor identifies steps to avoid or mitigate such delays and obtains the Borrower's prior written approval for such costs and expenses, then the D&C Contractor shall be entitled to a Change Order for the actual, documented, reasonable, and unavoidable costs incurred in connection with such efforts to avoid or mitigate such delays. If the D&C Contractor could not have avoided or mitigated the resulting delay or if the Borrower does not approve the D&C Contractor's identified mitigation steps, then the D&C Contractor's sole and exclusive remedy shall be such relief as set forth in this subsection above. The D&C Contractor shall in no event be entitled to any Claim for damages whatsoever by reason of any such Unavoidable Delay Event, including so-called Eichleay damages. The D&C Contractor shall bear the burden of proving the occurrence of an Unavoidable Delay Event and the resulting impacts.

Notwithstanding anything to the contrary in the DB Project Documents, the D&C Contractor shall not be entitled to receive any additional compensation for an Unavoidable Delay to the extent such delay occurs concurrently with delay due to or caused by the D&C Contractor or its Subcontractors.

The D&C Contractor acknowledges that the following events shall not constitute Unavoidable Delays, and that the D&C Contractor shall not be entitled to any extension of time on account thereof: (a) incompleteness or lack of coordination of DB Project Documents, Drawings, Specifications, Shop Drawings or Submittals (b) normal weather delays or conditions based on NOAA standards; (c) the acts, omissions or enforcement by the Port Authority or any Governmental Authority, including without limitation, the enforcement by the Port Authority or Governmental Authorities of their existing rules, requirements, regulations or standard operating procedures, which the D&C Contractor should have reasonably anticipated given the size and complexity of the Project or the D&C Contractor's prior experience with the Port Authority or Governmental Authorities (d) errors and omissions in the Drawings and Specifications arising from the DB Design Work performed by the Design Professionals; and (e) existing conditions which were or should have been known to the D&C Contractor; provided, however, that nothing in the D&C Contract shall impact the ability of the D&C Contractor to seek Equivalent Project Relief for events and delays for which Primary Project Relief is provided in the Lease Agreement to the Borrower.

e. ***Liquidated Damages*** (Section 10.10 of the D&C Contract)

The Borrower and the D&C Contractor recognize that the delay damages to the Borrower which would result from the D&C Contractor's failure to achieve completion of any of the Liquidated Damages Milestone Events are uncertain and cannot be calculated exactly and have agreed that, in lieu of actual damages and subject to the Borrower to seek the Borrower's Direct Damages, if the D&C Contractor shall have failed to achieve any Liquidated Damages Milestone Events by the applicable Milestone Event Dates (as the same may be adjusted pursuant to the D&C Contract) of the D&C Contract and after expiration of a thirty (30) Day grace period, the D&C Contractor shall pay to the Borrower, as liquidated damages and

not as a penalty, with respect to each Liquidated Damages Milestone Event, the applicable Liquidated Damages subject to the Liquidated Damages Cap.

For avoidance of doubt, in the event that the D&C Contractor does not achieve the applicable Liquidated Damages Milestone Event after the expiration of such grace period, then the Liquidated Damages corresponding to such Liquidated Damages Milestone Event shall begin to be assessed against the D&C Contractor starting from the Liquidated Damages Milestone Event Date and for each Day thereafter that the D&C Contractor has not achieved such Liquidated Damages Milestone Event. The Borrower shall have the right to withhold from any sums due to the D&C Contractor under the D&C Contract the amount of Liquidated Damages then due to the Borrower, and apply the same towards payment of such Liquidated Damages. Liquidated Damages shall be assessed for each Day that the D&C Contractor fails to achieve each specific Liquidated Damages Milestone Events (subject to the grace period) until such Liquidated Damages Milestone Events is achieved, or the Liquidated Damages Cap is reached.

The Borrower and the D&C Contractor further acknowledge that the amount of Liquidated Damages provided for represents fair and reasonable consideration under the circumstances existing as of the date of the D&C Contract, and that such sum represents the Borrower's best estimate as of the date of the D&C Contract of the Borrower's damages for delay in the event of the D&C Contractor's failure to achieve any Liquidated Damages Milestone Events by the applicable Milestone Event Dates.

The Borrower and the D&C Contractor acknowledge and agree that the Liquidated Damages relate only to damages to the Borrower caused by the D&C Contractor's delay in achieving any Liquidated Damages Milestone Event by the applicable Milestone Event Date (as the same may be adjusted); provided however, that such Liquidated Damages are not intended to, and, subject to the limitation of liability set forth in the D&C Contract, shall not limit the Borrower's recovery from the D&C Contractor under the terms of the D&C Contract for any direct damages to complete the DB D&C Work arising out of a termination in whole or in part as set forth in the D&C Contract, less the Borrower's extended staffing costs and third-party consultant costs (collectively, the "Borrower Direct Damages");

- (a) if the D&C Contractor is terminated in whole for cause by reason of an Event of Default in accordance with the terms of the D&C Contract, then subject to and without limitation of the Borrower's rights under the D&C Contract to assess Liquidated Damages, the Borrower shall be entitled to recover (i) any Liquidated Damages that have accrued but not been previously recovered by the Borrower, and (ii) the Borrower Direct Damages; and
- (b) if the Borrower issues a partial termination of the DB D&C Work for cause by reason of an Event of Default in accordance with its rights under the D&C Contract, then subject to and without limitation of the Borrower's rights under the D&C Contract to assess Liquidated Damages, the Borrower shall be entitled to recover (i) any Liquidated Damages that have accrued but not been previously recovered by the Borrower, and (ii) the Borrower Direct Damages for completion of the terminated portion of the DB D&C Work.

The Borrower and the D&C Contractor acknowledge and agree that except for the waiver of consequential damages within the D&C Contract, the Liquidated Damages shall be the Borrower's sole remedy for the consequential damages resulting from the D&C Contractor's failure to achieve any Liquidated Damages Milestone Events by the applicable Milestone Event Dates.

The Liquidated Damages due to the Borrower from the D&C Contractor shall not exceed the Liquidated Damages Cap. Notwithstanding anything to the contrary in the D&C Contract, the Liquidated



Damages Cap shall not apply and shall not in any way limit the amount of the Borrower's recovery of Liquidated Damages for: (i) the D&C Contractor's gross negligence or willful misconduct, (ii) claims covered by the D&C Contractor's insurance required to be maintained pursuant to the D&C Contract, (iii) the D&C Contractor's failure to continue to perform services in an event of dispute (provided that the Borrower continues to make undisputed payments to the D&C Contractor), (iv) the D&C Contractor's failure to assign Subcontracts to the Borrower upon termination, (v) the D&C Contractor preventing the Borrower's personnel reasonable access to any portion of the Project Site or DB D&C Work, and/or (vi) the D&C Contractor breaching any anti-bribery and anti-corruption laws, including OFAC. Further, notwithstanding anything to the contrary, the Liquidated Damages Cap shall not be construed to limit the amount the Borrower is entitled to recover for cost overruns.

The limitation of liability for Liquidated Damages to the Liquidated Damages Cap shall apply only to delay claims alleged by the Borrower directly against the D&C Contractor, and nothing in the D&C Contract shall be construed to limit the Borrower's rights of recovery against any third-parties or any Subcontractor, including without limitation the Borrower's claims as third-party beneficiary of any Subcontract, except as may be contained in any limitation of liability expressly included in any Subcontract approved in writing by the Borrower.

#### **11. WARRANTY; NONCONFORMING WORK** *(Article 11 of the D&C Contract)*

The D&C Contractor shall be responsible for the recertification of all Nonconforming Work, including, to the extent necessary, through removal and/or replacement, whether discovered by the D&C Contractor, the Borrower, or by the Port Authority. With respect to the DB D&C Work, the D&C Contractor warrants and guarantees to the Borrower the same Warranty that the Borrower provides the Port Authority pursuant to the Lease Agreement. The D&C Contractor warrants and guarantees (the "Warranty") to the Borrower and Port Authority as follows:

- i. the design of the Project shall satisfy the requirements of the Lease Agreement, D&C Contract, the Requirements and Provisions for Work and the other Project Documents;
- ii. all D&C Work including materials and equipment furnished as part of the construction, shall be (A) complete and conform to Best Management Practice, (B) new or approved recycled materials, of good quality, in conformance with Good Order Requirements, Applicable Laws, Applicable Standards, the Lease Agreement, the D&C Contract, the Requirements and Provisions for Work and the other Project Documents, and (C) once completed, free of all Defects in design, materials and workmanship and fit for its intended purpose; and
- iii. the Final Design Documents, including all final Construction Applications approved by the Port Authority shall (A) be accurate and complete, (B) comply with the requirements of the Project Documents, and (C) accurately reflect the condition of the Project as of the Completion Date.

The "Warranty Period" with respect to each Phase shall be for a term of two (2) years from the issuance by the Port Authority of the Phase 1 Completion Certificate or the Completion Certificate, as applicable, or for such term as is required by the PDD, but, with respect to any portion of the DB D&C Work that is repaired or replaced during such two (2) year period, such term shall be for two (2) years from the date of repair or replacement of such portion of the DB D&C Work, but in no event more than four (4) years from the date of commencement of the original warranty; provided that the Warranty with respect to any Installation Portion or Partial Occupancy Portion that has achieved partial completion prior to the Phase 1 Completion Date or the Completion Date, as applicable shall commence from the issuance by the Port

Authority of a “Temporary Certificate of Authorization to Occupy or Use” with respect to such Installation Portion or Partial Occupancy Portion, as applicable.

If (i) any DB D&C Work is identified as being Nonconforming Work during the Warranty Period, or (ii) a Defect in the DB D&C Work encompassed by the Warranty has occurred during the applicable Warranty Period, then at any time during the DB D&C Work Period with respect to clause (i) and at any time during the Warranty Period and thereafter during the Warranty Period with respect to clause (ii) as applicable, the Borrower or the Port Authority shall be entitled to require that the D&C Contractor, at its sole expense, rectify such Nonconforming Work or Defect, as applicable. The D&C Contractor shall prepare and submit for the Borrower’s and the Port Authority’s approval a corrective action plan meeting the requirements of the D&C Contract (a “Corrective Action Plan”) developed by the D&C Contractor with respect to such Nonconforming Work or Defect in the DB D&C Work, as applicable.

The D&C Contractor shall, within three (3) Days of its receipt of notice of the approval of a Corrective Action Plan, implement the Corrective Action Plan approved by the Borrower and the Port Authority, the Issuing Agent (as such term is defined in the General Provisions) if the Port Authority is not such Issuing Agent and by the Architect/Engineer of Record (as such term is defined in the General Provisions), and shall make any and all repairs or replacements of such DB D&C Work, including the repair and replacement of any and all damage caused by such repair or replacements, to the satisfaction of the Borrower (and, if required by the Lease Agreement, the Port Authority) and at the D&C Contractor’s sole cost and expense.

If the D&C Contractor fails within ten (10) Business Days after receipt of written notice from the Borrower or the Port Authority of any Nonconforming Work or Defect, as applicable, to provide a Corrective Action Plan acceptable to the Borrower and the Port Authority or thereafter fail to commence and diligently continue and complete the correction of such Nonconforming Work or Defect, as applicable, pursuant to, and within the time permitted in the Corrective Action Plan, the Borrower, or the Port Authority, in accordance with their rights to self-help or backcharge, shall be entitled to rectify such Nonconforming Work or Defect, as applicable.

In the event that the D&C Contractor fails to make the foregoing payment or reimbursement to the Borrower (or the Port Authority) for costs incurred to rectify Nonconforming Work, then in addition to all other rights and remedies, the Borrower will be entitled to draw upon (or shall draw upon, wherever it may be required under the Lease Agreement) the D&C Letter of Credit (or other such security) furnished by the D&C Contractor and pay all or a portion of such amounts over to the Port Authority, if required by the Lease Agreement.

In the event that the D&C Contractor’s or any Subcontractor’s failure to perform any of the DB D&C Work in accordance with the terms of the D&C Contract causes or results in a Defect or Nonconforming Work, and the D&C Contractor fails to correct such Defect or Nonconforming Work after receipt of written notice from the Borrower that the Borrower intends to perform such work and expiration of a three (3) Day opportunity to cure, the Borrower shall be entitled to recover the actual, necessary and reasonable costs it incurs to correct such Defect or Nonconforming Work. If the Borrower or the Port Authority determines that an Emergency exists which requires more immediate action than the D&C Contractor is able to provide, the Borrower or the Port Authority may, with prompt notice to the D&C Contractor, perform or cause to be performed such repairs or replacements, in which event the D&C Contractor shall compensate the Borrower or the Port Authority for the cost thereof, on demand.

Any repairs or replacements that the D&C Contractor is required to make pursuant to the D&C Contract shall be completed by the D&C Contractor even if such repairs or replacements may not be completed until after the expiration of the Warranty Period. The Warranty Period solely for the portion or

element of work requiring repair or replacement shall be deemed extended for any repair or replacement, subject to the outside date set forth above. The obligations of the D&C Contractor to make repairs or replacements shall not be satisfied by the payment of money to the Borrower. If the Borrower determines that any materials or equipment installed as part of the DB D&C Work are inherently defective or not fit for their intended use and thus being incapable of repair, then the D&C Contractor shall, upon notification by the Borrower of such determination, furnish and install a replacement for such materials or equipment. The Borrower may, if it so elects, specify the manufacturer and the trade name or model number of the replacement for such materials or equipment provided the replacement is of similar quality and cost as the original materials or equipment. In the event that the D&C Contractor fails to comply with any of the Warranty requirements set forth in the D&C Contract, the Borrower may, in addition to exercising all other legal and equitable remedies it may have, (1) deduct from any payment due or thereafter to become due to the D&C Contractor under the D&C Contract, the amount of damage, cost or expense that has been or, as reasonably estimated by the Borrower, incurred by the Borrower due to such failure by the D&C Contractor, and (2) perform or cause to be performed any needed repairs and replacements, in which event the D&C Contractor shall compensate the Borrower for the cost thereof, on demand. The D&C Contractor hereby expressly waives all claims that its guaranty or any of its Warranties were impaired due to any corrective work performed by, or at the direction of, the Borrower.

The D&C Contract's Warranty provisions shall survive Final Completion of the Project or the expiration or earlier termination of the D&C Contract.

## **12. INSURANCE** *(Article 12 of the D&C Contract)*

### **a. Owner Controlled Insurance Program** *(Sections 12.1.1 and 12.1.2 of the D&C Contract)*

The D&C Contractor is required during the term of the D&C Contract, and until receipt of written notice from the Borrower (if any), to comply with the insurance requirements set forth in the D&C Contract and the insurance requirements set forth in the Lease Agreement to the extent applicable to the D&C Contractor. The D&C Contractor shall be entitled to reimbursement for costs of maintaining such insurance at the costs set forth in the GMP. The D&C Contractor shall compensate the Borrower for any costs assessed by the Port Authority as a result of the D&C Contractor's failure to comply with the insurance requirements to the extent applicable to the D&C Contractor.

The Borrower has obtained an OCIP for the Project to provide for builder's risk, contractor's pollution liability, excess liability, general liability, and workers' compensation insurance. The Borrower must notify the D&C Contractor within seven (7) Days of any notice to cancel any insurance coverages to the extent specially obtained for the Project, and the D&C Contractor shall be reimbursed for any costs incurred through the date of the cancellation of the policies.

### **b. Contractor Professional Indemnity Insurance and Professional Liability Insurance** *(Section 12.1.3 and Exhibit 27 of the D&C Contract)*

The D&C Contractor shall, at a minimum, procure and maintain for six (6) years beyond the completion of all DB D&C Work (or as otherwise provided in the D&C Contract or the Lease Agreement) a project-specific contractor's protective professional indemnity insurance policy in the amount of Fifty Million Dollars (\$50,000,000), as approved by the Borrower. If such policy is not renewed or allowed to lapse, the D&C Contractor shall purchase a six (6) year Extended Reporting Period for the policy.

The Architect and Engineer of Record for the Project are separately required to provide professional liability insurance in the per claim and aggregate amount of Twenty Million Dollars (\$20,000,000). Such insurance policy need not be on a project-specific basis but shall be written on a claims-made basis and

maintained for a ten (10) year reporting/discovery period following the completion of each portion of the Project, and subject to the policy requirements of the Lease Agreement. Should such policy be a project specific professional liability policy, the aggregate limits of such policy will not be required to be reinstated annually.

c. ***Subcontractor Insurance Requirements (Section 12.5 of the D&C Contract)***

The D&C Contractor shall require any Subcontractors performing the DB D&C Work to provide either: (i) a surety bond, in each case in form and substance reasonably acceptable to the Borrower from a surety acceptable to the Borrower and the Port Authority, or (ii) as an alternative to requiring surety bonds from certain Subcontractors (as approved by the Borrower), the D&C Contractor shall obtain Subcontractor Default Insurance (“SDI”) ((i) and (ii) collectively, the “Subcontractor Construction Security”), in a form and amount satisfactory to the Borrower, and including a financial endorsement in favor of the Borrower and the Senior Collateral Agent. The Subcontractor Construction Security shall expressly name the Borrower or the Senior Collateral Agent, as applicable, as assignee beneficiaries, transferee beneficiaries, additional obligees or other applicable type of beneficiaries thereof with the right to enforce such security (a) upon an Event of Default (under the D&C Contract and the Lease Agreement) caused by the D&C Contractor or its Subcontractors, or (b) with respect to Subcontracts to which the Borrower is a third-party beneficiary or is enforcing indemnity rights, upon a material breach by the D&C Contractor of its obligations under the D&C Contract. All Subcontractor Construction Security must provide that such Subcontractor Construction Security may be transferred by the Borrower to the Port Authority as transferee beneficiary in the event that the Port Authority succeeds to the position of the Borrower under the D&C Contract or Subcontractor Construction Security must be re-issued in favor of the Port Authority. The D&C Contractor shall deliver a duplicate original of each such Subcontractor Construction Security to the Borrower and the Port Authority before its effective date. The existence of any such Subcontractor Construction Security shall not limit or alter any other remedies of the Borrower or the Port Authority under the D&C Contract or Applicable Law.

The D&C Contractor shall provide subcontractor payment and performance bonds for the amount of the Direct DB D&C Work, or, alternatively enroll such Subcontractor in SDI, with respect to select Subcontracts as determined mutually by the D&C Contractor and the Borrower. Such bonds shall (i) name the Borrower or the Senior Collateral Agent, as applicable, and any other entity reasonably requested by the Borrower, as an obligee, each withstanding to enforce the obligations undertaken by the Subcontractors and surety and the bonds, and (ii) provide that they may be transferred by the Borrower to the Port Authority as transferee beneficiary in the event that the Port Authority succeeds to the position of the Borrower under this Agreement or Subcontractor Construction Security must be re-issued in favor of the Port Authority.

As an alternative to payment and performance bonds (as and to the extent permitted under the Lease Agreement), and upon the Borrower’s written consent, the D&C Contractor may obtain SDI relative to the DB D&C Work. Subcontractors performing DB D&C Work that have a contract value greater than Forty Million Dollars (\$40,000,000) for DB D&C Work shall be excluded from enrollment in SDI. The D&C Contractor may reasonably request that the Borrower approve the exclusion of certain other Subcontractors from the SDI program and instead such Subcontractor shall be required to provide payment and performance bonds in a form acceptable to the Borrower. Such decision to exclude a Subcontractor shall be based on agreement between the D&C Contractor and the Borrower; provided, however, that the D&C Contractor may exclude certain Subcontractors from the SDI program when they present the list of bidders to the Borrower. The costs of payment and performance bonds and SDI, as applicable, shall not be included in the General Conditions Costs or General Requirements Costs, provided however, the cost of SDI and payment and performance bonds shall be included in the GMP. Proof of SDI or payment and performance bonds shall be furnished to the Borrower before commencement of the DB D&C Work by any entity required to obtain such SDI or payment and performance bonds.

In the event the Borrower directs the D&C Contractor to engage a particular Subcontractor who (i) is excluded by the SDI program insurer from the SDI program, and (ii) cannot furnish performance and payment bonds satisfactory to the Borrower issued by sureties licensed to transact the business of a surety in the State where the Project is located; then the Borrower (x) shall bear all risk for that Subcontractor's default, including all increased costs, charges and extensions of the Milestone Event Dates arising out of such Subcontractor's default, and to the extent such default delays the critical path of the Project and cannot be mitigated, (y) if necessary, shall issue a Change Order(s) for such increased costs, and/or extension of the Milestone Event Dates.

**d. *Builder's Risk Insurance (Section 12.2.1 of the D&C Contract)***

The Borrower shall purchase and maintain builder's risk insurance in accordance with the D&C Contract. The Borrower shall pay costs not covered because of such deductibles. However, the Borrower shall be entitled to backcharge the D&C Contractor up to One Hundred Thousand Dollars (\$100,000) in builder's risk deductibles for each claim made against the Borrower's builder's risk policy in any event that any actions of the D&C Contractor or any Subcontractor(s) results in a builder's risk claim. If the D&C Contractor fails to pay any such deductible or backcharge any responsible Subcontractor for the same, the Borrower shall be entitled to withhold the same against a progress payment. The builder's risk insurance shall cover portions of the DB D&C Work stored off the Project Site, and also portions of the DB D&C Work in transit, so long as storage and transit are within the contiguous United States.

**e. *Pollution Legal Liability Insurance (Section 12.2.2 of the D&C Contract)***

Unless otherwise provided, the Borrower has procured the pollution legal liability insurance. The Borrower shall pay costs not covered because of such deductibles, provided, however, the Borrower shall be entitled to backcharge the D&C Contractor up to One Hundred Thousand Dollars (\$100,000) in pollution legal liability deductibles for each claim made against the Borrower's pollution policy in any event that any actions of the D&C Contractor or any Subcontractor(s) results in a pollution policy claim. If the D&C Contractor fails to pay any such deductible or back charge any responsible Subcontractor for the same, the Borrower shall be entitled withhold the same against a progress payment.

**13. INDEMNITY (Article 13 of the D&C Contract)**

**a. *Indemnity arising from the Lease Agreement (Section 13.1.2 of the D&C Contract)***

To the extent required by the Lease Agreement and permitted by law, the D&C Contractor shall defend, indemnify and hold the Indemnitees harmless for all Claims and Losses for matters related to the DB D&C Work or the D&C Contractor or its Subcontractors.

**b. *Other Indemnity Requirements (Section 13.1.1 of the D&C Contract)***

To the fullest extent permitted by law, the D&C Contractor shall indemnify, defend, and hold harmless each of the Indemnitees, from and against any and all Claims and Losses that may be incurred by any of the Indemnitees as a result of, in connection with, or as a consequence of: (i) the negligent performance of the DB D&C Work; (ii) the infringement of any Intellectual Property right arising out of the performance of any of the DB D&C Work; (iii) the negligence or willful misconduct of the D&C Contractor or its Subcontractors; (iv) personal injury or property damage; and (v) the failure to comply with the applicable terms of the Lease Agreement or the Basic Lease or causing the Borrower to fail to comply with the terms of the Lease Agreement or the Basic Lease or to pay any amounts due thereunder. Each of the foregoing (i)–(v) shall be referred to as a "Recovery Action." The D&C Contractor is contractually obligated to include in each Subcontract an indemnity provision substantially similar to the provisions in

the D&C Contract, which shall also expressly provide that the Subcontractor thereunder shall defend, indemnify and hold harmless the Indemnitees, in addition to the D&C Contractor, and that the Indemnitees are third-party beneficiaries of such provision.

#### **14. PAYMENTS TO D&C CONTRACTOR** (*Article 14 of the D&C Contract*)

In consideration of the D&C Contractor's performance of the DB D&C Work and its other obligations under the D&C Contract, the Borrower shall pay to the D&C Contractor the Base Fee, in addition to payments for the Cost of the DB D&C Work, which shall be a fee in an amount equal to Seventy-Two Million Nine Hundred Four Thousand Nineteen Dollars (\$72,904,019), adjusted for fees paid under the Interim Agreement and subject to adjustment as provided in Article 7 of the D&C Contract. In no event shall the D&C Contractor be entitled to receive a Base Fee from the Borrower on account of the costs of insurance or SDI. The Base Fee shall be paid to the D&C Contractor monthly according to the Monthly Cost Projections agreed to between the Borrower and the D&C Contractor. The Borrower may withhold retainage on the Base Fee through fifty percent (50%) completion of the Project, as reasonably determined by the Borrower.

In addition to Base Fee, the Borrower is obligated to reimburse the D&C Contractor for other costs, including without limitation General Conditions Costs, General Requirements Costs, insurance costs (to the extent not already contemplated by the Borrower's OCIP and otherwise required under the D&C Contract), and Direct DB D&C Work Costs (including Subcontractor security – bonds and SDI – up to an amount not to exceed one and one-quarter percent (1.25%) of the aggregate Direct DB D&C Work Cost). The D&C Contractor shall not be entitled to receive any Base Fee on the Cost of the DB C&C Work to the extent attributable to the D&C Contractor's or any Subcontractor's overtime added by a Change; provided nothing shall impact the D&C Contractor's ability to seek Equivalent Project Relief for events and delays for which Primary Project Relief is provided in the Lease Agreement to the Borrower. Subcontractors who incur overtime fees, however, are precluded from making claims for Equivalent Project Relief.

#### **15. GUARANTEED MAXIMUM PRICE (“GMP”), SUBCONTRACTOR BUYOUT AND PAYMENTS** (*Article 15 of the D&C Contract*)

##### **a. The GMP** (*Sections 15.4 and 15.7 of the D&C Contract*)

The GMP for the design and construction of the DB D&C Work is Two Billion Three Hundred Twenty Million Eight Hundred Ninety-Eight Thousand Five Hundred Sixty-Nine Dollars (\$2,320,898,569). The GMP includes One Hundred Fifteen Million One Hundred Seventy-One Thousand Seven Hundred Forty-One Dollars (\$115,171,741) paid or to be paid by the Borrower to the D&C Contractor pursuant to the Interim Agreement. The contract value of the D&C Contract, as opposed to the GMP amount, is therefore Two Billion Two Hundred Five Million Seven Hundred Twenty-Six Thousand Eight Hundred Twenty-Eight Dollars (\$2,205,726,828). The GMP is premised upon the D&C Contractor's Qualifications and Assumptions.

The D&C Contract also allows the Borrower to elect to add the Add Alternates to the GMP. In the event the Borrower makes such election the Borrower (and it is approved by the Port Authority, if applicable), the Borrower and the D&C Contractor shall execute a Change Order for the Add Alternate amount determined by the Borrower and the D&C Contractor (“Add Alternate(s) Lump Sum”), and all work required by the Add Alternates shall become part of the DB D&C Work and shall be subject to the terms and conditions of the D&C Contract. To the extent the aggregate Changes and Add Alternates exceed the Covered Increase Amount, the D&C Contractor shall be entitled to a Base Fee, General Conditions Costs, General Requirements Costs and Construction Contingency for each Add Alternate. Notwithstanding anything else in the D&C Contract, if the Borrower elects to add an Add Alternate, the

D&C Contractor agrees to (i) make no claim for any payment, reimbursement, or damage relating to any Add Alternates, other than for the amount reflected in the Change Order and (ii) submit a revised Schedule of Values subject to the Borrower's approval, incorporating the Add Alternates.

Should the aggregate of the actual Cost of the DB D&C Work, the Base Fee, and other costs and expenses payable to the D&C Contractor under the D&C Contract exceed the GMP, subject to permissible adjustments under the same, the D&C Contractor shall pay for and bear the entire amount of excess.

**b. *Contingency (Sections 15.9 and 15.10 of the D&C Contract)***

The Borrower has provided a Construction Contingency for the Project in the amount of Eighty-Seven Million Five Hundred Sixty-Seven Thousand Three Hundred Seventy-Six Dollars (\$87,567,376) plus any amounts added under the terms of the D&C Contract. The D&C Contractor shall provide an explanation to the Borrower on a monthly basis in connection with the payment application process when it utilizes funds from the Construction Contingency. Provided that the D&C Contractor has achieved Final Completion, any Construction Contingency that is unused upon Final Completion of the DB D&C Work shall be paid to the D&C Contractor ("Construction Contingency Savings"). The Borrower shall at all times have the right to reasonably disallow the D&C Contractor's utilization of the Construction Contingency to the extent that the Borrower concludes that the costs to be paid do not qualify as part of the Cost of the DB D&C Work.

The D&C Contractor may not use the Construction Contingency to pay for Material Borrower Changes or Equivalent Project Relief. As discussed in subsection (e) below, the Construction Contingency may also be increased in the event that "Buyout Savings," defined as the greater of zero or the sum of money that remains in the GMP's subtrade budget (*i.e.*, the sum of all subtrade budgets in the GMP) after all subtrades are procured, exist; provided that the Borrower is also entitled to 50% of such Savings before they form part of the Construction Contingency.

**c. *No Escalations (Section 15.5 of the D&C Contract)***

Escalations in the costs of labor and/or materials, regardless of the cause for such escalations, including without limitation Unavoidable Delays, shall not constitute a Change or entitle the D&C Contractor to a Change Order or additional compensation of any nature, other than as may be available through Equivalent Project Relief.

**d. *Allowances and Exposure Holds (Section 15.6 of the D&C Contract)***

The Borrower and the D&C Contractor acknowledge that the Allowances, Allowance Items and Total Allowance Amount may fluctuate due to a number of circumstances, including the fact that the Borrower may not have yet selected the exact type or quantity of such materials, equipment or other items. No Allowance or portion of Allowance shall be committed without the prior written authorization of the Borrower, which shall be through the use of a Change Order. Once an Allowance Item has been adjusted in accordance with the D&C Contract, the Allowance shall be deemed closed. To the extent an Allowance Amount is insufficient to cover the scope of work, then the GMP will be increased by Change Order. If the line item amount is less than the Allowance, the GMP shall be decreased (and the Construction Contingency shall not be increased) by an amount equal to the amount by which the Allowance is less than the line item. Accordingly, the Borrower is taking the risk for Allowance overruns that would increase the GMP. Any additional costs to the Borrower as a result of such increase in the cost of the Allowance Item may also be funded through certain unallocated contingencies which may be available for any and all Project related activities.

The Direct DB D&C Work Cost contains certain, but not all that will be implemented, individual trade contingency amounts (each an “Exposure Hold”) to cover unforeseen costs with respect to certain identified elements of a Subcontractor’s scope of work, which Exposure Hold may or may not (as determined by the Borrower) be contained in the applicable Subcontract price. An Exposure Hold may only be spent for the element of work for which it is established and only upon prior notice to and approval by the Borrower in writing. Any costs in excess of an Exposure Hold to complete the element of work for which it is established shall be: (i) funded first from available, unused Exposure Holds; and (ii) after such Exposure Holds are exhausted, funded second from any Buyout Savings; and (iii) after exhausting the aforementioned avenues, funded third by the D&C Contractor. In the event and to the extent that funds allocated to Exposure Holds remain available after such DB D&C Work allocated to Exposure Holds is fully performed, the unused exposure hold shall be allocated to Buyout Savings.

*e. Trade Procurement (Section 15.11 of the D&C Contract)*

Notwithstanding that the GMP shall contain a trade breakdown, the completion of the DB D&C Work for the GMP is being guaranteed with respect to the total cost of the DB D&C Work and not the cost for each or any component or part thereof. As Subcontracts are awarded for each of the trades shown in the trade breakdown which were not awarded prior to the establishment of the GMP, the trade breakdown shall be adjusted as follows:

(i) Promptly after all Subcontracts have been awarded and all exposure holds have been resolved, the Borrower shall issue a Change Order reallocating the sum of awards. Any Buyout Savings (excluding savings attributable to value analysis agreed to with the Port Authority) will be split fifty percent (50%) to the Borrower (through a deductive change order reducing the GMP) and fifty percent (50%) to Construction Contingency.

(ii) If, after all of the Subcontracts have been awarded, the total net amount as awarded is greater than the amount shown on the trade breakdown, the costs will be borne by the D&C Contractor.

*f. Progress Payments (Section 15.13 of the D&C Contract)*

By no later than the twenty (20th) Day of each month during the Construction Phase, the D&C Contractor shall submit to the Borrower and the Borrower’s Representative a preliminary Application for Payment for DB D&C Work completed and projected to be completed in such month, in accordance with the respective Schedule of Values, in a form acceptable to the Borrower. The D&C Contractor shall receive, review, and recommend for payment, in whole or in part, all Subcontractors’ pay requests and assemble all costs on a monthly basis into a single Application for Payment. The D&C Contractor shall meet with the Borrower and the Borrower’s Representative within five (5) Days after the receipt by them of such preliminary Application for Payment to review same. On or before the fifth (5th) Day of immediately succeeding month, the D&C Contractor shall submit to the Borrower and the Borrower’s Representative a final form of the Application for Payment based on the aforesaid preliminary copies and incorporating any changes thereto agreed upon during such review meeting. Subject to timely submission by the D&C Contractor of the completed Application for Payment and the Borrower’s right to withhold including for required Subcontractor Retainage and retainage on Base Fee, the Borrower shall pay the D&C Contractor the undisputed amount for each progress payments approved by the Borrower within thirty (30) Days after receipt of the final Application for Payment. Provisions in the D&C Contract governing the timing of payment expressly supersede any New York state ‘Prompt Payment Laws’ in their entirety.



***g. The Borrower's Right to Withhold Payments (Section 15.16.1 of the D&C Contract)***

If any one or more of the following conditions exist:

- (a) Nonconforming Work has not been remedied within a reasonable period following a written request to do so, or as otherwise required by the DB Project Documents;
- (b) the DB D&C Work has not progressed to the point indicated in an Application for Payment;
- (c) third party claims have been filed or reasonable evidence exists indicating likelihood of the filing of such claims;
- (d) failure of the D&C Contractor to make payments to Subcontractors or Suppliers for DB D&C Work performed or labor or materials furnished for the D&C Contractor in accordance with the relevant Subcontract and Applicable Laws, provided the Borrower has previously made payment to the D&C Contractor for such amounts under the DB Project Documents;
- (e) damage to the property of the Borrower, the Port Authority or any Separate Contractor caused by the D&C Contractor or any Subcontractor which has not been repaired within a reasonable time following a written request to do so, or as otherwise required by the DB Project Documents;
- (f) failure to carry out the DB D&C Work in accordance with the DB Project Documents;
- (g) filing by any of the D&C Contractor's laborers, Suppliers, Subcontractors or their sub-subcontractors of a mechanic's lien against the Project Site, and the D&C Contractor has not caused the lien to be discharged; the amount withheld shall equal 150% of the amount of the lien plus any reasonable expenses which may be incurred in discharging the lien, provided Borrower has previously made undisputed payments to the D&C Contractor for such amount;
- (h) an Event of Default shall have occurred; or
- (i) failure of the D&C Contractor to provide the Borrower with satisfactory release and lien waivers;

The Borrower may (i) disapprove, in whole or in part, a Certificate for Payment; (ii) otherwise decide to withhold payment, in whole or in part, from the D&C Contractor; or (iii) nullify the whole or a part of a payment previously made because of subsequently discovered evidence or subsequent observations, in each case to the extent reasonably necessary to protect the Borrower from the losses arising from or relating to a default by the D&C Contractor or its Subcontractors.

Regarding the amounts withheld for items mentioned in clauses (a), (c), (d), (e), (f), (h), and (i) immediately preceding this paragraph, the Borrower shall be entitled to withhold the estimated value of such items, and for all other items, the Borrower shall be entitled to withhold an amount reasonably related to the grounds for disapproval.

If the conditions giving rise to the Borrower's disapproval, withholding, or nullification have been cured however, payment will be made of the applicable withheld amounts, subject to the Borrower's right to withhold payment as may be provided elsewhere in the D&C Contract.

In addition to any right of setoff provided by law, the Borrower may also deduct any amounts due or to become due from the D&C Contractor to the Borrower or its Affiliates from any sums or damages due or to become due from the Borrower to the D&C Contractor under the D&C Contract. No progress payments made shall constitute the Borrower's or Port Authority's final acceptance or approval of the DB D&C Work or a waiver of any of Borrower's or the Port Authority's respective rights or remedies, with respect to the DB D&C Work.

## **16. DISPUTE RESOLUTION** *(Article 16 of the D&C Contract)*

### **a. Disputes Related to the Port Authority and Lease Agreement** *(Section 16.1.1 and 16.5 of the D&C Contract)*

Any dispute that is subject to the dispute resolution procedures set forth in the Lease Agreement will be resolved in accordance with the Lease Agreement, including but not limited to the provisions of the Lease Agreement governing disputes involving technical or engineering matters that are subject to resolution by the Chief Engineer, provisions of the Lease Agreement involving a dispute or disagreement regarding Other Redevelopments, and provisions of the Lease Agreement providing the right of joinder for certain disputes under the D&C Contract.

### **b. Dispute Resolution Process** *(Section 16.2 of the D&C Contract)*

In the event of a dispute between the D&C Contractor and the Borrower arising from or in connection with the D&C Contract that is not subject to Section 16(a) of Appendix G of this Official Statement, such dispute will be subject to the dispute resolution process set forth below. For the avoidance of doubt, the dispute resolution procedure shall apply only to Disputes directly between the D&C Contractor and the Borrower and, if at any time during the pendency of such Dispute, the Dispute becomes subject to the provisions governing disputes related to the Port Authority and the Lease Agreement, the terms of this Section 16(b) of Appendix G of this Official Statement shall cease to apply and such Dispute shall be governed by the provisions governing disputes related to the Port Authority and the Lease Agreement.

The D&C Contractor and the Borrower are fully committed to working with each other throughout the performance of the DB D&C Work and agree to communicate regularly with each other at all times so as to avoid or minimize Disputes. If Disputes do arise, the D&C Contractor and the Borrower each commit to resolving such Disputes in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the DB D&C Work

The D&C Contractor and the Borrower will first attempt to resolve any through discussions between representatives of each party (the "D&C Contractor's Dispute Representative" and the "Borrower's Dispute Representative," respectively), which discussions shall conclude within five (5) Days of the written request to meet unless the D&C Contractor and the Borrower mutually agree otherwise.

If a Dispute cannot be resolved through the D&C Contractor's Dispute Representative and the Borrower's Dispute Representative, then, upon the request of either party, senior representatives from each party (the "Senior Representatives"), each with the necessary settlement authority within their own organizations to fully resolve the Dispute on behalf of their respective organizations, shall meet as soon as possible, but in no case later than ten (10) Days after such a request is made, to attempt to resolve such Dispute. Three (3) Days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their Dispute.

Engagement in the foregoing dispute avoidance and resolution procedures is a condition precedent to a Party's right to refer a Dispute to mediation or litigation.

If, after meeting, the Senior Representatives determine that the Dispute cannot be resolved on terms satisfactory to both parties, either party may demand that the other party attend a mediation session and attempt to negotiate a resolution of the Claim. The D&C Contractor and the Borrower shall use best efforts to select a neutral mediator acceptable to both the D&C Contractor and the Borrower. In the event no such acceptable neutral mediator is selected, the parties shall request a mediator be assigned by the American Arbitration Association. If the Claim is not resolved pursuant to mediation within thirty (30) Days (or such longer period as reasonably agreed to by the parties) from the request for a mediation session made pursuant to that Section, then the Claim shall be resolved by recourse to litigation. Engagement in the mediation procedures is a condition precedent to a party's right to commence litigation pursuant to Section

If, after engaging in the mediation procedures required pursuant to the D&C Contract, the dispute remains unresolved, the dispute will be finally decided by litigation in any New York State court or the U.S. District Court for the Southern District of New York sitting in the City and County of New York, and any appellate court from any thereof, unless the Borrower and the D&C Contractor mutually agree otherwise. Each party will bear its own attorneys' fees and costs in any dispute or litigation arising out of or pertaining to the D&C Contract and no party will seek or accept an award of attorneys' fees or costs except as otherwise expressly provided in the D&C Contract.

***c. Cooperation with the Borrower in the Event of a Dispute (Section 16.4.1 of the D&C Contract)***

In the event of any dispute, claim or potential claim with any Subcontractor, Separate Contractor, Managed Contractor or other Person arising from the DB D&C Work, in which the D&C Contractor and the Borrower are not in conflict over such dispute, claim, or potential claim, the D&C Contractor shall: (i) promptly give notice to the Borrower of any such dispute, claim, or potential claim; (ii) cooperate with and provide general assistance in connection with the Borrower's efforts to resolve such dispute, claim, or potential claim; and (iii) resolve any such dispute, claim, or potential claim in accordance with the Borrower's directions.

***d. Continued Performance Obligation in the Event of a Dispute (Section 16.2.4 of the D&C Contract)***

Pending final resolution of a Claim, including without limitation through mediation and litigation or otherwise, and unless otherwise agreed to in writing by the Borrower and the D&C Contractor, the D&C Contractor shall proceed diligently with performance of the DB D&C Work and the Borrower shall continue to pay those undisputed sums due to the D&C Contractor in accordance with the D&C Contract. Should the D&C Contractor fail to continue to perform the DB D&C Work pending final resolution of a Claim, and notwithstanding anything to the contrary contained in the D&C Contract, the D&C Contractor shall be liable for all direct, indirect, and consequential damages sustained by the Borrower as a result of the D&C Contractor's breach.

**17. ACCOUNTING REQUIREMENTS (Article 17 of the D&C Contract)**

Article 17 of the D&C Contract sets forth the accounts and records requirements related to the DB D&C Work. In connection therewith, the D&C Contractor shall keep complete and detailed accounts and records of all costs included in the Cost of the DB D&C Work, which accounts and records shall be adequate to verify the amount and expenditure of such costs and in such form and detail as may be acceptable to the Borrower and the Technical Advisor. The D&C Contractor shall exercise such controls as may be reasonably necessary for proper financial management of the DB D&C Work. The D&C Contractor shall maintain a complete set of such accounts and records at the D&C Contractor's field office and institute appropriate back-up systems (hard copy and computerized) to safeguard the information. Promptly after a

request by the Borrower or the Technical Advisor, the D&C Contractor shall deliver to the requesting party supporting documentation, in both hard copies and computer readable format, for amounts paid or payable by the Borrower, including invoices and payroll records. The D&C Contractor shall also keep such accounts and records in such a manner as to comply with the requirements of the Lease Agreement, as applicable.

If an audit reveals overcharges to the Borrower by the D&C Contractor, the latter shall, upon demand, repay the Borrower the costs of such audit and all such overcharges, together with interest earned on such overcharges at the rate of three percent (3%) per annum from the date such overcharged amount was paid to or on behalf of the D&C Contractor.

## **18. BORROWER'S RESPONSIBILITIES** *(Article 18 of the D&C Contract)*

Article 18 of the D&C Contract sets forth the Borrower's responsibilities related to the DB D&C Work. In connection therewith, the Borrower shall timely and fully perform all of its obligations in the D&C Contract, including the provision of any approvals, consents, actions or input, so as to enable the D&C Contractor to perform its obligations under the D&C Contract. The Borrower shall promptly notify the D&C Contractor of faults or defect in the DB D&C Work or non-compliance with the DB Project Documents, but the failure to do so will not waive, modify, or otherwise affect the D&C Contractor's obligations or liability under the D&C Contract, or impose any liability on the Borrower.

The Borrower is also responsible for providing notices, information, materials, consents, approvals and communications applicable to the DB D&C Work as required by the Lease Agreement within the time set forth in the Lease Agreement where such notice, information, material, consent, approval or communication may impact the performance of the DB D&C Work by the D&C Contractor pursuant to the terms of the D&C Contract or the right or ability of the D&C Contractor to recover any sort of entitlements, adjustment, compensation or other relief pursuant to the terms of the Lease Agreement, in respect of which the failure by the Borrower to timely provide notice under the Lease Agreement would or does impact, waive, diminish or prevent recovery by the D&C Contractor of such entitlement, adjustment, compensation or other relief pursuant to the D&C Contract; provided, however, that this obligation is subject to the D&C Contractor providing such notices, information, materials, consents, approvals and communications to the Borrower in accordance with the schedule and timeframes set for advance submission to the Borrower as set forth in the D&C Contract and the other DB Project Documents, to enable the Borrower to have sufficient time for review or comment (as applicable) and submission to the Port Authority as required by the Lease Agreement.

## **19. TERMINATION RIGHTS** *(Article 19 of the D&C Contract)*

### **a. Termination by the Borrower – For Cause** *(Section 19.1.1 of the D&C Contract)*

#### **i. Events of Default**

The Borrower shall have the right to terminate the D&C Contract, upon notice to the D&C Contractor and subject to the applicable cure periods, if any, provided in the D&C Contract upon the occurrence of any of the following, each of which shall constitute an "Event of Default:"

(a) The D&C Contractor (i) refuses to perform with the intention of not returning to perform the DB D&C Work for a period of more than fifteen (15) Days in the aggregate, and fails to recommence performance of the DB D&C Work within three (3) Days of written notice from the Borrower or (ii) abandons, deserts or vacates with the intention of not returning to the Project Site or its performance of the DB D&C Work (other than a discontinuance in connection with any condemnation, Delay Event, Force Majeure or any other event that, with the passage of time, would constitute an Unavailability Event) for a period of fifteen (15) or more consecutive days;

(b) The D&C Contractor ceases the DB D&C Work without the Borrower's approval or express legal justification pursuant to the terms of the D&C Contract (excluding any suspension rights provided to the D&C Contractor under the D&C Contract) and fails to recommence performance of the DB D&C Work within three (3) Days of written notice from the Borrower;

(c) The D&C Contractor fails to achieve Substantial Completion of Phase 2 by the ninetieth (90<sup>th</sup>) day prior to the Outside Completion Date;

(d) an authorized representative of the D&C Contractor repudiates the D&C Contract or all of the D&C Contractor's obligations under the D&C Contract;

(e) any lien (other than a Permitted Lien) is filed against the Premises because of any act or omission of the D&C Contractor or any Subcontractor, and shall not be discharged of record, or by bonding through an insurance company duly authorized to write such bonds in New York State, in each case within thirty (30) Days after such filing, subject however in all cases to any lien-related restrictions in the Basic Lease (which shall supersede and control);

(f) failure by the D&C Contractor to maintain (or cause to be obtained and maintained) insurance coverage in accordance with the provisions of the D&C Contract (other than as a result of commercial unavailability of such insurance coverage in accordance with the D&C Contract), including without limitation failure to comply with the requirements relating to the amount, terms or coverage, and such failure is not cured within three (3) business days after the initial date of such failure;

(g) the D&C Contractor makes changes to, or fails to utilize, Key Personnel or provide sufficient staff in accordance with the Staffing Plan, and without the Borrower's prior written consent, and the D&C Contractor fails to cure such change within five (5) Days of written notice from the Borrower;

(h) the D&C Contractor or its Subcontractors or Suppliers fail to cooperate with the Office of the Inspector General of the U.S. Department of Homeland Security (or any reconstituted or successor agency thereof), including, without limitation, with its integrity monitor, and such failure (other than in the case of a failure by the D&C Contractor) continues without cure or removal of the failing entity by the D&C Contractor for a period of two (2) Business Days or such shorter period as may be required by the Office of the Inspector General of the U.S. Department of Homeland Security;

(i) the D&C Contractor fails to pay Subcontractors undisputed amounts promptly or misapplies funds due Subcontractors pursuant to the terms of the applicable Subcontracts, and the D&C Contractor fails to cure such failure within ten (10) Days of written notice from the Borrower;

(j) the D&C Contractor fails to pay any taxes required in connection with the DB D&C Work pursuant to the D&C Contract, and the D&C Contractor fails to cure such failure within ten (10) Days of written notice from the Borrower;

(k) the D&C Contractor suffers a materially adverse change in its financial condition that impacts the DB D&C Work;

(l) (i) the D&C Contractor or Guarantor (A) institutes a proceeding to be adjudicated as bankrupt or insolvent, (B) consents to the institution of bankruptcy or insolvency proceedings against it, (C) files a petition or answer or consent seeking reorganization or relief under the federal Bankruptcy Code of the United States of America or any other similar applicable federal or state law, (D) consents to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee

or sequestrator (or other similar official) of such Person or of any substantial part of its property, (E) makes an assignment for the benefit of creditors, (F) is generally not paying, or shall admit in writing its inability to pay its debts generally as they become due, (G) forms any limited liability company, partnership or corporate action for the purpose of the foregoing, or (ii) a proceeding of any nature in clause (i) above is commenced against the D&C Contractor or Guarantor which (x) results in the entry of an order for relief or any such adjudication or appointment, or (y) remains undismissed, undischarged, or unstayed for a period of fifty (50) Days or more;

(m) the D&C Contractor or its Subcontractors fail to perform the DB D&C Work in a manner resulting in the Port Authority being given the right to terminate the Lease Agreement or determine that there is an occurrence of an event of default pursuant to the Lease Agreement;

(n) the D&C Contractor fails to make any other payment of fees or charges that are not disputed in good faith when due to the Borrower (including fees or payments due to the Port Authority through the Borrower), and the D&C Contractor fails to cure such failure within ten (10) Days of written notice from the Borrower;

(o) the D&C Contractor fails to keep, perform and observe (other than an event of default by the Borrower under the Lease Agreement not attributable to the actions or inactions of the D&C Contractor or its Subcontractors) each and every promise, covenant and agreement set forth in the D&C Contract, the Lease Agreement, any other Project Document, the Rules and Regulations and the Basic Lease on its part to be kept, performed, or observed, within twenty (20) Days after receipt of notice of default thereunder from the Borrower or the Port Authority or within such shorter period as may be required by any applicable Governmental Authority, including, without limitation, the City (except where fulfillment of its obligation requires activity over a period of time and the D&C Contractor shall have commenced to perform whatever may be required for fulfillment within twenty (20) Days and diligently continues such performance without interruption, except for causes beyond its control, to completion);

(p) any representation or warranty made or deemed to be made by the D&C Contractor in the D&C Contract or in the Lease Agreement or in any other certificates or agreements delivered by the D&C Contractor to the Borrower or the Port Authority in connection with the D&C Contract or the Lease Agreement shall be found to be incorrect, false or misleading in any material respect as of the time made (whether by affirmative statement or omission of such statement), unless the facts and circumstances that caused such representation, warranty, statement or omission found to be incorrect, false or misleading are capable of being remedied, and such incorrect, false or misleading representation, warranty, statement, or omission is rendered no longer incorrect, false or misleading in any material respect within sixty (60) Days following the earlier of (i) the date that the D&C Contractor obtained actual or constructive knowledge of such incorrect, false or misleading representation, warranty or omission or (ii) the date of notice thereof from the Borrower or the Port Authority to the D&C Contractor;

(q) the D&C Contractor fails to comply with Applicable Laws and such failure is not cured within fifteen (15) Days after the earlier of the D&C Contractor obtaining knowledge of such failure and receipt of notice of such failure from the Borrower, the Port Authority or the applicable Governmental Authority, or such shorter period as may be required by any applicable Governmental Authority (except where fulfillment of its obligation requires activity over a period of time and the D&C Contractor shall have commenced to perform whatever may be required for fulfillment within fifteen (15) Days after receipt of notice and diligently continues such performance without interruption, except for causes beyond its control, to completion);

(r) the D&C Contractor fails to comply with the applicable governmental requirements and Rules and Regulations set forth in the Lease Agreement if such failure causes, or in the

reasonable opinion of the Port Authority, is likely to cause, the termination, revocation or suspension of the Airport Operating Certificate, and if such failure is likely to cause the termination, revocation or suspension of the Airport Operating Certificate, such failure continues without full and complete cure for a period of five (5) Days (or such shorter period of time as may be required to comply with FAA direction or requirement with respect to such failure so as to ensure that the Airport Operating Certificate is not terminated, revoked or suspended, temporarily or permanently) after the earlier of the D&C Contractor having knowledge of such failure and receipt of notice of such failure from the Borrower, the Port Authority or the applicable Governmental Authority, or such shorter period as may be required by any applicable Governmental Authority;

(s) the D&C Contractor fails to comply with any written order issued to the Borrower or the D&C Contractor by the Port Authority to suspend, in whole or in part, the DB D&C Work (x) within five (5) days following receipt of such written order or (y) such shorter period as may be required in cases of an Emergency or a life, health, security, safety, or environmental hazard, or a breach of the Good Order Requirements;

(t) the D&C Contractor fails to begin the DB D&C Work with respect to either the Phase 1 DB D&C Work or the Phase 2 DB D&C Work, within fifteen (15) days of the Borrower's issuance of a notice to proceed;

(u) the D&C Contractor fails to comply with certain provisions of the Lease, including Assignment and Sublease, the Basic Lease, Non-Discrimination requirements, Employment – Affirmative Action – Equal Opportunity requirements, Minority Business Enterprises, Women-Owned Business Enterprises and Local Business Enterprises Commitment, representations and Warranties; OFAC Covenants, and such failure is not cured within ten (10) Business Days after the earlier of the D&C Contractor having knowledge of such failure and the D&C Contractor's receipt of notice of such failure from the Borrower, the Port Authority or the applicable Governmental Authority, or such shorter period as may be required by any applicable Governmental Authority (except where fulfillment of its obligation requires activity over a period of time and the D&C Contractor shall have commenced to perform whatever may be required for fulfillment within ten (10) Business Days after receipt of notice and diligently continues such performance without interruption, except for causes beyond its control, to completion);

(v) the D&C Contractor fails to comply in any material respect with the OIG or the Project Integrity Monitor as set forth in the Lease Agreement and the D&C Contract and such failure is not cured within five (5) Business Days after notice of such failure from the Port Authority;

(w) the D&C Contractor fails to keep, perform and observe each and every direction (i) issued by the Port Authority in accordance with the terms and provisions of the Lease Agreement (including any bulletin, directive or other instruction issued by the General Manager of the Airport or Chief Security Officer), or (ii) issued by the Port Authority in its capacity as a bi-state agency, an airport operator, or the tenant under the Basic Lease, provided that in either case of (i) or (ii), such failure continues without cure for a period of five (5) Days (except where fulfillment of its obligation requires activity over a period of time and the D&C Contractor shall have commenced to perform whatever may be required for fulfillment within five (5) Days after receipt of notice and diligently continues such performance without interruption, except for causes beyond its control, to completion);

(x) the D&C Contractor fails to comply with Chapter 4.1 (Prevailing Rate of Wage) of the General Provisions and such failure is not cured within ten (10) Business Days after notice of such failure from the Borrower or the Port Authority (except where fulfillment of such obligation requires activity over a period of time and the D&C Contractor shall have commenced to perform whatever may be

required for fulfillment within ten (10) Business Days after receipt of notice and diligently continues such performance without interruption, except for causes beyond its control, to completion);

(y) (i) the D&C Contractor fails to obtain, provide and maintain any bonds, D&C Guarantee, D&C Letter of Credit or any other Construction Security as and when required under the D&C Contract or (ii) the D&C Contractor breaches or defaults under any Parent Company Guarantee or under any D&C Letter of Credit and such breach or default is not cured or waived within thirty (30) days after the date on which the D&C Contractor receives written notice thereof from the Borrower (with a copy to the Guarantor) or any party to any such Parent Company Guarantee or D&C Letter of Credit; or

(z) the D&C Contractor's payment obligations of amounts due to the Borrower or any other person under the D&C Contract to which the limitation of liability specified in the D&C Contract (including the sub-limit with respect to Liquidated Damages or Design Limitation of Liability) equal exceed such limitation of liability (or sub-limit), or the D&C Contractor so asserts in writing, except to the extent the D&C Contractor irrevocably waives such limitation of liability, or agrees to an increase in such limitation of liability, in each case in writing and as and to the extent acceptable to the Borrower in its sole discretion.

ii. Compensation to the D&C Contractor Upon Termination – For Cause

In the event of a termination of the D&C Contract for cause and subject to the Borrower's right to withhold payments to the extent permitted under the terms of the D&C Contract, the D&C Contractor shall be paid by the Borrower for the portion of the GMP incurred by the D&C Contractor in the performance of the DB D&C Work up to the date of termination and for all materials, supplies and equipment incorporated in the DB D&C Work and/or stored at the Project Site or at such off-site storage locations as shall have been approved by the Borrower in accordance with the provisions of the D&C Contract, it being understood that the D&C Contractor shall not be entitled to recover anticipated profits on account of the Base Fee, General Requirements Costs and/or the General Conditions Costs or the anticipated profits of Subcontractors for portions of the DB D&C Work unperformed or for materials or equipment unfurnished, nor for reimbursement for Losses arising out of matters covered by insurance. Notwithstanding the foregoing, the Borrower shall have no obligation to pay the D&C Contractor for any amount to be paid by the Port Authority in the event of such termination, unless and until the Borrower first receives such payment from the Port Authority pursuant to the Lease Agreement.

**c. *Termination by the Borrower – For Convenience (Section 19.1.4 of the D&C Contract)***

The Borrower also has the right to terminate the D&C Contract without cause at any time by giving the D&C Contractor written notice thereof. Upon receipt of such notice, the D&C Contractor shall suspend performance of the DB D&C Work as soon as reasonably practicable or on such later date as may be specified in such notice, and make every reasonable effort to prevent incurrence of any further costs; provided, however, in connection with such termination the D&C Contractor shall perform such acts as may be reasonably necessary to preserve and protect all existing DB D&C Work. Upon such termination without cause, the D&C Contractor shall retain all sums of money theretofore paid hereunder to the D&C Contractor, except if and to the extent such sums of money are due to Subcontractors or were paid in advance to the D&C Contractor prior to the payment becoming due to the D&C Contractor, in which event the D&C Contractor shall pay the same, immediately upon the Borrower's direction, to such Subcontractors or to the Borrower, and the Borrower shall pay to the D&C Contractor, subject to the Borrower's right to withhold payments to the extent permitted under the terms of the D&C Contract, (a) all retainages, if any, earned by the D&C Contractor except retainages as to any Subcontracts assumed by the Borrower hereunder; (b) a sum of money equal to the Cost of the DB D&C Work incurred hereunder by the D&C Contractor for which payments have not theretofore been made hereunder, including all reasonable costs



of demobilization, close-out and site stabilization costs; and (c) the pro rata portion of the Base Fee applicable to the DB D&C Work performed by the D&C Contractor through the effective date of such termination, including any “true up” thereof. In the event of such termination of this Agreement, the D&C Contractor shall not be entitled to receive anticipated profits on any DB D&C Work not yet performed or any damages, consequential or otherwise.

d. ***Termination by the D&C Contractor (Section 19.2 of the D&C Contract)***

The D&C Contractor shall have the right to terminate the D&C Contract for cause upon forty-five (45) Days’ prior written notice and opportunity to cure to the Borrower in the event that any undisputed amounts due to the D&C Contractor remain unpaid for more than forty-five (45) Days after the date the same becomes due to the D&C Contractor under the D&C Contract, and then only if the undisputed amount remaining unpaid shall not have been paid to the D&C Contractor by the end of such notice and cure period. Upon any such termination, the Borrower shall pay to the D&C Contractor within fifteen (15) Days of the D&C Contractor’s termination of the D&C Contract: (i) the Cost of the DB D&C Work due to the D&C Contractor for DB D&C Work performed through the date of termination, (ii) the Base Fee on (i) above, and (iii) actual, reasonable and demonstrated demobilization costs, close-out costs and costs incurred to protect or preserve the DB D&C Work.

e. ***Termination of the Lease Agreement and Remedial Plan (Sections 19.3 and 19.4 of the D&C Contract)***

In the event of a termination of the Lease Agreement entitling the Borrower to compensation from the Port Authority, the Borrower will (i) notify the D&C Contractor and work with the D&C Contractor in preparing any applicable claim for termination compensation, and (ii) to the extent practicable, provide the D&C Contractor with an opportunity to participate in the discussion and resolution of any claim with the Port Authority. In the event that the Port Authority pays the Borrower a claim for termination compensation attributable to the DB D&C Work performed by the D&C Contractor, then pursuant to the D&C Contract, the Borrower shall pay to the D&C Contractor the amounts paid to the Borrower by the Port Authority applicable to the DB D&C Work performed by the D&C Contractor.

In the event that the Port Authority exercises its right to terminate the Lease Agreement due to the fault of the D&C Contractor, then the D&C Contractor shall pay the Borrower its proportionate share of the costs and expenses incurred by the Borrower and the Port Authority attributable to the D&C Contractor in connection with such termination, including without limitation, any re-entry, regaining or resumption of possession, collecting all amounts due to the Borrower and the Port Authority, the cleaning, repair, or restoration of any space which may be used and occupied under the D&C Contract (on failure of the D&C Contractor to have it cleaned, repaired or restored), the care and maintenance of such space during any period of non-use of the space, the foregoing to include without limitation personnel costs and legal expenses (including but not limited to the cost to the Borrower or the Port Authority of in-house legal services), repairing the space and putting the space in order (such as but not limited to repairing, cleaning, and restoring the same pursuant to this Agreement). Termination shall not relieve the D&C Contractor of any liabilities or obligations under the D&C Contract which shall have accrued on or prior to the effective date of the termination.

To the extent an event of default by the Borrower under the Lease Agreement has been caused by the failure of the D&C Contractor to perform the DB D&C Work in accordance with the terms of this Agreement, the D&C Contractor shall assist and cooperate with the preparation, submission, revision, and execution of a remedial plan approved by the Borrower and the Port Authority. If the Port Authority rejects the remedial plan, the D&C Contractor and the Borrower shall meet with the Port Authority no later than five (5) days to further discuss necessary modifications to the plan. If the Port Authority accepts the

remedial plan, the D&C Contractor shall comply diligently with such plan. Failure to do so constitutes a material breach of the D&C Contract.

If the Port Authority seeks to enforce its rights under the Lease Agreement against the Borrower for an event of default under the Lease Agreement caused by the D&C Contractor, then the Borrower shall also have the right, at any time, to make a claim at law or in equity, for damages or injunctive relief against the D&C Contractor.

f. ***Direct Agreement and Port Authority's Step-In Rights*** (Section 19.5 of the D&C Contract)

Concurrently with the execution of the D&C Contract, the D&C Contractor entered into a direct agreement with the Borrower, the Senior Collateral Agent, and the Subordinate Collateral Agent, which agreement sets forth, among other things, certain rights of the Lenders with respect to the D&C Contract. The D&C Contractor acknowledges that the Borrower has certain rights to conduct Refinancings under the Lease Agreement, and the D&C Contractor shall use commercially reasonable efforts to cooperate with the Borrower and any prospective Lenders in connection with the Borrower conducting any such Refinancing. In particular, the D&C Contractor agrees that it will enter into a direct agreement with the Borrower and each person at any time having the rights of a Recognized Mortgagee pursuant to the Lease Agreement (each such agreement, including the agreement entered into concurrently with the execution hereof, a "Direct Agreement"). The D&C Contractor shall also deliver officer's certificates, parent company guarantees, board resolutions, legal opinions and other documents related to the D&C Contractor's organization, authority and guarantees as and when reasonably required by or reasonably requested by the Borrower or any Lender in connection with entering into any such Direct Agreement.

Pursuant to the Lease Agreement, upon receipt by the Borrower of written notice from the Port Authority, the Port Authority is entitled to exercise the Borrower's rights with respect to the D&C Contract, without any necessity for a consent or approval from the Borrower or the making of a determination whether the Port Authority validly exercised its step-in rights ("Port Authority Step-In Rights"). Should the Port Authority exercise its Step-In Rights, the cure periods related to the D&C Contractor's ability to terminate the Borrower shall be tolled and extended accordingly. The D&C Contractor has also agreed to waive any claim or cause of action against: (i) the Borrower for any actions related to the Borrower's recognition of the Port Authority Step-In Rights; and (ii) the Port Authority for any actions related to the Port Authority's exercise of its Port Authority Step-In Rights.

Should the Port Authority exercise its Port Authority Step-In Rights, and subject to any applicable lender rights under the D&C Contract, the D&C Contractor has further agreed to promptly execute and deliver to the Port Authority or its successor, assignee or designee a new contract between the D&C Contractor and the Port Authority or its successor, assignee or designee on substantially the same terms and conditions as the D&C Contract, if (A) (i) the D&C Contract is rejected by the Borrower in bankruptcy or (ii) the D&C Contract is wrongfully terminated by the Borrower, or (iii) the Lease Agreement is terminated by the Port Authority pursuant to the Lease Agreement or (B) the Port Authority delivers to the D&C Contractor written request for such new contract within sixty (60) Days following the occurrence of any of the events outlined in the immediately preceding clauses (A)(i)-(iii).

**20. SUSPENSION OF THE DB D&C WORK** (Article 20 of the D&C Contract)

a. ***The Borrower's Right to Suspend*** (Section 20.1 of the D&C Contract)

The Borrower may, at any time and for any reason, in whole or in part, direct the D&C Contractor to suspend the DB D&C Work or any part thereof. Such direction shall be in writing and shall specify the period of such suspension and the reasons for such suspension. The D&C Contractor shall resume the

performance of the DB D&C Work upon the date specified in such directive or upon such other date as the Borrower may thereafter specify in writing.

If the DB D&C Work is suspended by the Borrower, the D&C Contractor shall be entitled to a Change Order, pursuant to the terms of the D&C Contract. For the avoidance of doubt, the D&C Contractor shall not be entitled to any Change Order, additional costs, or schedule relief for any Port Authority directed suspension of the DB D&C Work, except as otherwise provided in the D&C Contract.

**b. *The D&C Contractor's Right to Suspend* (Section 20.2 of the D&C Contract)**

In the event that the Borrower fails to make payments of any undisputed amounts due to the D&C Contractor, then the D&C Contractor may suspend the DB D&C Work after providing written notice and fourteen (14) Days' opportunity to cure to the Borrower, and provided further that the Borrower fails to cure and make such payment of undisputed amounts to the D&C Contractor within such fourteen (14) Day period. The D&C Contractor shall be entitled to a Change order compensating it for all actual and documented additional costs, mark-ups, and schedule relief for such suspension of the DB D&C Work.

**21. OWNERSHIP OF DOCUMENTS & DATA; PROPRIETARY & CONFIDENTIAL INFORMATION; INFORMATION SECURITY (Article 21 of the D&C Contract)**

The D&C Contract sets forth the respective responsibilities related to the ownership of documents and data; proprietary and confidential information, and information security. The Borrower has ownership rights in all work product produced by the D&C Contractor, its Subcontractors and Design Professionals. The D&C Contract also imposes various confidentiality requirements upon the Borrower and the D&C Contractor, except where confidential information (a) was in the public domain at the time it was disclosed; (b) was known to the party receiving it at the time of disclosure; (c) was disclosed with the prior approval of the other party; (d) the party's attorneys or accountants are required to disclose by rules of professional responsibility; or (e) subject to clause (d), the party is required to disclose pursuant to Applicable Law or court order.

**22. MISCELLANEOUS PROVISIONS (Article 22 of the D&C Contract)**

The D&C Contract sets forth provisions related to the administration and performance of the DB D&C Work, including without limitation cooperation and coordination with lenders, governing law (i.e., State of New York), forum (i.e., any New York State court located in the City and County of New York, or the U.S. District Court for the Southern District of New York), waiver of jury trial, protection of lenders and the Port Authority, third party beneficiaries, and assignment rights.

**23. CONSTRUCTION SECURITY (Article 12 of the D&C Contract)**

**a. *The D&C Contractor Parent Company Guaranty and Payment and Performance Bonds* (Section 12.3 of the D&C Contract)**

The D&C Contractor has agreed to cause its parent company, AECOM, a Delaware corporation, to provide a guaranty of the D&C Contractor's obligations under the D&C Contract (the "Parent Company Guaranty") to the Borrower in the amount of Five Hundred Million Dollars (\$500,000,000). The form of the Parent Company Guaranty has been approved by the Borrower, the Port Authority, and applicable lender(s). The cost of the Parent Company Guaranty shall be Two Million Five Hundred Thousand Dollars (\$2,500,000). The D&C Contractor has also agreed to provide payment and performance bonds to the Borrower in the amount of Five Hundred Million Dollars (\$500,000,000). The cost of the payment and performance bonds shall be Five Million Six Hundred Thousand Dollars (\$5,600,000). The Parent

Company Guaranty and the payment and performance bonds shall comply with the construction security requirements set forth in the Lease Agreement. The Borrower shall have the same rights and remedies against the D&C Contractor as the Port Authority has against the Borrower as provided under the construction security requirements of the Lease Agreement.

b. *The D&C Contractor D&C Letter of Credit (Section 12.4 of the D&C Contract)*

The D&C Contractor has caused to be delivered to the Borrower one or more irrevocable standby letters of credit, on terms acceptable to the Borrower and the Port Authority and issued by an Eligible LC Issuer, in favor of the Borrower or the Senior Collateral Agent, in form and substance sufficient to qualify such letters of credit as a Construction Security pursuant to the Lease Agreement, and substantially in the form approved by the Borrower, securing the payment and performance of the obligations of the D&C Contractor under the D&C Contract (collectively, the “D&C Letter of Credit”). The aggregate amount of the D&C Letter of Credit shall be Two Hundred Thirty-Two Million Eighty-Nine Thousand Eight Hundred Fifty-Six Dollars (\$232,089,856). The aggregate cost of the D&C Letter of Credit shall be Eleven Million Six Hundred Four Thousand Six Hundred Forty-Three Dollars (\$11,604,643). The Borrower or the Senior Collateral Agent, as applicable, shall have the right to draw upon each D&C Letter of Credit upon simultaneous notice to the D&C Contractor in the event that: (i) the D&C Contractor has breached the D&C Contract or is otherwise in default pursuant to the terms of the D&C Contract, and as a result thereof the Borrower has incurred costs or expenses; (ii) the D&C Contractor has failed to pay the Borrower amounts to which the Borrower is entitled to payment from the D&C Contractor in accordance with the terms of the D&C Contract; (iii) the D&C Contractor has failed to provide the Borrower with one or more replacement letters of credit that satisfy the requirements of the D&C Contract not later than sixty (60) Days prior to the stated expiration date of the current D&C Letter of Credit; (iv) the issuer of any D&C Letter of Credit no longer constitutes an Eligible LC Issuer and the D&C Contractor has failed to deliver one or more substitute letters of credit within 5 Business Days after the date such issuer failed to constitute an Eligible LC Issuer; or (v) default due to bankruptcy pursuant to the terms of the D&C Contract.

c. *Subcontractor Performance Security (Section 12.5 of the D&C Contract)*

Refer to Section 12(c) of this Appendix G for a summary of the applicable Subcontractor performance security.

## **24. CONSEQUENTIAL DAMAGES; LIMITATIONS ON LIABILITY**

a. *Limitation of Liability – General (Section 13.3 of the D&C Contract)*

Except with respect to: (i) claims arising out of the D&C Contractor’s gross negligence or willful misconduct; (ii) third-party claims, including, without limitation claims by the Port Authority arising from the Lease Agreement; (iii) the D&C Contractor’s refusal to perform because the Borrower exercises its right to withhold or the D&C Contractor stops work during the pendency of a dispute; (iv) personal injury and property damage claims; (v) the D&C Contractor’s failure to assign contracts upon termination, to the fullest extent permitted by law; (vi) the D&C Contractor preventing the Borrower’s personnel reasonable access to any portion of the Project Site or DB D&C Work; (vii) any damages payable by the Borrower under the Lease Agreement which in any way arise from the D&C Contractor’s acts or omissions; or (viii) the D&C Contractor breaching any anti-bribery and anti-corruption laws, including OFAC: the D&C Contractor’s total aggregate liability to the Borrower-Related Entities in connection with the D&C Contract and the performance of the DB D&C Work shall be limited to an amount of thirty five percent (35%) of the GMP. Further, the foregoing limitation of liability shall not inure to the benefit of the insurance carriers providing insurance that is procured by the Borrower pursuant to the D&C Contract.

b. ***Mutual Waiver of Consequential Damages (Section 13.4 of the D&C Contract)***

Except with respect to claims arising out of: (i) either of the Borrower's or the D&C Contractor's gross negligence or willful misconduct; (ii) third party claims, including, without limitation claims by the Port Authority arising from the Lease Agreement; (iii) the D&C Contractor's (a) refusal to perform because the Borrower exercises its right to withhold payment or the D&C Contractor stops work during the pendency of a dispute (provided that the Borrower continues to pay undisputed amounts to the D&C Contractor) or (b) stops work during the pendency of the dispute; (iv) personal injury and property damage claims (including damage to the Project itself to the extent such damage is not covered by builder's risk insurance through no fault of the Borrower); (v) the D&C Contractor's failure to assign contracts upon termination; (vi) the D&C Contractor preventing the Borrower's personnel reasonable access to any portion of the Project Site or DB D&C Work; or (vii) the D&C Contractor breaching any anti-bribery and anti-corruption laws, including OFAC; or (viii) any claims which are covered and paid by insurance the Borrower is required to procure and maintain pursuant to the D&C Contract; the D&C Contractor and the Borrower waive claims against each other for consequential damages arising out of or relating to the D&C Contract. This mutual waiver includes by way of example and not limitation the following:

- i. Damages incurred by the Borrower for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- ii. Damages incurred by the D&C Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business, opportunity cost and reputation, and for loss of profit except anticipated profit arising directly from the DB D&C Work performed pursuant to the D&C Contract.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination or default in accordance with the D&C Contract. Nothing contained in this mutual waiver of consequential damages shall be deemed to preclude an award of direct damages or assessment of Liquidated Damages (subject to the terms of the D&C Contract) against the D&C Contractor, when applicable, in accordance with the terms of the D&C Contract.

c. ***Limitation of Liability – Design (Section 4.7.1 of the D&C Contract)***

The Borrower has agreed that the D&C Contractor's aggregate liability to the Borrower and Borrower-Related Entities for any errors or omissions in the Design Work or any design services provided in the D&C Contract is limited to the Fifty Million Dollars (\$50,000,000) (the "Design Limitation of Liability"), provided that the Design Limitation of Liability does not limit claim related to the following: (a) claims arising out of the D&C Contractor or any Design Professional's gross negligence or willful misconduct; (b) third party claims, including but not limited to third party intellectual property infringement claims or employee labor law claims; (c) the D&C Contractor's refusal to perform because the Borrower exercises its right to withhold or the D&C Contractor stops work during the pendency of a dispute; (d) personal injury and property damage claims; (e) the D&C Contractor's failure to assign contracts upon termination, to the fullest extent permitted by law; (f) the D&C Contractor preventing the Borrower's personnel reasonable access to any portion of the Project Site or DB D&C Work; or (g) the D&C Contractor breaching any anti-bribery and Anti-Corruption Laws, including OFAC. Notwithstanding the foregoing, the Design Limitation of Liability shall not apply to claims arising out of, resulting from, or in any way related to the D&C Contractor's willful misconduct or independent negligence in the performance of non-

DB Design Work. Further, the Design Limitation of Liability shall not inure to the benefit of the insurance carriers providing insurance that is procured by the Borrower pursuant to the D&C Contract.

d. ***No Personal Liability*** (Section 22.12 of the D&C Contract)

In no event shall any members, partners, officers, shareholders, directors, managing directors, employees or affiliates of the Borrower or the D&C Contractor have any liability to the other under the D&C Contract or otherwise in connection with the Project, except for liabilities arising out of or related to the issuance of a Parent Company Guaranty or any other similar Construction Security.

e. ***Non-Exclusivity of Remedies*** (Section 22.11 of the D&C Contract)

The duties and obligations imposed by the D&C Contract and the rights and remedies available thereunder shall be in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available at law or in equity. Any reference in the D&C Contract to a specific right or remedy shall not be construed as limiting the Borrower or the D&C Contractor from exercising any other right or remedy it might have, under the D&C Contract or at law or in equity.

**EXHIBIT A – DEFINITIONS TO APPENDIX G  
SUMMARY OF CERTAIN PROVISIONS OF THE D&C CONTRACT**

**Rules of Interpretation**

1. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation.”
2. Definitions of terms shall apply equally to the singular and plural forms of the terms defined.
3. The word “will” shall be construed to have the same meaning and effect as the word “shall.”
4. A reference to a Person shall be construed to include its successors and permitted assigns.
5. In this Exhibit A to Appendix G, references to a Section, Exhibit, Schedule or Annex that do not specifically refer to another document shall mean a Section, Exhibit, Schedule, or Annex to the D&C Contract.
6. Any definition of or reference to any agreement, instrument or other document shall be construed (a) including all exhibits, schedules and other attachments thereto, (b) as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented and/or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth in the Financing Documents) and (c) including all documents, instruments or agreements issued or executed in replacement or substitution thereof.
7. The words “hereof,” “herein” and “hereunder” and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document.
8. References to “days” means calendar days, unless the term “Business Days” shall be used. References to a time of day means such time in New York, New York, unless otherwise specified.

Unless otherwise specified in the body of Appendix G, capitalized terms used in Appendix G shall have the meanings set forth below:

“Add Alternate(s) Lump Sum” shall have the meaning as set forth in Section 15(a) of Appendix G of the Official Statement.

“Airport” shall mean John F. Kennedy International Airport, consisting of certain premises identified as “John F. Kennedy International Airport” on Sheet JFK-1 of Exhibit A, and more particularly described in Exhibit B, each of such exhibits as annexed to the Basic Lease, and such other property as may be acquired in connection with and added to such premises pursuant to the terms of the Basic Lease.

“Allowances” shall mean the dollar amounts allocated to an Allowance Item within the GMP.

“Allowance Items” shall mean the materials, equipment and other elements of the DB D&C Work that have not been designed by the Design Professionals or selected by the Borrower as of the date the GMP is established.

“Applicable Law” or “Applicable Laws” shall mean any statute, law, code, regulation, ordinance, rule, common law, judgment, judicial or administrative order, decree, directive or other requirement having the force of law or other governmental restriction (including those resulting from the initiative or referendum process) or any similar form of decision of or determination by any Governmental Authority (including any applicable regulation, order or statement of policy of the Administrator of the FAA or any other governmental officer or body having jurisdiction over the enforcement of the obligations of the Port Authority under federal law), including any Environmental Requirements, whether taking effect before or after the Effective Date, in each case, as amended, revised, supplemented or otherwise modified from time to time and including requirements for operation of the Premises whether imposed upon the Premises operator or the Port Authority, as lessor. For the avoidance of doubt, the term “Applicable Laws” includes FAA Grant Assurances, TSA-issued requirements, PFC assurances and decisions and the Airport Operating Certificate, but excludes the Applicable Standards, the Rules and Regulations and Good Order Requirements.

“Applicable Standards” shall mean (i) the Rules and Regulations, (ii) all applicable codes, standards, regulations, manuals, references, guidelines, policies, specifications, handbooks and advisory circulars, including such codes, standards, regulations, manuals, references, guidelines, policies, specifications, handbooks, advisory circulars and similar documents referenced within the Lease Agreement and the Requirements and Provisions for Work issued or published by the Port Authority or a Governmental Authority and any similar applicable documents referenced in the Basic Lease, as amended, revised, supplemented or otherwise modified from time to time, and (iii) all applicable codes, references, and specifications issued or published by the Port Authority.

“Applicable Provisions” shall have the meaning as set forth in Section 2(f)(i) of Appendix G of the Official Statement.

“Application for Payment” shall mean D&C Contractor’s monthly requisition for compensation which shall be submitted in accordance with the D&C Contract.

“Available Documents” shall mean certain information only documents identified in the Lease Agreement.

“Baseline Schedule” shall mean the document annexed to the D&C Contract that was prepared in accordance with the Lease Agreement and the RPWs, as the same may be adjusted pursuant to the D&C Contract.

“Best Management Practice” shall mean the exercise of the degree of skill, diligence, prudence and foresight that would reasonably and ordinarily be expected from time to time from a skilled and experienced airport terminal operator or airport management services provider, or a skilled and experienced designer, engineer or contractor, as applicable, seeking in good faith to comply with its contractual obligations (including, in the case of an airport terminal operator or airport management services provider, obligations to consistently operate and maintain world-class terminal facilities), complying with Applicable Law, Governmental Approvals and Applicable Standards, and engaged in the same type of undertaking under similar circumstances and conditions. Best Management Practice is not static but rather will change over time; provided, however, that Best Management Practice with respect to any particular activity will be determined at the time when such particular activity is performed.

“Borrower” shall mean JFK Millennium Partners, LLC.

“Borrower’s Basis of Design” means the document entitled “Terminal 6 Comprehensive Basis of Design,” prepared by the Borrower and approved by the Port Authority as of the effective date, and included as a Reference Document.



“Borrower Change” shall have the meaning as set forth in Section 7(b) of Appendix G of the Official Statement.

“Borrower Change Directive” shall refer to a document labeled as such, and signed by a representative of the Borrower with the authority to order a Change that directs the D&C Contractor to proceed with a Change in the DB D&C Work.

“Borrower Direct Damages” shall have the meaning as set forth in Section 10(e) of Appendix G of the Official Statement.

“Borrower’s Dispute Representative” shall have the meaning as set forth in Section 16(b) of Appendix G of the Official Statement.

“Borrower’s QRP” shall have the meaning as set forth in Section 8 of Appendix G of the Official Statement.

“Borrower Related Entities” shall mean shall mean (a) Borrower, (b) Borrower’s Separate Contractors, (c) the list of Indemnitees in Section 1 of Exhibit 29 annexed to the D&C Contract (as may be amended), (d) the Manager, and (e) the employees, agents, officers, directors, shareholders, managers and members (if the Borrower is a limited liability company), partners (if the Borrower is a limited partnership or general partnership), authorized representatives, consultants, successors and assigns of any of the foregoing.

“Borrower’s Representatives” shall mean Derek Thielmann, or such other individual as Borrower may designate from time to time.

“Buyout Savings” shall have the meaning as set forth in Section 15(b) of Appendix G of the Official Statement.

“Change” or “Changes” shall refer to any alteration to the rights and obligations of any party to the D&C Contract, including adding, removing or modifying the scope of the DB D&C Work.

“Change Order” shall mean a written order, either prepared by D&C Contractor PMIS and submitted to Borrower through Procore and signed by D&C Contractor and Borrower (and, if required by the Lease, approved by the Port Authority), authorizing or directing a Change in accordance with the D&C Contract.

“Change Order Proposal” shall mean a written proposal process through Procore setting forth, in such detail as reasonably required by Borrower, the information required by the D&C Contract and, if applicable the Lease, including any request by D&C Contractor for adjustments to the GMP, Baseline Schedule, General Requirements Costs or General Conditions Costs, or extension of any Milestone Event.

“Claims” shall mean any and all claims, disputes, allegations, causes of action, demands, suits or proceedings alleging or seeking losses.

“Compensation Event” shall have the meaning as set forth in the defined terms of Appendix E of the Official Statement.

“Compensation Event Notice” means written notice given by the Borrower to the Port Authority within twenty (20) Business Days following the date on which the Borrower first becomes aware (or should have become aware, using all reasonable due diligence) that an event has occurred that the Borrower claims is a Compensation Event.

“Completion Certificate” shall have the meaning as set forth in Section 10(c)(ii) of Appendix G of the Official Statement.

“Completion Date” shall have the meaning as set forth in Section 10(c)(ii) of Appendix G of the Official Statement.

“Construction Application” shall mean one or more construction applications in the form prescribed by the Port Authority from time to time under the TCAP Process; provided that any Construction Application with respect to the D&C Work shall be deemed to include all plans and specifications of the D&C Work pursuant to and in accordance with the TCAP Process, the Airport Security Guidelines Manual and the Requirements and Provisions for Work.

“Construction Contingency Savings” shall have the meaning as set forth in Section 15(b) of Appendix G of the Official Statement.

“Construction Coordination Agreement” shall mean the Construction Coordination Agreement, dated as of November 17, 2022, by and between the Port Authority and the Borrower, as amended, supplemented or otherwise modified from time to time.

“Construction Work” shall mean all work related to the building, constructing, making, forming, manufacturing, furnishing, installing, supplying, delivering, landscaping, equipping and completing the Project and decommissioning, demolishing and removing the Existing Terminal Facilities, all in accordance with the Project Documents, but excluding Design Work and Operations and Maintenance Work.

“Contemplated Change Order Request” shall refer to a written request by Borrower to D&C Contractor for a Change which sets forth the nature of the Change.

“Corrective Action Plan” shall have the meaning as set forth in Section 11 of Appendix G of the Official Statement.

“D&C Contract” shall mean that certain design build agreement, as amended, entered into by and between Borrower and D&C Contractor dated November 17, 2022, for the design and construction of the Project.

“D&C Contractor” shall mean Hunt Construction Group, Inc.

“D&C Letter of Credit” shall have the meaning as set forth in Section 23(b) of Appendix G of the Official Statement.

“D&C Work” shall mean the Design Work and the Construction Work

“D&C Work Period” shall mean the period from the effective date of the Lease Agreement until the Port Authority issues a “Final Certificate of Authorization to Occupy or Use”; provided, however, that (i) with respect to obligations specific to the Phase 1 D&C Work, the period from the effective date until the Port Authority issues a “Final Certificate of Authorization to Occupy or Use” and (ii) with respect to obligations specific to the Phase 2 D&C Work, the period from the Port Authority’s approval of the Construction Application or Partial Approval Work Plans relating to all or a portion of such Phase 2 D&C Work until the Port Authority issues a “Final Certificate of Authorization to Occupy or Use”.

“DB Construction Work” shall mean all DB D&C Work related to the building, constructing, remediating, making, forming, manufacturing, furnishing, installing, supplying, delivering, landscaping, equipping and completing the Project and decommissioning, demolishing and removing the Existing Terminal Facilities,

all in accordance with the DB Project Documents, but excluding Design Work and Operations and Maintenance Work. For the avoidance of doubt, the DB Construction Work only includes Construction Work that is to be performed by D&C Contractor.

“DB D&C Work” shall mean all of the D&C Work to be performed by the D&C Contractor pursuant to the D&C Contract and the Lease Agreement and the GMP, but except as limited by the D&C Contract, PDD, and Qualifications, Assumptions, and Exclusions. Notwithstanding the foregoing, the DB D&C Work shall be deemed to include without limitation all required design-build services, DB Design Work, DB Construction Work, labor, materials, equipment and all other work and other services required to be performed and furnished by the D&C Contractor under and subject to the DB Project Documents for the full and timely completion of the DB D&C Work. For the avoidance of doubt, the DB D&C Work shall be deemed to include work or services required to secure Governmental Approvals, Construction Applications, Permits, approvals, or sign-offs for the DB D&C Work as set forth in the D&C Contract. For the avoidance of doubt, the DB D&C Work does not include any Operations and Maintenance Work.

“DB D&C Work Documents” shall mean Drawings, Specifications, Subcontracts, Shop Drawings, Samples, Product Data, Change Orders, Borrower Change Directives, Field Proceed Orders, Site Instructive, purchase orders, Subcontractors’ As-built Drawings, Composite As-built Drawings, guarantees, warranties, documents, analyses, Books and Records and other financial documentation, operating manuals, maintenance instructions, test results, logs, write-ups, requests for proposals, proposals, information and other documents and materials created or generated in connection with the Project.

“DB D&C Work Period” shall mean the period commencing from the effective date of the Lease Agreement until the Port Authority issues a “Final Certificate of Authorization to Occupy or Use” pursuant to of the Lease Agreement.

“DB Design Work” shall mean all DB D&C Work related to the design, redesign, engineering and architecture for the Project performed by Architect, Design Professionals, and D&C Contractor (including the Off-Premises Facilities) in accordance with the DB Project Documents, but excluding Construction Work and Operations and Maintenance Work. Further, any design, redesign, engineering, or architecture for the Project performed by Architect, Design Professionals, and D&C Contractor (including the Off-Premises Facilities) under the Interim Agreement shall also be part of DB Design Work.

“DB Project Documents” shall mean (i) the Project Documents, (ii) the Rights of Entry Agreements, (iii) the D&C Contract and the exhibits annexed thereto, (iv) all Borrower Change Directives and Change Orders, (v) the Comprehensive Security Plan, (vi) DB D&C Work Documents, (vii) the Environmental Reports, (viii) the PDD, and (ix) any amendments to or replacements of any of the foregoing undertaken in accordance with the terms hereof or thereof, and any other document that the Borrower and D&C Contractor may deem jointly to be a “DB Project Document” from time to time after the date hereof, together with any amendments of or supplements thereto.

“D&C Contractor’s Dispute Representative” shall have the meaning as set forth in Section 16(b) of Appendix G of the Official Statement.

“Defect” shall mean a defect or deficiency in the condition or performance of any component of the construction project, whether by design, construction, installation, damage or wear, affecting the condition, use, functionality or operation of any component of the construction project, that would cause or have the potential to cause one or more of the following:

- (a) a hazard, nuisance or other risk to public or worker health or safety, including the health and safety of Persons;

- (b) a structural deterioration of the affected New Terminal Facilities or Off-Premises Facilities or any other component of the Construction Project;
- (c) damage to a third party's property or equipment;
- (d) damage to the environment to the extent arising from a breach of this Agreement by the Lessee; or
- (e) failure of the affected New Terminal Facilities or Off-Premises Facilities or any component of the Construction Project to meet any of the requirements or standards referred to in Exhibit 8 (Performance Standards and Measurement Provisions) to the Lease Agreement.

“Delay Event” shall have the meaning as set forth in the defined terms of Appendix E of the Official Statement.

“Delay Event Notice” means a written notice from the Borrower to the Port Authority within twenty (20) Business Days following the date on which the Borrower first became aware (or should have become aware, using all reasonable due diligence) that an event has occurred that the Borrower claims is or is likely to become a Delay Event (provided, that in the case of the same Delay Event being a continuing cause of delay, only one (1) notice will be necessary).

“Design Cost” shall mean the cost of performing, providing and furnishing the DB Design Work.

“Design Limitation of Liability” shall have the meaning as set forth in Section 24(c) of Appendix G of the Official Statement.

“Design Professionals” shall mean individually and collectively, Architect, engineers and/or other design professionals engaged by D&C Contractor to perform the DB Design Work, together with their respective subconsultants, as same may be updated from time to time by D&C Contractor.

“Design Work” shall mean all work related to the design, redesign, engineering and architecture for the Construction Project (including the Off-Premises Facilities) in accordance with the Project Documents, but excluding Construction Work and Operations and Maintenance Work.

“Direct Agreement” shall have the meaning as set forth in Section 19(f) of Appendix G of the Official Statement.

“Direct DB D&C Work” shall mean all work, labor, services, materials, and equipment (including suppliers), whether performed, provided, or furnished by the D&C Contractor or its Subcontractors.

“Direct DB D&C Work Cost” shall mean the cost of performing, providing and furnishing the Direct DB D&C Work.

“Disputes” shall have the meaning as set forth in Section 7(h) of Appendix G of the Official Statement.

“Drawings” shall mean the working drawings now or hereafter prepared by the D&C Contractor for the Project, as the same may be amended, modified, revised or supplemented from time to time with Borrower's (and if required by the Lease Agreement, the Port Authority's), approval.

“Environmental Reports” shall mean the environmental site assessment reports and documents relating to Terminals 6 and 7 at the Airport, which are listed in the D&C Contract.

“Environmental Requirement” shall mean in the singular and “Environmental Requirements” shall mean in the plural all (i) common law and all past, present and future laws, statutes, enactments, regulations,

rules, directives, ordinances, codes, licenses, permits, orders, memoranda of understanding and memoranda of agreement, guidances, approvals, plans, authorizations, requirements and similar items of all Governmental Agencies, (ii) all pollution prevention programs, “best management practices plans”, and other programs adopted and agreements made by the Port Authority (whether adopted or made with or without consideration or with or without compulsion), with any Governmental Agencies, and (iii) all judicial, administrative, voluntary and regulatory decrees, judgments, orders and agreements, in each case relating to the protection of human health or the environment, the foregoing to include without limitation:

- (i) All requirements pertaining to reporting, licensing, permitting, investigation and Remediation of emissions, discharges, Releases or threatened Releases of Hazardous Substances into the air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances, or the transfer of property on which Hazardous Substances exist;
- (ii) All requirements pertaining to the health and safety of employees or the public;
- (iii) The Atomic Energy Act of 1954, 42 U.S.C. Section 2011 et seq.; the Clean Water Act also known as the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 et seq.; the Superfund Amendments and Reauthorization Act of 1986, Section 2701 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. Section 11001 et seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Safe Drinking Water Act of 1974, 42 U.S.C. Sections 300f-300h-11 et seq.; the New York State Environmental Conservation Law; the New York State Navigation Law; together, in each case, with any amendment thereto, and the regulations adopted, guidances, memoranda and publications promulgated thereunder and all substitutions thereof;
- (iv) The SPDES Permit; and
- (v) NEPA and the NEPA Approval Documents.

“Equivalent Project Relief” shall have the meaning as set forth in Section 7(h) of Appendix G of the Official Statement.

“Event of Default” shall have the meaning as set forth in Section 19(a)(i) of Appendix G of the Official Statement.

“Exposure Hold” shall have the meaning as set forth in Section 15(d) of Appendix G of the Official Statement.

“Field Proceed Orders” shall refer to the orders made by the Borrower’s Representative for minor changes in the DB D&C Work that will be performed on a time and material basis.

“Field Services Agreement” shall mean that certain field services agreement, as amended, entered into by and between Borrower and D&C Contractor dated November 29, 2021.

“Final Certificate of Authorization to Occupy or Use” shall have the meaning as set forth in Section 10(c)(i) of Appendix G of the Official Statement.

“Final Completion” shall mean the date upon which all conditions of Section 10(c)(iii) of Appendix G of the Official Statement have been achieved.

“General Conditions Costs” shall mean the D&C Contractor’s fixed incurred costs of furnishing supervision and staffing and other incidental costs incurred to support the Project’s administration and management. The costs of D&C Contract’s insurance, subcontractor default insurance and bonds shall not be included in the General Conditions Costs.

“General Conditions and General Requirements DB D&C Work” shall mean the work that D&C Contract shall perform including, inter alia, the furnishing of supervision, facilities, materials and general labor for items and requirements of the DB D&C Work that do not lend themselves readily to inclusion in one of the separate Subcontracts and are not included in any Subcontracts.

“General Provisions” shall mean the “Requirements & Provisions for Design & Construction Work – General Provisions,” set forth as Section A of the Requirements and Provisions for Work, as may be amended, revised, supplemented or otherwise modified from time to time by the Port Authority in accordance with the terms of the Lease Agreement.

“General Requirements Costs” shall mean the fixed incurred costs of performing the DB D&C Work that D&C Contract shall self-perform, such as the furnishing of facilities, materials, and general labor for items and requirements of the DB D&C Work that do not lend themselves readily to inclusion in one of the separate Subcontracts and are not included in any Subcontracts.

“GMP” shall mean the guaranteed maximum price set forth in the D&C Contract.

“Good Order Requirements” shall mean actions instituted by the Port Authority in a Non-Discriminatory Manner to preserve, maintain, improve or restore good order at the Airport which result in, or alleviate circumstances which derogate from, the Port Authority’s ability to (i) provide predictable, consistent or non-discriminatory service to Airport users or (ii) mitigate the risks that chaotic or uncontrolled situations arise on Airport premises which may, in the Port Authority’s sole and absolute discretion, lead to unsafe or insecure conditions.

“Governmental Approvals” shall mean all approvals, permits, permissions, consents, licenses, certificates (including sales tax exemption certificates), registrations, notices, exemptions, exceptions, waivers, filings and authorizations (whether statutory or otherwise), which are required from time to time under Applicable Law in order to authorize the Port Authority or the Borrower to perform all or any part of the D&C Work or take actions required to complete obligations in connection with the D&C Work, the Operations and Maintenance Work, or the lease and management of the Premises as provided for under the Lease Agreement and that are issued or authorized by any Governmental Authority

“Governmental Authority” and “Governmental Agency” shall each mean federal, state, municipal and other governmental authorities, boards and agencies of any state, nation or government, including, without

limitation, any court, and all agencies under the United States Departments of Interior, Commerce and Agriculture, the United States Food and Drug Administration and the United States Centers for Disease Control and Prevention, except that they shall not be construed to include The Port Authority of New York and New Jersey, the lessor under the Lease Agreement.

“Hazardous Substance” shall mean and include in the singular and “Hazardous Substances” shall mean and include in the plural, any pollutant, contaminant, toxic or Hazardous Waste, dangerous substance, noxious substance, toxic substance, flammable, explosive or radioactive material, urea formaldehyde foam insulation, asbestos, polychlorinated biphenyls, chemicals known to cause cancer, endocrine disruption or reproductive toxicity, petroleum and petroleum products and other substances which have been or in the future shall be declared to be hazardous or toxic under Environmental Requirements.

“Hazardous Waste” shall have the meaning given such term in Section 261.3 of 40 CFR Part 261, Subpart A, as amended.

“Indemnitees” shall mean the following:

- (a) JFK Millennium Partners, LLC, Vantage Airport Group (US) Ltd., Vantage Airport Group Ltd., RXR VAF III JFK Millennium Partners Vehicle LLC, Paslay Management Group, L.P., American Triple I Holdings, LLC, JetBlue Airways Corporation, British Airways Plc, and each of their respective affiliates, shareholders, members, managers, partners (including partners of partners), employees, subsidiaries and related parties, and any successors and/or assigns of such entities;
- (b) any present or future mortgagee which encumbers an interest in the land or improvements located at the Project Site, together with their respective directors, officers, employees, and any successors and assigns of such entities;
- (c) The Port Authority of New York and New Jersey and each of its commissioners, officers, directors, agents, employees, and authorized representatives;
- (d) The City of New York and each of its officers, directors, agents, employees, and authorized representatives;
- (e) New York City Economic Development Corporation and each of its officers, directors, agents, employees, and authorized representatives;
- (f) The Bank of New York Mellon and each of its officers, directors, agents, employees, and authorized representatives; and
- (g) such other and further entities and/or individuals as may be reasonably identified by Borrower to D&C Contractor in writing.

“Initial Premises” means the land marked as area 1 on Exhibit 1 (*Terminal 6/7 Proposed Future Leasehold*) to the Lease Agreement at the Airport in the County of Queens, City and State of New York, constituting 23.1 acres (the “Terminal 6 Parcel”), the aforesaid land, together with any property of the Port Authority and all structures, improvements, additions, buildings, installations, fixtures, facilities and other property located, constructed or installed, or which may be located, constructed or installed in, on, or under the Terminal 6 Parcel, and the equipment permanently affixed or permanently located therein, such as (without limitation) electrical, plumbing, sprinkler, fire detection, fire protection and fire alarm, heating, air conditioning, steam, sewage, drainage, refrigerating, communications, security systems, gas and other

systems, and their pipes, wires, mains, lines, tubes, conduits, equipment and fixtures, and all paving, drains, culverts, ditches and catch-basins constructed in, on, or under the Terminal 6 Parcel.

“Installation Portion” shall have the meaning as set forth in Section 10(c)(iii) of Appendix G of the Official Statement.

“Interface Agreements” shall have the meaning as set forth in Section 2(c) of Appendix G of the Official Statement.

“JFK Separate Contractors” shall have the meaning as set forth in Section 2(c) of Appendix G of the Official Statement.

“Key Contract(s)” means:

- (a) the D&C Contract with the Lead Contractor for the D&C Work with a guaranteed maximum price;
- (b) any Construction Security;
- (c) any MSA;
- (d) any O&M Contract,
- (e) the RXR Subcontract; and
- (f) a management agreement with a concessions manager, if any.

“Lead Contractor” shall mean the entity, whether a single entity or a joint venture, that will be primarily responsible for performing the Construction Work.

“Lease Agreement” shall mean the lease made as of the November 17, 2022, by and between the Port Authority and the Borrower, as the same may be amended, supplemented, extended or restated with the express prior approval of the Port Authority, which amendments, supplements, extensions or restatements shall be made a part of the D&C Agreement by Change Order or Borrower Change Directive.

“Liquidated Damages” shall mean the sum of (a) Three Hundred Seventy-Five Thousand Dollars (\$375,000) per Day for Substantial Completion of Phase 1 applicable to the Milestone Event Date identified in Exhibit 30 annexed to the D&C Contract, and (b) the sum of Three Hundred Thirty Thousand Dollars (\$330,000) per Day for Substantial Completion of Phase 2 applicable to the Milestone Event Date identified in the D&C Contract, subject to a thirty day grace period, if the Milestone Event has not been achieved by the Milestone Event Date, not to exceed the Liquidated Damages Cap.

“Material Borrower Change” shall have the meaning as set forth in Section 7(e) of Appendix G of the Official Statement.

“Milestone Event” shall mean any milestone event as set forth in Exhibit 30 annexed to the D&C Contract.

“Milestone Event Date” shall mean the corresponding deadline set forth in the matrix annexed to the D&C Contract as Exhibit 30 for each Milestone Event, subject to any adjustments and extensions of time expressly permitted pursuant to the terms of the D&C Contract.

“New Airport Design Guidelines” means the Design and Guideline Procedures (February 21, 2018), as amended, revised, supplemented or otherwise modified from time to time, and included as a Reference Document.



“New Terminal Facilities” means (i) a unified inter-connected passenger terminal building (the “New Terminal Building”) consisting of approximately 1,150,000 square feet of floor space, including a consolidated Federal Inspection Services (FIS) facility replacing the existing Terminal 7 FIS facilities and, upon completion, accessible to both the New Terminal Building and Terminal 5 for international flights, the foregoing together with all associated and related areas and facilities, including but not limited to concourses, supporting buildings, utility and mechanical rooms, concession areas, stairwells, stairways, escalators and elevators, and all fixtures, furnishings and equipment necessary for the operation of a world-class international and domestic airport passenger terminal facility, to replace the Existing Terminal Facilities on the Terminal 7 Parcel and the apron and taxi lanes on the Terminal 6 Parcel, as generally shown on Exhibit 1 (Terminal 6/7 Proposed Future Leasehold) to the Lease Agreement or such other gate configuration as approved by the Port Authority, (ii) all necessary and appropriate contiguous aircraft ramp and apron areas to serve the New Terminal Building, and (iii) the other structures, systems and improvements resulting from the D&C Work as set forth in Section 2(b)(2)(i)(B) of the Lease Agreement.

“Nonconforming Work” means any D&C Work that does not conform to the requirements of the Project Documents, Applicable Standards, the Rules and Regulations or Applicable Law.

“OCIP” shall mean an owner controlled insurance program.

“Operations and Maintenance Work” shall mean all work related to the operation, management, administration and maintenance of the Premises for its permitted use and any repair, modification, reconstruction, rehabilitation, restoration, renewal and replacement thereof all as required under the Lease Agreement including any work required in connection with a Condition Survey Report but excluding the D&C Work.

“Order of Precedence” shall mean:

- (1) In the event of any conflict, ambiguity or inconsistency between any terms or provisions of the Lease Agreement (including for the purposes hereof, the Reference Documents), the order of precedence, from highest to lowest, shall, except as provided otherwise in this definition, be as follows:
  - (i) any change order or other amendment to the Lease Agreement entered into in compliance with the terms of the Lease Agreement (to the extent applicable) or any other settlement agreement between the Port Authority and the Borrower, pursuant to which the Port Authority and the Borrower agree to amend the Lease Agreement, and the Port Authority’s internal authorization processes;
  - (ii) the main body of the Lease Agreement;
  - (iii) Exhibits to the Lease Agreement;
  - (iv) Reference Documents (other than the Borrower’s Basis of Design and approved Construction Applications);
  - (v) Borrower’s Basis of Design; and
  - (vi) any approved Construction Application.
  
- (2) In the event of any conflict, ambiguity or inconsistency between the General Provisions, Good Order Requirements, the Applicable Standards and/or the Requirements and Provisions for Work (excluding the General Provisions), the order of precedence, from highest to lowest, shall, except as provided otherwise in this definition, be as follows:
  - (i) Good Order Requirements;
  - (ii) the General Provisions;

- (iii) the Requirements and Provisions for Work (excluding the General Provisions);
  - (iv) the Applicable Standards.
- (3) Where Good Order Requirements, Requirements and Provisions for Work and Applicable Standards contain more stringent standards than Applicable Laws, the Good Order Requirements, the Requirements and Provisions for Work and Applicable Standards will prevail, to the extent that those more stringent standards do not violate Applicable Law. If any portion of the Applicable Standards conflicts with or is less stringent than Applicable Laws, such conflicting or less stringent portions of Applicable Standards shall not be deemed “applicable.” If any of the Applicable Standards (other than a Rule and Regulation) conflicts with or is less stringent than a Rule and Regulation, such Rule and Regulation will prevail. If any of the provisions of the Lease Agreement conflicts or is inconsistent with any Rule and Regulation, such provision of the Lease Agreement will prevail; provided, that with respect to (x) any Rule and Regulation which apply to all lessees at the Airport, or (y) any conflict or inconsistency directly bearing on public health, welfare or safety, the applicable Rule and Regulation will prevail (subject to the provisions of the Lease Agreement concerning Qualifying D&C Changes).
- (4) In the event of any conflict, ambiguity or inconsistency between or among any of the provisions in the Lease Agreement, or between two (2) or more Project Documents having the same order of precedence, the provisions that establish the higher quality manner or method of performing the D&C Work or that establish more stringent standards to the Borrower will prevail.
- (5) Additional or supplemental details or requirements in a lower priority Project Document shall be given effect except to the extent they irreconcilably conflict with requirements, provisions and practices contained in the higher priority Project Document.
- (6) Notwithstanding the order of precedence among Project Documents set forth in this definition, in the event of a dispute arising from a conflict between the Design and Construction Requirements and the Applicable Standards, or any dispute arising out of clause (4) above with respect to a technical or engineering matter that is governed by or based upon the Applicable Standards or any of the Reference Documents, the Chief Engineer’s jurisdiction shall apply pursuant to the terms of the Lease Agreement.
- (7) Notwithstanding the order of precedence among Project Documents set forth in this definition, in the event of any conflict, ambiguity or inconsistency between the Lease Agreement and the Construction Coordination Agreement, the provisions of the Construction Coordination Agreement shall prevail (subject in all cases to the terms and conditions thereof).
- (8) In the event of any conflict, ambiguity or inconsistency between or among the description of the scope of work to be performed for the D&C Work as set forth in Exhibit 3 of the Lease Agreement (D&C Work Scope Document) or the Lease Agreement or any other Project Document, then Exhibit 3 of the Lease Agreement (D&C Work Scope Document) shall have precedence and prevail.

“Other Redevelopments” shall mean (i) construction activities at the Airport authorized or conducted by the Port Authority, including without limitation any Port Authority enabling work or (ii) private redevelopments at the Airport authorized by the Port Authority (such concurrent construction activities).

“Outside Completion Date” shall mean twelve (12) months after the Scheduled Completion Date.

“Parent Company Guaranty” shall have the meaning as set forth in Section 23(a) of Appendix G of the Official Statement.

“Partial Occupancy Portion” shall have the meaning as set forth in Section 10(c)(iii) of Appendix G of the Official Statement.

“Permits” shall mean Governmental Approvals and any other approvals, permits, authorizations, plans, licenses and certifications as required by the Port Authority.

“Permit Matrix” shall mean the list of Governmental Approvals set forth in Section/Part 2.11 of the PDD as further described in the D&C Contract.

“Phase” shall mean each phase of D&C Work, including Phase 1 D&C Work and Phase 2 D&C Work, as applicable.

“Phase 1 Completion Certificate” shall have the meaning as set forth in Section 10(c)(i) of Appendix G of the Official Statement.

“Phase 1 Completion Date” shall have the meaning as set forth in Section 10(c)(i) of Appendix G of the Official Statement.

“Phase 1 DB D&C Work” shall mean the portion of the DB D&C Work to be performed for the Phase 1 Improvements.

“Phase 1 Improvements” shall mean such portion of the New Terminal Facilities and Off-Premises Facilities which shall form part of the Phase 1 D&C Work.

“Phase 2 DB D&C Work” shall mean the portion of the DB D&C Work to be performed for the Phase 2 Improvements.

“Phase 2 Improvements” shall mean such portion of the New Terminal Facilities and Off-Premises Facilities which shall form part of the Phase 2 D&C Work.

“Port Authority” means the Port Authority of New York and New Jersey, a body corporate and politic, established by Compact between the States of New Jersey and New York with the consent of the Congress of the United States of America, and having an office at 4 World Trade Center, 150 Greenwich Street, 19th Floor, New York, New York 10007, in the Borough of Manhattan, City, County and State of New York.

“Port Authority Change” means the Port Authority’s right from time to time during the D&C Work Period to effectuate changes in the design and in the construction of the D&C Work, to substitute materials and methods and to order extra work that the Port Authority, in its discretion, deems necessary or appropriate, in each case that take effect after the GMP Contract Date, so long as such change is not arbitrary and capricious or unduly discriminatory and is not effectuated by the Port Authority in order to avoid the qualification of any such change as a Qualifying D&C Change.

“Port Authority Step-In Rights” shall have the meaning as set forth in Section 19(f) of Appendix G of the Official Statement.

“Premises” means the Initial Premises and the Terminal 7 Premises.

“Primary Project Relief” shall have the meaning as set forth in Section 7(h) of Appendix G of the Official Statement.

“Project” means the design and construction of the New Terminal Facilities on the Premises and the design and/or construction of all or a portion of the Off-Premises Facilities outside the Premises by the Borrower as set forth in the Lease Agreement and the Project Documents and in accordance with Good Order Requirements, Applicable Law and Applicable Standards.

“Project Documents” shall mean (i) the Lease Agreement (and exhibits thereto), (ii) the Reference Documents, (iii) the Pre-Term Work Agreement, and (iv) the Construction Coordination Agreement, and any amendments to or replacements of any of the foregoing undertaken in accordance with the terms hereof or thereof, and any other document that the Port Authority and the Borrower may jointly designate in writing as a “Project Document” from time to time after the date hereof, together with any amendments of or supplements thereto.

“Project Site” shall mean the site where the DB D&C Work shall be performed at the Airport as generally described in **Exhibit 1** of the Lease Agreement named “Terminal 6/7 Proposed Future Leasehold.”

“Program Definition Document” or “PDD” shall mean the program definition that is a written description of the Project’s elements (a) detailing the Borrower’s functional, operational and support requirements over and above the BOD, and (b) setting forth the division of responsibility of the parties as it pertains to the Lease Agreement and Requirements and Provisions for Work.

“Punch List” shall mean the list of the DB D&C Work or corrective work remaining to be done and the time schedule for completing such work after substantial completion for each Phase.

“Reasonable D&C Contractor Claim(s)” means a Claim for Equivalent Project Relief provided by the D&C Contractor in accordance with this Agreement in connection with a Compensation Event, Delay Event and/or a Qualifying D&C Change.

“Recovery Action” shall have the meaning as set forth in Section 13(b) of Appendix G of the Official Statement.

“Reference Documents” shall mean (i) the Requirements and Provisions for Work, (ii) the Borrower’s Basis of Design, (iii) the New Airport Design Guidelines and (iv) any approved Construction Applications.

“Remedial Plan(s)” shall mean any remedial plan developed pursuant to the Lease Agreement with respect to an event of default by the Borrower under the Lease Agreement or any remedial plan developed by D&C Contractor in accordance with the terms of the D&C Contract

“Request for Final Inspection” shall have the meaning as set forth in Section 10(c)(i) of Appendix G of the Official Statement.

“Required Subcontractor Retainage” shall mean ten percent (10%) of the amount of each progress payment under a Subcontract (unless otherwise agreed to by the Borrower, in its sole discretion), which shall be reduced in accordance with the terms of the D&C Contract.

“Requirements and Provisions for Work” and “RPWs” means a Reference Document consisting of (i) the General Provisions, (ii) the Design and Construction Requirements and (iii) the Operations and Maintenance Term Requirements.

“Rights of Access” shall mean the Temporary Rights of Access.

“Right of Entry Agreements” shall mean certain agreements entered into by and between the Borrower and the D&C Contractor for rights of entry with the Port Authority, with British Airways (“BA”), and with JetBlue (“JB”) in connection with non-leasehold areas (the “PA ROE”), legacy Terminal 7 (the “BA ROE”), legacy Terminal 5 (the “JB ROE”), which right of entry agreements were entered into in order to facilitate Project preparation work to be performed prior to the Lease Agreement activation.

“Rules and Regulations” shall mean, individually and collectively, applicable rules, regulations, policies, manuals, publications, handbooks, advisory circulars, standards, practices and guidelines issued or published by the Port Authority (including, without limitation, any bulletin, directive or other official instruction issued by the General Manager of the Airport or the Chief Security Officer of the Port Authority and any code of ethics established by the Port Authority applicable to Borrowers and/or sublessees, contractors, furnishers of services or other Persons at the Airport); in each case, as may be amended, revised, supplemented or otherwise modified from time to time pursuant to a Rules and Regulations Change.

“Rules and Regulations Change” means (i) any new Rule and Regulation, (ii) any change to an existing Rule and Regulation (including by an amendment or supplement thereto) or (iii) a repeal of any existing Rule and Regulation; in each case that takes effect, except for purposes of establishing a Qualifying D&C Change, after the effective date of the Lease Agreement; provided, that, (a) any new, modified or changed Rule and Regulation related to safety (including health and sanitation), security and/or Good Order Requirements, or required to comply with Applicable Laws, shall not be unjustly or unduly discriminatory and (b) any new, modified or changed Rule and Regulation with respect to any matter other than safety (including health and sanitation), security or Good Order Requirements, and not required to comply with Applicable Laws, shall be reasonable (taking into account the Port Authority’s role and obligations as an airport operator) and shall not be unjustly or unduly discriminatory.

“Scheduled Completion Date” means February 23, 2028 (as such date may be adjusted only as expressly permitted under the Lease Agreement).

“Scheduled DB Completion Date” for the Project shall mean the scheduled date for Substantial Completion of Phase 2.

“Scheduled Phase 1 DB Completion Date” for the Project shall mean the scheduled date for Substantial Completion of Phase 1.

“Scheduled Phase 1 Completion Date” shall mean December 4, 2025 (as such date may be adjusted only as expressly permitted under this Agreement).

“SDI” shall mean subcontractor default insurance.

“Senior Representatives” shall have the meaning as set forth in Section 16(b) of Appendix G of the Official Statement.

“Separate Contractors” shall mean all contractors or subcontractors engaged or to be engaged by the Borrower (or by the Borrower or a Sublessee in the case of any Sublessee Spaces), and who are performing D&C Work at the Project Site or any Adjoining Premises, but excluding the D&C Contractor or its Subcontractors.

“Shop Drawings” shall mean the drawings, diagrams, schedules and other data specifically prepared by D&C Contractor or Subcontractors, as the case may be, to illustrate or define portions of the DB D&C

Work, which, as appropriate, shall reflect and incorporate the information in the Construction Documents depicting or otherwise pertaining to such portions of the DB D&C Work.

“Specifications” shall mean the working specifications now or hereafter prepared by the D&C Contractor for the Project, as the same may be amended, modified, revised or supplemented from time to time with Borrower’s (and if required by the Lease Agreement, the Port Authority’s), approval.

“Subcontractor” shall mean any Person with whom D&C Contractor has entered into any Subcontract (including by assignment), and any other Person with whom any Subcontractor has further subcontracted any part of the DB D&C Work, including the DB Design Work, at all tiers, including without limitation for the supply of labor, materials, or equipment. Subcontractors shall also include any contractor or subcontractor for which the contract or subcontract is assigned to D&C Contractor.

“Subcontractor Construction Security” shall have the meaning as set forth in Section 12(c) of Appendix G of the Official Statement.

“Submittals” shall mean Shop Drawings, Product Data, Samples and similar submittals prepared by or on behalf of the D&C Contractor.

“Substantial Completion of Phase 1” shall have the meaning as set forth in Section 10(c)(i) of Appendix G of the Official Statement.

“Substantial Completion of Phase 2” shall have the meaning as set forth in Section 10(c)(ii) of Appendix G of the Official Statement.

“TCAP Manual” shall mean the Tenant Construction and Alteration Process Manual of the Port Authority of New York and New Jersey, an electronic copy of which is available on the Port Authority website at <https://www.panynj.gov/port-authority/en/business-opportunities/tenant-construction-and-alteration-process.html>, as may be updated from time to time.

“TCAP Process” shall mean the Port Authority’s Tenant Construction and Alteration Process, which is described in:

- (a) the TCAP Manual;
- (b) the Port Authority’s Tenant Construction Review Manual (TCRM);
- (c) the Tenant Construction and Alteration Process Portal Guide;
- (d) the TCAP bulletins; and
- (e) any additional or modified manual updates, guidance, bulletins or the like issued by the Port Authority from time to time, and any subsequent editions, restatements or replacements of any of the above.

“Temporary Certificate of Authorization to Occupy or Use” shall have the meaning as set forth in Section 10(c)(iii) of Appendix G of the Official Statement.

“Temporary Rights of Access” shall mean that the Port Authority will grant to the Borrower, and the Borrower will take, for use by the Borrower and its contractors, those certain rights of way and access and use of those off-Premises portions of the Airport shown for ingress and egress, on foot and in vehicles, storage of materials, staging of construction, support, drainage, temporary utilities and other purposes with respect to the D&C Work during the D&C Work Period and consistent with the purposes of the Lease Agreement.

“Terminal 7 Premises” means the land marked as area 2 on Exhibit 1 (*Terminal 6/7 Proposed Future Leasehold*) to the Lease Agreement at the Airport in the County of Queens, City and State of New York, constituting 35.4 acres (the “Terminal 7 Parcel”), the aforesaid land, together with any property of the Port Authority and all structures, improvements, additions, buildings, installations, fixtures, facilities and other property located, constructed or installed, or which may be located, constructed or installed in, on, or under the Terminal 7 Parcel, and the equipment permanently affixed or permanently located therein, such as (without limitation) electrical, plumbing, sprinkler, fire detection, fire protection and fire alarm, heating, air conditioning, steam, sewage, drainage, refrigerating, communications, security systems, gas and other systems, and their pipes, wires, mains, lines, tubes, conduits, equipment and fixtures, and all paving, drains, culverts, ditches and catch-basins constructed in, on, or under the Terminal 7 Parcel.

“Transportation Deficiency Plan of Action” a plan of action to resolve any such parking deficiency by a date certain (including by implementing alternative modes of parking or ground transportation), mitigate any damages and address any dissatisfaction of airline passengers and customers caused by and during such condition.

“Transportation Management Plan” shall mean a parking and traffic mitigation plan approved by the Port Authority that describes, to the extent applicable, alternative parking solutions for each Phase of the D&C Work and traffic circulation and control management, roadway paving, staging, level of maintenance service, pedestrian walkways and site logistics, during the D&C Work Period.

“Qualifying D&C Change” means the Lessee shall at all times comply with all Rules and Regulations, the New Airport Design Guidelines and the Requirements and Provisions for Work and any changes thereto (including Rules and Regulations Changes and RPW Changes), in addition to, Good Order Requirements, Applicable Law, Applicable Standards and the requirements set forth in the Lease Agreement and the other Project Documents. However, if, during the D&C Work Period, the Port Authority issues or publishes any Rules and Regulations Change or any RPW Change or informs the Lessee of any change to the New Airport Design Guidelines, which, in each case, takes or took effect after the earlier of (i) the Effective Date, and (ii) the GMP Contract Date and such Qualifying D&C Change cannot be complied with by the Lessee without the Lessee incurring cumulative additional D&C Work Costs for the D&C Work (when aggregated with the D&C Work Costs of complying with any other such Qualifying D&C Change) of not less than \$25,000,000, then such Qualifying D&C Change shall be treated in all respects under the Lease Agreement as a Port Authority Change.

“Unavoidable Delays” shall mean delay in the performance of any portion of the DB D&C Work resulting in the D&C Contractor not being able to achieve any Milestone Event by the applicable Milestone Event Date, which is caused by an Unavoidable Delay Event.

“Unavoidable Delay Events” shall have the meaning as set forth in Section 10(d) of Appendix G of the Official Statement.

“Unavoidable Delay Event Notice” shall have the meaning as set forth in Section 10(d) of Appendix G of the Official Statement.

“Warranty” shall have the meaning as set forth in Section 11 of Appendix G of the Official Statement.

“Warranty Period” shall have the meaning as set forth in Section 11 of Appendix G of the Official Statement.

**(THIS PAGE INTENTIONALLY LEFT BLANK)**



## APPENDIX H

### SUMMARY OF CERTAIN PROVISIONS OF THE MANAGEMENT SERVICES AGREEMENT

*The following is a summary of selected provisions of the Management Services Agreement (“MSA”) and is not a full statement of the terms of such agreement. Accordingly, the following summary is qualified in its entirety by reference to such agreement and is subject to the full text of such agreement. Unless otherwise stated, any reference in this Official Statement to the MSA shall mean such agreement and all schedules, exhibits and attachments thereto, as amended, supplemented or otherwise modified and in effect as of the date hereof.*

#### **Term**

The term of the MSA begins with the commencement of the Lease Agreement (the “Effective Date”) and will end on December 30, 2060, unless extended automatically pursuant to an extension in the term of the Lease Agreement or terminated earlier as described in the MSA.

#### **Services**

The Manager will second personnel to the Lessee and through such seconded personnel and other third-party resources, provide the day-to-day management of the Lessee's business and operations, including but not limited to the provision of:

General management services, including the design and implementation of the treasury function and financial controls, the maintenance of appropriate accounting functions, the provision of centralized recruiting and other human resources-related guidance, the provision of ongoing public affairs guidance and support and enterprise risk management and the development of an ESG implementation and monitoring program.

Design development and contracting services, including facilitating the design development of concept drawings into construction documents, drawings and specifications, working with all parties with the objective of ensuring the project scope is delivered on time and on budget, the provision of guidance and input on tendering strategies and performing contract administration, coordination and facilitation of the design and review of tenants in accordance with the appropriate design, construction and alterations process manuals.

D&C program services, including working with all parties with the objective of ensuring the project scope is delivered on time and on budget, conducting design reviews, refining schedule and phasing plans, preparing and reviewing tender and request for proposal documents, managing the award recommendation process and monitoring D&C Work progress against schedule and budget.

Operational readiness and transition (“ORAT”) services, including coordinating ORAT plan activities with the Lessee, the Port Authority and other stakeholders, assisting with the delivery of ORAT services with respect to maintenance, operations, commercial, communications and public relations, finance, human resources training and information technology and developing and implementing training and orientation programs and operations center procedures.

Operations and maintenance services, including the provision of access to qualified personnel for guidance and support in relation to terminal and ramp operations, designing and commissioning a centralized and integrated operations center, preparing an annual operations and maintenance business

plan and annual services budget for submission to the Holdco Board, establishing a commercial lease policy and plans, implementing an appropriate commercial/retail mix and space utilization program, providing concession management services, including assistance with the management of Lessee commercial tenants and providing ongoing capital and life cycle planning assistance and coordination. With respect to the concession management services provided by the Manager, the Port Authority may, upon notice, require that such services be provided by the Manager to the Lessee pursuant to a separate concession management agreement.

### **Subcontractor Services Agreement**

The Manager will enter into a subcontract with RXR JMP Development Services LLC (the “Manager Subcontractor”) on commercial terms and conditions in relation to the Manager Subcontractor’s provision of certain services to the Manager including design and construction contract administration, public affairs support and stakeholder outreach.

### **Standard of Performance**

The Manager will exercise the degree of skill, diligence, prudence and foresight that would reasonably and ordinarily be expected from time to time from a skilled and experienced airport management services provider engaged to perform services similar to those under the MSA, in order to comply with its contractual obligations, applicable laws, governmental approvals and applicable standards.

### **Management and Coordination of Design and Construction Work**

The Manager will manage and coordinate the Lessee’s rights and obligations described in the D&C Contract with the Lead Contractor and assist the Lessee in the performance and administration of all D&C contracts to ensure that the D&C contractors complete the D&C Work on time and within budget. The Manager will interface with the Port Authority in the management of the D&C Work to the extent reasonably required pursuant to the Lease Agreement.

### **Changes to Services; Additional Services**

Upon any amendment to the Lease Agreement that may reasonably create obligations on the Lessee that require changes to the scope of the services, the Lessee and the Manager will in good faith review and amend the MSA to change the scope of services and fees as may be necessary to reflect the then-current and then-anticipated future needs of airport operations.

If the Lessee desires for the Manager to provide additional services outside the scope of services required under the MSA, the Lessee will invite the Manager to submit a proposal identifying the estimated cost and staffing requirements for such additional services. The Manager will have 30 days from receipt of the written invitation to provide the proposal, which will be subject to acceptance or rejection by the Holdco Board. If the Manager fails to provide a proposal, or has its proposal rejected, the Lessee may solicit proposals from qualified third parties.

### **Staffing and Appointment of Personnel**

The Manager will provide nominees for approval by the Holdco Board to fill the position of chief executive officer together with other capable and experienced key management personnel that it recommends serve in senior management roles of the Lessee. The Holdco Board will have the right to independently remove any executive from their appointed position at any time in its sole discretion upon

30 days' written notice to, and consult with, the Manager. The Manager will also have the right to independently remove any executive from their appointed position at any time in its sole discretion, provided that (a) prior to initiating any such removal of an executive, the Manager will provide at least thirty (30) days' written notice to, and consult with, the Holdco Board; and (b) the Manager provides to the Holdco Board a recommended nominee to replace such executive that has the appropriate skill, experience and qualifications for the position to be undertaken by such nominee. Any dispute between the parties arising from the hiring or termination of executives will be resolved by the dispute resolution mechanism described below. The Manager will propose additional personnel for secondment to the Lessee, including for the positions of Project Manager, Project Director and Design Manager.

## **Fees and Expenses**

The Manager will be paid:

*Mobilization Fee:* a one-time fixed mobilization fee in an amount of \$2,400,000 paid on the Effective Date.

*D&C Program Fee:* For the period from the Effective Date to the substantial completion of Phase 2, a fee for the provision of services in connection with the D&C Work as described in the MSA, in the collective amount of US\$20 million, paid in monthly increments as set out in the MSA.

*Management Fee:* A Management Fee calculated as follows, each paid monthly in arrears and prorated for any stub year:

- from the Effective Date up to and including the substantial completion of Phase 2, US\$6.6 million per annum, adjusted annually by the consumer price index specified in the MSA on the Effective Date, indexed to March 1, 2018, and
- for the period subsequent to the substantial completion of Phase 2, an amount equal to US\$6.8 million per annum (adjusted annually by the consumer price index specified in the MSA, indexed to March 1, 2018).

*ORAT Fee:* For the period from the Effective Date and up to and including the date of beneficial occupancy (“DBO”) of the Phase 2 D&C Work, an operational readiness and transition services fee, calculated as follows:

- for the period from the Effective Date up to and including December 31, 2022, an amount equal to US\$2.25 million payable on December 31, 2022;
- for the period after December 31, 2022 up to and including the DBO of the Phase 1 D&C Work, an amount equal to \$3.75 million payable on the DBO of Phase 1 of the D&C Work; and
- for the period subsequent to the DBO of the Phase 1 D&C Work and up to and including the DBO of the Phase 2 D&C Work, an amount equal to US\$1.5 million payable on the DBO of the Phase 2 D&C Work.

The Manager will be reimbursed monthly by the Lessee for all reasonable costs and expenses incurred by the Manager for rendering its services so long as such costs and expenses are incurred in accordance with the annual services budget.

In the event that, with respect to any calendar year, (a) the Lessee is assessed deductions under the Lease Agreement on account of the Lessee's failure to achieve the performance standards prescribed by the Lease Agreement, and (b) the failure to achieve such performance standards was caused by the failure of the Manager to perform the services in accordance with Best Management Practice, the Lessee may

reduce the Management Fee payable to the Manager in respect of such year by the amount of such deductions that is attributable to the failure of the Manager to perform its services in accordance with Best Management Practice.

In the event that, with respect to any calendar year, the Lessee receives a financial bonus under the Lease Agreement on account of the Lessee's achievement of the incentive key performance indicators prescribed by the Lease Agreement, the Lessee will increase the Management Fee payable to the Manager in respect of such year by the amount of such financial bonus.

### **Limitations on Authority of Manager**

The Manager and the seconded Manager personnel are not authorized to bind the Lessee and/or make any decisions on behalf of the Lessee except as expressly permitted to do so by the MSA or otherwise authorized by the Holdco Board.

### **Reporting and Record-keeping**

The Manager will provide the Holdco Board with reports regarding the current status of all matters relevant to the Lessee's operations and will comply with the Lessee's record keeping obligations under the Lease Agreement. Additionally, the Manager will make records under its control accessible to the Port Authority and Lessee as required by the Lease Agreement and the MSA.

The Manager will provide reports to the Holdco Board in connection with the actual and projected financial results of the Lessee's operations and the status of ongoing and anticipated D&C Work and actual and projected impacts on the Lessee's operations on a monthly basis from the Effective Date to the date which is 3 months post-DBO of the Phase 2 improvements, and quarterly thereafter. Reports on operations and maintenance work will be provided quarterly to the Holdco Board throughout the term of the MSA.

### **Covenants**

The Lessee agrees, among other things, to comply with all of the terms and conditions of the Lease Agreement applicable to it and to the performance of its obligations under the MSA, and subject to any limitations set forth in the Lease Agreement, financing documents, subleases, key contracts and any governmental requirements, to grant the Manager with the such authority as is necessary to enable the Manager to perform the services, to the extent permitted under the Lease Agreement, subleases, financing documents and any governmental requirements to provide the Manager and with access to the premises and such information, records, systems, assets, equipment, and facilities as may be necessary to enable the Manager to perform the services. The Manager agrees, among other things, to comply with all of the terms and conditions of the Lease Agreement applicable to it to perform the services in accordance with Best Management Practice and, except as otherwise directed by the Lessee, to refrain from taking any action or omitting to take any action that results in a material breach by the Lessee of its obligations under the Lease Agreement, the subleases, any financing documents, the key contracts, or any governmental requirements.

### **Indemnification**

Each party agrees to indemnify, defend and hold harmless the other and its directors, officers, employees, agents and affiliates for any direct losses claimed by the other party's indemnified parties (and in the case of the Manager's indemnity obligations, also the Port Authority Indemnified Party) as a result of the indemnifying party's negligence, fraud, omission, or willful misconduct in connection with its performance under the MSA, breach of the MSA and any claims of patent or copyright infringement.

## **Limitations on Liability**

With the exception of the Manager's gross negligence, fraud, or willful or criminal misconduct, the Manager's aggregate liability in connection with the MSA (including indemnification obligations) is capped annually as follows:

- for each calendar year preceding and including the year of substantial completion of the project, a maximum amount no greater than seventy-five percent (75%) of the Management Fee payable in the calendar year in which such claim(s) or damages arose; and
- with respect to any calendar year following the year of substantial completion of the project, a maximum amount no greater than one hundred percent (100%) of the Management Fee payable in the calendar year in which such claim(s) or damages arose.

## **Annual Services Budget and Annual Lessee Budget**

Each year, the Manager is required to prepare (i) an annual services budget setting forth all fees, Manager expenses and seconded Manager personnel costs anticipated to be incurred by the Lessee and payable to the Manager in respect of the following calendar year, and (ii) an annual lessee budget setting forth all costs, expenses and disbursements expected to be incurred by the Lessee with respect to the Lessee operations in the following calendar year (including the items set out in the annual services budget), and submit the same to the Holdco Board for approval.

## **Corporate Guaranty**

The Manager has delivered to the Lessee a corporate guarantee from Vantage Airport Group (US) Ltd. that guarantees the Manager's performance and payment obligations (the "Manager Guarantee").

## **Insurance**

During the term, the Manager will maintain or cause to be maintained, at its own cost and expense (and without reimbursement by the Lessee), all insurance that it is obligated to maintain under applicable law and pursuant to the Lease Agreement, and will cause the Lessee, the lead contractor, Port Authority Indemnified Parties, the City, the City's officials and employees, the New York City Economic Development Corporation and certain third parties to be named as additional insureds and loss payees on certain liability policies the Manager is required to maintain pursuant to the Lease Agreement. The Manager will also assist the Lessee with securing and maintaining all insurance policies required to be maintained by the Lessee pursuant to the project documents, key contracts, financing documents and applicable law, and all such policies shall name the Manager as an additional insured.

## **Events of Default**

The Manager shall be considered in default for the following events, amongst others, if not cured within the proscribed time frame, if applicable: a materially false or misleading representation or warranty in the MSA; failure to perform certain obligations applicable to the Manager under the Lease Agreement resulting in an Event of Default (as defined in the Lease Agreement); failure to perform certain material obligations under the MSA; bankruptcy or insolvency, whether it be voluntary or involuntary; an unpermitted assignment by the Manager's affiliate(s) of its or their interest(s) in the Lessee; the Manager Guarantee becomes invalid or ceases to be in full force and effect for any reason whatsoever, including as a result of the bankruptcy or insolvency of the Manager's corporate guarantor; failure by the corporate guarantor to perform any material obligation under the Manager Guarantee; certain acts by the Manager that cause the Lessee to be in default under the Lease Agreement; the Manager's liability to the Lessee

under the MSA exceeding a certain liability cap in certain periods or the Manager no longer qualifying as a Qualified Terminal Operator under the Lease Agreement. In the event of a Manager event of default, the Lessee shall have the right to terminate the MSA in addition to exercising any rights the Lessee may have at law or in equity.

The Lessee shall be considered in default for the following events if not cured within the prescribed time frame, if applicable: a material false or misleading representation or warranty in the MSA; failure to perform a material obligation under the MSA; bankruptcy or insolvency, whether it be voluntary or involuntary; failure to make payments under the MSA; and the Port Authority terminates the Lease Agreement for an event of default under the Lease Agreement, provided that such event of default is not directly caused by any breach by the manager under the MSA. In the event of a Lessee default, the Manager shall have the right to terminate the agreement in addition to exercising any rights the Manager may have at law or equity.

### **Termination**

The MSA will terminate upon the earliest of the following: (i) on the fifteenth anniversary of the Effective Date if the Port Authority, acting reasonably, determines that the Manager is no longer a Qualified Terminal Operator or the Port Authority determines that the services are not being or will not be performed in accordance with the Best Management Practice; (ii) the end of the term under the MSA; (iii) mutual agreement by the parties to terminate the MSA; (iv) a party elects to terminate the MSA after the default of the other party; or (v) termination of the Lease Agreement.

In the event of early termination of the MSA, (i) the Manager will continue to provide the services and assist the Lessee in complying with its obligations under the Lease, (ii) the Manager will vacate the premises upon the effective date of such termination and (iii) the Manager and Lessee may enter into a transition services agreement on terms to be mutually agreed. In the event of termination on the expiration date of the MSA, no later than one hundred and eighty (180) days prior to the expiration date, the Lessee and Manager will meet to develop a plan for the orderly transition of the services to the Port Authority, which plan the Lessee and Manager will use diligent efforts to complete no later than one hundred and fifty (150) days prior to the expiration date. In the event of termination on the expiration date, on the expiration date the Manager will vacate the premises and, to the extent within the control of the Manager, will ensure the premises are in at least the condition required by the Lease.

### **Port Authority Step-in Rights**

If the Lessee fails to perform its obligations under the Lease Agreement, and subject to certain recognized mortgagee's rights, the Port Authority has the right to step into the shoes of the Lessee under the MSA.

### **Dispute Resolution**

Senior executives of each party will have 20 business days after receipt of a dispute notice to resolve any dispute under the MSA. If the executives cannot settle the dispute, the matter will be submitted to arbitration conducted in New York, New York, administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures.

### **No Assignment**

Neither party may assign its rights or obligations under the MSA without the prior written consent of the other party, and the Port Authority (to the extent required by the Lease Agreement), except that (i)

the Lessee may, without the consent of the Manager (and without relieving itself of liability) transfer the MSA or any of its rights or obligations under the MSA to any recognized mortgagee in connection with any Lessee debt, and (ii) the Manager may, without the consent of but upon prior written notice to the Lessee, to the extent such assignment would not cause the Lessee to be in violation of the Lease Agreement, assign its rights or obligations to any of its affiliates that is a Qualified Terminal Operator if the counterparty of the Manager Guarantee agrees to such assignment.

**(THIS PAGE INTENTIONALLY LEFT BLANK)**



## APPENDIX I

### BOOK-ENTRY ONLY SYSTEM

*The Role of DTC.* Cede & Co., as nominee for DTC, will hold the Series 2024 Bonds.

*The Function of DTC.* DTC, the world's largest depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has a Standard & Poor's Rating of AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com). No information available on or through such website shall be deemed to be part of or incorporated in this Official Statement.

*The Rules for Transfers Among DTC.* Transfers between DTC participants will occur in accordance with DTC rules.

*DTC Will Be the Holder of the Series 2024 Bonds.* Purchases of the Series 2024 Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Series 2024 Bonds on DTC's records. The ownership interest of each actual purchaser of each Series 2024 Bond ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Series 2024 Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Series 2024 Bonds, except in the event that use of the book-entry system for the Series 2024 Bonds is discontinued.

To facilitate subsequent transfers, all Series 2024 Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of the Series 2024 Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not affect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Series 2024 Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Series 2024 Bonds

are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Series 2024 Bonds unless authorized by a Direct Participant in accordance with DTC's Money Market Instrument ("MMI") Procedures. Under its usual procedures, DTC mails an omnibus proxy to the Issuer as soon as possible after the record date. The omnibus proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Series 2024 Bonds are credited on the record date (identified in a listing attached to the omnibus proxy).

Principal and interest payments on the Series 2024 Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Issuer, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC or the Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal and interest payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Issuer, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owner will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as depository with respect to the Series 2024 Bonds at any time by giving reasonable notice to the Issuer. Under such circumstances, in the event that a successor depository is not obtained, note certificates are required to be printed and delivered.

The Issuer may decide to discontinue the use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, note certificates will be printed and delivered to DTC.

The information in this subsection concerning DTC has been obtained from sources that the Issuer believes to be reliable, but the Issuer does not take any responsibility for the accuracy thereof or make any representation as to the completeness or the accuracy of such information or as to the absence of material adverse changes in such information subsequent to the date hereof.

**APPENDIX J**

**FORM OF CONTINUING DISCLOSURE UNDERTAKING**

**(THIS PAGE INTENTIONALLY LEFT BLANK)**

## FORM OF CONTINUING DISCLOSURE UNDERTAKING

This Continuing Disclosure Undertaking (the “Disclosure Undertaking”), dated as of November 5, 2024, is executed and delivered by **JFK Millennium Partners, LLC**, a Delaware limited liability company (the “Borrower”) in order to provide certain continuing disclosure with respect to the Bonds in accordance with Rule 15c2-12 of the United States Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time (the “Rule”).

In consideration of the execution and delivery of the Bonds by the Issuer and the purchase of such Bonds by the Underwriters listed on the cover of the Official Statement (hereinafter defined), the Borrower hereby covenants and agrees as follows:

**SECTION 1. Definitions.** Capitalized terms not otherwise defined in this Disclosure Undertaking shall have the meaning assigned in the Rule or, to the extent not in conflict with the Rule, in the Official Statement. The capitalized terms shall have the following meanings:

(a) “Annual Filing Date” means the date, set in Section 2A(a) of this Disclosure Undertaking, by which the Annual Report is to be filed with the MSRB.

(b) “Annual Financial Information” means annual financial information as such term is used in paragraph (b)(5)(i) of the Rule and specified in Section 3A(a) of this Disclosure Undertaking.

(c) “Annual Report” means an Annual Report described in and consistent with Section 3A of this Disclosure Undertaking.

(d) “Audited Financial Statements” means the financial statements (if any) of the Borrower for the prior fiscal year, certified by an independent auditor as prepared in accordance with GAAP or otherwise, as such term is used in paragraph (b)(5)(i) of the Rule and specified in Section 3A(b) of this Disclosure Undertaking.

(e) “Authorized Representative” means the Chief Executive Officer of the Borrower or their designee, or such other person as the Borrower shall designate from time to time.

(f) “Bonds” means the Issuer’s Special Facilities Revenue Bonds, Senior Series 2024A (Green Bonds) (AMT) (Current Interest Bonds) (JFK Airport Terminal 6 Redevelopment Project) and Special Facilities Revenue Bonds, Senior Series 2024B (AMT) (Convertible Capital Appreciation Bonds) (JFK Airport Terminal 6 Redevelopment Project).

(g) “Certification” means a written certification of compliance signed by the Authorized Representative stating that the Annual Report, Quarterly Report, Monthly Report, Audited Financial Statements, Notice Event notice, Failure to File Event notice, Voluntary Event Disclosure or Voluntary Financial Disclosure delivered to the Dissemination Agent is the Annual Report, Quarterly Report, Monthly Report, Audited Financial Statements, Notice Event notice, Failure to File Event notice required to be, or the Voluntary Event Disclosure or Voluntary Financial Disclosure elected by the Borrower to be, submitted to the MSRB under this Disclosure Undertaking. A Certification shall accompany each such document submitted to the Dissemination Agent by the Authorized Representative and include the full name of the Bonds and the CUSIP numbers for all Bonds to which the document applies.

(h) “CUSIP number” means, with respect to any Bonds, the 9-character CUSIP number (the nine characters comprising a combination of digits and letters) relating to such Bonds.

(i) “Dissemination Agent” shall mean the Borrower, or any dissemination agent, or any alternate or successor dissemination agent, designated in writing as the “Dissemination Agent” by an Authorized Representative of the Borrower, which dissemination agent has evidenced its acceptance in writing.

(j) “EMMA System” shall mean the MSRB’s Electronic Municipal Market Access system, which can be found at [www.emma.msrb.org](http://www.emma.msrb.org), or any other repository of disclosure information that may be designated by the Securities and Exchange Commission in the future.

(k) “Failure to File Event” means the Borrower’s failure to file (i) an Annual Report on or before the Annual Filing Date, (ii) a Quarterly Report on or before the Quarterly Filing Date or (iii) a Monthly Report on or before the Monthly Filing Date.

(l) “Financial Obligation” means a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that “Financial Obligation” shall not include municipal securities (as defined in the Securities Exchange Act of 1934, as amended) as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

(m) “GAAP” means such accepted accounting practice as conforms at the time to applicable generally accepted accounting principles in the United States of America, consistently applied.

(n) “Indenture” has the meaning ascribed to such term in the Official Statement.

(o) “Information” means, collectively, the Annual Reports, the Quarterly Reports, the Monthly Reports, the Audited Financial Statements, the Notice Event notices, the Failure to File Event notices, the Voluntary Event Disclosures and the Voluntary Financial Disclosures.

(p) “Issuer” means New York Transportation Development Corporation, a local development corporation formed under Section 1411 of the New York Not-for-Profit Corporation Law

(q) “Monthly Filing Date” means the date, set in Section 2M(a) of this Disclosure Undertaking, by which the Monthly Report is to be filed with the MSRB.

(r) “Monthly Report” means a Monthly Report described in and consistent with Section 3M of this Disclosure Undertaking.

(s) “MSRB” means the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of the Securities Exchange Act of 1934.

(t) “Notice Event” means any of the events enumerated in paragraph (b)(5)(i)(C) of the Rule and listed in Section 4(a) of this Disclosure Undertaking, or the additional events listed in Section 4(b) of this Disclosure Undertaking that are not so enumerated in the Rule.

(u) “Obligated Person” shall have the meaning ascribed there by paragraph (f)(10) of the Rule.

(v) “Official Statement” means the Official Statement dated October 23, 2024 prepared in connection with the Bonds.

(w) “Owner(s)” means any person(s) (i) having the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries) or (ii) treated as the owner of any Bonds for federal income tax purposes.

(x) “Quarterly Filing Date” means the date, set in Section 2Q(a) of this Disclosure Undertaking, by which the Quarterly Report is to be filed with the MSRB.

(y) “Quarterly Report” means a Quarterly Report described in and consistent with Section 3Q of this Disclosure Undertaking.

(z) “Trustee” means The Bank of New York Mellon, as trustee under the Indenture, and its successors or assigns as trustee under the Indenture.

(aa) “Voluntary Event Disclosure” means a voluntary disclosure containing information of the type described by Section 7(a) of this Disclosure Undertaking.

(bb) “Voluntary Financial Disclosure” means a voluntary disclosure containing information of the type described by Section 7(b) of this Disclosure Undertaking.

## SECTION 2. Reports Generally.

Sections 2A, 2Q and 2M address the requirements for filing Annual Reports, Quarterly Reports and Monthly Reports by or on behalf of the Borrower. With respect to all such filings, the Dissemination Agent will verify the filing requirements of the MSRB prior to each respective Annual Filing Date, Quarterly Filing Date or Monthly Filing Date, as applicable; promptly satisfy the filing requirements of this Disclosure Undertaking before the Annual, Quarterly or Monthly Filing Date, as applicable; and, upon receipt, promptly file each Annual Report received under Sections 2A(a) and 2A(b) with the MSRB. If the Dissemination Agent is not the Borrower, the Dissemination Agent shall provide the Borrower evidence of the filings of each of the above when made.

### SECTION 2A. Provision of Annual Reports.

(a) The Authorized Representative, on behalf of the Borrower, shall file, or shall cause the Dissemination Agent to file, annually, an electronic copy of the Annual Report not later than one hundred thirty-five (135) days following the end of each fiscal year of the Borrower, commencing with the Fiscal Year ending December 31, 2024 (such date, and each anniversary thereof, the “Annual Filing Date”). The Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 3A, 3Q or 3M of this Disclosure Undertaking.

(b) If the Borrower is unable to provide to the MSRB through the EMMA System an Annual Report by the date required in paragraph (a) above, the Borrower shall send, or shall cause the Dissemination Agent to send, a timely notice to the MSRB through the EMMA System in substantially the form attached as Exhibit B.

(c) The Dissemination Agent shall:

(i) determine each year prior to the Annual Report Date the electronic filing requirements of the MSRB for the Annual Reports; and

(ii) if the Borrower is not the Dissemination Agent, the Dissemination Agent shall provide the Borrower with confirmation that the Annual Report has been filed with the MSRB through the EMMA System pursuant to this Continuing Disclosure Undertaking, stating the date it filed.

(d) The Borrower may adjust the Annual Filing Date upon change of its fiscal year by providing written notice of such change and the new Annual Filing Date to the Dissemination Agent, the Issuer, the Trustee and the MSRB, provided that the period between the existing Annual Filing Date and new Annual Filing Date shall not exceed one year.

#### SECTION 2Q. Provision of Quarterly Reports.

(a) The Borrower shall file, or shall cause the Dissemination Agent to file, for the first, second and third fiscal quarter of each fiscal year of the Borrower, an electronic copy of the Quarterly Report, not later than sixty-five (65) days following the end of each of the first three fiscal quarters, beginning with the quarter ending March 31, 2025 (such date, and the end of each of the first three fiscal quarters each year, the “Quarterly Filing Date”). The Quarterly Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 3Q of this Disclosure Undertaking.

(b) If the Borrower is unable to provide to the MSRB through the EMMA System a Quarterly Report by the date required in paragraph (a) above, the Borrower shall send, or shall cause the Dissemination Agent to send, a timely notice to the MSRB through the EMMA System in substantially the form attached as Exhibit D.

(c) The Dissemination Agent shall:

(i) determine each year prior to the Annual Report Date the electronic filing requirements of the MSRB for the Quarterly Reports; and

(ii) if the Borrower is not the Dissemination Agent, the Dissemination Agent shall provide the Borrower with confirmation that the Quarterly Report has been filed with the MSRB through the EMMA System pursuant to this Continuing Disclosure Undertaking, stating the date it was filed.

#### SECTION 2M. Provision of Monthly Reports.

(a) Until such time as the Borrower certifies that Phase 2 Substantial Completion has been achieved as described in the Official Statement, the Borrower shall file, or shall cause the Dissemination Agent to file, monthly, an electronic copy of the Monthly Report not later than thirty-five (35) days following the end of each month, beginning with the month ending on December 31, 2024 (such date, and each month thereafter, the “Monthly Filing Date”). The Monthly Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 3M of this Disclosure Undertaking.

(b) If the Borrower is unable to provide to the MSRB through the EMMA System a Monthly Report by the date required in paragraph (a) above, the Borrower shall send, or shall cause the Dissemination Agent to send, a timely notice to the MSRB through the EMMA System in substantially the form attached as Exhibit D.



(c) The Dissemination Agent shall:

(i) determine each year prior to the Annual Report Date the electronic filing requirements of the MSRB for the Monthly Reports; and

(ii) if the Borrower is not the Dissemination Agent, the Dissemination Agent shall provide the Borrower confirmation that the Annual Report has been filed with the MSRB through the EMMA System pursuant to this Continuing Disclosure Undertaking, stating the date it was filed.

SECTION 3A. Content of Annual Reports.

(a) Each Annual Report shall contain or incorporate by reference the following:

(i) Annual Financial Information with respect to the Borrower, including Audited Financial Statements, if available;

(ii) the Annual Operating Budget of the Borrower;

(iii) (A) the aggregate number of airlines that, as of December 31, (1) were operating regularly scheduled or seasonal service from Terminal 6 or (2) solely prior to the Phase 2 Date of Beneficial Occupancy, were not operating but were party to then-effective and fully-approved subleases with respect to Terminal 6, and (B) a list of the names of such airlines referenced in the foregoing clause (A) and each such airline's affiliation with a major global alliance, if any, as of such date; except to the extent the disclosure pursuant to clause (B) of any airline not operating regularly scheduled or seasonal service from Terminal 6 as of such date is restricted by a non-disclosure or other agreement between the Borrower and such airline;

(iv) a statement setting forth the number of contact gates at the Project used for active loading of passengers as of December 31 of the Fiscal Year most recently completed;

(v) a chart setting forth the total enplaned and deplaned passenger traffic of each of the top ten airline users of the Project, and the percentage that each airline's traffic represents of the total number of passengers enplaned and deplaned;

(vi) a statement that the Borrower continues to maintain all insurance policies required under the Lease;

(vii) a statement identifying whether any additional Obligations were issued during the Fiscal Year most recently ended, and, if so, the outstanding principal amount of such additional bonds;

(viii) after the Phase 2 Substantial Completion has occurred, the Senior Debt Service Coverage Ratio, the Total Debt Service Coverage Ratio, and, during the Ramp-Up Period, the Ramp-Up Debt Service Coverage Ratio for the Fiscal Year most recently completed;

(ix) after the Phase 2 End of Funding Date, the Debt Service Reserve Requirement for the Senior Debt Service Reserve Account for the Fiscal Year in which the filing is made, the amount currently on deposit in the Senior Debt Service Reserve Account, in cash

or Eligible Investments, and the remaining balance of any eligible Acceptable Letter of Credit delivered in connection therewith;

- (x) after the Phase 2 End of Funding Date, the Ramp-Up Reserve Requirement as of the end of the Fiscal Year in which the filing is made, the amount currently on deposit in the Ramp-Up Reserve Account, in cash or Eligible Investments, and the remaining balance of any eligible Acceptable Letter of Credit delivered in connection therewith;
- (xi) (1) the O&M Reserve Requirement, (2) the Major Maintenance Reserve Requirement, and (3) the Handback Reserve Amount, each at the end of the Fiscal Year in which the filing is made;
- (xii) the amounts currently on deposit in cash or Eligible Investments in each of (1) the O&M Reserve Account, (2) the Major Maintenance Reserve Account, (3) the Handback Reserve Account;
- (xiii) a statement, for each DSCR Calculation Period during the completed year, the determination of whether the Restricted Payment Conditions were satisfied;
- (xiv) The 5-year schedule of Major Maintenance Reserve Requirement as set forth in the then-current asset preservation schedule; and
- (xv) a certificate of the Authorized Representative certifying that: (i) no default or Event of Default under the Financing Documents has occurred and is continuing, or (ii) if any default or Event of Default has occurred under the Financing Documents has occurred and is continuing, a statement as to the nature thereof and what action the Borrower proposes to take with respect thereto.

(b) Audited Financial Statements prepared in accordance with GAAP will be included in the Annual Report. If audited financial statements are not available, then unaudited financial statements, prepared in accordance with GAAP, will be included in the Annual Report and the Borrower shall file, or cause to be filed, Audited Financial Statements promptly after the same become available.

(c) Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues with respect to which the Borrower is an “obligated person” (as defined in the Rule), which have been previously filed with the Securities and Exchange Commission or available to the public through the MSRB. If the document incorporated by reference is a final official statement, it must be available from the MSRB. The Borrower will clearly identify each such document so incorporated by reference.

(d) If the Annual Financial Information contains modified operating data or financial information different from the Annual Financial Information agreed to in the continuing disclosure undertaking related to the Bonds, the Borrower is required to explain, in narrative form, the reasons for the modification and the impact of the change in the type of operating data or financial information being provided.

SECTION 3Q. Content of Quarterly Reports.

(a) Each Quarterly Report shall contain or incorporate by reference the following:

- (i) for the first, second and third fiscal quarter of the Borrower, unaudited financial statements of the Borrower, including the unaudited income statement and balance sheet of the Borrower as of the end of the applicable period and the related unaudited statements of operations, changes in member capital and cash flows of the Borrower for such period, certified by the president, chief executive officer, chief financial officer or treasurer of the Borrower have been prepared in accordance with GAAP;
- (ii) the Senior Debt Service Coverage Ratio, the Total Debt Service Coverage Ratio and the and, during the Ramp-Up Period, the Ramp-Up Debt Service Coverage Ratio, as applicable, for the most recent DSCR Calculation Period, and the calculation thereof; and
- (iii) as of the end of the applicable fiscal quarter prior to the Phase 2 Date of Beneficial Occupancy, (A) the aggregate number of airlines that (1) were operating regularly scheduled or seasonal service from Terminal 6 or (2) were not operating but were party to then-effective and fully-approved subleases with respect to Terminal 6, and (B) a list of the names of such airlines referenced in the foregoing clause (A) and each such airline's affiliation with a major global alliance, if any, as of such date; except to the extent the disclosure pursuant to clause (B) of any airline not operating regularly scheduled or seasonal service from Terminal 6 as of such date is restricted by a non-disclosure or other agreement between the Borrower and such airline.

(b) Any or all of the items listed in the above section may be included by specific reference from other documents, including official statements of debt issues with respect to which the Borrower is an Obligated Person, which have been previously filed with the Securities and Exchange Commission or available to the public through the MSRB. If the document incorporated by reference is a final official statement, it must be available from the MSRB. The Authorized Representative will clearly identify each such document so incorporated by reference.

(c) If the Quarterly financial information contains modified operating data or financial information different from the Quarterly financial information agreed to in the continuing disclosure undertaking related to the Bonds, the Borrower is required to explain, in narrative form, the reasons for the modification and the impact of the change in the type of operating data or financial information being provided.

SECTION 3M. Content of Monthly Reports.

(a) Each Monthly Report (which shall only be required to be submitted during the construction period prior to Phase 2 Substantial Completion being achieved as described in the Official Statement) shall contain or incorporate by reference the following:

- (i) an assessment of the overall construction progress of the D&C Work since the date of the last report (or, with respect to the first such report, all D&C Work to date) and setting forth a reasonable estimate as to the completion date for the applicable D&C Work;

- (ii) a detailed description of any material delays encountered or anticipated in connection with the D&C Work and a reasonably detailed description of the proposed course of action with respect to such delay; and

(b) Any or all of the items listed above may be included by specific reference from other documents, including official statements of debt issues with respect to which the Borrower is an “obligated person” (as defined by the Rule), which have been previously filed with the Securities and Exchange Commission or available to the public through the MSRB. If the document incorporated by reference is a final official statement, it must be available from the MSRB. The Borrower will clearly identify each such document so incorporated by reference.

#### SECTION 4. Reporting of Notice Events.

(a) The occurrence of any of the following events with respect to the Bonds constitutes a Notice Event within the meaning of the Rule:

- (i) Principal and interest payment delinquencies;
- (ii) Non-payment related defaults, if material;
- (iii) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (iv) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (v) Substitution of credit or liquidity providers, or their failure to perform;
- (vi) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
- (vii) Modifications to rights of Bond holders, if material;
- (viii) Bond calls, if material, and tender offers;
- (ix) Defeasances;
- (x) Release, substitution, or sale of property securing repayment of the Bonds, if material;
- (xi) Rating changes;
- (xii) Bankruptcy, insolvency, receivership or similar event of the Borrower; provided that for the purposes of the events described in this subsection (a)(xii) of this Section 4, an event shall be considered to have occurred when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the Borrower in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Borrower, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or

liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Borrower;

- (xiii) The consummation of a merger, consolidation, or acquisition involving the Borrower or the sale of all or substantially all of the assets of the Borrower, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (xiv) Appointment of a successor or additional trustee or the change of name of a trustee, if material;
- (xv) Incurrence of a Financial Obligation of the Borrower, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the Borrower, any of which affect holders of the Bonds, if material; and
- (xvi) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the Borrower, any of which reflect financial difficulties.

(b) The occurrence of any of the following events with respect to the Bonds constitutes a Notice Event agreed to be disclosed by the Borrower but not otherwise required by the Rule:

- (i) the occurrence of Phase 2 Substantial Completion;
- (ii) details of any litigation, pending or, if actually known, threatened in writing, by or before any arbitrator or governmental entity in which the amount involved exceeds \$10,000,000 for a pending litigation, or \$20,000,000 for a litigation threatened in writing, in each case which is not covered by insurance;
- (iii) notice of the Borrower committing any “event of default” as defined in, or any material breach under, the Lease Agreement, the Leasehold Mortgages or the TDC Loan Agreements;
- (iv) the Borrower having actual knowledge of the filing or service of any mechanics lien or other claim that creates a lien upon the Project in an amount in excess of \$5,000,000;
- (v) receipt by the Borrower of any notices asserting an Event of Default under, or purporting to terminate or suspend performance of any Key Contract; and
- (vi) any written proposal of the Borrower to suspend or abandon the Project or the operation and management of Terminal 6 (except to the extent the suspension is as a result of an emergency or otherwise permitted under the Lease Agreement).

(c) The Borrower shall file, or cause the Dissemination Agent to file, in writing, a notice of the occurrence of a Notice Event in a timely manner not later than ten (10) business days of the occurrence of a Notice Event. This notice may be filed with a cover sheet in the form set forth in Exhibit C-1.

(d) The Trustee may deliver notices of redemption or defeasance of Bonds to the Dissemination Agent on behalf of the Borrower for filing pursuant to this Section 4. Upon receipt of any such notice, the Dissemination Agent shall promptly file the text of such notice with the MSRB in accordance with this Disclosure Undertaking.

SECTION 5. Certification. Whenever providing information to the Dissemination Agent, including but not limited to Annual Reports, Quarterly Reports, Monthly Reports, documents incorporated by reference to the Annual Reports, Audited Financial Statements, Notice Event notices, Failure to File Event notices, Voluntary Event Disclosures and Voluntary Financial Disclosures, the Borrower shall include a Certification, including the full name of the Bonds and the CUSIP numbers for the Bonds as to which the provided information relates.

SECTION 6. Additional Disclosure Obligations. The Borrower acknowledges and understands that other state and federal laws, including but not limited to the Securities Act of 1933 and Rule 10b-5 promulgated under the Securities Exchange Act of 1934, may apply to the Borrower, and that the duties and responsibilities of the Dissemination Agent under this Disclosure Undertaking do not extend to providing legal advice regarding such laws. The Authorized Representative, on behalf the Borrower, acknowledges and understands that the duties of the Dissemination Agent relate exclusively to execution of the mechanical tasks of disseminating information as described in this Disclosure Undertaking. The Borrower will provide the Dissemination Agent with the CUSIP numbers for (i) new bonds at such time as they are issued or become subject to the Rule and (ii) any Bonds to which new CUSIP numbers are assigned in substitution for the CUSIP numbers previously assigned to such Bonds.

SECTION 7. Voluntary Filings.

(a) The Borrower may, or may instruct the Dissemination Agent to, file a Voluntary Event Disclosure with the MSRB from time to time including with respect to the Voluntary Event Disclosure categories set forth below. Any such notice may be filed with a cover sheet in the form set forth in Exhibit C-2.

The categories of Voluntary Event Disclosure are as follows:

- (i) “amendment to continuing disclosure undertaking;”
- (ii) “change in the Borrower or Obligated Person;”
- (iii) “notice to investors pursuant to bond documents;”
- (iv) “certain communications from the Internal Revenue Service”, other than those required by the Rule;
- (v) “secondary market purchases;”
- (vi) “bid for auction rate or other securities;”
- (vii) “capital or other financing plan;”
- (viii) “litigation/enforcement action;”
- (ix) “change of tender agent, remarketing agent, or other on-going party;”

- (x) “derivative or other similar transaction;” and
- (xi) “other event-based disclosures.”

(b) The Borrower may, or may instruct the Dissemination Agent to, file a Voluntary Financial Disclosure with the MSRB from time to time including with respect to the Voluntary Financial Disclosure categories set forth below. Any such notice may be filed with a cover sheet in the form set forth in Exhibit C-3.

The categories of Voluntary Financial Disclosure are as follows:

- (i) “quarterly/monthly financial information;”
- (ii) “change in fiscal year/timing of annual disclosure;”
- (iii) “change in accounting standard;”
- (iv) “interim/additional financial information/operating data;”
- (v) “budget;”
- (vi) “investment/debt/financial policy;”
- (vii) “information provided to rating agency, credit/liquidity provider or other third party;”
- (viii) “consultant reports;” and
- (ix) “other financial/operating data.”

(c) The parties hereto acknowledge that the Borrower is not obligated pursuant to the terms of this Disclosure Undertaking to file any Voluntary Event Disclosure pursuant to Section 7(a) hereof or any Voluntary Financial Disclosure pursuant to Section 7(b) hereof.

(d) Nothing in this Disclosure Undertaking shall be deemed to prevent the Borrower from disseminating any other information, directly or through the Dissemination Agent, using the means of dissemination set forth in this Disclosure Undertaking or including any other information in any Annual Report, Quarterly Report, Monthly Report, Audited Financial Statements, Notice Event notice, Failure to File Event notice, Voluntary Event Disclosure or Voluntary Financial Disclosure, in addition to that required by this Disclosure Undertaking. If the Borrower chooses to include any information in any Annual Report, Audited Financial Statements, Notice Event notice, Failure to File Event notice, Voluntary Event Disclosure or Voluntary Financial Disclosure in addition to that which is specifically required by this Disclosure Undertaking, the Borrower shall have no obligation under this Disclosure Undertaking to update such information or include it in any future Annual Report, Audited Financial Statements, Notice Event notice, Failure to File Event notice, Voluntary Event Disclosure or Voluntary Financial Disclosure.

**SECTION 8. Termination of Reporting Obligation.** The obligations of the Borrower and the Dissemination Agent under this Disclosure Undertaking shall terminate with respect to an issue of the Bonds upon the legal defeasance, prior redemption or payment in full of all of the Bonds of such issue, when the Borrower is no longer an Obligated Person, or upon delivery by the Authorized Representative to the Dissemination Agent of an opinion of nationally recognized bond counsel to the effect that continuing disclosure is no longer required.

SECTION 9. Remedies in Event of Default. In the event of a failure of the Borrower or the Dissemination Agent to comply with any provision of this Disclosure Undertaking, the Owners' rights to enforce the provisions of this Disclosure Undertaking shall be limited solely to a right, by action in mandamus or for specific performance, to compel performance of the parties' obligation under this Disclosure Undertaking. Any failure by a party to perform in accordance with this Disclosure Undertaking shall not constitute a default on the Bonds or under any other document relating to the Bonds, and all rights and remedies shall be limited to those expressly stated herein.

SECTION 10. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Undertaking, the Borrower may amend this Disclosure Undertaking and any provision of this Disclosure Undertaking may be waived, provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of Sections 2, 3 or 4, it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of the Borrower, or the type of business conducted;

(b) The amendment or waiver is supported by an opinion of nationally recognized bond counsel acceptable to both the Obligated Person and the Dissemination Agent to the effect that such amendment or waiver would not, in and of itself, cause the undertakings herein to violate the Rule if such amendment or waiver had been effective as of the date of this Disclosure Undertaking but taking into account any amendments or subsequent change in or official interpretation of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver either (i) is approved by the Holders of a majority in aggregate principal amount of the Bonds, or (ii) is supported by an opinion of nationally recognized bond counsel acceptable to both the Borrower and the Dissemination Agent, to the effect that such amendment or waiver does not materially impair the interests of the Owners of the Bonds;

provided neither the Borrower nor the Dissemination Agent shall be obligated to agree to any amendment modifying their respective duties or obligations without their consent to such modification.

SECTION 11. Beneficiaries. This Disclosure Undertaking shall inure solely to the benefit of the Borrower, the Issuer, the Trustee, the Dissemination Agent, the Underwriters (as defined in the Official Statement), and the Owners from time to time of the Bonds, and shall create no rights in any other person or entity.

SECTION 12. Governing Law. This Disclosure Undertaking and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of New York.

*[Signature page follows.]*



JFK Millennium Partners, LLC

By:  
Name:  
Title:

[Signature Page to the Continuing Disclosure Undertaking]

**EXHIBIT A**

**NAME AND CUSIP NUMBERS OF BONDS**

**EXHIBIT B**

**NOTICE TO MSRB OF FAILURE TO FILE ANNUAL REPORT**

Issuer New York Transportation Development Corporation

Obligated Person: JFK Millennium Partners, LLC

Name(s) of Bond Issue(s): Special Facilities Revenue Bonds, Senior Series 2024A (Green Bonds) (AMT) (Current Interest Bonds) (JFK Airport Terminal 6 Redevelopment Project), and Special Facilities Revenue Bonds, Senior Series 2024B (AMT) (Convertible Capital Appreciation Bonds) (JFK Airport Terminal 6 Redevelopment Project)

Date(s) of Issuance: November 5, 2024

Date(s) of Disclosure Agreement: As of November 5, 2024

CUSIP Numbers: \_\_\_\_\_

NOTICE IS HEREBY GIVEN that the Borrower has not provided an Annual Report with respect to the above-named Bonds as required by the Disclosure Undertaking. The Borrower anticipates that the Annual Report will be filed by \_\_\_\_\_.

Dated: \_\_\_\_\_

**EXHIBIT C-1  
EVENT NOTICE COVER SHEET**

This cover sheet and accompanying "event notice" may be sent to the MSRB pursuant to Securities and Exchange Commission Rule 15c2-12(b)(5)(i)(C) and (D).

Issuer's and Obligated Person's Names:

**New York Transportation Development Corporation  
JFK Millennium Partners, LLC**

Issuer's Six-Digit CUSIP Number:

[        ]

Issuer's Nine-Digit CUSIP Number(s) of the bonds to which this material event notice relates: \_\_\_\_\_

Number of pages of attached: \_\_\_\_\_

\_\_\_\_ Description of Notice Event (Check One):

1. \_\_\_\_ "Principal and interest payment delinquencies;"
2. \_\_\_\_ "Non-Payment related defaults, if material;"
3. \_\_\_\_ "Unscheduled draws on debt service reserves reflecting financial difficulties;"
4. \_\_\_\_ "Unscheduled draws on credit enhancements reflecting financial difficulties;"
5. \_\_\_\_ "Substitution of credit or liquidity providers, or their failure to perform;"
6. \_\_\_\_ "Adverse tax opinions, IRS notices or events affecting the tax status of the security;"
7. \_\_\_\_ "Modifications to rights of securities holders, if material;"
8. \_\_\_\_ "Bond calls, if material;"
9. \_\_\_\_ "Defeasances;"
10. \_\_\_\_ "Release, substitution, or sale of property securing repayment of the securities, if material;"
11. \_\_\_\_ "Rating changes;"
12. \_\_\_\_ "Tender offers;"
13. \_\_\_\_ "Bankruptcy, insolvency, receivership or similar event of the obligated person;"
14. \_\_\_\_ "Merger, consolidation, or acquisition of the obligated person, if material;" and
15. \_\_\_\_ "Appointment of a successor or additional trustee, or the change of name of a trustee, if material;"
  
16. \_\_\_\_ "Incurrence of a Financial Obligation of the Borrower, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the Borrower, any of which affect security holders, if material;"
17. \_\_\_\_ "Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the Borrower, any of which reflect financial difficulties."

\_\_\_\_ Failure to provide annual financial information as required

\_\_\_\_ Failure to provide quarterly report as required

\_\_\_\_ Failure to provide monthly report as required

I hereby represent that I am authorized by the Borrower or its agent to distribute this information publicly:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Date:

**EXHIBIT C-2**  
**VOLUNTARY EVENT DISCLOSURE COVER SHEET**

Issuer's and Obligated Person's Names:

**New York Transportation Development Corporation**

**JFK Millennium Partners, LLC**

Issuer's Six-Digit CUSIP Number:

[       ]

Issuer's Nine-Digit CUSIP Number(s) of the bonds to which this material event notice relates: \_\_\_\_\_

Number of pages attached: \_\_\_\_\_

\_\_\_\_ Description of Voluntary Event Disclosure (Check One):

1. \_\_\_\_\_ "amendment to continuing disclosure undertaking;"
2. \_\_\_\_\_ "change in obligated person;"
3. \_\_\_\_\_ "notice to investors pursuant to bond documents;"
4. \_\_\_\_\_ "certain communications from the Internal Revenue Service;"
5. \_\_\_\_\_ "secondary market purchases;"
6. \_\_\_\_\_ "bid for auction rate or other securities;"
7. \_\_\_\_\_ "capital or other financing plan;"
8. \_\_\_\_\_ "litigation/enforcement action;"
9. \_\_\_\_\_ "change of tender agent, remarketing agent, or other on-going party;"
10. \_\_\_\_\_ "derivative or other similar transaction;" and
11. \_\_\_\_\_ "other event-based disclosures."

I hereby represent that I am authorized by the Borrower or its agent to distribute this information publicly:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Date:

**EXHIBIT C-3  
VOLUNTARY FINANCIAL DISCLOSURE COVER SHEET**

Issuer's and Obligated Person's Names:

**New York Transportation Development Corporation  
JFK Millennium Partners, LLC**

Issuer's Six-Digit CUSIP Number:

[        ]

Issuer's Nine-Digit CUSIP Number(s) of the bonds to which this material event notice relates: \_\_\_\_\_

Number of pages attached: \_\_\_\_\_

\_\_\_\_ Description of Voluntary Financial Disclosure (Check One):

1. \_\_\_\_\_ "quarterly/monthly financial information;"
2. \_\_\_\_\_ "change in fiscal year/timing of annual disclosure;"
3. \_\_\_\_\_ "change in accounting standard;"
4. \_\_\_\_\_ "interim/additional financial information/operating data;"
5. \_\_\_\_\_ "budget;"
6. \_\_\_\_\_ "investment/debt/financial policy;"
7. \_\_\_\_\_ "information provided to rating agency, credit/liquidity provider or other third party;"
8. \_\_\_\_\_ "consultant reports;" and
9. \_\_\_\_\_ "other financial/operating data."

I hereby represent that I am authorized by the Borrower or its agent to distribute this information publicly:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Date:





**APPENDIX K**

**FORM OF LEGAL OPINIONS OF CO-BOND COUNSEL**

**(THIS PAGE INTENTIONALLY LEFT BLANK)**

November 5, 2024

To: New York Transportation Development Corporation  
c/o Empire State Development  
655 Third Avenue  
New York, New York 10017

Ladies and Gentlemen:

We have served as co-bond counsel to our client the New York Transportation Development Corporation (the “Issuer”), a not-for-profit local development corporation organized and existing under Section 1411 of the New York Not-for-Profit Corporation Law, being Chapter 35 of the Consolidated Laws of the State of New York (the “Act”), created by action of the New York Job Development Authority established under Section 1802, Subtitle I, Title 8, Article 8, of the New York Public Authorities Law in connection with the issuance by the Issuer of its (i) \$1,845,640,000 Special Facilities Revenue Bonds, Senior Series 2024A (Green Bonds) (AMT) (Current Interest Bonds) (JFK Airport Terminal 6 Redevelopment Project) (the “Series 2024A Bonds”) and (ii) \$99,997,768 Special Facilities Revenue Bonds, Senior Series 2024B (AMT) (Convertible Capital Appreciation Bonds) (JFK Airport Terminal 6 Redevelopment Project) (the “Series 2024B Bonds”) and, together with the Series 2024A Bonds, the “Series 2024 Bonds”), dated the date of this letter.

The Series 2024 Bonds are issued under the Act and the TDC Master Bond Indenture of Trust (the “Master Indenture”), as supplemented by the TDC First Supplemental Bond Indenture of Trust (the “First Supplemental Indenture”), each dated as of November 1, 2022, and each by and between the Issuer and the Bank of New York Mellon, as trustee (the “Trustee”), as further supplemented and amended by the TDC Second Supplemental Bond Indenture of Trust, dated as of November 1, 2024 by and among the Issuer, the Trustee and Assured Guaranty Inc., as Bond Insurer (the “Second Supplemental Indenture,” and together with the First Supplemental Indenture and the Master Indenture, the “Indenture”), and a resolution of the Issuer adopted on October 1, 2024 (the “Resolution”). *Capitalized terms not otherwise defined in this letter are used as defined in the Indenture.*

In our capacity as co-bond counsel, we have examined the transcript of proceedings relating to the issuance of the Series 2024 Bonds, a copy of the signed and authenticated Series 2024 Bonds, the Indenture, the TDC Building Loan Agreement, dated as of November 1, 2022 (the “Original TDC Building Loan Agreement”), as amended by the First Building Loan Agreement Amendment, dated as of November 1, 2024 (the “First Building Loan Agreement Amendment,” and together with the Original TDC Building Loan Agreement, the “TDC Building Loan Agreement”) and the TDC Project Loan Agreement, dated as of November 1, 2022 (the “Original TDC Project Loan Agreement”), as amended by the First Amendment to TDC Project Loan Agreement, dated as of November 1, 2024 (the “First Project Loan Agreement Amendment,” and together with the Original TDC Project Loan Agreement, the “TDC Project Loan Agreement”), (the TDC Building Loan Agreement together with the TDC Project Loan Agreement the “Loan Agreements”), each by and between the Issuer and JFK Millennium Partners, LLC, a Delaware limited liability company (the “Borrower”) and the related promissory notes of the

Borrower (the “Series 2024 Notes”) evidencing the loans made pursuant to the Loan Agreements; and such other documents, matters and law as we deem necessary to render the opinions set forth in this letter.

Based on that examination and subject to the limitations stated below, we are of the opinion that under existing law:

1. The Resolution has been duly and lawfully adopted by the Issuer.
2. The Series 2024 Bonds, the Indenture, and the Loan Agreements are valid and binding obligations of the Issuer, enforceable in accordance with their respective terms.
3. The Indenture creates the valid pledge which it purports to create in the Trust Estate, including the loan payments, revenues and receipts payable or receivable under the Loan Agreements and the Series 2024 Notes and the moneys and securities from time to time held by the Trustee under the terms of the Indenture, subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in the Indenture.
4. The Issuer has the right and power to authorize, execute and deliver the Series 2024 Bonds, and the Series 2024 Bonds have been duly authorized, executed and delivered by the Issuer. The Series 2024 Bonds are valid and binding special limited revenue obligations of the Issuer, are enforceable against the Issuer in accordance with their terms and the terms of the Indenture and are payable as to principal, Redemption Price, Accreted Value and interest from moneys on deposit in the funds and accounts maintained under the Indenture. The payment of debt service on the Series 2024 Bonds is not secured by an obligation or pledge of any money raised by taxation, and the Series 2024 Bonds do not represent or constitute a general obligation or a pledge of the faith and credit of the Issuer, the State of New York or any of its political subdivisions.
5. Interest on the Series 2024 Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended (the “Code”), except interest on any Series 2024 Bonds for any period during which any such Series 2024 Bonds are held by a “substantial user” of the facilities financed or a “related person,” as those terms are used in Section 147(a) of the Code, and is an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals. Interest on the Series 2024 Bonds is exempt from personal income taxes imposed by the State of New York and political subdivisions thereof, including The City of New York and the City of Yonkers, so long as that interest is excluded from gross income for federal income tax purposes. We express no opinion as to any other tax consequences regarding the Series 2024 Bonds.

The opinions stated above are based on an analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. In

rendering all such opinions, we assume, without independent verification, and rely upon (i) the accuracy of the factual matters represented, warranted or certified in the proceedings and documents we have examined and (ii) the due and legal authorization, execution and delivery of those documents by, and the valid, binding and enforceable nature of those documents upon, any parties other than the Issuer.

In rendering those opinions with respect to the treatment of the interest on the Series 2024 Bonds under the federal tax laws and the tax laws of the State of New York and its political subdivisions, including The City of New York and the City of Yonkers, we further assume and rely upon compliance with the covenants in the proceedings and documents we have examined, including those of the Issuer, the Borrower, and certain other entities. Failure to comply with certain of those covenants subsequent to issuance of the Series 2024 Bonds may cause interest on the Series 2024 Bonds to be included in gross income for federal, state and local income tax purposes retroactively to their date of issuance.

The rights of the owners of the Series 2024 Bonds and the enforceability of the Series 2024 Bonds, the Indenture and the Loan Agreements are subject to bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or transfer, and other laws relating to or affecting the rights and remedies of creditors generally; to the application of equitable principles, whether considered in a proceeding at law or in equity; to the exercise of judicial discretion; and to limitations on legal remedies against public entities.

We express no opinion with respect to any indemnification, contribution, penalty, choice of law, choice of forum, choice of venue, waiver or severability provisions contained in the Series 2024 Bonds, the Indenture, or the Loan Agreements. Furthermore, we express no opinion herein regarding the perfection or priority of the lien on the funds created by the Indenture. We express no opinion with respect to the status or quality of title to, or interest in, any of the real, personal or intangible property and other assets described in, or subject to, the pledge or lien granted in the Loan Agreements, or the accuracy or sufficiency of the description contained therein of, or the priority of, or the remedies available to enforce, any pledge or lien on any such assets.

In connection with the delivery of this opinion, we are not passing upon the authorization, execution and delivery of the Loan Agreements by the Borrower. We have assumed the due authorization, execution and delivery of the Loan Agreements by the Borrower.

We express no opinion in this letter as to the accuracy, completeness, fairness or sufficiency of the Official Statement relating to the Series 2024 Bonds, or any appendices thereto.

No opinions other than those expressly stated herein are implied or shall be inferred as a result of anything contained in or omitted from this letter. The opinions expressed in this letter are stated only as of the time of its delivery, and we disclaim any obligation to revise or supplement this letter thereafter. Our engagement as co-bond counsel in connection with the original issuance and delivery of the Series 2024 Bonds is concluded upon delivery of this letter.

Respectfully submitted,

**(THIS PAGE INTENTIONALLY LEFT BLANK)**

**APPENDIX L**

**SPECIMEN MUNICIPAL BOND INSURANCE POLICY**

**(THIS PAGE INTENTIONALLY LEFT BLANK)**





# MUNICIPAL BOND INSURANCE POLICY

ISSUER:

Policy No.: -N

BONDS: \$ in aggregate principal amount of

Effective Date:

Premium: \$

ASSURED GUARANTY INC. ("AG"), for consideration received, hereby UNCONDITIONALLY AND IRREVOCABLY agrees to pay to the trustee (the "Trustee") or paying agent (the "Paying Agent") (as set forth in the documentation providing for the issuance of and securing the Bonds) for the Bonds, for the benefit of the Owners or, at the election of AG, directly to each Owner, subject only to the terms of this Policy (which includes each endorsement hereto), that portion of the principal of and interest on the Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Issuer.

On the later of the day on which such principal and interest becomes Due for Payment or the Business Day next following the Business Day on which AG shall have received Notice of Nonpayment, AG will disburse to or for the benefit of each Owner of a Bond the face amount of principal of and interest on the Bond that is then Due for Payment but is then unpaid by reason of Nonpayment by the Issuer, but only upon receipt by AG, in a form reasonably satisfactory to it, of (a) evidence of the Owner's right to receive payment of the principal or interest then Due for Payment and (b) evidence, including any appropriate instruments of assignment, that all of the Owner's rights with respect to payment of such principal or interest that is Due for Payment shall thereupon vest in AG. A Notice of Nonpayment will be deemed received on a given Business Day if it is received prior to 1:00 p.m. (New York time) on such Business Day; otherwise, it will be deemed received on the next Business Day. If any Notice of Nonpayment received by AG is incomplete, it shall be deemed not to have been received by AG for purposes of the preceding sentence and AG shall promptly so advise the Trustee, Paying Agent or Owner, as appropriate, who may submit an amended Notice of Nonpayment. Upon disbursement in respect of a Bond, AG shall become the owner of the Bond, any appurtenant coupon to the Bond or right to receipt of payment of principal of or interest on the Bond and shall be fully subrogated to the rights of the Owner, including the Owner's right to receive payments under the Bond, to the extent of any payment by AG hereunder. Payment by AG to the Trustee or Paying Agent for the benefit of the Owners shall, to the extent thereof, discharge the obligation of AG under this Policy.

Except to the extent expressly modified by an endorsement hereto, the following terms shall have the meanings specified for all purposes of this Policy. "Business Day" means any day other than (a) a Saturday or Sunday or (b) a day on which banking institutions in the State of New York or the Insurer's Fiscal Agent are authorized or required by law or executive order to remain closed. "Due for Payment" means (a) when referring to the principal of a Bond, payable on the stated maturity date thereof or the date on which the same shall have been duly called for mandatory sinking fund redemption and does not refer to any earlier date on which payment is due by reason of call for redemption (other than by mandatory sinking fund redemption), acceleration or other advancement of maturity unless AG shall elect, in its sole discretion, to pay such principal due upon such acceleration together with any accrued interest to the date of acceleration and (b) when referring to interest on a Bond, payable on the stated date for payment of interest. "Nonpayment" means, in respect of a Bond, the failure of the Issuer to have provided sufficient funds to the Trustee or, if there is no Trustee, to the Paying Agent for payment in full of all principal and interest that is Due for Payment on such Bond. "Nonpayment" shall also include, in respect of a Bond, any payment of principal or interest that is Due for Payment made to an Owner by or on behalf of the Issuer which has been recovered from such Owner pursuant to the United States Bankruptcy Code by a trustee in bankruptcy in accordance with a final, nonappealable order of a court having competent jurisdiction. "Notice" means telephonic or telecopied notice, subsequently confirmed in a signed writing, or written notice by registered or certified mail, from an Owner, the Trustee or the Paying Agent to AG which notice shall specify (a) the person or entity making the claim, (b) the Policy Number, (c) the claimed amount and (d) the date such claimed amount became Due for Payment. "Owner" means, in respect of a Bond, the person or entity who, at the time of Nonpayment, is entitled under the terms of such Bond to payment thereof, except that "Owner" shall not include the Issuer or any person or entity whose direct or indirect obligation constitutes the underlying security for the Bonds.

AG may appoint a fiscal agent (the "Insurer's Fiscal Agent") for purposes of this Policy by giving written notice to the Trustee and the Paying Agent specifying the name and notice address of the Insurer's Fiscal Agent. From and after the date of receipt of such notice by the Trustee and the Paying Agent, (a) copies of all notices required to be delivered to AG pursuant to this Policy shall be simultaneously delivered to the Insurer's Fiscal Agent and to AG and shall not be deemed received until received by both and (b) all payments required to be made by AG under this Policy may be made directly by AG or by the Insurer's Fiscal Agent on behalf of AG. The Insurer's Fiscal Agent is the agent of AG only and the Insurer's Fiscal Agent shall in no event be liable to any Owner for any act of the Insurer's Fiscal Agent or any failure of AG to deposit or cause to be deposited sufficient funds to make payments due under this Policy.

To the fullest extent permitted by applicable law, AG agrees not to assert, and hereby waives, only for the benefit of each Owner, all rights (whether by counterclaim, setoff or otherwise) and defenses (including, without limitation, the defense of fraud), whether acquired by subrogation, assignment or otherwise, to the extent that such rights and defenses may be available to AG to avoid payment of its obligations under this Policy in accordance with the express provisions of this Policy.

This Policy sets forth in full the undertaking of AG, and shall not be modified, altered or affected by any other agreement or instrument, including any modification or amendment thereto. Except to the extent expressly modified by an endorsement hereto, (a) any premium paid in respect of this Policy is nonrefundable for any reason whatsoever, including payment, or provision being made for payment, of the Bonds prior to maturity and (b) this Policy may not be canceled or revoked. THIS POLICY IS NOT COVERED BY THE PROPERTY/CASUALTY INSURANCE SECURITY FUND SPECIFIED IN ARTICLE 76 OF THE NEW YORK INSURANCE LAW.

In witness whereof, ASSURED GUARANTY INC. has caused this Policy to be executed on its behalf by its Authorized Officer.

ASSURED GUARANTY INC.

By \_\_\_\_\_  
Authorized Officer

1633 Broadway, New York, N.Y. 10019

(212) 974-0100

Form 500 (8/24)

**APPENDIX M**

**GREEN BONDS SECOND PARTY OPINION**

**(THIS PAGE INTENTIONALLY LEFT BLANK)**



## Second Party Opinion

<b>Issuer:</b>	<b>New York Transportation Development Corporation</b>
<b>Issue Description:</b>	Special Facilities Revenue Bonds, Senior Series 2024A (Green Bonds) (AMT) (Current Interest Bonds) (JFK Airport Terminal 6 Redevelopment Project)
<b>Project:</b>	Terminal 6 Redevelopment Project
<b>Green Standard:</b>	ICMA Green Bond Principles
<b>Green Category:</b>	Green Buildings
<b>Keywords:</b>	Green buildings, LEED Gold, Envision Gold, energy efficiency, greenhouse gas emission reduction, sustainable design, net zero aligned, climate resilience, gate electrification, JFK Airport, New York
<b>Par:</b>	\$1,845,640,000
<b>Evaluation Date:</b>	October 4, 2024

### GREEN BONDS DESIGNATION

Kestrel, an Approved Verifier accredited by the Climate Bonds Initiative, conducted an independent external review of the New York Transportation Development Corporation Special Facilities Revenue Bonds, Senior Series 2024A (Green Bonds) (AMT) (Current Interest Bonds) (JFK Airport Terminal 6 Redevelopment Project) (the "Series 2024A Bonds") to evaluate conformance with the Green Bond Principles (June 2021 with June 2022 Appendix 1) established by the International Capital Market Association. Our team for this engagement included analysts with experience in sustainability and environmental science.

This Second Party Opinion reflects our review of the uses and allocation of proceeds, oversight, and conformance of the Series 2024A Bonds with the Green Bond Principles. In our opinion, the Series 2024A Bonds are impactful, net zero aligned, conform with the four core components of the Green Bond Principles, and qualify for Green Bonds designation.

### ABOUT THE ISSUER

#### About the Conduit Issuer and the Borrower

The New York Transportation Development Corporation (the "Corporation") is a local development corporation created in 2015 by the State of New York and is the conduit issuer for JFK Millennium Partners LLC (the "Borrower"). JFK Millennium Partners LLC was formed in August 2022 to implement and manage the project being partially refinanced by the Series 2024A Bonds.<sup>1</sup> The Borrower leases certain

---

<sup>1</sup> The Borrower's ownership structure is described in the offering documents with respect to the Series 2024A Bonds.

premises at John F. Kennedy International Airport, located in Queens, New York (“JFK Airport” or the “Airport”), from the Port Authority of New York and New Jersey (the “Port Authority”). During the term of the lease, the Borrower will develop and operate the new facilities financed, in part, by the Series 2024A Bonds.<sup>2</sup>

### About JFK Airport

JFK Airport is the largest airport in the New York City metropolitan region, in terms of both passenger and cargo volume. As the sixth busiest airport in the United States and one of the most well-known international airports in North America, over half of the 62.5 million passengers served in 2023 traveled on international flights. As a significant economic engine in the New York metropolitan area, the Airport contributes over \$45 billion in economic activity and supports over 278,000 total jobs.<sup>3</sup>

JFK Airport is an industry leader in environmental sustainability and decarbonization. In 2017, the Airport joined the Airport Council International (“ACI”) Airport Carbon Accreditation Program to measure, manage, and reduce Scope 1, 2, and 3 emissions.<sup>4</sup> Several substantial renewable energy projects are under construction or planned at the Airport, including a 12-MW rooftop solar array on top of Long Term Parking Lot 9, a 7.7-MW rooftop solar array for the New Terminal One project, and a 3-MW solar array for the bond-financed Terminal 6 project described herein.<sup>5</sup>

The Port Authority has multiple sustainability goals, plans, and commitments, most notably the *Net Zero Roadmap* (“*Roadmap*”) dated September 2023.<sup>6</sup> The *Roadmap* details strategies for the Port Authority to reduce direct greenhouse gas (“GHG”) emissions by 50% by 2030 and achieve net zero emissions by 2050. Strategies in the *Roadmap* include the Zero-Emission Airside Vehicle rule, which requires all ground service equipment (“GSE”) at JFK Airport to transition to zero-emission vehicles by 2030. The *Roadmap* also requires that all airport redevelopment projects include charging ports for GSEs as well as electric ground power and pre-conditioned air at all gates. Approximately 98 charging points for GSEs are planned throughout the Airport.

In addition, the Port Authority has established sustainable design standards for capital projects. New building construction projects greater than 20,000 square feet must be designed to a minimum LEED Silver standard and large, multi-disciplinary and high-profile infrastructure projects must be designed to the Envision Gold sustainable infrastructure standard.<sup>7</sup> Additionally, the Port Authority requires projects located within a current or future floodplain to integrate climate resilience strategies, such as coastal protection, strategic site selection, and elevation of utilities.

---

<sup>2</sup> Upon expiration of the lease in 2060, the Port Authority will assume operation of the facilities.

<sup>3</sup> “2023 Airport Traffic Report,” Port Authority NY NJ, April 2023, [https://www.panynj.gov/content/dam/airports/statistics/statistics-general-info/annual-atr/ATR\\_2023.pdf](https://www.panynj.gov/content/dam/airports/statistics/statistics-general-info/annual-atr/ATR_2023.pdf).

<sup>4</sup> “Accredited Airports across the world,” Airport Carbon Accreditation, accessed August 27, 2024, <https://www.airportcarbonaccreditation.org/accredited-airports/>.

<sup>5</sup> “New York State’s Largest Solar Power Canopy Storage System at JFK Airport Authorized to Begin Development, Furthering Port Authority’s Commitment to the Paris Climate Agreement,” Port Authority NY NJ, December 17, 2020, <https://www.panynj.gov/port-authority/en/press-room/press-release-archives/2020-press-releases/new-york-states-largest-solar-power-canopy-storage-system-at-jfk.html>.

<sup>6</sup> “Climate Action: Port Authority releases roadmap to net-zero greenhouse gas emission by 2050 and announces achievement of key milestones,” Port Authority NY NJ, September 19, 2023, <https://www.panynj.gov/port-authority/en/press-room/press-release-archives/2023-press-releases/climate-action--port-authority-releases-roadmap-to-net-zero-gree.html>.

<sup>7</sup> “Clean Construction,” Port Authority NY NJ, accessed September 4, 2024, <https://www.panynj.gov/port-authority/en/about/Environmental-Initiatives/clean-construction.html>.

## ALIGNMENT TO GREEN STANDARDS<sup>8</sup>

### Use of Proceeds

The Series 2024A Bonds refinance debt for construction of Phases I and II of the Terminal 6 Redevelopment Project at JFK (“Terminal 6” or the “Project”). The Project includes construction of an approximately 1.2-million-square foot terminal targeting LEED Gold<sup>9</sup> certification and meeting Envision Gold sustainable infrastructure standards. The activities financed by the Series 2024A Bonds are eligible projects as defined by the Green Bond Principles in the *Green Buildings* project category.



Built on the previously demolished Terminal 6 and existing Terminal 7 sites, the new building will replace the existing Terminal 7 with a new 10-gate international terminal. The Project reconfigures existing facilities to improve connectivity between terminals and includes energy-efficient baggage handling, concessions, lounges, and security and customs areas. The total Terminal 6 Redevelopment Project cost is approximately \$5 billion.

### Construction Status

The majority of Series 2024A Bond Proceeds refinance Phase I, which includes design, engineering and construction of most of the Terminal 6 building footprint with five gates, arrivals, baggage handling, and customs. Phase 1 also includes some demolition. Phase II includes demolition of the old Terminal 7 and construction of five additional gates. Construction began in February 2023 and is expected to be complete in 2028. As of September 2024, construction is ongoing, and roof installation is underway. The first five gates are scheduled to open in early 2026.

### Sustainable and Resilient Design

The Terminal 6 building is expected to achieve LEED Gold certification, and the Project is expected to achieve an Envision Gold rating. The Project will meet the Port Authority of New York and New Jersey Sustainable Design Guidelines for both buildings and infrastructure<sup>10</sup> and is targeting SITES Gold certification for outdoor spaces.<sup>11</sup> The Project is designed to minimize energy and water use and reduce greenhouse gas emissions. Key sustainability features for Terminal 6 are highlighted below.

- High-efficiency HVAC, lighting, building envelope, and automated monitoring systems are incorporated to minimize energy use.
- A total of 3 MW of solar will be installed on roof areas, aligned with the State of New York target to reach 50% renewables by 2030.

<sup>8</sup> Green Bonds are any type of debt instrument where the proceeds will be exclusively applied to finance or refinance eligible Green Projects which are aligned with the four core components of ICMA Green Bond Principles.

<sup>9</sup> Minimum LEED Silver Building Design + Construction (BD+C), LEED Gold is expected; Project is also designed to achieve LEED Silver for Operations and Maintenance (O+M)

<sup>10</sup> “Sustainable Design Guidelines: Part 1 - Sustainable Building Guidelines,” Port Authority NY NJ, 2018 v1.0, Last Updated 1/1/2017, <https://www.panynj.gov/content/dam/port-authority/pdfs/-available-engineering-documents/sustainable-building-guidelines.pdf>; “Sustainable Design Guidelines: Part 2 - Sustainable Infrastructure Guidelines,” Port Authority NY NJ, 2022 v2.1, Last Updated 1/1/2022, <https://www.panynj.gov/content/dam/port-authority/about/environmental-initiatives/-clean-construction/Sustainable-infrastructure-guidelines.pdf>.

<sup>11</sup> The Sustainable Sites Initiative is administered by Green Business Certification, Inc., and is a rating system that certifies sustainability and resilience features in design, development and management of outdoor spaces. “About the Sustainable SITES Initiative,” Sustainable Sites Initiative, accessed October 4, 2024, <https://sustainablesites.org/about>.

- Commitments to track and report on annual greenhouse gas emissions in compliance with the New York City Climate Mobilization Act. The facility is designed for compliance with progressively lower building emissions intensity limits through 2050.
- Infrastructure to provide pre-conditioned air will be added at all gates and the project design supports fully electrified ground service equipment. These are best practices for reducing GHG emissions at airports.
- A whole-building life-cycle assessment was used to prioritize low-carbon building materials.
- At least 90% of waste will be diverted from landfills through recycling and reuse of asphalt, concrete, steel and other materials.
- A stormwater capture and reuse system will collect over 35% of rainwater from the roof area in an underground 75,000-gallon collection tank. Collected stormwater is reused for flushing low-flow fixtures.
- The Project includes a flood barrier designed to reduce risk from future flooding scenarios. Backup power sources improve resilience to power outages. A terminal-specific Resilience Plan is in development, with completion planned for the end of 2024.

The Project is also designed to achieve the Envision Gold rating. Managed by the Institute for Sustainable Infrastructure (“ISI”), Envision provides a comprehensive approach to building and maintaining sustainable, resilient, and equitable infrastructure. ISI was established by the American Public Works Association, the American Society of Civil Engineers, and the American Council of Engineering Companies. Infrastructure projects may receive an Envision Rating based on credits received in five categories: Quality of Life, Leadership, Resource Allocation, Natural World, and Climate and Resilience.

While aviation is a significant source of global greenhouse gas emissions, Kestrel views construction of airport facilities that meet green building standards as eligible for financing with Green Bond proceeds. In Kestrel’s opinion, the mechanisms for reducing the carbon footprint of airline travel may be viewed distinctly from the emissions associated with constructing and operating the terminal buildings and facilities.

#### Net Zero Alignment of the Series 2024A Bonds

Bonds are net zero aligned if bond-financed activities advance goals to reach net zero greenhouse gas emissions by at least 2050. The Port Authority has a goal to reach net zero direct GHG emissions by 2050, and the State of New York has established a goal to reduce statewide GHG emissions 40% below 1990 levels by 2030.<sup>12</sup>

The Terminal 6 project advances both of these goals with an energy-efficient design; low embodied carbon materials and incorporation of renewable energy. The Project is expected to achieve at least 20% energy savings over ASHRAE 90.1-2016. State-of-the-art monitoring systems for energy and water use have been incorporated into the design so that additional opportunities for emissions reduction can be identified after the building becomes operational.

---

<sup>12</sup> “Progress to Our Goals,” State of New York, Climate Leadership and Community Protection Act, accessed September 10, 2024, <https://climate.ny.gov/Our-Impact/Our-Progress>.



## Process for Project Evaluation and Selection

In 2017, the Port Authority began a master planning program for facilities to accommodate 100 million annual passengers by 2050. Through this effort, several existing terminals were prioritized for redevelopment, including the Terminal 6 project refinanced by the Series 2024A Bonds.<sup>13</sup> Redevelopment of the Terminal 6 and Terminal 7 sites will modernize facilities originally constructed in the 1960s, improve operational efficiency and connectivity between JFK terminals, and contribute to meeting the Port's climate action goals.

Comprehensive considerations of sustainability have been integrated throughout the planning process for Terminal 6. The Sustainability Plan for Terminal 6 establishes a roadmap for achieving sustainability targets and includes:

- Quantifiable objectives that meet regional and stakeholder requirements, including the Port Authority's Sustainable Building and Sustainable Infrastructure Guidelines; the Port Authority's Climate Resilience Guideline; and requirements under the NYC Climate Mobilization Act;
- Baseline energy use data and project status;
- Processes to monitor progress toward LEED and Envision certifications;
- Implementation steps to meet performance thresholds; and
- Commitments to ongoing project monitoring and greenhouse gas emissions reporting.

## Management of Proceeds

Proceeds of the Series 2024A Bonds will solely be used to refinance debt for the Project and pay costs of issuance. Upon closing, proceeds will be used to refinance outstanding debt and no proceeds will be held in temporary investments. JFK Millennium Partners, LLC is responsible for overseeing the allocation of proceeds.

## Reporting

Multiple forms of reporting provide assurance on sustainability attributes and demonstrate a commitment to monitoring and disclosing progress toward sustainability goals. Reporting commitments in the Lease Agreement between the Port Authority and JFK Millennium Partners are highlighted below, and may be made publicly available by the Port Authority.

- Progress on the Terminal 6 Sustainability Plan is reported quarterly to the Port Authority.
- Once the terminal is operational, Annual Sustainability Reports will be provided to the Port Authority for the duration of the lease through 2060. The Sustainability Report will follow Global Reporting Initiative ("GRI") 300 standard for Environmental Disclosures and include greenhouse gas emissions reporting and auditing.<sup>14</sup>
- The Energy Model for Terminal 6 will be kept up-to-date and provided annually to the Port Authority.

---

<sup>13</sup> "A Vision Plan for John F. Kennedy International Airport", Airport Advisory Panel, January 2017, <https://www.anewjfk.com/wp-content/uploads/pdf/JFK-Vision-Plan.pdf>.

<sup>14</sup> Emissions reporting consistent with ISO 14064 and external audits conducted every three years consistent with ISO 14065. This reporting supports compliance with the New York City Climate Mobilization Act and JFK Airport's accreditation under the Airport Council International Airport Carbon Accreditation program.

- Regular progress updates and announcements will be available on the Terminal 6 project website: [anewjfk.com/jmp-terminal6/](http://anewjfk.com/jmp-terminal6/).

In addition to these reporting commitments, Kestrel will provide one update report on the Series 2024A Bonds within 12 to 24 months of issuance. This report is expected to confirm use of proceeds, confirm continued alignment with the Green Bond Principles, and provide relevant updates on financed projects. These updates may include allocation of proceeds, project-level metrics for energy savings and water savings relative to a baseline, confirmation of LEED and Envision certifications, square footage of energy-efficient buildings and number of fully electrified gates constructed. It is expected that JFK Millenium Partners will voluntarily make this available for investors on the on the Terminal 6 project website: [anewjfk.com/jmp-terminal6/](http://anewjfk.com/jmp-terminal6/).

The Borrower will also submit continuing financial disclosures to the Municipal Securities Rulemaking Board (“MSRB”) as long as the Series 2024A Bonds are outstanding, as well as reports in the event of certain material developments. This reporting will be done annually, or as needed on the Electronic Municipal Market Access (“EMMA”) system operated by the MSRB.

## ALIGNMENT WITH UN SDGs



The Series 2024A Bonds support and advance the vision of the United Nations Sustainable Development Goals (“UN SDGs”), including:



### **Affordable and Clean Energy (Target 7.3)**

Improved energy efficiency of Terminal 6 and LEED certification



### **Industry, Innovation and Infrastructure (Target 9.4)**

Sustainable infrastructure for regional access and implementation of energy-efficient designs to minimize greenhouse gas emissions



### **Climate Action (Target 13.1)**

Installation of flood barriers, emergency power backups and conformance with resilient design standards

Full text of the Targets is available on the United Nations website: [un.org/sustainabledevelopment](http://un.org/sustainabledevelopment)

## CONCLUSION

Based on our independent external review, the Series 2024A Bonds are impactful, net zero aligned, conform, in all material respects, with the Green Bond Principles (2021) and are in complete alignment with the *Green Buildings* eligible project category.

Reproduction, repackaging, transmittal, dissemination, or redistribution of this content in whole or in part is prohibited without the express written approval of Kestrel 360, Inc. and is protected by copyright law. Website addresses provided herein are for informational purposes only, and no information included on any such website is incorporated herein by reference.

### About

Kestrel Sustainability Intelligence™ for municipal markets helps set the market standard for sustainable finance. We do this through verification and our comprehensive Sustainability Analysis and Scores.

Kestrel is a leading provider of external reviews for green, social and sustainability bond transactions. We evaluate corporate and municipal bonds in all sectors worldwide for conformance with international green and social bond standards.

kestrelesg.com | info@kestrelesg.com



For more information, contact:  
Monica Reid, Chief Executive Officer  
monica.reid@kestrelesg.com  
+1 541-399-6806



### Verification Team

- April Strid, MS, ENV-SP - Head of Research and Lead Verifier
- Matt Michel, PhD - Senior ESG Analyst
- Monica Reid, ENV-SP - CEO

### Disclaimer

This Opinion aims to explain how and why the discussed financing meets the ICMA Green Bond Principles based on the information that was provided by JFK Millenium Partners, LLC or made publicly available by JFK Millenium Partners, LLC and relied upon by Kestrel only during the time of this engagement (August – October 2024), and only for purposes of providing this Opinion.

We have relied on information obtained from sources believed to be reliable, and assumed the information to be accurate and complete. However, Kestrel can make no warranty, express or implied, nor can we guarantee the accuracy, comprehensive nature, merchantability, or fitness for a particular purpose of the information we were provided or obtained.

By providing this Opinion, Kestrel is neither addressing nor certifying the credit risk, liquidity risk, market value risk or price volatility of the projects financed by the Green Bonds. It was beyond Kestrel's scope of work to review for regulatory compliance, and no surveys or site visits were conducted by us. Furthermore, we are not responsible for surveillance, monitoring, or implementation of the project, or use of proceeds.

The Opinion delivered by Kestrel is for informational purposes only, is current as of the Evaluation Date, and does not address financial performance of the Green Bonds or the effectiveness of allocation of its proceeds. This Opinion does not make any assessment of the creditworthiness of JFK Millenium Partners, LLC, nor its ability to pay principal and interest when due. This Opinion does not address the suitability of a Bond as an investment, and contains no offer, solicitation, endorsement of the Bonds nor any recommendation to buy, sell or hold the Bonds. Kestrel accepts no liability for direct, indirect, special, punitive, consequential or any other damages (including lost profits), for any consequences when third parties use this Opinion either to make investment decisions or to undertake any other business transactions.

This Opinion may not be altered without the written consent of Kestrel. Kestrel reserves the right to revoke or withdraw this Opinion at any time. Kestrel certifies that there is no affiliation, involvement, financial or non-financial interest in JFK Millenium Partners, LLC or the projects discussed. We are 100% independent. Language in the offering disclosure supersedes any language included in this Second Party Opinion.

Use of the United Nations Sustainable Development Goal (SDG) logo and icons does not imply United Nations endorsement of the products, services, or bond-financed activities. The logo and icons are not being used for promotion or financial gain. Rather, use of the logo and icons is primarily illustrative, to communicate SDG-related activities.

**(THIS PAGE INTENTIONALLY LEFT BLANK)**

**APPENDIX N**

**TABLE OF ACCRETED VALUES OF SERIES 2024B CONVERTIBLE CAPITAL APPRECIATION BONDS THROUGH THE INTEREST COMMENCEMENT DATE**

<u>Date</u>	<u>Accreted Value per \$5,000 in Maturity Amount</u>
11/5/2024	\$3,028.40
12/31/2024	3,051.35
6/30/2025	3,127.60
12/31/2025	3,205.80
6/30/2026	3,285.95
12/31/2026	3,368.10
6/30/2027	3,452.30
12/31/2027	3,538.60
6/30/2028	3,627.10
12/31/2028	3,717.75
6/30/2029	3,810.70
12/31/2029	3,905.95
6/30/2030	4,003.60
12/31/2030	4,103.70
6/30/2031	4,206.30
12/31/2031	4,311.45
6/30/2032	4,419.25
12/31/2032	4,529.75
6/30/2033	4,642.95
12/31/2033	4,759.05
6/30/2034	4,878.00
12/31/2034	5,000.00

**(THIS PAGE INTENTIONALLY LEFT BLANK)**





# New York Transportation Development Corporation

