

*In the opinion of Katten Muchin Rosenman LLP and D. Seaton and Associates, P.A., P.C., Co-Bond Counsel, based on existing statutes, regulations, rulings and court decisions, interest on the Series 2024 Bonds is not includable in gross income for federal income tax purposes and is not includable in taxable income for purposes of personal income taxes imposed by the State of New York, The City of New York and the City of Yonkers, New York, assuming compliance with certain covenants and the accuracy of certain representations, except that no opinion is expressed by Co-Bond Counsel as to the exclusion from such gross income and such taxable income of interest on any Series 2024 Bond during the period that such Series 2024 Bond is held by a “substantial user” of the facilities financed or refinanced by the Series 2024 Bonds or a “related person” within the meaning of Section 147(a) of the Internal Revenue Code, as amended. In the further opinion of Co-Bond Counsel, interest on the Series 2024 Bonds is (i) an item of tax preference to be included in calculating the alternative minimum taxable income for purposes of the alternative minimum tax imposed on individuals, and (ii) included in the adjusted financial statement income of those corporations subject to the corporate alternative minimum tax. See “Tax Matters” herein.*



**\$2,550,000,000**  
**NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION**  
**SPECIAL FACILITIES REVENUE BONDS, SERIES 2024**  
**(John F. Kennedy International Airport New Terminal One Project)**  
**(Green Bonds)**  
**(Subject to AMT)**

**THE NEW TERMINAL ONE**  
JFK INTERNATIONAL AIRPORT

**Dated: Date of Delivery**

**Due: June 30, as shown on the inside cover**

The New York Transportation Development Corporation (the “Conduit Issuer”) is issuing its Special Facilities Revenue Bonds, Series 2024 (John F. Kennedy International Airport New Terminal One Project) (Green Bonds) (the “Series 2024 Bonds”) pursuant to a Master Indenture of Trust (the “Master Indenture”), among the Conduit Issuer, JFK NTO LLC (the “Lessee”) and The Bank of New York Mellon, as trustee (the “Indenture Trustee”), as supplemented by the Second Supplemental Indenture (the “Second Supplemental Indenture” and, together with the Master Indenture, the “Indenture”), among the Conduit Issuer, the Lessee and the Indenture Trustee.

The Conduit Issuer will lend the proceeds of the Series 2024 Bonds to the Lessee which will be used by the Lessee to (i) finance and refinance a portion of the costs relating to Phase A of the Project described herein, including costs originally financed by the proceeds of a portion of the outstanding loans (collectively, the “Bank Loans”) provided and committed to be provided by certain lenders (the “Lenders”) to the Lessee, pursuant to a credit agreement entered into by the Lessee, the Conduit Issuer and such Lenders (the “Credit Agreement”), as more fully described herein, (ii) fund a portion of the interest on the Series 2024 Bonds and the Conduit Issuer’s \$2,000,000,000 Special Facilities Revenue Bonds, Series 2023 (John F. Kennedy International Airport New Terminal One Project) (Green Bonds) (the “Series 2023 Bonds”), and (iii) pay certain costs of issuance related to the Series 2024 Bonds. Interest payable on the Series 2024 Bonds during construction of Phase A will be paid from funds on deposit in the applicable Capitalized Interest Accounts, proceeds of draws on the Bank Loans, and other available sources.

The “Project,” as more fully described herein, generally consists of (i) the development, design, construction, financing, operation and maintenance by the Lessee of the New Terminal One international passenger terminal facility and certain related assets (as more fully described herein, the “New Terminal Facilities”) at John F. Kennedy International Airport in Queens, New York (the “Airport” or “JFK Airport”), (ii) the demolition of a parking garage structure which was located north of the existing Terminal 1, portions of the apron located at the former Terminal 3 site, the existing Terminal 2, the Terminal 2 AirTrain Station, and the existing Terminal 1 at the Airport, and (iii) the construction of certain off-premises facilities, including certain landside utilities, a roadway network and certain modifications to the AirTrain.

The Port Authority of New York and New Jersey (the “Port Authority”) and the Lessee entered into a Lease on June 10, 2022 (the “Lease”), pursuant to which, among other things, the Lessee has agreed to undertake the Project. The Lease is scheduled to terminate on December 30, 2060, unless earlier terminated in accordance with the terms thereof.

The Series 2024 Bonds are payable primarily from the Project Revenues described herein, including payments made by airlines, providers of concession goods and services, and other commercial users of the New Terminal Facilities. The Series 2024 Bonds are secured on parity with the Bank Loans, the Series 2023 Bonds and certain other parity borrowings and other obligations of the Lessee outstanding from time to time (as more fully described herein, collectively, the “Secured Obligations”). In addition to Project Revenues, the Secured Obligations are further ratably secured by (i) amounts on deposit in certain Project Accounts established under the Common Terms Agreement and held by the Account Bank, (ii) a mortgage lien on and security interest in all of the Lessee’s right, title and interest to and under the Lease, (iii) a security interest in and lien on all of the Lessee’s right, title and interest in and to all of its personal property, including the Lessee’s interest in Project Accounts and its contractual rights and its equity interest in JFK NTO TRS LLC, as the Taxable REIT Subsidiary (the “Taxable REIT Subsidiary”), (iv) a security interest in all of the equity interests in the Lessee, (v) a security interest in and lien on all of the Taxable REIT Subsidiary’s right, title and interest in and to all of its personal property, and (vi) an assignment of all of the Conduit Issuer’s right, title and interest in and to a Building Loan Agreement and a Project Loan Agreement (collectively, as more fully described herein, the “Lessee Loan Agreements”), among the Conduit Issuer, the Lessee and MUFG Bank, Ltd., as Intercreditor Agent, the Leasehold Mortgages, the Building Loan Note, and the Project Loan Note to the Collateral Agent (subject to certain reserved rights of the Conduit Issuer), pursuant to the Collateral Assignments. The Series 2024 Bonds are additionally separately secured, as more fully described herein, by (x) the Trust Estate created under the Master Indenture for the benefit of the owners of all Bonds (including the Series 2024 Bonds, the Series 2023 Bonds and any series of Additional Bonds to be issued in the future), which includes a common bond debt service reserve account created pursuant to the Common Terms Agreement and to be funded on or prior to the Completion Date for Phase A of the Project and (y) solely for the benefit of the Owners of the Series 2024 Bonds, certain funds and accounts created under the Second Supplemental Indenture. See “PART 11 – SECURITY FOR THE SERIES 2024 BONDS,” “PART 12 – SUMMARY OF THE FINANCING DOCUMENTS,” “PART 13 – SUMMARY OF THE SECURITY DOCUMENTS,” “PART 14 – FLOW OF FUNDS UNDER THE COMMON TERMS AGREEMENT,” “PART 16 – AERONAUTICAL REVENUES” and “PART 17 – NON-AERONAUTICAL REVENUES” herein.

The Series 2024 Bonds are being issued as fully registered bonds in denominations of \$5,000 or integral multiples thereof. The Series 2024 Bonds will bear interest at the rates shown on the inside cover hereof and interest shall be payable semi-annually on December 31 and June 30 of each year, commencing on December 31, 2024. Principal payments on the Series 2024 Bonds shall be payable annually on June 30 of each year, commencing on June 30, 2037. See “PART 10 – DESCRIPTION OF THE SERIES 2024 BONDS” herein.

The Series 2024 Bonds are subject to optional, extraordinary, and mandatory redemption and optional purchase in lieu of redemption prior to maturity as described herein.\* See “PART 10 – DESCRIPTION OF THE SERIES 2024 BONDS” herein.

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, interest and redemption price on the Series 2024 Bonds will be made by the Indenture Trustee directly to Cede & Co., as described herein.

The Series 2024 Bonds are special and limited revenue obligations of the Conduit Issuer, payable by the Conduit Issuer as to the principal, redemption price, and interest thereon, solely out of the Trust Estate pledged under the Indenture referred to herein, including payments made by the Lessee to the Conduit Issuer pursuant to the Lessee Loan Agreements and from the application of moneys applied in accordance with the flow of funds established in the Common Terms Agreement and the Indenture. Neither the Series 2024 Bonds, the principal thereof, the interest thereon, nor the redemption price thereof, nor 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 Conduit Issuer), 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 Conduit Issuer) shall be liable on the Series 2024 Bonds. The Conduit Issuer has no power of taxation.

Investing in the Series 2024 Bonds is subject to numerous risks as described in “PART 20 – RISK FACTORS” herein.

The Series 2024 Bonds have been designated as “Green Bonds.” Kestrel has provided an independent external review and opinion that the Series 2024 Bonds conform with the four core components of the International Capital Market Association Green Bond Principles and therefore qualify for Green Bonds designation. For more information, see “PART 10 – DESCRIPTION OF THE SERIES 2024 BONDS – Green Bonds Designation” herein and “APPENDIX J – GREEN BONDS SECOND PARTY OPINION.”

The scheduled payment of principal and interest on the Series 2024 Bonds maturing on June 30, 2039, June 30, 2042, June 30, 2049 bearing interest at 5.000% per annum, June 30, 2054 bearing interest at 4.625% and 5.000% per annum, and June 30, 2060 bearing interest at 5.250% per annum (collectively, the “Insured Series 2024 Bonds”) when due will be guaranteed under a municipal bond insurance policy to be issued concurrently with the delivery of the Insured Series 2024 Bonds by Assured Guaranty Municipal Corp. (“AGM” or “Bond Insurer”). See “PART 11 – SECURITY FOR THE SERIES 2024 BONDS – Bond Insurance” 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 Appendices hereto in their entirety to obtain information essential to the making of an informed decision with respect to an investment in the Series 2024 Bonds.

The Series 2024 Bonds are being offered, subject to prior sale, withdrawal, or modification of the offer without notice and certain other conditions. Certain legal matters will be passed upon by Katten Muchin Rosenman LLP and D. Seaton and Associates, P.A., P.C., each of New York, New York, as Co-Bond Counsel to the Conduit Issuer, and BurgherGray LLP, New York, New York, as Disclosure Counsel to the Conduit Issuer. Certain legal matters will be passed upon for the Conduit Issuer by its General Counsel, for the Lessee by its co-counsel, Gibson, Dunn & Crutcher LLP and Bryant Rabbino LLP, each of New York, New York, and for the Underwriters by their co-counsel, Nixon Peabody LLP and the Law Offices of Joseph C. Reid, P.A., each of 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 June 27, 2024.

**BoFA Securities**

**Loop Capital Markets**

**Barclays**

**Blaylock Van, LLC**

**Cabrera Capital Markets LLC**

**Goldman Sachs & Co. LLC**

**J.P. Morgan**

**RBC Capital Markets**

**Rice Financial Products Company**

**Siebert Williams Shank & Co., L.L.C.**

**Stern Brothers & Co.**

**\$2,550,000,000**

**NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION**

**SPECIAL FACILITIES REVENUE BONDS, SERIES 2024**

**(John F. Kennedy International Airport New Terminal One Project)  
(Green Bonds)  
(Subject to AMT)**

**MATURITIES, PRINCIPAL AMOUNTS, INTEREST RATES, YIELDS AND CUSIPS<sup>†</sup>**

Maturity Date (June 30)	Principal	Interest Rate	Yield	CUSIP <sup>†</sup> No. 650116
2037	\$5,000,000	5.250%	4.070 <sup>C</sup> %	HB5
2038	22,840,000	5.250	4.080 <sup>C</sup>	HC3
2039*	14,290,000	5.250	3.870 <sup>C</sup>	HD1
2040	11,560,000	5.250	4.170 <sup>C</sup>	HE9
2041	15,080,000	5.250	4.260 <sup>C</sup>	HF6
2042*	32,715,000	4.250	4.320	HG4
2043	47,560,000	5.250	4.360 <sup>C</sup>	HH2
2044	44,895,000	5.250	4.410 <sup>C</sup>	HJ8

\$145,000,000 5.000% Series 2024 Term Bonds maturing June 30, 2049\* Yield 4.450<sup>C</sup>% (CUSIP<sup>†</sup> No. 650116HL3)

\$134,045,000 5.250% Series 2024 Term Bonds maturing June 30, 2049 Yield 4.620<sup>C</sup>% (CUSIP<sup>†</sup> No. 650116HK5)

\$48,150,000 4.625% Series 2024 Term Bonds maturing June 30, 2054\* Yield 4.680% (CUSIP<sup>†</sup> No. 650116HP4)

\$184,845,000 5.000% Series 2024 Term Bonds maturing June 30, 2054\* Yield 4.550<sup>C</sup>% (CUSIP<sup>†</sup> No. 650116HN9)

\$459,170,000 5.500% Series 2024 Term Bonds maturing June 30, 2054 Yield 4.660<sup>C</sup>% (CUSIP<sup>†</sup> No. 650116HM1)

\$311,155,000 5.000% Series 2024 Term Bonds maturing June 30, 2060 Yield 4.840<sup>C</sup>% (CUSIP<sup>†</sup> No. 650116HS8)

\$375,000,000 5.250% Series 2024 Term Bonds maturing June 30, 2060\* Yield 4.580<sup>C</sup>% (CUSIP<sup>†</sup> No. 650116HR0)

\$698,695,000 5.500% Series 2024 Term Bonds maturing June 30, 2060 Yield 4.740<sup>C</sup>% (CUSIP<sup>†</sup> No. 650116HQ2)

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<sup>C</sup> Yield to the June 30, 2033 call date.

\* Insured Series 2024 Bonds.

<sup>†</sup> CUSIP® is a registered trademark of the American Bankers Association. CUSIP data herein is provided by CUSIP Global Services (CGS), which is managed on behalf of the American Bankers Association by FactSet Research Systems, Inc. This information is not intended to create a database and does not serve in any way as a substitute for the CGS database. CUSIP numbers have been assigned by an independent company not affiliated with the Conduit Issuer, the Lessee, or the Underwriters and are included solely for the convenience of the registered owners of the applicable Series 2024 Bonds. None of Conduit Issuer, the Lessee, or the Underwriters 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.

**RENDERING OF THE NEW TERMINAL FACILITIES AFTER COMPLETION OF THE PROJECT (INCLUDING PHASE A, PHASE B1 AND PHASE B2 AS DESCRIBED HEREIN)**



## **IMPORTANT INFORMATION ABOUT THIS OFFICIAL STATEMENT**

The information set forth herein has been obtained from the Conduit Issuer, the Lessee, and other sources which are believed to be reliable. As to information and expressions of opinion from the Lessee, it is to be construed as a representation by or opinion of the Lessee and not a representation by or opinion of the Conduit Issuer. As to information and expressions of opinion from the Conduit Issuer, it is to be construed as a representation by or opinion of the Conduit Issuer and not a representation by or opinion of the Lessee. 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 Conduit Issuer or the Lessee since the date hereof.

The Conduit Issuer has provided the information set forth under the headings “PART 3 – PROJECT PARTICIPANTS – The Conduit Issuer” and “PART 27 – LITIGATION – The Conduit 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 Lessee has provided all information in this Official Statement not provided by the Conduit Issuer or the Underwriters.

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.

IN CONNECTION WITH THE OFFERING, THE UNDERWRITERS MAY EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE SERIES 2024 BONDS AT LEVELS ABOVE THOSE WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME. THE UNDERWRITERS MAY ALSO COMMUNICATE INDEPENDENT INVESTMENT RECOMMENDATIONS, MARKET COLOR, OR TRADING IDEAS AND/OR PUBLISH OR EXPRESS INDEPENDENT RESEARCH VIEWS IN RESPECT OF THE SERIES 2024 BONDS AND MAY AT ANY TIME HOLD OR RECOMMEND TO CLIENTS THAT THEY SHOULD ACQUIRE LONG AND/OR SHORT POSITIONS IN SUCH SERIES 2024 BONDS.

The order and placement of material in this Official Statement, including its appendices, are not to be deemed a determination of relevance, materiality, or importance, and all material in this Official Statement, including the appendices, must be considered in its entirety. 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. 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 Conduit 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 or permitted 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 in their entirety.

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 of 1933, as amended. 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 the following Appendices: B-1– “REPORT OF THE AIRPORT CONSULTANT” and B-2 – “REPORT OF THE LENDERS’ TECHNICAL ADVISOR.” Such forward-looking statements speak only as of the date of this Official Statement. A number of important factors affecting the Lessee, the New Terminal Facilities and the Project could cause actual results to differ materially from those stated in the forward-looking statements and such forward looking statements should not be construed in any way as a prediction or guarantee of actual performance or future events.

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 Lessee.

THE LESSEE AND THE CONDUIT 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 for purposes of Rule 15c2-12 of the United States Securities and Exchange Commission, as amended (“Rule 15c2-12”) or otherwise.

Assured Guaranty Municipal Corp. (“AGM” or “Bond Insurer”) makes no representation regarding the Series 2024 Bonds or the advisability of investing in the Series 2024 Bonds. In addition, AGM 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 AGM supplied by AGM and presented under the heading “PART 11 – SECURITY FOR THE SERIES 2024 BONDS – Bond Insurance” (other than with respect to the subheading “— *Risks of 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 LESSEE, THE CONDUIT ISSUER OR THE CONSULTANTS DO NOT CONSTITUTE PART OF THIS OFFICIAL STATEMENT.

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## SUMMARY STATEMENT

This Summary Statement is subject in all respects to the 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 in respect of the New York Transportation Development Corporation's Special Facilities Revenue Bonds, Series 2024 (John F. Kennedy International Airport New Terminal One Project) (Green Bonds) (the "Series 2024 Bonds"). 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 respective meanings given to such terms in APPENDIX A – "DEFINITIONS" or as otherwise defined elsewhere in this Official Statement.**

### The Project and Phasing

The "Project," as more fully described herein, generally consists of (i) the development, design, construction, financing, operation and maintenance by JFK NTO LLC, as lessee (the "Lessee") of the New Terminal One international passenger terminal facility and certain related assets (as more fully described herein, the "New Terminal Facilities") at John F. Kennedy International Airport in Queens, New York (the "Airport" or "JFK Airport"), (ii) the demolition of a parking garage structure which was located north of the existing Terminal 1 (the "Green Garage"), portions of the apron located at the former Terminal 3 site, the existing Terminal 2, the Terminal 2 AirTrain Station, and the existing Terminal 1 (together with the Green Garage, the "Former Terminal Facilities") at the Airport and (iii) the construction of certain off-premises facilities, including certain landside utilities, a roadway network and certain modifications to the AirTrain (the "Off-Premises Facilities"). The Project includes piling, steel, and concrete structure work, including, but not limited to, the enclosure of the AirTrain, the structure of the headhouse of the New Terminal Facilities and the structures supporting the future roadways providing access to the New Terminal Facilities. The Project will be undertaken in separate and independent phases and is intended, in part, to replace and expand the capacity at the existing Terminal 1, address the current wide-body gate shortage for international flights at JFK Airport and address the need to accommodate projected growth in international long-haul traffic demand.

The construction of the New Terminal Facilities is expected to occur in three primary and independent phases (Phase A, Phase B1 and Phase B2), with an additional potential fourth phase (Phase C) that is subject to further agreement between the Port Authority of New York and New Jersey (the "Port Authority") and the Lessee. *For the purposes of this Official Statement, Phase C is not considered part of the Project.* The primary three construction phases are expected to be as follows:

- (i) Phase A entails the construction of an approximately 1.8 million square foot new Terminal One building consisting of a new concourse and headhouse, incorporating thirteen permanent wide-body contact gates and a temporary contact gate, and a departures level and arrivals level, including a

Federal Inspection Services (“FIS”) facility for international flights;

- (ii) Phase B1 entails the construction of four additional wide-body contact gates and a narrow-body contact gate, unless two wide-body contact gates originally planned as part of Phase B1 are moved to Phase B2 (the “Two-Gate Toggle” as more fully described in the Lease), in which case Phase B1 will only include the construction of two additional wide-body contact gates instead of four, and a narrow-body contact gate; and
- (iii) Phase B2 entails the construction of four additional wide-body contact gates, unless the Two-Gate Toggle is implemented in Phase B1, in which case the two wide-body contact gates originally planned to be part of Phase B1 will be added to Phase B2, for a total aggregate of six wide-body contact gates in Phase B2 (Phase B1 and Phase B2 include the full construction of the West Pier at the site of the existing Terminal 1).

The additional potential fourth phase, Phase C, would include the potential expansion of the New Terminal Facilities by the construction of four additional gates, subject to certain other factors and agreements between the Lessee and the Port Authority. For the purposes of this Official Statement, Phase C is not considered part of the Project.

Detailed renderings of the Project and each of the independent construction phases are included in “PART 4 – THE PROJECT.”

Construction of Phase A commenced in June 2022, is approximately 40% progressed based on payments made to the Design Builder through April 2024 and is expected to be completed in June 2026. As of June 1, 2024, the construction is well underway with multiple trades working on site across the terminal processor building as well as landside civil/roadway work, and airside civil work. The critical piling and steel superstructure activities have been completed in the headhouse and slab-on-deck is being poured on all levels. Roofing and curtain wall installation are also well underway to enclose the building headhouse making it weathertight. Key trades have also started infrastructure work in the headhouse for the baggage handling system, mechanical systems, electrical systems, plumbing systems, fire protection systems, and vertical transportation systems. Utilities, foundation, and superstructure work for the East Pier concourse, airfield, and landside roadways are also continuing.

As of June 1, 2024, as permitted under the Lease, the Lessee has sent to the Port Authority various notices in respect of certain potential Delay Events and/or Compensation Events as described in “PART 4 – THE PROJECT – Construction Progress.” While the Port Authority has informed the Lessee that it disputes these claims and does not accept the underlying facts set forth in such notices of potential Delay Events and/or Compensation Events, the Lessee is actively working

with the Port Authority and the Design Builder to evaluate any impact of such events. Any mitigation measures identified as of June 1, 2024, to the extent appropriate, have been implemented to recover any delay.

Upon completion of Phase A, the New Terminal Facilities are expected to be fully functional and operational and are projected to generate sufficient Project Revenues to satisfy (i) as and when due and payable, the repayment of the Series 2024 Bonds, (ii) as and when due and payable, the repayment of any other series of Bonds previously issued, or issued in the future on parity with the Series 2024 Bonds, (iii) as and when due and payable, the repayment of the outstanding Bank Loans (as defined below), (iv) as and when due and payable, the repayment of any Bank Loans drawn in the future under the Credit Agreement (as defined below), and (v) the Rate Covenant described herein. See “PART 12 – SUMMARY OF THE FINANCING DOCUMENTS – Common Terms Agreement – Affirmative and Negative Covenants – Rate Covenant for Secured Obligations.”

The timing of construction of Phase B1 and Phase B2 is subject to the satisfaction of a number of factors and requirements. In addition, the plan of financing for Phases B1 and B2 remains to be determined. Upon completion of Phase B1 and Phase B2, the total square footage of the New Terminal Facilities is expected to be approximately 2.6 million square feet.

A more detailed description of the New Terminal Facilities, including the Project phasing and the status of construction of Phase A, are included in “PART 4 – THE PROJECT – Project Phasing,” “PART 8 – CONSTRUCTION OF PHASE A OF THE PROJECT,” APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE – Construction Phases” and APPENDIX E – “SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT.”

## **The Lease**

On June 10, 2022 (the “Effective Date”), the Port Authority, as lessor, and the Lessee, entered an Agreement of Lease (Port Authority Lease No. AYE-790) (the “Lease”), pursuant to which, among other things, the Lessee has agreed to undertake the Project and operate the New Terminal Facilities.

The term of the Lease began on the Effective Date and expires on the earlier of: (i) December 30, 2060, (ii) the termination of the Basic Lease (as defined herein), and (iii) any earlier termination of the Lease in accordance with its terms.

The existing sites leased, or contemplated to be tendered and leased, by the Port Authority to the Lessee under the Lease generally consist of: (i) the former Terminal 3 site that was being used by Delta Air Lines, Inc. (“Delta”) for aircraft parking hardstands and the site of the Green Garage (collectively, the “Initial Premises”), (ii) the former Terminal 2 site, which was used and operated by Delta under a lease agreement with the Port Authority that expired in or around January

2023 (the “First Additional Premises”), and (iii) the existing Terminal 1 site (the “Second Additional Premises” and together with the First Additional Premises, the “Additional Premises”).

On the Effective Date, the Initial Premises were transferred by the Port Authority to the Lessee. The First Additional Premises were handed over by the Port Authority to the Lessee in January 2023. The Second Additional Premises are expected to be added to the Lease on or before June 1, 2026 (as such may be extended in accordance with the Lease), prior to the completion of Phase A.

Under the Lease, the Lessee is entitled to derive revenues from its operation and management of the New Terminal Facilities, including by subleasing or otherwise making available such facilities for use by airlines, concessionaires and other tenants.

Upon the expiration of the Lease, the Lessee will, among other things, be required to hand back the demised premises to the Port Authority in the condition meeting certain requirements set forth in the Lease. See “PART 5 – THE LEASE” and APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE – Handback Requirements.”

Pursuant to the terms and conditions of the Lease, upon any early termination of the Lease, the Port Authority is only obligated to make a default termination payment to the Lessee in the following limited circumstances: (i) the Port Authority expressly (x) repudiated or willfully (with an intent to breach the quiet enjoyment provisions of the Lease) failed to provide or (y) repudiated or willfully failed to defend the Lessee’s right to quiet enjoyment of the Premises pursuant to the terms of the Lease (which, for the avoidance of doubt, are not to be deemed to have occurred during the pendency of a force majeure event or in the event of a taking) such that the Lessee is unable to (A) construct the New Terminal Facilities or (B) operate the New Terminal Facilities, in each case for a period of not less than 180 consecutive days; or (ii) (x) the Basic Lease (as defined below) is terminated, provided such termination is due to a default arising from the gross negligence or willful misconduct of the Port Authority (and not a breach or default arising from or related to any act or failure to act by the Lessee or any entity related to the Lessee), (y) the City of New York 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, and (z) the Lessee can establish that such termination of the Lease is a failure of the quiet enjoyment provisions of the Lease. If the Lessee terminates the Lease because of the Port Authority’s failure to provide or defend the Lessee’s right to quiet enjoyment of the Premises as described above, the Port Authority will have the option, but not the obligation, to assume the Lessee Debt (as defined in the Lease) then-outstanding, including the Series 2024 Bonds if then applicable. In the event the Port Authority exercises such right and assumes the Lessee Debt in accordance with the Lease, the

amount of the Lessee Debt assumed by the Port Authority will be deducted from the termination payment made by the Port Authority to the Lessee under the Lease. See “PART 10 – DESCRIPTION OF THE SERIES 2024 BONDS – Redemption of the Series 2024 Bonds – *Extraordinary Mandatory Redemption.*”

**Lessee**

The Lessee is a Delaware limited liability company that was formed in 2021 for the principal purpose of entering into the Lease, implementing the Project and operating and maintaining the New Terminal Facilities.

As more fully described herein, the limited liability company interests in the Lessee are indirectly owned as follows, which interests, pursuant to the terms of the Lease, are not permitted to be transferred prior to the first anniversary of Substantial Completion of the Project without the Port Authority’s consent:

- (i) 51% is owned by Mars NTO LLC (“Mars”), which is in turn (x) 96% owned by an Affiliate of Ferrovial SE (collectively, “Ferrovial”) and (y) 4% owned by CGI Phoenix Aggregator, L.P., an Affiliate of The Carlyle Group (“Carlyle”);
- (ii) 30% is owned by JLC JFK Aggregator L.P. (“JLC”), an affiliate of JLC Infrastructure, an investment firm formed in 2015 by Earvin “Magic” Johnson and Jim Reynolds of Loop Capital Markets LLC; and
- (iii) 19% is owned by Ullico Infrastructure JFK REIT, LLC (“Ullico”), the only labor-owned insurance and investment fund in the United States.

The Lessee directly employs its own staff that is responsible for its day-to-day affairs, including operations, project management, finance, information technology, marketing and communications, concessions, human resources and legal.

The Lessee is headquartered at JFK Building 111, 154-20-154-42 134th Street, 3rd floor, Jamaica, NY 11430.

See “PART 3 – PROJECT PARTICIPANTS – The Lessee – *The Lessee’s Ownership Structure,*” “– *The Lessee’s Governance Structure,*” and “– *The Lessee’s Management Team*” and “PART 3 – PROJECT PARTICIPANTS – The Sponsors.”

**Conduit Issuer**

The New York Transportation Development Corporation (the “Conduit Issuer”) is a local development corporation formed under Section 1411 of the New York Not-for-Profit Corporation Law. See “PART 3 – PROJECT PARTICIPANTS – The Conduit Issuer.”

**Port Authority**

The Port Authority is a municipal corporate instrumentality and political subdivision of the States of New York and New Jersey. The Port Authority operates the Airport under a lease agreement with The

City of New York entered into in 1947, as amended and supplemented from time to time thereafter (the “Basic Lease”). The current term of the Basic Lease expires on December 31, 2060. See “PART 3 – PROJECT PARTICIPANTS – The Port Authority.” The Port Authority is the lessor under the Lease.

## **Plan of Finance**

The Lessee currently expects that the total cost of Phase A, including related development costs (including demolition, construction, financing and other costs), will be approximately \$8.424 billion. As more fully described herein, on the Effective Date, pursuant to the Credit Agreement, the Lenders provided and committed to provide loans and lines of credit (collectively, the “Bank Loans”) to the Lessee in an amount equal to \$6,630,000,000, which, together with \$2,330,000,000 of equity commitments made by the Sponsors to the Lessee (as more fully described herein the “Equity Commitments”), was expected to be sufficient to pay the projected total costs of Phase A. As of June 1, 2024, Mars had contributed \$500,310,000 of its \$1,188,300,000 Equity Commitment, JLC had contributed \$294,300,000 of its \$699,000,000 Equity Commitment and Ullico had contributed \$186,390,000 of its \$442,700,000 Equity Commitment. In December 2023, the Lessee used a portion of the proceeds of the Series 2023 Bonds (defined herein) to refinance the Bank Loans then outstanding, and to reduce the Lenders’ initial commitments under the Credit Agreement from \$6,630,000,000 to \$4,480,630,854. As of June 1, 2024, the Conduit Issuer has outstanding drawn Bank Loans for funding Phase A totaling \$252,000,000, which amount has been on-lent by the Conduit Issuer to the Lessee under the Lessee Loan Agreements. Consequently, as of June 1, 2024, the Delayed Draw Term Lenders’ Delayed Draw Term Commitment (described herein) is \$3,928,630,854.

The outstanding Bank Loans are expected to be refinanced in full with a portion of the proceeds of the Series 2024 Bonds. Interest payable on the Series 2024 Bonds during construction of Phase A will be paid from funds on deposit in the applicable Capitalized Interest Accounts, proceeds of draws on the Bank Loans, and other available sources.

As of the date of this Official Statement, the Bank Loans provided and committed to be provided pursuant to the Credit Agreement, the proceeds of the Series 2023 Bonds, the proceeds of the Series 2024 Bonds and the Equity Commitments are expected to be sufficient to pay the projected total costs of Phase A.

It is expected that, from time to time, the Conduit Issuer will issue, and on-lend to the Lessee, the proceeds of Permitted Refinancing Indebtedness (including the Series 2024 Bonds and any other series of Bonds issued under the Master Indenture) and Incremental Debt sufficient in amount to refinance and prepay the Bank Loans and/or pay Project costs and thereby reduce the Lenders’ Bank Loan commitments and outstanding Bank Loans under the Credit Agreement. Upon any reduction of lending commitments under the

Bank Loan, the lending commitment of each lender will be reduced by such lender's ratable share, as described in the Credit Agreement.

In connection with, and in respect of, the Bank Loans already incurred and Bank Loans anticipated to be incurred under the Credit Agreement from time to time (which Bank Loans have a floating rate of interest), the Lessee entered into interest rate hedge agreements with certain hedge providers to fix such floating interest rate on the Bank Loans.

In addition, on the Effective Date, the Lessee entered into certain forward-starting interest rate hedge agreements to mitigate the risk of higher interest rates on its Senior Debt (including Permitted Refinancing Indebtedness and Incremental Debt) expected to be issued from time to time to refinance and prepay the Bank Loans incurred to pay such costs or to fund a portion of the costs of Phase A.

See "PART 6 – PLAN OF FINANCE FOR PHASE A OF THE PROJECT."

#### **Common Terms Agreement**

On June 3, 2022, the Lessee entered into the First Amended and Restated Common Terms Agreement (the "Common Terms Agreement") among the Taxable REIT Subsidiary, the Conduit Issuer, U.S. Bank, N.A., as the Collateral Agent (the "Collateral Agent") and as Account Bank (the "Account Bank"), MUFG Bank, Ltd., as the Intercreditor Agent (the "Intercreditor Agent"), and the Administrative Agent (the "Administrative Agent"), and any other Secured Creditor that becomes a party to the Common Terms Agreement from time to time. Upon issuance of the Series 2024 Bonds and the execution and delivery by the Indenture Trustee of an Accession Agreement to the Common Terms Agreement, the Owners of the Series 2024 Bonds will be Secured Parties under the Common Terms Agreement represented by the Indenture Trustee as their Secured Debt Representative.

Pursuant to the Common Terms Agreement, the Secured Parties and the Lessee set forth, among other things, the establishment of certain Project accounts, the flow of funds (both prior to and following the completion of Phase A), the appointment of various agents and certain of their respective rights and obligations in respect of the financing of the Project, certain representations, warranties, and covenants, events of default, remedies, intercreditor provisions and other terms and conditions with respect to the Lessee and the Project that benefit the Secured Creditors. See "PART 12 – SUMMARY OF THE FINANCING DOCUMENTS – Common Terms Agreement."

On April 1, 2024, the Second Amended and Restated Common Terms Agreement became effective. The Second Amended and Restated Common Terms Agreement, among other things, incorporated the provisions necessary to accommodate the potential incurrence by the Lessee of a loan from the United States Department of Transportation, acting by and through the Build America Bureau. As of the date of this Official Statement, the Lessee has not requested and is not currently

pursuing such a loan. See “PART 12 – SUMMARY OF THE FINANCING DOCUMENTS – Common Terms Agreement” and APPENDIX C-2 – “CERTAIN PROVISIONS OF THE COMMON TERMS AGREEMENT.”

### **Credit Agreement**

On June 3, 2022, the Lessee, the Conduit Issuer, the Administrative Agent, and each lender from time-to-time a party thereto (the “Lenders”), entered into an Amended and Restated Credit Agreement (the “Credit Agreement”).

Pursuant to the Credit Agreement, the Lenders committed to lend to the Conduit Issuer for on-lending to the Lessee a total of \$6.63 billion, under a term loan facility, a delayed draw term loan facility, a liquidity facility, a working capital facility and a security letter of credit deposit facility, in each case, on the terms and conditions set forth therein.

For more detailed description of the Credit Agreement, see “PART 12 – SUMMARY OF THE FINANCING DOCUMENTS – Credit Agreement.”

### **The Lessee Loan Agreements**

On the Effective Date, the Conduit Issuer, the Lessee and the Intercreditor Agent entered into a Project Loan Agreement (the “Project Loan Agreement”) and a Building Loan Agreement (the “Building Loan Agreement” and together with the Project Loan Agreement, the “Lessee Loan Agreements”).

Proceeds of each Bank Loan made by the Lenders to the Conduit Issuer have been and will be on-lent by the Conduit Issuer to the Lessee pursuant to the respective Lessee Loan Agreement. In addition, the proceeds of any Additional Senior Indebtedness and any Permitted Refinancing Indebtedness, including the Series 2024 Bonds, will be on-lent by the Conduit Issuer to the Lessee pursuant to the respective Lessee Loan Agreement.

For a more detailed description of the Lessee Loan Agreements, see “PART 12 – SUMMARY OF FINANCING DOCUMENTS – Lessee Loan Agreements.”

### **Authorization for the Series 2024 Bonds**

The Conduit Issuer is issuing its Series 2024 Bonds pursuant to (i) resolutions of the Conduit Issuer adopted on June 3, 2024 authorizing the issuance and sale of the Series 2024 Bonds and (ii) a Master Indenture of Trust (the “Master Indenture”), dated as of November 1, 2023, by and between the Conduit Issuer, the Lessee and the Indenture Trustee, as supplemented by the Second Supplemental Indenture (the “Second Supplemental Indenture” and, together with the Master Indenture, the “Indenture”), among the Conduit Issuer, the Lessee and the Indenture Trustee. See “PART 7 – SOURCES AND USES OF FUNDS FOR THE SERIES 2024 BONDS – and “PART 10 – DESCRIPTION OF THE SERIES 2024 BONDS.” The Series 2024 Bonds are the second series of Bonds issued under the Master Indenture. The Conduit Issuer has previously issued its \$2,000,000,000

Special Facilities Revenue Bonds, Series 2023 (John F. Kennedy International Airport New Terminal One Project) (Green Bonds) (the “Series 2023 Bonds”). For the purposes of this Official Statement, “Bonds” means, as the context requires, (i) the Series 2024 Bonds, the Series 2023 Bonds, and any additional bonds issued under the Indenture or (ii) Muni Bonds as such term is defined in the Common Terms Agreement, which includes the Series 2024 Bonds.

**Purpose of Issue**

The proceeds of the Series 2024 Bonds will be used to (i) finance and refinance a portion of the costs relating to Phase A of the Project described herein, including costs originally financed by the proceeds of a portion of the outstanding Bank Loans provided and committed to be provided by the Lenders to the Lessee pursuant to the Credit Agreement, (ii) fund a portion of the interest on the Series 2023 Bonds and the Series 2024 Bonds, and (iii) pay certain costs of issuance related to the Series 2024 Bonds. Interest payable on the Series 2024 Bonds during construction of Phase A will be paid from funds on deposit in the applicable Capitalized Interest Accounts, proceeds of draws on the Bank Loans, and other available sources. See “PART 7 – SOURCES AND USES OF FUNDS FOR THE SERIES 2024 BONDS.”

**Summary of the Series 2024 Bonds**

The Series 2024 Bonds are being issued as fully registered bonds in denominations of \$5,000 or in integral multiples thereof. The Series 2024 Bonds will bear interest at the rates as shown on the inside cover hereof and interest shall be payable semi-annually on December 31 and June 30 of each year, commencing on December 31, 2024 (which initial payment will include interest accrued from the date of issuance of the Series 2024 Bonds). Principal payments on the Series 2024 Bonds shall be payable annually on June 30 of each year, commencing on June 30, 2037.

The Series 2024 Bonds are subject to optional, extraordinary, and mandatory redemption and optional purchase in lieu of redemption prior to maturity as described herein.

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. The payment of the principal, interest and redemption price on the Series 2024 Bonds will be made by the Indenture Trustee directly to Cede & Co., as described herein.

See “PART 10 – DESCRIPTION OF THE SERIES 2024 BONDS.”

**The Series 2024 Bonds are Limited Obligations**

The Series 2024 Bonds are special and limited revenue obligations of the Conduit Issuer, payable by the Conduit Issuer as to the principal, redemption price, and interest thereon, solely out of the Trust Estate pledged under the Indenture, including from the application of moneys applied in accordance with the flow of funds established in the Common Terms Agreement and the Indenture.

**Security for the Secured Obligations**

The Series 2024 Bonds are secured ratably with the other Secured Obligations in accordance with the Common Terms Agreement by the following:

- (i) Project Revenues;
- (ii) amounts on deposit in certain Project Accounts established under the Common Terms Agreement and held by the Account Bank;
- (iii) a mortgage lien on and security interest in all of the Lessee's right, title and interest to and under the Lease and premises demised thereunder;
- (iv) a security interest in and lien on all of the Lessee's right, title and interest in and to all of its personal property, including the Lessee's interest in Project Revenues and Project Accounts and its contractual rights and its equity interests in the Taxable REIT Subsidiary;
- (v) a security interest in all of the equity interests in the Lessee;
- (vi) a security interest in and lien on all of the Taxable REIT Subsidiary's right, title and interest in and to all of its personal property; and
- (vii) an assignment of all of the Conduit Issuer's rights, title and interest in and to the Lessee Loan Agreements, the Leasehold Mortgages, the Building Loan Note, and the Project Loan Note to the Collateral Agent, subject to Reserved Rights.

**Additional Security for the Series 2024 Bonds**

The Series 2024 Bonds are additionally secured by (x) certain accounts created in the Indenture for the sole benefit of the Owners of the Series 2024 Bonds, and (y) a Bonds Senior Debt Service Reserve Account created pursuant to the Common Terms Agreement and to be funded on or prior to the Completion Date for Phase A from funds available to the Lessee, as more fully described herein.

See "PART 11 – SECURITY FOR THE SERIES 2024 BONDS," APPENDIX C-1 – "CERTAIN PROVISIONS OF THE MASTER INDENTURE" and APPENDIX C-2 – "CERTAIN PROVISIONS OF THE COMMON TERMS AGREEMENT."

**Common Debt Service Reserve Account**

Pursuant to the Common Terms Agreement, the Account Bank established Senior Debt Service Reserve Accounts, including an account entitled "Loans Debt Service Reserve Account," an account entitled "Bonds Senior Debt Service Reserve Account" and may establish other debt service reserve accounts in relation to any Additional Senior Indebtedness or Permitted Refinancing Indebtedness. The Bonds Senior Debt Service Reserve Account is a

common reserve account for the Bonds, including the Series 2023 Bonds, the Series 2024 Bonds and for each series of Additional Bonds issued in the future under the Master Indenture to the extent the Supplemental Indenture authorizing such series of Bonds provides that such series will be secured by the Bonds Senior Debt Service Reserve Account (the “Common Debt Service Reserve Account”). The initial amount required to be on deposit in the Common Debt Service Reserve Account (on or prior to the completion of Phase A) is required to be equal to the aggregate amount of the interest and principal that will become due and payable on the Bonds secured thereby during the next succeeding six (6) month period (the “Initial Debt Service Reserve Requirement”). The Common Debt Service Reserve Account and amounts deposited therein are required to be held by the Account Bank pursuant to the Common Terms Agreement and such account will constitute a part of the Trust Estate pledged exclusively under the Indenture for the benefit of the Owners of the Bonds, including the Series 2023 Bonds, the Series 2024 Bonds and any additional Bonds issued in the future under the Indenture. The Common Debt Service Reserve Account is required to be funded no later than the Completion Date for Phase A from funds available to the Lessee. Thereafter, the Common Debt Service Reserve Account will be funded only by transfers from the Post-Completion Revenue Account in accordance with the flow of funds set forth in the Common Terms Agreement. The Common Debt Service Reserve Account was not funded at the time of issuance of the Series 2023 Bonds and will not be funded at the time of issuance of the Series 2024 Bonds but rather will be funded no later than the Completion Date related to Phase A.

See “PART 11 – SECURITY FOR THE SERIES 2024 BONDS – Common Debt Service Reserve Account” and PART 14 – FLOW OF FUNDS UNDER THE COMMON TERMS AGREEMENT.”

#### **Rate Covenant**

Under the Common Terms Agreement, the Lessee has covenanted, as part of its operating budget, to establish rates charged under the Airline Use Agreements such that its projected Total Obligations Coverage Ratio will be no less than 1.25:1.00 in each calculation period after the Completion Date of Phase A. If at any time the 1.25:1.00 requirement is not projected to be met for an upcoming fiscal year, no Event of Default will occur under the Common Terms Agreement if the Lessee retains a nationally recognized firm with experience in planning the development, operation and management of airports and aviation facilities to recommend revisions to the Lessee’s annual operating budget and, after taking into account such recommendations, the Lessee revises such annual operating budget expected to generate sufficient free cash flow to satisfy such covenant.

See “PART 12 – SUMMARY OF THE FINANCING DOCUMENTS – Common Terms Agreement – *Affirmative and Negative Covenants – Rate Covenant for Secured Obligations.*”

**Additional Indebtedness**

Additional Indebtedness may be issued or incurred by the Lessee from time to time subject to the satisfaction of the applicable requirements set forth in the Common Terms Agreement and compliance with the requirements of the Lease. Certain of those requirements are summarized herein under “PART 12 – SUMMARY OF THE FINANCING DOCUMENTS – Common Terms Agreement – *Additional Indebtedness.*”

**Restricted Payments**

In accordance with the terms of the Common Terms Agreement, the Lessee is not permitted to make any Distributions except from amounts on deposit in the distribution account (the “Distribution Account”), which Distribution Account is not a Project Account and is under the Lessee’s exclusive control. Pursuant to the terms of the Common Terms Agreement, amounts may be transferred to the Distribution Account only if the Restricted Payment Conditions have been satisfied, including, without limitation, the restriction on making Distributions prior to the Completion Date of Phase A. The Lessee is entitled to withdraw and transfer funds from the Distribution Account without approval or consent by the Collateral Agent or any other person at any time.

For a description of the requirements that need to be satisfied in order to make Distributions to the Lessee, see “PART 12 – SUMMARY OF THE FINANCING DOCUMENTS – Common Terms Agreement – *Affirmative and Negative Covenants – Restricted Payments.*”

**The Design-Build Contract**

On the Effective Date, the Lessee, as developer, and Tishman Construction Corporation of New York (the “Design Builder”), as design-builder, entered into a Design-Build Contract (the “Design-Build Contract”) for the design and construction of Phase A (the “DB D&C Work”).

Pursuant to the Design-Build Contract, the Design Builder is required to undertake the DB D&C Work for Phase A. The Design Builder is generally responsible for the design and construction of Phase A, and for providing all materials, equipment and labor and to undertake all efforts necessary or appropriate to perform the work in accordance with the Project Documents, and to achieve the milestone events, substantial completion and final completion in accordance with the Project baseline schedule.

Additionally, a portion of the DB D&C Work includes the design and construction of the Off-Premises Facilities, which includes the design and construction of (i) certain portions of the roadway network that is for the sole and exclusive benefit of the Lessee, (ii) certain landside utilities, and (iii) certain temporary and permanent modifications to the AirTrain. The Design Builder has no responsibility to perform any Operations and Maintenance Work in respect of the Project (or any of its Phases).

See “PART 3 – PROJECT PARTICIPANTS – The Design Builder,” “PART 8 – CONSTRUCTION OF PHASE A OF THE PROJECT,” APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE – Design and Construction of the Construction Project,” and APPENDIX E – “SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT.”

**Operational Readiness and  
Airport Transfer Program**

In June 2023, the Lessee entered into an Operational Readiness and Airport Transfer Agreement (the “ORAT Agreement”) with Munich Airport US Holding LLC (in such capacity, the “ORAT Service Provider”). Pursuant to the ORAT Agreement, the ORAT Service Provider is required to provide the Lessee with expertise in interfacing with construction, systems, suppliers and operational stakeholders during the construction period to ensure a smooth transition from construction to operations.

**Operation and Management  
of the Project**

The Lessee is responsible under the Lease for the operation, management, administration, and maintenance of the Premises, including any repair, modification, reconstruction, rehabilitation, restoration, renewal and replacement of the Premises, including of the New Terminal Facilities following the construction thereof, all as required under the Lease (the “Operations and Maintenance Work”). In connection with the performance of the Operations and Maintenance Work, the Lease requires the Lessee to rely on the expertise and personnel of a “Qualified Terminal Operator.” The Port Authority determined that the Lessee qualified as a Qualified Terminal Operator under the Lease as of the Effective Date, which determination is subject to change in accordance with the terms of the Lease. The Lessee currently self-operates the Premises with the support of Ferrovial Airports US Operation and Management Services LLC, as the Manager, in accordance with a Management Services Agreement, dated as of the Effective Date (the “Management Services Agreement”). For further information regarding operations and maintenance of the New Terminal Facilities, please see APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE – Operation and Maintenance of the New Terminal Facilities” and APPENDIX F – “SUMMARY OF CERTAIN PROVISIONS OF THE MANAGEMENT SERVICES AGREEMENT.”

**Aeronautical Revenues and  
Non-Aeronautical Revenues**

Rates and charges paid by aeronautical users (generally speaking, commercial airlines) of Phase A are expected to comprise the principal revenue source for the Lessee’s payment of its operating expenses and repayment of its obligations under the Lessee Loan Agreements, including debt service on Senior Debt, including the Series 2024 Bonds. As of June 1, 2024, the Lessee has committed agreements from seven airline carriers that are expected to constitute approximately

26%\* of the forecast for the Lessee's enplanements at the New Terminal Facilities in the first full calendar year of operation. For a further description of aeronautical revenues, see "PART 16 – AERONAUTICAL REVENUES." Non-Aeronautical Revenues consisting generally of concession sublease rentals, certain additional revenues anticipated to be generated in Phase A, including from advertising fees, common area maintenance fees, marketing fees and storage fees for tenant goods, are an additional major source of Project Revenues. Revenues from concession sublease rentals, advertising fees and exclusive use of airline space is subject to a revenue sharing agreement with the Port Authority. For a further description of Non-Aeronautical Revenues, see "PART 17 – NON-AERONAUTICAL REVENUES."

### **Consultant Reports**

Steer Davies & Gleave, Incorporated (the "Airport Consultant") has prepared the Report of the Airport Consultant, which reviews Phase A projected traffic, revenues, rates and charges and operating expenses and is included in this Official Statement as APPENDIX B-1 – "REPORT OF THE AIRPORT CONSULTANT."

Infrata Limited (the "Lenders' Technical Advisor") has prepared the Report of the Lenders' Technical Advisor, which reviews the technical aspects of Phase A, the Airport Consultant's provided passenger and revenue forecast and supporting financial information by the Lessee, and is included in this Official Statement as APPENDIX B-2 – "REPORT OF THE LENDERS' TECHNICAL ADVISOR." Pursuant to its current engagement with the Lessee, the Lenders' Technical Advisor is required to provide monthly construction reports on Phase A to the Lessee, which reports the Lessee has agreed to file on the Municipal Securities Rulemaking Board's ("MSRB") EMMA online municipal securities data and disclosure site as and when required pursuant to the Lessee Continuing Disclosure Undertaking.

### **Risk Factors**

Investing in the Series 2024 Bonds is subject to numerous risks as described in "PART 20 – RISK FACTORS" herein.

### **Tax Matters**

In the respective opinions of Katten Muchin Rosenman LLP and D. Seaton and Associates, P.A., P.C., Co-Bond Counsel, interest on the Series 2024 Bonds is not includable in gross income for federal income tax purposes and is not includable in taxable income for purposes of personal income taxes imposed by the State of New York, The City of New York and the City of Yonkers, New York, assuming compliance with certain covenants and the accuracy of certain representations, except that no opinion is expressed by Co-Bond Counsel as to the exclusion from such gross income and such taxable income of interest on any Series 2024 Bond during the period that such Series 2024 Bond

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\* Korean Air is one of such airline carriers which has committed to operate at the New Terminal Facilities. As of June 1, 2024, Korean Air and Asiana Airlines are considering a merger. If such merger takes place, the percentage of committed forecast traffic is expected, as of June 1, 2024, to increase to approximately 29% of the total forecast for the Lessee's enplanements in the first full calendar year of operation.

is held by a “substantial user” of the facilities financed or refinanced by the Series 2024 Bonds or a “related person” within the meaning of Section 147(a) of the Internal Revenue Code, as amended. Interest on the Series 2024 Bonds is (i) an item of tax preference to be included in calculating the alternative minimum tax imposed on individuals and (ii) included in the adjusted financial statement income of those corporations subject to the corporate alternative minimum tax. See “PART 21 – TAX MATTERS.”

### **Continuing Disclosure**

In order to assist the Underwriters in complying with Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the “Rule”), the Lessee will execute a Lessee Continuing Disclosure Undertaking. The Lessee Continuing Disclosure Undertaking will include obligations on the Lessee to submit annual, quarterly and, during the construction period only, monthly reports containing certain financial and operating (or construction) information, as well as notices of certain material events, to the MSRB in accordance with the Rule.

Neither the Port Authority nor the Conduit Issuer will be required to submit any information pursuant to the Rule or pursuant to the Lessee Continuing Disclosure Undertaking.

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**OFFICIAL STATEMENT RELATING TO**  
**\$2,550,000,000**  
**NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION**  
**SPECIAL FACILITIES REVENUE BONDS, SERIES 2024**  
**(John F. Kennedy International Airport New Terminal One Project)**  
**(Green Bonds)**

**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 \$2,550,000,000 aggregate principal amount of Special Facilities Revenue Bonds, Series 2024 (John F. Kennedy International Airport New Terminal One Project) (Green Bonds) (the “Series 2024 Bonds”) of the New York Transportation Development Corporation (the “Conduit Issuer”). **Capitalized terms used herein unless otherwise defined have the respective meanings given to them in APPENDIX A – “DEFINITIONS.”** The Conduit 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. See “PART 3 – PROJECT PARTICIPANTS – The Conduit Issuer.”

The Conduit Issuer is issuing the Series 2024 Bonds pursuant to a Master Indenture of Trust (the “Master Indenture”), among the Conduit Issuer, JFK NTO LLC (the “Lessee”) and The Bank of New York Mellon, as trustee (the “Indenture Trustee”), as supplemented by the Second Supplemental Indenture (the “Second Supplemental Indenture” and, together with the Master Indenture, the “Indenture”), among the Conduit Issuer, the Lessee and the Indenture Trustee. The Series 2024 Bonds are the second series of Bonds issued under the Master Indenture. The Conduit Issuer has previously issued its \$2,000,000,000 Special Facilities Revenue Bonds, Series 2023 (John F. Kennedy International Airport New Terminal One Project) (Green Bonds) (the “Series 2023 Bonds”). For the purposes of this Official Statement, “Bonds” means, as the context requires, (i) the Series 2023 Bonds, the Series 2024 Bonds, and any additional bonds issued under the Indenture or (ii) Muni Bonds as such term is defined in the Common Terms Agreement, which includes the Series 2024 Bonds.

A portion of the proceeds of the Series 2024 Bonds will be used to refinance Bank Loans (as hereinafter defined) provided and committed to be provided by certain lenders (the “Lenders”) to the Conduit Issuer and the Lessee, pursuant to a credit agreement entered into by the Lessee, the Conduit Issuer and such Lenders (the “Credit Agreement”), as more fully described herein. The proceeds of the Bank Loans funded loans advanced to Lessee pursuant to a Building Loan Agreement and a Project Loan Agreement (collectively, as more fully described herein, the “Lessee Loan Agreements”), among the Conduit Issuer, the Lessee and MUFG Bank, Ltd., as Intercreditor Agent. The balance of the proceeds of the Series 2024 Bonds will be used by the Lessee to (i) finance (under the Lessee Loan Agreements) a portion of the costs relating to Phase A of the Project described herein, (ii) fund a portion of the interest on the Series 2024 Bonds and the Series 2023 Bonds, and (iii) pay certain costs of issuance related to the Series 2024 Bonds. Interest payable on the Series 2024 Bonds during construction of Phase A will be paid from funds on deposit in the applicable Capitalized Interest Accounts, proceeds of draws on the Bank Loans, and other available sources.

The “Project” generally consists of (i) the development, design, construction, financing, operation and maintenance by the Lessee of the New Terminal One international passenger terminal facility and certain related assets (as more fully described herein, the “New Terminal Facilities”) at John F. Kennedy International Airport in Queens, New York (the “Airport” or “JFK Airport”), (ii) the demolition of a parking garage structure which was located north of the existing Terminal 1 (the “Green Garage”), portions of the

apron located at the former Terminal 3 site, the existing Terminal 2, the Terminal 2 AirTrain Station and the existing Terminal 1 (together with the Green Garage, the “Former Terminal Facilities”) at the Airport, and (iii) the construction of certain off-premises facilities, including certain landside utilities, a roadway network and certain modifications to the AirTrain (the “Off-Premises Facilities”). The Project includes piling, steel, and concrete structure work, including, but not limited to, the enclosure of the AirTrain, the structure of the headhouse of the New Terminal Facilities and the structures supporting the future roadways providing access to the New Terminal Facilities. The Project will be undertaken in separate and independent phases and is intended, in part, to replace and expand the capacity at the existing Terminal 1 and address the current wide-body gate shortage for international flights at JFK Airport and the need to accommodate projected growth in international, long-haul traffic demand.

The Project is being constructed in three separate and independent phases. Construction of Phase A commenced in June 2022. As of the date of this Official Statement, the projected total costs of construction of Phase A and the development costs thereof (including demolition and construction, financing and other costs) are projected to be covered in full by (i) the lending commitments (as more fully described herein, the “Bank Loans”) made under the Credit Agreement (the “Credit Agreement”), by and among the Lessee, the Conduit Issuer and MUFG Bank, Ltd., as administrative agent (the “Administrative Agent”), (ii) the proceeds of the Series 2023 Bonds, (iii) the proceeds of Series 2024 Bonds, and (iv) the equity commitments made by the Sponsors to the Lessee (as more fully described herein, the “Equity Commitments”). It is expected that, from time to time during construction of Phase A, the Conduit Issuer will issue, and on-lend to the Lessee the proceeds of any Permitted Refinancing Indebtedness to prepay the Bank Loans and/or pay the costs of Phase A and reduce the lending commitments under the Credit Agreement. Upon any reduction of lending commitments under a Bank Loan, the lending commitment of each lender under such Bank Loan shall be reduced by such lender’s ratable share of the amount by which such Bank Loan is reduced (other than the termination of the lending commitment of any lender) as described in the Credit Agreement. In December 2023, the Lessee used a portion of the proceeds of the Series 2023 Bonds to refinance the Bank Loans then outstanding, and to reduce the initial Lenders’ commitments under the Credit Agreement from \$6,630,000,000 to \$4,480,630,854.

The Port Authority of New York and New Jersey (the “Port Authority”) and the Lessee entered into a Lease (the “Lease”) dated June 10, 2022, pursuant to which, among other things, the Lessee has agreed to consummate the Project. The Lease is scheduled to terminate on December 30, 2060, unless earlier terminated in accordance with the terms thereof.

The Lessee, JFK NTO TRS LLC (the “Taxable REIT Subsidiary”), the Conduit Issuer, U.S. Bank, N.A., as the Collateral Agent (the “Collateral Agent”) and the Account Bank (the “Account Bank”), and MUFG Bank, Ltd., as the Intercreditor Agent (the “Intercreditor Agent”) and the Administrative Agent, and any other Secured Creditor that becomes a party from time to time, entered into a First Amended and Restated Common Terms Agreement dated as of June 3, 2022, as amended and restated by a Second Amended and Restated Common Terms Agreement (the “Second Amended and Restated Common Terms Agreement”) dated as of April 1, 2024 (collectively, the “Common Terms Agreement”). Pursuant to such Common Terms Agreement, amongst other things, the Collateral Agent will hold the collateral as security for the Secured Debt, including the Series 2024 Bonds. The Common Terms Agreement provides that certain accounts established with respect to the Series 2024 Bonds will be held by the Collateral Agent. The Second Amended and Restated Common Terms Agreement, among other things, incorporated the provisions necessary to accommodate the potential incurrence by the Lessee (either directly or through the Conduit Issuer) of one or more loans (each a “TIFIA Loan”) pursuant to one or more loan agreements (each such loan agreement, a “TIFIA Loan Agreement”) from the United States Department of Transportation, acting by and through the Build America Bureau (the “TIFIA Lender”). These provisions were included to provide the Lessee with future financing flexibility and, as of the date of this Official Statement, the Lessee has not requested and is not currently pursuing a TIFIA Loan. See “PART 12 – SUMMARY OF THE

FINANCING DOCUMENTS – Common Terms Agreement” and APPENDIX C-2 – “CERTAIN PROVISIONS OF THE COMMON TERMS AGREEMENT.”

The Conduit Issuer has and will on-lend the proceeds of the Bank Loans, the proceeds of the Series 2023 Bonds, the proceeds of any Additional Senior Indebtedness and any Permitted Refinancing Indebtedness, including the Series 2024 Bonds, to the Lessee in accordance with the terms of the Lessee Loan Agreements.

The Series 2024 Bonds are secured on parity with the Bank Loans, the Series 2023 Bonds, any other series of Additional Bonds to be issued in the future and certain other parity borrowings and other obligations of the Lessee outstanding from time to time (collectively, the “Secured Obligations”). In addition to Project Revenues, the Secured Obligations are further ratably secured by, among other things as herein described, (i) amounts on deposit in certain Project Accounts established under the Common Terms Agreement and held by the Account Bank, (ii) the Project Loan Mortgage, dated June 10, 2022 (the “Project Loan Mortgage”), and the Building Loan Mortgage, dated June 10, 2022 (the “Building Loan Mortgage” and, together with the Project Loan Mortgage, the “Leasehold Mortgages”), pursuant to which the Lessee granted mortgage liens on and security interests in the interests of the Lessee under the Lease to the Conduit Issuer, (iii) the Lessee Security Agreement, dated June 10, 2022 (the “Lessee Security Agreement”), pursuant to which the Lessee granted a security interest in and lien on all of its right, title and interest in and to all of its personal property, including the Lessee’s interest in Project Accounts and its contractual rights and its equity interest in the Taxable REIT Subsidiary, (iv) the Lessee Pledge Agreement, dated June 10, 2022 (the “Lessee Pledge Agreement”), pursuant to which a security interest in all of the equity interests in the Lessee was granted, (v) the Taxable REIT Subsidiary Security Agreement, dated June 10, 2022 (the “Taxable REIT Subsidiary Security Agreement”), pursuant to which the Taxable REIT Subsidiary granted a security interest in and lien on all of its right, title and interest in and to all of its personal property, and (vi) the Project Loan Collateral Assignment Agreement, dated June 10, 2022 (the “Project Loan Collateral Assignment”) and the Building Loan Collateral Assignment Agreement, dated June 10, 2022 (the “Building Loan Collateral Assignment” and, together with the Project Loan Collateral Assignment, the “Collateral Assignments”), pursuant to which the Conduit Issuer assigned all of its right, title and interest in and to the Lessee Loan Agreements, the Leasehold Mortgages, the Building Loan Note, and the Project Loan Note to the Collateral Agent (subject to certain reserved rights of the Conduit Issuer), pursuant to the Collateral Assignments.

The Series 2024 Bonds are additionally separately secured by the Trust Estate created under the Master Indenture for the benefit of the owners of all Bonds (including the Series 2023 Bonds, the Series 2024 Bonds and any series of Additional Bonds to be issued in the future), which includes a common bond debt service reserve account created pursuant to the Common Terms Agreement and to be funded on or prior to the Completion Date for Phase A of the Project. In addition, the Series 2024 Bonds are secured by certain funds and accounts created under the Second Supplemental Indenture solely for the benefit of the Owners of the Series 2024 Bonds. See “PART 11 – SECURITY FOR THE SERIES 2024 BONDS” and APPENDICES C-1 through C-3 – “CERTAIN PROVISIONS OF THE MASTER INDENTURE,” – “CERTAIN PROVISIONS OF THE COMMON TERMS AGREEMENT,” and – “CERTAIN PROVISIONS OF THE LEASEHOLD MORTGAGES.”

The Lessee expects to meet its obligations under the Lessee Loan Agreements primarily from revenues it receives from the operation of Phase A of the Project (as more fully described herein, the “Project Revenues”), including payments made by airlines, providers of concession goods and services and other commercial users of the Phase A of the Project. See “PART 11 – SECURITY FOR THE SERIES 2024 BONDS – Project Revenues,” – “PART 16 – AERONAUTICAL REVENUES” and “PART 17 – NON-AERONAUTICAL REVENUES.”

**THE SERIES 2024 BONDS ARE SPECIAL AND LIMITED REVENUE OBLIGATIONS OF THE CONDUIT ISSUER, PAYABLE BY THE CONDUIT 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, NOR 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 CONDUIT ISSUER), 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 CONDUIT ISSUER) SHALL BE LIABLE ON THE SERIES 2024 BONDS. THE CONDUIT ISSUER HAS NO POWER OF TAXATION. SEE “PART 22 – LIMITED LIABILITY FOR THE SERIES 2024 BONDS” HEREIN.**

The Conduit Issuer may, upon the request of the Lessee, issue Additional Bonds and/or incur Additional Senior Indebtedness or Permitted Refinancing Indebtedness for the benefit of the Lessee, subject to compliance with the provisions of the Indenture and the Common Terms Agreement described below under the heading “PART 11 – SECURITY FOR THE SERIES 2024 BONDS,” “PART 12 – SUMMARY OF THE FINANCING DOCUMENTS – Common Terms Agreement – *Additional Indebtedness*” and in APPENDIX C-1 – “CERTAIN PROVISIONS OF THE MASTER INDENTURE – Authorization of Additional Muni Bonds.”

## **PART 2 - JOHN F. KENNEDY INTERNATIONAL AIRPORT**

### **The Basic Lease**

The Port Authority operates the Airport under a lease agreement, entered into in 1947, and a Restated Agreement of Lease of the Municipal Air Terminals, dated November 24, 2004 (the “Basic Lease”), pursuant to which the Premises are leased by the City of New York (the “City”) to the Port Authority. The term of the Basic Lease was extended for ten years in 2021 and is now 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 remains in effect would also result in a termination of the Lease.

**Neither the Port Authority nor the Lessee makes 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 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, as opposed to connecting through the Airport to reach another

destination) 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”). In 2023, the Airport served over 62.5 million passengers.

In an effort to deal with ongoing flight delays during peak hours of operation at the Airport and LaGuardia, the Federal Aviation Administration (“FAA”) issued orders to establish operational caps at each airport which restrict the number of scheduled operations per hour (arrivals and departures) during peak hours. On October 28, 2022, the FAA extended the current Order in effect for the Airport until October 26, 2024, maintaining the current caps on operations for certain hours at the Airport.

### **Airline Service and Operation of Passenger Terminals**

In 2023, 26 airlines were operating at the existing Terminal 1, and the Airport served over 62.5 million passengers in total, of which approximately 29.1 million were domestic and 33.4 million were international.

Airline service at the Airport is currently accommodated by the Airport’s five-unit passenger terminals. Each of the Airport’s passenger terminals has been privately developed and is leased by the Port Authority to third parties. Each terminal operator, like the Lessee will be with respect to the New Terminal Facilities, is responsible for its terminal’s overall management and operation. The Airport’s various passenger terminal leases extend for differing periods.

Airlines that operate at the Airport are free to seek accommodation at any one of the Airport’s unit passenger terminals from the terminal’s operator, subject to Port Authority consent. Each airline that is itself a lessee/operator of one of the Airport’s passenger terminals typically accommodates its own flight operations and may (depending on the terms of its lease or other agreement with the Port Authority) seek to accommodate flight operations of other airlines, at its respective terminal facilities. Other airlines typically seek to locate their flight operations at a passenger terminal within the Airport based on such factors as availability, quality and flexibility of space, support services, airline alliances or other business relationships, and costs, among other possible considerations. Airline demand for desirable terminal space at the Airport and its passenger terminals is also influenced by such factors as peak operating periods, when fewer aircraft contact gates are available for use.

No assurances can be provided regarding future airline activity or terminal capacity at the Airport or the outcome of existing or any future terminal development plans regarding the Airport.

### **JFK Airport Redevelopment**

#### ***Airport Overview***

Opened on July 1, 1948, JFK Airport is located in the southeastern section of Queens, New York, on Jamaica Bay. JFK 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 from the Port Authority. The terminals include federal inspection services facilities for processing arriving international passengers. Cargo buildings, four runways ranging in length from approximately 8,400 feet to 14,600 feet, a cogeneration facility integrating an installation for the generation of electrical energy with the Airport’s central heating, refrigeration plant and thermal distribution system are also located at the Airport. An automated light rail system (“AirTrain”) linking the terminals in the Central Terminal Area with each other and with existing transit lines in Jamaica, Queens and Howard

Beach, Queens, respectively, provides exclusive airport access for passengers and others using JFK Airport. A full service hotel containing approximately 500 guest rooms is located at the site of the TWA Flight Center at JFK Airport.

### ***Redevelopment***

Beginning in 2017, the Port Authority began planning for the comprehensive improvement of JFK Airport, particularly in the Central Terminal Area, where existing passenger terminals are reaching the end of their useful lives. The Airport-wide master plan provides for new state-of-the-art passenger facilities with a focus on customer-oriented, sustainable and technologically advanced operations. As part of this effort, in October 2018, the Board of Commissioners of the Port Authority approved exclusive negotiations with two different sponsor groups proposing privately-funded development of new passenger terminals (New Terminal 6, on the north side of JFK Airport, and New Terminal One (as defined herein), on the south side of JFK Airport, each as further described below) to replace outdated facilities, with the Port Authority investing in the necessary supporting infrastructure.

Building the proposed new terminals required: (i) the demolition of Terminal 2 (occupied through January 2022 by Delta Air Lines, Inc. (“Delta”)); (ii) the termination of aircraft parking at the former Terminal 3 site (previously used primarily by Delta and other Terminal 4 airlines); (iii) the eventual demolition of Terminal 1 (managed by a consortium of international airlines known as Terminal One Group Association, L. P. (“TOGA”) under a lease through December 31, 2025) and relocation of the air carriers currently using Terminal 1 to the new terminal on the south or other terminal facilities at JFK Airport; and (iv) the demolition of Terminal 7 operated by British Airways and relocation of British Airways to Terminal 8 and other Terminal 7 users to other premises at JFK Airport. The Port Authority advanced these activities through the onset of the COVID-19 pandemic in 2020 and successfully amended its terminal lease with American Airlines, Inc. (“American”) effective as of June 1, 2020, to provide for an upgrade and expansion of Terminal 8 which enabled British Airways to move its operations from Terminal 7 to Terminal 8 on December 1, 2022. In July 2023, a subsidiary of Unibail-Rodamco-Westfield (“URW”) Airports entered into agreements with the Port Authority and American providing for a \$125 million commercial redevelopment program at Terminal 8, which will feature new shopping and restaurant offerings.

Despite delays beginning in early 2020 related to the effects of the COVID-19 pandemic, the Port Authority has taken the following actions to date with its terminal operators to further effectuate the JFK Redevelopment:

(i) The Port Authority entered into a supplement to the lease for Terminal 4 with JFK International Air Terminal LLC (“IAT”) and consented to a related supplement to the sublease between IAT and its current anchor tenant, Delta, each in April 2022, to permit the redevelopment and expansion of Terminal 4 to allow Delta to consolidate its operations at JFK Airport in Terminal 4.

The initial construction phase includes conversion and renovation of three wide-body gates to narrow-body plane equivalents, conversion of existing Terminal 4 regional jet gates for use as seven full-size aircraft gates and construction of a new regional jet site and upgrade of the Terminal 4 headhouse and common areas to accommodate its expanded operations. This initial construction phase has a cost of \$1.5 billion, which includes Delta’s portion of the work described above and \$150 million for upgrades for the remainder of Terminal 4 to be performed by IAT through December 2024.

The Terminal 4 lease supplement also provided for a Delta option to undertake a second phase expansion which will result in up to 12 additional narrow-body aircraft gates, an expanded headhouse and an upgraded terminal frontage (“Second Phase Option”). Delta has not exercised the Second Phase Option and has therefore incurred certain contingent obligations to otherwise provide for upgrades to the Terminal 4 frontage. IAT retains the ability, with the Port Authority’s concurrence, to perform certain work at

Terminal 4 in lieu of Delta. It is anticipated that all subsequent work would be financed by the issuance of additional bonds by IAT, backed by Terminal 4 revenues.

(ii) On December 16, 2021, the Board of Commissioners of the Port Authority approved a lease for New Terminal One (as defined herein) with a development consortium comprised of The Carlyle Group (“Carlyle”), JLC Infrastructure, and The Union Labor Life Insurance Company. In February 2022, Ferrovial announced that it was in negotiations to purchase Carlyle’s interest in the consortium, subject to the Port Authority’s consent, among other things. On June 3, 2022, the Board of Commissioners of the Port Authority, after diligently considering Ferrovial’s financial condition and management capability, approved the subscription by an affiliate of Ferrovial, of 96% of Carlyle’s interest in the Lessee. On June 10, 2022, the Port Authority entered into a lease with the Lessee for the design and construction of New Terminal One (as defined herein) on the terms previously approved by the Board of Commissioners of the Port Authority.

(iii) Under the Lease, the new southern terminal (referred to as “New Terminal One”) is being constructed by the Lessee in three phases, subject to achievement of certain passenger activity triggers. The first phase of construction (Phase A) includes building the new arrivals and departures hall and 14 wide-body gates on a single concourse, and is expected to be in use by 2026. It is anticipated that two additional phases of construction will add a total of nine additional gates on a second concourse, with up to five gates added in the second phase and the remaining gates added in the third phase, except as otherwise described herein. Final New Terminal One capacity is expected to be 23 gates. Pursuant to the terms of the Lease, the Lessee is required to build each of the second and third above-described phases, so long as (i) it can achieve an investment grade rating for additional funding for the design and construction of the additional phases or (ii) international passenger enplanements at JFK Airport or the terminal reach 2019 levels. Notice to proceed with construction of Phase A was issued on June 10, 2022.

(iv) Simultaneously with its approval of the New Terminal One transaction, the Board of Commissioners of the Port Authority also approved an amendment to the existing Terminal 1 lease with TOGA, permitting the continued use of the existing terminal through December 2025 or, if later, the date on which Lessee requires the site for development of the latter two phases as described above.

On November 17, 2022, the Port Authority entered into a lease for a new passenger terminal on the north side of JFK Airport on a site comprised of the existing Terminal 7 and an adjacent vacant site previously occupied by Terminal 6, as contemplated under the Board of Commissioners of the Port Authority’s authorization in August 2021. The lessee for such new terminal is JFK Millennium Partners (“JMP”), a private consortium comprised of Vantage Airport Group, American Triple I Partners, RXR Realty and JetBlue Airways Corporation (“JetBlue”). The New Terminal 6 is expected to be interconnected with JetBlue’s Terminal 5. Construction of the approximately 1.2 million square foot passenger terminal project, referred to as “New Terminal 6,” commenced in February 2023 and has an estimated total cost of \$4.2 billion. Construction for such terminal is expected to be completed in two continuous phases. In the first phase, the New Terminal 6 headhouse and the departure and arrivals area, including five new gates are expected to be built on the vacant site previously occupied by Terminal 6. In the second phase of construction, JMP is expected to demolish Terminal 7 and construct five additional gates and associated terminal space. At the end of the second phase, it is expected that there will be a total of 10 gates in the New Terminal 6 (nine wide-body gates and one narrow-body gate).

In December 2021, the Board of Commissioners of the Port Authority authorized the Port Authority to undertake its planned infrastructure project at a cost of \$2.9 billion, to enable the terminal developments to be incorporated into the JFK Airport Central Terminal Area. The planned project includes airfield improvements, JFK Airport roadways, a new ground transportation center and utility upgrades. Due to upward pressures on project costs, economy-wide increase in inflation, extraordinary increases in the cost of certain construction materials and fixed price hikes to address higher risk profiles of very large projects,

cost proposals from contractors for design-build services for the Roadway Utilities and Ground Transportation Project (“RUGTC Contract”) and certain other utility contracts at JFK Airport exceeded cost estimates, which were developed prior to the initial JFK Redevelopment program authorization. In March 2023, the Board of Commissioners of the Port Authority authorized award of the RUGTC Contract to a joint venture comprised of Skanska USA Civil Northeast Inc. (“Skanska”) and Halmar International, LLC (“Halmar” and, together with Skanska, the “RUGTC Builders”) for an amount not to exceed \$1.240 billion and an increase to the total authorized program cost reflecting that price, in a total amount not to exceed approximately \$3.9 billion.

In May 2023, the Port Authority also entered into a construction support services agreement (the “CSS Agreement”) with Modern Efficient Transport and Supply LLC (“Modern”, an affiliate of Grace Industries LLC) to construct and operate a concrete batch plant at JFK Airport, a concrete crushing facility to recycle construction debris for redevelopment uses and a marine transport facility for the movement of construction material by barge. The services will be provided at stated rates approximating market charges to be paid by the developers and contractors conducting major construction at JFK Airport (each of which is obligated to use such services, subject to certain exceptions) and will significantly reduce the impact of airport construction on neighboring communities by eliminating the need for thousands of truck trips through local streets. The Port Authority has guaranteed Modern sales of a minimum of 720,000 cubic yards of concrete through the five-year term of the CSS Agreement and the Port Authority has agreed to reimburse Modern for up to \$5 million for its capital costs to construct the facilities.

Also included in the JFK Redevelopment program is the development by a subsidiary of TotalEnergies S.E. of a 12 MW carport canopy solar energy system incorporating battery storage. The project is expected to interconnect with the Consolidated Edison distribution system and serve the power needs of AirTrain operations while allowing the persons in the surrounding community to receive bill credits under the New York State Community Distributed Generation program (as well as generating bill credits for the Port Authority). The Port Authority has a contingent obligation to pay up to \$12 million in project costs to the developer in connection with the project, if federal tax incentives are not available to cover such costs.

The Lessee understands that the Port Authority has obtained all required approvals under the National Environmental Policy Act to proceed with the JFK Redevelopment as described above.

### **PART 3 - PROJECT PARTICIPANTS**

#### **The Lessee**

##### ***General Information Concerning the Lessee***

JFK NTO LLC, the Lessee, is a Delaware limited liability company that was formed on December 16, 2021, for the principal purpose of entering into the Lease, implementing the Project and operating and maintaining the New Terminal Facilities. The Lessee’s leasehold interest in the Project under the Lease with the Port Authority constitutes its principal asset. The Lessee is a special purpose entity and does not anticipate engaging in any material operations other than the implementation of the Project. Under the Lease as of the Effective Date, the Lessee is the Qualified Terminal Operator that is responsible for the Operations and Maintenance Work thereunder. The Lessee is headquartered at JFK Building 111, 154-20-154-42 134th Street, 3rd floor, Jamaica, NY 11430.

##### ***The Lessee’s Ownership Structure***

The Lessee is wholly owned by JFK NTO HoldCo LLC (“HoldCo”), a Delaware limited liability company that was formed on December 16, 2021.

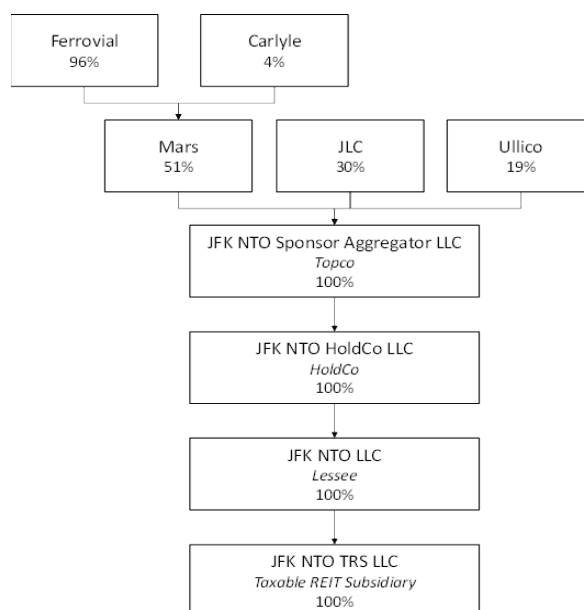
HoldCo is wholly owned by JFK NTO Sponsor Aggregator LLC (“Topco”), a Delaware limited liability company formed on December 16, 2021 by the Sponsors to operate as a sponsor aggregator company.

Ownership of Topco as of the date of this Official Statement is as follows:

- (i) 51% is owned by Mars NTO LLC (“Mars”), which is in turn (x) 96% owned by an Affiliate of Ferrovial SE (collectively, “Ferrovial”) and (y) 4% owned by CGI Phoenix Aggregator, L.P., an Affiliate of The Carlyle Group (“Carlyle”);
- (ii) 30% is owned by JLC JFK Aggregator L.P. (“JLC”); and
- (iii) 19% is owned by Ullico Infrastructure JFK REIT, LLC (“Ullico”).

The Lessee owns 100% of the limited liability company interests in JFK NTO TRS LLC (the “Taxable REIT Subsidiary”), a Delaware limited liability company formed on January 10, 2022 to operate as a taxable Real Estate Investment Trust subsidiary of the Sponsors. The Taxable REIT Subsidiary was created for the principal purpose of performing certain activities required in respect of the Project, which the Taxable REIT Subsidiary can perform under applicable law. The Taxable REIT Subsidiary will have no economic impact on the ability of the Project to generate Project Revenues to repay the Secured Obligations or to satisfy the Rate Covenant.

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



### ***The Lessee’s Governance Structure***

Given the Lessee’s ownership structure described above, the Lessee’s governance and management is governed and determined by (i) the Amended and Restated Limited Liability Company Agreement of Topco dated as of May 12, 2022 (the “Topco LLC Agreement”) and (ii) the Amended and Restated Limited Liability Company Agreement of the Lessee dated as of May 12, 2022 (the “Lessee LLC Agreement”).

Pursuant to the Topco LLC Agreement and the Lessee LLC Agreement, (i) HoldCo is managed by Topco as its sole member, and (ii) the Sponsors appoint the members of the Board of Directors of the Lessee. The initial (and current) number of Directors of the Lessee is seven. Each of the Sponsors has a right to appoint a certain number of Directors of the Lessee in accordance with their percentage of ownership in Topco. Under the current ownership structure, Mars has the right to appoint four Directors, including the Chairperson (of which Ferrovia has the right to appoint three Directors and the Chairperson, and Carlyle has the right to appoint one Director (subject to certain conditions)), JLC has the right to appoint two Directors, and Ullico has the right to appoint one Director. There is no independent Director appointment for bankruptcy purposes of the Lessee.

The Board of Directors of the Lessee has appointed the Chief Executive Officer, Chief Financial Officer, and other officers and staff as described in greater detail herein.

### ***Voting and Approvals***

The voting and approvals of the Board of Directors of the Lessee have certain majorities, supermajorities, and veto rights requirements both at the level of the Board of Directors of the Lessee and at the level of Topco.

*Board Majority Reserved Matters.* Certain material governance and business matters require the approval of more than 50% of all of the members of the Board of Directors of the Lessee, including, among other things: (i) appointment or removal of the CEO and the CFO, (ii) entering into contracts in which termination rights are granted in the event of a change of control, (iii) adopting or amending material compliance policies, and (iv) amending, implementing or terminating insurance policies or changing insurance coverage. All other matters that do not require a higher majority are subject to the simple majority vote.

*Board Supermajority Reserved Matters.* Certain material governance and business matters require the approval of at least 60% of all of the members of the Board of Directors of the Lessee, including, among other things: (i) approval or amendment of the consolidated annual operating budget, (ii) approval or amendment of the consolidated five-year business plan, (iii) incurring certain operating expenditures and capital expenditures in excess of certain thresholds, (iv) incurring financial debt, (v) creating any encumbrance over any assets or property, (vi) providing loans, or guaranteeing obligations of, third parties, (vii) permitting any amendment or modification of certain material documents, (viii) issuance of capital or of any membership interests of the Lessee, (ix) launching an initial public offering, (x) removing or replacing the ORAT Contractor, and (xi) adopting or amending any management compensation agreement, profit-sharing scheme, share option or share incentive.

*Board Veto Rights.* Certain members of the Board of Directors of the Lessee have veto rights on some of the material governance and business matters mentioned in the *Board Majority Reserved Matters* and *Board Supermajority Reserved Matters* noted above. Such veto rights can only be exercised if the votes cast by the members of the Board of Directors of the Lessee meet certain percentages.

*Sponsor Majority Reserved Matters.* Certain material governance and business matters require the approval of more than 50% of the votes entitled to be cast directly by the Sponsors, including, among other things: (i) permitting any project entity making or revoking a tax election or changing the tax residency, (ii) appointing or removing the external auditor, and (iii) making any change to the method of accounting.

*Sponsor Supermajority Reserved Matters.* Certain material governance and business matters require the approval of more than 60% of the votes entitled to be cast by the Sponsors (as indirect members of the Lessee), including, among other things: (i) related party contracts or transactions, (ii) variation of the

dividend or distribution policy, (iii) reduction in equity capital, buy back of shares, and (iv) incorporation of any new entity not contemplated in the organizational structure of the Project.

*Sponsor Veto Rights*. The Sponsors (as indirect members of the Lessee) have certain veto rights on certain material governance and business matters including, but not limited to, the matters mentioned in *Sponsor Majority Reserved Matters* and *Sponsor Supermajority Reserved Matters* sections above. Such veto rights can only be exercised if certain percentages of the votes entitled to be cast by the Sponsors are met.

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

Any direct or indirect transfer of all or a portion of the interests of the Lessee (“Lessee Units”) are restricted or encumbered by the Topco LLC Agreement and the Lease, as described in further details below.

Under the Topco LLC Agreement, the Sponsors may transfer their membership interests in Topco, however, any transfer of membership interests in Topco entitles each non-transferring Sponsor to a right of first offer with respect to the membership interests subject to such proposed transfer; provided, however, that transfers to Affiliates are not subject to such a right of first offer.

Under the Lease, certain direct and indirect transfers of Lessee Units are considered “Permitted Interest Dispositions” and, subject in all cases to the terms and conditions of the Lease, are permitted at any time, including, among others, (i) transfers between Sponsors, (ii) transfers between or among persons that are under common control, and (iii) transfers to a pension fund or employee equity compensation plan of the Sponsors or controlled by the Sponsors.

Except for “Permitted Interest Dispositions,” no direct or indirect transfers of Lessee Units may be made prior to the first anniversary of Substantial Completion of the Project without the Port Authority’s consent, which consent may be granted or withheld in the Port Authority’s sole discretion. From and after the first anniversary of Substantial Completion of the Project, Interest Dispositions (as defined in the Lease) will be permitted without the Port Authority’s consent; provided that (x) any Interest Disposition made to a transferee that is a Prohibited Party (as defined in the Lease) at the time of such Interest Disposition or in violation of applicable laws shall be void *ab initio*, and (y) any Interest Disposition that results in a Change in Lessee Control (as defined in the Lease) will be subject to the Port Authority’s consent, provided that the Port Authority may withhold its consent to such an Interest Disposition only if the Port Authority reasonably determines that (i) there exists an uncured Event of Default (as defined in the Lease), (ii) the proposed transferee is a Prohibited Party, or (iii) the Lessee has failed to demonstrate that the proposed transferee is a Qualified Terminal Operator or that the Lessee will otherwise continue to meet the Qualified Terminal Operator requirements of the Lease.

In addition, with respect to any equity member of the Lessee that is a Qualified Terminal Operator (a “QTO Equity Member”), prior to the fifth anniversary of Substantial Completion of the Project, no Interest Disposition may be made by such QTO Equity Member which would result in (x) such QTO Equity Member holding less than 10% of the ownership interests in the Lessee or (y) a QTO Equity Member Disposition (as defined in the Lease), without the Port Authority’s consent, which consent may be given or withheld by the Port Authority in its sole discretion.

For further description on the rights of the Port Authority to consent to transfers of the equity interests in the Lessee, see APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE.”

### ***Officers and Certain Executive Staff of the Lessee***

Jennifer Aument, Chief Executive Officer: Jennifer Aument is Chief Executive Officer of the Lessee. Jennifer brings more than 25 years of experience in developing and delivering major infrastructure projects across the highway, rail, airport and port sectors, with a focus on public-private partnerships. She has a strong track record of advancing complex infrastructure and megaprojects efficiently and safely on behalf of leading equity investors and developers for both the private and public sectors. Prior to joining the Lessee in April 2024, Jennifer served as Chief Executive of AECOM's Global Transportation business, leading a team of 14,000 to deliver innovative transportation solutions for clients of the pre-eminent transportation consulting and design firm. She previously served as President and CEO of leading infrastructure investor Transurban's North American business, where she oversaw the development, financing and operations of major toll road infrastructure in the US and Canada. In addition to her private sector experience, Jennifer served for a decade on the Board of Commissioners of the Virginia Port Authority. She has contributed to the boards of several publicly listed and private organizations in the transportation and technology sectors, including investment firms Meridiam and Strategic Value Partners and the non-profit transportation policy think-tank, Eno Center for Transportation. Jennifer has also served as an Executive in Residence at Cornell University's Brooks School of Public Policy, where she taught a graduate course on delivering modern mega transportation projects.

Simon Gandy, Executive Vice President and Chief Operations Officer: Simon Gandy is Executive Vice President and Chief Operating Officer of the Lessee. As a values-driven C-suite executive, Simon brings more than 34 years of global aviation industry experience from senior roles in Asia Pacific, Europe and the United States. Simon has a strong track record of delivering high levels of growth and market share within the aviation sector, delivering exceptional returns to investors. Prior to joining the Lessee, Simon spent 15 years at Melbourne Airport, serving in several leadership roles including Chief of Infrastructure, Chief Strategy and Development Officer and Chief of Aviation. During his tenure, Melbourne Airport achieved record growth in new international service and reached its highest level of investment in infrastructure. Under Simon's leadership, the airport implemented on-site energy generation and retailing solutions with a plan for net zero emissions by 2025. Simon began his aviation career with BAA plc, which operated the United Kingdom's largest airports. He served as General Manager of Transfer Operations at Heathrow Airport and General Manager of the North Terminal at London Gatwick, among other senior roles. Simon graduated from the University of Birmingham with a degree in mechanical engineering and is a graduate member of the Australian Institute of Company Directors. Over the span of his global aviation career, he has cultivated a passion for creating legacies through critical infrastructure that benefit communities, customers and shareholders.

Manoj Patel, Chief Financial Officer: Manoj Patel is the Chief Financial Officer of the Lessee. He brings more than 22 years of corporate finance and management expertise with significant experience in the aviation industry. Prior to joining the Lessee in January 2023, Manoj served as Executive Director of Finance and Business Development at the existing Terminal 1 at the Airport for almost seven years. During his tenure, the existing Terminal 1 achieved significant growth in passenger volumes, revenue per passenger and returns. Earlier in his career, Manoj advised other major airports on financial planning for capital projects, including at Dallas-Fort Worth International Airport and Dallas Love Field. Manoj graduated from The University of Texas at Arlington with an MBA (specialization in finance) and a Master's Degree in Accounting and Finance.

Uzoamaka Okoye, Chief of Staff: Uzoamaka Okoye is the Chief of Staff at the Lessee. In collaboration with the President and CEO and the Executive Leadership team, she drives strategy, planning and organizational development across all areas of the business. Uzoamaka brings more than two decades of experience in the construction and development industry, including substantial expertise as a legal adviser on construction and environmental law in the New York metropolitan area. She served for more than a decade at law firms Troutman Sanders (now Troutman Pepper) and Gibbons, prior to acting as Legal

Counsel to the Lessee’s Project Management Office for four years before being appointed Chief of Staff. She began her career as a project engineer in New York, working on water and wastewater infrastructure projects and assisting in the oversight and management of design and construction. Uzoamaka holds a Juris Doctor degree from Rutgers Law School, a Master’s Degree in Environmental Engineering from New York University – Polytechnic School of Engineering and a Bachelor’s Degree in Chemistry from American University.

Julie Cho, General Counsel and Secretary: Julie Cho is the General Counsel and Corporate Secretary of the Lessee, overseeing the organization’s legal matters and corporate governance. She is an experienced executive and trusted legal advisor who previously served as General Counsel for both The Lam Group and Lam Generation, two prominent minority-owned real estate developers with a combined New York City footprint of over 1.5 million square feet of residential, office, mixed-use properties, and more than 10 hotels. As part of her experience, Julie served as a key adviser on all aspects of several ground-up developments – financing, construction, leasing, and branding. Julie has also acted as a legal adviser to a range of clients in different sectors, while serving as a legal consultant at law firms Sullivan & Cromwell; Morrison Foerster and Gibson, Dunn & Crutcher. She began her legal career as a Special Assistant District Attorney in the Kings County District Attorney’s Office. Julie holds a Juris Doctor degree from Fordham University School of Law and a Bachelor’s Degree in English Literature and Political Science from the University of Michigan.

Serge Yonke Nguewo, Chief Information Officer: Serge Yonke Nguewo is the Chief Information Officer of the Lessee. He is a Senior Aviation Executive renowned for his strategic and results-driven approach, particularly in enhancing efficiency through automation, team building, and sharp business insight. His understanding of the aviation industry has been crucial in formulating and executing innovative IT solutions and business strategies that align with our corporate goals. Serge’s career includes a pivotal role as the Vice-President of Information and Communication Technology for Munich Airport NJ LLC, where he led the successful launch of a new terminal, showcasing his ability to lead high-performance teams and spearhead significant contributions to aviation digital transformation. His expertise spans aviation operations efficiency, airport data monetization, and cybersecurity. His tenure at Airport Council International World and Montreal-Trudeau International Airport exemplifies his capacity for managing complex projects and leading transformative programs, underlining his talent in strategic planning and innovation.

### ***Management and Operations***

The Lessee directly employs its own staff who is responsible for its day-to-day affairs, including project management, finance, marketing and communications, revenue and commercial management, operations, human resources, and legal. The Lessee operates a project management office under a program management agreement as described under “Project Management Office” below. The Lessee’s project management office is responsible for the oversight of the D&C Work (defined herein) as set forth in the Lease. As of June 1, 2024, the project management office employs and contracts approximately 67 personnel.

The Lessee is expected to prepare to assume management and operations of the New Terminal Facilities after the Completion Date for Phase A. Although supported by the Manager (as defined herein) under the Management Services Agreement, the Lessee expects to directly employ staff to begin the Operations and Maintenance Work with, as of the date of this Official Statement, approximately 95 personnel.

The Lessee’s governance structure, as described under “– *The Lessee’s Governance Structure*” above, leverages Ferrovial’s strength as an international airport manager, developer and investor, with expertise in infrastructure investment and management of highly complex projects provided by JLC, Ullico

and Carlyle. The Lessee is currently governed by a seven-person Board of Directors. Each member of the Board of Directors is a senior executive with a wealth of experience that is expected to support the success of the Project and the operation of the New Terminal Facilities. The Lessee's Board of Directors is focused on creating value by leveraging the Sponsors' experience and ensuring the collective strength of all partners toward a successful delivery of the Project.

### ***Board of Directors of the Lessee***

Pursuant to the Topco LLC Agreement and the Lessee LLC Agreement, as of the date of this Official Statement, Topco appointed the following Directors to the Board of Directors of the Lessee:

<u>Name</u>	<u>Position</u>	<u>Appointed by</u>
Luke Bugeja	Chairperson	Mars
Jean-Pierre Tabet	Director	Mars
Lysa Leiponis	Director	Mars
Richard Hoskins	Director	Mars
Robert Keough	Director	JLC
Marlon Smith	Director	JLC
Sonia Axter	Director	Ullico

Luke Bugeja (Mars): Mr. Bugeja is the Chairperson of the Lessee and has more than 35 years of experience in the aviation business. He serves as the Chief Executive Officer of Ferrovial Airports and as member of the Board of Directors of Heathrow Airport Holdings. He has spent most of his career in the aviation industry and airport infrastructure with operational, commercial, and financial experience in airlines, airports and investment management. Mr. Bugeja began his career at Qantas Airways in Australia in 1989, performing different roles in a management function. He has also worked at Macquarie Bank Limited/ Map Airports UK as a Managing Director. In 2011, he was appointed Asset Director of Ontario Airports Investments Limited ("OTPP"), responsible for OTPP's investments in Brussels, Bristol, and London City Airports. In 2018, Mr. Bugeja joined Changi Airports International as Chief Operating Officer. In 2020, he joined Hermes GPE as Operating Manager, where he was responsible for Hermes's investments in transportation.

Jean-Pierre Tabet (Mars): Mr. Tabet has more than 25 years of aviation industry leadership experience. He joined Ferrovial Airports in March 2023 as the Asset Management Director for North America. Prior to joining Ferrovial, Mr. Tabet's global experience included senior management positions for some of the world's major airport operators, such as Fraport, in locations as diverse as King Khaled International Airport in Saudi Arabia, Cairo Airport in Egypt and his role as Head of Business Development at Fraport USA. During his role as Managing Director of Munich Airport in the United States, he was integral to the successful opening of the new Terminal A at Newark Airport in New Jersey.

Lysa Leiponis (Mars): Ms. Leiponis has 35 years of experience in the aviation industry. She is the former General Manager of LaGuardia, the 20<sup>th</sup> largest U.S. airport, where she led a team of 400 people responsible for the customer experience of LaGuardia's 30 million annual passengers. She is recognized for leading LaGuardia through a \$9 billion redevelopment program, including the landmark public-private partnership to redevelop Terminal B. Before her role at LaGuardia, Ms. Leiponis spent more than ten years as a senior executive in the Port Authority's aviation department, directing programs for customer excellence, landside and parking, concessions, and strategic planning for the Port Authority's five airport system. She also served as Corporate Secretary for the Port Authority.

Richard Hoskins (Mars): Richard Hoskins is a Managing Director focused on infrastructure opportunities globally. He is based in Washington, DC and leads Carlyle's transport sector strategy for

infrastructure. Mr. Hoskins has over 30 years of experience in the finance industry and has been involved in many large and complex transactions including New Terminal One, London Southend Airport, MVP Terminals, Freeport LNG, Sydney Desalination Plant, Southeast Water, Perth and Melbourne Airports, TransGrid, and Port of Newcastle.

Robert Keough (JLC): Mr. Keough is Managing Director and Head of Infrastructure at JLC and has more than 20 years of experience in the airport and infrastructure business. He was a Senior Principal with Basalt Infrastructure Partners, focusing on North American origination, execution and asset management. Before that he was a Managing Director at John Hancock Life Insurance Company. Previously, Mr. Keough practiced transactional law. He also serves on the boards of Greenskies Clean Focus and Northeast Energy Center.

Marlon Smith (JLC): Mr. Smith was involved in establishing JLC in 2015 and is a Managing Director and member of its Investment Committee. He leads JLC's investment activity in transportation, communications and other public infrastructure sectors. Previously, Mr. Smith was a Managing Director of Loop Capital Markets LLC and Head of Infrastructure Advisory and Finance and prior thereto held roles in the investment banking divisions of Goldman, Sachs & Co. and Lehman Brothers.

Sonia Axter (Ullico): Ms. Axter is Managing Director and Head of Asset Management of Ullico Infrastructure Management Company ("UIMC") and has more than 28 years of experience in infrastructure development, principal ownership and project management. Prior to joining UIMC, she was a senior member of Deutsche Bank's alternative investment group and performed both acquisitions and asset management of infrastructure assets. Ms. Axter was also formerly a senior member of Bechtel Enterprises, where she led the redevelopment of one of the first public private partnerships in the U.S., the \$150 million light rail and real estate Cascade Station development in Portland, Oregon.

## **The Sponsors**

### ***Ferrovial***

Ferrovial Airports US (NASDAQ: FER) is an indirect wholly-owned subsidiary of Ferrovial. Ferrovial is a publicly traded company based in Amsterdam (Netherlands) with a market capitalization of approximately \$24 billion by the end of 2023 and is rated by both S&P and Fitch (BBB, stable outlook). Ferrovial is currently included in the IBEX-35, Dow Jones Sustainability and FTSE4Good indices, and presently has operations, including through its subsidiaries, in over 15 countries and employs approximately 25,000 people globally as of end of 2023. Its four main business lines are: airports, construction, toll roads and energy.

Ferrovial Airports International, SE ("Ferrovial Airports") is an indirect wholly-owned subsidiary of Ferrovial. Ferrovial Airports is engaged in the management and operation of local and international airports through concessions held by its subsidiaries. Ferrovial Airports undertakes all airport investment and management activities for Ferrovial and its subsidiaries.

Ferrovial Airports has, directly and indirectly through its subsidiaries, invested in airports since 1998. Ferrovial Airports holds a 25% stake in Heathrow Airport Holdings in connection with the management and operation of Heathrow Airport in London, a 50% stake in the Aberdeen, Scotland, Glasgow, Scotland and Southampton, England airports, and a 60% Dalaman Airport in Turkey.

### ***JLC***

JLC Infrastructure is an investor and asset management firm focused on the transportation, communications, energy, utilities and social infrastructure sectors in the United States. The firm was formed

in 2015 by Earvin “Magic” Johnson of Magic Johnson Enterprises and Jim Reynolds of Loop Capital Markets LLC. JLC is investing in the Project through the JLC JFK Aggregator L.P. JLC is 100% minority owned and controlled.

### ***Ullico***

Ullico Inc. is the only labor-owned insurance and investment company in the United States whose oldest subsidiary, The Union Labor Life Insurance Company, was founded in 1927 as a union-owned insurance company. Ullico Infrastructure Fund was founded to assist in the investment, maintenance and refurbishment of infrastructure in the United States. Ullico Inc.’s investment management division invests on behalf of North America’s Building Trades Unions, an alliance of 14 unions in the building and construction industry. As of December 31, 2023, the Ullico Infrastructure Fund had \$5.3 billion assets under management.

### ***Carlyle***

Carlyle (NASDAQ: CG) is a global investment firm with deep industry expertise that deploys private capital across three business segments: Global Private Equity, Global Credit and Global Investment Solutions. With \$425 billion of assets under management as of March 31, 2024, Carlyle’s purpose is to invest wisely and create value on behalf of its investors, portfolio companies and the communities in which we live and invest. Carlyle employs more than 2,200 professionals worldwide in 28 offices across four continents. Carlyle is investing in the Project through Mars.

See “PART 6 – PLAN OF FINANCE FOR PHASE A OF THE PROJECT –Sources of Funds for Phase A – *Equity Commitments*” for a description of the equity contributions of the Sponsors. The Equity Commitments required by the Equity Contribution Agreement to be contributed by the equity members of the Lessee and the Sponsors are limited. Potential investors in the Series 2024 Bonds should note that, as described elsewhere in this Official Statement, the Series 2024 Bonds are payable solely from the payments from the Lessee under the Lessee Loan Agreements. The Lessee’s obligations thereunder are non-recourse obligations of the Conduit Issuer and in no event will the equity members of the Lessee or any of the Sponsors have any obligation with respect to any payment related to the Series 2024 Bonds. There will be no recourse by the Lessee (or the Collateral Agent) to the equity members or Sponsors for additional equity.

### **The Design Builder**

Tishman Construction Corporation of New York, a subsidiary of AECOM Tishman, is the design-build contractor (the “Design Builder”) with respect to the DB D&C Work for the Project.

Founded in 1898, AECOM Tishman has been responsible for the construction of more than 900 million square feet of space, incorporating facilities of every size and type, including commercial, residential, educational, institutional, hospitality, retail, medical, life science, transportation, recreational, and building repositioning.

AECOM Tishman employs a diversified preconstruction and construction management staff of structural, mechanical, electrical, and civil engineers; architects; technology specialists; scheduling and cost control personnel; and construction estimators and accountants. Its professionals provide consultation and guidance in all phases of a building project, from master-planning, preconstruction option evaluation and decision-making, to design review, estimating, and scheduling, through procurement, construction and occupancy. AECOM Tishman’s staff, numbering more than 1,100 nationally, manages all consultants and contractors on a project, representing client interests throughout the project cycle.

AECOM Tishman has built two of the three tallest buildings in the U.S., One World Trade Center (the tallest tower in the Western Hemisphere) and One Vanderbilt; and was responsible for much of the Hudson Yards mega-developments, including:

- oversight and logistics management of the entire development and construction management of 30 Hudson Yards;
- the mixed-use 35 Hudson Yards – the Equinox tower – the tallest residential/hotel building at the site;
- the 400,000-SF LEED Gold fit-out of L’Oréal’s headquarters at 10 Hudson Yards;
- the Vessel, designed by Thomas Heatherwick; and the
- Shops & Restaurants, a one million SF, seven-story retail space and food hall.

Additional projects include the new corporate headquarters for JP Morgan at 270 Park Avenue and the new Foster + Partners tower, 425 Park.

### **Project Management Office**

Ferrovial Construction JFK T1, LLC (the “PMO-FC”), a subsidiary of Ferrovial, has been contracted by the Lessee to provide program management services relating to the design, development, and construction of Phase A. Pursuant to a Program Management Agreement, PMO-FC will act as an in-house entity, working as an extension of the Lessee’s staff and organization, to manage the delivery of Phase A, for which PMO-FC will oversee all aspects of design, pre-construction and construction. PMO-FC’s services will include design, construction and contract management, third-party interface and coordination, project reporting and cost management and reporting, among others.

PMO-FC has agreed to provide supervision and management services related to the design and construction work of the Design Builder, including acting as the principal interface with the Design Builder and giving instructions to the Design Builder that relate to the performance of its obligations under the Design Build Agreement.

### **Terminal Operator and Manager**

The Lessee is responsible under the Lease for all Operations and Maintenance Work for the New Terminal Facilities and will serve as Terminal Operator.

The Lessee will receive support for the Operations and Maintenance Work from Ferrovial Airports US Operation and Management Services LLC (the “Manager”), a subsidiary of Ferrovial Airports Holding US Corp. The Manager has agreed to provide certain management services to the Lessee under the Management Services Agreement (as defined herein). See “PART 3 – PROJECT PARTICIPANTS – The Sponsors – *Ferrovial*.” And “PART 15 – OPERATION AND MANAGEMENT OF THE PROJECT.”

### **Master Concessionaire**

URW Airports JFK T1, LLC (the “Master Concessionaire”), a Delaware limited liability company, is a subsidiary of Unibail-Rodamco-Westfield SE (URW), a public company with investment grade ratings of Baa2/BBB+ by Moody’s Ratings and S&P Global Ratings, respectively.

Unibail-Rodamco-Westfield is a French developer and commercial real estate company headquartered in Paris, France. The company was formed after the merger of the French company Unibail with the Dutch company Rodamco Europe in 2007 and the later acquisition of the Westfield Corporation. Unibail-Rodamco-Westfield is a global developer and operator of flagship destinations, with a portfolio valued at approximately €52.0 billion as of 2023, which portfolio consists of shopping centers, offices, convention and exhibition centers and service centers.

The Master Concessionaire is a subsidiary of the group which focuses on the development and operation of airports. Currently, the group operates at four airports in the United States, serving 10 terminals and more than 120 million annual customers. As of the date of the Official Statement, the Master Concessionaire serves JFK Airport, Los Angeles International Airport (LAX) and Chicago O'Hare International Airport (ORD).

### **ORAT Contractor**

Munich Airport US Holding LLC (the "ORAT Contractor"), a Delaware limited liability company, is a wholly-owned subsidiary of Munich Airport International GmbH ("MAI"), and has agreed to provide the Lessee with operational readiness and airport transfer services pursuant to the Operational Readiness and Airport Transfer Agreement ("ORAT Agreement"). Pursuant to the ORAT Agreement, the ORAT Contractor has agreed to provide the Lessee expertise in operational readiness and airport transfer, interfacing with construction, systems suppliers and operational stakeholders during the construction period to ensure smooth transition from construction to operations.

MAI is a subsidiary of Flughafen München GmbH (FMG), the owner and operator of Munich Airport ("MUC"). MAI was established to provide MUC management support and technical expertise both locally at its home airport in Munich and to airports around the world. MUC is a world leader in customer experience, highly efficient operations, and technology innovation. MAI has provided consulting and management services for 27 years to 51 international clients in 27 countries. MAI has more than 70 dedicated staff, but also the ability to reach into MUC's 18 companies for the additional provision of support both as long-term and short-term support. In May 2019, an affiliate of MAI entered into a terminal operator agreement with the Port Authority in respect of the operation and maintenance of Terminal One at Newark Liberty International Airport – which opened on January 12, 2023.

The experts at MAI provide full airport lifecycle services, including planning/design, project management, operational readiness and airport transfer ("ORAT"), operational start-up, airport operation management, commercial development, process reengineering, training services and overall airport management.

### **The Conduit Issuer**

The New York Transportation Development Corporation (the "Conduit 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 Conduit Issuer had its organizational meeting on November 3, 2015. The Conduit Issuer is not a subsidiary or agent of the JDA for any purpose under the laws of New York.

The Conduit Issuer has all powers conferred upon a not-for-profit corporation by the NFPC Law. However, in fulfilling its purpose, the Conduit 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 Conduit Issuer, each of which members appoints a designated number of Directors to the Board of the Conduit Issuer.

The Directors of the Conduit 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*
Kathleen Mize	Deputy Chief Financial Officer and Controller of the New York State Urban Development Corporation d/b/a Empire State Development	JDA	12/31/2016*
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 Conduit Issuer are:

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

## **The Port Authority**

The Port Authority acts as lessor under the Lease. The Port Authority is 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 two States, and thereafter consented to by the Congress of the United States. In the Compact, the two States recited their confident belief that a better coordination of the terminal, transportation, and other facilities of commerce in the Port of New York would result in great economies benefiting the nation as well as the States and that the future development of such facilities would require the cordial cooperation of the States in the encouragement of the investment of capital and in the formulation and execution of necessary plans. The two States also recited that such result could best be accomplished through the cooperation of the two States by and through a joint or common agency, and to that end, after pledging, each to the other, faithful cooperation in the future planning and development of the Port of New York, they created the Port of New York District (the “Port District”) and The Port of New York Authority, the name of which was changed, effective July 1, 1972, to “The Port Authority of New York and New Jersey.” The Compact has been amended and supplemented from time to time by legislation adopted by the two States.

## PART 4 - THE PROJECT

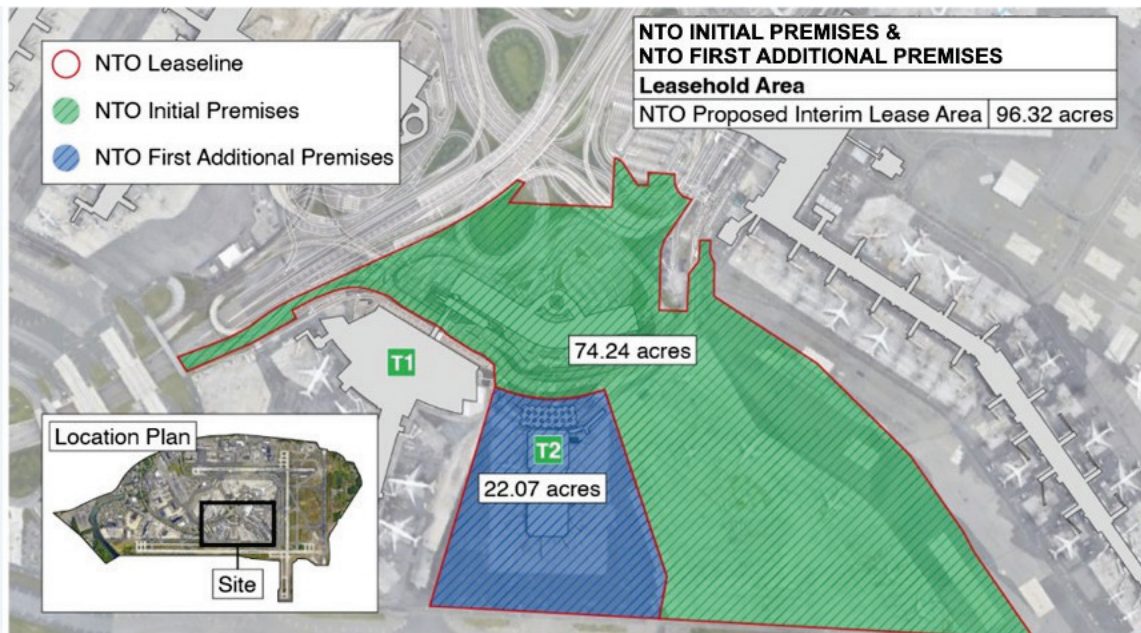
### Overview of New Terminal Facilities

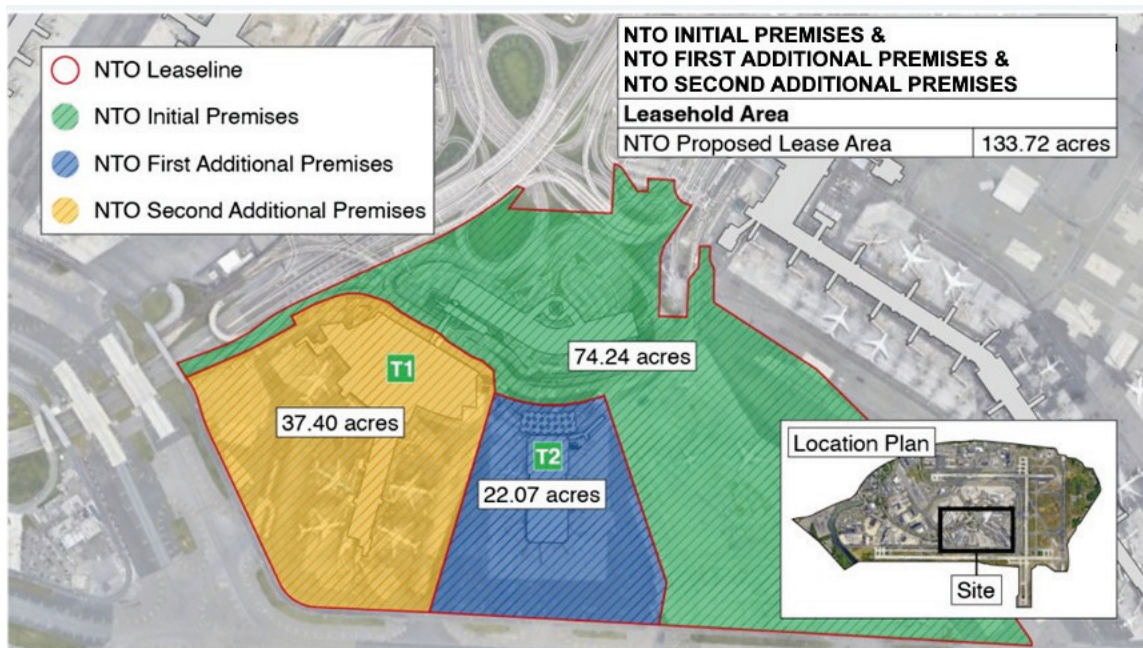
#### Overview

The Project generally consists of (i) the development, design, construction, financing, operation and maintenance by the Lessee of the New Terminal Facilities at the Airport, (ii) the demolition of the Former Terminal Facilities at the Airport and (iii) the construction of the Off-Premises Facilities. The Project includes piling, steel, and concrete structure work, including, but not limited to, the enclosure of the AirTrain, the structure of the headhouse of the New Terminal Facilities and the structures supporting the future roadways providing access to the New Terminal Facilities. The Project is expected to be undertaken in separate and independent phases and is intended, in part, to replace and expand the capacity at the existing Terminal 1 and address the current wide-body gate shortage for international flights at JFK Airport and the need to accommodate projected growth in international, long-haul traffic demand.

On the Effective Date, the Initial Premises, which consist mainly of the former Terminal 3 site, a portion of the Terminal 4 site and the Green Garage site, were transferred to the Lessee. The First Additional Premises, which consist mainly of the existing Terminal 2 site, was transferred to the Lessee on January 15, 2023, as contemplated by the baseline schedule. The Second Additional Premises, which consist mainly of the existing Terminal 1 site, will be transferred to the Lessee on or about May 2026, prior to the completion of Phase A. The graphics below depict the images of the various Premises related to Phase A of the Project.

As more fully described below in “– The Project – *Project Phasing*” and in “– The Project – *Construction Progress*,” construction of Phase A of the New Terminal Facilities began in June 2022 on the former Terminal 3 site, which was being used for aircraft parking, and with the commencement of enabling works for the demolition of the Green Garage. Phase A of the Project is expected to be completed in 2026.





Upon its completion, Phase A is expected to result in the construction and availability of 13 permanent wide-body contact gates, one temporary wide-body contact gate and five permanent aircraft parking hardstands with the following aircraft positions:

<u>Aircraft Position</u>	<u>Example Aircraft</u>	<u>Expected Available by 2026</u>
Group VI	Airbus A380, Boeing 747-8	2 gates
Group V	Airbus A350, Boeing 777	12 gates, 5 hardstands

Each gate is expected to accommodate aircraft up to the size of the gate. For example, Group VI gates can also accommodate Group V aircraft or smaller.

Group VI positions can accommodate the Airbus A380, the world's largest passenger aircraft currently in service, as well as the Boeing 747-8. Group V positions can accommodate large wide-body aircraft such as the Boeing 777 and 787 or the Airbus A330 and A350. As an exclusively international facility at a slot-constrained airport, wide-body aircraft are expected to account for most movements at the New Terminal Facilities. Some smaller aircraft are likely to fly shorter international routes such as to Latin America and the Caribbean that often operate during non-peak times.

Phase A is also expected to include five on-site live aircraft parking hardstands, all of which will be for boarding and deboarding passengers and will accommodate Group V aircraft. In addition to these five live hardstands, eight parking hardstands are expected to be leased to Delta for their exclusive use. These hardstands are expected to be only for aircraft parking, not remote boarding and deplaning of passengers. Airlines operating at the New Terminal Facilities will have access to off-site hardstands managed by the Port Authority.

## Project Phasing

### *Phasing of Construction*

The construction of the New Terminal Facilities is expected to occur in three primary independent phases (Phase A, Phase B1 and Phase B2), with an additional potential phase (Phase C) that is subject to

further agreement between the Port Authority and the Lessee. The existing Terminal 1 will continue to be operated by a third party until that facility is demolished and replaced by Phase A on the Completion Date of Phase A. For the purposes of this Official Statement, Phase C is not considered part of the Project.

Phase A. Construction for Phase A effectively commenced on June 10, 2022, and is currently ongoing as further described in “– The Project – Construction Progress” below. Currently, the Lessee, as contemplated in the Design-Build Contract, contemplates that the DBO of Phase A is expected to occur on or about June 1, 2026 (the day on which DBO of Phase A effectively takes place, the “Completion Date for Phase A”).

Phase A entails the construction of an approximately 1.8 million square foot new terminal building consisting of one (1) new concourse and headhouse, incorporating thirteen (13) permanent wide-body contact gates and one (1) temporary wide-body contact gate, and a departures level and arrivals level, including a FIS facility for international flights. The existing Terminal 1 will continue to be operated by a third party until that facility is demolished and replaced by Phase A on the Completion Date of Phase A.

After completion of Phase A, a portion of the New Terminal Facilities, including the headhouse, and East Pier passenger concourse, will be open, operating 7 days a week and 24 hours a day with 14 operational gates (one of which will be temporary).

Phases B1 and B2. The timing of construction of Phase B1 and Phase B2 is subject to a number of conditions and triggers, including, among others, the Lessee having obtained financing for each such phase. The plan of financing for each of Phases B1 and B2 remains to be determined. Nevertheless, as provided in the Lease, after completion of Phase A, the Lessee intends to start constructing Phase B1 and, subsequently, Phase B2.

Phase B1 entails the construction of four (4) additional wide-body contact gates and one (1) narrow-body contact gate, unless the Two-Gate Toggle (as described in the Lease) is implemented, in which case Phase B1 will only include the construction of two (2) additional wide-body contact gates and one (1) narrow-body contact gate.

Phase B2 entails the construction of four (4) additional wide-body contact gates, unless the Two-Gate Toggle (as defined in the Lease) is implemented, in which case the two (2) wide-body contact gates originally planned to be part of Phase B1 will be added to Phase B2, for a total aggregate of six (6) wide-body contact gates in Phase B2 (Phase B1 and Phase B2 include the full construction of the West Pier at the site of the existing Terminal 1). Upon completion of Phase B1 and Phase B2, the total square footage of the New Terminal Facilities building will be approximately 2.6 million square feet based on current terminal design. The New Terminal Facilities will have twenty-two (22) wide-body contact gates and one (1) narrow-body contact gate.

Phase C. As mentioned above, Phase C is subject to further agreement between the Port Authority and the Lessee, there being no binding obligation upon either the Lessee or the Port Authority to construct Phase C. For Phase C to be possible, the Premises would have to be (i) expanded in a manner, and pursuant to terms mutually acceptable to the Port Authority and the Lessee and (ii) approved by all relevant governmental authorities, including the FAA. The plan of financing for Phase C remains to be determined and will depend on the determination of such terms and receipt of such approvals. For the purposes of this Official Statement, Phase C is not considered part of the Project.

### ***Scheduled Completion Dates***

Under the Lease, the Lessee is obligated to complete the D&C Work for Phase A, Phase B1 and Phase B2 by certain Scheduled Completion Dates. Failure by the Lessee to complete the D&C Work (other

than punch-list items approved by the Port Authority) for any such Phase by the Scheduled Completion Date for such Phase will constitute an event of default under Section 21(a)(17) of the Lease. However, if the Lessee would have achieved the Scheduled Completion Date for each Phase except for the failure of the Port Authority to complete the Port Authority Enabling Work (as defined in the Lease) within the time period specified in the Lease, then the Lessee shall not be deemed to have failed to complete the D&C Work by the Scheduled Completion Date for such Phase.

### **Construction Progress**

Construction of Phase A commenced in June 2022, is approximately 40% progressed based on payments made to the Design Builder through April 2024 and is expected to be completed in June 2026. As of June 1, 2024, the construction is well underway with multiple trades working on site across the terminal processor building as well as landside civil/roadway work, and airside civil work. The critical piling and steel superstructure activities have been completed in the headhouse and slab-on-deck is being poured on all levels. Roofing and curtain wall installation are also well underway to enclose the building headhouse making it weathertight. Key trades have also started infrastructure work in the headhouse for the baggage handling system, mechanical systems, electrical systems, plumbing systems, fire protection systems, and vertical transportation systems. Utilities, foundation, and superstructure work for the East Pier concourse, airfield, and landside roadways are also continuing. A conceptual image of the completed Project is set forth on the inside cover of this Official Statement.

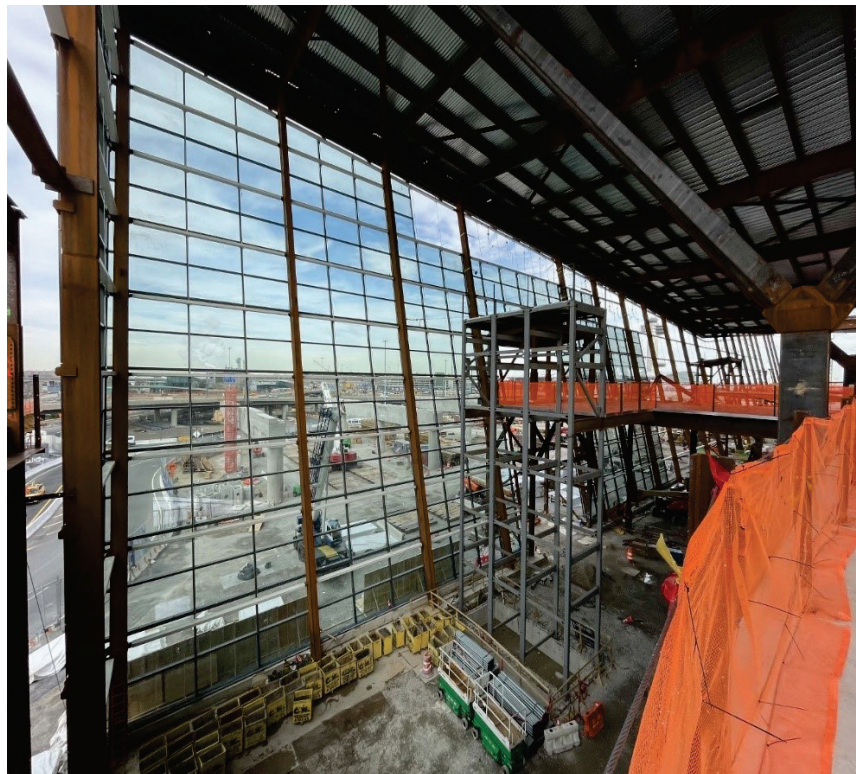
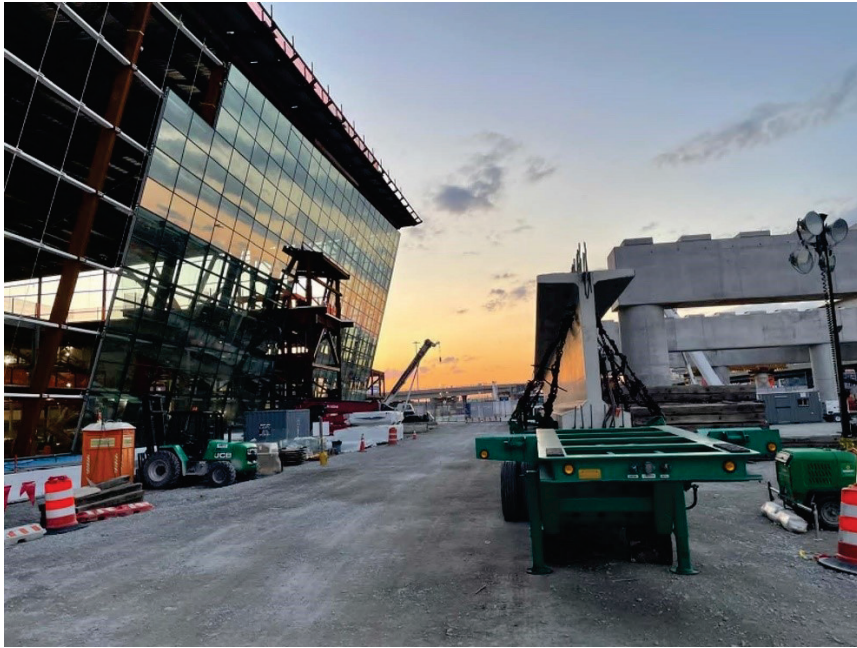
In addition, provided below are images of the Project site.

*[Remainder of page intentionally left blank.]*

The following two images represent aerial views of the new headhouse and concourse as of May 22, 2024.



The following two images represent exterior and interior views of the curtain wall as of May 22, 2024.



As of June 1, 2024, as permitted under the Lease, the Lessee has sent to the Port Authority various notices in respect of certain potential Delay Events and/or Compensation Events relating to (i) discovery of unknown hazardous substances at the Green Garage, (ii) discovery of hydraulic fluid at the former Terminal 3 site, (iii) an unknown condition in the area near former Terminal 3, (iv) asbestos containing material (“ACM”) discovery during utility excavation at Terminal 2 east frontage and at Terminal 2 during demolition and operations of level ceiling, (v) traffic monitoring of the rerouted existing Terminal 1 frontage roadway, (vi) provision of permanent power from one substation source, (vii) certain ground transportation center (“GTC”) design and schedule affecting work, (viii) the RUGTC Contract, (ix) weather delays, flooding and damages to the D&C Works and spreading of debris into the D&C Works, (x) a vapor intrusion investigation and report, (xi) Saab’s multilateration system, which is used to calculate the position of aircrafts using certain signals issued by such aircrafts, and the installation of two additional remote units, (xii) the “meeter” and “greeter” lot, (xiii) the cleaning and flushing of the chilled water piping system, (xiv) changes in the specifications for the insulation of the piping, valves and fittings for the landside mechanical work, (xv) removal of concrete piles impacting the slab on grade, (xvi) traffic monitoring of the C-Loop, (xvii) the power supply for the frontage roads, (xviii) installation of wayfinding signage in the Terminal 7 frontage, (xix) medium temperature hot water boilers pipe connection, (xx) the re-feed of the Terminal 4 sign structure and (xxi) the JFK expressway access to Terminal 1 and related detour signage. While the Port Authority has informed the Lessee that it disputes these claims and does not accept the underlying facts set forth in such notices of potential Delay Events and/or Compensation Events, the Lessee is actively working with the Port Authority and the Design Builder to evaluate any impact of such events. Any mitigation measures identified as of June 1, 2024, to the extent appropriate, have been implemented to recover any delay.

See “PART 8 – CONSTRUCTION OF PHASE A OF THE PROJECT – The DB D&C Work – Cooperation,” “PART 30 – RISK FACTORS – Risks Related to Operations at the Airport During Construction” and “–Risks Related to Coordination with Other JFK Airport Operations, Enabling Work and Construction Interfaces.”

Upon completion of Phase A, the New Terminal Facilities are expected to be fully functional and operational and are projected to generate sufficient Project Revenues to satisfy the repayment of the Series 2024 Bonds as well as the Rate Covenant described herein.

## **PART 5 - THE LEASE**

The following is a summary of selected provisions of the Lease 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 and is subject to the redacted text of such agreement.

The Port Authority, as lessor, and the Lessee, as lessee, entered into the Lease on the Effective Date.

### **Lease Term**

The Lease Term will commence as to any portion of the Premises on each of the applicable commencement dates and will expire on the earlier of (i) December 30, 2060, (ii) on the termination of the Basic Lease as hereinafter defined, and (iii) any earlier termination of the Lease in accordance with its terms. The Lease Term for the Initial Premises commenced on June 10, 2022.

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

Pursuant to the Lease, the Port Authority leased the Premises to the Lessee, and the Lessee has agreed, among other things, to: (i) undertake the D&C Work, including with respect to certain Off-Premises

Work, all as further described herein; (ii) finance the D&C Work, including certain elements of the Off-Premises Work, as further described herein, and (iii) operate and maintain the New Terminal Facilities.

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

The Lessee will use and operate the Premises as an international airline passenger terminal and for related purposes, including the use and occupancy by (i) the Lessee, (ii) scheduled aircraft operators who enter into an Airline Use Agreement with the Lessee, (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.

The New Terminal Facilities will be used by the Lessee or any airline user or specified scheduled aircraft operator solely in connection with their business of transportation by aircraft, and for activities reasonably required for such purposes. Among other things specified in the Lease, the New Terminal Facilities may be used for the reservation of space and the sale of tickets for transportation by aircraft operators, the clearance, checking and rendering of service by certain aircraft operators to their passengers and for the furnishing of information service to its passengers and the general public; providing lounges, rooms or space for the special handling of, or the furnishing of special services by certain aircraft operators to their passengers, guests, or invitees; the handling of baggage and unclaimed baggage; the conduct of operations, communications, reservations and administrative office functions and activities in connection with air transportation; the preparation, parking and storage of food, beverages and commissary supplies to be consumed on aircraft operated to and from the Premises by each aircraft operator; the fueling and routine servicing of aircraft and ramp equipment, as permitted by the Port Authority; the performance of emergency or turn-around aircraft maintenance; the training of personnel employed or to be employed by specified scheduled aircraft operators and certain persons engaged in commercial transportation by aircraft; the temporary storage of baggage and mail; the occasional and temporary storage of air cargo; aircraft line maintenance; ground service equipment maintenance; aircraft deicing; cabin cleaning; operation of an employee parking shuttle; operation of a passenger shuttle; acceptance and release of cargo, mail and express packages; charter operations by the Lessee and certain airlines; generation of electricity by the Lessee or any third-party on behalf of Lessee solely for consumption by and at the New Terminal Facilities and the provision of utilities by the Lessee solely to the New Terminal Facilities; such other ancillary uses as are customary for a commercial air terminal and air transportation business; and any other use approved in advance by the Port Authority in writing.

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

Except as otherwise provided in the Lease, the Lessee is responsible for (x) designing and constructing the New Terminal Facilities and (y) designing and constructing the Off-Premises Facilities (collectively, the “D&C Work”).

The “Scheduled Completion Date” for Phase A is June 1, 2026 (as such date may be adjusted as expressly permitted under the Lease). If Phase B1 and Phase B2 of the Project are developed separately, (i) with respect to Phase B1 of the Project, the Scheduled Completion Date for such phase is 23 months after the Phase B1 Commencement Date and (ii) with respect to Phase B2 of the Project, the Scheduled Completion Date is 18 months after the Phase B2 Commencement Date. If Phase B1 and Phase B2 of the Project are developed simultaneously, the Scheduled Completion Dates for both phases is the date which is 28 months after the Phase B1 and Phase B2 Commencement Date.

See “PART 2 – JOHN F KENNEDY INTERNATIONAL AIRPORT – JFK Airport Redevelopment,” “PART 4 – THE PROJECT,” APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE – Design and Construction of the Project” and APPENDIX E – “SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT.”

### ***Operation and Maintenance of the New Terminal Facilities***

Under the Lease, the Lessee is responsible for the Operations and Maintenance Work in respect of the Premises. In connection with the performance of the Operations and Maintenance Work, the Lease requires the Lessee to rely on the expertise and personnel of a Qualified Terminal Operator. The Port Authority determined that the Lessee qualified as a Qualified Terminal Operator as of the Effective Date, which determination is subject to change in accordance with the terms of the Lease. The Lessee currently self-operates the Premises with the support of the Manager, in accordance with the Management Services Agreement.

See APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE – Operations and Maintenance of the New Terminal Facilities.”

### ***Payments by the Lessee***

The Lessee will make certain payments to the Port Authority including, but not limited to the following: (i) Ground Rent, (ii) First Additional Rent, (iii) Second Additional Rental, (iv) Third Additional Rent, (v) IRR Rent, (vi) Concessions Revenue Rent, (vii) Common Use Lounge Share, and (viii) Sublease Fee.

*Ground Rent.* The Lessee pays annual ground rent to the Port Authority in the amount of \$173,490.02 per acre per annum as of 2022 as the base rate, which is adjusted annually at the greater of 4% or 50% of the CPI Percentage Increase (such annual amount, the “Ground Rent”), to be paid monthly in advance. The Ground Rent will be paid with respect to each of the Premises from and after the date on which each of the Premises are tendered to the Lessee. The Ground Rent will be paid to the Port Authority at the same level of payment of any other Permitted O&M Expense prior to the payment of any Lessee Debt.

*First Additional Rent.* If the Lessee has entered into any Leasehold Mortgage, the Lessee is required to pay an annual rent to the Port Authority in the amount of \$3,200,000 (in total for all Leasehold Mortgages), each calendar year commencing in the calendar year in which such Leasehold Mortgage(s) becomes effective, and continuing each subsequent calendar year until all amounts secured by such Leasehold Mortgage(s) has been repaid in full and released (the “First Additional Rent”).

*Second Additional Rental.* The Lease provides for the monthly payment of additional rent (the “Second Additional Rental”) by the Lessee to the Port Authority, starting on Phase A DBO, in the amount of (x) for any calendar year prior to and including 2026, \$61,957,620.90 and (y) for any calendar year thereafter, the Second Additional Rental Rate in effect for the prior calendar year escalated at 3%.

*Deferred Second Additional Rent.* If at any time during the period commencing on Phase A DBO and ending on December 31, 2033, the Lessee has insufficient funds in the Post-Completion Revenue Account to pay Second Additional Rental when due after payment of all other amounts with priority over or at the same level as Second Additional Rental as set forth in the Cash Flow Waterfall (the aggregate amount of every such deficiency, the “Deferred Second Additional Rent”), the shortfall will be carried forward and accrue interest at a rate of 7.5% per annum until the earlier of (i) the date on which the Lessee has sufficient funds available in the Post-Completion Revenue Account, after payment in full of all other amounts then due with priority over or at the same level as Second Additional Rental as set forth in the Cash Flow Waterfall, including the Deferred Second Additional Rent together with interest due thereon, and (ii) December 31, 2038.

*Third Additional Rent.* From the Phase A NTP Date and throughout the Lease Term, the Lessee is obligated to pay in equal quarterly installments in advance, an amount equal to \$56,400,000 per annum,

escalating at 3% per annum each year (the “Third Additional Rent”). The payment of Third Additional Rent shall be senior and prior to the payment of any payments or distributions made to the Lessee and/or the Lessee’s beneficial owners as set forth in the Cash Flow Waterfall. In the event the Port Authority terminates the Lease prior to the scheduled expiration date of the Lease Term, as a result of the occurrence of an Event of Default, the Lessee will be required to pay the net present value of all remaining unpaid and scheduled payments of Third Additional Rent, at a discount rate equal to the Cost of Capital (as defined in the Lease).

**IRR Rent.** Subject to the terms of the Lease, the Lessee is required to share with the Port Authority a portion of cash available for distribution to the equity members of the Lessee in any given quarterly period to the extent the internal rates of return exceed certain thresholds as potentially adjusted should the New Terminal Facilities be ranked by Skytrax in the Top 1-10 World’s Best Airport Terminals. To the extent there are not sufficient returns to satisfy any tier’s hurdle, the return shortfall is accrued at the applicable percentage threshold of the applicable tier.

**Deferred Concession Share.** The Concessions Revenue Rent, the Common Use Lounge Share and the Sublease Fee (the “Port Authority Concession Share”) are subject to a deferral mechanism through December 31, 2031. If at any time on or prior to December 31, 2031, the Lessee does not have available cash after payments of Senior Payments (as defined below) for any of the Port Authority Concession Share (the period commencing on any applicable monthly test date and ending upon the earlier to occur of (i) December 31, 2031, and (ii) the first test date to occur thereafter upon which there is, or there is projected to be, available cash after payment of Senior Payments, a “Deferred Concession Share Period”), the Port Authority Concession Share will be payable only from and to the extent there is cash remaining in the Post-Completion Revenue Account after payment by the Lessee, for the applicable month during which any Test Date occurs, of the aggregate of Permitted O&M Expenses, Major Maintenance and Asset Preservation Work costs and expenses, Ground Rent, Pro-Rated Debt Service, First Additional Rent, Second Additional Rental, Third Additional Rent and the funding of reserves as may be required under the Financing Documents in accordance with the Cash Flow Waterfall (collectively, the “Senior Payments”). If funds remaining in the Post-Completion Revenue Account available for distribution after payment of the Senior Payments is insufficient to pay the Deferred Concession Share in full at any time during the Deferred Concession Share Period (any such deficiency, a “Concession Shortfall”), the Concession Shortfall shall be deferred until the earlier of (1) the date there is cash remaining in the Post-Completion Revenue Account after payment of Senior Payments sufficient to pay any portion of the Concession Shortfall together with the Concession Shortfall Interest due thereon, and (2) December 31, 2038, at which time the Concession Shortfall and any Concession Shortfall Interest thereon shall become due and payable in its entirety. The payment of Concession Shortfall together with the Concession Shortfall Interest accrued thereon shall rank *pari passu*, with the Deferred MSA Fee and accrued interest on the Deferred MSA Fee, Deferred Second Additional Rent and any accrued interest on Deferred Second Additional Rent, and senior to any other amounts payable after Debt Service in accordance with the Cash Flow Waterfall.

See further information under “PART 15 – OPERATION AND MANAGEMENT OF THE PROJECT,” APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE – Permitted O&M Expenses; Rental Payments by the Lessee,” and APPENDIX F – “SUMMARY OF CERTAIN PROVISIONS OF THE MANAGEMENT SERVICES AGREEMENT.”

### **Port Authority Retained Rights**

The Port Authority has reserved various rights under the Lease, including, but not limited to, the following rights of use (including, the right to implement, conduct, control, approve and receive any fees, rents or profits, with respect to any and all of the following uses) (collectively, the “Reserved Uses”): (a) advertising, including static display, interactive display, audio-visual display, broadcast, and other; (b) except as otherwise provided in the Lease, 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; (c) except as otherwise provided in the Lease, “cellphone”/cellular technology and any technology or system that substitutes for, replaces or is used in conjunction with cellphone/cellular technology; (d) vending machines other than automated retail machines and food and beverage vending machines in non-public spaces; (e) concierge services; (f) ground transportation, including vehicle rentals, taxi dispatchers, and preferential allocation of or access to ground transportation services at the GTC or other parts of the Airport; (g) provision of on-airport baggage carts or other on-airport baggage-moving devices; (h) any and all developments at the GTC; (i) any and all sponsorship and naming rights available to the Port Authority at the Airport; (j) premium convenience services or space offered at the New Terminal Facilities or at other parts of the Airport, other than (1) such services or spaces within the exclusive use spaces or common use space allocated to the Airline Users, and provided free of charge, and (2) Common Use Lounges; and (k) further uses, operations or installations that may arise through any technological development or emerging technology (including opportunities generated by the collection, use or transfer of passenger data) that the Port Authority may determine at any time during the Lease Term constitute Reserved Uses, other than uses by Airline Users.

### **Compensation Events**

Upon the occurrence of a Compensation Event, the Lease provides that, subject to compliance with the requirements of the Lease, the Lessee is entitled to certain compensation from the Port Authority. If the Lessee fails to deliver notice of a Compensation Event within the required period set forth in the Lease, the Lessee will be deemed to have irrevocably and forever waived and released any claim or right to compensation, expenses and liabilities attributable to such Compensation Event.

Subject to the terms and conditions of the Lease, in the event of a Compensation Event, the Lessee will be entitled to damages in an amount generally equal to:

(i) any adverse Net Cost Impact, net of all insurance proceeds payable to the Lessee, its contractors or suppliers; and

(ii) Net Revenue Impact with respect to (a) Port Authority Changes in connection with (1) a material delay to the achievement by the Lessee of DBO of any Phase then under construction or any subsequent Phase, (2) except for the Two-Gate Toggle (as defined in the Lease), a reduction or modification in the number, type, configuration or location of gates, ramps or aprons compared to the same under the Lessee’s Basis of Design, and (3) the reduction, individually or in the aggregate with all prior Port Authority Changes, of the aggregate net leasable area comprising the concession areas of the New Terminal Facilities of more than 5% as compared to the net leasable area of the concession area in the Lessee’s Basis of Design approved by the Port Authority for such Phase, or the reconfiguration or relocation of such leasable area that adversely affects the monetary value of such concession areas such that individually, or in the aggregate with all prior Port Authority Changes, such reconfiguration or relocation adversely affects the Lessee’s Gross Rents by more than 5% as compared to projected revenue Gross Rents set forth in the financial model delivered to the Port Authority by the Lessee as updated on or before the Effective Date, (b) with respect to a Compensation Event for (1) the suspension of the D&C Work by the Port Authority in excess of 24 hours made in response to an event requiring the suspension of D&C Work, and (2) failure of the Port Authority to respond to requests from the Lessee for review and/or approval of material schedules, plans, design documents, or other submittals listed on a Schedule to the Lease, to the extent the aggregate delay for clauses (b)(1) and (2) exceed one hundred and eighty (180) days, and (c) solely with respect to a Port Authority Change, any additional amount payable to the Lessee pursuant to the Lease, provided there shall not be double compensation.

With respect to payment, to the extent funds are available to the Port Authority from the Port Authority Reserve Amount (described below), the Port Authority has the right to apply the Port Authority Reserve Amount towards such Lessee Damages. Otherwise, Net Cost Impact may be paid in a lump sum or a deduction to rentals, and Net Revenue Impacts may be paid through deduction in rentals or periodic payments on an agreed schedule.

The following are events entitling the Lessee to compensation, each referred to under the Lease as a “Compensation Event”, in each case subject to the terms, conditions and limitations set forth in the Lease: (i) a Port Authority Change; (ii) willful failure on the part of the Port Authority to provide the Lessee with temporary rights of access; (iii) willful failure on the part of the Port Authority to (a) provide access to Off-Premises Facilities within the specified time period set forth in the Baseline Schedule, (b) tender the Second Additional Premises after TOGA has vacated the Second Additional Premises, and/or (c) any failure of the Port Authority to tender the First Additional Premises to the Lessee by January 31, 2023 (or such later date that the Lessee agrees with Delta for their relinquishment of the First Additional Premises); (iv) any suspension of D&C Work, in whole or in part, in excess of twenty-four (24) hours pursuant to an order issued by the Port Authority for reasons other than (a) failure of the Lessee to comply with the Lease, any applicable law, any Applicable Standard (as defined in the Lease) or any governmental approval, (b) safety or Emergency reasons, (c) a Force Majeure Event, (d) the presence of a “VIP” or dignitary at the Airport, (e) reasons related to Good Order Requirements, and/or (f) Labor Troubles (subject to exceptions); (v) the Port Authority’s direction to uncover, remove, and restore D&C Work, if the Port Authority (a) 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) orders that the D&C Work be uncovered after the fact, and (c) the D&C Work exposed proves acceptable, except where such direction is in response to a Force Majeure Event or is in compliance with or necessary to effectuate the direction of any government entity; (vi) failure of the Port Authority to provide responses to submittals of requests from the Lessee for review and/or approval of material schedules, plans, design documents, or other submittals listed on an exhibit to the Lease to the extent such failures exceed one hundred eighty (180) days in the aggregate when combined with the Compensation Events set forth in clause (iv) above, subject to limited exceptions; (vii) with respect to any governmental approvals the Lessee is required to obtain pursuant to the Lease during the D&C Work Period for which the Lessee has requested information or a signature from the Port Authority in writing, (x) 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 approval to the extent such information is in the possession of the Port Authority and is not otherwise available to the Lessee or (y) any willful failure of the Port Authority to provide a signature in connection with such governmental approval with respect to documentation reviewed and approved by the Port Authority in accordance with the Lease; or (viii) any change in the scope or design of the Port Authority Enabling Work which materially and adversely impacts the performance of the D&C Work necessary to tie-in or connect the D&C Work with the Port Authority Enabling Work.

Subject to mitigation requirements and the other applicable terms and conditions of the Lease, upon the occurrence of a Compensation Event, the Lessee is entitled to: (i) an extension of the scheduled completion dates of the relevant phase on a day-for-day basis for any delays in the performance of the D&C Work directly caused by such Compensation Event, taking into account impacts on the critical path in the baseline schedule in accordance with the Requirements and Provisions for Work (as defined in the Lease), but only to the extent the Compensation Event actually delays the performance of the D&C Work beyond the scheduled completion date of the relevant phase; and (ii) submit a claim for damages pursuant to the Lease.

### **Delay Events**

Upon the occurrence of a Delay Event during the D&C Work Period affecting the performance of the D&C Work, the Lease provides that, subject to compliance with the requirements of the Lease, the

Lessee will be (i) excused from the performance of its obligations to perform the D&C Work to the extent such performance is directly prevented or delayed by the Delay Event and (ii) entitled to an extension of the applicable Scheduled Completion Date on a day-for-day basis for any delays in the performance of the D&C Work directly caused by such Delay Event, taking into account impacts of the Delay Event on the critical path in the Baseline Schedule 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 the Scheduled Completion Date of the relevant Phase. If the Lessee fails to deliver notice of a Delay Event within the required period set forth in the Lease, the Lessee 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.

A “Delay Event” under the Lease is any of the following, in each case subject to the terms, conditions and limitations set forth in the Lease: (i) the occurrence of any Force Majeure Event with respect to the Lessee; (ii) the discovery of any Unknown Conditions by the Lessee during the performance of the D&C Work that adversely impacts the Lessee’s performance of the D&C Work; (iii) the existence of any agreement, easement, right of entry, covenant, condition, restriction or other instrument to which the Project site is 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 (1) is not known to the Lessee or any Lessee-Related Entity, (2) was not notified to the Lessee by the Port Authority in, or cannot be reasonably inferred from the Disclosed Documents, (3) 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 (4) could not reasonably have been identified through review and analysis of Available Documents or publicly available information; (iv) any breach by the Port Authority of any material obligation under the Lease (to the extent not covered otherwise by any of the other events specified in the Delay Events section of the Lease); (v) the occurrence of a Compensation Event; (vi) the issuance of any injunction or other similar legal order by a court of competent jurisdiction based on a claim that challenges the Port Authority’s authority to enter into the Lease, which injunction or order prohibits or enjoins prosecution of the Work; (vii) any change by the Port Authority to the Rules and Regulations or the Requirements and Provisions for Work taking effect prior to the Completion Date (as defined in the Lease) that materially and adversely impacts Lessee’s cost of performing the D&C Work; (viii) any suspension of the D&C Work by the Port Authority in excess of 24 hours made in response to any of the following events: the existence of conditions unsafe for workers, other personnel or the general public or an Emergency, a Force Majeure event, the presence of VIP, dignitary or other person requiring special security arrangements or expedited handling at the Airport, and/or in order to respond to Good Order Requirements; (ix) any failure to tender the Terminal 2 and/or Terminal 1 sites to the Lessee by the date set forth in the Baseline Schedule, except to the extent caused by the Lessee or a Lessee-Related Entity; or (x) any failure by the Port Authority to issue approvals in accordance with the Material Submittals and Review Period set out as an exhibit under the Lease.

## **Termination Rights**

### ***Lessee Event of Default***

The Lease provides for a number of defaults by the Lessee (each, an “Event of Default”), subject, in certain cases, to cure periods and limitations specified therein. Such Events of Default include, without limitation: (i) insolvency or bankruptcy of the Lessee, (ii) voluntary abandonment of the Premises or discontinuance of the Project work, (iii) prohibited creation of liens on the Premises, (iv) unauthorized transfer of the leasehold interest and Interest Dispositions in violation of the Lease without the consent of the Port Authority, (v) merger or dissolution of the Lessee in violation of the Lease without the consent of the Port Authority, (vi) failure to pay rent, fees or other charges when due to the Port Authority, (vii) failure to comply with the Lease, (viii) failure to comply with the Office of the Inspector General of the U.S. Department of Homeland Security, (ix) misrepresentation, (x) failure to begin D&C Work by the time specified under the Lease or to complete the D&C Work by the Scheduled Completion Date (subject to

Port Authority completing the Port Authority Enabling Work in accordance with the established integration schedule, and subject to Lessee's ability to submit a remedial plan as described above), (xi) failure to pay the Equity Gain Share under the Lease, (xii) failure to comply with security requirements, (xiii) failure to comply with certain requirements in connection with the Basic Lease, (xiv) failure by the Lessee to issue the final notice to proceed with Phase B1 (the "Phase B1 NTP") within 90 days after the date on which certain conditions have been satisfied, (xv) failure by the Lessee to issue the final notice to proceed with Phase B2 (the "Phase B2 NTP") within 90 days after the date on which certain conditions have been satisfied, (xvi) failure by the Lessee to issue the Phase B1 NTP by the date which is nine months after the date on which certain conditions have been satisfied (and if the Port Authority has exercised the T4 Additional Gates Election, the date which is 21 months after the date on which certain conditions have been satisfied), (xvii) failure by the Lessee to issue the Phase B2 NTP by the date which is nine months after the date on which certain conditions have been satisfied, (xviii) an uncured failure by the Lessee to comply with applicable law, (xix) an uncured failure by the Lessee to comply with the provisions of the Lease, if such failure causes or is likely to cause the termination, revocation or suspension of the Airport Operating Certificate, (xx) an uncured failure by the Lessee to comply with any written order issued to the Lessee by the Port Authority in accordance with the Lease to suspend, in whole or in part, the D&C Work, (xxi) an uncured failure by the Lessee to comply in any material respect with the Port Authority's Office of the Inspector General, which includes the Office of Investigations and the Audit Department ("OIG") or the Project Integrity Monitor in accordance with the Lease, or (xxii) an uncured failure by the Lessee to keep, perform and observe each and every direction (x) issued by the Port Authority (including any bulletin, directive or other instruction issued by the General Manager of the Airport or Chief Security Officer) pursuant to the Port Authority's authority under the terms of the Project Documents, 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.

With respect to certain Events of Default, the occurrence of any such event as a direct and proximate result of a Delay Event where the Lessee is the Affected Party (as defined in the Lease) (and whether or not the Port Authority is also an Affected Party) will be deemed not to constitute an Event of Default, but only for so long as the Delay Event is occurring, and any cure periods in such events as described in the Lease will be extended solely to the extent, and for so long as, the ability of the Lessee to cure thereunder is directly and adversely affected by the Delay Event. In most cases the Events of Default under the Lease include cure periods, and in certain Events of Default exclusions relating to third parties actions.

In the case of an Event of Default related to Lessee's failure to complete the D&C Work by the applicable Scheduled Completion Date (a "Completion Event of Default"), the Lessee has the right to submit a proposed completion remedial plan to the Port Authority, which plan shall set forth a schedule and specific actions to be taken by the Lessee to cure the Event of Default and indicate the date on which the Completion Date is expected to occur, which shall be no later than the Outside Opening Date (as defined in the Lease). If the Port Authority accepts the remedial plan, the Lessee shall implement it diligently in accordance with its terms. Lessee may also be responsible for liquidated damages to the Port Authority in the case of a Completion Event of Default. For so long as the Lessee is in compliance with the terms of such a remedial plan, timely paying any applicable liquidated damages and the Outside Opening Date for the relevant Phase has not yet occurred, the Port Authority has agreed to refrain from exercising its rights to terminate the Lease for any Completion Event of Default.

See APPENDIX D – "SUMMARY OF CERTAIN PROVISIONS OF THE LEASE – Termination of the Lease – Lessee Events of Default."

### ***Grounds for Termination by the Lessee***

Subject to the terms and conditions of the Lease, upon the occurrence of any of the following events, the Lessee may elect to terminate the Lease upon notice to the Port Authority:

(i) the Port Authority expressly (x) repudiates or willfully (with an intent to breach the quiet enjoyment provisions of the Lease) fails to provide or (y) repudiates or willfully fails to defend the Lessee's right to quiet enjoyment under the Lease (which, for the avoidance of doubt, shall not be deemed to occur during the pendency of a force majeure event or in the event of a taking), such that the Lessee is unable to (a) construct the New Terminal Facilities or (b) operate the New Terminal Facilities, in each case for a period of not less than one hundred and eighty (180) consecutive days; or

(ii) the Port Authority willfully fails to tender any portion of the Premises to the Lessee within one hundred and eighty (180) days after the date specified for such tender in the Baseline Schedule (as such date may be extended in accordance with the Lease), except to the extent such failure results from a (a) Force Majeure event, (b) an Emergency, (c) Applicable Law or (d) (1) with respect to the Port Authority's tender of the First Additional Premises, holdover by Delta Airlines beyond the lease expiration date under its lease for Terminal 2 or (2) with respect to the Port Authority's tender of the Second Additional Premises, the failure of the existing tenants in the existing Terminal 1 to vacate the Second Additional Premises.

See APPENDIX D – "SUMMARY OF CERTAIN PROVISIONS OF THE LEASE – Termination of the Lease – Grounds for Lease Termination by the Lessee."

### ***Condemnation***

In the event of a condemnation of the entire Premises, the Lease will immediately terminate. In the event of a condemnation of a Material Part (as defined in the Lease) of the Premises or of the Public Landing Area, both Parties will have an option exercisable by notice given within ten (10) Business Days after the date of the condemnation to terminate the letting with respect to the Premises not taken, as of the date of the condemnation, and such termination will be effective as if the date of the condemnation were the original date of expiration thereof. If either Party exercises this option, the Port Authority will pay to the Lessee, subject to the terms and conditions of the Lease, the fair value of Lessee's leasehold interest in the Premises, that amount being a proportionate share of the condemnation proceeds received by the Port Authority.

In the event of a condemnation of less than all or a Material Part of the Premises, the Lease will continue as to the portion of the Premises not so taken and the payment of Ground Rent will be adjusted accordingly.

### **Termination Payment to the Lessee**

The Port Authority is only obligated to make a termination payment to the Lessee (the "Port Authority Default Termination Payment") in the following limited circumstances, in which an early termination of the Lease has occurred, subject, in each case, to the terms and conditions of the Lease: (i) the Port Authority expressly (x) repudiated or willfully (with an intent to breach the quiet enjoyment provisions of the Lease) failed to provide or (y) repudiated or willfully failed to defend, in each case, the Lessee's right to quiet enjoyment of the Premises pursuant to the terms of the Lease (which, for the avoidance of doubt, shall not be deemed to occur during the pendency of a force majeure event or in the event of a taking) such that the Lessee is unable to (A) construct the New Terminal Facilities or (B) operate the New Terminal Facilities, in each case for a period of not less than 180 consecutive days; or (ii) the following circumstances occur on a cumulative basis: (x) the termination of the Basic Lease, provided such termination is due to a default arising from the gross negligence or willful misconduct of the Port Authority (and not a breach or default arising from or related to any act or failure to act by the Lessee or any entity related to the Lessee), (y) the City of New York 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, and (z) the Lessee can establish that such termination of the Lease is a failure of the quiet enjoyment provisions of the Lease.

Under the Lease, any Port Authority Default Termination Payment shall be calculated as of the effective date of the termination in an amount equal to (without double counting) the fair market value (had the Lease not been terminated) of the Lessee's leasehold interest and its rights and obligations during the unexpired term of the Lease. The fair market value of the Lessee's leasehold interest and its rights and obligations during the unexpired term of the Lease for purposes of calculating the Port Authority Default Termination Payment will be determined by an independent third-party appraiser acceptable to the Lessee and the Port Authority, as of the effective date of termination of the Lease, based on the then-current condition of the Premises, the Existing Premises and the New Terminal Facilities (but assuming the event giving rise to the payment of the Port Authority Default Termination Payment had not occurred and the Lease had not been terminated as a result thereof). The appraiser will appraise the fair market value by taking into account the terms and conditions of the Lease (including the obligation to pay Rentals), projected cash flows and projected costs of the Premises and the Project Work for the remainder of the projected Term (using discounted cash flow methodology based on forecasts determined at that time) had the Lease not been terminated, as determined by the appraiser and assuming for the purposes of such determination that the Lessee Debt is repaid in accordance with planned amortization.

If the Lessee terminates the Lease early because of the Port Authority's failure to provide or defend the Lessee's right to quiet enjoyment of the Premises as described above, the Port Authority will have the option, but not the obligation, to assume the Lessee Debt (as defined in the Lease) then-outstanding, including the Series 2024 Bonds if then applicable. In the event the Port Authority exercises such right and assumes the Lessee Debt in accordance with the Lease, the amount of the Lessee Debt assumed by the Port Authority will be deducted from the termination payment made by the Port Authority to the Lessee under the Lease.

### **Equity Gain Share**

Subject to limited exceptions, with respect to transfers of direct or indirect shareholder or ownership interests in the Lessee, the Port Authority is entitled to a fee equal to 15% of any excess equity gain resulting from such transfers.

See APPENDIX D – "SUMMARY OF CERTAIN PROVISIONS OF THE LEASE – Restrictions on Assignments and Lease Terminal Operator Change in Control."

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

#### ***Leasehold Mortgages***

The Lease does not permit the Lessee to mortgage the Lessee's interest in the Lease or any portion of the Premises in whole or in part, directly or indirectly, by operation of law or otherwise other than to grant a leasehold mortgage to secure the obligations of the Lessee with respect to (i) the Initial Lessee Debt under the initial Financing Documents, (ii) Lessee Debt incurred in connection with the Project under Financing Documents applicable thereto, or (iii) with respect to any permitted Refinancing, 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); provided that at the time of execution and delivery of any such leasehold mortgage, no Lessee Event of Default has occurred and is continuing and certain terms and conditions are satisfied. The aforementioned conditions are satisfied for the issuance of the Series 2024 Bonds.

As of the date of the Lease, pursuant to the terms of the Lease, the aggregate principal amount of Lessee Debt secured by the Leasehold Mortgages must not exceed a maximum amount of \$6,630,000,000, determined without reduction for any prepayments, redemptions or refunds made pursuant to any of the Financing Documents at any time during the term, unless otherwise agreed by the Port Authority.

Pursuant to a Consent to Leasehold Mortgage and Other Financing Documents, dated June 10, 2022, the Port Authority acknowledged the Collateral Agent as a “Recognized Mortgagee.” The Port Authority is required to deliver to the Recognized Mortgagee a copy of each Event of Default Notice given under the Lease at the same time as and whenever any Event of Default Notice will have been sent to the Lessee. If the Port Authority elects to terminate the Lease the Port Authority will 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 Mortgage is in effect, will not be sooner than (i) the tenth (10<sup>th</sup>) day after the date of the Port Authority Termination Notice if the Event of Default triggering such notice is capable of being cured solely by the payment of money, and (ii) the ninetieth (90<sup>th</sup>) day after the date of sending of the notice if the Event of Default triggering such notice is not capable of being cured solely by the payment of money.

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

Subject to the terms and conditions of the Lease, the Recognized Mortgagee may cure the outstanding Lessee Events of Default (i) up to ten (10) days after the expiry of the applicable Lessee cure period for a Lessee Event of Default arising out of non-payment of money, (ii) up to one hundred eighty (180) days with respect to any Lessee Event of Default for failure to complete the D&C Work by the Scheduled Completion Date and (iii) up to ninety (90) Business Days after the expiry of the applicable Lessee cure period for any other Lessee Event of Default which period may be extended if the Lessee Event of Default cannot be reasonably cured within such ninety (90) Business Day period and the Recognized Mortgagee has taken steps to effect the cure subject to a long stop date for such additional cure period of one hundred and twenty (120) days. If the Recognized Mortgagee is prohibited from curing any Lessee Event of Default by any process, stay or injunction or pursuant to any bankruptcy or insolvency proceeding involving the Lessee, the time cure periods specified will be extended for the shorter of (i) the duration of such prohibition and (ii) one hundred and fifty (150) days.

The Port Authority’s right to terminate the Lease is suspended during the Recognized Mortgagee cure period if the Recognized Mortgagee proceeds to cure the Lessee Event of Default. The Port Authority is not prohibited from exercising any other rights and remedies provided at law or in equity so long as such exercise does not interfere with the Recognized Mortgagee’s right.

### ***Foreclosure***

The Recognized Mortgagee may exercise its Foreclosure Rights and enforce any applicable Financing Document in any lawful way, subject to certain conditions contained in the Lease, including, without limitation (i) the Recognized Mortgagee is not then a Prohibited Party, and (ii) in connection with the exercise of its Foreclosure Rights: (a) the rights of the Lessee under the Lease may be assigned or transferred only to a Qualified Terminal Operator, (b) if the Recognized Mortgagee moves or petitions for appointment of a receiver, such motion or petition will be subject to the prior written consent of the Port Authority, such consent not to be unreasonably withheld or delayed, (c) any Person to whom the Recognized Mortgagee transfers or assigns the Lessee’s interest in the Lease will enter into an assignment and assumption agreement pursuant to which such Person will have the rights and powers of, and assume the obligations of, the Lessee under the Lease; (d) 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 will demonstrate, to the satisfaction of the Port Authority, that it has the financial standing and capability to complete the D&C Work; (e) 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, or not permitted by, the Lease, (f) such Qualified Terminal Operator will acknowledge and agree that each Airline Use Agreement that is otherwise in full force and effect will remain in full force and effect and will be fully enforceable against such Qualified Terminal Operator in accordance with its respective terms as if such

Qualified Terminal Operator were the original party thereto; and (g) such Qualified Terminal Operator will 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.

### ***New Agreement***

If the Lease 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, 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 (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 Lease Term upon all of the covenants, agreements, terms, provisions and limitations of the Lease.

### ***Refinancing Requirements***

The Port Authority may withhold its consent to any refinancing ("Refinancing"), other than Exempt Refinancing, which is any refinancing that meets any of the following requirements ("Exempt Refinancings"): (i) (a) a proposed Refinancing that does not increase either the weighted average maturity or the interest rate of the Lessee Debt and (b) the proceeds of the proposed Refinancing refinance Lessee Debt without increasing the principal amount of Lessee Debt then outstanding other than by an amount equal to the reasonable costs of closing the Refinancing (including lender fees, arranger fees and advisor fees, original issue discounts and any required reserves) and results in projected debt service costs in each year to the end of the Lease Term that are no greater than the corresponding debt service costs projected for each year immediately prior to such Refinancing; (ii) a proposed Refinancing that (a) will occur during the D&C Work Period, (b) is for the purpose of obtaining additional funds required to reach completion, 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, (c) is on terms consistent with the terms of, and is otherwise permitted under, the initial Financing Documents and (d) does not result in an increase in the aggregate outstanding principal amount secured by the Leasehold Mortgage then in effect by more than 10%; (iii) a proposed Refinancing incurred by the Lessee (a) to refinance the Lessee Debt incurred as of the Effective Date under the initial Financing Documents, or (b) to finance the construction of the Project; or (iv) a proposed Refinancing that does not (a) 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; (b) 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; or (c) result in any portion of the proceeds of the Refinancing being used to make distributions or 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. The Series 2024 Bonds qualify as an Exempt Refinancing.

For a more detailed summary of the principal provisions of the Lease, see APPENDIX D – "SUMMARY OF CERTAIN PROVISIONS OF THE LEASE."

## PART 6 - PLAN OF FINANCE FOR PHASE A OF THE PROJECT

### Overview

The Lessee currently expects that the total cost of Phase A and related development costs (including demolition, construction, financing and other costs) will be approximately \$8.424 billion. As of the date of this Official Statement, the total cost of Phase A is projected to be covered in full from (i) the Bank Loans under the Credit Agreement, (ii) proceeds from Permitted Refinancing Indebtedness, including the Series 2023 Bonds and the Series 2024 Bonds and (iii) the Equity Commitments from the Sponsors.

It is expected that, from time to time, the Conduit Issuer will issue, and on-lend to the Lessee, the proceeds of (i) Permitted Refinancing Indebtedness (including the Series 2024 Bonds, the Series 2023 Bonds, and any other series of Bonds issued under the Master Indenture) to refinance and prepay the Bank Loans and/or pay Project Costs and (ii) Incremental Debt (including the Series 2024 Bonds, the Series 2023 Bonds, and any other series of Bonds issued under the Master Indenture) to pay Project Costs, in each case to thereby reduce the Lenders' Bank Loan commitments and outstanding loans under the Credit Agreement.

The Conduit Issuer has and will on-lend to the Lessee in accordance with the terms of the Lessee Loan Agreements the proceeds of the Bank Loans, the proceeds of any Additional Senior Indebtedness and the proceeds of any Permitted Refinancing Indebtedness, including the Series 2024 Bonds.

### Sources of Funds for Phase A

As of the date of this Official Statement, the total available sources of funds for Phase A are as follows:

<u>Total Available Sources of Funds for Phase A</u>	<u>(in millions)</u>
Bank Loans <sup>(1)</sup>	\$1,667
Series 2023 Bonds <sup>(2)</sup>	2,185
Series 2024 Bonds <sup>(2)</sup>	2,847
Equity Commitments <sup>(3)</sup>	<u>2,330</u>
Total	<u>\$9,029</u>

<sup>1</sup> See "Sources of Funds for Phase A – *Bank Loans*." Reflects prepayment of initial \$6,630 million loan commitment with a portion of net proceeds from the Series 2023 Bonds and Series 2024 Bonds. Funds available under the Credit Agreement include amounts which currently exceed the anticipated costs of Phase A.

<sup>2</sup> Amount includes net original issue premium and all hedge termination receipts.

<sup>3</sup> See "Sources of Funds for Phase A – *Equity Commitments*."

### ***Bank Loans***

Under the Credit Agreement, the Lenders committed to provide a total of \$6,630,000,000 in funding under a term loan facility, a delayed draw term loan facility, a liquidity facility, a working capital facility and a security letter of credit deposit facility, on the terms and conditions set forth therein. The amount of each such commitment is as follows:

(i) on the Effective Date, the Lenders provided the Conduit Issuer an Effective Date Term Commitment to fund Project Costs in the aggregate principal amount of \$1,430,000,000;

(ii) on the Effective Date, the Delayed Draw Term Lenders provided the Conduit Issuer a Delayed Draw Term Commitment to fund Project Costs in the aggregate principal amount of \$4,900,000,000;

(iii) certain Lenders provided the Conduit Issuer a \$200,000,000 Liquidity Facility Commitment to finance the short-term liquidity needs of the Lessee;

(iv) MUFG Bank, Ltd. provided the Conduit Issuer a \$50,000,000 Working Capital Facility in the form of a letter of credit to finance the working capital needs and general corporate purposes of the Lessee; and

(v) MUFG Bank, Ltd. provided the Conduit Issuer a \$50,000,000 Security Deposit Facility in the form of a letter of credit to finance the security deposit payable to the Port Authority under the Lease.

In December 2023, the Lessee used a portion of the proceeds of the Series 2023 Bonds to refinance the Bank Loans then outstanding, and to reduce the Lenders' initial commitments under the Credit Agreement from \$6,630,000,000 to \$4,480,630,854. As of June 1, 2024, the Conduit Issuer has outstanding drawn Bank Loans for funding Phase A totaling \$252,000,000, which amount has been on-lent by the Conduit Issuer to the Lessee under the Lessee Loan Agreements. Consequently, as of June 1, 2024, the Delayed Draw Term Lenders' Delayed Draw Term Commitment is \$3,928,630,854.

The Lessee plans to refinance all of the Bank Loans incurred as of the Effective Date prior to their final maturity date with Permitted Refinancing Indebtedness. Such Permitted Refinancing Indebtedness, including from proceeds of the Series 2023 Bonds and the Series 2024 Bonds, may include future Bonds, Private Placement Notes, and/or other Indebtedness permitted to be incurred by the Conduit Issuer, such as TIFIA Loans. As of the date of this Official Statement, the Lessee has not requested and is not currently pursuing a TIFIA Loan.

It is expected that a portion of the proceeds of the Series 2024 Bonds will be used to refinance a portion of the outstanding Bank Loans (and reduce the Lenders' Bank Loans commitments under the Credit Agreement), with such amount dependent upon final pricing, swap termination receipts, and costs of issuance.

### ***Series 2023 Bonds***

On December 6, 2023, pursuant to that certain First Supplemental Indenture, dated as of November 1, 2023 (the "First Supplemental Indenture"), among the Lessee, the Conduit Issuer and the Indenture Trustee, the Conduit Issuer issued the Series 2023 Bonds in an aggregate principal amount of \$2,000,000,000.

The Lessee used the proceeds of the Series 2023 Bonds to (i) refinance the Bank Loans then outstanding, (ii) finance certain Project Costs and reduce a corresponding amount of Lenders' commitments under the Credit Agreement, as described above, and (iii) pay for certain costs of issuance related to the issuance of the Series 2023 Bonds.

The Series 2023 Bonds are secured on parity with the Bank Loans, the Series 2024 Bonds and any other series of Additional Bonds to be issued in the future. The Series 2023 Bonds are secured by the Trust Estate created under the Master Indenture for the benefit of the owners of all Bonds (including the Series 2024 Bonds, the Series 2023 Bonds and any series of Additional Bonds to be issued in the future), which includes a common bond debt service reserve account created pursuant to the Common Terms Agreement and to be funded on or prior to the Completion Date for Phase A of the Project. In addition, certain accounts

were created under the First Supplemental Indenture which are solely for the benefit of the owners of the Series 2023 Bonds.

### ***Equity Commitments***

*Aggregate Equity Commitment.* Pursuant to the Equity Contribution Agreement, dated June 3, 2022, by and among the Lessee, Topco and the Collateral Agent (the “Equity Contribution Agreement”), Topco agreed to fund the equity contributions on the dates and in the amounts set forth below:

#### **Equity Contribution Schedule**

<b>Equity Contribution Date</b>	<b>Equity Contribution Amount (US\$)</b>
06/10/2022	\$ 18,166,667
08/15/2022	54,500,000
11/15/2022	54,500,000
02/15/2023	54,500,000
05/15/2023	90,833,333
08/15/2023	163,500,000
11/15/2023	163,500,000
02/15/2024	163,500,000
05/15/2024	218,000,000
08/15/2024	327,000,000
11/15/2024	327,000,000
02/15/2025	327,000,000
05/15/2025	218,000,000
05/15/2026	150,000,000
Total	<u>\$2,330,000,000</u>

The aggregate amount of Equity Commitments of each of the Sponsors is as follows:

Mars	\$1,188,300,000
JLC	699,000,000
Ullico	<u>442,700,000</u>
Total	<u>\$2,330,000,000</u>

All equity contributions required to be made on or prior to the date of this Official Statement under the Equity Contribution Agreement have been paid in full and in a timely manner in accordance with the Equity Contribution Agreement.

*Payment of Equity Commitments; Acceleration.* Under the Equity Contribution Agreement, the Lessee is required to deliver to Topco (with a copy to each Sponsor and the Collateral Agent) an equity contribution notice at least twenty (20) Business Days before each applicable Equity Contribution Date. On each Equity Contribution Date, Topco will fund the requested Equity Commitments in the amounts set forth in the above Equity Contribution Schedule in immediately available funds, through equity subscriptions or contributions or subordinated shareholder loans. Any such purchase of subscriptions or funding or contribution may be made by a draw on or withdrawal from any Equity Letters of Credit or Cash Collateral (collectively, “Credit Support”) in accordance with the Equity Contribution Agreement.

The proceeds of each equity contribution shall be deposited into Building Loan Costs Construction Account and/or Project Loan Costs Construction Account as specified by the Lessee in the equity

contribution notice; provided that (i) accelerated Equity Commitments shall be deposited in the Advanced Equity Contribution Account and (ii) if the Lessee fails to deliver an equity contribution notice for any Equity Contribution Date, the Equity Commitments made on such date shall be deposited in the Project Loan Costs Construction Account.

Upon the occurrence of an Equity Commitment acceleration event and written demand from the Collateral Agent (acting upon the written directions of Topco or the Intercreditor Agent, provided, that if conflicting notices, the Collateral Agent shall act upon the instructions of the Intercreditor Agent only), Topco shall make or cause to be made the Equity Commitments in cash in an amount equal to the unfunded equity contributions to a Lessee Project Account, for application in accordance with the Common Terms Agreement.

In addition, upon the occurrence of a Cash Collateral Sponsor Bankruptcy Event (as defined in the Equity Contribution Agreement) with respect to any Sponsor, Topco shall, at its option, either (i) make or cause to be made a portion of the Equity Commitments in cash by depositing an amount equal to the Unfunded Equity Contributions that are supported by cash collateral provided by such Sponsor into the Advance Equity Contribution Account or (ii) replace or cause to be replaced the cash collateral provided by such Sponsor with one or more Equity Letters of Credit.

*Credit Support.* The Equity Contribution Agreement requires that from and after the Effective Date, Topco's obligations under the Equity Contribution Agreement are supported in full by Credit Support in an aggregate amount of no less than the Unfunded Equity Contribution. Each Equity Letter of Credit must be provided by a financial institution that has a long-term unsecured senior debt rating of at least the following from at least one Rating Agency: (i) A- by S&P, (ii) A3 by Moody's or (iii) A- by Fitch.

If any Sponsor has not made or caused to be made its portion of the Equity Commitment to Topco by the date required to be made under the Equity Contribution Agreement, Topco is required to promptly notify the Collateral Agent of the failure by such Sponsor to make or cause to be made its portion of the Equity Commitment and the Collateral Agent shall draw on, or make a withdrawal from, such Sponsor's Credit Support.

The Collateral Agent shall be entitled to draw in full and immediately on any Equity Letter of Credit (up to the full amount available to be drawn under such Equity Letter of Credit on the date of such drawing but in any case no more than the amount of the Unfunded Equity Contributions with respect to the Sponsor providing such Equity Letter of Credit) upon the Collateral Agent's receipt of written notice from Topco that (i) such Equity Letter of Credit has not been extended or replaced with any Equity Letter of Credit or Cash Collateral (or a combination of the foregoing) at least thirty (30) days prior to its stated expiration date or (ii) the issuer of such Equity Letter of Credit has ceased to be an eligible Letter of Credit provider and such Equity Letter of Credit has not been replaced by or on behalf of the applicable Sponsor with another type of Credit Support in the amount required by the terms of the Equity Contribution Agreement within thirty (30) days from the date on which the issuer of the Equity Letter of Credit ceased to be an eligible Letter of Credit. The proceeds of any such draws shall be deposited into a Lessee Project Account, as specified by the Lessee, and applied in accordance with the Common Terms Agreement and be credited as Equity Commitments of Topco under the Equity Contribution Agreement and capital contributions by the relevant Sponsor to Topco.

The Equity Commitments required by the Equity Contribution Agreement to be contributed by the equity members of the Lessee and the Sponsors are limited. Potential investors in the Series 2024 Bonds should note that, as described elsewhere in this Official Statement, the Bonds, including the Series 2024 Bonds are payable solely from the payments from the Lessee under the Lessee Loan Agreements. The Lessee's obligations thereunder are non-recourse obligations of the Conduit Issuer and in no event will the equity members of the Lessee or any of the Sponsors have any obligation with respect to any payment

related to the Bonds. There will be no recourse by the Lessee (or the Collateral Agent) to the equity members or Sponsors for additional equity.

### ***Potential TIFIA Loan***

Among other debt, the Lessee may choose to pursue (either directly or through the Conduit Issuer) a TIFIA Loan. A TIFIA loan generally is a loan from the U.S. Department of Transportation pursuant to the Transportation Infrastructure Finance and Innovation Act (“TIFIA”) program or the Infrastructure Investment and Jobs Act for certain projects that meet certain requirements. As of the date of this Official Statement, the Lessee has not requested and is not currently pursuing a TIFIA Loan. For more information about any potential TIFIA Loan, the TIFIA Lender and the Common Terms Agreement, please refer to “PART 12 – SUMMARY OF THE FINANCING DOCUMENTS – Common Terms Agreement” and APPENDIX C-2 – “CERTAIN PROVISIONS OF THE COMMON TERMS AGREEMENT.”

### **Estimated Uses of Funds for Phase A**

As of June 1, 2024, the estimated uses of funds for Phase A are as follows:

<u>Project Uses</u>	<u>(in millions)</u>
Development Costs	
Construction Costs <sup>1</sup>	\$5,739.2
Interest During Construction <sup>2</sup>	628.3
Prefunded Port Authority Ground Rent and First, Second and Third Additional Rent <sup>3</sup>	349.2
Issuance Costs, Fees and Transition Costs <sup>4</sup>	868.0
Sponsor and Port Authority Development Fees <sup>5</sup>	<u>263.6</u>
Subtotal – Development Costs	<u>7,848.2</u>
Reserve Account Deposits <sup>6</sup>	<u>576.1</u>
Total Project Uses for Phase A	<u><u>\$8,424.3</u></u>

Total may not add due to rounding

<sup>1</sup> See “Estimated Uses of Funds for Phase A: ***Construction Costs***.”

<sup>2</sup> See “Estimated Uses of Funds for Phase A: ***Interest During Construction***.”

<sup>3</sup> See “Estimated Uses of Funds for Phase A: ***Prefunded Port Authority, Ground Rent, and First, Second and Third Additional Rent***.”

<sup>4</sup> See “Estimated Uses of Funds for Phase A: ***Issuance Costs, Fees and Transition Costs***.”

<sup>5</sup> See “Estimated Uses of Funds for Phase A: ***Sponsor and Port Authority Development Fees***.”

<sup>6</sup> See “Estimated Uses of Funds for Phase A: ***Reserve Account Deposits***.”

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The following are the major categories of the costs of Phase A:

### ***Construction Costs***

The construction costs of the New Terminal Facilities is estimated to be approximately \$5,739,153,877 and include construction costs covered by the Design-Build Contract (with a Contract Sum as of May, 2024 of \$3,990,274,198), which includes direct costs of raw materials for Phase A, allowance for changes during design progression, the portion of the contingency held in the maximum guaranteed price construction contract, general conditions, bonds, escalation, logistics/overtime/lost time/construction management fee, and design activities included in the Design-Build Contract. The Lessee continues to evaluate potential Change Orders that, if executed, are expected to adjust the Contract Sum. See “PART 8 – CONSTRUCTION OF PHASE A OF THE PROJECT – The DB D&C Work – *Contract Sum*.” Costs outside of the maximum guaranteed price construction contract include, but are not limited to, owner furnished/contractor installed, testing/inspection, environmental remediation, pre-construction and construction period design activities, project management office fee, owner controlled insurance program, integration program through design, construction and commissioning, and art and branding; reserves and contingencies, including reserves for Port Authority changes to design and construction and owner’s contingency and unallocated contingency. As of April 2024, approximately 67% of the funds in the owner contingency have been allocated.

### ***Interest During Construction***

Interest during construction of Phase A is estimated to be approximately \$628.3 million and includes interest on obligations issued or incurred under the Credit Agreement, including Bank Loans and letters of credit supporting Project Costs and reserves; and other Senior Debt anticipated to be incurred by the Lessee from time to time during such period, including the Series 2024 Bonds. Interest payable on the Series 2024 Bonds during construction of Phase A will be paid from funds on deposit in the applicable Capitalized Interest Accounts, proceeds of draws on the Bank Loans, and other available sources. See “PLAN OF FINANCE FOR PHASE A OF THE PROJECT –Sources of Funds for Phase A - *Bank Loans*” herein.

### ***Prefunded Port Authority Ground Rent, and First, Second and Third Additional Rent***

Port Authority Ground Rent and First Additional Rental, Second Additional Rental and Third Additional Rent during construction total approximately \$349.2 million.

### ***Issuance Costs, Fees and Transition Costs***

Issuance costs and fees total approximately \$868.0 million and include costs associated with Bank Loans, the Bonds (including the Series 2024 Bonds), liquidity facility and Sponsors equity letters of credit maintenance costs. Issuance costs with respect to the Series 2024 Bonds includes underwriters’ discount. The Lessee will also fund operating expenses and certain other costs (Management Services Agreement fees/expenses and Conduit Issuer fees) during the construction period.

### ***Sponsor and Port Authority Development Fees***

Sponsor and Port Authority development fees total approximately \$263.6 million. The Lessee paid at the Effective Date, and will pay monthly installments during the construction period, amounts to reimburse the Sponsors and the Port Authority for a portion of their respective costs and expenses related to Phase A of the Project.

## ***Reserve Account Deposits***

The Lessee will fund certain required reserve deposits, including to the Common Debt Service Reserve Account, the O&M Reserve Account, and the Ramp-Up Reserve Account established under the Common Terms Agreement no later than the Completion Date of Phase A.

## **Interest Rate Hedging**

On the Effective Date, the Lessee entered into certain fixed/floating interest rate swap transactions, each governed under a separate International Swaps and Derivatives Association Inc. 2002 Master Agreement.

<u>Hedging Strategy</u>	<u>Original Notional Amount</u>	<u>Current Notional Amount</u>	<u>Hedge Product</u>	<u>Hedge Effective Date</u>	<u>Hedge Maturity Date</u>	<u>Hedge Ratio as of 5/1/24<sup>(3)</sup></u>
Term Loan Hedge Agreement	\$2,779,329,017 <sup>(1)</sup>	\$374,589,505 <sup>(1)</sup>	100% of SOFR	June/July 2022; November 2023	September 2026	> 100%
Forward Starting Hedge Agreement	\$2,250,000,000	\$750,000,000	70% of SOFR	July 2024 <sup>(2)</sup>	July 2060	75%
Forward Starting Hedge Agreement	\$1,125,000,000	\$1,125,000,000	70% of SOFR	July 2025	July 2060	75%
Forward Starting Hedge Agreement	\$1,065,159,750	\$1,065,159,750	70% of SOFR	July 2026	July 2060	75%

<sup>1</sup> Maximum notional amount.

<sup>2</sup> In connection with the issuance of the Series 2023 Bonds, the Lessee executed partial terminations of these Hedge Agreements and the current notional amount of the Forward Starting Hedge Agreement Effective as of July 2024 is \$750,000,000.

<sup>3</sup> Ratio of swap notional to the actual (Term Loan) and planned principal amount of all Senior Debt due under the Credit Agreement and the Lessee Loan Agreements.

On the Effective Date in order to mitigate interest rate risk, the Lessee entered into a fixed payor interest rate swap transaction in a total notional amount of \$2,779,329,017. This hedge was intended to fix the interest rates payable on 75% of the amount of the Bank Loans anticipated as of the Effective Date to be made under the Credit Agreement. The hedge was partially terminated alongside the issuance of the Series 2023 Bonds based upon the anticipated utilization of the Bank Loans at that time. The hedge ratio on the actual amount of Bank Loans as of June 1, 2024 was approximately 148%.

The Lessee expects that the Conduit Issuer will issue, from time to time, and on-lend to the Lessee, the proceeds of Permitted Refinancing Indebtedness, sufficient in amount to prepay the Bank Loans and/or reduce the Lender's Bank Loan commitments under the Credit Agreement. In order to mitigate the risk of higher than budgeted interest rates on the projected Permitted Refinancing Indebtedness, on the Effective Date, the Lessee entered into certain forward-starting hedge agreements for a notional amount equal to 75% of the anticipated principal amount of the Permitted Refinancing Indebtedness expected to be issued from time to time.

The aggregate notional amount of each interest rate exchange agreement amortizes in order to hedge at least 75% and not more than 105% of all Senior Debt due under the Credit Agreement and the Lessee Loan Agreements at each interest payment date occurring during the term of the Lease as projected by the Project's base case financial model.

Pursuant to the terms of each interest rate swap transaction, on each payment date until the termination date, the Lessee will be obligated to pay fixed rate payments to the relevant Hedge Provider in USD, which the Lessee will fund using Project Revenues. The relevant Hedge Provider will, on the same payment date as the Lessee, be obligated to pay floating rate payments in USD (calculated by reference to SOFR) to the Lessee. Payment amounts due under the interest rate swap transactions on the same date will be subject to payment netting. The obligations of the Lessee to make payments to the Hedge Providers constitute Senior Debt under the Common Terms Agreement, which are payable on a parity with principal and interest with other Senior Debt, including the Series 2024 Bonds.

The interest swap transactions may be terminated in certain limited circumstances, which may oblige the Lessee to make a Termination Payment to the Hedge Provider. These include, amongst other termination events, the Hedge Provider ceasing to be a Lender, the acceleration of any Secured Obligation pursuant to the terms of the Common Terms Agreement or the Senior Debt being refinanced. A partial early termination may occur pro rata across all of the interest swap transactions where any portion of the outstanding aggregate notional amount on the interest swap transactions exceeds one hundred five percent (105%) of the principal amount of the Senior Debt as projected by the Project's base case financial model.

It is anticipated that the Lessee will execute a partial early termination of its Forward Starting Hedge Agreement with a July 2024 effective date and its Term Loan Hedge Agreement in connection with the issuance of the Series 2024 Bonds. It is expected that such termination will require the Hedge Providers to make a Termination Payment to the Lessee, the proceeds from which will be used to fund Project costs. See "PART 7 – SOURCES AND USES OF FUNDS FOR THE SERIES 2024 BONDS" below.

The following market standard events of default will apply to the Lessee: bankruptcy, failure to pay and cross-default. The Lessee and the relevant Hedge Provider for each interest swap transaction has also excluded certain market standard events of default. With respect to the Lessee only, these excluded events of default include but are not limited to: breach of agreement, credit support default, misrepresentation, default under specified transaction and merger without assumption. With respect to both the Lessee and the relevant Hedge Provider, force majeure shall not apply.

## **PART 7 - SOURCES AND USES OF FUNDS FOR THE SERIES 2024 BONDS**

As set forth in the table below, a portion of the proceeds of the Series 2024 Bonds will be used to refinance Bank Loans provided and committed to be provided by the Lenders, pursuant to the Credit Agreement. The proceeds of the Bank Loans funded loans advanced to the Lessee pursuant to the Lessee Loan Agreements. The balance of the proceeds of the Series 2024 Bonds will be used by the Lessee to (i) finance (under the Lessee Loan Agreements) a portion of the costs relating to Phase A of the Project described herein, (ii) fund a portion of the interest on the Series 2024 Bonds and the Series 2023 Bonds, and (iii) pay certain costs of issuance related to the Series 2024 Bonds. Interest payable on the Series 2024 Bonds during construction of Phase A will be paid from funds on deposit in the applicable Capitalized Interest Accounts, proceeds of draws on the Bank Loans, and other available sources.

*[Remainder of page intentionally left blank.]*

The following table sets forth the anticipated sources and uses of the Series 2024 Bond proceeds as of the date of issuance thereof:

***Sources of Funds\****

Par Amount of Series 2024 Bonds	\$ 2,550,000,000
Net Original Issue Premium	117,910,308
Hedge Termination Receipts	<u>179,423,348</u>

Total	\$ <u>2,847,333,656</u>
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***Uses of Funds\****

Phase A Project Costs	\$ 2,254,327,461
Deposit to the Capitalized Interest Accounts	305,834,468
Repayment of Bank Loans	253,386,115
Costs of Issuance of the Series 2024 Bonds**	<u>33,785,612</u>

Total	\$ <u>2,847,333,656</u>
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\*Numbers may not add due to rounding.

\*\* Includes underwriting discount, bond insurance premium, and other costs of issuance.

## **PART 8 - CONSTRUCTION OF PHASE A OF THE PROJECT**

On June 10, 2022, the Lessee, as developer, and the Design Builder, as design-builder, entered into the Design-Build Contract.

### **The Design-Build Contract**

The DB D&C Work for Phase A will be undertaken by the Design Builder pursuant to the Design-Build Contract. The Design-Build Contract includes a guaranteed maximum contract sum of approximately \$3.990 billion (“Contract Sum”), as may be adjusted by a Material Lessee Scope Change and an Equivalent Project Relief, in connection with the DB D&C Work required under the Design-Build Contract. As previously disclosed in this Official Statement, the Design Builder is Tishman Construction Corporation of New York.

See “PART 3 – PROJECT PARTICIPANTS – The Design Builder.” See also APPENDIX E – “SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT” for additional information regarding the provisions of the Design-Build Contract.

The Design Builder is responsible for the design and construction of the New Terminal Facilities from the earlier of the Design-Build Contract effective date or the date the DB D&C Work commences, until the Port Authority issues a final certificate of authorization to occupy or use pursuant to the Lease.

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

***Scope of the Work***

The DB D&C Work in respect of Phase A principally comprises the design and construction of state-of-the-art New Terminal Facilities, which is expected to have thirteen (13) permanent wide-body contact gates and one (1) temporary wide-body gate. The Design Builder is also responsible for providing all materials, equipment and labor and to undertake all efforts necessary or appropriate to perform the DB

D&C Work in accordance with the Project Documents, and to achieve the milestone events, substantial completion and final completion in accordance with the baseline schedule. Additionally, a portion of the DB D&C Work includes the design and construction of the Off-Premises Facilities, which include: (i) certain portions of the roadway networks that are for the sole and exclusive benefit of the Lessee, (ii) certain landside utilities, and (iii) certain temporary and permanent modifications to the AirTrain. The Design Builder has no responsibility to perform any Operations and Maintenance Work.

The scope of the DB D&C Work also obligates the Design Builder to account for certain environmental, sustainability and resilience requirements for the Project.

Pursuant to an Energy Services Agreement (“ESA”) entered into between the Lessee and ASX NTO Energy, LLC (“ASX”), a subsidiary of AlphaStruxure Holdings LLC, ASX will design, construct and operate an integrated microgrid infrastructure at the New Terminal Facilities. The Design Builder will not be responsible under the Design-Build Contract for the design and construction of the microgrid infrastructure.

In addition to the microgrid infrastructure, the only other excluded work under the Design-Build Contract will be (i) the roadway and utility work outside the Lessee’s lease line, (ii) the GTC, (iii) the equipment and systems provided by TSA or U.S. Department of Homeland Security, (iv) fit out of exclusive use space to be used by airlines, concessions and retail, (v) certain programming and software integration, and (vi) relocation of existing critical FAA airport specific systems.

Certain portions of the DB D&C Work will be performed by certain consultants and specialty contractors identified by the Lessee. To the extent that the Lessee and any such specialty provider have previously negotiated terms and conditions associated with such specialty provider’s performance of a certain scope of the DB D&C Work, those terms will be assigned to the Design Builder as assigned scope. The Design Builder is required to review the scopes of design services and construction work for each assigned scope and specialty provider and coordinate such services and work within the DB D&C Work. As a part of the integrated design process, the Design Builder has coordinated and integrated the design, cost, and schedule of the DB D&C Work to be performed by such specialty providers within the contract sum. The Design Builder is responsible for each specialty provider as a subcontractor. The assigned scopes include (i) system integrators, (ii) a baggage handling system, (iii) passenger boarding bridges and related apron equipment, (iv) Green Garage demolition, and (v) scope and cost negotiated with the AirTrain operator.

For information regarding the baseline schedule relating to the DB D&C Work (specifically, the milestone events, substantial completion and final completion), see APPENDIX E – “SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT.”

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

To the fullest extent possible, the Design Builder will be responsible to the Lessee for the obligations under the Lease pertaining to the DB D&C Work to the same extent that the Lessee is responsible to the Port Authority. The Design Builder’s liability, however, is subject to certain limitations (see “–Limitation of Liability” below). The DB D&C Work must comply with all applicable provisions of the Lease, including the project description, the scope of the project and related works, the FIS facility for international flights and the plans and specifications. The DB D&C Work must also comply with all Lease requirements, governmental approvals, applicable law, the performance standards, rules and regulations, the Port Authority’s code of ethics, access rights, sequencing and coordination requirements, milestone requirements, permitting and approvals requirements and oversight requirements.

### ***Contract Sum***

The Design-Build Contract is a comprehensive design-build agreement with a guaranteed maximum price (Contract Sum) of \$3,990,274,198 (as of May 2024) for the Design Builder's performance and completion of the design and construction work for Phase A. The Contract Sum may be adjusted by a material scope change initiated, or an act, in the first instance, by the Lessee, as set forth in the Design-Build Contract (a "Material Lessee Scope Change") and in the event of Equivalent Project Relief.

The Contract Sum is comprised of (i) the total not-to exceed cost of design work for the Project, (ii) the lump sum general conditions costs for the Project, (iii) the portion of the direct DB D&C Work costs for the construction work which has been awarded, (iv) the Design Builder's estimate of the direct DB D&C Work costs, for the construction work which has not been awarded, (v) the design contingency for the Project, (vi) the total not-to-exceed construction contingency for the Project, (vii) the base fee, (viii) the cost of payment and performance bonds, if any, (ix) costs of insurance, (x) costs of the design and construction letter of credit, payment and performance bonds and the parent company guaranty, (xi) costs of subcontractors default insurance, if any, and (xii) all taxes included in the cost of the DB D&C Work. As of April 2024, approximately 67% of the funds in the owner contingency have been allocated.

As of May 2024, 38 Change Orders (as defined in the Design-Build Contract) have been approved, of which 34 are considered Material Lessee Scope Changes and the remaining four are in respect of certain compensation events and construction allowances. The Change Orders relate to (i) the Design Builder's staff insurance, (ii) construction and inspection of automated baggage belts and baggage lift, (iii) electric busing, charging stations and electric provisions in connection with electric buses, (iv) rights of way for certain areas and lanes, (v) space permits for certain areas, (vi) crossover connections and simulation of the baggage handling system, (vii) manifold and controls at a satellite fuel farm, (viii) lounge elevators and drainage and ventilation works for restroom installation at first class lounges, (ix) national grid gas works, (x) construction of boarding bridges and proofing gates and gate renumbering, (xi) parking lot infrastructure and equipment, (xii) the Fitwel building certification, (xiii) installment of video walls, (xiv) trailer for the Cauley Coach bus drivers and operators, (xv) certain repairs at the Delta hardstands, (xvi) a chemical and biological detection system, (xvii) architectural renderings for art and branding concepts, (xviii) the shuttle connecting Terminals 1 and 8, (xix) certain changes to the AlphaStruxure electric-grid scope of work, (xx) a video controller engine for dynamic navigation, (xxi) the urban umbrella system for a pedestrian walk, (xxii) the RUGTC Contract, (xxiii) smart restrooms technology, (xxiv) hydraulic fluid discovered at the Terminal 3 elevator pits, (xxv) the installation of two cams at the new trailer and Delta departures roadway and (xxvi) the repair and paving of certain zones at the Terminal 4 bus lane. The Lessee continues to evaluate potential Change Orders that, if executed, are expected to adjust the Contract Sum. As of May 2024, the Lessee does not currently believe that these Change Orders materially alter the scope of the D&C Work or have a material impact on the schedule.

### ***Trade Procurement***

The completion of the DB D&C Work is being guaranteed with respect to the total cost of the DB D&C Work pursuant to the Contract Sum and not the costs for each or any part thereof. Pursuant to the Design-Build Contract, upon substantial completion of buyout of the subcontractors which were not awarded prior to the establishment of the Contract Sum, which will occur on or before June 1, 2024, the trade breakdown will be adjusted as follows: (i) if the amount awarded is less than the amount shown on the trade breakdown of the Contract Sum, the amount shown on the trade breakdown and the Contract Sum will be reduced by the difference between the two amounts and the amount of such procurement savings will be applied to (a) a staff bonus pool to be distributed directly by the Design Builder to its Project staff in an amount to and not to exceed \$5 million, and (b) to the extent any leftover procurement savings, the remaining amount will be applied to and increase the construction contingency; and (ii) if the amount as awarded is greater than the amount shown on the trade breakdown for the Contract Sum, the amount shown

on the trade breakdown will be increased by the difference between the two amounts, and to the extent that the construction contingency is sufficient, the construction contingency will be reduced by the same amount, and the Contract Sum will not be adjusted. As of June 1, 2024, when such substantial completion of buyout of the subcontractors occurred, 94.9% of the trade packages had been procured, with the remaining 5.1% expected to be procured by the end of the third quarter of 2024. The Lessee expects an approximately 6% overrun on trade costs once all procurement has been completed. The Lessee expects that any overruns on trade costs will be funded from the design or construction contingency, the Contract Sum is not to be adjusted and the risk of cost overruns are a Design Builder risk.

### ***No Escalation and Cost Overruns***

Escalation in the costs of labor and/or materials, regardless of the cause for such escalation, will not constitute a change for additional costs, delays or otherwise, or entitle the Design Builder to a change order or additional compensation of any nature. If the aggregate of the actual costs of the DB D&C Work, the base fee and other costs and expenses payable to the Design Builder under the Design-Build Contract exceeds the aggregate Contract Sum for the Project, subject to adjustments permitted under the Design-Build Contract, the Design Builder will pay for and bear the entire amount of such excess.

### ***Contingency Funds and Allowances***

The Contract Sum will include certain design and construction contingencies and allowances for particular aspects of the DB D&C Work identified within the Design-Build Contract. In the event a design change notice includes a design change arising from design progression of the development of 100% construction documents that increases the costs of the DB D&C Work, then the Design Builder will be entitled to use the design contingency for the net additive design work costs for the construction work. The construction contingency will be used by the Design Builder solely to cover certain construction contingency costs such as cost overruns in the purchasing of subcontracts, costs incurred to repair defective or damaged work executed by the Design Builder or any subcontractor which are not reimbursable under the Design-Build Contract or recoverable from a subcontractor, subject to certain exceptions and limitations, costs associated with Port Authority changes or changes required by any other governmental authority which do not constitute a Material Lessee Scope Change or equivalent project relief, among others. Construction allowances and construction allowance items will be limited solely to scopes of the DB D&C Work that were undefined or were unable to be defined by the basis of design and the Project Documents at the time the Contract Sum was established. See APPENDIX E – “SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT – Contingency Funds and Allowances” for additional information regarding the design and construction contingencies and the construction allowances under the Design-Build Contract.

### ***Anchor User Agreements and Interface Agreements***

As further described in this Official Statement, the Lessee has entered into (i) certain anchor user agreements pursuant to which the Lessee subleased certain spaces at the New Terminal Facilities to certain airlines and (ii) certain interface agreements. To the extent related to DB D&C Work, the Design Builder will comply with the terms of such agreements to the same extent and manner as required by the Lessee under the applicable agreement. The Design Builder has included the known costs associated with complying with the anchor user agreements the Lessee has entered into in the Contract Sum. Additionally, the Design Builder has included the known costs associated with complying with certain interface agreements the Lessee has entered into (including the Construction Coordination Agreement (as defined herein) and the NTO Delta Construction Interface Agreement (as defined herein)).

### ***Shortfall, Progress Payments and Mobilization Payments***

Each application for payment by the Design Builder will constitute a representation that the undisbursed remainder of the Contract Sum will be sufficient to fund the performance and completion of the DB D&C Work for the entire Project. The Lessee is obligated to make progress payments to the Design Builder in accordance with the terms of the Design-Build Contract, based on a schedule of values. In the event that the Design Builder is performing DB D&C Work that is to be paid for by the Port Authority pursuant to the Lease, then the Lessee will have no obligation to pay the Design Builder for such DB D&C Work unless and until the Port Authority has actually paid the Lessee for such work. A one-time mobilization payment of \$40 million is contemplated to be made to the Design Builder in order to mobilize the Design Builder to commence construction activities.

### ***Payments to Design Builder***

The Design Builder is entitled to the following payments from the Lessee under the Design-Build Contract:

(i) Base Fee. The Lessee is obligated to pay to the Design Builder a base fee of approximately \$129 million. The Design Builder is not entitled to receive a base fee from the Lessee on account of the costs of construction contingency, construction security, insurance, subcontractors default insurance, or bonds. The base fee will be paid to the Design Builder monthly, in proportion to the direct DB D&C Work cost of the DB D&C Work performed in the immediately preceding month, subject to 10% retention, which retention will apply until the DB D&C Work is 50% complete.

(ii) Cost of the DB D&C Work. The Lessee is obligated to reimburse the Design Builder for the direct DB D&C Work costs and the general conditions costs. The cost of the DB D&C Work will be credited with all rebates, trade discounts, credits on taxes or credits realized on cash deposits or insurance premiums with respect to insurance procured by the Design Builder.

(iii) Insurance. Except where the Lessee implements an owner-controlled insurance program, the Lessee is obligated to reimburse the Design Builder the cost of insurance required to be maintained under the Design-Build Contract up to 1.75% of the costs of the DB D&C Work. The Lessee is responsible for any deductibles under the same. In addition, the Lessee must reimburse the Design Builder for the cost of subcontractors default insurance at 1.5% of the DB D&C Work for the estimated subcontractor volume enrolled. The Design Builder has enrolled, and will cause all of its subcontractors to enroll, in the insurance program and comply with the insurance program manual. The Lessee provides pollution liability insurance and the Design Builder will be responsible for enrollment of all subcontractors.

(iv) Performance Bonds. The Lessee must reimburse the Design Builder for the actual and demonstrated costs of subcontractor payment and performance bonds, to the extent such bonds are required by the Lessee.

(v) Incentive Fees. The Design Builder is entitled to an incentive fee, up to an aggregate cap of 3% of the aggregate Contract Sum, based on the Design Builder's achievement of specific metrics. The project NTP incentive fee (as described below) will not be subject to the incentive fee cap. Upon the Lessee's issuance of the notice to proceed for the Project, the Design Builder will be awarded a one-time project NTP incentive fee in the amount of \$27.5 million. Additionally, the Design Builder will be entitled to a construction contingency savings incentive fee if upon final completion of Phase A there remains any unspent portion of the construction contingency after the application of any earned incentive fee. In such case, the unused construction contingency will be shared by the Lessee and the Design Builder as follows:

(a) the Design Builder will receive 30% as a construction contingency savings incentive fee, less the

procurement savings staff bonus, to the extent such amount is paid to the Design Builder prior to the payment of the construction contingency savings incentive fee and (b) the Lessee will receive 70%.

### ***Limited Obligation of the Lessee With Respect to Port Authority Payment Obligations***

The Design-Build Contract generally provides that the Lessee is required to remit or cause to be remitted any Material Lessee Scope Change amounts that are due and payable to the Design Builder as Compensation Events under the Lease upon receipt thereof from the Port Authority by the Lessee, including without limitation costs for Port Authority Changes. The Lessee is not otherwise responsible for making payments with respect to Compensation Events or other amounts to be paid by the Port Authority for the benefit of the Design Builder pursuant to the Design-Build Contract until such amounts are received by the Lessee from the Port Authority.

See APPENDIX E – “SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT – “Contract Sum” and “PART 20 – RISK FACTORS – Risks Related to the Lease – Port Authority Right to Withhold Certain Port Authority Funding Amounts.”

### ***Cooperation***

The Design-Build Contract contemplates that the Lessee and the Design Builder will work in a diligent and expeditious manner to actively seek to prevent, avoid, and mitigate potential impacts to construction schedules, scope of D&C Work and increased costs of construction for the Project and other redevelopments, as well as such impacts on the increased costs of Operations and Maintenance Work. The efforts of the Design Builder, the Port Authority, and the Lessee thereunder may include, as appropriate, 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 and the Other Redevelopments, as the case may be. In addition, the Design Builder is required to provide prior written notice to the Lessee as promptly as reasonably possible after becoming aware that an event or a condition has occurred giving rise to a Compensation Event or an Unavoidable Delay Event.

Further, the Lessee and the Port Authority have agreed in the Lease to establish a design and construction working group to review on a regular basis the development of the Project and all drawings, specifications, calculations, reports and other relevant documentation prior to the submission of any submittals to the Port Authority with respect to the D&C Work. The Design-Build Contract requires (i) that the Design Builder be advised of such meetings concerning matters pertaining to the Design-Build Contract, the D&C Work or the coordination of the D&C Work with separate contractors and the contractors working on other redevelopments and of the matters to be addressed at such meetings, and (ii) if such participation is requested by the Port Authority or the Lessee, the Design Builder is to participate in such meetings or otherwise provide such input as may be necessary or desirable.

Finally, the Lessee is exposed to certain risks arising from potential issues in required coordination with third-party interfacing work that could delay or increase the cost of the D&C Work, including risks associated with delays to the Port Authority’s performance of the Port Authority Enabling Work, which includes, among other things, the construction of the Roadway Network and the GTC. See ‘PART 4 – THE PROJECT – Construction Progress,’ Under the Lease, the Lessee is required to coordinate the D&C Work with all adjacent terminal operations, third-party work and interfaces. To the fullest extent possible, such obligations have been passed through to the Design Builder under the Design-Build Contract. The Lessee has entered into that certain Construction Coordination Agreement, dated as of June 10, 2022 (the “Construction and Coordination Agreement”) with the Port Authority, which governs construction related conflicts between the Lessee and the Port Authority and set 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. The Lessee has also entered into that certain NTO Delta Construction Coordination Interface Agreement, dated as of June 10, 2022 (the “NTO Delta Construction Coordination Interface Agreement”), with Delta which sets forth the procedures for cooperation among the parties with respect to, and coordination of (i) the surrender of the Terminal 2 area and the former Terminal 3 area of Delta to the Port Authority, (ii) the transitional obligations with respect to the closure of fuel lines and environmental transition obligations in the Terminal 2 area and the former Terminal 3 area, (iii) the use of de-icing pads rights located on the Premises granted by the Lessee to Delta during a certain period of time, and (iv) the cooperation and coordination activities in connection with the redevelopment of Terminal One pursuant to the Lease. The Lessee may enter into additional interface agreements during the DB D&C Work period. The Design Builder has included the known costs associated with complying with the Construction and Coordination Agreement and the NTO Delta Construction Coordination Interface Agreement in the Contract Sum and must comply with the terms and requirements of such agreements and other future interface agreements to the extent applicable to the DB D&C Work.

## **Change Orders and Material Lessee Scope Changes**

### ***Lessee Changes***

The Design Builder will receive no relief for time or money under the Design-Build Contract for a change that the Lessee effectuates in the design and construction of the DB D&C Work, either (i) itself, (ii) as a result of a Compensation Event, a Port Authority Change or a qualifying design and construction change permitted by the Lease for which the Design Builder is entitled to Equivalent Project relief, (iii) as a result of a change expressly permitted by the Design-Build Contract, or (iv) through a field proceed order. The Design Builder is entitled to relief only if such change is deemed to be a Material Lessee Scope Change.

### ***Material Lessee Scope Changes***

The Design-Build Contract includes a mechanism that allows the Lessee to require changes to the scope of the D&C Work. The Design Builder is entitled to additional compensation for Material Lessee Scope Changes, which includes changes that are (i) initiated, or is an act, in the first instance by Lessee (excluding any Port Authority Changes) or (ii) either (a) arise out of a specific right or entitlement granted to the Design Builder by the terms of the Design-Build Contract, or (b) are not reasonably inferable from the other Project Documents and were not reasonably capable of having been clarified by the Design Builder prior to the Contract Sum setting date, (iii) it cannot be reasonably anticipated from the basis of design, RFP documents or available documents, (iv) are material in nature (either alone or in the aggregate), as reasonably determined by the Lessee, or (v) it is expressly stated in the Design-Build Contract as being a Material Lessee Scope Change and complies with the requirements under the Design-Build Contract. If a Material Lessee Scope Change increases the actual direct DB D&C Work costs, general conditions cost and/or extends the baseline schedule and/ or milestone event date, resulting in a corresponding increase in the Contract Sum, then (i) the direct DB D&C Work costs will be increased by the amount of the actual net increase in direct DB D&C Work cost attributable to such change, (ii) the general conditions costs will be increased by 5% of the direct DB D&C Work costs attributable to such change, (iii) the baseline schedule and/or milestone event date will be extended by the impact to the DB D&C Work’s critical path attributable to the change, as applicable, and (iv) the base fee will be adjusted until the aggregate value of all change orders exceeds \$100 million of the aggregate cost of the DB D&C Work. If a Material Lessee Scope Change decreases the actual direct DB D&C Work costs, then (i) the direct DB D&C Work costs will be decreased by the amount of the actual net decrease in direct DB D&C Work cost attributable to such change, (ii) if the baseline schedule and/or milestone event dates is/are shortened by such change, the baseline schedule and/or milestone event dates will be shortened by the impact to the DB D&C Work’s critical path attributable to the change, as applicable, and (iii) if the direct DB D&C Work costs are reduced by more \$5 million and critical path of baseline schedule is shortened by such change, then the general conditions costs

will be decreased by the lesser of the actual reduced general conditions costs or 5% of the net reduction to the direct DB D&C Work costs attributable to such change, and the base fee will not be reduced.

As of May 2024, 38 Change Orders (as defined in the Design-Build Contract) have been approved, of which 34 are considered Material Lessee Scope Changes and the remaining four are in respect of certain compensation events and construction allowances. The Change Orders relate to (i) the Design Builder's staff insurance, (ii) construction and inspection of automated baggage belts and baggage lift, (iii) electric busing, charging stations and electric provisions in connection with electric buses, (iv) rights of way for certain areas and lanes, (v) space permits for certain areas, (vi) crossover connections and simulation of the baggage handling system, (vii) manifold and controls at a satellite fuel farm, (viii) lounge elevators and drainage and ventilation works for restroom installation at first class lounges, (ix) national grid gas works, (x) construction of boarding bridges and proofing gates and gate renumbering, (xi) parking lot infrastructure and equipment, (xii) the Fitwel building certification, (xiii) installment of video walls, (xiv) trailer for the Cauley Coach bus drivers and operators, (xv) certain repairs at the Delta hardstands, (xvi) a chemical and biological detection system, (xvii) architectural renderings for art and branding concepts, (xviii) the shuttle connecting Terminals 1 and 8, (xix) certain changes to the AlphaStruxure electric-grid scope of work, (xx) a video controller engine for dynamic navigation, (xxi) the urban umbrella system for a pedestrian walk, (xxii) the RUGTC Contract, (xxiii) smart restrooms technology, (xxiv) hydraulic fluid discovered at the Terminal 3 elevator pits, (xxv) the installation of two cams at the new trailer and Delta departures roadway and (xxvi) the repair and paving of certain zones at the Terminal 4 bus lane. The Lessee continues to evaluate potential Change Orders that, if executed, are expected to adjust the Contract Sum. As of May 2024, the Lessee does not currently believe that these Change Orders materially alter the scope of the D&C Work or have a material impact on the schedule.

### ***Design Builder Changes***

In the event that the Design Builder wants to propose a change to the Lessee that is not otherwise provided for in the Design-Build Contract ("Design Builder Change"), the Design Builder will for each proposed change, provide the Lessee with a change order proposal. If the Design Builder Change proposed in accordance with the Design-Build Contract constitutes a Lessee Change under the Lease, if proposed by the Lessee, then the Design Builder must provide a change order proposal, which must also satisfy the requirements of the Lease. The Lessee will review such change order proposal and submit any such proposal (if acceptable to the Lessee) to the Port Authority as a Lessee Change (as defined in the Lease). If the Design Builder Change proposed in accordance with the Design-Build Contract does not constitute a Lessee Change, and therefore, does not require the review or approval of the Port Authority, the Design Builder will submit a change order proposal to the Lessee, and the Lessee will approve or reject such request within 10 days after receipt thereof from the Design-Build Contract.

### ***Port Authority Changes***

In connection with Port Authority Changes (as further described above under the Lease), the Lessee will hold the Port Authority Reserve Amount (as defined in the Lease) of \$100 million for the entire Project, of which \$80 million is for Phase A, to be set aside for the purpose of funding any Port Authority Change. The Design Builder is entitled to recover any increase to the direct DB D&C Work costs attributable to such changes to the extent authorized by the Lessee.

### **Warranty**

The warranty period under the Design-Build Contract is the same as required by the Lessee under the Lease, which is within one year (or, if available on cost effective terms, two years) after (i) the date that the Port Authority issued a certificate of substantial completion or, (ii) for phased construction, from the date of the certificate of substantial completion for such phase. For any portion of the D&C Work that is

repaired in the guaranty period, such term will be for one (1) year (or two (2) as applicable) from the date of repair or replacement.

The Design Builder warranted and guaranteed (the “Warranty”) to the Lessee that:

(i) the design of the Project (as applicable to the DB D&C Work) and the completed DB D&C Work will satisfy the requirements of the Design-Build Contract, the Lease, the requirements and provisions for work, the basis of design, and the other Project Documents;

(ii) the DB D&C Work will be performed in a good and workmanlike manner, in conformity with the Project Documents and consistent with best management practices and the Standard of Care, as applicable, free of any faults or defects in equipment, material, or design furnished, or workmanship performed by the Design Builder, or any subcontractor, supplier or manufacturer retained by the Design Builder for purposes of performing the DB D&C Work;

(iii) all DB D&C Work including materials and equipment furnished as part of the construction, will be (a) complete and conform to best management practice, (b) new (unless otherwise specified herein or in the requirements and provisions for work), of good quality, in conformance with the applicable laws, applicable standards, the Project Documents, the Design-Build Contract, and the requirements and provisions for work, and (c) once completed, free of all defects in design, materials and workmanship and with respect to the design work only, fit for its intended purpose;

(iv) the final design documents, including all final construction applications approved by the Port Authority will (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 Lease Completion Date; and

(v) design professionals will perform the design work in accordance with the Standard of Care.

## **Compensation Events and Delay Events**

### ***Compensation Events***

Subject to Equivalent Project Relief and the terms of the Design-Build Contract (including all applicable notice requirements), the Design Builder is entitled to seek relief from the Lessee for Compensation Events as provided for in the Lease. See “PART 5 – THE LEASE – Compensation Events.”

### ***Delay Events***

Pursuant to the Lease, upon the occurrence of a Delay Event during the D&C Work Period affecting the performance of the D&C Work, and subject to compliance with the requirements thereof, the Lessee will be (i) excused from its obligation to perform the D&C Work to the extent such performance is directly prevented or delayed by the Delay Event and (ii) will be entitled to an extension of the applicable Scheduled Completion Date on a day-for-day basis for any delays in the performance of the D&C Work directly caused by such Delay Event, taking into account impacts of the Delay Event on the critical path in the Baseline Schedule 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 the Scheduled Completion Date of the relevant Phase. If the Lessee fails to deliver notice of a Delay Event within the required period set forth in the Lease, the Lessee 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 “PART 5 – THE LEASE – Delay Events.”

## Unavoidable Delay Events

Pursuant to the Design-Build Contract, the Design Builder's right to seek schedule relief from the Lessee is limited to the following unavoidable delay events, which are narrower than the Delay Events provided for in the Lease:

- (i) terrorism or war;
- (ii) strikes (not specific to the DB D&C Work) that are beyond the Design Builder'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 Design Builder or any subcontractor's negligence or willful misconduct);
- (iv) embargoes or interdictions;
- (v) abnormal inclement weather documented in accordance with the Design-Build Contract;
- (vi) failure to deliver the First Additional Premises by the date set forth in the baseline schedule;
- (vii) a delay in the delivery of material or a suspension of the Work caused by an order issued by a Governmental Authority or international governmental authority in response to an epidemic or pandemic as determined by the World Health Organization, Centers for Disease Control or other United States governmental authority with jurisdiction over the Project or the DB D&C Work;
- (viii) Compensation Events, subject to terms and conditions of the Design-Build Contract and the Lease;
- (ix) acts or omissions or willful misconduct of Lessee related entities or their agents, including without limitation the ORAT Contractor, the Taxable REIT Subsidiary, operation and maintenance contractors of Lessee, the operations and maintenance contractor, Lessee's separate contractors, and not subject to Equivalent Project Relief, subject to a notice and 10 day opportunity to cure, unless the critical path is delayed, and in which case the Design Builder will provide Lessee with written notice and three Business Days opportunity to cure; and
- (x) delay of Green Garage demolition commencement date, provided that such delay is proximately caused by the non-issuance of the notice to proceed for the Project.

If a delay results from the above unavoidable delay events, then subject to the negligence, willful misconduct, or fault or breach of the Design-Build Contract by the Design Builder or its subcontractors, the milestone date for the applicable milestone event will be extended for each day of delay to the critical path of the Project attributable to the unavoidable delay event (subject to notice requirements).

To the extent of an unavoidable delay event in (i) through (vii), the Design Builder will only be entitled to relief to the extent the Lessee is granted such Equivalent Project Relief by the Port Authority under the Lease (other than Delay Events as defined in the Lease, which the Design Builder is not entitled to). In the event of an unavoidable delay in (i) through (vii), the Design Builder will be entitled only to (a) an extension of time as provided in the immediately preceding paragraph, and (b) relief from Liquidated Damages to the extent that such unavoidable delay impacts the critical path for the achievement of the Liquidated Damages milestone event date.

To the extent of an unavoidable delay event in (viii), the Design Builder will only be entitled to relief to the extent the Lessee is granted such Equivalent Project Relief by the Port Authority under the

Lease (other than Delay Events as defined in the Lease, which the Design Builder is not entitled to). In the event of an unavoidable delay in (viii), the Design Builder will be entitled to (a) such relief as set forth in the Design-Build Contract, and (b) relief from Liquidated Damages to the extent that such unavoidable delay impacts the critical path for the achievement of the Liquidated Damages Milestone Event Date.

In the event of an unavoidable delay under (ix) and (x), the Design Builder will be entitled to a Material Lessee Scope Change for such delay, including relief from Liquidated Damages to the extent that such unavoidable delay impacts the critical path for the achievement of the Liquidated Damages milestone event date.

If the Design Builder identifies steps to avoid or mitigate an unavoidable delay and obtains Developer's prior written approval, then the Design Builder will 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. See "PART 8 – CONSTRUCTION OF PHASE A OF THE PROJECT – Change Orders and Material Lessee Scope Changes." No extension of time will be granted by reason of an unavoidable delay event if and to the extent that the Design Builder could have avoided or mitigated the resulting delay at the Developer's cost subject to the Design-Build Contract.

### **Equivalent Project Relief**

The Design-Build Contract provides that, so long as the Design Builder complies with the requirements of the Design-Build Contract and subject to the limitations set forth thereunder, the Design Builder 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 obligations under the Design-Build Contract, as those of the Lessee under the Lease; provided that such rights, benefits or entitlements under the Design-Build Contract with respect to Compensation Events, Port Authority Changes and Qualifying D&C Changes are conditioned upon the existence and enforcement of a corresponding right, benefit or entitlement of the Lessee under the Lease ("Equivalent Project Relief"). The Design Builder is not entitled to any form of schedule relief, delay event, monetary relief, or change order under the Design-Build Contract or the Lease, unless and only to the extent that (i) the Lessee is able to and does actually secure relief for a Compensation Event under the Lease or (ii) the Design Builder is entitled to a Material Lessee Scope Change under the Design-Build Contract. The Design Builder has no right to assert any claim for Equivalent Project Relief or Compensation Events directly against the Port Authority

Pursuant to the Design-Build Contract, the Design Builder must provide any claim for Equivalent Project Relief to the Lessee within sufficient time and in sufficient detail to enable the Lessee to review such claim and to submit such claim for which Equivalent Project Relief may be available to Developer to the Port Authority in accordance with the requirements of the Lease.

At the Lessee's request, the Design Builder is required to participate in the discussions with the Port Authority with respect to any claim for Equivalent Project Relief relating to Design Builder's obligations under the Design-Build Contract. Although the Design-Build Contract provides that the Lessee will take the lead in all such discussions with the Port Authority and that Lessee may settle any reasonable Claim by the Design Builder without the consent of the Design Builder, if in such circumstances the amount requested in such Claim by the Design Builder is greater than the amount for which the Lessee settles such Claim, then the Design Builder may bring a claim against the Lessee in respect of such difference.

The Lessee may decline to pursue any claim provided by the Design Builder that the Lessee determines (in its reasonable discretion) and informs the Design Builder in writing is not a reasonable claim. Any dispute with respect to whether a claim submitted pursuant to the terms of the Design-Build Contract by the Design Builder constitutes a reasonable Claim will be subject to a dispute resolution procedure. If the dispute resolution procedure determines that a claim provided by the Design Builder was a reasonable

claim and the Lessee failed to submit such reasonable claim, the Lessee will be required to promptly submit such reasonable claim to the Port Authority or, if such reasonable Design Builder claim is time barred by the terms of the Lease, the Lessee will be required to promptly pay the Design Builder the amount of Equivalent Project Relief that the Design Builder would have otherwise been entitled to receive with respect to such reasonable claim.

See APPENDIX E – “SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT – Changes in the DB D&C Work – Equivalent Project Relief.”

### **Delay and Liquidated Damages**

The Design Builder must pay to the Lessee Liquidated Damages in the fixed dollar amount of \$470,335 per day, for each day after June 1, 2026 that the Design Builder fails to achieve the Completion Date for Phase A, subject to a grace period and an overall cap, and certain carve outs. The Lessee may set-off any amounts payable to the Design Builder to pay Liquidated Damages.

The Design-Build Contract limits the exposure of the Design Builder for Liquidated Damages to \$320 million, subject to carve-outs for: (i) claims arising out of the Design Builder’s gross negligence or willful misconduct; (ii) claims covered by the Design Builder’s insurance required to be maintained pursuant to the Design-Build Contract; (iii) the Design Builder’s refusal to perform because the Lessee exercises its right to withhold or the Design Builder stops work during the pendency of a dispute; (iv) personal injury and property change claims; (v) the Design Builder’s failure to assign contracts upon termination, to the fullest extent permitted by law; (vi) the Design Builder preventing the Lessee’s personnel reasonable access to any portion of the Project Site or DB D&C Work; or (vii) the Design Builder breaching any anti-bribery and anti-corruption laws including OFAC.

### **Limitation of Liability**

Except with respect to: (i) claims arising out of the Design Builder’s gross negligence or willful misconduct; (ii) third-party claims, including but not limited to third party intellectual property infringement claims or employee labor law claims; (iii) the Design Builder’s refusal to perform because the Lessee exercises its right to withhold or the Design Builder stops work during the pendency of a dispute; (iv) personal injury and property damage claims; (v) the Design-Build’s failure to assign contracts upon termination, to the fullest extent permitted by law; (vi) the Design Builder preventing the Lessee’s personnel reasonable access to any portion of the Project Site or DB D&C Work; or (vii) the Design Builder breaching any anti-bribery and anti-corruption laws, including OFAC, the Design Builder’s total aggregate liability to Lessee related entities in connection with the Design-Build Contract will be limited to an amount equal to 35% of the Contract Sum for the entire Project.

Further, to the extent permitted by law, except with respect to: (i) claims arising out of Design Builder’s or any design professional’s gross negligence or willful misconduct; (ii) third party claims, including but not limited to third party intellectual property infringement claims or employee labor law claims; (iii) Design Builder’s refusal to perform because the Lessee exercises its right to withhold or Design Builder stops work during the pendency of a dispute; (iv) personal injury and property damage claims; (v) Design Builder’s failure to assign contracts upon termination, to the fullest extent permitted by law; (vi) Design Builder preventing Lessee’s personnel reasonable access to any portion of the project site or DB D&C Work; or (vii) Design Builder breaching any anti-bribery and anti-corruption laws, including OFAC, Design Builder’s aggregate liability to the Lessee and the Lessee related entities for any errors or omissions in the design work or any design services provided under the Design-Build Contract will be limited to \$50 million (the “Design Limitation of Liability”). Notwithstanding the foregoing, the Design Limitation of Liability will not apply to claims arising out of, resulting from, or in any way related to the willful misconduct or independent negligence of the Design-Build Contract.

## **Indemnity**

To the fullest extent permitted by law, under the Design-Build Contract, Design Builder is required to indemnify, defend and hold harmless each of the indemnitees (including the Port Authority indemnified parties), from and against any and all 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 failure to comply with the applicable terms of the Lease or the Basic Lease or causing Lessee to fail to comply with the terms of the Lease or the Basic Lease, (iii) the infringement of any intellectual property right arising out of the performance of any of the DB D&C Work or Services, (iv) personal injury or property damage; or (v) the gross negligence or willful misconduct of the Design Builder or its subcontractors, provided that the Design Builder's defense obligation will not apply with respect to claims actually covered by the professional liability policies of architect or any design professional and/or the Design Builder contractor's protective professional indemnity insurance policy, in which case Design Builder's obligations under the Design-Build Contract will be limited to indemnification and to hold the indemnitees harmless. Each of the foregoing (i)-(v) will be referred to as a "Recovery Action."

## **Construction Security**

### ***Parent Company Guaranty and Payment and Performance Bonds***

The Lessee has entered into a parent company guaranty, dated as of June 3, 2022 (the "Parent Company Guaranty") with AECOM, the Design Builder's parent company, pursuant to which AECOM unconditionally, absolutely and irrevocably guarantees to the Lessee the performance and satisfaction of the Design Builder's obligations under the Design-Build Contract, with an aggregate liability of \$500 million. See "PART 8 – CONSTRUCTION OF PHASE A OF THE PROJECT – Termination Rights – Direct Agreement and Port Authority Step-In Rights."

Pursuant to the Design-Build Contract, the Design Builder has agreed to furnish a payment and performance bond to the Lessee, guaranteeing the Design Builder's payment and performance obligations under the Design-Build Contract in the amount of \$500 million, subject to certain terms and conditions as set forth in the Design-Build Contract. At the Lessee's sole election, Lessee may require the Design Builder to furnish an additional performance and payment bond for all or a portion of the Parent Company Guaranty. In no event will the aggregate value of the performance and payment bond furnished by the Design Builder and the Parent Company Guaranty exceed \$1 billion.

### ***D&C Letter of Credit***

In connection with the Design-Build Contract, the Design Builder has furnished an irrevocable standby letter of credit, on terms acceptable to the Lessee and the Port Authority and issued by an Eligible LC Issuer satisfactory to the Lessee, in favor of the Lessee, in a form and substance sufficient per the requirements of the Lease, and substantially in the form approved by Lessee, securing the payment and performance of the obligations of the Design Builder under the Design-Build Contract ("D&C Letter of Credit"). The D&C Letter of Credit is in an aggregate amount equal to \$171,789,858.75 until June 1, 2026 (the Scheduled Completion Date of the DB D&C Work), in each case as may be further adjusted by mutual agreement of the parties and consistent with the requirements of the Lease and the Design-Build Contract. The D&C Letter of Credit has been issued upon terms satisfactory to the Port Authority, the Lessee, and the Lenders, securing its performance under the Design-Build Contract. Each D&C Letter of Credit provides that such D&C Letter of Credit may be transferred by the Lessee to the Port Authority, the Collateral Agent, and/or any lender as transferee beneficiary in the event that the Port Authority, the Collateral Agent, or any lender, as applicable, succeeds to the position of the Lessee under the Design-Build Contract. Such D&C Letter of Credit must remain in effect until the later of the calendar date stated therein to be the final expiration date thereof, or the Substantial Completion of Phase A.

For so long as the Design Builder is obligated to maintain the D&C Letter of Credit, not later than 60 days prior to the stated expiration date of such letters of credit, the Design Builder will renew or replace each such letter of credit with one or more replacement letters of credit. If the Lessee (or other beneficiary of the D&C Letter of Credit following a transfer) does not receive a replacement letter of credit from an Eligible LC Issuer within the time specified in the Design-Build Contract, the Lessee (or other beneficiary of the D&C Letter of Credit following a transfer) may draw on the full available amount of the applicable D&C Letter of Credit.

Lessee will also have the right to draw upon each D&C Letter of Credit upon simultaneous notice to the Design Builder in the event that: (i) the Design Builder is in default pursuant to the terms of the Design-Build Contract and has failed to cure such default to the Lessee's reasonable satisfaction within the relevant cure period; (ii) the Design Builder has failed to provide Lessee with a replacement letter of credit within 60 days prior to the stated expiration date of such D&C Letter of Credit; (iii) the issuer of the D&C Letter of Credit no longer constitutes an Eligible LC Issuer and the Design Builder has failed to deliver a new letter of credit within 10 days after the date such issuer failed to constitute an Eligible LC Issuer; or (iv) Design Builder defaults due to bankruptcy.

### ***Retention***

Retainage of 10% of the base fee will be held by the Lessee, until the DB D&C Work is 50% complete, at which time no further retention will be withheld by the Lessee. Retention will be released as part of the final payment, except with respect to the completion of certain early trades as expressly agreed to by the Lessee.

## **Suspension Rights**

### ***Port Authority's Right to Suspend***

As defined in the Lease, the Port Authority will have the right to suspend the D&C Work for:

- (i) any failure by the Design Builder to comply with the Lease, the Design-Build Contract, any applicable laws/ applicable standards/ Governmental Approval/ or comprehensive security plan;
- (ii) the existence of conditions unsafe for workers/ general public or as a result of any determination by the Port Authority as necessary to respond to good order requirements;
- (iii) an Emergency;
- (iv) a Force Majeure event;
- (v) the presence of a "VIP," dignitary or other person requiring special security arrangements or expedited handling at the Airport;
- (vi) as the Port Authority determines necessary to respond to good order requirements; and/or
- (vii) Labor Troubles.

### ***Lessee's Right to Suspend***

The Lessee has the right to suspend the Project, in whole or in part, at any time. If such suspension is for a period in excess of five consecutive days, the Design Builder will be entitled to a Change Order for (i) an adjustment to the baseline schedule actual and milestone events, (ii) additional general conditions costs incurred by reason of such suspension beyond such period, and (iii) certain additional costs, provided

that the Design Builder uses commercially reasonable efforts to mitigate. In the event the DB D&C Work is suspended by Lessee for 180 days or longer, for reasons other than: (a) a failure of the Design Builder to perform the DB D&C Work in accordance with the Design-Build Contract; or (b) any suspension implemented at the direction of the Port Authority, the Design Builder may elect to terminate the Design-Build Contract, which termination will be deemed a termination for convenience pursuant to the Design-Build Contract.

### ***Design Builder's Right to Suspend***

In the event that the Lessee fails to make payments of any undisputed amounts due to the Design Builder in accordance with the terms of the Design-Build Contract, then the Design Builder may suspend the DB D&C Work after providing written notice and 14 days' opportunity to cure to the Lessee, and provided further that the Lessee fails to cure and make such payment of undisputed amounts to the Design Builder within such 14 day period. If such suspension exceeds 20 days, then the Design Builder may terminate the Design-Build Contract. If the Lessee pays the undisputed amounts within such 20 day period, following the Design Builder's resumption of performance, the Design Builder will be entitled to a Material Lessee Scope Change for (i) its actual and demonstrated increases to the cost of the DB D&C Work caused by such suspension, and (ii) an equitable extension of the baseline schedule and milestone dates, as applicable, to the extent that the critical path was actually impacted by such suspension.

## **Termination Rights**

### ***Termination by Lessee – For Cause***

Lessee has the right to terminate the Design-Build Contract for cause in whole or in part upon notice to the Design Builder and subject to the applicable cure periods, if any, provided under the Design-Build Contract, upon the occurrence of any of the following, each of which will constitute a "DB Event of Default":

- (i) Design Builder refuses to perform or abandons the DB D&C Work with the intention of not returning to perform the DB D&C Work for a period of more than 15 days in the aggregate, and fails to recommence performance of the DB D&C Work within three days of written notice from the Lessee;
- (ii) Design Builder ceases the DB D&C Work without Lessee's approval or express legal justification and fails to recommence performance of the DB D&C Work within three days of written notice from the Lessee;
- (iii) Design Builder fails to achieve (a) substantial completion of the DB D&C Work by the Scheduled Completion Date or (b) the liquidated damages milestone event by the liquidated damages milestone event date, subject to the terms of the Design-Build Contract;
- (iv) Design Builder repudiates its obligations under the Design-Build Contract;
- (v) Any lien (other than a Permitted Lien or a lien filed due to non-payment by the Lessee) is filed against the Premises because of any act or omission of the Design Builder or any subcontractor;
- (vi) Design Builder fails to maintain required insurance;
- (vii) Design Builder makes changes to key personnel without Lessee's prior written consent;
- (viii) Design Builder fails to provide or utilize the personnel in accordance with the staffing plan;

(ix) Design Builder fails to pay subcontractors promptly or misapplies funds due subcontractors pursuant to the Project Documents;

(x) Provided that the Lessee has made payment of the corresponding amount, the Design Builder fails to pay any taxes required in connection with the DB D&C Work or the Project or pursuant to the Design-Build Contract;

(xi) Design Builder suffers a materially adverse change in its financial condition that impacts the D&C Work or Project;

(xii) Design Builder fails to perform any material obligation under the Design-Build Contract and does not correct such failure within 20 days after receipt of written notice from Lessee specifying such failure;

(xiii) prior to the Lease Completion Date: (a) the Design Builder (1) institutes a proceeding to be adjudicated as bankrupt or insolvent, (2) consents to the institution of bankruptcy or insolvency proceedings against it, (3) 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, (4) will 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 such person or of any substantial part of its property, (5) makes an assignment for the benefit of creditors, (6) is generally not paying, or will admit in writing its inability to pay its debts generally as they become due, or (7) forms any limited liability company, partnership or corporate action for the purpose of the foregoing; or (b) a proceeding of any nature in clause (a) above is commenced against the Design Builder 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 50 days or more;

(xiv) Design Builder 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 or determine that there is an occurrence of an event of default pursuant to the Lease;

(xv) Design Builder fails to make any other payment of fees or charges required hereunder or under the Lease when due to the Port Authority or the Lessee, and the Design Builder fails to cure such failure within five days of written notice from the Lessee;

(xvi) Design Builder fails to keep, perform and observe each every promise covenant and agreement set forth in the Design-Build Contract, the Lease, any other Project Document, the rules and regulations and the Basic Lease on its part to be kept, performed, or observed, (a) within 20 days after receipt of notice of default thereunder from the Port Authority (as received through the Lessee) or (b) such shorter period as may be required by any applicable Governmental Authority, including, without limitation, the City (except, with respect to clause (a) above, where fulfillment of its obligation requires activity over a period of time and the Design Builder will have commenced to perform whatever may be required for fulfillment within 20 days after receipt of notice and diligently continues such performance without interruption, except for causes beyond its control, to completion);

(xvii) any representation or warranty made or deemed to be made by the Design Builder in the Design-Build Contract or in any other certificates or agreements delivered by the Design Builder to the Lessee to be provided to the Port Authority in connection with the Lease is 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);

(xviii) Design Builder fails to comply with Applicable Laws and such failure is not cured within 15 days after the earlier of (a) the Design Builder obtaining knowledge of such failure, and (b) receipt of notice of such failure from the Port Authority (as received through the Lessee) or the applicable Governmental Authority;

(xix) Design Builder fails to comply with the provisions related to compliance with governmental requirements and rules and regulations of the Lease 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;

(xx) Design Builder fails to comply with any written order issued to the Lessee or the Design Builder by the Port Authority in accordance with the Lease to suspend, in whole or in part, the DB D&C Work;

(xxi) Design Builder fails to begin the DB D&C Work (a) with respect to the entire Project, within 15 days after the Port Authority's approval of the comprehensive final design submittal (as such term is defined in the General Provisions) or (b) within 15 days after any Port Authority issuance of the applicable partial approval; provided, however, that the Lessee has issued any notice to proceed so as to allow the Design Builder to commence the DB D&C Work;

(xxii) Design Builder fails to comply with the provisions related to assignment and sublease, non-discrimination minority business enterprises, women-owned business enterprises and local business enterprises, certain representations and warranties and OFAC covenants of the Lease, and such failure is not cured within the applicable cure period;

(xxiii) Design Builder fails to comply with requirements set forth in, and in accordance with the security related provisions of the Lease and such failure is not cured within the applicable cure period;

(xxiv) Design Builder fails to comply in any material respect with the OIG or the Project integrity monitor and such failure is not cured within the applicable cure period;

(xxv) Design Builder fails to keep, perform and observe each and every direction issued by the Port Authority and such failure is not cured within the applicable cure period; and

(xxvi) Design Builder fails to meet required good faith M/WBE, LBE, or SDVOB Project participation requirements, to the extent determined by the Port Authority pursuant to the Lease.

#### ***Termination by the Lessee – For Convenience***

The Lessee has the right to terminate the Design-Build Contract without cause at any time, in whole or in part, by giving the Design Builder at least 60 days' written notice thereof.

#### ***Termination by the Design Builder***

The Design Builder will have the right to terminate the Design-Build Contract upon 20 days written notice and opportunity to cure to Lessee for Lessee's material breaches under the Design-Build Contract which remained uncured for more than 10 days following the date the Design Builder provided written notice to Lessee of such material breach.

The sole liability of the Lessee to the Design Builder under the Design-Build Contract or otherwise, subject to full and complete performance by the Design Builder of its obligations under the Design-Build

Contract, will be payment of the monies payable thereunder, and the Lessee will have no liability to Design Builder for damages or charges of any kind.

#### ***Compensation to the Design Builder Upon Termination – For Cause***

In the event of a termination of the Design-Build Contract, the Design Builder will be paid by the Lessee for the actual costs incurred by the Design Builder in the performance of services or work for the Project up to the date of termination and for all materials, supplies and equipment incorporated in the Project and/or stored at the Project Site or at such off-site storage locations as will have been approved by the Lessee in accordance with the provisions of the Design-Build Contract, it being understood that the Design Builder will not be entitled to recover anticipated profits on account of the base fee 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 Lessee will have no obligation to pay the Design Builder for any amount to be paid by the Port Authority in the event of such termination, unless and until the Lessee first receives such payment from the Port Authority pursuant to the Lease.

#### ***Compensation to the Design Builder Upon Termination – For Convenience***

Upon a termination for convenience, the Design Builder will retain all sums of money paid to the Design Builder, except if and to the extent such sums of money are due to subcontractors or were paid in advance to the Design Builder prior to the payment becoming due to the Design Builder, in which event the Design Builder will pay the same, immediately upon the Lessee's direction, to such subcontractors or to the Lessee, and the Lessee will pay to Design Builder, subject to the Lessee's right to withhold payments to the extent permitted under the terms of the Design-Build Contract, (i) all retainages, if any, earned by the Design Builder except retainages as to any subcontracts assumed by Lessee; (ii) a sum of money equal to the cost of the DB D&C Work incurred under the Design-Build Contract by the Design Builder for which payments have not theretofore been made under the Design-Build Contract, including all reasonable costs of demobilization, close-out and site stabilization costs; and (iii) the pro rata portion of the base fee applicable to the DB D&C Work performed by the Design Builder through the effective date of such termination, including any "true up" thereof. In the event of such termination of the Design-Build Contract, the Design Builder will not be entitled to receive anticipated profits on any DB D&C Work not yet performed or any damages, consequential or otherwise.

#### ***Direct Agreement and Port Authority Step-In Rights***

The Design Builder has entered into that certain direct agreement, dated as of June 10, 2022 (the "D&C Contractor Direct Agreement") with the Lessee, the Taxable REIT Subsidiary and the Collateral Agent, pursuant to which, among other things, the Design Builder consented to the collateral assignment of the Design-Build Contract by the Lessee to the Collateral Agent as security for the Secured Obligations (including the Series 2024 Bonds) and, subject to certain conditions, granted the Collateral Agent certain cure and step-in rights regarding the Design-Build Contract following a default thereunder by the Lessee.

The Lessee has entered into that certain direct agreement, dated as of June 10, 2022 (the "Parent Guarantor Direct Agreement"), with AECOM, the Design Builder's parent company, pursuant to which AECOM consented to the collateral assignment of the Parent Company Guaranty by the Lessee to the Collateral Agent as security for the Secured Obligations (including the Series 2024 Bonds) and, subject to certain conditions, granted the Collateral Agent certain cure and step-in rights regarding applicable assigned contract following a default thereunder by the Lessee.

Subject to the rights of the lenders pursuant to the D&C Contractor Direct Agreement and the Parent Guarantor Direct Agreement, as applicable, upon receipt by the Lessee of written notice from the

Port Authority, the Port Authority is entitled to exercise the Lessee's rights with respect to the Design-Build Contract, without any necessity for a consent or approval from the Lessee or the making of a determination whether the Port Authority validly exercised its step-in rights (the "Port Authority Step-In Rights"). To the extent that the Port Authority exercises the Port Authority Step-In Rights, the cure periods in connection with the termination of the Design-Build Contract will be tolled and extended accordingly.

If upon the occurrence and during the continuation of an event of default under the Lease caused by Design Builder the Port Authority seeks to enforce its rights against the Lessee as set forth in the Lease, then the Lessee will also have the right, at any time, to make a claim at law or in equity, for damages or injunctive relief against the Design Builder.

## **PART 9 - ENVIRONMENTAL, SOCIAL AND GOVERNANCE**

### **Sustainability Plan – Environmental, Social and Governance**

#### ***Overview***

The Lessee has developed a sustainability plan (the "Sustainability Plan"), which sets forth a holistic Environmental, Social and Governance ("ESG") policy, with world-class policies and procedures. The Lessee's Sustainability Plan sets forth specific, quantifiable goals that look to align with the Port Authority's Sustainable Building Guidelines and which are expected to be supported by third-party verification, including both Leadership in Energy and Environmental Design ("LEED") and Envision certifications.

The Sustainability Plan defines sustainability as the use, development, and protection of resources in a way that enables the Lessee to maintain current projected occupant and operational needs without compromising the ability to do so in the future. In this context, resources include land, air, and water along with the inherent value of the natural resources, biodiversity, and life-supporting functions associated with them; energy and materials for development and construction; the essential historical, cultural, and geographic character of the location; and the diversity of economic activities and opportunities available to the community.

The Sustainability Plan intends to define what sustainability means for the New Terminal Facilities. Through the Sustainability Plan, the Lessee expects to: (i) develop specific, quantifiable goals and objectives to meet the initiatives established by the Port Authority; (ii) collect baseline data on the project's current status toward meeting the goals; (iii) implement action steps to realize the stated performance thresholds; (iv) communicate the plan to all stakeholders; (v) monitor effectiveness based on the metrics; and (vi) make data-based modification when needed. The Sustainability Plan is a roadmap for achieving long-term goals and documents strategies to continue the program, activities, and partnerships into the future. The Sustainability Plan represents a benchmark for future performance and its successful implementation is expected to be verified annually with robust metering, measurements, and monitoring.

#### ***Implementation and Monitoring of Sustainability Initiatives***

The New Terminal Facilities are designed to meet the Port Authority's Sustainability Initiatives, LEED v4 Silver Certification, Envision v3 Gold Verification, and SITES v2 Certification. To achieve these thresholds, the design of the New Terminal Facilities employs extensive infrastructure and system integration: energy usage and monitoring, indoor air quality reporting, direct digital controls for air handling units with numerous sequencing, overrides, and safety devices; metering and alarm monitoring for plumbing systems; comprehensive analysis and metering of electrical loads, emergency power distribution and UPS; programmable low voltage lighting systems with daylight and occupancy sensors; and power distribution integration with solar photovoltaic array and fuel cells. While under construction, thresholds

for demolition and construction waste will be achieved with planned strategies for waste stream diversion from landfill and environmentally preferable transportation strategies. Once operational, the New Terminal Facilities will be served by a comprehensive asset management system to ensure planned performance in the future.

### ***Sustainable Design***

The Sustainability Plan outlines specific sustainable design, procurement, construction and operations activities, covering, among others, the following environmental objectives: (i) meeting the Port Authority's greenhouse gases ("GHG") emissions reduction goal of 80% by 2050, (ii) meeting the 2020 New York City Energy Conservation Code to achieve a minimum 20% source energy use reduction compared to baseline operations, (iii) improving air quality with all-electric ground support equipment and designated electric vehicles charging parking spots, (iv) recycle captured water to reduce potable water consumption, (v) minimizing waste from demolition, construction, and on-going operations, (vi) incorporating acoustic design that meet industry, legislative, and LEED requirements, (vii) improving site ecology and biodiversity including bird collision deterrence, habitat restoration through enhanced ground level landscape, and (viii) improving site biodiversity through all green roof areas and site planting elements.

*Stormwater Capture and Reuse and Reduction of Portable Water Consumption.* The New Terminal Facilities' design includes the collection of 50% of the rainwater from the roof into a storage and treatment system for distribution for use as grey water toilet flushing and indoor irrigation.

*Aircraft Deicing Fluid Capture and Recovery.* As a part of a comprehensive stormwater pollution prevention plan, 60% of aircraft deicing fluid is expected to be captured.

*All-Electric Ground Support Equipment.* The New Terminal Facilities are expected to deploy all electric ground equipment and fleet and supporting charging equipment. Performance monitoring during operations is expected to evaluate the charging management strategy, energy consumption at each charger, charging process specific to each vehicle type, charger productivity, and energy consumption by integration with a building energy management system.

*Renewable Energy.* The New Terminal Facilities are expected to include an energy system providing electricity, medium temperature hot water, and chilled water. This approximately 12.3 megawatt microgrid is expected to comprise of solar photovoltaic arrays with an estimated capacity of a total of approximately 8 MWdc, with 6.4 MWdc Phase A, 0.8 MWdc Phase B1 and 0.7 MWdc Phase B2, battery energy storage, and fuel cells.

*Source Energy Use Reduction.* The Lessee has submitted an energy model to the Port Authority based on the terminal design for New Terminal Facilities demonstrating achievement of a minimum 20% source energy use reduction using the American Society of Heating, Refrigerating and Air Conditioning Engineers Standard 90.1-2016 as the baseline.

*Reduction of Greenhouse Gas Emissions.* The New Terminal Facilities are expected to achieve the annual building emissions limits established by New York City Local Law 97 requirements. Lessee's energy service provider responsible for the microgrid's design, construction, and operation has estimated that the microgrid production will generate 38% less greenhouse gas emission than grid sourced energy.

### ***Sustainable Construction Activities***

The Design Builder maintains the following sustainable construction activities:

1. Construction-Related Air Quality Measures.
  - a. Minimizing off-site truck trips by utilizing on-site rock/concrete crushing;
  - b. Prohibiting staging or parking on neighborhood streets, especially when adjacent to schools, hospitals, or daycare;
  - c. Minimizing off-site worker trips by providing access to on-site lunch trucks; and
  - d. Implementing Community Air Compliance Plan which implements the Air Monitoring System developed by the Port Authority.
2. Transportation-Related Air Quality Measures - Designated off-site employee parking with zero- or low-emissions shuttle to the construction site.
3. Storm Water Pollution Prevention Plan.
4. Waste Management Plan.
  - a. Construction Waste Diversion Rate;
  - b. Diversion rate for asphalt, concrete, steel, and soil;
  - c. Operational Waste Diversion Rate; and
  - d. Recycling rate of thermoplastics, glass, paper, carton, metal, and other recyclable materials.

### ***Sustainable Operations***

Lessee's waste management strategy is a multilayered approach designed to establish the facility and its operations as efficient and sustainable. This strategy stems from the organization's mission and values and supports the organization's goals, including alignment with and commitment to the Port Authority's vision of achieving a 90% waste diversion rate for new facilities.

At the completion of the construction of the New Terminal Facilities, Lessee is expected to implement a comprehensive waste management plan that will:

1. achieve a 90% diversion rate (excluding aircraft-generated waste);
2. provide 100% recycling of thermoplastics, glass, paper, carton, metal, and other recyclable materials (excluding international waste which must be incinerated); and
3. reuse 100% of organic waste through composting (excluding international waste which must be incinerated).

Within its operations, the Lessee will leverage resources to lead in airport waste management by:

1. Preventing waste at the source;
2. Reducing waste generation;
3. Reusing items and materials;

4. Recycling materials, including composting/organics;
5. Monitoring opportunities to improve waste management; and
6. Adapting accordingly.

This waste management strategy is expected to provide operational, environmental, social, and financial benefits for the facility, its partners, and the community. The Lessee is expected to pursue third party verification and certification of the waste management program performance in accordance with ISO standards.

### ***Sustainable Social Impact and Community Engagement***

The Lessee is a funding contributor to the community development fund which is overseen by the JFK Redevelopment Community Advisory Council. The Council works with the Port Authority to expand community outreach efforts and develop community-focused programs to provide meaningful and sustainable opportunities for local and diverse businesses, Minority- and Women-Owned Business Enterprises (“MWBE”), students, and jobseekers. The Lessee expects, through the community development fund, to establish the JFK Academy to facilitate career training that leads to well-paying jobs for residents which is critical to the local economy and also maximize the terminal's operational efficiency, developing a skilled locally based workforce in the local community.

The Lessee is committed to 30% MWBEs target participation, and expects to prioritize the participation of firms in Queens and Western Nassau County. To date, primarily through its construction procurement, the Lessee has commitments of over \$1bn with MWBE firms, \$250 million with Local Business Enterprises, and \$18 million with service-disabled veteran-owned businesses. In the construction of the New Terminal Facilities, the Lessee is exceeding workforce goals for minority workers and has implemented dialogue with union leadership and apprentice programs to increase minority participation as skilled labor and participation of women in the labor workforce. Once the New Terminal Facilities are operational, the Lessee expects that 50% of food and beverage concessions will be reserved for local businesses and 30% “Airport Concessions Disadvantaged Business Enterprise.”

The Lessee estimates that the sustainable design, construction and operation of the New Terminal Facilities will offer more than 10,000 job opportunities. These job opportunities include terminal management, security, administrative, maintenance, janitorial, lounge staff, logistics, ramp operations, baggage handling, concessions/retail staff, and airline staff.

The Lessee has implemented a comprehensive health and safety plan encompassing a robust owner-controlled insurance program with onsite physician assistants providing medical support and an alternative dispute resolution program providing care to injured workers.

### ***Sustainable Governance Policies and Processes***

The Lessee expects to promote and enhance stakeholder and partner engagement. The participation of these important actors is expected to build an innovative and collaborative public-private partnership for the sustainable development of the New Terminal Facilities. Providing oversight to the Lessee’s Sustainability Plan is its Board of Directors which is comprised of more than 25% female directors. The Lessee has implemented corporate governance and policies around (i) anticorruption and bribery, (ii) risk management and mitigation, (iii) financial controls and transparency, (iv) decision-making and accountability, (v) security including cybersecurity, and (vi) a code of conduct and business ethics.

## **PART 10 - DESCRIPTION OF THE SERIES 2024 BONDS**

### **Denominations, Registration and Exchange**

The Series 2024 Bonds are the second series of Bonds being issued pursuant to the Indenture.

The Series 2024 Bonds will be issued as fully registered Bonds in denominations of \$5,000 or integral multiples thereof and will bear interest from their date to their respective maturities in the principal amounts and at the interest rates set forth on the inside cover page of this Official Statement, as described below. The Series 2024 Bonds, as initially issued, will be dated their date of delivery. The Series 2024 Bonds are subject to redemption prior to maturity as described in “Redemption of Series 2024 Bonds” below.

### **Delivery**

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 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, if any, on the Series 2024 Bonds will be made by the Indenture Trustee directly to Cede & Co., as nominee for DTC, as the registered owner of the Series 2024 Bonds, to be subsequently disbursed to the Beneficial Owners (as defined in APPENDIX G – “BOOK-ENTRY ONLY SYSTEM”) 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 Dates**

Interest on the Series 2024 Bonds will be payable semi-annually on each December 31 and June 30 (each, an “Interest Payment Date”), commencing on December 31, 2024 (which initial payment will include interest accrued from the date of issuance of the Series 2024 Bonds). Principal on the Series 2024 Bonds will be payable annually on June 30 (each a “Principal Payment Date”), commencing on June 30, 2037.

### **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 or Redemption Price of the Series 2024 Bonds shall be payable by check or wire transfer to the Owners of the applicable series of Bonds at the Maturity Date or Redemption Date upon presentation and surrender of the Series 2024 Bonds of such series at the designated corporate trust office of the Indenture Trustee. However, 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 G – “BOOK-ENTRY ONLY SYSTEM.”

### **Payment of Interest**

The Series 2024 Bonds shall bear interest at the rates set forth on the inside cover page of this Official Statement on the basis of a 360-day year consisting of twelve (12) thirty (30)-day months. Interest on the Series 2024 Bonds shall accrue from the date of delivery thereof, or from the most recent Interest Payment Date to which interest has been paid, which 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. Interest payable on the Series 2024

Bonds during construction of Phase A will be paid from funds on deposit in the applicable Capitalized Interest Accounts, proceeds of draws on the Bank Loans, and other available sources.

Except as described below, interest payable on the Series 2024 Bonds on any Interest Payment Date shall be paid by the Indenture Trustee to the Owners of such Series 2024 Bonds appearing on the registration books maintained by the Indenture 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 (i) by check mailed to such Owners at their address as it appears on such registration books or at such other address furnished in writing by such Owners to the Indenture Trustee, or (ii) at the written request addressed to the Indenture 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 to the account filed with the Indenture Trustee no later than the Record Date for any interest payment. However, 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 G – “BOOK-ENTRY ONLY SYSTEM.”

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

### ***Optional Redemption***

The Series 2024 Bonds are subject to redemption at the option of the Conduit Issuer at the direction of the Lessee prior to maturity on and after June 30, 2033, in whole or in part at any time in such order of maturity as the Lessee shall direct and by lot within a maturity at a redemption price of 100% of the Series 2024 Bonds to be redeemed, plus accrued interest to (but not including the Redemption Date). The Series 2024 Bonds are not subject to a make-whole redemption.

### ***Extraordinary Mandatory Redemption***

The Series 2024 Bonds are subject to extraordinary redemption prior to maturity, in whole or in part, as the case may be, on any date at a redemption price equal to 100% of the principal of the Series 2024 Bonds to be redeemed, plus the interest accrued on such Series 2024 Bonds to, but not including, the Redemption Date, upon the occurrence of any of the following events, and using the funds described below:

(i) In the case of a Casualty Event or an Event of Eminent Domain, to the extent of Net Cash Proceeds in excess of \$100 million held in accordance with the Common Terms Agreement and not applied towards the repair and/or reconstruction of the Project in accordance with the Lease (provided that such usage of such funds will not adversely affect the exemption of interest on the Series 2024 Bonds from gross income for federal income tax purposes);

(ii) In the case of any Disposition by the Lessee of assets or property to the extent that Net Cash Proceeds of such Disposition are in excess of \$100 million;

(iii) In the case of the termination of the Lease, to the extent of any Net Cash Proceeds (as defined in the Lease) received by the Lessee from the Port Authority in respect of a termination of the Lease in whole or in part (including, without limitation, amounts set forth under the Lease); and

(iv) In the case of Completion of the Project there remains on deposit the Bond proceeds in any Bonds Project Loan Cost Construction Account or Bonds Project Building Loan Costs Construction Account with respect to the Project, after consultation with Bond Counsel and in accordance with Treasury Regulations Section 1.142-2 to the extent of such Bond proceeds remaining on deposit in such accounts.

Pursuant to the terms of the Lease, the Port Authority is only obligated to make a Port Authority Default Termination Payment in certain limited circumstances in which a termination of the Lease has occurred. See “PART 5 – THE LEASE – Termination Rights and – Termination Payment to the Lessee.”

***Mandatory Sinking Fund Redemption***

The Series 2024 Bonds shall be subject to mandatory redemption by the Conduit Issuer prior to maturity, in part, at a price equal to one hundred percent (100%) of the principal amount thereof, together with accrued interest to the date of redemption, 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 2024 Bonds maturing June 30, 2049 and bearing interest at 5.000% per annum

<u>Sinking Fund Requirement Payment Date</u>	<u>Sinking Fund Requirement</u>
June 30, 2045	\$21,845,000
June 30, 2046	21,575,000
June 30, 2047	19,945,000
June 30, 2048	33,585,000
June 30, 2049 <sup>†</sup>	48,050,000

<sup>†</sup> Stated Maturity.

Series 2024 Bonds maturing June 30, 2049 and bearing interest at 5.250% per annum

<u>Sinking Fund Requirement Payment Date</u>	<u>Sinking Fund Requirement</u>
June 30, 2045	\$20,195,000
June 30, 2046	19,940,000
June 30, 2047	18,440,000
June 30, 2048	31,050,000
June 30, 2049 <sup>†</sup>	44,420,000

<sup>†</sup> Stated Maturity.

Series 2024 Bonds maturing June 30, 2054 and bearing interest at 4.625% per annum

<u>Sinking Fund Requirement Payment Date</u>	<u>Sinking Fund Requirement</u>
June 30, 2050	\$8,055,000
June 30, 2051	8,110,000
June 30, 2052	9,930,000
June 30, 2053	10,635,000
June 30, 2054 <sup>†</sup>	11,420,000

<sup>†</sup> Stated Maturity.

Series 2024 Bonds maturing June 30, 2054 and bearing interest at 5.000% per annum

<u>Sinking Fund Requirement</u> <u>Payment Date</u>	<u>Sinking Fund Requirement</u>
June 30, 2050	\$30,915,000
June 30, 2051	31,140,000
June 30, 2052	38,120,000
June 30, 2053	40,835,000
June 30, 2054 <sup>†</sup>	43,835,000

<sup>†</sup> Stated Maturity.

Series 2024 Bonds maturing June 30, 2054 and bearing interest at 5.500% per annum

<u>Sinking Fund Requirement</u> <u>Payment Date</u>	<u>Sinking Fund Requirement</u>
June 30, 2050	\$76,805,000
June 30, 2051	77,355,000
June 30, 2052	94,690,000
June 30, 2053	101,435,000
June 30, 2054 <sup>†</sup>	108,885,000

<sup>†</sup> Stated Maturity.

Series 2024 Bonds maturing June 30, 2060 and bearing interest at 5.000% per annum

<u>Sinking Fund Requirement</u> <u>Payment Date</u>	<u>Sinking Fund Requirement</u>
June 30, 2055	\$33,360,000
June 30, 2056	38,700,000
June 30, 2057	47,395,000
June 30, 2058	56,635,000
June 30, 2059	65,675,000
June 30, 2060 <sup>†</sup>	69,390,000

<sup>†</sup> Stated Maturity.

Series 2024 Bonds maturing June 30, 2060 and bearing interest at 5.250% per annum

<u>Sinking Fund Requirement Payment Date</u>	<u>Sinking Fund Requirement</u>
June 30, 2055	\$40,205,000
June 30, 2056	46,640,000
June 30, 2057	57,120,000
June 30, 2058	68,255,000
June 30, 2059	79,150,000
June 30, 2060 <sup>†</sup>	83,630,000

<sup>†</sup> Stated Maturity.

Series 2024 Bonds maturing June 30, 2060 and bearing interest at 5.500% per annum

<u>Sinking Fund Requirement Payment Date</u>	<u>Sinking Fund Requirement</u>
June 30, 2055	\$74,910,000
June 30, 2056	86,895,000
June 30, 2057	106,425,000
June 30, 2058	127,170,000
June 30, 2059	147,475,000
June 30, 2060 <sup>†</sup>	155,820,000

<sup>†</sup> Stated Maturity.

At its option, to be exercised on or before the forty-fifth (45<sup>th</sup>) day next preceding any mandatory Redemption Date for Bonds under the Indenture, the Lessee may deliver to the Indenture Trustee for cancellation Bonds of the appropriate Series, interest rate, and maturity in any aggregate principal amount which have been purchased by the Lessee in the open market. Each Bond so delivered shall be credited by the Indenture Trustee at one hundred percent (100%) of the principal amount thereof against the Sinking Fund Requirement for the Bonds of such series on such mandatory Redemption Date in such chronological order as shall be directed in writing by the Lessee; and any excess of such amount shall be credited against future Sinking Fund Requirements in reverse chronological order. The Lessee will, on or before the forty-fifth (45<sup>th</sup>) day preceding each mandatory scheduled sinking fund Redemption Date, furnish the Indenture 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 Redemption Date; and unless such certificate is so timely furnished to the Indenture Trustee, the mandatory redemption requirements for such mandatory Redemption Date shall not be reduced under the provisions of this paragraph.

***Purchase in Lieu of Redemption***

Without prejudice to the rights of the Lessee pursuant to the Indenture, the Series 2024 Bonds are subject to purchase prior to maturity, at the option of the Conduit Issuer at the direction of the Lessee on any date the Series 2024 Bonds are subject to optional redemption, in whole or in part, at the purchase price, plus the interest accrued on such Series 2024 Bonds to (but not including) the purchase date as set forth in the notice of purchase to the registered owners of the Series 2024 Bonds to be so purchased.

If the Conduit Issuer, upon written request of the Lessee, elects to purchase any Series 2024 Bonds, the Indenture Trustee shall give notice of the purchase of such Series 2024 Bonds in the name of the Conduit

Issuer to the registered owners of the Series 2024 Bonds to be purchased by first-class mail, postage prepaid, not less than thirty (30) days nor more than sixty (60) days prior to the purchase date specified in such notice. The Series 2024 Bonds to be purchased are required to be tendered on the purchase date to the Indenture 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 Conduit Issuer evidenced thereby or modify the terms of the 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 Conduit Issuer's obligation to purchase any Series 2024 Bond is conditioned upon the availability of sufficient money to pay the Purchase Price for all of the Series 2024 Bonds to be purchased on the purchase date. If sufficient money is available on the purchase date to pay the Purchase Price 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. If sufficient money is not available on the purchase date for payment of the Purchase Price, 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, who will be entitled to the payment of the principal of and interest on such Series 2024 Bonds in accordance with their respective terms.

### **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, the Indenture Trustee at the direction of the Lessee will select the maturities of such series of Bonds to be redeemed or purchased. If less than all of the maturity and series of Bonds are to be redeemed or purchased, the Bonds of such series and maturity to be redeemed or purchased will be selected by the Indenture Trustee, by lot, using such method of selection as the Indenture Trustee shall determine; provided however 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 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 Conduit Issuer obtains a favorable opinion of Bond Counsel, and the Conduit Issuer may rely conclusively on such Opinion in complying with the requirements of the Indenture.

### **Notice of Redemption**

When redemption of any Series 2024 Bonds or any portions thereof is requested or required pursuant to the Indenture, upon written notice from the Conduit Issuer to the Indenture Trustee delivered no less than 30 days prior to the Redemption Date, the Indenture Trustee shall give notice of such redemption in the name of the Conduit 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 Indenture 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 Bond or portion thereof to be redeemed the Redemption Price thereof together with interest accrued to but not including the Redemption Date, 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 Indenture Trustee, in the name and on behalf of the Conduit Issuer, (i) shall, if the Series 2024 Bonds are book-entry Bonds, 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) 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 Indenture Trustee on or prior to the Redemption Date of moneys sufficient to pay the principal of, Redemption Price of, and interest on 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 Conduit 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 Indenture 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 Indenture 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, including interest accrued and unpaid to but not including the Redemption Date. If, on the Redemption Date, moneys for the redemption of all 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 including interest accrued to the Redemption Date shall be made to or upon the order of the registered owners only upon presentation of such Series 2024 Bonds for cancellation and exchange as provided under the Indenture; provided, however, that any Owner of at least \$1,000,000 in aggregate principal amount of Series 2024 Bonds to be redeemed may, by written request to the Indenture Trustee, received by the Indenture Trustee at least five (5) Business Days prior to the Redemption Date, direct that payments of Redemption Price including accrued interest to the Redemption Date be made by wire transfer in federal funds at such wire transfer address as the owner shall specify to the Indenture Trustee in such written request.

### **Green Bonds Designation**

*None of the Conduit Issuer, its counsel (including Co-Bond Counsel, Disclosure Counsel and General Counsel), the Lessee, its co-counsel, the Municipal Advisor, the Port Authority, its counsel and the Office of General Counsel of the Port Authority, the Underwriters and their counsel have independently confirmed or verified the information under this subsection or assumed any obligation to ensure that the Series 2024 Bonds comply with any legal or other standards or principles that may be related to Green Bonds. The Conduit Issuer and the Lessee have designated the Series 2024 Bonds as Green Bonds based solely on Kestrel's independent external review and opinion that the Series 2024 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 2024 Bonds as Green Bonds does not entitle the owner of any Series 2024 Bond to any benefit under the Code. Owners of the Series 2024 Bonds do not have any security other than as described under this "PART 10 – 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 (“Kestrel”) has determined that the Series 2024 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 J – “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 2024 Bonds. Second Party Opinions provided by Kestrel are not a recommendation to any person to purchase, hold, or sell the Series 2024 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 Conduit Issuer and the Lessee or that was otherwise made available to Kestrel. See also, “PART 9 – ENVIRONMENTAL, SOCIAL AND GOVERNANCE.”

## **PART 11 - SECURITY FOR THE SERIES 2024 BONDS**

### **General**

As more fully described in “PART 6 – PLAN OF FINANCE FOR PHASE A OF THE PROJECT,” the Lessee has entered into agreements for loans and equity that it expects are sufficient to provide for the development, design, construction and financing of Phase A. Bonds are expected to be issued by the Conduit Issuer from time to time at the request of the Lessee as Permitted Refinancing Indebtedness primarily to refinance certain Term Loans and Secured Hedge Agreements or as Incremental Debt that will reduce the Term Loan Facility under the Credit Agreement available to pay additional Phase A Project costs. The Series 2024 Bonds are the second series of Bonds being issued pursuant to the Indenture, as Senior Debt under the Common Terms Agreement. The Conduit Issuer has previously issued the Series 2023 Bonds.

Upon issuance, the Series 2024 Bonds will be Secured Obligations constituting Senior Debt under the Common Terms Agreement, secured, as more fully described herein, (a) by certain Project Accounts created under the Common Terms Agreement for the benefit ratably of certain Secured Obligations, including the Series 2024 Bonds, and certain Project Accounts being created for the benefit of the Owners of the Series 2024 Bonds as more fully described below under “Security for the Series 2024 Bonds – *Establishment of Project Accounts*,” (b) the Trust Estate (described herein) created under the Master Indenture for the benefit of the owners of all Bonds (including the Series 2024 Bonds, the Series 2023 Bonds and any series of Additional Bonds to be issued in the future), which includes a common bond debt service reserve account created pursuant to the Common Terms Agreement and to be funded on or prior to the Completion Date for Phase A of the Project and, solely for the benefit of the Owners of the Series 2024 Bonds, certain funds and accounts created under the Second Supplemental Indenture, and (c) ratably by

certain additional Collateral on parity with Secured Obligations, including the Series 2024 Bonds, as provided in the Financing Documents. Upon issuance of the Series 2024 Bonds and the execution and delivery by the Indenture Trustee of an Accession Agreement in accordance with the terms of the Common Terms Agreement, the Owners of the Series 2024 Bonds will be Secured Parties under the Common Terms Agreement represented by the Indenture Trustee as their Secured Debt Representative.

The Common Terms Agreement establishes certain Project Accounts with the Account Bank and determines the extent to which Project Revenues and other sources of funds are deposited into such Project Accounts for the benefit of the Secured Parties, including the Owners of the Series 2024 Bonds. See “PART 12 – SUMMARY OF THE FINANCING DOCUMENTS – Common Terms Agreement” and “PART 14 – FLOW OF FUNDS UNDER THE COMMON TERM AGREEMENT” for additional descriptions of the Project Accounts and the application of Project Revenues and other sources of funds.

## **Trust Estate**

The Trust Estate created under the Master Indenture includes the following:

- All funds, accounts, moneys and obligations from time to time held by the Indenture Trustee under the Indenture including amounts held in the accounts and subaccounts created under the Master 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 Indenture Trustee in trust under any of the provisions of the Master Indenture and any other right, title or interest which at such time is subject to the lien of the Master Indenture, except for moneys or obligations (i) held in any Arbitrage Rebate Account established in connection with a series of Tax-Exempt Bonds, or (ii) deposited with or paid to the Indenture Trustee for the redemption or payment of Bonds which are deemed to have been paid, provided however, that any fund, account or subaccount created under the Master Indenture or pursuant to any Supplemental Indenture with respect to a particular series of Bonds and pledged to such series of Bonds shall solely secure such series of Bonds.
- All moneys and obligations from time to time held by the Account Bank or the Collateral Agent under any of the following accounts created pursuant to the Common Terms Agreement (i) “Muni Bonds Project Loan Costs Construction Account,” (ii) “Muni Bonds Building Loan Costs Construction Account,” (iii) “Muni Bonds Senior Debt Service Reserve Account,” (iv) “Muni Bonds Project Loan Senior Debt Capitalized Interest Account,” (v) “Muni Bonds Building Loan Senior Debt Capitalized Interest Account,” (vi) “Muni Bonds Loans Interest Payment Account,” (vii) “Muni Bonds Loans Principal Payment Account,” (viii) “Muni Bonds Loans Prepayment Account,” and (ix) “Muni Bonds Senior Debt Proceeds Account,” and any subaccount within any of the foregoing if any, in relation to the issuance of any series of Bonds, provided however, that any of the foregoing accounts created with respect to the issuance of a particular series of Bonds and pledged to a particular series of Bonds shall solely secure such series of Bonds.
- Subject to the Common Terms Agreement, any security interest granted to the Collateral Agent under the Security Documents for the benefit of: (i) the Conduit Issuer (ratably as a Secured Creditor) under the Security Documents or otherwise, securing payment obligations of the Lessee under the Lessee Loan Agreements and the Promissory Notes relating to the Bonds and (ii) the Indenture Trustee on behalf of the Owners of the Bonds (ratably as a Secured Creditor), under the Security Documents or otherwise, including without limitation the Indenture Trustee’s proportionate right, interest and title to the Collateral pledged thereunder, and the present and continuing right of the Collateral Agent

on behalf of the Indenture Trustee (as a Secured Creditor) 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 that the Indenture Trustee is entitled to (as a Secured Creditor) 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 Agent on behalf of the Indenture Trustee (as a Secured Creditor) is entitled to do under such Security Documents.

- Subject to the Common Terms Agreement, the Conduit Issuer's rights with respect to and security interest in all funds deposited from time to time and earnings thereon in the Project Accounts other than the Project Accounts described in the second paragraph above, any and all other accounts established from time to time pursuant to the Common Terms Agreement as security for the Bonds, and any and all subaccounts created thereunder.
- 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 in favor of the Indenture Trustee (as a Secured Creditor) or the Account Bank or Collateral Agent on behalf of the Indenture Trustee (as a Secured Creditor), including any of the foregoing granted, assigned or pledged by (or on behalf of) the Lessee or any other Person on behalf of the Lessee, and the Indenture Trustee (as a Secured Creditor) and/or the Account Bank or Collateral Agent on behalf of the Indenture Trustee (as a Secured Creditor) 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.

Pursuant to the Master Indenture, each Owner of a Series 2024 Bonds (by purchase or transfer and acceptance thereof) acknowledges that the Conduit Issuer shall have no interest in the facilities operated or constructed as part of the Project, except as mortgagee under the Leasehold Mortgages. Each Owner of a Series 2024 Bond (by purchase or transfer and acceptance thereof) agrees that none of the Conduit Issuer, any Owner, or the Indenture Trustee shall have any interest in the Project or the Lease (including but not limited to, any rights to perform the rights or obligations of the Lessee under the Lease 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 or any part thereof or any rights or interest created thereby or the letting thereunder) under (i) the Security Documents or (ii) any actions under the real property law of the State of New York; or otherwise, in each case except for those interests or rights pursuant to the Leasehold Mortgages. Further, pursuant to the Master Indenture each Owner of the Series 2024 Bonds 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 at law or in equity arising out of or in connection with 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, each Owner of a Series 2024 Bond acknowledges and agrees pursuant to the Master Indenture that in the event there shall be a conflict between the provisions of the Leasehold Mortgages and the Lease, the Lease shall govern. The Port Authority shall not have any obligation with respect to the Series 2024 Bonds; provided that the Port Authority has agreed to certain rights of the Recognized Mortgagee (as defined in the Lease) pursuant to Section 83 of the Lease.

## **Project Accounts**

The Series 2024 Bonds are secured by amounts on deposit in certain Project Accounts established under the Common Terms Agreement and held by the Account Bank, by amounts transferred from the Project Accounts to certain funds and accounts established for the sole benefit of the Owners of the Series

2024 Bonds and held by the Indenture Trustee under the Second Supplemental Indenture, and certain additional Collateral.

*Establishment of Project Accounts.* Pursuant to the Common Terms Agreement, certain Project Accounts have been established with the Account Bank in the name of the Lessee or the Taxable REIT Subsidiary. Such Project Accounts are subject to the security interest of the Collateral Agent for the benefit of all the Secured Creditors entitled thereto as provided in the Common Terms Agreement in all of the Lessee's, Taxable REIT Subsidiary's and Conduit Issuer's respective rights, title and interest in, to and under the Collateral therein maintained. Certain other Project Accounts are required to be established simultaneously with the issuance of the Series 2024 Bonds, under the circumstances described in the Common Terms Agreement, including certain accounts required to be established in connection with the issuance of each series of Bonds. Subject to the occurrence of the Operating Business Conditions (as defined in APPENDIX A – "DEFINITIONS") the Project Accounts will be maintained until all Secured Obligations have been paid, discharged and satisfied in full in immediately available funds (other than contingent obligations in respect of indemnification, expense reimbursement, yield protection or tax gross-up for which no claim has been made).

The Series 2024 Muni Bonds Senior Debt Proceeds Account will also be funded from the proceeds of the Series 2024 Bonds and deposited with the Account Bank. Such Series 2024 Muni Bonds Senior Debt Proceeds Account is being funded to pay costs for Phase A of the Project. Amounts in such Series 2024 Muni Bonds Senior Debt Proceeds Account are for the sole benefit of the Owners of the Series 2024 Bonds and the Conduit Issuer, subject to the application of such amounts, generally for costs of Phase A of the Project, as provided in the Common Terms Agreement.

The Account Bank will also establish a Series 2024 Arbitrage Rebate Account with respect to the Series 2024 Bonds to pay rebate amounts owed to the United States, but amounts deposited therein are not subject to a security interest, pledge, assignment or other Lien in favor of any Secured Party or any other person.

The following additional Project Accounts will also be established by the Account Bank in connection with the issuance of the Series 2024 Bonds: "Series 2024 Muni Bonds Loans Interest Payment Account," "Series Muni 2024 Bonds Loans Principal Payment Account," "Series 2024 Muni Bonds Loans Prepayment Account" "Series 2024 Muni Bonds Senior Debt Proceeds Account," "Series 2024 Muni Bonds Project Loan Senior Debt Capitalized Interest Account," "Series 2024 Muni Bonds Building Loan Senior Debt Capitalized Interest Account," "Series 2023 Muni Bonds Project Loan Senior Debt Capitalized Interest Account," and "Series 2023 Muni Bonds Building Loan Senior Debt Capitalized Interest Account." There has heretofore been established with the Account Bank the Common Debt Service Reserve Account (the "Common Debt Service Reserve Account," and together with the Series 2024 Muni Bonds Loans Interest Payment Account, the Series 2024 Muni Bonds Loans Principal Payment Account, the Series 2024 Muni Bonds Loans Prepayment Account, the Series 2024 Muni Bonds Senior Debt Proceeds Account, the Series 2024 Muni Bonds Project Loan Senior Debt Capitalized Interest Account, the Series 2024 Muni Bonds Building Loan Senior Debt Capitalized Interest Account, the Series 2023 Muni Bonds Project Loan Senior Debt Capitalized Interest Account, and the Series 2023 Muni Bonds Building Loan Senior Debt Capitalized Interest Account being collectively referred to herein as the "Series 2024 Payment Project Accounts"). Amounts in such Series 2024 Payment Project Accounts are for the sole benefit of the Owners of the Series 2024 Bonds and the Conduit Issuer, subject to the application of such amounts to pay debt service on the Series 2024 Bonds as provided in the Common Terms Agreement. Amounts will be deposited into the Series 2024 Payment Project Accounts in accordance with the flow of funds described herein under "PART 14 – FLOW OF FUNDS UNDER THE COMMON TERMS AGREEMENT." For more information with respect to the Common Debt Service Reserve Account, see "—Common Debt Service Reserve Account" below.

- The Account Bank will deposit monthly from the Post-Completion Revenue Account into the Series 2024 Bonds Interest Payment Account a proportionate amount (for example, 1/6<sup>th</sup> for semi-annual interest payments) of the interest payment due on the next Interest Payment Date, in each case as directed to the Account Bank in a Funds Transfer Certificate delivered by the Lessee no later than two (2) Business Days prior to the date of the requested funds transfer. On or prior to each Interest Payment Date relating to the Series 2024 Bonds, the Account Bank will transfer monies from the Series 2024 Bonds Interest Payment Account to the Indenture Trustee for the payment of interest due and payable on such Interest Payment Date.
- The Account Bank will deposit monthly from the Post-Completion Revenue Account into the Series 2024 Bonds Principal Payment Account a proportionate amount (for example, 1/12th for annual principal payments) of the principal payment due on the next Principal Payment Date, in each case as directed to the Account Bank in a Funds Transfer Certificate delivered by the Lessee no later than two (2) Business Days prior to the date of the requested funds transfer. On or prior to each Principal Payment Date relating to the Series 2024 Bonds, the Account Bank will transfer monies from the Series 2024 Bonds Principal Payment Account to the Indenture Trustee for the payment of principal due and payable on such Principal Payment Date.
- The Account Bank will deposit into the Series 2024 Bonds Prepayment/Redemption Account on or prior to any date on which the Series 2024 Bonds are subject to prepayment or redemption, the amount required to be transferred from any source of funds pursuant to the Common Terms Agreement to provide for such prepayment or redemption. On or prior to each prepayment or redemption Payment Date relating to the Series 2024 Bonds, the Account Bank shall transfer monies from the Series 2024 Bonds Prepayment/Redemption Payment Account to the Indenture Trustee for the payment of the prepayment or redemption price due and payable on such Payment Date.

Establishment of Series 2024 Indenture Trustee-Held Payment Accounts under Second Supplemental Indenture. The Indenture Trustee will establish the “Series 2024 Bonds Interest Payment Indenture Account,” the “Series 2024 Bonds Principal Payment Indenture Account” and the “Series 2024 Bonds Prepayment/Redemption Payment Indenture Account” under the Second Supplemental Indenture for the sole benefit of the Owners of the Series 2024 Bonds.

- On or prior to each Interest Payment Date, the Indenture Trustee will deposit the moneys received from the Account Bank relating to interest payments on the Series 2024 Bonds into the Series 2024 Bonds Interest Payment Indenture Account for payment to the Owners of the Series 2024 Bonds.
- On or prior to each Principal Payment Date, the Indenture Trustee will deposit the moneys received from the Account Bank relating to principal payments on the Series 2024 Bonds into the Series 2024 Bonds Principal Payment Indenture Account for payment to the Owners of the Series 2024 Bonds.
- On or prior to each prepayment or redemption date, the Indenture Trustee will deposit the moneys received from the Account Bank relating to prepayment or redemption of the Series 2024 Bonds into the Series 2024 Bonds Prepayment/Redemption Payment Indenture Account for payment to the Owners of the Series 2024 Bonds.

## **Project Revenues**

Rates and charges paid by aeronautical users (generally speaking, commercial airlines) of Phase A are expected to comprise the principal revenue source for the Lessee's payment of its operating expenses and repayment of its obligations under the Lessee Loan Agreements, including debt service on Senior Debt, including the Series 2024 Bonds. As of June 1, 2024, the Lessee has committed agreements from seven airline carriers that are expected to constitute approximately 26%\* of the forecast for the Lessee's enplanements at the New Terminal Facilities in the first full calendar year of operation. For a further description of aeronautical revenues, see "PART 16 – AERONAUTICAL REVENUES." Non-Aeronautical Revenues consisting generally of concession sublease rentals, certain additional revenues anticipated to be generated in Phase A, including from advertising fees (which will be shared with the Port Authority), common area maintenance fees, marketing fees and storage fees for tenant goods, are an additional major source of Project Revenues. For a further description of Non-Aeronautical Revenues, see "PART 17 – NON-AERONAUTICAL REVENUES."

## **Leasehold Mortgages**

As security for its obligations under the Lessee Loan Agreements, the Lessee has, pursuant to the Leasehold Mortgages, granted mortgage liens on and security interests in the interests of the Lessee under the Lease to the Conduit Issuer, to secure its Secured Lease Obligations (other than any Hedge Obligations), and the Conduit Issuer has assigned all of its rights, title and interest as mortgagee under the Leasehold Mortgages, except for the Reserved Rights of the Conduit Issuer, to the Collateral Agent for the benefit of the Secured Parties under the Collateral Assignments. See "PART 12 – SUMMARY OF THE FINANCING DOCUMENTS – Leasehold Mortgages – Secures all Secured Obligations" for a further description of the Leasehold Mortgages.

The Leasehold Mortgages entitle a Recognized Mortgagee, such as the Collateral Agent, to certain notice and cure rights and certain other protections in the event the Lessee is in default under the Lease to ensure that the Lessee or its permitted successor is at all times able to maintain the tenancy under the Lease as long as any Bonds remain outstanding.

See "PART 12 – SUMMARY OF THE FINANCING DOCUMENTS – Leasehold Mortgages – Secures all Secured Obligations" for a further description of the Leasehold Mortgages.

## **Common Debt Service Reserve Account**

The Account Bank has established the Common Debt Service Reserve Account, which will secure outstanding Bonds, including the Series 2023 Bonds, the Series 2024 Bonds, and any Additional Bonds to the extent the Supplemental Indenture authorizing such series of Bonds provides that such series will be secured by the Common Debt Service Reserve Account. The Common Debt Service Reserve Account was not funded at the time of issuance of the Series 2023 Bonds and will not be funded at the time of issuance of the Series 2024 Bonds but rather will be funded no later than the Completion Date related to Phase A. The Common Debt Service Reserve Account will be funded from available funds of the Lessee, which could include the proceeds of future Senior Debt or equity contributions, in an amount equal to the aggregate amount of the scheduled interest and principal on the Bonds that will become due and payable during the next succeeding six (6)-month period. Thereafter it will be funded by transferring funds from the Post-Completion Revenue Account in accordance with a Funds Transfer Certificate and the waterfall described

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\* Korean Air is one of such airline carriers which has committed to operate at the New Terminal Facilities. As of June 1, 2024, Korean Air and Asiana Airlines are considering a merger. If such merger takes place, the percentage of committed forecast traffic is expected, as of the date of June 1, 2024, to increase to approximately 29% of the total forecast for the Lessee's enplanements in the first full calendar year of operation.

in “PART 14 – FLOW OF FUNDS UNDER THE COMMON TERMS AGREEMENT” on each Transfer Date to maintain the Debt Service Reserve Requirement.

If on any Payment Date, after giving effect to the transfers from the Post-Completion Revenue Account, the funds on deposit in the applicable Bond Interest Payment Account and/or applicable Bond Principal Payment Account are insufficient to pay the interest or principal on the outstanding Bonds on the Payment Date (a “Debt Service Insufficiency”), the Collateral Agent will transfer (without the requirement of a Funds Transfer Certificate) funds on deposit in the Common Debt Service Reserve Account in an amount equal to the Debt Service Insufficiency to the applicable Bonds Interest Payment Account or applicable Bonds Principal Payment Account, as applicable, for payment of interest or principal with respect to the related series of Bonds as of such Payment Date, as applicable.

The Lessee may, upon notice to the Collateral Agent and the Indenture Trustee, substitute all or any portion of the cash or Eligible Investments on deposit in the Common Debt Service Reserve Account with an Acceptable Letter of Credit for purposes of satisfying the Debt Service Reserve Requirement as provided in APPENDIX C-2 – “CERTAIN PROVISIONS OF THE COMMON TERMS AGREEMENT – Senior Debt Service Reserve Account.”

### **Additional Security for the Series 2024 Bonds**

The Series 2024 Bonds are secured ratably with other Secured Obligations by certain Collateral on parity with other Secured Obligations as provided in the Financing Documents by the following:

(i) as security for the payment and performance of the Secured Obligations, the Lessee has, pursuant to the Lessee Security Agreement, granted a security interest in and to the Collateral of the Lessee, including but not limited to its contractual rights and its rights to receivables under the Lease and its Equity Interests in the Taxable REIT Subsidiary, to the Collateral Agent for the benefit of the Secured Parties;

(ii) as security for the payment and performance of all Secured Obligations, HoldCo has, pursuant to the Lessee Pledge Agreement, granted a security interest over one hundred percent (100%) of the Equity Interests in the Lessee to the Collateral Agent for the benefit of the Secured Parties;

(iii) as security for the payment and performance of all Secured Obligations, the Taxable REIT Subsidiary has, pursuant to the Taxable REIT Subsidiary Security Agreement, granted a security interest in and to the Collateral of the Taxable REIT Subsidiary to the Collateral Agent for the benefit of the Secured Parties; and

(iv) as security for the Secured Obligations (other than the Building Loan Obligations and the Project Loan Obligations), the Conduit Issuer has, pursuant to the Collateral Assignments, and to the extent of its rights, title and interest, assigned all of its rights, title and interest in and to the Lessee Loan Agreements, the Leasehold Mortgages, the Building Loan Note, the Project Loan Note and any other Lien created for the benefit of the Conduit Issuer in respect of the Collateral under the applicable Security Documents or otherwise, except for the Reserved Rights, to the Collateral Agent for the benefit of the Secured Parties. Since the Conduit Issuer’s Reserved Rights to be reimbursed for fees, costs, charges, indemnities and expenses due and payable to the Conduit Issuer under the Financing Documents are expected to be limited and that such amounts are payable to the Conduit Issuer from the Pre-Completion Revenue Account and Post-Completion Revenue Account prior to the deposits required to be made to the Project Accounts established for the benefit of the Owners of the Series 2024 Bonds for the payment of debt service on the Series 2024 Bonds described above under “*Establishment of Project Accounts*,” it is not expected that the payment of such Reserved Rights will have a material adverse effect on the amounts available to such Owners on deposit in such Project Accounts.

## Coverage Ratio and Rate Covenant in the Common Terms Agreement Relating to Senior Debt

The Lessee and the Taxable REIT Subsidiary have included among the additional affirmative and negative covenants set forth in the Common Terms Agreement, the following, a more complete summary of which is set forth in APPENDIX C-2 – “CERTAIN PROVISIONS OF THE COMMON TERMS AGREEMENT – Schedule 2 – Common Representations and Warranties, Covenants and Events of Default – Affirmative Covenants and – Negative Covenants”:

For the purposes of this section, the following definitions apply:

“TOCR Calculation Period” means, as applicable, (a) on a historic basis, (i) each TOCR Initial Stub Period or (ii) any twelve (12)-month period beginning after such TOCR Initial Stub Period and ending on a Calculation Date, or (b) on a forward-looking basis, any twelve (12)-month period beginning the day after a Calculation Date.

“TOCR Initial Stub Period” means the period from the Phase A DBO Date to any Calculation Date that occurs at least six (6) months after the Phase A DBO Date and that occurs prior to the first (1st) anniversary of the Phase A DBO Date.

*Total Obligations Coverage Ratio.* Total Obligations Coverage Ratio means, for any TOCR Calculation Period, the ratio of A divided by B where: A = the Free Cash Flow (described in APPENDIX C-2 – “CERTAIN PROVISIONS OF THE COMMON TERMS AGREEMENT – Schedule 2 – Common Representations and Warranties, Covenants and Events of Default – Negative Covenants – Total Obligations Coverage Ratio”) for such TOCR Calculation Period; and B = the amount required during such TOCR Calculation Period for the payment of all Debt Service (excluding, for this purpose, any Debt Service paid (or to be paid) from the balance of any Construction Account). The Lessee shall not permit the Total Obligations Coverage Ratio for the TOCR Calculation Period ending on any Calculation Date to be less than 1.00 to 1.00.

If the Lessee fails to comply with the above financial covenant, any direct or indirect owner of the Lessee shall have the right to provide cash to the Lessee, not later than fifteen (15) Business Days following the date of delivery of the compliance certificate delivered under the Common Terms Agreement in the form of capital contributions or Subordinated Debt (in each case, other than amounts contributed or lent to the Lessee in connection with the relevant Equity Contribution Agreement) equal to the aggregate amount that, if either included as Project Revenues or if applied to Debt Service, as applicable, and at the election of the Lessee, for the relevant TOCR Calculation Period, would have been sufficient to cause compliance with the financial covenants set out above, for such TOCR Calculation Period (and any subsequent TOCR Calculation Period covering such Calculation Date) (an “Equity Cure”); provided that such Equity Cure right shall not be exercised more than two (2) times in any twelve (12)-month period nor more than five (5) times after the Effective Date and the proceeds of any capital contributions or Subordinated Debt in connection with any Equity Cure shall be either counted as Project Revenues or applied in the payment of Debt Service, as applicable, for the purposes of determining the Lessee’s compliance with the Total Obligations Coverage Ratio for purposes of the financial covenant above, as applicable, and not for any other purpose. After an Equity Cure is made the Lessee shall be deemed to be in pro forma compliance with the financial covenant set out above, the applicable breach or default of such financial covenant that had occurred (and any related Secured Obligations Event of Default) shall be deemed cured, but such Equity Cure shall not affect nor be included in the calculation of the Total Obligations Coverage Ratio for any other purpose under the Common Terms Agreement (including determining whether the making of certain Distributions is permitted under the Common Terms Agreement, as applicable).

*Rate Covenant for Secured Obligations.* The Lessee covenants and agrees to establish rates charged under the Airline Use Agreements sufficient to achieve a Projected TOCR of 1.25:1.00, in each TOCR

Calculation Period beginning January 1 of each Fiscal Year after the Lease Completion Date (based on the then-current annual operating budget); provided, however that (i) if the 1.25:1.00 requirement is not projected to be met for an upcoming Fiscal Year, the Lessee shall (a) retain an Airport Consultant to recommend revisions to the then-current annual operating budget (which revisions are subject to any existing commitments or limitations applicable under the Lease or any Anchor User Agreement) and (b) after taking into account such recommendations, revise the annual operating budget to produce (to the extent practicable using prudent business judgment and subject to any existing commitments or limitations applicable under the Lease or any Anchor User Agreement) sufficient Free Cash Flow to satisfy such 1.25:1.00 requirement in such upcoming Fiscal Year and (ii) the failure of the Lessee to satisfy the Projected TOCR covenant shall not give rise to a Secured Obligations Default or a Secured Obligations Event of Default unless, at any time after the Lessee is required to retain an Airport Consultant, the Lessee does not (x) retain an Airport Consultant or (y) (to the extent practicable using prudent business judgment and subject to any existing commitments or limitations applicable under the Lease or any Anchor User Agreement) promptly take measures to implement the Airport Consultant's recommendations.

### **Issuance of Additional Bonds**

Additional Bonds may be issued either as Additional Senior Indebtedness or as Permitted Refinancing Indebtedness, in each case upon satisfaction of the Debt Incurrence Conditions set forth in the Common Terms Agreement. Additional Senior Indebtedness of the Conduit Issuer may consist of Completion Debt or Incremental Debt. Permitted Refinancing Indebtedness consists of Senior Debt issued to refinance then-outstanding Senior Debt. In each case, the Additional Bonds would be issued by the Conduit Issuer (acting on the instructions of the Lessee), the proceeds of which would be on-lent to the Lessee pursuant to the applicable Lessee Loan Agreement(s). Bonds issued as Additional Senior Indebtedness may reduce the Term Loan Facility under the Credit Agreement available to pay additional Phase A Project costs and Bonds issued as Permitted Refinancing Indebtedness may refinance certain Terms Loans previously incurred under the Credit Agreement for Phase A Project costs. Upon any reduction of lending commitments under a Bank Loan, the lending commitment of each lender under such Bank Loan shall be reduced by such lender's ratable share of the amount by which such Bank Loan is reduced (other than the termination of the lending commitment of any lender) as described in the Credit Agreement.

The conditions precedent set forth in the Common Terms Agreement to the issuance of Completion Debt, Incremental Debt and Permitted Refinancing Indebtedness, including the Debt Incurrence Conditions applicable to Incremental Debt and Permitted Refinancing Indebtedness, are set forth in APPENDIX C-2 – "CERTAIN PROVISIONS OF THE COMMON TERMS AGREEMENT – Schedule 2 – Common Representations and Warranties, Covenants and Events of Default – Negative Covenants – Permitted Indebtedness."

During the period when the Credit Agreement remains outstanding, certain additional conditions precedent to the issuance of Completion Debt, Incremental Debt and Permitted Refinancing Indebtedness are required to be satisfied, as described in "PART 12 – SUMMARY OF THE FINANCING DOCUMENTS – Credit Agreement – Limitations on Indebtedness."

### **Bond Insurance**

#### ***Bond Insurance Policy***

Concurrently with the issuance of the Series 2024 Bonds, Assured Guaranty Municipal Corp. ("AGM" or "Bond Insurer") will issue its Municipal Bond Insurance Policy (the "Policy") for the Series 2024 Bonds maturing on June 30, 2039, June 30, 2042, June 30, 2049 bearing interest at 5.000% per annum, June 30, 2054 bearing interest at 4.625% and 5.000% per annum, and June 30, 2060 bearing interest at

5.250% per annum (collectively, the “Insured Series 2024 Bonds”). The Policy guarantees the scheduled payment of principal of and interest on the Insured Series 2024 Bonds when due as set forth in the form of the Policy included as APPENDIX L — “SPECIMEN MUNICIPAL BOND INSURANCE POLICY” to this Official Statement.

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

***Assured Guaranty Municipal Corp.***

AGM is a New York domiciled financial guaranty insurance company and an indirect subsidiary of Assured Guaranty Ltd. (“AGL”), 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 U.S. 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. Neither AGL nor any of its shareholders or affiliates, other than AGM, is obligated to pay any debts of AGM or any claims under any insurance policy issued by AGM.

AGM’s financial strength is rated “AA” (stable outlook) by S&P, “AA+” (stable outlook) by Kroll and “A1” (stable outlook) by Moody’s. Each rating of AGM 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 AGM in its sole discretion. In addition, the rating agencies may at any time change AGM’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 AGM. AGM only guarantees scheduled principal and scheduled interest payments payable by the issuer of bonds insured by AGM 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.

*Current Financial Strength Ratings.* On May 28, 2024, S&P announced it had affirmed AGM’s financial strength rating of “AA” (stable outlook). AGM can give no assurance as to any further ratings action that S&P may take.

On April 30, 2024, Moody’s announced it had affirmed AGM’s insurance financial strength rating of “A1” (stable outlook). AGM can give no assurance as to any further ratings action that Moody’s may take.

On October 20, 2023, Kroll announced it had affirmed AGM’s insurance financial strength rating of “AA+” (stable outlook). AGM can give no assurance as to any further ratings action that Kroll may take.

For more information regarding AGM’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 AGM.* At March 31, 2024:

- The policyholders’ surplus of AGM was approximately \$2,665 million.

- The contingency reserve of AGM was approximately \$892 million.
- The net unearned premium reserves and net deferred ceding commission income of AGM and its subsidiaries (as described below) were approximately \$2,036 million. Such amount includes (i) 100% of the net unearned premium reserve and net deferred ceding commission income of AGM, and (ii) the net unearned premium reserves and net deferred ceding commissions of AGM's wholly owned subsidiary Assured Guaranty UK Limited ("AGUK") and its 99.9999% owned subsidiary Assured Guaranty (Europe) SA ("AGE").

The policyholders' surplus of AGM and the contingency reserves, net unearned premium reserves and net deferred ceding commission income of AGM 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 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); and
- (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).

All information relating to 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 Series 2024 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 Municipal Corp.: 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 AGM included herein under the subheading "PART 11 – SECURITY FOR THE SERIES 2024 BONDS – Bond Insurance – *Assured Guaranty Municipal Corp.*" or included in a document incorporated by reference herein (collectively, the "AGM Information") shall be modified or superseded to the extent that any subsequently included AGM Information (either directly or through incorporation by reference) modifies or supersedes such previously included AGM Information. Any AGM Information so modified or superseded shall not constitute a part of this Official Statement, except as so modified or superseded.

*Miscellaneous Matters.* AGM makes no representation regarding the Series 2024 Bonds or the advisability of investing in the Series 2024 Bonds. In addition, AGM 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 AGM supplied by AGM and presented under the heading "PART 11 – SECURITY FOR THE SERIES 2024 BONDS – Bond Insurance" (other than with respect to the subheading "*— Risks of Bond Insurance*").

### ***Risks of Bond Insurance***

In the event of default of the payment of principal or interest with respect to the Insured Series 2024 Bonds when all or some becomes due, any owner of the Insured Series 2024 Bonds shall have a claim under the Policy issued by the Bond Insurer for such payments. However, in the event of any acceleration of the due date of such principal by reason of mandatory or optional redemption, other than any advancement of maturity pursuant to a mandatory sinking fund payment, the payments are to be made in such amounts and at such times as such payments would have been due had there not been any such acceleration. The Policy does not insure against redemption premium, if any. The payment of principal and interest in connection with mandatory or optional prepayment of the Insured Series 2024 Bonds by the Conduit Issuer and the Lessee which is recovered by the Conduit Issuer and the Lessee from any Owner as a voidable preference under applicable bankruptcy law is covered by the Policy, however, such payments will be made by the Bond Insurer at such time and in such amounts as would have been due absence such prepayment by the Conduit Issuer and the Lessee unless the Bond Insurer chooses to pay such amounts at an earlier date.

Under most circumstances, default of payment of principal and interest does not obligate acceleration of the obligations of the Bond Insurer without appropriate consent. The Bond Insurer may direct and must consent to any remedies and the Bond Insurer's consent may be required in connection with amendments to any applicable bond documents.

In the event the Bond Insurer is unable to make payment of principal and interest as such payments become due under the Policy, the Insured Series 2024 Bonds are payable solely from the moneys received pursuant to the applicable bond documents. In the event the Bond Insurer becomes obligated to make payments with respect to the Insured Series 2024 Bonds, no assurance is given that such event will not adversely affect the market price of the Insured Series 2024 Bonds or the marketability (liquidity) for the Insured Series 2024 Bonds.

The long-term ratings on the Insured Series 2024 Bonds are dependent in part on the financial strength of the Bond Insurer and its claim paying ability. The Bond Insurer's financial strength and claims paying ability are predicated upon a number of factors which could change over time. No assurance is given that the long-term ratings of the Bond Insurer and of the ratings on the Insured Series 2024 Bonds so insured by the Bond Insurer will not be subject to downgrade and such event could adversely affect the market price of the Insured Series 2024 Bonds or the marketability (liquidity) for the Insured Series 2024 Bonds. For a description of the rating on the Series 2024 Bonds, See "PART 23 - RATINGS" herein.

None of the Conduit Issuer, the Lessee or the Underwriters will make an independent investigation of the claims paying ability of the Bond Insurer, and no assurance or representation regarding the financial strength or projected financial strength thereof is being made by the Conduit Issuer, the Lessee or the Underwriters in this Official Statement. Therefore, when making an investment decision with respect to the Insured Series 2024 Bonds, potential investors should carefully consider the ability of the Conduit Issuer and the Lessee to pay principal and interest on the Insured Series 2024 Bonds, assuming that the Policy is not available, and the claims-paying ability of the Bond Insurer through final maturity of the Insured Series 2024 Bonds.

The obligations of the Bond Insurer are general obligations of the Bond Insurer and in an event of default by the Bond Insurer, the remedies available may be limited by applicable bankruptcy law or other similar laws related to insolvency.

### **Special and Limited Revenue Obligations of the Conduit Issuer**

**The Series 2024 Bonds are special and limited revenue obligations of the Conduit Issuer, payable by the Conduit Issuer as to the principal, redemption price, and interest thereon, solely out**

of the Trust Estate pledged under the Indenture. Neither the Series 2024 Bonds, the principal thereof, the interest thereon, nor the redemption price thereof, nor any interest accrued thereon to the date of redemption, shall ever constitute a debt of the State, the Port Authority, the JDA, ESD, or any other local development corporation, agency, or authority of the State (other than the Conduit Issuer), 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 Conduit Issuer) shall be liable on the Series 2024 Bonds. The Conduit Issuer has no power of taxation.

## **PART 12 - SUMMARY OF THE FINANCING DOCUMENTS**

### **General**

As used in this Official Statement, the term “Financing Documents” refers, collectively, to the agreements entered into by the Lessee with other parties to provide the financing necessary to fully pay the projected total costs of Phase A and related development costs. The Financing Documents include the Common Terms Agreement, which established the framework for the conditions to incurrence of, and sources of payment and security for the Secured Obligations; the Credit Agreement pursuant to which the Lenders have committed to Term Loan Borrowings, Working Capital Facility Borrowings and Security Deposit Borrowings; the Lessee Loan Agreements and related notes, pursuant to which the Conduit Issuer will on-lend the Permitted Debt, including Bank Loans and any Bonds, to the Lessee; the Secured Hedge Agreements to hedge interest rate exposure during the construction period; the Equity Contribution Agreements and Equity LCs; and similar agreements executed and delivered in connection with the issuance or incurrence of additional borrowings.

*This “PART 12 – SUMMARY OF THE FINANCING DOCUMENTS” contains summaries of key provisions of certain Financing Documents. Accordingly, the following is qualified in its entirety by reference to the summary of certain of such agreements attached as an Appendix to this Official Statement and is subject to the full text of such agreements, as applicable.*

### **Common Terms Agreement**

General. The Common Terms Agreement establishes the framework for the conditions to incurrence of, and sources of payment and security for, the Secured Obligations. Among other things, the Common Terms Agreement establishes the Project Accounts and the deposits into and withdrawals from the Project Accounts, sets forth the Secured Obligations Events of Default and remedies available subsequent thereto, lists the procedures available to modify the Common Terms Agreement, with and without Secured Parties consent, and establishes the relative duties and obligations of the Account Bank, the Collateral Agent and the Intercreditor Agent thereunder. A summary of certain provisions of the Common Terms Agreement is set forth in APPENDIX C-2 – “CERTAIN PROVISIONS OF THE COMMON TERMS AGREEMENT.”

The Second Amended and Restated Common Terms Agreement became effective on April 1, 2024. The Second Amended and Restated Common Terms Agreement, among other things, incorporated the provisions necessary to accommodate the potential incurrence by the Lessee (either directly or through the Conduit Issuer) of a TIFIA Loan from the TIFIA Lender. These provisions were included to provide the Lessee with future financing flexibility and, as of the date of this Official Statement, the Lessee has not requested and is not currently pursuing a TIFIA Loan. A summary of certain provisions of the Common Terms Agreement is set forth in APPENDIX C-2 – “CERTAIN PROVISIONS OF THE COMMON TERMS AGREEMENT.”

Only Secured Obligations are Secured Under the Common Terms Agreement. As more fully described herein, the following are Secured Obligations under the Common Terms Agreement, provided

that any applicable requirements of the Common Terms Agreement or other applicable Financing Documents that need to be satisfied prior to the issuance or incurrence of such Secured Obligations are satisfied:

- “Secured Pass Through Financing Obligations” refers to obligations of the Conduit Issuer now existing or hereinafter arising under or in connection with any Additional Senior Indebtedness Document, Permitted Refinancing Indebtedness Document or any other Financing Document. “Secured Pass Through Financing Obligations” includes the following types of Senior Debt: Loans under the Credit Agreement, Private Placement Notes or Bonds, including the Series 2024 Bonds;
- “Secured Lessee Obligations” consisting of the Building Loan Obligations, the Project Loan Obligations, any Hedge Obligations and all other obligations of the Lessee now existing or hereinafter arising under or in connection with any other Financing Document; and/or
- “Secured Taxable REIT Subsidiary Obligations” consisting of all liabilities and obligations, howsoever arising, owed by the Taxable REIT Subsidiary to any Secured Party under or in respect of the Taxable REIT Subsidiary Security Agreement.

The relative priorities of the rights of the Secured Parties to the Collateral provided under the Common Terms Agreement, including the Project Accounts established and to be established thereunder, are described in APPENDIX C-2 – “CERTAIN PROVISIONS OF THE COMMON TERMS AGREEMENT – Relative Priorities.”

*Establishment of Project Accounts.* The list of Project Accounts established and to be established under the Common Terms Agreement for the benefit of the Secured Obligations, and further detail on deposits into and withdrawals from such Project Accounts, are described in APPENDIX C-2 – “CERTAIN PROVISIONS OF THE COMMON TERMS AGREEMENT – Establishment of Project Accounts and – Deposits Into and Withdrawals From Project Accounts.” As more fully described above under “PART 11 – SECURITY FOR THE SERIES 2024 BONDS – Security for the Series 2024 Bonds – *Establishment of Project Accounts*” and “– *Establishment of Series 2024 Indenture Trustee-Held Payment Accounts under Second Supplemental Indenture*,” certain Series 2024 Payment Project Accounts held by the Account Bank and certain Series 2024 Indenture Trustee-Held Payment Accounts held by the Indenture Trustee have been established for the sole benefit of the Owners of the Series 2024 Bonds.

*Deposit of Amounts into Pre-Completion Revenue Account and Post-Completion Revenue Account.* Project Accounts securing all Secured Obligations on a parity basis include the Pre-Completion Revenue Account and the Post-Completion Revenue Account. Certain Project Revenues and other amounts will be deposited into the Pre-Completion Revenue Account through and including the Phase A DBO Date and certain Project Revenues and other amounts will be deposited into the Post-Completion Revenue Account from and after the Phase A DBO Date.

Through and including the Phase A DBO Date, the Lessee and, to the extent it has received such funds, the Conduit Issuer, shall promptly deposit or cause to be deposited into the Pre-Completion Revenue Account the following: all Project Revenues (other than any payment received under any Material Project Document, Airline Use Agreement or Anchor User Agreement required or permitted under the Common Terms Agreement to be deposited into another Project Account); certain income in respect of cash balances and Eligible Investments as described in and subject to the limitations of the Common Terms Agreement; amounts required to be transferred thereto from other Project Accounts or other sources in accordance with the terms of the Common Terms Agreement and the other Financing Documents; and any other amounts received by the Lessee, the application of which is not otherwise specified under the Common Terms

Agreement. Further details on deposits into the Pre-Completion Revenue Account are set forth in APPENDIX C-2 – “CERTAIN PROVISIONS OF THE COMMON TERMS AGREEMENT – Pre-Completion Revenue Account.” Moneys deposited into the Pre-Completion Revenue Account shall be applied to and including the Phase A DBO Date as provided herein under “PART 14 – FLOW OF FUNDS UNDER THE COMMON TERMS AGREEMENT.”

From and after the Phase A DBO Date, the Lessee and, to the extent it has received such funds, the Conduit Issuer, shall promptly deposit or cause to be deposited into the Post-Completion Revenue Account the following: all Project Revenues (other than any payment received under any Material Project Document, Airline Use Agreement or Anchor User Agreement required or permitted under the Common Terms Agreement to be deposited into another Project Account); certain Ordinary Course Payments or Termination Payments paid to the Lessee under the Secured Hedge Agreements relating to Senior Debt for a Phase with respect to which the Lease Completion Date has occurred; all amounts transferred from the Pre-Completion Revenue Account under the Common Terms Agreement; proceeds pursuant to the exercise of any Equity Cure that the Lessee does not elect to use for the prepayment of Senior Debt under the Common Terms Agreement; capital contributions or proceeds of loans from any equity holder of the Lessee or its Affiliates; certain insurance proceeds received by the Lessee (including if received as a reimbursement for claims paid by the Lessee) that are not otherwise required or permitted to be deposited into another Project Account or used for a specific purpose; Net Cash Proceeds of asset sales that are not otherwise required or permitted to be deposited into another Project Account or used for a specific purpose; amounts required to be transferred thereto from other Project Accounts or other sources in accordance with the terms of the Common Terms Agreement and the other Financing Documents; income in respect of cash balances and Eligible Investments as described in and subject to the limitations of the Common Terms Agreement; and any other amounts received by the Lessee or the Conduit Issuer (including any proceeds from borrowings under the Working Capital Facility or the Liquidity Facility) the application of which is not otherwise specified under the Common Terms Agreement. Further details on deposits into the Post-Completion Revenue Account are set forth in APPENDIX C-2 – “CERTAIN PROVISIONS OF THE COMMON TERMS AGREEMENT – Post-Completion Revenue Account.” Moneys deposited into the Post-Completion Revenue Account shall be applied to and including the Phase A DBO Date as provided herein under “PART 14 – FLOW OF FUNDS UNDER THE COMMON TERMS AGREEMENT.”

*Deposit of Amounts into Construction Accounts.* The Common Terms Agreement provides for the establishment of a separate Project Loan Costs Construction Account and, if applicable, Project Loan Senior Debt Capitalized Interest Account, and a separate Building Loan Costs Construction Account and, if applicable, Building Loan Senior Debt Capitalized Interest Account, for each Phase in connection with each issuance or incurrence of Additional Senior Indebtedness and Permitted Refinancing Indebtedness for the deposit of the proceeds of such Senior Debt relating to applicable costs of construction and capitalized interest.

Until the Lease Completion Date for a Phase, the Lessee and, to the extent it has received funds, the Conduit Issuer shall promptly deposit or cause to be deposited into the Construction Accounts for such Phase (with such of the proceeds that will be applied to pay for Project Loan Costs for such Phase being deposited into the designated Project Loan Costs Construction Accounts for such Phase (including in the case of any Bonds and any other Senior Debt with a designated Project Loan Senior Debt Capitalized Interest Account for such Phase), into such Project Loan Costs Construction Accounts for such Phase (including the corresponding Project Loan Senior Debt Capitalized Interest Account, as applicable), and such of the proceeds that will be applied to pay for Building Loan Costs for such Phase being deposited into the designated Building Loan Costs Construction Accounts for such Phase (including in the case of any Bonds and any other Senior Debt with a designated Building Loan Senior Debt Capitalized Interest Account for such Phase), into such Building Loan Costs Construction Accounts for such Phase (including the corresponding Building Loan Senior Debt Capitalized Interest Account, as applicable). Additional information on the funds other than Senior Debt proceeds expected to be deposited into the Construction

Accounts is set forth in APPENDIX C-2 – “CERTAIN PROVISIONS OF THE COMMON TERMS AGREEMENT – Construction Accounts.”

Subject to a Notice of Account Control, the Lessee, the Conduit Issuer and the Collateral Agent irrevocably authorize the Account Bank to make withdrawals and transfers from the applicable Construction Accounts for a Phase pursuant to a Construction Withdrawal Certificate delivered to the Account Bank, not less than three (3) Business Days before the requested Construction Transfer Date, for such withdrawals and transfers as set out in such Construction Withdrawal Certificate, to the extent of funds that are then on deposit (or that will be on deposit on the proposed Construction Transfer Date) in such Construction Accounts for such Phase. For a summary of the requirements of each such withdrawal or transfer, see APPENDIX C-2 – “CERTAIN PROVISIONS OF THE COMMON TERMS AGREEMENT – Construction Accounts.”

*Affirmative and Negative Covenants.* The Lessee and the Taxable REIT Subsidiary have included among the additional affirmative and negative covenants set forth in the Common Terms Agreement, the following, a more complete summary of which is set forth in APPENDIX C-2 – “CERTAIN PROVISIONS OF THE COMMON TERMS AGREEMENT – Schedule 2 – Common Representations and Warranties, Covenants and Events of Default – Affirmative Covenants and – Negative Covenants”:

*Restricted Payments.* The Lessee shall not make any Distributions except from the Distribution Account in accordance with the Common Terms Agreement.

The Lessee has established an account (the “Distribution Account”) that is not a Project Account and is subject to the exclusive control of the Lessee. The Lessee is entitled to withdraw and transfer funds from the Distribution Account without approval or consent by the Collateral Agent or any other person.

The Account Bank shall transfer funds on deposit in the Post-Completion Revenue Account pursuant to the conditions in the Common Terms Agreement, at the direction of the Lessee, to the Distribution Account or to any other person, in each case only upon satisfaction of the Restricted Payment Conditions on the Transfer Date immediately following the Calculation Date on which such conditions are satisfied, which shall be certified by the Lessee in an Officer’s Certificate from the Lessee (a “Restricted Payment Conditions Satisfaction Transfer Certificate”). The Restricted Payment Conditions shall not be required with respect to any funds deposited into the Distribution Account as a result of (i) immediately available funds in the Senior Debt Service Reserve Account, the O&M Reserve Account or the Major Maintenance Reserve Account being replaced with an Acceptable Letter of Credit, or (ii) the Lessee electing to deposit the proceeds of any True-Up Drawing into the Distribution Account (or to transfer the proceeds of such True-Up Drawing deposited into the Senior Debt Proceeds Accounts to the Distribution Account) pursuant to the Notice of Credit Extension and/or Construction Withdrawal Certificate, as applicable, related to such True-Up Drawing, and in each such case the Account Bank shall transfer such funds to the Distribution Account as directed in writing by the Lessee pursuant to a Funds Transfer Certificate without further restriction.

A summary of the Post-Completion Restricted Payment Conditions (the “Restricted Payment Conditions”) is set forth in APPENDIX C-2 – “CERTAIN PROVISIONS OF THE COMMON TERMS AGREEMENT – Distribution Account.”

*Liens.* Neither of the Lessee nor the Taxable REIT Subsidiary shall create, incur, assume or permit to exist any Lien on any Collateral, except Permitted Liens. A list of the Permitted Liens is set forth in APPENDIX C-2 – “CERTAIN PROVISIONS OF THE COMMON TERMS AGREEMENT – Schedule 2 – Common Representations and Warranties, Covenants and Events of Default – Negative Covenants - Liens.”

*Disposition of Assets.* Neither of the Lessee nor the Taxable REIT Subsidiary shall make any Disposition nor enter into any agreement to make any Disposition, except as follows:

(i) in the case of the Lessee, (a) Dispositions of obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business that is not useful or necessary or that is replaced, (b) the liquidation, sale or use of Permitted Investments, (c) the termination or unwinding of any Secured Hedge Transaction under a Secured Hedge Agreement permitted under the Common Terms Agreement (or any transaction under a Deal Contingent Hedge Agreement permitted under the Common Terms Agreement), (d) other Dispositions not otherwise contemplated by clauses (a) through (c) above of equipment or property in the ordinary course of business, not to exceed the greater of (1) Ten Million Dollars (\$10,000,000) in the aggregate in any Fiscal Year and (2) five percent (5%) of EBITDA, to the extent that such equipment or property is exchanged for credit against the purchase price of replacement equipment or property, or the proceeds of such Disposition are applied, within one hundred eighty (180) days after receipt thereof (or, if the Lessee shall have entered into a legally binding commitment within one hundred eighty (180) days of receipt to reinvest in replacement assets or other assets useful to its business, within two hundred seventy (270) days of receipt), to the purchase of replacement equipment or property, or (e) any Sublease permitted under the Lease and not otherwise restricted under the Financing Documents; provided, however, that any disposition of property, equipment or Permitted Investments financed or refinanced with an issue of Bonds shall be subject to the requirements of the applicable Tax Compliance Certificate or Certificates with respect to such issue of Bonds, and

(ii) in the case of the Taxable REIT Subsidiary, (a) dispositions of obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business that is not useful or necessary or that is replaced, (b) the liquidation, sale or use of Permitted Investments, or (c) other Dispositions not otherwise contemplated by clauses (a) and (b) above of equipment or property in the ordinary course of business, not to exceed Ten Million Dollars (\$10,000,000) in the aggregate in any Fiscal Year, to the extent that such equipment or property is soon exchanged for credit against the purchase price of replacement equipment or property, or the proceeds of such Disposition are applied, within one hundred eighty (180) days after receipt thereof (or, if the Taxable REIT Subsidiary shall have entered into a legally binding commitment within one hundred eighty (180) days of receipt to reinvest in replacement assets or other assets useful to its business, within two hundred seventy (270) days of receipt), to the purchase of replacement equipment or property.

***Notice of Secured Obligations Event of Default; Notice of Account Control.*** Promptly after any Secured Party obtains knowledge of the occurrence of any Secured Obligations Event of Default under any Financing Document to which it is a party, such Secured Party shall notify its Secured Debt Representative (if any) and the Intercreditor Agent in writing thereof (a “Notice of Default”). Each Notice of Default shall describe such Secured Obligations Event of Default in reasonable detail (including the date of occurrence). Upon receipt by the Intercreditor Agent of a Notice of Default, the Intercreditor Agent shall promptly send copies thereof to each Secured Debt Representative, the Collateral Agent, the Conduit Issuer and the Lessee.

Notwithstanding anything to the contrary in the Common Terms Agreement and subject to the next paragraph, on and after the date on which the Account Bank receives a written notice from the Collateral Agent (acting on the written instructions of the Intercreditor Agent) (any such notice, the “Notice of Account Control”) that a Secured Obligations Event of Default has occurred and is continuing, the Collateral Agent (acting on the written instruction of the Intercreditor Agent (acting on the instructions of the Required Secured Creditors or the Required Secured Creditors of the relevant class of Secured Creditors in the case of any Project Account or Account Collateral that is solely for the benefit of certain, and not all, Secured Creditors in accordance with the terms of the Common Terms Agreement)) is exercising control of the Project Accounts (the date of receipt of any such notice, the “Account Control Notice Date”), (i) the Account Bank shall thereafter accept all notices and instructions required or permitted to be given to it pursuant to the terms of the Common Terms Agreement with respect to the Project Accounts only from the

Collateral Agent and not from the Lessee, the Conduit Issuer or any other Person, (ii) neither the Lessee nor the Taxable REIT Subsidiary shall deliver any notices or instructions to the Account Bank or otherwise request a withdrawal, transfer, payment or other distribution from any Project Account and (iii) the Account Bank shall not withdraw, transfer, pay or otherwise distribute any monies in any of the Project Accounts except pursuant to written instructions from the Collateral Agent, unless the Account Bank shall have received a written notice from the Collateral Agent (which notice shall be provided by the Collateral Agent acting at the direction of the Intercreditor Agent (acting at the direction of the Required Secured Creditors)) after such Secured Obligations Event of Default has been waived or cured or is otherwise no longer continuing that such Secured Obligations Event of Default has been waived, cured or is otherwise no longer outstanding.

From and after an Account Control Notice Date until the relevant Secured Obligations Event of Default has been waived or cured or is otherwise no longer outstanding, and notwithstanding anything in the Common Terms Agreement to the contrary (but without limiting any of the Secured Parties' rights or remedies under the relevant Financing Documents), the Collateral Agent (or the Account Bank at the Collateral Agent's written direction) shall be permitted (and, in the case of clause (iii) any payments to or amounts collected for the Port Authority, shall) to (i) liquidate and make Eligible Investments in the Project Accounts, (ii) direct the disposition of the funds in each of the Project Accounts, (iii) pay from funds in the Project Accounts any Project Costs, O&M Expenses, Major Maintenance Expenses or any payments to the Port Authority then due and payable under the Lease and constituting Port Authority Priority Payments and (iv) pay from funds in the Project Accounts debt service of the Conduit Issuer and the Lessee and all other Secured Obligations then due and payable, in each case of clauses (i) through (iv) in accordance with the Common Terms Agreement and the other Financing Documents.

If a Secured Obligations Event of Default shall have occurred and be continuing, subject to the provisions of the Common Terms Agreement, the Required Secured Creditors or the Required Secured Creditors of the relevant class of Secured Creditors in the case of any Enforcement Action in respect of any Project Account or Account Collateral established solely for the benefit of certain, and not all, Secured Creditors in accordance with the terms of the Common Terms Agreement may instruct the Intercreditor Agent to direct the Collateral Agent to take any Enforcement Action. The Intercreditor Agent shall notify each Secured Party, the Conduit Issuer and the Lessee of any Enforcement Action.

For more information with respect to scope of the Secured Obligations Events of Default, the remedies available thereafter and the application of proceeds from enforcement, see APPENDIX C-2 – "CERTAIN PROVISIONS OF THE COMMON TERMS AGREEMENT – Schedule 2 – Common Representations and Warranties, Covenants and Events of Default – Events of Default."

***Votes Not Counted if Owners of Series 2024 Bonds Fail to Vote Under Common Terms Agreement.*** If, within the period specified by the Intercreditor Agent pursuant to the Common Terms Agreement, a Secured Party (such as an Owner of a Series 2024 Bond) who holds Senior Debt constituting registered bonds, Rule 144A or other public-style notes or bonds does not respond (by indication of its approval or disapproval of the relevant Intercreditor Vote) to the notice sent by the Intercreditor Agent regarding an Intercreditor Vote, then the number of votes of such Secured Party in such Intercreditor Vote (as determined in accordance with the Common Terms Agreement) shall not be counted in the Numerator or the Denominator for the purpose of calculating the Voting Party Percentage as set forth in the Common Terms Agreement.

## **Credit Agreement**

Overview. Lenders have committed under the Credit Agreement to Term Loan Borrowings, Working Capital Facility Borrowings, Liquidity Facility Borrowings and Security Deposit LC Borrowings and to the issuance of certain letters of credit.

Under the Credit Agreement,

(i) the Effective Date Term Lenders provided to the Conduit Issuer an Effective Date Term Commitment to fund Project Costs in the aggregate principal amount not exceeding \$1,430,000,000;

(ii) the Delayed Draw Term Lenders provided to the Conduit Issuer a Delayed Draw Term Commitment to fund Project Costs in the aggregate principal amount not exceeding \$4,900,000,000;

(iii) certain Lenders provided to the Conduit Issuer a \$200,000,000 Liquidity Facility Commitment to finance the short-term liquidity needs of the Lessee;

(iv) MUFG Bank, Ltd. provided to the Conduit Issuer a \$50,000,000 Working Capital Facility in the form of a letter of credit to finance the working capital needs of the Lessee, for general corporate purposes of the Lessee; and

(v) MUFG Bank, Ltd. provided to the Conduit Issuer a \$50,000,000 Security Deposit Facility in the form of a letter of credit to finance the security deposit payable to the Port Authority under the Lease.

Credit Extensions in the form of Borrowings or LC Credit Extensions result in Loans under the Credit Agreement, the proceeds of which are on-lent by the Conduit Issuer to the Lessee under the Lessee Loan Agreements.

From time to time, the Lessee expects to direct the Conduit Issuer to issue Additional Senior Indebtedness and/or Permitted Refinancing Indebtedness, including Private Placement Notes and Bonds, the proceeds of which will refinance outstanding Loans under the Credit Agreement and/or reduce the commitments of the Lenders in respect of the Term Loan Facility under the Credit Agreement.

The following are the types of borrowing facilities available under the Credit Agreement:

(i) Term Loan Borrowings. Subject to the terms and conditions set forth in the Credit Agreement, (a) each Effective Date Term Lender with an Effective Date Term Commitment severally agreed to make available one or more loans (each such loan, an “Effective Date Term Loan”) to the Conduit Issuer on the Effective Date in an aggregate amount not to exceed such Term Lender’s Effective Date Term Commitment and (b) each Delayed Draw Term Lender with a Delayed Draw Term Commitment severally agreed to make available one or more loans (each such loan, a “Delayed Draw Term Loan”) to the Conduit Issuer from time to time on and after the Effective Date until the Delayed Draw Term Loan Availability Period End Date in an aggregate amount not to exceed such Delayed Draw Term Lender’s Delayed Draw Term Commitment. The Effective Date Term Loans were made by the Effective Date Term Lenders in accordance with their respective Pro Rata Share of the Effective Date Term Loan Facility and the Delayed Draw Term Loans shall be made by the Delayed Draw Term Lenders in accordance with their respective Pro Rata Share of the delayed draw term loan facility. Amounts borrowed and subsequently repaid or prepaid may not be reborrowed.

(ii) Working Capital Facility Borrowings. Subject to the terms and conditions set forth in the Credit Agreement, each Working Capital Facility Lender severally agrees to make loans (each such loan, a “Working Capital Loan”) to the Conduit Issuer from time to time until the Working Capital Facility Availability Period End Date in an aggregate amount not to exceed at any time outstanding the amount of such Working Capital Facility Lender’s Working Capital Facility Commitment; provided, however, that after giving effect to any Working Capital Facility Borrowing, (a) the Total Working Capital Facility outstanding shall not exceed the Working Capital Facility and (b) the Outstanding Amount of the Working Capital Loans of such Working Capital Facility Lender, plus the Outstanding Amount of Working Capital LC Obligations of such Working Capital Facility Lender shall not exceed such Working Capital Facility

Lender's Working Capital Facility Commitment. The Working Capital Loans shall be made by the Working Capital Facility Lenders in accordance with their respective Pro Rata Share of the Working Capital Facility. Within the limits of each Working Capital Facility Lender's Working Capital Facility Commitment, and subject to the other terms and conditions of the Credit Agreement, the Conduit Issuer, acting at the direction of the Lessee, may borrow, prepay and reborrow the Working Capital Loans.

(iii) Liquidity Facility Borrowings. Subject to the terms and conditions set forth in the Credit Agreement, each Liquidity Facility Lender severally agrees to make loans (each such loan, a "Liquidity Loan") to the Conduit Issuer from time to time until the Liquidity Facility Availability Period End Date in an aggregate amount not to exceed at any time outstanding the amount of such Liquidity Facility Lender's Liquidity Facility Commitment; provided, however, that after giving effect to any Liquidity Facility Borrowing, the Outstanding Amount of all Liquidity Loans shall not exceed the Liquidity Facility. The Liquidity Loans shall be made by the Liquidity Facility Lenders in accordance with their respective Pro Rata Share of the Liquidity Facility. Within the limits of each Liquidity Facility Lender's Liquidity Facility Commitment, and subject to the other terms and conditions of the Credit Agreement, the Conduit Issuer, acting at the direction of the Lessee may borrow, prepay and reborrow the Liquidity Loans.

(iv) Working Capital LC Commitment. Subject to the terms and conditions set forth in the Credit Agreement, each Working Capital Facility Lender severally agrees (a) from time to time until the Working Capital LC Expiration Date to issue Working Capital LCs for the account of the Conduit Issuer and to amend or renew Working Capital LCs previously issued by it, and (b) to honor drafts under the Working Capital LCs; provided that the Working Capital Facility LC Issuing Bank shall not be obligated to make any Working Capital LC Credit Extension with respect to any Working Capital LC if as of the date of such Working Capital LC Credit Extension (x) the Total Working Capital Facility Outstanding would exceed the Working Capital Facility or (y) the aggregate Outstanding Amount of the Working Capital Loans of such Working Capital Facility Lender, plus such Working Capital Facility Lender's Outstanding Amount of all Working Capital LC Obligations would exceed such Working Capital Facility Lender's Working Capital Facility Commitment. Within the foregoing limits, and subject to the terms and conditions of the Credit Agreement, the Conduit Issuer's ability to obtain Working Capital LCs shall be fully revolving, and accordingly the Conduit Issuer (at the direction of the Lessee) may, during the foregoing period, obtain Working Capital LCs to replace Working Capital LCs that have expired or been terminated or that have been drawn upon and reimbursed.

(v) Security Deposit Facility Commitment. Subject to the terms and conditions set forth in the Credit Agreement, the Security Deposit Facility LC Issuing Bank agrees (a) from time to time until the Security Deposit LC Expiration Date to issue Security Deposit LCs and to amend or renew Security Deposit LCs previously issued by it, and (b) 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 Outstanding 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 of the Credit Agreement, the Conduit Issuer's ability to obtain Security Deposit LCs shall be fully revolving, and accordingly the Conduit 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.

The final maturity date for all Borrowings under the Credit Agreement is the earliest of (x) June 10, 2027, (y) the date that the Term Loans are declared due and payable following the occurrence of an event of default under the Credit Agreement and (z) the date on which the Lessee issues the Phase NTP (as

described in the Common Terms Agreement) for the first Additional Phase (as defined in the Common Terms Agreement) to commence under the Lease.

*Restricted Payment Conditions.* In addition to the restrictions set forth in the Common Terms Agreement, the Credit Agreement has imposed additional requirements on the distribution of certain moneys. Such additional requirements may be amended or waived by the Lenders at any time without the consent or approval of other Secured Creditors.

The Lessee shall not direct the Account Bank to transfer funds on deposit in the Pre-Completion Revenue Account or the Post-Completion Revenue Account, pursuant to the Common Terms Agreement, to the Distribution Account or to any person, or make any Distribution other than from the Distribution Account, unless, in addition to the satisfaction of the Restricted Payment Conditions, the Lessee shall have satisfied each of the following conditions as of the Transfer Date immediately following the applicable Calculation Date:

- (i) no Liquidity Loans are outstanding on such Transfer Date;
- (ii) unless the Debt Incurrence Conditions are satisfied on such Transfer Date, no Completion Debt is outstanding; and
- (iii) the Loan Facility has not been downgraded by any Rating Agency to below Investment Grade.

*Limitations on Permitted Indebtedness.* In addition to the restrictions set forth in the Common Terms Agreement, the Credit Agreement has imposed additional requirements on the issuance or incurrence of Indebtedness. Such additional requirements may be amended or waived by the Lenders at any time without the consent or approval of other Secured Creditors.

The Lessee shall not (and shall not instruct the Conduit Issuer to) create, incur or be liable for any Permitted Indebtedness that constitutes Indebtedness of the Lessee under the Lessee Loan Agreements resulting from the on-lending of the proceeds of:

(i) Incremental Debt incurred by the Conduit Issuer under any Additional Senior Indebtedness Documents unless prior to the incurrence of such Incremental Debt (a) all Obligations then outstanding under the Credit Agreement will be repaid in full, (b) all Commitments then available under the Credit Agreement will be terminated and (c) all Working Capital LCs and Security Deposit LCs replaced or Cash Collateralized;

(ii) Permitted Refinancing Indebtedness incurred by the Conduit Issuer unless (a) certain of the Debt Incurrence Conditions (other than the clause relating to Incremental Debt) have been satisfied (without giving effect to any waiver thereof by the Required Secured Creditors under the Common Terms Agreement) and (b) the Administrative Agent has received, at the election of the Lessee, either (1) an updated base case financial model, demonstrating that, after giving effect to the incurrence of such Permitted Refinancing Indebtedness, the minimum Projected TOCR for each four (4)-quarter period commencing on a Calculation Date occurring during the period beginning on the date of the proposed incurrence of such Permitted Refinancing Indebtedness and ending on the last day of the Lease Term, in accordance with the notional amortization schedule set forth in the base case financial model, is not less than 1.40:1.00 or (2) a reaffirmation letter from at least two (2) Rating Agencies then maintaining a rating on the outstanding Senior Debt confirming that after giving effect to the incurrence of such Permitted Refinancing Indebtedness the rating on the outstanding Senior Debt shall be at least Investment Grade; or

(iii) Completion Debt incurred by the Conduit Issuer under any Additional Senior Indebtedness Documents in relation to any Phase unless:

- (a) the Term Loans incurred to finance such Phase are fully drawn and outstanding and the Sponsor Aggregator has made all Equity Commitments which are required for such Phase;
- (b) the Administrative Agent has received a certificate from a Responsible Officer of the Lessee, confirmed by the Technical Advisor, certifying that after giving effect to the incurrence of such Completion Debt in relation to such Phase, (1) the Lessee has available funding sufficient to achieve the Completion for such Phase and (2) Completion of such Phase is reasonably likely to occur on or prior to the Date Certain for such Phase;
- (c) the Administrative Agent has received reaffirmation letters from at least two (2) of Fitch, Moody's, S&P and Kroll confirming that after giving effect to the issuance of such Completion Debt the rating on outstanding Senior Debt under the Credit Agreement shall be at least an Investment Grade;
- (d) the proceeds of such Completion Debt will be used solely to pay for design and construction costs (in respect of such Phase) certified by the Technical Advisor; provided that a portion of such proceeds shall be used to fund the Senior Debt Service Reserve Account in an amount equal to the Debt Service Reserve Requirement under the Financing Documents for such Completion Debt, if any; and
- (e) the Lessee has delivered to the Administrative Agent an updated base case financial model, demonstrating that, after giving effect to the incurrence of such Completion Debt, the minimum Projected TOCR for any four (4)-quarter period as of each Interest Payment Date through the Lease Term in accordance with the notional amortization schedule set forth in the base case financial model is not less than 1.20:1.00.

Prepayments. The Loans are subject to optional and mandatory prepayment as follows:

(i) Optional. The Conduit Issuer may, upon notice delivered by the Lessee to the Administrative Agent, at any time or from time to time voluntarily prepay Loans in whole or in part in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof or, if less, the entire principal amount thereof then outstanding without premium or penalty as provided in the Credit Agreement.

(ii) Mandatory. The Loans are subject to mandatory prepayment to the extent of the Net Cash Proceeds upon the occurrence of the following events, among others, all as more fully described in the Credit Agreement:

- (a) Event of Eminent Domain or any Casualty Event where such Net Cash Proceeds equal to or in excess of \$25 million are not applied towards the repair and/or reconstruction of the Project;
- (b) Net Cash Proceeds in excess of \$25 million in respect of certain Dispositions of the Lessee's or the Taxable REIT Subsidiary's assets that have not been reinvested in replacement assets or other assets as provided in the Credit Agreement; and

- (c) Certain performance liquidated damages under the Phase A D&C Contract or certain other Material Project Documents other than amounts applied to the payment of Project costs.

## **Lessee Loan Agreements**

Overview. The Conduit Issuer, the Lessee and the Intercreditor Agent entered into the Lessee Loan Agreements, pursuant to which the Conduit Issuer (i) has on-lent to the Lessee the proceeds of the outstanding Bank Loans and (ii) will on-lend to the Lessee the proceeds of Additional Senior Indebtedness and Permitted Refinancing Indebtedness requested by the Lessee, including the proceeds of the Series 2024 Bonds, for purposes of financing a portion of the costs relating to the design and construction of Phase A and to pay or reimburse the Lessee for certain costs and expenses related thereto. The proceeds on-lent pursuant to the Building Loan Agreement constitute items defined as an “improvement” and/or a “cost of improvement” under the New York Lien Law. The proceeds on-lent pursuant to the Project Loan Agreement relate to the remaining costs of Phase A not so characterized under the New York Lien Law. Collectively, as of any date, the amounts on-lent by the Conduit Issuer pursuant to the Lessee Loan Agreements equal the original aggregate principal amount of the Senior Debt relating to the design and construction of Phase A, other than Hedge Obligations.

Borrowings Generally. Subject to the terms and conditions set forth in the Lessee Loan Agreements, the Conduit Issuer agrees to make available to the Lessee from time to time one or more Borrowings of Building Loans or Project Loans, as the case may be, in an aggregate amount not to exceed the commitment amounts set forth in the Lessee Loan Agreements (currently, \$6.63 billion, the maximum amount permitted under the Lease without the Port Authority’s consent).

Borrowings include, (i) with respect to both Lessee Loan Agreements, Term Loans, Additional Senior Indebtedness and/or Permitted Refinancing Indebtedness, and (ii) additionally with respect to the Project Loan Agreement, Working Capital Loans, Liquidity Loans and/or Security Deposit Loans.

Prepayments – Optional. The Lessee may elect to prepay all or a portion of the Building Loans and/or Project Loans if and to the extent that the Conduit Issuer is permitted to elect to prepay the corresponding portion of the Senior Debt, in accordance with the prepayment provisions of the applicable Senior Debt Documents, and, if the Lessee elects to so prepay any Senior Debt, the Lessee shall prepay the corresponding portion of the Senior Debt in a principal amount equal to the amount of such prepayment.

Prepayments – Mandatory. To the extent that the Conduit Issuer is required to make a mandatory prepayment of, or make a mandatory offer to prepay, the Senior Debt (or any portion thereof) that has been on-lent to the Lessee as one or more Building Loans and/or Project Loans, the Lessee shall prepay the relevant Building Loans and/or Project Loans in a principal amount equal to the full amount of such mandatory payment or the amount of Senior Debt subject to an offer to prepay that has been accepted by the relevant Secured Creditors in accordance with the terms of the relevant Senior Debt Documents.

Repayment of Senior Debt. The Lessee will make scheduled repayments of Building Loans and Project Loans at such times and in the amounts required to be paid in accordance with the relevant Senior Debt Documents.

Payments Generally. All payments to be made by the Lessee under the Lessee Loan Agreements shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided in the applicable Lessee Loan Agreement, all payments by the Lessee thereunder shall be made from the relevant Project Accounts in accordance with the Common Terms Agreement to the specified Secured Debt Representative or Secured Party, as applicable, in immediately available funds.

*Loan Balancing.* The original allocation of which Phase A costs are Building Loan Costs and which are Project Loan Costs was based on the Lessee's estimated amounts. As actual Project costs are incurred, the Lessee may, without the consent of any Agent or any Secured Creditor, readjust such allocation with notice to the Intercreditor Agent and the Conduit Issuer. Any increase of the Building Loan Commitment or Project Loan Commitment and corresponding decrease of the Building Loan Commitment or Project Loan Commitment, as applicable, shall be identified as corresponding to one or more types of Senior Debt.

*Remedies.* Upon an acceleration of any Senior Debt in accordance with the related Senior Debt Document, as applicable, the corresponding Building Loans and Project Loans shall be concurrently accelerated under the applicable Lessee Loan Agreement to the same extent and the Lessee shall have an obligation to repay the applicable Building Loans and Project 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 Conduit Issuer in accordance with the Lessee Loan Agreements.

In the case of the Project Loan Agreement, to the extent that the Conduit Issuer has an obligation to pledge and deposit with or deliver to any Secured Debt Representative, for the benefit of any Secured Creditor with outstanding letters of credit under any Senior Debt Document, Cash Collateral in accordance with the applicable Senior Debt Document, the Lessee agrees to pledge and deposit with or deliver to the relevant Secured Debt Representative such Cash Collateral subject to and in accordance with the terms of such Senior Debt Document.

Any Enforcement Action and any other exercise of remedies (including acceleration of any Project Loans and/or Building Loans) under the Lessee Loan Agreements shall be taken solely in accordance with the Common Terms Agreement and in accordance with the applicable Senior Debt Document(s) and all amounts paid to or received by the 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 the Common Terms Agreement.

## **Second Supplemental Indenture**

The Series 2024 Bonds will be issued in accordance with the Master Indenture and the Second Supplemental Indenture.

The Conduit Issuer, in order to secure the payment of the Series 2024 Bonds, has pledged and assigned the Trust Estate to the Indenture Trustee pursuant to the terms of the Indenture for the benefit of the Owners.

## **PART 13 - SUMMARY OF THE SECURITY DOCUMENTS**

### **General**

As used in this Official Statement, the term "Security Documents" refers, collectively, to the agreements entered into from time to time in connection with the Financing Documents that create or perfect, directly or indirectly, a Lien in favor of the Collateral Agent for the benefit of the Secured Parties (including, without limitation, any account control agreement) and any other document designated as a Security Document by the Lessee. Except as expressly specified herein, all the Security Documents summarized herein secure all the Secured Obligations, including the Series 2024 Bonds.

*Security Documents Wherein Lessee Grants Lien.* The following "Security Documents" have been or will be executed and delivered by the Lessee wherein the Lessee grants a Lien on certain Collateral for the benefit of all Secured Obligations:

- each Leasehold Mortgage dated June 10, 2022, consisting of the Building Loan Mortgage and the Project Loan Mortgage (See “—Leasehold Mortgages” below);
- the Lessee Security Agreement dated as of June 10, 2022 (See “—Lessee Security Agreement” below); and
- any deposit account control agreement in respect of a deposit account established by the Lessee (the “Petty Cash Account”) (which will not constitute a Project Account) to be entered into by and among the bank holding the Petty Cash Account, the Lessee and the Collateral Agent (the “Petty Cash Account Control Agreement”), pursuant to which the Lessee will be entitled to withdraw and transfer funds for payment of O&M Expenses, without approval or consent by the Collateral Agent or any other Person (See “—Petty Cash Account Control Agreement” below). The Lien granted by the Lessee in respect of such Collateral will not be perfected until the Lessee enters into such Petty Cash Account Control Agreement.

Collateral Assignments and Mortgage Assignments Executed and Delivered by Conduit Issuer. The following “Security Documents” have been delivered by the Conduit Issuer to assign its interests to the Collateral Agent for the benefit of all Secured Obligations (See “—Collateral Assignments and Mortgage Assignments from Conduit Issuer to Collateral Agent” below):

- each Collateral Assignment dated as of June 10, 2022, consisting of the Building Loan Collateral Assignment and the Project Loan Collateral Assignment (as defined herein); and
- each Mortgage Assignment dated as of June 10, 2022, consisting of the Building Loan Mortgage Assignment and the Project Loan Mortgage Assignment (as defined herein).

Security Documents Executed and Delivered by Other Parties. The following “Security Documents” have been delivered by the parties referenced below wherein such party grants a Lien on certain Collateral for the benefit of all Secured Obligations:

- the Lessee Pledge Agreement dated as of June 10, 2022, executed by HoldCo (See “—Lessee Pledge Agreement” below);
- the Taxable REIT Subsidiary Security Agreement dated as of June 10, 2022 executed by the Taxable REIT Subsidiary (See “—Taxable REIT Subsidiary Security Agreement” below); and
- the Equity Contribution Agreement dated as of June 3, 2022, entered into by and among the Lessee, Topco and the Collateral Agent and each Equity Contribution Account Control Agreement and its respective Equity Contribution Pledge Agreement delivered by the members of Topco (See “—Equity Contribution Agreement, Equity Contribution Account Control Agreements and Related Equity Contribution Account Pledge Agreements – Secures all Secured Obligations” below).

*This “PART 13 – SUMMARY OF THE SECURITY DOCUMENTS” contains summaries of key provisions of the Leasehold Mortgages (certain provisions of which are attached as APPENDIX C-3 – “CERTAIN PROVISIONS OF THE LEASEHOLD MORTGAGES”) and certain other security documents. Accordingly, the following is qualified in its entirety by reference to the summary of certain of such agreements attached as an Appendix to this Official Statement and is subject to the full text of such agreements, as applicable.*

## Leasehold Mortgages

As security for the Secured Obligations, the Lessee executed and delivered to the Conduit Issuer, as mortgagee, and the Collateral Agent for the benefit of the Secured Parties and mortgagee, the Leasehold Mortgages. The maximum aggregate principal amount secured by the Building Loan Mortgage and the Project Loan Mortgage is \$6.63 billion.

Under the Project Loan Mortgage, the Lessee grants mortgage liens on and securities interests in the interests of the Lessee under the Lease, including the premises demised thereunder, to the Conduit Issuer and the Collateral Agent, and to secure the payment of the Project Loan Obligations. Under the Building Loan Mortgage, the Lessee grants mortgage liens on and securities interests in the interests of the Lessee under the Lease, including the premises demised thereunder, to the Conduit Issuer and the Collateral Agent, and to secure the payment of the Building Loan Obligations.

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

A 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, among other things, the rights of the Lessee under the Lease may be assigned or transferred only to a Qualified Terminal Operator; 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 (including the Recognized Mortgagee) shall demonstrate, to the satisfaction of the Port Authority, that it has the financial standing and capability to complete the D&C Work; and such Qualified Terminal Operator shall acknowledge and agree that each Airline Use Agreement that is otherwise in full force and effect will remain in full force and effect and will be fully enforceable against such Qualified Terminal Operator in accordance with its respective terms as if such Qualified Terminal Operator were the original party thereto.

As more fully described below under “—*Collateral Assignments from Conduit Issuer to Collateral Agent*,” concurrently with the execution of the Leasehold Mortgages, pursuant to the Project Loan Mortgage Assignment and the Building Loan Mortgage Assignment, the Conduit Issuer assigned its interest as mortgagee under the Leasehold Mortgages to the Collateral Agent, and, pursuant to the Project Loan Collateral Assignment and the Building Loan Collateral Assignment, the Conduit Issuer assigned to the Collateral Agent all of its rights, title and interest in and to the Lessee Loan Agreements (including the Loan Notes delivered thereunder), the Leasehold Mortgages and any other Lien created for the benefit of the Conduit Issuer in respect of the Collateral, except in each case for the Conduit Issuer’s Reserved Rights.

The Leasehold Mortgages, together with the other Financing Documents, contain certain representations and covenants on the part of the Lessee relating to the Lease and the work to be performed by the Lessee thereunder, and grant certain remedies to the Collateral Agent, as assignee of the Conduit Issuer, upon the occurrence and continuance of an Event of Default under the Leasehold Mortgages and the other Financing Documents, including the right to foreclose upon the Lessee’s interest in the Lease. Such remedies must, in all instances, be exercised in accordance with the terms of the Lease.

The Leasehold Mortgages shall be released upon the retirement, redemption, refunding, satisfaction or other payment or discharge of the Series 2024 Bonds and amounts owed by the Lessee under the Lessee Loan Agreements. See APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE – Lenders’ Rights and Remedies” for a further description of the Lease as it pertains to the Collateral Agent as mortgagee under the Leasehold Mortgages.

## **Lessee Security Agreement**

- Pursuant to the Lessee Security Agreement, the Lessee granted to the Collateral Agent a Lien on and security interest in all of the Lessee's right, title and interest in and to all of the Collateral, all as more fully described in the Lessee Security Agreement, including, without limitation, the following: Assigned contracts, consisting of each account, contract or agreement created or entered into by or for the Lessee, including each Material Project Document (consisting generally of the Lease, the Basic Lease, the Phase A D&C Contract, the Master Concession Agreement, each additional Material Project Document (as defined in APPENDIX A – "DEFINITIONS")), performance security provided to and for the benefit of the Lease supporting any of the foregoing and each other agreement or document that is designated a Material Project Document by the Lessee and the Intercreditor Agent), each Anchor User Agreement and each other account, contract or agreement, as each may be amended, restated, supplemented or otherwise modified or replaced, including, without limitation, all rights of the Lessee to receive moneys due or to become due under or pursuant to the assigned contract;
- the limited liability company interests issued by the Taxable REIT Subsidiary and all certificates or instruments representing the same and all other capital stock issued by the Taxable REIT Subsidiary and all warrants, options or other rights to acquire capital stock and all certificates or instruments representing the same (collectively, the "Taxable REIT Pledged Equity Interests"), including all rights and benefits of the Lessee associated with the Taxable REIT Pledged Equity Interests;
- all additional indebtedness from time to time owed to the Lessee and the instruments, if any, evidencing such indebtedness, and all interest, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such indebtedness;
- rents, revenues, income, receipts and proceeds derived in any manner by the Lessee in connection with the ownership, use or possession of the Project or any of the Collateral, including all amounts required or permitted to be deposited into the Project Accounts or Petty Cash Account pursuant to the Common Terms Agreement;
- policies of insurance; and
- all governmental approvals now or hereafter held in the name, or for the benefit, or inuring to the benefit, of the Lessee.

## **Petty Cash Account Control Agreement**

Pursuant to the Common Terms Agreement, the Lessee may at any time establish a Petty Cash Account with any bank or other financial institution, so long as the Lessee continues to comply with the provisions of the Common Terms Agreement as they relate to deposits and transfers made to such Petty Cash Account. To the extent required for purposes of establishing control over the Petty Cash Account, such Petty Cash Account will be subject to the Petty Cash Account Control Agreement.

Pursuant to the Petty Cash Account Control Agreement, the Lessee will grant to the Collateral Agent a Lien on and security interest in all of the Lessee's right, title and interest in the Petty Cash Account. The Lien granted by the Lessee in respect of such Collateral will not be perfected until the Lessee enters into such Petty Cash Account Control Agreement.

The Lessee will be entitled to withdraw and transfer funds from the Petty Cash Account solely for payment of O&M Expenses, by means of issuing checks (if available with respect to such account) or initiating wire transfers, without approval or consent by the Collateral Agent.

### **Collateral Assignments and Mortgage Assignments from Conduit Issuer to Collateral Agent**

Pursuant to the Collateral Assignment Agreement (Project), dated as of June 10, 2022 (the “Project Loan Collateral Assignment”), the Conduit Issuer assigned to the Collateral Agent for the benefit of the Secured Parties all of its rights, title and interest in and to the Project Loan Agreement, the Project Loan Mortgage, the Project Loan Note and any other Lien created for the benefit of the Conduit Issuer in respect of the Collateral (other than its Reserved Rights) under the applicable Security Documents or otherwise, other than the Building Loan Agreement, the Building Loan Mortgage, the Building Loan Note and Building Loan Collateral Assignment.

Pursuant to the Assignment of Mortgage (Project Loan), dated as of June 10, 2022 (the “Project Loan Mortgage Assignment”), the Conduit Issuer assigned to the Collateral Agent for the benefit of the Secured Parties all of its rights, title and interest in and to the Project Loan Mortgage.

Pursuant to the Collateral Assignment Agreement (Building), dated as of June 10, 2022 (the “Building Loan Collateral Assignment”), the Conduit Issuer assigned to the Collateral Agent for the benefit of the Secured Parties all of its rights, title and interest in and to the Building Loan Agreement, the Building Loan Mortgage, the Building Loan Note and any other Lien created for the benefit of the Conduit Issuer in respect of the Collateral (other than its Reserved Rights) under the applicable Security Documents or otherwise, other than the Project Loan Agreement, the Project Loan Mortgage, the Project Loan Note and Project Loan Collateral Assignment.

Pursuant to the Assignment of Mortgage (Building Loan), dated as of June 10, 2022 (the “Building Loan Mortgage Assignment”), the Conduit Issuer assigned to the Collateral Agent for the benefit of the Secured Parties all of its rights, title and interest in and to the Building Loan Mortgage.

### **Lessee Pledge Agreement**

HoldCo, as pledgor, and the Collateral Agent entered into an Equity Pledge Agreement, dated as of June 10, 2022 (the “Lessee Pledge Agreement”), pursuant to which HoldCo granted to the Collateral Agent a Lien on and security interest in all of HoldCo’s right, title and interest in and to the Pledged Collateral, all as more fully described in the Lessee Security Agreement, including, without limitation, the following:

- the limited liability company interests issued by the Lessee, consisting of 100% of the membership interests of HoldCo in the Lessee, and all certificates or instruments representing the same and all other capital stock issued by the Lessee and all warrants, options or other rights to acquire capital stock and all certificates or instruments representing the same (collectively, the “Lessee Pledged Equity Interests”), including all rights and benefits of HoldCo associated with the Lessee Pledged Equity Interests;
- all Indebtedness owed to the HoldCo by the Lessee and the instruments, if any, evidencing such Indebtedness, and any and all interest, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Indebtedness; and
- all dividends, interest, revenues, income, distributions and proceeds of any kind, whether cash, instruments, securities or other property distributable to HoldCo in respect of, or in

exchange for, the Lessee Pledged Equity Interests or any other Collateral pledged under the Lessee Pledge Agreement.

### **Taxable REIT Subsidiary Security Agreement**

Pursuant to the Taxable REIT Subsidiary Security Agreement, the Taxable REIT Subsidiary granted to the Collateral Agent a Lien on and security interest in and lien on all of the Taxable REIT Subsidiary's right, title and interest in and to all of the Collateral, all as more fully described in the Taxable REIT Subsidiary Security Agreement, including, without limitation, the following:

- assigned contracts, consisting of each account, contract or agreement created or entered into by or for the Taxable REIT Subsidiary, as each may be amended, restated, supplemented or otherwise modified or replaced, including, without limitation, all rights of the Taxable REIT Subsidiary to receive moneys due or to become due under or pursuant to the assigned contract;
- all additional indebtedness from time to time owed to the Taxable REIT Subsidiary and the instruments, if any, evidencing such indebtedness, and all interest, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such indebtedness;
- the TRS Project Accounts, consisting of the TRS Construction Phase Account and the TRS Operating Account;
- rents, revenues, income, receipts and proceeds derived in any manner by the Taxable REIT Subsidiary in connection with the ownership, use or possession of the Project or any of the Collateral, including all amounts required or permitted to be deposited into the TRS Project Accounts pursuant to the Common Terms Agreement;
- policies of insurance; and
- all governmental approvals now or hereafter held in the name, or for the benefit, or inuring to the benefit, of the Taxable REIT Subsidiary.

### **Equity Contribution Agreement, Equity Contribution Account Control Agreements and Related Equity Contribution Account Pledge Agreements**

Pursuant to the Equity Contribution Agreement, Topco agreed to make certain equity contributions to the Lessee and to ensure such Equity Commitments are at all times supported by certain credit support mechanisms described therein. In accordance with such credit support obligation, the Sponsors, as members of Topco, elected to provide such credit support in the form of Cash Collateral (as defined in the Equity Contribution Agreement), which Cash Collateral is or will be deposited by each Sponsor into a deposit bank account established by each such Sponsor with a bank or financial institution.

In connection therewith, each Sponsor is required to grant to the Collateral Agent a Lien on and security interest in all of its right, title and interest in and to the Accounts Collateral as described in the Equity Contribution Agreement, pursuant to a deposit account control agreement and a pledge agreement.

The following agreements have been entered into in connection with such Equity Commitments under the Equity Contribution Agreement:

- Depository Agreement, dated as of June 10, 2022, by and among the Collateral Agent, Mars NTO LLC, as depositor, and U.S. Bank, N.A., as depository agent, and the related Pledge Agreement, dated as of June 10, 2022, between Mars NTO LLC, as Sponsor, and the Collateral Agent;
- Deposit Account Control Agreement, dated as of June 10, 2022, by and among Golden Buckets, LLC, as depositor, the Collateral Agent and The Northern Trust International Banking Corporation, and the related Pledge Agreement, dated as of June 10, 2022, between Golden Buckets, LLC, as Sponsor, and the Collateral Agent;
- Deposit Account Control Agreement, dated as of June 10, 2022, by and among JLC Infrastructure Fund I LP, as depositor, the Collateral Agent and BMO Harris Bank, N.A., and the related Pledge Agreement, dated as of June 10, 2022, between JLC Infrastructure Fund I L.P., as Sponsor, and the Collateral Agent; and
- Deposit Account Control Agreement, dated as of June 10, 2022, by and among Ullico Infrastructure JFK Financial Aggregator HoldCo, LLC, as depositor, the Collateral Agent and The Bank of New York Mellon, as custodian, and the related Pledge Agreement, dated as of June 10, 2022, between Ullico Infrastructure JFK Financial Aggregator HoldCo, LLC, as Sponsor, and the Collateral Agent.

## **Direct Agreements**

As security for the Secured Obligations, the Lessee, the Taxable REIT Subsidiary, the Collateral Agent and the Design Builder entered into the D&C Contractor Direct Agreement, pursuant to which the Design Builder consented to the collateral assignment of the Design-Build Contract by the Lessee to the Collateral Agent as security for the Secured Obligations (including the Series 2024 Bonds) and, subject to certain conditions, granted the Collateral Agent certain cure and step-in rights regarding the Design-Build Contract following a default thereunder by the Lessee. See APPENDIX E – “SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT – Direct Agreement and Port Authority Step-In Rights.”

Similarly, the Lessee, AECOM, and the Collateral Agent entered into the Parent Guarantor Direct Agreement, pursuant to which AECOM, the Design Builder’s parent company, consented to the collateral assignment of the Parent Company Guaranty by the Lessee to the Collateral Agent as security for the Secured Obligations (including the Series 2024 Bonds) and, subject to certain conditions, granted the Collateral Agent certain cure and step-in rights regarding applicable assigned contract following a default thereunder by the Lessee.

Likewise, on June 10, 2022, the Lessee, the Master Concessionaire, and the Collateral Agent entered into that certain Consent to Assignment, Non-Disturbance and Attornment Agreement, dated as of June 10, 2022, pursuant to which the Master Concessionaire consented to the collateral assignment of the Master Concession Agreement by the Lessee to the Collateral Agent as security for the Secured Obligations (including the Series 2024 Bonds) and, subject to certain conditions, granted the Collateral Agent certain cure and step-in rights regarding applicable assigned contract following a default thereunder by the Lessee.

## **Intercreditor Matters**

The Common Terms Agreement sets forth the decision-making process of the Secured Creditors. Any approval or other direction or instruction of the Required Secured Creditors, including any Enforcement Action and any Modification, will be determined by an intercreditor vote.

In an intercreditor vote, each Secured Creditor will have a number of votes equal to the portion of the Combined Exposure (as defined in the Common Terms Agreement) represented by the Secured Obligations under its respective Financing Documents and will be represented by its Secured Debt Representative. However, Hedge Providers will have no voting rights with respect to the Secured Obligations arising under any Secured Hedge Agreement they are a party to or any voting rights in an intercreditor vote, except for votes where the subject of such intercreditor vote adversely affects the relevant Hedge Provider in a material respect or votes that require the consent of 100% of the Secured Creditors affected by such vote. In addition, any Secured Party who holds Senior Debt constituting registered bonds, Rule 144A or other public-style notes or bonds who does not respond within the timeframe provided for such intercreditor vote shall not be counted in such intercreditor vote. For a description of how an intercreditor vote is calculated and otherwise taken, see APPENDIX C-2 – “CERTAIN PROVISIONS OF THE COMMON TERMS AGREEMENT.”

If a Secured Obligations Event of Default has occurred and is continuing, the Required Secured Creditors may instruct the Intercreditor Agent to direct the Collateral Agent to take an Enforcement Action.

With the exception of certain Modifications that require the approval of the Required Secured Creditors through an intercreditor vote, Modifications with respect to the provisions of any Senior Debt Document will be made in accordance with the requirements of such Senior Debt Document. In addition, (i) Modifications with respect to the provisions of any Financing Document (other than the Senior Debt Documents and Security Documents) will be made with the consent of the Required Secured Creditors affected thereby and (ii) Modifications with respect to the provisions of any Security Document may be made only with the consent of the Collateral Agent (acting at the written direction of the Intercreditor Agent (as directed by the Required Secured Creditors through an intercreditor vote)).

The written consent of 100% of the Secured Creditors affected thereby is required for, among other things, Modifications to certain definitions under the Common Terms Agreement, Modifications permitting the assignment of the Lessee’s obligations, Modifications releasing Collateral from the Lien of any Security Document or releasing funds and Modifications that disproportionately and adversely impact any class of Secured Creditors.

At the request of any Secured Debt Representative, and without the consent of any Secured Party, the Intercreditor Agent will instruct the Collateral Agent to enter into, among others, certain Modifications relating to cure ambiguity or inconsistency, administrative and ministerial actions, modify any provision necessary to ensure any Bonds or other tax-exempt debt not be includable in gross income for federal income tax purposes and authorize and facilitate the issuance of Additional Senior Indebtedness and Permitted Refinancing Indebtedness.

For a description of the aforementioned Modifications, see APPENDIX C-2 – “CERTAIN PROVISIONS OF THE COMMON TERMS AGREEMENT – Amendments; Waivers; Instructions.”

## **PART 14 - FLOW OF FUNDS UNDER THE COMMON TERMS AGREEMENT**

### **Flow of Project Revenues**

The Common Terms Agreement establishes certain Project Accounts in the name of the Lessee and the manner in which Project Revenues and other sources of funds are deposited into such Project Accounts. See “PART 12 – SUMMARY OF THE FINANCING DOCUMENTS – Common Terms Agreement.”

## Pre-Completion Revenue Account

The Account Bank shall, prior to the Phase A DBO Date, make the following withdrawals, transfers and payments from the Pre-Completion Revenue Account in the amounts, at the times and only for the purposes specified below at the request of the Lessee in a Funds Transfer Certificate, and in the following order of priority, after giving effect to any other transfers from or into the Project Accounts specified below (or otherwise pursuant to the Common Terms Agreement) on the applicable Transfer Date as instructed by the Lessee (in accordance with the terms of the Common Terms Agreement) to be made on or prior to such Transfer Date (it being agreed that no amount shall be withdrawn or transferred on any date pursuant to any paragraph below until amounts sufficient as of that date (to the extent applicable) for all the purposes specified under the prior paragraphs shall have been withdrawn or transferred) to the extent amounts are then available in the Pre-Completion Revenue Account:

- (i) First, on each Transfer Date, in the following order of priority:
  - (a) *sub-first*, if any amount is required by a Tax Compliance Certificate with respect to an issue of Bonds or an issue of such other tax-exempt Senior Debt, as applicable, to satisfy the requirements of the Code with respect to any Bonds or other tax-exempt Senior Debt, as applicable, to the relevant Arbitrage Rebate Account, such required amount; and
  - (b) *sub-second*, (unless previously funded from amounts in the Construction Accounts for Phase A) an amount equal to any fees, costs, charges, indemnities and expenses due and payable to the Conduit Issuer under the Financing Documents;
- (ii) Second, on each Transfer Date (unless previously funded from certain amounts in the Construction Accounts for Phase A or from amounts applied to the Conduit Issuer in accordance with subparagraph *sub-first* of paragraph *First* above), if funds are otherwise not then available to be deposited into the Construction Accounts for Phase A to pay all Project Costs for Phase A then due and payable and reasonably expected to be due and payable during the following calendar month, to the applicable Construction Account for Phase A, the amount of Project Revenues to be applied to Project Costs for Phase A in such calendar month as set forth in the base case financial model delivered on the Effective Date; and
- (iii) Third, on each Transfer Date (unless previously funded from certain amounts in the Construction Accounts for Phase A or from amounts applied to the Conduit Issuer in accordance with subparagraph *sub-first* of paragraph *First* above), if funds are otherwise not then available to be deposited into the Construction Accounts for Phase A to pay all Project Costs for Phase A then due and payable and reasonably expected to be due and payable during the following calendar month, to the applicable Construction Account for Phase A, the amount of Project Revenues to be applied to Project Costs for Phase A in such calendar month that are in excess of the amounts allocated for such purpose as set forth in the base case financial model delivered on the Effective Date.

On the Phase A DBO Date, all remaining funds, if any, then on deposit in the Pre-Completion Revenue Account shall be transferred, at the election of the Lessee as set forth in a Funds Transfer Certificate, to the Post-Completion Revenue Account or to the Construction Accounts for Phase A.

## Post-Completion Revenue Account

The chart below illustrates the flow of funds from the Post-Completion Revenue Account in accordance with the Common Terms Agreement.

	Post Completion Waterfall Payments From the Post-Completion Revenue Account (Monthly Transfers Unless Otherwise Noted)
<i>First</i>	Port Authority Priority Payments or, if applicable, Concession Shortfall
<i>Second</i>	Arbitrage Rebate Account, if required, <u>then</u> Conduit Issuer Reserved Rights payments
<i>Third</i>	<i>Pro rata</i> monthly payments for (a) Permitted O&M Expenses and TRS Permitted O&M Expenses to the Operating Account or the TRS Operating Account, and (b) ground rent and Contingent Rental due under the Lease
<i>Fourth</i>	Secured Party fees and expenses (other than commitment fees and letter of credit fees that are paid from the Interest Account), then Ordinary Course Payments under Secured Hedge Agreements plus <i>pro rata</i> portion of interest, commitment fees and letter of credit fees due on Senior Obligations on next Interest Payment Date, then Termination Payments under Secured Hedge Agreements plus <i>pro rata</i> portion of principal due on Senior Obligations on next Principal Payment Date, then, to the extent any TIFIA Loan shall be outstanding and the TIFIA Obligations are not Senior Secured Obligations, an amount equal to the amounts necessary to cause the balance on deposit in such Interest Payment Account to equal the <i>pro rata</i> amount of interest due and payable on the TIFIA Loan on the next Interest Payment Date and then, to the extent any TIFIA Loan shall be outstanding and the TIFIA Obligations are not Senior Secured Obligations, an amount equal to the amounts necessary to cause the balance on deposit in such Principal Payment Account to equal the <i>pro rata</i> amount of principal due and payable on the TIFIA Loan on the next Principal Payment Date
<i>Fifth</i>	On each Transfer Date prior to June 30 and December 31, First Additional Rental due under the Lease
<i>Sixth</i>	To each Senior Debt Service Reserve Account after the funding thereof (other than any Senior Debt Service Reserve Account, if any, in respect of TIFIA Loans), Debt Service Reserve Requirement shortfalls, then, to the extent any TIFIA Loan shall be outstanding and the TIFIA Obligations are not Senior Secured Obligations, to each Senior Debt Service Reserve Account established in with each TIFIA Loan, Debt Service Reserve Requirement shortfalls
<i>Seventh</i>	On each Transfer Date prior to March 31 (if the Lessee so elects), June 30, September 30 and December 31, O&M Reserve Requirement shortfalls
<i>Eighth</i>	On each Transfer Date prior to March 31 (if the Lessee so elects), June 30, September 30 and December 31, <i>pro rata</i> payments (a) of Major Maintenance Reserve Requirement shortfalls, and (b) beginning five years prior to the Expiration Date, Handback Reserve Account shortfalls
<i>Ninth</i>	On a <i>pro rata</i> basis, (a) on each Transfer Date prior to March 31, June 30, September 30 or December 31, Third Additional Rent due under the Lease, and (b) on each Transfer Date, unless a Deferred Second Additional Rent amount has been calculated, Second Additional Rental due under the Lease
<i>Tenth</i>	On a <i>pro rata</i> basis, with respect to the most recent prior Transfer Date (a) Concession Shortfall not fully paid under <i>First</i> above plus Deferred Management Fee not fully paid under <i>Third</i> above plus Deferred Second Additional Rent not fully paid under <i>Ninth</i> above, <u>then</u> (b) with respect to prior Transfer Dates, accumulated and unpaid Concession Shortfalls not fully paid under <i>First</i> above plus Deferred Management Fee not fully paid under <i>Third</i> above plus Deferred Second Additional Rent not fully paid under <i>Ninth</i> above, in each case with interest thereon
<i>Eleventh</i>	Amounts equal to O&M Expenses, Directly Paid Costs and TRS Operating Phase Fees <u>then</u> due and payable not previously paid under the preceding deposits to the Operating Account or the TRS Operating Account
<i>Twelfth</i>	Amounts to the Construction Accounts to pay Project Costs during the following month as set forth in the base case financial model, <i>pro rata</i> if there are insufficient moneys to make all such deposits

<i>Thirteenth</i>	If other funds are not <u>then</u> available to be deposited into the Construction Accounts to pay Project Costs during the following month, Project Revenues shall be so deposited in excess of that set forth in the base case financial model, <i>pro rata</i> if there are insufficient moneys to make all such deposits
<i>Fourteenth</i>	Amounts payable to the Anchor Users under the Anchor User Agreements
<i>Fifteenth</i>	On any Transfer Date immediately following an Interest Payment Date on which principal amounts are payable on Senior Debt, at the election of the Lessee, amounts to prepay Working Capital Loans, Liquidity Loans and Security Deposit Loans, and Additional Senior Indebtedness or Permitted Refinancing Indebtedness constituting revolving loans or letter of credit loans
<i>Sixteenth</i>	To the Springing Liquidity Reserve Account, Springing Liquidity Reserve Requirement shortfalls
<i>Seventeenth</i>	On each Transfer Date immediately prior to March 31, an amount equal to the KPI Deductions due under the Lease
<i>Eighteenth</i>	On any transfer date following any Interest Payment Date, at the election of the Lessee, any amounts to the relevant Prepayment/Redemption Account for voluntary prepayments of Senior Debt or, or, to the extent not constituting Senior Debt at such time, TIFIA Loans, or Termination Payments under the Secured Hedge Agreements
<i>Nineteenth</i>	On any transfer date following any Interest Payment Date and within a period of 60 days thereafter, all remaining amounts to the Distribution Account if the Restricted Payment Conditions have been satisfied

The Account Bank shall, on and after the Phase A DBO Date, make the following withdrawals, transfers and payments from the Post-Completion Revenue Account in the amounts, at the times and only for the purposes specified below at the request of the Lessee in a Funds Transfer Certificate and in the following order of priority, after giving effect to any other transfers from or into the Project Accounts specified below or otherwise pursuant to the Common Terms Agreement on the applicable Transfer Date as instructed by the Lessee to be made on or prior to such Transfer Date (it being agreed that no amount shall be withdrawn or transferred on any date pursuant to any paragraph below until amounts sufficient as of that date (to the extent applicable) for all the purposes specified under the prior paragraphs shall have been withdrawn or transferred) to the extent amounts are then available in the Post-Completion Revenue Account (the “Post-Completion Waterfall”):

- (i) First, on each Transfer Date, to the Port Authority, an amount equal to the Port Authority Priority Payments, unless on any Transfer Date occurring on or prior to the Deferred Concession Shortfall End Date, a Concession Shortfall has been calculated under the Lease, in which case an amount equal to the Concession Shortfall on such Transfer Date shall instead be paid to the Port Authority under sub-paragraph *sub-first* and/or *sub-second* of paragraph *Tenth* below (as applicable);
- (ii) Second, on each Transfer Date in the following order of priority:
  - (a) *sub-first*, if any amount is required by a Tax Compliance Certificate with respect to an issue of Bonds or an issue of such other tax-exempt Senior Debt, as applicable, to satisfy the requirements of the Code with respect to the Bonds or such other tax-exempt Senior Debt, as applicable, to the relevant Arbitrage Rebate Account, such required amount; and
  - (b) *sub-second*, to the Conduit Issuer, an amount equal to any fees, costs, charges, indemnities and expenses due and payable to the Conduit Issuer under the Financing Documents on such Transfer Date;
- (iii) Third, on each Transfer Date, on a *pro rata* basis, (a) to the Operating Account, an amount sufficient, when taken together with amounts then on deposit therein, to pay (1) the Permitted O&M Expenses then due and payable, or reasonably projected to be due and payable, prior to the next succeeding Transfer Date, with respect to the Leased Premises, unless on any Transfer Date on or prior to the Deferred Management Fee End Date, a Deferred Management Fee has been calculated under the Management Services Agreement, in which case an amount equal to the Deferred Management Fee shall instead be paid under sub-paragraph *sub-first* and/or *sub-second* of paragraph *Tenth* below (as applicable) plus (2) any amounts to be used by the Lessee to pay any Directly Paid Costs attributable to TRS Permitted O&M Expenses and constituting part of the TRS Operating Phase Fee that are then due and payable, or reasonably projected to be due and payable, prior to the next succeeding Transfer Date, (b) to the Port Authority, an amount equal to the ground rent due and payable under the Lease for such calendar month with respect to the Leased Premises, (c) to the Port Authority, an amount equal to any Contingent Rental due and payable under the Lease prior to the next succeeding Transfer Date, and (d) to the TRS Operating Account in partial payment of the TRS Operating Phase Fee, an amount sufficient, when taken together with amounts then on deposit therein, to pay the TRS Permitted O&M Expenses (other than any Directly Paid Costs paid pursuant to clause (a)(2) above) then due and payable, or reasonably projected to be due and payable, prior to the next succeeding Transfer Date;
- (iv) Fourth, on each Transfer Date in the following order of priority:
  - (a) *sub-first*, to each Secured Party that is the payee thereof, an amount equal to the fees (other than commitment fees and letter of credit fees), costs, charges,

indemnities and expenses due and payable to the Secured Parties on such Transfer Date,

- (b) *sub-second*, (1) to the Ordinary Course Payment Account, an amount equal to the Ordinary Course Payments under any Secured Hedge Agreement due and payable since the preceding Transfer Date, and (2) to each Interest Payment Account (other than the Ordinary Course Payment Account), an amount equal to the amount necessary to cause the balance on deposit in such Interest Payment Account (other than the Ordinary Course Payment Account) for the purpose of paying all amounts due in respect of the interest, commitment fees and letter of credit fees due and payable on the Loans, Bonds, Private Placement Notes and any other Senior Secured Obligations (other than Ordinary Course Payments under any Secured Hedge Agreement) on the next succeeding Interest Payment Date for such Senior Secured Obligations to be equal to the product of (A) the number equal to (1) the number of Transfer Dates that have occurred since the preceding Interest Payment Date for such Senior Secured Obligations (including the current Transfer Date but excluding the Transfer Date on which such preceding Interest Payment Date occurred) divided by (2) the total number of Transfer Dates between the preceding Interest Payment Date for such Senior Secured Obligations (excluding the Transfer Date on which such preceding Interest Payment Date occurred) and the next succeeding Interest Payment Date for such Senior Debt (including the Transfer Date on which such succeeding Interest Payment Date will occur) times (B) an amount equal to the aggregate amount of interest, commitment fees and letter of credit fees to become due on the next succeeding Interest Payment Date with respect to the Loans, Bonds, Private Placement Notes and any other Senior Secured Obligations (other than Ordinary Course Payments under any Secured Hedge Agreement) (or, if such Transfer Date is also an Interest Payment Date for such Senior Secured Obligations, the aggregate amount of interest, commitment fees and letter of credit fees due on such Interest Payment Date); provided that if there are insufficient funds available on the Transfer Date to make the deposits required to be made by this sub-paragraph *sub-second*, transfers shall be made to each Interest Payment Account maintained with respect to any Senior Debt on a *pro rata* basis measured by the amounts required to be transferred to each such Interest Payment Account; and
- (c) *sub-third*, (1) to the Termination Payment Account, an amount equal to the Termination Payments under any Secured Hedge Agreement due and payable since the preceding Transfer Date and (2) to each Principal Payment Account (other than the Termination Payment Account) an amount equal to (A) the make-whole amount (if any), to be paid to any Principal Payment Account due and payable since the preceding Transfer Date on the Loans, Bonds, Private Placement Notes and any other Senior Secured Obligations (other than Termination Payments under any Secured Hedge Agreement) plus (B) the amount necessary to cause the balance on deposit in the Principal Payment Account for the purpose of paying all amounts due in respect of the principal due and payable on the Loans, Bonds, Private Placement Notes and any other Secured Obligations (other than Termination Payments under any Secured Hedge Agreement) on the next succeeding Payment Date to be equal, in the case of this subclause sub-third clause (2), to the product of (1) the number equal to (x) the number of Transfer Dates that have occurred since the preceding Payment Date (including the current Transfer Date but excluding the Transfer Date on which such preceding Payment Date occurred) or, in the event that no Payment Date has yet occurred in respect of the

relevant Senior Secured Obligations, such number shall be equal to one (1), divided by (y) the total number of Transfer Dates between the preceding Payment Date (excluding the Transfer Date on which such preceding Payment Date occurred) and the next succeeding Payment Date (or, in the event that no Payment Date has yet occurred in respect of the relevant Senior Secured Obligations, and the current Transfer Date is the Transfer Date immediately next preceding the first Payment Date in respect of the relevant Senior Secured Obligations, such number shall be equal to one (1)) times (2) an amount equal to the aggregate principal amounts to become due on the next succeeding Payment Date with respect to the Loans, Bonds, Private Placement Notes and any other Senior Secured Obligations (other than Termination Payments under any Secured Hedge Agreement) (or, if such Transfer Date is also a Payment Date, the aggregate principal amount due on such Payment Date); provided that if there are insufficient funds available on the Transfer Date to make the deposits required to be made as set forth above in this sub-paragraph *sub-third (c)*, transfers shall be made to each Principal Payment Account maintained with respect to any Secured Obligation on a *pro rata* basis measured by the amounts required to be transferred to each such Principal Payment Account;

- (d) *sub-fourth*, to the extent that any TIFIA Loan shall be outstanding and the TIFIA Obligations do not qualify as Senior Secured Obligations, on each Transfer Date, to each Interest Payment Account established in connection with any TIFIA Loan, an amount equal to the amount necessary to cause the balance on deposit in such Interest Payment Account for the purpose of paying all amounts due in respect of interest due and payable on the relevant TIFIA Loan on the next succeeding Interest Payment Date for such applicable TIFIA Obligations to be equal to the product of (a) the number equal to (i) the number of Transfer Dates that have occurred since the preceding Interest Payment Date for such TIFIA Obligations (including the current Transfer Date but excluding the Transfer Date on which such preceding Interest Payment Date occurred) divided by (ii) the total number of Transfer Dates between the preceding Interest Payment Date for such TIFIA Obligations (excluding the Transfer Date on which such preceding Interest Payment Date occurred) and the next succeeding Interest Payment Date for such TIFIA Obligations (including the Transfer Date on which such succeeding Interest Payment Date will occur) times (b) an amount equal to the aggregate amount of interest, to become due on the next succeeding Interest Payment Date; provided, that on each Interest Payment Date, amounts on deposit in each Interest Payment Account established in connection with any TIFIA Loan shall be transferred by the Account Bank pursuant to the applicable Funds Transfer Certificate for the payment of interest then due and payable on the TIFIA Obligations;
- (e) *sub-fifth*, to the extent that any TIFIA Loan shall be outstanding and the TIFIA Obligations do not qualify as Senior Secured Obligations, on each Transfer Date, on each Transfer Date, to each Principal Payment Account established in connection with any TIFIA Loan an amount equal to the amount necessary to cause the balance on deposit in such Principal Payment Account for the purpose of paying all amounts due in respect of the principal due and payable on the TIFIA Obligations on the next succeeding Payment Date to be equal to the product of (a) the number equal to (i) the number of Transfer Dates that have occurred since the preceding Payment Date (including the current Transfer Date but excluding the Transfer Date on which such preceding Payment Date occurred) or, in the event that no Payment Date has yet occurred in respect of the relevant TIFIA

Obligations, such number shall be equal to one (1), divided by (ii) the total number of Transfer Dates between the preceding Payment Date (excluding the Transfer Date on which such preceding Payment Date occurred) and the next succeeding Payment Date (or, in the event that no Payment Date has yet occurred in respect of the relevant TIFIA Obligations, and the current Transfer Date is the Transfer Date immediately next preceding the first Payment Date in respect of the relevant TIFIA Obligations, such number shall be equal to one (1)) times (b) an amount equal to the aggregate principal amount to become due on the next succeeding Payment Date with respect to the TIFIA Obligations (or, if such Transfer Date is also a Payment Date, the aggregate principal amount due on such Payment Date); provided, that on each Payment Date, amounts on deposit in each Principal Payment Account established in connection with any TIFIA Loans shall be transferred by the Account Bank pursuant to the applicable Funds Transfer Certificate for the payment of principal then due and payable on the TIFIA Obligations;

(v) Fifth, on each Transfer Date immediately prior to June 30 and December 31 of each calendar year, to the Port Authority, an amount equal to the First Additional Rental due and payable under the Lease in such calendar month;

(vi) Sixth, on each Transfer Date in the following order of priority:

- (a) *sub-first* to each Senior Debt Service Reserve Account, the amount necessary (if any) to fund such Senior Debt Service Reserve Account (other than any Senior Debt Service Reserve Account, if any, in respect of TIFIA Loans) so that the balance therein (taking into account amounts then on deposit therein and amounts available to be drawn on any Acceptable Letter of Credit posted to satisfy the relevant Debt Service Reserve Requirement) equals the applicable Debt Service Reserve Requirement with respect to such Senior Debt Service Reserve Account; provided that if there are insufficient funds available on the Transfer Date to make the deposits required to be made as set forth above in this paragraph *Sixth*, transfers shall be made to each Senior Debt Service Reserve Account maintained with respect to the Secured Obligations on a *pro rata* basis measured by the amounts of the respective deficiencies in each such Senior Debt Service Reserve Account; and
- (b) *sub-second*, to the extent that any TIFIA Loan shall be outstanding and the TIFIA Obligations do not qualify as Senior Secured Obligations, on each Transfer Date, to each Senior Debt Service Reserve Account established in connection with each TIFIA Loan 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 such Senior Debt Service Reserve Account, equals the applicable Debt Service Reserve Requirement at such time;

(vii) Seventh, on each Transfer Date immediately prior to June 30, September 30 and December 31 of each calendar year (and if the Lessee so elects, in its sole discretion, on any Transfer Date immediately prior to March 31 of each calendar year), to the O&M Reserve Account, the amount necessary (if any) to fund the O&M Reserve Account so that the balance therein (taking into account amounts then on deposit therein and amounts available to be drawn on any Acceptable Letter of Credit posted to satisfy the O&M Reserve Requirement) equals the O&M Reserve Requirement;

(viii) Eighth, on each Transfer Date immediately prior to June 30, September 30 and December 31 of each calendar year (and if the Lessee so elects, in its sole discretion, on any Transfer Date immediately prior to March 31 of each calendar year), on a pro rata basis, (a) to the Major Maintenance Reserve Account, the amount necessary (if any) to fund the Major Maintenance Reserve Account so that the balance therein (taking into account amounts then on deposit therein and amounts available to be drawn on any Acceptable Letter of Credit posted to satisfy the Major Maintenance Reserve Requirement) is at least equal to the Major Maintenance Reserve Requirement and (b) from and after the Transfer Date immediately preceding the date that is five (5) calendar years prior to the projected Expiration Date, to the Handback Reserve Account, the amount necessary (if any) to fund the Handback Reserve Account so that the balance on deposit therein equals the Handback Amount;

(ix) Ninth, on a *pro rata* basis, (a) on any Transfer Date immediately prior to March 31, June 30, September 30 or December 31 of each calendar year, to the Port Authority, an amount equal to the Third Additional Rental due and payable under the Lease for the immediately preceding quarterly period and (b) on any Transfer Date, to the Port Authority, an amount equal to the Second Additional Rental due and payable under the Lease for the calendar month in which such Transfer Date occurs; unless, on any Transfer Date on or prior to the Deferred Second Additional Rental End Date, a Deferred Second Additional Rental amount has been calculated under the Lease, in which case an amount equal to the Deferred Second Additional Rent shall instead be paid under sub-paragraph *sub-first* and/or *sub-second* of paragraph *Tenth* below, as applicable;

(x) Tenth, on each Transfer Date, in the following order of priority:

- (a) *sub-first*, on a *pro rata* basis, to the Port Authority (or in the case of clause (2), to the Manager) (1) on any Transfer Date occurring on or prior to the Deferred Concession Shortfall End Date on which a Concession Shortfall has been calculated under the Lease, an amount equal to the Concession Shortfall that would otherwise have been payable on such Transfer Date under sub-paragraph *First* above if no Concession Shortfall had been calculated, together with any interest due and payable thereon pursuant to the Lease (provided that if there is insufficient cash available to pay any such amount on any Transfer Date occurring prior to the Deferral Outside Date, the relevant shortfall amount and any interest due and payable thereon pursuant to the Lease shall instead be paid under sub-paragraph *sub-second* below), (2) on any Transfer Date occurring on or prior to the Deferred Management Fee End Date on which a Deferred Management Fee amount has been calculated under the Management Services Agreement, an amount equal to the Deferred Management Fee that would otherwise have been payable on such Transfer Date under paragraph *Third* if no Deferred Management Fee had been calculated (provided that if there is insufficient cash available to pay any such amount on any Transfer Date occurring prior to the Deferral Outside Date, the relevant shortfall amount and any interest due and payable thereon pursuant to the Management Services Agreement shall instead be paid under sub-paragraph *sub-second* below), and (3) on any Transfer Date occurring prior to the Deferred Second Additional Rental End Date, an amount equal to the Deferred Second Additional Rent (if any) (provided that if there is insufficient cash available to pay any such amount on any Transfer Date occurring prior to the Deferral Outside Date, the relevant shortfall amount and any interest due and payable thereon pursuant to the Lease shall instead be paid under sub-paragraph *sub-second* below); and
- (b) *sub-second*, to the Port Authority (or in the case of clause (2) below), to the Manager), (1) any accumulated and unpaid Concession Shortfall amounts due and

payable under the Lease which are attributable to prior Transfer Dates, together with any interest due and payable thereon pursuant to the Lease, (2) any accumulated and unpaid Deferred Management Fee amounts due and payable under the Management Services Agreement which are attributable to prior Transfer Dates, together with any interest due and payable thereon pursuant to the Management Services Agreement, and (3) any accumulated and unpaid Deferred Second Additional Rent amounts due and payable under the Lease which are attributable to prior Transfer Dates, together with any interest due and payable thereon pursuant to the Lease;

(xi) Eleventh, on any Transfer Date, (a) to the Operating Account, an amount equal to (1) O&M Expenses of the Lessee (other than such O&M Expenses that are expressly paid under other paragraphs of this Post-Completion Waterfall) that are not Permitted O&M Expenses (as defined in the Lease) plus (2) any amounts to be used by the Lessee to pay, in partial payment of the TRS Operating Phase Fee, any Directly Paid Costs attributable to O&M Expenses of the Taxable REIT Subsidiary (other than TRS Permitted O&M Expenses), and (b) to the TRS Operating Account, an amount equal to the TRS Operating Phase Fee then due and payable (less the portion thereof paid under paragraph *Third* above and clause (A) of this paragraph *Eleventh* above);

(xii) Twelfth, on each Transfer Date (unless previously funded from amounts in the Construction Accounts for a Phase in accordance with the Common Terms Agreement) if funds are otherwise not then available to be deposited into the Construction Accounts for a Phase to pay all Project Costs for such Phase then due and payable and reasonably expected to be due and payable during the following calendar month, to the applicable Construction Accounts for such Phase, the amount of Project Revenues to be applied to such Project Costs for such Phase in such calendar month as set forth in the base case financial model delivered on the relevant Closing Date of such Phase; provided that if there are insufficient funds available on the Transfer Date to make the transfers required to be made as set forth above in this paragraph *Twelfth*, transfers shall be made to such Construction Accounts for a Phase on a pro rata basis measured by the amounts required to be transferred to such Construction Accounts for a Phase;

(xiii) Thirteenth, on each Transfer Date (unless previously funded from amounts in the Construction Accounts for a Phase in accordance with the Common Terms Agreement), if funds are otherwise not then available to be deposited into the Construction Accounts for a Phase to pay all Project Costs for such Phase then due and payable and reasonably expected to be due and payable during the following calendar month, to the applicable Construction Accounts for such Phase, the amount of Project Revenues to be applied to such Project Costs for such Phase in such calendar month that are in excess of the amounts allocated for such purpose as set forth in the base case financial model delivered on the relevant Closing Date of such Phase; provided that if there are insufficient funds available on the Transfer Date to make the transfers required to be made as set forth above in this paragraph *Thirteenth*, transfers shall be made to such Construction Accounts for a Phase on a pro rata basis measured by the amounts required to be transferred to such Construction Accounts for a Phase;

(xiv) Fourteenth, on each Transfer Date, to each Anchor User an amount equal to any applicable Anchor User Discount, Volume Discount, Relocation Incentive Fee, Incentive Fee, Exclusive Use Space Rent Credit and Additional Flight Incentive Payment (in each case, as defined in the Anchor User Agreement to which such Anchor User is a party) due and payable under such Anchor User Agreement;

(xv) Fifteenth, on any Transfer Date immediately following an Interest Payment Date on which principal amounts are payable in respect of any Senior Debt, to the Loans Principal Payment Account or any other relevant Principal Payment Account, at the election of the Lessee in its sole discretion, an amount up to the outstanding principal of the Working Capital Loans, Liquidity Loans and Security Deposit Loans or of Additional Senior Indebtedness or Permitted Refinancing Indebtedness constituting revolving loans or letter of credit loans, in each case, as of such Transfer Date;

(xvi) Sixteenth, on each Transfer Date, to the Springing Liquidity Reserve Account, the amount necessary (if any) to fund the Springing Liquidity Reserve Account so that the balance therein equals the Springing Liquidity Reserve Requirement;

(xvii) Seventeenth, on each Transfer Date immediately prior to March 31 of each calendar year, to the Port Authority an amount equal to any applicable KPI Deductions (as defined in the Lease) which are due and payable under the Lease with respect to the immediately preceding calendar year;

(xviii) Eighteenth, on any Transfer Date immediately following an Interest Payment Date, at the election of the Lessee, to each relevant Prepayment/Redemption Account any amounts to be used for voluntary prepayments of Senior Debt or, to the extent not constituting Senior Debt at such time, TIFIA Loans, together with accrued interest and any fees, make-whole amount, breakage costs and/or associated Termination Payments under the Secured Hedge Agreements; and

(xix) Nineteenth, on each Transfer Date immediately following any Interest Payment Date and within a period of sixty (60) days thereafter, if the Restricted Payment Conditions have been satisfied, to the Distribution Account, all remaining amounts.

The Lessee and (at the direction of the Secured Parties) Collateral Agent each acknowledge and agree that payment of any Concession Shortfall and/or Deferred Second Additional Rent (each as defined under the Lease) to which the Port Authority is entitled under and subject to the Lease will be made in the ordinary course to the extent of available funds therefor in accordance with the foregoing provisions.

## **PART 15 - OPERATION AND MANAGEMENT OF THE PROJECT**

### **Management Services Agreement**

The Lessee is responsible under the Lease for all Operations and Maintenance Work for the New Terminal Facilities. The Lessee entered into the Management Services Agreement with the Manager pursuant to which the Manager has agreed to provide certain services and support in connection with the Lessee's responsibilities with respect to the Operations and Maintenance Work. The term of the Management Services Agreement commenced on June 10, 2022, and extends until the date that is 15 years from such date, unless terminated earlier pursuant to its terms.

Through the Manager's own personnel and other internal and third-party resources, the Manager has agreed to provide support to all of the Lessee's business and operations.

The Manager is also responsible for, among other things, providing the following services under the Management Services Agreement:

- (i) during the entire term of the Management Services Agreement;
  - (a) second the Seconded Manager Personnel to the Lessee, and
  - (b) provide management services through the Seconded Manager Personnel and other internal or third-party resources to, among other things, enable the Lessee to perform its obligations, and enforce its rights, under the Lease and other key documents in respect of the Project;
- (ii) from the Effective Date until Phase A DBO, provide:
  - (a) design and development support services,

- (b) Lessee set-up support,
  - (c) airline marketing and route development support,
  - (d) commercial concession management support,
  - (e) preparation of certain operations documentation, and
  - (f) the development of a comprehensive reporting infrastructure (collectively, the “Pre-DBO Services”); and
- (iii) from Phase A DBO throughout the term of the Management Services Agreement;
- (a) provide Pre-DBO Services during the D&C Work Period for each subsequent Phase following Phase A DBO,
  - (b) provide continuous management and support as post-DBO Services,
  - (c) participate in the preparation of Lessee operations materials,
  - (d) provide certain corporate services,
  - (e) revise the comprehensive reporting infrastructure set out in the Pre-DBO Services and provide support in the reporting infrastructure, and
  - (f) provide other terminal operator services.

The Manager expects to leverage the international headquarters and airport network of Ferrovial Airports, including its know-how, guides and manuals with respect to “Best Management Practices” for administration, financing, human resources, operations, information technology and commercial and brand issues, as may be necessary for the Manager to perform the services contemplated under the Management Services Agreement and for the Lessee to comply with its obligations under the Lease. While the Manager has agreed to be obligated to provide the requisite management services under the Management Services Agreement in accordance with “Best Management Practice,” the obligations under the Lease with respect to the Operations and Maintenance Work will remain the primary obligations of the Lessee and will not generally be deemed to have passed through to the Manager unless required otherwise in the Management Services Agreement.

Under the Management Services Agreement, the Lessee will be responsible to pay the Manager a management fee, which will be composed of a base fee (the “Base Fee”), a performance fee (the “Performance Fee”) and a bonus (if applicable). The Base Fee will be equal to an amount of \$5,580,016 per annum, adjusted annually by the increase in the consumer price index as defined by the Lease (such index, the “CPI”). The Lessee may only reduce the Base Fee by 25% in the event of any KPI deductions under the Lease that are attributable to services required to be provided by the Manager. The performance fee will be equal to 25% of the excess of actual cash available for distribution over the base case cash available for distribution for such year, capped at \$1,225,000 (in 2018 dollars adjusted annually by the increase in the CPI). The Manager has agreed to be entitled to receive a financial bonus in an amount equal to 25% of the amount of any financial bonus actually paid to the Lessee by the Port Authority under the Lease.

During the Deferred Concession Share Period (as defined in the Lease), any Base Fee and Performance Fee payable under the Management Services Agreement will be subordinated to debt service and payable from cashflows available after payment of the aggregate of Permitted O&M Expenses, Major

Maintenance and Asset Preservation Work costs and expenses, Ground Rent, Pro-Rated Debt Service, First Additional Rent, Second Additional Rental, Third Additional Rent and the funding of reserves as may be required under the Financing Documents in accordance with the Cash Flow Waterfall (the “Deferred MSA Fee”), on a pro rata basis with payment of any Deferred Concession Share payable after Debt Service. If available cashflows are insufficient to pay the Deferred MSA Fee in full, the shortfall will be carried over and accrue interest at a rate of 7.5% per annum until paid in full.

The management fees and expenses of the Manager under the Management Services Agreement will generally be paid from revenues of the Lessee prior to debt service as part of the Lessee’s Permitted O&M Expenses.

Lastly, under the Management Services Agreement, the Manager has agreed to designate nominees to serve as secondees to the Lessee in certain positions, subject to approval of the Lessee’s Board of Directors. The Lessee must pay a secondment fee of \$100,000 per annum per any Seconded Manager Personnel, payable monthly in advance. The ultimate decision to approve or reject any nominee for secondment is at the Lessee Board of Director’s discretion. The work and activities of the Lessee will otherwise be performed by other staff and personnel employed directly by the Lessee.

For a further description of the Management Services Agreement, see APPENDIX F – “SUMMARY OF CERTAIN PROVISIONS OF THE MANAGEMENT SERVICES AGREEMENT.”

## **ORAT Agreement**

In June 2023, the Lessee and the ORAT Contractor entered into the ORAT Agreement, pursuant to which the ORAT Contractor has agreed to provide to the Lessee operational readiness and airport transfer services. The term of the ORAT Agreement commences on the date of its execution and extends until the date of completion of the ORAT Services, unless terminated earlier pursuant to its terms.

The ORAT Contractor has agreed to provide the following services to the Lessee under the ORAT Agreement (the “ORAT Services”):

- (i) operational readiness and airport transfer planning and coordination with certain project stakeholders;
- (ii) supporting and consulting the Lessee with respect to the testing and commissioning of the D&C Work relating to the operational readiness and airport transfer prior to handover by the Design Builder to the Lessee;
- (iii) certain operational readiness and airport transfer logistic services;
- (iv) development of the Concept of Operations Plan (as defined in the Requirements and Provisions for Work under the Lease) and development of standard operating procedures for the New Terminal Facilities;
- (v) coordination, and the development and implementation, of familiarization training and coordination of stakeholder staff training;
- (vi) planning and executing the Project’s operational readiness and operational readiness and airport transfer trials; and
- (vii) developing and executing a relocation plan for the transition and relocation of Airline Users and others from other terminals at the Airport to the New Terminal Facilities.

The Lessee is required to provide the ORAT Contractor with all plans, schedules and any other information submitted to the Lessee by the Design Builder with respect to commissioning and achieving Substantial Completion for any Phase of the D&C Work. The ORAT Contractor has agreed to participate with the Lessee in the witnessing of testing and commissioning the D&C Work of any Phase, in addition to any other consultant witnessing and/or acting on behalf of the Lessee in relation to the foregoing.

The parties will be able to review the ORAT Services and identify any necessary changes to such services that the parties determine in good faith to be necessary to reflect the then-current and then-anticipated future needs and priorities relating to the New Terminal Facilities.

As consideration for the ORAT Services, the Lessee has agreed to pay to the ORAT Contractor the following fees:

- (i) with respect to the Phase A services \$10,163,155;
- (ii) with respect to the Phase B1 services \$1,923,948; and
- (iii) with respect to the Phase B2 services \$1,819,346.

Subject to certain retainage of the fees, the payment of the above-mentioned fees by the Lessee to the ORAT Contractor will be made monthly based on performance of the ORAT Services.

The ORAT Contractor will have no ability to bind the Lessee and/or to make any decisions on behalf of the Lessee except as expressly authorized by the Lessee. The ORAT Contractor will be subject to the same record-keeping obligations as set forth in the Lease and the Lessee will have the right to audit such records.

The Lessee will have the right to express any concerns in respect of the ORAT Contractor's performance of the ORAT Services and perform a performance review.

## **PART 16 - AERONAUTICAL REVENUES**

### **Overview**

Rates and charges paid by aeronautical users of the New Terminal Facilities are expected to comprise the principal revenue source for the Lessee's payment of its operating expenses and repayment of its obligations under the Lessee Loan Agreements and any of its Senior Debt, including the Series 2024 Bonds. Aeronautical users generally include (i) airlines, (ii) businesses that provide services and support directly related to aircraft operation, such as ground or passenger handling services and (iii) users of hardstand parking positions. The rates and charges paid by the aeronautical users are referred to as "Aeronautical Revenues." As of June 1, 2024, the Lessee has secured the commitment of Air France, Etihad Airways PJSC ("Etihad Airways"), KLM Royal Dutch Airlines ("KLM"), Korean Air, Polskie Linie Lotnicze LOT S.A. ("LOT Polish Airlines"), EVA Airways Corporation ("EVA Airways") and Air Serbia A.D. Beograd ("Air Serbia") to operate at the New Terminal Facilities despite the fact that the New Terminal Facilities to be completed in Phase A are not expected to open for commercial use until June 2026. This early commitment by these airlines, each of which has served JFK Airport for many years, demonstrates the demand by major international airlines for securing gate access in state-of-the-art terminal facilities at JFK Airport. In addition, the Lessee believes that its ability to obtain, as of June 1, 2024,

commitments for approximately 26%\* of the forecast for the Lessee's enplanements at the New Terminal Facilities in the first full calendar year of operation under long-term agreements provides market validation of the Lessee's business plan and the willingness of airlines to pay rates and charges in line with the Lessee's expectations.

Aeronautical Revenues will overwhelmingly be generated through a per passenger charge on airline users. This fee will be negotiated with airline users and subject to annual escalations throughout the life of the applicable agreement with each such airline user. Additional Aeronautical Revenue may be generated through ancillary charges for services such as: (i) the leasing of exclusive use space in the New Terminal Facilities for airline users such as passenger lounges, VIP check-in spaces, staff offices and operational support spaces and (ii) aircraft parking within the Lessee's leased premises.

The Project is intended to address the current wide-body gate shortage for international flights at JFK Airport and the need to accommodate projected growth in international, long-haul traffic demand. In general, the Lessee expects Aeronautical Revenues to be supported by: (i) strong and growing demand for air travel in the New York City market, including its role as a strategic and high revenue market for airline users; (ii) limited availability of wide-body gates that can support long-haul international flights within the New York region; and (iii) a high level of service at the New Terminal Facilities which exceeds existing standards and aligns with international market requirements of airlines currently serving JFK Airport. Subject to a revenue sharing mechanism with the Port Authority, the Lessee is expected to generate Non-Aeronautical Revenues and Aeronautical Revenues from the Phase A facilities, while, subject to the conditions, requirements, and further agreements described herein, the remaining phases will be under different stages of construction.

Expected demand for Phase A of the New Terminal Facilities is further underpinned by the upcoming loss of common-use gate space, which can accommodate international airlines due to the JFK Redevelopment as described in "PART 2 – JOHN F. KENNEDY INTERNATIONAL AIRPORT-JFK Airport Redevelopment," that the New Terminal Facilities will replace. The opening of the New Terminal Facilities to be completed in Phase A, which includes 14 wide-body gates (one of which will be temporary), will coincide with the closing of the existing Terminal 1, with 10 gates, and will follow the effective closure of three gates in Terminal 4. Given this loss of existing gate capacity at other terminals at the Airport, airlines are expected to demand the gates provided by the New Terminal Facilities.

Revenue is expected to grow over time due to: (i) forecasted long term growth in demand at JFK Airport, (ii) increasing scarcity of gate availability given the limited expansion opportunities at the Airport and the high cost of development in the region and (iii) historical norms in the market for contractual pricing escalations above inflation. The Lessee believes this is validated by the airline agreements already executed by the Lessee. See APPENDIX B-1 – "REPORT OF THE AIRPORT CONSULTANT."

### **Committed Airline Use Agreements**

The Lessee has secured the commitment of Air France, Etihad Airways, KLM, Korean Air, LOT Polish Airlines, Eva Airways and Air Serbia to operate at the New Terminal Facilities under long term agreements of between 10 and 25 years. Each airline agreement includes exclusivity commitments which prevent the airline from operating at any other terminal facility at JFK Airport during the course of the agreement to the extent they have service to the Airport, except in the case of irregular operations or force majeure as set forth in such airline agreements.

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\* As of June 1, 2024, Korean Air and Asiana Airlines are considering a merger. If such merger takes place, the percentage of committed forecast traffic is expected, as of June 1, 2024, to increase to approximately 29% of the total forecast for the Lessee's enplanements in the first full calendar year of operation.

These committed airline users are expected to represent, as of June 1, 2024, approximately 26%\* of the forecast for the Lessee's enplanements at the New Terminal Facilities in the first full calendar year of operation. After completion of Phase A, there will be a "ramp-up" period during which the airline users and concessionaires are expected to increasingly use the Phase A facilities.

Each committed airline user will be responsible to pay the Lessee a common use facilities charge (based on the number of enplaned passengers) and a rental charge per square foot for exclusive use space leased to it under its respective agreement, with the rate varying based on the type of space. Each rate will escalate annually at an agreed rate in excess of actual performance of the CPI – all items in New York-Newark-Jersey City.

### **Additional Airline Users**

The Lessee is currently engaging in discussions with additional airlines to secure additional user agreements and fill the available capacity of the New Terminal Facilities. These additional airline users are expected to include certain of the current users of the existing Terminal 1, which will close when the New Terminal Facilities to be completed in Phase A open, as well as airlines displaced from other terminals around the Airport during construction and development of other facilities. It may also include airlines not currently operating at JFK Airport which commence service to the New York market. Key attributes of the New Terminal Facilities that are expected to incentivize airlines to use the New Terminal Facilities include (i) the lack of available and suitable gate capacity elsewhere in the region, (ii) the high quality of the New Terminal Facilities relative to alternative facilities at the Airport and (iii) the higher level of service and world-class amenities at the New Terminal Facilities, including exclusive VIP lounges.

The terms of additional user agreements are likely to be of varying term based on the nature of the airline. Some of these additional airline users may sign long term agreements, while others may sign shorter agreements of between 3-5 years. Others may enter into shorter term agreements for a single operating season (typically six months).

The Lessee has assembled a dedicated team of experienced airline route development professionals within the organization responsible for engaging with potential airline users. This team will work with potential users to identify key needs for the airlines such as specific schedule requirements, facility needs such as lounge space or accommodation for connecting passengers and engage in negotiations on commercial terms for use of the New Terminal Facilities. To date, the team has demonstrated the demand for the New Terminal Facilities and the ability to secure long term airline commitments by agreeing to terms with four airline partners prior to beginning construction and three additional airline partners since beginning construction of the New Terminal Facilities.

### **Total Passenger Charge Revenues**

All users of the New Terminal Facilities are expected to pay a passenger fee per enplaned passenger and some airlines are expected to pay terminal rents if leasing exclusive-use areas from the Lessee. Committed airline users will be fixed at an agreed growth rate, while other airline user rates will be subject to market conditions and changes in operating costs over time.

The fees assumed have been compared to existing pricing from other JFK Airport terminals to date and validated through engagement with airline users, including the long-term commitment from seven airline users. Given the high cost of terminal development in the New York region, passenger charge pricing

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\* As of June 1, 2024, Korean Air and Asiana Airlines are considering a merger. If such merger takes place, the percentage of committed forecast traffic is expected, as of June 1, 2024, to increase to approximately 29% of the total forecast for the Lessee's enplanements in the first full calendar year of operation.

will generally be higher than existing terminal charges elsewhere in the United States and also reflects the high level of service and quality of the New Terminal Facilities. The Lessee anticipates this aligns with the needs of airline users, whose high value customer base in the New York region supports higher quality facilities than have existed historically at JFK Airport. Given the relatively small share of passenger total trip costs impacted by terminal pricing, airlines and passengers are expected to accept the anticipated charges, which will be comparable to other new terminal developments at the Airport. The Lessee believes that commitment of multiple large airline users validates the reasonableness of the expected passenger fees.

## **Additional Aeronautical Revenues**

### ***Exclusive Space Rentals***

While only a small portion of total Aeronautical Revenues, the rental of office, lounge space, VIP check-in space, operational support space and aircraft parking positions are expected to generate additional Project Revenues. The Lessee expects strong demand for exclusive-use space within the New Terminal Facilities, particularly given the mix of international carriers that utilize premium lounges and VIP check-in spaces as market differentiators.

The Former Terminal Facilities have approximately 86,000 square feet of office and lounge space for airlines. The New Terminal Facilities will increase exclusive use space to over 114,000 square feet upon completion of Phase A, which will allow for additional office and lounge space to support the traffic forecast while still attempting to maximize the time passengers spend in public areas. The Lessee believes that the commitment of airline users to a large share of the available lounge space demonstrates the demand for such facilities.

### ***Delta Hardstand Rentals***

Aircraft parking hardstand rentals on the Premises are expected to be another source of Project Revenues to the Lessee. The Project currently includes seven on-site hardstands.

On June 10, 2022, Delta and the Lessee entered into an Aircraft Parking License Agreement (the “Delta Hardstand Agreement”), pursuant to which the Lessee has agreed to grant Delta and its affiliates a license to access and use a portion of the Premises for parking and servicing of aircraft of Delta and its affiliates.

The term of the Delta Hardstand Agreement will continue until the earliest of (i) the termination of Delta’s right to occupy gates at Terminal 4, (ii) the termination of Delta’s right to operate at the Airport, or (iii) December 30, 2050, unless sooner terminated as provided therein.

Non-Delta airlines operating at the New Terminal Facilities will have the ability to utilize other parking hardstands elsewhere on the Airport which will be managed by the Port Authority and for which the Lessee will not collect any rents or generate any revenues.

## **PART 17 - NON-AERONAUTICAL REVENUES**

In addition to the Aeronautical Revenues from aeronautical users, payments made by non-aeronautical users of the New Terminal Facilities are expected to comprise the remaining principal revenue source for the Lessee’s payment of its operating expenses and repayment of its loan obligations under the Lessee Loan Agreements and its other outstanding indebtedness. The “Non-Aeronautical Revenue” is expected to be generated primarily from concession arrangements with third-party concessionaires, food and beverage outlets as well as from retail and duty-free shops that offer their goods and services to visitors of the New Terminal Facilities. Revenues to the Lessee are expected to be generated by a combination of

gross sales and rental yields paid by such concessionaires operating such venues. Additional Non-Aeronautical Revenues are expected to be generated through advertising and through cost recovery agreements with terminal users (e.g., for utility costs generated by a specific user).

The majority of Non-Aeronautical Revenues is currently expected to be generated through the New Terminal Facilities' concession program which will be managed through the Master Concession Agreement entered into between the Lessee and URW, as further described herein. The New Terminal Facilities will have significantly more concessions space than the existing Terminal 1, which is currently the highest performing concession program at JFK Airport and one of the top programs in the country in terms of sales per enplaned passenger.

### **Concession Space in New Terminal Facilities**

Based on the space utilization and sales per square foot, the concessions program at the existing Terminal 1 is undersized to meet traffic needs, which are expected to increase further in the future. Despite this lack of space, sales per enplaned passenger at the Former Terminal Facilities are the highest of any terminal at JFK Airport. This confirms the high demand for passenger concessions and the strong passenger demographics using the Former Terminal Facilities and demonstrates the revenue potential of the concession space at the New Terminal Facilities. The New Terminal Facilities are expected to capture the same attractive passenger demographics, with a significantly larger and improved commercial concessions offering. The early commitment of well-established airlines with strong passenger demographics including Air France, Etihad Airways, KLM, Korean Air, LOT Polish Airlines, EVA Airways and Air Serbia, underpins what the Lessee believes is an attractive concessions opportunity.

The New Terminal Facilities are expected to benefit from their international passenger mix which historically has created (and is expected to create in the future) a strong passenger demographic for airport retail and also allows duty free purchases to be taken directly by passengers, which is not always the case. This policy is referred to as "cash and carry" and refers to the ability of passengers to "carry" their goods with them from the retail location onto an aircraft rather than having to collect their duty-free purchases at the boarding gate upon departure. Such ability is only allowable in the United States in terminals where all passengers are departing for international markets, as will be the case at the New Terminal Facilities. This policy generally helps to increase duty free sales and is expected to make the New Terminal Facilities a highly attractive market for airport concessions developers and operations.

The design of the commercial and concession areas in the New Terminal Facilities is being finalized but is expected to maintain a mixed distribution of concessions throughout the headhouse and piers. Passenger flow after security will pass retail clusters in the headhouse. Landside concessions will focus on arriving passengers as well as "meeters" and "greeters" and employees. Increasing the overall area of the terminal dedicated to commercial activity is an important driver for non-aeronautical revenue development, as is the improved quality of the enlarged commercial area. The New Terminal Facilities are expected to accommodate over 17 square feet of commercial space per thousand enplaned passengers in the first year of operations in 2027, compared to less than 12 feet per thousand enplanements offered in the existing Terminal 1.

The Lessee has developed an operating concept to try to maximize the value of concessionaire real estate within the New Terminal Facilities, which incorporates revenue optimization techniques focused on exposure rates to key concessions such as duty free and high-end retail, tailored to the demographics and interests of the New Terminal Facilities' passengers. The concept calls for providing a "sense of place," which is often cited as a key feature of successful airport design.

## **Master Concession Agreement**

On June 10, 2022, the Lessee entered into a Master Concession Developer Agreement (the “Master Concession Agreement”) with the Master Concessionaire to exclusively plan, develop, design, lease (on behalf of the Lessee) and manage the concessions program, including food and beverage, retail, duty free services, foreign exchange services, all non-aeronautical commercial uses and all other commercial services and amenities at the New Terminal Facilities, with the exception of advertising and common-use lounges.

The term of the Master Concession Agreement commenced on June 10, 2022 and will terminate on the earlier of (i) October 31, 2039 and (ii) 10 years after the later of (a) the completion of the final Phase that Lessee elected to construct pursuant to the terms of the Lease or (b) the date set forth in the baseline schedule for completion of Phase B2, subject to any extensions agreed pursuant to the terms thereof or unless terminated earlier in accordance with its terms.

The Master Concessionaire generally must pay the Lessee a minimum annual guarantee for each enplaned passenger in a given year. The minimum annual guarantee will be adjusted annually by CPI and may be subject to other equitable adjustments pursuant to the terms of the Master Concession Agreement. The Lessee has assumed for the purposes of the revenue forecast contained in the Report of the Airport Consultant (attached as APPENDIX B-1) that the Master Concessionaire will only pay the minimum annual guarantee; however, the Master Concessionaire expects to achieve significantly higher revenues, providing upside to the Lessee.

Pursuant to the terms of the Master Concession Agreement, the Master Concessionaire has taken all commercial risks for delivering the majority of the non-aeronautical revenue. The structure of the Master Concession Agreement is such that the Master Concessionaire will achieve strong commercial performance only by significantly outperforming the minimum annual guarantee on which the Lessee is relying. The Master Concessionaire is an experienced airport concessions developer and operator in the United States including through existing operations at JFK Airport.

On March 18, 2024, URW Airports issued its first prime operator Request for Proposals (“RFP”) seeking a global duty-free partner to achieve its vision and connect with the local maker and vendor community to feature local products at the Airport. The tender is offered as a single package covering five outlets in the project’s initial phase, with additional space provided in future phases. As part of the RFP, the operator must include at least 30 percent airport concessions disadvantaged business enterprise participation and incorporate a minimum of 5 percent of local business enterprise product in their shop floor product mix, complementary to the overall merchandising plan. On May 20, 2024, URW Airports issued its second prime operator RFP with one package for the foodhall tender and one package for the travel essentials tender. Additionally, the Lessee expects URW Airports to launch its tender for specialty retail by early July 2024. The Lessee is working with URW Airports to target contract award to all concession tenants by the end of 2024.

## **Other Revenues**

Besides concession revenues through the Master Concessionaire, the Lessee expects separate advertising fees and cost recovery charges as additional non-aeronautical revenues. Advertising at the New Terminal Facilities will be managed through an airport wide contract managed by the Port Authority. Revenues from advertising generated at the New Terminal Facilities are split equally between the Port Authority and the Lessee. Cost recovery charges such as telecommunication fees, common area maintenance fees, marketing fees and storage fees for tenant goods will be passed through to New Terminal Facilities users and are also recognized as “non-aeronautical revenues.”

For further descriptions of the concessions program and other Non-Aeronautical Revenues for the New Terminal Facilities, see APPENDIX B-1– “REPORT OF THE AIRPORT CONSULTANT.”

## **PART 18 - THE CONSULTANTS' REPORTS**

Steer Davies & Gleave, Incorporated (the “Airport Consultant”) prepared the report of the Airport Consultant, which reviews projected traffic, revenues, rates, charges, and operating expenses, included in this Official Statement as APPENDIX B-1. See APPENDIX B-1 – “REPORT OF THE AIRPORT CONSULTANT” (the “Airport Consultant Report”).

In the Airport Consultant Report, the Airport Consultant has also projected future revenues from the fiscal year ending December 31, 2026 through the fiscal year ending December 31, 2035 (the “Projection Period”). The Airport Consultant has also projected future expenses of the operation of the New Terminal Facilities through the Projection Period. The Airport Consultant has classified these expenses for each year as operations, security, facilities, utilities, information technology, insurance, ground rent, and administration, including, among other things, expenditures pursuant to the Management Services Agreement. Operating costs were based on a review of the cost at the existing Terminal 1, scaling up costs to account for a larger facility and higher passenger volumes, as well as adjustments for efficiency gains and inputs from other advisors on costs such as maintenance, insurance and energy consumption. Expenses also reflect debt service on the Series 2024 Bonds as well as Series 2023 Bonds and future debt issuances.

The Airport Consultant has concluded that New Terminal Facilities revenues will be sufficient to comply with the Rate Covenant in each year of the Projection Period.

The following table is excerpted from the Airport Consultant Report and is not a full statement of the terms of such Airport Consultant Report. Accordingly, the following excerpt is qualified in its entirety by reference to and is subject to the full text of the Airport Consultant Report, which is attached hereto as APPENDIX B-1 – “REPORT OF THE AIRPORT CONSULTANT.” The table must be read in the context of the full Airport Consultant Report and investors must review the full Airport Consultant Report, which is subject to the limitations or disclaimers contained therein. Without limiting the generality of the foregoing, the Airport Consultant Report is expressly subject to the qualifications, assumptions made, procedures followed, matters considered and any limitations on the scope of work contained therein. Investors should note that the table, and the Airport Consultant Reports, are provided only as of the date set forth therein and do not contemplate any event, circumstances or changes with respect to the Project or otherwise after such date.

The below table is based upon projected information and data (financial and otherwise), and other forward-looking information, that may or may not occur or prove to be accurate. Such projected and forward-looking information is based on current expectations and projections about future events which are beyond the control of the Airport Consultant, the Lessee or any other participant in the New Terminal Facilities, and such projections and information can be affected by inaccurate assumptions. While these projections and information were prepared in good faith, no assurance can be given as to the accuracy or adequacy of such projections and information, or the assumptions underlying such projections and information.

The total liability of the Airport Consultant for any loss, damage, cost or expense suffered or incurred by all persons or entities and for all claims respecting its work performed in connection with the Project and the Series 2024 Bonds is hereby limited in the aggregate to \$3,000,000, except to the extent that such liability result from the willful misconduct, recklessness, fraud or gross negligence of the Airport Consultant (including infringement, wrongful use or violation of any intellectual property rights of third parties) or any other conduct for which liability cannot be limited under applicable law.

The following table sets forth the Airport Consultant's projections of revenues and expenses over the Projection Period, as well as the projected debt service coverage.

**Revenues, Expenses and Debt Service Coverage for the Projection Period  
(Fiscal Year ending December 31)**

Millions (\$ nominal)	2026 <sup>A</sup>	2027	2028	2029	2030	2031	2032	2033	2034	2035
<b>Project Revenues</b>										
Aeronautical Revenue	365.7	694.6	735.6	774.7	816.0	856.7	887.0	918.4	950.9	984.6
Non-Aeronautical Revenue	63.7	122.1	128.2	133.9	140.0	145.8	149.7	153.8	158.0	162.3
Interest Earnings	12.4	11.2	9.0	7.5	6.6	6.2	6.0	5.7	5.8	6.8
<b>Total Project Revenues [A]</b>	<b>441.9</b>	<b>827.9</b>	<b>872.8</b>	<b>916.2</b>	<b>962.6</b>	<b>1,008.7</b>	<b>1,042.8</b>	<b>1,077.9</b>	<b>1,114.7</b>	<b>1,153.7</b>
<b>Other Sources for Payment of Debt Service</b>										
Ramp-up Reserve Account Release	115.0	110.0	70.0	50.0	40.0	15.0	-	-	-	-
<b>Other Sources for Payment of Debt Service [B]</b>	<b>115.0</b>	<b>110.0</b>	<b>70.0</b>	<b>50.0</b>	<b>40.0</b>	<b>15.0</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Obligations Senior to Debt Service</b>										
Conduit Issuer Fee	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
Permitted O&M Expenses and Ground Rent	132.8	230.9	239.2	248.8	255.9	263.1	270.0	277.0	284.3	291.7
Management Services Agreement Fee <sup>B</sup>	3.1	6.3	6.5	6.6	6.7	6.9	7.0	7.2	7.3	7.5
Port Authority Priority Payments <sup>B</sup>	31.8	60.2	63.1	65.9	68.8	71.6	73.5	75.5	77.6	79.7
<b>Total Obligations Senior To Debt Service [C]</b>	<b>168.1</b>	<b>297.8</b>	<b>309.2</b>	<b>321.7</b>	<b>331.9</b>	<b>342.1</b>	<b>351.0</b>	<b>360.2</b>	<b>369.7</b>	<b>379.3</b>
<b>Net Remaining Revenue [D]=[A]+[B]-[C]</b>	<b>388.8</b>	<b>640.1</b>	<b>633.6</b>	<b>644.4</b>	<b>670.7</b>	<b>681.6</b>	<b>691.7</b>	<b>717.7</b>	<b>745.0</b>	<b>774.4</b>
<b>Other TOCR Obligations</b>										
Second Additional Rental <sup>B</sup>	31.0	63.8	65.7	67.7	69.7	71.8	74.0	76.2	78.5	80.8
Major Maintenance Reserve Account Deposits (O&M & Major Maintenance)	-	-	-	-	-	18.1	18.5	-	4.3	4.4
	30.0	20.7	1.8	7.9	13.7	13.8	1.4	1.4	26.3	48.8
<b>Total Other TOCR Obligations [E]</b>	<b>61.0</b>	<b>84.5</b>	<b>67.5</b>	<b>75.6</b>	<b>83.4</b>	<b>103.7</b>	<b>93.9</b>	<b>77.6</b>	<b>109.0</b>	<b>134.0</b>

Millions (\$ nominal)	2026 <sup>A</sup>	2027	2028	2029	2030	2031	2032	2033	2034	2035
<b>Debt Service</b>										
Existing Debt Service – Series 2022 Bonds	63.6	109.1	109.1	109.1	109.1	111.1	111.1	111.1	111.1	111.1
Debt Service – Series 2024	47.7	81.7	81.7	81.7	81.7	81.7	81.7	81.7	81.7	81.7
Expected Debt Service – Future Issuances	59.1	101.4	101.4	101.4	101.4	101.4	101.4	101.4	101.4	101.4
Facility Commitment/Letter of Credit Fees	2.3	3.2	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6
<b>Total Debt Service[F]</b>	<b>172.7</b>	<b>295.3</b>	<b>294.7</b>	<b>294.7</b>	<b>294.7</b>	<b>296.7</b>	<b>296.7</b>	<b>296.7</b>	<b>296.7</b>	<b>296.7</b>
<b>Total Debt Service Coverage Ratio [G]=[D]/[F]</b>	<b>2.25x</b>	<b>2.17x</b>	<b>2.15x</b>	<b>2.19x</b>	<b>2.28x</b>	<b>2.30x</b>	<b>2.33x</b>	<b>2.42x</b>	<b>2.51x</b>	<b>2.61x</b>
<b>Total Obligation Coverage Ratio [H]=([D]-[E])/[F]</b>	<b>1.90x</b>	<b>1.88x</b>	<b>1.92x</b>	<b>1.93x</b>	<b>1.99x</b>	<b>1.95x</b>	<b>2.01x</b>	<b>2.16x</b>	<b>2.14x</b>	<b>2.16x</b>

<sup>A</sup> Reflects partial year data beginning from the assumed Date of Beneficial Occupancy (DBO) of June 2026.

<sup>B</sup> Obligations subject to deferral mechanisms.

Source: Airport Consultant Report

Infrata Limited (the “Lenders’ Technical Advisor”) prepared its report, which reviews the technical aspects of the construction of the Project, the Airport Consultant’s provided passenger and revenue forecast and supporting information provided by the Lessee, included in this Official Statement as APPENDIX B-2. See APPENDIX B-2 – “REPORT OF THE LENDERS’ TECHNICAL ADVISOR.” Pursuant to its current engagement with the Lessee, the Lenders’ Technical Advisor is required to provide monthly construction reports on Phase A to the Lessee, which reports the Lessee has agreed to file on the MSRB EMMA online municipal securities data and disclosure site as and when required pursuant to the Lessee Continuing Disclosure Undertaking. See “PART 30 – CONTINUING DISCLOSURE.”

The Lenders’ Technical Advisor report must be read in its entirety and any summary herein is qualified in its entirety to such completed attached report.

*[Remainder of page intentionally left blank.]*

## PART 19 - DEBT SERVICE REQUIREMENTS FOR THE OUTSTANDING BONDS

The following table sets forth the amounts due in each fiscal year ending December 31 of the years shown for the payment of (i) aggregate debt service on Series 2023 Bonds, (ii) principal and interest on the Series 2024 Bonds and (iii) aggregate debt service on Outstanding Bonds under the Master Indenture, after the issuance of the Series 2024 Bonds. This table does not include the amounts required for the repayment of other Secured Obligations, including Bank Loans, which are expected to be refinanced with the proceeds of Additional Bonds, and the fees payable under the Credit Agreement, which will vary depending on the amount of outstanding Bank Loans.

<b>Fiscal Year Ending December 31</b>	<b>Outstanding Series 2023 Bonds</b>	<b>Series 2024 Principal Payments</b>	<b>Series 2024 Interest Payments*</b>	<b>Total Bonds Outstanding*</b>
2024	\$ 54,530,244	-	\$ 68,764,416	\$ 123,294,660
2025	109,060,488	-	134,539,075	243,599,563
2026	109,060,488	-	134,539,075	243,599,563
2027	109,060,488	-	134,539,075	243,599,563
2028	109,060,488	-	134,539,075	243,599,563
2029	109,060,488	-	134,539,075	243,599,563
2030	109,060,488	-	134,539,075	243,599,563
2031	109,060,488	-	134,539,075	243,599,563
2032	109,060,488	-	134,539,075	243,599,563
2033	109,060,488	-	134,539,075	243,599,563
2034	109,060,488	-	134,539,075	243,599,563
2035	109,060,488	-	134,539,075	243,599,563
2036	109,060,488	-	134,539,075	243,599,563
2037	109,060,488	\$ 5,000,000	134,407,825	248,468,313
2038	131,301,563	22,840,000	133,677,025	287,818,588
2039	119,146,850	14,290,000	132,702,363	266,139,213
2040	116,297,700	11,560,000	132,023,800	259,881,500
2041	118,542,875	15,080,000	131,324,500	264,947,375
2042	130,969,525	32,715,000	130,233,456	293,917,981
2043	141,157,675	47,560,000	128,289,813	317,007,488
2044	163,989,700	44,895,000	125,862,869	334,747,569
2045	135,337,313	42,040,000	123,608,131	300,985,444
2046	127,519,188	41,515,000	121,469,088	290,503,275
2047	121,657,188	38,385,000	119,423,613	279,465,800
2048	147,900,938	64,635,000	116,786,250	329,322,188
2049	174,246,063	92,470,000	112,764,288	379,480,350
2050	192,013,438	115,775,000	107,325,728	415,114,166
2051	175,290,638	116,605,000	101,161,138	393,056,775
2052	194,084,338	142,740,000	94,281,225	431,105,563
2053	193,231,838	152,905,000	86,438,347	432,575,184
2054	198,344,988	164,140,000	78,027,775	440,512,763
2055	162,148,013	148,475,000	69,724,069	380,347,081
2056	180,547,488	172,235,000	61,193,250	413,975,738
2057	210,561,491	210,940,000	51,000,875	472,502,366
2058	240,901,866	252,060,000	38,685,169	531,647,034
2059	267,668,997	292,300,000	24,205,300	584,174,297
2060	119,832,769	308,840,000	8,215,088	436,887,856
	<b><u>\$5,235,009,016</u></b>	<b><u>\$2,550,000,000</u></b>	<b><u>\$4,046,064,297</u></b>	<b><u>\$11,831,073,314</u></b>

\* Totals may not add due to rounding.

## **PART 20 - RISK FACTORS**

### **General**

The purchase of the Series 2024 Bonds is subject to certain risks. Potential investors should carefully consider the following risk factors and other investment considerations prior to making a decision to purchase the 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 the Series 2024 Bonds and does not necessarily reflect the relative importance of the various risks and other factors. Additional risk factors relating to the purchase of the 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 repayment of the Series 2024 Bonds. Any one or more of the risks described, and others, could adversely affect the Lessee, the Design Builder, the Port Authority or the Project and could lead to substantial decreases in the market value of the Series 2024 Bonds or the ability of the Lessee to repay the Series 2024. There can be no assurance that other risk factors will not become material in the future. This section should be read in conjunction with the rest of the Official Statement, including the Appendices hereto.

### **Risks Associated with the Limited Recourse Obligations of the Conduit Issuer and the Lessee**

The Series 2024 Bonds are special and limited revenue obligations of the Conduit Issuer, payable by the Conduit Issuer as to the principal, redemption price, and interest thereon, solely out of the Trust Estate pledged under the Indenture, including payments made by the Lessee to the Conduit Issuer pursuant to the Lessee Loan Agreements and from the application of moneys applied in accordance with the flow of funds established in the Common Terms Agreement and the Indenture. See “PART 11 – SECURITY FOR THE SERIES 2024 BONDS – Special and Limited Revenue Obligations of the Conduit Issuer.”

Rates and charges paid by aeronautical users of the New Terminal Facilities are expected to comprise the principal revenue source for the Lessee’s payment of its operating expenses and repayment of its obligations under its Senior Debt, including debt service on its Senior Debt, including the Series 2024 Bonds. Aeronautical users generally include (i) airlines (ii) businesses that provide services and support directly related to aircraft operation, such as ground or passenger handling services and (iii) users of handstand parking positions. These rates and charges paid by the aeronautical users are entitled Aeronautical Revenues. An additional major source of Project Revenues is Non-Aeronautical Revenues which consist generally of concessions offered to passengers including food and beverage outlets, retail and duty free shops and certain additional revenues from separate advertising fees (which revenues will be shared with the Port Authority) and cost recovery fees (telecommunication fees, common area maintenance fees, marketing fees and storage fees for tenant goods).

If the Lessee does not, for any reason, receive Project Revenues in a timely manner or in sufficient amounts, it may not be able to make payments of the amounts due under its Senior Debt. In such an event, payments of principal or interest on the Bonds, including the Series 2024 Bonds, may not be made in a timely manner or in sufficient amounts, and the registered owners of the Bonds, including the Series 2024 Bonds, will not have any recourse to any party other than the Lessee, or, as applicable, to the Collateral, for payment of the amounts then due.

The Lessee is a single-purpose entity and was formed for the sole purpose of undertaking the transactions contemplated under the Lease, including entering into the Lease and the associated Material Project Documents and Financing Documents. As such, the Lessee does not expect to own any material assets other than the leasehold interest in the New Terminal Facilities under the Lease, its rights under other

assets and contracts generally related to the New Terminal Facilities, the Equity Commitments, and amounts on deposit in the Project Accounts in accordance with the Common Terms Agreement.

The Lessee's obligations under the Lease and the Financing Documents are obligations solely of the Lessee and not of any affiliate of the Lessee. No equity member (or any of the Sponsors) of the Lessee has any obligation to contribute additional equity to the Lessee beyond the Equity Commitments or to otherwise provide funds to the Lessee, and the Lessee has no sources of revenue other than from the operation of the New Terminal Facilities. In addition, none of the equity members (or any of the Sponsors) of the Lessee has guaranteed the payment of the Secured Obligations or has any obligation with respect to the payment of the Secured Obligations. Therefore, the Lessee's ability to make payments in respect of Secured Obligations, including the Series 2024 Bonds, will depend on, among other things, the successful construction of Phase A and collection of sufficient Project Revenues on and after the Phase A DBO Date from the operation of the New Terminal Facilities, to satisfy its obligations, including the payment of Port Authority Priority Payments (unless a Concession Shortfall has been calculated under the Lease, in which case an amount equal to the Concession Shortfall shall be paid to the Port Authority), the payment of amounts, if any, required to be deposited into the relevant Arbitrage Rebate Accounts, fees and expenses of the Conduit Issuer, Permitted O&M Expenses (including Ground Rent and Contingent Rental payable to the Port Authority under the Lease) and payments on its Senior Debt. The amount of Project Revenues that the Lessee will be able to collect from its operation of the New Terminal Facilities may vary depending on a number of factors, including many that are outside the control of the Lessee, 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, such as pandemics. For a more complete description of the Project Revenues flow of funds prior to, and on and after the Phase A DBO Date, see "PART 14 – FLOW OF FUNDS UNDER THE COMMON TERMS AGREEMENT."

Substantially all of the Lessee's rights under the Lease and the other Material Project Documents are being pledged and assigned as security for the Lessee's financial obligations, but no assurance can be given that the funds available or proceeds of Collateral to the Collateral Agent will be sufficient to make all of the payments required to be made in respect of the Lessee's Senior Debt, 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 Indenture Trustee, the Collateral Agent, the Conduit Issuer, and the registered owners of the Series 2024 Bonds upon an event of default under the Indenture, the Common Terms Agreement, the Lessee 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 to the Underwriters will be 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 seek enforcement action or pursue action against the Lessee or obtain payment pursuant to the Financing Documents or to realize upon Collateral.

Payments of scheduled principal and interest in respect of the Series 2024 Bonds would likely be adversely affected by a bankruptcy of the Lessee 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 Lessee or the Collateral, 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 Lessee or the Collateral. For example, if the Lessee 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 its 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 Lessee.

In addition to impairment of the Collateral Agent's ability to exercise remedies in the event of a Lessee bankruptcy, under the current Bankruptcy Code, the Lessee or its trustee in bankruptcy would be required, within 120 days of the bankruptcy filing, to elect to assume or reject the Lease. The Lessee 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 Lessee's failure to assume or reject the Lease within these timeframes would result in the automatic rejection of the Lease. As part of the bankruptcy case, the Lessee would have the choice of either (i) assuming the Lease and thereby retaining its occupancy rights to the Premises or (ii) rejecting the Lease and vacating the Premises. Assumption of the Lease by the Lessee would require that the Lessee (a) cure any defaults under the Lease, (b) maintain its payment obligations under the Lease during bankruptcy, and (c) provide assurance of future performance of its obligations under the Lease.

Under the Leasehold Mortgages, 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 pursuant to the Bankruptcy Code, thereby giving to the Lessee the right to elect to treat the Lease as terminated, the Collateral Agent, and not the Lessee, will have the exclusive right to exercise its right in respect of such termination. Pursuant to the Leasehold Mortgages, the Lessee has unconditionally assigned to the Collateral Agent all of the Lessee's claims and rights to the payment of damages that may arise as a result of any rejection or disaffirmance of the Lease by the Port Authority or any trustee of the Port Authority, pursuant to the Bankruptcy Code.

Pursuant to the Leasehold Mortgages, in the event that a petition under the Bankruptcy Code is filed by or against the Lessee, and the Lessee, or anyone claiming through or under the Lessee or a trustee in bankruptcy has the right to reject the Lease under the Bankruptcy Code, the Lessee will give the Collateral Agent sufficient written notice of the date on which the hearing of such rejection or disaffirmance is being held and shall promptly assign the Lease to the Collateral Agent. In the event of any rejection or disaffirmance of the Lease by the Lessee or anyone claiming through or under the Lessee or a trustee in bankruptcy without having first made the preceding written offer to assign, upon written election by the Collateral Agent, such rejection or disaffirmance shall be deemed an assignment of the Lease to the Collateral Agent. If any of such assignments are held to be unenforceable, then the Lessee, anyone claiming by, through or under Lessee or a trustee in bankruptcy, is not permitted to exercise rights purportedly assigned to the Collateral Agent without the prior written consent of the Collateral Agent, and if the Collateral Agent gives such consent, Lessee, anyone claiming by, through or under Lessee or a trustee in bankruptcy will promptly exercise any of said rights. There can be no assurance that such assignments would be enforced by a bankruptcy court.

Under the terms of the Lease, following any rejection of the Lease in a bankruptcy of the Lessee, the Collateral Agent may have the ability to require the Port Authority to enter into a new Lease with the Collateral Agent or its nominee, subject to receipt of all necessary governmental approvals and timely compliance with the applicable provisions of the Lease (including the requirement that the new lessee be a Qualified Terminal Operator). However, if the Lessee does not desire to retain the Premises, in lieu of

rejecting the Lease, it is also possible that a bankruptcy could allow the Lessee 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 Lessee for any shortfall between the amounts due under the Financing Documents with respect to the Secured Obligations, including the Series 2024 Bonds, and the sale proceeds.

With respect to the Lessee Loan Agreements, in a bankruptcy, the Lessee 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 Lessee would be required to pay to the Collateral Agent pursuant to a plan of reorganization, as a Secured Creditor, the value of the Lessee's leasehold interest in the Premises under the Lease. Any amounts owed by the Lessee under its Secured Obligations, including the Series 2024 Bonds, in excess of the value of the Lessee's leasehold interest would be treated as an unsecured claim in any such reorganization.

No market valuation of the Lessee'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 Lessee's leasehold in the Premises and the appropriate valuation methodology could be issues that a bankruptcy court would review. 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 Lessee'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 the New Terminal Facilities could also adversely affect the Lessee's revenues and its ability to make timely payments in respect of the Secured Obligations, including the Series 2024 Bonds.

A bankruptcy or similar state law proceeding with respect to the Design Builder or the Manager could equally adversely affect the Lessee's ability to comply with its obligations under the Lease and adversely impact its ability to make timely payments of the Secured Obligations, including the Series 2024 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 Secured Obligations**

As described herein, payments with respect to the Senior Debt, including the Series 2024 Bonds, are contingent upon the Lessee making loan payments pursuant to the Lessee Loan Agreements. The Financing Documents permit the Conduit Issuer to issue or incur, in specific circumstances and provided that any required financial covenants are satisfied, certain additional Secured Obligations for the benefit of the Lessee and for certain purposes. See "PART 11 – SECURITY FOR THE SERIES 2024 BONDS – Issuance of Additional Bonds" and "PART 12 – SUMMARY OF FINANCING DOCUMENTS – Credit Agreement – *Limitations on Permitted Indebtedness*" for a description of the applicable circumstances and conditions related to such incurrence of additional Secured Obligations. Any additional Secured Obligations

issued or incurred would be payable from the Project Revenues, and would share in the Collateral, on a pari passu basis with the Series 2024 Bonds. Therefore, to the extent that the Lessee's Project Revenues are insufficient to make payments on all of the outstanding Secured Obligations, including any additional Senior Debt, such insufficiency may negatively impact the ability of the Lessee to satisfy its payment obligations under the Lessee Loan Agreements or to other Secured Obligations, and therefore, the payment of principal or interest on the Series 2024 Bonds. Furthermore, during any foreclosure action or other efforts to realize upon the Collateral, or in the case of an early termination of the Lease, to the extent that the Lessee, directly or through the Conduit Issuer, as applicable, has incurred additional Secured Obligations, the registered owners of the Series 2024 Bonds and the other Secured Parties will be required to share the proceeds of the Collateral or any termination payment, as applicable, with a larger group of holders of Secured Obligations, proportionally reducing any claim that the registered owners of the Series 2024 Bonds and the other Secured Parties may have to such proceeds or termination payment amount.

### **Bond Term Substantially Coterminous with Lease Term**

The Lease Term 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 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.

Additionally, termination of the Basic Lease prior to the end of the Lease Term could potentially adversely affect the Lessee's ability to satisfy its payment obligations with respect to the Secured Obligations, including the Series 2024 Bonds.

### **Risks Related to Collateral**

#### ***General***

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 Secured Obligations, including the Series 2024 Bonds.

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 Owners' security interest in the Collateral. Foreclosure of the Leasehold Mortgages is available for Events of Default under the Leasehold Mortgages, but will require the commencement of a legal action as non-judicial foreclosure is not available in New York. 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 Secured Parties, including the Owners. In addition, New York 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. Similarly, New York law may restrict the ability to foreclose on an equity pledge that secures the same debt as the Leasehold Mortgages. 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 Secured Obligations, including the Series 2024 Bonds.

In addition, since the Lessee's principal asset is its rights under the Lease, there are practical limitations on the exercise of remedies in respect thereof. Under the Lease, if the Collateral Agent (as the Recognized Mortgagee) acquires the Lessee's interest in the Lease through foreclosure of the Leasehold Mortgages it must engage a Qualified Terminal Operator with respect to the operations of the New Terminal Facilities and may only further assign the Lease to a Qualified Terminal Operator who has been determined

by the Port Authority, acting at its sole discretion, to be a Qualified Terminal Operator. To constitute a Qualified Terminal Operator, an entity must, in the opinion of the Port Authority, have sufficient experience, personnel, and financial capacity to operate and maintain the New Terminal Facilities on a basis consistent with the requirements of the Lease. The number of potential purchasers willing or able to meet these requirements under the Lease may be limited. Thus, as a practical matter, the Owners will have certain limitations on their ability to replace the Lessee as the lessee under the Lease.

## **Limitations on Owners' Remedies**

### ***Potential Adequacy of Funding Sources***

The Lessee plans to fund a portion of the construction of Phase A using funds from a variety of sources other than the Series 2024 Bonds, namely the Equity Commitments from the equity members and proceeds of other Senior Debt. 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 Lessee or are received by the Lessee later than anticipated, the Lessee's ability to complete the construction of Phase A may be limited or delayed, potentially adversely affecting the Lessee's ability to satisfy its payment obligations with respect to the Secured Obligations, including the Series 2024 Bonds.

Under the Credit Agreement, the current maturity date of the Bank Loans is five years from the Effective Date. In the event that the Lessee is not able to refinance any outstanding Bank Loans prior to such maturity date or to get an extension of such maturity date from the Lenders, it will be in default to its Lenders under the Credit Agreement, thus giving the Lenders, through the Collateral Agent, a right to exercise remedies under the Financing Documents, subject to the terms thereof.

In addition, the Lease provides that the aggregate amount of Lessee Debt (as defined in the Lease) as of the Effective Date secured by the Leasehold Mortgages, determined without reduction for any prepayments, redemptions or refunds, shall not exceed the maximum amount of \$6.63 billion, the amount of Borrowings commitments under the Credit Agreement and set forth in the Lessee Loan Agreements, unless otherwise agreed to by the Port Authority. In the event of construction cost overruns on Phase A or other costs exceed the budget therefor, the Lessee would need to raise additional equity or other non-debt proceeds or seek the approval of the Port Authority for additional debt capacity, which may not be available or granted.

### ***Disbursement of Loan Proceeds, Bond Proceeds and Equity Commitments***

Conditions Precedent to Use of Proceeds of the Series 2024 Bonds. Access to proceeds of the Series 2024 Bonds deposited into the Project Loan Costs Construction Accounts or the Building Loan Costs Construction Accounts, as applicable, to pay Project Costs of Phase A is dependent upon submission of detailed requisitions to the Account Bank not less than three (3) Business Days before the requested Construction Transfer Date. The Construction Withdrawal Certificate will contain certifications by the Lessee or the Taxable REIT Subsidiary, as applicable, that are required to be confirmed by the Technical Advisor. Such certifications include representations and warranties that (a) the Lessee has available funding sufficient to achieve Completion for the relevant Phase, (b) Completion for such Phase is reasonably likely to occur on or prior to the Date Certain for such Phase, and (c) no Secured Obligations Default or Secured Obligations Event of Default shall have occurred and be continuing, unless such funds will be used to cure a Secured Obligations Default or Secured Obligations Event of Default resulting solely from a failure to pay the D&C Contractor and in which case no other Secured Obligations Default or Secured Obligations Event of Default has occurred and is continuing. Another condition to disbursement is delivery to the Collateral Agent of duly executed acknowledgments of payments and partial releases of mechanics' and materialmen's liens from the relevant D&C Contractor to the extent such releases are provided under the

D&C Contracts. Any failure to comply with any such conditions may delay or restrain the ability of the Lessee to obtain such proceeds to make necessary payments.

*Conditions Precedent to Use of Proceeds of the Term Loans.* Disbursements of Term Loans under the Credit Agreement to pay Project Costs of Phase A are dependent upon satisfaction (or waiver by Required Lenders) of certain conditions precedent, including a certification that the payments pursuant to the requested withdrawal and transfer are in accordance with the committed loan notice delivered under the Credit Agreement. The Construction Withdrawal Certificate is required to contain similar certifications by the Lessee or the Taxable REIT Subsidiary, as applicable, described in the preceding paragraph, that are confirmed by the Technical Advisor. Disbursements are also conditioned upon delivery of the same releases described in the preceding paragraph. The Lessee may not be able to comply with some or all of such conditions.

*Resolution of Disputes.* Any Secured Debt Representative, acting reasonably, may dispute the application of proceeds in such Construction Withdrawal Certificate by delivering notice to the Lessee, the Account Bank, the Collateral Agent and the Intercreditor Agent on the grounds that the application of proceeds therein specified is not in accordance with the Financing Documents. The Lessee has the right thereafter to submit a corrected Construction Withdrawal Certificate which conforms to the requirements of the Financing Documents or submit the matter to dispute resolution in accordance with the applicable Financing Document. In the event of any such dispute, 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 the sufficiency of funds available to pay Project Costs necessary to achieve timely Completion or the Lessee or the Taxable REIT Subsidiary, as applicable, is not able to make the representations and warranties relating to funding required by the Construction Withdrawal Certificate, additional funds may be required, which may not be available to the Lessee. For risk factors relating to the issuance of additional Secured Obligations, see “PART 11 – SECURITY FOR THE SERIES 2024 BONDS – Issuance of Additional Bonds” and “PART 12 – SUMMARY OF FINANCING DOCUMENTS – Credit Agreement – *Limitations on Permitted Indebtedness.*” If the Technical Advisor is unable to certify as to its reasonable expectation that Completion is reasonably expected to be achieved on or prior to the Date Certain, construction work on Phase A may be delayed or stopped unless accommodation can be worked out between the Lessee and the Port Authority.

***Common Debt Service Reserve Account Funded no later than the Completion Date for Phase A***

The Lessee will be required to transfer funds no later than the Completion Date for Phase A, from the various subaccounts of the Construction Accounts, or other available funds, to the Common Debt Service Reserve Account.

If funds are not available on the Completion Date for Phase A to fund the Common Debt Service Reserve Account because of unanticipated additional construction costs or other reasons, the Common Debt Service Reserve Account may be funded in lesser amounts than required and the full funding thereof may be delayed.

***Limited Equity Commitments and Limitations on Issuance of Additional Senior Indebtedness***

The Equity Commitments required by the Equity Contribution Agreement to be contributed by the equity members of the Lessee and the Sponsors is limited to an aggregate of \$2,330,000,000. If any event occurs during the construction period that requires additional funding, there will be no recourse by the Lessee (or the Collateral Agent) to the equity members (or Sponsors) for additional equity. No equity member (or Sponsor) will be required to provide additional equity following Substantial Completion. Limitations in the Lease and the provisions in the Common Terms Agreement and/or the Credit Agreement relating to the issuance of Additional Senior Indebtedness may also limit the Lessee’s ability to raise additional funds from other sources required for the Project.

## **Actual Results May Differ From Forecasts and Assumptions**

The forecasts and projections, including projections of traffic flows and related revenues contained in the Report of the Airport Consultant, are based on assumptions that the preparers (and the Lessee) believe are reasonable. Actual results are likely to differ from those projected such that revenues generated from the operation of the New Terminal Facilities may be materially different than those originally forecasted and be insufficient to support the Lessee's payment obligations under the Financing Documents, including Lessee Loan Agreements, thereby adversely affecting the repayment of the Secured Obligations, including the Series 2024 Bonds. None of the Lessee, the Equity Members, the Sponsors, the Port Authority, or any other party assumes any responsibility for the accuracy of such projections. No representation is made or intended, nor should any representation be inferred, with respect to the likely existence of any particular future set of facts or circumstances, and prospective purchasers of the Series 2024 Bonds are cautioned not to place undue reliance upon the projections contained in this Official Statement.

## **Risks Related to the Lease**

### ***Termination Risk under the Lease***

The Lessee's principal asset is its leasehold interest under the Lease, including the right to develop, design, construct, operate and maintain the New Terminal Facilities and to charge, collect and retain revenues from the operation of such facilities until the expiration of the Lease in December 2060, unless terminated earlier as set forth in the Lease.

Following the occurrence and during the continuation of certain defaults by the Lessee under the Lease, the Port Authority is entitled, subject to the provisions of the Lease including certain notice requirements and cure rights to the Lessee, and cure and step-in rights granted to the Recognized Mortgagee thereunder, to, among other things, terminate the Lease and repossess and assume control of the Premises, and take certain other actions in accordance with the terms of the Lease. See APPENDIX D – "SUMMARY OF CERTAIN PROVISIONS OF THE LEASE – Termination of the Lease – Lessee Events of Default" for a description of Events of Default by the Lessee under the Lease that could give rise to a Port Authority right to terminate the Lease.

Upon a termination by the Port Authority due to a Lessee Event of Default under the Lease, the Port Authority will not be required to make any termination payment to the Lessee. The amounts available to the Lessee or the Collateral Agent in such event may be limited to the funds, if any, being held under the Common Terms Agreement and may not be sufficient to pay the obligations of the Lessee upon such a termination, including payments to the Port Authority under the Lease, or the payment of principal of and interest (and premiums or penalties, if any) on the Senior Debt, including the Series 2024 Bonds, and other Secured Obligations.

Subject to certain conditions and limitations set forth in the Lease, the Lease also generally provides that, upon the occurrence of certain material defaults under the Lease by the Port Authority relating to its (x) express repudiation or willful (with an intent to breach the quiet enjoyment provisions of the Lease) failure to provide for or defend Lessee's right to quiet enjoyment of the Premises under the Lease (which, for the avoidance of doubt, shall not be deemed to occur during the pendency of a force majeure event or in the event of a taking) such that the Lessee is unable to construct or operate the New Terminal Facilities, in each case for a period of not less than 180 consecutive days, or (y) failure to tender any portion of the Premises to the Lessee within 180 days after the date set forth in the baseline schedule, as such dates may be extended in accordance with the terms of the Lease, the Lessee has the right to terminate the Lease. In connection with an early termination by the Lessee pursuant to clause (x) above, the Lessee shall be entitled to receive a Port Authority Default Termination Payment from the Port Authority in an amount equal to the fair market value of its leasehold interest, less any Lessee Debt the Port Authority may have elected to

assume. See APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE – Termination of the Lease – Grounds for Termination by the Lessee” for a description of the limited events entitling the Lessee to terminate the Lease and recover the Port Authority Default Termination Payment. The Port Authority Default Termination Payment will be determined by an independent third-party appraiser, based on the then-current condition of the Premises, the Former Terminal Facilities and the New Terminal Facilities (but assuming the event giving rise to the payment of the Port Authority Default Termination Payment had not occurred and the Lease had not been terminated as a result thereof). The amount determined by the appraiser (less any Lessee Debt that the Port Authority may assume) may not be sufficient by itself to pay amounts due with respect to the Secured Obligations, including the Series 2024 Bonds. 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 Secured Obligations. Any Port Authority Default Termination Payment is (x) payable from Net Revenues deposited to the Port Authority’s consolidated bond reserve fund and, in the event such Net Revenues are insufficient therefor, other moneys of the Port Authority legally available for such payments when due and (y) 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. For these purposes, Net Revenues means, with respect to any date of calculation, the revenues of the Port Authority pledged under its Consolidated Bond Resolution and remaining after (a) payment or provision for payment of debt service on Consolidated Bonds as required by the applicable provisions of the Consolidated Bond Resolution, (b) 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, and (c) applications to purposes authorized in accordance with Section 7 of the Consolidated Bond Resolution. The Port Authority may not have sufficient funds to pay any Port Authority Default Termination Payment when and as required under the Lease.

### ***Risks Related to the Basic Lease***

The Lease is subject to the Basic Lease. The City of New York 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 neither the City of New York, nor the Port Authority is making any representation or warranty concerning the effectiveness of the Basic Lease in connection with the issuance of the Series 2024 Bonds. 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 (or any successor lease for the Premises), termination of the Lessee’s (or any successor lessee’s) interests in the Premises, and termination of the Leasehold Mortgages. In the event that the Port Authority’s failure to perform its obligations under the Basic Lease constituted an event for which the Port Authority is obligated to make a Port Authority Default Termination Payment as described above, then the Port Authority may be responsible for making a payment to the Collateral Agent. 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 Secured Obligations, including the Series 2024 Bonds, since the City would be under no obligation to continue to grant the Lessee (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 or that the Secured Obligations, including the Series 2024 Bonds, could be paid in full if the Basic Lease is terminated.

The New York Local Finance Law authorizes the City to be 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, which would impact or alter the

Basic Lease, thereby impacting the Lease. Such actions could adversely affect the security for the Series 2024 Bonds and any Additional Senior Indebtedness and any Permitted Refinancing Indebtedness.

### ***Risks Related to Recognized Mortgagee's Cure Rights***

The Recognized Mortgagee's exercise of cure and step-in rights following a Lessee Event of Default under the Lease is subject to compliance with certain conditions under the Lease, including the payment of certain amounts due and timely action to cure non-monetary defaults.

In the case of monetary Events of Default under the Lease, cure payments must be made within 10 days after the expiration of the Lessee's cure period under the Lease. In the case of non-monetary Events of Default (other than the Lessee's bankruptcy which is covered by other provisions in the Lease and a Completion Event of Default), cures must be effected within 90 Business Days after the expiration of the Lessee's cure period, subject to extension under certain circumstances but, in all events, subject to compliance with the applicable provisions of the Lease. In the case of a Completion Event of Default, cures must be effected within 180 days after the expiration of the Lessee's cure period, subject to compliance with certain conditions under the Lease. The Lease provides the circumstances under which the Collateral Agent may get additional time to cure certain Events of Default.

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. If the Port Authority exercises such right then the Lease will no longer constitute Collateral for the Secured Obligations, including the Series 2024 Bonds. The Port Authority will have no payment obligation in respect of the Secured Obligations should that occur.

### ***Political Risk***

As in any commercial arrangement, parties may disagree about the appropriate course of action to be taken, particularly if adverse events occur. The Port Authority and the Lessee have different priorities and interests and may have difficulty in resolving disputes should their interests diverge. Similarly, the Port Authority, as the lessor under the Lease, the Indenture Trustee, on behalf of the owners of the Series 2024 Bonds, and other agents on behalf of the other Secured Creditors may have different interests and priorities following a default or other adverse event under the Lease, and no assurance can be given that the Port Authority would be willing or able to take into account the interests of the owners of the Series 2024 Bonds if an event occurs that would entitle the Port Authority to terminate or to take other remedial action under the Lease.

### ***Governmental Approvals***

Pursuant to the Lease, the Lessee is responsible for obtaining, furnishing, paying the cost of, and maintaining in full force and effect, all governmental approvals (including environmental permits) required for the Project and the operation and maintenance of the New Terminal Facilities (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 under the Lease. With respect to the Project, some of the governmental approvals have been or will be obtained by the Lessee; otherwise, such responsibility has been assumed by the Design Builder. The Lessee 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; however, no assurance can be given that either the Lessee or the Design Builder will be able to obtain and maintain the governmental approvals. Although a failure or delay in obtaining governmental approvals due to certain failure or delay by the Port Authority constitutes a Compensation Event and Delay Event under the Lease, most delays or failures – particularly those

attributable to the Lessee or the Design Builder – are not covered or protected. A failure by the Lessee or the Design Builder 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 the New Terminal Facilities as a result of such failure is not accommodated or consented for under the Lease, could prevent or delay commencement of Design Work or Construction Work with respect to the Project, the operation of the New Terminal Facilities or the construction of future capital improvements, could impose additional costs on the Lessee, could result in a decrease in the operational revenues received by the Lessee and/or could provide the Port Authority with the right to terminate the Lease, all of which could adversely impact the Lessee's ability to make payments of debt service on the Secured Obligations, including the Series 2024 Bonds.

### **Risks Related to Operations at the Airport During Construction**

The Port Authority is currently engaged in various activities pertaining to the redevelopment of the Airport to address its short- and long-term infrastructure needs, including the construction of the Project. Historically, the Airport is heavily used and is congested as a result of spatial and scheduling constraints. In addition, other construction projects at the Airport are expected to be ongoing during the construction of the Project, which could both add to congestion at the Airport and create competition for qualified construction laborers or materials. Although the Lessee has sought to or intends to seek to reduce the risks that congestion and other activities at the Airport will interfere with or disrupt its performance of the Project, there can be no assurance that such interference or disruption will not occur or that the Lessee (or the Design Builder) would be able to address and remediate any such interference or disruption before it negatively affects the Project or results in adverse consequences under the Lease. The construction of the Project requires construction and sequencing with many different stakeholders, which further complicates the construction phase.

The Lessee intends to follow a phasing plan and certain transition principles to transition operations from the Former Terminal Facilities to the New Terminal Facilities. The demolition of the Former Terminal Facilities has commenced and, after the transition of operations from the Former Terminal Facilities to the New Terminal Facilities, the Lessee will continue the construction of the later phases in accordance with such phasing plan. See "PART 4 – THE PROJECT." The phasing plan will require the Former Terminal Facilities to be vacated by current users in accordance with the Project schedule, and concurrent commencement of operations at the first portion of the New Terminal Facilities, to enable construction on the Existing Premises to begin. If the applicable facilities are not vacated when anticipated, or if other complications disrupt the interface between the Construction Work and the on-going operations of the New Terminal Facilities, such events could result in delays to the Project for which the Lessee is not entitled to payment from the design builder 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). See "PART 20 – RISK FACTORS – Risks Related to Construction of the Project – Events That Impact the Construction and the Lessee's Revenues." Although the Lessee has sought to reduce the possibility of any such disruption by (i) employing the ORAT Service Provider to be responsible for the performance of the operational readiness and airport transfer services and (ii) generally planning to complete Construction Work in enclosed areas of the Airport (segregated from areas being used for ongoing Airport operations) and carefully planning the sequencing of certain interim milestones, there can be no assurance that such a disruption will not occur or that the Lessee would be able to address and remediate any such disruption before it results in adverse consequences under the Lease or negatively impacts the Lessee's business, financial condition and results of operations.

## **Risks Related to Construction of the Project**

### ***Events That Impact the Construction and the Lessee'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 Lessee is obligated to complete the D&C Work (other than punch list items approved by the Port Authority) for Phase A by the Scheduled Completion Date for Phase A. Pursuant to the Design-Build Contract, the Design Builder has agreed to comply with such deadlines as they relate to the D&C Work required to be undertaken by the Design Builder under the Design-Build Contract. See "PART 4 – THE PROJECT" and "PART 8 – CONSTRUCTION OF PHASE A OF THE PROJECT" for a further description of the applicable construction deadlines, as well as for a description of the obligations of the Design Builder.

The Project is a significant design and construction endeavor, with multiple milestones and a schedule that contemplates completion in phases, as more particularly described in "PART 4 – THE PROJECT – Project Phasing." 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 Completion on time 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 in 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 in connection with the JFK Redevelopment (see "PART 4 – THE PROJECT"), lack of sufficient and effective coordination among the Lessee, the D&C Work contractor, the Port Authority and other relevant third-parties (including, in particular, the airlines and other tenants with respect to their timely relocation from the Former Terminal Facilities to the New Terminal Facilities) 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 certain of these risks, particularly as they relate to Compensation Events that impact the cost of the Project, to the Port Authority. The Design-Build Contract, which includes a maximum contract sum, also allocates a number of these risks to the Design Builder. Except where attributable to certain qualifying changes in the D&C Work pursuant to the Lease, the risks resulting from the possible negative revenue impact related to Delay Events that result in delays in achieving certain interim milestones or Substantial Completion (under which circumstances Liquidated Damages are payable by the Design Builder), 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 Design Builder if the impact of such risks is not otherwise recoverable from the Port Authority. In the event, however, of a price or schedule adjustment that is attributable to certain qualifying changes in the D&C Work pursuant to the Lease, such risk is borne by the Lessee with respect to the entire Project up to \$25,000,000, after which such qualifying changes in the D&C Work shall be deemed a Port Authority Change.

During the period from the first anniversary of the Scheduled Completion Date until the Outside Opening Date, for each day that the Scheduled Completion Date has not yet occurred, the Lessee is required

to pay to the Port Authority Liquidated Damages in the amount of \$50,000 a day. In addition, the Design Builder may be relieved from its obligation to pay Liquidated Damages in the event of certain qualifying changes in the D&C Work pursuant to the Lease or Material Lessee Scope Change. Furthermore, the Design Builder has not waived its rights to contest a demand for payment of Liquidated Damages. There can be no assurance that contingency funds, insurance proceeds and/or other available funds will be sufficient should delays occur or should the Lessee have payment obligations that are not satisfied by or the responsibility of the Design Builder under the Design-Build Contract or the Port Authority under the Lease.

Any delay in achieving certain interim milestones, Substantial Completion or Completion by the relevant deadline, increased costs or defect with respect to the Project for which the Lessee does not have sufficient remedy against the Design Builder under the Design-Build Contract or for which the Lessee 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 Lessee and, possibly, the Lessee's ability to make payment of debt service on the Secured 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 by the Scheduled 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.

### ***Risks Related to the Operation and Maintenance of the Project***

The operation and maintenance of the Project involves various operational risks. The quality of the operation and maintenance of the Project, as well as events outside of the Lessee's control, could significantly reduce the revenues generated or significantly increase the expense of operating and maintaining the Project such that the Lessee may not be able to make payments required under its Senior Debt. In addition, any such events may cause the Lessee to be in violation of its obligations under the Lease and, to the extent not otherwise cured or resolved, could result in a termination of the Lease under certain circumstances, thus eliminating the anticipated source of repayment for its Senior Debt, including the Series 2024 Bonds.

### ***Cyberattacks could have a material adverse impact on the Project, the Lessee's operations and the Lessee's results of operations***

The Lessee could be subject to cyber-attacks in the form of computer malware, viruses, hacking, social engineering and phishing by third parties on its systems. Such attacks may affect the safe and efficient operation of the Airport, the airlines that serve the New Terminal Facilities and other tenants of the New Terminal Facilities; or may result in leakage or loss of confidential or proprietary data, which could cause customers to lose confidence in the Lessee and a loss of revenue. Although the Lessee takes various measures to prevent or mitigate external breaches to its systems and monitor its technology networks, there can be no assurance that such measures will provide absolute security. The Lessee's efforts to protect its systems from security breaches and improper access by third parties may also be unsuccessful due to software glitches or other technical malfunctions, employee error or malfeasance, or other factors. The occurrence of any such cyberattacks could have a material adverse effect on the Project or the Lessee's business, cash flow, financial condition and results of operations and, in turn, the Lessee's ability to make payments pursuant to the Lessee Loan Agreements and to make payments of debt service on the Series 2024 Bonds.

In February 2023, a threat actor impersonating a legitimate employee of one of the Lessee's suppliers contacted interim third-party members of the Lessee's finance team through an imposter email. The imposter requested to change such supplier's bank account information, which change the interim third-party members of the Lessee's finance team processed. This business email compromise event resulted in the transfer of the Lessee's funds to an imposter bank account in March 2023, which funds were subsequently diverted into multiple bank accounts. Upon such event, the Lessee activated all of its financial

and technology safety controls and procedures and managed to recover approximately 99.3% of the total amount incorrectly transferred. The Lessee terminated its interim third-party financial consulting services and made multiple changes to its finance department operating procedures and established new controls and preventive measures in order to avoid similar occurrences in the future. However, no assurances can be provided that such enhanced systems will be sufficient to prevent such attacks or consequences thereof in the future.

### ***Increase of Operating Costs***

The costs of operating and maintaining the Project, including the payment of applicable taxes, will be paid before any other expenses of the Project, including payments with respect to the Series 2024 Bonds and the funding and replenishment from time to time of the Common Debt Service Reserve Account for such payments. If the actual operations and maintenance costs (or applicable taxes) significantly exceed the costs (or taxes) assumed in the base case financial projections for the Project and if the Lessee is unable to implement measures to increase its revenues to offset such costs due to, among other factors, market conditions and/or contractual limitations in the Lease, the Lessee may not have sufficient cash flow to make payments pursuant to the Lessee Loan Agreements, thereby adversely affecting the payment of principal or interest on the Series 2024 Bonds.

### ***Delay in the Completion of the Project***

Pursuant to the terms and conditions of the Lease, the Lessee is obligated to complete construction of the Project in accordance with certain Project milestones and deadlines. Pursuant to the terms and conditions of the Design-Build Contract, the Design Builder has agreed to comply with the deadlines in respect of Phase A as they relate to the work required to be undertaken by the Design Builder under the Design-Build Contract. In the event that the Design Builder fails to implement any works and/or mitigation measures to avoid any delay in the construction schedule, as required under the Design-Build Contract, the Design Builder may be in breach of its obligations under the Design-Build Contract and such breach could result in a delay in the completion of Phase A of the Project.

If the Design Builder does not meet the construction deadlines set forth in the Design-Build Contract, the Lessee may be in breach of its obligations under the Lease and will likely, in any such circumstance, be required to pay liquidated damages thereof. Although the Lessee is entitled to receive compensation for the same damages from the Design Builder, the Design Builder could fail to compensate the Lessee for the applicable liquidated damages pursuant to the Design-Build Contract, which would result in a delay in the Lessee's ability to collect the same or otherwise prevent the recovery of any such amounts.

### ***Reliance on Performance by Design Builder***

The Design-Build Contract is generally structured to pass through to the Design Builder, on a back-to-back basis, almost all of the Lessee's design and construction obligations and risks under the Lease with respect to Phase A, subject to the exception described above herein. See "PART 8 – CONSTRUCTION OF PHASE A OF THE PROJECT – The DB D&C Work – *Back-to-Back Obligations*." In the event that the Design Builder fails to implement any works and/or mitigation measures to avoid any delay in the construction schedule, as required under the Design-Build Contract, the Design Builder may be in breach of its obligations under the Design-Build Contract and such breach could result in a delay in the completion of Phase A of the Project. In the event that the Design Builder does not satisfy its obligations under the Design-Build Contract, the Lessee might be at risk of default under the Lease and could be exposed to claims by the Port Authority. In some circumstances, termination of the Lease could result from such non-compliance by the Design Builder. See "– Risks Relating to the Lease – Termination Risk under the Lease" above.

Pursuant to the Design-Build Contract, the maximum aggregate liability of the Design Builder to the Lessee under such circumstances is generally limited to an amount equal to 35% percent of the sum of the Contract Sum. See “PART 8 – CONSTRUCTION OF PHASE A OF THE PROJECT – Limitation of Liability.” If losses by the Lessee as a result of the Design Builder’s failure to satisfy its obligations are not recoverable from the Design Builder or are in excess of such limitation on liability, the Lessee might not have sufficient funds available to satisfy its corresponding obligations under the Lease and the Lessee’s ability to make timely payment of debt service on the Bonds, including the Series 2024 Bonds, could also be adversely affected.

### **Risks Related to Coordination with Other JFK Airport Operations, Enabling Work and Construction Interfaces**

The Lessee is exposed to certain risks arising from potential issues in required coordination with third-party interfacing work that could delay or increase the cost of the D&C Work, including risks associated with delays to the Port Authority’s performance of the Port Authority Enabling Work, which includes, among other things, the construction of the Roadway Network and the GTC. The Delay Event notice provided to the Port Authority by the Lessee in respect of the RUGTC Contract relates to the construction of the ingress and egress roadway network to the New Terminal Facilities and involves certain works required to be undertaken by the Port Authority under the Lease. The Lessee, the Design Builder, the Port Authority and the RUGTC Builders have identified, evaluated and, where appropriate, implemented mitigation measures. Although the Lessee does not anticipate that such work will result in any material delay in the scheduled date for Phase A DBO if mitigated by the parties, any failure to implement such Port Authority Enabling Work, or material delay in the same, could result in a delay in the completion of Phase A of the Project. The Port Authority and the Lessee continue to work collaboratively to implement such identified mitigation measures. See “PART 4 – THE PROJECT – Construction Progress.”

Under the Lease, the Lessee is required to coordinate the D&C Work with all adjacent terminal operations, third-party work and interfaces. To the fullest extent possible, such obligations have been passed through to the Design Builder under the Design-Build Contract, and related coordination risks mitigated through the Construction Coordination Agreement among the Port Authority, the Lessee, the Design Builder, and other relevant third parties and the direct interface agreements with the relevant third parties (if applicable). The following interface agreements have been entered into by the Lessee: (i) the NTO Delta Construction Coordination Interface Agreement, dated as of June 10, 2022, between the Lessee and Delta, (ii) an aircraft parking license agreement, dated as of June 10, 2022, between the Lessee and Delta, (iii) the Construction Coordination Agreement, dated as of June 10, 2022, between the Lessee and the Port Authority and (iv) an amended and restated site access and indemnification agreement, dated as of October 22, 2019, between the Lessee and TOGA and the associated side letter, dated as of April 18, 2023. The various interface agreements have to date facilitated necessary coordination and are expected to grant the Lessee access and continue to address coordination issues necessary to conduct certain work required to progress the D&C Work. 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 will not increase costs or cause delays to the Lessee for which the Lessee may not be compensated or will not lead to a default under the Lease.

### **Risks Related to Changes in Law and Applicable Standards Changes**

The obligations of the Lessee under the Lease and in connection with the financing thereof are subject to various laws, policies and regulations, including, among others, laws governing environmental protections and tax policies. Changes in such laws, policies or regulations could negatively impact the cost and schedule related to the Project, the Lessee’s ability to fulfill its obligations under the Lease and the Lessee’s business, financial condition and results of operations. Under the Lease, only certain suspensions of the D&C Work and certain Port Authority changes qualify as Compensation Events which entitle the

Lessee to compensation. See “PART 5 – THE LEASE – Compensation Events” and “– Delay Events.” If (i) any such new or amended laws, policies or regulations that do not constitute a qualifying change in the D&C Work pursuant to the Lease require the Lessee to expend additional funds or adversely affect the Lessee’s revenues or obligations or (ii) the Lease does not treat such new or amended laws, policies or regulations as Compensation Events, such changes could adversely impact the Lessee’s ability to pay debt service on the Bonds, including the Series 2024 Bonds.

### **Risks Related to Certain Environmental, Health and Safety Considerations**

As with any project of this size and nature, the implementation and operation of the Project is 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. Failure to comply with any such statutes, regulations and directives or any permits required thereunder could have adverse effects on the Project, including civil or criminal liability, imposition of environmental liens and fines and expenditures of funds to bring the Project into compliance.

Additionally, soil and groundwater at the Premises have been affected by historic releases of petroleum hydrocarbons and other hazardous substances in relation to airport operations and the existing underground hydrant fueling system. Several areas within the Premises have undergone or are the subject of ongoing remediation activities to address these releases; however, it is likely that hazardous substances will be encountered during the course of D&C Work or Operation and Maintenance Work for the Project. The Lease only provides limited protection in respect of hazardous materials. The presence of hazardous substances could have an adverse impact on the Project and Operations and Maintenance Work, which could result in delays or increased costs or adversely impact the Lessee’s revenues or obligations.

### **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 and New Terminal Facilities 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 Lessee.

### **Risks Related to Damage or Destruction of the New Terminal Facilities and Adequacy of Insurance**

The Lessee is obligated under the Lease to obtain and keep in force comprehensive insurance, including all-risk property damage insurance against all risk of loss, including, without limitation, coverage for acts of Terrorism, flood, windstorm, storm surge, collapse, lightning, hail, ice, explosion, riot, vandalism, malicious mischief, civil commotion, aircraft, smoke, fire and earthquake, at full replacement cost of the Premises, and any other improvement constructed by the Lessee pursuant to the Lease 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.

The Lessee is also obligated under the Lease to obtain and keep in force 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 (a) the gross rents, revenues and similar amounts payable by Sublessees of the Premises, net of non-continuing expenses, for a period of two (2) years and (b) the aggregate amount of Ground Rent, Second Additional Rental, Third Additional Rental and Concessions Revenue Rent payable by the Lessee under the Lease for a two (2) year period, in each case, with a one (1) year extended indemnity period.

The Lessee may provide for the insurance required by the Lease by requiring each Contractor engaged by it for the Project Work to procure and maintain such insurance in accordance with the requirements set forth in the Lease.

Under the Lease, the Lessee may request that the Port Authority reconsider its insurance requirements on the grounds that such insurance is (a) commercially unavailable, (b) only available at premiums that are disproportionate to the coverage provided, and/or (c) not customarily required for comparable large urban commercial air passenger terminals within the United States. In connection with the Lease, the Lessee and the Port Authority agreed that, approximately eight months prior to when the completed construction value (including delay in startup) is projected to equal Two Billion Dollars, the Lessee has agreed to seek to procure additional coverage limits for the construction of Phase A up to full replacement cost, and would be required to purchase such higher limits subject to certain conditions, including that such limits are commercially available on commercially reasonable terms and the terms of such additional coverage are not materially inconsistent with the Lessee's existing builder's risk insurance policy.

The proceeds of casualty insurance may only be used to repair or replace the New Terminal Facilities and such proceeds will not be available under the Lease for the repayment of the Secured Obligations, including the Series 2024 Bonds. There can be no assurance that such insurance coverage will be available in the future on commercially reasonable terms or that the amounts for which the Lessee is insured or amounts that the Lessee receives under such insurance coverage will be sufficient to rebuild any damaged facility to the condition, capacity, or efficiency of the previously-existing facility or that payments due to the Lessee under such coverage are made when required under such policies.

Under the Lease, if, following a casualty event (other than a casualty event resulting from the breach, negligence or willful misconduct of the Lessee or a contractor of the Lessee), insufficient insurance proceeds are received by the Lessee to reconstruct the damaged facility in accordance with the original plans and specifications for such facility, the Lessee will promptly propose, and the Port Authority will consider, a plan with respect to (i) reasonable modifications to the affected facilities that would allow such facilities to be restored, replaced and rebuilt, solely from 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) any modifications to the technical requirements of the Lease applicable to the D&C Work that may be necessary or appropriate to implement the proposed modifications to the affected facilities, and (iii) any refinancing Lessee would propose to incur in connection with such restoration. There can be no assurance that any modified facility rebuilt pursuant to agreement by the Lessee and the Port Authority as a result of insufficient insurance proceeds will be able to produce sufficient revenues to enable the Lessee to meet its payment obligations with respect to the Secured Obligations, including the Series 2024 Bonds or that the Port Authority would consent to any such plan.

### **Risks Relating to No Title Insurance; No Legal Description**

No mortgagee title insurance has been obtained with respect to the Building Loan Leasehold Mortgage or the Project Loan Leasehold Mortgage. 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. In addition, if recording of the Leasehold Mortgages is delayed, there is no protection against liens, judgments or other encumbrances that might arise prior to the acceptance of the Leasehold Mortgages for recording by the City Register.

The Lease describes the Premises by reference to certain diagrams rather than a metes and bounds legal description. Accordingly, unless a metes and bounds description becomes available, the Leasehold Mortgages will be recorded against the tax block and lot of the Airport and will include those diagrams to indicate the portion of the Airport covered by the Lease 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 including those requirements set forth in Section 22 of the New York Lien Law. Among the requirements under Section 22 of the New York 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 New York 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 Lessee and the Collateral Agent to comply with the applicable provisions of the New York Lien Law could result in the lien of the Building Loan Agreement 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. The tax is payable at the time of recording. In the event that a mortgage gets 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 statute as the Conduit Issuer and common practice, the Leasehold Mortgages were 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 the Lessee will be obligated pay them but no Lessee 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 the Former Terminal Facilities and the New Terminal Facilities at the Airport.

It is not possible to predict whether future legislation, regulations, policies, orders, restrictions or limitations on the Airport, the Project, or operation of the New Terminal Facilities 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 Lessee's ability to operate the Former Terminal Facilities or the New Terminal Facilities.

### ***Available Slots***

The FAA uses runway slots to limit scheduled air traffic at certain capacity constrained airports. The Airport is one of the capacity constrained airports to which the FAA has applied such slots control in the United States, since it has a demand for airport infrastructure that significantly exceeds its capacity during relevant periods. Pursuant to such slots control, the Airport requires advance approval to operate during slot controlled hours. Therefore, the New Terminal Facilities will be subject to slots control by the FAA, which may affect operations, air traffic and airline runway use at the New Terminal Facilities.

In the context of airport coordination, a slot is an authorization to either take-off or land at a particular airport on a particular day during a specified time period. This authorization is for a planned aircraft operation and is distinct from air traffic control clearance or similar authorizations. Slots are used by the FAA in the United States and other regulators around the world to manage air traffic at busy airports, to prevent repeated delays that result from too many flights trying to take off or land at the same time and to manage other issues such as noise pollution.

The slots control at the Airport may significantly affect the New Terminal Facilities operation, its air traffic and the runway use by airline users. Such impact may significantly affect the number of enplaned passengers at the New Terminal Facilities, which may directly impact the common use facilities charge payable by each airline user to the Lessee, thereby adversely affecting the payment of principal or interest on the Secured Obligations, including the Series 2024 Bonds. There can be no assurance that such a disruption will not occur or that the Lessee would be able to address and remediate any such disruption before it negatively impacts the Lessee's business, financial condition and results of operation.

### ***Regulatory Review of Rates and Charges by Tariff***

The Lease requires that the Lessee establish a Comprehensive Terminal Use Plan (the "CTUP") prior to the commencement date of the Lease. The CTUP must establish certain operating principles with respect to the New Terminal Facilities, including principles and methodology of airline rates for the use of the New Terminal Facilities. The CTUP may be revised from time to time. The CTUP includes a methodology for establishing rates and charges that would be applicable to airlines that operate at the New Terminal Facilities without an airline sublease agreement. Generally, operators of airports are permitted under applicable federal law and FAA policies to impose rates and charges on airlines that are fair and reasonable and non-discriminatory. See "PART 16 – AERONAUTICAL REVENUES" for a discussion of the Lessee's rates and charges comprising Aeronautical Revenues. The Lessee believes that its currently proposed methodology for establishing rates and charges would meet applicable FAA criteria in the event that the Lessee had to impose them by tariff. It is possible, however, that a decision to establish any rates and charges by tariff would be preceded by a period of discussion between, and within, the Lessee and the Port Authority, including possibly review and/or approval by the respective boards of such parties, and possibly other procedural or notice requirements. This process may delay the setting of rates and charges by tariff or result in a modification of the rates and charges from that proposed by the Lessee in the CTUP. Pursuant to the Lease, if the Lessee imposes rates and charges by tariff, the Port Authority, in its capacity as the Airport sponsor and operator of the Airport, will provide such support as may be required by applicable law to enable the Lessee to establish rates and charges in accordance with the principles set forth

in the CTUP. The Port Authority currently has both statutory authority and authority under applicable federal law and FAA policy to establish rates and charges at its airports.

Due to the factors set forth above, no assurances can be given that the rates and charges proposed by the Lessee in the CTUP and set by tariff will not be reviewed or modified by the FAA. Further, if such rates and charges are approved, whether in the form requested or in a modified form, such rates and charges may be challenged by airlines.

### ***Landing Fees Levied by the Port Authority***

The Port Authority is entitled to levy certain charges for the use of public landing area and related areas and services in connection with the Airport and the New Terminal Facilities. The Port Authority levies charges for, among others, takeoff and landing of aircraft at the New Terminal Facilities, which charges may adversely impact the operating costs of the airlines at the New Terminal Facilities, which thereby may adversely impact the revenues of the Lessee. There can be no assurance that the Port Authority will not increase such charges or that the Lessee would be able to address or adjust to such an increase before it negatively impacts the Lessee's business, financial condition and results of operation.

### **Risk Factors Relating to the Airline Industry**

#### ***General***

The Project Revenues of the Lessee are affected substantially by the economic health of the air transportation industry and the airlines serving the New Terminal Facilities. Certain factors that may materially affect the New Terminal Facilities and the airlines include, but are not limited to, (i) national and international economic conditions and currency fluctuations, (ii) the population growth and the economic health of the region and the nation, (iii) the financial health and viability of the airline industry, (iv) air carrier service and route networks, (v) the availability and cost of aviation fuel and other necessary supplies, (vi) changes in demand for air travel, (vii) service and cost competition, (viii) levels of air fares, (ix) fixed costs and capital requirements, (x) the cost and availability of financing, including federal funding, (xi) the capacity of the national air traffic control system, (xii) the capacity of the New Terminal Facilities and of competing airports, (xiii) alternative modes of travel and transportation substitutes, (xiv) national and international disasters and hostilities, (xv) the cost and availability of employees, (xvi) labor relations within the airline industry, (xvii) regulation by the federal government including the effect of certain high density and perimeter rules on the Airport, (xviii) evolving federal restrictions on travel to the United States from certain countries, (xix) environmental risks and regulations, noise abatement concerns and regulations, (xx) bankruptcy and insolvency laws, and (xxi) safety concerns arising from international conflicts, the possibility of terrorist or other attacks and other risks (including the impact of such attacks on other airports that have flights to or from the Airports, as well as the possibility of the closure of those airports for a period of time).

Neither the Lessee nor the Port Authority makes any representation concerning the financial health of any airline or the industry as a whole, and no assurance can be given regarding the impact, if any, that future unfavorable events affecting airlines or airline users of the New Terminal Facilities or the airline industry more broadly might have upon the Lessee or its operations at the New Terminal Facilities.

#### ***Effect of COVID Pandemic and Particularly Vulnerability of the Airline Industry to the Effects of Pandemics, Epidemics and Natural Disasters***

The COVID Pandemic had and may continue to have material adverse effects on passenger traffic and the Airport. The Lessee cannot predict: (i) what short or long-term effects the restrictions and warnings imposed as a result of the COVID Pandemic or variations thereof may have on air travel (including to and

from the Airport and at Terminal 1 or the New Terminal Facilities), the retail and services provided by Airport and Terminal 1 concessionaires or the New Terminal Facilities, Airport and the Lessee costs or Port Authority or Lessee revenues; (ii) to what extent the COVID Pandemic or variations thereof, another outbreak or pandemic may disrupt the local, State, national or global economy, manufacturing or supply chain, and if any such disruption may adversely impact Airport-related construction, the cost, sources of funds, or other operations; (iii) whether or to what extent the Lessee may provide additional deferrals, forbearances, adjustments or other changes to its arrangements with its tenants and Airport concessionaires; or (iv) whether any of the foregoing may have a material adverse effect on the finances and operations of the Lessee and the Airport.

Prospective investors should assume that the restrictions and limitations related to the COVID Pandemic or variations thereof, can continue or be re-established on the near term, and that recovery may be prolonged, adversely impacting Lessee revenues. Future outbreaks, pandemics or events outside the Lessee's control may further reduce demand for travel, which in turn could cause a decrease in passenger activity at the Airport and declines in Lessee revenues. Additional information regarding the Port Authority's response to the COVID Pandemic can be found in the Port Authority's filings available on the MSRB's EMMA online municipal securities data and disclosure site. Neither such report nor any information contained on such website shall be or be deemed to be a part of this Official Statement.

Public health concerns have also affected air travel demand from time to time, including, in 2003, concerns about the spread of severe acute respiratory syndrome; in 2009, concerns about the spread of influenza; in 2014, an outbreak of Ebola in West Africa; and in January 2016, the Centers for Disease Control and Prevention issued a travel alert warning pregnant women to avoid travel to areas where the Zika virus had spread a list that included more than 50 countries and territories. An outbreak of a disease or similar public health threat that affects travel demand or travel behavior, or travel restrictions or reduction in the demand for air travel caused by an outbreak of a disease or similar public health threat in the future, could have a material adverse impact on the airline industry and result in substantial reductions in and/or cancellations of, bookings and flights.

***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, and (ix) disruption caused by airline accidents, criminal incidents and acts of war or terrorism, such as the events of September 11, 2001. 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, internet travel web sites and airlines reorganizing under applicable bankruptcy (or similar) law.

In the past decade, several airlines have merged and acquired competitors in an attempt to combine operations in order to increase cost synergies and become more competitive. In 2009, Delta completed its merger with Northwest Airlines. In 2010, United Airlines and Continental Airlines merged, creating the world's then largest airline in terms of operating revenue and revenue passenger miles. In 2011, Southwest Airlines completed its acquisition of AirTran. In 2015, American Airlines and US Airways completed their

merger which created the largest airline in the world in terms of operating revenue and revenue passenger miles (surpassing United Airlines). Alliances, mergers and other forms of industry consolidation, including antitrust immunity grants, may take place and may or may not involve airlines serviced at the New Terminal Facilities as participants. Depending on which airlines combine and which assets, if any, are sold or otherwise transferred to other airlines in connection with such combinations, the competitive position of airlines serviced at the New Terminal Facilities, relative to the post-combination airlines that acquire such assets, could be harmed and day-to-day operations at the New Terminal Facilities could be affected. Mergers and acquisitions can affect industry conditions, including competition and operating factors.

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 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 the prolonged weak economic conditions or other national and international fiscal concerns will not have an adverse effect on the air transportation industry, particularly over the full term of the Lease. 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***

Market prices for aircraft fuel depend on a multitude of unpredictable factors beyond any airline's control. These factors include changes in global crude oil prices, aircraft fuel supply-demand balance, inventory levels and fuel production and transportation capacity, as well as indirect factors, such as geopolitical events, economic growth indicators, fiscal/monetary policies, fuel tax policies and financial investments. Both actual changes as well as changes in market expectations of these factors can potentially drive rapid changes in fuel price levels and price volatility.

Airline earnings are significantly affected by changes in the price of aviation fuel. According to the Air Transport Association, fuel, along with labor costs, is one of the largest cost components of airline operations, and continues to be an important and uncertain determinate of an air carrier's operating economics. Any increase in fuel prices causes an increase in airline operating costs. Fuel prices continue to be susceptible to, among other factors, political unrest in various parts of the world (particularly in the oil-producing nations in the Middle East and North Africa), Organization of Petroleum Exporting Countries policies, the rapid growth of economies such as China and India, the levels of inventory carried by industries, the amounts of reserves maintained by governments, disruptions to production and refining facilities and weather.

***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.

Historically, the financial performance of the air transportation industry has correlated with the state of the national and global economies. Unfavorable conditions in these economies have resulted, and may result in the future, in decreased passenger demand for air travel, a reduction in cargo flights and other adverse impacts on the air transportation industry.

Many factors have combined to alter consumer travel patterns. The threat of terrorism remains high. As a result, national governments have mandated various security measures that have resulted in new security taxes and fees and longer passenger processing and wait times at airports. 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, Geopolitical Conflicts or the Fear of such Occurrence Could Negatively Affect the Lessee, even if not Directed at the Airline Industry***

Wars or other military conflicts, acts of terrorism or fear of such attacks, including elevated national threat warnings, may depress air travel, particularly on international routes, and cause declines in passengers and increases in costs.

On February 24, 2022, Russia launched an invasion of Ukraine with various cities across Ukraine targeted by Russian forces through air, land and sea military operations. The attacks on Ukraine resulted in casualties and it is uncertain at this time when the military combat between Russia and Ukraine will cease. In October 2023, war broke out in Israel. The effects of this war on commercial aviation include alterations to flight routes, but effects on the global economy and other effects on commercial aviation are unknown at this time. These conflicts could intensify and other conflicts could occur without warning. Travel behavior may be affected by military conflicts if flights are unable to arrive or depart from various airports located in or around areas of unrest. In addition, travel behavior may also be affected by anxieties about the safety of flying in or near areas of war or military conflict. War or military conflicts among countries may result in economic consequences impacting the airline industry such as costs of certain goods (e.g. fuel) increasing which could result in increased operational expenditures.

The attacks of September 11, 2001 and continuing terrorist threats, attacks and attempted attacks materially impacted and continue to impact air travel. Travel behavior may be affected by anxieties about the safety of flying and by the inconveniences and delays associated with more stringent security screening procedures, both of which may give rise to the avoidance of air travel generally and the switching from air to surface travel modes.

Increased security procedures introduced at airports since the attacks of September 11, 2001, and any other such measures that may be introduced in the future generate higher operating costs. The Aviation and Transportation Security Act mandated improved airport perimeter access security, enhanced security screening of passengers, baggage, cargo, mail, employees and vendors, enhanced training and qualifications of security screening personnel, and enhanced background checks. The Port Authority, the Lessee and airlines have at times found it necessary or desirable to make significant expenditures to comply with security-related requirements while seeking to reduce their impact on their customers, such as expenditures for automated security screening lines. In addition, neither the Port Authority nor the Lessee can forecast what new security requirements may be imposed in the future, or their impact on their customers and business.

Travel restrictions, as well as other public health measures, may be imposed to limit the spread of communicable diseases which may arise. The COVID Pandemic has severely and negatively affected the travel industry.

### ***Capacity of Air Traffic Control and Airport Systems***

Demands on the national air traffic control system have, in the past, caused delays and operational restrictions affecting airline schedules and passenger traffic. The FAA is gradually implementing its Next Generation Air Transportation System (“NextGen”) air traffic management programs to modernize and automate the guidance and communications equipment of the air traffic control system and enhance the use of airspace and runways through improved air navigation aids and procedures. The FAA Reauthorization Act contains several provisions aimed at accelerating the implementation of NextGen. Since 2007, airline traffic delays have decreased as a result of reduced numbers of aircraft operations, but, as airline travel increases in the future, flight delays and restrictions can be expected, and no assurances can be given that any airline travel increase will not again adversely affect airline operations.

### ***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. 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***

Global Climate Change. 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-Related Regulations. 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 the New Terminal Facilities Airport 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 Lessee cannot predict what the EPA’s emission standards will be or what effect those standards may have on the Lessee 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 the New Terminal Facilities is not expected to be significant, and the rule does not require modifications to airports. In January 2021, a collection of states filed a petition to review, challenging the final rule as unlawful and requesting remand to the EPA. The petitioners argued that the rule will not reduce aircraft emissions and cause no action by aircraft manufacturers. The case remains in abeyance in the United States Court of Appeals for the District of Columbia pending review of the final rule pursuant to President Biden’s Executive Order 13990. Executive Order 13990 directs agency review of regulations promulgated, issued or adopted between January 20, 2017 and January 20, 2021.

According to an October 28, 2020 report issued by Moody’s, extreme climate weather conditions caused by climate change will increase and disrupt airport operations, damage facilities and potentially decrease demand for travel for the upcoming decades. Over the 2004-2019 period, weather related events caused an average of 37% of flight delays annually according to a citation to the U.S. Department of Transportation’s Bureau of Transportation Statistics within the Moody’s report. In 2019, there were approximately 510,000 delays in flights caused by extreme weather. The report further states that the frequency and severity of climate-related weather events are expected to increase over the next two decades, and that airports will likely 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 New Terminal Facilities.

In addition, 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.

***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, air traffic controllers, 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 New Terminal Facilities will not experience strikes or other labor related employment disruptions.

Pilot shortage is an industry-wide issue, and especially so for smaller regional airlines. There are several causes for the pilot shortage that affect all airlines. Congress changed duty time rules in 2010 to mitigate pilot fatigue, which required airlines to increase pilot staff. Beginning in 2013, first officers flying for commercial airlines were required to have at least 1,500 hours of flight time, instead of the 250 hours previously required. Other factors include an aging pilot workforce and fewer new pilots coming out of the military. Further, as passenger demand increases, the major air carriers are anticipated to need additional pilots, and are generally able to hire pilots away from regional airlines. As a result, small regional airlines have a particularly difficult time hiring qualified new pilots, despite increased incentives. The shortage of pilots available to regional airlines may result in reduced service to some smaller U.S. markets.

In addition to the pilot shortage, over the next decade there could be a shortage of qualified mechanics to maintain the airlines' fleet of planes. This potential shortage is a result of an aging pool of mechanics, a large portion of which are expected to retire in the next decade, and a lack of younger people joining the ranks of the mechanics. A shortage of mechanics could raise the cost of maintenance, require airlines to maintain more spare planes and/or result in increased flight cancellations and delays.

Additionally, the aviation industry has been impacted by shortages of air traffic controllers. Also, due to the high volume of flights arriving and leaving the New York region and the interdependency of the airspace surrounding the Airport, there is a high likelihood of congestion, delay and limited available capacity at Port Authority commercial service airports, including the Airport. These shortages and high volume of flight activity may encourage the FAA to limit operational growth at the facilities for airlines operating at the Airport. See APPENDIX B-1 – "REPORT OF THE AIRPORT CONSULTANT."

***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***

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.

Computer networks and data transmission and collection are vital to the safe and efficient operation of the Airport, the airlines that serve the New Terminal Facilities and other tenants of the New Terminal Facilities. 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. Notwithstanding security measures, information technology and infrastructure of the New Terminal Facilities, any of the airlines serving the New Terminal Facilities or any other tenants at the New Terminal Facilities may be vulnerable to attacks by outside or internal hackers, or breached by employee error, negligence or malfeasance. Any such breach or attack could compromise systems and the information stored thereon. 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 or other loss of information could result in a disruption to the operation of the New Terminal Facilities and/or 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, thereby adversely affecting the ability of the Lessee to generate revenue.

#### ***Potential for Disruptions in Operations Caused by 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 U.S. airports and arriving or departing aircraft has increased significantly in recent years. Recent incursions of airport airspace by UAVs have disrupted airport operations by causing flights to be halted or diverted. London's Gatwick Airport was closed for 27 hours, impacting some 140,000 passengers and causing roughly 1000 flights to be delayed or canceled between December 19 and 21, 2018 due to drone incursions. An unauthorized UAV incursion at the Airport could result in the temporary delay or cancellation of flights to or from the Airport as well as harm the Airport's brand, reputation and its relationships with the Airport's customers, airlines and government partners. Although UAVs are regulated by the FAA and federal law prohibits the Airport from disrupting UAV operations or undertaking counter UAV measures, the Port Authority is working closely with the FAA to develop measures to prevent unauthorized UAV activity from adversely affecting the Airport. There can be no assurance, however, that in the future, unauthorized UAV activity will not adversely affect Airport or the Lessee's operations.

#### **Possible Loss of Tax-Exempt Status of Interest on Series 2024 Bonds**

On the date of delivery of and payment for the Series 2024 Bonds, Co-Bond Counsel will each render its opinion with respect to the tax-exempt status of the interest on the Series 2024 Bonds, the form of which opinion is set forth in APPENDIX K – "FORM OF LEGAL OPINION OF CO-BOND COUNSEL." See also "PART 21 – TAX MATTERS."

In the event the interest on the Series 2024 Bonds is determined to be includable in gross income of holders or Beneficial Owners of the Series 2024 Bonds for federal tax purposes, the Series 2024 Bonds will remain outstanding. In such event, there will be no adjustment in the interest rate on the Series 2024 Bonds. 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 to the date 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.

## **PART 21 - TAX MATTERS**

The Internal Revenue Code of 1986, as amended (the “Code”), establishes certain requirements that must be met at and subsequent to the issuance and delivery of the Series 2024 Bonds for interest on the Series 2024 Bonds to be and remain not includable in gross income of the owners thereof under Section 103 of the Code. Included among the continuing requirements of the Code are certain restrictions and prohibitions on the use of the proceeds of the Series 2024 Bonds and the use of the facilities financed or refinanced by the Series 2024 Bonds, restrictions on the investment of such proceeds and other amounts and the rebate to the United States of certain earnings in respect of investments. Failure to comply with these continuing requirements may cause the interest on the Series 2024 Bonds to be includable in gross income for federal income tax purposes retroactively to the date of their issuance irrespective of the date on which such noncompliance occurs. In such event, no provision has been made to increase the interest rate on the Series 2024 Bonds, or to indemnify Owners for resulting costs and losses (*e.g.*, tax deficiencies, interest and penalties, loss of market value of Series 2024 Bonds, etc.) or to redeem the Series 2024 Bonds. See “PART 10 - DESCRIPTION OF THE SERIES 2024 BONDS – Redemption of the Series 2024 Bonds. See “PART 20 – RISK FACTORS—Possible Loss of Tax-Exempt Status of Interest on Series 2024 Bonds.” In the Indenture, the Lessee Loan Agreements, the Tax Certificate as to Arbitrage and the Provisions of Sections 103 and 141-150 of the Internal Revenue Code of 1986 of the Conduit Issuer and the Lessee (the “Tax Compliance Certificate”), and accompanying documents, exhibits, and certificates, the Conduit Issuer and the Lessee have covenanted to comply with certain procedures, and they have made certain representations and certifications designed to assure compliance with the requirements of the Code. Although the Conduit Issuer and the Lessee have agreed not to violate the requirements and limitations of the Code, there can be no assurance that these events will not occur, nor that the Conduit Issuer and the Lessee can, through its efforts, control the occurrence of any such event.

In the opinions of Katten Muchin Rosenman LLP and D. Seaton and Associates, P.A., P.C., Co-Bond Counsel, assuming continuing compliance by the Conduit Issuer and the Lessee (and their successors) with the covenants and the accuracy of the representations and certifications referenced above, based on existing statutes, regulations, rulings and court decisions, interest on the Series 2024 Bonds is not includable in gross income for federal income tax purposes, except that no opinion is expressed as to the non-inclusion of interest on any Series 2024 Bond in gross income for federal income tax purposes during the period that such Series 2024 Bond is held by a “substantial user” of the facilities financed or refinanced by the Series 2024 Bonds or a “related person” within the meaning of Section 147(a) of the Code.

Co-Bond Counsel are of the further opinion that interest on the Series 2024 Bonds is an “item of tax preference” to be included in calculating the alternative minimum taxable income for purposes of the alternative minimum tax imposed on individuals. The Inflation Reduction Act of 2022 imposes a corporate alternative minimum tax equal to 15% of the “adjusted financial statement income” of any corporation (other than an S corporation, a regulated investment company and a real estate investment trust) having an average “adjusted financial statement income” exceeding \$1,000,000,000 over such corporation’s three preceding taxable years. The corporate alternative minimum tax is effective for taxable year beginning after December 31, 2022. Interest on tax-exempt bonds, such as interest on the Series 2024 Bonds, is included in the calculation of a corporation’s “adjusted financial statement income.”

Reference is made to APPENDIX K – “FORM OF LEGAL OPINION OF CO-BOND COUNSEL” hereto for the proposed forms of the approving opinions expected to be rendered by Co-Bond Counsel in connection with the Series 2024 Bonds.

Certain maturities of the Series 2024 Bonds have been initially offered to the public at prices in excess of their principal amounts, and such excess will constitute bond premium in the case of said maturities of the Series 2024 Bonds sold at their initial offering prices (the “Premium Bonds”). An initial purchaser (other than a purchaser who holds such Premium Bonds as inventory, stock in trade or for sale to customers in the ordinary course of business) with an initial adjusted basis in a Premium Bond in excess of its principal amount will have amortizable bond premium that is not deductible from gross income for federal income tax purposes. The amount of amortizable bond premium for a taxable year is determined actuarially on a constant interest rate basis over the term of such Premium Bond based on the purchaser’s yield to maturity (or, in the case of Premium Bonds callable prior to their maturity, over the period to the call date, based on the purchaser’s yield to the call date and giving effect to any call premium). For purposes of determining gain or loss on the sale or other disposition of a Premium Bond, an initial purchaser is required to decrease its adjusted basis in such Premium Bond annually by the amount of amortizable bond premium for the taxable year. The amortization of bond premium may be taken into account as a reduction in the amount of tax-exempt income for purposes of determining various other tax consequences of owning Premium Bonds. Owners of Premium Bonds are advised that they should consult with their own advisors with respect to the calculation of the amount of the bond premium that will be treated for federal income tax purposes as having amortized for any taxable year (or portion thereof) of such owners and with respect to the federal, state and local tax consequences of owning Premium Bonds.

Certain maturities of the Series 2024 Bonds have been initially offered to the public at prices less than the principal amount thereof payable at maturity (the “Discount Bonds”). If the first price at which a substantial amount of the Series 2024 Bonds of the same maturity is sold in the initial offering to the public (excluding bond houses, brokers or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers) is less than the principal amount thereof payable at maturity, the difference between such price and principal amount constitutes original issue discount with respect to each of the Series 2024 Bonds of the same maturity. Co-Bond Counsel is of the opinion that original issue discount, as it accrues, is excludable from gross income for federal income tax purposes and is subject to the alternative minimum tax to the same extent as is stated interest on the Series 2024 Bonds. Original issue discount accrues in each taxable year over the term of the Discount Bonds under the “constant yield method” described in regulations interpreting Section 1272 of the Code, with certain adjustments. Original issue discount may be treated as continuing to accrue in each taxable year even if payment of the Discount Bonds becomes doubtful. Accruals of original issue discount are treated as tax-exempt interest earned by owners on the accrual basis of tax accounting or the cash basis of tax accounting even though no cash corresponding to the accrual is received in the year of accrual. The tax basis of a Discount Bond if held by an original purchaser, can be determined by adding to such owner’s purchase price of such Discount Bond the original issue discount that has accrued. The Owners of Discount Bonds should consult their own tax advisors with respect to the calculation of the amount of the original issue discount that will be treated for federal income tax purposes as having accrued for any taxable year (or portion thereof) of such owners and with respect to other federal, state and local tax consequences of owning and disposing of the Discount Bonds.

The opinions of Co-Bond Counsel are based on current legal authority and cover certain matters not directly addressed by such authority. Such opinions represent 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 are not a guaranty of that conclusion. The opinions are not binding on the Internal Revenue Service (the “IRS”) or any court. Further, Co-Bond Counsel cannot give, and have not given, any opinion or assurance about the future activities of the Conduit Issuer or the Lessee, or about the effect of future changes in the Code,

applicable regulations, the interpretation thereof or the enforcement thereof by the IRS. The Conduit Issuer and the Lessee have covenanted, however, to comply with the requirements of the Code.

Certain requirements and procedures contained or referred to in the Indenture, the Lessee Loan Agreements, the Tax Compliance Certificate and other relevant documents may be changed and certain actions may be taken, under the circumstances and subject to the terms and conditions set forth in such documents, upon the advice or with the approving opinion of nationally-recognized bond counsel. Katten Muchin Rosenman LLP and D. Seaton and Associates, P.A., P.C. express no opinion as to the effect on the exclusion from gross income for federal tax purposes, and as to the effect on the non-inclusion in taxable income for purposes of personal income taxes imposed by the State of New York, the City and the City of Yonkers, New York, of interest on the Series 2024 Bonds of any such change occurring, or such action or other action taken or not taken, upon the advice or approval of bond counsel other than Katten Muchin Rosenman LLP and D. Seaton and Associates, P.A., P.C.

Prospective purchasers of the Series 2024 Bonds should be aware that ownership of, accrual or receipt of interest on, or disposition of, tax-exempt obligations may have collateral federal income tax consequences for certain taxpayers, including financial institutions, certain S corporations, United States branches of foreign corporations, property and casualty insurance companies, individual recipients of social security or railroad retirement benefits, taxpayers eligible for the earned income credit, and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry tax-exempt obligations. The foregoing is not intended as an exhaustive list of potential tax consequences. Prospective purchasers should consult their tax advisors as to any possible collateral tax consequences in respect of the Series 2024 Bonds. Co-Bond Counsel express no opinion regarding any such collateral tax consequences.

In the opinions of Co-Bond Counsel, assuming continuing compliance by the Conduit Issuer and the Lessee (and their successors) with the requirements of the Code that must be met in order for interest on the Series 2024 Bonds to be not includable in gross income for federal income tax purposes, interest on the Series 2024 Bonds is also not includable in taxable income for purposes of personal income taxes imposed by the State of New York, the City and the City of Yonkers, New York under existing statutes, regulations, rulings and court decisions, except that no opinion is expressed as to the non-inclusion of interest on any Series 2024 Bond in taxable income for purposes of such personal income taxes during the period that such Series 2024 Bond is held by a “substantial user” of the facilities financed or refinanced by the Series 2024 Bonds or a “related person” within the meaning of Section 147(a) of the Code.

Co-Bond Counsel have not undertaken to determine (or to inform any person) whether any actions taken (or not taken) or events occurring (or not occurring) after the date of issuance of the Series 2024 Bonds may adversely affect the value of, or the tax status of interest on, the Series 2024 Bonds. Future tax legislation, administrative actions taken by tax authorities, and court decisions, whether at the federal or state level, may adversely affect the tax-exempt status of interest on the Series 2024 Bonds under federal or state law or otherwise prevent holders or beneficial owners of the Series 2024 Bonds from realizing the full current benefit of the expected tax status of such interest. It is not possible to predict whether or when such developments may occur which may adversely affect the value of, or the tax status of, interest on municipal bonds, including the Series 2024 Bonds. Prospective purchasers of the Series 2024 Bonds should consult their tax advisors regarding any pending or proposed federal or state tax legislation, administrative actions or court decisions. Further, no assurance can be given that the introduction or enactment of any proposed legislation, or a future court decision, or any action of the IRS, including but not limited to regulation, ruling, or selection of the Series 2024 Bonds for audit examination, or the course or result of any IRS examination of the Series 2024 Bonds, or obligations which present similar tax issues, will not affect the market prices and marketability of the Series 2024 Bonds.

Information reporting requirements apply to interest paid on tax-exempt obligations, including the Series 2024 Bonds. In general, such requirements are satisfied if the interest recipient completes, and

provides the payor with, a Form W-9, “Request for Taxpayer Identification Number and Certification,” or if the recipient is one of a limited class of exempt recipients, including corporations. A recipient not otherwise exempt from information reporting who fails to satisfy the information reporting requirements will be subject to the “backup withholding,” which means that the payor of interest is required to deduct and withhold a tax from the payment, calculated in the manner set forth in the Code. If an owner purchasing a Series 2024 Bond through a brokerage account has executed a Form W-9 in connection with the establishment of such account, as generally can be expected, no backup withholding should occur. In any event, backup withholding does not affect the excludability of the interest on the Series 2024 Bonds from gross income for federal income tax purposes. Any amounts withheld pursuant to backup withholding would be allowed as a refund or a credit against the owner’s federal income tax once the required information is furnished to the IRS.

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 are not obligated to defend the Conduit Issuer, the Lessee or the holders or beneficial owners of the Series 2024 Bonds regarding the tax status of interest on the Series 2024 Bonds in the event of an audit 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 procedures parties other than the Conduit Issuer, the Lessee and their appointed counsel, including the holders or beneficial owners of the Series 2024 Bonds, would have little, if any, right to participate in the audit process. Moreover, because achieving judicial review in connection with any audit of tax-exempt bonds is difficult, obtaining an independent judicial review of IRS positions with which the Conduit Issuer or the Lessee legitimately disagrees, may not be practical. 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 prices for, or the marketability of, the Series 2024 Bonds, and may cause the Conduit Issuer, the Lessee, and the holders or beneficial owners of the Series 2024 Bonds to incur significant expense.

## **PART 22 - LIMITED LIABILITY FOR THE SERIES 2024 BONDS**

The Series 2024 Bonds are special and limited revenue obligations of the Conduit Issuer, payable by the Conduit Issuer as to the principal, Redemption Price, and interest thereon, solely out of the Trust Estate pledged under the Indenture referred to herein, including payments made by the Lessee to the Conduit Issuer pursuant to the Lessee Loan Agreements and from the application of moneys applied in accordance with the flow of funds established in the Common Terms Agreement and the Indenture. 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, the JDA, ESD, or any other local development corporation, agency, or authority of the State (other than the Conduit Issuer), 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 Conduit Issuer) shall be liable on the Series 2024 Bonds. The Conduit Issuer has no power of taxation.

## **PART 23 - RATINGS**

S&P, Moody’s Ratings, and Kroll Bond Rating Agency, LLC are expected to assign ratings of “AA”, “A1” and “AA+”, respectively, to the Insured Series 2024 Bonds, with the understanding that, upon delivery of the Insured Series 2024 Bonds, the Policy will be issued by AGM. The Series 2024 Bonds have been assigned underlying ratings by Moody’s, Fitch, and Kroll of “Baa3”, “BBB-” and “BBB-”, 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 Conduit Issuer and the Lessee undertake no responsibility after the issuance of the Series 2024 Bonds to assure the maintenance of the rating or to oppose any revision or withdrawal thereof.

## **PART 24 - UNDERWRITING**

The Series 2024 Bonds are being purchased by an underwriting group consisting of the underwriters listed on the cover page hereof (the “Underwriters”). BofA Securities, Inc. is acting as the representative of the Underwriters with respect to the Series 2024 Bonds.

The Underwriters have agreed to purchase the Series 2024 Bonds for an aggregate purchase price of \$2,654,862,823.15 (representing the principal amount of the Series 2024 Bonds of \$2,550,000,000.00, plus a net original issue premium of \$117,910,308.00, less an Underwriters’ discount of \$13,047,484.85). The initial public offering prices of the Series 2024 Bonds may be changed from time to time by the Underwriters.

The bond purchase contract relating to the Series 2024 Bonds (the “Bond Purchase Contract”) provides that (i) the Underwriters will purchase all (but not less than all) of the Series 2024 Bonds, and (ii) the obligations to make such purchases are subject to certain terms and conditions set forth in such Bond Purchase Contract including, among others, the approval of certain legal matters by counsel.

The Underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may 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. Under certain circumstances, the Underwriters and their affiliates may have certain creditor and/or other rights against the Lessee in connection with such activities, including, without limitation, being Lenders under the Credit Agreement and counterparties to certain interest rate swap transactions, as described below. In the course of their various business activities, the Underwriters and their respective affiliates, officers, directors and employees may purchase, sell or hold a broad array of investments and actively traded securities, derivatives, loans, commodities, currencies, credit default swaps and other financial instruments for their own account and for the accounts of their customers, and such investment and trading activities may involve or relate to assets, securities and/or instruments of the Conduit Issuer and the Lessee (and its affiliates) (directly, as collateral securing other obligations or otherwise) and/or persons and entities with relationships with the Conduit Issuer and the Lessee (and its affiliates). 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.

As described below, certain of the Underwriters have entered into distribution agreements with other broker-dealers for the distribution of the Series 2024 Bonds at the initial public offering prices. Such agreements generally provide that the relevant Underwriter will share a portion of its underwriting compensation or selling concession with such broker-dealers.

BofA Securities, Inc., the representative of the Underwriters of the Series 2024 Bonds, has entered into a distribution agreement with its affiliate Merrill Lynch, Pierce, Fenner & Smith Incorporated (“MLPF&S”). As part of this arrangement, BofA Securities, Inc. may distribute securities to MLPF&S, which may in turn distribute such securities to investors through the financial advisor network of MLPF&S.

As part of this arrangement, BofA Securities, Inc. may compensate MLPF&S as a dealer for their selling efforts with respect to the Series 2024 Bonds.

J.P. Morgan Securities LLC (“JPMS”), one of the Underwriters of the Series 2024 Bonds, has entered into negotiated dealer agreements (each, a “Dealer Agreement”) with each of Charles Schwab & Co., Inc. (“CS&Co.”) and LPL Financial LLC (“LPL”) for the retail distribution of certain securities offerings at the original issue prices. Pursuant to each Dealer Agreement, each of CS&Co. and LPL may purchase Series 2024 Bonds from JPMS at the original issue price less a negotiated portion of the selling concession applicable to any Series 2024 Bonds that such firm sells.

As described below, certain of the Underwriters and their respective affiliates may provide services to the Conduit Issuer and the Lessee and/or its affiliates from time to time unrelated to this offering and for which they will receive remuneration.

Loop Capital Markets LLC, an Underwriter of the Series 2024 Bonds, is solely owned by Loop Capital, LLC, an indirect owner of approximately 37% of MJE-Loop Capital Partners LLC, which serves as the Investment Advisor to JLC Infrastructure Fund 1, one of the equity participants in the Lessee.

Bank of America, N.A., an affiliate of BofA Securities, Inc., an Underwriter of the Series 2024 Bonds, is a Lender and joint lead arranger under the Credit Agreement. Additionally, Barclays Bank PLC, an affiliate of Barclays Capital Inc., and JPMorgan Chase Bank, N.A., an affiliate of J.P. Morgan Securities LLC, are each an Underwriter of the Series 2024 Bonds and a Lender under the Credit Agreement.

A portion of the proceeds of the Series 2024 Bonds will be used to repay a portion of the Bank Loans provided by the Lenders under the Credit Agreement.

## **PART 25 - FINANCIAL STATEMENTS AND INDEPENDENT AUDITOR**

The Lessee’s audited financial statements for the fiscal year ended December 31, 2023 and the unaudited financial statements as of and for the three months ended on March 31, 2024 presented in this Official Statement have been prepared in accordance with generally accepted accounting principles in the United States. See APPENDIX H – “FINANCIAL STATEMENTS OF THE LESSEE” hereto.

The financial statements of the Lessee as of and for the year ended December 31, 2023 have been audited by Ernst & Young LLP, independent auditors, as stated in their report appearing herein (see APPENDIX H – “FINANCIAL STATEMENTS OF THE LESSEE” hereto). Ernst & Young LLP has not reviewed, commented on or approved, and is not associated with, this Official Statement. Ernst & Young LLP has not performed any procedures on any financial statements or other financial information of the Lessee, including without limitation, any of the information contained in this Official Statement and has not been asked to consent to the inclusion of its report in this Official Statement.

## **PART 26 - 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 Katten Muchin Rosenman LLP and D. Seaton and Associates, P.A., P.C., Co-Bond Counsel. See APPENDIX K– “FORM OF LEGAL OPINION OF CO-BOND COUNSEL.” Certain legal matters will be passed upon by BurgherGray LLP, Disclosure Counsel. Certain legal matters will be passed upon for the Conduit Issuer by its General Counsel; for the Lessee by its co-counsel, Gibson, Dunn & Crutcher LLP and Bryant Rabbino LLP; and for the Underwriters by Nixon Peabody LLP and the Law Offices of Joseph C. Reid, P.A. Certain legal matters will be passed upon for the Indenture Trustee and Collateral Agent by Paparone Law PLLC.

## **PART 27 - LITIGATION**

### **The Conduit Issuer**

There is no litigation pending, or to the knowledge of the Conduit Issuer threatened, either seeking to restrain or enjoin the issuance of the Series 2024 Bonds or questioning or affecting the validity of the Series 2024 Bonds or the proceedings or authority under which they are to be issued.

### **The Lessee**

There is no litigation, proceedings or investigations pending for which the Lessee has received service of process or written notice or, to its knowledge, is threatened against it or its officers that would have a material adverse effect on the Project or the Lessee's business operations or financial condition.

## **PART 28 - ADVISORS**

### **Financial Advisor to the Port Authority**

Frasca & Associates, LLC is serving as Financial Advisor to the Port Authority with respect to the issuance of the Series 2024 Bonds.

### **Municipal Advisor to the Lessee**

Samuel A. Ramirez & Co., Inc. has assisted the Lessee as Municipal Advisor with respect to the pricing of the Series 2024 Bonds.

## **PART 29 - CERTAIN RELATIONSHIPS**

In the ordinary course of its business activities, the Lessee has entered into a number of transactions with related parties, as described below.

The Lessee is party to a Program Management Agreement, dated as of June 10, 2022, with Ferrovial Construction JFK T1, LLC (the "PMO-FC"), a subsidiary of Ferrovial. Pursuant to the Program Management Agreement, PMO-FC will act as an in-house entity, working as an extension of the Lessee's staff and organization, to manage the delivery of Phase A, for which PMO-FC will oversee all aspects of design, pre-construction and construction. PMO-FC's services will include design, construction and contract management, third-party interface and coordination, project reporting and cost management and reporting, among others. PMO-FC has agreed to provide supervision and management services related to the design and construction work of the Design Builder, including acting as the principal interface with the Design Builder and giving instructions to the Design Builder that relate to the performance of its obligations under the Design Build Agreement. See "PART 3 – PROJECT PARTICIPANTS – Project Management Office."

The Lessee is also party to a Management Services Agreement, dated as of June 10, 2022, with Ferrovial Airports US Operation and Management Services LLC (the "Manager"), a subsidiary of Ferrovial Airports Holding US Corp., a subsidiary of Ferrovial. Pursuant to the Management Services Agreement, the Manager has agreed to provide certain services and support in connection with the Lessee's responsibilities with respect to the Operations and Maintenance Work. The term of the Management Services Agreement commenced on June 10, 2022, and extends until the date that is 15 years from such date, unless terminated earlier pursuant to its terms. See "PART 3 – PROJECT PARTICIPANTS – Terminal Operator and Manager" and "PART 15 – OPERATION AND MANAGEMENT OF THE PROJECT."

For a discussion of the Lessee’s governance structure see “PART 3 – PROJECT PARTICIPANTS – The Lessee.”

Certain of the Underwriters for the Series 2024 Bonds also serve as Lenders under the Credit Agreement. See “PART 24 – UNDERWRITING.”

### **PART 30 - 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 Lessee will execute the Continuing Disclosure Undertaking to periodically provide certain financial information and operating data as described in APPENDIX I – “LESSEE CONTINUING DISCLOSURE UNDERTAKING” 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 Lessee covenanted in the Lessee Loan Agreements that, as long as Series 2024 Bonds remain outstanding, it will either maintain the Continuing Disclosure Undertaking in effect or to enter into a similar agreement with the Indenture Trustee providing for submission of information to the MSRB substantially the same as that information required to be submitted pursuant to the Continuing Disclosure Undertaking and over similar periods of time, all in compliance with the Rule.

Neither the Conduit Issuer nor the Port Authority will have any responsibility or liability to the holders of the Series 2024 Bonds or any other person with respect to such continuing disclosure.

### **PART 31 - ADDITIONAL INFORMATION**

Copies of the definitive agreements, some of which may be in redacted form and subject to any existing contractual agreements, will be available following the date of issuance of the Series 2024 Bonds, upon delivery of a written request and the payment of reasonable copying, mailing and handling charges to the Indenture Trustee at 240 Greenwich Street, 7E, New York, NY 10286, to the attention of the Corporate Trust Company.

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The execution and delivery of this Official Statement by authorized officers have been duly authorized by the Conduit Issuer and the Lessee.

**NEW YORK TRANSPORTATION  
DEVELOPMENT CORPORATION,**  
as Conduit Issuer

By:           /s/ Raymond Orlando            
Name: Raymond Orlando  
Title: Chief Financial Officer

**JFK NTO LLC,**  
as Lessee

By:           /s/ Manoj Patel            
Name: Manoj Patel  
Title: Chief Financial Officer

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## Appendix A

### DEFINITIONS

*Unless otherwise specified or previously defined herein, capitalized terms used in this Official Statement will have the meanings set forth below, and solely to the extent not otherwise defined herein or below, as applicable, in Section 1.01 (Defined Terms) of Schedule 1 to the Common Terms Agreement. Copies of the definitive agreements, some of which may be in redacted form and subject to any existing contractual agreements, will be available following the date of issuance of the Series 2024 Bonds, upon delivery of a written request and the payment of reasonable copying, mailing and handling charges to the Indenture Trustee at 240 Greenwich Street, 7E, New York, NY 10286, to the attention of the Corporate Trust Company.*

**Acceptable Letter of Credit** means any standby letter of credit in favor of the Collateral Agent (a) issued by an Eligible LC Issuer, (b) the reimbursement obligations with respect to which shall not unless issued under a letter of credit facility provided by an Additional Senior Creditor or a Permitted Refinancing Creditor, (i) have recourse to the Conduit Issuer, HoldCo, the Taxable REIT Subsidiary, the Lessee or the Project or (ii) be secured by a lien on, or a security interest in, the Collateral, (c) the term of which is at least one (1) year from the date of issue (except that for letters of credit issued as a replacement letter of credit with less than one (1) 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 thirty (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 thirty (30) days of such downgrade and, (iii) if such letter of credit is used to fund any Reserve Account established under the Common Terms Agreement, when funds would otherwise be drawn from such Reserve Account.

**Accession Agreement** means an accession agreement substantially in the form attached to the Common Terms Agreement as Exhibit G (Accession Agreement).

**Account Bank** means U.S. Bank, N.A. (as successor to MUFG Union Bank, N.A.).

**Account Collateral** means (a) all Project Accounts (other than the Arbitrage Rebate Accounts), (b) all cash, Permitted Investments, certificates, instruments, “investment property” (as defined in Section 9-102(a)(49) of the UCC), “securities” (as defined in Section 8-102(a)(15) of the UCC), “securities entitlements” (as defined in Section 8-102(a)(17) of the UCC), and other “financial assets” (within the meaning of Section 8-102(a)(9) of the UCC) at any time on deposit therein or credited thereto, including all income, earnings and distributions thereon and all proceeds, products and accessions of and to any and all of the foregoing, including whatever is received or receivable upon any collection, exchange, sale or other disposition of any of the foregoing and any property into which any of the foregoing is converted, whether cash or non-cash proceeds, (c) all “securities accounts” (within the meaning of Section 8-501 of the UCC), all deposit accounts and any and all other bank accounts, and (d) all amounts payable under or in connection with any of the foregoing clauses (b) and (c), and (e) all “proceeds” (as defined under the UCC) of any or all of the foregoing, whether cash or non-cash proceeds, that is subject to a security interest granted by the Lessee, as applicable, pursuant to the Lessee Security Agreement.

**Accounts Collateral** has the meaning assigned to it in the Equity Contribution Account Pledge Agreement.

**Additional Bonds** means additional Muni Bonds under the Common Terms Agreement and additional Bonds under the Indenture, as the context provides.

**Additional Material Project Document** has the meaning assigned to it in the Common Terms Agreement.

**Additional Phase** means (a) Phase B1, (b) Phase B2, or (c) any subsequent phase of the Project agreed under the Lease from time to time.

**Additional Premises** has the meaning assigned to it in the Lease.

**Additional Senior Creditor** means any Person providing Additional Senior Indebtedness (including any holders of bonds or other securities that are represented by a Secured Debt Representative); provided that if not already party hereto, the creditors providing such Indebtedness (or a Secured Debt Representative on their behalf) shall have acceded to the Common Terms Agreement in accordance with the Common Terms Agreement.

**Additional Senior Indebtedness** means Completion Debt, Incremental Debt and Additional Senior Indebtedness Hedge Obligations.

**Additional Senior Indebtedness Document** means any Credit Agreement, purchase agreement, indenture, note or similar contract or instrument providing for the issuance or incurrence of, or evidencing, any Additional Senior Indebtedness, including each Note Purchase Agreement, Private Placement Note, Indenture and Muni Bond incurred as Additional Senior Indebtedness, and each Additional Senior Indebtedness Hedge Agreement.

**Additional Senior Indebtedness Hedge Agreement** means any Interest Rate Hedge Agreement entered into in connection with the incurrence of Additional Senior Indebtedness that accrues interest at a variable interest rate.

**Additional Senior Indebtedness Hedge Obligations** means all Secured Lessee Obligations arising under or in connection with the Additional Senior Indebtedness Hedge Agreements.

**Additional Services** has the meaning set forth in APPENDIX F – “SUMMARY OF CERTAIN PROVISIONS OF THE MANAGEMENT SERVICES AGREEMENT” of this Official Statement.

**Additional Services Proposal** has the meaning set forth in APPENDIX F – “SUMMARY OF CERTAIN PROVISIONS OF THE MANAGEMENT SERVICES AGREEMENT” of this Official Statement.

**Administrative Agent** means MUFG Bank, Ltd.

**Advertising Share** has the meaning set forth in APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE” of this Official Statement.

**AECOM Direct Agreement** has the meaning set forth in “PART 13 – SUMMARY OF THE SECURITY DOCUMENTS” of this Official Statement.

**Affiliate** has the meaning assigned to it in the Common Terms Agreement, the Lease, the Design-Build Contract and the Management Services Agreement, as applicable.

**Affiliate QTO** has the meaning set forth in APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE” of this Official Statement.

**Agent** means the Collateral Agent, the Intercreditor Agent and each Secured Debt Representative party to the Common Terms Agreement.

**Aggregate Commitments** means the Commitments of all the Lenders.

**Air France** means Société Air France.

**Airline Use Agreement** means each airline use agreement entered into or to be entered into by the Lessee and any Airline User in form and substance similar to the standard-form airline use agreement and pursuant to which the Lessee will grant the right to such Airline User to use a portion of the Premises leased under the Lease to operate its business of transportation by aircraft in consideration for rental payments.

**Airline Users** has the meaning assigned to it in the Common Terms Agreement and the Lease, as applicable.

**Airport** or **JFK Airport** has the meaning set forth in “PART 1 – INTRODUCTION” of this Official Statement.

**Airport Operating Certificate** means the airport operating certificate issued by the FAA pursuant to 14 C.F.R. Part 139 with respect to the Airport.

**Airport Security Guidelines Manual** means the Airport Security Guidelines Manual for Port Authority of New York and New Jersey Airports annexed to the Lease, and any subsequent editions or replacements thereof, which is annexed to the Lease.

**Airport Security Manager** means the Airport’s primary contact for civilian security related activities at the Airport, who is designated as the “Airport Security Coordinator” as specified in 49 C.F.R. Part 1542.

**AirTrain JFK** means an automated light rail system linking the terminals in the Central Terminal Area with each other and with existing transit lines in Jamaica, Queens and Howard Beach, Queens, respectively, and providing exclusive airport access for passengers and others using JFK Airport.

**American** means American Airlines, Inc.

**Anchor User Agreements** means that certain amended and restated anchor user agreements entered into between the Lessee and each of the Anchor Users.

**Anchor Users** has the meaning set forth in “PART 16 – AERONAUTICAL REVENUES” of this Official Statement.

**Annual Operating Budget** means the operating budget and plan required to be provided by the Lessee pursuant to each of the Lessee Loan Agreements.

**Annual Services Budget** has the meaning set forth in APPENDIX F – “SUMMARY OF CERTAIN PROVISIONS OF THE MANAGEMENT SERVICES AGREEMENT” of this Official Statement.

**AOC** has the meaning set forth in APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE” of this Official Statement.

**Applicable Law** means 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, in each case, applicable to the Project, the Airport, the Premises or any Person, as the context may require. 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.

**Applicable Standards** means (i) the Rules and Regulations, (ii) Good Order Requirements, and (iii) 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 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.

**Arbitrage Rebate Account** has the meaning assigned to it in the Common Terms Agreement.

**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.

**Asset Preservation Schedule** means the five (5)-year asset preservation schedule included in each Capital Asset Management Plan and each update thereof, each subject to the approval of the Port Authority, consisting of a rolling, forward-looking maintenance services program that describes planned preventative and predictive maintenance taking into account both known and uncertain parameters and the Asset Preservation Work, including routine maintenance that the Lessee is planning to undertake pursuant to Section 11 (Care, Maintenance, Rebuilding and Repair by the Lessee) as of the date of publication of each Capital Asset Management Plan, as described in more detail in the Operations and Maintenance Term Requirements.

**Asset Preservation Work** means all Operations and Maintenance Work described in the Operations and Maintenance Term Requirements.

**Assignment and Assumption** means an Assignment and Assumption substantially in the form attached to the Credit Agreement, or otherwise in form and substance reasonably acceptable to the Administrative Agent.

**ASX** means ASX NTO Energy, LLC.

**Available Documents** has the meaning assigned to it in the Lease.

**Available Funding** has the meaning assigned to it in the Common Terms Agreement.

**Bank Loans** has the meaning set forth in “PART 1 – INTRODUCTION” of this Official Statement.

**Base Fee** has the meaning set forth in “PART 15 – OPERATION AND MANAGEMENT OF THE PROJECT” of this Official Statement.

**Base Rate** means, for any day, a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate on such day plus one half (1/2) of one percent (1%), (b) the Prime Lending Rate on such day, and (c) Daily Compounded SOFR. If the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Rate for any reason, including the inability or failure of the Administrative Agent to obtain sufficient quotations in accordance with the terms of the definition thereof, the Base Rate shall be determined without regard to clause (a) above until the circumstances giving rise to such inability no longer exist.

**Base Rate Loan** means a Loan that bears interest based on the Base Rate.

**Baseline Schedule** means the “Detailed Baseline Schedule” for the D&C Work prepared by the Lessee in accordance with the requirements of the General Provisions and approved by the Port Authority in form and substance. The Lessee shall update the Baseline Schedule in accordance with the General Provisions and provide each update for the Port Authority’s review and comment (if any).

**Basic Lease** has the meaning set forth in “PART 1 – INTRODUCTION” of this Official Statement.

**Basis of Design** means the term “Lessee’s Basis of Design” as defined in the Lease, which has been prepared by Design Builder and conditionally approved by Developer and the Port Authority as of the Effective Date of the Lease, subject to resolution of the comments of the Port Authority indicated in such conditional approval (and, for the avoidance of doubt, no other conditions), and included as a Reference Document. Design Builder shall update the Basis of Design to incorporate and address the comments made by the Port Authority and Developer pursuant to the Port Authority’s conditional approval of the Basis of Design, and obtain the Port Authority’s and Developer’s final approval of the Basis of Design. For the avoidance of doubt, the Basis of Design shall be required to satisfy the standards set forth in the Lease. The Basis of Design as used herein shall also mean and refer to the “Comprehensive Basis of Design” as set forth in the Requirements and Provisions for Work.

**Best Management Practices** has the meaning set forth in APPENDIX F – “SUMMARY OF CERTAIN PROVISIONS OF THE MANAGEMENT SERVICES AGREEMENT” of this Official Statement.

**Borrowing** means a Term Loan Borrowing, a Working Capital Facility Borrowing, a Liquidity Facility Borrowing and/or a Security Deposit LC Borrowing, as the context may require.

**Building Loan** or **Building Loans** means extension(s) of credit by the Conduit Issuer to the Lessee under the Building Loan Agreement to fund Building Loan Costs in a maximum principal amount not to exceed the Building Loan Commitment, and which shall be, as applicable, Term Loans, Additional Loans and/or Permitted Refinancing Loans, as the context may require.

**Building Loan Agreement** means the building loan agreement dated as of June 10, 2022, between the Lessee, the Conduit Issuer, and the Intercreditor Agent.

**Building Loan Commitment** means the Conduit Issuer’s obligation to make available the Building Loans to the Lessee pursuant to the Building Loan Agreement, as the same may be adjusted from time to time in accordance with the Building Loan Agreement. The original amount of the Building Loan Commitment on the date of the Building Loan Agreement shall be three billion, nine hundred eighty-eight

million, five hundred seventy-five thousand, five hundred fifty-two Dollars and fifty cents (\$3,988,575,552.50).

**Building Loan Costs** means Project Costs that are to be funded from proceeds of Building Loans hereunder and constitute Costs of the Improvement (which may be Hard Costs or Soft Costs).

**Building Loan Costs Construction Account** has the meaning assigned to it in the Common Terms Agreement.

**Building Loan Mortgage** has the meaning set forth in “PART 13 – SUMMARY OF THE SECURITY DOCUMENTS” of this Official Statement.

**Building Loan Note** means a promissory note, with the Lessee as the payor and the Conduit Issuer as payee, in substantially the form attached to the Building Loan Agreement, in a principal amount equal to the Building Loan Commitment issued by the Lessee in favor of the Conduit Issuer.

**Building Loan Obligations** means collectively, all loans, advances, debts, liabilities, and obligations, howsoever arising, owed by the Lessee to the Conduit Issuer under or in respect of the Building Loan Agreement, the Building Loan Mortgage and the Building Loan Note, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, including all interest, make-whole amounts, prepayment premiums, fees, charges, expenses, attorney costs and costs of any advisors and consultants chargeable to the Lessee and any interest or other amount accruing to the Conduit Issuer under or in respect of the Building Loan Agreement, the Building Loan Mortgage and the Building Loan Note, which arises after the commencement of any insolvency or bankruptcy proceedings with respect to the Lessee or the Conduit Issuer.

**Business Day** means any day that is not 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.

**CAFD** means, for any period, all cash and cash equivalents received by the Lessee during the relevant period from the operations of the New Terminal Facilities and from other assets, including, without limitation, income, loan interest and amounts released from reserves, and all cash proceeds from capital events, net of (i) operations and maintenance expenses, debt service, and any other expenses, fees, taxes, liabilities, the payment of any rebate and other obligations (whether fixed or contingent) of, or payable by, the Lessee and (ii) such reserves as the Lessee, in its absolute discretion, determines appropriate, which applicable law and regulations permit to be distributed.

**CAG Holdings** means CAG Holdings LLC.

**Calculation Date** means each March 31, June 30, September 30 and December 31 after the Phase A DBO Date.

**Capital Asset Management Plan** means the Capital Asset Management Plan, subject to approval of the Port Authority, as described in the Operations and Maintenance Term Requirements.

**Capital Stock** means: (a) in the case of a corporation or company, corporate stock or share capital; (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock; (c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and (d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person (it being understood and agreed, for the avoidance of doubt, that “cash-

settled phantom appreciation programs” in connection with employee benefits that do not require a dividend or distribution shall not constitute Capital Stock).

**Capitalized Interest Accounts** means, collectively, the Series 2024 Muni Bonds Project Loan Senior Debt Capitalized Interest Account, the Series 2024 Muni Bonds Building Loan Senior Debt Capitalized Interest Account, the Series 2023 Muni Bonds Project Loan Senior Debt Capitalized Interest Account, and the Series 2023 Muni Bonds Building Loan Senior Debt Capitalized Interest Account.

**Carlyle** means The Carlyle Group.

**Cash Collateral** means, under the Equity Contribution Agreement, with respect to any Sponsor, cash or Eligible Investments on deposit in a Cash Collateral Account.

**Cash Collateral Account** means, with respect to any Sponsor, an account in the name of such Sponsor, entitled “Cash Collateral Account” (or similar), with a bank or other financial institution (which shall not be required to be the Account Bank) and subject to an Equity Contribution Account Pledge Agreement and, to the extent required for purposes of establishing control (as set forth in Section 9-102(a) of the UCC or Section 9-106(c) of the UCC, as applicable) over Accounts Collateral (as defined in the Equity Contribution Account Pledge Agreement) consisting of deposit accounts or investment property, an Equity Contribution Account Control Agreement.

**Cash Collateralize** means, under the Credit Agreement, to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the LC Issuing Banks (as applicable), as collateral for LC Obligations, cash, Eligible Investments (if reasonably acceptable to the applicable LC Issuing Banks) or deposit account balances in Dollars or, if the LC Issuing Banks benefiting from such collateral agree in its sole discretion, other credit support (including by backstop with a letter of credit satisfactory to the applicable LC Issuing Banks or by being deemed reissued under another agreement acceptable to the applicable LC Issuing Banks), in each case in an amount sufficient to cover one hundred three percent (103%) of the then Outstanding Amount of such LC Obligations pursuant to documentation in form and substance reasonably satisfactory to (a) the Administrative Agent and (b) the applicable LC Issuing Banks (which documents are consented to by the Lenders) and “**Cash Collateral**” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

**Cash Flow Waterfall** has the meaning assigned to it in the Lease.

**Casualty Event** means an event (or series of related events) which causes (or cause) all or any portion of the Collateral or the Project to be damaged, destroyed or rendered unfit for its intended use for any reason whatsoever, other than an Event of Eminent Domain.

**Change in Lessee Control** has the meaning set forth in APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE” of this Official Statement.

**Chief Security Officer** means the Port Authority’s Chief Security Officer or duly authorized representative, including but not limited to the Airport Security Manager.

**City** means The City of New York.

**Claim** means has the meaning set forth in APPENDIX E – “SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT” of this Official Statement.

**Class** has the meaning assigned to it in the Common Terms Agreement.

**Class A Members** means the persons designated as Class A Members on Exhibit A of the Mars LLC Agreement.

**Closing Date** has the meaning assigned to it in the Common Terms Agreement.

**Closing Date Term Commitment** means, as to each Closing Date Term Lender, its obligation to make Closing Date Term Loans pursuant to the Credit Agreement in an aggregate principal amount not to exceed the applicable amount set forth in the Credit Agreement, or in the Assignment and Assumption pursuant to which such Closing Date Term Lender became a party hereto, as applicable, as the same may be adjusted from time to time in accordance with the Credit Agreement. Commitments shall be one billion four hundred thirty million Dollars (\$1,430,000,000) on the date of the Credit Agreement.

**Closing Date Term Lender** means (a) at any time on or prior to the Effective Date, any Lender that has a Closing Date Term Commitment at such time and (b) at any time after the Effective Date, any Lender that holds Closing Date Term Loans at such time.

**Closing Date Term Loan** means one or more loans, denominated in Dollars, made available by each Closing Date Term Lender with a Closing Date Term Commitment, to the Conduit Issuer on the Effective Date (if the Effective Date occurs on or prior to the Initial Commitment End Date), in an aggregate amount not to exceed such Closing Date Term Lender's Closing Date Term Commitment

**Collateral** has the meaning assigned to it in the Common Terms Agreement.

**Collateral Agent** means U.S. Bank, N.A. (as successor to MUFG Union Bank, N.A.).

**Collateral Assignment** has the meaning assigned to it in the Common Terms Agreement.

**Combined Exposure** means the sum of (a) the Total Outstandings, (b) the aggregate unused Term Commitments, (c) the aggregate unused Working Capital Facility Commitments, (d) the aggregate unused Liquidity Facility Commitments, and (e) the aggregate unused Security Deposit Facility Commitments; provided that the unused Term Commitments, the unused Working Capital Facility Commitments, the unused Liquidity Facility Commitments, and the unused Security Deposit Facility Commitments of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

**Commitment** means a Term Commitment, a Working Capital Facility Commitment, a Liquidity Facility Commitment, and/or a Security Deposit Facility Commitment, as the context may require.

**Committed Loan Notice** means notice of (a) a Term Loan Borrowing, (b) a Working Capital Facility Borrowing, (c) a Liquidity Facility Borrowing, (d) a conversion of Loans from one Type to another, or (e) a continuation of SOFR Loans, pursuant to the Credit Agreement, which, if in writing, will be in the form of a Notice of Credit Extension.

**Common Terms Agreement** has the meaning set forth in "PART 1 – INTRODUCTION" of this Official Statement.

**Common Use Lounge Share** has the meaning set forth in APPENDIX D – "SUMMARY OF CERTAIN PROVISIONS OF THE LEASE" of this Official Statement.

**Compact** means the Compact of April 30, 1921, made by and between the two States, and thereafter consented to by the Congress of the United States.

**Compensation Event** has the meaning set forth in “PART 5 – THE LEASE” of this Official Statement.

**Completion** means, in relation to any Phase, the satisfaction of each of the following conditions with respect to such Phase, or Waiver thereof by the Required Secured Creditors:

(a) the Intercreditor Agent and the Conduit Issuer shall have received an Officer’s Certificate of the Lessee certifying that each of the conditions set forth in the Common Terms Agreement has been satisfied;

(b) the Intercreditor Agent and the Conduit Issuer shall have received a certified copy of the Completion Certificate for such Phase delivered by the Port Authority under the Lease, evidencing that the Project has achieved the Completion Date for such Phase;

(c) all Governmental Approvals necessary as of the relevant stage of the Project and all occupancy certificates for the Project shall have been validly issued, shall be final and non-appealable and shall be free from conditions that would reasonably be expected to have a Material Adverse Effect or that the Lessee does not expect to be able to satisfy (it being agreed that any Governmental Approvals that have been obtained to achieve the Completion Date for such Phase in accordance with and as determined under the Lease shall be deemed to have satisfied the requirements of certain terms of the Common Terms Agreement);

(d) each of the Senior Debt Service Reserve Accounts, the O&M Reserve Account and the Major Maintenance Reserve Account are Fully Funded;

(e) no Secured Obligations Default or Secured Obligations Event of Default shall have occurred and be continuing; and

(f) the Intercreditor Agent shall have received duly executed acknowledgments of payments and final releases of mechanics’ and materialmen’s liens from the D&C Contractor for such Phase.

**Completion Certificate** has the meaning assigned to it in the Lease.

**Completion Date** means, in respect of any Phase, the Business Day on which Completion occurs for that Phase.

**Completion Debt** has the meaning assigned to it in the Common Terms Agreement.

**Completion Event of Default** has the meaning set forth in “PART 5 – THE LEASE” of this Official Statement.

**Compliance Certificate** has the meaning assigned to it in the Common Terms Agreement.

**Concession Revenue Share** has the meaning set forth in APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE” of this Official Statement.

**Concession Shortfall Interest** means the interest that would accrue on each deferred payment comprising a portion of the Deferred Concession Share, at the rate of 7.5% per annum, compounded annually, for the period from the date each such payment was deferred through and including the date the applicable Deferred Concession Share is paid to the Port Authority.

**Concessions Revenue Rent** means the greater of (x) 50% of the Gross Rents for the Current Calendar Year and (y) the MAG for the Current Calendar Year.

**Condition Survey Report** has the meaning assigned to it in the Lease.

**Conduit Issuer** means the New York Transportation Development Corporation, a local development corporation formed under Section 1411 of the New York Not-for-Profit Corporation Law.

**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 Coordination Agreement** means the Construction Coordination Agreement, dated as of June 10, 2022, by and between the Port Authority and the Lessee, as amended, supplemented or otherwise modified from time to time.

**Contingent Rental** means a single lump sum amount of twenty-five million Dollars and zero cents (\$25,000,000.00).

**Contract Sum** means the contract sum set forth within each D&C Contract for the scope of such D&C Work.

**Contractors** means 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.

**Construction Account** has the meaning assigned to it in the Common Terms Agreement.

**Construction Applications** means one or more construction applications in the form prescribed by the Port Authority from time to time under the TCAP Manual and including 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 Transfer Date** means each Business Day on which withdrawals are made from a Construction Account under and in accordance with the Common Terms Agreement or from a TRS Construction Phase Account under and in accordance the Common Terms Agreement; provided that there may only be one (1) Construction Transfer Date each calendar week; provided further that in the case of any Emergency Expenditure, the Construction Transfer Date shall occur on any other Business Day elected by the Lessee and shall not be subject to the aforementioned limit on the number of Construction Transfer Dates per calendar week.

**Construction Withdrawal Certificate** means an Officer’s Certificate of the Lessee or the Taxable REIT Subsidiary addressed to the Account Bank (with a copy to the Intercreditor Agent and the Collateral Agent), substantially in the form attached to the Common Terms Agreement, delivered under and in accordance with the Common Terms Agreement.

**Construction Work** has the meaning assigned to it in the Lease.

**Cost of Capital** means five and one-half percent (5.5%).

**Costs of the Improvement** means those items defined as an “improvement” and/or a “cost of improvement” under Section 2 of Article 1 of the Lien Law, including third party consultant costs (subject to applicable Law).

**Credit Agreement** has the meaning set forth in “PART 1 – INTRODUCTION” of this Official Statement.

**Credit Extension** has the meaning assigned to it in the Common Terms Agreement, the Credit Agreement, the Project Loan Agreement and the Building Loan Agreement, as applicable.

**Credit Support** means any Equity Letters of Credit or Cash Collateral.

**CTA** means the central terminal area at the Airport.

**Current Calendar Year** means the Calendar Year having just ended.

**D&C Change** means “Qualifying D&C Change” under the Lease.

**D&C Completion Longstop Date** means the earlier of (a) twelve (12) months after the Scheduled D&C Completion Date for Phase A and (b) the date on which the liquidated damages cap under the Phase A D&C Contract has been reached.

**D&C Contract** has the meaning assigned to it in the Common Terms Agreement and the Lease, as applicable.

**D&C Contractor** means any counterparty to a D&C Contract.

**D&C Contractor Direct Agreement** has the meaning set forth in “PART 13 – SUMMARY OF THE SECURITY DOCUMENTS” of this Official Statement.

**D&C Work** has the meaning assigned to it in the Lease.

**D&C Work Period** has the meaning assigned to it in the Lease.

**Date Certain** means (a) with respect to Phase A, June 1, 2026, (b) (i) if Phase B1 and Phase B2 are developed separately, with respect to Phase B1, the date which is twenty-three (23) months after the Phase B1 Commencement Date, and with respect to Phase B2, the date which is eighteen (18) months after the Phase B2 Commencement Date (as defined in the Lease), and (ii) if Phase B1 and Phase B2 are developed simultaneously, the date which is twenty-eight (28) months after the Phase B1 Commencement Date and Phase B2 Commencement Date, and (c) with respect to any other Additional Phase, the date that is agreed upon with respect to such Additional Phase under the Lease from time to time, in each case, as such date shall be extended on a day for day basis with any extension granted to the Lessee for the satisfaction of the obligations originally due on the Scheduled Completion Date for such Phase and any corresponding extension granted to the applicable D&C Contractor under the D&C Contract for such Phase so long as the Lessee has Available Funding sufficient to achieve Completion of such Phase and to satisfy its other payment obligations under the Financing Documents and Material Project Documents with respect to such Phase, in each case as certified by a Responsible Officer of the Lessee and confirmed by the Technical Advisor; provided that where the Lessee certifies that Completion of a Phase is reasonably likely to occur on or prior to the Date Certain for such Phase and/or the Technical Advisor confirms or otherwise certifies the same, such certification or confirmation may be made if (A) (I) the Lessee has delivered a Delay Event Notice to the Port Authority pursuant to the requirements of such Delay Event Notice under

the Lease and is engaged in ongoing discussions with the Port Authority with respect to such Delay Event Notice, (II) the Port Authority has not rejected such Delay Event Notice in accordance with the terms of the Lease, and (III) such Delay Event Notice does not contemplate an extension to the Scheduled Completion Date beyond, in the case of Phase A, the D&C Completion Longstop Date and, in the case of any subsequent Phase, the relevant construction period longstop date relating to the relevant D&C Contract set forth in the Financing Documents for such Phase, or (B) (I) a Completion Event of Default has occurred or is reasonably likely, based on the then anticipated schedule, to occur, (II) the Lessee has delivered a remedial plan setting forth a schedule and specific actions to be taken by the Lessee to cure such Completion Event of Default or anticipated Completion Event of Default and indicating the date on which the Completion Date is expected to occur that is reasonably satisfactory to the Technical Advisor and provides a Completion Date which is, in the case of Phase A, on or prior to the D&C Completion Longstop Date and, in the case of any subsequent Phase, on or prior to the relevant construction period longstop date relating to the relevant D&C Contract set forth in the Financing Documents for such Phase, (III) the Lessee is implementing or has implemented the remedial plan in all material respects, and (IV) the Port Authority has not rejected such remedial plan in accordance with the terms of the Lease.

**DB D&C Work** has the meaning assigned to it in the Design-Build Contract.

**DB Event of Default** has the meaning set forth in “PART 8 – CONSTRUCTION OF PHASE A OF THE PROJECT” of this Official Statement.

**DBO** means the date of beneficial occupancy for DB D&C Work (i) with respect to any Partial Occupancy Portion, the date on which the Partial Occupancy Portion is substantially complete and operations for regularly scheduled passenger flights shall have commenced, (ii) with respect to any 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 Installation Portion of the Off-Premises Facilities, and (iii) the date on which the New Terminal Facilities and the corresponding portion of the Off-Premises Facilities as outlined in the Off-Premises Scope Document (as annexed to the Lease) for Phase A are substantially complete and operations for regularly scheduled passenger flights shall have commenced, and (iv) with respect to the entirety of the New Terminal Facilities and the Off-Premises Facilities, the date on which the New Terminal Facilities and the Off-Premises Facilities are substantially complete and operations for regularly scheduled passenger flights shall have commenced; provided, however, that Design Builder shall not be responsible for failures or delays to the commencement of regularly scheduled passenger flights to the extent that such failures or delays do not arise out of or relate to the Design Builder’s performance and completion of the DB D&C Work, or Design Builder’s obligations hereunder.

**Deal Contingent Hedge Agreement** has the meaning assigned to it in the Common Terms Agreement.

**Debt Incurrence Conditions** means, in the case of any Incremental Debt or Permitted Refinancing Indebtedness (other than any Permitted Refinancing Indebtedness Hedge Obligations):

(a) no Secured Obligations Default or Secured Obligations Event of Default shall have occurred and be continuing or would result from the incurrence of such Additional Senior Indebtedness or Permitted Refinancing Indebtedness, as applicable;

(b) such Additional Senior Indebtedness or Permitted Refinancing Indebtedness, as applicable, ranks pari passu and is treated pro rata in all respects with the existing Secured Pass Through Financing Obligations and any Secured Lessee Obligations under or in connection with any Secured Hedge Agreements (and Secured Hedge Transactions thereunder);

(c) the requirements of certain provisions of the Common Terms Agreement shall be satisfied after giving effect to the incurrence of such Additional Senior Indebtedness or Permitted Refinancing Indebtedness, as applicable;

(d) with respect to any Permitted Refinancing Indebtedness, (i) the weighted average life to maturity of such Permitted Refinancing Indebtedness is at least equal to that of the Indebtedness being refinanced and (ii) the final maturity date of such Permitted Refinancing Indebtedness is not earlier than the Indebtedness being refinanced;

(e) with respect to any Incremental Debt, the Intercreditor Agent has received, at the election of the Lessee, either (i) an updated base case financial model, demonstrating that, after giving effect to the incurrence of such Additional Senior Indebtedness, the minimum Projected TOCR for each four (4)-quarter period commencing on a Calculation Date occurring during the period beginning on the date of the proposed incurrence of such Incremental Debt and ending on the later of (A) the fifth (5th) anniversary of such date in accordance and (B) if applicable, the fifth (5th) anniversary of the Lease Completion Date for the construction of the Phase being financed by such Incremental Debt, in each case in accordance with the notional amortization schedule set forth in the base case financial model, is not less than 1.40:1.00 or (ii) a reaffirmation letter from at least two (2) Rating Agencies then maintaining a rating on the outstanding Senior Debt confirming that after giving effect to the incurrence of such Additional Senior Indebtedness the rating on outstanding Senior Debt shall be at least Investment Grade;

(f) the Intercreditor Agent has received (i) new leasehold mortgages in substantially the same form as the Leasehold Mortgages or an amendment to the Leasehold Mortgages and (ii) amendments to the Lessee Loan Agreements (if required), in each case for purposes of (A) documenting the incurrence of such Additional Senior Indebtedness or Permitted Refinancing Indebtedness, as applicable, and the on-lending of the proceeds thereof to the Lessee and (B) securing an aggregate amount equal to the outstanding Secured Lessee Obligations (other than Hedge Obligations) following the incurrence of such Additional Senior Indebtedness or Permitted Refinancing Indebtedness, as applicable, together with related collateral assignments in substantially the same form as the Collateral Assignments;

(g) the representative of the holders of such Additional Senior Indebtedness or Permitted Refinancing Indebtedness, as applicable, has delivered a fully executed Accession Agreement; and

(h) the Intercreditor Agent has received an Officer's Certificate from the Lessee, in each case at least three (3) Business Days prior to the incurrence of such Additional Senior Indebtedness or Permitted Refinancing Indebtedness, as applicable, (i) identifying the Secured Debt Representative of the applicable Senior Creditors with respect to such Additional Senior Indebtedness or Permitted Refinancing Indebtedness, as applicable and (ii) attaching a copy of each Additional Senior Indebtedness Document relating to such Additional Senior Indebtedness or Permitted Refinancing Indebtedness Document relating to such Permitted Refinancing Indebtedness, as applicable, in each case which document(s) shall include the material terms, permitted uses, tenor and amortization, rate of interest (or formula applicable to the calculation thereof), and fees and any other conditions necessary to satisfy the other relevant conditions specified in the definition of "Debt Incurrence Conditions".

**Debt Service** under the Common Terms Agreement means, with respect to any period, the sum of the following (without duplication): (a) all interest (or in the case of the Projected TOCR (defined therein), scheduled interest) payments due and payable in respect of Secured Pass Through Financing Obligations under the Senior Debt Documents during such period (plus the net amounts payable (or minus the net amounts receivable) as Ordinary Course Payments under Secured Hedge Agreements), plus (b) commitment fees and letter of credit fees (and any other similar fees and charges) (or in the case of the Projected TOCR, scheduled commitment fees and letter of credit fees (and any other similar fees and

charges)) (other than one-time fees paid on or in relation to a Closing Date) due and payable in respect of Secured Pass Through Financing Obligations under the Senior Debt Documents during such period, plus (c) all payments of principal (or in the case of the Projected TOCR, scheduled payments of principal) in respect of Secured Pass Through Financing Obligations (other than prepayments of principal) due and payable under the Senior Debt Documents during such period (other than principal of the Working Capital Loans, the Liquidity Loans and the Security Deposit LC Loans and the principal amount payable in respect of any Senior Debt on the applicable final maturity date thereof).

**Debt Service Reserve Requirement** means, on each Transfer Date, with respect to each Class of Senior Debt, an amount equal to the aggregate amount of the scheduled interest and principal on such Class of Senior Debt that will become due and payable during the next succeeding six (6)-month period.

**Deferred Concession Share** has the meaning set forth in “PART 5 – THE LEASE” of this Official Statement.

**Deferred Concession Shortfall End Date** means the first Transfer Date to occur after December 31, 2031.

**Deferred Concession Share Period** has the meaning assigned to it in the Lease.

**Deferred Management Fee** has the meaning set forth in APPENDIX F – “SUMMARY OF CERTAIN PROVISIONS OF THE MANAGEMENT SERVICES AGREEMENT” of this Official Statement.

**Deferred MSA Fee** has the meaning set forth in “PART 15 – OPERATION AND MANAGEMENT OF THE PROJECT” of this Official Statement.

**Deferred Second Additional Rent** has the meaning set forth in APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE” of this Official Statement.

**Deferred Second Additional Rental End Date** has the meaning assigned to it in the Lease.

**Delay Event** has the meaning assigned to it in the Lease.

**Delay Event Notice** has the meaning assigned to it in the Lease.

**Delayed Draw Term Commitment** means, as to each Delayed Draw Term Lender, its obligation to make Delayed Draw Term Loans pursuant to the Credit Agreement in an aggregate principal amount not to exceed the amount set forth in the Credit Agreement, or in the Assignment and Assumption pursuant to which such Delayed Draw Term Lender became a party hereto, as applicable, as the same may be adjusted from time to time in accordance with the Credit Agreement. Commitments shall be four billion and nine hundred million Dollars (\$4,900,000,000) on the date of the Credit Agreement.

**Delayed Draw Term Lender** means (a) at any time on or prior to the Effective Date, any Lender that has a Delayed Draw Term Commitment at such time and (b) at any time after the Effective Date, any Lender that holds Delayed Draw Term Loans and/or Delayed Draw Term Commitments at such time.

**Delayed Draw Term Loan Availability Period End Date** means, with respect to the Delayed Draw Term Commitments, the earliest to occur of (a) the Date Certain for Phase A or, if certain events described in the Common Terms Agreement apply, the D&C Completion Longstop Date, (b) the Phase A DBO Date, (c) the date upon which the Delayed Draw Term Loans are fully drawn, (d) the Term Loan

Facility Maturity Date, (e) the date of cancellation of all remaining Delayed Draw Term Commitments under the Credit Agreement, and (f) if the Effective Date has not occurred by such date, the Initial Commitment End Date.

**Delayed Draw Term Loans** means one or more loans denominated in Dollars, made available by a Delayed Draw Term Lender with a Delayed Draw Term Commitment, to the Conduit Issuer from time to time on and after the Effective Date on any Business Day until the Delayed Draw Term Loan Availability Period End Date, in an aggregate amount not to exceed such Delayed Draw Term Lender's Delayed Draw Term Commitment.

**Delta** means Delta Air Lines, Inc.

**Delta Hardstand Agreement** means the Aircraft Parking License Agreement between Delta and the Lessee.

**Design-Build Contract** means the design build agreement dated as of May 20, 2022 between the Lessee, as developer, and the Design Builder, as design builder.

**Design Builder** means Tishman Construction Corporation of New York.

**Design Work** means all D&C Work related to the design, redesign, engineering and architecture for the Project (including the Off-Premises Facilities) in accordance with the Project Documents, but excluding Construction Work and Operations and Maintenance Work.

**Developer** means JFK NTO LLC.

**Direct Agreements** has the meaning assigned to it in the Design-Build Contract.

**Direct Connect Project** has the meaning assigned to it in the Lease.

**Directly Paid Costs** means any O&M Expenses of the Taxable REIT Subsidiary that are due and payable to third parties and are paid for by the Lessee on behalf of the Taxable REIT Subsidiary, which payments shall be treated as a payment of a portion of the TRS Operating Phase Fee.

**Disclosed Documents** has the meaning assigned to it in the Lease.

**Disposition** or **Dispose** means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person (or the granting of any option or other right to do any of the foregoing), 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.

**Distribution** means:

(a) any dividend or other distribution by the Lessee (whether in cash, securities, obligations, or other property of the Lessee) on, or other dividends or distributions on account of, or the setting apart of money for a sinking or other analogous fund for, or the purchase, redemption, retirement or other acquisition by the Lessee of, any portion of any Equity Interest in the Lessee;

(b) any payments (whether in cash, securities, obligations, or other property of the Lessee) of principal of, interest on and other amounts with respect to, or other payments on account of, or the setting apart of money for a sinking or other analogous fund for, or the purchase, redemption, retirement or other

acquisition by the Lessee of, any indebtedness for borrowed money owed to HoldCo or any Affiliate of the Lessee; and

(c) any transfer of funds into the Distribution Account in accordance with the Common Terms Agreement,

provided that (i) payments to Affiliates of the Sponsors, HoldCo, and/or the Lessee for fees and costs pursuant to any Material Project Document, Anchor User Agreement, or the Management Services Agreement, in each case, as in effect as of the Effective Date or as thereafter amended or modified, provided that such amendment or modification complies with the requirements of the Credit Agreement, (ii) payment to the Sponsor Aggregator in an aggregate amount equal to the development costs to be reimbursed to Sponsors and development fee to be paid to Sponsors on the Effective Date, in each case as expressly set forth in the base case financial model delivered on the Effective Date and (iii) reimbursements to the Sponsors for fees and costs up to the amounts expressly set forth in the base case financial model delivered on the Effective Date or on any subsequent Closing Date that are incurred in connection with issuing and maintaining Equity LCs and/or Equity Cash Collateral, in each case to the extent permitted by and paid in accordance with the relevant Equity Contribution Agreement, will not constitute Distributions.

**Distribution Account** has the meaning assigned to it in the Common Terms Agreement.

**Dollar** or **\$** means the lawful currency of the United States.

**EBITDA** means, as of any date of determination, for the Fiscal Year of the Lessee most recently ended for which financial statements have been delivered pursuant to the Common Terms Agreement as of such date and calculated based on such annual audited financial statements, an amount equal to the Net Income of the Lessee for such period plus (a) the following to the extent deducted in calculating such Net Income: (i) Net Interest of the Lessee for such period; (ii) the provision for federal, state, local and foreign income Taxes paid by the Lessee for such period; (iii) depreciation and amortization expense of the Lessee for such period; (iv) other extraordinary, unusual or non-recurring expenses of the Lessee; (v) all non-cash items decreasing such Net Income for such period, which do not represent a cash item in such period or any future period; (vi) restructuring costs, integration costs, costs of strategic initiatives, business optimization expenses or costs, retention, recruiting, relocation, signing and stay bonuses and expenses; (vii) costs and expenses related to the Common Terms Agreement and the other Financing Documents, acquisitions, investments, or issuances of debt or equity (as each is so permitted under the terms of the Financing Documents) or related to any amendment, negotiation, forbearance, extension, modification or Waiver in respect of the Financing Documents (in each case, whether or not consummated); and (viii) charges, losses or expenses to the extent paid for, reimbursed, indemnified or insured by a Person other than the Lessee (or reasonably expected to be so paid or reimbursed within one (1) year after the end of such period), subject to receipt by the Intercreditor Agent of reasonably satisfactory evidence thereof and minus (b) to the extent included in calculating such Net Income, all non-cash items increasing such Net Income for such period.

**Effective Date** means June 10, 2022.

**Eligible Investments** means:

(a) (i) direct obligations of, or obligations the principal of and interest on, which are unconditionally guaranteed by, the United States (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States) and (ii) evidences of ownership of proportionate interests in future interest or principal payments on obligations specified in the foregoing clause (i) held by a bank or trust company as custodian and which underlying obligations are not available to satisfy any

claim of the custodian or any Person claiming through the custodian or to whom the custodian may be obligated;

(b) debt obligations that are (i) issued or fully guaranteed by any state or political subdivision thereof or any agency or instrumentality or authority of such state or political subdivision and (ii) at the time of purchase, rated in one (1) of the two (2) highest rating categories (without regard to any refinement or gradation of rating category by numerical modifier or otherwise) assigned by at least one (1) Rating Agency to obligations of that nature;

(c) any bond, debenture, note, participation certificate or other similar obligation issued by a government sponsored agency (such as the Federal National Mortgage Association, the Federal Home Loan Bank System, the Federal Home Loan Mortgage Corporation or the Federal Farm Credit Bank) which is either (i) at the time of purchase, rated in one (1) of the two (2) highest rating categories (without regard to any refinement or gradation of rating category by numerical modifier or otherwise) assigned by at least one (1) Rating Agency, or (ii) backed by the full faith and credit of the United States;

(d) investments in commercial paper maturing within two hundred seventy (270) days from the date of acquisition and having, at such date of acquisition, one (1) of the two (2) highest credit ratings (without regard to gradations within such category) obtainable from Fitch, S&P or Moody's;

(e) demand deposits with the Account Bank, investments in certificates of deposit, banker's acceptances and time deposits maturing within one hundred eighty (180) days from the date of acquisition and issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, the Account Bank or any domestic office of any commercial bank organized under the laws of the United States or any State thereof which has a combined capital and surplus and undivided profits of not less than five hundred million Dollars (\$500,000,000);

(f) investments in federal funds, certificates of deposit, time deposits and banker's acceptances having maturities of not more than three hundred sixty-five (365) days, of the Account Bank or any other bank, the short-term debt obligations of which are rated not lower than A-1 by S&P or Fitch and P-1 by Moody's;

(g) investment agreements with any financial institution, the long-term debt, the claims paying ability or the financial program strength of which is rated by at least one (1) Rating Agency in any of the two (2) highest rating categories (without regard to any refinement or gradation of rating category by numerical modifier or otherwise); provided that (i) if the investment agreement is guaranteed by a third party, then the above rating requirements will apply to the guarantor only and (ii) in all cases, the above rating requirements will apply only at the time the investment agreement is executed;

(h) repurchase agreements with respect to and secured by obligations described in paragraphs (a), (b) or (c), which agreements may be entered into with a bank (including the Account Bank, the Collateral Agent or their Affiliates), a trust company, insurance company, financial services firm or a broker dealer which is a member of the Securities Investors Protection Corporation; provided that (i) the Collateral Agent or a custodial agent of the Collateral Agent has possession of the collateral and that the collateral is free and clear of third-party claims, (ii) a master repurchase agreement or specific written repurchase agreement governs the transaction, (iii) the collateral securities are valued no less frequently than daily, (iv) the fair market value of the collateral securities in relation to the amount of the repurchase obligation, including principal and interest, is equal to at least one hundred two percent (102%), and (v) such obligations must be held in the custody of the Collateral Agent or the Collateral Agent's agent;

(i) forward agreements with respect to obligations described in paragraphs (a), (b), (c) or (d) above in which a bank (including the Collateral Agent or its Affiliates), a trust company, insurance company, financial services firm or a broker dealer which is a member of the Securities Investors Protection Corporation has a continual obligation to deliver or purchase the obligations at an agreed upon price or yield; provided that such forward agreement provider must have long-term debt, claims paying ability or financial program strength ratings in one (1) of the three (3) highest rating categories (without regard to gradations within such category) by at least one (1) Rating Agency at the time of entering into such Agreement; provided further that if the forward agreement provider's obligation is guaranteed by a third party, then the above rating requirements will apply to the guarantor only;

(j) money market funds (including any such funds for which the Account Bank or any Affiliate thereof acts as an advisor or a manager) that (i) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S&P or Fitch and Aaa by Moody's and (iii) have portfolio assets of at least five billion Dollars (\$5,000,000,000);

(k) bonds, notes, debentures or other evidences of indebtedness issued or guaranteed by a corporation which are, at the time of purchase, rated by at least one (1) nationally recognized rating agency in any of the two (2) highest rating categories (without regard to any refinement or gradation of rating category by numerical modifier or otherwise); and

(l) asset-backed securities, commercial mortgage-backed securities, or mortgage-backed securities which are, at the time of purchase, rated by at least one (1) nationally recognized rating agency in any of the two (2) highest rating categories (without regard to any refinement or gradation of rating category by numerical modifier or otherwise).

**Eligible LC Issuer** has the meaning assigned to it in the Common Terms Agreement, the Lease, the Equity Contribution Agreement and the Design-Build Contract, as applicable.

**Emergency** has the meaning assigned to it in the Lease.

**Emergency Expenditure** has the meaning assigned to it in the Common Terms Agreement.

**Enforcement Actions** has the meaning assigned to it in Common Terms Agreement.

**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 Requirements** means all common law and all past, present and future laws, statutes, enactments, resolutions, regulations, rules, directives, ordinances, codes, licenses, permits, orders, memoranda of understanding and memoranda of agreement, guidance, approvals, plans, authorizations, concessions, franchises, and similar requirements of all governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States of America, states and political subdivisions thereof, 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 government agencies, departments, commissions, boards, bureaus or instrumentalities of the United States of America, states and political subdivisions thereof, and all judicial, administrative, voluntary and regulatory decrees, judgments, orders and agreements relating to the protection of human health or the environment, and in the event that there shall be more than one compliance standard, the standard for any of the foregoing to be that which requires the lowest level of a Hazardous Substance, the foregoing to include without limitation:

a. 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;

b. all requirements pertaining to the health and safety of employees or the public;

c. 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-300j-27; 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;

d. the State Pollutant Discharge Elimination System (SPDES) Permit; and

e. NEPA and the NEPA Approval Documents.

**Equity Cash Collateral** has the meaning assigned to the term “Cash Collateral” in the relevant Equity Contribution Agreement.

**Equity Commitments** means equity commitments made by the Sponsors to the Lessee.

**Equity Contribution Account Control Agreement** has the meaning assigned to it in the Equity Contribution Agreement.

**Equity Contribution Account Pledge Agreements** has the meaning assigned to it in the Equity Contribution Agreement.

**Equity Contribution Agreement** has the meaning set forth in “PART 12 – SUMMARY OF THE FINANCING DOCUMENTS” of this Official Statement.

**Equity Contribution Date** has the meaning assigned to it in the Equity Contribution Agreement.

**Equity Contributions** has the meaning assigned to such term in the relevant Equity Contribution Agreement (and including, for the avoidance of doubt, cash equity contributions in the form of capital contributions or Subordinated Debt).

**Equity Cure** has the meaning assigned to it in the Common Terms Agreement.

**Equity Gain Share** has the meaning assigned to it in the Lease.

**Equity Interests** has the meaning assigned to it in the Common Terms Agreement and the Lease, as applicable.

**Equity Letter of Credit or Equity LC** means any standby letter of credit in favor of the Collateral Agent (a) issued by an Eligible LC Issuer, (b) the reimbursement obligations with respect to which shall not (i) have recourse to the Conduit Issuer, HoldCo, the Taxable REIT Subsidiary, the Lessee or the Project or (ii) be secured by a lien on, or a security interest in, the Collateral, (c) the term of which is at least one (1) year from the date of issue (except that for letters of credit issued as a replacement letter of credit with less than one (1) year remaining until the stated expiration date of the letter of credit being replaced, the term shall be for such shorter period), (d) which allows drawing (i) during the thirty (30) day period prior to expiry (unless otherwise replaced) and (ii) upon downgrade of the issuer such that it is no longer an Eligible LC Issuer if not replaced within thirty (30) days of such downgrade, and (e) that is for the account of a Sponsor, an Affiliate thereof, or any other Person (other than the Lessee, Taxable REIT Subsidiary or HoldCo) and issued in respect of the Sponsor Aggregator's obligations under Section 2 (Equity Contributions) of the Equity Contribution Agreement to make Equity Contributions, substantially in the form provided in the Equity Contribution Agreement.

**ESA** means Energy Services Agreement entered into between the Lessee and ASX.

**Etihad Airways** means Etihad Airways PJSC.

**Event of Default** has the meaning set forth in "PART 5 – THE LEASE" of this Official Statement.

**Event of Default Notice** has the meaning assigned to it in the Lease.

**Event of Eminent Domain** means any action (or series of related actions) by any Governmental Authority (a) by which such Governmental Authority appropriates, confiscates, condemns, expropriates, nationalizes, seizes or otherwise takes all or substantially all of the Project or (b) by which such Governmental Authority assumes custody or control of any portion of the Project or business operations of the Lessee.

**Exempt Refinancings** has the meaning set forth in "PART 5 – THE LEASE" of this Official Statement.

**Existing Premises** means the premises let to Terminal One Group Association, L.P. pursuant to lease number AYC-190, made effective as of July 13, 1994, as amended, revised, supplemented or otherwise modified from time to time.

**Existing Terminal Facilities** has the meaning set forth in "PART 1 – INTRODUCTION" of this Official Statement.

**Existing Users** has the meaning set forth in "PART 16 – AERONAUTICAL REVENUES" of this Official Statement.

**Expenses** has the meaning set forth in APPENDIX F – "SUMMARY OF CERTAIN PROVISIONS OF THE MANAGEMENT SERVICES AGREEMENT" of this Official Statement.

**Expiration Date** Means 11:59 p.m. on December 30, 2060, or the date of termination of the Basic Lease, whichever is earlier.

**Extended Term Loan** means all or a portion of a Closing Date Term Loan or Delayed Draw Term Loan that has been requested by the Lessee to be converted to extend the scheduled maturity date(s) of any payment of principal with respect to all or a portion of any principal amount of such Closing Date Term Loan or Delayed Draw Term Loan.

**FAA** means the United States Federal Aviation Administration.

**Ferrovial** means Ferrovial SE or one or more Affiliates thereof.

**Ferrovial Airports** means Ferrovial Airports International, LTD.

**Ferrovial Airports US** means Ferrovial Airports US Terminal One, LLC.

**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 Project.

**Financial Model** mean the financial model provided to the Rating Agencies and lenders in connection with the Initial Lessee Debt as approved by the Port Authority on or prior to the Effective Date.

**Financing Documents** has the meaning assigned to it in the Common Terms Agreement and the Lease, as applicable.

**First Additional Premises** means the terminal facilities known as Terminal 2.

**First Additional Rent** has the meaning set forth in APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE” of this Official Statement.

**Fiscal Year** means with respect to:

(a) the Port Authority, the twelve (12) months commencing on July 1 of any calendar year and ending on June 30 of such calendar year, or any other twelve (12)-month period which the Port Authority designates as its fiscal year; and

(b) the Lessee, the twelve (12) months commencing on January 1 of any calendar year and ending on December 31 of such calendar year, or any other twelve (12)-month period which the Lessee designates as its fiscal year.

**Fitch** means Fitch, Inc., and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Fitch” shall be deemed to refer to any other nationally recognized securities rating agency.

**FMG** means Flughafen München GmbH.

**Force Majeure** has the meaning assigned to it in the Lease.

**Foreclosure Rights** means the right, pursuant to the Lease, to foreclose upon (or an assignment in lieu thereof) a Leasehold Mortgage and to have the Lease with respect to the applicable portion of the Premises assigned to a Qualified Terminal Operator.

**Free Cash Flow** has the meaning set forth in APPENDIX C-2 – “CERTAIN PROVISIONS OF THE COMMON TERMS AGREEMENT” of this Official Statement.

**Fully Funded** means (a) each Senior Debt Service Reserve Account, Acceptable Letters of Credit, cash or Eligible Investments on deposit in or standing to the credit thereof in an aggregate amount equal to the relevant Debt Service Reserve Requirement, (b) the O&M Reserve Account, Acceptable Letters of Credit, cash or Eligible Investments on deposit in or standing to the credit thereof in an aggregate amount equal to the O&M Reserve Requirement and (c) the Major Maintenance Reserve Account, Acceptable Letters of Credit, cash or Eligible Investments on deposit in or standing to the credit thereof in an aggregate amount equal to the Major Maintenance Reserve Requirement.

**Funds Transfer Certificate** means an Officer’s Certificate of the Lessee or the Taxable REIT Subsidiary addressed to the Account Bank (with a copy to the Intercreditor Agent and the Collateral Agent) delivered under and in accordance with the Common Terms Agreement.

**GAAP** means generally accepted accounting principles in the United States in effect from time to time.

**General Manager of the Airport** means the person or persons from time to time exercising the powers and functions 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 Provisions** means the “Requirements & Provisions for Design & Construction Work – General Provisions,” set forth in 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.

**General Reserve Fund** means the special fund by that name established by the General Reserve Fund Statutes.

**General Reserve Fund Statutes** means 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.

**Good Order Requirements** means actions instituted 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. A change which provides only an economic advantage to the Port Authority and serves no public purpose, and does not enhance the operations or efficiency of operating the Airport, whatsoever, will not be considered to require “good order” actions.

**Governmental Authority** means 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 of America Departments of Interior, Commerce and Agriculture, 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.

**Green Garage** has the meaning set forth in “PART 1 – INTRODUCTION” of this Official Statement.

**Gross Rents** has the meaning assigned to it in the Lease.

**Ground Rent** has the meaning set forth in APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE” of this Official Statement.

**GTC** means the Ground Transportation Center at the CTA.

**HAH** means Heathrow Airport Holdings.

**Hard Costs** shall mean those Building Loan Costs which are for labor, materials, equipment and fixtures.

**Hazardous Material** has the meaning assigned to it in the Lease.

**Hazardous Substance** means and includes 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, or the removal, containment or restriction of which have been or in the future shall be required, or the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling or ownership of which have or in the future shall be restricted, prohibited, regulated or penalized by any federal, state, county, or municipal or other local statute or law now or at any time hereafter in effect as amended or supplemented and by the regulations adopted and publications promulgated pursuant thereto.

**Hedge Agreement** means (a) any and all interest rate protection transactions, interest rate futures, interest rate options, interest rate swaps, interest rate caps, interest rate collars, interest rate hedge transactions, foreign exchange swaps, currency swaps, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, forward foreign exchange transactions, foreign exchange cap transactions, foreign exchange floor transactions, foreign exchange collar transactions, currency swap transactions, cross currency rate swap transactions, currency options, currency spot transactions or any other similar transactions or any combination of the foregoing (including any option to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, traded at the over-the-counter or standardized markets and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or are 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, including any such obligations or liabilities under any Master Agreement.

**Hedge Provider** has the meaning assigned to it in the Common Terms Agreement.

**HoldCo** means JFK NTO HoldCo LLC, a Delaware limited liability company.

**HoldCo LLC Agreement** means the Amended and Restated Limited Liability Company Agreement of HoldCo dated as of May 12, 2022.

**IAT** means JFK International Air Terminal, LLC, the operator of Terminal 4 at JFK Airport.

**Incremental Debt** has the meaning assigned to it in the Common Terms Agreement.

**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** has the meaning set forth in “PART 1 – INTRODUCTION” of this Official Statement.

**Indenture Trustee** means The Bank of New York Mellon.

**Initial Commitment End Date** means, under the Credit Agreement, with respect to the available Commitment(s) of any Lender, the date that is ninety (90) days after the Original Signing Date, or such later date as may be consented to in writing by each Lender and LC Issuing Bank (each acting in its sole and absolute discretion) in response to an extension request submitted by the Lessee to the Administrative Agent and each Lender and Issuing Bank at least two (2) Business Days before the expiry of such ninety (90)-day period.

**Initial Lessee Debt** means the first issuance or incurrence (an incurrence being deemed to include all bona fide Lessee Debt, whether drawn or undrawn, evidenced and secured by Financing Documents that have been unconditionally executed and delivered by Lessee and a third-party lender pursuant to which loan proceeds have been advanced, even if only partially, each, an “**Incurrence**”) of Lessee Debt in respect of each of Phase A, Phase B1 and Phase B2 (which issuances or Incurrences are expected to occur on or around the date of issuance of a notice to proceed for each such Phase), together with any payment obligations under swaps, option, derivatives or other arrangements hedging the Lessee’s exposures to interest rates or inflation entered into prior to, or within sixty (60) days after any such notice to proceed, issuance or Incurrence, in each case pursuant to Financing Documents approved by the Port Authority in accordance with the Lease, in an amount not to exceed \$8,929,000,000 in the aggregate.

**Initial Premises** means the terminal facility known as Terminal 3.

**Initial Scheduled Completion Date (Phase A)** means the Scheduled Completion Date for Phase A in effect on the Signing Date without any extensions of such date which may be permitted under the Lease or the Credit Agreement.

**Installation** has the meaning assigned to it in the Lease.

**Installation Portion** means any portion of the D&C Work for any Phase relating to an Installation or a portion thereof.

**Insurance and Condemnation Proceeds** means, in connection with any Event of Eminent Domain or Casualty Event, (a) all amounts payable to the Lessee or the Collateral Agent in respect of any casualty insurance maintained by or for the benefit of the Lessee in connection with the Project (for the avoidance of doubt, excluding general liability insurance, delayed completion insurance, automobile liability insurance, workers' compensation and business interruption insurance), (b) condemnation awards or other compensation, awards, damages and other payments or relief paid or payable to the Lessee and (c) any other payments paid or payable to the Lessee related to such Event of Eminent Domain or Casualty Event, regardless of whether such payments are received from any insurer, Governmental Authority or otherwise.

**Intercreditor Agent** means MUFG Bank, Ltd.

**Interest Dispositions** has the meaning assigned to it in the Lease.

**Interest Payment Date** means (a) in respect of the Loans, the last Business Day of each month, (b) in respect of any Muni Bonds, the thirtieth (30th) day of each June and the thirty-first (31st) day of each December (or if such day is not a Business Day, the immediately preceding Business Day), or on such other dates as shall be specified in the Senior Debt Documents entered into with respect thereto, and (c) in respect of any other Permitted Refinancing Indebtedness or Additional Senior Indebtedness, the dates and intervals specified in the Permitted Refinancing Indebtedness Documents or the Additional Senior Indebtedness Documents relating thereto.

**Interest Rate Hedge Agreement** means any Hedge Agreement documented under a 2002 ISDA Master Agreement (and related schedules and confirmations thereunder) designed to protect against fluctuations in interest rates.

**Investment Grade** means, with reference to a Person or any securities, that the Person has or the securities have been assigned a credit rating of: (a) BBB- or better by S&P, (b) Baa3 or better by Moody's, (c) BBB- or better by Fitch or (d) BBB- or better by Kroll.

**Investment Grade Rating Conditions** has the meaning set forth in APPENDIX D – "SUMMARY OF CERTAIN PROVISIONS OF THE LEASE" of this Official Statement.

**IRR Rent** has the meaning assigned to it in the Lease.

**ISP** means, with respect to any Letter of Credit, 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 Letter of Credit is subject).

**JAL** means Japan Airlines Co., Ltd.

**JetBlue** means JetBlue Airways Corporation.

**JFK Redevelopment** has the meaning set forth in "PART 2 – JOHN F KENNEDY INTERNATIONAL AIRPORT" of this Official Statement.

**JLC** means JLC JFK Aggregator L.P. or one or more Affiliates thereof.

**Key Contract** has the meaning assigned to it in the Lease.

**Korean Air** means Korean Air Lines Co., Ltd.

**KPIs** or “key performance indicators” means, collectively, the performance standards and measurements set forth in the Lease.

**KPI Deductions** means any amount payable by the Lessee for underperformance in respect of KPIs pursuant to the Lease.

**Kroll** means Kroll Bond Rating Agency, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Kroll” shall be deemed to refer to any other nationally recognized securities rating agency.

**Labor Troubles** means and includes strikes, boycotts, picketing, work-stoppages, slowdowns, disputes, or any other type of labor trouble, regardless of the employer of the person involved or their employment status, if any.

**LC Credit Extension** means the issuance, amendment or renewal of a letter of credit under the Credit Agreement or any other Financing Document, as applicable.

**LC Issuing Banks** means the Working Capital Facility LC Issuing Bank and/or the Security Deposit Facility LC Issuing Bank, as the context may require.

**LC Obligations** means the Working Capital LC Obligations and/or the Security Deposit LC Obligations, as the context may require.

**Lease** has the meaning set forth in “PART 1 – INTRODUCTION” of this Official Statement.

**Lease Completion Date** means (a) in respect of Phase A, the Phase A DBO Date, or (b) in respect of any Additional Phase, the date on which “DBO” for such Additional Phase occurs.

**Lease Term** has the meaning set forth in “PART 1 – INTRODUCTION” of this Official Statement.

**Leased Premises** means, collectively, the Initial Premises, the First Additional Premises and the Second Additional Premises.

**Leasehold Mortgage** means (a) the Building Loan Mortgage, (b) the Project Loan Mortgage and (c) any additional building loan or project loan leasehold mortgage, assignment of leases and rents, security agreement and fixture filing entered into from time to time in accordance with the terms of the Common Terms Agreement and the Financing Documents among the Lessee, the Conduit Issuer and the Collateral Agent for the benefit of the Secured Parties.

**Leasehold Mortgages** has the meaning set forth in “PART 13 – SUMMARY OF THE SECURITY DOCUMENTS” of this Official Statement.

**LEED** means Leadership in Energy and Environmental Design as established by the United States Green Building Council.

**Lenders** has the meaning set forth in “PART 1 – INTRODUCTION” of this Official Statement.

**Lessee** means JFK NTO LLC.

**Lessee Change** means (A) with respect to the New Terminal Facilities, a change in the D&C Work that increases or reduces the scope, function or intent of, such D&C Work as described in the Project Documents, or changes the requirements of, or the Parties' rights and/or obligations set forth in, the Project Documents, 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, the requirements of the New Airport Design Guidelines or the Requirements and Provisions for Work, in each case, with respect to the D&C Work.

**Lessee Damages** has the meaning assigned to it in the Lease.

**Lessee Debt** has the meaning assigned to it in the Lease.

**Lessee LLC Agreement** means the Amended and Restated Limited Liability Company Agreement of the Lessee dated as of May 12, 2022.

**Lessee Loan Agreements** means the (i) Project Loan Agreement, and (ii) the Building Loan Agreement.

**Lessee Operations** has the meaning set forth in APPENDIX F – “SUMMARY OF CERTAIN PROVISIONS OF THE MANAGEMENT SERVICES AGREEMENT” of this Official Statement.

**Lessee Pledge Agreement** means the Equity Pledge Agreement dated as of June 10, 2022 between HoldCo, as pledgor, and the Collateral Agent.

**Lessee Project Account** has the meaning assigned to it in the Common Terms Agreement.

**Lessee Security Agreement** means the security agreement dated as of June 10, 2022, between the Lessee and the Collateral Agent.

**Lessee Units** has the meaning set forth in “PART 13 – SUMMARY OF THE SECURITY DOCUMENTS” of this Official Statement.

**Lessee's Basis of Design** means the document entitled “The New Terminal One Basis of Design Report,” prepared by the Lessee and conditionally approved by the Port Authority as of the Effective Date subject to resolution of the comments of the Port Authority indicated in such conditional approval (and, for the avoidance of doubt, no other conditions), and included as a Reference Document. The Lessee shall update Lessee's Basis of Design to incorporate and address the comments made by the Port Authority pursuant to the Port Authority's conditional approval of Lessee's Basis of Design, and obtain the Port Authority's final approval of Lessee's Basis of Design. For the avoidance of doubt, Lessee's Basis of Design shall be required to satisfy the standards set forth in the Lease.

**Lessee's Event of Default** means an Event of Default of the Lessee under the Lease.

**Letter of Credit** means a Working Capital LC and/or a Security Deposit LC, as the context may require.

**Lien** has the meaning assigned to it in the Common Terms Agreement, the Lease and the Design-Build Contract, as applicable.

**Liquidated Damages** has the meaning assigned to it in the Design-Build Contract.

**Liquidated Damages Milestone Event Date** mean the corresponding deadline set forth in the Design-Build Contract, subject to any adjustments and extensions of time expressly permitted pursuant to the Design-Build Contract.

**Liquidity Facility** means, at any time, the aggregate amount of the Liquidity Facility Lenders' Liquidity Facility Commitments in respect of any Liquidity Tranche at such time.

**Liquidity Facility Availability Period End Date** means, with respect to the Liquidity Facility Commitments of each Lender, the earlier to occur of (a) the Liquidity Facility Maturity Date, (b) the date of cancellation of all remaining available commitments under the Liquidity Facility under the Credit Agreement, and (c) if the Effective Date has not occurred by such date, the Initial Commitment End Date.

**Liquidity Facility Borrowing** means a borrowing of the same Type of Liquidity Loan of a single Tranche from all the Liquidity Facility Lenders having Liquidity Facility Commitments or Liquidity Loans of the respective Tranche on a given date (or resulting from a conversion or conversions on such date).

**Liquidity Facility Commitment** means, as to each Liquidity Facility Lender, its obligation to make Liquidity Facility Loans pursuant to the Credit Agreement in an aggregate principal amount not to exceed the amount set forth in the Credit Agreement, or in the Assignment and Assumption pursuant to which such Liquidity Facility Lender became a party to the Credit Agreement, as applicable, as the same may be adjusted from time to time in accordance with the Credit Agreement. The original amount of the Liquidity Facility Commitments shall be two hundred million Dollars (\$200,000,000) on the date of the Credit Agreement.

**Liquidity Facility Lender** means, at any time, any Lender that has a Liquidity Facility Commitment at such time (and after the termination of all Liquidity Facility Commitments, any Lender that holds any Outstanding Amount in respect of Liquidity Loans).

**Liquidity Facility Maturity Date** means the earliest of (i) the fifth (5th) anniversary of the Effective Date, (ii) the date of termination in whole of the Liquidity Facility Commitments pursuant to the Credit Agreement, and (iii) the date on which the Lessee issues Phase NTP for the first Additional Phase to commence under the Lease.

**Liquidity Loans** means loans denominated in Dollars, made by a Liquidity Facility Lender, to the Conduit Issuer from time to time on and after the Effective Date, on any Business Day until the Liquidity Facility Availability Period End Date, in an aggregate amount not to exceed at any time outstanding the amount of such Liquidity Facility Lender's Liquidity Facility Commitment.

**Liquidity Tranche** means the Liquidity Facility pursuant to which Liquidity Loans are made under the Liquidity Facility Commitments, including the extensions of credit made thereunder.

**Loan** means an extension of credit by a Lender to the Conduit Issuer under the Credit Agreement in the form of a Term Loan, a Working Capital Loan, a Liquidity Loan, a Security Deposit Loan or an Extended Term Loan.

**Loan Facility** means the Term Loan Facilities, the Working Capital Facility, the Liquidity Facility and/or the Security Deposit Facility, as the context may require.

**Loan Notes** means (i) with respect to the Project Loan Agreement, the Project Loan Note, and (ii) with respect to the Building Loan Agreement, the Building Loan Note.

**Loans** has the meaning assigned to it in the Common Terms Agreement.

**Loans Debt Service Reserve Account** has the meaning assigned to it in the Common Terms Agreement.

**LOT Polish Airlines** means Polskie Linie Lotnicze LOT S.A.

**Lufthansa German Airlines** means Deutsche Lufthansa Aktiengesellschaft.

**MAG** has the meaning assigned to it in the Lease.

**MAG Amount** has the meaning set forth in APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE” of this Official Statement.

**Major Maintenance** has the meaning assigned to it in the Lease.

**Major Maintenance Expense** means any expenditure for major maintenance required or desirable in connection with the operation and maintenance of the Leased Premises, inclusive of maintenance, repair, renewal, reconstruction or replacement of any portion or component of the Project, as applicable, of a type which is not normally included as ordinary or routine maintenance (excluding any such costs that are payable by other Persons under warranty or similar agreements or insurance policies).

**Major Maintenance Reserve Account** has the meaning assigned to it in the Common Terms Agreement.

**Major Maintenance Reserve Requirement** means, for the Fiscal Year of the Lessee in which the Completion Date occurs and any Fiscal Year of the Lessee thereafter, the sum of: (a) one hundred percent (100%) of the expected Major Maintenance Expenses for year “N”; plus (b) sixty-six percent (66%) of the expected Major Maintenance Expenses for year “N+1”; plus (c) thirty-three percent (33%) of the expected Major Maintenance Expenses for year “N+2”; less (d) beginning with the date that is five (5) calendar years prior to the projected Expiration Date (as defined in the Lease), the aggregate amount on deposit in the Handback Reserve Account, where “N” is such Fiscal Year.

**Management Fee** has the meaning set forth in APPENDIX F – “SUMMARY OF CERTAIN PROVISIONS OF THE MANAGEMENT SERVICES AGREEMENT” of this Official Statement.

**Management Services Agreement** means the Management Services Agreement dated as of June 10, 2022 between the Lessee and the Manager.

**Manager** means Ferrovial Airports US Operation and Management Services LLC.

**Manager Financial Bonus** has the meaning set forth in APPENDIX F – “SUMMARY OF CERTAIN PROVISIONS OF THE MANAGEMENT SERVICES AGREEMENT” of this Official Statement.

**Manager-Nominated Executives** has the meaning set forth in APPENDIX F – “SUMMARY OF CERTAIN PROVISIONS OF THE MANAGEMENT SERVICES AGREEMENT” of this Official Statement.

**Mars LLC Agreement** means the Amended and Restated Limited Liability Company Agreement of Mars NTO LLC dated as of June 10, 2022.

**Master Concession Agreement** has the meaning set forth in “PART 17 – NON-AERONAUTICAL REVENUES” of this Official Statement.

**Master Concessionaire** means URW Airports JFK T1, LLC.

**Material Adverse Effect** means a material adverse effect on:

- (a) the business, properties, performance, results of operation or financial condition of the Lessee (taken as a whole);
- (b) the legality, validity or enforceability of any Financing Document or any Material Project Document;
- (c) the Lessee’s ability to observe and perform its material obligations under any Financing Document or any Material Project Document; or
- (d) the rights of the Secured Parties under the Financing Documents, including in respect of the Collateral created pursuant to the Security Documents, the validity, enforceability, effectiveness or perfection of the security interests granted or purported to be granted under the Security Documents or the ability of the Secured Parties to enforce their rights and remedies under the Financing Documents, including such Security Documents (other than any action attributable to the Collateral Agent, the Intercreditor Agent or any other Secured Party).

**Material Part** has the meaning assigned to it in the Lease.

**Material Project Document** means, collectively, the Lease, the Basic Lease, the Phase A D&C Contract, the Master Concession Agreement, each Additional Material Project Document, performance security provided to and for the benefit of the Lessee supporting any of the foregoing and each other agreement or document that is designated a Material Project Document by the Lessee and the Intercreditor Agent.

**Moody’s** means Moody’s Investors Service, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency.

**MSA Effective Date** has the meaning set forth in APPENDIX F – “SUMMARY OF CERTAIN PROVISIONS OF THE MANAGEMENT SERVICES AGREEMENT” of this Official Statement.

**MSA Term** has the meaning set forth in APPENDIX F – “SUMMARY OF CERTAIN PROVISIONS OF THE MANAGEMENT SERVICES AGREEMENT” of this Official Statement.

**Muni Bond** has the meaning assigned to it in the Common Terms Agreement.

**National Environmental Policy Act** means the National Environmental Policy Act, 42 U.S.C. §4321 et seq., as amended.

**NEPA** means the National Environmental Policy Act.

**NEPA Approval Documents** means the environmental assessment and finding of no significant impact and/or record of decision issued by FAA under NEPA with respect to the Project.

**Net Cash Proceeds** means, with respect to (a) any Disposition of any property of the Lessee, the aggregate amount of cash payments received, (b) any termination payment received by the Lessee under any Material Project Document, the aggregate amount of cash payments received, (c) any Event of Eminent Domain or any Casualty Event, the aggregate amount of Insurance and Condemnation Proceeds in respect of such event received by the Collateral Agent or the Lessee, (d) any performance liquidated damages received by the Lessee under any D&C Contract or under any other Material Project Document, the aggregate amount of cash proceeds received and (e) any Permitted Refinancing Indebtedness, the proceeds thereof, in each case, net of (i) the amount of any costs, expenses, commissions and fees paid or payable by or on behalf of the Lessee or the Conduit Issuer in connection with such event described in clauses (a), (b), (c), (d) and (e), as applicable (including in the case of clause (c) reimbursement to a Sponsor of any amount paid by such Sponsor with respect to a deductible or otherwise that is subsequently released back to the Lessee or the Conduit Issuer, which reimbursement shall not be treated as a Distribution or otherwise be conditioned before it can be deposited into the Distribution Account), (ii) any taxes imposed on and payable or reasonably estimated to be payable by the Lessee or the Conduit Issuer as a result of such event described in clauses (a), (b), (c), (d) and (e), as applicable, (iii) any repayments by the Lessee of Permitted Refinancing Indebtedness to the extent (A) such Permitted Indebtedness is secured by a Lien (other than any Lien pursuant to a Security Document) on the property that is the subject of such Disposition, Event of Eminent Domain or Casualty Event, (B) if the property is the subject of a Disposition, the transferee requires that such Permitted Indebtedness be repaid as a condition to the purchase of such property and (C) such Permitted Indebtedness is repaid only with amounts received from such Disposition or other Insurance and Condemnation Proceeds that are directly related to the Disposition or loss of such property and (iv) solely with respect to any Disposition described in clause (a), any reserve for adjustment in respect of the sale price of such asset or assets established in accordance with accounting principles (the amounts described in clauses (i) through (iv), collectively, the “**Collection Expenses**”).

**Net Cost Impact** has the meaning assigned to it in the Lease.

**Net Income** means, for any period, the net income (or loss) of the Lessee for such period as determined in accordance with GAAP.

**Net Interest** means, for any period of four (4) consecutive fiscal quarters of the Lessee most recently ended as of such time for which financial statements have been delivered pursuant the Common Terms Agreement, the total cash interest expense (after taking into account the net amount of Ordinary Course Payments paid by or to the Lessee) paid by the Lessee (without double counting) pursuant to the terms of the Lessee Loan Agreements, the other Senior Debt Documents and/or the Credit Terms Agreement plus fees.

**Net Revenue Impact** has the meaning assigned to it in the Lease.

**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** has the meaning set forth in “PART 4 – THE PROJECT” of this Official Statement.

**New Terminal One** means the new southern terminal.

**New Users** has the meaning set forth in “PART 16 – AERONAUTICAL REVENUES” of this Official Statement.

**North Terminal** has the meaning set forth in “PART 2 – JOHN F KENNEDY INTERNATIONAL AIRPORT” of this Official Statement.

**Note Purchase Agreement** has the meaning assigned to it in the Common Terms Agreement.

**Notice of Credit Extension** has the meaning assigned to it in the Building Loan Agreement and the Project Loan Agreement, as applicable.

**NTO Delta Construction Coordination Interface Agreement** means the construction coordination interface agreement, dated as of June 10, 2022 entered into by and between the Lessee and Delta.

**O&M Access Areas** mean areas over which the Port Authority grants Lessee rights of way, access and use rights, including easements, 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** has the meaning set forth in APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE” of this Official Statement.

**O&M Expenses** has the meaning assigned to it in the Common Terms Agreement.

**O&M Reserve Account** has the meaning assigned to it in the Common Terms Agreement.

**O&M Reserve Requirement** means, as of any Transfer Date, twenty-five percent (25%) of the budgeted O&M Expenses (without double counting) for the Fiscal Year of the Lessee in which such date falls, as shown in the Annual Operating Budget for such Fiscal Year.

**Obligations** means, under the Credit Agreement, collectively, all loans, advances, debts, liabilities, and obligations, howsoever arising, owed by (without double counting) the Conduit Issuer, the Lessee or the Taxable REIT Subsidiary to a Lender or the Administrative Agent under or in respect of the Creditor Agreement, the Fee Letters, the Common Terms Agreement or any Security Document to which (without double counting) the Conduit Issuer, the Lessee or the Taxable REIT Subsidiary is party of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money, and including the obligations of (without double counting) the Lessee in respect of any Secured Hedge Agreement in relation to the Loans), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, including all interest, fees, charges, expenses, Erroneous Payment Subrogation Rights, attorney costs and costs of any advisors and consultants chargeable to (without double counting) the Conduit Issuer, the Lessee or the Taxable REIT Subsidiary and, in each case, any interest or other amount accruing to a Lender or the Administrative Agent under or in respect of the Credit Agreement, the Common Terms Agreement or any Security Document to which (without double counting) the Conduit Issuer, the Lessee or the Taxable REIT Subsidiary is party which arises after the commencement of any insolvency or bankruptcy proceedings with respect to the Lessee.

**Off-Premises Facilities** has the meaning assigned to it in the Lease.

**Off-Premises Scope Document** has the meaning assigned to it in an annex to the Lease.

**Off-Premises Work** has the meaning assigned to it in the Design-Build Contract.

**Officer's Certificate** means with respect to a Person, a certificate of a Responsible Officer of such Person.

**Official Health Event** has the meaning assigned to it in the Lease.

**Operating Account** has the meaning assigned to it in the Common Terms Agreement.

**Operational Systems** means 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 Term Requirements** means Section C 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.

**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 including any work required in connection with a Condition Survey Report but excluding the D&C Work.

**ORAT** means operational readiness and airport transfer.

**ORAT Agreement** means the Operational Readiness and Airport Transfer Agreement to be entered into between the Lessee and the ORAT Contractor.

**ORAT Contractor** means Munich Airport US Holding LLC.

**ORAT Services** has the meaning set forth in "PART 15 – OPERATION AND MANAGEMENT OF THE PROJECT" of this Official Statement.

**Ordinary Course Payments** means all regularly scheduled payments due under any Secured Hedge Agreement from time to time, calculated in accordance with the terms thereof, including "fixed rate" payment amounts but excluding Termination Payments.

**Other Redevelopments** means, outside of the D&C Work, any other concurrent (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.

**Outside Opening Date** means certain other Airport improvements pursuant to the Port Authority's customary standard for similar improvements (as determined in its sole and absolute discretion) in conjunction with the D&C Work.

**Outstanding Amount** means: (a) with respect to the Term Loans, Working Capital Loans, Liquidity Loans and Security Deposit Loans on any date, the aggregate outstanding principal amount

thereof after giving effect to any borrowings and prepayments or repayments of the Term Loan, Working Capital Loans, Liquidity Loans and Security Deposit Loans (including any refinancing of outstanding unpaid drawings under (i) Working Capital LCs or Working Capital LC Credit Extensions as a Working Capital Facility Borrowing and (ii) Security Deposit LCs or Security Deposit LC Credit Extensions as a Security Deposit LC Borrowing), as the case may be, occurring on such date; (b) with respect to any Working Capital LC Obligations on any date, the amount of such Working Capital LC Obligations on such date after giving effect to any Working Capital LC Credit Extension occurring on such date and any other changes in the aggregate amount of the Working Capital LC Obligations as of such date, including as a result of any reimbursements of outstanding unpaid drawings under any Working Capital LCs (including any refinancing of outstanding unpaid drawings under Working Capital LCs or Working Capital LC Credit Extensions as a Working Capital Facility Borrowing) or any reductions in the maximum amount available for drawing under Working Capital LCs taking effect on such date; and (c) with respect to any Security Deposit LC Obligations on any date, the amount of such Security Deposit LC Obligations on such date after giving effect to any Security Deposit LC Credit Extension occurring on such date and any other changes in the aggregate amount of the Security Deposit LC Obligations as of such date, including as a result of any reimbursements of outstanding unpaid drawings under any Security Deposit LCs (including any refinancing of outstanding unpaid drawings under Security Deposit LCs or Security Deposit LC Credit Extensions as a Security Deposit LC Borrowing) or any reductions in the maximum amount available for drawing under Security Deposit LCs taking effect on such date.

**PA Cost Reimbursement Amount** has the meaning set forth in APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE” of this Official Statement.

**Parent Guarantor Direct Agreement** means that certain direct agreement, dated as of June 10, 2022, between the Lessee and AECOM, the Design Builder’s parent company.

**Partial Occupancy Portion** has the meaning assigned to it in the Lease.

**Performance Fee** has the meaning set forth in “PART 15 – OPERATION AND MANAGEMENT OF THE PROJECT” of this Official Statement.

**Permanent Rights of Access** means those certain easements, rights of way and other agreements for access to those portions of the Airport shown in the Lease for ingress and egress on foot and in vehicles, utilities and other purposes during the Term and as set forth in the Lease or otherwise granted by the Port Authority to the Lessee.

**Permitted Indebtedness** means:

- (a) Indebtedness of the Lessee under the Lessee Loan Agreements, to the extent relating to the on-lending of the proceeds of Indebtedness incurred by the Conduit Issuer under the Credit Agreement;
- (b) Indebtedness of the Lessee under the Lessee Loan Agreements, to the extent relating to the on-lending of the proceeds of Indebtedness incurred by the Conduit Issuer under any Additional Senior Indebtedness Documents and any Permitted Refinancing Indebtedness Documents;
- (c) amounts payable by the Lessee under the Lease, or by the Lessee or the Taxable REIT Subsidiary under any D&C Contract or any other Material Project Document, in each case, to the extent the same constitute Indebtedness;
- (d) Subordinated Debt of the Lessee;

(e) purchase money obligations of the Lessee and the Taxable REIT Subsidiary incurred to finance items of equipment that extend to and are secured by only the equipment being financed in an aggregate principal amount outstanding at any one time not to exceed the purchase price paid for such equipment (plus applicable fees, costs and expenses associated with such financings);

(f) Indebtedness in an aggregate principal amount outstanding not to exceed one hundred million Dollars (\$100,000,000) that is incurred by the Lessee in the ordinary course of business as an account party in respect of letters of credit and other similar instruments and that is secured only with cash collateral in the amount of such Indebtedness;

(g) current accounts payable of the Lessee and the Taxable REIT Subsidiary arising, interest thereon and accrued expenses incurred of the Lessee and the Taxable REIT Subsidiary, and financing of insurance premiums of the Lessee and the Taxable REIT Subsidiary, in the ordinary course of business;

(h) Indebtedness of the Lessee and the Taxable REIT Subsidiary incurred in respect of workers compensation claims, self-insurance obligations and performance, surety or appeal bonds provided in the ordinary course of business;

(i) Permitted Investments by the Lessee and the Taxable REIT Subsidiary, to the extent the same constitute Indebtedness;

(j) any other unsecured Indebtedness of the Lessee not described in clauses (a) through (i) above in an aggregate principal amount outstanding not to exceed the greater of (A) seventy-five million Dollars (\$75,000,000) and (B) five percent (5%) of EBITDA at any time and payable only from the Distribution Account; and

(k) Indebtedness of the Lessee under the Secured Hedge Agreements and the Deal Contingent Hedge Agreements.

**Permitted Interest Dispositions** has the meaning assigned to it in the Lease.

**Permitted Investments** means (a) Eligible Investments, (b) investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business and (c) with respect to the Lessee, Interest Rate Hedge Agreements required or permitted under the Common Terms Agreement and Deal Contingent Hedge Agreements.

**Permitted Liens** has the meaning assigned to it in the Common Terms Agreement and the Lease, as applicable.

**Permitted O&M Expenses** has the meaning assigned to it in the Lease.

**Permitted Refinancing Creditor** means any Person providing Permitted Refinancing Indebtedness (including any holders of bonds or other securities that are represented by a Secured Debt Representative); provided that if not already party hereto, the creditors providing such Indebtedness (or a Secured Debt Representative on their behalf) shall have acceded to the Common Terms Agreement in accordance with the Common Terms Agreement.

**Permitted Refinancing Indebtedness** has the meaning assigned to it in the Common Terms Agreement.

**Permitted Refinancing Indebtedness Document** has the meaning assigned to it in the Common Terms Agreement.

**Permitted Refinancing Indebtedness Hedge Obligations** has the meaning assigned to it in the Common Terms Agreement.

**Person** means not only a natural person, corporation or other legal entity, but also two or more natural persons, corporations, or other legal entities acting jointly as a firm, partnership, unincorporated association, consortium, joint venture or otherwise.

**PFC** means passenger facility charges covered by 14 C.F.R. Part 158, imposed by a public agency on passengers enplaned at a commercial service airport it controls.

**Phase** means Phase A or, if applicable, any Additional Phase.

**Phase A** means the portion of the New Terminal Facilities described in the Lessee's Basis of Design as Phase A, which shall include a new Terminal 1 building consisting of one (1) new concourse and headhouse, incorporating the initial thirteen (13) permanent wide-body contact Gates and one (1) temporary contact Gate, and a departures level and arrivals level, including a Federal Inspection Services (FIS) facility for international flights.

**Phase A D&C Contract** has the meaning assigned to it in the Common Terms Agreement.

**Phase A DBO** means the date on which DBO is achieved in respect of Phase A of the Project, as identified in the Lessee's Basis of Design.

**Phase A DBO Date** means the date on which "Phase A DBO" occurs under the Lease.

**Phase B1** means the portion of the New Terminal Facilities described in the Lessee's Basis of Design as Phase B1, which shall include the addition of four (4) wide-body contact Gates and one (1) narrow-body contact Gate, unless the Two-Gate Toggle is implemented, in which case it shall include the addition of two (2) wide-body contact Gates and one (1) narrow-body contact Gate.

**Phase B1 Commencement Date** means the date on which a final and financed notice to proceed is issued for the D&C Work of Phase B1.

**Phase B1 NTP** means a final notice to proceed, supported by executed Financing Documents for Initial Lessee Debt to fund the D&C Work of Phase B1.

**Phase B1 Traffic Trigger** has the meaning assigned to it in the Lease.

**Phase B1 Traffic Triggers** has the meaning assigned to it in the Lease.

**Phase B2** means the portion of the New Terminal Facilities described in the Lessee's Basis of Design, which shall include the addition of four (4) wide-body contact Gates, unless the Two-Gate Toggle is implemented, in which case it shall include the addition of six (6) wide-body contact Gates.

**Phase B2 Commencement Date** means the date on which a final and financed notice to proceed is issued for the D&C Work of Phase B2.

**Phase B2 NTP** means a final notice to proceed, supported by executed Financing Documents for Initial Lessee Debt to fund the D&C Work of Phase B2.

**Phase B2 Traffic Trigger** has the meaning assigned to it in the Lease.

**Phase C** has the meaning assigned to it in the Lease.

**Phase NTP** means (a) with respect to Phase A, the “Phase A NTP Date” under and as defined in the Lease, or (b) with respect to any Additional Phase, the date on which the final “notice to proceed” for such Additional Phase is issued by the Lessee under in the Lease.

**Pledged Collateral** has the meaning assigned to it in the Lessee Pledge Agreement.

**Port Authority** means The Port Authority of New York and New Jersey.

**Port Authority Advertising Revenues** means the share of advertising revenues that is payable to the Port Authority in accordance with the Lease.

**Port Authority Changes** means 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, pursuant to the Port Authority’s right from time to time during the D&C Work Period to effectuate such change.

**Port Authority Concession Share** has the meaning set forth in “PART 5 – THE LEASE” of this Official Statement.

**Port Authority Enabling Work** has the meaning assigned to it in the Lease.

**Port Authority Indemnified Parties** has the meaning set forth in APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE” of this Official Statement.

**Port Authority Priority Payments** means, as of any Transfer Date, the sum of (a) the Concession Revenue Rent calculated as of the last day of the calendar month immediately preceding such Transfer Date, plus (b) the Sublease Fee for the calendar month immediately preceding such Transfer Date, plus (c) the Common Use Lounge Share for the calendar month immediately preceding such Transfer Date, plus (d) the Port Authority Advertising Revenues.

**Port Authority Rating Requirement** means a long-term unsecured debt ratings of at least the following, from at least one of the nationally recognized rating agencies: (a) A by S&P; (b) A2 by Moody’s; or (c) A by Fitch.

**Port Authority Reserve Amount** mean an aggregate amount of one hundred million Dollars and zero cents (\$100,000,000.00) of which (i) eighty million Dollars and zero cents (\$80,000,000.00) shall be allocated to Phase A, (ii) ten million Dollars and zero cents (\$10,000,000.00) shall be allocated to Phase B1, and (iii) ten million Dollars and zero cents (\$10,000,000.00) shall be allocated to Phase B2.

**Port Authority Revenue Share** has the meaning set forth in “PART 5 – THE LEASE” of this Official Statement.

**Port Authority Termination Notice** means a termination notice to terminate the Lease served by the Port Authority on the Lessee, specifying the Event of Default that has occurred entitling the Port Authority to terminate.

**Post-Completion Revenue Account** has the meaning assigned to it in the Common Terms Agreement.

**Pre-Completion Revenue Account** has the meaning assigned to it in the Common Terms Agreement.

**Pre-DBO Services** has the meaning set forth in “PART 15 – OPERATION AND MANAGEMENT OF THE PROJECT” of this Official Statement.

**Premises** has the meaning assigned to it in the Lease.

**Prepayment/Redemption Accounts** has the meaning assigned to it in the Common Terms Agreement.

**Principal Payment Accounts** has the meaning assigned to it in the Common Terms Agreement.

**Private Placement Notes** has the meaning assigned to it in the Common Terms Agreement.

**Pro Rata Share** means, pursuant to the Credit Agreement, with respect to each Lender and any Loan Facility or all the Loan Facilities or any Tranche or all the Tranches (as the case may be) at any time, a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Commitments of such Lender under the applicable Loan Facility or the Loan Facilities or Tranche or Tranches (and, in the case of any Term Loan Tranche after the applicable borrowing date and without duplication, the outstanding principal amount of Term Loans under such Tranche, of such Lender, at such time) at such time and the denominator of which is the amount of the Aggregate Commitments under the applicable Loan Facility or the Loan Facilities or Tranche or Tranches at such time (and, in the case of any Term Loan Tranche and without duplication, the outstanding principal amount of Term Loans under such Tranche, at such time); provided that if the commitment of each Lender to make Loans, the obligation of the Working Capital Facility LC Issuing Bank to make Working Capital LC Credit Extensions and the obligation of the Security Deposit Facility LC Issuing Bank to make Security Deposit LC Credit Extensions have been terminated pursuant to the Credit Agreement, then the Pro Rata Share of each Lender shall be determined based on the Pro Rata Share of such Lender immediately prior to such termination and after giving effect to any subsequent assignments made pursuant to the terms hereof. The initial Pro Rata Share of each Lender is set forth opposite the name of such Lender in the Credit Agreement or in the Assignment and Assumption pursuant to which such Lender became a party hereto, as applicable.

**Pro-Rated Debt Service** means, as of any Test Date, a fraction, the numerator of which is the annual Debt Service and the denominator of which is twelve (12).

**Prohibited Party** has the meaning assigned to it in the Lease.

**Project** has the meaning set forth in “PART 1 – INTRODUCTION” of this Official Statement.

**Project Accounts** has the meaning assigned to it in the Common Terms Agreement.

**Project Costs** has the meaning assigned to it in the Common Terms Agreement.

**Project Integrity Monitor** means a private independent organization with legal, auditing, accounting, engineering and investigative expertise (and its subcontractors and sub-consultants) hired by the Port Authority to assist the Port Authority in its fraud prevention efforts.

**Project Loan** has the meaning assigned to it in the Project Loan Agreement.

**Project Loan Agreement** means the project loan agreement dated as of June 10, 2022, between the Lessee, the Conduit Issuer, and the Intercreditor Agent.

**Project Loan Commitment** means the Conduit Issuer's obligation to make available the Project Loans to the Lessee pursuant to the Project Loan Agreement, as the same may be adjusted from time to time in accordance with the Project Loan Agreement. The original amount of the Project Loan Commitment on the date of the Project Loan Agreement is two billion, six hundred forty-one million, four hundred twenty-four thousand, four hundred forty-seven Dollars and fifty cents (\$2,641,424,447.50).

**Project Loan Costs** means Project Costs that are to be funded from proceeds of Project Loans hereunder.

**Project Loan Mortgage** has the meaning set forth in "PART 13 – SUMMARY OF THE SECURITY DOCUMENTS" of this Official Statement.

**Project Loan Note** means a promissory note, with the Lessee as the payor and the Conduit Issuer as payee, in substantially the form attached to the Project Loan Agreement, in a principal amount equal to the Project Loan Commitment issued by the Lessee in favor of the Conduit Issuer.

**Project Revenues** means, for any period (without duplication), all revenue received by or on behalf of the Lessee during such period, including but not limited to revenues received by the Lessee from the operation of the Project, interest earned on and paid to the Lessee in respect of any Project Accounts, proceeds from any business interruption insurance, revenue derived from any third-party concession, lease or contract, delay liquidated damages paid under any D&C Contract and any other receipts otherwise arising or derived from or paid or payable in respect of the Project (including, for the avoidance of doubt, any such revenue which is required to be applied by the Lessee to make Port Authority Priority Payments under and in accordance with the Common Terms Agreement and the Lease), but excluding (a) proceeds of Indebtedness of the Lessee or the Conduit Issuer and proceeds in respect of the Deal Contingent Hedge Agreements and the Secured Hedge Agreements (including Ordinary Course Payments and Termination Payments), (b) proceeds of any equity contribution by the Sponsors (including pursuant to an Equity Contribution Agreement and the Equity LCs (if any)), (c) proceeds of any Equity Cure, (d) Insurance and Condemnation Proceeds and (e) proceeds of asset sales to the extent that such proceeds are not reinvested in replacement property other than proceeds from business interruption insurance, delay in start-up insurance, design defects insurance and any other insurance which is intended to be a lost revenue replacement.

**Projected TOCR** has the meaning assigned to it in the Common Terms Agreement.

**Public Landing Area** has the meaning assigned to it in the Lease.

**QTO or Qualified Terminal Operator** has the meaning assigned to it in the Lease.

**QTO Equity Member** means any equity member of the Lessee that is a Qualified Terminal Operator.

**QTO Equity Member Disposition** has the meaning assigned to it in the Lease.

**Rate Covenant** has the meaning assigned to it in section 3.20 of the Common Terms Agreement.

**Rating Agencies** means (a) each of Fitch, Moody's, S&P and Kroll and (b) if each of Moody's, S&P, Fitch and Kroll ceases to rate the Senior Debt for reasons outside of the Lessee's control, a "nationally recognized statistical rating organization" within the meaning of Section 3 under the Exchange Act selected by the Lessee or any direct or indirect parent of the Lessee as a replacement agency for Moody's, S&P, Fitch or Kroll, as the case may be.

**Recognized Mortgagee** has the meaning assigned to it in the Lease.

**Reference Documents** means (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** has the meaning set forth in "PART 5 – THE LEASE" of this Official Statement.

**Remediation** has the meaning assigned to it in the Lease.

**Rentals** means individually or collectively, the Ground Rent, Second Additional Rental, Third Additional Rent, the IRR Rent, the First Additional Rent and/or the Concessions Revenue Rent and/or all items of additional rental (including, without limitation, late fees, sublease fees and liquidated damages, as applicable).

**Required Lenders** means, as of any date of determination, Lenders having more than fifty percent (50%) of the Combined Exposure.

**Required Secured Creditors** has the meaning assigned to it in the Common Terms Agreement.

**Requirements and Provisions for Work** has the meaning assigned to it in the Lease.

**Reserve Accounts** means the Senior Debt Service Reserve Account, the Senior Debt Service Reserve Accounts, the Major Maintenance Reserve Account, the O&M Reserve Account, the Ramp-Up Accounts and the Springing Liquidity Reserve Account.

**Reserved Rights** has the meaning assigned to it in the Common Terms Agreement.

**Reserved Uses** has the meaning set forth in "PART 5 – THE LEASE" of this Official Statement.

**Responsible Officer** means with respect to any Person, the chief executive officer, president, any senior vice president, chief financial officer or other authorized signatory of such Person, as the case may be.

**Restricted Payment Conditions** has the meaning assigned to it in the Common Terms Agreement.

**RFP** means a request for proposals.

**Roadway Network** has the meaning assigned to it in the Lease.

**Rules and Regulations** means, individually and collectively, applicable rules, regulations, policies, manuals, publications, 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.

**S&P** means Standard & Poor's Ratings Services, a division of McGraw-Hill, duly organized and existing under and by virtue of the laws of the State, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term "S&P" shall be deemed to refer to any other nationally recognized securities rating agency.

**Scheduled Completion Date** means (a) with respect to Phase A, June 1, 2026 (as such date may be adjusted only as expressly permitted under the Lease); (b) (i) if Phase B1 and Phase B2 of the Project are developed separately, with respect to Phase B1 of the Project, the date which is 23 months after the Phase B1 Commencement Date; and with respect to Phase B2 of the Project, the date which is 18 months after the Phase B2 Commencement Date and (ii) if Phase B1 and Phase B2 of the Project are developed simultaneously, the date which is 28 months after the Phase B1 and Phase B2 Commencement Date.

**Scheduled D&C Completion Date** means June 1, 2026, as such date shall be extended on a day-for-day basis with any extension of the Initial Scheduled Completion Date (Phase A) pursuant to the Lease and the Phase A D&C Contract, so long as the Lessee has Available Funding sufficient to achieve Completion for Phase A and to satisfy its other payment obligations under the Financing Documents and Material Project Documents for Phase A, in each case as certified by a Responsible Officer of the Lessee and confirmed by the Technical Advisor.

**Second Additional Premises** means, subject to certain traffic triggers and credit rating conditions, the terminal facilities known as the existing Terminal 1.

**Second Additional Rental** has the meaning set forth in APPENDIX D – "SUMMARY OF CERTAIN PROVISIONS OF THE LEASE" of this Official Statement.

**Seconded Manager Personnel** has the meaning set forth in "PART 15 – OPERATION AND MANAGEMENT OF THE PROJECT" of this Official Statement.

**Seconded Manager Personnel Costs** has the meaning set forth in APPENDIX F – "SUMMARY OF CERTAIN PROVISIONS OF THE MANAGEMENT SERVICES AGREEMENT" of this Official Statement.

**Seconded Manager Personnel Expenses** has the meaning set forth in APPENDIX F – "SUMMARY OF CERTAIN PROVISIONS OF THE MANAGEMENT SERVICES AGREEMENT" of this Official Statement.

**Secondment Fee** has the meaning set forth in APPENDIX F – "SUMMARY OF CERTAIN PROVISIONS OF THE MANAGEMENT SERVICES AGREEMENT" of this Official Statement.

**Secured Creditor** has the meaning assigned to it in the Common Terms Agreement.

**Secured Debt Representative** means:

- (a) in the case of the Credit Agreement and the Lenders, the Administrative Agent;
- (b) in the case of any Indenture and the Muni Bond Holders thereunder, the Indenture Trustee specified in such Indenture; provided that such Indenture Trustee shall have executed an Accession Agreement, in such capacity, in accordance with the terms hereof on behalf of itself and/or (as applicable) the relevant Muni Bond Holders;

(c) in the case of any Private Placement Note under which a Note Agent has been appointed as the beneficiary thereof and the holder of such Private Placement Note, the Note Agent who is the beneficiary thereof; provided that such Note Agent shall have executed an Accession Agreement, in such capacity, in accordance with the terms hereof on behalf of itself and/or (as applicable) the relevant holders of Private Placement Notes;

(d) in the case of the Additional Senior Indebtedness Documents and the Additional Senior Creditors party thereto (other than with respect to any Muni Bonds or any Private Placement Notes under which a Note Agent has been appointed), such Additional Senior Creditors or any agent or trustee (or equivalent) specified therein as the representative of such Additional Senior Creditors; provided that such Person shall have executed an Accession Agreement, in such capacity, in accordance with the terms hereof on behalf of itself and/or (as applicable) all Additional Senior Creditors;

(e) in the case of the Permitted Refinancing Indebtedness Documents and the Permitted Refinancing Creditors party thereto (other than with respect to any Muni Bonds or any Private Placement Notes under which a Note Agent has been appointed), such Permitted Refinancing Creditors or any agent or trustee (or equivalent) specified therein as the representative of such Permitted Refinancing Creditors; provided that such Person shall have executed an Accession Agreement, in such capacity, in accordance with the terms hereof on behalf of itself and/or (as applicable) all Permitted Refinancing Creditors; and

(f) in the case of each Secured Hedge Agreement, the Hedge Provider party thereto.

**Secured Hedge Agreements** has the meaning assigned to it in the Common Terms Agreement.

**Secured Hedge Transactions** means any “Transaction” (as defined in and governed by the relevant Secured Hedge Agreement) in respect of one (1) or more interest rates.

**Secured Lessee Obligations** has the meaning set forth in “PART 1 – INTRODUCTION” of this Official Statement.

**Secured Obligations** has the meaning assigned to it in the Common Terms Agreement.

**Secured Obligations Default** means any event or condition that, with the giving of any notice, the passage of time, or both, would be a Secured Obligations Event of Default.

**Secured Obligations Events of Default** has the meaning set forth in “PART 12 – SUMMARY OF THE FINANCING DOCUMENTS” of this Official Statement.

**Secured Parties** means (i) the Agents, (ii) the Secured Creditor, and (iii) the Conduit Issuer.

**Secured Pass Through Financing Obligations** has the meaning set forth in “PART 1 – INTRODUCTION” of this Official Statement.

**Secured Taxable REIT Subsidiary Obligations** has the meaning set forth in “PART 1 – INTRODUCTION” of this Official Statement.

**Security Deposit Facility** means the security deposit facility made available by the Security Deposit Facility Lender under the Credit Agreement.

**Security Deposit Facility Commitment** means, as to each Security Deposit Facility Lender, its obligation to make Security Deposit Loans pursuant to the Credit Agreement in an aggregate principal

amount not to exceed the amount set forth in 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 fifty million Dollars (\$50,000,000) on the date of the Credit Agreement.

**Security Deposit Facility LC Issuing Bank** means (a) the Security Deposit Facility LC Issuing Bank identified in the Credit Agreement in its capacity as an issuer of Security Deposit LCs under the Credit Agreement (it being understood that the Security Deposit Facility LC Issuing Bank so identified shall not be obligated to issue any letters of credit under the Credit Agreement other than standby letters of credit) or (b) any other Lender reasonably acceptable to the Lessee and the Administrative Agent (which consent shall not be unreasonably withheld, delayed or conditioned) that agrees to issue Security Deposit LCs pursuant to the Credit Agreement, in each case in its capacity as an issuer of Security Deposit LCs under the Credit Agreement, or any successor issuer of Security Deposit LCs under the Credit Agreement, and in each case, applicable Affiliates, and in the case of both clauses (a) and (b) that satisfies the Port Authority Rating Requirement.

**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 Facility Maturity Date** means the earliest of (i) the fifth (5th) anniversary of the Effective Date, (ii) the date of termination in whole of the Security Deposit Facility Commitments pursuant to the Credit Agreement, and (iii) the date on which the Lessee issues Phase NTP for the first Additional Phase to commence under the Lease.

**Security Deposit LC** means any letter of credit issued, renewed, extended or amended hereunder by the Security Deposit Facility LC Issuing Bank. A Security Deposit LC may be a commercial letter of credit or a standby letter of credit.

**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 Conduit Issuer on the date required under 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 the Credit Agreement, the day that is three (3) Business Days prior to the scheduled Security Deposit Facility Maturity Date then in effect (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, including all Security Deposit LC Borrowings. 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 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 it in the Credit Agreement.

**Security Deposit Tranche** means the Security Deposit Facility pursuant to which Security Deposit LCs are made under the Security Deposit Facility Commitments, in each case, including the extensions of credit made thereunder.

**Security Documents** has the meaning assigned to it in the Common Terms Agreement and the Lease, as applicable.

**Senior Debt** means the Loans, Hedge Obligations, any Permitted Refinancing Indebtedness and any Additional Senior Indebtedness.

**Senior Debt Documents** means the Lessee Loan Agreements, the Credit Agreement, the Secured Hedge Agreements, the relevant Additional Senior Indebtedness Document and the relevant Permitted Refinancing Indebtedness Document.

**Senior Debt Service Reserve Accounts** has the meaning assigned to it in the Common Terms Agreement.

**Senior Payments** has the meaning assigned to it in the Lease.

**Services** has the meaning set forth in APPENDIX F – “SUMMARY OF CERTAIN PROVISIONS OF THE MANAGEMENT SERVICES AGREEMENT” of this Official Statement.

**Signing Date** means the date of the Common Terms Agreement.

**SOFR Loans** means a Loan that bears interest at a rate based on Daily Compounded SOFR (as calculated pursuant to the Credit Agreement).

**Soft Costs** means those Building Loan Costs which are not Hard Costs and which include fees to third parties, such as consultants, architects and engineers, recording fees, interest on the Building Loan and other non-construction related costs and expenses which are “Costs of the Improvement”.

**Sponsor Aggregator** means JFK NTO Sponsor Aggregator LLC, a Delaware limited liability company.

**Sponsors** means Ferrovial, Carlyle, JLC, and Ullico.

**Springing Liquidity Reserve Event** means the event that occurs if, on any Calculation Date, the Total Obligations Coverage Ratio for two (2) consecutive TOCR Calculation Periods ending on such Calculation Date was less than 1.30:1.00, and such event shall be deemed to continue until the first subsequent Calculation Date on which the Total Obligations Coverage Ratio for two (2) consecutive TOCR Calculation Periods ending on such Calculation Date was not less than 1.30:1.00.

**Springing Liquidity Reserve Requirement** means (a) on each Transfer Date which occurs while a Springing Liquidity Reserve Event has occurred and is continuing, an amount equal to the aggregate amount of the scheduled interest and principal on such Class of Senior Debt that will become due and payable during the next succeeding six (6)-month period, and (b) on each other Transfer Date, zero (0).

**State** means the State of New York.

**States** means the States of New York and New Jersey.

**Sublease** has the meaning assigned to it in the Lease.

**Sublease Fee** has the meaning set forth in APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE” of this Official Statement.

**Sublessees** has the meaning assigned to it in the Lease.

**Submittal Review Period** has the meaning set forth in APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE” of this Official Statement.

**Subordinated Debt** means any unsecured Indebtedness owed by the Lessee to any of its holders of Equity Interests or Affiliates, in each case (a) that is (i) expressly subordinated in right of payment to the Senior Debt on terms set forth the Common Terms Agreement and pledged to the Collateral Agent for the benefit of the Secured Parties pursuant to a Subordination Agreement and (ii) not secured by a Lien on any assets of the Lessee, and (b) payments in respect of which are subject to certain terms of the Common Terms Agreement.

**Subordination Agreement** means each subordination agreement entered into by the Lessee, the Collateral Agent and any Affiliate of the Lessee or equity holder of the Lessee, as subordinated lender, containing terms of subordination as set forth in the Common Terms Agreement or otherwise as reasonably acceptable to the Required Secured Creditors.

**Substantial Completion** has the meaning set forth in APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE” of this Official Statement.

**Successor Recognized Mortgagee** has the meaning set forth in APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE” of this Official Statement.

**T4 Additional Gates** has the meaning set forth in APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE” of this Official Statement.

**Taxable REIT Subsidiary** has the meaning assigned to it in the Lease and the Equity Contribution Agreement, as applicable.

**Taxable REIT Subsidiary Security Agreement** means the security agreement dated as June 10, 2022, between the Taxable REIT Subsidiary and the Collateral Agent.

**Taxes** means any and all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other similar charges now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority, including any interest, additions to tax, penalties or similar liability with respect thereto.

**TCAP Manual** means 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** means the Port Authority's Tenant Construction and Alteration Process, which includes:

- (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.

**Technical Advisor** means Infrata Limited, and its successors and assigns, or such other nationally recognized independent engineering firm performing similar services (a) selected by the Lessee with the consent of the Intercreditor Agent, which consent will not be unreasonably withheld or delayed or, if a Secured Obligations Event of Default has occurred and is continuing, by the Intercreditor Agent and (b) that has acknowledged that it is acting on behalf of the Secured Creditors.

**Temporary Rights of Access** has the meaning assigned to it in the Lease.

**Term** has the meaning assigned to it in the Lease.

**Term Commitment** means, as to each Term Lender, (a) its Closing Date Term Commitment or (b) its Delayed Draw Term Commitment.

**Term Lender** means (a) at any time on or prior to the Effective Date, any Lender that has a Closing Date Term Commitment and/or a Delayed Draw Term Commitment at such time and (b) at any time after the Effective Date, any Lender that holds Term Loans and/or Term Commitments at such time.

**Term Loan** means an advance made by any Term Lender under any Term Loan Facility.

**Term Loan Borrowing** means a borrowing of the same Type of Term Loan of a single Tranche from all the Term Lenders having Term Commitments or Term Loans of the respective Tranche on a given date (or resulting from a conversion or conversions on such date).

**Term Loan Facility** means a facility in respect of any Term Loan Tranche, as the context may require.

**Term Loan Facility Maturity Date** means the earliest of (i) the fifth (5<sup>th</sup>) anniversary of the Effective Date, (ii) the date that the Term Loans are declared due and payable pursuant to the Credit Agreement, and (iii) the date on which the Lessee issues Phase NTP for the first Additional Phase to commence under the Lease.

**Term Loan Tranche** means the respective facility and commitments utilized in making (or, where applicable, conversion or extension of) Term Loans under the Credit Agreement, with there being two Tranches on the Effective Date, (a) the Closing Date Term Loans and the Closing Date Term Commitments and (b) the Delayed Draw Term Loans and Delayed Draw Term Commitments.

**Termination Payments** has the meaning assigned to it in the Common Terms Agreement.

**Terrorism** means an act or series of acts, including the use of force or violence, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public in fear for such purposes.

**Test Date** has the meaning assigned to it in the Lease.

**Tested Period** has the meaning set forth in APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE” of this Official Statement.

**Third Additional Rent** has the meaning set forth in APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE” of this Official Statement.

**TOCR** or **Total Obligations Coverage Ratio** means, for any TOCR Calculation Period, the ratio of A divided by B where:

A = the Free Cash Flow for such TOCR Calculation Period; and

B = the amount required during such TOCR Calculation Period for the payment of all Debt Service (excluding, for this purpose, any Debt Service paid (or to be paid) from the balance of any Construction Account).

**TOCR Calculation Period** means, as applicable, (a) on a historic basis, (i) each TOCR Initial Stub Period or (ii) any twelve (12)-month period beginning after such TOCR Initial Stub Period and ending on a Calculation Date, or (b) on a forward-looking basis, any twelve (12)-month period beginning the day after a Calculation Date.

**TOCR Initial Stub Period** means the period from the Phase A DBO Date to any Calculation Date that occurs at least six (6) months after the Phase A DBO Date and that occurs prior to the first (1<sup>st</sup>) anniversary of the Phase A DBO Date.

**TOGA** has the meaning set forth in “PART 1 – INTRODUCTION” of this Official Statement.

**TOGA Affiliates** has the meaning set forth in “PART 16 – AERONAUTICAL REVENUES” of this Official Statement.

**TOGA Airlines** means, collectively, Air France, JAL, Korean Air, and Lufthansa German Airways.

**Topco** means JFK NTO Sponsor Aggregator LLC, a Delaware limited liability company.

**Topco LLC Agreement** means the Amended and Restated Limited Liability Company Agreement of Topco dated as of May 12, 2022.

**Total Outstandings** means the aggregate Outstanding Amount of all Loans, all Working Capital LC Obligations and all Security Deposit LC Obligations.

**Total Security Deposit Outstanding** means the aggregate Outstanding Amount of all Security Deposit Loans and Security Deposit LC Obligations.

**Total Working Capital Facility Outstanding** means the aggregate Outstanding Amount of all Working Capital Loans and Working Capital LC Obligations.

**Traffic Triggers** has the meaning set forth in APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE” of this Official Statement.

**Tranche** means any Term Loan Tranche, any Working Capital Tranche, any Liquidity Tranche or any Security Deposit Tranche.

**Transfer** has the meaning assigned to it in the Topco LLC Agreement.

**Transfer Date** means the Business Day set out in each Funds Transfer Certificate as the Transfer Date for such calendar month or, if no Transfer Date is identified in the Funds Transfer Certificate, the last Business Day of such calendar month; provided that, in any event, there shall only be one (1) Transfer Date per calendar month.

**TRS Construction Phase Account** has the meaning assigned to it in the Common Terms Agreement.

**TRS Operating Account** has the meaning assigned to it in the Common Terms Agreement.

**TRS Operating Phase Fee** means the services fee due and payable by the Lessee to the Taxable REIT Subsidiary pursuant to that certain Special Services Agreement, to be entered into between the Lessee and the Taxable REIT Subsidiary.

**TRS Permitted O&M Expenses** means any expenditure incurred or paid by the Taxable REIT Subsidiary that, if it had been incurred or paid for by the Lessee, would have constituted a Permitted O&M Expense.

**True-Up Drawing** has the meaning assigned to it in the Common Terms Agreement.

**TSA** means the Transportation Security Administration created under the Aviation and Transportation Security Act, 49 U.S.C. § 40101 et seq., or any successor agency thereto.

**Two-Gate Toggle** has the meaning set forth in APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE LEASE” of this Official Statement.

**Type** means, with respect to a Loan, its character as a Base Rate Loan or a SOFR Loan.

**UCC** means the Uniform Commercial Code as in effect from time to time in the State; provided that if by reason of mandatory provisions of law, perfection, or the effect of perfection or non-perfection or the priority of a Lien in any Collateral or the availability of any remedy under any Loan Document is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, “UCC” means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions of the Financing Documents relating to such perfection or effect of perfection or non-perfection or priority or availability of such remedy, as the case may be.

**Ullico** means Ullico Infrastructure JFK REIT, LLC.

**Unavoidable Delay Events** has the meaning set forth in the Design-Build Contract.

**Unknown Conditions** has the meaning assigned to it in the Lease.

**URW** means Unibail-Rodamco-Westfield.

**URW Direct Agreement** has the meaning set forth in “PART 6 – PLAN OF FINANCE” of this Official Statement.

**Voting Party Percentage** has the meaning assigned to it in the Common Terms Agreement.

**Waiver** has the meaning assigned to it in the Common Terms Agreement.

**Work** mean the D&C Work, the Operations and Maintenance Work and all other work and services provided to, or contracted for by, the Lessee to be performed at or with respect to the Premises and/or any Off-Premises Facilities outside the Premises, including, but not limited to, (1) D&C Work, (2) every award, contract, subcontract, purchase or other agreement relating to the provision of goods and/or services in connection with the D&C Work, the Operations and Maintenance Work or any other services or work to be performed at, or provided with respect to, the Premises and/or any Off-Premises Facilities outside the Premises, (3) professional services (including, without limitation, architectural and engineering) relating to the D&C Work, the Operations and Maintenance Work, the Premises and/or any Off-Premises Facilities outside the Premises, and (4) every award, contract, subcontract, purchase or other agreement relating to the construction and/or development of the Premises and/or any Off-Premises Facilities outside the Premises, and any and all goods and services furnished in connection with the foregoing.

**Working Capital Facility** means the working capital facility made available by the Working Capital Facility Lenders under the Credit Agreement.

**Working Capital Facility Availability Period End Date** means with respect to the Working Capital Facility Commitments of each Working Capital Facility Lender, the earliest to occur of (a) the Working Capital Facility Maturity Date, (b) the date of cancellation of all remaining available Working Capital Facility Commitments in accordance with the Credit Agreement, and (c) if the Effective Date has not occurred by such date, the Initial Commitment End Date.

**Working Capital Facility Borrowing** means a borrowing under the Working Capital Facility consisting of simultaneous Working Capital Loans of the same Type made by each Working Capital Facility Lender pursuant to the Credit Agreement.

**Working Capital Facility Commitment** means, as to each Working Capital Facility Lender, its obligation to make Working Capital Loans pursuant to the Credit Agreement in an aggregate principal amount not to exceed the amount set forth in the Credit Agreement, or the amount set forth in the Assignment and Assumption pursuant to which such Working Capital Facility Lender became a party hereto, as the same may be adjusted from time to time in accordance with the Credit Agreement. The original amount of the Working Capital Facility Commitments shall be fifty million Dollars (\$50,000,000) on the date of the Credit Agreement.

**Working Capital Facility LC Issuing Bank** means (a) the Working Capital Facility LC Issuing Bank identified in the Credit Agreement in its capacity as an issuer of Working Capital LCs under the Credit Agreement (it being understood that the Working Capital Facility LC Issuing Bank so identified shall not be obligated to issue any letters of credit under the Credit Agreement other than standby letters of credit) or (b) any other Lender reasonably acceptable to the Lessee and the Administrative Agent (which consent shall not be unreasonably withheld, delayed or conditioned) that agrees to issue Working Capital LCs pursuant to the Credit Agreement, in each case in its capacity as an issuer of Working Capital LCs under the Credit Agreement, or any successor issuer of Working Capital LCs under the Credit Agreement, and in each case, applicable Affiliates.

**Working Capital Facility Lender** means, at any time, any Lender that has a Working Capital Facility Commitment at such time (and after the termination of all Working Capital Facility Commitments, any Lender that holds any Outstanding Amount in respect of Working Capital Loans and/or Working Capital LC Obligations).

**Working Capital Facility Maturity Date** means the earliest of (i) the fifth (5th) anniversary of the Effective Date, (ii) the date of termination in whole of the Working Capital Facility Commitments pursuant to the Credit Agreement, and (iii) the date on which the Lessee issues Phase NTP for the first Additional Phase to commence under the Lease.

**Working Capital LC** means any letter of credit issued, renewed, extended or amended under the Credit Agreement by the Working Capital Facility LC Issuing Bank. A Working Capital LC may be a commercial letter of credit or a standby letter of credit.

**Working Capital LC Borrowing** means an extension of credit resulting from a drawing under any Working Capital LC which has not been reimbursed by the Conduit Issuer on the date required under the Credit Agreement or refinanced as a Working Capital Facility Borrowing.

**Working Capital LC Commitment** has the meaning described in “PART 12 – SUMMARY OF THE FINANCING DOCUMENTS” of the Official Statement.

**Working Capital LC Credit Extension** means, with respect to any Working Capital LC, the issuance thereof or extension of the expiry date thereof, or the renewal or increase of the amount thereof.

**Working Capital LC Expiration Date** means, subject to the Credit Agreement, the day that is three (3) Business Days prior to the scheduled Working Capital Facility Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

**Working Capital LC Obligations** means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Working Capital LCs plus the aggregate of all unreimbursed amounts in respect of Working Capital LCs, including all Working Capital LC Borrowings. For purposes of computing the amount available to be drawn under any Working Capital LC, the amount of such Working Capital LC shall be determined in accordance with the Credit Agreement. For all purposes of the Credit Agreement, if on any date of determination a Working Capital 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 Working Capital 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 Working Capital Facility LC Issuing Bank, such Working Capital LC shall be deemed to be “outstanding” in the amount of such drawing.

**Working Capital Loans** means loans denominated in Dollars made by each Working Capital Facility Lender to the Conduit Issuer from time to time on and after the Effective Date, on any Business Day until the Working Capital Facility Availability Period End Date, in an aggregate amount not to exceed at any time outstanding amount of such Working Capital Facility Lender’s Working Capital Facility Commitment.

**Working Capital Tranche** means the Working Capital Facility pursuant to which Working Capital Loans or Working Capital LCs are made under the Working Capital Facility Commitments, in each case, including the extensions of credit made thereunder.

**Appendix B-1**

**REPORT OF THE AIRPORT CONSULTANT**

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Final Report  
June 2024

# Report of the Airport Consultant

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Prepared for: JFK NTO LLC  
Our ref: 23244208

**steer**



# Report of the Airport Consultant

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Prepared by:

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## Disclaimer

This final report (the “**Report**”) was prepared by Steer, Davies & Gleave, Incorporated (“**Steer**”) for the benefit of JFK NTO LLC (“**NTO**”) (the “**Client**”) solely in its capacity as the Traffic and Revenue Advisor for the feasibility study covering traffic and business plan (but taking capital and maintenance cost assumptions from a consultant appointed by NTO) relating to the development of New Terminal One at John F. Kennedy International Airport in Queens, New York (the “**Project**”) pursuant to an engagement letter and related schedules (collectively, the “**Agreement**”), dated 23 December 2022.

This Report, and the information and statements contained within it, are all based upon information obtained from the Client and third parties, as well as from publicly available information, in the course of evaluations of the Project. Steer provides no assurance as to the accuracy of any such third-party information and bears no responsibility for the results of any actions taken on the basis of the third-party information contained in the Report, except to the extent that such actions result from the willful misconduct, recklessness, fraud or gross negligence of Steer.

The Report contains projected/forward-looking information and data (financial and otherwise) that may or may not occur or prove to be accurate. Such projected and forward-looking information is based on current expectations and projections about future events which are beyond the control of Steer and other participants in the Project. Projections and information contained in the Report could be affected by inaccurate assumptions. While the projections and information were prepared in good faith, no assurance can be given as to the accuracy or adequacy of such projections and information, or the assumptions underlying such projections and information. Actual events may well differ from those assumed, and events are subject to change. Steer takes no responsibility and bears no liability whatsoever as to the actions taken by others, including third parties, based upon the forward-looking statements made in the Report, except to the extent that such actions result from the willful misconduct, recklessness, fraud or gross negligence of Steer.

In addition to the foregoing, readers of the Report should be aware that although the COVID-19 is no longer a Public Health Emergency of International Concern (WHO, 5 May 2023), there are a wide range of views from authoritative sources as to the impact of the pandemic on future travel patterns and volumes. As a result, there is additional, and potentially material, uncertainty associated with the traffic and revenue projections contained in this Report.

The findings in the Report are time-sensitive and relevant only to current conditions at the time of writing. Steer undertakes no obligation to update the Report for any reason.

**Steer has no liability to recipients of this document other than the Client, purchasers of the Series 2024 Bonds on the first date on which they are issued (“Security Holders”) (subject to the position at law) or a party to a fully executed reliance letter with Steer concerning the Project (“Reliance Parties”). Any recipient of this document other than the Client, Security Holders and Reliance Parties, by its acceptance or use of this document, releases Steer from any liability for any loss or damage whether arising in contract, warranty, express or implied, tort or otherwise. Unless you are the Client, a Security Holder or a Reliance Party, Steer assumes no liability to you in respect of the Report or information within it.**

**The total liability of Steer for any loss, damage, cost or expense suffered or incurred by all persons or entities and for all claims respecting its work performed in connection with the Project and Series 2024 Bonds is hereby limited in the aggregate to \$3,000,000, except to the extent that such liability results from the wilful misconduct, recklessness, fraud or gross negligence of Steer.**

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## Cover Letter

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June 2024  
Steer Ref: 23244208

Dear Sir or Madam,

### **RE: Final Report of the Airport Consultant**

This Final Report of the Airport Consultant ("**Report**") was produced for JFK NTO LLC (the "**Client**") by Steer Davies & Gleave, Incorporated ("**Steer**"), pursuant to an engagement letter dated 23 December 2022 (the "**Engagement Letter**") solely in its capacity as the Traffic and Business Plan Advisor relating to the development of New Terminal One at John F. Kennedy International Airport in Queens, New York (the "**Project**").

This Report is confidential and may not be disclosed to any third party other than Permitted Parties (as defined below) subject to the conditions set out below, and to Financiers (as defined in the Engagement Letter) subject to such Financiers executing a reliance or non-reliance letter (in a form specified by Steer). Further, the Report may be included in an offering document related to an offering of securities by or on behalf of the Client, subject to the terms and conditions set out in the Engagement Letter.

The Client may disclose a copy of this Report on a confidential and non-reliance basis to:

- i. Representatives (meaning the officers, directors, shareholders, employees, legal counsel, independent auditors, service providers (including insurance brokers and insurers) of JFK NTO LLC, who have a need to review the Report in order for the Client to progress the Project or who are participating in the Project on behalf of the Client;
- ii. The Port Authority of New York and New Jersey; and
- iii. the respective professional advisors and insurance brokers who are reviewing the Project or the Project on behalf the parties at (i)-(ii) above

(i – iii collectively the "**Permitted Parties**")

Provided that:

in advance of disclosure of the Report, the Permitted Party accepts that:

- (a) disclosure is on a non-reliance basis;
- (b) the Report is confidential and no onward disclosure is permitted;
- (c) the Report may only be used for the purpose of the Project, and for the sole purpose of acting as Permitted Party in the role described in (i)-(iii) above.

Readers of the Report should note that information and statements contained within the Report, are all based upon information provided to Steer, and obtained from proprietary data purchased or confidential information provided by the Client, from publicly available information or sources, in the course of evaluations of the Project which Steer has not independently verified (unless expressly stated otherwise in the Report).

Certain forward-looking statements are based upon interpretations or assessments of information reviewed by us at the time of writing. Actual events may differ from those assumed, and events are subject to change. Findings are time-sensitive and relevant only to current conditions at the time of writing. The Report speaks only as of the date of issuance. Factors influencing the accuracy and completeness of the forward-looking statements may exist that are outside of the purview or control of Steer.

In addition to the foregoing, readers of the Report should be aware that although the COVID-19 is no longer a Public Health Emergency of International Concern (World Health Organization, 5 May 2023), there are a wide range of views from authoritative sources as to the impact of the pandemic on future travel patterns and volumes. As a result, there is additional, and potentially material, uncertainty associated with the traffic and revenue projections contained in this Report.

The Report, including this letter and attachment, should be read in its entirety.

For and on behalf of,

Steer Davies & Gleave, Incorporated

# Executive Summary

## Introduction

JFK NTO LLC appointed Steer Davies & Gleave, Incorporated (“Steer”) to prepare an independent feasibility study (“Report of the Airport Consultant” or “Report”) covering traffic, revenue, operating cost, capital costs and resulting coverage ratio forecasts related to the development of New Terminal One (NTO) at John F. Kennedy International Airport (JFK) in Queens, New York. Construction of NTO began in the summer of 2022. The Lease with the Port Authority of New York and New Jersey (PANYNJ, PA, or the “Port Authority”) is scheduled to terminate on December 30, 2060, unless earlier terminated in accordance with the terms thereof.

This Report outlines the assumptions, analysis, findings and forecasts as reviewed and evaluated by Steer for the NTO project.

- **NTO Project Background:** Chapter 1 provides an overview of the NTO project, including the Project Sponsors, and plan for design and construction phasing. Note that the Project has four phases: the scope of this report is for Phase A only, which is the scope covered in the “Base Case” forecast.
- **New York and JFK Socioeconomic and Air Traffic Background:** Chapter 2, Chapter 3 and Chapter 4 provides a market analysis and historic air traffic analysis of the New York region and JFK airport.
- **JFK and NTO Traffic Forecasts:** Chapter 5 and Chapter 6 present the independent air traffic demand projections by Steer, starting with a short- and long-term forecast for JFK, followed by forecasts for NTO.
- **NTO Financial Forecasts:** Projected traffic growth in Chapter 6 feeds into the revenue, cost and total obligation coverage forecasts. These financial chapters consist of:
  - Steer aeronautical revenue forecasts, or revenue generated from providing services to airline tenants (Chapter 7);
  - Steer non-aeronautical revenue forecasts, such as revenue generated from duty-free and concessions, based on an agreement with Unibail-Rodamco-Westfield (URW) (Chapter 8);
  - Steer operational expenditure forecasts for individual cost centers with key inputs from various technical advisors (Chapter 9); and
  - The financial summary providing an overview of the capital costs provided by the Operator, debt provision and financial forecasts for total service obligation coverage (Chapter 10).

In addition to a Base Case forecast, Steer also conducted four traffic and financial sensitivity cases with various impacts relative to the Base Case forecast. A summary of the cases is described in Table 0.1.

**Table 0.1: Summary sensitivities**

Sensitivity type	Name	Summary impact (relative to Base Case)
Traffic	Traffic Sensitivity	5% reduction in NTO enplanements
Aeronautical Revenue (CPE)	CPE Downside	5% reduction in starting CPE
	CPE Upside	5% increase in starting CPE
Operating Expenditure	O&M Sensitivity	5% increase on O&M expenses

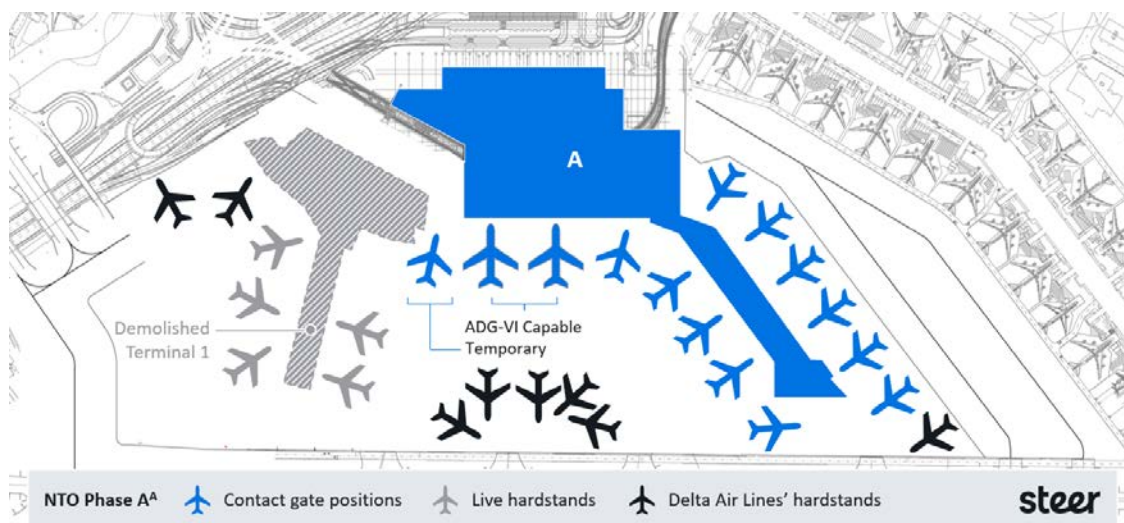
Source: Steer analysis

Key findings are discussed in the following Executive Summary. Steer recommends the review of this document in its entirety.

## New Terminal One project background

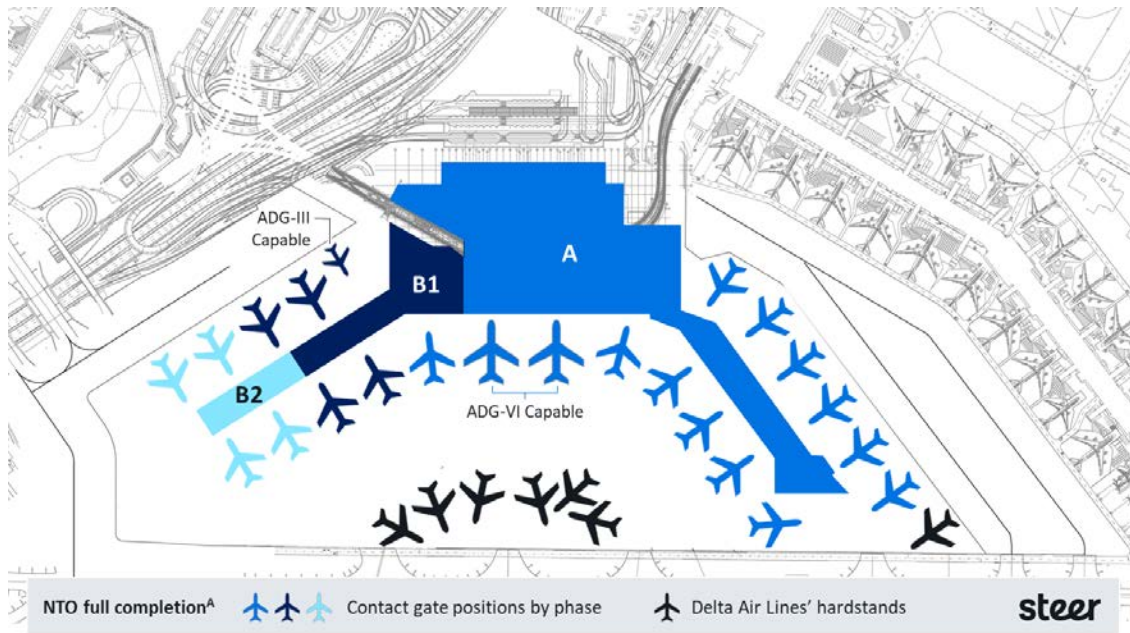
### Project overview

JFK is a large hub commercial service airport serving New York City and the surrounding region. The NTO project is the development of a new, all-international terminal at JFK as part of a broader redevelopment program to replace aging terminals across the airport. NTO will help facilitate continued long-term growth of air traffic at JFK airport. Phase A of NTO includes 14 contact gates and five live hardstands, with subsequent expansions facilitating long-term growth in demand. Construction of Phase A began in summer 2022 and NTO is expected to open in June 2026. Figure 0.1 illustrates the initial Phase A, the focus for this report and the Series 2024 Bonds. Figure 0.2 illustrates the complete build out of NTO through phase B2.

**Figure 0.1: NTO Phase A**

<sup>A</sup> Figure is for illustrative purposes only and may be subject to further changes.

Source: AECOM Tishman, Steer analysis

**Figure 0.2: NTO Phase A, Phase B1 and Phase B2**

<sup>A</sup> Figure is for illustrative purposes only and may be subject to further changes. Potential expansion beyond Phase B2 is subject to further discussion and agreement between JFK NTO LLC and the PANYNJ.

Source: AECOM Tishman, Steer analysis

NTO is being developed by a consortium of Project Sponsors comprised of Ferrovial Airports, JLC Infrastructure, Ullico and Carlyle. Ferrovial Airports, an infrastructure developer and airport operator, is the lead Project Sponsor and brings global best practices in airport operations to NTO. The other Project Sponsors all bring experience with complex infrastructure development and management as well as familiarity with the New York market.

The PANYNJ is the lessor under JFK NTO LLC's lease and will have responsibility for overall airport management including the airfield, central roadways, and other core facilities across the airport. The lease defines the PANYNJ's share in revenue generated by NTO through various rental structures as well as other key service requirements.

NTO will provide facilities to international passengers served by a mix of international, non-U.S. carriers at JFK airport. Given that NTO will replace the existing 10-gate Terminal 1 with a new modern facility, many of the airlines operating at that existing facility are expected to be part of the user base for NTO. Delta Air Lines took over the use of three gates at Terminal 4 which were previously used as common-use international gates. This has increased the need for NTO's gates. As such, the 14 contact gates in Phase A are intended to replace the 10 gates at the existing Terminal 1 and the three common-use gates at Terminal 4 which are now used by Delta Air Lines. The exact mix of airline users is subject to individual commercial discussions that are expected to take place in the years leading up to project completion.

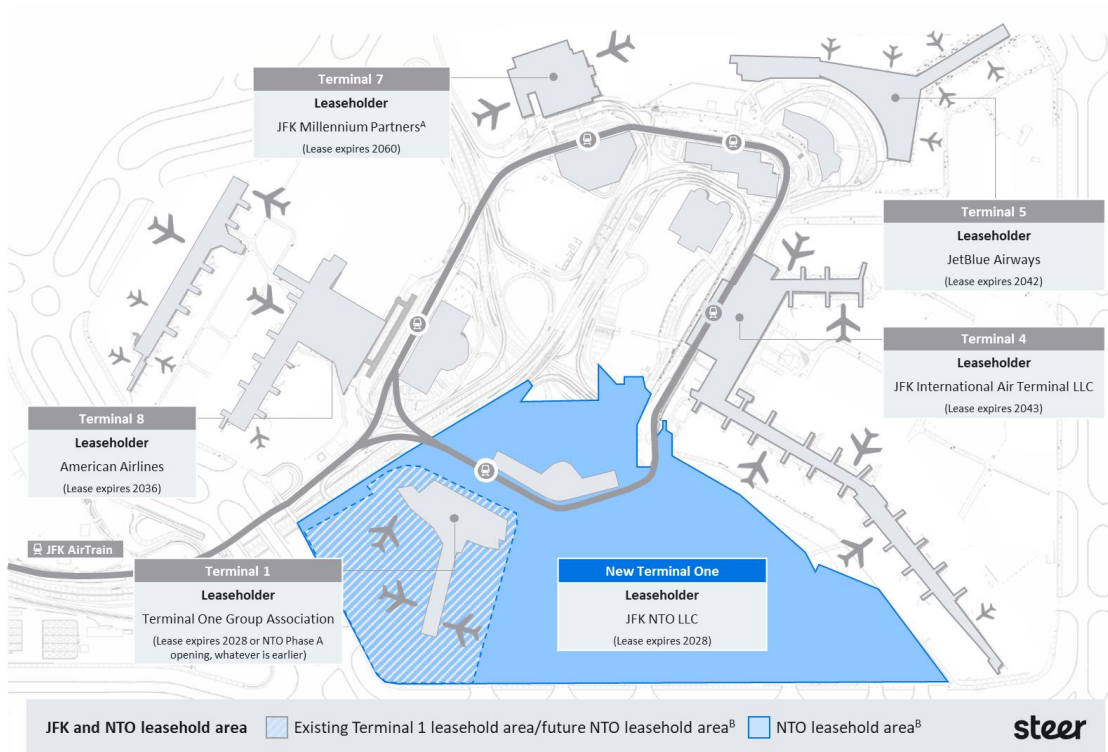
The Operator has seven committed airline agreements with Air France, Etihad Airways, KLM Royal Dutch Airlines ("KLM"), Korean Air, LOT Polish Airlines, EVA Airways and Air Serbia for periods of

between 10 and 25 years. Air France, Korean Air, EVA Airways and Air Serbia will move from the existing Terminal 1 to NTO, while KLM, LOT Polish Airlines and Etihad Airways will move to NTO from other existing terminal facilities at JFK. The agreements provide validation that the Operator's business model and pricing are within market expectations.

### **Role of JFK and the New Terminal One**

JFK serves as one of three large airports in the New York City metropolitan region, along with Newark Liberty International Airport in Newark, New Jersey and LaGuardia Airport in Queens, New York. JFK is the largest airport in the region, serving 31.3 million enplanements in 2019 – a record high for the airport. In 2019 JFK was the sixth busiest airport in the country and the 20th busiest in the world based on passenger traffic. JFK continued to be the country's largest international gateway airport, with 17.2 million international enplanements, far outpacing Los Angeles International which had the second most international enplanements in 2019. Following the impacts of COVID-19, traffic at JFK decreased to 8.3 million enplanements in 2020, of which 4.2 million were international. This increased to over 31 million enplanements in 2023, of which over 17.5 million were international. JFK has remained the largest airport in the New York region throughout this period.

NTO is expected to operate as one of four terminal complexes at JFK when it opens in 2026. While JFK currently has five terminals in operation, a coordinated redevelopment program by the PANYNJ – of which NTO is a part – is expected to consolidate operations into four larger terminal complexes. A map of the existing terminal layout and a table summarizing the expected capacity changes by 2028 and 2032 are shown in Figure 0.3 and Table 0.2. Among the six JFK terminals in operation in 2019, the existing Terminal 1 served 13% of the airport's passenger traffic.

**Figure 0.3: JFK leaseholder map 2023**

<sup>A</sup> JFK Millennium Partners is also the leaseholder for the former Terminal 6 site, located in between Terminal 5 and Terminal 7. This is to enable the construction of the first phase of new Terminal 6. Upon the first phase opening of the new Terminal 6, Terminal 7 will be demolished to enable the construction of the second phase expansion of Terminal 6.

<sup>B</sup> Leasehold areas in map are approximate – the figure is for illustrative purposes only.

Source: JFK NTO LLC, Port Authority of New York and New Jersey *A New JFK: Redevelopment Projects* (webpage), Steer analysis

**Table 0.2: JFK capacity plan 2019-2032**

Number of aircraft positions (assuming completion of NTO Phase A only)

Terminal(s)	Type	2019	2028	2032
Existing Terminal 1 (2019) NTO (2028, 2032)	Widebody	10	14	14
	Narrowbody	-	-	-
	Regional jet	-	-	-
	Live hardstands	-	5	5
	<b>Subtotal</b>	<b>10</b>	<b>19</b>	<b>19</b>
Terminals 2 and 4 (2019) Terminal 4 (2028, 2032)	Widebody	21	19	22
	Narrowbody	15	24	24
	Regional jet	11	1	1
	Live hardstands	3	3	-
	<b>Subtotal</b>	<b>50</b>	<b>47</b>	<b>47</b>
Terminals 5 and 7 (2019) Terminal 6 and 7 (2028, 2032)	Widebody	6	8	9
	Narrowbody	35	30	30
	Regional jet	-	-	-
	<b>Subtotal</b>	<b>41</b>	<b>38</b>	<b>39</b>
Terminal 8	Widebody	8	14	14
	Narrowbody	21	17	17
	Regional jet	6	-	-
	<b>Subtotal</b>	<b>35</b>	<b>31</b>	<b>31</b>
<b>Totals</b>	<b>All types</b>	<b>136</b>	<b>135</b>	<b>136</b>

Source: JFK NTO LLC, Steer analysis

## Air traffic forecasts

Steer developed a Base Case traffic forecast for JFK based on a short-term outlook of the ongoing recovery from COVID-19 and a long-term demand forecast driven by global economic projections. The Base Case forecast assumes traffic levels at JFK will surpass 2019 levels in 2024.

The Steer forecast for NTO is based on NTO's expected role of primarily providing replacement capacity for the gates being lost at the existing Terminal 1 as well as common-use gates that have been repurposed for Delta Air Lines at Terminal 4, providing a foundation of traffic at NTO.

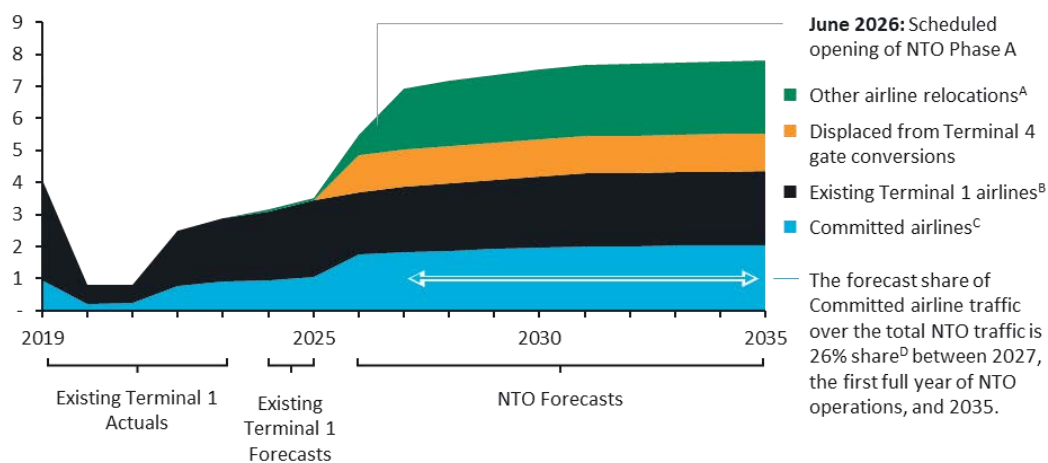
Underlying demand for NTO is based on the demand for air travel at JFK and the supply of terminal space around the airport. Steer has estimated the capacity of each terminal around JFK, including consideration of the planned closures and expansions of terminal facilities over the following six to ten years, as outlined in the Sponsor's lease. The Base Case forecast assumes utilization of this terminal capacity will be consistent with historical usage rates by terminal and

will maintain balance across the airport throughout the forecast period. Given that JFK faced gate capacity challenges pre-COVID-19, the airport is expected to face similar challenges once traffic returns to and surpasses 2019 levels and thus the airport needs additional gate capacity. Once NTO begins facing facility constraints, it is assumed to experience only minimal, constrained growth.

A summary of the airline groups expected to make-up the NTO forecast can be seen in Figure 0.4. With the committed airline agreements, the Operator has a committed 26% share of the forecast traffic between 2027, the full year of operations, and 2035.<sup>1</sup>

**Figure 0.4: NTO Phase A Base Case forecast by airline group 2019-2035**

Million enplanements



<sup>A</sup> From 2026, these are based on an assumed mix of airlines relocating to NTO from other JFK terminals to maintain a “normalized” utilization. Refer to Figure 0.5 for more information.

<sup>B</sup> Between 2019 and 2025, this includes all airlines that have or are expected to continue to operate at the existing Terminal 1 except Air France, Korean Air, EVA Airways and Air Serbia, which have already signed airline commitments with the Operator and have been accounted for under the Committed airlines category. These airlines are assumed to transfer operations over to NTO upon the opening of Phase A in June 2026.

<sup>C</sup> Includes Air France, Korean Air, EVA Airways, and Air Serbia which are existing Terminal 1 tenants, and Etihad Airways, KLM and LOT Polish Airlines starting in 2026 upon the opening of NTO.

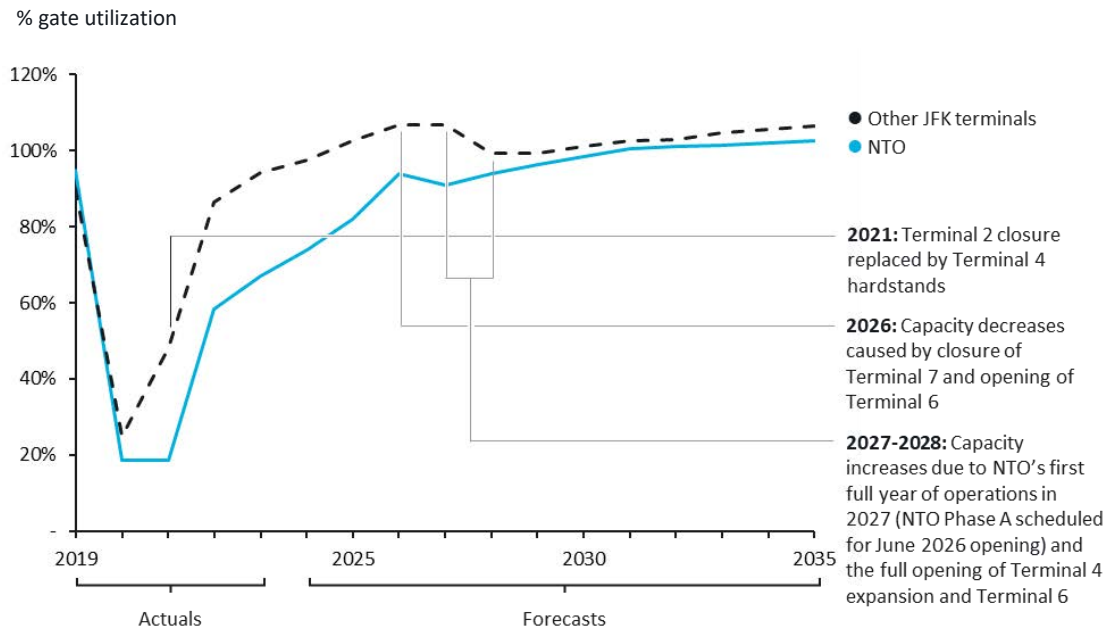
<sup>D</sup> The forecast committed airline share of 26% between 2027 and 2035 includes the carriers listed in Note C and excludes Asiana Airlines, which has announced a merger with Korean Air. This merger is currently under review by the United States. If Asiana Airlines is included as a committed carrier, the forecast committed airline share would increase to 28%.

Source: Official Airline Guide, Terminal One Group Association, Steer analysis and forecasts

<sup>1</sup> The forecast committed airline share of 26% between 2027 and 2035 includes Air France, Air Serbia, Etihad Airways, EVA Airways, KLM, Korean Air, LOT Polish Airlines. Note that Korean Air has announced a merger with Asiana Airlines, subject to regulatory approval of the United States. According to Korean Air, the following regulators have approved or have concluded its review of the Korean Air-Asiana Airlines merger: Australia, China, the European Union, Japan, Korea, Malaysia, Singapore, Turkey, Taiwan, Thailand, the Philippines, United Kingdom, and Vietnam. If Asiana Airlines is included as a committed carrier, the forecast committed airline share would increase to 28%.

The forecast for NTO assumes “normalization” of utilization across the different JFK terminals. Figure 0.5 illustrates the utilization (forecast demand over assumed capacity) at other JFK terminals compared with the existing Terminal 1 and NTO. Post-COVID-19 recovery, the utilization of all terminals is forecast to return to or exceed 2019 levels given the reduced capacity at the airport during the 2025 to 2027 period. This is expected to result in significant capacity pressure that drives demand for available gates across the airport, and thus contributes to our assumption of growth at NTO upon opening new capacity. Following the opening of terminal expansion projects scheduled in 2028, other terminals are forecast to have utilization levels above or in line with NTO, with the airport overall operating above 95% of total gate utilization. This capacity utilization assessment accounts for the peak and off-peak nature of flight schedules at JFK and is based on acute challenges during peak and near-peak times of demand. At JFK, this is most of the afternoon and evening. Gate capacity is likely to be less utilized during the late evening and mornings, though activity continues at the airport throughout the day. These high levels of gate utilization across the airport are expected to be the driving factor in airline relocation decisions.

**Figure 0.5: NTO gate utilization comparison 2019-2035**



Source: JFK NTO LLC, Terminal One Group Association, Steer analysis and forecasts

In addition to a Base Case traffic forecast, Steer also developed a Traffic Sensitivity Case that assumes a 5% reduction in enplanements. A comparison can be found in Table 0.3.

**Table 0.3: NTO Phase A Base Case and Traffic Sensitivity Case comparison 2019-2035**

Year	NTO Phase A Base Case (Million Enplanements)	Traffic Sensitivity Case (Million Enplanements)	Difference (% Change)
2026 <sup>A</sup>	5.49	5.22	-5.0%
2027	6.94	6.60	-5.0%
2028	7.16	6.80	-5.0%
2029	7.34	6.97	-5.0%
2030	7.52	7.14	-5.0%
2035	7.83	7.43	-5.0%

<sup>A</sup> NTO Phase A is scheduled to open June 2026.

Source: Steer analysis and forecasts

## Revenue forecasts

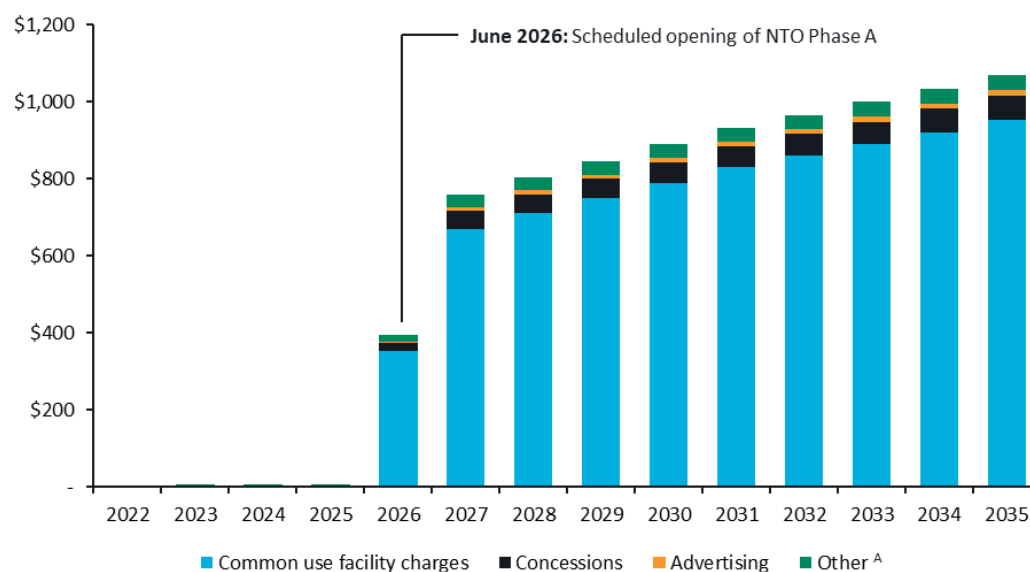
The Operator is expected to generate most of its revenue from passenger charges paid by airline users of NTO for their use of the facility. The Operator anticipates entering into Committed Airline User Agreements with commercial air carriers to operate at NTO. These airline agreements will include multi-year commitments to the facility. Each contract would establish the signatory airline's cost per enplanement (CPE) fees. At time of writing, the Operator has agreed to long-term contracts with seven carriers: Air France, Etihad Airways, KLM, Korean Air, LOT Polish Airlines, EVA Airways and Air Serbia and continues with active discussions with many other airlines.

The term of these long-term user agreements ranges from 10 to 25 years following the opening of Phase A. The Committed Airline Use Agreements all stipulate the airlines starting CPE with an escalation of CPI+1% per year. These Committed Airline Use Agreements also set the schedule of exclusive-use space rent, which varies by type of space. Some of these long-term users will receive a discount in the form of a rebate on their passenger fees which will be paid out after debt service; this rebate reflects these airlines' commitment to serve JFK through NTO for the duration of their use agreements.

The Operator will generate additional revenues via terminal concessions, as per the concession management agreement with Unibail-Rodamco-Westfield (URW), and advertising as well as the rental of office and lounge space, rental of aircraft parking positions to Delta Air Lines and various chargebacks for usage costs from concessionaires and airline users. Certain revenue streams are subject to revenue sharing agreements with the PANYNJ. Over the life of the concession (2026-2060) approximately 90% of total revenues after revenue sharing are expected to be generated from common use facility charges expressed as CPE, which are not subject to revenue sharing with the PANYNJ. A summary of the expected revenue is shown in Figure 0.6.

**Figure 0.6: NTO Base Case revenue forecast 2022-2035**

Million revenues (\$ nominal)



<sup>A</sup> "Other" includes Hardstand Rent, Exclusive Space Rent and non-aeronautical revenues not shown in the legend. All figures are after revenue sharing with the PANYNJ.

Source: Steer forecasts

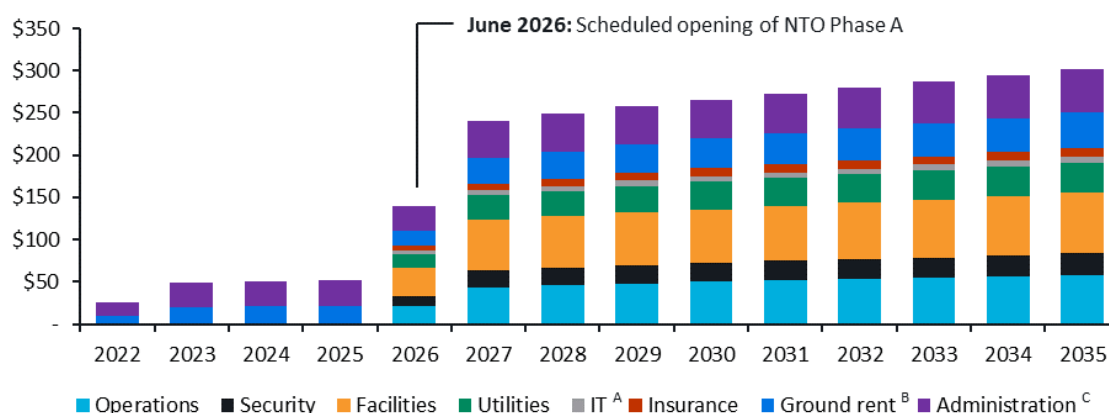
In addition to a Base Case forecast, Steer also developed two sensitivities to assess a potential range in CPE of  $\pm 5\%$  the Base Case CPE (CPE Downside Sensitivity Case, and a CPE Upside Sensitivity Case). This is further discussed in Section 7.2.

## Operating expenditure forecasts

Future operating costs have been modeled through a review of historical operating costs at the existing Terminal 1 between 2015 and 2020, benchmarked to comparable facilities at JFK and elsewhere, as well as detailed modeling and planning of certain major cost drivers such as energy and utilities, staffing and administration and facility maintenance. A summary of future operating costs is outlined in Figure 0.7. In addition to a Base Case forecast, Steer also developed an O&M Sensitivity Case to model the impacts of a 5% increase in operating costs. This is further discussed in Section 9.2.

**Figure 0.7: NTO Base Case operating expenditure forecast 2022-2035**

Millions operating costs (\$ nominal)

<sup>A</sup> "IT" stands for Information Technology.<sup>B</sup> "Ground rent" refers to Ground Rent and First Additional Rent payable to the PANYNJ.<sup>C</sup> "Administration" includes the following expenses: General & Administration, Labor, Project Delivery, URW Fee and the Management Services Agreement (MSA). For further information, please refer to Section 9.1.1, Terminal administration. Source: Steer forecasts

## Capital expenditure forecasts

The construction costs for NTO Phase A are capped at \$5.7 billion. Design and construction of NTO are being undertaken by Tishman Construction Corporation of New York under a Guaranteed Maximum Price (GMP) Design-Build Contract. Further details can be found in Chapter 10.

## Plan of finance

### Overview

The Operator has obtained funding commitments in an amount that is sufficient to fully cover the development costs of Phase A, estimated at approximately \$8.4 billion. As presented in Table 10.2, construction costs account for \$5.71 billion of total project uses, with approximately \$1.09 billion allocated to financing expenses (interest and fees during construction) associated with the execution of the Plan of Finance provided by the Operator. Remaining uses include \$0.58 billion allocated to reserve deposits prior to DBO and \$1.03 billion in closing costs, prefunded costs and fees.

As of May 1, 2024, the Operator has a \$252 million drawn balance from the term loan facilities. The Operator expects to use the proceeds of the Series 2024 Bonds to (a) fully refinance the drawn term loan facilities; and (b) fund future project costs.

### Cash flows and debt service

The Operator will use project revenues, including payments made by airlines, providers of concession goods and services and other commercial users, to cover its obligations. The Operator can defer certain PANYNJ obligations until 2035 per the Lease Agreement. These obligations include the PANYNJ Revenue Share and Second Additional Rent. MSA fees are also deferrable.

Assuming debt issuance is in line with the plan of finance, the average annual Debt Service Coverage Ratio (DSCR)<sup>2</sup> for the Base Case (2026-2035) is 2.32x, with a low of 2.15x in 2028. Table 0.4 provides the DSCR of the Base Case forecast and the four sensitivity cases. Throughout the project development period, Steer has been updating forecasts and monitoring key financial metrics including the DSCR and Total Obligation Coverage Ratio (TOCR). The financial ratios projected in this report reflect Steer's analysis as of May 2024 and incorporate analysis of the latest information available to us.

**Table 0.4: NTO Base Case and sensitivity cases' DSCR comparison 2026-2055**

Debt service coverage ratio

Year	Base Case	Traffic Sensitivity <sup>A</sup>	CPE Downside Sensitivity <sup>B</sup>	CPE Upside Sensitivity <sup>C</sup>	O&M Sensitivity <sup>D</sup>
2026 <sup>E</sup>	2.25x	2.14x	2.18x	2.32x	2.24x
2027	2.17x	2.04x	2.08x	2.25x	2.13x
2028	2.15x	2.01x	2.06x	2.24x	2.12x
2029	2.19x	2.04x	2.09x	2.28x	2.15x
2030	2.28x	2.13x	2.18x	2.38x	2.24x
2031	2.30x	2.14x	2.19x	2.40x	2.26x
2032	2.33x	2.17x	2.22x	2.44x	2.29x
2033	2.42x	2.25x	2.31x	2.53x	2.38x
2034	2.51x	2.34x	2.39x	2.63x	2.47x
2035	2.61x	2.43x	2.49x	2.73x	2.57x
2040	2.91x	2.72x	2.77x	3.06x	2.87x
2045	3.10x	2.90x	2.92x	3.29x	3.06x
2050	2.67x	2.50x	2.52x	2.83x	2.64x
2055	3.69x	3.45x	3.48x	3.91x	3.65x

<sup>A</sup> Based on a 5% reduction in NTO enplanements, relative to the Base Case forecast.

<sup>B</sup> Based on a 5% reduction in starting CPE, relative to the Base Case forecast.

<sup>C</sup> Based on a 5% increase in starting CPE, relative to the Base Case forecast.

<sup>D</sup> Based on a 5% reduction in O&M expenses relative to the Base Case forecast.

<sup>E</sup> Reflects partial year data beginning from the assumed Date of Beneficial Occupancy (DBO) of June 2026.

Source: Steer forecasts

<sup>2</sup> Debt Service Coverage Ratio (DSCR) is defined in this document as the ratio of [D] divided by [F] where:

- Total Project Revenues [A]
- Other Sources for Payment of Debt Service [B]
- Total Obligations Senior to Debt Service [C]
- Net Remaining Revenue [D] = [A]+[B]-[C]
- Total Debt Service [F]
- Debt Service Coverage Ratio [G] = [D]/[F]

Refer to Chapter 10 for further details.

The TOCR<sup>3</sup> consistent with the Common Terms Agreement, is forecast to average at 2.00x between 2026 and 2035 for the Base Case forecast, with a low of 1.88x in 2027. Table 0.5 provides the DSCR of the Base Case forecast and the four sensitivity cases.

**Table 0.5: NTO Base Case and sensitivity cases' TOCR comparison 2026-2055**

Total obligation coverage ratio

Year	Base Case	Traffic Sensitivity <sup>A</sup>	CPE Downside Sensitivity <sup>B</sup>	CPE Upside Sensitivity <sup>C</sup>	O&M Sensitivity <sup>D</sup>
2026 <sup>E</sup>	1.90x	1.78x	1.83x	1.97x	1.88x
2027	1.88x	1.75x	1.80x	1.97x	1.85x
2028	1.92x	1.78x	1.83x	2.01x	1.89x
2029	1.93x	1.79x	1.83x	2.03x	1.89x
2030	1.99x	1.84x	1.89x	2.09x	1.96x
2031	1.95x	1.79x	1.84x	2.05x	1.91x
2032	2.01x	1.85x	1.91x	2.12x	1.98x
2033	2.16x	1.99x	2.05x	2.27x	2.12x
2034	2.14x	1.97x	2.03x	2.26x	2.10x
2035	2.16x	1.98x	2.04x	2.28x	2.12x
2040	2.49x	2.30x	2.35x	2.64x	2.45x
2045	2.58x	2.38x	2.40x	2.76x	2.54x
2050	2.36x	2.19x	2.21x	2.52x	2.33x
2055	2.64x	2.40x	2.42x	2.85x	2.59x

<sup>A</sup> Based on a 5% reduction in NTO enplanements, relative to the Base Case forecast.

<sup>B</sup> Based on a 5% reduction in starting CPE, relative to the Base Case forecast.

<sup>C</sup> Based on a 5% increase in starting CPE, relative to the Base Case forecast.

<sup>D</sup> Based on a 5% reduction in O&M expenses relative to the Base Case forecast.

<sup>E</sup> Reflects partial year data beginning from the assumed Date of Beneficial Occupancy (DBO) of June 2026.

Source: Steer forecasts

<sup>3</sup> Consistent with the Common Terms Agreement, Total Obligations Coverage Ratio (TOCR) is defined in this document as the ratio of  $([D] - [E])$  divided by  $[F]$ , where:

- Net Remaining Revenue  $[D] = [A] + [B] - [C]$
- Total Other TOCR Obligations  $[E]$
- Total Debt Service  $[F]$
- Total Obligation Coverage Ratio  $[H] = ([D] - [E]) / [F]$

Refer to Chapter 10 for further details.

# 1 The New Terminal One

John F. Kennedy International Airport (JFK) is the primary international gateway airport for the New York region. Prior to March 2020, JFK was straining to accommodate traffic demand. As air traffic has recovered to pre-pandemic levels, strains have emerged once again on airport infrastructure. The New York region needs additional airport infrastructure to accommodate expected growth in air traffic following the industry recovery from COVID-19.

- The NTO project is part of a broader Vision Plan to transform JFK, validating its importance to the community and the PANYNJ.
- Despite increased traffic in the decades preceding 2020, investments to upgrade and expand JFK have been limited over the last 15 years. Projects currently underway at JFK, including the NTO project, address the need for new gate and terminal capacity to meet growth forecasts.
- NTO will be built in phases to align with expected traffic growth, with Phase A, a 14-gate terminal, opening in 2026. This will replace the existing 10-gate Terminal 1 and three widebody gates at Terminal 4 that have been converted for exclusive use by Delta Air Lines.

This chapter provides a summary of the NTO project.

## 1.1 Introduction

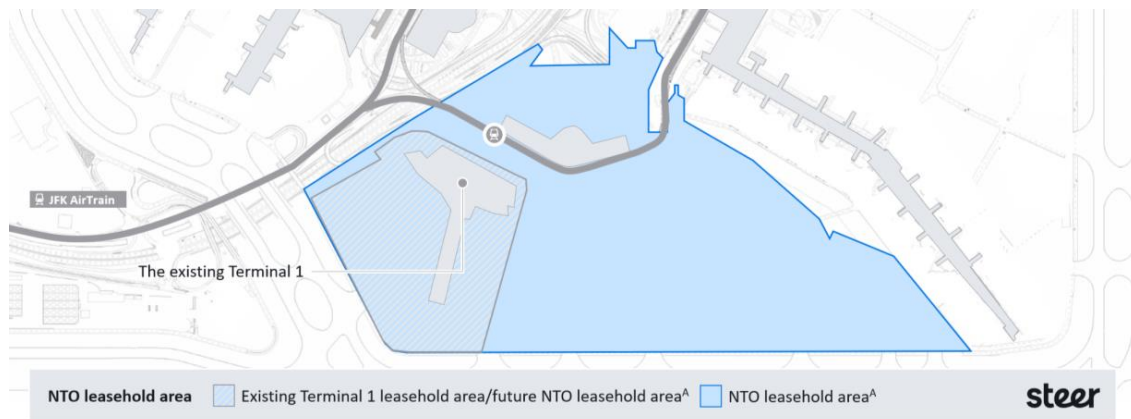
NTO is a critical component of a broader vision to transform JFK and build on the airport's role as the largest international gateway airport in the United States.

### 1.1.1 Project Overview

NTO is a new terminal facility currently under construction at John F. Kennedy International Airport in New York City. The project will be an international-only facility with four planned phases of development. The initial Phase A consists of 14 widebody gates and five hardstands which can be used for passenger boarding and deplaning. Subsequent phases of development are expected to increase total capacity first to 19, then 23 gates, with the ability to add an additional four widebody gates (for a total of 27 gates) based on future demand.<sup>4</sup>

NTO will be constructed within the southern portion of the airport which currently contains the existing Terminal 1 and in the past included Terminals 2 and 3. Terminal 2 was decommissioned in 2023 to accommodate the construction of NTO while the existing Terminal 1 will remain operational until Phase A of NTO is open, maintaining sufficient gate capacity across the airport during construction. The map in Figure 1.1 illustrates the NTO leasehold area, which totals 133.72 acres, inclusive of the 37.40 acres existing Terminal 1 leasehold area.

**Figure 1.1: The existing Terminal 1 and NTO leasehold areas**



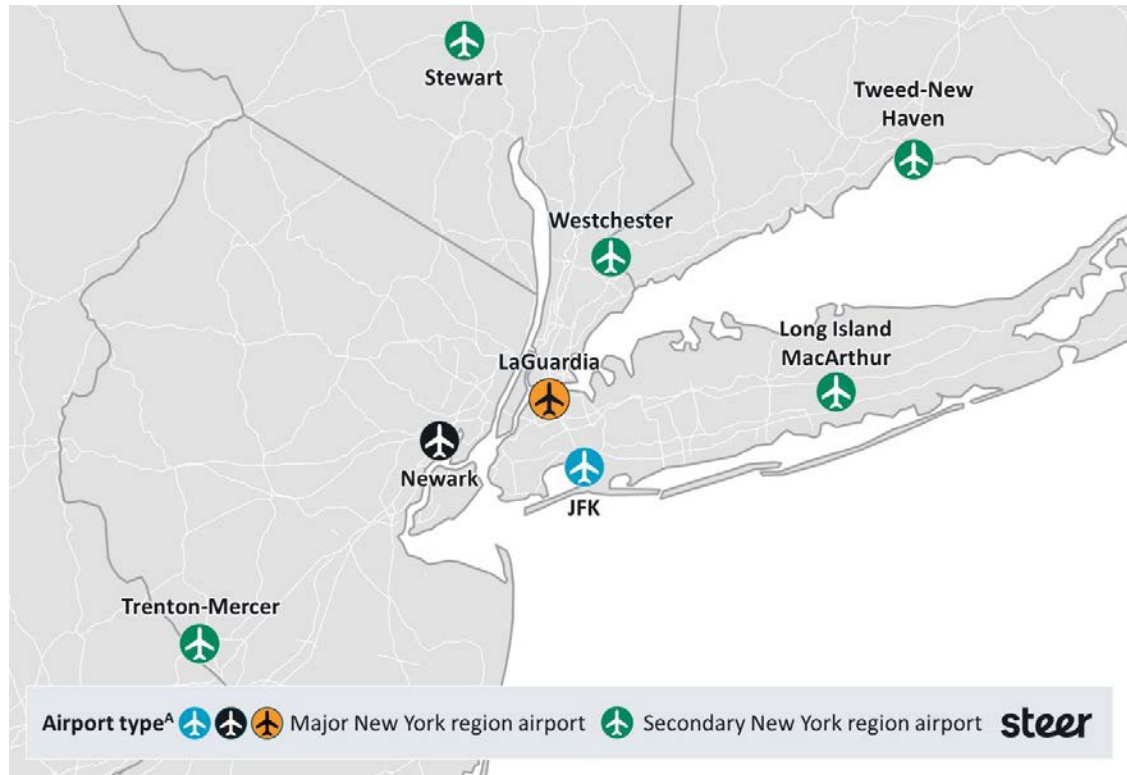
<sup>A</sup> The leasehold areas illustrated are approximate – the figure is for illustrative purposes only.  
Source: JFK NTO LLC, Steer analysis

<sup>4</sup> The additional four gates subject to further agreement between JFK NTO LLC and the PANYNJ. This report focuses on the completion of Phase A only. Gate counts and hardstands described do not include parking-only hardstands which are also included at the NTO site.

### 1.1.2 New York JFK airport

JFK is in Queens County, New York, approximately 17 miles southeast of Midtown Manhattan. The airport is operated by the PANYNJ, with terminals leased to individual airlines or terminal operators. The PANYNJ leases the land on which JFK is located from the City of New York, under the Basic Lease expiring at the end of 2060. Further discussion on the airports that serve the New York region can be found in Chapter 2 and Chapter 3.

Figure 1.2: Major and secondary New York region airports map



Note: General aviation, airstrips and other airports are not illustrated.

Source: Steer

Chapter 3 examines the New York region traffic and airports while Chapter 4 provides an overview of terminal infrastructure, historical traffic and operating conditions of JFK in further detail.

### 1.1.3 History of the JFK Vision Plan

In January 2017, *A Vision Plan to Transform JFK Airport* was announced.<sup>5</sup> The plan included three core elements:

- Transform JFK into a unified, interconnected, world-class airport;
- Address key bottlenecks in road access to and from the airport; and
- Expand rail mass transit to accommodate future projected passenger growth.

The plan was developed in response to growing passenger traffic at JFK, where passenger numbers more than doubled between 2002 and 2019. In 2017, the PANYNJ forecast 50 million enplanements by 2050<sup>6</sup>, highlighting the need for facility expansion. When the Vision Plan was announced, JFK had not had any significant increase in gate or terminal capacity since 2008, when Terminal 8 was redeveloped by American Airlines. Since then, JFK had only three smaller expansion projects:

- Nine-gate expansion at Terminal 4 in 2013;
- Six-gate expansion at Terminal 5 in 2014 to accommodate JetBlue Airways' growth; and
- Regional jet extension at Terminal 4 in 2015, which accommodates small narrowbody aircraft for Delta Air Lines.

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*The vision for JFK calls for the creation of a modernized airport that transforms the passenger experience.*

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### 1.1.4 The New Terminal One

A consortium of Project Sponsors, led by Carlyle, JLC Infrastructure and Ullico, formed in 2017 to pursue a proposal to redevelop the existing Terminal 1 and the former Terminal 2 and Terminal 3 sites (referred to by the PANYNJ as the "South Terminal Development"). In October 2018, the PANYNJ, announced the selection of the Project Sponsors' proposal as the preferred proposal for the South Terminal Development<sup>7</sup>. Following extensive planning and design development through 2019, 2020 and 2021, the PANYNJ executed a lease with JFK NTO LLC in June 2022. The Project Sponsor consortium has established a legal structure to manage the development and operation of NTO. Details of the contractual structure can be found in Section 1.3.

In connection with the planning effort to redevelop the Airport, the Port Authority was authorized by its Board of Commissioners to enter exclusive negotiations with two groups of interested parties for the development of two new terminal complexes at the Airport. Pursuant to such negotiations, in November 2019, the Board of Commissioners authorized the Port Authority to

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<sup>5</sup> Source: State of New York, Office of the Governor; Steer analysis

<sup>6</sup> Source: Port Authority of New York and New Jersey *Aviation Demand Forecasts, John F. Kennedy International Airport, December 2017*

<sup>7</sup> Source: Port Authority of New York and New Jersey *Governor Cuomo Announces \$13 Billion Plan to Transform JFK Into a World-Class 21st Century Airport* (Press Release)

enter into a lease agreement with a consortium of airlines operating the existing Terminal 1 and certain financial partners for the development of the new terminal facilities<sup>8</sup>. Those lease agreement negotiations slowed in the beginning of 2020, as that consortium took time to carefully assess the financial markets and the impact of the COVID-19 pandemic on economic conditions and aviation activity. After such assessment was made, the negotiations were no longer pursued.

In 2021, the Port Authority and a sponsor group consisting of Carlyle, JLC and Ullico (as hereinafter defined) entered negotiations for the New Terminal Facilities development. Afterwards, in December 2021, the Board of Commissioners authorized the Port Authority to enter into a lease agreement with such sponsor group<sup>9</sup>. In June 2022, the Port Authority approved Ferrovial (as hereinafter defined) as the new lead investor of the sponsor group and the Lessee and the Port Authority entered into the Lease on the effective date.<sup>10</sup>

Construction of the NTO project began in the summer of 2022, with Phase A due to open to the public in 2026.

The NTO project includes:

- Demolition of the existing Terminal 1,<sup>11</sup> Terminal 2 and Green Garage;
- Construction of NTO; and
- Construction of on-site utilities for NTO operations.

The 14 contact gates of NTO Phase A will replace 10 gates at the existing Terminal 1 and three gates at Terminal 4 which have recently been converted from common-use international gates to narrowbody gates for Delta Air Lines. Phase A will also include five live hardstands which will be used to accommodate airlines displaced from other terminal projects around JFK and for accommodating long-term traffic growth of current and future users.

Subsequent NTO phases of development would accommodate additional international, long-haul traffic demand. As the primary international gateway to the New York region, JFK has specific infrastructure requirements so facilities can accommodate widebody aircraft and serve significant volumes of international travelers.

NTO aims to meet existing and future demand for widebody gate capacity at JFK. NTO will enable operational improvements for airlines, reduce delays at the airport and improve passenger experience with new passenger facilities and services.

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<sup>8</sup>Source: Port Authority of New York and New Jersey *Port Authority Board Authorizes Proposed Lease for the New Terminal One as Part of the \$13 Billion Transformation of JFK International Airport* (Press Release)

<sup>9</sup> Source: Meetings of the Board of Commissioners and Board Committee Meetings – Thursday, December 16, 2021

<sup>10</sup> Source: Port Authority of New York and New Jersey *Governor Hochul Announces Construction of a \$9.5 Billion New Terminal One at JFK Airport Will Begin This Summer as the Final Pieces of the Project Are in Place* (Press Release)

<sup>11</sup> The demolition of the existing Terminal 1 is not required for Phase A of NTO to open and therefore may not be completed by 2026.

The construction of NTO Phase A began on the former Terminal 3 site, which was previously being used for aircraft parking, and on the site of the Green Garage. Additionally, the former Terminal 2 site has been included in the NTO leasehold. The former Terminal 2 has been demolished and construction of NTO is ongoing with both the headhouse and East Pier.

When Phase A is ready for opening in 2026, a mix of airlines are expected to relocate to NTO including some of the airlines operating at the existing Terminal 1 as well as airlines constrained by limited gate capacity at other JFK terminals. Thereafter, the existing Terminal 1 building will be demolished and the NTO facility could be expanded in its place through a phased expansion starting with Phase B1, followed by Phase B2. While Phases B1 and B2 are expected to be completed, subject to trigger provisions in the PANYNJ lease as outlined further in Section 1.4.4, these phases are not assumed to be completed in the scope of this report.

## **1.2 The role of the Port Authority of New York and New Jersey**

The PANYNJ operates JFK and has lease agreements with several airlines and terminal operators who are responsible for operations of individual terminals. JFK NTO LLC has a lease with the PANYNJ.

### **1.2.1 Port Authority of New York and New Jersey background**

The PANYNJ is a bi-state agency created by the states of New York and New Jersey in 1921. The agency is responsible for the management and operation of key transportation infrastructure around the New York City region, including the primary airports serving the region: JFK, Newark Liberty International Airport (“Newark”) and LaGuardia Airport (“LaGuardia”), as well as New York-Stewart International Airport (“Stewart International”), located in Orange County, New York and Teterboro Airport, a general aviation airport in New Jersey.<sup>12</sup> The PANYNJ is also responsible for key infrastructure across other transport modes including bridges, tunnels, seaports, bus terminals and key real estate assets throughout the region.

The PANYNJ is governed by a 12-member board with members appointed by the governors of New York and New Jersey. The PANYNJ’s operating budget is covered by revenues from its portfolio of assets and the agency does not receive tax revenue from either state. This is permitted because the PANYNJ is one of nine airport agencies statutorily exempted from FAA revenue diversion prohibition; this “grandfathering” allows the PANYNJ to use revenue generated at its airports for purposes other than support of its airport capital and operating expenses.

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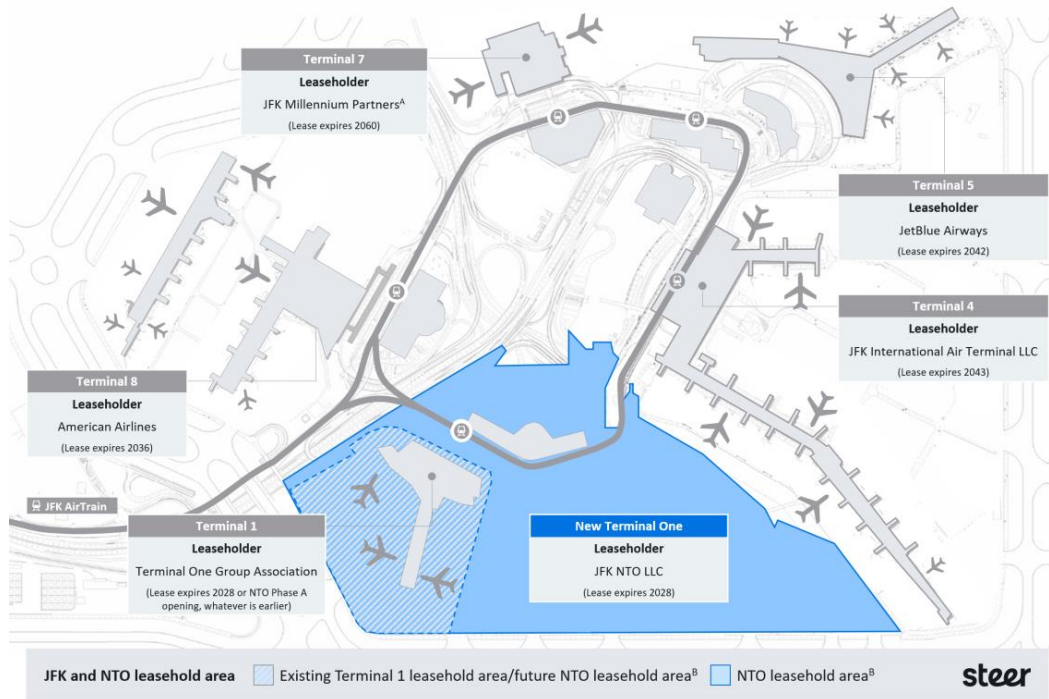
<sup>12</sup> The PANYNJ also provides select management functions at Atlantic City International Airport in Egg Harbor Township, New Jersey. Atlantic City International is owned by the South Jersey Transportation Authority and as of 2021 had only limited service by Spirit Airlines. It is considered outside the New York City region.

### 1.2.2 Lease structure

#### *JFK leases*

The PANYNJ leases JFK from the City of New York (the “City”) under the Basic Lease. In 2021, to help address the impacts of COVID-19 on the airport, the City extended the term of the Basic Lease by ten years to 2060. The PANYNJ maintains the right to sublease portions of JFK to tenants for development. The PANYNJ has historically had eight terminal sites at JFK which have been leased to terminal operators. The current lease holder for the existing Terminal 1 is a consortium of four international airlines, through a limited partnership known as Terminal One Group Association L.P. (TOGA). The TOGA partner airlines originally included Air France, Japan Airlines, Korean Air and Lufthansa. Japan Airlines has since left the consortium and moved their JFK operations to Terminal 8. Since the existing Terminal 1 opened in 1998, TOGA has operated the existing Terminal 1 for use by the founding airlines and for use by other airlines (“contracted airlines”). TOGA and the PANYNJ have agreed to a lease extension to cover the period from 2023 until the opening of NTO Phase A. The existing Terminal 1 will not operate beyond NTO’s opening date, per the Project Sponsors agreement with the PANYNJ.

Figure 1.3 illustrates the current leaseholders of the various JFK terminals, in addition to the future NTO leasehold area. Terminal 4 is leased by JFK International Air Terminal LLC. Terminal 5 is leased by JetBlue Airways. JFK Millennium Partners is the leaseholder for Terminal 7 and is the developer of Terminal 6, with the first phase to be constructed over the site of the former Terminal 6 between the existing Terminal 5 and Terminal 7 and the second phase constructed over the site of existing Terminal 7. Finally, Terminal 8’s leaseholder is American Airlines.

**Figure 1.3: JFK leaseholder map 2023**

<sup>A</sup> JFK Millennium Partners is also the leaseholder for the former Terminal 6 site, located in between Terminal 5 and Terminal 7. This is to enable the construction of the first phase of new Terminal 6. Upon the first phase opening of the new Terminal 6, Terminal 7 will be demolished to enable the construction of the second phase expansion of Terminal 6.

<sup>B</sup> Leasehold areas in map are approximate – the figure is for illustrative purposes only.

Source: JFK NTO LLC, Port Authority of New York and New Jersey *A New JFK: Redevelopment Projects* (webpage), Steer analysis

### *The New Terminal One lease*

The NTO project began with an initial leasehold covering certain portions of the former Terminal 3 site as well as land to the north of the AirTrain including the site of the former Green Garage,<sup>13</sup> with the leasehold having since expanded to include the Terminal 2 site. Terminal 2 has since been demolished to enable the construction of the Headhouse and East Pier. Following the Date of Beneficial Occupancy (DBO) of Phase A, the Operator's lease will expand again to cover the existing Terminal 1 site. Thus, the Operator's ultimate leasehold will include the existing Terminal 1 and the former Terminal 2 and Terminal 3 sites in addition to land north of the AirTrain rail line. The site, ultimately covering a total of 133.72 acres, will be leased until December 2060.

The project's development and operation are governed by a lease between the PANYNJ and a special purpose entity ("JFK NTO LLC"), which is controlled by the Project Sponsors. The lease agreement contains key provisions, including:

- Design and construction of NTO and supporting facilities;
- Operations and maintenance obligations;
- Rents, development fees, reimbursement of costs and payments in respect of certain services and facilities at the Airport to be paid by the Operator to the PANYNJ;
- PANYNJ shares of (i) revenues generated at NTO and (ii) cash available for distribution subject to certain thresholds, including incentives for Project Sponsors based on achieving top five ranking in the SkyTrax rating program;<sup>14</sup>
- Key Performance Indicators (KPIs) to assess the Operator's performance and determine financial incentives for exceeding KPIs or deductions for failing to meet minimum standards;
- PANYNJ commitments to projects essential for development;
- Conditions related to the transfer of the lease from the Operator, such as a sale or liquidation of assets;
- Supply of gates phased to meet demand; and
- Other commercial terms and commitments.

The Operator will be responsible for NTO terminal operations and will have a management team with professional staff for this purpose. The PANYNJ and Project Sponsors have agreed on certain Performance Standards and Measurement Provisions for NTO. These provisions outline specific KPIs as well as the associated incentives and are included as an exhibit to the lease. The provisions are expected to lead to improved service standards at NTO compared to current terminals at JFK, which in turn should lead to greater passenger satisfaction and improved operational performance by airlines, suppliers and concessionaires.

The Operator will make certain payments to the PANYNJ as per the lease agreement as summarized in Table 1.1.

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<sup>13</sup> The Green Garage was a parking garage structure located just north of the existing Terminal 1.

<sup>14</sup> SkyTrax is an international air transport rating organization.

**Table 1.1: Summary of the Operator-PANYNJ rents**

Type of payment	Summary description
<b>Ground rent</b>	<ul style="list-style-type: none"> <li>An amount equal to \$148.3 thousand per acre per annum (\$2018) for NTO's premises at any time during the Project (including construction), adjusted annually at the greater of 4% or one-half of the CPI Percentage Increase.</li> </ul>
<b>First Additional Rent</b>	<ul style="list-style-type: none"> <li>An annual mortgage security fee paid in recognition of all leasehold mortgage(s) the Lessee enters into in relation with the project.</li> </ul>
<b>Second Additional Rent</b>	<ul style="list-style-type: none"> <li>An amount equal to \$62.0 million per annum commencing upon completion of Phase A DBO, escalating at 3% per annum thereafter.</li> <li>Second Additional Rent is subordinate to debt service and is subject to a deferral mechanism, allowing it to be deferred and subordinated to debt service through 2033.</li> </ul>
<b>Third Additional Rent</b>	<ul style="list-style-type: none"> <li>An amount equal to \$56.4 million per annum, escalating at 3% per annum thereafter.</li> <li>Third Additional Rent is subordinate to debt service.</li> </ul>
<b>Internal Rate of Return (IRR) Rent</b>	<ul style="list-style-type: none"> <li>A share of cash available for distribution (CAFD) to the Sponsors in any given quarterly period to the extent Sponsors' IRR exceed thresholds as defined in the Lease.</li> <li>IRR Rent is subordinate to debt service.</li> </ul>
<b>Concessions Revenue Rent</b>	<ul style="list-style-type: none"> <li>A payment equal to the greater of (i) 50% of all gross rents paid or payable from Lessee's concessions sublessees less maintenance, marketing and utility charges and (ii) a minimum annual guaranteed amount (MAG) as defined in the Lease. Concessions Revenue Rent is subject to a deferral mechanism, allowing it to be deferred and subordinated to debt service through 2031.</li> </ul>
<b>Common Use Lounge Share</b>	<ul style="list-style-type: none"> <li>A payment equal to 50% of all revenues generated from the lease of common use lounges.</li> <li>Common Use Lounge Share is subject to a deferral mechanism, allowing it to be deferred and subordinated to debt service through 2031.</li> </ul>
<b>Sublease Fees</b>	<ul style="list-style-type: none"> <li>A payment equal to 10% of the rental payment for any exclusive use space subleases at the New Terminal Facilities.</li> <li>Sublease Fees are subject to a deferral mechanism, allowing it to be deferred and subordinated to debt service through 2031.<sup>A</sup></li> </ul>
<b>PA Cost Reimbursement Amount<sup>B</sup></b>	<ul style="list-style-type: none"> <li>An amount equal to \$139.0 million paid as follows: \$50.0 million paid at Financial Close, \$26.5 million in 2023 (12 equal monthly installments), \$26.5 million in 2024 (12 equal monthly installments) and \$36.1 million in 2025 (12 equal monthly installments).</li> </ul>

<sup>A</sup> Included in definition of Port Authority Priority Payment in the Lease Agreement.

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

Source: JFK NTO LLC

There are also revenue-sharing agreements equivalent to 50% of the advertising revenue between PANYNJ and the Operator. As the PANYNJ owns an airport-wide contract, payment is made from the PANYNJ to the Operator.

### 1.3 Project sponsors

The sponsors have extensive experience with airport developments around the world.

Project Sponsors are comprised of Ferrovial, JLC Infrastructure, Ullico and Carlyle. Collectively, the Sponsors have extensive experience in infrastructure and airport investment, development and operation within New York, as well as elsewhere across the United States and internationally. Summary descriptions of the Project sponsors are described below.



#### Ferrovial

Ferrovial (NASDAQ: FER) is one of the world's leading infrastructure operators focused on developing sustainable solutions. As of April 2024, Ferrovial had a market capitalization of \$27 billion and held a BBB (stable outlook) credit rating by S&P and Fitch. As of May 2024, the Company is publicly traded simultaneously in the U.S., the Netherlands and Spain. Ferrovial Airports provides integrated airport management activities and is one of the world's leading private airport investors, developers and operators. Part of the aviation industry since 1998, Ferrovial Airports provides more than 20 years of experience of investing, developing and operating 33 airports around the world. As the largest shareholder of London Heathrow Airport, with a 25% ownership position, Ferrovial Airports managed the planning and development of Heathrow's Terminal 2 which opened in 2014. Ferrovial also owns 50% of AGS (Aberdeen, Glasgow and Southampton airports in the U.K.) and 60% of Dalaman Airport in the Turkish Riviera.

Ferrovial operates a U.S. office out of Austin, Texas and manages a portfolio of active infrastructure assets in the U.S. including the North Tarrant Express and the Lyndon B. Johnson Expressway, among others.

Ferrovial Airports will provide support for operations at the facility through the MSA and Ferrovial Construction plays a key role as lead of the Project Management Office supporting the Capital Project Delivery ("CPD") team, helping manage construction and delivery of NTO. Ferrovial Construction's airport experience includes past projects at London Heathrow Terminal 2, among others.

Source: JFK NTO LLC



## JLC Infrastructure

JLC Infrastructure is an investor and asset management firm focused on the transportation, communications, energy, utilities and social infrastructure sectors in the United States. The firm was formed in 2015 by Loop Capital and Magic Johnson Enterprises and currently manages investments such as the redevelopment of Terminal B at LaGuardia Airport and other infrastructure projects.

Source: JFK NTO LLC



## Ullico

Ullico is the only labor-owned insurance and investment company in the United States. In existence for over 90 years, Ullico provides insurance products for union members, leaders and employers. Ullico also invests in building projects that support union employment. The Ullico Inc. Family of Companies includes The Union Labor Life Insurance Company; Ullico Casualty Group, LLC; Ullico Investment Company, LLC (Member FINRA/SIPC); and Ullico Investment Advisors, Inc.

Source: JFK NTO LLC



## Carlyle

The Carlyle Group (NASDAQ:CG) is a global alternative asset manager with approximately \$426 billion of assets under management across 586 investment vehicles as of April 2024. Carlyle's purpose is to invest wisely and create value on behalf of its investors, many of whom are public pension funds. Carlyle invests across several segments, including Corporate Private Equity, Global Credit, Real Estate, Natural Resources and Investment Solutions – in Africa, Asia, Australia, Europe, the Middle East, North America and South America. Carlyle employs more than 2,200 people in 23 offices across five continents. CAG Holdings, Carlyle's global airport platform, has led Carlyle's involvement in the Project since its inception.

Source: JFK NTO LLC

### 1.3.1 Project legal structure

The lessee of the new terminal facilities is a special purpose entity, “JFK NTO LLC”, a Delaware limited liability company, which entered into the Lease with the PANYNJ. The lessee is wholly owned by “JFK NTO HoldCo LLC”, a Delaware limited liability company, which is jointly wholly owned, indirectly through the “JFK NTO Sponsor Aggregator LLC” a Delaware limited liability company, by Ferrovial, JLC, Ullico and Carlyle as shown in Figure 1.4.



## 1.4 The New Terminal One

NTO is a new terminal development, with the initial phase delivering replacement capacity in 2026.

### 1.4.1 Overview

The NTO project includes three primary elements:

1. Construction of NTO: The Headhouse and East Pier is under construction on the former Terminal 3 site (previously used for aircraft parking) and will open in 2026;
2. Decommissioning and demolition of:
  - i. The former Terminal 2 to allow for the construction of Phase A (now complete); and
  - ii. The existing Terminal 1 to allow for Phases B1 and B2 with the expectation of beginning construction of Phase B1 at the existing Terminal 1 site subject to certain Lease conditions; and
2. Additional facilities: Construction of certain portions of the new roadway networks and landside utilities.

Phase A at NTO will provide 14 gates, five live hardstands suitable for boarding aircraft and eight hardstands used by Delta Air Lines for parking aircraft. It is designed to accommodate both the traffic that is currently utilizing the ten-gate existing Terminal 1 and the traffic that has previously used the three common-use international gates at Terminal 4 which have been repurposed for Delta Air Lines use.

Table 1.2 provides a summary of the number of aircraft positions by type.

**Table 1.2: Aircraft positions summary**

Airplane Design Group	Example aircraft	Available in 2026
Group VI	Airbus A380, Boeing 747-8	<ul style="list-style-type: none"> <li>2 gates</li> </ul>
Group V	Airbus A350, Boeing 777	<ul style="list-style-type: none"> <li>12 gates</li> <li>5 live hardstands</li> <li>8 parking hardstands</li> </ul>

Note: Each gate can accommodate aircraft up to the size of the gate. For example, Group VI gates can also accommodate Group V aircraft or smaller.

Source: AECOM Tishman, JFK NTO LLC, Steer analysis

Group VI positions can accommodate the Airbus A380, the world's largest passenger aircraft, as well as the Boeing 747-8. Group V positions can accommodate large widebody aircraft such as the Boeing 777 and 787 or the Airbus A330 and A350. As an exclusively international facility at a slot constrained airport, widebody aircraft are expected to account for most aircraft movements at the NTO facility. Some smaller aircraft are likely to fly shorter international routes such as to Latin America and the Caribbean that often operate during non-peak times. Some newer Group III aircraft such as the Airbus A321ULR can also fly long-haul routes. The two Group VI gates at the NTO facility can also accommodate up to four smaller Group III aircraft simultaneously without interfering with adjacent positions.

NTO will open with five live hardstands, which are aircraft positions used for boarding and deplaning of passengers. These live hardstands are expected to be utilized during periods when other contact gates are fully utilized. Departing passengers using a live hardstand will arrive at the Terminal and navigate to a dedicated holdroom (gate) from which they will board a bus to transport them a short distance to a parked aircraft. Arriving passengers will have a similar experience, deplaning by ramp or stairs onto awaiting buses which will transport them to the Terminal to continue their arrival process.

Phase A will also include eight on-site hardstands to be used only for aircraft parking and not boarding and deplaning of passengers. All such parking-only hardstands will accommodate Group V aircraft and will be leased to Delta Air Lines for their exclusive use. Airlines operating at NTO will have access to PANYNJ-managed parking hardstands outside of the NTO site.

#### **1.4.2 Continuation of current operations**

The existing Terminal 1 will continue to operate throughout NTO Phase A construction and will cease operations once NTO Phase A opens, as outlined in the lease agreement between the PANYNJ and the Operator. This allows for continuity of capacity for the airlines operating at the existing Terminal 1 today. As of the summer 2024 season, 28 airlines operate out of the existing Terminal 1.

The history of the existing Terminal 1 dates to 1994 when TOGA was originally formed and entered a long-term lease with the PANYNJ to finance, construct, maintain and operate a new passenger terminal facility at JFK. In 2019, the existing Terminal 1 was used by the four TOGA partner airlines, plus 18 other international airlines. While the original terminal was designed for 3.5 million enplanements, the existing Terminal 1 processed approximately 4.1 million annual enplanements with service to over 38 nonstop international destinations prior to the COVID-19 pandemic in 2019. The existing Terminal 1 occupies a 37.5-acre site with a ten-gate, 700,000 square foot facility illustrated in Figure 1.5.

**Figure 1.5: Aerial view of the existing Terminal 1**

Source: Microsoft Bing Maps imagery

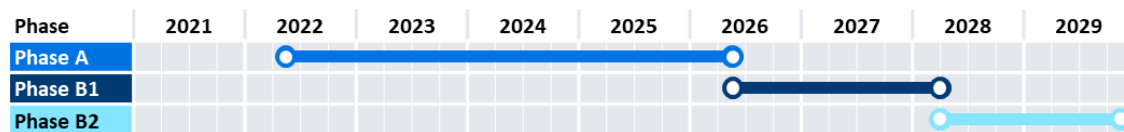
#### **1.4.3 Replacement of existing terminals and impact on airport capacity**

Terminal 2 was historically leased by Delta Air Lines under an agreement with the PANYNJ. On January 15, 2023, Delta Air Lines ended service at Terminal 2 and consolidated all flight activities at JFK to Terminal 4. The Terminal 2 site has since been transferred to the Operator to facilitate continued construction of NTO Phase A and Terminal 2 has been demolished. The existing Terminal 1 facility will be transferred to the Operator and demolished after the Phase A NTO opening, expected in 2026, with the NTO Phase A thereby acting as replacement capacity for the 10 gates decommissioned at the existing Terminal 1.

NTO has been designed to accommodate 7.6 million enplanements per year upon opening of Phase A in 2026, including 6.0 million via 14 contact gates and 1.6 million via five live hardstands which are expected to be utilized when contact gates are unavailable. Terminal design has accounted for this demand level across all key passenger processes including curb-frontage, check in, security, customs and immigration, baggage support systems, hold-room space, restroom capacity and commercial concessions, among others.

#### **1.4.4 Project phasing**

NTO is designed to be built in several discrete, incremental phases to accommodate future traffic growth. Based on current traffic forecasts and subject to specific lease obligations outlined below, Project Sponsors anticipate building all future phases (Phase A plus three future expansions), with completion of the final phase in 2037. Phases A, B1 and B2 are expected to be built continuously, with construction of Phase B1 commencing immediately following DBO of Phase A and construction of Phase B2 commencing immediately following DBO of Phase B1 as shown in Figure 1.6.

**Figure 1.6: NTO construction schedule**

Source: AECOM Tishman, JFK NTO LLC, Steer analysis

The three phases of the Project include:

- **Phase A:** Includes all core functions within the Headhouse as well as the East Pier with a total 14 gates.
- **Phase B1:** Construct a western portion of the Headhouse with an additional five gates on the West Pier totaling 19 gates across the new terminal facility.
- **Phase B2:** Develops four additional gates on the West Pier, replacing all remaining live hardstands with contact gates, totaling 23 gates across the new terminal facility.

Beyond Phase B2, NTO could seek to further expand the West Pier in the future subject to all required approvals, including agreement with the PANYNJ.

According to JFK NTO LLC, Phase A remains on budget and on time with critical path schedule holding to Phase A DBO in June 2026. The following provides a summary of the Phase A construction update as of May 2024:

- The topping out ceremony marking completion of the steel erection on the Headhouse was held on March 19<sup>th</sup>, 2024.
- Headhouse slab-on-deck works are ahead of plan and over 80% complete.
- Mechanical, electrical, and plumbing works have started in the Headhouse.
- Curtain Wall installation started ahead of schedule and is expected to be weathertight by summer 2024 and watertight by Q4 2024.
- Baggage handling system installation started in April 2024 with good progress.
- Tunnels, slab-on-grade, fireproofing, and roof are progressing as planned.
- Path to achieve “No Further Comments” (NFC) status on the design is scheduled by summer 2024.
- Progress on roads is proceeding according to schedule. Pile caps and pier columns poured, and precast girder installation started in April 2024.

#### *Triggers for Phase B1 and B2 Development*

NTO’s lease with the PANYNJ includes an obligation to construct Phases B1 and B2 after DBO of Phase A subject to a defined set of triggers. The trigger for Phase B1 is the earliest of:

- Affirmation of an investment grade rating timed such that construction of Phase B1 will immediately follow DBO of Phase A, or
- International enplanements at JFK recovering to 2019 levels during any six-month period corresponding to the same six months in 2019, or
- NTO enplanements exceeding 4.5 million enplanements on a rolling 12-month basis.

Once this agreed trigger is met, the Operator is obligated to proceed with construction of Phase B1 following the opening of Phase A. The Operator may reduce the scope of Phase B1 by two gates (from five gates to three gates) if this is needed to secure an investment grade rating. If Phase B1's scope is reduced to three gates, the two additional gates will be constructed as part of Phase B2.

The trigger for Phase B2 is the earliest of:

- Affirmation of an investment grade rating timed such that construction of Phase B2 will immediately follow DBO of Phase B1, or
- JFK exceeds 20 million international enplanements<sup>15</sup> on a rolling 12-month basis, or
- NTO enplanements exceed 6.7 million<sup>16</sup> enplanements on a rolling 12-month basis.

If the Operator does not proceed with construction of either Phase B1 or B2 consistent with the above trigger, the lease may be terminated after a period of time as set out in the lease. The lease includes lender protections if the PANYNJ terminates the lease due to the Operator's failure to meet the obligation to expand. Further details of the B1 and B2 trigger mechanisms are available in the NTO lease.

This Report has analyzed a Phase A only development at this time given the expectation of separate design, construction and financing plans for future phases and the lender protections referenced above. The Project Sponsors do intend to complete all phases of development and comply with the lease obligations.

A summary of the project's planned phasing is detailed in and illustrated in Table 1.3 and Figure 1.7 and Figure 1.8.

**Table 1.3: NTO construction phasing**

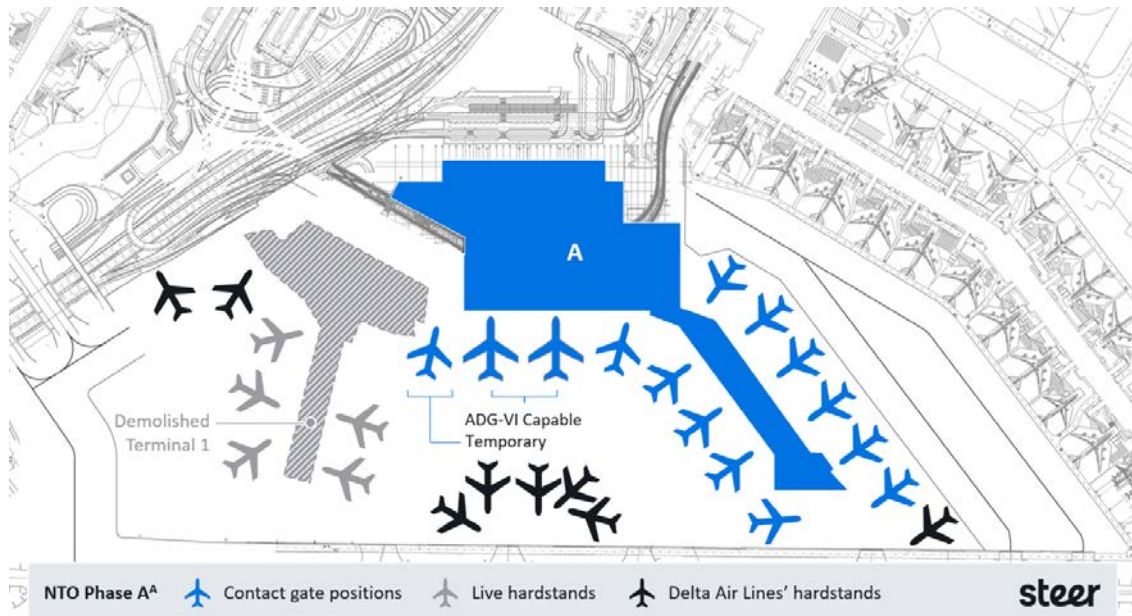
Phase	Construction start date	Operations opening date	Total gate capacity at opening	Total live hardstand capacity at opening
Phase A	June 2022	June 2026	14	5 <sup>A</sup>
Phase B1	2026	2028	19	1
Phase B2	2028	2029	23	-

<sup>A</sup> The five live hardstands included in Phase A will be available within four months of opening following the completion of minor additional works.

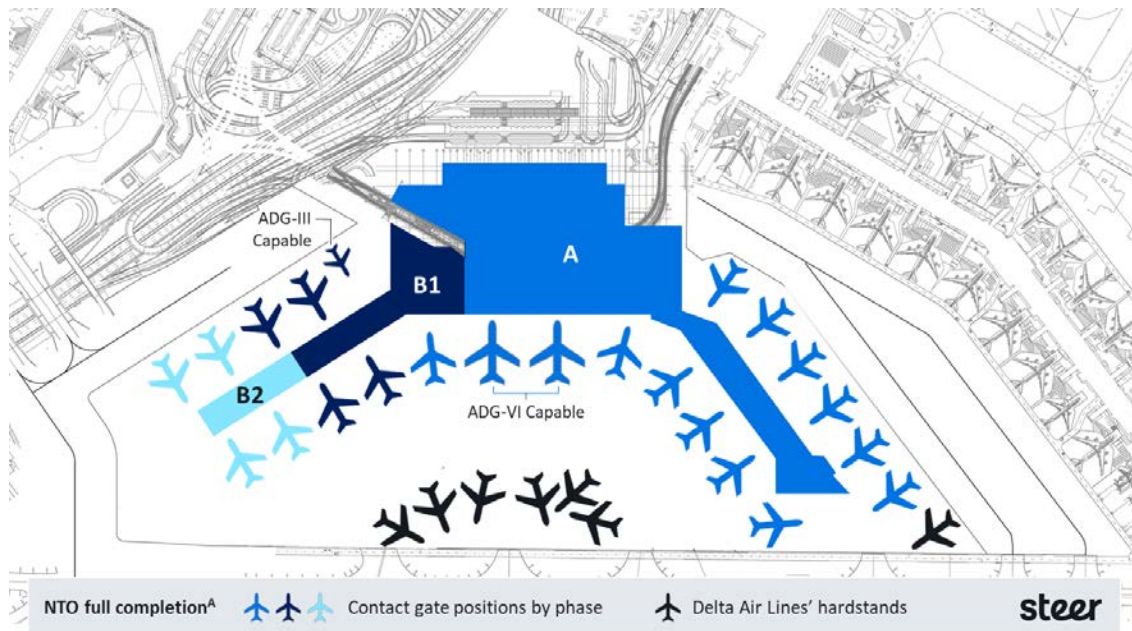
Source: AECOM Tishman, JFK NTO LLC, Steer analysis

<sup>15</sup> This is adjusted to 21 million under certain conditions in which Terminal 4 has further expanded. Consult lease material for further detail.

<sup>16</sup> This is adjusted to 6.0 million if Phase B1 were to be reduced to three gates.

**Figure 1.7: NTO Phase A**

<sup>A</sup> Figure is for illustrative purposes only and may be subject to further changes.  
Source: AECOM Tishman, JFK NTO LLC, Steer analysis

**Figure 1.8: NTO Phase A, Phase B1 and Phase B2**

<sup>A</sup> Potential expansion beyond Phase B2 is subject to further discussion and agreement between JFK NTO LLC and the PANYNJ.  
Source: AECOM Tishman, JFK NTO LLC, Steer analysis

#### 1.4.5 Additional facilities

In addition to the NTO Headhouse and piers, the Project Sponsors will also undertake:

- On-site and certain adjacent utility tie-ins to support NTO operations; and
- Certain portions of the temporary roadway network that will be exclusively used by NTO during construction but are outside the Terminal lease site.

#### 1.4.6 PANYNJ enabling works

According to the lease agreement, the PANYNJ will undertake several additional enabling works. These include

- Reconfiguration of roadways;
- Construction of a Ground Transportation Center that will consolidate parking and ground transit providers in a centralized facility for NTO and Terminal 4; and
- Construction of off-site landside utilities to provide the capacity needed for NTO and other facilities.

Other enabling works include:

- Construction of hardstand aircraft parking positions at the current H12 site location;
- Refurbishment of the existing Terminal 1 AirTrain station; and
- Construction of airfield interfaces with NTO taxi lanes.

The Operator will make fixed contributions to offset costs associated with these PANYNJ improvements, but the PANYNJ will manage the construction. These costs have been accounted for in Phase A cost forecasts as discussed in this Report. Contributions will be paid by the Project Sponsors over the life of the lease in the form of additional rent.

### 1.5 Series 2024 Bonds

The Series 2024 Bonds will be issued pursuant to the agreement between the New York Transportation Development Corporation, which will act as the conduit issuer for this transaction, and the Trustee. NTO will serve as the borrower of the proceeds of the Series 2024 Bonds pursuant to Loan Agreements between the Operator and the New York Transportation Development Corporation.

Series 2024 Bonds will be payable under the loan agreements and will be secured by project revenues generated at NTO. Project Revenues are comprised primarily of aeronautical charges on airline users and non-aeronautical revenues from concessions. These revenue streams are described in Chapter 7 and Chapter 8 respectively.

## 2 New York Region Market Analysis

Air travel demand at JFK is affected by a variety of characteristics of the New York region, such as population, economic conditions and tourism. Overall:

- The New York-Newark-Jersey City MSA has the largest population of any metropolitan area in the United States, with over 19.6 million residents in 2022.
- In 2022, the New York region recorded a Gross Regional Product (GRP) per capita of \$86,000, higher than comparable regions across the United States.
- Known as a major global center for finance, education, medical services, culture, arts and numerous other industries, the New York region is home to more than one-tenth of the businesses listed in the Fortune 500. This has contributed to the region's high proportion of business traffic; 20% of the total trips to New York City travelled for business in 2023, matching pre-COVID levels.
- A total of 66.6 million visitors travelled to New York in 2019, up from 36.2 million visitors in 2000 – a compound annual growth rate of 3.3%. In 2023, 62.2 million travelers visited New York City.

This chapter discusses the demand for travel, analyzing the tourism, economy and population of the New York region.

## 2.1 New York region airports and catchment area

Among the major New York region airports, JFK and LaGuardia are both located in New York State whereas Newark is in New Jersey. JFK and Newark are both international gateways for the New York region but have two distinct catchment areas. JFK serves primarily passengers originating from New York, while Newark serves passengers primarily from New Jersey.

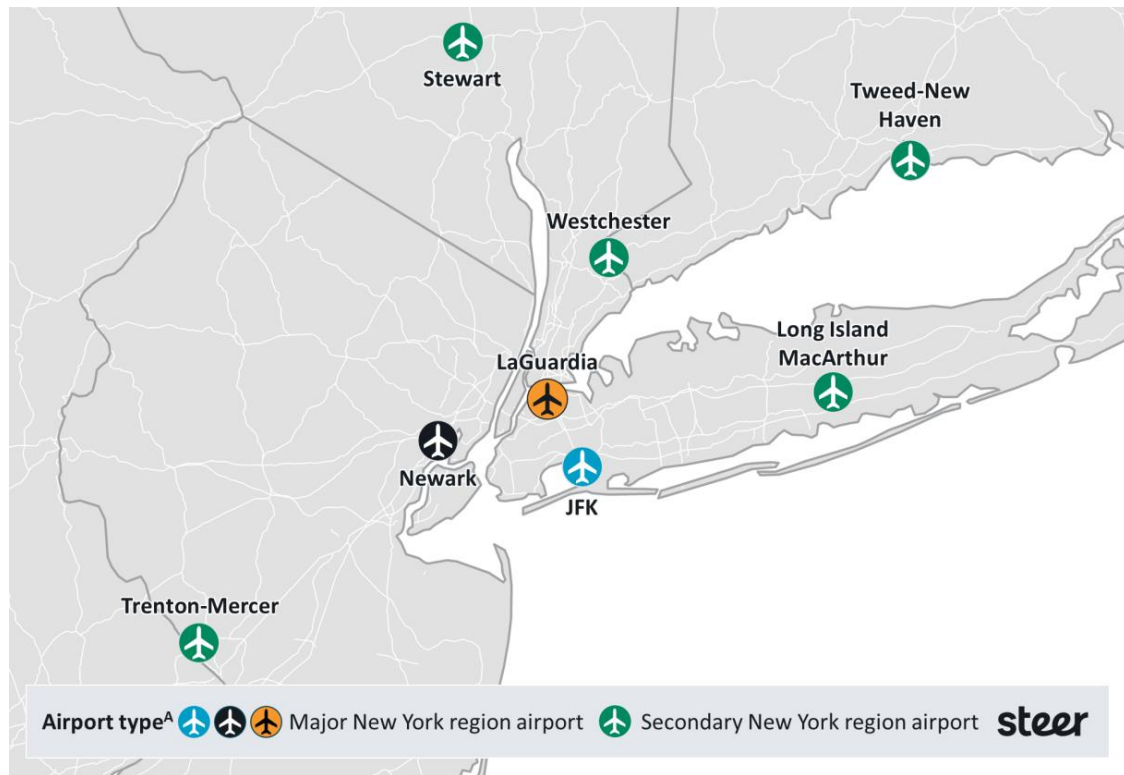
### 2.1.1 New York region airports

The New York region is served by three major airports: JFK, Newark and LaGuardia. Collectively these airports served over 97% of the New York region passenger traffic in 2023 in line with a similar 98% share in 2019.<sup>17</sup> These three airports are all classified as large hubs<sup>18</sup> by the Federal Aviation Administration. Figure 2.1 provides a map illustrating the locations of the major New York region airports in addition to the other secondary commercial airports, including Westchester County/White Plains (“Westchester”), Long Island MacArthur, Tweed-New Haven, Philadelphia Trenton-Mercer (“Trenton-Mercer”) and New York Stewart International (“Stewart”). These airports provide alternatives to the major New York region airports but are located further away from Manhattan compared to the three major airports. Other airports, including Republic, Teterboro and other smaller general aviation airports and airfields serve the New York region, but have been excluded from this analysis given their small commercial operations. Further discussion of the New York region airports can be found in Chapter 3.

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<sup>17</sup> Source: Port Authority of New York and New Jersey *Airport Traffic Report 2023* for JFK, Newark, LaGuardia and Stewart airports; U.S. Department of Transportation for Islip, Tweed-New Haven, Trenton-Mercer and Westchester airports; Steer analysis

<sup>18</sup> The U.S. Federal Aviation Administration defines large hubs as airports with at least 1% of the national enplanements annually.

**Figure 2.1: Major and secondary New York region airports map**

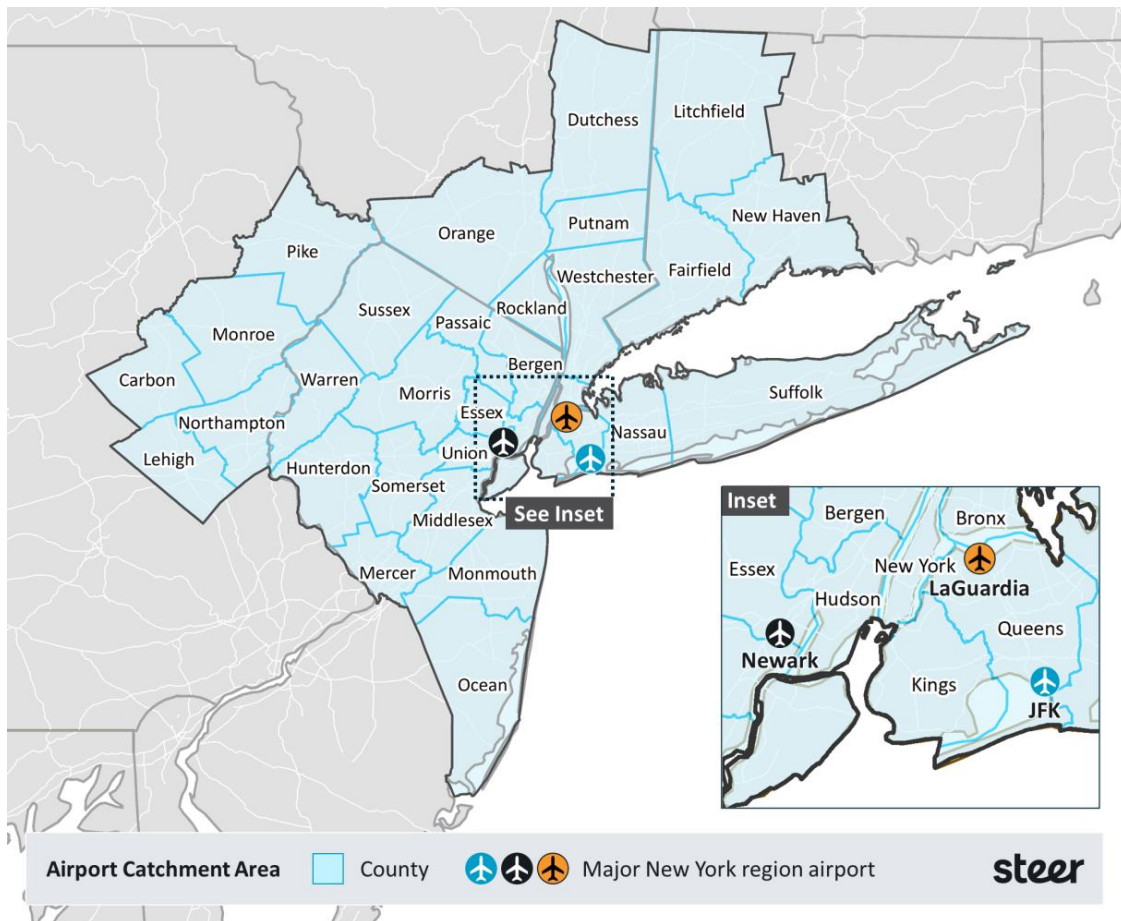
<sup>A</sup> General aviation, airstrips and other airports are not illustrated.

Source: Steer analysis

### 2.1.2 Airport catchment area of major New York region airports

According to the latest publicly available PANYNJ Terminal Customer Satisfaction Study conducted in 2017 ("2017 customer satisfaction survey") via the *2017 Air Traffic Report*, the catchment area of the major New York airports extends beyond the boundaries of New York City and into New Jersey, Connecticut, Pennsylvania and other parts of the United States.

Figure 2.2 provides a map of the New York region by county, which represents part of the catchment area of the major New York region airports.

**Figure 2.2: Major New York region airport catchment area**

Source: Port Authority of New York and New Jersey *Spring 2017 Terminal by Terminal Customer Satisfaction Study* via 2017 Air Traffic Report, Steer analysis

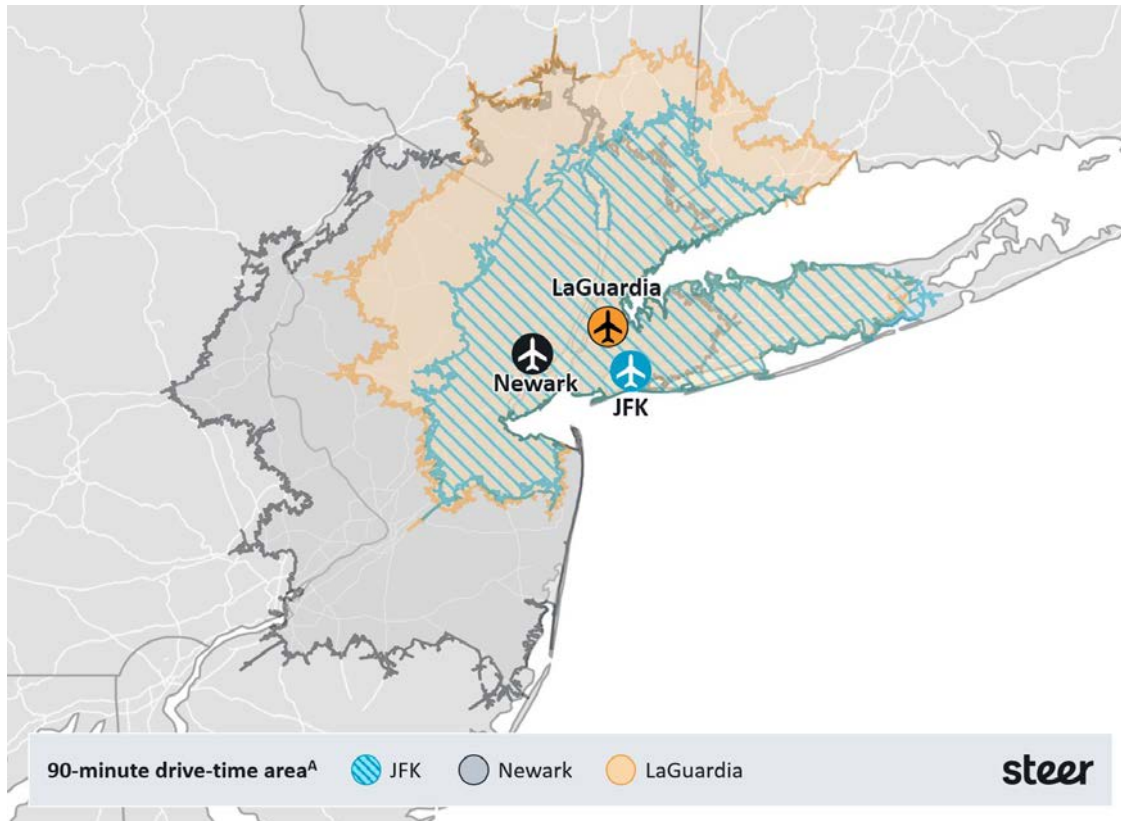
Figure 2.3 illustrates a 90-minute drive-time area for the three major New York region airports. While the three major New York region airports have overlapping service areas in New York City, Newark and Jersey City, the airports have distinct catchment areas owing to their respective geographies. From the latest publicly available 2017 customer satisfaction survey:

- An estimated 58% of the Newark O&D passengers surveyed originated from New Jersey, compared to only 12% for JFK.
- Meanwhile, 84% of the O&D passengers at JFK originated from New York State, compared to 34% for Newark.
- Furthermore, the share of O&D passengers at JFK whose trips originated from New York City was 74%, whereas this was 29% for Newark.

These statistics illustrate the distinct catchment areas between the two international airports: JFK is the primary airport among O&D passengers in New York City, whereas Newark serves as an alternative airport for New York City and the primary airport for O&D passengers originating from

New Jersey. JFK's catchment area includes not only New York City and Long Island, but also a wider region extending to Upstate New York, Connecticut and New Jersey.

**Figure 2.3: Major New York region airports 90-minute drive-time area**



<sup>A</sup> Morning peak-hour drive times.

Source: ArcGIS, Steer analysis

### 2.1.3 Airport connectivity

JFK and Newark are also each independently connected to the region's rail transit network via the respective AirTrain systems at each airport (AirTrain JFK and AirTrain Newark). LaGuardia currently has frequent bus connections to the City via the Metropolitan Transportation Authority's SelectBus bus rapid transit service. The remaining secondary New York region airports are much further away from New York City, and many do not have direct rail access to New York City.<sup>19</sup>

<sup>19</sup> Long Island MacArthur is served by shuttle service to the nearby Long Island Rail Road Ronkonkoma Station.

## 2.2 New York population

New York is the largest metropolitan area in the country. One of the factors that contributes to travel demand is the ethnic and demographic diversity of the region, which drives visiting friends and relatives (VFR) trips. Over 35% of the population in the New York region is Asian/Pacific Islander Non-Hispanic and Hispanic or Latino.

### 2.2.1 Population

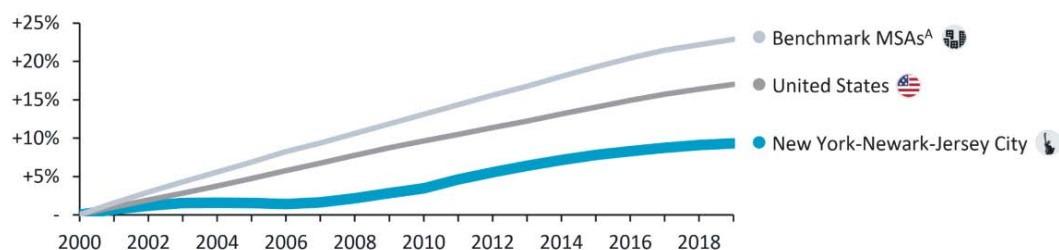
#### *Population growth*

The population of a region impacts demand for originating travel. According to U.S. Census Bureau, the New York-Newark-Jersey City Metropolitan Statistical Area (“New York-Newark-Jersey City” or “New York MSA”) was home to 19.6 million in 2022.

As illustrated in Figure 2.4, from 2000 to 2019 population increased by 9.3% in the New York MSA compared to 2000 levels or a compound annual growth rate of 0.5%. The national population increased 17% in 2019 compared to 2000 levels. Meanwhile, the population of the top 10 most populous statistical areas in the United States other than the New York MSA (referred to “Benchmark MSAs”)<sup>20</sup> increased 22.9%. While the compound annual growth rate from 2000 to 2019 for the overall United States and Benchmark MSAs was 0.8% and 1.1% respectively, the New York MSA experienced the lowest compound annual growth rate of 0.5%. Concurrent with GRP/GDP growth, the New York MSA’s lower population growth rates are driven in part by the maturity of the New York region.

**Figure 2.4: New York region population growth 2000-2019**

% year-over-2000 population change



<sup>A</sup> Benchmark MSAs include Atlanta-Sandy Springs-Alpharetta, Chicago-Naperville-Elgin, Dallas-Fort Worth-Arlington, Houston-The Woodlands-Sugarland, Los Angeles-Long Beach-Anaheim, Miami-Fort Lauderdale-Pompano Beach, Philadelphia-Camden-Wilmington, Phoenix-Mesa-Chandler and Washington-Baltimore-Arlington.

Source: Woods & Poole Economics Incorporated, Steer analysis

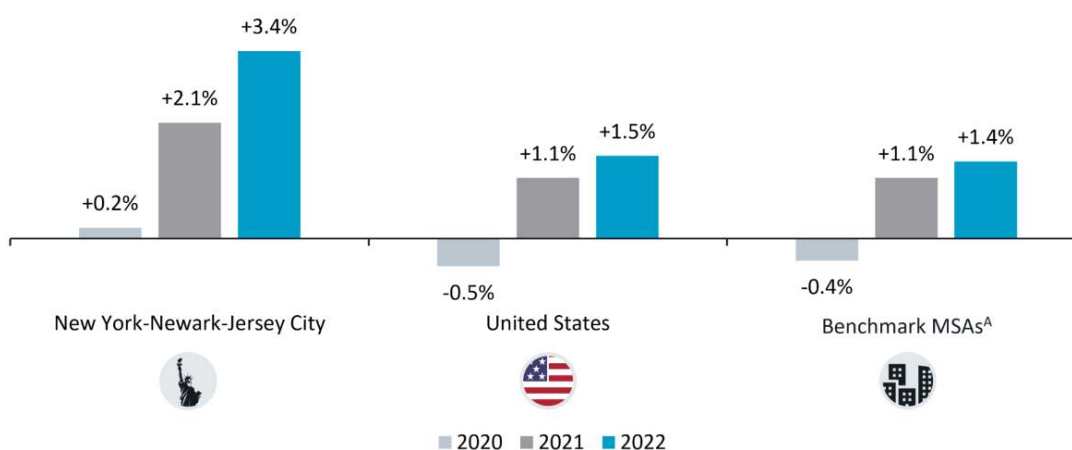
<sup>20</sup> Includes Atlanta-Sandy Springs-Alpharetta, Chicago-Naperville-Elgin, Dallas-Fort Worth-Arlington, Houston-The Woodlands-Sugarland, Los Angeles-Long Beach-Anaheim, Miami-Fort Lauderdale-Pompano Beach, New York-Newark-New Jersey, Philadelphia-Camden-Wilmington, Phoenix-Mesa-Chandler and Washington-Baltimore-Arlington.

Following the shutdown of schools, offices and stores in the beginning stages of the pandemic, many residents left New York City. According to U.S. Postal Service change-of-address data for New York City, as reported by the New York City Comptroller's Office, the number of monthly net moves out of the City in 2020 was over five times greater than 2019 levels. However, according to Bloomberg CityLab, 79% of these residential moves were within the New York MSA, as outer suburbs like northern New Jersey, Upstate New York and Long Island had an increase in residents.

According to U.S. census data, population across the New York MSA has increased despite the COVID-19 pandemic. As illustrated in Figure 2.5, the rate of growth has been higher than that of the U.S. average as well as Benchmark MSAs.<sup>21</sup> With a population of 8.3 million in 2022, New York City is the most populous city in the United States. According to the U.S. Census Bureau, it is also the largest metropolitan area in the country.

**Figure 2.5: New York region population growth 2019-2022**

% year-over-2019 population change



<sup>A</sup> Benchmark MSAs include Atlanta-Sandy Springs-Alpharetta, Chicago-Naperville-Elgin, Dallas-Fort Worth-Arlington, Houston-The Woodlands-Sugarland, Los Angeles-Long Beach-Anaheim, Miami-Fort Lauderdale-Pompano Beach, Philadelphia-Camden-Wilmington, Phoenix-Mesa-Chandler and Washington-Baltimore-Arlington.

Source: U.S. Census Bureau, Steer analysis

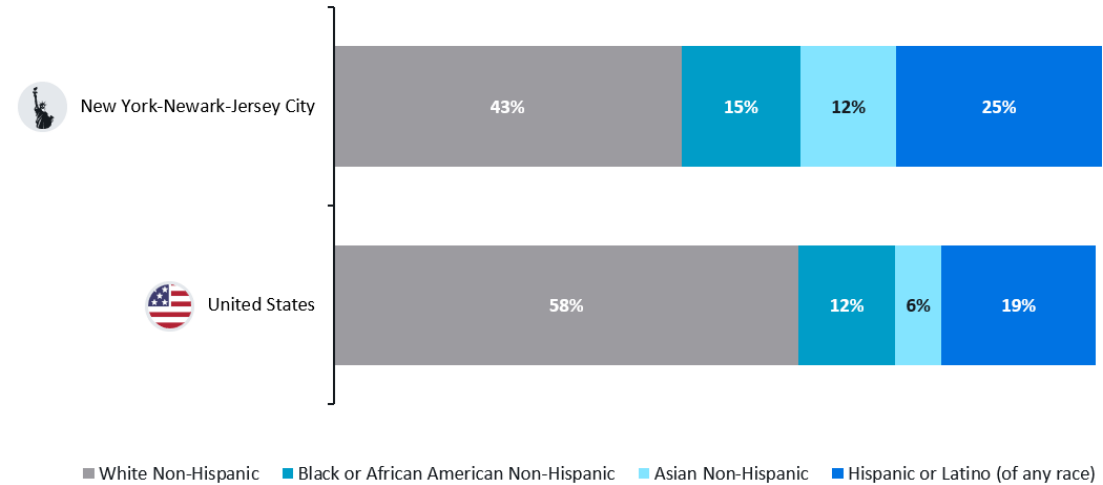
<sup>21</sup> Between 2019 and 2022, data was available from the U.S. Census Bureau *American Community Survey*.

Population diversity

The inbound travel demand for people visiting their friends and relatives is driven in part by the ethnic and demographic diversity of the region. Figure 2.6 illustrates the ethnic composition of the New York MSA in 2022 based on the latest U.S. Census American Community Survey data available at the time of writing. Non-white population groups totaled 57% of the population in the New York MSA in 2022. The largest non-white group was Hispanic or Latino of any race (25% of New York MSA population; 29% of New York City population) followed by Black or African American Non-Hispanic (15%; 20%) and Asian Non-Hispanic (12%; 14%). The proportion of non-white ethnic groups is higher within New York City at 70%.

Figure 2.6: New York MSA and New York City population group composition 2022

% distribution<sup>A</sup>



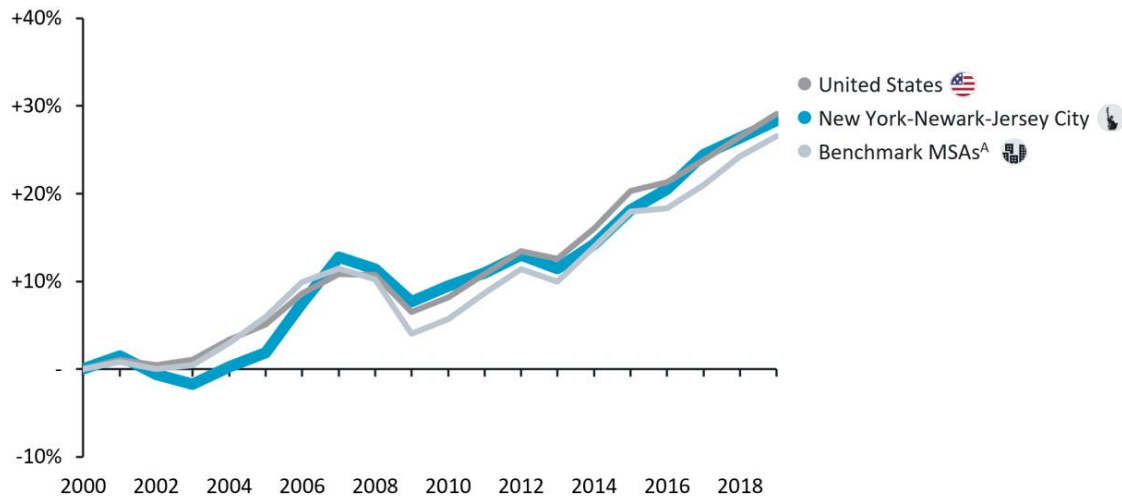
<sup>A</sup> Non-Hispanic demographic groups with a population share of less than 1% have been omitted for clarity, including “American Indian or Alaska Native” and “Native Hawaiian or Other Pacific Islander.”  
Source: U.S. Census Bureau, Steer analysis

2.2.2 Per capita income

Figure 2.7 illustrates the indices of the New York MSA compared with national and Benchmark MSAs income per capita. Compared with the base year in 2000, the income per capita in the New York MSA in 2022 was 38% higher than 2000-levels, which grew at higher rates compared to the benchmark MSAs’ growth at 35%. Higher personal income correlates with a higher propensity to travel, which helps increase demand for air travel at JFK and across the New York region.

**Figure 2.7: New York region income per capita 2000-2019**

% year-over-2000 income per capita change (\$2009)



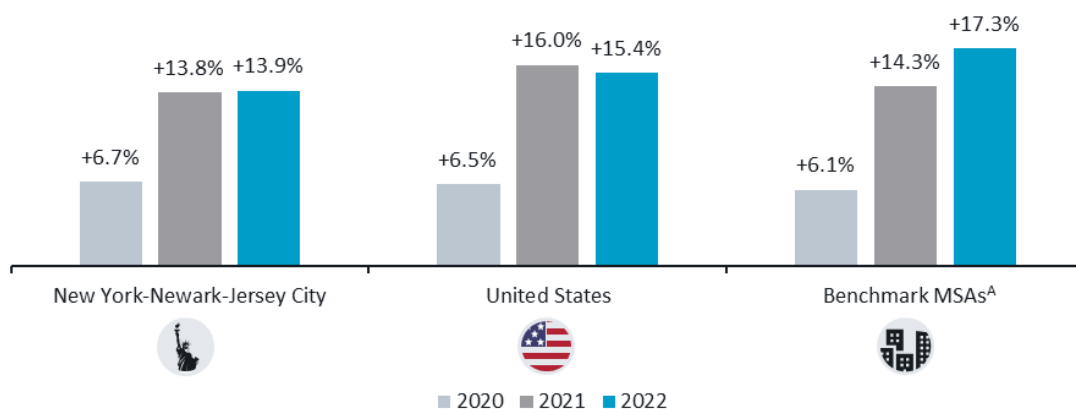
<sup>A</sup> Benchmark MSAs include Atlanta-Sandy Springs-Alpharetta, Chicago-Naperville-Elgin, Dallas-Fort Worth-Arlington, Houston-The Woodlands-Sugarland, Los Angeles-Long Beach-Anaheim, Miami-Fort Lauderdale-Pompano Beach, Philadelphia-Camden-Wilmington, Phoenix-Mesa-Chandler and Washington-Baltimore-Arlington.

Source: Woods & Poole Economics Incorporated, Steer analysis

Throughout the pandemic, income per capita in the New York MSA and across 10 benchmark MSAs grew relative to 2019 levels. As illustrated in Figure 2.8, income per capita growth in the New York MSA in 2022 was slightly less than the national income per capita growth, with figures rising 13.9% and 15.4% respectively relative to 2019.

**Figure 2.8: New York MSA income per capita 2019-2022**

% year-over-2019 income per capita change



<sup>A</sup> Benchmark MSAs include Atlanta-Sandy Springs-Alpharetta, Chicago-Naperville-Elgin, Dallas-Fort Worth-Arlington, Houston-The Woodlands-Sugarland, Los Angeles-Long Beach-Anaheim, Miami-Fort Lauderdale-Pompano Beach, Philadelphia-Camden-Wilmington, Phoenix-Mesa-Chandler and Washington-Baltimore-Arlington.

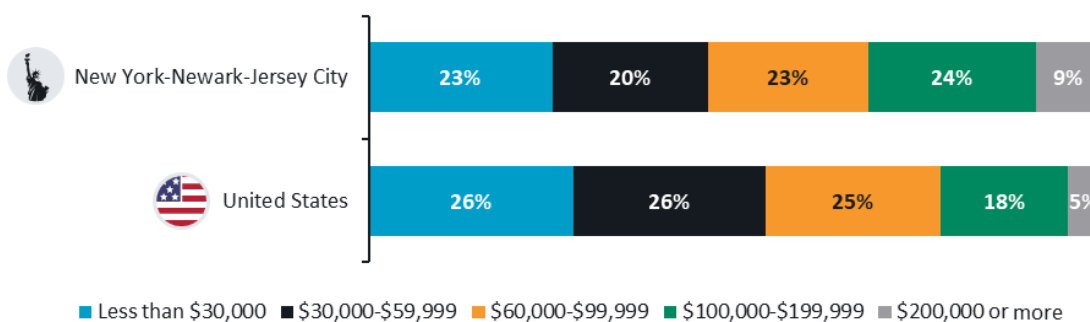
Source: U.S. Bureau of Economic Analysis, Steer analysis

### 2.2.3 Household income

Figure 2.9 examines the distribution of household income in the New York region compared to the United States. The New York region has a higher proportion of high-income earners (households earning at least \$100,000 per year in \$2009) than the national average. For the highest income category (those with annual household incomes of \$200,000 or greater), the New York region's share of 9% was almost double the national share.

**Figure 2.9: Household income distribution 2022**

% distribution



Source: U.S. Bureau of Economic Analysis, Steer analysis

## 2.3 New York economic base

New York has the highest concentration of Fortune 500 company headquarters in the United States. In addition to being one of the financial centers of the world, the New York region also has an emerging tech industry. The high concentration of diverse businesses has contributed to the strong economy in the New York region: in 2022, the New York MSA recorded the highest GRP per capita among the top 10 most populous MSAs in the United States. The New York region economic conditions have rebounded and stabilized in the wake of the pandemic.

### 2.3.1 Inflation

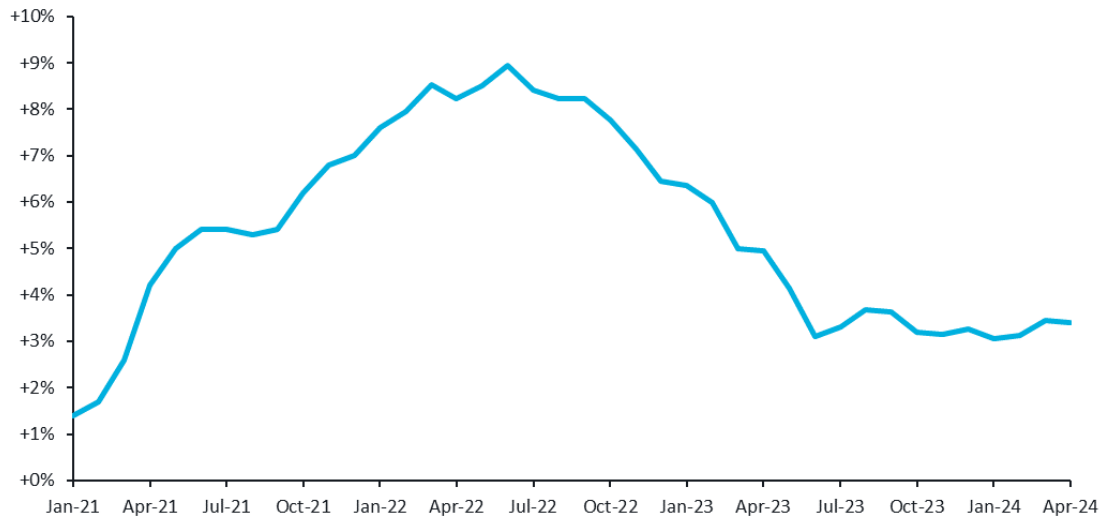
Following the pandemic, the U.S. economy recovered the fastest among comparably advanced economies. This output was accompanied by higher inflation as illustrated in Figure 2.10 which ranged from as low as 1.7% to as high as 9.1% between 2021 and 2022.<sup>22</sup> By the end of 2023, inflation was below 4% and lower than all comparably advanced economies except Japan, in part

<sup>22</sup> The Bureau of Labor Statistics measures inflation via the Consumer Price Index, which is defined as “the change in prices paid by consumers for goods and services”. The specific inflation data referenced was the 12-month percentage change in consumer price index (CPI) for All Items, All Urban Consumers (CPI-U). Source: U.S. Bureau of Labor Statistics March 2024, Steer analysis

due to the monetary policy of the U.S. Federal Reserve System. The 12-month percent change in the consumer price index for all urban consumers (“CPI-U”) for all items was back down to 3.4% by April 2024.

**Figure 2.10: U.S. consumer price index, All Urban Consumers (CPI-U) January 2021-April 2024**

% annual change



Source: U.S. Bureau of Labor Statistics, Steer analysis

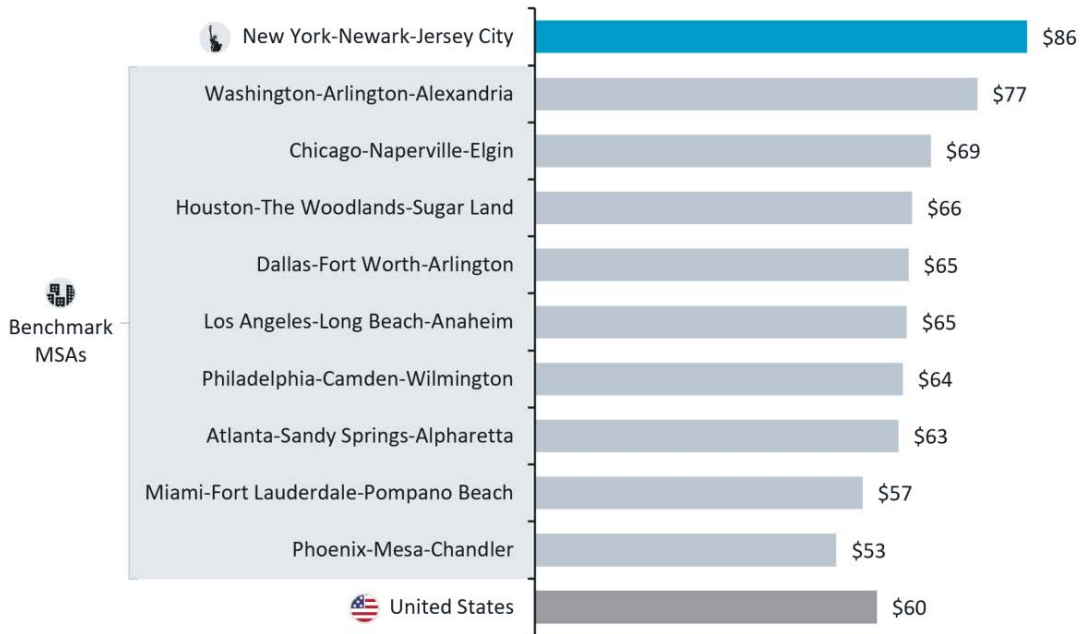
### 2.3.2 Economic output

The economic output of the New York MSA is the largest of any region in the United States. This large economic base contributes greatly to regional demand for air traffic activity.

Figure 2.11 depicts the Gross Regional Product (GRP) per capita of the top ten most populous U.S. MSAs in addition to the national Gross Domestic Product (GDP) per capita. The 2022 per capita GRP of New York MSA was \$86,000, well above the national GDP of approximately \$60,000.

**Figure 2.11: New York MSA gross regional product/gross domestic product benchmark 2022**

\$ thousand GRP/GDP per capita

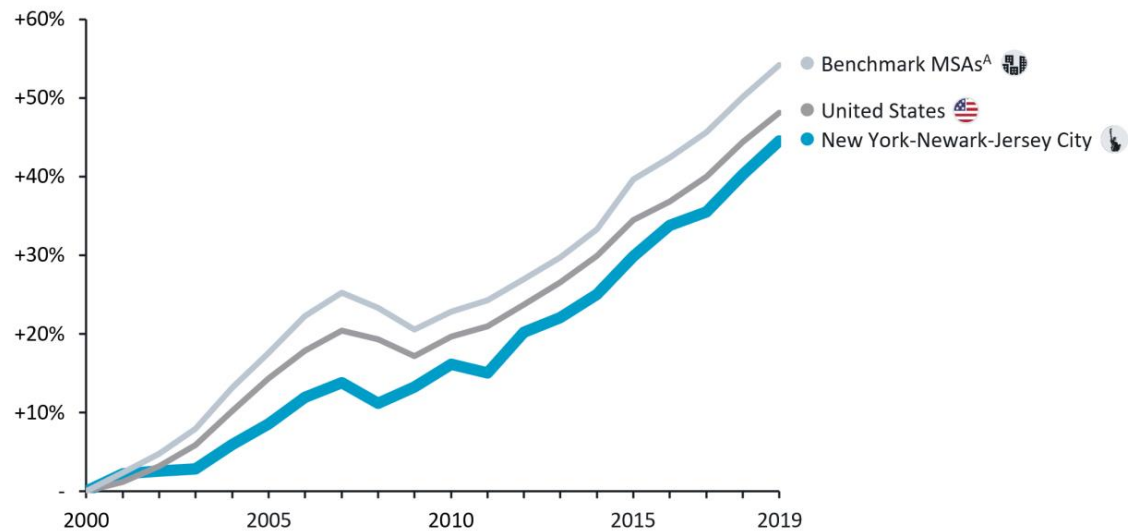


Source: U.S. Bureau of Economic Analysis, U.S. Census Bureau, Steer analysis

Figure 2.12 illustrates the growth of New York MSA GRP compared to the U.S. GDP and the other most populous metropolitan statistical areas (“Benchmark MSAs”) between 2000 and 2019, while Figure 2.13 illustrates the growth from 2019 to 2022 in which New York MSA’s GRP increased at rates comparable to the benchmark metropolitan statistical areas and the national average. After both the 9/11 attacks and the 2008 global financial crisis, economic output has surpassed historic rates; the same recovery has occurred after the 2020 pandemic. The national growth rates and the growth rates of benchmark metropolitan statistical areas include fast growing regions. The overall lower growth in New York MSA GRP is in part due to the economic maturity the region.

**Figure 2.12: New York region annual GRP growth 2000-2019**

% year-over-2000 GRP/GDP change

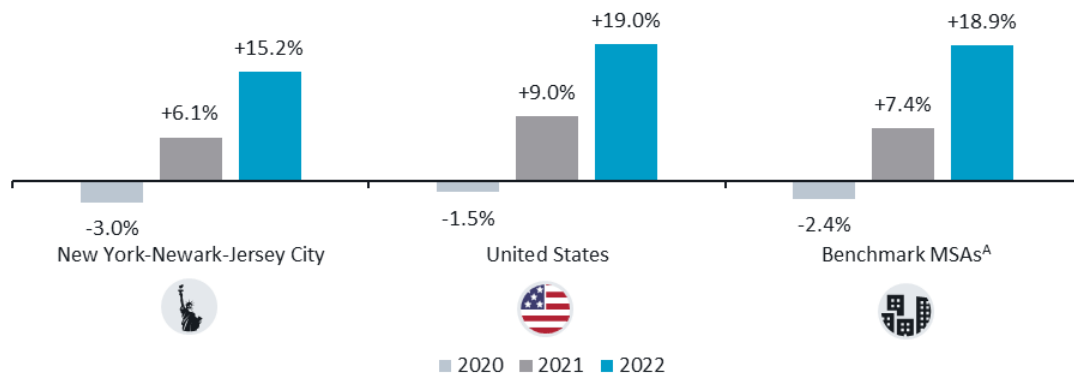


<sup>A</sup> Benchmark MSAs include Atlanta-Sandy Springs-Alpharetta, Chicago-Naperville-Elgin, Dallas-Fort Worth-Arlington, Houston-The Woodlands-Sugarland, Los Angeles-Long Beach-Anaheim, Miami-Fort Lauderdale-Pompano Beach, Philadelphia-Camden-Wilmington, Phoenix-Mesa-Chandler and Washington-Baltimore-Arlington.

Source: Woods & Poole Economics Incorporated, Steer analysis

**Figure 2.13: New York region annual GRP growth 2019-2022**

% year-over-2019 GRP/GDP change



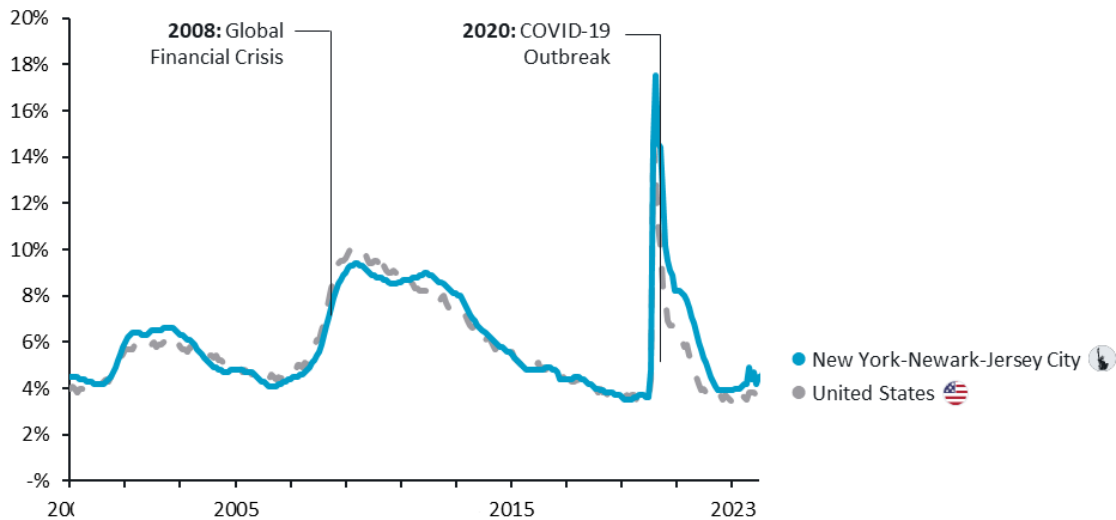
<sup>A</sup> Benchmark MSAs include Atlanta-Sandy Springs-Alpharetta, Chicago-Naperville-Elgin, Dallas-Fort Worth-Arlington, Houston-The Woodlands-Sugarland, Los Angeles-Long Beach-Anaheim, Miami-Fort Lauderdale-Pompano Beach, Philadelphia-Camden-Wilmington, Phoenix-Mesa-Chandler and Washington-Baltimore-Arlington.

Source: U.S. Bureau of Economic Analysis, Steer analysis

Another key economic indicator is the unemployment rate. As illustrated in Figure 2.14, the unemployment rates that spiked during the most severe months of the pandemic have fallen to pre-pandemic levels. Employment recovery has recovered at a faster rate than previously after the recession of the Global Financial Crisis of 2008.

**Figure 2.14: Unemployment rates January 2000-February 2024**

% monthly unemployment rate



Source: U.S. Bureau of Labor Statistics, Steer analysis

The New York economy continues to recover. Since 2021, there were several industry announcements including Google and LifeSci NYC as highlighted below. As a growing economy is important part to growing business traffic, these announcements suggest continued economic confidence for the New York region.



### Case study: Google expansion in New York

In April 2022, Google opened a new office complex along the Hudson River in Manhattan. In 2021 it had spent \$2.1 billion—one of the highest prices ever paid for an office building in the City—on the property to house its expanding workforce.

Source: New York Times *Google to Spend \$2.1 Billion on Manhattan Office Building*, Steer analysis



### Case study: LifeSci NYC

LifeSci NYC is a one-billion-dollar partnership between the City of New York, NYCEDC and private sector partners to propel the city to the forefront of life sciences research. Their investments include: \$450 million for research, \$430 million for lab and incubator space construction and \$20 million to build a diverse pipeline of life sciences talent.

Source: New York City Economic Development Corporation, Steer analysis



### Case study: Venture capital for startups

New York City companies attracted \$4.4 billion in venture capital (VC) funding in Q1 2024. The largest VC funding deals completed by City-based startups in Q1 2024 include:

- \$700 million for Wonder, a food delivery startup that operates truck-based restaurants.
- \$200 million for Bilt Rewards, a rewards program that allows renter to earn points on rent.
- \$200 million for Axonius, an asset inventory management platform focusing on cybersecurity solutions.
- \$115 million for The Brandtech Group, a marketing agency.
- \$100 million for Claroty, a cybersecurity company focusing on protecting infrastructure and industrial networks.
- \$100 million for FundGuard, an AI-powered investment accounting operating system.

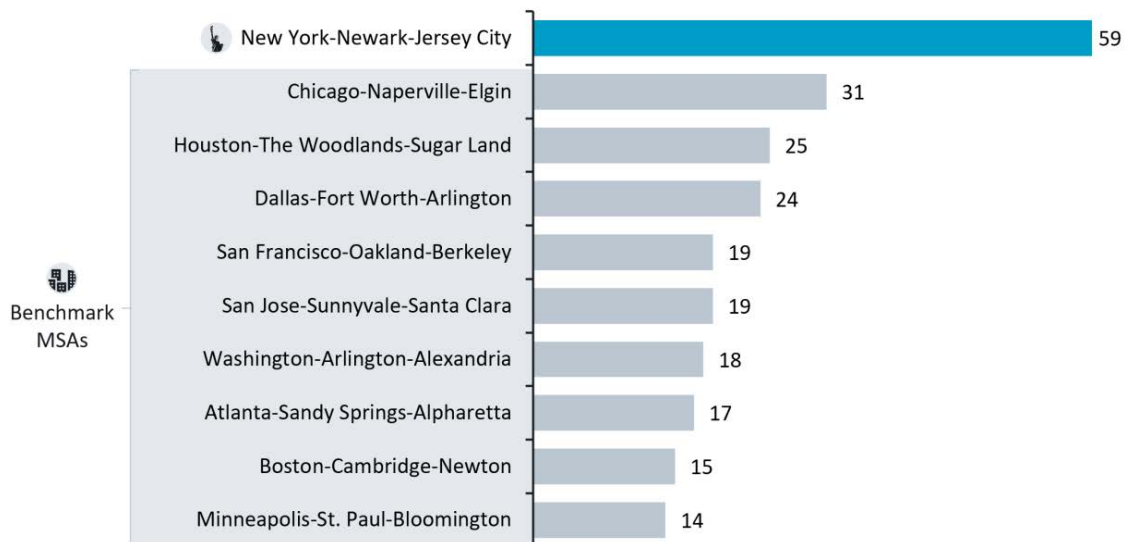
Source: CBInsights Alleywatch, Steer analysis

### 2.3.3 Industries and employment centers

Supporting the New York region's strong business traffic market is the presence of numerous large multi-national companies. The region has the highest concentration of Fortune 500 company headquarters in the United States, with 12% of the top 500 U.S. public companies headquartered in the New York MSA in 2023. The top five Fortune 500 companies headquartered in the region include JP Morgan Chase (national rank 23<sup>rd</sup> by annual revenue in 2023), Verizon (26<sup>th</sup>), Citigroup (36<sup>th</sup>), Pfizer (38<sup>th</sup>) and Johnson & Johnson (40<sup>th</sup>). New York also is home to the New York Stock Exchange and NASDAQ, the world's largest stock exchanges by both market capitalization and trading activity. As illustrated in Figure 2.15, the number of Fortune 500 companies headquartered in the New York MSA was nearly twice that of the second-ranked MSA (Chicago) in 2023.

**Figure 2.15: New York MSA vs. benchmark MSAs Fortune 500 headquarters benchmarking 2023**

Number of Fortune 500 headquarters



Source: Fortune Magazine, Steer analysis

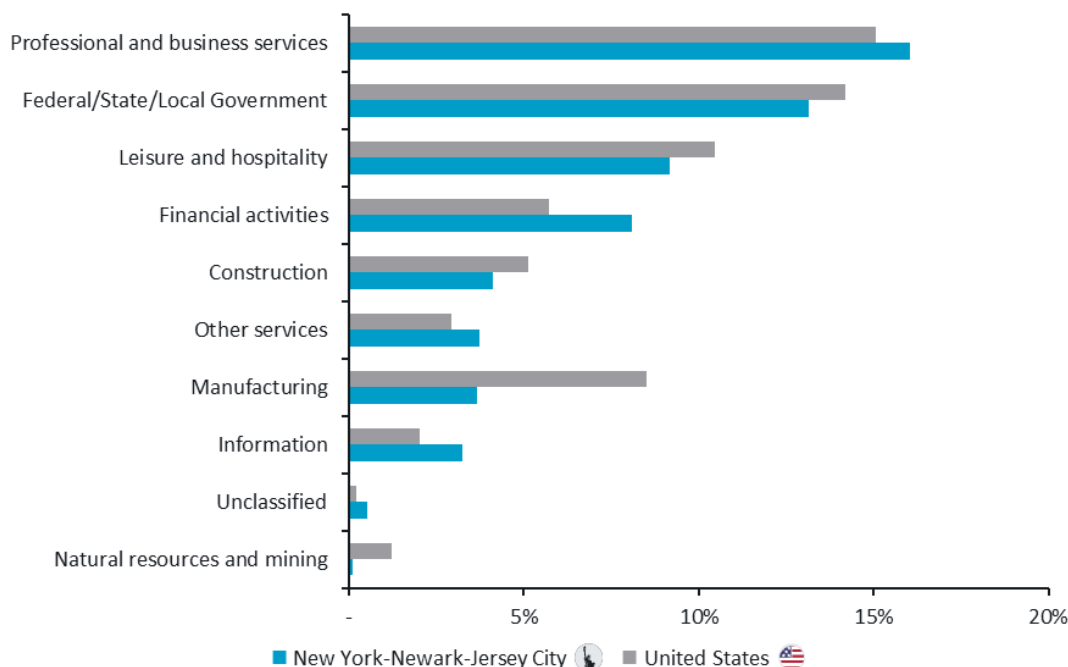
In addition to finance, New York hosts a growing tech industry, with many tech giants such as Google and Facebook expanding their presence in New York City even with delayed back-to-office plans. New York has the largest public healthcare system in the U.S. and boasts strength in academic scientific research and commercial scientific support. Some of the most prominent biotech and pharmaceutical companies, such as Bristol-Myers Squibb, Pfizer and Johnson & Johnson are headquartered in the region. New York City is also the largest “college town” in America, with 120 private, public and for-profit institutions of higher learning within New York City and many more in the region. Many of these graduates stay in the New York City and become valuable members of its diverse and talented workforce.

Figure 2.16 compares the industry sectors by employment of the New York MSA and the United States in 2022, the latest year (at the time of writing) for both geographies from the U.S. Bureau

of Economic Analysis. The top industry employment sector within the New York MSA is professional and business services estimated at 16%, followed by government (12%), leisure and hospitality (9%) and financial activities (9%). As illustrated in the graph, business services (such as finance and insurance, real estate and other professional services) represent sectors with larger employment shares in the New York MSA compared to national averages.

**Figure 2.16: Non-agricultural industry sectors 2022**

% employment share <sup>A</sup>



<sup>A</sup> Due to differences in data reporting, some industry groupings were omitted for clarity, including hospitals, mining, quarrying and oil and gas extraction, manufacturing, wholesale trade, transportation and warehousing, management, administrative and waste services, health services, except hospitals, social assistance and private households. MSA data for other services (except government and government enterprises) was used as comparison to U.S. data for other services, except private households.

Source: U.S. Bureau of Economic Analysis, Steer analysis

The growth of these industries is bolstered by the City's continuing investment in the region's economic growth. The New York City Economic Development Corporation (NYCEDC) has spurred multiple initiatives and public-private partnerships to establish or reinforce New York as a hotspot for various industries, such as cybersecurity, fashion, healthcare and "smart city" technology.

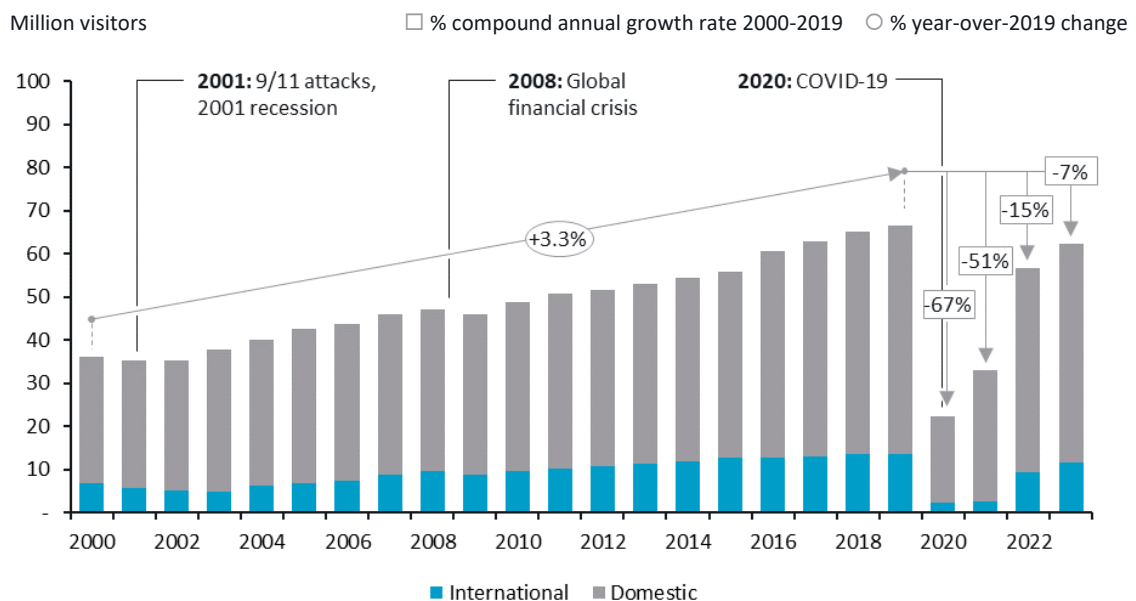
## 2.4 New York tourism and other air travel drivers

New York City saw an increase in tourists, both domestic and international, between 2000 and 2019 at a compound annual growth rate of 3.3%. Visitor volumes in 2023 were only 7% less than in 2019 as tourism recovers from the COVID-19 pandemic. New York's status as one of the financial capitals of the world as well as its diverse economy reinforce its status as a strong market.

### 2.4.1 Visitors by market

Tourism is a significant driver for inbound passenger traffic in the New York region. Figure 2.17 illustrates visitors to New York City by domestic and international markets between 2000 and 2023. An estimated 66.6 million visitors travelled to New York in 2019, up from an estimated 36.2 million visitors in 2000 or a compound annual growth rate of 3.3%. At a compound annual growth rate of 3.7% between 2000 and 2019, international visitors have grown at a faster rate than domestic visitors, which increased 3.2% per year during the same period. International visitors in 2023 numbered 10.8 million, or 80% of 2019 figures. While the number of visitors to New York decreased by 2.8% in 2001 compared to 2000 primarily because of the terrorist attacks of September 11<sup>th</sup> ("9/11 attacks"), visitor rates rebounded until the Global Financial Crisis, when total visitors decreased by 2.8% between 2008 and 2009. The onset of the COVID-19 pandemic reduced overall tourism figures in New York City. In 2020, visitor numbers dropped 67% relative to 2019, but figures have recovered to 93% of 2019 volumes in 2023.

**Figure 2.17: New York City visitors 2000-2023**

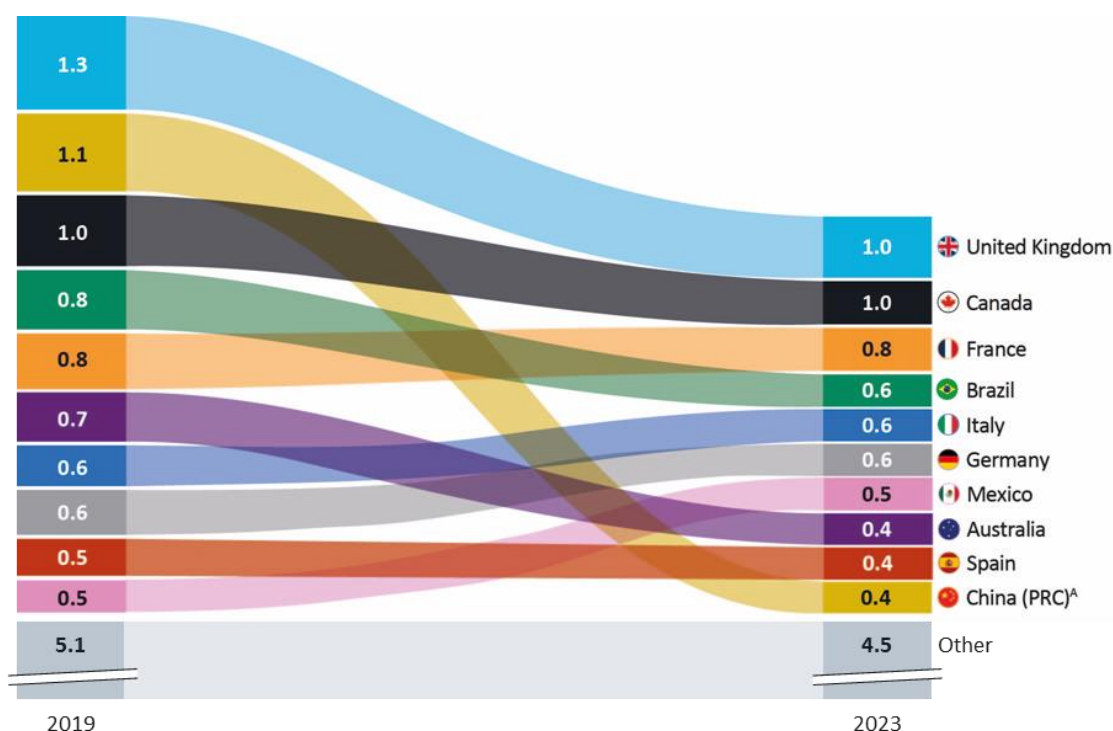


Source: NYC Tourism + Conventions (formerly NYC & Company) 2017-2018 annual summary, 2018-2019 Annual Report, Annual Report 2019-2020 and Annual Report 2023; Steer analysis

New York City attracts visitors from all over the world, including Europe, Central and South America and Asia. Figure 2.18 illustrates the top 10 international markets in 2019 and 2023. Visitors from the United Kingdom represented the largest origin country, with nearly 1.3 million visitors in 2019 and one million in 2023. China was the second largest market in 2019 at 1.1 million visitors but shrunk to 0.4 million in 2023. Canada was the third largest in 2019 with one million visitors, with similar volumes in 2023 making it the second largest international market. The visitor base to New York is highly diversified, minimizing the dependence on any single region of the world. This is especially important given regional variations in economic conditions over time.

**Figure 2.18: New York City top 10 international markets 2019/2023**

Million visitors



<sup>A</sup> PRC stands for People's Republic of China.

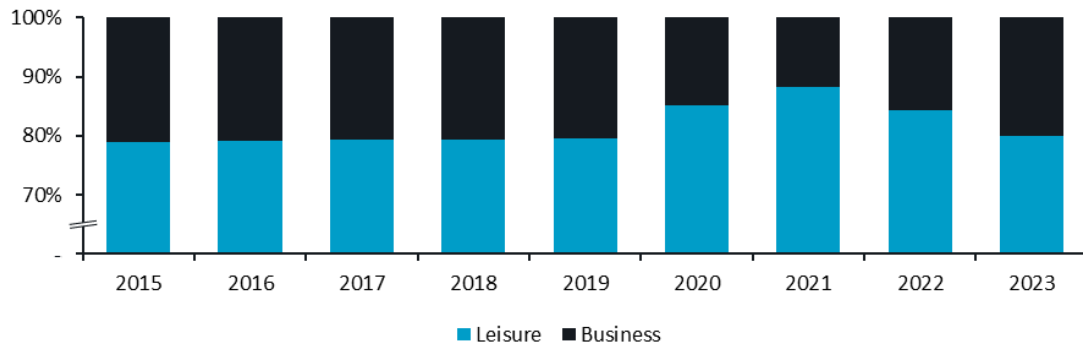
Source: New York City Tourism + Conventions *Annual Report 2023*, Steer analysis

#### 2.4.2 Visitors by trip purpose

In 2019, 80% of New York City's total visitors traveled for leisure purposes (using all modes of transportation—not just aviation), as illustrated in Figure 2.19, while the remaining 20% traveled for business. This distribution was similar between 2015 and 2019, when the proportion of business travel was between 20% and 21%. Business travel helps to further diversify the visitor base, contributing to the resilience of the New York travel industry against economic changes over time. The share of travelers on business to New York has recovered to 2019 proportions in 2023, with 20% of New York City's total visitors traveling for business purposes.

**Figure 2.19: New York City visitors by trip purpose 2015-2023**

% travel purpose share



Source: NYC Tourism + Conventions *2018-2019 Annual Report* and *NYC Travel & Tourism Outlook (March 2023)*, NYC Tourism + Conventions *Annual Report 2023*, Steer analysis

### 2.4.3 Arts, cultural attractions and meetings and convention venues

New York's tourism industry is driven in part by the region's international acclaim as a center for arts and culture. New York is home to many renowned institutions, including the Metropolitan Museum of Art, the Museum of Modern Art, the American Museum of Natural History, the Whitney Museum of American Art, the Solomon R. Guggenheim Museum, the Lincoln Center for the Performing Arts and Carnegie Hall. New York is also home to many different shows and musicals. According to the Broadway League, Broadway shows were attended by over 12.3 million customers with gross sales of \$1.6 billion during the 2022 to 2023 season.

In addition to the many museums and performing arts venues, the New York region also has many tourist attractions. Popular attractions include Times Square, Central Park, the High Line, the Empire State Building, Rockefeller Center, the Statue of Liberty, the World Trade Center memorial, One World Trade Center and the EDGE Sky Deck at Hudson Yards.

Convention and exhibition venues such as the Javits Center and Metropolitan Pavilion in addition to the various stadium venues and the hundreds of hotels across the New York region allow for the hosting of major events, meetings and expositions attracting visitors across the U.S. and around the world.

2.4.4 Sports teams

New York is home to several National Football League (NFL), Major League Baseball (MLB), National Basketball Association (NBA), National Hockey League (NHL) and Major League Soccer (MLS) teams as listed in Table 2.1.

Table 2.1: Select New York sports teams

Sports Team	Venue	Average Audience Size
New York Knicks (NBA)	Madison Square Garden	19,000
New York Rangers (NHL)		17,000
New York Yankees (MLB)	Yankee Stadium	41,000
New York City FC (MLS) <sup>A</sup>		19,000
Brooklyn Nets (NBA)	Barclays Center	17,500
New York Liberty (WNBA)		8,000
New York Mets (MLB)	Citi Field	33,000
New York City FC (MLS) <sup>A</sup>		19,000
New York Giants (NFL)	MetLife Stadium	76,000
New York Jets (NFL)		78,000
New York Red Bulls (MLS)	Red Bull Arena	17,500
New Jersey Devils (NHL)	Prudential Center	13,000
New York Islanders (NHL)	UBS Arena	13,000

<sup>A</sup> New York City MLS plays in both Yankee Stadium and Citi Field. The construction of a new MLS stadium is underway in Willets Point, Queens and scheduled to be completed in 2027.  
Source: National Hockey League, ESPN, Statista, Steer analysis

Each of these venues generate high travel demand due to their large capacity of seats. Madison Square Garden is in Midtown Manhattan and is considered an iconic sports and entertainment venue. Additionally, annual events such as the U.S. Open Tennis Championships and numerous golf championships attract guests and spectators from across the country and around the world.

### 2.4.5 Universities

New York City is home to several top universities that attract thousands of undergraduate and graduate students from across the globe each year. There are around 600,000 higher education students in New York City attending around 110 universities and colleges.<sup>23</sup> New York State hosts the largest number of students travelling out of state than any other state in the country.

Large universities in the New York region include Columbia University, New York University (NYU), Yale University, Princeton University, Rutgers University, St. John's University, Fordham University, Hofstra University, Barnard College, 64 different State University of New York (SUNY) schools and 25 City University New York (CUNY) schools. Beyond the New York-Newark-New Jersey area, there are other universities, such as Cornell University, Fordham University, Rensselaer Polytechnic Institute, Syracuse University and University of Rochester.

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<sup>23</sup> Source: Brookings Institution *New York in a Focus: A Profile from Census 2000 (November 2006)*, Steer analysis

### 3 New York Region Historic Air Traffic Demand

The New York region is served by three major airports, JFK, Newark and LaGuardia. Each airport plays a unique role in the region:

- JFK handled between 63% and 69% of the region's international passenger traffic between 2000 and 2023 making it the primary international gateway airport for the region.
- Newark acts as an important domestic and international hub for United Airlines and its Star Alliance partners but faces airfield restrictions and is dominated by a single-hub carrier.
- LaGuardia is a short-haul and domestic airport. The lack of an immigration and customs facility, physical and regulatory constraints on the airfield and the PANYNJ Perimeter Rule capping flight distances limit the airport's ability to expand or serve long-haul international traffic.
- Smaller secondary New York region airports supplement air service but lack strong connectivity to New York City's population centers. The lack of Federal Inspection Station facilities prevents airports such as Long Island MacArthur, New Haven, Trenton-Mercer and Westchester from serving international destinations without pre-clearance facilities.

This chapter provides an overview of the airports serving the New York region.

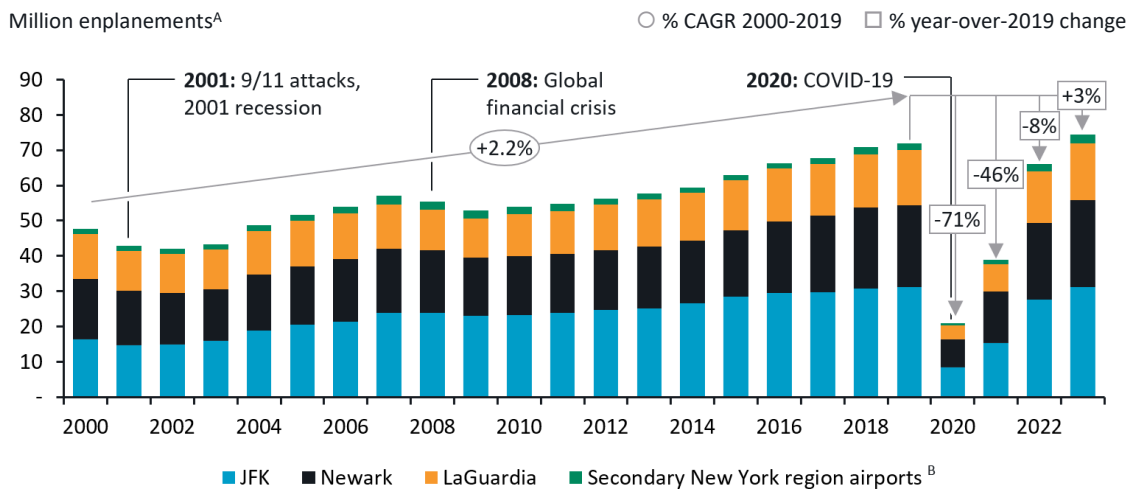
### 3.1 Historic traffic demand

JFK is the busiest airport by passenger traffic in the New York region, having handled between 63% and 69% of the international passenger traffic between 2000 and 2023. JFK is also the primary international gateway for the New York region.

#### 3.1.1 Regional traffic growth

Figure 3.1 provides an overview of passenger enplanements in the New York region. Regional enplanements increased from 47.7 million enplanements in 2000 to 71.9 million enplanements in 2019 or a compound annual growth rate of 2.2%. While passenger volumes across the New York region contracted during various industry crises in 2001 and 2008, traffic had historically returned to pre-crises levels with time. For instance, New York region enplanements contracted 10.0% in 2001 from 2000 volumes following the 9/11 attacks and 2001 recession. Both regional and JFK traffic returned above year 2000 enplanement volumes in 2004, while enplanement volumes did not recover to 2000 volumes until 2005 at LaGuardia and 2006 at Newark. Meanwhile, during the Global Financial Crisis, enplanements across the New York region were down in 2008 from pre-crises volumes the preceding year but returned to 2007 enplanement volumes in 2013. Between 2000 and 2019, JFK enplanements increased at a compound annual growth rate of 3.5%, making it the fastest growing airport in the New York region, compared with Newark and LaGuardia at 1.6% and 1.1% respectively.

**Figure 3.1: New York region enplanements 2000-2023**



<sup>A</sup> For JFK, Newark, LaGuardia and Stewart, passenger enplanements were calculated by dividing the number of passengers in half.

<sup>B</sup> Secondary New York region airports includes Stewart, Long Island MacArthur, New Haven, Trenton-Mercer and Westchester.

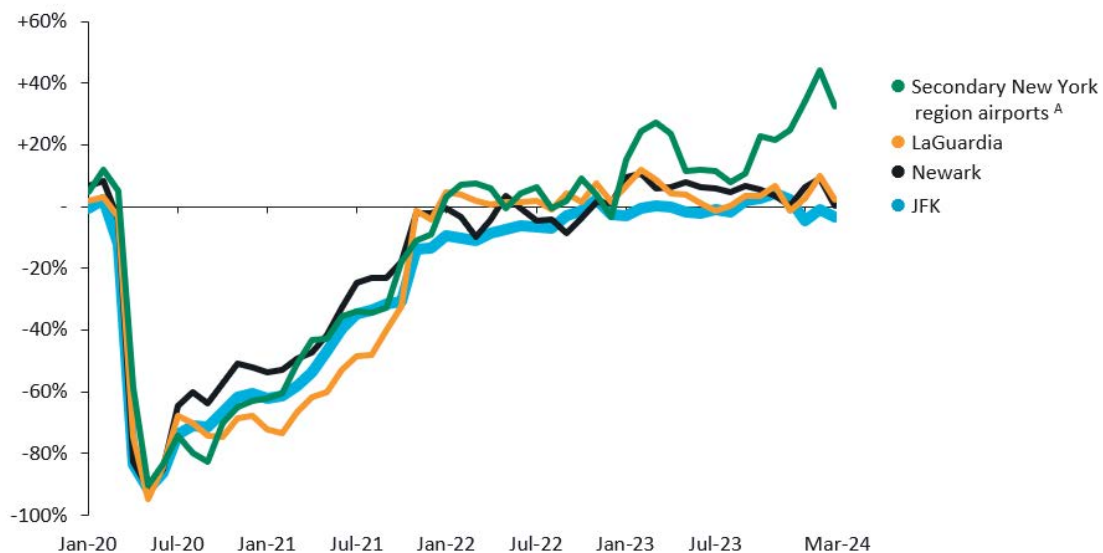
Source: Port Authority of New York and New Jersey *Airport Traffic Report 2003*, *Airport Traffic Report 2017* and *Airport Traffic Report 2019*, *Air Traffic Report 2021*, *Airport Traffic Report 2023* (for JFK, Newark, LaGuardia and Stewart); U.S. Department of Transportation (for all remaining airports); Steer analysis

Starting in 2020, COVID-19 had an unprecedented impact on the aviation industry. According to the International Air Transportation Association, global passenger miles flown fell to a low of 92% below the same levels in 2019 only three months following the start of the pandemic. The reductions in global aviation traffic were due to governments around the world adopting a range of different public health measures to contain the spread of the COVID-19 pandemic. New York regional traffic has rebounded to 74.4 million enplanements or 103% of 2019 enplanement volumes in 2023 as the aviation industry recovers from the effects of the COVID-19 pandemic. According to Airports Council International data, JFK was ranked as the sixth largest in the country by enplanements in 2023, with over 31.2 million enplanements, Newark ranked 13<sup>th</sup> in the country (24.5 million enplanements) and LaGuardia ranked 19<sup>th</sup> (16.2 million enplanements). Internationally, JFK ranked 13<sup>th</sup> globally by enplanements in 2023 with Newark in 31<sup>st</sup> place.

As illustrated in Figure 3.2, airports across the New York region have departing seat capacities that are near or have already exceeded March 2019 volumes in March 2024, particularly secondary New York region airports. This surge is attributed to the introduction of several low-cost carriers across various secondary airports, including Avelo Airlines at Tweed New Haven Airport in November 2021 and the launch of Breeze at Westchester County Airport in June 2022. Additionally, there has been significant growth in air traffic for JetBlue at Westchester County Airport and Frontier Airways at Long Island MacArthur Airport and Trenton-Mercer Airport. Among the three major New York region airports, LaGuardia and Newark have recovered, as departing seat capacity in March 2024 was 2.2% and 0.3% above March 2019 volumes in the same month in 2024. Meanwhile, JFK remained 3% below March 2019 volumes in March 2024.

**Figure 3.2: New York region departing seat capacities January 2020-March 2024**

% month over same month-2019 departing seat capacity change



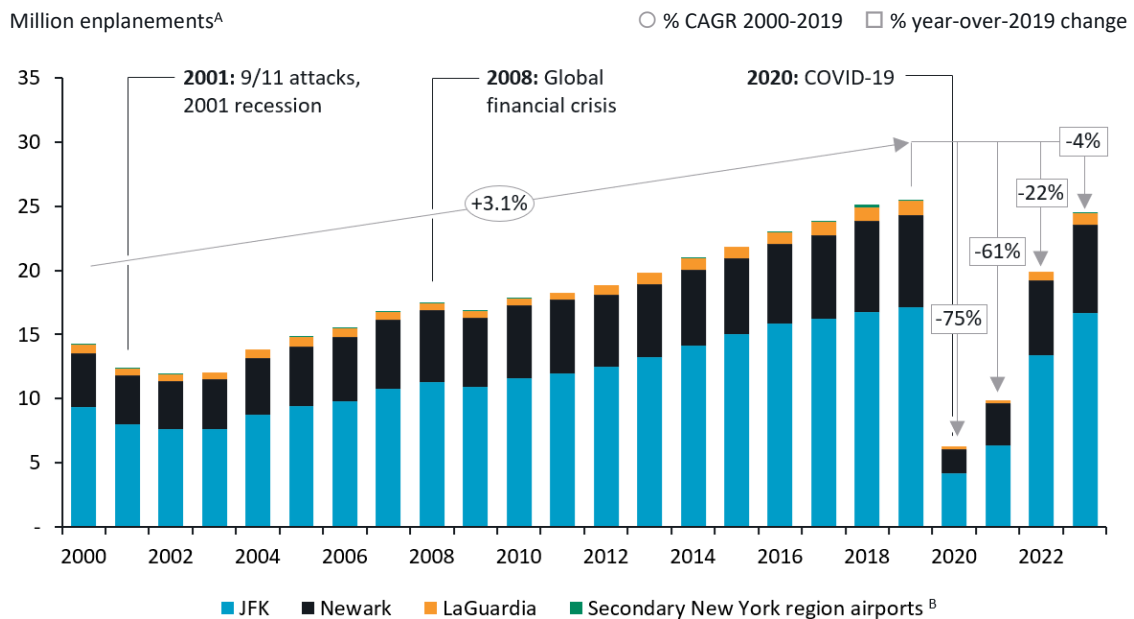
<sup>A</sup> Secondary New York region airports include Stewart, Islip, New Haven, Trenton-Mercer and Westchester.

Source: Official Airline Guide, Steer analysis

### 3.1.2 International traffic growth

As illustrated in Figure 3.3, total international enplanements across the New York region airports had increased from 14.2 million in 2000 to 25.5 million enplanements in 2019, representing a compound annual growth rate of 3.1%. At a compound annual growth rate of 3.3% during the same period, JFK was the fastest growing international airport among the major New York region airports. It was also the largest growing international airport across the New York region. International enplanement volumes at Newark and LaGuardia increased at a compound annual growth rate of 2.9% and 2.6% respectively. Following the COVID-19 pandemic outbreak beginning in 2020, international region-wide enplanement volumes fell by 75% in 2020, recovering to 4% below 2019 volumes in 2023. International enplanements at JFK recovered slightly faster than region-wide average at 3% below 2019 volumes.

**Figure 3.3: New York region airports international enplanements 2000-2023**



<sup>A</sup> For JFK, Newark, LaGuardia and Stewart, passenger enplanements were calculated by dividing the number of passengers in half.

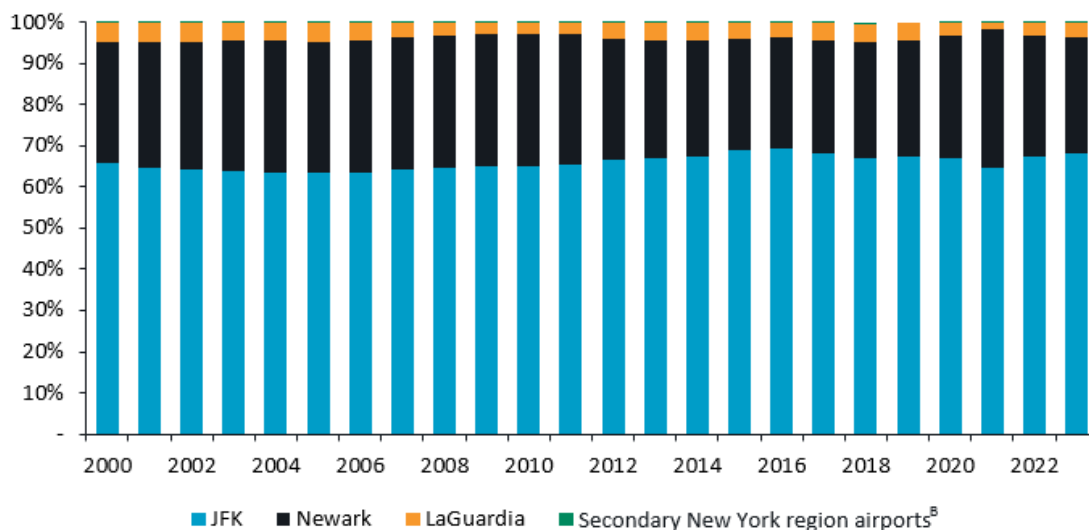
<sup>B</sup> Secondary New York region airports includes Stewart, Islip, New Haven, Trenton-Mercer and Westchester.

Source: Port Authority of New York and New Jersey *Airport Traffic Report 2003, Airport Traffic Report 2017, Airport Traffic Report 2019, Airport Traffic Report 2021 and Air Traffic Report 2023* (for JFK, Newark, LaGuardia and Stewart); U.S. Department of Transportation (for all remaining airports); Steer analysis

JFK is the primary international airport for the New York region as shown in Figure 3.4. Between 2000 and 2023, JFK handled between 63% and 69% of all international enplanements in the New York region, making it the largest airport by passengers.

**Figure 3.4: New York region airport international passenger distribution 2000-2023**

% international enplanements share<sup>A</sup>



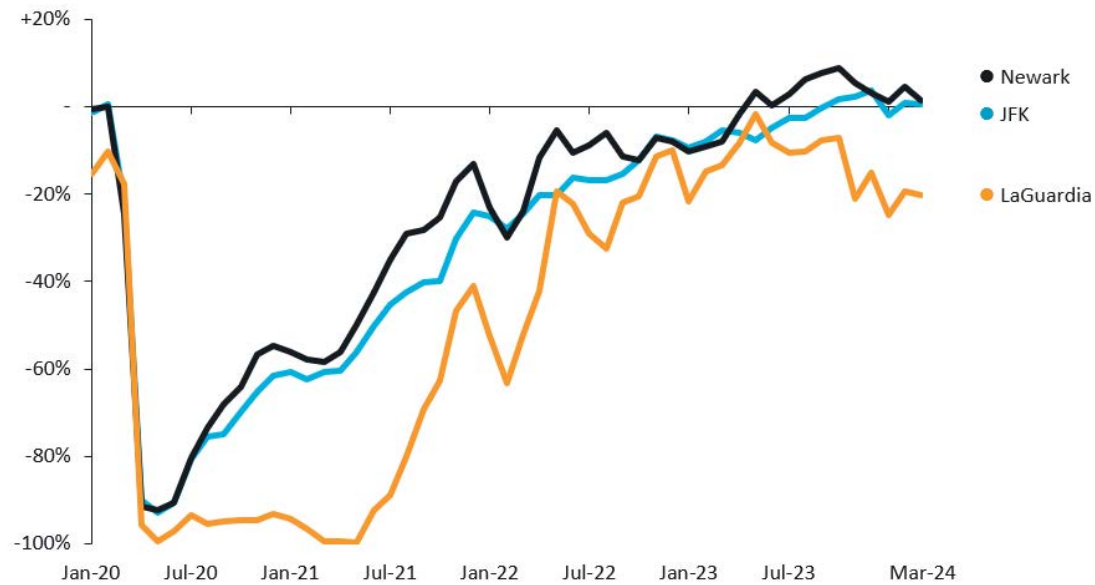
<sup>A</sup> For JFK, Newark, LaGuardia and Stewart, passenger enplanements were calculated by dividing the number of passengers in half.

<sup>B</sup> Secondary New York region airports includes Stewart, Islip, New Haven, Trenton-Mercer and Westchester.

Source: Port Authority of New York and New Jersey *Airport Traffic Report 2003*, *Airport Traffic Report 2017*, *Airport Traffic Report 2019*, *Air Traffic Report 2021*, and *Air Traffic Report 2023* (For JFK, Newark, LaGuardia and Stewart International from 2000 to 2019); U.S. Department of Transportation (for all other New York region airports); Steer analysis

Border closures around the world suppressed the recovery of international traffic relative to domestic traffic recovery. Certain countries in the Caribbean and other leisure-oriented destinations began relaxing border restrictions beginning in mid-2020, with more countries reopening in 2021 once COVID-19 vaccines were approved and distributed around the world. This has enabled the recovery of the international market as illustrated in Figure 3.5. International departing seat capacity in March 2024 at LaGuardia has recovered to 20% below March 2019 seat capacity volume<sup>24</sup>. Meanwhile, Newark and JFK have recovered to 1.5% and 0.6% above March 2019 departing seat capacity volumes in the same month of 2024.

<sup>24</sup> International flights constitute a minor portion of LaGuardia's overall traffic given the airport lacks the ability to process international arrivals and thus only serves pre-clearance markets. There has been a notable 16% decrease in departing seats bound for Canada during the first quarter of 2024 compared to the same period in 2023. This reduction contributes to the observed decline in 2024 at LaGuardia.

**Figure 3.5: New York region international departing seat capacities January 2020-March 2024**% year-over-2019 departing seat capacity change<sup>A</sup>

<sup>A</sup> Secondary New York airports such as Stewart handled international traffic but have not been shown in this figure given these are small compared to the traffic served by the Major New York region airports.

Source: Official Airline Guide, Steer analysis

In addition to the COVID-19 pandemic, the Russia-Ukraine war beginning in February 2022 has impacted aviation markets around the world in two ways as illustrated in Figure 3.6.

- **Suspension of routes through and to Ukraine:** Countries began avoiding Ukraine airspace to avoid the conflict zone. Commercial air services to Ukraine were suspended, including flights between JFK and Kyiv. Air services that normally passed through Ukraine were rerouted adding flight time and risk impacting operations and commercial viability.
- **International airspace closure:** The United States, as well as other countries including Canada and the European Union, closed its airspace to Russian-owned chartered or operated aircraft in its respective airspaces in protest to Russia's invasion. This suspended Aeroflot's flight operations between JFK and Moscow Sheremetyevo. Russia announced countermeasures, closing its airspace to airlines based in the United States, Canada and the European Union.

**Figure 3.6: International aviation impacts of the Russia-Ukraine war**

Example impacted flight from Russia to the United States



Example impacted flight from the U.S. to India



Note: Airspace illustrations are for illustrative purposes only.

Source: Aljazeera, Department of Transport, European Union, Government of Canada, U.S. Government, Steer analysis

Beyond Russian airspace closures, other regional conflicts such as the more recent Israel-Gaza war have also caused flight diversions to avoid these areas. However, these conflicts have less of an impact on global aviation compared to the Russian airspace issue.

Lastly, the People's Republic of China (PRC) implemented strict travel restrictions to mainland China at the beginning of the pandemic. While the Chinese government started loosening COVID-related travel restrictions in 2023, many U.S. airlines still have limited service to China. Restrictions between the two countries have been slowly lifted in the form of increased flight caps. Starting 31 March 2024, flights from either country have increased to 50 per week from 35 per week, bringing the number of flights allowed back to nearly one-third of its pre-pandemic levels. Airlines such as Xiamen Airlines have announced the resumption of services to JFK this year as restrictions loosen. In March 2024, the U.S. Department of Transportation authorized a 90-day waiver period on resuming flights to China. As a result, American Airlines, Delta Air Lines and United Airlines will delay resuming many services to China until October 2024 at the earliest. The two countries have been slowly increasing quotas, but current limits remain below the 150 weekly round trips permitted by each country before the policies were imposed in early 2020 due to the COVID-19 pandemic.<sup>25</sup>

### 3.1.3 Airlines' service to New York region airports

In 2019, JFK had a 71% share of all departing international widebody air traffic movements from the major New York region airports. Widebody aircraft have twin-aisles in the aircraft cabin and are larger than narrowbody, single-aisle, aircraft. These are generally better suited for long-haul operations at capacity constrained airports. Comparatively, Newark had a 29% share, while LaGuardia does not typically serve widebody aircraft. These shares have remained steady in 2023, illustrating a return towards pre-pandemic conditions.

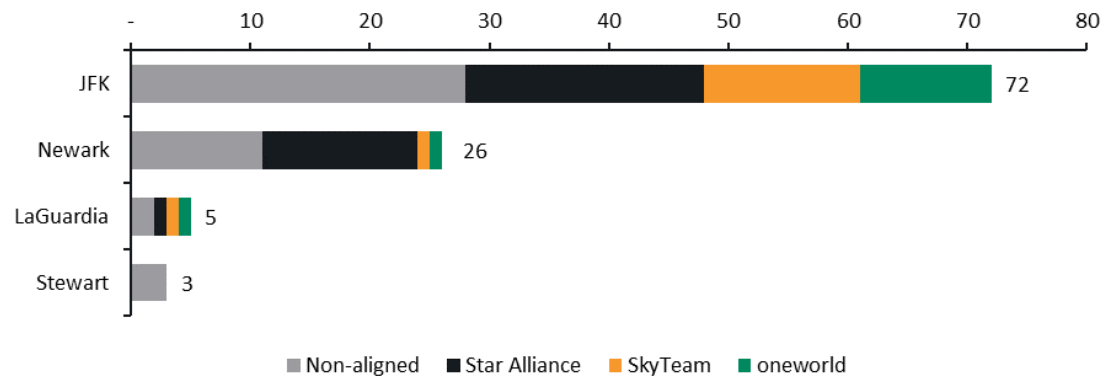
In addition to being the largest international airport by enplanement volumes in the New York region, as illustrated in Figure 3.7, JFK served 72 different international airlines in 2023, the most

<sup>25</sup> Source: State Council of the People's Republic of China *Chinese airlines increasing flights to the US*

among the New York region airports. 49 of these airlines serve only JFK while 23 of these airlines served other New York region airports. The next largest airport was Newark, which served 26 different international airlines. LaGuardia served five different international airlines in 2023 while Stewart served three airlines.

**Figure 3.7: New York region international airlines 2023**

Number of airlines that served international markets



Source: Official Airline Guide, Steer analysis






## 3.2 New York region airports operational constraints

Airports throughout the New York region face various constraints, including capacity constraints to the airfield, runways, terminals and even commercial constraints such as the airline mix. These constraints are likely to cause the region's airports to continue to function in complementary roles.

### 3.2.1 Airport infrastructure operational constraints

Airports require adequate capacity throughout several independent processes and if any single process or system is constrained it can impact an airport's ability to grow. Table 3.1 provides a summary of existing constraints facing the major New York region airports.




Table 3.1: Examples of capacity constraints

Category	Description	Air traffic impact
 <b>Terminal constraints</b>	Terminal facilities to accommodate passenger traffic levels, such as limited gates, small holdrooms and space restrictions in security and passport control.	<b>Direct:</b> Insufficient capacity to accommodate passenger traffic levels, especially at peak periods.
 <b>Runway constraints</b>	The length of a runway could restrict the type of aircraft that can be handled at a given airport.	<b>Direct:</b> May prohibit direct service from some markets.
 <b>Other airfield constraints</b>	Lack of aircraft infrastructure to handle aircraft movements (or air traffic movements), such as, but not limited to, taxiways or aircraft positions.	<b>Direct:</b> Insufficient capacity to accommodate air traffic movements.
 <b>Airline dynamics</b>	Network airlines, particularly international operations, require connecting passenger traffic to fill seats.	<b>Indirect:</b> Lack of connection partners may discourage an airline from serving a given airport, especially if there are alternatives.
 <b>Slot restrictions</b>	Preassigned take-off and landing positions to limit scheduled air traffic at capacity constrained airports.	<b>Direct:</b> Provides an upper limit on the number of air traffic movements per hour to manage air traffic and delays.

Source: Steer analysis

Operating constraints faced by the major New York region airports are detailed in Table 3.2. Overall, all the major New York region airports have physical site constraints that prevent easy expansion of runways and the airfield. All of these airports had constraints in the terminal facilities that justify their respective terminal expansion projects. Similar terminal constraints, such as the lack of FIS facilities to process international passengers and capacity constraints preventing significant airport expansion, can be found in some of the Secondary New York region airports. Additionally, these airports are further away from New York City compared to JFK and have limited access beyond the automobile. These factors prevent these airports from offering significant competition to JFK for international widebody traffic.

**Table 3.2: Summary of operating constraints at the major New York region airports**

Category	JFK	Newark	LaGuardia
 <b>Terminal constraints</b>	According to the PANYNJ's April 2020 environmental assessment, terminal facilities were exceeding design capacities in 2019. Various terminal projects, including NTO, are required to accommodate forecast growth.	The PANYNJ has replaced the aging Terminal A facility. The new Terminal A has narrowbody gates for domestic operations and services to Canada. Terminal B, the primarily international terminal, is slated for replacement.	Although LaGuardia recently completed two major terminal replacement projects, no terminals at LaGuardia have FIS facilities (enabling onsite processing of international arrivals).
 <b>Runway constraints</b>	JFK runways can accommodate widebody aircraft, including the Airbus A380, the largest passenger aircraft. Physical site constraints prevent easy expansion of runway capacity.	Newark is surrounded by roadways and urban development; these physical constraints prevent the airport from easily constructing additional runway capacity.	Runway length restrictions prohibit the airport from serving large, widebody aircraft, <sup>A</sup> and thus its ability to serve long-haul destinations. Physical site constraints prevent easy expansion of runway capacity.
 <b>Other airfield constraints</b>	Airfield improvement projects such as additional taxiway entrances and exits and highspeed turnoffs have provided airfield operational improvements.	Newark's physical constraints limit the PANYNJ in providing significant airfield capacity expansion.	The Terminal B redevelopment project provided more routes to the runway, reducing taxi times. However, the airfield cannot be easily expanded further.
 <b>Airline dynamics</b>	As the primary international airport, JFK has a broad mix of U.S. and international airlines.	Newark's traffic is influenced by United Airlines' dominance, presenting few connection options for non-Star Alliance airlines.	As primarily a domestic/regional airport, LaGuardia serves mostly U.S. airlines.
 <b>Slot restrictions</b>	Since 2008, JFK has had slot restrictions capping the total number of air traffic movements to 81 per hour. JFK is a Level 3 slot-constrained airport. <sup>B</sup> While airfield improvements can help increase the current slot limitation of 81 air traffic movements per hour, JFK is expected to remain a Level 3 slot constrained airport.	Newark is a Level 2 constrained airport. This lower designation reflects the lower overall demand, but schedule challenges remain that often require coordination and prevent new entrants from starting many operations at the airport. United is incentivized to avoid over-scheduling which would risk creating delays that could have a large impact on their network.	Like JFK, LaGuardia is a slot-constrained airport. The PANYNJ also has in place the Perimeter Rule, restricting flights to destinations under 1,500 miles. <sup>C</sup> Senate Bill S311 of the New York State Senate proposes a continued restriction of long-haul flights from LaGuardia. In May 2022, the bill passed the Senate and was delivered to the NYS Assembly.

<sup>A</sup> The airport can accommodate a Boeing 767 aircraft but cannot accommodate larger capacity widebodies at maximum takeoff weights.

<sup>B</sup> Under the International Air Transport Association's (IATA) Worldwide Airport Slot Guidelines (WASG), Level 3 is the highest slot constraint designation possible.

<sup>C</sup> With exceptions for flights to Denver, Colorado and for flights on Saturdays.

Source: Official Airline Guide, Port Authority of New York and New Jersey *Final Environmental Assessment John F. Kennedy International Airport Redevelopment Program, Terminal A Redevelopment Program Newark Liberty International Airport Final Environmental Assessment and Terminal One Redevelopment Briefing Book*; The New York Senate; U.S. Federal Aviation Administration; Steer analysis

### 3.2.2 U.S. Federal Aviation Administration air traffic control issues

More recently, the New York region has also been impacted by the shortage of U.S. FAA air traffic controllers. Due to the high volume of flights arriving and leaving in the New York region and the interdependency of the airspace surrounding JFK, delays caused partially by staffing shortages at the New York Terminal Radar Approach Control (TRACON) facility (N90) are expected to continue to impact carriers' ability to meet minimum usage in the winter 2023/2024 and summer 2024 scheduling seasons. The FAA anticipates a high likelihood of congestion and delay at JFK and surrounding airports if current requirements are not given increased flexibility. Typically, carriers at JFK must use each assigned slot at least 80% of the time. The FAA has asked U.S. airlines including American Airlines, Delta Air Lines, JetBlue Airways and United Airlines to cut flights across the New York region temporarily while short term staffing issues are addressed.

A shortage of air traffic controllers is one factor that limits available capacity at the PANYNJ commercial service airports. These shortages may encourage FAA to limit operational growth at the facilities and provide flexibility for airlines operating at JFK. At the time of writing, Airlines for America (A4A), the commercial airline trade association, has asked that the conditional waiver of the minimum usage requirement that applies to Operating Authorizations at JFK, LGA (operated also by PANYNJ) and Washington National Airport (DCA) be extended through the end of the Summer 2025 scheduling season. The trade association of U.S. commercial service airports, Airports Council International, North America (ACI-NA), has opposed that request. Both the A4A and ACI-NA requests are currently before the FAA for review.

To address the shortage in air traffic controllers in the long run, the FAA has announced intentions to hire 1,800 new controllers in 2024 and 2,000 in 2025.

## 4 JFK Historic Air Traffic Demand

Prior to the COVID-19 pandemic, JFK traffic growth was resilient, with demonstrated rebounds from past shock events and economic slowdowns. Traffic has recovered to near 2019 volumes.

- Passenger enplanements at JFK increased at a compound annual growth rate of 3.5% between 2000 and 2019 and recovering to 31.2 million in 2023, just 0.4% less than 2019 enplanement levels.
- International passenger traffic increased at a 3.3% compound annual growth rate between 2000 and 2019 and has driven 53% of the total JFK passenger traffic increase during that period. In 2023, international enplanements recovered to 97% of 2019 levels. The slower recovery of international traffic compared to domestic traffic has been driven by the slower reopening of countries to air travel, especially Asian countries.
- JFK has a diverse mix of U.S. and non-U.S. airlines. The diversity in airline traffic can mitigate against destination-specific economic conditions and increases market resilience.
- Before the pandemic, JFK served record passenger levels despite capacity constraints, with terminals serving passenger volumes well above design capacity. As traffic exceeds 2019 volumes, the airport is facing similar levels of congestion. Current terminal developments will address this challenge.

This chapter provides a detailed review of historical traffic since 2000 at JFK.

## 4.1 JFK terminal facilities

JFK is currently served by five terminals; each terminal is independently operated and serves a different mix of airlines. The existing Terminal 1 is the only terminal at JFK serving exclusively international traffic.

JFK currently has a total of five terminals in use for commercial passenger service. A history and summary description of each are discussed in Table 4.1. All terminals are configured around the center of the airport, connected by the AirTrain and the Van Wyck and JFK Expressways as illustrated in Figure 4.1. JFK has decommissioned various terminal facilities in recent years:

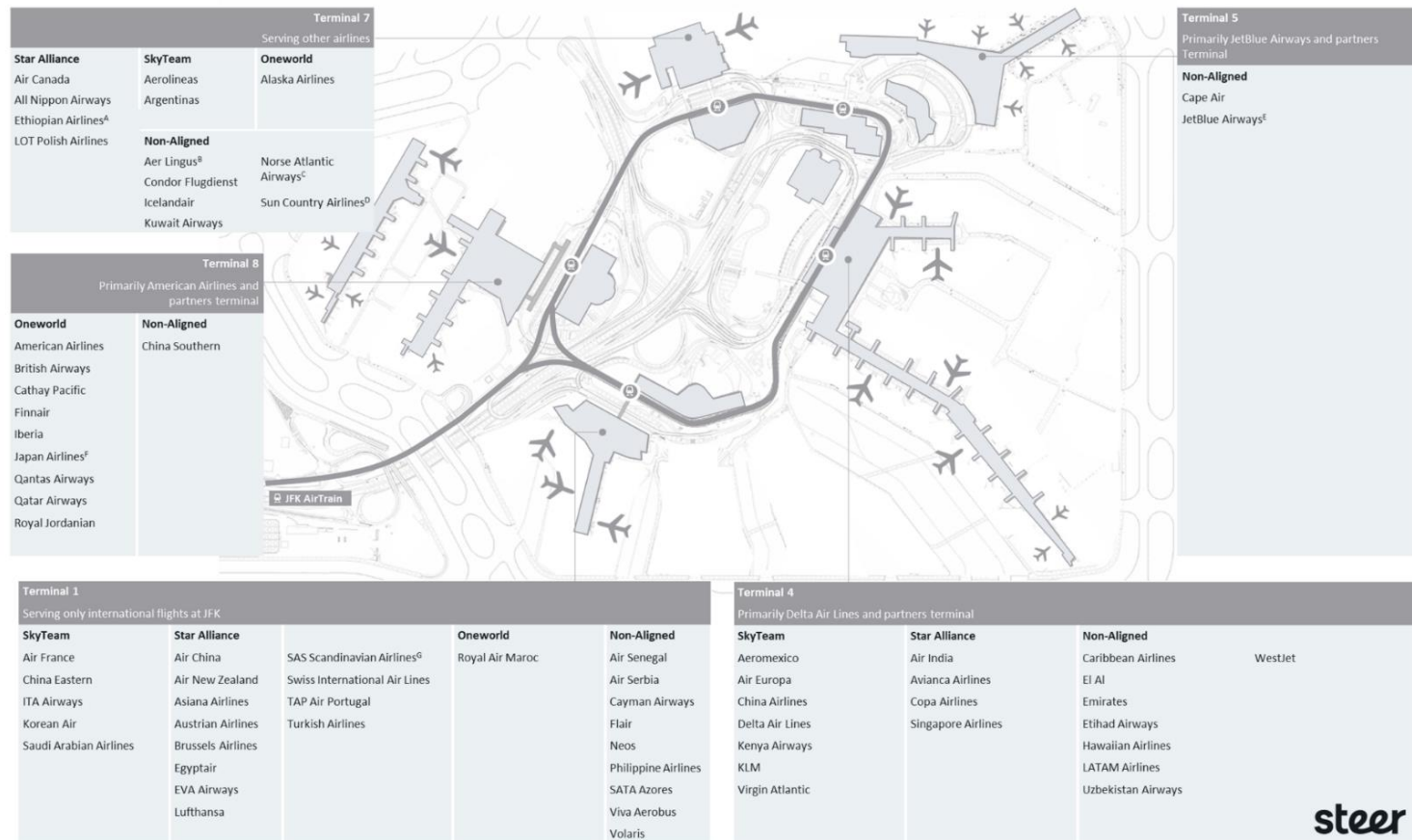
- Terminal 3 was demolished in 2013 when Delta Air Lines moved its operations into Terminal 4. The site was used for aircraft parking until the Operator took over the site and began construction of NTO in 2022.
- Terminal 6 was demolished in 2006 after JetBlue Airways vacated the terminal and consolidated into Terminal 5.
- Terminal 2 was demolished in 2023 as part of the new construction process for NTO.

**Table 4.1: JFK terminals summary**

Terminal	Description
<b>The existing Terminal 1</b> Serving only international flights	Opened in 1998 and operated by TOGA, the existing Terminal 1 only handles international flights and is home to international, non-U.S. carriers. As such, the terminal serves a diverse mix of international airlines from around the world.
<b>Terminal 4</b> Primarily Delta Air Lines and partners	Managed by JFK International Air Terminal LLC, an indirect subsidiary of Royal Schiphol Group of Amsterdam, Terminal 4 opened in 2001 and is home to Delta Air Lines for both domestic and international operations, select SkyTeam and partner airlines such as KLM and other non-U.S. airlines such as Emirates and Etihad Airways.
<b>Terminal 5</b> Primarily JetBlue Airways and partners	Opened in 2008, Terminal 5 is managed and operated by JetBlue Airways. The terminal previously served many of its partners, such as Aer Lingus and TAP Air Portugal, but these airlines have moved to other terminals. Only Cape Air remains as a non-JetBlue airline based in Terminal 5.
<b>Terminal 7</b> Serving other airlines (formerly for British Airways' operations)	Opened in 1970, Terminal 7 was operated by British Airways and used by other airlines such as Alaska Airlines and All Nippon Airways. After British Airways' relocation to Terminal 8, the terminal lease was transferred to JFK Millennium Partners, who will demolish it to develop the upcoming Terminal 6. Demolition is planned for 2026.
<b>Terminal 8</b> Primarily American Airlines and partners	Opened in various phases from 2005 to 2007, Terminal 8 is the home of American Airlines along with oneworld alliance partners, including Finnair and Royal Jordanian Airlines. British Airways and Iberia relocated to Terminal 8 in December 2022.

Source: JFK International Air Terminal LLC, JFK Millennium Partners, Official Airline Guide, Port Authority of New York and New Jersey *A New JFK: Redevelopment Projects* (webpage), Terminal One Group Association, Steer analysis

Figure 4.1: JFK terminal layout and airline tenants April 2023-March 2024



<sup>A</sup> Ethiopian Airlines has moved to Terminal 7 from Terminal 8 in June 2023.

<sup>B</sup> Aer Lingus has moved to Terminal 7 from Terminal 5 starting April 2023.

<sup>C</sup> Norse Atlantic Airways has moved to Terminal 7 from the existing Terminal 1 starting April 2023.

<sup>D</sup> Sun Country Airlines also had operations at Terminal 4 in April 2023.

<sup>E</sup> JetBlue Airways has operations at Terminal 5 from 5:00 am to 10:30 pm and at Terminal 4 from 10:30 pm to 5:00 am.

<sup>F</sup> Japan Airlines has moved to Terminal 8 from the existing Terminal 1 starting May 2023

<sup>G</sup> SAS Scandinavian Airlines moved from Terminal 7 to Terminal 1 in March 2024.

Source: Official Airline Guide, Steer analysis

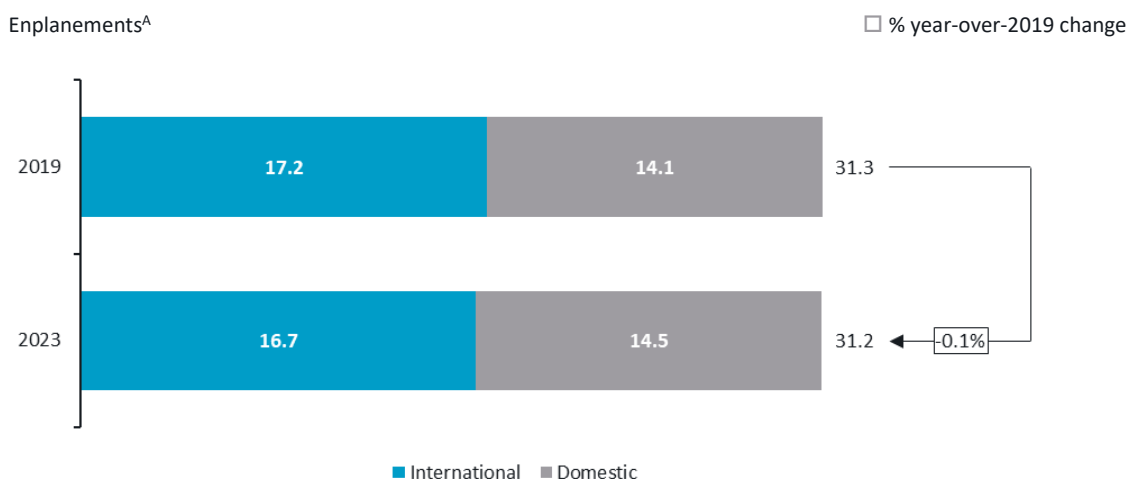
## 4.2 JFK air traffic demand

JFK is served by a diverse mix of airlines. Passenger traffic reached over 31 million enplanements in 2019, a record high. Passenger enplanements increased at a 3.3% compound annual growth rate between 2000 and 2019, despite having gone through two economic recessions and the 9/11 attacks. In 2023, traffic rebounded to 31.2 million enplanements following the COVID-19 outbreak in 2020, approximately the same as 2019 levels. Compared to other U.S. large hubs, JFK has a well-diversified mix of airlines which increases airport resiliency.

### 4.2.1 Overview

JFK served 31.3 million enplanements in 2019. Since the outbreak of the COVID-19 pandemic beginning 2020, enplanement volumes have nearly recovered to 2019 volumes in 2023. International enplanements in 2023 were 16.7 million and have recovered to 3% below 2019 volumes. Figure 4.2 shows the makeup of JFK traffic in 2019 and 2023.

**Figure 4.2: JFK Enplanements 2019/2023**



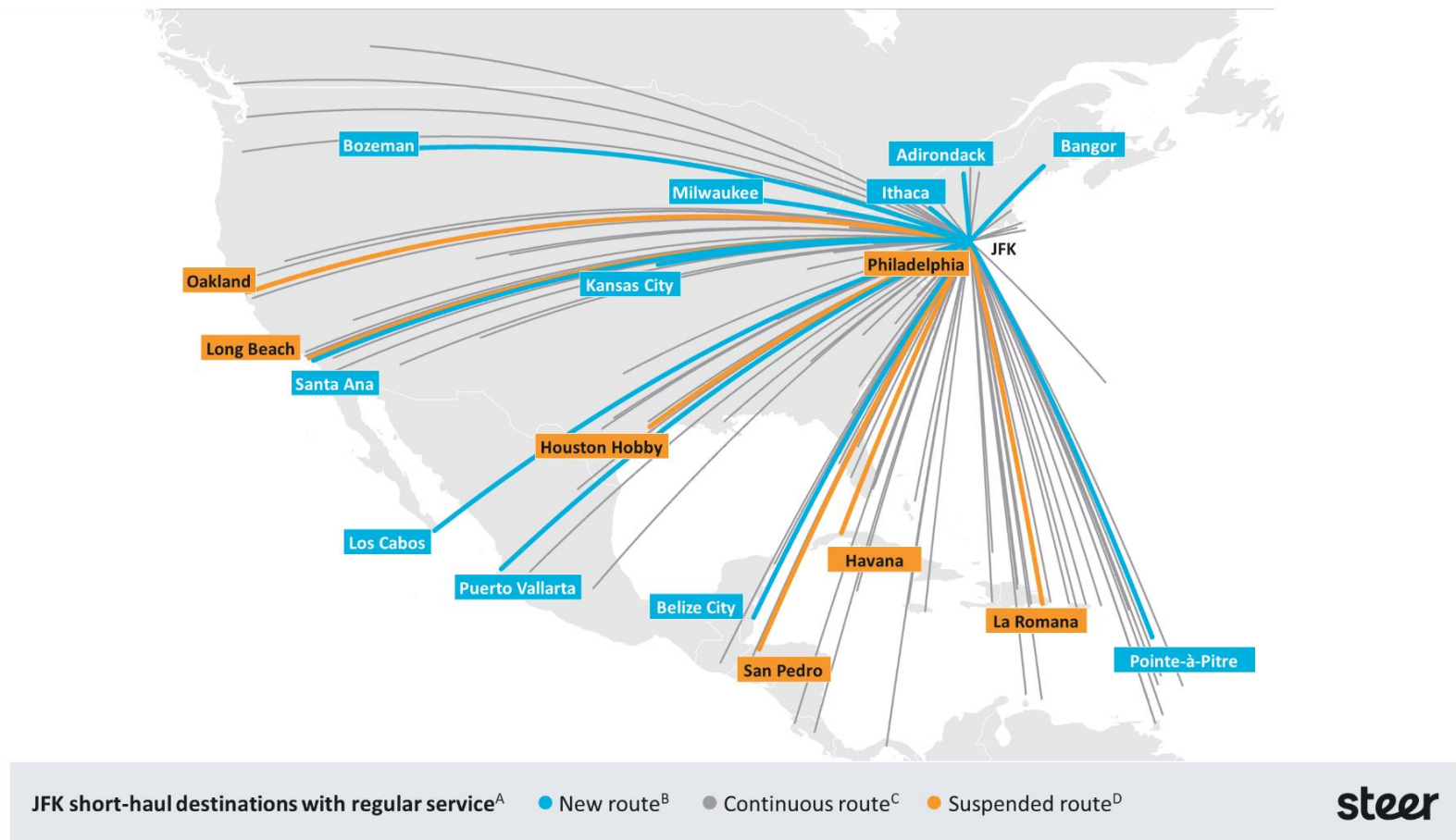
<sup>A</sup> Enplanements were calculated by dividing the number of passengers in half.

Source: Port Authority of New York and New Jersey *Airport Traffic Report 2023*, Steer analysis

Figure 4.3 and Figure 4.4 illustrate a comparison of the non-stop destinations served in 12 months ending March 2024 compared to the same period in March 2020. There have been 18 new regular services.<sup>26</sup>

<sup>26</sup> Defined as a non-stop route with at least 26 frequencies (average one weekly frequency over an International Air Transport Association season).

Figure 4.3: JFK non-stop destinations 12 months ending March 2020/2024



<sup>A</sup> Regular service is defined as a non-stop route with at least 26 frequencies (average one weekly frequency over an International Air Transport Association season).

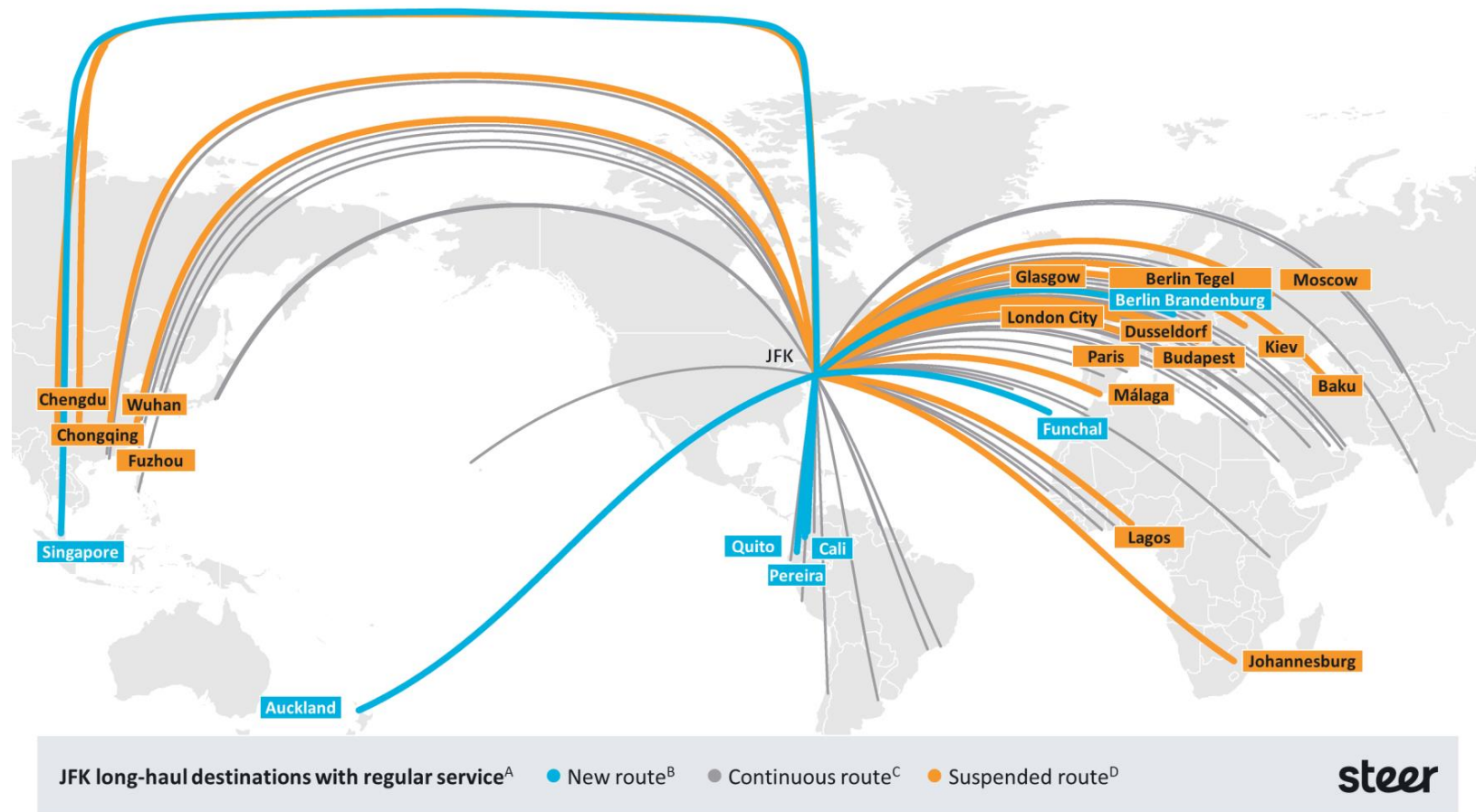
<sup>B</sup> "New Route" is defined as a route that was found in the 12-month period ending August 2023 but not in the 12-month period ending August 2019.

<sup>C</sup> "Continuous Route" is defined as a route flown in the 12-month period ending August 2023 but not in the 12-month period ending August 2019.

<sup>D</sup> "Suspended Route" is defined as a route flown in the 12-month period ending August 2019 but not in the 12-month period ending August 2023.

Source: Official Airline Guide, Steer analysis

Figure 4.4: JFK non-stop long-haul destinations 12 months ending March 2020/2024



<sup>A</sup> "Regular service" is defined as a non-stop route with at least 26 frequencies (average one weekly frequency over an International Air Transport Association season). Note that all services to Russia including Moscow Sheremetyevo and Kyiv have been suspended following the Russo-Ukrainian war and associated air space closures.

<sup>B</sup> "New Route" is defined as a route that was found in the 12-month period ending August 2023 but not in the 12-month period ending August 2019.

<sup>C</sup> "Continuous Route" is defined as a route flown in the 12-month period ending August 2023 but not in the 12-month period ending August 2019.

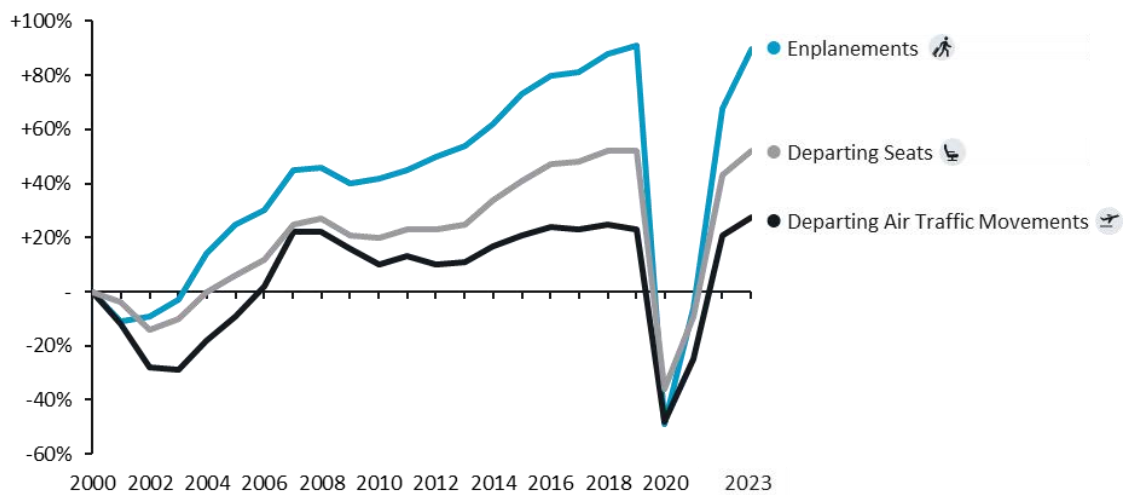
<sup>D</sup> "Suspended Route" is defined as a route flown the 12-month period ending August 2019 but not in the 12-month period ending August 2023.

Source: Official Airline Guide, Steer analysis

As illustrated in Figure 4.5, passenger traffic growth has exceeded the growth in air traffic movements (takeoffs and landings). In 2000, the average number of enplanements per departing air traffic movement was 94. This increased to a peak of 146 in 2019. In 2023, it was 140 as the recovery from the COVID-19 pandemic continues. The cause of this growth is through a combination of upgauging (the use of larger aircraft) and seat densification. This is consistent with many other constrained airport environments and is expected to continue as demand grows as the airport.

**Figure 4.5: JFK traffic 2000-2023**

% year-over-2000 change



Source: Port Authority of New York and New Jersey *Airport Traffic Report 2013*, *Airport Traffic Report 2017*, *Airport Traffic Report 2019* and *Airport Traffic Report 2023*; Official Airline Guide; Steer analysis

#### 4.2.2 Traffic trends by market

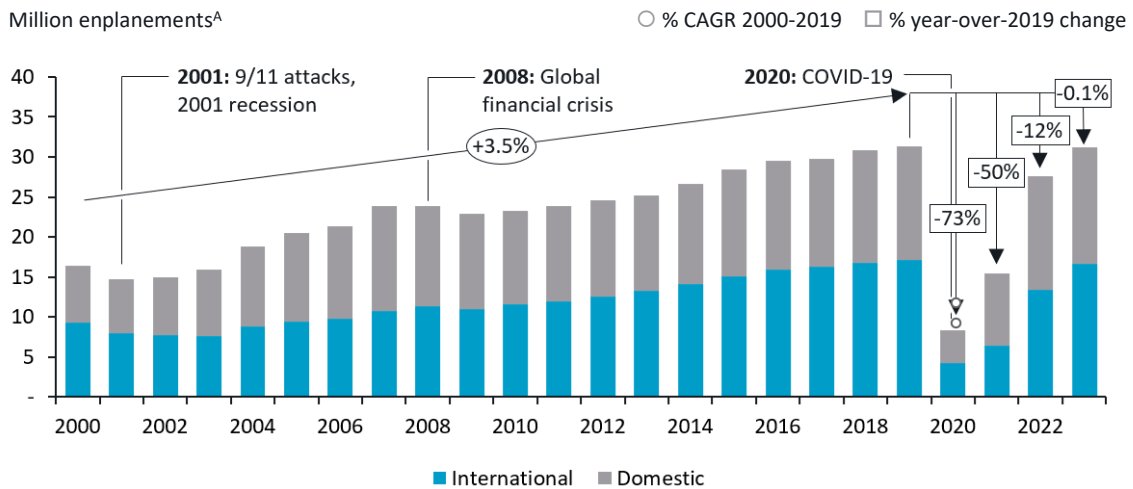
Figure 4.6 presents the domestic and international enplanements at JFK since 2000. Between 2000 and 2019, departing traffic increased at a compound annual growth rate of 3.5% from 16.4 million enplanements in 2000 to 31.3 million enplanements in 2019, recovering to 88% of 2019 enplanements in 2022. While international seat capacity increased at a faster rate than domestic seat capacity, actual passenger traffic grew more in the domestic market than the international market during this time (3.7% compound annual growth rate compared with 3.3%). This was primarily driven by the growth of JetBlue Airways and Delta Air Lines in the early 2000s. International enplanements in the 2010s increased at a compound annual rate of 4.5% compared to domestic traffic at 2.1%.

JFK passenger traffic has increased every year over this period, except during economic recessions. While international passenger traffic has increased, on average, faster than domestic traffic at JFK in recent years, the airport still served over 14.5 million domestic enplanements in 2023 and remains an important domestic airport for the New York region, particularly for long-haul domestic flights and connecting passengers onto international flights.

While JFK was impacted by significant events such as the 9/11 attacks and the Global Financial Crisis, the impact was generally limited to one year of declining traffic followed by a return to growth. Due to the 9/11 attacks, in 2001, JFK passenger traffic contracted by 10.6% compared to the previous year. The airport returned to growth in 2002 and by 2004 total traffic was 14% higher than it had been in 2000. Similarly, the impact of the global financial crisis in 2008 led to a one-year reduction in traffic at the airport, with 2009 traffic down 4% from 2008. By 2011, the airport was back to pre-global financial crisis levels and experienced strong growth until the COVID-19 pandemic.

Overall traffic growth is attributable to a mix of factors including a strong and growing local economy, strong in-bound tourism, increasing access to air travel globally including in emerging markets and a large and diverse mix of airline users that have increased seat capacity in the New York region to meet demand. In 2020, total JFK enplanements decreased 73% from the preceding year but have since recovered to 99.8% of 2019 passenger volumes in 2023. International traffic has nearly recovered from the impacts of the COVID-19 pandemic, having recovered to 97% of 2019 enplanements in 2023, while domestic enplanements at JFK in 2023 were 103% of 2019 levels. Further discussion on the international market and the contributing factors that have impacted its recovery can be found in the following Section 4.2.3.

**Figure 4.6: JFK domestic and international enplanements 2000-2023**



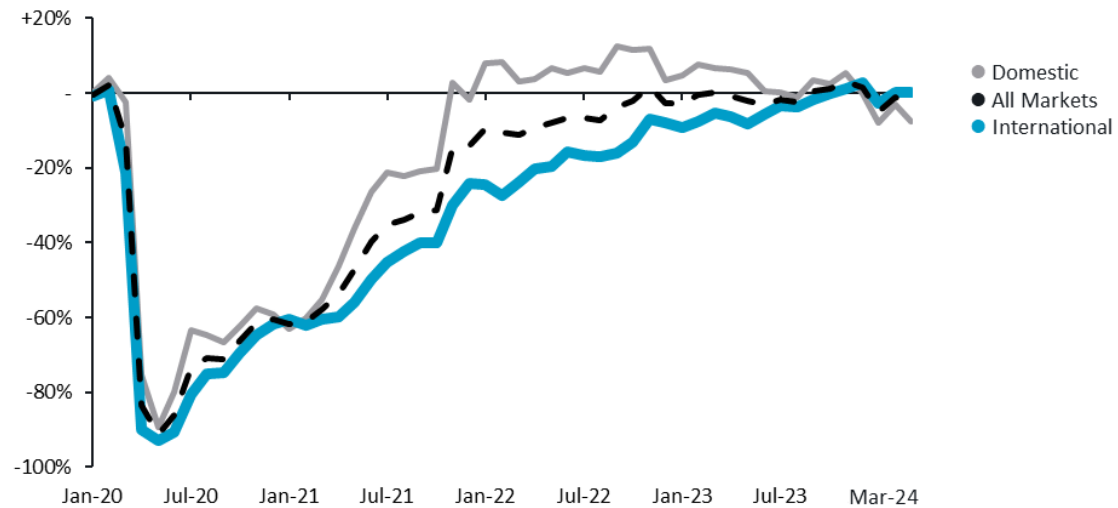
<sup>A</sup> Enplanements were calculated by dividing the number of passengers in half.

Source: Port Authority of New York and New Jersey *Airport Traffic Report 2013*, *Airport Traffic Report 2017*, *Airport Traffic Report 2019* and *Airport Traffic Report 2023*; Steer analysis

As illustrated in Figure 4.7, domestic seat capacity at JFK has recovered faster than international seat capacities, consistent with trends that were discussed in Chapter 1. Monthly JFK domestic seat capacities exceeded 2019 volumes in November 2021 and between January 2022 and July 2023 and remain at comparable levels in March 2024. Meanwhile, JFK international seat capacities have recovered at a slower rate but are at or approaching near-recovery levels. JFK international seat capacity was 1% above March 2019 volumes in March 2024.

**Figure 4.7: JFK seats by market January 2020-March 2024**

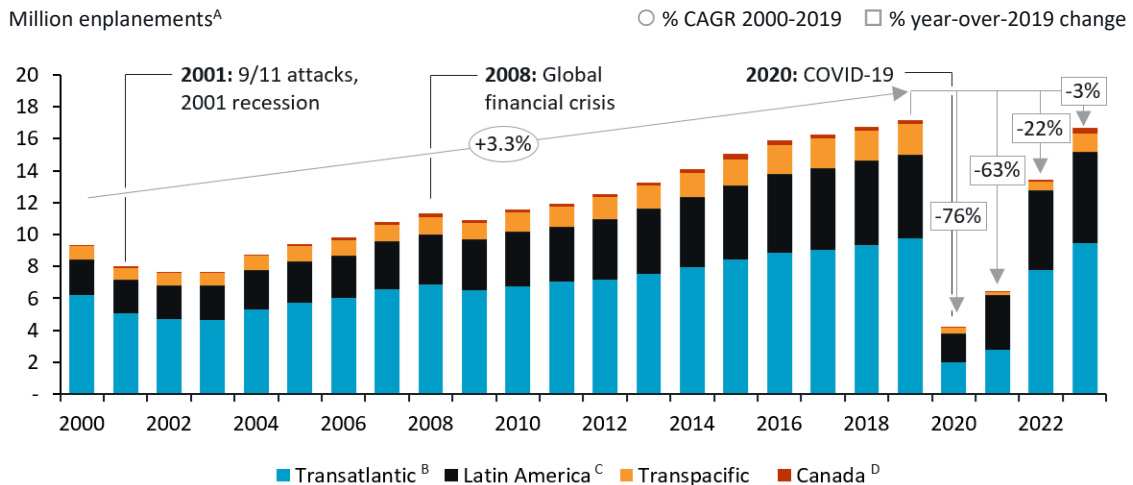
% year-over-2019 seats change



Source: Official Airline Guide, Steer analysis

### 4.2.3 International traffic trends

Figure 4.8 illustrates international enplanements by market at JFK. Transatlantic traffic (including Europe, Africa, the Middle East, India and Pakistan) has historically been the largest international market at JFK, though growth rates between 2000 and 2019 were below the average, reflecting the overall maturity of key large markets. Transpacific traffic increased at a compound annual growth rate of 4.7% between 2000 and 2019 with increased growth rates between 2010 and 2019. However, the COVID-19 pandemic has impacted this market segment the most, with 2023 enplanements at 61% of 2019 levels. Despite the global financial crisis, JFK international passenger traffic increased at a compound annual growth rate of 0.7% between 2007 and 2009, while domestic passenger traffic decreased 4.2% during the same period. Much of JFK's resilience to economic cycles comes from the diversity of its traffic base and share of international passengers which protects the airport's traffic from isolated economic downturns in one world region. While passenger volumes in the transatlantic, Latin American, and Canadian markets have recovered to 97%, 109%, and 153% of 2019 traffic levels in 2023 respectively, the overall transpacific market only recovered to 61%.

**Figure 4.8: JFK international enplanements by region 2000-2023**

<sup>A</sup> Enplanements were calculated by dividing the number of passengers in half.

<sup>B</sup> Includes Africa, Europe, the Middle East, India and Pakistan.

<sup>C</sup> Includes countries in North America other than Canada and the United States and across South America.

<sup>D</sup> Includes countries in East Asia (China, Chinese Taipei, Japan and South Korea), Southeast Asia (such as, but not limited to, Thailand and Singapore) and countries in the Pacific (such as, but not limited to, Australia and New Zealand).

Source: Port Authority of New York and New Jersey *Airport Traffic Report 2013*, *Airport Traffic Report 2017*, *Airport Traffic Report 2019* and *Airport Traffic Report 2022*; Steer analysis

As illustrated in Figure 4.9, recovery across the different international markets served by JFK have taken place at different levels, generally linked to local restrictions.

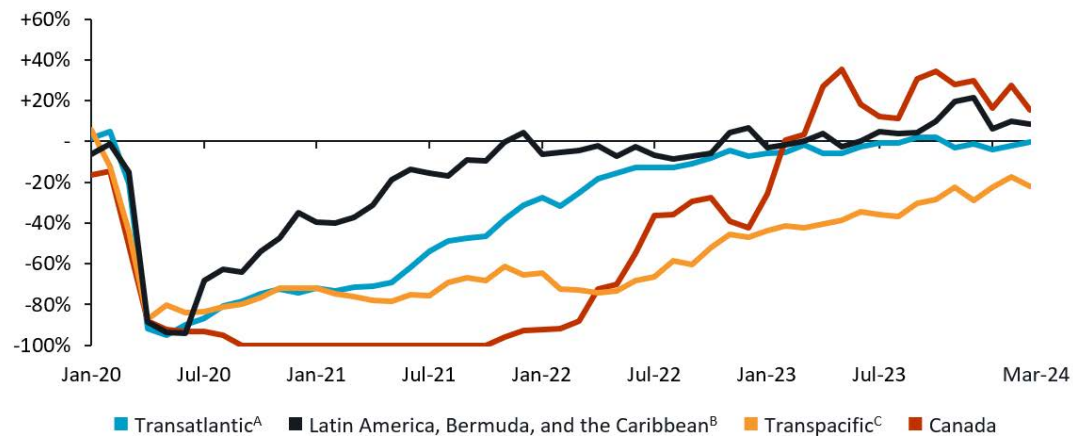
- **Canada:** Departing seat recoveries from JFK to Canada was a lagging market throughout the COVID-19 pandemic. However, departing seat capacities recovered in February 2023 and have since grown, making it the fastest recovering market now. Note that Canadian market was comparatively small with less than 1% of the total JFK passenger traffic share in 2019.
- **Latin America, Bermuda and the Caribbean:** International markets to Latin America<sup>27</sup> experienced a faster recovery as countries in these markets reopened earlier compared to other international destinations such as in Europe and Asia. Additionally, these markets cater to leisure travelers, which recovered faster than the business travel segment.
- **Transatlantic:** The transatlantic market, which was the largest international passenger market in 2019 at 27% total passenger market share, has recovered to capacity volumes just 0.4% below the same level as March 2019 levels in March 2024. This recovery is despite challenges posed by the war in Ukraine which has led to a stoppage of direct flights to Ukraine and Russia and has created additional challenges for airlines with respect to air-space access and flight safety.
- **Transpacific:** Meanwhile, the transpacific market remains 22% below March 2019 volumes in March 2024. The phased reopening of Asian countries such as Singapore and South Korea in April 2022 and later Japan in October 2022 led to a slower recovery compared to other

<sup>27</sup> Includes countries in North America other than Canada and the United States and across South America.

international markets. In March 2023, China resumed the issuance of all travel visas and stopped requiring COVID-19 test results at the end of August 2023. The number of flights between the two countries have increased with changes in regulatory caps but remain below the COVID-19 levels as discussed earlier in Section 3.1.2.

**Figure 4.9: JFK international seats by region January 2020-March 2024**

% year-over-2019 international departing seats change



<sup>A</sup> Includes Africa, Europe, the Middle East, India and Pakistan.

<sup>B</sup> Includes countries in North America other than Canada and the United States and across South America.

<sup>C</sup> Includes countries in East Asia (China, Chinese Taipei, Japan and South Korea), Southeast Asia (such as, but not limited to, Thailand and Singapore) and countries in the Pacific (such as, but not limited to, Australia and New Zealand).

Source: Official Airline Guide, Steer analysis

Figure 4.10 illustrates the total traffic across the JFK terminals in 2019 and 2023 by market type:

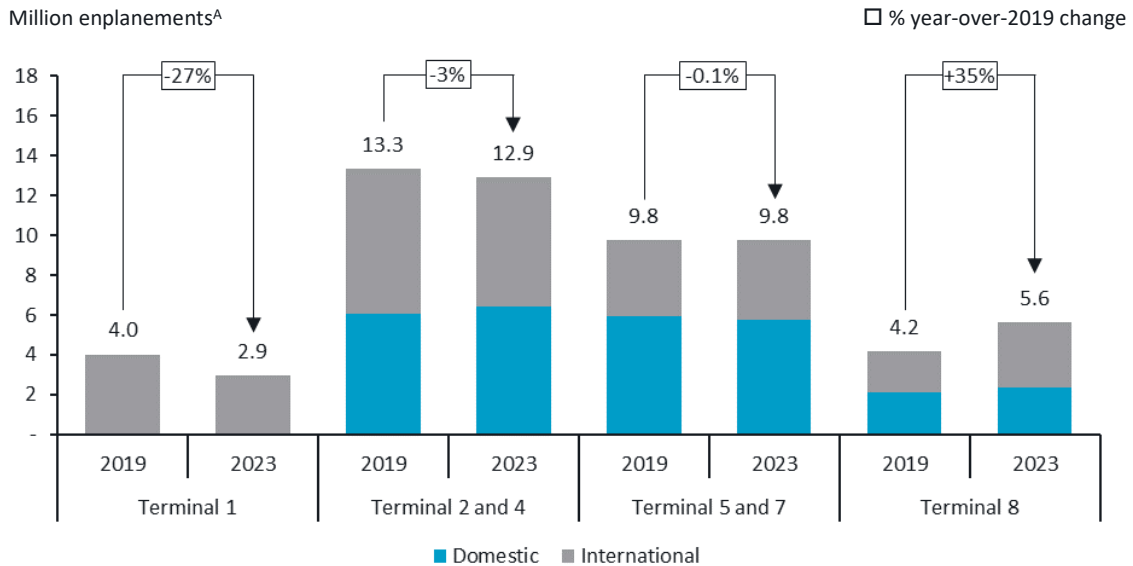
- **The existing Terminal 1:** The existing Terminal 1 served 2.9 million enplanements or 9% of the airport's traffic in 2023, all of which were international passengers.
- **Terminals 2 and 4:** At 12.9 million enplanements, the two terminals combined accounted for 41% of the total airport passenger traffic in 2023.<sup>28</sup> Terminal 4 is approximately 50% split in domestic and international passengers.
- **Terminals 5 and 7:** The combined traffic of these two terminals was 9.8 million enplanements, with over 60% of the traffic coming from domestic markets. These terminals served 31% of the overall airport enplanements in 2023.<sup>29</sup>

<sup>28</sup> Prior to the permanent closure of Terminal 2 in January 2023, Delta Air Lines' operation at JFK extended across both Terminal 2 and Terminal 4. Thus, Steer grouped both terminals together in this analysis and throughout this study.

<sup>29</sup> Terminal 7 is slated for demolition to enable the construction of a replacement terminal, Terminal 6 by JFK Millennium Partners, a private consortium consisting of Vantage Airport Group, American Triple I Partners, RXR Realty and JetBlue Airways Corporation. Once Terminal 6 is open, JetBlue Airways will operate across both Terminal 5 and Terminal 6. As a result, Steer has grouped Terminal 5, Terminal 6 and Terminal 7 together in this analysis. It is otherwise referred to as the "North Terminal Development" by the PANYNJ.

- **Terminal 8:** Meanwhile, Terminal 8, home to American Airlines and primarily its oneworld partners, served 5.6 million enplanements, of which 58% was international traffic while 42% was domestic traffic. The terminal served 18% of the total airport wide enplanements in 2023.

**Figure 4.10: JFK passenger traffic by terminal 2019/2023**



<sup>A</sup> Enplanements were calculated by dividing the number of passengers in half.

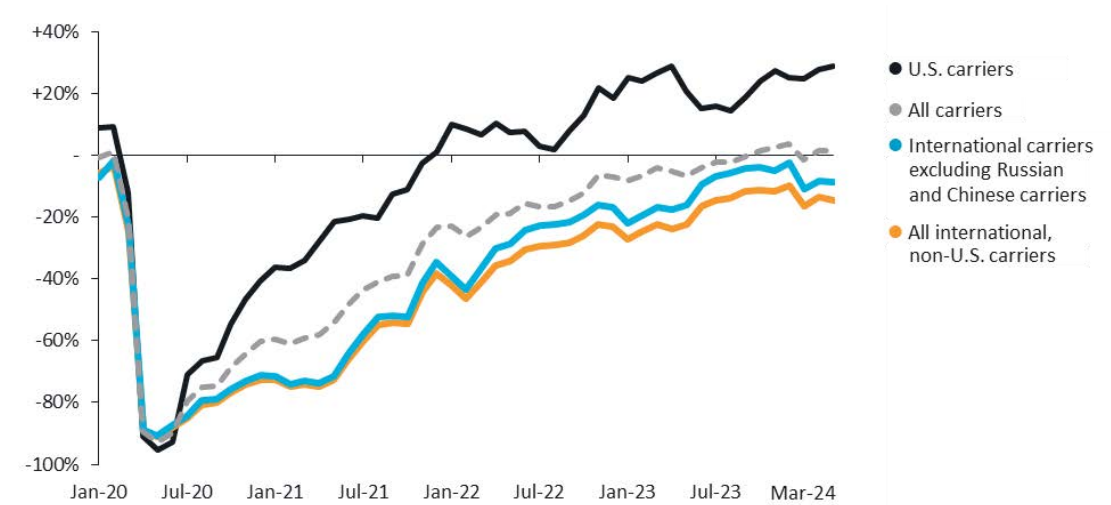
Source: Port Authority of New York and New Jersey *Airport Traffic Report 2023* and *Airport Traffic Report 2019*, Terminal One Group Association, Steer analysis

Enplanement volumes at the existing Terminal 1 were down 27% compared to pre-pandemic 2019 volumes in 2023, whereas traffic volumes at the other terminal groups have recovered near or even exceeded pre-pandemic volumes. The slower recovery of the existing Terminal 1 is due to several factors:

- **Exclusively international passengers:** The existing Terminal 1 serves exclusively the international market, which has recovered at a slower rate than the domestic market.
- **Exclusively international, non-U.S. carriers:** Furthermore, the existing Terminal 1 serves exclusively international services from non-U.S. carriers, which have recovered at a slower rate compared to international traffic carried by U.S. carriers as illustrated in Figure 4.11. Following steady increases in capacity throughout the summer season of 2023, total capacity among these international carriers was down in January 2024, reflecting typical reductions in demand during the winter travel season.
- **Higher proportion of transpacific traffic:** Compared to other terminals, the existing Terminal 1 serves a higher proportion of traffic to Asian markets, particularly China, which have reopened borders later compared to Latin American and European countries.
- **Russia-Ukraine war impacts:** Russian sanctions, the ban of Russia-based airlines to several countries including the United States, and the subsequent closure of Russian airspace impacting the commercial profitability of many airlines have further suppressed the traffic recovery of the existing Terminal 1.

**Figure 4.11: JFK international seat capacity January 2019-March 2024**

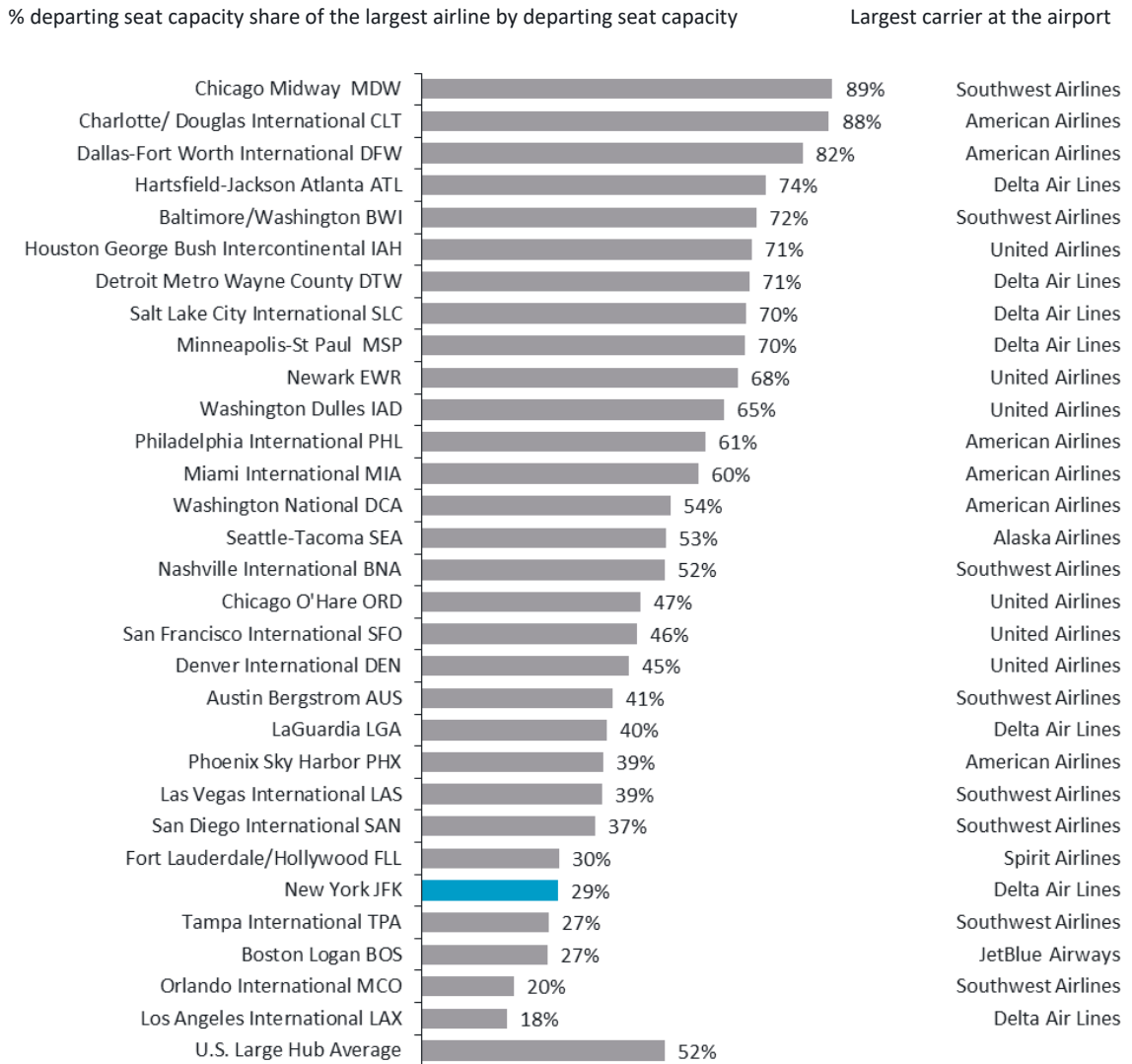
% year-over-2019 departing international seats change



Source: Official Airline Guide, Steer analysis

#### 4.2.4 Airline diversity

JFK had the largest number of airlines flying of all U.S. airports in 2023. This demonstrates that JFK has a strong mix of airlines. Despite the pandemic, JFK continues to maintain a strong mix of airlines and markets, with 75 different commercial airlines operating and scheduled to operate in 2023, the highest number in the United States. Figure 4.12 compares JFK with other U.S. large-hub airports (based on the latest U.S. FAA 2022 definition). Delta Air Lines, the largest airline by seat capacity at JFK, had only a 29% share of the total JFK departing seats in 2023. This is a relatively low share in comparison to other large-hub airports, including Newark, where United Airlines alone had a 68% share. The low seat-capacity share of any single airline decreases the reliance on one airline and reflects the large number of non-U.S. airlines that serve JFK which helps improve airport resiliency through a well-diversified mix of airline users and markets served.

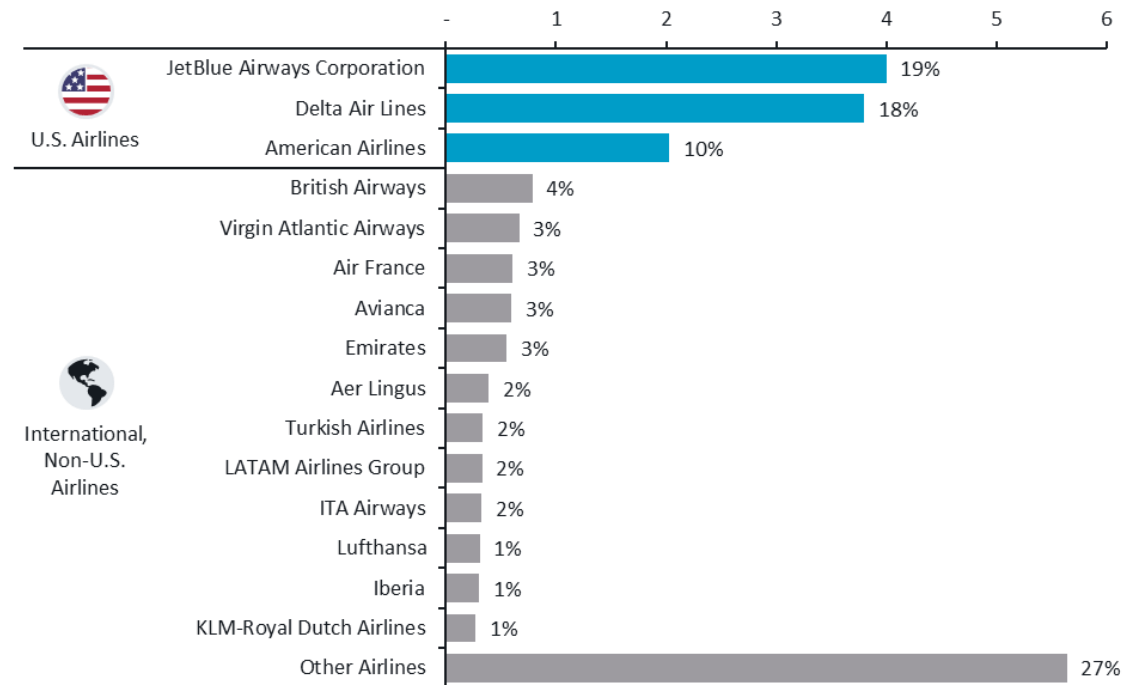
**Figure 4.12: Largest airline seat capacity U.S. large hub airport comparison 2023**

Source: Official Airline Guide, U.S. Federal Aviation Administration *Air Carrier Activity Information System*, Steer analysis

According to data from the Official Airline Guide, 72 different commercial airlines operated out of JFK in 2023. Figure 4.13 illustrates the departing international seat capacities of the top 15 airlines at JFK. At 4.0 million international departing seats, JetBlue Airways was the largest carrier in the international market by departing seat capacity in 2023. This was followed by Delta Air Lines and American Airlines at 3.8 million seats and 2.0 million seats respectively. These U.S. carriers combined represent a 47% share of the total international departing seat capacity at the airport. JetBlue Airways, Delta Air Lines and American Airlines are based at Terminal 5, Terminal 4 and Terminal 8 respectively. Meanwhile, the existing Terminal 1 serves exclusively international airlines such as Air France, Turkish Airlines and others.

**Figure 4.13: JFK international seat capacity by airline 2023**

Million international departing seats/% departing seat capacity share



Source: Official Airline Guide data, Steer analysis

### 4.3 JFK operational constraints

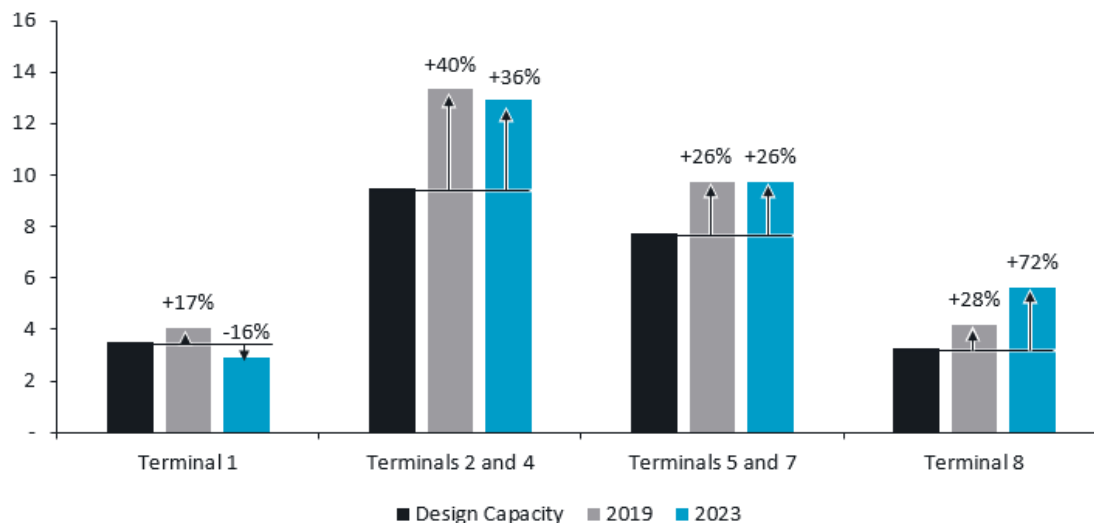
JFK is restricted to 81 air traffic movements per hour. Until an increase in slots is permitted, future growth in passenger traffic can be achieved by moving more passengers using larger capacity aircraft. In 2019, terminal facilities were constrained after having exceeded their original design capacities. By 2023, these constrained conditions have returned across most JFK terminals.

#### 4.3.1 Terminal design capacity constraints

In 2019, all terminals across JFK operated above their design capacities. In 2023, all terminals, except the existing Terminal 1, operated above their design capacities as illustrated in Figure 4.14. According to the *Final Environmental Assessment John F. Kennedy International Airport* report by the PANYNJ ("Environmental Assessment"), the combined passenger traffic of Terminal 2 and Terminal 4 was 36% above design capacity in 2023. Meanwhile, Terminal 8 operated at 72% above their design capacity while the Terminal 5 and Terminal 7 combined operated at 26% above their design capacities in the same year. The existing Terminal 1 has a design capacity of 3.5 million enplanements per annum, as shown in the figure; but the terminal handled 2.9 million enplanements in 2023, although it handled 4.1 million enplanements in 2019.



**Figure 4.14: JFK terminal design capacity compared to traffic 2019/2023**Million enplanements<sup>A</sup>

% year-over-design capacity

<sup>A</sup> Assumed 50% of two-way passengers.Source: Port Authority of New York and New Jersey *Final Environmental Assessment John F. Kennedy International Airport, Airport Traffic Report 2019* and *Airport Traffic Report 2022*; Terminal One Group Association; Steer analysis

The overcrowding of JFK terminals has had a direct impact on customer satisfaction and service levels. This is evidenced in survey trends from SkyTrax, where JFK has continuously declined in airport rankings. In 2016, JFK was ranked 59<sup>th</sup> out of the top 100 airports, but dropped to 63<sup>rd</sup> in 2017, 69<sup>th</sup> in 2018, 74<sup>th</sup> in 2019, 77<sup>th</sup> in 2020, 86<sup>th</sup> in 2021, 85<sup>th</sup> in 2022 and 88<sup>th</sup> in 2023. Furthermore, according to the 2019 Environmental Assessment, JFK's terminals were rated as "sub-optimum" under the International Air Transport Association's (IATA) level of service guidelines for terminal functional areas (*Airport Development Reference Manual, 10<sup>th</sup> Edition*) at select processing facilities as illustrated in Table 4.2. The report highlights that a sub-optimum level of service can result in inefficient passenger flows. Specifically, the environmental assessment described the existing Terminal 1 as having a "serious capacity [deficiency]" in security space, where the lack of space impacts security checkpoint efficiency and customs and immigration throughput. The report further points out that these space limitations restrict the ability for the U.S. Transportation Security Administration (TSA) and U.S. Customs and Border Protection (CBP) to provide additional staffing to serve increased passengers.

**Table 4.2: Levels of service of JFK terminals scheduled for replacement 2018**

Facility	Terminal 1	Terminal 2	Terminal 7
 Security Space	Sub-Optimum <sup>A</sup>	Sub-Optimum <sup>A</sup>	Sub-Optimum <sup>A</sup>
 FIS Primary Space	Optimum <sup>B</sup>	N/A <sup>C</sup>	Sub-Optimum <sup>A</sup>

<sup>A</sup> “Sub-optimum” refers to Levels of Service D and E under IATA’s level of service guidelines.

<sup>B</sup> “Optimum” refers to Level of Service C under IATA’s level of service guidelines. While the service levels were considered optimum in 2018, forecasts from the PANYNJ indicate that the FIS Primary Space is at risk of becoming sub-optimum in the future.

<sup>C</sup> Terminal 2 did not have a FIS facility as this was used primarily for domestic and international pre-clearance operations. The Terminal was decommissioned and demolished in 2023.

Source: Port Authority of New York and New Jersey *Final Environmental Assessment John F. Kennedy International Airport*, Steer analysis

Another key constraint at JFK is gate capacity. Gate capacities are estimated as the limit to how many passengers can be moved through a gate, while design capacity incorporates all processes within a terminal (for example, baggage, security) and reflects a designed-for level of service. As illustrated in Figure 4.15, gate capacity utilization across JFK was estimated at 91% in 2019. With overall recovery in airport traffic volumes from the COVID-19 pandemic, estimated gate utilization has recovered to 91% in 2023, a return to pre-pandemic conditions. Given the varying traffic recovery rates by terminal discussed earlier in Section 4.2.3, the estimated gate utilization varies across the airport. Terminal and gate constraints are expected to again impact airline operations, customer service and eventually the ability of airlines to add additional capacity to serve new passengers at JFK airport. NTO and the other terminal development projects underway will help address these constraints.

**Figure 4.15: JFK airport-wide average gate utilization 2019 and 2023**

% gate capacity utilization<sup>A</sup>



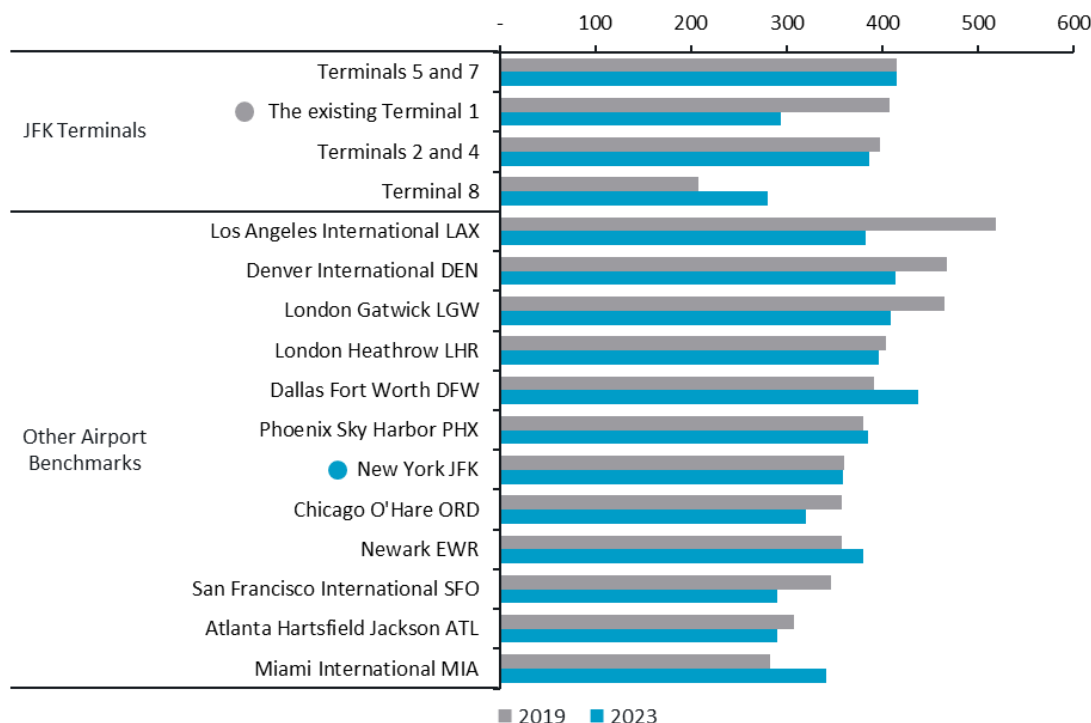
<sup>A</sup> Capacity utilization is based on assuming 430,000 annual enplanements per widebody-equivalent gate, except for Terminal 8, which uses an assumption of 280,000 enplanements per widebody-equivalent gate due to limited satellite concourse design restricting the number of widebody aircraft and due to the operational profile of American Airlines. Gate counts are based on the end of the last day of the calendar year. Capacity is based on benchmarks and accounts for fleet upgauging, the number of aircraft turns per gate and the Design Day Forecast Schedule (DDFS) as developed by Steer. Narrowbody and regional jet gates are converted to widebody-equivalent gates at a rate of 2:1 and 4:1 respectively. Active hardstands are stands used regularly for boarding and deplaning commercial airlines and are assumed to have 75% of the capacity of contact gates. Excludes non-active hardstands not used for the boarding and deplaning of commercial airlines.

Source: Port Authority of New York and New Jersey *Airport Traffic Report 2023* and *Airport Traffic Report 2019*, Terminal One Group Association, Steer analysis

Figure 4.16 compares enplanements per widebody-equivalent gate across JFK terminals with comparable U.S. and international airports. In 2019, the number of enplanements per widebody-equivalent gate was high at the existing Terminal 1 compared with other airports and JFK terminals, indicating the lack of available gate capacity. This was lower in 2023 due to the slower recovery of international traffic, particularly of non-U.S. airlines.

**Figure 4.16: Enplanements per widebody-equivalent gate comparison 2023**

Thousand enplanements per widebody-equivalent gate<sup>A</sup>



<sup>A</sup> Gate counts are based on the end of the last day of the calendar year.

Source: Terminal One Group Association, U.S. Department of Transportation, various airport websites, Steer analysis

JFK's original design focused on narrowbody and regional aircraft. However, increases in aircraft capacities as discussed in Section 4.3 have contributed to the terminal constraints. Larger aircraft require different terminals with larger processing areas as well as larger aircraft stands (gates) and larger-holdrooms (gate waiting areas). This was also recognized in the *PANYNJ Final Environmental Assessment John F. Kennedy International Redevelopment Program*, where it stated, "existing regional jet gates at JFK will soon be obsolete, necessitating the installation of gates that can serve larger aircraft" (p. 1-28).

### 4.3.2 Airfield and runway operational constraints

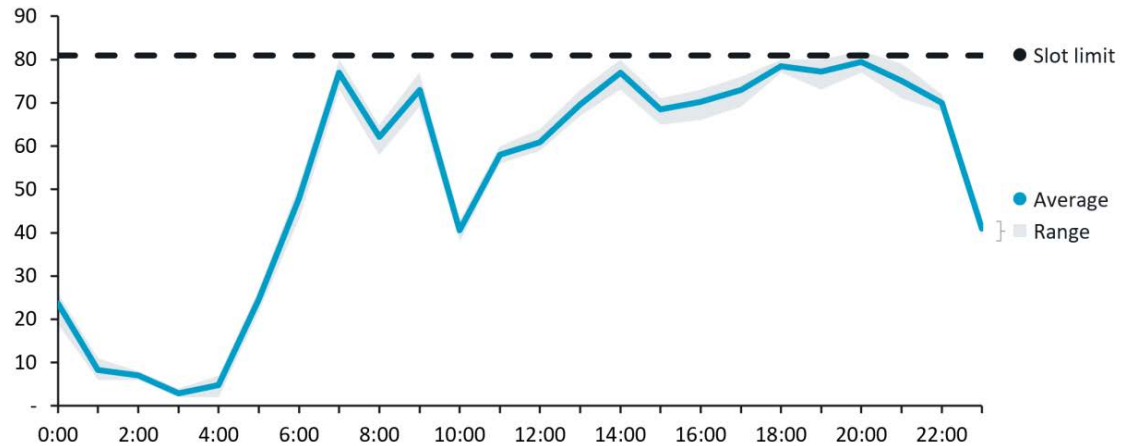
Airlines operate at terminals across the New York region based on customer demand as well as operational conditions at each airport. Federal limits in place since 1968 currently cap JFK's takeoffs and landings to 81 air traffic movements per hour during good weather operations. According to the *John F. Kennedy International (New York) (JFK) Airport Capacity Profile, 2014* report from the FAA, the estimated capacity for JFK in 2014 was 93 air traffic movements per hour, depending on runway configurations, demonstrating the airfield can accommodate significantly more movements than the 81 per hour limit. When weather conditions permit, the airport can exceed the allowed slot limits, demonstrating the full physical capacity of the airport. The FAA reports that weather conditions are favorable 87% of the time. For the remaining 13% of the time, capacity is reduced for what the FAA deems either "marginal" or "instrument" conditions. During those conditions, available capacity drops below the 81 movements level, leading to queuing, congestion, flight cancellations and delays.

Currently, JFK is the only international airport in the United States that requires commercial airlines to have a "slot" to schedule a flight (LaGuardia and Ronald Reagan Washington National similarly have slots, but do not have international passenger processing facilities). The International Air Transport Association's (IATA) *Worldwide Airport Slot Guidelines* (WASG, formerly Worldwide Slide Guidelines) classifies JFK as a Level 3 airport, requiring approval of new scheduled operations. Commercial airlines at Level 2 airports, such as Newark, submit advanced schedules to the airport and FAA. This is done to avoid excessive congestion and the possibility of the FAA imposing slots in the manner of a Level 3 airport. This same schedule coordination is done at five other U.S. airports. Due to the dominance of United Airlines at Newark, slot controls have proven less necessary because the airline has an incentive to avoid overscheduling, which would impose delays on its own passengers and generate avoidable operational costs.

Figure 4.17 illustrates the daily profile of scheduled air traffic movements at JFK during the peak summer months of July and August in 2023, where the scheduled movements per clock hour were approaching the limit of 81. Moreover, according to the *Operating Limitations at John F. Kennedy International Airport* (Order 87 FR 65161) published by the FAA in October 2022, the "reasons for retaining the Order have not changed appreciably since its initial issuance [in 2008]." Despite the dynamic demand during the 2020 to 2022 period due to the COVID-19 pandemic, demand for access to JFK remains high and multiple new entrant and other incumbent airlines have requested new peak period operations and retiming of existing flights to higher demand hours. The FAA has determined that the operational limitations imposed by this Order remain necessary. In the summer 2022 scheduling season, the allocated slots in the busiest hours were generally at the limits under this Order. For the winter 2022/2023 scheduling season, the FAA waiver extension of slot requirements will alleviate the demand strain on scheduling limits in multiple hours.

**Figure 4.17: JFK air traffic movements daily profile July-August 2023**

Scheduled air traffic movements per clock hour



Source: Official Airline Guide, Steer analysis

Despite the regulatory constraint at JFK, passenger traffic growth has continued to increase as discussed in the preceding sections. Continued growth is achieved primarily by increasing the number of passengers per air traffic movement using larger capacity aircraft and higher load factors. For July and August 2023, the average daily profile is close to capacity, with some periods on the busiest days seeing 81 movements in an hour. Further details are discussed in Chapter 5.

Note that as discussed in Chapter 3, the New York region has also been impacted by the shortage of U.S. FAA air traffic controllers. In response, the FAA waived issuing penalties to airlines that do not exercise the minimum number of takeoff and landing slots at airports in the New York region: as per Order 88 FR 54873, air “carriers will be permitted to voluntarily turn in up to 10 percent of their slots held at JFK” through to October 28, 2023. Later the following month, through Order 88 FR 64793, the FAA announced yet another extension to this waiver, allowing carriers to return their slots by October 13, 2023, for “the winter 2023/2024 scheduling season (October 29, 2023, through March 30, 2024),” and by December 15, 2023 “for the summer 2024 scheduling season (March 31, 2024, through October 26, 2024).” As an additional measure, the FAA also announced the consolidation of the New York Terminal Radar Approach (TRACON) to Philadelphia airport to address staffing issues in the New York metropolitan area.

## 5 JFK Air Traffic Forecasts

Steer forecasts that total JFK passenger traffic will return to pre-COVID-19 levels in 2024 and reach 42.2 million enplanements by 2035. This will mean a return to constrained and overcrowded conditions that brought about the need for the JFK Vision Plan.

- Steer used a combination of forward airline schedules and market recovery assumptions to forecast the growth of traffic on an airline-by-airline basis in the short term. Following the recovery from COVID-19, Steer applied an econometric model on an airline-by-airline basis to develop the Steer JFK Unconstrained Base Case forecast.
- As JFK is a slot-constrained airport, Steer applied slot limitations to the Steer JFK Unconstrained Base Case forecast to develop a Steer JFK Constrained Base Case forecast. Slot constraints are expected to have marginal impacts on forecast traffic growth at JFK by 2030.
- Both forecasts are in line with industry benchmarks from the U.S. FAA and the PANYNJ.

This chapter details the results and approaches used to develop both the Steer JFK Unconstrained Base Case forecast and the Steer JFK Constrained Base Case forecast.

## 5.1 Steer JFK Unconstrained Base Case forecast

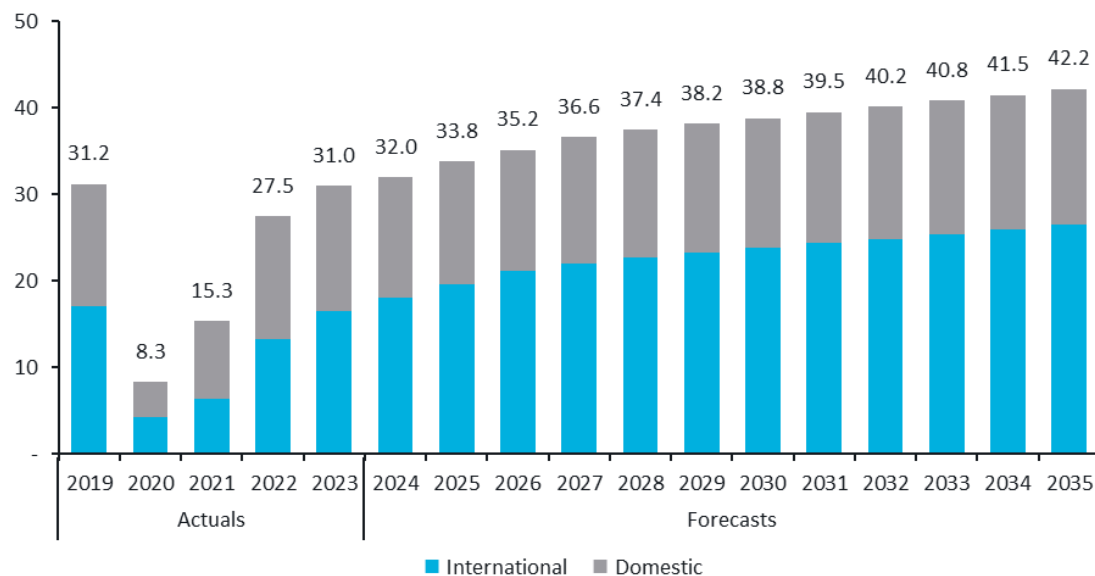
International traffic is forecast to recover to 2019 volumes in 2024, while domestic traffic has already recovered beyond 2019 volumes. This would mean a return to overcrowded conditions that brought about the need for the JFK Vision Plan.

### 5.1.1 Steer JFK Unconstrained Base Case forecast results

The JFK Base Case forecast produced by Steer incorporates historical traffic, forward airline capacity and other assumptions based on industry benchmarks to develop the Steer JFK Unconstrained Base Case forecast through to 2035. As illustrated in Figure 5.1 and Table 5.1, JFK is forecast to reach 42.2 million enplanements in 2035 or a compound annual growth rate of 1.9% between 2019 and 2035. Growth is forecast to be driven by international traffic, forecast at a 2.8% compound annual growth rate for the same period, while domestic traffic is forecast to increase at a compound annual growth rate of 0.6%.

**Figure 5.1: Steer JFK Unconstrained Base Case forecast 2019-2035**

Million enplanements



Source: Port Authority of New York and New Jersey *Annual Air Traffic Report 2019* and *John F. Kennedy International Airport 2020-2023* monthly air traffic statistics, Official Airline Guide, Terminal One Group Association, U.S. Department of Transportation, Steer analysis and forecasts

**Table 5.1: Base Case forecast by segment 2019-2035**

% compound annual growth rate

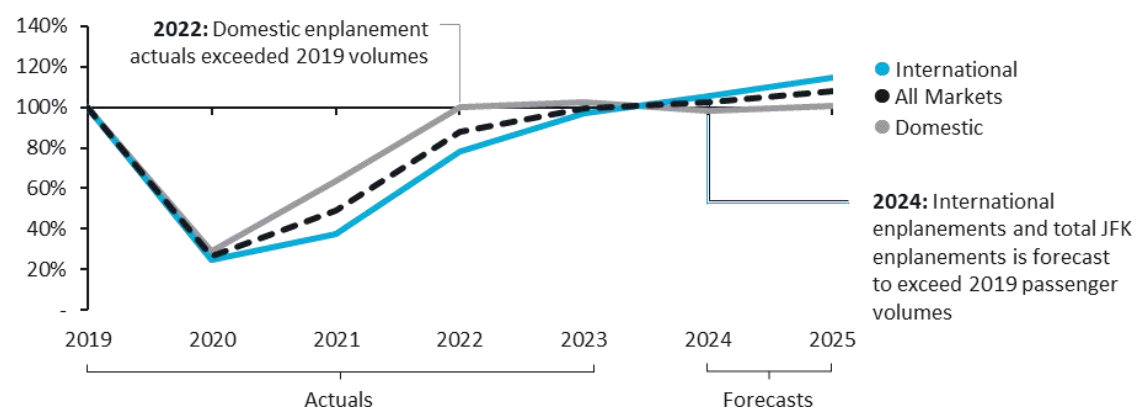
Market	2019-2025	2025-2035	2019-2035
International	+2.3%	+3.1%	<b>+2.8%</b>
Domestic	+0.1%	+1.0%	<b>+0.6%</b>
<b>All markets</b>	<b>+1.3%</b>	<b>+2.3%</b>	<b>+1.9%</b>

Source: Port Authority of New York and New Jersey *Annual Air Traffic Report 2019-2023* and *John F. Kennedy International Airport 2020-2023 monthly air traffic statistics*, Official Airline Guide, Terminal One Group Association, U.S. Department of Transportation, Steer analysis and forecasts

Figure 5.2 compares the growth of the different international and domestic forecasts that make up the Steer JFK Unconstrained Base Case forecast. As illustrated in the figure, domestic traffic has already recovered to 103% of pre-pandemic 2019 passenger volumes in 2023. International passenger traffic reached approximately 99% of the 2019 volumes in 2023, with a forecast recovery to 2019 passenger volumes in 2024.

**Figure 5.2: JFK Base Case forecast by market 2019-2025**

% of 2019 enplanement volumes



Source: Port Authority of New York and New Jersey *Annual Air Traffic Report 2019* and *John F. Kennedy International Airport 2020-2023 monthly air traffic statistics*, Official Airline Guide, Terminal One Group Association, U.S. Department of Transportation, Steer analysis and forecasts

### 5.1.2 Approaches and assumptions

#### Overview

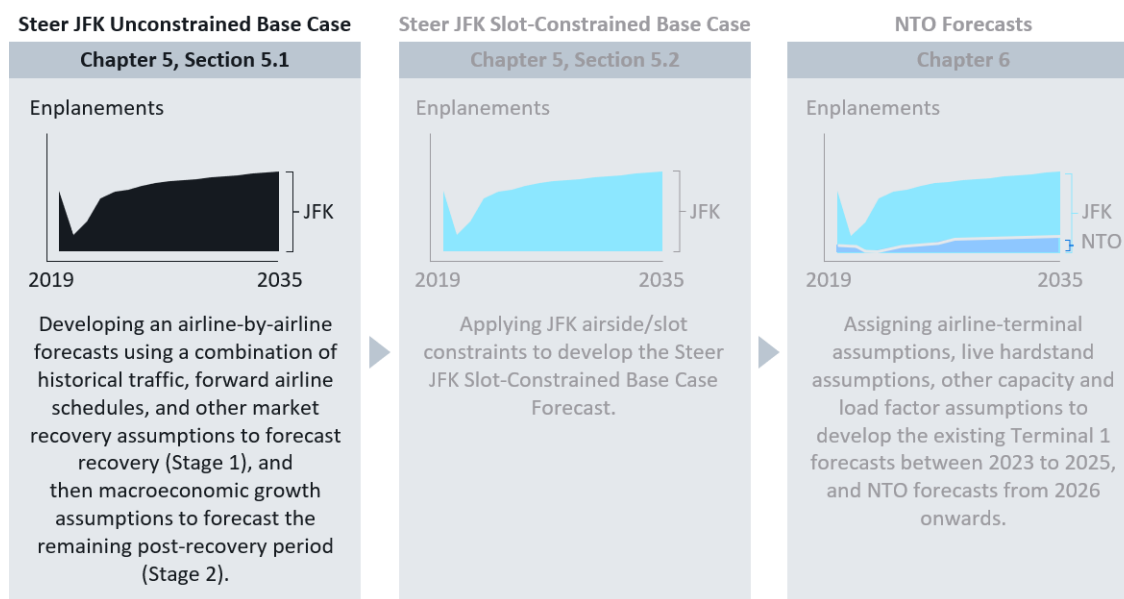
The approach to developing the Steer JFK Unconstrained Base Case forecast for each individual airline consists of two stages:

- **Stage 1: Recovery forecast approaches and assumptions** – Using a combination of historical traffic, forward airline schedules and other market recovery assumptions that vary based on an airline's domicile market.

- **Stage 2: Post-recovery forecast approaches and assumptions** – Using macroeconomic growth assumptions to develop airline-by-airline forecasts with different growth rates that vary based on an airline’s domicile market.

Together, these form an airline-by-airline buildup of the Steer JFK Unconstrained Base Case forecast, part of a broader set of forecasts as illustrated in Figure 5.3. As JFK is a slot-constrained airport, Steer applied constraints to develop a Steer JFK Base Case forecast (which includes the analysis on Slot Constraints), as discussed in Section 5.2. Steer then assigned terminals to the different airline-by-airline forecasts; the forecast results for the existing Terminal 1 and NTO are discussed later in Chapter 6.

**Figure 5.3: Steer traffic forecasts approach**



Source: Steer

### *Stage 1: Recovery forecast approaches and assumptions*

The three components of the JFK Base Case short-term forecast are summarized below. The combined results of these component assumptions are illustrated in Figure 5.4 as a percentage of 2019 enplanement volumes.

- **Historical traffic – January 2020 to March 2024:** Traffic between January 2020 and March 2024 is based on monthly passenger data from the PANYNJ,<sup>30</sup> which illustrates a continued recovery at JFK.
- **Forward airline schedules – April 2024 to March 2025:** The remaining periods up to the beginning of the Summer Season 2025 use forward airline capacity data from the Official

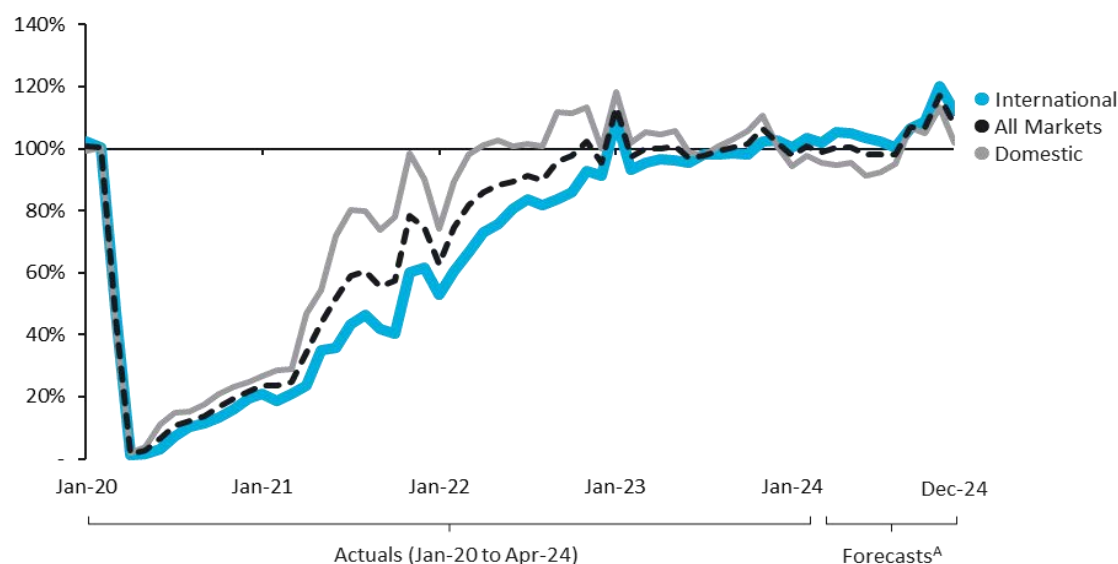
<sup>30</sup> Source: Port Authority of New York and New Jersey *John F. Kennedy International Airport 2020-2024* monthly air traffic statistics, Steer analysis

Airline Guide, linking the published forward capacity by market to the passenger recovery at JFK. Further discussion on forward airline schedule assumptions can be found in the following sub-sections.

- **Other forecast assumptions – April 2025 onwards:** As forward airline seat capacity is subject to further changes; Steer has applied different forecast assumptions between the domestic and individual international markets.

**Figure 5.4: JFK Base Case short-term forecast January 2020-December 2024**

% of 2019 enplanement volumes






<sup>A</sup> Based on forward airline schedules from May-24 onwards.

Source: Port Authority of New York and New Jersey *Annual Air Traffic Report 2019* and *John F. Kennedy International Airport 2020-2024* monthly air traffic statistics, Official Airline Guide, Terminal One Group Association, Steer analysis and forecasts

For specific airlines and segments that have significant recovery remaining (e.g. China), where forward schedules are still unreliable and/or are impacted by political turbulence and conflicts, the forecast includes specific assumptions which are summarized in Table 5.2.

**Table 5.2: Other short-term forecast assumptions**

Item	Description
 <b>Other airline changes</b>	<ul style="list-style-type: none"> <li>The forecast reflects recent changes in the airline mix operating at JFK. Since the outset of the pandemic, JFK has experienced airline turnover with some large airlines (for example, Norwegian) not expected to return. The forecast includes explicit assumptions about those markets being backfilled by existing/new airlines.</li> <li>Norwegian announced an exit from the transatlantic market in 2021, including at JFK.</li> <li>Norse Atlantic Airways has begun service at JFK in the Summer of 2022 and has operated multiple daily flights from Terminal 1 up to Q1 2023. It is now operating from T7.</li> <li>Azerbaijan, Thomas Cook, Interjet and XL France ceased operations since 2020 and are excluded from the Base Case JFK Forecast.</li> <li>Ethiopian Airlines, SATA Azores, Flair, Scandinavian Airline Systems (SAS), Neos Air and Air Senegal have started service to JFK and are included in the Base Case JFK Forecast.</li> <li>Aerolíneas Argentinas announced that it will be suspending its route to JFK in August 2024 and will deploy its aircraft on routes to Madrid and Miami. The forecast assumes traffic to/from Argentina will be operated by other Latin American hub-airlines such as LATAM and Avianca.</li> </ul>
 <b>Russia-Ukraine War</b>	<ul style="list-style-type: none"> <li>In February 2022 the Russian invasion of Ukraine escalated the ongoing Russo-Ukrainian War causing widespread social and economic displacement.</li> <li>The impacts of the conflict have extended to global political and economic affairs and has resulted in widespread sanctions on the Russian state and companies. This has included blocking Russian aircraft from wide stretches of airspace, including over the United States, Canada and the European Union. As a result, Russian airlines serving the U.S. have suspended all such service. This includes the previously operated JFK-SVO route between New York and Moscow which was operated by Aeroflot.</li> <li>In consideration of this ongoing conflict and the sanctions in place, Steer has analyzed Aeroflot's operations at JFK and made assumptions regarding the future of the Russian market at JFK.</li> <li>Aeroflot is assumed to remain suspended from JFK through mid-2026.</li> </ul>
 <b>China reopening</b>	<ul style="list-style-type: none"> <li>China started the process of reopening borders in 2023, however 2025 schedules remain unreliable and do not yet show a particular step-up in capacity offered to/from U.S.</li> <li>The number of allowed flights between China and U.S. is increasing. On February 26, 2024, the United States Department of Transportation (DOT) released a statement indicating that U.S.-China air service can be increased from the current 70 flights per week to a combined 100 flights per week, to be split equally between Chinese and U.S. carriers.</li> <li>For Chinese carriers therefore the forecast assumes a recovery to 2019 volumes only in 2026, assuming flight restrictions between the two countries will be significantly relaxed in 2025.</li> </ul>

Source: International Air Transportation Association, Official Airline Guide, U.S. Federal Aviation Administration, Steer analysis

*Stage 2: Post-recovery forecast approaches and assumptions*

Beginning in 2026, the forecast utilizes a top-down macroeconomic approach based on historical enplanements and their relationship to macroeconomic drivers (such as GDP) utilizing linear regression models to project future demand. This was conducted on an airline-by-airline basis for each airline operating at JFK by examining historical data through to 2019, separated by:

- **International Markets:** A relevant regional GDP growth figure (both historical and forecast) was assigned to each airline to measure past performance and forecast future traffic. For example, historical traffic from Air France was measured against a European GDP to obtain an income elasticity relative to traffic, which was then paired with a forward-looking GDP forecast and used to forecast traffic for the airline. Historical and forecast GDP values are sourced from the International Monetary Fund (IMF). Income elasticities are assumed to decline over time to account for maturity of the market (the wealthier the population gets, the less elastic it is to a change in GDP). When historical analysis was unavailable (that is, insufficient data points), benchmark values were used in relation to the geography of the airline, future fleet plans and the airline type (for example, full-service or low-cost carrier).
- **Domestic Market:** A total domestic traffic forecast was developed and subsequently split by market share, assuming a consistent market share in line with historical figures across the domestic airlines.

The Base Case forecast uses a combination of January 2024 and October 2023 World Economic Outlook data from the International Monetary Fund (IMF) by country and region up to, and including, 2028. Table 5.3 provides a list of the GDP assumptions used to develop traffic forecasts by region.

**Table 5.3: Real GDP assumptions by region**

% annual change

Region	IMF actuals				IMF forecasts					Steer assumptions	
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
United States	-2.8%	+5.9%	+1.9%	+2.5%	+2.1%	+1.7%	+2.1%	+2.1%	+2.1%	+1.8%	+1.5%
Latin America	-7.0%	+7.4%	+4.2%	+2.5%	+1.9%	+2.5%	+2.5%	+2.6%	+2.5%	+2.3%	+2.3%
Europe	-6.1%	+5.6%	+3.4%	+0.5%	+0.9%	+1.7%	+1.7%	+1.5%	+1.3%	+1.4%	+1.4%
Turkey	+1.9%	+11.4%	+5.5%	+4.0%	+3.1%	+3.2%	+3.2%	+3.2%	+3.2%	+3.0%	+3.0%
Middle East	-2.6%	+4.3%	+5.5%	+2.0%	+2.9%	+4.2%	+3.6%	+3.8%	+3.7%	+3.7%	+3.7%
Russia	-2.7%	+5.6%	-1.2%	+3.0%	+2.6%	+1.1%	+1.0%	+1.0%	+1.0%	+0.7%	+0.7%
China	2.2%	+8.5%	+3.0%	+5.2%	+4.6%	+4.1%	+4.1%	+3.7%	+3.4%	+3.4%	+3.4%
Japan	-4.2%	+2.2%	+1.0%	+1.9%	+0.9%	+0.8%	+0.5%	+0.4%	+0.4%	+0.4%	+0.4%
Asia-Pacific	-4.4%	+4.0%	+5.5%	+4.2%	+4.7%	+4.4%	+4.6%	+4.5%	+4.5%	+4.6%	+4.6%
South Africa	+0.0%	+4.7%	+1.9%	+0.6%	+1.0%	+1.3%	+1.4%	+1.4%	+1.4%	+1.3%	+1.3%

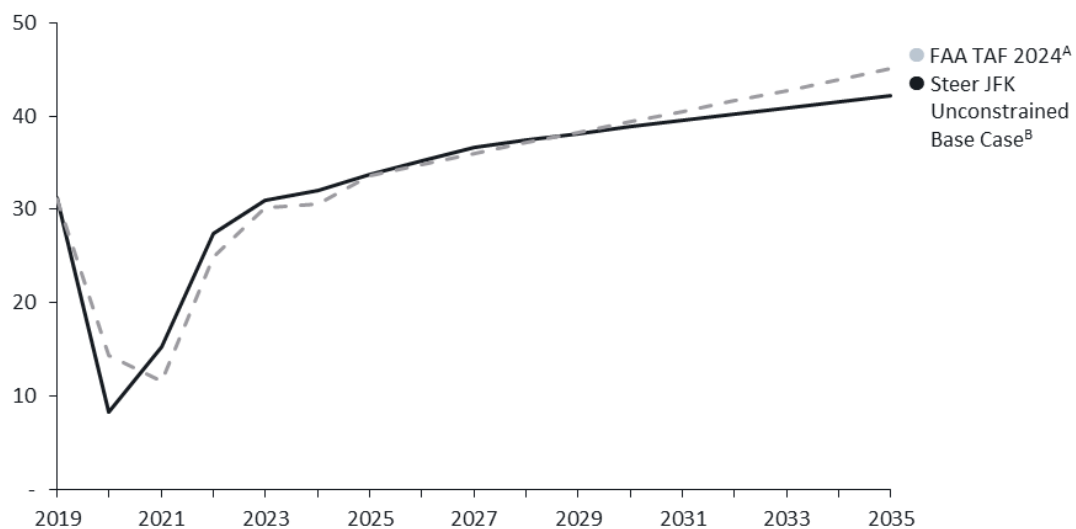
Source: International Monetary Fund, Steer analysis and forecasts

### 5.1.3 Forecast validation

Steer undertook a benchmarking analysis to validate forecasts. A comparable benchmark to the Steer JFK Base Case (Unconstrained) forecast is the FAA TAF as both forecasts do not factor in airside constraints. From 2021 to 2029 the Steer JFK Base Case (Unconstrained) forecast is higher than the FAA TAF (published in January 2024) as illustrated in Figure 5.5. After 2029 the Steer JFK Base Case (Unconstrained) forecast becomes the lower of the two, suggesting that the Steer forecast is reasonable. Between 2019 and 2023, the Steer Base Case (Unconstrained) forecast are actuals from PANYNJ figures.

**Figure 5.5: Steer JFK Unconstrained Base Case and FAA TAF forecast comparison 2019-2035**

Million enplanements



<sup>A</sup> Actuals between 2019 and 2022. Forecasts between 2023 and 2035.

<sup>B</sup> Actuals between 2019 and 2023. Forecasts between 2024 and 2035.

Source: Port Authority of New York and New Jersey *Annual Air Traffic Report 2019* and *John F. Kennedy International Airport 2020-2024* monthly air traffic statistics, Official Airline Guide, Terminal One Group Association, U.S. Federal Aviation Administration, Steer analysis and forecasts

## 5.2 Steer JFK Slot-Constrained Base Case forecast

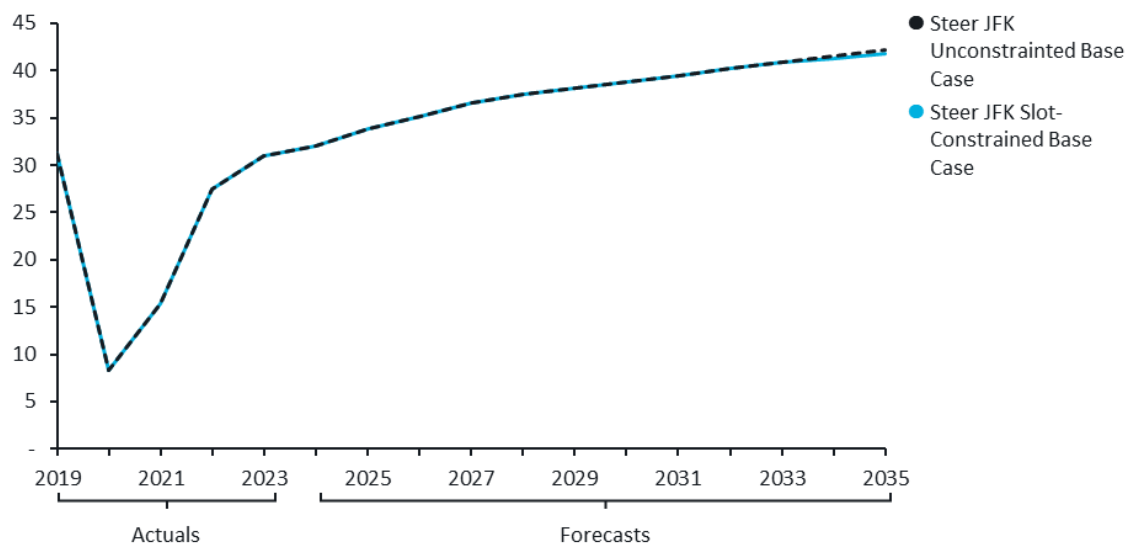
As JFK is a slot-constrained airport with a maximum number of air traffic movements handled by the airport, airside constraints need to be considered in the development of an airport-wide forecast. Steer applied slot assumptions to develop a JFK Constrained Base Case forecast. JFK is forecast to reach airside capacity in the mid-2030s.

### 5.2.1 Steer JFK Slot-Constrained Base Case forecast results

Airport-wide passenger enplanements are forecast to be airside constrained and reach capacity in the mid-2030s. Thus, between 2019 and 2035, there are only minor differences between the Steer JFK Unconstrained Base Case forecast and the Steer JFK Slot-Constrained Base Case forecast, as illustrated in Figure 5.6 and Table 5.4.

**Figure 5.6: Steer JFK Unconstrained Base Case and Steer JFK Slot-Constrained Base Case forecast 2019-2035**

Million enplanements



Source: Port Authority of New York and New Jersey *Annual Air Traffic Report 2019* and *John F. Kennedy International Airport 2020-2023* monthly air traffic statistics, Official Airline Guide, Terminal One Group Association, U.S. Federal Aviation Administration, Steer analysis and forecasts

**Table 5.4: Steer JFK Unconstrained Base Case and Steer JFK Slot-Constrained forecast comparison 2019-2035**

% of 2019 enplanement volumes (values rounded to the nearest fifth)

Year		Unconstrained Forecast	Slot Constrained Forecast	% difference
<b>Actuals</b>	2019	100%	100%	-
	2020	27%	27%	-
	2021	49%	49%	-
	2022	88%	88%	-
	2023	99%	99%	-
<b>Forecasts</b>	2024	102%	102%	-
	2025	108%	108%	-
	2026	113%	113%	-
	2027	117%	117%	-
	2028	120%	120%	-
	2029	122%	122%	-0.00%
	2030	124%	124%	-0.00%
	2031	127%	127%	-0.01%
	2032	129%	129%	-0.01%
	2033	131%	131%	-0.01%
	2034	133%	132%	-0.49%
	2035	135%	134%	-1.05%

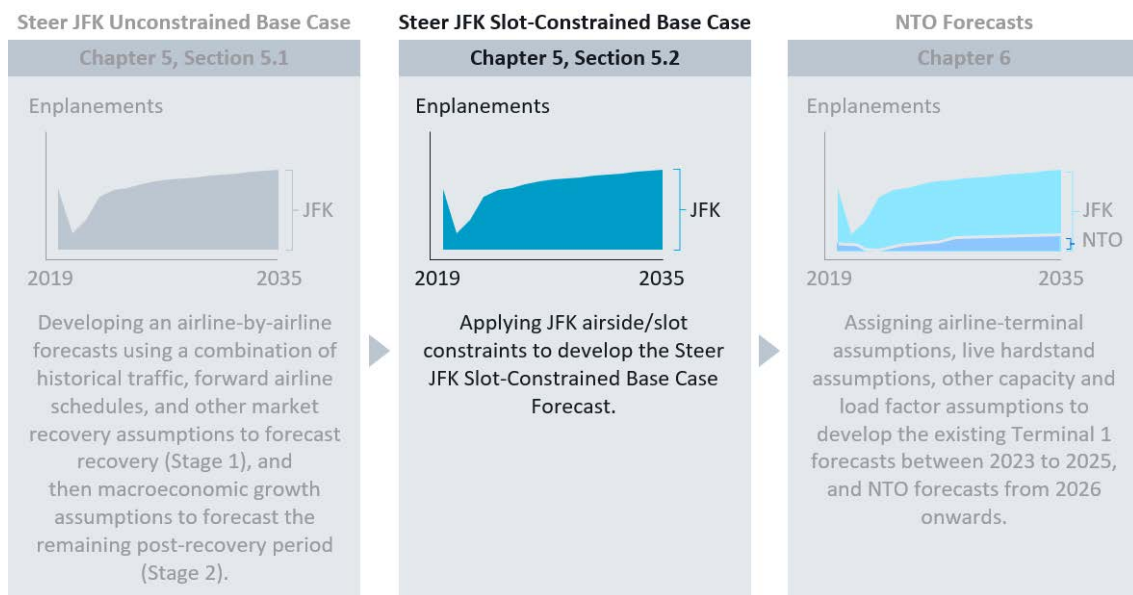
Source: Port Authority of New York and New Jersey *Annual Air Traffic Report 2019* and *John F. Kennedy International Airport* 2020-2023 monthly air traffic statistics, Official Airline Guide, Terminal One Group Association, U.S. Federal Aviation Administration, Steer analysis and forecasts

## 5.2.2 Approaches and assumptions

### Overview

After developing an overall Steer JFK Unconstrained Base Case forecast as discussed in the preceding Section 5.1, Steer applied airside slot constraints to develop a Steer JFK Slot-Constrained Base Case forecast (henceforth referred to as the Steer JFK Base Case forecast). The results of the Steer JFK Base Case forecast later feed into the forecasts of the existing Terminal 1 and NTO as discussed later in the following Chapter 6. Figure 5.7 provides a visual of the overall Steer traffic forecast approach on a step-by-step basis.

**Figure 5.7: Steer traffic forecasts approach**



Source: Steer

### Airside/slot constraints assumptions

Prior to the COVID-19 pandemic, JFK operated at full airfield capacity, at or near an average 81 air traffic movements per hour, from approximately 13:30 to 21:00 daily, as previously shown in Figure 4.17. This high usage remained consistent most of the year. Achieving traffic growth in such a heavily utilized market relies on increasing passengers per flight or scheduling additional flights at off-peak times.

To increase aviation capacity across New York, and particularly at JFK, authorities continue to address infrastructure constraints. Working with the FAA and airlines, the PANYNJ improved JFK's capacity at the end of 2019 by adding high speed turnoffs and realigned taxiways on the busiest runway, 13R/31L. The FAA has also implemented Traffic Management Advisor (TMA) to help improve the flow of arrivals to all of JFK's runways. Reflecting in part these changes, in September 2020, the FAA noted, in extending the 81-slot limitation to July 2023, that it "found continuing

improvements” at JFK. The notice then made clear that the FAA Administrator “may change limits if the Administrator determines that capacity exists to accommodate additional operations.”<sup>31</sup>

This type of regulatory action has precedent. In 2016, following a capacity and operational analysis of Newark Liberty International Airport, the FAA lifted its 81-slot limitation, determining that slot controls were no longer necessary for the airport, moving the airport from Level 3 (slot-controlled) to Level 2 (schedule-facilitated) beginning with the 2016 winter season.<sup>32</sup>

On July 9, 2021, President Biden under his priority for competition, added airport capacity and slot administration to his Administration’s priorities. He issued an Executive Order on Promoting Competition in the American Economy where he called on the Secretary of Transportation to “consider measures to support airport development and increased capacity and improve airport congestion management, gate access, implementation of airport competition plans and slot administration.” These recommendations have helped set the regulatory agenda for the Biden Administration through at least 2024.

The above-mentioned improvements, as well as operational improvements and regulatory priorities are expected to lead to a short- to medium-term increase in the 81 slots limitation, increasing the opportunity for additional commercial airline operations and passenger volumes.

Thus, the Steer forecast assumes the slot limit will increase to 87 air traffic movements per hour before the end of the decade, up from the current 81 air traffic movements and aligning with the phased opening of new terminal capacity at JFK. This is reasonable given ongoing and recent improvements in air traffic control systems. It also assumes a resolution of the recent U.S. FAA air traffic controller shortage issues. Assumptions for slot utilization have also been made, with a slight increase in utilization of shoulders and off-peak periods over time as demand increases.

The forecast also assumes a tapering of domestic traffic over time as slot restrictions constrain movements. As JFK faces capacity pressure, it is assumed that airlines and regulators will look to use slots in the most efficient way. For instance, international movements with larger passenger capacities are likely to be favored over smaller/shorter domestic flights. However, it is likely that JFK will always retain a domestic component as domestic traffic feeds connecting passengers onto long-haul international flights and JFK will remain a key domestic airport for longer flights that cannot be accessed from LaGuardia.

Recognizing the uncertainty about the timing of the approval for increased slot capacity at JFK and impacts to NTO forecasts, Steer has analyzed the impact of maintaining the current slot limitation of 81 air traffic movements per hour. Detailed discussion of this analysis can be found in the Section 6.3.3.

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<sup>31</sup> Source: Federal Register *Operating Limitations at John F. Kennedy International Airport* (85 Fed. Reg. 58258, 58258 and 89 Fed. Reg. 41486), Steer analysis

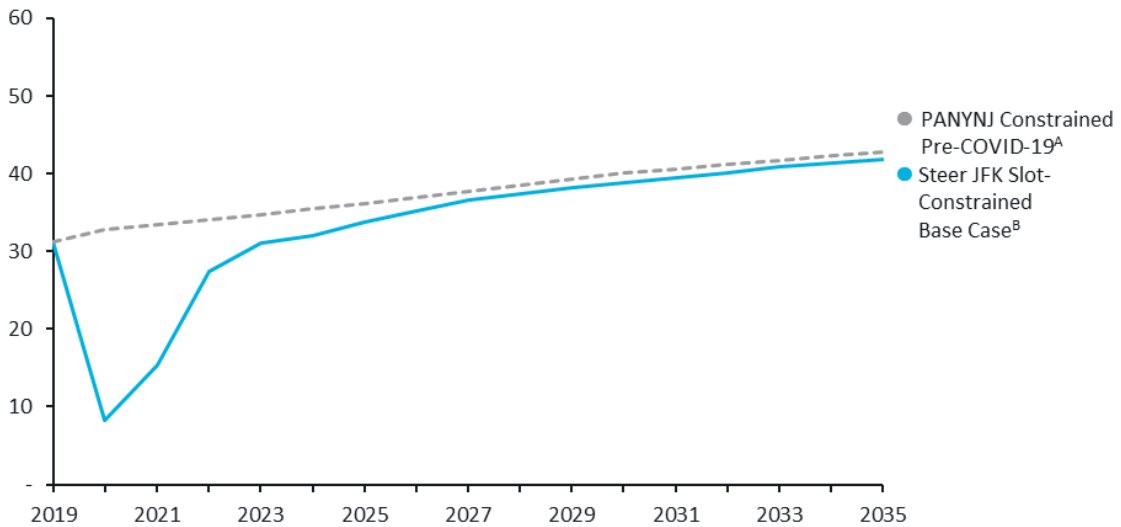
<sup>32</sup> Source: Federal Register *Change of Newark Liberty International Airport Designation* (81 Fed. Reg. 19861), Steer analysis

### 5.2.3 Forecast validation

Figure 5.8 provides a benchmark comparison between Steer JFK Slot-Constrained Base forecast with the PANYNJ constrained forecasts conducted prior to the COVID-19 pandemic. Consistent with the Steer JFK Unconstrained Base Case benchmarks, the Steer JFK Slot-Constrained Base Case forecast is also lower than the PANYNJ constrained forecasts and suggests that both forecast are in line and reasonable with industry benchmarks.

**Figure 5.8: JFK constrained forecast benchmark comparison 2019-2035**

Million enplanements



<sup>A</sup> Forecast values between 2019 and 2035.

<sup>B</sup> Actuals between 2019 and 2023. Forecasts between 2024 and 2035.

Source: Port Authority of New York and New Jersey *Aviation Demand Forecasts, John F. Kennedy International Airport*, June 2017 (approved by the FAA in December 2017), *Annual Air Traffic Report 2019* and *John F. Kennedy International Airport 2020-2024* monthly air traffic statistics; Official Airline Guide; Terminal One Group Association; U.S. Federal Aviation Administration; Steer analysis and forecasts

## 6 The New Terminal One Air Traffic Forecasts

Using the airline-by-airline Steer JFK Base Case forecast discussed in Chapter 5, Steer applied several airline-terminal assumptions and other capacity and operational assumptions to develop forecasts for the existing Terminal 1 and NTO.

- The existing Terminal 1 is forecast to recover to 86% of the 2019 traffic levels in 2025. NTO will facilitate international traffic growth at JFK and service airlines moving from the existing Terminal 1 and displaced from other JFK terminals.
- Large domestic airlines will continue to dominate most of the space at other terminal complexes around JFK, making NTO attractive as an all-common use facility.
- NTO is forecast to attract airlines as new widebody gate availability enhances potential for scheduling flexibility, especially at peak times. The loss of 10 gates at the existing Terminal 1 and three common-use gates at Terminal 4 is expected to drive immediate demand for NTO.
- Long-term growth forecasts for NTO are consistent with market conditions in a constrained environment.
- New entrants to JFK provide opportunities for additional traffic growth for NTO but are not currently included in the forecast.

This chapter discusses the results of the Steer NTO traffic forecasts.

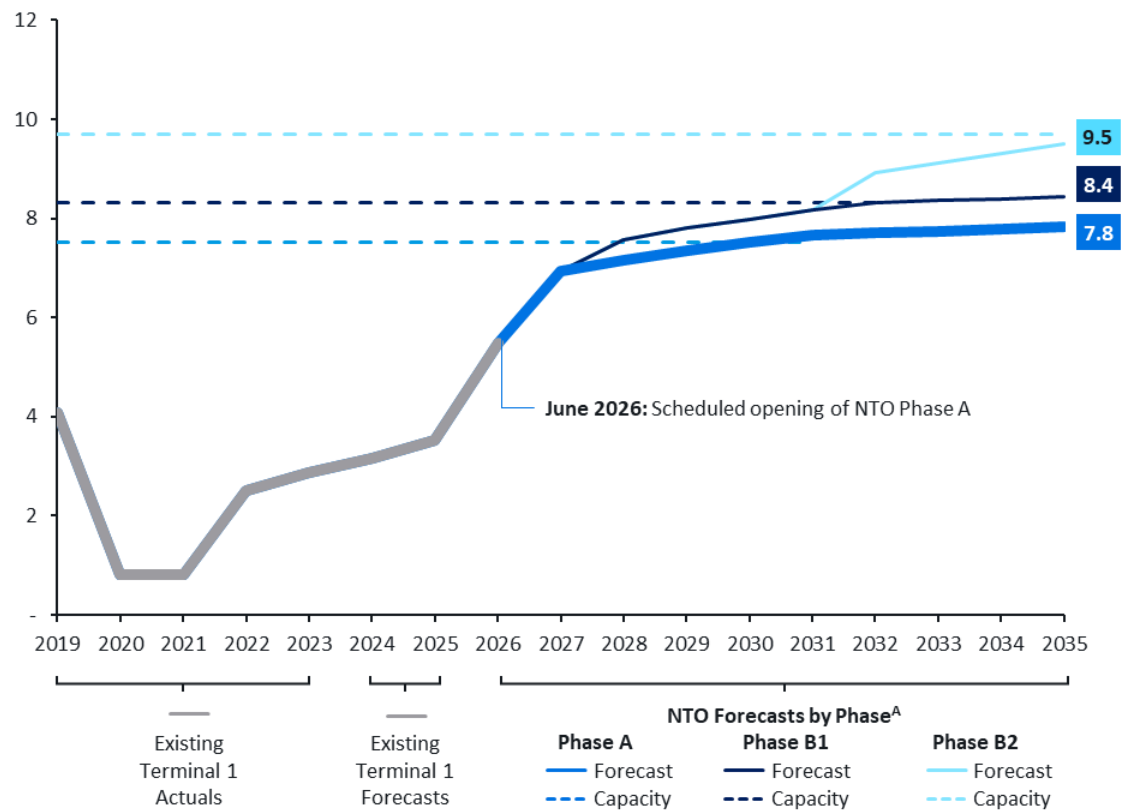
## 6.1 Base Case forecast

Steer forecasts NTO will reach 6.9 million enplanements in 2027, the first full year of operations, and to grow to 7.8 million enplanements in 2035.

Figure 6.1 illustrates the forecasts for NTO for the full build out of three phases: Phase A, Phase B1 and Phase B2 to 2035. The scope of this report is for Phase A only. The forecasts for each phase consider the terminal capacity thresholds as well as a phased ramp-up to the capacity thresholds, based on the forecast utilization and the assumed movements of airlines between different terminal facilities.

**Figure 6.1: NTO Base Case forecast by phase 2019-2035**

Million enplanements



<sup>A</sup> The scope of this report is Phase A only.

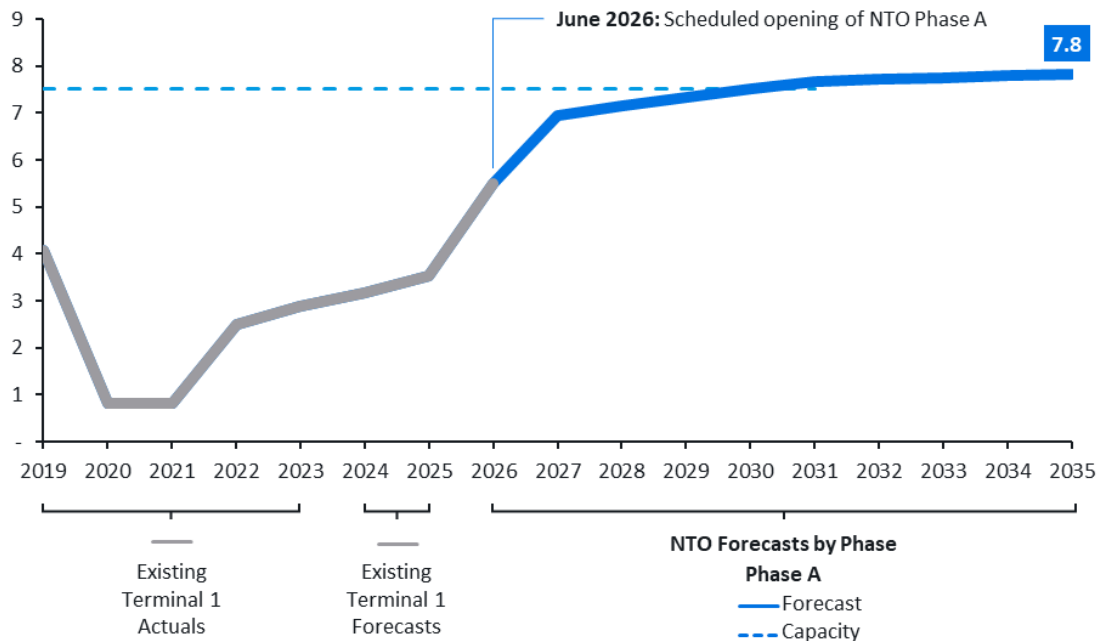
Source: Official Airline Guide, Terminal One Group Association, U.S. Federal Aviation Administration, Steer analysis and forecasts

This report focuses on the traffic case that corresponds to Phase A only, with 14 widebody contact gates, directly accessible from the terminal, and five widebody remote hardstands available by a short bus journey from NTO. The hardstands are expected to be available for use in September 2026.

Figure 6.2 and Table 6.1 illustrate the Phase A-only Base Case, including a forecast of the existing Terminal 1 operations until it closes. Traffic at the existing Terminal 1 is forecast to reach 3.5 million enplanements in 2025, falling short of the 2019 enplanement volumes of 4.1 million. Following the opening of NTO in 2026, enplanements at NTO are forecast to ramp up to 6.9 million in 2027 based primarily on new airlines using the Terminal, in particular airlines facing displacement from the loss of common use international gates at Terminal 4, alongside the airlines assumed to transfer from the existing Terminal 1 in 2026. Traffic is forecast to increase at a compound annual growth rate of 1.5% between 2027 and 2035 taking into consideration the capacity limitations of the Phase A build. This compares to JFK's compound annual growth rate between 2000 and 2019 of 3.5%.

**Figure 6.2: NTO Base Case forecast Phase A 2019-2035**

Million enplanements



Source: Official Airline Guide, Terminal One Group Association, U.S. Federal Aviation Administration, Steer analysis and forecasts

**Table 6.1: NTO Base Case forecast Phase A 2019-2035**

% Enplanement compound annual growth rate

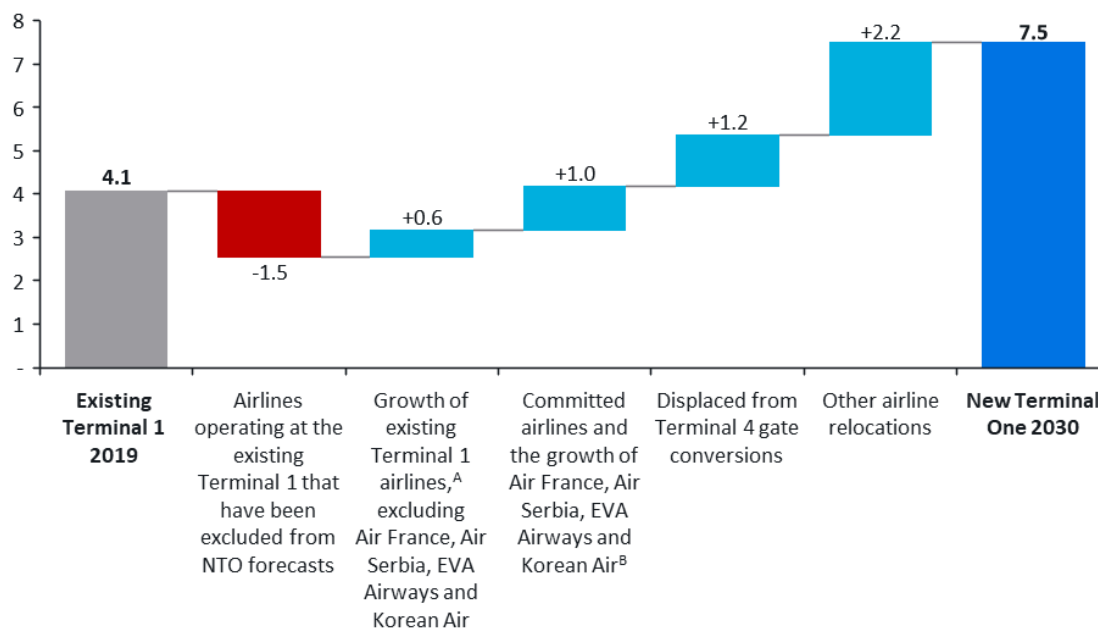
Phase	2019-2025	2025-2035	2019-2035
Phase A forecast	-2.4%	+8.3%	+4.2%

Source: Official Airline Guide, Terminal One Group Association, U.S. Federal Aviation Administration, Steer analysis and forecasts

To achieve the forecast 7.5 million enplanements at NTO in 2030, NTO is assumed to grow through a mix of carriers, some of whom have already made firm commitments to NTO. Significant traffic volume is expected to transition from the existing Terminal 1, including committed airlines Air France, Korean Air, EVA Airways and Air Serbia, with those airlines forecast to experience some growth over 2019 levels. In addition, NTO is likely to accommodate displaced traffic from other terminals including airlines impacted by the loss of three gates converted for Delta Air Lines' use at Terminal 4. Three carriers currently using other terminals have already committed to operating at NTO, including LOT Polish Airlines, Etihad Airways and KLM. Additional airline tenants are expected to face capacity constraints at their existing terminals between 2026 and 2030 as outlined in Figure 6.3 and detailed in Section 6.2.

**Figure 6.3: The existing Terminal 1 to NTO waterfall 2019-2030**

Million enplanements



<sup>A</sup> Current mix existing Terminal 1 airlines that are assumed to transfer to NTO, excluding the growth of Air France, Korean Air, Air Serbia and EVA Airways.

<sup>B</sup> Includes the growth of Air France, Korean Air, Air Serbia and EVA Airways, as well as new traffic from Etihad Airways, and LOT Polish Airlines, committed airlines which have relocated from other terminals.

Source: Official Airline Guide, Terminal One Group Association, Steer analysis and forecasts

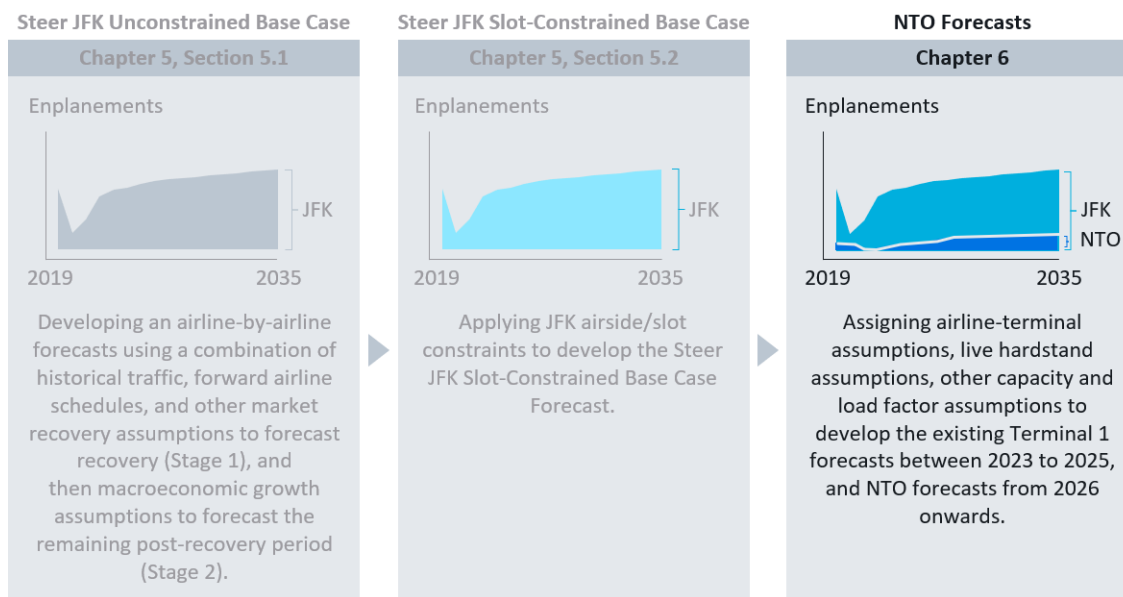
## 6.2 Approaches and assumptions

Steer has considered commercial agreements, airport-wide gate utilization and other operational assumptions in the development of the Base Case forecasts for NTO.

### 6.2.1 Overview

As discussed in the preceding Chapter 5, the NTO Base Case forecast is a product of the Steer JFK Base Case Constrained traffic forecast and assumptions regarding the future allocation of airlines between terminals at the airport, taking into consideration the phased opening of various terminal projects. The sum of all airline forecasts assumed to become tenants of NTO form the NTO forecasts. As illustrated in Figure 6.4, the NTO forecast is the final step of this approach.

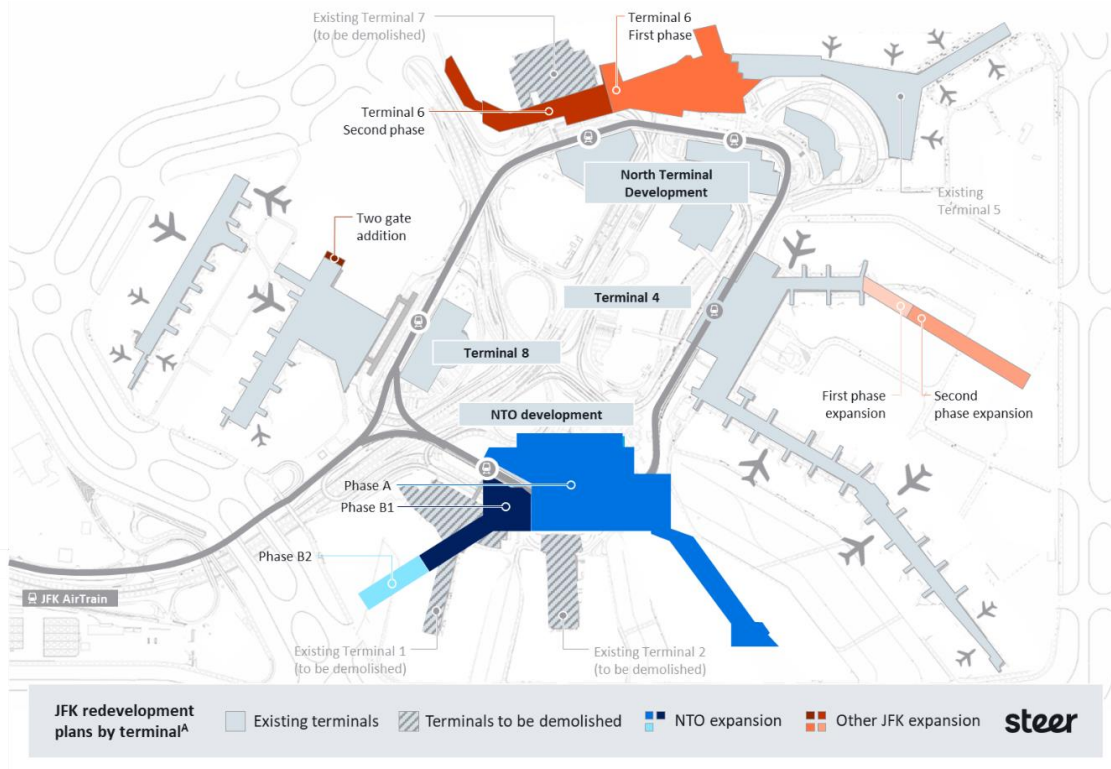
**Figure 6.4: Steer traffic forecasts approach**



Source: Steer

### 6.2.2 Capacity assumptions

In addition to NTO, the broader JFK redevelopment plan includes the expansion of three other terminals: Concourse A expansion at Terminal 4, North Terminal Development (Terminal 6 and the demolition of Terminal 7) and Terminal 8 as illustrated in Figure 6.5.

**Figure 6.5: Map of JFK redevelopment areas**

<sup>A</sup> Dates of the phases vary by terminal project and is for illustrative purpose only.

Source: JFK NTO LLC, Port Authority of New York and New Jersey *JFK Redevelopment Program Overview January 2020*, Steer analysis

### *Terminal 4 development*

The first phase of expansion at Terminal 4 is aimed at accommodating the loss of capacity at the former Terminal 2 facility. In this phase, Terminal 4 has converted gates including:

- Three existing common use widebody gates in Concourse B converted for use by Delta Air Lines;
- Ten existing regional jet gates at the end of Concourse B converted to seven narrowbody gates; and
- Eight regional jet gates constructed at the end of Concourse A.

The potential second phase of development would replace the ten temporary regional jet gates with eight permanent narrowbody gates. While Steer has assumed that project will be completed by 2028, the project timeline remains uncertain and may occur later or not at all.

### *Terminal 6 development*

The first phase of the Terminal 6 development includes constructing four widebody and one narrowbody gate which will replace the existing six widebody and six narrowbody gates available at Terminal 7 today. The second phase, which will follow the demolition of the existing Terminal 7, will add an additional five widebody gates.

### Terminal 8 development

Terminal 8 has completed a smaller project to resize existing gates on the satellite concourse (Concourse C) and add two new gates to Concourse B. Table 6.2 describe the gate assumptions<sup>33</sup> used in the NTO forecast for each terminal by gate type based on the development plans described above.

Each of the major JFK expansion projects are expected to open in phases. While the phasing of Terminal 4 reflects a reduction of two widebody gates, a third widebody gate is to be transferred to Delta Air Lines. At Terminal 8, the two-gate addition increasing widebody gates was driven by the conversion of smaller narrowbody and regional jet gates to accommodate the relocation of British Airways and Iberia, completed in December 2022.

**Table 6.2: JFK capacity plan 2019-2032**

Number of aircraft positions (assuming completion of NTO Phase A only)

Terminal(s)	Type	2019	2028	2032
Existing Terminal 1 (2019) NTO (2028, 2032)	Widebody	10	14	14
	Narrowbody	-	-	-
	Regional jet	-	-	-
	Live hardstands	-	5	5
	<b>Subtotal</b>	<b>10</b>	<b>19</b>	<b>19</b>
Terminals 2 and 4 (2019) Terminal 4 (2028, 2032)	Widebody	21	19	22
	Narrowbody	15	24	24
	Regional jet	11	1	1
	Live hardstands	3	3	-
	<b>Subtotal</b>	<b>50</b>	<b>47</b>	<b>47</b>
Terminals 5 and 7 (2019) Terminal 6 and 7 (2028, 2032)	Widebody	6	8	9
	Narrowbody	35	30	30
	Regional jet	-	-	-
	<b>Subtotal</b>	<b>41</b>	<b>38</b>	<b>39</b>
Terminal 8	Widebody	8	14	14
	Narrowbody	21	17	17
	Regional jet	6	-	-
	<b>Subtotal</b>	<b>35</b>	<b>31</b>	<b>31</b>
<b>Totals</b>	<b>All types</b>	<b>136</b>	<b>135</b>	<b>136</b>

Source: JFK NTO LLC, Steer analysis

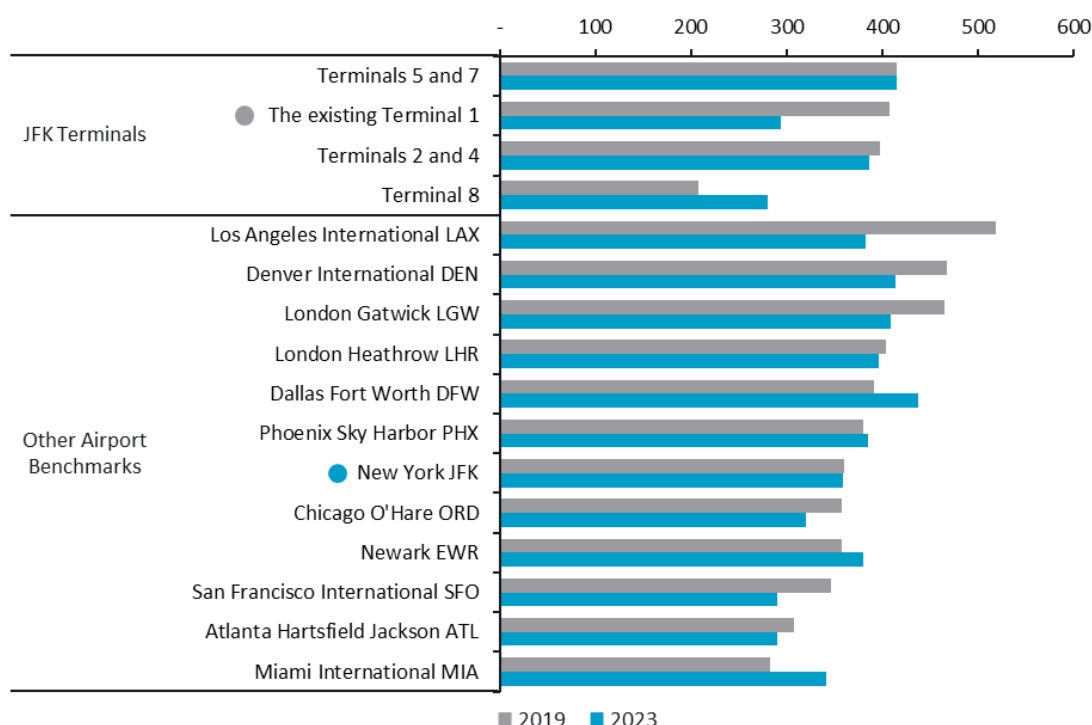
As discussed in Section 4.3, actual passenger traffic exceeded designed terminal capacity across all terminals in 2019, though individual constraints differ from facility to facility. Except for Terminal 8, each terminal also operated at the upper limits of benchmarked utilization by measure of passengers per gates in 2019, as shown in Figure 6.6. For this reason, Steer has assumed an

<sup>33</sup> For the context of this analysis, gates refer to both contact stands and live hardstands.

average annual throughput per widebody gate equivalent (meaning one widebody gate or two narrowbody gates) of 430,000 enplanements per year.<sup>34</sup> An exception has been made for capacity of Terminal 8 to account for the lower historical usage and other terminal constraints on that facility which have led to its historically lower traffic throughput per gate. Since 2019, carriers such as British Airways and Iberia have relocated to Terminal 8, increasing the average enplanements per widebody-equivalent gate.

**Figure 6.6: Enplanements per widebody-equivalent gate comparison benchmarks 2019/2023**

Thousand enplanements per widebody-equivalent gate



Source: Google Maps, Port Authority of New York and New Jersey *Annual Air Traffic Report 2019*, Terminal One Group Association, U.S. Department of Transportation, various airport websites, Steer analysis

While terminals may be able to accommodate a higher throughput than the assumed capacity, this may result in overcrowded facilities with sub-optimal service levels as evidenced in the pre-COVID-19 conditions across JFK terminals. Such lower service levels may not be consistent with lease terms between the PANYNJ and respective terminal operators. For the purposes of this

<sup>34</sup> The enplanements are benchmarked and tested through design day analysis to confirm it is both high utilization but also operationally achievable while maintaining high levels of service.

capacity assessment, a total terminal throughput (capacity) estimate has been obtained by multiplying the assumed capacity per gate by the number of widebody equivalent gates.<sup>35</sup>

Based on the layout of the airport, the estimated terminal capacity was approximately 34 million enplanements in 2019. Table 6.3 illustrates the breakdown by terminal.

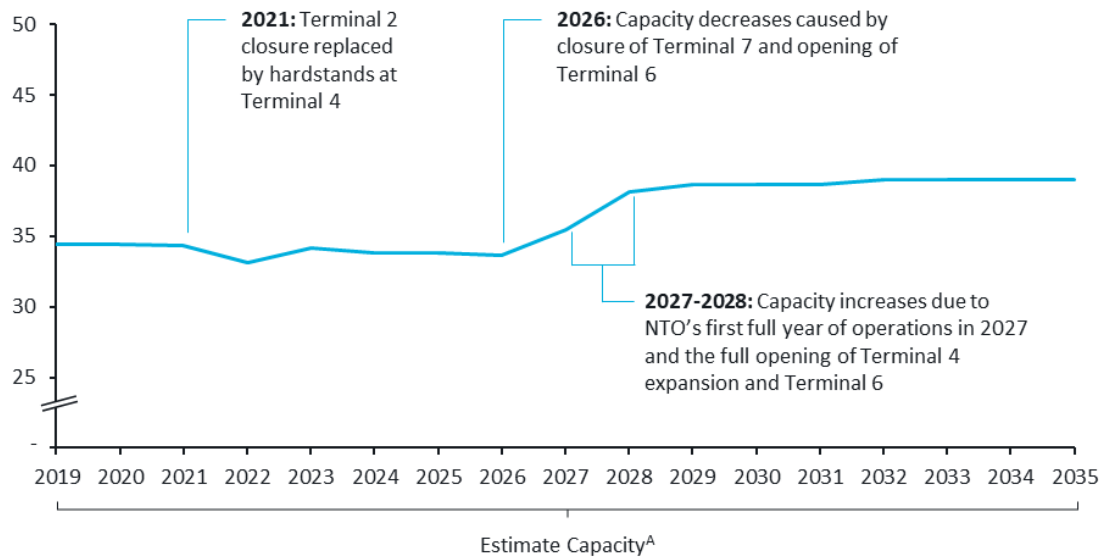
**Table 6.3: JFK capacity assessment 2019**

<b>JFK Terminal</b>	<b>2019 Widebody-equivalent gates</b>	<b>2019 Capacity enplanements</b>
Existing Terminal 1	10.0	4.3 million
Terminals 2 and 4	33.5	14.4 million
Terminals 5 and 7	23.5	10.1 million
Terminal 8	20.0	5.6 million
<b>Total</b>	<b>87.0</b>	<b>34.4 million</b>

Source: Steer analysis

Figure 6.7 illustrates the capacity as it is assumed to evolve through 2035. As noted, total airport capacity in 2026 is assessed to be lower than was available in 2019 because of the phasing of various development projects having not yet fully replaced decommissioned facilities including Terminal 1, Terminal 2 and Terminal 7.

<sup>35</sup> One widebody-equivalent gate is assessed as equal to: two narrowbody gates; or four regional jet gates. Live hardstands are assumed to have 75% the capacity of a contact gate of the same size.

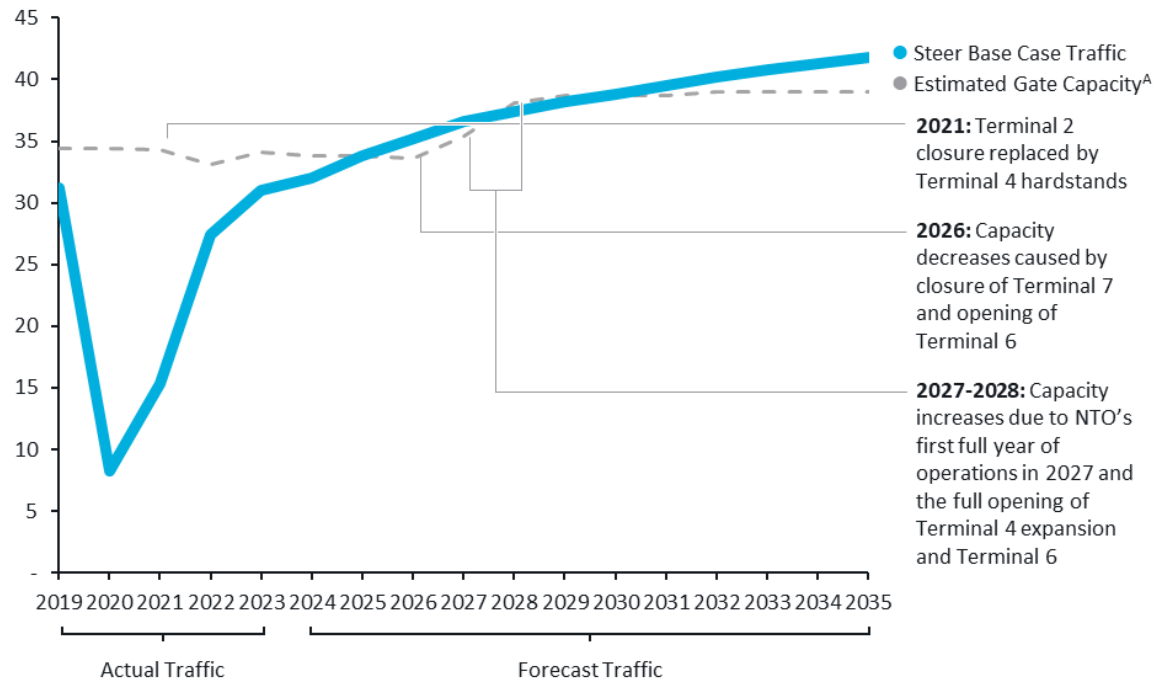
**Figure 6.7: JFK capacity 2019-2035**Million enplanements<sup>A</sup>

<sup>A</sup> Capacity utilization is based on assuming 430,000 annual enplanements per widebody-equivalent gate, except for Terminal 8, which uses an assumption of 280,000 enplanements per widebody-equivalent gate due to limited satellite concourse design restricting the number of widebody aircraft and due to the operational profile of American Airlines. Capacity is based on benchmarks and accounts for fleet upgauging, the number of aircraft turns per gate and the Design Day Forecast Schedule (DDFS) as developed by Steer. Narrowbody and regional jet gates are converted to widebody-equivalent gates at a rate of 2:1 and 4:1 respectively. Active hardstands are stands used regularly for boarding and deplaning commercial airlines and are assumed to have 75% of the capacity of contact gates. Excludes non-active hardstands not used for the boarding and deplaning of commercial airlines. Assumes Phase A only.  
Source: NTO Lease, U.S. Department of Transportation, Steer analysis

Given the loss of gate capacity between 2019 and 2026 and the expected growth of total JFK traffic to beyond 2019 levels by that time, the airport is expected to face a more challenged gate capacity environment in 2025-2027 than existed pre-COVID-19. This is shown in Figure 6.8.

**Figure 6.8: JFK total enplanement and gate capacity forecast 2019-2035**

Million enplanements

<sup>A</sup> Based on gate counts agreed to in the NTO Lease.

Source: JFK NTO LLC, Terminal One Group Association, Steer analysis and forecasts

The capacity illustrated here includes all 14 contact gates and five live hardstands provided by Phase A of NTO starting in 2026. Due to this capacity challenge noted above, there is expected to be a need for NTO's capacity upon opening, and the terminal forecast reflects the relocation of some airlines to the terminal as a result.

Once NTO reaches its assumed maximum capacity of 430,000 annual enplanements per widebody gate equivalent,<sup>36</sup> it is assumed to become capacity constrained. At this point, an increase in traffic of just 0.5% per year is assumed possible through improvements in technology, overall efficiency gains and increased passenger loads. If the terminal reaches 480,000 enplanements per gate, growth is assumed to be reduced to just 0.1% per year.

Airports with significant constraints are still expected to see some marginal growth as operators seek to maximize the market served. Evidence of this exists in airports with strict annual limitations on flights, including London Heathrow, which has still experienced a long-term compound annual growth rate of 1.2% over the 2000 to 2019 period despite an annual limit on aircraft movements. This has been accomplished through a combination of aircraft upgauging, seat densification and higher passenger load factors. Such examples suggest that should NTO face

<sup>36</sup> Live hardstands are assumed to achieve 75% the throughput of a contact gate, estimated at 322,500 annually for a widebody live hardstand position.

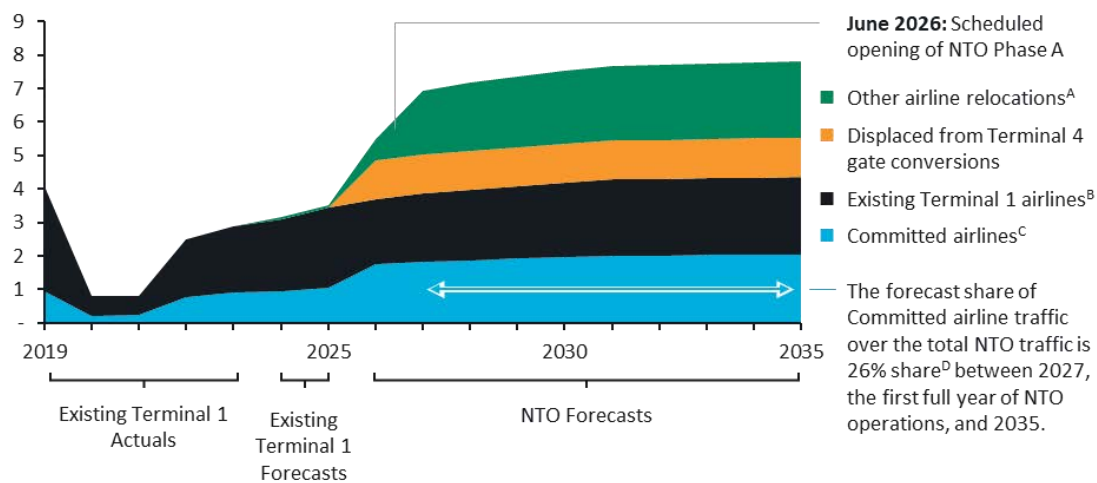
a limitation on gate capacity, given the lack of available capacity elsewhere at the airport, some year-over-year growth would still be expected.

### 6.2.3 Airline assumptions

The foundation of NTO traffic is assumed to be the existing Terminal 1 airline users, airlines displaced by the conversion of gates for Delta Air Lines' use at Terminal 4, airlines already committed to NTO and other airlines facing capacity challenges at Terminal 4 or without a home following the closure of Terminal 7. These airline groups are illustrated in Figure 6.9.

**Figure 6.9: NTO Base Case forecast by airline group 2019-2035**

Million enplanements



<sup>A</sup> From 2026, these are based on an assumed mix of airlines relocating to NTO from other JFK terminals to maintain a “normalized” utilization. Refer to Figure 6.11 for more information.

<sup>B</sup> Between 2019 and 2025, this includes all airlines that have or are expected to continue to operate at the existing Terminal 1 except Air France, Korean Air, Air Serbia and EVA Airways, which have already signed airline commitments with the Operator and have been accounted for under the *Committed airlines* category. These airlines are assumed to transfer operations over to NTO upon the opening of Phase A in June 2026.

<sup>C</sup> Includes Air France, Korean Air, EVA Airways and Air Serbia, which are existing Terminal 1 tenants, and Etihad Airways, KLM, and LOT Polish Airlines starting in 2026 upon the opening of NTO.

<sup>D</sup> The forecast committed airline share of 26% between 2027 and 2035 includes the carriers listed in Note C and excludes Asiana Airlines, which has announced a merger with Korean Air. This merger is currently under review by the United States. If Asiana Airlines is included as a committed carrier, the forecast committed airline share would increase to 28%.

Source: Official Airline Guide, Terminal One Group Association, Steer analysis and forecasts

#### *Other airlines displaced from Terminal 4 or other terminals*

Based on the loss of common-use gate capacity at Terminal 4 and the loss of existing capacity at Terminal 7, there is expected to be a need for the relocation of airlines into NTO.

While the exact mix of future airlines is unknown, NTO is expected to be a logical market for many international carriers at JFK, especially Star Alliance airlines, non-aligned airlines and airlines with specific capacity or commercial considerations for wanting to locate in an all-international facility.

Such airlines are expected to face constraints at other terminals and therefore may need the gate capacity NTO will provide in the market. Airlines are expected to consider the attractiveness of the new facilities, high level of service and the overutilization of gate capacity and dominance of domestic airlines at other terminals. This target market is shown in Table 6.4. The airlines that have signed or agreed to terms of User Agreements with NTO provide evidence that these are reasonable target airline groups as part of the business strategy to attract airline customers to NTO.

**Table 6.4: NTO target airline groups**

Airline group	Description
Existing Terminal 1 airlines	<ul style="list-style-type: none"> <li>NTO's opening will coincide with the closing of the existing Terminal 1, home to more than 20 international airlines.</li> <li>Given lack of capacity at other terminals, a coordinated relocation to NTO is expected.</li> <li><b>Air France, Air Serbia, EVA Airways, and Korean Air are all existing Terminal 1 airlines and have executed Airline Agreements.</b></li> </ul>
Star Alliance airlines	<ul style="list-style-type: none"> <li>International Star Alliance carriers benefit from sharing infrastructure and facilities at JFK and NTO is a logical hub terminal for their operations.</li> <li><b>EVA Airways, which is also an existing Terminal 1 airline, and LOT Polish Airlines are both members of Star Alliance and have executed Airline Agreements.</b></li> </ul>
Non-aligned airlines	<ul style="list-style-type: none"> <li>Non-aligned airlines generally have limited connecting traffic and limited commercial relationships with large U.S. domestic carriers.</li> <li>As a result, these airlines may struggle to secure limited space in other terminals where airlines with connections between alliance partner airlines will be prioritized over non-aligned airlines without alliance partners.</li> <li>NTO is a logical home for these airlines.</li> <li><b>Air Serbia, which is also an existing Terminal 1 airline, and Etihad Airways are both non-aligned airlines and have executed Airline Agreements.</b></li> </ul>
Other alliance airlines	<ul style="list-style-type: none"> <li>Given the space constraints, particularly for widebody operators at Terminal 4 and Terminal 8, other widebody international airlines from SkyTeam and oneworld may locate at NTO as well.</li> <li><b>Air France and Korean Air, which are existing Terminal 1 airlines, and KLM are members of SkyTeam and have executed Airline Agreements.</b></li> </ul>

Source: JFK NTO LLC, Steer analysis

### Committed airline users

The Operator has seven committed airline users in its terminal. A summary of these different airlines can be found in the following pages.



#### Air France

**Summary:** Based in Paris, France, Air France is a part of the Air France-KLM group. Air France is a TOGA partner airline based in the existing Terminal 1. Air France is a founding member of SkyTeam along with Delta Air Lines. Despite its close relationship with Delta Air Lines, which owns an equity stake in the Air France-KLM group and is a member of the same SkyTeam transatlantic joint venture, Air France has decided to sign an Anchor Agreement and operate from NTO. Air France carried nearly 590,000 enplanements in 2019, which represents a compound annual growth rate of 2.9% between 2010 and 2019. In 2023, Air France carried over 520,000 enplanements, 10% below 2019 volumes.

Source: Official Airline Guide, U.S. Department of Transportation, Steer analysis



#### Etihad Airways

**Summary:** Based in Abu Dhabi of the United Arab Emirates, Etihad Airways has operated between one and two average daily flights from JFK to its hub in Abu Dhabi between 2010 and 2019 using a mix of widebody aircraft. Etihad is not a member of any airline alliance but has a partnership with the Air France-KLM group and codeshares with Korean Air. Between 2010 and 2019, enplanements increased at a compound annual growth rate of 6.9%. Etihad Airways carried over 185,000 enplanements or 37% above 2019 volumes in 2023.

Source: Official Airline Guide, U.S. Department of Transportation, Steer analysis



## KLM Royal Dutch Airlines (“KLM”)

**Summary:** KLM is a part of the Air France-KLM group and is a founding member of SkyTeam along with Delta Air Lines. Like Air France, KLM has decided to operate at NTO despite its close relationship with Delta Air Lines, which owns an equity stake in the Air France-KLM group and is a member of the same SkyTeam transatlantic joint venture. KLM carried nearly 238,000 enplaned passengers in 2019, which represents a compound annual growth rate of 2.1% between 2010 and 2019. KLM enplanements had recovered to just 1% below 2019 volumes in 2023.

Source: Official Airline Guide, U.S. Department of Transportation, Steer analysis



## Korean Air

**Summary:** Founded in 1969, Korean Air is the flag carrier of South Korea and one of the largest airlines in Asia. Additionally, the airline is also one of the ten five-star airlines as designated by SkyTrax. The airline operates a fleet of over 160 aircraft and serves more than 125 destinations in 43 countries. The airline offers daily non-stop flights between JFK and Seoul’s Incheon International Airport (ICN), one of the airline’s main hubs. Korean Air carried nearly 250,000 enplaned passengers in 2019, which represents a compound annual growth rate of 2.7% between 2010 and 2019. Korean Air recovered to 94% of the 2019 enplanement volumes in 2023; its lower recovery compared to other committed airline users is due to the later reopening of borders of Asian countries compared to other countries around the world. Korean Air announced its acquisition of Asiana Airlines in 2020. The merger of the two airlines is currently under review by the U.S. Department of Transportation.

<sup>A</sup> According to Korean Air, the following regulators have approved or have concluded its review of the Korean Air-Asiana Airlines merger: Australia, China, the European Union, Japan, Korea, Malaysia, Singapore, Turkey, Taiwan, Thailand, the Philippines, United Kingdom, and Vietnam.

Source: Korean Air, Official Airline Guide, U.S. Department of Transportation, Steer analysis



## LOT Polish Airlines

**Summary:** LOT Polish Airlines is the flag carrier of Poland and a member of Star Alliance. Prior to the COVID-19 pandemic, the airline operated long-haul flights to two destinations using a mix of widebody aircraft: Warsaw, Poland, its hub; and Budapest, Hungary, where it established another operating base in 2018 filling in a full-service carrier void left behind by MALEV Hungarian Airlines after its bankruptcy in 2012. LOT Polish Airlines served a total of 123,000 enplanements in 2019 and grew at a compound annual growth rate of 8.2% from 2010 to 2019. In 2023, LOT Polish Airlines carried over 116,000 enplanements or 5% below 2019 volumes.

Source: Official Airline Guide, U.S. Department of Transportation, Steer analysis



## EVA Airways

**Summary:** EVA Airways, Taiwan's leading independent airline, has a significant presence at JFK. Operating out of Terminal 1, EVA Airways offers multiple weekly flights between JFK and Taipei, connecting North America to Asia and beyond. The airline has announced its intention to relocate to the New Terminal One at JFK, further enhancing its operations and passenger experience. As a Star Alliance member, EVA Airways offers seamless connections to over 1,300 destinations worldwide. EVA Airways served a total of 110,000 enplanements in 2019. In 2023 the airline carried over 106,000 enplanements, 3% below 2019 volumes.

Source: Official Airline Guide, U.S. Department of Transportation, Steer analysis



## Air Serbia

**Summary:** Air Serbia, the flag carrier of Serbia, has established a strong presence at JFK. Since launching its JFK services in 2016, the airline has been operating up to seven flights a week between Belgrade and JFK, connecting the two cities and facilitating travel between Eastern Europe and North America. Currently, Air Serbia operates out of Terminal 1 at JFK, and has committed to relocating to the New Terminal One in 2026. Air Serbia served a total of 37,000 enplanements in 2019. In 2023 the airline carried over 42,000 enplanements, 15% above 2019 volumes.

Source: Official Airline Guide, U.S. Department of Transportation, Steer analysis

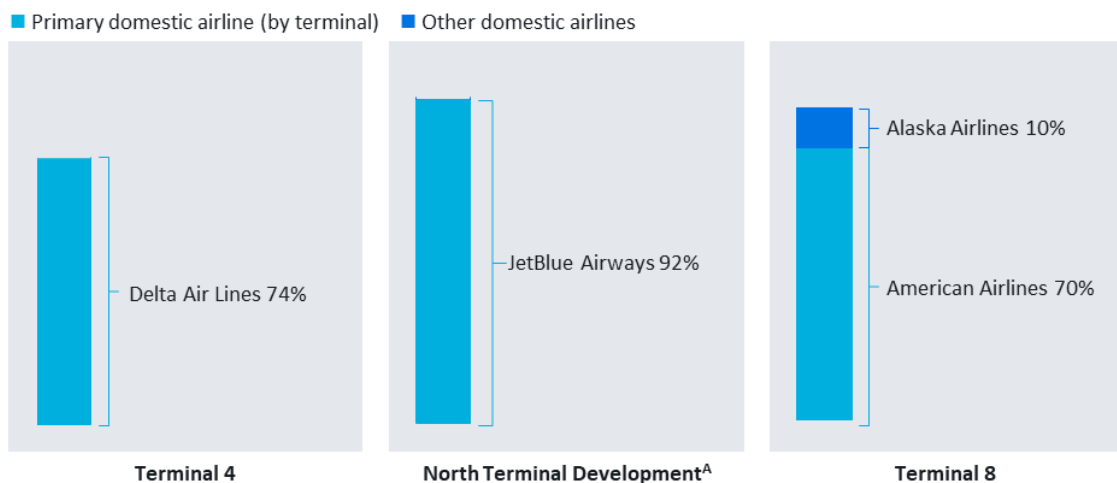
Execution of these Committed User Agreements provides evidence of market interest in future gate capacity at JFK and validation of the business plan for the Operator. In addition to airlines directly displaced from Terminal 4's gate conversions and the new anchor airlines, additional airlines are expected to transfer operations to NTO. This is based primarily on gate capacity requirements, but also driven by additional considerations including the role of domestic airlines in operating other terminal complexes at JFK, the relatively higher levels of congestion forecast at those other facilities and the various operational and commercial opportunities offered at NTO. These considerations are explored further in the following sections.

### *The role of domestic airlines*

Following the redevelopment projects across JFK, three of the four major terminal complexes will be dominated by a large domestic airline. Delta Air Lines, JetBlue Airways and American Airlines will respectively dominate Terminal 4, the North Terminal Development (Terminals 5 and 6) and Terminal 8. Each of these airlines is either the leaseholder or is involved in the management decisions of those facilities. For many international airlines, this presents a sub-optimal operating environment where the terminal layout, gate allocation and service offering are likely to be focused primarily on servicing the dominant airline. For example, domestic terminals may have smaller seating areas designed for smaller aircraft operations and often have dominant branding of the local domestic airline. In addition, as domestic airlines continue to increase service at JFK, they will likely require additional gate capacity, lounge space and support spaces that will create crowding pressures on non-anchor users. This is expected to be another factor contributing to the relative attractiveness of NTO for international, non-U.S. airlines. Figure 6.10 illustrates the share of terminal capacity forecast to be utilized by a major domestic airline or their joint-venture partners in 2030.

**Figure 6.10: Forecast share of terminal capacity used by domestic airlines in 2030**

% terminal capacity share (=100%)



<sup>A</sup> That is, Terminal 5 and Terminal 6.

Source: JFK NTO LLC, Steer analysis and forecasts

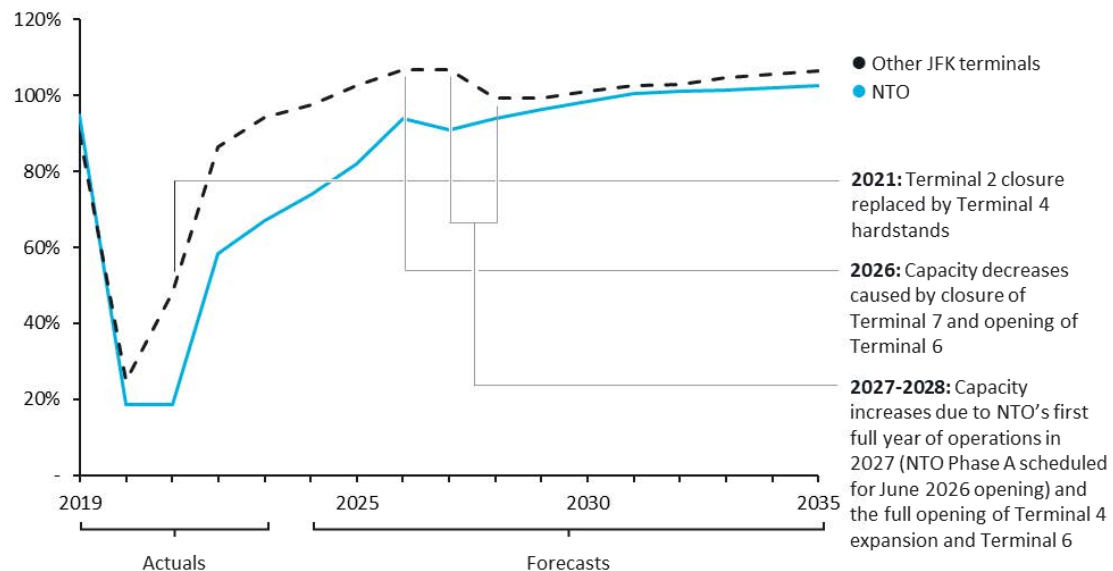
### Terminal utilization

The forecast for NTO assumes “normalization” of utilization across the airport. This reflects the need to balance utilization across the north (Terminals 5, 6 and 8) and south (NTO and Terminal 4) terminal groups. Figure 6.11 illustrates the utilization (forecast demand over assumed capacity) at other JFK terminals compared with the existing Terminal 1 and NTO. Post-COVID-19 recovery, the utilization of all terminals is forecast to return to or exceed 2019 levels given the reduced capacity at the airport during the 2025 to 2027 period. This is expected to result in significant capacity pressure that drives demand for available gates across the airport, and thus, contributes to our assumption of growth at NTO upon opening new capacity.

Following the opening of terminal expansion projects scheduled in 2028, other terminals are forecast to have utilization levels above or in line with NTO, with the airport overall operating above 95% of total gate utilization. This capacity utilization assessment accounts for the peak and off-peak nature of flight schedules at JFK and is based on acute challenges during peak and near-peak times of demand. At JFK, this is most of the afternoon and evening. Gate capacity is likely to be less utilized during the late evening and mornings, though activity continues at the airport throughout the day. These high levels of gate utilization across the airport are expected to be the driving factor in airline relocation decisions.

**Figure 6.11: NTO gate utilization comparison 2019-2035**

% gate utilization



Source: JFK NTO LLC, Terminal One Group Association, Steer analysis and forecasts

### *Airline industry dynamics*

In addition to capacity and gate availability considerations, airlines also consider commercial relationships and other industry dynamics in their terminal location preferences. Many airlines partner with peer airlines. Partnerships include code sharing, participating in the same airline alliance, or shared ownership or affiliation (“equity alliance”). These types of relationships, enabling connecting passengers between airlines and other operational efficiencies, drive a desire for co-locating airlines within a terminal and have been considered in the airline relocation assumptions within the Steer forecast. Considerations seen as impacting airline terminal preference are summarized in Table 6.5.

**Table 6.5: Relevant considerations for airline terminal preference**

Consideration	Description
Gate/capacity availability	<ul style="list-style-type: none"> <li>At a constrained airport like JFK, availability of capacity – particularly at peak times – is assumed to be the critical factor for airline terminal decisions.</li> </ul>
Co-location with partners	<ul style="list-style-type: none"> <li>Airline partnerships can take many forms. The closest partnerships are those in which separate airline brands are part of the same organization, such as the Air France – KLM Group.</li> <li>Alliance partnerships can be useful when connecting passengers, but JFK is primarily an O&amp;D airport.</li> </ul>
Service and facility quality	<ul style="list-style-type: none"> <li>Airlines seek out varying levels of service and amenities based on their business models.</li> <li>For some airlines, providing access to high-quality facilities including check-in areas, lounges and other spaces is core to their passenger experience.</li> </ul>
Branding and other commercial considerations	<ul style="list-style-type: none"> <li>Given the importance of product and brand differentiation, some airlines seek to avoid operating in a facility dominated by another airline brand.</li> </ul>

Source: Steer analysis

The importance of each consideration will vary among airlines. Of note, the seven NTO-committed airlines come from different alliances (or no alliance) and currently operate at different terminals at JFK.<sup>37</sup> The commitment of airlines from different commercial circumstances is seen as consistent with there being foreseeable terminal constraints and/or commercial drivers such as the focus on higher quality facilities, branding and operations independence from domestic airlines, access to suitable international services, like widebody gates, and lounge space.

### **6.2.3 Live hardstands**

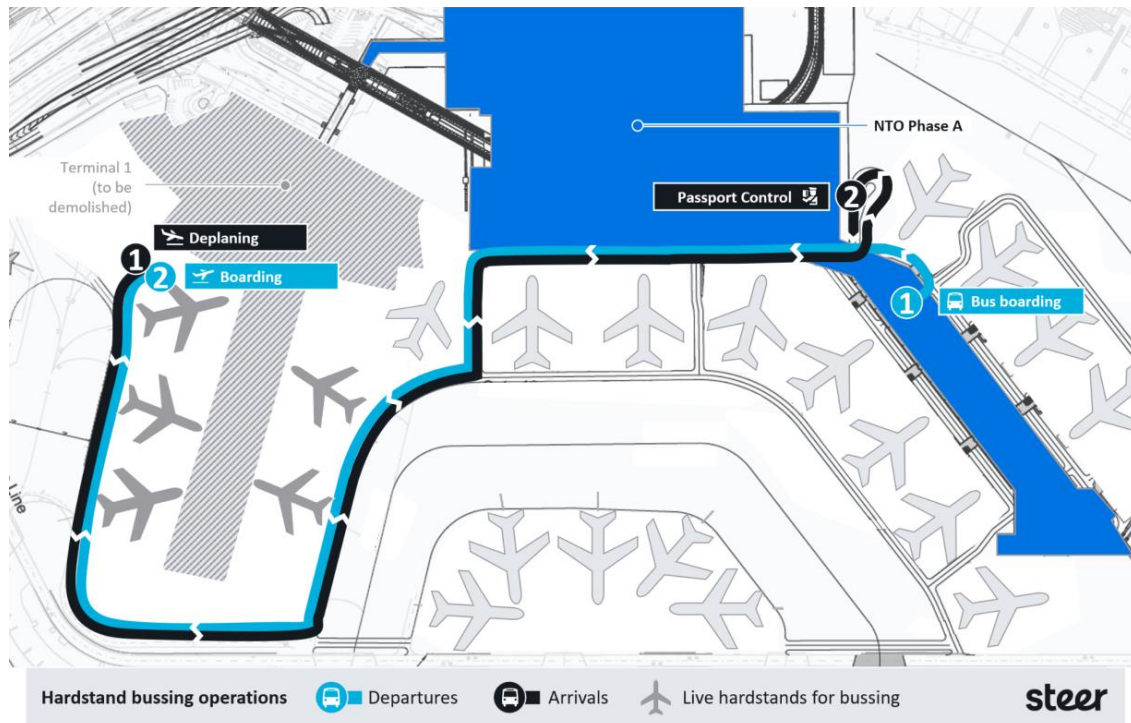
Phase A capacity assumes traffic will be operated through 14 contact gates and five live hardstands. Hardstands are assumed to be used to supplement fixed gate capacity during peak seasonal periods throughout the year when contact gates are fully utilized. Flights arriving or

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<sup>37</sup> Air France and Korean Air are part of the SkyTeam alliance and currently operate at the existing Terminal 1. LOT Polish Airlines is part of Star Alliance and currently operates at Terminal 7. Etihad Airways is unaligned and currently operates at Terminal 4. KLM is part of the SkyTeam alliance and operates at Terminal 4. Air Serbia is unaligned, while EVA Airways is part of Star Alliance – both operate at the existing Terminal 1.

departing from a hardstand will be met by buses which will transport passengers to or from NTO as illustrated in Figure 6.12.

**Figure 6.12: NTO hardstand bussing operations**



Note: Figure is for illustrative purposes only.

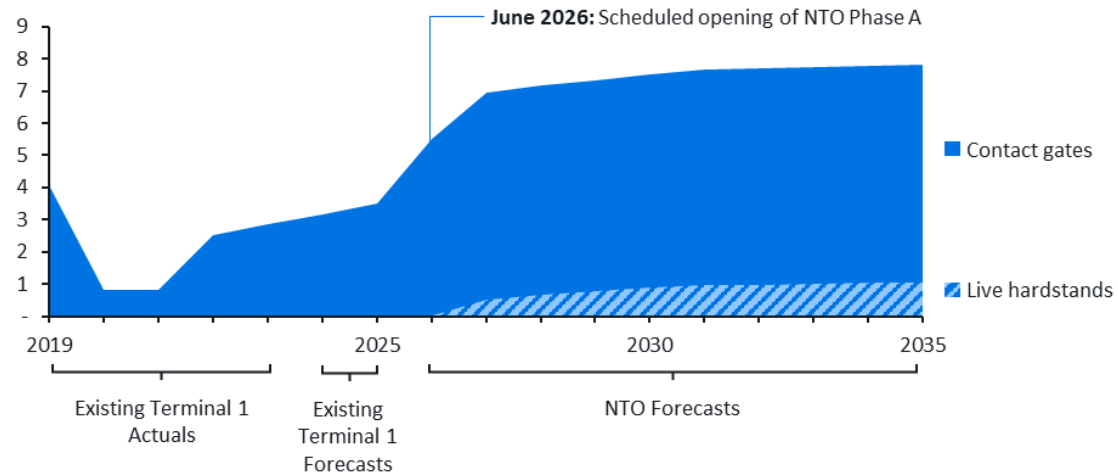
Source: JFK NTO LLC, Steer

The forecast allocation of traffic between contact gates and hardstands uses an assumed monthly capacity of 40,000 enplanements per contact gate (which corresponds to the maximum achieved at the existing Terminal 1 in 2019). When traffic exceeds 40,000 enplanements per contact gate in a month, the remaining traffic is assumed to be handled via hardstands.

The assumed hardstand capacity is 322,500 enplanements per annum, which is 75% of the assumed 430,000 annual enplanements per contact gate. This lower capacity accounts for possible extended boarding times and bussing operations, though the operational analysis conducted by Steer suggests that full usage could be possible as evidenced by Design Day Flight Schedule (DDFS) analysis and bussing concept of operations. Figure 6.13 illustrates the NTO Phase A Base Case enplanements forecast by contact gates and live hardstands.

**Figure 6.13: NTO Phase A Base Case forecast 2019-2035**

Million enplanements

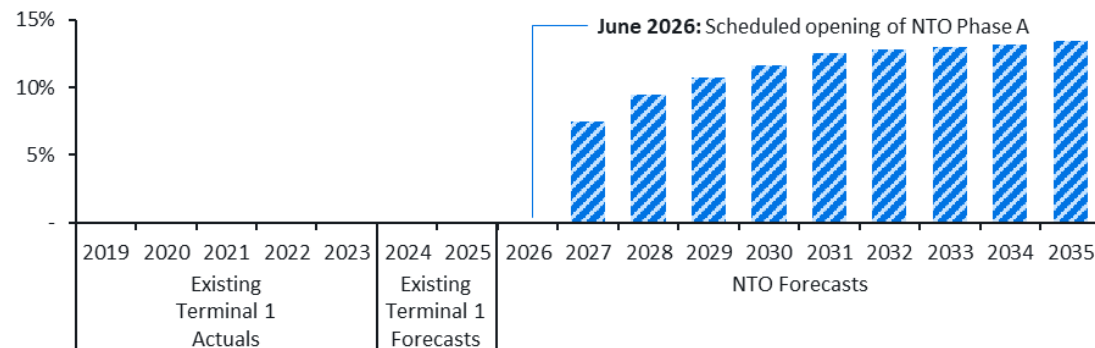


Source: Terminal One Group Association, Steer analysis and forecasts

As illustrated in Figure 6.14, the NTO Phase A Base Case forecast shows hardstand usage averaging approximately 12% from 2027 to 2035. However, Design Day Forecast Schedules (DDFS) analysis suggests management may be able to further reduce this estimate through optimized gate usage, which is preferable from an operational, financial and service standpoint for NTO.

**Figure 6.14: NTO Phase A Base Case forecast 2019-2035**

% of live hardstand enplanements



Source: Terminal One Group Association, Steer forecasts

#### 6.2.4 Operations forecast

Aircraft movements are calculated starting from the number of passengers each year, divided by the assumed passenger load factor and the average seats per movement assumed for that airline. Load factors and average seats are based on a combination of Official Airline Guide and U.S. Department of Transportation *T-100* data. Load factors are assumed to increase marginally

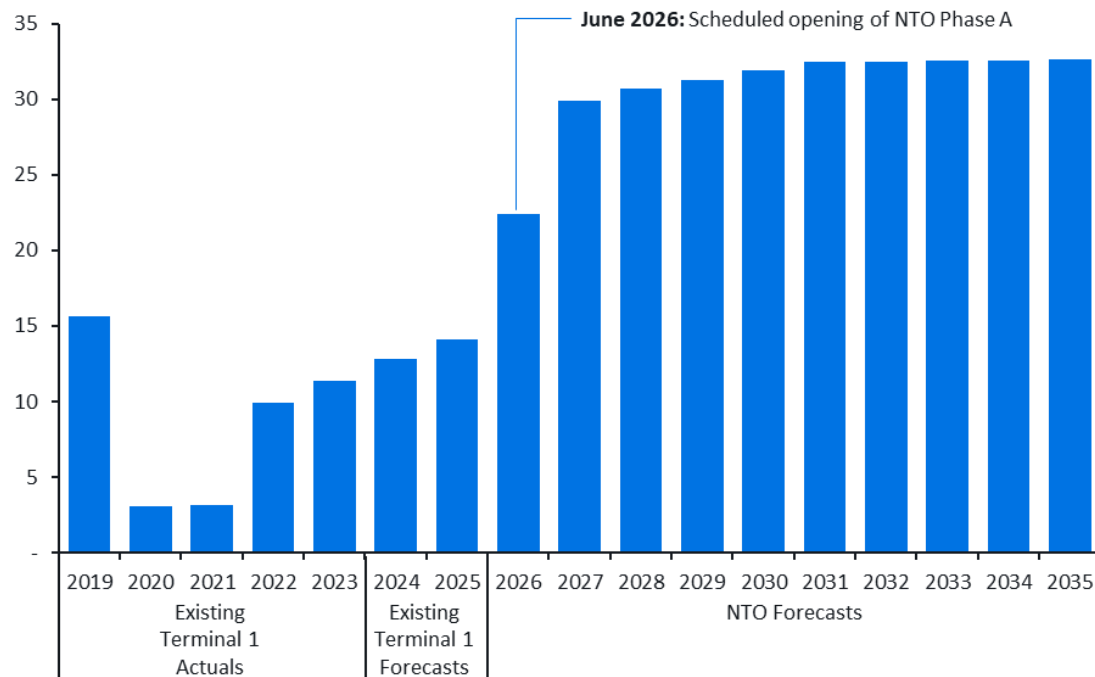
(1% to 3%) over time to account for airline efficiency gains; average seats are assumed to increase based on fleet data, where available, and in general under the assumption that airlines will up-gauge their aircraft over time.

The COVID-19 pandemic has affected airline fleet plans with less efficient aircraft being retired faster than previously planned. The forecast includes and recognizes these changes in the global fleet. However, Steer assumes large widebodies will continue to be relied upon to serve a large and congested hub like JFK airport in the medium to long term.

Figure 6.15 illustrates the results of the NTO air traffic movements forecast, increasing from 30,000 air traffic movements per annum in 2027 to 32,600 air traffic movements per annum by 2035.

**Figure 6.15: NTO Phase A Base Case forecast 2019-2035**

Thousand air traffic movements



Source: Terminal One Group Association, Steer forecasts

## 6.3 Benchmarks and validations

The NTO ramp-up is in line with the ramp-up observed at Los Angeles' Tom Bradley International Terminal (TBIT) between 2013 and 2019.

### 6.3.1 Tom Bradley International Terminal comparison

Los Angeles TBIT's ramp-up in international traffic is a benchmark for the forecast traffic ramp-up at NTO. Similarities of the two terminals and their respective terminals include:

- Like JFK, Los Angeles International (LAX) operates several terminals that form a central terminal area.
- LAX and JFK are both classified as large hubs by the U.S. FAA and are considered hubs for multiple domestic carriers that dominate the operations of their own terminals.
- TBIT, like NTO, is the only international-centric terminal at the airport and caters to non-U.S. airlines using the airport as a "spoke" in their network.

Since 2013, TBIT has experienced significant growth thanks to airlines moving from other terminals as well as new airlines entering the airport. This growth is comparable to the growth assumed for NTO. In the first six years of operation at TBIT, the terminal grew at a compound annual growth rate of 12.6% from 4.4 million enplanements in 2012 (the year before the new TBIT opened) to 8.9 million in 2018. At NTO, enplanement volumes from 2025 (opening year) to 2031 are forecast to increase at a compound annual growth rate of 11.8%, lower than the TBIT benchmark. An overview of TBIT can be found below.



Image Source: City of Los Angeles

#### Tom Bradley International Terminal

**Background Context:** In 2010 construction began on TBIT, then named the Bradley West project, part of the multi-year \$4.1 billion LAX improvement and redevelopment project. The project added over 1.25 million square feet of commercial areas, as well as new security screening, customs, immigration and baggage claim facilities. The terminal's existing two concourses were demolished and replaced with a larger pier with 18 gates. The terminal opened in 2013.

Source: City of Los Angeles, Steer analysis

### 6.3.2 Design day flight schedule

Design Day Flight Schedules (DDFS) have been developed in coordination with the NTO development team. DDFS development is a planning process in which annual forecasts are aligned with an operational forecast for a single day, referred to as the "design day." The forecast team has developed a design day schedule that reflects the actual flight times, aircraft types and gate assignments of an average day in August (JFK's busiest month) for each year in the forecast period. This flight schedule includes sufficient time at the gate for boarding and deplaning and considers actual flight schedules, travel times, arrival/departure times at the destination/origin

airport, seat configurations, load factors, tow-times to and from hardstands and numerous other considerations.

### 6.3.3 NTO Slot Limitation analysis

The Base Case assumes the current slot limitation of 81 air traffic movements per hour will increase to 87 air traffic movements per hour before the end of the decade. Steer recognizes there remains uncertainty about the precise timing of this allowed uplift in capacity at JFK. Therefore, Steer has undertaken analysis to estimate the impact of retaining the current 81 movements per hour limitation as illustrated in Table 6.6. The analysis shows a divergence of the forecast beginning after 2027, increasing to a maximum differential of 1.7% in 2031 before converging towards the NTO Phase A Base Case forecast. This is because the forecast is constrained by gate capacity by 2031. Thus, the differences of no additional slot growth are minimal.

Table 6.6: NTO Phase A Base Case forecast and Slot Limitation analysis comparison 2024-2035

Forecast/Year		NTO Phase A Base Case (Million Enplanements)	NTO Slot Limitation (Million Enplanements)	Difference (% Change)
Existing Terminal 1 Forecast	2024	4.08	4.08	-
	2025	3.17	3.17	-
	2026 <sup>A</sup>	3.52	3.52	-
	2027	5.49	5.49	-
	2028	6.94	6.88	-0.9%
NTO Forecast	2029	7.16	7.07	-1.3%
	2030	7.34	7.23	-1.5%
	2031	7.52	7.39	-1.7%
	2032	7.67	7.55	-1.6%
	2033	7.71	7.67	-0.5%
	2034	7.75	7.71	-0.5%
	2035	7.79	7.75	-0.5%

<sup>A</sup> NTO Phase A is scheduled to open June 2026.

Source: Terminal One Group Association, Steer analysis and forecasts

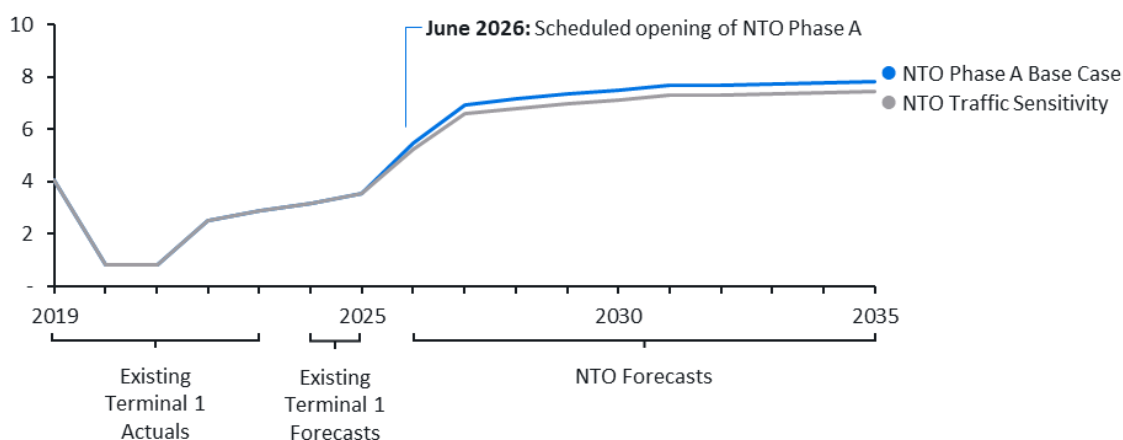
## 6.4 Sensitivity assessment

Steer developed a NTO Traffic Sensitivity Case to assess the impact of a 5% reduction in enplanements from the NTO Phase A Base Case forecast. The financial impacts of a 5% enplanement forecast reduction are discussed later in Chapter 10.

Figure 6.15 and Table 6.7 provides a comparison between the NTO Traffic Sensitivity Case and the NTO Phase A Base Case forecast.

**Figure 6.16: NTO Phase A Base Case and Traffic Sensitivity Case comparison 2019-2035**

Millions of enplanements



Source: Terminal One Group Association, Steer analysis and forecasts

**Table 6.7: NTO Phase A Base Case and Traffic Sensitivity Case comparison 2019-2035**

Year	NTO Phase A Base Case (Million Enplanements)	Traffic Sensitivity Case (Million Enplanements)	Difference (% Change)
2026 <sup>A</sup>	5.49	5.22	-5.0%
2027	6.94	6.60	-5.0%
2028	7.16	6.80	-5.0%
2029	7.34	6.97	-5.0%
2030	7.52	7.14	-5.0%
2035	7.83	7.43	-5.0%

<sup>A</sup> NTO Phase A is scheduled to open June 2026.

Source: Steer analysis and forecasts

## 7 Aeronautical Revenues

Airports depend on airline user fees and charges. Airports can levy this revenue in different ways and is the primary mechanism for operating expenditure and capital investment recovery. Given the substantial investment, the Operator will need to increase aeronautical revenues above historical rates to recover its capital investment.

- The Operator has already entered into committed airline agreements agreeing to common use facility charges with seven carriers, ahead of the Phase A opening in 2026.
- In addition, other factors such as the scarcity of widebody gates at JFK and high inflation put pressures on terminal operators including NTO to increase costs. Furthermore, the low price elasticity of international New York region travelers mean travelers can likely absorb higher costs. NTO terminal cost increases appear in line with other comparable airport terminals across the United States and around the world.
- Other discretionary charges to airlines, such as hardstand rental revenues, will supplement the NTO common use facility charges.

This chapter provides a review of the proposed NTO aeronautical revenues.

## 7.1 Base Case forecast

After completion of Phase A, common use facilities charges are forecast to generate approximately \$669 million during the first full year of operation in nominal terms.

### 7.1.1 Overview

Airport and terminal operators charge airline users for the use of their facilities. Given the size of its investment, the Operator will need to charge sufficient airline user fees to cover the high operating expenses in the New York region and recover its capital investment. These different sources of airline or aeronautical revenues include:

- common use facilities charges (based on the number of enplaned passengers);
- exclusive-use space rent (based on the amount of space rented out on an exclusive basis); and,
- hardstand rent (based on the number of hardstands rented to Delta Air Lines).

Further details on the approaches and assumptions that underpin the NTO aeronautical revenue forecast can be found in Section 7.1.2.

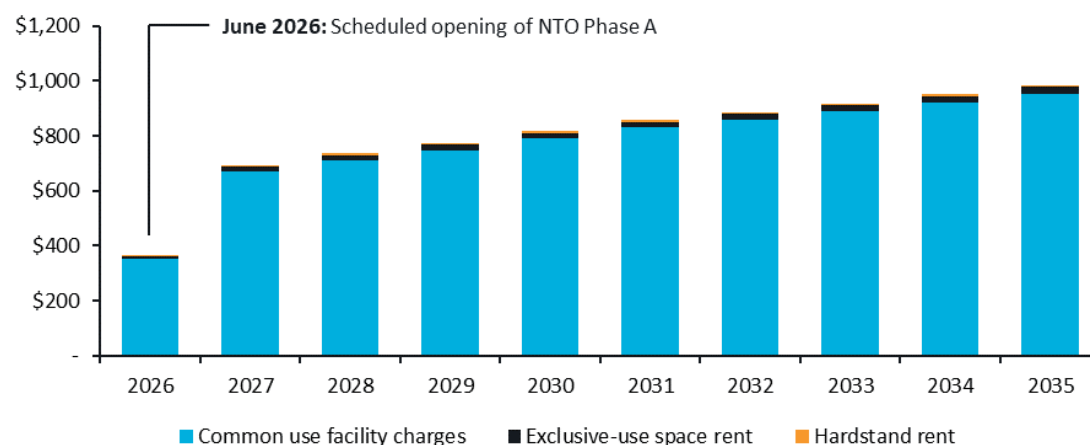
The NTO aeronautical revenue forecast is shown in Figure 7.1 with aeronautical revenue growing through additional passenger traffic and increases in nominal charges over time. The PANYNJ does not share in aeronautical revenue except for 10% of gross terminal rental revenue for exclusive-use spaces, such as airlines offices and lounges.<sup>38</sup> Figure 7.1 shows net revenue after PANYNJ revenue sharing with 97% of total aeronautical revenues coming from common use facility charges.

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<sup>38</sup> Space rented to Anchor Users is exempt from the PANYNJ revenue share.

**Figure 7.1: NTO Phase A Only Base Case forecast of net aeronautical revenue 2026-2035**

Million revenues (\$ nominal)



Source: Steer forecasts

At time of writing, the Operator has entered committed airline agreements with seven carriers: Air France, Etihad Airways, KLM, Korean Air, LOT Polish Airlines, EVA Airways, and Air Serbia prior to the opening of NTO. This provides mitigation against the risk of price uncertainty. Section 7.1.3 provides additional explanation for how this forecast could be achieved.

### 7.1.2 Approaches and assumptions

This section details the approaches and assumptions to the Base Case forecast, first beginning with a discussion of the regulatory environment as background context before detailing the assumptions that underpin the three different aeronautical revenue categories. The following sub-sections include further discussion on:

- Regulation and background context;
- Common use facility charges;
- Exclusive use space rent; and
- Hardstand rent.

#### *Regulation and background context*

In the United States, aeronautical users are “entitled to airport access on fair and reasonable terms without unjust discrimination.”<sup>39</sup> U.S. FAA policy also notes that “airport proprietors may use different mechanisms and methodologies to establish fees for different facilities.” In fact, the three major New York region airports address aeronautical charges differently than most U.S. airports. For instance, airlines at JFK are charged by the PANYNJ for airfield use and hardstand parking positions and are charged separately by a private terminal operator, including airlines or developers such as JFK NTO LLC, for use of terminal space, jet bridges and other passenger

<sup>39</sup> Source: Federal Register Vol. 78, No. 175

support infrastructure. Airlines also pay ground handlers to service their aircraft while on the ramp.<sup>40</sup> The majority of an airline's cost of operating at JFK is terminal charges. Steer estimates that over 70% of airline costs per widebody turn at JFK (pre-pandemic) were terminal charges.

Primarily through its airfield charges, the PANYNJ generates sufficient revenue to operate and maintain the airfield while the terminal operators charge separately to operate and maintain passenger facilities. For the terminal operator, terminal charges can be divided into smaller fees or can be simplified into an overall Cost Per Enplanement (CPE).<sup>41</sup> The starting CPE has been established based on a cost-recovery methodology, combining the traffic and non-aeronautical revenue forecasts with capital and operating cost forecasts to determine the required revenue from airline charges and tested against market conditions as evidenced by committed airline agreements. This is in line with U.S. FAA policies, as "airport proprietors must maintain a fee and rental structure that in the circumstances of the airport makes the airport as financially self-sustaining as possible."

The Operator is required to comply with regulatory requirements.

#### *Common use facility charges*

The common use facility charges are forecast to compose 97% of all aeronautical revenues at NTO. It is estimated to generate approximately \$669 million in revenues in 2027 (in nominal dollars). This revenue stream is forecast to increase due to increases in enplanements and an expected escalation of CPE equivalent to CPI+1%. Airlines are already familiar with the structure at JFK: for example, the existing Terminal 1 typically engages airlines under the same CPI+1% cost structure and average common use facility charges growth rates at the existing Terminal 1 exceeded CPI+1% in the period from 2014 to 2019.

The core principles assumed to be applied to setting the common use facility charges include:

- Remaining competitive in the market and promoting efficient use of the facility, which will result in sustainable cash flows for the Operator;
- Not being unjustly discriminatory as per U.S. FAA policies; and
- Using consistent guidelines when entering into airline agreements – primarily based on length of term and volume of passenger traffic.

The Operator currently has Committed Airline User Agreements with seven airlines. The terms of these long-term Committed Airline User Agreements range from 10 to 25 years following the opening of Phase A. The Committed Airline Use Agreements all stipulate the airlines' starting common use facility charges, expressed as a CPE, with an escalation of CPI+1% per year. These Committed Airline Use Agreements also set the schedule of exclusive-use space rent, which varies by type of space. These long-term users may receive a discount in the form of a rebate on their passenger fees which will be paid out after debt service, or incentives based on volume of traffic.

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<sup>40</sup> Ground handling charges include baggage handling, aircraft towing, catering and other services.

<sup>41</sup> A CPE is levied on only departing passengers. Arriving passengers are not levied a user-fee. The terminology can vary, for example, contract carrier passenger fee or common use facility charges rate.

At time of writing, the Operator has agreed to long-term contracts with seven carriers: Air France, Etihad Airways, KLM, Korean Air, LOT Polish Airlines, EVA Airways, and Air Serbia. Before the opening of Phase A, NTO is expected to sign additional airlines to user agreements, including many of the existing Terminal 1 airlines.

Steer has assumed a simple rates and charges structure, similar in nature to the current committed airline agreements, will be used throughout the NTO forecast period of 2026 through 2060. The principles of that charging structure are:

- Existing JFK terminals use various forms of airline charges. NTO's proposed "all-inclusive" style of common use facility charges for the use of its terminal facilities is comparable to what has historically been done by the existing Terminal 1 and in some cases other JFK terminals such as Terminal 4. Using this method, management charges airlines a single, per-enplanement fee that covers all supporting services, except ground handling and discretionary private space (such as offices and lounges).
- The common use facility charges encompass all the facilities airlines require to operate within the terminal including check-in counters, use of baggage systems, immigration and customs facilities, aircraft stands on the apron, use of gates and jet bridges and other supporting infrastructure.
- The fee also covers the personnel costs of customer support staff provided by the terminal, including wheelchair assistants and staff to assist passengers through the customs and immigration process. By contrast, other JFK terminals charge airlines separately for specific operational requirements, such as wheelchair assistants.
- Many non-U.S. airlines, such as those at the existing Terminal 1, have small New York or U.S. operations, and therefore favor an all-in fee over separate service contracts.
- As the opening of NTO Phase A is expected to coincide with the closing of the existing Terminal 1, continuity of this approach provides a familiar structure to airline tenants that may be relocating to NTO.

During the initial Phase A period of operation, five hardstands functioning as remote gates will operate at NTO. For any hardstand operation, there would be a discount applied to the Common-Use Facility Charge, reflecting the difference in level of service and offsetting additional costs related to bussing operations that are incurred by the airline carriers. Steer estimates that this reduced charge adequately offsets additional costs associated with the remote gates bussing operation. In comparison, the hardstand discounts at benchmark airports London Heathrow and Frankfurt are approximately 10% and 12%, respectively.

#### *Exclusive-use space rent*

Demand for office and lounge space within NTO is expected to be strong, particularly given the mix of international carriers who often target lounges as a market differentiator. Over 110,000 square feet of lounge and office space is planned for Phase A. This airline-rentable space will allow for additional office and lounge space to support the traffic forecast while still maximizing the time passengers spend in public areas. Rental rates for the office and lounge space are set at market rentals per square foot. Based on the actions of the committed airlines to establish lounges at NTO, these rates are justifiable and within the market.

### *Hardstand rent*

Hardstand rentals are another source of revenue. The NTO redevelopment will include eight on-site hardstands during Phase A, reducing to seven once Phase B1 opens. Delta Air Lines has agreed to a sub-lease with the Operator for use of the on-site hardstands for their exclusive use. This will allow Delta Air Lines to access aircraft parking close to its hub operation at Terminal 4.<sup>42</sup> The agreement outlines the payments to be made by Delta to the Operator based on overall market rates for hardstand space at JFK. The annual rental payment for each hardstand used by Delta Air Lines is based on the previous space rental rate at Area 1B at JFK.

### **7.1.3 Forecast validation**

At time of writing, the Operator has already entered into committed airline agreements with seven carriers prior to the opening of the Terminal: Air France, Etihad Airways, KLM, Korean Air, LOT Polish Airlines, EVA Airways, and Air Serbia. Etihad Airways, KLM and LOT Polish Airways are all existing JFK airlines and relocating to the NTO facility. Furthermore, the Operator is in negotiations with other airlines and is expected to sign additional airlines, including existing Terminal 1 airlines, Star Alliance airlines, non-aligned airlines and other airlines. Steer is aware of the Operator's ongoing negotiations with airline users which propose CPE rates above the rate assumed in this report, mitigating risks associated with the pricing assumptions. Steer has evaluated the committed airline agreements throughout the development process and has observed commercial pricing and incentive structures that support the underlying forecasts and suggest market conditions may improve further as the opening of NTO approaches.

Steer has identified four additional reasons why the Base Case forecast could be justified as summarized below; detailed analysis and discussion that support the individual reasons are provided in the following sub-sections:

1. Scarcity of widebody gates at JFK;
2. High inflation putting more pressure on terminal operating costs and increasing the cost of capital;
3. Low price elasticity of international New York region travelers; and
4. NTO costs are in line with comparable benchmark terminals.

#### *Scarcity of widebody gates at JFK*

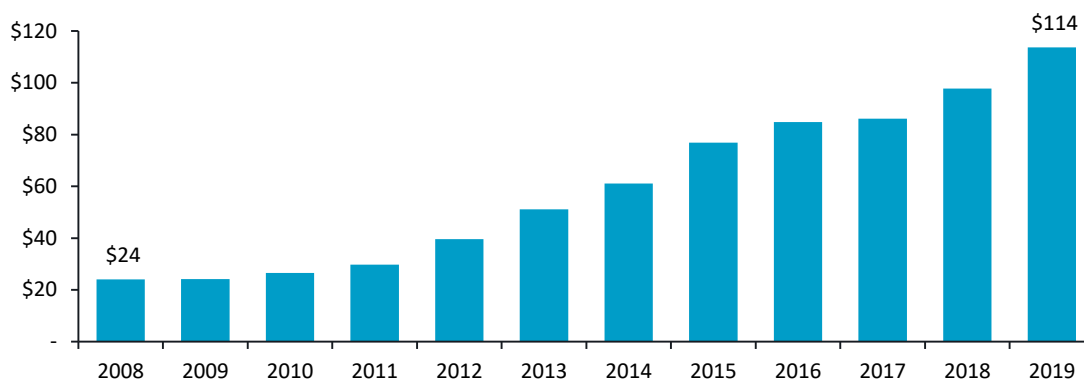
Figure 7.2 illustrates the growth in aeronautical revenues from common use facility charges between 2008 and 2019. Revenues increased from over \$24 million (nominal) in 2008 to \$114 million in 2019, representing a compound annual growth rate of approximately 15%.

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<sup>42</sup> Delta Air Lines previously leased the Terminal 3 site from the PANYNJ for this purpose.

**Figure 7.2: The existing Terminal 1 common use facility charges 2008-2019**

Million revenues (\$ nominal)

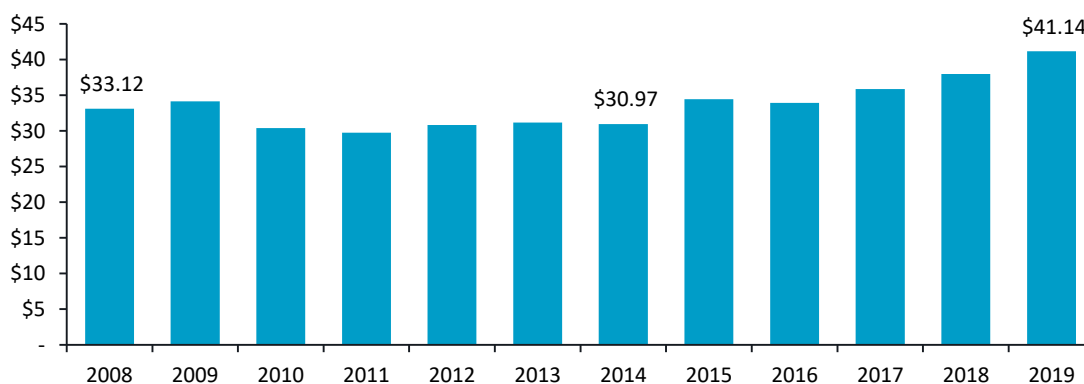


Source: Terminal One Group Association, Steer analysis

As common use facility charges are levied on a per enplanement basis (and thus expressed as a CPE), part of this increase is driven by traffic volumes. However, as illustrated in Figure 7.3, the cost per enplanement for non-anchor airlines, normalizing for growth in passenger traffic and CPE discounts from longer-term “anchor” contracts, increased from \$30.97 (nominal) to \$41.14 or a compound annual growth rate of 6% from 2014 to 2019 despite overcrowding and a lack of passenger amenities. The increasing CPE fees coincide with a period of significant traffic growth at the existing Terminal 1 as JFK became increasingly constrained with a scarcity of widebody gates. This illustrates the price inelasticity of airlines serving JFK and the pricing power of a terminal operator in a capacity constrained market.

**Figure 7.3: The existing Terminal 1 average non-anchor CPE fee 2008-2019**

Non-anchor cost per enplanement fee (\$ nominal)



Source: Terminal One Group Association, Steer analysis

The existing Terminal 1 management had signed up new carriers at CPE rates between \$45 and \$65 in 2021 and early 2022, despite the down year of traffic.<sup>43</sup> According to TOGA, this was due in part to airlines facing relocation from Terminal 4 due to Delta Air Lines' consolidation of its Terminal 2 operations to Terminal 4. Recent entrants at the existing Terminal 1 include Swiss, Egyptair and Air Serbia, each of whom previously operated at Terminal 4. Airlines seeking to enter Terminal 1 now are understood to face higher fees, in part due to revised rental terms of TOGA's lease extension with the PANYNJ.

As JFK passenger volumes are forecast to surpass pre-pandemic volumes in 2024 as discussed earlier in Chapter 5, JFK is forecast to return to a constrained environment with scarce availability of widebody gates. While several terminal redevelopment projects are ongoing (North Terminal Development – Terminal 6 replacing Terminal 7 – as well as Terminal 4), or have recently completed (Terminal 8), as shown in Table 7.1, the total number of widebody gates will increase to 59 in 2032.

**Table 7.1: JFK capacity plan 2019-2032**

Number of widebody aircraft positions (assuming Phase A only)

Terminals	2019	2028	2032
NTO	-	14	14
Existing Terminal 1	10	-	-
(Terminal 2 and) Terminal 4 <sup>A</sup>	21	19	22
North Terminal Development <sup>B</sup>	6	8	9
Terminal 8	8	14	14
<b>Total Widebody Aircraft Positions</b>	<b>45</b>	<b>55</b>	<b>59</b>

<sup>A</sup> Refers to the combination of Terminal 2 and Terminal 4 in 2019. Refers to only Terminal 4 for 2028 and 2032.

<sup>B</sup> Refers to combination of Terminal 5 and Terminal 7 in 2019 and the combination of Terminal 5 and Terminal 6 in 2028 and 2032.

Source: JFK NTO LLC, NTO Lease, Steer analysis

The scarcity of widebody gates will remain at JFK over the next decade, suggesting that terminal operators will continue to have pricing power in the future. The increasing number of NTO committed airline users suggest that airlines recognize the need to secure long-term capacity in a constrained operating environment with a scarcity of widebody gates.

#### *High inflation putting more pressure on terminal operating costs*

The Operator's expected pricing accounts for current inflation forecasts which reflects elevated levels of US CPI growth, in particular between 2021 and 2022, significantly beyond what has been experienced over the past several decades in the United States. This new inflationary environment is expected to impact the operating cost base of all terminals and airlines at JFK, including NTO. As

<sup>43</sup> Pricing terms for more recent joiners were not available to Steer.

previously stated, the CPE forecast must necessarily be aligned with expected costs and as such, the forecast starting CPE is reflective of the expectation for overall airline operating costs by 2026 given current inflationary expectations.

*Low price elasticity of New York region travelers*

International flights typically are charged materially higher fees given the additional facilities required to serve them, such as larger gates, immigration and customs facilities and other support infrastructure. Airlines, in turn, can absorb those higher charges as the average fares on international flights are significantly higher than fares on domestic flights.

The New York region is an Origin and Destination (O&D) market not dependent on more traditionally price-sensitive connecting passenger traffic. The O&D passenger values time and is less price sensitive given the limited number of alternative options compared to the connecting passenger traffic market. In 2023, according to booking data from the Official Airline Guide, the share of connecting passenger traffic at each of the major New York region airports was less than 20%.<sup>44</sup> The share of O&D traffic is forecast to increase over time for the following three reasons:

1. Given airspace and runway capacity constraints as discussed earlier in Chapter 3, Chapter 4 and Chapter 5, the share of O&D traffic is forecast to increase over time as airlines focus on higher yield customers and connecting passengers are diverted to less-congested airport hubs.
2. Current generation aircraft models such as the Boeing 787 and Airbus A350 as well as longer range narrowbody aircraft models such as the Airbus A321LR and A321XLR have enabled more longer-haul direct routes to smaller cities bypassing airport hubs which is expected to facilitate continued growth of O&D traffic to and from New York City.
3. As discussed in Chapter 2, the New York region has historically benefited from a strong economy with a high proportion of business traffic. This traffic segment tends to be time sensitive, preferring direct flights and tends also to be less price sensitive.

The airline commitments secured by the Operator suggests that airlines also recognize the low price elasticity of the New York long-haul air travel market and the potential ability to pass increased costs to passengers.

*Increases in NTO costs are in line with comparable benchmark terminals*

As noted, there is a significant cost associated with any redevelopment, which will need to be recovered through higher passenger charges. Similar projects to the NTO redevelopment across the New York market are expected to incur comparable capital costs due to price escalation of construction in the region. Each of the terminals at JFK are likely to experience upward pressure on CPEs over the next decade because of the significant capital expenditures planned by JFK terminal operators. As JFK terminal operators are private entities, the terms of their airline

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<sup>44</sup> Data from the Official Airline Guide for 2019 was lower than reported data from the PANYNJ *2019 Annual Air Traffic Report*, where the connecting passenger share was 27%, 14% and 24% for JFK, Newark and LaGuardia respectively. As PANYNJ uses Airports Council International Airport Service Quality surveys to derive its estimates, Steer has calculated its estimates based on ticketing data provided by the Official Airline Guide.

agreements are not publicly available. Using public data available, an assessment of each JFK terminal can be found below.



Image Source: Port Authority of New York and New Jersey A New JFK: Terminal 4 – Delta/JFKIAT – JFK International Airport Redevelopment (webpage)

## Terminal 4

**Future Rates:** Based on JFKIAT forecasts, this CPE would increase to \$78 by 2026 excluding additional charges, which could raise the total effective CPE paid by airlines to approximately \$82. These numbers account for only the first phase of expected Terminal 4 expansion and do not account for the potential further expansion of the terminal which Steer has assumed will be completed by 2028.

Source: New York Transportation Development Corporation *Terminal 4 John F. Kennedy International Airport Project \$1,354,605,000 Special Facility Revenue Bonds Series 2022*, Steer analysis



Image Source: Port Authority of New York and New Jersey A New JFK: Image Gallery – JFK International Airport Redevelopment (webpage)

## Terminal 6

**Future Rates:** Reports indicate the Terminal 6 project will cost \$4.9 billion and will result in the upgauging and reconfiguration of narrowbody gates to accommodate widebody aircraft. Assuming levels of operational expenditure and non-aeronautical revenue are comparable to NTO, Steer forecasts an average airline payment per enplanement (as a proxy for CPE) ranging between \$80 and \$110, given the uncertainty of JetBlue Airways' expected usage.

Source: New York State Governor Hochul Announces Construction of a \$4.2 Billion New Terminal 6 at JFK Will Begin Early Next Year as Final Pieces of the Project Are in Place, Steer analysis



Image Source: Port Authority of New York and New Jersey A New JFK: American Airlines – Terminal 8 – JFK International Airport Redevelopment (webpage)

## Terminal 8

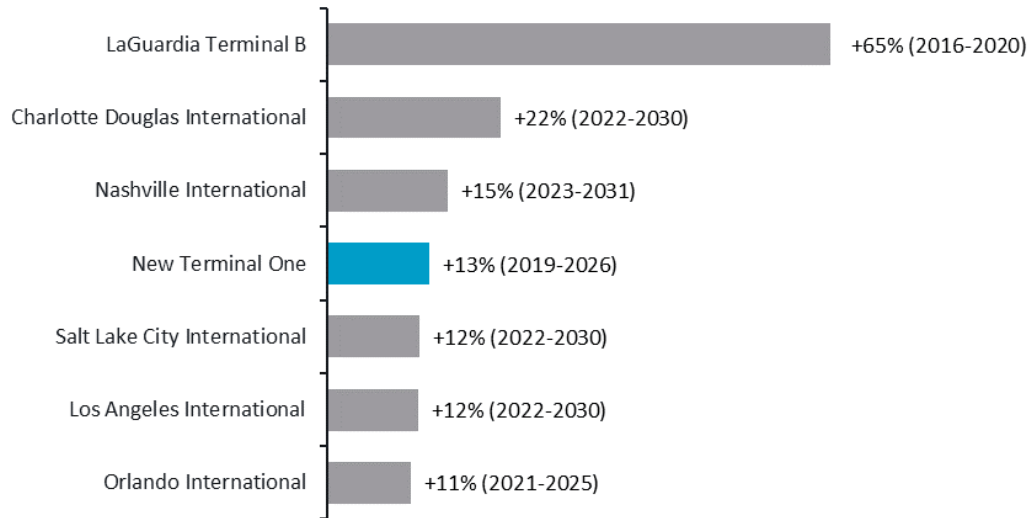
**Future Rates:** American Airlines is the hub airline and operator of Terminal 8. CPE data was not publicly available at the time of writing. British Airways and American Airlines invested approximately \$400 million to upgrade the facilities, which currently serves as a hub for the latter. As it is a hub for American Airlines and the base of operations for its oneworld partners, Steer assumes that there would be limited availability of international widebody gates for non-anchor airlines and using that scarce availability would come at a high cost.

Source: American Airlines *American Airlines and British Airways Unveil Exciting Plans for Enhancements to the World-Class Customer Experience at JFK's Terminal 8*, Steer analysis

Beyond JFK benchmarks, there have also been several other airport expansion projects across the United States. As illustrated in Figure 7.4, the forecast increase in CPE between the existing Terminal 1 in 2019 and NTO in its opening year 2026 is in line with other U.S. large hub airports that have embarked on similar terminal redevelopment projects. In particular, the CPE at LaGuardia was forecast to increase from less than \$4 per passenger in 2016 to greater than \$29 per passenger in 2020, representing a compound annual growth rate of 65%. Despite this high increase, the project consultants said the project was “reasonable and will not deter the air traffic forecast at New Terminal B.” Airlines did not strongly oppose the increase and have not reduced capacity at LaGuardia, due to the strength of demand for travel to the New York market. The new Terminal B is now open.

**Figure 7.4: NTO CPE benchmark comparison**

% estimate/forecast cost per enplanement compound annual growth rate



<sup>A</sup> Based on a comparison of the non-anchor CPE of the existing Terminal 1.

Source: City of Charlotte \$367,160,000 *City of Charlotte, North Carolina Charlotte Douglas International Airport*, City of Los Angeles *Official Statement* (for Los Angeles World Airports Series 2022G/H Bonds), Greater Orlando Airport Authority *Official Statement* \$183,100,000 *Greater Orlando Airport Authority Airport Facilities Revenue Bonds, Series 2022A (AMT) of the City of Orlando, Florida* \$64,050,000 *Greater Orlando Airport Authority Airport Facilities Revenue Bonds, Series 2022B (Taxable) of the City of Orlando, Florida* \$8,665,000 *Greater Orlando Airport Authority Airport Facilities Revenue Bonds, Series 2022C (AMT) of the City of Orlando, Florida* \$19,735,000 *Greater Orlando Airport Authority Airport Facilities Revenue Bonds, Series 2022D (Non-AMT) of the City of Orlando, Florida* \$11,490,000 *Greater Orlando Airport Authority Airport Facilities Revenue Bonds, Series 2022E (Taxable) of the City of Orlando, Florida*, Metropolitan Nashville Airport Authority \$596,085,000 *Metropolitan Nashville Airport Authority \$94,525,000 Airport Improvement Revenue Bonds Series 2022A (Non-AMT)* \$501,560,000 *Airport Improvement Revenue Bonds Series 2022B (AMT)*, New York Transportation Development Corporation Series 2016A (Tax-Exempt) (AMT) (LaGuardia Airport Terminal B Redevelopment Project) \$150,000,000 *Special Facilities Bonds, Series 2016B (Taxable) (LaGuardia Airport Terminal B Redevelopment Project)*, Salt Lake City International Airport \$600,000,000 *Salt Lake City, Utah Airport Revenue Bonds, Series 2023A (AMT)*, Steer analysis

### *Global perspectives*

In 2021, Airports Council International published a report projecting global airports' capital needs at nearly \$2.4 trillion from 2021 to 2040. The share assigned to North America was \$400 billion (17%). The continued growth of aviation in the United States, combined with historical underinvestment in infrastructure, has left many of the country's most critical airports unable to sufficiently serve the market demand. As a result, many airports are now addressing capital needs including terminal, airfield and surface access projects. This is expected to drive material increases in CPE at many airports over the next decade, from large hubs to non-hubs, and particularly at large hubs that have seen a concentration of growth over the last 15 years.

Most of the capital investment at airports would be financed through increases in the airline cost requirement (which would be reflected in the CPE metric), in part because of the structure of airport funding in the United States. The Passenger Facility Charge (PFC) is a federal program that allows airports to charge a fee for every passenger which is then dedicated to pre-approved FAA projects for airport reinvestment. This is separate from the CPE, allowing airports to raise funds for FAA-eligible projects. The PFC is currently capped at \$4.50 per segment flown (for a maximum of \$9.00) and has not increased since 2000, despite rising costs of construction and overall inflation. The result is that airports are increasingly left to increase CPE as the principal means for generating revenue for capital investment and maintenance of existing facilities. NTO does not benefit from PFC funding, which is collected and used by the PANYNJ.

Like the New York region, the London air market has several airports competing for traffic, including two main long-haul international airports London Heathrow and London Gatwick. Heathrow costs are \$65 per enplanement (£51 per enplanement in 2024) and is nearly four times higher than the second biggest airport in the region, London Gatwick. Passengers pay an additional airport passenger duty, which varies by ticket type but is higher for long-haul and premium cabin passengers. The difference in yield between London Heathrow and London Gatwick reflects the cost of replacing Terminal 2 (2014) and building Terminal 5 (2008), since the regulatory regime requires that aeronautical charges reflect costs of capital development projects and airport operations. At London Gatwick, no new terminals have been built over the corresponding period. However, despite much higher costs, due to the relative attractiveness of London Heathrow, the airport is at airside capacity year-round, with growth in passengers coming from larger aircraft, airline seat densification and higher load factors. Airlines have filled the new terminal capacity at London Heathrow and borne the cost of their construction through the passenger charges at the airport.

Steer expects JFK's new capacity will be filled over time and that CPE will serve as the primary mechanism for recovering the capital costs of providing the capacity. Like the relationship between London Heathrow and London Gatwick, Steer expects JFK to command a premium over Newark, or other airports in the region. This is due to market recognition and operational focus on long-haul international traffic, with a higher airline return than the domestic market and a larger traffic base to support airline growth.

Furthermore, future CPE escalations are based on a CPI+1% per annum assumption. Existing Terminal 1 airlines are already familiar with the structure as the existing Terminal 1 management currently engages airlines under the same CPI+1% cost structure.

## 7.2 Sensitivity assessment

Steer developed two aeronautical-related sensitivities, a CPE Downside Sensitivity Case and a CPE Upside Sensitivity Case. The financial impacts of both sensitivities are discussed later in Chapter 10.

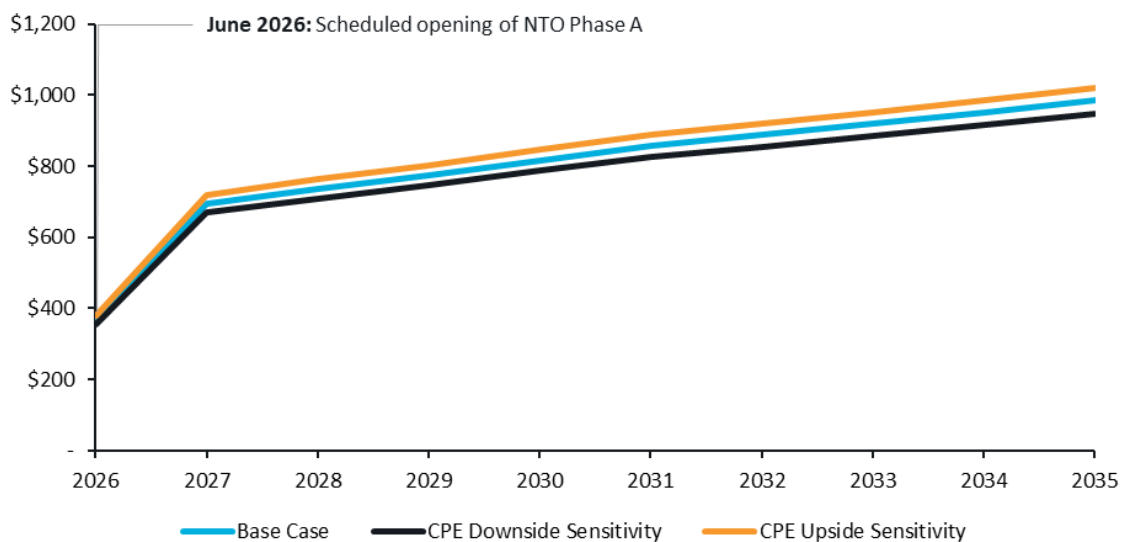
Two sensitivities have been developed to assess the potential range in CPE relative to the Base CPE forecast:

- **CPE Downside Sensitivity:** With a 5% CPE reduction
- **CPE Upside Sensitivity:** With a 5% CPE increase.

Figure 7.5 and Table 7.1 present total aeronautical revenue between 2026 and 2035 for the base case and the two sensitivities listed above. The financial impact of this range in NTO's capacity to meet its financial obligations is presented in Chapter 10.

**Figure 7.5: NTO Phase A Base Case forecast and CPE Sensitivities comparison 2026-2035**

Million revenues (\$ nominal)



Source: Steer forecasts

**Table 7.2: NTO Phase Base Case and sensitivities forecast of aeronautical revenue 2026-2035**

Million revenues (\$ nominal)

Year	NTO Phase A Base Case	CPE Downside Sensitivity	CPE Upside Sensitivity
2026 <sup>A</sup>	\$366	\$353	\$378
2027	\$695	\$670	\$720
2028	\$736	\$709	\$762
2029	\$775	\$747	\$803
2030	\$816	\$786	\$846
2031	\$857	\$826	\$888
2032	\$887	\$855	\$919
2033	\$918	\$885	\$952
2034	\$951	\$916	\$985
2035	\$985	\$949	\$1,020

<sup>A</sup> NTO Phase A is scheduled to open June 2026.

Source: Steer forecasts

## 8 Non-Aeronautical Revenues

Phase A of the NTO concession program will be 150% larger than the concession footprint of the existing Terminal 1, which already ranks as one of the highest non-aeronautical revenue generating terminals in the United States.

- Because NTO is an all-international facility, NTO will feature friction-free duty-free purchases as a “Cash and Carry” terminal, where customers can immediately receive their duty-free goods purchases unlike other JFK and U.S. international airport terminals.
- The commercial program will be developed and managed by Unibail-Rodamco-Westfield (URW), a world-leading retail provider, with a per-enplanement minimum annual guarantee and service quality requirements, significantly de-risking the non-aeronautical revenues for NTO.
- NTO will benefit from an international passenger profile that has a demonstrated potential for high airport spending and a larger footprint that will reduce terminal overcrowding, which is known to have impacted customer experience and suppressed passenger spend rates at the existing Terminal 1 facility.

The following chapter details NTO non-aeronautical revenue forecasts.

## 8.1 Base Case forecast

NTO will generate additional revenues via terminal concessions and advertising as well as the rental of office and lounge space.

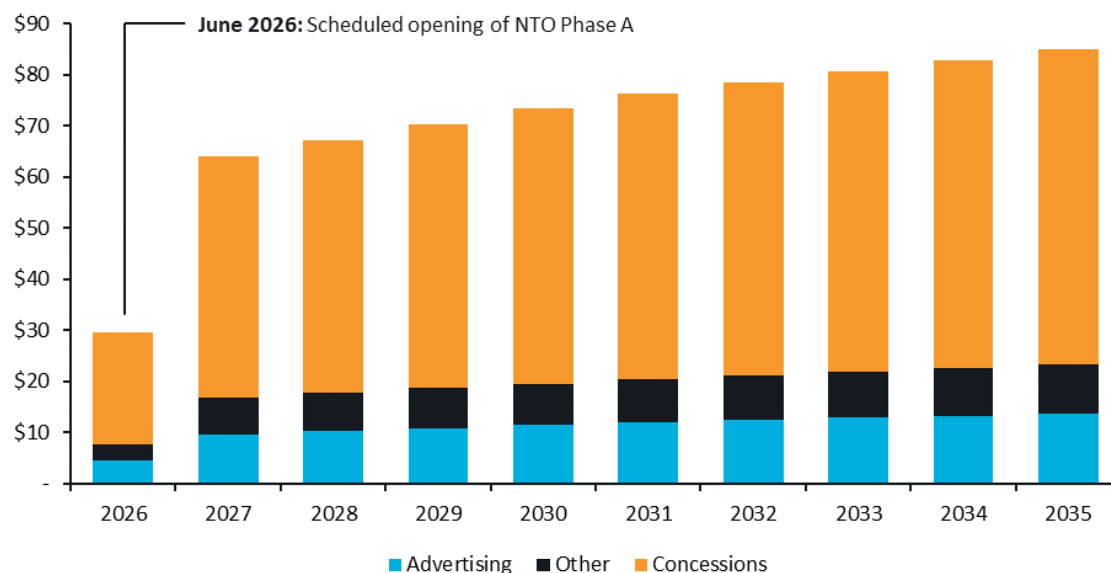
### 8.1.1 Overview

Non-aeronautical revenues, or non-airline revenues, at NTO consists of three types: concession, advertising, and other non-aeronautical revenues (including charging users for metered utilities and other such services). The proposed commercial program for NTO will have a significant increase in size and quality when compared to the existing Terminal 1 commercial program, which has had high, but stagnant pre-pandemic sales performance likely due to the terminal overcrowding. Growth in passenger spend rates will lead to improvement in rental rates given the expected strong demand to operate the concessions.

Figure 8.1 illustrates the NTO Base Case non-aeronautical forecast, after revenue sharing with the PANYNJ.<sup>45</sup> A summary of the NTO commercial program can be found in Section 8.1.2, while detailed approaches and assumptions of the three non-aeronautical revenue categories can be found in Section 8.1.3.

**Figure 8.1: NTO Base Case non-aeronautical revenue forecast 2026-2035**

Millions net revenue (\$ nominal)



Note: Forecast assumes Phase A only. Revenues shown are net of PANYNJ revenue share.  
Source: Steer forecasts

<sup>45</sup> The Operator will split non-aeronautical revenue streams with the PANYNJ equally.

### 8.1.2 Background context about the NTO commercial program

The following section details the proposed NTO commercial program, including:

- Commercial provisions and specifications
- Developer agreement

#### *Commercial provisions and specifications*

The space plan for the full build of NTO includes approximately 177,000 square feet of space allocated for retail and services (“retail”), duty-free and Food & Beverage (F&B) —approximately 121,000 square feet of which would be provided for Phase A. This allotment of commercial space will provide best-in-class levels of service and the greatest flexibility to concessionaires to configure individual concession programs for optimized performance. The commercial program would deliver the additional concessions space needed to allow for sales and revenue uplift relative to the existing Terminal 1. Table 8.1 illustrates the sample space allocation for duty-free, retail and F&B planned for NTO compared with the existing Terminal 1 facility.

**Table 8.1: Comparison of concession spaces by major category**

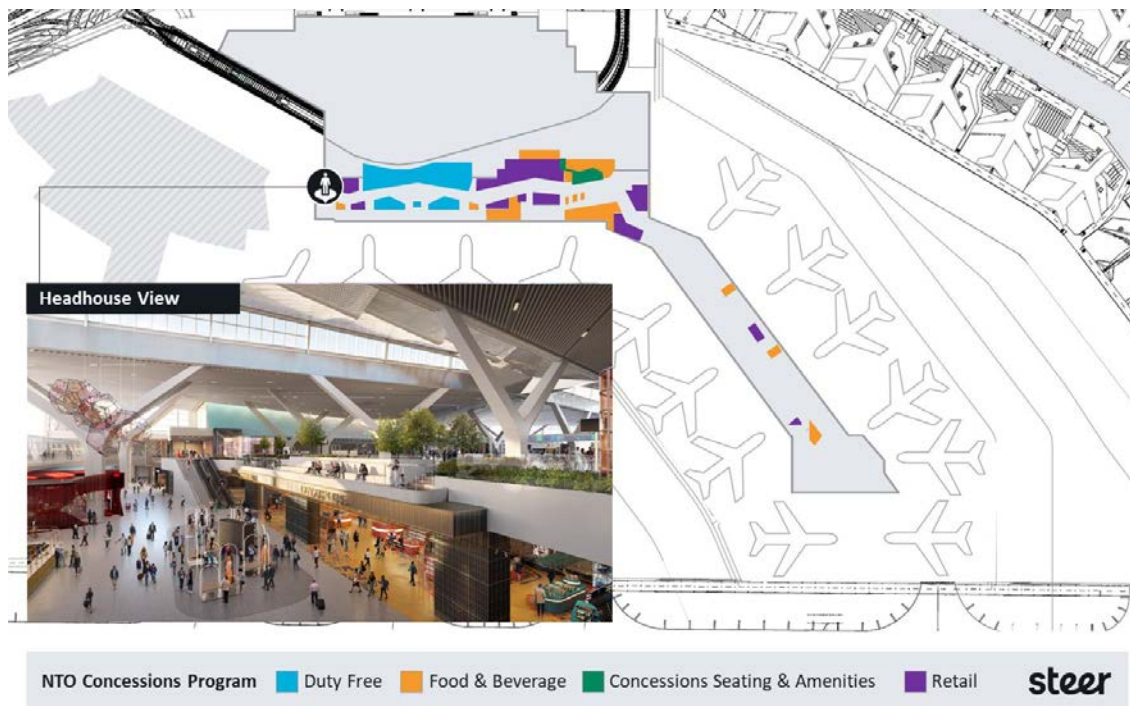
Concessions category	Existing Terminal 1 square footage	NTO planned square footage (Phase A)	% increase (approximate)
Food & Beverage	21,800	45,000	106%
Retail & Services	13,700	45,000	228%
Duty Free	12,400	28,000	126%
Concession Seating & Amenities	N/A	3,000	-
<b>Total</b>	<b>47,900</b>	<b>121,000</b>	<b>153%</b>

Note: NTO figures rounded to the thousand with concession seating adjusted to align with the total estimate of 121,000. Source: Terminal Sponsors (2023), Unibail-Rodamco-Westfield, Steer analysis

The development of specific commercial clusters will allow passengers to benefit from a full range of commercial options at the first phase of opening, when only one pier and the Headhouse will be open. The central plaza including the core duty-free offer will be fully operational after construction Phase A, with added commercial space coming online when the second pier is added during Phase B1.

At most U.S. airports, vendors are required to hold on to duty-free purchases and hand them to customers only when they are boarding aircraft for departure. This is to prevent passengers with international tickets purchasing duty-free goods on behalf of domestic passengers who are not eligible to make duty-free purchases. Because NTO is an all-international facility, NTO will also be a “Cash and Carry” terminal, enabling customers to immediately receive their duty-free goods after purchase rather than waiting for goods to be delivered to them as they board their aircraft.

A draft schematic layout can be seen in Figure 8.2. With various commercial areas in green (concession seating and amenities), purple (retail), yellow (F&B) and blue (duty-free). The commercial program at NTO is planned to maximize the attention of passengers in the central areas, with large volumes and attractive brands.

**Figure 8.2: Draft schematic layout of Phase A commercial program**

Source: Gensler, JFK NTO LLC, Steer analysis

As illustrated in the figure, the departing passenger would have a journey through the facility that we expect will be a compelling customer experience. The following describes such a journey to a gate along the East Pier.

- After going through the security checkpoint, departing passengers would descend via escalators into the main duty-free store. This store will feature a walk-through layout and be about 30,000 square feet large—more than twice the size of the offering at the existing Terminal 1. The Cash and Carry policy will continue to be available and drive sales (and net revenue).
- Upon exiting the main duty-free store and turning to head towards the concourse, passengers' line-of-sight would catch a cluster of restaurants, both along the terminal walls and amidst the public corridor.
- Next, passengers will go through a retail "district" after which they will enter the core of the commercial plaza including a food court, landscaping, a flexible stage area with dwelling and common seating areas.
- Finally, along the pier concourse, passengers would walk by smaller retail and F&B locations, which would capture patrons who choose to dwell within sight of their departure gate. NTO is expected to use a "call-to-gate" strategy in which aircraft gate assignments are announced only when an aircraft is preparing to begin the boarding process. This strategy facilitates passengers remaining in the core retail area for a longer period, helping increase space productivity. As a result, NTO will have a relatively modest commercial offer in the gate holdroom areas.

Figure 8.3 and Figure 8.4 provide additional illustrations of the different concession spaces planned for NTO Phase A.

**Figure 8.3: NTO Meet and Greet Concessions Rendering**



Source: JFK NTO LLC

**Figure 8.4: NTO Departure Concessions Rendering**



Source: JFK NTO LLC

### *Developer agreement*

The Operator has entered into a master concession management agreement with Unibail-Rodamco-Westfield (URW) to develop and manage the in-terminal concessions. The contract commences upon completion of Phase A and expires at the earlier of 10 years following the

completion of Phase B2 or October 31, 2039. There are two optional extension terms, one for seven years and the second co-terminus with the NTO lease with the PANYNJ.

URW has committed to pay concession rent as the higher of (1) rent as a percentage of gross sales or (2) a per-enplanement Minimum Annual Guarantee (MAG). The MAG, which is set in 2019 dollars, will be adjusted annually at CPI.

Should NTO's geographic passenger mix deviate significantly from current forecast and result in a 10% decrease in sales per enplanement, the MAG is subject to minor adjustment. The percentage rent varies across concession categories.

Concession rent then would be split: 50% to the PANYNJ and 50% retained by the Operator. In addition, the NTO-URW agreement has a goal of 50% of F&B space reserved for local, New York-based operators. Furthermore, the Operator will have an Airport Concession Disadvantaged Business Enterprise (ACDBE) goal of 30%.

The procurement for various concession packages includes:

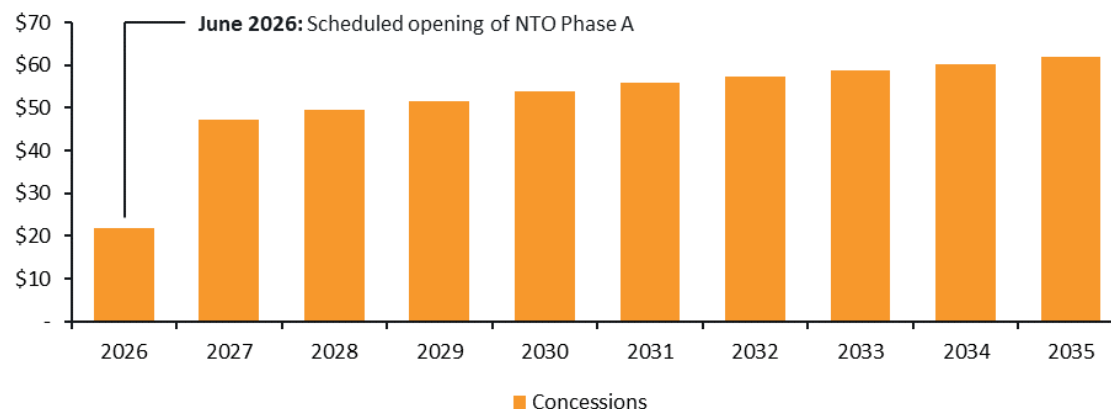
- Tranche 1 procurement, which includes the Duty Free and luxury boutiques, launched in March 2024.
- Tranche 2 procurement, which includes most of the F&B program launched in May 2024 with two main Request for Proposals for travel essentials and one food hall package.
- Tranche 3 procurement for specialty retail is expected to be launched by early July 2024.

JFK NTO LLC is targeting to award all concessions tenants before the end of 2024.

### 8.1.3 Approaches and assumptions

#### *Concessions*

A new, right-sized, best-in-class commercial program is assumed to effectuate an increase in the average spend rate above the high spend already achieved in the existing Terminal 1. A summary of the forecast revenue based on the MAG multiplied by NTO enplanements is shown in Figure 8.5. Importantly, this forecast assumes only the base MAG is paid by URW, presenting material upside for NTO should URW exceed their minimum performance thresholds.

**Figure 8.5: Forecast concessions revenue 2026-2035**Millions net revenue (\$ nominal)<sup>A</sup><sup>A</sup> Forecast assumes Phase A only.

Source: Unibail-Rodamco-Westfield, Steer analysis

### Advertising

Given the new design and construction of NTO, forecast advertising growth is reasonable. Expected rates have been tested against industry averages. Revenue growth has been forecast using a constant 90% elasticity to passenger growth, with sales escalating annually at CPI+1%, with the latter reflecting the organic growth of a constantly improving operation. In 2027, the first full year after DBO, Steer forecasts approximately \$27 million (nominal) in NTO advertising sales, netting about \$9.7 million (nominal) in NTO revenue. By 2035, Steer projects revenue of approximately \$13.7 million.

Advertising at all PANYNJ-operated airports and other transportation facilities is controlled through a single concession, awarded by the PANYNJ. In 2020, the PANYNJ executed a new advertising concession agreement with Clear Channel Advertising (CCA). It has a 12-year term plus one five-year extension. CCA pays a percentage of gross revenues as rent to the PANYNJ,<sup>46</sup> which in turn gives a share of advertising revenue generated at each terminal to the respective terminal operators. As a result, terminal operators are incentivized to provide high-quality platforms for digital and static ad displays.

U.S. airport terminal projects completed in the last decade have demonstrated the potential for a significant increase in premium advertising space, most notably Tom Bradley International Terminal at Los Angeles International where over 9,500 square feet of combined active-display areas were installed in 2013.<sup>47</sup> The video boards provide the terminal operator platforms for direct communication with passengers and premium advertising space.

<sup>46</sup> Steer has assumed an average annual revenue share throughout the forecast period based on a review of the Clear Channel agreement.

<sup>47</sup> Source: Daktronics, Steer analysis

Steer and Project Sponsors had a conversation with CCA in November 2021, during which we reviewed their financial assumptions. CCA has begun preparing plans for their advertising program in NTO, which would involve capital investment on their part. Most displays are expected to be electronic and dynamic, with an emphasis on core locations for environmental media, like at Tom Bradley International Terminal at Los Angeles International Airport. The displays would complement the core commercial offering in creating a sense of place and emphasizing iconic New York experiences. CCA's own assumed annual growth rate is 5% for advertising sales specific to NTO once the program is mature. Overall, CCA's expectations appear consistent with the NTO and URW business approaches and target markets.

#### *Other revenues*

The Operator will also generate a minimal revenue stream from charging users for usage of metered utilities and other such services. This cost-recovery structure is not subject to PANYNJ revenue sharing since it is effectively a "pass-through" between the providers and the users. The Operator is not assumed to generate any margin on this revenue, and it has been conservatively capped at rates comparable with what the existing Terminal 1 recovers on a per enplanement basis.

#### **8.1.4 Forecast validation**

The following section discusses three strengths of the NTO commercial program. Detailed analysis and discussion that support the individual reasons are provided in the following sub-sections:

- The concessions forecast is based on the Minimum Annual Guarantee;
- The international passenger profile has a demonstrated potential for high airport spending; and
- The proposed NTO commercial program will reduce overcrowding.

##### *The concessions forecast is based on the Minimum Annual Guarantee*

The non-aeronautical forecasts assume that the developer, URW, is paying only the MAG, representing a conservative forecast. URW has conducted their own revenue forecasts for a full commercial program (including Phases A, B1 and B2) with revenue projections higher than the minimum annual guarantee. URW has also conducted a financial proforma of a year with a full commercial program (including Phases A, B1 and B2); in this, URW's forecasts have a revenue per enplanement materially greater than the MAG. This suggests that a Steer-developed MAG-only forecast is conservative.

##### *The international passenger profile has a demonstrated potential for high airport spending*

Figure 8.6 illustrates the 2023 pre-pandemic sales per enplanement of the existing Terminal 1 compared with other JFK terminals and benchmark airports and terminals. As shown in Figure 8.6, the existing Terminal 1 was the top airport terminal in the United States.<sup>48</sup> Closely following performance of the existing Terminal 1 is Tom Bradley International Terminal (TBIT), one of the

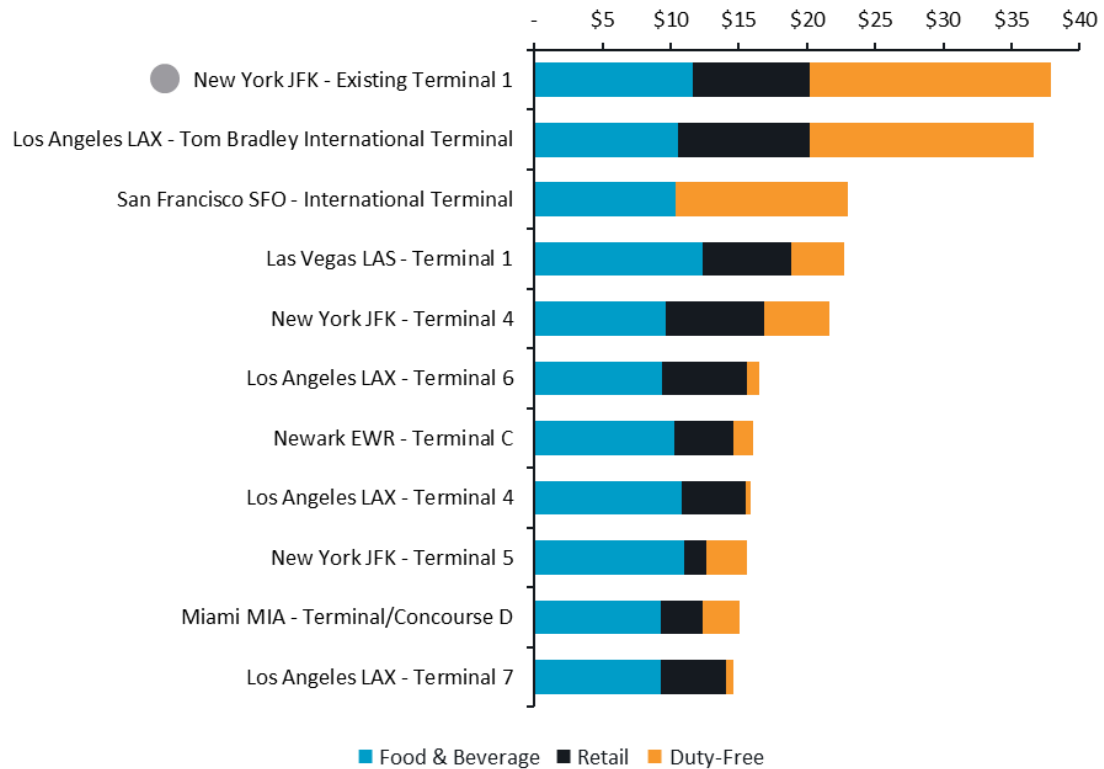
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<sup>48</sup> Excludes Washington Dulles Main Concourse, which appeared to be an outlier in 2023 data at \$62.10 per enplanement.

five terminals at Los Angeles International also developed and managed by URW, the same developer who will direct the NTO commercial program. The high performance of the existing Terminal 1 indicates the international passenger market at JFK provides a very strong market for non-aeronautical spend and is likely to lead to sales per enplanement significantly higher than national averages and JFK as a whole.

**Figure 8.6: Spend rate benchmark comparison 2023**

Sales per enplanement (\$ nominal)



Source: Airport Experience News Fact Book, Terminal One Group Association, Steer analysis

NTO will also operate as a Cash and Carry terminal, enabling customers to immediately receive their duty-free goods after purchasing rather than waiting for goods to be delivered to them as they board their aircraft. This allows customers to maintain control over their journey, a common air passenger priority according to surveys such as in the International Air Transport Association *Global Passenger Journey*. While there are many different factors that can impact duty-free performance, the high duty-free revenue performance at the existing Terminal 1 is assumed to be attributable, in large part, to the Cash and Carry uplift. 2023 duty-free sales per enplanement were \$17.62 at the existing Terminal 1 compared to \$7.17 at Terminal 7, \$3.45 at Terminal 8, \$4.80 in Terminal 4 and \$2.94 in Terminal 5.

In addition, international travelers tend to arrive at the airport early. This results in a long dwell time within the building, leading to additional opportunities for passengers to make use of concessions.

Key passenger attributes, including the Cash and Carry terminal facility and long passenger dwell times have contributed to the strong sales performance of the existing Terminal 1. Given NTO will remain an all-international terminal facility, these passenger attributes are expected to help NTO remain an industry-leading commercial program.

*The existing Terminal 1's performance is impacted by overcrowding*

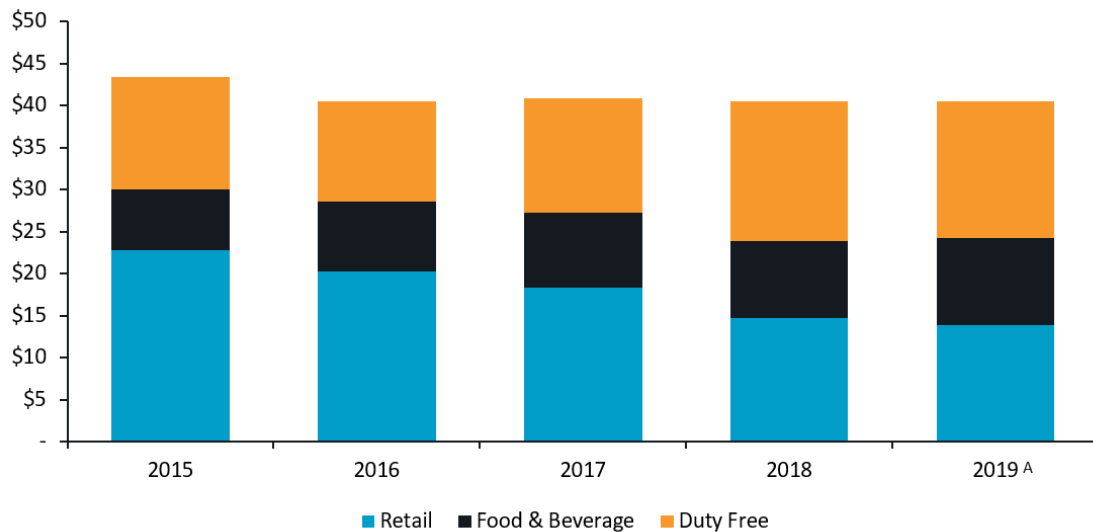
While sales at the existing Terminal 1 establish it as the top performing airport terminal in the United States, sales per enplanement decreased at a compound annual growth rate of 1.4% per annum between 2015 and 2019. Figure 8.7 presents the sales per enplanement historical time series since 2015. Note that data from second half of 2019 onwards was not available for Steer review. The decrease in sales per enplanement has two probable causes: (1) the overcrowding and the resultant degradation of the passenger experience, as discussed in Chapter 4; and (2) the lack of recent capital investment.<sup>49</sup> Data from Airport Experience News are available through reported-year 2023, which show \$38 in sales per enplanement.

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<sup>49</sup> Terminal 1 layout updates in 2018 led to a transfer of concession space from Specialty Retail to Duty Free, adding health and beauty concepts to the duty-free offering. Locations such as L'Occitane and La Prairie, previously independent storefronts, are now incorporated within a 7,000-square-foot Duty Free shop. While this creates the appearance of significant change within the Duty Free and Retail categories, effectively this constitutes a reclassification of existing sales, rather than a fundamental shift in performance.

**Figure 8.7: The existing Terminal 1 historical sales per enplanement 2015-2019**

Sales per enplanement (\$ nominal)



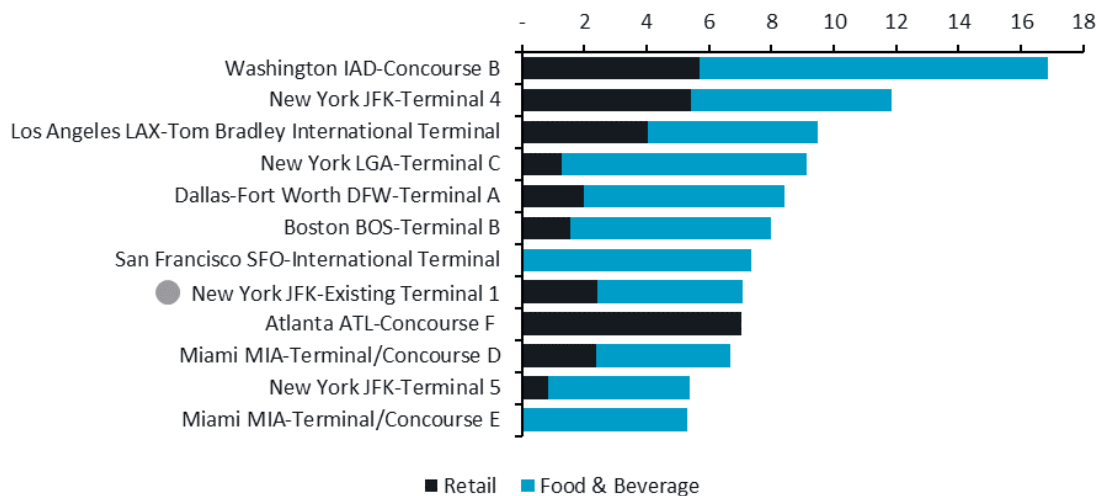
<sup>A</sup> 2019 amounts are estimates based on six months of actuals. Data between the second half of 2019 and 2022 were not available for Steer review.

Source: Terminal One Group Association, Steer analysis

The 2019 space provision shows that the existing Terminal 1 program is in the middle of its peers, as shown in Figure 8.8. This metric indicates there is scope to increase the size of the commercial offering.

**Figure 8.8: Space provision benchmark comparison 2023**

Square feet per thousand enplanements

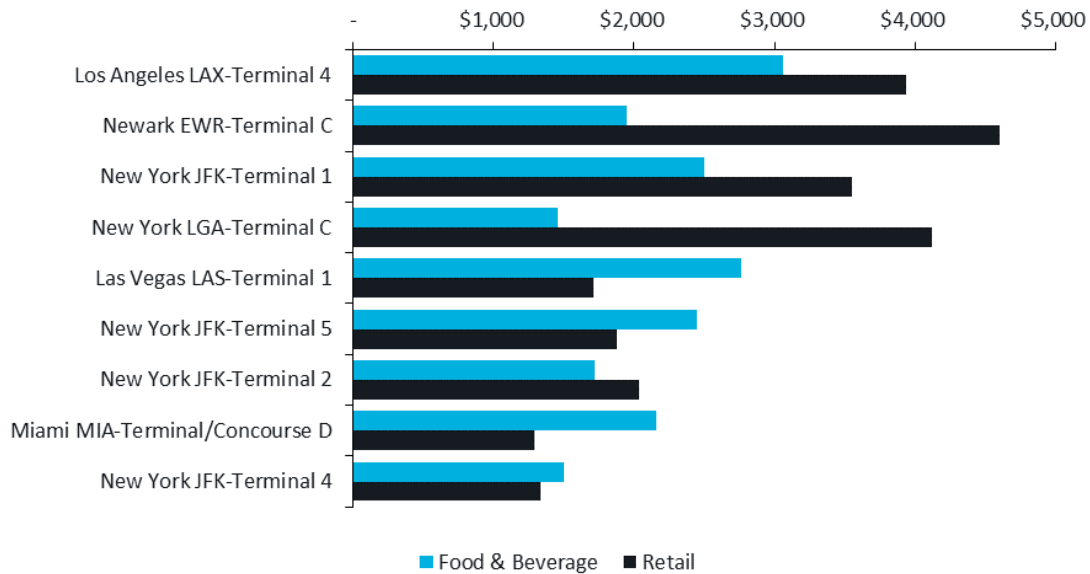


Source: Airport Experience News Fact Book Terminal One Group Association, Steer analysis

In retail and F&B, Figure 8.9 illustrates the productivity of benchmark airports and airport terminals across the United States, ranked from largest to smallest based on the combined retail and food & beverage sales per square foot.

**Figure 8.9: Productivity benchmark comparison 2023**

Sales per square foot (\$ nominal)



Source: Airport Experience News Fact Book, Terminal One Group Association, Steer analysis

The high spend rate at the existing Terminal 1 indicates there is great demand for in-terminal concessions. The high productivity and limited space provision suggest that the program is undersized. An undersized facility may be too small to adequately serve customers, resulting in a lower capture rate. Understanding this, the commercial program at NTO will be much larger to drive an even higher spend rate. NTO's commercial program would be sized at a higher space provision to provide the scale needed to enable a groundbreaking commercial offer. This is aimed at reducing overcrowding, key to achieving revenue performance as part of the Base Case forecast.

## 9 Operating Expenditures

Operating and Maintenance (O&M) costs have been estimated based on analysis of actual historical operating costs at JFK, the existing Terminal 1 and input from the Operator.

- Compared to existing Terminal 1, NTO will be substantially larger, with increased focus on customer experience, operational performance and sustainability.
- Cost forecasts include staffing estimates developed by the Operator to achieve service levels consistent with the expected service offerings.
- On-site energy generation supports renewable energy generation and sustainability targets while helping manage energy costs.
- New York is a high-cost environment relative to industry peers. State and local regulatory changes have elevated labor costs, already high relative to other U.S. regions.

Operating cost forecasts adjust for efficiencies achieved through scale and contractual commitments envisioned for NTO, validated by publicly available data. This chapter details the NTO operating expenditure forecasts.

## 9.1 Base Case forecast

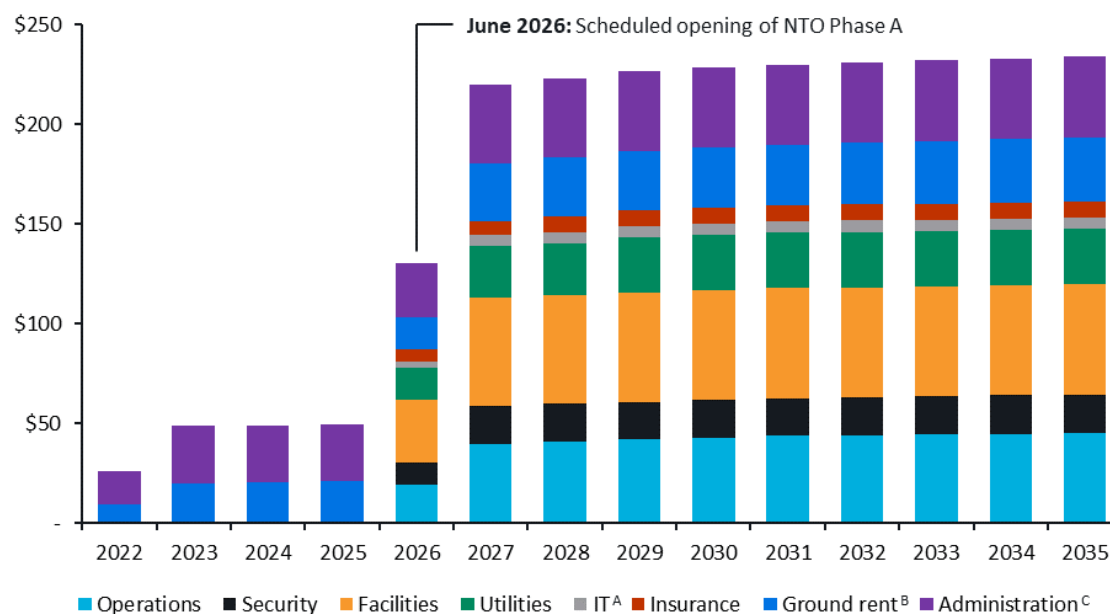
Steer modeled most operating costs based on review of the cost base at the existing Terminal 1, scaling up costs to account for a larger facility and higher passenger volumes and accommodating adjustments for efficiency gains. Certain costs were modeled independently, including staff, maintenance, insurance and utilities.

### 9.1.1 Overview

Figure 9.1 illustrates the forecast NTO operations and maintenance costs broken down by category from 2022 to 2035 (in real \$2023). From 2022 through the opening of the facility in 2026, all expenses are related to the project delivery period costs. 2027 represents the first full year of operation. Real costs are forecast to increase marginally from 2027 to 2035 at a compound annual growth rate of 0.8% as presented in Table 9.1.

**Figure 9.1: NTO Phase A Base Case operating expenditure forecast 2022-2035**

Million operating costs (\$2023 real, CPI deflated)



<sup>A</sup> "IT" stands for Information Technology.

<sup>B</sup> "Ground rent" refers to Ground Rent and First Additional Rent payable to the PANYNJ.

<sup>C</sup> "Administration" includes the following expenses: General & Administration, Labor, Project Delivery, URW Fee and the Management Services Agreement (MSA). For further information, please refer to Section 9.1.1, *Terminal administration*. Source: Steer forecasts

**Table 9.1: NTO Phase A Base Case operating expenditure forecasts growth 2027-2035**

Operations and maintenance costs (\$2023 real, CPI deflated), compound annual growth rate (%)

Operating expenditure category	2027-2035
Operations	+1.6%
Security	+0.5%
Facilities	+0.2%
Utilities	+0.9%
Information Technology	-
Insurance	+1.4%
Ground rent	+1.5%
Administration <sup>A</sup>	+0.3%
<b>All operating costs</b>	<b>+0.8%</b>

<sup>A</sup> Administration includes the following expenses: General & Administration, Labor, Project Delivery, URW Fee and the Management Services Agreement (MSA). For further information, please refer to Section 9.1.1, *Terminal administration*. Source: Steer forecasts

Table 9.2 provides an example of the different costs by operating expenditure category.

**Table 9.2: Categorization of operating costs and example cost centers**

Category	Description/example cost centers
Operations	<ul style="list-style-type: none"> <li>• Baggage operations</li> <li>• Contracted labor (for example, wheelchair and passenger service agents)</li> <li>• General ramp operations (for example, snow removal)</li> </ul>
Security	<ul style="list-style-type: none"> <li>• Building security</li> <li>• Checkpoint security</li> <li>• PANYNJ police</li> </ul>
Facilities	<ul style="list-style-type: none"> <li>• Janitorial services and supplies</li> <li>• Waste removal</li> <li>• Operating construction</li> </ul>
Utilities	<ul style="list-style-type: none"> <li>• Chilled and hot water</li> <li>• Electricity</li> <li>• Other utilities</li> </ul>
Information Technology (IT)	<ul style="list-style-type: none"> <li>• Systems (for example, flight information display systems, closed circuit television and airline common-use systems including self-service and biometrics)</li> <li>• Telephone usage</li> <li>• Web services</li> </ul>
Insurance	<ul style="list-style-type: none"> <li>• Insurance costs</li> </ul>
Administration	<ul style="list-style-type: none"> <li>• Management Services Agreement (MSA)</li> <li>• Staff and labor</li> <li>• Administrative costs (non-labor costs)</li> </ul>

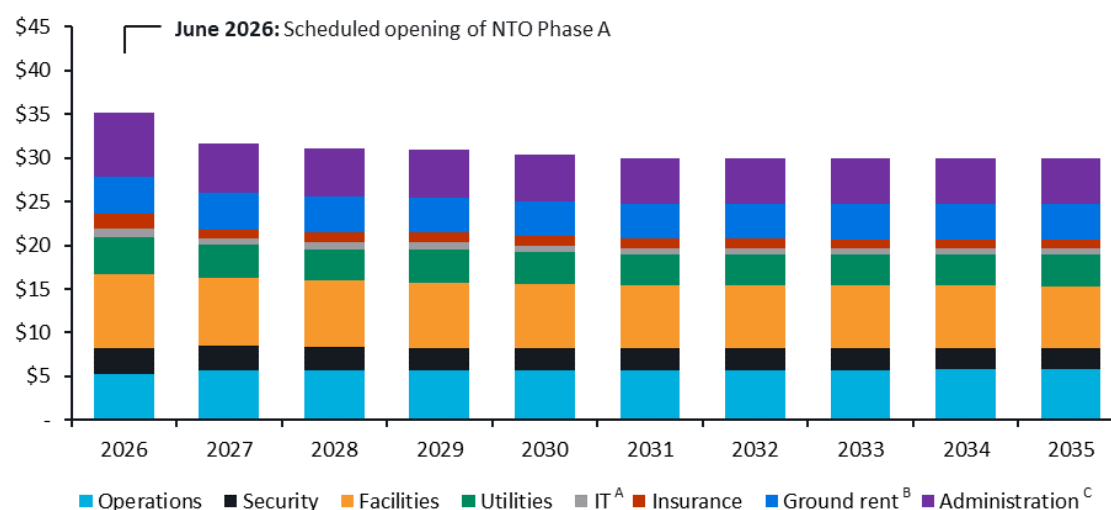
Category	Description/example cost centers
PANYNJ Rents	<ul style="list-style-type: none"> <li>Ground Rent (Rental payment based on total acreage of the Project site escalated at 4% per annum)</li> <li>First Additional Rent (Fixed payment per annum for Leasehold mortgage and Lease Extension Payment)</li> </ul>

Source: Steer analysis

Figure 9.2 illustrates the Base Case operating costs forecast per enplanement in real 2023 prices. Costs are highest following the opening of NTO in 2026, primarily due to the facility being at less than full capacity during the initial months of operations. Real costs reduce over time as the facility operates with more passengers and approaches full capacity.

**Figure 9.2: NTO Phase A Base Case operating expenditure forecast 2026-2035**

Operating costs per enplanement (\$2023 real, CPI deflated)



<sup>A</sup> "IT" stands for Information Technology.

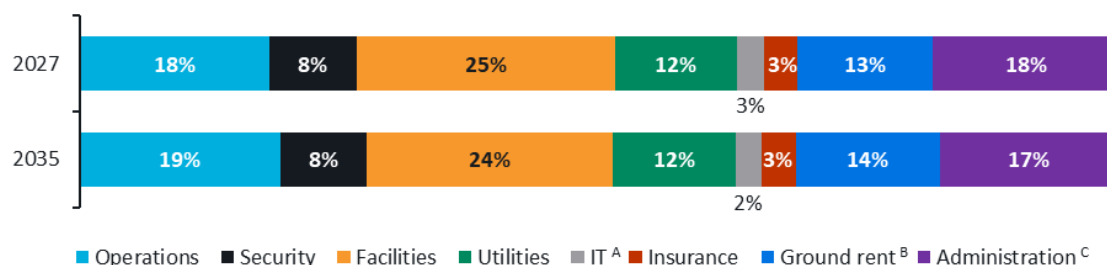
<sup>B</sup> "Ground rent" refers to Ground Rent and First Rent payable to the PANYNJ.

<sup>C</sup> "Administration" includes the following expenses: General & Administration, Labor, Project Delivery, URW Fee and the Management Services Agreement (MSA). For further information, please refer to Section 9.1.1, *Terminal administration*. Source: Steer forecasts

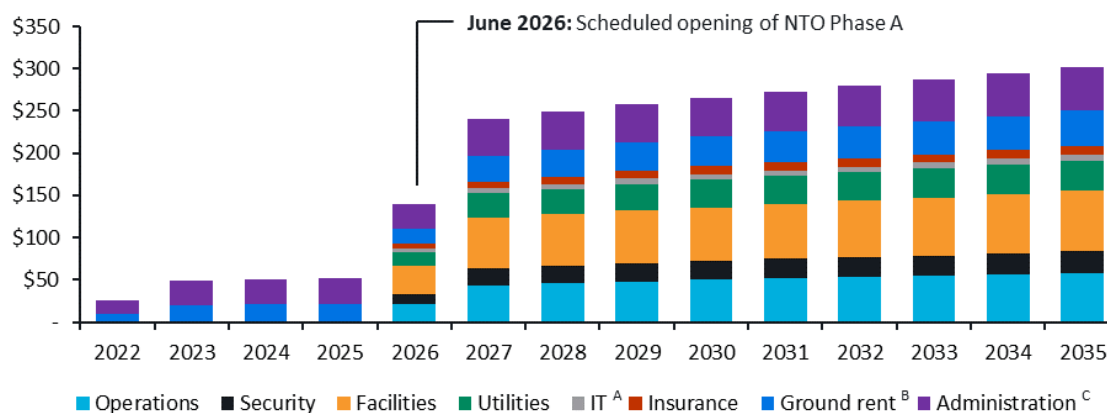
The composition of operations and maintenance costs remain largely unchanged in the period to 2035. As illustrated in Figure 9.3, the relative shares of the operations and maintenance expenditure categories are expected to remain consistent, with some changes such as growth in utility costs and ground rent due to rent cost growth from the PANYNJ exceeding the CPI.

**Figure 9.3: NTO Phase A Base Case operating expenditure forecast 2027 and 2035**

% operations costs share

<sup>A</sup> "IT" stands for Information Technology.<sup>B</sup> "Ground rent" refers to Ground Rent and First Additional Rent payable to the PANYNJ.<sup>C</sup> "Administration" includes the following expenses: General & Administration, Labor, Project Delivery, URW Fee and the Management Services Agreement (MSA). For further information, please refer to Section 9.1.1, *Terminal administration*. Source: Steer forecastsFigure 9.4 provides an illustration of the Base Case forecast in nominal dollars.<sup>50</sup>**Figure 9.4: NTO Phase A Base Case operating expenditure forecast 2022-2035**

Millions operating costs (\$ nominal)

<sup>A</sup> "IT" stands for Information Technology.<sup>B</sup> "Ground rent" refers to Ground Rent and First Rent payable to the PANYNJ.<sup>C</sup> "Administration" includes the following expenses: General & Administration, Labor, Project Delivery, URW Fee and the Management Services Agreement (MSA). For further information, please refer to Section 9.1.1, *Terminal administration*. Source: Steer forecasts<sup>50</sup> Based on a blended average of consumer price index forecasts from Moody's analytics, Oxford Economics and the Economist Intelligence Unit (EIU). For further details, please refer to Section 9.1.3.

## Operations

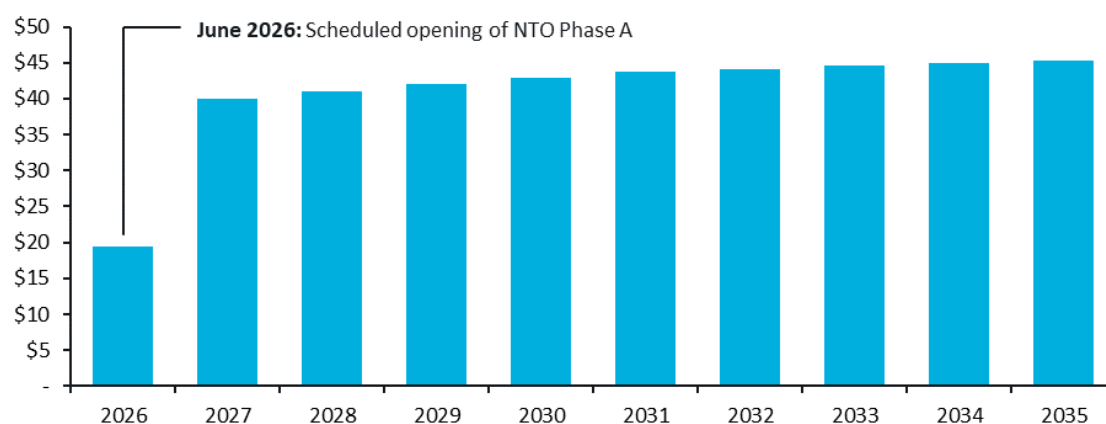
Major contributors in the operations category include contracted labor costs, such as:

- Wheelchair assistants;
- Passenger service agents to assist deplaning passengers through customs; and
- Staff to expedite security screening.

These three services together account for 70% of costs in this category. Between 2027 and 2035, terminal operations costs in real terms are forecast to increase at a compound annual growth rate of 1.6%. While some terminals charge separately for services such as wheelchair assistants, NTO is assumed to cover related costs only through the CPE. Figure 9.5 exhibits the Base Case terminal operations operating expenditure forecast.

**Figure 9.5: NTO Phase A Base Case operating expenditure forecast, operations 2026-2035**

Million operating costs (\$2023 real, CPI deflated)



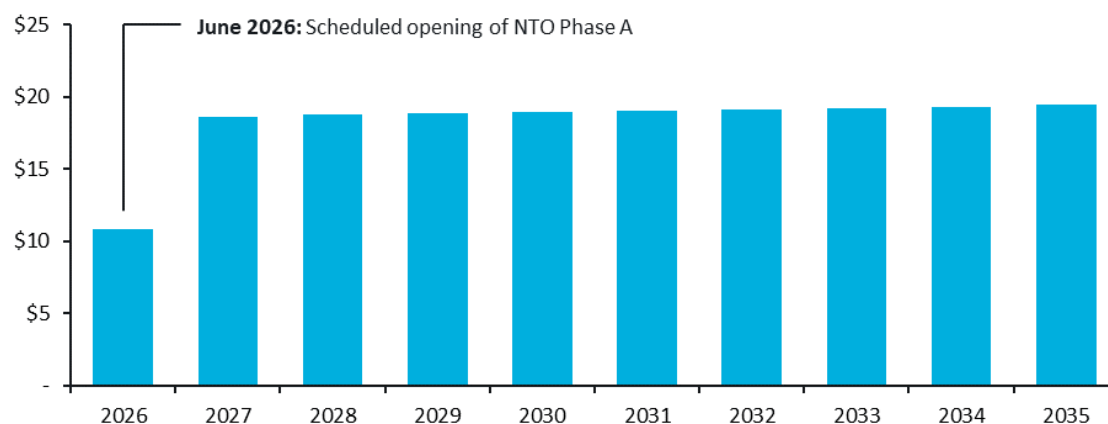
Source: Steer forecasts

## Security

Security costs are primarily driven by outsourced staff responsible for monitoring the inside of the building including staffing doorways and points of entry and exit to secure areas. The terminal also reimburses the PANYNJ for the PANYNJ police who patrol the site. Figure 9.6 illustrates the forecast security costs under the Base Case operating expenditures forecast. Additional security materials costs and costs related to monitoring concessions and deliveries are also included. Real costs are forecast to increase at a compound annual growth rate of 0.5% between 2027 and 2035.

**Figure 9.6: NTO Phase A Base Case operating expenditure forecast, security 2026-2035**

Million operating costs (\$2023 real, CPI deflated)



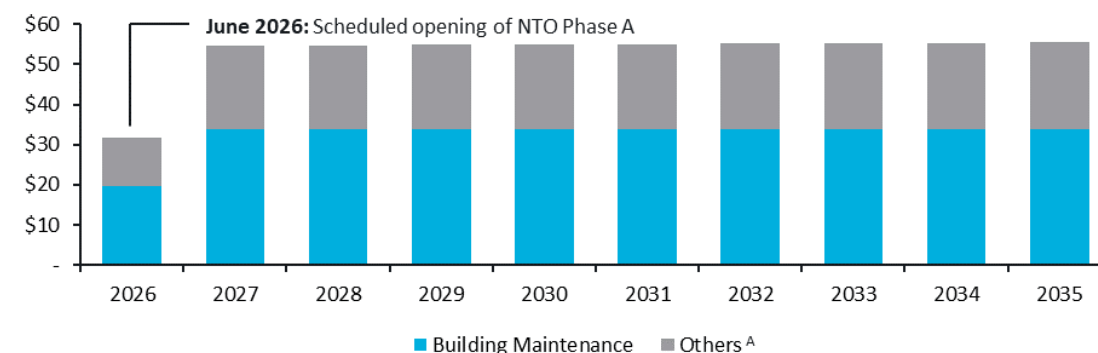
Source: Steer forecasts

### Facilities

Figure 9.7 shows the distribution of costs between maintenance and other facilities costs over time, excluding utilities. From 2027 to 2035, total facilities costs in real dollars are expected to increase at a compound annual growth rate of 0.2%. The distribution is split between building maintenance and other facilities costs. Within the other facilities category, custodial services represent the largest share of the overall total, accounting for approximately 39% of all costs in this category from 2027 to 2035. Maintenance costs, the most significant facility cost, are detailed separately. Maintenance costs were independently developed by the Operator development team in collaboration with Faithful+Gould and Arup based on the project design. Similarly, costs associated with utilities, which contribute significantly to total facilities' costs over the analysis period, are described in further detail in the following section.

**Figure 9.7: NTO Phase A Base Case operating expenditure forecast, facilities 2026-2035**

Million operating costs (\$2023 real, CPI deflated)



<sup>A</sup> Others include examples such as waste removal and custodial services.

Source: Arup, Faithful+Gould, JFK NTO LLC, Steer forecasts

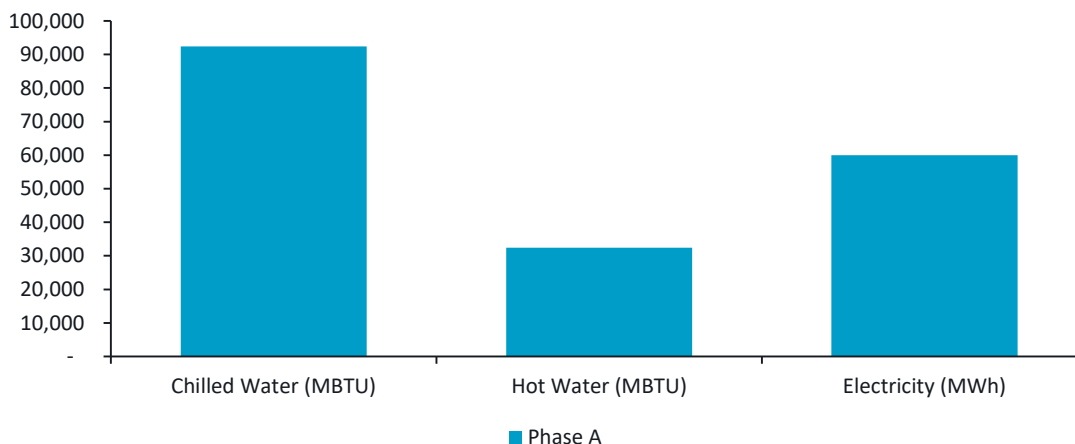
### Utilities

Annual utility costs of electricity, district heating and district cooling have been estimated using forecast energy demand and annual energy unit costs. The resulting forecasts are assessed to be reasonable while reflecting the challenge of forecasting energy and commodity prices. The annual energy costs were estimated assuming a three-tier cost structure in which NTO is expected to source energy from the PANYNJ, AlphaStruxure (ASX),<sup>51</sup> and in house generation for chilled water.

Utility demand was modeled by the engineering firm Jaros, Baum & Bolles (JB&B) based on the building design (see Figure 9.8). JB&B, part of NTO's design-build team, produced energy models, the output of which was used as the basis for forecast inputs. In the initial design stages, a contingency of 20% was added to the outputs of the energy model to account for any forecasting or modeling uncertainty. While design has progressed, the 20% contingency has been retained in the development of these forecasts.

**Figure 9.8: Phase A forecast annual consumption by major utility**

Energy units (MBTU or MWh depending on the utility)



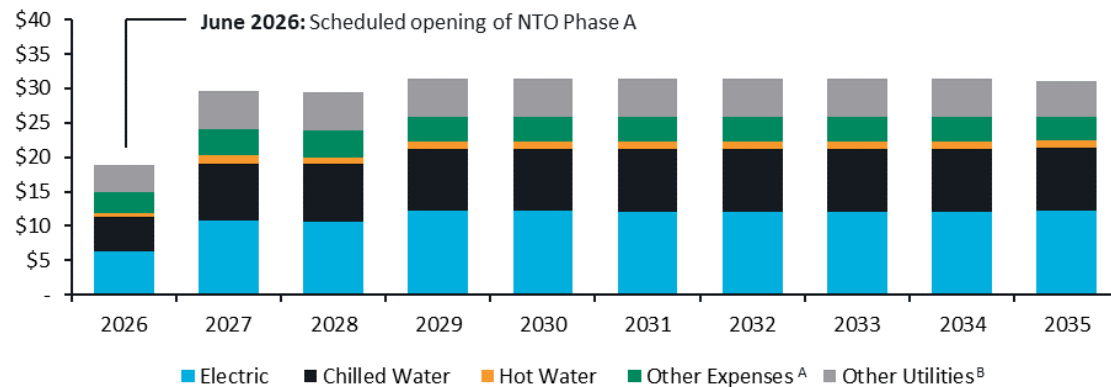
Source: JB&B forecasts, Steer analysis

Figure 9.9 illustrates the utilities costs over time. Overall, costs are expected to increase at a compound annual real growth rate of 0.9% per annum between 2027 and 2035. This includes electric, heating and cooling and includes all costs of concessionaires' space which the Operator is expected to be charged back to users. Given the range of possibilities implicit in an energy price forecast, actual results could vary considerably.

<sup>51</sup> AlphaStruxure is a joint venture of The Carlyle Group and Schneider Electric created to provide energy-as-a-service (EaaS) platforms allowing customers to own and operate microgrids without capital outlay.

**Figure 9.9: NTO Phase A Base Case operating expenditure forecast, utilities 2026-2035**

Million operating costs (\$2023 real, CPI deflated)



<sup>A</sup> Other expenses include costs associated with AlphaStruxure systems and the PANYNJ resilience/reserve capacity fees.

<sup>B</sup> Other utilities include water and sewer costs.

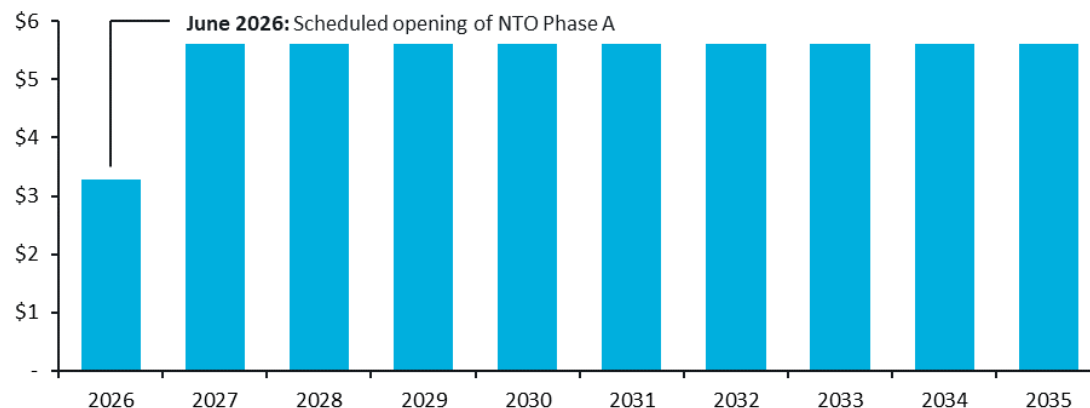
Source: JFK NTO LLC, U.S. Energy Information Administration, Steer forecasts

### Information Technology

Figure 9.10 illustrates the expected trajectory of IT costs over time. These reflect annual operating costs to support functions such as flight information display systems, closed circuit television and airline common-use systems including self-service systems and biometrics enabled devices. Like other capital costs, the operating budget does not include capital costs associated with new IT systems which are instead included in the capital expenditure budget. Like other major systems, IT capital expenditure includes estimates of useful life and replacement costs for both hardware and software infrastructure. While existing technology typically becomes cheaper over time, the expected introduction of additional technologies over time leads to a flat real cost forecast.

**Figure 9.10: NTO Phase A Base Case operating expenditure forecast, IT 2026-2035**

Million operating costs (\$2023 real, CPI deflated)



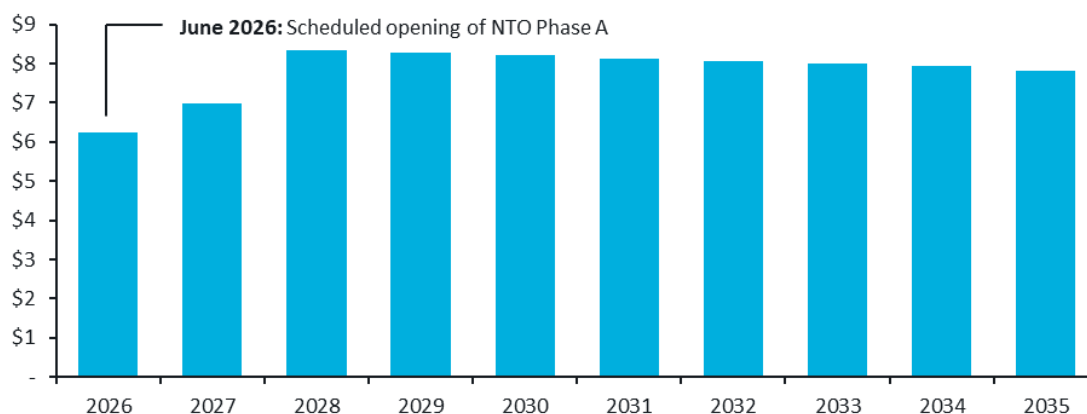
Source: Steer forecasts

### Insurance

Insurance premiums were developed by Willis Towers Watson and Risk International, both of whom specialize in risk management. These forecasts were developed using prevailing market rates in the New York region and are designed to incorporate all necessary insurance policies based on the value of the facility and scale of future operations as required by the lease and for the protection of the Operator and lease holders. Insurance costs for the capital program are excluded from the operating budget and included in the capital budget. Insurance costs are forecast to grow below the rate of inflation after the facility is completed, leading to a reduction in costs in real terms after 2028, as illustrated in Figure 9.11. The estimates are based on a conservative forecast based on peak costs provided in 2019.

**Figure 9.11: NTO Base Case operating expenditure forecast, insurance 2026-2035**

Million operating costs (\$2023 real, CPI deflated)



Source: Willis Towers Watson and Risk International forecasts, Steer analysis

### Terminal administration

Under the Lease, JFK NTO LLC, as the “Qualified Terminal Operator”, is responsible for operations and management through December 30, 2060, including curbside management and apron management.

JFK NTO LLC is a standalone entity governed by a Board of Directors and led by a Chief Executive Officer (CEO) who is responsible for the overall performance of NTO. The CEO is supported by an executive team, focused on each of the key value drivers of the business. Additionally, the executive team is tasked to deliver commercial, financial and operational performance alongside a seamless travel experience.

The Operator has developed a bottom-up schedule for the build out of the organization including management staffing and operations throughout the forecast period. Steer has reviewed the forecasts and compared them to industry norms for comparable operating companies and views the forecasts as reasonable and in-line with performance benchmarks. The terminal staffing plan has identified eight departments including:

- Executive;
- Communications;
- Legal, Compliance and Risk;
- Operations (including Facilities and Information Technology);
- Capital Expenditure;
- Revenue;
- Finance; and
- Talent Management.

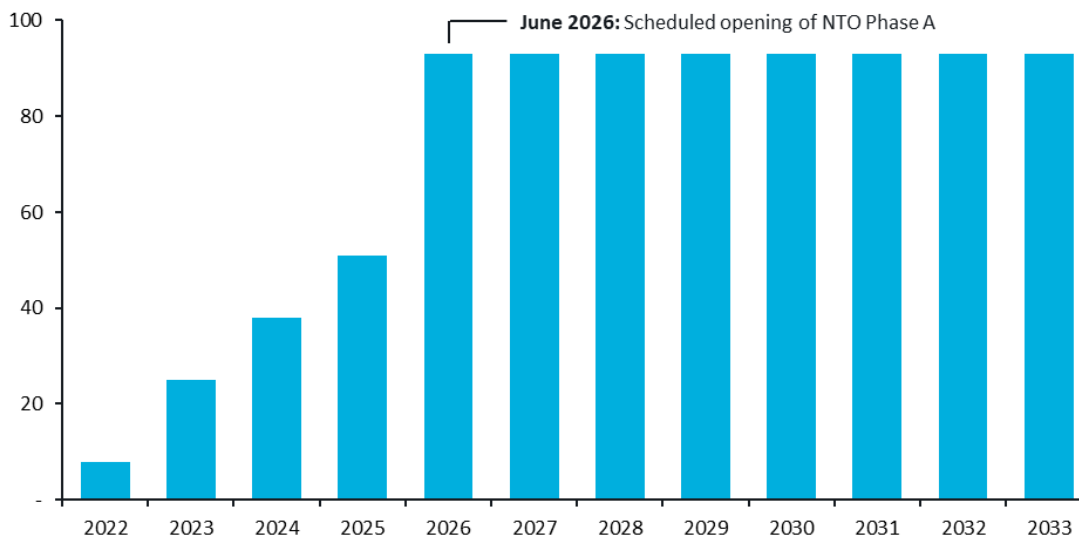
The terminal is expected to utilize outsourced service providers for several functions. The costs for outsourced contracts are included in the various other cost categories of the operating cost budget. The Terminal Administration costs are focused on oversight of those operations and management of the core terminal business including finance and commercial.

Figure 9.12 reflects the expected organizational structure once Phase A is fully operational. Figure 9.13 details the changes in Full Time Equivalents (FTE) over time.

Figure 9.12: NTO organization chart 2026



Source: JFK NTO LLC, Steer analysis

**Figure 9.13: NTO Phase A full time equivalents 2022-2033**Full time equivalents<sup>A</sup>

<sup>A</sup> Forecasts assumes completion of Phase A only. FTE estimate for 2026 considers an overlap of certain project delivery functions and operations. Some increases in FTEs are expected by the time Phase B2 opens.

Source: JFK NTO LLC, Steer analysis

The Operator has entered into a Management Services Agreement (MSA) with Ferrovial Airports to provide services and resources to support operations. The MSA is designed to provide support and continuous access to Ferrovial Airports to provide global best practices, technical expertise and consulting to the Operator to drive best in class performance.

The MSA focuses on the following technical, operational and customer experience elements:

- Design and Development Support Services:
  - Design criteria: interface to terminal operations, support in decision making and technical sustainability best practices;
  - Operational inputs: maximization of passenger experience, service provider and third-party requirements; and
  - Information and communications technology: masterplan / systems and technology road map, define master systems requirements, steering and integration of systems.
- The Operator set up support:
  - Development of the Terminal Performance Measurement Program, staffing and committee structures for liaising with stakeholders;
  - Preparation of Operations Documentation; and
  - Detailed Concept of Operations (ConOps) and Standard Operating Procedures (SOPs); technical policies and standard processes; Performance Management System Standards. The developer has submitted the ConOps plan with Advanced Final Design (90%) and received conditional approval from the PANYNJ.

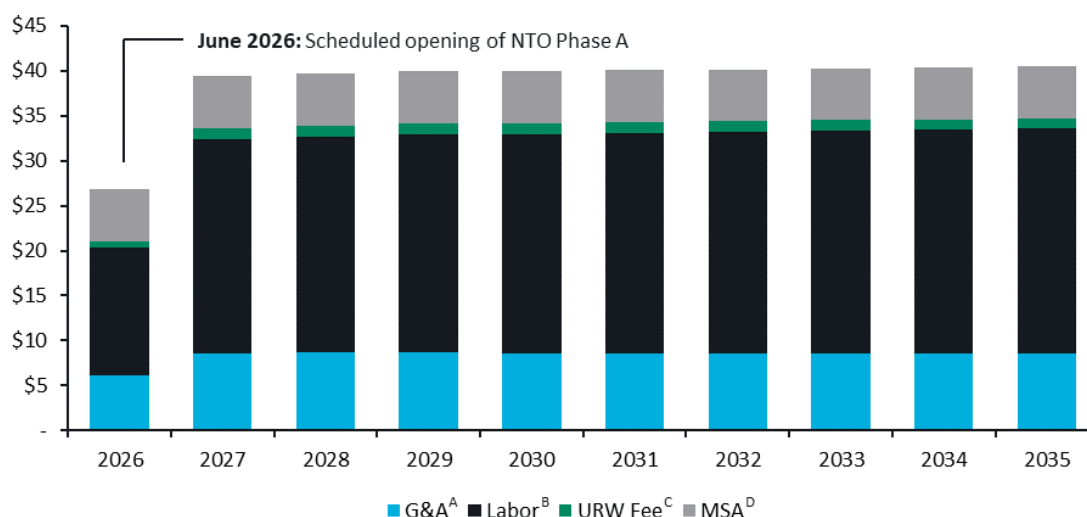
- Standards and Resiliency: Safety and security, facilities and management and maintenance, sustainability and business continuity.

Costs of the MSA are assumed to cease in 2037 (unless extended), consistent with the agreement between the parties. The MSA also defines incentives in line with the KPI regime agreed in the Operator's lease with the PANYNJ and can be extended by mutual agreement. A management fee will also be paid to URW for their oversight and management of the commercial program.

Figure 9.14 illustrates the Operator's administration costs over time. Without considering the MSA agreement, costs are expected to increase at a compound annual real growth rate of 0.4% per annum between 2027 and 2035.

**Figure 9.14: NTO Phase A Base Case operating expenditure forecast 2026-2035**

Million operating costs (\$2023 real, CPI deflated)



<sup>A</sup> "G&A" stands for General and Administrative costs covering ongoing non-labor expenses during operations.

<sup>B</sup> "Labor" costs refer to ongoing labor expenses during operations. Forecasts assumes completion of Phase A only. FTE estimate for 2026 considers an overlap of certain project delivery functions and operations.

<sup>C</sup> The "URW Fee" refers to the management fee paid to URW for oversight and management of the commercial program.

<sup>D</sup> "MSA" stands for Management Services Agreement with Ferrovial Airports.

Source: Steer forecasts

### 9.1.2 Background context about the NTO operating model

The NTO facility will extend into the footprints of three current terminal areas (including former Terminal 2 and Terminal 3 sites) and will feature modern technology systems and solutions absent in the existing Terminal 1. The commercial and ground support areas will be significantly larger, supporting an increase in concessionaires and service providers on the property. Each of these factors will have some impact on the facility's operating approach and performance compared to the existing Terminal 1.

Steer has assumed that the terminal will operate under an integrated terminal operator business model, serving as a base for airlines that require widebody gate capacity in the New York market. The Operator will have direct control over contracted services, including insourcing of key supervisory functions such as:

- Quality management;
- Customer experience;
- Airline marketing, etc.

This approach aligns and facilitates the Operator's environmental, social and governance (ESG) goals, which include a target of 30% Minority- or Women-owned Business Enterprise (MWBE) participation across all disciplines and phases through various professional services and other contracted functions.

Terms under the new lease will require the terminal operator to meet or exceed performance standards in a range of areas including customer service, processing times, special systems availability and energy use. The Operator is expected to maintain control over all aspects of terminal management, including finance, contracting, maintenance and airline services.

JFK NTO LLC is an independent business focused on the management, operation and maintenance of NTO. Pre-DBO, the focus will be on project delivery and organizational establishment to prepare for transition to full terminal operations, including:

- Development of Standard Operational Procedures (SOPs), Transition and Operational Readiness Activation and Transition (ORAT):
  - Definition and development of SOPs, operational requirements and documentation;
  - Airline marketing and route development;
  - Stakeholder management including with the PANYNJ, Customer and Border Protection (CBP), Transportation Security Administration (TSA), airlines and others; and
  - Commercial concept finalization and procurement (tenant mix).
- ORAT, Phase 1 will include:
  - Recruitment, training and familiarization for all staff; and
  - Basic and advanced trials.
- ORAT, Phase 2 will include:
  - Onboarding and training of staff;
  - Pre ORAT (finalization and initiation of process); and
  - Identification and evaluation of ensuring on time commissioning of all commercial tenants.

The ORAT agreement with Munich Airport International was executed in August 2023 with the ORAT team now mobilized in ORAT planning and preparation activities.

Given the need for adequate preparation ahead of the launch of the NTO facility in June 2026, we anticipate operational costs throughout the project delivery period, which will increase as the construction nears completion. Expected costs during the project delivery period include:

- **Staff costs:** Based on a build-up of staff provided by the Operator and described in greater detail in the staff section; and
- **Ground rent:** payments due to the PANYNJ under the lease.

Negotiations have commenced with various suppliers to provide operations and maintenance services for key systems during the operational phase. For example, NTO has entered into an agreement with Vanderlande to perform maintenance of the Baggage Handling System (BHS). The early procurement of key contracts will mitigate against operational risks as the project transitions from the construction to the operational phase.

### 9.1.3 Approaches and assumptions

To forecast the future operating period expenses, historical Terminal 1 costs were increased over time by a real growth rate and an allocated inflation rate for each specific line-item.

The real growth rate was determined based on the respective line item's projected responsiveness to changes in the underlying fundamentals between the existing Terminal 1 and NTO such as enplanements, terminal square footage or aircraft departures. These project fundamentals are termed "drivers" while the magnitude of the line item's responsiveness to them are termed "elasticities."

The inflation rate used to escalate the resulting values varies based on the specific line-item forecast. Depending on the line item, one of the following indices were used: CPI, labor (or adjusted labor<sup>52</sup>), electricity, or natural gas. Figure 9.15 illustrates a sample equation using elasticities to forecast operational expenditures.

**Figure 9.15: Operational expenditure elasticity forecasting equation**

$$OPEX_{Category (Year y)} = OPEX_{Category (Year y-1)} \times (1 + DriverChange_{Driver x})^{Elasticity_{Driver x}}$$

Note: Where "y" is a Given Year, "x" is a Selected Driver, "OPEX" stands for Operational Expenditure.

Source: Steer analysis

In certain cases, additional adjustments were made to account for one-time changes in a cost item due to structural changes in its future operation (that is, anticipated efficiency gains). Other items such as building maintenance and administration (reflecting the self-operating model chosen for NTO) insurance and utilities were developed independently and then incorporated into the broader cost estimates.

The following sections contain further discussion on:

- Terminal 1 historical operating costs;
- Inflation Index Driver;
- Labor or Adjusted Labor Index Driver; and
- Utilities Cost Forecasting and the Utilities Indices Driver.

<sup>52</sup> Adjusted labor factors are to account for higher-than-average forecast wage growth for workers currently working at or close to the minimum wage over the forecast period (starting in 2018). This is due to policy changes based on the interpretation of various "Living Wage" and "Minimum Wage" regulations by Steer in addition to the Healthy Terminals Act in New York State. The result of these policies are materially increased labor costs during the period 2018-2023 and then stabilized growth at a rate of CPI + 0.5% thereafter.

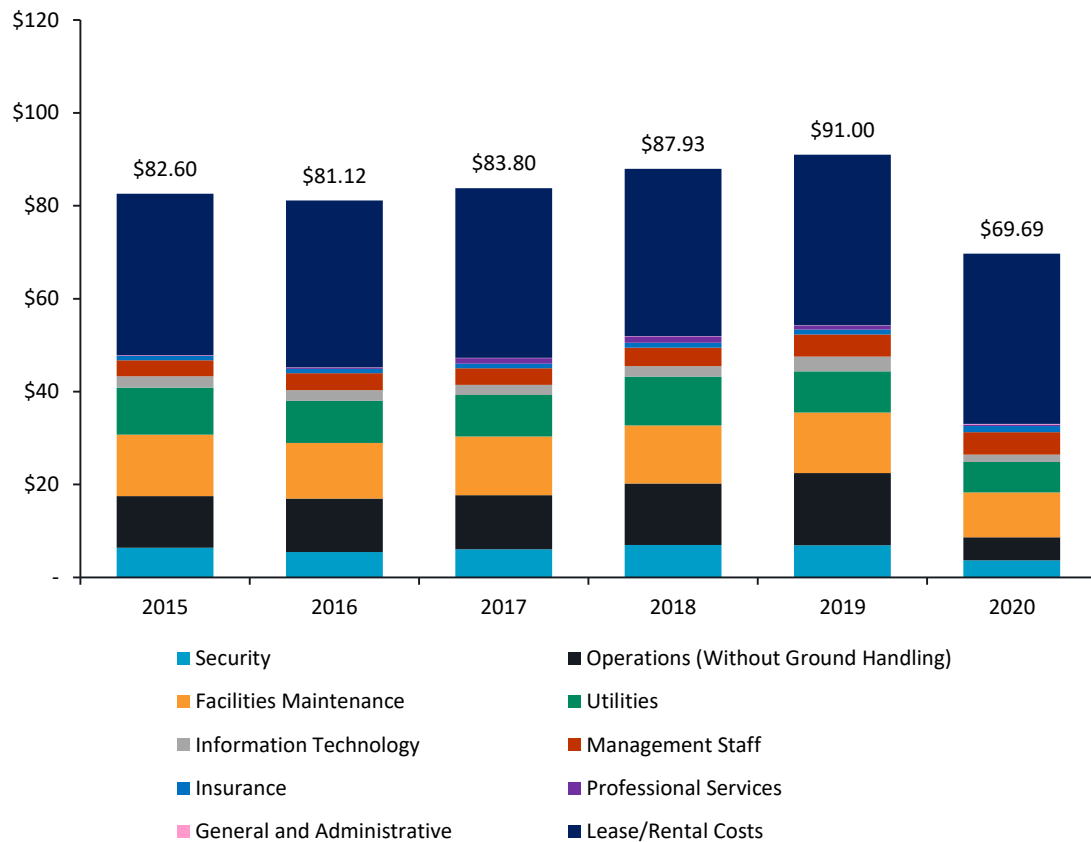
*The existing Terminal 1 historical operating costs*

Figure 9.16 illustrates the operating costs (including lease/rental costs but excluding ground handling services)<sup>53</sup> for the six years beginning in 2015 for the existing Terminal 1. Costs have remained relatively stable over this period, except between 2018 and 2019 where costs have experienced increases in some cost categories, particularly for security and operations. These are attributable mainly to the increase in minimum wage regulations impacting lower-wage staff in the New York region. Also, costs related to professional services increased between 2017 and 2018, likely due to consultancy support for the Terminal's redevelopment proposal. In addition, a significant fluctuation of utility costs is observed across the period which reflects the volatility of energy expenses due to the variability of local climatic conditions and energy prices that are outside the operator's control.

The existing Terminal 1's costs have also been impacted by the COVID-19 pandemic. Most cost categories were significantly impacted in 2020 with a general drop in operating and maintenance costs (except management staff and insurance) due to terminal activity slow down during the pandemic. Note that data from 2021 onwards was not available for Steer review.

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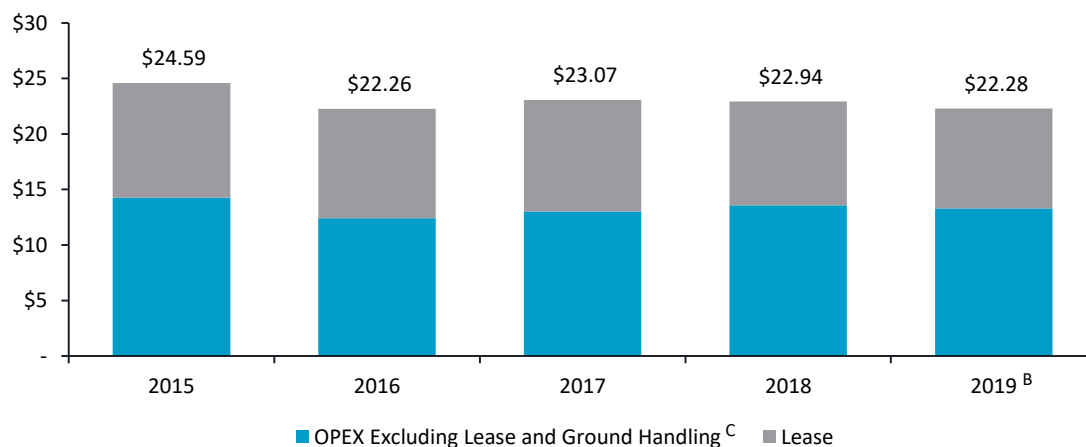
<sup>53</sup> At the existing Terminal 1 airlines have historically reimbursed ground handling expenses to the Terminal One Group Association (TOGA), with TOGA then being responsible for paying the sole provider of ground handling services at the terminal. This is reportedly due to the operating constraints of the facility, which do not allow for multiple ground handlers because of ramp space constraints. At NTO, airlines will be expected to contract directly with their chosen ground handler provider. NTO will have enough space for multiple ground handlers allowing airlines a competitive choice among handlers who are expected to be approved by the Operator and monitored through service level agreements. Because of this expected change, Steer has removed ground handling costs from historical analysis of TOGA's cost base.

**Figure 9.16: JFK existing Terminal 1 operating expenditures 2015-2020**Million operating costs (\$2018 real)<sup>A</sup>

<sup>A</sup> The existing Terminal 1 operating costs deflated/inflated to 2018 using EIU CPI database. Lease/rental costs include debt service for bonds issued for the original construction of Terminal 1. Some professional service costs relating to the NTO project are considered capital expenditures and are not shown in the above chart. 2021 – 2023 data were not available for Steer review.

Source: Terminal One Group Association, the Economist Intelligence Unit *EIU Consumer Price Index Database*, Steer analysis

Figure 9.17 illustrates the operating cost per enplanement over the 2015 to 2019 period, split between day-to-day operations and lease costs paid to the PANYNJ. For this analysis, 2020 figures have not been considered due to the unusual context of the COVID-19 pandemic, which led to an increase of more than four times the operating costs per enplanement. During the 2015 to 2019 period, enplanements increased by 22% to 4.1 million in 2019, from 3.4 million in 2015. Meanwhile, operating costs per enplanement decreased between 2015 and 2016. Note that data from 2021 onwards was not available for Steer review.

**Figure 9.17: The existing Terminal 1 operating expenditure per enplanement 2015-2019**Operating costs per enplanement (\$2018 real)<sup>A</sup>

<sup>A</sup> The existing Terminal 1 operating costs deflated/inflated to 2018 using EIU CPI database. Lease/rental costs include debt service for bonds issued for the original construction of Terminal 1. Some professional service costs relating to proposed terminal redevelopment project was considered capital expenditures and are thus excluded from this chart.

<sup>B</sup> 2020 value is excluded from the analysis to isolate the impact of the COVID-19 pandemic on enplanements. 2021 - 2023 data were not available for Steer review.

<sup>C</sup> "OPEX" stands for Operational Expenditure.

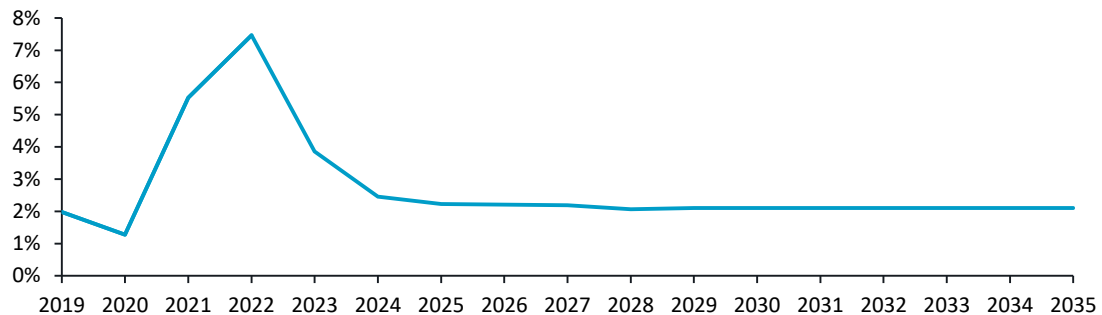
Source: Terminal One Group Association, the Economist Intelligence Unit *EIU Consumer Price Index Database*, Steer analysis

### *Inflation Index Driver*

Steer has utilized U.S. CPI forecasts sourced from Moody's analytics, Oxford Economics and the Economist Intelligence Unit (EIU) to create a blended average inflation forecast which is used to escalate costs between 2019 and 2028. From 2029 onwards, a fixed annual change assumption was used based on the composite Moody's, Oxford Economics, and the EIU to reduce volatility in long-term energy forecasts. As such, the cost forecast accounts for unusually high levels of inflation experienced in the 2021 and 2022 but assumes a normalization of inflation in the coming years. Long-term inflation is expected to remain above 2% as seen in Figure 9.18.

**Figure 9.18: U.S. consumer price index actual (2019-2021), forecast (2022-2035)**

% annual change



Source: Moody's Analytics, Economist Intelligence Unit, Oxford Economics, Steer analysis

*Labor or Adjusted Labor Driver*

For many outsourced service contracts, lower-wage staff execute key functions of terminal operations. As a result, the terminal is subject to changes in costs based on regulations around the minimum wage.

- In 2018, the PANYNJ Board of Commissioners unanimously adopted a minimum wage increase policy for JFK, Newark and LaGuardia. Goals of the policy are to align wages of workers at the three airports, reduce staff turnover and improve customer service, security and safety. The PANYNJ found an annual turnover rate of over 30% of privately employed workers at the three major New York region airports, a 50% increase since 2010.<sup>54</sup> In contrast, other airports reported turnover rates as low as 6%.<sup>55</sup>
- In 2021, New York adopted the Healthy Terminals Act to benefit airport workers located at JFK and LaGuardia. Beginning July 1, 2021, the new legislation provides that covered airport workers will be paid no less than the prevailing wage rate and a "standard benefits supplement rate" of at least \$4.54 per hour towards the cost of "minimum essential coverage" under an employer-sponsored healthcare plan.<sup>56</sup>

Figure 9.19 illustrates the impact of the aforementioned policies on minimum wages at JFK.

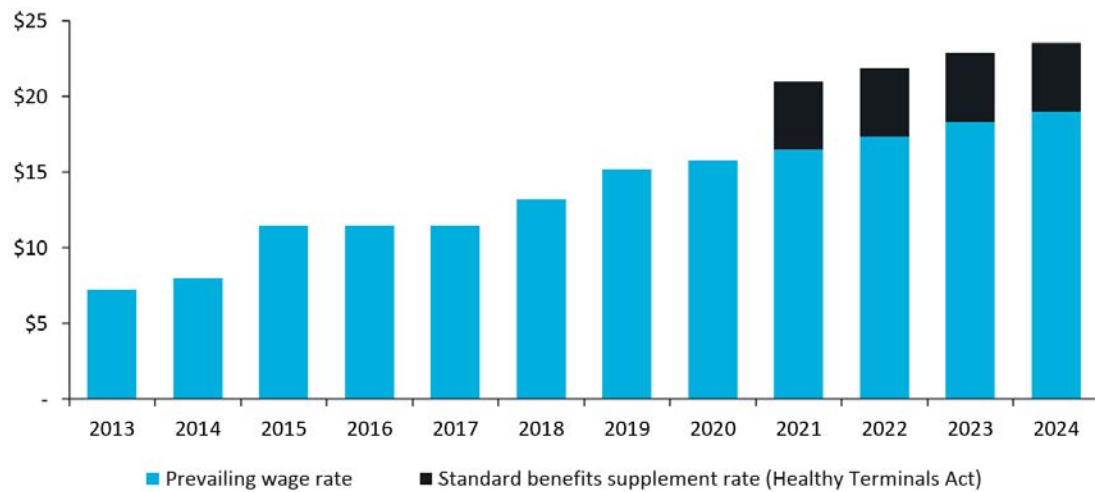
<sup>54</sup> Source: Port Authority Board approves minimum wage increase for airport workers (Press Release No.146)

<sup>55</sup> Source: State of New Jersey, Office of the Governor, Steer analysis

<sup>56</sup> Source: State of New York, Department of Labor, Steer analysis

**Figure 9.19: New York JFK prevailing minimum wage 2013-2024**

Hourly wage (\$ nominal)

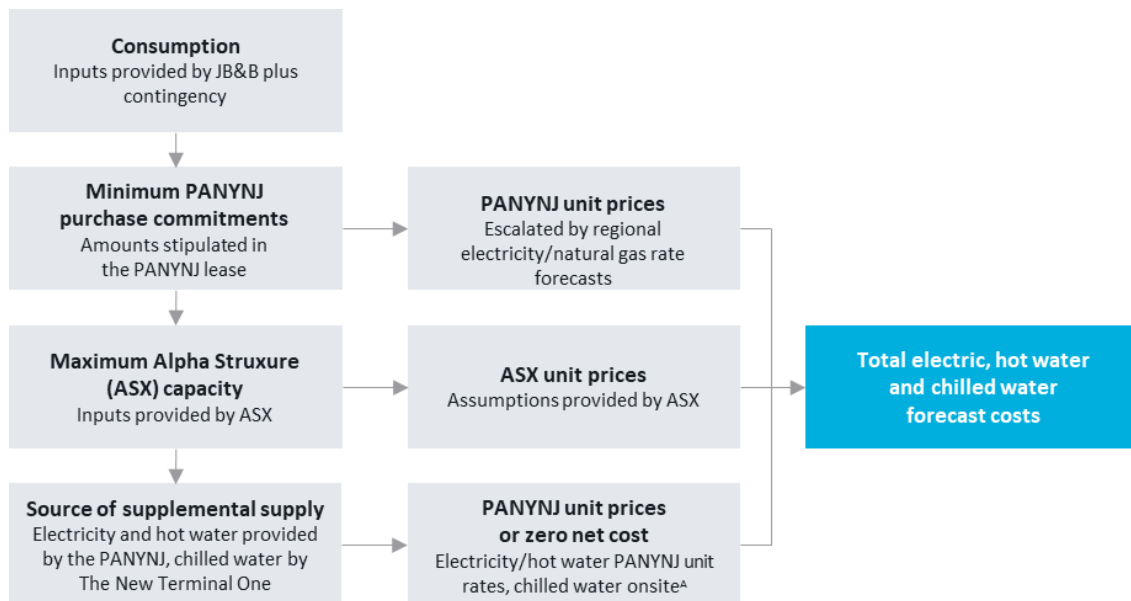


Source: Port Authority of New York and New Jersey *Port Authority Board approves minimum wage increase for airport workers* (Press Release No. 146), State of New Jersey, Office of the Governor, State of New York, Department of Labor, Steer analysis

#### *Utilities Cost Forecasting and the Utilities Indices Driver*

The multi-sourced model is structured as follows and shown in Figure 9.20.

- First, minimum energy commitments are expected to be purchased from the PANYNJ as stipulated in the Lease.
- Then, energy supplied by AlphaStruxure is expected to be consumed up to its maximum capacity.
- Finally, the supplemental supply is purchased either from PANYNJ (electricity and hot water) or generated onsite (only for chilled water).

**Figure 9.20: Energy procurement approach**

<sup>A</sup> Onsite chillers will generate supplemental chilled water at no new net cost – cost of generation already included in total electricity consumption.

Source: Steer analysis

The annual energy costs were estimated assuming a multi-sourced procurement model developed in coordination with Energy-as-a-Service (EaaS) provider AlphaStruxure. The procurement assumptions include the Operator's minimum energy commitments for purchase from the PANYNJ as stipulated in the lease. The business model of EaaS allows AlphaStruxure to price based on a known capital investment, expected usage and required capital return to provide a more stable, slower growing unit cost forecast over time. The AlphaStruxure system will include solar panels and other infrastructure to support renewable energy generation at NTO.

The Operator will have some additional costs associated with the AlphaStruxure system and through the PANYNJ to retain reserve capacity access. Those costs are summarized as:

- Natural gas costs of approximately \$1.6 million in 2026 escalating to over \$1.9 million by 2035, in nominal terms, used to run fuel cells operated by AlphaStruxure.
- A resilience fee of approximately \$0.5 million payable to AlphaStruxure.
- A \$1.9 million annual fee is assumed payable to the PANYNJ for reserve utility capacity.

Should NTO not expand beyond Phase A by 2029, AlphaStruxure's unit costs will increase. Steer's analysis assumes these unit costs increases beginning in 2029.

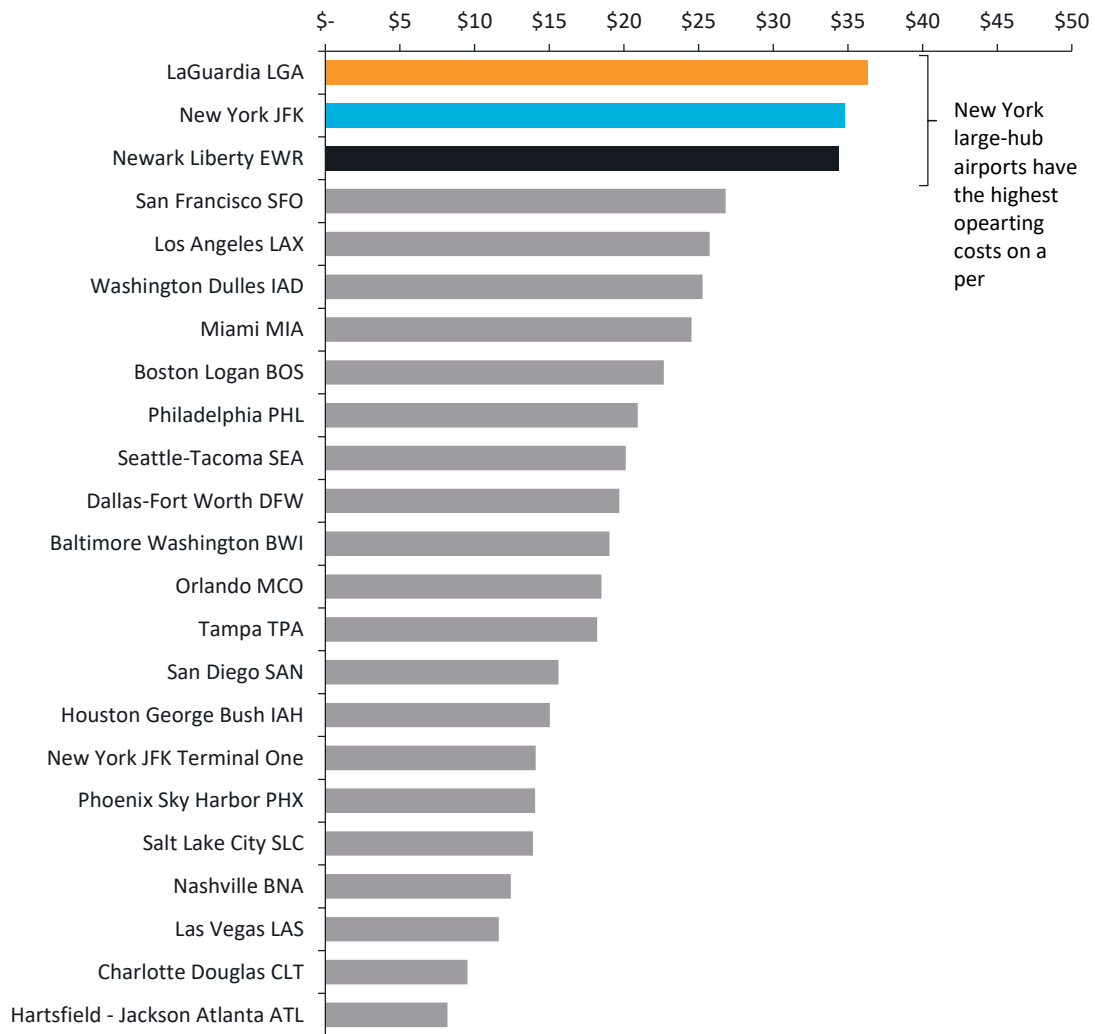
Unit prices were developed independently for energy procured from different channels. Energy procured via the PANYNJ is forecast using the past unit rates at JFK escalated using a blend of the latest available Moody's *Regional Electric/Natural Gas Rate* historical and forecasts and historical and forecasts available from the Energy Information Administration (EIA) between 2019 and 2028. From 2029 onwards, a fixed annual change assumption was used based on the composite Moody's and EIA approach throughout the lease term to reduce volatility in long-term energy forecasts. The PANYNJ (which provides all utilities to the terminals via the Cogen plant) controls the utility infrastructure across the airport and passes costs to terminal operators along with surcharges adequate to support and maintain the infrastructure.

#### 9.1.4 Forecast validation

Figure 9.21 summarizes the costs in 2022 of the U.S. large hub airports. Lease and rental costs at the existing Terminal 1 are both included in the amount shown, as these are typical of airport and terminal operator costs.<sup>57</sup> As illustrated in the figure, costs for the major New York region airports, including JFK, Newark and LaGuardia, have the highest operating costs per enplanement among the U.S. large hub airports, a reflection of the high labor and material costs in the New York region. Thus, only other New York airport terminals are directly comparable to NTO for the purposes of operating cost benchmarking.

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<sup>57</sup> The lease and rental costs are assumed to represent both property costs applicable to the airport as a whole and additionally the costs relating to provision of the airfield, which is not a direct cost of the terminal facility itself.

**Figure 9.21: U.S. large hub operating expenditures benchmarking 2022**Operating costs per enplanement (\$ nominal)<sup>A</sup>

<sup>A</sup> Excludes Minneapolis St. Paul, Fort Lauderdale/Hollywood, Denver International, Chicago Midway and Chicago O'Hare due to lack of FY2022 data.

Source: U.S. Federal Aviation Administration, Steer analysis

According to forecasts through other official bond statements, 2027 nominal operating expenditures on a per square foot basis were estimated at \$77 for LaGuardia while JFK Terminal 4 was \$89. NTO operating expenditures are forecast at \$131 per square foot in 2027; a higher operating expenditure forecasts reflects a more conservative forecast than comparable New York airport terminals.

**Figure 9.22: NTO-New York airport terminal operating cost forecasting benchmarks 2027**

Cost per square foot (\$ nominal)



Source: New York Transportation Development Corporation (Terminal 4 John F. Kennedy International Airport Project) \$1,354,650,000\* Special Facility Revenue Bonds Series 2022 (Tax-Exempt/AMT), \$2,260,380,000 Special Facilities Bonds and Series 2016A (Tax-Exempt) (AMT) (LaGuardia Airport Terminal B Redevelopment Project) \$150,000,000 Special Facilities Bonds, Series 2016B (Taxable) (LaGuardia Airport Terminal B Redevelopment Project), Steer analysis

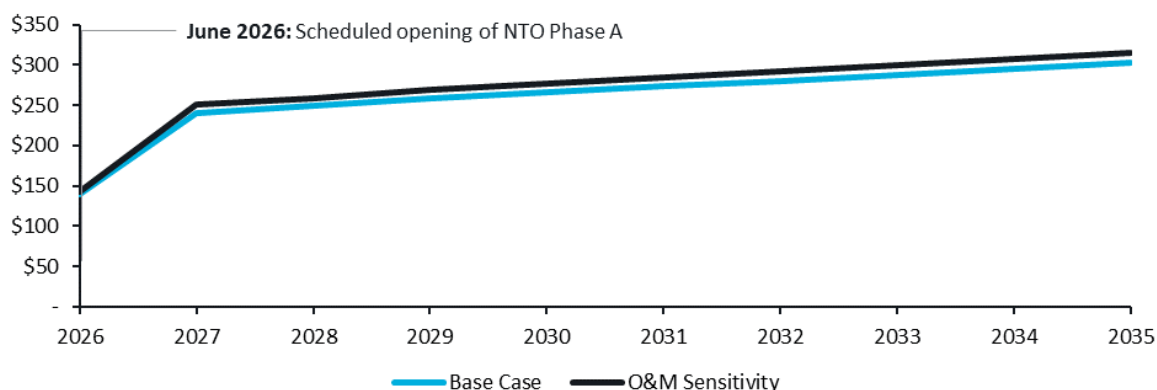
## 9.2 Sensitivity assessment

Steer modeled one O&M downside sensitivity where expenses were increased by 5% compared to the base case. The financial impacts of this sensitivity are discussed later in Chapter 10.

In addition to the Base Case, one O&M Sensitivity Case was tested where expenses were increased by 5% post DBO through 2060 as illustrated in Figure 9.23 and Table 9.3. The financial impact of this is discussed in Chapter 10.

**Figure 9.23: NTO Phase A Base Case and O&M Sensitivity comparison 2026-2035**

Million operating costs (\$ nominal)



Source: Steer forecasts

**Table 9.3: NTO Phase A Base Case and O&M Sensitivity comparison 2026-2035**

Million operating costs (\$ nominal)

Year	NTO Phase A Base Case		O&M Sensitivity	
2026 <sup>A</sup>		\$139		\$143
2027		\$240		\$250
2028		\$249		\$259
2029		\$259		\$269
2030		\$266		\$277
2031		\$273		\$284
2032		\$280		\$292
2033		\$287		\$299
2034		\$295		\$307
2035		\$302		\$315

<sup>A</sup> NTO Phase A is scheduled to open June 2026.

Source: Steer forecasts

## 10 Financial Framework and Forecasts

The Operator's forecast cash flows result in a sustainable financial performance which is expected to provide adequate Total Obligations Coverage and comply with debt service covenants throughout the lease period.

- NTO is forecast to generate most of its revenue from passenger charges paid by common use facility charges. These fees will be supplemented by additional revenues generated via terminal concessions, advertising, lounge and office rentals and various chargebacks.
- The proposed operating approach reflects contractual commitments and adjusts for costs related to improved service levels and efficiencies achieved through scale.
- NTO revenues are forecast to comply with the Total Obligations Coverage Ratio (TOCR) requirements pursuant to the Common Terms Agreement.

This chapter summarizes the forecast financial performance of the Operator with an emphasis on forecast cash flows and coverage of total obligations. In addition to the Base Case Forecast, this Chapter discusses the results of the various traffic, aeronautical revenue and operating expenditure sensitivities as discussed in Chapter 6, Chapter 7 and Chapter 9 respectively.

## 10.1 Financial framework

The Operator has devised a Plan of Finance that fully funds Phase A and aligns with the projected operating forecast to meet its obligations and rate covenants under the lease agreement with the PANYNJ and commitments to project lenders.

### 10.1.1 Lease Overview

The Operator executed a lease agreement with the PANYNJ which provides both physical site parameters of the NTO premises and defines the key commercial and legal interface between the two parties. The lease outlines key provisions which are the responsibility of each party, as is outlined in Section 1.3. NTO will make certain payments to the PANYNJ as noted in Table 10.1.

**Table 10.1: Summary of NTO-PANYNJ rents**

Type of payment	Summary description
<b>Ground rent</b>	<ul style="list-style-type: none"> <li>An amount equal to \$148.3 thousand per acre per annum (\$2018) for NTO's premises at any time during the Project (including construction), adjusted annually at the greater of 4% or one-half of the CPI Percentage Increase.</li> </ul>
<b>First Additional Rent</b>	<ul style="list-style-type: none"> <li>An annual mortgage security fee paid in recognition of all leasehold mortgage(s) the Lessee enters into in relation with the project.</li> </ul>
<b>Second Additional Rent</b>	<ul style="list-style-type: none"> <li>An amount equal to \$62.0 million per annum commencing upon completion of Phase A DBO, escalating at 3% per annum thereafter.</li> <li>Second Additional Rent is subordinate to debt service and is subject to a deferral mechanism, allowing it to be deferred and subordinated to debt service through 2033.</li> </ul>
<b>Third Additional Rent</b>	<ul style="list-style-type: none"> <li>An amount equal to \$56.4 million per annum, escalating at 3% per annum thereafter.</li> <li>Third Additional Rent is subordinate to debt service.</li> </ul>
<b>Internal Rate of Return (IRR) Rent</b>	<ul style="list-style-type: none"> <li>A share of cash available for distribution (CAFD) to the Sponsors in any given quarterly period to the extent Sponsors' IRR exceed thresholds as defined in the Lease.</li> <li>IRR Rent is subordinate to debt service.</li> </ul>
<b>Concessions Revenue Rent</b>	<ul style="list-style-type: none"> <li>A payment equal to the greater of (i) 50% of all gross rents paid or payable from Lessee's concessions sublessees less maintenance, marketing and utility charges and (ii) a minimum annual guaranteed amount (MAG) as defined in the Lease. Concessions Revenue Rent is subject to a deferral mechanism, allowing it to be deferred and subordinated to debt service through 2031.</li> </ul>
<b>Common Use Lounge Share</b>	<ul style="list-style-type: none"> <li>A payment equal to 50% of all revenues generated from the lease of common use lounges.</li> <li>Common Use Lounge Share is subject to a deferral mechanism, allowing it to be deferred and subordinated to debt service through 2031.</li> </ul>
<b>Sublease Fees</b>	<ul style="list-style-type: none"> <li>A payment equal to 10% of the rental payment for any exclusive use space subleases at the New Terminal Facilities.</li> <li>Sublease Fees are subject to a deferral mechanism, allowing it to be deferred and subordinated to debt service through 2031.<sup>A</sup></li> </ul>
<b>PA Cost Reimbursement Amount<sup>B</sup></b>	<ul style="list-style-type: none"> <li>An amount equal to \$139.0 million paid as follows: \$50.0 million paid at Financial Close, \$26.5 million in 2023 (12 equal monthly installments), \$26.5 million in 2024 (12 equal monthly installments) and \$36.1 million in 2025 (12 equal monthly installments).</li> </ul>

<sup>A</sup> Included in definition of Port Authority Priority Payment in the Lease Agreement.

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

Source: JFK NTO LLC

There is also a revenue-sharing agreement equivalent to 50% of the advertising revenue to be shared between the PANYNJ and the Operator. As the PANYNJ owns an airport-wide contract, payment is made from the PANYNJ to the Operator.

### 10.1.2 Plan of finance

The Operator has obtained funding commitments in an amount that is sufficient to fully cover the development costs of Phase A, estimated at approximately \$8.4 billion. As presented in Table 10.2, construction costs account for \$5.71 billion of total project uses, with approximately \$1.09 billion allocated to financing expenses (interest and fees during construction) associated with the execution of the Plan of Finance provided by the Operator. Remaining uses include \$0.58 billion allocated to reserve deposits prior to DBO and \$1.03 billion in closing costs, prefunded costs and fees.

The Operator plans to use its bank facility commitments to fund development costs and subsequently refinance the drawn term loan and delayed draw term loan facilities using long-term debt instruments as follows:

- The Series 2023 Bonds raised \$2.0 billion which was used to repay drawn amounts of the term loan facility and fund the NTO construction account.
- The proceeds of the Series 2024 Bonds would go towards repaying the current drawn amounts of the term loan facility and funding forward capital expenditures and delayed draw term loan facility as per Table 10.4; and
- Future Bond issuances will be used to pay development costs and/or repay the term loan facilities in addition to funding the Debt Service Reserve Account, Operations and Maintenance Reserve Account, Major Maintenance Reserve Account and Ramp Up Reserve Account (Table 10.3 presents current assumptions of future bond issuances).

**Table 10.2: Estimated sources and uses of funds for NTO Phase A**

Millions

Category	Total
<b>Project Sources</b>	
Capital Market Process <sup>A</sup>	\$5,919
Sponsor Equity Contributions	\$2,330
Interest from Construction Cash Fund	\$51
Voluntary Deleveraging from Operating Cash Flows	\$98
<b>Total<sup>B</sup></b>	<b>\$8,398</b>
<b>Project Uses</b>	
Development Capital Expenditure	\$5,713
Construction Related Financing Costs	\$1,085
Closing Costs of Issuance	\$290
Prefunded Costs	\$471
PA Upfront Development Fee	\$139
Sponsors Development Fee	\$125
Reserve Account Funding	\$576
<b>Total<sup>B</sup></b>	<b>\$8,398</b>

<sup>A</sup> Including swap termination proceeds.<sup>B</sup> Numbers may not total due to rounding.

Source: JFK NTO LLC, Steer analysis

**Table 10.3: Assumptions of future bond issuances**

Future Bond Issuances	Par Value (in Millions)	Interest Rate (Weighted Avg. Yield to Maturity)	Swap Termination Proceeds (in Millions)
2025 Bonds	\$1,500.00	4.90%	-
2026 Bonds	\$533.65	4.89%	-
<b>Total</b>	<b>\$2,033.65</b>		

Source: JFK NTO LLC, Steer analysis

As of May 1, 2024, the Operator has a \$252 million drawn balance from the term loan facilities. The Operator expects to use the proceeds of the Series 2024 Bonds to (a) fully refinance the drawn term loan facilities; and (b) fund future project costs.

Table 10.4 refers to the sources and the uses of the Series 2023 Bond proceeds.

**Table 10.4: Sources and uses of Series 2024 Bond proceeds**

\$ Millions

Category	Total
<b>Series 2024 Sources</b>	
Par Amount of Series 2024 Bonds	\$1,500
Swap Proceeds	\$142
<b>Total<sup>A</sup></b>	<b>\$1,642</b>
<b>Series 2024 Uses</b>	
Construction Fund	\$1,122
Repayment of Bank Loans	\$252
Capital Interest	\$253
Underwriters Discount & Cost of Issuance	\$15
<b>Total<sup>A</sup></b>	<b>\$1,642</b>

<sup>A</sup> Numbers may not total due to rounding.

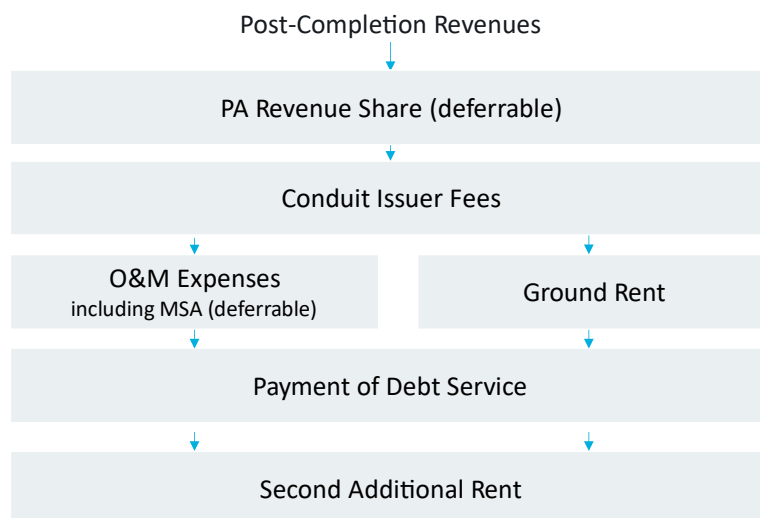
Source: JFK NTO LLC, Steer analysis

### 10.1.3 Post Completion Cash flow waterfall

Figure 10.1 provides the cashflow waterfall from revenue intake at the top of the diagram through debt service payments and then second additional rent, a subordinate Port Authority rent that will begin after Phase A DBO and is included in the TOCR calculation. Post-completion revenues include funding streams such as carrier passenger revenue, concessions rent and advertising.

The revenues are first applied to the Port Authority's Revenue Share, which is deferrable in the case of a concession shortfall until December 2031. Next, funds flow to cover fees due and payable to the conduit issuer, the New York Transportation Development Corporation.

Operations and maintenance expenses as well as ground rent due are payable under the lease following revenue sharing payments to the PANYNJ and fees to the Conduit Issuer. Included in the operations and maintenance expenses are fees related to the Management Services Agreement (MSA) which are deferrable up until 2035. Payments related to senior debt (bond offerings, private placements, etc.) follow the operations and maintenance expense. Should the PA Revenue Share be deferred, it would be payable after debt service up until 2031. Additional PANYNJ obligations sit below second additional rent and are not shown in the waterfall in Figure 10.1.

**Figure 10.1: NTO post-completion cashflow waterfall**

Source: JFK NTO LLC

**10.1.4 Defined Coverage Ratios***Debt Service Coverage Ratio*

Debt Service Coverage Ratio (DSCR) is defined in this document as the ratio of [D] divided by [F] where:

- Total Project Revenues [A]
- Other Sources for Payment of Debt Service [B]
- Total Obligations Senior to Debt Service [C]
- Net Remaining Revenue [D] = [A]+[B]-[C]
- Total Debt Service [F]
- Debt Service Coverage Ratio [G] = [D]/[F]

*Total Obligations Coverage Ratio*

Consistent with the Common Terms Agreement, Total Obligations Coverage Ratio (TOCR) is defined in this document as the ratio of ([D] – [E]) divided by [F], where:

- Net Remaining Revenue [D] = [A]+[B]-[C]
- Total Other TOCR Obligations<sup>58</sup> [E]
- Total Debt Service [F]
- Total Obligation Coverage Ratio [H] = ([D]-[E])/[F]

The following provides the definition provided in the Common Terms Agreement.

<sup>58</sup> The Lease between the Operator and the PANYNJ includes additional obligations specifically excluded from the TOCR calculation including 1<sup>st</sup> and 3<sup>rd</sup> Additional Rents. For further information, please refer to Table 10.1.

## Total Obligations Coverage Ratio

“Total Obligations Coverage Ratio” or “TOCR” means, for any TOCR Calculation Period, the ratio of A divided by B where:

- A = the Free Cash Flow for such TOCR Calculation Period; and
- B = the amount required during such TOCR Calculation Period for the payment of all Debt Service (excluding, for this purpose, any Debt Service paid (or to be paid) from the balance of any Construction Account).

Definition of FCF that is necessary to calculate TOCR:

“Free Cash Flow” means, for any TOCR Calculation Period (without double counting):

- a. all Project Revenues received or projected to be received by the Lessee during such TOCR Calculation Period; plus
- b. except when calculating the Total Obligations Cover Ratio for purposes of the Restricted Payment Conditions, all amounts released to the Post-Completion Revenue Account from any Ramp-Up Account during such TOCR Calculation Period; less
- c. prior to the Deferred Concession Shortfall End Date, all Port Authority Advertising Revenues, and (ii) on and from the Deferred Concession Shortfall End Date, all Port Authority Priority Payments, in each case, which are scheduled to be paid (and for the avoidance of doubt excluding deferred payments thereof) by the Lessee to the Port Authority pursuant to Section 4.02(b)(i) (Post- Completion Revenue Account) during such TOCR Calculation Period; less
- d. on and from the Deferred Management Fee End Date, all amounts which are scheduled under the Management Services Agreement pursuant to Section 4.02(b)(iii) (Post- Completion Revenue Account) during such TOCR Calculation Period; less
- e. on and from the Deferred Second Additional Rental End Date, all Second Additional Rental amounts which are scheduled to be paid (and for the avoidance of doubt excluding deferred payments thereof) by the Lessee to the Port Authority pursuant to Section 4.02(b)(ix) (Post- Completion Revenue Account) during such TOCR Calculation Period; less
- f. all other O&M Expenses (without double counting) and Major Maintenance Expenses (other than Port Authority Priority Payments, amounts payable to the Manager under the Management Services Agreement and Second Additional Rental amounts) paid during such TOCR Calculation Period from Project Revenues, other than (i) O&M Expenses paid from (without double counting) withdrawals from the O&M Reserve Account and the Springing Liquidity Reserve Account, (ii) Major Maintenance Expenses paid from (without double counting) withdrawals from the Major Maintenance Reserve Account and the Handback Reserve Account, and (iii) capital expenditures made from (A) the proceeds of Permitted Refinancing Indebtedness or (B) Insurance and Condemnation Proceeds; less
- g. all amounts (without double counting) deposited into the Major Maintenance Reserve Account, the O&M Reserve Account and the Handback Reserve Account during such TOCR Calculation Period”

Source: JFK NTO LLC

## 10.2 Summary of capital expenditures

Phase A of NTO will be built over a five-year period at an estimated cost of \$5.71 billion.

Total NTO Phase A construction costs is estimated at \$5.71 billion as illustrated in Figure 10.2.

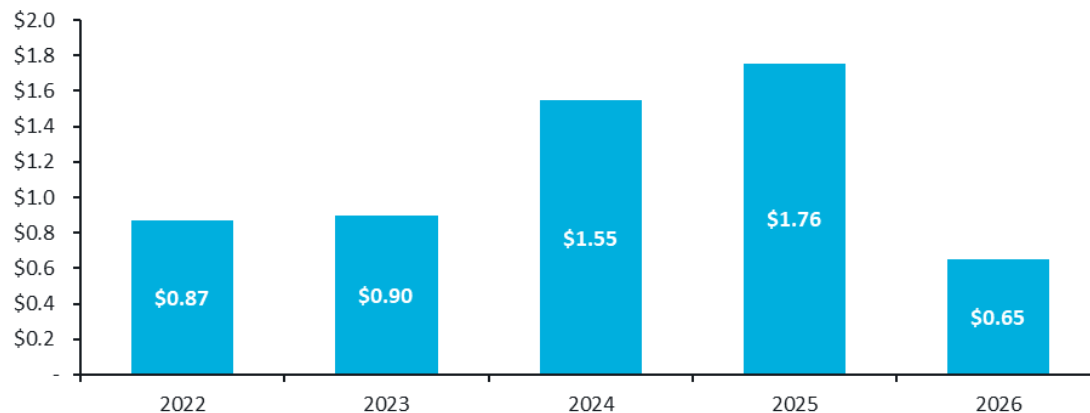
Design and construction of NTO is being undertaken by Tishman Construction Corporation of New York under a Design-Build Contract.

Phase A of the NTO project consists of the design and construction of the new terminal facilities, namely 13 wide-body contact gates and one temporary wide-body gate; the design and construction of Off-Premises Facilities, namely portions of the roadway networks that are for the sole and exclusive benefit of NTO, certain landside utilities and certain temporary and permanent modifications to the AirTrain; reviewal and coordination of D&C work subcontracted to specialty providers, namely system integrators, a baggage handling system, passenger boarding bridges and related apron equipment, Green Garage demolition, scope and cost negotiated with the AirTrain operator and providing all materials, equipment and labor.

Work excluded from the Design Builder's responsibilities include any operations and maintenance work, the design and construction of the AlphaStruxure microgrid and tenant fit out and exclusive airline space.

**Figure 10.2: NTO Phase A capital expenditures**

Billion capital expenditures (\$ nominal)



Source: JFK NTO LLC, Steer analysis

### 10.3 Summary of revenues

Like other JFK terminals, the Operator is expected to collect most of its revenue from charging a common use facility charge, calculated as a cost per enplanement. Other airline charges will supplement this revenue, such as lounge and office space rentals and aircraft parking fees.

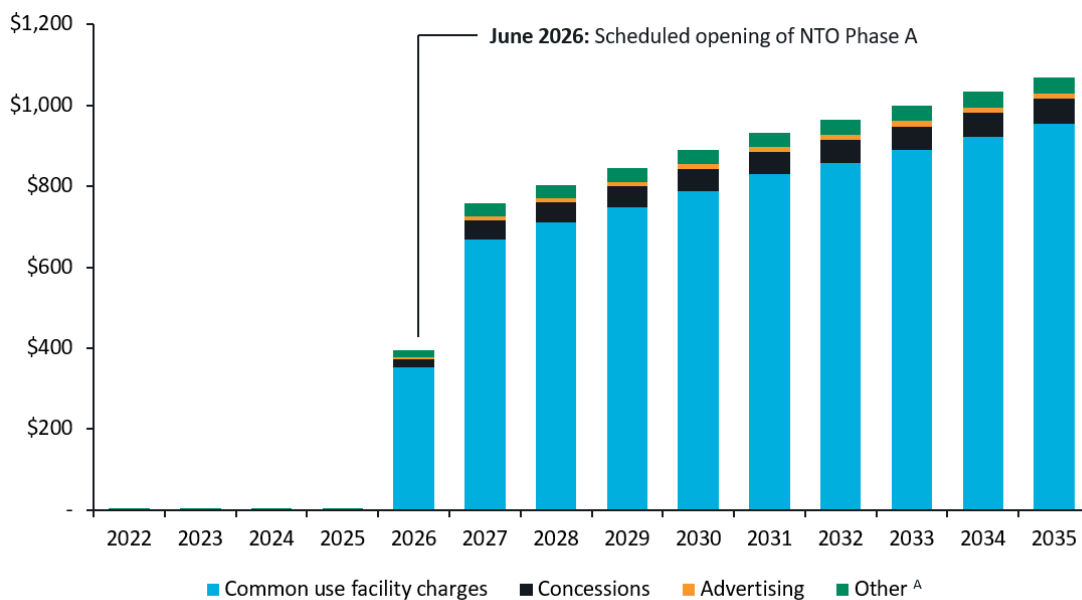
#### 10.3.1 Base Case forecast

As described in Chapter 7, the Operator is expected to generate most of its revenue from passenger charges paid by airline users of the Terminal. A CPE rate has been set based on the proposed project development costs and future operating expenses as well as the expected usage of the Terminal based on the traffic forecast. Enplanement fees are expected to escalate on average at a CPI+1% in 2027 and each subsequent year thereafter. Approximately 90% of total revenues are generated from common use facility charges.

The Operator will generate additional revenues via terminal concessions, as per the agreement with the master concessionaire Unibail-Rodamco-Westfield (URW), and advertising as well as the rental of office and lounge space, rental of aircraft parking positions to Delta Air Lines and various chargebacks for usage costs from concessionaires and airline users (see Chapter 7 and Chapter 8 for detail). A summary of the expected revenue is shown in Figure 10.3.

**Figure 10.3: NTO Phase A Base Case revenue forecast 2022-2035**

Million revenues (\$ nominal)



<sup>A</sup> "Other" includes Hardstand Rent, Exclusive Space Rent and non-aeronautical revenues not shown in the legend  
Source: Steer forecasts

## 10.4 Summary of operating expenditures

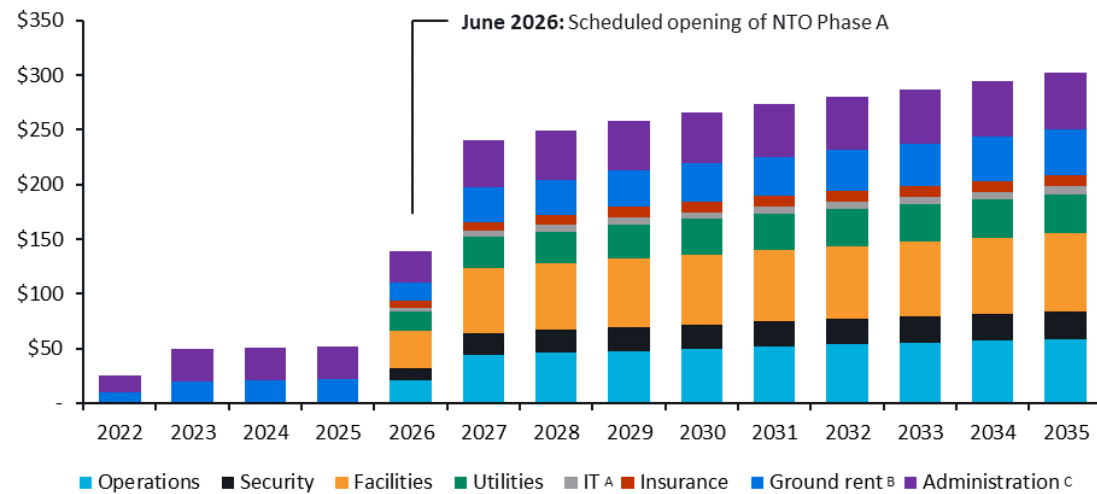
Steer has developed cost forecasts through analysis of historical operating costs at the existing Terminal 1 and other facilities at JFK, scaled up for the size of the NTO operation, combined with detailed projections provided by the Operator and the design build team on specific cost items such as staffing, utilities and maintenance.

### 10.4.1 Base Case forecast

As detailed in Chapter 9, NTO operating expenditures reflect the proposed commercial offering, New York's high-cost environment, sustainability targets and increased focus on customer experience.

**Figure 10.4: NTO Phase A Base Case operating expenditure forecast 2022-2035**

Millions operating costs (\$ nominal)



<sup>A</sup> "IT" stands for Information Technology.

<sup>B</sup> "Ground rent" refers to Ground Rent and First Rent payable to the PANYNJ.

<sup>C</sup> "Administration" includes the following expenses: General & Administration, Labor, Project Delivery, URW Fee and the Management Services Agreement (MSA). For further information, please refer to Section 9.1.1, *Terminal administration*.  
Source: Steer analysis

## 10.5 Annual debt service

Debt service payments for the Series 2023, Series 2024 and future bond issuances are expected to begin in 2026 and no principal payments are assumed until 2037. They are expected to be paid from operating cash flows.

Including existing Series 2023 debt service and debt service related to Series 2024 bonds, NTO will pay \$111.3 million in debt service in 2026, which increases to \$192.8 million by 2035. These figures increase to \$170.4 million and \$294.2 million, respectively, when considering expected debt service of future issuances for Phase A (see Table 10.5).

**Table 10.5: Annual debt service on the Series 2024 Bond and expected future issuances**

Millions (\$ nominal)

Category	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035
Existing Debt Service <sup>A</sup>	63.6	109.1	109.1	109.1	109.1	111.1	111.1	111.1	111.1	111.1
Debt Service – Series 2024	47.7	81.7	81.7	81.7	81.7	81.7	81.7	81.7	81.7	81.7
Expected Debt Service – Future Issuances	59.1	101.4	101.4	101.4	101.4	101.4	101.4	101.4	101.4	101.4
<b>Total Debt Service</b>	<b>170.4</b>	<b>292.2</b>	<b>292.2</b>	<b>292.2</b>	<b>292.2</b>	<b>294.2</b>	<b>294.2</b>	<b>294.2</b>	<b>294.2</b>	<b>294.2</b>

<sup>A</sup> Includes payment of bond insurance premium beginning in 2031.

Source: JFK NTO LLC, Steer analysis

## 10.6 Cash flow and coverage of obligations

The Operator's revenues are forecast to comply with Total Obligations coverage requirements set out in the Common Terms Agreement.

### 10.6.1 Base Case forecast

As detailed in Section 10.3, revenue-generating operations for NTO begin in 2026 for the Base Case, with steady year-over-year growth from 2027 through 2035. Operating expenditures follow a similar pattern except for the minimal expenses for ground rent in the years leading up to the start of operations. Operating expenditures increase substantially in 2026 as operations at NTO begin and then real costs, in 2023 dollars, increase marginally from 2027 through 2035 at a compound annual growth rate of 0.8%.

A Ramp Up Reserve Account serves as additional support to be accessed/released in the years immediately following the Phase A DBO. This reserve account is expected to be capitalized as part of future bond issuances prior to the Phase A DBO to aid liquidity for the first five years of operations and is currently sized at \$400 million.

Table 10.6 summarizes revenues, expenses and TOCRs of the Operator. During the 2026-2035 period, assuming debt issuance in line with the plan of finance, the annual DSCR averages 2.32x, with a low of 2.15x in 2028. Annual TOCR averages 2.00x, with a low of 1.88x in 2027. The coverage ratios as presented assume no cost deferrals.

The coverage ratios calculated are consistent with full execution of the Plan of Finance. Throughout the project development period, Steer has been updating forecasts and monitoring key financial metrics including the DSCR and TOCR. The financial ratios projected in this report reflect Steer's analysis as of May 2024 and incorporate analysis of the latest information available to us.

**Table 10.6: NTO Phase A Base Case revenues, expenses, TOCR and debt service 2026-2055**

Millions (\$ nominal)

Category	2026 <sup>A</sup>	2027	2028	2029	2030	2031	2032	2033	2034	2035	2040	2045	2050	2055
<b>Project Revenues</b>														
Aeronautical Revenue	365.7	694.6	735.6	774.7	816.0	856.7	887.0	918.4	950.9	984.6	1,173.1	1,421.9	1,694.2	2,000.7
Non-Aeronautical Revenue <sup>B</sup>	63.7	122.1	128.2	133.9	140.0	145.8	149.7	153.8	158.0	162.3	185.7	212.7	243.7	276.4
Interest Earnings	12.4	11.2	9.0	7.5	6.6	6.2	6.0	5.7	5.8	6.8	7.0	8.6	12.7	15.1
<b>Total Project Revenues [A]</b>	<b>441.9</b>	<b>827.9</b>	<b>872.8</b>	<b>916.2</b>	<b>962.6</b>	<b>1,008.7</b>	<b>1,042.8</b>	<b>1,077.9</b>	<b>1,114.7</b>	<b>1,153.7</b>	<b>1,365.9</b>	<b>1,643.3</b>	<b>1,950.6</b>	<b>2,292.1</b>
<b>Other Sources for Payment of Debt Service</b>														
Ramp-up Reserve Account Release	115.0	110.0	70.0	50.0	40.0	15.0	-	-	-	-	-	-	-	-
<b>Other Sources for Payment of Debt Service [B]</b>	<b>115.0</b>	<b>110.0</b>	<b>70.0</b>	<b>50.0</b>	<b>40.0</b>	<b>15.0</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Obligations Senior to Debt Service</b>														
Conduit Issuer Fee	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
Permitted O&M Expenses and Ground Rent	132.8	230.9	239.2	248.8	255.9	263.1	270.0	277.0	284.3	291.7	331.7	377.9	431.0	491.4
Management Services Agreement Fee <sup>C</sup>	3.1	6.3	6.5	6.6	6.7	6.9	7.0	7.2	7.3	7.5	-	-	-	-
PA Priority Payments <sup>C</sup>	31.8	60.2	63.1	65.9	68.8	71.6	73.5	75.5	77.6	79.7	91.2	104.4	119.5	135.5
<b>Total Obligations Senior to Debt Service [C]</b>	<b>168.1</b>	<b>297.8</b>	<b>309.2</b>	<b>321.7</b>	<b>331.9</b>	<b>342.1</b>	<b>351.0</b>	<b>360.2</b>	<b>369.7</b>	<b>379.3</b>	<b>423.3</b>	<b>482.7</b>	<b>551.0</b>	<b>627.4</b>
<b>Net Remaining Revenue [D] = [A]+[B]-[C]</b>	<b>388.8</b>	<b>640.1</b>	<b>633.6</b>	<b>644.4</b>	<b>670.7</b>	<b>681.6</b>	<b>691.7</b>	<b>717.7</b>	<b>745.0</b>	<b>774.4</b>	<b>942.6</b>	<b>1,160.6</b>	<b>1,399.6</b>	<b>1,664.8</b>
<b>Other TOCR Obligations</b>														
Second Additional Rent <sup>C</sup>	31.0	63.8	65.7	67.7	69.7	71.8	74.0	76.2	78.5	80.8	93.7	108.6	125.9	146.0
Major Maintenance	-	-	-	-	-	18.1	18.5	-	4.3	4.4	-	-	34.3	139.0
Reserve Account Deposits (O&M & Major Maintenance)	30.0	20.7	1.8	7.9	13.7	13.8	1.4	1.4	26.3	48.8	42.4	86.6	2.1	191.5
<b>Total Other TOCR Obligations [E]</b>	<b>61.0</b>	<b>84.5</b>	<b>67.5</b>	<b>75.6</b>	<b>83.4</b>	<b>103.7</b>	<b>93.9</b>	<b>77.6</b>	<b>109.0</b>	<b>134.0</b>	<b>136.1</b>	<b>195.2</b>	<b>162.4</b>	<b>476.5</b>
<b>Debt Service</b>														
Existing Debt Service <sup>D</sup>	63.6	109.1	109.1	109.1	109.1	111.1	111.1	111.1	111.1	111.1	118.3	137.0	193.2	163.2
Debt Service – Series 2024	47.7	81.7	81.7	81.7	81.7	81.7	81.7	81.7	81.7	81.7	89.0	102.2	142.9	124.4
Expected Debt Service – Future Issuances	59.1	101.4	101.4	101.4	101.4	101.4	101.4	101.4	101.4	101.4	113.8	132.1	184.7	160.8
Facility Commitment/Letter of Credit Fees	2.3	3.2	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6
<b>Total Debt Service [F]</b>	<b>172.7</b>	<b>295.3</b>	<b>294.7</b>	<b>294.7</b>	<b>294.7</b>	<b>296.7</b>	<b>296.7</b>	<b>296.7</b>	<b>296.7</b>	<b>296.7</b>	<b>323.6</b>	<b>373.9</b>	<b>523.3</b>	<b>451.0</b>
<b>Total Obligation Coverage Ratio [H] = ([D]-[E])/[F]</b>	<b>2.25x</b>	<b>2.17x</b>	<b>2.15x</b>	<b>2.19x</b>	<b>2.28x</b>	<b>2.30x</b>	<b>2.33x</b>	<b>2.42x</b>	<b>2.51x</b>	<b>2.61x</b>	<b>2.91x</b>	<b>3.10x</b>	<b>2.67x</b>	<b>3.69x</b>
<b>Total Debt Service [F]</b>	<b>1.90x</b>	<b>1.88x</b>	<b>1.92x</b>	<b>1.93x</b>	<b>1.99x</b>	<b>1.95x</b>	<b>2.01x</b>	<b>2.16x</b>	<b>2.14x</b>	<b>2.16x</b>	<b>2.49x</b>	<b>2.58x</b>	<b>2.36x</b>	<b>2.64x</b>

<sup>A</sup> Reflects partial year data beginning from the assumed Date of Beneficial Occupancy (DBO) of May 2026.<sup>B</sup> Prior to revenue share with the PANYNJ (included in PA Priority Payments).<sup>C</sup> Obligations subject to deferral mechanisms as Described in Section 10.1.1 and Section 10.1.3.<sup>D</sup> Includes payment of bond insurance premium beginning in 2031.

Source: JFK NTO LLC, Steer analysis

### 10.6.2 Sensitivities

In addition to the Base Case, the four sensitivities listed in Table 10.7 were analyzed to test the financial performance of the Operator under varying conditions.

**Table 10.7: Summary sensitivities**

Sensitivity type	Name	Summary impact (relative to Base Case)
Traffic	Traffic Sensitivity	5% reduction in NTO enplanements
Aeronautical Revenue (CPE)	CPE Downside	5% reduction in starting CPE
	CPE Upside	5% increase in starting CPE
Operating Expenditure	O&M Sensitivity	5% increase on O&M expenses

Source: Steer analysis

Table 10.8, Table 10.9, Table 10.10 and Table 10.11 present the debt and total obligations coverages for the four aforementioned sensitivities (in order).

**Table 10.8: NTO Phase A Traffic Sensitivity Case revenues, expenses, TOCR and debt service 2026-2055**

Millions (\$ nominal)

Category	2026 <sup>A</sup>	2027	2028	2029	2030	2031	2032	2033	2034	2035	2040	2045	2050	2055
<b>Project Revenues</b>														
Aeronautical Revenue	348.1	661.1	700.1	737.3	776.6	815.3	844.1	874.0	904.9	936.9	1,116.2	1,352.8	1,611.7	1,903.2
Non-Aeronautical Revenue <sup>B</sup>	60.6	116.1	121.9	127.3	133.1	138.6	142.4	146.2	150.2	154.3	176.6	202.3	231.8	262.8
Interest Earnings	12.4	11.2	9.0	7.5	6.6	6.2	6.0	5.7	5.8	6.8	7.0	8.6	12.7	15.1
<b>Total Project Revenues [A]</b>	<b>421.2</b>	<b>788.4</b>	<b>831.0</b>	<b>872.2</b>	<b>916.2</b>	<b>960.0</b>	<b>992.5</b>	<b>1,025.9</b>	<b>1,060.9</b>	<b>1,098.0</b>	<b>1,299.9</b>	<b>1,563.7</b>	<b>1,856.2</b>	<b>2,181.1</b>
<b>Other Sources for Payment of Debt Service</b>														
Ramp-up Reserve Account Release	115.0	110.0	70.0	50.0	40.0	15.0	-	-	-	-	-	-	-	-
<b>Other Sources for Payment of Debt Service [B]</b>	<b>115.0</b>	<b>110.0</b>	<b>70.0</b>	<b>50.0</b>	<b>40.0</b>	<b>15.0</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Obligations Senior to Debt Service</b>														
Conduit Issuer Fee	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
Permitted O&M Expenses and Ground Rent	131.8	229.1	237.4	246.9	253.9	261.0	267.8	274.8	282.1	289.3	329.0	374.7	427.4	487.2
Management Services Agreement Fee <sup>C</sup>	3.1	6.3	6.5	6.6	6.7	6.9	7.0	7.2	7.3	7.5	-	-	-	-
PA Priority Payments <sup>C</sup>	31.8	60.2	63.1	65.9	68.8	71.6	73.5	75.5	77.6	79.7	91.2	104.4	119.5	135.5
<b>Total Obligations Senior to Debt Service [C]</b>	<b>167.2</b>	<b>296.1</b>	<b>307.4</b>	<b>319.8</b>	<b>329.9</b>	<b>340.0</b>	<b>348.9</b>	<b>358.0</b>	<b>367.4</b>	<b>377.0</b>	<b>420.6</b>	<b>479.6</b>	<b>547.4</b>	<b>623.2</b>
<b>Net Remaining Revenue [D] = [A]+[B]-[C]</b>	<b>369.0</b>	<b>602.3</b>	<b>593.6</b>	<b>602.3</b>	<b>626.4</b>	<b>635.1</b>	<b>643.6</b>	<b>667.9</b>	<b>693.5</b>	<b>721.0</b>	<b>879.3</b>	<b>1,084.2</b>	<b>1,308.8</b>	<b>1,558.0</b>
<b>Other TOCR Obligations</b>														
Second Additional Rent <sup>C</sup>	31.0	63.8	65.7	67.7	69.7	71.8	74.0	76.2	78.5	80.8	93.7	108.6	125.9	146.0
Major Maintenance	-	-	-	-	-	18.1	18.5	-	4.3	4.4	-	-	34.3	139.0
Reserve Account Deposits (O&M & Major Maintenance)	30.0	20.7	1.8	7.9	13.7	13.8	1.4	1.4	26.3	48.8	42.4	86.6	2.1	191.5
<b>Total Other TOCR Obligations [E]</b>	<b>61.0</b>	<b>84.5</b>	<b>67.5</b>	<b>75.6</b>	<b>83.4</b>	<b>103.7</b>	<b>93.9</b>	<b>77.6</b>	<b>109.0</b>	<b>134.0</b>	<b>136.1</b>	<b>195.2</b>	<b>162.4</b>	<b>476.5</b>
<b>Debt Service</b>														
Existing Debt Service <sup>D</sup>	63.6	109.1	109.1	109.1	109.1	111.1	111.1	111.1	111.1	111.1	118.3	137.0	193.2	163.2
Debt Service – Series 2024	47.7	81.7	81.7	81.7	81.7	81.7	81.7	81.7	81.7	81.7	89.0	102.2	142.9	124.4
Expected Debt Service – Future Issuances	59.1	101.4	101.4	101.4	101.4	101.4	101.4	101.4	101.4	101.4	113.8	132.1	184.7	160.8
Facility Commitment/Letter of Credit Fees	2.3	3.2	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6
<b>Total Debt Service [F]</b>	<b>172.7</b>	<b>295.3</b>	<b>294.7</b>	<b>294.7</b>	<b>294.7</b>	<b>296.7</b>	<b>296.7</b>	<b>296.7</b>	<b>296.7</b>	<b>296.7</b>	<b>323.6</b>	<b>373.9</b>	<b>523.3</b>	<b>451.0</b>
<b>Total Obligation Coverage Ratio [H] = ([D]-[E])/[F]</b>	<b>2.14x</b>	<b>2.04x</b>	<b>2.01x</b>	<b>2.04x</b>	<b>2.13x</b>	<b>2.14x</b>	<b>2.17x</b>	<b>2.25x</b>	<b>2.34x</b>	<b>2.43x</b>	<b>2.72x</b>	<b>2.90x</b>	<b>2.50x</b>	<b>3.45x</b>
<b>Total Debt Service [F]</b>	<b>1.78x</b>	<b>1.75x</b>	<b>1.78x</b>	<b>1.79x</b>	<b>1.84x</b>	<b>1.79x</b>	<b>1.85x</b>	<b>1.99x</b>	<b>1.97x</b>	<b>1.98x</b>	<b>2.30x</b>	<b>2.38x</b>	<b>2.19x</b>	<b>2.40x</b>

<sup>A</sup> Reflects partial year data beginning from the assumed Date of Beneficial Occupancy (DBO) of May 2026.<sup>B</sup> Prior to revenue share with the PANYNJ (included in PA Priority Payments).<sup>C</sup> Obligations subject to deferral mechanisms as Described in Section 10.1.1 and Section 10.1.3<sup>D</sup> Includes payment of bond insurance premium beginning in 2031.

Source: JFK NTO LLC, Steer analysis

**Table 10.9: NTO Phase A CPE Downside Sensitivity Case revenues, expenses, TOCR and debt service 2026-2055**

Millions (\$ nominal)

Category	2026 <sup>A</sup>	2027	2028	2029	2030	2031	2032	2033	2034	2035	2040	2045	2050	2055
<b>Project Revenues</b>														
Aeronautical Revenue	353.4	669.5	709.0	746.7	786.5	825.7	854.9	885.1	916.4	948.8	1,126.5	1,354.0	1,613.1	1,903.2
Non-Aeronautical Revenue <sup>B</sup>	63.7	122.1	128.2	133.9	140.0	145.8	149.7	153.8	158.0	162.3	185.7	212.7	243.7	276.4
Interest Earnings	12.4	11.2	9.0	7.5	6.6	6.2	6.0	5.7	5.8	6.8	7.0	8.6	12.7	15.1
<b>Total Project Revenues [A]</b>	<b>429.6</b>	<b>802.9</b>	<b>846.2</b>	<b>888.1</b>	<b>933.0</b>	<b>977.6</b>	<b>1,010.6</b>	<b>1,044.6</b>	<b>1,080.3</b>	<b>1,118.0</b>	<b>1,319.3</b>	<b>1,575.3</b>	<b>1,869.5</b>	<b>2,194.7</b>
<b>Other Sources for Payment of Debt Service</b>														
Ramp-up Reserve Account Release	115.0	110.0	70.0	50.0	40.0	15.0	-	-	-	-	-	-	-	-
<b>Other Sources for Payment of Debt Service [B]</b>	<b>115.0</b>	<b>110.0</b>	<b>70.0</b>	<b>50.0</b>	<b>40.0</b>	<b>15.0</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Obligations Senior to Debt Service</b>														
Conduit Issuer Fee	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
Permitted O&M Expenses and Ground Rent	132.8	230.9	239.2	248.8	255.9	263.1	270.0	277.0	284.3	291.7	331.7	377.9	431.0	491.4
Management Services Agreement Fee <sup>C</sup>	3.1	6.3	6.5	6.6	6.7	6.9	7.0	7.2	7.3	7.5	-	-	-	-
PA Priority Payments <sup>C</sup>	31.8	60.2	63.1	65.9	68.8	71.6	73.5	75.5	77.6	79.7	91.2	104.4	119.5	135.5
<b>Total Obligations Senior to Debt Service [C]</b>	<b>168.1</b>	<b>297.8</b>	<b>309.2</b>	<b>321.7</b>	<b>331.9</b>	<b>342.1</b>	<b>351.0</b>	<b>360.2</b>	<b>369.7</b>	<b>379.3</b>	<b>423.3</b>	<b>482.7</b>	<b>551.0</b>	<b>627.4</b>
<b>Net Remaining Revenue [D] = [A]+[B]-[C]</b>	<b>376.5</b>	<b>615.1</b>	<b>607.0</b>	<b>616.4</b>	<b>641.2</b>	<b>650.6</b>	<b>659.6</b>	<b>684.4</b>	<b>710.6</b>	<b>738.7</b>	<b>896.0</b>	<b>1,092.6</b>	<b>1,318.5</b>	<b>1,567.3</b>
<b>Other TOCR Obligations</b>														
Second Additional Rent <sup>C</sup>	31.0	63.8	65.7	67.7	69.7	71.8	74.0	76.2	78.5	80.8	93.7	108.6	125.9	146.0
Major Maintenance	-	-	-	-	-	18.1	18.5	-	4.3	4.4	-	-	34.3	139.0
Reserve Account Deposits (O&M & Major Maintenance)	30.0	20.7	1.8	7.9	13.7	13.8	1.4	1.4	26.3	48.8	42.4	86.6	2.1	191.5
<b>Total Other TOCR Obligations [E]</b>	<b>61.0</b>	<b>84.5</b>	<b>67.5</b>	<b>75.6</b>	<b>83.4</b>	<b>103.7</b>	<b>93.9</b>	<b>77.6</b>	<b>109.0</b>	<b>134.0</b>	<b>136.1</b>	<b>195.2</b>	<b>162.4</b>	<b>476.5</b>
<b>Debt Service</b>														
Existing Debt Service <sup>D</sup>	63.6	109.1	109.1	109.1	109.1	111.1	111.1	111.1	111.1	111.1	118.3	137.0	193.2	163.2
Debt Service – Series 2024	47.7	81.7	81.7	81.7	81.7	81.7	81.7	81.7	81.7	81.7	89.0	102.2	142.9	124.4
Expected Debt Service – Future Issuances	59.1	101.4	101.4	101.4	101.4	101.4	101.4	101.4	101.4	101.4	113.8	132.1	184.7	160.8
Facility Commitment/Letter of Credit Fees	2.3	3.2	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6
<b>Total Debt Service [F]</b>	<b>172.7</b>	<b>295.3</b>	<b>294.7</b>	<b>294.7</b>	<b>294.7</b>	<b>296.7</b>	<b>296.7</b>	<b>296.7</b>	<b>296.7</b>	<b>296.7</b>	<b>323.6</b>	<b>373.9</b>	<b>523.3</b>	<b>451.0</b>
<b>Total Obligation Coverage Ratio [H] = ([D]-[E])/[F]</b>	<b>2.18x</b>	<b>2.08x</b>	<b>2.06x</b>	<b>2.09x</b>	<b>2.18x</b>	<b>2.19x</b>	<b>2.22x</b>	<b>2.31x</b>	<b>2.39x</b>	<b>2.49x</b>	<b>2.77x</b>	<b>2.92x</b>	<b>2.52x</b>	<b>3.48x</b>
<b>Total Debt Service [F]</b>	<b>1.83x</b>	<b>1.80x</b>	<b>1.83x</b>	<b>1.83x</b>	<b>1.89x</b>	<b>1.84x</b>	<b>1.91x</b>	<b>2.05x</b>	<b>2.03x</b>	<b>2.04x</b>	<b>2.35x</b>	<b>2.40x</b>	<b>2.21x</b>	<b>2.42x</b>

<sup>A</sup> Reflects partial year data beginning from the assumed Date of Beneficial Occupancy (DBO) of May 2026.<sup>B</sup> Prior to revenue share with the PANYNJ (included in PA Priority Payments).<sup>C</sup> Obligations subject to deferral mechanisms as Described in Section 10.1.1 and Section 10.1.3<sup>D</sup> Includes payment of bond insurance premium beginning in 2031.

Source: JFK NTO LLC, Steer analysis

**Table 10.10: NTO Phase A CPE Upside Sensitivity Case revenues, expenses, TOCR and debt service 2026-2055**

Millions (\$ nominal)

Category	2026 <sup>A</sup>	2027	2028	2029	2030	2031	2032	2033	2034	2035	2040	2045	2050	2055
<b>Project Revenues</b>														
Aeronautical Revenue	378.0	719.6	762.2	802.8	845.6	887.8	919.2	951.7	985.4	1,020.3	1,219.8	1,489.9	1,775.3	2,098.1
Non-Aeronautical Revenue <sup>B</sup>	63.7	122.1	128.2	133.9	140.0	145.8	149.7	153.8	158.0	162.3	185.7	212.7	243.7	276.4
Interest Earnings	12.4	11.2	9.0	7.5	6.6	6.2	6.0	5.7	5.8	6.8	7.0	8.6	12.7	15.1
<b>Total Project Revenues [A]</b>	<b>454.2</b>	<b>852.9</b>	<b>899.4</b>	<b>944.2</b>	<b>992.1</b>	<b>1,039.7</b>	<b>1,074.9</b>	<b>1,111.2</b>	<b>1,149.2</b>	<b>1,189.4</b>	<b>1,412.6</b>	<b>1,711.3</b>	<b>2,031.7</b>	<b>2,389.6</b>
<b>Other Sources for Payment of Debt Service</b>														
Ramp-up Reserve Account Release	115.0	110.0	70.0	50.0	40.0	15.0	-	-	-	-	-	-	-	-
<b>Other Sources for Payment of Debt Service [B]</b>	<b>115.0</b>	<b>110.0</b>	<b>70.0</b>	<b>50.0</b>	<b>40.0</b>	<b>15.0</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Obligations Senior to Debt Service</b>														
Conduit Issuer Fee	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
Permitted O&M Expenses and Ground Rent	132.8	230.9	239.2	248.8	255.9	263.1	270.0	277.0	284.3	291.7	331.7	377.9	431.0	491.4
Management Services Agreement Fee <sup>C</sup>	3.1	6.3	6.5	6.6	6.7	6.9	7.0	7.2	7.3	7.5	-	-	-	-
PA Priority Payments <sup>C</sup>	31.8	60.2	63.1	65.9	68.8	71.6	73.5	75.5	77.6	79.7	91.2	104.4	119.5	135.5
<b>Total Obligations Senior to Debt Service [C]</b>	<b>168.1</b>	<b>297.8</b>	<b>309.2</b>	<b>321.7</b>	<b>331.9</b>	<b>342.1</b>	<b>351.0</b>	<b>360.2</b>	<b>369.7</b>	<b>379.3</b>	<b>423.3</b>	<b>482.7</b>	<b>551.0</b>	<b>627.4</b>
<b>Net Remaining Revenue [D] = [A]+[B]-[C]</b>	<b>401.1</b>	<b>665.1</b>	<b>660.2</b>	<b>672.5</b>	<b>700.3</b>	<b>712.6</b>	<b>723.9</b>	<b>751.0</b>	<b>779.5</b>	<b>810.1</b>	<b>989.2</b>	<b>1,228.6</b>	<b>1,480.7</b>	<b>1,762.2</b>
<b>Other TOCR Obligations</b>														
Second Additional Rent <sup>C</sup>	31.0	63.8	65.7	67.7	69.7	71.8	74.0	76.2	78.5	80.8	93.7	108.6	125.9	146.0
Major Maintenance	-	-	-	-	-	18.1	18.5	-	4.3	4.4	-	-	34.3	139.0
Reserve Account Deposits (O&M & Major Maintenance)	30.0	20.7	1.8	7.9	13.7	13.8	1.4	1.4	26.3	48.8	42.4	86.6	2.1	191.5
<b>Total Other TOCR Obligations [E]</b>	<b>61.0</b>	<b>84.5</b>	<b>67.5</b>	<b>75.6</b>	<b>83.4</b>	<b>103.7</b>	<b>93.9</b>	<b>77.6</b>	<b>109.0</b>	<b>134.0</b>	<b>136.1</b>	<b>195.2</b>	<b>162.4</b>	<b>476.5</b>
<b>Debt Service</b>														
Existing Debt Service <sup>D</sup>	63.6	109.1	109.1	109.1	109.1	111.1	111.1	111.1	111.1	111.1	118.3	137.0	193.2	163.2
Debt Service – Series 2024	47.7	81.7	81.7	81.7	81.7	81.7	81.7	81.7	81.7	81.7	89.0	102.2	142.9	124.4
Expected Debt Service – Future Issuances	59.1	101.4	101.4	101.4	101.4	101.4	101.4	101.4	101.4	101.4	113.8	132.1	184.7	160.8
Facility Commitment/Letter of Credit Fees	2.3	3.2	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6
<b>Total Debt Service [F]</b>	<b>172.7</b>	<b>295.3</b>	<b>294.7</b>	<b>294.7</b>	<b>294.7</b>	<b>296.7</b>	<b>296.7</b>	<b>296.7</b>	<b>296.7</b>	<b>296.7</b>	<b>323.6</b>	<b>373.9</b>	<b>523.3</b>	<b>451.0</b>
<b>Total Obligation Coverage Ratio [H] = ([D]-[E])/[F]</b>	<b>2.32x</b>	<b>2.25x</b>	<b>2.24x</b>	<b>2.28x</b>	<b>2.38x</b>	<b>2.40x</b>	<b>2.44x</b>	<b>2.53x</b>	<b>2.63x</b>	<b>2.73x</b>	<b>3.06x</b>	<b>3.29x</b>	<b>2.83x</b>	<b>3.91x</b>
<b>Total Debt Service [F]</b>	<b>1.97x</b>	<b>1.97x</b>	<b>2.01x</b>	<b>2.03x</b>	<b>2.09x</b>	<b>2.05x</b>	<b>2.12x</b>	<b>2.27x</b>	<b>2.26x</b>	<b>2.28x</b>	<b>2.64x</b>	<b>2.76x</b>	<b>2.52x</b>	<b>2.85x</b>

<sup>A</sup> Reflects partial year data beginning from the assumed Date of Beneficial Occupancy (DBO) of May 2026.<sup>B</sup> Prior to revenue share with the PANYNJ (included in PA Priority Payments).<sup>C</sup> Obligations subject to deferral mechanisms as Described in Section 10.1.1 and Section 10.1.3.<sup>D</sup> Includes payment of bond insurance premium beginning in 2031.

Source: JFK NTO LLC, Steer analysis

**Table 10.11: NTO Phase A O&M Sensitivity Case revenues, expenses, TOCR and debt service 2026-2055**

Millions (\$ nominal)

Category	2026 <sup>A</sup>	2027	2028	2029	2030	2031	2032	2033	2034	2035	2040	2045	2050	2055
<b>Project Revenues</b>														
Aeronautical Revenue	365.7	694.6	735.6	774.7	816.0	856.7	887.0	918.4	950.9	984.6	1,173.1	1,421.9	1,694.2	2,000.7
Non-Aeronautical Revenue <sup>B</sup>	63.7	122.1	128.2	133.9	140.0	145.8	149.7	153.8	158.0	162.3	185.7	212.7	243.7	276.4
Interest Earnings	12.4	11.2	9.0	7.5	6.6	6.2	6.0	5.7	5.8	6.8	7.0	8.6	12.7	15.1
<b>Total Project Revenues [A]</b>	<b>441.9</b>	<b>827.9</b>	<b>872.8</b>	<b>916.2</b>	<b>962.6</b>	<b>1,008.7</b>	<b>1,042.8</b>	<b>1,077.9</b>	<b>1,114.7</b>	<b>1,153.7</b>	<b>1,365.9</b>	<b>1,643.3</b>	<b>1,950.6</b>	<b>2,292.1</b>
<b>Other Sources for Payment of Debt Service</b>														
Ramp-up Reserve Account Release	115.0	110.0	70.0	50.0	40.0	15.0	-	-	-	-	-	-	-	-
<b>Other Sources for Payment of Debt Service [B]</b>	<b>115.0</b>	<b>110.0</b>	<b>70.0</b>	<b>50.0</b>	<b>40.0</b>	<b>15.0</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Obligations Senior to Debt Service</b>														
Conduit Issuer Fee	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
Permitted O&M Expenses and Ground Rent	135.4	240.7	249.4	259.4	266.8	274.3	281.5	288.8	296.4	304.0	345.6	393.6	448.7	511.3
Management Services Agreement Fee <sup>C</sup>	3.1	6.3	6.5	6.6	6.7	6.9	7.0	7.2	7.3	7.5	-	-	-	-
PA Priority Payments <sup>C</sup>	31.8	60.2	63.1	65.9	68.8	71.6	73.5	75.5	77.6	79.7	91.2	104.4	119.5	135.5
<b>Total Obligations Senior to Debt Service [C]</b>	<b>170.8</b>	<b>307.7</b>	<b>319.4</b>	<b>332.4</b>	<b>342.8</b>	<b>353.3</b>	<b>362.5</b>	<b>372.0</b>	<b>381.7</b>	<b>391.7</b>	<b>437.2</b>	<b>498.4</b>	<b>568.7</b>	<b>647.3</b>
<b>Net Remaining Revenue [D] = [A]+[B]-[C]</b>	<b>386.1</b>	<b>630.2</b>	<b>623.4</b>	<b>633.8</b>	<b>659.8</b>	<b>670.4</b>	<b>680.2</b>	<b>705.9</b>	<b>733.0</b>	<b>762.0</b>	<b>928.7</b>	<b>1,144.9</b>	<b>1,381.9</b>	<b>1,644.9</b>
<b>Other TOCR Obligations</b>														
Second Additional Rent <sup>C</sup>	31.0	63.8	65.7	67.7	69.7	71.8	74.0	76.2	78.5	80.8	93.7	108.6	125.9	146.0
Major Maintenance	-	-	-	-	-	18.1	18.5	-	4.3	4.4	-	-	34.3	139.0
Reserve Account Deposits (O&M & Major Maintenance)	30.0	20.7	1.8	7.9	13.7	13.8	1.4	1.4	26.3	48.8	42.4	86.6	2.1	191.5
<b>Total Other TOCR Obligations [E]</b>	<b>61.0</b>	<b>84.5</b>	<b>67.5</b>	<b>75.6</b>	<b>83.4</b>	<b>103.7</b>	<b>93.9</b>	<b>77.6</b>	<b>109.0</b>	<b>134.0</b>	<b>136.1</b>	<b>195.2</b>	<b>162.4</b>	<b>476.5</b>
<b>Debt Service</b>														
Existing Debt Service <sup>D</sup>	63.6	109.1	109.1	109.1	109.1	111.1	111.1	111.1	111.1	111.1	118.3	137.0	193.2	163.2
Debt Service – Series 2024	47.7	81.7	81.7	81.7	81.7	81.7	81.7	81.7	81.7	81.7	89.0	102.2	142.9	124.4
Expected Debt Service – Future Issuances	59.1	101.4	101.4	101.4	101.4	101.4	101.4	101.4	101.4	101.4	113.8	132.1	184.7	160.8
Facility Commitment/Letter of Credit Fees	2.3	3.2	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6
<b>Total Debt Service [F]</b>	<b>172.7</b>	<b>295.3</b>	<b>294.7</b>	<b>294.7</b>	<b>294.7</b>	<b>296.7</b>	<b>296.7</b>	<b>296.7</b>	<b>296.7</b>	<b>296.7</b>	<b>323.6</b>	<b>373.9</b>	<b>523.3</b>	<b>451.0</b>
<b>Total Obligation Coverage Ratio [H] = ([D]-[E])/[F]</b>	<b>2.24x</b>	<b>2.13x</b>	<b>2.12x</b>	<b>2.15x</b>	<b>2.24x</b>	<b>2.26x</b>	<b>2.29x</b>	<b>2.38x</b>	<b>2.47x</b>	<b>2.57x</b>	<b>2.87x</b>	<b>3.06x</b>	<b>2.64x</b>	<b>3.65x</b>
<b>Total Debt Service [F]</b>	<b>1.88x</b>	<b>1.85x</b>	<b>1.89x</b>	<b>1.89x</b>	<b>1.96x</b>	<b>1.91x</b>	<b>1.98x</b>	<b>2.12x</b>	<b>2.10x</b>	<b>2.12x</b>	<b>2.45x</b>	<b>2.54x</b>	<b>2.33x</b>	<b>2.59x</b>

<sup>A</sup> Reflects partial year data beginning from the assumed Date of Beneficial Occupancy (DBO) of May 2026.<sup>B</sup> Prior to revenue share with the PANYNJ (included in PA Priority Payments).<sup>C</sup> Obligations subject to deferral mechanisms as Described in Section 10.1.1 and Section 10.1.3.<sup>D</sup> Includes payment of bond insurance premium beginning in 2031.

Source: JFK NTO LLC, Steer analysis

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### Steer project/proposal number

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**Appendix B-2**

**REPORT OF THE LENDERS' TECHNICAL ADVISOR**

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Delivering the confidence to invest



## The New Terminal One at John F Kennedy International Airport



## LENDERS' DUE DILIGENCE REPORT

### — Version

10

### — Prepared for

Underwriters & Prospective Bond Holders to the New Terminal One Project

### — Issue Date

June 3, 2024

### — Prepared by

Infrata

### — Reviewed by

EC

### — Approved by

AG

## IMPORTANT LEGAL NOTICE

This is a technical report dealing with the contractual and construction aspects of the Project but does not provide a detailed review of all the technical aspects in relation to the Project. It is intended to highlight issues that are considered to have significant commercial implications in relation to the risk to which the prospective Lenders may be exposed.

This report, by its very nature, requires a certain amount of simplification of complex technical provisions. The detailed terms of any contractual documentation referred to in this report should be relied upon for their full effect and not any summaries of such terms that may be contained in this report.

The comments made throughout this report are selective and should not be taken as the only areas where the Lenders may be exposed to risk. The assessment of the risks associated with a project of this nature is complex and involves (inter alia) an understanding of the interaction of issues where specialist opinion (for example from legal counsel) is required.

Lenders should also satisfy themselves on the ability of the Financial Sponsors, NTO and the appointed contractor to achieve completion by the required dates on the basis of the due diligence, reports and advice of the legal and other professional advisers in addition to the advice of Infrata Limited ("Infrata"). For example, reference should be made to insurance advisers in relation to insurance, which is not addressed in any detail in this report. The fact that a matter is not addressed in this report does not mean that it is not material.

This report and the opinions presented herein are subject to the following conditions and limitations:

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## PROJECT SUMMARY

PROJECT ELEMENT	DESCRIPTION	DESIGNATION
<b>Project Title</b>	JFK Terminal One Redevelopment	the Project
<b>Project Description (Phase A)</b>	New Terminal One, including construction of Headhouse, East Concourse, and associated aprons and roadways. Headhouse and East Concourse to have a gross square footage of approx. 1.8msq.ft. The project is to include 13 wide-body gates and 1 temporary, wide-body, contact gate and associated roadways and utilities.	
<b>Delivery Method</b>	Lease Agreement	
<b>Key Dates</b>	Financial Close, Lease Execution and Phase A NTP: June 10, 2022 First Additional Premises Lease Commencement Date: January 2023 Second Additional Premises Lease Commencement Date: Phase A DBO, subject to terms of Lease Scheduled Completion Date of Phase A (Phase A DBO): June 1, 2026 Lease Agreement expire date: December 30, 2060	
<b>Revenue Type</b>	Volume based Revenue	
<b>Project Parties</b>		
<b>Lessor</b>	The Port Authority of New York and New Jersey	PANYNJ
<b>Lessee</b>	JFK NTO LLC	Lessee / NTO / Developer
<b>Sponsor Members</b>	- Ferrovial Airports - JLC Infrastructure - Ullico - Carlyle	Financial Sponsors
<b>Capital Project Delivery Team</b>	- Ferrovial Construction - Lehrer Cumming - AtkinRealis (former SNC Lavalin) - McKissack & McKissack	CPD
<b>DB Contractor</b>	Tishman Construction Company of New York	AECOM Tishman, Tishman, DB Contractor
<b>Design Team Lead</b>	Gensler	Gensler

PROJECT ELEMENT	DESCRIPTION	DESIGNATION
<b>Management Services</b>	Ferrovial Airports	Ferrovial Airports
<b>Financial Sponsors' Advisors</b>		
<b>Financial</b>	2022 Financing: Citigroup, HSBC, MUFG 2023 refinancing: Citigroup, Loop Capital Markets 2024 refinancing: BofA Securities, Loop Capital Markets	-
<b>Legal</b>	Allen & Overy LLP, Troutman Pepper LLP, U. Okoye Law PLLC, Gibson Dunn & Crutcher	A&O, Troutman, Okoye, GD&C
<b>Traffic</b>	Steer	
<b>Pre-Construction Technical Consultants</b>	ARUP Atkins Syska Hennessy Group	
<b>Authority's Advisors</b>		
<b>Authority Legal Advisor</b>	Orrick Herrington & Sutcliff; Skadden, Arps, Slate, Meagher & Flom	
<b>Lenders' Advisors</b>		
<b>Insurance</b>	Intech	
<b>Legal</b>	Milbank	LLA
<b>Technical</b>	Infrata Limited	LTA, Infrata

## ACRONYMS AND DEFINITIONS

ACRONYM	MEANING
<b>AACE</b>	Association for the advancement of cost engineering
<b>ACDBE</b>	Airport Concession Disadvantaged Business Enterprise
<b>ACF</b>	Airport Construction Fee
<b>ACI</b>	Airports Council International
<b>AFD</b>	Advance Final Design
<b>AOC</b>	Airport Operations Center
<b>ASL</b>	Automated Security Lane
<b>ASQ</b>	Airport Service Quality
<b>ATM</b>	Air Traffic Movement
<b>AUA</b>	Airline Use Agreement
<b>BHS</b>	Baggage Handling Services
<b>BOD</b>	Basis of Design
<b>CAGR</b>	Compound Annual Growth Rate
<b>CAPA</b>	Centre for Aviation
<b>CapEx</b>	Overall Capital Expenditure
<b>CBP</b>	U.S. Customs and Border Protection
<b>CCA</b>	Clear Channel Advertising
<b>CCD</b>	Comprehensive Conceptual Design
<b>CAFD</b>	Cashflow Available for Distribution
<b>CDC</b>	Center for Disease Control and Prevention

ACRONYM	MEANING
<b>CFD</b>	Comprehensive Final Design
<b>CGI</b>	Carlyle Global Infrastructure Fund
<b>CHASP</b>	Construction Health and Safety Plan
<b>CID</b>	Comprehensive Intermediate Design
<b>CPD</b>	Capital Projects Delivery Team
<b>CPE</b>	Cost per Enplaned Passenger
<b>CPI</b>	Consumer Price Index
<b>CPT</b>	Cone Penetration Test
<b>DB</b>	Design Build
<b>DBA</b>	Design Build Agreement
<b>DBFOM</b>	Design, Build, Finance, Operate, Maintain
<b>DBO</b>	Date of Beneficial Occupancy
<b>DCA</b>	Ronald Reagan Washington National Airport
<b>DD</b>	Drilled Displacement (Pile)
<b>DDFS</b>	Design Day Flights Schedule
<b>EDRC</b>	Executive Design Review Committee
<b>EFSO</b>	Emergency Fuel Shut Off (System)
<b>EMP</b>	Environmental Management Plan
<b>eGSE</b>	Electrical Ground Support Equipment
<b>ESG</b>	Environmental, Social and Governance

ACRONYM	MEANING
<b>EWR</b>	Newark Liberty International Airport
<b>F+G</b>	Faithful+Gould
<b>FAA</b>	Federal Aviation Administration
<b>FONSI</b>	Finding of no Significant Impact
<b>FWL</b>	Fish & Wildlife
<b>GDP</b>	Gross Domestic Product
<b>GIR</b>	Geotechnical Interpretive Report
<b>GMP</b>	Guarantee Maximum Price
<b>GTC</b>	Ground Transportation Center
<b>HKG</b>	Hong Kong International Airport
<b>HSDN</b>	Homeland Secure Data Network
<b>IAD</b>	Washington Dulles International Airport
<b>IATA</b>	International Air Transport Association
<b>IFR</b>	Instrument Flight Rules
<b>IMF</b>	International Monetary Fund
<b>IPE</b>	Income per Enplanement
<b>JFK</b>	John F. Kennedy International Airport
<b>KPI</b>	Key Performance Indicators
<b>LATAM</b>	Latin America
<b>LAX</b>	Los Angeles International Airport
<b>LBEs</b>	Local Business Enterprises
<b>LGA</b>	LaGuardia Airport

ACRONYM	MEANING
<b>LGW</b>	London Gatwick Airport
<b>LHR</b>	London Heathrow Airport
<b>LLA</b>	Lenders' Legal Advisor
<b>LNTP</b>	Limited Notice to Proceed
<b>LTA</b>	Lenders' Technical and Market Advisor
<b>MAG</b>	Minimum Annual Guarantee
<b>MIA</b>	Munich International Airport
<b>MIDT</b>	Marketing Information Data Tapes
<b>MJE</b>	Magic Johnson Enterprises
<b>MP</b>	Drilled Micropiles
<b>MSA</b>	Management Services Agreement
<b>MSI</b>	Master Systems Integrator
<b>MWBE</b>	Minority and Women-Owned Business Enterprises
<b>MWLS</b>	MWBE, LBE and SDVOB
<b>NABTU</b>	North America's Building Trade Unions
<b>NOAA</b>	National Oceanic and Atmospheric Administration
<b>NTD</b>	New Terminal One
<b>NTP</b>	Notice to Proceed
<b>NYC</b>	New York City
<b>NYSDEC</b>	New York State Department of Environmental Conservation
<b>NYSDEP</b>	New York State Department of Environmental Protection
<b>NYSDOL</b>	New York State Department of Labor

ACRONYM	MEANING
<b>NYTDC</b>	New York Transportation Development Corporation
<b>O&amp;D</b>	Origin & Destination
<b>OpEx</b>	Operational Expenditure
<b>ORAT</b>	Operational Readiness and Airport Transfer
<b>OSHA</b>	Occupational Safety and Health Administration
<b>PANYNJ</b>	Port Authority of New York and New Jersey
<b>PBB/PLB</b>	Passenger Boarding/Loading Bridge
<b>PCC</b>	Portland Cement Concrete Pavement
<b>PFC</b>	Passenger Facility Charge
<b>PMO</b>	Project Management Organization
<b>QA/QC</b>	Quality Assurance / Quality Control
<b>RAP</b>	Remedial Action Plan
<b>RASK</b>	Revenue per Available Seat Kilometre
<b>ROM</b>	Reasonable Order of Magnitude
<b>RPW</b>	Requirements and Provisions for Work
<b>RUGTC</b>	Roadways Utilities and Ground Transportation Project
<b>SDVOB</b>	Service-disabled Veteran Owned Business
<b>SE</b>	Schneider Electric
<b>SEQRA</b>	State Environmental Quality Review Act
<b>SHJV</b>	Skanska Halmar JFK Joint Venture

ACRONYM	MEANING
<b>SIN</b>	Singapore Changi Airport
<b>SPDES</b>	State Pollutant Discharge Elimination System
<b>SPE</b>	Sales per Enplaned Passenger
<b>SPT</b>	Standard Penetration Test
<b>SPSF</b>	Sales per Square Foot
<b>SUF</b>	Space Utilization Factor
<b>T1</b>	Terminal 1
<b>TAA</b>	Tenant Alteration Applications
<b>TAAM</b>	Total Airport and Airport Modeler
<b>TBIT</b>	Tom Bradley International Terminal
<b>TCAP</b>	Tenant Construction and Alteration Process
<b>TOGA</b>	Terminal One Group Association, LP
<b>TOMI</b>	Terminal One Management Inc.
<b>TT</b>	Tapered Tip (Pile)
<b>UIF</b>	Ullico Infrastructure Fund
<b>URW</b>	Unibail Rodamco Westfield
<b>VOCs</b>	Volatile Organic Compounds
<b>WBS</b>	Work Breakdown Structure

## EXECUTIVE SUMMARY

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### Project Overview

In 2019, JFK handled over 62.5 million passengers and was ranked as the 6th busiest airport in the USA and 20th busiest in the world. JFK accounted for 67% of total international traffic in New York, making it the main international gateway.

The Covid-19 pandemic had a significant impact on traffic at the airport, with total passenger numbers falling 73% in 2020, and international passengers 76%. By 2022 total passenger traffic had returned to 88% of 2019 levels – domestic to 101% levels and international to 79%. The Sponsor has forecast international traffic to recover to 2019 levels in 2024. This is in line with industry recovery benchmarks and current performance suggests this to be an achievable assumption.

In October 2018, former Governor Cuomo of New York and the PANYNJ, announced the selection of the New Terminal One team ("NTO"), a consortium formed of Carlyle, JLC Infrastructure and Ullico, as the preferred developer for the sites of Terminals 1 and 2 and the former Terminal 3 with the development to be governed by a Lease Agreement, which is based on a Design, Build, Finance, Operate, Maintain ("DBFOM") model, between the Port Authority of New York and New Jersey ("PANYNJ") and NTO

On December 13, 2021, Governor Kathy Hochul announced that the PANYNJ had reached a revised agreement with NTO for the Project noting that the project was initially scheduled to break ground in 2020 however, due to the severe impact of the COVID-19 on air travel, the terms of the agreement needed to be restructured. On December 16, 2021, the PANYNJ Board of Commissioners took formal action and approved the new agreement between NTO and the PANYNJ. The Design Build Agreement was executed on May 23, 2022. Financial Close was reached on June 10, 2022, with the Lease Agreement being signed and the Notice to Proceed issued on the same day. The lease term ends on December 30, 2060.

Phase A of the Project is a \$8.396bn brownfield redevelopment of T1, sized to ensure that the current, overall, widebody stand and terminal capacity at JFK is maintained following (i) the demolition of existing Terminal 1, 2 and 3 (formerly demolished); and (ii) reconfigurations that will alter gate capacity at Terminals 4, 5/7 and 8. The future Phases B1 and B2 will provide for traffic growth.

Phase A will provide a 1.8m sqft terminal building with 13 wide-body contact gates and 1 temporary, wide-body, gate and is being delivered through a Design Build Agreement with AECOM Tishman which has been procured through a GMP route.

From a technical standpoint, some of the main challenges during construction are related to coordination and management of stakeholders on a live operational airport (e.g., other terminal leaseholders, AirTrain operator, other construction projects, T1's construction activities, and others). Albeit it is noted that many of the challenges normally associated with construction on a live operational airport, in the LTA's experience, have either been mitigated or are present to a lesser extent.

The Project has a number of dependencies on third parties' works and actions. The two main interfaces are with the PANYNJ and Delta Air Lines. NTO has recognized this complexity and put in place a suitably staffed Capital Project Delivery team ("CPD") that coordinates, manages and controls the project.

In general terms the LTA is satisfied with the progress of the project at this stage. The LTA notes that despite some historical delays in the foundation and utilities works, the schedule remains on track and no critical path delay to the Phase A DBO date of June 1, 2026, is anticipated at this time.

The LTA positively notes the proactive approach being adopted by the DB Contractor, and the PMO, in managing the schedule and budget and in mitigating delays with mitigation strategies developed based on the near term activities avoiding compression of the back end of the schedule.

Given the current status of the works on site, with design at 97% and the headhouse being almost completely out of the ground, the potential for material project delays and unanticipated cost increases associated with unknown ground conditions, utilities, design changes etc. have now been substantially minimised and for the majority of the remainder of the works the DB Contractor (and the subcontractors) has greater control over potential delay events associated with project resourcing, material availability etc.

### Project Organization & Parties

The Lessee is, indirectly, owned by the Financial Sponsors (Ferroviai Airports, The Carlyle Group ("Carlyle") along with Ullico and JLC).

NTO will manage the terminal with Ferroviai Airports providing consulting, technical services and staff training to NTO prior to and after Financial Close.

A Capital Projects Delivery team has been appointed to oversee the design development, project delivery, and facilitate communication between the parties. The team is being supported, through a lump sum PMA, by Ferroviai Construction and a number of sub-contractors with experience in the New York region and with the PANYNJ.

AECOM Tishman ("DB Contractor") is responsible for the design and construction activities. The DB Contractor has over 100 years of experience in NYC, having delivered over 18 PANYNJ projects in the last 50 years.

Gensler is responsible for the development of the design. The Design Team Lead has over 38 years of experience in airport terminal designs and has recent experience with PANYNJ projects with the JFK International Airport, JetBlue T5, T5 Expansion, and T4 Expansion.

The parties are experienced in working on airport projects and operations with the right skills to develop and manage a world-class terminal project. It is noted that members of both the Capital Projects Delivery team ("CPD") and DB Contractor teams have extensive experience both in working on PANYNJ projects and with each other.

### Contracts

The Lease is governed by a Lease Agreement with a standard risk allocation for Port Authority agreements.

The risks associated with the DB D&C Works are passed down to the DB Contractor under the Design Build Agreement ("DBA") which has been drafted on the basis of equivalent project relief and back-to-back principles. Where risks are retained at NTO level appropriate management and risk mitigation strategies are in place at this time to manage these risks.

The DBA Contract Sum has been procured under a guaranteed maximum price, subject to (i) Equivalent Project Relief; or (ii) a Material Developer Scope Changes.

The relationship between the Lessee and the Airlines will be governed by Airline Use Agreements which will provide a contractual framework for operations and commitments of the parties.

### Security Package

The LTA has tested the cap on liability (35% of the Contract Sum) defined in the DBA and concluded that it should cover additional cost in the event of a DB Contractor and/or sub-contractor replacement. The LTA analysis indicates that the total potential liability in the event of a DB Contractor replacement, with a 12-month delay, in a realistic worst-case is \$931.8m (22.5% of the anticipated adjustments to the Contract Sum at completion, as of the end of March 2024, or 23.7% of the original Contract Sum).

The LTA highlights however that the project has certain characteristics that mitigate additional costs associated with a DB Contractor and/or Sub-Contractor replacement, namely: (i) sub-contractor assignability to NTO; (ii) close monitoring of the works by the CPD; and (iii) liquid regional contractor market.

The LTA liquidity test analysis indicates liquidity needs of approximately \$158.2m. Based on this, the current Liquid Performance Security in the form of a Letter of Credit with an amount equal to \$171.8m is considered adequate.

In addition to the security provisions under the DBA NTO are also proposing to provide the following at Developer level: (i) an Enhanced Security Allowance of \$80m; (ii) \$300m pre-committed headroom in bank facilities restricted for use only in covering fixed costs such as operating costs, interest, rents during project delays and cost overruns; (iii) a \$200m liquid facility; and (iv) a \$50m working capital facility.

### Payment Mechanism

The LTA is of the view that the Payment Mechanism gives adequate priority to debt service and provide additional security to the lenders compared to many other similar projects.

The Project's revenue is to be shared with PANYNJ, however if cash flow is insufficient to cover Senior Payments, including Debt Service, then a significant share due to PANYNJ is paid after senior debt service. This mechanism will be in force until December 2031 (post ramp up).

NTO pays PANYNJ Ground Rent prior to debt service and First, Second and Third Rents and PANYNJ Distributions after debt service.

KPI penalties/incentives (related to operations performance) are subordinated to the payment of debt service and are not considered to be punitive, representing a maximum annual deduction payment by the Lessee equivalent to approximately 0.4% of the existing T1's revenue (based on 2019 revenues), but rather in line with the PANYNJ and Lessee's stated objective of delivery to world-class operating standards, customer experiences, and systems availability performance.

### Environment, Permits and Approvals

The FAA issued a Finding of No Significant Impact and Record of Decision (FONSI/ROD – NEPA Approval Documents) on April 21, 2020 with respect to the JFK Redevelopment Program. A Technical Report was submitted on January 14, 2022, outlining that the proposed changes to the Project do not change the contents, analysis, and conditions of approval, and that they remain current and valid. An updated Technical Report was

submitted by NTO on March 24, 2022 responding to comments received from the FAA. Additional comments were received on April 29, 2022 from the FAA and the PANYNJ submitted a revised Technical Report to the FAA on May 9, 2022 addressing these comments. On June 01, 2022 the FAA approved the Written Re-evaluation and Record of Decision for the Terminal one Design and Schedule Modifications.

The PANYNJ is the main permitting agency for the Construction Works, other than with respect to environmental permits. The definitive permits list for the Project has been developed in conjunction with the PANYNJ.

The environmental obligations under the Lease Agreement are typical for a project of this nature and location and should not represent an unusual risk to the project. These will be managed through the Project's Environmental Management Plan.

The Environmental Findings to date have been appropriately managed and remediated, where applicable, by the DB Contractor and no critical path delays have been reported. It is noted that there are ongoing discussions between NTO and the DB Contractor in relation to whether these findings are considered an Unknown Condition which would entitle the DB Contractor to compensation under the DB Contract.

The level of unknown utilities was higher than foreseen at Financial Close. However, as of August 2023 the headhouse is free and clear of critical utilities, minimizing the risk of possible delays due to utility works in this area. Furthermore, it is noted that as of April 2024, no unmitigated critical path delays due to utilities materialised. Unidentified utilities will be subject to a Delay Event under the Lease Agreement and a Material Developer Scope Change under the DBA.

General ground conditions on the site during the construction works have been as expected and do not greatly differ from the investigations performed prior to the construction works.

### Design and Construction

A new 1.8m sq. ft. Terminal One building providing replacement capacity within the airport.

The design is 98% completed and has been developed through extensive coordination between the CPD, the DB Contractor, the PANYNJ and key stakeholders. In April 2023, following the CFD submission, the PANYNJ sent a letter to proceed with the AFD. All AFD packages have been either partially, conditionally or fully approved and it is expected that all AFD's will be fully approved by Q4 2024. It is noted that the partial conditional approval of the AFD's is not affecting the progress of works on site.

The DB Contractor, NTO and the relevant interface parties are working collaboratively to mitigate potential impacts on schedule due to interface matters.

The construction phasing is designed to ensure adequate traffic and passenger flow and overall airport operations. Phase A is being constructed while the existing facilities of Terminal 1 remain in operation.

### Construction Schedule

NTP was achieved on June 10, 2022, with Construction starting ("Shovel in the ground") on the same day.

The activity durations and productivity rates within the most recent revision of the schedule have been updated, where appropriate, to reflect what has historically been achieved on site. Elsewhere the schedule is considering the activities and associated durations as provided by the subcontractors.

It is positively noted that procurement strategy adopted with the trades includes schedule buy-out (contractual commitment to achieving schedule date) and recent schedule updates include the incorporation of their activities providing additional detail and certainty to the schedule activities and dates included.

Whilst the Project Schedule does not declare float, it is considered that the schedule provides a level of resilience to possible delays and it is considered that the main potential drivers for material delay to the project (ground condition, unknown utilities and design changes), outside of the DB Contractor control, are largely in the past.

### Project Costs

The current estimate for the Total Phase A D&C Costs is approximately \$5.74bn of which approximately \$3.99bn (69.5%) constitutes the DB D&C Contract Sum.

The LTA notes that at Substantial buy out (June 1, 2024) 94.9% of the trade packages had been procured, with the remaining 5.1% expected to be procured by the end of Q3 2024. The LTA notes that NTO's expectation is an approximately 6% overrun on trade costs once all procurement has been completed.

It is noted that any overruns on trade costs will be funded from DB Contractor Design or Construction Contingency, the Contract Sum is not to be adjusted and the risk of cost overruns are a DB Contractor risk.

After undertaking the benchmark exercise with similar assets (i.e., airports in New York with similar works that have been undertaken in recent years) the LTA consider the assumed D&C cost reasonable.

The LTA sensitivity analysis on Developer Contingency Usage indicates \$23.3m of headroom to the Developer Contingency amount of \$326m under a realistic worst-case scenario.

In the LTA's opinion, the approach used by the Consortium to forecast OpEx is reasonable and follows the general industry standard. The methodology used has been designed to capture the most important factors driving cost growth. The LTA has not found any omissions of major cost categories and considers that appropriate drivers have been used in the forecast. It is noted that the OpEx forecast reviewed considers the Phase A development only.

At present, LTA benchmarks for OpEx per enplaned passenger against other US airports suggest that JFK Terminal One is one of the most expensive airport terminals. This is not a concern as such, more a reflection of the nature of the asset, location and conservative assumptions used.

The Major Maintenance forecast has been developed by Munich Airport International in collaboration with ARUP using a standard industry approach to estimating lifecycle costs and validated by Ferrovial Airports. The overall budget (on average 0.9% of CapEx annually) is in line with expectations.

### Traffic

Sponsors' traffic forecast has been developed on a bottom-up (by airline) basis for total airport traffic, with airlines then assigned to their respective assumed terminal. The LTA's review identified a number of risks to the forecast and has found sufficient evidence to mitigate many of them.

The Covid-19 pandemic has had a significant impact on traffic at the airport, with total passenger numbers falling 73% in 2020, and international passengers down 76%. The situation began to improve in 2021, with total passengers increasing by 85%, and international passengers increasing by 52%. Traffic has since returned to close to 2019 levels with 2023 seeing domestic traffic recovering to 103% of 2019 levels and International traffic to 97%.

The projected pace of ramp-up after 2026 is relatively strong and relies to a significant extent on the attraction of carriers from other terminals to NTO. However, JFK (and most of the New York airports) have been and are expected to be uniquely constrained in terms of wide-body gate capacity, particularly at peak times, and it is reasonable to

expect that some of the suppressed demand and carriers looking for gate capacity may fill the capacity at NTO relatively quickly, even at a higher price point of aeronautical charges. There are expected to be few alternatives in this constrained environment.

Very limited growth is expected post ramp-up as NTO gate capacity will be fixed. External shocks and new capacity developments at other terminals at JFK and in the New York City region is the primary traffic risk in the long term. However, the latter is expected to be very limited as there are no planned major projects targeting widebody capacity, similar to that of NTO in the New York airport market.

### Aeronautical Revenue

Compared to the existing Terminal 1, total aeronautical revenue increases significantly when the NTO opens due to increases in the level of charge per enplanement ("CPE") in 2026 and ramp up in traffic growth after the new terminal facilities become operational. Average gross CPE (before any rebates or discounts) across all airlines increases from \$45-55 (nominal, 2021) in the existing terminal 1 to \$90-100 (nominal, 2026) in the new terminal facility. From 2026 onwards, CPE is increased by CPI + 1%.

Etihad Airways, LOT Polish Airlines, Air France, KLM, Korean Air, EVA Airways and Air Serbia are currently the committed airline users, with additional carriers to be added in the future. Certain of the committed airline users will receive a discount in the form of a rebate on their passenger fees (subordinate to debt service).

The main reasons why these higher charges may be acceptable to the airlines (apart from a higher level of service) include: (i) higher average ticket prices charged by airlines at JFK compared to other airports and strong demand to operate from/to it. Due to this the impact on the overall air fare may be relatively small; (ii) new capacity will likely be added at a similar cost to NTO's, which would be reflected in higher marginal prices for any new capacity at other terminals; (iii) lack of widebody aircraft gate capacity at JFK and more generally in NYC, and little substantial additional capacity is currently envisaged in the medium term in JFK, risks associated with acceptance of higher charges by more price-sensitive carriers have been discussed in the Traffic section of this report; and (iv) the CPE will likely remain competitive given there are development plans currently taking place in other terminals which, once complete, will likely increase their CPE.

### Non-Aeronautical Revenue

NTO has executed a master concession management agreement with Unibail-Rodamco-Westfield ("URW"). The concession commences upon the completion of Phase A and expires either 10 years after the completion of Phase B2 or October 31st,

2039 – dependent on which occurs earlier. The contract includes a 7-year extension subject to the achievement of revenue targets.

The revenue mechanism is based on a Minimum Annual Guarantee ("MAG") per enplanement and is to be adjusted annually in accordance with CPI changes. The MAG will also increase with terminal development phases.

There will be a substantial increase of commercial space provision at NTO with a number of themed areas and a wide variety of shops and restaurants.

Total non-aeronautical revenue has been forecasted by establishing drivers for each revenue category (Concessions, Advertising and 'Other'). The MAG has been used conservatively for Concession forecast, whilst passenger growth is used for Advertising and 'Other'.

Overall, the non-aeronautical revenue uplifts projected for JFK NTO are reasonable and substantiated. Considering the substantial change of the breadth of the commercial offer at NTO and a near threefold increase of commercial space, the projected growth in sales per enplanement is reasonable overall in the LTA's view.

# 1 INTRODUCTION

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## 1.1 PURPOSE OF THE REPORT

- 1.1.1 Infrata Limited (“Infrata”) has been appointed by a consortium comprising Ferrovial Airports, Carlyle, JLC Infrastructure and Ullico Infrastructure Fund (the “Financial Sponsors”) as Lenders’ Technical and Market Advisor (“LTA”) on the New Terminal One Project (the “Project”) at John F. Kennedy International Airport (“JFK” or the “Airport”).
- 1.1.2 The Financial Sponsors (the “Sponsors”) are providing funding through capital contributions made to JFK NTO Sponsor Aggregator LLC that indirectly holds 100% of the ownership interests in the Lessee, NTO, through JFK NTO HoldCo, LLC.
- 1.1.3 Financial Close was reached on June 10, 2022 and in November 2023 NTO refinanced over \$2bn of the senior bank debt raised for Phase A of the Project with the New York Transportation Development Corporation Special Facilities Revenue Bonds, Series 2023 (John F. Kennedy International Airport New Terminal One Project) (Green Bonds). NTO are currently seeking to issue the next tranche of the bonds to refinance senior debt raised for Phase A and pay Project costs.
- 1.1.4 The role of the LTA at this stage is to carry out due diligence on the Lessee’s Project plans, key agreements in relation to those aspects pertinent to Phase A of the Project, including those which could impact future ability to service the debt and to provide commentary and opinion on the progress of the project to date.
- 1.1.5 The LTA points of contact will be Valery Olefir at [Valery.Olefir@infrata.com](mailto:Valery.Olefir@infrata.com), Eimear Connery at [Eimear.Connery@infrata.com](mailto:Eimear.Connery@infrata.com) and Alejandra Amigo at [Alejandra.Amigo@infrata.com](mailto:Alejandra.Amigo@infrata.com).

## 1.2 SCOPE OF THE REPORT

- 1.2.1 This Due Diligence covers the following aspects with a focus on Phase A of the Project including progress to date (i) Overall project structure, key parties and their contractual obligations; (ii) Contracts overview: Lease Agreement, DBA Term Sheet and key Interface Agreements; (iii) Payment Mechanism; (iv) Security Package; (v) Design and Construction including Environmental, Consents and Permits; (vi) Project Costs; (vii) Traffic Forecasts; and (viii) Project Revenues developed by the NTO.
- 1.2.2 An overview of scope, CapEx and schedule for Phases B1 and B2 is contained in Appendix A of this report.
- 1.2.3 The commentary and analysis contained within this report are from a technical perspective only, and legal and financial advice should be sought by the Lenders in relation to any point noted below which could have legal or financial implications.

## 1.3 LIMITATIONS AND EXCLUSIONS OF THE LTA’S REVIEW

- 1.3.1 The LTA approach primarily focuses on the Project risks that could be material to the Lenders’ interests and assesses the adequacy of the mitigating measures proposed by the Lessee.
- 1.3.2 Where the LTA considers it necessary, specific issues, with respect to the technical proposals, are scrutinized in more detail with a view to assess material risks to Lenders and how the Lessee’s solutions address these.
- 1.3.3 The LTA is relying on Information provided by the Financial Sponsors and NTO and is limited by the availability and quality of data to perform analysis and draw conclusions. When specific data is not available to the level of detail required for the LTA to demonstrate the adequacy of the plans, this is indicated in the report and alternative methods are used for the LTA assessment.
- 1.3.4 The LTA works exclusively with the information provided by the Financial Sponsors and NTO. This includes information shared:

- prior to financial close namely during (i) during a kick-off meeting held in February 2019; (ii) a project update session held in November 2019; (iii) a series of workshops held in New York between the LTA and the Project team in January 2020; (iv) subsequent meetings held in New York between the LTA and the Project team in November 2021; and (v) ongoing discussions and correspondences between the teams though to Financial Close in June of 2022; and
- as part of the LTA's ongoing role monitoring the construction of the project since Financial Close including during quarterly visits to the

project site, the most recent of which was in March 2024. In addition to the quarterly site visits the LTA undertook an additional visit to the site in May 2024 specifically for the purpose of obtaining a current view of the progress of the project and key project matters for the preparation of this report.

- 1.3.5 The report is prepared on the basis of the Project's documentation provided up to June 3, 2024.

## 2 PROJECT OVERVIEW

### ★ At a glance

- In 2019, JFK handled over 62.5m passengers and was ranked as the 6th busiest airport in the USA and 20th busiest in the world. JFK accounted for 67% of total international traffic in New York, making it the main international gateway.
- Phase A of the Project is a \$8.396bn<sup>1</sup> brownfield redevelopment of T1, sized to ensure that the current, overall, widebody stand and terminal capacity at JFK is maintained following (i) the demolition of existing Terminal 1, 2 and 3 (formerly demolished); and (ii) reconfigurations that will alter gate capacity at Terminals 4, 5/7 and 8. The future Phases B1 and B2 will provide for traffic growth.
- Phase A will provide a 1.8m sqft terminal building with 13 wide-body contact gates and 1 temporary, wide-body, gate and is being delivered through a Design Build Agreement with AECOM Tishman.
- NTO's development and operations are governed by a Lease Agreement between the Port Authority of New York and New Jersey ("PANYNJ") and NTO. Tenancy of the Initial Premises commenced on Financial Close (June 10, 2022) with the lease term ending on December 30, 2060.
- From a technical standpoint, some of the main challenges during Phase A construction are related to coordination and management of stakeholders on a live operational airport (e.g. other terminal leaseholders, other construction projects including T4 and others).
- It should be noted that the project has a number of dependencies on third parties' works and actions. The two main interfaces are with the PANYNJ and Delta Airlines. NTO has recognized this complexity and put in place a suitably staffed Capital Project Delivery team ("CPD") that coordinates, manages and controls the project.

<sup>1</sup> Total Phase A Project Costs of \$8.396bn include the Total D&C Costs (including fully spent contingencies and allowances), funding of reserves and payments to PANYNJ during construction of which \$5.7bn reflects the Total Phase A D&C Costs (including fully spent contingencies and allowances). Please refer to section 10.

### 2.1 PROJECT CONTEXT

- 2.1.1 In January 2017, former New York Governor Andrew Cuomo released his "Vision Plan to Transform JFK Airport" which included 3 core elements:
- i. Transform JFK into a unified, interconnected, world-class airport;
  - ii. Address key bottlenecks in road access to and from the airport; and
  - iii. Expand rail mass transit to meet projected passenger growth.
- 2.1.2 The plan was launched in response to growing passenger traffic at JFK, where passenger numbers have doubled since 2002 to reach 62.5 million passengers in 2019, making it the 6<sup>th</sup> busiest airport in the United States and 20<sup>th</sup> busiest in the world (PANYNJ statistics). Furthermore, the airport handled 34.3 million international passengers, more than any other US airport, in 2019 and a record high for JFK (PANYNJ Statistics). Total passenger traffic at JFK grew at the compound annual growth rate ("CAGR") of 4.3% between 2001-2019, outpacing the 2.9% CAGR for passenger traffic in the NY metro area.
- 2.1.3 However, JFK's gate and terminal capacity have not seen any significant increase or improvements since 2008, when Terminal 8 was reopened to house American Airlines. Since then, only Terminal 4's regional jet extension in 2015, which accommodates small narrow body aircraft, and three new international gates at JetBlue's Terminal 5 have been added to the airport. Currently JFK has 6 main terminals as shown in the figure below (Terminal 3 and Terminal 6 have been decommissioned).

**Figure 2-1: Terminals at JFK**



Source: JFK Airport webpage.

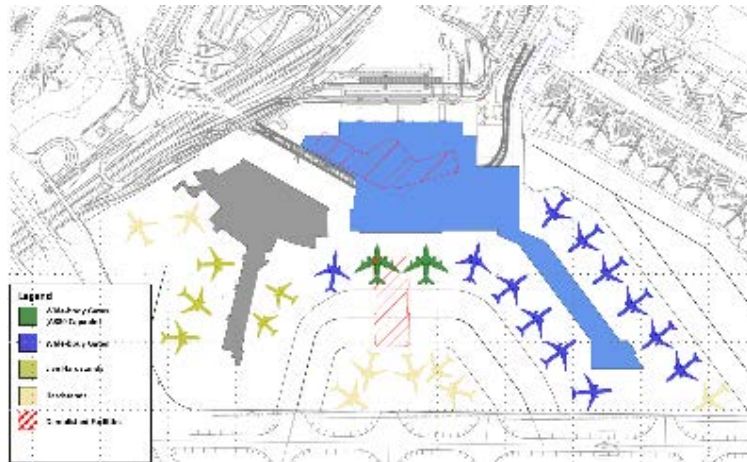
- 2.1.4 Following the Governor’s announcement, a terminal redevelopment plan was initiated by the PANYNJ by seeking proposals from existing terminal operators that would expand gate capacity, increasing the connectivity of the airport’s terminal and otherwise helping “transform JFK”.
- 2.1.5 In October 2018, former Governor Cuomo of New York and the PANYNJ, announced the selection of the New Terminal One team (“NTO”), a consortium formed of Carlyle, JLC Infrastructure and Ullico, as the preferred developer for the sites of Terminals 1 and 2 and the former Terminal 3 with the development to be governed by a Lease Agreement which is based on a Design, Build, Finance, Operate, Maintain (“DBFOM”) model.
- 2.1.6 Subsequently the COVID-19 pandemic had a significant impact on passenger numbers at the airport, with total passenger numbers falling 73% in 2020 compared to 2019, and international passengers down 76%. Recovery of international traffic to 2019 levels is envisaged to be complete in 2024 while domestic traffic was fully recovered in 2023. As such the need for the former New York Governor Andrew Cuomo “Vision Plan to Transform JFK Airport” remains though was reenvisioned to reflect the impact of COVID-19 on the market.
- 2.1.7 On December 13, 2021 Governor Kathy Hochul announced that the PANYNJ had reached a revised agreement with NTO for the Project noting that the project was initially scheduled to break ground in 2020 however, due to the severe impact of the COVID-19 on air travel, the terms of the agreement needed to be restructured. On December 16, 2021, the PANYNJ Board of Commissioners took formal action and approved the new agreement between NTO and the PANYNJ
- 2.1.8 Financial Close was reached on June 10, 2022 with the Lease Agreement being signed and the Notice to Proceed issued on the same day.
- 2.1.9 The new terminal will be built in phases, subject to international passenger traffic levels, as further described within this report. Phase A, for which NTO are currently seeking financing, is being constructed under a Design Build Agreement with AECOM Tishman.

## 2.2 PROJECT DESCRIPTION

- 2.2.1 The Project involves the design, development, construction, operation and maintenance of a new passenger terminal facility (new Terminal One). The estimated Total Phase A Project Cost is \$8.396bn and includes the Total Phase A D&C Costs (including fully spent contingencies and allowances), funding of reserves and payments to PANYNJ during construction. Please refer to section 10 – Project costs for further details.
- 2.2.2 The Project (Phase A – B2), is expected to address the pre-pandemic gate shortage at JFK and enable growth at the airport of long-haul international traffic. As the dominant international gateway to New York City, JFK has unique demands for facilities that can accommodate widebody aircraft and significant volumes of foreign passengers. Phase A of the Project is sized to ensure that the current, overall, widebody stand and terminal capacity at JFK is maintained following (i) the demolition of existing Terminal 1, 2 and 3 (formally demolished); and (ii) reconfigurations that will alter gate capacity at Terminals 4 and 8. The future Phases B1 and B2 will provide for traffic growth.

2.2.3 Phase A of the New Terminal One, the works for which financing is currently being sought, is being developed to the east of the existing Terminal 1, with a footprint covering the former Terminal 2 and Terminal 3 sites, as well as to the north where the current Green Garage was located. The redevelopment site will not be impacted by current lease agreements across those sites and will instead be bound by a new lease directly with the PANYNJ. The figure below illustrates the development of the footprint of Phase A of the New Terminal One.

**Figure 2-2 Footprint of the New Terminal One, Phase A**



Source: Financial Sponsors

2.2.4 The key phases are sequenced as follow:

**Table 2-1 Phasing**

PHASE	ACTIVITIES	NTP DATE	TIMELINE*
Phase A	Construction of the Headhouse, East Concourse, and associated aprons and roadways. With a total area of 1.8m sqft.  Demolition of Green Garage, T2, AirTrain station at T2, and associated roadways.	Lease Commencement Date (June 10, 2022)	2022-2026

PHASE	ACTIVITIES	NTP DATE	TIMELINE*
	Construction of 13 wide-body gates and 1 temporary, wide-body, contact gate.  Provision of 5 active hardstands and 8 hardstands for Delta usage		
Phase B1	Expansion of southwest corner of Headhouse and construction of the west concourse  4 Wide-body gates (subject to Two-Gate Toggle)  Conversion of Phase A temporary gate to a permanent gate  1 Narrow-body gate  521,158 sqft	Phase A DBO, if Investment Grade Rating for the debt to fund work obtained; or within 9 months after the Phase B1 Traffic Trigger**	2026-2028
Phase B2	Expansion of west concourse  4 Wide-body gates (6 if Two-Gate Toggle applied to Phase B1)  192,226 sqft	Phase B1 DBO, if Investment Grade Rating for the debt to fund work obtained; or within 9 months of the Phase B2 Traffic Trigger***	2028-2029

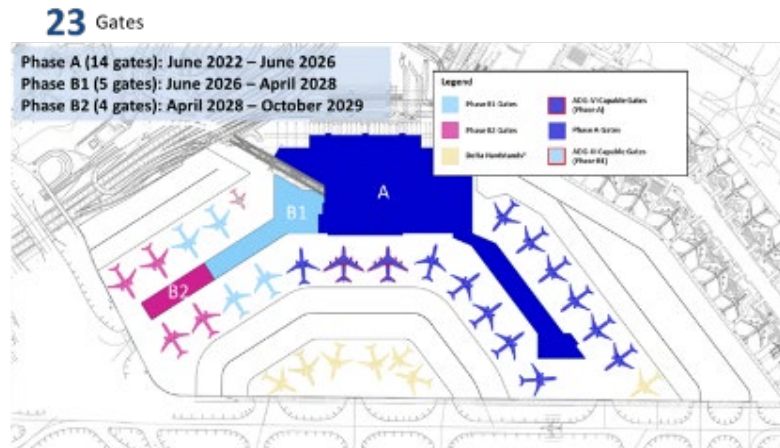
\*Assumes continuous build for Phase B1 and B2

\*\*Phase B1 Traffic Trigger date is the earlier of (i) the PANYNJ notifying NTO that the number of Airport International Enplanements during the preceding 6 months period equals or exceeds the number of Airport International Enplanements for the corresponding 6-month period in 2019; and (ii) the number of Enplanements at the New Terminal Facilities equals or exceeds 4,500,000 for either (a) the preceding 12-month period; or (b) on a forecast basis based on succeeding 12-month scheduled minimum usage under the Airline Use Agreements. If Phase B1 NTP has not occurred within 9 months of the Phase B1 Traffic Trigger Date the PANYNJ may accelerate the construction of 3 additional contact gates at T4.

\*\*\*Phase B2 Traffic Trigger date is the earlier of (i) Airport International Enplanements equals or exceeds, for the preceding 12-months, (a) 20,000,000 if T4 Additional Gates have been constructed; or (b) 21,000,000 without the construction of the T4 Additional Gates; and (ii) the date on which the number of Enplanements at the New Terminal Facilities, for the preceding 12-months, equals or exceeds, (a) 6,000,000, if the Two-Gate Toggle was exercised in Phase B1; or (b) 6,700,000, if the Two-Gate Toggle was not exercised.

Source: Lease Agreement, CIM

Figure 2-3: Diagram of Construction Phases.



Source: Financial Sponsors

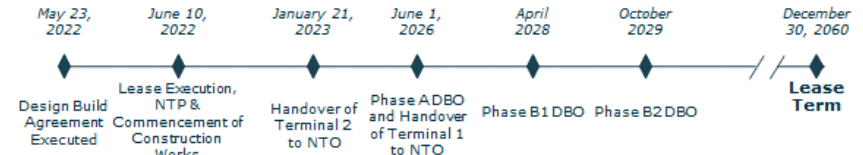
- 2.2.5 It is noted that in addition to the Phases as detailed above the Lease Agreement allows for a potential further expansion phase, Phase C, with an additional 4 gates. However, there are no obligations placed on either party (NTO or PANYNJ) in relation to Phase C.

## 2.3 KEY DATES

- 2.3.1 The Design Build Agreement was executed on May 23, 2022 and the Lease Agreement has been executed and became effective on June 10, 2022, which coincides with the Lease Commencement Date, signifying the date on which the Initial Premises is handed over and the Ground Rent starts accruing. The lease will end on December 30, 2060.
- 2.3.2 The Initial Premises, comprising of the landside area, the Green Garage site and the T3 site, were handed over to NTO on NTP. The First Additional Premises, comprising primarily of the T2 site was handed over by Delta on January 21, 2023. The existing Terminal 1 facilities will be handed over to NTO on Phase A DBO, the Second Additional Premises Lease Commencement Date.

- 2.3.3 The key contractual dates that trigger the start and mark the end of the lease are as illustrated in the timeline below, assuming continuous build for Phase B1 and B2.

Figure 2-4 Project Key Dates Overview



Source: NTO

## 2.4 LEASE AGREEMENT D&C COMMITMENTS

- 2.4.1 Table 2.2-1 sets out the Commitments under the Lease Agreement including NTO's responsibility under the Lease Agreement both in relation to the D&C work (Phases A – B2) and Operations and Maintenance. It also includes the agreed Enabling Works that have been carried out by the PANYNJ.

Table 2-2 Key Works during Construction

SCOPE OF WORK DEFINED UNDER SECTION 2 AND 11 OF LEASE AGREEMENT
<b>Scope of D&amp;C Work on the Premises (the New Terminal Facilities) – Financed and executed by NTO</b>
Decommissioning and demolition of: <ul style="list-style-type: none"> <li>Certain existing structures, fixtures and other improvements comprising the existing Terminal 2 and Terminal 2 AirTrain Station as part of Phase A; and</li> <li>Existing Terminal Facilities as part of Phase B1</li> </ul>
Construction of a New, 2.6m sq. ft, World-Class Terminal Facility and related support building including: <ul style="list-style-type: none"> <li>Phase A to include (i) 1 new concourse, (ii) 13 permanent wide body contact Gates; and (iii) 1 temporary contact Gate;</li> <li>Phase B1 to include (i) an additional new concourse; (ii) 18 permanent wide-body contact Gates, in total; and (iii) 1 permanent narrow-body contact Gate;</li> <li>Phase B2 to include (i) extension to Phase B1 concourse; (ii) 22 permanent wide-body contact Gates, in total; and (iii) 1 permanent narrow-body Gate.</li> </ul>

SCOPE OF WORK DEFINED UNDER SECTION 2 AND 11 OF LEASE AGREEMENT
All necessary aircraft ramp and apron areas including, as required during the D&C Work, temporary and 8 permanent hardstand parking positions for Group V aircraft for the preferential use by Delta Airlines as part of Phase A
Construction of temporary and permanent Terminal Frontage and Access Roads as part of Phase A
Temporary facilities to support passenger terminal services during the construction of the New Terminal Facilities as part of each Phase
All required services and systems on the Premises needed for the New Terminal Facilities, including all necessary relocations and upgrades to provide sufficient capacity for the terminal as part of Phase A
As part of Phase A, and as required for each Phase, all necessary or required (i) grading & paving; (ii) blast fences, concertina wire on fences and other fencing; (iii) security measures as required by the PANYNJ
As part of Phase A an On-Site Energy System directly interconnected with the bulk electric power system sufficient to supply 5.345 MW of electric power to the New Terminal Facilities (the On-Site Electric Power Amount) and to power on-Premises chillers sufficient to produce 25,396 MMBTU of chilled water annually that is fully backed up by Lessee's conventional electric chillers in an N+1 redundancy configuration (the On-Site Chilled Water Amount) for the New Terminal Facilities (the Off-Grid Load)
As part of Phase B1 an expansion of the On-Site Energy System directly interconnected with the bulk electric power system not utilising the PANYNJ electrical equipment and sufficient to supply 6.745 MW of electric power to the New Terminal Facilities and to power on-Premises heaters and chillers , sufficient to produce 6,479 MMBTU of hot water annually (the On-Site Hot Water Amount) and 37,267 MMBTU of chilled water annually that is fully backed up by the Lessee's conventional electric chillers in an N+1 redundancy configuration.
As part of Phase B2 an expansion of the On-Site Energy System directly interconnected with the bulk electric power system not utilising the PANYNJ electrical equipment and sufficient to supply 6.745 MW of electric power to the New Terminal Facilities and to power on-Premises heaters and chillers , sufficient to produce 15,167 MMBTU of hot water annually and 30,334 MMBTU of chilled water annually that is fully backed up by the Lessee's conventional electric chillers in an N+1 redundancy configuration.
<b>Scope of D&amp;C Work off the Premises – Financed and executed by NTO</b>
As part of Phase A all necessary and appropriate work for the construction of certain portion of the Roadway Network which is for the sole and exclusive benefit of NTO, or portions of the network impacted by the development, as specified in the Basis of Design

SCOPE OF WORK DEFINED UNDER SECTION 2 AND 11 OF LEASE AGREEMENT
As part of Phase A all necessary and appropriate work for the construction of certain portion of the Landside Utilities, as specified in Exhibit 9 to the Lease
As part of Phase A all necessary and appropriate work for the construction of temporary and permanent modifications of the AirTrain
<b>Operations and Maintenance Works – Financed and executed by NTO</b>
Performance of Operations and Maintenance Work of the New Terminal Facilities that is available for use once a 'Temporary Certificate of Authorization to Occupy or Use' is issued and shall assume the entire responsibility for Operations and Maintenance Work whatsoever in the Premises throughout the term
<b>PANYNJ Enabling Works – Financed by NTO through the payment of the Third Additional Rent and allowances within the Lease Agreement. Works to be executed by the PANYNJ</b>
Construction of temporary and permanent elevated landside access roadways and bypass roadways for access to all Airport terminals to/from I678 (Van Wyck) and JFK Expressways (except for temporary access to existing Terminals 1, 2 and 4 which may be required due to Lessee's D&C Work)– Roadway Network
All the required services and systems off the Premises needed for the New Terminal Facilities, the Landside Utilities, in all cases, giving effect to the availability of the On-Site Energy System, and taking into consideration (i) the Electricity Start Date of December 1, 2024; and (ii) the Heating, Cooling and Power Specifications for each phase.
Reserve electric and thermal capacity provision equivalent to the Off-Grid Load
All appropriate lines, mains, cables, manholes, wires, conduits and other facilities required to enable supply of electricity to the Premises directly from the Cogeneration Facility – the Direct Connect Project.
Construction of a new parking and ground transportation facility – Ground Transportation Center
Construction of 14 hardstands located at the Airport's former Hangar 12 site or another site selected by the PANYNJ and reasonably acceptable to NTO, 8 of which will be provided to Delta, these will be used as a central de-icing facility – Off-Premises Hardstands
Construction of three entry connections to integrate the New Terminal Facilities apron area with the Taxiway A & B system, including taxilanes, filets and related infill, airfield lighting and markings – Airfield Work

SCOPE OF WORK DEFINED UNDER SECTION 2 AND 11 OF LEASE AGREEMENT
Adjustments to Taxiway K-4, immediately to the South of Terminal One, in the event that the PANYNJ Total Airport and Airport Modeler ("TAAM") determined that there is an unreasonable level of airfield congestion which cannot be mitigated through operational procedures
Refurbishment of the Terminal 1 Station (the AirTrain Upgrade)

Source: Sections 2 and 11 of the Lease Agreement

2.4.2 It is understood that while the majority of the Phase A works will be undertaken by the Design Build Contractor (the "DB Contractor"), under the Design Build Agreement, certain Phase A scope items will be completed under separate contracts these include:

- The On-Site Energy System (the "AlphaStruxure" project)
- Fit out of commercial and airline spaces, subject to separate agreements with URW and the Airlines
- Design and construction of 5 active Hardstands during interim period between Phase A and Phase B.
- Art and Branding

## 2.5 KEY CHALLENGES

### Technical challenges

- 2.5.1 In general, the Works are of medium to low complexity from a technical standpoint when compared to other airport expansion projects of similar size. The LTA understands that the DB Contractor will use known and proven construction technology and tested materials from reputable suppliers.
- 2.5.2 NTO has put in place a Capital Project Delivery team ("CPD") that is coordinating, managing and controlling the project. This structure has been designed to ensure Project's cost, quality and progress are kept under control.
- 2.5.3 The following are the top key technical challenges for the redevelopment of Terminal One.

Table 2-3: Top Project Challenges

Technical Challenges	NTO's Approach to Mitigate the Risks	LTA Opinion
<b>A – Stakeholders &amp; Interfaces</b>		
<p><b>Coordination and cooperation amongst NTO's members and external stakeholders.</b></p> <p><b>NTO is responsible for construction coordination and for coordinating works with third parties where appropriate as per Section 2 of the Lease Agreement.</b></p>	<p>NTO has entered into a Construction Coordination Agreement with the PANYNJ and other key stakeholders. The Construction Coordination Agreement covers responsibilities, interface risks, new improvements and enabling works. In addition, NTO has entered into interface agreements with TOGA, Delta and IAT to cover interfaces with T1, T2 and T4, respectively.</p> <p>NTO's members have proven experience of working alongside partners delivering similar airport projects.</p> <p>NTO has put in place a CPD which assists in managing the various work streams.</p> <p>The CPD has been working with the key stakeholders (DB Contractor, Ferrovial Airports, PANYNJ, local communities and so forth) and has the role of facilitating, coordinating, and overseeing every stage of the D&amp;C Work.</p>	<p>While NTO does not have a Design/Builder as shareholder, as typically seen in P3 projects, the LTA takes comfort with the approach taken by NTO in putting in place a CPD that is leading and directing the project and notes favourably the alignment between the CPD and NTO through Ferrovial Construction, a member of the CPD team.</p> <p>The LTA notes that the CPD encompasses many individuals from firms (see section 3 of this report for further detail on this item) acting as one cohesive team. The LTA believes the CPD have the right mix of skills and experience to deliver the project on time and on budget.</p> <p>The LTA notes the following actions are being taken by NTO to mitigate some of this risk:</p> <ul style="list-style-type: none"> <li>◦ Early and continuous stakeholder engagement with: i) PANYNJ – to manage the risk of change of scope; ii) the MSA provider (Ferrovial Airports) in order to ensure the asset's design is fit for purpose during operations and a smooth transition from Construction to Operation and (iii) other third-party interfaces such as TSA, CBP, National Grid amongst others.</li> <li>◦ Established relationship with PANYNJ. In particular, the CPD and DB Contractor members have worked directly with/for the PANYNJ and are familiar with the approvals process; communication and monitoring protocols during design and construction.</li> </ul> <p>See section 8.7 of this report for discussion on the management of interfaces to date and key matters arising.</p>

Technical Challenges	NTO's Approach to Mitigate the Risks	LTA Opinion
<b>B – Costs</b>		
<b>Change Orders.</b>  <b>At any point during construction, PANYNJ has the right to amend any element of design/construction of the Project. This could lead to cost overruns and/or construction delays.</b>	<p>Section 2(ee)(3) of the Lease Agreement indicates that if the Port Authority Changes Order exceed the Reserve Amount, NTO will be entitled to claim reimbursement from the PANYNJ for any actual and reasonable incremental costs incurred by NTO during the D&amp;C Work period and/or the performance of the O&amp;M Work.</p> <p>NTO has included within the construction budget \$80 million (the Phase A Reserve Amount) to cover any PANYNJ Change Orders. At the end of construction PANYNJ gets the unused amounts of the Reserve Amount.</p>	<p>As indicated in the previous point, the LTA considers that early engagement with PANYNJ should reduce the risk of additions or amendments to the design (or help to incorporate them into planning).</p> <p>Further it is noted that the Comprehensive Basis of Design ("BOD") Approved as Noted was received on February 4, 2022.</p> <p>The Comprehensive Final Design ("CFD") was submitted on November 30, 2022 and the PANYNJ letter to proceed with the AFDs was received April 20, 2023. Approval of all AFD packages is anticipated by Q4 2024.</p> <p>The LTA considers that the level of design, and design approval, at this stage to further reduce the risk of additions or amendments to the design from the PANYNJ.</p> <p>NTO and the CPD have indicated that during the design phase there have been some adjustments proposed by PANYNJ which are already incorporated in the latest version of the design and discussions are ongoing with the PANYNJ as to whether these constitute PA Changes and allowable draws on the PA Reserve Amount. These amounts are considered as Owner Contingency draws in the LTA stressing of the Owner Contingency set out in section10.2.</p> <p>The amount provisioned for PANYNJ Change Order is substantial and the fact that it is reimbursable to the PANYNJ provides incentives to the PANYNJ to avoid using it up in order to save costs for its other projects.</p> <p>The Lease protects against Change Orders that could have a material effect on the cost and/or delay to construction and/or O&amp;M cost or certain significant modifications to design that could impact future revenue generation.</p>

Technical Challenges	NTO's Approach to Mitigate the Risks	LTA Opinion
<b>C – Approvals &amp; Permits</b>		
<b>PANYNJ's approval and permits by third parties.</b>  <b>As per Sections 6 and 7 of the Lease Agreement, NTO is responsible for obtaining and paying for all required permits and approvals for the Project from the relevant authorities. NTO's responsibility also includes amendments, modifications, revisions or supplements to any such permits or approvals where such amendments, modifications, revisions or supplements are necessary for the D&amp;C Work or the Operations and Maintenance Work.</b>	<p>The LTA has been informed that to ensure prompt responses, (according to the NTO) the PANYNJ has formed a JFK Redevelopment team that is specifically dedicated to the JFK redevelopment. This team is familiar with the context of the airport and available for the Project. The JFK Redevelopment team will be based in the same onsite construction office as the Terminal One CPD.</p> <p>Failure by the PANYNJ to provide responses or signature to submittals and matters for which a response is required within the time period set forth in the Submittal Review Period will constitute a Delay Event and will entitle NTO to an Extension of Time.</p> <p>Failure of an aggregate of 180 days (together with any PANYNJ suspensions of work) beyond the agreed time period for the relevant submittals will constitute a Compensation Event and will entitle NTO to compensation in addition to additional time.</p>	<p>The LTA notes that, as of May 2024, no delays on the permitting and approval process has been reported to date.</p> <p>The LTA appreciates the political push behind the redevelopment of Terminal One, which could encourage PANYNJ to have the required resources and protocols to deal with the approval.</p> <p>The LTA considers the relief for delay in PANYNJ approvals to be reasonable.</p>

Technical Challenges	NTO's Approach to Mitigate the Risks	LTA Opinion
<b>D – Planning and Operations</b>		
<p><b>Continued operations to ensure no reduction in capacity during redevelopment.</b></p> <p><b>This is a key requirement of the PANYNJ given the brownfield nature of the Terminal. Failure to comply with this requirement can trigger penalties and eventually termination of the contract (NTO Events of Default as per Section 21 of the Lease Agreement)</b></p>	<p>The phasing agreed with PANYNJ envisages a full segregation of the construction site with the operational areas of the terminal.</p> <p>During the construction of Phase A, the Existing Terminal 1 will be operational.</p> <p>The DB Contractor has developed detailed sequencing plans that take into account the site accesses and arrangements to eliminate any interface with operational areas.</p>	<p>The LTA considers that the DB Contractor has developed a plan that addresses the key risks such as roadway circulation, gate capacity, compliance with geometric separation between worksite and operations, and passenger flow.</p> <p>The LTA is satisfied with NTO's proposal to manage operations during construction.</p>
<p><b>Adequate capacity provision at all times</b></p> <p><b>Airport facilities will need to maintain adequate processing capacity to handle passengers and aircraft throughout the construction and subsequent periods.</b></p>	<p>Capacity estimations for all elements of Airport operations during the construction project and operations have been carried out using the PANYNJ's standards and exceeding all requirements.</p>	<p>The LTA has reviewed the capacity provision of the current plan and considers that it is sufficient to handle the forecast traffic volume.</p>

Technical Challenges	NTO's Approach to Mitigate the Risks	LTA Opinion
<p><b>Compliance with Authority Requirements</b></p> <p><b>Inadequate design of facilities may lead to delayed approval of the Authority and compliance with operational KPIs in the longer term.</b></p> <p><b>Correction of non-compliance can lead to delays and cost overruns.</b></p>	<p>The Basis of Design ("BOD") Conditional Approval was received on January 5, 2022 this was resubmitted on January 15, 2022, and Approved as Noted on February 4, 2022.</p> <p>The Comprehensive Final Design ("CCD") was submitted on November 11, 2022 and the PANYNJ letter to proceed with the AFD Submittals was received on April 20, 2023.</p> <p>Advance Final Design Submittals to the PANYNJ is ongoing with 100% of the submission expected by Q2 2024 and all approvals expected by Q4 2024.</p> <p>The DB Contractor has subcontracted trades to renowned contractors/suppliers, prioritizing the experience and quality of subcontractors over price.</p>	<p>The LTA understands that the PANYNJ has been involved in the development of the design to date and notes positively that the BOD was Approved as Noted on February 4, 2022 and that following the CFD submittal the approval to proceed with the AFD Submissions was granted.</p> <p>The LTA notes that Executive Design Review Committee and Executive Design Working Committee were formed, were meetings were held between the PANYNJ, CPD and the DB Contractor to advance the Advance Final Design Submittals.</p> <p>The LTA acknowledges the coordination between the Operations, Construction and Design team during the design stage in order to develop the most efficient solution for the project lifecycle.</p> <p>The LTA notes positively the involvement of world leader contractors like Vanderlande and ADB Safegate and subcontractors well established in the New York Market. Please refer to Section 3.5 for a review of the major subcontractors.</p> <p>The LTA understands that KPI Incentives / Penalties are capped at \$750k in any given year.</p> <p>In addition, performance deductions rank after debt service and should not affect the credit risk.</p>
<b>E – Construction Schedule</b>		
<p><b>Risk of delays that could lead to penalties and/or termination.</b></p>	<p>The current Construction Schedule meets the contractual milestones and is largely based on subcontractor input for their bought out schedules.</p> <p>The Schedule includes allowance for adverse weather as stated in the Requirements and</p>	<p>The LTA is satisfied that the Schedule, as currently developed, has a level of resilience to delay built-in and as such considers the completion dates achievable.</p> <p>The LTA notes that the DB Contractor to date has been capable to adapt the planning to the actual findings on the construction site and pivot the solutions were appropriate to maintain Phase A DBO.</p>

Technical Challenges	NTO's Approach to Mitigate the Risks	LTA Opinion
	<p>Provisions for Work of the Lease Agreement.</p> <p>If required, the DB Contractor can implement an accelerated plan to recover potential delay by working extended shifts and additional days per week.</p> <p>The construction team has been involved in the design in order to develop solutions that increase the efficiency during construction and operation of the asset.</p>	The DB Contractor has identified certain opportunities to recover potential delay, which include the possibility to work Saturdays and Sundays to accelerate or recover any possible schedule delay.
<b>F – Logistics</b>		
<b>Space available to conduct construction activities</b>	<p>The DB Contractor is confident that the staging areas available allow for the implementation of accelerated plans, if necessary, with sufficient space to store materials for the follow-on shift.</p> <p>The DB Contractor has extensive experience of delivering project with similar logistics challenges in extremely constrained areas, such as the One World Trade Centre in New York.</p>	No issues with space availability for logistics have been encountered to date.
<b>G - Environmental</b>		
<b>Contaminated Soil</b>	The DB Contractor has carried out Ground Investigation ahead of the construction works to ascertain the conditions of the ground.	<p>The LTA notes positively the introduction of allowances in the Schedule to carry out remediation works.</p> <p>It is noted that in general the level of contaminated soil is as expected based on the surveys and information provided prior to Financial Close with the exception of</p>

Technical Challenges	NTO's Approach to Mitigate the Risks	LTA Opinion
	The DB Contractor has made time allowances in the Schedule in case any remediation works are required.	<p>some localised areas. Please see section 7.1 for further discussion on this matter.</p> <p>The LTA further notes that there are limited areas remaining where inground works are required.</p>
<b>H – Utilities Relocation</b>		
<b>Utilities Relocation</b>	Utility Surveys have been carried out to ascertain the location of utilities with the Lease Premises. The DB Contractor undertook a campaign of trial pits to confirm information provided by surveys.	<p>The LTA notes that the level of unknown utilities was higher than foreseen at Financial Close. No Delay Event notices have been submitted due to this and no critical path impact has been materialised to date due to utilities works.</p> <p>As of August 2023, the headhouse is free and clear of critical utilities, minimizing the risk of possible delays due to utility works in this area and as of May 2024 piling works in the East Pier are nearing completion.</p> <p>The LTA notes that all the utilities within the airport are under the control of the PANYNJ, except the gas supply. This is seen as a positive factor due to the reduction of stakeholder interfaces.</p> <p>It is noted that National Grid did not accept a direct contract with the DB Contractor and requested a contract with the Developer. However, it is understood that the risks associated with the National Grid works remains with the DB Contractor.</p>
<b>I – Date of Beneficial Occupancy ("DBO")</b>		
<b>Conditions required to obtain Issuance of the Completion Certificate by the Port Authority (Section 2.(v) of the Lease Agreement</b>	NTO will manage any potential associated risk through close engagement and co-ordination with the PANYNJ throughout the design development and construction process.	<p>It is noted that there is no independency in this process and that the issuance of the certificates is at the PANYNJ's discretion.</p> <p>The LTA is satisfied with the level of coordination shown between the different parties at this stage.</p> <p>The LTA also takes comfort in the fact that the Basis of Design ("BOD") was Approved as Noted on February 4, 2022 and that</p>

Technical Challenges	NTO's Approach to Mitigate the Risks	LTA Opinion
		following the CFD submittal the approval to proceed with the AFD Submissions was granted.

Source: Infrata.

## Management of Airport Specific Challenges

- 2.5.4 The DB Contractor, AECOM Tishman, has extensive experience in airport projects, with involvement in 18 PANYNJ projects over the last 50 years including at JFK, World Trade Center and Transportation Hub Oculus Tower. Therefore, the DB Contractor benefits from a clear understanding of the requirements and approvals involved with this type of projects.
- 2.5.5 The DB Contractor developed strong relationships with the PANYNJ on the LaGuardia Project, where it was working as the Owner's Agent, representing the PANYNJ on site. This dynamic is going to be fostered in this Project to ensure the right level of coordination between the parties to the best interest of the Project.
- 2.5.6 One of the most common challenges of working in the Airport environment is the interface risks between the construction works and the day to day operations of the airport. The DB Contractor has developed a phasing plan that mitigates this risk, by segregating the construction works, in so far as is possible, from the operations of the airport. All the construction work are being carried out under a controlled environment without interface with the public.
- 2.5.7 The DB Contractor will also be excused of dealing with the strict requirements of works on an Airside environment since it was agreed with the PANYNJ that the majority of the construction site layout within the Lease Premises can be treated as Landside environment.
- 2.5.8 The footprint within the Lease Premises provides sufficient staging areas to store materials on site for double shift works. The DB Contractor will also benefit from lessons learnt from previous projects with more logistical constraints to develop a Logistics Plan suitable for this Project.

- 2.5.9 The DB Contractor understands the importance of early engagement with stakeholders and local community as they are also key players for the success of the project. The DB Contractor has continuous engagement with the respective stakeholders to ensure that communication between the parties is effective. The DB Contractor is also implementing Community Liaison Groups to provide frequent updates on the progress of the Project and address any concern from the community.

## LTA Opinion

- 2.5.10 The LTA considers that the members of NTO and DB Contractor have a good understanding of the particularities around Airport construction works which is being demonstrated in the delivery of the project to date and should help them successfully deliver the project.
- 2.5.11 The LTA notes positively the involvement of the DB Contractor in La Guardia Airport. This experience will add value to the team by bringing the knowledge gained and lessons learnt from that project and apply them to this project to mitigate any potential risk typical from construction works in an airport environment. Furthermore, the DB Contractor is also taking advantage of the extensive experience building at JFK Airport to plan the works in the most efficient way.
- 2.5.12 The LTA further notes the extensive global airport development experience which Ferrovial brings to the team both as a Sponsor member and also as a member of the CPD including the development and bringing into operation of T5 and T2 at London Heathrow Airport, both of which were constructed on time and within budget. The LTA considers that the knowledge, and lesson's learned by the Ferrovial team on these projects, many of whom are involved in this project, further manages the specific challenges associated with airport developments.

## 2.6 KEY ACHIEVEMENTS

- 2.6.1 As of May 2024, the Phase A DBO date of June 1, 2026 is being maintained with no critical path delay.
- 2.6.2 It is noted that following the CFD submission the PANYNJ authorized the DB Contractor to continue with the Advanced Final Design ("AFD") Packages. All AFD packages have been either partially, conditionally or fully approved and it is expected that all AFD's will be fully approved by Q4 2024. It is noted that the partial conditional approval of the AFD's is not affecting the progress of works on site.
- 2.6.3 The Terminal 2 demolition works was completed in December 2023.
- 2.6.4 The AirTrain Enclosure works were completed on December 18, 2023 and the AirTrain was brought back into full operation, utilising the enclosure, on January 27, 2024.
- 2.6.5 The test lab facility was brought into operation in December 2023.
- 2.6.6 The foundation works in the Headhouse were completed in February 2024 and steel erection in the headhouse commenced in July 2023 and has been completed as of May 2023, with steel erection for the whole terminal at 80%. The topping off ceremony, raising the beam of steel for the highest point in the project, was held in March 2024.
- 2.6.7 Curtain Wall installation works commenced on January 15, 2024 with preparatory works and the installation of the first panels occurred on February 2, 2024.
- 2.6.8 Steel erection on the East Pier commenced on March 21, 2024 and on April 22, 2024 the first two escalators were installed.
- 2.6.9 Baggage Handling System installation works commenced on April 2024.
- 2.6.10 Foundations on the east pier are ongoing and nearing completion with pile caps due to be completed in July 2024 and no critical utilities remain on the east pier.

### 3 PROJECT ORGANIZATION AND PARTIES

#### ✦ At a glance

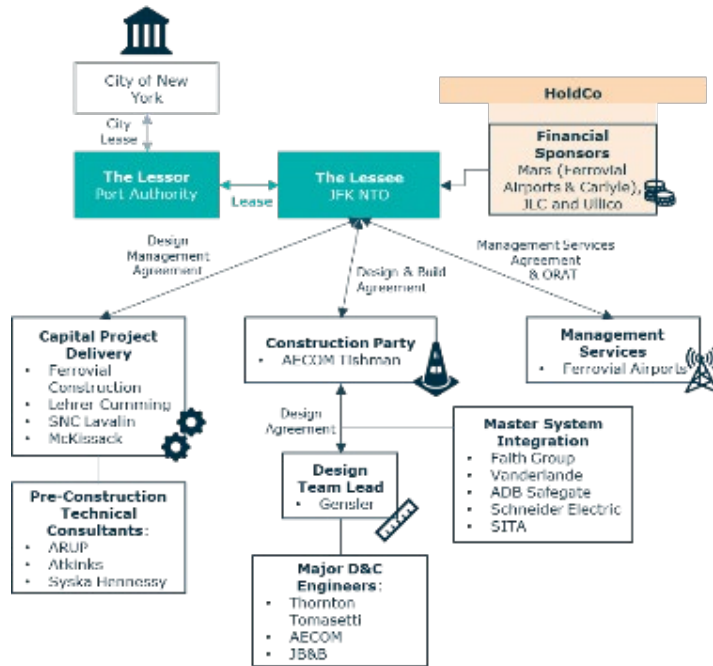
- The Lease Agreement ("Lease") regulates the contractual relationship between the Port Authority of New York and New Jersey (the "Lessor") and a special purpose entity, NTO (the "Lessee"). The lease is subordinate to the PANYNJ lease with the city which terminates in 2060.
- The Lessee is, indirectly, owned by the New Terminal One Financial Sponsor Group (Ferroviair Airports, along with Carlyle, Ullico and JLC).
- NTO will manage the terminal with Ferroviair Airports providing consulting services.
- A Capital Project Delivery team ("CPD") has been appointed, led by Palmina Whelan with a lump sum PMA in place with Ferroviair Construction, to oversee the design development, project delivery, and facilitate communication between the parties.
- AECOM Tishman is responsible for the design and construction activities. The DB Contractor has over 100 years of experience in NYC, having delivered over 18 PANYNJ projects in the last 50 years.
- Gensler is responsible for the development of the design. The Design Team Lead has over 38 years of experience in airport terminal designs and has recent experience with PANYNJ projects with the JFK International Airport, JetBlue T5, T5 Expansion, and T4 Expansion.
- The parties are experienced in working on airport projects and operations with the right skills to develop and manage a world-class terminal project. It is noted that members of both the CPD and DB Contractor teams have extensive experience both in working on PANYNJ projects and with each other.

#### 3.1 OVERALL PROJECT STRUCTURE

##### Overview of project structure

- 3.1.1 JFK is operated by the PANYNJ under a lease (the "City Lease") with the City of New York which will expire in 2060.
- 3.1.2 The Lease Agreement ("Lease"), relevant to this report, regulates the contractual relationship between PANYNJ (the "Lessor") and a special purpose entity, JFK NTO LLC (the "Lessee"). The Lease is subject and subordinate to the PANYNJ lease with the city.
- 3.1.3 The Financial Sponsors (the "Sponsors") are providing funding through capital contributions made to JFK NTO Sponsor Aggregator LLC that indirectly holds 100% of the ownership interests in the Lessee, through JFK NTO HoldCo, LLC ("HoldCo").
- 3.1.4 The figure below outlines in a simplified form the contractual structure and relationship of the Project's key parties.

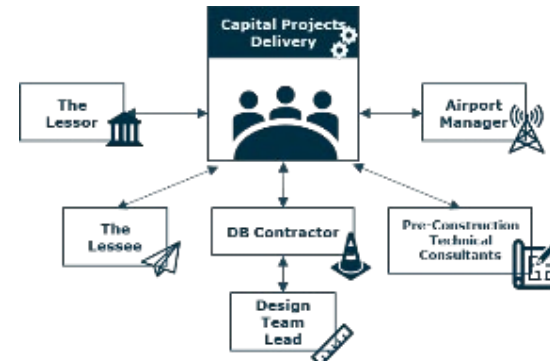
Figure 3-1 Simplified project structure



Source: Financial Sponsors

- 3.1.5 The Financial Sponsors are Ferroviol Airports, Carlyle, JLC and Ullico.
- 3.1.6 The Capital Project Delivery team ("CPD") oversees the project delivery. Key elements of the CPD role include design and construction oversight and facilitation of communication at every stage of the D&C Work as in the figure below.

Figure 3-2 CPD relationships



Source: Infrata, based on the CIM

- 3.1.7 The CPD focuses on:
- enabling common understanding of the key requirements and how they are to be translated into the design;
  - introducing the right controls and tracking;
  - working with PANYNJ on permitting, approvals and coordination.
- 3.1.8 During the pre-construction phase there were a number of key advisors, the Pre-Construction Technical Consultants, supporting and advising the CPD notably in relation to the planning of the development of the terminal and associated infrastructure both for Phase A and throughout the Lease Period.
- 3.1.9 The design and construction works is the responsibility of AECOM Tishman. AECOM Tishman has been named the Lead Contractor under the Lease Agreement. AECOM Tishman has relevant experience in aviation projects and/or projects located in New York. Please see section 3.5 for further detail on their relevant experience and section 4.2 and 4.4 for the LTA review of the Design and Build Agreement and risk transfer thereunder.

3.1.10 Gensler is the lead designer for AECOM Tishman, responsible for the overall Project's design. Major engineering sub-consultants to the Design Team Lead are Thornton Tomasetti (Structural Engineering), AECOM (Civil Landside & Airside Engineering), and JB&B (Mechanical, Electrical, Plumbing, Fire Protection). Each of them has substantial relevant experience as indicated in Section 3.5.

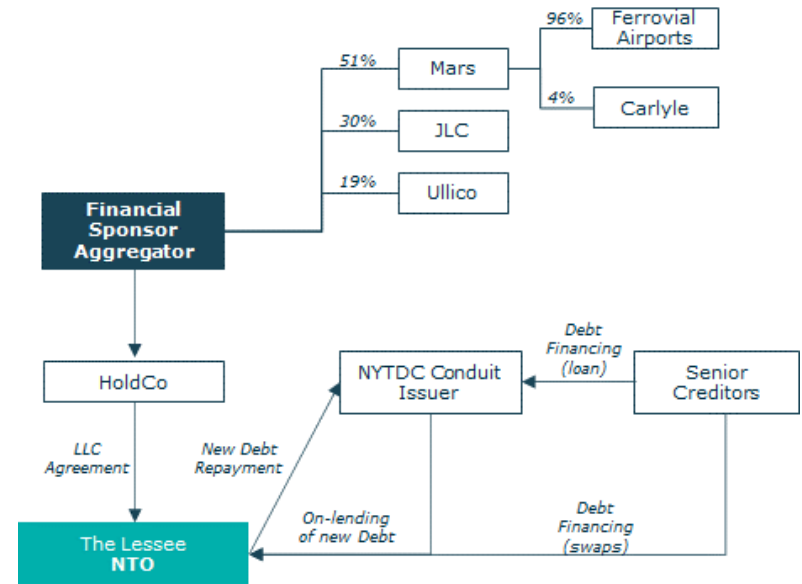
3.1.11 Operations and Maintenance Works will be carried out by NTO as the Qualified Terminal Operator. NTO has entered into a:

- Management Services Agreement (the "MSA") with Ferrovial Airports (the "Manager"), and a
- Concession Management Developer Agreement with URW Airports LLC. URW is a global retail specialist and leader, will be NTO's master concessionaire and will deliver and manage the commercial air travel retail space. URW has extensive experience working with PANYNJ including at JFK T8 and at the World Trade Center.

#### Ownership structure

3.1.12 NTO is owned by HoldCo, which in turn is owned by the Financial Sponsor Aggregator. The figure below illustrates a simplified ownership structure.

Figure 3-3 Simplified Ownership Structure



Source: CIM

3.1.13 The Lessee is wholly owned by a special purpose company, HoldCo. NYTDC Conduit Issuer will receive the proceeds of the Senior Debt and on-lend such proceeds to Lessee and NTO will be responsible to service loan repayments.

#### LTA Opinion – Overall Project Structure

3.1.14 In the LTA's opinion, the contractual structure reflects the key contractual obligations defined in the Lease.

3.1.15 While Lessee owners do not include a Design/Builder, as is now typically seen on P3 projects, the LTA takes comfort from the approach used by Lessee in putting in place a CPD that will lead and direct the project from the technical perspective. The LTA takes comfort from the corporate alignment between the CPD team, the PMO lead by Ferrovial Construction, and the Sponsor group. As indicated in other sections of this report, the key stakeholders (PANYNJ; Manager; DB Contractor; Lead Designer; Sponsors; etc.) have been coordinating and cooperating from the outset of the project.

- 3.1.16 To date, a good working relationship is noted between the parties to the project with established working arrangement and lines of communication.
- 3.1.17 Further comments on the specific contracts are provided in Section 4 of this report.

## 3.2 THE LESSOR

### The Port Authority of New York and New Jersey

- 3.2.1 The PANYNJ conceives, builds, operates and maintains infrastructure critical to the New York/New Jersey region's trade and transportation network<sup>1</sup>. Port District - its area of jurisdiction – spans over a region with a radius of approximately 25 miles from the Statue of Liberty.
- 3.2.2 PANYNJ has the responsibility for the region's three largest airports—Newark, LaGuardia, and JFK. Both the City of Newark and the City of New York are leasing the land, where the airport facilities sit, to the PANYNJ (City Lease).
- 3.2.3 PANYNJ is financially self-sufficient, it does not have the power to tax, nor does it receive any income via taxation. Its revenue is generated from its facility operations-tolls, user fees, fares and rent.

### Relevant experience


- 3.2.4 This Project is PANYNJ's third airport P3, following the Terminal 4 Project at John F. Kennedy airport (which was designed, built and is now being operated by a Schiphol-led consortium) and the LaGuardia Airport Central Terminal Building Replacement Project (once completed a consortium of Meridiam, Skanska and Vantage Airport Group will operate and maintain the new terminal for 35 years).

### LTA Opinion – The Lessor

- 3.2.5 The LTA considers that PANYNJ has the relevant experience to manage the project as it has been involved in large-scale projects - in particular JFK T4 Project and La Guardia Central Terminal Building Project as both projects are similar in complexity.
- 3.2.6 The PANYNJ has dedicated staff managing the JFK redevelopment, including the Terminal One project, which streamlines the permitting, approvals, and coordination.
- 3.2.7 To date no issues have been identified in relation to the PANYNJ approach to the project.

## 3.3 THE FINANCIAL SPONSORS (INDIRECT OWNERS OF LESSEE)

Table 3-1 Financial Sponsors

PARTY		DESCRIPTION AND RELEVANT EXPERIENCE
MARS (51%)	Ferrovial Airports (NASDAQ: FER) 	<ul style="list-style-type: none"> <li>Ferrovial, established in 1952, is one of the world leading infrastructure investors and operators. Ferrovial Airports was established in 1998, with a focus on design, build finance and maintenance of Airport Facilities.</li> <li>As of May 2024, the Company is publicly traded simultaneously in the U.S., the Netherlands and Spain.</li> <li>As of 2023, Ferrovial achieved over \$21 billion worldwide. Ferrovial is currently included in the IBEX-35, Dow Jones Sustainability and FTSE4Good indices, and presently has operations, including through its subsidiaries, in over 15 countries and employs approximately 24,000 people globally as of end of 2022.</li> <li>Ferrovial Airports has extensive airport experience in airport development and operations, including a 25% share ownership in London Heathrow Airport, 50% in Glasgow, Aberdeen and Southampton Airports in the UK and a 60% Dalaman Airport in Turkey, with Heathrow Airport achieving Skytrax Awards.</li> </ul>

<sup>1</sup> These facilities include America's busiest airport system, marine terminals and ports, the PATH rail transit system, six tunnels and bridges between New York and New Jersey, the Port Authority Bus Terminal in Manhattan and the World Trade Center

PARTY		DESCRIPTION AND RELEVANT EXPERIENCE
<div> <div>Carlyle</div>   </div>		<ul style="list-style-type: none"> <li>The Carlyle Group, established in Washington, D.C. in 1987, is one of the world's largest and multi-product global alternative asset management firms.</li> <li>Carlyle launched the Global Infrastructure Opportunity Fund ("CGI") to pursue value-added middle market infrastructure transactions, with a focus on Energy/Power, Transport/Logistics and Water/Agriculture</li> <li>The fund achieved final close in June 2019 on \$2.2 billion in total commitments.</li> <li>Carlyle has \$385 billion of assets under management as of June 30, 2023.</li> <li>Carlyle employs more than 2,200 people in 29 offices across five continents.</li> <li>CGI established CAG Holdings as its primary vehicle for airport infrastructure investment opportunities globally. CAG is led by a management team with prior experience across 70+ airport projects valued at over \$60 billion including NY LaGuardia, Montego Bay, London Luton, Athens and Sydney.</li> </ul>
	<div> <div>JLC Infrastructure (30% of investment)</div>  </div>	<ul style="list-style-type: none"> <li>JLC Infrastructure is an investor and asset management firm focused on the transportation, energy, utilities, communications and social infrastructure sectors in the United States.</li> <li>JLC is a 100% minority owned and controlled firm founded in 2015 by Loop Capital and Magic Johnson Enterprises ("MJE").</li> <li>JLC has airport experience, including the Great Hall Redevelopment at Denver Airport and the Development of Terminal B of La Guardia Airport (\$3.9bn transaction).</li> </ul>
	<div> <div>Ullico (19% of investment)</div>  </div>	<ul style="list-style-type: none"> <li>The Ullico Infrastructure Fund ("UIF") was established in 2010 to assist with the investment, maintenance and refurbishment of US infrastructure. UIF's affiliate, The Union Labor Life Insurance Company, was founded in 1927 as a union owned insurance company; Ullico is now the only labor owned insurance company.</li> <li>UIF invests on behalf of North America's Building Trades Unions ("NABTU"), an alliance of 14 unions in the building and construction industry.</li> <li>UIF has \$4.8bn assets under management (as of June 30, 2023).</li> <li>UIF includes a responsible contractor policy that promotes fair benefits and wages, working conditions and training opportunities in projects.</li> </ul>

Source: Financial Sponsors

## LTA Opinion – The Lessee


3.3.1 In the LTA's opinion, the Sponsors' members have the relevant experience to successfully manage construction and operations of the project. The LTA notes the following key features brought by the members:

- Knowledge of the asset – The team established by the Lessee has individually worked previously in different projects involving JFK. Including the JFK redevelopment plan, terminals expansion and the AirTrain Development;
- Established relationship with PANYNJ, unions and local communities;
- Experience in the USA, and internationally, at major airports. In particular(i) Ferrovial Airports involvement in multiple developments such as Heathrow Airport (with 25% share ownership), Denver Great Hall, Doha Airport (with 49% ownership of the company providing facility Management Services); (ii) The management team at Carlyle and its airport platform CAG Holdings has experience with 70+ airport projects worldwide including NY LaGuardia, London Luton, Athens and Sydney; and (iii) JLC Infrastructure has been involved in Great Hall Redevelopment at Denver Airport and the Development of Terminal B of La Guardia.

## 3.4 CPD & PRE-CONSTRUCTION TECHNICAL CONSULTANTS

3.4.1 The CPD has an important role in the management, control and coordination of the works during construction. Further information is provided in the Section 8 of this report.

Table 3-2 CPD Parties

Party	Description and Relevant experience
	<p>Ferrovial Construction is an international leader in the construction industry, with experience in highly complex projects and a focus on the design and construction of civil works, buildings, industrial works, and transport infrastructure. Ferrovial Construction Airports experience includes projects such as London Heathrow T2, Aberdeen Airport, Madrid-Barajas</p>

Party	Description and Relevant experience
	T4, Malaga Terminal and Lima Control Tower, amongst others.
<b>CUMMING GROUP</b>	A global leader in construction management, Lehrer Cumming brings experience of working on more than \$25 billion worth of construction across high-profile projects including the redevelopment of LaGuardia Airport ("LGA") and Terminal 5 at JFK
	Founded in 1911, SNC-Lavalin is a fully integrated professional services and project management company with a significant presence in the infrastructure sector.  In 2023, the SNC-Lavalin Group rebranded to AtkinsRealis.
	McKissack & McKissack is a minority-owned professional design and construction firm in the United States, participating in projects including the World Trade Center Transportation Hub, LaGuardia Central Terminal B and the expansion of Terminals D & E at Philadelphia International Airport.
	VRX, Inc. is an award-winning, woman-owned civil engineering and environmental compliance firm providing construction management (CM), inspection, and project/program management (PM) services to airlines and airports across the U.S.  As part of the CPD team for the New Terminal One, VRX is providing design and constructability reviews of the Baggage Handling System and assists with facility/interface coordination with TSA and CBP.

Source: Financial Sponsors

Table 3-3. Pre-Construction Technical Consultants

Party	Description and Relevant experience
	Arup is a design, engineering, architecture, planning and advisory firm with expertise in Airport Planning. Relevant experience includes JFK Terminal 5, San Francisco International Airport, Seattle International Airport.
	ATKINS is a design, engineering and project management consultant, member of SNC-Lavalin Group. Relevant experience includes Hartsfield-Jackson ATL Roadways for International Terminal, airside and landside design and construction at LAX.
	Syska Hennessy Group is a national market leader in technical management consulting and engineering. Relevant experience includes Long Beach Airport new terminal, LAX Midfield Satellite Concourse, and Indianapolis International, Midfield Terminal Program.

Source: Financial Sponsors

### LTA Opinion – Capital Project Delivery team

- 3.4.2 The LTA considers the CPD to be adequately resourced and having the appropriate skills to oversee the project. The CPD organization has been beneficial in maintaining good communication and interaction with the stakeholders throughout the Project.
- 3.4.3 Individually, team leaders each have an established track record with projects of comparable size, complexity and geography including within the NYC and tri-state area. The Ferrovia Construction team has relevant experience in Airports Development such as London Heathrow T2, Aberdeen Airport, Madrid-Barajas T4, Malaga Terminal and Lima Control Tower, amongst others.
- 3.4.4 The LTA notes positively the proactive approach being adopted by the CPD in the management of the execution of the project and notes positively the relationships being formed at all levels across the organisation regardless of the member party they originate in.

### 3.5 PHASE A DB CONTRACTOR

Table 3-4 DB Contractor relevant experience

Party	Description and Relevant experience
<b>AECOM TISHMAN</b>	<ul style="list-style-type: none"> <li>AECOM Tishman, an AECOM Company, is a full-service Construction Manager, Owner's Representative, and Project Manager founded in 1898. AECOM Tishman is headquartered in New York City and maintains an active presence in 18 states across the country.</li> <li>AECOM Tishman is responsible for the construction of more than 600 million square feet of space, including offices, hotels, residential buildings, retail, medical, educational, transportation, recreational, and institutional.</li> <li>AECOM's construction experience in NYC includes multiple towers and the Transportation Hub at the new World Trade Center site, the New School, LGA Central Terminal B development, the Javitz Convention Center, Denver International Airport and multiple projects at JFK International Airport.</li> </ul>

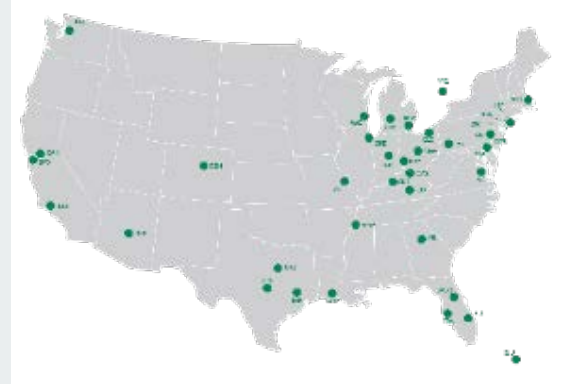
Source: Financial Sponsors

#### Airport Experience in the USA

- 3.5.1 AECOM Tishman has over 100 years of experience in NYC, whilst delivering over 18 PANYNJ projects in the last 50 years.
- 3.5.2 The LTA understands that some of the members of the DB Contractor have worked at LaGuardia Airport. AECOM Tishman's role in the project was Owner's Agent. The company was responsible to supervise the works on site and manage the interface with the different stakeholders, including the PANYNJ.

Table 3-5 AECOM Tishman qualifications

Qualification	AECOM Tishman Experience
<b>NYC experience</b>	100+ years' experience including One World Trade Center and LGA CTB
<b>PANYNJ experience</b>	18+ Port Authority projects delivered over the last 50+ years

Qualification	AECOM Tishman Experience
<b>Airport Terminal experience</b>	<p>65+ airport projects and over \$5 Bn aviation construction (see below the geographical location of key project for reference)</p>  <p>Source: Financial Sponsors</p>
<b>Local labor and supply chain</b>	100+ years' experience with local labor
<b>Financial capacity</b>	\$5.5bn bonding capability
<b>MWBE involvement</b>	Strong MWBE Commitment and track record

Source: Financial Sponsors

#### Subcontractors

- 3.5.3 The DB Contracted has procured close to 95% of the trade costs as of Substantial buy out (June 1, 2024). The remaining 5% of the trade costs are expected to be procured by the end of Q3 2024. There are a total of 63 subcontractors currently awarded. These include Banker Steel who focus on structural steel works, Kone providing vertical and horizontal transportations, Roger & Sons Concrete and P. Scalandre providing Slab on Metal Deck and Slab on Grad respectively and Harmon and Navilius providing Curtain Wall. Please refer to the Appendix D for the capabilities of the major subcontractors.

## LTA Opinion – DB Contractor

- 3.5.4 AECOM Tishman has substantial experience in airport and terminal construction projects and a track record of construction on large projects in NYC.
- 3.5.5 In particular, the LTA takes comfort on the DB Contractor’s extended experience of working with PANYNJ (18+ projects over 50+ years). This includes its ongoing project at LaGuardia Airport in New York. The experience gained in LaGuardia is seen as a positive aspect by the LTA, as the DB Contractor should have a better understanding on how to manage their main stakeholders.
- 3.5.6 The LTA notes the individual extensive experience of the DB Contractor key team members in projects of similar magnitude. The LTA is satisfied with the DB Contractors skill and experience required to deliver the project.
- 3.5.7 Overall, the subcontractors are well-performing and are established in the US market. Some have global coverage (e.g. Vanderlande for BHS) whilst others focus exclusively on the New York City region (e.g. PJP Installer, Meccon, Welsbash). Overall, they all showcased their expertise and capabilities in projects known worldwide such as the Petronas Twin Towers (Malaysia), the Burj Khalifa in Dubai (UAE) and numerous airports globally and in the New York City area.
- 3.5.8 The LTA positively notes the relationships formed between the DB Contractor and the CPD team, dealing, in a collaborative manner, with project matters as they arise.

## 3.6 PHASE A DB DESIGN TEAM

### Lead Designer – Gensler

Table 3-6 Lead Designer relevant experience

Party	Description and Relevant experience
<b>Gensler</b>	Gensler is an architectural services firm with over 38 years of experience in airport terminal designs and over 5 million square feet of planned and constructed projects, including:

Party	Description and Relevant experience
	<ul style="list-style-type: none"> <li>JFK International Airport, JetBlue T5 and T5 Expansion.</li> <li>JFK International Airport, T4 Phase II Expansion.</li> <li>San Francisco International Airport, Harvey Milk T1 Center.</li> <li>Pittsburgh International Airport.</li> <li>Detroit Metropolitan Airport.</li> <li>Gensler has experience with PANYNJ, strengthened through collaboration on the recent JFK projects, which utilized the Port Authority’s Tenant Construction (“TCAP”) and Alteration Process and represent more than 50 completed Tenant Alteration Applications (“TAAs”).</li> </ul>

Source: Financial Sponsors

### 3.6.1 The Key Sub-Advisors are:

- **Civil Landside & Airside:** AECOM is a global provider of technical services to airport owners, investors and aviation clients. Relevant experience includes JFK Terminal 8 Expansion and Original Terminal, JFK Terminal 5/5I Development Program and JFK Terminals 2-4 Redevelopment Program.
- **Airside Movements:** ADB Safegate is a leading provider of solutions that boost efficiency, improve safety, raise environmental sustainability and reduce operational costs for airports and airlines worldwide. The company is involved with the design development of the airside movements.
- **Structural Engineering:** Thornton Tomasetti is a structural engineering consultant offering services to support design, construction, and improvement of building structures. Relevant experience includes Pittsburgh Airport Terminal, LaGuardia Airport Terminal B, O’Hare International Airport L Concourse.
- **Mechanical, Electrical, Plumbing, Fire Protection:** JB&B is a company with over 100 years of practice and has completed over 15,000 design projects, with relevant experience in engineer technologies. Relevant experience include the Newark Liberty International Airport and World Trade Center Site Redevelopment.

- **Baggage Handling:** Vanderlande. After engaging the services of SuissePlan for some early design works. An early competitive bid process was held for baggage handling and awarded to Vanderlande, one of the global industry leaders in Baggage Handling Systems (“BHS”).
- **ICT Infrastructure and Safety & Security Systems:** Schneider Electric (“SE”) is a global leader in Power Systems automation, Data Centers and IoT. SE has a joint venture with Carlyle (AlphaStruxure) that is providing Energy as a Service to New Terminal One.
- **Systems (Integration, Communications and Passenger & Operations):** SITA has a strong presence in PANYNJ airports including Newark, La Guardia and JFK (Terminal 4). SITA has a local engineering team and testing premises already in place locally at Bohemia, NY.

### LTA Opinion – Design Parties

- 3.6.2 The LTA notes that the Lead Designer has experience serving the PANYNJ as the Lead Designer for the T4 and T5 expansion at JFK. Other parties are suitably experienced in their specialist fields.
- 3.6.3 The LTA positively notes the level of design is as of 98% with all Advanced Final Designs packages to the approved by Q4 2024. Please refer to Section 8.5 for further details on the Design Process.
- 3.6.4 The LTA notes the collaborative approach being adopted by the Project Parties (PANYNJ; CPD; Manager, Lessee; DB Contractor) to elaborate a design that is consistent with the long-term view of the project whilst considering best industry practices.

### 3.7 AIRPORT MANAGEMENT PARTIES

- 3.7.1 Operations and management services will be self-provided by NTO who will retain most of the operational responsibility and is expected to retain key existing personnel at Terminal One, subject to a broader market-based recruitment process to identify the best candidates.
- 3.7.2 NTO will be supported, through an MSA, in a number of operational aspects by Ferrovial Airports which will offer consulting, technical services and staff training to NTO prior to and after Financial Close.

- 3.7.3 Please see Table 3-1 for further details on the relevant experience of Ferrovial Airports.

### LTA Opinion – Airport Management

- 3.7.4 The LTA considers that through the MSA arrangement NTO are leveraging the wider Ferrovial Airports teams extensive global experience in the operation of major hub airports in the development of systems and process appropriate for the new Terminal One whilst maintaining the flexibility to identify, and employ directly, the best fit for key positions.
- 3.7.5 The LTA considers the arrangement as a standard arrangement for airport projects where a member of the Equity team have extensive operating experience and notes positively that through Ferrovial Airports there is alignment between the Manager under the MSA and NTO.
- 3.7.6 The LTA notes positively that Ferrovial Airports has extensive experience operating major airports including London Heathrow Airport (UK) which has been awarded multiple Skytrax award service levels. Further the LTA notes positively the positive impact which Ferrovial Airports has in relation to ASQ scores at the airports in which they invest.
- 3.7.7 Please see section 4.6 for a review of the MSA with Ferrovial Airports.

### 3.8 ORAT PROVIDER

- 3.8.1 The ORAT process will be undertaken by Munich International Airport (“MIA”).

Table 3-7 MIA Relevant Experience

Party	Description and Relevant experience
	<ul style="list-style-type: none"> <li>○ Munich Airport is a full-service airport operator with over 60 successful projects in over 30 countries and over 65 years of experience. Please refer to the ORAT Planning section for further credentials.</li> <li>○ Munich Airport is expert in Operational Readiness and Airport Transfer (“ORAT”) through its many international projects, including the successful opening of the New Terminal A at Newark.</li> </ul>

Source: NTO

### **LTA Opinion – ORAT Provider**

- 3.8.2 The LTA notes the extensive experience of Munich Airports on similar ORAT projects carried out around the world. It is considered that the Project in Newark has provided the company with experience of specific issues in the New York airport environment.

## 4 CONTRACTUAL REVIEW

### ★ At a glance

- The Lease is governed by a Lease Agreement with a standard risk allocation for Port Authority agreements.
- The risks associated with the DB D&C Works are passed down to the DB Contractor under the Design Build Agreement ("DBA") which has been drafted on the basis of equivalent project relief and back-to-back principles. Where risks are retained at NTO level appropriate management and risk mitigation strategies are in place at this time to manage these risks, including where appropriate risk allowances within the project costs.
- The DBA Contract Sum is being procured under a guaranteed maximum price, with a total amount of \$3,927m, subject to agreed changes.
- The relationship between the Lessee and the Airlines will be governed by Airline Use Agreements which will provide a contractual framework for operations and commitments of the parties.

### 4.1 INTRODUCTION

- 4.1.1 This section provides the LTA review of the Project's contractual documents namely (i) the Executed Lease Agreement dated June 10, 2022 (the Lease Agreement); (ii) the Executed Design Build Agreement, dated May 23, 2022 (the "DBA"); (iii) the executed Delta-NTD Construction Coordination Interface Agreement, dated June 1, 2022 (iv) The Delta – NTD Aircraft Parking License Agreement dated June 1, 2022; (v) the Construction Coordination Agreement dated June 1, 2022; (vi) the TOGA Site Access Agreement dated October 22, 2019; (vii) the Management Services Agreement dated June 10, 2022; and (viii) the Anchor User Agreement (Etihad dated April 21, 2022, LOT dated April 20, 2022, Air France dated April 1, 2022 and Korean Air Lines Dated December 27, 2022).

- 4.1.2 The purpose of this review is to identify those matters which are material to the Lender from a technical, operational and commercial perspective and focuses on the appropriateness of the risk allocation. As a result, it does not provide an exhaustive review of each clause of the contracts and should not be considered a legal review of the contracts. Readers should seek independent counsel for confirmation of any legal matters.

### 4.2 RISK ALLOCATION

- 4.2.1 The table below summarizes the allocation of key Project technical risks including the pass down of risks to the DB Contractor in so far as they relate to the works to be carried out under the DBA, the DB D&C Work.

**Table 4-1: Lease Agreement review – key technical and commercial conditions**  
(x = Assumes Risk, → = Risk Transferred)

NO.	RISK	PANYNJ	LESSEE	DB CONTRACTOR
<b>A) Construction related risks</b>				
<b>A1</b>	Design & Construction of DB D&C Work on the Premises <sup>(a)</sup>		→	X
<b>A2</b>	Design & Construction of DB D&C Work off the Premises (the Off-Premises Facilities) <sup>(b)</sup>	x	→	x
<b>A3</b>	On-Site Energy System & 5 active Hardstands		x	
<b>A4</b>	Port Authority Enabling Works	x		
<b>A5</b>	Pre-Term Work		x	

NO.	RISK	PANYNJ	LESSEE	DB CONTRACTOR
A6	Rights of Access	x		
A7	Risk of loss arising out of or in connection with the performance of the DB D&C Work		→	x
A8	Construction Application & Port Authority approval of designs		→	x
A9	Utilities <sup>(c)</sup>	x	→	x
A10	Other Redevelopments	x	→	x
A11	Construction coordination & interfacing works with third parties	x	→	x
A12	Coordination of the AirTrain with the Construction Works and provision of temporary services		→	x
A13	Non-interference with Airport operations during the DB D&C Work		→	x
A14	Unknown Conditions including (i) Unknown Archaeological Remains; (ii) Unknown Endangered Species; (iii) Unknown Facilities; and (iv) Unknown Hazardous Substances <sup>(d)</sup>	x	x	

NO.	RISK	PANYNJ	LESSEE	DB CONTRACTOR
A15	Accuracy and completeness of Available Documents		→	x <sup>(e)</sup>
A16	Information within Environmental Report		x	
<b>B) O&amp;M related risks</b>				
B1	Traffic risk		x	
B2	Air traffic management	x		
B3	Customs and police services	x		
B4	Technology enhancement		x	
B5	Operations and Maintenance Work of the Premises		x	
B6	Maintenance of Utilities		x	
B7	Utility Supply <sup>(f)</sup>	x	x	
B8	Asset condition at Handback		x	
<b>C) General risks across the lease term<sup>(h)</sup></b>				
C1	Labor matters including (i) Labor Harmony; (ii) entering into a Project Labor Agreement; (iii) Local Business Enterprise and Employment Opportunity; Affirmative Action;		→	x

NO.	RISK	PANYNJ	LESSEE	DB CONTRACTOR
	Equal-Opportunity; Minority Business Enterprise, Women-Owned Business Enterprise Requirements and (iv) ACDBE compliance			
<b>C2</b>	Governmental Approvals		→	x
<b>C3</b>	Change in Code or Law		x	
<b>C4</b>	Compliance with Governmental Requirements		→	x
<b>C5</b>	Safety		→	x
<b>C6</b>	Security		→	x
<b>C7</b>	Existing Asset Condition		x	
<b>C8</b>	Environmental Obligations		x	x
<b>C9</b>	Hazardous Substances, including pre-existing Hazardous Substances <sup>(g)</sup>		x	x
<b>C10</b>	Airport-Wide Facilities and Services	x	x <sup>(h)</sup>	
<b>C11</b>	Damage to or Destruction of the Premises		x	

NO.	RISK	PANYNJ	LESSEE	DB CONTRACTOR
<b>Notes:</b> <ul style="list-style-type: none"> <li>a) Subject to the agreed upon Exclusions and Qualifications list.</li> <li>b) The allocation of responsibilities with respect to the Off-Premises Work, include cost, is defined within Exhibit 8 (Off-Premises Scope Document) to the Lease Agreement</li> <li>c) Subject to a Delay Event. It is noted that the provision of utilities to the site boundary/other locations agreed between the parties is the responsibility of the PANYNJ.</li> <li>d) The DB Contractor will be responsible for matters as of the Contract Sum Setting Date, April 22, 2022. Subject to a Delay Event under the Lease Agreement and Material Developer Scope Change under the DBA.</li> <li>e) Other than in relation to Unknown Conditions and the Environmental Report</li> <li>f) The PANYNJ will be responsible for the supply of electricity, sewerage services, domestic cold water, hot and chilled water to specified capacities.</li> <li>g) Where the risks in this category are indicated as transferred to the DB Contractor this is during the undertaking of the DB D&amp;C Work only, during operations the risk is the Lessee's.</li> <li>h) If the PANYNJ develops during the term an Airport-wide facility which (i) benefits the project either directly or indirectly or is used by the Lessee of any of its tenants in connection with their activities; or (ii) is implemented by the PANYNJ to facilitate safety, security or operational efficiencies at the Airport then the Lessee will pay a portion of the CapEx and OpEx associated with the facility with the CapEx cost amortized over the expected useful life of the facility (such costs will be allocated by the PANYNJ between the Lessee and other terminal operators).</li> </ul>				

Source: Lease Agreement and DB Agreement

### LTA Opinion

- 4.2.2 The risk transfer provisions between the PANYNJ and the Lessee are broadly inline with those seen by the LTA in traditional P3 Contracts in the US market and in line with the typical provisions for PANYNJ agreements.
- 4.2.3 It is noted that the DB Agreement has been negotiated on the basis of a guaranteed maximum price, see section 4.4 for further discussion on this. The risk transfer provisions are broadly inline with those seen by the LTA in traditional P3 Contracts in the US market.
- 4.2.4 The LTA notes that the ground conditions risk are maintained at Lessee level. Please see section 7.1 for matters arising to date.
- 4.2.5 As a general note it is understood that where risks are retained by the Lessee during operations that should the risk materialize, for example in relation to Airport-Wide Facilities and Services provisions, the associated costs will be passed on to the airlines and other tenants.

### 4.3 LEASE AGREEMENT REVIEW

- 4.3.1 The Lease Agreement is made up of its main body, 46 Exhibits and 5 Schedules.
- 4.3.2 The parties to the Lease Agreement are:
- The Port Authority of New York and New Jersey; and
  - JFK NTO, LLC, the Lessee
- 4.3.3 The Lease Agreement is subject to the Basic Lease (the Agreement for the Municipal Air Terminals between the City of New York and the PANYNJ).
- 4.3.4 The table below sets out the LTA's review of the key technical terms included in the Lease Agreement:

**Table 4-2-: Lease Agreement – Key Technical Conditions**

Term	LTA Opinion
The Leased Premises (Section 1) and Project Milestones (Section 2)	
<p>The Leased Premises are classified as:</p> <ul style="list-style-type: none"> <li>The Initial Premises (Landside Areas, Green Garage site and the current T3 site) let as of Phase A NTP.</li> <li>The First Additional Premises (the current T2 site and a portion of the T4 site) let on the 30 days after the day the premises is turned back to the Port Authority by Delta Airlines (was anticipated to be January 1, 2023).</li> <li>The Second Additional Premises (the current T1 site) let on or before Phase A DBO.</li> </ul> <p>Exhibits 1, 2 and 3 to the Lease Agreement define the areas concerned.</p> <p>The Lease Agreement terminates at the earliest of (i) December 30, 2060 (the Lease Term) regardless of the exact Start date for all Leased Premises, or (ii) upon early termination of the City Lease.</p> <p>Scheduled Completion Date:</p> <ul style="list-style-type: none"> <li>Phase A DBO: June 1, 2026</li> </ul>	<p>The Premises considered under the Lease Agreement along with their tender dates and access rights are defined within the Lease Agreement.</p> <p>The Initial Premises were let as of June 10, 2022. Delta vacated the First Additional Premises on January 21, 2023.</p> <p>Despite the slight delay in handover of the First Additional Premises by Delta Air Lines there was no resulting schedule delay.</p> <p>The LTA notes the 18-month period between the Scheduled Completion Date and the Outside Opening Date for each Phase.</p>
Airlines and Concessions Subleases (Section 20)	
<p>The Lessee is only authorized to sublet or grant occupancy rights in or on to the Premises with prior written consent of the PANYNJ, except if expressly permitted under Exempt Subleases, Airline Use Agreements and Concession Sublease.</p>	<p>These are clearly defined and are standard provisions for agreements of this type.</p>
Scope of Works, Standards and Requirements (Section 2 and 6)	
<p>The D&amp;C Work covers the following:</p> <ul style="list-style-type: none"> <li>D&amp;C Work on the Premises</li> <li>D&amp;C Work off the Premises (Off-Premises Facilities / Installation)</li> <li>Port Authority Enabling Work</li> </ul> <p>The works under each element, and the triggers for future phases, are as further described in section 2.2 and 2.4 of this report and are detailed within the Lease Agreement and its Exhibits.</p> <p>All the demolition, design, construction and installation work in relation to the D&amp;C Work on and off the Premises will be undertaken by the Lessee at their cost and risk. These works are collectively referred to as the Project under the Lease Agreement.</p> <p>The Port Authority Enabling Works will be undertaken at the sole cost and expense of the PANYNJ but will be paid by the Lessee through</p>	<p>The scope of works, and phasing thereof, is clearly identified within the Lease Agreement.</p> <p>It is noted positively by the LTA that the scope of the D&amp;C Work is defined as that generally shown in the Lessee's Basis of Design. The LTA takes comfort from the fact that the Basis of Design has received Approval as Noted from the PANYNJ.</p> <p>The Standards &amp; Requirements are clearly defined within the Requirements and Provisions for Work as is the test for Best Management Practice.</p> <p>The order of precedence between the Project Documents is clearly set out within the Lease Agreement.</p>

Term	LTA Opinion
<p>the Third Additional Rent and other specified Allowances within the Lease Agreement based on agreed amounts set in the associated Exhibits.</p> <p>The works are to be undertaken in Phases as set out in the Lessee's Basis of Design.</p> <p>The project is to be delivered using Best Management Practice, complying with Applicable Law, Governmental Approvals and Applicable Standards.</p> <p>The Lessee shall comply and ensure that any Lessee-Related Entities comply with the Sustainable Design Guidelines, all Environmental Requirements, Transportation Security Regulations and the Rules and Regulations applicable to the project.</p> <p>The Lease Agreement sets out the Estimated Construction Amount for all Phases of the D&amp;C Work as well as for each individual Phase as follows: (i) \$7,783,000,000 for all Phases of the D&amp;C Work; (ii) anticipated Phase A expenditure of \$5,739,000,000; (iii) anticipated Phase B1 expenditure of \$1,224,000,000; and anticipated Phase B2 expenditure of \$820,000,000.</p>	<p>Please see section 8 of this report for further discussion on the works to be undertaken by the Lessee and their approach to Construction.</p>
<b>D&amp;C Changes (Section 2)</b>	
<p>The Lease Agreement sets out the processes and procedures to be followed in the event of changes including changes associated with:</p> <ul style="list-style-type: none"> <li>Port Authority Changes – subject to the provisions of a Compensation Event and funding from the Port Authority Reserve Amount</li> <li>Rules and Regulations Changes – the Lessee exposure is capped at \$25,000,000 for Qualifying D&amp;C Changes above which Lessee Damages (compensation) will be due</li> <li>Lessee Changes – Lessee's sole cost and expense</li> <li>The Port Authority Reserve Amount is an amount (\$100,000,000 in total \$80,000,000 of which is allocated to Phase A) to be funded by the Lessee and made available to fund Port Authority Changes.</li> </ul>	<p>The process for managing changes to the D&amp;C Work, including the funding of such changes and the approval process is clearly defined within the Lease Agreement.</p> <p>The LTA notes the provision of capped sums within the agreement in relation to Port Authority Changes and Qualifying D&amp;C Changes which are to be funded by the Lessee but above which the changes would become compensation events. It is the LTA's opinion that these allowances should help in the overall change control process and avoid protracted negotiations with respect to the associated changes.</p> <p>To date, there has been no approved usages of the Port Authority Reserve Amount.</p>

Term	LTA Opinion
<b>Project Resourcing (Section 65, Schedule E, F G, and I)</b>	
<p>The Lessee commits to adhere to the requirements stipulated in Schedules E and F regarding (i) Minority Business Enterprises and Women-Owned Business Enterprises ("MWBE"); (ii) Local Business Enterprises ("LBEs"); (iii) Service-disabled Veteran Owned Business ("SDVOB"); and (iv) Airport Concession Disadvantaged Business Enterprise ("ACDBE") Commitments.</p>	<p>The Participation Goals, by Category of Work, are clearly defined in the Lease Agreement (20% and 10% by total cost of each Category for MBE and WBE respectively, 10% LBEs, 30% goal for ACDBE participation and 3% goal for SDVOB) and are typical of the provisions seen in projects of this nature in the US.</p> <p>As of March 2024 the overall minority participation has been reported at 21.67% and 15.01% for MBE, 6.65% for WBE, 4.71% for LBE and 0.34% for SDVOB as percents of the total project costs and 34.31% and 23.17% for MBE, 11.14% for WBE, 3.99% for LBE and 0.38% for SDVOB as percents of the construction awards to date.</p>
<b>Conditions to Substantial Completion and Partial Completion (Section 2 (v))</b>	
<p>The following conditions must be met to achieve the Substantial Completion, for each Phase:</p> <ul style="list-style-type: none"> <li>All applicable conditions set forth in the TCAP Process have been satisfied;</li> <li>Work completed in a manner so as to not preclude the later Phases of the Project;</li> <li>Certifications received and inspection reports completed for all the systems essential to the operation of the Terminal;</li> <li>Evidence that all associated fees for all the Governmental Approvals have been paid by the Lessee;</li> <li>All the manuals and plans relevant to every system essential for the operation of the Terminal have been submitted for approval to the PANYNJ;</li> <li>Any other submittal required under the Agreement to be submitted and approved by the PANYNJ;</li> <li>A punch list has been submitted and approved by the PANYNJ.</li> </ul> <p>Following delivery of the above to the PANYNJ the PANYNJ will undertake an inspection of the D&amp;C Work to certify that the conditions for Substantial Completion have been met and shall issue Completion Certificate(s) to the Lessee.</p>	<p>The conditions to be satisfied and processes to be followed in relation to achievement of Substantial Completion and Partial Completion in order to bring the works into operation are clearly defined and set out in the Lease Agreement.</p> <p>It is noted that there is no independency in this process and that the issuance of the certificates is at the PANYNJ's discretion. It is understood that this is a standard provision in all PANYNJ agreements. The Lessee will manage any potential associated risk through close engagement and co-ordination with the PANYNJ throughout the design development and construction process.</p>

Term	LTA Opinion
<p>The issuing date of the Completion Certificate represents the substantial completion of the D&amp;C Work, except any outstanding item in the Punchlist, and is referred in the Lease Agreement as the Completion Date.</p> <p>When a material portion of the D&amp;C Work is substantially completed or is properly usable for the purposes as set out in the Lease Agreement the Lessee may apply to the PANYNJ for a Temporary Certificate of Authorization for Occupancy and Use and a Completion Certificate for the Installation Portion or the Partial Occupancy Portion in order to bring the works into operation.</p>	
Warranties (Sections 2 (i) and Section 85)	
<p>The Lessee will obtain warranties and guarantees, for the protection of the Port Authority, as are normally provided with respect to the D&amp;C Work and design from the Project Contractors, all Subcontractors and suppliers.</p> <p>The Warranty for each Phase of the Project shall be of one year from the issuance of the Completion Certificate for the relevant Phase by the Port Authority. If any portion of the D&amp;C Work is repaired or replaced during this period, the period of Warranty should be of one year from the date of the repair or replacement. This period can be extended to two years if it is available from the DB Contractor and proven to be cost effective for the Lessee.</p> <p>In addition to the one-year Warranty Period provision within the Lease Agreement Section B to the Requirements &amp; Provisions for Work Exhibit set out additional Warranty Requirements for specific elements of the Work.</p>	These conditions are clearly defined and are standard for projects of this nature.
Compensation Events (Section 2 (ee))	
<p>The Lessee will be entitled to a Compensation Event if any of the following occurs:</p> <ul style="list-style-type: none"> <li>Any Port Authority Change;</li> <li>Willful failure to provide the Lessee with Temporary Rights of Access;</li> </ul>	These events which could lead to a Compensation Event along with the damages payable under the Lease Agreement are clearly defined.

Term	LTA Opinion
<ul style="list-style-type: none"> <li>Willful failure to (i) provide the Lessee with access to the Off-Premises Facilities or (ii) tender the First Additional Premises by January 31, 2023 or (iii) tender the Second Additional Premises following TOGA's vacation;</li> <li>If the PANYNJ enters into a contract with (i) TOGA or any Airline which allows them to remain in occupancy of the Second Additional Premises;</li> <li>Any suspension of the D&amp;C Work by the Port Authority for a period longer than 24 hours;</li> <li>Instruction by the Port Authority to uncover, remove and restore any D&amp;C Work if the Authority had the opportunity to review the works and failed to raise the issues at the time;</li> <li>Failure by the Port Authority to review and approve documents within the agreed period for reviews;</li> <li>Failure or delay by the Port Authority to supply the Lessee with the information required to obtain or comply with Governmental Approvals;</li> <li>Any change in the scope of the Port Authority Enabling Work that materially and adversely impacts the D&amp;C Work.</li> </ul> <p>The Lessee Damages payable will be based upon the adverse Net Cost Impact of the event plus, where defined the Net Revenue Impact of the Event and, in the case of Port Authority Change, any amount above the Port Authority Reserve Amount.</p> <p>If the Port Authority Reserve Amount has not been exhausted, the Port Authority may elect to offset any Lessee Damages against any such Port Authority Reserve Amount</p>	<p>The procedures to raise a Compensation Event Notices and the process to be followed are also clear and well defined.</p> <p>To date the DB Contractor has submitted 21 Compensation Event Notices to NTO which have been passed through to the Port Authority to preserve the rights under the Lease Agreement.</p>
Delay Events (Section 2 (ff))	
<p>The following are Delay Events of a technical nature:</p> <ul style="list-style-type: none"> <li>Any Force Majeure Event;</li> <li>Discovery of Unknown Conditions by the Lessee during the D&amp;C Work;</li> <li>Any unknown agreement that restricts or hinders the Lessee to perform the D&amp;C Work;</li> </ul>	<p>These events which could lead to a Delay Event along with the relief provided under the Lease Agreement are clearly defined.</p> <p>The procedures to raise a Delay Event Notices and the process to be followed are also clear and well defined.</p>

Term	LTA Opinion
<ul style="list-style-type: none"> <li>Any breach of the Lease Agreement by the Port Authority</li> <li>The occurrence of a Compensation Event;</li> <li>Any change by the Port Authority of the Rules and Regulations or the Requirements and Provisions for Work;</li> <li>Specific suspension of the D&amp;C Work by the Port Authority for a period longer than 24 hours including due to an Emergency or the presence of a VIP or dignitary requiring special security arrangements at the Airport;</li> <li>Failure to tender (i) the First Additional Premises to the Lessee on the date set forth in the Baseline Schedule (January 1, 2023); and/or (ii) the Second Additional Premises to the Lessee on the date set forth in the Baseline Schedule (May 1, 2026), except to the extent caused by the Lessee or a Lessee-Related Entity;</li> <li>Any failure by the Port Authority to issue approvals in accordance with the Material Submittal and Review Period.</li> </ul> <p>If a Delay Event is agreed between the parties (i) the Lessee will be excused from performance of its obligations to perform the D&amp;C Work to the extent that such D&amp;C Work is directly affected by the Delay Event, and (ii) the Interim Milestones and/or the Scheduled Completion Date will be extended for any critical path delays in the performance of the D&amp;C Work directly caused by the Delay Event.</p> <p>In all cases the Lessee has an obligation to take all steps reasonably necessary to mitigate the impact in accordance with Best Management Practice.</p>	<p>To date the DB Contractor has submitted 12 Delay Event Notices, which includes 2 Compensation Events and 4 Port Authority Change, to NTO which have been passed through to the Port Authority to preserve the rights under the Lease Agreement.</p>
Force Majeure (Section 45)	
<p>The following events constitute a Force Majeure Event:</p> <ul style="list-style-type: none"> <li>if the Lessee is delayed or prevented to fulfil its obligations by any law, rule, regulation, order or other action taken after the Effective Date by any Governmental Authority;</li> <li>any acts of God, floods, storms, war, civil disorder, terrorist act, public enemy,</li> </ul>	<p>These events are clearly defined under the Lease Agreement and are standard for a project of this nature.</p> <p>It is understood that under the Project Labor Agreement strikes, labor disputes or labor protests are prohibited.</p> <p>The LTA notes positively the inclusion of an Official Health Event as a Force Majeure and</p>

Term	LTA Opinion
<p>pandemic or epidemic health event officially declared by a federal or New York State Government Authority (an "Official Health Event"), strike, labor dispute, shortages of materials, fuel, power;</p> <ul style="list-style-type: none"> <li>any other cause not within the control of the Lessee to remedy.</li> </ul> <p>If there is any strike, labor dispute or labor protest caused by or attributable to any Lessee-Related Entity, it will not be considered a Force Majeure.</p> <p>The occurrence of any of the Force Majeure events described will not relieve the Lessee of any obligation to pay any Rentals or any other fees due by the Lessee other than in relation to an Official Health Event which requires the Lessee to suspend operations, or prohibits or restricts travel or effects an entry ban covering international passengers and materially diminishes international traffic at the Airport which last for more than 4 months (a "Specified Event"). During such an event the Lessee may, if there is insufficient funds to pay all or a portion of Second Additional Rental when due after payment of all other amounts with priority over or at the same level as Second Additional Rental in the Cash Flow Waterfall, defer payment of the Second Additional Rent, or portion thereof, for a 1 year period (the "Relief Period"). The deferred amount would become payable at the earlier of (i) the date on which the Lessee has sufficient funds available to pay; or (ii) 3 years after the end of the Relief Period. Interest would be payable on any such deferred amounts.</p> <p>The Lessee is not released from its obligations to comply with Governmental Approvals or Applicable Laws.</p>	<p>the relief provided in relation to payment of Second Additional Rents in such an event.</p>
Handback Requirements (Section 87)	
<p>The Lessee will be required to submit the Leased Premises to pre-Handback joint inspections with the Port Authority for purposes of (i) verifying the condition of the Leased Premises and their residual life and (ii) identifying expenditures necessary to meet the Handback requirements.</p>	<p>The process for handback along with the handback requirements are clearly defined and in line with the Lease Agreement and the Requirements and Provisions for Work Exhibit.</p>

Term	LTA Opinion
No later than five (5) years prior to the projected expiration of the Lease, the Lessee will fund a Handback reserve in an amount equal to 115% of the Handback amount so determined by a third-party consultant.	
Major Maintenance and Asset Preservation (Section 86)	
<p>The Lessee shall diligently perform Major Maintenance as and when necessary to maintain compliance with the performance measures as set out in the Lease Agreement.</p> <p>The Lessee must with the Capital Asset Management Plan and the Asset Preservation Schedule, as approved by the Port Authority, including with respect to scheduling and performing Major Maintenance.</p> <p>No later than the date of Substantial Completion of any Phase, the Lessee shall establish and fund a reserve account (the Major Maintenance Reserve Fund) that may be used to pay the costs of the performance of Major Maintenance. The Lessee shall make deposits to the Major Maintenance Reserve Fund at the frequencies or intervals and in the amounts as determined by the Recognized Mortgagee under the Financing Documents</p>	The provisions with respect to Major Maintenance and Asset Preservation, including with respect to the Major Maintenance Reserve Fund, are in line with provisions in other agreement of a similar nature.
Lessee Events of Default (Section 21)	
<p>Section 21 of the Lease Agreement sets out an exhaustive list of Events of Default which could lead to Termination by the Port Authority if not cured within the specified time limits. The events of a technical nature include:</p> <ul style="list-style-type: none"> <li>Failure to complete the D&amp;C Work for any Phase by the Scheduled Completion Date for such Phase</li> <li>Failure to begin the D&amp;C Work (i) within 30 days after the Port Authority's approval of the Comprehensive Final Design Submittal or (ii) with respect to any Phase, within 30 days after the Port Authority's issuance of the applicable Partial Approval</li> <li>Abandonment; (in)voluntary bankruptcy; liens against leased property because of Lessee act or omission</li> </ul>	<p>The Events of Default which could lead to a Termination, including the associated cure periods are clearly defined within the Lease Agreement.</p> <p>The events defined are in line with similar provisions in other agreements reviewed by the LTA.</p> <p>It is noted that under the Lease Agreement the Recognized Mortgagee has a further (i) 180 days to cure in relation to a Completion Event of Default;(ii) 10 days to cure in the event of Payment Events of Default; and (iii) a further 90 days to cure with respect to any Other Event of Default prior to termination.</p>

Term	LTA Opinion
<ul style="list-style-type: none"> <li>Failure to pay fees and/or other amounts due under the Lease Agreement</li> <li>Failure to comply with City Lease, applicable law, covenants, representations and warranties</li> <li>Failure to comply with any written order by the PANYNJ to suspend the D&amp;C Work within 10 days of receipt of the written order or to keep, perform and observe directions issued by the PANYNJ</li> <li>Failure to cooperate with the Office of the Inspector General of the US Department of Homeland Security</li> <li>Failure to comply with the ACDBEC, MWBE and LBE commitments or OFAC Covenants and Obligations and such breach is not cured in 20 days</li> <li>Failure to issue the Phase B1 or B2 NTP within 90 days after receipt of Investment Grade Rating, or with 9 months of the applicable Phase Traffic Trigger NTP Date (which is itself 9 months after the Phase Traffic Trigger Date), or 21 months in the case of Phase B1 if the PANYNJ has exercised the T4 Additional Gates Election.</li> </ul> <p>In relation to failure to complete the D&amp;C Work by the Scheduled Completion date the Lessee has a further 18 months prior to the PANYNJ being able to exercise its Termination rights (Completion Event of Default).</p>	
Dispute Resolution (Sections 90, 91 and 92)	
<p>Any dispute between the parties should be discussed by designated senior representative of each Party with an aim to resolve it. If this is not achieved within the period agreed (at least 15 days), either Party will have the right to proceed to Litigation.</p> <p>With respect to any dispute with Net Revenue Impact under Section 2(ee)(3)(iii), the Dispute will follow into arbitration. Both parties will agree on the appointment of an Arbitrator. The Arbitrator his determination of the appropriate resolution of the issue in question. The arbitration decision shall be conclusive and binding on the parties that have participated in the arbitration proceedings.</p>	<p>The Dispute Resolution and Arbitration Procedures are clearly defined.</p> <p>It is noted that disputes of a technical nature will be determined by the Chief Engineer of the Port Authority in his sole discretion without cause for recourse other than through public law. It is understood that this is a standard provision in PANYNJ agreements.</p>

Term	LTA Opinion
<p>Any aspect of a Dispute that involves a technical or engineering matter that is governed by or based upon the Applicable Standards or the Reference Documents, with respect to the D&amp;C Work and any capital improvements or replacement or renovation work performed by the Lessee on the Premises, shall be determined by the Chief Engineer in his sole discretion, and shall be conclusive, final and binding on the parties.</p> <p>Each Party will be responsible to pay its own costs and expenses arising from the Dispute Resolution.</p>	
Liquidated Damages (Section 21 and Schedule E)	
<p>The Lessee is liable of paying the Port Authority the amount of \$50,000 per day, for each day the Completion Date for the associated Phase has not occurred, during the period from the first anniversary of the Scheduled Completion Date until the Outside Opening Date for such Phase.</p>	<p>It is positively noted by the LTA that in the case of a delay to the Scheduled Completion Date Liquidated Damages do not start to be accrued until a delay of 12 months to this date.</p>
Deductions / KPI Performance and Incentive Structure	
<p>Monetary deductions will be imposed, and incentives awarded, with respect to the performance of the New Terminal Facilities based upon a measurement of certain key performance indicators relating to Capacity Management, Systems Availability and Quality of Service.</p>	<p>Please see 6.7 for the LTA review and opinion of the KPI and deduction/incentive regime to be implemented.</p>
Airport-Wide Facilities and Services (Section 79)	
<p>Section 79 of the Lease Agreements sets out a number of provisions in relation to Airport-Wide Facilities and Services, these are as follows:</p> <ul style="list-style-type: none"> <li>○ PANYNJ development of Airport-wide Facilities:</li> <li>○ Over the course of the Term the PANYNJ may develop Airport-wide facilities. Should these developments (i) be of benefit to the Premises (directly or indirectly) or be used by the Lessee or any of its tenants in connection with their activities at the</li> </ul>	<p>It is understood that based on discussions between the PANYNJ and NTO that the provisions relating to the PANYNJ development of Airport-wide Facilities are in relation to potential development of hangars rather than major CapEx spends such as a new air traffic control tower / new runways etc. The LTA recommends legal counsel review of this matter to understand the exposure to undefined sums under this provision. Notwithstanding this the LTA notes that any such costs would be spread between</p>

Term	LTA Opinion
<p>Premises; and (ii) is implemented to facilitate safety, security or operational efficiencies at the Airport then the Lessee shall pay a portion of the capital expenditures and operating expenditures relating to the facility. The costs are to be allocated by the PANYNJ between the Lessee and other terminal operators and users. The capital costs will be amortized over the expected useful life of the facility.</p> <ul style="list-style-type: none"> <li>○ Communication and Collaboration with the Airport Operations Center ("AOC")</li> <li>○ Airport Traffic Mitigation. The Lessee agrees to pay PANYNJ costs associated with the Airport Traffic Mitigation Plan</li> </ul>	<p>NTO and other operators at the airport and would be amortized over the expected useful life of the facility thus reducing its potential impact. Furthermore, it is understood by the LTA that should such costs be incurred these would be passed down within the relevant sublease and airline agreements to the Airlines and Tenants.</p> <p>With respect to the requirement to communicate and collaborate with the AOC it is understood that NTO has agreed with the PANYNJ that they will provide suitable provisions within their control room to allow for a connection, to be provided by the PANYNJ, to the AOC systems.</p> <p>The costs associated with the AOC and the Airport Traffic Mitigation Plan are set out within Exhibit 28 (the "Lessee Milestone Payments Schedule") with items identified as being either fixed, set costs, or variable, where NTO is to reimburse the actual costs incurred by PANYNJ.</p>

Source: Infrata's review of the Lease Agreement, Financial Sponsors clarifications

#### 4.4 DBA REVIEW

- 4.4.1 This section provides the LTA technical review of the Executed Design Build Agreement ("DBA") between NTO and Tishman Construction Corporation of New York (the "DB Contractor"), dated May 23, 2022, for the Phase A works.
- 4.4.2 NTO and the DB Contractor entered into an Interim Agreement, which was effective as of November 01, 2021, under which NTO engaged the DB Contractor to perform certain preconstruction services, design progression and early services relating to the DB D&C Work prior to Financial Close. The DB Contractor will be compensated for the actual and demonstrated incurred costs and expenses. The maximum aggregate costs under the Interim Agreement are \$76,376,233.
- 4.4.3 This section of the report summarizes and comments on the key technical aspects of the DBA.

**Table 4-3: DBA– Key Technical Conditions**

SCOPE	
<p>The DB D&amp;C scope includes all D&amp;C scope items as indicated in Section 2(b)(1) of the Lease, and as outlined in Exhibit 2-1 of the DBA, in so far as they are required for Phase A excluding (i) AlphaStruxure; (ii) Design and Construction of 5 active hardstands; (iii) fit-out of tenant spaces; and (iv) equipment associated with Automatic Security Lanes ("ASL").</p> <p>The DB Contractor is also responsible for the design and construction of the Assigned Off-Premises Facilities, as stated in Exhibit 20 of the DBA.</p> <p>The works must be performed in accordance with the (i) relevant portions of the Lease, including with respect to inclusivity requirements; (ii) the Requirements and Provisions for Work; (iii) Applicable Standards &amp; Laws, Rules and Regulations; (iv) Port Authority Requirements; and (v) the Project Documents.</p> <p>The DB Contractor shall design and construct the Project to achieve LEED Silver Certification from the U.S. Green Building Council LEED Certification and to provide the information necessary to achieve as many additional credits for LEED Gold Certification as are reasonably obtainable without additional change to the design and without any schedule and cost impacts.</p> <p>The DB Contractor may rely on the Environmental Report. In the event that the information provided in the Environmental Report is false, in error, or contains and ambiguity, the DB Contractor is entitled to a Material Developer Scope Change.</p> <p>DB Contractor is responsible for coordinating the D&amp;C Work with the other contractors who may require access to the site and must provide early access to the Airlines to their Exclusive Spaces on or before 9 months prior to the date on which the DB Contractor reasonably expects to achieve Substantial Completion.</p>	<p>contingency. NTO utilization of contingency for these has been considered within the analysis on Developer Contingency, please see section 10.2.</p> <p>While the program requirement is to achieve LEED Silver certification, the program remains on target to potentially exceed this requirement and achieve LEED Gold certification. SITES and Envision remain on track to meet the RPW requirements of SITES Certified and Envision Gold.</p>
<p>The LTA considers that the D&amp;C Scope, as relevant to the DB D&amp;C Scope, is appropriately passed through from the Lease Agreement. The DB D&amp;C Scope outlines the DB responsibilities required by the Lease and the DBA.</p> <p>It is noted that the works associated with the AirTrain including those to be performed by the AirTrain operator are included within the DB D&amp;C Work.</p> <p>Following the Comprehensive Final Design ("CFD") submittal, the PANYNJ issued a letter to proceed with the Advance Final Design ("AFD"). The final comments to the CFD will be addressed in the AFD submissions which are expected to be fully approved by Q4 2024.</p> <p>The LTA notes that the payment of the Assigned Off-Premises Works is responsibility of JFK NTO TRS LLC which is entitled to perform as the Developer for these works.</p> <p>With respect to the Airline Exclusive Spaces, it is understood that the DB Contractor will provide "white boxes" and the Airlines will be responsible for fit out. This is a typical arrangement for spaces of this nature and allows the tenants to provide their own branding etc. in these spaces.</p> <p>The LTA notes that the scope excludes equipment for Automated Security Lanes ("ASL"). It is understood that NTO have yet to make a determination as to whether these will be required and if they are to the extent they are not provided by TSA or other third party NTO will utilize</p>	CONTRACT SUM
	<p>The Contract Sum for the entire Project and Completion of the DB D&amp;C Work has been tendered by the DB Contractor and approved by the Developer. The Contract Sum is a guaranteed maximum price of \$3,927,092,777.</p> <p>At Substantial Buyout of the Subcontracts (on or before June 1, 2024) in the event that the awarded trade cost (Direct DB D&amp;C Work Cost) is less than the amount in the trade breakdown of the Contract Sum, the trade costs shall be reduced by the difference of the two amounts (the Procurement Saving). The amounts resulting from such Procurement Savings shall be applied to (i) a staff bonus pool in an amount up to \$5m, and (ii) increase the Construction Contingency. If the amount awarded is greater than the amount shown in the trade breakdown of the Contract Sum Design Contingency may be used to supplement the difference, to the extent it is sufficient otherwise Construction Contingency may be used.</p> <p>Upon Completion of the Substantial Buyout of the Contract Sum the Contract Sum shall be reduced by 70% of any unused Design Contingency and the remaining Design Contingency shall be used to increase the Construction Contingency.</p> <p>In the event that the actual Costs of the DB D&amp;C Works exceed the aggregate Contract Sum, post setting, the DB Contractor shall pay and bear the excess.</p> <p>A Schedule of Values, including quantities, is to be developed based on the Cost Breakdown Structure under Exhibit 34 of the DBA.</p> <p>The LTA notes that the Contract Sum is a not to exceed amount, subject to adjustments permitted under the DBA. The LTA notes that whilst one such adjustment is in relation to Construction Allowances the LTA understands the only such allowance contained in the DB Contract Sum is in relation to bussing arrangements for which an \$11m allowance is included within the General Conditions amount. Currently it is expected the Contractor Bussing to be of \$26m with allowances from NTO granted to the DB Contractor. This has been taken into consideration within the analysis on the usages of Developer Contingency, see section 10.2.</p> <p>It is noted that outside of the above, changes to the Contract Sum are limited to (i) Equivalent Project Relief; or (ii) a Material Developer Scope Change providing the Developer with a high degree of cost certainty and protection from cost overruns. The LTA notes that as of April 2024, 38 Change Orders have been approved.</p> <p>The LTA considers that the DBA sets out a clear set of provisions under which both the Design Contingency and Construction Contingency may be used.</p> <p>The LTA considers that the Schedule of Values helps to assist the CPD in assessing the Percentage of Completion of the works and is being used as part of the monthly Applications for Payment. This also assist in the management of both (i) the Design Contingency usage, an allowance to cover actual increases to the Cost of the DB D&amp;C Work (other than Design Work costs) arising</p>

from design progression of the development of 100% construction documents; and (ii) Construction Contingency usage.

The LTA notes that by Substantial Buyout 94.9% of the trade packages had been procured, with the remaining 5.1% expected to be procured by the end of Q3 2024. The LTA notes that NTO's expectation is an approximately 6% overrun on trade costs once all procurement has been completed. The LTA notes that any overruns on trade costs will be funded from DB Contractor Design or Construction Contingency, the Contract Sum is not to be adjusted and the risk of cost overruns are a DB Contractor risk.

Notwithstanding the above, the LTA considers that the potential for a Procurement Savings Staff Bonus ensured prudent management of the procurement of trades by the DB team.

Please see section 10.2 for the LTA review of the DB D&C Contract Sum and project costs along with the changes to date.

## PAYMENTS

Payments to the DB Contractor constitutes of progress payments on a monthly basis.

Amounts payable are based on (i) DB D&C progress achieved in the month (based on the Schedule of Values); (ii) less retainage and withheld amounts; (iii) plus portion of Base Fee payable; and (iv) plus actual General Conditions Costs incurred.

The Base Fee for each Component is subject to 10% retention until 50% completion is reached in relation to the DB D&C Works, at which point no further retention will be withheld. The retained amount will be released as part of the Final Payment.

Subcontracted amount is subject to 10% retention until 50% of the works to be completed under the subcontract has been completed at which point the retainage amount may be reduced. No amounts may be released which would cause the total retained amount to fall below 5% of the total amounts paid to the Subcontractor until the Subcontract is closed by the DB Contractor and NTO.

NTO has paid the DB Contractor a one-time set mobilization payment of \$40,000,000 in order to mobilize and commence construction activities for the Project. In addition, NTO has paid certain other up-front costs associated with the security requirements under the DBA.

NTO and the DB Contractor have funded a MWLS Imprest Account within 45 days of NTP with \$10m each. This account is jointly controlled by the DB Contractor and NTO. As of the 39<sup>th</sup> month after NTP, the DB Contractor will apply a credit to the MWLS Imprest Account of \$1m in ten applications for payment.

The LTA considers the payment process is well defined and standard for projects of this nature.

The Schedule of Values, against which progress are being measured and which regulates the monthly progress payments, is defined within Exhibit 34-1 to the DBA.

The LTA notes that the Base Fee and subcontracted amounts are subject to retainage. 100% of the trade costs (direct costs) will be subcontracted as such all direct costs would be subject to this 10% retainage. Furthermore, the LTA notes that in the event a subcontractor work requires testing and commissioning, the subcontract price will be subject to a further 2% retainage.

The LTA notes that to date certain deviations to the subcontracted amounts have been made. These include (i) No retention on the advance payment to Banker for Structural Steel trade, (ii) No retention on the advance payment to T1- Mech for Heating and Air Conditioning trade, (iii) No retainage to Bombardier for AirTrain Programming, (iv) No retainage to Thorton Tomassetti for Structural Steel design services, and (v) No retention on the bond for Roger and Sons (Superstructure Concrete), F.W Sims (Landside Mechanical), and Wolkow Braker (roofing) The LTA considers that overall, these deviations do not represent a materially adverse change to the protections offered to the Developer within the DBA subcontractor requirements.

It is understood that the intention of the MWLS Imprest Account is to aid the cashflow of the M/WBE, LBE and SDVOB Subcontractors involved in the project. It is noted that the MWLS Imprest Account will be replenished on a monthly basis by the DB Contractor from amounts received as part of the applicable Application for Payment.

On April 26, 2024 an Amendment to the DBA was signed to increase the MWLS Imprest Account total amount from \$20,000,000 to \$30,000,000. The \$10,000,000 increase was funded equally by the Developer and the DB Contractor and as of the 39<sup>th</sup> month after NTP, the DB Contractor will apply a credit to the MWLS Imprest Account of \$1.5m in ten applications for payment.

## INCENTIVES

The DB Contractor will be entitled to receive incentive payments up to an aggregate cap of 3% (the Incentive Fee Cap) of the Contract Sum based on the achievement of specified metrics. The DBA provides for the following Incentive Fees:

- Project NTP Incentive Fee: \$27,500,000, not subject to the Incentive Fee Cap noted above.
- Schedule Incentive Fee: \$20 million, subject to Incentive Fee Cap and payable from unused Construction Contingency
- Safety Incentive Fee: Amount based upon actual savings realized for cost of insurance up to an amount of 0.25% of the aggregate Contract Sum, subject to the Incentive Fee Cap. Earned for the achievement of certain safety goals. Payable within 60 days after the notification of the Insurance Company of any savings.
- Construction Contingency Savings Incentive Fee: if any unspent portion of the Construction Contingency remains after Final Completion, it will be shared by NTO and the DB Contractor, the DB Contractor will receive 30% of the Construction Contingency, less the Procurement Savings Staff Bonus, subject to the Incentive Fee Cap, with NTO receiving the remainder of the unspent Construction Contingency. Payable with DB Final Payment following achievement of Phase A DBO.

The LTA considers that the Incentive Fee mechanism should ensure prudent management of the contract by the DB Contractor with the Schedule Incentive Fee and Construction Contingency Savings Incentive Fee being payable from unspent Construction Contingency.

It is noted that the Safety Incentive Fee is payable from savings realized from the OCIP loss reserve account and the \$27.5m NTP Incentive Fee is included within the \$457m preconstruction item within the CapEx Build-Up reviewed by the LTA. The Safety Incentive Fee is currently expected to be \$9m.

## CONSTRUCTION AND SCHEDULE

The DB Contractor is to ensure minimal interruption of the operations at the Terminal Facilities as defined in the Lease to the extent reasonably practicable. The DB Contractor is also to propose an integrated construction schedule and coordination principles related to the other concurrent redevelopments at JFK.

The Baseline Schedule is subject to the Developer approval and shall include the D&C Work, Milestone Events, Phase A DBO, Scheduled Completion Date and Completion Date.

The Baseline Schedule shall set forth the Milestone Event Dates, including the anticipated substantial completion for the project and duration and sequencing of activities.

The Project Schedule is subject to the scheduling requirements in the Lease and shall account for NTO's requirements related to opening the Project including (i) time to commission and test the Work; and (ii) to allow ORAT Service Provider to complete the ORAT Trials and (iii) will specify the dates DB Contractor must provide access to the Exclusive Spaces.

In the event of a delay the DB Contractor will work premium time and shifts and incur costs necessary to recover the Project Schedule with no increase in Contract Sum unless recovery is necessary due to a Material Developer Scope Change or available via Equivalent Project Relief. DB Contractor may propose acceleration in lieu of premium time, subject to NTO approval.

To the extent of an Unavoidable Delay (i) through (vii) the Project Schedule will be extended for each day of delay to the Critical Path attributed to the Unavoidable Delay, subject to DB Contractor duty to mitigate and terms of the Lease. The Cost of the Work may be increased subject to notice requirements. In the event of an Unavoidable Delay (viii) the relief afforded to the DB Contractor will be back-to-back with the Lease Agreement. For Unavoidable Events (ix) or (x) shall be deemed a Material Developer Scope Change and will entitle DB Contractor to time and money, provided that for an Unavoidable Delay in (x), the DB Contractor will only be entitled to time and increased general conditions costs after 7 aggregate delay days.

The Unavoidable Delay Events include (i) Terrorism or War; (ii) Strikes not specific to the DB D&C Work, beyond the DB Contractor's or its subcontractors' reasonable control; (iii) Fire or other casualty result in damages to the DB D&C Work; (iv) Embargoes or Interdictions; (v) Abnormal inclement weather; (vi) Failure to deliver the first additional premises by the date; (vii) A delay in the delivery of materials or a suspension of work issues by a Governmental Authority; (viii) Compensation Events; (ix) Acts or omissions or willful misconduct of NTO subject to notice and cure, (x) delay of Green Garage Demolition commencement date, caused by non-issuance of NTP.

The LTA considers the provisions in the DBA in relation to Construction and Schedule to be appropriate for a project of this type. Please refer to Section 9 for the review and opinion on the DB Contractor schedule.

It is the LTA's view that the provisions with respect to the schedule, including with respect to the schedule recovery options and delay provisions are clearly defined and should assist in the control and management of the schedule and should assist in the early identification of any risks to the Completion Date.

As of April 2024, the DB Contractor has submitted 12 Delay Event Notices to NTO, including 2 Compensation and Delay Events and 4 Port Authority Change, which have been passed through to the Port Authority to preserve the rights under the Lease Agreement. The LTA notes that mitigation measures have been identified, and where appropriate implemented, to recover delays to date including through the overlapping of certain activities, and maintain the Phase A DBO date.

## MILESTONE AND LIQUIDATED DAMAGES

The following Milestones, and associated Daily LD Rates are contemplated under the DBA:

MILESTONE EVENT	MILESTONE DATE	DAILY LD RATE
Milestone Event #1	Phase A DBO – June 1, 2026.	\$470,335
Milestone Event #2	Systems Ready for EaaS provider – August 12, 2024.	N/A
Milestone Event #3	Systems Ready for EaaS provider – October 4, 2024.	N/A
Milestone Event #4	Systems Ready for EaaS provider – October 8, 2024.	N/A
Milestone Event #5	White Box Ready for Food and Beverage Retail – April 14, 2025.	N/A
Milestone Event #6	Space Available for TSA – April 14, 2025	N/A
Milestone Event #7	Space Available for CBP – April 14, 2025	N/A
Milestone Event #8	White Box Ready for Airline Spaces – April 14, 2025	N/A
Milestone Event #9	Start of Basic ORAT – December 5, 2025.	N/A
Milestone Event #10	Start of Integrated System Testing (IST) – October 24, 2025.	N/A
Milestone Event #11	DBO – June 1, 2026	N/A
Milestone Event #12	Start of Advance ORAT – March 3, 2026.	N/A

LD's will be assessed for each day of delay subject to a 30 day grace period and an overall cap of \$320,000,000.

The Daily LD Rates and the LD cap are subject to the standard carve outs including (i) gross negligence or willful misconduct; (ii) amounts covered by DB Contractor insurance; (iii) failure to continue to perform services in an event of dispute etc.

The LD's will not limit NTO's ability to recover direct damages (less extended staffing and third-party consultant costs) to complete the DB D&C Work arising out of a termination.

In addition, if Jay Badame (President of DB Contractor Executive Oversight) ceases to be directly involved in the Project, and the DB Contractor is unable to provide an alternate individual

<p>acceptable to the Developer in its sole and absolute discretion, the Developer will assess LD's in the amount of \$10,000,000.</p>	<p>certificate of Partial Occupancy Portion or Installation Portion for a specific phase. For any D&amp;C Work repaired in initial period the period will be extended for a further 1 (or 2) years from the date of repair or replacement.</p>
<p>The LTA notes that while the grace period offered under the Lease Agreement prior to incurring LD costs is 12 months this is shortened to 30 days under the DB Contract.</p> <p>The LTA understands that after the 30 day LD Grace Period, the Construction Contingency, if available, can be utilised to cover Liquidated Damages up to 30 additional days.</p> <p>It is noted that the LD cap allows for 680 days of LD accrual. It is noted that regardless of this cap being reached the DB Contractor will be in default under the DBA should they fail to achieve Phase A DBO by the Scheduled Completion Date.</p> <p>To date the Milestone Events dates are being maintained in the project schedule.</p> <p>From the end of September 2023 Jay Badame is no longer involved in the project. It is noted that the Developer has issued a letter reserving to assess the liquidated damages in the amount of \$10m against DB Contractor for failing to maintain Jay Badame's involvement with the Project.</p> <p>Please refer to section 5 for the LTA review of the security including liquidity test.</p>	<p>The Warranty Provisions are in line with those contained within the main body of the Lease Agreement.</p> <p>Given the principles of back-to back and compliance with Lease Agreement requirements in so far as they relate to the D&amp;C Work the LTA is of the view that this also ties the DB Contractor into compliance with the additional Warranty Periods as specified in the Requirements &amp; Provisions for Work Exhibit to the Lease Agreement. This matter should be confirmed with legal counsel.</p> <p>From the LTA's experience on similar projects, the guarantee period of 2 years is common market practice. The LTA notes that the guarantee may be extended for a further 1 year if it can be provided on cost effective terms.</p> <p>It is understood that the ultimate decision on any additional Warranty Period, above those specified within the DBA and Lease agreement will be the result of a commercial decision, between the parties balancing the cost of such additional warranty provision with the potential costs of undertaking the maintenance direct.</p>
<p><b>LIABILITY CAP AND SECURITY</b></p>	<p><b>CHANGES TO CONTRACT AND COMPENSATION</b></p>
<p>The DBA provides a Liability Cap of 35% of the Contract Sum, as may be adjusted by Material Developer Scope Changes and Equivalent Project Relief, subject to standard carve-outs for a transaction of this nature.</p> <p>The DBA provides for the following security package provisions:</p> <ul style="list-style-type: none"> <li>Subcontractor Payment and Performance Bonds or alternatively Subcontractor Default Insurance program, subject to PANYNJ approval for any Subcontractors whose contract sum exceeds \$10,000,000.</li> <li>A Parent Company Guarantee ("PCG") from AECOM in an amount of \$500m with a "sunset date" no earlier than the end of the construction warranty period, and in no event longer than 2 years post Substantial Completion (subject to Lender approval).</li> <li>A DB Contractor Payment and Performance Bond in an amount of \$500m.</li> <li>Liquid Performance Security in the form of a Letter of Credit with an amount equal to \$171,789,858 until the latter of substantial completion of the DB D&amp;C Works or Scheduled Completion Date.</li> </ul>	<p>A Change is only compensable if it is a Material Developer Scope Change and satisfies the following (a) is requested by the NTO; (b) either (i) arises out of a specific right or entitlement granted to DB Contractor under the DBA or (ii) was not reasonably inferable from the Project Documents and was not capable of being clarified by the DB Contractor prior to full execution of the DBA; (c) cannot be reasonably anticipated from the Basis of Design, RFP Documents or Available Documents; and (d) it is material in nature (either alone or in aggregate) or (e) it is stated in the DBA as a "Material Developer Scope Change".</p> <p>Port Authority Changes: Subject to Equivalent Project Relief and compensable as per the Lease conditions.</p> <p>Permitted Adjustments in the Event of a Material Developer Scope Change or Equivalent Project Relief: (i) associated net increase in Direct D&amp;C Work Costs; (ii) extension to Baseline Schedule and/or Milestone event Dates to the extend the DB D&amp;C Work's critical path is impacted by the Change; (iii) the General Conditions Costs are to be increased by 5% of the Direct D&amp;C Work Costs change; (ii) if the Cost of the DB D&amp;C Work of a Change exceeds the Covered Increase Amount (\$100m), the DB is entitled to receive a fee of 3% of those costs above the \$100m limit.</p>
<p>In relation to the subcontractor bonding requirements it is understood that this has been waived by the DB Contractor for Creative Carpentry, a MBE awarded the Temporary Carpentry and Protection scope, and the DB Contractor has assumed this risk.</p> <p>Please refer to section 5 (Security Package Analysis) for the LTA review and commentary on the security package provisions.</p>	<p>Changes that adversely affect the Exclusive Spaces will require prior written approval of applicable Airline. If Airline requests a change to Specifications as provided for in Anchor User Agreement DB Contractor will notify the Airline, within 3 weeks, of the estimated cost of the change.</p>
<p><b>WARRANTY PERIOD</b></p>	<p>The provisions for change in general follow the standard provisions in projects of this nature and follow the back-to-back principles on which the DBA is developed.</p> <p>The LTA notes that NTO and the DB Contractor agree to avoid adjusting the Contract Sum for changes that do not materially increase the Design and Build Costs, for which the Construction Contingency will be available. It is understood that test for materiality of a Material Developer Scope Change has purposefully been left vague to allow open discussions and to encourage</p>

reasonable positions in negotiations. It is recommended that legal counsel advice is sought on this matter.

The LTA notes that as of April 2024, 38 Change Orders have been approved with an associated cost of \$63,181,419, of which 34 are considered a Material Developer Scope Change.

#### TERMINATION, DEFAULTS AND DEFAULTS TRIGGER DATES

The DBA can be terminated by NTO due to either (i) specific Events of Default, subject to cure periods, including the Events of Default under the Lease Agreement; or (ii) by convenience in whole or in part upon 60 days' written notice to the DB Contractor.

Default trigger dates and cure periods are designed to provide a buffer relative to the Lease Agreement provisions

In the event of a Termination for Cause by NTO the DB Contractor will be responsible for all costs to compete the Project beyond the original contract price, subject to the limitations on liability.

In the event of a Termination for Convenience NTO will pay the DB Contractor for services properly performed and the reasonable and actual demobilization costs incurred.

The DB Contractor may terminate the DBA for NTO uncured payment defaults and bankruptcy of NTO.

NTO's termination events include, without limitation, (i) DB Contractor abandons the DB D&C Work for a period of more than 15 days in the aggregate; (ii) DB Contractor ceases the DB D&C Work without Developer's approval; (iii) the DB Contractor fails to achieve Substantial Completion of the DB D&C Work by the Scheduled Completion Date or the Liquidated Damages Milestone Event by the Liquidated Damages Milestone Event Date; (iv) The failure of DB Contractor or its Subcontractors to perform the DB D&C Work in a manner resulting in the Port Authority being given the right to terminate the Lease or determine that there is an occurrence of an event of default pursuant to the Lease.

The provisions as outlined appear in line with standard provisions for contracts of this type.

The LTA notes that, notwithstanding the LD provisions failure to achieve Substantial Completion of the DB D&C Work by the Scheduled Completion Date or the Liquidated Damages Milestone Event by the Liquidated Damages Milestone Event Date provides NTO with the right to terminate the DBA which provides a considerable, 18 month, buffer to the longstop date under the Lease Agreement.

Source: JFK NTO - Design Build Agreement (DBA) - Tishman EXECUTED [compiled 05.23.22 10.30pm]

## 4.5 INTERFACE AGREEMENTS

4.5.1 In addition to the DBA the LTA has reviewed the Interface Agreements, which have been executed in order to manage and mitigate some of the risk areas associated with the coordination of the Project with other activities at the Airport namely:

- The Delta-NTO Construction Coordination Interface Agreement between NTO and Delta (executed June 10, 2022);
- The Delta-NTO Aircraft Parking License Agreement between NTO and Delta (executed June 10, 2022); and
- The Construction Coordination Agreement between the PANYNJ and NTO (executed June 10, 2022).
- The Amended and Restated Site Access and Indemnification Agreement between Terminal One Group Association ("TOGA") and NTO (executed October 22, 2019) and associated Side Letter (dated April 18, 2023)

4.5.2 All Agreements contain the provisions for:

- A commitment from the parties to cooperate with each other.
- Indemnification, Warranties and Dispute Resolution.

4.5.3 The following table outlines some key points, of a technical nature, from the Term Sheets with respect to the Project.

**Table 4-4 Key Technical Points of Interface Agreements**

AGREEMENT	KEY TECHNICAL POINTS
<b>The Delta-NTO Construction Coordination Interface Agreement</b>	<p>The T2 area is currently leased by Delta, including the passenger terminal, and Delta has a license to use the T3 area, including 15 hardstands.</p> <p>Delta shall be responsible for all environmental liabilities at the T2 and T3 areas identified in the Baseline Surveys to the same extent it is responsible under its lease with the Port Authority. Delta shall also be responsible for all environmental liabilities at these areas that the Lessee can show were caused by Delta.</p> <p>Delta vacated the T2 area and the Deicing Position 3 by January 21, 2023, the T3 area when Delta has been provided with replacement hardstands position by the Lessee and the PANYNJ and the De-icing Positions 1&amp; 2 by April 1, 2025.</p>
<b>The Delta – NTO Aircraft Parking License Agreement</b>	<p>At NTP the Lessee granted Delta a License to use 8 T1 Hardstands, both Temporary and Permanent Hardstands.</p> <p>Delta will pay the Lessee a fee per hardstand per annum for the forecast cost of constructing, maintaining and operating the T1 Hardstands.</p>

AGREEMENT	KEY TECHNICAL POINTS
<b>Construction Coordination Agreement</b>	<p>The PANYNJ and NTO have entered into a Construction Coordination Agreement to set forth certain rules and requirements for setting methods and standards for performing the Redevelopment D&amp;C Work.</p> <p>The parties agree to:</p> <p>(i) Develop a Coordination Schedule - The PANYNJ will compile all Redevelopment Schedules into a Master Schedule that will be available to the Airport Redeveloping Entities;</p> <p>(ii) Participate in periodic Scheduling Meetings with all Airport Redeveloping Entities;</p> <p>(iii) Prioritize D&amp;C Work in a manner to ensure all possible conflicts are resolved;</p> <p>(iv) Cooperation by NTO with all Airport Redeveloping Entities;</p> <p>(v) Develop protocol and rules for Traffic Management during the Redevelopment Period;</p> <p>(vi) The PANYNJ will assist NTO in arranging utilities works performed by PANYNJ or its contractors;</p> <p>(vii) NTO will be consulted by the PANYNJ Roadways Design Builder for possible interfaces;</p> <p>(viii) That the PANYNJ will arrange to have the Logistics Facilities, including Materials crushing/recycling operations, concrete batching facilities, On-Airport deliveries of bulk materials, bulk transportation off-site (not applicable to the redevelopment of Terminal 4 to the extent described as the "2022 Expansion Project").</p> <p>If any potential conflicts or interference are not resolved through an established meeting process, the Port Authority's Chief Engineer shall resolve any such conflicts.</p>
<b>The Site Access and Indemnification Agreement and associated Side Letter</b>	<p>TOGA signed, in July 1994, a lease with the PANYNJ which lets to TOGA Terminal One (the Existing Terminal One Lease).</p> <p>During the construction of the New Terminal One NTO will need access to the property leased to TOGA to ensure maintenance of pedestrian and vehicular traffic to the existing Terminal One including the construction of temporary and permanent roadways leading to existing Terminal One and the New Terminal One.</p> <p>The Site Access and Indemnification Agreement sets out the policies and procedures for (i) access by NTO to the Terminal One Leasehold Property on an interim basis; and (ii) managing impacts to existing Terminal One in connection with the New Terminal One works.</p> <p>The Agreement includes provisions for (i) Rights of Access; (ii) Consents required from TOGA prior to access and prior to undertaking activities including information to be provided prior to consent being given and TOGA's rights to revoke any such consent; (iii) Reimbursement of TOGA's costs associated with</p>

AGREEMENT	KEY TECHNICAL POINTS
	<p>coordination and project interfaces; (iv) Governing Documents and Port Authority Relationship; (v) Access to the Property; (vi) NTO Safety and Restoration responsibilities; and (vii) NTO's responsibility for Hazardous Materials.</p> <p>The Side Letter memorializes the Parties agreement regarding toles and responsibilities to allow for modification of the West TOGA Parking Lot and taxi queue, and bus curb frontage after the construction of the new "C-Loop" roadway to mitigate actual conditions and congestion on the Terminal One roadways and NTO's associated commitments and responsibilities.</p>

Source: Interface Agreements

### LTA Opinion

- 4.5.4 The LTA is satisfied that the Interface Agreements have been drafted in a way that is appropriate for the Lessee to manage, and mitigate, the risks associated with the relevant works and set out clear provisions with regards to (i) the roles and responsibilities of the parties to each interface agreement; (ii) the framework through which the interface matters will be managed and coordinated; (iii) flow to, where appropriate, of delays to the Lease Agreement Delay Events; (iv) Dispute Resolution; and (v) will by the time of finalization contain clear timelines and dates by which each Party must complete relevant actions.

### 4.6 THE MANAGEMENT SERVICES AGREEMENT

- 4.6.1 The Management Services Agreement ("MSA") is between JFK NTO LLC (the Lessee) and Ferrovial Airports (the Manager) and is drafted on the basis of a 15-year Term which may be extended upon mutual agreement between the parties. The Effective Date of the MSA is June 10, 2022.
- 4.6.2 The MSA splits the services to be undertaken by the Manager into 2 Phases
- The Pre-DBO Services: The services required from the Effective Date until Phase A DBO of the Project;
  - The Post-DBO Services: The services required from Phase A DBO until the last day of the Term.
- 4.6.3 Ferrovial Airports will provide management services and resources to support the Lessee's business and operations including

- Pre-DBO services: (i) Design and Development Support Services; (ii) Lessee set-up support; (iii) Airline Marketing and Route Development Support; (iv) Commercial Concession Management Support; and (v) Preparation of Operations Documentation; and (vi) Development of a comprehensive reporting infrastructure; and
- Post-DBO services: (i) Continuous Management and Support; (ii) Participation in the Preparation of Lessee Operations Materials; (iii) Corporate Services; and (iv) Revising and providing support in the comprehensive reporting infrastructure.

4.6.4 The Standards of Performance, as contained in the Lease Agreement and including with respect to KPIs, are passed down the Manager to the extent that their ability to ensure they are met is within their control and authority as are (i) the Rules and Regulations applicable to the Lease Agreement; (ii) the Lease Agreement labor commitments with respect to MBEs, WBE and LBEs Participation levels.

4.6.5 The Manager will leverage the airport network of Ferrovial Airports including its know-how, guides and manuals with respect to Best Management Practices for administration, financing, human resources, operations, information technology and commercial and brand issues.

4.6.6 The Management Fee is as set out in the Lease Agreement and consists of 3 separate components

- A Base Fee per annum which will be subject to annual consumer price index ("CPI") adjustments and deductions should the Lessee fail to achieve KPIs under the Lease Agreement (the Base Fee Deduction can be up to 25% of such financial deductions);
- A Performance Fee should the actual CFAD in a year exceed the Base Case CFAD in the given year subject to capped amount;
- The Manager Financial Bonus of an amount of 25% of the financial bonus paid to the Lessee by the Port Authority (as per Exhibit 19 of the Lease Agreement).

The Management Fee will be subject to annual consumer price index ("CPI") adjustment and deductions should the Lessee fail to achieve KPIs under the Lease Agreement. Deductions will only take effect 6 months after Phase A DBO.

4.6.7 The Annual Limitation of Liability of the Manager is capped as follows:

- During the Calendar Year in which the Effective Date occurs – the cap will be equal to 100% of the projected Base Fee to be earned on the remainder of that year; and
- During the Calendar Years to follow – the cap will be 100% of the then current Base Fee plus 20% of all Performance Fees paid during the previous 3 years.

### LTA Opinion

4.6.8 The LTA considers the MSA to be in an appropriate form and standard and is consistent with other MSA reviewed by the LTA for similar Services.

4.6.9 The LTA notes positively the role and services to be provided by Ferrovial Airports during Pre-DBO Services which includes (i) a review and feedback role with respect to the DB Contractor's plans; and (ii) a performance monitoring role of the DB Contractor's performance under the DBA.

4.6.10 The LTA concurs with the sentiment in the MSA that this role, as defined, should support the Lessee's objective that the New Terminal Facilities meet World-Class standards at the time of DBO of each phase and should thereafter be operated at such level to meet the KPI requirements and other Lessee obligations under the Lease Agreement.

4.6.11 The LTA notes that the Payment will be subject to the Lease Agreement Performance Standards and Measurement Provisions, including possible incentives and deductions. It is the LTA's views that these deductions and bonus mechanisms should incentivize Ferrovial Airports to maintain high standards in the maintenance and operation of the Project.

## 4.7 ANCHOR USER AGREEMENT

4.7.1 The form of Anchor User Agreement ("AUA") sets out the contractual framework under which NTO, as the Operator, contract with Airlines with regards to (i) the use of the Terminal One Facilities for Air Transportation Business; and, where appropriate, (ii) the lease of the Exclusive Use Spaces.

4.7.2 The parties to each individual AUA will be (i) NTO; and (ii) the named Airline.

- 4.7.3 Items included as condition precedent to its effectiveness vary across the AUA's and include the prior (i) execution of the Consent to Sublease from the PANYNJ; (ii) execution of a Freedom Agreement if the AUA is for a term longer than 1 year; (iii) execution of any agreement required for the Airline to obtain services from other permittees at the Airport (i.e. fuel from the fuel service permittees); and, with respect to the Exclusive Use Areas, (iv) the Exclusive Area Agreement.
- 4.7.4 Each AUA includes in a clear manner the associated (i) Term; (ii) Scheduled Expiration Date; (iii) Exclusive Use Space, if applicable; (iv) Rent and Other Fees; and (v) Security Deposit, in the form of a letter of credit. Prior to Phase A DBO, the airline shall provide the Flight Schedule.
- 4.7.5 It is noted that the Rent and Other Fees include the (i) Exclusive Use Space Rent on a per square foot basis; and (ii) Initial Common Use Facilities Charge Rate on a per enplaned passenger basis. Both the Initial Common Use Facilities Charge and the Exclusive Use Spaces charge will be subject to annual inflation. The Common Use Facilities Charge Rate may also be adjusted to take into account any Government-Mandated Capital Costs and any Government-Mandated Operating Expense.
- 4.7.6 The items and services covered under the Common Use Facilities Charges are provided in a schedule (O&M Services) to the AUA. This schedule also contains a list of Excluded Services which will be paid for directly by the Airline.
- 4.7.7 With respect to utilities where the cost of a utility usage, in an Exclusive Use Space, is specifically identifiable as the Airlines usage through metering, sub-metering or similar, then the costs can be recovered from the Airline on a at cost basis, without any mark-up or administrative charge.
- 4.7.8 Where the AUA is not a Fee Exempt Subleases under the Lease Agreement the Airline will be responsible for paying to the PANYNJ the Sublease Fee with respect to any Exclusive Use Spaces. The Fee Exempt Subleases being any Sublease that: (a) has a term (including all automatic or optional extensions) of less than 1 year; (b) is in existence as of the Lease Commencement Date, or is a replacement or assignment of a Sublease in existence as of the Lease Commencement Date and is on the same terms as such Sublease; (c) is an Anchor Use Agreement entered into on or prior to the Effective Date or (d) is entered into (i) by an Affiliate of an Anchor User to provide services to an Anchor User or the Lessee or (ii) by an Anchor User to provide services to an Affiliate of an Anchor User or the Lessee.

- 4.7.9 In the event the Airline fails to pay any amount due to the PANYNJ or the Operator, the Operator may impose a late charge.

4.7.10 The AUA:

- contains appropriate provisions for (i) the pass through of the terms, covenants, conditions and provisions of the Lease Agreement and the Basic Lease as applicable to the AUA including with respect to Environmental compliance matters; (ii) default and termination; and (iii) dispute resolution; and
- sets out in a clear manner the roles, responsibilities and obligations of each Party with respect to the Common Use Space and where applicable the Exclusive Use Space including (i) their permitted usage; (ii) restrictions and prohibited acts; (iii) the operation and maintenance obligations of each Party; (iv) Ground-Handling Services responsibilities; (v) utility payment; and (vi) remedies, indemnification and liability.

### LTA Opinion

- 4.7.11 The LTA is of the opinion that the AUA sets out in a clear and appropriate manner the role and responsibilities of the parties with appropriate mechanisms for risk management and provides a clear framework with regards to use of the Common Use Facilities and cost allocation.
- 4.7.12 Whilst the AUA does not provide a specific provision in relation to the pass through of any deductions under the Lease Agreement Performance Standards and Measurement Provisions it is noted positively that the Airline will pay NTO for costs associated with repairing, replacing, rebuilding or painting any part of the Premises that may be damaged or destroyed by the acts or omissions of the Airline, its employees, agents, passengers, guests or invitees.
- 4.7.13 The LTA considers positively the fact that the AUA stipulates that the Handling Services, required for the Airlines operations, may only be provided by service providers authorized by NTO and licensed by the PANYNJ. This should provide NTO with appropriate control over ground handling service providers.

- 4.7.14 The LTA understands that the AUA's entered into before the Effective Date of the Lease are considered Fee Exempt Subleases. For any AUA's entered into after the Effective Date, they would not be considered Fee Exempt unless they meet certain requirements (i.e. short term in nature, etc.) or if it is directly negotiated with the PANYNJ that the new AUA would be a Fee Exempt sub lease.
- 4.7.15 The LTA notes under the LOT AUA there is a provision for Lounge Space Credit (up to \$1m) in the event that the Commencement Date has not occurred by May 1, 2027. It is understood that LOT is not taking lounge space.

## 5 PHASE A SECURITY PACKAGE ANALYSIS

### ✦ At a glance

- The LTA has tested the cap on liability (35% of the Contract Sum) defined in the DBA and concluded that it should cover additional cost in the event of a DB Contractor and/or sub-contractor replacement. The LTA analysis indicates that the total potential liability in the event of a DB Contractor replacement, with a 12-month delay, in a realistic worst-case is \$931.8m (22.5% of the anticipated adjustments to the Contract Sum at completion, as of the end of March 2024, or 23.7% of the original Contract Sum).
- The LTA highlights however that the project has certain characteristics that mitigate additional costs associated with a DB Contractor and/or Sub-Contractor replacement, namely: i) sub-contractor assignability to NTO; ii) close monitoring of the works by the CPD; and iii) liquid regional contractor market.
- The LTA liquidity test analysis indicates liquidity needs of approximately \$158.2m. Based on this, the current Liquid Performance Security in the form of a Letter of Credit with an amount equal to \$171.8m is considered adequate.
- In addition to the security provisions under the DBA NTO are also proposing to provide the following at Developer level: (i) an Enhanced Security Allowance of \$80m; (ii) \$300m pre-committed headroom in bank facilities restricted for use only in covering fixed costs such as operating costs, interest and rents during project delays; (iii) a \$200m liquid facility; and (iv) a \$50m working capital facility.

### 5.1 D&C CONTRACT SECURITY PACKAGE

#### Methodology

- 5.1.1 The LTA's established methodology is a theoretical calculation of the additional cost and time associated with the replacement of the D&C Contractor and/or key sub-contractor(s) to complete the Project, in the event of termination due to an Event of Default in the DBA and/or key sub-contractor(s). The LTA considers the replacement of the D&C Contractor and/or key sub-contractor(s) to be an unlikely but material event with significant impact to the Project in terms of delays and additional costs to complete the Project.
- 5.1.2 The LTA has approached this analysis based on experience with similar projects, thereby ensuring that the technical assumptions reflect the realistic worst-case scenarios. The analyses of scenarios are not intended to be precise but, rather, serve as a guideline for such scenarios represented in monetary terms as a proportion of the overall DB Contract Sum.
- 5.1.3 The analysis does not address, nor considers, the track record and capabilities of the D&C Contractor's and/or key sub-contractor(s) or the likelihood of occurrence. The analysis assumes that an Event of Default has occurred in each scenario and NTO will be entitled to terminate the DBA and/or key sub-contractor(s).
- 5.1.4 The LTA's methodology is based on the quantitative analysis of:
  - Peaks of expenditure in the planned monthly construction cash flow;
  - Key construction activities taking place on site when expenditure is high or material; and
  - Other key activities, for example design, permits, construction, systems installation, testing and commissioning which, in the LTA's experience, have the ability to impact negatively on the Project in terms of costs and delays to the DBO dates, and other Project Milestones.
- 5.1.5 The LTA has assumed that the DB Contractor and superstructure concrete works and Main Electrical Works subcontractor are being replaced.

## Key Consideration of the project for the replacement analysis

- 5.1.6 **DB Contractor's sub-contracting strategy:** 100% of the trade costs will be subcontracted with current procurement of the trade costs at approximately 95%. In the event that the DB Contractor needs to be replaced, sub-contracts will be assigned to NTO and thus there is a reduced risk of cost uplift (i.e. cost increase of new sub-contractors). Moreover, the majority of the sub-contractors provide guarantees (e.g. performance bonds, with NTO named as a dual obligee).
- 5.1.7 **Continuity of the works:** The CPD is adequately staffed to oversee all aspects of the construction project. As such, the CPD can be an effective bridge for the transition between contractors/sub-contractors.
- 5.1.8 **Quality of the works:** As explained in Section 3, the CPD will be controlling the quality of the works, and any disputed amounts may be withheld by NTO.
- 5.1.9 **Delayed sub-contractor payments:** Lien waivers are required for all payments, and thus no subcontractor should be more than a month behind payment. To date the only Lien Waivers in place are for amounts related to Change Orders / disputed Compensation Events. Further, except in limited circumstances, all payments to sub-contractors will be subject to 10% retention up to a minimum of 50% of the relevant subcontract completion.
- 5.1.10 **Ability to replace the DB Contractor:** According to ENR New York, a specialized infrastructure magazine, there were 37 construction companies in New York with regional revenue of over \$100m as of October, 2023. AECOM Tishman is based in New York, and in 2023 over \$3527.58m of its revenue came from work in the region. The top 10 companies in the New York region are set out below. In addition to these the LTA considers that Ferrovial Construction have the appropriate experience to step in in the event of a contractor replacement scenario.

Table 5-1: New York 2023 Top 10 Contractors

RANK	COMPANY	REGIONAL REV 2023 (MILL. \$)
1	STUCTURE TONE/PAVARINI MCGOVERN/LF DRISCOLL/RC ANDERSEN	3,926.32
2	AECOM TISHMAN	3527.58
3	TURNER CONSTRUCTION CO.	2462.92
4	SKANSKA USA	1751.97
5	HUNTER ROBERS CONSTRUCTION GROUP LLC	1401.16
6	LENDLEASE	1200.70
7	J.T. MAGEN & CO.	1192.20
8	GILBANE BUILDING CO.	995.35
9	JRM CONSTRUCTION MANAGEMENT	980.00
10	LECHASE CONSTRUCTION SERVICES LLC	803.90

Source: <https://www.enr.com/NewYork/Toplists/2023-Top-Contractors-Preview>

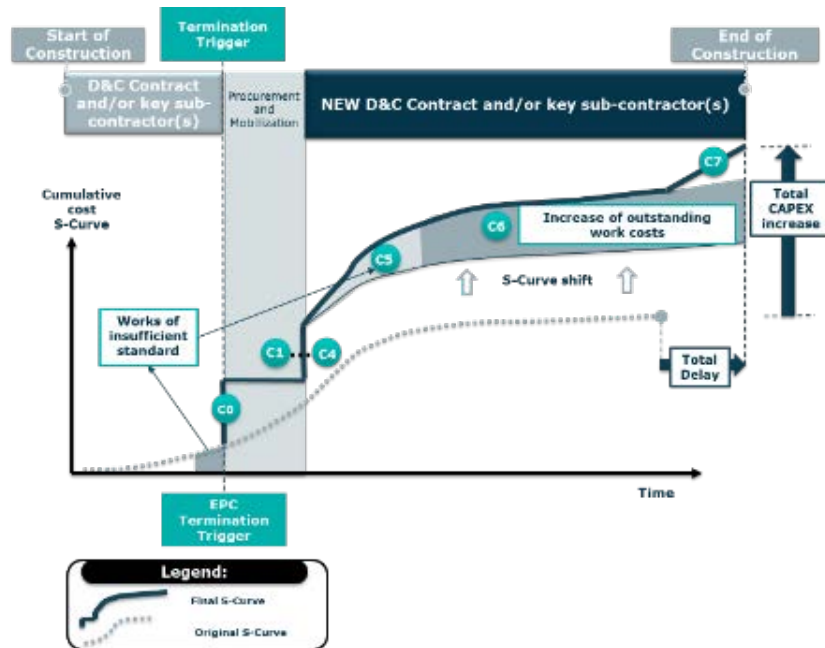
### Additional costs to replace the DB Contractor and/or key sub-contractor(s) and complete the works

5.1.11 In determining the cost to replace the DB Contractor and/or key sub-contractor(s) and complete the infrastructure due to each scenario, the LTA considered the items summarized in the following table and figure:

	NAME	DESCRIPTION
C0	Performance Deductions	Allowance for additional penalties that might occur due to the default event and replacement/mobilisation period. This assumption is based on an assessment of noncompliance deduction during the Construction Phase – Assumed to be zero as the Lease Agreement does not impose any penalties for delay / quality issues during construction and assume that this will be reflected in the DBA as previously.
C1	Tender Costs	The associated cost to put together the documentation to find a replacement Contractor.
C2	Ransom Creditors	Suppliers/Sub-contractors might pursue claims relating to arrangements with the terminated Contractor against NTO or the NTO Team might have to incur additional costs to cover non-payment by the terminated Contractor.  Based on an estimate of the works that will be sub-contracted and an estimation of the amount of non-payment works carried out noting that maximum exposure to NTO under the terms of the DBA is 1 month as discussed above.
C3	Consultancy Fee	Allowance for additional advisory fees for legal (excluding any potential settlement cost) and technical advisors (additional to the LTA's normal scope of works for construction monitoring).
C4	Additional Engineering	Allowance to cover the need to assess any faulty/ non-compliant design or works and draw up plans suitable to the new Contractor. Calculated as a percentage of the design costs and works to be completed.
C5	Remedial Costs	Remedial costs arising from repairing previously completed works deemed to be of insufficient standard or not meeting the contractual requirements. Additional costs considered under this assumption includes provisions for the need to rebuild certain areas of the Project, where remediation

	NAME	DESCRIPTION
		measures are not viable, and site upkeep during the procurement period.
C6	Construction Uplift %	Construction uplift is the percentage applied by any replacement Contractor to complete the remaining works and availability of replacement sub-contractors in the market.  Allowance made on the basis of the estimated value of the capital costs invested into the Project (by relevant disciplines) at the time of default, remaining balance to complete the works, the time left in the construction schedule, necessary acceleration measures (including rapid mobilization) that the new DB Contractor and/or key sub-contractor(s) will have to put in place in order to meet the construction end data and the extent of technical complexity of the works remaining.  The LTA has considered uplifts of between 2.5% and 20% to individual work packages.
C7	Delay Damages	Based on the information provided, the total maximum daily LDs passed to the Contractor amount to: USD470k per day (following a 30 day grace period) with a cap of USD320m. However, the LTA notes, based on information provided by NTO (in model NTO - Delay Damages Calc DRAFT 2024-05-14), that the actual costs to NTO (including financing costs, lost revenues & additional costs) in the event of a 12-month delay to opening of Phase A would be \$493.2m. It is this amount which is used in the analysis.

**Figure 5-1: Illustrative diagram of cost incurred on a DB Contractor replacement**

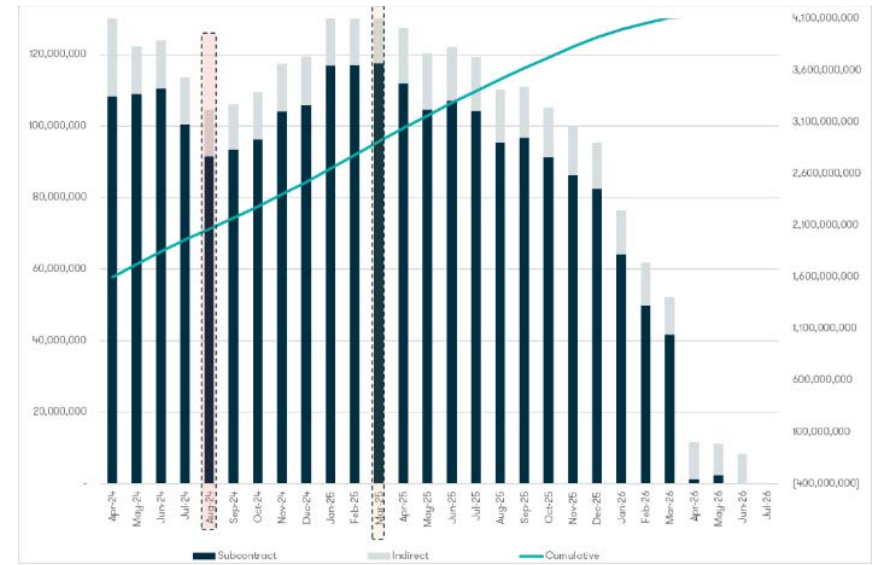


Source: Infrata

## Results & LTA Opinion

5.1.12 Based on the anticipated cashflow to completion as of the end of March 2024 (utilising the early curve from the cashflow information and taking into consideration NTO's assessment of future increases in the contract sum through to completion as of the end of March 2024), the results of the LTA analysis indicates that replacement in August 2024 is the realistic worst case from a total costs to complete perspective while March 2025 is the realistic worst case from an immediate liquid needs perspective. The results of the LTA analysis are provided below.

**Figure 5-2: Cash-Flow curve with August 2024 and March 2025 highlighted**



Source: NTO (Simplification of Cashflow Breakdown\_for Security Package) and LTA analysis

- 5.1.13 Based on the assumptions outlined above and the assessment undertaken by the LTA, the total potential liability in the event of a DB Contractor replacement, with a 12-month delay, in a realistic worst-case is \$931,804,776 (22.5% of the adjusted Contract Sum, or 23.7% of the original Contract Sum), see table below. The analysis conducted by the LTA, under a worst-case scenario, demonstrates that the Liability Limit of 35% of the Contract Sum within the DBA security package is adequate.
- 5.1.14 In order to determine the need for immediate liquid funds in the event of a termination and replacement of the DB Contractor the LTA has taken into account the following costs items: C1 – Tender Costs; C2 – Ransom Creditors; C3 – Consultancy Fees and additional LTA monitoring; and C8 – Construction site upkeep and interim maintenance costs during the procurement period, including site maintenance and security costs.

- 5.1.15 Based on the assumptions outlined above and the assessment undertaken by the LTA, the total liquidity needs, in the event of a DB Contractor replacement, with a 12-month delay, in a realistic worst-case is \$158,248,593 (3.83% of the adjusted Contract Sum or 4.0% of the original Contract Sum). Based on this, the Liquid Performance Security in the form of a Letter of Credit with an amount equal to \$171,789,858.75 is considered adequate.
- 5.1.16 The LTA notes, favourably, that in addition to the security provisions under the DBA NTO are also proposing to provide the following at Developer level: (i) an Enhanced Security Allowance of \$80m; (ii) \$300m pre-committed headroom in bank facilities restricted for use only in covering fixed costs such as operating costs, interest, rents during project delays and cost overruns; (iii) a \$200m liquid facility; (iv) a \$50m working capital facility; and (v) amounts retained under the DBA. The LTA considers that these provide additional security in the event of a replacement scenario.

**Table 5-2: Additional Costs to complete the Project in the event of DB Contractor Replacement – Realistic Worst Case**

Month	6 August 2024	13 March 2025	19 September 2025	24 February 2026
Total CAPEX:	\$4,136,208,231			
Total works completed:	2,066,293,676	2,915,508,210	3,624,299,899	4,059,663,964
Total works completed %	50%	70%	88%	98%
Balance to complete:	2,069,914,555	1,220,700,021	511,908,332	76,544,267
Balance to complete %	50%	30%	12%	2%
<b>No. Name</b>				
C0 Performance Deductions	-	-	-	-
C1 Tender Costs	36,069,251	36,069,251	36,069,251	36,069,251
C2 Ransom Creditors	94,345,124	120,073,842	97,444,771	50,203,216
C3 Consultancy Fees	1,000,000	1,000,000	1,000,000	1,000,000
C4 Additional Engineering	11,330,887	6,682,215	2,802,229	419,010
C5 Remedial Costs	103,054,363	123,151,810	102,574,428	63,874,876
C6 Construction Uplift	192,845,763	107,338,545	45,684,318	9,379,127
C7 Delay Damages	493,159,388	493,159,388	493,159,388	493,159,388
<b>Grand Total</b>	<b>931,804,776</b>	<b>887,475,052</b>	<b>778,734,386</b>	<b>654,104,868</b>
<b>% of the Construction Contract</b>	<b>22.5%</b>	<b>21.5%</b>	<b>18.8%</b>	<b>15.8%</b>

Source: LTA

**Table 5-3: Liquidity needs in the event of DB Contractor Replacement – Realistic Worst Case**

	August 2024	March 2025	September 2025	February 2026
Total CAPEX:	\$4,136,208,231			
Total works completed:	2,066,293,676	2,915,508,210	3,624,299,899	4,059,663,964
Total works completed %	50%	70%	88%	98%
Balance to complete:	2,069,914,555	1,220,700,021	511,908,332	76,544,267
Balance to complete %	50%	30%	12%	2%
<b>No. Name</b>				
C0 Performance Deductions	-	-	-	-
C1 Tender Costs	36,069,251	36,069,251	36,069,251	36,069,251
C2 Ransom Creditors	94,345,124	120,073,842	97,444,771	50,203,216
C3 Consultancy Fees	1,000,000	1,000,000	1,000,000	1,000,000
C8 Site upkeep and O&M costs	1,105,500	1,105,500	1,105,500	1,105,500
<b>Grand Total</b>	<b>132,519,875</b>	<b>158,248,593</b>	<b>135,619,522</b>	<b>88,377,967</b>
<b>% of the Construction Contract</b>	<b>3.20%</b>	<b>3.83%</b>	<b>3.28%</b>	<b>2.14%</b>

Note: Total Capex is the current Contract Sum plus NTO's current future anticipated increases through to completion

Source: LTA

- 5.1.17 Under a 12-month delay scenario the LTA understands that total additional costs to NTO would be approximately \$493.2m as set out in the following table.

**Figure 5-3: Delay damages under a 12-month delay scenario**

COST ELEMENT	AMOUNT (MUSD)
O&M	-41.2
MSA	-6.2
O&M	-35.0
Port Authority Obligations	-94.8
Ground Rent	-27.7
First Additional Rent	-3.2
Third Additional Rent	-64.0
Debt Service and Fees	-295.3
Construction Related NTO Costs	-76.1
OCIP	-53.0
Other Consultants	-7.5
Programme Management Fee	-15.6
Fixed Obligations	-507.5
Total Aeronautical Revenue (Incl. Delta Hardstands)	5.3
Interest Income	9.0
Offsets	14.3
<b>12-MONTH DELAY DAMAGES</b>	<b>-493.2</b>

Source: NTO (NTO - Delay Damages Calc DRAFT 2024-05-14)

- 5.1.18 The LTA notes that in a delay event, without termination, the available off sets of the above 12-month delay damages include (i) \$157.6m in Daily LD's (11 month of LD's associated with Milestone Event #1) under the DBA; (ii) the \$80m prefunded Enhanced Security Package Allowance; (iii) the \$300m pre-committed headroom in bank facilities; (iv) the \$200m liquid facility; and (v) the \$50m working capital facility.

- 5.1.19 Based on the large construction market in the New York area, with over 45 contractors with regional revenue greater than \$100m (in 2023), the LTA considers the market to be liquid and the likelihood of finding a suitable replacement high. A number of reputable and sizeable contractors can be regarded as adequate alternatives given their track record and expertise. This confirms the LTA opinion that there is sufficient capacity in the market to provide alternative contractors for the Project in the event of replacement.

- 5.1.20 The scope of the project is considered moderately complex due to the need to maintain airport operations and specific requirements associated with constructing an airport terminal. However, many of the larger contractors have buildings, transportation and airport construction experience as well as New York-specific track record in densely populated spaces with tight construction areas. This leads the LTA to conclude that the project should fit well within the capabilities of the existing larger companies.

## 5.2 DELAY ANALYSIS

- 5.2.1 The table below provides an assessment of the residual delay in the event of bringing a new DBA Contract and/or key sub-contractor(s) to finish the works under a realistic worst case based on a schedule analysis undertaken by the PMO. The analysis concludes that the 12 month delay is less of an impact when experienced at month 22 versus later months for the following reasons:

- When the delay happens earlier in the program there is a longer remaining life of the project across which to reasonably mitigate the delay including across a larger number of remaining activities.
- There is a limited amount of mitigation possible on the backend of the schedule due to shorter time for reaction and mitigations are conservative for interior works due to potential space constraints for critical work and increased pressure on coordination between ongoing trades.

- 5.2.2

**Table 5-4 Assumptions of delay (in months) due to DB Contractor replacement event.**

ITEM	AUGUST 2024	MARCH 2025	SEPTEMBER 2025	FEBRUARY 2026	KEY CONSIDERATIONS
<b>(a) Procurement of new D&amp;C Contract and/or key sub-contractor(s)</b>	9	9	9	9	Whilst the NY construction market has a large number of potential construction companies that could step in and continue the works, however, the LTA notes that in recent years there has been a change of DB Contractors willing to participate in P3 projects due their risk exposure which may be reflected in longer periods to negotiate a contract with a new DB Contractor. projects due to the risk exposure.
<b>(b) From contract award to mobilisation on site</b>	2	2	2	2	Works are located at an accessible site.
<b>(c) Delays</b>	1	1	1	1	Potential delays that could affect the start of the new DB Contractor and/or Subcontractors. The LTA notes that the DBA provides TerminalCo with the right to terminate the contract at 1 months' notice, not subject to dispute resolution.
<b>(d) a + b + c total delay at start of the new D&amp;C Contract and/or key sub-contractor(s)</b>	12	12	12	12	N/A
<b>(e) No float in the schedule</b>	0	0	0	0	The DB Contractor have identified opportunities to recover potential delays, however, has also advised that the schedule has no float.
<b>(f) acceleration by new D&amp;C Contract and/or key sub-contractor(s)</b>	5.5	3	1.5	0.5	<p>All post-delay work will be on a 6 day/week calendar</p> <p>Long lead items fabrication and delivery is required to be expedited (PBBs, Curtain Wall, BHS, TSA Equipment, MSI, Vertical Transportation, etc.)</p> <p>Double shift and third shift will be required on post-delay work</p> <ul style="list-style-type: none"> <li>For the double shift work: Inefficiency factor of 20% was used on substructure, superstructures, exterior enclosure, underground utilities, airside and landside civil work.</li> <li>For the third shift work Inefficiency factor of 30% was used on interior fit-out, MEP installation, Low Voltage installation and Testing and Commissioning.</li> </ul>
<b>(g) = d - e - f total residual to maximum project deadline</b>	6.5	9	10.5	11.5	N/A

Source: LTA & CPD

## 6 PAYMENT MECHANISM

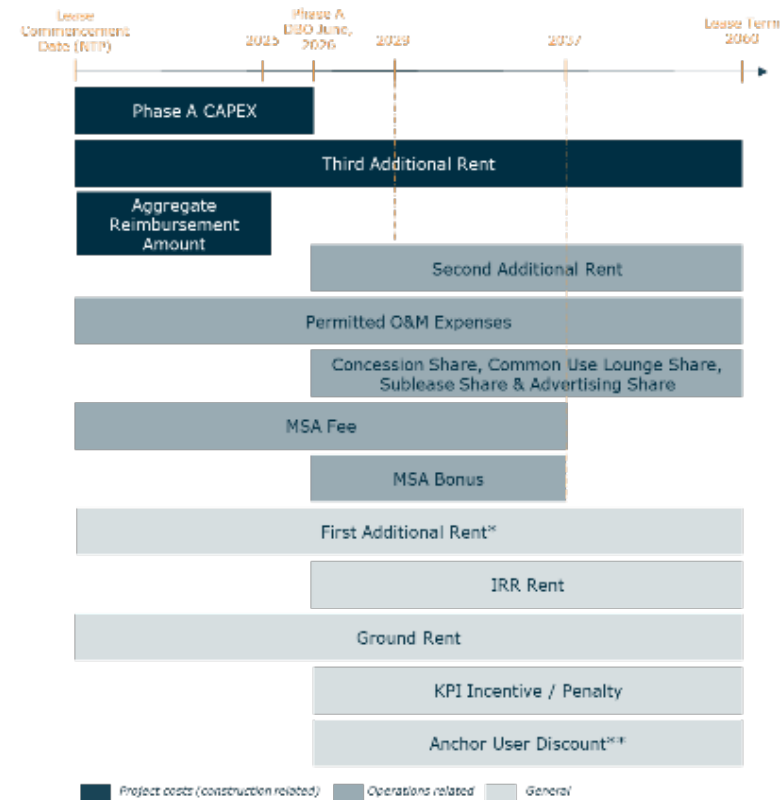
### At a glance

- The LTA is of the view that the Payment Mechanism gives adequate priority to debt service and provide additional security to the lenders compared to many other similar projects.
- The Project's revenue is to be shared with PANYNJ, however if cash flow is insufficient to cover Senior Payments, including Debt Servicing, then a significant share due to PANYNJ is paid after senior debt service. This mechanism will be in force until December 2031 (post ramp up).
- NTO pays PANYNJ Ground Rent prior to debt service and First, Second and Third Rents and PANYNJ Distributions after debt service.
- KPI penalties/incentives (related to operations performance) are subordinated to the payment of debt service and are not considered to be punitive, representing a maximum annual deduction payment by the Lessee equivalent to approximately 0.4% of the existing T1's revenue (based on 2019 revenues), but rather in line with the PANYNJ and Lessee's stated objective of delivery to world-class operating standards, customer experiences, and systems availability performance.

### 6.1 OVERVIEW

- 6.1.1 The Lessee is entitled to collect revenues from operations and pays rent to the PANYNJ throughout the Leasehold, as defined in Sections 4 and 11 of the Lease Agreement.
- 6.1.2 The following timeline and table present the Lessee's obligations to PANYNJ and expected expenditure during construction (i.e. CapEx) and operations (Manager's fee and OpEx).

Figure 6-1 Timeline of the Lessee's payments



Source: Infrata Analysis based on the Lease Agreement

Note:

\*The First Additional Rent is to be paid from the beginning of the year the mortgages become available (NTP) and until mortgages have been repaid in full. The LTA understands this should extend over the lease term. The MSA fee/Bonus is until 2037 as per the Financial Model.

\*\* The Anchor User Discount is payable up to each airline's respective AUA maturity

Figure 6-2 Summary of the Lessee's expenses throughout the Leasehold

Payment	Value	Description	Party receiving payment	Prov. Of the Lease
Total Phase A D&C work cost (assuming all contingencies and allowances used.)	5.739bn	For New Terminal Facilities (D&C Work)	DB Contractor & PANYNJ	TBC
3 <sup>rd</sup> Additional Rent	56.4m/yr	Paid quarterly, escalating at 3% per annum	PANYNJ	Section 4(d)
Aggregate Reimbursement Amount	139.0m	On Financial Close, \$50,000,000; commencing in January 2023 and ending in December 2025, monthly payments (i) in 2023, \$26,500,000; (ii) in 2024, \$26,500,000; and (iii) in 2025, \$36,100,000	PANYNJ	Section 4(g)
2 <sup>nd</sup> Additional Rent	62.0m/yr	Escalated by 3% / yr Paid monthly starting from Phase A DBO, subject to deferral (see below for deferral mechanism)	PANYNJ	Section 4(c)

Payment	Value	Description	Party receiving payment	Prov. Of the Lease
Permitted O&M Expenses	-	Excludes penalties and liquidated damages	Employees; Insurance; utilities; etc.	Section 96
Concession Revenue Rents	Greater of 50% of Gross Rents and the MAG for the year	Subject to the PA Share Deferral Mechanism (see below for further detail)	PANYNJ	Section 4(f)
Common Use Lounge Share	50% of revenues received from the Common Use Lounges	Subject to the PA Share Deferral Mechanism (see below for further detail)	PANYNJ	Section 4(h)
Sublease Fee	10% of the Terminal Use Payment received	Subject to the PA Share Deferral Mechanism (see below for further detail)	PANYNJ	Section 4(i) & 20(b)(9)
MSA Fee	5.58m	Annually adjusted by CPI; subject to KPI deductions and deferral	Manager (i.e. Ferrovial Airports)	Section 11(g)
MSA Bonus	25% of excess of cashflow for that year	Capped at 1.225m/yr (2018 base), subject to deferral	Manager (i.e. Ferrovial Airports)	Section 11(g)
1 <sup>st</sup> Additional Rent	3.2m/yr	Security fee for all leasehold mortgages (if any)	PANYNJ	Section 4(b)

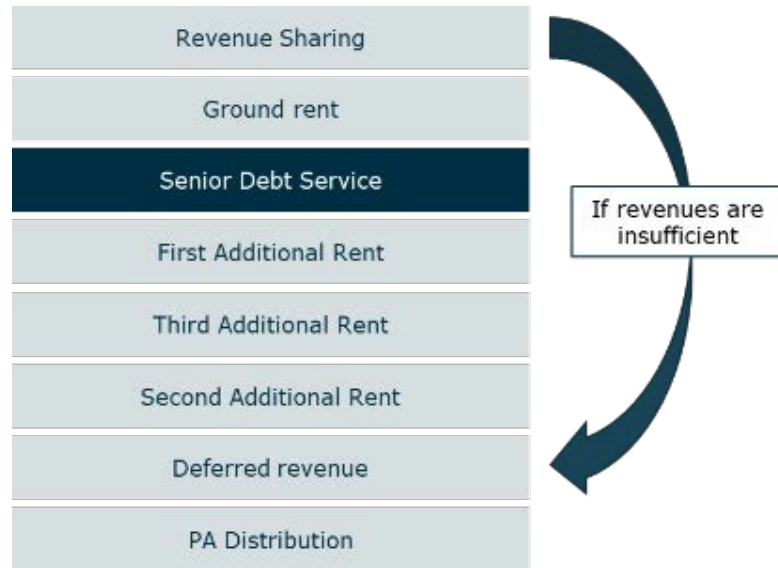
Payment	Value	Description	Party receiving payment	Prov. Of the Lease
		Paid semi-annually (from when they become available until they're fully repaid)		
IRR Rent	% of excess of CAFD based on tiered thresholds	CAFD is Cashflow Available for Distribution	PANYNJ and Financial Sponsors	Section 4 (e)
Equity Gain Share	15% of returns in excess of certain IRR thresholds	In connection with any Interest Disposition	PANYNJ	Section 51(c)
Ground Rent	148,300/acre/yr (2018 base)	Adjusted by max (4% or 50% of CPI Percentage Increase) Paid monthly	PANYNJ	Section 4(a)
KPI Incentive/ Penalty	Depends on Manager's performance.	Financial remuneration / penalty for Manager's performance	Manager or NTO	n/a
Anchor User Discount	Percentage Common Use Facilities Charge paid back to the Airline.	Anchor tenants' full rents are to be paid to the Lessee and any discounts paid after debt service.	Anchor Airlines	n/a
Volume Discount	Payment for each enplaned passenger in	Anchor tenants' full rents are to	Anchor Airlines	n/a

Payment	Value	Description	Party receiving payment	Prov. Of the Lease
	excess of a certain threshold	be paid to the Lessee, and any discount paid prior to distribution to the Sponsors.		

Source: Infrata Analysis based on the Lease Agreement

- 6.1.3 The Project's non-aeronautical revenues will be shared with PANYNJ. However, if there if revenues are insufficient after Payment of Senior Payments for any Concessions Revenue Rent, Common Use Lounge Share or Sublease Fee then the revenue sharing (Concessions Revenue Rent, Common Use Lounge Share and Sublease Fee) due to PANYNJ will be payable only from, and to the extent, these is cash remaining in the Post-Completion Revenue Account after payment of Permitted O&M Expenses, Major Maintenance and Asset Preservation Work, Ground Rent, Pro-Rates Debt Service First Additional Rent, Second Additional Rental, Third Additional Rent and the funding of reserves, as may be required under the Financing Documents (the "PA Share Deferral Mechanism"). This mechanism will be in place through 2031, when the traffic ramp up is expected to be completed.

**Figure 6-3: Payments to PANYNJ**



Source: Infrata Analysis based on the Lease Agreement -Note: PANYNJ Reimbursement Account is funded up front and hence has been removed from the figure.

- 6.1.4 It is noted that through to December 2033 the Second Additional Rent due may be deferred should there be insufficient funds available in the Revenue Account after payment of all other amounts which have priority over it including Senior Debt Service. Any such deferred amounts must be paid no later than 2038.

### LTA Opinion

- 6.1.5 Revenue sharing mechanism, such as the one used for the Terminal One project, is not unusual on airport concessions and P3s in the USA and internationally.
- 6.1.6 The PANYNJ Share Deferral Mechanism ensures that debt service is paid prior to the PANYNJ Share and MSA Fee in the event the Lessee would fall short of liquidity to pay all three, providing security to the Lenders. The MSA fee can

also be deferred, through to December 2031, with accrued interests if the cashflows are insufficient to pay the fee in full. This provides additional buffer to the Lessee.

## 6.2 PERFORMANCE KPIS

- 6.2.1 The Performance Standards and Measurement Provisions Exhibit to the PANYNJ sets out the KPIs against which the performance of the Lessee will be measured, including (i) bonus and incentive payments; and (ii) deductions. The review and commentary presented below summarizes the principles applied in the Exhibit based on its current drafting (version 11).
- 6.2.2 The overarching principle behind the Performance Standards and Measurement Provisions is the delivery of world-class operating standards, customer experiences, and systems availability performance.
- 6.2.3 Until PANYNJ completion of the Ground Transportation Center, the Roadway Network and other PANYNJ Enabling Work that could reasonably be expected to result in an adverse effect on the ability of the Lessee to perform its obligations, KPIs tied to ASQ scores (i.e. customer satisfaction) will only be reported and monitored, but the Lessee will not be subject to any financial deductions or entitled to any financial incentive.

### KPIs

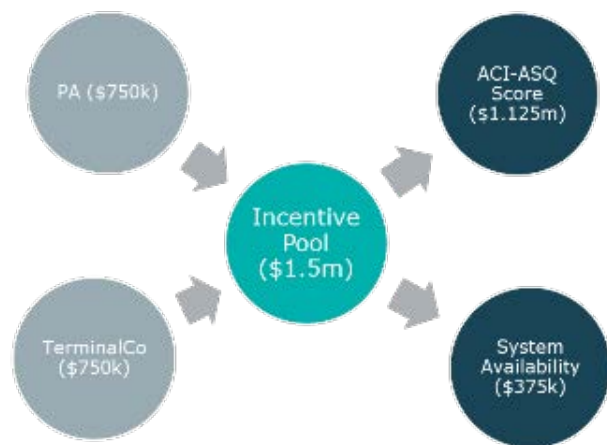
- 6.2.4 The KPIs are structured into three classes of measurement and reporting (i) Incentive KPIs; (ii) Monitoring KPIs; and (iii) Reporting KPIs, as further described below.
- 6.2.5 The Monitoring and Reporting KPIs, unless otherwise stated, shall be reported in real-time using digital/networked systems as indicated in Performance Management Plans and/or where no digital/networked systems are available or exist at the time of collection

### Incentive KPIs

- 6.2.6 These relate to those KPIs with Financial Incentives/Deductions. Potential incentive payments and deductions are considered under two categories: i) ACI-ASQ Overall Satisfaction Score KPIs and ii) Systems Availability KPIs.

- 6.2.7 The incentive/deductions will be paid from the incentive pool sized at \$1.5m in a Calendar Year 50% of which will be reserved within the PANYNJ as a potential rental credit within its annual operating revenue budget and 50% within the Lessee annual budget. Of this pool up to 75% will be reserved for serving the ACI-ASQ KPIs and up to 25% for the System Availability KPIs.

**Figure 6-4: Incentive Pool Serving and Distribution**



Source: Performance Standards and Measurement Provisions Exhibit

- 6.2.8 The System Availability KPIs are further subdivided into 4 categories with the System Availability KPIs reserved amount equally distributed across the 4 categories (\$93.75k reserved against each): (i) Conveyance Systems; (ii) Baggage Systems; (iii) Passenger Loading Bridges ("PLBs") & Associated Equipment; and (iv) Asset Management (Preventive Maintenance).
- 6.2.9 If incentive payments are to be paid from the Incentive Pool for any period, the PANYNJ will pay 50% of the total earned incentive amount to the Lessee, and if deductions are to be paid the Lessee shall pay 50% of the total deduction amount to the PANYNJ.

- 6.2.10 Incentive payments / deduction amounts will be assessed based on the performance of the specific KPI against the Thresholds as specified in the Exhibit on a linear basis. It is noted that whilst the performance will be monitored, and reported against, on a monthly basis incentive payments/deductions will only be made on an annual basis for both the ACI-ASQ Score KPI and the System Availability KPIs.

- 6.2.11 The Thresholds with respect to the ACI-ASQ Score will be revisited every 5 years.

- 6.2.12 In calculating the System Availability Permitted Unavailability Events will not be considered as Unavailability Events this includes when the system is out of service (i) due to repairs covered under manufacturer's warranty; (ii) is closed for maintenance that will not have an operational effect on the Facilities and has been pre-approved by the PANYNJ; (iii) for routine scheduled maintenance during Core Operational Hours which, due to its nature cannot be completed outside of the Core Operational Hours, and which has been pre-approved by the PANYNJ; and (iv) due to an emergency, damage, power-outage or fire-alarm not caused by any Lessee-Related Entity

#### Monitoring KPIs

- 6.2.13 These KPIs are targeted benchmarks that are managed through Performance Management Plans. The Monitoring KPIs relate to (i) Gate Reallocation Strategy; (ii) Terminal Frontage Flow; (iii) Check-in Times; (iv) Security Wait Times; (v) Bathroom Cleanliness; (vi) Bathroom Availability; (vii) Baggage Delivery; (viii) Gate Utilization; and (ix) Sustainability.
- 6.2.14 Quarterly meetings will be held between the Lessee and the PANYNJ to review performance and to discuss any further adjustments in the Performance Management Plans that may be required in order achieve the target performance indicators.
- 6.2.15 While there are no bonuses or deductions associated with the Monitoring KPIs if the Lessee fails to develop Performance Management Plans designed to address the target performance indicators or fails to implement the Performance Management Plans developed the PANYNJ may perform such obligations in accordance with Section 54 (Right to Perform the Lessee's Obligations) of the Lease Agreement and recover associated costs from the Lessee.

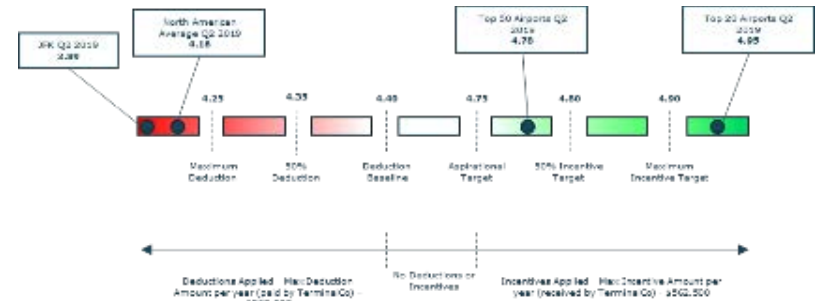
## Reporting KPIs

- 6.2.16 These relate to data and supporting documentation on additional key performance indicators listed in order to monitor the airport's "ecosystem" of landside and airside activities. The categories for the Reporting KPIs can be considered under the following 3 broad categories: (i) Collaboration with Stakeholder; (ii) Facility Utilization; (iii) Asset Availability.
- 6.2.17 Indicators will be selected for each of the major categories in order to shape ongoing discussions between the PANYNJ and the Lessee regarding current and future expected performance.
- 6.2.18 The appropriateness of the Reporting KPIs in meeting their stated objective will be reviewed at the end of Year 1 following Phase A DBO and every 5 years thereafter.

## LTA Analysis and Opinion

- 6.2.19 Under the performance regime (i) the maximum yearly deduction which the Lessee could be exposed to is \$750k reducing to \$562.5k once the pass through under the MSA is taken into consideration. This amount is equivalent to approximately 0.4% of the existing T1's revenue based on a 2019 estimate of approximately \$195m; and (ii) any deductions based on KPIs will be paid after debt service.
- 6.2.20 Whilst the ACI-ASQ Score Thresholds set within the Performance Standards and Measurement Provisions are considered demanding when compared to scores typically seen in the North American market the LTA does not consider them as being punitive and considers them to reflect the PANYNJ's, and Lessee's, stated objective regarding providing a world-class customer experience with timely capital-investment and 21<sup>st</sup> century governance.

Figure 6-5: ACI-ASQ Score KPI Thresholds

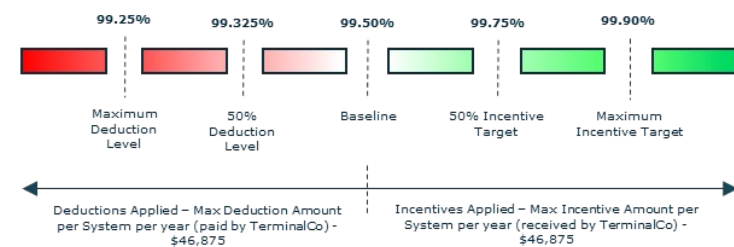


Source: Performance Standards and Measurement Provisions Exhibit & LTA Analysis

- 6.2.21 The Thresholds set with respect to the System Availability KPIs are in line with industry standards and provisions reviewed by the LTA on other airport deals for the systems indicated. Based on the information reviewed to date and discussions held across the project team, the LTA is satisfied that the design and coordination efforts to date, including operational input's to key design and procurement decisions (see section 7), along with the preventative rather than reactive maintenance regime to be adopted during operations should facilitate attainment of, as a minimum, the Baseline Threshold.

6.2.22

Figure 6-6: System Availability KPIs Thresholds



Source: Performance Standards and Measurement Provisions Exhibit

## 7 ENVIRONMENT, PERMITS AND APPROVALS

### ✦ At a glance

- The FAA issued a Finding of No Significant Impact and Record of Decision (FONSI/ROD – NEPA Approval Documents) on April 21, 2020 with respect to the JFK Redevelopment Program. On June 01, 2022 the FAA approved the Written Re-evaluation and Record of Decision for the Terminal one Design and Schedule Modifications.
- The PANYNJ is the main permitting agency for the Construction Works, other than with respect to environmental permits. All permits needed for the construction are in place and no delays on the permitting process has been reported as of April 2024.
- The Environmental Findings to date have been appropriately managed and remediated, where applicable, by the DB Contractor and no critical path delays have been reported. It is noted that NTO and the DB Contractor have reached a settlement for certain environmental and unknown conditions findings which will be covered under a Material Developer Scope Change and will be funded from the Environmental Allowance within the Developer Costs.
- The environmental obligations under the Lease Agreement are typical for a project of this nature and location and should not represent on unusual risk to the project. These will be managed through the Project's Environmental Management Plan.
- The level of unknown utilities was higher than foreseen at Financial Close. However, as of August 2023 the headhouse is free and clear of critical utilities, minimizing the risk of possible delays due to utility works in this area. Furthermore, it is noted that this, as of April 2024, no unmitigated critical path delays due to utilities materialised. Unidentified utilities will be subject to a Delay Event under the Lease Agreement and a Material Developer Scope Change under the DBA.
- General ground conditions on the site during the construction works has been as expected and do not greatly differ from the investigations performed prior to the construction works.

### 7.1 ENVIRONMENTAL MATTERS

- 7.1.1 All responsibilities and risks associated with environmental matters, including compliance and implementation of all limitations and requirements of the NEPA Approval Documents, if any, and permits are with NTO who in turn, and where appropriate, have reflected these risks into the relevant contracts with the DB Contractor, MSA and Airlines. Please see section 4 of this report for an overview of these pass down provisions.

Table 7-1: Status of Environmental Approvals

PERMIT/APPROVAL	OWNER	COMMENT
<b>NEPA Approval/FONSI - FAA</b>	PANYNJ	<p>The FAA issued a Finding of No Significant Impact and Record of Decision (FONSI/ROD) on April 21, 2020 with respect to the JFK Redevelopment Program, including the NTO Project.</p> <p>Based on certain changes made to the NTO Project subsequent to the issuance of the FONSI/ROD a Technical Report was prepared and submitted to the FAA on January 14, 2022 outlining that the proposed changes to the Project do not change the contents, analysis, and conditions of approval, and that they remain current and valid. An updated Technical Report was submitted by NTO on March 24, 2022 responding to comments received from the FAA. Additional comments were received from the FAA on April 29, 2022 and a revised Technical Report was submitted to the FAA on May 9, 2022.</p> <p>On June 01, 2022 the FAA approved the Written Re-evaluation and Record of Decision for the Terminal one Design and Schedule Modifications.</p>
<b>SPDES - NYDEC</b>	PANYNJ	<p>NYSDEC State Pollution Discharge Elimination System ("SPDES") Permit was issued on April 8, 2020.</p>
<b>SEQRA Review - NYTDC</b>	NTO	<p>NYTDC issued its State Environmental Quality Review Act ("SEQRA") Report on April 22, 2020. Based on the changes made to the Project, NYTDC conducted an environmental</p>

PERMIT/APPROVAL	OWNER	COMMENT
		review concurrently with the FAA Technical Report and issued a negative declaration on February 24, 2022, and the ENB Public Notice was issued on March 9, 2022.

Source: NTO

- 7.1.2 The Lessee's environmental obligations are specified in section 57 of the Lease Agreement. Environmental activities include, but are not limited to, soil sampling activities, handling, evaluation, characterization, storage and disposal of waste materials activities, dewatering activities, identification and removal of hazardous materials activities, storage of fuel and flammable liquids, noise monitoring and obligations to remediate. These activities are to be conducted on the Existing Premises and within the Lessee's construction boundaries on the Additional Premises.
- 7.1.3 The PANYNJ has provided the project team with historical environmental documents relating to the T1, T2 and T3 sites. These documents primarily relate to historical spills at the site, hydrant fuel line abandonment and closure at Terminal 2, previous baseline investigations and remedial actions at the sites. The documents range in age from studies undertaken in 1997 to 2018.
- 7.1.4 An Environmental Management Plan ("EMP") has been prepared for the project that incorporates the results of the documents provided by the PANYNJ, as well as the results of the baseline study. The EMP has been prepared in accordance with the guidance set out by PANYNJ's Tenant Construction and Alteration Process Manual, as well as the requirements outlined in the JFK Redevelopment Program's Requirements and Provisions for Work (RPW).
- 7.1.5 The EMP provides a pathway of how contaminants and areas of concern ("AOCs") will be dealt with during construction, providing a review of the potential AOCs and evaluation of the current site conditions. The EMP also provides procedures for soil reuse and regulatory compliance as well as management plans for excavated soils, including requirements for contractor training, the evaluation of onsite soil and fill materials during excavation, proper handling and stockpile methods, soil testing and disposal protocols.

## Findings to date

- 7.1.6 Prior to Financial Close surveys were carried out in the structures that were to be demolished to understand if there is any presence of Asbestos.
- During the demolition of the Green Garage no asbestos was found.
  - The quantity of asbestos in Terminal 2 was greater than that initially envisaged by the DB Contractor and additional abatement insurance has been obtained for the Demolition of Terminal 2. A certified New York State Department of Labor asbestos inspector visited the site to identify presence/absence of asbestos containing materials ("ACM"). The suspected asbestos containing material was abated by a licensed abatement contractor under the supervision of a licensed environmental company. NTO and the DB Contractor have reached a Settlement for the additional costs due to Asbestos which will be covered by a Material Developer Scope Change and will be funded from the Environmental Allowance within the Developer Costs.
  - Based on the results of the survey, the DB Contractor does not expect to find any Asbestos during the demolition works of the existing Terminal 1.
- 7.1.7 Volatile Organic Compounds ("VOCs") typically found in chlorinated solvents (or chlorinated VOCs) were detected during the foundation works in November 2022. A Vapor Investigation was conducted to determine the elevated concentration and to attempt to identify the source and determine what mitigations, if any, need to be taken. Additional soil vapor sampling was conducted during September 2023 and a report was issued by Langan on October 6, 2023 where a vapor barrier to mitigate possible vapor intrusion is considered to be an effective solution. The study undertaken indicated that the waterproof membrane, already considered within the design, was sufficient to mitigate the VOC's based on the VOC's concentration observed through sampling. It is noted that the costs associated with the study were covered by the Design Development Contingency as an interim measure to progress the works and avoid delays and will be funded from the Environmental Allowance within the Developer Costs in the future. It is understood that there are no additional costs associated with this finding.

- 7.1.8 While test pitting for piles on the Terminal 3 site, two old elevator shafts were uncovered that were not properly decommissioned, hydraulic fluid that was left in the shafts leaked into the excavation pit and while decommissioning abandoned in-place hydrant fuel lines, it was discovered that the abandoned hydrant fuel lines were not properly decommissioned and residual fuel remained in the line. It is understood that remediation was conducted and mitigation measures were taken as a precautionary measure. A Material Developer Scope was executed for the costs associated to this matter with a funding source from the Environmental Allowance within the Developer Costs.
- 7.1.9 During Q1 2024, 3 unknown tanks were encountered on the Terminal 3 Site which were decommissioned and are now awaiting the closure report to proceed with the works. Furthermore, 3 minor spills were encountered which were reported and remediated. It is understood that the costs will be funded from the Environmental Allowance within the Developer Costs.
- 7.1.10 During the demolition of the Green Garage the amount of grade beams was higher than initially foreseen. Grade beams were to be removed to progress with the foundation works for the headhouse. As the grade beams were shown in standards provided by the PA and electrical plans, it was not considered an Unknown Condition for which the DB Contractor would be due compensation under the DB Contract and the associated costs for the removal of the grade beams was funded from the DB Construction Contingency.
- 7.1.11 Where encountered, contaminated soils that require remediation are removed and disposed off-site at facilities that are capable of accepting soils based on their respective levels of contamination and where warranted, New York State Department of Environmental Conservation ("NYSDEC") oversight has been sought for grossly contaminated/reportable conditions under the NYSDEC spills program. Contaminated soils that met the EMP-defined criteria of Grossly Contaminated, have been segregated and stockpiled for disposal. All grossly contaminated soils attributed to prior releases was sampled in accordance with the approved testing criteria outlined in the Environmental Management Plan, and disposed off-site at Port Authority-approved and permitted Class B disposal facilities.

- 7.1.12 All groundwater is required to be treated prior to discharge to the outfall network. A Long Island Well Permit (LIWP) was obtained by New Terminal One (the permit holder) for all dewatering activities associated with the New Terminal One redevelopment. The LIWP was issued by the NYSDEC, and all dewatering adheres to the treatment and discharge parameters outlined in the LIWP and Port Authority concurrence letter. As of May 2024, all dewatering systems have been decommissioned and no dewatering activities are expected for the remaining of the Project.

## LTA OPINION

- 7.1.13 The environmental requirements and obligations as provided under the Lease Agreement are national and local standards for developments of this nature with many of the obligations being managed through consideration in the design solution, i.e. the requirement for oil interceptors is a standard requirement on all areas susceptible to fuel spills such as the airside ramp area. The LTA considers that the obligations identified have known solutions and as such should not pose a material risk to the project once the baseline study has been concluded.
- 7.1.14 The Environmental Findings to date have been appropriately managed and remediated, where applicable, by the DB Contractor and no critical path delays have been reported. It is noted that there are ongoing discussions between NTO and the DB Contractor in relation to whether these findings are considered an Unknown Condition which would entitle the DB Contractor to compensation under the DB Contract.
- 7.1.15 It is considered that the risk of delays and or costs increases due to environmental findings is reduced with the level of progress to date, which includes critical utilities in the headhouse and east pier being completed, the headhouse being out of the ground and the east pier being almost fully out of the ground.
- 7.1.16 The LTA considers the approach being adopted within the Environmental Management Plan as appropriate with the AOC's identified primarily associated with areas of known / likely issue such as (i) along the fuel hydrant lines; and (ii) areas around glycol and fuel tanks. The LTA notes that the EMP is subject to revisions.
- 7.1.17 The LTA notes the measures taken by the DB Contractor in relation to the chlorinated VOCs, hydraulic fuel in the elevator shafts and the residual fuel in

the fuel lines, and the tanks findings. It is understood that these have been appropriately remediated, without affecting the critical path of the schedule. In the case of the chlorinated VOCs, a study confirmed the waterproofing membrane considered for the project was sufficient to mitigate the VOC's based on the VOC's concentration observed through sampling.

- 7.1.18 The LTA notes that NTO and the DB Contractor have reached a settlement for certain environmental findings and findings of unknown conditions, such as the unknown asbestos at T2 and the associated Air Monitoring. It is understood that this will be covered under a Material Developer Scope Change and will be funded from the Environmental Allowance within the Developer Costs.

## 7.2 PERMITS AND APPROVALS

- 7.2.1 NTO is responsible for obtaining all Permits and Approvals other than the Port Authority Governmental Approvals as noted in section 7.1. The following table lists the major permits and approvals that are required prior to commencement of the associated construction works.

**Table 7-2: Project Permits in Place**

PERMITS	DESCRIPTION	PERMITTING AGENCY
<b>Permit #GP-0-15-002</b>	SPDES General Permit for Stormwater Discharges from Construction Activity  Issued on November 1, 2017.	NYSDEC
<b>Long Island Water Well Permit</b>	Permit for dewatering discharge to local water system.  Issued on February 1, 2021.	Department of Environmental Conservation
<b>Major Oil Storage Facility License</b>	Required for any facility that stores a total of 400,000 gallons or more of petroleum in ASTs or USTs.  Issued on October 11, 2023.	NYDEC
<b>Phase 1 and Phase 2 Stormwater Pollution</b>	This permit requires facilities to develop Stormwater Pollution Prevention Plans (SWPPPs) and report the results of	NYSDEC

PERMITS	DESCRIPTION	PERMITTING AGENCY
<b>Prevention Plan (SWPPP)</b>	industry-specific monitoring to the New York State Department of Environmental Conservation (NYSDEC) on an annual basis.  Issued on April 8, 2020 and September 12, 2022 and are valid for 5 years.  Phase 2 modification was approved on March 21, 2024	
<b>FAA 7460</b>	FAA Line of sight approval  Green Garage & LRS2 Demolition – Issued March 24, 2022 Roadways Piles Utilities – July 11, 2022 Phase A Permanent Structure – November 9, 2022 Headhouse Piles – September 16, 2022 East Pier Piles – September 16, 2022 Airside Utilities-Civil-West of 1A – January 1, 2023 Terminal 2 Demolition – January 3, 2023 Steel Area 1 – July 17, 2023 Steel Area 2/6 – April 27, 2023 Steel Area 3/7 – September 6, 2023 Steel Area 4A – August 24, 2023 Steel Area 4B – August 24, 2023 Steel Area 3-7 – September 9, 2023 Steel Area 5N – February 13, 2024	FAA

Source: NTO

- 7.2.2 It is noted that in addition to the above there are a number of other permits required for the works, where the Permitting Agency is the PANYNJ. Where these are required, these are issued as part of the Advanced Final Design ("AFD") approval process. Similarly there are a number of permits associated with the transport of material to/from site are obtained by the DB Contractor on a as needed basis. The permits which fall under these categories are outlined in the following table.

Table 7-3 Permits to be obtained through AFD Submissions

PERMITS	DESCRIPTION	PERMITTING AGENCY
<b>PA 2714A Alteration Permit</b>	Permit to construct (alter) as per approved construction documents.	PANYNJ
<b>CK10 - PANYNJ TCAP Pre-Construction (of each separate project) Project Management forms</b>	TAA Ph 1 02 Tenant's Form Identifying A/EOR; TAA Ph 1 03 Tenant's Form Accepting TAA process; TAA Ph 1 04 A/EOR's Form Accepting; TAA process PA 3677 Asbestos Certification Form; PA 3678 Asbestos Abatement Permit Application (if required); TAA Ph 1 05 Preliminary Review Submittal Form; PA 531 TAA Application Form; TAA Ph 1 06 A/EOR Declaration with TAA Form PA 531; TAA Ph 1 07 Contract Document List (note: in excel format); Sustainable Design Guidelines (if required); TAA Ph 1 08 A/EOR Rider Response Form; PA 3749D M/WBE Participation Plan; TAA Ph 1 09 Tenant's A/EOR Identification Form; TAA Ph 1 10 A/EOR's Identification Form	PANYNJ
<b>CK-11 PANYNJ TCAP Construction (of each separate project) Project Management forms</b>	TAA Ph 2 11 List of Sub-Contractors; PA 3647 Tenant Monthly Employment Utilization Report; PA 3968A Tenant Construction Statement of M/WDBE Payments Report; PA 2133 Cutting and Welding Permits (if applicable); PA 2847 Special Hot Work Permits (if applicable); PA 3745C Contractor Permit Required Confined Space Notification; Non-Hazardous Waste Manifest; PA 2497A Electrical Work Permit; TAA Ph 2 12 A/EOR Certification Request for Partial Inspection; TAA Ph 2-3 13 Response to Non-Conformance Report. Contact the REO for additional PA forms required during the Construction Phase	PANYNJ
<b>2497A: "Electrical Distribution Work Permit"</b>	Daily permit to perform electrical work impacting PANYNJ electrical systems	PANYNJ

PERMITS	DESCRIPTION	PERMITTING AGENCY
<b>CD-1, CD-2</b>	Cranes & Derricks permits for cranes, derricks, pile drivers, hoists, mast climbers, scaffolds, etc.	NYC DOB
<b>2133: "Cutting &amp; Welding Permit"</b>	Daily permit to perform cutting/grinding or welding work with increased potential for fire	PANYNJ
<b>2847: "Special Hot Work Permit"</b>	Daily permit to perform related "hot" work with increased potential for fire	PANYNJ
<b>3745C: "Confined Space Notification"</b>	Daily notice for entry to confined space.	PANYNJ
<b>PA 3678 Asbestos Abatement Permit Application</b>	Permit for asbestos abatement	PANYNJ
<b>AirTrain Occupancy Permit</b>	Required for all works which require track occupancy.	PANYNJ
<b>AirTrain Work Permit</b>	Train Movements, Customer Movements, safety systems, Activity that is not supervised by an AirTrain Qualified Employee, such as the work of the Lessee.	PANYNJ
<b>811 Notice</b>	PANYNJ approval of Utilities markouts	PANYNJ
<b>Utilities Shutdown</b>	PANYNJ approval of Utilities shutdowns or outages	PANYNJ
<b>Lane Closure Permit</b>	For closure of any traffic lane	PANYNJ
<b>FAA 7460</b>	FAA Line of sight approval for any equipment which breaks the plane of vision from the ATCT	FAA
<b>NYS Special Hauling Permit</b>	Required if the vehicle and/or loads exceed the legal dimensions or weights specified in NYS Vehicle and Traffic Law Section 385	Department of Transportation of New York State

PERMITS	DESCRIPTION	PERMITTING AGENCY
<b>PANYNJ 'Ramp Authorized' permit for Airport Operations</b>	PANYNJ permit for non-PANYNJ vehicles to operate within AOA	PANYNJ
<b>NYS Part 364 Waste Transporter Permit</b>	NYS Env Conservation Law required permit for transportation of regulated waste generated or disposed of within NY State.	Department of Environmental Conservation
<b>NJDEP Solid Waste Transporter Permit</b>	A waste transporter permit will be required to transport waste material from the project area to off-site locations in New Jersey.	NJDEP
<b>NYSDEC Waste Disposal and Processing Facilities</b>	Waste disposal and processing facility permit information will be reviewed and submitted to the PANYNJ for approval prior to use.	NYSDEC & NJDEP
<b>New York City Department of Sanitation Fill Material Transfer Station Permit</b>	New York City Department of Sanitation (NYCDOS) permit is required for select waste disposal and transfer facilities	NYCDOS
<b>Hazardous Waste Land Disposal Facility Operating Permits/Post-Closure Permits</b>	Dept of Env Remediation permit for hazardous waste landfill operation	NYS DEC
<b>Passaic Valley Sewerage Use Permit</b>	A permit is required to discharge treated concrete wash and slurry water generated from the project site into the Passaic Valley municipal sewer system in accordance.	JR Haftek Co. Inc.
<b>PA 2714B Temporary Certificate of Authorization to Occupy and Use</b>	PANYNJ temp permit to occupy space following initial inspection and approval of construction	PANYNJ

PERMITS	DESCRIPTION	PERMITTING AGENCY
<b>PA 2714C Final Certificate of Authorization to Occupy and Use Retain at Tenant PANYNJ Lease</b>	PANYNJ final permit to occupy space following resolution of all outstanding items related to construction	PANYNJ

Source: NTO

- 7.2.3 It is understood, based on discussions with the project team, that the PANYNJ has formed a JFK Redevelopment team that is specifically dedicated to the JFK redevelopment. This team is familiar with the context of the airport and available for the Project.

### LTA Opinion

- 7.2.4 The LTA notes that, as of April 2024, all major permits required for the works are in place and that there has been no reported delays in obtaining permits or reported delays to the works as a result of a missing permit.
- 7.2.5 The LTA positively notes that the majority of the permits required are PANYNJ permits and therefore the risks associated with requiring permits from parties outside of the project contracts is limited.
- 7.2.6 Through their work at LaGuardia and Newark, and indeed as part of the PANYNJ, the LTA notes the extensive experience the project team (CPD and DB Contractor) have in interactions with the PANYNJ and the in-depth knowledge of the PANYNJ processes and departments. It is the LTA's view that this knowledge and experience should further help mitigate delay risks associated with permitting.

### 7.3 GEOTECHNICAL

- 7.3.1 Geotechnical conditions encountered to date have been as expected based on the information provided by the PANYNJ prior to Financial Close and the various supplementary studies undertaken by NTO and the DB Contractor.
- 7.3.2 Over the course of the development and construction of the Airport the areas within the lease line have been subjected to extensive subsurface investigations the results of which have been made available to the project team. The information provided by the PANYNJ to the project team prior to Financial Close related to investigations undertaken between 1987 and 2013 and includes records of borings made for the Green Garage, Blue Parking Lot, existing Terminal 1, Taxiway along Terminals 1, 2, and 3, and at airside of Terminals 3 and 4.
- 7.3.3 A supplemental subsurface investigation was undertaken for the new terminal structure and related roadways, pavements and utilities to supplement the available subsurface data from the prior borings. This investigation included additional borings and cone penetration tests ("CPT") made on both the airside and landside of the existing terminals. The resulting Geotechnical Interpretive Report ("GIR") was issued in March 2020. Additionally, a pre-construction Pile Test Program ("PTP") was performed for the New Terminal One project in July 2020 and a Final Geotechnical report was issued which encompassed the PTP program and results.
- 7.3.4 Additional investigations were undertaken following the demolition of existing structures to supplement the information presented in the GIR.
- 7.3.5 Records of the borings and CPT completed demonstrated a relatively uniform subsurface profile across the terminal site consisting from top to bottom of:
- 10 to 15 ft of granular fill (Stratum F)
  - 5 to 10 ft of organic silty clay and peat (Stratum O & Pt)
  - over 100 ft of loose to compact glacial sands (Stratum S) that increase in density with depth
  - gardeners clay (Stratum C) at a depth of 125 ft (Elevation -115)
- 7.3.6 A 30 to 40 ft alluvial sand layer (Stratum AS) is presented below Stratum F fill in a localized area within the footprint of the west pier of the new terminal (Phase B).
- 7.3.7 Observation wells and piezometers installed in completed borings within the new terminal footprint indicated normal groundwater levels between Elevation +2 and +4 in the Stratum F with water levels generally increasing with distance inland from Jamaica Bay.
- 7.3.8 Given the presence of potentially liquefiable soils, the site was classified as Site Class F (Design Category C) according to the 2014 NYC Building Code. As a result of these potentially liquifiable soils a supplemental liquefaction evaluation was performed, by Langan Engineer (the Engineer of Record for PANYNJ), for the site using the reported site-specific Peak Ground Acceleration ("PGA") and CPT and standard penetration test ("SPT") data for the site. Through which it was determined that there is an adequate margin of safety against liquefaction for the Terminal One Headhouse and Eastern Concourse and, in line with the historical results of site-specific evaluations conditions at the terminals and roadways, the site specification classification is considered Site Class D and the corresponding Seismic Design Category is B.
- 7.3.9 According to the GIR foundations for major structures will derive their support in the natural glacial sand layer (Stratum S) while shallow foundation bearings (generator pads, light poles and bollards) will rest on Stratum F fill.
- 7.3.10 Estimated pile lengths according to axial and lateral loads have been determined of between (i) 65 ft pile length with bond length of 25 ft for 18 inch Driven Tapered Tip ("TT") Steel Piles; (ii) 75 ft for 16 inch Drilled Displacement ("DD") Piles; and (iii) 85 ft for 16 inch Drilled Micropiles ("MP") with a bond length of 55 ft.
- LTA Opinion**
- 7.3.11 As of April 2024, the general ground conditions on the site during the construction works has been as expected and do not greatly differ from the investigations performed prior to the construction works. It is noted that the foundation works for the headhouse are completed and foundation works in the east pier are nearing completion thus greatly reducing the risk of ground conditions for the project.

- 7.3.12 It is understood that in some areas, along the East Pier due to underground obstructions, alternate designs are being implemented to mitigate any potential deviation from the design loads due to the obstructions found. This element is considered a DB Contractor risk.
- 7.3.13 The LTA positively noted that the design incorporates the DB Contractors decision, prior to Financial Close, to raise, by 3 ft, the building elevation beneath the new piers and much of the southern third of the headhouse in order to address concerns with water levels.

## 7.4 EXISTING UTILITIES

- 7.4.1 The existing utility information for the site was provided by the PANYNJ. This identifies the known utilities passing through the Lease Area. To, in so far as was reasonably practical, confirm the information provided by the PANYNJ and to identify the tie-in locations for new/relocated utilities the project team undertook its own utility surveys in the landside and airside to support the design prior to Financial Close.
- 7.4.2 The existing utilities information provided prior to Financial Close has been found to not accurately represent all utilities encountered on site to date. With additional utilities encountered and some utilities found to be in alternative locations to those indicated in the information provided. This has proved to be a challenge in relation to the execution of the piling works on site where alternative solutions / additional relocation has been required in some locations which has, historically, slowed the progress of the in-ground foundation works. It is noted that since August 2023, the headhouse was free and clear of critical utilities and the East Pier is free of all critical utilities as of April 2024.
- 7.4.3 Unknown utilities are considered as Unknown Condition under the Lease Agreement and as such afforded the protections associated with a Delay Event. Costs associated with unknown utilities are a DB Contractor risk.
- 7.4.4 All the utilities on the site are controlled by the PANYNJ, except the gas system, which is owned by National Grid. Discussions were held with National Grid to ensure that all the required changes are designed and carried out in accordance with the DB Schedule. As of April 2024 National Grid permanent gas line works were substantially complete with the pending works associated with the connection to the building, these works will be performed at a later stage.

- 7.4.5 Prior to undertaking the works the DB Contractor created detailed plan for the utilities work both for the existing utilities diversions and abandonment works, as well as the new infrastructure requirements. This work was reflected and submitted via the AFD's (Advanced Final Design) for both the interim and permanent utilities. All utility work and details of the AFD's were developed in cooperation with the design teams and PANYNJ. In so far as is possible the need to provide temporary relocations was minimized and when relocating the utilities they have been relocated to their final location in so far as is possible.

## LTA Opinion

- 7.4.6 The LTA notes that despite the level of unknown utilities being higher than foreseen at Financial Close that no Delay Event notices have been submitted due to this. The LTA notes positively the proactive approach adopted by the DB Contractor to manage the schedule and avoid unknown utilities posing a risk to the Phase A DBO date.
- 7.4.7 The LTA considers that the major risk of unknown utilities causing a delay event is in the past with the headhouse and east pier free of all critical utilities.
- 7.4.8 It is noted that the gas utility provider National Grid did not accept a direct contract with the DB Contractor and requested a contract with the Developer. However, it is understood that the risks associated with the National Grid works remains with the DB Contractor.
- 7.4.9 The LTA notes that there is limited number of stakeholders to deal with the utilities (PANYNJ and National Grid) in comparison to many other projects in scale and nature and this has reduced the risk associated with delays due to reliance on third parties, outside of the Project Parties, completing relocation and associated works. The LTA notes that coordination with utilities providers is being actively managed by the DB Contractor. To date, no delays due to third party utility relocations have materialized.

## 8 PHASE A DESIGN AND CONSTRUCTION

### At a glance

- A new 1.8m sq. ft. Terminal One building providing replacement capacity within the airport.
- The design is at 98% completed and has been developed through extensive coordination between the CPD, the DB Contractor, the PANYNJ and key stakeholders. In April 2023, following the CFD submission, the PANYNJ sent a letter to proceed with the AFD. All AFD packages have been either partially, conditionally or fully approved and it is expected that all AFD's will be fully approved by Q4 2024. It is noted that the partial conditional approval of the AFD's is not affecting the progress of works on site.
- The current layout has been validated through passenger flow modelling, for the terminal building, and airfield movement modelling and the airfield geometric design has been coordinated with other PANYNJ airfield works.
- The majority of the work is being completed in a landside environment simplifying the construction processes and avoiding the additional security requirements associated with constructing airside.
- The construction phasing is designed to ensure adequate traffic and passenger flow and overall airport operations. Phase A is being constructed while the existing facilities of Terminal 1 remain in operation.
- The DB Contractor, NTO and the relevant interface parties are working collaboratively to mitigate potential impacts on schedule due to interface matters.

### 8.1 INTRODUCTION

8.1.1 This section of the LTA report assesses the organization, approach and key assumptions used by the DB Contractor, Designer and CPD in preparing the design and the delivery of the construction works as well as performance to date.

8.1.2 The LTA has been provided with the Requirements and Provisions for Work from the PANYNJ, the Basis of Design, and various other documents that were developed by the DB Contractor in order to support the Construction works.

8.1.3 The CPD represents NTOs interests by overseeing all aspects of the construction project including Quality Assurance, cost and schedule as well as the provision of specialist inspection serviced during construction. The CPD is responsible for the Project Management Organization ("PMO") team. The full scope of the CPD is summarized as it follows:

Table 8-1 CPD Scope

SCOPE DURING CONSTRUCTION
<ul style="list-style-type: none"><li>○ Manage design and construction as owner's representative.</li><li>○ Drive quality and innovative delivery methods to reduce cost and risk.</li><li>○ Track, manage and report project goals including safety, security, logistics, construction progress and quality, cost to date, cost to complete, variances, and MWBE and local participation.</li><li>○ Review and approve payment notices.</li><li>○ Project Cost control and control of procurement activities.</li><li>○ Contract and dispute management, including change orders and extensions of time request.</li><li>○ Manage interface between construction completion and commissioning.</li><li>○ Coordinate tenant and concession design and construction to interface with DB.</li><li>○ Oversee completion documents.</li><li>○ Provide support to achieve MWBE and Local Business goals.</li></ul>

Source: CPD

8.1.4 Ferrovial Group joined the consortium in 2022 seconding resources in an integrated manner with the CPD and PMO teams, covering different areas of expertise including Design, Scheduling, Cost Control, Quality, Construction, Finance and overall project management, among others. These resources have been fully incorporated into the team reporting to the CPD Project Director and integrated within the wider NTO team and departments to manage the Design and Builder contract and associated interfaces.

8.1.5 The CPD includes approximately 70 members. The organization structure of the CPD during construction is shown in Appendix B.

8.1.6 The CPD oversees the DB Contractor works on site. The DB Contractor is responsible for elaboration and performance of the means and methods,

quality assurance and quality control of the works, except for the quality acceptance of works requiring Special Inspections, which are the responsibility of the CPD. For this the PMO has engaged three special inspection agencies for various scope of the program to ensure the quality of the works. These agencies include (i) Bureau Veritas, (ii) Cole Technology and (iii) KS Engineering.

8.1.7 The PMO, (the portion of the CPD team responsible for the onsite oversight and control of the project construction) relocated to Building 111 at JFK in December 2024 and the entire NTO team has relocated to Building 111 in January 2024. In Building 111 the NTO team is co-located with the Design and Construction team and the PANYNJ Aviation and Engineering project representatives easing communications between the parties.

8.1.8 To date certain Program Control Methods have been deployed, including (i) Health and Safety Incentive Program: under which the DB Contractor will use a scorecard, consisting of KPIs, goals, and objectives to improve and drive the safety program forward; (ii) Earned value tracking; (iii) Budget Controls; (iv) Contingencies Tracker; (v) Schedule Controls; (vi) Construction, Design Change Notices (DCN), Request For information (RFI) trackers amongst others. The figures below show illustrative snapshots from the PMO control system of various metrics being tracked.

Figure 8-1 Health and Safety Indicators



Figure 8-2 Budget Controls

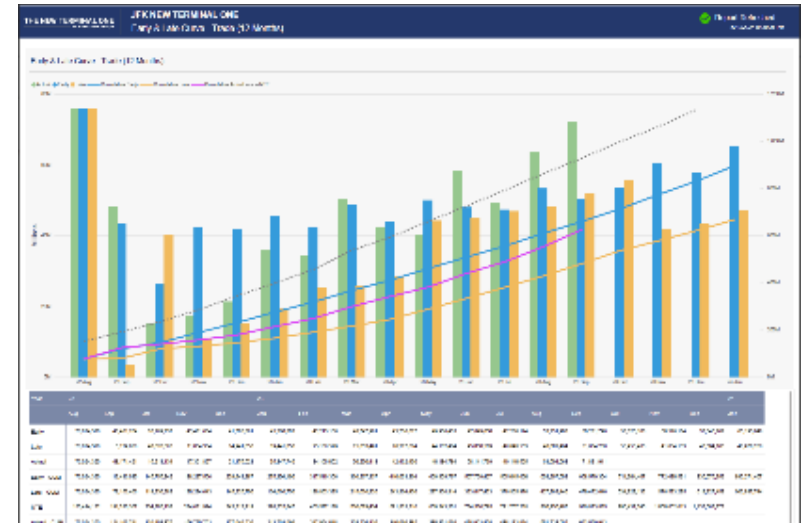
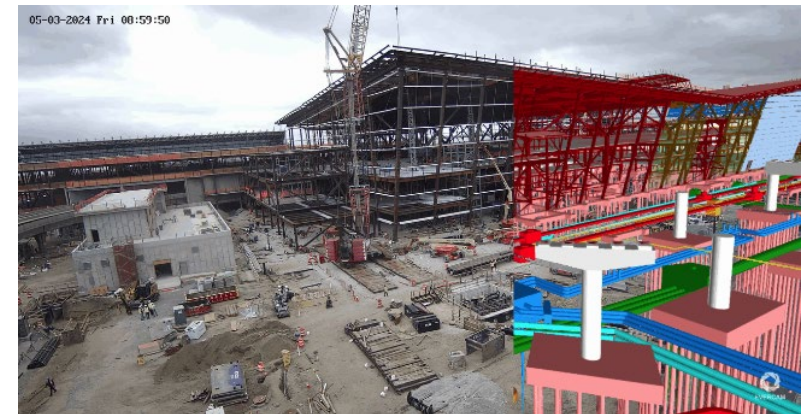


Figure 8-3 Evercam



Source: NTO

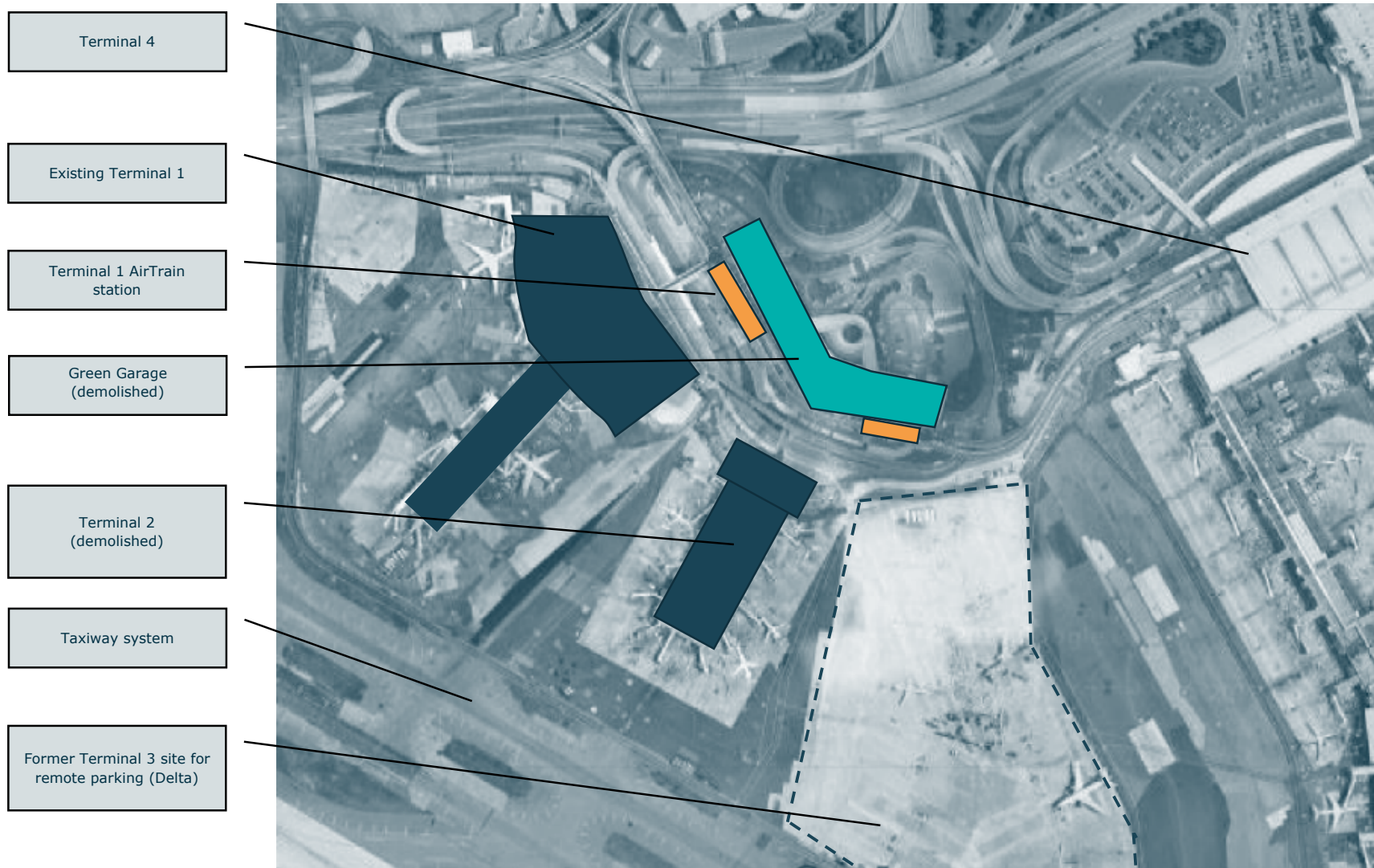
## LTA Opinion

- 8.1.9 The LTA considers the CPD to be adequately resourced and having the appropriate skills to oversee the project. The CPD organization has been beneficial in maintaining good communication and interaction with the stakeholders throughout the Project.
- 8.1.10 The scope of the CPD covers the expected items to manage a project of this nature and dedicated directors are responsible for every key element.
- 8.1.11 The LTA is satisfied with the level of coordination between the CPD and the DB Contractor to date. The LTA understands that some of the key members of both organizations have been working together in other projects, which helps to improve communication between the teams.
- 8.1.12 The LTA considers adequate the level of experience within the CPD team, taking comfort in the experience working with the PANYNJ by some of its members as well as the experience within the PMO of delivering major capex projects at other airports.
- 8.1.13 Based on performance to date the LTA considers that the PMO is taking a proactive approach in the management of the DB Contractor and is working collaboratively with them to resolve matters as they arise and to manage the schedule and project budget.

## 8.2 PROJECT SITE

- 8.2.1 At Financial Close the site comprised of Terminal 2 with associated apron, the parking garage in front of Terminal 1 (the green garage), frontage roads, and the remote apron parking on the former Terminal 3 site, as shown below.
- 8.2.2 Terminal 2 was vacated and handed over to the DB Contractor on January 2023 and the Existing Terminal 1 will remain in operation until DBO of Phase A at which time it will be handed over to NTO.
- 8.2.3 All existing facilities will be demolished and replaced by the new terminal, roadways and apron, except for the Terminal 1 AirTrain station, as part of the D&C Work. This limits NTO's exposure to any maintenance and operating risks associated with existing facilities.

Figure 8-4 Existing Facilities

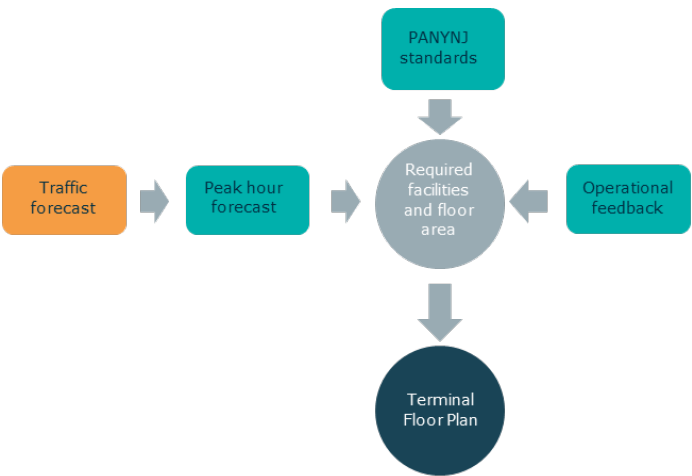


8.3 PLANNING AND ANALYSIS

General Approach

- 8.3.1 Prior to Covid-19 the Financial Sponsors were developing its Terminal One plan in close cooperation with the PANYNJ and its advisors, whilst the JFK master planning process was still ongoing. Several workshops were held with representatives from the PANYNJ and Terminal One planning teams to streamline both development plans.
- 8.3.2 The Financial Sponsors initially hired the US architecture firm PGAL to develop its terminal plan. In 2021 PGAL was replaced by ARUP for the planning of the New Terminal. ARUP followed a standard process for its planning, to meet PANYNJ's September 2018 Airport Planning Standards Manual.

Figure 8-5 General methodology of the planning process



Source: Infrata

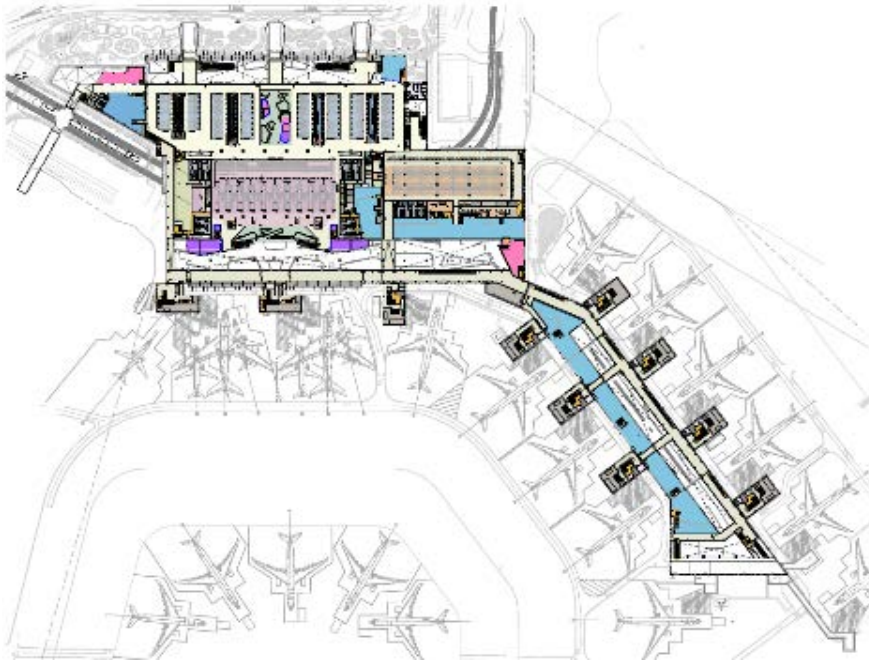
- 8.3.3 A detailed Design Day Flights Schedule (“DDFS”) has been developed to forecast the peak hour passengers and simulate passenger departure and arrival profiles. A DDFS is developed for the years 2031, 2037 and 2050.

- 8.3.4 The output of the ARUP study, the required facilities and floor areas parameters, were provided to the DB Contractor as part of the bid process and used in the development of the floor area plans for the facility.
- 8.3.5 Whilst the current financing is for Phase A only, the terminal has been planned safeguarding future developments and passenger needs.

Terminal Plan

- 8.3.6 The resulting terminal of 1.8m sq. ft. will replace current Terminals 1 and 2 and incorporate the existing Terminal 1 AirTrain station. Whilst the initial build is for Phase A, the Headhouse has been primarily planned to provide the capacity needed for 2050. There is limited expansion to passenger processing capabilities in the Headhouse in the subsequent Phases (Phase B1 and B2) outside of Baggage processing.
- 8.3.7 The departures hall will comprise of double sided check-in islands and all check-in positions will be convertible between full service, agent-staffed, positions and self-service bag drops. Following check-in passengers will go through the security area.

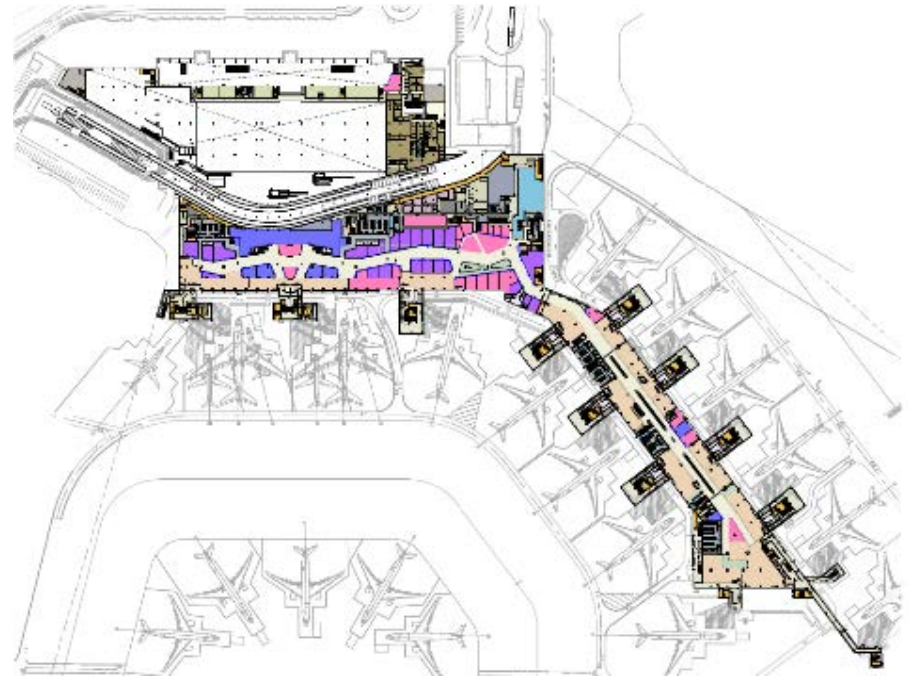
Figure 8-6 Departures level



Source: NTO

- 8.3.8 After security clearance, passengers descend into the departure's concourse. The departures concourse contains F&B and retail outlets in the central hall as well as within the piers.
- 8.3.9 AirTrain tracks and station are on the departures level and have landside access to the terminal.
- 8.3.10 Part of the baggage handling system is located at this level (in blue), transporting checked in luggage to the make-up area on the ground floor.

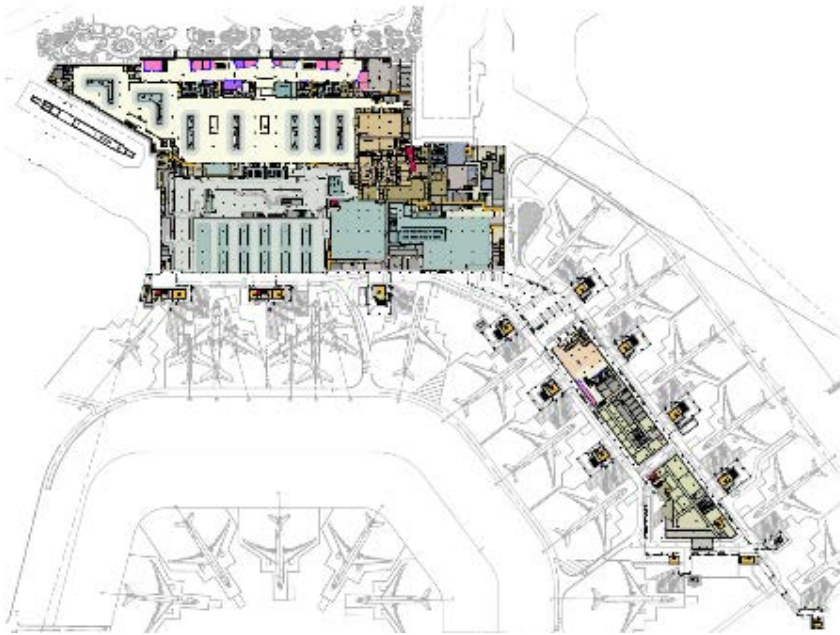
Figure 8-7 Departures Concourse



Source: NTO

- 8.3.11 The arrivals level contains passport control area as well as baggage reclaim and the meeters & greeters area.
- 8.3.12 A large area is reserved for the baggage make-up positions for departing bags.

Figure 8-8 Arrivals Level



Source: NTO

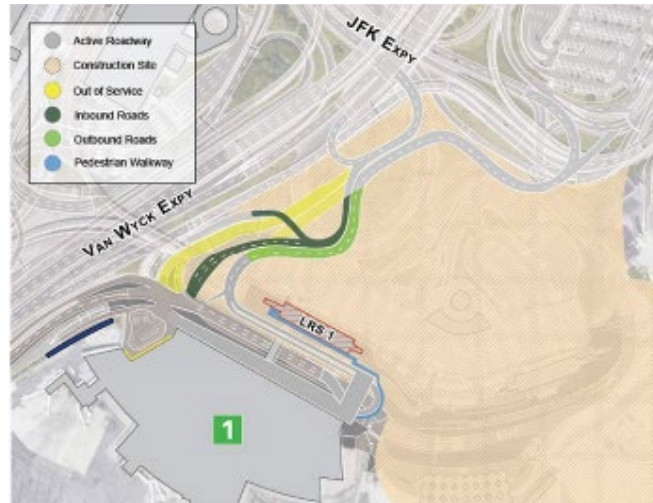
#### Apron Layout

- 8.3.13 The apron is planned taking into account the general layout of the PANYNJ Masterplan, providing 13, wide-body, contact gate parking positions, 1 temporary, wide-body, contact gate plus the 5 Delta Hardstands which will be used for parking only and not for passenger (de)boarding. There is a single taxilane serving all gates on the inside in front of the terminal which might feasibly cause delays when aircraft are pushing back. The fact that there are two entry and exit points to the main taxiway system mitigates this issue, and the number of stands accessed by this taxilane is limited. The PANYNJ has carried out TAAM simulations of the airfield using the forecast flight schedule to test for bottlenecks and found that the airfield should be able to function without major delays.

#### Roadway circulation

- 8.3.14 As part of the broader redevelopment plan for JFK, the PANYNJ is undertaking works to simplify all the roads at the airport that lead to Terminal One and the neighboring terminals, the Roadways Utilities and Ground Transportation Project ("RUGTC"). These works are not the responsibility of NTO and fall outside the scope of work of the Project though there are as number of interfaces between these works and the Terminal One works, see section 8.7 for further details on the interface between Terminal One Works and RUGTC Project being undertaken by the PANYNJ.
- 8.3.15 The only road work that is included in the Project scope relates to the frontage curbside and the access and egress roadways for Terminal One, which will be adjusted to accommodate the footprint of construction and the new terminal building. Funding for this work is included in the cost of the Project.
- 8.3.16 The roadway system is a crucial part of the overall JFK masterplan, and also a critical part of construction phasing since roadworks may interfere with passenger and construction vehicle flows and may lead to congestion and delays (such as experienced at LaGuardia Airport recently).
- 8.3.17 NTO has modelled the roadway system with different configurations in each construction phase using specialist transport planning software VISSIM to verify that the flow of traffic can be maintained at acceptable levels. The new system requires the existing roadways to be demolished and temporary roads to be constructed.

**Figure 8-9 Example of Temporary Roads required**



Source: DB Contractor

### LTA Opinion

- 8.3.18 The Financial Sponsors used a collaborative approach with the PANYNJ and its master planning team and consultants as part of its project development. NTO has also been in ongoing dialogue with the other terminal development projects at the airport. This collaboration is beneficial to avoid any future risks of non-compliance and any corrective amendments to the plan at a later stage.
- 8.3.19 The overall approach the Financial Sponsors used for planning terminal facilities and future capacity is in line with international best practices and follows the guidelines as set by the PANYNJ.
- 8.3.20 Further, it is positively noted that Ferrovial Airports undertook a review of the operational elements of the design. During this review Ferrovial Airports has not identified any major issue.

- 8.3.21 Please see section 8.7 for further discussion on the interface between Terminal One Works and RUGTC Project being undertaken by the PANYNJ as well as the sequencing of temporary roads during the works and traffic management to date.

### 8.4 DB CONTRACTOR ORGANIZATION

- 8.4.1 The DB Contractor has implemented a standard structure for projects of this magnitude, with clear lines of communication between the Lead Managers for different disciplines and the Project Director. The organization structure is shown in Appendix C – DB Contractor Structure. The Projector Director delegates day to day activities related to construction works to a Deputy Project Director.
- 8.4.2 Each Lead Manager is responsible for safety, quality, schedule, and cost control within their specific disciplines. They are also responsible for coordinating with different supporting departments in order to manage their works.
- 8.4.3 The design of the works is being conducted by the Design Team Lead, with support from Major Engineering Subconsultants and monitored by the DB Contractor. The structure of the design team is divided in Terminal Design and Airside/Landside Design.
- 8.4.4 The project team will be composed of circa 300 members at the peak of construction, who will be distributed between different departments and disciplines. The structure also includes a QA/QC and Safety teams, with the Directors of each team responding directly to the Project Director.
- 8.4.5 The QA/QC team has the responsibility for ensuring that the Quality Management Plan is being followed on site by different disciplines, with the QA/QC representatives reporting directly to the QA/QC Director.
- 8.4.6 The Safety team is responsible for supervising works on site, ensuring that the working areas are safely managed by respective trades. This involves inspections to ensure the works are carried in accordance with the relevant safety standards and agreed methodologies. The Safety team is also responsible for ensuring that every worker has the required Occupational Health and Safety Administration ("OSHA") card to work on site. The Safety team acts independently of any other disciplines and reports directly to the Safety Director.

8.4.7 Whilst the QA/QC and Safety teams have their own directors to ensure their impartiality to carry out their role, they are integrated within the different disciplines to ensure that they are part of the planning process of works on site. Representatives of each team provide advice to the construction teams ensuring that the works on site are performed without compromising the safety of individuals and to the quality standards expected and required by the contract.

8.4.8 The LTA notes that the DB Contractor is recording incidents on site and following processes to ensure causes are being investigated and have rolled out their Lifeguard Program for the recording of safety observations. In addition, Site Safety Orientations are being performed as teams mobilize on site and regular toolbox talks are being held on site. The Health and Safety performance statistics as of the end of March 2024 are shown in the following table.

**Table 8-2 Safety Statistics to March 2024**

	EXPOSURE HOURS	TOTAL RECORDABLE CASES (TRIR)	LOST TIME CASES (LTI)
<b>Goals (Rate)</b>		2.8	3.0
<b>Incidents</b>	1,996,297	45	13
<b>Achieved Rate</b>		4.51	1.3

Source: NTO

8.4.9 Recordable safety incidents mostly relate to injuries to limbs and only one high potential incident was recorded and no recurring incidents are being reported.

8.4.10 A number of initiatives were rolled out in an effort to improve the H&S performance on the project and to achieve the DB Contractor stated HS&E vision of being a beacon of Safety Excellence in the industry and communities in which they work. These include (i) ensuring competent supervision on site by continual training, pre-planning, management commitment and continual employee management; (ii) site safety orientations are being performed as contractors and subcontractors mobilize on site; (iii) an online safety orientation must be completed by everyone accessing the site; (iv) reporting

of near misses and QR codes to be provided around the site for anonymous reporting; and (v) monthly lunch and learns.

8.4.11 The design and construction teams' relevant experience is further discussed in Section 3.5 of this report.

### LTA Opinion

8.4.12 The LTA is of the opinion that the organization structure of the DB Contractor has the right level of resources for a project of this magnitude. The DB Contractor has incorporated the relevant resources into the Project and continues to expand its team as the works on site are ongoing.

8.4.13 The DB Contractor's QA/QC structure is considered adequate. It is noted that reports and investigations are being conducted daily with the QA/QC team based on site. Furthermore, it is positively noted the level of coordination between the DB Contractor and the PMO team to ensure the quality of the works.

8.4.14 The LTA notes that the Total Recordable Incident Rate is tracking behind the overall goal for the project. It is noted that the DB Contractor and the PMO have a tight reporting and tracking of safety incidents and are continuously looking for ways to improve safety on site.

## 8.5 PHASE A DESIGN PROCESS

### Authority Requirements & Progress to Date

8.5.1 PANYNJ requirements for design and construction are primarily defined the Requirements and Provisions, this Reference Document is divided in 3 different sections:

- Section A - Requirements & Provisions for Design & Construction Work – General Provisions;
- Section B - Requirements & Provisions for Design & Construction Work – Technical Requirements;
- Section C - Operations & Maintenance Term Requirements.

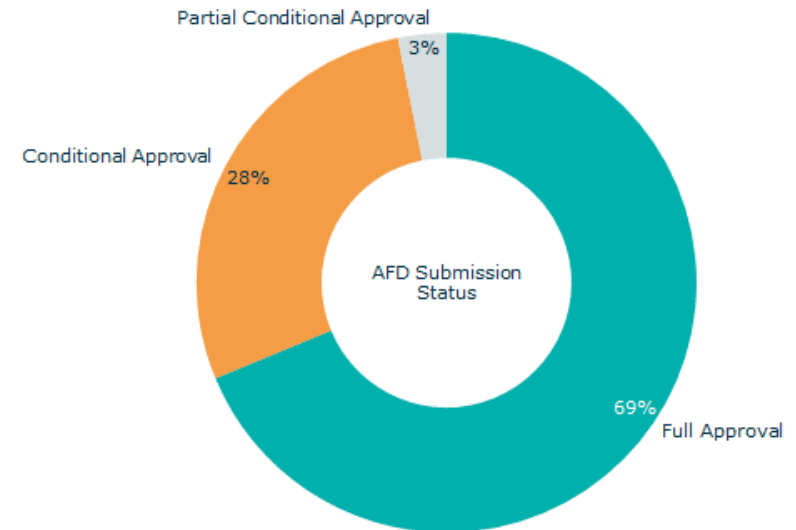
8.5.2 The requirements and provisions are in line with the standards and provisions for works of this type, based on New York City Building Codes and applicable American Concrete Institute standards, American Steel Institute, as well as ASTM, NFPA, FAA and PANYNJ requirements for airfield design with standard provisions for design life.

8.5.3 The Design Submittals follow the standards requirements for projects of this nature. The Designer requires approval of each submission before advancing to the follow-on stage of Design. The Design packages submitted are as follows:

- Comprehensive Basis of Design ("BOD") submittal – Approval as Noted has been received on February 4, 2022. One item is undergoing finalization (Terminal Planning Matrix), 3 items have been conditionally approved (NY Sense of Place, Life Safety Design/Plan and Protective Design Narrative).
- Comprehensive Conceptual Design ("CCD") Submittal – submitted on February 8, 2022. PANYNJ letter to proceed received April 1, 2022.
- Comprehensive Intermediate Design ("CID") Submittal - at 60% completion, submitted July 25, 2022. PANYNJ letter to proceed received November 25, 2022.
- Comprehensive Final Design ("CFD") Submittal for review and approval of the PANYNJ – at 100% completion, submitted November 30, 2022. PANYNJ letter to proceed to AFD received April 20, 2023.
- Advanced Final Design ("AFD") Submittals of 100% construction documents is expected in Q2 2024 and the majority of the approvals are expected by early Q3 2024, with the exception of the Building and Systems Interior AFD package which is expected by Q4 2024.

8.5.4 The figure below shows the status of the AFD submissions.

Figure 8-10: AFD Submission Status



Source: CPD

8.5.5 The 32 AFD submissions have received either full approval, conditional approval or partial conditional approval. The package which received partial conditional approval is the Building Systems and Interiors. It is noted that the partial conditional approval of this package is not affecting the progress of works on site.

8.5.6 Working groups with members from the JFK Redevelopment and the Master Planning team, PANYNJ Engineering Department, and the Lessee's team have been formed with the aim to review the design process, taking a holistic view of the Terminal, ensuring that all the requirements by the different stakeholders are included in the design and that the reviews are carried out in the most efficient way. These working groups are the Design Review Working Committee and the Executive Design Review Committee ("EDRC").

- 8.5.7 Overall the Design is reported as currently approximately 98% complete, with the different elements of works at different stages of the design as shown in Table 8-3.

**Table 8-3 Percentage of design completion per element of works**

ELEMENT OF WORKS	CURRENT DESIGN PROGRESS (%)	ANTICIPATED CURRENT DESIGN PROGRESS (%)
<b>Steelwork (Primary)– Processor Building</b>	100%	100%
<b>Steelwork – Other Structures</b>	99%	100%
<b>Roof Build-up</b>	100%	100%
<b>Curtain Walling</b>	100%	100%
<b>MEP (Mechanical, Electrical and Plumbing)</b>	98%	100%
<b>BHS</b>	100%	100%
<b>Utilities – Landside</b>	100%	100%
<b>Utilities - Airside</b>	99%	100%
<b>Drainage</b>	99%	100%
<b>Landside Design - Civil</b>	98%	100%
<b>Airfield Design - Civil</b>	98%	100%

Source: Gensler

### LTA Opinion

- 8.5.8 The Authority design requirements are standard for a project of this nature and the LTA is confident that the requirements should not pose any undue risk to the team. It is noted that no major design changes have materialized through the design approval process. Comments or remarks from the PANYNJ are addressed through the submission process.

- 8.5.9 To date, no design related delays have been reported and the Advance Final Designs required for the works are in place. It is noted that certain design packages are pending coordination with the RUGTC. Please refer to section 8.7 for further details on the RUGTC.

- 8.5.10 It is positively noted that the level of design currently completed is nearing completion at 98%, which minimizes the risk of design changes.

- 8.5.11 The LTA notes positively that the design is being developed through a joint effort involving all the relevant parties, such as, PANYNJ, representative airlines, the NTO, Gensler, AECOM, DB Contractor and other key stakeholders. This coordination has been achieved through regular workshops that aim to address all the requirements and proposals from the different parties. It is noted that the TSA, CDC, FAA and the Customer & Border Protection are also part of this process to ensure that their requirements are reflected on the design.

- 8.5.12 The LTA notes that following the CFD submission, the PANYNJ has provided a letter to proceed with the AFD Submissions. It is positively noted that 22 AFD Packages have been Fully Approved and 8 Conditionally Approved.

## 8.6 DESIGN SOLUTION OVERVIEW

### Terminal

- 8.6.1 The concept of the design is to allow for the utilization of conventional systems readily available in the New York City construction market and introduce incremental innovations that can be realized through repetitive systems during the construction works to address challenges of long spans and wind and seismic resistance. All the proposed systems are proven approaches that have been shown on prior projects to be successful in achieving a high-performing, economical and sustainable buildings.

### Foundations

- 8.6.2 The new terminal structure will be supported by piles that bear in deep sand stratum. The diameter and length of the piles will primarily be 18 inches and approximately 65 ft.

- 8.6.3 The New Terminal One slabs will be supported by structured slabs that span between piles and grade beams to avoid excessive settlement from the fill material.
- 8.6.4 Prior to Financial Close, the design of the Apron Level of the Terminal was raised by 3 feet from the base design, to keep the Terminal, and critical electrical systems, out of the flood plain.

#### Steel Structure

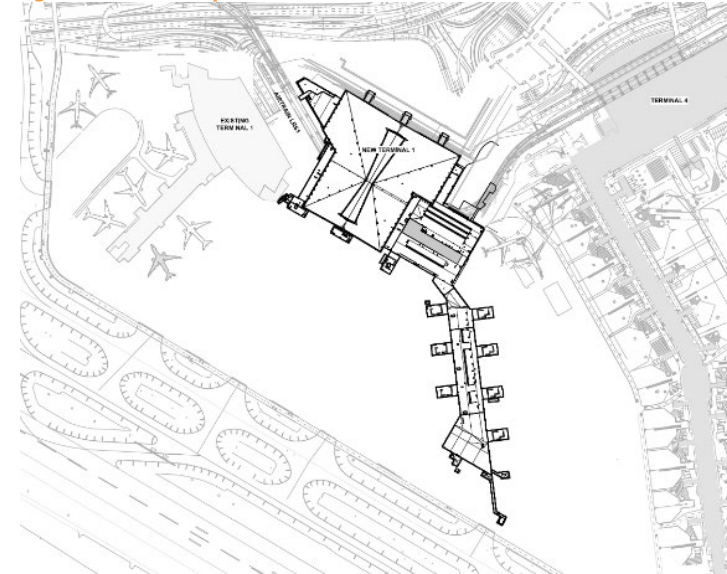
- 8.6.5 The design of the terminal is based on a repetitive column grid (30'x60' and 60'x60'). This solution intends to increase the speed of construction and achieve a structural efficiency and simplicity through the repetition of structural members.
- 8.6.6 The structural design is performed considering the various stages of building occupancy. Structural elements will be designed for worst-case loading that occurs during the different stages of occupancy, in their completed state. The three stages considered are as follows:
- Phase A;
  - Phase A and B1;
  - Phase A + B1 and B2.
- 8.6.7 The design loads assumed for the design are based on the maximum loads expected by the intended use or occupancy, but in no case less than the minimum loads listed in the governing building code.

#### Building Envelope

- 8.6.8 The curtain wall system for the Processor Building will consist of a unitized aluminum system with typical glazing panel sizes of 6'x10'. The curtain wall will be supported via a secondary steel system.
- 8.6.9 The secondary steel system will have differences from elevation to elevation, with the planar trusses varying between be 98ft tall and 114ft tall, and spaced at 30ft, supported at the Arrivals Level and laterally restrained at the Roof.

- 8.6.10 The roof of the Processor Building will include a central clerestory system in a bowtie geometry. The supporting structure of the clerestory will be composed of steel framing which spans to a perimeter framing member in the primary roof structure.

Figure 8-11 Roof Layout



- 8.6.11  
Source: NTO

Figure 8-12 Roof Progress up to March 2024



Source: NTO

- 8.6.12 The typical membrane of the roof will be installed upon a structural metal roof deck which will be installed into a secondary steel system connected to the primary steel of the building. The metal roof deck will receive adhered air/vapor barrier membrane, minimum 8" inches rigid insulation, coverboard and PVC roofing membrane.

#### Mechanical

- 8.6.13 The Mechanical rooms will be strategically located on various levels, mainly at the mechanical mezzanine level at the Processor Building, at the arrival level and the Boarding Towers for the piers. There will be outside air intake via louvered walls and plenums will be located on the vertical wall faces of the mezzanine level. Exhaust air louvers will be at least 10 feet above the ground or located on the roof.
- 8.6.14 With regards to ventilation of the building, any outside air intake shall be from the roof, away from sources of contamination, odors and exhaust chimneys.

#### Electrical

- 8.6.15 The design team has analyzed the projected total load for The New Terminal One. The projected load was estimated based on the square footage of various areas of The New Terminal One and functionality of those areas.

- 8.6.16 The Electrical switchgear is being designed to operate under the current capacity of 5KV or the future 13KV. That way, the system will not be relying on the completion of the upgrade system to operate.

- 8.6.17 The Terminal area shall have the capacity to serve all the baggage, mechanical, loading bridges, concessions, security, lighting and general power equipment.

#### Plumbing

- 8.6.18 The Plumbing Infrastructure shall include the following systems:

- Domestic Water Distribution;
- Sanitary Drainage;
- Storm Water Drainage;
- Natural Gas Supply System.

- 8.6.19 The Terminal will be provided with two 10-inch redundant domestic water services extended from 5-feet outside the building's foundation wall. The water services shall be connected to the low-pressure water main in a way such that if a sectional valve on the site main is closed at least one of the water supplies shall still be active.

- 8.6.20 The sanitary drainage will flow by gravity to electric duplex Variable Frequency Drives sewage ejectors and lifted to the site sanitary force mains. The sewage ejector pits are going to be located on the Apron level of the Processor building and both East and West piers.

- 8.6.21 The storm water drainage will be provided by the presence of roof drains on all roofs. The roof drains shall drain by using symphonic drainage technology and connect to the rainwater harvesting tanks. The overflow of the rainwater harvesting tanks will be drained by gravity to connect to the site storm sewer collectors.

- 8.6.22 The gas supply to the Terminal will be via 12" gas services from National Grid, installed in T1 Utility Corridor and connected to the terminal at two gas meter rooms.

### Baggage Handling System

- 8.6.23 The design of the Baggage Handling System is based on a total capacity of 5804 (3154 outbound, 2650 inbound) bags per hour, derived from the 2050 Flight schedule.
- 8.6.24 The ticketing area has been designed to allow passengers to check in their bags up to 4 hours prior to their departure.
- 8.6.25 The baggage handling system will be designed for a minimum equipment life of 15 years and an operating duty cycle of 18 hours a day, 365 days per year.
- 8.6.26 The LTA understands that the designers of the Baggage Handling System, Vanderlande, are having regular meetings with the Designer and Ferrovial Airports, to ensure that any requirement from the Operator is included in the design.

### Airfield

- 8.6.27 The design for the airfield work includes the placement of utilities, hydrant fueling, drainage system, collection of residuals resulting from deicing operations, airfield lighting, pavements, airfield markings, bollards and guardrails. AECOM has progressed the airfield design to the Advance Final Design Submission level for airfield disciplines such as civil, site, grading, storm, glycol collection, FHS and utilities.

### Civil Airside

- 8.6.28 All existing pavements, buildings, utilities and other site facilities within the airfield work area will be demolished.
- 8.6.29 The layout design for the contact gates has been standardized to the maximum extent possible to increase efficiencies on the apron and provide a consistent Ground Service Equipment service approach.
- 8.6.30 All surface elements external to the new Terminal will be one of the following types:
- Asphalt Concrete Pavement – Flexible pavement;
  - Portland Cement Concrete Pavement ("PCC") – Rigid pavement.

- 8.6.31 The findings from the Ground Investigation works being carried out as part of the Interim Works will be used to confirm the assumptions made in the design. The initial pavement design is based on the subgrade characterization contained in the PANYNJ civil Design Guidelines.
- 8.6.32 The design also takes into consideration locations that will require special pavement transitions sections for aircraft or vehicular load. These situations will be as follows:
- where asphalt pavement ties to concrete pavement;
  - where asphalt or concrete pavement ties to pile supported concrete slabs;
  - where new pavement ties to existing asphalt pavement.
- 8.6.33 If the underground facility structures are located within the aircraft parking aprons, hardstands and concrete pavements, the design allows for the installation of an isolation slab to accommodate differential settlement between pavement and the underground facility structures.
- 8.6.34 The LTA understands that Ferrovial Airports has also been involved in the design coordination of the Stand operations modelling, Apron Management and Deicing operations locations.
- 8.6.35 It is also understood that Ferrovial Airports has been consulted on the Ground Service Equipment staging areas and is satisfied with the allocated areas.

### Aircraft Fueling Systems

- 8.6.36 A new hydrant fuel system will be installed to supply jet fuel to the Terminal 1 gates. The new hydrant fuel system will be fed from the existing Terminal 1 and Terminal 3 hydrant fuel mains, connecting with both on the west and east side of the new Terminal 1 respectively.
- 8.6.37 The construction of the Phase A Processor Building and concourse will require the demolition or abandonment in place of the existing Terminal 2 and 3 hydrant fuel systems. If the existing systems are within the footprint of the new Terminal, the DB Contractor will remove the infrastructure. However, if the existing infrastructures do not clash with the new system, they will be filled with slurry and abandoned.

### Drainage

- 8.6.38 The proposed airside drainage network is an integrated system that is intended to capture and convey stormwater runoff from the terminal building, aircraft stands, taxi lanes, vehicle service roads and aircraft hardstands.
- 8.6.39 The design also includes the relocation of existing storm sewer trunk lines that convey storm drainage to the existing outfall.
- 8.6.40 The proposed grading strategy around the terminal is to pitch surface drainage away from the terminal towards the back of stand areas, eventually tying into the existing surrounding airfield grades. The Project team developed a 3D model that incorporates this strategy, providing the levels for all the inlets/catch basins, junction boxes, manholes and storm pipes.

### LTA Opinion

- 8.6.41 The LTA notes positively the level of coordination between Gensler, CPD, the DB Contractor and PANYNJ, working together to develop a design that promotes the efficiency during the delivery of the works, whilst considering and including any optimization that will improve the operation of the terminal in the future.
- 8.6.42 It is noted that the DB Contractor has been able to adapt the design to the actual findings on site, this has included adaptations in the foundation system for the terminal and the application of surcharges in certain areas to reduce the number of piles required to support the drainage system in areas where ground improvements were identified as required.

## 8.7 PHASE A CONSTRUCTION PHASING

- 8.7.1 The DB Contractor has developed a construction sequencing plan for the works with the intent to facilitate uninterrupted operations and maintain gate and passenger processing capacity throughout the construction period. The works are primarily undertaken landside by providing perimeter barriers that isolate construction areas and allow for continuous and unimpeded work without interference from airport operations this approach also simplified security issues.

- 8.7.2 The following table provides an overview of the sequencing of main construction works, indicating the expected durations and periods for each sequence.

**Table 8-4 Construction Phasing of the Project (Month 1 = June 2022)**

CONSTRUCTION PHASING
<b>Sequence 1 – Building Fit Out: Months 18-24</b> <ul style="list-style-type: none"><li>○ Piles/Foundations</li><li>○ Permanent Utilities Landside / Airside</li><li>○ AirTrain Enclosure and Interior Works</li><li>○ Airside Civil and Hydrant Fueling</li><li>○ Permanent Roadway Construction</li><li>○ Headhouse &amp; East Pier superstructures</li><li>○ Vertical Transportation / MEP / Architectural Fit Out</li><li>○ Curtain Wall</li><li>○ BHS Installation Commencement</li></ul>
<b>Sequence 2 – Building Fit Out: Months 25-32</b> <ul style="list-style-type: none"><li>○ Piles/Foundations</li><li>○ Permanent Utilities Airside</li><li>○ Hydrant Fueling</li><li>○ Permanent Roadway Construction</li><li>○ Headhouse &amp; East Pier superstructures</li><li>○ MEP / Vertical Transportation / Architectural Fit Out</li><li>○ Tie into existing utilities</li><li>○ Curtain Wall</li><li>○ BHS installation, commence testing &amp; commissioning</li><li>○ Electrical/Photovoltaic/Substations</li><li>○ Tenant fitout</li></ul>
<b>Sequence 3 – Interior Program: Months-33-41</b> <ul style="list-style-type: none"><li>○ Permanent Roadway Construction</li><li>○ MEP / Vertical Transportation / Architectural Fit Out</li><li>○ Tie into existing utilities</li><li>○ Permanent Utilities Airside</li><li>○ Hydrant Fueling (EFSO System)</li><li>○ BHS Testing &amp; Commissioning</li><li>○ Passenger Boarding Bridges</li><li>○ Electrical/Photovoltaic/Substations</li><li>○ Various systems' Testing &amp; Commissioning</li><li>○ Tenant fitout</li><li>○ Commence ORAT</li></ul>
<b>Sequence 4 – ORAT: Months-42-48</b>

CONSTRUCTION PHASING
<ul style="list-style-type: none"> <li>○ <b>BHS Testing &amp; Commissioning</b></li> <li>○ <b>Electrical/Photovoltaic/Substations</b></li> <li>○ <b>Various systems' Testing &amp; Commissioning</b></li> <li>○ <b>ORAT</b></li> <li>○ <b>Demobilization</b></li> <li>○ <b>Passenger Boarding Bridges</b></li> </ul>

Source: Appendix H-1 - 202403 JFK NTO Month 22 Progress Update

- 8.7.3 There are some dependencies within the phasing plan where there will be reliance on third party actions for approvals, coordination of activities, and to clear the sites ahead of construction activity by the DB Contractor, among others. Further details about third-party dependencies are provided in the table below.

**Table 8-5 Third party dependencies**

ENTITY	CURRENT STATUS OF COORDINATION
FEDERAL AUTHORITIES	
<b>TSA</b>	<ul style="list-style-type: none"> <li>○ Coordination with TSA is ongoing and monthly meetings are being held.</li> <li>○ The BHS has been approved by TSA.</li> <li>○ The delivery of CTX Machines was expected to occur in July 2024, however due to the sequence of works on site it will be stored until September 2024. It is understood that this has been coordinated with NTO and the DB Contractor and incorporated into the schedule.</li> <li>○ The package for leasable and non-leasable areas has been approved and all leasable areas have been identified.</li> </ul>
<b>CBP</b>	<ul style="list-style-type: none"> <li>○ The Detailed Development Packages have been submitted and approved by the CBP.</li> <li>○ CBP has approved 3 waivers requests and 1 remains under review by CBP. The 4 waivers relate to pre-action sprinkler system and the deletion of humidification in 3 areas. The waiver pending approval is for the humidification deletion in one of the areas.</li> <li>○ It is understood that the DB Contractor has complied with ATDS across all disciplines.</li> </ul>

ENTITY	CURRENT STATUS OF COORDINATION
<b>CDC</b>	<ul style="list-style-type: none"> <li>○ Coordination efforts were completed and all required approvals are in place.</li> </ul>
<b>FWL</b>	<ul style="list-style-type: none"> <li>○ Coordination efforts were completed and all required approvals are in place.</li> <li>○ The schedule remains to be incorporated within the DB Contractor schedule.</li> </ul>
CONSTRUCTION INTERFACE	
<b>Delta</b>	<ul style="list-style-type: none"> <li>○ Delta has a license to use the T3 area, including 15 hardstands and was previously occupying the T2 area which was handed over on January 21, 2023 and is now completely demolished.</li> <li>○ Weekly coordination meetings are held to coordinate construction work and upcoming fence line moves.</li> <li>○ It is understood from the DB Contractor that collaboration with the Delta team is going well and that a good working relationship has been established.</li> </ul>
<b>TOGA</b>	<ul style="list-style-type: none"> <li>○ During the construction of the New Terminal One NTO will require access to the property leased to TOGA to ensure maintenance of pedestrian and vehicular traffic to the existing Terminal One. This includes the construction of temporary and permanent roadways leading to existing Terminal One and the New Terminal One.</li> <li>○ Bi-weekly technical work sessions with the PANYNJ and TOGA are held for future work planning and to mitigate any possible construction impacts.</li> </ul>
<b>National Grid</b>	<ul style="list-style-type: none"> <li>○ National Grid is the gas utility provider who will provide gas to the terminal.</li> <li>○ National Grid did not accept a direct contract with the DB Contractor and requested a contract with the Developer. It is understood that the risks associated with the National Grid works remains with the DB Contractor.</li> <li>○ As of April 2024 National Grid permanent gas line works were substantially complete with the connection to the building pending, which will be performed at a later stage.</li> </ul>

ENTITY	CURRENT STATUS OF COORDINATION
OTHER PROJECTS	
RUGTC	<ul style="list-style-type: none"> <li>The PANYNJ has selected a joint venture of Skanska USA Civil NE and Halmar International LLC (Skanska Halmar JFK Joint Venture, the SHJV) to deliver the JFK Roadways Utilities and Ground Transportation Project (the "RUGTC").</li> <li>The LTA understands from NTO that there have been changes to the RUGTC Project as understood at Financial Close, including (i) a change in the date by which the GTC car parking spaces will be available for passenger with a current anticipated opening date for the GTC 10 months post the Phase A DBO Date, (ii) the current design and scope has changed and does not deliver the equivalent passenger experience as that discussed with the PANYNJ prior to Financial Close and (iii) the RUGTC schedule currently considers dates for the completion of the demolition of the T4 backbone roads materially later than those included in the Baseline Schedule prior to Financial Close.</li> <li>A solution has been reached with the PANYNJ and the DB Contractor Tishman to resolve the schedule misalignments in relation to the demolition of the T4 backbone, which had the potential to impact Phase A DBO, with a phased approach to be adopted in relation to the demo and handover of the T4 backbone area and resequencing of activities, etc. Both the DB Contractor and NTO confirmed that the solution agreed would result in no impact to the Phase A DBO date due to this matter.</li> <li>It is noted that commercial discussions are ongoing between NTO and the PANYNJ in relation to the Delay and Compensation Event and the possible usage of the PA Reserve Amount for the costs associated with the proposed solution. Due to this ongoing discussion it is likely that the associated costs will be funded from Owner Contingency as an interim measure to ensure works progress on site while the commercial discussions continue.</li> </ul>
Central Substation 2	<ul style="list-style-type: none"> <li>Permanent Power to the terminal will be provided from the CS2.</li> <li>Previously, the PANYNJ through communications in workshops indicated a potential delay to the provision of permanent power. However, it is understood from NTO that PANYNJ have since confirmed that they should have no issues to provide the Permanent Power by the required date.</li> </ul>

Source: NTO

8.7.4 The phasing of the roadway works was modified due to the above mentioned RUGTC interface. The figure below shows the columns impacted by the RUGTC works (shown in red in the figure below).

Figure 8-13 T4 Backbone and Roadway Works



Source: DB Contractor

### LTA Opinion

- 8.7.5 The LTA considers that the DB Contractor, NTO and the relevant interface parties are working collaboratively to mitigate potential impacts on schedule due to interface matters. A solution has been reached with the PANYNJ and the DB Contractor Tishman to resolve the schedule misalignments in relation to the demolition of the T4 backbone, which had the potential to impact Phase A DBO.
- 8.7.6 The LTA's review of the phasing proposal confirms that it is designed to ensure adequate traffic and passenger flow and overall airport operations. This is achieved through isolation and separation of construction sites, establishment of temporary roadway infrastructure when it is required and sequencing of construction activity to ensure adequate capacity provision for passengers

and aircraft. It is noted that as of April 2024, no issues with logistics have been reported.

- 8.7.7 The LTA positively notes that the AirTrain was fully reactivated on January 27, 2024 without major impacts to the operation.
- 8.7.8 The LTA considers that the project is medium to low complexity from a technical standpoint, however, acknowledges the additional constraints and difficulties inherent to a construction in an airport environment. The LTA is confident that the DB Contractor has got right level of knowledge and experience in the project team to deliver the works safely, to a high standard of quality, on time and within budget.

## 8.8 PHASE A ORAT PLANNING

- 8.8.1 ORAT is a holistic program, parallel to construction, that assures the readiness of people, procedures, and facilities. It defines target operational models and procedures for all stakeholders, facilitates training and familiarization for the new airport or terminal. The centrepiece are operational trials to ensures that staff, procedures, and systems work smoothly from day one. And finally, ORAT plans and executes the move to the new terminal and starts the operation on day one. This is a critical process and will minimize risk of operational incidents during the timely terminal opening.

### Approach

- 8.8.2 The ORAT process will be carried out by Munich International Airport ("MIA") as an operational partner of the consortium and formalized using a standard ORAT agreement. MIA has extensive experience in executing ORAT projects on over 35 projects globally of assisting with commissioning of new airports and terminal facilities. Most recent assignments include:
- Bermuda L.F Wade Airport
  - New Istanbul Airport
  - Jeddah Airport
  - Muscat Airport
  - Newark Terminal A

- 8.8.3 With their experience over the last 20 years, a tried and tested approach is developed, summarized as follows:

Figure 8-14 ORAT Process



Source: Munich Airport ORAT Approach and Methodology

- 8.8.4 The ORAT schedule is being developed by MIA in conjunction with NTO and the DB contractor and permanently aligned to ensure that the ORAT activities can be carried out at the earliest opportunity in the most efficient way.
- 8.8.5 Key considerations accounted for in the ORAT plan for Terminal One are:

Table 8-6 ORAT Plan Considerations

ITEM	CONSIDERATION
<b>Government stakeholder engagement</b>	Typically, government bodies dealing with immigration, customs and security have specific requirements that need to be taken into account.  The MIA team have extensive experience of dealing with various government agencies to ensure their involvement from the start of the project.
<b>DB Contractor Communications</b>	The schedule is constantly aligned with the DB Contractor schedule.  Working groups have been set up to discuss the integration of ORAT into the construction schedule and the ORAT team can work in the terminal when it is safe to do so, and when the facilities are sufficiently ready for terminal employees to recognize their workplaces and equipment.
<b>Early involvement of key stakeholders</b>	The ORAT team intends to involve all stakeholders such as ground handlers, air traffic control, airlines, etc. at an early stage. This is made possible due to early involvement of the ORAT team in the project and a dedicated stakeholder engagement plan.

<b>Two-phased terminal opening</b>	As the terminal opens in two stages, lessons learned in the first phase will be used in the second phase. Any issues identified in the first phase will be resolved and improved upon to prevent reoccurrence in the second phase.
<b>Close proximity to existing terminal</b>	The new terminal is constructed near the existing one and this should assist (and also not interfere with) the ORAT process.

- 8.8.6 From Q1 2024 MIA is fully mobilized and participating in meetings with NTO and different stakeholders including the design and construction team.
- 8.8.7 As of April 2024 the main achievements consist of the submission of preliminary Trial Calendar with scenarios and trial requirements to CPD, the draft of deliverable schedule with adapted deliverable milestones to cater actual project requirements and the first draft of NTO Training Needs Matrix is in place and core process meetings are ongoing. The draft ORAT plan, Terms of Reference and budget are in place. The MIA Schedule is expected during Q2 2024 with basic trials anticipated to commence in December 2025 and advance trials anticipated in late Q1 / early Q2 2026.
- 8.8.8 It is understood that the equipment required for basic ORAT has been identified and MIA and that the preparation of operational manuals and procedures is underway with tenders out for the preparation of training manuals.

### LTA Opinion

- 8.8.9 The LTA notes extensive experience of Munich Airports on similar ORAT projects carried out across the world. The project in Newark has provided the company with experience of specific issues in the New York airport environment.
- 8.8.10 Munich Airports' methodology demonstrates a good understanding of the procedures and activities necessary to bring a new development of this size into operation. The LTA recognizes the experience of the organization in this area.
- 8.8.11 The ORAT schedule for this project includes the typical activities and timescales the LTA has seen on similar projects. The LTA is of the opinion that there are no additional specific risks associated with the commissioning of the new terminal facilities and further risks identified during the process should be managed in due course using the experience of the entities involved.

- 8.8.12 The LTA welcomes the early commencement of activities of MIA and the ORAT team to ensure that the processes are well defined in advance of the commencement of Basic and Advance ORAT activities on site.

## 9 PHASE A CONSTRUCTION SCHEDULE

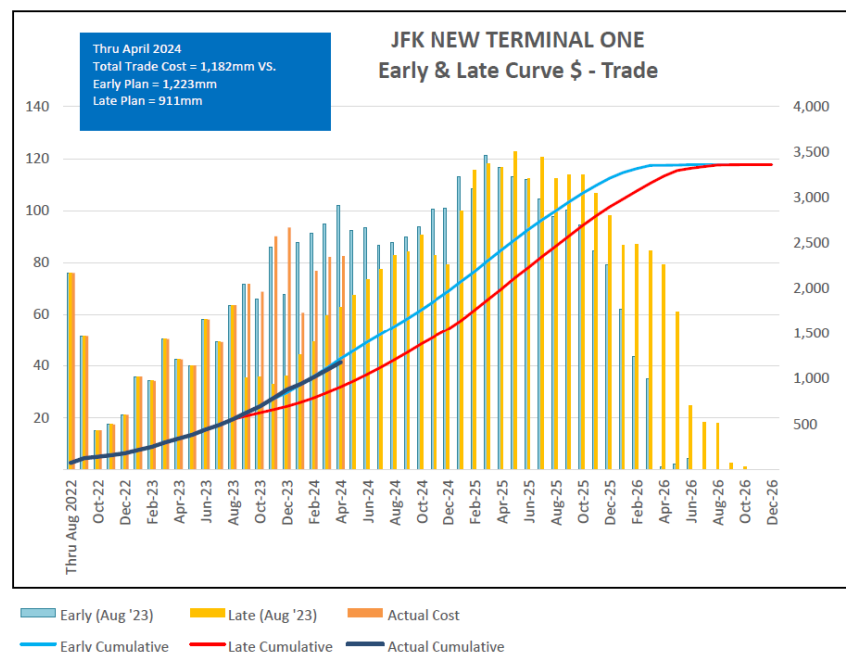
### ✦ At a glance

- NTP was achieved on June 10, 2022 with Construction starting (“Shovel in the ground”) on the same day.
- The Preliminary Baseline Schedule was submitted by the DB Contractor on January 18, 2021, and conditionally approved on January 28, 2022. The most current schedule, Monthly Progress Schedule Update 23 was submitted for PANYNJ approval on May 13, 2024.
- The current schedule indicates Phase A DBO by June 1, 2026, in line with the Lease Agreement.
- The LTA is satisfied with the progress of the project at this stage. The LTA notes that despite some historical delays, the schedule remains on track and no critical path delay to the Phase A DBO date of June 1, 2026 is anticipated at this time.
- The LTA positively notes the proactive approach being adopted by the DB Contractor, and the PMO, in managing the schedule and mitigating delays with mitigation strategies developed based on the near term activities avoiding compression of the back-end of the schedule.
- Whilst the Project Schedule does not declare float, it is considered that the schedule provides a level of resilience to possible delays and it is considered that the main potential drivers for material delay to the project (ground condition, unknown utilities and design changes) are largely in the past.
- The LTA notes that the procurement strategy adopted with the trades includes schedule buy-out (contractual commitment to achieving schedule dates) with subcontractor schedule of activities being incorporated into schedule updates.

## 9.1 PROGRESS TO DATE

- 9.1.1 The progress of the project, as of the end of April 2024 is ahead of the Late Baseline Curve. Overall a progress of 41.2% can be seen, based on payments made, which is between the early forecast of 41.6% and the late forecast of 35.6%. Of the DB Contract Sum, the current progress is 40%.

Table 9-1 DB Contractor Trade Costs S-Curve as of April 2024



Source: NTO

- 9.1.2 To date there have been a number of non-critical delays with respect to the schedule. Where these have occurred a mitigation strategy has been developed by the DB Contractor to ensure there are no critical path delays and that the Phase A DBO date of June 01, 2026 is maintained. Strategies adopted include (i) resequencing of specific elements; (ii) working extended and double shifts; (iii) increasing manpower and crews working on site; and (iv) overlapping of activities if appropriate.

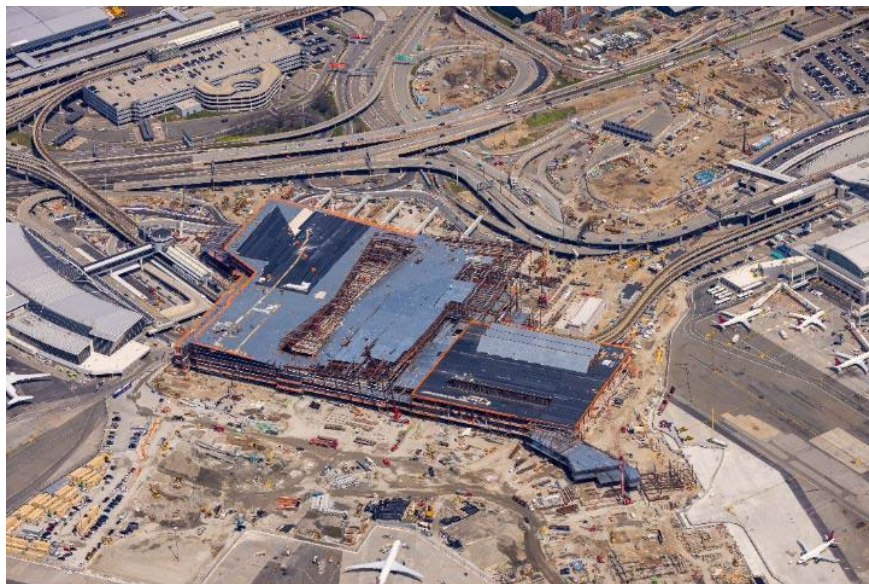
#### Headhouse Progress Overview and key 2024 dates as of April 2024

- 9.1.3 The foundation works in the Headhouse were completed in February 2024 and steel erection in the headhouse commenced in July 2023 and has been completed as of May 2024. Once a sector of the steel structure becomes available, Slab on Deck installation commences and is nearing 90% completion. Furthermore, the excavation for the BHS tunnels is ongoing as well as the installation of Slab on Grade. The Slab on Grade works have been progressing marginally behind schedule due a change in the approach to utilities with utilities being installed below the slab rather than being hung from above. It is expected that this strategy will ultimately result in schedule savings due to the anticipated quicker progress once the utilities are installed and easier coordination thereafter. No impact is expected to the follow trade works. Spray on fireproofing and roofing installation is also ongoing within the building along with the installation of HVAC duct work and other MEP fixtures throughout the headhouse. Curtain wall installation commenced on February 2, 2024 and works have been progressing slower than expected due to steel detailing which is required to be completed in advance of the installation. However, a recovery plan was put in place by the DB Contractor, where extended shifts and additional working days will be implemented from May 2024 to recover any potential delays. The installation of BHS walkways commenced in April 2024. It is anticipated to achieve partial weather tightness of the building by the end of July 2024 with full weather tightness scheduled for December 2024. Though it is understood that efforts are being made to achieve weather tightness by October 2024.

#### East Pier Progress Overview and key 2024 dates as of April 2024

- 9.1.4 Foundations are ongoing and nearing completion with pile caps due to be completed in July 2024. Steel erection commenced later than initially planned and is being recovered through the implementation of extended shifts and is anticipated to be completed by the end of July 2024. The current weather scheduled weather tight date for the East Pier is March 2025 though it is understood that efforts are being made to achieve weather tightness by the end of 2024. In April 2024, the first escalators were installed, making the most of the steel sequence which allowed for the fully assembled escalators to be put in place.
- 9.1.5 Please refer to Appendix F for pictures of the progress to May 2024.
- 9.1.6 To date the DB Contractor has submitted 13 Delay Event Notices to NTO which have been passed through to the Port Authority to preserve the rights under the Lease Agreement.
- 9.1.7 As of substantial buyout (June 1, 2024), 94.9% of the trade packages have been procured, including all long lead items. As part of the procurement process the subcontractors are buying-out the schedule, i.e. they are committing to the schedule dates within their subcontracts. The current Project Schedule incorporates the schedules for those trades.

Figure 9-1 Progress on Site up to April 2024



Source: CPD

### LTA Opinion

- 9.1.8 In general terms the LTA is satisfied with the progress of the project at this stage. The LTA notes that despite the historical delays the schedule remains on track and no critical path delay to the Phase A DBO date of June 1, 2026 is anticipated at this time.
- 9.1.9 The LTA notes that whilst non-critical delays have occurred, these have been mitigated through the resequencing of specific elements and through working extended shifts.
- 9.1.10 The LTA positively notes the proactive approach being adopted by the DB Contractor, and the PMO, in managing the schedule and mitigating delays with mitigation strategies developed based on the near term activities avoiding compression of the back end of the schedule.

- 9.1.11 The LTA notes that to date all key schedule milestone KPI's have been achieved without adverse schedule delays.

## 9.2 AUTHORITY SCHEDULE REQUIREMENTS

- 9.2.1 PANYNJ requirements for the Project Schedule are primarily defined in the Lease Agreement Section 2(c) and in Chapter 3 of Section A to Requirements and Provisions for Work Exhibit.
- 9.2.2 The Lessee is required to provide the Preliminary Baseline Schedule within 30 calendar days of the Limited Notice to Proceed ("LNTP"), which has been submitted and approved by the PANYNJ. Once it is accepted, the Lessee has 60 calendar days to submit the Detailed Baseline Schedule for PANYNJ Approval.
- 9.2.3 In line with standard provisions for projects of this nature all float contained in the Project Schedule is not time for the exclusive use or benefit of either the PANYNJ or the Lessee. The LTA notes that there are no liquidated damages or other financial penalties associated with the Interim Milestones. If Interim Milestones are not met, the Lessee will have to present a remedial plan to the PANYNJ within 30 days of the milestone. The remedial plan should set out an accelerated schedule to meet such dates.

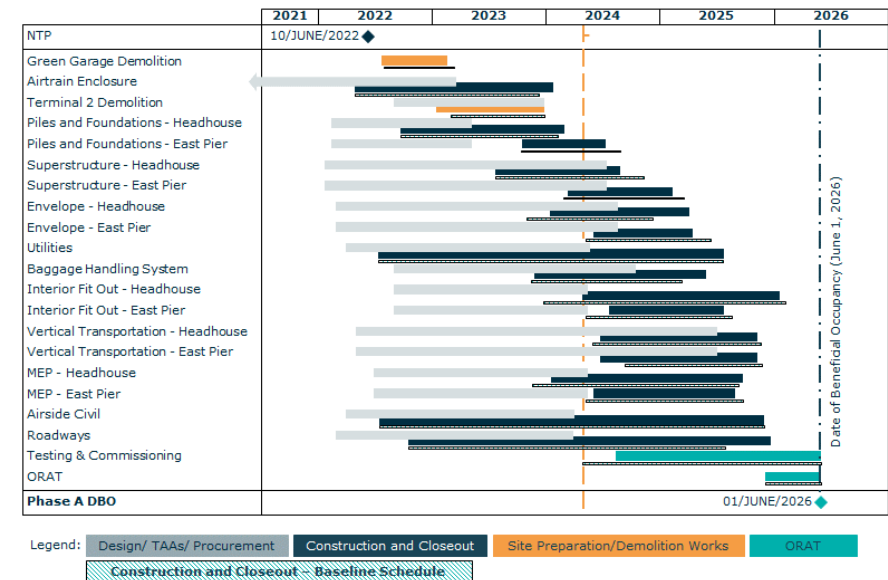
### LTA Opinion

- 9.2.4 The Project Schedule requirements under the PANYNJ are standard and should not pose any particular issue to a competent contractor such as the DB Contractor. The requirement to share float is a common one in contracts of this type. However, this event can lead to further discussions during the construction period on who has best claims over its use. This may lead to the DB Contractor adopting a conservative approach within their scheduling with respect to declaring float against activities.
- 9.2.5 It is noted that the Detailed Baseline Schedule was Conditionally Approved by the Port Authority New York New Jersey (PANYNJ) on June 9, 2022 and the Notice to Proceed was formally issued on June 10, 2022 in line with the deadlines under the Lease Agreement.

### 9.3 CONSTRUCTION SCHEDULE AND APPROACH

- 9.3.1 The LTA has reviewed the following documents from the DB Contractor: (i) Appendix H-1 - 202404 JFK NTO Month 23 Progress Update and (ii) JFKR\_T1\_2024-05-14\_NAR\_YR-1008-10-023\_Schedule\_Narrative\_Rev00\_R22
- 9.3.2 The Schedule remains subject to continuous development and refinement as trade packages are procured and the associated subcontractors schedule and activities are incorporated and non-critical delays encountered as the works are progressed on site.
- 9.3.3 The Schedule includes both the Baseline Schedule and the Current Schedule with slight variances due to resequencing of the works for optimizations, or due to minor setbacks as the construction works progress on site.
- 9.3.4 Figure 9-2 provides a summary of the current Construction Schedule. The ORAT activities shown are only those which overlap with the DB Works. For further details on the Baseline Schedule Dates and the September 2023 Schedule (the schedule reviewed in LTA Report v9.0) please refer to Appendix G.

Figure 9-2 Construction Summary Schedule



Source: Appendix H-1 - 202404 JFK NTO Month 23 Progress Update

Table 9-2 Summary of key construction dates

PHASE	CONSTRUCTION START	CONSTRUCTION FINISH
NTP	10-Jun-22	
Green Garage Demolition	25-Jul-22	20-Feb-23
Airtrain Enclosure	28-Apr-22 A	27-Jan-24 A
Terminal 2 Demolition	16-Jan-23 A	27-Dec-23 A
Piles and Foundations - Headhouse	21-Sep-22 A	29-Feb-24 A
Piles and Foundations - East Pier	16-Oct-23 A	12-Jul-24

PHASE	CONSTRUCTION START	CONSTRUCTION FINISH
Superstructure - Headhouse	25-Jul-23 A	26-Aug-24
Superstructure - East Pier	11-Mar-24 A	12-Feb-25
Envelope - Headhouse	15-Jan-24 A	07-Apr-25
Envelope - East Pier	03-Jun-24	17-Apr-25
Utilities	12-Jul-22 A	25-Jul-25
Baggage Handling System	27-Nov-23 A	30-May-25
Interior Fit Out - Headhouse	29-Apr-24 A	19-Jan-26
Interior Fit Out - East Pier	22-Jul-24	25-Jul-25
Vertical Transportation - Headhouse	21-May-24	11-Nov-25
Vertical Transportation - East Pier	25-Jun-24*	10-Nov-25
MEP - Headhouse	18-Jan-24 A	26-Sep-25
MEP - East Pier	03-Jun-24	29-Aug-25
Airside Civil	15-Jul-22 A	03-Dec-25
Roadways	18-Oct-22 A	22-Dec-25
ORAT	05-Dec-25	01-Jun-26
<b>PHASE A DBO</b>		<b>01-JUN-26</b>

Note: \*It is noted that the first escalators were installed on the East Pier in April 2024. It is understood that this sequence will be updated in upcoming monthly schedule updates.

Source: Appendix H-1 - 202404 JFK NTO Month 23 Progress Update

9.3.5 In line with the Lease Agreement requirements the Contractor has developed its Project Schedule using the Primavera P6 project management software.

9.3.6 The current Schedule is based on a various calendars depending of the trade, with Structural Steel, Foundations, Curtain Wall and Roadways based on extended shifts.

9.3.7 The schedule takes into consideration the following holidays and non-working days: (i) New Year's Day; (ii) Martin Luther King Jr. Day (iii) Presidents' Day; (iv) Memorial Day; (v) Independence Day; (vi) Labor Day; (vii) Columbus Day; (viii) Veterans Day (ix) Thanksgiving Day; (x) Day After Thanksgiving; and (xi) December 25.

9.3.8 The durations allowed for Design Package Submission and Review Periods to the Authorities are in line with the Requirements and Provision of Work of the Lease Agreement.

9.3.9 The activity durations and productivity rates within the most recent revision of the schedule have been updated, where appropriate to reflect what has historically been achieved on site. Elsewhere the schedule is considering the activities and associated durations as provided by the subcontractors.

9.3.10 The LTA has been informed of the following productivity rates been considered for structural steelwork and curtain wall:

- Structure:
  - Steel fabrication of 500-700 tons per week
  - Steel erection of 600-800 tons per week
- Curtain Wall
  - Curtain Wall Fabrication of 45 to 60 units per week
  - Curtain Wall Erection of 50 to 70 units per week
- Slab on Deck
  - Installation – 19,000 sqft per week
- Slab on Grade
  - Installation – 16,200 sqft per week per shift

- Roofing
  - Installation – 29,000 sqft per week

9.3.11 The DB Contractor has in place a detailed Schedule of Activities for all major items of work which is updated on a monthly basis to track the progress of works and identify delay.

### LTA Opinion

- 9.3.12 The LTA considers that the approach to the development and updates of the schedule to be appropriate.
- 9.3.13 It is positively noted that the schedule is being bought out by the subcontractors and recent schedule developments include the incorporation of their activities providing additional detail and certainty to the schedule activities and dates included.
- 9.3.14 The LTA considers the production rates considered within the schedule to be in line with the market standards and in line with those being achieved on site. Since the start of 2023 the DB Contractor has achieved an average steel fabrication rate of 850 tons per week. The average fabrication rate for Curtain Wall is 52 units per week and the erection rate is of 37 units per week, lower than the expected production rate. However, it is noted that this is expected to pick up in the upcoming months with additional shifts being deployed to site to support the scheduled dates.
- 9.3.15 The LTA has been informed that there is an additional 15-day buffer included in the overall construction schedule for non-Work period due to adverse weather outside of the typical weather contingency included from the weather analysis. According to the DB Contractor, the main activities subject to potential delays due to adverse weather are the superstructure and envelope works. The LTA considers this allowance to be reasonable and notes that weather tightness of the terminal structure is anticipated by the end of 2024 lessening the risks associated with adverse weather conditions.
- 9.3.16 It is noted that under the DBA any weather delays in excess of U.S. Department of Commerce, National Oceanic and Atmospheric Administration (“NOAA”) 10-year average data for the area closest to the Project Site will entitle the DB Contractor to a time extension but not an adjustment in the

Contract Sum. It is understood that the current rolling year average is 14 days which is less than the buffer allowed for by the DB Contractor.

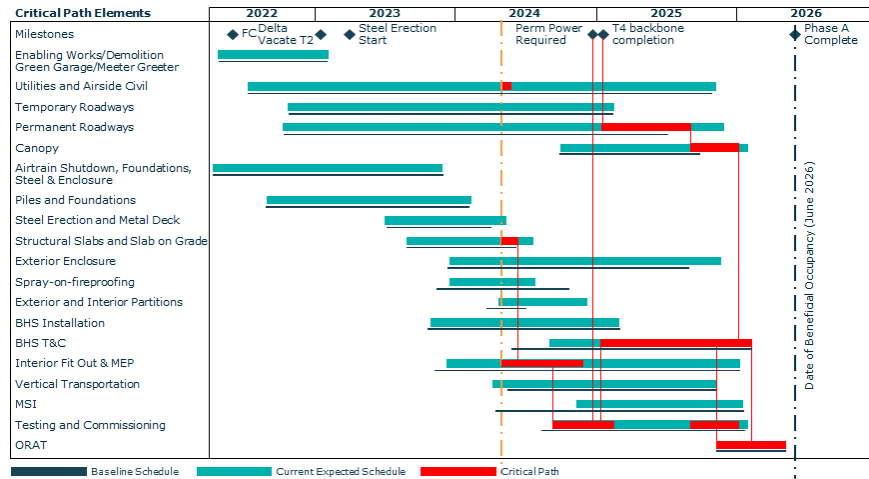
9.3.17 The main constraints to the Project Schedule, which can potentially constitute risks to the Project at this stage, are generally linked to matters such as material supply (including curtain wall panels), coordination between the trades, interface with third parties, see section 8.7, traffic management and system integration. In order to mitigate these risks, the LTA understands that the Lessee in conjunction with the DB Contractor have formed working groups to discuss these items in detail, having frequent coordination and interface meetings between the different parties and the PANYNJ. In addition the PMO and the DB Contractor are having weekly schedule meetings to ensure alignment on key activities and progress required to achieve milestones, it being noted that intermediate milestones and progress KPI’s are being tracked by the PMO to ensure the overall schedule remains on track. It is noted that to date, whilst the availability of labor has affected other projects in the United States, this has not been an issue for the Project with the DB Contractor.

9.3.18 To further reduce the risk associated with systems integration and functional tests it is understood that in the test lab facility the NTO network has been replicated along with active network equipment to allow pre-configuration and testing on the 138 airport specialist systems to be installed and the 180 interfaces. It is understood that testing on this network commenced in May 2024 and is due to run through to the end of 2024.

## 9.4 CRITICAL PATH AND FLOAT

9.4.1 The schedule reviewed shows the DB Contractor proposals for design, procurement, construction and testing and commissioning of the new Terminal. Figure 9-3 outlines the Critical Path of the Project in the current Expected Schedule, including the milestones mentioned previously for the handover to the DB Contractor of the existing structures and completion of the different Phases of the new Terminal.

Figure 9-3 Construction Schedule and Critical Path



Source: NTO

- 9.4.2 The Main Critical Path of the Project starts with slab-on-grade work at the South of the Building Area HHS4. Then the path continues through interior partitions and MEP and the installation, testing, and commissioning of the BHS (Baggage Handling System). In parallel, permanent roadway works with the T4 Backbone demolition and canopy works. The path ends with ORAT and DBO Milestone Completion on June 1, 2026.
- 9.4.3 The Secondary Critical Path runs in parallel to the main critical path. The secondary path starts with interior fit out and MEP and Testing and Commissioning and then merges with the Primary Critical Path.
- 9.4.4 The current Project Schedule does not have any declared float with regards to the Phase A DBO date. However it is considered that the current schedule does offer a level of resiliency to delays:
- The current schedule is broadly based on a single shift 5 day work week, with the exception of Structural Steel, Foundations, Curtain Wall and Roadways which are based on extended shifts. The schedule presents some opportunity to extend the working hours and to incorporate Sunday work to accelerate in the event of possible delays. Furthermore,

additional crews could be brought on to the project subject to area availability.

- As of substantial buyout (June 1, 2024), 94.9% of the trade packages had been procured, including all long lead items. As part of the procurement process the subcontractors are buying-out the schedule, i.e. they are committing to the schedule dates within their subcontracts with the subcontractor committed dates, and activities, incorporated into the current schedules for those trades. Providing confidence that the appropriate resources are available in the market to undertake the works in the timeline indicated.
- It is noted that the remaining packages, which are currently out to tender, are being procured on similar basis with the subcontractors buying into the schedule.
- Given the current status of the works on site, with design at 98%, the headhouse being out of the ground, and the east pier being mostly out of the ground, the potential for material project delays associated with unknown ground conditions, utilities, design changes etc. have now been substantially minimized and for the majority of the remainder of the works the DB Contractor (and the subcontractors) has greater control over potential delay events associated with project resourcing, material availability etc.
- To date, delays to the critical path have been mitigated through the resequencing of the activities at the front end of the schedule while broadly preserving the duration of the activities at the back end. By doing so the DB Contractor has maintained the possibility to resequencing those works in the future or allowing for the compression of those activities if necessary to recover delays.

## LTA Opinion

- 9.4.5 Notwithstanding that the Project Schedule does not declare float it is considered that the schedule provides a level of resilience to possible delays and it is considered that the main potential drivers for material delay to the project (ground condition, unknown utilities and design changes) are largely in the past.
- 9.4.6 It is positively noted that utility relocation works and piles and foundations in the Headhouse have been completed. With the Steel structure in the Headhouse and piles and foundations in the East Pier nearing completion and the progress in slab on deck is trending in line with the schedule. The LTA notes that while some trades such as slab on grade and Curtain Wall have fallen slightly behind schedule, the DB Contractor has taken appropriate measures such as extended working hours to mitigate the impact to Phase A DBO. It is considered that the above reduces the risk of material schedule delays which are outside of the DB Contractor control.
- 9.4.7 Based on these points, and subject to successful management of the interface points mentioned in Section 8.7, the LTA is satisfied that the Schedule, as currently developed, has a level of resilience to delay built-in and as such considers the Phase A DBO date indicated to be achievable provided (i) the required resources are deployed to support the production rates on which the schedule is based; and (ii) the current approach to management of the schedule is maintained.

## 10 PROJECT COSTS

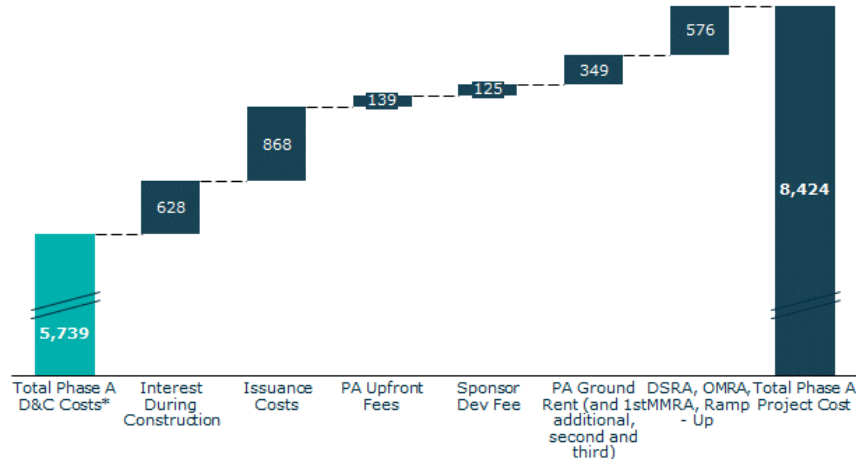
### At a glance

- The current Total Phase A D&C Costs is being maintained at \$5.7bn of which approximately \$3.99bn (69.5%) constitutes the DB Contract Sum.
- As of substantial buyout (June 1 2024), 94.9% of the trade packages had been procured, with the remaining 5.1% expected to be procured by the end of Q3 2024. The LTA notes that NTO's expectation is an approximately 6% overrun on trade costs once all procurement has been completed. It is noted that any overruns on trade costs will be funded from DB Contractor Design or Construction Contingency, the Contract Sum is not to be adjusted and the risk of cost overruns are a DB Contractor risk.
- After undertaking the benchmark exercise with similar assets (i.e. airports in New York with similar works that have been in recent years) the LTA consider the assumed D&C cost reasonable.
- In the LTA's opinion, the approach used by the Consortium to forecast OpEx is reasonable and follows the general industry standard. The methodology used has been designed to capture the most important factors driving cost growth. The LTA has not found any omissions of major cost categories and considers that appropriate drivers have been used in the forecast. It is noted that the OpEx forecast reviewed considers the Phase A development only.
- At present, LTA benchmarks for OpEx per enplaned passenger against other US airports suggest that JFK Terminal One is one of the most expensive airport terminals. This is forecasted to increase in the future; however, this is not a concern as such, more a reflection of the nature of the asset, location and conservative assumptions used.
- The Major Maintenance forecast has been developed by Munich Airport International ("MAI") in collaboration with ARUP using a standard industry approach to estimating lifecycle costs and the overall budget (on average 0.9% of CapEx annually) is in line with expectations. Ferrovial Airports has reviewed and validated the Major Maintenance forecast.

### 10.1 PHASE A COSTS OVERVIEW

10.1.1 The following diagram shows the key cost elements for the development of Phase A of the Project which are referenced throughout this report.

Figure 10-1: Total Project Cost breakdown (\$million)



\*Total Phase A D&C Costs include the PANYNJ Reserved Amount for Change Orders

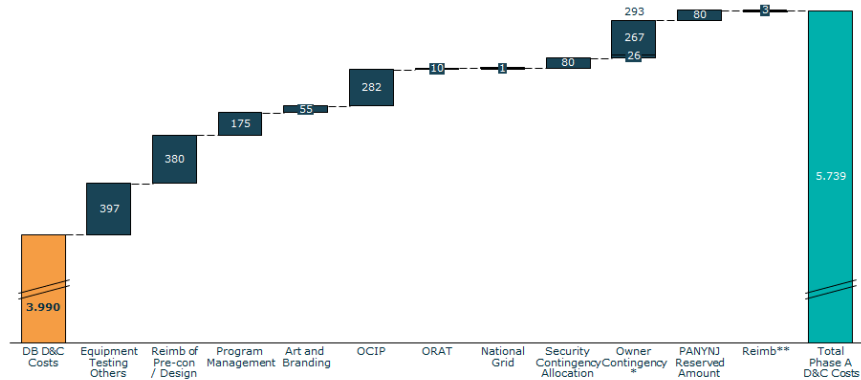
Source: NTO

10.1.2 Total Phase A D&C Cost (referred as CapEx) covers only the design and construction activities for Phase A of the New Terminal Facilities (the D&C Work) which shall be financed, designed, constructed, operated and maintained by the Lessee. They amount to \$5,739 million (including contingencies) and represent 68.2% of the Total Phase A Project cost \$8,420m.

10.1.3 Reserve funds required during operation are funded from the construction budget. They include: i) DSRA; ii) O&M Reserve; iii) Major Maintenance Reserve; iv) Ramp Up Reserve.

- 10.1.4 The additional funds for the PANYNJ (aka the PA Upfront Fee) represent approximately 1.7% of the Total Phase A Project Cost. The Sponsor Development fee cover expenses with the Financial Sponsor and Financing Fee. The Interest During Construction equates to 7.4% of the Total Phase A Project Costs.
- 10.1.5 Finally, the Issuance Costs include bank loan upfront issuance costs, tax-exempt upfront issuance costs, transition expenses, liquidity facility upfront fees, equity LOC upfront and commitment fees.
- 10.1.6 The budget for the Phase A D&C Costs as of April 2024 are shown in Figure 10-2 and Figure 10-3.

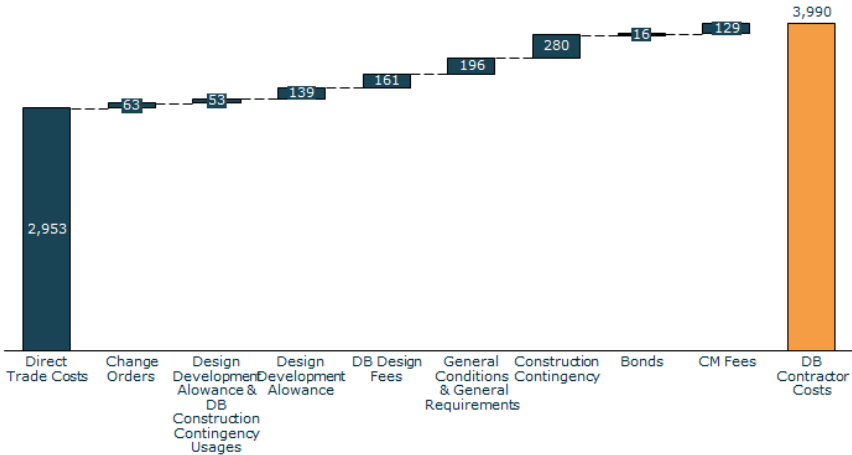
Figure 10-2 Current Budget Phase A D&C Cost breakdown (\$million)



Note: \* Including approved and yet to be used  
 \*\* Reimbursements include \$0.04m for Terminal Marketing Video and \$0.1m for Video Game Controller and Flyby of Building which will be funded from Opex, \$1.7m for Alphastruxure Scope Split Roofing which will be fully funded by Alphastruxure and \$1.6m for the AirFrance Lounge which is funded by AirFrance.  
 Source: NTO

- 10.1.7 The current budget for the components of “DB D&C Costs” (aka D&C Contract Sum) are illustrated below.

Figure 10-3 Current Budget DB D&C Cost breakdown (\$million)



Source: NTO

- 10.1.8 Since NTP the DB Contract Sum has increased due to Material Developer Scope Change Orders and usage of Developer Allowances. To date 38 Change Orders have been executed. The table below outlines the approve usages of contingency and budgetary allowances to date. Please refer to Appendix E for further details on the budgetary changes.

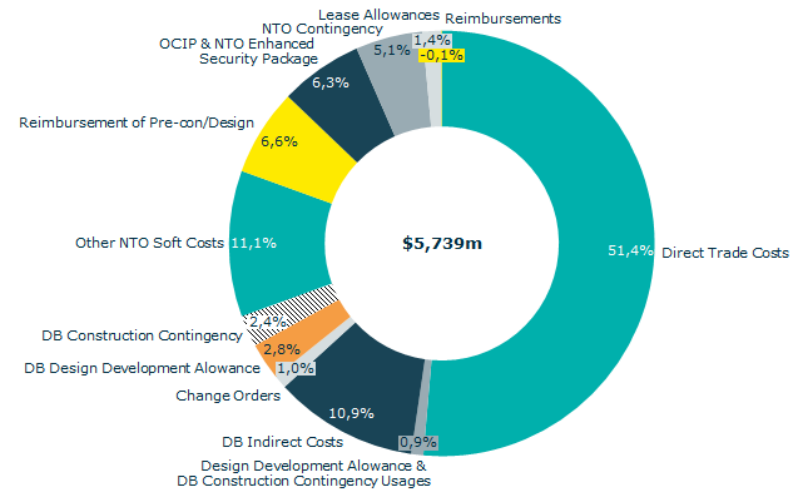
Table 10-1 Changes in Contingencies and Developer's allowances usages

	ORIGINAL BUDGET	APPROVED USAGE (TO GMP)	APPROVED USAGE (TO DEVELOPER)	BALANCE
<b>DB CONTINGENCY</b>				
<b>Design Development Allowance</b>	\$188,363,237	\$27,218,875 <sup>a</sup>		\$161,144,362
<b>Construction Contingency</b>	\$164,070,668	\$25,412,907 <sup>b</sup>		\$138,657,762
<b>Contractor Bussing Allowance</b>	\$11,182,500			\$18,292,035
<b>DEVELOPERS ALLOWANCES AND CONTINGENCY</b>				
<b>Owner Contingency</b>	\$326,027,183	\$32,921,276	\$26,218,732	\$275,064,716
<b>Environmental Remediation</b>	\$15,000,000	\$596,396.77		\$15,000,000
<b>Contractor Bussing Allowance</b>	\$15,205,377	\$7,109,534 <sup>c</sup>		\$8,095,842
<b>Opex Transfer</b>	-	\$157,080		-
<b>PA Reserve Amount</b>	\$80,000,000			\$80,000,000
<b>Total</b>	<b>\$436,232,560</b>	<b>93,416,068</b>	<b>26,218,732</b>	
a) Usage is for design changes b) Usage is for certain construction item and procurement overrun c) Usage of the \$7.1m allowance under Developer costs for has been transferred to the DB Contract Sum. The balance will be transferred as the Bussing Allowance is used.				

## 10.2 PHASE A D&C COSTS

- 10.2.1 The LTA has reviewed D&C Costs information provided on May 17, 2024 which reflect the status of all project costs as of the end of April 2024.
- 10.2.2 The cost information at this stage is based on the D&C Contract Sum as further described below, the as contracted Developer Costs and Developer Contingencies and allowances as required under the Lease Agreement.
- 10.2.3 The Contract Sum reflects the costs of the packages which the DB Contractor has already procured, the bids prices for those packages which are undergoing the procurement process. Noting that any overruns in the procurement over and above those which can be funded from either the DB Design Contingency or DB Construction Contingency are at the risk of the DB Contractor. As of substantial buyout (June 1, 2024) the procurement is at 94.9% and it is expected for the procurement process to be completed by early Q3 2024.
- 10.2.4 The figure below illustrates the breakdown of Phase A D&C Costs (CapEx).

Figure 10-4 CapEx (aka D&C Cost) Breakdown



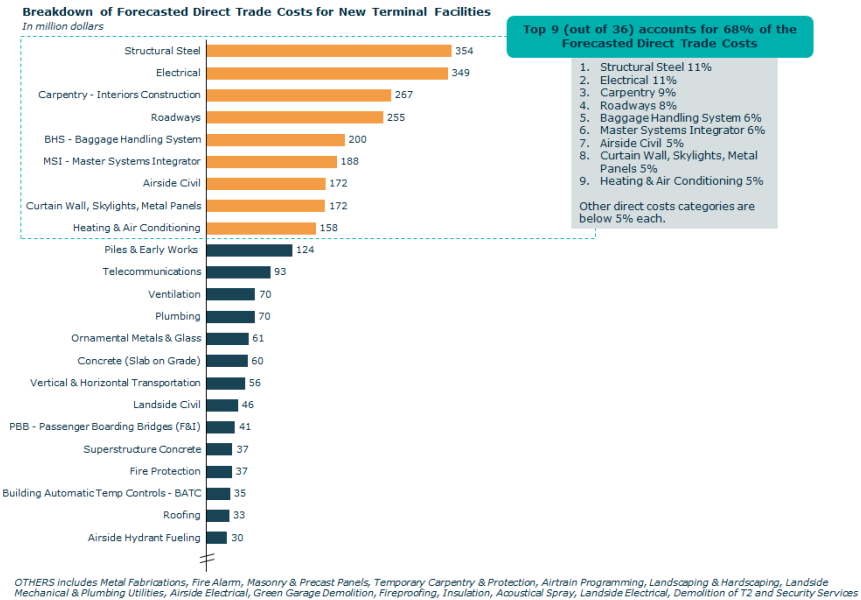
Source: NTO (Commitment Master Apr24 V02)

- 10.2.5 The direct trade costs account for (i) the spend to develop the new 1.8 million sq. ft terminal building; (ii) demolition of T2; and (iii) at grade works on site improvements.
- 10.2.6 The DB indirect costs cover: (i) Design Fees; (ii) Construction Management Fees; (iii) General Conditions and General Requirements; and (iv) Bonds.
- 10.2.7 The Other NTO Soft Costs account for (i) Equipment, Testing and Others; (ii) Program Management Fee; (iii) Art & Branding; and (v) ORAT.

### Direct Costs Breakdown

- 10.2.8 As of substantial buyout, 94.9% of the trade packages had been procured, with the remaining 5.1% expected to be procured by Q3 2024. For those packages procured to date the total procurement costs are above those anticipated a Financial Close by 4.2%. The main increases to the procurement costs are seen in the electrical packages, Heating and Air Conditioning, Master Systems Integrator and Airside Civil. These increases are mainly due to (i) material inflation; (ii) labor availability; and (ii) M/WBE & LBE participation. Savings were seen in other trade packages such as structural steel, piles and foundations and ventilation.
- 10.2.9 NTO’s expectation is a 6% overrun on trade costs once the procurement has been completed. Any overruns on trade costs will be funded from DB Contractor Design or Construction Contingency, the Contract Sum is not to be adjusted and the risk of cost overruns are a DB Contractor risk.
- 10.2.10 The following figure provides the breakdown of the Forecasted Direct Costs, considering those awarded to date.

Figure 10-5 Direct Costs Breakdown



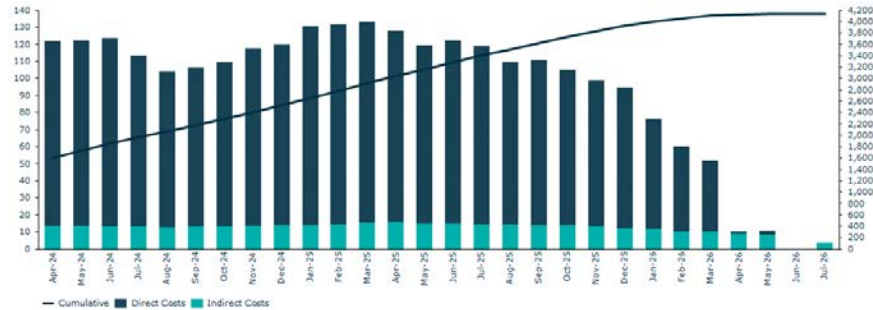
Source: NTO (NTO HL Procurement Schedule 06-03-24)

- 10.2.11 The CapEx forecast provided subdivides Direct Costs into 36 categories. Nine of them account for over 68% of the forecast expenses (\$2,115 million).

### Cashflow

- 10.2.12 Spent to April 2024 is \$1,569m with \$2,580m forecast to completion. The figure below shows the cashflow to completion based on the early curve for the DB D&C Work.

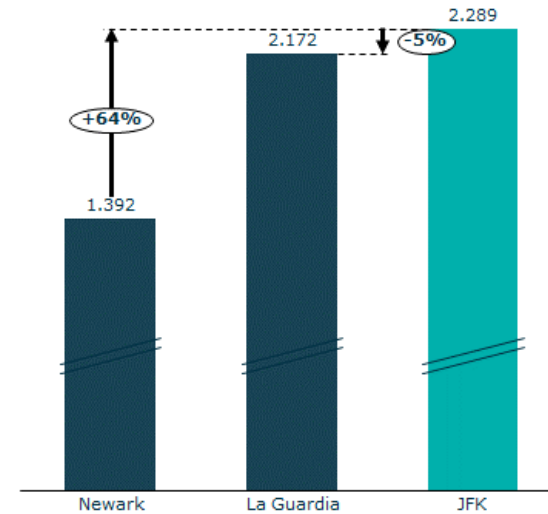
Figure 10-6 DB D&C Works cashflow to completion



### DB D&C Costs Benchmarks

- 10.2.13 The LTA has compared JFK Terminal One's development cost to other airport of similar characteristics. The cost considered for the benchmark is equal to D&B D&C contract sum Forecast at Completion (\$4.136bn).
- 10.2.14 The LTA considers that JFK's particular characteristics (e.g. scope of the Works, geographical location, market reflective prices) poses a challenge to compare to other airports in the world, and thus has chosen to compare it against: LaGuardia and Newark airports – both located in New York which have or will undertake similar developments.

Figure 10-7: Relative price (\$/sf.)



Source: NTO; La Guardia: <https://dwcconsulting.com/images/OS/LGA%202016AB%20SFB%20OS.pdf>; Newark: <https://www.worldconstructionnetwork.com/news/tutor-periniparsons-jv-wins-141bn-contract-for-newark-airport-terminal-one/>

- 10.2.15 The above graph indicates that JFK T1 is ~5% higher than La Guardia's scope-adjusted development cost<sup>2</sup>, the construction conditions of which the LTA considers challenging (e.g. smaller area to build on which can increase materials price as storage is limited). The LTA takes comfort with the fact that the Project lies in the upper end of the benchmark.

<sup>2</sup> La Guardia's scope included elements which are not included in JFK's development project, namely: parking garage; CHRP plant; ancillary services. These elements make up ~10% which has been removed from the \$2.78bn original cost.

## Indirect Costs

10.2.16 The table below illustrates the project DB D&C Indirect Costs up to April 2024.

**Table 10-2. Indirect Costs Breakdown**

ITEM	COST	% OF D&B D&C COSTS
<b>Design Development Allowance</b>	188,363,237	4.72%
○ <i>Approved Design Development Allowance Usage</i>	27,218,875	0.68%
<b>DB Design Fees</b>	196,484,117	4.92%
<b>General Conditions &amp; General Requirements</b>	280,128,381	7.02%
<b>Construction Contingency</b>	164,070,668	4.11%
○ <i>Approved Construction Contingency Usage</i>	25,412,907	0.68%
<b>Bonds</b>	15,904,917	0.40%
<b>CM Fee</b>	129,182,535	3.24%
<b>TOTAL INDIRECT COSTS</b>	<b>974,133,855</b>	<b>24.41%</b>

Source: NTO

10.2.17 The Design Development Allowance is considered to be completely used. The uses of the Design Development Allowance are for Procurement Costs and Change Orders related to design changes.

10.2.18 The allowances made for Indirect Costs are considered consistent with the LTA's expectations and reflective of the DB Contractor approach to the project.

## Owner Contingency Allowance

10.2.19 The LTA notes that at Financial Close NTO were holding \$326.0m in Developer Contingency within the Total Phase A D&C Costs, equivalent to 7.4% of Project Costs, excluding allowances required under the Lease Agreement and NTO fixed costs at that time.

10.2.20 At the time of writing the current unallocated Owner Contingency is \$264.3m equivalent to 7.8% of Project Costs to completion, excluding allowances required under the Lease Agreement and NTO fixed costs at this time.

10.2.21 NTO has undertaken a bottom-up review across all departments and project managers to ascertain likely Owner Contingency usage through to the end of the project. The result of this analysis indicates a potential additional Owner Contingency usage of \$159.7m when taking into consideration all risk items assigned with a High likelihood of occurring. The NTO analysis indicates headroom of \$104.6m when just considering those items with a High likelihood of occurring.

## LTA Opinion - CapEx

10.2.22 The LTA takes comfort on the appropriateness of the project costs based on the level of procurement at this stage of the project and understands that the DB Contractor and NTO have internal forecasts of the remaining packages to be procured.

10.2.23 The LTA notes that by Substantial buy out (June 1, 2024) 94.9% of the trade packages had been procured, with the remaining 5.1% expected to be procured by the end of Q3 2024. The LTA notes that NTO's expectation is an approximately 6% overrun on trade costs once all procurement has been completed. The overruns on trade costs will be funded from the Design Development Allowance or the Construction Contingency. It is noted that the DB D&C Contract Sum is not to be adjusted for procurement overruns and the risk of cost overruns are a DB Contractor risk.

10.2.24 After undertaking the benchmark exercise with similar assets (i.e. airports in New York with similar works) the LTA considers the DB D&C cost reasonable.

- 10.2.25 The LTA benchmark range for Owner Contingency on Airport Finance Projects is between 2.4% and 10%. It is noted that those projects at the upper end of this range include Developer risk exposure for refurbishment works, which is not the case here. Overall, the LTA is satisfied with the level of contingency remaining at this stage of the project.
- 10.2.26 It is noted that, at the time of writing (i) design is reported as 98% with the design packages moving through the AFD process and all AFD approvals expected by early Q4 2024; (ii) procurement of the DB trade costs are at 94.9% complete; and (iii) the headhouse construction fully out of the ground with the east pier almost out of the ground. Based on the foregoing it is considered that the main drivers for future Material Developer Scope Changes ("MDSC") and the risks of Compensation Events due to Unknown Conditions is decreasing. The LTA considers that those items identified to date in relation to MDSC's and Unknown Conditions, and as taken into account within NTO's own analysis should represent a reasonable assessment of future potential draws on Owner Contingency and Environmental Allowance.
- 10.2.27 In order to assess the sufficiency of remaining contingency the LTA has run a realistic worst case cost sensitivity analysis of the variable costs. Items considered within the LTA analysis include:
- NTO Identified Risk items: Those items which have been identified to date in correspondences between NTO and the DB Contractor including in relation to (i) executed Change Orders; (ii) MDSC; (iii) Notices of Compensation Events; (iv) Lien Waiver Amounts; (v) amounts being tracked as Pending Items between NTO and the DB Contractor; and (vi) items excluded from the DB Contract Sum and included in the Qualifications and Exclusions; and
  - NTO Soft Costs increase: The LTA has considered within its analysis on NTO's Contingency are escalations in NTO soft costs, those costs which sit outside the DB Contract Sum.
- 10.2.28 Based on the above the LTA considers a total potential future Developer risk exposure, based on a realistic worst-case analysis of the current project of \$242.03m providing a headroom of \$23.2m.

## 10.3 OPERATING COSTS

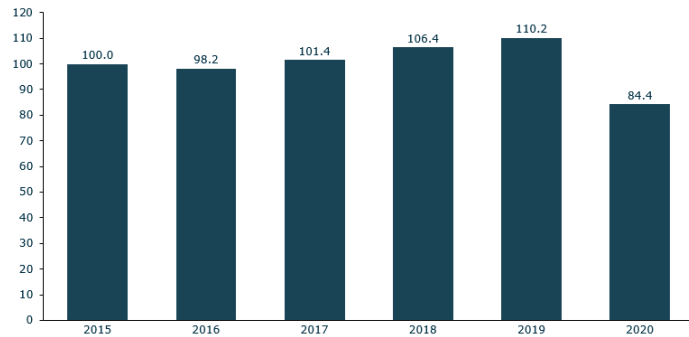
- 10.3.1 This section presents an overview of New Terminal One's Operating Costs ("OpEx") composition and forecast. It starts by examining the current situation at the existing Terminal One in terms of the main OpEx categories and historical expenditure evolution. This provides an overview of the context and operating environment; followed by an analysis of the Consortium's approach to forecasting OpEx for Phase A development of the New Terminal One. The methodology adopted by the consortium, as well as main assumptions considered in its model are then reviewed, and the LTA's opinion on each of these items is provided.
- 10.3.2 Infrata has conducted its own analysis of the financial model provided by the Sponsor, "20240508\_JFKNTO Op Model\_2024\_BONDS v3 Tx INFRATA X", received in May 2024.

### Overview of Sponsor's Proposal

#### Current situation

- 10.3.3 The existing Terminal One operations use an outsourced operating model. In 2018, the in-house management team comprised 32 employees, whereas over 400 additional staff were employed by contractors to provide janitorial, security and passenger assistance services.
- 10.3.4 The main OpEx categories in the terminal include: Security (exc. screening equipment); Operations (with nearly 50% related to ground handling services); Utilities (electricity, sewerage, heating and cooling); Facilities Maintenance (incl. janitorial services); IT; Management Staff; Insurance; Professional Services (auditing, legal, consultants); General Admin; and Rental Cost.
- 10.3.5 The figure below shows Terminal One's historical evolution of OpEx. As can be seen, OpEx remained fairly stable over the period 2015-2019, averaging \$92.68 million per annum. Costs increased in 2018 due to higher expenditure on security, operations, utilities and professional services, attributed to a rise in the minimum wage. The steep decrease in 2020 is due to the Covid-19 pandemic and terminal activity slow down.

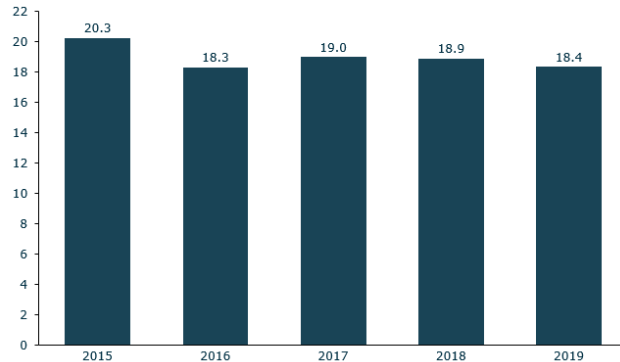
**Figure 10-8 JFK Terminal One Operating Cost (\$2023 Real million)**



Source: Steer Report

- 10.3.6 Lease costs are included in OpEx and consist of rent to the PANYNJ for the Terminal site as well as debt service on the original Terminal construction.
- 10.3.7 Operating cost per enplanement is shown in the figure below. It decreased in 2016 and remained fairly stable since then. Meanwhile, during the 2015-2019 period, enplanements increased by 22%.

**Figure 10-9 Operating Cost Per Enplanement (\$2023 Real)**



Source: Steer Report

#### Consortium Approach

- 10.3.8 The approach adopted by the Sponsor's team to forecast future operating expenses for Security, IT, Operations, and Facilities (excluding in-line maintenance) is based on elasticities of costs applied to drivers, as well as cost escalation due to inflation.
- 10.3.9 The formula used to calculate operating costs is as follows.

$$Opex_{Category(y)} = Opex_{Category(y-1)} \times (1 + DriverChange_x)^{Elasticity_x}$$

here:

$y$  = Given Year

$x$  = Selected Driver

- 10.3.10 Items such as In-Line Maintenance Costs, Terminal Administration, Insurance and Utilities were estimated independently, as summarized in the table below.

**Table 10-3 Consortium's approach to estimating other OpEx categories**

ITEM	DESCRIPTION
<b>In-Line Maintenance Costs (Included in Facilities)</b>	In-Line Maintenance cost estimates have been based on a bottom-up build-up of costs developed by the NTO development team, ARUP and Faithful and Gould.
<b>Terminal Admin</b>	Cost estimates include staffing estimates developed by NTO to achieve service levels consistent with the expected service offering.  Most of the staff are outsourced. The in-house staff will increase from 15 FTEs in 2022 to 56 FTEs in 2025, ahead of the terminal's opening, during the project delivery period. The total number of in-house staff is expected to reach 95 by 2026 and stabilizes at that level.
<b>Insurance</b>	Developed by Willis Towers Watson and Risk International, an international risk management firm, using NY market rates and policies.
<b>Utilities</b>	Consumption forecasts were developed by the engineering firm Jaros, Baum & Bolles (JB&B) based on the expected

ITEM	DESCRIPTION
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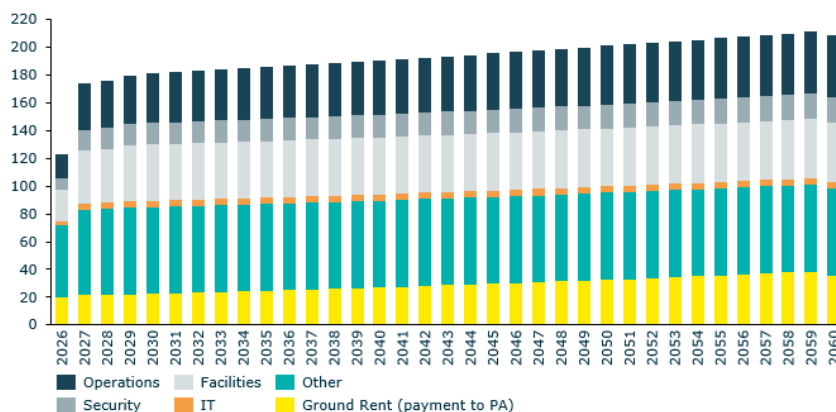
design of the building. A contingency of 20% was added to the outputs of the energy model which has been retained.

Source: Steer Report

#### Forecast Overview

10.3.11 The Consortium projects total OpEx to increase from nearly \$139 million in 2027 to around \$213 million by 2060 (2018 real), growing at a CAGR of 1.3%. Administration costs (Staff costs) and Ground Rent are anticipated for the project delivery period between 2022 and 2025, prior to the opening of NTO in 2026. This amount increases from \$22 million in 2022 to \$26 million in 2025.

Figure 10-10 Sponsor OpEx Forecast (\$2018 Real, million)



Source: 20240508\_JFKNTO Op Model\_2024\_BONDS v3 Tx

10.3.12 The following categories have been used for the analysis:

- Operations- Wheelchair Assistance, PAX service agents, Snow Removal
- Security- Port Authority Police
- Facilities – Mainly Building Maintenance and Custodial Services

- Utilities – Mainly chilled/hot water and Electricity
- IT - Mainly Systems
- Insurance
- Ground Rent
- Administration – Mainly NTO staffing

10.3.13 Post 2027, Insurance, Facilities, Utilities, and Ground Rent are expected to grow the most, while other cost items such as Security, IT, and Administration are expected to grow at a slower rate. Table 10-4 below shows the CAGR for each component.

10.3.14 Operations, Security and Facilities are to be outsourced and the Terminal One own staff are included in the Administration category. A large component of each of these categories is related to staff expenditure.

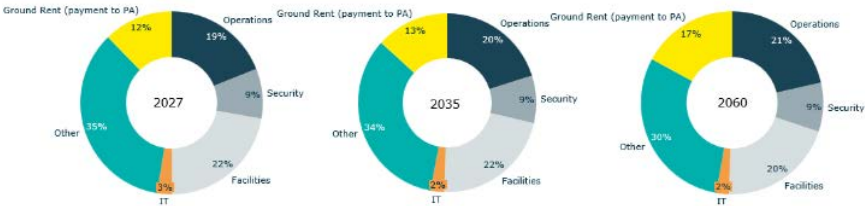
Table 10-4 CAGR for OpEx Components (\$2018 Real million)

CATEGORY	2027	2060	CAGR (2027-2060)
Operations	32.97	44.83	0.9%
Security	15.33	18.07	0.5%
Facilities	38.38	42.72	0.3%
IT	4.61	4.61	0.0%
Ground Rent	21.33	35.68	1.6%
Other	61.11	62.91	0.1%
<b>TOTAL</b>	<b>174.72</b>	<b>208.81</b>	<b>0.6%</b>

Source: Infrata Analysis

10.3.15 After the opening of the new terminal, all categories’ shares remain mostly unchanged as no further changes or expansions to the facility are forecast in the base case. Due to ground rent growing at a higher rate than inflation, its share increases marginally over time.

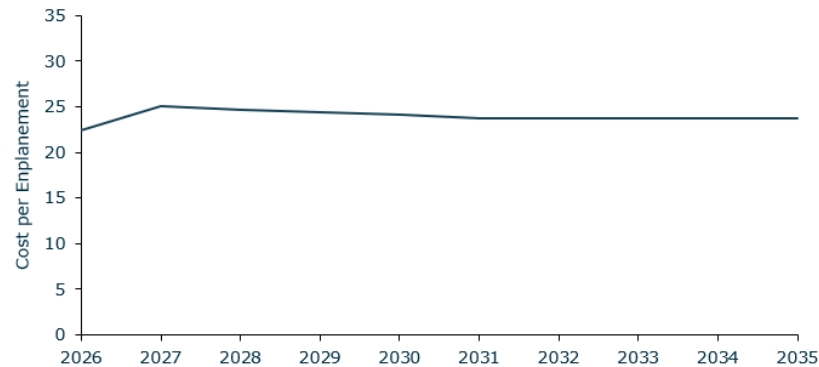
Figure 10-11 Real OpEx Composition Forecast



Source: Infrata Analysis

10.3.16 In terms of the operating cost per enplaned passenger, the financial model shows that it will reach a maximum of \$25.65 in 2027 after opening of the new terminal in June 2026. As traffic ramps up, the TerminalCo’s operating cost per enplaned passenger declines and stabilizes at a level of around \$24, slightly higher than pre-pandemic costs for existing Terminal One.

Figure 10-12 Total O&M Cost per enplaned PAX (\$2018)

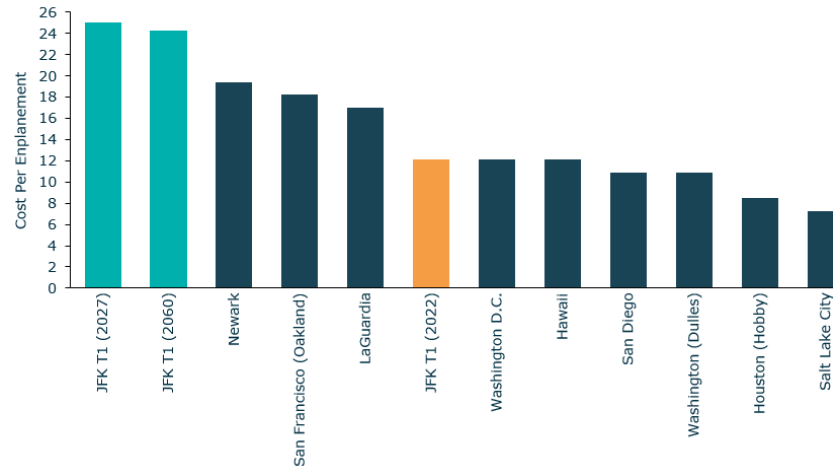


Source: Infrata Analysis

LTA Opinion

- 10.3.17 In the LTA’s opinion, the approach used by the Consortium to forecast OpEx is reasonable and follows the general industry standard.
- 10.3.18 The methodology used has been designed to capture the most important factors driving cost growth. The LTA has not found any omissions of major cost categories and considers that appropriate drivers have been used in the forecast. The forecasted OpEx values appear consistent with the expansion plan proposed for Terminal One.
- 10.3.19 It is noted that the Steer report has been prepared reflecting the accrual of rents, 12 months in a year, whilst the model is based on actual payments of one month in advance. This has a marginal impact on the rent cost in 2060, the last year of the lease, and explains a slight difference in reported numbers between the model and the Steer report in that year. The LTA has benchmarked the forecasted OpEx per enplaned passenger against other US airports. The comparison, shown in the figure below, suggest that JFK existing Terminal One is, at present, one of the most expensive airport terminals to operate within the sample and will become more expensive to operate in the future. This is not a concern as such, more a reflection of the nature of the asset and conservative methodology used by the Consortium. The positioning of JFK NTO at the high end of the benchmark sample is largely due to the nature and the high cost of operating in New York City. A much larger terminal facility in terms of floor area/passenger means that the cost of *inter alia* maintenance and utilities per passenger will increase.

**Figure 10-13 US Benchmark Cost per Enplaned PAX (\$2018 Real)**



Source: LTA Analysis, Airport public data (terminal operations only, excluding airfield OpEx)

## Cost Item: Operations

### Consortium's Proposal

- 10.3.20 This category includes cost items such as wheelchair assist service, snow removal, staff to aid passenger flows through immigration and security and airport information.
- 10.3.21 The Consortium has calculated future costs for different operations categories according to individual elasticities applied to enplanements, terminal space, average aircraft size, ATMs, and land area. Most operations elasticities are between 90-100%.
- 10.3.22 As the Concession does not include the operation of the existing terminal and the new terminal will not be in operation until 2026, only the O&M costs associated with the new cost structure have been considered.

### LTA Opinion

- 10.3.23 Overall the LTA believes that reasonable assumptions have been used by the Consortium to estimate Operations expenses. The 90-100% elasticities to enplanements are conservative and within the range observed at other airport expansion projects, where they typically vary between 50% and 100%.
- 10.3.24 The LTA notes that the AUA mentions that ground handling services required for airlines operations are to be procured by the airlines themselves.
- 10.3.25 The LTA notes that Ferrovial has done a full due diligence of NTO's business plan and Cost Estimates and validated them.

## Cost Item: Security

### Consortium's Proposal

- 10.3.26 The Consortium has assumed an elasticity of 50% to the terminal area increase for all security categories. Security costs are indexed with living wages, US CPI and Labor index.

### LTA Opinion

- 10.3.27 The 50% elasticity to the terminal area increase is reasonable as the overall increase of the size of the new terminal is much larger than the number of security positions, which are expected to double compared to the existing terminal. Cost indexing assumptions are reasonable in the LTA's opinion.

## Cost Item: Facilities

### Consortium's Proposal

- 10.3.28 Facilities mainly consist of in-line maintenance and custodial services.
- 10.3.29 Elasticities of 60% to the terminal area (considering the areas of the existing Terminal One and the New Terminal One) have been considered for Custodial Services.

10.3.30 The In-Line Maintenance forecast is based on a bottom up estimate by NTO development team, CNS, Faithful & Gould and ARUP using system and CapEx information provided by NTO and consists of the following component costs: (i) Site based sub contracted Operations and Maintenance staff for operations and maintenance of all mechanical, electrical, plumbing, sewer, architectural, etc; (ii) Expendable Maintenance Materials; (iii) Tools and Equipment; and (iv) Specialized Sub Contractors for items such as the BHS, MSI, PBB's, BMS, Fire and Life Safety and Elevators and Escalators. The estimate has been developed using a hybrid method based on a bottom up projection of staffing and costs for similar facilities supplemented by cost information from the Phase A CapEx.

10.3.31 It is noted that the in-line maintenance costs reviewed include not only for the rectification of operational issues and repairs but also includes a preventive and predictive maintenance program to provide an extended operational life of equipment including fan and motor replacements, light fixture, and circuit breaker replacements, etc which may sometimes be considered within major maintenance budgets. The in-line maintenance cost per enplanement is \$3.43 (2018\$) on average for the period 2026-2060, which is higher than the LTA's benchmark range. The cost of operating and maintaining the baggage system and the gate system are grown with a 90% elasticity to enplanements and ATMs, respectively. These cost components are indexed to Labor.

10.3.32 It is noted that the NTO team are currently in the process of procuring a number of key contracts for the operations phase with (i) the BHS O&M contract executed with Vanderlande in March 2024; (ii) the eGSE, Maximo and de-icing contracts currently in tender phase; and (iii) scope of works being developed for facilities maintenance and janitorial services contracts in preparation for the tender phase for these.

#### LTA Opinion

10.3.33 The 60% elasticity to the terminal space for Custodial Services is considered reasonable.

10.3.34 The LTA takes comfort in the bottom-up analysis for in-line maintenance and notes the experience of the team involved not only in airport terminal operations but also in the operation and maintenance of facilities within the New York area.

10.3.35 The LTA notes positively that the in-line maintenance cost per enplanement is higher than its benchmark range for other airports and considers that this supports the approach taken in relation to replacement ratios in the development of the Major Maintenance Cost forecast as discussed in section 10.4.

#### Cost Item: Utilities

10.3.36 Utilities costs are mainly composed by electricity, chilled and hot water.

10.3.37 A bottom up analysis has been carried out to forecast utility costs (electricity, heating and cooling), using utility demand software to determine future consumption at the terminal in combination with energy cost indices. Each demand forecast is matched with the unit rates paid by Terminal One and scaled up using the cost indices. This was undertaken by engineering firm Jaros, Baum & Bolles (JB&B).

10.3.38 The new Terminal is expected to source energy from PANYNJ, AlphaStruxure ASX (a joint venture of The Carlyle Group and Schneider Electric providing energy-as-a-service platforms, the system will include solar panel and other infrastructure to support renewable energy at NTO) and in-house generation for chilled water. The analysis was conducted on the basis of the unit costs provided by PANYNJ and ASX and the forecasted demand.

10.3.39 The energy procurement is multi-sourced and structured as follow: first, minimum energy commitments are expected to be purchased from PANYNJ as stipulated in the Lease; then the energy is supplied by ASX (consumption at its maximum capacity); finally, the remaining supply is purchased either from PANYNJ or generated on site (chilled water only).

10.3.40 Other costs are associated to natural gas to run fuel cells operated by ASX, a resilience fee payable to ASX, and reserve utility capacity fee payable to PANYNJ.

#### LTA Opinion

10.3.41 For Utilities, the LTA takes comfort from the fact that a detailed bottom up assessment of major utilities costs has been carried out for the Consortium. The LTA has been informed that the model's methodology, assumptions, inputs and outputs are considered reasonable by Ferrovial.

- 10.3.42 Water & Sewer cost forecast has used elasticity to the terminal size as the driver. In the LTA's experience, passenger volumes are a better indicator since passengers and passenger services account for much of the use of water. However, considering that the size of the terminal increases at a substantially higher rate than passenger volumes, the Consortium's forecast is suitably conservative.
- 10.3.43 In relation to other Utilities, overall, reasonable assumptions and elasticities have been used by the Consortium, within the LTA's benchmark range.

### Cost Items: IT, Administration, Insurance

#### Consortium's Proposal

- 10.3.44 The Consortium has assumed elasticities of 60% to the terminal size for IT costs. Administration costs are mainly driven by NTO staffing, separated in project delivery and operations. Additionally, administration costs are composed of URW and Management Service Agreement (MSA) fees (assumed to cease in 2037).
- 10.3.45 IT, URW and MSA fees, non-labor NTO staffing costs are indexed to US CPI; labor NTO staffing costs are indexed to labor.
- 10.3.46 A bottom-up approach has been used by NTO in determining the staffing needs including management staffing and operations throughout the operational period. The staff plan includes both outsourced staff and in-house staff. During the project development stage the plan considers between 15-30 in the initial years. This increases to 56 by the end of 2025 and reaches 95 in 2026 for ORAT and terminal operations, at which point it stabilizes.
- 10.3.47 Insurance was forecasted using prevailing market rates in the New York region by Willis Towers Watson. The costs are expected to grow below the rate of inflation after the facility completion, leading to a reduction in costs after 2028.

#### LTA Analysis & Opinion

- 10.3.48 In the LTA's opinion, the Consortium has generally used a reasonable approach to estimate future IT and Administration costs, using standard drivers applied in the industry.

- 10.3.49 A detailed bottom-up assessment of staff numbers and cost has been carried out by the Consortium and its operating partner which provides more certainty with regard to the expected staff cost.
- 10.3.50 The 60% elasticity to terminal space used for IT is within the benchmark range of the LTA.
- 10.3.51 The LTA notes that the Consortium has not explicitly assumed any future reduction of staff due to new technologies, which represents a conservative approach from the cost point of view.

## 10.4 MAJOR MAINTENANCE

### Consortium's Approach

- 10.4.1 The LTA has undertaken a review of the Major Maintenance forecast of the Project. The Major Maintenance forecasts has been produced jointly by Reach and ARUP with input from CNS who has experience in operating and maintaining facilities, including airport terminals, in New York. The forecast has also been subject to review by Ferrovial Airports who have confirmed that it is satisfied with the costs and proposed approach.
- 10.4.2 Major maintenance costs include costs associated with the maintenance and life cycle parameters required to properly care for an asset once the maximum useful life from the asset nears. Costs include replacement, renewal, refurbishing, or types of work not normally considered as an operating and routine maintenance cost and aim at preserving or extending asset lifecycle. Assets that are technology related in nature will require regular upgrades as the technology's life span is much shorter than other types of assets.
- 10.4.3 It is noted that the in-line maintenance costs reviewed as part of the OpEx include not only for the rectification of operational issues and repairs but also preventive and predictive maintenance program to provide an extended operational life of equipment including fan and motor replacements, light fixture, and circuit breaker replacements, etc which may sometimes be considered within major maintenance budgets.
- 10.4.4 Major Maintenance and Asset Replacement Cost Calculation Drivers include
- Initial CapEx investment of the item

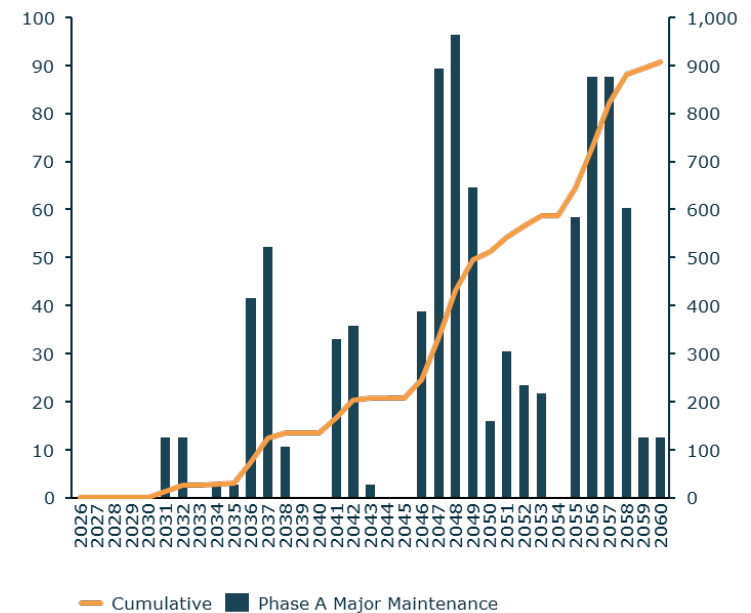
- Useful life of the asset / replacing intervals (years)
- Asset replacement ratio (% of initial CapEx) to be replaced at the designated replacement intervals
- Logical annual capital spending program/ distribution applied
- Handback Requirements

10.4.5 The frequency of maintenance and the proportion of the original CapEx value spent, for each component, has been determined in order to forecast major maintenance costs up until 2060.

10.4.6 The first wave of capital asset replacement is foreseen between 2036 and 2038 and a second wave of capital asset replacement between 2046 and 2049 and with a final wave between 2056 – 2058 to meet Handback Requirements and for those components with a lifecycle of approximately 30 years.

10.4.7 The resultant forecast major maintenance costs for the Phase A construction are displayed in the following figure. Total cumulative major maintenance costs are expected to reach 906m USD by 2060 in real terms. This does not include intermediate or routine maintenance which is included in the routine maintenance item in operating costs (see the Operating Costs section of this report for further detail).

**Figure 10-14 Major Maintenance Cost Forecast (\$ million Real 2021)**



Source: Financial Sponsor

10.4.8 The LTA summarizes below maintenance assumptions used for key elements.

**Figure 10-15 Lifespan and Maintenance Period**

ASSET CATEGORY	ASSET TYPE	REPLACEMENT INTERVAL/% OF CAPEX	LTA OPINION
Aircraft Support	Jet Bridges	15 years/20%	The replacement ratio is relatively low based on LTA's benchmarks, however it is considered that with the latest airbridge equipment, useful life can be prolonged. It is also considered that the early interval replacement prolongs the

ASSET CATEGORY	ASSET TYPE	REPLACEMENT INTERVAL/% OF CAPEX	LTA OPINION
			ultimate useful life of the jet bridges.
	Hydrant Fuelling Systems	25 years/25%	In line with LTA benchmark range. The Consortium has assumed shorter intervals at a lower replacement rate.
<b>Building Envelope</b>	Roof	30 years/40%	While the replacement interval is in line with LTA benchmark range the replacement ratio of CapEx is considered low however it is noted that the percentage is based upon an analysis of the portion of the CapEx which is subject to replacement
	Exterior Enclosure	35 years/40%	The replacement ratio is relatively low based on LTA's benchmarks. However, due to the lifespan of 35 years, which is based on the team's experience from other airports in the New York area, this is considered not to have an impact on the forecast. It is further noted that items such as finishes are considered as part of the routine maintenance.
	Windows	30 years/40%	In line with LTA benchmark range.
<b>Circulation</b>	Elevators	20 years/40%	The replacement ratio is relatively low based on LTA's benchmarks. However, it is understood replacement of items such as motor replacements is considered within the routine maintenance budget.
	Escalators	20 years/40%	The replacement ratio is relatively low based on LTA's benchmarks. However, it is understood replacement of items such as motor replacements is considered within the routine maintenance budget.

ASSET CATEGORY	ASSET TYPE	REPLACEMENT INTERVAL/% OF CAPEX	LTA OPINION
<b>Civil Roadways</b>	Airside Pavement	10 years/10%	The replacement rate is relatively low; however, the interval of full depth repairs is shorter than industry benchmarks. Shorter intervals enhance the condition and consequently reduce overall replacement rates.
	Frontage Road	10 years/10%	The replacement rate is relatively low; however, the interval of full depth repairs is shorter than industry benchmarks and therefore more conservative. Shorter intervals enhance the condition and consequently reduce overall replacement rates.
<b>Electrical</b>	Electrical Service and Distribution	30 years/25%	The replacement ratio of CapEx is considered low however it is noted that the percentage is based upon an analysis of the portion of the CapEx which is subject to replacement and considers a complete replacement of all electrical transformers, switchboards, and panels. It is further noted that the routine maintenance amount includes for items such as fan and motor replacements, light fixture, and circuit breaker replacements, etc.
	Electrical systems	8-25 years/25%	Sponsor's forecast consists of shorter intervals of lower replacement value, which is considered appropriate.
<b>Fire Systems</b>	Fire protection, sensors, pipework and sprinklers	30 years/40%	Lifespan and replacement ratio considered on the low side compared to industry benchmarks.
<b>HVAC</b>	Piping Distribution Systems	30 years/40%	The replacement ratio is slightly lower than LTA's benchmarks, however it is considered that this

ASSET CATEGORY	ASSET TYPE	REPLACEMENT INTERVAL/% OF CAPEX	LTA OPINION
			varies by manufacturer and the Consortium proposal appears reasonable.
	Air Distribution Systems	30 years/40%	The replacement ratio of CapEx is considered low however it is noted that the percentage is based upon an analysis of the portion of the CapEx which is subject to replacement and includes the replacement of the mechanical rotational equipment (fans, Air Handling Units, etc).
Other	Controls	15 years/40%	Lifespan and replacement ratio considered on the low side compared to industry benchmarks
	Baggage Handling System	21 years/75%	Within LTA's industry benchmarks.

Source: Reach and ARUP

### LTA Opinion

10.4.9 The LTA considers the Sponsor's methodology for cost forecasting for major maintenance systems to be in line with standard industry practice and notes that all expected components of a major maintenance plan for this scope have been included in the Consortium's estimation.

10.4.10 The LTA considers that replacement ratios for some terminal systems such as escalators/travellators, Fire and HVAC are slightly below LTA benchmarks. However, this is considered to be the case due to a different maintenance strategy, with smaller replacement at reduced interval lengths, which the LTA considers appropriate as it results in higher spend overall. In addition, the LTA notes that whilst some of the % of CapEx per intervention may appear lower than industry benchmarks (Civil Roadways, Electrical, HVAC) these percentages have been based on an analysis of the CapEx of the elements by Munich Airport International and ARUP to determine the percentage value of the portion which would require replacement and take into consideration the teams experience at other facilities within the New York area. For all other items, and overall, the LTA considers that the replacement intervals and ratios which are within the expected range.

10.4.11 Total Replacement maintenance costs up until 2060 for the Phase A works add up to USD 906m (\$ 2021). The average annual expenditure represents around 0.9% of total CapEx costs, which is line with LTA's expectations.

10.4.12 It is noted that a similar approach has been undertaken for Phase's B1 and B2 developments.

# 11 TRAFFIC FORECAST

## ✦ At a glance

- The New York City airport system is a complex market. The area is served by 3 major airports: JFK, Newark and LaGuardia, as well as multiple secondary commercial airports. The area’s largest airport is JFK, which served approximately 31.3 million enplanements in 2019. JFK is the main international gateway to the area, given its extensive international route network and airline base.
- The Covid-19 pandemic had a significant impact on traffic at the airport, with total passenger numbers falling 73% in 2020, and international passengers 76%. By 2023 total passenger traffic had returned to 99.8% of 2019 levels – domestic to 103% and international to 97%. The Sponsor has forecast international traffic to recover to 2019 levels in 2024. This is in line with industry recovery benchmarks and current performance suggests this to be a achievable assumption.
- The projected pace of traffic growth from 2026 is relatively strong and relies to a significant extent on the attraction of carriers from other terminals to the new facility at NTO. JFK (and most of the New York airports) have been and are expected to be uniquely constrained in terms of wide-body gate capacity, and it is reasonable to expect that some of the suppressed demand and carriers looking for gate capacity may fill the capacity at NTO relatively quickly, even at a higher price point of aeronautical charges due to the increasing space requirements of Delta and JetBlue at T4 and T5 which will likely displace some traffic. There are expected to be few alternatives in this constrained environment and the NTO offers a new dedicated international facility.
- Very limited growth is expected post ramp-up as NTO gate capacity will be fixed. External shocks and new capacity developments at other terminals at JFK and in the New York City region is the primary traffic risk in the long term. However, the latter is expected to be a low risk given the very limited planned widebody gate capacity expansion at JFK outside NTO.
- Further analysis and detailed review of the above and other risks are provided in the following section.

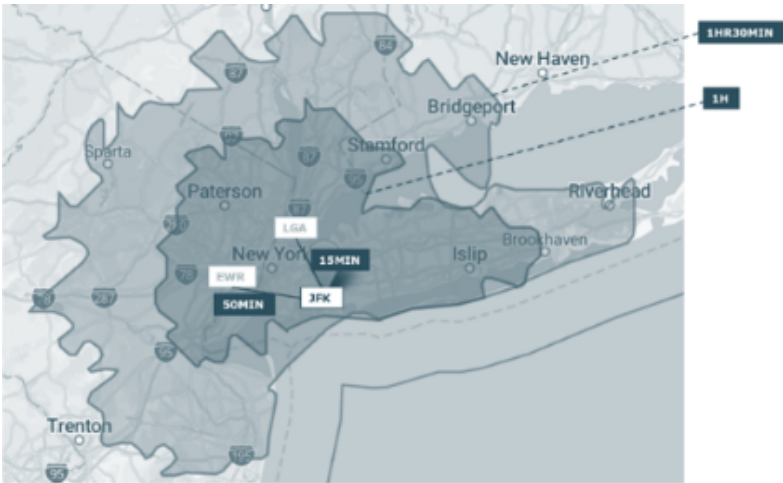
## 11.1 MARKET OVERVIEW

### New York Region

#### Location and Catchment Area

- 11.1.1 The New York metropolitan area is served by three major airports: John F. Kennedy International Airport (“JFK”), Newark Liberty International Airport (“EWR”) and LaGuardia Airport (“LGA”) (though LGA is dominated by domestic traffic).
- 11.1.2 With an estimated population of 19.2 million people in 2019 (US Census Bureau), the New York Metropolitan Area is the largest in the United States.
- 11.1.3 As set out in the figure below, the airports are located within less than an hour’s drive of each other. JFK Airport is located in the south of Queens, around 18 miles from central Manhattan. New Jersey, located west of Manhattan, hosts Newark Liberty Airport, while LaGuardia is located in the north of Queens, around 9 miles from central Manhattan.

Figure 11-1 Location of Major New York Airports and Catchment Area



- 11.1.4 The following table demonstrates that most local passengers at JFK and LaGuardia originate in New York State, while Newark is weighted more towards inhabitants of New Jersey.

**Table 11-1 Origin of Local Passengers**

State	JFK	Newark	LaGuardia
New York	82.4%	28.6%	77.6%
New Jersey	3.7%	53.5%	3.0%
Connecticut	3.0%	1.3%	4.9%
Other	10.9%	16.6%	14.5%

Source: Port Authority of New York and New Jersey (PANYNJ) (Survey undertaken from May to mid-June 2016).

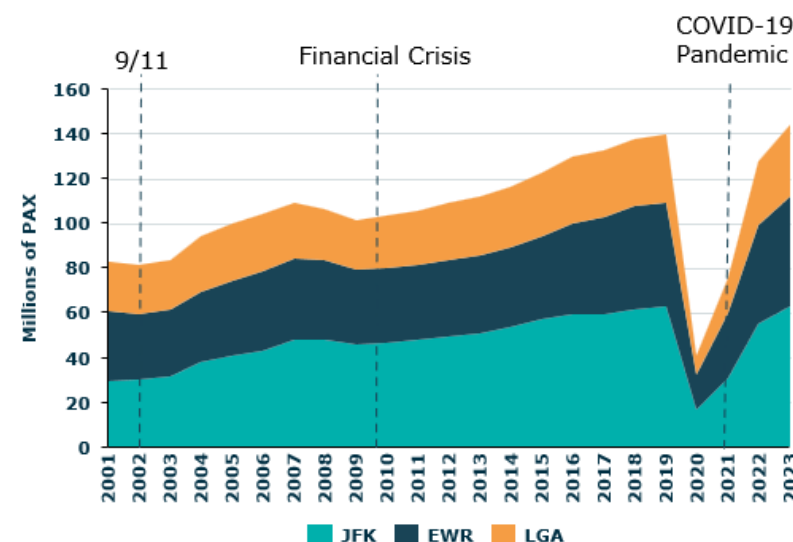
#### Evolution of Passenger Traffic in the New York City Region

- 11.1.5 The area's largest airport is JFK, with 31.3 million enplanements in 2019. Newark follows with 23.2 million enplanements, while LaGuardia processed 15.5 million enplanements during the same year. Together, these airports represent the largest Origin/Destination ("O&D") market in the United States. According to Steer, connecting passengers contributed around 15% of enplanements across the major New York airports.
- 11.1.6 The New York airport system is a complex and segmented market. JFK is the main international gateway to the area, given its extensive international route network and airline mix. In 2019, the airport handled 17.2 million international enplanements – more than any other US airport and a record high for JFK – contributing to 67% of total international traffic in the New York region. JFK's share of domestic traffic is declining, dropping to around 30% in 2023. This is due to the increasing presence of international traffic at JFK as well as faster domestic growth at EWR in recent years.

- 11.1.7 Newark is a hub for United Airlines and popular amongst other Star Alliance members. Star Alliance airlines contributed to around 72% of departing seat capacity at Newark in 2019. This has increased to 74% in 2023. With 93% of total traffic departing and arriving to/from domestic destinations, LaGuardia is strongly dominated by domestic traffic due to lack of US Customs and Border processing facilities.

- 11.1.8 Over the past two decades, the New York airports have been impacted by 9/11 and the global financial crisis, as depicted in Figure 11-2. Despite traffic declines as a result of these events, the airports have shown recovery during subsequent years. Between 2004 and 2019, total traffic at the three airports increased at a compound annual growth rate ("CAGR") of 2.7%. The airports have shown stronger growth during 2013-2019, where traffic grew at a CAGR of 3.8%. Total traffic at all 3 airports fell 70% in 2020 due to the COVID-19 pandemic and rebounded 85% in 2021 as pandemic related restrictions began to ease and displayed further recovery throughout 2022 and 2023..

**Figure 11-2 Historical Traffic by Airport**



Source: PANYNJ

11.1.9 Of the three major airports in the New York region, JFK has been the most resilient to both 9/11 and the global financial crisis in terms of the immediate impact (according to PANYNJ's statistics). Total traffic dropped for the whole region in 2002, with JFK being the least affected. While 9/11 functioned more as a shock event, the financial crisis had a more prolonged impact on the traffic at all three airports.

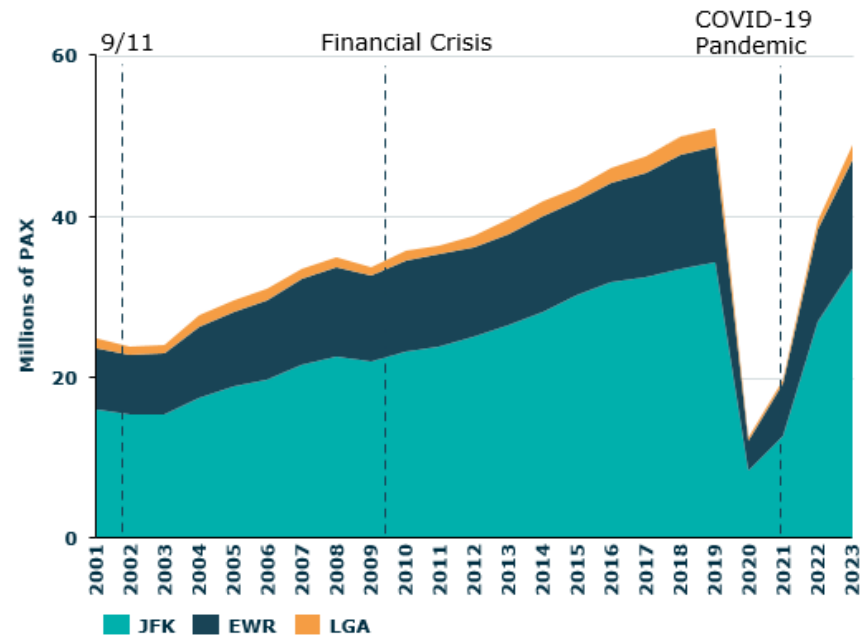
**Table 11-2: Compound Annual Growth Rates by Airport and Passenger Type**

Airport	CAGR 2001-2019	CAGR 2008-2019	CAGR 2013-2023
<b>JFK</b>	<b>4.3%</b>	<b>2.5%</b>	<b>2.2%</b>
Domestic	4.5%	1.0%	2.0%
International	4.4%	3.9%	2.3%
<b>Newark</b>	<b>2.2%</b>	<b>2.5%</b>	<b>3.4%</b>
Domestic	1.8%	2.6%	4.0%
International	3.7%	2.3%	2.0%
<b>LaGuardia</b>	<b>1.8%</b>	<b>2.7%</b>	<b>2.0%</b>
Domestic	1.6%	2.5%	2.1%
International	4.0%	6.3%	0.5%

Source: Port Authority of New York and New Jersey. Note: LGA international traffic has been volatile in recent years, with 38% growth in 2012 and -3% growth in 2015.

11.1.10 As noted above, JFK serves as the main international gateway to the New York region. However, international traffic growth at JFK has shown a degree of slowing down over the past few years, as shown in Figure 11-3. Despite its yearly growth rate of 2.6% between 2016-2019, this was lower compared to the 6.1% CAGR over 2012-2016. This relatively slow growth follows from gate capacity constraints and operational restrictions, discussed in further detail in the following sections.

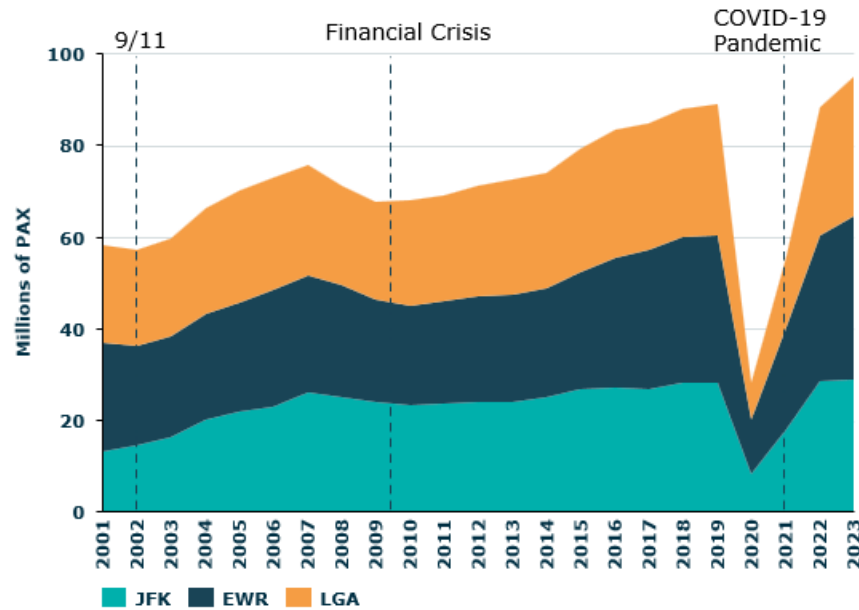
**Figure 11-3 International Traffic by Airport**



Source: PANYNJ

- With regards to domestic traffic, both Newark and LaGuardia have surpassed JFK, with Newark growing particularly fast since 2015 (Figure 11-4). This is likely due to operational performance improvements at EWR which led to the FAA removing strict slot controls in 2016.

Figure 11-4 Domestic Traffic by Airport



Source: PANYNJ

- 11.1.11 JFK Terminal One served approximately 8.1 million passengers in 2019, contributing to around 13% of JFK's total traffic. The terminal currently hosts 28 airlines, of which 3 are TOGA<sup>3</sup> airlines and 25 are contract carriers.

<sup>3</sup> Terminal One Group Association L.P., the current lease holder and operator of the existing Terminal 1 formed of a consortium of four airlines (Air France, Japan Airlines, Korean Air, Lufthansa).

- 11.1.12 In 2019, TOGA airlines processed around 1.3 million enplanements in Terminal One (32.4% of the terminal's enplanements). Norwegian was the largest airline of the terminal in 2019, contributing 19% of total capacity at the terminal and was ranked 8<sup>th</sup> at JFK in regard to the number of seats in 2019. Norwegian ceased operations from JFK in January 2021.

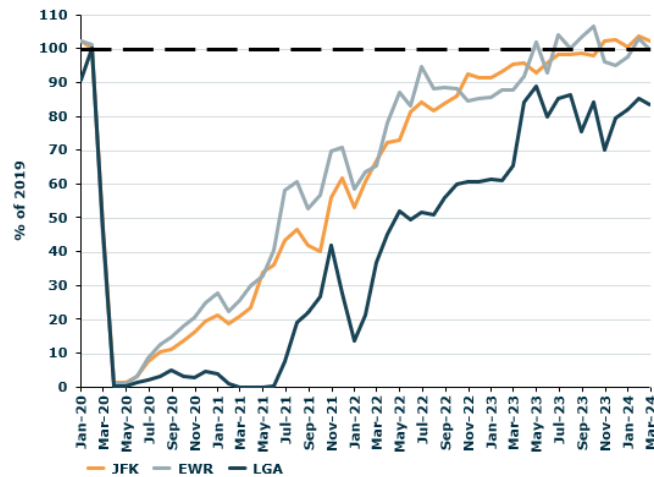
### The COVID-19 Pandemic

- 11.1.13 The COVID-19 pandemic began in the United States in March 2020 and was largely disruptive – adversely affecting travel, financial markets, employment, shipping, and other industries. The US GDP contracted at a 3.5% annualized rate in 2020, the largest contraction since 1946 and the first since 2009.
- 11.1.14 The impact of the COVID-19 pandemic in New York City has varied by airport and passenger type, as reviewed in the following sections, although, as the following analysis will demonstrate, the traffic has recovered strongly throughout 2022 and 2023 with domestic traffic recovering past 2019 levels in 2023 and international traffic expected to recover to 2019 levels in 2024.

### Impact on International Traffic

- 11.1.15 As discussed, non-essential international travel was suspended for nearly 20 months from a large number of countries, disrupting airports which rely heavily on international traffic.
- 11.1.16 The following figure shows the month-on-month international traffic at the 3 New York airports in terms of percentage of the corresponding month in 2019 demonstrating the traffic recovery profile.

Figure 11-5 Monthly International Passengers vs 2019



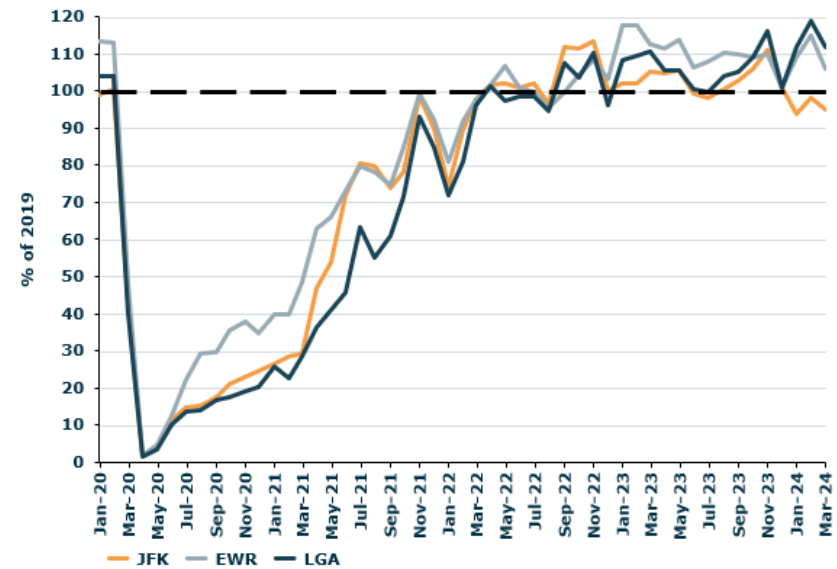
Source: PANYNJ

11.1.17 Since July 2020, international traffic at JFK and EWR have been on a steady recovery, reaching a peak of 104% at JFK in February 2024 and 107% of 2019 levels at EWR in October 2023. LGA has recovered to a peak of 89% of 2019 levels in May 2023. It is important to note that JFK maintains a more diverse mix of international traffic than EWR.

#### Impact on Domestic Traffic

11.1.18 Domestic traffic has been less severely impacted by the COVID-19 pandemic. Figure 11-6 shows the month-on-month domestic traffic at the 3 airports in terms of percentage of the same month in 2019.

Figure 11-6 Monthly Domestic Passengers vs 2019



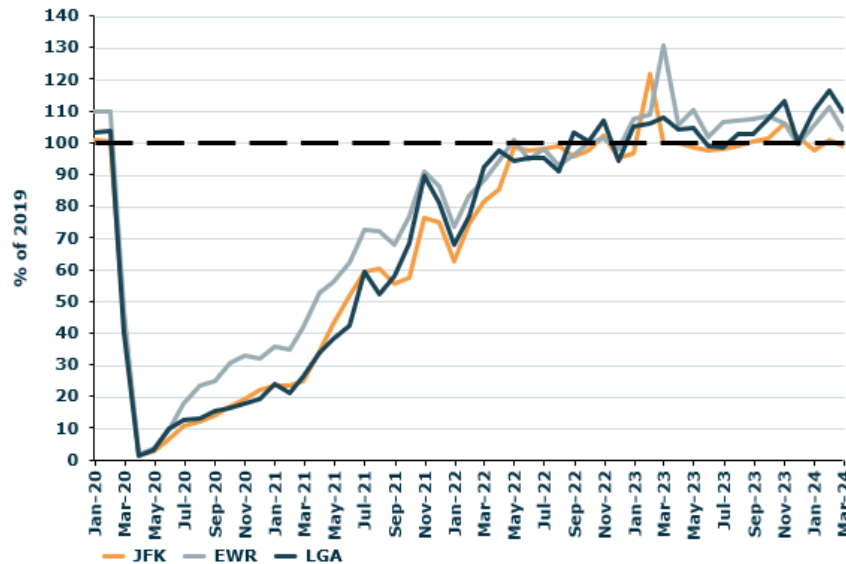
Source: PANYNJ

11.1.19 Unlike international travel, domestic traffic has seen a similar recovery across all three airports. Traffic dropped to between 40% and 48% of 2019 levels in March 2020, and further plummeted to 2% in April 2020. Traffic has continued to grow, and in November 2023, JFK was at 111% of 2019 levels, while EWR and LGA were at 115% and 119%, respectively, considerably surpassing pre-pandemic traffic levels.

#### Impact on Total Traffic

11.1.20 When looking at the data at total passenger level, EWR has had the best recovery to date – likely to due to two-thirds of the traffic being domestic and exposure to a less diverse mix of international markets – full year 2023 seeing total passenger levels at 105.8% of 2019. The figure below shows the month-on-month total traffic at the 3 airports in terms of percentage of the same month in 2019 demonstrating that traffic has returned to near or above 2019 levels during 2023.

Figure 11-7 Monthly Total Passengers vs 2019



Source: PANYNJ

- 11.1.21 EWR reached 111% of 2019 levels in February 2024, LGA 117% of 2019 levels also in February 2024, and JFK 106% in November 2023. Since December 2022, total passenger levels at the airports have been 95% or more of 2019 levels on a monthly basis.

### JFK Terminal and Airline Overview

- 11.1.22 JFK has six operative terminals numbered 1-8, skipping Terminal 3 and 6, which were demolished in 2013 and 2011, respectively.

### Existing Terminal One (Existing Conditions)

- 11.1.23 The existing Terminal One is served by carriers from all 3 global alliances, including:

- **SkyTeam carriers:** Air France<sup>4</sup>, China Eastern Airlines, ITA Airways (formerly Alitalia), Korean Air, and Saudia; SAS, which is currently operating in Terminal One will transfer to SkyTeam from Star Alliance on September 1<sup>st</sup> 2024.
- **Star Alliance carriers:** Air China, Air New Zealand, Asiana, Austrian Airlines, Brussels Airlines, Egyptair, EVA Air, Lufthansa, SWISS, TAP Portugal and Turkish Airlines; and
- **Oneworld carriers:** Royal Air Maroc.

- 11.1.24 Other airlines serving Terminal One include Air Senegal, Air Serbia, Azores Airlines, Cayman Airways, Flair Airlines, Neos, Philippine Airlines, VivaAerobus, and Volaris.

- 11.1.25 Terminal One is the only terminal to serve exclusively international flights and non-US based carriers.

- 11.1.26 The existing Terminal One is to be demolished and replaced by NTO in 2026. NTO will be a new dedicated international terminal without a dominant anchor carrier which will provide replacement gate capacity left by closure of the existing Terminal One and three common-use gates at Terminal 4 which are being converted for exclusive use by Delta.

### Terminal 2/4

- 11.1.27 Before 2013, Terminal 2 served the majority of Delta's domestic operations collectively with Terminal 3 which handled international flights, but the 2013-2015 expansion of Terminal 4 allowed the airline to consolidate most of its operation in the new larger facility, which includes international and transcontinental flights.

<sup>4</sup> Air France has an authorized and executed Anchor Agreement with NTO with effectiveness subject to conformance with the PA lease.

- 11.1.28 Due to drastic schedule reductions propagated by the COVID-19 pandemic, Delta suspended all operations from Terminal 2. Demolition of Terminal 2 commenced in Summer 2023.
- 11.1.29 Terminal 4 is the busiest terminal at JFK, housing nearly all of Delta operations and additionally operating with a large share of international airlines, serving alliances including:
- **Sky Team carriers:** Aeromexico, Air Europa, China Airlines, Delta Air Lines, Kenya Airways, KLM Royal Dutch Airlines<sup>5</sup>, Virgin Atlantic and Xiamen Air;
  - **Star Alliance carriers:** Air India, Avianca Brasil, Caribbean Airlines, Copa Airlines and Singapore Airlines.
- 11.1.30 Terminal 4 also serves non-alliance carriers including EL AL, Emirates, Etihad<sup>6</sup>, Hawaiian Airlines, LATAM Airlines Uzbekistan Airlines and WestJet.
- 11.1.31 In 2019, Terminal 4 was already facing capacity challenges, with aircraft on the ground exceeding available gates at multiple times of the day. With its phased development, Terminal 4 is expected to achieve capacity of 13.2m by 2026, lower than the combined capacity of 14.4m of the combined Terminal 4/Terminal 2 campus.
- 11.1.32 Delta is expected to prefer co-locating at Terminal 4 with other JV or SkyTeam partners with significant feed to its network. JV members include LATAM, Aeromexico and Virgin Atlantic. This move has been further strengthened by Virgin Atlantic's entry into the SkyTeam alliance.

#### Terminal 5

- 11.1.33 JetBlue is the dominant airline and operator in Terminal 5. The only other airline currently operating in Terminal 5 is Cape Air.
- 11.1.34 On November 12, 2014, JetBlue opened the International Arrivals Concourse (T5i) at the terminal.

#### Terminal 7

- 11.1.35 Terminal 7 is currently operated by JFK Millenium Partners after British Airways relocated to Terminal 8 from December 2022:
- **Oneworld carriers:** Alaska Airlines
  - **Star Alliance carriers:** Air Canada, All Nippon Airways, Ethiopian Airlines, LOT Polish Airlines<sup>7</sup>;
  - **SkyTeam carriers:** Aerolíneas Argentinas
- 11.1.36 Terminal 7 also hosts non-alliance carriers Aer Lingus, Condor, Icelandair Kuwait Airways, Norse Atlantic, Sun Country and Ukraine International Airlines.
- 11.1.37 Aer Lingus's arriving flights are pre-cleared for US Customs and Immigration in Shannon and Dublin, Ireland meaning that passengers disembark from the plane directly into the airside departures hall, equivalent to domestic flights.
- 11.1.38 Terminal 7 is set to be demolished (currently scheduled for 2026) in the coming years as construction begins on the replacement facility, Terminal 6 (North Terminal Development). Terminal 6 is understood to be connected to the existing Terminal 5, providing congestion relief there as part of the North Terminal Development.
- 11.1.39 With JetBlue's introduction of a long-haul transatlantic service, it is, along with its partners, forecast to expand its existing home at Terminal 5 into the North Terminal Development (Terminal 6).

<sup>5</sup> KLM has a pre-NTP contract with NTO.

<sup>6</sup> Etihad has an authorized Anchor Agreement with NTO with effectiveness subject to conformance with the PA lease.

<sup>7</sup> LOT Polish Airlines has an authorized and executed Anchor Agreement with NTO with effectiveness subject to conformance with the PA lease.

### Terminal 8

- 11.1.40 Terminal 8 is a major Oneworld hub with American Airlines being the dominant airline and operator alongside Transatlantic Joint Venture partners, British Airways, Finnair, and Iberia. Other OneWorld alliance members include Cathay Pacific, Japan Airlines, Qantas, Qatar Airways, and Royal Jordanian airlines. Terminal 8 also houses Sky Team member China Southern and International Airlines Group owned Low Cost Carrier, Level.
- 11.1.41 Construction began on improving and expanding Terminal 8 in January 2020, which was completed in 2022. This was primarily concerned with the addition of two gates and the resizing of existing gates on the satellite concourse.
- 11.1.42 British Airways, a transatlantic joint venture partner with American and a founding OneWorld member, moved to Terminal 8 in December 2022 as the lease of Terminal 7 was transferred to JFK Millenium partners to enable the North Terminal Development; Iberia (part of the British Airways group, IAG) also followed. This provides further co-location of OneWorld airlines, together with Finnair, Cathay Pacific JAL, QANTAS, Qatar Airways and Royal Jordanian, enabling connections between American Airlines and its partners.

### Connecting Passengers & Preclearance

- 11.1.43 US Customs and Border Protection Preclearance is a strategic stationing of customers and border protection officers at designated foreign airports to inspect travellers prior to boarding US-bound flights. With Preclearance, travellers can bypass CBP and Transportation Security Administration inspections upon US arrival as they are treated as domestic passengers and can proceed directly to their connecting flight or destination.
- 11.1.44 There are currently 16 preclearance locations in 6 countries: Dublin and Shannon in Ireland; Aruba; Freeport and Nassau in The Bahamas; Bermuda; Abu Dhabi, United Arab Emirates; and Calgary, Toronto, Edmonton, Halifax, Montreal, Ottawa, Vancouver, Victoria, and Winnipeg in Canada.

- 11.1.45 There are purported plans to expand the Preclearance system to further locations in Europe, Latin America, and Asia. Although no plans have been confirmed, the potential for preclearance to be established in further airports in other regions may complicate the process of inter-terminal connections at JFK. While the AirTrain provides free transport between terminals to passengers, the LTA notes that there is no airside connection between Terminal One and the other terminals.

## 11.2 NYC AIRPORTS' CAPACITY OVERVIEW

### Airport Infrastructure

- 11.2.1 JFK has four runways ranging from 8,400 to 14,500 feet long. Two of them are widely spaced parallel runways oriented in a northwest/southeast direction, and two are closely spaced parallel runways oriented in a northeast/southwest direction.
- 11.2.2 Newark operates two parallel runways of 10,000 and 11,000 feet, as well as one cross runway of 6,700 feet long. Though the FAA upgraded Newark to a Level 2 congested airport in 2016, the airport is considered constrained due to limited capacity of the runway and airport facilities. Runway expansion may be rendered difficult due to the location of the I-95 to the East and I-78 to the North.
- 11.2.3 LaGuardia has two short runways of approximately 7,000 feet. Due to the relatively short runways and other facility constraints, airlines are restricted in the use of wide body aircraft. In addition, LaGuardia is located in a bay area, limiting future potential runway and other infrastructure expansions (particularly due to environmental and land acquisition constraints).

### Capacity Constraints and Limitations

- 11.2.4 Capacity constrained airports in the US are subject to runway slot controls, imposed by the FAA. Slot coordination guidelines are provided by the International Air Transport Association ("IATA") and categorized into the following levels of congestion:
- Level 1: airports where the capacity of the airport infrastructure is generally adequate to satisfy demand

- Level 2: airports where there is potential for congestion during some periods, which can be resolved by schedule adjustments
- Level 3: airports where there is insufficient infrastructure or where governments have imposed conditions that make it impossible to satisfy demand. Level 3 airports are slot controlled and require advance approval for operations during slot-controlled hours.

Source: IATA Worldwide Slot Guidelines

- 11.2.5 Level 3 slot controls are currently in place at JFK, LaGuardia and Washington Ronald Reagan Airport. Four other US airports, including Newark, are dependent on a formal schedule review by the FAA (Level 2).
- 11.2.6 The FAA has imposed a runway constraint at JFK to mitigate congestion and delays at the airport. Consequently, JFK runway operations may not exceed 81 scheduled ATMs per hour. However, the LTA understands that the airport has operated above this level in the past.
- 11.2.7 Until 2016, Newark was designated as a Level 3 airport and subject to a limitation of 81 scheduled ATMs per hour. Due to operational improvements including better on-time performance and fewer delays, the FAA 'upgraded' Newark to a Level 2 airport.
- 11.2.8 LaGuardia is subject to a perimeter rule limiting operations to a 1,500-mile radius with the exception of Denver (Colorado). The PANYNJ set this rule in the 1950s to move airlines and passengers to JFK and Newark, airports with more sufficient infrastructure.
- 11.2.9 The following table shows a summary of operational constraints at each of the major New York airports.

**Table 11-3: Slot Constraints**

Airport	Level of Congestion	Operational Constraints
<b>JFK</b>	Level 3	<ul style="list-style-type: none"> <li>o Maximum of 81 ATMs per hour between 6 am – 10.59 pm</li> </ul>
<b>Newark</b>	Level 2	<ul style="list-style-type: none"> <li>o Schedule-facilitation process to handle high demand at some periods</li> </ul>
<b>LaGuardia</b>	Level 3	<ul style="list-style-type: none"> <li>o Perimeter rule limiting operations to a 1,500-mile radius (which does not apply to flights on Saturdays and flights to/from Denver)</li> <li>o Maximum of 71 ATMs per hour (6 am – 9.59 pm Monday-Friday; 12 noon – 9.59 pm Sunday)</li> <li>o 2 Relatively short runways (around 7,000 feet each) restricting wide body aircraft</li> </ul>

Source: Infrata Analysis

- 11.2.10 The FAA has extended the existing operating limitations at LaGuardia and JFK were extended in October 2022 for a period until October 2024 although proposals for policy changes have been submitted in both cases.

#### Future Regulatory Improvements

- 11.2.11 At the time of writing this report, there is no formal commitment to remove the runway limitation at JFK. However, the LTA understands that the FAA has produced a report estimating an ATM hourly capacity of 93<sup>8</sup> could be achieved. The FAA continues to note improvements to operational constraints made by PANYNJ at JFK.
- 11.2.12 In 2007, the FAA introduced the NextGen modernization program to improve safety, efficiency, capacity, predictability and resiliency of the American aviation industry. This program focuses on the implementation of new innovative technologies and procedures, resulting in more efficient airspace and ground operations.

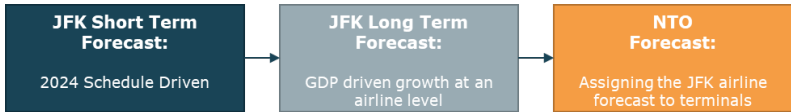
<sup>8</sup> John F. Kennedy International (New York) (JFK) Airport Capacity Profile, 2014.

- 11.2.13 During bad weather conditions, the FAA operates under instrument flight rules ("IFR"). Under IFR, the separation between aircraft is increased, thereby reducing the capacity of the runway. During these conditions, capacity drops below the 81 ATMs per hour restriction.
- 11.2.14 The PANYNJ and FAA continue to make improvements to address airfield constraints at JFK, such as adding high speed turnoffs, realigning taxiways, and implementing Traffic Management Advisor to improve arrival aircraft flows.

### 11.3 OVERVIEW OF SPONSORS’ FORECASTING METHODOLOGY

- 11.3.1 The Sponsors have commissioned Steer as the Traffic and Business Plan Advisor. Steer is a global advisory firm active in the infrastructure and transportation sector. Steer has recently been involved in traffic assignments for the airports of Westchester County (New York), Chicago, Las Vegas, San Juan and Denver. In addition, Steer has worked on constrained airport systems in London, Paris and Sao Paulo.
- 11.3.2 Steer has followed a three-step process to forecast NTO traffic. The first two steps involve forecasting JFK airport traffic before assigning a segment of traffic to NTO in the third step.

Figure 11-8 High Level Overview of Steer's Traffic Forecasting Process



Source: Infrata analysis based on Steer Feasibility Report

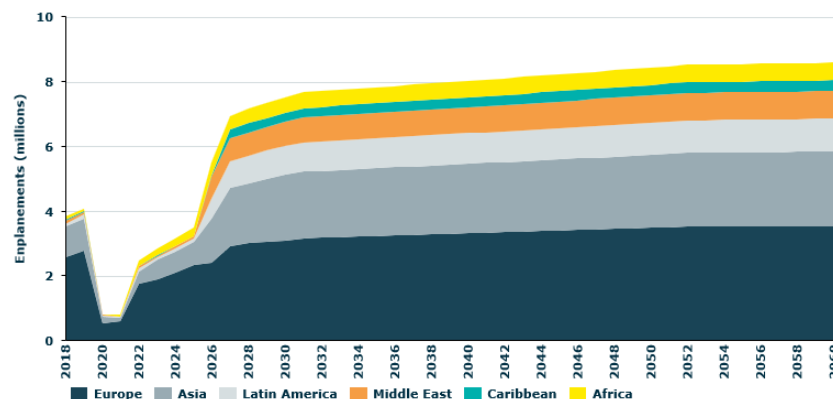
- 11.3.3 Steer has divided the JFK forecast into short and long term. The short term is concerned with the recovery of traffic from the Covid-19 pandemic. Steer has taken a regional approach to estimating traffic recovery, using available scheduled seat data as a starting point. More on the forecast recovery is included later in the chapter.
- 11.3.4 The JFK long term forecast is comprised of econometric growth, driven by regional GDP of the passenger origin market. The long term forecast has been done at an airline level to be able to distribute between the terminals at JFK.

- 11.3.5 The NTO forecast is derived by assigning the appropriate airline forecasts developed in the JFK long term forecast step. These include existing Terminal One tenants, new Anchor Airlines, as well as other airline traffic assumed to migrate to NTO as a result of capacity constraints at the other terminals.
- 11.3.6 Runway slot constraints are expected to limit traffic growth at JFK. As a result, the JFK forecast has been constrained based on ATM slots. Similarly, terminal gate capacity constraints are expected to affect NTO. Given these capacity constraints, the NTO forecast is constrained in 2031 onwards, once the terminal reaches a 430,000 enplanements per gate threshold.

### 11.4 SPONSORS’ TRAFFIC FORECASTS

- 11.4.1 The traffic forecasts covered in this chapter refer primarily to those associated with Phase A only build.
- 11.4.2 The number of enplanements at NTO is forecast to grow to 7.5 million in 2030 and to 8.6 million by the end of the forecast (2060) at a CAGR of 2.7% between 2023 and 2060. The fastest growth is expected during the Short Term period up to 2026). Further growth is expected in the Ramp Up period (2026-2032) during which several airlines are expected to move to NTO. Slower growth is forecast for the remainder of the forecast (2032-2060) as a result of the terminal reaching its capacity. Further illustration is provided in Figure 11-9.
- 11.4.3 It is noted that the Middle East and Caribbean growth rates are considerably high in the short to medium term periods, respectively, due to the shifting of airlines to NTO during those periods and the currently low passenger numbers for these regions at Terminal One. The primary airlines causing this growth are Avianca, forecast to bring 602,000 enplanements, Etihad Airways, forecast to bring 270,000 enplanements to NTO in 2026 and Caribbean Airlines, forecast to bring 257,000 enplanements in 2027. Other notable increases include KLM with a forecast of 252,000 enplanements in 2026 and LOT Polish with a forecast of 123,000 enplanements in 2026. As discussed, this strong growth will be tapered by the capacity constraints of the terminal after the ramp-up period.

Figure 11-9: Steer Terminal One / NTO Traffic Forecast



Source: Steer

Table 11-4 Terminal One / NTO Compound Annual Growth Rates by Market

Market	2023-2026	2026-2035	2035-2060
Europe	8.2%	3.3%	0.4%
Asia	31.2%	4.9%	0.4%
Middle East	140.8%	1.6%	0.4%
Latin America	118.2%	4.9%	0.4%
Africa	23.3%	2.1%	0.4%
Caribbean	13.7%	34.3%	0.4%

## 11.5 OVERVIEW OF LTA'S APPROACH TO REVIEW

11.5.1 In its review, the LTA will focus on the risks to the traffic forecasts considering capacity constraints at JFK. In essence, we attempt to answer the following questions:

- What is the Sponsors' assumed **recovery of air traffic from the Covid-19 pandemic**, and is it reasonable? The recovery of the domestic market is complete, however international market recovery is lagging slightly.
- What is the risk to passenger demand increase (ramp-up) **between 2026 and 2032**, at the pace and level projected by the Sponsors, driven by airline relocation to NTO?
- Are there any risks to demand **after the ramp-up period**?

11.5.2 We will focus only on material aspects of the forecast and methodology to address key identified risks.

11.5.3 The following section focuses on those sections of the Sponsor's methodology and underlying assumptions which carry the most uncertainty for lenders. We have divided these into three major categories:

- Phase 1:** The first phase encompasses traffic during construction works, Covid recovery, and impacts from the ongoing conflict in Ukraine (2022-2026).
- Phase 2:** The second phase involves the reshuffling of airlines in the short term (2026-2032) in the wake of the opening of NTO; this is referred to as Ramp-Up demand. Traffic demand to 2035 is also considered in this section.

## 11.6 KEY FINDINGS AND ISSUES

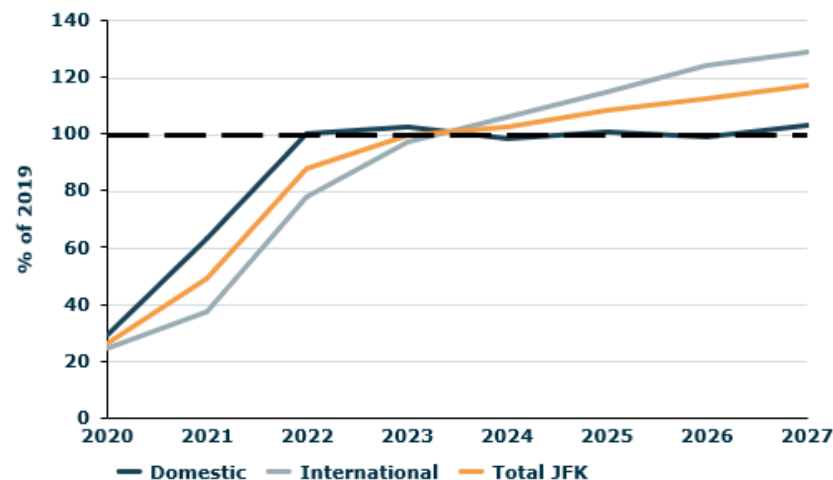
### Traffic Phase 1 – Forward Airline Schedules (2024-2025)

11.6.1 Traffic Phase 1 refers to the short-term developments of air traffic at JFK as the industry recovers from the Covid-19 pandemic of 2020-2021 and enters the first full year of traffic expected to be at pre-Covid levels. Traffic in this period is driven by airlines rebuilding their capacity at the airport.

11.6.2 The Sponsors have also incorporated the effects of the ongoing conflict in Ukraine which began in February 2022. At the time of writing, direct flights between Moscow and New York-JFK, which previously were operated on Russian airline Aeroflot, remain suspended and Aeroflot's rights to enter US airspace have been revoked. The duration of the suspension of the route and the revocation to the US airspace is unclear; the Sponsors assume that Aeroflot remains suspended from JFK indefinitely. A portion of Aeroflot's expected passengers are assumed to be carried on other European and Middle Eastern airlines given that a large share of Aeroflot's traffic from JFK were serving connections to countries in Eastern Europe, the Middle East, and Central Asia. A portion of Aeroflot's actual Russian market is expected to return over time, yet a full recovery of the Russian market is not expected until 2026. However, Aeroflot is not assumed to return to NTO at all and is not included in the forecasts. The LTA views this as a prudent assumption.

11.6.3 The Sponsors have followed a regional approach for the recovery of passenger traffic which is based on the primary markets served by each airline. This section will analyse the recovery profile assumed in the Sponsors' forecasting model and provide views on the timing of recovery. The Sponsor has forecast domestic passengers to surpass 2019 levels in 2023 at 103% of 2019 levels. International passengers are forecast to reach 93% of 2019 in 2023 and 102% in 2024. Total passengers at JFK are forecast to recover to 103% of 2019 levels in 2024. This is reflected in the figure below.

Figure 11-10 JFK International & Domestic Passenger Forecast Recovery



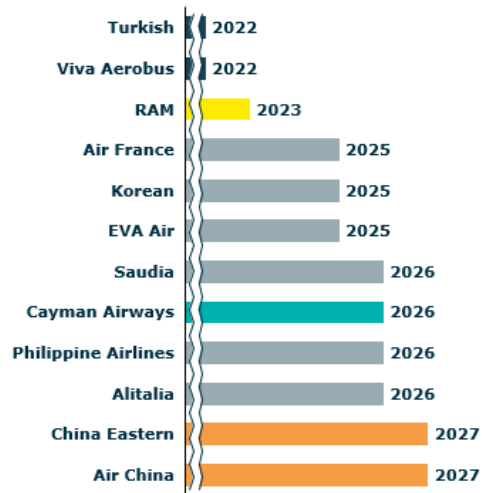
Source: Steer

11.6.4 The LTA notes that the assumption that total JFK traffic will return to 2019 levels by 2024 is based on several assumptions including; (a) economic growth is in-line with the recovery from Covid; (b) the airline industry will recover to the extent that there is sufficient seat supply to meet demand; (c) domestic and leisure traffic will drive the recovery, with business and international traffic recovering slower; (d) JFK will remain as a major hub for domestic airlines; and (e) NYC will remain as an important global node for business, commerce and culture.

In order to forecast on an airline level, the Sponsors have used OAG scheduling data to forecast traffic for the year ahead to March 2025. This has been checked alongside assumptions for market recovery.

11.6.5 These assumptions are upheld in the below figure, which displays the full calendar year when passengers are forecast to exceed their 2019 figures for existing Terminal One carriers. This illustrates the general profile at which the key airlines and by extension markets are expected to recover.

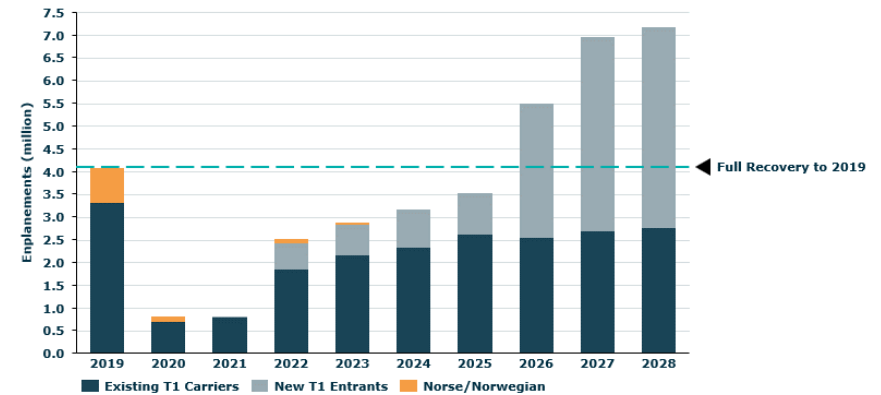
**Figure 11-11 Existing Terminal One Carriers Year of Recovery Above 2019 Levels**



Source: Steer

- 11.6.6 In terms of total passengers, the existing Terminal One carriers are forecast by the Sponsors to recover to 2019 levels fully between 2025-2027. 2022 saw 46% of 2019 passengers for existing Terminal One carriers.
- 11.6.7 When taking Norse/Norwegian into account, existing Terminal One carriers are forecast to recover fully to 2019 levels between 2025-2026 because existing carriers would have to recover above their 2019 levels in order to make up for traffic lost by Norwegian. However, new entrants to Terminal One began in 2021 and 2022 with Air Serbia, Air Senegal, SATA Azores, Asiana, Egyptair, TAP Air Portugal, Air New Zealand, and Flair and is forecast to continue.
- 11.6.8 This boosts the recovery profile of the terminal, allowing for a full recovery in 2025-2026, as existing carriers have fully recovered and new airline entrants to the terminal fill the gap in traffic lost by Norwegian. The other airline entrants are serving different markets than Norwegian did, rather an increase in new markets which will occupy space previously utilized by Norwegian.

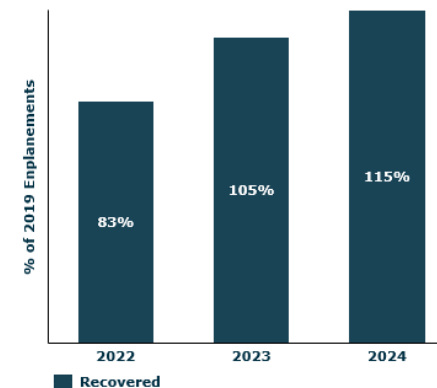
**Figure 11-12 Existing Terminal One Carriers Passenger Recovery Profile**



Source: Steer

- 11.6.9 All other international passengers (those not currently in the existing Terminal One) are forecast to recover in 2023. This is due the shorter forecast recovery time for US carriers' international traffic (Delta, JetBlue, American) which are the largest airlines at JFK.

**Figure 11-13 Non-T1 Carrier International Passenger Recovery Profile**

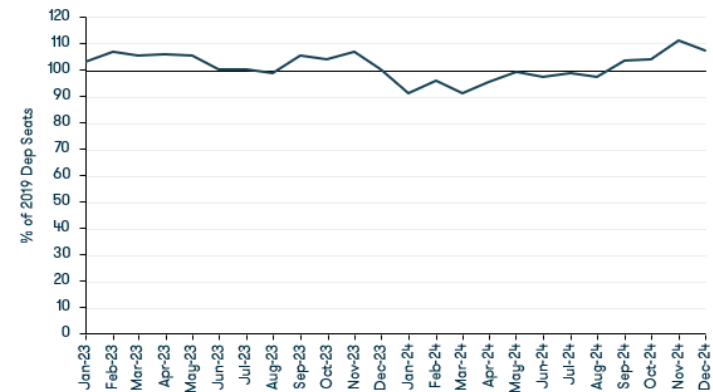


Source: Steer

#### LTA View on Recovery and Short Term Forecast

- 11.6.10 The outlook of the US aviation market expects a recovery range between for 2024 and 2025, with the majority of industry forecasts concurring that the market will recover to 2019 levels by 2024. The LTA has considered industry sources from IATA, ACI, the US DOT, Fitch, Moody's, and Airlines for America as well as an analysis of 2024 seat capacity.
- 11.6.11 COVID restrictions have now been significantly relaxed worldwide including in China and the Far East with the majority of countries not employing any restrictions as of May 2024.
- 11.6.12 There are still risks present in the industry, primarily regarding uncertainties around the pace and timing of air traffic recovery in markets such as China, although the LTA notes the positive capacity data of recent months and lagging business and international travel. The LTA continues to monitor these closely.
- 11.6.13 Industry-wide, there are considerations about structural change for certain types of travel, such as business trips – which are more easily replaced by virtual alternatives. This may be conservative given the ongoing rebound of traffic and the pent-up demand driven by missed business trips during the pandemic.
- 11.6.14 The figure below reflects the departing seats from JFK from January 2023 to December 2024 as a share of 2019 levels. As shown, the domestic seats have fully recovered to 2019 levels.

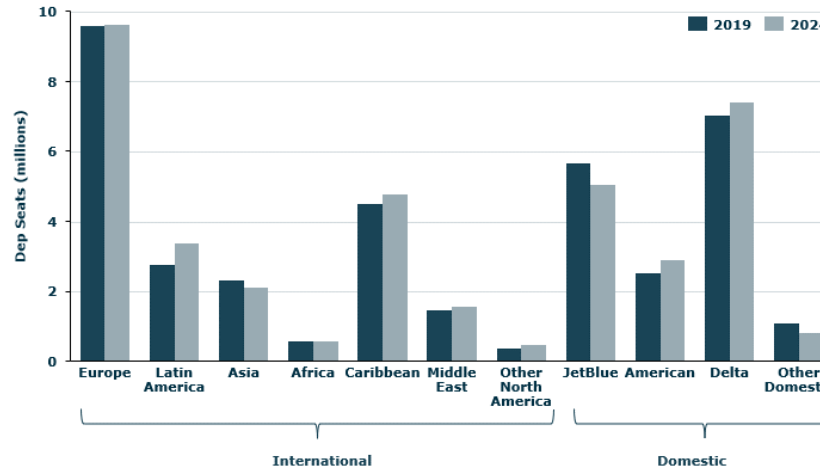
Figure 11-14 JFK Scheduled Domestic Seats vs 2019



Source: OAG Analyser;

- 11.6.15 Full recovery in international traffic is generally expected to take longer than domestic traffic as airlines and airports globally have been impacted by staff shortages and the ability to redeploy capacity quickly. Data for the year ahead suggests that Full recovery could be expected in 2024.
- 11.6.16 The LTA notes that the Sponsors' forecast international traffic recovery by 2024 falls within the range of industry benchmarks and is viewed as reasonable at the total level.
- 11.6.17 Upon analysing the recovery on an airline region basis, the international seat schedules have varying short term recoveries. Recovery has been analysed for the January to December period as shown in Figure 11-15 below. Table 11-5 presents the respective aggregate seat capacity by region and major US airlines for 2024 as a percentage the seat capacity observed in the same time period in 2019.

**Figure 11-15 Scheduled Departure Seats at JFK by Airline Region in 2024 vs 2019 (Jan-Dec\*)**



Source: OAG Analyser; \*Oct-Dec based on schedules

**Table 11-5 2024 Scheduled Seat Capacity as a Percentage of 2019 by Region\***

Europe	Latin Am.	Asia	Africa	Caribbean	Middle East	JetBlue	American	Delta	Other North America
100%	122%	92%	100%	107%	107%	140%	140%	111%	123%

Source: OAG Analyser

\*Considering the January to December period (Oct-Dec based on schedules)

### Traffic Phase 2 (2026-2032) – Ramp Up Demand

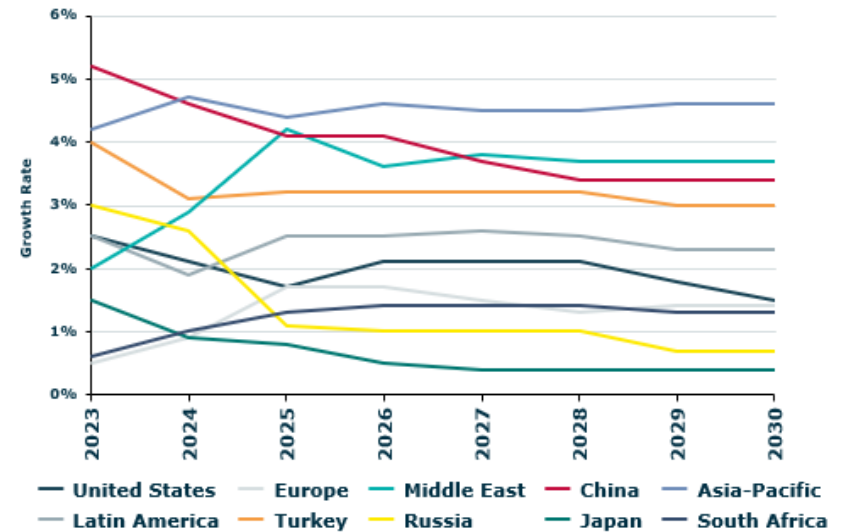
- 11.6.18 Traffic Phase 2 refers to the change in demand during the period beyond 2026 upon the opening of NTO and what is expected to be a period of further capacity constraints at other terminals. The primary driver of traffic during this period is the relocation of other airlines to NTO.

- 11.6.19 We will review the Sponsor's growth and capacity assumptions underpinning this part of the forecast before offering views on similar precedents and corresponding downside risks.

### Sponsor Econometric Growth Assumptions

- 11.6.20 The first section focuses on the underlying econometric growth of traffic. International traffic growth is driven by regional GDP forecasts assigned to each airline based on the origin market served. The relationship between GDP and traffic growth uses an elasticity based on historical regression models on an airline level. These elasticities are assumed to decay over time to account for the growing maturity of the market.
- 11.6.21 Domestic traffic is grown using a US GDP forecast and then split by market share. The market shares are assumed to remain consistent across each airline. The following figure shows the GDP growth used in the forecast for each region. Steer has sourced these values from the International Monetary Fund's ("IMF") October 2023 and January 2024 World Economic Outlook.

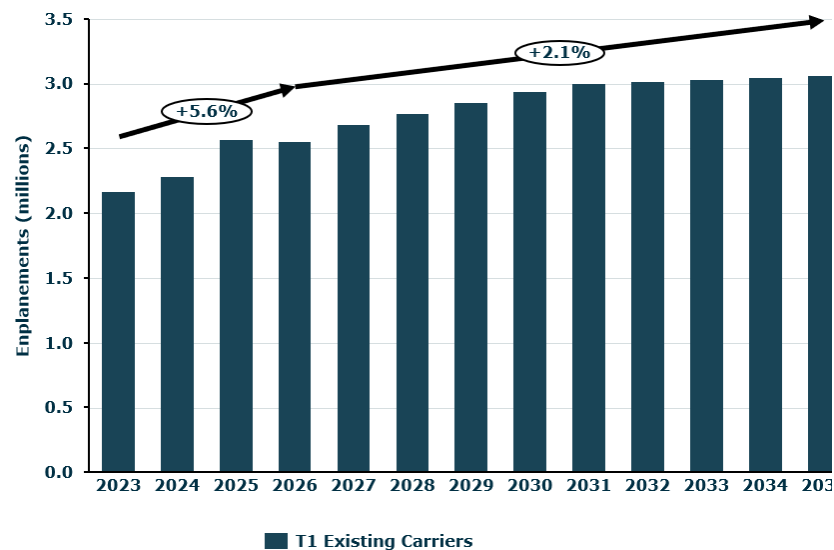
**Figure 11-16 Sponsor GDP Forecasts Assumptions**



Source: Steer from IMF World Economic Outlook plus Steer assumptions 2029 & 2030

11.6.22 Figure 11-17 below demonstrates the existing Terminal One airlines forecast growth. Traffic on existing Terminal One airlines is expected to grow at a CAGR of 2.1% during the period between 2026 and 2035.

**Figure 11-17 Existing Terminal One Airlines Forecast Growth**



Source: Steer

#### LTA View on Growth

11.6.23 The GDP growth assumptions used by the Sponsor in the forecast are appropriate and generally in line with industry benchmarks from sources including the Organization for Economic Co-operation and Development, Oxford Economics, and the International Monetary Fund.

11.6.24 The LTA notes that the resulting post-recovery growth of existing Terminal One airlines at a CAGR of 2.1% between 2026 and 2035 appears reasonable, given the 4.4% annual growth in international passengers between 2013 and 2019.

#### Sponsor Capacity Assumptions

11.6.25 The capacity of the other terminals at JFK is the primary driver of airline relocation to NTO. The Sponsor has compared the design capacities of gates in the other terminals with their projected traffic. The following table shows the Sponsors' assumptions for the number of gates by terminal. The LTA understands that these assumptions are based on discussions with the PANYNJ.

**Table 11-6 Sponsor Anticipated Number of Gates by Terminal**

Terminal	Aircraft Type	Gate Type	2019	2028	2032
T1 / NTO	Widebody	Contact	9	14 <sup>9</sup>	14
		Live Hardstand	-	5	5
	Narrowbody	Contact	1	-	-
		Live Hardstand	-	-	-
T2/4	Widebody	Contact	21	19	22
		Live Hardstand	3	3	-
	Narrowbody	Contact	26	24 <sup>10</sup>	24 <sup>11</sup>
		Live Hardstand	-	-	-

<sup>9</sup> 13 widebody contact gates and 1 temporary widebody gate in Phase A.

<sup>10</sup> 24 narrowbody and 1 regional jet gates.

<sup>11</sup> 24 narrowbody and 1 regional jet gates.

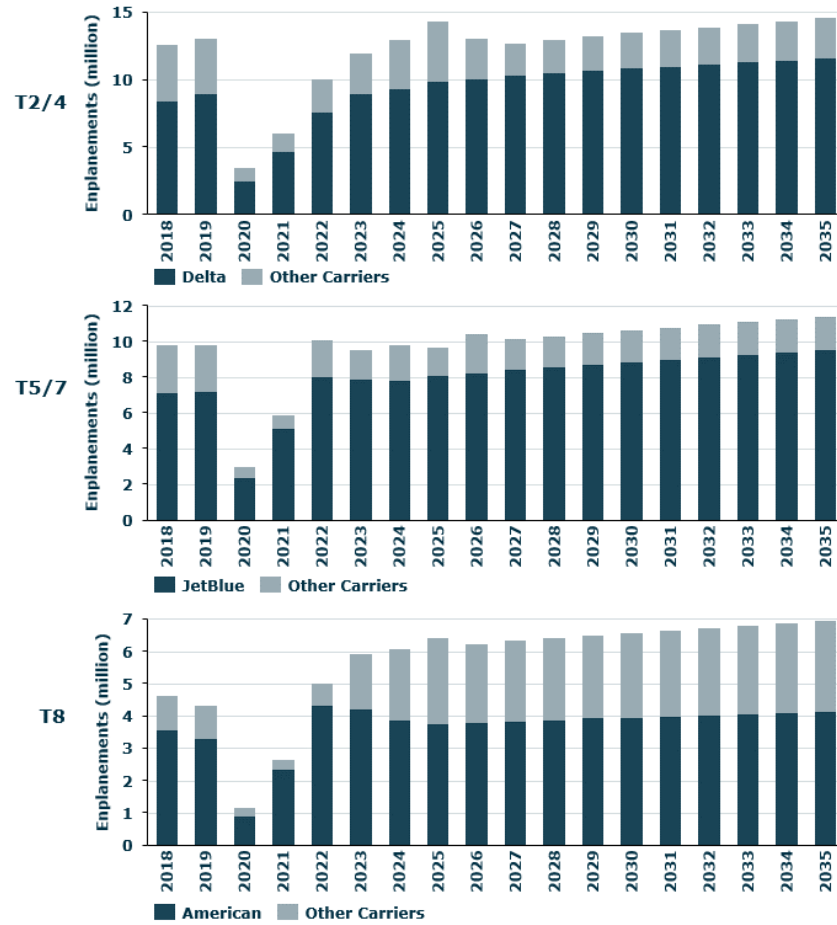
Terminal	Aircraft Type	Gate Type	2019	2028	2032
<b>T5/7</b>	Widebody	Contact	6	8	9
		Live Hardstand	-	-	-
	Narrowbody	Contact	35	30	30
		Live Hardstand	-	-	-
<b>T8</b>	Widebody	Contact	8	14	14
		Live Hardstand	-	-	-
	Narrowbody	Contact	27 <sup>12</sup>	17	17
		Live Hardstand	-	-	-

Source: Steer

- The need for increasing gate capacity at other terminals is based on the current (pre-Covid) and forecast congestion levels at each terminal. The LTA understands that the PANYNJ is limiting gate capacity at the other JFK terminals leading up to 2028.
- It is expected that increasing space requirements among the other terminals' anchor airlines (Delta, JetBlue, American) will likely lead to the need for relocation of some of the other airlines currently serving Terminals 4, 5/7, and 8.
- As shown in Figure 11-18 below, these anchor airlines represent the vast majority of traffic at Terminals 4, 5/7, and 8 which have already presented issues with congestion in recent years.

<sup>12</sup> 21 narrowbody and 6 regional jet gates.

Figure 11-18 Sponsor Traffic Forecast by Terminal (No Airline Relocation to NTO)



### Sponsor Airline Relocation Assumptions

- 11.6.26 Based on historical data and industry benchmarks, the theoretical maximum enplanements per widebody gate equivalent<sup>13</sup> has been set at 430,000 annually. When the forecast approaches or exceeds this cap, this excess traffic is assumed to migrate towards new capacity (i.e., other terminals).
- 11.6.27 The LTA understands that JFK has operated near this level in the past, and several other airports in the US and Europe have historically operated above this level. Steer has provided benchmarking in their report. However, annual enplanements per gate above 430,000 is associated with lower service levels and overcrowding.
- 11.6.28 Due to exceptional terminal constraints and lower historical usage at Terminal 8, the Sponsors have assumed a lower maximum enplanements per gate of 280,000. According to Steer, this is due to a satellite concourse design that restricts the number of widebody aircraft and the operational profile of American Airlines.
- 11.6.29 NTO will facilitate continued growth of existing Terminal 1 airlines and provide service for airlines displaced from other terminals. The capacity at NTO in 2026 is expected to cater to this spill over demand from other terminals as Delta and JetBlue grow and displace traffic in T4 and T5, in addition to growth of existing Terminal 1 airlines. The result is significantly high annual traffic growth at NTO (compared to traffic at existing Terminal 1) during the period 2026-2027 as airlines transfer from the existing Terminal 1 including the already committed Air France, Air Serbia and Korean Air as well as the already committed capacity from Etihad, EVA Airways, KLM and LOT Polish.
- 11.6.30 The Sponsors have assumed a timeline of progressive airline movements to NTO based on the 430,000 enplanements per gate threshold and space available at NTO. Capacity constraints at the other terminals is the primary driver of airline relocation to NTO. Other airline relocations are forecast to account for 2.2 million enplanements, as well as 1.2 million displaced from Terminal 4 gate conversions.
- 11.6.31 The Sponsors have considered secondary drivers of relocation to NTO as the quality of facility offered – a fully dedicated international terminal without a dominant main domestic carrier anchor tenant, the need for widebody gates, and the desire to co-locate with partner airlines. This includes:
- 11.6.32 Alliances/Joint Ventures/Ownership Stakes: Star Alliance and unaligned airlines are assumed to prefer to operate at NTO. Star Alliance airlines do not have a natural alternative given connecting traffic to United is largely undertaken at EWR.
- 11.6.33 Current Terminal: Terminals 4 and 5-7 become increasingly constrained, which will displace airlines to Terminal One / NTO. Both are dominated by a main domestic carrier – Delta and jetBlue respectively.
- 11.6.34 Expressed Interest: Airlines who have previously expressed interest in being a tenant at Terminal One are more likely to join NTO in the future.
- 11.6.35 Some airlines are forecast to relocate before Phase A construction is complete, though the majority occurs from 2026 onwards.
- 11.6.36 The LTA notes that the exact airline relocation profile will depend on commercial discussions between terminal operators and the airlines. NTO has assumed a carrier mix based on assumptions around airlines that may fit a target profile and who have weaker commercial relationships with the other terminal anchor airlines. Additionally, recent airline entrants at Terminal One include Azores Airlines and SAS which previously did not operate at JFK.
- 11.6.37 The LTA notes that airline user agreements have already been agreed with Air France, Air Serbia, Etihad Airways, EVA Airways, LOT Polish, KLM and Korean Air. These carriers represent 26% of forecast traffic which has been committed. It is further noted that this figure is expected to increase to 28% upon full regulatory confirmation of the Korean/Asiana merger.

### Post 2026 Period Forecast Results

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<sup>13</sup> Narrowbody gates are assumed 0.5 of a widebody equivalent. Regional jet gates are assumed 0.25 of a widebody equivalent.

- 11.6.38 The relocation of airlines to NTO results in significantly high annual growth in passengers, as shown in Table 11-7. 2026-2027 is the highest growth period, with projections of annual growth at or above 20%.
- 11.6.39 By 2031-2032, NTO is forecast to near its terminal gate capacity, and growth is therefore constrained. Post-ramp up growth is detailed further in the following section.

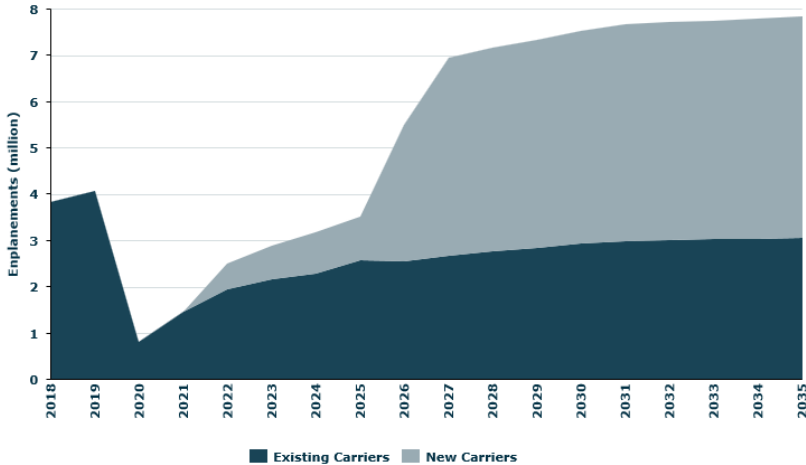
Table 11-7 Sponsor Projected NTO Traffic Growth during Ramp-Up Period

Year	2026	2027	2028	2029	2030	2031	2032 – 2035 (per annum )
Traffic Growth	56.0%	26.5%	3.1%	2.5%	2.4%	2.1%	0.5%

Source: Steer

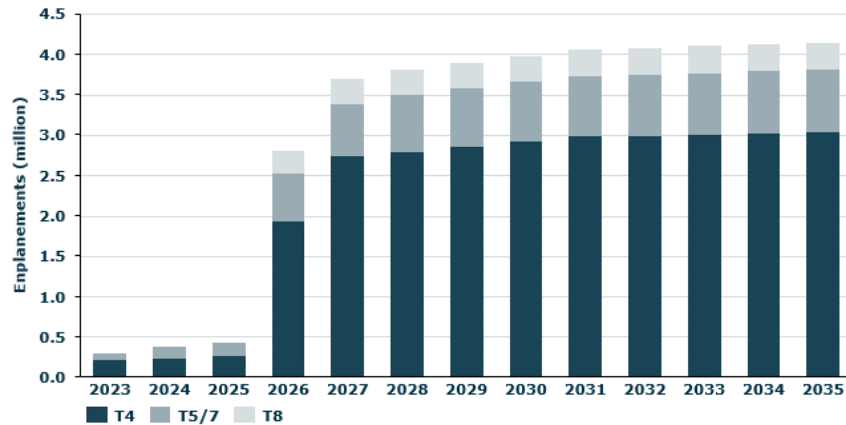
- 11.6.40 The Ramp Up period is forecast to add significant amounts of capacity and thus passenger throughput at NTO. By 2030, 53% of NTO passengers are expected to be from other airlines that have relocated to the terminal.

Figure 11-19 Sponsor NTO PAX Forecast



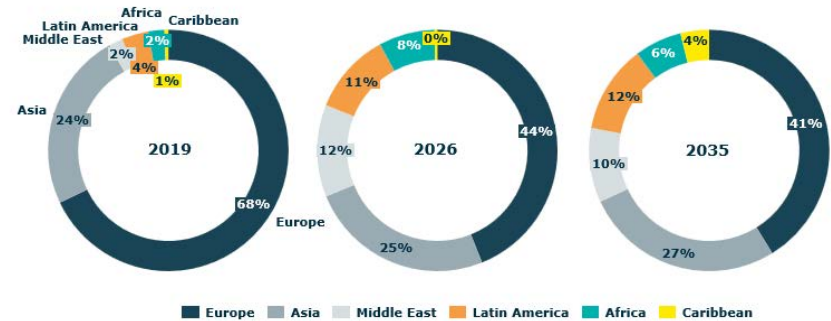
- 11.6.41 The majority of other carriers at NTO are projected to come from T4 as replacement capacity amidst increasing gate pressure at T4 and conversion of three gates for exclusive use by Delta. Between 2022 and 2032, 73% of other carrier passengers at NTO are forecast to come from T4, followed by 19% and 8% for Terminals 5/7 and 8, respectively.

Figure 11-20 PAX Relocated to NTO by Origin Terminal



- 11.6.42 The relocation of multiple airlines to NTO will have a significant impact on the passenger mix at the terminal. In 2019, the Terminal One passenger mix was dominated by the European (68%) and Asian (24%) markets with Norwegian being the top carrier.
- 11.6.43 By 2026, the Middle East and African markets are projected to extend their market share at the terminal, primarily at the expense of Europe. This comes following the relocation of airlines such as Etihad to NTO.
- 11.6.44 Between 2026 and 2032, a further expansion in the market shares of the Caribbean and Asia is forecast following the relocation of Caribbean Airlines and high GDP growth in China and the wider Asia Pacific region plus further relocations.

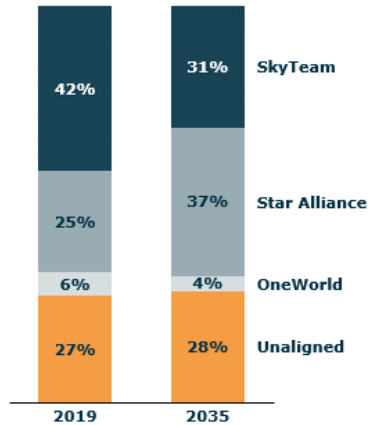
Figure 11-21 Terminal One / NTO Actual and Forecast PAX Mix



Source: Steer

- 11.6.45 As mentioned previously, when taking airline alliances and partnerships into account, Star Alliance carriers do not have a natural 'home' terminal at JFK due to the lack of a United operation. As such, NTO is forecast to become a preferred alternative for Star Alliance carriers who may wish to co-locate together. This would be similar to the current Terminal 2 at LHR. This assumption is evident in the below figure.
- 11.6.46 The respective share of total enplanements by airline alliances in 2019 compared to 2032 is presented in the figure below. Notably, Star Alliance is expected to gain 15% share of total enplanements as it gains more members in NTO, reaching 2.7 million enplanements in 2032 (35% of total NTO enplanements).

**Figure 11-22 Share of Total Enplanements in Terminal One / NTO by Alliance in 2019 vs 2035**



Source: Steer

#### Risks and LTA Conclusions

11.6.47 The LTA notes that there are multiple risks related to the potential relocation of airlines to NTO:

11.6.48 Price sensitivity: some of the existing and new anticipated airlines may be sensitive to the proposed higher aeronautical tariffs, which are higher than those charged at the existing Terminal One. Low-cost carriers may look for alternative options to reduce costs, while airlines mainly operating on short-haul routes may be more price sensitive than airlines operating on long-haul routes. The LTA is not aware of any airline feedback on the NTO pricing. The LTA notes that by the time NTO opens in 2026, other JFK terminals are expected to have increased their aeronautical charges in response to terminal development projects. Additionally, gate capacity is expected to be highly limited at the other terminals, leading to a lack of substantial choice for airlines seeking to reduce costs.

11.6.49 Airline partnerships/strategies: airline partners may prefer to operate out of the same terminal. The LTA understands that some of the airlines prefer a more unified structure of alliances among the terminals. Given the large presence of SkyTeam members at T4 and the fact that Delta Airlines has consolidated all operations in this terminal, some airlines may be reluctant to move operations from T4 to NTO (assuming that there is availability at T4). However, the LTA notes that gate availability at T4 will likely not be an option for all airlines at the terminal. The projected growth of Delta is expected to displace some traffic at T4, and NTO presents the most logical alternative given congestion levels and dominance of major US-based airlines at the other terminals.

- The above risk from airline alliances is partially mitigated by the presence of Air France as existing T1 tenants, as well as the pre-NTP contract with KLM. Airline groups are likely to be a stronger contributing factor to co-location. For NTO, this is primarily driven by Air France-KLM. Additionally, the Phase A forecast does not include a number of other carriers who may wish to move to NTO, such as Emirates which is a large, unaligned carrier currently operating at T4.
- The use of remote boarding gates: The LTA notes that remote boarding gates (i.e., without the use of a jet bridge) remains rare in the United States and is usually reserved for small flights operated by regional jets. Given that the majority of flights at NTO will be operated by widebody aircraft, airlines may be unwilling to relocate to NTO if the only gate capacity available during their flight slot is a hardstand which uses remote boarding. This would also likely be the case at other terminals however.
- Future development plans at other terminals may entice airlines to remain at their existing terminal:

11.6.50 Terminal 4 (JFK IAT): expansion of Concourse A. This redevelopment will add new narrow body capacity to the terminal to satisfy demand from Delta (displaced from Terminal 2).

11.6.51 Terminal 5/7 (JetBlue): 1.2m sq ft extension replacing terminal 7 and the former terminal 6 site, with 9 widebody aircraft gates.

11.6.52 Terminal 8: British Airways and American Airlines recently teamed up with the PANYNJ to redevelop the terminal. Improvements include five additional wide body gates (two new gates and reconfiguration of five narrow body gates into three widebody gates), enhanced baggage systems, new lounges as well as new check-in areas and concessions. The works were completed in December 2022 with relocation of British Airways and Iberia to Terminal 8 followed by Japan Airlines in May 2023.

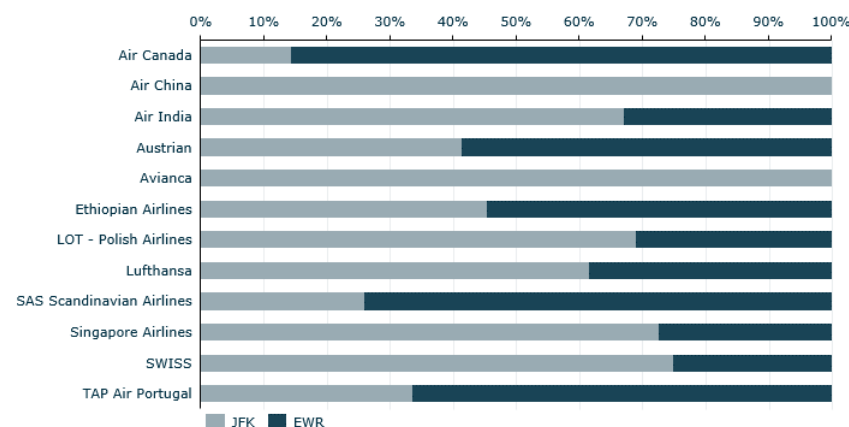
11.6.53 However, Table 11-6 shows that NTO is providing the largest widebody gate capacity growth of all terminals. While short haul traffic has more options at most terminals, long-haul carriers are limited to widebody gates only, which are scarcer. Since NTO will have exclusively widebody gates in Phase A and additions of those gates at other terminals are limited (based on existing plans), the LTA agrees with the Consortium that it will be in the most advantageous position to accommodate long-haul operators constrained or displaced at other terminals, especially in the period between 2026 – 2028 when the capacity at NTO is made available.

11.6.54 Additionally, NTO has seven committed airlines (Air France, Air Serbia, Etihad, LOT Polish, Korean Air and KLM) representing 23% of the traffic forecast, helping to mitigate risk in the ramp-up period.

11.6.55 Another potential area for risk is competition from Newark. In the face of increasing capacity constraints at JFK, some airlines may prefer to increase seat capacity at EWR, in place of looking to NTO for additional space, in order to increase penetration in the New York market while also maintaining existing capacity at JFK. This option is potentially attractive especially for Star Alliance carriers who count on connecting domestic traffic through United's extensive network at EWR. The LTA views competition from EWR as a relatively low risk to the overall traffic picture at NTO due to the different catchment areas served by each airport and the status of JFK as the generally preferred entry point for international traffic to New York. Notably, Scandinavian Airlines System has launched flights to JFK in 2023 – a Star Alliance (moving to SkyTeam) carrier that was formerly located at Newark.

11.6.56 As shown in Figure 11-23 below, most Star Alliance carriers maintain a significant share of their New York operations at EWR, although Air Canada and SAS Scandinavian Airlines recently launched service to JFK. It is noted that due to US Customs preclearance at all major Canadian airports, Air Canada is also able to utilize LaGuardia.

**Figure 11-23 Star Alliance Seat Capacity Distribution JFK vs EWR 2024**



Source: OAG Analyser

11.6.57 The LTA notes that while the risk of competition from EWR exists, EWR is also a constrained airport, especially during peak periods which complicates scheduling of additional capacity. EWR also maintains a unique catchment area from JFK that is more focused on New Jersey. Many international airlines also view JFK as a distinct market from EWR and therefore are unlikely to relinquish any existing slots at JFK.

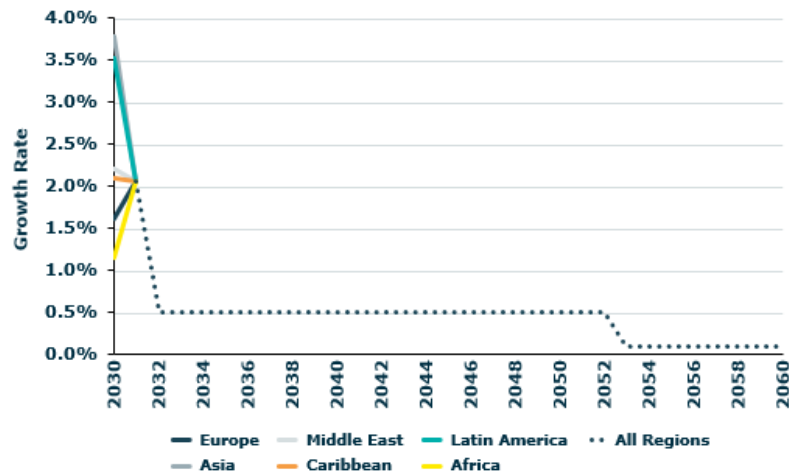
### Post Ramp Up Demand

11.6.58 Following the opening of NTO Phase A as well as other renovations at Terminals 4, 5/7, and 8, the dynamic between terminals should reach a relative equilibrium. Steer has forecast passenger traffic growth at NTO to slow to an annual growth of 0.5% between 2032 and 2052. Beyond this point, annual growth slows to 0.1%. This section focuses on the assumptions behind this longer-term growth.

### Sponsors' Growth Assumptions

11.6.59 The organic airline growth during the ramp up runs into gate constraints by the early 2030s. By 2032, traffic is grown on an assumption of incremental growth in enplanements per gate as the capacity of 430,000 enplanements per gate is reached.

**Figure 11-24 Post Ramp-Up Annual Traffic Growth Rate**



Source: Steer

11.6.60 The LTA understands that the 0.5% growth is assumed possible by means of improvements in technology, overall efficiency gains, and increased passenger loads, and, when the NTO reaches 480,000 enplanements per gate, growth is assumed to be reduced to 0.1% per year. The Sponsor supports this constrained growth with evidence from existing airports with strict annual limitations on flights, such as London Heathrow which has witnessed a long-term growth of 1.3% CAGR between 1999-2019 despite its annual limit on aircraft movements.

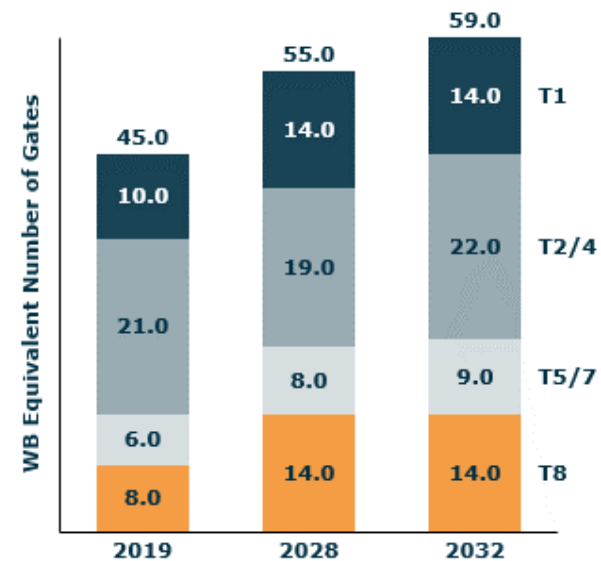
### LTA Opinion on Post Ramp-Up Demand

11.6.61 The Post Ramp-Up demand generally appears reasonable. The LTA notes that other highly gate constrained and/or slot regulated airports such as LHR, LAX, LGW, and DFW have managed to record positive annual growth, and it is expected that this will be the case for NTO.

### Capacity Developments at JFK and other NYC Airports

11.6.62 NTO will face competition from changing dynamics at the other JFK terminals as well as at other New York airports. There are planned capacity expansions in both categories. The graph below shows the JFK terminal expansions which the Sponsors accounted for in their forecast. The graph shows the distribution of gates across the various terminals at the airport, aggregated in terms of widebody equivalents.

**Figure 11-25: Steer assumptions on distribution of gates by Terminal at JFK**



Source: Steer

- 11.6.63 The LTA has researched these projects and they appear to correspond with the Sponsor’s assumptions. It is notable that NTO is by far the largest gate capacity expansion vs. the existing Terminal One situation.
- 11.6.64 The risks to NTO regarding expansions at other New York airports are largely mitigated. As per the sections on Market Overview, the Sponsor does not consider it likely that there will be a significant change in ongoing patterns when it comes to allocation of airlines/operations between the different New York airports. The previous section on Ramp Up demand noted the potential risk of airlines putting additional seat capacity at EWR as JFK becomes increasingly constrained.
- 11.6.65 There are additionally ongoing redevelopment projects at EWR and LGA which may alleviate congestion at these two airports in the long term and provide increased competitiveness with JFK. However, as described in the next two paragraphs, these two projects are focused on narrowbody and Domestic travel, providing only limited risk to NTO operations.
- 11.6.66 Newark’s Terminal One Redevelopment Program has replaced the existing Terminal A building and its 10 gates with a new terminal building among other supporting features. The new facility opened in January 2023, with 33 gates (expandable to 45 in the future). The LTA understands that this new terminal will be oriented towards domestic and narrow body traffic. This is therefore likely to present a low risk to NTO.
- 11.6.67 LaGuardia has undertaken a re-development program that has enhanced capacity at Terminal B, which opened in June 2020. However, as mentioned earlier, LaGuardia is dominated by domestic traffic and limited by its constrained location and perimeter rule. Thus, LaGuardia is not considered a strong competitor in terms of international traffic at NTO.

### 11.7 OVERALL CONCLUSIONS AND RECOMMENDED TRAFFIC SCENARIOS FOR LENDERS

- 11.7.1 In the LTA’s view the traffic forecast for NTO appears reasonable and does not appear to have major downside risks due to the significant pent-up demand at the existing Terminal One, which will need to be catered for by NTO and the relocation of other airlines from across JFK. The lack of additional capacity at other JFK terminals and growing space requirements of Delta and

JetBlue would likely displace some traffic, for which NTO will be the most likely option.

- 11.7.2 Ramp up assumptions made by the Sponsors are reasonable overall. However, by their nature, they rely on a number of assumptions concerning the rate of take up of additional gate capacity and relocation to NTO by airlines. This is mitigated by overall wide-body aircraft gate capacity constraints elsewhere but leaves some residual risk of a more protracted ramp up period. The LTA recommends testing the robustness of the project against this scenario.
- 11.7.3 In the long term, the project may be susceptible to temporary traffic reductions due to external events. The LTA therefore suggests that the following scenarios should be tested by the Lenders:

- **Table 11-8 Suggested Lenders' Scenarios**

Risk	Scenario
Ramp Up Period	
A more protracted take up of terminal capacity by airlines (for cost or other reasons)	<ul style="list-style-type: none"> <li>Consider that carriers would prefer to stay at their existing terminal even as congestion levels rise above the theoretical maximum enplanements per gate of 430,000.</li> <li>As a result, the ramp-up period may be extended by 2-3 years until other carriers get displaced at other terminals.</li> </ul>
Post Ramp Up Period	
Another global shock event in the long term	<ul style="list-style-type: none"> <li>Assume that another global shock hits the aviation industry, whether it be another pandemic or major financial crisis.</li> <li>Assume the shock to take 3-4 years for total recovery.</li> </ul>

Source: Infrata

## 12 PROJECT REVENUE

### ✦ At a glance

- Aeronautical revenue from 2027 starts at a level of a nominal average of \$90 - \$100 (2027) in the entirely new facility which will replace the existing terminal and provide new dedicated international capacity at JFK. From 2026 onwards, CPE is increased by CPI + 1%. The large capital project developments across all terminals at JFK would also be expected to see CPEs increase commensurately across the new facilities.
- Etihad Airways, LOT Polish Airlines, Air France, KLM, Korean Air, EVA Airways and Air Serbia are currently the committed airline users of the new facility, with additional carriers to be added in the future. Certain of the committed airline users will receive a discount in the form of a rebate on their passenger fees (subordinate to debt service).
- The main reasons why higher charges (60 to 95% increase to previous levels seen at the existing Terminal One) may be acceptable to the airlines (apart from a higher level of service) include: (i) higher average ticket prices charged by airlines at JFK compared to other airports and strong demand to operate from/to it. Due to this the impact on the overall air fare would likely be relatively small; (ii) new capacity will likely be added at a similar cost to NTO's, which would be reflected in higher marginal prices for any new capacity at other terminals; (iii) lack of widebody aircraft gate capacity at JFK and more generally in NYC, and little substantial additional capacity is currently envisaged in the medium term in JFK, risks associated with acceptance of higher charges by more price-sensitive carriers have been discussed in the Traffic section of this report; and (iv) the CPE will likely remain competitive given there are development plans currently taking place in other terminals which, once complete, will likely increase their CPE.

### 12.1 AERONAUTICAL REVENUES

12.1.1 The LTA has used 2019 as a reference year, due to the unprecedented nature of the COVID-19 pandemic which has negatively impacted 2020 figures. The scale at which the exogenous event has impacted traffic and revenue varies across each airport and, thus, renders 2020 unsuitable as a reference year. The LTA believes that 2019 is a better representation of pre-pandemic conditions at JFK and benchmark airports, and, as such, is a suitable reference to use in the following analyses of NTO's business plan.

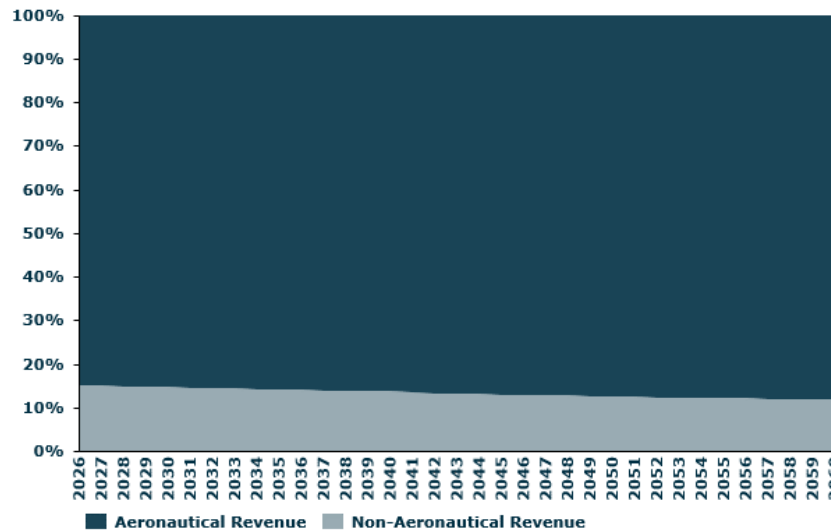
12.1.2 Notably, the historical analyses act as a point of reference against the Existing Terminal 1.

#### Sponsor's Proposal

##### Overview

12.1.3 Aeronautical revenues account for 84% of total revenues from 2026 and grow to 88% by 2060 (these percentages are before revenue sharing with the PANYNJ).

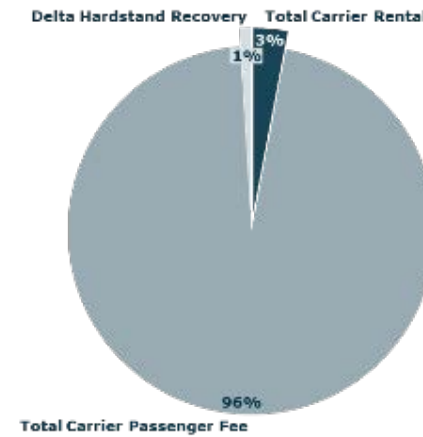
Figure 12-1 Relative shares of Aeronautical vs Non-aeronautical real revenues



Source: Infrata Analysis based on the Financial Model

- 12.1.4 The composition of aeronautical revenue is roughly constant throughout the leasehold and there are no material changes in the relative shares of its components. As illustrated in the figure below, aeronautical revenues are almost solely driven by passenger fees (96% of aeronautical revenues in 2028). The other two streams of revenues, hardstand revenues and carrier rental revenues are minor. This review will focus on the material component of the revenue which is the passenger fee.

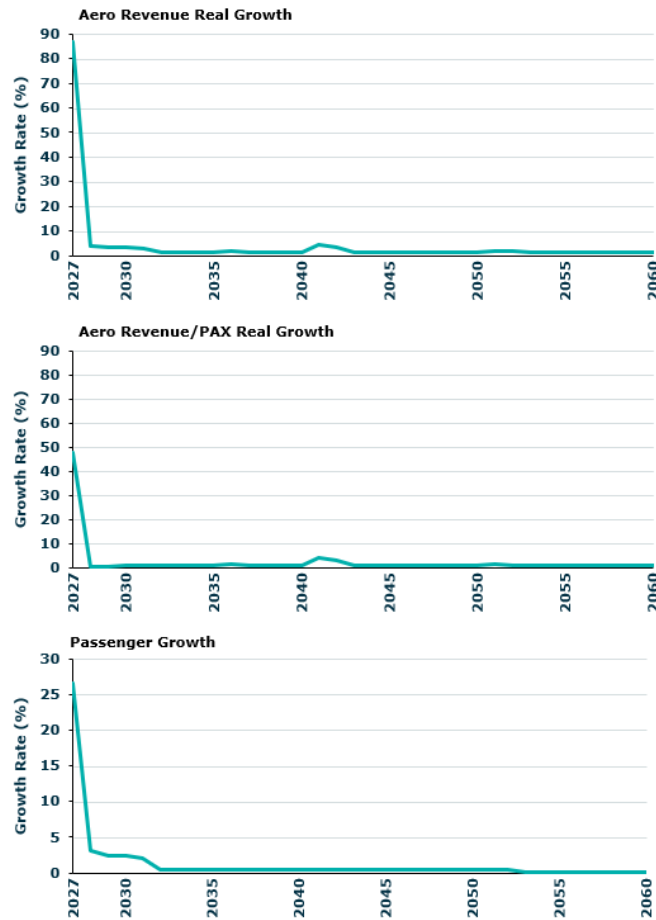
Figure 12-2: Breakdown of Aeronautical Revenues 2028



Source: Infrata Analysis based on the Financial Model

- 12.1.5 CPE is forecast to increase by CPI +1% until the end of the forecast. The dynamics of both total and per passenger revenue projections are presented in the charts below.

**Figure 12-3: Drivers of Aeronautical revenues real growth (\$2018)**



Source: Infrata Analysis based on the Operating Inputs file v3

- 12.1.6 In addition to the above charges accruing to the Lessee, the PANYNJ charges airlines for the use of the airfield, as well as the PANYNJ's passenger facility charge ("PFC"). These revenues are received by the PANYNJ and Terminal One does not benefit from them. Ground handling charges will be levied by the companies providing these services directly to airlines (currently provided and charged for by the Lessee).
- 12.1.7 The Lessee currently uses an 'all-inclusive' approach to charging and its CPE covers all supporting services, including check-in counters, use of baggage systems, aircraft stands and other supporting infrastructure. Customer support staff are also provided by the Lessee within this single charge. This is different from other JFK terminals who charge separate fees for various services to airlines. Ground handling, airline agents/staff such as check in and gate agents, and discretionary private space such as office and lounge space are the only exclusions from T1's all-inclusive charge. The simplified charging mechanism is assumed to continue throughout the forecast period.
- 12.1.8 Within the new concession, Air Serbia Etihad Airways, EVA Air Air France, LOT Polish Airlines, KLM, and Korean Air have signed new long-term AUA that will bind them to paying an agreed passenger fee and terminal rents. These new anchor airlines and pre-NTP contract carriers will benefit from a rebate to their passenger fees that makes their effective rate significantly lower compared to contract airlines. The rebates are subordinated to debt service and PA rents. All the existing Terminal 1 airlines with the exception of the Lufthansa group airlines are assumed to be moving to NTO and are treated as short-term "contract" non-anchor carriers.

#### Sponsor's Forecast Assumptions

- 12.1.9 The following table sets out key assumptions behind the Consortium's aeronautical revenue forecast:

**Table 12-1 Future CPE at NTO**

ASSUMPTION	EXPLANATION
<b>Non-Anchor Tenants</b>	The initial 2026 market rate will be set and then increased at a rate of CPI + 1%.

ASSUMPTION	EXPLANATION
	CPE with non-anchor tenants will be determined upon entering contract with commercial air carriers, reflecting the current market conditions, gate capacity, and other factors.
<b>Anchor Tenants</b>	The initial 2026 market rate will be set and then increased at a rate of CPI + 1%. These tenants will receive a discount in the form of a rebate on their passenger fees (after debt service), reflecting their commitment and current status.

Source: Steer Report, CIM

12.1.10 The CPE increase compared to previous rates at the existing Terminal One is justified by the substantially higher service level offering to airlines and passengers, a high cost of new airport capacity development (in line with the cost recovery model), a strong demand for limited widebody gates at JFK, and, to some extent, by the lack of options for many international airlines at other JFK terminals and NYC airports.

12.1.11 These higher passenger charges (construction costs are usually passed onto consumers) are not expected to inhibit passenger growth according to the sponsors' analysis. The main argument is that airlines are willing to operate in a high-cost environment, hence the acceptance of the higher CPE by anchor airlines, and the price inelasticity of OD passengers in the New York region. Strong demand and lack of wide body gate capacity should act as further support for the acceptance by the market of the CPE increase at NTO.

**Table 12-2 CPE increase - factors contributing to acceptance**

FACTOR	SPONSORS' RATIONALE
Growth in International traffic	Demand has proven to be strong over the last 8 years, as traffic has continued to grow strongly while the CPE was raised significantly.
Quality of Facility	Increases in CPE have been accepted despite lack of investment in the facility. For some airlines, providing access to high quality facilities including check-in areas, lounges and other spaces is core to the passenger experience.
High-Yield Market	Airlines are less likely to withdraw from the market in order to serve substitute markets. Higher tolerance for marginal increases in operating costs given higher air fares that carriers are able to charge to customers.

FACTOR	SPONSORS' RATIONALE
Gate Scarcity in NYC	Gate capacity, in particular for widebody aircraft, is limited in NYC. Lack of available capacity in other terminals or airports gives NTO the opportunity to accommodate this demand at a higher price point.
Capital Recovery at Major US & Global Airports	Any new gate developments at NYC airports will come at a similarly high capital cost and are likely to trigger increases in the CPE at a similar level to NTO's as a result. Capacity expansion at other JFK Terminals (5/7 and 4) are likely to increase CPE charges, placing NTO's proposed increase in line with estimated future charges at JFK terminals. Similar developments at Chicago O'Hare, LAX and San Francisco International follow suit. London Heathrow's developments and subsequent increase in CPE also provide support, as airlines have filled capacity and endured the cost of construction through CPE.

Source: Steer Report

## LTA Analysis and Opinion

### Acceptance of CPE increases and Threat of relocation by T1 carriers

12.1.12 The Sponsors' assumption is that capacity scarcity at JFK will create a "sellers' market" and airlines will be effectively driven to accept the higher charges (for better quality facilities). While anchor airlines will be tied in and offered rebates, non-anchor airlines may be more foot-loose in the face of increasing costs.

12.1.13 Whilst some, more cost-sensitive airlines, may be resistant to paying higher CPEs, overall, considering:

- the strength of the demand to fly into JFK (higher average fares commanded by carriers compared to other airports in NYC);
- shortage of available wide-body aircraft gate options at JFK; and
- higher quality of facilities for passengers,
- the risks of market acceptance are sufficiently mitigated, in the LTA's opinion.

- 12.1.14 Beyond the opening of NTO, the revenue forecast is predicated on an annual increase of CPE by CPI + 1%. Considering the forecast of continuing capacity shortage (see the traffic section of this report) and the strong demand at JFK and the wider NYC market, this should be broadly acceptable to airlines in the longer term. Adjusting charges with inflation is common practice at capital cities and other major airports globally. It is worth mentioning that the CPI+1% approach is also used in the current lease (according to the Consortium).
- 12.1.15 It should be noted that CPEs at the other terminals are not publicly available. The Consortium has assumed that the other JFK terminals will be operated using similar pricing models to NTO (given that they each have construction programs that require repayment) and that their passenger charges will grow with inflation. Steer has provided estimates that provide an expected CPE by terminal
- 12.1.16 However, pricing models may differ amongst JFK terminals and there is a residual risk of them being able to offer more advantageous terms to current Terminal 1 customers (if they have spare capacity). Rates set for non-anchor airlines are variable without any regulatory caps on their value. Further analysis to support this opinion is provided in Steer's report and supplemented in this section below. This includes examples of similar price increases, capacity constraints and development at other JFK terminals and other airports.
- 12.1.17 Competition from other Terminals at JFK and other Airports. As discussed in the traffic section of this report, NTO faces competition from other terminals, and there is a possibility of current T1 airlines moving elsewhere. Non-anchor airline tenants are usually only bound by a short-term terminal use agreement; however, moving would require some form of additional cost. One of the main reasons (apart from the potentially higher level of service and availability of slots) for the airlines to move to NTO is a shortage of widebody gates at other terminals. There are ongoing or potential projects at JFK and EWR that might add widebody gate capacity. Further, other JFK terminals are largely dominated by a US carrier, allowing them to take priority over schedule, operations, branding and customer experience – which may not align with international airlines' value proposition. JFK's capacity developments are further analyzed in the traffic section of this report. The overall conclusion is that much of the currently envisaged capacity will occur at NTO and it is not likely that substantial new capacity will be added at other terminals that would be available for current Terminal 1 carriers to use since

it is reserved for main US airlines and their close partners, including American, JetBlue and Delta.

- 12.1.18 EWR's T1 recently underwent redevelopments in order to increase capacity, with 33 operational gates on opening of the facility in 2023, expandable to 45 in the long-term future. All these gates are designed to serve narrow-body aircraft (although 3 of the initial 33 gates and 6 of the additional 12 (two narrow-body gates per one wide-body gate) should be capable of accommodating widebody aircraft). EWR's T1 will replace the aging Terminal A facility, which is to be demolished. EWR, however, whilst being a competing airport, is not likely to be the first option for many carriers operating at JFK, who are more likely to prefer to stay at JFK where they command higher yields.
- 12.1.19 Steer has made assumptions on the current levels of CPE at other terminals as well as the growth rate of those CPEs i.e. due to expansion projects not actual data, which is commercially sensitive. This makes it difficult to assess how competitive NTO's charges will be in comparison to the other terminals. However, given that both Terminals 5 and 7 are redeveloping and Terminal 4 is receiving capital expenditure to extend the concourse, it is probable that when works are complete, these terminals will likely increase their CPE as well. Therefore, for these reasons, it is assumed that the 2026 CPE for NTO will remain competitive given the redevelopment happening at other terminals. Furthermore, all terminals experience shortage of capacity to various degrees and it is likely that charges to non-anchor airlines have been set to reflect this situation. It should be noted that other terminals include domestic traffic and narrow body gates, which is not competitive with NTO.

#### Airport Charges Benchmarks

- 12.1.20 Since terminal charges are not available, the LTA has compared JFK's airfield charges to other airports. Airfield charges are an important component of an airline's aeronautical fees and contribute to the total cost calculation. Moreover, they can be used to assess the risk of airlines moving to another airport. The airfield CPE at JFK was \$26.39 in 2019, the second highest in the US after Newark. As Newark has even higher airfield charges, the risk of airlines moving from JFK for pricing reasons alone is somewhat reduced.

12.1.21 Other US East Coast airports in Chicago, Boston, Philadelphia, or Washington, for example, have CPEs that are much lower than at NYC airports. There is no direct competition between these airports (other than for connecting traffic which is minor at Terminal 1) who serve their own catchment areas. The LTA is comforted by the fact that EWR is not priced lower than JFK for NYC customers. In addition, it should be noted that JFK has a larger share of international traffic than most benchmarks and JFK Terminal One only has international traffic, which commands generally higher fares and has a greater tolerance for higher airport charges.

Figure 12-4 CPE US Airports



Source: 2019 CAFR, FAA 5100 127 yBenchmarks of Price Increases at Other Airports

12.1.22 Steer have studied London Heathrow Airport ("LHR") to benchmark the effect of increased charges.

12.1.23 The comparative analysis to LHR seems reasonable given that both JFK and LHR are limited to capacity constraints while having a strong demand. As outlined in the traffic section, JFK is restricted to 81 air traffic movements per hour. LHR has a similar type of restriction with 480,000 ATMs p.a. Another similarity is that both LHR and JFK are in the two largest airport systems, facing competition from a number of other local airports.

12.1.24 High-yield airports such as JFK have demand that largely exceeds supply (pent-up demand). LHR has faced capacity constraints for a number of years and, while its charges are much higher than those of Gatwick Airport ("LGW") and other London airports, there has been no evidence of demand leakage from LHR to other airports; slots at Heathrow have reportedly changed hands for tens of millions of pounds. Heathrow is considered a premium go-to airport in the city and airlines command higher air fares as a result (similarly to JFK). Heathrow's passenger charges have been raised substantially over the years as it upgraded its facilities and are expected to continue to increase as the third runway is developed, without much impact on demand growth. As an additional cost consideration due to the reduced activity levels caused by the pandemic, the UK Civil Aviation Authority has proposed to set charges at Heathrow in 2023-2026 to between £25 to £35 per passenger (equivalent to between \$68 and \$95 CPE given 2-way passenger fee), a 37% increase from 2019 levels. This was challenged by airlines as part of the regulatory process, but the decision was upheld by the regulator.

Table 12-3 London 2019 & 2023 Airport Charges Per Passenger

AIRPORT	2019	2024
Heathrow	£22.92	£25.43
Gatwick	£13.74	*
Luton	£13.15	£18.31
Stansted	£12.27	£15.64

Source: UK CAA; \*LGW unavailable for 2023

12.1.25 However, NTO faces additional competition coming from the other terminals, not just airports. While the JFK premium may incentivize airlines to stay in the airport it will not keep them from moving to other domestic dominated terminals with lower charges. In addition, NTO offers branding opportunities not available in other terminals, which are more dominated by anchor airlines (e.g. Delta's expansion in T4; new developments for JetBlue in T5/T6/T7; and the predominance of American Airlines and British Airways in T8).

12.1.26 The LTA has also considered Hong Kong International Airport (“HKG”) example. The airport introduced the ‘Airport Construction Fee’ (“ACF”) in August 2016 in order to finance a third runway. The airport started collecting between HK \$70 and HK \$180 per traveler. The ACF increased the passenger airport charge at HKG by 40%.

12.1.27 Seat capacity of non-Hong Kong based airlines has stagnated since 2014, while growing again slowly in 2016 and 2017, while decreasing again in 2018 and 2019, as shown in the figure below.

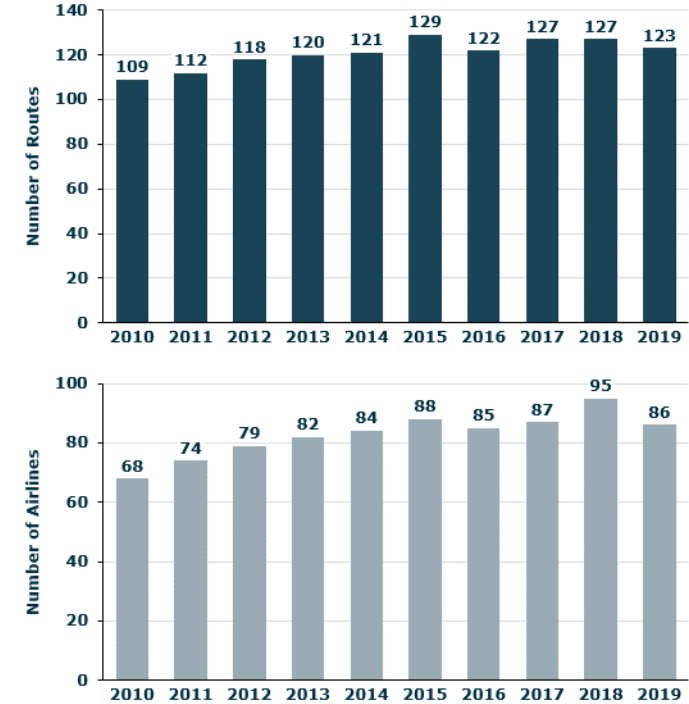
Figure 12-5: HKG Non-Based\* Airlines' seat capacity



Source: OAG

12.1.28 Despite the introduction of the ACF in 2016, new routes have been added in the past few years. While 7 routes were dropped in 2016, which may have been the reason for the seat capacity decline, 5 new ones were introduced a year later. New airlines have also joined HKG airport since 2016; however, there has been an equal decrease in airlines in 2019 due to socioeconomic factors. The reduction of airlines and routes in 2019 was unrelated to the rise in fees and instead due to political protests that shut down the airport for two consecutive days in August.

Figure 12-6: HKG Non-Based number of airlines and routes\*



Source: OAG\*HK Based airlines are excluded: Cathay Airlines & HK Airlines

12.1.29 Therefore, while seat capacity has fallen for airlines that are not based at HKG, new routes have been added and new airlines have not been deterred by the rising passenger fees (in 2017 and 2018). Despite the fall in airlines and routes in 2019 as a result of the political climate, available statistics do not suggest a major impact of the increased fee on growth at HKG airport. One conclusion to be drawn from this for the NTO is that increases in charges in a constrained airport environment do not necessarily constrain airlines’ route development decisions, assuming the demand remains strong.

## 12.2 NON-AERONAUTICAL REVENUES

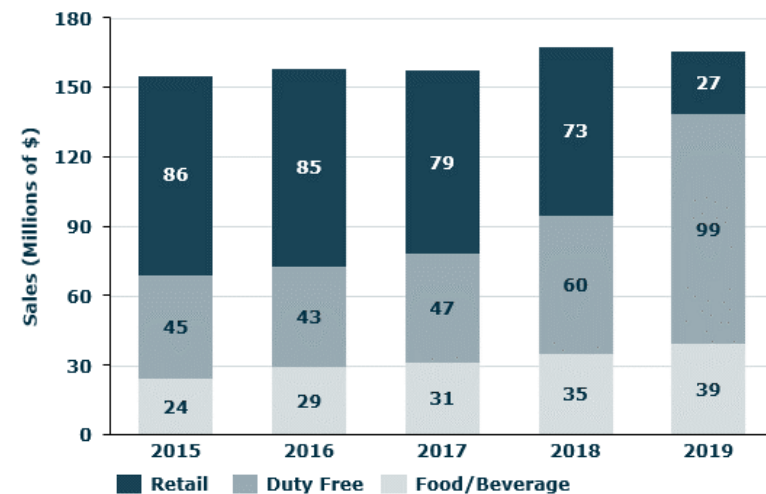
### ✦ At a glance

- JFK Terminal One is currently one of the top performing airport terminals in the US in terms of non-aeronautical revenues. This is achieved despite the current commercial offer being substantially undersized, which is evidenced by a variety of metrics and US airport benchmarks.
- There will be a substantial increase of commercial space provision at The New Terminal One with several themed areas and a wide variety of shops and restaurants.
- The Sponsor's forecast assumes increases in income per enplanement ("IPE") across all categories alongside incremental increases in concession terms (the minimal annual guarantee ("MAG")). The forecast is based on establishing drivers for each revenue category, including the MAG, and passenger growth which are reviewed further within this chapter. In comparison to the CPE, the largest contributor to aeronautical revenue, non-aeronautical IPE is much lower. This reflects the larger contribution of aeronautical versus non-aeronautical revenue to total revenue – a feature typical of most airports around the world.
- Both existing and forecast sales per enplanement are at the top end or above USA airport terminal benchmarks. This reflects the unique high spending international only passenger mix at JFK Terminal One and places JFK Terminal One closer to its international peers in major capital cities. Considering the substantial change of the breadth of the commercial offer at JFK T1 and a near threefold increase of commercial space, the projected growth in income per enplanement is reasonable overall in the LTA's view.
- There are risks associated with the forecast and these mainly relate to the Master Concessionaire's contract terms and commercial performance, as well as potential passenger behavioral differences in a post-pandemic environment which may differ from indicative spending trends witnessed at JFK T1.

### Current Situation

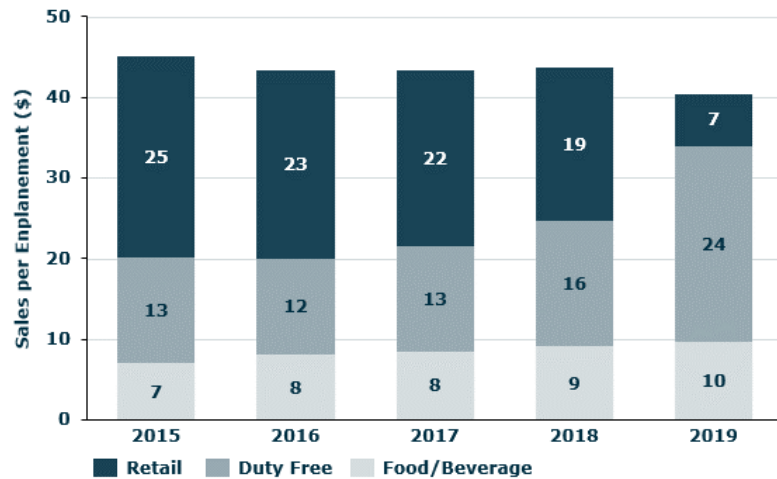
- 12.2.1 The existing JFK Terminal One is currently one of the top performing airport terminals in the US in terms of non-aeronautical revenues. Historical analyses provide a point of reference against the existing Terminal One.
- 12.2.2 Gross sales from the commercial program at Terminal One reached \$165 million in 2019, growing at an average annual rate of 1.6% since 2015 as indicated in the below charts.
- 12.2.3 The terminal's commercial facilities contain 53 concession units. The commercial space of around 47,900 square feet is accounted for by Retail (45%) followed by Food & Beverage (29%) and Duty Free (26%). Currency exchange outlets account for the rest of the space.

Figure 12-7: JFK Terminal 1 Historical Sales



Source: TOGA; Steer Feasibility Report 2019

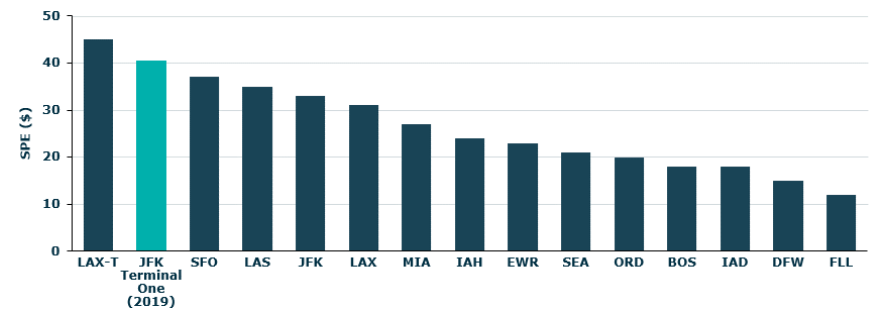
Figure 12-8 JFK Terminal 1 Historical Sales per Enplanement



Source: TOGA; Steer Feasibility Report 2019

- 12.2.4 The Specialty Retail category, presented above within the Retail category, has been declining in terms of sales, partly because of congested facilities and partly because some concessions were moved into a newly opened Duty-Free store front in 2018.
- 12.2.5 In 2019, the terminal registered Sales per Enplaning Passenger ("SPE") (a metric which is double the sales per passenger) of approximately \$40.44, positioning it well ahead of terminal concession sales in other large airports in the country, as depicted below. Part of the reason for Terminal One's high SPE is that this terminal handles international traffic only; as opposed to terminals in other airports, which may also include domestic traffic, as well as changes to duty-free arrangements. This includes the "Cash and Carry" policy where passengers can immediately take possession of their purchase, rather than having goods delivered to the gate. The SPE in the terminal fell 5.4% in 2019, as growth in passengers surpassed growth in revenue (6.5% for passengers, 0.7% for revenue).

Figure 12-9 Average Non-aeronautical terminal Sales per Enplanement (2019)



Source: LTA's analysis and benchmarks, Steer Feasibility Report. Data is for terminal sales only, excluding other revenue.

- 12.2.6 Despite a strong sales performance, the LTA recognizes that space allocated to concessions in Terminal One at present is low compared with terminals in other US major international airports. The space utilization factor ("SUF") in the terminal was estimated to be around 11.7 sqft per thousand enplaned passengers in 2018, which is below the industry average (15-18 sqft per thousand enplaned passengers). In addition, sales per square foot ("SPSF") in Terminal One reached ~\$3,400 in 2019, registering values significantly higher than the US industry average in the Duty Free category, as shown in the table below.

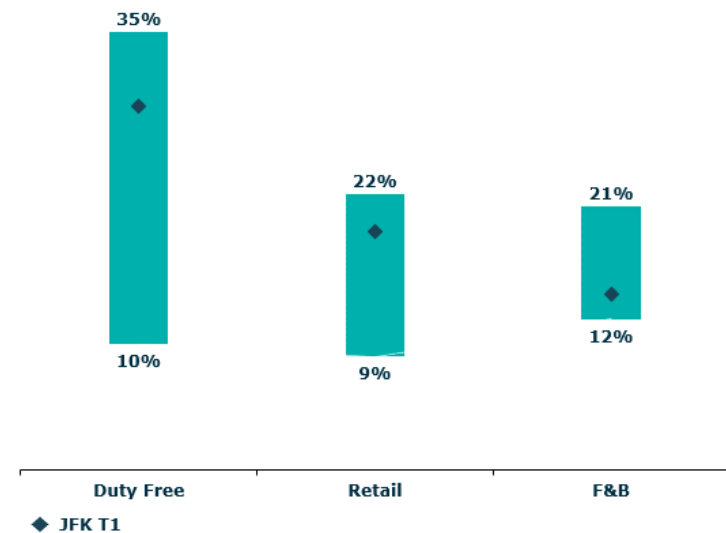
Table 12-4 JFK Terminal One Sales Per Square Foot (\$2019)

CATEGORY	JFK TERMINAL ONE	US INDUSTRY AVERAGE
Food & Beverage	\$2,200	\$1,450 - \$2,300
Duty Free	\$6,175	\$1,500 - \$2,300
Retail	\$2,800	\$2,500 - \$4,200

Source: Steer Feasibility Report, LTA's analysis and benchmarks

- 12.2.7 The relatively high SPSF, particularly for Duty Free, is generally an indicator that the commercial offer is undersized. Expanding the commercial offer in terms of size will likely reduce crowding levels making it more comfortable for passengers to do shopping and pass time in restaurants or cafes and should generally lead to higher sales per enplanement.
- 12.2.8 In relation to rental yield rates (share of revenue by the outlets shared with the airport), Terminal One registered effective rates of approximately 27% for Core Duty Free (29% for all Duty Free), 19% for Retail and 14% for Food & Beverage in 2019.
- 12.2.9 Revenue earned in 2020 was a result of nearly all locations paying monthly instalments of their MAGs through April to December due to the Covid-19 pandemic.
- 12.2.10 The LTA has compared these values with a benchmark derived from a survey to 49 concession managers from US airports. This suggests that the rental yield for duty free is at the higher end of the range typically seen at US airports, whereas it remained within the expected range for Retail and Duty Free, as shown below. The LTA notes, however, that most of the benchmarks in the survey will not have international-only traffic as at JFK Terminal One, which is a relatively unusual situation at US airports. This is reflected in higher sales per enplanement (see the figure below) and allows the terminal operator to command higher rental rates.

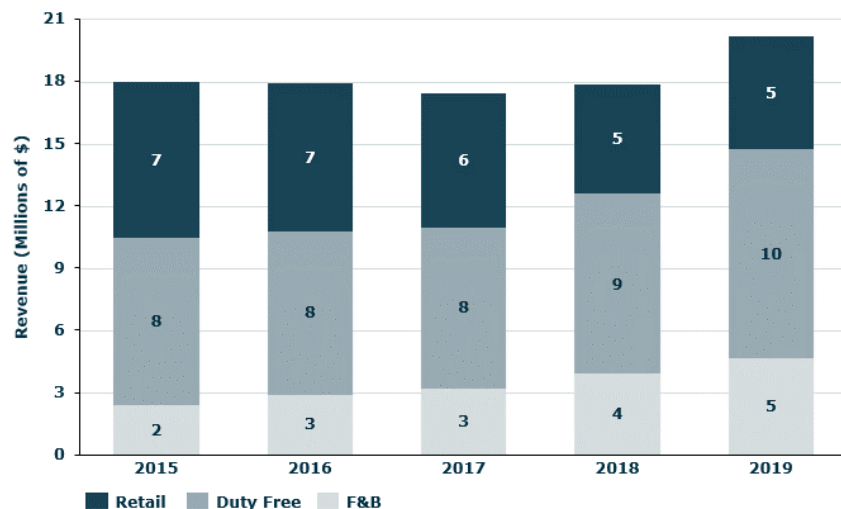
**Figure 12-10 Benchmark Rental Rates by Category (2019)**



Source: LTA's analysis and benchmarks (Airport Cooperative Research Program, survey including 49 concessions at US airports of various sizes)

- 12.2.11 The resulting total non-aeronautical revenue from the core retail program remained relatively stable between 2015 and 2018, with a marginal increase in 2019 in Duty Free and Food and Beverage categories, as shown below. This is reflective of the high utilization of outlets (providing little room for improvement) and relatively stable traffic level in this timeframe.

**Figure: 12-11 Historical Non-Aeronautical Revenue (to the Lessee) at JFK Terminal One**



Source: Steer Feasibility Report

#### Passenger Profile

12.2.12 All passengers at Terminal One are international, with the large majority of them being O&D. In 2019, approximately 65% of all passengers travelled for leisure purposes (either tourism or visiting relatives), 15% travelled for business, and about 20% travelled for educational reasons (e.g. university students).

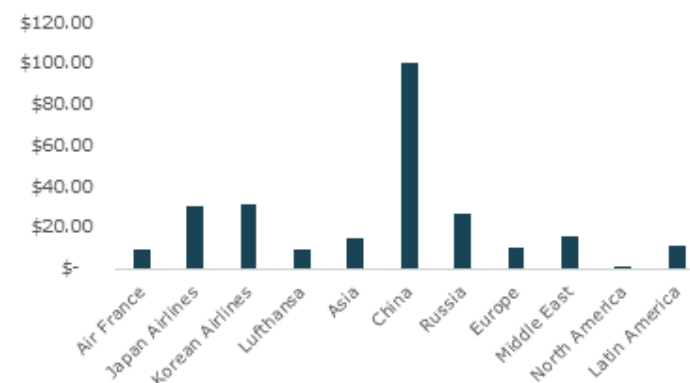
12.2.13 As international travelers tend to arrive earlier – airlines encourage passengers on long haul flights to arrive at check in at least 2 hours before scheduled departure time, dwell time at Terminal One is generally high. According to PANYNJ data, the average dwell time in the terminal has been estimated at 142 minutes, with over 75% of passengers spending more than 2 hours in the terminal building before departing. This compares with between 90 and 120 minutes for the majority of US airports within the LTA’s benchmark data set and places it close to levels below Denver Airport (nearly 2.5 hours) and close to Charlotte Douglas and Dallas Fort Worth Airports. It

is important to note that these airports (DEN, CLT, DFW) are hubs with a high proportion of connecting traffic which increases average dwell time.

12.2.14 The LTA agrees with the Consortium that the customer profile of its passengers coupled with long dwell times account to a large extent for comparatively high sales achieved at Terminal One.

12.2.15 It is worth noting that a survey conducted by the Consortium in 2017 identified that passengers traveling to Asia spend as much as 1.9-2.9x more than trans-Atlantic passengers. According to the US World Tourism Organization, China is the world’s top outbound tourism spender, reaching \$250 billion in 2016. The chart below with selected sales data confirms this trend.

**Figure: 12-12: Average Sales per Passenger in 2016 for selected Duty Free and Retail shops**



Source: TOGA

12.2.16 Traffic to and from Asia is a fast-growing market, according to the Sponsor’s forecast; the Asian market at NTO is expected to grow at a CAGR of 2.3% between 2026 and 2060 demonstrating strong growth. Refer to section 11.4 of this report for further review on the traffic forecast by market region.

12.2.17 Terminal 1 also has a “Cash and Carry” Duty Free, where passengers can immediately take possession of their purchase, rather than having goods delivered to the gate – a common practice in the US. This increases the passenger propensity to spend and thus increases average transaction values.

12.2.18 The spending habits of passengers in a post-pandemic environment could differ from the pre-pandemic context with greater use of technology expected. Steer assumes that NTO will adapt to this changing environment accordingly.

#### Approach to the Forecast

12.2.19 The methodology adopted by the Sponsors’ Advisor (Steer) to forecast non-aeronautical revenues is based on establishing drivers for each category (Concessions, Advertising and Others).

12.2.20 It is understood that the NTO has entered into a master concession management agreement with Unibail-Rodamco-Westfield (“URW”). This will group all Duty Free, Retail and Food and Beverage (“F&B”) activity under one revenue stream ‘Concessions’. The contract terms have been agreed and the concession commences upon the completion of Phase A and expires either 10 years after the completion of Phase B2 or October 31<sup>st</sup>, 2039 – dependent on which occurs earlier.

12.2.21 The revenue mechanism is based on a Minimum Annual Guarantee (“MAG”) per enplanement and is to be adjusted annually in accordance with CPI changes and terminal development phases, as shown in Table 1-5.

**Table 12-5 MAG during each phase of terminal development (\$2019)**

PHASE	MINIMUM ANNUAL GUARANTEE
<b>A</b>	\$10.90 per enplanement
<b>B1</b>	\$12.50 per enplanement
<b>B2</b>	\$14.25 per enplanement

Source: Steer Feasibility Report, Master Concession Development Agreement

12.2.22 The MAG will be equally shared between PANYNJ and NTO. The proportion retained by NTO will later be distributed between itself and URW as per the tiered schedule agreed between the two parties, as presented in Table 12-6.

**Table 12-6 Tiered Revenue Sharing Schedule (\$2019)**

PHASE	REVENUE PER ENPLANEMENT	% SHARE TO NTO	% SHARE TO URW
<b>A</b>	\$0.00 - \$13.39	97.5%	2.5%
	\$13.40 - \$14.15	40.0%	60.0%
	\$14.16 - \$14.53	25.0%	75.0%
	>\$14.53	20.0%	80.0%
<b>B1</b>	\$0.00 - \$15.35	97.5%	2.5%
	\$15.36 - \$16.23	40.0%	60.0%
	\$16.24 - \$16.67	25.0%	75.0%
	>\$16.67	20.0%	80.0%
<b>B2</b>	\$0.00 - \$17.50	97.5%	2.5%
	\$17.51 - \$18.50	40.0%	60.0%
	\$18.51 - \$19.00	25.0%	75.0%
	>\$19.00	20.0%	80.0%

Source: Steer Feasibility Report, Master Concession Developer Agreement

12.2.23 The concession revenue forecast only assumes Phase A is achieved. As such, the Sponsors’ passenger forecast is applied to the \$10.90 per-enplanement MAG to project its baseline concession revenues. There is an opportunity for the revenue achieved to be greater than the MAG, in which case actuals may be higher than expected.

12.2.24 As of 2020, advertising activity at all PANYNJ airports is under a single concessionaire, Clear Channel Advertising (“CCA”). The concession has 12-year term with the possibility of a 5-year extension. 72% of CCA’s gross revenue is paid to the PANYNJ of which 50% is attributed to the terminal operator.

12.2.25 This structure incentivizes a constant improvement of advertising facilities on behalf of the terminal operator. The Sponsors' Advisor has assumed revenue growth from advertising activity at the NTO to increase at a 90% elasticity to passenger growth – which Steer has tested against industry benchmarks. To reflect organic growth, sales are expected to increase at CPI+1%.

12.2.26 Other non-aeronautical revenue streams to the operator include utility charges and other similar services. NTO is assumed to generate a similar per enplanement revenue as the current terminal.

12.2.27 With regard to the Master Concessionaire agreement, on May 20, URW Airports issued its second prime operator RFP with one package for the foodhall tender and one package for the travel essentials tender. Additionally, URW Airports expects to launch its tender for specialty retail by early July. NTO is working with URW Airports to target contract award to all concession tenants by the end of 2024.

#### Commercial Concept Layout

12.2.28 In order to address the current shortfall of space and meet future traffic levels, the plan is to expand the commercial space from 47,900 sqft to at least 121,000 – excluding storage space. Although the current design (Table 12-7) exceeds this minimum target, the front-of-house space is to be mainly distributed amongst duty free (23%), retail (37%) and F&B (37%).

12.2.29 Phase B1 and B2 layout plans are yet to be finalized; however, they are expected to be similar to Phase A's.

**Table 12-7: Space Allocation Proposed for JFK NTO (Phase A)**

	EXISTING AREA	EXISTING SHARE	PLANNED AREA	PLANNED SHARE
Retail	13,700	29%	45,000	37%
Duty Free	12,400	26%	28,000	23%
F&B	21,800	45%	45,000	37%
Concession Seating	-	-	3,000	2%

	EXISTING AREA	EXISTING SHARE	PLANNED AREA	PLANNED SHARE
Total	47,900	100%	121,000	100%

*Source: Steer Report, URW Master Concession Agreement. F&B includes ghost kitchen. Storage space is not included.*

12.2.30 The Sponsors developed a commercial concept which includes Duty Free, a Retail 'district', Foodcourt, landscaping and a flexible stage area with dwelling and common seating areas. The commercial program is envisioned to maximize the attention of passengers in the central areas, with large volumes of attractive brands. The figure below presents an overview of the schematic layout of level 2 of the Phase A commercial program.

12.2.31 A 'call-to-gate' strategy is expected to be used at NTO, gate assignments are revealed only once an aircraft is ready for boarding, which will, transitively, increase passenger dwell time in the core retail area and improve space productivity. As such, NTO's commercial offer in the gate holding area will be relatively smaller than at other areas.

Figure 12-13: Proposed Commercial Concept



Source: Steer Feasibility Report

12.2.32 Steer's forecasts estimate an increase in Revenue or Income per Enplanement ("IPE") in real terms from \$5.73 in 2026 to around \$8.75 in 2060 driven by a gradual increase in the spend rate. This will position NTO in a similar range as international hubs around the world. The LTA notes positively that total non-aeronautical revenue is forecast to grow at 2.6% CAGR between 2026 and 2060, .

Table 12-8: Changes in IPE Forecasted by the Sponsors\* (\$2023)

CATEGORY	2026	2035	2060	CAGR (2026-2060)
Concessions	\$4.29	\$6.13	\$6.09	1.0%
Advertising	\$0.82	\$1.37	\$1.73	2.2%

CATEGORY	2026	2035	2060	CAGR (2026-2060)
Other	\$0.63	\$0.93	\$0.93	1.2%
Total	\$5.73	\$8.43	\$8.75	1.3%

Source: Infrata Analysis

\*Figures are net of PANYNJ deductions

12.2.33 The rationale for the proposed changes is summarized in the table below. Analysis by the LTA is provided further in this section.

Table 12-9: Rationale behind IPE increase by Category

CATEGORY	CONSORTIUM'S PROPOSAL
Concessions	The new, right-sized and best-in-class commercial program is assumed to propagate an increase in average spend rate. The current Terminal has a high sales per square foot, reflecting an undersized commercial program which is unable to optimize sales production due to an under provision of commercial space versus passenger demand. An enlarged commercial area is envisioned to allow for greater variety and appeal of concessions and a reduction in the "crowding effect" which can discourage passenger spend. Concession revenue is conservatively based on the MAG (see Table 1-5).
Advertising	The new design and construction of NTO is expected to provide potential for a significant increase in premium advertising space, as seen in the Tom Bradley International Terminal in LAX. Revenue growth in this category has been forecast using 90% elasticity to passenger growth over time, with sales escalating annually at CPI+1%.
Other	The Terminal operator generates a minimal revenue stream from charging users for usage of metered utilities and other similar services. NTO is not assumed to generate any margin on this revenue, and it has been conservatively capped at current levels on a per enplanement basis.

Source: Steer Feasibility Report

## LTA Analysis and Opinion

### Consortium Approach

- 12.2.34 In the LTA's view, the methodology follows generally accepted industry standards and is reasonable. Further metrics could be utilized within the revenue drivers to substantiate the forecast and provide comfort; however, the basis of the forecast is a contractual guarantee. The LTA understands that the design approach and final space allocation are in the process of finalization, and a more thorough analyses will be undertaken, leading to the final layout.

### Commercial Plan

- 12.2.35 In the LTA's opinion, the proposed space development plan is sensible and logical and in line with expected requirements for such a terminal and will represent a considerable improvement over the existing Terminal 1 offering.
- 12.2.36 Estimation of the required additional space has been derived considering commercial programs at comparable airport terminals. Further, the LTA notes positively that post-pandemic passenger preferences such as increased use in technology will be accommodated in the commercial plans.
- 12.2.37 In the LTA's opinion, the retail concept planned for the future facility is generally consistent with the forecast changes in SPEs (and transitively IPEs) per category.

### Revenue Drivers Analysis

- 12.2.38 The following section details the LTA's opinion on the use of revenue drivers in the forecast for each category.
- 12.2.39 Concession revenue is driven conservatively based on the Phase A MAG. Whilst an appropriate driver for revenue, the LTA understands that other, more detailed and insightful metrics such as capture rate, average transaction value, and rental rate were not considered. It is noted that these were used in Steer's original bottom up methodology and are now superseded following the MAG guarantee.

- 12.2.40 The concession revenue forecast indirectly takes into account average spend rate, as it is assumed to heighten with the increase in commercial space and enhancement of the commercial program. This is an appropriate assumption, as there are high sales per square foot observed in the existing, undersized Terminal 1. The assumption that sales will be optimized with improvements in space provision is then warranted, as more commercial space will be provided to meet passenger demand.

- 12.2.41 Advertising revenue is driven by passenger growth, at an elasticity of 90%. It is not clear to the LTA how this figure was derived and whether robust statistical tests have taken place. The LTA finds the LAX Tom Bradley International terminal as an appropriate and comparable benchmark to support the assumption that there will be significant increase in premium advertising space. However, there is a small risk that the resulting elasticity to passenger growth of this revenue stream is more insensitive.

- 12.2.42 The "Other" category revenue is driven on a per enplanement basis and is conservatively capped at current levels. The LTA finds this to be an appropriate approach.

**Table 12-10: LTA Opinion on Revenue Drivers**

DRIVER	LTA OPINION
MAG	The MAG has been set appropriately, at >75% of expected commercial revenue. Its use as a revenue driver is conservative and appropriate. The Phase A MAG (\$10.90) is assumed to be achievable by URW given that they have previously projected a revenue per enplanement of \$17.70 in a year with a full commercial program (75% of which is \$13.30). As noted earlier, URW is progressing with Prime Operator RFPs and is targeting contract award to all concession tenants by the end of 2024.
Space Provision	The assumption that increased commercial space provision will increase spend per passenger, as well as premium advertising space, is reasonable. Steer reports that the existing Terminal 1 has a high spend per square foot and is on the lower end of square feet per thousand enplanements in US benchmarks, which substantiates the need to increase the size of the commercial offering and the subsequent assumptions made.

DRIVER	LTA OPINION
<b>Passenger Growth</b>	Passenger growth is used to derive the forecast for the "Other Non-Aero" category. This is an appropriate assumption as it the revenue is derived from charging users for usage of metered utilities and other such services.

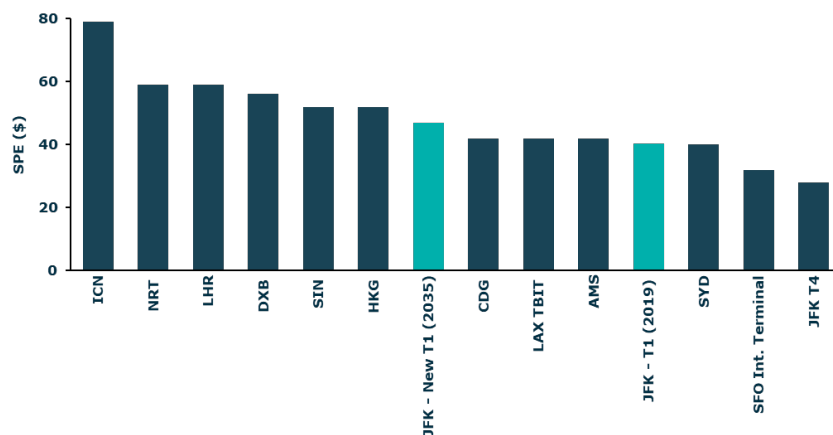
Source: LTA's analysis and benchmarks

- 12.2.43 The LTA notes that CPI is used to grow the revenue drivers and it is potentially impacted by economic fluctuations.

#### Resulting SPE

- 12.2.44 The expanded commercial space is forecasted to place NTO ahead of other US airports' current operation and in the range of global leading airports for sales per enplaned passengers. The figure below benchmarks the resulting increase in SPE with other major hubs.

Figure 12-14 Benchmark Sales per Enplanement



Source: LTA Benchmarks and Analysis.

- 12.2.45 Considering a large proportion of foreign travelers and an all-international mix of passengers, comparisons with major international airports are appropriate and they place JFK T1's SPEs in line or lower than major international hubs.

- 12.2.46 The LTA has been informed that the concessions are not forecasted by category given that the financial model is based on a contractual guarantee; it will be URW's responsibility to develop a program that optimizes revenue between the various concession categories.

- 12.2.47 The share of passengers travelling to/from Asia is predicted to increase, which should have a positive impact on the expected sales per passenger, given that Trans-Pacific travelers spend significantly higher amounts at JFK T1's commercial facilities.

- 12.2.48 Considering the near threefold increase of commercial space provision at the NTO, the increase in SPEs is considered reasonable overall

- 12.2.49 Some Risks Associated with the Non-aeronautical Revenue Forecast are analyzed below

#### Concession Agreement:

- 12.2.50 Under a master concession agreement, a possible disadvantage is that the operator is leveraged to a single relationship and does not have direct relationships with the individual brand. This means that if a brand is not performing well, the airport cannot impact the commercial mix and must rely on the master concessionaire to apply the necessary changes. Further, this type of agreement may give rise to lack of competition, transparency, and innovation within the concessions, which may inhibit future commercial growth in the terminal.

- 12.2.51 The LTA notes that this risk is largely mitigated with the master concessionaire agreement with URW, a global developer and operator of flagship retail assets, which provides a MAG of over 75% of expected commercial revenue, and a tiered revenue sharing incentive structure which reduces risks of delivery of concession program revenue. Further, it is noted that high quality concessions and "Cash and Carry" Duty Free are also planned to capture more international passengers with greater propensity to spend.

#### General trend in retail:

- 12.2.52 An increasing use of e-commerce is changing the landscape of retailing affecting activities at airports. As e-commerce gains popularity, more and more passengers will tend to purchase items online rather than in shops. This was particularly evident during the COVID-19 pandemic, whereby there has been and further desire to increase the usage of technology. The NTO is not scheduled to open until 2026, which provides for a reasonable period of recovery in terms of pandemic-influenced behaviors.
- 12.2.53 Beyond the challenges, e-commerce also presents the opportunity for airports to provide a highly personalized retail experience by maximizing passenger data (e.g. trip purpose, weather, destination etc.). Further, passenger data collected through technology can be leveraged to inform targeted advertising through mobile devices to drive additional sales. Moreover, items pre-ordered by passengers, purchased at the airport, or even on the plane could be delivered to where the shopper wants (e.g. their hotel, home, a specific store) or collected before their flight or upon landing.
- 12.2.54 Overall, the non-aeronautical revenue uplifts projected for JFK NTO are reasonable and substantiated. Considering the substantial change of the breadth of the commercial offer at NTO and a near threefold increase of commercial space, the projected growth in sales per enplanement is reasonable overall in the LTA's view.

## APPENDICES

### APPENDIX A – PHASE B1 AND B2

#### Overview

This Appendix sets out an overview of the Phase B1 and B2 development proposal of NTO.

The purpose of this Appendix is to (i) provide a high-level overview of the potential Phase B1 and B2 builds; and (ii) provide LTA commentary on the sufficiency of the current cost estimates and proposed schedules based on the current development plans for these phases.

#### Phase B1 and B2

As noted in sections 2.2 and 4.3 the Lease Agreement contains a requirement to develop Phase B1 and B2 as follows:

**Table A-1: Phase B1 and B2 Lease Agreement Requirement**

PHASE	SCOPE	NTP DATE	SCHEDULED COMPLETION DATE***
Phase B1	<p>Expansion of southwest corner of Headhouse and construction of the west concourse</p> <p>4 Wide-body gates (subject to Two-Gate Toggle)</p> <p>Conversion of Phase A temporary gate to permanent gate</p> <p>1 Narrow-body gate</p> <p>(521,158 sqft terminal extension)</p>	Phase A DBO, if Investment Grade Rating for the debt to fund work is obtained; or within 9 months after the Phase B1 Traffic Trigger*	Phase B1 Commencement Date + 23months

PHASE	SCOPE	NTP DATE	SCHEDULED COMPLETION DATE***
Phase B2	<p>Expansion of west concourse</p> <p>4 Wide-body gates (6 if Two-Gate Toggle applied to Phase B1)</p> <p>(192,226 sqft terminal extension)</p>	Phase B1 DBO, if Investment Grade Rating for the debt to fund work obtained; or within 9 months of the Phase B2 Traffic Trigger**	Phase B2 Commencement Date + 18 months

#### Notes:

\*Phase B1 Traffic Trigger date is the earlier of (i) the PANYNJ notifying NTO that the number of Airport International Enplanements during the preceding 6 months period equals or exceeds the number of Airport International Enplanements for the corresponding 6-month period in 2019; and (ii) the number of Enplanements at the New Terminal Facilities equals or exceeds 4,500,000 for either (a) the preceding 12-month period; or (b) on a forecast basis based on succeeding 12-month scheduled minimum usage under the Airline Use Agreements. If Phase B1 NTP has not occurred within 9 months of the Phase B1 Traffic Trigger Date the PANYNJ may accelerate the construction of 3 additional contact gates at T4.

\*\*Phase B2 Traffic Trigger date is the earlier of (i) Airport International Enplanements equals or exceeds, for the preceding 12-months, (a) 20,000,000 if T4 Additional Gates have been constructed; or (b) 21,000,000 without the construction of the T4 Additional Gates; and (ii) the date on which the number of Enplanements at the New Terminal Facilities, for the preceding 12-months, equals or exceeds, (a) 6,000,000, if the Two-Gate Toggle was exercised in Phase B1; or (b) 6,700,000, if the Two-Gate Toggle was not exercised.

\*\*\* If Phase B1 and B2 are development simultaneously their Scheduled Completion Date shall be Commencement Date + 28 months

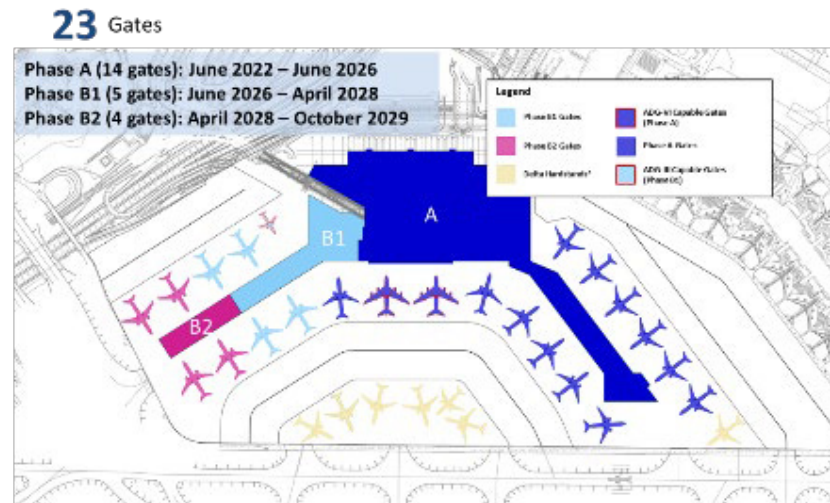
Source: Lease Agreement

Under the Lease Agreement Lessee Events of Defaults specifically associated with the development of Phase B1 and B2 include:

- Failure to issue the Phase B1 or B2 NTP within 90 days after receipt of Investment Grade Rating, or with 9 months of the applicable Phase Traffic Trigger NTP Date (which is itself 9 months after the Phase Traffic Trigger Date), or 21 months in the case of Phase B1 if the PANYNJ has exercised the T4 Additional Gates Election
- Non-achievement of the applicable Phase C

- completion by the Outside Opening Date, which is Scheduled Completion Date + 18 months with Liquidated Damages accrued from the first anniversary of the Scheduled Completion Date

**Figure A-1: Construction Phases**

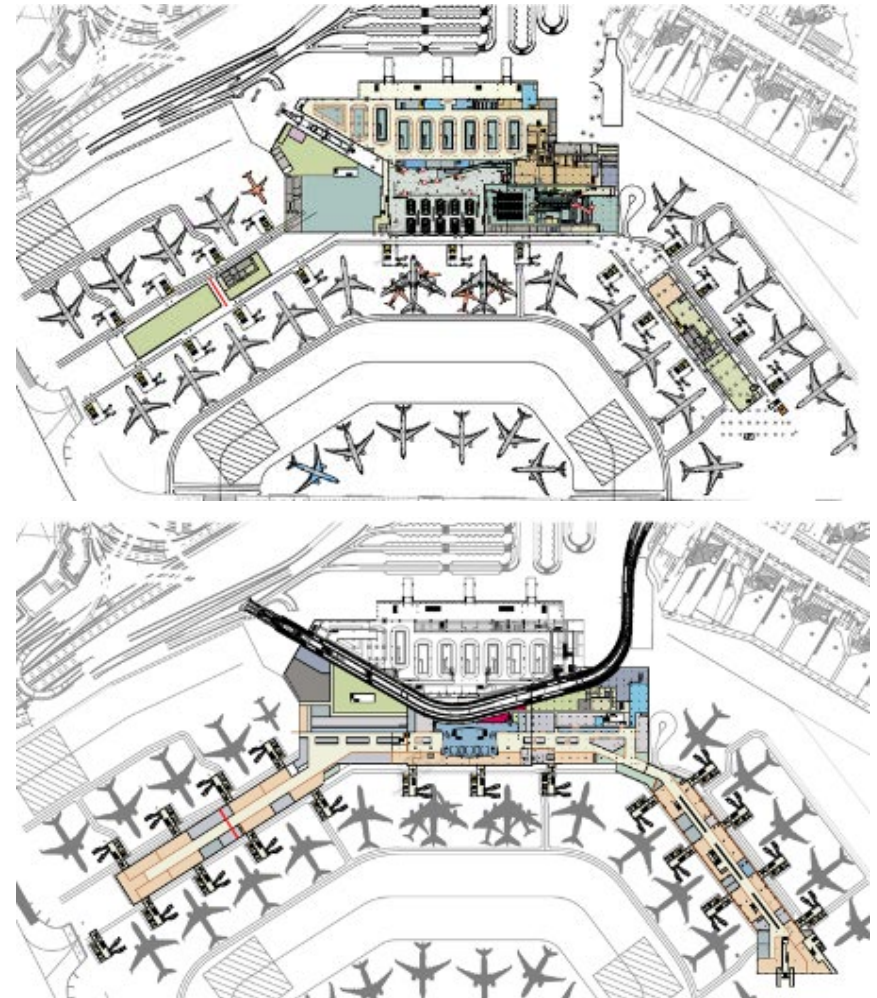


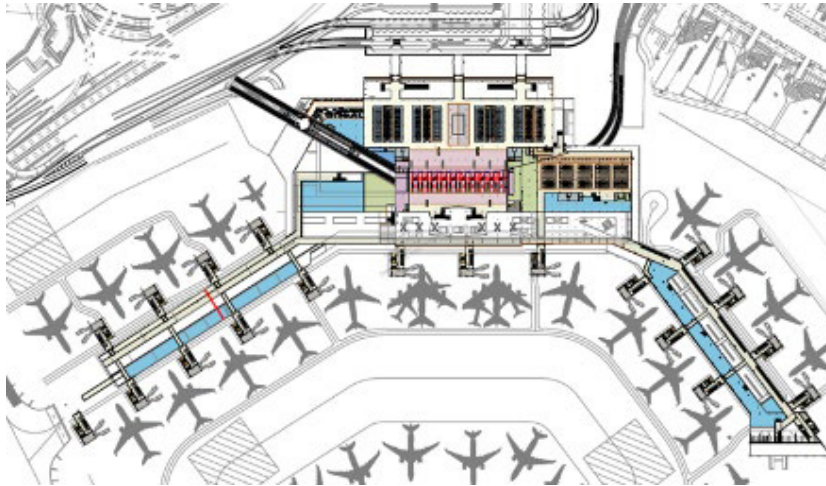
Source: NTO

## Facility Planning

As noted in section 8.3 of the Due Diligence Report a DDFS has been developed for the years 2031, 2037 and 2050. The DDFS for 2037 and 2050 were used as the assessment of the terminal needs under Phase B1 and B2, both in terms of terminal floor area and passenger processing requirements. Based on these needs' schematic designs have been developed for the expansion of the Phase A terminal in Phase B1 and B2 as shown in the figures below.

**Figure A-2: Overall Terminal Development: Arrivals Level, Concourse Level and Departures Level**





Source: NTO

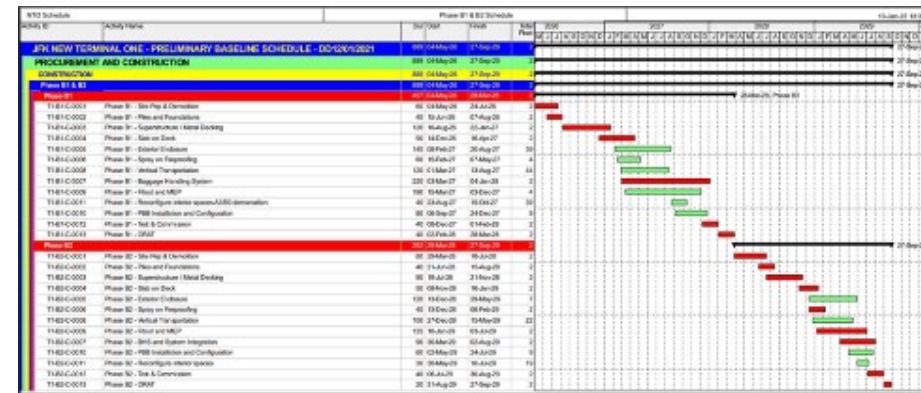
The resulting expansion areas for Phase B1 and B2 have been determined as 521,158 sqft and 192,226 sqft respectively. The main areas of expansion within the terminal relate to gate holdrooms, general circulation, concession areas, MEP spaces and admin and support areas with expansion to the baggage handling hall during Phase B1. Phase B1 also includes the provision of 2 additional baggage reclaim belts within the baggage claim area. Excluding these 2 belts and some adjustments to the BHS to handle the larger volumes of baggage no additional equipment (check-in counters / kiosks / security lanes etc) are envisaged above those provided in Phase A.

## Schedule Development

A high-level schedule has been developed by the NTO CPD team to assist in the negotiations of appropriate deadlines under the Lease Agreement of the Scheduled Completion Dates for Phase B1 and B2.

The schedule developed assumes a continuous build, i.e. Phase B1 commenced after Phase A DBO and Phase B2 immediately after Phase B1 DBO. The schedule, as outlined assumes that Phase B1 design and permitting occurs prior to Phase A DBO with a similar assumption in relation to Phase B2 design and permitting activities.

Figure A-3: Phase B1 and B2 schedule



Source: NTO

It is noted that the overall duration of Phase B1 is 23 months and for Phase B2 is 18 months.

The schedule durations have been developed on the basis of the following:

- Baggage Handling System based on CPD team internal discussions and review and cross checked with Vanderlande.
- Unobstructed Construction Site for Pile Operations
- Durations for Piles are based on 2 rigs, 10 piles per rig per day
- Durations for Superstructure are based on 3 cranes, 10 picks per crane per day
- Fit-out and MEP durations are based on square footage of the building and were compared to durations for the Concourses at LGA Terminal B. A 70% factor was applied to the durations when compared to LGA to account for added complexity of operations at LGA Terminal B.
- Passenger Boarding Bridge durations are based on installation rates compared to LGA Terminal B. Since there are few gates for Phase B1 and B2, contingency was added to account for minor apron work that may need to be completed after the configuration of the gates.

It is understood that Rough Order of Magnitude ("ROM") take-offs were used to determine the quantities for piles and superstructure works.

It is envisaged that the critical path for B1 will start with Substructures and then run through Steel Erection and Metal Decking through Slab-On-Deck followed by Spray on Fireproofing and the Baggage Handling System to Testing and Commissioning and ORAT.

Phase B2's critical path starts with the Substructures and then flows through Steel Erection and Metal Decking through Slab-on-Deck followed by Spray on Fireproofing and Fit-out and MEP Installation to BHS and System Integration, Testing and Commissioning and ORAT.

## CapEx

A high-level CapEx estimate for Phase B1 and B2 has been prepared utilizing the 2020 Faithful and Gould ("F+G") estimate adjusted to reflect (i) 2022 market prices, by tracking the Phase A price increase; and (ii) the current scope. The following provides an overview of the breakdown provided to the LTA.

**Table A-2: Phase B1 and B2 CapEx Breakdown**

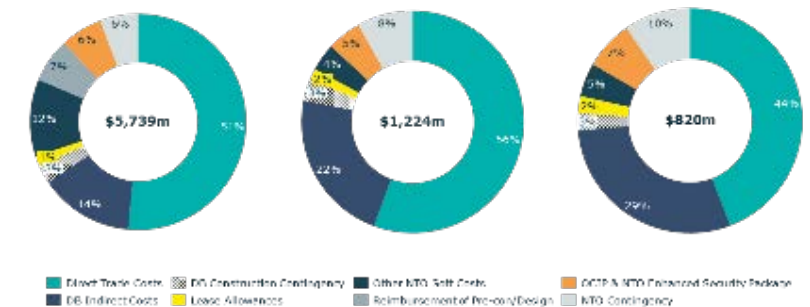
ITEM	PHASE B1 COSTS (\$)	PHASE B2 COSTS (\$)
<b>Direct Trade Cost (inc. onsite utilities)</b>	681,433,498	362,153,211
<b>Design Allowance</b>	29,376,145	23,319,945
<b>Construction Contingency</b>	39,264,647	20,738,328
<b>CM Fee</b>	39,233,001	26,645,753
<b>Indirect Costs</b>	205,212,935	191,061,505
<b>D&amp;C CONTRACT SUM</b>	<b>994,520,227</b>	<b>623,918,742</b>
<b>Owner Contingency</b>	99,239,756	78,379,798
<b>PANYNJ Change Order/ Reserve Amount</b>	10,000,000	10,000,000
<b>Other Costs</b>	119,774,885	107,517,103
<b>TOTAL D&amp;C COSTS</b>	<b>1,223,534,867</b>	<b>819,815,642</b>

Source: NTO

It is noted that the Lease Agreement contains requirements in relation to allowances associated with PANYNJ Change Orders and Art & Branding for Phase B1 and B2. It is understood that no other allowances are anticipated within the Lease Agreement for these Phases.

The following figures provide an overview of the split of the costs, for comparison purposes the split is also provided for Phase A.

**Figure A-4: D&C Cost Split – Phase A, B1 and B2**



Source: NTO

In order to determine the reasonableness of the cost estimates at this stage for the Phase B1 and B2 works the LTA has undertaken a comparison with both the Phase A works and also other projects within the LTA benchmark range. When considering the direct costs of the terminal works the following rates have been determined:

**Table A-3: Relative Price – Terminal Direct Costs \$/sqft**

PHASE	\$/SQFT
<b>Phase A</b>	1,629
<b>Phase B1</b>	1,083
<b>Phase B2</b>	1,579

Source: LTA Analysis

## LTA Opinion

The LTA notes that the schematic planning for Phase B1 and B2 has been undertaken in line with international best practices and follows the guidelines as set by the PANYNJ.

The LTA considers the approach adopted to determine to overall floor area required, and the level of planning undertaken to date, to be in line with expectations, and is to a sufficient level of detail, to provide comfort in the reasonableness of the quantities produced to provide a reasonable assessment of schedule needs and to estimate CapEx.

The timelines within the schedule developed by NTO for Phases B1 and B2 are in line with the deadlines as set in the Lease Agreement.

The LTA notes that both the schedule for Phase B1 and B2 assumes the design and permitting works for the Phase are completed in advance of the schedule start date, i.e. during Phase A for Phase B1 and in Phase B1 for Phase B2. The LTA notes that the CapEx reviewed for Phase A includes Phase B1 design costs at Developer level. It is noted that whilst the Phase B2 design will be undertaken prior to Phase B1 DBO these costs are considered within the Phase B2 CapEx reviewed.

It is noted that the schedule has primarily been based either on (i) rates as provided for Phase A; or (ii) team members' experience of similar works at LaGuardia. The LTA considers this a reasonable assumption for the development of the schedule at this stage and considers that this should provide a level of resilience noting that the works on Phase B1 and B2 are of a simpler construction than that of Phase A with "lighter" systems / MEP installation. It is noted however that this is offset in part by the potential for greater, relative, complexity in relation to (i) logistics, due to the smaller nature of the sites available; (ii) greater interfaces with passengers and airport operations; (iii) construction of Phase B2 in an airside environment; and (iv) potential for liquefiable soils.

The LTA notes positively that similar to Phase A both Phase B1 and B2 have an 18-month delay period prior to a delay in achieving the Scheduled Completion Date becoming an Event of Default for which the Port can terminate under the Lease Agreement.

Based on the reviews undertaken to date the LTA does not consider the proposed schedule, and deadlines under the Lease Agreement (subject to the adjustment to 23 months for Phase B1) to represent a material risk to the project.

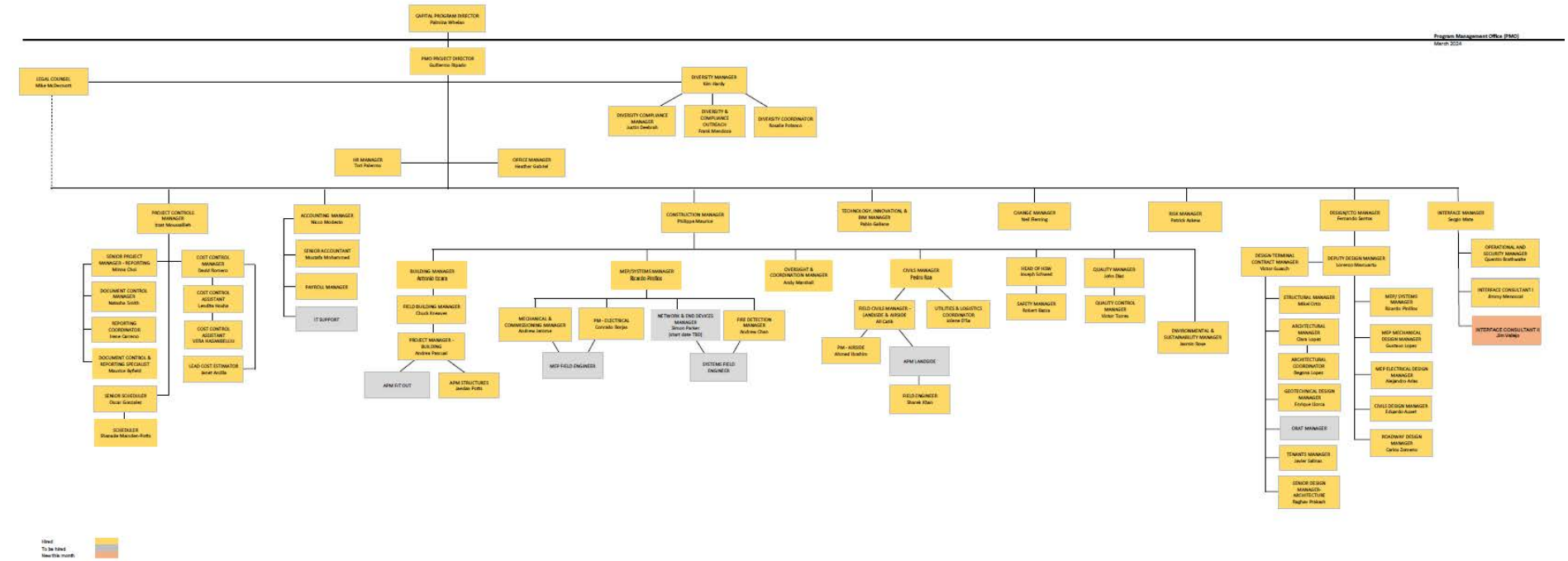
The LTA considers that the approach adopted in developing the CapEx estimate for Phase B1 and B2 to be appropriate with the detailed cost estimated developed in 2020 adjusted to reflect market conditions at Financial Close based on the updated quotes received for Phase A and revised in line with the updated scope anticipated in each Phase. It is understood that the 2020 F+G included a 3% annual escalation factor for Phase B2 rates to the midpoint of construction. This is driving the apparently higher \$/sf rate for Phase B2 in comparison to Phase A.

The LTA takes comfort from relative \$/sf values in comparison to the Phase A costs noting that the Phase B1 and B2 builds are of simpler construct than Phase A and contain, relatively, simpler systems and equipment.

The LTA notes positively that the CapEx reviewed includes 11% of contingency for Phase B1 (3% DB Contingency and 8% Developer Contingency) and 13% for Phase B2 (3% DB Contingency and 10% Developer Contingency), when contingency is expressed as a % of the total CapEx contemplated. Contingency represents a similar portion of the total CapEx for the Phases as it does for Phase A.

The LTA considers that the Phase B1 and B2 CapEx reviewed provides a reasonable level of resilience to market changes and cost escalations and represent a reasonable estimation to undertake the associated work. Noting that this LTA assessment assumes no material events of cost escalation / shock events occur within the time frame.

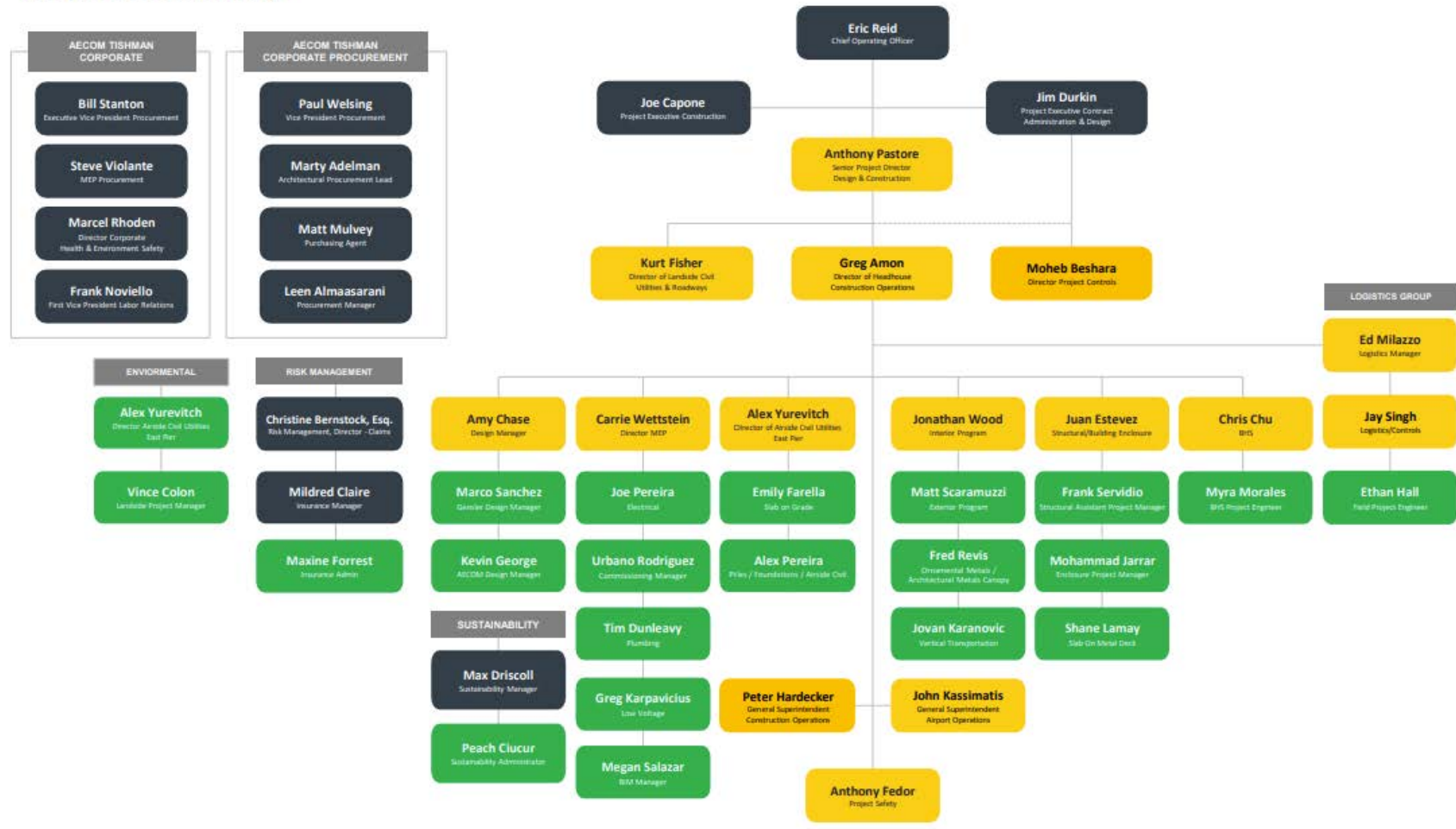
## APPENDIX B – CPD STRUCTURE



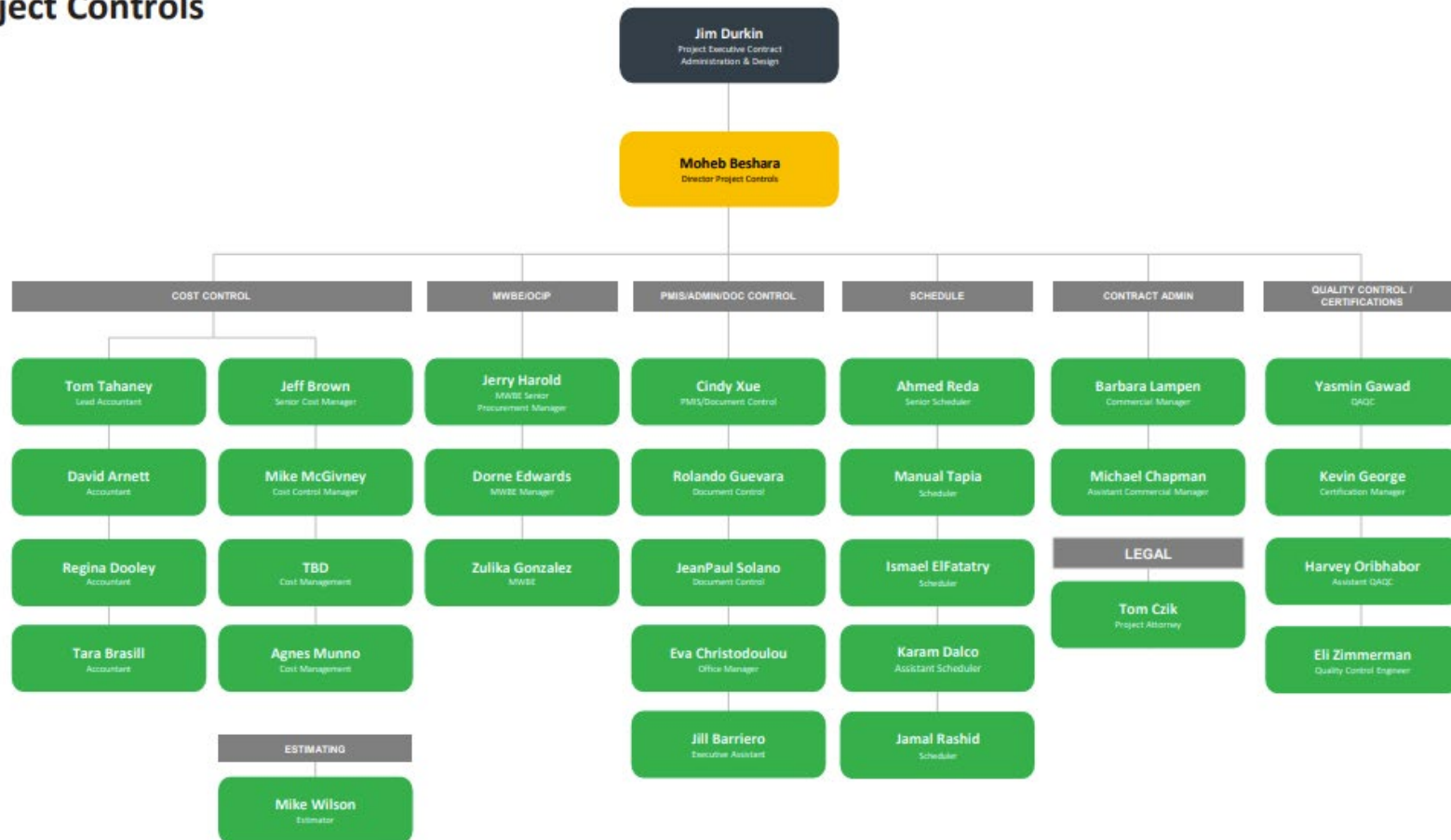
Source: Appendix J – CPD Structure

## APPENDIX C – DB CONTRACTOR STRUCTURE

### Project Leadership



## Project Controls



# JFK New Terminal One

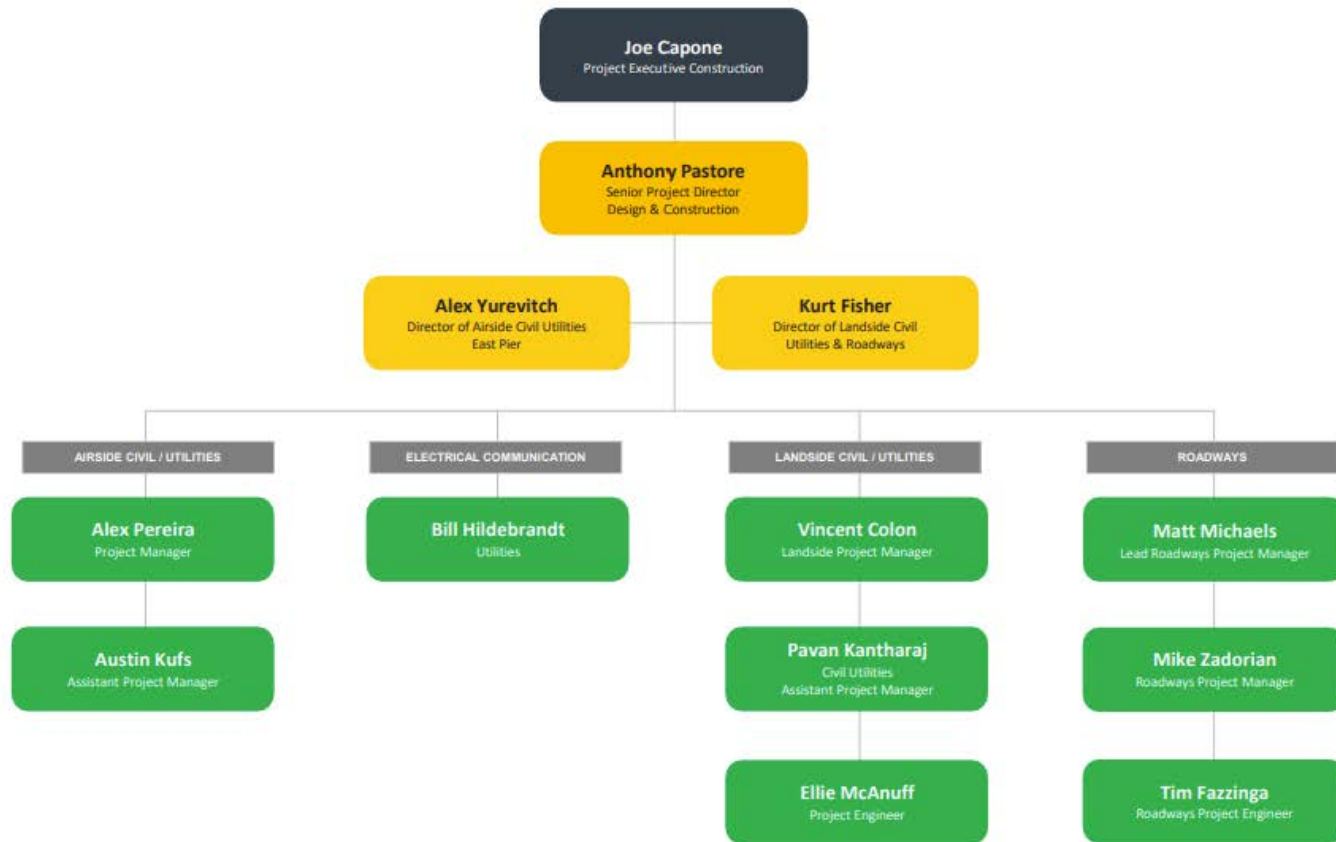
## Construction Field Operations – Superintendents

THE NEW TERMINAL ONE  
JFK INTERNATIONAL AIRPORT

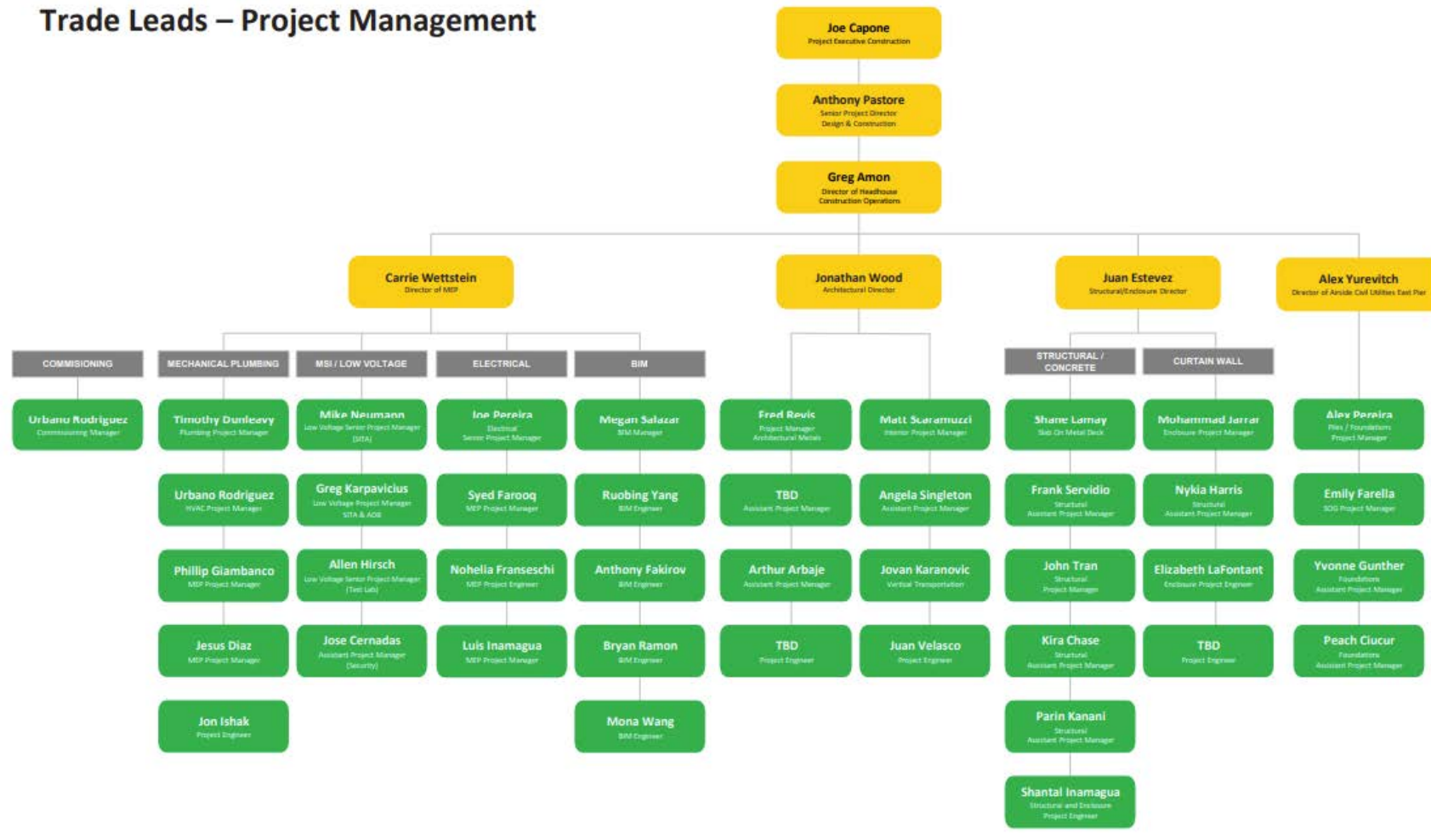
AECOM TISHMAN



## Civil/Utilities & Roadways – Project Management



## Trade Leads – Project Management



Source: Appendix I-2 –Tishman Monthly Report Appendices

## APPENDIX D – SUBCONTRACTORS

SUBCONTRACTOR	COMPANY DESCRIPTION
<b>Thorton Tomasetti</b>	Thornton Tomasetti is an engineering firm known for its expertise in structural design. Thornton Tomasetti provided structural design services for a range of projects within New York including the MetLife Stadium and NY Times Building. Other notable experience includes the Petronas Twin Towers in Malaysia, completed in 1998.
<b>Banker Steel</b>	Banker Steel is a steel fabrication and erection company based in the USA. Banker provides structural steel solutions for skyscrapers, stadiums, bridges and critical infrastructure. Banker Steel has great experience with working on airports, and has worked on both Nashville and Orlando International Airport. More recently the company have been awarded the contract to work on the new Terminal 6 at JFK International Airport, once it is demolished in 2025.
<b>Scalamandre &amp; Sons Inc.</b>	Scalamandre & Sons Inc., based in New York, USA, is a leader in the industry for over 100 years and is involved in early works and pile-related construction projects. They have completed \$500M and \$200M in works at JFK and La Guardia Airports, respectively. They have been working in the sector for the last 35 years and aim to cover all the NY Metropolitan Airports.
<b>Kone</b>	Kone, headquartered in Finland, operates across 60 countries and is a company specializing in vertical and horizontal transportation solutions, such as elevators and escalators. Kone provided elevator systems for the Burj Khalifa (2010), the world's tallest skyscraper in Dubai (UAE).
<b>Harmon</b>	Harmon is the most trusted partner in US to manage building facade projects. They are known for their innovative and high-quality building envelope solutions. They worked on the Children's Hospital of Philadelphia (CHOP) Schuylkill Avenue Tower.
<b>Roger &amp; Sons Concrete</b>	Roger & Sons Concrete is based in the New York Metro region and is a contractor specializing in superstructure concrete work with focus to ensure the stability and strength of structures.
<b>Vanderlande</b>	Vanderlande is a Dutch company that provides baggage handling system solutions in more than 600 airports worldwide. Vanderlande implemented the baggage handling system for Istanbul Airport in 2019.
<b>Schneider Electric</b>	Schneider Electric, based in France, aims to maximize airport facility by adopting high performance building technologies and practices, combined with intelligent services offerings, which enable reduced energy consumption and operating costs. The company works with a range of different aspects within airports including baggage, power distribution, security, and environmental control. Their success has been evident at many major international and regional airports including, Geneva Airport, Las Vegas Airport and Hollywood Burbank Airport.
<b>ADB Safegate</b>	ADB Safegate, who are based out of Belgium, provide intelligent and efficient solutions empowering airports who are committed to evolving airside systems and improving operations and passenger services. They have provided their services to projects in the New York area including the new LaGuardia Central Terminal B, as well as other major projects at larger airports such as Abu Dhabi International Airport and Charles De Gaulle International Airport.
<b>SITA</b>	SITA are based in Switzerland, and aim to create safer, frictionless passenger journeys by implementing autonomous digital solutions across the airport, with an overall goal of making airport operations smarter and more efficient. SITA hold vast experience and have worked the likes of Air France-KLM Group, Frankfurt Airport, Kuala Lumpur International and Sydney Airport.
<b>AERO Bridgeworks Inc</b>	AERO Bridgeworks Inc. Provide engineering, planning, construction and technical services to airports across the US. They play a crucial role in facilitating the boarding process for passengers. AERO provided turnkey design and construction services for a VDGS Safegate System at JFK.
<b>Bombardier</b>	Bombardier is a Canadian mobility solution provider specialised in operations and maintenance services for automated transit systems. They have a 16-year partnership with JFK for several AirTrain O&M contracts.
<b>Posillico</b>	Posillico is a contractor based in New Jersey, USA, and has worked on some of the busiest airports in the world including John F. Kennedy International and LaGuardia Airports. Posillico has delivered challenging work to help the growth of the transportation industry through construction of runways, taxiways, utilities, as well as landside roadways.
<b>Welsbach</b>	Welsbach is one of the largest commercial electrical contractors in New York City. They specialise in outdoor electrical construction and maintenance, including complete deign build construction.

SUBCONTRACTOR	COMPANY DESCRIPTION
<b>Cooper, H.O. Penn</b>	Cooper Electric is a full-service electrical distributor, serving many different segments including electrical contractors, industrials, OEM, utilities, residential, and solar. H.O. Penn has over 400 employees offering service expertise in caterpillar products as well as over 900 caterpillar machines to meet customers' rental needs.
<b>Urban</b>	Urban are a trusted source of HVAC installation, maintenance and repair, based out of Massachusetts, with 10 years' experience.
<b>Delta Sheetmetal</b>	Based out of Tennessee, Delta Sheetmetal fabricate and install all type of fittings, duct and blow pipe. The company specialises in HVAC duct systems and light gauge sheet metal fabrication for industrial needs. They have fabricated industrial duct work and HVAC components for many projects in countries including Canada, Mexico, Russia and China.
<b>ASM Mech</b>	ASM mech are a New York based company and specialise in the installation, repair, and replacement of residential and commercial HVAC systems.
<b>PBS Tri-Venture Partners</b>	PBS Tri-Venture Partners specialize in roadway construction projects related to airports. They are based in Boston, Massachusetts, and are responsible for creating and maintaining the road network within and around airport facilities.
<b>PJP Installer</b>	In the past decade, PJP has managed over \$100+ million in Hoisting & Scaffolding Projects. They are presently involved at all NY airports, museums, art centers, hospitals and many other private sector jobsites across the New York region. Project experience includes sidewalk bridge with pipe scaffolding in 74 Trinity Place, New York.
<b>Meccon</b>	Meccon has over 38 years of history as an industrial construction company specializing in the installation of Airport Bulk Fuel, Fuel Transmissions Mains and Aircraft Hydrant Fuel Systems. Meccon worked on many aviation projects including JFK, La Guardia, Philadelphia and other US based airports.
<b>Navillus Contracting</b>	Navillus Contracting, is a New York City-based construction firm specializing in general contracting, commercial concrete, masonry, tile, stone, and carpentry. With over 30 years of experience, Navillus is known for cost estimation, value engineering, and project management, consistently leading in many of the region's most highly regarded infrastructure and private-sector projects.
<b>ADCO</b>	Founded in 1977, ADCO Electrical Corporation aims to set a standard of excellence in NYC's electrical contracting market. The company serves diverse sectors including healthcare, biotech, airports, arenas, entertainment, technology, data centers, and commercial towers. Known for its innovative electrical and low voltage systems in design and construction, ADCO offers both the capability and personalized attention to meet client needs effectively.
<b>T-1 Mechanical</b>	Fresh Meadow Mechanical Corp. is a leading mechanical contractor based in Fresh Meadows, New York. With over 25 years of experience in the field, the company specializes in a wide range of mechanical construction projects, including power plants, hi-rise residential buildings, commercial buildings, office buildings, correctional facilities, tenant work, sewage treatment plants, chemical and pharmaceutical institutions, industrial buildings, and renovation projects.
<b>Ferreira</b>	Ferreira is a national leader in the construction industry with headquarters in Branchburg, New Jersey, and regional offices in Florida, New York, California, Rhode Island, and Virginia. The company has expanded its services to include transportation, utility, power, marine construction, and renewable energy. Employing over 1,500 people across the U.S., Ferreira achieves \$500 million in annual sales.
<b>Component</b>	Component Assembly Systems, along with its subsidiary Component West, are renowned constructors serving a diverse range of markets including residential, commercial, institutional, entertainment, and hotels. They are recognized for their commitment, integrity, and quality workmanship, consistently meeting tight schedules. Their values are reflected in numerous projects across the United States. Since its inception in 1964, Component Assembly Systems has been a trusted entity in the construction industry for both clients and employees.

## APPENDIX E – CHANGES TO THE BUDGET

DESCRIPTION	ORIGINAL BUDGET	CURRENT BUDGET (APRIL 2024)	FORECAST AT COMPLETION
<b>Direct Trade Cost</b>	2,952,958,922	2,952,958,922	3,179,720,218
<b>Design Development Allowance</b>	188,363,237	188,363,237	-
<b>Construction Contingency</b>	164,070,668	163,282,142	101,515,687
<b>General Conditions and General Requirements</b>	280,128,381	285,587,177	287,208,225
<b>Bonds</b>	15,904,917	15,904,917	15,904,917
<b>Design Fees</b>	196,484,117	196,484,117	226,136,493
<b>CM Fee</b>	129,182,535	129,182,535	129,182,535
Change Orders	-	58,511,151	209,865,076
<b>D&amp;B COSTS</b>	<b>3,927,092,777</b>	<b>3,990,274,198*</b>	<b>4,149,533,151</b>
<b>Reimbursement of Pre-con / Design</b>	380,307,128	379,637,878	377,137,878
<b>PRE-NOTICE TO PROCEED</b>	<b>380,307,128</b>	<b>379,637,878</b>	<b>377,137,878</b>
Equipment / Testing / Others	424,230,278	396,766,004	385,192,679
<b>Program Management Fee</b>	174,000,000	174,796,423	181,532,995
<b>Art &amp; Branding</b>	55,000,000	54,750,688	54,988,128
<b>OCIP</b>	282,333,355	282,333,355	267,333,355
<b>ORAT</b>	10,163,155	10,163,155	10,163,155
Others (incl National Grid, TSA Equipment, ERP)	-	788,526	13,226,562
Change Orders	-	-	37,307,720
<b>Security Contingency Allocation</b>	80,000,000	80,000,000	80,000,000
<b>Owner Contingency</b>	326,027,183	293,105,907**	106,200,511
<b>PANYNJ Reserve Amount</b>	80,000,000	80,000,000	80,000,000
<b>COSTS OUTSIDE D&amp;C COSTS</b>	<b>1,431,753,972</b>	<b>1,372,704,059</b>	<b>1,215,945,105</b>
Terminal Marketing Video (reimbursed from Opex)	-	-37,380	-37,380
Video Game Controller and Flyby of Building (reimbursed from Opex)	-	-119,700	-119,700
Alphastruxure Split Roof Scope (reimbursed by Alphastruxure)	-	-1,742,145	-1,742,145
AirFrance Lounge (reimbursed by AirFrance)	-	-1,563,033	-1,563,033
<b>TOTAL REIMBURSEMENTS</b>		<b>-3,462,258</b>	<b>-3,462,258</b>
<b>TOTAL NEW TERMINAL PROJECT COSTS</b>	<b>5,739,153,876</b>	<b>5,739,153,877</b>	<b>5,739,153,877</b>

Note \* DB Contract Price as of April 2024, \*\*Including Board approved usages which are yet to be effected.

## APPENDIX F – PROGRESS PICTURES

Headhouse from AirTrain – Enclosure Works



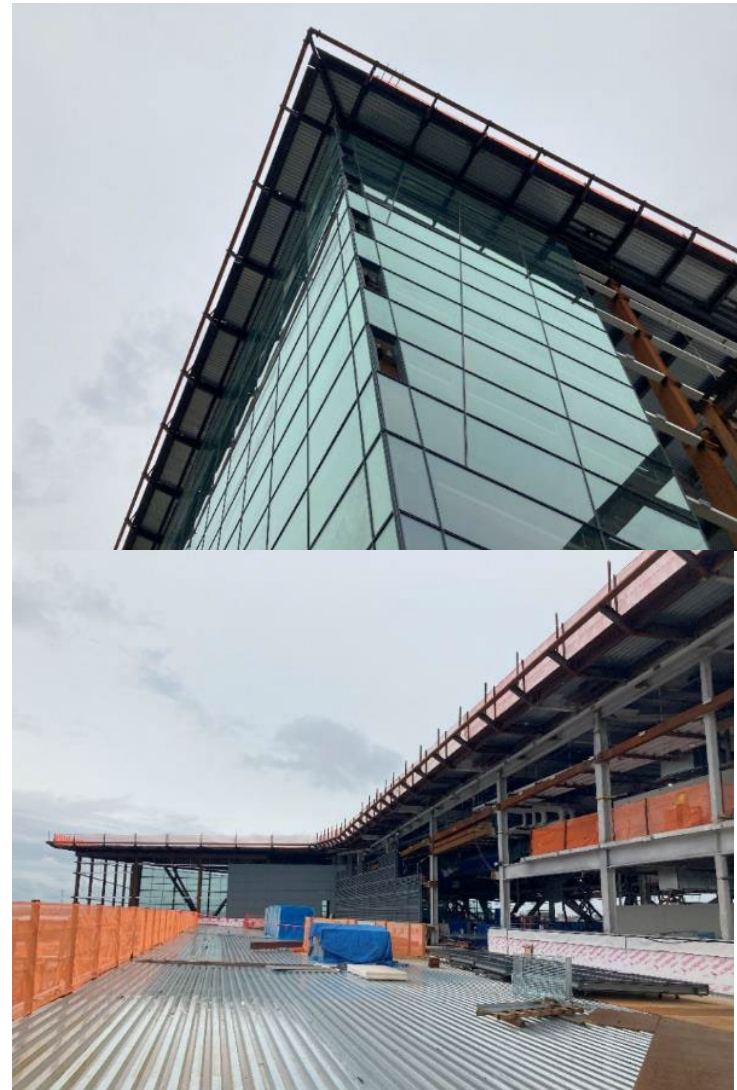
Headhouse from AirTrain – Enclosure Works



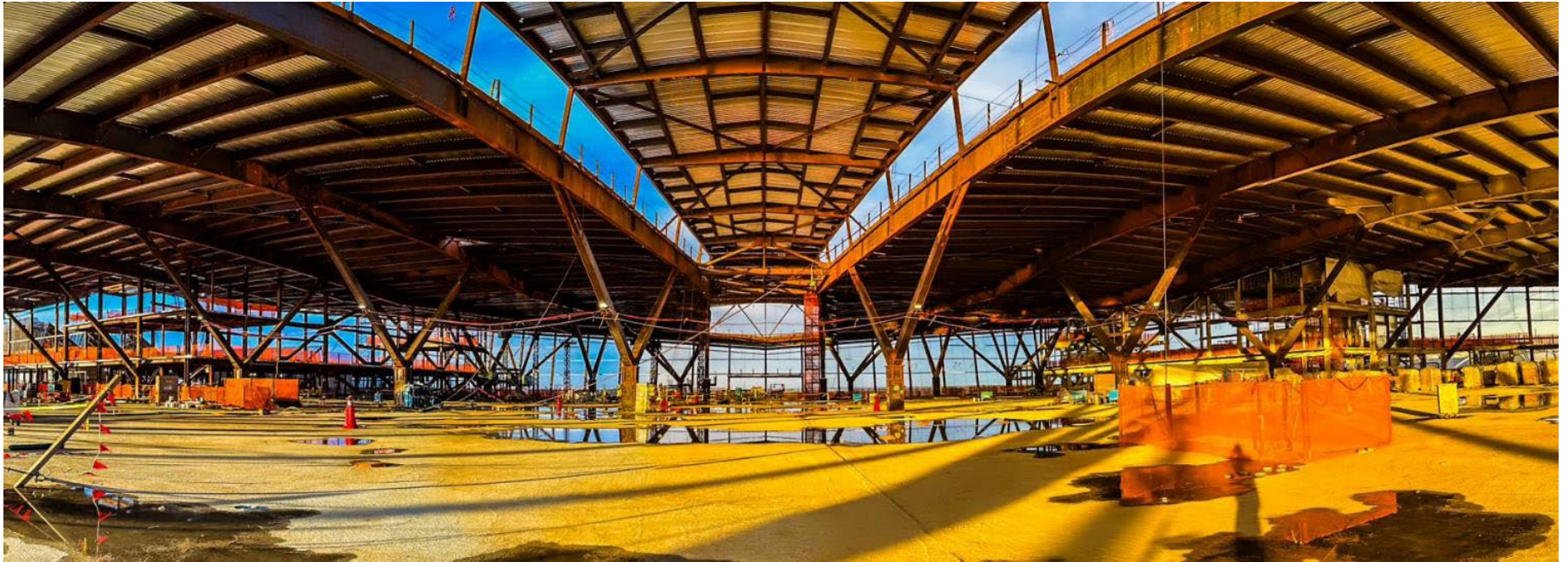
#### Headhouse Works – Steel Structure



### Curtain Wall Works



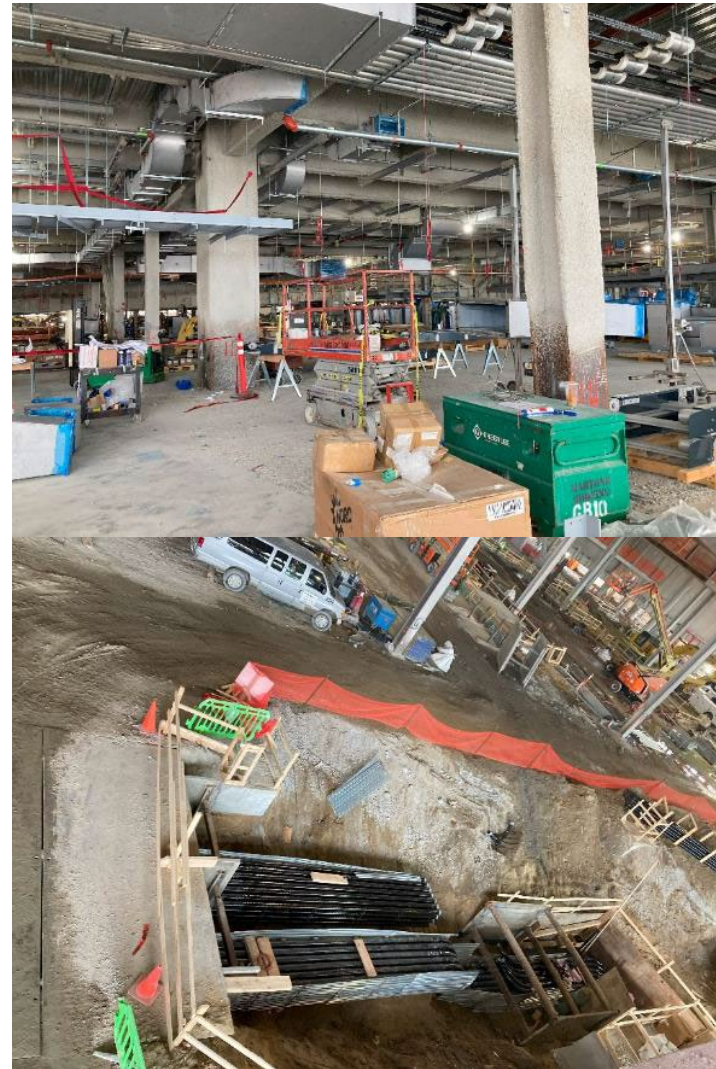
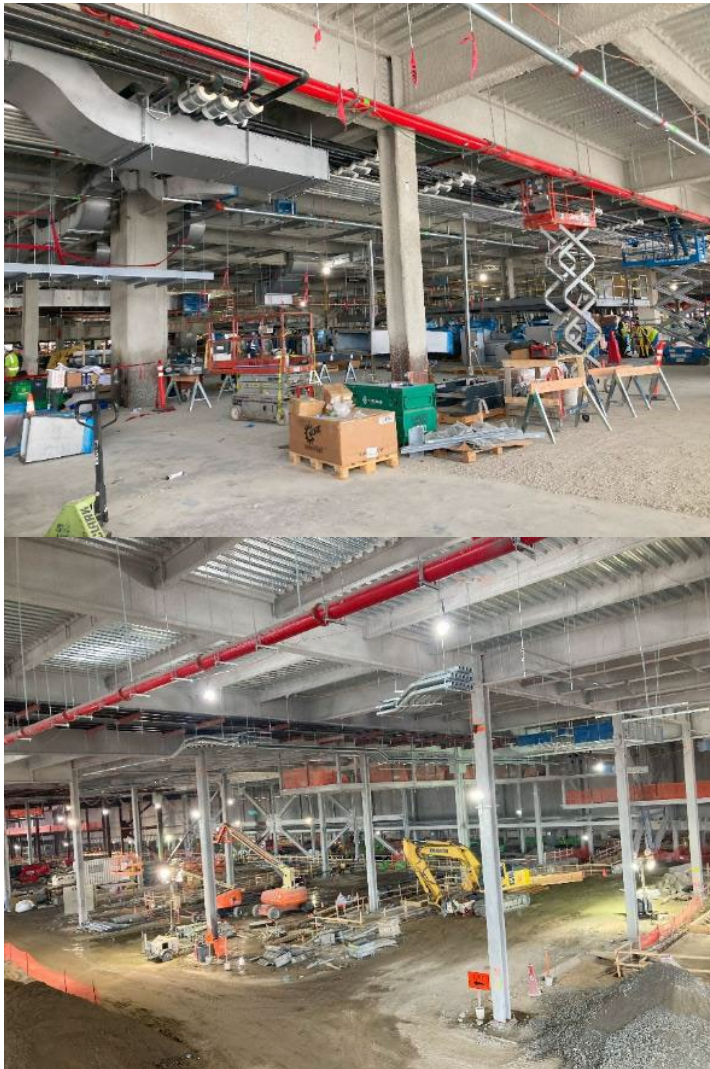
### Roof Installation



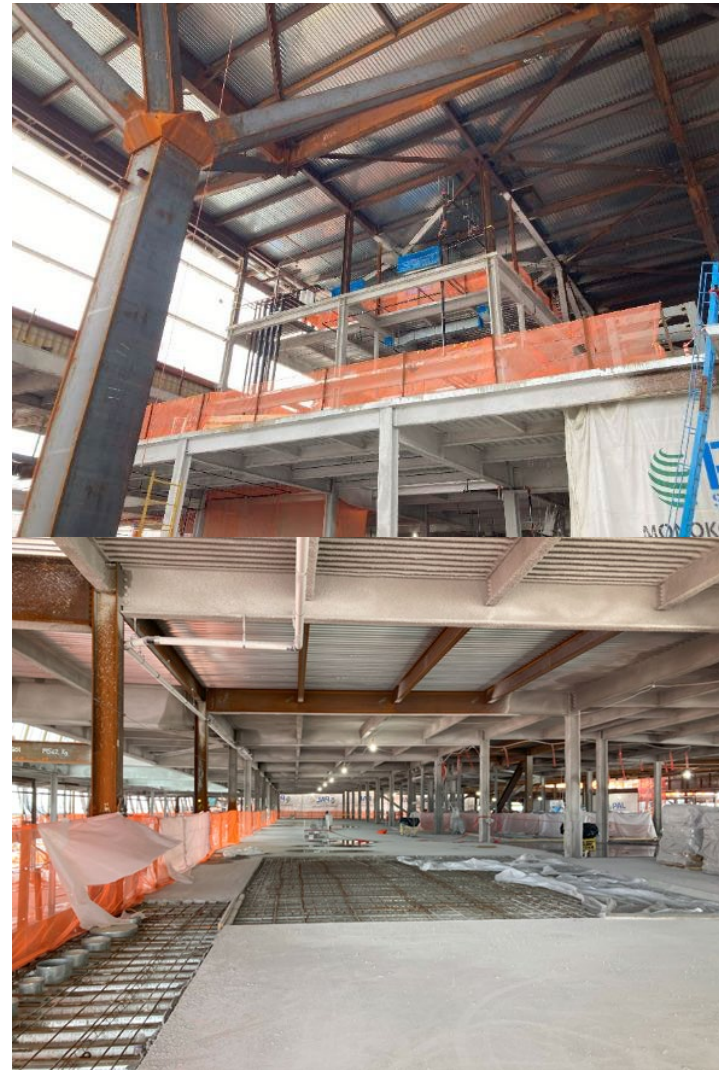
### Clerestory Installation



### Basement BHS & MEP Installation



#### Headhouse internal work



### East Pier – Steel Works & Piling and Escalator Installation



#### Airside – Pavement & Utility Works

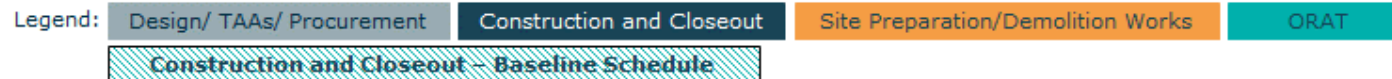
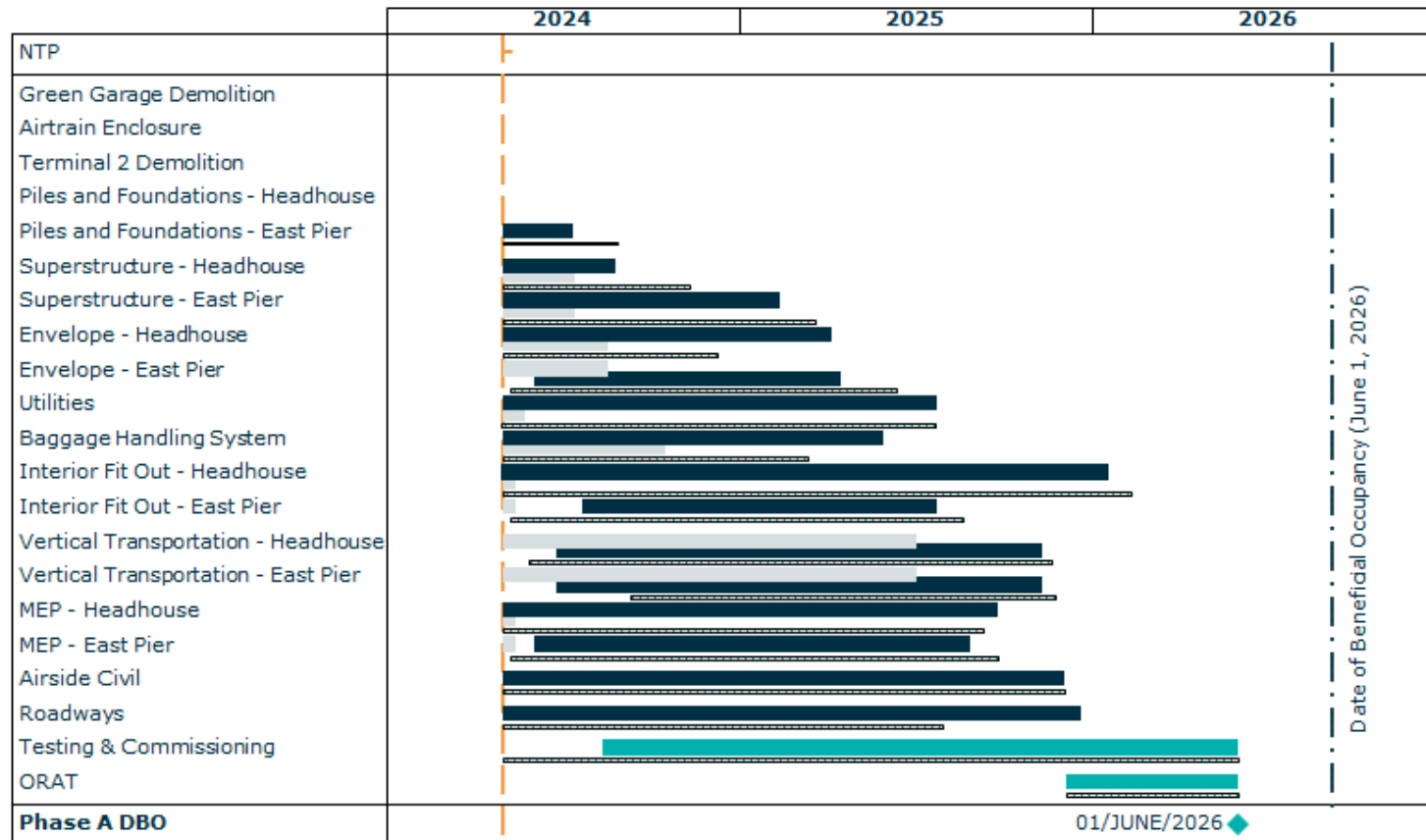


## Landside Works

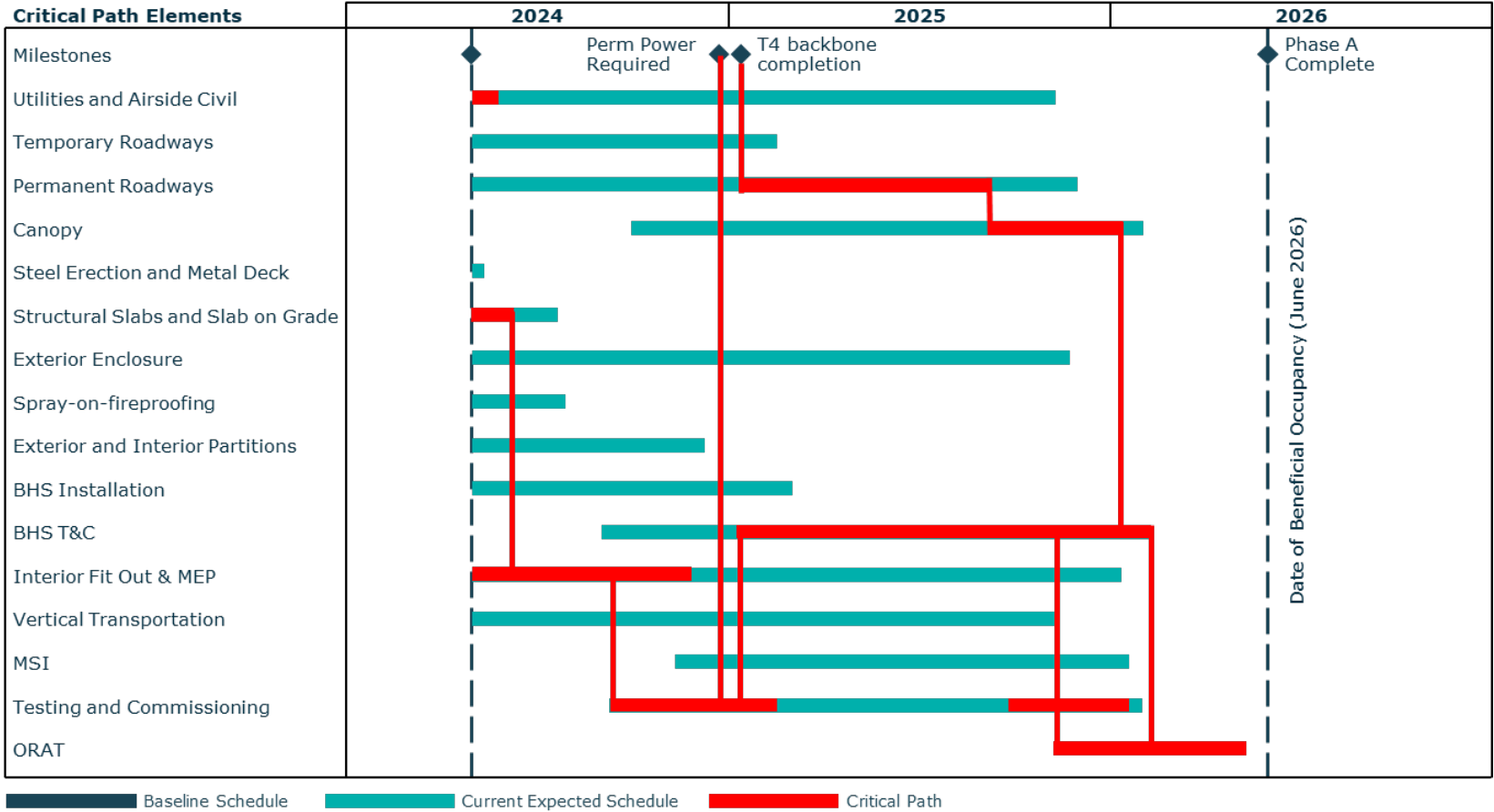


## APPENDIX G –SCHEDULE DETAILS

### Forward Looking Construction Schedule



Forward Looking Critical Path



## September 2023 Schedule and Current Baseline Schedule

PHASE	SEPTEMBER 2023		CURRENT BASELINE	
	CONSTRUCTION START	CONSTRUCTION FINISHES	CONSTRUCTION START	CONSTRUCTION FINISHES
NTP	10-Jun-22		10-Jun-22	
Green Garage Demolition	25-Jul-22	20-Feb-23	01-Aug-22	14-Mar-23
Airtrain Enclosure	27-Jun-23	12-Dec-23	28-Apr-22	12-Dec-23
Terminal 2 Demolition	17-Jan-23	29-Nov-23	01-Mar-23	28-Dec-23
Piles and Foundations - Headhouse	21-Sep-22	31-May-24	21-Sep-22	08-Feb-24
Piles and Foundations - East Pier	03-Oct-23	19-Apr-24	16-Oct-23	27-Aug-24
Superstructure - Headhouse	10-Jan-23	17-Oct-24	25-Jul-23	11-Nov-24
Superstructure - East Pier	12-Feb-24	18-Dec-24	28-Feb-24	20-Mar-25
Envelope - Headhouse	03-Jan-24	23-Sep-25	02-Nov-23	10-Dec-24
Envelope - East Pier			08-May-24	13-Jun-25
Utilities	12-Jul-22	20-Oct-25	12-Jul-22	22-Jul-25

	SEPTEMBER 2023		CURRENT BASELINE	
	CONSTRUCTION START	CONSTRUCTION FINISHES	CONSTRUCTION START	CONSTRUCTION FINISHES
Baggage Handling System	01-Nov-23	01-Jun-26	14-Nov-23	13-Mar-25
Interior Fit Out - Headhouse	20-Mar-24	07-Jan-26	27-Dec-23	10-Feb-26
Interior Fit Out - East Pier	23-Sep-24	28-Jul-25	08-May-24	21-Aug-25
Vertical Transportation - Headhouse	10-Jun-24	20-Oct-25	11-Sep-24	26-Nov-25
Vertical Transportation - East Pier			11-Sep-24	26-Nov-25
MEP - Headhouse	25-Oct-23	10-Oct-25	20-Nov-23	10-Sep-25
MEP - East Pier	09-Aug-24	29-Aug-25	08-May-24	26-Sep-25
Airside Civil	01-Sep-22	10-Nov-25	15-Jul-22	03-Dec-25
Roadways	18-Oct-22	20-Nov-25	18-Oct-22	31-Jul-25
Testing & Commissioning	10-Apr-25	19-Jan-26	26-Apr-24	01-Jun-26
ORAT	19-Aug-25	01-Jun-26	05-Dec-25	01-Jun-26
Phase A DBO		01-Jun-26		01-Jun-26

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## Appendix C-1

### CERTAIN PROVISIONS OF THE MASTER INDENTURE

*The following includes certain provisions of the Master Indenture and is not a full statement of the terms of such agreement. Accordingly, the following is qualified in its entirety by reference to such agreement and is subject to the full text of such agreement. Copies of the definitive agreements, some of which may be in redacted form and subject to any existing contractual agreements, will be available following the date of issuance of the Series 2024 Bonds, upon delivery of a written request and the payment of reasonable copying, mailing and handling charges to the Indenture Trustee at 240 Greenwich Street, 7E, New York, NY 10286, to the attention of the Corporate Trust Company. Unless otherwise stated, any reference in this Official Statement to the Master Indenture shall mean such agreements 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 C-1 but not otherwise defined in this Official Statement have the meanings given to such terms under the Master Indenture.*

\* \* \*

### **NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS, THIS INDENTURE WITNESSETH:**

The Conduit Issuer, in consideration for the purchase of the Muni Bonds by the Owners and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in order to secure the payment of the Muni Bonds and to secure the performance and observance of all the covenants and conditions set forth in the Muni 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 Indenture Trustee and to its successors and assigns forever and, subject to the Security Documents, 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 CLAUSES

#### I

All funds, accounts, moneys and obligations from time to time held by the Indenture Trustee under this Indenture including amounts held in the Accounts and Subaccounts created under Section 4.02 (*Creation of Funds and Accounts*) hereof 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 Indenture 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 Arbitrage Rebate Account established in connection with a Series of Tax-Exempt Muni Bonds, or (ii) deposited with or paid to the Indenture Trustee for the redemption or payment of Muni Bonds which are deemed to have been paid in accordance with Article VII (*Discharge of Indenture*) hereof; provided, however, that any fund, account or subaccount created hereunder or pursuant to any Supplemental Indenture with respect to a particular Series of Muni Bonds and pledged to such Series of Muni Bonds shall solely secure such Series of Muni Bonds.

## II

All moneys and obligations from time to time held by the Account Bank or the Collateral Agent under any of the following accounts created pursuant to the Common Terms Agreement (i) Muni Bonds Project Loan Costs Construction Account, (ii) Muni Bonds Building Loan Costs Construction Account, (iii) Muni Bonds Senior Debt Service Reserve Account, (iv) Muni Bonds Project Loan Senior Debt Capitalized Interest Account, (v) Muni Bonds Building Loan Senior Debt Capitalized Interest Account, (vi) Muni Bonds Loans Interest Payment Account, (vii) Muni Bonds Loans Principal Payment Account, (viii) Muni Bonds Loans Prepayment Account, or (ix) Muni Bonds Senior Debt Proceeds Account, and any subaccount within any of the foregoing if any, in relation to the issuance of any Series of Muni Bonds; provided, however, that any of the foregoing accounts created with respect to the issuance of a particular Series of Muni Bonds and pledged to a particular Series of Muni Bonds shall solely secure such Series of Muni Bonds.

## III

Subject to the Common Terms Agreement, any security interest granted to the Collateral Agent under the Security Documents for the benefit of: (i) the Conduit Issuer (ratably as a Secured Creditor) under the Security Documents or otherwise, securing payment obligations of the Lessee under the Lessee Loan Agreements and the Promissory Notes relating to the Muni Bonds and (ii) the Indenture Trustee on behalf of the Owners of the Muni Bonds (ratably as a Secured Creditor), under the Security Documents or otherwise, including without limitation the Indenture Trustee's proportionate right, interest and title to the Collateral pledged thereunder, and the present and continuing right of the Collateral Agent on behalf of the Indenture Trustee (as a Secured Creditor) 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 that the Indenture Trustee is entitled to (as a Secured Creditor) 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 Agent on behalf of the Indenture Trustee (as a Secured Creditor) is entitled to do under such Security Documents.

## IV

Subject to the Common Terms Agreement, the Conduit Issuer's rights with respect to and security interest in all funds deposited from time to time and earnings thereon in the Project Accounts other than the Project Accounts described in Granting Clause II above, any and all other accounts established from time to time pursuant to the Common Terms Agreement as security for the Muni Bonds, and any and all subaccounts created thereunder.

## V

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 Muni Bonds in favor of the Indenture Trustee (as a Secured Creditor) or the Account Bank or Collateral Agent on behalf of the Indenture Trustee (as a Secured Creditor), including any of the foregoing granted, assigned or pledged by (or on behalf of) the Lessee or any other Person on behalf of the Lessee, and the Indenture Trustee (as a Secured Creditor) and/or the Account Bank or Collateral Agent on behalf of the Indenture Trustee (as a Secured Creditor) 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 creation, perfection, enforcement, and priority of the pledge of the Trust Estate by the Conduit Issuer to secure or pay the Muni Bonds as provided herein shall be governed by this Indenture. The Trust Estate pledged for the payment of the Muni Bonds, as received by or otherwise credited to the Conduit

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 Conduit Issuer irrespective of whether such Persons have notice of such liens. All funds provided pursuant to the Common Terms 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 Muni Bonds Outstanding under this Indenture are discharged in accordance with Section 7.01 (*Discharge of Indenture*) hereof, the right, title and interest of the Indenture 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 Indenture Trustee (or by the Account Bank or Collateral Agent on behalf of and for the benefit of the Indenture Trustee) for the equal and proportionate benefit of the Owners and any of them, without preference, priority or distinction as to lien or otherwise (except as otherwise provided herein). When Muni Bonds are issued, executed and delivered in accordance with the provisions of this Indenture, such Muni Bonds will have been duly authorized, executed and delivered and will constitute the valid special, limited obligations of the Conduit Issuer, payable solely from and secured exclusively by the Trust Estate and the Security Documents in accordance with the Common Terms Agreement and the provisions hereof, including the payments to be made by the Lessee under the Lessee Loan Agreements, and nothing in the Muni Bonds or this Indenture shall be construed as assigning or pledging therefor any other funds or assets of the Conduit Issuer.

All covenants, stipulations, promises, agreements and obligations of the Conduit Issuer set forth herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Conduit Issuer and not of any member, officer or employee of the Conduit Issuer in his or her individual capacity, and no recourse shall be had for the prepayment of principal or interest on the Muni Bonds or for any claim based thereon or hereunder against any member, officer or employee of the Conduit Issuer or any person executing the Muni Bonds in his or her individual capacity.

All Muni Bonds issued and secured hereunder are to be issued, authenticated and delivered and all 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 Conduit Issuer has agreed and covenanted, and does hereby agree and covenant with the Lessee, the Indenture Trustee and with the respective Owners, from time to time of the Muni Bonds or any part thereof, as follows:

\* \* \*

## ARTICLE II

### AUTHORIZATION, TERMS, EXECUTION AND ISSUANCE OF THE MUNI BONDS

#### **Section 2.01. Authorization of Muni Bonds, Principal Amount, Designation and Form of Muni Bonds.**

(a) Upon the request of the Lessee, the Conduit Issuer may issue a Series of Muni Bonds from time to time for the purpose as hereinafter provided. Pursuant to a Supplemental Indenture, any such Series of Muni Bonds may be issued as either Tax-Exempt Muni Bonds or Taxable Muni Bonds, and such Muni Bonds may be insured (the “**Insured Muni Bonds**”) under a bond insurance policy (the “**Muni Bond Insurance Policy**”) issued by a bond insurer (the “**Muni Bond Insurer**”). Unless otherwise provided in the Supplemental Indenture providing for the issuance of a Series of Muni Bonds, the Muni Bonds shall be

designated “New York Transportation Development Corporation Special Facilities Revenue Bonds (John F. Kennedy International Airport New Terminal One Project) (Green Bonds)” and shall bear an appropriate series designation. The purposes of the issuance of a Series of Muni Bonds shall be to (i) provide funds to the Lessee to pay a portion of the Project Costs and/or to refinance Loans made pursuant to the Credit Extensions, the proceeds of which were used to pay a portion of the Project Costs and/or to refinance outstanding Muni Bonds, (ii) provide funds to the Lessee to pay certain Termination Payments with respect to certain outstanding Secured Hedge Transactions, (iii) make a deposit to the Muni Bonds Senior Debt Service Reserve Account, (iv) make a deposit to one or more Muni Bonds Project Loan Senior Debt Capitalized Interest Accounts and a deposit to one or more Muni Bonds Building Loan Senior Debt Capitalized Interest Accounts, and (v) provide funds to pay costs of issuance of the Muni Bonds, to the extent permitted by the Code (if applicable), in each case in accordance with the Lessee Loan Agreements and the Common Terms Agreement. Except for the Conduit Issuer’s \$2,000,000,000 New York Transportation Development Corporation Special Facilities Revenue Bonds, Series 2023 (John F. Kennedy International Airport New Terminal One Project) (Green Bonds) (the “Series 2023 Bonds”), no other Muni Bonds may be issued under this Indenture except in accordance with this Article and the provisions of an applicable Supplemental Indenture.

**Section 2.02. All Muni 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), each Series of Muni 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 Muni Bonds, so that each Series of Muni 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.

**Section 2.06. Registration of Transfer and Exchange of Muni Bonds; Persons Treated as Owners.**

(a) The Conduit Issuer shall cause books for the registration and for the registration of transfer of the Muni Bonds as provided in this Indenture to be kept by the Indenture Trustee, which is hereby appointed the Bond Registrar for the Muni Bonds. The transfer of any Muni Bond shall be registered upon surrender of such Muni 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 Conduit Issuer shall execute and the Indenture Trustee shall authenticate and deliver, in the name of the transferee or transferees, a new fully registered Muni Bond of the same Series and maturity, in any Authorized Denomination or Authorized Denominations and bearing interest at the same rate.

(b) Muni Bonds may be exchanged at the designated corporate trust office of the Bond Registrar for a like aggregate principal amount of fully registered Muni Bonds of the same Series, maturity and interest rate in Authorized Denominations. The Conduit Issuer shall execute and the Indenture Trustee shall authenticate and deliver Muni Bonds which the Owner making the exchange is entitled to receive, bearing numbers not contemporaneously outstanding.

(c) The Bond Registrar shall not be required to register the transfer of or exchange of any Muni Bond (i) after notice calling such Muni Bond or portion thereof for redemption has been mailed or (ii) after any Muni Bond (or portion thereof) has been selected for redemption.

(d) No Series of Tax-Exempt Muni Bonds shall be transferred by the Bond Registrar subsequent to a purchase in lieu of redemption unless the Conduit Issuer obtains a Favorable Opinion of Bond Counsel, and the Bond Registrar may rely conclusively on such Favorable Opinion of Bond Counsel in complying with the requirements of this Section.

(e) The Person in whose name a Muni Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of principal of, Redemption Price of or interest on any Muni 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 Muni Bond to the extent of the sum or sums paid.

(f) Any Owner 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 2.12. Authorization of Additional Muni Bonds.**

(a) Additional Muni Bonds may be issued from time to time subject to the provisions of this Section.

(b) Subject to paragraph (c) below, and at the request of the Lessee, Additional Muni Bonds may be delivered under and be equally and ratably secured by this Indenture on a parity with any other Additional Muni 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, and the Lessee Loan Agreements and no Enforcement Action is ongoing under the Common Terms Agreement.

(c) The Conduit Issuer shall not issue Additional Muni Bonds unless the Lessee provides the Port Authority with prior written notice and the following additional requirements are satisfied:

(i) The Lessee has provided to the Indenture Trustee the following evidence indicating that, as of the date of issuance of such Additional Muni Bonds (x) the Port Authority has provided prior written consent regarding the proposed issuance of Additional Muni Bonds if and to the extent required pursuant to the Lease, (y) the Lessee is in compliance with the Lessee Loan Agreements, and (z) the Debt Incurrence Conditions have been satisfied; and

(ii) The Lessee shall not be required to meet the requirements of Section 2.12(c)(i)(x) or (z) above in order to request the Conduit Issuer to issue Additional Muni Bonds if (x) the proposed Additional Muni Bonds are deemed Completion Debt and the conditions for the incurrence of Completion Debt set forth in the definition of "Completion Debt" as set forth in the Common Terms Agreement have been satisfied, or (y) the proposed Additional Muni Bonds are to be issued to refund Outstanding Muni Bonds and the proposed additional Muni Bond issuance produces net present value savings to the Lessee and the requirement of paragraphs (d) and (h) of the definition of Debt Incurrence Conditions have been satisfied.

#### **Section 2.13. Conditions to Issue Additional Muni Bonds.**

Before any Additional Muni Bonds shall be delivered under the provisions of Section 2.12 (*Authorization of Additional Muni Bonds*), the following conditions shall occur:

(a) The Conduit Issuer shall authorize the issuance of such Additional Muni Bonds, fixing the amount and terms thereof and describing the purpose or purposes for which such Additional Muni Bonds are being delivered or describing the Outstanding Muni Bonds to be refunded.

(b) The Conduit Issuer shall authorize a Supplemental Indenture for the purpose of delivering such Additional Muni Bonds and such Supplemental Indenture shall specify, among other matters, whether the Additional Muni Bonds will be secured by the Muni Bonds Senior Debt Service Reserve Account, and redemption terms, and whether any additional accounts shall be established hereunder or under the Common Terms Agreement.

(c) Except as otherwise provided in this Indenture, each Series of Additional Muni Bonds shall be equally and ratably secured under this Indenture with the Series 2023 Bonds and any other Series of Additional Muni Bonds, without preference, priority or distinction of any Muni Bonds over any other Muni Bonds except with respect to any of the following accounts created under the Common Terms Agreement with respect to the issuance of a particular Series of Muni Bonds: (i) Muni Bonds Project Loan Costs Construction Account, (ii) Muni Bonds Building Loan Costs Construction Account, (iii) Muni Bonds Project Loan Senior Debt Capitalized Interest Account, (iv) Muni Bonds Building Loan Senior Debt Capitalized Interest Account, (v) Muni Bonds Loans Interest Payment Account, (vi) Muni Bonds Loans Principal Payment Account, (vii) Muni Bonds Loans Prepayment Account, or (viii) Muni Bonds Senior Debt Proceeds Account, and any subaccount within any of the foregoing, and any of the following accounts created pursuant to the provisions hereof and any Supplemental Indenture with respect to the issuance of a particular Series of Muni Bonds: (1) Bond Interest Payment Indenture Account, (2) Bond Principal Payment Indenture Account, or (3) Bond Prepayment/Redemption Payment Indenture Account. Unless provided otherwise in a Supplemental Indenture, all such Additional Muni Bonds shall be in substantially the same form as the Series 2023 Bonds, but shall be of 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 premiums, contain an appropriate series designation and be delivered at such prices as shall be designated in a Supplemental Indenture and approved by the Conduit Issuer.

(d) The Indenture Trustee shall execute and deliver Additional Muni Bonds substantially in the same form and manner set forth in this Article, but prior to or simultaneously with the execution and issuance of such Additional Muni Bonds by the Conduit Issuer, there shall be filed with the Indenture Trustee the following:

(i) A certified copy of the resolution of the Conduit Issuer authorizing the issuance of such Additional Muni Bonds.

(ii) A certificate of the Lessee stating that as of the date of such issuance 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, or the Lessee Loan Agreements or would constitute a Secured Obligations Default or Secured Obligations Event of Default under the Common Terms Agreement.

(iii) The written consent of the Lessee to the issuance of Additional Muni Bonds and a certificate of the Conduit Issuer that, to the knowledge of the officer signing such certificate, 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 or the Lessee Loan Agreements.

(iv) Notice to and written consent of the Port Authority, if and to the extent required by the Lease.

(v) An original executed counterpart of the Supplemental Indenture in respect of the Additional Muni Bonds being issued.

(vi) An executed counterpart to supplements of the Lessee Loan Agreements, Leasehold Mortgages, the Building Loan Note and the Project Loan Note, if any, related to such Additional Muni Bonds.

(vii) Certified copies of the Promissory Notes, certified copies of the Leasehold Mortgages, certified copies of the Collateral Assignments, the Tax Compliance Certificate (with respect to Tax-Exempt Muni Bonds), certified copies of the Common Terms Agreement and the other Financing Documents executed or adopted by each of the Conduit Issuer, the Lessee, and any other parties thereto.

(viii) A request and authorization to the Indenture Trustee by the Conduit Issuer to authenticate the Additional Muni Bonds and deliver said Additional Muni Bonds to or upon the order of the purchaser(s) therein identified upon payment to the Indenture Trustee, of the purchase price thereof. The Indenture 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.

(ix) In the case of Additional Muni Bonds being delivered to refund Outstanding Muni Bonds, such additional documents as shall be reasonably required by the Indenture Trustee to evidence that provision has been duly made in accordance with the provisions of Article III herein for the payment of the Muni Bonds to be refunded.

(x) An Opinion of Bond Counsel to the effect that the issuance of such Additional Muni Bonds has been duly authorized, that all legal conditions precedent to the delivery of such Additional Muni Bonds have been fulfilled, and that the Additional Muni Bonds are valid and binding obligations of the Conduit Issuer in accordance with their terms.

(xi) An Opinion of General Counsel or Deputy General Counsel to the Conduit Issuer.

(xii) The executed Muni Bonds.

(xiii) Evidence that the Debt Incurrence Conditions as appropriate have been satisfied.

(xiv) A letter of the Lessee instructing the Account Bank to establish with respect to such Series of Additional Muni Bonds as applicable and pledging as security for such Series of Additional Muni Bonds, a (i) Muni Bonds Project Loan Costs Construction Account, (ii) Muni Bonds Building Loan Costs Construction Account, (iii) Muni Bonds Project Loan Senior Debt Capitalized Interest Account, (iv) Muni Bonds Building Loan Senior Debt Capitalized Interest Account, (v) Muni Bonds Loans Interest Payment Account, (vi) Muni Bonds Loans Principal Payment Account, (vii) Muni Bonds Loans Prepayment Account, and (viii) Muni Bonds Senior Debt Proceeds Account, and any subaccount within any of the foregoing.

(xv) If such Additional Muni Bonds are Insured Muni Bonds, a copy of the Muni Bond Insurance Policy.

(xvi) Such other certificates, statements, receipts, opinions and documents as the Indenture Trustee shall reasonably require for the issuance of such Additional Muni Bonds.

When the documents specified in this subsection have been filed with the Indenture Trustee, the Indenture Trustee shall authenticate and deliver such Additional Muni Bonds to or upon the order of the purchasers thereof, but only upon payment of the purchase price of such Additional Muni Bonds. The proceeds of the sale of such Additional Muni Bonds, paid over to the Indenture Trustee shall be deposited

and applied by the Indenture Trustee as provided herein and in the Supplemental Indenture authorizing the issuance of such Additional Muni Bonds. The proceeds of all Additional Muni Bonds delivered to refund Outstanding Muni Bonds shall be deposited by the Indenture 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, Redemption Price of and interest on the Muni Bonds to be refunded, as provided in Article VII herein and in the Supplemental Indenture authorizing the issuance of such refunding Additional Muni Bonds.

#### **Section 2.14. Limitation on Liability of the Conduit Issuer and its Members.**

(a) Anything in this Indenture, the Muni Bonds, the Lessee Loan Agreements or any Security Document to the contrary notwithstanding, any obligations of the Conduit Issuer under this Indenture, the Muni Bonds, the Lessee Loan Agreements or related document for the payment of money shall not constitute or give rise to or impose upon the Conduit Issuer a pecuniary liability or a charge upon the general credit (including any fees or expenses of any parties) nor create a debt of the Conduit Issuer, the State or any political subdivision thereof. In making the agreements, provisions and covenants set forth in this Indenture, the Conduit Issuer has not obligated itself except with respect to the Mortgaged Property (as defined in the Leasehold Mortgages) and the application of the revenues, income and all other property therefrom, as hereinabove provided.

(b) All covenants, stipulations, promises, agreements and obligations of the Conduit Issuer contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the Conduit Issuer and not of any member, director, officer, employee or agent of the Conduit Issuer in his or her individual capacity, and no recourse shall be had for the payment of the principal of, Redemption Price of or interest on the Muni Bonds or for any claim based thereon or hereunder against any member, director, officer, employee or agent of the Conduit Issuer or any natural person executing Muni Bonds.

#### **Section 2.16. Denominations, Medium, Method and Place of Payment and Dating of Muni Bonds.**

(a) The Muni Bonds shall be issued in the form of fully registered Muni Bonds in Authorized Denominations. The principal of, Redemption Price of and interest on the Muni Bonds shall be payable in lawful money of the United States of America.

(b) Except as may be specifically set forth herein, the Indenture Trustee, the Lessee and the Conduit Issuer may treat the Owner of a Muni Bond as the absolute owner thereof for all purposes, whether or not such Muni Bond shall be overdue, and the Indenture Trustee, the Lessee and the Conduit Issuer shall not be affected by any knowledge or notice to the contrary; and payment of the principal of, Redemption Price of and interest on such Muni Bond shall be made only to such Owner, which payments shall be valid and effectual to satisfy and discharge the liability of such Muni Bond to the extent of the sum or sums so paid. All Muni Bonds at maturity or on earlier redemption paid pursuant to the provisions of this Section shall be cancelled by the Indenture Trustee.

(c) The Muni Bonds shall be dated their respective dates of authentication and delivery thereof and shall each bear interest at the applicable rate or rates during each applicable interest accrual period until the entire principal amount of the Muni Bonds has been paid.

(d) The principal of the Muni Bonds of a Series shall become due and payable on its Principal Payment Dates. The principal of, Redemption Price of the Muni Bonds shall be payable by check or wire transfer to the Owners of such Series of Muni Bonds at the Maturity Date or Redemption Date upon presentation and surrender of the Muni Bonds of such Series at the designated corporate trust office of the

Indenture Trustee. The interest payable on the Muni Bonds of a Series on any Interest Payment Date shall be paid by the Indenture Trustee to the Owners of such Series of Muni Bonds appearing on the registration books maintained by the Indenture 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 each such Owner at its address as it appears on such registration books or at such other address furnished in writing by each such Owner to the Indenture Trustee, or (2) at the written request addressed to the Indenture Trustee by any Owner, 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 Indenture Trustee no later than a Record Date for any interest payment.

(e) Interest on any Muni 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 Muni Bond on the relevant Record Date and shall be payable to the Owner in whose name such Muni Bond is registered at the close of business on a Special Record Date (defined herein) for the payment of such Defaulted Interest, which Special Record Date shall be fixed in the manner described below. The Collateral Agent shall notify the Indenture Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Muni Bond and the date of the proposed payment (which date shall be such as will enable the Indenture Trustee to comply with the next sentence hereof), and shall deposit with the Indenture 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 Indenture Trustee for such deposit prior to the date of the proposed payment; money deposited with the Indenture Trustee shall be held in trust for the benefit of the Owners of the Muni Bonds entitled to such Defaulted Interest as provided in this Section. Following receipt of such funds the Indenture Trustee shall fix the Special Record Date (the “**Special Record Date**”) for the payment of such Defaulted Interest which shall be not more than fifteen (15) days 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 Indenture Trustee. The Indenture Trustee shall promptly notify the Lessee of such Special Record Date and, in the name and at the expense of the Lessee, 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 Muni Bonds are held in the Book-Entry System, or mailed first class postage prepaid, to each Owner of a Muni 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 Muni Bond delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Muni Bond of the same Series shall carry all the rights to interest accrued and unpaid, and to accrue, which were carried by such other Muni Bond, and each such Muni Bond shall bear interest from such date, so that neither gain nor loss in interest shall result from such registration of transfer or exchange.

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### ARTICLE III

#### REDEMPTION OF MUNI BONDS BEFORE MATURITY

##### **Section 3.01. Redemption of Muni Bonds.**

(a) All Muni Bonds issued under this Indenture are subject to extraordinary mandatory redemption prior to maturity, in whole, or in part, as the case may be, on any date at a redemption price equal to 100% of the principal of such Muni Bonds to be redeemed, plus the interest accrued on such Muni Bonds to, but not including, the Redemption Date, upon the occurrence of any of the following events, and using the funds described below:

(i) In the case of a Casualty Event or an Event of Eminent Domain, to the extent of Net Cash Proceeds in excess of \$100 million held in the Insurance and Condemnation Proceeds Account held under the Common Terms Agreement and not applied towards the repair and/or reconstruction of the Project in accordance with the Lease (provided that such usage of such funds shall not adversely affect the exemption of interest on the Tax-Exempt Muni Bonds);

(ii) In the case of any Disposition by the Lessee of assets or property to the extent that Net Cash Proceeds of such Disposition are in excess of \$100 million;

(iii) In the case of the termination of the Lease, to the extent of any Net Cash Proceeds received by the Lessee from the Port Authority in respect of a termination of the Lease in whole or in part (including, without limitation, amounts set forth under the Lease);

(iv) In the case of Completion of the Project there remains on deposit Muni Bond Proceeds in any Muni Bonds Project Loan Cost Construction Account or Muni Bonds Project Building Loan Costs Construction Account with respect to the Project, after consultation with Bond Counsel and in accordance with Treasury Regulations Section 1.142-2 to the extent of such Muni Bond Proceeds remaining on deposit in such accounts.

(b) Except as provided in Section 3.01(a) above, the Muni Bonds shall be subject to redemption prior to maturity and purchase in lieu of redemption at such times, to the extent and in the manner provided herein and in the applicable Supplemental Indenture.

(c) Redemption of a Series of Muni Bonds permitted or required by this Section 3.01 (*Redemption of Muni Bonds*) shall be made as follows, and the Indenture Trustee shall give notice or redemption referred to and in accordance with Section 3.03 (*Notice of Redemption*) of this Indenture in respect of each such redemption.

(i) Redemption shall be made pursuant to the redemption provisions of Section 3.01(b) hereof at such times as are permitted thereunder and in such principal amounts as the Lessee shall request in a written notice to the Conduit Issuer and Indenture Trustee; and

(ii) Redemption shall be made pursuant to the redemption provision of Section 3.01(a) without the necessity of any instructions or further act of the Conduit Issuer or the Lessee.

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## ARTICLE IV

### APPLICATION OF BOND PROCEEDS; 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 Indenture Trustee of the Initial Series of Muni Bonds authenticated and delivered under this Indenture and an applicable Supplemental Indenture. The security so pledged and then or thereafter received by the Conduit 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 Conduit 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 Conduit Issuer, irrespective of whether such parties have notice thereof.

#### **Section 4.02. Creation of Funds and Accounts.**

There is hereby created and established with the Indenture Trustee the following Accounts:

- (i) One or more “Bond Interest Payment Indenture Accounts” (each a “**Bond Interest Payment Indenture Account**”) each created with respect to the issuance of any Series of Muni Bonds;
- (ii) One or more “Bond Principal Payment Indenture Accounts” (each a “**Bond Principal Payment Indenture Account**”) each created with respect to the issuance of any Series of Muni Bonds;
- (iii) One or more “Bond Prepayment/Redemption Payment Indenture Accounts” (each a “**Bond Prepayment/Redemption Payment Indenture Account**”) each created with respect to the issuance of any Series of Muni Bonds;
- (iv) One or more “Arbitrage Rebate Accounts” (each a “**Arbitrage Rebate Account**”) each created with respect to the issuance of any Series of Tax-Exempt Muni Bonds; and
- (v) One or more “Cost of Issuance Indenture Accounts” (each a “Cost of Issuance Indenture Account”) each created with respect to the issuance of any Series of Muni Bonds.

Notwithstanding anything herein to the contrary, the Indenture Trustee may from time to time and in connection with the issuance of a Series of Muni Bonds hereunder and under an applicable Supplemental Indenture hereafter establish and maintain additional funds, accounts or subaccounts necessary or useful in connection with any other provision of this Indenture or any Supplemental Indenture or to the extent deemed necessary by the Indenture Trustee.

#### **Section 4.03. Transfers to Accounts.**

The Indenture Trustee shall promptly deposit the following receipts into the following accounts as applicable:

(a) There shall be deposited into the applicable Bond Interest Payment Indenture Account created with respect to a Series of Muni Bonds on each Transfer Date or on any other date on which interest is due and payable: (i) amounts remitted or transferred to such account by the Account Bank from the applicable Muni Bonds Project Loan Senior Debt Capitalized Interest Account pursuant to Section 4.04(b)(iii) of the Common Terms Agreement pursuant to a Construction Withdrawal Certificate delivered to the Account Bank not less than three (3) Business Days before the requested transfer date, (ii) amounts remitted or transferred to such account by the Account Bank from the applicable Muni Bonds Building Loan Senior Debt Capitalized Interest Account pursuant to Section 4.04(b)(iv) of the Common Terms Agreement pursuant to a Construction Withdrawal Certificate delivered to the Account Bank not less than three (3) Business Days before the requested transfer date, (iii) amounts remitted or transferred to such account by the Account Bank from the applicable Muni Bonds Loans Interest Payment Account pursuant to Section 4.06(a) of the Common Terms Agreement pursuant to a Funds Transfer Certificate delivered by the Lessee to the Account Bank no later than two (2) Business Days prior to the date of the requested funds transfer and (iv) amounts remitted or transferred to such account by the Account Bank from the Muni Bonds Senior Debt Service Reserve Account pursuant to Section 4.09(c) of the Common Terms Agreement.

(b) There shall be deposited into the applicable Bond Principal Payment Indenture Account created with respect to a Series of Muni Bonds on each Transfer Date or on any other date on which principal

on Muni Bonds is due and payable pursuant to a Funds Transfer Certificate delivered by the Lessee to the Account Bank no later than two (2) Business Days prior to the date of the requested funds transfer (i) amounts remitted or transferred to such account by the Account Bank from the applicable Muni Bonds Loans Principal Payment Account pursuant to Section 4.06(b) of the Common Terms Agreement pursuant to a Funds Transfer Certificate delivered by the Lessee to the Account Bank no later than two (2) Business Days prior to the date of the requested funds transfer and (ii) amounts remitted or transferred to such account by the Account Bank from the Muni Bonds Senior Debt Service Reserve Account pursuant to Section 4.09(c) of the Common Terms Agreement.

(c) There shall be deposited into the applicable Bond Prepayment/Redemption Payment Indenture Account created with respect to a Series of Muni Bonds amounts remitted or transferred to such account by the Account Bank from the applicable Muni Bonds Loans Prepayment Account pursuant to:

(i) Section 4.06(c) of the Common Terms Agreement, with respect to (A) all amounts transferred from the Insurance and Condemnation Proceeds Account held under the Common Terms Agreement as and to the extent required to be applied towards the redemption of Muni Bonds pursuant to the provisions of the applicable Tax Compliance Certificate, (B) Net Cash Proceeds from any Disposition by the Lessee of assets or property as and to the extent required to be applied towards the redemption of Muni Bonds pursuant to the provisions of the applicable Tax Compliance Certificate, (C) Net Cash Proceeds received in respect of a termination of the Lease to the extent required to be applied towards the redemption of the Muni Bonds and (D) Net Cash Proceeds of a Permitted Refinancing Indebtedness to the extent required to be applied towards the redemption of the Muni Bonds;

(ii) Section 4.06(g) of the Common Terms Agreement for the purpose of prepaying the Loans and/or other Secured Obligations, as applicable, together with any other amount pursuant to a Funds Transfer Certificate delivered by the Lessee to the Account Bank amounts then due and payable under the Senior Debt Documents, including accrued interest, fees, make whole amounts, premiums, breakage costs, Termination Payments and indemnities payable in connection with such prepayment, as directed in the relevant Funds Transfer Certificate delivered by the Lessee to the Account Bank pursuant to Section 4.22 of the Common Terms Agreement or, in the case of a transfer from the Muni Bonds Senior Debt Service Reserve Account pursuant to Section 4.09(c) of the Common Terms Agreement as directed to the Account Bank in writing by the Collateral Agent (without the requirement of a Funds Transfer Certificate);

(iii) Section 4.10(b) of the Common Terms Agreement from the Insurance and Condemnation Proceeds Account any amount not applied towards the repair and/or reconstruction of the Project in accordance with the Lease; and

(iv) Section 4.04(d)(ii)(B) of the Common Terms Agreement, if on the Completion of the Project there remains on deposit any Muni Bond Proceeds and proceeds of other tax-exempt Senior Debt in any Muni Bonds Project Loan Costs Construction Account and Muni Bonds Project Building Loan Costs Construction Account.

(d) There shall be deposited into the applicable Cost of Issuance Indenture Account created with respect to a Series of Muni Bonds amounts remitted or transferred to such account from the proceeds of such Series of Muni Bonds as directed by the Lessee or the Conduit Issuer. The Indenture Trustee is authorized to apply the amounts on deposit in the Cost of Issuance Indenture Account to the payment of costs of issuance relating to a Series of Muni Bonds and is directed to issue its checks (or, at the direction of the Lessee, make wire transfers), upon a requisition submitted to the Indenture Trustee, signed by the Lessee in the form attached hereto as Exhibit C (*Form of Requisition*).

(e) There shall be deposited into the appropriate Bond Interest Payment Indenture Account, Bond Principal Payment Indenture Account, and Bond Prepayment/Redemption Payment Indenture Account: (i) amounts remitted or transferred to such account pursuant to the Common Terms Agreement; and (ii) any moneys deposited into such account pursuant to Section 8.05 hereof and all other moneys received by the Indenture Trustee that are accompanied by directions that such moneys are to be deposited into such account.

(f) If on any Interest Payment Date the funds on deposit in the applicable Bond Interest Payment Indenture Account are not sufficient to pay the interest payment in full on such Interest Payment Date with respect to an applicable Series of Muni Bonds, the Indenture Trustee shall transfer moneys from the applicable Bond Principal Payment Indenture Account sufficient to make such payment. If on any debt service payment date there exists both (i) funds on deposit in the applicable Bond Interest Payment Indenture Account in excess of the amount necessary to pay the interest payment due on such date, and (ii) insufficient funds on deposit in the applicable Bond Principal Payment Indenture Account to make the principal payment due on such date in full, the Indenture Trustee shall transfer all or such portion of such excess funds on deposit in the Bond Interest Payment Indenture Account to the applicable Bond Principal Payment Indenture Account as necessary to provide for such applicable principal payment in full.

To the extent that investment earnings or transfers from other Accounts are credited to an Account in accordance with this Indenture, deposits to be made to such Accounts shall be reduced by the amount so credited.

#### **Section 4.04. Arbitrage Rebate Accounts.**

There shall be used in connection with the issuance of any Series of Tax-Exempt Muni Bonds under an applicable Supplemental Indenture an Arbitrage Rebate Account for all such Series, and shall be for the sole benefit of the United States of America and shall not be subject to the claim of any other Person, including without limitation, the Owners. Each Arbitrage Rebate Account is established for the purpose of complying with Section 148 of the Code and the Treasury Regulations promulgated pursuant thereto, and all deposits to and transfers made by the Collateral Agent in an Arbitrage Rebate Account shall be made in accordance with and pursuant to Section 4.12 of the Common Terms Agreement. The money deposited in an Arbitrage Rebate Account, together with all investments thereof and investment income therefrom, shall be held in trust and applied solely as provided in the applicable Tax Compliance Certificate. Each Arbitrage Rebate Account is not a portion of the Trust Estate or the Collateral and is not subject to any lien under this Indenture or any other Security Document. Notwithstanding the foregoing, the Indenture Trustee with respect to each Arbitrage Rebate Account is afforded all the rights, protections and immunities otherwise accorded to it hereunder and under an applicable Supplemental Indenture. Notwithstanding anything contained in this Indenture or any Supplemental Indenture to the contrary, neither the Conduit Issuer nor the Indenture Trustee shall be responsible or liable for any loss, liability or expense incurred as a result of the failure of the Lessee to fulfill its obligation with respect to the calculation and payment of the Rebate Amount. The Conduit Issuer and the Indenture Trustee shall be entitled to rely conclusively upon the calculations provided by the Lessee.

#### **Section 4.05. Establishment of Muni Bonds Senior Debt Service Reserve Account.**

In conjunction with the issuance of the Series 2023 Bonds, the Lessee shall instruct the Account Bank to establish the Muni Bonds Senior Debt Service Reserve Account in accordance with Section 3(a)(viii) of the Common Terms Agreement. The Muni Bonds Senior Debt Service Reserve Account will be established solely for the benefit of all the Muni Bonds unless the Supplemental Indenture authorizing a Series of Muni Bond provides that such Series will not be secured by the Muni Bonds Senior Debt Service Reserve Account. The Muni Bonds Senior Debt Service Reserve Account will be funded in an amount

equal to the Muni Bonds Senior Debt Service Reserve Requirement at such time as provided in any Supplemental Indenture authorizing a Series of Muni Bonds. Amounts will be deposited into the Muni Bonds Senior Debt Service Reserve Fund in accordance with Section 4.02(b) of the Common Terms Agreement and the Muni Bonds Senior Debt Service Reserve Fund will be subject to the provisions of Section 4.09 of the Common Terms Agreement.

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## ARTICLE V

### PARTICULAR COVENANTS OF CONDUIT ISSUER

#### **Section 5.01. Conduit 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 Conduit 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 Muni Bonds shall not be payable out of any funds of the Conduit Issuer other than those pledged therefor but shall be payable by the Conduit Issuer solely from the Trust Estate and the Indenture Trustee's proportionate right, interest and title to the Collateral including the payments made by the Lessee under the Lessee Loan Agreements and the Promissory Notes, and the revenues and receipts pledged to the payment thereof in the manner and to the extent in this Indenture and the Security Documents and Financing Documents specified, and nothing in the Muni Bonds, in the Lessee Loan Agreements, in the Promissory Notes, in this Indenture or in any Security Document or Financing Document shall be considered as pledging any other funds or assets of the Conduit Issuer.

#### **Section 5.02. Payment of Principal and Interest.**

The Conduit Issuer covenants that it will, from the sources contemplated herein, and in the Financing Documents promptly pay or cause to be paid the principal of, Redemption Price of and interest on the Muni Bonds, at the place, on the dates and in the manner provided in this Indenture and in the Muni Bonds according to the true intent and meaning thereof. All covenants, stipulations, promises, agreements and obligations of the Conduit Issuer contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the Conduit 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 of or interest on the Muni 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 Muni Bonds. None of the Muni Bonds, the principal of, Redemption Price thereof or the interest 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 Conduit Issuer) and neither the State nor any such other entity shall be liable on any obligation so incurred, and the Muni Bonds shall not be payable out of any funds of the Conduit Issuer other than those pledged therefor. The Conduit Issuer shall not be required under this Indenture or the Lessee Loan Agreements or any other Security Document or Financing Document to expend any of its funds other than (i) the proceeds of the applicable series of Muni Bonds, (ii) the loan payments, revenues and receipts pledged to the payment of the applicable series of Muni Bonds, and (iii) any income or gains therefrom.

### **Section 5.03. Performance of Covenants; Conduit Issuer.**

The Conduit 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 Series of Muni Bonds executed, authenticated and delivered hereunder and in all proceedings pertaining thereto. The Conduit Issuer represents and warrants that it is duly authorized under the Act and the laws of the State to issue the Muni Bonds authorized hereby and to execute this Indenture, to make the loans pursuant to the Lessee Loan Agreements and the Promissory Notes, to assign the Lessee Loan Agreements, the Promissory Notes, and the Leasehold Mortgages pursuant to the Collateral Assignments including the loan payments made by the Lessee under the Lessee Loan Agreements and the Promissory Notes, thereby pledged in the manner and to the extent therein set forth, and to pledge the Trust Estate; and that all action on its part for the execution and delivery of this Indenture has been duly and effectively taken.

### **Section 5.05. Lessee Loan Agreements.**

It is understood and agreed that the Conduit Issuer will, pursuant to the Lessee Loan Agreements and the Promissory Notes, loan to the Lessee an amount equal to the principal amount of the Outstanding Muni Bonds. Executed copies of the Lessee Loan Agreements and each Promissory Note will be on file in the office of the Conduit Issuer and in the designated corporate trust office of the Indenture Trustee. Reference is hereby made to the Lessee 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 Lessee Loan Agreements shall be enforceable in accordance with the Common Terms Agreement.

### **Section 5.06. Creation of Liens; Indebtedness.**

The Conduit 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, or the revenues and payments required to be made under the Lessee Loan Agreements and the Promissory Notes assigned to the Collateral Agent under the Collateral Assignments, except the lien, charge and pledge created by the Collateral Assignments, this Indenture (including the issuance of Additional Muni Bonds hereunder) and the Leasehold Mortgages. The Conduit Issuer shall have no pecuniary liability for its covenants set forth in this Indenture or the Collateral Assignment including under this Section 5.06, and the Leasehold Mortgages.

### **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 as supplemented by any Supplemental Indenture, in the rights and other intangible interests described herein, shall be perfected by the filing of financing statements by the Lessee at the direction of the Conduit Issuer (at the sole cost and expense of the Lessee) in the office of the Secretary of State of the State of New York (the “**Secretary of 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 Indenture Trustee whenever such action is necessary to preserve the lien and security interest hereof. Any such filings or re-filings shall be prepared by the Lessee and delivered to the Indenture Trustee (if electronic filing is not elected by the Conduit Issuer) on a timely basis accompanied by any fees or requisite charges. The Indenture Trustee 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 Lessee of any such filings.

(b) The Conduit Issuer and the Indenture Trustee acknowledge that, as of the Closing Date,

(i) 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;

(ii) 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);

(iii) The Conduit 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

(iv) 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 as supplemented by any Supplemental Indenture (individually or collectively, the “**Continuation Action(s)**”), then the Lessee in a timely manner shall: (A) as applicable, upon the request of the Indenture Trustee (i) prepare and deliver to the Indenture Trustee all necessary instruments and filing papers, together with remittances equal to the costs of required filing fees and other charges, so that the Indenture Trustee may perform the Continuation Actions, or (ii) electronically perform the Continuation Actions and deliver to the Indenture Trustee 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 the Indenture Trustee or the Conduit Issuer, deliver or cause to be delivered to the Conduit Issuer and the Indenture Trustee the Opinion of Counsel to the Lessee as described below. The Indenture Trustee 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 Lessee. In the event the Lessee chooses to have the Indenture Trustee perform all or some of the Continuation Actions, as provided in clause “(A)(i),” the Indenture Trustee shall reasonably and promptly perform such Continuation Actions at the Lessee’s sole expense. The Lessee 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 (30th) 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 as supplemented by any Supplemental Indenture.

If an Opinion of Counsel to the Lessee is requested pursuant to clause “(B),” then the Opinion of Counsel to the Lessee shall be addressed to the Lessee, the Conduit Issuer and the Indenture Trustee. If so requested, the Lessee shall deliver successive Opinions of Counsel in respect of (i) the thirtieth (30th) 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 Lessee, 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 Indenture Trustee with instruments and papers prepared by the Lessee, (ii) the Lessee through electronic filing, or (iii) the Indenture Trustee as to some Continuation Actions, and the Lessee as to the others through electronic filings, all appropriate steps shall have been taken on the part of the Lessee, the Conduit Issuer and the Indenture Trustee then requisite to the maintenance of the perfection of the security interest of the Indenture Trustee in and to all property and interests which by the terms of this Indenture as supplemented by any Supplemental Indenture are to be subjected to the lien and security interest of this Indenture as supplemented by any Supplemental Indenture.

(d) Any filings with respect to UCC financing statements may be made electronically, and the Conduit Issuer shall have the right to designate a company (which shall be reasonably acceptable to the Indenture Trustee) to facilitate the filing of UCC financing statements.

(e) The Indenture Trustee acknowledges and agrees (on behalf of itself and the Owners) that neither the Conduit Issuer, nor any of its directors, members, officers, employees, servants, agents, persons under its control or supervision, or attorneys (including Bond Counsel to the Conduit Issuer), nor any of the Lessee'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 Lessee.

**Section 5.09. Reporting between the Indenture Trustee, the Collateral Agent and the Account Bank.**

Any reports or notices required to be given hereunder or pursuant to any Supplemental Indenture from the Indenture Trustee to the Collateral Agent, Account Bank, or Intercreditor Agent, may be deemed by the Collateral Agent, Account Bank or Intercreditor Agent to be delivered to the Collateral Agent, Account Bank or Intercreditor Agent without any further action on the part of the Indenture Trustee, as long as the Indenture Trustee and the Collateral Agent, Account Bank or Intercreditor Agent are the same entity.

**Section 5.10. Tax Covenants of the Conduit Issuer.**

(a) The Conduit Issuer covenants that it shall not take any action within its control, nor refrain from taking any action reasonably requested by the Lessee, or the Indenture Trustee that would cause the interest on any issue of Tax-Exempt Muni Bonds 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 Conduit Issuer and the only remedy to which the Conduit Issuer shall be subject shall be specific performance. Notwithstanding any other provision of this Indenture to the contrary, so long as it is necessary to maintain the exclusion of interest on any issue of Tax-Exempt Muni Bonds from gross income for federal income tax purposes, the covenants contained in this Section shall survive the payment of any issue of Tax-Exempt Muni Bonds and the interest thereon, including any payment or defeasance thereof pursuant to Section 7.01 of this Indenture.

(b) The Conduit Issuer covenants and agrees, for the benefit of each Owner, it shall comply with its covenants and agreements set forth in each Tax Compliance Certificate and in this Section 5.10. In

the event the Conduit Issuer becomes aware of a possible violation of a tax covenant, the Conduit Issuer shall have the right, upon notice to the Lessee, to conduct its own investigation, and at the sole but reasonable cost and expense of the Lessee, to retain Bond Counsel to determine any and all actions required to remediate such violation.

#### **Section 5.11. List of Owners.**

The Indenture Trustee will keep on file for the Muni Bonds a list of names and addresses of the Owners of all Muni Bonds, as from time to time registered on the registration books maintained by the Indenture Trustee, together with the principal amount and numbers of such Muni Bonds owned by each such Owner. At reasonable times and under reasonable regulations established by the Indenture Trustee, such list may be inspected and copied for any purpose by the Lessee, 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 Muni Bonds, such possession or ownership and the authority of such designated representative to be evidenced to the satisfaction of the Indenture Trustee.

#### **Section 5.12. Arbitrage Covenants.**

The Conduit Issuer covenants and certifies to and for the benefit of the Owners of each issue of Tax-Exempt Muni Bonds Outstanding that money on deposit in any Account or Subaccount in connection with such issue of Tax-Exempt Muni Bonds, whether or not such money was derived from proceeds of the sale of such issue of Tax-Exempt Muni Bonds or from any other source, will not be used in a manner which will cause such issue of Tax-Exempt Muni Bonds 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 such issue of Tax-Exempt Muni Bonds to be included in gross income for Federal income tax purposes. Pursuant to such covenant, the Conduit Issuer obligates itself to comply throughout the term of each issue of the Tax-Exempt Muni Bonds with the requirements of Section 148 of the Code, as provided in the applicable Tax Compliance Certificate for such issue of Tax-Exempt Muni Bonds. Further, the Conduit 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 each issue of Tax-Exempt Muni Bonds pursuant to Section 148(f) of the Code from amounts made available for such purpose by the Lessee. Notwithstanding any other provision of this Indenture to the contrary, so long as necessary to maintain the exclusion of interest on any issue of Tax-Exempt Muni Bonds from gross income for federal income tax purposes, the covenants contained in this Section shall survive the payment of such issue of Tax-Exempt Muni Bonds and the interest thereon, including any payment or defeasance thereof pursuant to Section 7.01 of this Indenture. Notwithstanding any provision of this Section, if the Conduit Issuer obtains an Opinion of Bond Counsel to the effect that any action required under this Section is no longer required or that some further action is required to maintain the exclusion from federal income tax of interest on an issue of Tax-Exempt Muni Bonds, the Conduit Issuer may rely conclusively on such Opinion in complying with the requirements of this Section, and the covenants contained herein shall be deemed modified to that extent.

#### **Section 5.13. Notices and Instructions.**

The Indenture Trustee shall promptly deliver to the Conduit Issuer, the Lessee, and the Collateral Agent:

- (a) any notice provided to it by the Lessee under the terms of the Lessee 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 Lessee Loan Agreements; and

(c) written notice of any Lien placed on, or any claim against, the Trust Estate (other than the Security Interests created under this Indenture or the other Financing Documents or Security Documents, or any other Permitted Lien) to the extent it has knowledge thereof.

(d) In addition to the above means of giving notice, the Indenture 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 Lessee shall provide to the Indenture 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 Lessee whenever a person is to be added or deleted from the listing. If the Lessee elects to give the Indenture Trustee any Instructions using Electronic Means, and the Indenture Trustee, in its discretion, elects to act upon such Instructions, the Indenture Trustee’s understanding of such Instructions shall be deemed controlling. The Lessee understands and agrees that if the Indenture Trustee cannot determine the identity of the actual sender of such Instructions, the Indenture Trustee may conclusively presume that directions that purport to have been sent by an Authorized Person listed on the incumbency certificate provided to the Indenture Trustee have been sent by such Authorized Persons. The Lessee shall be responsible for ensuring that only Authorized Persons transmit such Instructions to the Indenture Trustee 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 Indenture Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Indenture Trustee’s reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction, provided that the Indenture Trustee 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 Indenture Trustee, including without limitation the risk of the Indenture 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 Indenture Trustee 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 Indenture Trustee immediately upon learning of any compromise or unauthorized use of the security procedures.

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## ARTICLE VI

### PARTICULAR COVENANTS AND REPRESENTATIONS OF LESSEE

#### Section 6.01. Tax Covenant.

(a) The Lessee covenants that it shall not take any action within its control, nor refrain from taking any action reasonably requested by the Conduit Issuer or the Indenture Trustee that would cause the interest on any Tax-Exempt Muni Bonds to become includable in gross income for federal income tax purposes. Notwithstanding any other provision of this Indenture to the contrary, so long as it is necessary to maintain the exclusion of interest on any issue of Tax-Exempt Muni Bonds from gross income for federal income tax purposes, the covenants contained in this Section shall survive the payment of such issue of

Tax-Exempt Muni Bonds and the interest thereon, including any payment or defeasance thereof pursuant to Section 7.01 of this Indenture.

(b) The Lessee covenants and agrees, for the benefit of each Owner of Tax-Exempt Muni Bonds, it shall comply with its covenants and agreements set forth in the applicable Tax Compliance Certificate with respect to such Tax-Exempt Muni Bonds and in this Section 6.01. Notwithstanding any other provision of this Indenture or the Common Terms 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 Muni Bonds, the covenants contained in this Section shall survive the payment of such Tax-Exempt Muni Bonds and the interest thereon, including any payment or defeasance thereof.

(1) The Lessee covenants that at least ninety-five percent (95%) of the “net proceeds” (as defined in section 150 of the Code and pertinent Treasury Regulations thereunder) of each issue of Tax-Exempt Muni Bonds, shall be used solely to pay qualified costs (including the repayment of the relevant portion of one or more Loans used to finance or refinance such costs) in accordance with the applicable Tax Compliance Certificate for such issue of Tax-Exempt Muni Bonds.

(2) The Lessee covenants for the benefit of the Conduit Issuer and the Owners of each issue of the Tax-Exempt Muni Bonds outstanding from time to time that it will not take any action or omit to take any action with respect to such issue of Tax-Exempt Muni Bonds, the proceeds thereof, any other funds of the Lessee or any of the facilities financed or refinanced with the proceeds of such issue of Tax-Exempt Muni Bonds if such action or omission (i) would cause the interest on such issue of Tax-Exempt Muni Bonds to lose its excludability from gross income for federal income tax purposes under Section 103 of the Code or (ii) would cause interest on such issue of Tax-Exempt Muni Bonds to lose any exemption from income taxation in the State for which they would otherwise be eligible.

(3) The Lessee further acknowledges that the certifications, representations, covenants and procedures set forth in the Tax Compliance Certificate or Certificates implement the covenants in paragraphs (a) and (b) above and Section 6.02 and are incorporated herein by this reference.

(4) The Lessee shall not permit any use of the proceeds of an issue of the Tax-Exempt Muni Bonds which would cause such issue of Tax-Exempt Muni Bonds to be classified as “arbitrage bonds” within the meaning of Section 148 of the Code.

(5) The Lessee shall aid and assist the Conduit Issuer in connection with preparing and submitting to the IRS a Form 8038 (or other applicable information reporting statement) with respect to each issue of Tax-Exempt Muni Bonds at the time and in the form required by the Code.

(6) The Lessee will adopt and implement written post-issuance tax compliance procedures to assure the compliance of the tax covenants in this Section 6.01 sufficient (i) to monitor the requirements of Section 148 of the Code with respect to each issue of Tax-Exempt Muni Bonds and (ii) to ensure that all nonqualified bonds of each issue of Tax-Exempt Muni Bonds are remediated in accordance with the Code and the regulations thereunder.

(7) If pursuant to the procedures of the Lessee, the Lessee determines that it must take remedial action to cure a violation of the tax covenants in this Section 6.01, in an applicable Tax Compliance Certificate or otherwise with respect to any issue of Tax-Exempt Muni Bonds, it will promptly notify the Conduit Issuer and the Indenture Trustee as to the action to be taken.

## **Section 6.02. Arbitrage Covenant.**

The Lessee covenants and certifies to and for the benefit of the Owners of each issue of Tax-Exempt Muni Bonds Outstanding that money on deposit in any Account or Subaccount in connection with such issue of Tax-Exempt Muni Bonds, whether or not such money was derived from proceeds of the sale of such issue of Tax-Exempt Muni Bonds or from any other source, will not be used in a manner which will cause such issue of Tax-Exempt Muni Bonds 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 such issue of Tax-Exempt Muni Bonds to be included in gross income for Federal income tax purposes. Pursuant to such covenant, the Lessee obligates itself to comply throughout the term of each issue of the Tax-Exempt Muni Bonds with the requirements of Section 148 of the Code, as provided in the applicable Tax Compliance Certificate for such issue of Tax-Exempt Muni Bonds. The Lessee 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 gross proceeds of each issue of Tax-Exempt Muni Bonds. Notwithstanding any other provision of this Indenture to the contrary, so long as necessary to maintain the exclusion of interest on any issue of Tax-Exempt Muni Bonds from gross income for federal income tax purposes, the covenants contained in this Section shall survive the payment of such issue of Tax-Exempt Muni Bonds and the interest thereon, including any payment or defeasance thereof pursuant to Section 7.01 of this Indenture. Notwithstanding any provision of this Section, if the Conduit Issuer obtains an Opinion of Bond Counsel to the effect that any action required under this Section is no longer required or that some further action is required to maintain the exclusion from federal income tax of interest on an issue of Tax-Exempt Muni Bonds, the Conduit Issuer may rely conclusively on such Opinion in complying with the requirements of this Section, and the covenants contained herein shall be deemed modified to that extent.

## **ARTICLE VII**

### **DISCHARGE OF INDENTURE**

#### **Section 7.01. Discharge of Indenture.**

(a) If, when the Muni Bonds secured hereby shall be paid in accordance with their terms (or payment of the Muni Bonds has been provided for in the manner set forth in the following paragraph), and the fees and expenses of the Indenture Trustee and the Conduit Issuer due in connection with the payment of the Muni Bonds and all other sums payable hereunder shall have been paid or provided for in accordance with the provisions of this Section, 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 Conduit Issuer, the Indenture 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 Lessee Representative shall direct in writing, except as otherwise provided herein.

(b) Payment of any Outstanding Muni 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 Muni Bond (or portion) is to be redeemed on any date prior to its maturity, the Conduit Issuer shall have given to the Indenture Trustee in form satisfactory to it irrevocable instructions to give notice of redemption of said Muni Bonds in accordance with the provisions of Section 3.06 hereof, (ii) there shall have been irrevocably deposited with the Indenture 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 Indenture Trustee, at the same time, shall be sufficient to pay when due the principal of, Redemption Price of, and interest due and to become due on said Muni

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 Indenture Trustee and the Conduit Issuer, (x) a report of a firm of nationally recognized independent certified public accountants or nationally recognized verification consultants as selected by the Lessee and reasonably acceptable to the Conduit 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 of, Redemption Price of, and interest due or to become due on such Muni 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 to the further effect that upon provision for the payment of the principal of, Redemption Price of, and interest due or to become due on such Muni Bonds, the pledge of moneys and securities hereunder and the grant of all rights to the Owners of such Muni Bonds hereunder shall be discharged and satisfied, and (iv) the Conduit Issuer shall have given the Indenture Trustee irrevocable instructions to give a notice to the Owners of such Muni Bonds that the deposit required by (ii) above has been made with the Indenture Trustee, and that, with respect to such Muni Bonds, the pledge of this Indenture has been released and discharged, except as otherwise herein provided, and that payment of said Muni 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, Redemption Price of, and interest on said Muni Bond (or portion). At such time as payment of any Muni Bond (or portion) has been provided for as aforesaid, such Muni 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 Indenture Trustee.

(c) The release of the obligations of the Conduit Issuer under this Section shall be without prejudice to the right of the Indenture Trustee to be paid by the Lessee compensation 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.

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## ARTICLE VIII

### EVENTS OF DEFAULT

#### **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 and Redemption Price of any Muni 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 Muni 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 in the Muni Bonds or this Indenture contained (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 Conduit Issuer, the Lessee and the Indenture Trustee from the Owners of a majority in aggregate principal amount of the Muni Bonds then Outstanding or from the Indenture 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 a (i) Secured Obligations Event of Default as defined under the Common Terms Agreement or (ii) an Event of Default as defined under the Credit Agreement that continues beyond any grace or cure period provided for under such agreements.

The Indenture Trustee shall, within thirty (30) days of the occurrence of an Event of Default or of any event of which the Indenture 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 Conduit Issuer, the Lessee, the Collateral Agent, and all Owners of the occurrence of such Event of Default or such other event.

## **Section 8.02. Remedies on Events of Default.**

If an Event of Default shall have occurred and be continuing, the Indenture Trustee shall have the right to take any enforcement action or otherwise exercise remedies (including acceleration of the Muni Bonds) in accordance with Section 8.03 of the Common Terms Agreement. Notwithstanding the foregoing, the Indenture Trustee may take any or all of the following actions:

(a) *Transfer of Funds under the Common Terms Agreement.* If such an Event of Default as described in Section 8.01(a) or (b) has occurred and is continuing, without further demand or notice, the Indenture Trustee may request the Account Bank to transfer immediately available funds in the applicable account or subaccount of any (i) Muni Bonds Project Loan Costs Construction Account, (ii) Muni Bonds Building Loan Costs Construction Account, (iii) Muni Bonds Senior Debt Service Reserve Account, (iv) Muni Bonds Project Loan Senior Debt Capitalized Interest Account, (v) Muni Bonds Building Loan Senior Debt Capitalized Interest Account, (vi) Muni Bonds Loans Interest Payment Account, (vii) Muni Bonds Loans Principal Payment Account, (viii) Muni Bonds Loans Prepayment Account or (ix) Muni Bonds Senior Debt Proceeds Account as provided in Section 8.04(a) of the Common Terms Agreement, and the Indenture Trustee shall deposit any moneys received as a result of such action in the applicable Bond Interest Payment Indenture Accounts, Bond Principal Payment Indenture Accounts and/or the Bond Prepayment/Redemption Payment Indenture Accounts for each Series of Muni Bonds, as applicable.

(b) *Legal Proceedings and Acceleration.* Subject to Section 8.03 of the Common Terms Agreement, the Indenture Trustee may, at the written direction of the Owners of a majority in aggregate principal amount of Muni Bonds Outstanding, (1) bring such suits, actions or proceedings at law or in equity to enforce the rights of the Owners, and require the Conduit Issuer or the Lessee or either or both of them to carry out the agreements with or for the benefit of the Owners, and to perform its or their duties, under this Indenture and the other Financing Documents, or (2) by written notice to the Conduit Issuer, the Lessee and the Collateral Agent, declare the principal of the Muni Bonds to be immediately due and payable, whereupon the principal of the Muni 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 Muni Bonds to the contrary notwithstanding. The Indenture 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 Owners.

(c) *Suit for Judgment on the Muni Bonds.* Subject to Section 8.03 of the Common Terms Agreement, the Indenture 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 Owners hereunder, but any such judgment against the Conduit Issuer shall be enforceable only against the Trust Estate and the Indenture Trustee's proportionate right, interest and title to the Collateral. No recovery of any judgment by the Indenture Trustee shall in any manner or to any extent affect the lien of this Indenture or any rights, powers or remedies of the Indenture

Trustee hereunder, or any lien, rights, powers or remedies of the Owners of the Muni Bonds, but such lien, rights, powers and remedies of the Indenture Trustee and of the Owners 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 if requested by the Owners of a majority in aggregate principal amount of Muni Bonds then Outstanding and the Indenture Trustee is indemnified as provided in Section 9.02 hereof, the Indenture Trustee shall be obligated to exercise such one or more of the rights and powers conferred by this Section as the Indenture Trustee, being advised by counsel (with such counsel being obtained at the expense of the Lessee), shall deem most expedient in the interests of the Owners.

(d) *Cure Rights of Lessee.* Pursuant to the Lessee Loan Agreements, the Conduit Issuer has granted to the Lessee full authority for the account of the Conduit Issuer to perform any covenant or obligation of the Conduit Issuer, the non-performance of which is alleged in any notice received by the Lessee to constitute a default hereunder, in the name and stead of the Conduit Issuer with full power to do any and all things and acts to the same extent that the Conduit Issuer could do and perform any such things and acts with power of substitution. The Indenture Trustee agrees to accept such performance by the Lessee as performance by the Conduit Issuer.

(e) *The Common Terms Agreement.* The Indenture Trustee shall be entitled to deliver all notices, instructions, directions, and otherwise exercise all of the Indenture Trustee's rights under the Common Terms Agreement as a Secured Debt Representative. The Indenture Trustee may direct the Collateral Agent 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 Common Terms Agreement, and may further direct the Collateral Agent as to application of Funds, Accounts, and application of such Collateral.

(f) *Exercise of All Legal Remedies.* Subject to the Common Terms Agreement, the Indenture 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 Owners May Control Proceedings.**

Subject to the Common Terms Agreement, the Owners of a majority in aggregate principal amount of the Muni 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 Indenture 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 Indenture 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 Owners.**

No Owner of any Muni 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 and is continuing of which the Indenture Trustee has notice, and such default shall have become an Event of Default and the

Owners of a majority in aggregate principal amount of Muni Bonds then Outstanding shall have made written request to the Indenture 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 Indenture Trustee indemnity as provided in Section 9.02 hereof and unless the Indenture 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 Indenture 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 Muni Bonds shall have the right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture and the Indenture 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 Muni Bonds then Outstanding. Nothing in this Indenture contained shall, however, affect or impair the right of any Owner of Muni Bonds to enforce the payment, by the institution of any suit, action or proceeding in equity or at law, of the principal of, Redemption Price of and interest on any Muni Bond at and after the maturity thereof, or the obligation of the Conduit Issuer to pay the principal of, Redemption Price of, Sinking Fund Requirement and interest on each of the Muni Bonds to the respective Owners of the Muni Bonds at the time and place, from the source and in the manner herein and in the Muni Bonds expressed

#### **Section 8.05. Application of Moneys.**

All funds held by the Indenture Trustee or paid to the Indenture Trustee by the Collateral Agent or the Account Bank pursuant to Section 8.04 of the Common Terms Agreement in connection with an Enforcement Action pursuant to and in accordance with the Common Terms Agreement, this Indenture, and the other Security 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 Indenture Trustee have been paid in full (the **“Indenture Trustee Collection Costs”**) and all fees and expenses due to the Indenture Trustee hereunder (**“Indenture Trustee Fees”**), be deposited into the applicable Bond Interest Payment Indenture Accounts, Bond Principal Payment Indenture Accounts and/or the Bond Prepayment/Redemption Payment Indenture Accounts for the Muni Bonds. All moneys so deposited into the applicable Bond Interest Payment Indenture Accounts, Bond Principal Payment Indenture Accounts and/or the Bond Prepayment/Redemption Payment Indenture Accounts for the Muni Bonds shall be applied as follows (provided, however, that any moneys held for non-presented Muni Bonds hereunder shall only be applied to the payment of such Muni Bonds without reduction for Indenture Trustee Collection Costs or Indenture Trustee Fees):

(a) Unless the principal of all Muni Bonds shall have become due and payable, all such moneys shall be applied:

*First*, To deposit in the Arbitrage Rebate Accounts any deficiency of amounts required to be deposited to such accounts.

*Second*, To the payment to the Persons entitled thereto of all installments of interest then due on the Muni Bonds and the Muni Bond Insurer for reimbursement of interest advanced under any Muni Bond Insurance Policy with respect to Insured Muni Bonds, in the order of the maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the Persons entitled

thereto, without any discrimination or privilege, except as to any difference in the respective rates of interest specified in the Muni Bonds;

*Third,* To the payment to the Persons entitled thereto of the unpaid principal of and Redemption Price of any of the Muni Bonds which shall have become due (other than Muni Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture) and to the Muni Bond Insurer for reimbursement of principal advanced under any Muni Bond Insurance Policy by the Muni Bond Insurer with respect to Insured Muni Bonds, in the order of their due dates, with interest on the unpaid principal of and Redemption Price of such Muni Bonds from the respective dates upon which they became due, at a rate borne by the Muni Bonds and, if the amount available shall not be sufficient to pay in full Muni Bonds due on any particular date, together with such interest, then to the payment first of such interest, ratably, according to the amount of such interest due on such date, and then to the payment of such principal, ratably, according to the amount of principal due on such date, to the persons entitled thereto, without any discrimination or privilege, except as to any difference in the respective rates of interest specified in the Muni Bonds.

*Fourth,* To the Muni Bond Insurer for the payment of interest on all amounts advanced by the Muni Bond Insurer under a Muni Bond Insurance Policy from the date advanced by the Muni Bond Insurer until payment thereof in full, payable to the Muni Bond Insurer at the Late Payment Rate as specified in any Supplemental Indenture and to the payment to the Muni Bond Insurer for any insurance premiums owed the Muni Bond Insurer and any and all out of pocket charges, fees, costs, and expenses that the Muni Bond Insurer may reasonably pay or incur, including, but not limited to attorneys' and accounts fees and expenses in connection with the enforcement, defense or preservation of any rights in respect of any of the Financing Documents.

(b) If the principal of all the Muni Bonds shall have become due and payable, all such moneys shall be applied (subject to the terms of the Granting Clauses of this Indenture and to the proviso set forth in the first paragraph of this Section) *first:* to deposit in the Arbitrage Rebate Accounts any deficiency of amounts required to be deposited to such accounts, *second:* to the payment to the Persons entitled thereto of all installments of interest due and payable on or prior to maturity, and the Muni Bond Insurer for reimbursement of interest paid by the Muni Bond Insurer with respect to Insured Muni Bonds, if any, in the order in which such installments became due and payable and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment, ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Muni Bonds, and *third:* to the payment of the principal of the Muni Bonds and to the Muni Bond Insurer for reimbursement of principal paid by the Muni Bond Insurer with respect to Insured Muni Bonds, ratably, to the Persons entitled thereto, without preference or priority of any Muni Bonds over any other Muni Bond, and *fourth:* to the Muni Bond Insurer for the payment of interest on all amounts advanced by the Muni Bond Insurer under a Muni Bond Insurance Policy from the date advanced by the Muni Bond Insurer until payment thereof in full, payable to the Insurer at the Late Payment Rate as specified in any Supplemental Indenture and to the payment to the Muni Bond Insurer for any insurance premiums owed the Muni Bond Insurer and any and all out of pocket charges, fees, costs, and expenses that the Muni Bond Insurer may reasonably pay or incur, including, but not limited to attorneys' and accountants fees and expenses in connection with the enforcement, defense or preservation of any rights in respect of any of the Financing Documents.

(c) If the principal of all the Muni Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article then, subject to the provisions of paragraph (b) of this Section in the event that the principal of all the Muni Bonds shall later become due or be declared due and payable, the moneys remaining and thereafter accruing to the respective Bond Interest Payment Indenture Accounts, Bond Principal Payment Indenture Accounts and/or

the Bond Prepayment/Redemption Payment Indenture Accounts shall be applied in accordance with the provisions of paragraph (a) of this Section.

Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times, and from time to time, as the Indenture Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Indenture Trustee shall apply such funds, 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 Indenture 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 Muni Bond until such Muni Bond shall be presented to the Indenture Trustee for appropriate endorsement or for cancellation if fully paid. The Indenture Trustee shall set a Special Record Date for such payment in accordance with Section 2.16(e) hereof.

Whenever all of the Muni Bonds and interest thereon have been paid under the provisions of this Section and all expenses and fees of the Indenture Trustee and any other amounts to be paid to the Conduit Issuer hereunder have been paid, any balance remaining in the Accounts shall be paid as provided in Common Terms Agreement.

**Section 8.06. Indenture Trustee May Enforce Rights Without Muni Bonds.**

All rights of action and claims under this Indenture or any of the Muni Bonds Outstanding hereunder may be enforced by the Indenture Trustee without the possession of any of the Muni Bonds or the production thereof in any trial or proceedings relative thereto; and any suit or proceeding instituted by the Indenture Trustee shall be brought in its name as Indenture Trustee, without the necessity of joining as plaintiffs or defendants any Owners of the Muni Bonds, and any recovery of judgment shall be for the ratable benefit of the Owners of the Muni 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 Indenture Trustee or of any Owner 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.

All rights of action and claims under this Indenture or any of the Muni Bonds Outstanding hereunder may be enforced by the Indenture Trustee without the possession of any of the Muni Bonds or the production thereof in any trial or proceedings relative thereto; and any suit or proceeding instituted by the Indenture Trustee shall be brought in its name as Indenture Trustee, without the necessity of joining as plaintiffs or defendants any Owners of the Muni Bonds, and any recovery of judgment shall be for the ratable benefit of the Owners of the Muni 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 8.08. No Waiver of One Default to Affect Another.**

No waiver of any default hereunder, whether by the Indenture Trustee or the Owners, 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 Indenture 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 Indenture Trustee, then and in every such case the Conduit Issuer, the Lessee, the Indenture 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 Indenture Trustee shall continue as if no such proceedings had been taken.

#### **Section 8.10. Waivers of Events of Default.**

The Indenture Trustee may waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest on the Muni Bonds, and shall do so upon the written request of the Owners of a majority in aggregate principal amount of all the Muni Bonds then Outstanding 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 and Redemption Price of any Outstanding Muni Bonds at the date of maturity or redemption thereof, or any default in the payment when due of the interest on any such Muni Bonds, unless prior to such waiver or rescission, all arrears of interest or all arrears of payments of principal of and Redemption Price of (with interest upon such principal, Sinking Fund Requirements and Redemption Price at the rates borne by the Muni Bonds) and all expenses of the Indenture 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 Indenture Trustee on account of any such default shall have been discontinued or abandoned or determined adversely to the Indenture Trustee, then and in every such case the Conduit Issuer, the Lessee, the Indenture Trustee and the Owners 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.

#### **Section 8.11. Indenture Trustee to Notify Parties of Default and Disclose Information Relating to Default.**

The Indenture Trustee shall promptly notify in writing the Conduit Issuer, the Lessee, the Port Authority, and the Collateral Agent of any default hereunder or the occurrence of any Event of Default. The Indenture Trustee may, in its discretion, notify in writing all Owners of the occurrence of any Event of Default and shall make available any and all information reasonably requested in writing of the Indenture Trustee concerning the Event of Default, the Muni Bonds, the Conduit Issuer, the Collateral Agent, the Lessee 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 Muni Bond shall be extended, whether or not such extension be by or with the consent of the Conduit 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 Muni Bonds then outstanding and of all interest the time for the payment of which shall not have been extended.

#### **Section 8.13. Inconsistency with Common Terms Agreement.**

Notwithstanding anything to the contrary expressed or implied herein, all rights, interests, powers and remedies available to the Conduit Issuer and the Indenture Trustee shall be subject to the Common Terms Agreement. In the event of any conflict or inconsistency between any term or provision of this Indenture and the Common Terms Agreement, the terms of the Common Terms Agreement shall prevail.

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## ARTICLE IX

### THE INDENTURE TRUSTEE AND PAYING AGENT

#### **Section 9.02. Indemnity.**

The Indenture Trustee shall be under no obligation to institute any suit, or to take any remedial action under this Indenture, the Common Terms Agreement or under any other Security 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 Common Terms Agreement or under any other Security 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 Indenture Trustee shall nevertheless be obligated to cause the principal amount of the Muni Bonds to be accelerated or redeemed when required under this Indenture and to make payments (from the sources herein specified) on the Muni Bonds when due, all at the times and in the manner specified in this Indenture. Nothing in this Section shall be construed to require any indemnity from the Conduit Issuer to the Indenture Trustee.

#### **Section 9.03. Responsibilities of Indenture Trustee.**

(a) The Indenture Trustee shall have no responsibility in respect of the validity or sufficiency of this Indenture or of any other Security Document or the security provided hereunder or thereunder or the due execution of this Indenture by the Conduit Issuer or the Lessee, or the due execution of any other Security Document by any party (other than the Indenture Trustee) thereto, or in respect of the validity of the Muni Bonds authenticated and delivered by the Indenture 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 or any Supplemental Indenture. The recitals, statements and representations contained in this Indenture and in the Muni Bonds shall be taken and be construed as made by and on the part of the Conduit Issuer and not by the Indenture Trustee, and the Indenture Trustee does not assume any responsibility for the correctness of the same; provided, however, that the Indenture Trustee shall be responsible for its representation contained in its certificate on the Muni Bonds and for its responsibility as to filing, refiling, recording and re-recording as contained in Section 5.08 hereof or any Supplemental Indenture.

(b) The Indenture Trustee shall not be liable or responsible because of the failure of the Conduit 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 Compliance Certificate with respect to any issue of Tax-Exempt Muni Bonds. The Indenture Trustee shall not be responsible for the application of any of the proceeds of the Muni Bonds or any other moneys deposited with it and paid out, invested, withdrawn or transferred in accordance with this Indenture, the Common Terms Agreement or the Tax Compliance Certificate with respect to any issue of Tax-Exempt Muni Bonds or for any loss, fee, tax or other charge resulting from any such investment. The Indenture Trustee shall not be liable in connection with the performance of its duties under the Lessee Loan Agreements, under the Common Terms Agreement, under this Indenture or under any other Security Document except for its own willful misconduct or gross negligence. The immunities and exemptions from liability of the Indenture Trustee

shall extend to its directors, officers, employees, agents and servants and persons under the Indenture Trustee's control or supervision.

(c) The Indenture 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 and such duties as an Additional Senior Creditor under the Common Terms Agreement. In case an Event of Default has occurred (which has not been cured) the Indenture 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 Indenture Trustee shall not be charged with knowledge of the occurrence of an Event of Default unless, (i) the Indenture Trustee has not received any certificate or other document regularly required to be delivered to the Indenture Trustee under the Lessee Loan Agreements or any other Security Document, (ii) the Indenture Trustee has not received from the Collateral Agent or the Account Bank payment of any amount required to be remitted to the Indenture Trustee under the Lessee Loan Agreements or any other Security Document, (iii) an officer in the corporate trust department of the Indenture Trustee has actual knowledge thereof, or (iv) the Indenture Trustee has received written notice thereof from the Lessee, the Conduit Issuer or any Owner.

(d) The Indenture Trustee shall not be liable or responsible for the failure of the Lessee to effect or maintain insurance as provided in the Common Terms Agreement 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 Conduit Issuer, the Lessee, the Indenture Trustee or any other Person.

(e) The Indenture Trustee shall execute (without the necessity of obtaining the signatures of the Lessee) and cause to be filed those continuation statements, any additional financing statements and all other instruments required by it by Section 5.08 hereof or any Supplemental Indenture.

(f) The Indenture Trustee shall make annual reports to the Conduit Issuer, the Collateral Agent, and the Lessee 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 Lessee Loan Agreements or this Indenture or under any other Security Document.

(g) With respect to the Tax Compliance Certificate with respect to any issue of Tax-Exempt Muni Bonds, the Indenture 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 Lessee Representative delivered to the Indenture Trustee in accordance with the terms of the Tax Compliance Certificate. Notwithstanding any provision of the Tax Compliance Certificate or any other Security Document with respect to any issue of Tax-Exempt Muni Bonds, nothing in the Tax Compliance Certificate, either expressed or implied, shall be deemed to impose upon the Indenture Trustee any responsibility for the legal sufficiency of the Tax Compliance Certificate to effect compliance with the Code nor any duty to independently review or verify any information or calculation furnished to the Indenture Trustee by the Lessee.

(h) Subject to subsection (b) above, if consent of the Indenture Trustee is required under this Indenture, the Lessee Loan Agreements, the Common Terms Agreement, or any other Security Document to any action or event, the Indenture Trustee may, but shall not be obligated to, solicit consents therefor from Owners of the Muni Bonds and shall not be in any way obligated to consent to any such action or event without the prior consent of the Owners of a majority in aggregate principal amount of the Muni Bonds Outstanding unless a specific provision herein provides otherwise.

(i) The Indenture 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 Indenture 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 Indenture 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 Indenture 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 Indenture 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 Indenture Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Indenture Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

(m) The Indenture 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 Indenture 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 Security Document.

(o) The permissive right of the Indenture Trustee to do things enumerated in this Indenture, the Common Terms Agreement or any other Security Document shall not be construed as a duty, and in doing or not doing so the Indenture Trustee shall not be answerable for other than its gross negligence or willful misconduct.

#### **Section 9.05. Evidence on Which Indenture Trustee May Act.**

(a) In case at any time it shall be necessary or desirable for the Indenture Trustee to make any investigation respecting any fact preparatory to taking or not taking any action, or doing or not doing anything, as such Indenture 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 Indenture 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 costs and expense of the Lessee, and when determined necessary in the reasonable discretion of the Indenture Trustee, upon the written opinion of any attorney (who may be an attorney for the Conduit Issuer or an employee of the Lessee), engineer, appraiser, architect or accountant believed by the Indenture Trustee to be qualified in relation to the subject matter.

#### **Section 9.06. Indenture Trustee and Paying Agents May Deal in Muni Bonds.**

Any national banking association, bank or trust company acting as an Indenture 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 Muni Bonds, and may join in any action which any Owner may be entitled to take with like effect as if such association, bank or trust company were not such Indenture Trustee or Paying Agent.

#### **Section 9.07. Resignation or Removal of Indenture Trustee.**

The Indenture 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 Conduit Issuer, the Collateral Agent, the Account Bank, the Lessee and the Owners of all Muni 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 Indenture Trustee pursuant to Section 9.08 hereof and (ii) the transfer of the Trust Corpus (hereinafter defined) to such successor Indenture Trustee. Following such sixty (60) days should no successor have been appointed, the Indenture Trustee shall have the right to petition a court of competent jurisdiction to have a successor Indenture Trustee appointed.

The Indenture 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 Indenture Trustee and signed by the Conduit Issuer or the Owners of not less than a majority in aggregate principal amount of the Muni 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 Indenture Trustee as directed by the Conduit Issuer. The Indenture 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 Indenture Trustee pursuant to Section 9.08 hereof. If the Indenture Trustee shall resign or shall be removed, such Indenture Trustee must transfer and assign to the successor Indenture 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 Indenture Trustee of its appointment as such, whichever shall last occur, (i) all amounts (including all investments thereof) held in any Account or Subaccount under this Indenture, together with a full accounting thereof, (ii) all records, files, correspondence, registration books Muni Bond inventory, all information relating to Muni 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, and deficiencies in any Account or Subaccount balance) and all such other information (in whatever form) in the possession of the Indenture 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 Indenture 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 Indenture Trustee.**

(a) If at any time the Indenture 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 Indenture Trustee or of its property or affairs, the position of Indenture Trustee shall thereupon become vacant. If the position of Indenture Trustee shall become vacant for any of the foregoing reasons or for any other reason or if the Indenture Trustee shall resign, the Conduit Issuer shall appoint a successor Indenture Trustee, such Indenture Trustee shall be reasonably acceptable to the Lessee, and the Conduit Issuer shall use its best efforts to obtain acceptance of such trust by the successor Indenture Trustee within (60) days from such

vacancy or notice of resignation. Within twenty (20) days after such appointment and acceptance, the Conduit Issuer shall notify in writing the Lessee and the Owners of all Muni Bonds.

(b) In the event of any such vacancy or resignation and if a successor Indenture Trustee shall not have been appointed within sixty (60) days of such vacancy or notice of resignation, the Owners of a majority in aggregate principal amount of the Muni Bonds then Outstanding, by an instrument or concurrent instruments in writing, signed by such Owners or their attorneys in fact thereunto duly authorized and filed with the Conduit Issuer, may appoint a successor Indenture Trustee (reasonably acceptable to the Lessee) which shall, immediately upon its acceptance of such trusts, and without further act, supersede the predecessor Indenture Trustee. If no appointment of a successor Indenture 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 Owner of any Muni Bond then Outstanding, the Conduit Issuer or any retiring Indenture Trustee or the Lessee may apply, at the expense of the Lessee, to any court of competent jurisdiction to appoint a successor Indenture Trustee. Such court may thereupon, after such notice, if any, as such court may deem proper, appoint a successor Indenture Trustee.

(c) Any Indenture 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 Security Document. At the time of its appointment, any successor Indenture Trustee shall have a capital stock and surplus aggregating not less than \$100,000,000.

(d) The predecessor Indenture Trustee shall transfer to any successor Indenture 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 Indenture Trustee of its appointment as such. Where no vacancy in the position of the Indenture 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 Indenture Trustee shall execute, acknowledge and deliver to its predecessor, and also to the Conduit Issuer, an instrument in writing accepting such appointment, and thereupon such successor Indenture 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 Indenture Trustee; but such predecessor shall, nevertheless, on the written request of its successor or of the Conduit Issuer, and upon payment by the Lessee 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 Indenture Trustee all the estate, properties, rights, immunities, powers and trusts of such predecessor; and every predecessor Indenture 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 Conduit Issuer be required by any successor Indenture Trustee for more fully and certainly vesting in such Indenture Trustee the estate, properties, rights, immunities, powers and trusts vested or intended to be vested in the predecessor Indenture Trustee, any such instrument in writing shall, on request, be executed, acknowledged and delivered by the Conduit Issuer. Any successor Indenture Trustee shall promptly notify the other Notice Parties of its appointment as Indenture Trustee.

(f) Any company into which the Indenture 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 Indenture 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 Security Document shall be the successor to such Indenture Trustee without the execution or filing of any paper or the performance of any further act.

#### **Section 9.11. Books and Records; Reports.**

(a) The Indenture 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 Indenture Trustee relating to the Muni Bonds and all 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 Indenture Trustee shall maintain records of all receipts, disbursements, and investments of funds with respect to the Accounts and Subaccounts until the fifth anniversary of the date on which all of the Muni Bonds shall have been paid in full.

(c) The Indenture Trustee hereby agrees to provide a monthly report or statement to the Collateral Agent four (4) Business Days prior to each Transfer Date setting forth, among other things, the balance for each Account and Subaccount established and created pursuant to this Indenture.

#### **Section 9.12. Notice to Rating Agencies.**

The Indenture Trustee shall provide the Rating Agencies, if the Muni Bonds should be rated, with written notice, if possible, in advance or, if impossible, promptly following the effective date of (i) the appointment of any successor Indenture Trustee, (ii) any amendments to the Financing Documents and Security Documents, (iii) the payment in full of all of the Muni Bonds, (ix) the giving of a notice of redemption of a Series of Muni Bonds, (iv) the acceleration of the payment of principal of and interest on the Muni Bonds or (v) the redemption in whole or other payment in full of the Muni Bonds. The Indenture Trustee shall also furnish to the Rating Agencies, if the Muni Bonds should be rated, information reasonably requested in writing by the Rating Agencies. The Indenture 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.

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### **ARTICLE X**

#### **SUPPLEMENTAL INDENTURES**

##### **Section 10.01. Supplemental Indentures Not Requiring Consent of Owners.**

(a) The Conduit Issuer, the Indenture Trustee and the Lessee 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 Owners of the Muni Bonds:

(i) To cure any formal defect, omission or ambiguity in this Indenture, if such action is not materially adverse to the interests of the Owners.

(ii) To grant to or confer upon the Indenture Trustee for the benefit of the Owners 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.

(iii) To add to the covenants and agreements of the Conduit Issuer or the Lessee in this Indenture other covenants and agreements to be observed by the Conduit Issuer or the Lessee which are not contrary to or inconsistent with this Indenture as theretofore in effect.

(iv) To add to the limitations and restrictions in this Indenture other limitations and restrictions to be observed by the Conduit Issuer or the Lessee which are not contrary to or inconsistent with this Indenture as theretofore in effect.

(v) 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.

(vi) 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 Muni Bonds not be includable in gross income for federal income tax purposes.

(vii) To effect any other change herein which, in the judgment of the Indenture Trustee, is not to the material prejudice of the Indenture Trustee or the Owners (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).

(viii) 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 Muni 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.

(ix) To authorize or accommodate the issuance of Additional Muni Bonds and prescribe the terms, forms and details thereof not inconsistent with this Indenture.

(b) Before the Conduit Issuer, the Indenture Trustee and the Lessee shall enter into any Supplemental Indenture pursuant to this Section, there shall have been filed with the Indenture 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 Conduit 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 Muni Bonds Outstanding or the validity of any of the Muni 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 Owners of any Series of Muni Bonds, the Indenture Trustee shall consider the effect of such amendment, consent, action or inaction to the security of such Muni Bonds and may rely on a written opinion of counsel in connection therewith.

#### **Section 10.02. Supplemental Indentures Requiring Consent of Owners.**

(a) Subject to the terms and provisions contained in this Section and not otherwise, the Owners of not less than a majority in aggregate principal amount of the Muni Bonds hereby secured and then Outstanding shall have the right, from time to time, to consent to and approve the entering into by the Conduit Issuer, the Indenture Trustee and the Lessee of any Supplemental Indenture as shall be deemed

necessary or desirable by the Conduit Issuer for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained herein.

(b) 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, Redemption Price of or interest on any Outstanding Muni Bonds, a change in the terms of redemption or maturity of the principal of or the interest on any Outstanding Muni Bonds, or a reduction (except as provided in this Indenture) in the principal amount of any Outstanding Muni Bond or the Redemption Price 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 Muni Bonds required for consent to such Supplemental Indenture, in each case unless the prior written consent of the Owners of each Muni Bond affected thereby has been obtained.

(c) If at any time the Conduit 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 Owners 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 Indenture Trustee for inspection by all Owners.

(d) Whenever, within one year after the date of such notice, there shall have first been filed with the Indenture Trustee (i) the written consents of Owners of not less than a majority in aggregate principal amount of the Muni Bonds then Outstanding (or, if such Supplemental Indenture shall affect only a single Series of Muni Bonds, the written consents of not less than a majority in aggregate principal amount of such affected Series of Muni Bonds Outstanding), and (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 Conduit Issuer in accordance with its terms, and to the effect that such Supplemental Indenture will not cause the interest on the Tax-Exempt Muni Bonds to become includable in gross income for federal income tax purposes, nor adversely affect the validity of the Muni Bonds, the Conduit Issuer and the Indenture 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 Muni Bonds with respect to which such consent is given. Any such consent shall be binding upon the Owner of the Muni Bonds giving such consent and upon any subsequent Owner of such Muni Bonds and of any Muni Bonds issued in exchange therefor (whether or not such subsequent Owner thereof has notice thereof), unless such consent is revoked in writing by the Owner of such Muni Bonds giving such consent or a subsequent Owner thereof by filing such revocation with the Indenture Trustee prior to the execution of such Supplemental Indenture.

(e) If the Owners of not less than the percentage of Muni Bonds required by this Section shall have consented to and approved the execution thereof as herein provided, no Owner of any Muni 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 Conduit Issuer from executing the same or from taking any action pursuant to the provisions thereof.

(f) 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 Conduit Issuer, the Indenture Trustee, the Lessee and all Owners of Muni 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 Indenture Trustee is authorized to join with the Conduit Issuer and the Lessee in the execution of any such Supplemental Indenture and to make further agreements and stipulations which may be contained therein, but the Indenture 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 Muni Bonds delivered thereafter, if any, if deemed necessary or desirable by the Indenture Trustee. In executing any Supplemental Indenture, the Indenture 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 any issue of Tax-Exempt Muni Bonds.

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## **ARTICLE XI**

### **CONDUIT ISSUER**

#### **Section 11.01. Exculpation of Conduit Issuer; Conduit Issuer Payments.**

In the exercise of the powers of the Conduit Issuer and its members, officers, employees or agents under this Indenture, and including without limitation the application of monies, the investment of funds, or the assignment or other disposition of the funds in the Project Accounts in the case of a Secured Obligations Event of Default, neither the Conduit Issuer nor any Conduit Issuer Indemnified Party shall be accountable, except 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 Secured Parties or the Lessee Affiliate Parties 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 Conduit Issuer shall not be required to take any action that is contrary to this Indenture, any Supplemental Indenture or any other Financing Document or applicable law, including any action that may be in violation of the automatic stay under any requirement of law relating to bankruptcy, insolvency or reorganization or relief of debtors. The Conduit Issuer and the Conduit 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 Conduit Issuer shall not (except in the case of acts or omissions of gross negligence or willful misconduct of the Conduit Issuer or any Conduit 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 from amounts received by the Conduit Issuer from the Lessee for payment pursuant to the terms of any Lessee Loan Agreement or other Financing Document. Nothing in the Financing Documents shall require the Conduit Issuer to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. In no event shall any members, officers, directors, employees and agents of the Conduit Issuer have any liability hereunder or under any Financing Document.

**Section 11.02. Conduit Issuer not Responsible for Insurance, Taxes, Execution of Indenture or Application of Monies Applied in Accordance with this Indenture and any Supplemental Indenture.**

(a) The Conduit 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 Conduit Issuer shall not be (i) responsible for or have any duty to ascertain or inquire into the validity, effectiveness, genuineness, enforceability or sufficiency of this Indenture, any Supplemental Indenture or any other Financing Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien, or security interest created or purported to be created under the Security Documents, or for any failure of the Lessee or any Secured Party or any other party to any Financing Document to perform its obligations hereunder or thereunder (other than the Conduit Issuer) or (ii) responsible for or have any duty to ascertain or inquire into the value or the sufficiency of any Collateral. The Conduit 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 Conduit 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 Conduit Issuer hereunder shall extend to its directors, members, attorneys, officers, employees and agents.

**Section 11.04. Limitation of Conduit Issuer's Liability.**

Anything in this Indenture, an Supplemental Indenture or any other Financing Document to the contrary notwithstanding, the Senior Debt and all obligations of the Conduit Issuer for the payment of money under this Indenture, any Supplemental Indenture and any other Financing Document or related document are the valid special, limited obligations of the Conduit Issuer and shall never constitute a debt of the State, the JDA or the New York State Urban Development Corporation (d/b/a Empire State Development) and none of the State, the JDA or the New York State Urban Development Corporation (d/b/a Empire State Development) shall be liable thereon, nor shall any such amounts be payable out of any funds of the Conduit Issuer (other than in the case of any liability of the Conduit Issuer arising from the gross negligence or willful misconduct of the Conduit Issuer or any of its members, officers, employees or agents) other than those pledged therefor or subject the Conduit Issuer to any pecuniary or other liability. Such amounts shall be payable by the Conduit Issuer solely from the Collateral including the payments made by the Lessee under the Lessee Loan Agreements, and the revenues and receipts pledged to the payment thereof in the manner and to the extent specified in this Indenture and any Supplemental Indenture, and nothing in this Indenture, any Supplemental Indenture, the Credit Agreement, the Lessee Loan Agreements or any other Financing Document shall be considered as pledging any other funds or assets of the Conduit Issuer other than those expressly pledged therefore hereunder or under the other Financing Documents (other than in the case of any liability of the Conduit Issuer arising from the gross negligence or willful misconduct of the Conduit Issuer or any of its members, officers, employees or agents). None of the Senior Debt nor any other obligation of the Conduit Issuer under this Indenture, any Supplemental Indenture, the Credit Agreement, the Lessee Loan Agreements and any other Financing Document is a general obligation of the Conduit Issuer nor a debt or pledge of the faith and credit of the State, the JDA, the New York State Urban Development Corporation (d/b/a Empire State Development) or any authority, public benefit corporation, local development corporation or any municipality of the State. The Conduit Issuer has no taxing power. The Conduit Issuer shall not be required under this Indenture, any Supplemental Indenture, the Common Terms Agreement, the Credit Agreement, the Lessee 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 Conduit Issuer arising

from the gross negligence or willful misconduct of the Conduit Issuer or any of its members, officers, employees or agents) other than (a) the proceeds of the Loans, (b) the loan payments, revenues, receipts and proceeds of the Collateral pledged to the payment of the Loans under the Security Documents, and (c) investment earnings, if any, on the amounts identified in clause (a) or (b) above, in each case to the extent received by the Conduit Issuer. Notwithstanding any provision to the contrary contained elsewhere herein or in any other Financing Document, the Conduit Issuer shall not have any duties or responsibilities, except those expressly set forth herein or in any other Financing Document, nor shall the Conduit Issuer have or be deemed to have any fiduciary relationship with any Secured Party or Lessee or participant or any other Person, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Indenture, any Supplemental Indenture or any other Financing Document or otherwise exist against the Conduit Issuer.

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## ARTICLE XII

### MISCELLANEOUS

#### **Section 12.01. Muni Bond Insurance.**

Any Insured Muni Bonds issued hereunder shall be insured under a Muni Bond Insurance Policy issued by the Muni Bond Insurer, and such Insured Muni Bonds shall be issued under provisions and conditions set forth in an applicable Supplemental Indenture.

#### **Section 12.02. Assignment.**

Except as expressly contemplated herein, in the Lessee Loan Agreements and in the Security Documents, neither the Lessee nor the Conduit Issuer may assign its interest in this Indenture.

#### **Section 12.03. Release and Indemnification.**

(a) The Lessee agrees to and does hereby indemnify and hold harmless the Conduit Issuer and any member, principal, officer, director, official, agent, employee, and attorney thereof, any person who “controls” the Conduit Issuer (within the meaning of Section 15 of the Securities Act, or Section 20 of the Exchange Act), the Indenture Trustee and any member, principal, officer, director, official, agent, employee, and attorney thereof, the Collateral Agent 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 Conduit Issuer without gross negligence or willful misconduct of its duties under the Indenture, (iii) any untrue statement of a material fact contained in the Lessee’s application to the Conduit Issuer or in any information provided by the Lessee pursuant to the Lessee Continuing Disclosure Undertaking, (iv) any omission by the Lessee of a material fact necessary to be stated in the Lessee’s application to the Conduit Issuer or in any information provided by the Lessee pursuant to the Lessee Continuing Disclosure Undertaking in order to make such statement not misleading or incomplete, or (v) the acceptance and administration of the duties of the Indenture Trustee under the Indenture, the Financing Documents, the Security Documents and any documents related thereto. 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 Lessee, such Indemnified Party shall promptly notify the Lessee in writing, and except where the Lessee is the claimant, the Lessee 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 Lessee 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 Lessee shall not be liable for any settlement of any such action effected without the consent of the Lessee, but if settled with the consent of the Lessee, or if there is a final judgment for the claimant on any such action, the Lessee 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 Lessee 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 Muni 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 Lessee at the expense of the Lessee. In such event, the Lessee 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 Lessee fails to respond adequately and promptly to the IRS, the Conduit 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 Lessee shall be liable.

(c) Notwithstanding anything in this Indenture to the contrary which may limit recourse to the Lessee or may otherwise purport to limit the liability of the Lessee, the provisions of this Section shall control the Lessee's obligations, and shall survive repayment of the Muni Bonds, including any Additional Muni Bonds.

(d) Notwithstanding anything to the contrary contained herein, the Lessee shall have no liability to indemnify the Conduit Issuer, the Collateral Agent or the Indenture Trustee against claims or damages resulting from such parties' own gross negligence or willful misconduct.

(e) If the reimbursement provided for in this Section is unenforceable, or is unavailable to the Lessee in respect of any losses, claims, damages, or liabilities (or actions in respect thereof) of the type subject to reimbursement herein, then the Lessee 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).

(f) To secure the indemnification payment obligation of the Lessee, the Indemnified Parties shall have a lien prior to the lien, if any, created by this Indenture for the benefit of the Owners of the Muni Bonds on all money or property held or collected by the Indenture Trustee other than money held for the payment of the principal, purchase price or Redemption Price of any Muni Bonds, and interest on any Muni Bonds previously matured or called for redemption in accordance with this Indenture, which shall be held for the benefit of the Owners of such Muni Bonds only. Such obligations shall survive the satisfaction and discharge of this Indenture.

(g) 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 12.05. 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 Lessee, the Indenture Trustee, the Collateral Agent, the Paying Agents, if any, and the registered Owners of the Muni 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 Conduit Issuer shall be for the sole and exclusive benefit of the Lessee, the Indenture Trustee, the Paying Agents, if any, and the registered Owners of the Muni Bonds.

#### **Section 12.08. 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 CONDUIT ISSUER, THE LESSEE AND THE INDENTURE 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 MUNI BONDS OR THE TRANSACTIONS CONTEMPLATED HEREBY.

#### **Section 12.11. 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 12.12. Reliance on Directions of the Lessee.**

Whenever in this Indenture or the Tax Compliance Certificate an action or direction is required of or permitted by the Conduit Issuer or the Lessee, then, except as otherwise specifically provided, the Conduit Issuer and the Indenture Trustee agree that either of them shall be authorized to conclusively rely upon a written instrument from the Authorized Conduit Issuer Representative or Authorized Lessee Representative, as the case may be, with respect thereto.

#### **Section 12.13. Moneys Held for Particular Muni Bonds.**

The amounts held by the Indenture Trustee or Paying Agents for the payment of the principal of, Redemption Price of and interest due on any date with respect to particular Muni Bonds shall, on and after such date and pending such payment, and subject to any rebate requirements with respect to any issue of Tax-Exempt Muni Bonds as set forth in the Tax Compliance Certificate or this Indenture, be set aside on its books and held in trust for the Owners of the Muni Bonds entitled thereto. Such amounts so held shall be uninvested or, if invested, invested only in Government Obligations maturing within thirty (30) days.

#### **Section 12.14. Force Majeure.**

In no event shall the Indenture 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 Indenture 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.

## Appendix C-2

### CERTAIN PROVISIONS OF THE COMMON TERMS AGREEMENT

*The following includes certain provisions of the Common Terms Agreement and is not a full statement of the terms of such agreement. Accordingly, the following is qualified in its entirety by reference to such agreement and is subject to the full text of such agreement. Copies of the definitive agreements, some of which may be in redacted form and subject to any existing contractual agreements, will be available following the date of issuance of the Series 2024 Bonds, upon delivery of a written request and the payment of reasonable copying, mailing and handling charges to the Indenture Trustee at 240 Greenwich Street, 7E, New York, NY 10286, to the attention of the Corporate Trust Company. Unless otherwise stated, any reference in this Official Statement to the Common Terms Agreement shall mean such agreements and all schedules, exhibits and attachments thereto, as amended, supplemented or otherwise modified and in effect as of the date hereof.*

\* \* \*

#### Section 3.01 Relative Priorities.

(a) Subject to paragraph (b) below:

(i) the parties hereto acknowledge and agree that, pursuant and subject to the applicable Security Documents, on and as of the First Closing Date:

(A) pursuant to the Leasehold Mortgages, the Lessee has granted mortgage liens and security interests in the interests of the Lessee under the Lease to the Conduit Issuer, to secure the Secured Lessee Obligations (other than any Hedge Obligations);

(B) pursuant to the Lessee Security Agreement the Lessee has granted security interests in certain Collateral identified therein to the Collateral Agent for the benefit of the Secured Parties, to secure the Secured Obligations;

(C) pursuant to the Lessee Pledge Agreement, HoldCo has granted security interests in the Equity Interests in the Lessee and certain related Collateral specified therein to the Collateral Agent for the benefit of the Secured Parties, to secure the Secured Obligations;

(D) pursuant to the Taxable REIT Subsidiary Security Agreement, the Taxable REIT Subsidiary has granted security interests in certain Collateral identified therein to the Collateral Agent for the benefit of the Secured Parties, to secure the Secured Obligations; and

(E) on or before the First Closing Date, pursuant to the Collateral Assignments, the Conduit Issuer has assigned all of its rights, title and interest in the Lessee Loan Agreements, the Leasehold Mortgages, the Building Loan Note, the Project Loan Note and any other Lien created for the benefit of the Conduit Issuer in respect of the Collateral under the applicable Security Documents or otherwise, except for the Reserved Rights, to the Collateral Agent for the benefit of the Secured Parties; and

(ii) notwithstanding the date, manner or order of grant, attachment or perfection of any Liens securing the relevant Secured Obligations granted in the Collateral and notwithstanding any provision of the UCC, applicable Law or the Security Documents, each Secured Party (or its Secured Debt Representative on its behalf) hereby agrees that, subject to paragraphs (b) and (c) below, as among the

Secured Parties in whose favor a Lien has been granted, the Lien of the Collateral Agent shall be for the ratable benefit of such Secured Parties with respect to all Collateral subject to such Lien, each Class of Secured Creditor ranks and will rank equally in priority with each other Class of Secured Creditor in the Lien granted to the Collateral Agent, and no Class of Secured Creditor shall be entitled to any preferences or priority over any other Class of Secured Creditor.

(b) Notwithstanding any other provision of this Agreement to the contrary, each of the following Project Accounts will be established in the name of the Lessee or, in the case of the TRS Construction Phase Accounts, the Taxable REIT Subsidiary, subject to a security interest in all of the Lessee's, the Taxable REIT Subsidiary's and the Conduit Issuer's respective rights, title and interest in, to and under the Collateral therein maintained in favor of the Collateral Agent for the exclusive benefit only of the following specified Secured Creditors:

(i) each of the Loans Interest Payment Account, the Loans Principal Payment Account, the Loans Prepayment Account and the Loans Debt Service Reserve Account will be for the sole benefit of the Lenders and the Conduit Issuer;

(ii) each of the Ordinary Course Payment Account and the Termination Payment Account will be for the sole benefit of the Hedge Providers;

(iii) each of the Senior Debt Proceeds Account, the Interest Payment Account, the Principal Payment Account, the Senior Debt Service Reserve Account, the Project Loan Senior Debt Capitalized Interest Account, the Building Loan Senior Debt Capitalized Interest Account and the Prepayment/Redemption Account, if any, opened in relation to any Additional Senior Indebtedness (other than pursuant to any Additional Senior Indebtedness Hedge Obligations) will be for the sole benefit of the Additional Senior Creditors providing such Additional Senior Indebtedness (or any Additional Senior Indebtedness Tranche, as applicable) and the Conduit Issuer;

(iv) each of the Senior Debt Proceeds Account, Interest Payment Account, Principal Payment Account, Senior Debt Service Reserve Account, the Project Loan Senior Debt Capitalized Interest Account, the Building Loan Senior Debt Capitalized Interest Account, and the Prepayment/Redemption Account, if any, required to be opened in relation to any Permitted Refinancing Indebtedness (other than pursuant to any Permitted Refinancing Indebtedness Hedge Obligations) will be for the sole benefit of the Permitted Refinancing Creditors providing such Permitted Refinancing Indebtedness (or any Tranche Permitted Refinancing Indebtedness Tranche, as applicable) and the Conduit Issuer; and

(v) each of the Construction Accounts and the TRS Construction Phase Account for a Phase will be for the sole benefit of the Secured Creditors providing Senior Debt to construct such Phase, the Hedge Providers party to Secured Hedge Agreements in relation to such Senior Debt and the Conduit Issuer.

(c) The Liens on the Collateral in respect of any outstanding TIFIA Loan shall be, and are hereby, subordinate during any period when a Bankruptcy Related Event with respect to the Lessee has not occurred, only to the Liens on the Collateral in respect of the Senior Secured Obligations. Upon the occurrence of a bankruptcy Related Event with respect to the Lessee, the TIFIA Loans shall be automatically and without further notice, consent or action by any Secured Party, secured by a first priority security interest in the Collateral on a *pari passu* basis with the other Senior Secured Obligations in each case in accordance with the terms hereof and of the Security Documents.

(d) The parties hereto acknowledge that, except as specified in the Lease or as otherwise approved by the Port Authority, the Collateral Agent and the other Secured Parties hereunder shall not have any rights in respect of the provisions of the Lease other than those rights to which the Lessee, a Recognized Mortgagee (as defined in the Lease), any other holder of a Leasehold Mortgage (as defined in the Lease) or any other holder of Lessee Debt (as defined in the Lease) are granted or entitled pursuant to the terms of the Lease and acknowledge the rights of the Port Authority under Section 83 of the Lease.

Section 3.02 The Account Bank.

(a) Acceptance of Appointment.

(i) The Account Bank hereby agrees (A) to act as depositary, (B) to act as a “securities intermediary” (within the meaning of Section 8-102(a)(14) of the UCC) with respect to the Project Accounts and the Financial Assets (as defined below) credited to the Project Accounts, (C) to act as a “bank” (within the meaning of Section 9-102(a)(8) of the UCC), to the extent any Project Account is deemed not to be a “securities account” (within the meaning of Section 8-501(a) of the UCC), with respect to the Project Accounts and credit balances deemed not to constitute “financial assets” (within the meaning of Section 8-102(a)(9) of the UCC (“**Financial Assets**”)) credited thereto, and (D) to accept all cash, payments, Eligible Investments and other amounts to be delivered to or held by the Account Bank pursuant to the terms of this Agreement. The Account Bank shall hold and safeguard the Account Collateral in accordance with the terms of this Agreement.

(ii) The Conduit Issuer and the Lessee shall not have any rights to withdraw or transfer funds from the Project Accounts, as third party beneficiary or otherwise, except as otherwise provided herein (including all requirements to comply with Section 3.10(a) (Material Project Documents) of Schedule 2 (Common Representations and Warranties, Covenants and Events of Default)).

(iii) Pursuant to Section 83(a)(18) (*Leasehold Mortgages*) of the Lease, the Collateral Agent shall, upon instruction by the Intercreditor Agent, instruct the Account Bank to 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).

(b) Degree of Care; Liens. The Account Bank shall exercise the same degree of care in administering the funds held in the Project Accounts and the investments purchased with such funds in accordance with the terms of this Agreement as the Account Bank exercises in the ordinary course of its day to day business in administering other funds and investments for its own account and as otherwise required by applicable Laws. The Account Bank is not party to and shall not execute and deliver, or otherwise become bound by, any agreement (other than this Agreement) under which the Account Bank agrees with any Person other than the Collateral Agent and the Intercreditor Agent (and, to the extent set forth herein, the Lessee and the Conduit Issuer, but subject to sub-paragraph (a)(ii) above) to comply with entitlement orders or instructions originated by such Person relating to any of the Project Accounts or the security entitlements credited thereto. The Account Bank shall not grant any Lien on any Account Collateral 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 and shall, if any such Lien shall be created as a result of actions or omissions of the Account Bank, attempt to cause the prompt release or discharge of the same.

(c) Subordination of Lien; Waiver of Set-Off. In the event that the Account Bank has or subsequently obtains by agreement, operation of law or otherwise a Lien over any Account Collateral or Project Account, other than any Lien arising under the Security Documents as a result of the Account Bank being a Secured Party, the Account Bank agrees that such Lien shall (except to the extent provided in the

last sentence of this paragraph (c)) be subordinate to the Lien of the Conduit Issuer and the Collateral Agent. The Financial Assets and other Account Collateral standing to the credit of the Project Accounts will not be subject to deduction, set-off, banker's lien, or any other right in favor of any Person other than the Conduit Issuer and the Collateral Agent, except to the extent of (i) returned items and chargebacks either for uncollected checks or other items of payment and transfers previously credited to one or more of the Project Accounts and later returned or reversed for any reason and (ii) all reasonable amounts payable to the Account Bank by the Lessee in respect of the Account Bank's fees and expenses for the operation and maintenance of the Project Accounts, and the Lessee, the Conduit Issuer and the Collateral Agent hereby authorize the Account Bank to debit the applicable Project Accounts for such amounts and in such event, the Account Bank shall provide notice to the Lessee, the Conduit Issuer and the Collateral Agent.

(d) No Other Agreements. None of the Account Bank, the Collateral Agent, the Conduit Issuer or the Lessee has entered nor will enter into any agreement granting a Lien over any Project Account or any other Account Collateral, other than this Agreement and the other Financing Documents.

(e) Notice of Adverse Claims. The Account Bank hereby represents that, except for the claims and interests of the Collateral Agent, the Conduit Issuer and the Lessee in the Account Collateral, the Account Bank, (i) as of the Effective Date and (ii) as of each date on which any Project Account is established pursuant to this Agreement, has no knowledge of, and has received no written notice of, any claim to, or interest in, any Account Collateral. If any Person asserts any Lien (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against any Account Collateral, the Account Bank, upon obtaining written notice thereof, will promptly notify the Collateral Agent, the Conduit Issuer, the Intercreditor Agent and the Lessee thereof.

(f) Reports; Documents. Until the obligation to maintain the Project Accounts ceases in accordance with Section 4.25 (End of Security Period), the Account Bank shall provide to the Lessee, the Conduit Issuer, the Collateral Agent, the Intercreditor Agent and each Secured Debt Representative with access to its on-line bank statements and transaction activities reports with respect to each Project Account, subject to the Lessee, the Conduit Issuer, the Collateral Agent, the Intercreditor Agent and each Secured Debt Representative providing any reasonable information to the Account Bank that is needed to establish such Person with access to such on-line system. Such bank statements and transaction reports shall include deposits, withdrawals and transfer from and to any Project Account. The Account Bank shall retain records of all receipts, disbursements and investments of funds with respect to each Project Account until the third (3rd) anniversary of the closing of such Project Account in accordance with the provisions of this Agreement.

(g) Receipt of Certain Funds. If any Agent, any Secured Creditor, the Lessee, the Taxable REIT Subsidiary or the Conduit Issuer receives directly any amount that is payable to a Project Account in accordance with the terms of this Agreement (due to such amount not being paid directly to the applicable Project Account), such Person shall promptly notify the Collateral Agent and shall transfer such amount to the Account Bank, and the Account Bank shall deposit such amount into the applicable Project Account. Until the time of such transfer, such Agent, such Secured Creditor, the Lessee, the Taxable REIT Subsidiary or the Conduit Issuer, as applicable, shall hold such payments and other amounts in the same form as received in trust for the Lessee or the Taxable REIT Subsidiary, as applicable, subject to the Lien of the Collateral Agent.

### Section 3.03. Establishment of Project Accounts.

(1) The Account Bank will, (1) on or before the First Closing Date, establish the accounts described in sub-paragraphs (i) through (xiii) (other than sub-paragraph (xii) below, which may be established by the Lessee at any time in accordance with sub-paragraph (xii) below), (xvii), (xviii) and

Section 1(a)(i)(a)(xix) below, and (2) on or before the applicable Closing Date for any Additional Senior Indebtedness or Permitted Refinancing Indebtedness, establish any accounts that are required to be opened under any Additional Senior Indebtedness Documents or Permitted Refinancing Indebtedness Documents (including any accounts described in sub-paragraphs (xiv) through Section 1(a)(i)(a)(xvi) below), and in each case, the Account Bank shall maintain all such accounts in accordance with this Agreement, in the case of the accounts described in sub-paragraphs (i) through (xv) below, in the name of the Lessee (each such account, a “Lessee Project Account” and collectively, the “Lessee Project Accounts”) or, in the case of the accounts described in sub-paragraphs Section 1(a)(i)(a)(xviii) and Section 1(a)(i)(a)(xix) below, the Taxable REIT Subsidiary (each such account, a “TRS Project Account” and collectively, the “TRS Project Accounts” and together with the Lessee Project Accounts, each, a “Project Account” and collectively, the “Project Accounts”), which Project Accounts shall, subject to Section 4.23 (Operating Business Conditions), be maintained from the First Closing Date (or, in the case of any accounts described in sub-paragraphs (xiv) through (xv) below, from the Closing Date for the Additional Senior Indebtedness or Permitted Refinancing Indebtedness to which such Project Accounts relate) until the end of the Security Period:

(i) an account entitled “Pre-Completion Revenue Account” (the “Pre-Completion Revenue Account”);

(ii) an account entitled “Post-Completion Revenue Account” (the “Post-Completion Revenue Account”);

(iii) the following accounts (collectively identified as the “Project Loan Costs Construction Accounts” and each a “Project Loan Costs Construction Account”): (A) an account entitled “Credit Agreement Project Loan Costs Construction Account” (the “Credit Agreement Project Loan Costs Construction Account”), (B) each other account, if any, required to be opened under any Additional Senior Indebtedness Documents or Permitted Refinancing Indebtedness Documents to track the disbursement of proceeds in relation to the relevant Additional Senior Indebtedness or Permitted Refinancing Indebtedness, and (C) each capitalized interest account, if any, required to be opened under any Additional Senior Indebtedness Documents or Permitted Refinancing Indebtedness Documents in relation to the relevant Additional Senior Indebtedness or Permitted Refinancing Indebtedness (each of the Project Accounts referred to in this clause (C), a “Project Loan Senior Debt Capitalized Interest Account” and collectively the “Project Loan Senior Debt Capitalized Interest Accounts”); provided that a separate account may be established by the Lessee as a matter of accounting convenience for tracking funds for each series of Additional Senior Indebtedness and/or Permitted Refinancing Indebtedness;

(iv) the following accounts (collectively identified as the “Building Loan Costs Construction Accounts” and, together with the Project Loan Costs Construction Accounts, the “Construction Accounts” and each a “Building Loan Costs Construction Account” and a “Construction Account”, respectively): (A) an account entitled “Credit Agreement Building Loan Costs Construction Account” (the “Credit Agreement Building Loan Costs Construction Account”), (B) each other account, if any, required to be opened under any Additional Senior Indebtedness Documents or Permitted Refinancing Indebtedness Documents to track the disbursement of proceeds in relation to the relevant Additional Senior Indebtedness or Permitted Refinancing Indebtedness, and (C) each other capitalized interest account, if any, required to be opened under any Additional Senior Indebtedness Documents or Permitted Refinancing Indebtedness Documents in relation to the relevant Additional Senior Indebtedness or Permitted Refinancing Indebtedness (each of the Project Accounts referred to in this clause (C), a “Building Loan Senior Debt Capitalized Interest Account” and collectively the “Building Loan Senior Debt Capitalized Interest Accounts”); provided that a separate account may be established by the Lessee as a matter of accounting convenience for tracking funds for each series of Additional Senior Indebtedness and/or Permitted Refinancing Indebtedness;

(v) an account entitled “Operating Account” (the “Operating Account”);

(vi) the following accounts (collectively identified as the “Senior Secured Obligations Payment Accounts” and each a “Senior Secured Obligations Payment Account”):

(A) an account entitled “Loans Interest Payment Account” (the “Loans Interest Payment Account”) and an account entitled “Ordinary Course Payment Account” (the “Ordinary Course Payment Account”) and each other interest payment account opened in relation to any Additional Senior Indebtedness or Permitted Refinancing Indebtedness; provided that a separate account may be established by the Lessee as a matter of accounting convenience for tracking funds for each series of Additional Senior Indebtedness and/or Permitted Refinancing Indebtedness, which separate account shall be subject in all respects to the provisions of this Agreement applicable to Interest Payment Accounts established on or before the First Closing Date (each Project Account referred to in this sub-paragraph (A), an “Interest Payment Account” and collectively the “Interest Payment Accounts”);

(B) an account entitled “Loans Principal Payment Account” (the “Loans Principal Payment Account”) and an account entitled “Termination Payment Account” (the “Termination Payment Account”) and each other principal payment account opened in relation to any Additional Senior Indebtedness or Permitted Refinancing Indebtedness; provided that a separate account may be established by the Lessee as a matter of accounting convenience for tracking funds for each series of Additional Senior Indebtedness and/or Permitted Refinancing Indebtedness, which separate account shall be subject in all respects to the provisions of this Agreement applicable to Principal Payment Accounts established on or before the First Closing Date (each Project Account referred to in this sub-paragraph (B), a “Principal Payment Account” and collectively the “Principal Payment Accounts”); and

(C) an account entitled “Loans Prepayment Account” (the “Loans Prepayment Account”) and each other prepayment or redemption account opened in relation to any Additional Senior Indebtedness or Permitted Refinancing Indebtedness; provided that a separate account may be established by the Lessee as a matter of accounting convenience for tracking funds for each series of Additional Senior Indebtedness and/or Permitted Refinancing Indebtedness, which separate account shall be subject in all respects to the provisions of this Agreement applicable to Prepayment/Redemption Accounts established on or before the First Closing Date (each Project Account referred to in this sub-paragraph (C) and the Termination Payment Account shall be referred to herein as a “Prepayment/Redemption Account” and collectively the “Prepayment/Redemption Accounts”);

(vii) the following accounts (collectively identified as the “Senior Debt Service Reserve Accounts” and each a “Senior Debt Service Reserve Account”): an account entitled “Loans Debt Service Reserve Account” (the “Loans Debt Service Reserve Account”) and each other debt service reserve account opened in relation to any Additional Senior Indebtedness or Permitted Refinancing Indebtedness, which account, for the avoidance of doubt, may be one single account for all Additional Senior Indebtedness and/or Permitted Refinancing Indebtedness; provided that a separate account may be established by the Lessee as a matter of accounting convenience for tracking funds for each series of Additional Senior Indebtedness and/or Permitted Refinancing Indebtedness, which separate account shall be subject in all respects to the provisions of this Agreement applicable to Senior Debt Service Reserve Accounts established on or before the First Closing Date;

(viii) an account entitled “O&M Reserve Account” (the “O&M Reserve Account”);

(ix) an account entitled “Major Maintenance Reserve Account” (the “Major Maintenance Reserve Account”);

(x) an account entitled “Insurance and Condemnation Proceeds Account” (the “Insurance and Condemnation Proceeds Account”);

(xi) the following accounts (collectively identified as the “Ramp-Up Accounts” and each a “Ramp-Up Account”): an account entitled “Initial Ramp-Up Account” (the “Initial Ramp-Up Account”) and any other ramp up account opened at the election of the Lessee in connection with any Phase;

(xii) each account, if any, for the receipt of security deposits opened in relation to each Airline Use Agreement; provided that a separate account may be established by the Lessee as a matter of accounting convenience for tracking security deposits for each Airline User (each Project Account referred to in this sub-paragraph (xii), an “AUA Security Deposit Account” and collectively the “AUA Security Deposit Accounts”);

(xiii) an account for the receipt of security deposits opened in relation to the Master Concession Agreement; provided that a separate account may be established by the Lessee as a matter of accounting convenience for tracking funds for each Concession Sublessee (each Project Account referred to in this sub-paragraph (xiii), a “Concession Security Deposit Account” and collectively the “Concession Security Deposit Accounts”);

(xiv) each account, if any, for the receipt and disbursement of proceeds opened in relation to any Additional Senior Indebtedness or Permitted Refinancing Indebtedness; provided that a separate account may be established by the Lessee as a matter of accounting convenience for tracking funds for each series of Additional Senior Indebtedness and/or Permitted Refinancing Indebtedness (each Project Account referred to in this sub-paragraph (xiv), a “Senior Debt Proceeds Account” and collectively the “Senior Debt Proceeds Accounts”);

(xv) any account with respect to each issue of Muni Bonds bearing the name “Arbitrage Rebate Account” and the year and series designation for such issue of Muni Bonds and each other arbitrage rebate account, if any, required to be opened under any Additional Senior Indebtedness Documents or Permitted Refinancing Indebtedness Documents in relation to the relevant Additional Senior Indebtedness or Permitted Refinancing Indebtedness; provided that a separate account may be established by the Lessee as a matter of accounting convenience for tracking funds for each series of Additional Senior Indebtedness and/or Permitted Refinancing Indebtedness (each Project Account referred to in this sub-paragraph (xv), an “Arbitrage Rebate Account” and collectively the “Arbitrage Rebate Accounts”);

(xvi) as and when required under Section 4.13(a) (Springing Liquidity Reserve Account), an account entitled “Springing Liquidity Reserve Account” (the “Springing Reserve Account”);

(xvii) an account entitled “Advanced Equity Contribution Account” (the “Advanced Equity Contribution Account”);

(xviii) an account entitled “TRS Construction Phase Account” (the “TRS Construction Phase Account”); and

(xix) an account entitled “TRS Operating Account” (the “TRS Operating Account”).

The Lessee and the Taxable REIT Subsidiary shall notify, and the Account Bank shall confirm to, the Intercreditor Agent and Collateral Agent in writing of the account numbers of the Project Accounts no later than the First Closing Date (other than in the case of any accounts described in sub-paragraphs (xiv) and (xv) above, in which case the Lessee shall notify, and the Account Bank shall confirm to, the Intercreditor

Agent and the Collateral Agent in writing of the account numbers of such Project Accounts no later than the applicable Closing Date). For administrative purposes, the Account Bank may open from time to time additional accounts (which shall have separate account numbers) of any of the Project Accounts as directed in writing by the Collateral Agent (as directed by the Intercreditor Agreement (at the direction of the applicable Secured Debt Representative)) or (so long as no Secured Obligations Event of Default has occurred and is continuing) the Lessee or the Taxable REIT Subsidiary, as applicable. The Account Bank shall advise the Collateral Agent, the Intercreditor Agent, the Conduit Issuer, the Lessee and the Taxable REIT Subsidiary, as applicable, in writing of the account name and number of any Project Account (including any Interest Payment Account, Principal Payment Account and Senior Debt Service Reserve Account) established hereunder by the Account Bank, if any, after the First Closing Date.

- (b) The Lessee may at any time establish the Distribution Account with a bank or other financial institution (which shall not be required to be the Account Bank) in accordance with Section 4.14 (Distribution Account) and/or any Petty Cash Account with a bank or other financial institution (which shall not be required to be the Account Bank) in accordance with Section 4.15 (Petty Cash Account).
- (c) From and after the First Closing Date until the end of the Security Period, all amounts from time to time held in each Project Account shall be disbursed in accordance with the terms hereof, shall constitute the property of the Lessee, in the case of the Lessee Project Accounts, and the Taxable REIT Subsidiary, in the case of the TRS Project Accounts, and shall be subject to the Lien of the Conduit Issuer and the Collateral Agent (for the benefit of the Secured Parties).
- (d) Each Project Account and all amounts from time to time held in such Project Account shall be maintained by the Account Bank from and after the First Closing Date for the purposes and on the express terms set out in this Agreement. All such amounts shall constitute a part of the Account Collateral and shall not constitute payment of any Secured Obligations or any other obligations of the Lessee, the Taxable REIT Subsidiary or the Conduit Issuer until expressly applied thereto in accordance with the provisions of this Agreement and the other Financing Documents.
- (e) From and after the First Closing Date, the Lessee, the Taxable REIT Subsidiary, the Conduit Issuer and the Collateral Agent hereby irrevocably instruct and authorize the Account Bank to deposit funds (promptly upon receipt thereof) into, and transfer and withdraw funds from, the Project Accounts in accordance with the terms of this Agreement, including Section 4.01(b) (Pre-Completion Revenue Account) and Section 4.02(b) (Post-Completion Revenue Account), as applicable. For the avoidance of doubt, the Lessee shall be entitled to withdraw and transfer funds from the Distribution Account (whether or not established with the Account Bank) for any purpose permitted by applicable Law without approval or consent by the Collateral Agent or any other Person.

#### ARTICLE IV DEPOSITS INTO AND WITHDRAWALS FROM PROJECT ACCOUNTS

The provisions of this Article IV (Deposits Into and Withdrawals From Project Accounts) shall apply from the Effective Date until the end of the Security Period.

##### Section 4.01 Pre-Completion Revenue Account.

- (a) From and after the Effective Date through and including the Phase A DBO Date, the Lessee and, to the extent it has received such funds, the Conduit Issuer, shall promptly deposit or cause to be deposited into the Pre-Completion Revenue Account:

(i) all Project Revenues (other than any payment received under any Material Project Document, Airline Use Agreement or Anchor User Agreement required or permitted hereunder to be deposited into another Project Account);

(ii) income in respect of cash balances and Eligible Investments as described in Section 3.04 (Permitted Investments) and subject to the limitations in Section 3.04(d) (Permitted Investments);

(iii) amounts required to be transferred thereto from other Project Accounts or other sources in accordance with the terms of this Agreement and the other Financing Documents; and

(iv) any other amounts received by the Lessee the application of which is not otherwise specified hereunder.

The Lessee shall on or before the Effective Date have irrevocably instructed all parties paying Project Revenues to the Lessee to deposit such Project Revenues into the Pre-Completion Revenues Account (other than any payment received under any Material Project Document, Airline Use Agreement or Anchor User Agreement required or permitted hereunder to be deposited into another Project Account), and shall so irrevocably instruct all other parties at any time paying Project Revenues to the Lessee before the Phase A DBO Date (other than any payment received under any Material Project Document, Airline Use Agreement or Anchor User Agreement required or permitted hereunder to be deposited into another Project Account) to make such payments directly to the Pre-Completion Revenue Account. In the event that, notwithstanding the foregoing, any such payments, proceeds or other amounts are received by the Lessee or the Conduit Issuer, the Lessee or the Conduit Issuer, as applicable, shall promptly pay, endorse, transfer and deliver such payments or other amounts to the Account Bank for deposit into the Pre-Completion Revenue Account and, until such delivery, the Lessee or the Conduit Issuer, as applicable, shall hold such payments and other amounts in the same form as received in trust for the Lessee, subject to the Lien of the Collateral Agent. For the avoidance of doubt, amounts paid to the Conduit Issuer in satisfaction of its fees and expenses shall be the sole and absolute property of the Conduit Issuer and shall not be subject to the terms of this provision.

(b) The Account Bank shall, after the Effective Date and prior to the Phase A DBO Date, make the following withdrawals, transfers and payments from the Pre-Completion Revenue Account in the amounts, at the times and only for the purposes specified below at the request of the Lessee in a Funds Transfer Certificate (in substantially the form attached hereto as Exhibit D-1 (Pre-Completion Funds Transfer Certificate)), and in the following order of priority, after giving effect to any other transfers from or into the Project Accounts specified below (or otherwise pursuant to this Article IV (Deposits Into and Withdrawals From Project Accounts)) on the applicable Transfer Date as instructed by the Lessee (in accordance with the terms hereof) to be made on or prior to such Transfer Date (it being agreed that no amount shall be withdrawn or transferred on any date pursuant to any paragraph below until amounts sufficient as of that date (to the extent applicable) for all the purposes specified under the prior paragraphs shall have been withdrawn or transferred) to the extent amounts are then available in the Pre-Completion Revenue Account:

(i) *First*, on each Transfer Date in the following order of priority:

(A) *sub-first*, if any amount is required by a Tax Compliance Certificate with respect to an issue of Muni Bonds or an issue of such other tax-exempt Senior Debt, as applicable, to satisfy the requirements of Section 148(f) of the Code with respect to any Muni Bonds or other tax-exempt Debt, as applicable, to the relevant Arbitrage Rebate Account, such required amount; and

(B) *sub-second*, (unless previously funded from amounts in the Construction Accounts for Phase A in accordance with Section 4.04 (Construction Accounts)), an amount equal to any fees, costs, charges, indemnities and expenses due and payable to the Conduit Issuer under the Financing Documents;

(ii) *Second*, on each Transfer Date, (unless previously funded from amounts in the Construction Accounts for Phase A in accordance with Section 4.04 (Construction Accounts) or from amounts applied in accordance with sub-paragraph (i) above), if funds are otherwise not then available to be deposited into the Construction Accounts for Phase A to pay all Project Costs for Phase A then due and payable and reasonably expected to be due and payable during the following calendar month, to the applicable Construction Account for Phase A, the amount of Project Revenues to be applied to Project Costs for Phase A in such calendar month as set forth in the base case financial model delivered on the Effective Date; and

(iii) *Third*, on each Transfer Date, (unless previously funded from amounts in the Construction Accounts for Phase A in accordance with Section 4.04 (Construction Accounts) or from amounts applied in accordance with sub-paragraph (i) above), if funds are otherwise not then available to be deposited into the Construction Accounts for Phase A to pay all Project Costs for Phase A then due and payable and reasonably expected to be due and payable during the following calendar month, to the applicable Construction Account for Phase A, the amount of Project Revenues to be applied to Project Costs for Phase A in such calendar month that are in excess of the amounts allocated for such purpose as set forth in the base case financial model delivered on the Effective Date.

(c) On the Phase A DBO Date, all remaining funds, if any, then on deposit in the Pre-Completion Revenue Account shall be transferred, at the election of the Lessee as set forth in a Funds Transfer Certificate, to the Post-Completion Revenue Account or to the Construction Accounts for Phase A for application in accordance with Section 4.04(d) (Construction Accounts). The Account Bank shall, thereafter and upon receipt of written instructions from the Lessee and the Collateral Agent, close the Pre-Completion Revenue Account.

#### Section 4.02 Post-Completion Revenue Account.

(a) From and after the Phase A DBO Date, the Lessee and, to the extent it has received such funds, the Conduit Issuer shall promptly deposit or cause to be deposited into the Post-Completion Revenue Account:

(i) all Project Revenues (other than any payment received under any Material Project Document, Airline Use Agreement or Anchor User Agreement required or permitted hereunder to be deposited into another Project Account);

(ii) any Ordinary Course Payments or Termination Payment paid to the Lessee under the Secured Hedge Agreements relating to the Senior Debt for a Phase with respect to which the Lease Completion Date has occurred (except to the extent, at the direction of the Lessee, proceeds from such Termination Payments are used to offset the reasonable costs and expenses of the Lessee (A) entering into a replacement transaction under an Interest Rate Hedge Agreement or (B) replacing or refinancing (pursuant to a transaction permitted under this Agreement) the obligations related to such Interest Rate Hedge Agreement);

(iii) all amounts transferred from the Pre-Completion Revenue Account under Section 4.01(c) (Pre-Completion Revenue Account);

(iv) any proceeds pursuant to the exercise of any Equity Cure that the Lessee does not elect to use for the prepayment of Senior Debt under Section 4.17 (Total Obligations Coverage Ratio) of Schedule 2 (Common Representations and Warranties, Covenants and Events of Default);

(v) any other capital contributions or proceeds of loans from any equity holder of the Lessee or its Affiliates (net of any transactions costs, expenses and taxes payable in connection therewith) that are not otherwise required or permitted to be deposited into another Project Account or used for a specific purpose;

(vi) any general liability insurance, delay of completion insurance, automobile liability insurance, workers' compensation and business interruption insurance proceeds received by the Lessee (including if received as a reimbursement for claims paid by the Lessee) that are not otherwise required or permitted to be deposited into another Project Account or used for a specific purpose;

(vii) any Net Cash Proceeds of asset sales that are not otherwise required or permitted to be deposited into another Project Account or used for a specific purpose;

(viii) all amounts transferred from the Construction Accounts under Section 4.04(d)(i)(D) (Construction Accounts);

(ix) all amounts transferred from the Ramp-Up Accounts under Section 4.11(c) (Ramp-Up Accounts);

(x) amounts required to be transferred thereto from other Project Accounts or other sources in accordance with the terms of this Agreement and the other Financing Documents;

(xi) income in respect of cash balances and Eligible Investments as described in Section 3.04 (Permitted Investments) and subject to the limitations in Section 3.04(d) (Permitted Investments); and

(xii) any other amounts received by the Lessee or the Conduit Issuer (including any proceeds from borrowings under the Working Capital Facility or the Liquidity Facility) the application of which is not otherwise specified hereunder.

The Lessee shall irrevocably instruct all parties at any time paying Project Revenues to the Lessee after the Phase A DBO Date (other than any payment received under any Material Project Document, Airline Use Agreement or Anchor User Agreement required or permitted hereunder to be deposited into another Project Account) to make such payments directly to the Post-Completion Revenue Account. In the event that, notwithstanding the foregoing, any such payments, proceeds or other amounts are received by the Lessee or the Conduit Issuer, the Lessee or the Conduit Issuer, as applicable, shall promptly pay, endorse, transfer and deliver such payments or other amounts to the Account Bank for deposit into the Post-Completion Revenue Account and, until such delivery, the Lessee and the Conduit Issuer shall hold such payments and other amounts in the same form as received in trust for the Lessee, subject to the Lien of the Collateral Agent. For the avoidance of doubt, amounts paid to the Conduit Issuer in satisfaction of its fees and expenses under the Financing Documents shall be the sole and absolute property of the Conduit Issuer and shall not be subject to the foregoing provision.

(b) The Account Bank shall, on and after the Phase A DBO Date, make the following withdrawals, transfers and payments from the Post-Completion Revenue Account in the amounts, at the times and only for the purposes specified below at the request of the Lessee in a Funds Transfer Certificate (in substantially the form attached hereto as Exhibit D-2 (Post-Completion Funds Transfer Certificate))

and in the following order of priority, after giving effect to any other transfers from or into the Project Accounts specified below or otherwise pursuant to this Article IV (Deposits Into and Withdrawals From Project Accounts) on the applicable Transfer Date as instructed by the Lessee (in accordance with the terms hereof) to be made on or prior to such Transfer Date (it being agreed that no amount shall be withdrawn or transferred on any date pursuant to any paragraph below until amounts sufficient as of that date (to the extent applicable) for all the purposes specified under the prior paragraphs shall have been withdrawn or transferred) to the extent amounts are then available in the Post-Completion Revenue Account (the “**Post-Completion Waterfall**”):

(i) *First*, on each Transfer Date, to the Port Authority, an amount equal to the Port Authority Priority Payments, unless on any Transfer Date occurring on or prior to the Deferred Concession Shortfall End Date, a Concession Shortfall has been calculated under the Lease, in which case an amount equal to the Concession Shortfall on such Transfer Date shall instead be paid to the Port Authority under sub-paragraph (b)(x)(A) and/or sub-paragraph (b)(x)(B) below (as applicable);

(ii) *Second*, on each Transfer Date in the following order of priority:

(A) *sub-first*, if any amount is required by a Tax Compliance Certificate with respect to an issue of Muni Bonds or an issue of such other tax-exempt Senior Debt, as applicable, to satisfy the requirements of Section 148(f) of the Code with respect to the Muni Bonds or such other tax-exempt Senior Debt, as applicable, to the relevant Arbitrage Rebate Account, such required amount; and

(B) *sub-second*, to the Conduit Issuer, an amount equal to any fees, costs, charges, indemnities and expenses due and payable to the Conduit Issuer under the Financing Documents on such Transfer Date;

(iii) *Third*, on each Transfer Date, on a *pro rata* basis, (A) to the Operating Account, an amount sufficient, when taken together with amounts then on deposit therein, to pay (I) the Permitted O&M Expenses then due and payable, or reasonably projected to be due and payable, prior to the next succeeding Transfer Date, with respect to the Leased Premises unless, on any Transfer Date on or prior to the Deferred Management Fee End Date, a Deferred Management Fee has been calculated under the Management Services Agreement, in which case an amount equal to the Deferred Management Fee shall instead be paid under sub-paragraph (b)(x)(A) and/or sub-paragraph (b)(x)(B) below (as applicable) **plus** (II) any amounts to be used by the Lessee to pay any Directly Paid Costs attributable to TRS Permitted O&M Expenses and constituting part of the TRS Operating Phase Fee that are then due and payable, or reasonably projected to be due and payable, prior to the next succeeding Transfer Date, (B) to the Port Authority, an amount equal to the ground rent due and payable under the Lease for such calendar month with respect to the Leased Premises, (C) to the Port Authority, an amount equal to any Contingent Rental due and payable under the Lease prior to the next succeeding Transfer Date, and (D) to the TRS Operating Account in partial payment of the TRS Operating Phase Fee, an amount sufficient, when taken together with amounts then on deposit therein, to pay the TRS Permitted O&M Expenses (other than any Directly Paid Costs paid pursuant to clause (A)(II) above) then due and payable, or reasonably projected to be due and payable, prior to the next succeeding Transfer Date;

(iv) *Fourth*, on each Transfer Date in the following order of priority:

(A) *sub-first*, to each Secured Party that is the payee thereof, an amount equal to the fees (other than commitment fees and letter of credit fees), costs, charges, indemnities and expenses due and payable to the Secured Parties on such Transfer Date;

(B) *sub-second*, (I) to the Ordinary Course Payment Account, an amount equal to the Ordinary Course Payments under any Secured Hedge Agreement due and payable since the preceding Transfer Date, and (II) to each Interest Payment Account (other than the Ordinary Course Payment Account), an amount equal to the amount necessary to cause the balance on deposit in such Interest Payment Account (other than the Ordinary Course Payment Account) for the purpose of paying all amounts due in respect of the interest, commitment fees and letter of credit fees due and payable on the Loans, Muni Bonds, Private Placement Notes and any other Senior Secured Obligations (other than Ordinary Course Payments under any Secured Hedge Agreement) on the next succeeding Interest Payment Date for such Senior Secured Obligations to be equal to the product of (a) the number equal to (i) the number of Transfer Dates that have occurred since the preceding Interest Payment Date for such Senior Secured Obligations (including the current Transfer Date but excluding the Transfer Date on which such preceding Interest Payment Date occurred) divided by (ii) the total number of Transfer Dates between the preceding Interest Payment Date for such Senior Secured Obligations (excluding the Transfer Date on which such preceding Interest Payment Date occurred) and the next succeeding Interest Payment Date for such Senior Debt (including the Transfer Date on which such succeeding Interest Payment Date will occur) times (b) an amount equal to the aggregate amount of interest, commitment fees and letter of credit fees to become due on the next succeeding Interest Payment Date with respect to the Loans, Muni Bonds, Private Placement Notes and any other Senior Secured Obligations (other than Ordinary Course Payments under any Secured Hedge Agreement) (or, if such Transfer Date is also an Interest Payment Date for such Senior Secured Obligations, the aggregate amount of interest, commitment fees and letter of credit fees due on such Interest Payment Date); provided that if there are insufficient funds available on the Transfer Date to make the deposits required to be made by this sub-paragraph (B), transfers shall be made to each Interest Payment Account maintained with respect to any Senior Debt on a *pro rata* basis measured by the amounts required to be transferred to each such Interest Payment Account; and

(C) *sub-third*, (I) to the Termination Payment Account, an amount equal to the Termination Payments under any Secured Hedge Agreement due and payable since the preceding Transfer Date and (II) to each Principal Payment Account (other than the Termination Payment Account) an amount equal to (1) the make-whole amount (if any), to be paid to any Principal Payment Account due and payable since the preceding Transfer Date on the Loans, Muni Bonds, Private Placement Notes and any other Senior Secured Obligations (other than Termination Payments under any Secured Hedge Agreement) plus (2) the amount necessary to cause the balance on deposit in the Principal Payment Account for the purpose of paying all amounts due in respect of the principal due and payable on the Loans, Muni Bonds, Private Placement Notes and any other Senior Secured Obligations (other than Termination Payments under any Secured Hedge Agreement) on the next succeeding Payment Date to be equal, in the case of this clause (2), to the product of (a) the number equal to (i) the number of Transfer Dates that have occurred since the preceding Payment Date (including the current Transfer Date but excluding the Transfer Date on which such preceding Payment Date occurred) or, in the event that no Payment Date has yet occurred in respect of the relevant Senior Secured Obligations, such number shall be equal to one (1), divided by (ii) the total number of Transfer Dates between the preceding Payment Date (excluding the Transfer Date on which such preceding Payment Date occurred) and the next succeeding Payment Date (or, in the event that no Payment Date has yet occurred in respect of the relevant Senior Secured Obligations, and the current Transfer Date is the Transfer Date immediately next preceding the first Payment Date in respect of the relevant Senior Secured Obligations, such number shall be equal to one (1)) times (b) an amount equal to the aggregate principal amounts to become due on the next succeeding Payment Date with respect to the Loans, Muni Bonds, Private Placement Notes and any other Senior Secured Obligations (other than Termination Payments under any Secured Hedge Agreement) (or, if such Transfer Date is also a Payment Date, the aggregate principal amount due on such Payment Date); provided that if there are insufficient funds available on the Transfer Date to make the deposits required to be made as set forth above in this sub-paragraph (C), transfers shall be made to each Principal Payment Account maintained with respect to any

Secured Obligation on a *pro rata* basis measured by the amounts required to be transferred to each such Principal Payment Account;

(D) *sub-fourth*, to the extent that any TIFIA Loan shall be outstanding and the TIFIA Obligations do not qualify as Senior Secured Obligations, on each Transfer Date, to each Interest Payment Account established in connection with any TIFIA Loan, an amount equal to the amount necessary to cause the balance on deposit in such Interest Payment Account for the purpose of paying all amounts due in respect of interest due and payable on the relevant TIFIA Loan on the next succeeding Interest Payment Date for such applicable TIFIA Obligations to be equal to the product of (a) the number equal to (i) the number of Transfer Dates that have occurred since the preceding Interest Payment Date for such TIFIA Obligations (including the current Transfer Date but excluding the Transfer Date on which such preceding Interest Payment Date occurred) divided by (ii) the total number of Transfer Dates between the preceding Interest Payment Date for such TIFIA Obligations (excluding the Transfer Date on which such preceding Interest Payment Date occurred) and the next succeeding Interest Payment Date for such TIFIA Obligations (including the Transfer Date on which such succeeding Interest Payment Date will occur) times (b) an amount equal to the aggregate amount of interest, to become due on the next succeeding Interest Payment Date; provided, that on each Interest Payment Date, amounts on deposit in each Interest Payment Account established in connection with any TIFIA Loan shall be transferred by the Collateral Agent for the payment of interest then due and payable on the TIFIA Obligations;

(E) *sub-fifth*, to the extent that any TIFIA Loan shall be outstanding and the TIFIA Obligations do not qualify as Senior Secured Obligations, on each Transfer Date, on each Transfer Date, to each Principal Payment Account established in connection with any TIFIA Loan an amount equal to the amount necessary to cause the balance on deposit in such Principal Payment Account for the purpose of paying all amounts due in respect of the principal due and payable on the TIFIA Obligations on the next succeeding Payment Date to be equal to the product of (a) the number equal to (i) the number of Transfer Dates that have occurred since the preceding Payment Date (including the current Transfer Date but excluding the Transfer Date on which such preceding Payment Date occurred) or, in the event that no Payment Date has yet occurred in respect of the relevant TIFIA Obligations, such number shall be equal to one (1), divided by (ii) the total number of Transfer Dates between the preceding Payment Date (excluding the Transfer Date on which such preceding Payment Date occurred) and the next succeeding Payment Date (or, in the event that no Payment Date has yet occurred in respect of the relevant TIFIA Obligations, and the current Transfer Date is the Transfer Date immediately next preceding the first Payment Date in respect of the relevant TIFIA Obligations, such number shall be equal to one (1)) times (b) an amount equal to the aggregate principal amount to become due on the next succeeding Payment Date with respect to the TIFIA Obligations (or, if such Transfer Date is also a Payment Date, the aggregate principal amount due on such Payment Date); provided, that on each Payment Date, amounts on deposit in each Principal Payment Account established in connection with any TIFIA Loans shall be transferred by the Collateral Agent for the payment of principal then due and payable on the TIFIA Obligations;

(v) *Fifth*, on each Transfer Date immediately prior to June 30 and December 31 of each calendar year, to the Port Authority, an amount equal to the First Additional Rental due and payable under the Lease in such calendar month;

(vi) *Sixth*, on each Transfer Date in the following order of priority:

(A) *sub-first*, to each Senior Debt Service Reserve Account, the amount necessary (if any) to fund such Senior Debt Service Reserve Account (other than any Senior Debt Service Reserve Account, if any, in respect of TIFIA Loans) so that the balance therein (taking into account amounts then on deposit therein and amounts available to be drawn on any Acceptable Letter of Credit posted to satisfy the relevant Debt Service Reserve Requirement) equals the applicable Debt Service Reserve

Requirement with respect to such Senior Debt Service Reserve Account; provided that if there are insufficient funds available on the Transfer Date to make the deposits required to be made as set forth above in this sub-paragraph (vi)(A), transfers shall be made to each Senior Debt Service Reserve Account maintained with respect to the Secured Obligations on a *pro rata* basis measured by the amounts of the respective deficiencies in each such Senior Debt Service Reserve Account; and

(B) *sub-second*, to the extent that any TIFIA Loan shall be outstanding and the TIFIA Obligations do not qualify as Senior Secured Obligations, on each Transfer Date, to each Senior Debt Service Reserve Account established in connection with each TIFIA Loan 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 such Senior Debt Service Reserve Account, equals the applicable Debt Service Reserve Requirement at such time;

(vii) *Seventh*, on each Transfer Date immediately prior to June 30, September 30 and December 31 of each calendar year (and if the Lessee so elects, in its sole discretion, on any Transfer Date immediately prior to March 31 of each calendar year), to the O&M Reserve Account, the amount necessary (if any) to fund the O&M Reserve Account so that the balance therein (taking into account amounts then on deposit therein and amounts available to be drawn on any Acceptable Letter of Credit posted to satisfy the O&M Reserve Requirement) equals the O&M Reserve Requirement;

(viii) *Eighth*, on each Transfer Date immediately prior to June 30, September 30 and December 31 of each calendar year (and if the Lessee so elects, in its sole discretion, on any Transfer Date immediately prior to March 31 of each calendar year), on a *pro rata* basis, (A) to the Major Maintenance Reserve Account, the amount necessary (if any) to fund the Major Maintenance Reserve Account so that the balance therein (taking into account amounts then on deposit therein and amounts available to be drawn on any Acceptable Letter of Credit posted to satisfy the Major Maintenance Reserve Requirement) is at least equal to the Major Maintenance Reserve Requirement and (B) from and after the Transfer Date immediately preceding the date that is five (5) calendar years prior to the projected Expiration Date (as defined in the Lease), to the Handback Reserve Account, the amount necessary (if any) to fund the Handback Reserve Account so that the balance on deposit therein equals the Handback Amount;

(ix) *Ninth*, on a *pro rata* basis, (A) on any Transfer Date immediately prior to March 31, June 30, September 30 or December 31 of each calendar year, to the Port Authority, an amount equal to the Third Additional Rental due and payable under the Lease for the immediately preceding quarterly period and (B) on any Transfer Date, to the Port Authority, an amount equal to the Second Additional Rental due and payable under the Lease for the calendar month in which such Transfer Date occurs; unless, on any Transfer Date on or prior to the Deferred Second Additional Rental End Date, a Deferred Second Additional Rent amount has been calculated under the Lease, in which case an amount equal to the Deferred Second Additional Rent shall instead be paid under sub-paragraph (b)(x)(A) and/or sub-paragraph (b)(x)(B) below (as applicable);

(x) *Tenth*, on each Transfer Date, in the following order of priority:

(A) *sub-first*, on a *pro rata* basis, to the Port Authority (or in the case of clause (II), to the Manager) (I) on any Transfer Date occurring on or prior to the Deferred Concession Shortfall End Date on which a Concession Shortfall has been calculated under the Lease, an amount equal to the Concession Shortfall that would otherwise have been payable on such Transfer Date under sub-paragraph (b)(i) above if no Concession Shortfall had been calculated, together with any interest due and payable thereon pursuant to the Lease (provided that if there is insufficient cash available to pay any such amount on any Transfer Date occurring prior to the Deferral Outside Date, the relevant shortfall amount and any interest due and payable thereon pursuant to the Lease shall instead be paid under sub-

paragraph (b)(x)(B) below), (II) on any Transfer Date occurring on or prior to the Deferred Management Fee End Date on which a Deferred Management Fee amount has been calculated under the Management Services Agreement, an amount equal to the Deferred Management Fee that would otherwise have been payable on such Transfer Date under sub-paragraph (b)(iii) above if no Deferred Management Fee had been calculated (provided that if there is insufficient cash available to pay any such amount on any Transfer Date occurring prior to the Deferral Outside Date, the relevant shortfall amount and any interest due and payable thereon pursuant to the Management Services Agreement shall instead be paid under sub-paragraph (b)(x)(B) below), and (III) on any Transfer Date occurring prior to the Deferred Second Additional Rental End Date, an amount equal to the Deferred Second Additional Rent (if any) (provided that if there is insufficient cash available to pay any such amount on any Transfer Date occurring prior to the Deferral Outside Date, the relevant shortfall amount and any interest due and payable thereon pursuant to the Lease shall instead be paid under sub-paragraph (b)(x)(B) below); and

(B) *sub-second*, to the Port Authority (or in the case of clause (II) below), to the Manager), (I) any accumulated and unpaid Concession Shortfall amounts due and payable under the Lease which are attributable to prior Transfer Dates, together with any interest due and payable thereon pursuant to the Lease, (II) any accumulated and unpaid Deferred Management Fee amounts due and payable under the Management Services Agreement which are attributable to prior Transfer Dates, together with any interest due and payable thereon pursuant to the Management Services Agreement, and (III) any accumulated and unpaid Deferred Second Additional Rent amounts due and payable under the Lease which are attributable to prior Transfer Dates, together with any interest due and payable thereon pursuant to the Lease;

(xi) *Eleventh*, on any Transfer Date, (A) to the Operating Account, an amount equal to (I) O&M Expenses of the Lessee (other than such O&M Expenses that are expressly paid under other sub-paragraphs of this paragraph (b)) that are not Permitted O&M Expenses (as defined in the Lease) plus (II) any amounts to be used by the Lessee to pay, in partial payment of the TRS Operating Phase Fee, any Directly Paid Costs attributable to O&M Expenses of the Taxable REIT Subsidiary (other than TRS Permitted O&M Expenses), and (B) to the TRS Operating Account, an amount equal to the TRS Operating Phase Fee then due and payable (*less* the portion thereof paid under sub-paragraph (b)(iii) above and clause (A) above);

(xii) *Twelfth*, on each Transfer Date (unless previously funded from amounts in the Construction Accounts for a Phase in accordance with Section 4.04 (Construction Accounts)) if funds are otherwise not then available to be deposited into the Construction Accounts for a Phase to pay all Project Costs for such Phase then due and payable and reasonably expected to be due and payable during the following calendar month, to the applicable Construction Accounts for such Phase, the amount of Project Revenues to be applied to such Project Costs for such Phase in such calendar month as set forth in the base case financial model delivered on the relevant Closing Date of such Phase; provided that if there are insufficient funds available on the Transfer Date to make the transfers required to be made as set forth above in this paragraph (xii), transfers shall be made to such Construction Accounts for a Phase on a *pro rata* basis measured by the amounts required to be transferred to such Construction Accounts for a Phase;

(xiii) *Thirteenth*, on each Transfer Date (unless previously funded from amounts in the Construction Accounts for a Phase in accordance with Section 4.04 (Construction Accounts)), if funds are otherwise not then available to be deposited into the Construction Accounts for a Phase to pay all Project Costs for such Phase then due and payable and reasonably expected to be due and payable during the following calendar month, to the applicable Construction Accounts for such Phase, the amount of Project Revenues to be applied to such Project Costs for such Phase in such calendar month that are in excess of the amounts allocated for such purpose as set forth in the base case financial model delivered on the relevant Closing Date of such Phase; provided that if there are insufficient funds available on the Transfer Date to make the transfers required to be made as set forth above in this paragraph (xiii), transfers shall be made to such Construction Accounts for a Phase on a *pro rata* basis measured by the amounts required to be transferred to such Construction Accounts for a Phase;

(xiv) *Fourteenth*, on each Transfer Date, to each Anchor User an amount equal to any applicable Anchor User Discount, Volume Discount, Relocation Incentive Fee, Incentive Fee, Exclusive Use Space Rent Credit and Additional Flight Incentive Payment (in each case, as defined in the Anchor User Agreement to which such Anchor User is a party) due and payable under such Anchor User Agreement;

(xv) *Fifteenth*, on any Transfer Date immediately following an Interest Payment Date on which principal amounts are payable in respect of any Senior Debt, to the Loans Principal Payment Account or any other relevant Principal Payment Account, at the election of the Lessee in its sole discretion, an amount up to the outstanding principal of the Working Capital Loans, Liquidity Loans and Security Deposit Loans or of Additional Senior Indebtedness or Permitted Refinancing Indebtedness constituting revolving loans or letter of credit loans, in each case, as of such Transfer Date;

(xvi) *Sixteenth*, on each Transfer Date, to the Springing Liquidity Reserve Account, the amount necessary (if any) to fund the Springing Liquidity Reserve Account so that the balance therein equals the Springing Liquidity Reserve Requirement;

(xvii) *Seventeenth*, on each Transfer Date immediately prior to March 31 of each calendar year, to the Port Authority an amount equal to any applicable KPI Deductions (as defined in the Lease) which are due and payable under the Lease with respect to the immediately preceding calendar year;

(xviii) *Eighteenth*, on any Transfer Date immediately following an Interest Payment Date, at the election of the Lessee, to each relevant Prepayment/Redemption Account any amounts to be used for voluntary prepayments of Senior Debt or, to the extent not constituting Senior Debt at such time, TIFIA Loans, together with accrued interest and any fees, make-whole amount, breakage costs and/or associated Termination Payments under the Secured Hedge Agreements; and

(xix) *Nineteenth*, on each Transfer Date immediately following any Interest Payment Date and within a period of sixty (60) days thereafter, if the Restricted Payment Conditions have been satisfied, to the Distribution Account, all remaining amounts.

The Lessee and (at the direction of the Secured Parties) Collateral Agent each acknowledge and agree that payment of any Concession Shortfall and/or Deferred Second Additional Rent (each as defined under the Lease) to which the Port Authority is entitled under and subject to the Lease will be made in the ordinary course to the extent of available funds therefor in accordance with the provisions of this Section 4.02(b) (Post-Completion Revenue Account).

Section 4.03 Senior Debt Proceeds Account.

(a) From and after the First Closing Date, the Lessee and, to the extent it has received such funds, the Conduit Issuer shall promptly deposit or cause to be deposited into the relevant Senior Debt Proceeds Account established with respect to any Additional Senior Indebtedness or Permitted Refinancing Indebtedness, all proceeds from the issuance of such Additional Senior Indebtedness or Permitted Refinancing Indebtedness, as applicable, on-lent to the Lessee pursuant to the Lessee Loan Agreements, in each case, for the avoidance of doubt, other than (i) the aggregate amount of fees and expenses payable, if any, by the Conduit Issuer or the Lessee in connection with such incurrence or purchase, (ii) any proceeds required to be applied towards the prepayment of the Loans or other Senior Debt in accordance with Section 4.06(c)(v) (Senior Secured Obligations Payment Account) and (iii) any proceeds designated by the Lessee in a Notice of Credit Extension (as defined in the Project Loan Agreement) (other than Muni Bonds Proceeds) for deposit into the corresponding Senior Debt Service Reserve Account, the Major Maintenance Reserve Account (or from and after the date that is five (5) calendar years prior to the projected Expiration Date (as defined in the Lease), the Handback Reserve Account), the O&M Reserve Account and/or any Ramp-Up Account.

(b) Subject to Section 8.02 (Notice of Account Control), the Lessee, the Conduit Issuer and the Collateral Agent hereby irrevocably authorize the Account Bank to make withdrawals and transfers from each Senior Debt Proceeds Account to the relevant Construction Account or in the case of proceeds from the incurrence of Incremental Debt, to the Distribution Account (other than proceeds of any TIFIA Loan), as the case may be, pursuant to a Construction Withdrawal Certificate delivered to the Account Bank in accordance with Section 4.04(b)(i) and (ii) (Construction Accounts). The Lessee shall be entitled to deliver a Construction Withdrawal Certificate only if and so long as, in the case of an issue of Muni Bonds or Private Placement Notes with respect to a Phase, each of the following conditions are satisfied (or waived by the applicable Senior Debt Representative) with respect to such Phase as of the requested Construction Transfer Date: (i) the Lessee has delivered an Officer's Certificate certifying that: (A) the Lessee has Available Funding sufficient to achieve Completion for such Phase; (B) Completion for such Phase is reasonably likely to occur on or prior to the Date Certain for such Phase; and (C) the amounts being requested in the applicable Construction Withdrawal Certificate are solely for the payment (or reimbursement for a prior payment) of Project Costs (and whether such Project Costs constitute Building Loan Costs or Project Loan Costs) for such Phase, in each case as confirmed by the Technical Advisor, and shall be paid in accordance with the Financing Documents (including Section 3.10(a) (Material Project Documents) of Schedule 2 (Common Representations and Warranties, Covenants and Events of Default)), (ii) all representations and warranties of the Lessee and the Conduit Issuer made in any Financing Document to which it is a party shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality) on and as of the date of such Construction Transfer Date (both immediately before and after giving effect to such withdrawal and transfer occurring on such date), except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality) as of such earlier date, (iii) no Secured Obligations Default or Secured Obligations Event of Default shall have occurred and be continuing, unless such funds will be used to cure a Secured Obligations Default or Secured Obligations Event of Default resulting solely from a failure to pay the D&C Contractor for such Phase and in which case no other Secured Obligations Default or Secured Obligations Event of Default has occurred and is continuing, (iv) the Intercreditor Agent shall have received duly executed acknowledgments of payments and partial releases of mechanics' and materialmen's liens, from the D&C Contractor for Phase A, to the extent applicable;

provided that such releases may be conditioned upon receipt of payment with respect to the work, services and materials to be paid for with the proceeds of such disbursement, (v) all Equity Contributions required to have been made as of the date of such disbursement shall have been made (or will be made on such date of such Credit Extension), in accordance with the Equity Contribution Agreement; and Credit Support is provided in respect of the remaining Equity Commitment Amount in accordance with the Equity Contribution Agreement, (vi) all Governmental Approvals of the Lessee that are necessary as of the relevant stage of Phase A shall have been issued, shall be final and non-appealable and shall be free from conditions that would reasonably be expected to have a Material Adverse Effect or that the Lessee does not expect to be able to satisfy, and (vii) the Lessee shall have paid, or simultaneously with such disbursement shall pay, all fees and expenses then due and payable to the Secured Parties and the Conduit Issuer, including pursuant to the Fee Letters; provided further that (x) in the case of an issue of Muni Bonds and any other Senior Debt with a designated Project Loan Costs Construction Account (including a designated Project Loan Senior Debt Capitalized Interest Account), the Muni Bonds Proceeds and the proceeds of such other Senior Debt received by, or on behalf of, the Conduit Issuer shall be deposited into the corresponding Project Loan Costs Construction Account (including the corresponding Project Loan Senior Debt Capitalized Interest Account, as applicable), in accordance with the relevant Notice of Credit Extension (as defined in the Project Loan Agreement), or (y) in the case of an issue of Muni Bonds and any other Senior Debt with a designated Building Loan Costs Construction Account (including a designated Building Loan Senior Debt Capitalized Interest Account), the Muni Bonds Proceeds and the proceeds of such other Senior Debt received by, or on behalf of, the Conduit Issuer shall be deposited into the corresponding Building Loan Costs Construction Account (including Building Loan Senior Debt Capitalized Interest Account, as applicable), in accordance with the relevant Notice of Credit Extension (as defined in the Building Loan Agreement).

#### Section 4.04    Construction Accounts.

(a)      From and after the First Closing Date until the Lease Completion Date for a Phase, the Lessee and, to the extent it has received such funds, the Conduit Issuer shall promptly deposit or cause to be deposited into the Construction Accounts for such Phase (with such of the following proceeds that will be applied to pay for Project Loan Costs for such Phase being deposited into the designated Project Loan Costs Construction Accounts for such Phase (including in the case of any Muni Bonds and any other Senior Debt with a designated Project Loan Senior Debt Capitalized Interest Account for such Phase), into such Project Loan Costs Construction Accounts for such Phase (including the corresponding Project Loan Senior Debt Capitalized Interest Account, as applicable) in accordance with Section 4.03(b) (Senior Debt Proceeds Account) and such of the following proceeds that will be applied to pay for Building Loan Costs for such Phase being deposited into the designated Building Loan Costs Construction Accounts for such Phase (including in the case of any Muni Bonds and any other Senior Debt with a designated Building Loan Senior Debt Capitalized Interest Account for such Phase), into such Building Loan Costs Construction Accounts for such Phase (including the corresponding Building Loan Senior Debt Capitalized Interest Account, as applicable) in accordance with Section 4.03(b) (Senior Debt Proceeds Account)):

(i)      all proceeds from borrowings under the Credit Agreement and, as transfers from the relevant Senior Debt Proceeds Accounts in accordance with Section 4.03(b) (Senior Debt Proceeds Account), all other proceeds under the other Senior Debt Documents (in each case, to the extent that the relevant Senior Debt has been incurred specifically for the purpose of funding Project Costs for such Phase), in each case, on-lent to the Lessee pursuant to the applicable Lessee Loan Agreement (for the avoidance of doubt, other than the aggregate amount of fees and expenses payable, if any, by the Conduit Issuer or the Lessee in connection with such disbursement under such Senior Debt Documents and paid directly to the recipient thereof from the proceeds thereof and other than any portion thereof used to fund the relevant

Senior Debt Service Reserve Account), including the proceeds of any True-Up Drawing elected to be deposited into the applicable Construction Account by the Lessee pursuant to the Notice of Credit Extension (as defined in the Lessee Loan Agreements) related to such True-Up Drawing;

(ii) until the Lease Completion Date for such Phase, any Ordinary Course Payments and Termination Payments paid to the Lessee under the Secured Hedge Agreements which relate to the Senior Debt for such Phase (except to the extent that proceeds from such Termination Payments are used to offset the reasonable costs and expenses of the Lessee (A) entering into a replacement transaction under an Interest Rate Hedge Agreement or (B) replacing or refinancing (pursuant to a transaction permitted under this Agreement) the obligations related to such Interest Rate Hedge Agreement);

(iii) all amounts transferred from the Pre-Completion Revenue Account in accordance with paragraphs (b) and (c) of Section 4.01 (Pre-Completion Revenue Account);

(iv) the proceeds of any Equity Contributions from any holder of Equity Interests of the Lessee or its Affiliates, including the proceeds of any funds drawn from the Advanced Equity Contribution Account in accordance with Section 4.18 (Advanced Equity Contribution Account) and any drawing made on any Equity LCs or Equity Cash Collateral, made in accordance with the relevant Equity Contribution Agreement and the terms thereof for the purposes of funding Project Costs for such Phase, other than any such proceeds designated for deposit into a Senior Debt Service Reserve Account, the Major Maintenance Reserve Account (or from and after the date that is five (5) calendar years prior to the projected Expiration Date (as defined in the Lease), the Handback Reserve Account), the O&M Reserve Account and/or any Ramp-Up Account;

(v) until the Lease Completion Date for such Phase, any other capital contributions or proceeds of loans from any equity holder of the Lessee or its Affiliates made for the purposes of funding Project Costs for such Phase (net of any transactions costs, expenses and taxes payable in connection therewith);

(vi) until the Lease Completion Date for such Phase, any general liability insurance, delayed completion insurance, automobile liability insurance, workers' compensation and business interruption insurance proceeds received by the Lessee in respect of such Phase (including if received as a reimbursement for claims paid by the Lessee);

(vii) until the Lease Completion Date for such Phase, any Net Cash Proceeds of asset sales relating to such Phase which are not otherwise required or permitted to be deposited into another Project Account or used for a specific purpose;

(viii) income in respect of cash balances and Eligible Investments as described in Section 3.04 (Permitted Investments);

(ix) any amounts transferred from any Construction Account relating to a prior Phase in accordance with clause (II) of sub-paragraph (d)(i)(B) of Section 4.04 (Construction Accounts) and subject to the limitations in Section 3.04(d) (Permitted Investments);

(x) any proceeds of any TIFIA Loan; and

(xi) any other amounts required to be transferred to the Construction Accounts for such Phase from other Project Accounts or other sources in accordance with the terms of this Agreement and the other Financing Documents.

(c) Subject to Section 8.02 (Notice of Account Control), the Lessee, the Conduit Issuer and the Collateral Agent hereby irrevocably authorize the Account Bank to make withdrawals and transfers from the applicable Construction Accounts for a Phase pursuant to a Construction Withdrawal Certificate delivered to the Account Bank, not less than three (3) Business Days before the requested Construction Transfer Date, for such withdrawals and transfers as set out in such Construction Withdrawal Certificate, to the extent of funds that are then on deposit (or that will be on deposit on the proposed Construction Transfer Date) in such Construction Accounts for such Phase:

(i) in the Project Loan Costs Construction Accounts for such Phase:

(A) for the direct payment, or indirect, in the case of equity contributions to be made by the Lessee to the Taxable REIT Subsidiary for the direct payment by the Taxable REIT Subsidiary, in each case of Project Loan Costs (including any applicable payment of the TRS Construction Phase Fee) for such Phase due and payable or that will become due and payable within thirty (30) days after such Construction Transfer Date (or in the case of any such Project Loan Costs consisting of outstanding principal on the Working Capital Loans, Liquidity Loans and/or Security Deposit Loans, the amount elected for repayment by the Lessee in its sole discretion up to such outstanding principal amount or in the case of any such Project Loan Costs consisting of ground rent due and payable under the Lease with respect to the Leased Premises, with the priority of payment required under Section 4(a)(4) of the Lease) from such Project Loan Costs Construction Accounts so long as:

I. if such payments are to be made from the proceeds of a disbursement of Loans, the payments of such Project Loan Costs pursuant to such requested withdrawals and transfers are in accordance with the Committed Loan Notice (as defined in the Credit Agreement) delivered under Section 2.02 (*Borrowings, Conversions and Continuations of Loans*) of the Credit Agreement and Section 2.02 (*Notice of Credit Extension*) of the Project Loan Agreement, as confirmed by the Technical Advisor; and

II. if such payments are to be made from (1) the proceeds of Private Placement Notes or Muni Bonds Proceeds received by, or on behalf of, the Conduit Issuer, (2) the proceeds of Equity Contributions (if any) or (3) other amounts or proceeds on deposit in such Project Loan Costs Construction Accounts, the payments of such Project Loan Costs pursuant to such requested withdrawals and transfers are in accordance with (x) the certifications of the Lessee in such Construction Withdrawal Certificate, as confirmed by the Technical Advisor in an Officer's Certificate of the Technical Advisor attached to such Construction Withdrawal Certificate and (y) in the case of payments to be made from Muni Bonds Proceeds, the Tax Compliance Certificate for the issue of Muni Bonds related to such Muni Bonds Proceeds; or

(B) in the case of a True-Up Drawing, if so elected by the Lessee in its sole discretion, to the Distribution Account such amount specified by the Lessee from such Project Loan Costs Construction Accounts so long as (I) if the True-Up Drawing is to be made from the proceeds of Private Placement Notes, Equity Contributions (if any) or other monies on deposit in the Project Loan Costs Construction Accounts, such transfer is made in accordance with the instructions of the Lessee in such Construction Withdrawal Certificate; and (II) if the True-Up Drawing is to be made from Muni Bonds

Proceeds or the proceeds of other tax-exempt Senior Debt, such transfer is made in accordance with the provisions of the Tax Compliance Certificate for the issue of Muni Bonds in respect of the Muni Bonds Proceeds or such other tax-exempt Senior Debt, as applicable (provided that, if the provisions of the applicable Tax Compliance Certificate require that such funds be used to redeem such Muni Bonds or other tax-exempt Senior Debt instead, the Lessee shall instruct the Account Bank to apply the proceeds of such True-Up Drawing, if any, to such redemption); and

(ii) in the Building Loan Costs Construction Accounts for such Phase:

(A) for the direct payment, or indirect, in the case of equity contributions to be made by the Lessee to the Taxable REIT Subsidiary, in each case of Building Loan Costs (including any applicable payment of the TRS Construction Phase Fee) for such Phase due and payable or that will become due and payable within thirty (30) days after such Construction Transfer Date from such Building Loan Costs Construction Accounts so long as:

I. if such payments are to be made from the proceeds of a disbursement of Loans, the payments of such Building Loan Costs pursuant to such requested withdrawals and transfers are in accordance with the Committed Loan Notice (as defined in the Credit Agreement) delivered under Section 2.02 (*Borrowings, Conversions and Continuations of Loans*) of the Credit Agreement and Section 2.02 (*Notice of Credit Extension*) of the Building Loan Agreement, as confirmed by the Technical Advisor; and

II. if such payments are to be made from (1) the proceeds of Private Placement Notes or Muni Bonds Proceeds received by, or on behalf of, the Conduit Issuer, (2) the proceeds of Equity Contributions (if any) or (3) other amounts or proceeds on deposit in such Building Loan Costs Construction Accounts, the payments of such Building Loan Costs pursuant to such requested withdrawals and transfers are in accordance with (x) the certifications of the Lessee in such Construction Withdrawal Certificate, as confirmed by the Technical Advisor in an Officer's Certificate of the Technical Advisor attached to such Construction Withdrawal Certificate and (y) in the case of payments to be made from Muni Bonds Proceeds, the Tax Compliance Certificate for the issue of Muni Bonds related to such Muni Bonds Proceeds; or

(B) in the case of a True-Up Drawing, if so elected by the Lessee in its sole discretion, to the Distribution Account such amount specified by the Lessee from such Building Loan Costs Construction Accounts so long as (I) if the True-Up Drawing is to be made from the proceeds of Private Placement Notes, Equity Contributions (if any) or other monies on deposit in the Building Loan Costs Construction Accounts, such transfer is made in accordance with the instructions of the Lessee in such Construction Withdrawal Certificate or (II) if the True-Up Drawing is to be made from Muni Bonds Proceeds or other tax-exempt Senior Debt, such transfer is made in accordance with the provisions of the Tax Compliance Certificate for the issue of Muni Bonds in respect of the Muni Bonds Proceeds or such other tax-exempt Senior Debt, as applicable;

(iii) in the Project Loan Senior Debt Capitalized Interest Accounts for such Phase, for the direct payment of interest, commitment fees and letter of credit fees on the relevant Senior Debt that was on-lent to the Lessee under the Project Loan Agreement and that is due and payable or that will become due and payable within thirty (30) days after such Construction Transfer Date from the Project Loan Senior Debt Capitalized Interest Account for the benefit of the holders of such Senior Debt; and

(iv) in the Building Loan Senior Debt Capitalized Interest Accounts for such Phase, for the direct payment of interest, commitment fees and letter of credit fees on the relevant Senior Debt that was on-lent to the Lessee under the Building Loan Agreement and that is due and payable or that will become due and payable within thirty (30) days after such Construction Transfer Date from the Building Loan Senior Debt Capitalized Interest Account for the benefit of the holders of such Senior Debt;

provided that, subject to complying with the requirements of Section 2.13 (Loan Balancing) of each Lessee Loan Agreement, Section 2.15 (Increases and other Changes to the Building Loan and Building Loan Commitment; Refinancings and Repayments of the Building Loan) of the Building Loan Agreement and Section 2.15 (Increases and other Changes to the Project Loan and Project Loan Commitment; Refinancings and Repayments of the Project Loan) of the Project Loan Agreement, the Lessee may at its election transfer funds from the Building Loan Costs Construction Accounts for such Phase to the Project Loan Costs Construction Accounts for such Phase and vice versa pursuant to a Construction Withdrawal Certificate delivered to the Account Bank at least three (3) Business Days before the date of the requested transfer.

(c) The Lessee hereby covenants and agrees only to give instructions to the Account Bank to make any such withdrawal and transfer of funds for the purposes of payment of Project Costs for a Phase that are then due and payable or that will become due and payable within thirty (30) days after the relevant Construction Transfer Date, in each case, in accordance in all material respects with the Construction Budget and the Construction Schedule for such Phase; provided that the Lessee may transfer monies from the Construction Accounts for such Phase in respect of any Emergency Expenditures in accordance with Section 4.22 (Funds Transfer Certificates); provided further that any transfer of Muni Bond proceeds or other tax-exempt Senior Debt in respect of Emergency Expenditures shall be in accordance with the provisions of the Tax Compliance Certificate for the issue of Muni Bonds in respect of the Muni Bonds Proceeds or such other tax-exempt Senior Debt, as applicable.

(d) On the Completion Date for any Phase, to the extent that there shall be funds remaining on deposit in the Construction Accounts for such Phase, the Lessee, the Conduit Issuer and the Collateral Agent hereby irrevocably authorize the Account Bank to withdraw and transfer such funds as follows in accordance with an Officer's Certificate of the Lessee addressed to the Account Bank (with a copy to the Conduit Issuer and the Collateral Agent) (it being agreed that no amount shall be withdrawn or transferred pursuant to any sub-paragraph below until amounts sufficient as of that date (to the extent applicable) for all the purposes specified under the prior paragraphs shall have been withdrawn or transferred):

(i) in the case of amounts on deposit in the Construction Accounts for such Phase (other than Muni Bonds Proceeds and the proceeds of any other tax-exempt Senior Debt on deposit in the Construction Accounts for such Phase):

(A) *First*, amounts will be retained in the Project Loan Costs Construction Accounts for such Phase for the payment of any remaining incurred or scheduled, but unpaid, Project Loan Costs for such Phase and in the Building Loan Costs Construction Accounts for such Phase for the payment of any remaining incurred or scheduled, but unpaid, Building Loan Costs for such Phase (collectively, in respect of any Phase, the "**Unpaid Project Costs**"), in each case, of the Lessee or the Taxable REIT Subsidiary;

(B) *Second*, an amount equal to thirty-five percent (35%) of the applicable Construction Cost Savings Amount, if any, then on deposit in the Construction Accounts for such Phase (other than Muni Bonds Proceeds on deposit in the Construction Accounts for such Phase) will be retained in the Construction Accounts for such Phase for application as follows: (I) for payment to the Port Authority if and when required pursuant to Section 81(a)(3) (*Milestone Payments for the Cost of the Redevelopment Work*) of the Lease; or (II) if such amounts are not required to be paid (or to have been paid) to the Port Authority in accordance with clause (I) above prior to the date on which Phase NTP is issued for the next succeeding Phase, then on such date, to the applicable Construction Accounts for such Phase to be used in accordance with Section 4.04(a) (Construction Accounts);

(C) *Third*, at the Lessee's option, to each relevant Prepayment/Redemption Account any amounts to be used for voluntary prepayments of Senior Debt and, to the extent not constituting Senior Debt at such time, the TIFIA Loans, together with accrued interest and any fees, make-whole amount, breakage costs and/or associated Termination Payments under the Secured Hedge Agreements; and

(D) *Fourth*, all remaining funds (other than Muni Bonds Proceeds and the proceeds of any other tax-exempt Senior Debt relating to such Phase), if any, then on deposit in the Construction Accounts for such Phase shall be transferred to the Post-Completion Revenue Account; and

(ii) in the case of Muni Bonds Proceeds and the proceeds of any other tax-exempt Senior Debt, in each case, on deposit in any Construction Account for such Phase:

(A) *First*, such Muni Bonds Proceeds and proceeds of other tax-exempt Senior Debt shall be transferred to the relevant Arbitrage Rebate Account in such amount as is required by the Tax Compliance Certificate or Certificates with respect to such issue of Muni Bonds and/or other tax-exempt Senior Debt, as applicable, to satisfy the requirements of Section 148(f) of the Code with respect to such Muni Bonds and/or other tax-exempt Senior Debt, as applicable; and

(B) *Second*, such Muni Bonds Proceeds and proceeds of other tax-exempt Senior Debt shall be transferred to the relevant Prepayment/Redemption Account for the Senior Debt relating to such Phase for application to the redemption of Muni Bonds or the repayment or redemption of such other tax-exempt Senior Debt, to the relevant Principal Payment Account or to such other account (including the relevant Interest Payment Account ) as in the opinion of nationally recognized bond counsel in respect of such Muni Bonds and/or such other tax-exempt Senior Debt, as applicable, will not adversely affect the tax-exempt status of interest on such Muni Bonds and/or such other tax-exempt Senior Debt, as applicable.

After the Completion Date for any Phase, the completion of all transfers contemplated in this paragraph (d) and the payment in full of all Unpaid Project Costs of the Lessee for such Phase, the Account Bank shall, upon receipt of written instructions from the Lessee and the Collateral Agent, close the Construction Accounts for such Phase.

#### Section 4.05 Operating Account.

(a) The Account Bank shall deposit into the Operating Account all amounts transferred from:

(i) the Post-Completion Revenue Account in accordance with sub-paragraphs (b)(iii)(A) and (b)(xi) of Section 4.02 (Post-Completion Revenue Account), and

(ii) the O&M Reserve Account in accordance with Section 4.07 (O&M Reserve Account).

(b) If at any time after making transfers from the O&M Reserve Account pursuant to Section 4.07(a) (O&M Reserve Account) the amount on deposit in the Operating Account is insufficient to satisfy the O&M Expenses of the Lessee then due and payable, the Lessee shall have the right to instruct the transfer, pursuant to an Officer's Certificate addressed to the Account Bank (with a copy to the Collateral Agent), of amounts from the Pre-Completion Revenue Account or the Post-Completion Revenue Account, respectively, to deposit directly into the Operating Account; provided that an amount equal to the Port Authority Priority Payments, ground rent and Contingent Rental (if any) under the Lease then due and payable on the next Transfer Date shall remain on deposit in the Pre-Completion Revenue Account or the Post-Completion Revenue Account, as applicable. The Lessee shall have the right, so long as such withdrawal or transfer is requested in accordance with the terms of this Agreement and the other Financing Documents, to instruct the Account Bank in writing to transfer the funds from the Post-Completion Revenue Account to the Operating Account without approval or consent by the Collateral Agent or any other Person, and the Account Bank shall do so upon receipt of such instruction.

(c) Subject to Section 8.02 (Notice of Account Control), the Lessee shall be entitled to instruct the Account Bank pursuant to a Funds Transfer Certificate (including the supporting information attached thereto), to withdraw or transfer funds from the Operating Account (i) for the payment of O&M Expenses and Directly Paid Costs, (ii) to the relevant Petty Cash Account up to an amount such that, when taken together with all other transfers to such Petty Cash Account in any calendar month, does not exceed one hundred thousand Dollars (\$100,000) in such month, or (iii) to the extent such funds constitute Insurance and Condemnation Proceeds deposited into the Operating Account pursuant to Section 4.10 (Insurance and Condemnation Proceeds Account), to the payment of Collection Expenses in respect of such Insurance and Condemnation Proceeds in accordance with Section 4.10 (Insurance and Condemnation Proceeds Account), in each case without approval or consent by the Collateral Agent or any other Person.

#### Section 4.06 Senior Secured Obligations Payment Accounts.

(a) The Account Bank shall deposit into each Interest Payment Account on each Transfer Date or any other date on which interest, commitment fees and letter of credit fees on the Loans or on any other Secured Obligations are due and payable, the amount required to be transferred from the Post-Completion Revenue Account to such Interest Payment Account pursuant to Section 4.02(b)(iv)(B) and Section 4.02(b)(iv)(D) (Post-Completion Revenue Account) in the order of priority established therein, or the other terms of this Agreement or any Financing Document (or from any other source of funds as directed by the Lessee to the extent the Lessee is permitted to use such funds for such purposes in accordance with this Agreement), in each case as directed to the Account Bank in a Funds Transfer Certificate delivered by the Lessee pursuant to Section 4.22 (Funds Transfer Certificates) no later than two (2) Business Days prior to the date of the requested funds transfer.

(b) The Account Bank shall deposit into each Principal Payment Account on each Transfer Date or on any other date on which principal on the Loans or on any other Secured Obligations or any make-whole amount or Termination Payment is due and payable or the Lessee has elected to repay principal on the Working Capital Loans, Liquidity Loans and/or Security Deposit Loans, the amount required to be transferred from the Post-Completion Revenue Account to such Principal Payment Account under Section 4.02(b)(iv)(C) and 4.02(b)(iv)(E) (Post-Completion Revenue Account) in the order of priority established therein, or the other terms of this Agreement or any Financing Document (or from any other source of funds as directed by the Lessee to the extent the Lessee is permitted to use such funds for such

purposes in accordance with this Agreement), in each case as directed to the Account Bank in a Funds Transfer Certificate delivered by the Lessee pursuant to Section 4.22 (Funds Transfer Certificates) no later than two (2) Business Days prior to the date of the requested funds transfer.

(c) With respect to the Senior Debt relating to a Phase, the Lessee shall promptly deposit or cause to be deposited into the Loans Prepayment Account and into each other Prepayment/Redemption Account (in each case, to the extent prepayment or redemption of such Senior Debt is required by the terms of the relevant Financing Documents) including into any Prepayment/Redemption Account established in connection with any TIFIA Loan (to the extent prepayment thereof is required by the terms of the applicable TIFIA Loan Agreement), the following:

(i) all amounts transferred from the Insurance and Condemnation Proceeds Account in accordance with Section 4.10(b) (Insurance and Condemnation Proceeds Account) as and to the extent required to be applied towards the prepayment of the Loans pursuant to Section 2.04(b)(i) (*Mandatory*) of the Credit Agreement, the redemption of the Muni Bonds pursuant to the tax covenants in the Indenture and the provisions of the Tax Compliance Certificate or Certificates applicable to such issue or issues of Muni Bond and/or the prepayment or redemption of other Secured Obligations under the relevant Senior Debt Documents (including, in each case, the prepayment of associated Building Loans and Project Loans, as applicable, pursuant to the Lessee Loan Agreements);

(ii) any Net Cash Proceeds received from any Disposition by the Lessee of assets or property as and to the extent required to be applied towards the prepayment of the Loans pursuant to Section 2.04(b)(ii) (*Mandatory*) of the Credit Agreement, toward the redemption of one or more issues of Muni Bonds pursuant to the tax covenants in the Indenture and the provisions of the Tax Compliance Certificate or Certificates applicable to such issue or issues of Muni Bond and/or the prepayment or redemption of other Secured Obligations under the relevant Senior Debt Documents (including, in each case, the prepayment of associated Building Loans and Project Loans, as applicable, pursuant to the Lessee Loan Agreements);

(iii) any Net Cash Proceeds received from (A) the Port Authority pursuant to the Lease in connection with the termination of the Lease and (B) any other Material Project Counterparty in connection with the termination of the relevant Material Project Document, in each case, to the extent required to be applied towards the prepayment of the Loans pursuant to Section 2.04(b)(iii) (*Mandatory*) of the Credit Agreement and/or the prepayment or redemption of other Secured Obligations under the relevant Senior Debt Documents (including, in each case, the prepayment of associated Building Loans and Project Loans, as applicable, pursuant to the Lessee Loan Agreements);

(iv) the Net Cash Proceeds of performance liquidated damages received by the Lessee (A) from the D&C Contractor for such Phase pursuant to the D&C Contract for such Phase or (B) pursuant to any other Material Project Document, in each case, to the extent required to be applied towards the prepayment of the Loans pursuant to Section 2.04(b)(iv) (*Mandatory*) of the Credit Agreement and/or the prepayment or redemption of other Secured Obligations under the relevant Senior Debt Documents (including, in each case, the prepayment of associated Building Loans and Project Loans, as applicable, pursuant to the Lessee Loan Agreements); and

(v) the Net Cash Proceeds of any Permitted Refinancing Indebtedness (including pursuant to the Note Purchase Agreement, the Notes, the Indenture and/or the Muni Bonds) to be applied towards the prepayment of the Loans pursuant to Section 2.04(b)(v) (*Mandatory*) of the Credit Agreement and/or the prepayment or redemption of other Secured Obligations under the relevant Senior Debt Documents (including, in each case, the prepayment of associated Building Loans and Project Loans, as applicable, pursuant to the Lessee Loan Agreements).

(d) The Lessee shall promptly deposit or cause to be deposited into the Loans Prepayment Account and into each other Prepayment/Redemption Account any proceeds pursuant to the exercise of any Equity Cure that the Lessee elects to prepay under Section 4.17 (Total Obligations Coverage Ratio) of Schedule 2 (Common Representations and Warranties, Covenants and Events of Default).

(e) On or prior to each Interest Payment Date, the Account Bank shall transfer monies from the various Interest Payment Accounts for the purpose of paying the interest, commitment fees, letter of credit fees and Ordinary Course Payments under any Secured Hedge Agreement due and payable on such Interest Payment Date, as directed in the relevant Funds Transfer Certificate delivered by the Lessee pursuant to Section 4.22 (Funds Transfer Certificates).

(f) On or prior to each Payment Date, or in the case of payment of outstanding principal on the Working Capital Loans, Liquidity Loans and Security Deposit Loans, such other applicable date, the Account Bank shall transfer monies from the various Principal Payment Accounts for the purpose of paying the principal, make-whole amounts (if any) and Termination Payments under any Secured Hedge Agreement due and payable on such Payment Date, as directed in the Funds Transfer Certificate delivered by the Lessee pursuant to Section 4.22 (Funds Transfer Certificates).

(g) The Account Bank shall transfer monies from such Prepayment/Redemption Account for the purpose of prepaying the Loans and/or other Secured Obligations, as applicable, together with any other amounts then due and payable under the Senior Debt Documents, including accrued interest, fees, make-whole amounts, premiums, breakage costs, Termination Payments and indemnities payable in connection with such prepayment, as directed in the relevant Funds Transfer Certificate delivered by the Lessee pursuant to Section 4.22 (Funds Transfer Certificates) or, in the case of a transfer from a Senior Debt Service Reserve Account pursuant to Section 4.09(c) (Senior Debt Service Reserve Account) as directed to the Account Bank in writing by the Collateral Agent (without the requirement of a Funds Transfer Certificate):

(i) immediately upon the deposit of any proceeds into the Loans Prepayment Account or any other Prepayment/Redemption Account pursuant to clause (A) of Section 4.06(c)(iii) (Senior Secured Obligations Payment Account) or Section 4.06(c)(v) (Senior Secured Obligations Payment Account); and

(ii) on the Interest Payment Date immediately following the deposit of any other proceeds into the Loans Prepayment Account or any other Prepayment/Redemption Account.

#### Section 4.07 O&M Reserve Account.

(a) No later than the Completion Date for Phase A, the O&M Reserve Account will be funded in an amount equal to the O&M Reserve Requirement from, at the election of the Lessee, (i) proceeds from Credit Extensions under the Financing Documents on-lent to the Lessee pursuant to the applicable Lessee Loan Agreement, and (ii) proceeds of Equity Contributions (if any), including the proceeds of any funds drawn from the Advanced Equity Contribution Account in accordance with Section 4.18 (Advanced Equity Contribution Account) and the proceeds of any drawing made on any Equity LCs or Equity Cash Collateral, made in accordance with the relevant Equity Contribution Agreement and the terms thereof. Thereafter, the O&M Reserve Account will be funded by transfers from the Post-Completion Revenue Account in accordance with Section 4.02(b)(vii) (Post-Completion Revenue Account) (or from any other source of funds as directed by the Lessee to the extent the Lessee is permitted to use such funds for such purposes in accordance with this Agreement) such that the aggregate amount transferred on each Transfer Date after the Completion Date for Phase A shall be the lesser of (A) the amount available to be transferred from the Post-Completion Revenue Account in accordance with Section 4.02(b)(vii) (Post-Completion Revenue

Account) and (B) such amount as is required so that the balance of the O&M Reserve Account is equal to the O&M Reserve Requirement.

(b) To the extent that on any Transfer Date the amounts on deposit in the O&M Reserve Account are in excess of the O&M Reserve Requirement, then before making transfers pursuant to clause (A) of Section 4.02(b)(iii) (Post-Completion Revenue Account) on such Transfer Date the Account Bank shall, as directed by the Lessee pursuant to a Funds Transfer Certificate, transfer such excess monies to the Post-Completion Revenue Account.

(c) Subject to Section 8.02 (Notice of Account Control), if (i) on any Transfer Date the amount available in the Post-Completion Revenue Account is insufficient to make a deposit into the Operating Account in accordance with sub-paragraph (b)(iii)(A) or (b)(xi) of Section 4.02 (Post-Completion Revenue Account) or (ii) at any time the amount on deposit in the Operating Account is insufficient to satisfy the O&M Expenses of the Lessee then due and payable (an “**O&M Expense Insufficiency**”), the Lessee shall have the right, without approval or consent by the Collateral Agent or any other Person so long as such withdrawal or transfer is requested in accordance with the terms of this Agreement and the other Financing Documents, to instruct the Account Bank, pursuant to (in the case of clause (i)) a Funds Transfer Certificate or (in the case of clause (ii)) an Officer’s Certificate addressed to the Account Bank (with a copy to the Collateral Agent), to transfer amounts from the O&M Reserve Account (or from any other source of funds as directed by the Lessee to the extent the Lessee is permitted to use such funds for such purposes in accordance with this Agreement) directly into the Operating Account.

(d) Notwithstanding any other provision of this Agreement to the contrary, the Lessee may, upon notice to the Collateral Agent, substitute all or any portion of the cash or Eligible Investments on deposit in the O&M Reserve Account with an Acceptable Letter of Credit for purposes of satisfying the O&M Reserve Requirement. In the event that the Lessee substitutes cash or Eligible Investments on deposit in the O&M Reserve Account with such Acceptable Letter of Credit, and delivers any such Acceptable Letter of Credit to the Collateral Agent, the Lessee shall have the right to instruct the Account Bank to liquidate any Eligible Investments credited to the O&M Reserve Account and to remit to the order of the Lessee all cash (including proceeds of such liquidated Eligible Investments) to the Distribution Account without the approval or consent of the Collateral Agent, and the Account Bank shall do so upon receipt of a written confirmation from the Collateral Agent that such Acceptable Letter of Credit has been delivered to the Collateral Agent. The undrawn face value of any such Acceptable Letter of Credit shall be included when calculating the balance on deposit in the O&M Reserve Account. For clarity, neither the Account Bank nor the Collateral Agent shall be responsible for determining that any letter of credit or other instrument delivered by the Lessee and purported to be an Acceptable Letter of Credit in fact satisfies the requirements therefor set forth in the Financing Documents.

(e) The Lessee may, from time to time, direct the Collateral Agent to draw on the Acceptable Letter of Credit furnished pursuant to paragraph (d) above, in the amount specified by the Lessee. The Collateral Agent may (without direction from the Lessee or the Secured Creditors), but shall not be obligated to (unless directed to do so by the Intercreditor Agent (as directed by the Required Secured Creditors)) draw on such Acceptable Letter of Credit (i) in the amount of any O&M Expense Insufficiency after taking into account any amount on deposit in the O&M Reserve Account (including as a result of any draw on such Acceptable Letter of Credit directed by the Lessee in accordance with this paragraph (e)) or (ii) in an amount equal to the O&M Reserve Requirement after taking into account any amount on deposit in the O&M Reserve Account if: (A) such letter of credit is not replaced thirty (30) days prior to expiry thereof with immediately available funds or with a replacement Acceptable Letter of Credit; (B) within thirty (30) days of a downgrade of the issuer such that it is no longer an Eligible LC Issuer, the Lessee shall not have provided a replacement Acceptable Letter of Credit or cash; or (C) it has been instructed to do so under an Enforcement Action. The Lessee shall promptly notify the Collateral Agent upon the Lessee

becoming aware of a downgrade of the issuer of an Acceptable Letter of Credit furnished pursuant to paragraph (d) above, such that it is no longer an Eligible LC Issuer. In connection with any draw, the Collateral Agent shall direct the issuer of such Acceptable Letter of Credit to pay the proceeds of such draw to the O&M Reserve Account for application in accordance with the terms of this Agreement.

Section 4.08 Major Maintenance Reserve Account.

(a) No later than the Completion Date for Phase A, the Major Maintenance Reserve Account will be funded in an amount at least equal to the Major Maintenance Reserve Requirement from, at the election of the Lessee, (i) proceeds from Credit Extensions under the Financing Documents on-lent to the Lessee pursuant to the applicable Lessee Loan Agreement, and (ii) proceeds of Equity Contributions (if any), including the proceeds of any funds drawn from the Advanced Equity Contribution Account in accordance with Section 4.18 (Advanced Equity Contribution Account) and the proceeds of any drawing made on any Equity LCs or Equity Cash Collateral, made in accordance with the relevant Equity Contribution Agreement and the terms thereof. Thereafter, the Major Maintenance Reserve Account will be funded by transfers from the Post-Completion Revenue Account in accordance with clause (A) of Section 4.02(b)(viii) (Post-Completion Revenue Account) (or from any other source of funds as directed by the Lessee to the extent the Lessee is permitted to use such funds for such purposes in accordance with this Agreement) such that the aggregate amount transferred on each Transfer Date after the Completion Date for Phase A shall be the lesser of (A) the amount available to be transferred from the Post-Completion Revenue Account in accordance with clause (A) of Section 4.02(b)(viii) (Post-Completion Revenue Account) and (B) such amount as is required so that the balance of the Major Maintenance Reserve Account is equal to the Major Maintenance Reserve Requirement (or such greater amount as specified by the Lessee).

(b) To the extent that on any Transfer Date the amounts on deposit in the Major Maintenance Reserve Account are in excess of the Major Maintenance Reserve Requirement, then before making transfers pursuant to Section 4.02(b) (Post-Completion Revenue Account) on such Transfer Date the Account Bank shall, at the election of the Lessee and as certified in the Funds Transfer Certificate by the Lessee, transfer such excess monies from the Major Maintenance Reserve Account to the Post-Completion Revenue Account or, from and after the date that is five (5) calendar years prior to the projected Expiration Date (as defined in the Lease), to the Handback Reserve Account in accordance with the Handback Requirements (as defined in the Lease) and comply with its obligations under Section 87 of the Lease.

(c) Subject to Section 8.02 (Notice of Account Control), the Lessee shall be entitled to instruct the Account Bank pursuant to a Funds Transfer Certificate (including the supporting information attached thereto), to withdraw and transfer funds from the Major Maintenance Reserve Account for the payment of Major Maintenance Expenses in compliance with the terms of the Lease and the Financing Documents, without approval or consent by the Collateral Agent or any other Person.

(d) Notwithstanding any other provision of this Agreement to the contrary, the Lessee may, upon notice to the Collateral Agent, 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 for purposes of satisfying the Major Maintenance Reserve Requirement. In the event that the Lessee 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 Agent, the Lessee shall have the right to instruct the Account Bank to liquidate any Eligible Investments credited to the Major Maintenance Reserve Account and to remit to the order of the Lessee all cash (including proceeds of such liquidated Eligible Investments) to the Distribution Account without the approval or consent of the Collateral Agent, and the Account Bank shall do so upon receipt of a written confirmation from the Collateral Agent that such Acceptable Letter of Credit has been delivered to the Collateral Agent. 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. For clarity, neither the Account Bank nor the Collateral Agent shall be responsible for determining that any letter of credit or other instrument delivered by the Lessee and purported to be an Acceptable Letter of Credit in fact satisfies the requirements therefor set forth in the Financing Documents.

(e) The Lessee may, from time to time, direct the Collateral Agent to draw on the Acceptable Letter of Credit furnished pursuant to paragraph (d) above, in the amount specified by the Lessee. The Collateral Agent may (without direction from the Lessee or the Secured Creditors), but shall not be obligated to (unless directed to do so by the Intercreditor Agent (as directed by the Required Secured Creditors)) draw on such Acceptable Letter of Credit (i) in the amount required for the payment of Major Maintenance Expenses after taking into account any amount on deposit in the Major Maintenance Reserve Account (including as a result of any draw on such Acceptable Letter of Credit directed by the Lessee in accordance with this paragraph (e)) or (ii) in an amount equal to the Major Maintenance Reserve Requirement after taking into account any amount on deposit in the Major Maintenance Reserve Account if: (A) such letter of credit is not replaced thirty (30) days prior to expiry thereof with immediately available funds or with a replacement Acceptable Letter of Credit; (B) within thirty (30) days of a downgrade of the issuer such that it is no longer an Eligible LC Issuer, the Lessee shall not have provided a replacement Acceptable Letter of Credit or cash; or (C) it has been instructed to do so under an Enforcement Action. The Lessee shall promptly notify the Collateral Agent upon the Lessee becoming aware of a downgrade of the issuer of an Acceptable Letter of Credit furnished pursuant to paragraph (d) above, such that it is no longer an Eligible LC Issuer. In connection with any draw, the Collateral Agent shall direct the issuer of such Acceptable Letter of Credit to pay the proceeds of such draw to the Major Maintenance Reserve Account for application in accordance with the terms of this Agreement.

(f) The Lessee shall have the right to cause the transfer, pursuant to a Funds Transfer Certificate, of amounts from the Major Maintenance Reserve Account (i) directly to the Port Authority (or as otherwise directed by the Port Authority) to compensate the Port Authority for performing (or causing to be performed) Major Maintenance in compliance with the terms of Section 86(c)(5) of the Lease, subject to the rights of the Secured Parties under Section 83 of the Lease, (ii) directly to the Port Authority upon a termination of the Lease in compliance with the terms of Section 86(d) of the Lease (and the Lessee hereby irrevocably instructs the Account Bank to transfer any such amounts to the Port Authority upon receiving written notice from the Intercreditor Agent or the Lessee specifying that such a termination has occurred and the relevant amount payable) and (iii) 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 the Handback Requirements (as defined in the Lease) and comply with its related obligations under Section 87 of the Lease. The Collateral Agent and the other Secured Parties acknowledge that funds in the Major Maintenance Reserve Account shall be available to the Port Authority if the Port Authority exercises its option to perform Major Maintenance (as defined in the Lease) in accordance with Section 86(c)(5) of the Lease.

#### Section 4.09 Senior Debt Service Reserve Account.

(a) No later than the Completion Date for Phase A or, in the case of any Additional Senior Indebtedness or Permitted Refinancing Indebtedness incurred thereafter, the date required by the relevant Senior Debt Documents, each Senior Debt Service Reserve Account will be funded in an amount equal to the relevant Debt Service Reserve Requirement (if any) from, at the election of the Lessee, (i) proceeds from Credit Extensions under the Financing Documents that are on-lent to the Lessee pursuant to the applicable Lessee Loan Agreement, and (ii) proceeds of Equity Contributions (if any), including the proceeds of any funds drawn from the Advanced Equity Contribution Account in accordance with

Section 4.18 (Advanced Equity Contribution Account) and the proceeds of any drawing made on any Equity LCs or Equity Cash Collateral, made in accordance with the relevant Equity Contribution Agreement and the terms thereof. Thereafter, each Senior Debt Service Reserve Account will be funded only by transfers from the Post-Completion Revenue Account in accordance with Section 4.02(b)(vi)(A) and 4.02(b)(vi)(B) (Post-Completion Revenue Account) in the order of priority set forth therein, (or from any other source of funds as directed by the Lessee to the extent the Lessee is permitted to use such funds for such purposes in accordance with this Agreement) such that the aggregate amount transferred on each Transfer Date after the Completion Date for Phase A shall be the lesser of (A) the amount available to be transferred from the Post-Completion Revenue Account in accordance with Section 4.02(b)(vi) (Post-Completion Revenue Account) and (B) such amount as is required so that the balance of such Senior Debt Service Reserve Account is equal to the relevant Debt Service Reserve Requirement (if any).

(b) Except as expressly provided in paragraph (d) below, to the extent that on any Transfer Date the amounts on deposit in any Senior Debt Service Reserve Account are in excess of the relevant Debt Service Reserve Requirement (if any), then before making transfers pursuant to Section 4.02(b) (Post-Completion Revenue Account) on such Transfer Date the Account Bank shall, at the election of the Lessee, as certified in the Funds Transfer Certificate by the Lessee, transfer such excess monies to the Post-Completion Revenue Account; provided that any such excess in the Muni Bonds Debt Service Reserve Account or other Prepayment/Redemption Account attributable to Muni Bonds Proceeds, as certified in the Funds Transfer Certificate, shall be transferred by the Account Bank to the relevant Muni Bonds Redemption Account (or other Prepayment/Redemption Account established for tracking a series of Muni Bonds), the Muni Bonds Principal Payment Account (or other Principal Payment Account established for tracking a series of Muni Bonds), the Muni Bonds Interest Payment Account (or other Interest Payment Account established for tracking a series of Muni Bonds) or to such other account as in the opinion of a nationally recognized bond counsel in respect of the Muni Bond will not adversely affect the tax-exempt status of interest on the relevant issue of Muni Bonds.

(c) If on any Interest Payment Date after giving effect to the transfers from the Post-Completion Revenue Account as contemplated in Section 4.02(b)(iv) (Post-Completion Revenue Account), the funds on deposit in the relevant Interest Payment Account or Principal Payment Account established with respect to any Secured Obligations are insufficient to pay the interest or principal on such Secured Obligation on the applicable Interest Payment Date or Payment Date, as applicable (a “**Debt Service Insufficiency**”), the Collateral Agent shall transfer (without the requirement of a Funds Transfer Certificate) funds on deposit in the Senior Debt Service Reserve Account established for such Secured Obligations (including by drawing on any Acceptable Letter of Credit credited to such Senior Debt Service Reserve Account) to the relevant Interest Payment Account or Principal Payment Account, as applicable, for such Secured Obligations for payment of interest or principal with respect to such Secured Obligations as of such Interest Payment Date or Payment Date, as applicable.

(d) Notwithstanding any other provision of this Agreement to the contrary, the Lessee may, upon notice to the Collateral Agent (and, with respect to any Senior Debt Service Reserve Account that relates to an issuance of Muni Bonds, to the Indenture Trustee for such Muni Bonds), substitute all or any portion of the cash or Eligible Investments on deposit in any Senior Debt Service Reserve Account with an Acceptable Letter of Credit for purposes of satisfying the relevant Debt Service Reserve Requirement. In the event that the Lessee substitutes cash or Eligible Investments on deposit in any Senior Debt Service Reserve Account with such Acceptable Letter of Credit, and delivers any such Acceptable Letter of Credit to the Collateral Agent, the Lessee shall have the right to instruct the Account Bank to liquidate any Eligible Investments credited to such specified Senior Debt Service Reserve Account and to remit to the order of the Lessee all cash (including proceeds of such liquidated Eligible Investments) to the Distribution Account

without the approval or consent of the Collateral Agent, and the Account Bank shall do so upon receipt of a written confirmation from the Collateral Agent that such Acceptable Letter of Credit has been delivered to the Collateral Agent; provided, however, that any such cash (including proceeds of such liquidated Eligible Investments) in the Muni Bonds Debt Service Reserve Account or other Prepayment/Redemption Account attributable to Muni Bonds Proceeds, as certified in the Funds Transfer Certificate, shall be transferred by the Account Bank to the relevant Muni Bonds Redemption Account (or other Prepayment/Redemption Account established for tracking a series of Muni Bonds), the Muni Bonds Principal Payment Account (or other Principal Payment Account established for tracking a series of Muni Bonds), or to such other account (including the Muni Bonds Interest Payment Account (or other Interest Payment Account established for tracking a series of Muni Bonds)) as in the opinion of a nationally recognized bond counsel in respect of the Muni Bond will not adversely affect the tax-exempt status of interest on the relevant issue of Muni Bonds. The undrawn face value of any such Acceptable Letter of Credit shall be included when calculating the balance on deposit in the relevant Senior Debt Service Reserve Account. For clarity, neither the Account Bank nor the Collateral Agent shall be responsible for determining that any letter of credit or other instrument delivered by the Lessee and purported to be an Acceptable Letter of Credit in fact satisfies the requirements therefor set forth in the Financing Documents.

(e) The Lessee may, from time to time, direct the Collateral Agent to draw on the Acceptable Letter of Credit furnished pursuant to paragraph (d) above, in the amount specified by the Lessee. The Collateral Agent (without direction) may and (if directed by the Intercreditor Agent) shall draw on the relevant Acceptable Letter of Credit (i) if it has actual knowledge of a Debt Service Insufficiency, in the amount of such Debt Service Insufficiency after taking into account any amount on deposit in the relevant Senior Debt Service Reserve Account (including as a result of any draw on such Acceptable Letter of Credit directed by the Lessee in accordance with this paragraph (e)) or (ii) in an amount equal to the Debt Service Reserve Requirement after taking into account any amount on deposit in the relevant Senior Debt Service Reserve Account if: (A) such letter of credit is not replaced thirty (30) days prior to expiry thereof with immediately available funds or with a replacement Acceptable Letter of Credit; (B) within thirty (30) days of a downgrade of the issuer of such Acceptable Letter of Credit such that it is no longer an Eligible LC Issuer, the Lessee shall not have provided a replacement Acceptable Letter of Credit or cash; or (C) it has been instructed to do so under an Enforcement Action. The Lessee shall promptly notify the Collateral Agent (and, with respect to any Senior Debt Service Reserve Account that relates to an issuance of Muni Bonds, to the Indenture Trustee for such Muni Bonds) upon the Lessee becoming aware of a downgrade of the issuer of an Acceptable Letter of Credit furnished pursuant to paragraph (d) above, such that it is no longer an Eligible LC Issuer. In connection with any draw, the Collateral Agent shall direct the issuer of such Acceptable Letter of Credit to pay the proceeds of such draw to the relevant Senior Debt Service Reserve Account for application in accordance with the terms of this Agreement.

#### Section 4.10 Insurance and Condemnation Proceeds Account.

(a) The Net Cash Proceeds of all Insurance and Condemnation Proceeds received by the Lessee or to its order (other than in respect of general liability insurance, delayed completion insurance, automobile liability insurance, workers' compensation and business interruption insurance, which are to be deposited directly into the relevant Construction Account for the Phase to which such proceeds relate before the Completion Date for such Phase, and thereafter into the Post-Completion Revenue Account) shall be paid directly into the Insurance and Condemnation Proceeds Account.

(b) The Lessee shall be entitled to withdraw and transfer amounts on deposit in the Insurance and Condemnation Proceeds Account for application toward the repair and/or reconstruction of the Project, or any portion thereof, in accordance with the requirements of the Lease; provided that, subject to the Lease, any amounts not applied towards the repair and/or reconstruction of the Project in accordance with the Lease shall be transferred to the relevant Prepayment/Redemption Account and applied as a mandatory

prepayment or redemption of the Loans pursuant to Section 2.04(b)(i) (*Mandatory*) of the Credit Agreement, one or more issues of Muni Bonds pursuant to the tax covenants in the Indenture and the provisions of the Tax Compliance Certificate or Certificates applicable to such issue or issues of Muni Bond and/or of any other Secured Obligations pursuant to the relevant Financing Documents (including, in each case, the prepayment of associated Building Loans and Project Loans, as applicable, pursuant to the Lessee Loan Agreements). If any funds remain on deposit in the Insurance and Condemnation Proceeds Account following final completion of such repair and/or reconstruction in accordance with the requirements of the Lease, and (i) the amount of such excess funds is less than twenty-five million Dollars (\$25,000,000), the Lessee shall, in each case pursuant to a Funds Transfer Certificate, direct the Account Bank to transfer such excess funds to the Pre-Completion Revenue Account, if before the Phase A DBO Date, and thereafter to the Post-Completion Revenue Account or (ii) the amount of such excess funds is equal to or greater than twenty-five million Dollars (\$25,000,000), to the relevant Prepayment/Redemption Account and to then transfer such excess funds to the relevant Senior Debt Representative for application as a mandatory prepayment or redemption of the Loans pursuant to Section 2.04(b)(i) (*Mandatory*) of the Credit Agreement, one or more issues of Muni Bonds pursuant to the tax covenants in the Indenture and the provisions of the Tax Compliance Certificate or Certificates applicable to such issue or issues of Muni Bond and/or of any other Secured Obligations pursuant to the relevant Senior Debt Documents (including, in each case, the prepayment of associated Building Loans and Project Loans, as applicable, pursuant to the Lessee Loan Agreements).

#### Section 4.11 Ramp-Up Accounts.

(a) No later than the Completion Date for Phase A, the Initial Ramp-Up Account will be funded in an amount of up to four hundred million Dollars (\$400,000,000) from, at the election of the Lessee, (i) proceeds from the LC Credit Extensions under the Financing Documents on-lent to the Lessee pursuant to the applicable Lessee Loan Agreement, and (ii) proceeds of Equity Contributions, including the proceeds of any funds drawn from the Advanced Equity Contribution Account in accordance with Section 4.18 (Advanced Equity Contribution Account) and the proceeds of any drawing made on any Equity LCs or Equity Cash Collateral, made in accordance with the relevant Equity Contribution Agreement and the terms thereof.

(b) To the extent that any Ramp-Up Account is required in connection with any Additional Senior Indebtedness or Permitted Refinancing Indebtedness, such Ramp-Up Account will be funded in the amount required under the relevant Senior Debt Documents for such Additional Senior Indebtedness or Permitted Refinancing Indebtedness from, at the election of the Lessee, (i) proceeds from the LC Credit Extensions under the Financing Documents on-lent to the Lessee pursuant to the applicable Lessee Loan Agreement, (ii) proceeds from such Additional Senior Indebtedness or Permitted Refinancing Indebtedness, as applicable, and (iii) proceeds of Equity Contributions, including the proceeds of any funds drawn from the Advanced Equity Contribution Account in accordance with Section 4.18 (Advanced Equity Contribution Account) and the proceeds of any drawing made on any Equity LCs or Equity Cash Collateral, made in accordance with the relevant Equity Contribution Agreement and the terms thereof.

(c) If on any Transfer Date, after giving effect to the transfers from the Post-Completion Revenue Account as contemplated in Section 4.02(b) (Post-Completion Revenue Account), the funds on deposit in the Post-Completion Revenue Account are insufficient to make all transfers described in sub-paragraphs (i) through (xiv) of Section 4.02(b) (Post-Completion Revenue Account), the Lessee shall, pursuant to a Funds Transfer Certificate, instruct the Account Bank to transfer funds on deposit in the Ramp-Up Accounts to the Post-Completion Revenue Account in the amount necessary to complete the remaining transfers described in sub-paragraphs (i) through (xiv) of Section 4.02(b) (Post-Completion Revenue Account) on such Transfer Date, and on any other Transfer Date or other date, the Lessee shall instruct the Account Bank, in each case pursuant to a Funds Transfer Certificate, to transfer funds on deposit

in the Ramp-Up Accounts to the Post-Completion Revenue Account in accordance with the base case financial model delivered on the most recently occurring Closing Date (or if Phase A DBO (as defined in the Lease) is delayed by more than three (3) months, such transfer will be in accordance with the base case financial model delivered on the Effective Date as adjusted for such delay pursuant to the Lease) for application in accordance with Section 4.02(b) (Post-Completion Revenue Account).

(d) Subject to Section 8.02 (Notice of Account Control), the Lessee shall be entitled to instruct the Account Bank, pursuant to a Funds Transfer Certificate, to withdraw and transfer funds from the Ramp-Up Account for the payment of the amounts referred to in paragraph (c) above in compliance with the terms of the Financing Documents, without approval or consent by the Collateral Agent or any other Person.

#### Section 4.12      Arbitrage Rebate Accounts.

(a) The Arbitrage Rebate Accounts and the amounts deposited therein shall not be subject to a security interest, pledge, assignment or other Lien in favor of any Secured Party or any other Person.

(b) The Account Bank, upon the receipt of an Officer's Certificate of the Lessee certifying the Rebate Amount (as defined in the Tax Compliance Certificate or Certificates with respect to an issue of Muni Bonds and relevant Senior Debt) with respect to such Muni Bonds or such other Senior Debt, as applicable, shall deposit funds transferred from the Pre-Completion Revenue Account, the Post-Completion Revenue Account and the Construction Accounts pursuant to Section 4.01(b)(i)(A) (Pre-Completion Revenue Account), Section 4.02(b)(ii)(A) (Post-Completion Revenue Account) and Section 4.04(d)(ii)(A) (Construction Accounts), respectively into the relevant Arbitrage Rebate Account established with respect to such Muni Bonds or such other Senior Debt within fifty (50) days following each Computation Date (as defined in the Tax Certificate or Certificates with respect to an issue of Muni Bonds and relevant Senior Debt), and specified in such Officer's Certificate, the amount specified in such Officer's Certificate (which the Lessee shall specify such that the amount held in such Arbitrage Rebate Account after such deposit will be equal to such Rebate Amount calculated as of such Computation Date with respect to such issue of Muni Bonds and relevant Senior Debt). If the amounts on deposit in any Arbitrage Rebate Account are insufficient to make the deposits specified in such Officer's Certificate, the Lessee shall promptly remit the amount necessary to make up such deficiency to the Account Bank for deposit in the relevant Arbitrage Rebate Account.

(c) If within sixty (60) days following any Computation Date, the amount on deposit in the relevant Arbitrage Rebate Account exceeds the applicable Rebate Amount, the Account Bank, upon the receipt of written instructions from a Responsible Officer of the Lessee, shall transfer the excess amount specified in such instructions and deposit the amount so specified into the relevant Interest Payment Account.

(d) The Lessee may from time to time instruct the Account Bank in writing pursuant to instructions from a Responsible Officer of the Lessee, to pay to the United States, out of amounts in the relevant Arbitrage Rebate Accounts, (i) not less frequently than once each five (5) years after the Closing Date of the relevant issue of Muni Bonds or such other Senior Debt, as applicable, an amount such that, together with prior amounts paid to the United States, the total paid to the United States is equal to ninety percent (90%) of the Rebate Amount with respect to such issue of Muni Bonds or such other Senior Debt, as applicable, as of the date of such payment and (ii) notwithstanding the defeasance or retirement of such issue of Muni Bonds or other Senior Debt, as applicable, not later than thirty (30) days after the date on which such issue of Muni Bonds or other Senior Debt, as applicable, have been paid in full, one hundred percent (100%) of the Rebate Amount with respect to such issue of Muni Bonds or such other Senior Debt, as applicable, as of the date of payment. The Account Bank shall make the payments specified in such instructions in the amounts, and to the accounts specified therein, and, subject to receipt of such written

instructions not later than three (3) Business Days prior to the requested date of payment specified therein, on such specified dates. For clarity, and without limiting or otherwise affecting the provisions of Article X (The Intercreditor Agent, the Collateral Agent and the Account Bank), the Account Bank shall not be responsible for calculation or verification of any such amounts or payment obligations.

#### Section 4.13 Springing Liquidity Reserve Account.

(a) No later than the first Transfer Date after the occurrence of any Springing Liquidity Reserve Event, the Springing Liquidity Reserve Account will be opened and funded only by transfers from the Post-Completion Revenue Account in accordance with Section 4.02(b)(xvi) (Post-Completion Revenue Account) such that the aggregate amount transferred on each Transfer Date after the Completion Date for Phase A shall be the lesser of (A) the amount available to be transferred from the Post-Completion Revenue Account in accordance with Section 4.02(b)(xvi) (Post-Completion Revenue Account) and (B) such amount as is required so that the balance of such Springing Liquidity Reserve Account is equal to the Springing Liquidity Reserve Requirement (if any).

(b) Except as expressly provided in paragraph (a) above, to the extent that on any Transfer Date the amount on deposit in the Springing Liquidity Reserve Account is in excess of the Springing Liquidity Reserve Requirement (if any), then before making transfers pursuant to Section 4.02(b) (Post-Completion Revenue Account) on such Transfer Date the Account Bank shall, at the election of the Lessee, as certified in the Funds Transfer Certificate by the Lessee, transfer such excess monies to the Post-Completion Revenue Account.

(c) If on any Transfer Date, the funds on deposit in the Post-Completion Revenue Account are insufficient to pay any amounts referred to in sub-paragraphs (b)(i) through (b)(xi) of Section 4.02(b) (Post-Completion Revenue Account) on such Transfer Date (each of the foregoing, a “**Specified Payment Insufficiency**”), the Collateral Agent shall (acting at the direction of the Required Secured Creditors) instruct the Account Bank in writing to transfer (without the requirement of a Funds Transfer Certificate) funds on deposit in the Springing Liquidity Reserve Account to the Post-Completion Revenue Account for application in accordance with Section 4.02(b) (Post-Completion Revenue Account).

#### Section 4.14 Distribution Account.

(a) The Lessee may at any time establish an account (the “**Distribution Account**”) with any bank or other financial institution; provided that the Lessee shall continue to comply with the provisions of this Agreement as they relate to deposits and transfers made to the Distribution Account. The Distribution Account shall not constitute a Project Account and shall be subject to the exclusive control of the Lessee. The Lessee shall be entitled to withdraw and transfer funds from the Distribution Account, by means of issuing checks (if available with respect to such account) or initiating wire transfers, without approval or consent by the Collateral Agent or any other Person.

(b) The Account Bank shall transfer funds on deposit in the Post-Completion Revenue Account pursuant to Section 4.02(b)(xix) (Post-Completion Revenue Account), as applicable, at the direction of the Lessee, to the Distribution Account or to any other Person, in each case only upon satisfaction of the Restricted Payment Conditions on the Transfer Date immediately following the Calculation Date on which such conditions are satisfied, which shall be certified by the Lessee in an Officer’s Certificate from the Lessee, substantially in the form of Exhibit F (Restricted Payment Conditions Satisfaction Transfer Certificate) (a “**Restricted Payment Conditions Satisfaction Transfer Certificate**”). For clarity, satisfaction of the Restricted Payment Conditions shall not be required with respect to any funds deposited into the Distribution Account as a result of (i) immediately available funds in the Senior Debt Service Reserve Account, the O&M Reserve Account or the Major Maintenance Reserve

Account being replaced with an Acceptable Letter of Credit, pursuant to Section 4.07(d) (O&M Reserve Account), Section 4.08(d) (Major Maintenance Reserve Account) or Section 4.09(d) (Senior Debt Service Reserve Account), respectively, or (ii) the Lessee electing to deposit the proceeds of any True-Up Drawing into the Distribution Account (or to transfer the proceeds of such True-Up Drawing deposited into the Senior Debt Proceeds Accounts to the Distribution Account) pursuant to the Notice of Credit Extension and/or Construction Withdrawal Certificate, as applicable, related to such True-Up Drawing, and in each such case the Account Bank shall transfer such funds to the Distribution Account as directed in writing by the Lessee pursuant to a Funds Transfer Certificate without further restriction.

(c) After the end of the first TOCR Initial Stub Period and on or after the earlier of (x) the issuance by the Lessee of Phase NTP for the first Additional Phase, and (y) the third (3rd) anniversary of the Phase A DBO Date, to request a transfer of funds on deposit in the Post-Completion Revenue Account to the Distribution Account, the Lessee shall have satisfied the following conditions as of any Transfer Date immediately following any Calculation Date and any Transfer Date within a period of sixty (60) days thereafter (the “**Restricted Payment Conditions**”):

(i) (A) the Senior Debt Service Reserve Account, the Springing Liquidity Reserve Account (if any), the Major Maintenance Reserve Account and (unless the Operating Business Conditions have been satisfied) the O&M Reserve Account shall be Fully Funded to their respective required levels as of such Transfer Date (including, for the avoidance of doubt, on the Transfer Date immediately prior to March 31 of each calendar year) and (B) there are no Concession Shortfall amounts, Deferred Second Additional Rent amounts or Deferred Management Fee amounts, in each case, which have been deferred pursuant to Section 4.02(b)(x)(A) and (B) (Post-Completion Revenue Account) and remain unpaid as of such Transfer Date;

(ii) the Total Obligations Coverage Ratio for the TOCR Calculation Period ending on the immediately preceding Calculation Date was not less than 1.15:1.00;

(iii) the Projected TOCR on a pro forma basis after giving effect to the Distribution to be made on the relevant Transfer Date for the TOCR Calculation Period commencing on the Calculation Date immediately succeeding such Transfer Date is not less than 1.15:1.00;

(iv) no Secured Obligations Default or Secured Obligations Event of Default has occurred and is continuing or would exist immediately after giving effect to such transfer to the Distribution Account;

(v) (A) the Port Authority has not exercised its right to terminate the Lease or (B) the Port Authority has rescinded any notice of termination delivered to the Lessee under the Lease; and

(vi) to the extent that a TIFIA Loan shall be outstanding, each of the “Restricted Payment Conditions” (as defined in any TIFIA Loan Agreement) shall have been satisfied in accordance with the relevant TIFIA Loan Agreement.

#### Section 4.15 Petty Cash Account.

(a) The Lessee may at any time establish one or more deposit accounts (each, a “**Petty Cash Account**”) with any bank or other financial institution; provided that the Lessee shall continue to comply with the provisions of this Agreement as they relate to deposits and transfers made to each Petty Cash Account. Each Petty Cash Account shall not constitute a Project Account, and to the extent required for purposes of establishing control (as set forth in Section 9-104(a) of the UCC or Section 9-106(c) of the UCC, as applicable) over each Petty Cash Account, shall be subject to a deposit account control agreement

between such bank or other financial institution, the Lessee and the Collateral Agent, in form and substance reasonably satisfactory to the Lessee, the Collateral Agent and the Required Secured Creditors (each, a **“Petty Cash Account Control Agreement”**). The Lessee shall be entitled to withdraw and transfer funds from each Petty Cash Account: (i) at any time, to make tax, regulatory (including state filing fees, federal costs, fines or assessments), payroll, employee expenses and corporate credit card payments through the Automated Clearing House, and (ii) for the payment of O&M Expenses, in each case, by means of issuing checks (if available with respect to such account) or initiating wire transfers, without approval or consent by the Collateral Agent or any other Person.

(b) The Account Bank shall transfer funds on deposit in the Operating Account pursuant to Section 4.05(c) (Operating Account) at the direction of the Lessee to the relevant Petty Cash Account, as instructed by the Lessee.

(c) The Lessee shall be entitled to fund the Petty Cash Accounts with amounts available in the relevant Construction Account by delivering to the Account Bank a Construction Withdrawal Certificate in accordance with Section 4.04 (Construction Accounts).

#### Section 4.16 AUA Security Deposit Accounts.

(a) From and after the Effective Date, the Lessee shall promptly deposit or cause to be deposited into each AUA Security Deposit Account all security deposits received by the Lessee under the Airline Use Agreement relating to such AUA Security Deposit Account.

(b) The Lessee shall be entitled to withdraw and transfer amounts on deposit in an AUA Security Deposit Account by written instruction to the Account Bank to (i) cover losses or damages that such deposit secures and (ii) return such deposit to the depositor, in each case in accordance with the applicable Airline Use Agreement.

(c) The Lessee shall hold amounts on deposit in each AUA Security Deposit Account in trust for the applicable Airline User in accordance with the applicable Airline Use Agreement, subject to the Lien of the Collateral Agent (which Lien shall be subject to any obligation to return the deposit to the depositor pursuant to the terms of the applicable Airline Use Agreement).

#### Section 4.17 Concession Security Deposit Accounts.

(a) From and after the Closing Date, the Lessee shall promptly deposit (or cause to be deposited by URW Airports) (i) if Lessee has elected to maintain one (1) Concession Security Deposit Account, into the Concession Security Deposit Account all security deposits received by the Lessee or URW Airports under the Master Concession Agreement or (ii) if the Lessee has elected to maintain more than one (1) Concession Security Deposit Account, into the relevant Concession Security Deposit Account the relevant portion of the security deposits received by the Lessee or URW Airports under the Master Concession Agreement relating to such Concession Security Deposit Account.

(b) The Lessee shall be entitled to withdraw and transfer (or, provided URW Airports has the required authorizations, cause URW Airports to withdraw and transfer) amounts on deposit in a Concession Security Deposit Account by written instruction to the Account Bank to (i) cover losses or damages that such deposit secures and (ii) return such deposit to the depositor, in each case in accordance with the Master Concession Agreement.

(c) The Lessee shall hold amounts on deposit in a Concession Security Deposit Account in trust for the applicable Concession Sublessee in accordance with the Master Concession Agreement, subject to the Lien of the Collateral Agent (which Lien shall be subject to any obligation to return the deposit to the depositor pursuant to the Master Concession Agreement).

Section 4.18 Advanced Equity Contribution Account. To the extent there are amounts on deposit in the Advanced Equity Contribution Account as of an Equity Contribution Date (as defined in the Equity Contribution Agreement), the Lessee shall withdraw and transfer amounts on deposit in the Advanced Equity Contribution Account, upon prior written notice to the Account Bank, on such Equity Contribution Dates in an amount equal to the Pro Rata Equity Interest Share (as defined in the Equity Contribution Agreement) of the Sponsor with respect to which a Cash Collateral Sponsor Bankruptcy Event triggering the obligation to deposit such amounts in the Advanced Equity Contribution Account occurred of the amount set forth in Schedule 2.1 (*Equity Contribution Schedule*) to the Equity Contribution Agreement for such Equity Contribution Date. The Lessee shall apply the amounts withdrawn under this Section 4.18 (Advanced Equity Contribution Account) as Equity Contributions in accordance with this Agreement, including Section 4.04 (*Construction Accounts*), Section 4.08(a) (*Major Maintenance Reserve Account*), Section 4.09(a) (*Senior Debt Service Reserve Account*), and Section 4.11 (*Ramp-Up Accounts*).

Section 4.19 TRS Construction Phase Account.

(a) From and after the First Closing Date until the Lease Completion Date for a Phase, the Taxable REIT Subsidiary shall promptly deposit or cause to be deposited into the TRS Construction Phase Account for such Phase:

(i) income in respect of cash balances and Eligible Investments as described in Section 3.04 (*Permitted Investments*);

(ii) payments received with respect to the TRS Construction Phase Fee;

(i) equity contributions received from the Lessee; and

(iv) any other amounts required to be transferred to the TRS Construction Phase Account from other Project Accounts or other sources in accordance with the terms of this Agreement and the other Financing Documents.

The Taxable REIT Subsidiary shall irrevocably instruct all parties at any time paying revenues to the Taxable REIT Subsidiary from the First Closing Date until the applicable Lease Completion Date for such Phase to make such payments directly to the TRS Construction Phase Account. In the event that, notwithstanding the foregoing, any such payments, proceeds or other amounts are received by the Taxable REIT Subsidiary, the Taxable REIT Subsidiary shall promptly pay, endorse, transfer and deliver such payments or other amounts to the Account Bank for deposit into the TRS Construction Phase Account and, until such delivery, the Taxable REIT Subsidiary shall hold such payments and other amounts in the same form as received, subject to the Lien of the Collateral Agent.

(b) Subject to Section 8.02 (*Notice of Account Control*), the Taxable REIT Subsidiary and the Collateral Agent hereby irrevocably authorize the Account Bank to make withdrawals and transfers from the TRS Construction Phase Account pursuant to a Construction Withdrawal Certificate delivered by the Taxable REIT Subsidiary or the Lessee to the Account Bank, not less than three (3) Business Days before the requested Construction Transfer Date, for such withdrawals and transfers as set out in such Construction Withdrawal Certificate, to the extent of funds that are then on deposit (or that will be on deposit on the proposed Construction Transfer Date) in the TRS Construction Phase Account for the direct payment of

Project Costs for such Phase due and payable or that will become due and payable within thirty (30) days after such Construction Transfer Date from the TRS Construction Phase Account so long as the payments of such Project Costs pursuant to such requested withdrawals and transfers are in accordance with the certifications of the Taxable REIT Subsidiary or the Lessee in such Construction Withdrawal Certificate, as confirmed by the Technical Advisor in an Officer's Certificate of the Technical Advisor attached to such Construction Withdrawal Certificate.

(c) The Taxable REIT Subsidiary hereby covenants and agrees only to give instructions to the Account Bank to make any such withdrawal and transfer of funds for the purposes of payment of Project Costs for a Phase that are then due and payable or that will become due and payable within thirty (30) days after the relevant Construction Transfer Date, in each case, in accordance in all material respects with the Construction Budget and the Construction Schedule for such Phase.

(d) On the Completion Date for any Phase, to the extent that there shall be funds remaining on deposit in the TRS Construction Phase Account for such Phase, the Taxable REIT Subsidiary and the Collateral Agent hereby irrevocably authorize the Account Bank to withdraw and transfer such funds as follows in accordance with an Officer's Certificate of the Taxable REIT Subsidiary addressed to the Account Bank (with a copy to the Lessee and the Collateral Agent) (it being agreed that no amount shall be withdrawn or transferred pursuant to any sub-paragraph below until amounts sufficient as of that date (to the extent applicable) for all the purposes specified under the prior paragraphs shall have been withdrawn or transferred):

(ii) First, amounts will be retained in the TRS Construction Phase Account for such Phase for the payment of any Unpaid Project Costs of the Taxable REIT Subsidiary; and

(iii) Second, all remaining funds, if any, then on deposit in the TRS Construction Phase Account for such Phase shall be transferred to the TRS Operating Account.

After the Completion Date for any Phase, the completion of all transfers contemplated in this paragraph (d) and the payment in full of all Unpaid Project Costs of the Taxable REIT Subsidiary for such Phase, the Account Bank shall, upon receipt of written instructions from the Taxable REIT subsidiary and the Collateral Agent, close the TRS Construction Phase Account for such Phase.

#### Section 4.20 TRS Operating Account.

(a) From and after the Phase A DBO Date, the Account Bank shall deposit into the TRS Operating Account all amounts transferred from:

(i) the TRS Construction Phase Account in accordance with Section 4.19(d)(ii) (TRS Construction Phase Account), and

(ii) the Post-Completion Revenue Account in accordance with clause (D) of Section 4.02(b)(iii) and clause (A) of Section 4.02(b)(xi) (Post-Completion Revenue Account).

The Taxable REIT Subsidiary shall irrevocably instruct all parties at any time paying revenues to it after the Phase A DBO Date to make such payments directly to the TRS Operating Account. In the event that, notwithstanding the foregoing, any such payments, proceeds or other amounts are received by the Taxable REIT Subsidiary, it shall promptly pay, endorse, transfer and deliver such payments or other amounts to the Account Bank for deposit into the TRS Operating Account and, until such delivery, the Taxable REIT

Subsidiary shall hold such payments and other amounts in the same form as received, subject to the Lien of the Collateral Agent.

(b) Subject to Section 8.02 (Notice of Account Control), the Taxable REIT Subsidiary shall be entitled to instruct the Account Bank pursuant to a Funds Transfer Certificate (including the supporting information attached thereto, as applicable) to withdraw or transfer funds from the TRS Operating Account for the payment of O&M Expenses of the Taxable REIT Subsidiary or, at any time, transfer funds from the TRS Operating Account to the Post-Completion Revenue Account.

#### Section 4.21 When Certain Amounts Are Insufficient.

(a) Subject to Section 8.02 (Notice of Account Control), if the funds on deposit in the Operating Account and the O&M Reserve Account are in the aggregate insufficient to pay the reasonable and necessary Permitted O&M Expenses (as defined in the Lease) as of any date other than a Transfer Date (in which case clause (A) of Section 4.02(b)(iii) (Post-Completion Revenue Account), as applicable, shall apply), the Lessee may deliver a written request to the Account Bank (with a copy to the Collateral Agent) setting forth the amount to be transferred from the Post-Completion Revenue Account to the Operating Account, which amount shall not exceed the amount of such insufficiency; provided that an amount equal to the Port Authority Priority Payments, ground rent and Contingent Rental (if any) under the Lease due and payable on the next Transfer Date shall remain on deposit in the Post-Completion Revenue Account, as applicable, and the Account Bank shall make the transfers so requested as promptly as practicable. The Lessee shall apply any funds so transferred to the Operating Account for the purpose of satisfying such deficiency.

(b) Subject to Section 8.02 (Notice of Account Control), if the funds on deposit in the Major Maintenance Reserve Account are in the aggregate insufficient to pay the reasonable and necessary Major Maintenance Expenses as of any date other than a Transfer Date (in which case Section 4.02(b)(viii) (Post-Completion Revenue Account) shall apply), the Lessee may deliver a written request to the Account Bank (with a copy to the Collateral Agent) setting forth the amount to be transferred from the Post-Completion Revenue Account to the Major Maintenance Reserve Account, which amount shall not exceed the amount of such insufficiency, and the Account Bank shall make the transfers so requested as promptly as practicable. The Lessee shall apply any funds so transferred to the Major Maintenance Reserve Account for the purpose of satisfying such deficiency.

#### Section 4.22 Funds Transfer Certificates.

(a) Except as expressly provided in this Agreement, each withdrawal or transfer of funds from the Project Accounts (other than the Construction Accounts, withdrawals and transfers from which shall be made pursuant to an executed Construction Withdrawal Certificate (except in the case of any Emergency Expenditures made in accordance with this Agreement)) by the Account Bank on behalf of the Lessee or the Conduit Issuer in accordance with this Agreement will be made pursuant to an executed Funds Transfer Certificate (except in the case of any Emergency Expenditures made in accordance with this Agreement), which certificate will be provided and prepared by the Lessee and will contain a certification by the Lessee that such withdrawal or transfer complies with the requirements of this Agreement (including Section 3.10(a) (Material Project Documents) of Schedule 2 (Common Representations and Warranties, Covenants and Events of Default)) and the other Financing Documents; provided that withdrawals and transfers in respect of any Emergency Expenditures shall be made pursuant to an Officer's Certificate of the Lessee specifying (i) each Project Account from which a transfer is to be made (which will be any Project Loan Costs Construction Account, the Pre-Completion Revenues Account, the Post-Completion Revenue Account, the Operating Account, the O&M Reserve Account, the Major Maintenance Reserve Account and/or the Springing Liquidity Reserve Account) and the payment instructions for the payees to whom such

transfer is to be made, (ii) the amount requested to be transferred from such Project Account and (iii) the proposed date of such transfer; provided further that the Lessee shall include, in the Construction Withdrawal Certificate delivered after the payment of applicable Emergency Expenditures, information supporting such Emergency Expenditure.

(b) A Funds Transfer Certificate relating to each applicable Project Account will be delivered to the Account Bank and the Port Authority (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) no later than two (2) Business Days prior to each date on which funds are proposed to be withdrawn or transferred. The Account Bank shall comply with any such Funds Transfer Certificate to the extent funds are available in the applicable Project Accounts; provided that, pursuant to sub-paragraph (c) below, if any withdrawal or transfer of funds requested in a Funds Transfer Certificate is not in compliance with this Agreement (including Section 3.10(a) (Material Project Documents) of Schedule 2 (Common Representations and Warranties, Covenants and Events of Default)) or the other Financing Documents, the Intercreditor Agent (acting in accordance with this Agreement) shall notify the Account Bank, the Collateral Agent and the Lessee in writing of such non-compliance at least one (1) Business Day prior to the requested date of transfer or withdrawal, and the Lessee shall not be entitled to cause such proposed withdrawal until such time as it has submitted a revised Funds Transfer Certificate which complies with the terms hereof or thereof.

(c) With respect to any Funds Transfer Certificate or any other written request submitted to the Account Bank in connection with transfers to be made pursuant to this Agreement:

(i) any Secured Debt Representative, acting reasonably, may dispute the application of proceeds in such Funds Transfer Certificate or written request 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 Account Bank, the Collateral Agent 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 or written request 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 or written request 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 or written request submitted pursuant to sub-paragraph (i) or (ii) above must be provided to the Account Bank at least two (2) Business Days prior to the immediately preceding Business Day that is the proposed date of the transfers to be made pursuant thereto.

(d) The Account Bank shall not be obligated to monitor or verify (i) the accuracy of any Funds Transfer Certificate or other written instructions provided to the Account Bank for the transfer or deposit of funds with respect to any Project Account, or (ii) the use of amounts withdrawn from the Project Accounts pursuant to written instructions given by the Lessee. For clarity, the Account Bank shall not make any transfers pursuant to a Funds Transfer Certificate if it receives a notice of objection from the Intercreditor Agent or from any Secured Debt Representative as contemplated by paragraph (b) or (c)(i) above, as applicable, unless and until it receives a further written notice from the Intercreditor Agent or from any Secured Debt Representative, as applicable, withdrawing its notice of objection.

Section 4.23 Operating Business Conditions. Notwithstanding anything to the contrary in this Agreement, at any time and from time to time, upon satisfaction of the Operating Business Conditions, the Lessee may elect, by delivering an Officer's Certificate to the Intercreditor Agent certifying the satisfaction of the Operating Business Conditions and confirming its elections under this Section 4.23 (Operating Business Conditions), (a) to close any Project Account (other than the TRS Operating Account) and/or not to apply the provisions of this Article IV (Deposits Into and Withdrawals From Project Accounts) that relates to such Project Accounts, (except in any such case for the Post-Completion Revenue Account, each Senior Debt Service Reserve Account, the Major Maintenance Reserve Account, any Project Accounts with Muni Bond Gross Proceeds on deposit therein and any Arbitrage Rebate Account with respect to any issue of Muni Bonds or other tax-exempt Senior Debt until such time as one hundred percent (100%) of the Rebate Amount with respect thereto has been paid in full in accordance with Section 4.12(d) (Arbitrage Rebate Accounts)) and only after transferring any monies on deposit in any such Project Accounts being closed into the Post-Completion Revenue Account and (b) to cease submitting Funds Transfer Certificates; provided that, notwithstanding the foregoing, the Lessee will be required to comply with (A) the priority of payments contemplated by the Post-Completion Waterfall (but it will not be required to make transfers to Project Accounts it may elect to close (even if it has not made such election)), including each Principal Payment Account in accordance with Section 4.02(b)(iv)(C) (Post-Completion Revenue Account) and (B) the Restricted Payment Conditions and certify to their satisfaction in a Restricted Payment Conditions Satisfaction Transfer Certificate; provided further that, after such election, if on any Calculation Date the Total Obligations Coverage Ratio for any TOCR Calculation Period ending on such Calculation Date is less than 1.70:1.00, the Lessee shall be required promptly to open any Project Accounts that it has closed under this Section 4.23 (Operating Business Conditions) and to comply with the requirements of this Article IV (Deposits Into and Withdrawals From Project Accounts).

Section 4.24 Inadequately Identified Amounts. In the event that the Account Bank receives any amount which is inadequately identified as to the Project Account into which such amount is to be credited, the Account Bank shall notify the Lessee (with a copy of such notice to the Collateral Agent) of such event and shall request instructions as to the Project Account into which such amount should be credited. The Account Bank shall credit such amount to the Pre-Completion Revenue Account or the Post-Completion Revenue Account, as applicable, until such time as the Account Bank receives instructions from the Lessee in accordance herewith stating that such amount should be credited to another Project Account in accordance with the Financing Documents, in which case the Account Bank shall credit such amount to the Project Account designated by the Lessee.

Section 4.25 End of Security Period. At the end of the Security Period, the Account Bank will (except as may otherwise be requested by the Lessee) promptly at the expense of the Lessee (or, with respect to the TRS Project Accounts, the Taxable REIT Subsidiary), close any Project Accounts (except for any Arbitrage Rebate Account with respect to an issue of Muni Bonds or other tax-exempt Senior Debt, which shall be closed only upon payment in full of one hundred percent (100%) of the Rebate Amount with respect to such issue of Muni Bonds or tax-exempt Senior Debt, as of the date of payment provided for in Section 4.12(d) (Arbitrage Rebate Accounts)) that have not previously been closed in accordance with the terms of this Agreement and/or liquidate any investments credited thereto and/or transfer the funds deposited therein or credited thereto, as directed by the Lessee (or, with respect to the TRS Project Accounts, the Taxable REIT Subsidiary) in writing or as may be directed by a court order or other legal process.

Section 5.06 Hedge Providers as Secured Creditors. For the avoidance of doubt, each Hedge Provider shall be entitled to share in the Collateral as a Secured Creditor, solely in its capacity as Hedge Provider party to a Secured Hedge Agreement under and subject to the terms set forth in this Agreement.

Section 5.07 Limitation on Hedge Provider Voting Rights. No Hedge Provider shall have (i) any voting rights under this Agreement with respect to any Secured Obligations arising under any Secured

Hedge Agreement to which it is a party or (ii) any rights to participate in any Intercreditor Vote in its capacity as a Hedge Provider except for the following:

(a) Intercreditor Votes requiring the consent of the Unanimous Voting Parties pursuant to Section 9.02(a) (Modifications Requiring All Secured Parties or Classes of Secured Parties) or in connection with Modifications that adversely affect the applicable Hedge Provider in any material respect pursuant to Section 9.02(b) (Modifications Requiring All Secured Parties or Classes of Secured Parties); or

(b) upon a Termination Payment becoming due and payable by the Lessee to a Hedge Provider in accordance with the terms of a Secured Hedge Agreement following a Hedge Event of Default or other Hedge Termination Event thereunder with respect to the Lessee and the delivery of a Hedge Termination Statement by such Hedge Provider to each Agent (in which case such Hedge Provider shall be entitled to vote the amount of such Termination Payment as part of the Combined Exposure); or

(c) in the case of any Modification with respect to the provisions of any Secured Hedge Agreement, such Modification may be made only with the written consent of the Hedge Provider party thereto; or

(d) in the case of any Modification of any Financing Document so as to alter the ratable treatment of any Hedge Obligations, Secured Hedge Agreement or Secured Hedge Transaction, such Modification may be made only with the written consent of the Hedge Provider adversely affected thereby; or

(e) in the case of any Modification of the definitions of “Additional Hedge Provider”, “Additional Senior Creditor”, “Additional Senior Indebtedness Hedge Agreement”, “Additional Senior Indebtedness Hedge Obligations”, “Class”, “Combined Exposure”, “Enforcement Action”, “Financing Documents”, “Hedge Agreement”, “Hedge Early Termination Date”, “Hedge Event of Default”, “Hedge Payment Default”, “Hedge Provider”, “Hedge Obligations”, “Hedge Termination Event”, “Hedge Termination Statement”, “Interest Rate Hedge Agreement”, “Ordinary Course Payments”, “Ordinary Course Payment Account”, “Permitted Refinancing Creditor”, “Permitted Refinancing Indebtedness Hedge Agreement”, “Permitted Refinancing Indebtedness Hedge Obligations”, “Required Secured Creditors”, “Secured Pass Through Financing Obligations”, “Secured Creditors”, “Secured Debt Representative”, “Secured Hedge Agreement”, “Secured Hedge Transaction”, “Secured Lessee Obligations”, “Secured Obligations”, “Secured Parties”, “Security Documents”, “Senior Debt”, “Senior Debt Documents”, “Termination Payments”, “Termination Payment Account” or “Unanimous Voting Parties” under this Agreement, in each case, in a manner materially adverse to any Hedge Provider, such Modification may be made only with the written consent of such Hedge Provider affected thereby.

Without limitation of the foregoing sub-paragraphs (a) through (e), when participating in any Intercreditor Vote, each Hedge Provider that is also a Lender agrees, if applicable, to exercise its voting rights in its capacity as a Hedge Provider under its Secured Hedge Agreement(s) related to the Loans Facilities in the same manner as it (or any affiliate that is a Lender) exercises its voting rights in its (or such affiliate’s) capacity as a Lender, to the extent that such Lender is entitled to vote in respect of the matter subject to such Intercreditor Vote.

## ARTICLE VI SHARING; ADDITIONAL SECURED PARTIES

Section 6.01 Basic Agreement. Subject to Section 6.03 (Amounts Not Subject to Sharing), all amounts paid to or received by the 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 (including any proceeds in respect of a Leasehold Mortgage or Collateral Assignment, notwithstanding that the Hedge Obligations are not “Secured Obligations” as defined under the Leasehold Mortgages) shall be paid promptly to the Secured Parties ratably in the order specified in Section 8.04 (Application of Proceeds) based on the amounts owing to each Secured Party on each level of priority specified therein.

Section 6.02 Payments Received by Certain Secured Parties.

(a) Except as excluded in Section 6.03 (Amounts Not Subject to Sharing) and except for amounts obtained from or through the Collateral Agent pursuant to this Agreement, if any Secured Party (other than the Collateral Agent) shall obtain any amount whether (i) by way of voluntary or involuntary payment, (ii) by virtue of an exercise of any right of set-off (except, for the avoidance of doubt, in accordance with netting or set-off arrangements under the terms of any Secured Hedge Agreement permitted pursuant to Section 5.04 (Netting)), banker’s lien or counterclaim, (iii) as proceeds of any insurance policy covering any properties or assets of the Lessee, (iv) from proceeds of liquidation or dissolution of the Lessee or distribution of its assets among its creditors (however such liquidation, dissolution or distribution may occur), (v) as payment following the acceleration of any Secured Obligation, (vi) from any realization on Collateral, (vii) by virtue of the application of any provision of any of the Financing Documents (other than this Agreement), (viii) from proceeds required to be applied as a mandatory prepayment or redemption (other than under Section 4.04(d)(ii)(B) (Construction Accounts) or Section 4.09(b) (Senior Debt Service Reserve Account)) or (ix) in any other manner in respect of any Secured Obligations owed to such Secured Party under any Financing Document (other than any amount distributed pursuant to and in accordance with the express terms of this Agreement), then the Secured Party receiving such amount shall forthwith notify the Collateral Agent and each Secured Debt Representative thereof and shall promptly, and in any event within ten (10) 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 Collateral Agent for the account of the Secured Parties, to be shared in accordance with Section 6.01 (Basic Agreement), or Section 8.04 (Application of Proceeds) or the applicable mandatory prepayment or redemption requirements in the Financing Documents.

(b) If any party hereto shall receive any amounts in excess of its entitlement under this Agreement, such Secured Party shall hold any such excess amounts in trust for the other Secured Parties (as applicable), to whom it shall account therefor as soon as the respective entitlement of each Secured Party has been established pursuant to the provisions of this Agreement and shall provide a notice to the Intercreditor Agent upon receiving any such excess.

Section 6.03 Amounts Not Subject to Sharing. Notwithstanding any other provision of this Agreement or any other Financing Document to the contrary, no Secured Party shall have any obligation to share: (a) any payment made by any Person to such Secured Party pursuant to a contract of participation or assignment or any other arrangement by which a direct or indirect interest of such Secured Party under the relevant Financing Document is transferred (other than any such contract or other arrangement entered into with the Lessee or any Affiliate thereof);

(b) any payment made pursuant to and in accordance with the express terms of this Agreement;

(c) any amount owed by any Hedge Provider to the Lessee that is netted as set forth in Section 5.04 (Netting); or

(d) any amounts on deposit in any Senior Debt Proceeds Account, Senior Debt Service Reserve Account, Project Loan Senior Debt Capitalized Interest Account or Building Loan Senior Debt Capitalized Interest Account.

Section 6.04 Presumption Regarding Payments. For purposes hereof, any payment received by a Secured Party under or pursuant to a Financing Document may be presumed by such Secured Party to have been properly received by such Secured Party in accordance with this Article VI (Sharing; Additional Secured Parties) unless (a) such Secured Party receives written notice from any other Secured Party, the Conduit Issuer or the Lessee that such payment was not made in accordance herewith or (b) such Secured Party otherwise has actual knowledge that such payment was not made in accordance herewith. If any payment initially received by a Secured Party or the Conduit Issuer is rescinded or must otherwise be restored by the Secured Party that first obtained it or the Conduit Issuer, each other Secured Party that shares the benefit of such payment or the Conduit Issuer shall return to such Secured Party or the Conduit Issuer its portion of the payment so rescinded or required to be restored in each case in accordance with Section 6.02 (Payments Received by Certain Secured Parties).

Section 6.05 No Separate Security. Each Secured Party that is a party to this Agreement (a) agrees that, except as otherwise explicitly provided in Section 6.03 (Amounts Not Subject to Sharing), all Collateral is for the joint benefit of all the Secured Parties and the proceeds of any enforcement thereof will be applied in accordance with Section 8.04 (Application of Proceeds) (including proceeds from Collateral granted pursuant to a Leasehold Mortgage or Collateral Assignment, notwithstanding that the Hedge Obligations are not "Secured Obligations" as defined under the Leasehold Mortgages) and (b) represents and warrants to each other Secured Party that, in respect of the Secured Obligations now or hereafter owing to such Secured Party, it has received no security from the Conduit Issuer, the Lessee or any Lessee Affiliate Party except (i) its interest in the Collateral granted pursuant to the Security Documents, if any, or (ii) as otherwise provided pursuant to the Financing Documents. In furtherance of the foregoing, if any Secured Party shall receive or be entitled to demand or otherwise call upon any guaranty, security or other assurance of payment which is not described in the immediately preceding sentence in respect of the Secured Obligations owed to such Secured Party, such Secured Party shall receive any proceeds thereof in trust for all the Secured Parties (to be shared promptly and ratably with the other Secured Parties) and shall exercise its rights to demand or call upon such guaranty, security or other assurance of payment as directed by the Required Secured Creditors (determined without regard to such Secured Party's portion of the Combined Exposure).

Section 6.06 Additional Secured Parties. The Collateral Agent will perform its undertakings set forth herein with respect to each holder of Secured Obligations that are, in each case, issued or incurred after the date hereof, provided that:

(i) such Secured Obligations are incurred in accordance with the terms of each of the Financing Documents, in each case as in effect at such time, and the procedures set forth in this Section 6.06 (Additional Secured Parties); and

(ii) each holder of Secured Obligations signs and delivers, directly or through its designated Secured Debt Representative, an Accession Agreement prior to or concurrently with the execution of the applicable Senior Debt Documents.

(b) In furtherance of paragraph (a) above, each of the Conduit Issuer and the Lessee shall deliver to the Collateral Agent (with a copy to the Intercreditor Agent and each other Secured Debt Representative) with respect to itself only each of the following:

(i) evidence that each of the Conduit Issuer and the Lessee has duly authorized, executed (if applicable) and recorded (or caused to be recorded) in each appropriate governmental office all relevant filings and recordations to ensure that each holder of Secured Obligations is secured by the Collateral in accordance with the Security Documents;

(ii) a copy of the executed Accession Agreement referred to in sub-paragraph (a)(ii) above; and

(iii) any other documentation as the Collateral Agent may reasonably request to evidence the due authorization, execution and delivery of the applicable Accession Agreement by the Additional Senior Creditors or the Permitted Refinancing Creditors.

(c) Upon execution and delivery of an Accession Agreement referred to in paragraph (a) above (directly or through its designated Secured Debt Representative), a holder of Secured Obligations (including the Muni Bond Holders and Private Placement Noteholders) and, if applicable, such Secured Debt Representative (including the Indenture Trustee and the Note Agent), shall each become a Secured Party hereunder and the Conduit Issuer's, Taxable REIT Subsidiary's and the Lessee's obligations to such Persons shall become Secured Pass Through Financing Obligations, Secured Taxable REIT Subsidiary Obligations and Secured Lessee Obligations, respectively.

(d) On each date that the Conduit Issuer incurs Additional Senior Indebtedness Obligations or Permitted Refinancing Indebtedness Obligations, the Lessee shall be deemed to represent and warrant to each Secured Party hereto that (i) the incurrence of such Additional Senior Indebtedness Obligations or Permitted Refinancing Indebtedness Obligations are permitted by, and do not violate or result in any default under, any then-existing Financing Document, (ii) the counterparties to such contemplated Additional Senior Indebtedness Documents or Permitted Refinancing Indebtedness Documents will be Secured Parties hereunder, (iii) the obligations of each of the Conduit Issuer, the Lessee and the Taxable REIT Subsidiary under the applicable contemplated Financing Documents will be Secured Pass Through Financing Obligations, Secured Lessee Obligations and, Secured Taxable REIT Subsidiary Obligations, as applicable, and (iv) other than in the case of TIFIA Obligations which shall be secured by Liens on the Collateral subordinate to the Senior Secured Obligations (as contemplated hereunder) during any period when a Bankruptcy Related Event with respect to the Lessee has not occurred, such Secured Obligations will be secured *pari passu* by a Lien on the Collateral.

ARTICLE VII  
DECISION MAKING; VOTING; NOTICE AND PROCEDURES

Section 7.01    Decision Making.

(a)        Where, in accordance with this Agreement or any other Financing Document, the approval or other direction or instruction of the Required Secured Creditors is required, including in connection with any Enforcement Action under Section 8.03 (Exercise of Remedies) and any Modification under Article IX (Amendments; Waivers; Instructions), the determination of whether such approval, direction or instruction will be granted or withheld shall be determined by an Intercreditor Vote conducted in accordance with the procedures set forth in this Agreement among the Secured Creditors entitled to vote with respect to the particular approval or other direction or instruction.

(b)        Each approval or other direction or instruction of the Required Secured Creditors made in accordance with the terms of this Agreement shall be binding upon each of the Secured Parties.

(c)        The respective votes of the Secured Parties that are represented by a Secured Debt Representative under the Financing Documents shall be determined by such Secured Debt Representative in accordance with the provisions of Section 7.02 (Each Party's Entitlement to Vote) and Section 7.03 (Votes Allocated to Each Party) below and notified by such Secured Debt Representative to the Intercreditor Agent in writing.

(d)        Where, in accordance with any Senior Debt Document, the approval or other direction or instruction of a Class of Secured Creditors, as the case may be, is required, the determination of whether such approval, direction or instruction will be granted or withheld shall be determined by the threshold of such Class of Secured Creditors as set forth in such Senior Debt Document and conducted in accordance with the procedures set forth in such Senior Debt Document.

Section 7.02    Each Party's Entitlement to Vote.

(a)        Except as otherwise expressly provided in this Agreement, each Secured Creditor shall be entitled to vote in each Intercreditor Vote conducted under this Agreement.

(b)        Notwithstanding anything to the contrary set forth herein or in any other Financing Documents, (i) none of (A) the Conduit Issuer, the Lessee, HoldCo, the Sponsor Aggregator, the Sponsors or any of their respective Affiliates (other than any Debt Fund Affiliate subject to any limitations on voting set forth in any Senior Debt Document, including Section 11.06(g) (Binding Effect; Successors and Assigns) of the Credit Agreement and Section 7.03 (Votes Allocated to Each Party)) that from time to time holds any Senior Debt, (B) any Secured Party that has agreed, directly or indirectly, to vote or otherwise act at the written direction or subject to the approval or disapproval of the Lessee, HoldCo, the Sponsor Aggregator, any Sponsor or any of their respective Affiliates, or (C) except as specified in Section 11.01 (Amendments, Etc.) of the Credit Agreement and/or the equivalent provisions of any Additional Senior Indebtedness Document and/or Permitted Refinancing Indebtedness Document, any Defaulting Lender for so long as it is a Defaulting Lender pursuant to the Credit Agreement, the Additional Senior Indebtedness Documents and/or the Permitted Refinancing Indebtedness Documents shall be entitled to participate in any Intercreditor Vote, (ii) except as specified in Section 5.07 (Limitation on Hedge Provider Voting Rights) and Section 9.02 (Modifications Requiring All Secured Parties or Classes of Secured Parties), a Hedge Provider shall not have (A) any voting rights under this Agreement with respect to any Secured Obligations arising under any Secured Hedge Agreement to which it is a party or (B) any rights to participate in any

Intercreditor Vote (iii) any Intercreditor Vote in respect of a Project Account or Account Collateral in relation thereto that is solely for the benefit of certain, and not all, Secured Creditors under the terms of this Agreement, no Secured Creditor that is not part of the Class of Secured Creditors benefiting from such Project Account or Account Collateral shall have any voting rights or any rights to participate in such Intercreditor Vote with respect to such Project Account or Account Collateral; and (iv) solely to the extent that (a) any Senior Secured Obligations remain outstanding and (b) the TIFIA Obligations do not constitute Senior Secured Obligations, the TIFIA Lender shall not have any voting rights under this Agreement (each of the parties referred to in clauses (i), (ii) (iii) and (iv), a “Non-Voting Secured Creditor”), and the Intercreditor Agent, in determining the percentage of votes cast (and instructions of the Required Secured Creditors), shall disregard the principal amount of Secured Obligations held by Non-Voting Secured Creditors in both the Numerator and Denominator of the calculation in determining the outcome of such vote. Prior to the taking of any Intercreditor Vote, the Lessee shall provide prompt written notice to the Intercreditor Agent of the identity of each Non-Voting Secured Creditor and the principal amount of Secured Obligations relating thereto.

Section 7.03 Votes Allocated to Each Party.

(a) Except as otherwise provided in Section 7.02 (Each Party’s Entitlement to Vote) and Section 9.02 (Modifications Requiring All Secured Parties or Classes of Secured Parties), each Secured Creditor will have a number of votes in any Intercreditor Vote equal to its portion (in Dollar amounts in relation to the aggregate Dollar amount of the Combined Exposure) of the Combined Exposure under all Senior Debt Documents (other than the Lessee Loan Agreements) on a dollar-for-dollar, and not block voting, basis.

(b) In calculating the Voting Party Percentage consenting to, approving, waiving or otherwise providing direction with respect to any decision, the total number of votes cast by all Secured Creditors entitled to vote in favor of the proposed consent, approval, direction or other action (the “**Numerator**”) shall be divided by the total number of votes entitled to be cast with respect to such matter (the “**Denominator**”); provided that the Voting Party Percentage shall not include any votes excluded pursuant to paragraph (d) below.

(c) If, within thirty (30) days or such longer period as shall be prescribed by the Lessee (such longer period in no event to exceed one hundred eighty (180) days) or, upon the occurrence and during the continuation of a Secured Obligations Event of Default, such period as shall be prescribed by the Intercreditor Agent at the written direction of the Required Secured Creditors, in each case, in the notice sent pursuant to Section 7.04 (Notification of Matters), the Voting Party Percentage of the relevant Intercreditor Vote is equal to or greater than that required to consent to and affirm the proposed consent, approval, direction or other action, such proposed consent, approval, direction or other action shall be considered approved as determined by the Intercreditor Agent and no Secured Party shall have any right to object to any of the terms or provisions contained in the Intercreditor Vote, or the operation thereof, or in any manner to question the approval thereof, or to enjoin or restrain the Intercreditor Agent or the Collateral Agent from executing the same or from taking any action pursuant to the provisions thereof.

(d) (i) If, within the period specified by the Intercreditor Agent pursuant to paragraph (c) above, a Secured Party who holds Senior Debt constituting registered bonds, Rule 144A or other public style notes or bonds does not respond (by indication of its approval or disapproval of the relevant Intercreditor Vote) to the notice sent by the Intercreditor Agent regarding an Intercreditor Vote, then the number of votes of such Secured Party in such Intercreditor Vote (as determined in accordance with paragraph (a) above) shall not be counted in the Numerator or the Denominator for the purpose of calculating the Voting Party Percentage as set forth in paragraph (b) above.

(ii) Debt Fund Affiliates in the aggregate shall not have voting rights in excess of ten percent (10%) of the Secured Obligations and the number of votes of Debt Fund Affiliates in excess of ten percent (10%) of the Secured Obligations, in the aggregate, in such Intercreditor Vote (as determined in accordance with paragraph (a) above) shall not be counted in the Numerator or the Denominator for the purpose of calculating the Voting Party Percentage as set forth in paragraph (b) above

Section 7.04 Notification of Matters. If at any time (a) the Intercreditor Agent proposes to exercise any discretion conferred on it under any Financing Document (including in connection with directing the Collateral Agent to take action), (b) any other Secured Party, in accordance with this Agreement, notifies the Intercreditor Agent of a matter with respect to which it believes the Intercreditor Agent should exercise its discretion or (c) the Intercreditor Agent becomes aware as a result of any notification from any other Secured Party, the Conduit Issuer or the Lessee of any matter requiring an Intercreditor Vote under this Agreement, then the Intercreditor Agent shall promptly notify the other Secured Debt Representatives, the Lessee and the Conduit Issuer of the matter in question, specifying: (i)

(A) the manner in which the Intercreditor Agent proposes to exercise its discretion, (B) the matter with respect to which the Intercreditor Agent has been requested to exercise its discretion and (C) whether the matter requires an Intercreditor Vote hereunder, as applicable;

(ii) the Voting Party Percentage (if any) required for such determination or Intercreditor Vote; and

(iii) if applicable, the time period determined by the Lessee or the Intercreditor Agent in accordance with paragraph (c) above within which each Secured Party must provide it with instructions in relation to such matter.

Section 7.05 Notice of Amounts Owed. If (a) the Intercreditor Agent (at the written direction of the Required Secured Creditors) pursuant to an Enforcement Action instructs in writing the Collateral Agent or any other Person holding any Collateral on behalf of the Secured Parties to proceed 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 remedy under any other Financing Document or (b) any of the matters described in clauses (a) through (c) of Section 7.04 (Notification of Matters) has occurred, then, upon the request of the Collateral Agent or the Intercreditor Agent to the relevant Secured Debt Representatives, each Secured Party shall promptly notify (through its Secured Debt Representative, as applicable) in writing the Collateral Agent or the Intercreditor Agent, as applicable, as of any time that the Collateral Agent or the Intercreditor Agent, as applicable (with a copy to the Conduit Issuer and the Lessee), may reasonably specify in such request, of (i) the aggregate amount of the respective Secured Pass Through Financing Obligations (or in the case of a Hedge Provider, Secured Lessee Obligations) owing to the Secured Party and (ii) such other information as the Collateral Agent or the Intercreditor Agent, as applicable, may reasonably request. Each of the Collateral Agent and Intercreditor Agent shall be entitled to conclusively rely upon such information received from any Secured Debt Representative.

## ARTICLE VIII REMEDIES

Section 8.01 Notice of Secured Obligations Event of Default. Promptly after any Secured Party obtains knowledge of the occurrence of any Secured Obligations Event of Default under any Financing Document to which it is a party, such Secured Party shall notify its Secured Debt Representative (if any) and the Intercreditor Agent in writing thereof (a “**Notice of Default**”). Each Notice of Default shall specifically refer to this Section 8.01 (Notice of Secured Obligations Event of Default) and shall describe such Secured Obligations Event of Default in reasonable detail (including the date of occurrence). Upon

receipt by the Intercreditor Agent of a Notice of Default, the Intercreditor Agent shall promptly send copies thereof to each Secured Debt Representative, the Collateral Agent, the Conduit Issuer and the Lessee.

Section 8.02 Notice of Account Control.

(a) Notwithstanding anything to the contrary in this Agreement and subject to paragraph (c) below, on and after the date on which the Account Bank receives a written notice from the Collateral Agent (acting on the written instructions of the Intercreditor Agent) (with a copy to the Conduit Issuer and the Lessee) (any such notice, the “**Notice of Account Control**”) that a Secured Obligations Event of Default has occurred and is continuing, the Collateral Agent (acting on the written instruction of the Intercreditor Agent (acting on the instructions of the Required Secured Creditors or the Required Secured Creditors of the relevant Class of Secured Creditors in the case of any Project Account or Account Collateral that is solely for the benefit of certain, and not all, Secured Creditors in accordance with the terms of this Agreement)) is exercising control of the Project Accounts (the date of receipt of any such notice, the “**Account Control Notice Date**”), (i) the Account Bank shall thereafter accept all notices and instructions required or permitted to be given to it pursuant to the terms of this Agreement with respect to the Project Accounts only from the Collateral Agent and not from the Lessee, the Conduit Issuer or any other Person, (ii) neither the Lessee nor the Taxable REIT Subsidiary shall deliver any notices or instructions to the Account Bank or otherwise request a withdrawal, transfer, payment or other distribution from any Project Account and (iii) the Account Bank shall not withdraw, transfer, pay or otherwise distribute any monies in any of the Project Accounts except pursuant to written instructions from the Collateral Agent, unless the Account Bank shall have received a written notice from the Collateral Agent (which notice shall be provided by the Collateral Agent (acting at the direction of the Intercreditor Agent (acting at the direction of the Required Secured Creditors)) after such Secured Obligations Event of Default has been waived or cured or is otherwise no longer continuing) that such Secured Obligations Event of Default has been waived, cured or is otherwise no longer outstanding.

(b) Within three (3) Business Days after an Account Control Notice Date, if requested in writing to do so by any other Agent, the Account Bank shall provide account statements of the Project Accounts as of such Account Control Notice Date to such Agent.

(c) From and after an Account Control Notice Date until the relevant Secured Obligations Event of Default has been waived or cured or is otherwise no longer outstanding, and notwithstanding anything herein to the contrary (but without limiting any of the Secured Parties’ rights or remedies under the relevant Financing Documents), the Collateral Agent (or the Account Bank at the Collateral Agent’s written direction) shall be permitted (and, in the case of clause (iii) and payments to or amounts collected for the Port Authority, shall) to (i) liquidate and make Eligible Investments in the Project Accounts, (ii) direct the disposition of the funds in each of the Project Accounts, (iii) pay from funds in the Project Accounts any Project Costs, O&M Expenses, Major Maintenance Expenses or any payments to the Port Authority then due and payable under the Lease and constituting Port Authority Priority Payments and (iv) pay from funds in the Project Accounts debt service of the Conduit Issuer and the Lessee and all other Secured Obligations then due and payable, in each case of clauses (i) through (iv) in accordance with this Agreement and the other Financing Documents.

(d) For the avoidance of doubt, after any date on which the Account Bank receives a Notice of Default and until it receives a Notice of Account Control, except to the extent expressly provided otherwise in this Agreement, the Account Bank shall continue to apply amounts pursuant to the terms of this Agreement to the extent instructed by the Lessee.

Section 8.03    Exercise of Remedies.

(a)     If a Secured Obligations Event of Default shall have occurred and be continuing, subject to Section 7.01 (*Decision Making*), the Required Secured Creditors or the Required Secured Creditors of the relevant Class of Secured Creditors in the case of any Enforcement Action in respect of any Project Account or Account Collateral established solely for the benefit of certain, and not all, Secured Creditors in accordance with the terms of this Agreement, may instruct the Intercreditor Agent to direct the Collateral Agent to take any Enforcement Action. The Intercreditor Agent shall notify each Secured Party, the Conduit Issuer and the Lessee of any Enforcement Action.

(b)     Unless otherwise consented to in writing by the Collateral Agent (pursuant to written instructions of the Intercreditor Agent (acting at the written direction of the Required Secured Creditors or the Required Secured Creditors of the relevant Class of Secured Creditors in respect of any Project Account or Account Collateral established solely for the benefit of certain, and not all, Secured Creditors in accordance with the terms of this Agreement)), no Secured Party, individually or together with any other Secured Party, shall have the right to, nor shall it (w) exercise or enforce any of the rights, powers or remedies which the Collateral Agent is authorized to exercise or enforce under this Agreement or any of the other Security Documents with respect to the Collateral or enforce any security interest created or evidenced by any Security Document or require the Collateral Agent to enforce any such security interest, (x) sue for or institute any creditor's process (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, (y) take any step for the winding up, administration of or dissolution of, or any insolvency proceeding in relation to, the Lessee, or for a voluntary arrangement, scheme of arrangement or other analogous step in relation to the Lessee or (z) apply for any order for an injunction or specific performance in respect of the Lessee in relation to any of the Financing Documents. Notwithstanding the foregoing, any Secured Party may:

(i)     file a claim or statement of interest with respect to the Secured Obligations owed to such Person; provided that a bankruptcy has been commenced by or against the Lessee (and may take such other action as it deems in good faith to be necessary to protect its rights in such proceeding);

(ii)    file any necessary or appropriate 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 or Liens of any Collateral Agent or any other Secured Party, including any claims secured by the Collateral; and

(iii)   file any pleadings, objections, motions or agreements which assert rights or interests available to unsecured creditors of the Lessee arising under any bankruptcy of the Lessee or applicable non bankruptcy law, in each case, which is not inconsistent with the terms of this Agreement.

(c)     Any action which has been requested pursuant to an Enforcement Action may be modified, supplemented, terminated and/or countermanded if the Intercreditor Agent or the Collateral Agent shall have received either (i) a written revocation notice from the Required Secured Creditors or (ii) a written notice from the Required Secured Creditors which contains different or supplemental directions with respect to such action.

(d)     At the written direction of the Intercreditor Agent (as directed by the Required Secured Creditors or the Required Secured Creditors of the relevant Class of Secured Creditors in respect of any Project Account or Account Collateral established solely for the benefit of certain, and not all, Secured Creditors in accordance with the terms of this Agreement) pursuant to an Enforcement Action, the Collateral Agent shall seek to enforce the Security Documents (with notice thereof to the Conduit Issuer

and the Lessee) and to realize upon the Collateral or, in the case of a bankruptcy of the Lessee, to seek to enforce the claims of the Secured Parties under the Financing Documents in respect thereof; provided that neither the Secured Debt Representatives nor the Collateral Agent shall be obligated to follow any Enforcement Action as to which the Secured Debt Representatives or the Collateral Agent (as applicable) reasonably believes or has received a written opinion of counsel to the effect that such Enforcement Action is in conflict with any provisions of applicable Law, this Agreement or any other Financing Document or any order of any court or Governmental Authority. Neither the Collateral Agent, the Intercreditor Agent nor any Secured Debt Representative shall, under any circumstances, be liable to any other Secured Party or any other Person for actions taken or not taken at the written directions of the Required Secured Creditors (and, in the case of the Collateral Agent, of the Intercreditor Agent).

(e) If any Secured Debt Representative is directed or determines, as applicable, to accelerate its applicable Secured Obligations in accordance with the terms of any applicable Financing Documents, or any Hedge Provider determines to declare (or take other action resulting in) an early termination of its Secured Hedge Agreement, then such Secured Party shall deliver to the Intercreditor Agent within two (2) Business Days of receipt of such direction or of such determination, as the case may be, a written notice to that effect. Notwithstanding any provision to the contrary in this Agreement, any Class of Secured Creditors may, at any time after the occurrence and during the continuance of a Secured Obligations Event of Default in respect of payment obligations under its applicable Financing Documents or any other event of default or termination event under its applicable Financing Documents that is set forth therein and not in this Agreement, terminate any outstanding Commitments and accelerate the Senior Debt thereunder or cause the early termination of the relevant Secured Hedge Agreement in accordance with the terms thereof in accordance with the terms of the applicable Financing Documents.

(f) In addition to the remedies above, if the Lessee breaches the Reserved Rights, the Conduit 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 will cause immediate and irreparable injury to the Conduit Issuer and that money damages will not provide an adequate remedy therefor.

#### Section 8.04 Application of Proceeds.

(a) Distribution of Collateral Proceeds. Following delivery of an Enforcement Action to the Collateral Agent in connection with the sale, disposition or other realization, collection or recovery of any amounts in the Project Accounts or any other Collateral (or any portion thereof) pursuant to, or by the operation of any of the terms of, the Security Documents and this Agreement, the Collateral Agent shall direct the Account Bank to transfer all amounts and proceeds attributable to any Construction Account, Senior Debt Service Reserve Account, Interest Payment Account, Ordinary Course Payment Account, Principal Payment Account, Termination Payment Account, Prepayment/Redemption Account, Senior Debt Proceeds Account, Project Loan Senior Debt Capitalized Interest Account and Building Loan Senior Debt Capitalized Interest Account to the appropriate Secured Debt Representative or Secured Debt Representatives with respect to the Secured Obligations to which such Project Account relates, to be applied, first for the pro rata payment of all accrued and unpaid interest (including default interest, if any) and Ordinary Course Payments on the relevant Secured Obligations, and second, if any unpaid principal or make-whole amount or premium (if applicable) or Termination Payments of such Secured Obligations have become due (by acceleration or otherwise), to the payment of such unpaid principal, make-whole amount, premium and Termination Payments. Following the application of the amounts described in the immediately preceding sentence of this Section 8.04(a) (Application of Proceeds), the Collateral Agent shall apply the proceeds of any other sale, disposition, or other realization, collection or recovery of Collateral toward the payment of the Secured Obligations in the following order of priority:

(i) *first*, to the *pro rata* payment of all fees (other than commitment fees), costs and other expenses (including the reasonable fees, costs and expenses of counsel and indemnification payments) then due and payable to the Account Bank, the Agents, the Conduit Issuer and any other holder of a Secured Obligation (and/or a representative thereof) in connection with the performance of their respective obligations under the Financing Documents to which they are a party and the consummation of the transactions contemplated thereby (in each case to the extent not previously satisfied);

(ii) *second*, to the *pro rata* payment of all accrued and unpaid interest (including default interest, if any) on all Senior Secured Obligations (including Ordinary Course Settlement Payments under any Secured Hedge Agreement) and all accrued and unpaid commitment fees and letter of credit fees under the Credit Agreement or any Additional Senior Indebtedness Document or Permitted Refinancing Indebtedness Document;

(iii) *third*, if any unpaid principal of any Senior Secured Obligations, including Termination Payments under any Secured Hedge Agreement, and/or any accrued and unpaid prepayment premium or make-whole amount (if applicable) on any Senior Secured Obligations has become due (by acceleration or otherwise), to the *pro rata* payment of such unpaid amounts;

(iv) *fourth*, to the *pro rata* payment of all other amounts, if any, due and payable under any Financing Document with respect to any Senior Secured Obligations;

(v) *fifth*, to the extent that the TIFIA Obligations do not qualify as Senior Secured Obligations, to the payment of all amounts due and payable in respect of the TIFIA Obligations; and

(vi) *sixth*, upon the payment in full of all Secured Obligations in accordance with sub-paragraphs (i) through (v) above, to pay to the Lessee, or as may be directed by the Lessee any proceeds then remaining.

(b) If at any time any Secured Party will for any reason obtain any payment or distribution upon or with respect to the Secured Obligations contrary to the terms of this Agreement, whether as a result of the Collateral Agent's exercise of any Enforcement Action in respect of the Collateral or otherwise, such Secured Party agrees that it will have received such amounts in trust, and will promptly remit such amount so received in error to the Collateral Agent to be applied in accordance with the terms of this Agreement.

Section 8.05 Reliance on Information. For purposes of applying payments received in accordance with this Article VIII (Remedies), the Collateral Agent shall be entitled to rely upon the information received by, and upon the request of, the Collateral Agent for such purpose, pursuant to Section 7.05 (Notice of Amounts Owed), 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 Agent determines that it is unable to determine the amount or order of payments that should be made hereunder, the parties hereto agree that the Collateral Agent shall have the right, at its 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 8.06 Enforcement in Bankruptcy Proceedings. In the event that any TIFIA Loan shall be outstanding, the following provisions shall apply in any bankruptcy Proceeding with respect to the Lessee:

(a) Subject to clauses (b) through (e) below, each Secured Creditor, as to any Secured Obligations held by such Secured Creditor, will have all rights of a creditor of the Lessee including the

right to file proofs or claims of debt with respect to such Secured Obligations, to appear and be heard as a creditor in such proceeding, to serve as a member of a committee of creditors, to file a Plan, to take any action necessary to perfect its Lien (or preserve the perfection of its Lien) on the Collateral, to vote its claims in respect of any proposed Plan (subject to Section 8.09 and clause (d) below), and, subject to the provisions of Section 8.07, to receive and retain any payment or distribution of assets or securities of the Lessee of any kind or character, whether in cash, securities or other property, made in or as a result of such proceeding pursuant to any Plan or otherwise; provided (i) that if any Secured Creditor (other than the TIFIA Lender) does not file any such proof or claim of debt within thirty (30) days prior to the last date for the filing thereof, then the Intercreditor Agent (acting at the direction of the Required Secured Creditors in accordance with the terms hereof) may, with the consent of such Secured Creditor, instruct the Collateral Agent to file any appropriate proof or claim on behalf of such Secured Creditor, and (ii) notwithstanding the foregoing, the Intercreditor Agent shall not, without the prior written consent of the TIFIA Lender or the U.S. Department of Justice, instruct the Collateral Agent to file any such proof of claim or debt on behalf of the TIFIA Lender.

(b) Subject to clauses (c) through (e) below, (i) the Secured Parties (or, in each case, the Secured Debt Representative acting on their behalf) shall use reasonable good faith efforts to develop with the other Secured Parties a plan for the course and conduct of any actions in any such proceeding (including any proposed foreclosure or disposition of all or a substantial part of the Collateral), and (ii) in any bankruptcy Proceeding, each Secured Creditor will agree to authorize or take such Enforcement Actions as shall be directed in writing by the Required Secured Creditors, and no Secured Party shall take any enforcement or other action (or give or join in any directions to the Collateral Agent) which is inconsistent with a written direction by the Required Secured Creditors.

(c) Subject to clauses (d) and (e) below, if the Intercreditor Agent (acting at the direction of the Required Secured Creditors in accordance with the terms hereof) requests that any Secured Creditor join in a written instruction regarding the exercise of an Enforcement Action in seeking a lifting of the automatic stay and in commencing and pursuing a foreclosure action with respect to the Collateral, such Secured Creditor will join in such instruction and will not take any action that would hinder such action.

(d) Notwithstanding anything in this Agreement to the contrary, the TIFIA Lender, unless the TIFIA Lender is a Non-Federal TIFIA Assignee, shall not be required to take any action, or refrain from taking any action, in connection with any bankruptcy Proceeding unless and until approved in writing by the U.S. Department of Justice, consistent with 28 U.S.C. § 516 and any other federal statute or regulation applicable to matters in litigation. Nothing in this Section 8.06(d) shall be construed to limit any right of the TIFIA Lender as a Required Secured Creditor if the TIFIA Lender qualifies as a Required Secured Creditor hereunder or the right of the TIFIA Lender to participate in any Intercreditor Vote hereunder.

(e) Notwithstanding anything in this Agreement to the contrary, each of the Secured Parties shall, at a minimum, have the right to appear and be heard in the capacity of a creditor, including the right to file pleadings, claims, motions and objections as such creditor may deem appropriate and in its best interests.

**Section 8.07** Payment Over After Bankruptcy Related Event. In the event that any TIFIA Loan shall be outstanding, the following provisions shall apply:

(a) From and after the occurrence of a Bankruptcy Related Event with respect to the Lessee, should any Secured Creditor (other than the TIFIA Lender) receive (i) any payments, distributions or

delivery of Collateral or proceeds of Collateral or (ii) any cash, debt, or equity securities in a bankruptcy Proceeding (“Reorganization Securities”) on account of any outstanding Secured Obligations and any other Secured Creditor (including the TIFIA Lender) does not concurrently receive a ratable payment, distribution or delivery on account of the outstanding Secured Obligations owing to such Secured Creditor (including outstanding TIFIA Obligations), then the recipient Secured Creditor shall turn over to the Collateral Agent the excess non-pro rata payment, distribution, Collateral, proceeds or Reorganization Securities for distribution to (or for the benefit of) such other Secured Creditors in accordance with Section 8.04 hereof.

(b) If, in any bankruptcy Proceeding, debt obligations of the reorganized debtor secured by Liens upon any property of the reorganized debtor are distributed to the Secured Creditors on account of claims arising under the Financing Documents pursuant to a Plan, arrangement, compromise or liquidation or similar dispositive restructuring plan, then, to the extent the debt obligations distributed on account of the Secured Obligations (other than the TIFIA Obligations) and on account of the TIFIA Obligations are secured by Liens upon the same property, the applicable provisions of this Agreement will survive the distribution of such debt obligations pursuant to such Plan and will apply with like effect to the Liens securing such debt obligations.

Section 8.08 Classification. In the event that any TIFIA Loan shall be outstanding, the following provisions shall apply. Each Secured Creditor acknowledges and agree that, immediately upon the occurrence of any Bankruptcy Related Event with respect to the Lessee:

(a) The Liens securing the Secured Obligations and the Liens securing the TIFIA Obligations shall, for all purposes hereunder, be classified as a single Lien.

(b) The TIFIA Obligations and the other Senior Secured Obligations shall be treated as *pari passu* obligations, and (i) no Secured Creditor shall oppose the TIFIA Obligations and all other Senior Secured Obligations being classified together as a single class in any Plan proposed or adopted in a bankruptcy Proceeding and (ii) to the extent any of the Secured Creditors delivers to the Intercreditor Agent a notice of opposition to the classification of the TIFIA Obligations and all other Senior Secured Obligations as separate classes in any Plan proposed or adopted in a bankruptcy Proceeding, then the Intercreditor Agent shall object to such proposed classification and the Secured Creditors shall support such objection to the proposed classification. All distributions shall be made as if there were one single class of creditors in respect of the Collateral (except for any Collateral pledged for the sole benefit of a certain Class of Secured Creditors).

Section 8.09 Voting for Plan of Reorganization. In the event that any TIFIA Loan shall be outstanding, the following provisions shall apply:

(a) Subject to clause (d) below or as otherwise agreed to in writing by the TIFIA Lender, no other Secured Creditor shall file, propose, sponsor, support by filing a pleading with any court or vote in favor of any Plan (and each shall vote and shall be deemed to have voted to reject any Plan) in a bankruptcy Proceeding if such Plan (i) is inconsistent with the priorities provided for in this Agreement, (ii) seeks to “cram up” the TIFIA Lender under 11 U.S.C. § 1129(b) or reinstate the TIFIA Obligations under 11 U.S.C. § 1124 unless all Senior Secured Obligations are being reinstated under such Plan, (iii) provides for different treatment of the TIFIA Obligations compared to the other Senior Secured Obligations, (iv) is or may be subject to an objection by the TIFIA Lender, provided that to the extent the TIFIA Lender has not filed such an objection, the TIFIA Lender notifies the Intercreditor Agent in writing, at least 10 days prior to the deadline to vote to accept or reject the Plan, that the TIFIA Lender intends to object to the Plan, or (v) violates the express provisions of this Agreement.

(b) Subject to clause (d) below or as otherwise agreed to in writing by the Secured Creditor (other than the TIFIA Lender), the TIFIA Lender shall not file, propose, sponsor, support by filing a pleading with any court, or vote in favor of any Plan (and the TIFIA Lender shall be deemed to have voted to reject any Plan) in a bankruptcy Proceeding if such Plan (i) is inconsistent with the priorities provided for in this Agreement, (ii) seeks to “cram up” the Secured Creditor (other than the TIFIA Lender) under 11 U.S.C. § 1129(b) or reinstate the Senior Secured Obligations under 11 U.S.C. § 1124 unless the Senior Secured Obligations are being reinstated under such Plan, (iii) provides for different treatment of the Senior Secured Obligations compared to the TIFIA Obligations, (iv) is subject to an objection by Secured Creditor representing a majority of the aggregate principal amount of the outstanding Senior Secured Obligations (excluding, in all circumstances, the TIFIA Obligations), provided that to the extent the relevant Secured Debt Representative has not filed such an objection, such Secured Debt Representative notifies the TIFIA Lender, at least 10 days prior to the deadline to vote to accept or reject the Plan, in writing that such Secured Debt Representative intends to object to the Plan, or (v) violates the express provisions of this Agreement.

(c) No Secured Creditor (other than the TIFIA Lender) shall enter into or support (i) any framework agreement, plan support agreement or similar agreement or (ii) any agreement, instrument, or other document implementing, supporting or supplementing a Plan with respect to the Lessee, in each case, without the prior written consent of the TIFIA Lender. The TIFIA Lender shall not enter into or support (i) any framework agreement, plan support agreement or similar agreement or (ii) any agreement, instrument, or other document implementing or supplementing a Plan with respect to the Lessee, in each case, without the prior written consent of the Intercreditor Agent (acting at the direction of the Required Secured Creditors (excluding, for purposes of this Section 8.09(c), the TIFIA Lender and at all such times treating the TIFIA Lender as a Non-Voting Secured Creditor for the purpose of any vote under this Section 8.09(c)) in accordance with this Agreement).

(d) In the event that the TIFIA Lender has assigned the TIFIA Loan in full to a Non-Federal TIFIA Assignee, this Section 8.09 shall cease to apply.

Section 8.10 Effectiveness in Bankruptcy Proceedings. In the event that any TIFIA Loan shall be outstanding, the following provisions shall apply. The Parties acknowledge and agree that this Agreement is a “subordination agreement” under Section 510(a) of the Bankruptcy Code and under comparable provisions of any other applicable law in a bankruptcy Proceeding, which shall be effective before, during and after the commencement of any bankruptcy Proceeding. All references in this Agreement to any Lessee or obligor will include such Person as a debtor in possession and any receiver or trustee for such Person in any bankruptcy Proceeding.

Section 8.11 Adequate Protection. In the event that any TIFIA Loan shall be outstanding, the following provisions shall apply:

- (a) No Secured Creditor will contest, protest, or object to:
  - (i) A request by a Secured Creditor for “adequate protection” under the Bankruptcy Code in any bankruptcy Proceeding;
  - (ii) An objection by a Secured Creditor to a motion, relief, action, or proceeding based on a Secured Creditor claiming a lack of adequate protection; or
  - (iii) The payment of interest, fees, expenses, costs, charges or other amounts to the Secured Creditor (including the TIFIA Lender) under section 506(b) of the Bankruptcy Code to the extent of the value of the interest of the Secured Creditors in the Collateral.

(b) Notwithstanding Section 8.11(a), if in any bankruptcy Proceeding any Secured Creditor (or any subset thereof) is granted adequate protection, then each Secured Creditor may seek the same form of adequate protection, and the Parties agree that any adequate protection payments or proceeds of adequate protection granted shall follow the priorities forth in Section 8.4 hereof.

Section 8.12 Post-Petition Interest. In the event that any TIFIA Loan shall be outstanding, the following provisions shall apply. No Secured Creditor nor any Senior Debt Representative shall oppose or seek to challenge any claim by any other Secured Creditor or Senior Debt Representative for allowance in any bankruptcy Proceeding consisting of Post-Petition Interest, fees or expenses, to the extent of the value of the Lien securing the claim of the Secured Creditor pursuing such claim.

Section 8.13 Use of Cash Collateral and DIP Financing. In the event that any TIFIA Loan shall be outstanding, the following provisions shall apply:

(a) Until the payment in full in cash of the principal of and interest, and premium, if any, on all indebtedness and any other amounts outstanding under any TIFIA Loan and constituting TIFIA Obligations has occurred, if the Lessee shall be subject to any bankruptcy Proceeding and the TIFIA Lender shall desire to permit the use of Cash Collateral (as defined in section 363(a) of the Bankruptcy Code) on which the TIFIA Lender or any other creditor has a Lien, or to permit the Lessee to obtain DIP Financing (the “TIFIA DIP Financing”), whether from the TIFIA Lender and/or any other Person, each Secured Creditor (other than the TIFIA Lender) agrees that they will not object to such Cash Collateral use or any Lessee financing under Section 364 of the Bankruptcy Code (a “DIP Financing”) (including any proposed orders for such Cash Collateral use and/or DIP Financing which are acceptable to the TIFIA Lender) to the extent the TIFIA DIP Financing Conditions are met; provided, that the TIFIA Lender shall not propose or support a TIFIA DIP Financing that does not satisfy the TIFIA DIP Financing Conditions; provided, further, that any such TIFIA DIP Financing may not roll-up or otherwise include or refinance any pre-petition TIFIA Obligations; provided, further, that each Secured Creditor have the right, but not the obligation, to participate in such DIP Financing on a pro rata basis.

(b) Until the payment in full has occurred in cash of the principal of and interest, and premium, if any, on all indebtedness and any other amounts constituting Senior Secured Obligations, if the Lessee shall be subject to any bankruptcy Proceeding and the Secured Creditors (other than the TIFIA Lender) shall desire to permit the use of Cash Collateral on which such Secured Creditor or any other creditor has a Lien, or to permit the Lessee to obtain DIP Financing (the “Senior DIP Financing”), whether from a Secured Creditor or any other Person, the TIFIA Lender agrees that it will not object to such Cash Collateral use or DIP Financing (including any proposed orders for such Cash Collateral use and/or DIP Financing which are acceptable to Secured Creditors (other than the TIFIA Lender)) to the extent the Senior DIP Financing Conditions are met; provided, that Secured Creditors (other than the TIFIA Lender) shall not propose or support a Senior DIP Financing that does not satisfy the Senior DIP Financing Conditions; provided, further, that any such Senior DIP Financing may not roll-up or otherwise include or refinance any pre-petition Secured Obligations; provided, further, that the TIFIA Lender shall have the right, but not the obligation, to participate in such DIP Financing on a pro rata basis.

## ARTICLE IX AMENDMENTS; WAIVERS; INSTRUCTIONS

Section 9.01 Modifications Generally. Subject to Sections 9.02 (Modifications Requiring All Secured Parties or Classes of Secured Parties), 9.03 (Modifications Allowed Without Consent) and 9.04 (Effect of Amendment on the Account Bank and the Agents):

(a) Except as otherwise provided in Section 5.01 (Limitations on Amendments of Secured Hedge Agreements) and Section 5.07 (Limitation on Hedge Provider Voting Rights) and this Article IX (Amendments; Waivers; Instructions), Modifications with respect to the provisions of any Senior Debt Document shall be made in accordance with the requirements of such Senior Debt Document.

(b) Except as otherwise provided in Section 5.01 (Limitations on Amendments of Secured Hedge Agreements), Section 5.07 (Limitation on Hedge Provider Voting Rights) and this Article IX (Amendments; Waivers; Instructions), Modifications with respect to the provisions of any Financing Document (other than the Senior Debt Documents and Security Documents) shall be made only with the consent of the Required Secured Creditors and each Agent affected thereby and otherwise in accordance with the requirements of such Financing Document.

(c) Except as otherwise provided in Section 5.01 (Limitations on Amendments of Secured Hedge Agreements), Section 5.07 (Limitation on Hedge Provider Voting Rights) and this Article IX (Amendments; Waivers; Instructions), Modifications with respect to the provisions of any Security Document may be made only with the consent of the Collateral Agent (acting at the written direction of the Intercreditor Agent (as directed by the Required Secured Creditors)) and otherwise in accordance with the requirements of such Security Document and this Agreement.

(d) Any such consent of the Required Secured Creditors in accordance with this Article IX (Amendments; Waivers; Instructions) shall be binding upon all Secured Parties, and upon any subsequent Secured Parties and of any Secured Obligations issued in exchange therefor (whether or not such subsequent Secured Parties thereof has notice thereof). If the Required Secured Creditors shall have consented to and approved any Modification to any Financing Document in accordance with the terms of this Article IX (Amendments; Waivers; Instructions) and the terms of the applicable Financing Document, no Secured Party shall have any right to object to the execution of the documentation setting forth such Modification or to the effectiveness thereof, 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 or effectiveness thereof, or to enjoin or restrain the Lessee or the Taxable REIT Subsidiary from executing the same or from taking any action pursuant to the provisions thereof.

(e) Upon the effectiveness of any amendment or modification to any Financing Document in accordance with the terms of this Article IX (Amendments; Waivers; Instructions), such Financing Document shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations thereunder of the parties thereto shall thereafter be determined, exercised and enforced subject in all respects to such amendment or modification.

(f) Notwithstanding the foregoing, any Waiver of an Event of Default set forth in a Senior Debt Document (and not this Agreement) by the applicable Class of Secured Creditors pursuant to the terms of the Senior Debt Documents under which such Event of Default arose shall constitute a Waiver of the Secured Obligations Event of Default hereunder to the extent arising solely from such Event of Default.

#### Section 9.02 Modifications Requiring All Secured Parties or Classes of Secured Parties.

Notwithstanding Section 9.01 (Modifications Generally): (a) the written consent of the Unanimous Voting Parties and the TIFIA Lender (to the extent the TIFIA Lender does not constitute a Unanimous Voting Party at such time) shall be required for:

(i) any Modification to the definitions of the terms “Class”, “Combined Exposure”, “Secured Creditors”, “Financing Documents”, “Secured Parties”, “Secured Obligations”, “Secured Pass Through Financing Obligations”, “Secured Lessee Obligations”, “Secured Taxable REIT Subsidiary

Obligations”, “Required Secured Creditors”, “Voting Party Percentage” or “Unanimous Voting Parties” to Section 9.01 (Modifications Generally) or to this Section 9.02 (Modifications Requiring All Secured Parties or Classes of Secured Parties); and

(ii) any Modification of any provision of this Agreement or any other Financing Document that has the effect of:

(A) permitting the Conduit Issuer, the Taxable REIT Subsidiary or the Lessee to assign its rights or delegate its duties under any Financing Document;

(B) releasing all or substantially all of the Collateral from the Lien of any of the Security Documents or allowing the release of any funds held by the Collateral Agent, other than (x) the release of Collateral or funds pursuant to the express provisions of any Security Document and (y) transfers or releases of funds pursuant to and as expressly contemplated by this Agreement;

(C) altering the relative priority of payments or application of proceeds, in each case, as among the Secured Parties, including applicable modifications to Section 4.02(b) (Post-Completion Revenue Account) or Section 8.04 (Application of Proceeds);

(D) amending any Secured Hedge Agreement pursuant to Section 5.01 (Limitations on Amendments of Secured Hedge Agreements);

(E) amending Section 7.02 (Each Party’s Entitlement to Vote); or

(F) causing any Secured Obligations to cease to be secured on a *pari passu* basis with all other Secured Obligations, if applicable, or add, modify or waive any provisions of the Financing Documents so as to subordinate the Secured Obligations to any other Secured Obligations without the prior written consent of each Secured Party affected thereby.

(b) Any Modification of (i) this Agreement, any Lessee Loan Agreement or any Security Document in a manner that would disproportionately and adversely impact the rights of any Class of Secured Creditors as compared to the other Classes of Secured Creditors or (ii) Section 11.01 (Expenses) or Section 11.02 (Indemnification), to the extent affecting any Class of Secured Creditors, shall, in each case, require the affirmative vote of the Class of Secured Creditors (in addition to the consent of the Required Secured Creditors to the extent otherwise required pursuant to this Agreement).

**Section 9.03 Modifications Allowed Without Consent.** Without the consent of any Secured Party or any other Person, the Intercreditor Agent shall, and shall instruct the Collateral Agent in writing to, at the request of any Secured Debt Representative, enter into one (1) or more Modifications of this Agreement, the Lessee Loan Agreements or the Security Documents, as applicable, to: (a) cure any immaterial ambiguity, defect or inconsistency;

(b) provide for any other ministerial actions with respect to matters arising under the Security Documents (including any such Modifications to incorporate appropriate ministerial provisions with respect to Additional Senior Indebtedness Obligations or Permitted Refinancing Indebtedness Obligations incurred in accordance with the terms of any Additional Senior Indebtedness Documents and any Permitted Refinancing Indebtedness Documents);

(c) make any change that would provide any additional rights or benefits to the Secured Parties;

(d) grant to or confer upon the Collateral Agent for the benefit of the Secured Parties any additional rights, remedies, powers, authority or security which may lawfully be granted or conferred and which are not contrary to or inconsistent with the Financing Documents as theretofore in effect;

(e) make, complete or confirm any grant of Collateral permitted or required by the Security Documents;

(f) modify such provisions of such Financing Document as shall, in the opinion of legal counsel to the Muni Bond Holders or holders of other tax-exempt Senior Debt, be necessary to assure that the interest on the Muni Bonds or an issue of such other tax-exempt Senior Debt not be includable in gross income for federal income tax purposes;

(g) with respect to any Financing Document governing any Secured Obligation that benefits from (or is intended to benefit from) (i) qualification under the Trust Indenture Act of 1939 or any similar federal statute hereafter in effect, or (ii) qualification for sale or exemption from registration or other limitations under the securities laws of the United States or of any of the states of the United States, amend, Modify, or supplement such Financing Document to permit or preserve such qualification or exemption and add to the Financing Documents such other terms, conditions and provisions as may be required to continue such exemption under said Trust Indenture Act of 1939 or similar federal statute, or to continue the exemption from registration;

(h) authorize and facilitate the issuance of Additional Senior Indebtedness and Permitted Refinancing Indebtedness and prescribe the terms, forms and details thereof, to the extent permitted by and in accordance with the terms of the Financing Documents (including, without limitation, in connection with the execution and delivery of any related Accession Agreement);

(i) evidence the succession of a successor Agent or co-Agent under any Financing Document;

(j) make any Benchmark Transition Conforming Changes; and

(k) correct any typographical errors, drafting mistakes or other similar mistakes that do not modify the intended rights, benefits and obligations of the parties hereto,

in each case, which do not involve any material change; provided that such actions pursuant to this Section 9.03 (Modifications Allowed Without Consent) do not materially adversely affect the interests of the Secured Parties; and provided further, that by executing or acceding to this Agreement, each Secured Party consents to any Modification which is made in compliance with this Section 9.03 (Modifications Allowed Without Consent). The Collateral Agent may, in exercising judgment under this Section 9.03 (Modifications Allowed Without Consent), conclusively rely, and shall be protected in relying, in good faith, upon an opinion of legal counsel (including counsel to Lessee) or an opinion or report of engineers, accountants or other experts.

The Collateral Agent shall, at the written instruction of the Intercreditor Agent (and the Intercreditor Agent is hereby instructed to so instruct the Collateral Agent, without further action or consent of any Secured Party) Modify and/or execute any documentation necessary to extend the benefit of the Security Documents to the Secured Parties under the Financing Documents, as in effect at such time, including to increase the amount of the Secured Obligations secured pursuant to the terms of such Security Documents, in each case in accordance with the terms hereof and the terms of the Financing Documents, as in effect at such time. Any such written instruction of the Intercreditor Agent shall specifically refer to this Section 9.03 (Modifications Allowed Without Consent). In connection with any incurrence of Permitted Refinancing Indebtedness Obligations or Additional Senior Indebtedness Obligations by the Conduit Issuer, it is the

intention of each of the Conduit Issuer, the Lessee and the Taxable REIT Subsidiary that the Security Documents and all Liens granted thereunder continue to be valid, enforceable and in full force and effect and extend to, as Secured Obligations thereunder, such Permitted Refinancing Indebtedness Obligations and Additional Senior Indebtedness Obligations. All covenants, agreements and grants of Liens made by the Conduit Issuer, the Lessee or the Taxable REIT Subsidiary in the Security Documents as of any Closing Date shall be ratified and remade as of the date of the incurrence of any Permitted Refinancing Indebtedness Obligations or Additional Senior Indebtedness Obligations. The Secured Parties confirm that the Intercreditor Agent is authorized to instruct the Collateral Agent in respect of the Modifications described in this Section 9.03 (Modifications Allowed Without Consent).

Section 9.04 Effect of Amendment on the Account Bank and the Agents. No party hereto shall amend any provision of this Agreement or any other Financing Document that expands or increases the obligations or duties, or reduces or limits the rights, protections, benefits or privileges, or that otherwise materially affects, the Account Bank or any Agent party thereto without the written consent of the Account Bank or such Agent, as applicable.

Section 9.05 Amendments Affecting the Conduit Issuer. In no event shall any Financing Document be modified in any manner that would affect the rights, remedies, obligations or liabilities of the Conduit Issuer without the prior written consent of the Conduit Issuer.

Section 9.06 Amendments to Senior Debt Documents. Notwithstanding anything else to the contrary in this Agreement, no Secured Creditor (or any Senior Debt Representative acting on behalf of such Secured Creditor) shall, without the prior written consent of the TIFIA Lender and the Intercreditor Agent (acting at the direction of the Required Secured Creditors in accordance with this Agreement), enter into any amendments with the Lessee, or grant any waivers or consents to the Lessee, in connection with any applicable Financing Document that have the effect of:

(A) except in connection with the incurrence by the Lessee of Additional Senior Indebtedness and/or Permitted Refinancing Indebtedness and/or other Permitted Indebtedness in accordance with the terms hereof (and any amendments thereto permitted thereunder), increasing the lending commitments of any Secured Party over the amounts permitted under the Financing Documents, shorten the fixed maturity of the Senior Secured Obligations;

(B) except in connection with the incurrence by the Lessee of Additional Senior Indebtedness and/or Permitted Refinancing Indebtedness and/or other Permitted Indebtedness in accordance with the terms hereof (and any amendments thereto permitted thereunder), increasing the rate of interest or yield of, change the method of calculation of interest upon, or shorten the time for payment of interest on, such Senior Secured Obligations;

(C) except in connection with the incurrence by the Lessee of Additional Senior Indebtedness and/or Permitted Refinancing Indebtedness and/or other Permitted Indebtedness in accordance with the terms hereof (and any amendments thereto permitted thereunder), increasing any fees payable under such Finance Document, or shorten the scheduled date of any payment thereof;

(D) except in connection with the incurrence by the Lessee of Additional Senior Indebtedness and/or Permitted Refinancing Indebtedness and/or other Permitted Indebtedness in accordance with the terms hereof (and any amendments thereto permitted thereunder), providing for dates of payments of principal or interest which are either earlier or later than such dates provided for under such Finance Document;

(E) permits the amendment of any hedging arrangements for the Senior Secured Obligations that affects the TIFIA Lender in any material adverse respect, including any material adverse effect on the ability of the Lessee to make any payment pursuant to any TIFIA Loan Agreement or any other Financing Document;

(F) except in connection with the incurrence by the Lessee of Additional Senior Indebtedness and/or Permitted Refinancing Indebtedness and/or other Permitted Indebtedness in accordance with the terms hereof (and any amendments thereto permitted thereunder), adding or modifying any covenant, event of default or mandatory prepayment event for the benefit of such Secured Creditor or increase the debt service reserve requirement with respect to the applicable Senior Secured Obligations, in each case, in a manner which is material and adverse to the TIFIA Lender or any other Secured Creditor, including any material adverse effect on the ability of the Lessee to make any payment in respect of the TIFIA Loan or any other Finance Document;

(G) reducing the amount of proceeds of any disposition of Collateral that are required under such Finance Document to be used to prepay Senior Secured Obligations or, to the extent not constituting Senior Secured Obligations at such time, TIFIA Obligations; or

(H) following the occurrence and during the continuance of a Secured Obligations Event of Default under the Finance Documents with respect to the applicable Secured Obligations, making any other modification to such Finance Document that could adversely affect the TIFIA Lender or any other Secured Creditor, including any material adverse effect on the ability of the Lessee to make any payment in respect of the TIFIA Loan or under any other Finance Document;

provided that the prior written consent of the TIFIA Lender and the Intercreditor Agent shall not be required in connection with the incurrence by the Lessee of Additional Senior Indebtedness and/or Permitted Refinancing Indebtedness and/or other Permitted Indebtedness in accordance with the terms hereof.

## ARTICLE X THE INTERCREDITOR AGENT, THE COLLATERAL AGENT AND THE ACCOUNT BANK

### Section 10.01 Appointment and Authorization of Common Appointee.

(a) Each Secured Party (other than the Intercreditor Agent) hereby irrevocably appoints MUFG Bank, Ltd. and its successors and permitted assigns to act on its behalf as Intercreditor Agent hereunder and under the other Financing Documents (subject to the provisions in Section 10.09 (Successor Agents)), and designates and authorizes the Intercreditor Agent (and the Collateral Agent at the direction of the Intercreditor Agent) to take such actions on its behalf under the provisions of this Agreement and each other Security Document and to exercise such powers and perform such duties as are expressly delegated to the Intercreditor Agent by the terms of this Agreement or any other Financing Document, together with such actions and powers as are reasonably incidental thereto. The Intercreditor Agent may perform any of its duties through its officers, directors, agents, employees, or affiliates.

(b) U.S. Bank shall act as the Collateral Agent under the Financing Documents, and each of the Secured Parties (other than the Collateral Agent) hereby irrevocably appoints and authorizes U.S. Bank to act for the benefit of the Secured Parties for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted to secure any of the Secured Obligations, together with such powers as are reasonably incidental thereto. In this connection, the Collateral Agent (and any co-agents, sub-agents and attorneys-in-fact appointed by the Collateral Agent pursuant to Section 10.02 (Delegation of Duties) for

purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents) shall be entitled to the benefits of all provisions of this Article X (The Intercreditor Agent, the Collateral Agent and the Account Bank) (including Section 10.07 (Indemnification of Common Appointee-Related Persons)), as though such co-agents, sub-agents and attorneys-in-fact were the Collateral Agent under the Financing Documents) and Section 9.04 (Effect of Amendment on the Account Bank and the Agents) as if set forth in full herein with respect thereto and all references to the Intercreditor Agent in this Article X (The Intercreditor Agent, the Collateral Agent and the Account Bank) shall, where applicable, be read as including a reference to the Collateral Agent.

(c) Each party hereto hereby irrevocably appoints and authorizes U.S. Bank to act as Account Bank, and by its signature below (and any successors thereto pursuant to this Article X (The Intercreditor Agent, the Collateral Agent and the Account Bank)), U.S. Bank hereby accepts such appointment and agrees to act as Account Bank under the express terms of this Agreement. The Account Bank is authorized to exercise such rights, powers and authorities as are specifically delegated to the Account Bank by the terms of this Agreement, together with all such rights, powers, and authorities as are reasonably incidental thereto.

(d) The provisions of this Article X (The Intercreditor Agent, the Collateral Agent and the Account Bank) (except insofar as they relate to the Account Bank) are solely for the benefit of the Intercreditor Agent and the Secured Parties, and neither the Conduit Issuer nor the Lessee shall have rights as a third party beneficiary of any of such provisions (except insofar as they relate to the Account Bank). Notwithstanding any provision to the contrary contained elsewhere herein or in any other Financing Document, no Common Appointee shall have any duties or responsibilities, except those expressly set forth herein, nor shall any Common Appointee have or be deemed to have any fiduciary relationship with any Secured Party or participant or any other Person, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Financing Document or otherwise exist against any Common Appointee. Regardless of whether a Secured Obligations Default has occurred and is continuing and without limiting the generality of the foregoing sentence, the use of the term “agent” herein and in the other Financing Documents with reference to any Common Appointee is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties; additionally, each Secured Party agrees that it will not assert any claim against any Common Appointee based on an alleged breach of fiduciary duty by such Common Appointee in connection with this Agreement and the transactions contemplated hereby.

(e) Without limiting the generality of the foregoing, the Secured Parties hereby expressly authorize (i) the Intercreditor Agent and the Collateral Agent, as applicable, to execute and deliver, and to perform its obligations under, each of the Financing Documents to which the Intercreditor Agent or the Collateral Agent, as applicable, is a party and (ii) the Intercreditor Agent and the Collateral Agent, as applicable, to execute and deliver, and to perform its obligations under, any and all documents (including releases, payoff letters and similar documents) with respect to the Collateral and the rights of the Secured Parties with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Security Documents and acknowledge and agree that any such action by any Common Appointee shall bind the Secured Parties.

(f) Nothing in this Agreement or any Financing Document shall require any Common Appointee to account to any Secured Party for any sum or the profit element of any sum received by such Common Appointee for its account.

**Section 10.02 Delegation of Duties.** The Intercreditor Agent may execute any of its duties and exercise its rights and powers under this Agreement or any other Financing Document (including for

purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents or of exercising any rights and remedies thereunder) by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. The Intercreditor Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Common Appointee-Related Persons. The Intercreditor Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct by the Intercreditor Agent, as determined by a final non-appealable judgment by a court of competent jurisdiction. The exculpatory provisions of this Article X (The Intercreditor Agent, the Collateral Agent and the Account Bank) shall apply to any such sub-agent and to the Common Appointee-Related Persons of the Intercreditor Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Intercreditor Agent.

Section 10.03 Liability of Agents. (a) No Common Appointee-Related Person shall be (i) liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Financing Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct in connection with its duties expressly set forth herein, to the extent determined in a final, non-appealable judgment by a court of competent jurisdiction), (ii) liable for any action taken or not taken by it (A) with the consent or at the request of the Required Secured Creditors (or such other number or percentage of the Secured Creditors as shall be necessary, or as the Intercreditor Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 10.01 (Appointment and Authorization of Common Appointee) and Section 8.03 (Exercise of Remedies)) or (B) in the absence of its own gross negligence or willful misconduct as determined by the final, non-appealable judgment of a court of competent jurisdiction, in connection with its duties expressly set forth herein, (iii) responsible in any manner to any Secured Party or participant for any recital, statement, representation or warranty made by the Lessee or any officer thereof, contained herein or in any other Financing Document, or in any certificate, report, statement or other document referred to or provided for in, or received by the Intercreditor Agent under or in connection with, this Agreement or any other Financing Document, (iv) responsible for or have any duty to ascertain or inquire into the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Financing Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien, or security interest created or purported to be created under the Security Documents, or for any failure of the Lessee or any other party to any Financing Document to perform its obligations hereunder or (v) responsible for or have any duty to ascertain or inquire into the value or the sufficiency of any Collateral. No Common Appointee-Related Person shall be under any obligation to any Secured Party or participant to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Financing Document, or to inspect the properties, books or records of the Conduit Issuer, the Lessee or any Affiliate thereof. The Intercreditor Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions relating to Disqualified Institutions. Without limiting the generality of the foregoing, the Intercreditor Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Secured Party or participant or prospective Secured Party or participant is a Disqualified Institution or (y) have any liability with respect to or arising out of any assignment or participation of loans, or disclosure of confidential information, to, or the restriction on any exercise of rights or remedies of, any Disqualified Institution.

(b) As to any matters not expressly provided for herein and in the other Financing Documents (including enforcement or collection), no Common Appointee shall be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the written instructions of, in the case of the Intercreditor Agent, the Required Secured Creditors (or such other number or percentage of the Secured Creditors as shall be necessary, pursuant to the terms in the Financing Documents), in the case of the Collateral Agent, the

Intercreditor Agent and, in the case of the Account Bank, the Collateral Agent, and, unless and until revoked in writing, such instructions shall be binding upon each Secured Party; provided, however, that no Common Appointee, as applicable, shall be required to take any action that (i) such Common Appointee in good faith believes exposes it to liability unless such Common Appointee receives an indemnification satisfactory to it from the Secured Parties with respect to such action or (ii) is contrary to this Agreement or any other Financing Document or applicable law, including any action that may be in violation of the automatic stay under any requirement of law relating to bankruptcy, insolvency or reorganization or relief of debtors or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any requirement of law relating to bankruptcy, insolvency or reorganization or relief of debtors; provided, further, that a Common Appointee may seek clarification or direction from, in the case of the Intercreditor Agent, the Required Secured Creditors, in the case of the Collateral Agent, the Intercreditor Agent and, in the case of the Account Bank, the Collateral Agent prior to the exercise of any such instructed action and may refrain from acting until such clarification or direction has been provided. No Common Appointee shall have any duty to disclose, except as expressly set forth herein and in the other Financing Documents, and shall not be liable for the failure to disclose, any information relating to the Conduit Issuer, the Lessee or any of its Affiliates that is communicated to or obtained by any Person serving as a Common Appointee or any of its Affiliates in any capacity. Nothing in this Agreement shall require any Common Appointee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(c) Whenever in the administration of this Agreement the Account Bank shall deem it necessary or desirable that a factual or legal matter be proved or established in connection with the Account Bank taking, suffering or omitting to take any action hereunder, such matter (unless other evidence in respect thereof is herein specifically prescribed) may for the purposes of such action be deemed to be conclusively proved or established by a certificate of a Responsible Officer of the Lessee or a certificate of an officer of the Collateral Agent or from a legal opinion from counsel to the Lessee.

(d) Each of the Account Bank and the Collateral Agent is hereby authorized to obey and comply with all writs, orders, judgments or decrees issued by any court or administrative agency affecting any Project Accounts or funds or property on deposit or credited thereto or otherwise held by the Account Bank or the Collateral Agent. Neither the Account Bank nor the Collateral Agent shall be liable to any of the parties hereto or any of the Secured Parties or their successors, heirs or personal representatives by reason of compliance with such writs, orders, judgments or decrees, notwithstanding such writ, order, judgment or decree is later reversed, modified, set aside or vacated.

Section 10.04 Reliance by Agents. Each Common Appointee shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, request, consent, certificate, instrument, affidavit, letter, telegram, facsimile, telex or telephone message, electronic mail message, Internet or intranet website posting or other distribution statement or other document or conversation reasonably believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons. Each Common Appointee may also rely upon any statement made to it orally or by telephone and reasonably believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Credit Extension or the purchase of Private Placement Notes that by its terms must be fulfilled to the satisfaction of the Secured Creditors, the Intercreditor Agent may presume that such condition is satisfactory to such Secured Creditor unless the Intercreditor Agent shall have received notice to the contrary from such Secured Creditor prior to the making of such Credit Extension or the purchase of such Private Placement Notes. Each Common Appointee may consult with, and rely upon (and be fully protected in relying upon), advice and statements of legal counsel (including counsel to Lessee),

independent accountants and other experts selected by such Agent. Each Common Appointee shall be fully justified in failing or refusing to take any action under any Financing Document unless it shall first receive such advice or concurrence of, in the case of the Intercreditor Agent and the Collateral Agent, the Required Secured Creditor (or such greater number of Secured Creditors as may be expressly required hereby in any instance) and, in the case of the Account Bank, the Collateral Agent, as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Secured Creditors against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Each Common Appointee shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Financing Document in accordance with a request or consent of, in the case of the Intercreditor Agent and the Collateral Agent, the Required Secured Creditors (or such greater number of Secured Creditors as may be expressly required hereby in any instance) and, in the case of the Account Bank, the Collateral Agent, and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Secured Creditors.

Section 10.05 Notice of Default. No Common Appointee shall be deemed to have knowledge or notice of the occurrence of any Secured Obligations Default, unless the Intercreditor Agent shall have received written notice from a Secured Creditor referring to this Agreement, describing such Secured Obligations Default and stating that such notice is a “notice of default”. Each of the Intercreditor Agent and the Collateral Agent will notify the other Secured Creditors of its receipt of any such notice. The Intercreditor Agent shall take such action with respect to any Secured Obligations Event of Default as may be directed by the Required Secured Creditors in accordance with this Agreement; provided, however, that unless and until the Intercreditor Agent has received any such direction, the Intercreditor Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Secured Obligations Event of Default as it shall deem advisable or in the best interest of the Secured Creditors.

Section 10.06 Credit Decision; Disclosure of Information by Agents. Each Secured Creditor acknowledges that no Common Appointee-Related Person has made any representation or warranty to it, and that no act by any Common Appointee hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of the Lessee or any Affiliate thereof, shall be deemed to constitute any representation or warranty by any Common Appointee-Related Person to any Secured Creditor as to any matter, including whether Common Appointee-Related Persons have disclosed material information in their possession. Each Secured Creditor represents to each Common Appointee that it has, independently and without reliance upon any Common Appointee-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Conduit Issuer and the Lessee, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement. Each Secured Creditor also represents that it will, independently and without reliance upon any Common Appointee-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Financing Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Conduit Issuer and the Lessee. Except for notices, reports and other documents expressly required to be furnished to the Secured Creditors by any Common Appointee herein, such Common Appointee shall not have any duty or responsibility to provide any Secured Party with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of the Conduit Issuer or the Lessee which may come into the possession of any Common Appointee-Related Person. Subject to the satisfaction of each of the conditions to the occurrence of the Effective Date set forth in the Credit Agreement, including approval of the Financing Documents contemplated thereby, each Secured Party, by delivering its signature page to this Agreement on the date hereof, or delivering its signature page to an Accession Agreement or any other Financing Document pursuant to which it shall become a Secured Party

hereunder, shall be deemed to have acknowledged receipt of, and consented to and approved, each Financing Document and each other document required to be delivered to, or be approved by or satisfactory to, the Intercreditor Agent or the Secured Parties on the Effective Date or, as applicable, the date of such Accession Agreement to which it is a party.

**Section 10.07 Indemnification of Common Appointee-Related Persons.** Whether or not the transactions contemplated hereby are consummated, each Secured Creditor shall, on a ratable basis based on such Secured Creditor's Pro Rata Share of all Senior Debt, indemnify upon demand each Common Appointee-Related Person (to the extent not reimbursed by or on behalf of the Lessee and without limiting the obligation of the Lessee to do so), and hold harmless each Common Appointee-Related Person in each case from and against any and all Indemnified Liabilities incurred by such Common Appointee-Related Person; provided, however, that no Secured Creditor shall be liable for any Indemnified Liabilities incurred by a Common Appointee-Related Person to the extent such Indemnified Liabilities are determined in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Common Appointee-Related Person's own gross negligence or willful misconduct; provided, however, that no action taken in accordance with the directions of the Required Secured Creditors (or such other number or percentage of the Secured Creditors as shall be required by the Financing Documents) or, in the case of the Collateral Agent, taken in accordance with the directions of the Intercreditor Agent, or, in the case of the Account Bank, taken in accordance with the directions of the Collateral Agent, shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 10.07 (Indemnification of Common Appointee-Related Persons). In the case of any investigation, litigation or proceeding giving rise to any Indemnified Liabilities, this Section 10.07 (Indemnification of Common Appointee-Related Persons) shall apply whether or not any such investigation, litigation or proceeding is brought by any Secured Creditor or any other Person. Without limiting the foregoing, each Secured Creditor shall reimburse the Intercreditor Agent upon demand for its Pro Rata Share of any costs or out-of-pocket expenses (including the fees, disbursements and other charges of counsel) incurred by the Intercreditor Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Financing Document, or any document contemplated by or referred to herein, to the extent that the Intercreditor Agent is not reimbursed for such expenses by or on behalf of the Lessee; provided that such reimbursement by the Secured Creditors shall not affect the Lessee's continuing reimbursement obligations with respect thereto; provided, further, that failure of any Secured Creditor to indemnify or reimburse the Intercreditor Agent shall not relieve any other Secured Creditor of its obligation in respect thereof. The protections and exculpations of each Common Appointee (and Common Appointee-Related Parties) set forth in this Article X (The Intercreditor Agent, the Collateral Agent and the Account Bank), including the undertakings in this Section 10.07 (Indemnification of Common Appointee-Related Persons), shall survive termination of this Agreement, the termination of the Aggregate Commitments, the payment of Secured Obligations and the resignation or removal of such Common Appointee.

**Section 10.10 Collateral and Guaranty Matters.** Except with respect to the exercise of set-off rights under any Financing Document or with respect to a Secured Party's right to file a proof of claim in an insolvency proceeding, no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce any guarantee of the Secured Obligations, it being understood and agreed that all powers, rights and remedies under this Agreement and the Security Documents to which the Collateral Agent is a party may be exercised solely by the Collateral Agent on behalf of the Secured Parties in accordance with the terms thereof. Each of the Secured Creditors irrevocably authorizes the Collateral Agent and the Collateral Agent shall to the extent requested by the Lessee or, solely in the case of paragraph (b) below, to the extent provided for under this Agreement:

(a) release any Lien on any property granted to or held by the Collateral Agent under any Financing Document (i) at the end of the Security Period, (ii) that is sold, disposed of or distributed or to be sold, disposed of or distributed as part of or in connection with any transaction permitted hereunder or under any other Financing Document, (iii) subject to any set-off rights under any Financing Document, if approved, authorized or ratified in writing by the Required Secured Creditors or (iv) that constitutes Excluded Property (as defined in any Security Document) as a result of an occurrence not prohibited hereunder; and

(b) release any Lien on any property granted to or held by the Collateral Agent under any Financing Document on such property that is permitted to be disposed of by the terms of this Agreement.

Upon request by the Intercreditor Agent at any time, the Required Secured Creditors will confirm in writing the Collateral Agent's authority to release its interest in particular types or items of property. In each case as specified in this Section 10.10 (Collateral and Guaranty Matters), the applicable Common Appointee will (and each Secured Party irrevocably authorizes the applicable Common Appointee to) execute and deliver to the Lessee such documents as the Lessee may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents, in each case in accordance with the terms of the Financing Documents and this Section 10.10 (Collateral and Guaranty Matters). Additionally, upon reasonable request of the Lessee, the Collateral Agent will return possessory Collateral held by it that is released from the security interests created by the Security Documents pursuant to this Section 10.10 (Collateral and Guaranty Matters); provided that in each case of this Section 10.10 (Collateral and Guaranty Matters), upon the Collateral Agent's reasonable request, the Lessee shall have delivered to the Intercreditor Agent and Collateral Agent a certificate of a Responsible Officer of the Lessee certifying that any such transaction has been consummated in compliance with the Financing Documents and that such release is permitted hereby; provided that in the event that the Collateral Agent loses or misplaces any possessory collateral delivered to the Collateral Agent by the Conduit Issuer or the Lessee, upon reasonable request of the Lessee, the Collateral Agent shall provide a loss affidavit to the Conduit Issuer or the Lessee, as the case may be, in the form customarily provided by the Collateral Agent in such circumstances.

Upon termination of this Agreement in accordance with the terms hereof, 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 Lessee, the Conduit Issuer and each other grantor of security under a Security Document. Upon any such termination, the Collateral Agent will, at the Lessee's direction and expense, execute and deliver to the Lessee such documents as the Lessee shall reasonably request to evidence such termination.

Section 10.12 Security Documents. The Intercreditor Agent and the Collateral Agent are authorized by the Secured Debt Representatives and other Secured Parties to, to the extent required by the terms of the Financing Documents, (a) enter into any Security Document, or (b) make or consent to any filings or take any other actions in connection therewith (and any amendments, amendments and restatements, restatements or Waivers of or supplements to or other modifications to, such agreements in connection with the incurrence by the Conduit Issuer and the Lessee of any Permitted Refinancing Indebtedness that is permitted to be secured pursuant to this Common Term Agreement, in order to permit such Indebtedness to be secured by a valid, perfected lien on the Collateral (with such priority as may be designated by the Lessee, to the extent such priority is permitted by the Financing Documents)), and the parties hereto acknowledge that any Security Document, consent, filing or other action will be binding upon them. Each Secured Debt Representative and other Secured Party hereby authorizes and instructs the Intercreditor Agent (and the Collateral Agent at the direction of the Intercreditor Agent) to enter into any Security Document (and any amendments, amendments and restatements, restatements or Waivers of or supplements to or other modifications to, such agreements in connection with the incurrence by the Lessee of any Indebtedness of the Lessee that is permitted to be secured pursuant to this Agreement, in order to

permit such Indebtedness to be secured by a valid, perfected lien on the Collateral (with such priority as may be designated by the Lessee, to the extent such priority is permitted by the Financing Documents)), and to subject the Liens on the Collateral securing the Secured Obligations to the provisions thereof.

#### Section 10.13 Credit Bidding

Each Secured Party hereby irrevocably authorizes the Collateral Agent at the direction of the Intercreditor Agent, to credit bid all or any portion of the Secured Obligations (including by accepting some or all of the Collateral in satisfaction of some or all of the Secured Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one (1) or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Sections 363, 1123 or 1129 of the Bankruptcy Code of the United States, or any other Debtor Relief Laws in any other jurisdictions to which the Lessee is subject, or (b) at any other sale, foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Collateral Agent (whether by judicial action or otherwise) in accordance with any applicable law. In connection with any such credit bid and purchase, the Secured Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid by the Collateral Agent at the direction of the Intercreditor Agent on a ratable basis (with Secured Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that shall vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) for the asset or assets so purchased (or for the equity interests or debt instruments of the acquisition vehicle or vehicles that are issued in connection with such purchase); provided, that for the avoidance of doubt any credit bid by the Intercreditor Agent shall require the written consent of the TIFIA Lender. In connection with any such bid, (i) the Collateral Agent shall be authorized to form one (1) or more acquisition vehicles and to assign any successful credit bid to such acquisition vehicle or vehicles, (ii) each of the Secured Parties' ratable interests in the Secured Obligations which were credit bid shall be deemed without any further action under this Agreement to be assigned to such vehicle or vehicles for the purpose of closing such sale, (iii) the Collateral Agent shall be authorized to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Intercreditor Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or equity interests thereof, shall be governed, directly or indirectly, by, and the governing documents shall provide for, control by the vote of the Required Secured Creditors or their permitted assignees under the terms of this Agreement or the governing documents of the applicable acquisition vehicle or vehicles, as the case may be, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Secured Creditors contained in Section 10.01 (Appointment and Authorization of Common Appointee) of this Agreement), (iv) the Collateral Agent on behalf of such acquisition vehicle or vehicles shall be authorized to issue to each of the Secured Parties, ratably on account of the relevant Secured Obligations which were credit bid, interests, whether as equity, partnership, limited partnership interests or membership interests, in any such acquisition vehicle and/or debt instruments issued by such acquisition vehicle, all without the need for any Secured Party or acquisition vehicle to take any further action, and (v) to the extent that Secured Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Secured Obligations assigned to the acquisition vehicle exceeds the amount of Secured Obligations credit bid by the acquisition vehicle or otherwise), such Secured Obligations shall automatically be reassigned to the Secured Parties pro rata with their original interest in such Secured Obligations and the equity interests and/or debt instruments issued by any acquisition vehicle on account of such Secured Obligations shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action. Notwithstanding that the ratable portion of the Secured Obligations of each Secured Party are deemed assigned to the acquisition vehicle or vehicles as set forth in clause (ii) above, each Secured Party shall execute such documents and provide such information regarding the Secured Party (and/or any designee of the Secured Party which will receive interests in or

debt instruments issued by such acquisition vehicle) as the Collateral Agent may reasonably request in connection with the formation of any acquisition vehicle, the formulation or submission of any credit bid or the consummation of the transactions contemplated by such credit bid. The TIFIA Lender shall be entitled in its sole discretion to elect to participate on a pro rata basis with the other Secured Parties (with the extent of such participation by the TIFIA Lender not to exceed the ratio of the then-outstanding TIFIA Obligations to the then outstanding Senior Secured Obligations (without giving any effect to the TIFIA Obligations)) in any bid for all or any portion of the Collateral, including any credit bid pursued by the Required Secured Creditors as contemplated by this section. In addition, nothing in this Agreement shall be construed as the TIFIA Lender's consent to a sale of the Collateral pursuant to 11 U.S.C. § 363(f) or pursuant to a chapter 11 plan of reorganization. The determination by the TIFIA Lender to participate in any proposed credit bid or to consent to a sale of the Collateral pursuant to 11 U.S.C. § 363(f) or pursuant to a chapter 11 plan of reorganization shall be subject to the provisions of Section 8.06(d) hereof in all respects.

Section 11.18 Effectiveness of TIFIA Specific Provisions. Notwithstanding anything else to the contrary herein, the provisions of Section 8.06, Section 8.07, Section 8.08, Section 8.09, Section 8.10, Section 8.11, Section 8.12, Section 8.13 and Section 9.06 shall only become effective at such as time as: (i) there is any TIFIA Loan outstanding, and (ii) the aggregate amount of Permitted Refinancing Indebtedness at such time exceeds the outstanding amount of the Loans.

**SCHEDULE 2**  
**COMMON REPRESENTATIONS AND WARRANTIES, COVENANTS AND EVENTS OF**  
**DEFAULT**

**AFFIRMATIVE COVENANTS**

The covenants set forth in this Article (*Affirmative Covenants*) shall apply with respect to all Senior Debt and TIFIA Obligations in accordance with Section 2.02 (*Covenants*) of this Agreement.

Section 3.01 Financial Statements. The Lessee shall deliver to the Intercreditor Agent, the Conduit Issuer and each Secured Debt Representative:

(a) within one hundred twenty (120) days after the end of each Fiscal Year of the Lessee, a balance sheet of the Lessee as at the end of such Fiscal Year, and the related statements of income or operations, changes in shareholders' equity, and cash flows for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion (including the notes thereto) of an independent certified public accountant of nationally recognized standing, which report and opinion shall be prepared in accordance with GAAP and shall include a certification to the effect that such statements fairly present in all material respects the financial position and results of operations of the Lessee as at the dates indicated in conformity with GAAP and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit; and

(b) within sixty (60) days after the end of each of the first (1st) and third (3rd) fiscal quarters of each Fiscal Year of the Lessee (commencing with the fiscal quarter immediately following the first (1st) full fiscal quarter after the First Closing Date), an unaudited balance sheet of the Lessee as at the end of such fiscal quarter, and the related statements of income or operations, changes in shareholders' equity, and cash flows for such semi-annual period and for the portion of the Fiscal Year then ended, setting forth in each case in comparative form the figures for the corresponding semi-annual period of the previous Fiscal Year and the corresponding portion of the previous Fiscal Year, in each case, all in reasonable detail and, certified by the chief executive officer, chief financial officer, treasurer or controller of the Lessee as fairly presenting the financial condition, results of operations, shareholders' equity and cash flows of the Lessee, consistent with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

Documents required to be delivered pursuant to paragraph (a) or (b) above may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which such documents are posted on the Lessee's behalf on an Internet or intranet website, if any, to which each Secured Party has access (whether a commercial, third-party website or whether sponsored by the Intercreditor Agent); provided that (i) the Lessee shall deliver paper copies of such documents to any Secured Party and the Conduit Issuer upon its request to the Lessee to deliver such paper copies until a written request to cease delivering paper copies is given by such Secured Party and (ii) the Lessee shall notify each Secured Party and the Conduit Issuer (by telecopier or electronic mail) of the posting of any such documents and provide to the Intercreditor Agent or any Secured Debt Representative by electronic mail electronic versions of such documents. Neither the Intercreditor Agent nor any Secured Debt Representative shall have any obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall not have any responsibility to monitor compliance by the Lessee with any such request by any other Secured Party for delivery, and each Secured Party shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

Section 3.02 Certificates; Reports; Other Information. The Lessee shall deliver the following information to each Secured Debt Representative, the Conduit Issuer and the Intercreditor Agent:

(a) concurrently with the delivery of the financial statements referred to under the captions in Sections (a) (Section 3.01 Financial Statements) and (b) (Section 3.01 Financial Statements) of this Article (Affirmative Covenants) of this Schedule 2 (Common Representations and Warranties, Covenants and Events of Default), a certificate of the chief executive officer, chief financial officer, treasurer or controller of the Lessee certifying that no Secured Obligations Default has occurred or, if a Secured Obligations Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto;

(b) after the occurrence of the Phase A DBO Date, concurrently with the delivery of the financial statements referred to in Sections (a) (Section 3.01 Financial Statements) and (b) (Section 3.01 Financial Statements) of this Article (Affirmative Covenants) of this Schedule 2 (Common Representations and Warranties, Covenants and Events of Default), a certificate signed by the chief executive officer, chief financial officer, treasurer or controller of the Lessee, as to (i) the Total Obligations Coverage Ratio calculated using Free Cash Flow, (ii) the Total Obligations Coverage Ratio using Free Cash Flow without giving effect to clause (b) of the definition thereof, (iii) the amount and calculation of any deferrable amounts (including, as applicable, Port Authority Priority Payments, amounts paid to the Manager under the Management Service Agreement and Second Additional Rental Amounts) which are deducted from the calculation of Free Cash Flow and (iv) the amount of any deferred amounts outstanding as of such date (including, as applicable, Port Authority Priority Payments, amounts paid to the Manager under the Management Service Agreement and Second Additional Rental Amounts), in each case with respect to the immediately prior Calculation Date, which certificate shall set forth all information reasonably necessary to calculate each such Total Obligations Coverage Ratio for the TOCR Calculation Period ending on such Calculation Date and shall show the calculation of each such Total Obligations Coverage Ratio (each such certificate, a “**Compliance Certificate**”);

(c) monthly progress reports with respect to each Phase (if any) for which Phase NTP has been issued but the Lease Completion Date has not occurred, by the twenty-eighth (28th) day of each calendar month for the preceding calendar month, which monthly progress reports shall be substantially in the form of Exhibit B (Monthly Progress Reports);

(d) quarterly operating reports with respect to each Phase for which the Lease Completion Date has occurred (if any), by the twenty-eighth (28th) day of each calendar month succeeding a fiscal quarter, for the preceding fiscal quarter, which quarterly operating reports shall be substantially in a form as mutually agreed between the Lessee and the Intercreditor Agent prior to the First Closing Date; and

(e) promptly, such additional information regarding compliance with the terms of the Financing Documents and the Material Project Documents and Anchor User Agreements to which it is a party, as any Secured Debt Representative may from time to time reasonably request, including without limitation, any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of Beneficial Owners identified in parts (c) or (d) of such certification.

Section 3.03 Operating Budget and Plan. The Lessee shall deliver to the Intercreditor Agent, no later than thirty (30) days prior to the beginning of each Fiscal Year of the Lessee, the Annual Operating Budget for such Fiscal Year.

Section 3.04 Notices. The Lessee shall deliver the following information to the Intercreditor Agent, each Secured Debt Representative and the Conduit Issuer promptly, and in any event within ten (10)

Business Days (or in the case of paragraph (a) below, five (5) Business Days), after actual knowledge thereof by a Responsible Officer of the Lessee:

- (a) the occurrence of any Secured Obligations Default or Secured Obligations Event of Default;
- (b) any matter that has resulted or would reasonably be expected to result in a Material Adverse Effect;
- (c) the occurrence of any ERISA Event which, individually or when aggregated with any other ERISA Event, would reasonably be expected to have a Material Adverse Effect;
- (d) any material change in accounting policies or financial reporting practices by the Lessee;
- (e) any early cancellation or material change in the terms, coverage or amounts of any insurance required by the Lease;
- (f) any revocation, denial, adverse and material modification or non-renewal of any Governmental Approval held by the Lessee;
- (g) the occurrence of any Casualty Event with respect to a material portion of the Project;
- (h) any written proposal of the Lessee 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);
- (i) with respect to the Lessee, 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 the greater of (i) ten million Dollars (\$10,000,000) and (ii) five percent (5%) of EBITDA, in each case which is not covered by insurance;
- (j) any notice asserting an “event of default” by the Lessee or the Taxable REIT Subsidiary as defined in, or any material breach by the Lessee or the Taxable REIT Subsidiary under, or purporting to terminate or suspend performance of, any Material Project Document;
- (k) any material amendment to the Organizational Documents of the Lessee or the Taxable REIT Subsidiary;
- (l) the filing or service of any mechanics, lien that creates a lien upon the Project in an amount in excess of five million Dollars (\$5,000,000);
- (m) the issuance of any material new Governmental Approval which was obtained or made by the Lessee or the Taxable REIT Subsidiary together with a copy thereof (and any material amendments, modifications or supplements to any thereof);
- (n) the occurrence of (i) any event that is an event of Force Majeure (as defined in the Lease) or a force majeure event as defined under any Material Project Document, (ii) any Emergency causing loss of life or material damage to property of the Project or third parties or (iii) any material delay for any reason in the construction of the Project;

(o) with respect to the Lease, (i) any Compensation Event Notice (as defined in the Lease), (ii) any Delay Event Notice (as defined in the Lease), (iii) any Event of Default Notice or Port Authority Termination Notice (each as defined in the Lease), (iv) the occurrence of the First Additional Premises Lease Commencement Date (as defined in the Lease), (v) the occurrence of the Second Additional Premises Lease Commencement Date (as defined in the Lease), (vi) the occurrence of any Lease Completion Date, (vii) the issuance of Phase NTP for any Additional Phase, (viii) the occurrence or end of any Deferred Concession Share Period (as defined in the Lease), (ix) the occurrence of the Phase B1 Traffic Trigger Date or the Phase B2 Traffic Trigger Date (each as defined in the Lease), (x) any failure by the Lessee to achieve the Phase B1 Investment Grade Rating Date or the Phase B2 Investment Grade Rating Date (each as defined in the Lease) by the required date for such milestone under the Lease, (xi) any other material written notice from the Lessee to the Port Authority, and (xii) the commencement or completion of any other milestone set forth under the Lease;

(p) any written notice from a Governmental Authority of any order, ruling, statute or other law or regulation that would reasonably be expected to be material and adverse to the Lessee or the Taxable REIT Subsidiary;

(q) any material transaction entered into by the Lessee or the Taxable REIT Subsidiary with any Affiliates;

(r) contemporaneously with the submission thereof to the Port Authority, following the occurrence of any event of default under the Lease, a copy of any Completion Remedial Plan (as defined in the Lease) submitted to the Port Authority pursuant to Section 21(e) of the Lease, and thereafter any acceptance or rejection of such remedial plan by the Port Authority and any material developments in the Lessee's efforts to implement such plan; and

(s) the initiation of any investigation or proceeding by a Governmental Authority regarding any actual or alleged violation of Anti-Corruption Laws, Anti-Money Laundering Laws or Sanctions by the Lessee, the Taxable REIT Subsidiary or any of their respective directors, officers or employees.

Each notice pursuant to this (Section 3.04 Notices) of this Article (*Affirmative Covenants*) of this Schedule 2 (Common Representations and Warranties, Covenants and Events of Default) (other than Sections 3.04(d) and (k) of this Article (*Affirmative Covenants*) of this Schedule 2 (Common Representations and Warranties, Covenants and Events of Default)) shall be accompanied by a statement of a Responsible Officer of the Lessee setting forth details of the occurrence referred to therein and stating what action the Lessee has taken and proposes to take with respect thereto. Each notice pursuant to (Section 3.04(a) Notices) of this Article (*Affirmative Covenants*) of this Schedule 2 (Common Representations and Warranties, Covenants and Events of Default) shall describe the provisions of this Agreement and any other Lessee Loan Agreements that have been breached.

**Section 3.05 Governmental Approvals.** The Lessee and the Taxable REIT Subsidiary, as applicable, shall obtain, or cause the applicable third party to obtain, on a reasonably timely basis all Governmental Approvals (other than Governmental Approvals required to be obtained by the Port Authority under the Lease) that are necessary as of the relevant stage of the Project and will comply with such Governmental Approvals in respect of the construction, operation and maintenance of the Leased Premises and the Project, except where the failure to obtain, maintain or comply would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**Section 3.06 Compliance with Laws.** The Lessee will comply with all Laws applicable to it and its Property, except in such instances in which (a) such requirement of Law is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually

or when aggregated with any other instance, would not reasonably be expected to have a Material Adverse Effect. The Taxable REIT Subsidiary will comply with all Laws applicable to it and its Property in all material respects. Notwithstanding the immediately preceding two (2) sentences to the contrary, with respect to applicable Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions, each of the Lessee and the Taxable REIT Subsidiary will comply therewith in all material respects; provided, however, that this covenant with respect to Sanctions is not sought by or made for the benefit of any Secured Party to the extent that it would give rise to any violation of, conflict with or liability under EU Regulation (EC) 2271/96, Section 7 of the German Foreign Trade Regulation (*Außenwirtschaftsverordnung*), or any other similar anti-boycott or blocking law or regulation in force from time to time in the European Union or any European Union member state, in each case to the extent applicable to such Secured Party.

Section 3.07     Insurance.

(a)     The Lessee shall comply with the provisions of Section 12 (*Insurance*) of the Lease and shall maintain or cause to be maintained for the benefit of the Collateral Agent the same insurance and endorsements as are required under Section 12 (*Insurance*) of the Lease for the benefit of the Port Authority, as such requirements may be waived or modified in accordance with the terms of Section 12 (*Insurance*) of the Lease pursuant to agreement between the Lessee and the Port Authority, including, for the avoidance of doubt, any agreement between the Lessee and the Port Authority as a result of any insurances required under the terms of the Lease no longer being available on a commercially reasonable basis or on commercially reasonable terms. Without limiting the foregoing, (i) the Lessee shall provide the same notice and evidence of renewal to the Collateral Agent as it provides to the Port Authority and (ii) such insurance policies shall, as applicable, afford to the Collateral Agent the same contractual liability coverage, notice of cancellation rights, waivers of subrogation and non-impairment of coverage rights to the Collateral Agent as they afford to the Port Authority. In addition, the property insurance required under Section 12(a) (*Required Insurance*) of the Lease shall contain an agreed amount endorsement or a coinsurance waiver and a replacement cost value endorsement without reduction for depreciation.

(b)     The Lessee shall deliver to the Collateral Agent a copy of any confirmation of coverage or renewals delivered to the Port Authority pursuant to Section 12(d)(9)(v) (*Certificates, etc.*) of the Lease.

(c)     All insurance required by Section 12(d) (*Other Requirements as to Insurance Policies*) of the Lease (other than policies covering liabilities to third parties or insuring the interest of third parties) shall name the Collateral Agent, as additional insured or loss payee as its interests appear.

Section 3.08     Maintenance of Existence. Each of the Lessee and the Taxable REIT Subsidiary shall maintain (a) its legal existence as a limited liability company, (b) its good standing and qualification to do business in (i) the State, and (ii) unless, in the case of the Lessee only, the failure to be qualified would not reasonably be expected to result in a Material Adverse Effect, in each other jurisdiction where such qualification is required by applicable Law), and (c) all material rights, franchises, privileges and consents necessary for the maintenance of its existence.

Section 3.09     Separateness. Each of the Lessee and the Taxable REIT Subsidiary shall (a) maintain bank accounts, entity records and books of account separate from those of any Affiliate, (b) not commingle its funds or assets with those of any Affiliate, (c) provide that its board of managers or other analogous governing body (in the case of the Lessee) will hold all appropriate meetings to authorize and approve its actions, which meetings will be separate from those of other entities and (d) conduct in all material respects its business solely in its own name and through its duly authorized officers, managers, representatives and agents, in a manner not misleading to other Persons as to its identity (including, without limiting the generality of the foregoing, all oral and written communications (if any), including invoices, purchase orders, and contracts).

Section 3.10 Material Project Documents.

(a) The Lessee shall design, construct and operate and maintain the Project in accordance with the Lease in all material respects.

(b) Each of the Lessee and the Taxable REIT Subsidiary shall timely observe, perform and comply in all material respects with its obligations under the Material Project Documents to which it is a party and shall take prompt action to cure any event of default by the Lessee or the Taxable REIT Subsidiary (as applicable) pursuant to such Material Project Documents and to prevent the termination or cancellation of such Material Project Documents, unless, with respect to the termination of any Material Project Document (other than (i) the Lease, (ii) the Phase A D&C Contract in the circumstances described in Section 9.01(f) (*Bankruptcy Proceedings – Phase A D&C Contractor*) of the Credit Agreement, (iii) Section 20.1.1(k) or (m) (*Termination by Developer*) of the Phase A D&C Contract or (iv) analogous circumstances with respect to the D&C Contractor for any Additional Phase) the Lessee has replaced such Material Project Document with a Replacement Project Document within one hundred twenty (120) days after the earlier of (A) written notice thereof from the Intercreditor Agent to the Lessee and (B) actual knowledge of such default by a Responsible Officer of the Lessee. Each of the Lessee and the Taxable REIT Subsidiary shall maintain, preserve and enforce its material rights and privileges under the Material Project Documents in a commercially reasonable manner.

Section 3.11 Books and Records; Inspections; Auditors.

(a) Each of the Lessee and the Taxable REIT Subsidiary shall keep proper records and books of accounts in which complete and correct entries shall be made of its transactions in accordance with GAAP. Such records and books related to the Project shall, to the extent permitted by Law, be subject to the inspection of the Conduit Issuer and each Secured Debt Representative upon reasonable notice and at reasonable times during business hours; provided that absent the occurrence and continuation of a Secured Obligations Event of Default the Lessee and the Taxable REIT Subsidiary shall not be responsible for the cost of any such inspection (other than as set forth in (Section 3.11 Books and Records; Inspections; Auditors) of this Article (*Affirmative Covenants*) of this Schedule 2 (Common Representations and Warranties, Covenants and Events of Default)). The Lessee and the Taxable REIT Subsidiary will permit the Conduit Issuer and each Secured Debt Representative, upon prior reasonable notice and at reasonable times, to take copies and extracts from such books and records and will from time to time furnish, or cause to be furnished, to the Conduit Issuer and each Secured Debt Representative such information and statements as any such Secured Debt Representative may reasonably request, all as may be reasonably necessary for the purpose of determining performance or observance by the Lessee and the Taxable REIT Subsidiary of its obligations under the Financing Documents.

(b) The Lessee and the Taxable REIT Subsidiary will, if requested by the Conduit Issuer or any Secured Debt Representative, on one (1) occasion annually for each of the Conduit Issuer and the Secured Debt Representatives, give the Conduit Issuer or the Secured Debt Representatives and their consultants, as a group, access to the Leased Premises, at the sole cost of such Persons, at any reasonable time and upon reasonable prior written notice to the Lessee, in each case during official business hours and in a manner that cannot reasonably be expected materially to interfere with or disrupt the performance by the Lessee, the Taxable REIT Subsidiary or any other party of its obligations with respect to the construction and operation of the Project. Upon the occurrence and during the continuance of a Secured Obligations Event of Default, if the Conduit Issuer or any Secured Party requests that any of its consultants or representatives be permitted to make such visit, at any reasonable time and upon reasonable prior written notice to the Lessee or the Taxable REIT Subsidiary, such request must be granted and the reasonable fees and expenses of the Conduit Issuer or such Secured Party and its consultants and representatives in connection with such visit will be for the account of the Lessee; provided that neither the Conduit Issuer

nor any Secured Party shall be permitted more than three (3) visits in any calendar year at the cost of the Lessee and the Secured Parties shall make reasonable efforts to coordinate such visit with other Secured Parties.

(c) The Lessee shall retain independent auditors of nationally recognized standing to audit its annual financial statements.

Section 3.12 Project Revenues. All Project Revenues and any other amounts received by the Lessee or the Taxable REIT Subsidiary shall be deposited into the Project Accounts and applied, in each case, in accordance with the Financing Documents.

Section 3.13 Taxes. Each of the Lessee and the Taxable REIT Subsidiary shall timely file all tax returns and timely pay and discharge all Taxes before they become delinquent unless they are being contested in good faith by appropriate proceedings, and it has provided adequate reserves which are maintained in accordance with GAAP or unless the failure to pay and discharge (individually or in the aggregate) would not reasonably be expected to, in the case of the Lessee, have a Material Adverse Effect or, in the case of the Taxable REIT Subsidiary, be material in any respect.

Section 3.14 Construction, Implementation and Operation of the Project. The Lessee will and, to the extent of its responsibility therefor, the Taxable REIT Subsidiary will, construct, operate and maintain (including all necessary repairs, renewals and replacements) the Project (or cause the same to be constructed, operated and maintained) in accordance with the Material Project Documents, Prudent Industry Practice and applicable Law, except to the extent that the failure to do any of the foregoing would not reasonably be expected to result in a breach or event of default under any Material Project Document that would give rise to a right to terminate such Material Project Document or have a Material Adverse Effect.

Section 3.15 Interest Rate Hedging. On or prior to the date that is sixty (60) days after the First Closing Date, the Lessee shall enter into one (1) or more Secured Hedge Transactions under one (1) or more Secured Hedge Agreements such that, when taken together with Senior Debt that accrues interest at a fixed interest rate, at least seventy-five percent (75%), and not in excess of one hundred five percent (105%) of the projected principal amount of all Senior Debt as of each Interest Payment Date occurring through the Lease Term, in each case, in accordance with the notional amortization schedule set forth in the initial base case financial model has an actual or (with Secured Hedge Agreements) effective fixed interest rate. On and after the date that is sixty (60) days after the First Closing Date, the Lessee shall maintain in effect at all times one (1) or more Secured Hedge Transactions under one (1) or more Secured Hedge Agreements such that, when taken together with Senior Debt that accrues interest at a fixed interest rate, at all times at least seventy-five percent (75%), and not in excess of one hundred five percent (105%) of the projected principal amount of all Senior Debt as of each Interest Payment Date occurring through the Lease Term, in each case, in accordance with the notional amortization schedule set forth in the base case financial model has an actual or (with Secured Hedge Agreements) effective fixed interest rate.

Section 3.16 Maintenance of Rating. If (and only if) any Senior Debt is initially rated, the Lessee shall maintain a credit rating for the outstanding Senior Debt from at least one (1) of the Rating Agencies.

Section 3.17 Security Documents; Further Assurances.

(a) Each of the Lessee and the Taxable REIT Subsidiary will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements and such further instruments as may reasonably be required for carrying out the expressed intentions of the Security Documents to which it is a party and as may be necessary or reasonably requested for establishing,

maintaining, assuring, conveying, granting, assigning, securing, confirming, preserving and protecting the Liens (whether now existing or hereafter arising) granted by or on behalf of it pursuant to the Security Documents, or intended to be so granted pursuant to the Security Documents, or which it may become bound to grant, and the subject of each such Lien is and will be free and clear of any other Liens thereon or with respect thereto, other than Permitted Liens and correcting any material defect or error that may be discovered in any Financing Document or other document or instrument relating to any Collateral or in the execution, acknowledgement, filing or recordation thereof. Each of the Lessee and the Taxable REIT Subsidiary will, at all times, to the extent permitted by law, defend, preserve and protect the Liens granted pursuant to the Security Documents and all the rights of the Conduit Issuer and the Collateral Agent for the benefit of the Secured Parties under the Security Documents against all claims and demands of all Persons whomsoever, except in each case for Permitted Liens promptly following any request therefor, provide information and documentation reasonably requested by any Agent or Secured Debt Representative for purposes of compliance with applicable “know your customer” requirements under applicable Anti-Money Laundering Laws, the PATRIOT Act and the Beneficial Ownership Regulation.

(b) Each of the Lessee and the Taxable REIT Subsidiary will cause all necessary Uniform Commercial Code financing statements to be recorded and filed in such manner and in such places as may be required by Law to perfect the Lien created by the Security Documents and will cause to be filed and re-filed and recorded or re-recorded all necessary Uniform Commercial Code financing statements required to be filed and re-filed and recorded or re-recorded as a result of any changes to its name, principal place of business, accounting or financial reporting policies or Fiscal Year.

(c) If the Lessee acquires any additional property, including in connection with the handover of the Existing Premises and/or the Lease is amended to add any additional property, then the Lessee shall execute and deliver an amendment to the Leasehold Mortgages or such new or additional leasehold mortgages in form and substance acceptable to Intercreditor Agent such that the Secured Obligations (other than Hedge Obligations) are secured by such additional property.

Section 3.18 Maintenance of Intellectual Property. The Lessee and the Taxable REIT Subsidiary shall, and shall use commercially reasonable efforts to cause third parties to, maintain rights to all patents, copyrights and intellectual property required for the development, construction and operation of the Project by the Lessee in accordance with the Lease, except for any such failure to maintain as would not be reasonably expected to have a Material Adverse Effect.

Section 3.19 Ranking of Indebtedness. Each of the Lessee and the Taxable REIT Subsidiary will ensure that its payment obligations under the Financing Documents will rank *pari passu* with all other payment obligations under the Financing Documents and at least *pari passu* in priority of payment with all of its unsecured and unsubordinated obligations outstanding at any time except for any of its obligations to creditors whose claims are preferred by operation of applicable Law.

Section 3.20 Rate Covenant for Secured Obligations. The Lessee covenants and agrees to establish rates charged under the Airline Use Agreements sufficient to achieve a Projected TOCR of 1.25:1.00, in each TOCR Calculation Period beginning January 1 of each Fiscal Year after the Completion Date, (based on the then-current Annual Operating Budget); provided, however that (a) if the 1.25:1.00 requirement is not projected to be met for an upcoming Fiscal Year, the Lessee shall (i) retain an Airport Consultant to recommend revisions to the then-current Annual Operating Budget (which revisions are subject to any existing commitments or limitations applicable under the Lease or any Anchor User Agreement) and (ii) after taking into account such recommendations, revise the Annual Operating Budget to produce (to the extent practicable using prudent business judgment and subject to any existing commitments or limitations applicable under the Lease or any Anchor User Agreement) sufficient Free Cash Flow to satisfy such 1.25:1.00 requirement in such upcoming Fiscal Year and (b) the failure of the

Lessee to satisfy the Projected TOCR covenant under this (Section 3.20 Rate Covenant for Secured Obligations) of this Article (Affirmative Covenants) of this Schedule 2 (Common Representations and Warranties, Covenants and Events of Default) shall not give rise to a Secured Obligations Default or a Secured Obligations Event of Default unless, at any time after the Lessee is required to retain an Airport Consultant pursuant to this (Section 3.20 Rate Covenant for Secured Obligations) of this Article (Affirmative Covenants) of this Schedule 2 (Common Representations and Warranties, Covenants and Events of Default), the Lessee does not (x) retain an Airport Consultant or (y) (to the extent practicable using prudent business judgment and subject to any existing commitments or limitations applicable under the Lease or any Anchor User Agreement) promptly take measures to implement the Airport Consultant's recommendations.

## NEGATIVE COVENANTS

The covenants set forth in this Article (Negative Covenants) shall apply with respect to all Senior Debt and TIFIA Obligations in accordance with Section 2.02 (Covenants) of this Agreement.

Section 4.01 No Other Business. (a) The Lessee shall not engage in any business other than the Project and activities and undertaking ancillary or incidental thereto or as otherwise contemplated by the Lease, and (b) the Taxable REIT Subsidiary shall not engage in any business activities of any kind or nature other than the making and performance of the Financing Documents to which it is intended to be a party, design, engineering and architecture, construction or installation obligations, operation, management, administration and maintenance of the Premises (as defined in the Lease) for its permitted use and any repair, modification, reconstruction, rehabilitation, restoration, renewal and replacement thereof, and other services for the Project and transactions or activities reasonably incidental thereto (including development and construction of the Off-Premises Facilities).

Section 4.02 Fundamental Changes. Neither of the Lessee nor the Taxable REIT Subsidiary shall, at any time:

- (a) enter into any consolidation, amalgamation, demerger, merger, reconstruction, partnership, joint venture, profit-sharing or any analogous arrangement;
- (b) liquidate, wind up or dissolve, or sell, lease or otherwise transfer or Dispose of (whether in one (1) transaction or in a series of transactions) all or substantially all of its property, assets or business or combine, merge or consolidate with or into any other entity;
- (c) change its legal form or amend or modify its Organizational Documents, in any manner that would, individually or in the aggregate, reasonably be expected to be materially adverse to the Secured Parties; or
- (d) make any material acquisition of a business or line of business from any Person.

Section 4.03 No Subsidiaries. The Lessee shall not permit to exist any Subsidiary of the Lessee other than the Taxable REIT Subsidiary. The Taxable REIT Subsidiary shall not permit to exist any Subsidiary of the Taxable REIT Subsidiary.

Section 4.04 Affiliate Transactions. The Lessee shall not enter into, directly or indirectly, any transactions with any of its Affiliates other than (a) in the ordinary course of business and upon fair and commercially reasonable terms to the Lessee, no less favorable than would be available in a comparable transaction on an arm's-length basis, (b) transactions contemplated by the terms of (i) the Financing

Documents (including, for the avoidance of doubt, the Energy Services Agreement) or the Material Project Documents as in effect on the First Closing Date and as such Material Project Documents may be amended or modified thereafter in a manner that complies with clause (a) of this (Section 4.04 Affiliate Transactions), and (c) Distributions (subject to satisfaction of the Restricted Payment Conditions) or any other payment or distribution made in accordance with the provisions of the Financing Documents. Subject to Section 4.19 (Taxable REIT Subsidiary) of this Article (*Negative Covenants*) of this Schedule 2 (Common Representations and Warranties, Covenants and Events of Default), the Taxable REIT Subsidiary shall not enter into, directly or indirectly, any transactions with any of its Affiliates other than (i) in connection with (A) any assignment by the Lessee to the Taxable REIT Subsidiary of the Lessee's obligations under the Lease in respect of the development and construction of the Off-Premises Facilities, (B) the entry by the Taxable REIT Subsidiary, together with the Lessee, into the Phase A D&C Contract and any other D&C Contract permitted under the Financing Documents, in each case, for the purpose of the Taxable REIT Subsidiary assuming certain rights and obligations with respect to the development and construction of the Off-Premises Facilities and, as required, certain way finding, signage and utilities work in the "Substation 2" area of the Project and (C) any assignment by the Lessee to the Taxable REIT Subsidiary of any of the Lessee's obligations under the Anchor User Agreements, the Management Services Agreement, the Energy Services Agreement and other contracts relating to the Project, in each case, in respect of any activities that either do not give rise to "qualifying income" for the purposes of Sections 856(c)(2) and (3) of the Code or would otherwise cause income received or accrued by the Lessee under the such contracts to fail to qualify as "rents from real property" within the meaning of Section 856(d) of the Code (which such assignment may contain compensation paid to the Taxable REIT Subsidiary for assuming such obligations), and (ii) any distributions or other payments made to the Lessee.

**Section 4.05 Changes in Name, Place of Business or Fiscal Year.** Neither of the Lessee nor the Taxable REIT Subsidiary shall (a) change its name, jurisdiction of formation, principal place of business, accounting or financial reporting policies, tax identification number, state organizational identification number or Fiscal Year or undertake any division of its rights, assets, obligations or liabilities pursuant to a plan of division or otherwise pursuant to applicable Law, in each case without giving the Intercreditor Agent and the Conduit Issuer at least thirty (30) days' prior written notice, (b) enter into or undertake any plan of division under the laws of the State of Delaware or other applicable Law without the prior written consent of the Intercreditor Agent (acting on the written instructions of the Required Secured Creditors), or (c) take any action that could result in the Lessee or the Taxable REIT Subsidiary being treated other than as a "disregarded entity" within the meaning of U.S. Treasury Regulation § 301.7701-3 that is disregarded as separate from a United States person within the meaning of Section 7701(a)(30) of the Code for U.S. federal income tax purposes, without the prior written consent of the Intercreditor Agent (acting on the written instructions of the Required Secured Creditors).

**Section 4.06 Investments.** Neither of the Lessee nor the Taxable REIT Subsidiary shall make any investment or capital contribution to, or purchase stocks, bonds, notes or other securities of, or advance any extension of credit to, or make any other investment in, any other Person, other than, in the case of the Lessee, Permitted Investments.

**Section 4.07 Disposition of Assets.** Neither of the Lessee nor the Taxable REIT Subsidiary shall make any Disposition nor enter into any agreement to make any Disposition, except (a) in the case of the Lessee, (i) Dispositions of obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business that is not useful or necessary or that is replaced, (ii) the liquidation, sale or use of Permitted Investments, (iii) the termination or unwinding of any Secured Hedge Transaction under a Secured Hedge Agreement permitted hereunder (or any transaction under a Deal Contingent Hedge Agreement permitted hereunder), (iv) other Dispositions not otherwise contemplated by clauses (i) through (iii) above of equipment or property in the ordinary course of business, not to exceed the greater of (A) ten million Dollars (\$10,000,000) in the aggregate in any Fiscal Year and (B) five percent (5%) of EBITDA,

to the extent that such equipment or property is exchanged for credit against the purchase price of replacement equipment or property, or the proceeds of such Disposition are applied, within one hundred eighty (180) days after receipt thereof (or, if the Lessee shall have entered into a legally binding commitment within one hundred eighty (180) days of receipt to reinvest in replacement assets or other assets useful to its business, within two hundred seventy (270) days of receipt), to the purchase of replacement equipment or property or (v), any Sublease permitted under the Lease and not otherwise restricted under the Financing Documents; provided, however, that any disposition of property, equipment or Permitted Investments financed or refinanced with an issue of Muni Bonds shall be subject to the requirements of the applicable Tax Certificate or Certificates with respect to such issue of Muni Bonds, and (b) in the case of the Taxable REIT Subsidiary, (i) dispositions of obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business that is not useful or necessary or that is replaced, (ii) the liquidation, sale or use of Permitted Investments, or (iii) other Dispositions not otherwise contemplated by clauses (i) and (ii) above of equipment or property in the ordinary course of business, not to exceed ten million Dollars (\$10,000,000) in the aggregate in any Fiscal Year, to the extent that such equipment or property is exchanged for credit against the purchase price of replacement equipment or property, or the proceeds of such Disposition are applied, within one hundred eighty (180) days after receipt thereof (or, if the Taxable REIT Subsidiary shall have entered into a legally binding commitment within one hundred eighty (180) days of receipt to reinvest in replacement assets or other assets useful to its business, within two hundred seventy (270) days of receipt), to the purchase of replacement equipment or property.

Section 4.08 Limitations on Indebtedness. Neither of the Lessee nor the Taxable REIT Subsidiary shall create, incur or be liable for (or in the case of the Lessee, instruct the Conduit Issuer to create or incur) any Indebtedness, except for Permitted Indebtedness.

“Permitted Indebtedness” means:

- (a) Indebtedness of the Lessee under the Lessee Loan Agreements, to the extent relating to the on-lending of the proceeds of Indebtedness incurred by the Conduit Issuer under the Credit Agreement;
- (b) Indebtedness of the Lessee under the Lessee Loan Agreements, to the extent relating to the on-lending of the proceeds of Indebtedness incurred by the Conduit Issuer under any Additional Senior Indebtedness Documents and any Permitted Refinancing Indebtedness Documents;
- (c) amounts payable by the Lessee under the Lease, or by the Lessee or the Taxable REIT Subsidiary under any D&C Contract or any other Material Project Document, in each case, to the extent the same constitute Indebtedness;
- (d) Subordinated Debt of the Lessee;
- (e) purchase money obligations of the Lessee and the Taxable REIT Subsidiary incurred to finance items of equipment that extend to and are secured by only the equipment being financed in an aggregate principal amount outstanding at any one time not to exceed the purchase price paid for such equipment (plus applicable fees, costs and expenses associated with such financings);
- (f) Indebtedness in an aggregate principal amount outstanding not to exceed one hundred million Dollars (\$100,000,000) that is incurred by the Lessee in the ordinary course of business as an account party in respect of letters of credit and other similar instruments and that is secured only with cash collateral in the amount of such Indebtedness;

(g) current accounts payable of the Lessee and the Taxable REIT Subsidiary arising, interest thereon and accrued expenses incurred of the Lessee and the Taxable REIT Subsidiary, and financing of insurance premiums of the Lessee and the Taxable REIT Subsidiary, in the ordinary course of business;

(h) Indebtedness of the Lessee and the Taxable REIT Subsidiary incurred in respect of workers compensation claims, self-insurance obligations and performance, surety or appeal bonds provided in the ordinary course of business;

(i) Permitted Investments by the Lessee and the Taxable REIT Subsidiary, to the extent the same constitute Indebtedness;

(j) any other unsecured Indebtedness of the Lessee not described in clauses (a) through (i) above in an aggregate principal amount outstanding not to exceed the greater of (A) seventy-five million Dollars (\$75,000,000) and (B) five percent (5%) of EBITDA at any time and payable only from the Distribution Account; and

(k) Indebtedness of the Lessee under the Secured Hedge Agreements and the Deal Contingent Hedge Agreements.

“Completion Debt” means any senior secured Indebtedness incurred by the Conduit Issuer (acting on the instructions of the Lessee), including pursuant to any Note Purchase Agreement, Notes, Indenture and Muni Bonds incurred as Completion Debt, and on-lent to the Lessee pursuant to the applicable Lessee Loan Agreement that is provided by an Additional Secured Creditor and that satisfies the following conditions:

(a) the aggregate principal amount of such Indebtedness, together with the amount of any other Completion Debt then outstanding, shall not exceed ten percent (10%) of the Senior Debt (excluding other Completion Debt) then outstanding;

(b) the Lessee has delivered to each Agent (other than the Account Bank) an updated base case financial model, demonstrating that, after giving effect to the incurrence of such Completion Debt, the minimum Projected TOCR for any four (4)-quarter period as of each Interest Payment Date through the later of (i) the fifth (5th) anniversary of the date of the proposed incurrence of such Completion Debt and (ii) the fifth (5th) anniversary of the Lease Completion Date for the Phase being financed by such Completion Debt, in accordance with the notional amortization schedule set forth in the base case financial model, is not less than 1.20:1.00;

(c) the Intercreditor Agent has received (i) new leasehold mortgages in substantially the same form as the Leasehold Mortgages or an amendment to the Leasehold Mortgages and (ii) amendments to the Lessee Loan Agreements (if required), in each case for purposes of (A) documenting the incurrence of such Additional Senior Indebtedness or Permitted Refinancing Indebtedness, as applicable, and the on-lending of the proceeds thereof to the Lessee and (B) securing an aggregate amount equal to the outstanding Secured Lessee Obligations (other than Hedge Obligations) following the incurrence of such Completion Debt, together with related collateral assignments in substantially the same form as the Collateral Assignments; and

(d) a portion of such proceeds shall be used to fund the relevant Senior Debt Service Reserve Account in an amount equal to the Debt Service Reserve Requirement of the Financing Documents for such Completion Debt, if any.

“Incremental Debt” means any senior secured Indebtedness or Indebtedness under a TIFIA Loan Agreement incurred by the Conduit Issuer (acting on the instructions of the Lessee), including pursuant to any Note Purchase Agreement, Notes, Indenture and Muni Bonds incurred as Incremental Debt, and on-lent to the Lessee pursuant to the applicable Lessee Loan Agreement that is provided by an Additional Senior Creditor and that satisfies the following conditions:

(1) the Debt Incurrence Conditions have been satisfied (or waived by the Intercreditor Agent (acting in accordance with this Agreement)) unless prior to the incurrence of such Incremental Debt (i) all Secured Obligations then outstanding will be repaid in full, (ii) all Commitments then available will be terminated and (iii) all Working Capital LCs and Security Deposit LCs or other letters of credit issued pursuant to an existing Additional Senior Indebtedness Document is replaced or cash collateralized (pursuant to the terms of the applicable Financing Document);

(2) a portion of the proceeds of such Incremental Debt will be used to (i) pay for any costs, expenses, or other amounts of the Secured Parties resulting from the incurrence of such Incremental Debt and (ii) fund the Senior Debt Service Reserve Account of such Incremental Debt in an amount equal to the Debt Service Reserve Requirement of the Financing Documents for such Incremental Debt; and

(3) to the extent that any proceeds of such Incremental Debt will be used to pay holders of Equity Interests of any Lessee Affiliate Party amounts not contemplated by the base case financial model delivered on the First Closing Date, the Conduit Issuer has approved the incurrence of such Incremental Debt.

“Permitted Refinancing Indebtedness” means (x) any Permitted Refinancing Indebtedness Hedge Obligation provided by a Permitted Refinancing Creditor and (y) any Indebtedness incurred by the Conduit Issuer (acting on the instructions of the Lessee), including pursuant to any Note Purchase Agreement, Notes, Indenture or Muni Bonds incurred as Permitted Refinancing Indebtedness, and on-lent to the Lessee pursuant to the applicable Lessee Loan Agreement to refinance, in part or in full, then-outstanding Senior Debt and that satisfies the following conditions:

(a) the Debt Incurrence Conditions have been satisfied (or waived) by the Required Secured Creditors unless prior to the incurrence of such Permitted Refinancing Indebtedness or as a result of the incurrence of such Permitted Refinancing Indebtedness (i) all Secured Obligations then outstanding will be repaid in full, (ii) all Commitments will be terminated and (iii) all Working Capital LCs, Security Deposit LCs or other letters of credit issued pursuant to an existing Additional Senior Indebtedness Document or Permitted Refinancing Indebtedness Document is replaced or cash collateralized (pursuant to the terms of the applicable Financing Document);

(b) the proceeds of such Permitted Refinancing Indebtedness will be used to (i) refinance existing Senior Debt (including accrued interest on such Senior Debt) and replace other Commitments, (ii) pay for any premia, fees, costs, expenses, charges and other amounts of the Secured Parties resulting from the incurrence of such Permitted Refinancing Indebtedness, including any breakage costs and/or associated Termination Payments under the Secured Hedge Agreements relating to such refinanced Senior Debt, if any, or associated with arranging, issuing and incurring such Permitted Refinancing Indebtedness, (iii) fund the Senior Debt Service Reserve Account of such Permitted Refinancing Indebtedness in an amount equal to the Debt Service Reserve Requirement set out in the Financing Documents for such Permitted Refinancing Indebtedness and fund any Building Loan Senior Debt Capitalized Interest Account or Project Loan Senior Debt Capitalized Interest Account required under the relevant Permitted Refinancing Indebtedness Documents and (iv) with respect to any proceeds from the issuance of such Permitted Refinancing Indebtedness at a premium over the face value thereof, to pay for Project Costs; and

(c) the aggregate initial principal amount of such Permitted Refinancing Indebtedness shall not exceed the sum of (i) the Commitments being cancelled concurrently with the incurrence of such Permitted Refinancing Indebtedness, (ii) the principal, interest and other fees and charges due and payable in respect of the Senior Debt being repaid with the proceeds of such Permitted Refinancing Indebtedness, (iii) all premia, fees, costs, expenses, and reserves (including any additional Debt Service Reserve Requirement resulting from the incurrence of such Permitted Refinancing Indebtedness) or the funding of any Building Loan Senior Debt Capitalized Interest Account or Project Loan Senior Debt Capitalized Interest Account required under the relevant Permitted Refinancing Indebtedness Documents associated with arranging, issuing, and incurring such Permitted Refinancing Indebtedness and any additional amount based on the issuance of Senior Debt at a premium to par and (iv) all fees, costs, expenses, and other amounts payable to the holders of the Senior Debt being prepaid with the proceeds of such Permitted Refinancing Indebtedness (including any Termination Payments under Secured Hedge Agreements relating to such refinanced Senior Debt, if any).

“Debt Incurrence Conditions” means, in the case of any Incremental Debt or Permitted Refinancing Indebtedness (other than any Permitted Refinancing Indebtedness Hedge Obligations):

(a) no Secured Obligations Default or Secured Obligations Event of Default shall have occurred and be continuing or would result from the incurrence of such Additional Senior Indebtedness or Permitted Refinancing Indebtedness, as applicable;

(b) other than in the case of TIFIA Obligations which shall be secured by Liens on the Collateral subordinate to the Senior Secured Obligations during any period when a Bankruptcy Related Event with respect to the Lessee has not occurred, such Additional Senior Indebtedness or Permitted Refinancing Indebtedness, as applicable, ranks *pari passu* and is treated *pro rata* in all respects with the existing Secured Pass Through Financing Obligations and any Secured Lessee Obligations under or in connection with any Secured Hedge Agreements (and Secured Hedge Transactions thereunder);

(c) the requirements of (Section 4.15 Interest Rate Hedging) of Schedule 2 (Common Representations and Warranties, Covenants and Events of Default) shall be satisfied after giving effect to the incurrence of such Additional Senior Indebtedness or Permitted Refinancing Indebtedness, as applicable;

(d) with respect to any Permitted Refinancing Indebtedness, (i) the weighted average life to maturity of such Permitted Refinancing Indebtedness is at least equal to that of the Indebtedness being refinanced and (ii) the final maturity date of such Permitted Refinancing Indebtedness is not earlier than the Indebtedness being refinanced;

(e) with respect to any Incremental Debt, the Intercreditor Agent has received, at the election of the Lessee, either (i) an updated base case financial model, demonstrating that, after giving effect to the incurrence of such Additional Senior Indebtedness, the minimum Projected TOCR for each four (4)-quarter period commencing on a Calculation Date occurring during the period beginning on the date of the proposed incurrence of such Incremental Debt and ending on the later of (A) the fifth (5th) anniversary of such date in accordance and (B) if applicable, the fifth (5th) anniversary of the Lease Completion Date for the construction of the Phase being financed by such Incremental Debt, in each case in accordance with the notional amortization schedule set forth in the base case financial model, is not less than 1.40:1.00 or (ii) a reaffirmation letter from at least two (2) Rating Agencies then maintaining a rating on the outstanding Senior Debt confirming that after giving effect to the incurrence of such Additional Senior Indebtedness the rating on outstanding Senior Debt shall be at least Investment Grade;

(f) the Intercreditor Agent has received (i) new leasehold mortgages in substantially the same form as the Leasehold Mortgages or an amendment to the Leasehold Mortgages and (ii) amendments to the

Lessee Loan Agreements (if required), in each case for purposes of (A) documenting the incurrence of such Additional Senior Indebtedness or Permitted Refinancing Indebtedness, as applicable, and the on-lending of the proceeds thereof to the Lessee and (B) securing an aggregate amount equal to the outstanding Secured Lessee Obligations (other than Hedge Obligations) following the incurrence of such Additional Senior Indebtedness or Permitted Refinancing Indebtedness, as applicable, together with related collateral assignments in substantially the same form as the Collateral Assignments;

(g) the representative of the holders of such Additional Senior Indebtedness or Permitted Refinancing Indebtedness, as applicable, has delivered a fully executed Accession Agreement; and

(h) the Intercreditor Agent has received an Officer's Certificate from the Lessee, in each case at least three (3) Business Days prior to the incurrence of such Additional Senior Indebtedness or Permitted Refinancing Indebtedness, as applicable, (i) identifying the Secured Debt Representative of the applicable Additional Senior Creditors with respect to such Additional Senior Indebtedness or Permitted Refinancing Indebtedness, as applicable and (ii) attaching a copy of each Additional Senior Indebtedness Document relating to such Additional Senior Indebtedness or Permitted Refinancing Indebtedness Document relating to such Permitted Refinancing Indebtedness, as applicable, in each case which document(s) shall include the material terms, permitted uses, tenor and amortization, rate of interest (or formula applicable to the calculation thereof), and fees and any other conditions necessary to satisfy the other relevant conditions specified in the definition of "Debt Incurrence Conditions".

Section 4.09 Liens. Neither of the Lessee nor the Taxable REIT Subsidiary shall create, incur, assume or permit to exist any Lien on any Collateral, except Permitted Liens.

"Permitted Lien" means:

(a) Liens created pursuant to the Financing Documents or the Deal Contingent Hedge Agreements;

(b) with respect to the Lessee and the Taxable REIT Subsidiary, Liens, deposits or pledges incurred or created in the ordinary course of business or under applicable Law in connection with or to secure the performance of bids, tenders, trade contracts, contracts, leases, statutory obligations, surety bonds, appeal bonds and other obligations of a like nature;

(c) with respect to the Lessee and the Taxable REIT Subsidiary, mechanics', materialmen's, workers', repairmen's, employees', warehousemen's, carriers' or other like Liens 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 which are adequately bonded or which are being contested by the Lessee or the Taxable REIT Subsidiary (as applicable) in good faith by appropriate proceedings and so long as the Lessee or the Taxable REIT Subsidiary (as applicable) shall, to the extent required by GAAP on a consistent basis, set aside on its books adequate reserves with respect thereto;

(d) with respect to the Lessee and the Taxable REIT Subsidiary, Liens for Taxes, assessments or governmental charges either secured by a bond reasonably acceptable to the Intercreditor Agent or which are not yet due or which are being contested by the Lessee in good faith by appropriate proceedings and so long as the Lessee shall, to the extent required by GAAP on a consistent basis, set aside on its books adequate reserves with respect thereto;

(e) with respect to the Lessee and the Taxable REIT Subsidiary, pledges and deposits (other than the Project Accounts) made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other similar laws or regulations;

(f) with respect to the Lessee and the Taxable REIT Subsidiary, Liens arising out of judgments or awards (i) fully covered by insurance, that do not constitute an “event of default” under any Financing Document, do not in the aggregate materially interfere with the Lessee’s or the Taxable REIT Subsidiary’s ability, as applicable, to use the affected property or assets in the ordinary conduct of business of the Lessee or the Taxable REIT Subsidiary, as applicable, and do not in the aggregate materially detract from the value of the affected property or assets, or (ii) with respect to which an appeal or proceeding for review is being prosecuted by the Lessee or the Taxable REIT Subsidiary, as applicable, in good faith by appropriate proceedings and so long as the Lessee or the Taxable REIT Subsidiary, as applicable, shall, to the extent required by GAAP on a consistent basis, set aside on its books adequate reserves with respect thereto;

(g) with respect to the Lessee and the Taxable REIT Subsidiary, easements, reservations, zoning restrictions, rights of way and other encumbrances on real property imposed by Law or arising in the ordinary course of business and any other matter which appears on the title report delivered pursuant to Section 1.18 (*Land Matters*) of Schedule 4.01 (*Conditions Precedent to the Initial Credit Extension on the First Closing Date*) of the Credit Agreement that do not secure any monetary obligations, do not render title to the property encumbered thereby unmarketable and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Lessee or the Taxable REIT Subsidiary (as applicable) including the construction or operation of the Project;

(h) with respect to the Lessee and the Taxable REIT Subsidiary, any Lien existing on any property or asset prior to the acquisition thereof by the Lessee; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition, (ii) such Lien shall not apply to any other property or assets of the Lessee or the Taxable REIT Subsidiary (as applicable) and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition, and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(i) with respect to the Lessee and the Taxable REIT Subsidiary, Liens securing amounts permitted under paragraph (e) of the definition of “Permitted Indebtedness” and such Lien encumbers only the specific equipment so purchased;

(j) with respect to the Lessee and the Taxable REIT Subsidiary, leases, licenses, subleases or sublicenses granted to others in the ordinary course of business that do not (i) interfere in any material respect with the ordinary conduct of the business of the Lessee or the Taxable REIT Subsidiary (as applicable), or (ii) secure any Indebtedness;

(k) with respect to the Lessee and the Taxable REIT Subsidiary, any Liens in favor of the Port Authority created under the Lease as is in effect on the First Closing Date; and

(l) with respect to the Lessee and the Taxable REIT Subsidiary, Liens, pledges and deposits in favor of the Port Authority in respect of the Handback Reserve Account.

Section 4.10 Additional Accounts. The Lessee shall not establish or maintain any securities accounts or bank accounts other than the Lessee Project Accounts, the Distribution Account, the Handback Reserve Account and any other accounts required to be established or maintained pursuant to the Financing Documents. The Taxable REIT Subsidiary shall not establish or maintain any securities accounts or bank accounts other than the TRS Project Accounts.

Section 4.11 Restricted Payments. The Lessee shall not make any Distributions except from the Distribution Account in accordance with Section 4.14(a) (*Distribution Account*) of this Agreement.

Section 4.12 Settlements. Unless the Lessee or the Taxable REIT Subsidiary has obtained the prior written approval of the Required Secured Creditors or such dispute, claim, compromise or settlement, if adversely determined or decided against the Lessee or the Taxable REIT Subsidiary, would not reasonably be expected to have a Material Adverse Effect, the Lessee or the Taxable REIT Subsidiary, as applicable, shall not settle or discontinue any dispute or claim under a Material Project Document or compromise or settle any other liability in respect of the Project.

Section 4.13 Material Project Documents.

(a) Neither the Lessee nor the Taxable REIT Subsidiary shall amend or waive any provision of or cancel, suspend or terminate any Material Project Document (other than (i) the Lease, which is covered by paragraph (b) below, (ii) the Phase A D&C Contract in the circumstances described in Section 9.01(f) (*Bankruptcy Proceedings – Phase A D&C Contractor*) of the Credit Agreement, (iii) Section 20.1.1(k) or (m) (*Termination by Developer*) of the Phase A D&C Contract or (iv) analogous circumstances with respect to the D&C Contractor for any Additional Phase) except to the extent such amendment (individually or when aggregated with any other amendment), waiver, cancellation, suspension or termination would not reasonably be expected to have a Material Adverse Effect.

(b) The Lessee shall not (i) terminate or cancel the Lease, or (ii) amend or waive any provision of or suspend any provision of, the Lease (A) to the extent it is restricted from doing so pursuant to the terms of the Leasehold Mortgages or, (B) otherwise, to the extent such amendment (individually or when aggregated with any other amendment), waiver or suspension would reasonably be expected to have a Material Adverse Effect.

Section 4.14 Additional Material Project Documents. Neither the Lessee nor the Taxable REIT Subsidiary shall enter into any Additional Material Project Document without the prior approval of the Required Secured Creditors; provided that, in respect of any D&C Contract for any Additional Phase, such approval shall not be required if the criteria specified in paragraph (c)(iv) of the definition of “Additional Phase Commencement Conditions” have been satisfied in respect of such D&C Contract.

Section 4.15 Hedging. The Lessee shall not enter into, or agree to enter into, any Hedge Agreement without the prior written approval of the Intercreditor Agent, other than (a) Deal Contingent Hedge Agreements entered into on or about the date of this Agreement, and (b) Secured Hedge Agreements in accordance with (Section 3.15 Interest Rate Hedging) of the prior Article (*Affirmative Covenants*) of this Schedule 2 (*Common Representations and Warranties, Covenants and Events of Default*). In no event shall any Hedge Agreement be entered into for speculative purposes. The Taxable REIT Subsidiary shall not enter into, or agree to enter into, any Hedge Agreement without the prior written approval of the Intercreditor Agent.

Section 4.16 Restrictions on Corrupt Activity, Illicit Payments and Violations of Sanctions and Anti-Corruption Laws. Neither of the Lessee nor the Taxable REIT Subsidiary shall, nor shall permit or authorize any of its officers, directors, employees, Affiliates or agents to, directly or indirectly:

(a) engage in any transaction or dealing with, involving or for the benefit of any Sanctioned Person in connection with the Project that would result in a violation of Sanctions;

(b) offer, promise, or pay any corrupt or illicit payment in connection with the Project in violation of applicable Anti-Corruption Laws; or

(c) otherwise engage in any transaction in connection with the Project or use any part of the proceeds of any Senior Debt (i) to fund or facilitate any transaction or dealing with, involving or for the

benefit of any Sanctioned Person or otherwise in any manner that would constitute a violation of Sanctions by any Person participating in this transaction, including any Secured Party, or (ii) for any bribes, kick-backs or other corrupt or illicit payments or otherwise in any manner that would constitute a violation of applicable Anti-Corruption Laws,

provided, however, that the covenants with respect to Sanctions under this Section 4.16 (Restrictions on Corrupt Activity, Illicit Payments and Violations of Sanctions and Anti-Corruption Laws) of this Article (Negative Covenants) of this Schedule 2 (Common Representations and Warranties, Covenants and Events of Default) are not sought by or made for the benefit of any Secured Party to the extent that they would give rise to any violation of, conflict with or liability under EU Regulation (EC) 2271/96, Section 7 of the German Foreign Trade Regulation (*Außenwirtschaftsverordnung*), or any other similar anti-boycott or blocking law or regulation in force from time to time in the European Union or any European Union member state, in each case to the extent applicable to such Secured Party.

#### Section 4.17 Total Obligations Coverage Ratio.

(a) The Lessee shall not permit the Total Obligations Coverage Ratio for the TOCR Calculation Period ending on any Calculation Date to be less than 1.00:1.00.

For purposes of the Total Obligations Coverage Ratio, the following terms have the following meanings:

“Total Obligations Coverage Ratio” or “TOCR” means, for any TOCR Calculation Period, the ratio of A divided by B where:

A = the Free Cash Flow for such TOCR Calculation Period; and

B = the amount required during such TOCR Calculation Period for the payment of all Debt Service (excluding, for this purpose, any Debt Service paid (or to be paid) from the balance of any Construction Account).

“Free Cash Flow” means, for any TOCR Calculation Period (without double counting):

(a) all Project Revenues received or projected to be received by the Lessee during such TOCR Calculation Period; *plus*

(b) except when calculating the Total Obligations Cover Ratio for purposes of the Restricted Payment Conditions, all amounts released to the Post-Completion Revenue Account from any Ramp-Up Account during such TOCR Calculation Period; *less*

(c) (i) prior to the Deferred Concession Shortfall End Date, all Port Authority Advertising Revenues, and (ii) on and from the Deferred Concession Shortfall End Date, all Port Authority Priority Payments, in each case, which are scheduled to be paid (and for the avoidance of doubt excluding deferred payments thereof) by the Lessee to the Port Authority pursuant to Section 4.02(b)(i) (Post-Completion Revenue Account) during such TOCR Calculation Period; *less*

(d) on and from the Deferred Management Fee End Date, all amounts which are scheduled to be paid (and for the avoidance of doubt excluding deferred payments thereof) by the Lessee to the Manager under the Management Services Agreement pursuant to Section 4.02(b)(iii) (Post-Completion Revenue Account) during such TOCR Calculation Period; *less*

(e) on and from the Deferred Second Additional Rental End Date, all Second Additional Rental amounts which are scheduled to be paid (and for the avoidance of doubt excluding deferred payments thereof) by the Lessee to the Port Authority pursuant to Section 4.02(b)(ix) (Post-Completion Revenue Account) during such TOCR Calculation Period; *less*

(f) all other O&M Expenses (without double counting) and Major Maintenance Expenses (other than Port Authority Priority Payments, amounts payable to the Manager under the Management Services Agreement and Second Additional Rental amounts) paid during such TOCR Calculation Period from Project Revenues, other than (i) O&M Expenses paid from (without double counting) withdrawals from the O&M Reserve Account and the Springing Liquidity Reserve Account, (ii) Major Maintenance Expenses paid from (without double counting) withdrawals from the Major Maintenance Reserve Account and the Handback Reserve Account, and (iii) capital expenditures made from (A) the proceeds of Permitted Refinancing Indebtedness or (B) Insurance and Condemnation Proceeds; *less*

(g) all amounts (without double counting) deposited into the Major Maintenance Reserve Account, the O&M Reserve Account and the Handback Reserve Account during such TOCR Calculation Period.

(b) If the Lessee fails to comply with the financial covenant in paragraph (a) above, any direct or indirect owner of the Lessee shall have the right to provide cash to the Lessee, not later than fifteen (15) Business Days following the date of delivery of the Compliance Certificate under Section 3.02 (Certificates; Reports; Other Information) of the prior Article (*Affirmative Covenants*) of this Schedule 2 (Common Representations and Warranties, Covenants and Events of Default) in the form of capital contributions or Subordinated Debt (in each case, other than amounts contributed or lent to the Lessee in connection with the relevant Equity Contribution Agreement) equal to the aggregate amount that, if either included as Project Revenues or if applied to Debt Service, as applicable, and at the election of the Lessee, for the relevant TOCR Calculation Period, would have been sufficient to cause compliance with the financial covenants set out in paragraph (a) above, for such TOCR Calculation Period (and any subsequent TOCR Calculation Period covering such Calculation Date) (an “Equity Cure”); provided that (i) such Equity Cure right shall not be exercised more than two (2) times in any twelve (12)-month period nor more than five (5) times after the First Closing Date and the proceeds of any capital contributions or Subordinated Debt in connection with any Equity Cure shall be either counted as Project Revenues or applied in the payment of Debt Service, as applicable, for the purposes of determining the Lessee’s compliance with the Total Obligations Coverage Ratio for purposes of paragraph (a) above, as applicable, and not for any other purpose. After an Equity Cure is made the Lessee shall be deemed to be in pro forma compliance with financial covenants set out in paragraph (a) above, the applicable breach or default of such financial covenant that had occurred (and any related Secured Obligations Event of Default) shall be deemed cured, but such Equity Cure shall not affect nor be included in the calculation of the Total Obligations Coverage Ratio for any other purpose under this Agreement (including determining whether the making of any Distributions is permitted under Section 4.14 (Distribution Account) of this Agreement, as applicable).

Section 4.18 Additional Phases. Neither the Lessee nor the Taxable REIT Subsidiary shall commence the construction of any Additional Phase, including issuance of Phase NTP for any Additional Phase, unless each of the Additional Phase Commencement Conditions in respect of such Additional Phase have been satisfied or waived by the Required Secured Creditors, acting reasonably.

Section 4.19 Taxable REIT Subsidiary.

(a) The Lessee shall not, at any time, Dispose of any Equity Interests in the Taxable REIT Subsidiary.

(b) The Taxable REIT Subsidiary will not, directly or indirectly, enter into, incur or permit to exist any agreement or other consensual arrangement that prohibits, restricts or imposes any condition on the ability of the Taxable REIT Subsidiary to pay dividends or other distributions with respect to any of its Equity Interests.

## EVENTS OF DEFAULT

Section 5.01 Secured Obligations Events of Default. Any one (1) or more of the following events shall constitute a “Secured Obligations Event of Default” in accordance with Section 2.03 (Secured Obligations Events of Default) of this Agreement:

(a) Payment Defaults. The Lessee, the Conduit Issuer or the Taxable REIT Subsidiary fails to pay within seven (7) Business Days after the same becomes due any amount payable hereunder or under any Financing Document (other than a Senior Debt Document).

(b) Misrepresentations. Any representation or warranty made by the Lessee, HoldCo, the Taxable REIT Subsidiary or, for so long as it has any outstanding Equity Commitments under the Equity Contribution Agreement, the Sponsor Aggregator, in any Financing Document to which it is a party (other than a Senior Debt Document) proves to have been incorrect or misleading in any material respect when made, unless such misrepresentation is capable of remedy and is remedied, within sixty (60) days after the receipt by the Lessee of written notice from the Intercreditor Agent therefor.

(c) Bankruptcy Proceedings. (i) The Lessee or the Taxable REIT Subsidiary (A) institutes a proceeding to be adjudicated as bankrupt or insolvent, (B) shall consent to the institution of bankruptcy or insolvency proceedings against it, (C) shall file a petition or answer or consent seeking reorganization or relief under the federal Bankruptcy Code of the United States or any other similar applicable federal or state law, (D) 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 such Person or of any substantial part of its property, (E) shall make an assignment for the benefit of creditors, or is generally not paying or shall admit in writing its inability to pay its debts generally as they become due or (F) takes any limited liability company, partnership or corporate action for the purpose of the foregoing or (ii) commencement against the Lessee of any proceeding of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment, or (B) remains undismissed, undischarged, or unstayed for a period of ninety (90) days.

(d) Judgments. One (1) or more final, non-appealable judgments for the payment of money shall be rendered against (i) the Lessee in an aggregate amount in excess of the greater of (A) fifty million Dollars (\$50,000,000) (indexed annually to the CPI) and (B) five percent (5%) of EBITDA, or (ii) the Taxable REIT Subsidiary in an aggregate amount in excess of ten million Dollars (\$10,000,000), and, in each case, the same shall remain undischarged for a period of sixty (60) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Lessee or the Taxable REIT Subsidiary to enforce any such judgment that is not adequately covered by insurance or a performance bond.

(e) Covenants. (i) The Lessee fails to comply with (A) any of the following affirmative or negative covenants under this Agreement: any negative covenant under the Article herein captioned Negative Covenants of this Schedule 2 (Common Representations and Warranties, Covenants and Events of Default), or the following Affirmative Covenants under a prior Article of this Schedule 2: Section 3.04(a) (Notices) of Schedule 2 (Common Representations and Warranties, Covenants and Events of Default), Section 3.08 (Maintenance of Existence) of this Schedule 2 (Common Representations and Warranties,

Covenants and Events of Default), Section 3.09 (Separateness) of this Schedule 2 (Common Representations and Warranties, Covenants and Events of Default) or Section 3.19 (Ranking of Indebtedness) of this Schedule 2 (Common Representations and Warranties, Covenants and Events of Default), in each case unless such failure is capable of being remedied and is remedied within ten (10) days after the earlier of (I) written notice specifying such failure having been given to the Lessee by the Intercreditor Agent or any Secured Creditor and (II) actual knowledge thereof by a Responsible Officer of the Lessee, or (B) any other affirmative or negative covenant under the Financing Documents to which it is a party (other than a Senior Debt Document), unless such failure is capable of being remedied and is remedied within sixty (60) days after the earlier of (I) written notice specifying such failure having been given to the Lessee by the Intercreditor Agent or any other Secured Creditor and (II) actual knowledge thereof by a Responsible Officer of the Lessee, or such longer period as is reasonably necessary under the circumstances to remedy such failure so long as corrective action is instituted by the Lessee within the applicable sixty (60)-day period and is diligently pursued until such failure is corrected and in any event not to exceed one hundred twenty (120) days without the prior written approval of the Intercreditor Agent (acting at the direction of the Required Secured Creditors); or

(ii) HoldCo fails to comply with any affirmative or negative covenant under the Financing Documents to which it is a party, unless such failure is capable of being remedied and is remedied within sixty (60) days after the earlier of (A) written notice specifying such failure having been given to the Lessee or any Secured Party by the Intercreditor Agent or any other Secured Creditor and (B) actual knowledge thereof by a Responsible Officer of the Lessee; or

(iii) the Sponsor Aggregator or any Sponsor party to an Equity Contribution Account Pledge Agreement or Equity Contribution Account Control Agreement fails to comply with any affirmative or negative covenant under the Equity Contribution Agreement, Equity Contribution Account Pledge Agreement or Equity Contribution Account Control Agreement, as applicable, unless such failure is capable of being remedied and is remedied within forty-five (45) days after the earlier of (A) written notice specifying such failure having been given to the Lessee by the Intercreditor Agent or any Secured Creditor and (B) actual knowledge thereof by a Responsible Officer of the Lessee; or

(iv) the Taxable REIT Subsidiary fails to comply with (A) any negative covenant under the Article entitled Negative Covenants of this Schedule 2 (Common Representations and Warranties, Covenants and Events of Default), or the following Affirmative Covenants of a prior Article: Section 3.08 (Maintenance of Existence) of this Schedule 2 (Common Representations and Warranties, Covenants and Events of Default), Section 3.09 (Separateness) of this Schedule 2 (Common Representations and Warranties, Covenants and Events of Default) or Section 3.19 (Ranking of Indebtedness) of this Schedule 2 (Common Representations and Warranties, Covenants and Events of Default), in each case unless such failure is capable of being remedied and is remedied within three (3) Business Days after the earlier of (I) written notice specifying such failure having been given to the Taxable REIT Subsidiary and the Lessee by the Intercreditor Agent or any Secured Creditor and (II) actual knowledge thereof by a Responsible Officer of the Taxable REIT Subsidiary, or (B) any other affirmative or negative covenant under the Financing Documents to which it is a party (other than a Senior Debt Document), 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 having been given to the Taxable REIT Subsidiary by the Intercreditor Agent or any other Secured Creditor and (II) actual knowledge thereof by a Responsible Officer of the Taxable REIT Subsidiary.

(f) Total Loss; Condemnation. (i) Any event of Total Loss occurs, or (ii) any Event of Eminent Domain and in respect of all or substantially all of the Project occurs such as to not allow the Lessee to continue satisfying its material obligations under the Financing Documents and the Material Project Documents for more than sixty (60) consecutive days, in each case, after giving effect to any Insurance and

Condemnation Proceeds or other amounts available to the Lessee and applied to the replacement or repair of the affected assets.

(g) Abandonment. The Lessee abandons all or a material part of the Project or of its activities to design, develop, cause the construction of, operate or maintain the Project in each case, which abandonment shall be deemed to have occurred if the Lessee fails, to conduct its activities in accordance with the Lease to design, develop, cause the construction of, operate or maintain the Project for thirty (30) consecutive days (in either case other than as a result of a Compensation Event, a Delay Event or a Force Majeure (in each case, as defined under the Lease)).

(h) Cross-Acceleration. (i) The maturity of any Indebtedness of the Lessee (other than Senior Debt) that is outstanding in a principal amount of at least the greater of (A) fifty million Dollars (\$50,000,000) and (B) five percent (5%) of EBITDA shall be accelerated or any such Indebtedness (other than any Subordinated Debt) shall be, as a result of the occurrence of an event of default or similar event, declared to be due and payable or required to be prepaid or redeemed (other than by a regularly scheduled required prepayment or redemption), purchased or defeased, or an offer to prepay, redeem, purchase or defease such Indebtedness shall be required to be made, in each case prior to the stated maturity thereof or (ii) the Lessee shall fail to pay in full at the stated final maturity thereof any Indebtedness of the Lessee that is outstanding in a principal amount of at least the greater of (A) fifty million Dollars (\$50,000,000) and (B) five percent (5%) of EBITDA.

(i) Insurance. Any insurance required under the terms of the Lease to be maintained by the Lessee is not, or ceases to be, in full force and effect at any time when it is required to be in effect, unless (i) such insurance is replaced by insurance on substantially similar terms within the applicable replacement period, if any, provided for under the Lease or (ii) the requirements for such insurance are waived or modified in accordance with the terms of Section 12 (*Insurance*) of the Lease pursuant to an agreement between the Lessee and the Port Authority, including, for the avoidance of doubt, any agreement between the Lessee and the Port Authority as a result of any insurances required under the terms of the Lease no longer being available on a commercially reasonable basis or on commercially reasonable terms.

(j) Governmental Approvals. Any Governmental Approval obtained or required to be obtained hereunder by the Lessee or the Taxable REIT Subsidiary is lost, surrendered, revoked, cancelled or otherwise not maintained in full force and effect and such loss, surrender, revocation, cancellation or failure to maintain has had or would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, where such Governmental Approval is not restored or replaced by another Governmental Approval within thirty (30) days after the earlier of (i) written notice thereof from the Intercreditor Agent to the Lessee and (ii) knowledge of such default by a Responsible Officer of the Lessee, or such longer period as is reasonably necessary under the circumstances to remedy such failure so long as corrective action is instituted by the Lessee within the applicable thirty (30)-day period and is diligently pursued until such loss is corrected and in any event not to exceed ninety (90) days without the prior written approval of the Intercreditor Agent.

(k) ERISA. An ERISA Event shall have occurred and be continuing and which such ERISA Event, together with all other ERISA Events, if any, would reasonably be expected to result in a Material Adverse Effect.

(l) Material Project Documents. Any Material Project Counterparty shall be in material breach of, or in material default under, a Material Project Document and such breach or default gives (or with the passage of time or giving of notice will give) the Lessee the right to terminate such Material Project Document (other than any such material breach or material default by the Phase A D&C Contractor under the Phase A D&C Contract in the circumstances described in Section 9.01(f) (*Bankruptcy Proceedings* –

*Phase A D&C Contractor*) of the Credit Agreement or Section 20.1.1(k) or (m) (*Termination by Developer*) of the Phase A D&C Contract or analogous circumstances with respect to the D&C Contractor under the D&C Contract for any Additional Phase); provided that no Event of Default shall occur under this Section 5.01(l) (Material Project Documents) of this Schedule 2 (Common Representations and Warranties, Covenants and Events of Default) if (i) in the case of a failure by a Material Project Counterparty to comply with any payment obligations, such breach or default shall continue unremedied for a period equal to the lesser of (A) the grace period specified in such Material Project Document and (B) thirty (30) days or (ii) in the case of a failure by a Material Project Counterparty to comply with non-payment obligations, such breach or default shall continue unremedied for a period equal to the lesser of (A) the grace period specified in such Material Project Document and (B) sixty (60) days, and in any case, with respect to any Material Project Document (other than the Lease) the Lessee has not replaced such Material Project Document with a Replacement Project Document (including by way of assignment by the then existing Material Project Counterparty to a third party that satisfies the requirements of the definition thereof) within one hundred eighty (180) days after the earlier of (I) written notice thereof from the Intercreditor Agent to the Lessee and (II) actual knowledge of such default by a Responsible Officer of the Lessee.

(m) Termination, Breach and Invalidity of Financing Documents or Material Project Documents.

(i) The maturity of any Senior Debt shall be accelerated or any Senior Debt shall be, as a result of the occurrence of an Event of Default (as defined in such Senior Debt Document) or similar event, declared to be due and payable or required to be prepaid or redeemed (other than by a regularly scheduled required prepayment or redemption), purchased or defeased, or an offer to prepay, redeem, purchase or defease such Senior Debt shall be required to be made, or the relevant Senior Debt Document terminated, in each case prior to the stated maturity thereof.

(ii) Any Financing Document or any material provision thereof, at any time after its execution and delivery and for any reason other than expressly permitted hereunder or thereunder or satisfaction in full of all the Secured Obligations, ceases to be in full force and effect or is declared by a court of competent jurisdiction or other Governmental Authority to be invalid, illegal or unenforceable; or the Lessee or any Affiliate thereof (including the Taxable REIT Subsidiary) contests in any manner the validity or enforceability of any Financing Document to which it is a party; or the Lessee or any Affiliate thereof (including the Taxable REIT Subsidiary) repudiates or denies that it has any or further liability or obligation under any provision of any Financing Document to which it is a party, or purports to revoke, terminate or rescind any provision of any Financing Document to which it is a party.

(iii) Any Material Project Document (or any material provision thereof), at any time after its execution and delivery, terminates or ceases to be in full force and effect or is declared by a court of competent jurisdiction or other Governmental Authority to be invalid, illegal or unenforceable (except (A) upon fulfillment of such party's obligations thereunder or the projected Expiration of the term of such Material Project Document or (B) in the circumstances described in Section 9.01(f) (*Bankruptcy Proceedings – Phase A D&C Contractor*) of the Credit Agreement or Section 20.1.1(k) or (m) (*Termination by Developer*) of the Phase A D&C Contract or analogous circumstances with respect to the D&C Contractor under the D&C Contract for any Additional Phase) or the Lessee, the Taxable REIT Subsidiary or any Material Project Counterparty contests in any manner the validity or enforceability of any provision of any Material Project Document; or the Lessee or any Material Project Counterparty repudiates or denies that it has any or further liability or obligation under any provision of any Material Project Document and, with respect to any Material Project Document (other than the Lease), the Lessee has not replaced such Material Project Document with a Replacement Project Document within one hundred twenty (120) days after the earlier of (I) written notice thereof from the Intercreditor Agent to the Lessee and (II) actual knowledge of such default by a Responsible Officer of the Lessee.

(iv) The Port Authority has delivered a Port Authority Termination Notice (as defined in the Lease) to the Lessee.

(n) Security Documents. Any Security Document shall cease (other than as expressly permitted under the Financing Documents) to be effective to grant a first-priority (subject to Permitted Liens) perfected Lien 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 sixty (60) days after the earlier of (i) written notice thereof from the Collateral Agent or Intercreditor Agent and (ii) actual knowledge of such default by a Responsible Officer of the Lessee.

(o) Conduit Issuer. The Conduit Issuer defaults in the observance or performance of any covenant, agreement or other provision contained in any Financing Document (other than as set forth in paragraph (a) above) and such default shall continue for a period of sixty (60) days after written notice to the Conduit Issuer and the Lessee from the Intercreditor Agent specifying such default; provided that with respect to any such failure, no Secured Obligations 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 sixty (60)-day period and shall thereafter be diligently prosecuted to completion and the failure shall be remedied thereby.

## Appendix C-3

### CERTAIN PROVISIONS OF THE LEASEHOLD MORTGAGES

*The following includes certain provisions of the Leasehold Mortgages and is not a full statement of the terms of such agreements. Accordingly, the following is qualified in its entirety by reference to such agreements and is subject to the full text of such agreements. Copies of the definitive agreements, some of which may be in redacted form and subject to any existing contractual agreements, will be available following the date of issuance of the Series 2024 Bonds, upon delivery of a written request and the payment of reasonable copying, mailing and handling charges to the Indenture Trustee at 240 Greenwich Street, 7E, New York, NY 10286, to the attention of the Corporate Trust Company. Unless otherwise stated, any reference in this Official Statement to the Leasehold Mortgages shall mean such agreements and all schedules, exhibits and attachments thereto, as amended, supplemented or otherwise modified and in effect as of the date hereof. Except as otherwise provided herein, references to “Leasehold Mortgage Loan” shall mean both the Building Loan and the Project Loan. Capitalized terms used in this Appendix C-3 but not otherwise defined in this Official Statement have the meanings given to such terms under the Leasehold Mortgages.*

\* \* \*

#### Section 2. Grant of Leasehold Mortgage.

(a) To secure (i) the payment when due of the total aggregate principal amount of the Leasehold Mortgage Loans, together with all of the interest payable on such Leasehold Mortgage Loans, with (x) the maximum amount of principal equal to three billion, nine hundred eighty-eight million, five hundred seventy-five thousand, five hundred fifty-two Dollars and fifty cents (\$3,988,575,552.50) under the Building Loan Mortgage and (y) two billion, six hundred forty-one million, four hundred twenty-four thousand, four hundred forty-seven Dollars and fifty cents (\$2,641,424,447.50) under the Project Loan Mortgage (or such lesser amount as may be outstanding from time to time), and (ii) the payment or performance of all other loans, advances, debts, liabilities, and obligations, howsoever arising, owed by the Mortgagor to the Conduit Issuer under or in respect of the Building Loan Agreement or Project Loan Agreement, as applicable, the Building Loan Mortgage or Project Loan Mortgage, as applicable or any Building Loan Note (as defined in the Building Loan Agreement) or Project Loan Note (as defined in the Project Loan Agreement), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, including all interest, make-whole amounts, prepayment premiums, fees, charges, expenses, attorney costs and costs of any advisors and consultants chargeable to the Mortgagor and any interest or other amount accruing to the Conduit Issuer under or in respect of the Building Loan Agreement or Project Loan Agreement, as applicable, the Building Loan Mortgage or Project Loan Agreement, as applicable, or any Building Loan Note or Project Loan Note, as applicable, which arises after the commencement of any insolvency or bankruptcy proceedings with respect to the Mortgagor or the Conduit Issuer (collectively, the “**Obligations**”), the Mortgagor hereby grants, mortgages, pledges, assigns, transfers and sets over to the Mortgagee, subject to and upon the terms and conditions of this Leasehold Mortgage, all of Mortgagor’s right, title and interest in, to and under the following, in each case to the extent permissible under the Lease and limited solely to Mortgagor’s interest in such property under the Lease (collectively, the “**Mortgaged Property**”):

(i) The Lease and, subject to the terms and provisions of clause (B) of this Section 2, the leasehold estate created pursuant to the Lease with respect to the land and real property as more particularly described on Exhibit B and visualized on Exhibits A-1, A-2 and A-3 attached hereto and made a part hereof (which Exhibits A-1, A-2, A-3 and B shall be amended or otherwise modified by the parties to this Leasehold Mortgage as necessary following the Completion Date to reflect the Lease lines

depicted in the final Premises, which modifications may, in the event the initial Exhibits A-1, A-2, A-3 and B include 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 this Leasehold Mortgage in compliance with Section 83(a)(14) (*Leasehold Mortgages*) of the Lease), 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, whether by reason of the exercise of options thereunder or by reason of amendments, modifications, supplements, extensions and renewals of the Lease, of whatsoever nature derived or to be derived by the Mortgagor by virtue of the Lease, 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 building materials, building equipment and fixtures of every kind and nature located on the Premises or attached to, contained in or used in any such buildings and other improvements, and all appurtenances and additions thereto and betterments, substitutions and replacements thereof acquired by the Mortgagor under the Lease, and the right to exercise all rights of the Mortgagor under the Lease (including any right or power to voluntarily surrender or terminate the Lease), except as otherwise provided therein;

(ii) 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;

(iii) All machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), furniture, software used in or to operate any of the foregoing, and other property of every kind and nature whatsoever owned by the Mortgagor or in which the Mortgagor has or shall have an interest, now or hereafter located upon the Premises, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and all building equipment, materials and supplies of any nature whatsoever owned by the Mortgagor, or in which the Mortgagor has or shall have an interest, now or hereafter located upon the Premises, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Premises and all of the Mortgagor's right, title and interest in personal property, including, in any event, all of the Mortgagor's right, title and interest in and to, whether now owned or hereafter acquired, all equipment, fixtures, general intangibles and inventory and all proceeds of any and/or all of the foregoing (each of the foregoing terms, as defined in the UCC) (collectively, the "**Personal Property**"), and the right, title and interest of the Mortgagor in and to any of the 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;

(iv) 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 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 Obligations (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 Obligations;

(v) All condemnation proceeds, including interest thereon, which may heretofore and hereafter be received by the Mortgagor pursuant to the Lease or otherwise;

(vi) Any Port Authority Default Termination Payment (as such term is defined in the Lease) or any other amounts payable by the Port Authority in connection with any termination of the Lease;

(vii) Any replacement or reinstatement of the Lease or other right of continued occupancy of the premises demised under the Lease arising in connection with a termination of the Basic Lease prior to its stated expiration date as provided for in Section 29 (*Basic Lease*) of the Lease;

(viii) Any agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into or received, in each case, by Mortgagor, 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, respecting or pertaining to the use, occupation, construction, 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);

(ix) All of the Mortgagor’s right, title and interest in, to and under all tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Mortgaged Property (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); and

TOGETHER WITH any rights granted to the Mortgagor under the Lease or otherwise 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 provided to the Mortgagor under the Lease or otherwise;

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, subject to the terms of the Lease, all insurance proceeds resulting from damage to or destruction of the Premises and all awards resulting from any taking with respect to 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; and all right, title and interest of the Mortgagor in and to any additional property and rights that may from time to time hereafter by installation in the Premises, or by writing of any kind, be subjected to the lien hereof by the Mortgagor or by anyone on their behalf;

PROVIDED, HOWEVER, that the Mortgaged Property shall exclude the Mortgagor's right, title and interest in, to and under any of the following (each an "**Excluded Asset**") (a) motor vehicles, airplanes and other assets subject to certificates of title, but only to the extent that a security interest therein cannot be perfected by the filing of a UCC financing statement, (b) any intent-to-use trademark application prior to the filing of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, to the extent that the grant, attachment or enforcement of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable federal law, (c) particular assets if and for so long, if agreed by the Mortgagee (acting reasonably) and the Mortgagor in writing, the costs and other consequences of creating or perfecting such pledge in such assets exceeds the value to be afforded thereby, (d) any property to the extent that a grant of a security interest in such property is prohibited by any requirement under a Governmental Approval or any Law (each a "**Legal Requirement**"), requires a consent not obtained of any Governmental Authority pursuant to such Legal Requirements or is prohibited by, or constitutes a breach or default under or results in the termination of, or grants any Person (other than the Mortgagor) the right to terminate its obligations thereunder, or constitutes or results in the abandonment, invalidation or unenforceability of any right, title or interest of the Mortgagor therein, or requires any consent not obtained under, any lease, contract, permit, license, agreement, instrument or other document providing for such prohibition, breach, default or termination or requiring such consent is ineffective under applicable Law (including, without limitation, pursuant to Section 9-406, 9-407, 9-408 or 9-409 of the UCC); provided that any such property shall constitute an Excluded Asset only to the extent and for so long as the consequences specified above shall exist and shall cease to be an Excluded Asset and shall become Collateral immediately and automatically, at such time as such consequence shall no longer exist, (e) any equipment (as such term is defined in the UCC) owned by the Mortgagor that is subject to a purchase money security interest or a capital lease, in each case constituting Permitted Indebtedness, if the contract or other agreement in which such security interest is granted (or in the documentation providing for such capital lease) prohibits or requires the consent of any Person other than the Mortgagor as a condition to the creation of any other security interest in such equipment, but only, in each case, to the extent, and for so long as, the Indebtedness secured by the applicable security interest or the capital lease has not been repaid in full or the applicable prohibition (or consent requirement) has not otherwise been removed or terminated, (f) any asset subject to a Permitted Lien (other than Liens in favor of the Mortgagee) to the extent that the grant of other Liens on such asset (i) would result in a breach or violation of, or constitute a default under, the agreement or instrument governing such Permitted Lien, (ii) would result in the loss of use of such asset or (iii) would permit the holder of such Permitted Lien to terminate the Mortgagor's use of such asset, (g) any and all amounts paid or distributed by the Mortgagor as a Distribution or otherwise, in each case, to the extent expressly permitted under the Common Terms Agreement and the other Senior Debt Documents, (h) proceeds of insurance policies to the extent constituting (i) amounts that are required to be paid to, or deposited with (for so long as such deposit is required), a third party and (ii) proceeds of workers' compensation and employer's liability insurance policies and, to the extent prohibited by such policy, any professional liability insurance policies, (i) each of the Distribution Account and the Handback Reserve Account and any monies, securities, instruments or other investments on deposit therein from time to time, (j) letter of credit rights with a stated amount below five million Dollars (\$5,000,000), (k) payroll accounts and deposit accounts established for maintaining cash collateral in respect of letter of credit obligations, and (l) Community Development Reserve (as defined in the Lease).

Each of the rights granted in this Leasehold Mortgage is and shall be (I) appurtenant to the leasehold estate in the Premises created by the Lease, (II) automatically transferred with any permitted assignment or other transfer of the Lease and the leasehold estate created thereby and (III) coupled with an interest and irrevocable during the term of the Lease.

TO HAVE AND TO HOLD the Mortgaged Property, together with all rights and claims of the Mortgagor therein, to the 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 Obligations at the time and in the manner provided in each evidence of the Obligations, this Leasehold Mortgage and the other Financing Documents, 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 in each evidence of the Obligations, this Leasehold Mortgage and the other Financing Documents, these presents and the estate hereby granted shall cease, terminate and be void.

(b) The 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; provided, however, unless a Secured Obligations Event of Default shall have occurred and be continuing, the 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 Financing Documents and not prohibited by the Lease.

(c) Notwithstanding anything to the contrary contained herein:

(i) the parties to this Leasehold Mortgage hereby acknowledge and agree that, as of the date hereof, Mortgagor is granting to Mortgagee a mortgage lien on, and security interest in, the leasehold interest demised pursuant to the Lease in the land described and visualized on Exhibit A-1 attached hereto, and its right, title and interest to the real property located on such land and the other Mortgaged Property located on such land and/or related and incidental thereto (which, for the avoidance of doubt, shall not include the land described and visualized on Exhibit A-2 or Exhibit A-3 or any real property located on such land or any other Mortgaged Property located on such land or related and/or incidental thereto);

(ii) the parties to this Leasehold Mortgage hereby acknowledge and agree that as of the First Additional Premises Lease Commencement Date (as defined in the Lease), Mortgagor is granting to Mortgagee a mortgage lien on, and security interest in, the leasehold interest demised pursuant to the Lease in the land described and visualized on Exhibit A-2 attached hereto, and its right, title and interest to the real property located on such land and the other Mortgaged Property located on such land and/or related and incidental thereto. For the avoidance of doubt, as of the First Additional Premises Lease Commencement Date, the leasehold estate being granted hereunder shall include the land described and visualized on Exhibit A-1 and Exhibit A-2 only, and all real property located on such land and all other Mortgaged Property located thereon and/or related or incidental thereto (which, for the avoidance of doubt shall not include the land described and visualized on Exhibit A-3 or any real property located on such land or any other Mortgaged Property located on such land or related and/or incidental thereto); and

(iii) the parties to this Leasehold Mortgage hereby acknowledge and agree that as of the Second Additional Premises Lease Commencement Date (as defined in the Lease), Mortgagor is granting to Mortgagee a mortgage lien on, and security interest in, the leasehold interest demised pursuant

to the Lease in the land described and visualized on Exhibit A-3 attached hereto, and its right, title and interest to the real property located on such land and the other Mortgaged Property located on such land and/or related and incidental thereto. For the avoidance of doubt, as of the Second Additional Premises Lease Commencement Date, the leasehold estate being granted hereunder shall include the land described and visualized on Exhibit A-1, Exhibit A-2 and Exhibit A-3, and all real property located on such land and all other Mortgaged Property located thereon and/or related or incidental thereto.

Section 3.        Covenants. The Mortgagor covenants to and with the Mortgagee as follows:

(i)        The Mortgagor agrees that in the event that the Mortgagor fails to perform any of its obligations under this Leasehold Mortgage, the Lease or under the other Financing Documents, the Mortgagee shall have the right (but not the obligation), to the extent set forth in the Lease or as otherwise approved by the Port Authority, to perform such obligations in accordance with the terms and conditions of the Lease, this Leasehold Mortgage and the other Financing Documents to which the Mortgagee is a party; provided, however, that so long as a Secured Obligations Event of Default shall not have occurred and be continuing, the 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 Financing Documents and not prohibited by the Lease; and

(ii)       The Mortgagor will prepare and execute any documents necessary to record this Leasehold Mortgage and prepare and file any necessary financing statements and, at periodic intervals, continuation statements pursuant to the UCC and any other documents required to perfect or continue the perfection of the lien and security interest granted in this Leasehold Mortgage, and will make any such filings, and 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 Mortgagee to be necessary or reasonably required.

Section 4.        Condition of Premises.

(a)        The Mortgagor will not commit or suffer physical waste and will otherwise comply with its obligations under the Lease with respect to the maintenance of the condition and repair of the Mortgaged Property.

(b)        Nothing contained in this Leasehold Mortgage, nor any action or inaction of the Mortgagee, shall constitute any consent or request, express or implied, by the 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 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 5.        Lease.

(a)        The Mortgagor covenants that it will (i) promptly observe, perform and comply in all material respects with all the terms, provisions, covenants, conditions and agreements imposed upon or assumed by the Mortgagor as lessee under the Lease, (ii) not do, or permit anything to be done, or omit or refrain from doing anything, the doing or omissions of which will give the Port Authority a right to terminate the Lease, (iii) not terminate, or consent to the termination of, the Lease without the prior written

approval of the Mortgagee, except upon expiration of its Term (as defined in the Lease). Upon the occurrence of any “Event of Default” under and as defined in the Lease, the Mortgagor shall promptly take such actions as may be necessary to timely effect a cure thereof and shall provide to the Mortgagee a copy of any remedial plan submitted to the Port Authority pursuant to Section 21(h) or (i) (*Termination by the Port Authority*) of the Lease contemporaneously with the submission thereof to the Port Authority and shall thereafter keep the Mortgagee apprised of any acceptance or rejection of such remedial plan by the Port Authority and any material developments in the Mortgagor’s efforts to implement such remedial plan. After any termination of the Lease, to the extent the Mortgagor receives payment of the Port Authority Default Termination Payment (as such term is defined in the Lease), such amounts will be immediately paid to the Collateral Agent for disposition in accordance with the Common Terms Agreement. The obligation under the immediately preceding sentence shall survive any termination of this Leasehold Mortgage for so long as any Obligations remain outstanding.

(b) The approval of 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 Section 2(ee) (*Compensation Events*), Section 2(ff) (*Delay Events*), Section 4 (*Rental*) (other than Section 4(d) (*Third Additional Rent*)), 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 76 (*Termination by the 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) or any other amendment, variation or modification of the Lease that could reasonably be expected to have a material adverse effect on the rights or interests of the Mortgagee. The Mortgagee shall respond to any request from the Mortgagor or the Port Authority for approval of a modification or amendment of the Lease within thirty (30) days or such longer period as may be prescribed by the Mortgagor pursuant to Section 7.03(c) (*Votes Allocated to Each Party*) of the Common Terms Agreement or, upon the occurrence and during the continuation of a Secured Obligations Event of Default, a reasonable period of time not to exceed one hundred eighty (180) days. The Mortgagee may not require the Port Authority to pay any fee, charge, or other amount (including reimbursement of any cost or expense) in connection with providing its consent in accordance with this Section 5(b). Notwithstanding anything to the contrary stated or implied in this paragraph, no consent from the Mortgagee shall be required if an amendment to, or variation or modification of, the Lease is necessary for the Port Authority, in its sole discretion, to be in compliance with the Basic Lease or any applicable Law.

(c) The parties hereto acknowledge that, except as specified in the Lease or as otherwise approved by the Port Authority, this Leasehold Mortgage and all rights of the Mortgagee (or any of its successors or assigns) hereunder (i) shall in all respects be as specified in and shall be subject and subordinate to all of the terms, covenants, conditions and provisions of the Lease, including, without limitation, the obligation of the Mortgagor to pay all amounts owed to Contractors (as such term is defined in the Lease), and (ii) shall be subject and subordinate to all of the terms, covenants, conditions and provisions of the Basic Lease. The terms, covenants, conditions and provisions of the Lease and the Basic Lease shall govern as between the Port Authority, the Mortgagor, and the Mortgagee, and in the event of any inconsistency between the terms, covenants, conditions and provisions of the Lease or 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 or the Basic Lease, as applicable, shall control.

(d) The parties acknowledge that the Mortgagee shall not, 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, other than such rights or interest as may be granted to or acquired by the Mortgagee in accordance with Section 83 (*Project Financing*) of the Lease.

Section 6.        Power of Attorney. Upon the occurrence and during the continuance of a Secured Obligations Event of Default, the Mortgagor hereby irrevocably constitutes and appoints the Mortgagee, with full authority in the name, place and stead of Mortgagor to do any and all things required to be done in the 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 the 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 Obligations are 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 the Mortgagee hereunder are solely to protect its interest and shall not impose any duty upon it to exercise any of such powers.

Section 7.        No Assumption by the Mortgagee.

Except as otherwise provided in Section 83(e) (*Recognized Mortgagee's Right to Cure*) of the Lease, nothing in this Leasehold Mortgage contained, nor any action or inaction on the part of the Mortgagee, is intended or shall be construed as establishing between the Mortgagee and any sublessee or between the Mortgagee and the landlord under the Lease or any party to the Financing Documents, the relationship of lessor and/or lessee or as rendering the Mortgagee responsible or liable to any person for the manner of maintenance of the property demised under or affected by the subleases, the Lease or the Financing Documents or the conduct of any business therein or as an assumption by the Mortgagee of any liability to any person for the fulfillment of any covenant or obligation of the subleases, the Lease or the Financing Documents prior to such time as the Mortgagee (x) has taken ownership of the Mortgagor's interest in the Lease by foreclosure or otherwise or (y) has taken possession or control of the Mortgagor's interest in the Lease, whether directly or by an agent as a mortgagee in possession.

Section 8.        Rights and Remedies.

(a)        General.

The Mortgagee shall have those rights and remedies under this Leasehold Mortgage as are specifically provided by this Leasehold Mortgage, the Lease, and the other Financing Documents, subject to the terms and conditions stated therein, at law and in equity. Any amounts received by the Mortgagee in the exercise of its rights and remedies under this Leasehold Mortgage shall be applied by the Mortgagee in accordance with Section 12 (*Application of Proceeds*) hereof.

(b)        Mortgagor Deemed Lessee.

(i)        Notwithstanding any other provision of this Leasehold Mortgage to the contrary, the Mortgagor, for all purposes under the Lease, shall be deemed to be the tenant under the Lease, unless and until the Recognized Mortgagee (as such term is defined in the Lease) shall have acquired the Mortgagor's interest in the Lease or a new lease has been executed between the Port Authority, as lessor, and the Mortgagee, as lessee, pursuant to Section 83 (*Project Financing*) of the Lease, as the case may be, and the Mortgagor shall have as full and complete control of the operation and use of the Premises as if this Leasehold Mortgage had not been executed and delivered (except as permitted in connection with the exercise of the Mortgagee's rights and remedies under this Leasehold Mortgage, the Lease or the other Financing Documents, and except for the purpose of preserving the Mortgaged Property to the extent

permitted in the Lease, this Leasehold Mortgage or the other Financing Documents, as applicable). Nothing set forth in the foregoing sentence, however, shall be deemed or construed to limit in any way any right of the Recognized Mortgagee to exercise any or all of the remedies available under this Leasehold Mortgage, at law or equity under the laws of the State of New York that are prohibited by law from being waived as a matter of public policy (including, without limitation, the right to appoint a receiver).

(ii) The Mortgagee acknowledges and agrees that, in accordance with Section 83(a)(11) (*Leasehold Mortgages*) of the Lease, notwithstanding any enforcement of the security under this Leasehold Mortgage, the Mortgagor shall remain liable to the Port Authority for the payment of all sums owing to the Port Authority under the Lease and the performance and observance of all of the Mortgagor's covenants and obligations under the Lease, unless otherwise satisfied.

(c) Notice of Default, Foreclosure Notice and Port Authority's Right to Purchase.

(i) The Mortgagee shall send to the Port Authority a copy of each notice of default or notice of delinquency under any of the Financing Documents or the Building Loan Mortgage or Project Loan Mortgage, as applicable, and any notice given under the Financing Documents that the Lessee Debt (as defined in the Lease) outstanding under the Financing Documents has become immediately due and payable, at the same time as and whenever any such notice shall have been sent to the Mortgagor, but the Port Authority shall not have the right to cure any default under the Building Loan Mortgage or Project Loan Mortgage, as applicable, except to the extent provided in Section 8(c)(ii) below. If a Secured Obligations Event of Default shall have occurred and be continuing, and the Mortgagee intends to foreclose, the Mortgagee shall give the Mortgagor and the Port Authority written notice of its intention to foreclose (a "**Foreclosure Notice**") and notice of (A) the unpaid principal amount of the Building Mortgage Loans and Project Mortgage Loans, as applicable, and the amount of any accrued and unpaid interest thereon (including any default interest then outstanding under the applicable Building Loan Agreement and related Building Loan Documents or Project Loan Agreement and related Project Loan Documents), any prepayment premiums or penalties, make-whole amounts, Ordinary Course Payments, Termination Payments or other prepayment amounts or breakage costs that would be due and payable upon payoff of the Building Loans and Project Loans, as applicable, and all other amounts that would be due and owing under the applicable Building Loan Agreement and related Building Loan Documents and Project Loan Agreement and related Project Loan 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 Building Loans and Project Loans, as applicable, from and after the date of such Foreclosure Notice, and (B) the amount on deposit in each of the Project Accounts to the extent available to be disbursed under Article IV (*Deposits Into and Withdrawals From Project Accounts*) of the Common Terms Agreement.

(ii) To the extent provided in the Lease, the Port Authority shall have the right but not the obligation following the giving of such Foreclosure Notice by the Mortgagee to repay, discharge and satisfy in full in immediately available funds the Obligations secured by this Leasehold Mortgage and the other Secured Obligations (as defined in the Common Terms Agreement) due and payable under the other Financing Documents from the Mortgagee in accordance with Section 83(i) (*Port Authority's Right to Pay Off Lessee Debt*) of the Lease. In addition to the foregoing, the Mortgagee agrees to be bound by the provisions of Section 83(i) (*Port Authority's Right to Pay Off Lessee Debt*) of the Lease.

(iii) The 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 Debt, 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 Security Documents and the Mortgagor's leasehold estate free from any claims, equities or rights of redemption of the Mortgagor, the Secured Parties and the Mortgagee, and the Port Authority shall have the right to bid for the Mortgaged Property and the property encumbered by the other 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, if a purchaser at a foreclosure sale shall acquire title to the Lease 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.

(d) Incorporation of Additional Rights and Remedies.

Pursuant to certain provisions of the Lease, the Leasehold Loan Agreements, the Credit Agreement, the Common Terms Agreement and the other Financing Documents, including, without limitation, Section 83 (*Project Financing*) of the Lease, the Mortgagee has certain rights and remedies upon a Secured Obligations Event of Default, including, without limitation, the right to foreclose upon the Mortgagor's interest in, or otherwise compel an assignment of, the Lease and the right to compel a New Agreement (as defined in the Lease), all of which provisions are hereby incorporated herein by reference as if fully set forth herein, and the Mortgagee shall have the benefit of and be entitled to rely on such provisions, subject to the terms and conditions stated therein and, as between the Mortgagor and Mortgagee, 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.

(e) Mortgagee's Ability to Cure Default.

(i) If an "Event of Default" shall have occurred and be continuing under and as defined in the Lease, Mortgagor acknowledges and agrees that the Port Authority (as lessor under the Lease) has agreed to accept and permit the curing of any default under the Lease by the Mortgagee or its designee, as, if and with the same force and effect as though cured by the Mortgagor. The curing of any such default by the Mortgagee shall not be deemed to cure any default by the Mortgagor under this Leasehold Mortgage or the other Financing Documents and shall not relieve the Mortgagor from any obligation to reimburse the 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 the Mortgagor from its obligations hereunder, the Mortgagee may personally, or by its agents or attorneys, including, but not limited to, any Qualified Terminal Operator (as defined in the Lease) appointed in accordance with the Lease (but shall not be obligated to), take any action at law or in equity that, subject to the terms and conditions of the Lease (or as otherwise approved by Port Authority), Mortgagee deems necessary or desirable to prevent or cure any default by the Mortgagor in the performance of or compliance with any of the Mortgagor's covenants or obligations under the Lease or any Financing Document, and the Mortgagee and any person designated by the Mortgagee shall have, and are hereby granted, the right to enter upon the Premises to such extent and as often as the Mortgagee deems necessary or desirable to prevent or cure any such default by the Mortgagor, subject to the terms and conditions of the Lease (or as otherwise approved by the Port Authority); provided, however, that so long as a Secured Obligations Event of Default shall not have occurred and be continuing, the 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 Financing Documents and not prohibited by the Lease. The Mortgagee may, but shall not be required to, expend such sums of money as the Mortgagee deems necessary for any such purpose, and the Mortgagor hereby agrees to pay to the Mortgagee, immediately upon demand, all reasonable sums so expended by the Mortgagee, together with interest thereon from the date of disbursement at a rate of interest per annum equal to the Default Rate under (and as defined in) the then-applicable Senior Debt Documents. All reasonable sums so expended by the Mortgagee and the Secured Parties (other than the Hedge Providers) and such interest thereon shall be added to the Obligations of the Mortgagor to Mortgagee and the Secured Parties (other than the Hedge Providers) and secured by the lien of this Leasehold Mortgage.

(f) Remedies.

(i) Subject to the limitations of Section 8(a) hereof, upon the occurrence and during the continuance of a Secured Obligations Event of Default, the Mortgagee may, in addition to any rights or remedies available to it hereunder, subject to the terms and conditions of the Lease (or as otherwise approved 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 Mortgagee, take any one or more of the following actions, at such times and in such order as the Mortgagee shall determine: the Mortgagee personally, or by its agents or attorneys, including, but not limited to, any Qualified Terminal Operator (as defined in the Lease) appointed in accordance with the Lease, may enter into and upon all or any part of the Premises, and each and every part thereof, and may exclude the Mortgagor, its agents and servants wholly therefrom; and having and holding the same, may 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 upon every such entry, the Mortgagee, at the expense of the Mortgagor, from time to time, either by purchase, repairs or construction, may maintain and restore the Mortgaged Property, and may insure the same; and likewise, from time to time, at the expense of the Mortgagor, the Mortgagee may make all necessary or proper repairs, renewals and replacements and such useful alterations, additions, betterments and improvements thereto and thereon as to it may seem advisable; and in every such case the Mortgagee shall 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 8(a) hereof, upon the occurrence and during the continuance of a Secured Obligations Event of Default, without limiting the generality of the other provisions of this Leasehold Mortgage or any other rights at law or in equity, the Mortgagee, with or without entry, personally or by its agents or attorneys, including, but not limited to, any Qualified Terminal Operator (as defined in the Lease) appointed in accordance with the Lease, insofar as applicable, may, in each case subject to the applicable provisions of the Lease (including Section 83 (*Project Financing*) thereof) and the Financing Documents:

sell the Mortgaged Property in whole or in part 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;

institute proceedings for the foreclosure of this Leasehold Mortgage; or

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, this Leasehold Mortgage or any of the other Security 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 Mortgagee shall elect.

(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 pursuant to Section 365(a) of Title 11 of the United States Code, 11 U.S.C. §101, et seq., as amended, or a successor statute and all rules and regulations from time to time promulgated thereunder (the “**Bankruptcy Code**”), thereby giving to the Mortgagor the right to elect to treat the Lease as terminated pursuant to Section 365(h)(1) of the Bankruptcy Code, or a successor statute, Mortgagee shall have the exclusive right to exercise said right and Mortgagor hereby assigns said right to Mortgagee. Mortgagor shall not, without Mortgagee’s prior written consent, elect to treat either the Lease or the leasehold estate created thereby as terminated under Subsection 365(h)(1) of the Bankruptcy Code or any successor statutory provision, after rejection or disaffirmance of the Lease 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 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 by the Port Authority or by any trustee of such party, pursuant to the Bankruptcy Code. To the extent Mortgagor shall fail to timely and reasonably proceed upon request of Mortgagee, 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 (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 Obligations shall have been satisfied and discharged in full. Any amounts received by Mortgagee as damages arising out of any such rejection of the Lease shall be applied by Mortgagee in accordance with Section 12 (Application of Proceeds) 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 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 request by Mortgagee, Mortgagee shall have, and is hereby granted, the option, to the exclusion of Mortgagor, exercisable upon notice from Mortgagee to the Mortgagor, to conduct and control any such litigation with counsel of Mortgagee’s choice. 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 Mortgagee in connection therewith. Mortgagor shall, upon demand, pay to Mortgagee all costs and expenses (including, without limitation, reasonable legal fees and disbursements) paid or incurred by 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 Obligations. Mortgagor shall not, without the prior written consent of Mortgagee, commence any action, suit, proceeding or case, or file any application or make any motion, in respect of the Lease 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 pursuant to Section 365(a) of the Bankruptcy Code or a successor statute, Mortgagor shall give Mortgagee 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; provided, however, that if a trustee in bankruptcy shall have a right to reject the Lease in less than thirty (30) days, then Mortgagor shall give such notice to Mortgagee 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, 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 Mortgagee, to attempt to assign the Lease to the Mortgagee, its designee or nominee. In no event shall the Mortgagor have an obligation to cure any outstanding defaults in connection with any such assignments. In the event 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 and shall instead promptly assign the Lease to Mortgagee, its designee or nominee. In the event of any rejection or disaffirmance of the Lease 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 Mortgagee, such rejection or disaffirmance shall be deemed an assignment of the Lease to the Mortgagee, its designee or nominee. Furthermore, until such time as the Lease is so rejected or disaffirmed or otherwise assumed by Mortgagor, Mortgagee shall have the right to seek adequate protection for payment of the Obligations.

(v) If any of the assignments provided for in this Section 8(g) 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 Mortgagee without the prior written consent of Mortgagee, and if Mortgagee shall give such consent, Mortgagor, anyone claiming by, through or under Mortgagor or a trustee in bankruptcy shall promptly exercise any of said rights.

(vi) To the extent permitted by applicable Law and to the extent Mortgagor unreasonably fails to act in a timely manner upon request of Mortgagee, Mortgagor hereby assigns, transfers and sets over to Mortgagee a right to apply to the US bankruptcy court under Subsection 365(d)(4) of the Bankruptcy Code for an order extending the period during which the Lease 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 9. Sale by the Mortgagee.

(h) The 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 Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(i) Upon the completion of any sale or sales made by the Mortgagee under or by virtue of this Leasehold Mortgage, the 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 Mortgagee may, at the 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 Obligations then due. Upon the occurrence and during the continuance of a Secured Obligations Event of Default, the 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 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 Mortgagee, shall ratify and confirm any such sale or sales by executing and delivering to the Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of the 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.

(j) 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 Mortgagee under this Leasehold Mortgage, whether under the provisions of this Section 9 or otherwise, shall be applied in the order set forth in Section 12 (*Application of Proceeds*) hereof.

(k) Upon any sale made under or by virtue of this Leasehold Mortgage or any of the other 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 Mortgagee may bid for and acquire the Mortgaged Property and the other property encumbered by the other 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 Mortgagee are authorized to deduct under this Leasehold Mortgage.

(l) The foregoing clauses (a)-(d) shall be subject to the terms and conditions of the Lease (or as otherwise approved by the Port Authority).

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Section 12. Application of Proceeds. All proceeds received by the Mortgagee from the sale or other disposition of this Leasehold Mortgage or from the exercise by the Mortgagee of any right or remedy under this Leasehold Mortgage, whether received from a new lessee or otherwise, shall be applied for the benefit of the Secured Parties in accordance with the terms and provisions of Section 8.04 (Application of Proceeds) of the Common Terms Agreement.

Section 13. 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 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 14. Condemnation.In the event that pursuant to the terms of Section 19 (*Condemnation*) of the Lease, there is a Taking (as such term is defined in the Lease) of the Premises, such portion of the Premises subject to the Taking pursuant to Section 19 (*Condemnation*) of the Lease shall be free and clear of this Leasehold Mortgage and any interest of the Mortgagee in the Mortgaged Property. The Mortgagor hereby assigns to the Mortgagee the entire consideration received by the Mortgagor, if any, pursuant to Section 19 (*Condemnation*) of the Lease as collateral and further security for the Obligations and the Mortgagor hereby consents to and directs that the Port Authority pay to the 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, in accordance with the Common Terms Agreement and to which Mortgagor is entitled under the Lease, as the sole and entire consideration for such taking, the amount provided under Section 19 (*Condemnation*) of the Lease. Notwithstanding anything to the contrary contained herein, any amount so paid by the Port Authority to the Mortgagee shall be applied by the Mortgagee in accordance with the Lease and the 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 each of the Port Authority, the Mortgagor and the 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.

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Section 17. Permitted Refinancing Indebtedness and Additional Senior Indebtedness.The Mortgagor and the Mortgagee understand and agree that the Conduit Issuer may, from time to time at the direction of the Mortgagor and subject to the terms of the Financing Documents, establish and authorize the incurrence of Permitted Refinancing Indebtedness and/or Additional Senior Indebtedness for purposes of the Project which shall be pari passu with the Senior Debt incurred or committed to be issued or advanced as of the date hereof, the proceeds of which shall be on lent to the Mortgagor pursuant to the terms of the Leasehold Mortgage Loan Agreement. The parties hereto shall execute such documents as may reasonably be required to accomplish such purposes.

\* \* \*

Section 19. Payment by the Mortgagee.

Subject to the terms and provisions of the Common Terms Agreement, 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 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 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 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 Mortgagee deems advisable, and for any of said purposes the Mortgagee may advance such

sums of money as it deems necessary; provided, however, so long as a Secured Obligations Event of Default shall not have occurred and be continuing, the 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 Financing Documents and not prohibited by the Lease.

\* \* \*

## **Appendix D**

### **SUMMARY OF CERTAIN PROVISIONS OF THE LEASE**

*The following is a summary of selected provisions of the Lease 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. Copies of the definitive agreements, some of which may be in redacted form and subject to any existing contractual agreements, will be available following the date of issuance of the Series 2024 Bonds, upon delivery of a written request and the payment of reasonable copying, mailing and handling charges to the Indenture Trustee at 240 Greenwich Street, 7E, New York, NY 10286, to the attention of the Corporate Trust Company. Unless otherwise stated, any reference in this Official Statement to the Lease 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 D but not otherwise defined in this Official Statement have the meanings given to such terms under the Lease.*

On June 10, 2022, the Port Authority, as lessor, and the Lessee, as lessee, entered into the Lease.

#### **Principal Rights and Obligations of the Lessee**

##### ***Concession; Lease***

Pursuant to the Lease, the Port Authority granted the Lessee the right to design, construct, finance, operate and maintain the Premises, in accordance with and subject to the terms and conditions of the Lease and the applicable Project Documents.

Subject to the terms and conditions of the Lease, the Port Authority leased the Premises to the Lessee on an “as is” basis, subject to any and all easements, encumbrances, restrictions, reservations, covenants and agreements applicable thereto. The Lessee accepted the Initial Premises on the commencement date of the Lease and the First Additional Premises on January 15, 2023. The Second Additional Premises are to be tendered to the Lessee on or before the Scheduled Completion Date for Phase A DBO. The Port Authority has also granted to the Lessee the Temporary Rights of Access and Permanent Rights of Access and O&M Access Areas necessary for the Lessee to perform the D&C Work and conduct the Operations and Maintenance Work. The rights granted to the Lessee under the Lease are subject and subordinate to the terms of the Basic Lease.

##### ***Lease Term; Quiet Enjoyment***

The Lease Term commenced on June 10, 2022 (the “Effective Date”) and will end on the first to occur of (i) 11:59 pm New York City time on December 30, 2060 or if earlier, upon the termination of the Basic Lease, and (ii) the earlier termination of the Lease pursuant to the terms thereof.

The Lessee, so long as it pays all rentals required to be paid by it under the Lease, and performs all covenants, conditions and provisions of the Lease on its part to be performed, may peacefully and quietly enjoy the Premises throughout the term of the Lease, except as otherwise expressly set forth in the Lease.

##### ***Use of Premises; Subleases***

The Lessee will use and operate the Premises as an international airline passenger terminal and for related purposes, including the use and occupancy by (i) the Lessee, (ii) scheduled aircraft operators who

entered into an airline user agreement with the Lessee, (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.

Subject to certain uses reserved to the Port Authority and its designees, the Lessee is responsible for subleasing the New Terminal Facilities to aircraft operators, concession sublessees and other tenants in accordance with the requirements of: (i) the Lease; (ii) a comprehensive terminal use plan for the operation of the New Terminal Facilities for passenger air transportation-related uses; and (iii) a comprehensive concessions plan for the development and operation of the concession program for the New Terminal Facilities. The terminal use plan and the concessions plan must each be approved by the Port Authority and must be updated annually during the Lease Term. The comprehensive terminal use plan is required to identify the principles and methodologies of the Lessee's airline rates and charges structure and outline other matters relating to the aeronautical users of the New Terminal Facilities. The comprehensive concessions plan is required to provide details with respect to the Lessee's retail concessions program, including the types of concessions, rentals required for each type of concession, fees, ACDBE participation and similar matters.

Subject to the terms of the Lease, the Lessee is not permitted to sublet or license the Premises (or any portion thereof) or enter into any sublease (or amend, modify or extend any existing sublease) without the prior written consent of the Port Authority. Subject to the terms of the Lease, certain subleases that are entered into in accordance with the comprehensive terminal use plan or that are entered into with Anchor Users on or prior to the date of the Lease will be exempted from the Port Authority's consent requirement. In addition, all subleases (including exempt subleases) are required to contain certain required sublease provisions.

#### Permitted O&M Expenses; Rental Payments by the Lessee

##### ***Permitted O&M Expenses***

The payment of certain expenses by the Lessee considered "Permitted O&M Expenses" will be senior and prior to the payment of any Lessee Debt or any related debt service and certain rentals payable to the Port Authority under the Lease.

##### ***Ground Rent***

Pursuant to, and subject to the terms of, the Lease, the Lessee will pay annual ground rent ("Ground Rent") to the Port Authority in the amount of (x) for the period from the Effective Date of the Lease to December 31, 2022, \$148,300 per acre per annum, escalated for each January 1st that occurred between December 31, 2018 and the calculation date by 4% per year (so that the rental rate in 2022 equaled \$173,490.02) and (y) thereafter, the rental rate in the prior calendar year, adjusted annually at the greater of 4% or 50% of the CPI Percentage Increase, which rent shall be paid monthly in advance. The Ground Rent will be paid (i) with respect to the Initial Premises from and after the Effective Date of the Lease, and (ii) with respect to the First Additional Premises and the Second Additional Premises from and after the date the First Additional Premises or Second Additional Premises, as applicable, are tendered to the Lessee. The Ground Rent will be paid to the Port Authority at the same level of payment of any other Permitted O&M Expense prior to the payment of any Lessee Debt.

##### ***First Additional Rent***

In connection with the Lessee's entry into one or more Leasehold Mortgages, the Lessee will pay the Port Authority an annual rental (the "First Additional Rent") in an amount of \$3,200,000 in total for all

such Leasehold Mortgages, which rental shall be payable semi-annually, commencing in the calendar year in which any such Leasehold Mortgage becomes effective and continuing until all amounts secured by such Leasehold Mortgages have been repaid in full and any Leasehold Mortgages have been released.

### ***Second Additional Rental***

The Lease provides for the payment of an additional annual rent (the “Second Additional Rental”) by the Lessee to the Port Authority, starting with completion of Phase A, in the amount of \$61,957,620.90 per annum, and escalating at 3% annually thereafter, which rent shall be paid monthly in advance. If, prior to December 31, 2033, the Lessee has insufficient funds available in the Post-Completion Revenue Account to pay all or a portion of the Second Additional Rental when due after payment of all other amounts with priority over or at the same level as Second Additional Rental as set forth in the Cash Flow Waterfall (the aggregate amount of such deficiencies, the “Deferred Second Additional Rent”), the payment of the Deferred Second Additional Rent will be deferred until the earlier of (x) the date on which the Lessee has sufficient funds available in the Post-Completion Revenue Account to make such payment, after payment in full of all other amounts then due with priority over or at the same level as the Second Additional Rental as set forth in the Cash Flow Waterfall and (y) December 31, 2038, and the Lessee will be obligated to pay the Port Authority interest on the amount of any unpaid Deferred Second Additional Rent at a rate per annum of 7.5% until the date of payment of any such Deferred Second Additional Rent. Payment of Second Additional Rental and Deferred Second Additional Rent shall be senior and prior to the payment of any payments or distributions made by the Lessee to any of its owners.

### ***Third Additional Rent***

From the Effective Date of the Lease and throughout the Lease Term, the Lessee is obligated to pay in equal quarterly installments in advance, an annual rent (the “Third Additional Rent”) in an amount equal to \$56,400,000, escalating at 3% per annum. The payment of Third Additional Rent will be subordinated to the payment of Lessee Debt and senior to any payments or distributions to the Lessee and/or the Lessee’s beneficial owners. In the event the Port Authority terminates the Lease prior to the scheduled expiration date, as a result of the occurrence of an Event of Default, the Lessee shall be required to pay the net present value of all remaining unpaid and scheduled payments of Third Additional Rent, at a discount rate equal to 5.5%.

### ***IRR Rent***

The Lessee must share with the Port Authority a share of CAFD to the Sponsors in any given quarterly period to the extent IRR Rent exceeds certain thresholds set forth in the Lease. For each year during the Lease Term in which the New Terminal Facilities are ranked by Skytrax in the Top 1-10 World’s Best Airport Lease Terminals, such thresholds will be adjusted.

To the extent there are not sufficient returns to satisfy any tier’s hurdle, the return shortfall is accrued at the applicable percentage threshold of the applicable tier.

### ***Revenue Sharing***

Subject to the Deferred Concession Share mechanism described below, the Lessee is required to pay (A) concessions revenue rent (the “Concession Revenue Share”) to the Port Authority in an amount equal to the greater of (i) 50% of all gross rents paid or payable from Lessee’s concessions sublessees operating at the New Terminal Facilities, provided that gross rents shall not include amounts received by the Lessee for (a) common area operations and maintenance charges assessed to food-and-beverage concession sublessees located within designated food court areas, (b) marketing charges for the concessions

program, including for directories and similar wayfinding devices and (c) utilities charges, in each case on a straight cost recovery basis with no markup, and (ii) the then applicable minimum annual guaranteed amount (the “MAG Amount”) described below, which Concession Revenue Share is payable to the Port Authority prior to payment by the Lessee of any Permitted O&M Expenses as set forth in the Cash Flow Waterfall, (B) 50% of all revenues generated from the lease of common use lounges (the “Common Use Lounge Share”), and (C) 10% of the rental payment for any exclusive use space subleases at the New Terminal Facilities (the “Sublease Fee”).

The MAG Amount equals: (a) until DBO has occurred for any Phase, \$0, (b) with respect to the calendar year immediately subsequent to the calendar year during which DBO of any Phase occurs (the “First Concessions Year”), an amount equal to the product of (x) 80% of the concession revenue share forecast for such First Concessions Year divided by the enplanements forecasted to occur during such First Concessions Year, and (y) the actual number of enplanements during such First Concessions Year; and (c) for each calendar year thereafter, an amount equal to the product of (x) 80% of the actual Concession Revenue Rent paid to the Port Authority in the previous calendar year divided by actual enplanements for that previous calendar year, and (y) the actual number of enplanements during the current calendar year. In any event, the MAG will not be less than a floor of \$6.67 per enplanement adjusted annually by CPI. The MAG Amount applies only with respect to Concessions Revenue Rent.

The Port Authority is obligated to pay the Lessee 50% of all advertising revenues paid to the Port Authority which are allocable to the New Terminal Facilities after deduction of the revenue share of the manager of the advertising program at the Airport (the “Advertising Share”). The Advertising Share is not subject to the deferral mechanism described above.

The Port Authority Revenue Share is subject to the Deferred Concession Share, a deferral mechanism through December 31, 2031 that subordinates the Port Authority Revenue Share to debt service and other Lessee expenses, and which works as follows: the Port Authority Revenue Share will be payable only from and to the extent there is cash remaining in the Post-Completion Revenue Account after payment by Lessee, for the applicable month during which any Test Date occurs, of the aggregate of Permitted O&M Expenses, Major Maintenance and Asset Preservation Work costs and expenses, Ground Rent, Pro-Rated Debt Service, First Additional Rent, Second Additional Rental, Third Additional Rent and the funding of reserves as may be required under the Financing Documents in accordance with the Cash Flow Waterfall. The Port Authority Revenue Share will be deferred until the earlier of (1) the date there is cash remaining in the Post-Completion Revenue Account after payment of Senior Payments sufficient to pay any portion of the same together with the Concession Shortfall Interest due thereon, and (2) December 31, 2038. If available cash flows are insufficient to pay the Deferred Second Additional Rent in full, the shortfall will be carried forward and accrue interest at a rate of 7.5% per annum until the earlier of (i) available cash flows are sufficient to pay the Deferred Second Additional Rent together with interest due thereon, and (ii) December 31, 2038. The Deferred Second Additional Rent and the Deferred MSA Fee will be subordinated to the payment of Second Additional Rental and Third Additional Rent.

#### ***AOC; Milestone Payments; PA Cost Reimbursement***

Subject to the terms of the Lease, the Lessee has agreed to pay a portion of capital and operating expenditures related to any Airport-wide facility developments which (i) demonstrably benefit the Premises, (ii) are used by the Lessee or its tenants in connection with the Premises, and (iii) are implemented to facilitate safety, security, or operational efficiencies at the airport during the Lease Term. The Lessee will also contribute to the costs of the Port Authority’s Airport Operations Center (“AOC”) planned for development.

Specifically pursuant to Section 81 (*Milestone Payments for the Cost of the Redevelopment Work*) of the Lease, the Lessee will pay fixed monthly payments totaling \$87.5 million with respect to the Roadway Network, \$22 million in connection with the Direct Connect Project, and \$40 million in connection with the AirTrain Upgrade.

The Lessee must reimburse the Port Authority for all Port Authority costs and expenses in connection relating to the Project up to an amount of \$139,100,000 (the “PA Cost Reimbursement Amount”). The PA Cost Reimbursement Amount was paid or will be paid, as applicable, as a project cost as follows: (i) \$50,000,000 was paid as of the Effective Date; (ii) during 2023, the Lessee will pay 12 equal monthly installments totaling \$26,500,000; (iii) in 2024, the Lessee will pay 12 equal monthly installments totaling \$26,500,000; and (iv) in 2025, the Lessee will pay 12 equal monthly installments totaling \$36,100,000.

#### Design and Construction of the Project

The Lessee will carry out and complete the D&C Work in accordance with the Lease, the Requirements and Provisions for Work, the other Project Documents, Applicable Laws, Applicable Standards and governmental approvals. The Lessee is required to complete the D&C Work for each Phase by the Scheduled Completion Date of such Phase. The Scheduled Completion Date of Phase A is June 1, 2026 (as such date may be adjusted as permitted under the Lease, including for Delay Events as described below). Phase B1 and Phase B2 of the Project may be developed separately as described under “Construction Phases” below. The Scheduled Completion Date (i) with respect to Phase B1 is 23 months after issuance of notice to proceed with respect to Phase B1; (ii) with respect to Phase B2 is 18 months after issuance of notice to proceed with respect to Phase B2, and (iii) if Phase B1 and Phase B2 are developed simultaneously, the date which is twenty-eight (28) months after the Phase B1 and Phase B2 issuance of notice to proceed. Each of these dates may be adjusted only as expressly permitted under the Lease.

#### ***Construction Phases***

The Lessee is obligated to construct Phase B1 and Phase B2 subject to meeting certain investment grade rating criteria for the applicable Phase (“Investment Grade Rating Conditions”), or, if such Investment Grade Rating criteria are not met, satisfaction of certain traffic triggers for such Phase (“Traffic Triggers”), as follows:

The Lessee must, no earlier than nine months and no later than six months prior to the Scheduled Completion Date for completion of Phase A or Phase B1, as applicable, use commercially reasonable efforts to obtain an Investment Grade Rating for the Lessee Debt to fund the D&C Work Costs for Phase B1 or Phase B2, as applicable. If the Lessee obtains an Investment Grade Rating, the Lessee’s obligation to commence the D&C Work in respect of Phase B1 or Phase B2, as applicable, is further subject to (i) completion of the applicable previous Phase; (ii) tender of the Second Additional Premises; and (iii) obtaining all Governmental Approvals required in connection with such Phase; *provided* that the Lessee shall use commercially reasonable efforts to obtain such Governmental Approvals on a timely basis to maintain the Baseline Schedule (collectively, “Investment Grade Rating Conditions”). In addition, the obligation to proceed is suspended during a Force Majeure materially impacting the Lessee’s ability to commence and proceed with D&C Work in respect of the applicable Phase (a severe disruption in the financial, banking and capital markets generally will be deemed as Force Majeure for that purpose until the date such disruption subsides to the extent applicable).

If following Phase A DBO or Phase B1 DBO, as applicable, the applicable Traffic Triggers are met prior to obtaining investment grade rating, the Lessee must commence D&C Work in respect of Phase B1 or Phase B2, as applicable, and seek to obtain investment grade rating as described above. The Phase B1

Traffic Trigger is the earlier to occur of: (A) the date on which the Port Authority notifies the Lessee that the number of Airport international enplanements during the preceding six (6) months period prior to the applicable date of calculation equals or exceeds the number of Airport international enplanements for the corresponding six (6) month period in 2019 and (B) the date on which the number of enplanements at the New Terminal Facilities equals or exceeds 4,500,000 (i) for the twelve (12) month period preceding the applicable date of calculation or (ii) on a projected basis, for the twelve (12) month period succeeding the applicable date of calculation. Phase B2 Traffic Trigger is the earlier to occur of: (A) (a) to the extent the T4 Additional Gates (described below) have not been constructed, the date on which the number of Airport international enplanements equals or exceeds 20,000,000 and (b) to the extent the T4 Additional Gates have been constructed, the date on which the number of Airport international enplanements equals or exceeds 21,000,000, in each case, for the twelve (12) month period preceding the applicable date of calculation, and (B) (a) if the Two-Gate Toggle was implemented, the date on which the number of Enplanements at the New Terminal Facilities equals or exceeds 6,000,000 for the twelve (12) month period preceding the applicable date of calculation and (b) if the Two-Gate Toggle was not implemented, the date on which the number of Enplanements at the New Terminal Facilities equals or exceeds 6,700,000 for the twelve (12) month period preceding the applicable date of calculation.

If the Lessee fails to develop Phase B1 within the applicable timeframe after the applicable Traffic Triggers are met, the Port Authority may permit the lessee of Lease Terminal 4 at the Airport to construct, or may itself undertake to construct up to three (3) new permanent wide-body contact gates at Lease Terminal 4 at the Airport ("T4 Additional Gates"). If the Lessee fails to commence Phase B1 or Phase B2 within the applicable timeframe (30 days following satisfaction of the Investment Grade Rating Conditions and other conditions being met, or nine (9) months from the Traffic Triggers and other conditions being met, as applicable), the Lessee, in addition to all other rentals, must pay the Port Authority a single lump sum amount of \$25 million. Failure by the Lessee to commence Phase B1/Phase B2 within ninety (90) days after the Investment Grade Rating Conditions and other conditions have been satisfied or failure by the Lessee to commence Phase B1 or Phase B2, as applicable, by the date which is nine (9) months after the Phase B1 Traffic Trigger NTP Scheduled Date (or, if the Port Authority has exercised the T4 Additional Gates Election, twenty-one (21) months after the Phase B1 Traffic Trigger NTP Scheduled Date) or nine (9) months after the Phase B2 Traffic Trigger NTP Scheduled Date, as applicable, will trigger an Event of Default.

If the Lessee is unable, despite its commercially reasonable efforts, to obtain an investment grade rating for the Lessee Debt to fund the D&C Work Costs for Phase B1, but would be able to obtain such Investment Grade Rating if the number of Gates in Phase B1 were reduced from four (4) wide-body contact Gates and one (1) narrow-body contact Gate to two (2) wide-body contact Gates and one (1) narrow-body contact Gate, Lessee must move two (2) wide-body contact Gates originally planned to be a part of Phase B1 to Phase B2 (the "Two-Gate Toggle") in order to obtain such Investment Grade Rating.

#### ***Cooperation and Coordination of the D&C Work; Design and D&C Working Group***

The Lessee and the Port Authority will cooperate with each other and engage at all times in an open dialogue with respect to the D&C Work and the Project. The Lessee and the Port Authority have agreed to establish a design and construction working group to review the development of the D&C Work and the Port Authority Enabling Work and all drawings, sketches, specifications, calculations, reports and other relevant documentation prior to the submission of any Construction Application to the Port Authority with respect to the D&C Work. The working group will meet on a regular basis in order to ensure that both parties will be generally informed of all aspects of the design and construction of the Project, the status of the Port Authority reviews, comments, and approvals, and all approval dates for all Construction Applications with respect to the D&C Work. The meetings will be on an informal basis to encourage a full discussion of all appropriate issues between the parties and will not supersede the approval process set forth in the Lease,

the TCAP Process, the Requirements and Provisions for Work or in the other Project Documents. The working group will meet in the manner required above until the Substantial Completion of the Project.

### ***Suspension of D&C Work***

The Port Authority will at any time have the right and authority to suspend all or any portion of the D&C Work by written order to the Lessee; provided that (i) such suspension shall only apply to such portion of the D&C Work impacted or at issue with respect to such event or condition, and (ii) the Port Authority shall promptly rescind such order of suspension when the Port Authority has determined that the event or condition giving rise to such suspension has either been rectified or ceased to exist. Such events or conditions for which the Port Authority may suspend the work include:

(1) any failure by the Lessee to comply with the Lease, any Applicable Law, Applicable Standard or Governmental Approval or obtain any Governmental Approval required to be obtained by the Lessee, including in the event of any failure to comply with the Comprehensive Security Plan);

(2) the existence of conditions unsafe for workers, other personnel or the general public;

(3) an Emergency;

(4) a Force Majeure event;

(5) the presence of a “VIP,” dignitary or other person requiring special security arrangements or expedited handling at the Airport;

(6) as the Port Authority determines to be necessary to respond to Good Order Requirements; and/or

(7) Labor Troubles (subject to terms of the Lease).

### ***Port Authority Oversight; Inspection of D&C Work***

The Port Authority has the right to enter upon the Premises to, among other things, conduct oversight, observe the Lessee’s performance and take any other action that the Port Authority may be entitled or obligated to take under the Lease or Applicable Law. Such right includes the right of the Port Authority, through its duly authorized representatives, to inspect the D&C Work and the plans and specifications thereof, to take samples and perform testing.

If at any time the Lessee fails to perform any of the Work in any material respect, the Port Authority is entitled to cease construction of the applicable portion of the D&C Work specified. The Port Authority has the right to require the Lessee to deliver a proposal for making modifications, corrections or changes in or to the D&C Work that has been or is to be performed so that the same will comply with the provisions of the Lease, the Construction Application and the Partial Approval covering the applicable portion of the D&C Work.

### ***Partial Completion***

The Lease sets out a process by which the Lessee may use a Partial Occupancy Portion or Installation Portion of the New Terminal Facilities for its intended purpose once a material portion of the D&C Work for any Phase is substantially completed or properly usable for the purposes set forth in the Lease. The Lessee may advise the Port Authority to such effect and deliver to the Port Authority: (A) a

certificate signed by an authorized officer of the Lessee certifying that the requirements of the Lease have been met and that the Installation Portion or the Partial Occupancy Portion, as applicable, has been constructed, in all respects, in accordance with all approved plans and specifications and the provisions of the Project Documents and all Applicable Law and Applicable Standards (including installation, commissioning and activation of all equipment and systems required to be installed, commissioned and activated by the Lessee in accordance with the Lease and the other Project Documents), (B) a certificate signed and sealed on behalf of the Architect of Record by a New York State licensed architect on its staff certifying that the approved plans and specifications relating to such Installation Portion or Partial Occupancy Portion, as applicable, are in compliance, in all respects, with the Project Documents, Applicable Law and Applicable Standards and, (C) a certificate 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 Project Documents, Applicable Law and Applicable Standards. The Lessee must also satisfy any applicable conditions in the TCAP Manual with respect to the Partial Occupancy Portion or Installation Portion. Such use is also subject to the Port Authority's inspection and cooperation from the Lessee. Upon satisfaction of all requirements and conditions set forth in the Lease a "Temporary Certificate of Authorization to Occupy or Use" will be issued by the Port Authority in accordance with the TCAP Process with respect solely to the Installation Portion or Partial Occupancy Portion, as applicable, subject to additional conditions as set forth in the Lease.

### ***Substantial Completion***

Substantial completion of the Work for each Phase ("Substantial Completion") will only occur once the Lessee has (x) satisfied all of the applicable conditions set forth in the TCAP Manual with respect to the D&C Work for such Phase and the Airport Security Guidelines Manual, (y) completed such Work in a manner so as to not preclude the later Phases of the Project as described in the Lessee's Basis of Design, and (z) satisfied the certain conditions set forth therein, including obtaining all certifications for mechanical, electrical, electronics and other systems, all inspection reports for such systems will have been made; payment of all associated fees due and owing for all applicable Governmental Approvals; and submission of all applicable plans and manuals and all other submittals required by the Project Documents, Applicable Law or Applicable Standards.

Following delivery of the above referenced certificate to the Port Authority, the D&C Work for the applicable Phase will be inspected by the Port Authority, and if the same has been completed as certified by the Lessee and the Lessee's architect or engineer, and the Lessee has complied, in all respects, with the requirements of the Lease, the other Project Documents, Applicable Standards and Applicable Law, the Port Authority will issue to the Lessee the Completion Certificate subject to the terms of the Lease.

### **Change Orders and Directives**

#### ***Port Authority Changes***

The Port Authority has the right to propose any change to the Work that the Lessee is required to implement pursuant to a change order and following the procedure set forth in the Lease. If the Port Authority proposes a Port Authority change, the Lessee will be required to deliver within fifteen Business Days of receipt of the Port Authority's proposal a written description of the projected impact to the Lessee of the proposed Port Authority change (a "Change Order Proposal"), setting forth, among other things, (a) material delay to the achievement of DBO of the Phase then under construction or any subsequent Phase, (b) a material incremental increase to direct costs to perform the D&C Work resulting from the proposed change, (c) a reduction or modification in the number, type, configuration or location of Gates, ramps or aprons and (d) of Port Authority Changes that result in reduction of Gross Rents or leasable concession

area, in each case, by more than 5% as compared to what was approved by the Port Authority on the Effective Date of the Lease.

As soon as possible after the Port Authority receives a Change Order Proposal, the Port Authority and the Lessee will meet to discuss the terms thereof. The Port Authority will provide its approval or disapproval within thirty days of the meeting. If the parties cannot agree on the terms of a proposed Port Authority Change, the Port Authority may direct the Lessee to proceed with implementing the change and compensate the Lessee for any impact, either upward or downward, to the forecasted costs, Gross Rents and Gross Revenues in connection with the performance of the Operations and Maintenance Work resulting from the proposed Port Authority Change. The Lessee will not be required to perform a Port Authority Change that would result in the conditions set forth in (a), (c), and (d) above unless Port Authority compensates the Lessee for the cost of such work and the Net Revenue Impact of such Port Authority Change.

### ***Lessee Changes***

The Lessee has the right to propose a change to the Work to the Port Authority by delivering a change request to the Port Authority, setting forth, among other things, the proposed change in the Work in sufficient detail to enable the Port Authority to evaluate it in full, the reasons for proposing such change in the Work and all information that the Lessee is required to provide in an impact statement in response to a proposed Port Authority change. As soon as possible after the Port Authority receives a proposed Lessee change, the parties will meet and discuss the change. The Port Authority may request additional information to review, propose modifications to, accept, or reject the proposed change. Any rejection will only be subject to challenge by the Lessee if such rejection involves an engineering matter.

### ***Compensation Events***

Subject to certain notice requirements, submission of necessary documentation and other requirements set forth in the Lease, the occurrence of certain Compensation Events during the Lease Term entitle the Lessee to claim monetary compensation from the Port Authority, including the following (in each case, subject to the limitations and other provisions set forth in the Lease):

- (i) any Port Authority Change;
- (ii) any willful failure of the Port Authority to provide the Lessee with Temporary Rights of Access in accordance with the terms therein with respect to the applicable ongoing Phase; provided that no such failure will 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 as a result of or arising out of an Emergency, or (y) due 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 terms therein;
- (iii) (A) any willful failure of the Port Authority to (x) provide the Lessee with access to the Off-Premises Facilities within the specified time periods set forth in the Baseline Schedule, (y) tender the Second Additional Premises after TOGA has vacated the Second Additional Premises; and/or (B) any failure of the Port Authority to tender the First Additional Premises to the Lessee by January 31, 2023 (or such later date that the Lessee agrees with Delta for their relinquishment of the First Additional Premises); provided, that the Port Authority will have no liability under this clause (B) if Delta refuses to vacate the First Additional Premises on the basis that the Lessee (i) has not entered into an agreement with Delta to provide Delta with access to 8 hardstands for Group V Aircraft (the Delta Hardstand Agreement), (ii) refuses to provide Delta with access to 8 hardstands for Group V Aircraft on the terms set forth in such Delta Hardstand Agreement even though the Lessee has the ability to provide the same, or (iii) is not ready

to provide Delta with access to 8 hardstands for Group V Aircraft on or before January 31, 2023; provided further, however, that with respect to a failure captured by the foregoing clause (iii), the Port Authority will have liability under this clause (B) for each day that the Port Authority fails to tender the First Additional Premises to the Lessee after the date that is thirty (30) days after the Lessee notifies Delta that such hardstands are available for Delta's use provided such hardstands are actually made viable to Delta; and/or (C) the Port Authority's entry into a written contract with TOGA or any Airline binding upon the Port Authority which allows TOGA or such Airline to remain in occupancy of the Second Additional Premises other than in accordance with the terms of the Existing TOGA Site Lease; provided that the foregoing will not 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 as a result of or arising out of an Emergency or (y) due 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 terms therein;

(iv) any suspension of the D&C Work, in whole or in part, by the Port Authority in excess of twenty-four (24) hours made in response to an event requiring the suspension of D&C Work, other than certain events set out in the Lease including noncompliance with the Lease, Emergency, Force Majeure, the presence of a VIP or dignitary, Good Order Requirements, or Labor Troubles;

(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 the Applicable Laws, Applicable Standards, the Lease, the Requirements and Provisions for Work and the other Project Documents; provided that no such event will be deemed to be a Compensation Event to the extent that it is (x) conducted at the direction of any Governmental Authority, or (y) due to a Force Majeure event, for so long as the Parties are coordinating the resumption of performance pursuant to the terms therein;

(vi) the failure of the Port Authority to respond to requests from the Lessee for review and/or approval of such schedules, plans, design documents, or other submittals listed on Exhibit 17 (Material Submittals and Review Period) within the time period set forth in such Exhibit 17 (Material Submittals and Review Period) (the "Submittal Review Period") to the extent such failures exceed one hundred eighty (180) days in the aggregate when combined with the Compensation Events set forth therein; provided that failure to respond within the Submittal Review Period will not count toward the aggregate one hundred eighty (180) day period unless the Lessee will have provided notice of the failure 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) DAYS OF RECEIPT OR DEEMED RECEIPT SHALL CONSTITUTE A COMPENSATION EVENT"** and the Port Authority will have failed to respond to such notice within the five (5)-day period; and provided further, that it will 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 or the other Project Documents (including compliance with Applicable Standards), or (B) review by Governmental Authorities is required 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 will count toward the aggregate one hundred eighty (180) day period to the extent (x) 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 terms therein, or (y) the Port

Authority notifies the Lessee in writing prior to the expiration of the five (5)-day notice period that additional time is necessary for the Port Authority to review any submittal within the Submittal Review Period due to the complexity of such submission as reasonably determined by the Port Authority, which notice will contain an explanation for such delay and identify the estimated extended response time for such submittal;

(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 (x) is specifically identified in a written request from the Lessee to the Port Authority, (y) is in the possession of the Port Authority and (z) is not otherwise available to the Lessee, and in any case, 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 will be not less than ten (10) Business Days after such request); provided, that no such willful failure or delay will 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 terms therein; or

(viii) any change in the scope or design of the Port Authority Enabling Work which materially and adversely impacts the performance of the D&C Work necessary to tie-in or connect the D&C Work with the Port Authority Enabling Work,

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 or any other Project Document, (C) the Port Authority acting in accordance with Applicable Laws, Applicable Standards (provided such Applicable Standards apply to other Airport facilities and are applied to the Lessee in a Non-Discriminatory Manner) or a contract binding upon the Port Authority entered into by the Port Authority in the ordinary course of business, or (D) the failure of the Port Authority to address disagreements between a Lessee-related entity and any other party conducting D&C Work at the Airport, whether such party is subject to the Construction Coordination Agreement or otherwise.

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 will 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.

The Lessee will, and will cause each of its contractors and suppliers 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.

If, for any reason, the Lessee fails to deliver a written Compensation Event Notice within the time period required by the Lease, the Lessee will be deemed to have irrevocably and forever waived and released any claim or right to compensation or other adverse effects on Gross Revenues or on costs, expenses and liabilities attributable to such Compensation Event.

In the event of a Compensation Event, Lessee Damages will be in an amount equal to:

any adverse Net Cost Impact net of all insurance proceeds payable to the Lessee, its contractors or suppliers; and

Net Revenue Impact with respect to (1) Port Authority Changes in connection with (a) a material delay to the achievement of the Completion Date, (b) a reduction or modification in the number, type, configuration or location of Gates, ramps or aprons compared to the same under the Lessee's Basis of Design, and (c) the reduction, individually or in the aggregate with all prior Port Authority Changes, of the aggregate net leasable area comprising the concession areas of the New Terminal Facilities of more than 5% as compared to the net leasable area of the concession area in the Lessee's Basis of Design, or the reconfiguration or relocation of such leasable area that adversely affects the monetary value of such concession areas such that individually, or in the aggregate with all prior Port Authority Changes, such reconfiguration or relocation adversely affects the Gross Rents by more than 5% as compared to projected revenue Gross Rents set forth in the Financial Model on the effective date of the Lease, and (2) (a) with respect to the Compensation Event described in clause (iv) above (the Port Authority's suspension of D&C Work) to the extent the aggregate delay under clauses (iv) and (vi) (failure to timely review material submittals) exceeds one hundred and eighty (180) days.

With respect to payment, to the extent funds are available to the Port Authority from the Port Authority Reserve Amount (described below), the Port Authority has the right to apply the Port Authority Reserve Amount towards such Lessee Damages. Otherwise, Net Cost Impact may be paid in a lump sum or a deduction to rentals, and Net Revenue Impacts may be paid through deduction in rentals or periodic payments on an agreed schedule.

### ***Delay Events***

Subject to certain notice requirements, submission of necessary documentation and other requirements set forth in the Lease, the occurrence of certain Delay Events during the Lease Term entitle the Lessee to claim schedule relief from the Port Authority including, the following (in each case, subject to the limitations and other provisions set forth in the Lease):

(i) the occurrence of any Force Majeure event with respect to the Lessee;

the discovery of any Unknown Conditions 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 Project is 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, (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;

any breach by the Port Authority of any material obligation under the Lease (to the extent not covered otherwise by any of the other events specified in the Lease;

the occurrence of a Compensation Event;

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 or the transactions contemplated hereby under New York Unconsolidated Laws Sections 6631-6647, which injunction or order prohibits or enjoins prosecution of the Work;

any change by the Port Authority to the Rules and Regulations or the Requirements and Provisions for Work taking effect prior to the Completion Date that materially and adversely impacts (notwithstanding the Lessee's reasonable efforts to mitigate) the Lessee's cost of performing 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 an event requiring the suspension of D&C Work specifically set forth in the Lease;

(A) any failure to tender the First Additional Premises to the Lessee on the date set forth in the Baseline Schedule, except to the extent caused by the Lessee or a Lessee-related entity and/or (B) any failure to tender the Second Additional Premises to the Lessee on the date set forth in the Baseline Schedule, except to the extent caused by the Lessee or a Lessee-related entity; or

any failure by the Port Authority to issue approvals in accordance with the Material Submittals and Review Period,

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 or any other Project Document.

If for any reason the Lessee fails to deliver a written Delay Event Notice within the time period required by the Lease, the Lessee will be deemed to have irrevocably and forever waived and released any claim or right to time extensions or any other relief attributable to such Delay Event. As a condition to the Port Authority's obligation to extend any schedule relief, the Lessee is required to execute a full, unconditional, irrevocable release of any claims and other rights to relief and remedies associated with such event, except for (i) the claim and right to the subject relief, (ii) the Lessee's right to claim monetary relief for a Compensation Event, and (iii) the right to terminate the Lease in accordance with the terms of the Lease and to receive any applicable termination compensation.

The Lessee will, and will cause each of its contractors and suppliers 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 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, the delay and excuse of performance permitted under the Lease will 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 is required to continue its performance and observance of all of its obligations and covenants to be performed to the extent that it is reasonably able to do so and will use its Reasonable Efforts, and will 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 Lessee from timely payment of monetary obligations pursuant to the Lease or compliance with 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.

Subject to certain restrictions set forth in the Lease and the Lessee giving the Delay Event Notice required in the Lease, a Delay Event will excuse the Lessee from whatever performance is prevented or delayed by the Delay Event referred to in such notice to the extent set forth in the Lease.

Subject to the limitations set forth in the Lease, a Delay Event that is agreed between the Port Authority and the Lessee occurring during the D&C Work Period affecting the performance of the D&C Work will excuse the Lessee from performance of its obligations to perform the D&C Work but only to the extent that such D&C Work is directly affected by such Delay Event.

If the Port Authority and the Lessee (i) cannot agree on the extent of any delay incurred or relief from the Lessee's obligations under the Lease, 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, the Port Authority and the Lessee will resolve the matter in accordance with the dispute resolution procedures in the Lease. Pursuant to the Lease, the Lessee will be entitled to: (a) an extension to the dates for achievement of the applicable Scheduled Completion Date on a day-for-day basis, taking into account impacts on the critical path in the Baseline Schedule adversely affected; and (b) temporarily excuse performance.

### ***Official Health Event***

As noted above, subject to the terms and conditions of the Lease, the occurrence of any Force Majeure event with respect to the Lessee may be a Delay Event. The term "Force Majeure" is defined in the Lease to include, among other things, a pandemic or epidemic health event officially declared by a federal or New York State Governmental Authority, which event delays or prevents the performance of a party's obligations under the Lease. It excuses affected performance and extends completion deadlines, but only to the extent such performance is actually and necessarily affected by the event and the effect of the event could not be anticipated or avoided by the exercise of reasonable precautions and measures. The Force Majeure provisions of the Lease do not relieve the Lessee of any obligation to pay any rentals or other amounts specified in the Lease. Further, in no event shall the inadequacy of financial resources required in any circumstance constitute Force Majeure or causes or conditions beyond the control of the Lessee.

### **Performance Security**

The Lessee must require any Contractors whose Contract Sum exceeds \$10,000,000 performing the D&C Work to provide: (x) one or more parent guaranty (if more than one, such guarantee will be issued on a joint and several basis) from reputable guarantors acceptable to the Port Authority, (y) one or more D&C Letters of Credit, or (z) a payment and performance bond from a surety acceptable to the Port

Authority, provided that for contracts whose Contract Sum is less than \$40,000,000, as an alternative to requiring surety bonds from certain Contractors, the Design Builder may enroll such Contractor in a subcontractor default insurance program, in a form and amount satisfactory to the Port Authority, and including a financial endorsement in favor of the Lessee and the Port Authority.

#### Design and Construction Warranty

Under the Lease, the Lessee warrants and guarantees to the Port Authority that (i) the design of the Project satisfies the requirements of the Lease, the Requirements and Provisions for Work and the other Project Documents; (ii) all D&C Work, including materials and equipment furnished as part of construction, are (A) complete and conform to Best Management Practice, (B) new (unless otherwise specified in the Lease or the Requirements and Provisions for Work), of good quality, in conformance with Applicable Laws, Applicable Standards, the Lease, 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 for each Phase, including all final Construction Applications approved by the Port Authority for each such Phase will (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 under the Lease must be for a term of one (1) year (or, if available on cost effective terms, two (2) years) after the date that the Port Authority issues a certificate of substantial completion of the applicable Phase. For any portion of the D&C Work that is repaired in the warranty period, such term will be for one (1) year (or two (2) as applicable) from the date of repair or replacement.

#### Defects and Non-Conforming Work

In the event of the occurrence of a defect in the D&C Work encompassed by the warranty during the applicable warranty period, and including any non-conforming work, the Port Authority is entitled under the Lease, in addition to any other remedies, to demand that the Lessee or its contractor rectify such defect or non-conforming work at its sole expense.

#### Other Redevelopments

The Lessee has entered into a Construction Coordination Agreement with the Port Authority that is intended to provide for a safe, secure and orderly use of shared resources during the construction of the Project and other redevelopment works at the Airport which may concurrently take place with the construction of the Project. The Port Authority has caused, or will cause, each such other redevelopment party at the Airport to enter into a construction coordination agreement with the Port Authority with substantially similar terms as the agreement entered into by the Lessee.

The Construction Coordination Agreement provides guidelines and procedures for the Port Authority's JFK Program Director to resolve use priorities of certain shared Airport resources, such as roadways, logistics facilities, and laydown areas, between the various Airport redevelopment parties. Separately, the Lessee and other Airport redevelopment entities have agreed to utilize certain concrete batching plants and barging facilities being constructed at the Airport and to be operated by third-party vendors, in order to address certain community and traffic management concerns.

Additionally, pursuant to the Lease, the Port Authority will use commercially reasonable efforts to coordinate the D&C Work and the Other Redevelopments in a non-discriminatory manner, to the extent that unanticipated conflicts arise to enable the D&C Work to continue, to minimize disruption to the traveling public, to address certain Good Order Requirements, or to accommodate Port Authority Enabling

Work or other work that as gating items need to be prioritized in each case in accordance with applicable provisions of the Lease and the Construction Coordination Agreement.

#### Asset Preservation Schedule

The Lessee will submit an Asset Preservation Schedule and updates thereto for review and approval by the Port Authority as required under the Operations and Maintenance Lease Term Requirements. The Lessee's preparation of the Updated Asset Preservation Schedule will include revisions as reasonably indicated by experience and then-existing conditions respecting the Premises, changes in estimated costs of Asset Preservation Work, funding of the Major Maintenance Reserve Fund and disbursement plan and schedule from the Major Maintenance Reserve Fund, changes in technology, changes in the Lessee's planned means and methods of performing Asset Preservation Work and other relevant factors. The Updated Asset Preservation Schedule also will set forth, by category of asset, the Lessee's planned draws from the Major Maintenance Reserve Fund during the forthcoming five (5) Calendar Years.

#### Major Maintenance

In addition to routine maintenance, the Lessee is required to diligently perform Major Maintenance, repair, reconstruction or replacement of any portion or component of the New Terminal Facilities as necessary to maintain compliance with the Lease and, when applicable, the handback requirements. The Lessee will comply with the then-current Capital Asset Management Plan and the Asset Preservation Schedule, as updated from time to time in accordance with the Operations and Maintenance Lease Term Requirements, including with respect to scheduling and performing Major Maintenance.

The Lessee is required to establish and fund a major maintenance reserve fund on or prior to the Substantial Completion Date of any Phase that may be used to pay the costs of the performance of Major Maintenance. If at any time the Port Authority reasonably determines that the Lessee has failed to complete any part of the Major Maintenance which was contemplated to be completed by, and within the time set forth in, the Asset Preservation Schedule, the Port Authority will give written notice thereof to the Lessee and the Recognized Mortgagee. If the Lessee fails to complete such part of the Major Maintenance within thirty (30) days after the date of the Port Authority's notice (unless the Lessee has provided a work plan acceptable to the Port Authority within such thirty (30) day period that sets forth a schedule and describes specific actions the Lessee will undertake to cure such failure and demonstrates to the satisfaction of the Port Authority that such failure can be cured within a reasonable period of time, and for so long as the Lessee is diligently implementing such plan), the Port Authority will be entitled to (i) declare an Event of Default and exercise its rights and remedies under the Lease (subject to the Recognized Mortgagee's rights to cure such Event of Default and the Recognized Mortgagee's rights in and to the major maintenance reserve fund) or (ii) to perform such Major Maintenance (or engage third parties to perform such Major Maintenance) at the sole cost of the Lessee. If the Port Authority elects to perform (or engage a third party to perform) such Major Maintenance, the Port Authority will provide the Lessee with an invoice for the reasonable estimated or actual costs of such performance and the Lessee will, or will cause the Lenders, to promptly pay such invoice in full upon drawing on the major maintenance reserve fund (including any Major Maintenance Performance Security, if applicable). If the amounts in the major maintenance reserve fund, together with amounts drawn under any Major Maintenance Performance Security, are insufficient to cure such failure or reimburse the Port Authority for the actual costs incurred by it in performing such Major Maintenance (as increased pursuant to this sentence), or if the Lessee is unable to make draws on the major maintenance reserve fund or any Major Maintenance Performance Security for the purpose of paying the Port Authority's invoice, the Port Authority may pay for the costs of such action, in which case the Lessee is required to reimburse the Port Authority in an amount equal to 115% of all out-of-pocket costs and expenses directly paid or incurred by the Port Authority (together with late charges).

### Handback Requirements

Upon the expiration or earlier termination of the Lease, the Lessee will, among other things, be required to handback the Premises to the Port Authority, at no charge to the Port Authority, in the condition meeting all of the requirements set forth in the Lease and the maintenance requirements. Prior to the projected expiration date, the Lessee and the Port Authority will jointly perform Pre-Handback Inspections to jointly determine and verify the condition of the Premises and the residual lives of the assets thereof and revise and update the capital asset management plan. The Lessee is required to perform the necessary maintenance to bring the Premises and related assets up to required conditions and remedy any defects identified by the pre-handback inspections.

No later than sixty (60) days prior to the date that is five (5) years prior to the expiration of the Lease, the Port Authority and the Lessee will engage a mutually acceptable independent, nationally-recognized consultant to provide an estimate of amounts it reasonably believes will be sufficient to cover all costs necessary to cause the Premises and the assets thereof to meet the Handback Requirements at the Expiration Date. Five (5) years prior to the expiration of the Lease, the Lessee must establish a handback reserve fund for the sole benefit of the Port Authority, which funds are available to the Port Authority commencing on the expiration or earlier termination of the Lease for a period of two years after such expiration or earlier termination date if any portion of the Premises or any asset thereof does not satisfy the handback requirements specified in the Lease. Additionally, the handback reserve fund is available to the Port Authority, subject to the rights of the Lenders, upon the occurrence of an Event of Default or early termination of the Lease as a result of such Event of Default.

### Security Deposit

The Lessee must maintain a security deposit (or other form of security, as applicable) in compliance with the Security Agreement in an amount equal to \$50 million.

### Accommodation of Requesting Airlines

#### ***Requesting Airlines***

The Lease contains provisions for a possible accommodation at the New Terminal Facilities of a scheduled aircraft operator which requests the usage of a gate and related services therein. Upon such request, the Lessee will use reasonable efforts to accommodate such request. If the Lessee cannot fulfill such a request, the Lessee will so advise the Port Authority, including documentation demonstrating the inability to provide the requested accommodation. Thereafter, the Port Authority will make a determination as to whether the Lessee should provide the requested accommodations to such requesting airline and if so, whether there are any limitations on the nature, cost, duration and extent of such Accommodations. The determinations made by the Port Authority shall be made on a reasonable basis taking into consideration various factors (including the requirements and obligations of the Lessee or the Port Authority, as applicable, pursuant to Applicable Law, agreement and otherwise, including as the Lessee of the Premises, the operator of the Airport and as an applicant for and recipient of governmental grants, federal airport aid, passenger facility charges and other monies; available opportunities for the requesting airline to enter into an accommodation agreement at terminals not owned or operated by the Lessee; operational considerations of the Port Authority, the Lessee and the Airport; the compatibility of the flights, schedules, flight times, operations, operating practices, and aircraft equipment of the requesting airline with those of the airline sublessees; effects on the efficiency of the airline sublessees' flight operations and their ability to retain their operating authorizations; and the need for labor harmony and compliance with collective bargaining agreements, together with any other factors deemed to be relevant by the Port Authority). In making such determination, the Port Authority will attempt to accommodate such requesting airline by directing it to

schedule the arrival or departure time of a flight at a time that is not in conflict with the arrival or departure time of a flight of an airline sublessee. If the Port Authority provides notice to provide accommodations to the Lessee pursuant to the Lease as outlined above, the Lessee will enter into an Airline Use Agreement with such requesting airline.

### ***Accommodation during Irregular Operations***

The Lessee will comply with Airport-wide irregular operations accommodations provisions as set forth in the Rules and Regulations and implement and enforce against each Airline User and QTO the same principles.

### **Operation and Maintenance of the New Terminal Facilities**

Throughout the term of the Lease, the Lessee will carry out the Operations and Maintenance Work in accordance with Best Management Practice, Applicable Laws and the Applicable Standards. Additionally, the Lessee will at all times perform the Operations and Maintenance Work to ensure ongoing compliance with, among other things, the airport performance standards and measurement (KPIs) and customer care standards (and meet or exceed such standards). The Lessee's failure to comply with the performance standards and measurement provisions set forth in the Lease will entitle the Port Authority to rights and remedies under the Lease and the other Project Documents, including the assessment of performance penalties in accordance with the terms of the Lease and termination for an uncured Event of Default (subject to the rights of the Lenders to cure such Event of Default).

### **Compliance with Law; Governmental Approvals**

The Lessee is required to comply with all Applicable Laws and Applicable Standards, including all applicable environmental laws and FAA orders, statements of policy, advisory circulars and other FAA issuances. Except as otherwise provided in the Lease with respect to certain governmental approvals obtained by the Port Authority, the Lessee is responsible for obtaining and maintaining in full force and effect all required governmental approvals required in connection with the performance of its obligations under the Project Documents. With respect to governmental approvals obtained by the Port Authority, which are set forth in more detail in the Lease, the Lessee is responsible for obtaining amendments or modifications to such governmental approvals obtained by the Port Authority necessary to reflect the requirements for the D&C Work and the Operations and Maintenance Work based on the Lessee's final design or means and methods should the final design deviate from the basis upon which the governmental approvals obtained by the Port Authority were initially granted by the applicable Governmental Authority. In the event that any amendments or modifications are not permitted by the Governmental Authority, the Lessee is responsible, at its own risk of delay and cost, for revising the final design or means and methods as necessary to satisfy the requirements and conditions of the original governmental approvals obtained by the Port Authority or the amendment or modification to such governmental approval as issued by such governmental authority. The Lessee is required to perform its obligations under the Lease in compliance with all governmental approvals at all times.

The parties are required to cooperate with each other in connection with the application by the Lessee for governmental approvals and upon reasonable request of the Lessee will take certain additional actions (such as the execution of certain documents and attending meetings or making applications in the name of the Port Authority) at the Lessee's cost.

The Lessee is obligated to comply, and to cause Lessee-Related Entities, sublessees and their respective guests and invitees to comply, with the rules, regulations, policies, standards, practices and guidelines issued or published by the Port Authority with respect to the conduct and operations of the Lessee

and others at the Airport (including with respect to the use of certain public aircraft facilities provided and maintained by the Port Authority at the Airport for public or common use), as such rules and regulations may from time to time be promulgated by the Port Authority. In addition, the Lessee is obligated to comply, and to cause its contractors, suppliers and sublessees to comply, with any bulletin, directive or other official instruction issued by the General Manager from time to time, it being understood that a General Manager directive or instruction would apply comparably to the Lessee as to other operators at the Airport; provided that an Event of Default under the Lease will be deemed not to occur if, in complying with a general manager directive or instruction, the Lessee is compelled to commit a breach of the terms of the Lease or any Applicable Law or Applicable Standard. Generally, the Lessee is not entitled to claim a Compensation Event or a Delay Event for any impacts incurred in connection with the Lessee's compliance with a general manager directive or instruction.

#### Minimum Wage Policy; Labor Harmony

The Lessee will comply with the Port Authority's minimum wage policy, as it may be modified from time to time. The Lessee must cause the Design Builder to (i) enter into a project labor agreement with The Building and Construction Trades Council of Greater New York with respect to the D&C Work, and (ii) comply with the terms and conditions of any such project labor agreement. In the performance of the D&C Work, the Lessee must not permit any situation or condition to arise or continue that causes any labor troubles at, or emanating from, the Premises which interferes with the operations (including any D&C Work) at the Premises or interferes with the operations of the Port Authority or its contractors, or lessees, licensees, permittees or other users of the Airport. The Lessee must use all reasonable and diligent efforts to promptly rectify any condition causing or contributing to labor troubles in accordance with the terms of the Lease.

#### Key Contracts

The Lease obligates the Lessee to preserve its rights and perform its obligations under, and observe all of the provisions of, the Key Contracts. Without the Port Authority's prior written consent, the Lessee will not have the right to enter into a Key Contract, terminate or replace any Key Contract (other than in the exercise of its rights thereunder in respect of uncured defaults by the counterparty to such Key Contract, or upon a change in Applicable Law that renders part of the Key Contract null and void), or amend any Key Contract in any material respect (other than to the extent required to comply with any amendment of the Lease). The Lessee is solely responsible for paying each contractor and supplier under any contract of the Lessee for the performance of the work and for paying its contractors' invoices within twenty days following receipt of corresponding payments from the Port Authority (subject to certain exceptions) and for ensuring that all lower-tier contracts have corresponding payment requirements. The Lease specifies a number of mandatory provisions to be included in each Key Contract, including compliance with Applicable Law, a standard of professional responsibility, the right of the Port Authority to the contractors' remaining warranties and guaranties, the conditions to the contractor's right to terminate or suspend such Key Contract, restrictions on the contractor's right to assign such Key Contract, intellectual property rights and licenses, a requirement for the contractor to participate in meetings between the Lessee and the Port Authority and dispute resolution proceedings, agreement to the Port Authority step-in rights, the Port Authority's status as third party beneficiary of the contractor's representations and warranties, reporting and record keeping provisions, indemnification of the Port Authority Indemnified Parties, waiver of liens against the Work or Premises, termination of the Key Contract upon termination of the Lease, and prohibition of amendment of such mandatory provisions without the prior written consent of the Port Authority. The Lessee is restricted from entering into a Key Contract with certain Persons (such as an affiliate of the Lessee, or a debarred Person and its affiliates).

The Port Authority has an approval right for any proposed replacement of the Design Builder, the Manager or any concessions manager, based upon a determination by the Port Authority in accordance with the criteria set forth in the Lease (which includes factors such as the proposed contractor's financial strength, experience in the relevant field, its background, reputation and integrity, and satisfaction by such contractor of any additional reasonable conditions imposed by the Port Authority). The Port Authority will also have the right to approve the terms of the contract with such replacement contractor or manager.

#### Lease Terminal Security

The Lessee and the Port Authority have agreed to a comprehensive security plan for the Premises, which describes security and law enforcement requirements to be performed by the Lessee throughout the term of the Lease. The security program complies with applicable federal regulations and will incorporate one or more exclusive area agreements pursuant to 49 C.F.R. 1542.111. The Port Authority will amend its airport-wide security program and submit such amended program for approval by the TSA. The Port Authority will continue to have responsibility as the airport operator under the airport-wide security program. The Port Authority will have the right at any time, from time to time, to enter upon the Premises and to inspect Lessee's compliance with the comprehensive security plan and/or, at a time and in a manner that does not materially interfere with operations at the Premises as a whole, conduct a security site condition survey of the Premises. 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.

#### Environmental Liability

Under the Lease, the Lessee is generally responsible for the Work in compliance with Environmental Requirements throughout the term of the Lease and the Port Authority is generally responsible for environmental conditions on the Premises arising during the period prior to the commencement date of the Lease.

The Lessee is required to, among other things, (i) prepare an environmental management plan setting forth the design and construction requirements, operational procedures, documentation and other information required to ensure compliance with Environmental Requirements throughout the term of the Lease; (ii) identify and obtain, or cause its sublessees or Lessee-Related Entities to obtain, any governmental approvals required under environmental laws throughout the term; (iii) assume responsibility for the performance of and breaches of the Lessee's obligations and responsibilities by all Lessee-Related Entities, sublessees and other persons using space within the Premises or the areas subject to the temporary rights of access; (iv) prepare certain environmental plans in accordance with the Environmental Requirements in the Lease (including, without limitation, with respect to spill prevention, control and countermeasures, stormwater pollution prevention, erosion control, health and safety and indoor air quality management); and (v) prepare environmental notices, submittals and reports.

The Lessee is responsible for the management, excavation, handling, sampling, evaluation, characterization, disclosure, storage, transport and disposal in compliance with all Environmental Requirements of all waste materials used, handled, disturbed or generated within the Premises and the Temporary Rights of Access during the term of the Lease. During the performance of the Work and any subsequent demolition, excavation or construction as part of Major Maintenance or routine maintenance during the term of the Lease, the Lessee is responsible for proper management, excavation, storage, sampling, characterization, handling and disposal of all excavated materials debris, and demolition debris, including lead-containing materials, asbestos-containing materials and hazardous wastes. Materials being disposed of off-site must be sent to approved disposal locations pursuant to and as set forth in Section 57 (*Environmental Obligations*) of the Lease. The Lessee is responsible for any management, treatment,

storage, transportation, or disposal of stormwater or groundwater containing Hazardous Materials that is to be extracted or pumped from any design and construction work area as part of the Work. The Lessee is also required to notify the Port Authority if it identifies a Hazardous Substance or contamination during the D&C Work that may require Remediation on the basis of odors, visual observation or other information, and to conduct Remediation with respect to such condition, subject to certain cost recovery rights and schedule relief, if the Port Authority directs the Lessee to conduct such Remediation. Remediation of Hazardous Substances or contaminations present on, in or under the Premises or the Temporary Rights of Access on or prior to the commencement date of the Lease that are outside of the areas to be excavated during the D&C Work are the Port Authority's responsibility.

The Lessee is generally responsible for all costs, losses, liabilities, damages and operational requirements arising under or with respect to the compliance with the Environmental Requirements throughout the term of the Lease. 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 Materials release occurring or existing outside of the Premises and the Temporary Rights of Access on or prior to the commencement date of the Lease; (ii) certain pre-existing Hazardous Substances that are present on, in, or under the certain 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 (unless imposed as a result of the Lessee's or any occupant's failure to comply with obligations under the Lease); (iv) the presence at approved disposal locations of pre-existing Hazardous Materials disposed of by the Lessee during the D&C Work in compliance with the Lease; and (v) certain Hazardous Substances that were present in soil or groundwater on, at or under certain Premises or Rights of Access prior to the commencement of the Lease, except to the extent exacerbated by the Lessee or a lessee-related entity. In addition, the Lessee has the right to make a claim for compensation and delay if, without the negligence or culpable act or omission of the Lessee or any occupant, it incurs certain environmental damages in connection with (i) unknown Hazardous Materials required to be managed as part of the D&C Work; (ii) Remediation that the Lessee is required to perform by a Governmental Authority with respect to pre-existing Hazardous Materials outside the Excavation Boundary; (iii) the stoppage of work or modification of work as directed by the Port Authority with respect to certain remediation obligations; and (iv) certain Remediation required or otherwise approved by the Port Authority to be performed by the Lessee under the Lease.

#### Restrictions on Assignments and Lease Terminal Operator Change in Control

##### ***Restrictions on Assignments***

Subject to certain exceptions, prior to the first anniversary of Substantial Completion of all Phases of the Project, any assignment of interest disposition in the Lessee is subject to the consent of the Port Authority. After the first anniversary of Substantial Completion of all Phases of the Project, the Port Authority may withhold consent to any transfer that results in a Change in Lessee Control only if the Port Authority reasonably determines that (i) there exists an uncured Lessee Event of Default, (ii) the proposed transferee is a Prohibited Party or (iii) the Lessee has failed to reasonably demonstrate the financial strength and integrity of the proposed transferee, the capitalization of the proposed transferee, and the qualifications and experience of the proposed transferee or its contractors to perform the obligations under the Lease. A "Change in Lessee Control" means a change in control of the Lessee or any equity member of the Lessee, whether voluntarily, involuntarily, by operation of law or otherwise and whether resulting from a single transaction, a series of related transactions or otherwise.

### ***Restrictions on Lease Terminal Operator Change in Control***

In connection with the Operations and Maintenance Work, the Lessee will rely on the expertise and personnel of a Qualified Terminal Operator, pursuant to any of the following arrangements or a combination thereof:

(ii) one of the equity members of the Lessee will be a Qualified Terminal Operator (the "Lease Terminal Operator Member"), in which case the Lessee may enter into a contract with the Lease Terminal Operator Member, under which the Lease Terminal Operator Member, as terminal operator, provides the Lessee with specified services and support relating to the Operations and Maintenance Work (an "O&M Contract");

an Affiliate under common control with the Lease Terminal Operator Member will also be a Qualified Terminal Operator (an "Affiliate QTO"), in which case the Lessee will enter into an O&M Contract with such Affiliate QTO as Qualified Terminal Operator on terms approved by the Port Authority;

the Lessee will enter into and maintain an O&M Contract, on terms approved by the Port Authority, with a third-party terminal operator (i.e., a party other than the Lease Terminal Operator Member or an Affiliate QTO) who is a Qualified Terminal Operator and who undertakes to perform substantially all of the Operations and Maintenance Work; or

the Lessee qualifies as a Qualified Terminal Operator and will self-perform the Operations and Maintenance Work without reliance on a Lease Terminal Operator Member or an affiliated or third-party Lease Terminal Operator.

Prior to the fifth anniversary of Substantial Completion of the Project, any assignment of interest disposition in an equity member of the Lessee that is a Qualified Terminal Operator, which would result in such equity member holding less than 10% of the ownership interests is subject to the Port Authority's consent. From and after the fifth anniversary of Substantial Completion, the Port Authority must not unreasonably withhold its consent if the Lessee has sufficiently demonstrated that the Project will be operated and maintained by a Qualified Terminal Operator.

### ***Equity Gain Share***

With respect to any transfer of direct or indirect ownership interests in the Lessee, the Port Authority will be entitled the Equity Gain Share, which will be a fee equal to 15% of returns in excess of 15% net internal rate of return calculated on a time weighted basis and taking into account sale costs and costs and expenses reimbursed to the Port Authority, plus reimbursement of all reasonable, out-of-pocket documented costs and expenses of the Port Authority in reviewing the assignment.

### **Refinancing; Restrictions on Additional Indebtedness**

Other than for an Exempt Refinancing, the Port Authority may withhold its consent to any Refinancing of a sufficient size. Exempt Refinancing is any refinancing that meets any of the following requirements:

(iii) Refinancings that do not increase (A) the weighted average maturity or the interest rate of the Indebtedness 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 (including lender fees,

arranger fees and advisor fees, original issue discounts and any required reserves) and results in projected debt service costs in each year to the end of the Lease Term that are no greater than the corresponding debt service costs projected for each year immediately prior to such Refinancing;

(iv) Refinancing that (A) will occur during the D&C Work Period, (B) is for the purpose of obtaining additional funds required to reach completion, 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, (C) is on terms consistent with the terms of, and is otherwise permitted under, the initial Financing Documents and (D) does not result in an increase in the aggregate outstanding principal amount secured by the Leasehold Mortgage then in effect by more than 10%;

(v) Refinancing incurred by the Lessee (i) to refinance the Lessee Debt incurred as of the Effective Date, or (ii) that is incurred by the Lessee to finance the construction of the Project; or

(vi) The proposed Refinancing must not (A) 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; (B) 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; or (C) result in any portion of the proceeds of the Refinancing being used to make distributions or 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.

## Termination of the Lease

### ***Lessee Events of Default***

The occurrence of certain Events of Default (set forth more fully in the Lease) during the Lease Term will constitute a default by the Lessee, including, but not limited to, the following:

(vii) the Lessee will become insolvent or will take the benefit of any present or future insolvency statute, or will 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

(viii) by order or decree of a court the Lessee will be adjudged bankrupt or an order will be made approving a petition filed by any of its creditors or by any of the stockholders (or partners, members of 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; provided, however, that if any such judgment or order is stayed or vacated within sixty (60) days after the entry thereof, any notice of cancellation will be and become null, void and of no effect; or

(ix) 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 will take possession or control of all or substantially all of the property of the Lessee, and such possession or control will continue in effect for a period of sixty (60) days; or

(x) the Lessee will voluntarily abandon, desert or vacate the Premises or discontinue its operations at the Airport or its performance of the Project Work for a period of thirty (30) or more consecutive days, or, after exhausting or abandoning any right of further appeal, the Lessee will be prevented for a period of thirty (30) days by action of any Governmental Authority other than the Port Authority having jurisdiction thereof, from conducting its operations at the Airport, due to any act or omission of any lessee-related entity and/or any Equity Member; or

(xi) any lien (other than a Permitted Lien) is filed against the Premises because of any act or omission of any Lessee-related entity and/or any Equity Member, and will not be discharged of record, or by bonding through an insurance company duly authorized to write such bonds in New York State, within thirty (30) days after such filing, subject however in all events to any lien-related restrictions stated in the Basic Lease (including, without limitation, any related limitations or prohibitions on grace and cure periods); or

(xii) except as expressly permitted in the Lease, any Transfer, Assignment or Interest Disposition; provided, however, that no prohibited Interest Disposition of indirect Equity Interests will be deemed to trigger an Event of Default hereunder if such indirect Interest Disposition is unwound or expressly consented to by the Port Authority in writing within thirty (30) days of the earlier of (X) the Lessee obtaining knowledge of such noncompliance and (Y) receipt of notice of such noncompliance from the Port Authority; or

(xiii) except as otherwise provided in the Lease, the Lessee will, 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

(xiv) the Lessee will fail to (x) duly and punctually pay the rentals and such failure will continue unremedied for five (5) days following the date on which such payment was due, or (y) make any other payment of fees or charges required hereunder when due to the Port Authority, or (z) 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, and such failure will continue for ten (10) days after receipt of notice of default from the Port Authority; or

(xv) the Lessee will fail to keep, perform and observe each and every promise, covenant and agreement set forth in the Lease, any other Project Document, the Rules and Regulations and the Basic Lease on its part to be kept, performed, or observed, (x) within thirty (30) days after receipt of notice of default thereunder from the Port Authority or (y) such shorter period as may be required by any applicable Governmental Authority, including, without limitation, the City (except, with respect to clause (x) above, where fulfillment of its obligation requires activity over a period of time and the Lessee will 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

(xvi) any representation or warranty made or deemed to be made by the Lessee in the Lease or in any other certificates or agreements delivered by Lessee to the Port Authority in connection with the Lease will 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

(xvii) failure by the Lessee to comply with Applicable Laws and such failure is not cured within (x) thirty (30) days after the earlier of (i) the Lessee obtaining knowledge of such failure and (ii) receipt of notice of such failure from the Port Authority or the applicable Governmental Authority, or (y) such shorter period as may be required by any applicable Governmental Authority (except, with respect to clause (x) above, where fulfillment of its obligation requires activity over a period of time and the Lessee will 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

(xviii) 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 (x) three (3) Business Days or (y) such different period as may be required by the Office of the Inspector General of the U.S. Department of Homeland Security (which, if greater than the period set forth in clause (x), the requirements will be evidenced in writing from the Office of the Inspector General of the U.S. Department of Homeland Security); provided that such different period will not be unreasonably prejudicial to the Port Authority; or

(xiii) failure by the Lessee to comply with the provisions of Section 6 (*Compliance with Governmental Requirements*) or Section 7 (*Rules and Regulations*) of the Lease 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 obtaining 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

(xiv) failure by the Lessee to maintain insurance coverage in accordance with the provisions of Section 12 (*Insurance*) of the Lease (other than the commercial unavailability of insurance coverage required to be maintained under Section 12 (*Insurance*)), including, without limitation, failure to comply with the requirements relating to the amount, terms or coverage; provided that if such failure results solely from (x) a change by the Port Authority to the insurance coverage requirements under Section 12 (*Insurance*) or (y) the failure by an insurance carrier to maintain the rating required by Section 12(e) (*Nature of Insurers*), such failure will not constitute an Event of Default so long as it is cured within thirty (30) days after the initial date of such failure; provided, further, that during any such failure the insurance coverage maintained by the Lessee immediately prior to such change by the Port Authority to the insurance coverage requirements

under Section 12 (Insurance) or such failure by the insurance carrier to maintain the rating required by Section 12(e) (Nature of Insurers), as applicable, remains in full force and effect; or

(xv) failure by the Lessee to comply with any written order issued to the Lessee by the Port Authority in accordance with Section 2(dd)(2) (Compliance Directives; Suspension of D&C Work) of the Lease to suspend, in whole or in part, the D&C Work (x) within ten (10) Business 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

(xvi) failure by the Lessee to begin the D&C Work (x) with respect to the entire Project, within thirty (30) days after the Port Authority's approval of certain comprehensive final design submittal (as described in the general provisions) or (y) with respect to any Phase, within thirty (30) days after the Port Authority's issuance of the applicable Partial Approval; or

(xvii) failure by the Lessee to complete the D&C Work (other than punch-list items approved by the Port Authority) for any Phase by the Scheduled Completion Date for such Phase; provided, however, that if the Lessee would have achieved the Scheduled Completion Date for such Phase except for the failure of the Port Authority to complete the Port Authority Enabling Work within the time period set forth in the Master Schedule, then the Lessee will not be deemed to have failed to complete the D&C Work (other than punch-list items approved by the Port Authority) by the Scheduled Completion Date for such Phase; or

(xviii) failure of the Lessee to comply with (i) the provisions of Section 20(d)(12) (Airport Concession Disadvantaged Business Enterprises Commitment), Section 63 (Non-Discrimination), Section 65 (Minority Business Enterprises, Women-Owned Business Enterprises and Local Business Enterprises Commitment), Section 85(b)(1) (Lessee's OFAC Covenants and Obligations) or Section 85(b)(2) (Lessee's OFAC Covenants and Obligations), in each case, of the Lease, and such failure is not cured within twenty (20) Business Days after the earlier of the Lessee obtaining 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 will have commenced to perform whatever may be required for fulfillment within twenty (20) Business Days after receipt of notice and diligently continues such performance without interruption, except for causes beyond its control, to completion) or (ii) the provisions of Section 29(b) (Specific Agreements with respect to the Basic Lease) of the Lease and such failure is not cured within thirty (30) calendar days after the initial date of such failure or such shorter period as may be required pursuant to the Basic Lease; or

(xix) failure by an interest transferor to pay the Equity Gain Share in accordance with Section 51 (Interest Dispositions) of the Lease, which failure is not cured within the greater of (x) five Business Days following the Lessee obtaining knowledge of such failure to pay and (y) ninety (90) calendar days following the date upon which such interest transferor consummated a Transfer of its direct or indirect interest; or

(xx) failure by the Lessee to comply with requirements set forth in, and in accordance with, Section 9 (Security) of the Lease and such failure is not cured within five (5) Business Days after the initial date of such failure; or

(xxi) failure to comply in any material respect with the OIG or the Project Integrity Monitor as set forth in Section 2(y)(3) (Cooperation) of the Lease and such failure is not cured within ten (10) Business Days after notice of such failure from the Port Authority; or

(xxii) failure by the Lessee to keep, perform and observe each and every direction (x) issued by the Port Authority (including any bulletin, directive or other instruction issued by the General Manager of the Airport or Chief Security Officer) pursuant to the Port Authority's authority under the terms of the Project Documents, 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 such cure requires activity over a period of time and the Lessee will have commenced to perform whatever may be required for cure within ten (10) days after receipt of notice and diligently continues such performance without interruption, except to the extent delayed by events of Force Majeure despite reasonable efforts to cure such failure, to completion within an aggregate period not to exceed ninety (90) days), following receipt of notice of such failure from the Port Authority; or

(xxiii) (i) if the Lessee is required to construct Phase B1 or Phase B2 pursuant to the terms of the Lease, failure by the Lessee to issue the Phase B1 NTP within ninety (90) days after the Phase B1 IG NTP Scheduled Date, or (ii) if Section 2(b)(2)(v)(B)(cc) (Phases of D&C Work) of the Lease applies, failure by the Lessee to issue the Phase B2 NTP within ninety (90) days after the Phase B2 IG NTP Scheduled Date; or

(xxiv) failure by the Lessee to issue (i) Phase B1 NTP by the date which is nine (9) months after the Phase B1 Traffic Trigger NTP Scheduled Date or, if the Port Authority has exercised the T4 Additional Gates Election, the date which is twenty-one (21) months after the Phase B1 Traffic Trigger NTP Scheduled Date or (ii) Phase B2 NTP by the date which is nine (9) months after the Phase B2 Traffic Trigger NTP Scheduled Date;

provided, in each case (other than with respect to clauses (i), (ii), (iii), (v), (vi), (vii), (viii), (xii), (xiii) (with respect to Applicable Law), (xiv), (xv), (xviii), (xix), (xx), (xxi) and (xxii) above), the occurrence of any such event as a direct and proximate result of a Delay Event where the Lessee is the Affected Party (and whether or not the Port Authority is also an Affected Party) will be deemed not to constitute an Event of Default, but only for so long as the Delay Event is occurring, and any cure periods in such clauses will be extended solely to the extent, and for so long as, the ability of the Lessee to cure thereunder is directly and adversely affected by the Delay Event; and

provided further that no event will constitute an Event of Default if it is caused, directly or indirectly, by solely with respect to the events set forth in clauses (v), (viii)(x), (viii)(y), (ix), (xi), (xii), (xiv), (xviii)(i) with respect to compliance with Section 63 (Non-Discrimination) of the Lease, and (xx) above, a Concession Sublessee that is an ACDBE and the Lessee is unable, despite exercising commercially reasonable efforts, to cause such Concession Sublessee to cure the applicable default and/or comply with its Concession Sublease, the Lessee has certified that, with the Port Authority's consent, it will terminate the Concession Sublease forthwith in accordance with the provisions of the Concession Sublease related to notice and cure periods, and the Port Authority has not consented to the Lessee's request to terminate such Concession Sublessee's Concession Sublease.

### ***Remedial Plan***

In the case of any Event of Default described in Section 21(a) (Lease Termination by the Port Authority) of the Lease other than (A) those set forth in clauses (i), (ii), (iii), (viii), (xii), (xiii), (xv), (xvii),

(xix) and (xxi) above, and (B) Events of Default which the Port Authority has a good faith belief could be reasonably likely to result in (i) a violation of any rule or regulation issued by the FAA or any other Governmental Authority, (ii) civil or criminal liability to the Port Authority, (iii) an event of default under the Basic Lease, and/or (iv) an Emergency, the Lessee has the right to cure such Event of Default by preparing and submitting for approval by the Port Authority, within the relevant cure period set forth in Section 21(a) (*Lease Termination by the Port Authority*), a remedial plan providing 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.

The Lessee has the right to submit for the Port Authority's review and approval a remedial plan with respect to a failure to complete the D&C Work for any Phase by the Scheduled Completion Date of such Phase and pursuant to such remedial plan propose that date for completion of the D&C Work will be extended by no later than 18 months after the applicable Scheduled Completion Date. So long as the Lessee is implementing the applicable remedial plan, the Port Authority will not terminate the Lease. Notwithstanding the foregoing, if the D&C Work for such Phase has not been completed by first anniversary of the applicable Scheduled Completion Date, then, commencing upon such first anniversary, the Lessee must pay the Port Authority liquidated damages in the amount of \$50,000 per day until the D&C Work is completed.

#### ***Port Authority Remedies upon Event of Default***

Upon the occurrence and during the continuation of an Event of Default, the Port Authority may, subject to the Recognized Mortgagee's rights and remedies, do any or all of the following as the Port Authority, in its sole discretion, will determine (as set forth more fully in the Lease):

- (xix) terminate the Lease and the rights of the Lessee thereunder;
- (xx) make a claim at law or in equity, for damages or injunctive relief; and/or
- (xxi) seek remedy of the Event of Default as described in the preceding section and set forth more fully in the Lease.

#### ***Survival of Rental Obligations of the Lessee***

Upon any termination of the Lease for an Event of Default, or by or under any summary proceeding or other action or proceeding, all the Rental obligations of the Lessee under the Lease, and all other obligations of the Lessee that have not been fully performed will survive such termination, and the following damages will become due and payable to the Port Authority:

- (xxii) The amount of the total of all rentals less the installments thereof paid prior to the Effective Date of termination except that the credit to be allowed for the installment paid and payable on the first day of the month in which the termination is effective will be prorated for the part of the month the letting remains in effect on the basis of the actual number of days in said month;
- (xxiii) The amount of any additional rent and any fees, expenses and other amounts then due and owing to the Port Authority pursuant to the Lease;
- (xxiv) On account of the Lessee's obligations to pay certain condition survey costs, an amount equal to such condition survey costs less the amount thereof paid prior to the Effective Date of termination; and

(xxv) An amount equal to all expenses incurred by the Port Authority in connection with such termination, cancellation, re-entry, regaining or resumption of possession, the restoration of the Premises (on failure of the Lessee to restore), the reletting of the Premises, the care and maintenance of the Premises during any period of vacancy of the Premises, the foregoing to include without limitation legal expenses (including but not limited to the cost to the Port Authority of in-house legal services), brokerage fees and commissions, repairing and altering the Premises and putting the Premises in order (such as, but not limited to, cleaning and decorating the Premises).

If the Port Authority relets or takes actual use or occupancy, the Lessee will be credited any net amount remaining after deducting from the amount actually received from any lessee, licensee, permittee, or other occupier in connection with the use of the Premises during the balance of the letting as the same is originally stated in the Lease, or from the market value of the occupancy.

#### ***Lease Termination for failure to construct Phase B1 or B2***

If an Event of Default resulting from failure by the Lessee to timely commence Phase B1 or B2 has occurred and the Port Authority enters into a lease with a new tenant on substantially similar terms that would have applied for the then unexpired portion of the term of the Lease, such termination of the Lease will take effect as of the date the Port Authority enters into such new lease, and to the extent the new tenant pays the Port Authority an amount in consideration for getting such new tenant on the same terms that would have existed under the Lease for the remainder of the term had it not been terminated, then such amount will be paid by the Port Authority to the Lessee as a termination payment. However, if the rentals payable under the new lease are less than the rentals that would have been paid by Lessee for the remainder of the term had the Lease not been terminated, such termination payment to the Lessee will be reduced by the net present value of the difference in such rentals and if the rentals payable under the new lease are more than would have been paid by Lessee for the remainder of the Lease Term had the Lessee not been terminated, such termination payment will be increased by the net present value of the difference in such rentals. Unless the new tenant assumes Lessee's Debt, the termination payment will not be less than the amount required to repay the Lessee debt then outstanding at such time.

#### ***Grounds for Lease Termination by the Lessee***

If any one or more of the following events or conditions (set forth more fully in the Lease) occur during the term of the Lease:

(xxvi) the Port Authority expressly (i) repudiates or willfully (with an intent to breach the terms of the Lease) fails to provide or (ii) repudiates or willfully fails to defend Lessee's right to quiet enjoyment of the Premises pursuant to the terms of the Lease (except as a result of a Force Majeure event or in the event of a taking) such that the Lessee is unable to (x) construct the New Terminal Facilities or (y) operate the New Terminal Facilities, in each case for a period of not less than 180 consecutive days; or

(xxvii) the Port Authority fails to tender any portion of the Premises to the Lessee within 180 days after the date specified for such tender in the Baseline Schedule, as such time periods may be extended in accordance with the terms of the Lease, but excepting any failure which arises out of or results from (w) a Force Majeure event, (x) an Emergency, (y) Applicable Law or (z) with respect to the Port Authority's tender of the First Additional Premises, holdover by Delta beyond the lease expiration date under its lease for Lease Terminal 2 (AYC-325) or the failure of the current tenants in existing Lease Terminal One to vacate the Second Additional Premises, it being the intent of the Parties that to trigger the Lessee's rights hereunder such Port Authority failure be in the nature of willful misconduct on its part;

then upon the occurrence of any such event or at any time thereafter during the continuance of the condition, the Lessee may by 180 days' written notice to the Port Authority terminate the Lease.

In the case of such a termination by the Lessee under clause (ii) above for the Port Authority's willful failure to provide or defend quiet enjoyment, the Port Authority must, subject to the terms and conditions of the Lease, pay the Lessee fair market value pursuant to an agreed appraisal procedure.

#### Other Lease Termination Events

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

Subject to the following sentence, the Lease shall terminate upon an early termination of the Basic Lease. If the City does not attorn to, or enter into a direct lease with the Lessee, and such termination of the Basic Lease is due to the Port Authority's gross negligence or willful misconduct, 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 the Lessee can show that such termination constitutes a failure to provide quiet enjoyment in accordance with Section 76(a)(1) (*Termination by Lessee*) of the Lease, the Lessee will be entitled to termination payment equal to fair market value pursuant to an agreed appraisal procedure and subject to the terms and conditions of the Lease.

##### ***Early Lease Termination upon Condemnation***

In the event of a condemnation of (i) a material portion of Premises or the Public Landing Area, the Lessee and the Port Authority each has the right to terminate the Lease; (ii) the entire Premises, the Lease will immediately terminate; and (iii) less than a material part of the Premises or the Public Landing Area, the Lease will continue as to the portion of the Premises not so taken and the payment of Ground Rent will be adjusted accordingly. If all or a material portion of the Premises is condemned, then, subject to the terms and conditions of the Lease, the Port Authority will pay the Lessee the fair value of the Lessee's leasehold interest in the Premises, to be calculated on a proportionate basis and in accordance with Section 19 (*Condemnation*) of the Lease.

#### Lenders' Rights and Remedies

##### ***Leasehold Mortgages***

Except as expressly authorized in the Lease, the Lessee may not mortgage its interest in the Lease or any part of the Premises, in whole or in part.

The Lease allows the Lessee to grant a Leasehold Mortgage on its interest in the Lease to secure the initial Lessee Debt under the Financing Documents or, subject to certain conditions, any subsequent Lessee Debt, provided, that at the time any Leasehold Mortgage is executed and delivered no Event of Default has occurred and is continuing, and subject to certain terms and conditions, including the following:

(xxviii) the Leasehold Mortgage (A) may not cover any property of, or secure any debt issued or guaranteed by, any Person other than the Lessee and the Taxable REIT Subsidiary (or a financial institution providing a financial guaranty or similar credit enhancement in respect of any debt of the Lessee), (B) will only secure the obligations of the Lessee and the Taxable REIT Subsidiary under the then-existing Financing Documents or a Refinancing approved by the Port Authority and (C) will not be cross-defaulted with any other agreement or arrangement between the Lessee and the Recognized Mortgagee other than the Financing Documents;

(xxix) subject to clause (xiv) below, no Leasehold Mortgage may encumber less than the entire interest of the Lessee under the Lease and the Lessee's leasehold interest in the Premises;

(xxx) no Leasehold Mortgage may encumber any property other than the Lessee's leasehold interest in the Premises and Lessee's Personal Property, 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;

(xxxi) as of the Effective Date (as defined in the Financing Documents), the aggregate principal amount of Lessee Debt secured by the Leasehold Mortgage must not exceed a maximum amount of \$6,630,000,000, 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;

(xxxii) 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 may extend to or affect the fee simple interest in the Premises, the Port Authority's interest under the Basic Lease or the Lease or the Port Authority's or the City's reversionary interest and estate in and to the Premises or any part thereof;

(xxxiii) the Port Authority has 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 and for any remedies of the Recognized Mortgagee provided by Applicable Law, no Recognized Mortgagee will be entitled to seek any damages or other amounts against the Port Authority for any or all of the same;

(xxxiv) the Port Authority has no obligation to the holder of a Leasehold Mortgage (including any Recognized Mortgagee) in the enforcement of the Port Authority's rights and remedies herein or as otherwise provided by Applicable Law, except as expressly set forth in the Lease;

(xxxv) the Leasehold Mortgage will provide that if an "Event of Default" under the applicable Financing Documents has occurred and is continuing, and the mortgagee under such Leasehold Mortgage gives notice of such "Event of Default" to the Lessee, then such mortgagee will simultaneously give notice of such "Event of Default" to the Port Authority;

(xxxvi) all rights acquired by the holder of a Leasehold Mortgage (including any Recognized Mortgagee) are subject and subordinate to all of the provisions of the Basic Lease and, subject to the terms of the Lease and except as specified therein, will be subject and subordinate to all of the rights of the Port Authority therein;

(xxxvii) neither Section 83 (*Project Financing*) of the Lease nor a Leasehold Mortgage will prevent the Lessee from amending the Lease without the approval of a Recognized Mortgagee; provided that a Leasehold Mortgage may contain provisions requiring the approval of a Recognized Mortgagee or Recognized Mortgagees (such approval not to be unreasonably withheld, delayed or conditioned) for any amendment, variation, modification of, or a waiver of the Lessee's rights and obligations under several sections of the Lease (as set forth in more detail therein) or any other amendment, variation or modification of the Lease that could reasonably be expected to have a material adverse effect on the rights or interests of a Recognized Mortgagee; and provided, further, that the applicable Financing Documents will expressly state that the Recognized Mortgagee will

respond to any request from the Lessee or the Port Authority for approval of a modification or amendment of the Lease within a reasonable period of time; provided, however, notwithstanding anything to the contrary stated or implied in this paragraph (x), no such consent from any Recognized Mortgagee will be required if an amendment to, or variation or modification of, the Lease is necessary for the Port Authority, in its sole discretion, to be in compliance with the Basic Lease or any Applicable Law and, provided, further, a Recognized Mortgagee may not require the Port Authority to pay any fee, charge, or other amount (including reimbursement of any cost or expense) in connection with providing its consent (where such consent is required, as provided in the Lease);

(xi) notwithstanding any enforcement of the security of the Leasehold Mortgage, the Lessee will remain liable to the Port Authority for the payment of all sums owing to the Port Authority under the Lease and the performance and observance of all of the Lessee's covenants and obligations under the Lease, unless otherwise satisfied;

(xii) no holder of a Leasehold Mortgage (including any Recognized Mortgagee) will, by virtue of such Leasehold Mortgage, acquire any greater rights or interest in the Premises than the Lessee has at any applicable time under the Lease, other than such rights or interest as may be granted to or acquired by the Recognized Mortgagee in accordance with the Lease;

(xiii) as between the Port Authority and any holder of a Leasehold Mortgage (including any Recognized Mortgagee), in the event of any inconsistency between the terms, covenants, conditions and provisions of the Lease and the terms, covenants, conditions and provisions of the Leasehold Mortgage or any of the Financing Documents, the terms, covenants, conditions and provisions of the Lease will control;

(xiv) the Leasehold Mortgage will provide that following the applicable Completion Date, the legal description of the premises set forth in exhibits to the Leasehold Mortgage and any related diagrams therein will be amended, as necessary, to reflect the lease lines delineating the final Premises, which amendment may, in the event the legal description attached as exhibits to the Leasehold Mortgage and any related diagrams therein, include property that lies outside such final lease lines, include a non-discretionary partial release of certain parts of the Premises and the Lessee's rights therein from the lien of the Leasehold Mortgage and the applicable Financing Documents;

(xv) notwithstanding anything contained in the Leasehold Mortgage or any consent or approval of the Port Authority thereto, it is understood, agreed and will be expressly provided in the Leasehold Mortgage, that the Leasehold Mortgage and the rights of the Recognized Mortgagee, or its assignee or its successor-in-interest, as applicable, (i) will in all respects be as specified in and will be subject and subordinate to the terms, covenants, conditions and provisions set forth in the Lease and (ii) will be subject and subordinate to the terms, covenants, conditions, and provisions of the Basic Lease. The terms, covenants, conditions and provisions of the Lease and the Basic Lease will govern as between the Port Authority, the Lessee, and the Recognized Mortgagee, and in the event of any inconsistency between the terms, covenants, conditions and provisions of the Lease and the Basic Lease, as applicable, and the terms, covenants, conditions and provisions of the Leasehold Mortgage, the terms, covenants, conditions, and provisions of the Lease and the Basic Lease, as applicable, will control. The Lessee agrees that the terms and requirements of the foregoing sentence will be expressly provided in the Leasehold Mortgage;

(xvi) notwithstanding any provisions of the Leasehold Mortgage to the contrary, the Lessee for all purposes will be deemed to be the Lessee under the Lease hereunder unless and until

the Recognized Mortgagee will have acquired the Lessee's interest therein or a new lease has been executed between the Port Authority, as lessor, and the Recognized Mortgagee, as Lessee, as the case may be, and the Lessee will have as full and complete control of the operation and use of the Premises as if the Leasehold Mortgage had not been executed and delivered. Nothing set forth in the foregoing sentence, however, will be deemed or construed to limit in any way any right of the Recognized Mortgagee to exercise any or all of the remedies available at law or equity under the laws of the State of New York that are prohibited by law from being waived as a matter of public policy (including, without limitation, the right to appoint a receiver);

(xvii) the Leasehold Mortgage will make reference to the provisions of the Lease and will provide that the Leasehold Mortgage and the rights of the Recognized Mortgagee thereunder are and will be in all respects subject to the Lease; and

(xviii) the Leasehold Mortgage (and/or Financing Documents) will provide that the Recognized Mortgagee (or trustee acting on its behalf) is obligated, as set forth in the trust agreement (or similar document) to act in accordance with the instructions for disbursements for the benefit of the Port Authority, among others.

#### Recognized Mortgagee

A Person that holds a Leasehold Mortgage that complies with certain terms and conditions in the Lease and is an institutional lender under the Lease is entitled to the benefits and protections provided to a Recognized Mortgagee pursuant to the Lease (including an institutional lender acting as Collateral Agent with the customary powers given to collateral agents or trustees in commercial financing transactions). *Notices*

The Port Authority is required to deliver to the Recognized Mortgagee a copy of each Event of Default Notice given under the Lease at the same time as and whenever any Event of Default Notice is sent to the Lessee. If the Port Authority elects to terminate the Lease the Port Authority must send to the Recognized Mortgagee a copy of the Port Authority termination notice.

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

The Recognized Mortgagee may cure the outstanding Lessee Events of Default (i) up to ten (10) days after the expiry of the applicable Lessee cure period for a Lessee Event of Default arising out of non-payment of money, (ii) up to one hundred eighty (180) days with respect to any Lessee Event of Default for failure to complete the D&C Work by the Scheduled Completion Date and (iii) up to ninety (90) business days after the expiry of the applicable Lessee cure period for any other Lessee Event of Default (other than a Lessee Event of Default relating to a bankruptcy or insolvency of the Lessee as to which no cure shall be required), which period may be extended if the Lessee Event of Default cannot be reasonably cured within such ninety (90) business day period and the Recognized Mortgagee has taken steps to effect the cure subject to a long stop date for such additional cure period as is reasonable necessary to effectuate cure with reasonable diligence, but at most one hundred and twenty (120) days and provided that such additional time shall be acceptable to the Port in its sole discretion. In the case of clause (iii) above, the Recognized Mortgagee must provide no less than thirty (30) days' notice of the failure to cure within the ninety (90) day period. If the Recognized Mortgagee is prohibited from curing any Lessee Event of Default by any process, stay or injunction or pursuant to any bankruptcy or insolvency proceeding involving the Lessee, the time cure periods specified will be extended for the shorter of (i) the duration of such prohibition and (ii) one hundred and fifty (150) days.

### ***Assignment of Leasehold Mortgage***

A Recognized Mortgagee may 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 discretion. A “Successor Recognized Mortgagee” means a successor to a Recognized Mortgagee selected and appointed in accordance with the Leasehold Mortgage that is an institutional lender (or agent or trustee acting on behalf thereof) and not a Prohibited Party.

### ***Foreclosure***

Subject in the terms of the Lease (including the bankruptcy-related provisions therein), the Recognized Mortgagee may exercise its foreclosure rights and enforce any security document in any lawful way subject to the terms of the Lease, including: (i) the rights of the Lessee under the Lease may be assigned or transferred only to a Qualified Terminal Operator, (ii) petitions by the Recognized Mortgagee for appointment of a receiver are subject to the prior written consent of the Port Authority, (iii) any Person to whom the Recognized Mortgagee transfers or assigns the Lessee’s interest in the Lease must enter into an assignment and assumption agreement in substantially the form attached to the Lease; (iv) 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, or not permitted by, the Lease, (v) a Qualified Terminal Operator must acknowledge and agree that each Airline Use Agreement that is otherwise in full force and effect will remain in full force and effect; (vi) a Qualified Terminal Operator (or its designee or nominee) must pay 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 certain statement of estimated liabilities as provided in the Lease which are past-due or due and payable, in accordance with the provisions of the Lease; and (vii) in the case of such a lessee assignment and assumption agreement, a Qualified Terminal Operator must cure, within the applicable cure period, all Events of Default under the Lease of which the Recognized Mortgagee has been notified by the Port Authority in writing.

During any period in which the Recognized Mortgagee itself or by an agent, is the owner, or is in control or possession, of the Lessee’s interest in the Lease, it will (A) engage a Qualified Terminal Operator to provide management services with respect to the operations of the Premises and (B) be bound by all liabilities and obligations of the Lessee accruing under the Lease during such period.

### ***New Lease***

If the Lease is rejected or disaffirmed pursuant to any bankruptcy law or proceeding or other similar law or proceeding, the Port Authority has agreed, 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 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 such new lease of the Premises for the remainder of the term of the Lease.

### ***Port Authority’s Right to Pay Off Lessee Debt***

Subject to the terms of the Lease, the Port Authority has the right, without the obligation, after (x) the occurrence of an event of default under the Financing Documents, (y) the acceleration of the Lessee Debt and (z) a termination of the Lease following a Lessee event of default thereunder, to pay the Lessee Debt then outstanding and secured by the Leasehold Mortgage, which will include 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.

### Indemnification

#### ***Indemnification by the Lessee***

Without limiting any other indemnity, hold harmless or defense obligations of the Lessee under the Lease, or any rights and remedies available to the Port Authority at law or in equity or under this Agreement, the Lessee must indemnify and hold harmless the Port Authority, the City, the New York City Economic Development Corporation, each Commissioner of the Port Authority and each of their respective officers, directors, agents, employees and authorized representatives (collectively, the “Port Authority Indemnified Parties”) for any liability for losses due to third-party claims (except to the extent (i) such losses are caused by willful misconduct or gross negligence of the Port Authority or any officer, director, agent or employee of the Port Authority, (ii) that indemnity would be precluded pursuant to the provisions of Section 5-321 of the N.Y.S. General Obligations Law or (iii) that the losses suffered by the Lessee were 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) arising out of events specified in the Lease, including, but not limited to, the following: (A) any use or occupancy of the Premises or the areas subject to Rights of Access by the Lessee or any occupant or any acts or omissions of any Lessee-related entity or any sublessee at the Airport; (B) failure of the Lessee to comply with or perform any covenants or obligations in the Lease or the other Project Documents or any breach by the Lessee of its representations and warranties set forth in the Lease; (C) any willful misconduct, negligence or other culpable act, error or omission of a Lessee-related entity or any sublessee in connection with the Work, the Premises or the areas subject to the Rights of Access; and (D) any environmental liability with respect to a Hazardous Materials release at, on or under the Premises or the areas subject to the Rights of Access, or at any off-Premises location, caused by the negligent or willful acts or omissions of the Lessee, any Lessee-related entity or any occupant (to the extent the Lessee is responsible for the acts or omissions of such occupant pursuant to the Lease).

### Insurance

The Lessee must procure and maintain, and where applicable and expressly provided for in the Lease cause to be procured and maintained by third parties, insurance policies required under the Lease, 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 Section 12 (Insurance) of the Lease. 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, all losses within the scope of the insurance requirements under the Lease which are not recoverable by insurance or deductible would be the responsibility of and paid by the Lessee.

### Equal Opportunity – Employment Matters

The Lessee is prohibited from discriminating against employees or applicants for employment and selections for training or retraining because of race, creed, color, national origin, sex, age, disability or handicap. In addition, the Lessee must commit to use good faith efforts to implement an extensive program

of affirmative action, including specific affirmative action steps to be taken by the Lessee, to ensure maximum opportunities for employment and contracting by minorities and women.

The Lessee is required to commit to use good faith efforts to implement an extensive program to ensure compliance with the Port Authority's policies with respect to ensuring maximum opportunities for minority and women-owned business enterprises, as well as to encourage the use of local business enterprises and service-disabled veteran-owned business enterprises, all as specified in and in accordance with the participation goals set forth in the Lease.

The Lessee covenanted that it would not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or performance of any concession sublease, management contract or subcontract, purchase or lease agreement or other similar agreement. In addition, in connection with the leasing and operation of the concession program at the Premises, the Lessee is required to use good faith efforts to implement an extensive program to maximize the use of airport concession disadvantaged business enterprises in accordance with the Lease.

### Dispute Resolution

#### ***General***

Except as expressly set out otherwise in the Lease, upon the referral of a dispute between the Port Authority and the Lessee regarding any matter in the Lease, 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 fifteen days. If resolution is not reached within fifteen days, unless the parties agree to extend the fifteen day negotiation period, either the Port Authority or the Lessee may proceed pursuant to the litigation rules and procedures outlined in the Lease. 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 and any claim, controversy or dispute arising under or related to the Lease 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.

## **Appendix E**

### **SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT**

*The following is a summary of selected provisions of the Design-Build 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. Copies of the definitive agreements, some of which may be in redacted form and subject to any existing contractual agreements, will be available following the date of issuance of the Series 2024 Bonds, upon delivery of a written request and the payment of reasonable copying, mailing and handling charges to the Indenture Trustee at 240 Greenwich Street, 7E, New York, NY 10286, to the attention of the Corporate Trust Company. Unless otherwise stated, any reference in this Official Statement to the Design-Build 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 E but not otherwise defined in this Official Statement have the meanings given to such terms under the Design-Build Contract.*

On June 10, 2022, the Lessee, as developer, and the Design Builder, as design builder, entered into the Design-Build Contract.

#### **Overview**

The DB D&C Work for Phase A of the Project will be undertaken by the Design Builder pursuant to the Design-Build Contract, dated as of June 10, 2022, by and between the Lessee and the Design Builder. The Design-Build Contract includes, a guaranteed maximum Contract Sum in the amount of \$3,927,092,777, as may be adjusted by a Material Lessee Scope Change and an Equivalent Project Relief, in connection with the DB D&C Work required under the Design-Build Contract.

#### **Scope of Work**

Subject to limited exceptions specified in the Design-Build Contract, Design Builder will perform any and all DB D&C Work required under the Design-Build Contract, including without limitation (i) perform the Design Work and Construction Work in respect of Phase A of the Project, (ii) provide all materials, equipment, and labor, required for the DB D&C Work, and (iii) undertake all efforts necessary or appropriate to perform the DB D&C Work in accordance with the Project Documents and to achieve the milestone events, substantial completion, and final completion in accordance with the baseline schedule.

The Design Builder is required to perform the DB D&C Work and cause its subcontractors to perform the DB D&C Work in accordance with the (1) terms and conditions of the Design-Build Contract, relevant portions of the Lease, the requirements and provisions for work, applicable standards, Applicable Laws, rules and regulations, Port Authority requirements, and the Project Documents, including without limitation all construction applications, (2) best management practices and the standard of care, as applicable, and (3) the Project Documents, Applicable Law, applicable standards, and Contract Sum. The Design Builder is also responsible for the permits, approvals, reports, studies, analyses, and compliance under the requirements and provisions for work and the Lease that are applicable to the DB D&C Work as set forth in the Design-Build Contract.

#### ***Personnel***

Design Builder is required to hire and retain as representatives a sufficient number of employees and other personnel, with the requisite skill, technical ability, training and experience to enable Design

Builder to perform the DB D&C Work in an expeditious and economical manner, in conformity with the Project Documents and consistent with best management practices and the standard of care, as applicable.

### ***Design Professionals***

The Design Builder will record its communications with subcontractors, design professionals, and other persons regarding the DB D&C Work utilizing internet/web-based construction management software, which the Lessee will have full access to, to be provided and maintained by Design Builder and approved by the Lessee, with copies of written communications to be delivered by Design Builder to the Lessee. The Lessee will have full access to all design professionals and will be entitled to communicate directly with design professionals but in the presence of Design Builder and to attend all meetings attended by any design professionals and Design Builder relating to the Project.

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

To the fullest extent possible, the Design Builder will be responsible to the Lessee for the obligations under the Lease pertaining to the DB D&C Work to the same extent that the Lessee is responsible to the Port Authority and Design Builder will not take or permit any action or inaction that would cause the Lessee to default under the Lease. The Design Builder's liability, however, is subject to certain limitations (see "*Limitation of Liability*" below). The DB D&C Work must comply with all applicable provisions of the Lease, including the project description, the scope of the project and related works, the Federal Inspection Services facility for international flights and the plans and specifications. The DB D&C Work must also comply with all Lease requirements, governmental approvals, applicable law, the performance standards, rules and regulations, the Port Authority's code of ethics, access rights, sequencing and coordination requirements, milestone requirements, permitting and approvals requirements and oversight requirements.

### ***Anchor User Agreements/Exclusive Spaces***

The Lessee has entered into certain Anchor User Agreements pursuant to which the Lessee subleased certain spaces at the New Terminal Facilities to certain airlines. To the extent related to DB D&C Work, the Design Builder must comply with the terms of such Anchor User Agreements to the same extent and manner as required by the Lessee under such applicable agreement. The Design Builder has included the known costs associated with complying with the Anchor User Agreements in the Contract Sum. Non-compliance by Design Builder with the terms of the Anchor User Agreements, will constitute a breach of the Design-Build Contract. Any Anchor User Agreements executed after the Contract Sum setting date will be incorporated to the Design-Build Contract.

With respect to the exclusive spaces, each Airline User will provide detailed specifications for each Airline User's respective exclusive spaces within the Project and Design Builder is required to cooperate with any separate contractors retained by each Airline User with respect to completing the exclusive space work. The Project Site will have separate contractors performing work within the exclusive spaces and the Design Builder is obligated to coordinate the DB D&C Work with the separate contractors for the exclusive spaces. Any required coordination work in connection with, required by, or related to the Anchor User Agreements and exclusive spaces will not constitute a change.

### ***Interface Agreements***

The Lessee has entered and will enter into certain interface agreements (of which Design Builder may be a party to) with certain stakeholders at the Project and at the Airport. The Lessee has entered into the Construction Coordination Agreement with the Port Authority and the NTO Delta Construction

Coordination Interface Agreement with Delta and may enter into additional interface agreements during the DB D&C Work period. Design Builder has included the known costs associated with complying with the Construction Coordination Agreement and the NTO Delta Construction Coordination Interface Agreement in the Contract Sum. Design Builder is required to comply with the terms and requirements of all interface agreements to the extent such agreements apply to the DB D&C Work and to the Design Builder's obligations under the Design-Build Contract and to cause its subcontractors to do the same. Non-compliance by Design Builder with the terms of any interface agreement, will constitute a breach of the Design-Build Contract. Design Builder has agreed that any required coordination work to ensure the Lessee's or Design Builder's compliance with the interface agreements will not constitute a change.

### ***ORAT Agreement***

The Lessee intends to enter into certain ORAT Agreement with the ORAT Contractor to provide certain operational readiness and airport transfer plans at the Project prior to the completion of Phase A. The Design Builder is required to provide, within the baseline schedule, for the commencement of ORAT commissioning services to occur not less than 6 months prior to the completion of Phase A. To the extent related to the DB D&C Work within the scope of the Design-Build Contracts, Design Builder must comply with the terms of such ORAT Agreement to the same extent and manner as required by the Lessee under such applicable agreement. Non-compliance by Design Builder with the terms of the ORAT Agreement will constitute a breach of the Design-Build Contract and any required coordination in connection with, required by, or related to the ORAT Agreement will not constitute a Change.

### ***Port Authority Requirements***

Design Builder will perform the DB D&C Work subject to any applicable Port Authority requirements which are publicly available or otherwise provided by the Lessee to Design Builder, including without limitation requirements relating to performance standards, access, security and badging requirements, safety requirements, diversity, minority/women owned business enterprises requirements, submittal requirements, and ethical requirements. Design Builder must also comply with and be obligated to any other requirements of the Lessee or Port Authority requirements by which the Lessee may be bound.

### ***Governmental Approvals***

Design Builder will be responsible for securing, obtaining and maintaining all Governmental Approvals (including any revision, modification, amendment, supplement, renewal or extension thereof, but except for those Governmental Approvals and permits that are expressly the responsibility of the Lessee or the Port Authority) required in connection with the performance of the DB D&C Work (including without limitation all approvals, permits, permissions, consents, licenses, certificates, registrations, notices, exemptions, exceptions, waivers, filings and authorizations from the Port Authority that are applicable to the DB D&C Work) and based upon the final design and the Project Documents, except in respect of any Port Authority Governmental Approvals, and provided that Design Builder will be responsible for any modifications or amendments thereto as set forth in the Lease. Design Builder will not be entitled to any change related to any requirement to obtain Governmental Approvals or permits not previously known, unless such later required Governmental Approval or permit is required as a result of or to implement a Material Lessee Scope Change or Compensation Event. Pursuant to the Lease, Design Builder will be responsible, at its own risk of delay and cost, for revising the final design and/or means and methods as necessary to satisfy the requirements and conditions of all Governmental Approvals, and any amendment, modification, revision or supplement to such Governmental Approval as has been issued by such Governmental Authority, and Design Builder will perform the DB D&C Work in accordance therewith. Design Builder is obligated to keep the Lessee and the Port Authority informed, which may be achieved through the design and construction working group or otherwise upon the Lessee's or the Port Authority's

request, as to the status of all required Governmental Approvals, including any amendments, modifications, revisions or supplement of any Governmental Approvals required for the DB D&C Work.

### ***Risk of Loss***

Subject to the Project's builder's risk policy and any other applicable insurance policies, Design Builder assumed the risk of loss of or damage to all of the DB D&C Work prior to the completion thereof and the risk of loss of or damage to all property of the Port Authority arising out of or in connection with the performance of the DB D&C Work; provided that, subject to the Design-Build Contract and the Lease, the foregoing will not be interpreted as requiring Design Builder to assume the risk of loss or damage with respect to work other than the DB D&C Work for loss or damages caused by the Lessee or its separate contractors. In the event of any loss or damage to the DB D&C Work prior to the completion thereof, or damage to all property of the Port Authority arising out of or in connection with the performance of the DB D&C Work, Design Builder will repair, replace, and make good the DB D&C Work and the property of the Port Authority without cost or expense to the Port Authority or the Lessee, including without limitation performing any repairs to roadways, sidewalks or existing landscaping or hardscaping impacted by the DB D&C Work or by Design Builder's operations or activities related to the DB D&C Work at the Airport.

### ***Relocation of Utilities***

There may be communications and utility lines and conduits located on or under the site on which DB D&C Work is performed, which do not, and may not in the future, serve the Premises. Subject to the Equivalent Project Relief provision in the Design-Build Contract, the Design-Build Contract at its sole cost and expense, if directed by the Lessee or the Port Authority to do so prior to the completion of Phase A of the New Terminal Facilities, will relocate and reinstall such communications and utility lines and conduits necessary to perform the DB D&C Work on the Premises or off-premises as directed by the Lessee or the Port Authority, and to restore all affected areas. Design Builder will perform the Relocation Work subject to and in accordance with the Design-Build Contract, the other Project Documents, Applicable Law and applicable standards, and the Relocation Work will become a part of the DB D&C Work. The Relocation Work will not be or become a part of the Premises; provided that communications and utility lines and conduits subject to Relocation Work that are located upon and exclusively continue to serve the Premises will be part of the Premises, except to the extent such costs are attributable to the Lessee.

### ***Off-Premises Work***

A portion of the DB D&C Work will include the design and construction of certain off-premises works, including the landside utilities, the roadway network and modifications of the AirTrain, described in the Lease. Certain rights and obligations of the Lessee relating to the off-premises work will be assigned to the Taxable REIT Subsidiary as though the Taxable REIT Subsidiary were the Lessee under the Design-Build Contract. The Lessee will guarantee the performance of the Taxable REIT Subsidiary's payment obligations to the Design Builder for the off-premises work. In the event of a failure by the Taxable REIT Subsidiary to pay the Design Builder the amounts owed to the Design Builder for such off-premises work, the Design Builder may suspend the off-premises work (but not the DB D&C Work generally). The Lessee has entered into a separate agreement with Design Builder, which absolutely, unconditionally and irrevocably guarantees, as obligor and not merely as surety, the full performance of the Taxable REIT Subsidiary's obligations to Design Builder pursuant to the Design-Build Contract. Such guaranty will remain in full force and effect until the Taxable REIT Subsidiary's obligations under the Design-Build Contract have been satisfied by payment in full to Design Builder.

## Changes in the DB D&C Work

### ***Lessee Changes***

The Design Builder will receive no relief for time or money under the Design-Build Contract for a change that the Lessee effectuates in the design and construction of the DB D&C Work, either (i) itself, (ii) as a result of a Compensation Event, a Port Authority Change or a qualifying design and construction change permitted by the Lease for which the Design Builder is entitled to Equivalent Project relief, (iii) as a result of a change expressly permitted by the Design-Build Contract, or (iv) through a field proceed order, effectuates. The Design Builder is entitled to relief only if such change is deemed to be a Material Lessee Scope Change.

### ***Material Lessee Scope Changes***

The Design-Build Contract includes a mechanism that allows the Lessee to require changes to the scope of the D&C Work. The Design Builder is entitled to additional compensation for Material Lessee Scope Changes, which includes changes that are (a) initiated, or is an act, in the first instance by Lessee (excluding any Port Authority Changes) or (b) either (i) arise out of a specific right or entitlement granted to the Design Builder by the terms of the Design-Build Contract, or (ii) are not reasonably inferable from the other Project Documents and were not reasonably capable of having been clarified by the Design Builder prior to the Contract Sum setting date, (c) it cannot be reasonably anticipated from the basis of design, RFP documents or available documents and (d) are material in nature (either alone or in the aggregate), as reasonably determined by the Lessee or (e) it is expressly stated in the Design-Build Contract as being a Material Lessee Scope Change and complies with the requirements under the Design-Build Contract. If a Material Lessee Scope Change, increases the actual direct DB D&C Work costs, general conditions cost and/or extends the baseline schedule and/ or milestone event date, resulting in a corresponding increase in the Contract Sum, then (i) the direct DB D&C Work costs will be increased by the amount of the actual net increase in direct DB D&C Work cost attributable to such change, (ii) the general conditions costs will be increased by 5% of the direct DB D&C Work costs attributable to such change, (iii) the baseline schedule and/or milestone event date will be extended by the impact to the DB D&C Work's critical path attributable to the change, as applicable and (iv) the base fee will be adjusted until the aggregate value of all change orders exceeds \$100 million of the aggregate cost of the DB D&C Work. If a Material Lessee Scope Change, decreases the actual direct DB D&C Work costs, then (i) the direct DB D&C Work costs will be decreased by the amount of the actual net decrease in direct DB D&C Work cost attributable to such change, (ii) if the baseline schedule and/or milestone event dates is shortened by such change, the baseline schedule and/or milestone event dates will be shortened by the impact to the DB D&C Work's critical path attributable to the change, as applicable, and (iii) if the direct DB D&C Work costs are reduced by more \$5 million and critical path of baseline schedule is shortened by such change, then the general conditions costs will be decreased by the lesser of the actual reduced general conditions costs or 5% of the net reduction to the direct DB D&C Work costs attributable to such change, and the base fee will not be reduced.

### ***Design Builder Changes***

In the event that the Design Builder wants to propose a change to the Lessee that is not otherwise provided for in the Design-Build Contract ("Design Builder Change"), the Design Builder will for each proposed change, provide the Lessee with a change order proposal. If the Design Builder Change proposed in accordance with the Design-Build Contract constitutes a Lessee Change under the Lease if proposed by the Lessee, then the Design Builder must provide a change order proposal, which must also satisfy the requirements of the Lease. The Lessee will review such change order proposal and submit any such proposal (if acceptable to the Lessee) to the Port Authority as a Lessee Change (as defined in the Lease). If the Design Builder Change proposed in accordance with the Design-Build Contract does not constitute a Lessee

Change, and therefore, does not require the review or approval of the Port Authority, the Design Builder will submit a change order proposal to the Lessee, and the Lessee will approve or reject such request within 10 days after receipt thereof from the Design-Build Contract.

### ***Port Authority Changes***

In connection with Port Authority Changes (as further described above under the Lease), the Lessee will hold the Port Authority Reserve Amount (as defined in the Lease) of \$100 million for the entire Project, of which \$80 million is for Phase A, to be set aside for the purpose of funding any Port Authority Change. The Design Builder is entitled to recover any increase to the direct DB D&C Work costs attributable to such changes to the extent authorized by the Lessee.

### ***Equivalent Project Relief***

The Design-Build Contract provides that, so long as the Design Builder complies with the requirements of the Design-Build Contract and subject to the limitations set forth thereunder, the Design Builder 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 obligations under the Design-Build Contract, as those of the Lessee under the Lease; provided that such rights, benefits or entitlements under the Design-Build Contract with respect to Compensation Events, Port Authority Changes and qualifying D&C Changes are conditioned upon the existence and enforcement of a corresponding right, benefit or entitlement of the Lessee under the Lease ("Equivalent Project Relief"). The Design Builder is not entitled to any form of schedule relief, delay event, monetary relief, or change order under the Design-Build Contract or the Lease, unless and only to the extent that (i) the Lessee is able to and does actually secure relief for a Compensation Event under the Lease or (ii) the Design Builder is entitled to a Material Lessee Scope Change under the Design-Build Contract. The Design Builder has no right to assert any claim for Equivalent Project Relief or Compensation Events directly against the Port Authority

Pursuant to the Design-Build Contract, the Design Builder must provide any claim for Equivalent Project Relief to the Lessee within sufficient time and in sufficient detail to enable the Lessee to review such claim and to submit such claim for which Equivalent Project Relief may be available to Lessee to the Port Authority in accordance with the requirements of the Lease.

At the Lessee's request, the Design Builder is required to participate in the discussions with the Port Authority with respect to any claim for Equivalent Project Relief relating to Design Builder's obligations under the Design-Build Contract. Although the Design-Build Contract provides that the Lessee will take the lead in all such discussions with the Port Authority and that Lessee may settle any reasonable Claim by the Design Builder without the consent of the Design Builder, if in such circumstances the amount requested in such Claim by the Design Builder is greater than the amount for which the Lessee settles such Claim, then the Design Builder may bring a claim against the Lessee in respect of such difference.

The Lessee may decline to pursue any claim provided by the Design Builder that the Lessee determines (in its reasonable discretion) and informs the Design Builder in writing is not a reasonable claim. Any dispute with respect to whether a claim submitted pursuant to the terms of the Design-Build Contract by the Design Builder constitutes a reasonable Claim will be subject to a dispute resolution procedure. If the dispute resolution procedure determines that a claim provided by the Design Builder was a reasonable claim and the Lessee failed to submit such reasonable claim, the Lessee will be required to promptly submit such reasonable claim to the Port Authority or, if such reasonable Design Builder claim is time barred by the terms of the Lease, the Lessee will be required to promptly pay the Design Builder the amount of Equivalent Project Relief that the Design Builder would have otherwise been entitled to receive with respect to such reasonable claim.

If the amount payable to the Design Builder with respect to a reasonable Design Builder claim pursuant to the Design-Build Contract is decreased by the Port Authority pursuant to the Lease to reflect insurance proceeds or amounts recovered from third-party sources that relates to such reasonable Design Builder claim, the Design Builder will be entitled to payment of any such insurance proceeds or amounts recovered from third-party sources promptly upon the receipt of same by the Lessee from the applicable insurance provider or other third-party source.

The Design Builder will also assist the Lessee in Lessee's pursuit of potential sources of funds or reimbursement from any third-party source to offset Lessee's damages, as also required by the Lease.

### ***Compensation Events***

Subject to Equivalent Project Relief and the terms of the Design-Build Contract (including all applicable notice requirements), the Design Builder is entitled to seek relief from the Lessee for Compensation Events. The term "Compensation Event" for purposes of the Design Builder means any of the following events or conditions, subject to the limitations and other provisions set forth in the Lease:

- a) any Port Authority Change;
- b) the Port Authority willfully fails to provide the Lessee with temporary rights of access in accordance with the Lease; provided that no such failure will 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 as a result of or arising out of an emergency, or (y) due to a Force Majeure event with respect to the Port Authority for so long as the Lessee and the Port Authority are coordinating the resumption of performance pursuant to the Lease;
- c) (A) the Port Authority willfully fails to (x) provide the Lessee with access to the off-premises facilities within the specified time periods set forth in the baseline schedule, and/or (y) tender the First Additional Premises after Delta has vacated the First Additional Premises, and/or (z) tender the Second Additional Premises after TOGA has vacated the Second Additional Premises, and/or (B) (x) the Port Authority's entry into a written contract with Delta binding upon the Port Authority which allows Delta to remain in occupancy of the First Additional Premises notwithstanding delay in completion of the Terminal 4 expansion in accordance with the requirements of the Terminal 2 Lease Amendment, and/or (y) the Port Authority's entry into a written contract with TOGA or any Airline binding upon the Port Authority which allows TOGA or such airline to remain in occupancy of the Second Additional Premises other than in accordance with the terms of the Terminal One Lease Amendment;
- d) any suspension of the DB D&C Work, in whole or in part, by the Port Authority in excess of 24 hours made in response to an event requiring the suspension of DB D&C Work, other than such events set forth in the Lease;
- e) the Port Authority's direction to uncover, remove, and restore DB D&C Work;
- f) the Port Authority fails to respond to requests from the Lessee initiated by Design Builder for review and/or approval of such schedules, plans, design documents, or other submittals listed on the Lease within the applicable review period to the extent;

- g) with respect to Governmental Approvals Design Builder is required to obtain on behalf of the Lessee pursuant to the Project Documents during the DB 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 Design Builder to obtain or comply with such Governmental Approvals that (x) is specifically identified in a written request from Design Builder to the Lessee, (y) is in the possession of the Port Authority, and (z) is not otherwise available to Design Builder or Lessee, and in any case, within a time period reasonably specified by Design Builder in such request, or (B) the willful failure of the Port Authority to provide a required signature of a Port Authority official within a reasonable period; or
- h) any change in the scope or design of the Port Authority Enabling Work which materially and adversely impacts the performance of the DB D&C Work necessary to tie-in or connect the DB D&C Work with the Port Authority Enabling Work,

except, in each case, to the extent arising by reason of or attributable to (A) the negligence or willful misconduct of Design Builder or any of its subcontractors, (B) any act or omission by Design Builder or any of its subcontractors in breach of the provisions of the Design-Build Contract or any other Project Document, (C) the Port Authority acting in accordance with Applicable Laws, applicable standards (provided such applicable standards apply to other Airport facilities and are applied to Lessee in a non-discriminatory manner) or a contract binding upon the Port Authority entered into by the Port Authority in the ordinary course of business, or (D) the failure of the Port Authority to address disagreements between Design Builder and any other party conducting construction work at the Airport, whether such party is subject to the Construction Coordination Agreement or otherwise.

If any of the events described in clauses (b), (c) and (e) through (g) above are deemed by the Port Authority not to be a Compensation Event due to the occurrence of a Force Majeure event with respect to the Port Authority, Design Builder will assist and coordinate with Lessee and the Port Authority 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 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.

The Design Builder is required to give written notice to Lessee within 7 business days following the date on which Design Builder first became aware (or should have become aware, using all reasonable due diligence) of the occurrence of a Compensation Event.

Upon the occurrence of a claimed Compensation Event, Design Builder is required to, and will cause each of its subcontractors to, take all reasonable steps 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. If, for any reason, Design Builder fails to give the written Compensation Event notice within the required time period, Design Builder will be deemed to have irrevocably and forever waived and released any claim or right to any adverse effects on costs, expenses and liabilities attributable to such event that Design Builder may otherwise have been able to claim as a Compensation Event.

Lessee will also submit Design Builder's Compensation Event notice to the Port Authority in accordance with the Lease. To the extent that the Port Authority determines that a Compensation Event has occurred for which the Lessee is entitled to compensation, then the Lessee will issue a change order to Design Builder reflecting the time and cost adjustments afforded by Equivalent Project Relief. Design Builder will be entitled to recover from the Lessee the amount that Lessee receives from the Port Authority that is actually attributable to any net cost impact to Design Builder.

If a Compensation Event has been deemed to occur by the Port Authority occurring during the DB D&C Work period affecting the performance of the DB D&C Work, then such Compensation Event will be on the basis of Equivalent Project Relief and will (A) excuse Design Builder from performance of its obligations to perform the DB D&C Work pursuant to the Design-Build Contract, but only to the extent that the performance of such DB D&C Work is directly affected by such Compensation Event, and (B) extend the Scheduled Completion Date day-for-day for any delays in the performance of the DB D&C Work directly caused by such Compensation Event in each case, taking into account impacts of the Compensation Event on critical path items to the baseline schedule in accordance with the requirements and provisions for work, but only to the extent the Compensation Event actually delays the performance of the DB D&C Work beyond the Scheduled Completion Date.

#### Subcontractors

##### ***DB D&C Work of Subcontractors***

All portions of the DB D&C Work that Design Builder does not perform with its own forces, as approved in advance by Lessee, and all materials and equipment that Design Builder does not supply, will be performed or supplied by subcontractors pursuant to approved subcontracts.

##### ***Preferred Specialty Providers***

Lessee intends certain portions of the DB D&C Work will be performed by certain consultants and specialty contractors identified by the Lessee. To the extent that the Lessee and any such specialty provider have previously negotiated terms and conditions associated with such specialty provider's performance of a certain scope of the DB D&C Work, those terms will be assigned to the Design Builder as assigned scope. Design Builder will review the scopes of design services and construction work for each assigned scope and specialty provider and coordinate such services and work within the DB D&C Work, and advise Lessee in writing of any errors, omissions, inconsistencies in the scope of services and work to be performed. As a part of the integrated design process, the Design Builder has coordinated and integrated the design, cost, and schedule of the DB D&C Work to be performed by such specialty providers within the Contract Sum. Lessee expects that Specialty Providers and Assigned Scopes will include:

- a) Master System Integrators, including SITA, ADB Safegate, and Schneider Electric;
- b) Baggage Handling System led by Vanderlande Industries;
- c) Passenger Boarding Bridges and related apron equipment led by AERO BridgeWorks;
- d) Scope and cost negotiated with Russo Construction LLC for Green Garage demolition; and
- e) Scope and cost with AirTrain operator, Bombardier, Inc.

Design Builder will be responsible for each specialty provider as a subcontractor in accordance with the terms of the Design-Build Contract. The scope and cost of the above specialty providers are included in the Contract Sum.

Design Builder is obligated to (i) itself abide by the requirements and obligations contained in the Design Builder section with respect to subcontractors and specialty providers, and (ii) expressly include in all subcontracts it executes for the performance of the DB D&C Work the provisions contained in the Design Builder section with respect to subcontractors and specialty providers, and will require all of its subcontractors to include in all of their respective subcontracts for the performance of the DB D&C Work

a provision that obligates each subcontractor to be subject to the corresponding payment requirements as specified in the Design-Build Contracts with respect to each lower-tier subcontractor.

Design Builder will also exercise best management practice, in each (x) key contract of Design Builder, and (y) subcontract for the performance of the DB D&C Work in excess of \$50 million that Design Builder executes, at a minimum:

- a) require the subcontractor to carry out the DB D&C Work in accordance with Applicable Law, applicable standards, best management practice and the relevant terms, conditions and standards set forth in the Project Documents;
- b) include a covenant to comply with and maintain all Governmental Approvals applicable to the performance of the applicable DB D&C Work;
- c) set forth customary representations, warranties, guaranties, performance security and liability provisions of the subcontractor in accordance with best management practice for work of similar scope and scale;
- d) require the subcontractor to obtain and maintain in force such insurance coverages as required under the Design-Build Contract and which are applicable to the subcontractor;
- e) expressly require the subcontractor to participate in meetings between Design Builder, Lessee, and/or the Port Authority (if such participation is requested or approved by Lessee or the Port Authority) concerning matters pertaining to such subcontractor, the DB D&C Work or the coordination of the DB D&C Work with other subcontractors and the contractors working at the Airport; provided that all direction to such subcontractor will be provided by Design Builder;
- f) include an agreement by the subcontractor to participate in any dispute resolution proceeding pursuant to the Design-Build Contract if such participation is requested by Lessee or the Port Authority;
- g) without cost to Lessee or the Port Authority and subject to the rights of the recognized mortgagee, expressly permit assignment to Lessee or the Port Authority, or its successor, assignee or designee, of all Design Builder's rights under the Subcontract, contingent only upon delivery of a written request from Lessee or the Port Authority following termination or expiration of the Design-Build Contract, allowing Lessee or the Port Authority or their successor, assignee or designee to assume the benefit of Design Builder's rights with liability only for those remaining obligations of Design Builder accruing after the date of assumption, such assignment to include the benefit of all subcontractor warranties, indemnities, guarantees and performance security, and expressly state that any acceptance of assignment of the subcontract by Lessee or the Port Authority, or their successors, assignees or designees, will not operate to make Lessee or the Port Authority, or their successors, assignees or designees, responsible or liable for any breach of the subcontract by Design Builder or for any amounts due and owing under the subcontract for work or services rendered prior to the effective date of assignment to, and assumption of, the subcontract by Lessee or the Port Authority;
- h) subject to the rights of the recognized mortgagee, expressly include a covenant, expressly stated to survive termination of the subcontract, to promptly execute and deliver to Lessee or the Port Authority or its successor, assignee or designee a new contract between the

subcontractor and Lessee or the Port Authority or their successors, assignees or designees on the same terms and conditions as the subcontract, if (A) the subcontract is rejected by Design Builder in bankruptcy or is wrongfully terminated by Design Builder, and (B) Lessee or the Port Authority delivers to the subcontractor written request for such new contract within 60 days following termination or expiration of the Design-Build Contract on substantially the same terms and conditions as the subcontract;

- i) expressly include requirements that the subcontractor will comply with the applicable of the Lease related to non-discrimination, employment – affirmative action – equal opportunity and minority business enterprises, women-owned business enterprises and local business enterprises commitment and the applicable provisions of the schedules referenced in such sections of the Lease;
- j) expressly include the indemnitees and the Port Authority indemnified Parties as indemnitees, with direct right of enforcement, in any indemnity given by the subcontractor under the subcontract;
- k) expressly include an acknowledgement (A) that the Port Authority is immune from Liens, (B) that the subcontractor has no right or claim to any Lien with respect to the DB D&C Work or the Premises for failure of the other contracting party to pay amounts due the subcontractor, and (c) that the subcontractor waives any such right or claim that may exist at law or in equity;
- l) subject to the rights of the recognized mortgagee, expressly include (A) the right of Design Builder to terminate the subcontract upon any termination of the Design-Build Contract or (B) that the subcontract automatically terminates upon any termination of this Agreement, in each case without liability of Lessee or the Port Authority for the Subcontractor's lost profits or business opportunity, but subject to the right of the Port Authority to request a new contract as provided in (h);
- m) expressly include an acknowledgement (A) that any discussions between the Port Authority or its designated representatives and any Subcontractor in connection with the performance of the DB D&C Work by such subcontractor are intended to be advisory in nature and do not constitute directives from the Port Authority, unless otherwise provided in accordance with the Lease, (B) that the Port Authority is neither responsible for the supervision of the DB D&C Work performed by such Subcontractor nor the performance of the DB D&C Work (including all means and methods) by such Subcontractor, (C) that, notwithstanding the incorporation of the Port Authority requirements in the Subcontract for the performance of the DB D&C Work, and any rights the Port Authority may have reserved to itself under the Lease, the Design-Build Contract, or the subcontract, the Port Authority will have no liabilities or obligations of any kind to the subcontractor, and the subcontractor will not be a third-party beneficiary of this Agreement or the Lease, and (D) that the Port Authority is not responsible for payment of any such DB D&C Work, unless the Port Authority has expressly agreed to such payment obligations under contract;
- n) include provisions naming Lessee and the Port Authority as a third-party beneficiary of each of the provisions identified in a) through l) above and o) below; and
- o) expressly provide that any purported amendment with respect to any of the foregoing matters set forth in a) through n) above without the prior written consent of Lessee and the Port Authority will be null and void ab initio and of no force and effect.

Provided that the subcontracts for the performance of the DB D&C Work comply with the requirements of the Project Documents and includes each of the mandatory provisions set forth above, Lessee and Design Builder will not be obligated to submit a copy of such subcontracts to the Port Authority for its prior review and approval before execution of the same, but will promptly following execution of such Subcontract, deliver a fully executed copy of such subcontract to the Port Authority.

#### Baseline Schedule

The baseline schedule will set forth the milestone events, including the Scheduled Completion Date, and all other requirements provided in the requirements and provisions for work. The baseline schedule will fully describe the intended method of accomplishing all the various portions of the DB D&C Work and related activities necessary to complete the DB D&C Work. The baseline schedule will demonstrate, to the reasonable satisfaction of Lessee, an expeditious, practicable and reasonable plan for achieving the milestone events, including the Scheduled Completion Date. In no event will 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 Lessee to such extension or other revision. Design Builder will be responsible for incorporating the Port Authority's comments to and finalizing the baseline schedule and thereafter, for providing Lessee and the Port Authority with updates to the baseline schedule, all in accordance with the requirements and provisions for work or as may be required sooner pursuant to the Design-Build Contract, and providing in writing a general description of the means and methods that Design Builder proposes to adopt for the execution of the DB D&C Work.

Additionally, the baseline schedule will also include the following, as appropriate:

- a) Permit and approval process;
- b) verification of the assumptions in the Contract Sum relative to the intended schedule;
- c) dates for the receipt of design deliverables from Design Builder and design professionals required for subcontracting and procurement including sufficient time for the review and approval by Lessee of the design documents and the subcontract bid packages;
- d) activities related to the procurement of subcontractors;
- e) a purchasing schedule including a listing of all long-lead material, building systems and equipment items and a schedule for the acquisition and delivery of such items;
- f) a schedule for the engineering, Submittals submission, fabrication, testing, and delivery of all major components fabricated off-site;
- g) one or more "critical paths";
- h) activities for coordination of the DB D&C Work with the work of separate contractors, including with the Port Authority's contractors, contractors for Other Redevelopments, or any other third-party interface, as applicable;
- i) integrations with the DB D&C Work and the Project activities of Lessee, Lessee's representative, and the separate contractors;

- j) construction completion and closeout activities including appropriate time for punch list completion;
- k) activities related to approvals required to be obtained from Governmental Authorities (including the Port Authority);
- l) activities of design professionals necessary for mock-up construction;
- m) work calendars required to identify interaction with separate contractors, including the Port Authority's contractors, contractors for Other Redevelopments, or any other third-party interface, or any special crew work, shift work, holidays and/or weather constraints or conditions based on NOAA standards;
- n) commissioning activities including dates for commencement and completion of startup, testing, and commissioning of equipment and systems; and
- o) Design Builder will retain only qualified scheduling personnel.

Finally, the baseline schedule will indicate specific activities, durations, dependencies and sequencing and provide a critical path through the activities including identification of the milestone events for the DB D&C Work, and the work of separate contractors, including the Port Authority's contractors, contractors for Other Redevelopments, or other third party interface. To the extent required, the baseline schedule will provide for phasing and/or sequencing of the various activities as may be required to achieve Lessee's use or occupancy requirements. Special attention to specific deliverables such as permanent power availability, power available dates for various subcontractors will also be considered and reported upon periodically.

#### ***Completion of the DB D&C Work; Substantial Completion***

The Design Builder is required to perform, and cause to be performed, the DB D&C Work in compliance with the baseline schedule. Design Builder is also required to 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 will be of the essence for Design Builder's performance of the DB D&C Work.

Design Builder will complete the DB D&C Work (other than punch-list items approved by Lessee and the Port Authority) by the Scheduled Completion Date, (i) subject to any adjustment from time to time only as expressly permitted under the Lease, or (ii) as modified by a change order, Equivalent Project Relief or Unavoidable Delay.

When all or a portion of the DB D&C Work is substantially completed and ready for use, including as evidenced by the issuance by the Port Authority of a "Temporary Certificate of Authorization to Occupy or Use" for each installation portion and partial occupancy portion of the DB D&C Work, Design Builder will advise the Port Authority to such effect in accordance with the requirements and provisions for work and to Lessee and will deliver to the Port Authority and Lessee a certificate by an authorized officer of Design Builder and Design Builder's architect or engineer certifying that the requirements of the Design-Build Contract have been met and that the DB D&C Work has been constructed in accordance with the Project Documents, approved drawings and specifications and the provisions of the Design-Build Contract and in compliance with all Applicable Laws and applicable standards.

Substantial completion of the DB D&C Work will only occur if Design Builder, and Lessee so concurs, will have: (i) satisfied all of the applicable conditions set forth in the requirements and provisions for work, the TCAP manual, and the Lease with respect to the DB D&C Work and the Airport Security Guidelines Manual; and (ii) satisfied the conditions set forth in the Design-Build Contract.

### ***Delay Events***

Pursuant to the Lease, upon the occurrence of a Delay Event during the D&C Work Period affecting the performance of the D&C Work, and subject to compliance with the requirements thereof, the Lessee will be (i) excused from its obligation to perform the D&C Work to the extent such performance is directly prevented or delayed by the Delay Event and (ii) will be entitled to an extension of the applicable Scheduled Completion Date on a day-for-day basis for any delays in the performance of the D&C Work directly caused by such Delay Event, taking into account impacts of the Delay Event on the critical path in the Baseline Schedule 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 the Scheduled Completion Date of the relevant Phase. If the Lessee fails to deliver notice of a Delay Event within the required period set forth in the Lease, the Lessee 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.

### ***Unavoidable Delay Events***

The Design Builder's right to seek schedule relief from the Lessee is limited to the following the unavoidable delay events set forth in the Design-Build Contract, which are narrower than the Delay Events provided for in the Lease, and include the following:

- a) terrorism or war;
- b) strikes (not specific to the DB D&C Work) that are beyond the Design Builder's or its subcontractors' reasonable control;
- c) fire or other casualty resulting in property damage to the DB D&C Work (not caused by the Design Builder or any subcontractor's negligence or willful misconduct);
- d) embargoes or interdictions;
- e) abnormal inclement weather documented in accordance with the Design-Build Contract;
- f) failure to deliver the First Additional Premises by the date set forth in the baseline schedule;
- g) a delay in the delivery of material or a suspension of the Work caused by an order issued by a Governmental Authority or international governmental authority in response to an epidemic or pandemic as determined by the World Health Organization, Centers for Disease Control or other United States governmental authority with jurisdiction over the Project or the DB D&C Work;
- h) Compensation Events, subject to terms and conditions of the Design-Build Contract and the Lease;
- i) acts or omissions or willful misconduct of Lessee related entities or their agents, including without limitation ORAT Contractor, the Taxable REIT Subsidiary, operation and maintenance contractors of Lessee, the Operations and Maintenance Contractor, Lessee's

separate contractors, and not subject to Equivalent Project Relief), subject to a notice and 10 day opportunity to cure, unless the critical path is delayed, and in which case the Design Builder will provide Lessee with written notice and 3 business days opportunity to cure; and

- j) delay of Green Garage demolition commencement date, provided that such delay is proximately caused by the non-issuance of the notice to proceed for the Project;

If a delay results from the above unavoidable delay events, then subject to the negligence, willful misconduct, or fault or breach of the Design-Build Contract by the Design-Build or its subcontractors, the milestone date for the applicable milestone event will be extended for each day of delay to the critical path of the Project attributable to the unavoidable delay event (subject to notice requirements).

To the extent of an unavoidable delay event in (a) through (g), the Design Builder will only be entitled to relief to the extent the Lessee is granted Equivalent Project Relief by Port Authority under the Lease (other than Delay Events as defined in the Lease, which the Design Builder is not entitled to). In the event of an unavoidable delay in (a) through (g), the Design-Build Contract will be entitled only to (i) an extension of time as provided in the immediately preceding paragraph, and (ii) relief from Liquidated Damages to the extent that such unavoidable delay impacts the critical path for the achievement of the Liquidated Damages milestone event date.

To the extent of an unavoidable delay event in (h), the Design Builder will only be entitled to relief to the extent the Lessee is granted such Equivalent Project Relief by Port Authority under the Lease (other than Delay Events as defined in the Lease, which the Design Builder is not entitled to). In the event of an unavoidable delay in (h), the Design Builder will be entitled to (i) such relief as set forth in the Design-Build Contract, and (ii) relief from Liquidated Damages to the extent that such unavoidable delay impacts the critical path for the achievement of the Liquidated Damages Milestone Event Date.

In the event of an unavoidable delay under (i) and (j), the Design Builder will be entitled to a Material Lessee Scope Change for such delay, including relief from Liquidated Damages to the extent that such unavoidable delay impacts the critical path for the achievement of the Liquidated Damages milestone event date. No extension of time will be granted by reason of an unavoidable delay event if and to the extent that Design Builder could have avoided or mitigated the resulting delay at Lessee's cost. If Design Builder identifies steps to avoid or mitigate such delays and obtains Lessee's prior written approval for such costs and expenses, then Design Builder will 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 Design Builder could not have avoided or mitigated the resulting delay, then Design Builder's sole and exclusive remedy will be to (i) request an extension of time in the manner and within the time frame provided in, and subject to the terms of the Design-Build Contract, (ii) only for unavoidable delays described in (i) above, receive, if applicable, its actual cost of the DB D&C Work, if any, incurred by reason of such unavoidable delay event and (iii) only for unavoidable delays described in (j) above, receive, if applicable, its increased actual general conditions costs, if any, incurred by reason of such unavoidable delay event; provided that the unavoidable delay event exceeds 7 days. Design Builder will in no event be entitled to any claim for damages whatsoever by reason of any such unavoidable delay event, including so-called "Delay Damages." Design Builder bears the burden of proving the occurrence of an unavoidable delay event and the resulting impacts.

Design Builder is not entitled to receive any additional compensation or extension of time for an unavoidable delay to the extent such delay occurs concurrently with delay due to or caused by Design Builder or subcontractors; provided, however, Design Builder will be entitled to an extension of time

irrespective of a concurrent delay due to or caused by Design Builder or subcontractors if, the concurrent unavoidable delay is:

- a) an unavoidable delay described in (h) above subject to Equivalent Project Relief for which the Port Authority approves both additional compensation and an extension of time, or
- b) an unavoidable delay described in (i) above and the delay exceeds a grace period of 30 days.

The following events will not constitute unavoidable delays, and the Design Builder will not be entitled to any extension of time on account thereof: (a) incompleteness or lack of coordination of Project Documents, drawings or specifications, (b) the acts, omissions or conduct of any Governmental Authority (including the Port Authority), including without limitation, the enforcement by Governmental Authorities of their existing rules, requirements, regulations or standard operating procedures, which Design Builder should have reasonably anticipated given the size and complexity of the Project or Design Builder's prior experience with the Governmental Authorities (including the Port Authority), (c) normal weather delays or conditions based on NOAA standards; (d) errors and omissions in the drawings and specifications; and (e) existing conditions which were or should have been known to Design Builder; provided, however, that nothing herein will impact the ability of Design Builder to seek Equivalent Project Relief for Compensation Events provided in the Lease to Lessee.

### ***Liquidated Damages***

The Design Builder must pay to the Lessee liquidated damages in the fixed dollar amount of \$470,335 per day, for each day after June 1, 2026 that the Design Builder fails to achieve the Completion Date for Phase A, subject to a grace period and an overall cap, and certain carve outs. The Lessee may set-off any amounts payable to the Design Builder to pay Liquidated Damages.

The Design-Build Contract limits the exposure of the Design Builder for Liquidated Damages to \$320 million, subject to carve-outs for: (i) claims arising out of the Design Builder's gross negligence or willful misconduct; (ii) claims covered by the Design Builder's insurance required to be maintained pursuant to the Design-Build Contracts; (iii) the Design Builder's refusal to perform because the Lessee exercises its right to withhold or the Design Builder stops work during the pendency of a dispute; (iv) personal injury and property claims; (v) the Design Builder's failure to assign contracts upon termination, to the fullest extent permitted by law; (vi) the Design Builder preventing the Lessee's personnel reasonable access to any portion of the Project Site or DB D&C Work; or (vii) the Design Builder breaching any anti-bribery and anti-corruption laws including OFAC.

### **Warranty; Nonconforming Work**

#### ***Warranty***

The warranty period under the Design-Build Contract is the same as required by the Lessee under the Lease, which is within 1 year (or, if available on cost effective terms, 2 years) after (a) the date that the Port Authority issued a certificate of substantial completion or, (b) for phased construction, from the date of the certificate of substantial completion for such phase. For any portion of the D&C Work that is repaired in the guaranty period, such term will be for one (1) year (or two (2) as applicable) from the date of repair or replacement.

The Design Builder warranted and guaranteed (the "Warranty") to the Lessee that:

- a) the design of the Project (as applicable to the DB D&C Work) and the completed DB D&C Work will satisfy the requirements of the Design-Build Contract, the Lease, the requirements and provisions for work, the basis of design, and the other Project Documents;
- b) the DB D&C Work will be performed in a good and workmanlike manner, in conformity with the Project Documents and consistent with best management practices and the Standard of Care, as applicable, free of any faults or defects in equipment, material, or design furnished, or workmanship performed by the Design Builder, or any subcontractor, supplier or manufacturer retained by the Design Builder for purposes of performing the DB D&C Work;
- c) all DB D&C Work including materials and equipment furnished as part of the construction, will be (i) complete and conform to best management practice, (ii) new (unless otherwise specified herein or in the requirements and provisions for work), of good quality, in conformance with the applicable laws, applicable standards, the Project Documents, the Design-Build Contract, and the requirements and provisions for work, and (iii) once completed, free of all defects in design, materials and workmanship and with respect to the design work only, fit for its intended purpose;
- d) the final design documents, including all final construction applications approved by the Port Authority will (i) be accurate and complete, (ii) comply with the requirements of the Project Documents, and (iii) accurately reflect the condition of the Project as of the Completion Date; and
- e) Design professionals will perform the design work in accordance with the standard of care.

### ***Non-Conforming Work***

If (i) any DB D&C Work is identified in writing by Lessee or the Port Authority as being nonconforming work (that does not conform to the requirements of the Project Documents, applicable standards or Applicable Law) during the DB D&C Work period or Warranty period, or (ii) a defect (defect or deficiency in the condition or performance of any component of the DB D&C Work) 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 (i) above and at any time during the Warranty period and thereafter during the Warranty period, with respect to (ii) above, as applicable, Lessee or the Port Authority will be entitled to require that Design Builder (or a subcontractor on its behalf), at its sole expense, rectify such nonconforming work or defect, as applicable. In the event that any party under the Lease disputes whether a component of the DB D&C Work constitutes nonconforming work or a defect, then such dispute will be referred to the chief engineer. If there is no such dispute or if the chief engineer confirms the relevant DB D&C Work is nonconforming work or that there is a defect, Design Builder will prepare and submit for Lessee's and the Port Authority's approval a corrective action plan meeting the requirements of the general provisions developed by Design Builder with respect to any nonconforming work or defect in the DB D&C Work, as applicable. If Lessee or the Port Authority determines that an emergency exists which requires more immediate action than Design Builder is able to provide, Lessee or the Port Authority may, with prompt notice to Design Builder, perform or cause to be performed such repairs or replacements, in which event Design Builder is obligated to compensate Lessee or the Port Authority for the cost thereof, on demand. Design Builder will (or will cause its subcontractors to, as applicable), within 3 days of its receipt of notice of the approval of a such corrective action plan, implement the corrective action plan approved by Lessee and the Port Authority, the issuing agent if the Port Authority is not such issuing agent and by the architect/engineer of record, subject to and without waiver of any objections by Design Builder,

and any and all repairs or replacements of such DB D&C Work, and will repair and replace, at its sole cost and expense, any and all damage caused by such repair or replacements, to the satisfaction of Lessee.

If Design Builder has failed within the required time period to provide a corrective action plan acceptable to Lessee and 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, Lessee, or the Port Authority, in accordance with the Lease, will be entitled to rectify such nonconforming work or defect, as applicable, (or to engage a third party to rectify such nonconforming work or defect, as applicable) and receive from Design Builder payment or reimbursement of an amount equal to 115% of any out-of-pocket costs, expenses, damages, penalties and other charges paid or incurred by it to rectify such nonconforming work or defect, as applicable. In the event that Design Builder fails to make the foregoing payment or reimbursement to Lessee (or the Port Authority), Lessee will be entitled (as it may be required under the Lease) to draw upon the D&C Letter of Credit (or other such security) furnished by the Design Builder and pay such amounts over to the Port Authority, as applicable.

In the event that Design Builder or any subcontractor fails to perform any of the DB D&C Work in accordance with the terms of the Design-Build Contract causing a defect or nonconforming work, and Design Builder fails to correct such defect or nonconforming work after receipt of written notice from Lessee that Lessee intends to perform such work and expiration of a 3 day opportunity to cure, Lessee will be entitled to cure the defect or nonconforming work and backcharge Design Builder subject to payments due to Design Builder for Lessee's reasonable, actual and direct costs thereof from Design Builder. In the event that back charging such costs is not feasible, Lessee will be entitled to utilize construction contingency funds in order to pay for the actual, necessary and reasonable costs it incurs to correct such defects or nonconforming work.

#### Insurance

The Design Builder will be required at all times during the DB D&C Work period to comply with the insurance requirements under the Design-Build Contract and the Lease to the extent applicable to Design Builder. Lessee is required to obtain a developer-controlled insurance program for the Project to provide for excess liability, general liability, and workers' compensation insurance. The architect and all design professionals are required to furnish and maintain professional liability practice policies in the minimum amounts and on the terms set forth in the Design-Build Contract. Additionally, the Lessee is also required to purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on an "all-risk" or equivalent policy form for the completed value of the entire Project at the Project Site on a replacement cost basis.

#### Security for Performance

##### ***Parent Company Guaranty and Payment and Performance Bonds***

The Lessee has entered into a parent company guaranty, dated as of June 3, 2022 (the "Parent Company Guaranty") with AECOM, the Design Builder's parent company, pursuant to which AECOM unconditionally, absolutely and irrevocably guarantees to the Lessee the performance and satisfaction of the Design Builder's obligations under the Design-Build Contract, with an aggregate liability of \$500 million.

Pursuant to the Design-Build Contract, the Design Builder has agreed to furnish a payment and performance bond to the Lessee, guaranteeing the Design Builder's payment and performance obligations under the Design-Build Contract in the amount of \$500 million, subject to certain terms and conditions as

set forth in the Design-Build Contract. At the Lessee's sole election, Lessee may require the Design Builder to furnish an additional performance and payment bond for all or a portion of the Parent Company Guaranty. In no event will the aggregate value of the performance and payment bond furnished by the Design Builder and the Parent Company Guaranty exceed \$1 billion.

### ***D&C Letter of Credit***

In connection with the Design-Build Contract, the Design Builder has furnished an irrevocable standby letter of credit, on terms acceptable to the Lessee and the Port Authority and issued by an Eligible LC Issuer satisfactory to the Lessee, in favor of the Lessee, in a form and substance sufficient per the requirements of the Lease, and substantially in the form approved by Lessee, securing the payment and performance of the obligations of the Design Builder under the Design-Build Contract ("D&C Letter of Credit"). The D&C Letter of Credit is in an aggregate amount equal to \$171,789,858.75 until June 1, 2026 (the Scheduled Completion Date of the DB D&C Work), in each case as may be further adjusted by mutual agreement of the parties and consistent with the requirements of the Lease and the Design-Build Contract. The D&C Letter of Credit has been issued upon terms satisfactory to the Port Authority, the Lessee, and the lenders, securing its performance under the Design-Build Contract. Each D&C Letter of Credit provides, that such D&C Letter of Credit may be transferred by the Lessee to the Port Authority, the Collateral Agent, and/or any lender as transferee beneficiary in the event that the Port Authority, the Collateral Agent, or any lender, as applicable, succeeds to the position of the Lessee under the Design-Build Contract. Such D&C Letter of Credit must remain in effect until the later of the calendar date stated therein to be the final expiration date thereof, or the substantial completion date of Phase A.

For so long as the Design Builder is obligated to maintain the D&C Letter of Credit, not later than 60 days prior to the stated expiration date of such letters of credit, the Design Builder will renew or replace each such letter of credit with one or more replacement letters of credit. If the Lessee (or other beneficiary of the D&C Letter of Credit following a transfer) does not receive a replacement letter of credit from an Eligible LC Issuer within the time specified in the Design-Build Contract, the Lessee (or other beneficiary of the D&C Letter of Credit following a transfer) may draw on the full available amount of the applicable D&C Letter of Credit.

Lessee will also have the right to draw upon each D&C Letter of Credit upon simultaneous notice to the Design Builder in the event that: (i) the Design Builder is in default pursuant to the terms of the Design-Build Contract and has failed to cure such default to the Lessee's reasonable satisfaction within the relevant cure period; (ii) the Design Builder has failed to provide Lessee with a replacement letter of credit within 60 days prior to the stated expiration date of such D&C Letter of Credit; (iii) the issuer of the D&C Letter of Credit no longer constitutes an Eligible LC Issuer and the Design Builder has failed to deliver a new letter of credit within 10 days after the date such issuer failed to constitute an Eligible LC Issuer; or (iv) the Design Builder defaults due to bankruptcy.

### **Indemnity**

To the fullest extent permitted by law, under the Design-Build Contract, Design Builder is required to indemnify, defend and hold harmless each of the indemnitees (including the Port Authority indemnified parties), from and against any and all 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 failure to comply with the applicable terms of the Lease or the Basic Lease or causing Lessee to fail to comply with the terms of the Lease or the Basic Lease, (iii) the infringement of any intellectual property right arising out of the performance of any of the DB D&C Work or Services, (iv) personal injury or property damage; or (v) the gross negligence or willful misconduct of the Design Builder or its subcontractors, provided that the Design Builder's defense obligation will not apply with respect to claims

actually covered by the professional liability policies of architect or any design professional and/or the Design Builder contractor's protective professional indemnity insurance policy, in which case Design Builder's obligations under the Design-Build Contract will be limited to indemnification and to hold the indemnitees harmless. Each of the foregoing (i)-(v) will be referred to as a "Recovery Action.

Design Builder is also required pay or cause to be paid all undisputed claims lawfully made against it by its subcontractors and all claims lawfully made against it by other third persons arising out of or in connection with or because of the performance of the DB D&C Work, and will cause its subcontractors to pay all such claims lawfully made against them.

#### Limitation on Liability

Except with respect to: (i) claims arising out of the Design Builder's gross negligence or willful misconduct; (ii) third-party claims, including but not limited to third party intellectual property infringement claims or employee labor law claims; (iii) the Design Builder's refusal to perform because the Lessee exercises its right to withhold or the Design Builder stops work during the pendency of a dispute; (iv) personal injury and property damage claims; (v) the Design-Build's failure to assign contracts upon termination, to the fullest extent permitted by law; (vi) the Design Builder preventing the Lessee's personnel reasonable access to any portion of the Project Site or DB D&C Work; or (vii) the Design Builder breaching any anti-bribery and anti-corruption laws, including OFAC, the Design Builder's total aggregate liability to Lessee related entities in connection with the Design-Build Contract will be limited to an amount equal to 35% of the Contract Sum for the entire Project.

Further, to the extent permitted by law, except with respect to: (i) claims arising out of Design Builder's or any design professional's gross negligence or willful misconduct; (ii) third party claims, including but not limited to third party intellectual property infringement claims or employee labor law claims; (iii) Design Builder's (a) refusal to perform because the Lessee exercises its right to withhold or Design Builder stops work during the pendency of a dispute; (iv) personal injury and property damage claims; (v) Design Builder's failure to assign contracts upon termination, to the fullest extent permitted by law; (vi) Design Builder preventing Lessee's personnel reasonable access to any portion of the project site or DB D&C Work; or (vii) Design Builder breaching any anti-bribery and anti-corruption laws, including OFAC, Design Builder's aggregate liability to the Lessee and the Lessee related entities for any errors or omissions in the design work or any design services provided under the Design-Build Contract will be limited to \$50 million, the Design Limitation of Liability. Notwithstanding the foregoing, the Design Limitation of Liability will not apply to claims arising out of, resulting from, or in any way related to the willful misconduct or independent negligence of the Design-Build Contract.

#### Payments to Design Builder

##### ***Base Fee***

In consideration of Design Builder's performance of the DB D&C Work for the entire Project and its other obligations under the Design-Build Contract, Lessee is required to pay to Design Builder the base fee in an amount equal to \$129,182,535. In no event will Design Builder be entitled to receive a base fee from Lessee on account of the costs of construction contingency, construction security, insurance, SDI, or bonds.

The Base Fee will be paid to Design Builder monthly, in proportion to the direct DB D&C Work Cost component of the DB D&C Work performed in the immediately preceding month, subject to retention of 10% of the base fee before calculating a reduction to the cost of the DB D&C Work by the applicable retention. Lessee will cease to withhold further retention after such time that the DB D&C Work is 50%

complete, as reasonably determined by Lessee. The retained portion of the base fee will be released to Design Builder as part of the final payment, except with respect to the completion of certain early trades as expressly agreed to by Lessee. Lessee will not be required to release to Design Builder, prior to the final payment, any amount that would reduce the retention against base fee as provided herein to an amount less than 5% of the total Base Fee paid to Design Builder to date.

#### ***Cost of the DB D&C Work***

Lessee will reimburse Design Builder for the direct DB D&C Work costs and the general conditions costs.

#### ***Insurance***

Except where Lessee implements a developer-controlled insurance program, Lessee will reimburse to Design Builder the cost of insurance required to be maintained under the Design-Build Contract.

#### ***Subcontractor Default Insurance***

Lessee will reimburse to Design Builder the cost of SDI, if required by Lessee, at a rate of 1.5% of the direct DB D&C Work costs for the estimated subcontractor volume enrolled, paid to Design Builder in equal payments in each monthly payment request.

#### ***Bonds***

Lessee will reimburse to Design Builder the actual and demonstrated cost of subcontractor payment and performance bonds, to the extent such bonds are required by Lessee.

#### ***Incentive Fees***

The Design Builder is entitled to an incentive fee subject to a 3% incentive fee cap will be an aggregate cap based on the Design Builder's achievement of specific metrics. The project NTP incentive fee (as described below) will not be subject to the incentive fee cap. Upon the Lessee's issuance of the notice to proceed for the Project, the Design Builder will be awarded a one-time project NTP incentive fee in the amount of \$27.5 million. Additionally, the Design Builder will be entitled to a construction contingency savings incentive fee if upon final completion of the entire Project there remains any unspent portion of the construction contingency after the application of any earned incentive fee. In such case, the unused construction contingency will be shared by the Lessee and the Design Builder as follows: (i) the Design Builder will receive 30% as a construction contingency savings incentive fee, less the procurement savings staff bonus, to the extent such amount is paid to the Design Builder prior to the payment of the construction contingency savings incentive fee and (ii) the Lessee will receive 70%.

#### **Contract Sum**

The Design-Build Contract is a comprehensive design-build agreement with a guaranteed maximum price for the Design Builder's performance and completion of the design and construction work for Phase A. The Contract Sum may be adjusted by a material scope change initiated, or an act, in the first instance, by the Lessee, as set forth in the Design-Build Contract (a "Material Lessee Scope Change") and in the event of Equivalent Project Relief.

### ***Cost Report***

Design Builder is required to prepare an anticipated cost report of the cost of the DB D&C Work on a monthly basis, or more frequently as reasonably directed by Lessee, which will comply with the cost breakdown structure in the Design-Build Contract, and will show past, present and anticipated future expenditures required to complete the DB D&C Work and track approved and pending change orders and potential change orders. Pending change orders and known claims for extra costs will be analyzed as soon as possible after claim submission so that they can be included in the anticipated cost reports with appropriate comments.

### ***Cost Records***

Design Builder is also required to keep detailed accounts and cost records (on a trade-by-trade basis, including general conditions DB D&C Work), in addition to those specified elsewhere in this Agreement, in accordance with best management practices and the standard of care, as applicable, including without limitation, cost records required in connection with time and material and/or unit price change orders.

### ***Contract Sum***

The Contract Sum is comprised of (a) the total not-to exceed cost of design work for the Project, (b) the lump sum general conditions costs for the Project, (c) the portion of the direct DB D&C Work costs for the construction work which has been awarded, (d) the Design Builder's estimate of the direct DB D&C Work costs, for the construction work which has not been awarded, (e) the design contingency for the Project, (f) the total not-to-exceed construction contingency for the Project, (g) the base fee, (h) the cost of payment and performance bonds, if any, (i) costs of insurance, (j) costs of the design and construction letter of credit, payment and performance bonds and the parent company guaranty, (k) costs of subcontractors default insurance, if any, and (l) all taxes included in the cost of the DB D&C Work.

### ***Trade Procurement***

The completion of the DB D&C Work is being guaranteed with respect to the total cost of the DB D&C Work pursuant to the Contract Sum and not the costs for each or any part thereof. Upon substantial completion of buyout of the subcontractors which were not awarded prior to the establishment of the Contract Sum, which will occur on or before June 1, 2024, the trade breakdown will be adjusted as follows: (i) if the amount awarded is less than the amount shown on the trade breakdown of the Contract Sum, the amount shown on the trade breakdown and the Contract Sum will be reduced by the difference between the two amounts and the amount of such procurement savings will be applied to (i) a staff bonus pool to be distributed directly by the Design Builder to its Project staff in an amount to and not to exceed \$5 million and (ii) to the extent any leftover procurement savings, the remaining amount will be applied to and increase the construction contingency; and (ii) if the amount as awarded is greater than the amount shown on the trade breakdown for the Contract Sum, the amount shown on the trade breakdown will be increased by the difference between the two amounts, and to the extent that the construction contingency is sufficient, the construction contingency will be reduced by the same amount, and the Contract Sum will not be adjusted.

### ***No Escalation and Cost Overruns***

Escalation in the costs of labor and/or materials, regardless of the cause for such escalation, will not constitute a change for additional costs, delays or otherwise, or entitle the Design Builder to a change order or additional compensation of any nature. If the aggregate of the actual costs of the DB D&C Work, the base fee and other costs and expenses payable to the Design Builder under the Design-Build Contract

exceeds the aggregate Contract Sum for the Project, subject to adjustments permitted under the Design-Build Contract, the Design Builder will pay for and bear the entire amount of such excess.

#### ***Contingency Funds and Allowances***

The Contract Sum will include certain design and construction contingencies and allowances for particular aspects of the DB D&C Work identified within the Design-Build Contract.

*Use of Design Contingency Funds.* In the event a design change notice includes a design change arising from design progression of the development of 100% construction documents that increases the costs of the DB D&C Work, then the Design Builder will be entitled to use the design contingency for the net additive design work costs for the construction work. Design Builder is required to provide an explanation to Lessee on a monthly basis in connection with the payment application process when it desires to utilize funds from the design contingency to cover such costs.

*Use of Construction Contingency Funds.* The construction contingency will be used by the Design Builder solely to cover the following construction contingency costs:

- a) cost overruns in the purchasing of subcontracts after establishing a final Contract Sum;
- b) costs incurred to repair defective or damaged work executed by Design Builder or any of its Subcontractors which are not otherwise reimbursable hereunder or recoverable from a subcontractor (but only to the extent not caused by the gross negligence, or willful misconduct of Design Builder or its subcontractors) provided that Design Builder uses commercially reasonable efforts to pursue recovery from SDI, if applicable;
- c) costs incurred due to the default or non-performance of a Subcontractor which are not reasonably recoverable from such subcontractor or SDI furnished by Design Builder under the Design-Build Contract and provided that Design Builder has made a claim under such insurance;
- d) Direct DB D&C Work schedule recovery costs incurred due to delays or potential delays in achieving a milestone event provided such delays or potential delays are caused by Design Builder or any subcontractor and with respect to which Design Builder is not otherwise compensated and which are not reasonably recoverable from such subcontractor or SDI;
- e) cost of the DB D&C Work included in the drawings and specifications which were omitted by Design Builder in the Contract Sum;
- f) cost of the DB D&C Work included in the drawings and specifications which Design Builder underpriced in the Contract Sum;
- g) costs associated with Port Authority Changes or changes required by any other Governmental Authority following establishment of the Contract Sum which do not constitute a Material Lessee Scope Change or Equivalent Project Relief;
- h) costs associated with the acts, omissions, or enforcement by the Port Authority or other Governmental Authority, and not covered by Equivalent Project Relief, except when resulting from a grossly negligent or willful and malicious failure by Design Builder to comply with the terms of the Design-Build Contract;

- i) costs required to complete the DB D&C Work that do not qualify as a Material Lessee Scope Change or Equivalent Project Relief, subject to any other limitation in the Design-Build Contract;
- j) Unknown conditions and environmental remediation for which Design Builder is responsible for under the Design-Build Contract to the extent not captured as a Compensation Event or Material Lessee Scope Change;
- k) field conditions, excluding unknown conditions and environmental remediation for which Design Builder is not responsible for under the Design-Build Contract;
- l) work stoppages;
- m) additional costs and expenses associated with minor errors and omissions in the Design Work, which are not reasonably recoverable from such design professional or professional liability insurance furnished by such design professional;
- n) safety and protection;
- o) after the liquidated damages grace period, liquidated damages not to exceed a total of 30 days of the daily liquidated damages rate applicable to the liquidated damages milestone event as identified in the Design-Build Contract; and
- p) other costs approved by Lessee.

Design Builder is required to provide an explanation to Lessee on a monthly basis in connection with the payment application process when it desires to utilize funds from the construction contingency to cover costs as described above.

### ***Construction Allowances***

Construction allowances and construction allowance items will be limited solely to scopes of the DB D&C Work that were undefined or were unable to be defined by the basis of design and the Project Documents at the time the Contract Sum was established. The construction allowances and construction allowance items may fluctuate due to a number of circumstances, including the fact that Lessee may not have yet selected the exact type or quantity of such materials, equipment or other items. Accordingly, unless otherwise provided in the Project Documents:

- a) materials, equipment and other items under a construction allowance will be selected by Lessee in a timely manner so as to avoid delays in the DB D&C Work;
- b) Construction allowances will cover the cost of materials and equipment delivered at the Project Site, and all required taxes, labor, installation and other expenses, less applicable trade discounts, contemplated for stated construction allowance items;
- c) Design Builder's costs for unloading and handling a construction allowance item at the Project Site and overhead and profit contemplated for such construction allowance item will be deemed to be included in the general conditions costs and the base fee and will not be included in the construction allowance; and

- d) Design Builder will not use any portion of the construction allowance items without Lessee's prior written approval in each instance. If approved, Design Builder will issue a change order proposal pursuant to the Design-Build Contract, estimating the total forecast of such construction allowance item.

The Contract Sum contains limited construction allowances, the actual cost of which may increase or decrease based on actual Project Site conditions, Construction Documents, and interior design documents which have not yet been completed, and/or utility and regulatory requirements. As construction allowances are converted, the Contract Sum will be adjusted as follows:

- a) if the line item amount exceeds the construction allowance, the Contract Sum will be increased by an amount equal to the amount by which the line item exceeds the construction allowance; and
- b) if the line item amount is less than the construction allowance, the Contract Sum will be decreased by an amount equal to the amount by which the line item is less than the construction allowance.

#### ***Shortfall, Progress Payments and Mobilization Payments***

Each application for payment by the Design Builder will constitute a representation that the undisbursed remainder of the Contract Sum will be sufficient to fund the performance and completion of the DB D&C Work for the entire Project. The Lessee is obligated to make progress payments to the Design Builder in accordance with the terms of the Design-Build Contract, based on a schedule of values. In the event that the Design Builder is performing DB D&C Work that is to be paid for by the Port Authority pursuant to the Lease, then the Lessee will have no obligation to pay the Design Builder for such DB D&C Work unless and until the Port Authority has actually paid the Lessee for such work. A one-time mobilization payment of \$40 million is contemplated to be made to the Design Builder in order to mobilize the Design Builder to commence construction activities.

#### **Disputes and Claims**

##### ***Port Authority Dispute Resolution Procedures***

Any dispute that is subject to the Port Authority dispute resolution procedures set forth in the Lease will be resolved in accordance with the Lease, including without limitation to the provisions governing disputes involving technical or engineering matters that are subject to resolution by the chief engineer.

##### ***Disputes between Lessee and Design Builder***

In the event of a dispute between the Design Builder and the Lessee, that is not subject to the Port Authority dispute resolution procedures described in "Port Authority Dispute Resolution Procedures" above, the Design Builder and the Lessee will first attempt to resolve any disputes through discussion between representatives of each party. If the dispute cannot be resolved through the representatives, senior representatives of each party will meet, each with the necessary settlement authority within their own organizations. The senior representative resolution procedure must occur before referring a dispute to the dispute board, which members will be selected by the parties. If the dispute board fails to assist the parties in resolving disputes, the dispute will be decided by litigation. The substantially prevailing party of any dispute will be entitled to recover its attorneys' fees and costs.

## Termination

### *Termination by the Lessee for Cause*

Lessee has the right to terminate the Design-Build Contract for cause in whole or in part upon notice to the Design Builder and subject to the applicable cure periods, if any, provided under the Design-Build Contract, upon the occurrence of any of the following, each of which will constitute a DB Event of Default:

- a) Design Builder refuses to perform or abandons the DB D&C Work with the intention of not returning to perform the DB D&C Work for a period of more than 15 days in the aggregate, and fails to recommence performance of the DB D&C Work within 3 days of written notice from the Lessee;
- b) Design Builder ceases the DB D&C Work without Lessee's approval or express legal justification and fails to recommence performance of the DB D&C Work within 3 days of written notice from the Lessee;
- c) Design Builder fails to achieve (x) substantial completion of the DB D&C Work by the Scheduled Completion Date OR (y) the liquidated damages milestone event by the liquidated damages milestone event date, subject to the terms of the Design-Build Contract;
- d) Design Builder repudiates its obligations under the Design-Build Contract;
- e) Any lien (other than a Permitted Lien or a lien filed due to non-payment by the Lessee) is filed against the Premises because of any act or omission of the Design Builder or any subcontractor;
- f) Design Builder fails to maintain required insurance;
- g) Design Builder makes changes to key personnel without Lessee's prior written consent;
- h) Design Builder fails to provide or utilize the personnel in accordance with the staffing plan;
- i) Design Builder fails to pay subcontractors promptly or misapplies funds due subcontractors pursuant to the Project Documents;
- j) Provided that the Lessee has made payment of the corresponding amount, the Design Builder fails to pay any taxes required in connection with the DB D&C Work or the Project or pursuant to the Design-Build Contract;
- k) Design Builder suffers a materially adverse change in its financial condition that impacts the D&C Work or Project;
- l) Design Builder fails to perform any material obligation under the Design-Build Contract and does not correct such failure within 20 days after receipt of written notice from Lessee specifying such failure;
- m) prior to the Completion Date: (i) the Design Builder (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) will 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 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 will admit in writing its inability to pay its debts generally as they become due, or (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 Design Builder 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 50 days or more;

- n) Design Builder 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 or determine that there is an occurrence of an event of default pursuant to the Lease;
- o) Design Builder fails to make any other payment of fees or charges required hereunder or under the Lease when due to the Port Authority or the Lessee, and the Design Builder fails to cure such failure within 5 days of written notice from the Lessee;
- p) Design Builder fails to keep, perform and observe each every promise covenant and agreement set forth in the Design-Build Contract, the Lease, any other Project Document, the rules and regulations and the Basic Lease on its part to be kept, performed, or observed, (x) within 20 days after receipt of notice of default thereunder from the Port Authority (as received through the Lessee) or (y) such shorter period as may be required by any applicable Governmental Authority, including, without limitation, the City (except, with respect to clause (x) above, where fulfillment of its obligation requires activity over a period of time and the Design Builder will have commenced to perform whatever may be required for fulfillment within 20 days after receipt of notice and diligently continues such performance without interruption, except for causes beyond its control, to completion);
- q) any representation or warranty made or deemed to be made by Design Builder in the Design-Build Contract or in any other certificates or agreements delivered by the Design Builder to the Lessee to be provided to the Port Authority in connection with the Lease is 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);
- r) Design Builder fails to comply with Applicable Laws and such failure is not cured within 15 days after the earlier of (i) the Design Builder obtaining knowledge of such failure, and (ii) receipt of notice of such failure from the Port Authority (as received through the Lessee) or the applicable Governmental Authority;
- s) Design Builder fails to comply with the provisions related to compliance with governmental requirements and rules and regulations of the Lease 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;
- t) Design Builder fails to comply with any written order issued to the Lessee or the Design Builder by the Port Authority in accordance with the Lease to suspend, in whole or in part, the DB D&C Work;

- u) Design Builder fails to begin the DB D&C Work (x) with respect to the entire Project, within 15 days after the Port Authority's approval of the comprehensive final design submittal (as such term is defined in the General Provisions) or (y) within 15 days after any Port Authority issuance of the applicable partial approval; provided, however, that the Lessee has issued any notice to proceed so as to allow the Design Builder to commence the DB D&C Work;
- v) Design Builder fails to comply with the provisions related to assignment and sublease, non-discrimination minority business enterprises, women-owned business enterprises and local business enterprises, certain representations and warranties and OFAC covenants of the Lease, and such failure is not cured within the applicable cure period;
- w) Design Builder fails to comply with requirements set forth in, and in accordance with the security related provisions of the Lease and such failure is not cured within the applicable cure period;
- x) Design Builder fails to comply in any material respect with the OIG or the Project integrity monitor and such failure is not cured within the applicable cure period;
- y) Design Builder fails to keep, perform and observe each and every direction issued by the Port Authority and such failure is not cured within the applicable cure period; and
- z) Design Builder fails to meet required good faith M/WBE, LBE, or SDVOB Project participation requirements, to the extent determined by the Port Authority pursuant to the Lease.

Lessee will have the right, upon a termination of the Design-Build Contract because of an DB Event of Default, to take possession of and use all or any part of Design Builder's materials, equipment, supplies and other property of every kind used by Design Builder in the performance of the DB D&C Work and to use such property in the manner it deems desirable to complete the DB D&C Work, and engage the services of other parties therefor. Any such act by Lessee will not be deemed a waiver of any other right or remedy of Lessee.

If Design Builder defaults or fails to carry out any of its material obligations under the Project Documents, regardless of whether the Design-Build Contract is terminated or a DB Event of Default will have occurred, Lessee, upon 20 Days' written notice and opportunity to cure to Design Builder (which notice will not be required in the event of an emergency), and without prejudice to any other right or remedy Lessee may have, may carry out any or all of the obligations of Design Builder, either directly or through others, and charge the cost thereof to Design Builder. The performance of such obligations by Lessee or by others will not relieve Design Builder of any obligation or liability for the DB D&C Work and will not operate to waive any right or remedy of Lessee.

#### ***Termination by Lessee – For Convenience***

The Lessee has the right to terminate the Design-Build Contract without cause at any time, in whole or in part, by giving the Design Builder at least 60 days' written notice thereof. Upon receipt of such notice, Design Builder will be required to 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.

### ***Design Builder Actions Upon Notice of Termination***

Upon receipt of any such notice of termination of the Design-Build Contract from Lessee, and as a condition precedent to Lessee's obligation to make any of the aforesaid payments to Design Builder required under the Design-Build Contract, Design Builder will:

- a) stop performing the DB D&C Work under the Design-Build Contract on the date, and to the extent specified, in the notice of termination;
- b) not enter into any further subcontracts;
- c) at the option of Lessee, Design Builder will assign to Lessee or any of its affiliates or any contractor, construction manager, design builder or other person or entity designated by Lessee, all Design Builder's right, title and interest in, to and under those subcontracts designated by Lessee. Lessee will assume the obligations of Design Builder under such subcontracts from and after the effective date of such assignment;
- d) except with respect to those subcontracts assigned to Lessee pursuant to the Design-Build Contract, or unless otherwise directed by Lessee, terminate the subcontracts entered into by Design Builder in connection with the DB D&C Work to the extent that they relate to portions of the DB D&C Work to be performed subsequent to the date set forth in the notice of termination as the date upon which such termination will become effective;
- e) to the extent required by Lessee and subject to the prior approval of Lessee, use commercially reasonable efforts to settle, at Lessee's sole cost and expense and at no cost to Design Builder, all outstanding liabilities and all valid claims arising out of such termination of subcontracts, which approval by Lessee will be final for all the purposes;
- f) transfer title to Lessee in and to, unless already vested in Lessee, and deliver in the manner, at the time, and to extent, if any, directed by Lessee, fabricated or unfabricated parts, work in process, completed DB D&C Work, supplies, and other material and equipment produced as a part of, or acquired in connection with the performance of, the DB D&C Work; and all the documents, materials and other warranties;
- g) if requested by Lessee, and at Lessee's sole cost and expense, use commercially reasonable efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by Lessee, any property of the types referred to herein, provided that the proceeds of any such transfer or disposition will be applied in reduction of any payments to be made by Lessee to Design Builder under the Design-Build Contract or will otherwise be credited to the cost of the DB D&C Work or paid in such other manner as Lessee may direct;
- h) complete performance of such part of the DB D&C Work as will have been specified in the notice of termination to be completed by Design Builder prior to the effective date of such termination, for which Design Builder will be paid in accordance with the Design-Build Contract; and
- i) prior to the effective date of such termination, take such action as may be necessary, or as Lessee may direct, for the protection and preservation of the property related to the DB D&C Work which is in the possession of Design Builder and in which Lessee has or may

acquire an interest, the cost of which will be considered as a part of the cost of the DB D&C Work.

#### ***Termination by the Design Builder***

The Design Builder will have the right to terminate the Design-Build Contract upon 20 days prior written notice and opportunity to cure to Lessee for Lessee's material breaches under the Design-Build Contract which remained uncured for more than 10 days following the date the Design Builder provided written notice to Lessee of such material breach.

The sole liability of the Lessee to the Design Builder under the Design-Build Contract or otherwise, subject to full and complete performance by the Design Builder of its obligations under the Design-Build Contract, will be payment of the monies payable thereunder, and the Lessee will have no liability to Design Builder for damages or charges of any kind.

#### ***Compensation to the Design Builder Upon Termination – For Cause***

In the event of a termination of the Design-Build Contract, the Design Builder will be paid by the Lessee for the actual costs incurred by the Design Builder in the performance of services or work for the Project up to the date of termination and for all materials, supplies and equipment incorporated in the Project and/or stored at the Project Site or at such off-site storage locations as will have been approved by the Lessee in accordance with the provisions of the Design-Build Contract, it being understood that the Design Builder will not be entitled to recover anticipated profits on account of the base fee 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 Lessee will have no obligation to pay the Design Builder for any amount to be paid by the Port Authority in the event of such termination, unless and until the Lessee first receives such payment from the Port Authority pursuant to the Lease.

#### ***Compensation to the Design Builder Upon Termination – For Convenience***

Upon a termination for convenience, the Design Builder will retain all sums of money paid to the Design Builder, except if and to the extent such sums of money are due to subcontractors or were paid in advance to the Design Builder prior to the payment becoming due to the Design Builder, in which event the Design Builder will pay the same, immediately upon the Lessee's direction, to such subcontractors or to the Lessee, and the Lessee will pay to Design Builder, subject to the Lessee's right to withhold payments to the extent permitted under the terms of the Design-Build Contract, (a) all retainages, if any, earned by the Design Builder except retainages as to any subcontracts assumed by Lessee; (b) a sum of money equal to the cost of the DB D&C Work incurred under the Design-Build Contract by the Design Builder for which payments have not theretofore been made under the Design-Build 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 Design Builder through the effective date of such termination, including any "true up" thereof. In the event of such termination of the Design-Build Contract, the Design Builder will not be entitled to receive anticipated profits on any DB D&C Work not yet performed or any damages, consequential or otherwise.

#### ***Remedial Plans***

Pursuant to the Lease, Lessee is entitled to cure certain events of default by Lessee as defined under the Lease by preparing and submitting for the Port Authority, within the relevant cure period, a remedial plan that will set forth a schedule and specific actions to be taken by the Lessee to cure such DB Event of

Default and, if applicable, reduce the likelihood of such defaults occurring in the future. To the extent an event of default by Lessee under the Lease has been caused by the failure of Design Builder to perform the DB D&C Work in accordance with the terms of the Design-Build Contract, Design Builder is will be required to assist and cooperate with the preparation, submission, revision, and execution of a remedial plan approved by Lessee and the Port Authority. The actions identified in the remedial plan to cure the applicable DB Event of Default by Design Builder may include improvements to the Design Builder's quality management practices, plans and procedures, revising and restating management plans, changes in organizational and management structure, increased monitoring and inspections, changes in key personnel and other important personnel, and replacement of subcontractors. in the event that the remedial Plan is not accepted by the Port Authority, Lessee will promptly notify Design Builder, and the Port Authority, Lessee and Design Builder will meet to discuss. If the Remedial Plan is accepted by the Port Authority, Design Builder will implement such remedial plan diligently and in accordance with its terms and subject to the terms of the Design-Build Contract and the Lease. Any failure by Design Builder to comply diligently with such approved Remedial Plan will constitute a material breach of the Design-Build Contract.

#### ***Direct Agreement and Port Authority Step-in Rights***

The Design Builder has entered into the Direct Agreement with the Lessee and the Collateral Agent, which sets forth, among other things, certain rights of the lenders with respect to the Design-Build Contract. The Design Builder acknowledged that the Lessee has certain rights to conduct refinancings under the Lease, and the Design Builder must use commercially reasonable efforts to cooperate with the Lessee and any prospective lenders in connection with the Lessee conducting any such refinancing. In particular, the Design Builder agreed to enter into a direct agreement with the Lessee and each person at any time having the rights of a recognized mortgagee pursuant to the Lease. The Design Builder has also caused AECOM to agree that it will enter into a direct agreement for the Parent Company Guaranty with the Lessee and each person at any time having the rights of a recognized mortgagee pursuant to the Lease.

Subject to the rights of the lenders pursuant to the applicable Direct Agreement, upon receipt by the Lessee of written notice from the Port Authority, the Port Authority is entitled to exercise the Lessee's rights with respect to the Design-Build Contract, without any necessity for a consent or approval from the Lessee or the making of a determination whether the Port Authority validly exercised its step-in rights (the "Port Authority Step-In Rights"). To the extent that the Port Authority exercises the Port Authority Step-In Rights, the cure periods in connection with the termination of the Design-Build Contract will be tolled and extended accordingly.

If upon the occurrence and during the continuation of an event of default under the Lease caused by Design Builder, the Port Authority seeks to enforce its rights against the Lessee as set forth in the Lease, then the Lessee will also have the right, at any time, to make a claim at law or in equity, for damages or injunctive relief against the Design Builder.

#### **Suspension of Work**

##### ***Port Authority's Right to Suspend***

As defined in the Lease, the Port Authority will have the right to suspend the D&C Work for:

- a) any failure by the Design Builder to comply with the Lease, the Design-Build Contract, any applicable laws/ applicable standards/ Governmental Approval/ or comprehensive security plan;

- b) the existence of conditions unsafe for workers, other personnel or the general public or as a result of any determination by the Port Authority as necessary to respond to good order requirements;
- c) an Emergency;
- d) a Force Majeure event;
- e) the presence of a “VIP,” dignitary or other person requiring special security arrangements or expedited handling at the Airport;
- f) as the Port Authority determines necessary to respond to good order requirements; and/or
- g) Labor Troubles.

### ***Lessee’s Right to Suspend***

The Lessee has the right to suspend the Project, in whole or in part, at any time. If such suspension is for a period in excess of 5 consecutive days, the Design Builder will be entitled to a Change Order for (a) an adjustment to the baseline schedule actual and milestone events, (b) additional general conditions costs incurred by reason of such suspension beyond such period, and (c) certain additional costs, provided that the Design Builder uses commercially reasonable efforts to mitigate. In the event the DB D&C Work is suspended by Lessee for 180 days or longer, for reasons other than: (i) a failure of the Design Builder to perform the DB D&C Work in accordance with the Design-Build Contract; or (ii) any suspension implemented at the direction of the Port Authority, the Design Builder may elect to terminate the Design-Build Contract, which termination will be deemed a termination for convenience pursuant to the Design-Build Contract.

### ***Design Builder’s Right to Suspend***

In the event that the Lessee fails to make payments of any undisputed amounts due to the Design Builder in accordance with the terms of the Design-Build Contract, then the Design Builder may suspend the DB D&C Work after providing written notice and 14 days’ opportunity to cure to the Lessee, and provided further that the Lessee fails to cure and make such payment of undisputed amounts to the Design Builder within such 14 day period. If such suspension exceeds 20 days, then the Design Builder may terminate the Design-Build Contract. If the Lessee pays the undisputed amounts within such 20 day period, following the Design Builder’s resumption of performance, the Design Builder will be entitled to a Material Lessee Scope Change for (i) its actual and demonstrated increases to the cost of the DB D&C Work caused by such suspension, and (ii) an equitable extension of the baseline schedule and milestone dates, as applicable, to the extent that the critical path was actually impacted by such suspension.

### **Governing Law**

The Design-Build Contract will be construed and interpreted in accordance with the laws of the State, except to the extent that United States federal law otherwise applies.

### **Design Builder’s Representations and Warranties**

The Design Builder has made certain representations and warranties for the benefit of the Lessee and those that are required to be made by the Lessee in the Lease to the extent they relate to the Design Builder and the DB D&C Work.

### Assignment

The Design-Build Contract does not permit the Design Builder to assign, transfer, encumber or otherwise affect its obligations, responsibilities, and rights under the Design-Build Contract without the Lessee's prior written consent, which may be provided or withheld in the Lessee's reasonable discretion. Under the Design-Build Contract, the Lessee may assign the Design-Build Contract without the Design Builder's consent to (a) the Lessee's affiliates, (b) any person or entity which succeeds to all or substantially all of the Lessee's assets and business, (c) the Port Authority or (d) the Lessee's lenders provided that any or all of the foregoing agree to performance of Developer's roles, obligations and responsibilities on the same terms and conditions set forth in the Design-Build Contract.

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## Appendix F

### SUMMARY OF CERTAIN PROVISIONS OF THE MANAGEMENT SERVICES AGREEMENT

*The following is a summary of selected provisions of the Management Services 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. Copies of the definitive agreements, some of which may be in redacted form and subject to any existing contractual agreements, will be available following the date of issuance of the Series 2024 Bonds, upon delivery of a written request and the payment of reasonable copying, mailing and handling charges to the Indenture Trustee at 240 Greenwich Street, 7E, New York, NY 10286, to the attention of the Corporate Trust Company. Unless otherwise stated, any reference in this Official Statement to the Management Services 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 F but not otherwise defined in this Official Statement have the meanings given to such terms under the Management Services Agreement.*

On June 10, 2022, the Lessee and the Manager entered into the Management Services Agreement.

#### Term

The term of the Management Services Agreement commenced on June 10, 2022 (the “MSA Effective Date”) and will terminate on the 15th anniversary of the MSA Effective Date (the “MSA Term”), unless terminated earlier in accordance with its terms. The MSA Term may be extended by either party by requiring the other party to commence discussion to extend the MSA Term, at least 12 months prior to the end of the original MSA Term. Any extension is subject to the written approval of the Port Authority.

#### Scope of Services

During the term of the Management Services Agreement, the Manager will provide the services under the Management Services Agreement (the “Services”), which include:

- (i) during the entire term of the Management Services Agreement:
  - (a) second the Seconded Manager Personnel to the Lessee, and
  - (b) through internal or approved third-party resources, provide management services and resources to enable the Lessee to perform its obligations, and enforce its rights, under the Lease and the other Project Documents, the Key Contracts (other than the Management Services Agreement), the Financing Documents and all Subleases and to qualify as a Qualified Terminal Operator under the Lease;
- (ii) from the MSA Effective Date until final completion of Phase A DBO, the Pre-DBO Services; and
- (iii) from Phase A DBO throughout the term of the Management Services Agreement (a) the Pre-DBO Services during the D&C Work Period for each subsequent Phase following Phase A DBO, (b) continuous management and support as post-DBO Services, (c) participation in the preparation of Lessee operations materials as post-DBO Services, (d) certain corporate services as post-DBO Services, (e) revision of the comprehensive

reporting infrastructure set out the Pre-DBO Services and provide support in the reporting infrastructure as post-DBO Services, and (f) other terminal operator services management services and resources, to support the Lessee's business and operations ("Lessee Operations"), as post-DBO Services.

The Manager will provide the Services to the Lessee, nevertheless, the obligations in the Lease with respect to the Operations and Maintenance Work will remain the primary obligation of the Lessee and such obligations will not be deemed to have been passed through to the Manager under the Management Services Agreement and the other requirements and standards specified under the Lease except to the extent expressly provided in the Management Services Agreement.

#### Standard of Performance

The Manager is required to perform its obligations under the Management Services Agreement with 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 seeking in good faith to comply with its contractual obligations (including obligations to consistently operate and maintain world-class terminal facilities), complying with applicable law, governmental approvals and other applicable standards under the Management Services Agreement, and engaged in the same type of undertaking under similar circumstances and conditions ("Best Management Practice"), with the objective of ensuring that the Lessee Operations are performed in accordance with, amongst other items detailed in the Management Services Agreement: the Lease and the other Project Documents, the Key Contracts, the Financing Documents and all Subleases, applicable laws and standards, rules and regulations, governmental approvals, staffing plans, KPIs and Lessee's policies.

Under the supervision of, and in accordance with reasonable direction provided by, the Lessee, the Manager is required to implement and use the business practices and philosophy of the Ferrovial Group in the performance of the Services.

#### Secured Areas and Security Requirements

The Manager is required to conform to the security procedures and protocols that the Lessee may establish from time to time (whether by the direction of the Port Authority or otherwise) for accessing secured areas designated by Lessee and escorting personnel.

#### D&C Review

During the D&C Work Period, and in performing the Pre-DBO Services, the Manager is required to act in accordance with Best Management Practice to: (i) review and provide timely feedback, from time to time, to the Lessee in respect of the Design Builder's Plans; and (ii) assist the Lessee with the monitoring of performance of the Design Builder under the D&C Contract, in each case to support the Lessee's objective that the New Terminal Facilities meet world-class standards at the time of DBO of each portion thereof and may thereafter be operated by the Lessee and can be operated at such level to meet the KPI requirements and other Lessee obligations under the Lease.

#### Changes to Services and Additional Services

During the concession period, on an annual basis as part of the annual review process of the Annual Services Budget, the parties to the Management Services Agreement will in good faith review and give due consideration to identifying any changes necessary to the Services that the parties determine in good faith to be necessary to reflect the then-current and then-anticipated future needs and priorities relating to

the Lessee Operations and will amend the Management Services Agreement to reflect any such changes and give effect thereto.

If the parties identify any additional required services that are outside the scope of the Services, but that the Manager is capable of providing (such additional services, the “Additional Services”), then the Lessee will invite the Manager in writing to submit a reasonably detailed proposal (the “Additional Services Proposal”) to the Lessee setting out the Manager’s estimate of the expected cost of the Additional Services, together with a proposed program for implementation and delivery. If the Lessee accepts the Additional Services Proposal, then the Services will be amended to incorporate the Additional Services described in the Additional Services Proposal and the parties will amend the Management Services Agreement as may be required to give effect to the Additional Services Proposal. An Additional Services Proposal may also be requested from third parties by the Lessee pursuant to the terms of the Management Services Agreement. If a third-party Additional Services Proposal is accepted by the Lessee, the Manager is required to reasonably cooperate with such third party and to provide reasonable operational interfaces with respect to the performance by such third party of such Additional Services, and the Lessee will approve any reasonably required amendment to the Annual Services Budget to account for the costs, if any, of interfacing with such third party in respect of such Additional Services.

#### Seconded Manager Personnel

The Manager may nominate up to eight management personnel candidates for secondment from the Manager to the Lessee. All the candidates nominated by the Manager, unless otherwise approved by the Lessee, will have experience working with and/or having received training from the Manager, its affiliates, or entities participating with, directly or indirectly, with Ferrovial, S.A. in comparable projects, in any case for a period of not less than twelve (12) months. The Manager and Lessee are required to agree the initial list of positions for which the Manager will nominate candidates at least 15 months in advance of scheduled Phase A DBO. Thereafter, the Manager is required to, not less than six (6) months prior to the scheduled Phase A DBO, provide a list of the initial management personnel nominees, together with the positions they are proposed to fill and their relevant credentials to the Lessee for consideration by the Lessee. If it becomes necessary to replace any secondee, the Manager is required to promptly nominate to the Lessee a capable and experienced replacement management personnel nominee. The nominees designated by the Manager that fulfill the conditions set forth in the Management Services Agreement will be considered “Seconded Manager Personnel”.

In the case of any secondee appointed in an executive role (“Manager-Nominated Executives”), the employment or secondment agreements of each of the Manager-Nominated Executives are required to state that each of the Manager-Nominated Executives will be required to provide functional expertise, advice, and assistance to the Lessee. Each Manager-Nominated Executive will have a duty of care to the Lessee commensurate with that of an executive at an equivalent level of management in a Delaware corporation. The Lessee’s chief executive officer and senior finance executive will be employees of the Lessee and will not be seconded.

The Manager will not be allowed to transfer or reassign any Seconded Management Personnel without the prior written consent of the Lessee. The Seconded Manager Personnel will be employees of the Manager, its affiliates, or entities participating, directly or indirectly, with Ferrovial, S.A. in comparable projects, for all purposes, and the Manager will be responsible for payment of all compensation and other employment costs (collectively, the “Seconded Manager Personnel Costs”).

The Lessee is required to reimburse the Manager for all business travel costs, housing and local living allowances, personal travel costs, relocations costs and tax uplift (collectively, the “Seconded Manager Personnel Expenses”) in each case that have been included in the Annual Services Budget or have

otherwise been approved by the Lessee. The Lessee will be required to pay to the Manager a secondment fee of \$100,000 per annum per Seconded Manager Personnel (the “Secondment Fee”), payable monthly.

#### Lessee Personnel and Staffing Plan

The Lessee will develop its staffing plan with respect to the hiring of all personnel and the secondment of personnel.

#### Access to Ferrovial Airports

The Manager is required to leverage the international headquarters and airport network of Ferrovial Airports, including its know-how, guides and manuals with respect to Best Management Practices for administration, financing, human resources, operations, information technology and commercial and brand issues, as may be necessary for the Manager to perform the Services and for the Lessee to comply with its obligations under the Lease.

#### Fees and Expenses

The Lessee is required to reimburse the Manager for the Seconded Manager Personnel Costs and the Seconded Manager Personnel Expenses, and reasonable and documented non-personnel related costs and direct expenses paid or incurred by the Manager in the previous calendar month in connection with rendering the Services, to the extent such costs and expenses are not covered by the Base Fee (collectively, the “Expenses”), provided that such Expenses are incurred in accordance with the Annual Services Budget or have been incurred at the direction of the Lessee or otherwise agreed in writing by the Manager and the Lessee.

The Lessee will pay the Manager a management fee (the “Management Fee”), which will be composed of a Base Fee, a Performance Fee and a bonus (the “Manager Financial Bonus”).

- i. The Base Fee will be \$5,580,016 (in 2022 dollars) payable in equal monthly installments, adjusted annually by the increase in the consumer price index. The base fee will commence accrual on the MSA Effective Date adjusted as follows: (1) the Base Fee will be adjusted pro rata for the period between the MSA Effective Date and December 31, 2022; (2) the Base Fee will be adjusted pro rata for the period between January 1 of the year in which the last day of the MSA Term occurs and the last day of the MSA Term; and (3) the amount of the Base Fee will be adjusted annually, commencing January 1 of the year after 2022, by the CPI Percentage Increase. If the Lessee is assessed financial deductions under the Lease, for a Lessee’s failure to achieve KPIs under the Lease, the Lessee may reduce the Base Fee payable to the Manager in respect of such year by an amount equal to 25% of the amount of such financial deductions.
- ii. The Performance Fee will be calculated as follows: from the day following Phase A DBO until the last day of the MSA Term, if actual CAFD exceeds the base case CAFD agreed by the parties for a given Calendar Year (or shorter period in the case of the year in which Phase A DBO occurs or in which the MSA Term ends), the Performance Fee for such year (or shorter period) will be equal to 25% of the excess of actual CAFD for such year (or shorter period) over the base case CAFD for such year (or shorter period), capped at \$1,225,000 (in 2018 dollars, to be adjusted annually, commencing January 1 of the year after 2018, by the CPI Percentage Increase) in any Calendar Year (adjusted pro rata for any period shorter than a Calendar Year); and

- iii. The Manager will be entitled to receive a Manager Financial Bonus in an amount equal to 25% of the amount of any financial bonus actually paid to the Lessee by the Port Authority under the Lease.

For the period after DBO until expiration of the Lease, if the Lessee determines that a prohibition on equity distribution under the Lessee's Financing Documents will occur during the 12-month period following the relevant calculation date, any portion of the earned Performance Fee that, if paid, would trigger an equity lock up will be accrued and not paid by the Lessee. If an equity lock up is not in effect on the next applicable calculation date or such payment will not trigger an equity lock up, the Lessee will pay such accrued amount to the Manager no later than five business days after such calculation date. During any equity lock up, any accrued and unpaid Performance Fee will accrue interest at a rate of 7.5% commencing from the date that is 12 months from the date on which such performance fee was originally due and payable.

During any Deferred Concession Share Period, any Base Fee and Performance Fee due to the Manager in any month during such period (the "Deferred Management Fee") will be subordinated and payable from the Lessee's cashflows available after payment of Senior Payments on a pro rata basis with payment of any Deferred Concession Share payable by the Lessee. If available cashflows are insufficient to pay the Deferred Management Fee in full, the shortfall will be carried over each month and accrue interest at a rate of 7.5% per annum until paid in full.

In the event the Lessee does not pay any undisputed amount by the due date, the amount will be considered a late payment and will accrue interest at the annual rate of the prime rate in effect of the administrative agent under the Financing Documents plus 2%, calculated from the date such payment should have been made until such payment is made.

Under the Management Services Agreement the Manager acknowledges that the Port Authority is immune from liens, and the Manager has no right or claim to any lien with respect to the Services or the Premises for failure of the Lessee to pay any amounts due to the Manager under the Management Services Agreement.

#### Limitations on the Authority of the Manager

The Manager has no ability to bind the Lessee and/or to make any decisions on behalf of the Lessee except as expressly authorized by the Lessee.

#### Maintenance and Inspection of Books and Records

The Manager will comply with the record keeping provisions of the Lease to the extent related to the Services or the Manager. The Lessee will have the right to audit the records maintained by the Manager at the cost of the Lessee.

#### Non-Competition and Non-Solicitation

Except as expressly authorized by the Lessee, the Manager will not directly or indirectly through any Person or contractual arrangement, operate, manage or develop any terminal facility at the Airport (other than the services under the Management Services Agreement). If the Manager, intends to provide competing Services in the City metro area, the Manager must notify the Lessee in writing at least three months in advance with a written report detailing its compliance with confidentiality covenants and that informational barriers have been established. The Lessee may consent to the written report or remove such services from the scope of Services for the duration the Manager is providing the competing services.

The Lessee and Manager agree that during the MSA Term and for a period of 365 days following the termination of the Management Services Agreement, each party will not, without the prior written consent of the other party, (a) hire or engage any current employees of the other party (or consultants who work with such party) in any capacity, to work in or for any business of the Lessee or the Manager or in any other business or (b) solicit or induce, or attempt to solicit or induce, any employee or consultant to end or change his or her employment or consulting relationship with the other party or any of its affiliates.

#### Covenants

Lessee agrees, among other things, to timely perform its obligations under the Management Services Agreement and provide the Manager with the control, access, information, personnel, work space, equipment approvals and payment necessary to enable the Manager to perform its Services. The Manager agrees, among other things, to timely perform its obligations under the Management Services Agreement and comply with the Lease, Financing Documents, license requirements, governmental approvals, applicable law, budgets, plans and policies and to prepare any required budgets, staffing plans, financial documents and reports. Both parties also mutually agree to respect the confidential nature of each other's proprietary information.

#### Indemnification

The Lessee will indemnify the Manager and its directors, officers, employees, agents and affiliates for any direct losses suffered or incurred as a result of any negligent act or omission, fraud or willful misconduct of the Lessee or Lessee personnel, provided that such act, omission, fraud or willful misconduct was not at the specific direction of a seconded manager or any employee, director, officer or agent of the Manager, any breach of the Management Services Agreement, and any claim brought against the Manager for patent or copyright infringement.

The Manager will indemnify the Lessee and its directors, officers, consultants, employees, agents, direct or indirect members or partners and affiliates and any Port Authority Indemnified Parties for any direct losses suffered or incurred as a result of any negligent act or omission, fraud or willful misconduct of the Manager or any Seconded Manager Personnel or any other employee, director, officer or agent of the Manager, any breach of the Management Services Agreement, and any claim brought against the Lessee for breach of representations and warranties related to intellectual property.

Indemnification obligations survive the early termination of the Management Services Agreement for a period of 24 months.

#### Limitation of Liability

The maximum aggregate liability of the Manager with respect to any calendar year will be limited to a maximum amount determined as follows:

- i. In respect of the 2022 calendar year, the limit will be equal to 100% of the projected Base Fee to be earned for the remainder of such calendar year.
- ii. In calendar years following the MSA Effective Date under the Management Services Agreement, 100% of the then current annual Base Fee, plus 20% of all Performance Fees paid to the Manager during the prior three calendar years.

Neither party will be liable to the other for indirect, incidental, punitive or consequential damages for breach of the Management Services Agreement. The limitations on indemnification will not apply to

either party's right to recover damages that are recoverable under insurance policies or damages that arise out of fraud, corruption, other criminal activity, willful misconduct or willful recklessness.

#### Annual Services Budget

The Lessee, in consultation with the Manager, will prepare an annual budget each calendar year with respect to the Services to be rendered by the Manager during such year (the "Annual Services Budget"). The Lessee and the Manager will agree on such Annual Services Budget for each calendar year. In the event of any dispute related to the determination of the new Annual Services Budget for any calendar year, the previous year's Annual Services Budget, as adjusted annually by the CPI Percentage Increase, will continue in effect until such time as the new budget is agreed.

#### Performance Review

The Lessee will have the right to provide written notice to the Manager of any concerns in respect of the performance of the Services. If the parties are unable to resolve such concerns, the Lessee may require the Manager to deliver a remedial plan. If the parties fail to agree on a remedial plan, the Lessee will be entitled to terminate the Management Services Agreement immediately by written notice to the Manager.

#### Insurance

The Manager will maintain, at its own cost and expense, all insurance that it is obligated to maintain under the Lease to the extent related to the Management Services Agreement, including but not limited to employer's liability insurance. The Manager will also be required to maintain errors and omissions and professional liability insurance.

#### Events of Default

The Management Services Agreement sets forth Manager events of default which include, but are not limited to: (i) the taking of actions that exceed the scope of the Manager's powers under the Management Services Agreement without the Lessee's consent to the extent such action has a material adverse effect, (ii) insolvency or bankruptcy, (iii) voluntarily discontinuation of the performance of services for 25 consecutive days or more (iv) action of a governmental authority which prevents the performance of services for 25 consecutive days or more due to an act or omission of the Manager, (v) creation of liens on the premises, (vi) merger or dissolution without the Lessee's consent, (vii) failure to pay amounts which continues for 25 days, (viii) breach of covenants and incorrect, false or misleading representations and warranties, failure to comply with applicable laws or best management practices, (ix) failure to provide insurance, and (x) any (1) act or omission of the Manager which causes the Lessee to fail to comply with Best Management Practice in relation to the performance of the operations and maintenance work under the Lease, (2) failure of the Manager to provide the services in the manner required to ensure compliance with the Lease, or (3) failure to remedy uncured and outstanding KPI failures as required under the Lease to the extent such failure was caused by the Manager. Upon the occurrence of a Manager event of default the Lessee is entitled to terminate the Management Services Agreement by written notice to the Manager in addition to any rights Lessee may have at law or equity.

The Management Services Agreement sets forth Lessee events of default which include, but are not limited to: (i) false or misleading representations or warranties not remedied within 30 days to the extent they cause a material adverse effect, (ii) failure to perform a material obligation under the Management Services Agreement, (iii) insolvency or bankruptcy, (iv) failure to make any undisputed payment to the Manager not remedied for 30 days, (v) termination of the Lease by the Port Authority for an event of default

to the extent not caused by the Manager. If a Lessee event of default occurs, the Manager may either terminate the Management Services Agreement upon written notice and/or exercise any or all remedies available to it at law or in equity, including but not limited to, charging interest at a rate of 7.5% per year on past due amounts.

### Termination

Subject to the rights of the Port Authority and the lenders under the Financing Documents, the Management Services Agreement will terminate upon the earliest of the following: (a) end of the MSA Term, (b) mutual agreement of the parties in writing to terminate the Management Services Agreement, subject to the prior written consent of the Port Authority and Collateral Agent (to the extent required), (c) termination of the Management Services Agreement following a Manager or Lessee event of default, (d) upon written notice from the Lessee to the Manager if the Manager and the Lessee fail to agree on a remedial plan or the Manager fails to perform such remedial plan, or (e) termination of the Lease.

The Manager will have no right to suspend its performance under the Management Services Agreement, or to terminate the Management Services Agreement or demobilize without first delivering to the Port Authority prior written notice specifying the grounds therefor; however, the Manager will have no right to suspend if the Port Authority notifies the Manager that it intends to exercise its step-in rights.

Upon termination of the Management Services Agreement, Lessee will pay Manager all undisputed amounts due under the Management Services Agreement. Provided that the termination is not caused by a Manager event of default, the Lessee will also reimburse reasonable demobilization costs including move and shipping cost for Manager's office materials, fees for personnel lease terminations, pro rata taxes, accounting and legal fees.

### Port Authority Step-In Rights

Subject to the rights of the lenders pursuant to the applicable direct agreement, the Port Authority is entitled to exercise the Lessee's rights with respect to the Management Services Agreement, without any necessity for a consent or approval from the Lessee or the making of a determination whether the Port Authority validly exercised its step-in rights.

### Dispute Resolution

The parties will cooperate in good faith with each other in resolving all controversies, claims or disputes arising out of or relating in any way to the Management Services Agreement, including breach of the Management Services Agreement. In the event of any dispute related to any payment of money, senior executives of each party will conduct good-faith negotiations to resolve the dispute within 15 days. If the dispute cannot be settled within 15 days, or if any other dispute cannot be settled through good-faith negotiations within 20 Business Days, then either party may submit the dispute to the New York courts, as set forth in the Management Services Agreement.

### Assignment

The Management Services Agreement is not assignable without the prior written consent of the other party (and, to the extent required, the Port Authority), provided that: (a) the Lessee is entitled to assign the Management Services Agreement in connection with any Lessee debt; and (b) the Manager is entitled to subcontract the performance of services under the Management Services Agreement to certain permitted support providers detailed in the Management Services Agreement. The Lessee may also assign the Management Services Agreement to the Port Authority following termination or expiration of the Lease.

## Appendix G

### 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).

*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 Conduit 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 Conduit 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 Conduit 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 Conduit Issuer, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners 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 Conduit Issuer. Under such circumstances, in the event that a successor depository is not obtained, note certificates are required to be printed and delivered.

The Conduit Issuer may decide to discontinue 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 Conduit Issuer believes to be reliable, but the Conduit 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 H**

### **FINANCIAL STATEMENTS OF THE LESSEE**

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## **JFK NTO LLC and Subsidiary**

Consolidated Financial Statements as of and for the years ended December 31,  
2023 and 2022 and Report of Independent Auditors.

# **JFK NTO LLC and Subsidiary**

## **Report of Independent Auditors and Consolidated Financial Statements as of and for the years ended December 31, 2023 and 2022**

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3	Report of Independent Auditors
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5	Consolidated Statements of Operations and Comprehensive Income (loss)
6	Consolidated Statements of Member's Equity
7	Consolidated Statements of Cash Flows
8	Notes to Consolidated Financial Statements

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## Report of Independent Auditors

The Board of Directors and Member of JFK NTO LLC and Subsidiary

### Opinion

We have audited the consolidated financial statements of JFK NTO LLC and Subsidiary (the Company), which comprise the consolidated balance sheets as of December 31, 2023 and 2022, and the related consolidated statements of operations, comprehensive income (loss), member's equity and cash flows for the years then ended, and the related notes (collectively referred to as the "financial statements").

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2023 and 2022, and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

### 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 Auditor's Responsibilities for the Audit of the 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 Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free of material misstatement, whether due to fraud or error.

In preparing the 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 financial statements are available to be issued.

### Auditor's Responsibility for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free of material misstatement, whether due to fraud or error, and to issue an auditor's 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 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 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 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 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.

*Ernst & Young LLP*

March 28, 2024

**JFK NTO LLC and Subsidiary**  
for the period ended December 31, 2023

**Consolidated Balance Sheets**  
**Year Ended December 31, 2023**  
(Dollars in millions)

	Note	2023	2022
<b>Assets</b>			
<b>Current Assets:</b>			
Cash	1(d)	54	58
Restricted Cash	1(e)	94	45
Derivative Assets – Current	1(l)	4	-
Prepaid Expenses – Current	1(g)	136	73
<b>Total Current Assets</b>		<b>288</b>	<b>176</b>
Contract Asset	1(o)	101	35
Concession Asset	1(h)	5,595	4,706
Derivative Assets – Non-Current	1(l)	137	163
Prepaid Expenses & Other Assets – Non-Current	1(g)	328	88
<b>Total Assets</b>		<b>6,449</b>	<b>5,168</b>
<b>Liabilities</b>			
<b>Current Liabilities:</b>			
Retainage Payable – Current	1(i)	40	5
Concession Commitments – Current	2	130	105
Accounts Payable and Accrued Liabilities	1(i)	128	51
<b>Total Current Liabilities</b>		<b>298</b>	<b>161</b>
Retainage Payable – Non-Current	1(i)	34	2
Long Term Debt, net	1(m)	1,962	1,155
Concession Commitments – Non-Current	2	3,785	3,706
<b>Total Liabilities</b>		<b>6,079</b>	<b>5,024</b>
<b>Equity</b>			
Member's Capital	1(a)	600	127
Retained Deficit		(658)	(258)
Accumulated Other Comprehensive Income		428	275
<b>Member's Equity</b>		<b>370</b>	<b>144</b>
<b>Total Liabilities and Member's Equity</b>		<b>6,449</b>	<b>5,168</b>

**JFK NTO LLC and Subsidiary**  
for the period ended December 31, 2023

**Consolidated Statements of Operations and Comprehensive Income (loss)**  
**Year Ended December 31, 2023**  
**(Dollars in millions)**

	Note	2023	2022
<b>Revenue</b>			
Construction Agent Revenue	1(o)	66	35
Other Revenue	1(o)	5	2
<b>Total Revenue</b>		<b>71</b>	<b>37</b>
 Cost of services		 64	 33
Promissory Note Guaranteed Payment	1(a)	-	36
<b>Total Operating Expenses</b>		<b>64</b>	<b>69</b>
 <b>Operating Profit (Loss)</b>		 <b>7</b>	 <b>(32)</b>
 Interest and fees expense	1(n)	 (432)	 (113)
Gain/(Loss) on interest rate swaps	1(l)	25	(113)
 Taxation		 -	 -
 <b>Net loss</b>		 <b>(400)</b>	 <b>(258)</b>
 Gain on effective portion of designated hedging instruments	1(l)	 153	 275
 <b>Comprehensive income (loss)</b>		 <b>(247)</b>	 <b>(17)</b>

**JFK NTO LLC and Subsidiary**  
for the period ended December 31, 2023

**Consolidated Statements of Member's Equity**  
**Year Ended December 31, 2023**  
(Dollars in millions)

	Member's capital	Retained deficit	Accumulated Other Comprehensive Income	Total equity
<b>Balance as of January 1, 2022</b>	-	-	-	-
Member's Contributions	127	-	-	<b>127</b>
Net (loss)	-	(258)	-	<b>(258)</b>
Gain on effective portion of designated hedging instruments	-	-	275	<b>275</b>
<b>Balance as of December 31, 2022</b>	<b>127</b>	<b>(258)</b>	<b>275</b>	<b>144</b>
Member's Contributions	473	-	-	<b>473</b>
Net (loss)	-	(400)	-	<b>(400)</b>
Gain on effective portion of designated hedging instruments	-	-	153	<b>153</b>
<b>Balance as of December 31, 2023</b>	<b>600</b>	<b>(658)</b>	<b>428</b>	<b>370</b>

**JFK NTO LLC and Subsidiary**  
for the period ended December 31, 2023

**Consolidated Statements of Cash Flows**  
**Year Ended December 31, 2023**  
**(Dollars in millions)**

	<b>2023</b>	<b>2022</b>
<b>Cash flows from operating activities</b>		
Net loss	(400)	(258)
<u>Adjustments to reconcile net loss to net cash provided by (used in) operating activities:</u>		
Non-cash gain on derivatives	(46)	112
Non-cash interest expense	234	16
<u>Changes to operating assets and liabilities:</u>		
Contract Asset	(66)	(35)
Concession Asset	(889)	(897)
Derivative Assets	38	-
Prepaid Expenses	(80)	(161)
Concession Commitments	(81)	-
Accounts Payable and Other Accrued Liabilities	144	58
<b>Net cash flows used in operating activities</b>	<b>(1,146)</b>	<b>(1,165)</b>
<b>Cash flow from investing activities</b>		
<b>Net cash provided by investing activities</b>	<b>-</b>	<b>-</b>
<b>Cash flow from financing activities</b>		
Member's contributions	473	127
Term loan drawdowns	596	1,430
Proceeds from bond issuance	2,000	-
Repayment of term loan	(2,026)	-
Derivatives settlement	183	-
Payment of debt issuance fees	(35)	(289)
<b>Net cash flow provided by financing activities</b>	<b>1,191</b>	<b>1,268</b>
<b>Net change in cash and restricted cash</b>	<b>45</b>	<b>103</b>
Cash and restricted cash at the beginning of the period	<b>103</b>	<b>-</b>
<b>Cash and restricted cash at the end of the period</b>	<b>148</b>	<b>103</b>
<b>Supplemental cash flow disclosure:</b>		
Cash paid for interest	176	95

# **JFK NTO LLC and Subsidiary**

## **for the period ended December 31, 2023**

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### **1. Summary of Significant Account Policies**

#### **(a) Description of the Business**

##### **Ownership Structure:**

JFK NTO LLC (“NTO”) is a Delaware limited liability company that was formed on December 16, 2021. NTO is wholly owned by JFK NTO HoldCo LLC (“Holdco”), a Delaware limited liability company that was formed on December 16, 2021. As such, NTO is treated as a partnership for federal and state income tax purposes. NTO was formed for the principal purpose of the design, construction, operation and maintenance (the “Project”) of the New Terminal Facilities at John F. Kennedy International Airport (the “Airport” or “JFK Airport”).

Holdco is wholly owned by JFK NTO Sponsor Aggregator LLC (“Topco”), a Delaware limited liability company formed on December 16, 2021 and classified as a partnership for US federal income tax purposes. On May 12, 2022, the original limited liability company agreement of Topco was amended to include JLC JFK Aggregator L.P. and Ullico Infrastructure JFK REIT, LLC.

Ownership of Topco is as follows:

- 51% is owned by Mars NTO LLC (“Mars”), which is in turn 96% owned by Ferrovial Airports US Terminal One, LLC or one or more Affiliates thereof (collectively, “Ferrovial Airports US”) and 4% owned in the aggregate by certain affiliates of the Carlyle Group (“Carlyle”).
- 30% is owned by JLC JFK Aggregator L.P. or one or more Affiliates thereof (collectively, “JLC”), and
- 19% is owned by Ullico Infrastructure JFK REIT, LLC or one or more Affiliates thereof (collectively, “Ullico”; and together with Mars and JLC, the “Members”)

Note that while NTO, Holdco and Topco were formed in 2021, operational activities did not commence until 2022 and the first capital contribution was made June 10, 2022 (\$18 million).

Pursuant to the Equity Contribution Agreement, dated June 3, 2022, Topco agreed to make equity contributions periodically through the initial Phase A construction period for a total of \$2.33 billion. Pursuant to the Equity Contribution Agreement, Topco is required to ensure that its obligations to make equity contributions are at all times supported in full by letters of credit and/or cash collateral.

NTO owns 100% of JFK NTO TRS LLC (“TRS” or “Subsidiary”, and together with NTO, the “Company”), a Delaware limited liability company established on January 10, 2022, which is classified as a corporation for tax purposes. As a taxable REIT subsidiary, TRS enables NTO to comply with the rules of a real estate investment trust for the benefit of certain Members, which are REITs. NTO may assign to TRS certain activities that are not eligible for REITs to perform. On June 10, 2022, NTO and TRS entered into an Off-Premises Work Assignment Agreement, pursuant to which NTO assigned to TRS the obligation to administer, manage, and coordinate all design, construction, maintenance, and operation activities with respect to certain off-premises facilities and work for Phase A of the Project.

##### **Port Authority Agreement:**

On June 10, 2022, the Port Authority of New York and New Jersey (the “Port Authority”), as lessor, and the Company, as lessee (the “Lessee”), entered into an Agreement (Port Authority Lease No. AYE-790) (the “Port Authority Agreement”), pursuant to which, among other things, the Lessee is responsible for the Project.

Under the Port Authority Agreement, the Company, as the Lessee, is generally responsible 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 Port Authority Agreement (the “Operations and Maintenance Work”). In connection with the performance of the Operations and Maintenance Work, the agreement requires the Company to rely on the expertise and personnel of a “Qualified Terminal Operator”. The Lessee is qualified as a Qualified Terminal Operator under the agreement and will self-operate the New Terminal Facilities with the support

## **JFK NTO LLC and Subsidiary** for the period ended December 31, 2023

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of Ferrovial Airports US Operation and Management Services LLC, as the Manager, in accordance with a Management Services Agreement, dated as of June 10, 2022 (the "Management Services Agreement").

The term of the agreement began on June 10, 2022 and expires on the earlier of: (1) December 30, 2060 or (2) any earlier termination of the Port Authority Agreement in accordance with its terms.

The existing sites leased, or contemplated to be tendered and leased, by the Port Authority to the Company as the Lessee under the agreement generally consist of: (1) the former Terminal 3 site, the site of the Green Garage and a portion of the existing Terminal 4 site (collectively, the "Initial Premises"), (2) the former Terminal 2 site, and (3) the existing Terminal 1 site.

Under the Port Authority Agreement, the Company as the Lessee is entitled to derive revenues from its operation and management of the New Terminal Facilities, including via subleasing or otherwise making available such facilities for use by airlines and other tenants.

Upon the expiration or earlier termination of the Port Authority Agreement, the Company will, among other things, be required to hand back the demised premises to the Port Authority in the condition meeting certain requirements set forth in the Port Authority Agreement.

The construction of the New Terminal Facilities is expected to occur in three primary phases (Phase A, Phase B-1 and Phase B-2) which are expected to be as follows:

- (1) Phase A includes construction of an approximately 1.8 million square foot new terminal building consisting of a new concourse and headhouse, incorporating the initial thirteen permanent wide-body contact gates and a temporary contact gate, and a departures level and arrivals level, including a Federal Inspection Services facility for international flights:
- (2) Phase B1 includes the addition of four wide-body contact gates and a narrow-body contact gate, unless the Two-Gate Toggle (as defined in the Port Authority Agreement) is implemented, in which case Phase B1 will only include the addition of two wide-body contact gates and a narrow-body contact gate, and
- (3) Phase B2 includes the addition of four wide-body contact gates, unless the Two-Gate Toggle (as defined in the Port Authority Agreement) is implemented, in which case it will include the addition of two wide-body contact gates (Phase B1 and Phase B2 include the full construction of the West Pier at the site of the existing Terminal 1).

The Company currently expects that the total cost of Phase A of the Project and related development costs (including demotion and construction, financing and other costs) will be approximately \$8.4 billion. To finance this, alongside with equity contributions from the Sponsors, the Company entered into the Credit Agreement described below.

### **Credit Agreement:**

On June 3, 2022 the Company, the New York Transportation Development Corporation (the "Conduit Issuer"), MUFG (the "Administrative Agent"), and each lender from time-to-time party thereto (the "Lenders"), entered into an Amended and Restated Credit Agreement (the "Credit Agreement").

Pursuant to the Credit Agreement, the Lenders committed to lend to the Conduit Issuer for on-lending to the Lessee a total of \$6.6 billion, under a term loan facility, a delayed draw term loan facility, a liquidity facility, a working capital facility and a security deposit facility, in each case, on the terms and conditions set forth therein. The amount of the Lenders' commitment under the Credit Agreement, together with the Equity Contributions of the Sponsors, is expected to be sufficient to pay the projected total costs of Phase A of the Project and related development costs thereof.

As further discussed in note 1 (n) *Long-term Debt*, the Company undertook a refinancing in December 2023, when NTO issued \$2.0 billion in series 2023 bonds, mitigating refinancing risk with three years remaining on the term loan.

## **JFK NTO LLC and Subsidiary**

**for the period ended December 31, 2023**

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### **The Design-Build Contract:**

On June 10, 2022, the Company, as developer, and Tishman Construction Corporation of New York (the "Design Builder" or "Tishman"), as design builder, entered into a Design-Build Contract (the "Design-Build Contract"). The Design Builder is required to undertake the Design and Construction Work for Phase A of the Project for a guaranteed maximum price pursuant to the Design-Build Contract. The Design Builder is generally responsible for the design and construction of the New Terminal Facilities, and for providing all materials, equipment, and labour and to undertake all efforts necessary or appropriate to perform the work in accordance with the Project Documents, and to achieve the milestone events, substantial completion and final completion in accordance with the baseline schedule.

Additionally, a portion of the Design and Construction Work includes the design and construction of the Off-Premises Facilities, which includes the design and construction of (1) certain portions of the roadway networks that are for the sole and exclusive benefit of the Lessee, (2) certain landside utilities, and (3) certain temporary and permanent modifications to the inter-terminal train. The Design Builder has no responsibility to perform any Operations and Maintenance Work.

### **(b) Basis of Presentation of the Financial Statements**

The accompanying financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP).

### **(c) Use of Estimates**

The preparation of 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 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 (o) *Revenue Recognition*, and the estimation of the swap fair values, as discussed further in note 1 (l) *Derivative and financial instruments and hedging activities*. The estimates and assumptions used in the preparation of the 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 and Cash Equivalents**

The Company considers all short-term investments with original maturities of three months or less to be cash equivalents. As of December 31, 2023, the Company had \$2 million in short-term investments that meet the definition of cash equivalents.

### **(e) Restricted Cash**

As of December 31, 2023, the Company had \$94 million (2022: \$45 million) deposited in an account to pay for insurance claims as they arise. As the cash is not available for immediate business use and is specifically held to pay for insurance claims, the Company has classified it as restricted cash, separate from cash on the Balance Sheet.

### **(f) Accounts Receivable**

In general, accounts receivable, are due within 30 days. The Company establishes allowances for doubtful accounts when losses are deemed probable. As of December 31, 2023 and 2022, the Company had no outstanding accounts receivable. The Company determined that there was no allowance for doubtful accounts needed based on its assessment of outstanding receivables.

**JFK NTO LLC and Subsidiary**  
for the period ended December 31, 2023

**(g) Prepaid Expenses**

Prepaid expenses as of December 31, 2023 primarily includes amounts paid by the Company for its insurances as well as advances to contractors:

<i>in millions</i>	<b>December 31, 2023</b>		<b>December 31, 2022</b>	
	<b>Short-Term</b>	<b>Long-Term</b>	<b>Short-Term</b>	<b>Long-Term</b>
Insurance	13	20	16	23
Port Authority Rent	20	-	21	-
Advances to contractors	102	86	36	65
Deferred issuance costs		222		
Other	1	-	-	-
<b>Prepaid Expenses</b>	<b>136</b>	<b>328</b>	<b>73</b>	<b>88</b>

**(h) Concession Assets**

Concession assets represent the cost of obtaining the concession rights for the Project, including a promissory note agreement entered into on May 13, 2022, which was contingent on the successful closing of the debt and equity financing, the signing of the Port Authority Agreement and the Design-Build Agreement, as well as costs associated with the construction of the terminal and rental payments to the Port Authority.

The Company has recorded \$5,595 million of concession assets as of December 31, 2023:

<i>in millions</i>	
<b>January 1, 2022</b>	
Costs associated with construction	257
Promissory Note	531
Costs associated with the Port Authority Agreement	3,918
<b>December 31, 2022</b>	<b>4,706</b>
Costs associated with construction	880
Costs associated with the Port Authority Agreement	9
<b>December 31, 2023</b>	<b>5,595</b>

The Company assesses at each reporting date, whether there is an indication that the concession asset may be impaired. If any such indication exists, the Company determines whether the estimated undiscounted cash flows will be sufficient to recover the carrying amount. Where the carrying amount of the concession asset exceeds its recoverable amount, the concession asset is considered impaired and is written down to its recoverable amount.

An additional agreement was entered with the Port Authority during 2023 to rent office space at Building 111 at JFK Airport. The notional amount of the total payments over the life of the agreement is \$9 million.

**(i) Retainage**

The Company retains a portion of the invoices from Tishman and its sub-contractors. It recognizes this as a current or non-current liability, based on when the retainage is expected to be paid. Payment is based on the project milestone that the invoice is related to and when that milestone is expected to be completed.

<i>in millions</i>	<b>December 31, 2023</b>		<b>December 31, 2022</b>	
	<b>Short-Term</b>	<b>Long-Term</b>	<b>Short-Term</b>	<b>Long-Term</b>
Retainage	40	34	5	2

**JFK NTO LLC and Subsidiary**  
for the period ended December 31, 2023

**(j) Accounts Payable and Accrued Liabilities**

At December 31, 2023, accounts payable and accrued liabilities included the following:

<i>in millions</i>	<b>December 31, 2023</b>	<b>December 31, 2022</b>
Accounts Payable	108	42
Accrued interest	10	3
Other accruals	10	6
<b>Accounts Payable and Accrued Liabilities</b>	<b>128</b>	<b>51</b>

**(k) Impairment of Long-Lived Assets**

Long-lived assets are reviewed for impairment at an asset group level (which for the Company consists primarily of its concession 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 year ended December 31, 2023.

**(l) Derivative financial instruments and hedging activities**

Derivatives are initially recognized at fair value on the date a derivative contract is entered into and are subsequently re-measured at their fair value at each reporting date.

Derivative financial instruments are accounted for at fair value within the statements of operations except for derivatives designated as hedging instruments in cash flow hedge relationships, for which gains and losses are reflected in other comprehensive income (loss).

The method of recognizing the resulting gain or loss depends on whether the derivative is designated as a hedging instrument, and if so, the nature of the item being hedged.

On June 6, 2022, the Company entered into multiple tranches of interest rate swaps to hedge their exposure to variability in cash flows from floating rate coupon payments on the delayed draw term loan and planned future debt issuances.

In December 2023, as part of the Term Loan refinancing the Company closed out \$3.4 billion notional of swaps resulting in \$183 million receipt of cash.

<i>In millions</i>	<b>December 31, 2023</b>		
	Assets	Liabilities	Total
Effective hedged derivatives	139	-	139
Non-hedged derivatives	2	-	2
Derivative assets	141	-	141

<i>In millions</i>	<b>December 31, 2022</b>		
	Assets	Liabilities	Total
Effective hedged derivatives	108	-	108
Non-hedged derivatives	55	-	55
Derivative assets	163	-	163

**JFK NTO LLC and Subsidiary**  
for the period ended December 31, 2023

At December 31, 2023 the Company has term loan swaps outstanding with a notional value of \$65 million and forward starting swaps with an effective date notional of \$2.1 billion.

Amortization of the amount of gains deferred in Accumulated Other Comprehensive Income that were recorded to earnings was \$19.3 million (2022: \$1.4 million) during the period ended December 31, 2023, and \$22.9 million is expected to be amortized over the next twelve months.

**(m) Long-Term Debt**

As noted in note 1 (a), the Company entered into the Credit Agreement, pursuant to which the Lenders committed a total of \$4.6 billion (2022: \$6.6 billion) under a term loan facility, a delayed draw term loan facility, a liquidity facility, a working capital facility and a security deposit facility (collectively, the "Bank Loans"). The interest on the Bank Loans is a variable interest rate, the base rate being the daily Secured Overnight Financing Rate ("SOFR") from the Federal Reserve Bank of New York and a margin. The debt coverage covenants do not take effect until after Phase A DBO as defined in the Port Authority Agreement.

During the year, the Company had additional borrowings on the term loan facility of \$596 million totalling \$2.026 billion to date, all of which was paid down in December 2023, leaving zero balance as of December 31, 2023, except for \$222 million of deferred issuance costs of which are included in Prepaid Expenses & Other Assets – Non-Current on the balance sheet as there is no outstanding liability.

To paydown the term loan balance, the Company undertook a refinancing in December 2023, when NTO issued \$2.0 billion in series 2023 bonds, which are designated as green bonds. The bonds have several tranches with varying maturities through 2060. The interest rate of the bonds varies from 5.1% to 6%.

The Company incurred in \$35 million of bond issuance costs in 2023 and \$289 million of debt issuance costs in 2022, which are being amortized over the term of the respective loan using the effective interest rate method. Amortization of these deferred issuances costs for the periods ended December 31, 2023 and 2022 were \$50 million and \$16 million, respectively, included in Interest and Fees Expense on the statement of operations and comprehensive income.

<i>In millions</i>	<b>Maturity</b>	<b>December 31, 2023</b>	<b>December 31, 2022</b>
Term Loan principal amount	6/10/2027	\$ -	\$1,430
Term Loan debt issuance cost, net of amortization (classified as other assets in 2023)		-	(275)
Serial Bond 2038	6/30/2038	\$23	
Serial Bond 2039	6/30/2039	\$12	
Serial Bond 2040	6/30/2040	\$9	
Serial Bond 2041	6/30/2041	\$12	
Serial Bond 2042	6/30/2042	\$26	
Serial Bond 2043	6/30/2043	\$38	
Serial Bond 2044	6/30/2044	\$35	
Term Bond 2049	6/30/2049	\$217	
Term Bond 2054	6/30/2054	\$542	
Term Bond 2060	6/30/2060	\$1,083	
Bond issuance cost, net of amortization		\$(35)	-
<b>Total Long-Term Debt</b>		<b>\$1,962</b>	<b>\$1,155</b>

## **JFK NTO LLC and Subsidiary**

**for the period ended December 31, 2023**

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### **(n) Revenue Recognition**

As defined by ASC 853 – Service concession arrangements, the Company is the operator of the new terminal that is being constructed with the Port Authority as the grantor.

Revenue is recognized by the Company in accordance to ASC 606 – Revenue recognition.

#### **(1) Construction Revenue**

Based on the Port Authority Agreement with the Port Authority, the Company has determined that it is an agent in accordance with ASC 606: *Revenue from Contracts with Customers*, given that it is not providing construction services directly to the Port Authority and instead has subcontracted this to AECOM Tishman ("Tishman"). Tishman is directly responsible for the construction of the terminal in accordance with the specifications of the Port Authority.

The Company recognized construction revenue of \$66 million (2022: \$35 million) as an agent for the year ended December 31, 2023. This was based on estimated mark-up on project management fees and operating expenses during the period.

#### **(2) Operations and Maintenance Service Revenue**

Operations and Maintenance Service Revenue will only be recognized when the construction of the terminal has been completed.

Upon completion of the terminal, at each reporting period, the Company will recognize revenue over time for passenger charges and retail concession fees. The costs associated with these revenues will be expensed in the period in which they are incurred.

#### **(3) Other revenue**

The Company entered into an Aircraft Parking License Agreement with Delta Air Lines on June 10, 2022. This agreement allows Delta Air Lines (as the licensee) and its affiliates to use and access a portion of the leased premise that JFK NTO LLC has leased from the Port Authority to design and construct the New Terminal One.

For the fiscal year ending December 31, 2023, the Company earned \$5 million (2022: \$2 million) in license fees from Delta Air Lines.

### **(o) Concentration of Credit Risk**

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. The Company regularly monitors the financial stability of all the financial institutions it transacts with, including respective credit agency ratings, and believes they are not exposed to significant credit risk.

### **(p) 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.

## **JFK NTO LLC and Subsidiary**

### **for the period ended December 31, 2023**

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*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).

Management estimates that the carrying value of cash and cash equivalents, restricted cash, accounts receivable, accounts payable, and accrued expenses were at amounts that reasonably approximate their fair value based on their short-term nature.

The fair value of financial instruments that are not traded in an active market (such as derivatives) is determined by using valuation techniques. These valuation techniques maximise the use of observable market data where it is available. All significant inputs required to fair value an instrument are observable, therefore the instrument is included in Level 2.

#### **(q) Risks and Uncertainties**

Given that the Company is currently in the design and construction phase, future operating results may be affected by various factors. 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 these could impact the Company's operating results in the future.

The Lessee is exposed to certain risks arising from potential issues in required coordination with third-party interfacing work that could delay or increase the construction cost.

The Company, in its operations and management of the terminal may be also subject to various lawsuits and disputes. At December 2023, the Company doesn't have any material litigation nor claim.

#### **(r) Insurance**

The Company is required to carry certain insurance coverages pursuant to the Port Authority Agreement. Prepaid insurance costs represent insurance premiums paid that are related to future periods and these amounts are included in Prepaid Expenses-current and Prepaid Expenses & Other Assets – Non-Current in the accompanying balance sheet. As of December 31, 2023, prepaid insurance costs totalled \$32 million, of which \$13 million is in Prepaid Expenses-current and \$19 million is in Prepaid Expenses & Other Assets – Non-Current on the accompanying 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 capitalized as part of the Concession Asset in the accompanying balance sheet.

#### **(s) Adoption of New Accounting Pronouncements**

In June 2016, the FASB issued ASU 2016-13 to Topic 326, Financial Instruments – Credit Losses: Measurement of Credit Losses on Financial Instruments, which replaces the current incurred loss impairment method with a method that reflects expected credit losses on financial instruments. The measurement of current expected credit losses under the new guidance is applicable to financial assets measured at amortized cost, including third-party trade receivables. This ASU was effective for interim and annual periods beginning after December 15, 2022. The Company adopted the new standard effective January 1, 2023, using the modified retrospective method for all financial assets measured. No cumulative effect adjustment to retained earnings was required upon adoption. The adoption of this standard did not have a material impact on the Company's financial statements.

## JFK NTO LLC and Subsidiary

for the period ended December 31, 2023

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### 2. Port Authority Agreement

As noted in Note 1(a) on June 10, 2022, the Company entered into an agreement with the Port Authority with a term through and expires on the earlier of: (1) the earlier of December 30, 2060 and (2) any earlier termination of the Port Authority Agreement in accordance with its terms.

Under the terms of the Port Authority Agreement, the Company is generally responsible for the Project in compliance with all applicable governmental requirements and Port Authority rules and regulations.

As the construction and design phases are still in progress, the Company capitalizes the payments to the Port Authority that are non-contingent and readily determinable and therefore represent a liability of the Company. The future fixed payments were discounted using a 4.89% discount rate over the life of the agreement, ending on December 30, 2060, and the associated liability is being accreted over the life of the agreement, resulting in \$184 million in noncash interest expense in 2023. This concession commitment liability has been recognized in Concession Commitments (current and non-current) for \$3,915 million (2022: \$3,811 million) as of December 31, 2023. All rents owed under the Port Authority Agreement have priority over any distributions to members.

#### Base Rent

From the Port Authority Agreement commencement to its expiration, the Port Authority shall receive an annual rent of \$148,300 per acre per annum, (the "Base Rent") adjusted annually at the greater of 4% or one-half of inflation. Rent expense related to the Base Rent is recognized as incurred over the term of the Port Authority Agreement. Total rent paid by the Company for the year ended December 31, 2023 is \$17.4 million (2022: \$8.5 million).

#### Other Rents

The Company must pay the Port Authority other rents, both fixed and variable. The variable rent payments are calculated as percentages of different categories of revenue the Company receives from the Project.

In addition, the Company will pay agreed upon, market-based rates for use of certain property and services, including parking spaces, busing operations, staging/lay down areas and office space pursuant to separate permits issued by the Port Authority.

The following is a schedule of future minimum rent commitments under the Port Authority Agreement at December 31, 2023:

Fiscal year ended December 31:

2024	\$112 million
2025	\$124 million
2026	\$141 million
2027	\$163 million
2028	\$166 million
Thereafter	\$9,208 million

### 3. Related Party Transactions

Related party transactions relate to management advisory services and project management advisory services provided by the shareholders and their affiliates to NTO. The amount paid for these services in the period ending December 31, 2023 was \$41 million (2022: \$22 million).

Additionally, the Company pays the shareholders commitment fees for their equity contribution obligations, which are included within interest and fees on the statement of operations and comprehensive income. The amount of commitment fees for fiscal year ending December 31, 2023 was \$61 million (2022: \$35 million).

**JFK NTO LLC and Subsidiary**  
for the period ended December 31, 2023

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**4. Employee Retirement Plans**

The Company employees participate in a defined contribution plan ("Plan") which permits participants to make contributions by salary deduction pursuant to Section 401(k) of the Internal Revenue Code. The Company's contributions to the Plan were \$90k (2022: \$17k) for the year ended December 31, 2023.

**5. Commitments and Contingencies**

There are no other commitments besides the rents to the Port Authority in Note 2 and the long-term debt in Note 1(n).

**6. Subsequent Events**

Management has reviewed and evaluated material subsequent events and transactions that occurred after the balance sheet date of December 31, 2023, through March 28, 2024, the date the financial statements were available to be issued. The accompanying financial statements include all events or transactions, including estimates, required to be recognized in accordance with generally accepted accounting principles. Management has determined that there are no non-recognized subsequent events that require additional disclosure.

JFK NTO LLC  
and project entities

Financial Statements as of  
March 31, 2024

(Unaudited)

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**JFK NTO LLC**  
**Balance Sheet**  
**As of 3/31/2024**  
*Amounts in Millions of Dollars*

	<u>As Of March 31, 2024</u>
<b><u>Current Assets</u></b>	
Cash	13
Restricted Cash	95
Accounts Receivable	-
Derivative Assets - Current	7
Prepaid expenses - Current	120
<b>Total Current Assets</b>	<u>235</u>
<b><u>Non-current Assets</u></b>	
Contract Asset	117
Concession Asset	5,901
Derivative Assets - Non Current	230
Prepaid expenses & Other Assets - Non Current	321
<b>Total Non-Current Assets</b>	<u>6,569</u>
<b>Total Assets</b>	<u><u>6,804</u></u>
<b><u>Current Liabilities</u></b>	
Retainage Payable - Current	58
Concession Comittments - Current	132
Accounts Payable and Accrued Liabilities	158
<b>Total Current Liabilities</b>	<u>348</u>
<b><u>Non Current Liabilities</u></b>	
Retainage Payable - Non-Current	30
Long Term Debt, net	2,094
Concession Comittments - Non Current	3,801
<b>Total Liabilities</b>	<u>6,273</u>
<b><u>Members' (Deficit) and Equity</u></b>	
Members' Capital	763
Retained Deficit	(751)
Accumulated Other Comprehensive Income	519
<b>Member's Equity</b>	<u>531</u>
<b>Total Liabilities and Members' Deficit</b>	<u><u>6,804</u></u>

**JFK NTO LLC****Income Statement****As of 3/31/2024***Amounts in Millions of Dollars*

	<b>QTD</b>
	<b>Q1, 2024</b>
<b><u>Revenues</u></b>	
Construction Agent Revenue	16
Other revenue	1
<b>Total Revenues</b>	<b>17</b>
<b><u>Expenses</u></b>	
Cost of services	15
<b>Total Expenses</b>	<b>15</b>
<b>EBITDA</b>	<b>2</b>
Interest and Fees	(95)
Interest rate swaps	1
Income Tax	(0)
<b>Net loss</b>	<b>(92)</b>
Gain/(Loss) on effective portion of designated hedging instruments	90
<b>Comprehensive income</b>	<b>(2)</b>

**JFK NTO LLC**  
**Statement of Cash Flows**  
**As of 3/31/2024**  
*Amounts in Millions of Dollars*

	<b>QTD</b>
	<b>Q1, 2024</b>
<b>Operating activities</b>	
Net loss	(92)
Adjustments to reconcile net income to net cash provided by (used in) operating activities	-
Non-cash gain on derivatives	(6)
Non-cash interest expense	46
Changes in operating assets and liabilities:	-
Contract Asset	(16)
Concession Asset	(306)
Derivatives Assets	(1)
Prepaid Expenses	24
Lease Commitments	(28)
Accounts Payable and Accrued Liabilities	45
<b>Net cash provided by (used in) operating activities</b>	<b>(335)</b>
<b>Investing activities</b>	
<b>Net cash used in investing activities</b>	<b>-</b>
<b>Financing activities</b>	
Member's contribution	164
Term loan drawdowns	131
Proceeds from bond issuance	-
Repayment of term loan	-
Derivatives settlement	-
Payment of debt issuance fees	-
<b>Net cash provided by financing activities</b>	<b>295</b>
<b>Net change in cash and restricted cash</b>	<b>(40)</b>
<b>Cash and restricted cash</b>	
Cash and restricted cash at Beginning of Period	148
<b>Cash and restricted cash at End of Period</b>	<b>108</b>
 Supplemental Interest	 22

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**Appendix I**

**FORM OF LESSEE CONTINUING DISCLOSURE UNDERTAKING**

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## APPENDIX I

### FORM OF LESSEE CONTINUING DISCLOSURE UNDERTAKING

#### CONTINUING DISCLOSURE UNDERTAKING

This Continuing Disclosure Undertaking (the “Disclosure Undertaking”), dated as of June 27, 2024, is executed and delivered by **JFK NTO LLC**, a Delaware limited liability company that was formed on December 16, 2021 (the “Obligated Person”) for the benefit of the Owners (hereinafter defined) of the Bonds (hereinafter defined) 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 Conduit Issuer and the purchase of such Bonds by the Underwriters listed on the cover of the Official Statement (hereinafter defined), the Obligated Person 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 Obligated Person 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 Obligated Person or his or her designee, or such other person as the Obligated Person shall designate from time to time.

(f) “Bonds” means the Series 2024 Bonds described in the Official Statement (hereinafter defined) as listed on the attached Exhibit A, with the CUSIP numbers relating thereto.

(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 Obligated Person 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) “Conduit Issuer” means New York Transportation Development Corporation, a local development corporation formed under Section 1411 of the New York Not-for-Profit Corporation Law

(i) “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.

(j) “Dissemination Agent” shall mean the Obligated Person, or any Dissemination Agent, or any alternate or successor Dissemination Agent, designated in writing by an Authorized Representative of the District, which Dissemination Agent has evidenced its acceptance in writing.

(k) “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.

(l) “Failure to File Event” means the Obligated Person’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.

(m) “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.

(n) “Force Majeure Event” means: (i) acts of God, war, or terrorist action; (ii) failure or shut-down of the EMMA System maintained by the MSRB; or (iii) to the extent beyond the Obligated Person’s reasonable control, interruptions in telecommunications or utilities services, failure, malfunction or error of any telecommunications, computer or other electrical, mechanical or technological application, service or system, computer virus, interruptions in Internet service or telephone service (including due to a virus, electrical delivery problem or similar occurrence) that affect Internet users generally, or in the local area in which the Obligated Person or the MSRB is located, or acts of any government, regulatory or any other competent authority the effect of which is to prohibit the Dissemination Agent from performance of its obligations under this Disclosure Undertaking.

(o) “Generally Accepted Accounting Principles” has the meaning ascribed to such term in the Indenture.

- (p) “Indenture” has the meaning ascribed to such term in the Official Statement.
- (q) “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.
- (r) “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.
- (s) “Monthly Report” means a Monthly Report described in and consistent with Section 3M of this Disclosure Undertaking.
- (t) “MSRB” means the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of the Securities Exchange Act of 1934.
- (u) “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.
- (v) “Official Statement” means that Official Statement of the Conduit Issuer prepared in connection with the Bonds listed on Exhibit A.
- (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 information of any of the categories specified in Section 7(a) of this Disclosure Undertaking that is accompanied by a Certification of the Authorized Representative containing the information prescribed by Section 7(a) of this Disclosure Undertaking.
- (bb) “Voluntary Financial Disclosure” means information of any of the categories specified in Section 7(b) of this Disclosure Undertaking that is accompanied by a Certification of the Authorized Representative containing the information prescribed 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 the Obligated Person with the Dissemination Agent, and the corresponding obligation of the Dissemination Agent to file such reports with the MSRB. With respect to all such filings by the Dissemination Agent with the MSRB, the Dissemination Agent will verify the filing specifications 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, and each Audited Financial Statement received under Section 2A(d), with the MSRB. If the Dissemination Agent is not the Obligated Person, the Dissemination Agent shall provide the Obligated Person 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 Obligated Person, shall provide, annually, an electronic copy of the Annual Report and Certification to the Dissemination Agent not later than one hundred twenty (120) days following the end of each fiscal year of the Obligated Person, commencing with the Fiscal Year ending December 31, 2024. Promptly upon receipt of an electronic copy of the Annual Report and the Certification, the Dissemination Agent shall provide an Annual Report to the MSRB not later than one hundred thirty-five (135) days after the end of each fiscal year of the Obligated Person, 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 Obligated Person is unable to provide to the MSRB through the EMMA System an Annual Report by the date required in paragraph (a) above, the Obligated Person shall 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 Dissemination Agent is other than the Obligated Person, the Dissemination Agent shall file a report with the Obligated Person certifying that the Annual Report has been provided pursuant to this Continuig Disclosure Undertaking, stating the date it was provided and confirming that it has been filed with the MSRB through the EMMA System.

(d) If Audited Financial Statements of the Obligated Person are not available prior to the Annual Filing Date, the Obligated Person shall include unaudited financial statements as part of the Annual Report. The Audited Financial Statements, when and if available, will be provided to the Dissemination Agent.

(e) The Obligated Person 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 Conduit 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 Obligated Person shall provide, for the first, second and third fiscal quarter of each fiscal year of the Obligated Person, an electronic copy of the Quarterly Report and Certification to the Dissemination Agent, together with a copy each for the Conduit Issuer and the Trustee, not later than the sixty-fifth (65th) day following the end of each of the first three quarters, beginning with the quarter ending September 30, 2024 (such date, and each date as applied to each such calendar quarter thereafter, 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 Obligated Person is unable to provide to the MSRB through the EMMA System a Quarterly Report by the date required in paragraph (a) above, the Obligated Person shall 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 Quarterly Report Date the electronic filing requirements of the MSRB for the Annual Reports; and

(ii) if the Dissemination Agent is other than the Obligated Person, the Dissemination Agent shall file a report with the Obligated Person certifying that the Quarterly Report has been provided pursuant to this Continuing Disclosure Undertaking, stating the date it was provided and confirming that it has been filed with the MSRB through the EMMA System.

#### SECTION 2M. Provision of Monthly Reports.

(a) Until such time as the Obligated Person certifies that Phase A DBO has been achieved as described in the Official Statement, the Obligated Person shall provide, monthly, an electronic copy of the Monthly Report and Certification to the Dissemination Agent, together with a copy each for the Conduit Issuer and the Trustee, not later than the thirty-five (35) day following the end of each month, beginning with the month ending on July 31, 2024 (such date, and each monthly anniversary thereof, 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 Obligated Person is unable to provide to the MSRB through the EMMA System a Monthly Report by the date required in paragraph (a) above, the Obligated Person shall 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 Dissemination Agent is other than the Obligated Person, the Dissemination Agent shall file a report with the Obligated Person certifying that the Monthly Report has been provided pursuant to this Continuing Disclosure Undertaking, stating the date it was provided and confirming that it has been filed with the MSRB through the EMMA System.

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 Obligated Person, including Audited Financial Statements, if available;
  - (ii) to the extent the Phase A DBO has occurred, the Annual Operating Budget of the Obligated Person for the Fiscal Year most recently completed;
  - (iii) to the extent the Phase A DBO has occurred, a list of airlines operating at the New Terminal Facilities as of December 31 of the Fiscal Year most recently completed, and each such airlines' affiliation with a major global alliance, if any, as of such date;
  - (iv) to the extent the Phase A DBO has occurred, a statement setting forth the number of contact gates at the New Terminal Facilities used for active loading of passengers as of December 31 of the Fiscal Year most recently completed;
  - (v) to the extent the Phase A DBO has occurred, a chart setting forth the total enplaned and deplaned passenger traffic of each of the top ten airline users of the New Terminal Facilities, and the percentage that each airline's traffic represents of the total number of passengers enplaned and deplaned;
  - (vi) a statement that the Obligated Person continues to maintain all insurance policies required under the Lease;
  - (vii) a statement identifying whether any additional bonds were issued during the Fiscal Year most recently ended, and, if so, the outstanding principal amount of such additional bonds;
  - (viii) to the extent the Phase A DBO has occurred, the Debt Service Coverage for the Fiscal Year most recently completed, prepared by the Obligated Person in form substantially similar to the chart set forth in the Official Statement under "PART 18 – THE CONSULTANT'S REPORTS," which chart the Obligated Person may populate with information produced by the Obligated Person and not by any consultant;
  - (ix) to the extent the Phase A DBO has occurred, the Debt Service Reserve Requirement for each Senior Debt Service Reserve Account for the Fiscal Year

in which the filing is made, the amount currently on deposit in each such Senior Debt Service Reserve Account, and the amounts currently on deposit from cash and eligible investments and letters of credit; and

- (x) to the extent the Phase A DBO has occurred, 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 Obligated Person 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. Audited Financial Statements will be provided pursuant to Section 2A(d).

(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 Obligated Person 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 on the MSRB Internet Website. If the document incorporated by reference is a final official statement, it must be available from the MSRB. The Obligated Person 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 Obligated Person 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.

(e) Each Quarterly Report shall contain or incorporate by reference the following:

- (i) for the first, second and third fiscal quarter of the Obligated Person, unaudited financial statements of the Obligated Person, including the unaudited income statement and balance sheet of the Obligated Person as of the end of the applicable period and the related unaudited statements of operations, changes in member capital and cash flows of the Obligated Person for such period, certified by the president, chief executive officer, chief financial officer or treasurer of the Obligated Person have been prepared in accordance with GAAP; and
- (ii) a quarterly operating report for the first, second and third quarter of the Fiscal Year, as applicable, with respect to Phase A, to the extent Phase A DBO has been achieved.

(f) 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 Obligated Person is an “obligated person” (as defined by the Rule), which have been previously filed with the Securities and Exchange Commission or available on the MSRB Internet Website. 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.

(g) 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 Obligated Person 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.

(h) Each Monthly Report (which shall only be required to be submitted during the construction period prior to Phase A DBO being achieved as described in the Official Statement) shall contain or incorporate by reference the monthly progress report the Obligated Person is obligated to deliver under the Common Terms Agreement.

(i) 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 Obligated Person is an “obligated person” (as defined by the Rule), which have been previously filed with the Securities and Exchange Commission or available on the MSRB Internet Website. If the document incorporated by reference is a final official statement, it must be available from the MSRB. The Obligated Person 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 Obligated Person; 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 an Obligated Person 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 Obligated Person, 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 Obligated Person;
- (xiii) The consummation of a merger, consolidation, or acquisition involving an Obligated Person or the sale of all or substantially all of the assets of the Obligated Person, 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 an Obligated Person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of an Obligated Person, any of which affect security holders, 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 an Obligated Person, any of which reflect financial difficulties.

(b) The Obligated Person intends to comply with the Notice Events described in subparagraph xv and xvi above, and the definition of “Financial Obligation” herein, with reference to the Rule, and any other applicable federal securities laws and guidance provided by the Securities and Exchange Commission in Release No. 34-83885 dated August 20, 2018 (the “2018 Release”), and any further amendments or written guidance provided by the Securities and Exchange Commission or its staff with respect the amendments to the Rule effected by the 2018 Release.

(c) The Obligated Person 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, if material.

(d) If the Dissemination Agent has been instructed by the Obligated Person as prescribed in subsection (c) of this Section 4 to report the occurrence of a Notice Event, the Dissemination Agent shall promptly file a notice of such occurrence with the MSRB in accordance with this Disclosure Undertaking. This notice may be filed with a cover sheet completed by the Dissemination Agent in the form set forth in Exhibit C-1.

(e) The Trustee may deliver notices of redemption or defeasance of Bonds to the Dissemination Agent on behalf of the Obligated Person 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. CUSIP Numbers.** 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 Obligated Person shall indicate 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 Obligated Person 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 Obligated Person, 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 Obligated Person, 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 Obligated Person 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 Obligated Person may instruct the Dissemination Agent to file a Voluntary Event Disclosure with the MSRB from time to time pursuant to a Certification of the Authorized Representative. Such Certification shall identify the Voluntary Event Disclosure (which shall be

any of the categories set forth in this Section 7(a)), include the text of the disclosure that the Obligated Person desires to make, contain the written authorization of the Obligated Person for the Dissemination Agent to disseminate such information, and identify the date the Obligated Person desires for the Dissemination Agent to disseminate the information. If the Dissemination Agent has been instructed by the Obligated Person as prescribed in this Section 7(a) to file a Voluntary Event Disclosure, the Dissemination Agent shall promptly file such Voluntary Event Disclosure with the MSRB in accordance with this Disclosure Undertaking. This notice may be filed with a cover sheet completed by the Dissemination Agent 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 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 Obligated Person may instruct the Dissemination Agent to file a Voluntary Financial Disclosure with the MSRB from time to time pursuant to a Certification of the Authorized Representative. Such Certification shall identify the Voluntary Financial Disclosure (which shall be any of the categories set forth in this Section 7(b)), include the text of the disclosure that the Obligated Person desires to make, contain the written authorization of the Obligated Person for the Dissemination Agent to disseminate such information, and identify the date the Obligated Person desires for the Dissemination Agent to disseminate the information. If the Dissemination Agent has been instructed by the Obligated Person as prescribed in this Section 7(b) to file a Voluntary Financial Disclosure, the Dissemination Agent shall promptly file such Voluntary Financial Disclosure with the MSRB. This notice may be filed with a cover sheet completed by the Dissemination Agent 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 Obligated Person 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 Obligated Person from disseminating any other information 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 Obligated Person 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 Obligated Person 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 Obligated Person 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 Obligated Person is no longer an “obligated person” (within the meaning of the Rule), 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 Obligated Person 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 Obligated Person may amend this Disclosure Undertaking and any provision of this Disclosure Undertaking may be waived, if such amendment or waiver is supported by (i) an opinion of counsel expert in federal securities laws 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 subsequent change in or official interpretation of the Rule and (ii) an opinion of counsel expert in federal securities laws acceptable to both the Obligated Person 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 Obligated Person 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 Obligated Person, the Conduit 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.

JFK NTO LLC, as Obligated Person

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**

**NAME AND CUSIP NUMBERS OF BONDS**

**NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION**

**SPECIAL FACILITIES REVENUE BONDS, SERIES 2024**

**(John F. Kennedy International Airport New Terminal One Project)**

**[TO COME]**

## **EXHIBIT B**

### **NOTICE TO MSRB OF FAILURE TO FILE ANNUAL REPORT**

Conduit Issuer	New York Transportation Development Corporation
Obligated Person:	JFK NTO LLC
Name(s) of Bond Issue(s):	Special Facilities Revenue Bonds, Series 2024 (John F. Kennedy International Airport New Terminal One Project)
Date(s) of Issuance:	June 27, 2024
Date(s) of Disclosure Agreement:	As of June 27, 2024
CUSIP Numbers:	_____

NOTICE IS HEREBY GIVEN that the Obligated Person has not provided an Annual Report with respect to the above-named Bonds as required by the Disclosure Undertaking. The Obligated Person 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).

Conduit Issuer's and Obligated Person's Names:

**New York Transportation Development Corporation**  
**JFK NTO, LLC**

Conduit Issuer's Six-Digit CUSIP Number:

**650116**

Conduit 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 an Obligated Person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of an Obligated Person, 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 an Obligated Person, 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 Obligated Person or its agent to distribute this information publicly:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Date:

**EXHIBIT C-2**  
**VOLUNTARY EVENT DISCLOSURE COVER SHEET**

Conduit Issuer's and Obligated Person's Names:

**New York Transportation Development Corporation**  
**JFK NTO LLC**

Conduit Issuer's Six-Digit CUSIP Number:

**650116**

Conduit 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 Obligated Person or its agent to distribute this information publicly:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Date:

**EXHIBIT C-3**  
**VOLUNTARY FINANCIAL DISCLOSURE COVER SHEET**

Conduit Issuer's and Obligated Person's Names:

**New York Transportation Development Corporation**  
**JFK NTO LLC**

Conduit Issuer's Six-Digit CUSIP Number:

**650116**

Conduit 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 Obligated Person or its agent to distribute this information publicly:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Date:

**EXHIBIT D**

**NOTICE TO MSRB OF FAILURE TO FILE [QUARTERLY][MONTHLY] REPORT**

Conduit Issuer	New York Transportation Development Corporation
Obligated Person:	JFK NTO LLC
Name(s) of Bond Issue(s):	Special Facilities Revenue Bonds, Series 2024 (John F. Kennedy International Airport New Terminal One Project)
Date(s) of Issuance:	June 27, 2024
Date(s) of Disclosure Agreement:	As of June 27, 2024
CUSIP Numbers:	_____

NOTICE IS HEREBY GIVEN that the Obligated Person has not provided a [Quarterly][Monthly] Report with respect to the above-named Bonds as required by the Disclosure Undertaking. [The Obligated Person anticipates that the [Quarterly][Monthly] Report will be filed by\_\_\_\_\_].

Dated: \_\_\_\_\_

cc: \_\_\_\_\_

## **Appendix J**

### **GREEN BONDS SECOND PARTY OPINION**

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## Second Party Opinion

<b>Issuer:</b>	<b>New York Transportation Development Corporation</b>
<b>Issue Description:</b>	Special Facilities Revenue Bonds, Series 2024 (John F. Kennedy International Airport New Terminal One Project) (Green Bonds)
<b>Project:</b>	New Terminal One Project
<b>Green Standard:</b>	ICMA Green Bond Principles
<b>Green Category:</b>	Green Buildings
<b>Keywords:</b>	Green buildings, LEED Silver, energy efficiency, Envision Gold, sustainable design, net zero aligned, climate resilience, airport, gate electrification, JFK Airport, New York
<b>Par:</b>	\$2,550,000,000
<b>Evaluation Date:</b>	May 30, 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, Series 2024 (John F. Kennedy International Airport New Terminal One Project) (Green Bonds) ("Series 2024 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 2024 Bonds with the Green Bond Principles. In our opinion, the Series 2024 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, the Lessee & the Sponsors

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 NTO LLC (the "Lessee"). JFK NTO LLC was formed in December 2021 to implement and manage the project financed by the Series 2024 Bonds. The sponsors and share owners of JFK NTO LLC are Mars NTO LLC (owned by Ferrovial and affiliates of the Carlyle Group), JLC Infrastructure, and an affiliate of Ullico, Inc (the

"Sponsors").<sup>1</sup> The Lessee will lease certain 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 Lessee will implement and operate the new facilities financed, in part, by the Series 2024 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-New Jersey region, the Airport contributes over \$45 billion in economic activity and supports over 238,000 total jobs, not including the approximately 40,500 people employed at the Airport.<sup>3</sup>

JFK Airport is an industry leader in environmental sustainability and decarbonization. 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 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 and a 7.7-MW rooftop solar array for the New Terminal One.<sup>5,6</sup> The reconstruction and expansion of Terminal 4 at the Airport achieved LEED Platinum certification for Operations and Maintenance, making it the first pre-existing airline terminal in the United States to achieve the Platinum standard.<sup>7</sup>

The Port Authority has multiple sustainability goals, plans, and commitments, most notably the *Net Zero Roadmap* ("Roadmap") dated September 2023.<sup>8</sup> The *Roadmap* details strategies for the Port Authority to reduce direct greenhouse gas emissions by 50% by 2030 and to 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 and electric ground power and pre-conditioned air at all gates. As of May 2024, the bidding process is underway for service providers, and applicants are expected to provide plans for operation of a fully electrified GSE fleet. Approximately 98 charging points for GSEs are planned throughout the Airport. In addition, the Port Authority has established sustainable design standards guidelines for capital projects, including designing to LEED Silver for large (greater than 20,000 square feet) new building construction projects and designing to Envision Gold for

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<sup>1</sup> Mars NTO LLC is owned by an affiliate of Ferrovial International SE and certain affiliates of The Carlyle Group.

<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 May 7, 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> Series 2024 Bond proceeds will not finance the new Terminal One solar array.

<sup>7</sup> "JFK Airport's Terminal 4 Awarded LEED Platinum Certification," T4 JFK International Air Terminal, September 26, 2022, <https://www.jfkt4.nyc/4news/article/jfk-airports-terminal-4-awarded-leed-platinum-certification/>.

<sup>8</sup> "Net Zero Roadmap," Port Authority NY NJ, September 2023, <https://www.panynj.gov/content/dam/port-authority/about/environmental-initiatives/-panynj-NetZeroRoadMap.pdf>.

large, multi-disciplinary and high-profile infrastructure projects.<sup>9</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.

## ALIGNMENT TO GREEN STANDARDS<sup>10</sup>

### Use of Proceeds

The Series 2024 Bonds finance construction and refinance bank loans for construction of Phase A of the new Terminal One at JFK (“Phase A” or the “Project”). Phase A includes construction of a new terminal building and demolition of certain existing facilities and recycling of debris. Terminal One is designed to meet LEED Silver<sup>11</sup>, at a minimum, and Envision Gold sustainable infrastructure standards. The financed activities are eligible projects as defined by the Green Bond Principles in the *Green Buildings* project category.



The new Terminal One project is expected to be completed in three phases: Phase A, Phase B1 and Phase B2. Phase A includes construction of an approximately 1.8-million-square-foot new terminal with passenger gates, concessions, baggage handling and a Federal Inspection Services space for international flights. When Phase A is complete, the facility will be fully operational to serve passengers. The total cost of all phases of the project is expected to be approximately \$8.4 billion.

### Construction Status

Construction began in June 2022 and is expected to be complete in June 2026. The Project remains on schedule and budget. Work on major structural elements of the terminal entrance and the foundation of the East Pier is nearing completion. Installation of critical building systems such as HVAC and utility infrastructure is underway. The Lessee expects to have the building fully enclosed and weathertight by the end of 2024. As of March 2024, construction of Phase A was 35% complete.

The Project also includes demolition of existing facilities including one parking garage and the existing Terminal 2 building. Approximately 97% of materials have been reused or recycled, exceeding the minimum 90% requirement for Port Authority projects. As of September 2023, the major demolition components have been completed.

### Sustainable and Resilient Design

JFK NTO LLC is targeting a minimum of LEED Silver certification for the building, Envision Gold for certification for all infrastructure, and will follow the Port Authority of New York and New Jersey Sustainable Design Guidelines for both buildings and infrastructure.<sup>12</sup>

<sup>9</sup> “Clean Construction,” Port Authority NY NJ, accessed May 16, 2024, <https://www.panynj.gov/port-authority/en/about/Environmental-Initiatives/clean-construction.html>.

<sup>10</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>11</sup> Building Design + Construction (BD+C), Interior Design + Construction (ID+C), and Operations and Maintenance (O+M)

<sup>12</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>.

The new terminal building is designed to minimize energy and water use and reduce greenhouse gas emissions. Key sustainability features for Terminal One are highlighted below.

- High-efficiency HVAC, lighting, building envelope, and automated monitoring systems are incorporated to minimize energy use.
- A total of 7.7 MW<sup>13</sup> of solar will be installed on roof areas, aligned with the New York target to reach 50% renewables by 2030.
- Installation of three Power Islands, each with two 460 kW fuel cells designed to use low carbon fuels in the future.
- Commitments to track and report on annual greenhouse gas emissions in compliance with the New York City Climate Mobilization Act. The facility will comply with progressively lower building emissions intensity limits through 2050.
- The baggage handling system is designed to minimize energy use with features such as idling modes to reduce run time.
- Infrastructure to provide pre-conditioned air will be added at all gates and designs support fully electrified ground service equipment.
- A life-cycle analysis of materials in the main structure and building envelope was completed and a value chain analysis was used to prioritize low-carbon building materials.
- Stormwater capture and reuse systems are incorporated, as well as low-flow water fixtures and advanced water metering. Approximately 50% of annual rainwater on the terminal roof area will be captured and reused, and a portion of the roof will be a green roof, with plants and landscaping.
- The new facility is elevated to minimize flooding and includes backup power sources to improve resilience to power outages.

The project is also designed to achieve the Envision Gold standard. 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 2024 Bonds

Bonds are net zero aligned if bond-financed activities advance goals to reach net zero greenhouse gas emissions by 2050. The Terminal One project is designed to meet robust green building standards and Envision sustainable infrastructure standards that advance the Port Authority’s goal to reach net zero by 2050.

In addition to construction of an energy-efficient building, the Terminal One project includes a 11.34-MW microgrid with solar arrays, battery storage, and fuel cells designed to use low carbon fuels in the future. Energy generation from the microgrid reduces greenhouse gas emissions by approximately 38% compared to grid-sourced energy. The microgrid is scheduled to be operational with Phase A of the Project.

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<sup>13</sup> Phase A includes 6.4 MW of solar installations and full build-out of all phases includes approximately 8 MW.

These projects are financed separately from the Series 2024 Bonds but directly support emission reduction targets for Phase A and are integral to the design of low-carbon and resilient buildings.

### **Process for Project Evaluation and Selection**

In 2017, the Port Authority began a master planning program called *A Vision Plan for John F. Kennedy International Airport* to accommodate 100 million annual passengers by 2050. As part of this program, several existing terminals are planned for redevelopment, including the terminal project financed by the Series 2024 Bonds.<sup>14</sup> The modernized Terminal One will improve connectivity and consolidate outdated terminals at JFK. The Project will also help meet demand for modernized air transport in the New York-New Jersey-Connecticut metropolitan area, as identified by the Regional Plan Association.

Sustainable development of Terminal One has been integrated throughout the planning process. In April 2023, the latest draft of the NTO Sustainability Plan was prepared for the Project to provide a roadmap for achieving sustainability targets and includes:

- Quantifiable objectives that meet regional and stakeholder requirements, including the Port Authority's Environmental Policy and requirements under the NYC Climate Mobilization Act;
- Baseline energy use data and project status;
- Implementation steps to meet performance thresholds; and
- Commitments to ongoing project monitoring and greenhouse gas emissions reporting.

### **Management of Proceeds**

Proceeds of the Series 2024 Bonds finance and refinance the Project and pay costs of issuance. Upon closing, a portion of the Series 2024 Bond proceeds will be used to refinance a portion of bank loans under an existing credit agreement. Remaining proceeds will be deposited in a construction fund to pay ongoing construction costs. Prior to spending, proceeds in the construction fund may be held in Permitted Investments, as defined by the Common Terms Agreement. JFK NTO LLC is responsible for overseeing the allocation of proceeds.

### **Reporting**

Kestrel will provide one update report on the Series 2024 Bonds within 12 to 36 months of issuance. This report is expected to confirm use of proceeds to refinance a portion of bank loans, 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 Silver certification, square footage of energy-efficient buildings, and number of fully electrified gates constructed. Additionally, regular progress updates and announcements will be available on the Terminal One project website: [anewjfk.com/projects/the-new-terminal-one/](https://www.anewjfk.com/projects/the-new-terminal-one/).

Throughout the Terminal One construction period, JFK NTO LLC has engaged a consulting group to monitor and report on progress including budget updates. These progress reports will be conducted monthly and made available on the Electronic Municipal Market Access ("EMMA") system. Upon completion of the Terminal One project, JFK NTO, LLC intends to produce annual sustainability reports, with updates on a wide range of sustainability and resilience initiatives. Greenhouse gas emissions will be

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<sup>14</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>.

reported annually using Global Reporting Initiative standards to demonstrate ongoing compliance with the New York City Climate Mobilization Act. This greenhouse gas emissions reporting also supports JFK Airport’s accreditation under the Airport Council International Airport Carbon Accreditation program.

The Lessee will submit continuing financial disclosures to the Municipal Securities Rulemaking Board (“MSRB”) as long as the Series 2024 Bonds are outstanding, as well as reports in the event of material developments. This reporting will be done annually on EMMA, operated by the MSRB.

**ALIGNMENT WITH UN SDGs**



The Series 2024 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 new terminal and LEED Silver certification (minimum)



**Industry, Innovation and Infrastructure (Target 9.4)**  
Sustainable infrastructure for regional access and incorporated energy efficiency that will minimize greenhouse gas emissions



**Climate Action (Target 13.1)**  
Elevation of critical systems above floodplains and in conformance with resilient design standards

Full text of the Targets for these Goals is available in Appendix A, with additional information available on the United Nations website: [un.org/sustainabledevelopment](https://un.org/sustainabledevelopment)

**CONCLUSION**

Based on our independent external review, the Series 2024 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. The Project meets robust green building and sustainable infrastructure standards, and advances climate action goals of the Port Authority and the Airport.

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## About

Kestrel Sustainability Intelligence™ for municipal markets helps set the market standard for sustainable finance. We do this through verification and our comprehensive Analysis and Scores.

Kestrel is a leading provider of external reviews for green, social and sustainability bond transactions. We are qualified to evaluate corporate and municipal bonds in all asset classes worldwide for conformance with international green and social bond standards.

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For more information, contact:  
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+1 541-399-6806



### Verification Team

- Monica Reid - CEO
- April Strid, MS - Head of Research and Lead Verifier
- Matt Michel, PhD - Senior ESG Analyst

## 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 NTO LLC or made publicly available by JFK NTO LLC and relied upon by Kestrel only during the time of this engagement (May 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 date of issuance, 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 NTO 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 NTO 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.

# Appendix A.

## UN SDG TARGET DEFINITIONS

### **Target 7.3**

By 2030, double the global rate of improvement in energy efficiency

### **Target 9.4**

By 2030, upgrade infrastructure and retrofit industries to make them sustainable, with increased resource-use efficiency and greater adoption of clean and environmentally sound technologies and industrial processes, with all countries taking action in accordance with their respective capabilities

### **Target 13.1**

Strengthen resilience and adaptive capacity to climate-related hazards and natural disasters in all countries

**Appendix K**

**FORM OF LEGAL OPINION OF CO-BOND COUNSEL**

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June 27, 2024

New York Transportation Development Corporation  
c/o Empire State Development  
655 Third Avenue, 2<sup>nd</sup> Floor  
New York, New York 10017

Ladies and Gentlemen:

We have examined a record of proceedings of the New York Transportation Development Corporation (the “Conduit 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, and other proofs submitted to us relative to the issuance and sale of the Conduit Issuer’s \$2,550,000,000 aggregate principal amount of Special Facilities Revenue Bonds, Series 2024 (John F. Kennedy International Airport New Terminal One Project) (Green Bonds) (the “Series 2024 Bonds”).

The Series 2024 Bonds are issued under and pursuant to the Act and the Master Indenture of Trust (the “Master Indenture”) dated as of November 1, 2023, by and among the Conduit Issuer, JFK NTO LLC (the “Lessee”) and The Bank of New York Mellon, as trustee (the “Indenture Trustee”), as supplemented by the Second Supplemental Indenture of Trust dated as of June 1, 2024, by and among the Conduit Issuer, the Lessee and the Indenture Trustee (the “Second Supplemental Indenture” and together with the Master Indenture, the “Indenture”), and a resolution of the Conduit Issuer adopted on June 3, 2024 (the “Bond Resolution”) authorizing the issuance and sale of the Series 2024 Bonds and the taking of certain actions relating thereto.

On April 1, 2024, the Lessee entered into the Second Amended and Restated Common Terms Agreement (as amended, the “Common Terms Agreement”) among the JFK NTO TRS LLC, the Conduit Issuer, U.S. Bank, N.A., as the Collateral Agent (the “Collateral Agent”) and as Account Bank, MUFG Bank, Ltd., as the Intercreditor Agent (the “Intercreditor Agent”), and the Administrative Agent, and any other Secured Creditor that becomes a party to the Common Terms Agreement from time to time. Upon issuance of the Series 2024 Bonds and the execution and delivery by the Indenture Trustee of an Accession Agreement to the Common Terms Agreement, the Owners of the Series 2024 Bonds will be Secured Parties under the Common Terms Agreement represented by the Indenture Trustee as their Secured Debt Representative.

Pursuant to the Common Terms Agreement, the Secured Parties and the Lessee set forth, among other things, the establishment of certain Project accounts, the flow of funds, the appointment of various agents and certain of their respective rights and obligations in respect of the financing of the Project, certain representations, warranties, and covenants, events of default, remedies, intercreditor provisions and other terms and conditions with respect to the Lessee and the Project that benefit the Secured Creditors.

Capitalized terms used but not defined herein shall have the respective meanings ascribed thereto in the Indenture and the Common Terms Agreement.

The Series 2024 Bonds are dated the date hereof and mature on the dates and bear interest at the rates set forth in the Series 2024 Bonds and the Second Supplemental Indenture. The Series 2024 Bonds are issuable as fully

registered bonds, without coupons, in such authorized denominations as set forth in the Series 2024 Bonds and the Indenture.

The Series 2024 Bonds are subject to optional redemption, extraordinary mandatory redemption and mandatory sinking fund redemption prior to maturity in the manner and upon the terms and conditions set forth in the Second Supplemental Indenture.

The Series 2024 Bonds are issued in order to provide funds for the following purposes: (i) finance and refinance a portion of the costs of Phase A of the Project originally financed by the proceeds of a portion of the outstanding Bank Loans, (ii) fund a portion of the interest on the Series 2023 Bonds and the Series 2024 Bonds, and (iii) pay certain costs of issuance related to the Series 2024 Bonds. Interest payable on the Series 2024 Bonds during construction of Phase A is anticipated to be paid from funds on deposit in the applicable Capitalized Interest Accounts, proceeds of draws on the Bank Loans, and other available sources.

The proceeds of the Series 2024 Bonds will be loaned by the Conduit Issuer to the Lessee pursuant to a Building Loan Agreement and a Project Loan Agreement (collectively, the “Loan Agreements”), each dated as of June 10, 2022, each among the Conduit Issuer, the Lessee and the Intercreditor Agent, which loans will each be evidenced by a related promissory note of the Lessee (the “Notes”) and used for the Project. The Series 2024 Bonds are secured by, among other things, a pledge and assignment of the Notes and the Loan Agreements to the Collateral Agent pursuant to the Collateral Assignments and a pledge of moneys and securities held in certain funds and accounts established under the Indenture and under the Common Terms Agreement.

The Lessee has granted to the Indenture Trustee and the Conduit Issuer mortgage liens on the Lessee’s leasehold interest in the Premises pursuant to the Leasehold Mortgages, each dated as of June 10, 2022 (collectively the “Leasehold Mortgages”).

The Conduit Issuer has assigned all of its right, title and interest (other than certain reserved rights) in the Loan Agreements and the Leasehold Mortgages to the Collateral Agent, for the benefit of the Bondholders and other Secured Creditors.

We are of the opinion that:

1. The proceedings and proofs reviewed show lawful authority for the issuance and sale of the Series 2024 Bonds by the Conduit Issuer pursuant to the laws of the State of New York, including particularly the Act and other applicable provisions of law, and the Bond Resolution, and under and pursuant to the provisions, terms and conditions of the Indenture.
2. The Conduit Issuer has the right and power to enter into each of the Master Indenture, the Second Supplemental Indenture and the Loan Agreements, and each has been duly authorized, executed and delivered by the Conduit Issuer and, assuming due authorization, execution and delivery of such documents by the other parties thereto, the Indenture and the Loan Agreements are in full force and effect in accordance with their terms and are valid and binding upon the Conduit Issuer and enforceable against the Conduit Issuer in accordance with their terms, and no other authorization by the Conduit Issuer for either of the Indenture or the Loan Agreements is required.
3. The Indenture creates the valid pledge which it purports to create of all funds, accounts, moneys and obligations from time to time held by the Indenture Trustee, under the Indenture subject only to the provisions of the Indenture and the Common Terms Agreement permitting the application thereof for the purposes and on the terms and conditions set forth in the Indenture and the Common Terms Agreement.

4. The Conduit 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 Conduit Issuer. The Series 2024 Bonds are valid and binding special limited revenue obligations of the Conduit Issuer, are enforceable against the Conduit Issuer in accordance with their terms and the terms of the Indenture and are payable as to principal, Redemption Price and interest from moneys on deposit in the funds and accounts maintained under the Indenture. The Series 2024 Bonds are entitled to the benefits of the Indenture and the Act.

5. The Internal Revenue Code of 1986, as amended (the “Code”), establishes certain requirements that must be met at and subsequent to the issuance and delivery of the Series 2024 Bonds for interest on the Series 2024 Bonds to be and remain not includable in gross income of the owners thereof under Section 103 of the Code. Included among the continuing requirements are certain restrictions and prohibitions on the use of proceeds of the Series 2024 Bonds, restrictions on the use of the Project, restrictions on the investment of proceeds and other amounts and the rebate to the United States of certain earnings in respect of investments. Failure to comply with these continuing requirements may cause the interest on the Series 2024 Bonds to be includable in gross income for federal income tax purposes retroactively to the date of their issuance irrespective of the date on which such noncompliance occurs. In the Indenture, the Loan Agreements, the Tax Certificate and Agreement among the Conduit Issuer, the Lessee and the Indenture Trustee dated the date hereof (the “Tax Certificate”), and accompanying documents, exhibits, and certificates, the Conduit Issuer and the Lessee have covenanted to comply with certain procedures, and they have made certain representations and certifications, designed to assure compliance with the requirements of the Code.

Assuming continuing compliance by the Conduit Issuer and the Lessee (and their successors) with the covenants and the accuracy of the representations and certifications referenced above, under existing statutes, regulations, rulings and court decisions, interest (and any accrued original issue discount) on the Series 2024 Bonds is not includable in gross income for federal income tax purposes; except that no opinion is expressed as to the non-inclusion of interest (and any accrued original issue discount) on any Series 2024 Bond from gross income for federal income tax purposes during the period that such Series 2024 Bond is held by a “substantial user” of the facilities financed or refinanced by the Series 2024 Bonds or a “related person” within the meaning of Section 147(a) of the Code.

Interest (and any accrued original issue discount) on the Series 2024 Bonds is an “item of tax preference” to be included in calculating the federal alternative minimum taxable income for purposes of the alternative minimum tax imposed with respect to individuals. Interest (and any accrued original issue discount) on the Series 2024 Bonds is included in the adjusted financial statement income of those corporations subject to the corporate alternative minimum tax.

6. Assuming continuing compliance by the Conduit Issuer and the Lessee (and their successors) with the requirements of the Code that must be met in order for interest on the Series 2024 Bonds to be not includable in gross income for federal income tax purposes, interest (and any accrued original issue discount) on the Series 2024 Bonds is also not includable in taxable income for purposes of personal income taxes imposed by the State of New York, The City of New York and the City of Yonkers, under existing statutes, regulations, rulings and court decisions; except that no opinion is expressed as to the non-inclusion of interest (and any accrued original issue discount) on any Series 2024 Bond in taxable income for purposes of such personal income taxes during the period that such Series 2024 Bond is held by a “substantial user” of the Project or a “related person” within the meaning of Section 147(a) of the Code.

Except as stated in paragraphs 5 and 6 above, we express no opinion as to any federal or state tax consequences of the ownership or disposition of the Series 2024 Bonds.

We have examined one of the Series 2024 Bonds in fully registered form and, in our opinion, the form of said Series 2024 Bond is regular and proper.

The opinions expressed herein with respect to the Indenture, the Series 2024 Bonds and the Loan Agreements are qualified to the extent that enforceability of the Indenture, the Series 2024 Bonds and the Loan Agreements may be limited by any applicable bankruptcy, insolvency, debt adjustment, moratorium, reorganization or other similar laws or equitable principles affecting creditors' rights generally or as to the availability of any particular remedy.

In rendering this opinion, we express no opinion with respect to the due filing and sufficiency of financing statements under the Uniform Commercial Code as enacted in the State of New York. We understand that you have received the opinions of Gibson, Dunn & Crutcher LLP and Bryant Rabbino LLP, co-counsel to the Lessee, dated the date hereof, with respect to such matters.

In rendering this opinion, we have reviewed the opinions of Gibson, Dunn & Crutcher LLP and Bryant Rabbino LLP, co-counsel to the Lessee, each dated the date hereof, as to certain matters relating to the Lessee, and have assumed the due authorization, execution and delivery of the Loan Agreements, the Notes and the Tax Certificate by the parties thereto (other than the Conduit Issuer). We understand that you have received the opinions of the Lessee's counsel, Gibson, Dunn & Crutcher LLP and Bryant Rabbino LLP, each dated the date hereof, with respect to such matters.

Certain requirements and procedures contained or referred to in the Indenture, the Loan Agreements, the Tax Certificate and other relevant documents may be changed, and certain actions may be taken, under the circumstances and subject to the terms and conditions set forth in such documents, upon the advice or with the approving opinion of nationally recognized bond counsel. We express no opinion as to the effect on the exclusion from gross income for federal tax purposes, and as to the effect on the non-inclusion in taxable income for purposes of personal income taxes imposed by the State of New York, The City of New York and the City of Yonkers, New York, of interest on the Series 2024 Bonds of any such change occurring, or such action or other action taken or not taken, after the date hereof, upon the advice or approval of bond counsel other than Katten Muchin Rosenman LLP and D. Seaton and Associates, P.A., P.C. Furthermore, the opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. Such opinions may be affected by actions taken or omitted or events occurring (or not occurring) after the date hereof. We have not undertaken to determine, or to inform any person, of any such actions taken or omitted or events occurring (or not occurring) or any other matters which come to our attention after the date hereof. Accordingly, this opinion speaks only as of its date and is not intended to, and may not, be relied upon in connection with any such actions, events or matters. Our engagement with respect to the Series 2024 Bonds has concluded with their issuance, and we disclaim any obligations to update this letter.

Very truly yours,

**Appendix L**

**SPECIMEN MUNICIPAL BOND INSURANCE POLICY**

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## MUNICIPAL BOND INSURANCE POLICY

ISSUER:

BONDS: \$ in aggregate principal amount of

Policy No: -N

Effective Date:

Premium: \$

ASSURED GUARANTY MUNICIPAL CORP. ("AGM"), 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 AGM, 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 AGM shall have received Notice of Nonpayment, AGM 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 AGM, 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 AGM. 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 AGM is incomplete, it shall be deemed not to have been received by AGM for purposes of the preceding sentence and AGM 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, AGM 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 AGM hereunder. Payment by AGM to the Trustee or Paying Agent for the benefit of the Owners shall, to the extent thereof, discharge the obligation of AGM 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 AGM 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 AGM 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.

AGM 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 AGM pursuant to this Policy shall be simultaneously delivered to the Insurer's Fiscal Agent and to AGM and shall not be deemed received until received by both and (b) all payments required to be made by AGM under this Policy may be made directly by AGM or by the Insurer's Fiscal Agent on behalf of AGM. The Insurer's Fiscal Agent is the agent of AGM 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 AGM to deposit or cause to be deposited sufficient funds to make payments due under this Policy.

To the fullest extent permitted by applicable law, AGM 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 AGM 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 AGM, 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 MUNICIPAL CORP. has caused this Policy to be executed on its behalf by its Authorized Officer.

ASSURED GUARANTY MUNICIPAL CORP.

By \_\_\_\_\_  
Authorized Officer

A subsidiary of Assured Guaranty Municipal Holdings Inc.  
1633 Broadway, New York, N.Y. 10019  
(212) 974-0100

Form 500NY (5/90)



# THE NEW TERMINAL ONE

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JFK INTERNATIONAL AIRPORT

